

**OFFICIAL MINUTES**  
**Carroll County Planning and Zoning Commission**

**July 21, 2009**

Location: Carroll County Office Building

Members Present: David L. Brauning, Chairman  
Dennis Wertz, Vice Chair  
Melvin E. Baile, Jr.  
Wayne Schuster  
Charles M. Chadwick  
Robert B. Slade, Alternate

Members Absent: Alec Yeo  
Julia Walsh Gouge, Ex Officio

The meeting opened at 9:00 a.m. Present with the Commission were the following persons: Kelly Martin and Tom Devilbiss, Department of Planning; Terri Jones, Department of the County Attorney; Clay Black, Jeanne Joiner, Kim Brandt, Pat Varga, Ashley Wantz, and Kathryn Filemyr, Bureau of Development Review; Daphne Daly, Bureau of Comprehensive Planning; Chris Letnaunchyn, Bureau of Engineering; Paige Sunderland, Department of Economic Development; Bryan Van Fossen, Office of Public Safety; Ted Zaleski, Bureau of Budget; Mike Evans, Department of Public Works; Jeff Degitz, Department of Recreation and Parks; Gary Kerns; Doug Murdock; John Lopez; John Lemmerman; Clark Shaffer; Alice Altstatt; Bob Martin; Randy Bachtel; Linda Ebersole; Isaac Menasche; Brooks Leahy; Louis Toth; Dale Radcliffe; Robert Hall; Brian Grasso; Dan Staley; Brian DiMaggio; Bob Martinez; and members of the press.

**APPROVAL OF MINUTES**

- a. June 11, 2009
- b. June 15, 2009
- c. June 16, 2009
- d. June 23, 2009

The minutes of June 11, June 15, June 16, and June 23 were approved, as written, on motion of Mr. Chadwick, seconded by Mr. Schuster, and carried.

**REPORT OF AGENCY REPRESENTATIVES:**

Office of Public Safety – Mr. Bryan Van Fossen reported there have been several recent fires in rural areas of the County which required use of dry hydrants. The County is redoubling its efforts to make repairs on these water supplies. Staff is continuing to search for new locations for dry hydrants.

Mr. Brauning questioned what types of repairs were being completed.

Mr. Van Fossen explained that some dry hydrants are bridge mounted. A bridge mount broke during use and, occasionally, the dry hydrants that are in the ground get hit by mowers. He noted these are normal wear and tear repair items.

Public Works – Mr. Mike Evans reported that the Carroll County Commissioners signed a resolution agreeing to go forward with the waste to energy project which is a joint project with Frederick County. Frederick County has executed the Memorandum of Understanding and that is circulating for signature. Once that document is signed, staff will be able to move forward with design and permitting work. Financing and construction will occur two years later.

Mr. Brauning questioned the progress on road overlays.

Mr. Evans indicated the overlays are moving along slowly. Micro-paving is being completed on a number of non-residential roads.

Dr. Slade entered the meeting.

Mr. Baile questioned whether water usage has increased in the Freedom area with the lack of rain.

Mr. Evans indicated usage has not dramatically increased, and there is no capacity issue in the area.

Management and Budget- Mr. Ted Zaleski reported that another cycle of the CIP is beginning. Direction has been sent out to agencies, and requests are due by September 1. Staff will work with the requests and present a draft to the Commission in January. Mr. Zaleski indicated that he is not anticipating a lot of new projects. Efforts will be focused on what can be removed from the CIP. Mr. Zaleski reported that it is just two weeks into the new fiscal year, and the Governor is going to the Board of Public Works with \$300 million in cuts tomorrow. The County will likely feel the impact of those cuts.

Mr. Brauning questioned whether any stimulus money filtered down to the County.

Mr. Zaleski reported that CATS received \$1.5 million, some of which is going to a new building for them. Approximately \$684,000 was received toward reducing energy use. Money for road improvements to MD 97 and Stone Road was received in the amount of \$2.5 million. Citizen Services will receive several million over several years for weatherization projects. The school system will receive some funding connected to special education. Mr. Zaleski indicated the total is only about \$5 million. Some of the moneys are going into operating costs that will remain after the money is used up.

Development Review- Mr. Clay Black reported that last month the Commission had requested staff review regulations with regard to use-in-common driveways to provide areas for pull over, mail boxes, trash cans, etc. Staff has been researching various jurisdictions and is working with the Department of Public Works on this effort.

Recreation and Parks – Mr. Jeff Degitz reported that Bark Hill Park is 95 percent complete; the playing field area and parking lot are complete; paving Peace and Plenty Drive; overseeding will be done this fall; fields will be ready for use next year. A pre-bid meeting is scheduled next week for Krimgold Park with a bid meeting scheduled in September; hope to award bid and start construction this fall. Constructing an additional athletic field at Deer Park to provide extra playing area for practices and allow the field to be moved forward or backward to rest the turf.

Mr. Degitz indicated there is some money collected from the past few years for land acquisition. Staff is looking for property in the Westminster and Finksburg areas.

**COMMISSION MEMBER REPORTS:**

Commission Chairman – Mr. Brauning indicated he signed several minor subdivisions since the last meeting. He thanked the Commission members and staff for their participation the last couple months at the Pathways Plan meetings. Mr. Brauning noted that Commissioner Gouge would not be present for the meeting.

Other Members – Mr. Melvin Baile noted that he had attended the public information meeting for the Finksburg Corridor Plan on Thursday night. He indicated Ms. Daphne Daly handled herself very well in the face of adversity—the crowd was a little hostile.

Ms. Daly noted that the public hearing is scheduled for Tuesday, July 28 at 6:30 p.m. at the Sandymount United Methodist Church.

Mr. Brauning congratulated Ms. Daly on the memo she received from Mr. Horn with regard to her efforts at the Pathways Plan public hearing.

**PROPOSED AMENDMENTS TO CHAPTER 103 – DEVELOPMENT AND SUBDIVISION OF LAND, SECTION 103-51 – PROHIBITED USES IN A PLANNED BUSINESS CENTER**

Mr. Clay Black, Chief, Bureau of Development Review, discussed the proposed change requested by a project that cannot have an indoor swimming pool in a strip center to teach children how to swim. He noted that the ordinance makes no distinction between the kinds of swimming pools. An amendment has been proposed to prohibit swimming pools, except for those indoor pools completely enclosed within a structure and which do not have any retractable walls or roofs.

Ms. Terri Jones, Deputy County Attorney, explained that the prohibited uses have not been changed since 1965 except with regard to outdoor advertising signs. She noted that these uses will be reviewed as part of the Pathways process, but this amendment was moving forward because of a pending lease. Ms. Jones explained that without this change, therapists, athletic clubs, etc., would be unable to have pools.

The Commission, on motion of Mr. Chadwick, seconded by Dr. Slade, and unanimously carried, directed staff to forward a favorable recommendation to the Board of County Commissioners for adoption of the proposed amendment to 103-51 which would permit indoor swimming pools which are completely enclosed within a structure.

**PRELIMINARY AND FINAL SUBDIVISION PLAN REVIEW:**

a. P-08-003, O’Hagans Ridge, Section 2

**A. P-08-003, O’HAGAN’S RIDGE, SECTION 2**

LOCATION: West side of Houck Road, 8<sup>th</sup> Election District

OWNER: Joseph P. Medved, Trustee of the Joseph P. Medved Trust, 4195 St. Paul Road, Hampstead, Maryland 21074

DEVELOPER: Same as Owner

ENGINEER: RTF Associates, Inc., 142 East Main Street, Westminster, MD 21157

ZONING: Agricultural

ACREAGE: 4.94 acres

WATERSHED: Liberty Reservoir

NO. OF LOTS: 2 lots

MASTER PLAN: Agriculture

Ms. Kimberly Brandt presented the background.

Action Required:

Four actions are required:

1. Approval of the Preliminary Plan of Subdivision pursuant to Chapter 103, Development and Subdivision of Land, of the Code of Public Local Laws and Ordinances of Carroll County.
2. Approval of the Preliminary Plan of Subdivision pursuant to Chapter 71, Adequate Public Facilities and Concurrency Management, of the Code of Public Local Laws and Ordinances of Carroll County.
3. Approval of the Final Plan of Subdivision pursuant to Chapter 103, Development and Subdivision of Land, of the Code of Public Local Laws and Ordinances of Carroll County.
4. Approval of the Final Plan of Subdivision pursuant to Chapter 71, Adequate Public Facilities and Concurrency Management, of the Code of Public Local Laws and Ordinances of Carroll County.

Existing Conditions:

The subject property was first subdivided in 2007. Three lots that are accessed from a use-in-common driveway, O'Hagan Drive, were created. A copy of the subdivision plat is attached to this report.

Plan Review:

The developer proposes to create two lots, which are identified as Lot 4 and Lot 5 on the subdivision plans. With this subdivision, no further residential subdivision of the 69.8-acre remaining portion will be permitted. The proposed subdivision is consistent with the Master Plan designation of Agriculture.

The lots will be accessed from the existing use-in-common driveway. A declaration of maintenance obligations has been recorded and includes Lot 4. As the document does not address Lot 5, an amended declaration of maintenance obligations will be recorded. Right-of-way for Houck Road will be dedicated to the County with recordation of the subdivision.

To address the requirements of forest conservation, 2.405 acres of existing woods on the remaining portion have been placed under easement. To satisfy the requirements of the landscaping ordinance, landscaping will be provided along Houck Road.

To address the requirements of stormwater management, a drywell will be installed on Lot 5. Lot 4 will achieve stormwater management through grading.

The plan was subject to citizen involvement at the February 23, 2009 Technical Review Committee meeting. No citizens spoke on this project at the meeting and the Bureau of Development Review has not received any correspondence concerning this project.

Chapter 103 Recommendations:

The staff recommends approval of the Preliminary Plan and Final Plan subject to the following conditions:

1. That the Owner/Developer enter into a Public Works Agreement with Carroll County to guarantee completion of any required improvements.
2. That a Stormwater Management Easement and Maintenance Agreement be granted to the Carroll County Commissioners by a deed to be recorded simultaneously with recordation of the plat.
3. That a landscape maintenance agreement be recorded simultaneously with recordation of the plat.
4. That the area shown as Parcel A be conveyed to the Carroll County Commissioners by a deed to be recorded simultaneously with recordation of the plat.
5. That an amended Declaration of Maintenance Obligations for O'Hagans Drive be recorded simultaneously with recordation of the plat.

CONCURRENCY MANAGEMENT REPORT

Ms. Kimberly Brandt presented the background.

Subdivision Plan: P-08-003, O'Hagan's Ridge, Section 2

Number of Lots: 2 lots

Schools: Sandymount Elementary  
Shiloh Middle  
Westminster High

Roads: Houck Road

Fire and EMS: Reese

Police Services: Maryland State Police/Carroll County Sheriff's Department

Background:

Pursuant to Section 71-6D of the Code of Public Local Laws and Ordinances, once the Department of Planning has determined that the preliminary plan may be presented to the Commission, Available Threshold Capacity forms are distributed for comment. The forms were distributed to the appropriate agencies.

Agency Responses:

Police Services:

The estimated Carroll County population as of May 31, 2009 was 174,868. As of that date, among the police forces in the County with staffing levels established by an annual budget, including the Carroll County Sheriff's Office and the municipal police departments, there were 151 funded officer positions. The average staffing level at the Maryland State Police Barracks for the period June 2008 through May 2009 was 84 officers. Based on a total of 235 positions, the ratio of sworn law enforcement positions to the current Carroll County population as of the end of May was 1.35.

Including the projected population growth that would result from residential developments in the pipelines of the county and the municipalities brings the estimated ratio to 1.33 by the end of FY09 – adequate.

The adopted Carroll County Government operating plan for FY 2009-2014 provides for planned funding for three new deputy positions every year.

Schools:

The Carroll County Public Schools responded that Sandymount Elementary, Shiloh Middle, and Westminster High are adequate for years FY10 through FY15.

The enrollment projections indicate that Sandymount Elementary will range between 84 and 86% of capacity during the current 6-year CIP cycle. In the Sandymount attendance area 13 additional residential developments, comprised of 139 lots, are in the review process. There are 82 lots in the Sandymount attendance area that have been recorded since the adoption of Concurrency Management (3/5/98) that have not been issued a building permit.

The enrollment projections indicate that Shiloh Middle will range between 77 and 88% of functional rated capacity during the current 6-year CIP cycle. In the Shiloh attendance area 17 additional residential developments, comprised of approximately 205 lots, are in the review process. There are approximately 97 lots in the Shiloh attendance area that have been recorded since the adoption of Concurrency Management (3/5/98) that have not been issued a building permit.

The enrollment projections indicate that Westminster High will range between 84 and 92% of capacity of during the current 6-year CIP cycle. In the Westminster attendance area 29 additional residential developments, comprised of approximately 444 residential lots, are currently in the review process. There are approximately 186 residential units in the Westminster attendance area that have been recorded since the adoption of Concurrency Management (3/5/98) that have not been issued a building permit.

#### Fire and Emergency Medical Services:

The proposed subdivision is located in the Reese emergency services district. The 2009 1st quarter late and no response statistical data indicates that of the first due total fire calls in the Reese district, 0.0% were categorized as no responses and 2.50% as late and no responses. Of the first due emergency medical service calls in the Reese district, 0.0% were categorized as no responses and 0.0% as late and no responses. Reese meets adequate late and no response criteria.

With regard to fire call response time, for the two-year period of 6/1/07 to 5/31/09 Reese had an average response time of 7 minutes and 59 seconds – adequate.

With regard to emergency medical call response time, for the two-year period of 6/1/07 to 5/31/09 Reese had an average response time of 7 minutes and 32 seconds – adequate.

The primary route from the firehouse to the proposed development does not include travel over any bridges.

#### Roads:

The Carroll County Department of Public Works responded that Houck Road, a local rural road, is rated Level of Service “A” – adequate.

#### Recommendation:

With regard to a preliminary plan, Chapter 71-6D(4) states “If all public facilities and services are adequate during the current CIP, the Commission may approve the plan to proceed to the final plan stage and issue a recordation schedule and building permit reservations, subject to a building permit cap adopted by the Board of County Commissioners in effect at the time of application for building permits.”

There are no adopted building permits caps in the geographic area impacted by this development.

Pursuant to Chapter 71 staff recommends that the Planning Commission approve the preliminary plan with conditions as follows:

1. Police, schools, fire and EMS, and roads are considered adequate.
2. Tentative building permit reservations are for 2 lots in FY10.
3. The tentative recordation schedule requires the plan to be recorded within 24 months of preliminary approval.
4. The building permit reservations are allowed to roll over year after year until the sunset provision takes effect and the preliminary plan becomes void.

With regard to a final plan, Chapter 71-6E(4) of the Code of Public Local Laws and Ordinances of Carroll County states “For projects that received a recordation schedule and building permit reservations at the preliminary plan stage, the Commission shall inform the developer whether any existing or proposed building permit cap would be applicable to the project.”

There are no adopted building permits caps in the geographic area impacted by this development.

Pursuant to Chapter 71 staff recommends that the Planning Commission approve the final plan with conditions as follows:

1. Police, schools, fire and EMS, and roads are considered adequate.
2. Building permit reservations are for 2 lots in FY10.
3. The recordation schedule requires the plan to be recorded within 24 months of preliminary approval.
4. The building permit reservations are allowed to roll over year after year until the sunset provision takes effect and the preliminary plan becomes void.

Discussion:

The above staff report has been revised as corrected by Ms. Brandt during her presentation with regard to requirements for forest conservation and landscaping. These changes include a change to the third condition listed under Chapter 103 to address the landscape maintenance agreement.

Dr. Slade questioned whether there were additional subdivision rights.

Ms. Brandt explained that the 70-acre remaining portion is not allowed further subdivision based on the current regulations.

**Decision:**

In accordance with Chapter 103, the Commission, on motion of Mr. Schuster, seconded by Mr. Chadwick, and unanimously carried, approved the preliminary and final plans subject to the five

conditions in the staff report, amending the third condition with regard to the landscape maintenance agreement.

In accordance with Chapter 71, the Commission, on motion of Mr. Schuster, seconded by Mr. Chadwick, and unanimously carried, approved the preliminary plan with the four conditions in the staff report and the final plan based on the four conditions in the staff report.

**FINAL SITE PLAN REVIEW:**

a. S-07-035, Crossroads Automotive Service Center

**A. S-07-035, CROSSROADS AUTOMOTIVE SERVICE CENTER**

LOCATION: West side of Gamber Road (Maryland Route 91), East side of Old Gamber Road, 4<sup>th</sup> ED

OWNER: Brian DiMaggio, 1940 Bethel Road, Finksburg, MD 21048

DEVELOPER: Same

ENGINEER: BPR, 150 Airport Drive, Suite 4, Westminster, MD 21157

ZONING: Business – Neighborhood Retail

ACREAGE: 4.219 acres

FIRE DISTRICT: Gamber

WATERSHED: Liberty Reservoir

MASTER PLAN: Neighborhood Business

Mr. Clay Black presented the background.

Action Required:

The final site plan is before the Planning and Zoning Commission per Section 103.19 of the Code of Public Local Laws and Ordinances of Carroll County for consideration and approval of the site plan.

Existing Conditions:

There are two billboards located on the subject site; a Colonial Pipeline Company gas pipeline traverses the property. The site is otherwise unimproved. There is an intermittent spring head on the property near Maryland Route 91.

Site Plan Review:

The developer proposes to construct a one-story, 10,000-square-foot automobile service center. The site plan also shows a proposed dwelling in the northwest corner of the site. The developer has stated that he intends to construct this dwelling in the future for his use. The subject property is not located in a public water or sewer service area; private wells and septic systems will be required.

On January 18, 2007, the Board of Zoning Appeals (BZA) granted a conditional use for an automobile service center on the subject site. The conditions of approval limited the hours of operation to 7:00 a.m. to 7:00 p.m. Monday through Saturday and the number of employees to fourteen, including the developer. The developer subsequently appealed the decision to Circuit Court which remanded the case back to BZA for further proceedings to deliberate on the condition limiting the number of employees. The BZA kept the condition limiting the number of employees. A copy of both BZA decisions is attached to this report.

The concept site plan was presented to the Planning and Zoning Commission at the October 21, 2008 meeting and the meeting minutes are attached to this report. The proposed use is consistent with the land use-designation as identified on the Finksburg and Environs comprehensive plan.

Access to the site will be via a new entrance onto Old Gamber Road, Maryland Route 879. The Maryland State Highway Administration is requiring construction of an acceleration lane and a deceleration lane at the site entrance. Right-of-way dedication will also be required for the full frontage of the property along Old Gamber Road. Improvements along Gamber Road, MD 91 include widening of the road and striping. An SHA access permit will be required.

All technical review agencies have recommended approval of the final site plan. The proposed landscaping is shown on Sheet 12 of the site plan. The landscaping will be subject to a maintenance agreement. Requirements of the Forest Conservation Ordinance are being met by the purchase into an off-site forest bank. An on-site underground stormwater management facility is being constructed to address the stormwater management code requirements. A 40,000 gallon underground fire protection tank will be installed to address the requirements of Chapter 112, Fire Protection. As part of the plan approval, a non-forested water resource protection easement will be granted to the County.

The site plan indicates the billboards will remain. Clear Channel Communications, which owns the billboards, has a ground lease until 2018. The developer has signed an agreement with Colonial Pipeline Company to allow for construction of the driveway access over Colonial's right-of-way. As shown on sheet 13, the only lighting proposed is wall-mounted lights with no lighting proposed for the free standing sign.

To address some of the concept plan comments from both the Commission and the public, the developer has made design changes as reflected on the final site plan. The location of the access drive has been shifted 250 feet south. This change would allow for vehicles to travel a shorter distance on Old Gamber Road to access and leave the site and the access point is no longer directly across from a driveway entrance. The parking space layout has been reconfigured to provide the spaces around and closer to the building. Previously, the parking spaces were strung out and parallel to the frontage along most of Old Gamber Road.

The building elevations are shown on sheet 15. A beige metal building with a green roof and green paneled doors is proposed. A decorative flagstone knee wall is proposed along the front of the building and wrapping around the side of the building to the break in the roof. This flagstone wall design meets the Design and Architectural Review Committee recommendations. The concept plan showed a building height of 37 feet, the developer has lowered the building height by nine feet to now a height of 28 feet. The maximum allowable height in the BNR district is 40 feet. Additionally, by not bringing in fill dirt, the building finished grade has been lowered by another 4 feet. This overall decrease of 13 feet reduces the visibility of the entire building from Route 91. The garage doors are shown as 14 feet high. The Planning Commission and numerous citizens have expressed a concern over the height of the doors and the vehicles that can be serviced with service bay doors that are 14 feet high. Staff has articulated these concerns to the developer with a request to reduce the height to 10 feet. The developer has submitted information regarding the garage door height and his desire to have the doors at a 14 foot height. The zoning ordinance defines the permitted vehicles that may be serviced by this service center not the height of the doors. Automobile service center are defined as general automotive repair for automobiles, pickup trucks and similar passenger-type vehicles.

Numerous comments have been received from residents of the area. The comments are in regards to the proposed and possible use of the building, the size of the building, the use is not appropriate to the neighborhood, and the overall appearance of the building. Attached are copies of the written comments that have been received.

The final plan was presented to the Design and Architectural Review Committee which recommended additional landscaping be placed along the entrance drive. The recommendation, which staff supports, would extend the screening to include the full frontage of the service center site.

Recommendation:

Staff recommends approval of the site plan subject to the following conditions:

1. That the developer enter into a Public Works Agreement with Carroll County that guarantees completion of the improvements.
2. That the area designated on the plan as 'Area of SHA Dedication' be conveyed to the State Highway Administration.
3. That a stormwater management easement and maintenance agreement be granted to the County Commissioners of Carroll County as an easement of access to the County Commissioners or authorized representatives by a deed to be recorded simultaneous with recordation of the Public Works Agreement.
4. That a non-forested water resource protection easement be granted to the County Commissioners of Carroll County by a deed to be recorded simultaneous with recordation of the Public Works Agreement.
5. That a Landscape Maintenance Agreement be recorded simultaneous with the Public Works Agreement.

6. Continue the screening that is currently shown in front of the parking lot to include the length of the property to the entrance drive at Old Gamber Road.

Discussion:

Mr. Wertz asked for clarification that the staff and DARC were recommending 10-foot doors.

Mr. Black indicated DARC is recommending 10-foot doors, but the staff recommendations are based on the Commission's comments.

Mr. Wertz questioned the square footage of the sign as shown on Sheet 15.

Mr. Black indicated the 72 square feet was for one double-sided sign.

Mr. Wertz questioned where the compressors would be located.

Mr. Brian DiMaggio, owner, indicated the compressors would be located inside the building.

Mr. Wertz questioned whether there would be any fencing.

Mr. DiMaggio indicated he had no intention to fence the area.

Mr. Wertz questioned whether the applicant intended to service school buses and trucks at this facility.

Mr. DiMaggio indicated he has asked for permission to service school buses and trucks, and he would hope to in the future, but something would have to happen to the legislation or through a BZA decision to make that possible.

Mr. Wertz indicated he visited his current facility and there were three school buses on the premises. He suggested the 14-foot garage doors were a concern and a design issue.

Mr. DiMaggio noted that he had submitted a photograph of a service van being unloaded from a flatbed truck indicating the need for the 14-foot garage door height.

Mr. Wertz provided two examples of service garages that he utilizes in the Hampstead area which have 10-foot doors. These owners have never experienced problems in servicing vehicles with the 10-foot doors.

Mr. DiMaggio suggested it is an unsafe practice and does not allow for vehicles to be unloaded inside the building.

Mr. Wertz questioned whether thought had been given to using materials on the building's exterior that are more similar to the houses in the area, i.e., bricks, shingles, etc.

Mr. DiMaggio indicated he had chosen the materials for his building very carefully after reviewing hundreds of products. He provided a panel with the building's finish for the Commission to view.

Mr. Brauning questioned the location of the drain that runs under the State road in relation to the building.

Mr. Randy Bachtel, BRP, identified the location on the drawing.

Mr. Schuster questioned the ability of the property to have two different uses.

Ms. Jones explained that residences are allowed in the B-NR and a property can have two different uses.

Mr. Chadwick questioned whether the house was being approved as part of this site plan or whether the applicant would come back with an amended site plan if and when the house is built.

Mr. Black indicated the house is shown on the site plan, so it would not come back before the Commission.

Ms. Jones explained the applicant could build a house today without having to go through the Commission review process.

Mr. Schuster questioned why more details and elevations were not available for the residence.

Mr. Black indicated the house was shown on the plan to identify the total use of the property.

Mr. Wertz questioned whether the Commission would have the authority to require elevations on the dwelling.

Ms. Jones indicated the Commission did not have the authority to require elevations on a single-family dwelling.

Mr. Wertz argued that he thought the Commission did have the authority. He suggested the Commission could request to review the building elevations before the building permit is issued for the dwelling.

Dr. Slade questioned whether there would be any parking of vehicles on the grass.

Mr. DiMaggio indicated he had no intention of parking on the grass.

Mr. Chadwick questioned whether there would be any external lifts.

Mr. DiMaggio indicated all work must be done inside the building.

Mr. Bachtel explained that Colonial Pipeline prefers that no landscaping be done through their easement.

#### Public Comments:

Mr. Gary Kerns, 2280 Kays Mill Road South, suggested that all of the conditions of approval from the BZA should be shown prominently on the site plan, in particular, the vehicles that can

be worked on. He agreed with the suggestion that the service bay door height should be reduced to 10 feet and the height of the building should be reduced to 20 feet. Mr. Kerns indicated that anything the Commission could do to improve the design of the building would be appreciated. He suggested the kneewall should surround the building in total and a masonry monument sign should be utilized. Mr. Kerns suggested that the uses allowed in the B-NR be reviewed. This use is too heavy for this area.

Mr. John Lopez, 2470 Twin Knolls Circle, indicated he would like to echo the comments of Mr. Kerns. He suggested the design style was not consistent with the area. Mr. Lopez indicated there are no other businesses on MD 91 except at the intersection of MD 140. He expressed his concerns with the door size. Mr. Lopez stated that if the 14 foot height is permitted, the developer will come back to modify the use to allow the building to service buses and trucks. He suggested that allowing this door size now allows this use in the future. Mr. Lopez reviewed several traffic concerns. He questioned how water use and discharge will be monitored to protect the safety of the wells in the neighborhood.

Ms. Alice Altstatt, 2350 Deer Park Road, expressed concern with the proposed height of the garage doors and the future servicing of larger vehicles. She noted concerns with regard to traffic safety, lighting, and signage.

Mr. Brauning questioned the sight distance from the entrance to the edge of the curve.

Mr. Bachtel indicated he had worked extensively with the State Highway Administration on the entrance. There is approximately 250 feet from the entrance to the middle of the curve.

Ms. Linda Ebersole, 3336 Old Gamber Road, expressed her concern with the fact that this facility is so out of context with the existing residences. She noted displeasure with the high elevation and height of the garage doors. Ms. Ebersole questioned how Mr. DiMaggio's use of the property will be monitored to ensure he does not work on school buses and larger vehicles. She noted that 20 percent of his current business is working on school buses. Ms. Ebersole expressed concern about the increase in traffic on the road, the location of the entrance so close to the intersection of Deer Park Road, the environmental impacts, septic and water usage, etc. She suggested that staff review the regulations relating to the B-NR district. Ms. Ebersole indicated there are a lot of these types of businesses in the area and this facility was not needed.

Mr. Chadwick questioned the cost difference between a metal roof and a shingled roof.

Mr. Bob Martinez, builder, indicated a lumber roof with shingles is more expensive than a metal roof. He could not provide exact figures as it depends on the materials. Mr. Martinez suggested the most cost effective approach is a steel roof.

Mr. Chadwick questioned whether the Commission requiring a shingled roof would entail reengineering of the building.

Mr. Martinez indicated it would require a redesign.

Mr. Wertz discussed the water use and discharge of the facility. He questioned whether there would be washing of vehicles.

Mr. Bachtel outlined the flow calculations from MDE and the Health Department.

Mr. DiMaggio indicated he did not plan to wash vehicles at this facility. He also explained his plans for removal and recycling of hazardous materials.

Mr. Wertz suggested the proposed use was not a neighborhood oriented use and there are major deficiencies in the B-NR district. If these types of heavy uses are continued to be permitted, then special regulations should be added. He expressed his concerns with the project, including: the height of the garage doors, whether this was an appropriate design for this location, whether the design is in harmony with the purpose of the B-NR district, whether the design is in conformance with the Master Plan, the rear and side facades should match the front in colors and materials, the design does not reduce impact on the neighborhood, etc. Mr. Wertz indicated the Planning Commission has the responsibility to uphold the integrity of the B-NR District, ensure conformance with the Master Plan, and protect the integrity of the surrounding neighborhood through the site plan process. The Commission should consider the visual and functional impact of the proposed building and use on the neighborhood. He suggested the site plan should be withdrawn or denied. He further suggested that the building materials should be compatible with the surrounding neighborhood and the same color and materials on all sides, garage doors should be a maximum of 10 feet in height, and the site plan should list the four conditions imposed by the BZA with the Case # 5273.

**Decision:**

A motion was made by Mr. Wertz to deny the final site plan for reasons stated in his comments. The motion was seconded by Mr. Chadwick.

Mr. Baile indicated the applicant has met all the requirements of the B-NR District. He acknowledged that the citizens do not want it to be located there, but the zoning is there and the project meets SHA regulations. Mr. Baile indicated the garage he takes his vehicles only works on cars and pick-up trucks and their garage doors open all the way to the ceiling – more than 14 feet.

Mr. Bachtel asked for clarification as to how long the developer would have to wait to come back to the Commission if the Plan was denied.

Ms. Jones indicated that unless there is some modification of the plan, the plan cannot come back before the Commission for a year. If there is some modification, then someone who voted against the plan needs to make a motion to rehear it.

Mr. Bachtel stated his client wished to withdrawal his application, make changes based on the Commission's comments, and return with a revised plan.

Mr. Wertz withdrew his motion, and Mr. Chadwick withdrew his second to the motion.

Ms. Jones clarified that if the applicant withdrawals his plan today, he would have to resubmit the plan and go through TRC again. The Commission would need to waive that requirement, if they do not feel it is necessary to go through TRC again.

Mr. Bachtel suggested that based on the Commission's comments relating to design, the applicant should be allowed to meet with DARC and not have to go back through the entire review process.

Ms. Jones suggested that the applicant not withdraw the plan, but the Commission table the plan for a certain number of months or indefinitely.

The Commission, on motion of Mr. Schuster, seconded by Dr. Slade, and unanimously carried, tabled the application so the applicant can make refinements as discussed by the Commission members.

Mr. Schuster left the meeting.

**SPECIAL REPORTS:**

- a. P-06-022, Evergreen Plantation 3
- b. 032-C-02, Chenopodium Acres
- c. Dede World

**A. P-06-022, EVERGREEN PLANTATION 3**

Mr. Brauning indicated he would preside over the issue, but would make no comments as the owners are good friends of his.

LOCATION: North side of Fannie Dorsey Road, west of Susquehanna Court, 14<sup>th</sup> Election District

OWNER: Roger & Jane Wolfe, 1150 Fannie Dorsey Road, Sykesville, Maryland 21784

DEVELOPER: Same as Owner

SURVEYOR: DRS & Associates, 52 Winters Street, Westminster, MD 21157

ZONING: Agricultural

WATERSHED: South Branch of the Patapsco River

Ms. Kimberly Brandt presented the background.

Action Required:

The developer has requested Planning Commission approval to transfer residential lot yield to the area labeled on the record plat of Evergreen Plantation as a remaining portion. General Note 8 on the plat states that the regulations for the Agricultural zoning district prohibit further subdivision of the area designated on the plat as the remaining portion for the purpose of creating lots for residential use.

### Project History:

In 1995, Evergreen Plantation was recorded. A copy of the record plat is attached to this report. The subdivision consists of 8 lots. The lot yield was derived from 3 parcels owned by the developer. Two of the subdivision lots represent yield from two of the three remaining portions. Accordingly, a condition of preliminary plan approval was that the remaining portions be consolidated by deed prior to or simultaneously with recordation of the final plat. The deed of consolidation creating a 69-acre remaining portion was recorded in 1995.

In 1999, the area of the remaining portion was reduced to 3.36 acres by deed. A plat was not recorded; there was no review by County Development Review staff. The balance of the remaining portion, 65.9 acres, was added to an existing 20.3138-acre off-conveyance. The deed adding the 65.9 acres to the off-conveyance includes the required language stating that the land being added is not intended for development other than accessory structures. The 3.36-acre remaining portion contains a house.

### Current Request/Findings:

The developer now intends to subdivide the off-conveyance, which is located to the north of the Evergreen Plantation lots. Based on 20.3138 acres, the current regulations for the Agricultural zoning district allow the creation of 2 lots and a remaining portion. The developer wishes to create three lots adjacent to the recorded Evergreen Plantation lots. The off-conveyance would then have no residential building rights. The developer operates a Christmas tree farm on this land. It is identified on the proposed plan of Evergreen Plantation 3 as 'Not for Residential Use – For Agricultural Purposes Only.'

There is also a 0.519-acre area in the northeast corner of the site that, as the result of a surveying error years ago, was not included in earlier descriptions of the property. The developer's surveyor contends that this entitles the developer to another building lot. The staff is still researching this matter and has not agreed that the 0.519-acre area is a separate tract or parcel and, therefore, entitled to a residential building right. The developer wishes to create a lot associated with this area and transfer it to the area adjacent to the Evergreen Plantation lots.

For access to three of the proposed lots and to meet the County's road frontage requirement, the developer is proposing to construct a cul-de-sac that would be publicly owned and maintained. The cul-de-sac would terminate just before the ponds on the property. The private drive serving the business on the site would extend from the cul-de-sac. Because the plan has not yet been submitted for review, it is not clear if Public Works will support this proposal.

The developer has been advised that because of the note on the plat of Evergreen Plantation stating that the remaining portion may not be further subdivided for residential purposes, the Planning Commission must approve the creation of lots in this area. The developer has also been advised that in order for the staff to support the request, the owners of the Evergreen Plantation lots should be informed of the proposed plan and not object to the location proposed for the lots. The developer's surveyor has been meeting with the property owners individually to discuss the proposed plan.

If the Planning Commission approves the transfer of residential lot yield to the area identified on the plat of Evergreen Plantation as the remaining portion, a concept plan will be submitted for

staff review. Lot layout and access will be considered during the concept review. While the staff generally supports the clustering of residential lots, the staff cannot now comment on the proposed layout or the proposed public road.

Discussion:

Ms. Brandt indicated a staff report from 1992 mentions a public road being added to serve the lots, but in 1995 a note was placed on the recorded plat indicates there would be no further subdivision. A concept plan has not been presented or reviewed by agencies. The developer was asked to follow up with the eight property owners to inform them of the proposed plan and get their feedback regarding the proposed lots. Ms. Brandt noted that the property was also posted. One property owner contacted the office indicating he was not comfortable with this request. He researched the property before his purchase and read the plat note.

Mr. Chadwick questioned whether the Commission has the right to overrule a note on a plat recorded in 1995.

Ms. Jones explained that the Commission has the ability in the future to approve an amended plat and notes can be modified at any time. She stated the Commission would not be approving a plan at this time, but allowing the developer to amend the plat to remove the restriction. Dr. Slade questioned how many lots could be added with the off-conveyances, etc., if the restriction is not lifted from the plat.

Ms. Brandt indicated staff and the developer have agreed that the yield from the off-conveyances is two lots and a remaining portion. She indicated the area proposed for the location of these lots. Ms. Brandt noted the area remaining would have no more residential building rights. Staff does not agree that there is a fourth lot.

Mr. Chadwick questioned the nature of the deed at Liber 671, Folio 393. He asked whether it was a deed of quiet title.

Ms. Brandt indicated the deed does not describe the ½ acre tract as if it were its own parcel.

Mr. Isaac Menasche, attorney for the Wolfe's, stated the issue before the Commission today is not the number of lots available. The applicant can work that out with staff when sufficient proof is supplied. Mr. Menasche indicated the issue before the Commission is the location of the lots. He noted the reason for the relocation of the lots is to cluster them to preserve ag land and reduce the amount of ag land that will be impacted. The relocation does not adversely impact the intent of zoning. Mr. Menasche explained that the alternative was to place the lots more centrally on the farm which would require construction of a public road that ends in a cul-de-sac to serve use-in-common driveways. He explained that the real intent for the plat note is to indicate that remainders shall not be eligible for further residential subdivision. Mr. Menasche indicated this plan does not increase the density. The developer intends to comply with regulations to maximize the available farmland and meet the rural development guidelines.

Ms. Brandt noted that the entire area is farmed, including the area proposed for lots.

Dr. Slade questioned whether these notes have been changed before.

Ms. Brandt indicated this was the first time she had come before the Commission with such a request.

Mr. Dan Staley, DRS & Associates, indicated he had processed the original subdivision in 1992. At that time, the off-conveyances could not be subdivided because the owner had to wait five years. He explained that the lots were contemplated at this location at that time.

Mr. Chadwick suggested that placing the lots towards the south end of the property, closest to the road, makes sense and is less disruptive. He also noted the suggested location impacts the existing homeowners who contemplated their purchases based on the note that there would be no more lots.

Mr. Staley indicated letters had been sent to the neighboring property owners, except Lot 7. Four of the landowners indicated they did not have a problem with the lots, 2 have indicated they do not want the lots, and two property owners did not respond.

**Public Comments:**

Mr. Dale Radcliffe, 6271 James Drive, owner of Lot 6, stated the developer, Mr. Greg Dorsey, had explained to him before his purchase that there was no way there could ever be any more subdivision. Mr. Radcliffe indicated the primary reason he bought the lot was the view. He indicated he was told that was the total number of lots that could be sold and the plat says no further subdivision.

Mr. Brian Grasso, 6291 James Drive, owner of Lot 7, stated he purchased the property with the understanding there would be no further subdivision. That was one of the primary reasons he purchased the lot. He noted that if there was a master plan to create additional lots that was not brought to his attention.

Mr. Robert Hall, 6290 James Drive, owner of Lot 1, indicated he was told the same thing—that there would be no further building.

Ms. Jones explained that the Commission needs to act on the request to remove the restriction from the original plat.

Dr. Slade questioned what would happen if no action was taken by the Commission.

Ms. Jones indicated it would go before the Board of Zoning Appeals.

**Decision:**

The Commission, on motion of Dr. Slade, seconded by Mr. Wertz and carried (Dr. Slade, Mr. Baile, and Mr. Wertz voted “Aye”; Mr. Chadwick voted “No”; Mr. Brauning did not vote), directed that the restriction for further subdivision for residential purposes on the plat remain as it is.

**B. F-05-013, CHENOPODIUM ACRES**

LOCATION: Bollinger Road at the intersection with Hook Road, 4<sup>th</sup> Election District

OWNER: Francis L. & Mary Jean Bollinger, 1343 Bollinger Road, Westminster, MD 21157

DEVELOPER: Same as Owner

SURVEYOR: DRS & Associates, 52 Winters Street, Westminster, MD 21157

ZONING: R-40,000, Agricultural

WATERSHED: North Branch of the Patapsco River

ACREAGE: 160 acres

NO. of LOTS: 119 (Approved in 1973)

PUBLIC FACILITIES IMPACTED:

SCHOOLS: Sandymount Elementary  
Shiloh Middle  
Westminster High

ROADS: Bollinger Road

FIRE AND EMS: Reese

POLICE: Maryland State Police/Carroll County Sheriff's Dept.

Ms. Kimberly Brandt presented the background.

Action Required:

In response to a request from the developer's attorney, determine if the Planning Commission will agree to amend the phasing plan for Chenopodium Acres, Phases 3-8.

Project History:

Chenopodium Acres is a subdivision consisting of 119 lots. The preliminary plan was approved on October 19, 1973. The subdivision consists of 8 phases. Phase 1 (13 lots) was recorded on May 21, 1998. The Planning Commission approved a phasing plan for Phases 2-8 on June 21, 2005.

On April 16, 2006 the Planning Commission approved a revised phasing plan that reduced the number of lots to be included in Phase 2 and increased the number of lots to be included in Phase 8. Phase 2 (8 lots) was recorded on June 29, 2006.

On November 27, 2006, the developer requested and was granted a one year extension of the deadlines for the remaining phases. Under that revised phasing plan, Phases 3-8 were subject to

a series of deadlines that required Phase 3 to receive final approval by July 1, 2008, Phase 4 to receive final approval by July 1, 2009, and so forth.

On May 20, 2008, the developer requested another one year extension of the deadlines for the remaining phases. The Planning Commission granted a two year extension, which requires that Phase 3 be recorded by July 1, 2010. The minutes from that meeting are attached to this report.

Chapter 103-16G(2) states that "A preliminary plan of subdivision which was approved by the Commission prior to July 22, 2003, shall become void 24 months after July 22, 2003 or as otherwise specified by the Commission." The phasing plan that was approved on June 21, 2005 was, in effect, an extension of the June 22, 2005 deadline specified by the code. The November 27, 2006 action by the Commission was a second extension. The May 20, 2008 action by the Commission was a third extension.

#### Current Request/Findings:

Of the 23 lots recorded to date, only 2 have been sold. Noting the poor market for residential lots, the developer's attorney has requested that the Chenopodium Acres phasing plan for Phases 3-8 be amended to reduce the number of lots to be recorded with Phase 3 to 1 rather than 19 and increase the number of lots in later phases accordingly. The Phase 3 lot will be created around the developer's residence and the farm buildings on the site. The proposed revised phasing plan is attached to this report.

As was noted at the May 2008 Planning Commission meeting, the preliminary plan does not meet the current County standards for subdivisions. Concurrency Management was also discussed at that meeting. Police were approaching inadequate. Currently all facilities and services that would be impacted by this development are adequate.

#### Recommendation:

Amend the Chenopodium Acres phasing plan to reduce the number of lots to be recorded with Phase 3 to one (1) lot rather than nineteen (19) lots and increase the number of lots in later phases accordingly.

#### Discussion:

Mr. Brooks Leahy, attorney for the developer, requested that the Commission, in light of the devastating real estate market, consider allowing his clients to reduce the number of lots allowed in Phase 3 and increase the number in subsequent phases.

Mr. Chadwick indicated the developer has not been very successful in selling lots in this subdivision as one is the spec house and one is a child's home. He questioned what made the developer feel that all the lots would be able to be sold if they were moved to Phase 8.

Mr. Leahy indicated the lots cannot be sold now. His clients can only hope they will be able to sell them in the future when there will be more demand for the lots.

**Decision:**

The Commission, on motion of Mr. Baile, seconded by Mr. Wertz, and carried (Dr. Slade, Mr. Baile, and Mr. Wertz voted "Aye"; Mr. Chadwick abstained; Chairman Brauning did not vote), amended the Chenopodium Acres phasing plan to reduce the number of lots to be recorded with Phase 3 to one (1) lot rather than nineteen (19) lots and increase the number of lots in later phases accordingly.

**C. DEDE WORLD**

LOCATION: East side of Dede Road, North side of MD Route 140, 4<sup>th</sup> ED

OWNER: Dede World General Partnership c/o Randy Cohen, P.O. Box 278,  
Monrovia, MD 21770

DEVELOPER: Same

ENGINEER: Charles R. Crocken & Associates, Inc., P.O. Box 307, Westminster, MD  
21157

ZONING: Industrial Restricted

ACREAGE: 5.1 acres

Mr. Clay Black presented the background.

**Purpose:**

The plan is before the Planning and Zoning Commission per the request of the developer to allow the traffic impact study to be completed by the developer's engineer instead of Carroll County's contracted engineer.

**Site Plan Background:**

The developer proposes to construct a four story office and retail center. §103-19 of the Code of Public Local Laws and Ordinances states that a traffic impact study be performed by the owner, or by the County at the expense of the owner, in accordance with criteria established by the Department of Public Works. The owner shall reimburse the County for all costs associated with the traffic impact study completed by the County. At the February 19, 2008 Planning Commission meeting, the Commission authorized the Department of Planning to assume that all traffic impact studies be prepared by engineers under contract with the Department of Public Works unless waived by the Commission. The developer has requested that the Commission waive the requirement of having the traffic study prepared by engineers under contract with DPW and allow the developer to undertake the traffic study. The developer is aware that is a traffic impact study is required.

Discussion:

Mr. Black indicated no plan had been submitted. He explained that the developer realizes his next step will be before the Board of Zoning Appeals. The company the developer would like to use for his traffic study is not on the County's list. A similar request was made by another developer, and the Commission allowed that request to occur. Mr. Black indicated a change since the staff report was written. The developer no longer proposes to construct a four-story center. There have been some concerns raised by the Health Department with regard to the maximum square footage allowed.

Mr. Clark Shaffer, attorney for the developer, indicated his client was unsure of the square footage at this point.

Mr. Wertz questioned the rating of the Dede Road/MD 140 intersection.

Mr. Black indicated he was not sure of the rating, but Mr. Chris Letnaunchyn was present from the Bureau of Engineering.

Mr. Chris Letnaunchyn, Bureau of Engineering, indicated no recent studies have been done of that intersection, but the last study did identify the intersection as Level F. He explained that one of the purposes of the traffic study is to identify intersections that have unacceptable levels of service and to suggest mitigation opportunities.

Mr. Wertz expressed concern about the results being biased if a developer used his own consultant.

Mr. Shaffer explained that his client has owned the land for 15-17 years. The original plan was for an RV parking facility on the land which is zoned IR. Mr. Shaffer indicated his clients are now proposing a mixed retail office complex. His client cannot confirm whether it will be a two or four story complex because development will occur on private well and septic and the Health Department heavily regulates those issues. Mr. Shaffer explained that his client desires to use The Traffic Group to conduct the traffic impact study because he has used the company before and is familiar with them. The Traffic Group also did work for the recent Mudgett development which is located off Dede Road and has frontage directly on MD 140. Mr. Shaffer indicated his client will be going before the Board or Zoning Appeals (BZA) and wishes to provide traffic testimony during that process. The Traffic Group has a detailed history and familiarity with that intersection and have worked with the State on that intersection. The consultant is familiar with the State's position and right-of-way details and has background and historical details that may make it a little easier and cheaper to complete the process. Mr. Shaffer explained that the Commission will still get a traffic study that has a scope which has been approved by the County and the State Highway Administration (SHA). The County and SHA still review the study, submit comments, and request additional information, etc.

Public Comment:

John Lopez, Finksburg Planning Area Council (FPAC), encouraged the developer to meet with his organization to try to move these plans forward. He noted that this property is currently being proposed to be rezoned to Boulevard District and the intended use would change based on the proposed rezoning, providing a better use and better design guidelines.

Mr. Shaffer indicated the developer intends to work closely with FPAC, but he is trying to get a handle on what the plan will look like first. He noted that his client is aware of the Boulevard District proposal and has researched whether or not the project can move forward with that zoning. Mr. Shaffer stated that the Planning Department and the Department of Economic Development are telling his client that this is a good plan and fits in the area. His client had not anticipated that the Health Department review would take so long.

Mr. Wertz questioned whether a fast food restaurant was under consideration.

Mr. Shaffer indicated he did not think a fast food restaurant would be proposed, but he was not sure.

Ms. Paige Sunderland, Department of Economic Development, indicated her department has been working with the developer for two years. What was going to be an RV parking lot, is now proposed as a retail office facility. Economic Development would appreciate the cooperation and support of the Commission in realizing the goal of the gateway corridor. She noted that the plan Mr. Shaffer is referring to is very early in the process. Health Department issues have prevented them from narrowing the scope. There is a pad site out front which could be any number of things, but the focus is on the back lot which is subdivided by Tracy's Road (a planned major street proposed in the Finksburg Plan).

**Decision:**

A motion was made by Mr. Wertz and seconded by Dr. Slade that the Commission not waive the requirement that the traffic impact study be completed by engineers under contract with the Department of Public Works.

Ms. Jones noted that there is no requirement for the BZA that you have a traffic study, but they are required to consider traffic conditions and facilities. It is not the same type of study done for the Commission in the site plan process. The County's engineer will not do a traffic impact study for the BZA when there is no approved use.

The motion failed with Mr. Wertz and Dr. Slade voting "Aye"; Mr. Chadwick, Mr. Baile, and Mr. Brauning voted "No".

The Commission, on motion of Mr. Baile, seconded by Mr. Chadwick, and carried (Mr. Chadwick, Mr. Baile, and Mr. Brauning voted "Aye"; Mr. Wertz and Dr. Slade voted "No"), waived the requirement of having the traffic study prepared by engineers currently under contract with the Department of Public Works and allowed the developer to undertake the traffic study.

**PUBLIC COMMENTS/PETITIONS:**

Mr. John Lopez stated the County has a tremendous need for an industrial tax base. He suggested the B-NR District is flawed and needs to be reexamined. Mr. Lopez indicated the County needs to use common sense and good planning and look at the B-NR District and the IR Districts that are being allowed to be converted to commercial.

There being no further business, the Commission adjourned at 12:15 p.m.

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Approved