

**MINUTES OF THE ST. MARY'S COUNTY PLANNING COMMISSION MEETING  
SOUTHERN MARYLAND HIGHER EDUCATION CENTER \* CALIFORNIA, MARYLAND  
Tuesday, October 10, 2006**

Members present were Steve Reeves, Chair; Howard Thompson, Vice Chair; Lawrence Chase; Merl Evans; Brandon Hayden; and Susan McNeill. Shelby Guazzo was excused. Department of Land Use and Growth Management (LUGM) staff present were Denis Canavan, Director; Phil Shire, Deputy Director; Jeff Jackman, Senior Planner; Bob Bowles, Planner II; Dave Berry, Planner I; Susie McCauley, Senior Planning Specialist; and Cindy Koestner, Recording Secretary. County Attorney, Christy Holt Chesser, and Deputy County Attorney, Colin Keohan were also present.

The Chair called the meeting to order at 6:30 p.m.

**APPROVAL OF THE MINUTES** – The minutes of September 25, 2006 were approved as recorded.

**DECISION**

**CWSP #06-120-008 – PEMBROOKE RUN (continued from 9/25/06)**

The applicant is requesting review of a Concept Development Plan, in order to proceed with an amendment to the Comprehensive Water and Sewerage Plan. The property contains 29.2 acres; is zoned Residential Low-Density District (RL); and is located at 46800 Meadows Way, Great Mills, Maryland; Tax Map 51, Grid 22, Parcel 636.

Owner: D & E Construction Inc. (c/o Dennis Frischholz)  
Present: Jerry Nokleby, Nokleby Surveying, Inc.

This item was tabled at the meeting on September 25, 2006 and is returning for review and approval. Mr. Bowles noted the staff report incorrectly states the property contains 19.92 acres; the property actually contains 29.2 acres. Mr. Bowles stated Mr. Nokleby of Nokleby Surveying, agent for the property owner, is present tonight to answer any questions. Mr. Thompson explained the Planning Commission decided at a previous meeting not to move on a case unless either the owner or party representing the owner is present.

**Mr. Thompson moved that having accepted the staff report, dated September 15, 2006, and having made a finding that the referenced project meets concept plan requirements to proceed with a Comprehensive Water and Sewer amendment to change the water and sewer categories from S-6D and W-6D to S-3D and W-3D, and noting that the subdivision plan must return to the Planning Commission for preliminary approval, the Planning Commission grant approval of the concept plan. The motion was seconded by Mr. Hayden and passed by a 6-0 vote.**

**PUBLIC HEARINGS**

**CWSP #06-131-010 – VALLEY LEE VFD**

The applicant is requesting an amendment to service area map IV-61 to change the service category from NPS (no planned service) to W-3D and S-3D (service in 3 to 5 years, developer financed) for 15.32 acres described Tax Map 61, Grid 5, Parcels 78, 108, 134, 399 and 418 in the Second Election District in anticipation of service to an existing fire hall with banquet facility.

Owner: Second District Volunteer Fire Department  
Present: Dan Ichniowski, NG&O Engineering

Legal advertisements for the public hearings were published in the *St. Mary's Today* on 9/24/06 and 10/1/06. The properties were posted and notices were mailed to the adjoining property owners. Copies of the proposed amendments were placed on the County website, at the Public Information Office located at 23115 Leonard Hall Drive, Leonardtown, Maryland, and in all branches of the County libraries.

Mr. Jackman stated the Planning Commission granted concept approval for the Valley Lee Volunteer Fire Department addition on August 14, 2006. He explained the Valley Lee Fire Department will connect to the force main that runs from Piney Point to the Marley Taylor wastewater treatment plant. The public sewer connection will be for the existing fire hall, a planned 2,040 square foot addition and a 4,100 square foot banquet hall. Mr. Jackman explained property outside of Piney Point is not allowed access to the Piney Point force main unless there is a health issue. He said the Health Department supports connection to public sewer in this case because the current septic system on the subject property is failing.

The Chair opened the hearing to public comment. The hearing closed with no comments.

**Mr. Evans moved that having accepted the staff report, dated September 21, 2006, and having held a public hearing on the request for amendment to the St. Mary's County Comprehensive Water and Sewerage Plan (CWSP), and having made findings of adequacy with respect to the objectives and policies of the CWSP as required by the Environment Article of the Maryland Annotated Code and of consistency with the St. Mary's County Comprehensive Plan, the Planning Commission recommend to the Board of County Commissioners to amend service area map IV-61 to change the service categories from NPS (no planned service) to S-3D (service in 3 to 5 years, developer financed) for 15.32 acres described as Tax Map 61, Grid 5, Parcels 78, 108, 134, 399 and 418 in the Second Election District; and authorize the Chair to sign a resolution to transmit this recommendation to the Board of County Commissioners. The motion was seconded by Mr. Thompson and passed by a 6-0 vote.**

**CWSP #06-120-008 – PEMBROOKE RUN**

The applicant is requesting an amendment to service area maps III-51 and IV-51 to change the service category from W-6 and S-6 (service in 6 to 10 years) to W-3D and S-3D (service in 3 to 5 years, developer financed) for 29.2 acres described as Parcel 636 of Tax map 51, in the Eighth Election District in anticipation providing community water and sewerage service to a subdivision comprised of 23 lots, more or less.

Owner: D&E Construction, Inc.  
Present: Jerry Nokleby, Nokleby Surveying, Inc.

Mr. Jackman stated the hearing for this case can proceed because the Planning Commission granted concept plan approval earlier in this meeting. He explained the subdivision proposes 23 dwelling units and will connect to the Lexington Park water distribution system and the Marley Taylor wastewater treatment plant.

Mr. Thompson inquired about the proposed stormwater management area circled on the development plans. Mr. Nokleby explained this is a natural low area in the subdivision where most of the water drains and it is the proposed location for a stormwater collection system. He estimated the area drops down about 20 feet. Mr. Thompson asked if this area is landfill. Mr. Nokleby confirmed the stormwater management area was originally used as a landfill and was later reclaimed. He added no development is anticipated there. Mr. Thompson asked if the property is required to connect to public water and sewer. Mr. Nokleby replied yes because it is located in the Lexington Park Development District.

Mr. Thompson inquired about access to the parcels located behind the development, particularly the property of James & Teresa Smith. Mr. Nokleby replied these properties are accessed from either Hermanville Road or Old Hermanville Road.

The Chair opened the hearing to public comment. The hearing closed with no comments.

**Mr. Thompson moved that having accepted the staff report, dated September 21, 2006, and having held a public hearing on the request for amendment to the St. Mary's County Comprehensive Water and Sewerage Plan (CWSP), and having made findings of adequacy with respect to the objectives and policies of the CWSP as required by the Environment Article of the Maryland Annotated Code and of consistency with the St. Mary's County Comprehensive Plan, the Planning Commission recommend to the Board of County Commissioners to amend service area maps III-51 and IV-51 to change the service categories from W-6 and S-6 (service in 6 to 10 years) to W-3D and S-3D (service in 3 to 5 years, developer financed) for 29.2 acres described as Parcel 636 of Tax Map 51 in the Eighth Election District; and authorize the Chair to sign a resolution to transmit this recommendation to the Board of County Commissioners. The motion was seconded by Mr. Evans and passed by a 6-0 vote.**

## **FAMILY CONVEYANCES**

### **MSUB #06-110-019 – KOEGEL ESTATES**

The applicant is requesting preliminary review of an additional lot on a private road in accordance with St. Mary's Subdivision Ordinance 02-02, Section 30.11.4, Family Conveyance provision. The property contains 3.97 acres; is zoned Rural Preservation District (RPD); and is located at 44350 Richey Road, Leonardtown, Maryland; Tax Map 57, Grid 13, Parcel 273.

Owner: Catherine R. Koegel  
Present: Jerry Nokleby, Nokleby Surveying, Inc.

Certified Notice was mailed to all users of the private road and contiguous property owners. Certified receipts are in the file.

Mr. Bowles explained there are no outstanding issues. He stated approval of an additional lot will bring the total number to six lots on this private road. The applicant determined Richey Road is a 40 foot right-of-way, with a 12-foot to 13-foot, gravel travel way in fair condition. Richey Road becomes a public road 440 feet from the applicant's property. Mr. Bowles noted the applicant will be required to sign a maintenance agreement for the private road.

Mr. Reeves asked if Lot 2 of the proposed subdivided property will have access to Dry Creek Lane. Mr. Bowles replied Dry Creek Lane borders the property on one side, but the only access will be to Richey Road.

The Chair agreed to allow public comment.

Mr. Joe Capristo, resident of Dry Creek Lane and owner of adjoining property, explained he has some concerns with adding lots to Richey Road. He stated the private section of the road already contains at least eight homes and the Ordinance requires a road be public if there are more than six houses. He feels a Family Conveyance is not a right under the Ordinance, but an exception. He expressed concern the road is already overburdened, there is no allowance for additional traffic, and an additional lot will detract from the rural character of the area.

Mr. Bowles responded the applicant meets all eight of the requirements set forth in the Ordinance for a Family Conveyance. He noted the Ordinance sets forth standards based on the

number of lots on a private road, not the number of users, and there may be more than one user on a lot. Ms. McNeill asked the surveyor of record to comment on the adequacy of the road. Mr. Nokleby stated he inspects each private road in these cases before writing his report. He explained the private section of Richey Road is gravel and making it a public road would require it be asphalt, which is not consistent with maintaining the rural character of the road. He noted Family Conveyances are allowed because the cases are for people who wish to keep their family in the County and the new lot in this case is for the property owner's daughter. He explained private roads have contained up to 22 users without any adverse effects on the road. Mr. Nokleby explained the road appears fairly maintained and includes adequate pullover areas for two-way traffic. He stated the turnoff to the property is very close to the end of the asphalt portion of the road. Ms. McNeill asked if the County feels the road adequacy issue has been addressed. Mr. Bowles replied yes.

Ms. Kelcy Seabolt, who lives at the end of Richey Road, explained the property in question is the best place to add another lot because the current owner keeps her property in immaculate condition and always fixes holes in the road in front of the property.

**Mr. Thompson moved that having accepted the staff report, dated September 19, 2006, and having made findings pursuant to Section 30.11.4 of the Subdivision Ordinance (Criteria for Approval of a Family Conveyance), the Planning Commission grant approval of the Family Conveyance subdivision, with the condition that agreements ensuring access to, and use and maintenance of, the road shall be recorded prior to recordation of the plat. The motion was seconded by Mr. Evans and passed by a 6-0 vote.**

**MSUB #06-110-027 – USHERS SUBDIVISION, RE-SUBDIVISION OF LOT-1**

The applicant is requesting preliminary review of an additional lot on a private road in accordance with St. Mary's Subdivision Ordinance 02-02, Section 30.11.4, Family Conveyance provision. The property contains 3.50 acres; is zoned Rural Preservation District (RPD); and is located at 46198 Usher Lane, Valley Lee, Maryland; Tax Map 58, Grid 20, Parcel 230, Lot 1.

Owner: Diane L. Henderson  
Present: Jerry Nokleby, Nokleby Surveying, Inc.

Certified Notice was mailed to all users of the private road and contiguous property owners. Certified receipts are in the file.

Mr. Bowles explained there are no outstanding issues and the applicant has met or agreed to meet all eight requirements of the Ordinance for Family Conveyances. He stated approval of an additional lot will bring the total number to 13 lots on this private road. The applicant determined Usher Lane is a 50 foot right-of-way, with a 16-foot, paved travel way for the first 0.2 miles, which then changes into a 12-foot to 18-foot gravel, travel way in good condition. Mr. Bowles noted the applicant will be required to sign a maintenance agreement for the private road.

Ms. McNeill asked Mr. Nokleby to address the adequacy of Usher Lane. Mr. Nokleby stated Usher Lane turns off of an asphalt highway and is paved until it reaches a salvage yard. The gravel portion of the road does not contain any potholes and allows ample turnoffs for two-way traffic. He explained there are no steep areas and the road appears well maintained.

The Chair agreed to allow public comment.

Mr. Richard Potts, resident of Usher Lane, commented the road currently contains several potholes. He explained there are already 13 houses on the road, but only he and one or two other owners ever perform or pay for any road maintenance. Mr. Bowles responded the applicant will be required to help with maintenance issues when the new lot is added according to

the maintenance agreement. Mr. Potts expressed concern he has not seen any maintenance agreements for any other lot on the road and he feels the road's maintenance is already a problem without the additional lot.

Mr. Thompson asked staff to provide copies of all of the maintenance agreements that have ever been signed for lots on Usher Lane. Mr. Reeves asked who signs the maintenance agreement. Mr. Bowles replied the family member signs when the plat is recorded and they agree to contribute a set amount to road maintenance. He explained all of the current owners should be contributing as well. Mr. Thompson stated he wants to see exactly how many property owners are actually contributing. Mr. Shire explained older roads become overburdened over time because, prior to enactment of the current Ordinance, property owners were not required to sign maintenance agreements. He said staff wants all owners to sign an agreement stating they will contribute to road maintenance; however, there is no law in place that can force established residents to sign. Staff's goal is to at least bind the owners of the newly subdivided lots to some form of road maintenance for private roads.

Ms. McNeill expressed concern the burden rests only on the newest residents. Mr. Shire pointed out even if a maintenance agreement is signed by the new lot owner, property often changes ownership. He stated the issue may become a civil matter between neighbors to get everyone to contribute to the maintenance. He noted this will be an issue regardless of whether the new lot is approved or not. Mr. Evans expressed concern there is not an effective way to ensure private roads are maintained.

Mr. Nate Combs stated he lives on Usher Lane and he explained there was no maintenance agreement in place when he purchased his current property. He said the property owners along Usher Lane met and signed an agreement in the past requiring everyone to pay road dues. Mr. Combs explained he has paid \$200 road dues each year for three years, but nothing happens to the road. Mr. Evans inquired about who collects the fees. Mr. Combs responded they are paid to a property owner on the road and everyone except the salvage yard owner is supposed to be paying; however, not all of the property owners are paying.

Mr. Nokleby pointed out a homeowner's association is a common way to fix these issues. He explained property owners form an association that requires everyone to attend meetings and pay dues. If a property owner fails to pay dues, the association levies the amount against their property, which forces payment of all outstanding dues when the property is sold. Mr. Potts responded some property owners never sell, thus the dues are never collected.

**Ms. McNeill moved to table this case until the Planning Commission can review all of the maintenance agreements for Usher Lane. This motion was seconded by Mr. Thompson and passed by a 6-0 vote.**

Ms. Chesser asked Mr. Combs to forward a copy of the dues agreement he signed three years ago. Ms. McNeill expressed concern road maintenance may be an issue in other Family Conveyance cases. She stated the Planning Commission may need to review this issue and determine what types of protective measures can be taken to ensure all property owners who reside on a private road contribute to that road's maintenance. Mr. Reeves concurred and said this issue needs to be reexamined at a public hearing.

#### **MSUB #06-110-025 – NELSON FAMILY SUBDIVISION**

The applicant is requesting preliminary review of an additional lot on a private road in accordance with St. Mary's Subdivision Ordinance 02-02, Section 30.11.4, Family Conveyance provision. The property contains 4 acres; is zoned Rural Preservation District (RPD); and is located at 24260 Victory Lane, Clements, Maryland; Tax Map 23, Grid 24, Parcel 139.

Owner: John Vernon & Debra Ann Nelson

Present: Jerry Nokleby, Nokleby Surveying, Inc.

Certified Notice was mailed to all users of the private road and contiguous property owners. Certified receipts are in the file.

Mr. Bowles explained there are no outstanding issues and the applicant has met or agreed to meet all eight requirements of the Ordinance for Family Conveyances. He stated approval of an additional lot will bring the total number to 10 lots on this private road. The applicant determined Victory Lane is a variable width right-of-way, with a 16-foot, gravel travel way in good condition. Mr. Bowles noted the applicant will be required to sign a maintenance agreement for the private road.

Mr. Nokleby pointed out he does not inspect these roads every day and the condition of a road may change by the time he submits his report and the case comes before the Planning Commission. He explained the 9.5 inches of rain that recently fell in the area is an example of an event that can seriously alter the condition of a road after he has inspected it. Mr. Nokleby reported the Nelson family property does not have an asphalt apron at the property entrance; however, construction of a proper asphalt entrance will be required. He explained there is ample room for two-way traffic along Victory Lane to the point where the new lot will be located and there are no slope issues.

Mr. Thompson noted the Planning Commission gets a copy of the agenda one week prior to the meeting; thus, when they visit the site, the road condition may be different and they may see things not included in the surveyor's report. Mr. Evans stated his only concern is that the road is maintained without placing full responsibility on the owners of the newest lots. Ms. Chesser explained the maintenance of a private road is a civil matter between owners when there are no recorded documents for the older lots. The County can only address maintenance responsibility when a maintenance agreement has been signed and recorded. Mr. Evans stated he wants to examine ways the County can ensure the signed agreements are being adhered to. Ms. Chesser noted the Planning Commission can review this if they feel facilitation of recorded agreements is not working. Mr. Reeves stated the Planning Commission needs to be informed of the number of existing road maintenance agreements for all Family Conveyance cases on private roads to determine if a new lot will be a burden on the road. Mr. Nokleby responded the new lot is not the burden because they have the signed maintenance agreement. He noted the agreement also states the owners will meet once a year and determine, by majority vote of those attending, a set amount each owner must pay towards road maintenance. Ms. McNeill commented this is not effective if several property owners refuse to participate.

**Mr. Thompson moved that having accepted the staff report, dated September 19, 2006, and having made findings pursuant to Section 30.11.4 of the Subdivision Ordinance (*Criteria for Approval of a Family Conveyance*), the Planning Commission grant approval of the Family Conveyance subdivision, with the condition that agreements ensuring access to, and use and maintenance of, the road, including the construction of a proper asphalt entrance, shall be recorded prior to recordation of the plat. The motion was seconded by Mr. Evans and passed by a 6-0 vote.**

## **DEVELOPMENT REVIEW**

### **CCSP #06-132-027 – SAN SOUCI RETAIL EXPANSION**

The applicant is requesting review and approval of a Concept Site Plan for a 37,023 square foot retail expansion in an existing shopping center. The property contains 29.17 acres; is zoned Corridor Mixed Use District (CMX); and is located at 22599 MacArthur Boulevard, California, Maryland; Tax Map 43, Grid 2, Parcel 20.

Owner: WP San Souci Associates, LLC (Tim Herb)

Present: Michael Pierce, Loiederman Soltesz Associates, Inc.

Mr. Shire explained San Souci is an older shopping center and the 37,023 square foot addition was included in the original plans; therefore, infrastructure for the requested addition is already in place. He further explained a traffic impact study will be conducted prior to final approval, the property owner will contribute to the Hike or Bike trail, and the current parking space is more than adequate to handle the additional store space. Ms. McNeill inquired about the method for determining adequate parking. Mr. Shire explained five spaces are required for every 1,000 square feet of floor space, a criterion that has not changed since San Souci was built. Ms. McNeill expressed concern the parking lot is already congested without the addition. Mr. Shire explained a prior tenant, a nursery, was using a large portion of the parking lot for display, which might account for some of the crowding.

**Mr. Evans moved that having accepted the staff report, dated September 27, 2006, and having made a finding that the objectives of Section 60.5.3 of the zoning ordinance have been met, and having noted that the referenced project has met all requirements for concept approval, the Planning Commission grant approval of the Concept Site Plan. The motion was seconded by Mr. Thompson and passed by a 6-0 vote.**

#### **COMMENT**

Ms. McNeill commented she enjoyed attending the FDR Boulevard Groundbreaking Ceremony.

#### **ADJOURNMENT**

The meeting was adjourned at 8:05 p.m.

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Cindy R. Koestner  
Recording Secretary

Approved in open session: October 23, 2006

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Stephen T. Reeves  
Chairman