

ALLEGANY COUNTY BOARD OF ZONING APPEALS

IN RE: APPLICATION OF : **CASE NO. 880**
TERRAPIN RUN, LLC
FOR A SPECIAL EXCEPTION : **Hearing Dates: 8/02/05-8/30/05**
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FINDINGS

This case came before the Allegany County Board of Zoning Appeals (the "Board") upon the application of Terrapin Run, LLC for a special exception for planned development in the "A" - Agricultural, Forestry and Mining Zoning District and the "C" - Conservation Zoning District.

A field inspection of the subject property was conducted by the members of the Board on June 30, 2005. The purpose of the field inspection was to familiarize the Board members with the site layout in order for them to develop an understanding as to where the proposed use would be located and as to whether the proposed use would be constructed in compliance with the terms of the Zoning Ordinance.

At the hearings which commenced on August 2, 2005 and concluded on August 29, 2005, the Board considered the attached list of exhibits which consisted of information gathered by the Secretary of the Board and information provided by other agencies and individuals.

The proposed use will be located on a 935 acre tract of land on the north side of U.S. Route 40 between Shipley Road on the east side and Green Ridge Road on the west side. The tract abuts Route 40 and Shipley Road. The tract is basin shaped with the outer portion being a

higher elevation than the interior portions. Green Ridge State Forest is located to the east of the tract and other forested lands are located to the South.

The subject property is located largely within the A Zoning District; however portions of said property are located within the C Zoning District. The portion of the property in the C Zoning District is located mostly within stream buffers.

The planned development proposed by the Applicant will consist of a maximum of 4,300 dwelling units. Those units will consist of single condominiums (2-3 story apartment structures), ½ acre lots with single family homes, 1/3 acre lots with single family homes, multiple family dwellings, townhomes and patio homes. The Applicant also plans to build an equestrian center and community building on the site. The development will also feature a commercial/retail area with neighborhood commercial uses planned primarily to service the needs of the persons residing in the area. It is expected that the development will have a density of 4.6 residences per acre which density is consistent with that which exists in the city of Frostburg and outlying areas of the city of Cumberland.

The entire buildout for the project is expected to take place over a twenty (20) year time frame. Approximately 150-200 separate permits and approvals will be required for the project. The Board's approval is the first major approval that has been sought by the Applicant.

The project will have its own water system and its own waste water treatment plant. A community well system will be developed to provide potable water and water utilized for household purposes. Initially, the structures in the project will be serviced by individual septic systems and possibly community septic systems. Those systems will be laid out so that they can be tied into the project-wide system that will be serviced by the waste water treatment plant. The

waste water treatment plant is expected to become necessary around the time 1,200 dwelling units are constructed, although the Applicant plans to complete construction of the plant prior to the completion of the 375th residential dwelling unit unless there are delays in the process of obtaining the required permits, in which event it will be constructed as soon as possible after the permit is issued.

The Applicant's Residential Planned Developments is Permitted by Special Exception

An issue was raised as to whether the proposed use is permitted in the A and C Zoning Districts. A “planned residential development” is a special exception use in the A and C Zoning Districts under the terms of §§ 141-97.B and 141-98.B of the Ordinance. However, the Ordinance does not define that term.

The Ordinance defines a “planned development” in §141-71 as “[including] mobile home parks, multifamily housing, condominiums, townhouses, cluster residential developments, industrial parks, shopping centers, convenience centers, campgrounds and resorts, having water and/or sewer systems and an internal road system maintained by the developer or his assigns.” The same types of planned developments are listed in §141-84.A.

Article XX of the Ordinance contains a listing of the permitted uses and those permitted by special exception in each of the zoning districts. None of the sections in that Article address “planned developments” generally as permitted or special exception uses. Rather the only reference to the term or a variation thereof is the usage of the term “planned residential development.” Although the types of planned developments are addressed individually in some of these sections, the term “planned development” is not utilized therein.

The lack of a definition for the term “planned residential development” leaves the Board in a position where it must determine whether the terms “planned development” and “planned residential development” have the same or a different meaning. The Board is of the opinion that the meanings differ. However, despite that opinion, it is the Board’s opinion that the proposed use is permitted by special exception in the A and C Zoning Districts.

The Board assumes that the drafters of the Ordinance intended the terms planned development and planned residential development to have different meanings. It is the Board’s opinion that the word “residential” in the term “planned residential development” is a modifier that includes some but not all of the types of planned developments.

The Board is of the opinion that industrial parks should definitely not be considered to be planned residential developments as industrial uses are only specifically permitted in the I Zoning District and they are not permitted as permitted or special exception uses in any other Zoning Districts. Further, industrial uses are not in consonance with the purposes sought to be served in the A and C Zoning Districts.

The Applicant intends to include certain commercial structures in the proposed development in the nature of neighborhood commercial uses, except that gas stations and movie theaters will not be included among those uses. It argues that such uses are accessory and incidental to the residential nature of the project as “The use of 1% of the development for retail and commercial purposes does not transform the Terrapin Run Project from a residential project to a commercial project.” See Memorandum of Applicant, p. 18. Only nine (9) of the 935 acres of the site will be devoted to the commercial/retail uses planned by the Applicant.

The Applicant quotes from County Commissioners v. Zent, 86 Md. App. 745 (1991) as providing authority for its position that the commercial/retail uses contemplated are accessory to the principal use. That case concerned a bulk milk delivery, distribution and trucking business that was operating in the Agricultural Zoning District in Carroll County, Maryland. The milk trucking and distribution business became a nonconforming use with the advent of zoning. The use involved the storage of old decommissioned trucks for purposes related to the repair of operable trucks as well as other salvage type uses. In addressing the salvage operations component of the use, the Board of Zoning Appeals for Carroll County determined that the site was not a nonconforming junkyard and was therefore not permitted. The Court of Special Appeals determined that this determination was erroneous.

In its opinion, the Court defined an accessory use as one “which is dependent on or pertains to the principal or main use.” Id. at 758 (quoting 82 Am.Jur.2d, *Zoning and Planning* § 169 (2d ed 1976)). Considering a number of cases from other jurisdictions, the Court opined

One of the most restrictive definitions of "accessory use" is that found in Lawrence v. Zoning Bd. of Appeals of the North Branford, 158 Conn. 509, 264 A.2d 552 (1969):

The ordinance in question defines an accessory use as one which is subordinate and customarily incidental to the main building and use on the same lot. The crucial phrase "customarily incidental" is typically present in this type of legislation

* * *

The word "incidental" as employed in a definition of "accessory use" incorporates two concepts. It means that the use must not be the primary use of the property but rather one which is subordinate and minor in significance. Indeed, we find the word "subordinate" included in the definition in the ordinance under consideration. But "incidental," when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary

use. It is not enough that the use be subordinate; it must also be attendant or concomitant

The word "customarily" is even more difficult to apply. Although it is used in this and many other ordinances as a modifier of "incidental," it should be applied as a separate and distinct test. Courts have often held that use of the word "customarily" places a duty on the board or court to determine whether it is usual to maintain the use in question in connection with the primary use of the land. In examining the use in question, it is not enough to determine that it is incidental in the two meanings of that word as discussed above. The use must be further scrutinized to determine whether it has commonly, habitually and by long practice been established as reasonably associated with the primary use.

Id. at 767-78.

The Ordinance does not contain a definition of the term “accessory use” in the context of planned developments. Nevertheless, the Zent opinion offers guidance to the Board with respect to the matter at issue.

The Board determined that the commercial/retail uses proposed by the Applicant are incidental and accessory to the principal use. Less than 1% of the project will be devoted to such uses. The Board considered that the Planning Commission referred to the proposed use as, in essence, being a planned community and opined that such uses typically involve some commercial and retail uses. In allowing for planned residential developments in the A and C Zoning Districts, it is the Board’s opinion that the drafters of the Ordinance did not intend to prohibit accessory commercial and residential uses. Thus, the Board concluded that the planned development proposed in this case is permitted as a special exception use in the A and C Zoning Districts.

The Proposed Use Will Meet the Criteria of the Ordinance

The case law clearly establishes that a special exception use is presumed to be compatible with uses permitted as a matter of right provided the proposed use meets the criteria of the ordinance in question. “A special exception is a use which has been legislatively predetermined to be conditionally compatible with the uses permitted as of right in a particular zone, the condition being that a zoning body must, in each case, decide under specific statutory standards whether the presumptive compatibility in fact exists.” Creswell v. Baltimore Aviation Serv., Inc., 257 Md. 712, 719 (1970). The Board’s findings relative to the criteria of the Ordinance are as follows:

1. The lot size and yard requirements set forth in §141-100 of the Ordinance are inapplicable at this time. The project has not progressed to the point that the exact locations of all improvements have been planned. Sketch plans for the project have been prepared, but those plans only depict the general locations of the improvements. As constructed, the improvements will need to meet the lot size and yard requirements of the Ordinance.

2. The proposed use will be subject to the setback requirements for structures set forth in §141-101 of the Ordinance. All structures will need to be set back 40 feet from the right-of-way or 65 feet from the centerline thereof as the A and C Zoning Districts are classified as “non-urban districts.” The Applicant will comply with these criteria.

3. The Applicant submitted a major site plan consisting of three separate pages which was admitted into evidence as Exhibit S. A major site plan is required for planned developments as per the provisions of §141-83.C of the Ordinance. Section 141-114 of the Ordinance sets forth the major site plan criteria. The Board applied those criteria to the site plan produced by

the Applicant, and determined that the site plan meets all of those criteria. It also determined that the stormwater and sediment and erosion control criteria were inapplicable at the present time in that the plans will be dependent upon the plans relative to the location of the improvements within the site and that such plans will be addressed in the subdivision approval process.

4. The proposed use is subject to the general development standards set forth in §141-115 of the Ordinance. In that regard, the Board's findings other than those previously addressed herein are:

A. The proposed use has approximately one mile of frontage on Route 40, a publicly dedicated right of way, thereby meeting all requirements of the Ordinance relative to minimum road frontage.

B. No structures will be constructed on sites having a slope of 25% or more and any structures that are planned for development on sites presently having a slope of 25% or more will be constructed once the proposed sites are graded so that their slopes are less than 25%.

C. All lots will have a buildable site which is at least 25 feet from the center line of any stream or drainageway. In the event any stream basins are determined to be greater than 400 acres in size above the site for the planned development, the buildable sites will be set back no less than 50 feet from the stream bank. The Applicant plans to abide by these restrictions and will not construct improvements any closer than 50 feet from the Terrapin Run stream bank.

D. The Applicant's site plan depicts U.S. jurisdictional waters and required buffer areas. Buildable sites will not be located within the required buffer areas. Exhibit W shows that the Department of Natural Resources has determined that there are no state or federal

records for rare, threatened or endangered species within the project site. Thus, the State of Maryland has not designated any habitats for threatened or endangered species within the project's boundaries. The Opponents claim that threatened or endangered species could come to be located within the boundaries of the site of the proposed use. The Board determined that this criteria does not relate to possibly present threatened or endangered species. It only relates to current designations of particular habitats and there are no such designations at the site of the proposed use.

E. All criteria set forth in §141-115 will be met in that (i) the site will have considerable more than fifty feet of frontage on U.S. Route 40 with access via a commercial entrance, (ii) interior roads will provide access to each unit or parcel and will be maintained by the developer; (iii) water and sewer service from common systems will be provided as addressed previously herein and the expert testimony presented by the Applicant established that the systems planned will be adequate to service the project's needs; (iv) a fifty (50) foot buffer will be implemented with respect to the property in its entirety; and (v) open spaces are planned as set forth in the stream buffering areas depicted in the site plan and trails for pedestrian and equestrian traffic which, to the extent possible, will be constructed over existing logging trails.

The Board determined that the property has two (2) front sides by virtue of Route 40 abutting the south side and West Shipley Road abutting the east side. Thus, the 50 foot front yard and rear yard buffers apply as to all sides.

Section 141-28 of the Subdivision Regulations provide that only 25 acres of the site must be left as open space. The proposed use will have the following open spaces: (1) 75 acres of stream buffering; (2) 22 acres for the equestrian center; and (3) five (5) acres for the trail system.

5. The commercial, industrial and institutional development standards set forth in §141-124 of the Ordinance, insofar as they are applicable, will all be met by the Applicant as is addressed elsewhere herein.

6. There was no testimony relative to the Applicant's plans for lighting, signs or billboards. Therefore, the Board presumed that no such plans exist. If and when they do, they will need to comply with the standards set forth in §141-125 of the Ordinance, including, but not limited to those related to sign size and setback requirements. The Board expects that there will be a substantial sign at the main entrance to the proposed use and further recognizes that the design of the sign and its particular location are not matters of primal importance to the Applicant in light of the number of permits and approvals the project will require in order to move forward in the development process.

Based upon the foregoing findings, the Board found that the Applicant will comply with the criteria of the Zoning Ordinance. Thus, it is entitled to the presumption that the planned residential development proposed is compatible with the uses permitted as a matter of right within the A and C Zoning Districts.

The Opponents Did Not Establish Site Specific Adverse Impact

The Board next considered whether "the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use, regardless of its location within the zone ...". Brandywine Enterprises v. County Council for Prince Georges County, 117 Md. App. 525 (1997). The issue for the Board's consideration "is whether the adverse effects in a particular location would be

greater than the adverse effects ordinarily associated with a particular use that is considered by the [Board].” Eastern Outdoor Adver. Co. v. Mayor & City Council of Baltimore, 128 Md. App. 494, 526 (1999). The opponents bear the burden of proof to show that there are site-specific adverse impacts sufficient to negate the presumption that the special exception use is compatible with the uses permitted as a matter of right within the A and C Zoning Districts.

Numerous opponents were present at the hearing and testified in opposition to proposed use. The Board’s findings relative to the issues raised in opposition to the use are as follows. Board member, William Powell, dissented with respect to some of the Board’s findings. Where applicable, his dissent is duly noted below.

Water Availability and Quality

The opponents expressed concerns regarding water availability and the effect the proposed use would have with respect to water resources for existing area residents. They are of the opinion that the proposed use will adversely affect the water resources and that there will be insufficient water resources to service their needs and the needs of those residing within the planned development proposed.

Mark Eisner, the Applicant’s hydrogeology expert, testified at length relative to the issue of water availability and the Maryland Department of the Environment’s allocation of ground water resources for the proposed use. The Board considered Mr. Eisner to be an expert in his field.

Mr. Eisner initially testified that he expects the MDE to issue a water allocation permit based upon the expected needs of the proposed use twelve (12) years into the future. He expects the water allocation to be 350,400 gallons per day. This figure is set forth in the document titled

“Table 1: Estimated Available Supplies” which forms a part of Exhibit II. This figure is calculated in two ways. One method involves multiplying the net acreage available for allocation (1168 acres) by 300 gallons per day per acre (the water availability per acre based upon MDE standards. The other method involves multiplying the equivalent dwelling units per area (1,402 total) by 250 gallons per day per equivalent dwelling unit. The first calculation establishes the need for a water allocation of 350,400 gallons per day and the second method established a need of 350,500 gallons per day. Both methods are calculated upon the assumption that MDE will allocate groundwater resources from adjacent state owned land to the proposed use in issuing the water allocation permit.

The water availability of 300 gallons per day per acre is a statistic that is utilized by MDE statewide without allowance for deviations as to specific areas within the state predicated upon different topographies, soil conditions, relative rainfall amounts, etc. Opponents objected to the utilization of this statistic because Allegany County is acknowledged to be the driest county in the state of Maryland and for other reasons relating to the ability of the groundwater to be recharged. Conversely, Mr. Eisner pointed out that the site of the proposed use is basin shaped and the fact that water flows downhill, towards the lower lying areas in the basin, would have an ameliorative effect notwithstanding the opponents’ areas of concern.

The Board also considered that the second method for calculating the anticipated water allocation provides a conservative estimate in that the 250 gallon per day per equivalent dwelling unit figure is the highest figure MDE uses in making its allocations. That figure represents the anticipated water use of single family homes. Denser uses have lower gallon per day water needs based upon MDE statistics. The proposed use will be a mixed use of single family homes

and higher density residences. Thus, in estimating the allocation based upon 1,402 single family homes, the Applicant utilized a statistic that resulted in a lesser number of equivalent dwelling units being permissible.

In the interim period between Mr. Eisner's initial testimony and his rebuttal testimony, the Applicant acquired a 412 acre parcel of land in the area of and to the west of the proposed use. As a result of the acquisition of the parcel, the anticipated water allocation increased to 470,000 gallons per day, an allocation equivalent to the daily water needs of 1,882 equivalent dwelling units.

The 412 acre parcel also includes a stretch of Fifteen Mile Creek. The Applicant intends to submit an application for a permit to allow it to withdraw surface water from Fifteen Mile Creek for the purposes of the proposed use. The anticipated allocation is expected to be 1.6 million gallons per day, exceeding the anticipated need of the proposed use at full buildout by more than twofold.

Opponents questioned what would occur if there is not a sufficient amount of water to service the needs of area residents and what would happen if the groundwater became subject to a higher level of contamination as a result of the proposed use. Mr. Eisner advised that MDE would require the Applicant, at its expense, to mitigate the problem and, in his experience, the mitigation required has been effective to resolve the adverse consequences of development.

Mr. Eisner testified that, if the project is completed as planned with 4,300 units being constructed, the total need for water in the development will be 750,000 gallons per day based upon the mixed variety of dwellings that will be erected on the site. Opponents raised concerns as the water availability at the site, assuming MDE allows water from state owned land to be

allocated to the site, is 350,400 gallons per day. Further, the water availability figure is predicated upon only 10% of the surface area within the project area being impervious. Opponents expressed concern that the impervious area would become greater than 10% as the proposed use is developed further.

Mr. Eisner adequately addressed these concerns. The 10% statistic is an accepted standard in his area of expertise. However, MDE reviews water allocation permits no less than once every three years and specific complaints and other matters can result in there being more frequent reviews. Such reviews can result in the reassessment of the water allocations. Building permits are not issued unless there are adequate water resources to service the needs of area residents. If it is determined at any point during the development of the proposed use that water resources are insufficient to service the needs of area residents, no further building permits will be issued unless and until additional water resources are identified. Further, in such instances, it could be expected that the Applicant will be required to mitigate and undertake remedial measures. Development will be limited by existing water resources. In the event the Applicant cannot locate resources above and beyond 350,400 gallons per day, MDE will not permit him to develop the site to a point beyond the site's availability to service the needs of area residents.

One opponent, David Reusing, testified that when the Applicant drilled test wells, his well ran dry for the first time during the four (4) years he owned his property. His property is located at the top of a hill approximately 1000 feet from the property line of the proposed use. Mr. Eisner's testimony established to the satisfaction of the Board that Mr. Reusing's water loss was most likely not related to the test wells. His addressed four (4) points in support of his position

First, only two (2) of the test wells were located in the area of Mr. Reusing's property. Those wells ran for a period of several hours one (1) month prior to the time Mr. Reusing lost his water. Such a limited period of water draw would be unlikely to affect neighboring wells.

Second, Mr. Reusing's property is located at the top of a hill, an area with a minimal recharge area. Areas of limited rechargeability present greater risk for water loss.

Third, the fissures of the geologic formations run southwest to northeast. Groundwater flows in a direction parallel to the geologic formations. For the test wells to have caused Mr. Reusing's water loss, the water would have needed to flow against the grain, which Mr. Eisner indicated was very unlikely.

Fourth, Mr. Eisner reviewed Mr. Reusing's well permit. The information contained therein established that the well has a cascading water source. Mr. Eisner's testimony established that such wells are subject to having decreased performance with the passage of time.

All water will be treated and will be subject to governmental regulatory agency inspections to ensure the adequacy of the water quality. With the acquisition of the 412 acre parcel, the Applicant will have sufficient water resources available to service the needs of the proposed project. MDE's regulations will have the effect of determining the extent to which this project can be developed. Thus, the majority of the Board opined that the water quantity and quality issues do not present site-specific adverse impacts.

Mr. Powell dissented on this issue. He opined that the groundwater allocation is insufficient to support the project at full buildout. He further opined that the Applicant's plans do not adequately address the water needs at the subject site and took issue with the majority's willingness to accept the fact that the MDE permitting process will, to a large extent, dictate the

number of units developed. In sum, it is Mr. Powell's position that the Applicant submitted an application for a 4300 unit planned residential development and that it did not establish satisfactorily that it would be able to meet the water resource needs of the project's potential future residents.

School System Adequacy

Numerous opponents expressed concerns relative to the adequacy of the school system to handle the influx of students the proposed use would bring to the school system, particularly if 4,300 residential units are developed on the site. This impact is not site specific in that the influx of students at full buildout would be the same regardless of where the proposed use is located. The school system would have to make adjustments regardless of where such a planned development would be established. Further, the Superintendent of the Allegany County School System has opined that the system would be able to handle the increase in the size of the student body.

It is also worthy to note that the Applicant envisions that 25% of the units built will be for the "active elderly," persons fifty-five years of age and older. Typically, such persons do not have school age children. Therefore, the imposition on the school system will be mitigated if these plans come to fruition.

Economic Impact

One opponent raised an issue relative to the economic impact of the proposed use. She claimed that the proposed use would cost the County \$1.25 for every dollar in tax revenue generated by the proposed use. No studies or reliable data were cited as the source for this claim. She further claimed that the residents of the development, due to its proximity to the

Allegany/Washington County line, would spend their money outside of Allegany County because Hancock would be the site where they would conduct their shopping and they would be drawn to out of County sites to spend their money.

The Board found this argument to be devoid of merit. Such an argument would effectively serve to prohibit the establishment of planned developments near county lines when the nearest commercial center is located in the adjacent county. Further, the alleged adverse impact has no effect on properties surrounding or in the general area of the use.

In his case in rebuttal, the Applicant offered the testimony of an expert economist, Dr. Basu. Dr. Basu's testimony clearly established that the \$1.25 cost per every dollar in tax revenue was an fallacious assumption. He further testified that the economic impacts of a project in the nature of the proposed use would be favorable to the County. He projected that the project, at full buildout, would result in the addition of 3,227 jobs and that, during the construction phase, in excess of 300 persons per year would be employed.

None of this testimony was relevant to the issue of site-specific adverse impact. However, it was relevant to the issue of whether the proposed use will be in harmony with the comprehensive plan. That issue is addressed later herein.

Adequacy of Fire Protection and Related Services

Opponents expressed concerns about the inadequacy of fire protection and emergency medical services in the area of the proposed use. The Little Orleans Volunteer Fire Department services the area in which the use would be located. The nearest ambulance service is located in Flintstone. The opponents were concerned about response times when fire and health-related

emergencies arise and they further expressed concerns relative to the inadequacy of the current staffing of such services to meet the needs of the proposed development.

The Board considered these objections and determined that they do not constitute site-specific adverse impacts. The Applicant will deed land within the development to fire protection and emergency medical service providers. The Board recognizes that such services are largely manned by volunteers. As the population increases in the area, the pool of available volunteers will increase. It is also foreseeable that these services could be established, at least in part, on an other than volunteer basis. Regardless of the location of a development of the magnitude proposed by the Applicant, the need for services like fire and police protection and emergency medical services would need to be met.

In its case in rebuttal, the Applicant's development manager for the proposed use, Craig Leonard, addressed matters relative to the opponents' concerns. He communicated with area officials and ascertained that the fire department volunteers spend approximately 90% of their time fund raising in order to finance their operations. The Applicant will create a special taxing district in the area of the proposed use, the proceeds of which would be directed toward fire protection, thereby mitigating the fund raising pressures and enabling the volunteers to direct their energies toward fighting fires rather than raising money. Such a special tax assessment will benefit area residents beyond the borders of the proposed use.

The Board further opined that regardless of the location of the use within the A and C Zoning Districts, the effect of a development of the magnitude proposed by the Applicant would have the same affect upon volunteer fire and emergency medical services resources. More people would create a greater need for such services in any area.

Scenic Route 40

A representative from the Maryland Historic National Road Association expressed concerns that the proposed use would undermine the heritage tourism associated with Route 40, a route which has been federally designated as being of significance. She opined that the development should not be permitted for this reason.

No evidence was presented to indicate that development along scenic byways is in any way restricted by federal or other law. No criteria were adduced relative to what considerations would be taken into account in taking away Route 40's special designations, nor was any evidence presented as to the likelihood of the proposed use resulting in the loss of the designations. Therefore, the opponents failed to carry their burden of proof in establishing the likelihood that Route 40 will lose its designations if the project moves forward.

There is substantial development along Route 40 in other areas in the County. The special designations in regard to the roadway, in some respects, relate to its historic use, i.e., that of an east-west transportation corridor. Year in and year out improvements are made to the roadway. The historic nature of the roadway is applicable with respect to its heavily developed portions as well as the lesser developed portions. This development has not resulted in Route 40 losing its federal designations.

Further, prior to the establishment of Interstate 68, Route 40 was the major east-west travel corridor. Its use as such did not impair or affect its federal designations, assuming those designations were made prior to the construction of I68. Further, the substantial commercial development that currently exists along Route 40 in towns like LaVale and Frostburg has not affected its designation as such either.

In their closing argument, the opponents, through counsel, argued that the improvement of Route 40, particularly the widening of the roadway which, insofar as the Board noted, only related to the area of the commercial entrance, would effectively destroy the tree canopy effect wherein the trees effectively create a canopy over Route 40. The testimony adduced during the hearings did not include any remarks or observances that led the Board to believe that such a canopy exists. Further, they viewed the site during a pre-hearing visit and did not observe the tree canopy referenced by counsel.

The Board determined that the objections relative to this issue are speculative and, as such, do not constitute competent evidence of site-specific adverse impact

Traffic

A general objection was raised relative to the inadequacy of the traffic study submitted by the Applicant as an exhibit in this matter. Most of the issues addressed in opposition were criticisms of the points addressed in the survey rather than offers of substantive evidence demonstrating site-specific adverse impact. The opponents bear the burden of proof to produce substantive evidence of site-specific adverse impact. The Applicant does not have the burden to show that there will be no site-specific adverse impact. Much of the testimony on the issue of site-specific adverse impact with respect to the issue of traffic was in criticism of the traffic analysis provided by the Applicant's traffic expert. The criticism offered, to a large extent, was unaccompanied by substantive evidence. Such was the case with respect to the general criticisms of the traffic study. Those criticism relative to the accuracy of the Applicant's traffic expert's traffic study did not establish any site-specific adverse impacts.

Nancy Jones had twenty years of experience working as a traffic engineer for the Maryland State Highway Administration, the last five years of which she worked as a transportation engineer in Allegany, Washington and Garrett Counties. She is an expert in traffic engineering. Her general criticisms relative to the deficiencies in the Applicant's traffic study do not warrant comment other than those set forth above.

However, Ms. Jones testified that Route 40 in the area of the proposed use is a two lane roadway. The Highway Capacity Manual recites that the capacity for a two lane road is 20,000 trips per day. The Institute of Traffic Engineers produces data relative to the number of trips per day that are expected to be generated from dwelling units. The ITE states that 5.86 trips per day can be expected from a townhouse. The other types of dwelling units proposed would generate a higher number of trips according to the ITE. Ms. Jones multiplied 5.86 by 4,300 (the total number of units anticipated) and opined that, conservatively, 25,198 trips per day would be generated from the site in the event the site is fully developed in accordance with the Applicant's plans. It is her opinion that Route 40 would not be able to handle this amount of traffic without substantial improvements.

Mr. Lenhard, the Applicant's traffic expert, testified that the number of trips per day is not the standard in the industry for interpreting road capacity. The applicable standard involves measuring traffic flow at peak hours. Further the use of the 5.86 trips per day figure is inaccurate as some uses on the site will generate more trips per day and some will generate less using industry standard data source. Thus, the 25,000 trips per day figure is questionable.

The Board recognizes that Route 40 was a major east-west transportation corridor before Interstate 68 was constructed. The traffic that now travels on I68 used to travel on Route 40.

Route 40 was able to handle the traffic at that time and there was no evidence to suggest that it would not be able to handle the traffic if the proposed use reaches full buildout. Further, Interstate 68 is located in close proximity to the site of the proposed use and it is reasonable to expect that much of the traffic originating from the proposed use will ultimately end up on I68 for its east/west transportation route.

Ms. Jones expressed concerns that increased traffic on Route 40 will increase traffic risks, presumably in proportion to the number of travelers on that roadway. Mr. Lenhard opined that her opinion was not supported by data or research in that as traffic increases, speeds decrease. This process becomes more dramatic as congestion increases. The Board agreed with this assessment.

It is the Board's opinion that regardless of the location of the site on Route 40, whether at this location or elsewhere in the subject Zoning Districts, traffic will increase. Thus, the adverse impact is not site-specific. Further, the Board noted that there are two (2) access points to I68 in relatively close proximity to the use which are expected to deflect traffic from the use away from Route 40, whereas, at other locations, such access points may not exist.

For the foregoing reasons, the Board found that the objections relative to traffic issues do not constitute site-specific adverse impacts.

Waste Water

Opponents expressed concerns relative to the adequacy to the Applicant's waste water disposal plan. Merle Holsinger, an expert in the field of civil engineering, albeit admittedly with less experience in the field of waste water management services than the Applicant's experts, endorsed the findings of the Allegany County Soil Conservation District and the USDA - Natural

Resources Conservation Service set forth in Exhibit KK. That document was authored by Carl Robinette, District Conservationist of the Allegany County Soil Conservation District. Mr. Holsinger expressed concerns that soil conditions would not be adequate to support septic fields and that the use would require the construction of a waste-water treatment plant from the outset in order to adequately address waste water processing needs of the development if the proposed lot sizes were not increased substantially beyond the size of the lots proposed by the Applicant.

On cross-examination, Mr. Holsinger candidly admitted that each septic field is site-specific, i.e., each site has its own soil conditions, topography, etc. that impact upon the practicality and implementation of a septic field. He further admitted that the Maryland Department of the Environment must approve each septic field and that, in the absence of such approval, the Health Department will not issue a building permit.

The Applicant produced testimony to the effect that sand mounds could be used for individual lots no smaller than 1/3 of an acre. Plans were produced for the erection of such dwellings, showing the location of the septic systems in relation to the lot improvements. These plans were offered as being consistent with MDE rules and regulations. Mary Fertig, the Applicant's civil engineering expert, disagreed with the contention in Exhibit KK to the effect that a 1.5 acre lot size is appropriate (and inferentially required) for sand mounds, commenting that such lot size requirements do not exist as a requirement of any regulatory agency.

Much comment was made regarding Exhibit KK. The conclusions made therein were predicated upon soil mapping. Cindy Shepeck, the Applicant's geological engineer provided testimony that was predicated upon soil mapping and actual test pits (12) and soil borings (11), all of which were conducted at various locations within the project boundaries. The Board gave

her conclusions regarding soil conditions greater weight than those found in Exhibit KK because her findings were based upon field work rather than matters of public record which may or may not relate to the specific site in questions, although the Board considered them to relate to the general area in which the site is located.

Ms. Shepeck opined that soil depths at the site of the proposed use are deeper than twenty to forty inch depths Mr. Robinette testified about. It was her opinion that soil depths in the area of the proposed use ranged from 3.5 feet to 8.5 feet. This would seem to indicate that the concerns relative to the soil usable as attenuation zones for septic fields is greater than was projected by Mr. Robinette. She also opined that the rock content of the soil ranged from 35% to 65% which is not inconsistent with Mr. Robinette's report or his testimony.

Ms. Shepeck's testimony regarding soil depths undermines Mr. Robinette's testimony and the information contained in his report to the effect that four (4) feet of soil is required for a proper attenuation zone for a traditional septic system. Further, Ms. Fertig testified that in Allegany and Garrett County, two (2) feet deep attenuation zones are permitted. The soil depths of 3.5 feet to 8 feet are adequate in depth, if not in soil content quality, for septic field attenuation zones.

Mr. Robinette is of the opinion that the rock content of the soil reaches 50% or more once depths of twenty (20) to thirty (30) inches are reached. He further opined that septic fields are not permitted in areas where the rock content exceeds 50% in the attenuation zone. This testimony was uncontroverted. It stands to reason that some areas of the property will be suitable for septic fields and that others will not due to the rock content of the soils. Where the rock content is too high, sand mounds may be used as an alternative to septic fields.

Regardless of the depth of the soil or its rock content, issues that impact upon whether a traditional septic field is appropriate or non-traditional methods such as sand mounds may be employed, all septic systems will be subject to the approval of MDE or the Health Department. Any systems not receiving such approval will not be constructed.

Thus, the Board determined that potential adverse impacts related to septic fields will be substantially resolved by the permitting process. If a particular site's conditions are not conducive to establishing a proper septic field, a building permit will not be issued and there will be no building on that site unless and until a proper waste water disposal device or facility is installed. For these reasons, the objections relative to the Applicant's proposed utilization of septic fields during the initial stages of the development of the project does not constitute a site-specific adverse impact.

If and when the waste water treatment plant is built, the Applicant plans to obtain a permit to allow it to discharge treated waste water into Terrapin Run. Terrapin Run, an intermittent stream, runs from the site of the proposed use through Green Ridge Forest to Fifteen Mile Creek. Opponents expressed concern relative to the ecological impact effluent discharge would have upon the relevant ecosystems and the wildlife residing therein. Again, Mr. Holsinger candidly testified that the Maryland Department of the Environment is the agency that issues permits relative to the discharge of waste water into waterways. He explained that the MDE's standards are stringent and that its standards are designed to take water quality and quantity issues into consideration insofar as effluent discharge into streams is concerned. MDE will not issue a permit for the discharge of waste water into Terrapin Run if it determines that an adverse impact will result therefrom and, if such a discharge would have an adverse impact only

at certain times, it could impose restrictions and conditions so as to ameliorate or eliminate those adverse impacts. The Applicant will have to provide for waste water disposal, whether it be by septic fields, a waste water treatment plant or other approved means. In the absence of making such a provision, the Applicant will simply not be permitted to build.

The Opponents also presented legal argument relative to whether the Applicant will be able to obtain a permit to discharge effluent into Terrapin Run. The opponents claim that the Applicant will need to present “social and economic justification” in order to obtain a permit to discharge effluent into Terrapin Run, an intermittent stream it claims is classified as a Tier II Water. See COMAR § 26.08.02.04-1(G) & (K)(1)(a). The Opponents claim that the Applicant will not be able to procure the permit because the proposed use is not within a priority funding area and social and economic justifications are limited to projects within such areas. COMAR § 26.08.02.04-1(K)(1) lists the criteria for making a social and economic justification for waste water discharges into Tier II Waters. In order to establish social and economic justification, an applicant must be able to show that the waterway is located within a priority funding area. See COMAR § 26.08.02.04-1(K)(1)(a). The site of the proposed use is not a priority funding area. COMAR § 26.08.02.04-1(H)(4) provides that where a social and economic justification cannot be provided a discharge permit shall be denied.

Several issues need to be considered with respect to this argument, including, but not limited to whether Terrapin Run is a Tier II Water and whether a social and economic justification is required for this use. Mr. Eisner testified that a social and economic justification is only required for those discharges which are determined to degrade the stream. That is an impetus for developers to design and construct better waste water systems in order to avoid the

issue of stream degradation. Further, he opined that Terrapin Run is not a Tier II Water and is therefore not subject to the COMAR regulations relative to such waterways. He testified that MDE considers those streams to be Tier II Waters which are marked on United States Geological Survey Maps with a dashed line rather than by a solid line. He further testified that such maps depict Terrapin Run by a solid line.

The Board is unclear as to whether the Opponents are requesting that it make a finding as to whether Terrapin Run is a Tier II stream and the waste water discharge permit will be subject to a showing of economic and social justification. The Board presumes that the MDE permitting process in that regard is substantial and involves a number of consideration, most, if not all of which, the Board is unqualified to make. The Board agrees with the Opponents' assertion in their memorandum that local ordinances are pre-empted by state law. See Opponents' Memorandum at page 20. However, the Board will decline to deny the application on the basis of the Opponent's argument that the Applicant is unable to present an economic and social justification as required by COMAR, assuming, of course that the Opponents' arguments regarding its applicability are correct.

COMAR § 26.08.02.04-1(L)(1) provides, "(1) Components of the SEJ [(social and economic justification)] may vary depending on factors including, but not limited to, the extent and duration of the impact from the proposed discharge and the existing uses of the water body." The Board has not been delegated the authority to determine which, if any components should be varied. Further, it has not been delegated the authority to make determinations on behalf of the Maryland Department of the Environment. It will decline the opportunity to do so in this case. The determinations the Opponents request the Board to make are for the MDE to make. Simply

put, if a social and economic justification is required and if the Applicant is unable to meet MDE's requirements in that regard, it will not be able to proceed with the project as planned. Matters relative to these issues are deferred to MDE.

David Trail, an opponent who resides adjacent to the north side of the proposed use and operates a 130 acre beef cattle farm on his property, expressed concerns that the proposed use would cause adverse effects upon his water quality and quantity. Mr. Trail's concerns relative to water quality relate to adverse impacts that would be caused by individual septic fields in the area. The Applicant will require that no private septic fields will be allowed in that area and all residential units in that area will be serviced by the community septic system to be established. Therefore, the cause of Mr. Trail's concern will not take place.

Mr. Trail lives downstream from the proposed use. He is concerned that the development will cause increased runoff onto his property. The Board considered these assertions and simply quotes from the Applicant's Memorandum at page 13 as being responsive:

The allegation of "potential" is clearly not sufficient. The applicant's engineers clearly testified that runoff and impact would meet rigid requirements of state and local ordinances both as to water quality and quantity. Indeed, the engineer (Mr. Holsinger) who testified for the respondents, did not disagree. He agreed that the engineering technology is available to control such problems, and that if MDE did its job, there should not be any adverse effects.

Based upon the foregoing matters, the majority of the Board determined that there would be no site-specific adverse impacts related to the issues addressed herein. Mr. Powell dissented from this view. It is his opinion that the site has limited suitability for septic fields and that the use of sand mounds is impractical due to the undesirable aesthetic affects such structures would have upon the lots in the use due to their relatively small size, some single family units resting upon 1/3 acre lots. He further indicated he was not willing to leave the control of the magnitude of the development to MDE as a part of its permitting process. His concerns related to the issue of feasibility in that he did not believe the Applicant presented a feasible waste water treatment plan, at least at the outset of the development prior to the construction and operation of the waste water treatment plant.

Aesthetics and Noise

There is a bed and breakfast and a twenty acre retreat facility located nearby the site of the proposed use. The proprietor of the bed and breakfast, Mr. Reusing, expressed concerns that the development would ruin the view as his site looks down upon the site of the proposed use. He and the proprietor of the retreat facility expressed concerns about their ability to continue to attract clientele if the Applicant is granted a special exception in that their clientele visit their facilities in order to get away from city life. Further, the owner of the retreat expressed that her clientele come to the retreat for peace and serenity in order to de-stress and that the proposed development and the noise associated with its construction would harm her business.

The Board does not consider the noise and view objections to constitute a site-specific adverse impact. It is unreasonable to expect that neighboring properties will be kept development free or to be subject to only certain types of development despite the provisions of the Ordinance which permit the type of development opposed. While the character of the immediate area in which the proposed use is located could change and certainly would change if the development progresses substantially, it is impossible to predict what impact that will have on the subject businesses. Further, the owner of the retreat has listed the property for sale and has chosen to market it only to a certain type of purchaser, i.e. one with a vision for the retreat property that is substantially similar to her own. Those self-imposed restrictions should not work to the detriment and the rights of her neighbors to use their properties in manners that are legal but perhaps not entirely consistent with her vision.

The Applicant presented a report from George Spano of Polisonics Corporation with respect to the noise issue. He opined that the noise generated from the use will meet the MDE's

noise regulation requirements. Nevertheless, the Board considered this report to be of little to no utility in that its terms were vague, its applicability to the proposed use was questionable, and Mr. Spano did not appear to testify to address the particular matters set forth therein. The Board accepted that MDE has noise regulation standards and that those standards are enforceable.

The Board concluded that the objections addressed herein do not constitute site-specific adverse impacts. It further opined that the use, regardless of its location within the subject Zoning Districts, would create the same amount of noise, although at other locations, there would not necessarily be a fifty (50) foot buffer.

Natural Resource Issues

Tom Mathews, a retired wildlife biologist for the Department of Natural Resources has intimate knowledge of the Green Ridge State Forest and the Billmeyer Wildlife Management Area due to his prior work experience. He and others expressed concerns that the proposed development will “fragment” the forest, that hunting will be adversely affected due to the need to post safety zones and it will cause the tourism industry to suffer. He also expressed concerns relative to the impact the use will have on fauna in the area of the use, particularly the wood turtle.

The Board found that his objections do not rise to the level of site-specific adverse impacts because the site of the proposed use is not a part of Green Ridge State Forest and therefore cannot fragment it. Further, the site of the proposed use has been actively logged in the recent past. The logging has already fragmented the forest on the subject property from Green Ridge State Forest. The Board also noted that the portion of Green Ridge State Forest which is adjacent to the site of the proposed use is only 1,500 to 2,000 feet wide.

Due to the size of the forest, there should be ample hunting area within its confines for such activity to be conducted safely and away from residential development. Hunters are subject to the obligation to conduct their activities in a safe and responsible manner. They should not be directing their fire arms in the direction of the proposed use in any circumstance as West Shipley Road separates Green Ridge State Forest from the site of the proposed use on the eastern side of the proposed use and the vastly larger portion of the forest is located south of Route 40. Hunters should not discharge their firearms in the direction of roadways due to the dangers presented to motorists. One Board member also expressed his opinion that there were laws that prohibit hunting activities within fifty (50) feet of a roadway.

Insofar as the effect upon the wood turtle is concerned, the Board considered that the Ordinance requires the protection of threatened and endangered species on the site. Mr. Mathews testified that there is a population of wood turtles that resides in the area of the proposed site and that if the application is granted and waste water is discharged into Terrapin Run, the wood turtles might move from its current location. The Board did not consider this to be a site-specific adverse impact in that the evidence did not establish that the wood turtle is threatened or endangered nor did it establish that in moving, the turtles would perish.

The argument relative to the development causing an adverse impact on tourism is debatable as it could be argued that the proposed use will benefit area tourism in that, hypothetically, more people would come to the area for tourism purposes while visiting friends and family residing in the proposed planned development. It is just as conceivable that more people will visit Green Ridge State Forest as a result of the proposed use as it is that less will. No competent testimony was offered to indicate which scenario is likely to occur.

Harperella

An ecologist, Donnelle Keech, spoke on behalf of the Nature Conservancy, addressing particular concerns relative to harperella, an aquatic species of flower that is federally recognized as an endangered species. She opined that a colony of approximately 500 harperella plants is located approximately three miles downstream from the site of the proposed use.¹ She also opined that harperella is susceptible to changes in water flow and quality without definitively opining that the flow changes resulting from effluent discharge in Terrapin Run would adversely affect the harperella three (3) miles downstream in Fifteen Mile Creek. She stated that she expected a daily average of 244,000 gallons of waste water effluent to be discharged into Terrapin Run if the project is developed as planned. However, her testimony did not establish how that flow would impact the flow in Fifteen Mile Creek in the area where the harperella is found.

In her testimony, Ms. Keech drew parallels between Deep Run, another waterway in the Fifteen Mile Creek watershed, and Terrapin Run. It was her contention that water flow data for Deep Run would be similar to that for Terrapin Run. Deep Run experiences periods of time when the flow is negligible or non-existent and other periods when the flow exceeds two billion gallons per day. It is her assertion that harperella has adapted to these changes in flow and that its survival is dependent upon these changes in flow. However, the Board noted that harperella does not reside in Terrapin Run and that her testimony did not establish the extent to which flow changes in Terrapin Run translate into changes in harperella's habitat.

Notwithstanding the parallels drawn between Deep Run and Terrapin Run, there was no evidence to suggest that harperella habituates either waterway. Rather, harperella is found three

¹ Mr. Irre testified that he walked the banks of Fifteen Mile Creek 1/4 - 1/2 mile upstream and downstream of the site where harperella is alleged to exist. He walked the site at the end of the plant's blooming period but he did not observe any harperella in the locations he traversed.

(3) miles downstream from the site of the proposed use in Fifteen Mile Creek. Deep Run and Terrapin Run are just two of the many tributaries that feed into Fifteen Mile Creek. The Board was not presented with flow data for Fifteen Mile Creek, nor was it presented with evidence relative to how the increase in water flow attributable to effluent discharge from the site of the proposed use, if and when such effluent discharge occurs, would actual translate into increased water flow in Fifteen Mile Creek. It was not presented with any definitive evidence as to the effect the increase in water flow could be expected to have on harperella and its habitat.

The use of Deep Run as a surrogate for Terrapin Run was “bad science” according to Mr. Eisner and the Board is inclined to agree. The flow data for Deep Run was based upon measurements taken over a two (2) year period, a statistically inadequate period of time. Deep Run is only 6.4 square miles in size and is nestled entirely within a valley, whereas Terrapin Run is fifty (50) square miles in size and is not geographically limited as Deep Run is.

Mr. Eisner further demonstrated to the Board that the Deep Run analysis was flawed in that fifty (50) square miles of the drainage area for Fifteen Mile Creek is located upstream from harperella’s purported location in that waterway and Terrapin Run represents only 4% of the total drainage into the area where harperella is located.

Mr. Eisner also remarked that Interstate 68 crosses the Fifteen Mile Creek watershed two (2) times as close as does the site of the proposed use. The Interstate is in much closer proximity to harperella than is the site of the proposed use. He opined that harperella has been shown to survive the pollution, stormwater runoff, etc. that has come from Interstate 68. The inference he wishes the Board to make is that harperella is robust and that it will survive the development of

the site if it survived the development of I68 and its continued existence in proximity to harperella.

Lastly, Mr. Eisner pointed out that the surrogate evidence should have related to Fifteen Mile Creek rather than Terrapin Run as Fifteen Mile Creek is the waterway in which harperella is found. The Board agrees with that assertion. Mr. Eisner was the only witness who presented credible evidence as to how the total flow in Terrapin Run would affect the flow in Fifteen Mile Creek. He opined that Patterson Creek is a good surrogate for Fifteen Mile Creek and he produced a hydrograph and other information that established that an increase in the daily flow of Fifteen Mile Creek by 750,000 gallons would have a negligible effect on water levels based upon his surrogate analysis. The historical data for Patterson Creek was provided for a statistically significant period of time.

Ms. Keech expressed that the adverse impact the proposed use could have upon harperella, i.e., its possible demise at Fifteen Mile Creek, is possible, but not necessarily likely to occur. She advised that she is aware that the Maryland Department of the Environment is responsible for regulating water quality and quantity issues and that, if it does its job properly, adverse impacts could be mitigated or eliminated. However, she also expressed concerns that endangered fauna is often lost in the mix where development issues are concerned. In addressing these concerns, the Board opined that it must consider likely adverse impacts, not just possible ones. The realm of possibility is too expansive to enter into.

In sum, the Board found that the evidence presented did not establish that the proposed use will have a site-specific adverse impact insofar as that impact relates to harperella.

Sports Fields An opponent objected to the proposed use due to the fact that the plans, as they currently exist, do not include any provisions for the establishment of sports fields. This objection was not relevant to the issue of site-specific adverse impact as regardless of where the proposed use would be located, there would be no existing provisions for sports fields. Although it would be nice to include such amenities in the plans, it is not within the Board's purview to require their inclusion. The same rationale applies to the objection relative to the site not having sidewalks and bike lanes designated in the Applicant's plans.

The Proposed Use is in Harmony with the Comprehensive Plan

A legal argument was made to the effect that a special exception cannot be granted unless the use is in conformity with the Comprehensive Plan (the "Plan") and is compatible with the existing neighborhood. A "special exception" is defining in the zoning enabling legislation as a grant of a specific use that would not be appropriate generally or without restriction and shall be based upon a finding that certain conditions governing special exceptions as detailed in the zoning ordinance exist, that the use conforms to the plan and is compatible with the existing neighborhood. (emphasis added).

Md. Code Ann. Art. 66B §1.00(k). The opponents argued that the proposed use will not be consistent with the Plan and must be denied.

The case law provides further elucidation as to whether the Board is required to conduct analysis as to whether the use conforms to the Plan. In Mossburg v. Montgomery County, the Court of Special Appeals remarked, "[w]hen a legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or

special exception uses.” 107 Md. App. 1, 8 (1995) (quoting Schultz v. Pritts, 291 Md. 1, 21-22 (1981). The Mossburg Court further remarked

Thus, it is not whether a special exception/conditional use is compatible with permitted uses that is relevant in the administrative proceedings. The legislative body, by designating the special exception, has deemed it to be generally compatible with the other uses. In special exception cases, therefore, general compatibility is not normally a proper issue for the agency to consider. That issue has already been addressed and legislatively resolved.

Id. at 8. Thus, legislatively enacted special exception use designations are presumptively valid. However, it as stated in the Schultz case, a determination that the use is not in harmony with the general purpose and intent of a comprehensive plan would serve to overcome the presumption of validity and would serve as a basis for denying an application for a special exception. Schultz, 291 Md. @ 11.

It is the Board’s contention that strict conformity to the Plan is not required. As stated in Schultz, the issue is “whether the use in the particular case is in harmony with the general purpose and intent of the Plan.” Id. at 11. “If the evidence makes . . . the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence . . . of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use if arbitrary, capricious and illegal.” Id.

The Plan is intended to be advisory in nature, not regulatory. “. . . [I]t is commonly understood, in Maryland and elsewhere, that Master Plans are guides in the development process. Master Plan guidelines are mandatory only if an ordinance so provides.” Richmarr Holly Hills,

Inc. v. American PCS, LP, 117 Md. App. 607, 640 (1997). The Ordinance contains no requirement of strict adherence to the Plan and it affords it no regulatory authority.

Opponents objected to the proposed use on the ground that it is not consistent with “Smart Growth” principles in that Smart Growth espouses developing in areas where infrastructure exists rather than in areas, like Terrapin Run, where it does not. The Plan incorporates Smart Growth principles within its terms.

Presumably, the Ordinance is the County Commissioners legislative implementation of the Plan and the Plan contains numerous references to the Ordinance’s conformity to Plan recommendations. Insofar as planned residential developments are permitted in the A and C Zoning Districts, it is presumed that the County Commissioners deemed such uses to be compatible with the uses permitted as a matter of right therein. The Planning Commission, the authors of the Plan, found “that the planned community is consistent with the County’s Comprehensive Plan.” See Exhibit MM. The Board gave this finding deference but not absolute authority.

It is easy to pick and choose provisions from the Plan as being supportive of the contention that the proposed use will not be in harmony with its terms. Similarly, there are numerous statements in the Plan that support the position to the contrary.

It was the Board’s opinion that the goal of the Plan is to promote orderly growth. Some of the opening statements in the Plan contain recitations to that effect.

To be effective, comprehensive planning must coordinate governmental and private actions. Its primary purpose is to achieve the goals of the people of the County, while avoiding waste, inefficiency and duplication of effort. As such, planning must be a continuing effort and must also be flexible enough to adjust to changing circumstances.

Further, it is the function of the Comprehensive Plan to serve as a guide to public and private actions and decisions to ensure the appropriate development of public and private property. It should be noted that the implementation of local government plans requires some regulation of development to protect the general public health, safety, and welfare. In general, however, planning is intended to be used as a tool to channel development where it can be most effective for the community. Also, planning can mean better, more effective use of tax revenues. It can also mean wiser use of land, water, and other resources. As such, the Comprehensive Plan and its elements are designed to be used as a tool to guide County elected officials and government agencies in the decision making process. It can also guide municipal and state officials, local service organizations, industrial leaders, large land holders, home builders, and other citizens to plan in concert with overall county goals.

Allegany County Comprehensive Plan 2002 Update, page 1.

Both the Applicant and the opponents have cited Plan provisions relative to whether the Plan envisions a planned residential development in the A and C Zoning Districts. It is the Board's opinion that the Plan's recommendations in this regard are merely advisory and are made in furtherance of the goal of fostering orderly and wise growth. Leaving development to areas that are only in the vicinity of those urban areas that have already been developed is one method of achieving these goals. Establishing such developments in more outlying areas presents more challenges in terms of promoting orderly and wise growth; however, as addressed previously herein, the Applicant is prepared to meet these challenges and has strategies in place that are in harmony with the Plan.

Goal 1 as stated in the Plan is to "Develop a sound, balanced and diversified economy." See Plan, p. 20. Despite recent and substantial spending increases on the part of the County with respect to economic and community development, the gains in those areas have been marginal at best as Dr. Basu explained. He further explained that economic development requires growth and

that the growth in the population will have a concomitant effect upon the local economy. It is the Board's opinion that this economic issue is further indicative of the proposed use's harmony with the Plan.

The findings relative to the proposed use being in harmony with the Plan represent the majority opinion of the Board. Mr. Powell dissented. It was his opinion that the Plan does not support a finding that a 4,300 unit planned residential development is contemplated within the A and C Zoning Districts at the location proposed.

CONCLUSIONS

The Board unanimously found that the proposed use will meet the criteria of the Ordinance. By a majority, it found that the proposed use will not present any site-specific adverse impacts and that it will be in harmony with the Plan. Based upon those determination and the findings set forth above, the Board voted at the conclusion of the hearing in this matter, 2-1 in favor of granting the Applicant's request for a special exception for an addition to a planned residential development in the A and C Zoning Districts.

As a condition to the granting of the Board's approval, the Applicant will be required to comply with the terms and criteria of the Zoning Ordinance at all times. The Applicant must also obtain the approval of all State, County, and municipal agencies whose approvals are required for the conduct of the proposed use, including, but not limited to, Allegany County Health Department, Soil Conservation District, ACDPW Roads Division, ACDPW Engineering Division, ACDPW Public Utilities Division, ACDPW County Roads Division, Maryland Department of the Environment, Zoning Certification, and Building Codes Compliance.

Other conditions imposed by the Board are as follows:

1. A minimum of 50 feet of buffering shall be maintained on all sides of the use within the proposed sites boundaries. Where possible, the Applicant shall leave existing trees in place.

2. The Applicant shall not use septic systems (other than those tying into and being serviced by the water treatment plant) for any housing units developed on the site plan shown as Pod A-2 which drain in a northerly direction.

3. Any signage shall be constructed in conformity with the size, setback and other requirements of the Ordinance.

ATTEST:

Copies to: See Attached List

BOARD OF ZONING APPEALS

By: JS
Julia Williams, Chairperson

BOARD OF ZONING APPEALS

FOR ALLEGANY COUNTY, MARYLAND

CASE# 880

TERRAPIN RUN LLC

AUGUST 30TH, 2005

EXHIBITS LIST

- A. Completed *Petition for a Special Exception* submitted by Terrapin Run L. L. C.
- B. An *Adjoining Property Owners List* completed and signed by the Applicant.
- C. A *Notification of the Hearing*, sent to adjoining and adjacent property owners by the Secretary of the Board.
- D. *Notification of Hearing* sent to the Applicant by the Secretary of the Board.
- E. *Inter Office Memo* distributed by the Division of Land Development Services to involved review agents notifying them of this Case, date, time and requesting comment.
- F. *Public Notification* dispatched to the Cumberland Times/News for the purposes of notifying the general public of the hearing date, time and location.
- G. *Public Notice*, as published in the Cumberland Times/News, on July 16, 2005.
- H. A package of Material prepared for the Hearing scheduled for July 6, including Adjoining Property Owners list, Memos and Notifications.
- I. A package of material concerning the cancellation of the Hearing scheduled for July 6, including a Memo, and notification letters.
- J. A package of material associated with the Planning and Zoning Commission meeting of May 18, 2005, including minutes, findings and correspondence.
- K. *Memo* from David A. Dorsey, Planner III regarding site plan requirements.
- L. A *Letter* from Steven D. Foster, Chief of the Maryland State Highways Administration Engineering Access Permits Division concerning that Division's request for a traffic study of the proposed planned residential development.
- M. A *Letter* from Ray C. Dintaman, Jr., Director of the Maryland Department of Natural Resources Environmental Review Unit expressing interest in the proposed planned residential development and offering natural resources information.
- N. A *Letter* from Anna Custer, Executive Director of the Greater Cumberland Committee expressing that organizations support of the proposed planned residential development.
- O. A *Letter* from C. Victor McFarland expressing interest in the effect of the proposed planned residential development on "downstream properties".
- P. A *Letter* from J. Robert Smith, President of the Greater Allegany Business Foundation expressing the Cumberland/Allegany County Industrial Foundations support of the proposed planned residential development.
- Q. A *Letter* from Peter H. Miller of the Maryland/Delaware Society of American Foresters expressing the organization's perception of the impact of the proposed planned residential development.
- R. A *Letter* from Elizabeth Buxton, Executive Director of Scenic Maryland expressing that organization's opposition to the proposed planned residential development.
- S. A *Site Plan* provided by the Applicant dated July 2005.
- T. Extraneous file material including seven letters from among the various notifications that were returned by the Postal Service.
- U. Resume of Mary Fertig (Apex Engineering).
- V. Plan Approval and Permits table (Apex Engineering).
- W. Environmental review of West Shipley Road from MDE.
- X. Resume of Karen Carpenter (Apex Engineering).
- Y. Watek Engineering Corp. brochure including Ray Emtiaz resume.
- Z. Watek Preliminary Feasibility Report dated 8/1/2005.

AA. Report on wetlands from Jim Irre to Michael Carnock.
BB. Draft feasibility study by the Traffic Group.
CC. Resume of Mark Eisner (Advanced Land and Water, Inc.).
DD. Hydrologic Cycle/ Acreage Table (four pages).
EE. Letter from Appalachian Professional Foresters Association.
FF. Letter from Potomac Conservancy.
GG. Letter from Baltimore 4-Wheelers Association.
HH. Letter from Citizens for Smart Growth in Allegany County.
II. Two replacement pages for Exhibit DD.
JJ. Newspaper Advertisement for Citizens for Smart Growth in Allegany County.
KK. Letter from Natural Resources Conservation Service.
LL. Letter from the State of Maryland Department of Natural Resources.
MM. Allegany County Planning and Zoning Commission Findings of May 18, 2005.
NN. Wall map of northeastern Allegany County.
OO. Letter from Dale Sams.
PP. Letter from James T. Spies on behalf of the Historic Highlands Association of Realtors.
QQ. Letter from Dr. William J. AuMiller, Superintendent of Schools for the Allegany County Board of Education.
RR. Letter from Elva M. Burnett, Waldorf, MD.
SS. Letter from Edward Shipway representing B. P. Builders, Inc of Flintstone.
TT. Letter from Caleb Gould of Allegany Associates, Inc.
UU. Plates from Allegany County Comprehensive Plan.
VV. Plate #24 from the Allegany County Board of Education Master Plan for School Facilities.
WW. Testimony of Jaquelin Sams and documents.
XX. Placard from Maryland National Road Association.
YY. Package from Maryland National Road Association.
ZZ. Package from Merle Holsinger.
AAA. Package from David Trail.
BBB. Photograph from David Reusing.
CCC. Large tax map.
DDD. Testimony of Tom Mathews.
EEE. Print of an e-mail received from Donna Wallizer.
FFF. Testimony from Dan Metzger.
GGG. Letter from Al Geis.
HHH. Excerpt from Allegany County Comprehensive Plan (Appendix 1).
III. Plate 38 of Allegany County Comprehensive Plan - State and Federal Lands.
JJJ. Table and map entitled Western Maryland Public Lands - Eastern 1/2 of Allegany County.
KKK. Packet from Donelle Keech, The Nature Conservancy.
LLL. Plate 36 of the Allegany County Comprehensive Plan - Stream Basins
MMM. Testimony from Penny Knobel-Besa.
NNN. Testimony of L. E. Osmansky - Garrett Sportsman's Association.
OOO. Testimony of Francis Zumbun, Forest Manager, Green Ridge State Forest.
PPP. Letter from Kevin D. Brandt, Superintendent, C&O National Historical Park.
QQQ. Press release from Division of Land Development Services re: hearing date, place and time.
RRR. Letter from Keith Eshleman, Associate Professor, Appalachian Laboratory.
SSS. Testimony of Sally Speicher.
TTT. Testimony of John Biggs.
UUU. Memorandum of Respondants from William C. Wantz.

VVV. James Irre's resume.

WWW. Cindy Shepeck's resume.

XXX. Preliminary Subsurface Exploration(Soil Report) from Hilles-Carnes Engineering Associates.

YYY. Large diagram of a sand mound cross-section.

ZZZ. Typical sand mound layout.

AAAA. Report for Hydrological Investigations from Earth Resources Technology, Inc.

BBBB. Report from Polysonics, Corporation.

CCCC. Resume of Anirban Basu.

DDDD. Report on Economic and Fiscal Impacts from Sage Policy Group, Inc.

EEEE. Hydrogeologic charts from Advanced Land and Water, Inc.

FFFF. Memorandum of Applicant

GGGG. Addendum to Memorandum of Applicant

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Distribution List

Ack	Gerald & Bettie		15901 Cresap Mill Road, SE	Oldtown	MD	21555
A'Hearn	Bettie		18602 Opessa Street, SE	Oldtown	MD	21555
Ahmad	Fatema		12515 N. Cresap Street	Cumberland	MD	21502
Air	Adele		10 Washington Street	Middletown	MD	21769
Alder	William & Kimberly		13507 Fifteen Mile Creek Road	Flintstone	MD	21530
Altemas	Judith L.		14219 N. Bel Air Drive, SW	Cumberland	MD	21502
Andrick	Jerry, Kay & Mike		13800 West Shipley Road NE	Flintstone	MD	21530
Appel	Randy		11708 Green Ridge Road NE	Flintstone	MD	21530
Atkinson	Bill	Maryland Department of Planning	113 Baltimore Street	Cumberland	MD	21502
Bachman	Terry		13108 Green Ridge Road, NE	Flintstone	MD	21530
Bailey	James		206 N. Centre Street	Cumberland	MD	21502
BARNES	HAROLD L		21110 Flintstone Creek Road, NE	Flintstone	MD	21530
BARNES	JOSEPH L ET UX		12212 Green Ridge Road, NE	Flintstone	MD	21530
BARNES	JOSEPH LEE-ARLENA S		12212 Green Ridge Road, NE	Flintstone	MD	21530
BARNES	KENNETH LEE- JOSEPH LEE		12302 Green Ridge Road, NE	Flintstone	MD	21530
BARNES	PAUL H		12310 Green Ridge Road, NE	Flintstone	MD	21530
BARNES	PAUL H		12310 Green Ridge Road, NE	Flintstone	MD	21530
Basu	Anirban	Sage Policy Group	6 N. Broadway, Suite 2	Baltimore	MD	21231
Beachy	Robert		12816 Winchester Road	Cumberland	MD	21502
Biggs	Sean		251 Armstrong Avenue	Frostburg	MD	21532
Bishop	Russell John & Christina L.		31407 Green Meadow Lane, NE	Flintstone	MD	21530-3050
Bollack	Henry & Marlene		13405 Scofield Road, NE	Flintstone	MD	21530
Brewer	Matt		45 W. Main Street	Frostburg	MD	21532
CAPPADOCIA	RONALD J-KAREN N		22 SEABRIDGE AVE	BALTIMORE	MD	21222
Carnes	Chester		634 Fayette Street	Cumberland	MD	21502
Carnock	Michael	PDC Inc.	5840 Banneker Road - Suite 110	Columbia	MD	21044
Carpenter RLA	Karen	Apex Engineering	15850 Crabbs Branch Way - Suite 200	Rockville	MD	20855
Cathey	Finka		27905 National Pike, NE	Flintstone	MD	21530
Cave	James & Frances		12122 Wilmont Turn	Bowie	MD	20715
Clapp	W.R.		13500 Black Valley Road	Flintstone	MD	21530
Cole	Beryl		17518 Top Row Road	Frostburg	MD	21532
Collins PE	Steven	WATEK Engineering	4412 Powder Mill Road	Beltsville	MD	20705
Connor	Bernie & Cleo		14202 Canal Road, SE	Cumberland	MD	21502
Cornwell	Eston & Violet		12203 Price Road, NE	Little Orleans	MD	21766
Cornwell	Tony and Stephanie		31706 Old Adams Road NE	Little Orleans	MD	21766
Cover	Pamela K.		12909 Growdenvale Drive	Cumberland	MD	21502
Custer Executive Director	Anna	The Greater Cumberland Committee	PO Box 1153	Cumberland	MD	21502
Dell	Jerri		8807 Reading Road	Silver Spring	MD	20901
Dell	Jerri		13108 Green Ridge Road, NE	Flintstone	MD	21530
Diehl	Karla		14801 Lower Town Creek Road	Oldtown	MD	21555
Dintaman Jr. Director	Ray	Maryland Department of the Environment	Tawes State Office Building - 580 Taylor Avenue	Annapolis	MD	21401
Dorsey	Wade		117 Mary Street	LaVale	MD	21502
Downs	Jean & Ray		15106 Laurel Ridge Road, SW	Cresaptown	MD	21502

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Distribution List

DuVall	Bill		14905 Old Hancock Road	Cumberland	MD	21502
Easton	Violet C		12203 Price Road NE	Little Orleans	MD	21766
Eisner	Mark		7540 Main Street	Sykesville	MD	21784
Elsroad	Wilbert and Betty		14500 Scofield Road NE	Flintstone	MD	21530
Emtial	Ray		4412 Powder Mill Road	Beltsville	MD	20705
Erhardt	Altbrenda		13905 Scofield Road NE	Flintstone	MD	21530
Fertig PE	Mary	Apex Engineering	15850 Crabbs Branch Way - Suite 200	Rockville	MD	20855
Firlie	Bruce		12719 N. Cresap Street	Cumberland	MD	21502
Fischer	Ronald E.		13423 N. Orleans Road, NE	Little Orleans	MD	21766
Geis	Aldred		PO Box 71	Clarksville	MD	21029
Getz	Woody		90 Frost Avenue	Frostburg	MD	21532
Glassquinn	Margeret		P.O. Box 19	Oldtown	MD	21555
Gottesthal	Hilmar		13910 Scofield Road NE	Flintstone	MD	21530
Green	Elbert		12201 Cresap Mill Road SE	Oldtown	MD	21555
Hall	Mary		15601 Williams Road, SE	Cumberland	MD	21502
Hammond	Alan		250 Messiah Church Road	Bedford	PA	15522
Heavner	Lee		17605 Williams Road	Flintstone	MD	21530
Higman-Weiss	Joseph H. & Evelyn S.		12101 Green Ridge Road, NE	Flintstone	MD	21530
Hildreth	Greg		108 Ormand Street	Frostburg	MD	21532
Hipsley	Harold		29 Mary Street	Cumberland	MD	21502
Holsinger	Merle		14321 Barkdoll Road	Hagerstown	MD	21742
Howser	Thomas V.		15111 Trailridge Road, SW	Cumberland	MD	21502
Huebner	Steve & Mary		12814 Appel Road	Little Orleans	MD	21766
Hughes	Robert		14101 Scofield Road NE	Flintstone	MD	21530
Hutcheson	Robert M.		701 Kelly Road	Cumberland	MD	21502
Hutter	Jeff		12212 Bedford Road	Cumberland	MD	21502
Iddings	Margee		13210 Green Ridge Road, NE	Flintstone	MD	21530
Irre	Jim		221 Lower Road	Strasburg	VA	22657
Jackson	Carl		13502 Crossover Road, NE	Flintstone	MD	21530
Jackson	Christy	Apex Engineering	15850 Crabbs Branch Way - Suite 200	Rockville	MD	20855
Jan	Kolin		150 N. Lakewood	Ridgeley	WV	26753
Johnson	Barbara		7 Helman Drive	LaVale	MD	21502
Johnson	Ray		12601 Wilson Lane SE	Cumberland	MD	21502
JONES	ROBERT P		3901 INNER CIRCLE	BALTIMORE	MD	21225
Jones	Bill		31727 Old Adams Road, NE	Little Orleans	MD	21766
Jones	Charles		31727 Old Adams Road NE	Little Orleans	MD	21766
JONES	JAMES E-SUSAN M		5489 MAGIC ST	BALTIMORE	MD	21225
Jones	Nancy		12105 Swain Road, NE	Little Orleans	MD	21766
Keech	Donnelle	The Nature Conservancy	12902 Cohill Road	Clear Spring	MD	21722
Kessler	Joseph		805 Columbia Avenue	Cumberland	MD	21502
KISAMORE	BERTHA M LE		13520 Scofield Road, NE	Flintstone	MD	21530
KLINE	JEFFREY		18935 MANCHESTER DR	HAGERSTO WN	MD	21742-2665
Knobel-Besa	Penny		13910 Scofield Road	Flintstone	MD	21530
Kocher	Robert & Shirley		11900 Green Ridge Road, NE	Flintstone	MD	21530
Kyle	Katherine		PO Box 170	Flintstone	MD	21530
Lee	James		13810 Lonesome Pine Road	Flintstone	MD	21530
Lee	James and Wanda		13810 Lonesome Pine Drive NE	Flintstone	MD	21530
Leggett	Robert & Ann		12800 Green Ridge Road NE	Flintstone	MD	21530

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Distribution List

Lenhart	Mike	The Traffic Group	9900 Franklin Square Drive, Suite H	Baltimore	MD	21236
Leonard	Craig	FOCUS Realty Advisors LLC	1847 Cape May Road	Essex	MD	21221
Leonard	Kim		7 Williams Street	Cumberland	MD	21502
Li PhD PG	Peter H.	Earth Resources Technology	8106 Stayton Drive	Jessup	MD	20794
MacGray	Steve		10609 Pearl View Place	LaVale	MD	21502
Macy, Jr.	A. Douglas		36 Greene Street	Cumberland	MD	21502
Maier	Henry		19350 Oliver Beltz Road	Oldtown	MD	21555
Malaney	Don		13403 Black Valley Road	Flintstone	MD	21530
Malaney	Victoria		13403 Black Valley Road	Flintstone	MD	21530
MALOZI	LOIS I		2861 PLAINFIELD RD	BALTIMORE	MD	21222
Martman	Margie		14 S. Lee Street	Cumberland	MD	21502
Mathews	Charles		917 Bedford Street	Cumberland	MD	21502
Matthews	Tom		1034 Bedford Street	Cumberland	MD	21502
McCusker	Tim E.		10535 Orleans Road, NE	Little Orleans	MD	21766
McCusker	Wayne & Pam		10620 Aerie Road	Cumberland	MD	21502
McLaughlin	Georgene		22717 Barn Hill Road	Oldtown	MD	21555
Mellan	James		923 Dolly Terrace	LaVale	MD	21502
Metzgar	Dorothy		520 National Highway	LaVale	MD	21502
Metzger	Brad		727 Valley View Drive	LaVale	MD	21502
Metzger	Daniel		727 Valley View Drive	LaVale	MD	21502
Milewski	Tony and Mona		13501 Milewski Drive NE	Flintstone	MD	21530
Miller	Donna		10305 Dicks Ridge Road	Little Orleans	MD	21766
Miltenburger	Mary		P.O. Box 1697	Cumberland	MD	21502
Moore	Jeff		130 Horse Ranch Road	Artemas	PA	17211
Moreland	C. Victor		2109 Devere Lane	Catonsville	MD	21228
Myers	Shirley		12314 Divide Road, NE	Little Orleans	MD	21766
NATHAN	SWAMI		198 Thomas Johnson Drive - Suite 207	Frederick	MD	21702-4462
Neason	Gertrude E.		17578 Top Row Road	Frostburg	MD	21532
Niedzwick	Kathleen		8119 Woodhaven Road	Rosedale	MD	21237
Northcraft	Gail P.		114 Gleason Street	Cumberland	MD	21502
Osmansky	Lee		807 Louisiana Avenue	Cumberland	MD	21502
Paye	Robert	Geppert, McMullen, Paye & Getty	21 Prospect Square	Cumberland	MD	21502
Pierce	Mark & Brandy		31704 Old Adams Road	Little Orleans	MD	21766
Pittman	Vivian		525 Haddon Avenue	Cumberland	MD	21502
Plank	Bill		3653 Robinsonville Road	Clearville	PA	15535
Pohle	Tim		301 Pulaski Street	Cumberland	Md	21502
Poorsoltan	Keramat		653 Washington Street	Cumberland	MD	21502
Porta	Paul and Anna		13311 Bedrock Road NE	Flintstone	MD	21530
Press	Carolyn		543 Greene Street	Cumberland	MD	21502
Property Manager		Taylor Family Real Estate Corp	1091 County Road 139	Hickory Ridge	AR	72347
Property Manager		Lane Family Real Estate Corp	1091 County Road 139	Hickory Ridge	AR	72347
Property Manager		MD Dept of Environmental Resources	301 West Preston Street	Baltimore	MD	21201

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Distribution List

Property Manager		MD Dept of Environmental Resources	580 Taylor Avenue E4	Annapolis	MD	21401
PROPERTY MANAGER		LEYDIG LUMBER COMPANY	P O BOX 500	ELLERSLIE	MD	21529
PROPERTY MANAGER		STATE OF MD FISH & WILDLIFE ADMIN	TAWES STATE OFFICE BUILDING	ANNAPOLIS	MD	21401
PROPERTY MANAGER		FAITH RESOURCING CONNECTION, INC	811 LANGLEY DR	SILVER SPRING	MD	20901
PROPERTY MANAGER		DRINK RUN CORPORATION	203 ARDMORE RD	LINTHICUM	MD	21090
Property Manager		Faith Resourcing Connections, Inc.	13210 Green Ridge Road, NE	Flintstone	MD	21530
Ptak	Cindy	Maryland National Road Association	301 W. Preston Street - 11th Floor	Baltimore	MD	21201
Raesly	Elaine		2041 Frostburg Road	Frostburg	MD	21532
Reckart	Carolyn & David		130 Horse Ranch Road	Artemas	PA	17211
REED	ROBERT L JR-KATHY A		13206 Green Ridge Road, NE	Flintstone	MD	21530
Resident			11900 Green Ridge Road, NE	Flintstone	MD	21530
Resident			11300 M.V. Smith Road	Flintstone	MD	21530
Resident			2031 Centreville Road	Centreville	MD	21617
Reusing	David		31101 National Pike NE	Little Orleans	MD	21766
Richman	Barbara		13613 Esworthy Road	Darnestown	MD	20874
Riley	Stephen		13520 Scofield Road, NE	Flintstone	MD	21530
Robles	Robert		12501 View Top Lane	Flintstone	MD	21530
ROGERS	THERESA PEARL J ET VIR		1904 TADCASTER RD	BALTIMORE	MD	21228
Roland	Robyn		519 Town Creek Road	Clearville	PA	15535
Romero	David		55 Baltimore Street	Cumberland	MD	21502
Roque	Barbara B.		701 Kelly Road	Cumberland	MD	21502
ROUSE	MARTIN		7505 MONTEVIDEO COURT	JESSUP	MD	20794
Sams	Dale		701 Neamacolin Avenue	Cumberland	MD	21502
Sams	Jackie		701 Neamacolin Avenue	Cumberland	MD	21502
Savage	Glen		540 Martin Road	Artemas	PA	17211
SCARDINA	ANTHONY G		203 ARDMORE RD	LINTHICUM	MD	21090
Schoolman	Carrol		13201 Scofield Road, NE	Flintstone	MD	21530
Schrotenbeer	Murray	Grouseland Tours	467 Robinsville Road	Clearville	PA	15535
SHIPWAY	EDWARD ELDON-LINDA MARIE		12204 Green Ridge Road, NE	Flintstone	MD	21530
Shipway	John		11410 M.V. Smith Road	Flintstone	MD	21530
Siejch	Joseph P.		13610 Scofield Road NE	Flintstone	MD	21530
Skidmore	Elizabeth		6 Linda Way	LaVale	MD	21502
Sliker	Robert		12205 Cresap Mill Road SE	Oldtown	MD	21555
Smith President	J. Robert	The Greater Allegany Business Foundation	PO Box 3273	LaVale	MD	21504-3273
Spangler	Amanda		13800 W. Shipley Road, NE	Flintstone	MD	21530
Speicher	Sally		13400 Street Road	Flintstone	MD	21530
Spinrad	William	C & O Canal NHP	1805 Dual Highway, Suite 100	Hagerstown	MD	21740
Stakem, President	Honorable James J.	Allegany County Commissioners	701 Kelly Road	Cumberland	MD	21502

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Distribution List

Stevens	Barbara		10717 Catherine Street	Frostburg	MD	21532
Stevens	Melissa		10717 Catherine Street	Frostburg	MD	21532
STOKES	DAVID A ET UX		29401 National Pike, NE	Flintstone	MD	21530
STOKES	JAMES A		29301 National Pike, NE	Flintstone	MD	21530
STOKES	JAMES A ET UX		29302 National Pike, NE	Flintstone	MD	21530
Stokes	Ervin G.		29302 National Pike, NE	Flintstone	MD	21530
Stokes	Robert E. & Pamela S.		29401 National Pike, NE	Flintstone	MD	21530
Struehmeir	Adriana		13410 Scofield Road NE	Flintstone	MD	21530
Stuehmeier	Wilfried G.		13410 Scofield Road, NE	Flintstone	MD	21530
Sweitzer	Scott & Robin		11101 Vale Summit Road	Frostburg	MD	21532
Thacker	Kevin and Chere		11703 Green Ridge Road NE	Flintstone	MD	21530
TRAIL	CALVIN T ET UX		11907 Green Ridge Road, NE	Flintstone	MD	21530
Trail	Calvin T.		11907 Green Ridge Road, NE	Flintstone	MD	21530
TRAIL	DARHL E ET UX		31400 Green Meadow Lane, NE	Flintstone	MD	21530
Trail	Darhl Eugene & Melissa G.		31410 Green Meadow Lane, NE	Flintstone	MD	21530
TRAIL	DARL EUGENE-SHIRLEY A ET AL		31400 Green Meadow Lane, NE	Flintstone	MD	21530
Trail	David F. & Susan W.		13500 Glendale Farm Road, NE	Flintstone	MD	21530
TRAIL	DAVID F-DIANA L		13500 Glendale Farm Road, NE	Flintstone	MD	21530
TRAIL	LARRY S		31401 GREEN MEADOW LN NE	FLINTSTONE	MD	21530-3050
TRAIL	LUCILLE IRENE		11901 Green Ridge Road, NE	Flintstone	MD	21530
True	John & Wanda		11800 Green Ridge Road, NE	Flintstone	MD	21532
Twigg Sr.	John		12668 Triadelphia Road	Ellicott City	MD	21042
Twigg-Koch	Vicky		520 Price Georges Street	Cumberland	MD	21502
Uhlig	Willy M. & Robert P.		1726 Salma Avenue	Baltimore	MD	21227
Vakilirad	Jaleh		653 Washington Street	Cumberland	MD	21502
Valentine	Bill		13613 N. Orleans Road	Little Orleans	MD	21530
Valentine	Ruth Ann		13613 N. Orleans Road	Little Orleans	MD	21766
VANCE	DANIEL G ET UX		13002 Green Ridge Road, NE	Flintstone	MD	21530
Vance	Melvin		13508 Scofield Road, NE	Flintstone	MD	21530
Vance	Melvin Ricky		13520 Scofield Road, NE	Flintstone	MD	21530
Vannienwenhoue	Deborah		11300 MV Smith Road NE	Flintstone	MD	21530
Wallizer	Pat & Donna		31661 Green Forest Drive, SE	Little Orleans	MD	21766
Wantz	Bill		123 W. Washington Street	Hagerstown	MD	21740
WEISS	JOSEPH H		12012 Green Ridge Road, NE	Flintstone	MD	21530
WEISS	JOSEPH H-EVELYN S HIGMAN		12101 GREEN RIDGE RD NE	FLINTSTONE	MD	21530-3155
Welton	Wright		19110 Walnut Woods Way	Oldtown	MD	21555
Wiesman	Antoinette S.		723 Valley View Drive	LaVale	MD	21502
Williams	Dave		304 Wallace Street	Cumberland	MD	21502
Wood	David W. & Cheryl L.		12012 Green Ridge Road, NE	Flintstone	MD	21530
Yeager	Jim		P.O. Box 19	Oldtown	MD	21555
Yeager	Richard		866 Sperry Terrace	Cumberland	MD	21502
Young	Steve	ACDPW -County Office Complex	701 Kelly Road	Cumberland	MD	21502
Zlomek	Bernie		11702 Summit Road	Frostburg	MD	21532
Zumbrun	Francis		608 North First Street	LaVale	MD	21502