

IN RE: <b>PLANNED UNIT DEVELOPMENT (PUD)</b>	*	BEFORE THE OFFICE OF
12 <sup>th</sup> Election District		
7 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
<b>(8100 Stansbury Road)</b>	*	FOR
<b>SHELTERED HARBOR II – PUD</b>	*	BALTIMORE COUNTY
SRP Management, LLC	*	<b>CASE NO. 02-0141</b>
<i>Developer/Applicant</i>		

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**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”). SRP Management, LLC (herein known as “Developer”) seeks approval of 89 single-family attached homes on Stansbury Road in Dundalk. Forty (40) of the units will have “front loaded” one-car garages and 49 will have “rear loaded” two-car garages. The proposed development is more particularly described on the 2-sheet redlined Plan known as the “1<sup>st</sup> Material PUD Amendment – Sheltered Harbor II” (the "Plan") submitted into evidence and marked as Developer's Exhibit 13. The Plan was prepared by D. S. Thaler & Associates, Inc.

The subject site is located on 6.5± acres of ML-IM zoned land at 8100 Stansbury Road on Lynch Cove. It was formerly a boatyard and marina. The site is in an Intensely Developed Area (“IDA”) of the Chesapeake Bay Critical Area (“CBCA”). The Developer is seeking to amend the previously approved PUD development so as to utilize "Parcel Two" as the area of residential development.

The history of the site and the project is somewhat convoluted. The Baltimore County Planning Board approved a mixed use PUD for this site on May 16, 2006 in accordance with

Resolution No. 87-04, which envisioned a mixed use development with retail, multi-story residential, and marina uses. Due to a downturn in the economy, that PUD plan could not be successfully marketed. As a result, the then owners of the parcel prevailed upon the County Council to enact Resolution No. 50-10 for the Villages at Sheltered Harbor Alternate PUD, which allowed for a maximum of 90 single-family attached fee-simple units on “Parcel One” of the site, and which separated “Parcel One” of the previously approved PUD (Resolution No. 87-04) from “Parcel Two,” which remained slated for mixed use retail/office development. By Resolution No. 173-05 the County Council approved for this site the density permitted in R.A.E. 1 zones, which is a maximum of 40 density units per acre (meaning that for this 6.78 acre site a maximum of 271.2 density units). In 2012, the development proposal for "Parcel One" was amended, and the site was developed with 68 single-family attached units as reflected on the Villages at Sheltered Harbor Alternate PUD Development Plan (“Sheltered Harbor I”), as approved by the Administrative Law Judge in December 2013. The present case seeks approval of a 1<sup>st</sup> Material Amendment to allow for the aforementioned 89 single family attached dwellings on “Parcel Two,” to be known as “Sheltered Harbor II.”

The *Master Plan 2020* "Land Management Area Plan" designation for the subject site is Community Conservation Area (“CCA”). Baltimore County's CCAs encompass the County's more densely populated, established communities. Nearly 75% of the County's residents live in CCAs, where there are a wide range of housing choices, small-scale commercial centers and employment centers. The CCA land management area designation is intended to protect and invest in these older communities, and revitalize their commercial hubs.

The "Proposed Land Use, Baltimore County Smart Coded" designation is T-4, General Urban Zone. The T-4 transect zone is characterized by mixed use, but is primarily residential

urban fabric. It may have a wide range of building types including single-family detached and attached houses and townhouses.

In enacting Resolution 50-10 the County Council found that the PUD application satisfied the community benefits required by BCC § 32-4-242(b)(6)(ii) and (iii). The resolution states that the plan will “provide the county land use benefit, including higher architectural design because of an improved site layout that provides fee simple homes and thus shoreline protection and view corridors for residents and neighbors not provided by the existing PUD Plan with its approved high rise condominium units.”

The property was properly posted with the Notice of Hearing and properly advertised, as required by the BCC. On August 26, 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, Rick Polm, as well as Mark Vaszil and Stacey McArthur from D.S. Thaler & Associates, Inc., the engineering firm that prepared the Plan. Patricia A. Malone, Esquire with Venable, LLP, appeared on behalf of the Developer. Two members of the community also attended but stated that they were simply seeking information about the proposed project. They declined to testify.

#### **Agency Witnesses**

Several County agency representatives testified at the hearing, and their testimony was facilitated by Darryl Putty, the Project Manager. The first witness was Jim Hermann, representing Development Plans Review (“DPR”) and the Department of Recreation and Parks (“DRP”). He submitted the Schematic Landscape Plan that he as the County Landscape Architect had approved on August 18, 2021. It was admitted as County Exhibit 1. He explained that a final Landscape Plan would need to be submitted and approved in Phase 2 of the project. On behalf of DRP, Mr. Hermann testified that this proposed 89 unit community was required to provide 1,000 sq. ft. of

open space for each unit, for a total of 89,000 sq. ft. of open space. He further explained that the site plan provides 65,266 sq. ft. of open space leaving a deficit of 23,734 sq. ft. He submitted a “Request for Waiver of Local Open Space” filed by the Developer which was admitted as County Exhibit 2, and a letter of approval signed by the Directors of the Department of Permits, Approvals and Inspections (“PAI”) and the Department of Public Works (“DPW”), which was admitted as County Exhibit 3. As evidenced by these exhibits, the Developer will pay a fee in lieu in the amount of \$83,306.34 to offset the open space deficit. Mr. Hermann also explained that the county had also agreed to count some of the environmental areas identified on the site plan as open space, including the proposed boardwalk along the waterfront and the kayak ramps. In conclusion he testified that these agencies recommended approval of the Sheltered Harbor II project.

Jason Seidelman testified next on behalf of the Zoning Review Office. He explained that all zoning issues had been resolved with the Developer and that his office also recommended approval. Lachelle Imwiko testified on behalf of Real Estate Compliance. She explained that the redlined comments on the site plan addressed all remaining issues and that her office also recommends approval. Steve Ford then testified on behalf of the Department of Environmental Protection and Sustainability (“DEPS”). He explained that he was representing the Ground Water Management (“GWM”) and Storm Water Management (“SWM”) sections as well as the Environmental Impact Review section. He too confirmed that the redlined plan had addressed all outstanding comments from these sections and that DEPS recommended approval. The approved Concept SWM Plan was admitted as County Exhibit 4.

Vishnu Desai testified on behalf of Development Plans Review. He explained that there were a few modification of standards issues that had not yet been resolved, but that except for them that DPR recommends approval of the project. The undersigned had Mr. Desai stay in the hearing

in order to hear the testimony of the Developer's engineer regarding these issues and to comment on same. During the hearing the issues were addressed and resolved, as will be clarified in the Order.

Finally, Brett Williams testified on behalf of the Department of Planning ("DOP"). He submitted the Final Hearing Officer Hearing Report from the DOP, which was admitted as County Exhibit 5. He testified that the DOP had reviewed and approved the School Impact Analysis ("SIA") for this PUD, as required by BCC § 32-6-103. The SIA Report was admitted as County Exhibit 5A. He explained that the Middle and High Schools for this PUD have a projected State Rated Capacity ("SRC") of 87% and 106%, respectively, which are below the 115% SRC limit. However, Grange Elementary School has a projected SRC of 117%. He testified that DOP nevertheless recommends approval of the project under BCC § 32-6-103(f)(3) because several elementary schools in adjoining districts have sufficient excess capacity. With reference to the DOP's Final HOH Report, Mr. Williams testified that the proposed 1<sup>st</sup> Material PUD Amendment conforms with the Master Plan; meets the compatibility requirements of BCC § 32-4-402; meets the mitigation of impacts requirements of BCC § 32-4-243(b)(3); and meets the PUD modification of standards requirements. Mr. Williams also submitted an approved Public Works Waiver request, which was admitted as County Exhibit 6. He explained that the waiver requests were approved in order to reduce the impervious surface area in this environmentally sensitive location, and that the waivers would not adversely impact walkability or overall site design. In addition, Mr. Williams testified that the DOP had reviewed and approved the Pattern Book as being in conformance with the Performance Standards of the Baltimore County Zoning Regulations ("BCZR") § 260.

In sum, except for DPR, each agency witness indicated the redlined Development Plan satisfied all Baltimore County laws and regulations, as well as all agency comments, and each agency recommended approval of the 1<sup>st</sup> Material Amendment “Sheltered Harbor II.”

### **Developer’s Case**

Developer’s first witness was Mark Vaszil, an engineer with D.S. Thaler & Associates, Inc. He was accepted as an expert in engineering in the BCZR and the BCC. His *curriculum vitae* was admitted as Developer’s Exhibit 3. He described the area of this site and the site itself in some detail. He then detailed his numerous interactions with the County agencies in order to address concerns raised about the project. He explained that he worked with DEPS to arrive at the most suitable site design for this site based on CBCA restrictions. He explained that the overarching goal was to reduce the amount of impervious surface, which is what drove several of the modifications of standards requests. He explained that the Developer had proposed that all roads within the development would be public, but at the County’s request they had agreed to make all the “side streets” private. He testified that trash pickup from these streets would occur at their intersection with Stansbury Road, a public road that runs west to east through the middle of the site. He further testified that the side streets could accommodate emergency vehicles and equipment. He also testified that the development team had had numerous meetings with the HOA of the adjacent “Villages at Sheltered Harbor” community to the north. He explained that as a result of these meetings the Developer had agreed to, among other things, remove (at an estimated cost of \$400,000.) three (3) large decrepit piers in front of the Villages community, and to connect the Villages to the proposed boardwalk running along the waterfront of the proposed Sheltered Harbor II community. Mr. Vaszil identified and submitted the formal agreement between the HOA and the Developer (“Second Amendment to Declaration of Restrictions and Declaration of

Easements”), which has been recorded in the Baltimore County Land Records, and which was admitted as Developer’s Exhibit 8. This document details the pier removal, the boardwalk access and numerous other items that the parties have agreed to. Mr. Vaszil also explained the modification of standard requests “M-11” through “M-16” and the reasons therefor. He further testified that this site has no Basic Services Map issues. He then explained that pursuant to County Council Resolution 173-05 the site is subject to the density limits of the R.A.E. 1 zone, which provides for 40 density units per acre, and that the proposed plan calls for much less density than that.<sup>1</sup> He also explained that under BCZR § 302.1 this ML zoned site is subject to the height and area standards of the DR 5.5 zone, and that some of the modifications of standards requests are based on these DR 5.5 parameters. In addition, Mr. Vaszil testified that the Developer will remediate the soil contamination at the site that was caused by the former boat yard and marina uses. Finally, Mr. Vaszil testified that in his expert opinion the proposed site plan complies with all applicable BCC and BCZR standards.

Developer’s next and last witness was Stacey McArthur, a registered landscape architect, who is also with D.S. Thaler & Associates. She was accepted as an expert in land use, site design and the BCC and BCZR. Her *curriculum vitae* was admitted as Developer’s Exhibit 10. She addressed the modification of standards requests that Mr. Vaszil had not addressed. The majority of those modification requests are for setback relief, or arise from CBCA constraints. She explained the Pattern Book in some detail, including numerous design features that were added to meet the “substantially higher” design standard applicable to PUDs. She also explained that the design of this community is very similar to the design of the adjacent townhomes at the Villages of Sheltered Harbor, and that there will be vehicular and pedestrian connectivity between these

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<sup>1</sup> Per the site plan, this 6.78 acre parcel would yield a maximum of 271 density units (6.78 x 40). However, the plan proposes only 133.5 density units - 89 three bedroom townhouses (89 x 1.5).

two communities. She further noted that the proposed development will be more environmentally friendly than the existing site, which is 100% paved and impervious surface. Finally, she explained that under Council Resolution 173-05 no community benefit is actually required for this PUD but that, in fact, several community benefits will be provided: The removal of the three decrepit piers, the construction of the boardwalk and kayak ramp, to be shared with the adjacent Villages community, and the viewscape of the waterfront that will be provided at the end of Stansbury Road.

### **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, establishes each of these elements.

THEREFORE IT IS ORDERED by this Hearing Officer/Administrative Law Judge this **3<sup>rd</sup>** day of **September, 2021**, that the Open Space Waiver, Modifications of Standards (with the



exception of the condition(s) listed below), and the Public Works Waiver, be and are hereby **GRANTED**.

IT IS FURTHER ORDERED that the 2-sheet redlined Development Plan known as **“SHELTERED HARBOR II – PUD DEVELOPMENT PLAN”** (Developer’s Exhibit 13), be and is hereby **APPROVED**, subject to the following conditions:

- 1) Except for Stansbury Road, all sections of all other roads within the Sheltered Harbor II community will be **PRIVATE** roads.
- 2) The Developer’s engineer shall submit the proposed water line design for this development to the DPW&T Water Design Section for their review and approval prior to the issuance of permits.
- 3) The Developer shall remediate the “brownfield” conditions at the site (Maryland Dept. of Environment Brownfields Master Inventory #MD1778).

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



PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM/dlw