

IN RE: PLANNED UNIT DEVELOPMENT (PUD)	*	BEFORE THE OFFICE OF
1 st Election District		
1 st Council District	*	ADMINISTRATIVE HEARINGS
(Johnnycake Road)	*	FOR
PATAPSCO FIELDS – PUD	*	BALTIMORE COUNTY
PATAPSCO FIELDS INVESTMENT, LLC	*	CASE NO. 01-0607
<i>Owner/Applicant</i>		

* * * * *

ADMINISTRATIVE LAW JUDGE’S OPINION AND ORDER
ON PLANNED UNIT DEVELOPMENT (PUD)

This matter comes before the Office of Administrative Hearings (“OAH”) for a hearing pursuant to § 32-4-245 of the Baltimore County Code (“BCC”), which governs Planned Unit Developments (“PUD”). Patapsco Fields Investments, LLC (herein known as “Developer”) seeks approval of 182 single family attached homes off of Johnnycake Road in Woodlawn. The proposed development is more particularly described on the 14-sheet redlined Plan (the "Plan") submitted into evidence and marked as Developer's Exhibit 1. The Plan was prepared by Morris Ritchie & Associates, Inc.

The subject site is 35.6 acres, more or less, of DR 3.5 and OT zoned land. It is partially wooded and partially meadow. There is an existing dwelling and assorted accessory structures that will be razed. All existing vegetation within the limit of disturbance is to be removed. There are a variety of environmental features and constraints, including streams and wetlands, which will be protected.

The PUD application was submitted to the County Council on November 14, 2018. On June 1, 2020 the Baltimore County Council introduced Resolution 59-20 stipulating that the Patapsco Fields PUD is eligible for Baltimore County review in accordance with § 32-4-242 of the Baltimore County Code (“BCC”). The resolution was enacted on July 6, 2020.

In Resolution 59-20 the County Council found that the proposed PUD was in conformance with the Master Plan, and specifically the T-4 General Urban transect applicable to this tract.¹ The Council also found that the proposed development would serve another Master Plan goal because “this PUD would create much needed new housing stock in close proximity to an area which suffers from a jobs-to-housing imbalance; namely the Woodlawn CDP, home of the Social Security Administration and Centers for Medicaid and Medicare Services, as well as a number of privately operating businesses.” *See*, Resolution 59-20, admitted as Developer’s Exhibit 6.

The County Council further found that the PUD application satisfied the community benefits required by B.C.C. § 32-4-242(b)(6)(ii) and (iii), as follows: First, the Developer will provide a land use benefit and capital improvement benefit of \$111,000.00. These funds will be allocated in direct payments of \$75,000.00 to Liberty Community Development Corporation Youth Center at Security Mall for improvements to the Youth Center; and \$36,000.00 to the Chadwick Manor Community Association, for a community sign and tree plantings along Fairmont Road. In addition, Resolution 59-20 requires the Developer to contribute \$340,000.00 to the County to satisfy its Open Space responsibilities under B.C.C. § 32-6-108. Those funds will be allocated for recreational amenities and improvements in the neighboring Parkview Trail and Stonegate at Patapsco subdivisions, as detailed in the Resolution.

Resolution 59-20 also sets forth certain site design conditions, including that there shall be no direct access from the site to or from Security Boulevard and/or Fairbrook Road, nor shall a right of way from either of these roads be extended through the site. It was further resolved that the Developer must construct a landscape berm along Johnnycake Road for the entire frontage of the Development. In addition, the Developer is required to install and maintain a wood chip

¹ In Resolution 59-20 the Council also resolved to reclassify the majority of the site from T-2 Rural to T-4 General Urban, so that the entire site is now T-4.

hike/bike trail on the existing 40 ft. wide Consolidated Gas and Electric Company right-of-way, which runs the width of the property. Finally, in consideration of these community benefits and open space contributions the County Council resolved to modify the existing DR and OT density restrictions to allow for a maximum of 182 single-family attached dwellings.²

The PUD application in this case was filed on November 14, 2018 and the preliminary evaluation report from the relevant county agencies was submitted to Councilman Tom Quirk on November 29, 2018 in accordance with B.C.C § 32-4-232(c)(3). *See*, Report, admitted as Developer’s Exhibit 18. A Community Input Meeting (“CIM”) was held on December 9, 2020, attended by 17 interested community members. *See*, CIM Meeting Minutes, admitted as Developer’s Exhibit 23. The Development Plan Conference (“DPC”) was held on

² In 2020, the site was the subject of Comprehensive Zoning Map Process (“CZMP”) Issue 1-035. For this issue, the petitioner, the County Council, requested no change to the site’s existing zoning - OT and DR 3.5. The County Council’s final decision retained the existing zoning classifications. At the Hearing Officer Hearing one of the Protestants, Kathleen Skullney, on behalf of the Patapsco Granite Community Association (“PGCA”), moved to dismiss the Developer’s case on the grounds that the PUD application should have been held in abeyance during the pendency of the 2020 CZMP, when in fact the PUD process continued. Ms. Skullney urged that Resolution 59-20 was therefore invalid and could not be relied on to permit this PUD development. I heard argument from both Ms. Skullney and Mr. Vettori and held the issue *sub curia* in the interest of proceeding with the scheduled HOH. Having reviewed the applicable sections of the County Development law I respectfully disagree with Protestants’ position. The Motion to Dismiss is therefore denied.

B.C.C. § 32-4-205(c), entitled “vesting of plan” does prohibit the *vesting* of certain plans (including, as in the instant case, those impacted by CZMP issues raised by “the Department of Planning, the Planning Board, or *the County Council*” during the pendency of the CZMP process. B.C.C. § 32-4-205(b)(3). However, the fact that a given plan cannot *vest* during the pendency of the CZMP does not mean that the development process must halt. It simply means that the applicant/developer proceeds at their own risk in terms of the costs associated with the development process. Could development applications be brought to a screeching halt by the mere filing of a CZMP Issue it is not hard to imagine CZMP issues being filed for the sole purpose of obstructing development applications.

June 23, 2021 between the Developer's consultants and representatives from the relevant Baltimore County agencies, who submitted final written comments on the Development Plan.

The property was properly posted with the Notice of Hearing and properly advertised, as required by the B.C.C. On June 16, 2021 a public hearing was held via Webex in lieu of an in-person public hearing due to ongoing Covid-19 restrictions. In attendance were the Developer, David Strouse, as well as Sean Davis, Josh Sharon and Dean Hoover, from Morris & Ritchie Associates, Inc., the engineering firm that prepared the Plan. Mickey Cornelius, a traffic engineer also appeared. David Gildea, Esquire and Jason Vettori, Esquire of Schmidt, Gildea & Smith, appeared on behalf of the Developer. Community members, Kathleen Skullney and Cathy Wolfson also attended and expressed concern with various aspects of the project. Their overarching concerns were congestion and traffic impacts. Emails opposing the project were received from Ranjith Ravindiran, a nearby resident, and from Ryan Coleman, the President of the Randallstown NAACP. Mr. Coleman stated that he doesn't believe this PUD project should be approved because he doesn't believe it conforms to the Master Plan, especially since the East-West Light Rail Line was not funded by the Governor. Mr. Ravindrian merely opined that the project "will have an adverse impact on the community on multiple fronts." Neither of them testified at the hearing. Mike Baldwin, the President of the Parkview Trails Homeowners Association, testified in support of the project and thanked the Developer for having a positive dialogue with their HOA and the others in the area.

Agency Witnesses

Several County agency representatives appeared at the hearing, including Darryl Putty, the Project Manager; James Hermann, representing Department of Public Works ("DPW") and Department of Recreation and Parks; Michael Viscarra from Development Plans Review ("DPR"),

and LaChelle Imwiko, from Real Estate Compliance. Also appearing on behalf of the County were Krystle Patchak and Jenifer Nugent from the Department of Planning (“DOP”), and Steve Ford with the Department of Environmental Protection and Sustainability (“DEPS”). Shaun Crawford appeared on behalf of the Office of Zoning Review (“OZR”).

Mr. Hermann testified that a Schematic Landscape Plan for the project had been approved on July 8, 2021. (County Exhibit 1). He explained that a final Landscape Plan will need to be approved in Phase II of the development process. Wearing his DPR hat, Mr. Hermann explained that the Open Space law requires 1000 sq. ft. per unit so this PUD requires 182,000 sq. ft. of open space. He testified that the Plan provides for 105,477 sq. ft., leaving a shortfall of 76,523 sq. ft., at a rate of \$3.51 a sq. ft. for a total of \$268,595.73. He further testified that the Developer is providing \$90,504.00 of on-site open space amenities and \$340,000.00 of off-site improvements per Resolution 59-20, and they have, therefore more than satisfied their Open Space obligations.

Ms. Patchak testified that DOP had approved the School Impact Analysis because none of the impacted schools is projected to exceed 115% of State Rated Capacity. Dogwood Elementary DEPS is projected at 111.14%; Windsor Mill Middle is projected at 103.75%; and Woodlawn High is projected at 80.91%. (Developer’s Exhibit 24). She also testified generally about the DOP’s Final HOH Report. (Developer’s Exhibit 25). She explained that, based in large part on the County Council’s Resolution 53-20 that the PUD meets all Master Plan and Compatibility requirements, and that all other applicable code requirements and zoning regulations are also met, subject to the conditions enumerated at the end of the DOP Report.

LaChelle Imwiko testified that Real Estate compliance has reviewed the redlined Plan and that it addresses all her agency’s comments. Steve Ford testified on behalf of DEPS that both a concept storm water management (“SWM”) plan (Developer’s Exhibit 11A) and a Development

SWM plan (Developer's Exhibit 11B) had been approved. He further explained that the project would be served by public water and sewer so no groundwater management plan was required. Finally, he testified that the Plan had also been reviewed and approved by the Environmental Impact Review section. Last, Shaun Crawford testified that OZR had reviewed the Plan, including the Modification of Standards requests and had no outstanding issues.

Each agency witness indicated the redlined Development Plan satisfied all Baltimore County laws and regulations, as well as all agency comments from the Development Plan Conference, and each reviewer recommended approval of the Plan on behalf of their respective agencies.

Developer's Case

Mr. Vettori gave a general overview and chronology of the PUD process in this case and then presented several witnesses. First was David Strouse, on behalf of Patapsco Fields Investments, LLC. Mr. Strouse testified that he is a lifelong Baltimore County resident and that he has been in the development business for over thirty years, with many successful projects in the County. He explained that he and other members of the development team have put much time and effort into meeting with community groups to get their input on this proposed project and to negotiate the community benefits the project will bring, including the aforementioned improvements at the Parkview Trail and Stonegate at Patapsco developments.

Sean Davis of Morris & Ritchie engineering testified next. He was accepted as an expert in engineering, site planning, and the Baltimore County development and zoning laws. He described the Plan in great detail, emphasizing the aesthetics and environmental protections included in the Plan. He also testified that, in his expert opinion, the PUD conforms with the 2020 Master Plan, meets the compatibility requirements of B.C.C. § 32-4-242. He also opined that the

requested Modification of Standards are appropriate and that many of the modifications will lessen environmental impacts by, among other things, reducing the amount of impervious surface.

Josh Sharon of Morris & Ritchie was next. He was also accepted as an expert in engineering, site design, and the Baltimore County development and zoning laws and regulations. He explained the technical aspects of the Plan in detail, including the storm water management systems, the public sewer and water connections, the forest buffer and easement protections, the internal road system, and the open space amenities, as well as the 8 ft. wide sidewalk that will extend across the entire frontage of the site and connect with the adjacent development's sidewalk. He also explained the access point design on Johnnycake Road and the fact that a second access point would connect this development with the adjacent Patapsco Glen II development to the west, providing the second access point required for a development of more than 150 units. He testified that Greg Carski of DPW had approved the Developer's Traffic Impact Analysis ("TIA"). In discussing the traffic impacts Mr. Sharon testified that the Plan provides for the addition of a third lane along the frontage of the site to ease the traffic impacts of vehicles turning into the development. Mr. Sharon opined that the Plan conforms to all the requirements of BCZR § 502.1, as well as all other county, and state laws. Finally, he testified that the Modification of Standards were necessary because of the current OT and DR 3.5 zoning on the site, but that they were authorized by the PUD Resolution.

Developer's final witness was Mickey Cornelius. He was accepted as an expert in traffic engineering. He explained the TIA that he had performed. (Developer's Exhibit 35). He testified that this site is not within a deficient traffic shed on the Basic Services Map. With reference to the TIA he testified that according to the International Traffic Engineers ("ITE") manual this 182 unit townhouse development will generate an additional 84 trips in the morning rush hour and an

additional 104 trips in the evening rush hour. He confirmed that a second access point was required due to the number of units (greater than 150) and that the Plan called for this access via the adjacent development, which was permitted under the B.C.C. and BCZR. He also confirmed that a third turn lane would be constructed along the site frontage on Johnnycake road in order to lessen traffic impacts. On cross-examination from Ms. Wolfson he acknowledged that the proposed 182 units are expected to add 1330 daily trips in and out of the site but he testified that this would not have significant detrimental impacts on traffic in the area.

As the conclusion of this witness testimony Mr. Vettori moved that all the Developer's Exhibits be admitted into evidence and the motion was granted.

Baltimore County Code Requirements

The Hearing Officer can approve a PUD Development Plan only upon finding:

- (1) The proposed development meets the intent, purpose, conditions, and standards of this section;
- (2) The proposed development will conform with § 502.1.A, B, C, D, E and F of the Baltimore County Zoning Regulations and will constitute a good design, use, and layout of the proposed site;
- (3) There is a reasonable expectation that the proposed development, including development schedules contained in the PUD development plan, will be developed to the full extent of the plan;
- (4) Subject to the provisions of § 32-4-242(c)(2), the development is in compliance with § 430 of the Baltimore County Zoning Regulations; and
- (5) The PUD development plan is in conformance with the goals, objectives, and recommendations of the Master Plan, area plans, or the Department of Planning.

BCC § 32-4-245(c)(1)-(5).

In this case, the Developer presented evidence which, when coupled with the findings of agency witnesses, and the County Council's findings in Resolution 53-20, establishes each of these elements. I note that BCC § 32-4-245(c)(1)-(5) requires conformance with only subsections A

thru F of BCZR § 502.1. Conspicuously omitted are § 502.1 G, H, and I, which deal, respectively, with: zoning inconsistencies, impermeable surface and vegetative retention, and environmental and natural resource impacts. Ironically, or perhaps not, those would have been the three primary areas of concern I would have with this proposed Plan. But my job is not to rewrite the law, it is to interpret and apply it. So I must set those concerns aside.

In my view the only other aspects of the plan that are of concern under § 502.1 are whether the project will “tend to create congestion in roads, streets or alleys” § 502.1.B; and, whether it will “tend to overcrowd land and cause an undue concentration of population.” § 502.1.D. With regard to the traffic impacts, the unrebutted testimony of the Developer’s traffic engineer is that this development will not have a significantly detrimental impact on traffic conditions in the area, despite the fact that it will add 84 new morning rush trips, 104 new evening rush trips and a total of 1330 total new daily trips. Laypersons, including myself, may find this conclusion suspect. But there is no countervailing evidence in the record, and DPW’s Traffic Engineering section has endorsed the Developer’s TIA, so there are no substantial grounds upon which the Plan can be denied on this basis. As to the question of population overcrowding, the County Council, in Resolution 53-20 reclassified 75% of his site from T2 Rural to T4 General Urban, which the Master Plan describes as “primarily residential urban fabric.” Given that reclassification, and the Council’s finding that these new homes are needed to address a housing to jobs deficit in the immediate vicinity, I cannot conclude that this development will overcrowd the land or unduly concentrate population.

This conclusion is buttressed by the fact that the DOP concluded in its Final HOH Report that the proposed PUD should be approved because they found that it conforms with the Master Plan; meets the compatibility requirements of B.C.C. § 32-4-402; meets the mitigation of impacts

requirements of B.C.C. § 32-4-243(b)(3); and meets the PUD modification of standards requirements, subject to a few conditions that will be incorporated into this Order.³

Further, I find that based on this Developer's track record and their already significant investment in this project that there is a very reasonable expectation that the project will be completed as designed and on schedule. In addition, the unrebutted expert opinions of both Mr. Davis and Mr. Sharon, as well as the recommendations of the relevant county agencies, convinces me that the Developer satisfied all requirements of the B.C.C. and complied with BCZR §§ 430 and 502.1.

Finally, given the factors cited by the County Council in Resolution 53-20, I find that the proposed development advances the goals and objectives of the Master Plan. Specifically, it will provide market rate housing within the URDL and near existing public transportation and employment centers while protecting the environmental features on the site and providing substantial community benefits, as required by the Resolution. In sum, B.C.C. §32-4-245(c)(5) is satisfied.

A PUD is required to provide a "community benefit" per BCC § 32-4-242(b)(6)(iii). As detailed above, the Council has found numerous community benefits that will derive from the proposed development and I concur with their findings. The Code also requires the ALJ to state how any approved modification of standards would impact surrounding uses and promote the public interest. BCC § 32-4-245(a)(3). On this issue, I am again persuaded by the testimony of

³ The DOP Final HOH Report states in its "Modification of Standards" narrative that the DOP "does not support the blanket variances since they alter the spatial relationships established for each house type." There is a difference between a "modification" that is authorized by the County Council as part of a PUD resolution, and a variance under BCZR § 307.1, or the common law, both of which require proof of additional factors. Since Resolution 53-20 approves the increase in density for this site, as well as changes its Transect from T2 to T4 I believe the modifications are appropriate and necessary.

Mr. Davis and Mr. Sharon that the modifications will allow Developer to construct a compact and walkable community. And again, their testimony is buttressed by the DOP's recommendation that the Plan and Pattern Book be approved. As such, I believe the modifications would be in the public interest.

THEREFORE, IT IS ORDERED by this Hearing Officer/Administrative Law Judge this **26th** day of **July, 2021**, that the 14-sheet redlined Development Plan known as "**Patapsco Fields – PUD DEVELOPMENT PLAN**" (Developer's Exhibit 1), be and is hereby **APPROVED**, **subject to the conditions set forth in the DOP Final HOH Report, which are incorporated herein.**

Any appeal of this Order shall be taken in accordance with Baltimore County Code, § 32-4-281.

Signed _____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm