



Barnesville Oak, Preliminary Plan Amendment No. 12009011B

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Completed: 06/07/19

Description

Barnesville Oak, Preliminary Plan Amendment No. 12009011B:

Request to amend Condition No. 13 of MCPB Resolution No. 10-129, approving Preliminary Plan No. 120090110; on Peach Tree Road, 1,976 feet SW of Whites Store Road; Agricultural Reserve Zone (AR), 1980 Preservation of Agriculture and Rural Open Space Functional Master Plan.

Recommendation – Approval

Applicant: Stud Farm, LLC

Acceptance Date: 01/09/2019

Review Basis: Chapter 50, Chapter 59



Summary

- There is no new development associated with this application.
- Amending previously approved condition to exclude Farm Labor Housing Units from the density calculation/development rights retention requirement, consistent with Section 59.4.2.1.D.2 of the Montgomery County Zoning Ordinance, as amended by ZTA 17-06.
- Amending the condition does not require any new Preliminary Plan Findings.
- Staff has received correspondence concerned with the possibility of increasing density or additional development on the property.
- The Planning Board granted an Extension Request on June 6, 2019.

Executive Summary

Maximum Density of an AR (previously RDT) zoned property is one unit per every 25 acres. The Barnesville Oak subdivision was 840 acres of land and would have a maximum yield of 33 units. The applicant at the time only requested 24 units, which was below the maximum yield.

At the public hearing for the Barnesville Oak Subdivision in 2010, the Planning Board determined that any subdivision of RDT property, was the triggering event under §59-C-9.41 for inclusion of farm tenant dwellings, farm tenant mobile homes or guest houses in the density calculation. This interpretation led to Condition 13:

Record Plat must reference a recorded easement for the parent parcels indicating i) that density and TDRs for these lots was removed from the parent parcels; and ii) per §59-C-9.41 of the Montgomery County Zoning Ordinance, following this subdivision, any farm tenant dwelling, farm tenant mobile home, or guest house is included in the total permitted density of 33 residential structures on the Property.

In 2018, the Montgomery County Council adopted ZTA 17-06 as Ordinance Number 18-39 ("ZTA 17-06"). This legislative action changed the 2010 Planning Board interpretation. Currently the Code, §59.4.2.1.D.2 excludes Farm Labor Housing Units (previously known as farm tenant dwellings and farm tenant mobile homes) from the density calculation for properties undergoing subdivision in the AR zone if the use remains accessory to farming and the principal dwelling following subdivision.

The ZTA 17-06 has changed the underlying code (§59-C-9.41) and partially invalidated Condition #13 and the associated covenant. The applicant has filed an application to amend Condition #13 so that the Subdivision can be brought into alignment with the current code.

This application does not grant any additional units above the previously approved 24. However, if this application were approved as requested by the Applicant, it would not preclude future preliminary plan amendment applications from seeking additional units up to the maximum yield of 33 with specific findings. Any future applications would have to go through the subdivision review process including a Planning Board hearing and would have to meet all current subdivision standards.

SECTION 1 – RECOMMENDATION

Preliminary Plan Amendment No. 12009011B: Staff recommends Approval of the Preliminary Plan Amendment with revised condition no. 13 as stated below. All previously approved plans, findings, and conditions of approval remain in full force and effect, except as modified herein.

13. Record Plat must reference a recorded easement for the parent parcels indicating that density and TDRs for these lots was removed from the parent parcels.

SECTION 2 – SITE LOCATION AND VICINITY

Site Location and Vicinity

The property is identified as Parcel 570 on Tax Map DU13 and is comprised of 840 acres zoned Agricultural Reserve (AR). It is located on both the east and west sides of Peach Tree Road, bounded to the north by White Store Road and to the west by Beallsville Road (MD 109) ("Property").

Peach Tree Road and Beallsville Road are classified as Rustic Roads; Whites Store Road is classified as an Exceptional Rustic Road. Low density residential lots and open agricultural fields abut the site to the south. All other adjacent properties are predominantly agricultural in nature. The Property itself is assessed as agricultural and is now used for a horse farm operation, and for cattle and hay production. Peach Tree Road splits the Property from north to south, with equal portions of the Property on each side of the road.

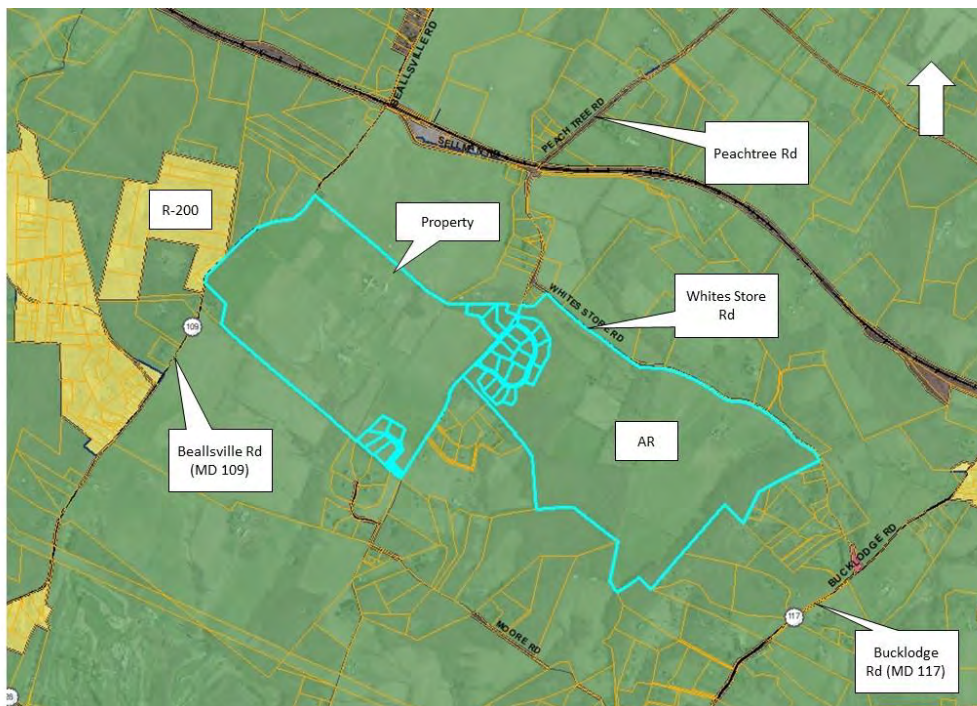


Figure 1: Vicinity Map with Zoning

Site Description

The topography of the Property is rolling in nature, with 193.60 acres of forest and open agricultural fields as the predominant features. There are eight streams on-site and 19.9 acres of wetlands. The Property is within the Dry Seneca Creek watershed; a Use I-P watershed.

There are two primary residential homes on the Property and seven other farm tenant dwellings. One of the tenant structures is identified on the Historical Atlas as the John Lynch Farm #18/8. One primary residence is on the west side of Peach Tree Road with driveway access to Beallsville Road. This home is associated with the horse farm operation on that side of the road and has two accessory tenant houses. The primary residence on the east side of Peach Tree Road has five accessory tenant houses that include the historic resource. All these dwelling units access Whites Store Road.



Figure 2: 2017 Aerial Photograph of Site

Site History

In 2000, a pre-preliminary plan (719990320) was submitted to planning staff for advice. The pre-preliminary plan proposed to subdivide the property into 31 lots averaging 5-6 acres each. During the review of this pre-preliminary plan, staff suggested to the applicant that it would be far more advantageous to minimize the residential footprint by clustering the lots and to provide large contiguous areas suitable for agriculture.

In 2009, a Preliminary Plan of Subdivision (#120090110) proposed to subdivide the Property under the RDT zoning standards to create 21 new residential lots and three outlots. The outlots were being created because three proposed lots had not yet passed percolation testing. The two existing farm residences and seven associated tenant dwellings were retained on two large farm remainders of 369.4 and 411.4 acres, respectively. This application was ultimately approved with a 4-1 vote with Montgomery County Planning Board Resolution MCPB No. 10-129 (Attachment B).

SECTION 3 – CURRENT PROPOSAL

Request to amend Condition No. 13 of MCPB Resolution No. 10-129 (“Condition”), approving Preliminary Plan No. 120090110 (the “Preliminary Plan”) as follows:

Approved Condition #13:

Record Plat must reference a recorded easement for the parent parcels indicating i) that density and TDRs for these lots was removed from the parent parcels; and ii) per §59-C-9.41 of the Montgomery County Zoning Ordinance, following this subdivision, any farm tenant dwelling, farm tenant mobile home, or guest house is included in the total permitted density of 33 residential structures on the Property.

Proposed Amended Condition #13:

Record Plat must reference a recorded easement for the parent parcels indicating that density and TDRs for these lots was removed from the parent parcels.

SECTION 4 – ANALYSIS AND FINDINGS

None of the original findings are being amended or altered with this approval, all previous findings remain in full force and effect. The analysis discussion below is provided to discuss the implications of amending Condition #13 and how it relates to both the original approval and the current Zoning Ordinance.

Preservation of Agriculture and Rural Open Space Functional Master Plan (“AROS”) Conformance

During the review of the Application there was some discussion about Condition 13 being related to the Master Plan Conformance Finding the Planning Board made on the original application. After reading the transcript of the original hearing (Attachment C) and the Planning Board Resolution, the Condition is not related to Master Plan Conformance but directly related to the Zoning Code. The actual finding from the Resolution reads:

The Planning Board determined that the Preliminary Plan, as proposed, protects to a significant degree, the ability for agricultural practices to continue on the Property as recommended by the AROS Master Plan. Of the 840 acres making up this Property, 780 acres will remain in agriculture. The AROS Master Plan does not set a specific objective goal for preservation, and the intent of the Master Plan is that the Planning Board, in its discretionary role must be satisfied that the Applicant has made reasonable good faith efforts to protect as much agricultural land as possible. The Board was satisfied that the Preliminary Plan protects agriculture and minimizes fragmentation of active farmland by creating residential lots that are as small as reasonably possible, and that are clustered in areas that do not detract from the active agricultural land. The Preliminary Plan intentionally minimizes the spread of residential development to avoid fragmentation and to minimize the potential for conflicts between farm and non-farm properties. Although there was testimony that the proposed development would change the character of the area, creating a suburban enclave within the Agricultural Reserve, the focus of the Master Plan is preservation of agriculture within the Reserve --not maintenance of the rural character. However,

in order to allay those concerns, the Preliminary Plan calls for the new homes to be buffered, where practical, from the agricultural areas to reduce conflicts. The Board finds that the Preliminary Plan is in substantial conformance with the AROS Master Plan.

The key phrase in the finding is “as proposed” meaning a preliminary plan of 21 Lots and 3 Outlots is in conformance with the AROS Master Plan. Amending Condition #13 will not affect this finding and any future development would still need Planning Board review at which time new findings would need to be made.

Zoning Code Conformance

§59-C-9.41 of the Montgomery County Zoning Ordinance which provided that:

Only one one-family dwelling unit per 25 acres is permitted. (See Section 59-C-9.6 for permitted transferable density.) The following dwelling units on land in the RDT zone are excluded from this calculation, provided that the use remains accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

- (a) A farm tenant dwelling, farm tenant mobile home, or guest house, as defined in Section 59-A-2.1.
- (b) An accessory apartment or accessory dwelling regulated by the special exception provisions of Division 59-G-1 and 59-G-2 and Section 59-A-6.20.

Under the pre-2010 Interpretation by the Planning Board, the density for the Preliminary Plan would have excluded the 6 farm tenant dwellings and 1 guest house, limiting density to 31 new dwelling units (assuming the 2 principal structures retained development rights).

At the public hearing for the Barnesville Oak plan in 2010 (“2010 Interpretation”), the Planning Board determined that the subdivision of RDT property was the triggering event under §59-C-9.41, which required that the farm tenant dwellings, farm tenant mobile homes or guest houses be included in the density calculation for the 840 acre Property. It has to be noted here that prior to this Preliminary Plan action in 2010, §59-C-9.41 had been interpreted that farm tenant dwellings, farm tenant mobile homes and guest houses only be included in the density calculations if they no longer remained accessory to farming and the principal dwelling after subdivision (i.e. the subdivision severed them from farm and principal dwelling). The 2010 Interpretation for Barnesville Oak changed the prior interpretations of §59-C-9.41 and limited the Barnesville Oak Preliminary Plan to 24 lots for new dwelling units and required development rights be retained for the 6 existing farm tenant dwellings and 1 guest house, in addition to the 2 existing principal structures (farm homes) for a total of 33 TDR’s for the 33 rooftops on the Property.

The 2010 Interpretation was codified as §59.4.2.1.D.2 in the comprehensive amendment to the Montgomery County Zoning Ordinance, ZTA 13-04, adopted by the County in 2013 as Ordinance Number 17-43 (the “Comprehensive Amendment”). The Comprehensive Amendment also converted the RDT zone to the Agricultural Reserve (AR) zone. The Parent Tract was reclassified to the AR zone by the associated District Map Amendment G-956.

In 2018 the Montgomery County Council, sitting as the District Council (the “Council”), adopted ZTA 17-06 as Ordinance Number 18-39 (“ZTA 17-06”). This legislative action changed the 2010 Interpretation, By legislative act, the Council amended §59.4.2.1.D.2 on January 23, 2018 by re-enacting §59.4.2.1.D.2 of the Montgomery County Zoning Ordinance to eliminate the 2010 Interpretation. Accordingly, §59.4.2.1.D.2 (again) excludes Farm Labor Housing Units from the density calculation for properties in the AR zone if the use remains accessory to farming and the principal dwelling following subdivision.

Both the Covenant and Condition have been affected by legislative changes subsequent to the approval of the Preliminary Plan, requiring Planning Board action to bring them into compliance with the current Code. The Covenant and Condition are both predicated on a code section that has been overturned by a subsequent legislative act. The Condition was based on the 2010 Interpretation that was incorporated into §59.4.2.1.D.2 of Montgomery County Zoning Ordinance during the Comprehensive Amendment. The Covenant specifically incorporates §59.4.2.1.D.2 by reference as the basis for the Preliminary Plan density restriction. Subsequently, §59.4.2.1.D.2 of the Montgomery County Zoning Ordinance has been changed, rendering both the Covenant and Condition incorrect.

Further, the subdivision of any similarly situated properties in the AR zone will be evaluated under §59.4.2.1.D.2 of the Montgomery County Zoning Ordinance, as amended. Accordingly, those applicants will be entitled to exclude Farm Labor Housing Units from the density calculation/development rights retention requirement. Thus, it is only fair that §59.4.2.1.D.2 of the Montgomery County Zoning Ordinance, as amended by ZTA 17-06, be uniformly applied to all affected properties in the AR zone, especially in absence of any language in §59.4.2.1.D.2 to the contrary.

Through this amendment, the Applicant would be afforded the same rights afforded to similarly situated properties within the County by virtue of ZTA 17-06.

SECTION 5 – CITIZEN CORRESPONDENCE AND ISSUES

The Applicant has met all proper signage and noticing requirements for the submitted Application. Staff has received significant interest in the Application from the public and civic associations (Attachment F).

Staff met with Montgomery Countryside Alliance and Sugarloaf Citizen’s Association on March 12, 2019 to discuss the amendment and what exactly is being proposed. There was significant concern over possibly increasing density and number of rooftops on this property. Additionally, they expressed concern that while ZTA 17-06 was approved by Council, there may be additional legislative intent that would indicate it should not be retroactively applied to this Preliminary Plan of Subdivision. Additionally, Staff received individual emails concerned with additional development and requests to be notified of the Planning Board hearing date and to restate that no additional development should be approved as part of this Application.

Staff informed those who inquired that no additional development is proposed with this application, however this would not preclude future applications from being submitted. Furthermore, Staff confirmed that any future applications for additional development would need to come through the Planning Board and would have full separate reviews independent of this application.

Staff expects additional correspondence to be received after the posting of this Staff Report and will forward all new correspondence to the Planning Board.

SECTION 6– CONCLUSION

The proposed amendment meets all of the requirements established in the Subdivision Regulations and the Zoning Ordinance and conforms to the recommendations of the *Preservation of Agriculture and Rural Open Space Master Plan*. This amendment updates a previously approved Preliminary Plan to be consistent with the current Code. Therefore, staff recommends approval of the Application.

Attachments

- A- 120090110 Staff Report
- B- MCPB Resolution No. 10-129 for Preliminary Plan No. 120090110
- C- 120090110 Planning Board Hearing Transcript
- D- Covenant
- E- Applicant's Statement of justification
- F- Citizen Correspondence



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item # 9
7/22/2010



MEMORANDUM

DATE: July 9, 2010

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Catherine Conlon, Subdivision Supervisor *CC*
Development Review Division

FROM: Richard A. Weaver, Coordinator *RAW* (301-495-4544)
Development Review Division

REVIEW TYPE: Preliminary Plan of Subdivision

APPLYING FOR: 21 lots and 3 outlots for up to 24 one family detached dwelling units

PROJECT NAME: Barnesville Oaks

CASE #: 120090110

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: Rural Density Transfer (RDT)

LOCATION: On the east and west sides of Peach Tree Road, bounded on the north by Whites Store Road and to the west by Beallsville Road (MD 109)

MASTER PLAN: Agricultural and Rural Open Space (AROS)

APPLICANT: Barnesville Oaks Farms, L.L.C.

ENGINEER: Benning and Associates

ATTORNEY: Miles and Stockbridge

FILING DATE: December 4, 2008

HEARING DATE: July 22, 2010

RECOMMENDATION: Approval, subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 21 one-family detached residential lots and 3 outlots.
- 2) The applicant must comply with all conditions of approval of the preliminary forest conservation plan prior to plat recordation or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permit(s), as appropriate. Conditions include, but are not limited to:
 - a. Category I conservation easements on platted portions of the Property must be shown on the record plats.
 - b. Category I conservation easements must be placed over all forest conservation areas located on the unplatted farm remainder of the property. These conservation easements must be recorded by deed in the County land records and referenced on the record plat(s) for the residential lots.
- 3) Record plat to reflect a Public Use Trail Easement (“PUTE”) through the property as shown on the preliminary plan. The PUTE must define the conditions for use of, maintenance responsibility for, and enforcement authority over the trail. Prior to record plat, the PUTE must be approved by the Commission’s Office of the General Counsel. Also prior to record plat, the applicant must file the PUTE in the land records, and identify the liber and folio on the record plat.
- 4) Prior to recordation of the plat(s), applicant must submit an affidavit to MNCPPC staff that verifies the availability of one Transferrable Development Right for each lot shown on the plat(s).
- 5) The record plat must show dedication of Peach Tree Road to a width of 70 feet (or 35 feet from centerline) to Rustic Road standards and the new internal road (Barnesville Oak Lane) as a 50 foot wide tertiary road right-of-way as shown on the approved preliminary plan.
- 6) The applicant must construct all road improvements within the rights-of-way shown on the approved preliminary plan to the full width mandated by the master plan and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the preliminary plan, “To Be Constructed By _____” are excluded from this condition.
- 7) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 8) The applicant must comply with the conditions of the MCDPS stormwater management approval dated September 9, 2009 and reconfirmed on May 14, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 9) The applicant must comply with the conditions of the MCDPS, Well and Septic Section approval dated April 16, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 10) The applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated June 23, 2009. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.

- 11) The certified preliminary plan must contain the following note: “Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints and driveway locations shown on the preliminary plan are illustrative. The final locations of buildings, structures and hardscape will be determined during the building permit approval process. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board’s approval.”
- 12) Record Plat must contain the following note: “Agriculture is the preferred use in the Rural Density Transfer Zone. All agricultural operations shall be permitted at any time, including the operation of farm machinery, and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the Zone.”
- 13) Record Plat must reference a recorded easement for the parent parcels indicating that density and TDRs for these lots was removed from the parent parcels.
- 14) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.
- 15) Other necessary easements must be shown on the record plat(s).

SITE DESCRIPTION (Figures 1 and 2)

The property (“Property” or “Subject Property”) is identified as Parcel 570 on Tax Map DU13 and is comprised of 840 acres zoned Rural Density Transfer (RDT). It is located on both the east and west sides of Peach Tree Road, bounded to the north by White Store Road and to the west by Beallsville Road (MD 109). Peach Tree Road and Beallsville Road are classified as Rustic Roads; Whites Store Road is classified as an Exceptional Rustic Road. Low density residential lots and open agricultural fields abut the site to the south. All other adjacent properties are predominantly agricultural in nature. The Property itself is assessed as agricultural and is now used for a horse farm operation, and for cattle and hay production. Peach Tree Road splits the Property from north to south, with equal portions of the site on each side of the road.

There are two primary residential homes on the property and seven other farm tenant dwellings. One of the tenant structures is identified on the Historical Atlas as the John Lynch Farm #18/8. One primary residence is on the west side of Peach Tree Road with driveway access to Beallsville Road. This home is associated with the horse farm operation on that side of the road and has two accessory tenant houses. The primary residence on the east side of Peach Tree Road has five accessory tenant houses that include the aforementioned historic resource. All of these dwelling units access Whites Store Road.

The topography of the site is rolling in nature, with 193.60 acres of forest and open agricultural fields as the predominant features on the Property. There are eight streams on-site and 19.9 acres of wetlands. The property is within the Dry Seneca Creek watershed; a Use I-P watershed.

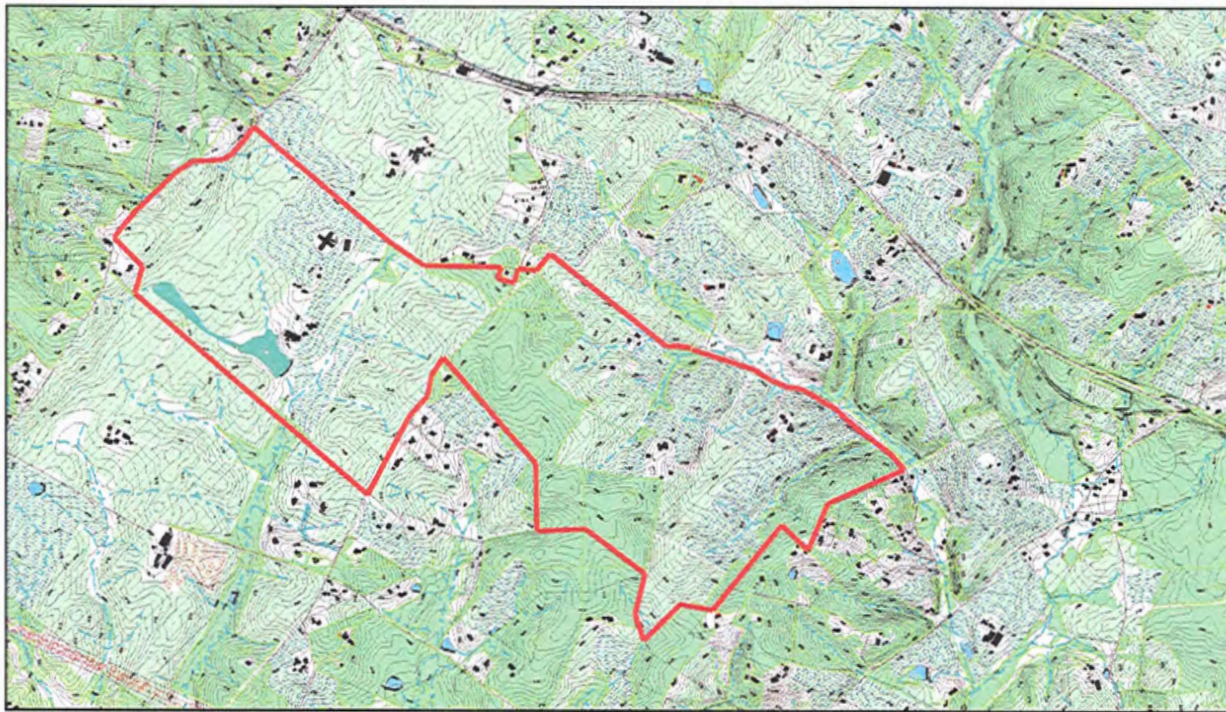


Figure 1



Figure 2

PROJECT DESCRIPTION (Figures 3 and 3a)

This application proposes to subdivide the Property under the RDT zoning standards which establish a density of one lot per 25 acres with a minimum lot size of 40,000 square feet or roughly one acre. The proposal is to create 21 new residential lots and three outlots. The outlots are being created because three proposed lots have not yet passed percolation testing. The two existing farm residences and seven associated tenant dwellings will be retained on two large farm remainders of 369.4 and 411.4 acres, respectively. The proposed lots are separated into three distinct clusters; two on the west side of Peach Tree Road, and the other located within a forested area on the east side of Peach Tree Road.

The southernmost cluster of five lots on the west side of Peach Tree Road utilizes a shared driveway. The lots have been located here, in part, to abut the existing lots to the south in the adjacent Woodstock Subdivision. The location of these five lots is such that they utilize an existing hedgerow on the southern border of the Subject Property to screen them from view as you travel north on Peach Tree Road. These lots have also been reduced in size to no more than three acres to minimize impact to viable agricultural land.

The northernmost cluster of three lots on the west side of Peach Tree Road is located in a small area of forest to screen them to the maximum extent possible and to minimize impact to active agricultural lands. These lots will also use a shared driveway with access to Peach Tree Road, in keeping with the opportunity to minimize curb cuts and visual impacts to this rustic road. These lots are also no greater in size than three acres.

The largest cluster of 13 lots is proposed on the east side of Peach Tree Road and they will have access via a new tertiary residential street. In the original 2008 submission of this application this street was proposed to be an overlength cul-de-sac. Staff, believing that 13 homes would be better served with two points of access requested that the road be re-designed as a through-street with two connections to Peach Tree Road. The plans were revised as now shown to propose a loop road with 13 lots and three outlots. The remaining forest that exists in this location will provide screening for the new homes. Considerable re-design of this area has occurred since the original plan submission to include not only a loop road but also a reduction of disturbance to the larger area of forest immediately to the south and east of these lots.

Within the residential components of this project, the forest conservation plan shows clearing of approximately 35.0 acres of forest and retention of 8.30 acres. To meet forest conservation requirements the applicant has elected to protect 89.6 acres in a Category I easement and to further place an additional 50.0 acres in Category I easement to be used as a forest bank. The compact nature of the residential component of this subdivision leaves 780 acres of the 840 acre Property or approximately 93% available for agriculture. The 740 acres that remain will be left unplatted and re-deeded as two distinct farms. The tenant houses will remain as accessory structures to the primary structures on those farm parcels.

The cluster with 13 lots and three outlots is a relatively large cluster when compared to other subdivisions in the RDT zoned areas of the County. This perception is perhaps amplified by the compact nature of the lots which do not exceed three acres in size. But, staff believes that

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Previous Review (Figure 4)

This application was preceded by a pre-preliminary plan (719990320) that was submitted to planning staff for advice in 2000. That particular pre-preliminary showed a different lot pattern than what is proposed under this application. The pre-preliminary plan proposed to subdivide the property into 31 lots averaging 5-6 acres each. Staff discouraged this approach to subdivision, believing that it was too intrusive to Peach Tree Road, a rustic road, and that it unnecessarily spread development out into active and usable agricultural lands. Further, it required removal of a significant area of forest including one area that has the size and depth to support Forest Interior Dwelling Species (FIDS). During the review of this pre-preliminary plan, staff suggested to the applicant that it would be far more advantageous to minimize the residential footprint and to provide large areas of contiguous lands suitable for agriculture.

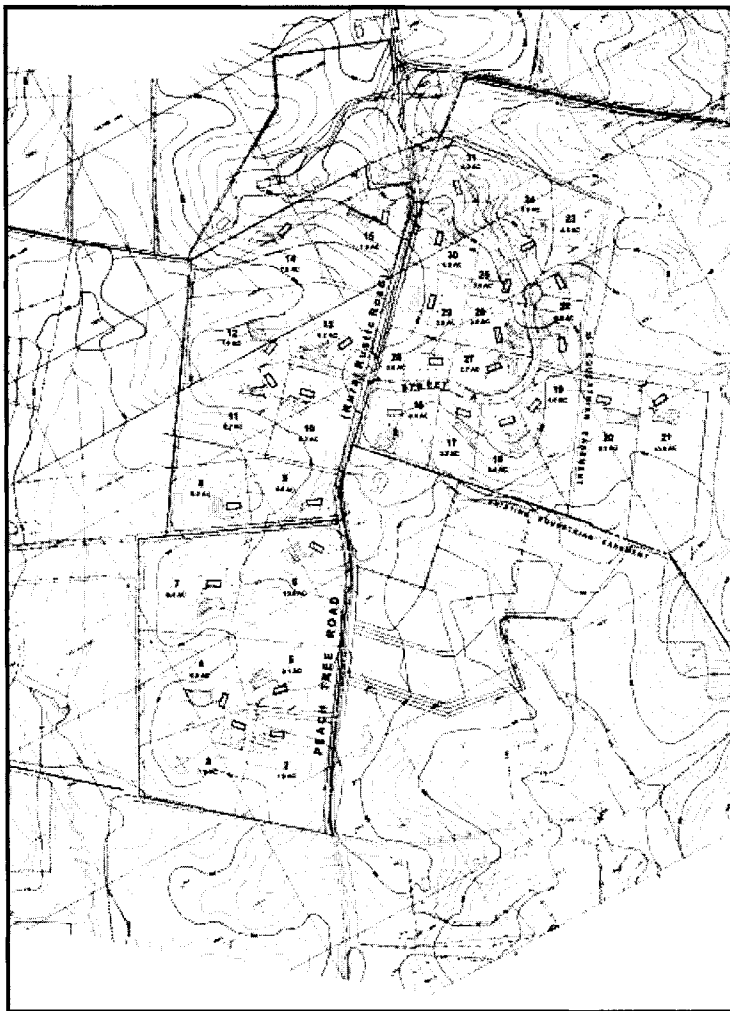


Figure 4

ANALYSIS AND FINDINGS

Conformance to the Master Plan

This property is located in the Agricultural Reserve and is controlled by the Functional Master Plan for the Preservation of Agriculture and Rural Open Space. Guidance is also provided by the Rustic Roads Functional Master Plan which designated Beallsville Road (rustic), Peach Tree Road (rustic) and Whites Store Road (exceptional rustic).

Functional Master Plan for the Preservation of Agricultural and Rural Open Space (AROS, 1980)

The AROS Plan “focuses on the preservation of farmland but it also tries to establish a policy framework that will contribute to the continuation of farming in the County” (p. i, emphasis original). This property falls within the Western Sector of the master plan area. Plan recommendations and guidance is excerpted below, with staff comments after each:

This Plan recommends...

- *Preservation of critical masses of farmland and rural open space.*
- *Applications of incentives and regulations to preserve farmland and... to encourage agricultural use of the land.*
- *Application of specific innovative preservation techniques such as the Rural Density Transfer Zone...*
- *Support of full County participation in the State Agricultural Land Preservation Program” (p. iv).*

This proposal retains a very large, contiguous mass of farmland; the existing equestrian and cattle operations are anticipated to continue. At staff’s request, the applicant has met with staff of the Montgomery County Department of Economic Development, Agricultural Services Division, and discussed the potential for placing this property into an easement program.

The critical land use issue in this Plan is the loss of productive farmland; the focus is the identification and application of land use regulations and incentives to help retain agricultural land in farming and complementary rural open space areas (p. 7).

This is the largest single farm property in the County. The proposal will result in two large farm remainders that cumulatively will continue to be the largest farm operation in the County.

Since one of the most serious threats to the Agricultural Reserve and Rural Open Space Areas is development, the recommendations focus on policies that a) stabilize land values; b) minimize development pressures; c) avoid premature and fragmented subdivision; d) protect agricultural practices; e) improve agricultural support services; f) maintain a critical mass of agricultural land; g) relate County farmland preservation efforts to those of our neighboring counties; and h) channel growth into Clarksburg, Damascus, Olney Town Center, and Poolesville as recommended in the General Plan (p. 39).

Agriculture is protected and fragmentation is minimized by the small sizes of the residential lots and the cluster locations created. The plan intentionally minimizes the spread of residential development to avoid fragmentation and to minimize the potential for conflicts between farm and non-farm properties. Further, new homes are buffered, where practical, from the agricultural areas to reduce conflicts.

For those areas designated as Agricultural Reserve, the Rural Density Transfer Zone (RDT) is recommended. These areas contain a critical mass of productive farmland worthy of protection, as well as other non-farmland uses which serve to support and define the critical mass (p. 41, emphasis original).

This property is in the Agricultural Reserve and zoned RDT. A large, viable mass of productive farmland is protected by the design of the proposed subdivision. A large critical mass of productive farmland will remain after development under the proposal.

The dominant use of the land in this 68,000 acre [Western] sector has for years been agriculture. Although agricultural pursuits in Montgomery County have shrunk greatly, this western part of the County remains a relatively undisturbed agricultural region (p. 56).

The limited lot sizes and location of clusters will minimize disturbance to agricultural operations on the property.

The additional house separation from the roadway provides the secondary benefits of opportunities for scenic setbacks and landscaping (p. 63).

Long scenic views of Sugarloaf Mountain dominate this property. Lots have been pushed away from Peach Tree Road to reduce impacts on these views and the forest that exists at the edge of the road.

Following is an excerpt from the AROS Plan that provides an example of an operational TDR program:

Sending Area

Farmer A owns 600 acres.

- 1. Parcel must be in the Agricultural Reserve*
- 2. Farmer A, owning 600 acres, his development rights are calculated at one unit per 5 acres, therefore Farmer A controls 120 development rights. $600 \div 5 = 120$ development rights.*
- 3. Farmer A wishes to develop some lots on the farm; the Rural Density Transfer Zone permits Farmer A to convert 20% of the development rights into building lots (each lot having a minimum of 40,000 sq. ft., approximately 1 acre) on the farm.*

- *120 development rights X 20% = 24 lots which may be subdivided from the 600 acre farm.*
- *120 development rights X 80% = 96 development rights that are eligible for transfer (p. 44).*

This example from the AROS Plan is directly applicable to the proposed preliminary plan and is evidence that subdivision of large farms and conversion of residual development rights was contemplated by the AROS Plan. The example indicates that a farmer is permitted to convert 20% of the development rights into building lots with a minimum lot area. It does not specify a maximum lot size, but it follows reasonably that to reduce fragmentation and preserve farmland, the lots should be the minimum size feasible. The example stems from the Master Plan's thesis that a successful preservation strategy must strike a balance which limits the economic return available from subdivision and development while retaining the value essential to the survival of the successful farming operation. The development density helps to preserve the farmland, while the equity aspect of the TDR program encourages farming.

Staff believes that the proposed preliminary plan fulfils this strategy. The farm is 840 acres, and has 168 TDRs, of which 135 are eligible for transfer and 33 are residual development rights (now referred to as BLTs). The lots shown on the plan are the minimum sizes that can be created while still providing for on-site septic and well requirements. The 24 proposed lots/outlots have an average size of 2.28 acres, ranging from 1.4 acres to 3.0 acres and the area impacted by the proposed 24 residential lots is 54.38 acres, which constitutes 6.4% of the entire property. The area of land to be dedicated to roads is 4.5 acres which brings the percentage up to 7.0%. Most of the lots are within currently forested areas; only 14.6 acres is actually removed from active agricultural operations out of a total of 570 acres. Thus the actual loss of actively farmed land has been reduced to only 2.5% of the total.

Staff notes that since the original pre-preliminary plan submission in 1999, the proposal has changed significantly by minimizing lot sizes and further clustering. Significant improvements have been made in the amount of contiguous farmland and mature upland forest to be preserved. The cluster of five lots located on the west of Peach Tree Road will impact farmland and will visibly alter the landscape. However, in striking the balance that the AROS Plan speaks of, staff has weighed these potential impacts and finds the proposal to substantially conform to the AROS plan.

Rustic Roads Functional Master Plan (RRFMP, 1996) (Figure 5)

Given that the Subject Property abuts three Rustic Roads, the Rustic Roads Functional Master Plan identifies several elements that are pertinent to the development of this property.

Rustic Roads (left to right):

Beallsville Road, Peach Tree Road, Whites Store Road

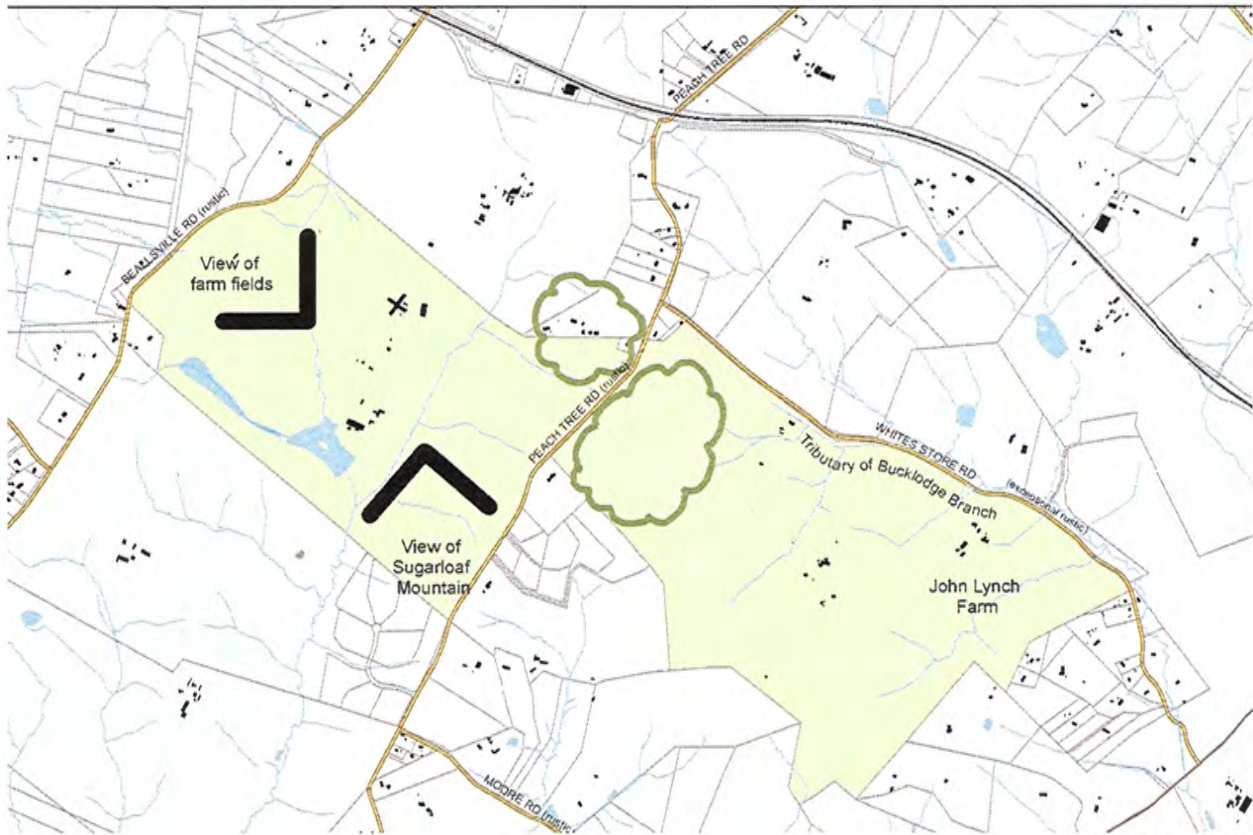


Figure 5

Beallsville Road (MD Route 109)

Beallsville Road abuts the western edge of this property for just over half a mile. This part of the farm has few trees, allowing traffic and houses on Peach Tree Road to be seen across the fields over a mile away. The RRFMP begins the description of this road (pp. 54-57) thus: “Barnesville Road, in partnership with Old Hundred Road, has outstanding vistas of farm and rural landscapes.” The map of the road in the Plan identifies a view of farm fields (see photo). The pertinent Significant Features of the road are:

- “Road alignment as it follows the contours of the land
- “Ridge road with great views.”

As the description notes, the road follows the contours of the land, which is somewhat rolling adjacent to this property. No development is proposed along Beallsville Road. If it were, constraints would include protecting the views and locating driveways or roadways with adequate site distances. Opportunities would include the close proximity of the MARC Station, the reduction in homes along Peach Tree Road, and the transfer of some trips from Peach Tree Road to Beallsville Road, which has had drainage and safety improvements.

Views of Barnesville Oak Farm from Beallsville Road



Peach Tree Road

Peach Tree Road bisects this farm and includes about eight-tenths of a mile of road frontage. Like Beallsville Road, the views on Peach Tree Road are expansive; a striking view of Sugarloaf Mountain is seen across this property while traveling northbound. The description in the RRFMP identifies the historic alignment and the tree canopies as Significant Features (pp. 128-131), and notes that “[t]he road then passes through forest near Whites Store Road” which refers to the forest on this property, and identifies the Sugarloaf Mountain view on the map.

All of the proposed lots will have access from Peach Tree Road, either from the new loop road on the east side, or from one of two shared driveways on the west side. Because of the identified views toward Sugarloaf Mountain, the proposed lots on the west side are either set

back from the road or tucked into forest; unlike some of the houses that already exist on adjacent property. On the east, the proposed lots and outlots are within the forest described in the Plan; the proposal includes at least 50 feet of conservation easement between the road and future house sites to preserve the forested roadside.

Views from Peach Tree Road

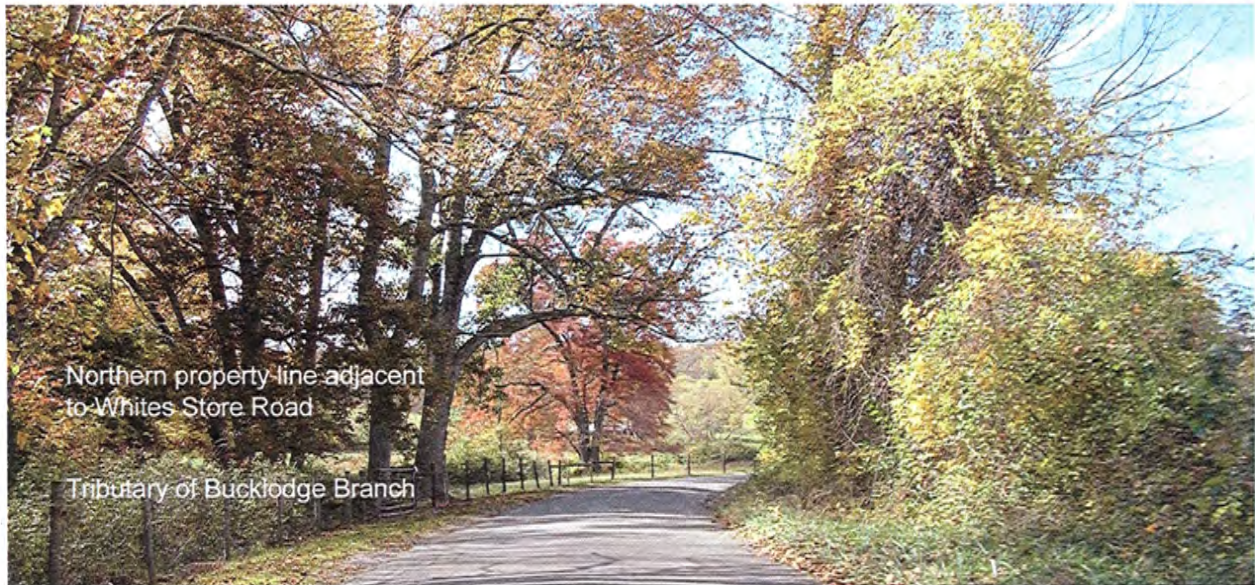


Whites Store Road

Approximately 1.25 miles of the northern Subject Property line abuts Whites Store Road, an exceptional rustic road. The road pavement is 16 feet wide with no center line or edge markings. The Plan describes Significant Features that include the way the “road follows a tributary of Bucklodge Branch,” which is on the farm, and a “unique view enclosed within a

small valley,” also in this location (pp. 184-185). The John Lynch Farm is a Locational Atlas site that exists on the property. It is a landmark described in the Driving Experience: “The John Lynch Farm includes a large frame farmhouse from the late 1800s and notable outbuildings, including a stone and brink springhouse near the road and a substantial bank barn.” The farmhouse within this historic site is one of the Property’s seven tenant dwellings. No new development is proposed along, or with access to, White Store Road.

Views from Whites Store Road



Rustic Roads Advisory Committee

The applicant's representatives attended several Rustic Roads Advisory Committee (RRAC) meetings and presented the latest version of the plan. Because the proposal accesses only Peach Tree Road, the committee focused there, paying particular attention to the impacts to the views and forest as compared to earlier versions of the proposal. Discussions ranged from moving some lots to Beallsville Road (views and site distances would have to be considered) to connecting the new road from Peach Tree Road to Whites Store Road (using an existing driveway or bordering a power line cut through the forest were possibilities). The current submission allows up to five houses to share a driveway at the RRAC's request to avoid additional entries. It also moves lots further out of the way of views toward Sugarloaf Mountain, and loops the new road back to Peach Tree Road to avoid any direct road connection to Whites Store Road that might have triggered road widening for safety reasons.

The proposal will have a significant impact on the character of this portion of Peach Tree Road, but protects Beallsville and Whites Store Roads. This highlights a quandary about clustering in one place to preserve another; one area receives the majority of the impact while another area benefits. In this instance, staff determined that the visual impacts of residential development on this farm are minimized by locating the lots along Peach Tree Road where existing forest and site topography can be used to limit their visibility. Staff finds this proposal generally conforms to the Rustic Roads Functional Master Plan.

Public Facilities

Roads and Transportation Facilities

A new road, shown on the plan as Barnesville Oaks Lane, will serve the 13 proposed lots and 3 outlots located on the east side of Peach Tree Road. As previously discussed, this road will be built to tertiary road standards with a 50 foot wide right-of-way. No sidewalks are required for this section of road because of its low traffic volume and because it is in the "rural area" defined in the road code. Driveway permits will be required for the two new driveway access points on the west side of Peach Tree Road. Site distance studies have been approved for all locations by MCDOT.

The proposed lots do not generate 30 or more vehicle trips during the morning or evening peak-hours. Therefore, the application is not subject to Local Area Transportation Review. The subject site is located in the Rural West Policy Area where there is no trip mitigation requirement for PAMR according to the current Growth Policy. Transportation Planning staff has reviewed the adequacy of the proposed road system. None of the local roads will be overburdened by the additional traffic generated by this development. With the revision to the plan to provide a loop road for the thirteen lot cluster of homes, internal access to those lots will also be adequate. Sidewalks are not required in this rural area as defined by the Road Code; however, pedestrians can safely use the road shoulders in this low traffic volume area. Proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

Other Public and Private Facilities and Services

Staff finds that public facilities and services are available and will be adequate to serve the proposed dwelling units. Local utilities have found that their respective utility, if available, is adequate in this area to serve the proposed subdivision. The Montgomery County Department of Permitting Services (MCDPS) has approved the private wells and septic systems for all but three of the lots (11, 19, 20) which are proposed to be recorded as outlots at this time. Additionally, two of the existing tenant houses have also not passed septic percolation testing as of this date. If they cannot successfully pass percolation testing MCDPS may determine that they must be razed.

The application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles and that it includes an easement for a future water supply cistern that will be shown on the record plat. Other public facilities and services, such as schools, police stations, firehouses and health services, are operating within the standards set by the Growth Policy Resolution currently in effect. The application is not within a school moratorium area; and is not subject to payment of a School Facilities Payment.

Environment

Environmental Guidelines

The plan meets all applicable requirements for protection of environmentally sensitive areas. The Property contains streams, wetlands, and stream valley buffer. However, the Applicant proposes to continue agricultural uses on the two farm remainders where these environmental features occur. A Declaration of Intent (DOI) has been submitted by the applicant verifying the continuation of agriculture on the two farm remainders. There are no streams or environmental buffers within the area of the 24 proposed lots/outlots. A portion of the forested stream valley buffer within the farm remainders, however, will be protected with a Category I easement to meet the forest conservation requirements for the 24 lots/outlots.

Forest Conservation (Figure 6)

Staff finds that the plan meets all applicable requirements of the County Forest Conservation Law, Chapter 22A. Of the 840.13 acre farm, 780.73 acres will remain in agriculture and qualify for exemption from forest conservation requirements. After removing 1.6 acres of road dedication from the remaining 59.4 acre tract, a net tract area of 57.8 acres remains subject to the law.

Within the 57.8 acres subject to the forest conservation law the applicant is proposing to clear 35.0 acres of forest and retain 8.30 acres of forest in Category I conservation easements. Based on the forest conservation worksheet, the forest conservation requirements for the 57.8 acre net tract equals 44.80 acres. To meet this requirement, the Preliminary Forest Conservation Plan shows protection of 89.6 acres of existing forest in Category I conservation easements on the farm remainder. Since the farm remainders will remain unplatted the conservation easements

will be recorded by deed and referenced on the plat(s) for the lots.

The applicant is also proposing to place an additional 50 acres of upland forest contiguous to one of the areas of forest retention into Category I conservation easement to use as a forest mitigation bank for future credits. Overall the proposed preliminary forest conservation plan will protect 147.9 acres of forest in Category I conservation easements, including a significant forested area that is capable of supporting FIDS. Protected forest is shown in green below.

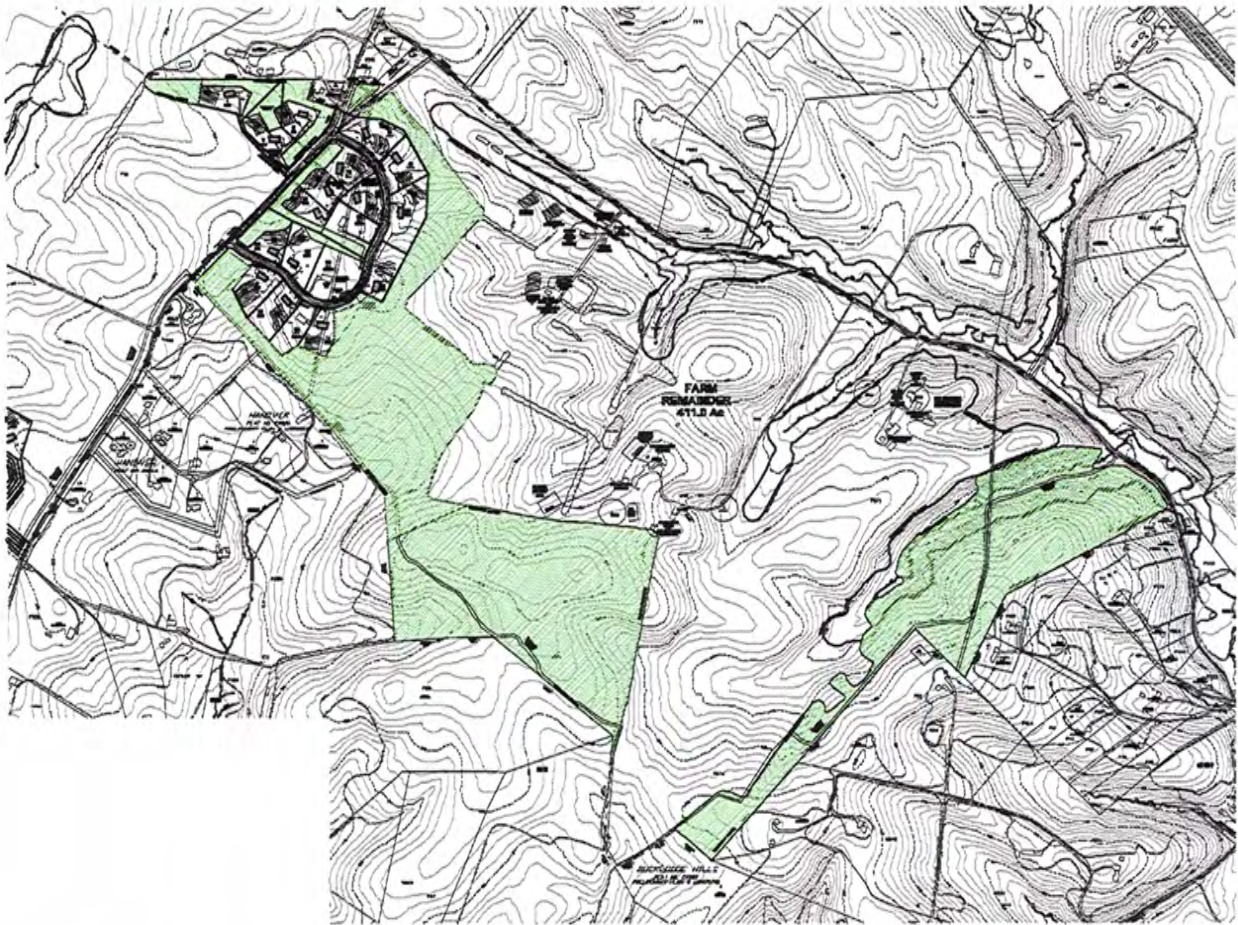


Figure 6

Stormwater Management

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on September 9, 2009 and the concept was reaffirmed on May 14, 2010. The concept plan consists of on-site water quality controls and onsite recharge via roadside swales, drywells and rooftop disconnects. Channel protection volume is not required because the one-year post development peak hour discharge is less than or equal to 2.0 cubic feet per second.

Compliance with the Subdivision Regulations and Zoning Ordinance

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. Staff finds that the roads and other public facilities are adequate to serve the proposed development. Minimal road improvements are required because of the rustic road designation; however, the road capacity is adequate to handle the additional traffic volume. The new proposed internal road will be adequate to provide access to the larger cluster of homes. The size, shape, width and orientation of the lots are appropriate for the location of the subdivision given the language in the AROS master plan which requires that agricultural opportunities are maximized. The plan adequately protects environmental resources as required and fully complies with Chapter 22A, the County Forest Conservation Law. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan

The lots were reviewed for compliance with the dimensional requirements for the RDT zone as specified in the Zoning Ordinance and found to meet all requirements. The lots as proposed will meet all the dimensional requirements for area, frontage, width, and setbacks in that zone. All lots have frontage on a publically dedicated roadway. A summary of this review is included in attached Table 2 at the end of this report.

Citizen Correspondence and Issues

Approximately 90 letters have been received thus far, and a petition with well over 200 signatures has been provided, seeking some way to preserve this farm or modify the proposal to reduce the impact of this development. Due to the large volume of correspondence and phone calls, staff has prepared a summary of the most prevalent concerns and suggestions raised. Some of the specifics may not be entirely captured; all of the community letters, whether in support or opposition, are included in the record of this application.

This is the largest single farm property in Montgomery County, and community interest and concern has been significant. The applicant's representatives held a well-attended public meeting in Poolesville, have mailed updated plans to neighbors, and have attended several Rustic Roads Advisory Committee (RRAC) meetings. Several community concerns have been addressed and some community suggestions have been incorporated into the plan. The community concerns and suggestions include:

- Non-conformity with Master Plans, loss of farms and farming
- Suburbanization, increase in conflicts between farming and residential uses
- Density or intensity of development
- Impact on rustic roads
- Loss of forest, loss of habitat
- Impact on views
- Impacts on surrounding wells
- Safety concerns about increasing traffic, especially for bicyclists and farm machinery operators
- Placing all or part of the farm into an agricultural easement program

- Inability to reach the property owner to discuss easement possibilities

Non-Conformity with Master Plans

Residents argue that the impact of this proposal will fundamentally and irreversibly change the character of this area, creating a suburban enclave within the Agricultural Reserve that will be in conflict with farming operations. Staff acknowledges that with any development activity in a low density area, the perception of impact is heightened, yet staff maintains that this subdivision layout minimizes visual and agricultural impacts.

Suburbanization

Due to the very large size of this property and the clustering of 24 lots/outlots in a concentrated area, residents argue that the appearance of a new suburban enclave will be created, inviting expectations of more typical suburban neighborhoods and amenities, rather than promoting an understanding that the area is primarily agricultural. Residents of Barnesville have also compared the number of houses in this area, including the two recently-built subdivisions, to their town and note that the total number of dwellings would be similar. However, Barnesville contains churches, public spaces and gathering places, while this section of Peach Tree Road will have nothing similar for the residents.

The clustering of the houses to preserve the bulk of the farm in two large operations has also generated comments. Proposals include creating 25-acre farm parcels that would increase the number of farmers and boost the County's farm economy. Staff notes that the AROS plan confirms that a 25-acre farm is financially viable yet it recommends 40,000 square feet as the minimum lot size in the Rural Density Transfer zone. The proposed plan reflects the property owner's desire to maintain the existing farming operation on larger, contiguous areas while utilizing the flexibility for lot size in the RDT zone to achieve allowable residential density as well.

Density and intensity of development

The majority of writers have recommended that all or part of this property be placed into an agricultural easement as a way to reduce density. Alternative designs with lots oriented to other roads or portions of the overall farm have also been proposed to reduce the intensity of the development, which is clustered into an area which has already undergone subdivision.

Comments have been received about the allowable density and the counting of the existing accessory dwellings, both tenant houses and guest houses. While the original application proposed 31 new lots in addition to the 2 farm houses and 7 tenant dwellings, the current proposal reduces the number of lots so that there will be no more than 33 total dwellings (the maximum permitted at 1 dwelling per 25 acres). The farm houses and tenant dwellings will remain on two unplatted farm remainders. The discussion of tenant structures, vis a vis density, is, therefore, not before the Planning Board at this time.

Rustic Roads

The purpose of the rustic roads program is to preserve the rustic character of certain county roads (RRFMP, p. 3); residents say that the concentration of houses on Peach Tree Road will irreparably degrade the quality of this rustic road. The applicant's engineers have sought ways to minimize the impacts and have made a number of changes at the recommendation of the Rustic Roads Advisory Committee. Staff has found the preliminary plan to be in general conformance with the Rustic Roads Functional Plan.

Views

Views of the working landscape are an integral part of the character of the Agricultural Reserve. On this property, there is a mile-long view across the farm fields from Beallsville Road to the forest adjacent to Peach Tree Road, and an outstanding vista across the fields from Peach Tree Road to Sugarloaf Mountain, about six miles away. As noted previously, the proposal has been modified to protect both views, though there will still be an impact.

Loss of Forest

Thirteen of the lots and the 3 outlots will be located in what is now mature upland forest; 35 acres of forest will be lost to development. Residents are concerned about the loss of habitat provided by this forest, which they suggest is irreplaceable given how long it would take to grow a replacement area.

A choice between loss of cropland or forest is frequently required when farms are subdivided. The answer is seldom simple and usually involves a balancing of public purposes. In this case, through onsite forest retention, Category 1 easements, and a forest bank, the applicant will be permanently retaining 147.9 acres of forest. This far exceeds the minimum acres required to meet the Forest Conservation law requirements and includes protection of area that could otherwise be cleared and converted to other agricultural uses. Staff considers this to be an excellent opportunity to protect a significant area of forest that can support Forest Interior Dwellings Species.

Traffic

All of the roads surrounding this property are rustic roads and are shared by cars, trucks, tractors, motorcycles, buses, bicycles, horses and people on foot. Concerns about the increase in traffic have focused particularly on the impact to bicyclists and farm equipment operators, as both groups often travel at less than posted speeds and sometimes take more than one travel lane. Peach Tree Road is heavily traveled by bicyclists on weekends, and an equestrian easement is proposed on the Subject Property adjacent to the road along part of its frontage. The Rustic Roads Advisory Committee has struggled with these questions, but there is currently no policy in place to help resolve these conflicts. MNCPPC and County staff have determined that the rustic and exceptionally rustic roads adjacent to this Property can safely accommodate the proposed development without the need for improvements that could affect their character.

Easement Programs

The majority of the community letters ask that all or part of this farm be placed into an agricultural easement program of some kind. Staff at the Agricultural Services Division of the Department of Economic Development has discussed the potential for easements on the property with representatives of the applicant, and the application indicates that an easement program will be considered upon approval of this plan. It is not clear that placing this property under some kind of agricultural easement will be financially feasible without some other efforts being made.

Inability to Contact the Property Owner

Community residents have repeatedly but unsuccessfully attempted to contact the property owner directly to discuss agricultural easements. This has led to considerable frustration as all matters are being handled by the owner's representatives. Questions have been raised as to whether the owner is even aware of the community concerns, the nature of what is being proposed and the agricultural easement options. Staff is aware that the owners of the property have consented to a meeting with local representatives, however; the outcome of that meeting is not known at this time.

Tenant Houses

Section 59-C-9.41 of the Montgomery County Zoning Ordinance allows certain exemptions from the one unit per twenty-five acre density cap in the RDT zone. This section reads as follows:

"Only one one-family dwelling unit per 25 acres is permitted. (See section 59-C-9.6 for permitted transferable density.) The following dwelling units on land in the RDT zone are excluded from this calculation, provided that the use remains accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

(a) A farm tenant mobile home or guest house as defined in section 59-A-2.1, title "Definitions."

There are currently nine dwellings and a wide variety of other farm structures on the property. According to the submission, four dwellings are occupied by farm families, three are occupied by non-farm families, and two are unoccupied, as detailed in Table 1 below.

The proposal retains the existing nine dwellings on the two farm remainders and adds 21 new lots and three outlots. Issues have been raised regarding density and the accessory dwellings on this property, specifically, as to whether the tenant structures must be counted toward the full density of the project. Rather than resolving this issue as part of this application, the applicant reduced the number of lots from 33 to 24 which accounts for the nine existing residential structures, including the seven tenant homes. Therefore, this issue is not before the Planning Board as part of this preliminary plan although testimony may be received on the issue.

As additional background, the Vision Division prepared an expanded discussion of the tenant house/density issue which is included for the Board's information as Attachment A of this staff report.

Table 1

Description	Location (from Peach Tree Road)	Notes (septic approved unless otherwise noted)
Main house	East	Unoccupied
Guest House	East	Unoccupied
Future main house	West	Farm family occupies
Tenant dwelling T-1	West	Farm family occupies
Tenant dwelling T-2	West	Non-farm family occupies; built prior to 1958.
2 barns, 2 sheds, 1 indoor riding rink, 5 unidentified structures	West	
Tenant dwelling T-3	East	Needs septic approval Farm family occupies.
Tenant dwelling T-4	East	Needs septic approval Non-farm family occupies; built prior to 1958.
Tenant dwelling T-5	East	Must separate septic from office. Non-farm family occupies; built prior to 1958.
Farm office	East	Must separate septic from T-5.
Tenant dwelling T-6	East	John Lynch Farm (Locational Atlas 18/6). Farm family occupies; built prior to 1958.
7 farm buildings and 5 unidentified structures	East	

Water Withdrawal

A concern about the potential impact that the proposed wells may have on existing local wells was raised to staff and prompted us to have a telephone conversation with Maryland Department of the Environment (MDE) staff to understand how the State would address this. The State has issued Groundwater Appropriation Permits for the subdivision wells. Residents have asked if a study was done to determine the impact to the local well water supply. Staff learned that for withdrawal rates of less than 10,000 gallons per day, no study is required. When asked about how this subdivision may impact local wells, a formula was provided that predicts the water budget. Each proposed home, on average, withdraws 216 gallons per day from the aquifer for residential use. That equates to 7,128 gallons per day for the thirty three dwellings. The recharge rate from normal precipitation is 300 gallons per day/per acre. With 840 acres at 300 gallons per day, the recharge to the aquifer is 252,000 gallons per day of recharge. MDE confirmed that water was plentiful for the proposed 24 lot/outlot subdivision as well as the existing local wells.

CONCLUSION

The proposed lots meet all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conform to the recommendations of the AROS Master

Plan. Access and public and private facilities will be adequate to serve the proposed lots, and the application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan. Therefore, approval of the application with the conditions specified above is recommended.

Attachments

Attachment A – Vision Division Report

Attachment B – Referenced Agency Approval Letters

Table 1: Preliminary Plan Data Table and Checklist

Plan Name: Barnesville Oaks				
Plan Number: 120090110				
Zoning: RDT				
# of Lots: 21				
# of Outlots: 3				
Dev. Type: Residential/Agricultural				
PLAN DATA	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan	Verified	Date
Minimum Lot Area	40,000 sq. ft.	1.4 acres . minimum	RW	
Lot Width	150 ft.	150 ft. minimum	RW	
Lot Frontage	25 ft.	25 ft. minimum	RW	
Setbacks			RW	
Front	50 ft. Min.	Must meet minimum ¹	RW	
Side	20 ft. Min./40 ft. total	Must meet minimum ¹	RW	
Rear	35 ft. Min.	Must meet minimum ¹	RW	
Height	50 ft. Max.	May not exceed maximum ¹	RW	
Max Resid'l d.u. per Zoning	33 units	21 lots, 3 outlots and two farm remainders	RW	
MPDUs	n/a		RW	
TDRs	Available	Available	RW	
Site Plan Req'd?	No	No	RW	
FINDINGS				
SUBDIVISION				
Lot frontage on Public Street	Yes	RW		
Road dedication and frontage improvements	Yes	Agency letter		
Environmental Guidelines	Yes	Staff memo		
Forest Conservation	Yes	Staff memo		
Master Plan Compliance	Yes	Staff memo		
Other (i.e., parks, historic preservation)				
ADEQUATE PUBLIC FACILITIES				
Stormwater Management	Yes	Agency letter		
Water and Sewer (WSSC)	N/a	RW		
10-yr Water and Sewer Plan Compliance	Yes	Agency comments		
Well and Septic	Yes	Agency letter		
Local Area Traffic Review	N/a	Staff memo		
Policy Area Mobility Review	N/a	Staff memo		
Transportation Management Agreement	No	RW		
School Cluster in Moratorium?	No	RW		
School Facilities Payment	No	RW		
Fire and Rescue	Yes	Agency letter		
Other (i.e., schools)				

¹ As determined by MCDPS at the time of building permit.

Density and intensity of development

The majority of writers have recommended that all or part of this property be placed into an agricultural easement as a way to reduce density. Alternative designs have also been proposed to reduce the intensity of the development, which is clustered into an area that has already undergone subdivision.

Comments have been received about the allowable density and the counting of the existing accessory dwellings, both tenant houses and guest houses. The current proposal reduces the number of lots so that there will be no more than 33 dwellings, so this issue is not before the Planning Board with this application. However, the community is concerned that more development could be proposed on this farm in the future.

Because of these concerns, the applicant's attorney has performed background research and submitted substantial material about tenant dwelling provisions in the RDT zone; he has indicated his belief that the tenant dwellings should not be counted as part of the density of this proposal. Residents strongly disagree.

As initially proposed by the applicant, tenant and guest houses were not included in density calculations. In 1999, when the pre-preliminary plan for this property was filed, 33 lots (three large and 30 smaller lots) were shown; if all percs were successful and the accessory dwellings all retained, that plan would have resulted in 39 dwellings. In 2008, when this preliminary plan was filed, 33 lots were again shown (two large and 31 smaller lots), which would have resulted in 40 dwellings. The current plan proposes 21 lots, three outlots, and two farm remainders; when all percs are completed, this plan will result in 33 dwellings.

The allowed density in the RDT zone is described as follows in the Zoning Ordinance under 59-C-9.41:

Only one one-family dwelling unit per 25 acres is permitted. (See section 59-C-9.6 for permitted transferable density.) The following dwelling units on land in the RDT zone are excluded from this calculation, provided that the use remains accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

- (a) A farm tenant dwelling, farm tenant mobile home or guest house as defined in section 59-A-2.1, title "Definitions."*
- (b) An accessory apartment or accessory dwelling regulated by the special exception provisions of division 59-G-1 and 59-G-2.*

Footnote 8, which applies to farm tenant dwellings, farm tenant mobile homes and guest houses, repeats part of the provision above and adds exclusions for dwellings in existence prior to June 1, 1958:

A farm tenant dwelling, farm tenant mobile home, or guest house... is excluded from the density calculations... provided that these uses remain accessory to a farm. Once the property is subdivided, such dwellings would no longer comply with these definitions or with this exclusion. A farm tenant dwelling in existence prior to June 1, 1958, may be rented to a non-farm family without obtaining a special exception as an accessory dwelling, provided that the dwelling meets all applicable health and safety regulations.

Separately listed for the RDT zone, an "Accessory dwelling for agricultural workers" is also permitted, subject to Footnote 42:

Only for workers actively engaged on a full-time or part-time basis in managing or maintaining a lawful agricultural use that is under the control of the owner or operator of property on which the accessory dwelling is located. An accessory dwelling for use by agricultural workers is permitted in addition to a main dwelling (59-C-9.3).

These exclusions and footnotes are not found in the original text of the RDT zone that appears as Appendix A of the AROS plan.

The applicant's attorney argues that the tenant dwellings and guest house will remain accessory to the farm, thus they should continue to be excluded from the density calculations. Background information includes a discussion of tenant houses as affordable housing in the Agricultural Reserve; the RDT zone contains no requirement for moderately priced dwelling units (MPDUs).

In response, residents note that the Zoning Ordinance states, "Once the farm is subdivided, such dwellings would no longer comply with these definitions or this exclusion." Residents argue that, following the applicant's case, a three-acre subdivided property with a horse might reasonably be called a farm, and it would thus be eligible to have any number of tenant dwellings. Having tenant dwellings that don't count toward density after the farm has been subdivided would result in this clause becoming purposeless and meaningless. Calling tenant housing "affordable housing" and allowing them in excess of density without any base requirement rewards properties with increased density while undermining the MPDU program. Additionally, having accessory dwellings that are occupied by non-farm families or guests is unrelated to farming; it is simply excess density.

As noted above, this information is provided as background for testimony that may be presented; no decision about the inclusion or exclusion of the accessory dwellings in density calculation is required by this submission.



Attachment B

DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

September 9, 2009

Carla Reid
Director

Mr. Jon Shiancoe
JAS Engineering and Design
5105 Mount Oaks Sanctuary Drive
Bowie, MD 20720

SEP 11 2009

Re: Stormwater Management **CONCEPT** Request
for Barnesville Oak Farms
Preliminary Plan #: 120090110
SM File #: 234607
Tract Size/Zone: 840.13 acres/ RDT
Total Concept Area: 119.3 acres
Lots/Block: NA
Parcel(s): P579
Watershed: Dry Seneca and Little Seneca

Dear Mr. Shiancoe:

Based on a review by the Department of Permitting Services Review Staff, the stormwater management concept for the above mentioned site is **acceptable**. The stormwater management concept consists of on-site water quality control and onsite recharge via roadside swales, drywells and rooftop disconnect. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cfs.

The following **items** will need to be addressed **during** the detailed sediment control/stormwater management plan stage:

1. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
3. An engineered sediment control plan must be submitted for this development.
4. All filtration media for manufactured best management practices, whether for new development or redevelopment, must consist of MDE approved material.

This list may not be all-inclusive and may change based on available information at the time.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is not required.

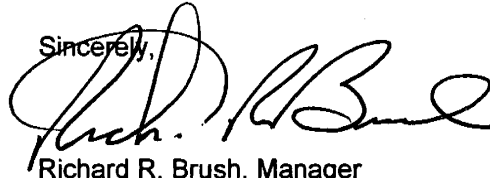
This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way

unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate concept request shall be required.

Maryland Department of the Environment regulations require all final sediment control and stormwater management plans approved on or after May 4, 2010 must comply with the most recent changes to the Maryland Stormwater Design Manual. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cfs. After that date, previously approved stormwater management concept plans are no longer valid unless they have been designed to the new standards or have been reconfirmed by the Department of Permitting Services.

If you have any questions regarding these actions, please feel free to contact William Campbell at 240-777-6345.

Sincerely,



Richard R. Brush, Manager
Water Resources Section
Division of Land Development Services

RRB:dm

cc: C. Conlon
M. Pfefferle
SM File # 234607

QN -less than 2cfs; Acres: 119.3
QL - onsite; Acres: 119.3
Recharge is provided



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Carla Reid
Director

May 14, 2010

Mr. Jon Shiancoe, P.E.
JAS Engineering, LLC
5105 Mount Oaks Sanctuary Drive
Bowie, MD 20720

Re: Stormwater Management **CONCEPT**
RECONFIRMATION Barnesville Oak
Farms
SWM Concept #: 234607

Dear Mr. Shiancoe:

Your request for a stormwater management reconfirmation for the above site has been evaluated. The original approved SWM concept dated September 9, 2009 is hereby reconfirmed. Please adhere to all conditions required as part of that approval.

If you have any questions regarding these actions, please feel free to contact William Campbell at 240-777-6345.

Sincerely,

Richard R. Brush, Manager
Water Resources Planning Section
Division of Land Development Services

RRB:dm

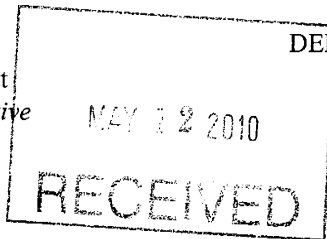
cc: SM File #: 234607



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Carla Reid Joyner
Director



MEMORANDUM

April 16, 2010

TO: Cathy Conlon, Development Review
Maryland National Capital Park and Planning Commission

FROM: Carla Reid, Director
Department of Permitting Services

SUBJECT: Status of Preliminary Plan for Well and Septic: Barnesville Oak Farms
1-20090110

This is to notify you that the Well & Septic Section of MCDPS approved the plan received in this office on April 15, 2010

Approved with the following reservations:

1. The record plat must be at the same scale as the preliminary plan, or submit an enlargement of the plat to match the preliminary plan.
2. The record plat must show the septic reserve areas as they are shown on this plan.
3. Prior to DPS approval of the Record Plat, the existing septic system serving the farm office and the tenant dwelling (T5) shall be replaced with separate systems in the designated approved septic reserve areas. Separate septic system permits shall be required. The existing septic system must be pumped by a licensed scavenger, crushed and backfilled.
4. Outlots 11, 19 & 20 are not buildable lots at this time. Before these outlots can be converted to buildable lots testing is needed to establish an approvable septic reserve area to serve each lot.
5. Tenant house T3 and tenant house T4 shall be razed prior to approval of the record plat by DPS Well & Septic unless an approvable septic reserve area is established to serve tenant house T3 and an approvable septic reserve area is established to serve tenant house T4.

If you have any questions, please contact Kim Beall at (240) 777-6315.

cc: Benning & Associates
File

5



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

June 23, 2009

Ms. Catherine Conlon, Subdivision Supervisor
Development Review Division
The Maryland-National Capital
Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RE: Preliminary Plan #1-20090110
Barnesville Oak Farms

Dear Ms. Conlon:

We have completed our review of the above referenced preliminary plan dated May 8, 2009. An earlier version of this plan was reviewed by the Development Review Committee at its meeting on January 26, 2009. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to DPS in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. Necessary dedication along Beallsville Road (MD 109), Peach Tree Road, and Whites Store Road in accordance with the Master Plan.
2. Full width dedication and construction of Barnesville Oak Lane as a modified open section tertiary street.
3. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.
4. Grade establishments for all new public streets and/or pedestrian paths must be approved prior to submission of the record plat.
5. Access and improvements along Beallsville Road (MD 109) as required by the Maryland State Highway Administration.

Division of Traffic Engineering and Operations

100 Edison Park Drive, 4th Floor • Gaithersburg, Maryland 20878
Customer Service 240-777-6000 • Main Office 240-777-2190 • TTY 240-777-6013 • FAX 240-777-2080
trafficops@montgomerycountymd.gov

(6)

6. The record plat is to include a reciprocal ingress, egress and public utilities easement to serve the lots accessed by the private common driveways.
7. Wells and septic systems cannot be located within the right of way or within slope or drainage easements.
8. Relocation of utilities along existing roads to accommodate the new driveway entrances will be the responsibility of the applicant.
9. Provide documentation confirming abandonment of the existing C&P right of way prior to record plat.
10. Enclosed storm drainage and/or engineered channels for Barnesville Oak Lane shall be designed in accordance with the Montgomery County Department of Transportation Storm Drain Design Criteria.
11. Storm drain easements shall be sized prior to approval of the record plat. No fences will be permitted within the storm drain easements without a revocable permit from the Montgomery County Department of Permitting services and a recorded Maintenance and Liability Agreement.
12. Developer shall provide street lights in accordance with the specifications, requirements and standards prescribed by the Division of Traffic Engineering and Operations.
13. The sight distance studies have been accepted. Copies of the approved sight distance forms are enclosed for your information and reference.
14. The drainage study has been accepted.
15. We have accepted the applicant's justification and request to allow five (5) lots to be served by a private common driveway. We support Planning Board approval of this proposal, subject to the preparation of Maintenance and Liability Agreement(s) to identify the obligations and rights of the future property owners.
16. If the proposed development will alter any existing street lights, signing, and/or pavement markings, please contact Mr. Dan Sanayi, Manager of our Traffic Engineering Design and Operations Section, at (240) 777-6000 for proper executing procedures. All costs associated with such relocations shall be the responsibility of the applicant.
17. Permit and bond will be required as a prerequisite to DPS approval of the record plat. The permit will include, but necessarily be limited to, the following improvements:

- A. Street grading, paving, shoulders, sidewalks and handicap ramps, side drainage ditches and appurtenances, and street trees along Barnesville Oak Lane as a modified open section tertiary road.
- B. Permanent monuments and property line markers, as required by Section 50-24(e) of the Subdivision Regulations.
- C. Erosion and sediment control measures as required by Section 50-35(j) and on-site stormwater management where applicable shall be provided by the Developer (at no cost to the County) at such locations deemed necessary by the Department of Permitting Services (DPS) and will comply with their specifications. Erosion and sediment control measures are to be built prior to construction of streets, houses and/or site grading and are to remain in operation (including maintenance) as long as deemed necessary by DPS.
- D. Developer shall ensure final and proper completion and installation of all utility lines underground, for all new road construction.
- E. Developer shall provide street lights in accordance with the specifications, requirements, and standards prescribed by the Division of Traffic Engineering and Operations.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact me at greg.leck@montgomerycountymd.gov or (240) 777-6000.

Sincerely,



Gregory M. Leck, Manager
Development Review Team

Enclosures (5)

M:\sub\LAD\1-20090110, Barnesville Oak Farms, gml revs

cc: Katharine Sexton, Barnesville Oak Farms, LLC
Charles R. Player, Jr., Malsama Corporation
David McKee; Benning & Associates, Inc.
Corren V. Giles; MSHA EAPD
Richard Weaver; M-NCPPC DRD
Shahriar Etemadi; M-NCPPC TPD
Joseph Y. Cheung; DPS RWPPR
Sarah Navid; DPS RWPPR
Preliminary Plan Folder
Preliminary Plans Notebook



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

SEP 28 2010

MCPB No. 10-129
Preliminary Plan No. 120090110
Barnesville Oak Farm
Date of Hearing: July 22, 2010

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, Balsamah Corporation N.V. (formerly known as Malsama Corporation N.V.), a Netherlands Antilles corporation ("Balsamah") is the owner of approximately 840 acres of land located on the east and west sides of Peach Tree Road, bounded on the north by Whites Store Road and to the west by Beallsville Road (MD 109) ("Property" or "Subject Property"); and

WHEREAS, by letter dated November 13, 2008, Balsamah authorized Katherine S. Sexton and/or Barnesville Oak Farms LLC, a Maryland corporation, as their appointed representatives to act individually or together, on behalf of Balsamah to take all necessary steps to obtain preliminary subdivision plan approval for the Property; and

WHEREAS, on December 4, 2008, Barnesville Oak Farms LLC, ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 21 lots and 3 outlots for up to 24 one family detached dwelling units and two farm parcels to be unplatted on the Property, in the Agricultural and Rural Open Space Master Plan ("AROS Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120090110, Barnesville Oak Farm, ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated July 9, 2010, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

Approved as to
Legal Sufficiency:

[Signature] 8/31/10

8787 Georgia Avenue, N.W., Suite 100, Silver Spring, MD 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, Montgomery Countryside Alliance and the Audubon Naturalist Society, two parties of record requested a delay of the Hearing alleging that Balsamah did not have authority to authorize their appointed representatives to file the Application and act on its behalf during the proceedings for the Application because neither Balsamah, its predecessor in interest (Malsama Corporation), nor its Managing Director (Curcao Corporation) is registered to do business in the state of Maryland; and

WHEREAS, upon testimony heard and evidence submitted for the record by Montgomery Countryside Alliance, the Audubon Naturalist Society, and Applicant as a preliminary matter on July 23, 2010, the Planning Board denied the request for delay, on motion of Commissioner Dreyfuss; seconded by Commissioner Wells-Harley, with a vote of 4-0, Commissioners Dreyfuss, Wells-Harley, Alfandre, and Carrier, voting in favor, with Commissioner Presley abstaining; and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on July 23, 2010, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on July 23, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Dreyfuss; seconded by Commissioner Alfandre, with a vote of 4-1, Commissioners Dreyfuss, Alfandre, Carrier, and Wells-Harley voting in favor, with Commissioner Presley voting to disapprove.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No.120090110 to create 21 lots and 3 outlots for up to 24 one family detached dwelling units, and two unplatted farm parcels on 840 acres of land, in the RDT zone, located on the east and west sides of Peach Tree Road, bounded on the north by Whites Store Road and to the west by Beallsville Road (MD 109), in the AROS master plan area, subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 21 one-family detached residential lots and 3 outlots for up to 24 one family detached dwelling units, and two unplatted farm parcels.
- 2) The applicant must comply with all conditions of approval of the preliminary forest conservation plan prior to plat recordation or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permit(s), as appropriate. Conditions include, but are not limited to:
 - a. Category I conservation easements on platted portions of the Property

- must be shown on the record plats.
- b. Category I conservation easements must be placed over all forest conservation areas located on the unplatted farm remainders of the Property. These conservation easements must be recorded by deed in the County land records and referenced on the record plat(s) for the residential lots.
- 3) A Public Use Trail Easement ("PUTE") must be created on the Property as shown on the preliminary plan. The PUTE will name Equestrian Partners in Conservation ("EPIC"), a 501c3 non-profit corporation, its successors or assigns, or another suitable entity identified by MNCPPC staff, as the Grantee and must include, at a minimum: (i) the conditions and restrictions governing uses that are within the definition of "Recreational Purpose" as defined in the MD Ann. Code, Natural Resources Article, §5-1101; (ii) the right of Grantee to construct, maintain and repair the trail, with no obligation by either Grantee or the Grantor to do so; and (iii) rights of enforcement by both the Grantor and the Grantee, with no obligation on either to do so. The PUTE must be approved by the Commission's Office of the General Counsel which approval may not be delayed beyond 120 days following adoption of the MCPB Resolution of approval of the Preliminary Plan but no less than 90 days after submission of a reasonable draft for review. Prior to recordation of the initial plat, the applicant must record the PUTE in the land records and the plat must include a reference to the Liber and Folio of the recorded PUTE. Should the designated Grantee as specified herein decline to accept the PUTE, the record plat may be recorded without the reference.
- 4) Prior to recordation of the plat(s), Applicant must submit an affidavit to MNCPPC staff that verifies the availability of one Transferrable Development Right for each lot and outlot shown on the plat(s).
- 5) The record plat must show dedication of Peach Tree Road to a width of 70 feet (or 35 feet from centerline) to Rustic Road standards and the new internal road (Barnesville Oak Lane) as a 50 foot wide tertiary road right-of-way as shown on the approved preliminary plan.
- 6) The Applicant must construct all road improvements within the rights-of-way shown on the approved preliminary plan to the full width mandated by the master plan and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the preliminary plan, "To Be Constructed By _____" are excluded from this condition.
- 7) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
- 8) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated September 9, 2009 and reconfirmed on May 14, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.

- 9) The Applicant must comply with the conditions of the MCDPS, Well and Septic Section approval dated April 16, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 10) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated June 23, 2009. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 11) The certified preliminary plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints and driveway locations shown on the preliminary plan are illustrative. The final locations of buildings, structures and hardscape will be determined during the building permit approval process. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
- 12) Record Plat must contain the following note: "Agriculture is the preferred use in the Rural Density Transfer Zone. All agricultural operations shall be permitted at any time, including the operation of farm machinery, and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the Zone."
- 13) Record Plat must reference a recorded easement for the parent parcels indicating i) that density and TDRs for these lots was removed from the parent parcels; and ii) per §59-C-9.41 of the Montgomery County Zoning Ordinance, following this subdivision, any farm tenant dwelling, farm tenant mobile home, or guest house is included in the total permitted density of 33 residential structures on the Property.
- 14) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.
- 15) Other necessary easements must be shown on the record plat(s).

BE IT FURTHER RESOLVED, that, having given full consideration to testimony heard and evidence submitted for the record by Montgomery Countryside Alliance, the Audubon Naturalist Society, and Applicant, the Montgomery County Planning Board FINDS that:

1. *The Applicant had authority to file the Application on behalf of Balsamah Corporation N.V. (formerly known as Malsama Corporation N.V.), a Netherlands Antilles corporation as the owner of the Property.*

The Subdivision Regulations, Chapter 50 of the Montgomery County Code, defines an Owner as “[a] person or corporation holding a legal title in the land...” Subdivider is defined as “[a]n individual, partnership or corporation (or agent thereof) that undertakes the subdivision of land or the activities covered under [Chapter 50]....” Nothing in either of those definitions or in the Subdivision Regulations requires that the owner or subdivider be registered to do business in the State of Maryland. And Montgomery Countryside Alliance or the Audubon Naturalist Society provided no legal basis on which the Board could rely. It has been the longstanding practice of the Planning Board to accept applications for subdivision from an agent of a property owner, so long as the authority of the agent is clear. In accordance with the subdivision regulations, the Applicant submitted written verification with the Application authorizing the Applicant to file the Application and it was found to be complete. In fact, as stated by Montgomery Countryside Alliance and the Audubon Naturalist Society, the request for delay of the proceedings was raised in order to provide these interested parties with an opportunity to discuss their concerns about the Application directly with the owner of the Property; their preference over working through their issues with the owner’s appointed representatives.

The Planning Board did not find the request or the evidence presented to be so compelling as to warrant a delay of the Hearing, particularly since Applicant’s appointed representatives have made themselves available through a public meeting held in Poolesville on their proposed Application, have provided updated plans to the neighbors, and have been available at several Rustic Roads Advisory Committee meetings. To the contrary, the Planning Board found the authorization submitted with the Application, together with the July 22, 2010, letter with supporting documentation from Stephen J. Orens, on behalf of Applicant objecting to the requested postponement, and the reasons set forth therein to be compelling.

AND BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein) and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

2. The Preliminary Plan substantially conforms to the AROS Master Plan.

The Planning Board determined that the Preliminary Plan, as proposed, protects to a significant degree, the ability for agricultural practices to continue on the Property as recommended by the AROS Master Plan. Of the 840 acres making up this Property, 780 acres will remain in agriculture. The AROS Master Plan does not set a specific objective goal for preservation, and the intent of the

Master Plan is that the Planning Board, in its discretionary role must be satisfied that the Applicant has made reasonable good faith efforts to protect as much agricultural land as possible. The Board was satisfied that the Preliminary Plan protects agriculture and minimizes fragmentation of active farmland by creating residential lots that are as small as reasonably possible, and that are clustered in areas that do not detract from the active agricultural land. The Preliminary Plan intentionally minimizes the spread of residential development to avoid fragmentation and to minimize the potential for conflicts between farm and non-farm properties. Although there was testimony that the proposed development would change the character of the area, creating a suburban enclave within the Agricultural Reserve, the focus of the Master Plan is preservation of agriculture within the Reserve -- not maintenance of the rural character. However, in order to allay those concerns, the Preliminary Plan calls for the new homes to be buffered, where practical, from the agricultural areas to reduce conflicts. The Board finds that the Preliminary Plan is in substantial conformance with the AROS Master Plan.

3. *The Preliminary Plan substantially conforms to the Rustic Roads Functional Master Plan.*

The Planning Board finds that the Preliminary Plan substantially conforms to the Rustic Roads Functional Master Plan. All three abutting roads, Beallsville Road, Peach Tree Road and Whites Store Road are Rustic Roads, with Whites Store Road also being designated as an Exceptional Rustic Road. The lot layout proposed on the Preliminary Plan does not visually impact Beallsville Road or Whites Store Road but concentrates development along Peach Tree Road. The Board considered the impact of the two driveways and the two new road access points along Peach Tree Road and understood that the Rustic Roads Advisory Committee had recommended approval of the Preliminary Plan with these points of access.

The Planning Board was satisfied that the visual impacts to Peach Tree Road were minimized by using shared driveways to serve multiple lots and that the two access points for the new tertiary street were necessary for the number of lots proposed. The Board also considered the Staff Report which explained that the five lots in the southernmost cluster were relocated back off Peach Tree Road to minimize impact to a designated viewshed in the Rustic Roads Functional Master Plan that captured a view to Sugarloaf Mountain. The remaining 16 lots and three outlots on the Preliminary Plan uses forest, to the extent possible, to screen views along Peach Tree Road. The Board was satisfied that the Preliminary Plan appropriately addressed the recommendations of the Rustic Roads Functional Master Plan and finds that the Preliminary Plan is in substantial conformance with that plan.

4. *All public facilities will be adequate to support and service the area of the proposed subdivision.*

The Planning Board finds that all public facilities will be adequate to serve the lots proposed by this Application. The Board determined that a new road is required to serve the 13 proposed lots and 3 outlots located on the east side of Peach Tree Road, and that it should be constructed to tertiary road standards within a dedicated 50 foot wide right-of-way. No sidewalks are required for this section of road because of its low traffic volume and because it is in the "rural area" defined in the road code. Pedestrians can safely use the road shoulders in this low traffic volume area. The Board also determined that two shared driveways will be adequate to serve the three-lot and five-lot clusters on the west side of Peach Tree Road.

The Board considered the Staff Report and determined that the 21 lots and three outlots proposed will not generate 30 or more vehicle trips during the morning or evening peak-hours; therefore, the application is not subject to Local Area Transportation Review. The Subject Property is located in the Rural West Policy Area where there is no trip mitigation requirement for PAMR according to the current Growth Policy. The Board was satisfied that the local road network will not be overburdened by the additional traffic generated by this development. Proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

The Board finds that other public facilities and services are available and will be adequate to serve the proposed dwelling units. Local utilities have found that their respective services, if located in the area, are adequate to serve the proposed subdivision. The Montgomery County Department of Permitting Services (MCDPS) has approved the septic systems for all but three lots (11, 19, 20), which as a result are to be recorded as outlots. The Maryland Department of the Environment (MDE) has analyzed the well water withdrawal and has issued a groundwater appropriation permit. The Board understood that MDE was satisfied that well water supplies would be adequate for the new lots and that recharge to the groundwater supply was adequate for local wells.

The application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles and that it includes an easement for a future water supply cistern that will be shown on the record plat. Other public facilities and services, such as schools, police stations, firehouses and health services, are operating

within the standards set by the Growth Policy Resolution currently in effect. The Application is not within a school moratorium area and is not subject to a School Facilities Payment.

5. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Board finds the application meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision as previously discussed regarding the size, shape and location of the lots on the farm.

6. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

The Board finds that the Preliminary Plan meets all applicable requirements of the Montgomery County Forest Conservation Law, Chapter 22A. Of the 840 acres making up this Property, 780 acres will remain in agriculture and are exempt from forest conservation requirements through an agricultural Declaration of Intent. The residential component of this Application generates a 57.8 acre net tract area that is subject to the law. The forest conservation requirement on the 57.8 acre net tract will be met by protecting 8.30 acres within the residential lots and 89.6 acres on the unplatted farm portion of the Application. The Applicant also proposed to protect an additional 50 acres of existing forest to be used for forest banking purposes.

7. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on September 9, 2009 and the concept was reaffirmed on May 14, 2010. The concept plan consists of on-site water quality controls and onsite recharge via roadside swales, drywells and rooftop disconnects. Channel protection volume is not required because the one-year post development peak hour discharge is less than or equal to 2.0 cubic feet per second.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-

35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

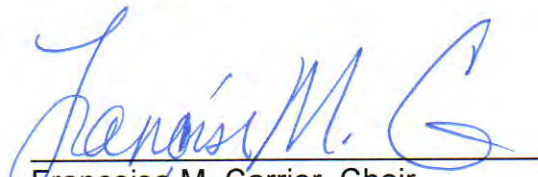
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 28 2010 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Alfandre, seconded by Vice Chair Wells-Harley, with Chairman Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre and Dreyfuss present and voting in favor of the motion, and Commissioner Presley absent at its regular meeting held on Thursday, September 16, 2010, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board

Rebecca Walker
Miles & Stockbridge, PC
11 North Washington St. #700
Rockville, MD 20850

Norman Knopf
Knopf & Brown
401 East Jefferson Street, #206
Rockville, MD 20850`

Hugh Gibson
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Silver Spring, MD 20910

Lynn Lipp
21221 Peach Tree Road
Dickerson, MD 20842 `

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Martinsburg Planning Area Citz. Assoc.
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Poolesville, MD 20837

Susan Jamison
P.O. Box 621
Poolesville, MD 20837

Eleanor Kotler
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Dickerson, MD 20842

Dale Kotler
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Ann Sturm
Sugarloaf Citizens Assoc.
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Barnesville, MD 20838

Dolores Milmoie
Audubon Naturalist Society
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Chevy Chase, MD 20814

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Montgomery Countryside Alliance
P.O. Box 521
Boyd's, MD 20841

Tom Hoffmann
Peachtree Road Civic Assoc.
19218 Peachtree Road
Clarksburg, MD 20871

Tom Guiterrez
15410 Partnership Road
Poolesville, MD 20837

Margaret Chasen
League of Women Voters
9608 Hawick Lane
Kensington, MD 20895

Jane Champman
22111 Dickerson School Road
Dickerson, MD 20842

Richard Hill
Dickerson Community Assoc.
23315 Whites Ferry Road
Dickerson, MD 20842

Alyce Ortuzar
P.O. Box 312
Ashton, MD 20861

Rodney Wallace
20431 Peach Tree Road
Dickerson, MD 20842

Tina Brown
18201 Barnesville Road
Barnesville, MD 20838

Jim Brown
Izaak Walton League
18201 Barnesville Road
Barnesville, MD 20838

Anne Shroeder
16760 Whites Store Road
Boyd's, MD 20841

Suzanne Shoemaker
20201 Bucklodge Road
Boyd's, MD 20841

Ellen Pearl
15500 Comus Road
Clarksburg, MD 20871

Kirk Mettam
20501 Peach Tree Road
Dickerson, MD 20842

Barnesville Oak Farms, LLC
Katherine Sexton
4200 Wisconsin Ave. Suite 106-180
Washington, DC 20016

Holland and Knight
Robert Harris and Stacy Silber
3 Bethesda Metro Ctr. Suite 800
Bethesda, MD 20814

Malsama Corporation
Charles Player, JR
17520 Whites Store Road
Po Box 401
Barnesville, MD 20838

Benning and Assoc.
David W. McKee
8933 Shady Grove Ct
Gaithersburg, MD 20877

parity of records

No.	Name & Phone Number		Organization & Address	Time
11.	Tom Hoffmann 301-928-5858	rthoffmann@aol.com	Peachtree Road Civic Association 19218 Peachtree Road Clarksburg, MD 20871 ✓	10
12.	Tom Gutierrez 301-758-5595	tgutierrez@fcclaw.com	15410 Partnership Road Poolesville, MD 20837 ✓	3
13.	Margaret Chasen 301-942-0497		League of Women Voters 9608 Hawick Lane Kensington, MD 20895 ✓	10
14.	Jane Chapman 202-277-6009		22111 Dickerson School Road Dickerson, MD 20842 ✓	3
15.	Richard Hill 301-495-0900	rhill@asis.org	Dickerson Community Association 23315 Whites Ferry Road Dickerson, MD 20842 ✓	10
16.	Alyce Ortuzar 301-774-6617	farmparity@gmail.com	PO Box 312 Ashton, MD 20861 ✓	3
17.	Rodney Wallace		20431 Peach Tree Road Dickerson, MD 20842 ✓	3
18.	Tina Brown 202-365-2113		18201 Barnesville Road Barnesville, MD 20838 ✓	3
19.	Jim Brown 240-654-3149		Izaak Walton League 18201 Barnesville Road Barnesville, MD 20838 ✓	10
20.	Anne Shroeder 301-349-0802	farmeranne@stargazing.com	16760 Whites Store Road Boys, MD 20841 ✓	3
21.	Anne Shroeder 301-349-0802	farmeranne@stargazing.com	Sierra Club	3
22.	Suzanne Shoemaker		20201 Bucklodge Rd Boys, MD 20841 ✓	3

Barnesville Oaks Farm - (Limited Testimony - 3 minutes)

Item #9

July 22, 2010

Speaker Sign-up Sheet

No.	Name & Phone Number	Email	Organization & Address	Time
	Rebecca Walker 301-517-4830	rwalker@milesstockbridge.com	Miles & Stockbridge, PC 11 North Washington Street # 700 Rockville, MD 20850	
	Katherine Sexton ✓ Stephen Orens David McKee APPLICANT		Barnesville Oaks Farms, LLC Miles & Stockbridge, PC Benning & Associates	
1.	Norman Knopf 301-545-6100	knopf@knopf-brown.com	Knopf & Brown 401 East Jefferson Street, #206 Rockville, MD 20850	10
2.	Hugh Gibson 301-608-8187	hdg558@aol.com	1201 East West Highway #421 Silver Spring, MD 20910	3
3.	Lynn Lipp 301-972-8134	goggynpapa@intairnet.com	21121 Peach Tree Road Dickerson, MD 20842	3
4.	Robert Jamison 240-793-8238	susansfo@msn.com	Martinsburg Planning Area Citizens Assn. P.O. Box 621 Poolesville, MD 20837	3
5.	Susan Jamison 240-793-8238	susansfo@msn.com	P.O. Box 621 Poolesville, MD 20837	3
6.	Eleanor Kotler 301-349-0150	thekotlers@comcast.net	22404 Nicholson Farm Road Dickerson, MD 20842	3
7.	Dale Kotler 301-349-0150	thekotlers@comcast.net	22404 Nicholson Farm Road Dickerson, MD 20842	3
8.	Anne Sturm 301-972-9636	annets1@aol.com	Sugarloaf Citizens Association 21730 Peach Tree Road Barnesville, MD 20838	3
9.	Dolores Milmoie 301-633-8719	dmilmoie@audubonnaturalist.org	Audubon Naturalist Society 8940 Jones Mill Road Chevy Chase, MD	10
10.	Caroline Taylor 301-461-9831	caroline@mocoalliance.org	Montgomery Countryside Alliance P. O. Box 521 Boys, MD 20841	3
			TOTAL	44

23.	Mary Reardon	2236 Washington Ave Silver Spring, MD 20910	3
			111

No.	Name & Phone Number	Organization & Address	Time
24.	Ellen Pearl	15500 Comus Rd Clarksburg, MD 20871 ✓	3
24.	Kirk Mettam	20501 Peach Tree Rd Dickerson, MD 20842 ✓	3
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THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

TRANSCRIPT OF

HEARING

PRELIMINARY PLAN 120090110

BARNESVILLE OAKS FARMS

BEFORE THE

MONTGOMERY COUNTY PLANNING BOARD

JULY 22, 2010

COMMISSIONERS PRESENT:

FRANÇOISE M. CARRIER, CHAIR

MARYE WELLS-HARLEY, VICE CHAIR

JOE ALFANDRE, COMMISSIONER

NORMAN DREYFUSS, COMMISSIONER

AMY PRESLEY, COMMISSIONER

1 CHAIR FRANÇOISE CARRIER: The Planning Board will come to
2 order. We have a single item left on our agenda. Item number
3 nine, Preliminary Plan for Barnesville Oak Farms. I'll make a
4 preliminary personal announcement. If you see me standing up
5 it's because I have back issues and this chair and I are not
6 getting along. It doesn't reflect on my level of interest and
7 the conversation. I will be fully attentive, but I may have to
8 stand up for parts of the evening. I understand that there is
9 an individual who has an argument she wishes to make about
10 whether the Planning Board has legal authority to decide this
11 matter, and there was a request that that be handled on a
12 preliminary basis, and I'm willing to entertain that. But I
13 am going to place a time limit on it. It will not count
14 against your time on the substance of the subdivision, but I
15 want to keep it to five minutes. So, Dolores Milmoe, are you
16 out there? And, uh, the Applicant's counsel can certainly
17 respond, um, also if they, uh, so desire.

18 MS. DOLORES MILMOE: Thank you, Madame Chair. My name is
19 Dolores Milmoe. I'm with the Audubon Natural Society, and um,
20 my associate here is Tom Gutierrez from the community. We have
21 done a lot of research trying to find out who owns the land,
22 uh and trying to reach the direct, have a direct communication
23 with the landowner so that we could discuss conservation
24 options that might be available and of interest to the owner.

1 In doing so, we got a copy of the authorization to Ms.
2 Katherine Sexton from the record. And if you look at this
3 document, it lays out in fairly clear language, uh, giving her
4 authorization. Um, with the help of an attorney who
5 specialized in, um, this type of, of document and research,
6 um, there, we have found and I sent Mr. Lieb a detailed email
7 today that none of the entities listed are, at least not,
8 according to the search of Maryland state records, Maslama Al-
9 Sama Ciroc Corporation have never been registered in the state
10 of Maryland. Uh, and if you look at the, the substance of the
11 arguments, the whole, the entire document has several flaws
12 which we feel should be remedied before this, uh, can go
13 forward. Um, essentially, they are not recognized in the state
14 of Maryland as an entity and therefore, even at this
15 administrative level, we feel that this hearing should not
16 take place, um, until they remedy that, uh, um, that
17 irregularity in their filing.

18 MR. TOM GUTIERREZ, PARTNERSHIP ROAD: Tom Gutierrez. I
19 just add this, that the, the public has a right to review a
20 complete record. The record hasn't been completed. When it is
21 completed, it may well be that this you, this issue resolves
22 itself but until then, the public hasn't been afforded the,
23 the right to the notice and comment that it's entitled to.

24

1 MS. MILMOE: And finally, I don't know if you have a copy
2 of our complaint, uh, at all but, um, there are seven issues.
3 The first four, the first three being that they are not, um,
4 uh, they're not registered to do business in the, in the uh,
5 state of Maryland. But on, uh, number seven. They claim
6 without any documentation that Malsama Corporation is now
7 Balsama Corporation.

8 CHAIR CARRIER: Excuse me, I'm going to interrupt you
9 because our counsel is trying to interject again.

10 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: I apologize.
11 I had asked my assistant to provide copies of both the memo
12 from Ms. Milmoe that came in by email, as well as the copy
13 from the Applicant's counsel, and I think she only provided
14 the one side. But, um, if you'll explain it in the meantime, I
15 will go, I've read everything. I will go upstairs.

16 CHAIR CARRIER: You don't have, they don't have the copies
17 of our email?

18 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: I, I don't,
19 I don't know. No, I don't, and I apologize for that. It was an
20 administrative oversight. But they have not read either side.

21 CHAIR CARRIER: Ok.

22 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: So, you're
23 at the

24 CHAIR CARRIER: We were very busy today.

1 MS. MILMOE: I understand.

2 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: So, so
3 you're at the same advantage of the ap, both sides are at the
4 same advantage of, of just making it a verbal argument. I
5 will, though, provide them with copies

6 CHAIR CARRIER: Ok.

7 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: if you'll
8 just give me. But just continue. I'll be back.

9 MR. GUTIERREZ: We'd be pleased to continue. Well, we had,
10 we, we, we started with five minutes, and now we find that,
11 that no one had the documents that we'd hoped they'd had. I
12 will tell you that this is an important matter, and we need to
13 have it resolved before we move forward. The staff in its
14 report punted on the issue of whether or not there's even a
15 need to know who the Applicant is. In addition, there seems to
16 be a reliance on the fact that somebody has granted
17 representation authority to, uh, to another individual.
18 That's fine, but what we don't have clear is who it is that
19 granted that authority and how they were empowered to grant
20 that authority, and, and, and respectfully all that should be
21 resolved before we have a hearing on the substance.

22 MS. MILMOE: And since you don't have my memo, um, I can
23 just go through it briefly, and, but in order to review that,
24 you would need a copy of the pdf, which was also sent in and

1 is in part of the record, which is from, uh, it's from the
2 Curacao Corporation Company, NV, Managing Director,
3 authorizing Katherine Sexton to represent them in this matter.
4 So, what my memo is, with the help of an attorney, uh, lays
5 out in seven points why this document is flawed, and that they
6 don't really have status as an entity to do business in the
7 state of Maryland. Um, so without the pdf, uh, you know.

8 CHAIR CARRIER: I have a question as to on what basis you,
9 um, conclude that filing a subdivision application constitutes
10 doing business.

11 MS. MILMOE: So, the attorney explain, as he explained to
12 us that if, if the same entity were to come before the court
13 in Maryland, they would not be able to file an appeal because
14 they are not, they are not registered to do business in the
15 state of Maryland, and therefore, even at this administrative
16 level, they should not be allowed to go forward until they
17 remedy this, um, this fact.

18 MR. GUTIERREZ: I would add, Madam Chairman, that, um,
19 this is a situation where the land is, this is not just a
20 question of filing an application. There's land that
21 supposedly is being farmed out there. There's a lot of
22 activity that someone's doing on that land, and yet we don't
23 know who's authorized, qualified to do business in the state
24

1 of Maryland. These are questions that there may be good
2 answers to, but we haven't seen them yet. That's our point.

3 CHAIR CARRIER: The Planning Board does not have authority
4 to tell someone whether or not they can farm land. There is
5 other County agencies that may have that kind of authority.
6 We certainly do not. We have jurisdiction to hear subdivision
7 applications.

8 MS. MILMOE: Right. And I, I would like to stick with the
9 document itself and the seven points laid out. Um, and I
10 would just start according to a search of Maryland state
11 records, Maslama Corporation, NV has never been registered to
12 do business in Maryland, the same with Al-Sama Corporation,
13 NV, the same with Curacao Corporation Company, NV. Uh, if you
14 look carefully at the authorization document provided, at the
15 top it says Masalma Corporation, NV, but it's signed on behalf
16 of the Curacao Corporation Company, NV. Then if you look
17 carefully at the notary clause, it says that the signers of
18 the document are acting in their capacity of attorney-in-fact
19 for Curacao Corporation, NV, further described as a limited
20 liability company. This is problematic because, um, number
21 one, the sig, if the signatures are actually operating as
22 attorney-in-fact, then a power of attorney should have been
23 attached. Number two, we don't believe that the corporate form
24 of an NV unique to the Netherlands Antilles is a limited

1 liability company. It is in fact a private corporation.
2 Number six, this also claims without any document that Curacao
3 Corporation Company, NV acts as a managing director of Masalma
4 Corporation, NV. That is curious as well. It would be
5 irregular for one corporation to serve as a director of
6 another. It may be that the owner or majority stockholder, but
7 a director implies a position held by an individual. Number
8 seven. This claim, this document claims without any
9 documentation that Masalma Corporation NV is now Basalma
10 Corporation, NV. In summary the document recites that
11 individuals acting on behalf of a corporation who hold an
12 underclosed, undisclosed power of attorney to act for that
13 corporation on behalf of another corporation, which
14 purportedly is the new corporate name of the foreign
15 corporation owning the property as shown in the land records,
16 which has never been registered to do business in the state of
17 Maryland. That they grant to a recently formed Maryland LLC,
18 and certain individuals, the right to act on the owner's
19 behalf. If the owner were identified, these problems would be
20 resolved. We respectfully request that this information be
21 presented this evening and that the hearing should be
22 postponed until these significant irregularities are
23 rectified.

24

1 CHAIR CARRIER: Thank you. Does the Applicant wish to
2 respond?

3 STEPHEN ORENS, ATTORNEY, MILES & STOCKBRIDGE ON BEHALF OF
4 APPLICANT: Yes, Madam Chair. Thank you. For the record, Steve
5 Orens with Miles & Stockbridge on behalf of the Applicant.
6 Um, I think the simple answer to the question is what does the
7 subdivision regulate? what do the subdivision regulations
8 require, for an application to be filed, and, what does the
9 state code require of a foreign corporation that owns
10 property, a single piece of property, and they have occasional
11 business transactions in the state of Maryland. There is
12 nothing in the state code that would require Masalma
13 Corporation to register to do business in the state of
14 Maryland in order to hold title to the property that, uh, the
15 document that Ms. Milmoie, uh, submitted, the deed, shows they
16 are. The power of attorney that was granted to the LLC and,
17 uh, to Ms. Sexton is notarized and signed by the managing
18 agent of the corporation that owns the property. I am aware of
19 no law, no case that says that a corporation cannot manage
20 another corporation. I think if you told General Motors that
21 their, uh, subsidiary corporations were illegal I don't think
22 they would agree with you. The management of this corporation
23 is correct. It is appropriate; it is in accordance with the
24 law. What is necessary for a filing of an application for a

1 preliminary plan of subdivision? You have to look at the
2 subdivision regulations themselves to see what is required.
3 When an owner is not the applicant, whether it's a single lot
4 owned by an individual, whether it is a large tract of land
5 owned by a corporation, doesn't matter. But where the owner is
6 not the applicant, there must be written verification
7 submitted with the application that the person who is the
8 applicant, or as the, uh, subdivision regulations define it,
9 the developer or sub-divider, is authorized to proceed. That
10 document was in fact filed at the time of the application.
11 Now what does the, what does the sub, what is the definition
12 of developer or sub-divider in the subdivision regulations? I
13 quote: an individual, partnership or corporation (or agent
14 therefore) that undertakes the subdivision of land. The agent
15 who is undertaking the subdivision of land in this case is the
16 Applicant, is the LLC. It is Ms. Sexton. They are the
17 Applicant. They are the ones that the subdivision
18 regulations, uh, authorized to file the application. The
19 property owner does not have to file the application. The
20 property owner does not have to reveal in a subdivision
21 proceeding who all the shareholders are or who the individual
22 members of the corporation are. That is not required, that the
23 fact that someone has been trying to reach the owner is
24 irrelevant. They can reach the agent of the owner, who is in

1 Maryland. It is an LLC that is a Maryland LLC that is
2 proceeding with this application, and they can deal with that
3 person. The individual shareholders of the corporation do not
4 have to make themselves available to anybody who wants to
5 reach them. That's not a zoning requirement. The, trying the
6 title of land is not a zoning requirement. This is a zoning
7 action. The subdivision application was duly filed. It was
8 filed by a person authorized to file it. All of the
9 documentation necessary was submitted, reviewed by the
10 Development Review Division intake staff and found to be
11 complete, and for this issue to be raised the night of the
12 hearing based on an email received at 12:20 the day of the
13 hearing is nothing more than an attempt to delay this process.
14 We object to any delay. There is no basis for a delay. here
15 is no statutory, regulatory, or case law that would require a
16 delay, and we ask that the, uh, request for a delay be denied.

17 CHAIR CARRIER: I would ask our counsel if she has any
18 opinion, knowing that she has not had time, clearly, to
19 research this with any thoroughness since this is a very last-
20 minute issue.

21 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: Without
22 looking into the validity of the, uh, of the relationships
23 between, um, I would basically suggest that what Mr., um,
24 what, what would convince me is the fact that the subdivision

1 regulations don't require that, uh, a party who owns the
2 property be a resident or be authorized to do business in the
3 state. There might be other, there might be other, uh, steps
4 in the process, such as entering into certain agreements along
5 the way that might have that, might carry that obligation, but
6 as far as filing a, uh, subdivision plan, there's nothing in
7 the subdivision regulations that would preclude that. For
8 example, if a, if a party is a resident of the state of New
9 York, and the only thing that they have in Maryland is they
10 happen to be the owner of the property, um, I don't, I don't,
11 we would not turn down the application, subdivision
12 application. I don't think we have any authority to do that.

13 CHAIR CARRIER: Um, I, I expect it would be best to have
14 some kind of motion as to whether we are going to go forward.
15 In my view, um, I am not persuaded that there are legal
16 grounds to not go forward with this hearing or with making a
17 decision on this. It's a matter better decided by a court of
18 law. Parties who allege that there's no jurisdiction or no
19 authority in this body to make a subdivision application, a
20 decision in this, you know, you're welcome to appeal if we
21 decide to grant it, and let a court decide. Your right to do
22 that will not be harmed by our going forward. Um, so, that's
23 my view. Is there, uh, any other discussion or a motion.

24

1 COMMISSIONER NORMAN DREYFUSS: I'd like, I'd like to make
2 a motion. Um, that the, uh, application, uh, get the right
3 number here. Um, RDT Zone application be heard. That I
4 don't, I think the requirement of Preliminary Plan No.
5 120090110, Barnesville Oak Farms, I think what's persuasive to
6 me is if the requirements of the subdivision regulations have
7 been met, and, uh, I think we're obligated to review the
8 application under our own rules.

9 CHAIR CARRIER: Is there a second?

10 VICE CHAIR WELLS-HARLEY: Second.

11 CHAIR CARRIER: Any further discussion? Hearing none, all
12 those in favor say aye.

13 COMMISSIONERS: Aye.

14 COMMISSIONER PRESLEY: I'm going to abstain because I
15 don't feel like I have enough information here to really make
16 that assessment. I don't know whether we've ever had a
17 situation where, um, where it specifically spells out the
18 subdivision and someone's an owner and not a representative,
19 so I'm just abstaining for those reasons.

20 CHAIR CARRIER: Ok. Thank you very much. We will now go
21 forward with staff's presentation.

22 RICHARD WEAVER, DEVELOPMENT REVIEW DIVISION STAFF: Thank
23 you very much. For the record, Richard Weaver with the
24 Development Review Division, and to my right, Callum Murray

1 with our Vision Division. We're here to present to you the
2 preliminary plan entitled Barnesville Oak Farms, uh, with a
3 Preliminary Plan No. 120090110. I'll start out very simply.
4 We're going to go into quite a bit of detail and hopefully
5 finish with a clear concise conclusion as to why staff is
6 recommending what we are. This is a request to approve 24 lots
7 including 3 outlots on 840 acres of land in the rural density
8 transfer zone which we'll be referring to as the RDT zone
9 tonight. The RDT zoning standards are found within the
10 Montgomery County Zoning Ordinance, and the Zoning Ordinance
11 establishes a maximum density of one lot for every 25 acres of
12 land. Therefore, the maximum number of lots on this 840-acre
13 property is, has potential for 33 lots. The property is
14 currently an agricultural use and includes both crop
15 production and livestock. The application proposes it's at
16 least the majority of the property as an unplatted farm that
17 can continue to operate in much the same manner that it does
18 today. Staff will discuss how this proposal meets the
19 requirements of Chapter 50, the Subdivision Regulations,
20 Chapter 59, the Zoning Ordinance, and how it conforms to the
21 agricultural and rural space, open space master plan.

22 Our subject property is shown on this slide in red. It's
23 located north of, south of Barnesville and on the north side
24 of Poolesville in between those two towns. You'll note our

1 little Seneca Park off to the east of this subject property.
2 This is a, uh, kind of a blow up the preliminary plan drawing.
3 And it's important to note some geographical features here.
4 One is Beallsville Road, Maryland 109, which frames in the
5 western boarder of the property, and Peach Tree Road, which
6 essentially bisects the property right through the middle.
7 Whites Store Road is a, um, is located off, in, on the
8 northern frontage of this, um, property. All three of these
9 roads are rustic roads and Whites Store Road happens to be an
10 exceptional rustic road. Um, I think this is a good slide. It
11 kind of gives you an idea of what's going on on the site.
12 Again, Beallsville Road to the west, Peach Tree Road severes
13 the property in the middle and Whites Store Road off to the
14 north here. Um, to give you an idea, focus in on the dark
15 green that you see here from this aerial slide. It's a little
16 murky. It was a hazy day, I, I understand, but, um, the dark
17 green here is the forest resource that is located on this 840
18 acres. The remainder, the light greens and the browns are
19 essentially active agricultural areas. The proposal before you
20 is, uh, this is a blow up of the residential lots on this
21 property. Note that we really have three clusters of lots.
22 One to the south, along again Peach Tree Road, and two to the
23 north, a cluster of 3 lots here, and a cluster of 13 lots and
24 3 outlots located in this area on the east side of Peach Tree

1 Road. Um, I'm going to zoom in on the lots to the south.
2 There are five lots in this location. They will share a
3 private driveway. All five lots have pipe stems out to Peach
4 Tree Road. You'll note Woodstock subdivision immediately to
5 the south of these five lots. You will also note an open area
6 here. Um, these lots have been pushed intentionally back off
7 of Peach Tree Road, and we've created a, an open area here.
8 And Callum will go to more detail on this, but there's an
9 established view shed within the rural and rustic road
10 functional plan, uh, that one can see traveling north on Peach
11 Tree Road. Um, excuse me, that, uh, opens up a view of
12 Sugarloaf Mountain. We believe that, um, with this orientation
13 of these lots that we have protected that view shed to the
14 greatest extent possible. It's also very important to note
15 that all of the lots on this subdivision are less than 3
16 acres, and Callum will talk a little bit about trees for
17 direction and test amendments which, uh, go into, that put a
18 certain restrictions on residential lots in the RDT zone. All
19 of the septic systems that are before you today are also
20 located on the lot or the house for which they serve. We're
21 going to jump a little bit to the north. Um, note on the, uh,
22 also on the west side of Peach Tree Road, we have three lots
23 with a shared driveway. There is a forest resource here. Uh, I
24 would say that two of the three lots are tucked into the

1 forest. The, the third house here is located right on the edge
2 of the existing forest line. Uh, and you will note that there
3 will be some forest lost to, uh, place these houses within
4 this forest resource. On the other side of Peach Tree Road, we
5 have 16 total lots. Three of those are outlots. They have not
6 passed percolation standards by the Montgomery County
7 Department of Permitting Services as of yet. Um, with this
8 number of lots, staff has determined that the road for, on
9 which they front, should be a loop road. In other words, it
10 should have two access points to Peach Tree Road to provide a
11 dual access. Uh, we believe that there were too many lots.
12 This originally came in as a cul-de-sac, and we just believe
13 that 16 lots should have two points of access. It makes for
14 good planning. It makes for good vehicular and pedestrian
15 circulation. Uh, the outlots are denoted with a star and they
16 are continuing to go through percolation testing for those
17 lots. They cannot be built on. They will be platted as
18 outlots. At such a time as a, uh, septic system is approved
19 for these outlots, they may be converted, uh, under a minor
20 subdivision process by conversion through a record plat. You
21 will also note that, um, these 16 lots are within a large area
22 of forest. You've seen some of the testimony that 35 acres of
23 forest resource will be removed on this property. This was
24 done intentionally, and we'll discuss how we tried as staff,

1 and the applicant tried to balance the loss of forest resource
2 with the loss of the farm and active farmland. It was a
3 balance, and we believe that this plan has reached the right
4 balance. Some of the forest, uh, because of the loss of
5 forest, they, they are going to have to satisfy forest
6 conservation requirements. Uh, losing 35 acres means they do
7 have a planting requirement. Um, the net tract area for the
8 forest conservation worksheet, as we call it, only looks at
9 the tract, the, uh, looks at the, uh, residentially used
10 proportions of this site. In other words, the farm will
11 continue under declaration of intent or agriculture that's
12 exempt from forest conservation. Farming will continue on the
13 vast majority of this site. So the vast majority of the site
14 has a declaration of intent to continue farming practices and
15 will be exempt from forest conservation. The tract area, for
16 forest conservation purposes, is 57.8 acres. That is
17 essentially the land that is consumed within the, um, three-
18 acre lots that that we're, uh, reviewing tonight. Uh, the area
19 in green here is what will end up within a category one forest
20 conservation easement, and it is substantial. Um, the 57.8-
21 acre net tract area, uh, requirements for forest conservation
22 will be met in two ways. There will be 8.3 acres, which will
23 be located on the lots within the area of the platted lots.
24 In these areas, there will also be 89.6 acres of offsite

1 forest protection, offsite meaning on the farm remainder,
2 Offsite of the platted lots. So there's an 89.6-acre
3 requirement to protect in a category one easement additional
4 forest. The applicant also proposed to, uh, protect an
5 additional 50 acres of forest, uh, which will serve as a
6 forest bank. The certain beauty of this amount of forest saved
7 is that these, uh, large areas of forest quality for forest
8 interior dwelling species. They are of such a size and
9 magnitude that they, uh, they can provide habitat to certain
10 species that require large deep expanses of forest. Uh, and
11 uh, in certain respects we believe that is a good thing. It's
12 becoming increasingly more difficult to find large portions of
13 forest that can do that. Um, there are no, uh, none of the
14 lots are really impacting the environmental resources on the
15 site. You can see from this application, uh, this drawing that
16 we do have some stream sheds. Our stream courses through the
17 site. They will remain on the agricultural portions of the
18 property. Um, and one thing that we need to discuss tonight is
19 the location, or the issue of a forest conservation, um, I'm
20 sorry, uh, equestrian easement that traverses through the farm
21 remainder of this property. I'm going to go back a few slides
22 and we can see this, this equestrian easement in orange that
23 comes up through the farm remainder, crosses here and
24 continues all the way over to, um, Beallsville Road. Uh, on

1 this particular, uh, this being a large property, it's hard to
2 capture this all on one slide.

3 COMMISSIONER PRESLEY: Is that an existing forest, uh,
4 equestrian easement, you're talking about?

5 MR. WEAVER: Um, no. It is not an existing equestrian
6 easement, but the equestrian community has approached us, and
7 they do, they do currently ride here and they wish to continue
8 to do that, and we've, uh, attempted to accommodate them in
9 some way. Uh, this, uh, easement ribbons all the way again
10 from Beallsville Road here, down the boarder of the site. It
11 crosses Peach Tree Road in this location, through the forest
12 resource, and winds its way through the farmland over to
13 Whites Store Road. and, uh, condition three of the our staff
14 report, um, needs to be modified, and I don't know if we want
15 to get into a detailed discussion of this right now, but, um

16 COMMISSIONER PRESLEY: I was just curious to know if that
17 was existing or if that was something that we were placing on
18 it and whether or not that was a request also by the applicant
19 to preserve some equestrian.

20 MR. WEAVER: The applicant has worked with the, uh,
21 equestrian community and met with our park staff, and we
22 believe we have an easement alignment that works with this
23 property. Uh, so as not to conflict greatly with the, uh,

24

1 agriculture that's going on, Um, Carol, uh, we have a revised
2 condition number three. It's quite lengthy.

3 COMMISSIONER PRESLEY: I can wait until you get to the
4 conditions.

5 MR. WEAVER: Ok.

6 COMMISSIONER PRESLEY: I just wanted to know if it

7 MR. WEAVER: Perhaps we should do this at the end. Uh, we
8 don't want to get terribly bogged down in this, but, um. With
9 that, I'm going to turn this over to, um, well let me conclude
10 this brief presentation here in the beginning, to say that the
11 lots have been reviewed for consistency with the forest con,
12 uh, forest conservation law one thing. The subdivision
13 regulations and the zoning ordinance in all respects, all of
14 these lots have the frontage. They have the size, the area,
15 the dimensional requirements. They all exceed 40,000 square
16 feet, which is the minimum lot size in a rural density
17 transfer zone. They, uh, all have, except for three outlots,
18 approved septic and well locations. Uh, they in all ways have
19 adequate public facilities which can be provided to them.
20 And, uh, they all meet, they all conform and comply with the
21 sub regs and the zoning ordinance. Now we're going to talk a
22 little bit about the AROS Master Plan.

23 MR. CALLUM MURRAY, COMMUNITY-BASED PLANNING DIVISION

24 STAFF: Good evening, Madame Chairman, members of the Board.

1 CHAIR CARRIER: Good evening, Callum.

2 MR. MURRAY: I'm sorry?

3 CHAIR CARRIER: Good evening, Callum.

4 MR. MURRAY: Well, good evening. As Richard said, the
5 property bisected by Beach Street, eh, Peach Tree Road, and
6 what I'd like to do is give the Board some, eh, context by
7 looking at two immediately adjacent subdivisions to this, this
8 property. One is on, on, on the west side, eh, called
9 Woodstock, and the other one is on the east side called,
10 called, called Hannover, and then I'd like to briefly cover
11 the, the history of this application, and, Woodstock,
12 obviously, abuts spans below here, and this farmer attempted
13 to use all of its development rights and, uh, consolidate a
14 cluster on, on Peach Tree Road. The advantage to that was
15 that, uh, he created one large, eh, efficient unit for
16 farming, the disadvantage is that it looks like transplanted
17 suburbia from downturn of Potomac and, uh, it's very open and,
18 uh, very visible. There are eight lots here and the average
19 size is 4.63 acres. The Hannover subdivision abuts the
20 property on, on south, southeast side. There are also eight
21 lots and the average size is 3.86, very open, very visible.
22 And, eh, the community resentment against this subdivision was
23 exacerbated by the fact that there was a egregious example of
24 child lot abuse. That can apply for five child lots, and um

1 apparently sold the lots before the property was plotted. So
2 that has resonated with the community and, and it's still,
3 it's still, um, maintained out there. Now if we look at the,
4 make a comparison of the lot sizes, the application before you
5 tonight actually compares very favorably. Hum, the average lot
6 size is half of Woodstock and one and a half acres less than
7 Hanover. Now turning to history, this is a photograph of
8 Barnesville Oak on the west side of Peach Tree looking north.
9 This entire area of, eh, addable land on the west side would
10 have been eliminated by an application we received in 1999.
11 The three lots on the west side that Rich alluded to would be
12 in this forest in, in the background. Now if we look at the,
13 if we compare what we received in 1999, that's here, you can
14 see that the application we received two years ago, uh, was a
15 considerable improvement, and since then, each of these three
16 elements has been reduced considerably.

17 COMMISSIONER PRESLEY: Could you go back for a minute,
18 Callum, just I want to make sure I'm understanding what I'm
19 seeing. So there was actually, because I didn't see that
20 submission in our packets. There's the submission in 99

21 MR. WEAVER: That was a pre-preliminary plan.

22 MR. MURRAY: Pre-preliminary. So input was given and that
23 was discussed in our report, and then the preliminary plan
24 September 2008, how was that

1 MR. WEAVER: That's the same application that you're
2 looking at here today.

3 COMMISSIONER PRESLEY: Ok.

4 MR. WEAVER: This is an evolution of that application, as
5 staff and the applicant have worked together to devise a
6 better plan.

7 COMMISSIONER PRESLEY: Ok. So you'll tell me what the
8 difference is as we go.

9 MR. MURRAY: Yes.

10 COMMISSIONER PRESLEY: Ok.

11 MR. MURRAY: So if, if we look at that in the area taken
12 up in the residential lots, eh, basically what we have to be
13 has been reduced by two-thirds from what we had in 1999, and
14 by 50 percent in the last two years. The average lot size has
15 been reduced by more than half since 99, and by one and a half
16 acres since 2008. And the remainder farm area has increased
17 120 acres since 99 and by 68 acres in the last two years. Now
18 if you look at the, the AROS master plan, the master plan
19 actually

20 CHAIR CARRIER: And for the sake of the record, AROS is?

21 MR. MURRAY: AROS stands for: Agricultural and Rural Open
22 Space Master Plan.

23 CHAIR CARRIER: Thank you.

24

1 MR. MURRAY: An example is, several examples are given and
2 one of them on page 44 cited a 600-acre farm which generated
3 120 TDRs based on the previous RC zoning, of which 96 could be
4 sold or transferred and 24 could be developed to an out column
5 BLTs.

6 CHAIR CARRIER: Perhaps for the record you should explain
7 what a TDR is and what a BLT is.

8 MR. MURRAY: Uh, TDR is a transferrable development right.
9 BLT is a building lot termination, and, a minimum lot size,
10 eh, was specified as just under one acre. The plan didn't
11 specify a maximum. The plan strongly recommended wells and
12 trench and septic systems which this application has, and if I
13 can remind the Board that in May you sent a draft zoning text
14 amendment to the Council, and it will be introduced in
15 September, and some extracts from that, the purpose clause was
16 to promote agriculture preservation by attending large areas
17 of contiguous properties suitable to agriculture. To minimize
18 the size of residential lots unrelated to farming and to
19 balance the needs of new development with minimal
20 fragmentation of farmland and minimal intrusion on the
21 landscape, and to design new development unrelated to farming
22 so that can be practically integrated into the landscape.
23 Further, one of the guidelines was that any development must
24 locate and arrange the residential development to protect to

1 the maximum extent reasonable those portions of the tract most
2 appropriate for agriculture; And lastly, the, the Board in
3 considering a criteria and in a farm this size, you're going
4 to affect farmland, forest or views of the, they decided that,
5 umh, they would be taken, they would protect them and this all
6 go to priority; The farmland first. The environmental areas
7 like forest second, and the views third. So when, uhm, we
8 look at this plan, you can see that this is Woodstock. This is
9 Hannover. Sixteen of the lots are within a forest. They're
10 screened as far as can be possible. They're set back further
11 from the road. They will definitely impact the character of
12 Peach Tree Road. There's no doubt about that, but if you can
13 imagine these lots on either White Store Road or Beallsville
14 Road, in our opinion, the affect would be worse. Three of
15 these lots are partially in farmland, and there's only five in
16 open farmland. So we think, I think that reduces the farmland
17 by two and a half percent. So we feel that it conforms to the
18 AROS Master Plan. Thank you. I'll be glad to answer any
19 questions from the Board.

20 CHIAR CARRIER: Thank you, Mr. Murray.

21 COMMISSIONER PRESLEY: Are you looking at all of those?
22 You mentioned something about maximum allowable density. Are
23 you looking at all of those as developable by right, or are
24 you looking at those as, as for consideration? You, you

1 mentioned several factors including the forest, um, loss of
2 that. The potential for the view shed impact on rustic roads.
3 Um, so is there a presumption with us, with our staff that
4 it's the maximum density allowable by right?

5 MR. WEAVER: We, of course, review each plan as it comes
6 to us. Um, the original application, I believe, came in for
7 more lots. I, it was 30, 31 units, and there was a brief
8 discussion in your staff report about the fact that this is
9 below density by, uh, nine units. Um, and that was due to
10 disagreement at the time about tenant houses and how we would
11 look at that. That's not really on the table tonight, but, um,
12 your question is do we look at this by right? Um, well
13 certainly there is an expectation given, uh, you know, the
14 fact that we can locate lots on here that meet all the
15 requirements for the Subdivision Regulations, the Zoning
16 Ordinance, the lots that conform to the Agricultural and Rural
17 Open Space Master Plan, that full density is achievable and
18 can be supported by staff, but we have to fully comply and
19 conform to all the regulations that we look at for every
20 preliminary plan application.

21 MR. MURRAY: At the same time, we have from the onset
22 constantly encouraged the applicant to apply for the building
23 lot termination program. Just to update the Board on the
24 status of that, the executive regulations were approved by

1 PHED Committee this week, they're going to the Council on
2 Tuesday with a recommendation of approval, and, I understand
3 it's likely to be approved, which means the BLT program will
4 be enforced 30 days hence. And ironically, em, in terms of
5 imminent threat of development, you get higher points if you
6 have approved lots. So you have a better chance of getting
7 approval by the program if you have approved lots.

8 CHAIR CARRIER: Mr. Alfandre, I just want to interject
9 something. There was a gentleman in the audience trying to ask
10 a question. Um, if you sign up to testify, you can ask a
11 question then. I just can't take questions from the audience
12 during this portion of the evening.

13 COMMISSIONER ALFANDRE: Callum, so, uh, the BLT would work
14 as a one, one-to-one, one, as far as this, this farm goes of
15 this subdivision? Potentially, if they wanted to distinguish
16 it a BLT, they could sell one for one BLT.

17 MR. MURRAY: Theoretically, they could apply to sell off
18 the BLTs.

19 COMMISSIONER ALFANDRE: Right.

20 MR. MURRAY: If they're unlikely to go through, but
21 because it would eliminate all of the funds and nobody else
22 would get any. The reason it should be clear that 24 is a
23 large subdivision that is there, but it's a function of the
24 size of the farm.

1 COMMISSIONER ALFANDRE: Well, my question is this. They,
2 if this plan were approved,

3 MR. MURRAY: Right.

4 COMMISSIONER ALFANDRE: then, and the BLT program were
5 approved,

6 MR. MURRAY: Um hm.

7 COMMISSIONER ALFANDRE: and to the extent it was funded,

8 MR. MURRAY: Um hm.

9 COMMISSIONER ALFANDRE: then, uh, the owner of these lots
10 could sell

11 MR. MURRAY: Could apply.

12 COMMISSIONER ALFANDRE: Could apply.

13 MR. MURRAY: Could apply to agricultural services, and
14 would be prudent and, um, all of the applications for a
15 certain pied would be considered, would be ranked on the basis
16 of size,

17 COMMISSIONER ALFANDRE: I see.

18 MR. MURRAY: a percentage of prime soils, tenancy, and
19 then the, the stage in the development process. You get a
20 certain amount of points if you've applied for subdivision.
21 And you get highest number of points, if, if you have approved
22 lots.

23 COMMISSIONER ALFANDRE: So that you're at the top of the
24 list.

1 MR. MURRAY: Well.

2 COMMISSIONER ALFANDRE: You're at the top, you're closer
3 to the top of the list.

4 MR. MURRAY: If you have a same advantage, yeah.

5 COMMISSIONER ALFANDRE: If you have an approved
6 subdivision.

7 MR. MURRAY: Yeah.

8 COMMISSIONER ALFANDRE: And, um, part of that program,
9 does that, has it been worked out yet where they could be sold
10 or bought like TDRs?

11 MR. MURRAY: Um, they could be bought like TDRs. There's a
12 public and a private, em, element to it. Theoretically,
13 theoretically, the, the, Department of Economic Development Ag
14 Services could purchase lots.

15 COMMISSIONER ALFANDRE: But it has to go through their

16 MR. MURRAY: It has to go through their process, or
17 theoretically while developing some place like White Flint, we
18 need some other option.

19 COMMISSIONER ALFANDRE: Would go to the Ag Services.

20 MR. MURRAY: Would go directly to the applicant.

21 COMMISSIONER ALFANDRE: Oh, ok. So they could

22 MR. MURRAY: And the public would not be involved at all.

23 COMMISSIONER ALFANDRE: So, that's going to be allowed in
24

1 MR. MURRAY: Well, absolutely, and that would be
2 encouraged

3 COMMISSIONER ALFANDRE: Right.

4 MR. MURRAY: because that's exactly what happens in the
5 TDR program.

6 COMMISSIONER ALFANDRE: Thanks.

7 CHAIR CARRIER: Um, are there any additional questions for
8 staff before we move on to our speakers? We do have, uh, a
9 lot of people interested in speaking. I don't see any lights
10 among Planning Board members. Commissioner Presley?

11 COMMISSIONER PRESLEY: I'll hold the rest of my questions.
12 We'll probably come back to that issue.

13 CHAIR CARRIER: Ok. Um, we'll start with the applicant
14 represented by Ms. Walker.

15 MS. REBECCA WALKER, ATTORNEY REPRESENTING THE APPLICANT:
16 Yes, thank you. I, I just want to clarify. I don't know if
17 staff was done with their presentation since they indicated
18 they were going to review condition three and the revisions

19 CHAIR CARRIER: Oh,

20 MS. WALKER: before they went to the applicant. I just
21 want to make sure we have that.

22 MR. WEAVER: Thank you. Condition three slide. Condition
23 three pertains to the equestrian easement. Um, what we want to
24 try to do is accommodate the equestrian community and public

1 access through the site. What we don't want to do is to have
2 an orphan easement out there, and this condition is devised so
3 that a, uh, a grantee that will maintain and, uh, perhaps, uh,
4 enforce the, the, the, uh, equestrian easement has, can be
5 identified, and that that, uh, there is a public use, um.

6 Sorry.

7 CHAIR CARRIER: You flipped over it twice.

8 MR. MURRAY: Here you go.

9 MR. WEAVER: Public use trail easement is created that
10 establishes a grantee who will maintain and oversee this
11 trail. Um, this revised condition would replace condition
12 three, um, and it would require, we do, we have been working
13 with the, um, EPIC, which is the Equestrian Partners In
14 Conservation. They have expressed an interest in maintaining
15 and overseeing this trail system. Um, but we've worded this as
16 such that it doesn't necessarily have to be EPIC. It could be
17 an, another, uh, grantee, uh, that's identified by MNCPP
18 state, MNCPPC staff, um, and since this easement is on the
19 farm remainder, it will not be platted but will not need to
20 reference this, um, easement agreement on the plats for the,
21 uh, the residential lots. I think Carol will probably want to
22 add, add to this, so.

23 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: If I could
24 chime in for a minute.

1 COMMISSIONER DREYFUS: I've got a question before you do
2 that. Is this, is this a voluntary commitment by the applicant
3 at the request of staff?

4 MR. WEAVER: This is simply a proffer.

5 COMMISSIONER DREYFUSS: Ok. Thank you.

6 COMMISSIONER PRESLEY: It wasn't requested by staff. They
7 offered it to keep, to be able to keep the equestrian access
8 basically.

9 COMMISSIONER DREYFUSS: And the applicant responded?

10 MR. GLENN KREGER, COMMUNITY-BASED PLANNING STAFF: Yes.

11 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: Um, I just
12 want to clarify the, uh, the terminology orphan easement
13 because some of you might not understand what Mr. Rue was
14 referring to. Um, in the past, uh, the Board at the request of
15 the community or a public, any public, uh, participant who had
16 went, who wanted access to a particular piece of property
17 where the Board was looking at subdivision, uh, what the Board
18 used to do was, um, have the applicant include a simple
19 drawing or line of an access easement in some fashion whether
20 it's equestrian or non-equestrian. A public use or access
21 easement on the, on the plat, and then it was never clear who
22 the grantee of that easement was, nor was it clear what the
23 conditions of use and the obligations of the parties were.

24

1 And we called them orphan easements because there was not
2 grantee. There was nobody who owned it. So the question

3 CHAIR CARRIER: So nobody who could take, go to court to
4 enforce the conditions.

5 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: Well, we,
6 we had argued that the beneficiary of that easement who was
7 the general public would have that right to do so, but there
8 was always a question of standing, and it was clear, though
9 that the Commission was not the owner. We weren't the grantee
10 of those easements. We simply effectuated the request of the
11 public to make sure that the access was maintained. So what
12 we've been trying to do is to create a little more, some more
13 certainty in rights of enforcement and in maintenance
14 obligations repair, uh, conditions of use, etcetera. The other
15 thing I just wanted to mention is the reason that we go, site
16 the natural, natural resources article and recreational
17 purposes defined in that is because under state law,
18 specifically in that, uh, in that provision, uh, the property
19 owner so long as, uh, the landowner allows their property to
20 be used for recreational purposes without charge, there is no
21 liability or even obligation to maintain on behalf of the
22 landowner, but it's essentially an indemnification for that
23 public use and that those parties who actually, people, the
24 public who access this for recreational purposes is not

1 considered a business invitee. So it allows, um, protection
2 for the landowner in that regard. So we've, uh, anyway, so
3 that's, we've been working with the applicant's counsel to
4 make sure, uh, that those protections will be there and, uh,
5 and that's essentially the, uh, the genesis of this particular
6 provision.

7 MR. WEAVER: That essentially concludes our presentation
8 with the conditions, uh, recommended in the staff report as
9 revised. Staff believes that this plan complies and comports
10 with all requirements, and we recommend approval.

11 CHAIR CARRIER: Thank you very much. Now, Ms. Walker,

12 MS. WALKER: Thank you, Madame Chair. For the record,
13 Rebecca Walker and Steve Orens with the law firm of Miles &
14 Stockbridge. Present with me this evening at the table to my
15 right is Katherine Sexton, representative of the applicant and
16 developer Barnesville Oaks Farms, LLC, and to my left is Mr.
17 Orens, as I'm sure many of you know. And to his left is David
18 McKee from Benning & Associates, who's the land planner for
19 the project. First I want to thank staff very legitimately, in
20 particular on this application for all of their hard work.
21 There were numerous, countless meetings, um, between all
22 members of your staff and they were extremely, uh, helpful and
23 made themselves available to really make this a better plan.
24 And I think that you see that, uh, in the iteration that was

1 presented when it was first filed in 2008 versus the current
2 plan, uh, that there was really a compromise there. I'm
3 actually going to turn over this section of the applicant's
4 presentation to Ms. Sexton, and then, I will take things back
5 and continue from there.

6 MS. KATHERINE SEXTON, REPRESENTING THE APPLICANT: Good
7 evening, Madam Chairman and members of the Board. I'm
8 Katherine Sexton of Barnesville Oak Farms. I represent the
9 farm owner. The farm owner, the Balsama Corporation, is a
10 long-term member of the Montgomery County farming community.
11 The farm owner has contributed to the County's agricultural
12 industry for 30 years by cultivating large scale operations on
13 this property. As a neighbor, the farm owner has contributed
14 to the non-farming community by informally allowing the
15 Potomac Hunt and other neighbors to ride on and enjoy the
16 property. In designing this plan from a farmer's perspective,
17 the farm owner set four primary objectives. First, the plan
18 must maintain agriculture as the primary land use, and indeed,
19 97 percent of the agricultural operations on the property are
20 maintained

21 CHAIR CARRIER: Let me interrupt you just for a moment.
22 Can folks hear? Because I'm not sure the mic is picking you up
23 very well. Can we move it just a little closer? I tried to
24 turn up the volume, but we were getting feedback.

1 MS. SEXTON: Thank you. In designing the plan from a
2 farmer's perspective, the farm owner, can you hear me now?

3 CHAIR CARRIER: I think so. Can you hear her now?

4 AUDIENCE: Yes.

5 CHAIR CARRIER: Mostly yes. Not everybody. Lean forward a
6 little or move it to the side if you're able.

7 MS. SEXTON: Thank you.

8 CHAIR CARRIER: Thank you. That should do it.

9 MS. SEXTON: The farm owner set four primary objectives to
10 design this plan from a farmer's perspective. The first
11 objective was that agriculture must remain the primary land
12 use. Indeed 97 percent of the agricultural operations on the
13 property will be maintained. Only seven percent of the
14 property is proposed for new residential lots. Second, the
15 plan must allow the bulk of the property to remain in large
16 contiguous fields. Indeed, the plan does maintain 780 acres in
17 large contiguous fields. Third, the plan must be sensitive to
18 the non-farming community suggestions. Some suggested an
19 equestrian trail for the public's use, no suburban features,
20 such as monumental entryways or cul-de-sacs, maintaining the
21 views of Sugarloaf Mountain and farming, offering the majority
22 of lots behind trees to minimize the visual impact of the new
23 lots, reducing the number of new access points on Peach Tree,
24 and reducing the size and number of the new lots. The plan

1 implements all of these suggestions. The fourth objective, the
2 plan must be designed in accordance with the rules governing
3 residential development, and obtain County staff support for
4 approval. We believe we have done that. As the farm owner's
5 representative who has been farming one of the largest parcels
6 in the County for three decades, I respectfully urge you to
7 approve this application on the basis of the plan proposes to
8 develop only seven percent of the property, while it maintains
9 93 percent of the property undeveloped, 97 percent of the
10 agricultural operation, two of the largest farms in the
11 county, and proposes a permitted residential use with no sand
12 mounds, no special exceptions, and not child lots. Madam
13 Chairman, members of the Board, this plan implements farm
14 owners' property rights to develop a portion of their property
15 while promoting agriculture as a primary land use. There's
16 room for both development and agriculture to live and prosper
17 side by side under the government laws. For these reasons, I
18 urge your approval. Thank you.

19 MS. WALKER: Thank you. I just have a few additional
20 points to make.

21 COMMISSIONER ALFANDRE: I have a question. Just a brief,
22 What is the operation? What is the farm operation?

23

24

1 MS. SEXTON: There are a number of farming operations.
2 There are crops, hay, um, pasture, as well as an equestrian
3 operation on one side.

4 COMMISSIONER ALFANDRE: That you operate?

5 MS. SEXTON: The farm owner operates and also leases out
6 some of the land to other farmers in the area.

7 COMMISSIONER ALFANDRE: And, um, the farm owner is the
8 same as the owner, of the property?

9 MS. SEXTON: Yes, the Balsama Corporation.

10 COMMISSIONER ALFANDRE: So, they intend, this corporation
11 intends to continue that in perpetuity?

12 MS. SEXTON: They have filed an intent to continue the
13 farming operations.

14 COMMISSIONER ALFANDRE: And, um, um, was this an Arabian
15 horse farm at one time? Never was?

16 MS. SEXTON: I'm sorry, I don't know the answer to that
17 question.

18 COMMISSIONER ALFANDRE: Ok. I'm just trying to fix.
19 Thanks.

20 MS. SEXTON: You are welcome.

21 MS. WALKER: Thank you. Just to reiterate on a point that
22 Ms. Sexton made which I think is important. Looking at the
23 forward for the agricultural, rural and open space master
24 plan, it indicates that there is adequate room for both

1 development and agriculture in Montgomery County, and I think
2 that there's important language there, although it's in the
3 forward, not in the text of the plan, in that there's a
4 balance, and I think that this plan strikes that balance in
5 particular. Um, we haven't really talked specifically about
6 the acreages of the farm remainders, but there are two farm
7 remainders here that are being preserved. One of them is 369.4
8 acres, and the second is 411.4 acres. So that's about 781
9 acres, uh, that will be retained into farm remainders, which I
10 think are probably close to the largest in the County, uh,
11 after, if this subdivision were to be approved. Uh, again, the
12 average lot size of our lots proposed, uh, is 2.28 acres at
13 this time, which is, uh, substantially smaller than those
14 that, uh, surround this subdivision.

15 As far as public benefits, I'd just like to touch on that
16 since I think that, um, really is what Commissioner Presley's
17 earlier question was going to. Um, for the subdivision, the
18 equestrian trail that's been proposed, um, to put into an
19 easement is 19,325 feet long, which, uh, we believe is, uh,
20 the longest, if not one of the longest, uh, equestrian trails
21 that would be under easement in the County at this time. Uh,
22 and in addition to the equestrian trail as a benefit, uh, this
23 applicant is also, um, required for our fire suppression, but,
24 uh, we're putting in a 30,000 gallon cistern, um, serves for

1 fire suppression for this development, but also provides
2 additional fire protection, um, for up to one mile vicinity
3 from this project, and we think that that is a pretty big
4 public benefit, uh, as well, that doesn't currently exist
5 without this development. The plan carefully avoids
6 fragmentation of farmland as indicated in the AROS master
7 plan, uh, and is careful not to develop on or near prime or,
8 um, more productive soils on the property. Uh, it's also been
9 a balance between the sensitive environmental features that
10 are located on this property, uh, as staff's report indicated,
11 there's approximately eight different streams that cut through
12 portions of this property and obviously, the, um, significant
13 forest resource that's located onsite. There're also, um,
14 which I think was mentioned in the staff report, but not
15 touched on tonight, a potential historic resource of the John
16 Lynch Farm that's located on the Locational Atlas, uh, on this
17 property as well, and we were careful, obviously, to preserve
18 that environmental setting and the active agricultural uses
19 that are going on on that property currently, and we believe
20 will continue. Uh, the plan, I don't know if we can pull up
21 the slide I have here. Change it over to me. This is
22 essentially the same exhibit that staff, uh, has presented you
23 with, with an overlay, and what we've overlaid on here are
24 the, um, environmental, uh, sensitive areas, which you can see

1 the stream valley buffers, uh, we've also overlaid the prime
2 soils which there's, as was indicated in the staff report.
3 There's not a lot of prime soils, but there are some prime
4 soils on the property. Um, and so, looking at this plan and
5 what really drove this layout and this lot location, uh,
6 configuration is that we were trying to avoid, um, adding any
7 lots along Whites Store Road since it has, uh, it's such an
8 exceptional character and is a rustic road. Uh, we were asked
9 specifically by the Rustic Roads Advisory Committee not to put
10 any houses along that road. So that was significant. Uh, in
11 addition, and there's also environmental features, as you can
12 see on the map presented that would really preclude that. Uh,
13 and any property that could be developed along Whites Store
14 would conflict with the exiting farming operations that are
15 going on there and the fields. Uh, in addition, as far as
16 Beallsville Road, there is very limited sight distance due to
17 topographical considerations there. We don't believe that
18 there would be a safe spot, uh, in order to put any access
19 points along that road. Um, so that really drove the layout,
20 if you will, in toward Peach Tree Road, and looking at the
21 natural resources that were there with the forest, it seemed
22 like the best possible location to try to screen to the
23 maximum extent possible, um, these houses from the road, and
24 looking at the, um, setbacks for the proposed lots, um, lots

1 one through five are set back 415 feet, um, from the, um, from
2 Peach Tree Road. Lot six through eight are set back 300 feet,
3 um, from the road, and then the, um, what I'll call the
4 interior lots on the loop road, the closest, um, lot is set
5 back 180 feet. Uh, so there are significant setbacks that went
6 into designing this plan to try to push them away from the
7 road, uh, to minimize any impact on, on the character of that
8 road and really screen them, um, with the existing resources.
9 Um, I would just ask, I don't want to, I think staff did an
10 excellent job, so I don't want to reiterate what they, what
11 they've already indicated, so with that I'd like to reserve
12 the additional time that we have for rebuttal. Um, once the
13 community's had the opportunity to speak, we'd like to come
14 back up, and certainly happy to answer any more questions with
15 regard to the application now or later.

16 CHAIR CARRIER: Ok. Thank you. Does anybody have questions
17 now, or shall we move to the rest our speakers? Ok. Uh, we
18 have, uh, a large number of speakers. I'm going to call up,
19 uh, one, two, seven, we have seven chairs? I'm going to call
20 up seven people at a time. Norman Knopf, Hugh Gibson, Lynnn
21 Lipp, Robert Jamison, Susan Jamison, Eleanor Kotler, and Dale
22 Kotler. We are going to, um, I'm going to be pretty strict
23 about the three minutes tonight because we have a very long
24 list of speakers, although those of you who are representing

1 an organization, of course, get more than three minutes. Mr.

2 Knopf, are you representing an organization?

3 MR. NORMAN KNOPF, KNOPF & BROWN, ATTORNEY REPRESENTING

4 MONTGOMERY COUNTRYSIDE ALLIANCE AND SUGARLOAF CITIZENS

5 ASSOCIATION: I'm representing two organization, and according

6 to your

7 CHAIR CARRIER: You don't get 20 minutes. You just get 10.

8 MR. KNOPF: I'll, I'll take it. [LAUGHTER]

9 MR. KNOPF: My name is Norm Knopf and first, it's my first
10 appearance before the Board with your new Chair, and I want to
11 say how pleased I am that she is the new Chair and how
12 fortunate the County is to have her.

13 CHAIR CARRIER: You are very kind, but you still don't get
14 20 minutes. [LAUGHTER]

15 MR. KNOPF: Um, I, uh, oh if we're going to be timed, I
16 hope somebody would put the timer on so I know where I am.

17 CHAIR CARRIER: You know, we're actually using a different
18 system because that one makes the noise loud enough to wake
19 the dead. Um, we have a gentler noise that we're using these
20 days. But it's true that it doesn't warn you. You know me.
21 I'll let you go over by 30 seconds.

22 MR. KNOPF: Thanks a lot. I am testifying tonight on
23 behalf of the, two associations, The Montgomery Countryside
24 Alliance and Sugarloaf Citizens Association, and I am pitching

1 in for my partner Dave Brown who has a family commitment and
2 is on the West Coast tonight. Um, so, uh, with that, I will
3 talk rather fast because we have a legal analysis that has not
4 come up yet on some of these issues, and really, there is an
5 elephant in this room that nobody has mentioned. I'm going to
6 address five legal issues. The elephant comes out in issue
7 number four.

8 The first issue is that in, uh, assessing, and these
9 issues and others will be addressed in detail by many members
10 of the community after. We're not hitting every issue. This
11 is just a legal analysis. They will hit other issues. In
12 assessing the master plan conformity regarding allowed
13 density, uh, it's not a matter of right. Fewer units are an
14 option. Staff and the applicant agree that this 840-acre
15 parcel at 25 dwelling units an acre produces a maximum density
16 of 33 units. Uh, the applicant claims that this development is
17 contemplated as a matter of right, and staff has, uh, given an
18 answer to the question on that sort of indicating, it's a
19 little murky as to whether they view this as a matter of right
20 or not, but, um, they, the proper, uh, this is not the proper
21 approach in evaluating an AROS subdivision. Uh, although it's
22 true that 33 units are what is allowed, that this is the
23 maximum density, that does not vest anyone absolute right to
24 get 33 units. For example in working with DPS, uh, the Board

1 would not allow record plat to be filed where the lot doesn't
2 perk. So therefore, you would lose one of your lots. The fact
3 that the zoning allows a certain maximum, and you know in
4 other contexts doesn't mean that you therefore have the right
5 for it. What you have to do is evaluate whether all the
6 criteria are met so that you should get the maximum. Uh, there
7 are many ways that the maximum allowable density might not be
8 met. Um, this, one of those ways is that you would have to ask
9 would a less density be better to achieve the goal of
10 substantial conformity with the AROS Master Plan, and if so,
11 what would a reasonable plan look like. In terms of density
12 and layout, Uh, if you ask this question of the staff at the
13 hearing, I believe they would tell you that less density would
14 be better from a perspective of achieving the AROS Master Plan
15 goals, but, they have not evaluated less dense plans because
16 in evaluating the master plan conformity, they approach the
17 allowable density as a given. Um, nothing in the AROS master
18 plan or in any law administered by this Board requires the
19 acquiescence and developers desire to achieve the maximum
20 allowable. The AROS Master Plan recognizes a need for
21 residential use is to serve the agricultural, industrial,
22 industry and rural community at large and further makes clear
23 that residential development options are available in farming
24 areas, but only on a limited basis and in a manner that is

1 consistent with the preservation policies. Quite plainly,
2 therefore, in order to assure that every significant RDT
3 development proposal substantially conforms to the master
4 plan, the Board can consider whether the proposed development,
5 uh, despite its being allowable, should be allowed, so that
6 the Master Plan criteria are met. Our point is that the Board
7 should seriously consider whether conformity necessitates
8 fewer dwelling units. Needless to say, we think the conclusion
9 is yes.

10 My point number two is a 19-unit suburban style
11 subdivision along Peach Tree Road is not in substantial
12 conformance with the AROS Master Plan. The plan clusters 19 of
13 the 24 dwelling units along Peach Tree. A staff explains that
14 there are logical reasons for this amount of clustering and
15 for doing so at this particular place, such as minimizing the
16 view shed impacts and incursions on rustic roads. In our view,
17 the fatal flaw in this analysis is the failure to consider
18 whether fewer clustered units would be more compatible with
19 the AROS master plan, as I mentioned previously. The 19
20 clustered units alone will produce a household population
21 larger than the nearby town of Barnesville. Nothing in the
22 AROS Master Plan is supportive of the idea that the proper way
23 to preserve broad, uh, expanses of agriculture land is to
24 cluster single-family dwellings in the, in enclaves divorced

1 from adjacent to farm operations, enclaves large enough to
2 qualify as mini townships. Another problem with the
3 substantial clustering of residents along Peach Tree is that
4 there already are two existing suburban style subdivision,
5 which Callum Murray addressed. A good case can be made that
6 those were inappropriate. Putting aside past mistakes,
7 however, our point is that adding to them does not improve the
8 situation. The solution is, to too many units in one place is
9 to either reduce the number of units in that place or disperse
10 the units, or a combination of both strategies. As explained
11 above, reduction in the number of units seems to have gone
12 unexplored. Doing so might well open the possibility of
13 establishing at least one more cluster area. For example, if
14 the 24 new units were reduced by 25 percent to 18, and another
15 place were found for a cluster of just 4, which my clients
16 advise is doable, the 19-unit cluster could be reduced to 9,
17 uh, on the, on the west side to 9 totally. Three on the west
18 side of Peach Street, Peach Tree, and six on the east side. We
19 believe this configuration would be superior and more in the
20 interest of the master plan.

21 My point number three out of five, moving right along.
22 The, uh, approval of the plan as currently configured will set
23 an unwelcome precedent for future lookalike subdivisions, a
24 major setback to achieving the purposes of the AROS master

1 plan. Approval of this project will only strengthen the
2 existing incentives at farmland consolidation for development
3 purposes. For example, under current practice, if there were
4 two 25-acre adjoining vacant RDT parcels, one that perks
5 successfully and one that doesn't perk at all, not only is one
6 develop, not only, only one is developable, but if the two are
7 combined, it's more likely you'll get two houses.

8 CHAIR CARRIER: Would you repeat that again? That was
9 hard to follow.

10 MR. KNOPF: Ok. If you have two lots at 25 acres each and
11 one is not perkable, you get one house. But if you combine the
12 two lots,

13 CHAIR CARRIER: you don't get two houses.

14 MR. KNOPF: You could get two houses because they can
15 fudge the perk, the perk area. So you end up, you see, it
16 gives you more flexibility to qualify. That, that's the point
17 I'm trying to make. Uh, so this will be an incentive for
18 consolidation. Now, I'm going to get to points four and five
19 which are the elephant in the room. I hope I'm wrong, and
20 maybe it can be clarified tonight, but there is a major issue
21 here as to what the density is that is being approved here.
22 We have 24 units, we are told, that are being approved. Uh,
23 but we are also told that it's not involved, the seven units
24 that are on the parcel that isn't being platted. As you've

1 heard, they're only platting a very small part and the rest is
2 being kept in farmland, but that farmland has a tenant houses
3 on it, and those houses are not being counted as part of this
4 project as we understand, and therefore, the question is are
5 we dealing with 24, or are we dealing, in fact, with 33 so
6 that the entire 840 acres is spoken for. Now, one way to make
7 clear that 840 is spoken for is if you interpret the
8 subdivision, uh, exception or regulation as reaching all 840
9 acres. To remind the Board, there is a clause in the zoning
10 code that says, farmhouses don't count on non-subdivided land
11 until you subdivide it. So the question is, are we subdividing
12 the other portion of the property, these hundreds of acres
13 that are farmland. My understanding is the applicant is
14 saying, no, that is not being part of the subdivision. My
15 understanding from staff report, and I hope I'm wrong, is that
16 they say, well that's not on the table. So how does this issue
17 arise? The issue arises in that we understand the applicant to
18 say only the land that involves these, um, platted parcels is
19 the subdivision. Um, in 9, 2008 plan, their proposed, um, they
20 planned through the number of iteration, but when submitted in
21 2008, it proposed that the two large farms, all the land be
22 plotted into lots. The latest version leaves in, leaves all
23 the farmland on platted parcels. The Board should reject this
24 piecemeal approach. The 2008 application affectively

1 recognized the appropriateness of platting all the land in the
2 proposed subdivision. In this case, the farmland is not being
3 used solely for agricultural purposes. The acreage is also
4 being used to quality for much smaller lots for subdivision.
5 Now, but, those lots have to borrow from the land that's not
6 being claimed to be subdivided in order to meet the 25-acre
7 density requirement. So, although we have a smaller, and all
8 we have, because you multiply 24 times 25 acres, you get 600
9 acres, but a good portion of that 600 acres that they're
10 borrowing from is on the land that they claim is not being
11 subdivided. It's just what they call the farmland and they say
12 that's not being platted. It's not being subdivided. Um, from
13 a platting inspect, we've seen as a practical matter where you
14 have to borrow land in order to have this platted period.
15 From the unplatted area, and as I understand Mr. Callum's, um,
16 or Weaver's presentation, they're also borrowing some forest
17 conservation requirements on the so-called unplatted land, and
18 I believe they had to borrow from that land some, uh, some
19 consideration of some land for perk purposes. The bottom line
20 is you should be looking at the entire 840 acres as a whole.
21 And it's integrated, it's an integral part since you have to
22 borrow, and so from a subdivision standpoint, you should
23 interpret it as saying the entire parcel is subdivided for
24 purposes of determining whether the exemption is still

1 applicable. The exemption meaning if it, if it's subdivided,
2 you lose, you have to count the farmhouses. If it's not
3 subdivided, you don't have to count the farmhouses. So if you
4 count the farmhouses, you then have 33 units. All of the
5 property is spoken for, and we're saying that it makes sense
6 from a planning standpoint, good planning standpoint that that
7 you do the whole property and treat it all as being subdivided
8 so that later, it doesn't come back to bite you. Somebody
9 comes in again with the, there's what, 600 acres or whatever
10 it is, I forgot. The hundreds of acres that they claim is not
11 platted, they may come in later and carve out another piece of
12 that. It doesn't contain the farmhouses, and pretty soon
13 before you know it, you have a density greater than 33.

14 CHAIR CARRIER: Well, the question is whether to leave
15 that fight for some future time when somebody may come in
16 seeking to build more, to, to subdivide more lots.

17 MR. KNOPF: Well, at the risk at making bad joke, I think
18 at that point, the horse is out of the barn. I think you need
19 to nail it down now.

20 CHAIR CARRIER: I'm not sure the horse is out of the barn,
21 and one of the. Are you done? because you should be. You're
22 out of time, but I'm going to ask you a question, so that'll
23 give you more time. Alright, Mr. Murray, would you please put
24 up the slide where you had the example page from the master

1 plan, where it says if you had a farm of x number of acres,
2 160 acres, I guess it was, this is how many TDRs you get. Um,
3 I wanted to ask your, um, view, Mr. Knopf, um, I, I find that
4 particular the part of the master plan, um, pretty compelling.
5 It has this example of how you're supposed to calculate how
6 many buildable lots is on a farm, and it's a big farm. Six
7 hundred acres it uses in the example. So it seems to me that
8 it was contemplating not just, you know, a smaller farm that
9 would produce a couple of lots, but it actually contemplated
10 the possibility of a large farm owner wanting to, not a large
11 farm owner, the owner of a large farm. [LAUGHTER]

12 Um, the size of the farm owner is not relevant. We
13 don't know. It's true. We don't know. But, they were
14 contemplating that a large farm could be subdivided. This to
15 me suggests pretty strongly the staff's position has some
16 validity that there is an, and a, by right density here, that
17 the expectation of the master plan is that you get this
18 density. So, I'd like you to tell me how you, you know, why
19 you think that that this does not, why this doesn't have that
20 same weight for you.

21 MR. KNOPF: Right. Um, well, first as we pointed out, I
22 don't think this is interpreted by anybody that if the land
23 didn't perk, let's supposed the entire land didn't perk, you
24 could still come in and get the same divisions.

1 CHAIR CARRIER: I don't think anybody's suggesting that.

2 MR. KNOPF: But, so that means the master plan isn't quite
3 as black and white as you're saying. Suppose there are
4 extensive, um, wetlands on there. I don't think you're saying,
5 well we just ignore that because you're entitled to so many
6 units. I think this, to apply this situation like you do in a
7 normal areas, R60 or R90 zoning. R60 lot is 6,000 square feet,
8 so somebody comes in with, uh, uh, 60,000 square feet, you
9 don't say, oh you have a matter of right to get 10 units. The
10 Board looks to see what does the master plan say, what other
11 factors are there that may result in minimizing. The master
12 plan and other sake, it's a maximum 25. I don't think that
13 guarantees you as a matter of right. I think your requirement
14 that it be in substantial compliance with the master plan
15 means that you have to meet the goals of the master plan, and
16 if this is inconsistent, that would be a ground to say, uh,
17 sorry, but, um, I, I think to, to just finish my thought, I
18 think it's crucial that this Board make a finding that either,
19 that the whole area is subdivided, so that you're counting
20 those 7 houses, or if the applicant is going to say don't
21 worry, we have a declaration, we're going to farm, don't
22 worry, we're not going to develop that further, then as a
23 condition for granting this, you should have it, there should
24 be a covenant placed on the land that's not platted, and the

1 deck says you, you could tilt. That's it. Because you have now
2 33 units on all 184, and don't come back later when
3 everybody's memory's a little vague and, uh, perhaps you're
4 not Chair anymore, and try to get in through the back door,
5 not that these current owners would, but maybe the, the
6 corporation might sell it to somebody else. We, the community
7 would like to be protected, and I think it makes sense from
8 the planning standpoint that you look at the entire parcel and
9 bind it up because that's what you understand is being done
10 now, and so, let's make it certain, and that's one of the
11 reasons the community's out here in such numbers is they feel
12 that there is an effort, a loophole being created, possibly,
13 to create a greater density later.

14 CHAIR CARRIER: Ok. Thank you, Mr. Knopf.

15 MR. KNOPF: Thank you very much for your time.

16 CHAIR CARRIER: Ok. Hugh Gibson.

17 MR. HUGH GIBSON: Thank you very much. Um, I will try to

18 Oh, I'm sorry. There we go. Um, I think that I will
19 depart from my, uh, prepared testimony in the interest of time
20 and just hit a couple of key points.

21 CHAIR CARRIER: I'm grateful to you.

22 MR. GIBSON: Um, [LAUGHTER]. Um, just by way of
23 introduction, um, I am a, um, County resident. I don't live in
24 the ag. reserve, but I am consider myself an enthusiastic fan

1 of the ag. reserve. I use its amenities with great regularity.
2 Um, and I have some experience with conservation easements,
3 which are an issue in this matter. Uh, I myself is, am a donor
4 of a conservation easement on family property. I have some
5 familiarity with the specific easement programs that exist,
6 uh, in Montgomery County. Um, the two aspects of this case
7 that I want to address briefly are the merits of clustering,
8 um, and whether there can be some sort of land use compromise
9 that would preserve the best, it would sort of combine the
10 best elements of clustering and easements. I, I appreciate
11 peoples' concerns about clustering. I understand that the
12 number of, um, units here is, is a matter of discomfort to a
13 lot of people and the density of them, but the fact of the
14 matter is that if you look strategically at what has to be
15 done in the future to protect the ag. reserve, not only on
16 this particular parcel, but across the RDT zone, there really
17 is no alternative to embarking on a path of clustering in a
18 lot of the cases. Um, if you don't cluster, experience has
19 shown that what you get instead are large lots on which very
20 large houses are built. Uh, I think, based on my own
21 observation in the majority of the cases, um, agriculture is
22 eliminated on those kinds of parcels. Uh, to the extent it
23 remains, it's often in a rather attenuated form. Um, if you're
24 lucky you may get some, um, a few horses, or you may get some

1 residual cropland, but you don't really get a sense that these
2 properties are farms in any sort of genuine sense. If you go
3 with the opponent's position that these clusters are too dense
4 and should be dispersed, what you are going to get is further
5 consumption. You're going to get larger lots, further
6 consumption of Ag land, further consumption of open space, and
7 a high potential for conflict with the rustic roads functional
8 master plan in this case because the more territories that
9 consumed by house lots, uh, the more visual impairment there's
10 going to be across the parcel from the three, um, rustic
11 roads. I could go in more detail on that, but I don't think
12 there's time. But one point I want to hit again is, is that
13 all although we look at individual cases primarily on the
14 facts of the case, and on their own merits, we also kind of
15 have to bear in mind the question of how we are going to
16 preserve the ag. reserve in the long run. What kind of
17 strategies are feasible, what kind of strategies would work
18 best? Because this is not the only development application
19 that this Board is going to entertain, as I understand it,
20 there are many landowners who cross the ag. reserve who are
21 contemplating development. Um, you can't, you can argue about
22 the number of lots, but whatever the final number is is their
23 development right. Um, you can't accommodate them all through
24 easements because there simply is not enough money to buy

1 easements on these properties, and secondly because not all
2 landowners will seriously consider, um, selling an easement or
3 donating an easement. That appears to be the case in the
4 present instance. Um, so I think that to get clustering
5 started on a workable basis and a firm basis, this is a very
6 good opportunity to start do that. Uh, because the applicant
7 and county staff have worked together to produce a cluster
8 design that has some major advantages, um, forest conservation
9 easements are used to buffer, um, the clusters from public
10 view along roads. Um, a very large percent the applicant is
11 matching of the land is, is preserved, uh, in Ag and open
12 space and forest through this clustering scheme. Now, let me
13 jump to my final point. I think, um, opponents of a valid
14 concern that this may in the future balloon into something
15 much larger, and I greatly sympathize with Martin. I would
16 like to suggest a possible compromise in which, um, the
17 applicant in a process requires negotiation that the applicant
18 is allowed to proceed with the development of 24 lots, uh,
19 along the lines that are proposed tonight, but the applicant
20 also agrees to place conservation easements and conservation
21 easements in the two farm reminders, um, that would be
22 stringent enough to essentially preclude, um, further
23 development that would result in new housing.

24 CHAIR CARRIER: I do need to ask you to wrap up.

1 MR. GIBSON: Ok. Well, I think the benefits of considering
2 this, this sort of solution is, is that again, it would
3 achieve the benefits, not only of clustering, but of, um, very
4 strict conservation of Ag and open space. And considering
5 that it looks as though this matter is controversial enough
6 that it could result in rather protracted legal and political
7 wrangling, I would think that it would be in the interest of
8 all parties to consider, um, a compromise along the lines such
9 as those. So that is what I am putting forward. Um, and at
10 this point, I'll wrap up my remarks.

11 CHAIR CARRIER: Thank you very much, Mr. Gibson. Lynn
12 Lipp.

13 MS. JANICE LYNN LIPP: My name is Janice Lynn Lipp. I
14 reside at 21121 Peach Tree Road. Um, I would like to address
15 several matters that caused me great alarm in this issue, and
16 you have, um, prepared remarks but I may just speak to you
17 know. As a person who values the rural nature of our
18 community, and I don't think that 24 more houses funneled
19 exclusively onto Peach Tree Road. No other road takes the
20 direct brunt of this, where there is access to, uh,
21 Beallsville Road from the property but not, it's not planned
22 as, as part of this community being able to access Beallsville
23 Road. Peach Tree Road is a very windy, narrow, hilly, little,
24 rustic, country road. We already have traffic problems. We

1 already have problems with the road falling apart, and we
2 don't need 30 more houses or 25 more houses generating, and
3 somewhere in the staff report, I think I have it here in front
4 of me. The proposed lots do not generate 30 or more traffic,
5 uh, vehicle trips during the morning or evening peak hours.
6 Are they kidding? Not in the world I live in. One house can
7 generate five or six trips during those times, and more during
8 other times. They've got to be kidding, and the idea that the
9 proposal will have a significant impact on the character of
10 this portion of Peach Tree Road, but, but protects Beallsville
11 and Whites Store Roads, it doesn't really. It doesn't protect
12 Whites Store Road at all because that will be a major access.
13 And it highlights a quandary about clustering in place to
14 preserve another. That's outrageous to me that you would
15 sacrifice Peach Tree Road in order to save anything else, and
16 you're not saving anything else because Whites Store Road
17 still has to be one of the access points. There are three ways
18 to get to this location. South on Peach Tree, north on Peach
19 Tree or up Whites Store Road, or Moore Road which is another
20 rural rustic road. It just won't work, and, I'm very concerned
21 about the water usage. These houses are going to use a lot of
22 water. We're on a sole source aquifer. We're all on wells, and
23 we're all on septic systems, and the concentration of septic
24 systems really bothers me. This is too many houses over our

1 sole source aquifer with septic systems. Um, I don't know who
2 thought that this development wasn't going to impact
3 negatively Peach Tree Road, but their out of their minds.
4 They need to come out there and drive the road and stay there
5 for a little while and look at it. We do not have the
6 infrastructure. We don't have public sewer. We don't have
7 public water. We don't have an adequate road to, to support
8 this kind of development.

9 CHAIR CARRIER: You will need to come to a close, Ms.
10 Lipp.

11 MS. LIPP: I think you will be destroying the rural
12 character of this area by allowing this kind of development to
13 happen.

14 CHAIR CARRIER: Thank you. Mr. Jamison. Robert Jamison.

15 MR. ROBERT JAMISON: For the record, Robert Jamison, 16200
16 Edwards Ferry Road. I want to thank the members of the Board
17 for being here, and I do respect the immense real estate
18 talent that compromises, that comprises the Board right now.
19 [LAUGHTER] I've worked with you, not compromises, but
20 comprises. [LAUGHTER] Excuse me. I misspoke. [LAUGHTER] In
21 1981 we made a deal. I'm a farmer. I farm 2,000 acres. My
22 brother's a farmer. He farms 5,000 acres, primarily in
23 Montgomery County. We have invested huge money in rolling
24 stock. We've invested huge money in real property. I am here

1 to support this plan because I want the deal that we cut in
2 1981 respected, and that was one house per 25 acres minimum
3 net lot yield. Minimum lot size 40,000 square feet, and one
4 transferrable development right for each five acres in the
5 90,000 rural density, 90,000 acre rural density transfer zone.
6 I am not an expert in planning. I believe this is probably a
7 good plan because Mr. Murray and Mr. Weaver and the able staff
8 here have gone over it and they recommend it. I can empathize
9 with the people in this room who are going to have to put up
10 with the traffic. I understand where you're coming from,
11 because I have to fight the traffic, too, but somewhere, we
12 have to have real property rights respected and the zoning
13 laws respected. Everyone here probably has a real property
14 interest, whether it's a leasehold estate, or a house. Where
15 do you begin? Because we got in foreign or some group to
16 impede their property rights and where do you stop with it.
17 So, I'm saying to the Board, you have to approve this. It's a
18 matter of law. We've been down this road with the 427 acres
19 that my brothers and I own in Clarksburg. Thank you.

20 CHAIR CARRIER: Thank you, Mr. Jamison. Next speaker is
21 Susan Jamison.

22 MS. SUSAN JAMISON: Good evening. My name is Susan
23 Jamison. I live on Edwards Ferry Road in Poolesville, and I'm
24 here tonight as a member of the public to voice my own support

1 of the plan. I appreciate that the staff has recommended this
2 plan for approval. Um, this property is located in the RDT
3 zone. The written zoning law itself is clear and unambiguous.
4 A landowner has the right to build one single-family
5 residential dwelling for every 25 acres. This plan provides
6 for 25 houses on a farm of over 800 acres in addition to the
7 several that are already on the farm. As such, the plan is in
8 full conformance with the RDT zone. The landowner is not
9 seeking to obtain more density than the law allows. This level
10 of development shown in this plan is the landowner's right
11 under the clear zoning laws. When the zoning law is clear, and
12 this one dates back to 1981, to ignore the right, the rights
13 it confers would be arbitrary and capricious and unreasonable.
14 We all benefit when zoning laws are honored. In addition to
15 being a member of the Maryland Bar, I'm also a real estate
16 associate broker. My husband Robert Jamison is a real estate
17 broker, as well as being one of Montgomery County's leading
18 farmers. Often, we are called upon to make judgments on the
19 value of parcels of land in the RDT zone, and in doing this we
20 look to and rely upon the written zoning laws, and we do look
21 to see if the property perks. We are not alone. Bankers and
22 mortgagees, Fannie Mae and Freddie Mac, bank and state
23 appraisers, property tax assessors, IRS valuation experts, and
24 many others are called upon every day to make sound value

1 judgments about real property parcels, and they base, each
2 base their calculations on the written zoning law. We all
3 benefit when zoning laws are honored. Here the laws are clear
4 and unambiguous. The plan conforms to the zoning laws. And
5 the plan rightfully should be approved. I urge you to follow
6 the staff recommendations and approve this plan. Thank you.

7 CHAIR CARRIER: Thank you very much. Next speaker is
8 Eleanor Kotler or Cotler.

9 MS. ELEANOR KOTLER: Hi, I'm Eleanor Kotler. I live in
10 22404 Nicholson Farm Road, Dickerson, Maryland. I live in the
11 ag. reserve, Montgomery County, and I've come to ask you to
12 please do not approve the excessive cluster development of 24
13 or more home lots in Peach Tree and White Ground Road. Also
14 known as, is it Barnesville Oak or Oaks? I'm not sure. Um,
15 approving this plan defeats the purpose and integrity of, uh,
16 the AROS master plan. The formula that the planning staff so
17 painstakingly followed since, um, since 1999, in this plan
18 they've worked really hard, um. The plan that's displayed, um,
19 that Mr. Jamison and Mrs. Jamison and others here have, have,
20 um, have expressed, um, is, uh, is used beyond the scope of
21 what the master plan intend. Um, the formulas in the master
22 plan were intended for you as Planning Board, to use when
23 farmers seek to develop their property for the children to
24 live and farm. For developing what's known as child lots.

1 These formulas were not intended to be applied when
2 developers, real estate proprietors, corporations buy mass
3 amounts of ag. reserve land cheaply and then come to you
4 seeking to suburbanize the ag. reserve in order to sell their
5 newly built homes to consumers at premium prices. This, the
6 example that the planning staff used refers to Farmer A, see,
7 it says Farmer A. It doesn't say real estate proprietor,
8 corporation, LLC, whoever this applicant is. So in other
9 words, when seeking to develop a lot, a child lot on their
10 land, farmers would come to you asking for what they need.
11 Whereas developers, real estate proprietors, loan officers,
12 corporations, and so on seeking to develop land they've
13 invested will ask for the maximum allowable density just to
14 make more profit. When deciding whether to approve this
15 subdivision, Barnesville Oak, I ask you to consider the
16 principles of public purpose listed in the master plan Chapter
17 4, and determine if these housing clusters meet the following
18 parameters, and I'm going to go quick. Would building the
19 Barnesville Oaks clusters prevent urban sprawl? No, it would
20 create more sprawl. Are the County growth management systems
21 appropriately addressed in this housing cluster which states
22 that no major development should be built outside of public
23 facilities such as the sewer envelope? Well, the Barnesville
24 Oaks housing clusters cannot meet this. Residents in

1 Barnesville Oaks cluster will depend on the same sole source
2 aquifer that we all do.

3 CHAIR CARRIER: You're going to need to wrap it up,
4 please.

5 MS. KOTLER: Ok. There's several more that I'd mention,
6 but, um, I want to say will the Barnesville Oaks, um,
7 subdivision, um, uh, uh, uh, uh, uh, uh, uh protect our
8 environment? This is where the master plan fell short, I mean
9 the planning staff fell short. I believe as hard as they
10 worked, they addressed this issue that they recommend the
11 plan, but viable land, farmland will be protected at the cost
12 of 35 acres of pristine forest and wildlife, and in the master
13 plan, when I was reading it last night and the last couple of
14 weeks, it goes to great lengths to talk about protecting
15 wildlife, and, 35 acres of forest and wildlife are going to be
16 sacrificed, and the remaining forest is just to conceal this,
17 this cluster. That's malignant, whereas like, like other
18 developers, and other people, like, we're going to build a
19 similar, you know, I, I really. Please listen to this lawyer
20 who talked to you about trying to put an end, and, and, and,
21 and, and a stamp on this because this is a malignant
22 development, and this takes advantage of the child lot, um,
23 AROS plan that they're saying. This, this does the opposite of
24 what Mr. Jamison said.

1 CHAIR CARRIER: Thank you. Thank you, Ms. Kotler. Ok,
2 folks. [APPLAUSE] I'm going ask you not to clap anymore
3 because we're going be here until midnight at this rate. I
4 understand that there's a lot of sentiment in opposition. We
5 get it. Dale Kotler.

6 MR. DALE KOTLER: Hi. Dale Kotler. I'm Eleanor's husband.
7 We're at 22404 Nicholson Farm Road, and yeah

8 MR. KOTLER: Dickerson, Maryland, and, uh, you know, quite
9 frankly, we are losing more than, more than one acre per
10 minute of farmland in the U.S., which amounts to about 1.2
11 million acres per year in the U.S. according to the farmland
12 trust. This is precisely why the ag. reserve was created.
13 This land is in reserve for agricultural purposes, reserve,
14 not for creating suburbia. Now more than 250 people have
15 signed a petition concurring with this, as well as several
16 civic and community organization, and more than 60 letters
17 opposing this Barnesville Oaks division have come into you
18 which I read on the website. Subdivision is not in keeping
19 with what the AROS master plan set out to do when it was
20 created in 1980. As it stated on page eight of the Planning
21 Board memorandum, the plan recommends applications. I just
22 read this last night, applications, incentives and regulations
23 to preserve farmland and to courage, encourage agricultural
24 use of the land. It seems that more of an effort has been put

1 in to allow maximum density than in preserving this precious
2 acreage of farmland, forest and open space. This is not in
3 keeping with the plan's objective of focusing on policies that
4 as stated quote, minimize development pressures, protect
5 agricultural practice, improve agricultural support services,
6 and maintain critical mass of agricultural land. How is this
7 large subdivision in keeping with this? I don't get it. You
8 know, and having recently discovered the ag. reserve and the
9 beautiful countryside, which I did, we moved out there about a
10 year and a half ago, I was terribly disappointed last year
11 when taking a drive down and noticed a new, new subdivision
12 established on Peach Tree Road which the photographs so, so
13 showed us. It was awful. You see this beautiful vista of
14 farmland and there's these hideous suburbia, these mac
15 mansions everywhere. Wouldn't it, now, now, this coming on the
16 heels of this, it seems ironic to me that this new proposed
17 development is coming on the heels of it. This is not in
18 keeping with what the AROS Master Plan was, creating suburbia.
19 Now more incentive, and there's going to be more, oh, it set a
20 precedent now. Oh, well now everybody should be able to
21 develop. It's just getting way out of hand. I mean, the whole,
22 the whole County is just already developed to the hilt. We've
23 got one little precious area. I know millions of, over at
24 least two million go to Sugarloaf Mountain, which this whole

1 area, bicyclers. Every Saturday I drive down, they're on,
2 they're doing tours. They have organized tours, I mean, it's
3 the only last vestige, The pearl of Montgomery County. or
4 God's sakes, can't we just, just maintain a little, a little
5 sensibility of it. It just, you know, everyone, it's the
6 money, money. Oh, we got money invested. We got this. I mean,
7 there's a legacy. There's a heritage for the people. And
8 everybody's supposed to disregard it at the expense of, oh,
9 development. Oh, it's so important to fill, fill my pockets.
10 You know, and I can only hope that the Planning Board will
11 uphold the integrity, the spirit of the AROS plan and consider
12 it for this reason. I mean, we've got enough development
13 everywhere else.

14 CHAIR CARRIER: Thank you, Mr. Kotler.

15 MR. KOTLER: Thank you.

16 CHAIR CARRIER: I'll ask you all to relinquish your seats.

17 Next six speakers. Anne Sturm, Dolores Milmo, Caroline
18 Taylor, Tom Hoffmann, Tom Gutierrez. Oh, seven, and Margaret
19 Chasen. One, two, three, four, five, six, Oh, and Jane
20 Chapman. Having trouble counting seven, because the first
21 person didn't get a number, so I can't do it just by the. Ok.
22 I'm going to go by the numbers on the list. Anne Sturm.

23 MS. ANNE STURM, SUGARLOAF CITIZENS ASSOCIATION: Is it
24 already on?

1 MS. STURM: My name is Anne Sturm. I live at 21730 Peach
2 Tree Road. But today, I am speaking for Sugarloaf Citizens
3 Association as the president, and we're located at 20900
4 Martinsburg Road in Dickerson. The Board members of the
5 Sugarloaf Citizens Association are opposed to the proposed
6 Barnesville Oaks residential development for these main
7 reasons. Number one: the resulting cluster will simply be too
8 large. The proposed cluster along Peach Tree Road will be
9 right alongside two existing clusters of larger homes. The
10 resulting mega cluster will have no community feel, but will
11 simply be a d de facto subdivision in look, feel and fact.
12 This is truly not appropriate in the agricultural reserve. We
13 believe if the development is allowed to proceed, that some of
14 the homes on the east side of Peach Tree Road cluster should
15 be eliminated or distributed elsewhere on the property. Two:
16 the proposed cluster is now situated excessively, is now
17 situated excessively reduces the forestation, the area,
18 clearing 35 acres. We realize there's a tradeoff between using
19 up agricultural land, versus currently forested land.
20 However, older growth forests like the one affected are scarce
21 and need to be preserved. No amount of mitigation will replace
22 the old growth being lost. Three: the proposed development
23 will introduce a traffic hazard for those slowing down to
24 turns into access roads, for those through travelers coming

1 upon those access roads, and especially for bicyclists using
2 Peach Tree Road, coming into conflict with the clustered
3 residents exiting via their access road. Four: The question of
4 whether the tenant properties on the area being developed
5 count as residences has not been resolved. We fear that the
6 developers will return in the future to add yet more
7 development, depending on how that issue is ultimately
8 resolved. This concern would, of course, be allayed if the
9 property were put into an environmental trust. Five: Water
10 supplies for current residents are jeopardized by the planned
11 24 accesses to the common aquifer, especially with the plan
12 needs of five to six bedroom dwellings. We believe that the
13 developers should be required to establish a sphere of
14 influence to which the county would require and apply a hold
15 harmless provision to protect the existing residents from
16 undue impact on their water supplies. Furthermore, I find it
17 very confusing. I know this land very, very well, and
18 sometimes people testify that it's 800 acres that is being
19 considered.

20 CHAIR CARRIER: You get extra time because you're speaking
21 for an organization, but, um, I can

22 COMMISSIONER DREYFUSS: Is this the same organization Mr.
23 Knopf spoke for?

24 MS. STURM: Pardon?

1 CHAIR CARRIER: No.

2 MS. STURM: This is Sugarloaf Citizens Association.

3 CHAIR CARRIER: Actually, Mr. Knopf didn't tell us who he
4 was speaking for.

5 MS. STURM: He is. Yes, he is hired by Sugarloaf and
6 Montgomery Countryside Alliance.

7 COMMISSIONER DREYFUSS: I was just trying to avoid double
8 dip.

9 MR. KNOPF: It's not the same organization.

10 MS. STURM: It is the same organization.

11 COMMISSIONER DREYFUSS: So one of you

12 CHAIR CARRIER: Mr. Knopf, who are you representing?

13 MR. KNOPF: The, um, Countryside Alliance and Sugarloaf

14 MS. STURM: And Sugarloaf Citizens Association.

15 COMMISSIONER DREYFUSS: All I'm trying to do is each
16 organization gets 10 minutes if,

17 MS. STURM: Ok. And, and, I, I understood that our
18 attorney did not count against my 10 minutes. If it does

19 CHAIR CARRIER: Where did you get that understanding?

20 MS. STURM: I don't know. I'm sorry if, I'm sorry if it
21 isn't

22 CHAIR CARRIER: If you're represented

23 MS. STURM: And I'll close now.

24 CHAIR CARRIER: Thank you very much.

1 MS. DOLORES MILMOE, AUDUBON NATURALIST SOCIETY: Good
2 evening. My name is Dolores Milmoe and I'm here tonight on
3 behalf of the Audubon Natural Society and its member, uh, to
4 oppose the current iteration of Barnesville Oaks proposal.
5 One of the primary missions of Audubon in the Metro region is
6 to protect farmland and open space, and we often point to this
7 nationally recognized agriculture reserve in Montgomery County
8 as one of the best models for farmland preservation. A model
9 that we hope will support an increasing number of small
10 organic and sustainable food growing operations in close
11 proximity to the nation's capital. I would add that we were in
12 here in April, or May, uh, in which, at which, during which
13 time the Commission approved the incubator farm, ad what we
14 are promoting are actually smaller organic sustainable parcels
15 of land and not the usual commodity industrial crop, uh, that
16 is grown now. I would add that I think it's been missing in
17 verbally, but I know that the staff report reported accurately
18 that this is the last remaining large parcel in the ag.
19 reserve. This is not your vanilla subdivision coming in for
20 review here. Um, it's the last remaining large parcel. It's
21 one of the largest residential subdivisions proposed in the
22 ag. reserve, and I would like to quote former, uh, planning
23 Chair Royce Hanson, who when we would come in on, uh, ag.
24 reserve subdivision proposals would always say, and he was one

1 of the chief architects of the reserve, he said, no landowner
2 is guaranteed full density, and so, I would suggest to you
3 that the, the number in the subdivide, the, the clustered
4 subdivision is in direct conflict with the, the master plan
5 itself, more about that in a minute. We recognize that staff
6 spent a considerable time trying to mitigate the impacts of
7 this proposal, but we submit that it's not enough to say, well
8 this plan is not as bad as it could have been. The fact is
9 that this suburban style residential development is simply not
10 in harmony with the purpose and goal of the master plan. To
11 the contrary, in our view, it would significantly undermine
12 the practice of agriculture. While we agree that clustering
13 should and can be used as a tool to preserve farmable acres,
14 we also would agree that it should be site specific. That is
15 to say, it should not be applied myopically just on one
16 parcel, but considered in a larger context of what is in the
17 adjacent and nearby neighborhood, and if you look at the map
18 behind us, it's been, staff did touch on this. What you have
19 along Peach Tree Road are already two large prominent
20 residential sub, suburban style subdivisions, and I would
21 argue that adding this much density in the pattern in which it
22 is proposed is going to cross the threshold and significantly
23 impact and undermine the goal and purpose of the, of the
24 master plan which is the conduct and practice of the

1 agriculture. Um, ok, and in this case, these dense proposed
2 clusters significantly impact an already densified Peach Tree
3 Road. I've said that. Um, and then I would say this. It's
4 significant that the applicant in, uh, making his proposal or
5 their proposal to be, um, to be citizens in Poolesville in
6 September of 08, uh, they actually said, well this is in
7 keeping with the harmony. This is in harmony with the
8 neighborhood, and they cite the various subdivisions that I've
9 mentioned as examples of being in harmony with the
10 neighborhood. That very statement begs the question of when
11 the threshold is crossed in the ag. reserve in terms of
12 preservation versus the influx of even more suburban style,
13 uh, residential development. I want you to know, too, I've
14 been at this business for 15 years now, uh, in terms of trying
15 to protect open space and farmland and environmental resources
16 and the reserve. Uh, there is a definite culture clash when
17 you insert these subdivisions, uh, some of whom use Chemlawn,
18 many of whom do not like the slow movement of agricultural
19 vehicles on the road. Many of whom do not like the smell
20 associated with the agriculture. Many of whom don't, you
21 know, they, they just don't like farming noises. Um, you have
22 a culture clash, and in fact, you're undermining the practice
23 of agriculture and the goal and purpose of the reserve. We
24 also think that the applicant is trying to end-run the

1 question of density by segmenting out that piece of the, of
2 the, uh, farmland that has the existing, uh, units on it.
3 Many of these are rentals. They are not, uh, farmer
4 residences. They are rental units. They've segmented these out
5 from consideration. You as the Planning Board do have the
6 latitude to require that the entire parcel be, come in for
7 subdivision review. We think that, um, you do have the
8 latitude to tell staff and applicant to go back to the drawing
9 board. I think you should really consider whether this amount
10 of density does cross the line, uh, in terms of really
11 undermining the, the agri, the master plan. Um, we think that
12 if there, there's a, a better configuration as others have
13 said. There is a potential site on, um, Beallsville Road where
14 some of these could be moved so that Peach Tree Road does not
15 become a, a mini village in the middle of the ag. reserve. Um,
16 at any rate, I guess that's my bottom line, and I really, uh,
17 I, while I understand that, that the staff has spent a long
18 time at this, I also think they're very invested in this plan.
19 They seem to wear the hat that everyone is guaranteed full
20 build out. Uh, that clustering is always the way to go, and we
21 say it's not always the way to go. When you cluster things,
22 you are taking that land out of the potential for agriculture
23 forever. If there were some farmettes, so-called farmettes of
24 10, 20, 25 acres in this plan, you would have the potential to

1 use that land for the purpose for which this, this area is
2 designated. Thank you.

3 CHAIR CARRIER: Thank you. Ms. Milmoe. I want to ask a
4 question. Um, you, um, quoted my predecessor Royce Hanson, and
5 as saying no landowner is guaranteed the full density. Do you
6 know what his legal basis was for that statement?

7 MS. MILMOE: I know it's, it is. There is a legal basis.
8 I all know, also know, um, from attorneys who have represented
9 us in the past, and I think Margaret Chasen is here from the
10 League of Women Voters, and she might be able to cite that,
11 uh, provision, but, that is, I have heard him say that several
12 times, and I've heard our attorneys say that many times.

13 CHAIR CARRIER: Ok. Our next speaker is Caroline Taylor.

14 MS. CAROLINE TAYLOR, MONTGOMERY COUNTRYSIDE ALLIANCE:
15 Madam Chair, members of the Board. For the record, I'm
16 Caroline Taylor. I'm executive director for Montgomery
17 Countryside Alliance, and I acknowledge that I'm speaking only
18 for three minutes.

19 CHAIR CARRIER: Thank you.

20 MS. TAYLOR: Uh, I note a degree of, with a degree of
21 irony that the last speaking engagement that both Dolores and
22 I had here, as she mentioned, was with regard to the small
23 farm incubator, uh, a public/private collaboration on an
24 incubator on a learning, uh, farm for the next generation of

1 farmers. Uh, in my estimation, that, uh, that particular
2 initiative represents real progress towards achieving the
3 goals of the master plan and building the next generation of
4 farmers it can get on the ground in the reserve. The response,
5 just so you know, to this project has been nothing less than
6 phenomenal with inquiries each week from perspective farmers.
7 And Montgomery Countryside Alliance is working diligently to
8 identify funding to make the project a reality. Here and now
9 in this 30 anniversary of the reserve and on the largest
10 remaining farm left, we have an opportunity, an obligation, to
11 use all means at our disposal to keep this farm in agriculture
12 and in harmony with the master plan. There is, I believe, much
13 more that can be achieved with this plan. From the outset, we
14 have sought dialog with the owner in order to convey
15 opportunities for easements and indeed sale of all or part of
16 the land in order to give them their perceived equity and to
17 provide to perpetual preservation of the property. Our efforts
18 in that regard are ongoing. The agents, understandably, are
19 reluctant to pursue conservation. They profit from maximum
20 development after all, but make no mistake the developer's
21 agents concessions with this plan are largely counterfeit.
22 The total potential density, as staff rightly notes, is
23 achieved at 33 dwelling units. Moreover, the density is
24 actually facilitated on land with limited area, on land with

1 limited area suitable for septic systems by promoting large
2 clusters with small lots where perk approval could be
3 achieved. These clusters amount to continued remodeling of
4 this area of the reserve from field and forest to one suburban
5 strip of, uh, of massive homes to another, fully divorced from
6 agriculture. The master plan does not envision such a
7 revamping of its purpose. The Board recently heard from
8 reserve community also that trends in farming indicate
9 smaller, sustainable diversified farms are on the rise, both
10 locally and nationally. For those of us in the trenches, the
11 reserve is both fertile ground and a battleground. With one
12 arm we seek to plant food for the region, and with the other
13 we work to hold in compatible development at bay. So that
14 there will be ground upon which the new generation of family
15 farmers will take root. The Board acknowledged in their
16 discussion and subsequent decision that clustering can, in
17 some instances, be a tool that will further the aim of the
18 master plan, and that in others it could run counter to the
19 plan. The Barnesville Oak plan represents a tool poorly
20 applied and in, as a result sets up real conflict with the
21 purpose of the zone. Moreover, if the highest value is
22 increasingly placed on massive homes in clustered subdivision
23 styled developments. May I have just one second more? What
24 chances have we to keep land reasonably affordable for new

1 farm families? The per-acre cost of land is the single most
2 cited barrier at getting a farm started in the reserve.
3 Perspective farmers also cite that large tracts of farmland in
4 excess of 100 acres are well without, outside their financial
5 reach. Yet, that is precisely what this plan would create. We
6 ask you to send the plan back to staff to address these
7 deficiencies. Much more can be achieved. Thank you.

8 CHAIR CARRIER: Thank you. Tom Hoffmann.

9 MR. TOM HOFFMANN, PEACH TREE ROAD CIVIC ASSOCIATION:
10 Thank you.

11 CHAIR CARRIER: Press, press the button.

12 MR. HOFFMANN: Oh. Tom Hoffman 23801 Peach Tree Road,
13 Clarksburg, I'll to keep it well under three minutes if
14 possible. I think the outcome of the Board's deliberation
15 depends on the question you decide to ask. Is farmland being
16 kept open? Maybe. Well, I see two big pieces of land, so
17 farmland is being kept open, maybe, depending on what gets
18 done with it in the future, and so, I think that depends on
19 whether or not you pull the entire property into the plan and
20 deal with the tenant houses, as Mr. Knox suggested at the
21 beginning. If you don't do that, you leave the development,
22 the subdivision planning and development of this farm open to
23 another fight another day. Madame Chairman, you sort of
24 suggested what's wrong with that. There can be another fight

1 another day, but, it's certainly within your power to resolve
2 all the fights, his year, at this time, and the treatment of
3 this land. Is the practice in, the other questions, and I
4 suggest the way to look at it, is the practice in the industry
5 of agriculture being sustained and protected? I don't think
6 you can build a town of, a small town of 19 houses in the
7 middle of farm country and say we're about preserving farming.
8 What we're about, if this plan is approved as presented, is
9 carving out parcels of land to build new small towns in the
10 middle of the agricultural reserve. Is there a property right
11 to do that? Maybe, it depends upon the relationship between
12 property rights and the master plan. A Court of Appeals in
13 Maryland has addressed that many times, most recently eight
14 months ago, and you do have the authority to rely on the
15 master plan to address how you resolve the property rights.
16 The preservation of farming and agriculture is the underlying
17 purpose of the master plan. For 20 years people argued about
18 open space and sand mounds and so forth and so on, but I think
19 there is a consensus now, in the community and in the County
20 Council that the preservation of farming as an industry hangs
21 in the balance. If that's not the primary question, then I
22 think, uh, the Board fails to use its authority to address
23 what's really going on here. One last point, 10 seconds, there
24 are rental houses on the property. These are not just tenant

1 houses. These are rental houses. In any subdivision of
2 property served by septic, the county always insists on
3 testing and confirmation for septic and water for existing
4 dwellings. I don't think that's been done here. I see nothing
5 in the staff report that indicates it's been done here.

6 CHAIR CARRIER: It's my understanding it would be required
7 to be done before any building permits would be issued. So
8 they would be required to have working septic for every one of
9 their lots, even the ones that are, for which they are not
10 currently seeking subdivision.

11 MR. HOFFMANN: Um, lastly,

12 CHAIR CARRIER: I got that from Mr. Murray, who should
13 know.

14 MR. MURRAY: Actually, DPS would insist

15 CHAIR CARRIER: Oh, it's not building, it's before that.

16 MR. MURRAY: Plat.

17 MR. HOFFMANN: Lastly, you put a slide

18 CHAIR CARRIER: It's record plat.

19 MR. HOFFMANN: I'm sorry. You put a slide up and you asked
20 Mr. Knopf to comment on it, the example from 1981. While I
21 support his answer, I think the real answer is not the example
22 from 1981 when the authors of the plan couldn't contemplate
23 the economic circumstances of the county 29 years later. I
24 think the real answer is what was the purpose of the master

1 plan? What would it take in 1981? What would it take in 1991?
2 What does it take in 2010 to preserve and sustain agriculture
3 in the light of development pressure, that's the question!

4 CHAIR CARRIER: Thank you very much. Tom Gutierrez.

5 MR. TOM GUTIERREZ: Hi. My name's Tom Gutierrez. I'm in,
6 uh, Poolesville, Maryland. I've been there for a decade, and
7 I'm here to speak against this plan because I don't want the
8 community to be, uh, degraded, uh, unnecessarily and
9 inappropriately. In the less than three minutes that I have to
10 speak here, I'll explain why. My overarching request to this
11 Commission is that it exercises its authority and its
12 responsibility to decide this issue independently. On staff
13 recommendation, however well intended, are just
14 recommendations. In this instance they're recommendations that
15 have been developed in concert with the applicant. I think
16 that staff has been candid in, in, in, in conceding that.
17 Most of those discussions are ex parte, and there's no way for
18 anybody to know what really went on in those conversations.
19 That adds to the need for you all to independently decide what
20 you want to do. I think there's two, two further comments on
21 the staff's role here. Uh, the staff has an ownership issue,
22 uh, interest in this proposal. They've worked on it, and that
23 has to be taken into consideration when you consider what to
24 do with it. Secondly as I've heard the staff speak today, a

1 disproportionate portion of their testimony was to the affect
2 that there are worse proposals. This, the predecessors to this
3 one were worse, and other ones that had been approved had been
4 worse. That doesn't justify this one. Now, turning to the
5 substance of this, um, what the master plan talks about is
6 allowed density. It talks about maximum density. It doesn't
7 talk about guaranteed density. The master, if you look to the
8 master plan as a whole, and I'd be happy to brief it if
9 anybody has any, any doubts as to what's in that plan. It
10 talks about maximum density. Um, when the staff started, and
11 you can tell this from their presentation today, they started
12 with the proposition that we're going to see if maximum is, is
13 permissible here, and then they worked backwards. You don't
14 start with, with maximum density being a goal. It's something
15 that is, is literally a maximum. I don't think that anybody
16 should be surprised that if you start with a faulty predicate,
17 you're going come up with a faulty solution. Now, once you
18 decide what the maximum density is, and we've talked about the
19 farmhouses, the tenant houses and what not, then you have to
20 decide where the public interest lies. You have to balance in
21 some private property rights, and you have to, you have to
22 balance in what is in harmony with the master plan, and I
23 think we've heard a lot of, uh, discussion from opponents here
24 explaining that this proposal is absolutely not in harmony

1 with the master plan. Now there are four specific problems
2 with this, uh, with this proposal and with the staff report.
3 First of all, on the staff report there isn't any genuine
4 consideration of the considerable adjacent subdivision. Um,
5 the fact that they didn't consider that should be called for

6 CHAIR CARRIER: That's your three minutes, so if you could
7 move through your next three points.

8 MR. GUTIERREZ: Sure. Let me just close that.

9 CHAIR CARRIER: I'd appreciate it.

10 MR. GUTIERREZ: Yeah. That's fine. I understand. Um, I
11 thank you for your time, and I'll urge you to do the right
12 thing, and I'll urge you to remember that once sprawl is
13 permitted, it can never be taken back. So, if, if, if you
14 don't grant full development now and later you think you want
15 to grant more development, you can do it. But you can never
16 pull it back, and the last thing I would say is, whatever you
17 do, don't let this ag. reserve die from a thousand cuts, and
18 this is one of those cuts. You let this happen and then people
19 are going to rely on it next week and the week after, and
20 that's just not what the master plan is intended to do. Thanks
21 for your time.

22 CHAIR CARRIER: Thank you, Mr. Gutierrez. Um, Ms. Chasen?

23 MS. MARGARET CHASEN, LEAGUE OF WOMEN VOTERS: I'm Margaret
24 Chasen and I'm here to speak for the League of Women Voters.

1 But before I begin with the League's comments, I'd like to,
2 um, respond to your earlier question of, um, Royce's comments
3 about the, um, limitation of development in the ag. reserve.
4 Is the maximum a right, or is it a, a maximum, and, he has
5 provided me with some case law that indicates that it is not a
6 right, and unfortunately, I didn't bring that with me tonight,
7 but I'll be glad to send his comments and the case law
8 quotation to you.

9 MS. DOLORES MILMORE: We actually do have his case law
10 cites.

11 MS. CHASEN: So you have it.

12 MS. DOLORES MILMOE: Yeah.

13 CHAIR CARRIER: Those of you who are done speaking, you
14 might want to turn off your mics. Thank you.

15 MS. CHASEN: Um, so that

16 CHAIR CARRIER: Do you remember what the gist was of the
17 case law?

18 MS. CHASEN: The gist was that zoning sets a standard, a
19 maximum standard and it is not a guarantee to any property
20 owner that that maximum will be realized. That's the gist of
21 the thing. My second comment has to do with the BLT. The, the,
22 uh, standards for providing access, the BLT for public purpose
23 is that if there is threat, threat, excuse me, threat of
24 imminent subdivision that the priority would be raised, but

1 certainly approving the subdivision would not help to raise
2 the priority. The priority would already be maximum note
3 simply by a threat of imminent subdivision so that, um, it's
4 not beneficial to the rating of BLT eligibility to approve the
5 subdivision, and then, I have one question, and that question
6 is, if the entire property has not been considered in making
7 this proposal, where do they get the buildable TDRs to justify
8 the number of houses? I don't know. Do you? If you don't have
9 enough acreage involved to provide the proper number of
10 buildable TRDs, you don't have a right to build a house. So
11 that, that is strictly comment from me personally. Now I would
12 like to give you the League of Women Voters comments.

13 The League of Women Voters of Montgomery County has
14 maintained a study committee actively studying agricultural,
15 county agricultural issues and monitoring activity relating to
16 the agricultural reserve for more than 10 years. We feel we
17 have a good understanding of the functional plan for the
18 preservation of agriculture and rural open space. We have
19 supported the major talents of the plan. To avoid
20 fragmentation of agricultural land in the agricultural reserve
21 and to protect land for farming and we've done this as various
22 issues have arisen. The League of Women Voters supports a
23 policy of land use designed to allow development on a limited
24 basis and in a manner consistent with the preservation

1 policies as called out in the plan. The League further
2 supports restricting activities that could stimulate a need
3 for commercial development in the agricultural reserve. One
4 concern with the proposal before you is that if a major ex-
5 urban residential development is allowed to be developed along
6 Peach Tree Road, that does not serve the agricultural industry
7 or the rural community as recommended by the functional plan,
8 then there would indeed be a need for additional types of
9 development in that area. The League has been a strong
10 supporter of agricultural easements, including a 2006
11 recommendation for the building lot termination easement.
12 This is a means of preventing excessive creation of dwelling
13 units in the agricultural reserve. We believe the planning
14 staff should encourage easement alternatives to those seeking
15 to extract value from their land holdings. In short, the
16 League does not feel that this Barnesville Oaks proposal is
17 consistent with the thrust of the functional plan for the
18 preservation of agriculture and rural open space, and we hope
19 that alternatives will be considered. Thank you.

20 CHAIR CARRIER: Thank you, Ms. Chasen. Uh, Jane Chapman.

21 MS. JANE CHAPMAN: Good evening. Excuse me. I'm providing
22 testimony for my daughter Pamela Bow who's an adjacent
23 neighbor at 20830 Peach Tree Road. She's unable to be here
24 tonight because she's on medic duty tonight in the upper

1 county. I also reside in Dickerson. She and I are opposed to
2 this plan. I'm going to try to do this in her thoughts in
3 three minutes. The University of Maryland has identified four
4 areas of concern in rural areas. I'm going to address only the
5 fourth, the impact of increased traffic on Peach Tree Road.
6 There is no question the Barnesville Oaks would freeze
7 congestion on Peach Tree, which has a designated rustic road,
8 is often narrow winding, and has site lines that are sometime
9 obscured. Even without the new subdivision, Peach Tree
10 presents challenges for commuters and for farmers moving
11 equipment. Most of the people considering this planning
12 process have never lived in a community, farming community,
13 and so do not understand the facets of agricultural
14 production. Newcomers to rural areas tend to be unaware of
15 crop cycles, livestock management, and the farm business.
16 Farmers already monitor the neighborhood for times of
17 increased or decreased traffic and try to move equipment
18 between fields during the time of low traffic. With a mega
19 cluster the size proposed by Barnesville Oak, there would be
20 no way to avoid traffic. Often this equipment, equipment moves
21 at only 15 to 20 miles per hour. This will become an unsafe
22 traffic gridlock nightmare on an already poorly kept road.
23 Farmers maintain crop schedules. During an active farming
24 season, agricultural equipment for tilling, planting, and

1 harvesting must be on the road. Farm equipment such as
2 tractors, plows and combines can be very large, must travel
3 slowly and make wide turns, and Peach Tree has many blind
4 curves where unwise drivers try to pass, often resulting in
5 collisions. This April and May alone, three different cars
6 wrecks at the very spot on Peach Tree where Barnesville Oak is
7 planning a major intersection. One of those collisions
8 involved a school bus, and the people at fault in each case
9 were individuals unused to the nature of rural road. The
10 University of Maryland's College of Agriculture and Natural
11 Resources states that population and land development will
12 continue to increase in Maryland's agricultural areas as those
13 in population centers seek a life at a more relaxed pace. The
14 ag. reserve was created to prevent at least some of Montgomery
15 County's agricultural heritage from being thusly threatened.
16 Understand this: farmers must operate in a cost-effective and
17 productive manner. It is a business and a way of life to those
18 involved, and an important part of our state's economy. These
19 farms are essential to the whole economy, food supply and
20 rural area. If you allow this development, there will be
21 conflict on the roads. Make no mistake this will threaten the
22 farmers and their farms. We have to be responsible and look at
23 the big picture here. It's not just about one man's land.
24 It's not just about a group of developers and construction

1 companies who can profit short-term from this. It's about our
2 agricultural industry, and from a traffic point of view the
3 safety of everyone involved. If you have not done so, drive
4 Peach Tree Road. It will be an education.

5 CHAIR CARRIER: Thank you very much. If you all could,
6 uh, give us your seats.

7 MS. DOLORES MILMOE: Yeah. Madame Chair, if you, if you
8 like, I do have the case law cited by the Ch, uh, former
9 Chair. Would you like the names?

10 CHAIR CARRIER: Do you have it written down?

11 MS. DOLORES MILMOE: Yeah.

12 CHAIR CARRIER: Can you just give me the piece of paper,
13 or do you. That would be great.

14 CHAIR CARRIER: Not early enough to inform any decision we
15 make this evening, but useful for education. Thank you. I
16 appreciate that. Richard Hill, Alyce Ortuzr, Rodney Wallace,
17 Tina Brown, Jim Brown, Anne Shroeder, and Suzanne Shoemaker.
18 Mr. Hill.

19 MR. RICHARD HILL, DICKERSON COMMUNITY ASSOCIATION: Thank
20 you very much. Uh, Madame Chair, members of the Board. My name
21 is Richard Hill. I'm speaking for the Dickerson Community
22 Association. I live at 23315 Whites Ferry Road. I'm going, I
23 sent my, I emailed in my statement and I'm going to skip
24 because there was a whole lot of redundancy there. I think the

1 simple redundancy to what has been said previously. I think
2 the central point to is we believe the Planning Board can and
3 should insist that the entire property is being considered
4 here, and not just a certain piece specified by the
5 developers. In my day job, I run a scientific society. I'm a
6 chief staff person. I understand that staff had to take what
7 comes to it, work with it, understand the Board and then bring
8 it forward. I also understand all too well that a Board does
9 not have to, does, does not have those same restrictions. A
10 Board can act very independently, and I think the Board in
11 this case absolutely should say that this is all of the
12 development for the entire property. I, that's a central point
13 there. The community thinks of this as one property. I think
14 the Planning Board should deal with it as one property in its
15 entirety, and, we're also not especially reassured by the
16 wording in the staff report that, uh, the developer will
17 consider putting it into an easement program after it's
18 approved. Um, that reminds us a little bit of Blimpie from the
19 Popeye cartoon saying I'll gladly give you a dollar tomorrow
20 for a hamburger today. [LAUGHTER] That's my thoughts. Thank
21 you.

22 CHAIR CARRIER: Thank you, Mr. Hill. Uh, Alyce Ortuzar.

23 MS. ALYCE ORTUZAR: My name is Alyce Ortuzar. I live in
24 the Olney/Ashton area. To approve this subdivision is to end

1 the current rural character and agricultural uses of this
2 beautiful piece of land. This suburban subdivision and
3 agricultural land is the antithesis of smart growth. The
4 County will incur fiscal obligations for infrastructure and
5 services it cannot fulfill to current residents today. As
6 evidenced by broken computers in the libraries, computers in
7 need of technological upgrades, ambulance fees promoted as a
8 source of revenue, and reduced services reflected in the
9 furlough sign in your own lobby. I urge you to delay this
10 project. You do have that discretion. Communities around the
11 country are preserving, protecting, and restoring exactly what
12 this project will destroy. Open space and local agriculture
13 are vitally important, economic, social and environmental
14 assets are to be protected for current and future generations.
15 Agriculture return was more in revenue than it consumes or
16 requires in services and infrastructure unlike residential
17 development, and agriculture generates tertiary, significant
18 tertiary economic spin offs and entrepreneurial opportunities.
19 We need to reevaluate the direction you might be taking the
20 County in, and you should enable and empower residents to
21 preserve the rural and agricultural heritage that attracted
22 them to that beautiful part of the County. Our local food
23 supply is part of our national security, and our rural
24 heritage should be preserved for current and future

1 generations, and homeowners should not be treated the same way
2 as speculators. Speculators who invest in land are no
3 different from speculators who invest in stocks. There are no
4 guarantees. This misguided project should not go forward, and
5 it is time for the Planning Board and the staff to restore the
6 vision and control of the County, in particular the ag.
7 Reserve for those who live there. Thank you.

8 CHAIR CARRIER: Thank you very much. Mr. Wallace.

9 MR. RODNEY WALLACE: Thank you very much for allowing me
10 to speak. I live at 20431 Peach Tree Road, which is in the
11 Hanover subdivision as it was described earlier.

12 CHAIR CARRIER: You've heard some unpleasant things about
13 your subdivision this evening.

14 MR. WALLACE: That's ok. I have more to say about another
15 one. We'll be even.

16 CHAIR CARRIER: Oh, good. [LAUGHTER]

17 MR. WALLACE: So, uh, anyway, uh. I want to start by
18 saying why I purchased a home in that subdivision as opposed
19 to many other opportunities in Germantown or other similar
20 cities. And it simply is that it's a rural environment. It's
21 a great place to raise a family. It's a great place to have
22 personal animals, etcetera. It's just a wonderful place. Um,
23 what makes it different than living in Germantown or a city is
24 the distance between the houses and how many houses in their

1 general area. If you pack the houses too tight, whether
2 there's a business district or not, you have a town, and that
3 point's been made several times. But I'd like to make it
4 again. By more than doubling the number of homes along this
5 one-mile stretch of Peach Tree Road, you are dangerously
6 encroaching upon it being a town. Ok. The clusters that exist
7 there now fit, in my opinion, harmoniously in with the
8 agriculture. I think there are some other opinions in the
9 room. But, to me they fit harmoniously, by more than doubling
10 the size of a cluster and putting it adjacent to two clusters
11 that are already there is a substantial change in this little
12 part of the county. If this cluster was in a, in an area where
13 there were no other clusters around, it wouldn't be as big an
14 impact. Um, there was a comment made earlier about the, um,
15 the developer that said, uh, safe access to Highway 109 could
16 not be achieved, and, uh, that they wanted to preserve Whites
17 Stores Road because it was rustic. Um, my comment to that
18 would be, well those are valid reasons on to put things on
19 those roads, but there's an alternative solution, which is to
20 reduce the number of houses allowed to be built, as opposed to
21 taking everything and putting it in one spot. Where there are
22 already clusters that local farmers apparently do not like
23 very well. So, that's my main point for the Commission. I
24 think the plan as it's, uh, proposed should not be approved.

1 That however many houses that are approved to be built should
2 be spread into small clusters. I propose the current cluster
3 is as large as one should be, and they should be scattered
4 along the land, and if there are physical obstacles that
5 prevent that from being done, then the number of properties
6 approved should be reduced. Thank you.

7 CHAIR CARRIER: Thank you, Mr. Wallace. Tina Brown.

8 MS. TINA BROWN: Yes. Right here, I, before I give my
9 remarks I'd like to, um, just point out a couple of props.
10 This is a map of the agriculture reserve. I'm the artist who
11 did this map. I worked with people, farmers, historical people
12 in the county. We wanted to tell the story of our agricultural
13 history in Montgomery County with this map. I sell hundreds of
14 them at my art studio. People love in Montgomery County coming
15 there and knowing we have these rustic roads they can drive
16 on, and two of the favorite things people go to when they
17 leave my studio is Kingsbury Orchard and Lewis Orchard. So, I
18 just wanted to give you a visual. You've see all these images.
19 I suggest you consider this image.

20 COMMISSIONER ALFANDRE: Can you pass that around?

21 MS. BROWN: Yes. Please do, and the other thing, and you
22 can tell I am passionate about this landscape, I spent 10
23 years on Sugarloaf Mountain with Melanie Choukas-Bradley, and
24 I'm co-author of these books on Sugarloaf. The first book that

1 came out is Sugarloaf: the mountain's history, geology and
2 natural lore. There are a lot of stories. There are, there's a
3 lot of history on this road, and I suggest you take a pause
4 and not just look at it as another rustic road in the county.
5 So these are just purpose facts. You can pass these around as
6 well, and if you don't have copies, I'd be glad to donate
7 those. Ok.

8 My name is Tina Brown. Madame Chair, members of the
9 Planning Board, thank you for this opportunity to speak
10 tonight. I live in Barnesville, the small town of Barnesville
11 at 18201 Barnesville Road. I wanted to speak as a member and a
12 resident of the agriculture reserve, and to talk about the
13 appreciation that we have for the wise land use planning that
14 our County leaders had 30 years ago. We all enjoy the benefits
15 of living in a pastoral agricultural landscape. This is
16 possible because new development 30 years ago was decided to
17 be concentrated, and new urban and commercial developments
18 near existing transit corridors. When new development proposal
19 are under consideration in the rural density zone, we depend
20 on you, the staff and members of the Planning Board, to honor
21 the master plan spirit, as well as consider the concerns of
22 the community, and the potential impact on our sole source
23 aquifer. I have attended the Barnesville Oak public meetings,
24 and I have met with local civic organizations to discuss what

1 we consider a subdivision proposal. There are significant
2 concerns within the community regarding the negative impact
3 from this new development. Personally, our well has gone dry.
4 I don't know how many people on the Board up there have had a
5 well go dry, but our well's gone dry, and that has been in the
6 11 years we lived in Barnesville. The replacement well price
7 tag has exceeded the initial \$12,000, and despite our new well
8 and conservative household water usage with an eye on the
9 water table, we have gone dry periodically.

10 So my questions for you are, what will the impact be on
11 our EPA designated sole source aquifer from these new large
12 suburban style homes, and who of you will be around in 10
13 years to monitor the impact on the surrounding homeowners like
14 myself? These real world considerations are rarely discussed
15 and taken seriously when Malcom and Mr. Weaver, when you
16 consider these plans, you know, they're all dipping a straw
17 into our aquifer. So, I'm asking you, can you guarantee my
18 water when this massive new development takes place on Peach
19 Tree Road? We love our rural community, and we enjoy, the new
20 families who join us out there, but we want to keep it a
21 working agricultural community which is endangered with this
22 large suburban tract. Finally, I have to speak on behalf of
23 our beloved Barnesville Oak. This name

24 CHAIR CARRIER: You'll have to do it quickly.

1 MS. BROWN: Ok. Well, there was a Barnesville Oak that was
2 to be the state's champion tree and it fell in a horrible rain
3 thunderstorm the day it was to be announced, and so this
4 offshore company has taken our beautiful, beloved Barnesville
5 Oak and degraded the name by putting it on something that goes
6 against everything that that tree and the love in the
7 community had for it. So, in, in, I just, I just had to
8 address that. It's killing us that they're using this name.
9 Thank you.

10 CHAIR CARRIER: Thank you, Ms. Brown. Are you familiar
11 with the section in the staff report about the aquifer?

12 MS. BROWN: I have, I have not read it in detail today,
13 but I have looked at it before. I attended the 2008 meeting,
14 um, in a local location at Poolesville, and since then have
15 looked at it but not recently.

16 CHAIR CARRIER: Well, let me just, let me just summarize
17 it for you. Um, because they did do a little research on the
18 question of, uh, water usage, and you're not the first person
19 to bring it up, so it might interest other people. They, the
20 staff spoke with the, um, Maryland Department of the
21 Environment to find out how the state would address aquifer
22 usage. They issue groundwater appropriation permits for
23 subdivision wells, and they did, um, they have a formula that
24 protect, predicts the water budget. They estimate that a home

1 withdraws 216 gallons a day from the aquifer, which is some
2 7,000 gallons a day for 33 dwellings, um, which would include
3 the 7 that are not part of subdivision as the applicant
4 defines it. They consider the recharge rate from normal
5 precipitation to be 300 gallons a day per acre of land. So
6 with 840 acres, this, the full tract is considered to recharge
7 the aquifer at a rate of 252,000 gallons per day. Therefore,
8 uh, they consider water to be plentiful for an 800-acre
9 property to have 24 houses or even 33 houses on it.

10 MS. BROWN: I understand that, and I'm familiar with
11 formulas. But, you don't live out there. We have, I, well, we
12 worked

13 CHAIR CARRIER: I'm not inviting additional comment.

14 MS. BROWN: Ok.

15 CHAIR CARRIER: I just wanted you to know what the state,
16 you know, people who have

17 MS. BROWN: The state may not know that my neighbor's well
18 doesn't go dry, and mine does. It's very topical out there.
19 It's not a universal formula. I wish it were. I wish I had the
20 water my neighbor has.

21 CHAIR CARRIER: Ok. Mr. Brown.

22 MR. JIM BROWN, IZAAK WALTON LEAGUE: I'm Jim Brown. I
23 also reside at 18201 Barnesville Road, and tonight I'm
24 representing the thousand members of the Izaak Walton League,

1 uh, the chapter including the, uh, ag. Reserve. We're
2 appearing here tonight in opposition to the plan. Basically
3 three reasons: First, Peach Tree Road has been designate a
4 rustic road, as well all know, and with the development which
5 has been already taking place, this road is going be further
6 degraded. Um, and we strongly feel that the previous speaker
7 mentioning the traffic accidents, the amount of farm equipment
8 and the speed at which they travel, the school busses, and the
9 existing traffic that's already on this road is, um, is going
10 to result in a lot of more accidents and possibly, hopefully
11 not, but possibly some deaths. So this is something that
12 should be really considered. Peach Tree Road has already been
13 adversely affected by cluster development. Approval of these
14 new homes will inevitably result in pressure to upgrade Peach
15 Tree Road, and therefore ruining its rustic beauty. This
16 proposed development is in conflict with the master plan for
17 the area. We feel the area was never intended to be an
18 extension of suburbia. The purpose of the ag. reserve is
19 farming. The proposal is most definitely not farming.
20 Fortunately, you have some options. First, if development is
21 permitted, the number of lots should be significantly reduced.
22 Second, in order to compensate the owner, the possibility of
23 conservation easements should be explored. Easements will

24

1 protect the land from further pressure and further preserve
2 the ag. reserve. Thank you.

3 CHAIR CARRIER: Thank you very much, Mr. Brown. Anne
4 Shroeder.

5 MS. ANNE SHROEDER, SIERRA CLUB: Good evening. Thank you.
6 Ooops. Good evening. Thank you very much. I'm speaking on
7 behalf of my farm, and I also have a letter on behalf of the
8 Sierra Club which I would like to read after my short
9 testimony. My name is Anne Shroeder. I reside at 16760 Whites
10 Store Road. I have been there since 2002, and I'm the
11 president and owner of Star Gazing Farm which is a 501(c)3,
12 um, organization of farm animal sanctuary and education center
13 for children. Um, I was riding by tractor around this
14 afternoon preparing for the farm tour which is

15 CHAIR CARRIER: I've been to your farm.

16 MS. SHROEDER: Oh, good.

17 CHAIR CARRIER: It's lovely.

18 MS. SHROEDER: You've met Newman, then.

19 CHAIR CARRIER: When my kids were young. They had a great
20 time.

21 MS. SHROEDER: As I riding my tractor this afternoon
22 preparing for the farm tour, I thought how ironic it is that
23 we have this meeting tonight. Because just last year, I was
24 shaking Ike Leggett's hand, you know, being congratulated on

1 being a part of the agricultural reserve, and being part of
2 this, this tradition of doing a farm tour every year. And
3 here we are in a meeting basically fighting to keep our
4 farmland. Um, you know, it seems to me that the County on the
5 one hand is trying to praise our agriculture heritage, and,
6 and tell everybody else in the County and in the area to come
7 and visit it, and on the other hand, is potentially opening up
8 the doors to the big development machine. The tour brings
9 thousands of people to the County, to this part of the County,
10 um, every year, and it's a really, really wonderful way to
11 show people what we have done in the agricultural reserve. I
12 want to mention that since I'm on Whites Store Road, um, I did
13 a little quick research and found that there are 22 homes, or
14 22 families currently residing on Whites Store Road. That's
15 two miles of, um, of rustic road. We're talking about more
16 than doubling the number of people at the end of that road. I
17 just can't even imagine what that's going to do to our
18 traffic. Moreover, it's sort of like when you double the
19 prison population. All of a sudden you've got, you've got a
20 cell with one inmate and suddenly you've got two inmates. But
21 you're not just adding another inmate you're adding a skinhead
22 to an MS-13 cell. [LAUGHTER] It's really going to be a
23 problem. [LAUGHTER] It's going to be a problem.

24

1 CHAIR CARRIER: There must be a reason that's improper,
2 but I can't think, of it right now. [LAUGHTER]

3 MS. SHROEDER: I used to work at the jail. I can say that.
4 [LAUGHTER] It's not a happy scene in the jail, and it's not
5 going to be a happy scene on Peach Tree Road, and it's
6 especially not going to be happy for the wildlife, for the
7 bicyclists that come out there. There are thousands of
8 bicyclists that come out, for all the horseback riders, for
9 all the people that come out to enjoy. I just don't see how
10 bringing these suburban type houses into the ag. reserve is in
11 the spirit of the master plan. I want to read quickly the
12 letter from the. Do I have time to read the Sierra Club
13 letter?

14 CHAIR CARRIER: Yes, since it's a different organization.

15 MS. SHROEDER: Alright.

16 CHAIR CARRIER: Go ahead.

17 MS. SHROEDER: This is from David Hauck, the Chair of
18 Montgomery County Sierra Club. We believe the Barnesville Oaks
19 development which is scheduled to come before the Planning
20 Board on July 22 should be scaled back to preserve the
21 character of the agricultural reserve. We have several
22 concerns about this development. The first relates to its size
23 and scale. While the individual lots may be consistent with
24 zoning, the overall development is not since it creates a

1 suburban style subdivision. This clearly is not in conformance
2 with the stated aims of the functional master plan for the
3 preservation of agricultural and rural open space in
4 Montgomery County. Thus, the Planning Board has the authority
5 to scale back the project to ensure proper and reasonable
6 conformance. Also of concern is the fact that the existing
7 homes or quote tenant houses are not being counted in
8 calculating the allowed density. As such, this constitutes an
9 end run to the density requirements. Finally, there is an
10 apparent unwillingness of the Barnesville Oaks landowners to
11 consider possible conservation easement that in all likelihood
12 would involve little or no financial costs to them. The Sierra
13 Club endorses strong protections for our agricultural reserve.
14 Thus, we believe that it is appropriate and reasonable for the
15 Montgomery County Planning, Montgomery Planning Board to
16 significantly scale back the size and scale of the Barnesville
17 Oaks development in order to bring it into conformity with the
18 functional master plan. Thank you.

19 CHAIR CARRIER: Thank you.

20 COMMISSIONER DREYFUSS: Quick question. How big is your
21 farm?

22 MS. SHROEDER: Four and a half acres.

23 UNIDENTIFIED: Four and a half acres, and, um, what kind
24 of things do you grow?

1 MS. SHROEDER: Uh, manure. [LAUGHTER]

2 COMMISSIONER DREYFUSS: I think I should have learned a
3 long time ago, don't ask question I might not want the answer
4 for.

5 MS. SHRODER: We've taken animals, actually unwanted
6 animals, a lot of animals from farm animals that get turned
7 into animal control.

8 COMMISSIONER DREYFUSS: Thank you.

9 CHAIR CARRIER: Suzanne Shoemaker.

10 MS. SUZANNE SHOEMAKER: Hi. My name is Suzanne Shoemaker,
11 and I live in Boyds at 20201 Bucklodge Road, right around the
12 corner from Anne Shroeder. Um, I am actually, uh, I'm reading
13 a letter from, um, Merritt Ednie who is the Boyds Civic
14 Association president, and I also had just a few comments of
15 my own, uh, personal. This is, um, Merritt Ednie's letter. I
16 would like to record, I would like the record to show that the
17 Boyds Civic Association members are opposed to this proposed
18 residential subdivision. Since its inception, we have studied
19 the proposal and discussed the impact it will have of the
20 Peach Tree community, as well as the ramifications it will
21 have on the integrity of the agricultural reserve. We are
22 opposed to the density and would like, um, Park and Planning
23 to consider decreasing the number of allowable building lots,
24 so as to conform with the intent of the master plan and the

1 goal of the ag. reserve. We feel that by allowing such a large
2 development among existing houses would set a bad precedent
3 for future building considerations in the ag reserve. We have
4 found that pursuing conservation easements with property
5 owners in Boyds has served us well in preserving the rural
6 integrity of the Boyds community and in keeping with its
7 master plan. We believe the Barnesville Oak development is a
8 perfect opportunity to explore such an option, and I just
9 wanted to add, um, I'm a wildlife biologist, and I'm also a
10 water quality monitor with Audubon Naturalist Society, and
11 just my own personal opinion. The fact that you've taken out
12 33 acres of forest in the is, it put it, to, um, to put this,
13 this, uh, cluster in is misguided I think. Because if you
14 look at this, look at all of the agricultural land and then
15 look at the amount of forests there. There's very little
16 forest that's left in the ag. reserve, and it's a critical
17 habitat for wildlife. There's a lot of wildlife that depends
18 on that, and not to mention the fact that when you take out
19 all that forest, you're going to open that land up to more
20 erosion and more degradation of the water quality, and there's
21 mention of the number of creeks that runs through this
22 property. There's a lot of creeks running through there. All
23 of that, um, the erosion potential from the farmland is soaked
24 up by that forest, and that forest is, is protecting the

1 creeks from all the, uh, agricultural runoff, and so, you're
2 not only, you know, by, by taking out that forest, you're
3 degrading the water quality and you are, um, you know, taking
4 up critical wildlife habitat. So I don't know what the
5 thinking was. I mean it's pretty selfish to think that you're
6 getting, sacrificing the forest for your view scape. But
7 that's what I think is being done here, and I think that's
8 misguided.

9 CHAIR CARRIER: Thank you. Alright. Thank you very much,
10 folks. Last two speakers, Mary Reardon and Ellen Pearl. Did I
11 miss you?

12 MR. KIRK METTAM: Yes.

13 CHAIR CARRIER: What's your name?

14 MR. KIRK METTAM: Kirk Mettam. You have my name on the
15 list.

16 CHAIR CARRIER: Can you show me. I mean you can certainly
17 speak, but I don't see a Kirk on here. Maybe we, somehow
18 you're on line. Yep. That's it. Tell me your name now, and sit
19 at the table.

20 MR. METTAM: Kirk Mettam.

21 CHAIR CARRIER: Ok. Ms. Reardon.

22 MS. MARY REARDON: Thank you. My name is Mary Reardon. I
23 live in Silver Spring about a mile from downtown. Ann Ambler
24 couldn't be here tonight, so I'm here to read the parts of her

1 statement that I think particularly bear repeating. She
2 protests the large number of houses proposed for the
3 Barnesville Oaks subdivision in the area master plan for
4 agriculture. She continues. I've see Montgomery County go from
5 farm fields and forest to broad avenues and cul-de-sac
6 communities. I was here when the farsighted idea of the ag.
7 reserve was born. I recognize its immense value as a cleanser
8 of the air pollution our denser areas generate. Our ag.
9 reserve is also a delight for the eyes when viewed from
10 Sugarloaf Mountain. It's such a treasure. Looking down
11 subdivisions, such as Barnesville Oaks, does not have the same
12 affect. As we face an energy constrained future, the value of
13 our ag. reserve for producing food adjacent to such a heavily
14 populated area greatly increases. But the promise of our ag.
15 reserve is always threatened by those who wish to profit from
16 planting houses there instead of crops. Already, some people
17 call the ag. reserve the mansion preserve. Now it's being
18 invaded by subdivisions. Clustering which seeks to preserve at
19 least some land large enough to farm is commendable if
20 otherwise all farmland is lost. But suburban style
21 subdivisions have no place on land intended for agriculture.
22 Barnesville Oaks is simply a piece of Germantown or
23 Gaithersburg plopped down on currently rustic Peach Tree Road.
24 How long before a more subdivision, suburban subdivision

1 clustered next to these and residents demand that the roads be
2 widened because they're frustrated with slow moving farm
3 equipment, or because of traffic volume. In addition, this
4 development would destroy 36 acres of forest, the very best
5 ground cover clean air and water. Since I doubt the project
6 can be entirely rejected, I urge the Board to reduce greatly
7 the number of houses allowed in Barnesville Oaks and work to
8 protect much more of the forest and farmland with conservation
9 easements, and for myself, I'd like to, um, say that, um, in
10 reading over the, the staff report, something jumped out at
11 me. Um, and it's this. The staff report indicates that with
12 development in low density areas, the perception of impact is
13 heightened, the perception. This is not just perception. The
14 serious impact and the scope of loss is very real. We're
15 losing something very pristine and precious, and I think the
16 staff knows it. Thank you.

17 CHAIR CARRIER: Thank you, Ms. Pearl.

18 MS. ELLEN PEARL: Good evening. It's past my bedtime, but
19 I'm happy to be here.

20 CHAIR CARRIER: Mine, too.

21 MS. PEARL: I noticed coming in here, I don't have any
22 prepared, because I leave it to much smarter people to speak
23 to me, but I couldn't resist. I noticed coming in that there's
24 a little garden outside, and they're planting vegetables.

1 Well, I have a garden like that. I live on about a half acre,
2 almost an acre, actually, on Comus Road, about three miles
3 from Sugarloaf Mountain. There have not been many new
4 developments on Comus Road except for this atrocious, huge
5 thing that actually dwarfs Sugarloaf at certain angles. I
6 don't know how that passed the, the Planning Board, but it
7 did, and even though there hasn't been any development, I have
8 never seen so much traffic increase since I've been living
9 there for 10 years. But not just bikers, not just cars, I'm
10 talking semis, dump trucks, and then going around to Slidell
11 Road, the stop there at Bucklodge just to go over to go to
12 work, there's a, a stop sign there that's backed up almost all
13 the way back to 355. I don't know where these people who are
14 planning to live in the reserve are going to work, but a lot
15 of people who say they're going to work up at, around, um,
16 Clarksburg don't. They all contribute to the traffic. So my
17 suggestion is, if I can see Comus Road increasing traffic like
18 that, and nothing's being built, I can't imagine that
19 something disastrous isn't going to happen on Peach Tree.
20 Now, I'm going to turn 70 years old this year, and I look to
21 the future, and I see how Royce and the Planning Board in 1981
22 looked to the future. I worked for Montgomery County Public
23 Schools. These kids eat lunch every day. We could grow it.
24 We won't have to get our stuff from Chile and California. I

1 think this Council, or this Planning Board needs to be charged
2 with a beacon of the future. I think you're stuck in reverse.
3 This whole idea of developing mansions that we can't sustain
4 with our electrical grids and our water, which these perk
5 things are a joke, um, is something you have to realize. This
6 trend can be disastrous, and it is like a malignant cancer. I
7 think we have an opportunity. You have an opportunity to show
8 the country that we are going to do something different here.
9 We are going to feed our own people in Maryland from our
10 reserve, and we're going to be a part of a partnership to
11 create small farms and an economy where our people can live
12 comfortably and feed our people and enjoy the beauty and the
13 exceptional sacred place that we have. Thank you.

14 CHAIR CARRIER: Thank you very much, and, uh, Mr. Mettam,
15 you get to close the public speaking.

16 MR. METTAM: Thank you very much. My name is Kirk Mettam,
17 and I live at 20501 Peach Tree Road with my wife and two
18 daughters. Um, I'm going just share some thoughts about the
19 master plan. We live on a 10-acre property. If you go back to
20 the map here we're, there we go. Callum's got me. We call it
21 ground zero. [LAUGHTER] Um, so we've, we've, uh, we're in the
22 middle of this proposed group of clusters which has been
23 called a mega cluster, and really with, in combination with
24 everything else, there's nothing, you can't call it anything

1 but a suburban subdivision. So we're sort of at this, we found
2 ourselves at the center of this debate. Um, so we've been
3 listening a lot, and I wanted to share from my perspective
4 what I've learned over the last few years. Um, first I've
5 learned to appreciate the agricultural reserve, um, as a truly
6 visionary planning effort that it was 30 years ago. Um, but
7 at, you know, as with any vision it's not without challenges.
8 The vision, I've prepared this so forgive me if I read. Um,
9 the vision

10 CHAIR CARRIER: Quite alright.

11 MR. METTAM: The vision was to sustain a working landscape
12 while permitting developmental land within the reserve, and
13 since that time it's forced the issue of how to balance the
14 needs of the agriculture, of agriculture with development
15 pressures, particularly for residential use within the, within
16 commuting distance of the nation's capital. No small
17 challenge. Um, these challenges have become even more
18 complicated. Since that time suburban sprawl is literally
19 knocking on the door. Many of the loopholes and shortcomings
20 of the original, uh, the original zoning, the master plan
21 zoning have been abused and, uh, the unique advantages of, of
22 viable agriculture also, though, have started to become
23 apparent. Um, we've heard a lot of the division with the cost
24 of transportation increase and so forth. In addition the

1 recreational value of the ag. reserve has become very apparent
2 with the bike, the cyclists and also there we've seen, well,
3 the value to these groups down County is immeasurable.
4 There's an inherent conflict, as with all of these issues.
5 Um, and so County planners have been actively involved in
6 further refining the zoning laws as these needs become
7 apparent. But, Barnesville Oaks really, to me has stirred a
8 conceptual level debate about the future of the ag. reserve.
9 Because of where we live, as I mentioned, we hear opinions
10 from everyone. We've listed to all sides of this debate. Um,
11 I've really found there are two extremes of opinion about the
12 ag. reserve or the concept. There are those that appreciate
13 the vision, as I do, of a working landscape and realize that
14 there's value there, and that compromises are going to have to
15 be made to support the goal of a working landscape. Then there
16 are those who believe that a balance is too difficult, and
17 that the ag. reserve will ultimately die a slow death. The
18 county will ultimately, many years from now, rezone as
19 residential, and, and, uh, we hear this a lot. I contend that
20 this proposal represents a very critical point, or even a
21 tipping point for the success or failure of the ag. reserve.
22 Why does it sound so grim? The ag. reserve as originally
23 defined
24

1 CHAIR CARRIER: That little noise meant it's three
2 minutes.

3 MR. METTAM: Ok.

4 CHAIR CARRIER: So if you could move with dispatch.

5 MR. METTAM: Sure. The ag. reserve acknowledges clusters,
6 but what's missing is some limit on a size of cluster and a
7 distance proximity to other clusters. That is what is wrong
8 with this plan, and I, I, represent that this, this approval
9 of this plan would create a dangerous precedent that will
10 ultimately establish the fate of the ag. reserve. Um, I should
11 also add, our community, you've heard a little bit of that
12 tonight, is very upset, and we're not upset at the planners at
13 the County. They're, they've been working very hard on various
14 specific issues. We're not upset at the planners and the
15 lawyers. They've been doing their job. We upset by two things.
16 One is that we're very, very frustrated by the lack of ability
17 to communicate with the owner. You've heard that. I won't
18 dwell on that. But the idea that the ag. reserve is being
19 destroyed by an offshore interest is frustrating. The last
20 one, the approval of this proposal will really represent a
21 dangerous and irreversible precedent that we believe is going
22 to march forward, and it will be the tipping point for the ag.
23 reserve. The approval of this plan will open the gates to more
24 of the same resulting in the failure of the working landscape.

1 CHAIR CARRIER: Thank you, Mr. Mettam.

2 COMMISSIONER DREYFUSS: I have one question for the
3 applicant. In your parcel, is there any farming going on?

4 MR. METTAM: Yes.

5 COMMISSIONER DREYFUSS: What do you grow?

6 MR. METTAM: Right now it's, it's, it's all, um, hay.

7 COMMISSIONER DREYFUSS: Ok.

8 MR. METTAM: And we're working with the county right now
9 to develop sort of a, a demonstration equestrian property.

10 COMMISSIONER DREYFUSS: Thank you.

11 CHAIR CARRIER: Um, the applicant wishes to have rebuttal?
12 We're going to keep it limited.

13 MS. WALKER: Thank you, Madame Chair. I'll try to keep my
14 rebuttal as limited as possible. But, I do feel a need to
15 respond to a few key points, uh, that I think were raised by
16 some of the citizenry here tonight. Specifically, the
17 agricultural reserve was created to preserve agriculture and
18 open space. The zone, the RDT zone that was created to
19 implement the master plan specifically states that residential
20 lots are a permitted use in the zone. If they didn't want that
21 to occur, then they could have certainly not have the language
22 in the zoning ordinance stating that it's a permitted use in
23 the zone. The text of the AROS plan itself refers to this
24 balance that I've alluded to before between development and

1 agriculture. This plan preserves 97.4 percent of the
2 agricultural operations on this property. The plan and the
3 zone do not require no impact to the surrounding community.
4 We're sensitive to the community's concerns, and I think, I
5 hope that that comes across through the revisions that have
6 been made in the plan from when it was first filed in 2008
7 until the plan that's before the Board at this time, with a
8 significant reduction in the average lot size, a
9 reconfiguration of the location of some of the lots in
10 response to comments regarding the view shed and concerns
11 regarding that. So I hope that that is evident to the Board as
12 they review the current application. The owner of this
13 property, regardless of whether they're a corporation or not,
14 is not a speculator. They're not a short term-holder or a
15 carpetbagger as they have been portrayed through some of the
16 written testimony that's been submitted. They've owned this
17 land for over 30 years. I do submit that that does give them
18 appropriate seat at this table before you to bring their
19 application and their plan. Because they're a corporation it
20 should not mean that they should be subject to stricter
21 scrutiny than a homeowner or an individual farmer who would be
22 sitting up here with their 840-acre farm asking for a
23 subdivision approval. The standard is the same, and we would
24 ask that the Board apply that appropriately. Just going

1 through a few of the technicalities that were raised: Um, this
2 project does not propose to exceed the maximum density for the
3 site. Thirty-three lots is what is permitted on the 840 acres
4 that are part of this application. The proposed subdivision of
5 individual lots to be created is 24 lots that are proposed.
6 Three of those are actually outlots is what is alluded to in
7 the staff report. Because we don't have the adequate perk
8 testing at this time. So, there's, there's nothing being
9 hidden here. That's exactly what's on the table. And should
10 the perk testing be approved and, and the County approve that,
11 then we would have the ability to convert the outlots into
12 buildable lots, again, still at the 24 that is before the
13 Board currently. If we wanted to come back in and add
14 additional lots, we would have to come back to this Board and
15 go through the same process that we've gone through to date.
16 I can speak very clearly on this. There is no intent by this
17 applicant to come back in for any additional lots on this
18 property anytime in the near future, or in the known future to
19 me. We've asked that question. There's zero intent for that.
20 With regard to the easements that have come up, we understand
21 that there's been a desire to preserve the farm remainders,
22 uh, the unplied remainders in some sort of preservation
23 easement. The applicant is not opposed to that at all.
24 They've expressed an ongoing interest both with the Office of

1 Economic Development and with staff at Park and Planning that
2 they would be very interested in pursuing a BLT or other type
3 of program that, that could be facilitated. But that's not
4 what's before the Board this evening. What's before the Board
5 this evening is the subdivision application for the 24 lots.
6 What occurs with the farm remainders is then a negotiation
7 between the agency hoping to acquire earnings then and this
8 applicant and the property owner. So, we're not opposed to
9 that for the record. But we don't feel that it's
10 appropriately before the Board at this time, or that the Board
11 has the jurisdiction, uh, to require such an easement. Um. I
12 think the Chair covered both the reference in the staff report
13 on the water aquifer, and, again, with regard to the perk test
14 I'd just like to reiterate, we do have an approval letter from
15 the County, uh, that, uh, for all but the three outlots, and
16 we have followed proper procedure in order to obtain that. So
17 there's no question as to whether there's an adequacy of
18 facilities in order to accommodate this subdivision. Uh. The
19 Board's indulgence for just one moment, I just want to, I'm
20 breezing through here trying to make sure I get everything.
21 There was also a question about the, um, farmland runoff and,
22 and the water issues, and the forest on this property is
23 actually higher than the adjacent farmland, so there's not a
24 run up to the forest, um, so our position is that there's not

1 any, any issue with regard to some of the statements that were
2 made. It's also our position that we're not sacrificing the
3 forest for the view scape. Um, you know, the limited forest
4 that we're requesting to be cleared, and we're preserving
5 almost 83 percent of the forest that's on this site, is being
6 done in order to preserve the agricultural operations that are
7 on this property. We don't want to sprawl these houses and
8 locate them on the farm. We want to keep the farm two very
9 large, viable farms. So I think that that's a very important
10 statement I can address the farm tenant dwelling issue if the
11 Chair and the Board would like, but, um, our position is the
12 same as staff's. If we were requesting to subdivide those
13 seven lots and put them on their own seven residences, and put
14 them on their own lots, then I think we'd be having a very
15 different discussion here.

16 CHAIR CARRIER: I don't believe staff has actually taken
17 the position. I believe they have carefully avoided taking the
18 position as to whether, um, if you, whether you would be
19 entitled to those seven houses as well as seven additional
20 lots.

21 MS. WALKER: I agree. I absolutely agree with the Chair.
22 I only say that we're on the same position that we feel it's
23 not before the Board for a discussion. However, if the Board
24

1 members have questions, I'm certainly happy to answer them.

2 And I'll leave it at that.

3 CHAIR CARRIER: Thank you, Ms. Walker. Six minutes,
4 excellent.

5 MS. WALKER: I tried. Thank you.

6 CHAIR CARRIER: Ok, Board questions?

7 COMMISSIONER ALFANDRE: I have a question. Um, are you
8 willing to limit the remainders to 24, no more than 24 lots?

9 CHAIR CARRIER: You don't mean the remainders. You mean
10 the whole property.

11 COMMISSIONER ALFANDRE: No, I mean the remainders.

12 COMMISSIONER PRESLEY: The TR remainders.

13 COMMISSIONER ALFANDRE: Yeah. That's essentially what
14 these are.

15 MS. WALKER: Let me, I think I

16 CHAIR CARRIER: The farm reminders have a total of seven
17 houses on them now.

18 COMMISSIONER ALFANDRE: And are we including that in the
19 24?

20 MS. WALKER: No.

21 COMMISSIONER ALFANDRE: You're leaving those separate.
22 Are you willing to include them in the

23 MS. WALKER: No, that's not part of this application.
24 They are an unrecorded farm remainders

1 COMMISSIONER ALFANDRE: It's going to make it easier on
2 you.

3 MS. WALKER: They're an unrecorded farm remainders. The
4 farm remainders are not required to be plotted. They're exempt
5 from platting under the subdivision

6 COMMISSIONER ALFANDRE: I'm just telling you.

7 MS. WALKER: regulations and it's our position that the
8 farm tenant dwellings are existing dwellings with existing
9 people

10 COMMISSIONER ALFANDRE: I understand.

11 MS. WALKER: living in them that are working and operating
12 as part of the farms. Pursuant to a zoning ordinance and the
13 definitions, they are not required to be put on

14 COMMISSIONER ALFANDRE: Ok.

15 MS. WALKER: their own lot and subdivided. So,

16 COMMISSIONER ALFANDRE: It's the only question I had.

17 CHAIR CARRIER: Other Board member questions? Comments?
18 Nothing?

19 COMMISSIONER PRESLEY: just a few. Just for our self
20 again. Things have gotten a little muddy. How exactly are we
21 deriving the 33 acres, 24, I see the math, but is that based
22 on the parcel in total? And then somehow it's not counting
23 when we've got remainders. We're taking it away. You know.
24 Just walk me through.

1 MS. CAROL RUBIN, LEGAL COUNSELT TO THE BOARD: If I could
2 answer. If I could answer, if you will refer to the data table
3 on page 24 of the staff report, it talks about, uh, the
4 maximum residential dwelling units per zoning.

5 COMMISSIONER PRESLEY: Right.

6 MS. CAROL RUBIN, LEGAL COUNSELT TO THE BOARD: The
7 proposed for approval by the preliminary plan includes 21
8 lots, 3 outlots, and 2 farm reminders. So basically, the
9 entire 800 plus acres is part of the subdivision application.

10 COMMISSIONER PRESLEY: Ok.

11 MS. CAROL RUBIN, LEGAL COUNSELT TO THE BOARD: It's just
12 that there's a distinction between what's in the preliminary
13 plan and what needs to be platted. Because the, there, it's
14 part of the subdivision, but as Ms. Walker pointed out,
15 Section 50-9 of the subdivision regulations specifically
16 excludes residential, I mean, I'm sorry, agricultural,
17 agriculturally used property from being platted. So for that
18 reason, the agricultural, or the farm remainders will not be
19 platted, but they are part of the subdivision.

20 CHAIR CARRIER: Can you explain in ten words or less the
21 difference between subdivision and platting?

22 MS. CAROL RUBIN, LEGAL COUNSELT TO THE BOARD: Well, the
23 subdivision is the preliminary plan approval. The platting is
24 the final, uh, and what goes on the record. It's an unrec,

1 they remain as unrecorded parcels. It's, it's, they're part
2 of, they're subdivided, but they're not platted.

3 COMMISSIONER PRESLEY: In 2008 how was it being presented,
4 as

5 CHAIR CARRIER: Well that was just the first version of
6 this same application. So,

7 COMMISSIONER PRESLEY: I know, but I'm, I'm interested to
8 know the history because I want to understand why, why there
9 seems to be a, a migration of where the seven, especially with
10 in view of the, the concern expressed by the community.
11 What's going on with these because there must be some notion
12 in the owners had as to how these should or would be
13 considered, and why they were shifted or changed, if they
14 were,

15 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: I believe
16 they were left off. The number was reduced. In order that that
17 particular issue does not have to be resolved at this point
18 [LAUGHTER] that in the future if in, it's just, it's left as
19 an open issue. It's not before the Board, and then the Board
20 wouldn't have to deal with it at this point. The only
21 questions is the 24 lots that are being created, and the, and
22 the, then you have the remaining farm. It's not before the
23 Board anymore than 24 lots. The farm, the farm tenant

24

1 dwellings aren't even at issue because whether or not they're
2 included as density is irrelevant to today's application.

3 CHAIR CARRIER: Mr. Dreyfuss

4 COMMISSIONER DREYFUSS: Um, I was here, uh, when I first
5 started and had a presentation about the, uh, issue of child
6 lots and clustering, and I remember distinctly the advantages
7 presented by staff and confirmed by many of the testimony
8 given us today of the advantages of keeping large open parcels
9 for farming, and the problems of creating open field, 25-acre
10 parcels that, I guess there were some pictures in, in some
11 presentations that were called, uh, they were big lawns with
12 houses on them, and, um, at that time there was a great deal
13 of enthusiasm for clustering, for creating large parcels, um,
14 so that the farming could actually happen since large parcels
15 are needed to make them efficient. So I was somewhat surprised
16 tonight to hear somewhat the opposite, and secondly, um, I
17 think that until farms come in and commit to a development
18 program, the land is still at play, and is in danger of
19 becoming something else at some future time. Once a commitment
20 is made to a development, then that parcel is no longer
21 available to the owners to do something else with. So by
22 committing 840 acres and the, um, subdivision that's, uh, the
23 preliminary plan that's being proposed takes this property out
24 of, uh, play for future development, and I think that, if that

1 happened throughout the whole agricultural reserve, we would
2 not be dealing with this every month. We have the property
3 pretty much preserved the way it was intended. But clustering
4 that's proposed by applicant and supported by staff has a
5 limited number of access points on Peach Tree Road, Um, unlike
6 traditional houses on many of the roads out here where each
7 house has a driveway, here there will only be two access
8 points, and I think for the, at least for those 17 lots that
9 are under one circle drive, I guess, that one, and then
10 there's one on the other side that's a single access, and then
11 there's a single access there. So, we have fewer, uh,
12 driveways to deal with onto a main, uh, road and rural road.
13 So I think there are a lot of advantages to a plan like this
14 by limiting the development, and there's been a lot of
15 testimony tonight about the taking of the forest, but in the
16 last hearings I attended, there was a big concern about taking
17 open space and farmlands for houses. So you either lose a
18 little bit of wildlife, or you lose a little bit of farm and
19 get to look at all the houses sitting on hills. So, I think
20 this is the, a good plan based on the alternative choices we
21 have, and I would, um, follow staff's recommendation for
22 approval.

23 CHAIR CARRIER: I wanted to ask staff's view and legal
24 counsel if she chooses to, of the argument that it is

1 permissible for the Planning Board to reduce the number of
2 lots below one per 25 acres, not on the basis of perk tests or
3 wetlands, but on the basis of a finding that the master plan
4 would simply be violated by having that many lots subdivided
5 on this property. Do you think that's permissible? Do you
6 consider that an option before us?

7 MR. MURRAY: Well, there was a lot of discussion tonight
8 about, uh, guaranteed maximum density. Regardless of state
9 law, in many, many areas of the county and parcels in the
10 county, it's a practical impossibility. I'll give you an
11 example. If you have a five-acre parcel and one-acre zoning
12 and you have four acres of wetlands, you're not going to get
13 full density. If this land didn't perk at all, if it didn't
14 perk even with sand mounds, the owner would not get through
15 density, and if the Board can look at condition 13 on page
16 three, there was a concern that somehow or other the tenant
17 parcels were not being considered in terms of the transfer. In
18 fact, they would be encumbered with our easement by the plot.
19 Now, in an area this size of 840, because if you put 24 houses
20 on it

21 CHAIR CARRIER: I'm sorry. I don't think, I'm not sure I
22 understand condition 13. For the sake of the folks in the
23 audience, it says record plat must reference a recorded
24 easement for the parent parcels indicating that density and

1 TDRs for these lots was removed from the parent parcels. Can
2 you explain what that means, please?

3 MR. WEAVER: The applicant will be required. Richard
4 Weaver for the record, the applicant will be required to
5 record an easement on the remaining parent tract. That says 24
6 TDRs have been removed from this property to be used to create
7 these 24 lots. So, there was some concern early on about when
8 you're gone and I'm gone, who's going to watch this. There
9 would be a note on that record plat. That record plat is in
10 the land records. We have copies of it here, and it says
11 something happened to that parent tract. Something was removed
12 for it. In this case it was 24 TDRs, leaving nine TDRs, nine
13 buildable TDRs on the remaining tract.

14 COMMISSIONER PRESLEY: If in fact the issue with the
15 tenant dwellings is resolved.

16 MR. WEAVER: If in fact the issue with the tenant
17 dwellings is resolved.

18 CHAIR CARRIER: I don't want Callum to stop, not, I want
19 him to finish. Can we let him finish my, answering my
20 question.

21 MR. MURRAY: Ok. Dealing with some of these, um, issues of
22 interpreting a 30-year-old master plan has been somewhat
23 difficult, and it's very true that the RDT zone allows housing
24 and it refers to the primacy of agriculture, which means it's

1 not the sole use, and we try very hard, and we have reduced
2 the yields on many, many properties. There are 50,000 acres in
3 the reserve encumbered by some form of TDR easement. There are
4 20,000 additional acres encumbered by Maryland Agricultural
5 Land Preservation Fund easements. AEP, I've forgotten what the
6 acronym stands for now. MET, Maryland Environmental Trustees,
7 these are very, very restrictive. In some cases, eh, for
8 example, the Board had to have one just a few weeks ago,
9 Friends a Plenty, it was 150 acres. We allowed one lot, and
10 the owner put the remainder in an easement with, and reserved
11 one lot. So that's two lots on 150 acres. Now, we would love
12 this property to go under easement for

13 CHAIR CARRIER: How did, was that voluntary on the part of
14 the applicant? Was that all they wanted?

15 MR. MURRAY: Absolutely. Well, voluntary and it was paid
16 for the easement. I mean he got compensation for it. So, it
17 wasn't altruistic, and, uh, so the thing is if you have a
18 parcel of 840 acres and you wanted it to be 24 lots on it, and
19 you want to minimize the size of the lots, there are many,
20 many ways it can be done. But, you're definitely going to have
21 an impact with 55 acres taken out of the farm. Now, one, one
22 speaker addressed the loss of forest. Now that farmer could
23 come in tomorrow and apply for a timber harvest to clear it

24

1 all. We have 147 acres of under conservation easement, which
2 we don't have today, if this is approved.

3 CHAIR CARRIER: That would be part of the subdivision.

4 MR. MURRAY: Yes. So, it's um. Oh, I also, um, a little,
5 there was some aspersion cast on staff that we wouldn't just
6 plan, that's, you know, to use a technical term, baloney. We
7 meet with all applicants. Some meetings are of everybody. We
8 have met with every single citizen who wants to talk about
9 this. I have met with Mr. Mettam. I don't know how many times,
10 lots of times. So we'll talk to anybody about any, any
11 subdivision. So in essence, the, the plan, the master plan
12 specifies a balance of preservation using development to, as
13 equity to keep the farm going, and, um, unfortunately, there
14 is no easement on this property, and thus about 20,000 acres
15 have no easements on them, and we will continue to get
16 applications on them, and this is precisely why the BLT
17 program was devised. In an attempt to remove rooftops because
18 the master plan does not preclude them.

19 COMMISSIONER PRESLEY: Yes, but I don't know if that still
20 answered the question totally for me because just because the
21 master plan doesn't preclude rooftops doesn't mean that in
22 view of what would actually be done, um, putting aside the
23 fact that we would gain the, uh, forest conservation of some.
24 To presume that that is sufficient to warrant the full amount

1 of the 24 doesn't speak to me to the rustic road issues, to
2 the, to the issues that were driven home by Mr. Hoffmann in
3 his, um, recantation of the essence of the AROS plan. It
4 doesn't take into account the doubling in the size, you know,
5 or any of the impact. You know, when you think about putting
6 another community within a community. So, I guess I am
7 personally not convinced that, that you've really answered the
8 question of whether or not we still have the right to, to
9 limit based on the total impact and what it is going to do in
10 the area.

11 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: If I could
12 address that, um, because it's the last two arguments that I
13 had to make in the Court of Special Appeals. The question
14 before the Board and the reason that the, I believe, the
15 question of whether or not you can reduce the lots, uh, below
16 the zoning, what's the zoning envelope, would be whether or
17 not the Board determines that the plan as submitted is in
18 substantial conformance with the master plan. If the Board
19 does not believe that it is in substantial conformance, then
20 it can make, that's the finding it has to make, and if it
21 can't make that finding based upon the number of lots
22 proposed, then it would have the authority to reduce that
23 number. But if you find that it is in fact in substantial
24 conformance with the master plan, which is what staff has

1 recommended and has suggested that finding, then I would
2 suggest that the Board cannot reduce the number of lots.
3 That's the basis for the last two cases that were appealed and
4 that we have in front of the Court of Special Appeals, is it
5 was based on size of lots and configuration of lots and
6 whether or not they conform to the master plan.

7 COMMISSIONER PRESLEY: Including the terms of the purposes
8 set out and the conservation of the rural lifestyles and all
9 that.

10 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: Correct.

11 COMMISSIONER ALFANDRE: Callum, let me ask again. Because
12 I, I, I think it's, I think you did a remarkable job myself.
13 And I've sat through many, many long nights, you, too, Rich.
14 I really, I, I did. Um, the plan as approved, the plan as you
15 propose, uh, ultimately they can build, or ultimately 33
16 houses could be built.

17 MR. MURRAY: There are seven existing houses.

18 COMMISSIONER ALFANDRE: Just tell me what the total
19 rooftops are going to be there.

20 MR. MURRAY: Oh, 33.

21 COMMISSIONER ALFANDRE: 33.

22 MR. MURRAY: Yes.

23 COMMISSIONER ALFANDRE: Ok.

24

1 COMMISSIONER PRESLEY: I want to know, I mean, I'm almost
2 prepared to, if no one else, so I have a couple more questions
3 before I'm prepared to make a motion, really of the applicant.
4 Um, just to express to you openly that I have an extremely
5 difficult time thinking that this fulfills sufficiently the
6 goals of the master plan to warrant saying 24 is a great idea.
7 Especially in this configuration regardless of the fact that I
8 acknowledge that you're saving the bigger, um, open space of
9 farmland. I think that maybe staff has felt constrained to
10 have to do that, and I understand that you've worked with them
11 over a period of x years of, um. But, I'm interested to know,
12 for me personally since I'm leaning towards denial of it based
13 on that, what you would be willing, having heard the comments
14 of everyone else, too, what you might be willing to say would
15 be a reasonable revision, uh, to the 24, which I think is an
16 obscene number in view of the goals of this plan and the fact
17 that these are, are extremely rustic roads and that this is,
18 it, it almost seems to violate every single thing that's in
19 the plan. Other than a technical notation that says you
20 potentially could have that number of pones. So before I make
21 any, uh, one way or another, before I make a motion, I would
22 want to know so that you don't have wasted your time in case
23 others feel the way I do. How far would you be willing to go
24 to reduce on your own some number of hones or to work a little

1 bit to separate these? I think there was, there were a couple
2 of proposals put forth that I heard. Um,

3 MS. WALKER: With all due respect, I mean, the application
4 that is before the Board is the plan that we have now.

5 COMMISSIONER PRESLEY: I understand that.

6 MS. WALKER: On the table for deliberation. As far as, if
7 you're asking me if the applicant would be willing to take ask
8 for a deferral to come back with a different plan. Is that
9 what you're asking? Or,

10 COMMISSIONER PRESLEY: Yes. Or if you, maybe the applicant
11 knows right now that they're willing to, to, uh consider
12 reduction further than

13 MS. WALKER: Even if they were, the Board still couldn't
14 vote on that plan because you don't have a plan in front you.
15 So I don't know that I would be comfortable asking the
16 applicant to make that, uh, decision today without even having
17 had the opportunity make a revision. But, I mean, we can
18 certainly confer with the applicant, but as far as your
19 statements with regard to the master plan, obviously, I mean
20 we have to respectfully disagree. Um, and I would just want to
21 point out that this plan was recommended for approval by the
22 Rustic Roads Advisory Committee, and they've seen this several
23 time. Uh, they were met with several times, and, and it's
24 indicated in staff's report that the plan is substantially

1 consistent with that master plan. So, I do understand that's a
2 concern, um, but I would just like for the record for that to
3 be clear. Um, I'm certainly happy to take a moment at the
4 Chair's indulgence to talk with the applicant.

5 COMMISSIONER PRESLEY: Well, I'm not speaking for the rest
6 of my colleagues. I'm just

7 MS. WALKER: If you feel it's necessary, but our position
8 to date has been that we worked very diligently to, to reduce
9 the size of the lots to the extent possible and to, and to
10 develop a configuration of lots that we feel is consistent
11 with the agricultural rural open space master plan, as well as
12 the zone. Um, so, I mean I

13 CHAIR CARRIER: I think it's probably premature to take a
14 recess to have a discussion now. I think I'd like to see
15 better what the sense of the Board is. Uh, Mr. Dreyfuss
16 informs me that the end of his statement a little earlier,
17 when he said he would support, he used the word move, and I
18 missed it. But apparently, he moved. I didn't hear it.
19 Everybody says no. Nobody heard you use the word move Mr.
20 Dreyfuss.

21 MS. WALKER: I heard him say it. I wrote it down.

22 COMMISSIONER DREYFUSS: Can I say it now?
23
24

1 CHAIR CARRIER: Why don't you say it now if that's your
2 intent and I'll give you a chance to make a motion, too. We
3 can have two motions on the floor at once, can't we? No.

4 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: Actually,
5 you can't. You can have one motion at a time. I'll let you
6 decide who you want to call on to make a motion.

7 CHAIR CARRIER: Well, you know, I believe Mr. Dreyfuss
8 that he used the word move because I don't think he would lie
9 to me. Um, so, um, there was a motion. Is there a second? The
10 motion was to approve as recommended by staff?

11 COMMISSIONER DREYFUSS: By staff.

12 CHAIR CARRIER: Is there a second?

13 COMMISSIONER DREYFUSS: With the amendment on the, uh,
14 condition three.

15 COMMISSIONER ALFANDRE: Which is what?

16 COMMISSIONER DREYFUSS: The, uh, easement for the

17 CHAIR CARRIER: Equestrian easement.

18 COMMISSIONER DREYFUSS: Equestrian easement.

19 CHAIR CARRIER: Is there a second? I don't hear one. All
20 right, for the moment at least, that motion fails. I have a
21 concern on which I would I would appreciate input from my
22 fellow Board members, and my concern is that, um, we're having
23 a lot of reaction to the idea of 24 lots because it's a big
24 number for a rural area. My concern is that, um, whether

1 denying this on the basis that 24 is a big number, whether
2 it's fair to a property owner who happens to have a really big
3 farm. Everybody is entitled to one house for every 25 acres,
4 and I'm not sure why that should be different for somebody who
5 owns 800 acres than for somebody who owns 75 acres and who can
6 make three little houses and nobody will mind because it's
7 just three houses in the middle of a lot of land. Um, so I
8 would, um, I'd like to see how my, if anybody else shares my
9 concern about fairness because there's a lot of things at play
10 here, you know. We have property rights issues, um, as well as
11 protection of the character of the agricultural reserve. But,
12 part of the reason we have the program we have, um, the zoning
13 scheme we have was that when the property was rezoned to
14 create the ag. reserve, we wanted to preserve some economic
15 value for the farmers. And so, one of the things we did to do
16 that was to say you could build one house for every 25 acres.
17 And, um, I'm concerned about the fairness of saying well you
18 can except that if you own a lot of land, then you can't,
19 because we can't bear the thought of this many houses in one
20 spot in this lovely rural place. So, what do you all think?

21 VICE CHAIR WELLS-HARLEY: Madame Chairman, I am concerned
22 about the fairness issue with that because I think that
23 perhaps what, um, is kind of, uh, seeping into, to this is the
24 fact that there are other subdivisions that are in that

1 immediate area, and the fact that we're adding 24 more homes
2 with four different driveways or access points on this same
3 stretch of one to two miles as I have heard it described, is
4 that's what's seeping into this. But is that fair to this
5 particular applicant? So, that's, that's the dilemma that I
6 have, because, you know, they are allowed to do this under, as
7 I see it, you know, under the zoning. But the fact that we are
8 impacting an area considerably that we have set out to
9 preserve with this program. So I would agree with you there.
10 There is definitely in my mind a fairness issue with this.

11 COMMISSIONER PRESLEY: And for me it's not number of lots,
12 it's these lots within this setting with these conditions.
13 That is why I've been asking what rights to do we have to say.
14 Do we have to say that these are by right? Or are there
15 conditions we must take into consideration. So in this case,
16 with this person's 800 acres, there's also a consideration as
17 we would look at any, anything for development that what are
18 the adjacencies. What's going on? What does the plan say?
19 What is the main purpose for preservation? Is this going to
20 allow it to be usable? What does it do when you take away that
21 particular 35 acres? I just think it has to be considered. I
22 think it is, it is a difficult balance, probably, between the
23 fairness issue of one per 25 and the goals of the plan in an
24 area that seems to already be

1 COMMISSIONER DREYFUSS: When I looked at it, I thought
2 about where do you put the lots? If you don't put them here,
3 where do you put them? Put the map up. Back up, would you
4 Callum?

5 MR. MURRAY: Where?

6 COMMISSIONER ALFANDRE: Wait, don't go there, will you.
7 Please don't re

8 COMMISSIONER DREYFUSS: I'm not trying to reposition the
9 lots, but if you say they don't belong here, where are you
10 going to put them? Or where are you going to put any?
11 Because there's roads around this property, so if they're not
12 on Peach Tree, where are we going to put them?

13 COMMISSIONER ALFANDRE: Norman, I

14 COMMISSIONER PRESLEY: I'd say 24 in that.

15 COMMISSIONER DREYFUSS: How many do you think? Sixteen?
16 Eighteen? Fourteen? Twelve?

17 COMMISSIONER PRESLEY: I don't know.

18 COMMISSIONER DREYFUSS: One?

19 COMMISSIONER PRESLEY: I wasn't evaluating for that.

20 COMMISSIONER ALFANDRE: Oh. Let me just say what my
21 perspective is because it's. I think the plan. I think
22 everything about the plan except one thing is very consistent
23 with the 1980, I wanted to call it AROS, but I'll call it AROS
24 plan. Um, including the amendments that I think were made in

1 1986. They didn't change it much. What they did was they
2 preserved, I think, one town and some other historic areas.
3 If anything, this is consistent with that. Um, it's in the
4 rural density transfer. It has TDRs. It meets the 40,000 foot
5 minimum. You're proposing developing 55 of 840 acres, and if
6 you take out the conservation for a minute, I think that's
7 consistent with preserving farmland in the AROS plan. It is
8 not a vanilla plan. It's a very well crafted plan. Here's
9 where I have a, here's where I am stuck, ok, and I've always
10 been stuck on this, and it doesn't have anything to do with
11 the plan or the consistency of the plan. I think the plan is
12 consistent in terms of the plan. Where I'm stuck is, that 1980
13 plan was signed by our former Chairman the first time he was
14 here and I don't think we can speak for him. Nobody can. But,
15 I can look and see that he signed that, and in my opinion,
16 it's consistent with what he signed, which changed from 1980
17 to now is the, um, interpretation and the, uh, creation or
18 the, uh, I'm losing a word here. Sorry. How you come up with
19 the lousy BLTs, the retainers, and I'll be honest, Callum, I
20 don't know the difference between the child lot, the remainder
21 lot, the tenant lot, the original lot, the station master's
22 lot, the mayor's lot. I don't know what those are. But I think
23 that is what has changed to me and what I'm stuck on, and I
24 personally have not, I don't agree that it's good public

1 policy to have county funds spent to buy BLTs and, you know,
2 going to 33 here what I don't understand it is exactly,
3 somehow that's going to get done that way. The difference
4 between 24 which I think you have a legitimate right to. I
5 think, I think the plan sustains that. It's that extra however
6 you come up with them and whatever you call them, that I don't
7 get, and I don't understand them, and that's why I can't, I
8 don't see where you get from 24 to 33. I think that the
9 clustering is perfect. I think the, everything that you've
10 done here is exactly what I've heard us talk about for the
11 last two years, and I think you've done a good job of it. I
12 just can't get past that interpretation of what the hell that
13 is.

14 MR. MURRAY: Well, a couple of things. Em, it hasn't been
15 mentioned yet, but this, this plan has been endorsed by the
16 Agricultural Preservation Advisory Board. We generally support
17 the master plan and preservation of agriculture

18 COMMISSIONER ALFANDRE: I'm not surprised to hear that.

19 MR. MURRAY: Secondly, you mentioned a previous Chairman.
20 The previous Chairman signed a letter to the President of the
21 Council enclosing this text amendment from which I've drawn,
22 and these three slides here, this plan is consistent with all
23 three of them.

24

1 COMMISSIONER ALFANDRE: I agree with you. The plan, I
2 don't get, you can put those, the difference between 24 and
3 33, you can get them in this plan. They can, they're in this
4 plan. But I don't understand.

5 MS. ROSE KRASNOW, DIVISION CHIEF DEVELOPMENT REVIEW
6 DIVISION: Commissioner Alfandre, I want to make it clear this
7 is for 24, and there are farm tenant houses

8 COMMISSIONER ALFANDRE: I know that.

9 MS. ROSE KRASNOW, DIVISION CHIEF DEVELOPMENT REVIEW
10 DIVISION: and farmhouses, if they wanted to convert those into
11 lots, they would have to come back to the Board. There is no
12 guarantee that you would be approving it.

13 COMMISSIONER ALFANDRE: I am just saying to you I don't
14 understand that, that separation of that in a plan like this.
15 That is what doesn't. That is not what's consistent with the
16 plan. To me, especially in this area, you do a plan, and you
17 say that's the plan. Well, we're doing a plan, but it's going
18 to leave here, and it isn't really the plan.

19 MS. ROSE KRASNOW, DIVISION CHIEF DEVELOPMENT REVIEW
20 DIVISION: Well, I strongly disagree with that. I feel that it
21 is the plan. There would be no guarantee that they could come
22 in and get the additional lots if they were not.

23 COMMISSIONER ALFANDRE: I understand, but, but that leaves
24 it open to interpretation.

1 MS. ROSE KRASNOW, DIVISION CHIEF, DEVELOPMENT REVIEW

2 DIVISION: That's not what we were evaluating. We were
3 evaluating whether what was in front of us, the 24 lots met

4 COMMISSIONER ALFANDRE: But that's what, and that's what I
5 can analyze and that's what I agree with. All I'm saying is,
6 I don't get the rest of those lots and how they are part of
7 any lot.

8 MS. ROSE KRASNOW, DIVISION CHIEF DEVELOPMENT REVIEW

9 DIVISION: They're not lots. They're just tenant.

10 COMMISSIONER ALFANDRE: I'm just telling you.

11 CHAIR CARRIER: It does remind me that I wanted to mention
12 one thing. Mr. Dreyfus made a statement earlier that approval
13 of this would take the land out of play and I have to say that
14 it would not. Because if we approve the plan as currently
15 submitted, um, it leaves in play nine potential lots. If you
16 do the math on how many lots you get per acre, this 840-acre
17 farm is entitle to 33 residential lots. In order to avoid
18 having a decision made at this time on the existing farm
19 tenant houses, the applicant chose to only ask for 24 lots
20 right now, because they wanted to just not have that fight
21 right now. I'm putting words in your mouth a little bit, but
22 that's my sense of things, and so, it does not take the
23 property out of play. It leaves open the possibility that this

24

1 owner or some future owner will come back and say, I want my
2 remaining seven lots now.

3 COMMISSIONER DREYFUSS: Until the applicant returns, they
4 have what they've submitted, and when they return, this Board
5 or whatever Board is here has the opportunity to make a
6 decision about wherever they want to have recorded lots, they
7 go. So, as far as we're concerned, the tenant houses that are
8 here and the 24 lots that are requested is all they can do
9 until they come back here and go through this whole process
10 again and get an approval.

11 CHAIR CARRIER: And more importantly,

12 COMMISSIONER DREYFUSS: And then they have to give up the
13 tenant houses.

14 CHAIR CARRIER: The Board would not, any Board would not
15 necessarily have to approve the seven additional because there
16 is an argument that by subdividing any part of this property,
17 you are, you, you pull those existing seven tenant lots into
18 your total permitted number of residential lots, whether you
19 have actually subdivided them individually or not. It's a
20 legal argument. I'm sort of inclined to believe it. But it's
21 not at issue before us with this application, as far as I can
22 see. I see Mr. Knopf shaking his head. I don't know. I will
23 ask our lawyer. Do we have any way to reach out and make a
24

1 finding that those 7 lots, the 33 that, the 24 plus the
2 existing 7 tenant lots are it?

3 MR. ORENS: Madame Chairman,

4 CHAIR CARRIER: I didn't ask you, Mr. Orens, you're not my
5 lawyer. Let my lawyer answer first and then I'll let you
6 speak.

7 MR. ORENS: Thank you very much.

8 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: I would say
9 if because it's not before you, it's not part of the
10 application, that it's not appropriate to make a finding with
11 regard to those other nine, or the seven tenant dwelling
12 houses, plus the two existing residential, primary
13 residential. They aren't before you. So, and there is some,
14 um, we have not done a very, we have not done an analysis on
15 whether or not the subdivision would in fact, as, as, as, as
16 you suggested bring them into, uh, take them out of play or
17 require that those are, uh, go to the total, to the maximum
18 density. We can do that, and again, I think that if the
19 applicant or whoever ends up, you know, any future owner
20 brings that before and looks to increase the density above the
21 24 lots that they're asking for today, that clearly would be
22 an issue that we would have to analyze. But we have not done
23 it because, um, because it's not before the Board. It's not
24 part of the application. It was specifically left out.

1 CHAIR CARRIER: Mr. Orens, do you have anything different
2 to say?

3 MR. ORENS: Yes, very briefly. I think we have to keep in
4 mind the distinction between a lot, a recorded lot that's on a
5 plat, and a farm tenant dwelling that is on the same farm, no
6 on a separate lot, as farm operations. If any of the seven
7 farm tenant dwellings were to come before you as part of an
8 application to separate those by creating lot lines and
9 separating them from the farm to which they pertain where farm
10 workers live, that would be a subdivision, that would be when
11 you are creating lots, and then you would count those lots and
12 the houses on them against the development rights or
13 transferrable development rights. But when you read the zoning
14 ordinance and you understand that so long as the farm tenant
15 dwelling is not separated from the farm that it's operating,
16 and here you have two large farms that have farm tenant
17 dwellings that are on the same parcel. They're not separate
18 lots, and under the, the way the zoning ordinance is written
19 today, they are not, they can't be sold. They can't be.

20 CHAIR CARRIER: I'm going to cut you off because you're
21 not actually responding to the issue I raised, which was the
22 question whether we can reach out and bring them in right now.
23 We don't need to hear the argument on that legal issue.
24 Unless we decide that we want, we don't need to hear it at

1 all, truthfully, because if we decide we want to reach out and
2 do it, we are taking a risk that you all are going to appeal
3 and we will lose. So I, given the lateness of the hour, with
4 all due respect, I'd love to hear your argument another time,
5 but not now.

6 COMMISSIONER DREYFUSS: When you say bring them in are you
7 suggesting that they be recorded in their current locations?

8 CHAIR CARRIER: I was, um, I. No. I don't. Well. It's
9 not a question of recording them. As I understand it, the law
10 says that you don't have to count existing houses in your
11 calculation of one house per 25 acres unless you subdivide the
12 property, and the wording is "subdivide the property". So, the
13 legal issue, I think, would be what does the property mean?
14 It's a broad and vague term. Um, you know. The question is how
15 a court would define that. Would a court say for each of the
16 seven tenant houses and the two main houses, which I had
17 forgotten about, so that makes it a total of nine, of course,
18 if I had one the math, I would know that the difference
19 between 24 and 33 is 9. My fourth grader could have told me.
20 Whether a court would say that subdividing the property means
21 subdividing around each of those houses, or whether
22 subdividing the property means subdividing any part of it.
23 They are, from, you know, and intuitive perspective, it seems
24 to me, subdividing the property. They are asking this agency

1 to divide it up and make lots out of parts of it. So, I would
2 argue that they don't get any more, that 33 is it and the nine
3 existing home count. Mr. Orens was very prepared to give us
4 his argument to the contrary. So that's a legal issue. And my
5 question was not who wins that legal battle. My question was,
6 if we want to assume that I'm right, can we do that. Can we as
7 the Planning Board say, 33, this is it. You get the 24 new
8 ones, and the nine existing, and you don't get to ever come
9 back, and I don't know the answer to that question.

10 I think the answer comes.

11 CHAIR CARRIER: Sounds like we don't, we haven't figured
12 it out.

13 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: And I think
14 the answer, or the appropriate time to address that question
15 is if and when they come back for additional density. Have
16 they used all the density or not. But I think that that's
17 appropriate when they come in, if and when they come in for
18 that.

19 COMMISSIONER ALFANDRE: Carol, I have to

20 COMMISSIONER PRESLEY: And that's another answer, then
21 that's where I would not be comfortable with the whole number
22 thing because, you, we don't know yet what situation

23 COMMISSIONER ALFANDRE: Not only that. I don't know, then,
24 if it's consistent with the master plan.

1 COMMISSIONER PRESLEY: That's what I'm saying.

2 MR. KNOPF: Madame Chair, may I have 15 second to clarify
3 this.

4 CHAIR CARRIER: You may, but only if you can actually
5 address my question instead of giving me the legal argument
6 that I don't want to hear.

7 MR. KNOPF: I am aware, and I believe you can ask the
8 staff, on the, I'm sorry I don't have the exact cases in mind,
9 but there have been numerous instances that this Board on
10 subdivision where someone has come in with part of a larger
11 parcel to subdivide, and because of environmental or other
12 concerns, the Board has said, we want you to bring the whole
13 parcel in and make it part of the subdivision. I believe you
14 have the authority in your discretion to say that because of
15 the circumstance here where you expounded it that it's
16 involved already. But you borrow land and you're using some of
17 the main property, you can say we want to look at the entire
18 parcel. Excuse me, and you can condition that, ask the
19 applicant to, whether he'll agree, and if not, you can decline
20 to affirm this, uh, approve it unless that's part of the
21 condition. I thought the answer was already given by Carol
22 Rubin when she said, this whole parcel, 840 acres was
23 subdivided, just portions weren't unplatted. Well if it's
24 subdivided, all 840 acres that answers the question. You've

1 knocked out the exemption for the tenant farms because it's
2 been subdivided. Thank you.

3 CHAIR CARRIER: Ms. Rubin, do you have any experience with
4 past actions by this Board as Mr. Knopf suggests?

5 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: That
6 particular question, I have not had to deal with regard to,
7 but I do agree as far as whether, how the court would answer
8 that. But I do agree, and as I said before, the entire
9 property, it's defined in the staff report if you look in the
10 site description. It identifies the property as 840 acres.
11 And then you look at the data table. It also identifies the
12 entire property as part of the subdivision. So the only
13 question is whether, when it, when the, I have to look at the
14 zoning ordinance, the specific language and, and, and analyze
15 whether that means in fact, it, that the farm tenant dwellings
16 are going to apply as part of the density count or not. But as
17 I said before, that's not before the Board today, and I'm not
18 prepared to give a legal analysis of that, and if I was, I
19 probably would want to do it in closed session.

20 CHAIR CARRIER: You know, I'm, I'm, uh, I'm finding that
21 I, my instinct at this point is, and I hate to even use this
22 word, but to defer a decision, um, because I feel like we are,
23 it seems to me that it would make sense to just, to decide
24 this question. But we don't have enough information at this

1 point to do it. And I would like to have advice of counsel as
2 to whether, um, whether the Board can put a condition on it
3 saying, you get 24 new lots and your 9 existing home sites use
4 up the rest of your density.

5 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: I guess my
6 question is why is it, in other words, if it's not, if the
7 applicant is not requesting more than 24 lots today, why

8 CHAIR CARRIER: Because I think it helps us to assess
9 compliance with the master plan.

10 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: Ok.

11 CHAIR CARRIER: Because I think if we don't know whether
12 we're, whether the possibility is 33 houses or 41 houses, I
13 personally find it difficult to make an assessment of what is
14 the crucial question which is, does this substantially comply
15 with the master plan.

16 MR. ORENS: Madame Chair, if the Board believes that the
17 evidence of record supports that, I believe Ms. Rubin is
18 correct. You could, we won't agree with it, but you could over
19 our objection impose that as a condition. Approve the 24 lots
20 and state that the Board concludes that the, uh, farm tenant
21 dwellings are counted in the calculation of density. Whether
22 that's legally correct or not, uh, is essentially for a court
23 to decide should the applicant want to appeal it. Uh, I'm
24 saying how you can move forward. I'm not saying that that's

1 the, I am not speaking for the applicant and saying that that
2 is our position. That is not our position.

3 CHAIR CARRIER: You've just given us some free legal
4 advice. I love that.

5 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: He didn't
6 say it was free. [LAUGHTER]

7 MR. ORENS: But you don't have to pay for it.

8 CHAIR CARRIER: Nothing is free.

9 MR. ORENS: Well, I, I think that is a way that we can
10 move forward.

11 COMMISSIONER ALFANDRE: But here's the problem. The

12 CHAIR CARRIER: Mr. Dreyfuss was trying to say something.

13 COMMISSIONER ALFANDRE: The seven lots. We just haven't
14 even looked at them yet. We haven't looked at them yet.

15 CHAIR CARRIER: Mr. Dreyfuss, were you going to try and
16 say something?

17 COMMISSIONER DREYFUSS: I understood the problem to be
18 committing the other nine houses to this plan so that you know
19 with as certainty that this is the final plan, and, the, our
20 legal counsel said that's not part of this application and
21 you've asked her to do some more work. But if she concludes
22 that we can do it, we would do no different than what we're
23 proposing right now, which is approve it with that condition.
24 If the condition is valid, it's going to hold up. If it's not

1 valid, it won't hold up, and it doesn't really change the
2 decision that we would like to make but can't. So you can make
3 that decision.

4 COMMISSIONER ALFANDRE: Norman, here is where, Well, I
5 can't because I haven't looked at the nine. I said seven. I
6 meant nine. I haven't even looked at it.

7 COMMISSIONER DREYFUSS: You don't have to.

8 COMMISSIONER ALFANDRE: It's part of the plan.

9 COMMISSIONER DREYFUSS: But some other members here may
10 find that comfortable enough.

11 COMMISSIONER ALFANDRE: I understand. I'm just saying that
12 because I haven't looked at it.

13 COMMISSIONER DREYFUSS: But the comments from some others
14 where we want to make sure that the 33, I mean the 24 and the
15 9 are it. That was the end of it.

16 COMMISSIONER ALFANDRE: No. My comment was

17 COMMISSIONER DREYFUSS: They're satisfied.

18 COMMISSIONER ALFANDRE: But I think it's important that
19 we go on record that we feel this is consistent with the
20 master plan, and not looking at those 9 in this context, which
21 we didn't do. They were just talked about tenant remainders.
22 I didn't even, you know, think of them that way.

23 COMMISSIONER DREYFUSS: Because they're not part of the
24 application.

1 COMMISSIONER PRESLEY: Exactly the point. [LAUGHTER]

2 COMMISSIONER ALFANDRE: But they don't have to be.

3 CHAIR CARRIER: I think that they. The point, my point is
4 that I think that they should be. I think that the, I think
5 that the, the clear way to handle this is to look at the
6 property as a whole and assess if the compliance of the whole
7 think, um, with the goals of the master plan.

8 COMMISSIONER DREYFUSS: So would you, so you wouldn't
9 approve it requiring those nine to be part of the plan?

10 CHAIR CARRIER: No. I think that I, you know, having
11 gotten Mr. Orens' legal advice on the subject, I think that I,
12 uh, I think that I could support a motion to approve the 24
13 with a condition added, and I don't know exactly how to word
14 it. Maybe staff could help word or

15 MR. WEAVER: Could this possibly be a note on the record
16 plat?

17 CHAIR CARRIER: A note on the record plat sounds good.
18 See, there we go.

19 MR. WEAVER: Something to the effect that density has been

20 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: I would
21 simply refer

22 CHAIR CARRIER: Maybe it's that instead of saying the 24,
23 don't we have a note

24

1 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: I would
2 recommend

3 CHAIR CARRIER: What about condition 13? Maybe we say
4 that 33 TRS have been removed rather than saying 24.

5 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: I would
6 recommend

7 CHAIR CARRIER: But that's not exactly it, is it?

8 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: No. I would
9 recommend simply a reference to the section in the zoning
10 ordinance that specifically, that says once a property, that
11 it generally excludes farm tenant dwellings from the density
12 calculation, but then says that once the property is
13 subdivided, they're excluded. And I would refer to it that
14 way as opposed to trying to finagle it some other. Just
15 straight refer to that so it's clear what the Board's
16 rationale was if that's the direction that the Board is
17 choosing to go. As I said, I'm not sure whether the, you know,
18 whether the applicant will agree with that or, you know,
19 whether it's going to end up being a subject of appeal.

20 MR. WEAVER: A hypothetical situation, though, is the
21 tenant structures are removed.

22 MS. RUBIN: That's correct, but I think that it's in there
23 that they're, they're. That's right, once it's removed, then
24

1 they would have the additional density because it doesn't, it
2 simply reduces the density.

3 CHAIR CARRIER: If they tear down a house. If we've got
4 this condition and they tear down a house, then they could
5 come in and ask for another lot right?

6 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: Correct.

7 CHAIR CARRIER: So it's, nothing is forever. But this is
8 as close to complete as we could get it. So it sounds like
9 we're looking at language that would say something like per
10 section whatever it is of the zoning ordinance, following this
11 subdivision, the 9 existing, we call them residences?

12 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: Farm tenant
13 dwellings.

14 CHAIR CARRIER: But they're not all tenant dwellings,
15 right?

16 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: Correct.

17 COMMISSIONER DREYFUSS: Farm dwellings?

18 MS. CAROL RUBIN, LEGAL COUNSEL TO THE BOARD: It's the
19 farm tenant dwellings that are excluded from the density
20 calculation of the zoning ordinance.

21 MR. WEAVER: There's one guest house and

22 MS. AMY LINDSEY: There is a guest house. They are, in the
23 zoning ordinance, I think they use accessory dwellings for
24 this entire group.

1 CHAIR CARRIER: Ah. Ok. Oh, they're farm accessory
2 dwellings, or just

3 MS. LINDSEY: Just accessory dwellings.

4 CHAIR CARRIER: The nine existing accessory dwellings, um,
5 are included in the total permitted density of 33 residences.
6 Is that the right word to use? Carol?

7 MS. RUBIN: I'm sorry?

8 MR. KNOPF: Residential structures.

9 CHAIR CARRIER: Careful there, Mr. Knopf.

10 MR. WEAVER: They're all residential structures and would
11 be appropriately named.

12 CHAIR CARRIER: Residential structures. Ok.

13 [INDECIPHERABLE CHATTER]

14 [NOTE: discussions off the record for several minutes]

15 CHAIR CARRIER: I'm sorry folks. I appreciate your
16 indulgence. I know it's not fascinating to watch us do this.

17 [INDECIPHERABLE CHATTER]

18 CHAIR CARRIER: Let's take a little recess because we
19 clearly need a few minutes to talk about this.

20 COMMISSIONER DREYFUSS: The Chairman and counsel and plan
21 director have

22 CHAIR CARRIER: Alright.

23 COMMISSIONER DREYFUSS: After midnight.

24

1 CHAIR CARRIER: Only for a moment because it is five
2 minutes to midnight. Mr. Orens has asked for our indulgence
3 for a moment. Apparently, his client would like to say
4 something.

5 MR. ORENS: Thank you, Madame Chair for your indulgence.
6 We have clarified with the client, and we've been given the
7 opportunity to read the language that is proposed, and while
8 we do not agree to accept it, we understand it. We understand
9 what the Board is concluding and we ask that you take your
10 final action now based on the language that you have, and your
11 attorneys have corrected.

12 MS. ROSE KRASNOW, DIVISION CHIEF DEVELOPMENT REVIEW
13 DIVISION: And with that said, I would like to read you the
14 language we have drafted. I'm not sure that everyone knows
15 what that language is, and this would be changing condition
16 number 13, and it would read, if you look at your staff report
17 on page three, it would read as the entire condition would
18 read as follows. Record plat must reference a recorded
19 easement for the parent parcels indicating one: that density
20 and TDRs for these lots was removed from the parent parcels,
21 and two: per 59(c)9.41 of the zoning ordinance following this
22 subdivision, any farm tenant dwelling, farm tenant mobile home
23 or guest house is included in the total permitted density of
24 33 residential structure on the property.

1 COMMISSIONER DREYFUSS: Ok. With that condition added, I
2 would recommend approval of the staff report, plus the
3 condition on the equestrian easement.

4 COMMISSIONER ALFANDRE: And, I can support it, because I
5 think it is, it's a good plan that's consistent with the
6 master plan.

7 COMMISSIONER DREYFUSS: Mine was a motion. Did I make a
8 motion?

9 CHAIR CARRIER: I was taking that as a motion and I was
10 taking that a second. Given the hour, you know, our vocabulary
11 is limited. So, we'll go with that as a motion and Mr.
12 Alfandre's as a second, any further discussion?

13 COMMISSIONER PRESLEY: I'll just add one more note because
14 I think the language that you added Rose is probably the best
15 within what I heard tonight that the staff feels that it can
16 do. I still personally question whether the number starting
17 with the 24 is in keeping with the plan based on all other
18 factors. So, when I don't vote along with you, only because I
19 don't think you made the yeomen's effort to get the best that
20 you thought you could. But I wanted to register my
21 disagreement in that way, so.

22 CHAIR CARRIER: Ok. All those in favor say aye.

23 COMMISSIONERS: Aye, aye, aye aye.

24 CHAIR CARRIER: Opposed?

1 COMMISSIONER PRESLEY: Opposed.

2 CHAIR CARRIER: You've got your subdivision now go get a
3 conservation easement on some of it. Make everybody happy.

4 MR. ORENS: Thank you all for putting up with us at this
5 late hour.

6 CHAIR CARRIER: And thank you to those in the audience for
7 your indulgence of how long this took and the fact that we
8 started late.

9 VICE CHAIR WELLS-HARLEY: Good Morning everyone.

10 [LAUGHTER]
11
12
13
14

15 CERTIFICATION

16
17 This is to certify that the attached proceedings before
18 the Maryland-National Capital Park and Planning Commission,
19 Montgomery County Planning Board, in the matter of
20 Preliminary Plan 120090110, Barnesville Oaks Farms, held in
the auditorium at 8787 Georgia Avenue, Silver Spring,
Maryland, on Thursday, July 22, 2010, were held as herein
appears, and that this is a transcript from the recording.

21
22 
23 M. Clara Moise
24 Technical Writer

49858 244

Tax ID # 11-01991498

(2)

Attachment D

DECLARATION OF RESTRICTIVE COVENANT / EASEMENT

THIS DECLARATION, made this 3rd day of December, 2014 by Balsamah Corporation, N.V., a Willemstad, Curacao corporation, hereafter referred to as "Covenantor", is the owner of the following property:

SEE ATTACHED SCHEDULE A

WITNESSETH

WHEREAS, the above referenced property ("Property") is the subject of Preliminary Plan No. 120090110, approved by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission during its meeting on July 22, 2010, and memorialized by Resolution No. 10-129, dated September 28, 2010

WHEREAS, the Property is in the Agricultural Reserve Zone (AR), which limits development to one one-family dwelling unit for every twenty-five (25) acres of land.

WHEREAS, the Property consists of 840.13 acres of land, and is being subdivided into one-family detached residential lots on 55.23 acres of land to be shown on a Subdivision Record Plat and recorded among the Land Records of Montgomery County, Maryland and an of dedication containing 4.514 acres of land. The remaining 780.44 acres of land become the Remainder Parcels as shown on the above referenced Preliminary Plan of Subdivision and will be noted on the aforesaid Subdivision Record Plat.

WHEREAS, Condition 13 of Resolution No. 10-129 requires an easement to be recorded for the parent parcels indicating (i) that density and TDRs for these lots was removed from the parent parcels and (ii) per Section 4.2.1.D2 of the Montgomery County Zoning Ordinance 2014, following this subdivision, any farm tenant dwelling, farm tenant mobile home, or guest house is included in the total permitted density of 33 residential structures on the Property.

MONTGOMERY COUNTY, MDAPPROVED BY MB

FEB 23 2015

\$ 000 RECORDATION TAX PAID
\$ 000 TRANSFER TAX PAID

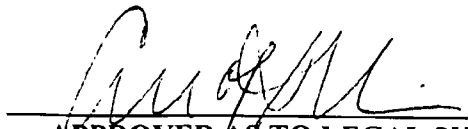
FILED
CLERK OF COURT
CLERK'S OFFICE
MONTGOMERY CO. MD.

WRIT FD SURE	40.00
RECORDING FEE	20.00
TOTAL	60.00
Res # 10005	RCP# 4 37416
BHM NVE	BLK # 6367
Feb 23, 2015	03:41 PM

508
208

NOW THEREFORE, in consideration of the promises herein made and other good and valuable consideration, the Covenantor does hereby covenant and agree, for them, their successors and assigns that:

- (1) The Property consists of 840.13 acres of land, on which thirty-three (33) one-family dwelling units are permitted.
- (2) Covenantor proposed up to 24 one-family dwelling units as part of approved Preliminary Plan 120090110. The Remainder Parcel of 780.44 acres of land can accommodate an additional 9 one-family dwelling units, which, in accordance with Section 4.2.1.D2 of the Montgomery County Zoning Ordinance 2014 shall include any farm tenant dwelling, farm tenant mobile home, or guest house.
- (3) The covenant contained herein shall run with the land and shall bind the Covenantor and the Covenantor's heirs, executors, administrators, successors and assignees, and shall bind all present and subsequent owners of the Property.
- (4) This Covenant shall be recorded among the Land Records of Montgomery County, Maryland prior to the recordation of the Final Record Plat and shall be reflected on the Final Record Plat by references to the Liber and Folio.

 12/17/14
 APPROVED AS TO LEGAL SUFFICIENCY
 Office of the General Counsel — M-NCPPC

SIGNATURE PAGE TO FOLLOW

49858 246

IN WITNESS WHEREOF, the Covenantor has executed this Declaration of Covenants as of this 3rd day of December 2014.

[Signature]
WITNESS:

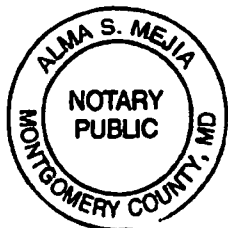
COVENANTOR:

[Signature]

STATE OF Maryland, County of Montgomery:

On this 3rd day of December, 2014, personally appeared before me, a notary public in and for the aforesaid jurisdiction, the said Alma Maja being duly authorized, and known to be (or satisfactorily proven) to be authorized to act on behalf of Balsamah Corporation, N.V. and acknowledged that this Covenant was freely and voluntarily executed for the purposes stated therein.

WITNESS my hand and official seal.



ALMA S. MEJIA
Notary Public, State of Maryland
County of Montgomery
My Commission Expires 08/23/2016

[Signature]
Notary Public
My Commission Expires: 8/23/2016

THE UNDERSIGNED, a member in good standing of the Bar of the Court of Appeals of Maryland, hereby certifies that the within instrument was prepared by him or under his immediate supervision.

[Signature]
Stephen J. Orens

Tax Id No: 11-01991498

After Recording Please Return to:

Rebecca D. Walker, Esquire
Stephen J. Orens, Esquire
Miles & Stockbridge, P.C.
11 N. Washington Street, Suite 700
Rockville, Maryland 20850

SCHEDULE A

METES AND BOUNDS DESCRIPTION
PROPERTY OF
BALSAHMA CORPORATION N.V.

BARNESVILLE ELECTION DISTRICT.NO. 11
MONTGOMERY COUNTY, MARYLAND

840.1322 ACRES

BEING the same land described in a deed from The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the U.S.A and Ruth McCormick Tankersley to Malsama Corporation N.V. (now known as Balsamah Corporation NV) dated May 23, 1980, and recorded in Liber 5522 at Folio 867, among the Land records of Montgomery County, Maryland containing 840.1322 acres; and

BEING the same land conveyed by a Deed of Quitclaim from Ruth McCormick Tankersley to Balsamah Corporation NV, formerly known as Malsama Corporation N.V. dated July 9, 1981 and recorded in Liber 5731 at Folio 822, among the aforesaid Land records.

Area III Division
Montgomery County Planning Department
The Maryland National Capital Park & Planning Commission

**STATEMENT OF JUSTIFICATION IN SUPPORT OF
PRELIMINARY PLAN AMENDMENT**

Preliminary Plan: 120090110B – Barnesville Oak Farm (a/k/a Greentree Farm)
Property: Parcel 070, Tax Map CU53
Address: 21121 Beallsville Road, Dickerson, MD 20842
Applicant: Stud Farm, LLC

The Applicant, Stud Farm, LLC (the “Applicant”), submits this Statement of Justification in support of its request to amend Condition No. 13 of MCPB Resolution No. 10-129 (the “Condition”), approving Preliminary Plan No. 120090110 (the “Preliminary Plan”), as amended, and in support thereof states as follows:

I. Introduction

This preliminary plan amendment proposes to: (1) amend the Condition to eliminate the density restriction imposed upon Farm Labor Housing Units in accordance with §59.4.2.1 of the Montgomery County Zoning Ordinance, as recently amended by Zoning Text Amendment (“ZTA”) 17-06; and (2) release Parcel 070 (Tax Map CU53), with a street address of 21121 Beallsville Road, Dickerson, MD 20842 (the “Subject Property”), from the Declaration of Restrictive Covenant/Easement dated December 3, 2014 and recorded on February 23, 2015 among the Land Records for Montgomery County, Maryland in Liber 49858 at folio 244 (the “Covenant”) that imposes the density restriction per the Condition.

Accordingly, this preliminary plan amendment confirms that the existing Farm Labor Housing Units depicted on the Preliminary Plan are excluded from the density calculation under §59.4.2.1 of the Montgomery County Zoning Ordinance and therefore, do not need to retain a

development right. This preliminary plan amendment proposes no new lots for residential dwelling units at this time.

II. Background

On or about December 4, 2008, Balsamah Corporation NV filed the Preliminary Plan to subdivide approximately 840 acres of land classified in the Rural Density Transfer (RDT) zone and situated on the east and west sides of Peach Tree Road in Dickerson, Maryland (the “Parent Tract”). At the time the Preliminary Plan was filed, the Parent Tract was improved with 9 residential structures, which included, 2 primary residential homes, 1 guest house and 6 farm tenant dwellings, one of which is identified on the Historical Atlas as the John Lynch Farm (#18/8). The Parent Tract also had 33 development rights.

The Preliminary Plan proposed subdividing the 840 acres into: (1) 24 lots for 24 new one-family dwelling units¹ on 55.23 acres; (2) 4.514 acres of dedication for road improvements; and (3) 2 farm parcels totaling 780.44 acres and improved with the 2 primary residential homes, 1 guest house and 6 farm tenant dwellings. It also proposed to retain the remaining nine (9) development rights with the 2 farm parcels. However, contrary to precedent, the Planning Board, through a condition of preliminary plan approval, required that the 1 guest house and 6 farm tenant dwellings be included in the density calculation for the Preliminary Plan and therefore, each retain a development right.

Specifically, at its July 23, 2010 public hearing, the Planning Board for the Maryland-National Capital Park and Planning Commission (the “Planning Board”) approved the Preliminary Plan with conditions. MCPB Resolution No. 10-129, a copy of which is attached

¹ MCPB Resolution No. 10-129 approved 21 lots, 3 outlots and 2 unplatted farm parcel. The 3 outlots were approved pending septic approval, subsequently obtained that approval and were converted to lots.

hereto and incorporated herein as **Exhibit A**, (the “Resolution”), memorialized the Planning Board’s decision and included Condition, No. 13, which states:

- 13) Record Plat must reference a recorded easement [the Covenant] from the parent parcels indicating i) that density and TDRs for these lots was removed from the parent parcels; and ii) per §59-C-9.41 of the Montgomery County Zoning Ordinance, following this subdivision, any farm tenant dwelling, farm tenant mobile home, or guest house is included in the total permitted density of 33 residential structures on the Property.

The Condition arguably imposes a density restriction by requiring that the 6 farm tenant dwellings and 1 guest house be included in the total permitted density for the Preliminary Plan and each retain a development right.

The density restriction set forth in the Condition was a direct result of the Planning Board reversing its prior interpretation of §59-C-9.41 of the Montgomery County Zoning Ordinance, 2004 (hereinafter “Section 59-C-9.41” or “§59-C-9.41”), which provided that:

Only one one-family dwelling unit per 25 acres is permitted. (See Section 59-C-9.6 for permitted transferable density.) The following dwelling units on land in the RDT zone are excluded from this calculation, provided that the use remains accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

- (a) A farm tenant dwelling, farm tenant mobile home, or guest house, as defined in Section 59-A-2.1.
- (b) An accessory apartment or accessory dwelling regulated by the special exception provisions of Division 59-G-1 and 59-G-2 and Section 59-A-6.20.

The approval of the Preliminary Plan was the first time the Planning Board determined that the subdivision of RDT property (*ie.* the fact that the property went through the subdivision process) was the triggering event under §59-C-9.41 for inclusion of farm tenant dwellings, farm tenant mobile homes or guest houses in the density calculation. Prior to the Preliminary Plan, §59-C-9.41 had been interpreted to include in the density calculation those farm tenant dwellings, farm tenant mobile homes and guest houses that no longer remained accessory to

farming and the principal dwelling after subdivision (*ie.* the subdivision severed them from farm and principal dwelling). This changed interpretation of §59-C-9.41 (the “2010 Interpretation”) misguided the Planning Board’s interpretation of the Functional Master Plan for the Preservation of Agricultural and Rural Open Space (the “AROS Master Plan”), erroneously limited the Preliminary Plan to 24 lots/new dwelling units and required development rights be retained for the 6 farm tenant dwellings and 1 guest house, in addition to the 2 existing principal structures. Under the pre-2010 Interpretation, the density for the Preliminary Plan would have excluded the 6 farm tenant dwellings and 1 guest house, limiting density to 31 lots/new dwelling units (assuming the 2 principal structures retained development rights).

In order to vest the Preliminary Plan, the Applicant’s predecessor in title recorded among the Land Records for Montgomery County: (1) the Covenant on February 23, 2015, a copy of which is attached hereto and incorporated herein as **Exhibit B**; and (2) Plat Nos. 25048 – 25051 on October 29, 2015.

Subsequently thereto, the Montgomery County Council, sitting as the District Council (the “Council”), adopted ZTA 17-06 as Ordinance Number 18-39 (“ZTA 17-06”). This legislative action corrected the 2010 Interpretation, thereby rendering the Condition and Covenant invalid. Accordingly, the Applicant requests an amendment to the Condition to eliminate the Preliminary Plan density restriction and release the density restriction in the Covenant from the Subject Property. Through this amendment, the Applicant will be afforded the same rights afforded to similarly situated properties within the County by virtue of ZTA 17-06.

III. The Council Corrected the 2010 Interpretation through the Adoption of ZTA 17-06.

Prior to the Preliminary Plan, the Planning Board and the Maryland-National Capital Park and Planning Staff interpreted §59-C-9.41 as excluding farm tenant dwellings, farm tenant mobile homes or guest houses from the density calculation for property classified in the RDT zone unless the use was subdivided from the parent tract, causing it to no longer be accessory to farming and the principal dwelling. The 2010 Interpretation reversed that interpretation and was regrettably codified as §59.4.2.1.D.2 in the comprehensive amendment to the Montgomery County Zoning Ordinance, ZTA 13-04, adopted by the County in 2013 as Ordinance Number 17-43 (the “Comprehensive Amendment”). The Comprehensive Amendment also converted the RDT zone to the Agricultural Reserve (AR) zone. The Parent Tract was reclassified to the AR zone by the associated District Map Amendment G-956.

By legislative act, the Council corrected §59.4.2.1.D.2 on January 23, 2018 by re-enacting §59.4.2.1.D.2 of the Montgomery County Zoning Ordinance to eliminate the 2010 Interpretation. Accordingly, §59.4.2.1.D.2 (again) excludes Farm Labor Housing Units (previously known as farm tenant dwellings and farm tenant mobile homes) from the density calculation for properties in the AR zone if the use remains accessory to farming and the principal dwelling following subdivision.

IV. The Preliminary Plan Amendment is Necessary to Remove an Invalid Condition and Covenant and Uniformly Apply the Zoning Ordinance to all Affected Properties.

The Council took legislative action to correct the 2010 Interpretation. ZTA 17-06 has struck the 2010 Interpretation from the Zoning Ordinance by making it crystal clear in

§59.4.2.1.D.2.b² when a Farm Labor Housing Unit is and is not included in the AR (formally RDT) density calculation. The Council's decision was not made in a vacuum. It was fully aware of the existing AROS Master Plan and presumptively took it into consideration when it adopted ZTA 17-06.

As a result, both the Covenant and Condition have been invalidated, requiring Planning Board action to bring them into compliance with the current law. The Covenant and Condition are both predicated on a code section that has been overturned by a subsequent and presumptively valid legislative act. The Condition was based on the erroneous 2010 Interpretation that was incorporated into §59.4.2.1.D.2 of Montgomery County Zoning Ordinance during the Comprehensive Amendment. The Covenant specifically incorporates §59.4.2.1.D.2 by reference as the basis for the Preliminary Plan density restriction. Subsequently, §59.4.2.1.D.2 of the Montgomery County Zoning Ordinance has been corrected, rendering both the Covenant and Condition invalid.

Further, the subdivision of any similarly situated properties in the AR zone will be evaluated under §59.4.2.1.D.2 of the Montgomery County Zoning Ordinance, as amended. Accordingly, those applicants will be entitled to exclude Farm Labor Housing Units from the density calculation/development rights retention requirement. Thus, it is only fair that §59.4.2.1.D.2 of the Montgomery County Zoning Ordinance, as amended by ZTA 17-06, be uniformly applied to all affected properties in the AR zone, especially in absence of any language in §59.4.2.1.D.2 to the contrary. Accordingly, the Applicant requests that

² "If a property is subdivided so that any Farm Labor Housing Units or Detached Accessory Apartments are no longer accessory to the farm as defined in Section 59.3.7.4.B, any Farm Labor Housing Units or Detached Accessory Apartments are not excluded from the calculation of density and must have retained a development right in addition to the retained development right for any newly created lot; however, these dwellings are excluded from the density calculation and need not have a retained development right if: i. the dwelling remains accessory to Farming and the principal dwelling; or ii. the subdivision is for the sole purpose of creating a child lot."

§59.4.2.1.D.2 of the Montgomery County Zoning Ordinance, as amended by ZTA 17-06, is applied to the Preliminary Plan density calculation through this preliminary plan amendment and that the Planning Board:

1. Amend the Condition as follows:

Record Plat must reference a recorded easement for the parent parcels indicating that density and TDRs for these lots was removed from the parent parcels.

2. Approve for legal sufficiency a Covenant amendment to be recorded among the Land Records for Montgomery County, Maryland to release the density restriction from the Subject Property.

V. CONCLUSION

For the foregoing reasons, Stud Farm, LLC, respectfully requests that the Planning Board amend Condition No. 13 and release the density restriction in the Covenant from the Subject Property, all as provided by § 59.4.2.1.D.2 of the Montgomery County Zoning Ordinance.

On behalf of the Applicant, the undersigned certifies that the information set forth in this statement of justification is true, complete, and correct to the best of their knowledge, information, and belief as of the date set forth below.

Respectfully submitted,

Miles & Stockbridge P.C.

Casey L. Cirner

Date

McMillan Metro, P.C.

Stephen J. Orens

Date

Peter Ciferri

Date

Exhibit A
Planning Board Resolution



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 10-129
Preliminary Plan No. 120090110
Barnesville Oak Farm
Date of Hearing: July 22, 2010

SEP 28 2010

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, Balsamah Corporation N.V. (formerly known as Malsama Corporation N.V.), a Netherlands Antilles corporation ("Balsamah") is the owner of approximately 840 acres of land located on the east and west sides of Peach Tree Road, bounded on the north by Whites Store Road and to the west by Beallsville Road (MD 109) ("Property" or "Subject Property"); and


WHEREAS, by letter dated November 13, 2008, Balsamah authorized Katherine S. Sexton and/or Barnesville Oak Farms LLC, a Maryland corporation, as their appointed representatives to act individually or together, on behalf of Balsamah to take all necessary steps to obtain preliminary subdivision plan approval for the Property; and

WHEREAS, on December 4, 2008, Barnesville Oak Farms LLC, ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 21 lots and 3 outlots for up to 24 one family detached dwelling units and two farm parcels to be unplatted on the Property, in the Agricultural and Rural Open Space Master Plan ("AROS Master Plan") area; and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120090110, Barnesville Oak Farm, ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated July 9, 2010, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

Approved as to
Legal Sufficiency:

 8/31/10

8787 Georgia Avenue, N.W. • Suite 100 • Washington, D.C. 20012 • Phone: 301.495.4605 • Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

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WHEREAS, Montgomery Countryside Alliance and the Audubon Naturalist Society, two parties of record requested a delay of the Hearing alleging that Balsamah did not have authority to authorize their appointed representatives to file the Application and act on its behalf during the proceedings for the Application because neither Balsamah, its predecessor in interest (Malsama Corporation), nor its Managing Director (Curcao Corporation) is registered to do business in the state of Maryland; and

WHEREAS, upon testimony heard and evidence submitted for the record by Montgomery Countryside Alliance, the Audubon Naturalist Society, and Applicant as a preliminary matter on July 23, 2010, the Planning Board denied the request for delay, on motion of Commissioner Dreyfuss; seconded by Commissioner Wells-Harley, with a vote of 4-0, Commissioners Dreyfuss, Wells-Harley, Alfandre, and Carrier, voting in favor, with Commissioner Presley abstaining; and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on July 23, 2010, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on July 23, 2010, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Dreyfuss; seconded by Commissioner Alfandre, with a vote of 4-1, Commissioners Dreyfuss, Alfandre, Carrier, and Wells-Harley voting in favor, with Commissioner Presley voting to disapprove.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No.120090110 to create 21 lots and 3 outlots for up to 24 one family detached dwelling units, and two unplatted farm parcels on 840 acres of land, in the RDT zone, located on the east and west sides of Peach Tree Road, bounded on the north by Whites Store Road and to the west by Beallsville Road (MD 109), in the AROS master plan area, subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 21 one-family detached residential lots and 3 outlots for up to 24 one family detached dwelling units, and two unplatted farm parcels.
- 2) The applicant must comply with all conditions of approval of the preliminary forest conservation plan prior to plat recordation or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permit(s), as appropriate. Conditions include, but are not limited to:
 - a. Category I conservation easements on platted portions of the Property

- must be shown on the record plats.
- b. Category I conservation easements must be placed over all forest conservation areas located on the unplatted farm remainders of the Property. These conservation easements must be recorded by deed in the County land records and referenced on the record plat(s) for the residential lots.
- 3) A Public Use Trail Easement ("PUTE") must be created on the Property as shown on the preliminary plan. The PUTE will name Equestrian Partners in Conservation ("EPIC"), a 501c3 non-profit corporation, its successors or assigns, or another suitable entity identified by MNCPPC staff, as the Grantee and must include, at a minimum: (i) the conditions and restrictions governing uses that are within the definition of "Recreational Purpose" as defined in the MD Ann. Code, Natural Resources Article, §5-1101; (ii) the right of Grantee to construct, maintain and repair the trail, with no obligation by either Grantee or the Grantor to do so; and (iii) rights of enforcement by both the Grantor and the Grantee, with no obligation on either to do so. The PUTE must be approved by the Commission's Office of the General Counsel which approval may not be delayed beyond 120 days following adoption of the MCPB Resolution of approval of the Preliminary Plan but no less than 90 days after submission of a reasonable draft for review. Prior to recordation of the initial plat, the applicant must record the PUTE in the land records and the plat must include a reference to the Liber and Folio of the recorded PUTE. Should the designated Grantee as specified herein decline to accept the PUTE, the record plat may be recorded without the reference.
 - 4) Prior to recordation of the plat(s), Applicant must submit an affidavit to MNCPPC staff that verifies the availability of one Transferrable Development Right for each lot and outlot shown on the plat(s).
 - 5) The record plat must show dedication of Peach Tree Road to a width of 70 feet (or 35 feet from centerline) to Rustic Road standards and the new internal road (Barnesville Oak Lane) as a 50 foot wide tertiary road right-of-way as shown on the approved preliminary plan.
 - 6) The Applicant must construct all road improvements within the rights-of-way shown on the approved preliminary plan to the full width mandated by the master plan and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the preliminary plan, "To Be Constructed By _____" are excluded from this condition.
 - 7) The record plat must reflect common ingress/egress and utility easements over all shared driveways.
 - 8) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated September 9, 2009 and reconfirmed on May 14, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.

- 9) The Applicant must comply with the conditions of the MCDPS, Well and Septic Section approval dated April 16, 2010. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 10) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated June 23, 2009. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the preliminary plan approval.
- 11) The certified preliminary plan must contain the following note: "Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints and driveway locations shown on the preliminary plan are illustrative. The final locations of buildings, structures and hardscape will be determined during the building permit approval process. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board's approval."
- 12) Record Plat must contain the following note: "Agriculture is the preferred use in the Rural Density Transfer Zone. All agricultural operations shall be permitted at any time, including the operation of farm machinery, and no agricultural use shall be subject to restriction because it interferes with other uses permitted in the Zone."
- 13) Record Plat must reference a recorded easement for the parent parcels indicating i) that density and TDRs for these lots was removed from the parent parcels; and ii) per §59-C-9.41 of the Montgomery County Zoning Ordinance, following this subdivision, any farm tenant dwelling, farm tenant mobile home, or guest house is included in the total permitted density of 33 residential structures on the Property.
- 14) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board resolution.
- 15) Other necessary easements must be shown on the record plat(s).

BE IT FURTHER RESOLVED, that, having given full consideration to testimony heard and evidence submitted for the record by Montgomery Countryside Alliance, the Audubon Naturalist Society, and Applicant, the Montgomery County Planning Board FINDS that:

1. *The Applicant had authority to file the Application on behalf of Balsamah Corporation N.V. (formerly known as Malsama Corporation N.V.), a Netherlands Antilles corporation as the owner of the Property.*

The Subdivision Regulations, Chapter 50 of the Montgomery County Code, defines an Owner as “[a] person or corporation holding a legal title in the land...” Subdivider is defined as “[a]n individual, partnership or corporation (or agent thereof) that undertakes the subdivision of land or the activities covered under [Chapter 50]......” Nothing in either of those definitions or in the Subdivision Regulations requires that the owner or subdivider be registered to do business in the State of Maryland. And Montgomery Countryside Alliance or the Audubon Naturalist Society provided no legal basis on which the Board could rely. It has been the longstanding practice of the Planning Board to accept applications for subdivision from an agent of a property owner, so long as the authority of the agent is clear. In accordance with the subdivision regulations, the Applicant submitted written verification with the Application authorizing the Applicant to file the Application and it was found to be complete. In fact, as stated by Montgomery Countryside Alliance and the Audubon Naturalist Society, the request for delay of the proceedings was raised in order to provide these interested parties with an opportunity to discuss their concerns about the Application directly with the owner of the Property; their preference over working through their issues with the owner’s appointed representatives.

The Planning Board did not find the request or the evidence presented to be so compelling as to warrant a delay of the Hearing, particularly since Applicant’s appointed representatives have made themselves available through a public meeting held in Poolesville on their proposed Application, have provided updated plans to the neighbors, and have been available at several Rustic Roads Advisory Committee meetings. To the contrary, the Planning Board found the authorization submitted with the Application, together with the July 22, 2010, letter with supporting documentation from Stephen J. Orens, on behalf of Applicant objecting to the requested postponement, and the reasons set forth therein to be compelling.

AND BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein) and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

2. The Preliminary Plan substantially conforms to the AROS Master Plan.

The Planning Board determined that the Preliminary Plan, as proposed, protects to a significant degree, the ability for agricultural practices to continue on the Property as recommended by the AROS Master Plan. Of the 840 acres making up this Property, 780 acres will remain in agriculture. The AROS Master Plan does not set a specific objective goal for preservation, and the intent of the

Master Plan is that the Planning Board, in its discretionary role must be satisfied that the Applicant has made reasonable good faith efforts to protect as much agricultural land as possible. The Board was satisfied that the Preliminary Plan protects agriculture and minimizes fragmentation of active farmland by creating residential lots that are as small as reasonably possible, and that are clustered in areas that do not detract from the active agricultural land. The Preliminary Plan intentionally minimizes the spread of residential development to avoid fragmentation and to minimize the potential for conflicts between farm and non-farm properties. Although there was testimony that the proposed development would change the character of the area, creating a suburban enclave within the Agricultural Reserve, the focus of the Master Plan is preservation of agriculture within the Reserve -- not maintenance of the rural character. However, in order to allay those concerns, the Preliminary Plan calls for the new homes to be buffered, where practical, from the agricultural areas to reduce conflicts. The Board finds that the Preliminary Plan is in substantial conformance with the AROS Master Plan.

3. The Preliminary Plan substantially conforms to the Rustic Roads Functional Master Plan.

The Planning Board finds that the Preliminary Plan substantially conforms to the Rustic Roads Functional Master Plan. All three abutting roads, Beallsville Road, Peach Tree Road and Whites Store Road are Rustic Roads, with Whites Store Road also being designated as an Exceptional Rustic Road. The lot layout proposed on the Preliminary Plan does not visually impact Beallsville Road or Whites Store Road but concentrates development along Peach Tree Road. The Board considered the impact of the two driveways and the two new road access points along Peach Tree Road and understood that the Rustic Roads Advisory Committee had recommended approval of the Preliminary Plan with these points of access.

The Planning Board was satisfied that the visual impacts to Peach Tree Road were minimized by using shared driveways to serve multiple lots and that the two access points for the new tertiary street were necessary for the number of lots proposed. The Board also considered the Staff Report which explained that the five lots in the southernmost cluster were relocated back off Peach Tree Road to minimize impact to a designated viewshed in the Rustic Roads Functional Master Plan that captured a view to Sugarloaf Mountain. The remaining 16 lots and three outlots on the Preliminary Plan uses forest, to the extent possible, to screen views along Peach Tree Road. The Board was satisfied that the Preliminary Plan appropriately addressed the recommendations of the Rustic Roads Functional Master Plan and finds that the Preliminary Plan is in substantial conformance with that plan.

4. All public facilities will be adequate to support and service the area of the proposed subdivision.

The Planning Board finds that all public facilities will be adequate to serve the lots proposed by this Application. The Board determined that a new road is required to serve the 13 proposed lots and 3 outlots located on the east side of Peach Tree Road, and that it should be constructed to tertiary road standards within a dedicated 50 foot wide right-of-way. No sidewalks are required for this section of road because of its low traffic volume and because it is in the "rural area" defined in the road code. Pedestrians can safely use the road shoulders in this low traffic volume area. The Board also determined that two shared driveways will be adequate to serve the three-lot and five-lot clusters on the west side of Peach Tree Road.

The Board considered the Staff Report and determined that the 21 lots and three outlots proposed will not generate 30 or more vehicle trips during the morning or evening peak-hours; therefore, the application is not subject to Local Area Transportation Review. The Subject Property is located in the Rural West Policy Area where there is no trip mitigation requirement for PAMR according to the current Growth Policy. The Board was satisfied that the local road network will not be overburdened by the additional traffic generated by this development. Proposed vehicle and pedestrian access for the subdivision will be safe and adequate with the proposed public improvements.

The Board finds that other public facilities and services are available and will be adequate to serve the proposed dwelling units. Local utilities have found that their respective services, if located in the area, are adequate to serve the proposed subdivision. The Montgomery County Department of Permitting Services (MCDPS) has approved the septic systems for all but three lots (11, 19, 20), which as a result are to be recorded as outlots. The Maryland Department of the Environment (MDE) has analyzed the well water withdrawal and has issued a groundwater appropriation permit. The Board understood that MDE was satisfied that well water supplies would be adequate for the new lots and that recharge to the groundwater supply was adequate for local wells.

The application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles and that it includes an easement for a future water supply cistern that will be shown on the record plat. Other public facilities and services, such as schools, police stations, firehouses and health services, are operating

within the standards set by the Growth Policy Resolution currently in effect. The Application is not within a school moratorium area and is not subject to a School Facilities Payment.

5. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Board finds the application meets all applicable sections. The proposed lot size, width, shape and orientation are appropriate for the location of the subdivision as previously discussed regarding the size, shape and location of the lots on the farm.

6. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

The Board finds that the Preliminary Plan meets all applicable requirements of the Montgomery County Forest Conservation Law, Chapter 22A. Of the 840 acres making up this Property, 780 acres will remain in agriculture and are exempt from forest conservation requirements through an agricultural Declaration of Intent. The residential component of this Application generates a 57.8 acre net tract area that is subject to the law. The forest conservation requirement on the 57.8 acre net tract will be met by protecting 8.30 acres within the residential lots and 89.6 acres on the unplatted farm portion of the Application. The Applicant also proposed to protect an additional 50 acres of existing forest to be used for forest banking purposes.

7. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on September 9, 2009 and the concept was reaffirmed on May 14, 2010. The concept plan consists of on-site water quality controls and onsite recharge via roadside swales, drywells and rooftop disconnects. Channel protection volume is not required because the one-year post development peak hour discharge is less than or equal to 2.0 cubic feet per second.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-

35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Land Records of Montgomery County, Maryland or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is SEP 28 2010 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Alfandre, seconded by Vice Chair Wells-Harley, with Chairman Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre and Dreyfuss present and voting in favor of the motion, and Commissioner Presley absent at its regular meeting held on Thursday, September 16, 2010, in Silver Spring, Maryland.

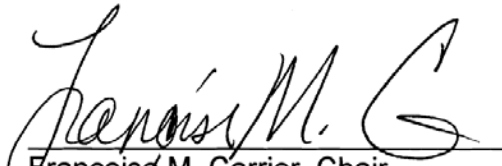

Françoise M. Carrier, Chair
Montgomery County Planning Board

Exhibit B
Covenant

49858 244

Tax ID # 11-01991498

(v)

DECLARATION OF RESTRICTIVE COVENANT / EASEMENT

THIS DECLARATION, made this 3rd day of December, 2014 by Balsamah Corporation, N.V., a Willemstad, Curacao corporation, hereafter referred to as "Covenantor", is the owner of the following property:

SEE ATTACHED SCHEDULE A

WITNESSETH

WHEREAS, the above referenced property ("Property") is the subject of Preliminary Plan No. 120090110, approved by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission during its meeting on July 22, 2010, and memorialized by Resolution No. 10-129, dated September 28, 2010

WHEREAS, the Property is in the Agricultural Reserve Zone (AR), which limits development to one one-family dwelling unit for every twenty-five (25) acres of land.

WHEREAS, the Property consists of 840.13 acres of land, and is being subdivided into one-family detached residential lots on 55.23 acres of land to be shown on a Subdivision Record Plat and recorded among the Land Records of Montgomery County, Maryland and an of dedication containing 4.514 acres of land. The remaining 780.44 acres of land become the Remainder Parcels as shown on the above referenced Preliminary Plan of Subdivision and will be noted on the aforesaid Subdivision Record Plat.

WHEREAS, Condition 13 of Resolution No. 10-129 requires an easement to be recorded for the parent parcels indicating (i) that density and TDRs for these lots was removed from the parent parcels and (ii) per Section 4.2.1.D2 of the Montgomery County Zoning Ordinance 2014, following this subdivision, any farm tenant dwelling, farm tenant mobile home, or guest house is included in the total permitted density of 33 residential structures on the Property.

MONTGOMERY COUNTY, MD

APPROVED BY: *[Signature]*

FEB 23 2015

RECORDATION TAX PAID
TRANSACTION TAX PAID

FILED
CLERK OF COURT
CLERK'S OFFICE
MONTGOMERY CO., MD.

2015 FEB 23 PM 3:45

WRIT OF SURETY
RECORDING FEE
TOTAL
Res # 10085 Rcpt # 37416
BRI NVE Bk # 6367
Feb 23, 2015 03:41 PM

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) BFM 49858, p. 0244, MSA_L2E63_49815, Date available 02/22/2015, Printed 07/10/2018

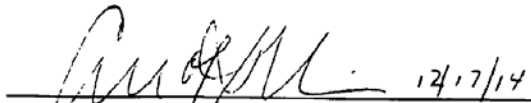
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40
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49858 245

NOW THEREFORE, in consideration of the promises herein made and other good and valuable consideration, the Covenantor does hereby covenant and agree, for them, their successors and assigns that:

- (1) The Property consists of 840.13 acres of land, on which thirty-three (33) one-family dwelling units are permitted.
- (2) Covenantor proposed up to 24 one-family dwelling units as part of approved Preliminary Plan 120090110. The Remainder Parcel of 780.44 acres of land can accommodate an additional 9 one-family dwelling units, which, in accordance with Section 4.2.1.D2 of the Montgomery County Zoning Ordinance 2014 shall include any farm tenant dwelling, farm tenant mobile home, or guest house.
- (3) The covenant contained herein shall run with the land and shall bind the Covenantor and the Covenantor's heirs, executors, administrators, successors and assignees, and shall bind all present and subsequent owners of the Property.
- (4) This Covenant shall be recorded among the Land Records of Montgomery County, Maryland prior to the recordation of the Final Record Plat and shall be reflected on the Final Record Plat by references to the Liber and Folio.


12/17/14
APPROVED AS TO LEGAL SUFFICIENCY
Office of the General Counsel — M-NCPPC

SIGNATURE PAGE TO FOLLOW

49858 246

IN WITNESS WHEREOF, the Covenantor has executed this Declaration of Covenants as of this 3rd day of December 2014.

[Signature]
WITNESS:

COVENANTOR:

[Signature]

STATE OF Maryland, County of Montgomery:

On this 3rd day of December, 2014, personally appeared before me, a notary public in and for the aforesaid jurisdiction, the said Alma Maja being duly authorized, and known to be (or satisfactorily proven) to be authorized to act on behalf of Balsamah Corporation, N.V. and acknowledged that this Covenant was freely and voluntarily executed for the purposes stated therein.

WITNESS my hand and official seal.



ALMA S. MEJIA
Notary Public, State of Maryland
County of Montgomery
My Commission Expires 08/23/2016

[Signature]
Notary Public
My Commission Expires: 8/23/2016

THE UNDERSIGNED, a member in good standing of the Bar of the Court of Appeals of Maryland, hereby certifies that the within instrument was prepared by him or under his immediate supervision.

[Signature]
Stephen J. Orens

Tax Id No: 11-01991498

After Recording Please Return to:

Rebecca D. Walker, Esquire
Stephen J. Orens, Esquire
Miles & Stockbridge, P.C.
11 N. Washington Street, Suite 700
Rockville, Maryland 20850

49858 247

SCHEDULE A

METES AND BOUNDS DESCRIPTION
PROPERTY OF
BALSAHMA CORPORATION N.V.

BARNESVILLE ELECTION DISTRICT.NO. 11
MONTGOMERY COUNTY, MARYLAND

840.1322 ACRES

BEING the same land described in a deed from The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the U.S.A and Ruth McCormick Tankersley to Malsama Corporation N.V. (now known as Balsamah Corporation NV) dated May 23, 1980, and recorded in Liber 5522 at Folio 867, among the Land records of Montgomery County, Maryland containing 840.1322 acres; and

BEING the same land conveyed by a Deed of Quitclaim from Ruth McCormick Tankersley to Balsamah Corporation NV, formerly known as Malsama Corporation N.V. dated July 9, 1981 and recorded in Liber 5731 at Folio 822, among the aforesaid Land records.

REVISED FEBRUARY, 2015

Client Documents:4829-5483-3184v2[19383-000004]2/11/2015

From: Michelle Lockey <michellelockeymusic@gmail.com>
Sent: Wednesday, January 16, 2019 6:14 PM
To: Brown, Angela <Angela.Brown@montgomeryplanning.org>
Subject: Need more information on Plan # 12009011B

Hello Ms. Brown

I need to find the lead reviewer for the attached letter. I recently moved into an area approved for development by this same developer, right next to where this was proposed. (20350 Peach Tree Rd)

We were told the remainder of the area was Farm Land and the master plan did not show any proposal for further building.

However the letter says they are trying to amend the plan to allow the developer to build Farm Labor Housing and Guest Houses in the Total Permitted Density. I need to know what exactly that means and how many of these housing units are being build. Also what makes them different than detached single family units?

Any information you can provide me would be greatly appreciated.

Thank You!

All My Best

Michelle Lockey

Penn, Joshua

From: Victoria Weller Crawford <vickiskip@gmail.com>
Sent: Wednesday, May 22, 2019 10:46 AM
To: Penn, Joshua
Subject: Additional Houses in Barnesville Oaks

Plan Number: **12009011B**

As a neighbor of this area, much of our bucolic atmosphere in this area is lost to bulldozers, very heavy trucks constantly going up and down Peach Tree Road, huge depressions and ruts in the roads caused by these trucks, "some" quick repair to the road but not sufficient enough to last very long and the loss of our quiet way of life. We moved here to avoid the crush of a normal neighborhood closer to down county. Now it has followed us here and the "safety of the Ag Reserve" is no longer visible. It seems that all builders look at this area as the next "great thing" and are successfully breaking up the Ag Reserve. We have a horse farm and our tractors used to be the noisiest thing around. Not any more.

Can you please decline to add more housing to our area? We are choking on the added traffic and the massive trucks ruining our Rustic Roads. The Ag Reserve is unique in the United States but we will lose that status if you continue to allow more houses to break it up. Please let us keep the farms!

Thank you
Vicki Crawford

--

*Vicki Crawford
Hunter's Trap Farm
17201 Whites Store Road
Boys, MD 20841*

Penn, Joshua

From: Natalie E. Feit <nefw@rcn.com>
Sent: Monday, January 21, 2019 1:09 PM
To: Penn, Joshua
Subject: Barnesville Oak Farm

I have received a Notice of Application about Plan Number 12009011B - Barnesville Oak Farm, and would like to know how this further development impacts my parcel of land located at 19820 Bucklodge Road, Boyds, MD 20841.

Am I correct in assuming that this has something to do with a stud farm and the housing that would be required for laborers and guests?? How many dwellings, (and of what nature are those dwellings), does the Amendment encompass?

I looked at the site map and from what I can ascertain, the project does NOT abut my parcel of land. Is that correct?

I would appreciate hearing from you answering my concerns. Thank you.

Very truly yours,
Natalie E. Feit
nefw@rcn.com

Penn, Joshua

From: Jack Reid <jcr57@aol.com>
Sent: Wednesday, May 1, 2019 9:23 AM
To: Penn, Joshua
Cc: KmRtystry@gmail.com
Subject: Barnesville Oak Farm Plan # 12009011B

Hello Joshua,

I am writing as one of the property owners adjacent to the Barnesville Oak Farm. I was sent notice of a public hearing with a tentative date of May 9, 2019. Written notification of the Public Hearing was to be sent no later than 10 days prior to the hearing. I have not received notice as of April 30 so assume the date has been changed. Will you confirm the date of the Hearing if said has been set and let me know the procedure for speaking at the Hearing?

Thank you for your time.

Very best regards,

John C Reid
20911 Beallsville Rd.
Dickerson, MD 20842