

APPROVED & ADOPTED

POTOMAC SUBREGION

MASTER PLAN AMENDMENT

MARCH 1994

TO INCLUDE THE 48 ACRE
RAPLEY TRACT INTO THE
TDR RECEIVING AREA THAT
ADDRESSES THE AVENEL FARM



**PUBLISHED BY THE MONTGOMERY COUNTY PLANNING DEPARTMENT
8787 GEORGIA AVENUE, SILVER SPRING, MARYLAND 20910-3760**

ABSTRACT

TITLE: Approved and Adopted Potomac Subregion Master Plan Amendment

AUTHOR: The Maryland-National Capital Park and Planning Commission

SUBJECT: Master Plan Amendment for the Potomac Subregion which amends the July 1984 Amendment to the 1980 Comprehensive Master Plan

DATE: March 1994

PLANNING AGENCY: The Maryland-National Capital Park and Planning Commission
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Silver Spring, MD 20910-3760

SOURCE OF COPIES: The Maryland-National Capital Park and Planning Commission
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ABSTRACT: This Plan will amend the Master Plan for the Potomac Subregion, May 1980. This Plan includes the 48 acre Rapley Tract into TDR receiving area 33, commonly known as Avenel, with a maximum density on the tract of 1 housing unit per acre. Additional guidelines for development of the Rapley Tract are also included.

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POTOMAC SUBREGION MASTER PLAN AMENDMENT

MARCH 1994

An Amendment to the Master Plan for the Potomac Subregion, May 1980, as amended July 1984; being also an amendment to the General Plan for Physical Development of Montgomery County, Maryland.

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THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

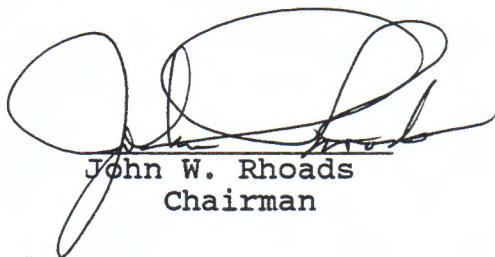
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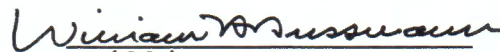
CERTIFICATE OF APPROVAL AND ADOPTION

This Amendment to the Master Plan for the Potomac Subregion, May 1980 as amended July 1984 and the General Plan for the Maryland-Washington Regional District in Montgomery County, Maryland, as amended; has been approved by the Montgomery County Council, sitting as the District Council, by Resolution No. 12-1520 on March 1, 1994; and has been adopted by the Maryland-National Capital Park and Planning Commission by Resolution No. 94-06 on March 16, 1994, after duly advertised public hearings pursuant to Article #28 of the Annotated Code of Maryland.

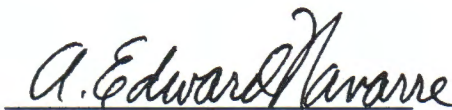
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION



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THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

The Maryland-National Capital Park and Planning Commission is a bi-county agency created by the General Assembly of Maryland in 1927. The Commission's geographic authority extends to the great majority of Montgomery and Prince George's Counties; the Maryland-Washington Regional District (M-NCPPC planning jurisdiction) comprises 1,001 square miles, while the Metropolitan District (parks) comprises 919 square miles, in the two counties.

The Commission has three major functions:

- (1) The preparation, adoption, and, from time to time, amendment or extension of the General Plan for the physical development of the Maryland-Washington Regional District;
- (2) The acquisition, development, operation, and maintenance of a public park system; and
- (3) In Prince George's County only, the operation of the entire County public recreation program.

The Commission operates in each county through a Planning Board appointed by and responsible to the county government. All local plans, recommendations on zoning amendments, administration of subdivision regulations, and general administration of parks are responsibilities of the Planning Boards.

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THE MASTER PLAN PROCESS

Staff Draft Plan - This document is prepared by the Montgomery County Planning Department for presentation to the Montgomery County Planning Board. A Public Hearing (Preliminary) Draft Plan is then prepared for approval to go to public hearing by the Planning Board. The Public Hearing (Preliminary) Draft Plan incorporates those preliminary changes to the Staff Draft Plan that the Planning Board considers appropriate.

Public Hearing (Preliminary) Draft Plan - This document is a formal proposal to amend an adopted master or sector plan prepared by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission. It is prepared for the purpose of receiving public hearing testimony. Its recommendations are not necessarily those of the Planning Board. Before proceeding to publish a Planning Board (Final) Draft Plan, the Planning Board holds a public hearing. After the close of the record of this public hearing, the Planning Board holds open worksessions to review the testimony and to revise the Public Hearing (Preliminary) Draft Plan.

Planning Board (Final) Draft Plan - This document is the Planning Board's recommended Plan. After October 1, 1992, changes in the Regional District Act require the Planning Board to transmit the Plan directly to the County Council with copies to the County Executive. The Regional District Act then requires the County Executive, within sixty days, to prepare and transmit a fiscal impact analysis of the Planning Board (Final) Draft Plan to the County Council. The Executive may also forward any other comments and recommendations regarding the Planning Board (Final) Draft Plan within the sixty-day period.

After receiving the Executive's fiscal impact analysis and comments, the County Council may hold a public hearing to receive public testimony on the Plan. After the close of record of this public hearing, the Council's Planning, Housing, and Economic Development Committee (PHED) holds open worksessions to review the testimony and revise the Planning Board (Final) Draft Plan. The County Council, after its worksessions, then adopts a resolution approving the Planning Board (Final) Draft Plan, as revised.

Adopted Plan - The Plan approved by the County Council is forwarded to The Maryland-National Capital Park and Planning Commission for adoption. Once adopted by the Commission, the Plan officially amends the various master or sector plans cited in the Commission's adoption resolution.

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INTENT AND BACKGROUND
OF THIS AMENDMENT

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THE INTENT OF THE 1994 AMENDMENT TO THE MASTER PLAN FOR THE POTOMAC SUBREGION

It is the intent of this Amendment to enlarge the 978-acre Transfer of Development Rights (TDR) Receiving Area 33 known as Avenel Farm to include the adjoining 48-acre Rapley Tract. This changes the Master Plan zoning recommendation on the Rapley Tract from the existing RE-2 to RE-2C/TDR. The maximum density on the Rapley Tract recommended by the Amendment is one housing unit per acre for a maximum of 48 dwelling units. The adoption of this Amendment limits the total density of TDR Receiving Area 33 to 869 dwelling units. Guidance is also given to insure that development on the Rapley Tract is compatible with its surroundings and appropriate notice is given to future home owners of the Advanced Wastewater Treatment (AWT) Facility to be constructed nearby.

BACKGROUND FOR THE 1994 AMENDMENT

A request was first made to include the Rapley Tract into TDR Receiving Area 33 during the deliberations on the 1984 Amendment which designated the Avenel Farm as a TDR receiving area. Due to the late date of the request, the 1984 Planning Board noted that while the request may have merit, it should be handled in a separate plan amendment at some future date. Prior to this Amendment, no action has been taken to implement that suggestion despite a 1991 request to do so. More recently, representatives of the Rapley Tract filed an application for a local zoning map amendment (G-698) to change the existing zoning of RE-2 to RE-2C/TDR. Although the Hearing Examiner's report of July 1993 notes a number of technical disputes among the experts who testified, a clear consensus of opinion was that a minor master plan amendment within the context of the 1984 Amendment was the best procedure to achieve the change desired by the applicant. The Hearing Examiner's report states the advantages of development under RE-2C/TDR zoning over the existing RE-2 zoning. The Hearing Examiner's report is included as a technical appendix to this Master Plan Amendment to provide both background and substantive support for this Amendment. The particular zoning "mistake" noted in that report does not reflect the Planning Board's position.

The Rapley Tract is surrounded on three sides by RE-2C/TDR zoned land, the fourth side is essentially Persimmon Tree Road. Persimmon Tree Road is also the boundary of Avenel Farm. Historically, the Rapley Tract was part of the original Avenel Farm acreage. No other site abutting Avenel shares these physical and historical characteristics.

The zoning density cap recommended by this Amendment of 869 housing units for the combined land of Avenel and the Rapley Tract is essentially the same as it is in the adopted 1984 Amendment. That Amendment put a cap of 850 units on Avenel, excluding the 48-acre Rapley Tract. The RE-2 zoning for the Rapley Tract was not changed by the 1984 Amendment. The RE-2 zoning on the Rapley Tract has a maximum zoning capacity of 24 dwelling units. The combined zoning capacity of Avenel and

Rapley prior to this Amendment is 874 units; five housing units more than what allowed by this Amendment. The infrastructure demands of this Amendment, therefore, were already anticipated by the 1984 Amendment.

Although this Amendment has the effect of shifting more density onto the Rapley Tract, the site is sufficiently large and the density sufficiently low to permit appropriate accommodations to its existing neighbors. Compatibility would be assured by the site plan requirements of the RE-2C/TDR zone. A site plan would not be required in the existing RE-2 zoning.

TOPIC OF PARTICULAR CONCERN

The development guidelines for the Rapley Tract deserve particular attention. Some seven acres of the Rapley Tract are within 1,600 feet of the planned AWT facility. The 1984 Amendment to the Master Plan for the Potomac Subregion indicated a general need for a 1,600-foot buffer around the AWT facility. The 1,600-foot buffer was determined to be the maximum area within which odors from the AWT plant might be detected. No dwelling units are permitted within the designated area which did not extend on to the Rapley Tract. Recreational uses are permissible.

In 1992, the Washington Suburban Sanitary Commission (WSSC) was presented with the opportunity to buy the seven acres on the Rapley Tract within 1,600 feet of the planned AWT facility. WSSC was advised by Montgomery County's Department of Environmental Protection (DEP) that the 1984 development report "did not contemplate a continuation of the 1,600-foot buffer..." on the Rapley Tract and DEP did "...not believe there is justification to modify this earlier conclusion." The result of that recommendation was a decision by WSSC to refrain from purchasing this area.

DEP was consulted about this Master Plan Amendment and recommended that "if the TDR designation is approved that the increased density (should) not be allowed in the area of the projected 1,600-foot buffer." The staff at WSSC would prefer no new dwelling units in the buffer but are not willing to have the Rapley owners use some adjoining land owned by WSSC in exchange for a continuous, 1,600 foot, non-residential buffer.

In the absence of this Master Plan Amendment, the owners of the Rapley Tract would have enough land area within 1,600 feet of the planned AWT facility to permit three new units. The illustrative site planned submitted to the Hearing Examiner as part of the proposed local zoning map amendment has seven new units in this area. The effect of limiting development in this area and providing for the same number of dwelling units on the entire site will mean a lower average lot size on the remainder of the site, with less latitude for retaining on-site forest conservation areas. The effect of not limiting development within the 1600-foot buffer is that there are potentially more home sites closer to the AWT Facility and the remote possibility that these homes will sometimes be able to detect odors for the planned AWT Facility. This Master Plan Amendment supports DEP's position.

FORMAT

The mechanics of making this change is by making appropriate additions and deletions to the Approved and Adopted 1984 Amendment. The following material is the 1984 adopted text with text deleted indicated in brackets and new text underlined.

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THE 1984 AMENDMENT TO THE
1980 MASTER PLAN FOR THE
POTOMAC SUBREGION WITH
ADDITIONS AND DELETIONS APPROVED AND ADOPTED
IN 1994 INDICATING CHANGES

CONCEPT PLAN FOR RECEIVING AREA 33

AVENEL FARM POTOMAC , MARYLAND

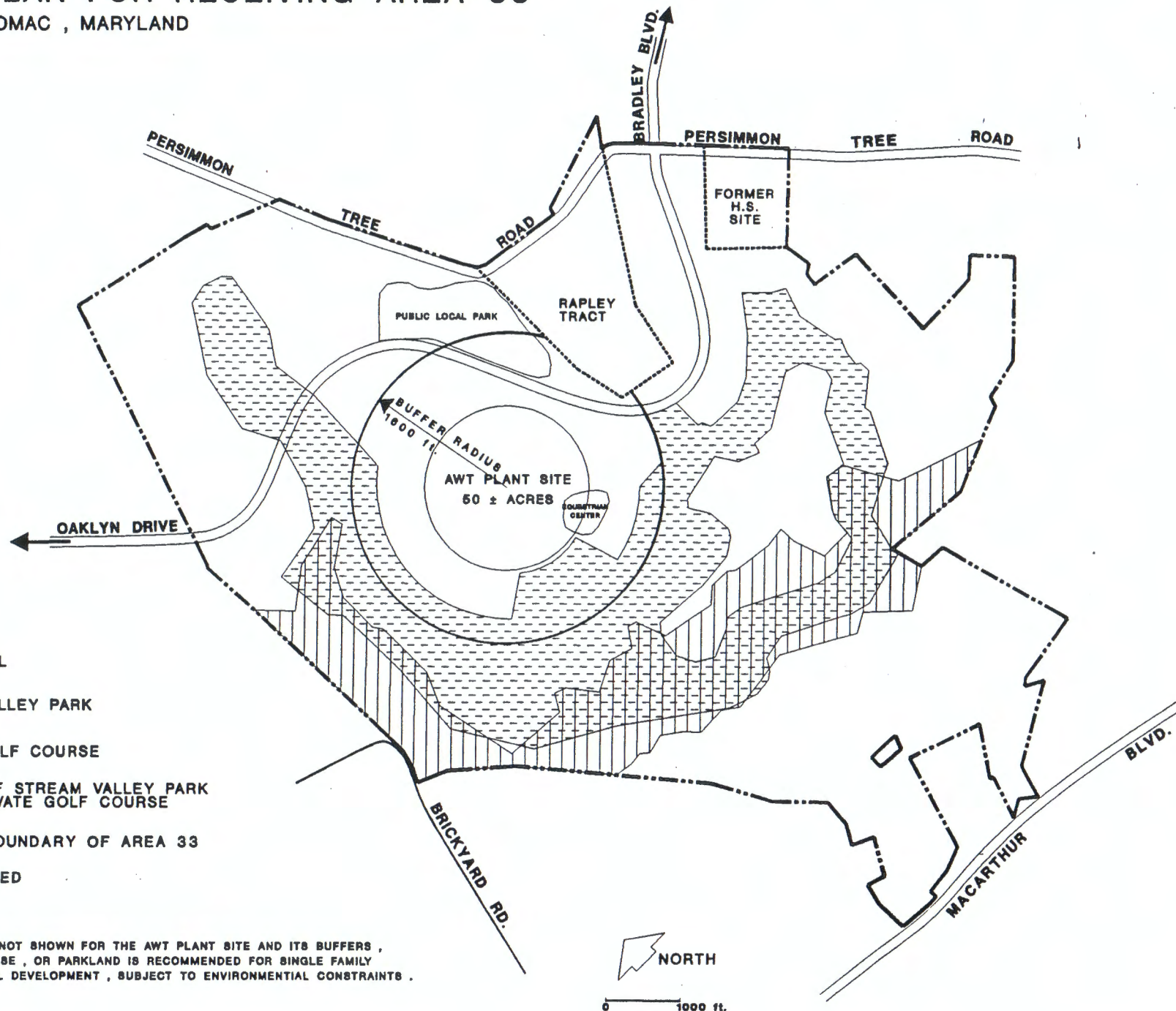
NOTE TO THE READER
THIS MAP AMMENDS
THE 1984 MAP FOR
TDR AREA 33 BY
INCLUDING THE RAPLEY
TRACT.

8

LEGEND

-  RESIDENTIAL
-  STREAM VALLEY PARK
-  PRIVATE GOLF COURSE
-  PORTION OF STREAM VALLEY PARK
WITHIN PRIVATE GOLF COURSE
-  OUTSIDE BOUNDARY OF AREA 33
-  AREAS ADDED

NOTE : THE AREA NOT SHOWN FOR THE AWT PLANT SITE AND ITS BUFFERS ,
GOLF COURSE , OR PARKLAND IS RECOMMENDED FOR SINGLE FAMILY
RESIDENTIAL DEVELOPMENT , SUBJECT TO ENVIRONMENTAL CONSTRAINTS .



HIGHLIGHTS

In summary, this Amendment will:

Provide for the AWT Plant site and create the necessary buffer area.

Allow for a private golf course, partly within the Secondary buffer area, subject to easements for public pedestrian and equestrian access.

Limit residential development to a maximum of [850] 869 units.

Require that a public local park be provided in a suitable location and configuration according to Parks Department criteria.

Remove the Rock Run Gold Mines from the Locational Atlas.

Provide for the conservation and protection of the Rock Run Stream Valley.

Change the alignment of the proposed extension of the arterial street A-39 within the tract.

Expand Area 33 to include the former high school site on Persimmon Tree Road and the Rapley Tract.

BACKGROUND

The Avenel Farm is a 948-acre parcel of land within the Rock Run drainage basin. It is located north of MacArthur Boulevard and west of Persimmon Tree Road. The 1980 *Master Plan for the Potomac Subregion* identifies the Avenel Farm as a site for a proposed advanced wastewater treatment (AWT) plant. (See page 76 and the Environmental Features Map.) It also indicates that Rock Run is an environmentally sensitive area (page 73). The *Plan* shows two historic sites in this area. One is on the farm—the Rock Run Gold Mines. The Ellerslie/Saunders Home is adjacent to the farm and has been designated a Historic Site on the County's functional *Master Plan for Historic Preservation*. The land use portion of the *Plan* shows the Avenel Farm for single-family detached houses and proposes a public park along the stream valley and adjoining steep slopes of Rock Run. This plan also recommends including the Rapley Tract into TDR Receiving Area 33.

In 1982, the *Potomac Master Plan* was amended to designate a number of "receiving areas" for the transfer of development rights (TDR) in furtherance of the County's agricultural preservation policy. The designation of TDR sites is a sequential step in the implementation of the adopted County-wide *Functional Master Plan for the Preservation of Agriculture and Open Space*. The County's *General Plan for the Physical Development of the Maryland-Washington Regional District in Montgomery County, Maryland* provides general policy guidance for the County's land use plans. It

states that a large, designated land area in the upper County, now being used for farming and/or open space, should be protected for the benefit of the local food supply, the general environment, and the well-being of future generations. The TDR program allows farmland owners in the Rural Density Transfer (RDT) Zone to sell their development rights and still retain title to their land. The sale of development rights can help to finance farm improvements and operations without the necessity of selling off small residential lots to raise capital. This approach, unlike traditional zoning techniques, offers farmland owners an economic incentive to resist development pressure.

The *Agricultural Preservation Plan* provides for the possible sale and transfer of development rights from the Agricultural Reserve area to other parts of the County. Owners of land in "receiving areas" shown on adopted master plans will be able to develop to the densities up to those shown on these plans after purchase of TDR's from farmland located in the Agricultural Reserve and after approval of subdivision and site plans by the Planning Board. The sale of such TDR's puts the "sending area" farmland under a permanent easement restricting future non-agricultural development. The receiving areas will be identified in approved and adopted master plans and will be consistent with environmental, transportation, housing, and population guidelines of those master plans.

The 1982 Amendment designated the Avenel Farm (Area 33, page 28) as a potential TDR receiving area provided that the AWT Plant was not located there. The Amendment also identified 583 acres of the farm as being needed for the AWT Plant and buffer (including a portion of the proposed stream valley park) if it were to be built there. In that Amendment the Planning Board and County Council noted uncertainties associated with the AWT Plant and the size and use of the buffer area. The 1982 Amendment left open the possibility of a further master plan amendment to consider the utilization of TDR's on the remaining portions of the farm whenever decisions about the AWT Plant and the buffer area became more certain.

A decision has now been made by the County and the Washington Suburban Sanitary Commission (WSSC) to locate the AWT Plant on a central portion of the Avenel Farm. Furthermore, a proposal has been made to construct a private, stadium golf course within the farm. Part of the golf course is to be located on land that is designated in the *Master Plan* for a public park known as the Rock Run Stream Valley Park, and part of it will be in what was originally shown as a portion of the buffer area for the AWT Plant.

THIS AMENDMENT

The AWT Plant will be located within a 50-acre area. Trees, berms, and shrubs will provide visual screening. Portions of this 50-acre area, as well as the buffer, will remain accessible to the public for hiking and equestrian trails. Any modification to the plant's configuration beyond this 50 acre site will require an additional master plan amendment.

Surrounding the 50-acre plant site is a buffer area of approximately 120-acres, consisting of a 500-foot deep primary buffer and a 300-foot deep secondary buffer. While most of this buffer area, as well as the plant site, will be owned and/or used by the proposed golf course. Overall, the AWT site, buffer, and golf course will fulfill the objectives described in the Project Development Report (PDR) for visual, sound, and odor screening.

Early in the facility planning process, an area of 583 acres was identified for acquisition or dedication to provide for the Rock Run AWT site and buffer. This land area was to be purchased largely with public funds. The currently proposed AWT site and buffer, the portion of the golf course contiguous to the AWT site and buffer, and the adjoining recreation and stream valley park areas form a roughly rectangular area of approximately 400 acres with the AWT site in the center. This expanse of open space will be achieved with public moneys paying for approximately one-half of the acreage (i.e., the AWT site and buffer) and private money paying for one-half (the golf course).

The County Government and WSSC have reviewed the Environmental Project Report for Rock Run in detail and concluded that the 170-acre AWT site and buffer, along with small areas of the golf course that intrude into the secondary buffer are more than adequate to provide for a 20 million gallons per day Rock Run AWT facility and desirable setbacks from existing and planned residential development. In reaching the revised acreage needs for the AWT site and buffer, the assumptions used in odor dispersion modeling contained in the PDR were reviewed and found to be extremely conservative. The PDR assumed that a total plant upset would occur where all surfaces containing sludge solids would be exposed to the atmosphere and generating odors at the highest level ever measured anywhere and that this upset would occur under the worst atmospheric conditions possible for dispersion. It further assumed no mitigating interaction of odor molecules with surrounding vegetation or other elements of the atmosphere and no control devices or measures that may be incorporated into the design of the AWT plant.

In actuality, plant upsets are extremely rare at well run facilities and, even if occurring, would not produce the level of odors modeled. In the case of Rock Run, where sewage is withdrawn from the Dulles Interceptor Sewer and pumped up to the plant for treatment, if conditions conducive to a plant upset were to occur, then flows could be bypassed to the Blue Plains Sewage Treatment Plant for treatment. Other odor protection measures, if necessary, can also be employed at Rock Run. Furthermore, contrary to the conservative assumptions of the model odor molecules do dissipate by diffusion, do undergo destructive processes in the air, and the vegetative screening to be provided is an effective mitigating measure to control odors.

Nonetheless, the **1600 feet from center of site** maximum odor detection limit that resulted from the modeling was used as a guide for the delineation of the outer boundary of the secondary buffer, **and will be the closest distance where residential development will be allowed except for a small portion of the Rapley Tract.** The golf course, in most directions, provides an additional odor and aesthetic buffer and further improves the compatibility of the plant with the community. Some seven acres of the Rapley Tract

are within 1,600 feet of the planned AWT Plant. However, the Environmental Project Report referred to above, did not indicate that any part of the Rapley Tract was required for a buffer and for this reason, this Plan Amendment permits up to three new housing units to be developed on that portion of the Rapley Tract that is within 1,600 feet of the AWT Plant.

OPEN SPACE

A buffer area adjacent to the 50-acre AWT Plant site is proposed to have the open space land use designation. A 260± acre golf course is to be partially located within a portion of the buffer area and partially surrounding the plant site and buffer. Because the buffer of open space is needed to prevent houses from being built too close to the AWT Plant, golf course development would be compatible with this purpose. This golf course also provides additional buffer between the AWT site and some of the residential development. It also provides an economic use for this portion of the farm, thus eliminating the need to acquire this part of the buffer area at public expense. Therefore, this Amendment regards a portion of the Avenel Farm as suitable for the private golf course subject to obtaining a special exception use permit. This Amendment also calls for public access through the portion of the Rock Run Stream Valley Park occupied by the golf course, limited however to hikers and equestrians in the area of the equestrian trails. This area will retain the designation of public park. The golf course in the Rock Run Stream Valley will need to be developed and maintained in accordance with the same environmental criteria that are applicable to the public park system in stream valley park areas.

Reflecting action taken by the Historic Preservation Commission upon review of research and materials relevant to the criteria of the historic preservation ordinance, this Amendment removes the Rock Run Gold Mines from the *Locational Atlas and Index of Historic Sites in Montgomery County Maryland*.

This Plan Amendment still requires a public local park (previously designated for the former high school site on Persimmon Tree Road). However, this Amendment allows for the park to be located elsewhere within the Avenel Farm at a site equally suitable in size, topography, configuration, and access.

RESIDENTIAL DEVELOPMENT

The remaining acreage is suitable for residential use. This Amendment removes from the AWT Plant site, its buffers (the Rapley Tract is not included in the designated buffer area), and other open spaces any potential for future residential development because the overall density will have been used for residential development. This will ensure that the undeveloped portion of the farm will remain open space and will be accessible to the public in perpetuity should the golf course not be built or the activity ever be discontinued.

As an additional safeguard, a mechanism to restrict the use of the golf course in perpetuity to a recreational open space use, available to the public, and no more intensive than a golf course must be agreed upon by the owner and the M-NCPPC.

The Avenel Farm including the Rapley Tract is located in a community that is developed with low and medium residential densities ranging in intensity between the RE-2 and the R-200 zoning categories. The 1982 Amendment placed a maximum capacity of 1,000 dwellings, including TDR's and moderately priced dwelling units (MPDU's), on the Avenel Farm. However, the decision to devote a part of the Avenel Farm to a future AWT plant coupled with open space utilization still requires some reduction in the total amount of allowable dwelling units. Given the previous planning history, the large amount of open space, and public benefit considerations, the maximum residential capacity is reduced to [850] 869 units by this Amendment including the Rapley Tract. This represents a maximum density that may be applied to the ground in a fashion that will reflect good land use practices for this location, given open space utilization.

The use of TDR's can be accomplished without adversely changing the character of this portion of Potomac. Compatibility with adjacent development can be achieved by having a range of densities starting with the lowest at the outside perimeter and clustering increasing density toward the interior open space areas. This increase in density would further the agricultural preservation program while also helping to preserve a portion of the secondary buffer without a public expenditure.

This *Plan* required a traffic analysis at the time of subdivision. The Planning Board will examine traffic conditions within the context of the *Approved and Adopted Master Plan for the Potomac Subregion*. If a need is demonstrated by the traffic analysis, some operational and paving improvements may be made a condition of subdivision approval.

NOTIFICATION

This Plan Amendment recommends that potential homebuyers be made aware of the presence of the AWT plant site prior to their purchasing a home on the Avenel Farm. Under the master plan disclosure provisions of the Montgomery County Code, a homebuyer has an opportunity to review the applicable master plan. Thus, the information provided in this Plan Amendment will assist in notifying prospect home purchasers of the presence of the AWT plant site. This Plan Amendment also recommends that a formal disclosure of the presence of the AWT plant site be made. Similar notice should be given to all home buyers on the Rapley Tract. Home buyers within 1,600 feet of the planned AWT facility should be given specific notice of that proximity to the future facility.

These measures occur late in the home selection process, generally after one has selected a particular home. Therefore, the Plan Amendment further recommends that the Department of Environmental Protection place well-designed signs in the area indicating

the AWT site. These signs will inform early in the prospective homebuyer's selection that the AWT site is in the vicinity.

ENVIRONMENTAL PROTECTION

The Avenel Farm is the largest remaining undeveloped parcel in the Rock Run watershed. Development of this parcel for golf course, residential, recreational, and AWT uses could add to the nonpoint source pollutant loading of Rock Run unless appropriate best management practices are employed. In order to maintain the existing stream quality in Rock Run, this Master Plan Amendment recommends that the developer(s) of the Avenel Farm be required to provide a detailed water quality analysis demonstrating how nonpoint source pollutant loadings will be kept at or near existing levels. In addition, the following guidelines must be used in the development of the Avenel Farm.

- 1) The disturbance of mature woodland areas is strongly discouraged and should be avoided wherever possible. The Planning Board should give attention to the establishment of conservation easements along small tributaries at the time of subdivision.
- 2) All clearing and grading activities shall strictly adhere to the U.S. Soil Conservation Service guidelines pertaining to erosion and sediment control. Phased clearing and grading shall be employed whenever/wherever feasible. In addition, the use of higher trapping efficiency sediment basins and/or oversized sediment traps is recommended.
- 3) Strict adherence to the Environmental Planning Division's "Steep Slope" guidelines should be required at the time of site plan review.
- 4) Effective energy dissipation techniques shall be employed at all storm drainage outfalls to reduce upland and channel erosion.
- 5) Stormwater management ponds shall be constructed in synchronization with or ahead of the residential units.
- 6) For water quality reasons, wet ponds with a minimum of 6 to 12 hours detention time should be used. In the areas where wet ponds are not feasible or desirable, the use of extended detention dry ponds (having a minimum detention time of 12 hours), porous pavement, or infiltration devices will be considered.
- 7) The overall maintenance of the proposed golf course and open space areas along the stream valleys shall conform to the same environmental standards that are applicable to the M-NCPPC. Furthermore, the Maryland Department of Agriculture, Cooperative Extension Service and M-NCPPC Department of Parks shall be consulted in the appropriate

application rates of fertilizers, pesticides, and herbicides in the operation of the golf course. This application history shall be kept in recorded form and be available to appropriate County and State agencies.

No development will be allowed within the ultimate 100-year floodplain, on steep slopes (25% or greater), or on soils with poor drainage properties. The actual residential unit yield may be less than the [850] 869 maximum indicated in this Amendment based on reductions imposed during further review.

Furthermore, it is anticipated that the proposed private golf course will be the location, in part, for open space and stormwater management that will serve the future occupants and needs of the proposed residential area. Since the golf course design and the residential area. Since the golf course design and the residential development are interconnected, their layout must complement each other. In order to assure this, this Master Plan Amendment calls for the site plan and subdivision processes of each to be coordinated (including concurrent scheduling if possible) to ensure compatibility and adequacy of all environmental and recreational objectives.

In addition, the following guidelines must also be used in the development of the Rapley Tract:

- 1) The total number of dwelling units shall not exceed 48 and may be lower in order to meet all development guidelines.
- 2) The number of new dwelling units within 1,600 feet of the AWT shall not exceed 3, the number of units that could have been built under RE-2 zoning in the same area.
- 3) A minimum one hundred foot buffer of existing deciduous trees south of Persimmon Tree Road shall remain undisturbed.
- 4) All access to the tract shall only be from Oaklyn Drive.
- 5) Land immediately adjoining Persimmon Tree Road shall contain a minimum two (2) acres entirely in the lot or in combination of the lot and common area adjacent to Persimmon Tree Road.
- 6) Any special exception use of the property should have minimal lighting and any structure thereon should not exceed the height of the highest dwelling unit.
- 7) Development shall strictly adhere to the M-NCPPC "Environmental Management of Development in Montgomery County, Maryland" guidelines. Development shall also meet all requirements of county laws for forest conservation, stormwater management and other environmental regulations.

ZONING

The effect of this Amendment designating Area 33 for TDR development is to allow for a maximum of [850] 869 dwelling units (DU's) upon approval by the Planning Board of a preliminary plan of subdivision. This is allowed under the existing RE-2C and RE-2 Zones when TDR's have been purchased from the RDT-zoned areas elsewhere and applied to the Avenel Farm. The TDR-2 designation allows for the development standards and housing types of the R-200 Zone. These standards are needed to achieve good design and provide for a variety of housing types, including both single-family detached and attached.

The section under "Receiving Area 33" on page 28 of the September 1982 Amendment to the *Master Plan for the Potomac Subregion* is recommended to be changed to read as follows:

Receiving Area 33

Size (including surplus school site <u>and the Rapley Tract</u>)	[978] <u>1,026+</u> acres
Present Zoning	RE-2C/ <u>TDR</u> and RE-2
Maximum Units w/o TDR	[391] <u>410</u> DU's
Proposed TDR Optional Density	TDR-2 (limited)
Maximum Units w/TDR's and MPDU's	[850] <u>869</u> DU's
Maximum TDR's (to be reduced by the number of MPDU's)	459
Water and Sewer Category	[W-2; S-6 (automatic changes to S-3 with TDR's)] <u>W-1, W-3; S1 and S3</u>

Area 33, in addition to the Avenel Farm, a [948] 1,026 acre site located between Persimmon Tree Road and MacArthur Boulevard, is expanded to include a 30-acre surplus school site on Persimmon Tree Road and the 48 Rapley Tract south of Persimmon Tree Road. The Avenel Farm [is currently zoned RE-2C] and the former school site is zoned RE-2C/TDR and the Rapley Tract is zoned RE-2.

This Amendment designates Area 33 as a TDR receiving area, the site of an AWT plant, and recommends a private golf course. Development shall be limited to no more than ~~[850]~~ 869 dwelling units, including MPDU's and TDR's. The TDR-2 designation means that development may utilize the R-200 standards in order to provide a wider range of housing types. This will allow a development plan that can better respond to topographic and environmental conditions on the site. Under any development procedure, with or without TDR's, this Amendment recommends that any development in the area south of Rock Run must address the severe environmental constraints in that area.

This Amendment removes from the AWT Plant site, its buffers (the Rapley Tract is not included in the designated buffer area), and other open spaces any potential for future residential development because the overall density will have been used for residential development in the area designated for residential development. This will ensure that the undeveloped portion of the farm will remain open space in perpetuity should the golf course not be built or the activity ever be discontinued.

As an additional safeguard, a mechanism to restrict the use of the golf course in perpetuity to a recreational open space use, available to the public and no more intensive than a golf course, must be agreed upon by the owner and the M-NCPPC.

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APPENDIX:

HEARING EXAMINER'S REPORT ON A
LOCAL ZONING AMENDMENT FOR THE
RAPLEY TRACT SUBMITTED TO THE
COUNTY COUNCIL, OCTOBER 1993

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BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND

Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
217-6660

IN THE MATTER OF:
ROCK RUN LIMITED PARTNERSHIP

Applicant

James R. Crawford
Grace Fielder
Edward Y. Papazian
Donald Woodsmall

For the Application

Larry A. Gordon, Esquire
Stephen Z. Kaufman, Esquire

Attorneys for the Applicant

* * * * *

John C. Alexander
Bob Banner
Tom Bernitt
Donna Citrin, Spokesperson for Persimmon*
Tree Road Property Owners
Charles A. Irish, Jr.
Robert L. Mitchell

Application No. G-698
and
Application No. G-704

In Support of the Application

* * * * *

Denis Canavan, Coordinator, Neighborhood*
Design and Zoning, Maryland-National *
Capital Park and Planning Commission *

Neither in Support of nor in
Opposition to the Application

* * * * *

William O. Bittman, Esquire, pro se
Jill J. Lavin, Zoning Chair, West
Montgomery County Citizens Association*
(WMCCA)
Mary King, President-Elect, WMCCA
Mary Ann Thane, Past President, WMCCA
Carole Trautschold

In Opposition to the Application

* * * * *

Before: Philip J. Tierney, Hearing Examiner

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HEARING EXAMINER'S REPORT AND RECOMMENDATION

I. SUMMARY

A nonbinding residential development plan proposes to cluster 48 homes on a 48-acre tract in a manner that would preserve significant trees and locate the homes on lots sized to be compatible with adjacent development. The development is proposed to be incorporated into the Avenel Farm, a clustered residential development located on 978 acres designated as a transferable development rights (TDR) receiving area and approved for 825 homes of various types and densities with over 400 acres of recreational amenities and public facilities. Avenel surrounds the site on three sides and shares the same access road on the fourth side. The nonbinding plan contains a number of elements that make it clearly superior to development under the current zoning in terms of traffic safety, internal traffic circulation and preservation of natural features of the site.

The Applicant filed alternative requests for either the RE-2C/TDR or RE-1 Zones. However, neither application meets the zoning requirements for different reasons. The RE-2C/TDR Zone could satisfy the zoning requirements if the master plan is amended to designate the site as a TDR receiving area. Because of factual circumstances connected with the approval of TDR zoning in 1987 and the size of approved lots located along the perimeter of the site, fairness supports a prompt and limited master plan review to determine the suitability of the site as a TDR receiving area. A master plan review will require a short term deferral of Application G-698 and, if the site is designated as a TDR receiving area and incorporates the elements of the development plan as density and development guidelines, the RE-2C/TDR Zone can be approved without further proceedings. Application G-704 for the RE-1 Zone does not share the same factual circumstances and should be denied.

II. STATEMENT OF THE CASE

Application No. G-698, filed August 28, 1992, requests reclassification from the RE-2 Zone to the RE-2C/TDR Zone of 48.032 acres known as the Rapley/MacMartin tract, located on Persimmon Tree Road west of the intersection with Bradley Boulevard and Oaklyn Drive, Potomac, in the 10th Election District.

Application No. G-704, filed May 3, 1993, requests reclassification from the RE-2 Zone to the RE-1 Zone of the same property which is the subject of Application No. G-698. It is an alternative zoning request in the event that G-698 is not approved. Because the two applications involve the same property, same owner, and similar zoning issues, the cases were consolidated for purposes of evaluation and hearing.

The two applications were initially reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) who, in a report dated May 28, 1993, recommended denial. The full Planning Board considered the two requests on June 3, 1993 and, by a three to two vote, recommended denial. The Applicant proposed to submit as an exhibit of record an audio tape of the Planning Board's deliberations apparently to demonstrate general support for the form of development proposed by the nonbinding plan. The opposition objected to receipt of the evidence and the objection was sustained on the grounds of relevancy.

A public hearing was originally scheduled for Application G-698 on February 19, 1993. However, this hearing date was postponed on several occasions at the request of the Applicant. After the filing of the alternative request, G-704, a consolidated hearing was scheduled for June 14, 1993 and convened on that date. Evidence was presented both in support of and in opposition to the applications. For convenience, and with the consent of the parties, the record in G-698 was designated as the master file for exhibits submitted pertaining to both applications. Following the hearing, the record was held open until July 2, 1993 in order to permit the parties an opportunity to file additional materials.

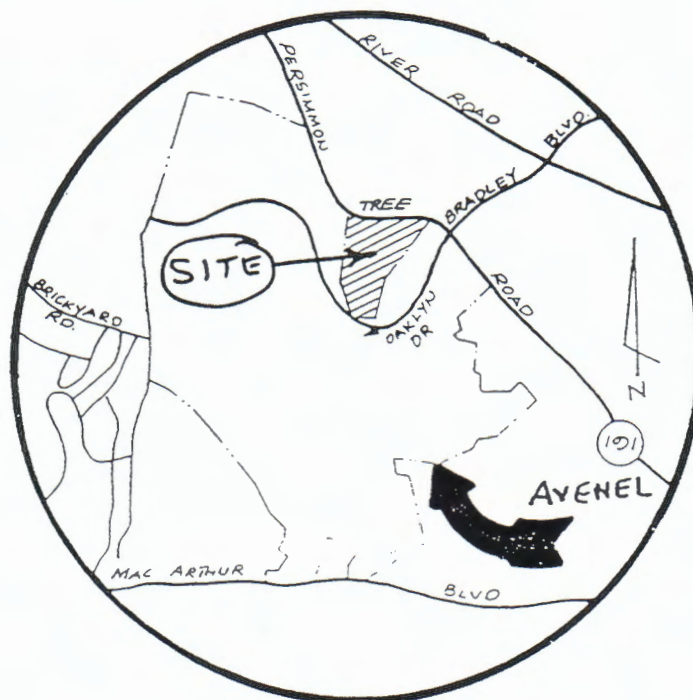
III. BACKGROUND FACTS

In order to properly evaluate the zoning issues involved, it is necessary to develop the pertinent facts by descriptions of the subject property, the proposed development, the planning and zoning history of the immediate area, the zoning neighborhood, the land use and zoning pattern of the zoning neighborhood, changes occurring within the neighborhood, and the availability and adequacy of public facilities in the area. The facts are largely uncontested but where there is a conflict it is resolved under the preponderance of evidence test.

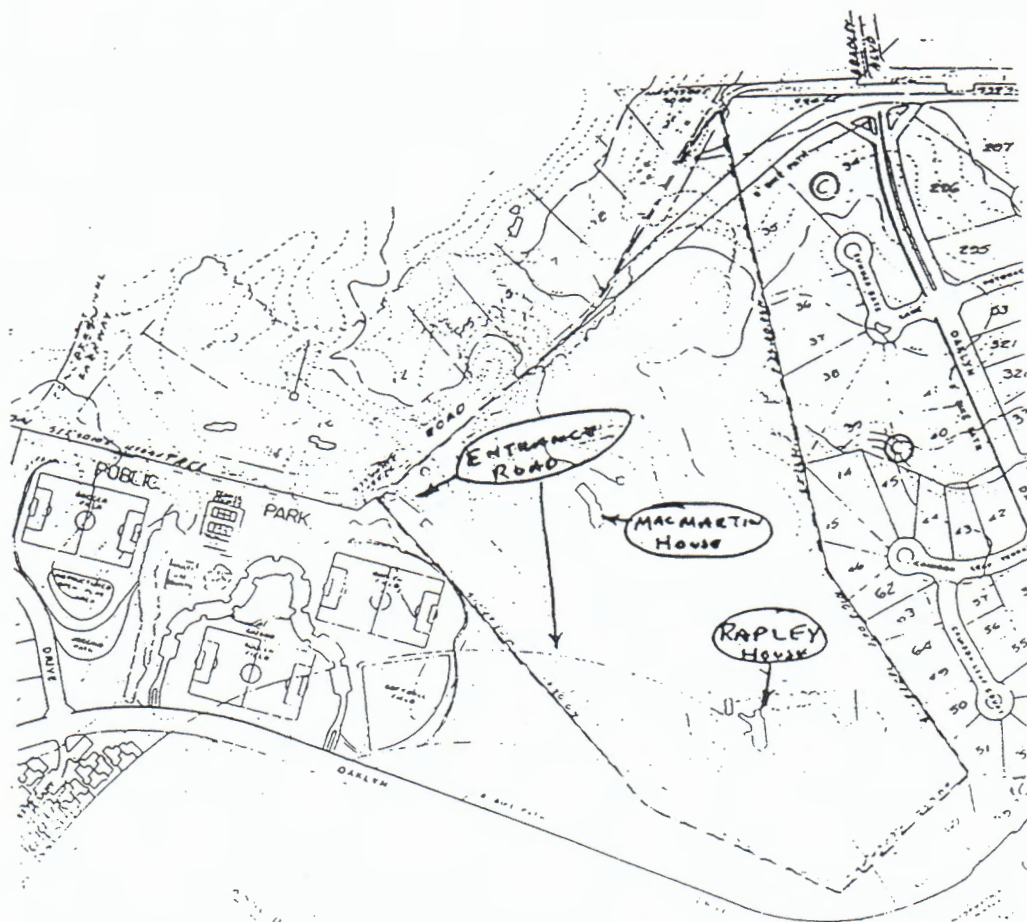
A. The Subject Property

The subject property forms an irregularly-shaped tract made up of three parcels which are located in a bucolic section of Montgomery County near the center of the Potomac-Cabin John and Vicinity Planning Area about mid-way between the Potomac River and Interstate 270. The site is surrounded on three sides by the 978-acre Avenel Farm which is currently being developed with 825 houses ranging in style and density from townhouses to single-family detached homes on two acre lots. The site has about 1,500 feet of frontage along the south side of Persimmon Tree Road and is located about 400 feet west of the intersection of Persimmon Tree Road with Bradley Boulevard and Oaklyn Drive. The general location and shape of the site and its neighbor Avenel are depicted below.

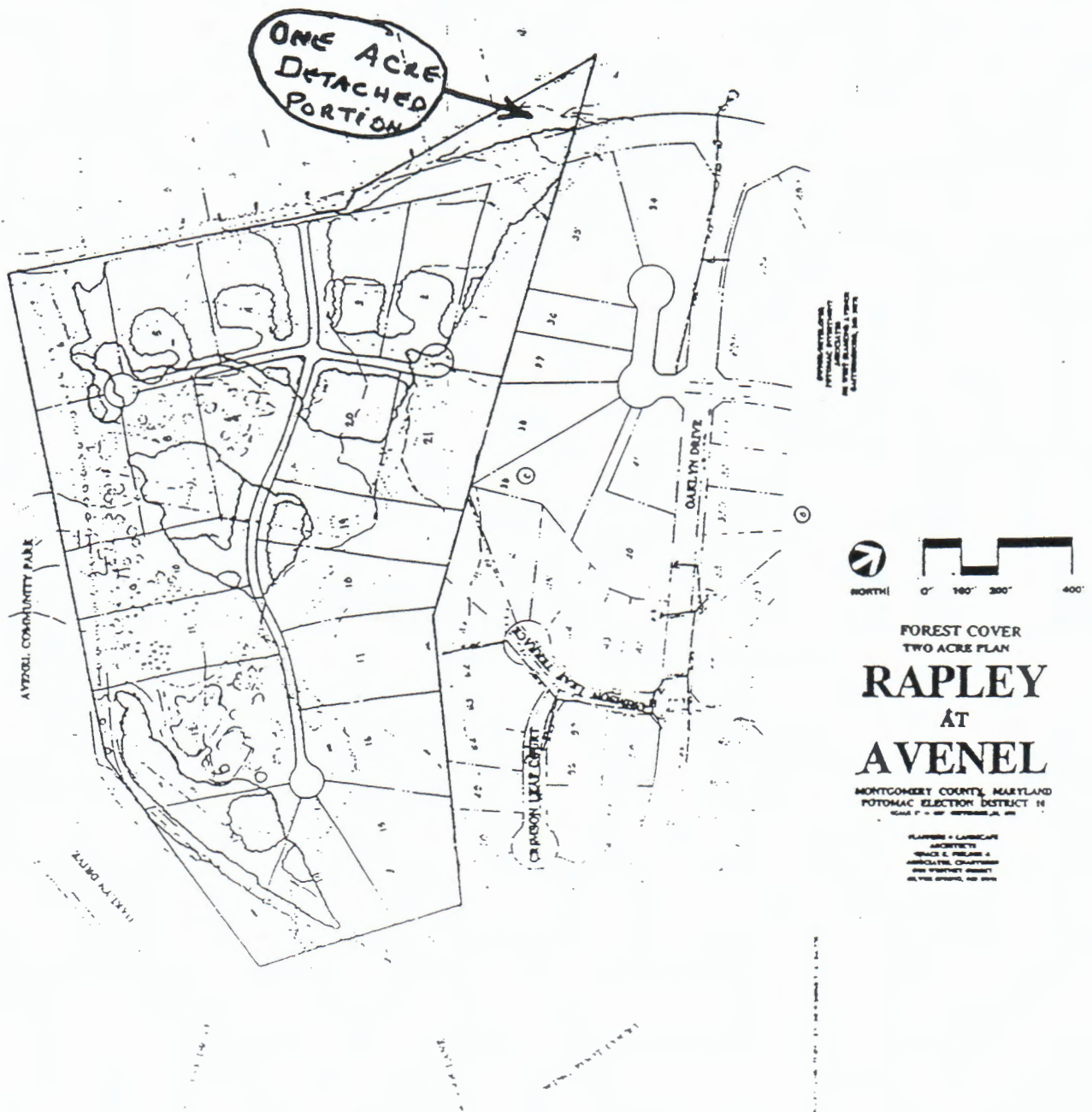
VICINITY MAP
SCALE: 1" = 4000'



Current access to the site is by way of a driveway connected to Persimmon Tree Road at the western edge of the site. The access is considered hazardous because it is located near a sharp curve and has poor sight distance along Persimmon Tree Road. The driveway serves two existing houses, one of which is known as the Rapley Mansion and the other known as the MacMartin or daughter's house. About 25% of the site or 12.3 acres are under mature forest cover. Large tulip poplar trees are located in the center of the site. Oak and sycamore trees are located along the perimeter. The topography reflects slopes of 20% or less, except for an area located in the southwestern portion of the site which contains slopes that exceed 20%. The elevation of the site ranges from a low point of 293 feet at the southwest corner to a high point of 393 feet near the entrance drive to the MacMartin House in the northwestern portion of the site. The shape of the property and its features are depicted below.

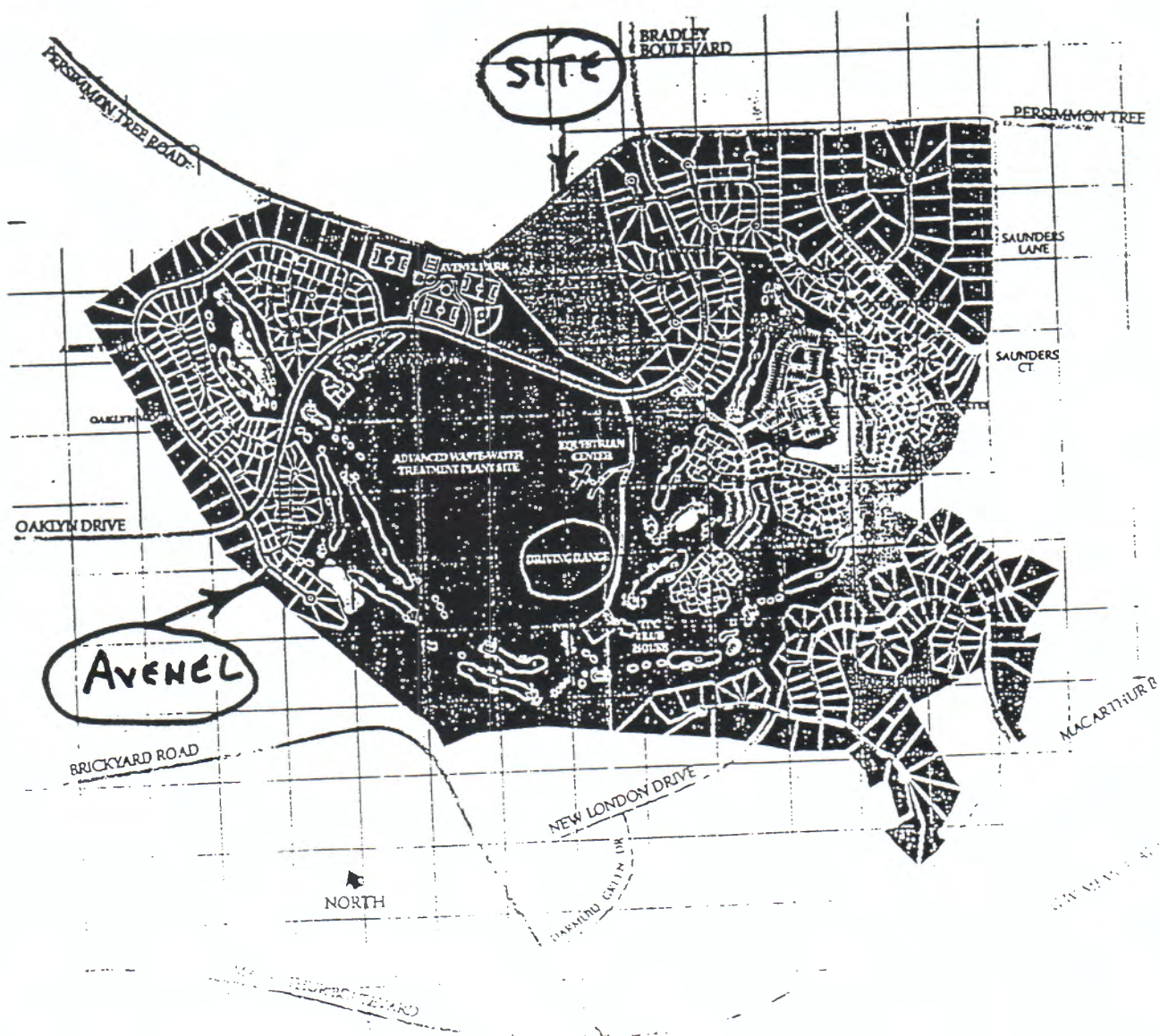


Development of the site under the current RE-2 Zone could generate between 19 and 21 single-family lots. A one-acre portion of the site was severed from the main tract when Persimmon Tree Road was relocated in 1988. The one-acre parcel is mostly wooded and would not be developed under the existing or proposed zoning. Because of the hazardous access to Persimmon Tree Road, future access under conventional development would be relocated further east and would involve regrading and removal of existing trees near the road frontage. This form of development would retain about half of the existing trees and is illustrated below.



B. The Proposed Development

The Applicant is the developer of Avenel and acquired a contractual interest in the property on September 18, 1984. The property was subsequently conveyed to the Applicant on June 17, 1987. The acquisition was for the purpose of incorporating the site into Avenel which surrounds the subject property on three sides. The western boundary line extends about two thousand feet in length and abuts the Avenel Local Park. The southern boundary line extends about 560 feet and abuts undeveloped lots within Avenel. The eastern boundary line extends about 2,300 feet and abuts both developed and undeveloped lots within Avenel. There are 23 abutting lots that range in size from 15,000 square feet to two acres and reflect an average lot size of 26,000 square feet. The disparity in lot sizes between the current zoning on the site and approved Avenel development is illustrated on the map depicted on page 7. The relationship of the subject property to Avenel is also depicted below.



Because the site contains a significant tree cover, the Applicant proposes tree preservation as a major amenity. The proposed development would locate 48 homes in a manner that would preserve most of the existing trees, specifically a three-acre tulip poplar grove in the center of the site, trees leading to and surrounding the Rapley Mansion, and trees along the northern perimeter bordering Persimmon Tree Road.

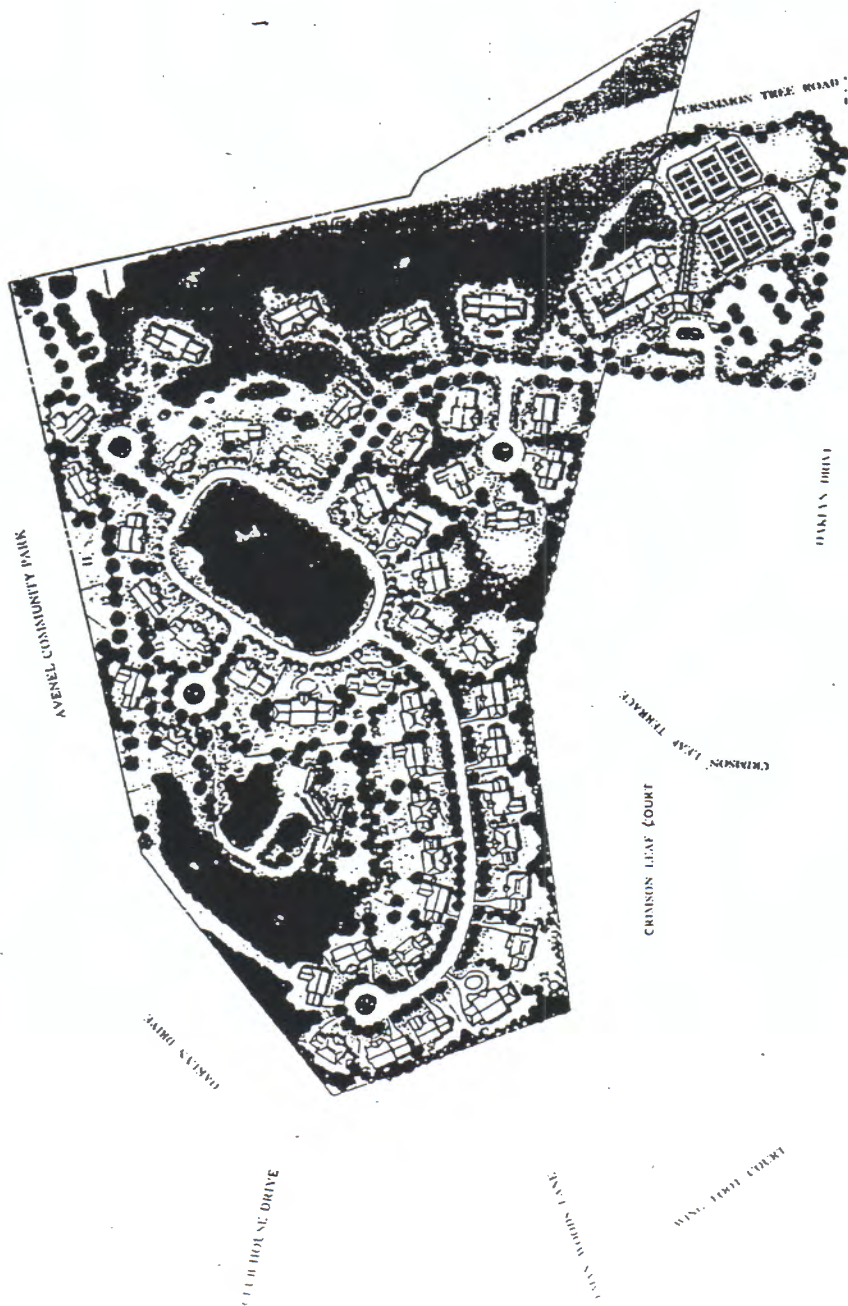
Density would be clustered in the same manner as Avenel. The Rapley Mansion would be retained on a 3.5 acre lot. The homes located along the northern perimeter of the site would be on two-acre lots to maintain compatibility with existing homes along Persimmon Tree Road. The lots located along the perimeter abutting Avenel would be consistent with lot sizes approved there. The lot sizes would range from 15,000 square feet to 3.5 acres with an average lot size of 33,880 square feet.

The proposed development would avoid access to Persimmon Tree Road by using an extension of Summer Gate Lane from Avenel. The interior roads are proposed as tertiary streets to allow for smaller turning movements and right-of-way dedication in order to preserve more trees. Access to the Rapley Mansion would allow for preservation of original landscaping including azaleas and rhododendrons.

A recreation facility, including six non-lighted, uncovered, outdoor tennis courts, an Olympic sized swimming pool, accessory parking, and the Avenel Homeowners' Association offices, would be located on 8.2 acres at the northeast corner and would include 2.3 acres of the subject property. The entrance to this recreation facility would be through Summer Gate Lane. Approval of the recreation facility would be subject to a special exception request submitted by the Applicant if the zoning is approved.

The proposed development when combined with approved Avenel density would conform with the master plan recommendation for 869 dwelling units for both tracts. Avenel was initially authorized for 850 units, but the Applicant eliminated 25 lots during the subdivision process as depicted on the map reproduced on page 4. The proposed recreational facility would displace four more lots for a total density at Avenel of 821 units. The proposed development including the recreation facility and tree preservation areas are depicted on pages 9 and 10.

The proposed development is subject to limitations of an agreement executed between the Applicant and neighboring property owners. The agreement provides that no more than 48 single-family homes can be built on the subject property and the combined density for Avenel and the subject property cannot exceed 869 dwelling units. The agreement also provides for a 100-foot tree buffer along Persimmon Tree Road and a tree conservation easement which will be supplemented by plantings of evergreens between the deciduous trees and the road. Access from Persimmon Tree Road is prohibited. The northwest corner of the site will serve as an equestrian easement for access to Avenel Park. Any development along Persimmon Tree Road cannot have any lighted tennis courts or bubbles. All lots adjacent to Persimmon Tree Road must be at least two acres in size. This agreement was submitted as evidence to illustrate how either of the two requested zones might be developed. The agreement cannot be the basis for approval of either zoning request or form a condition of approval.



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ILLUSTRATIVE RAPLEY AT AVENEL

MONTGOMERY COUNTY, MARYLAND
POTOMAC ELECTION DISTRICT 10

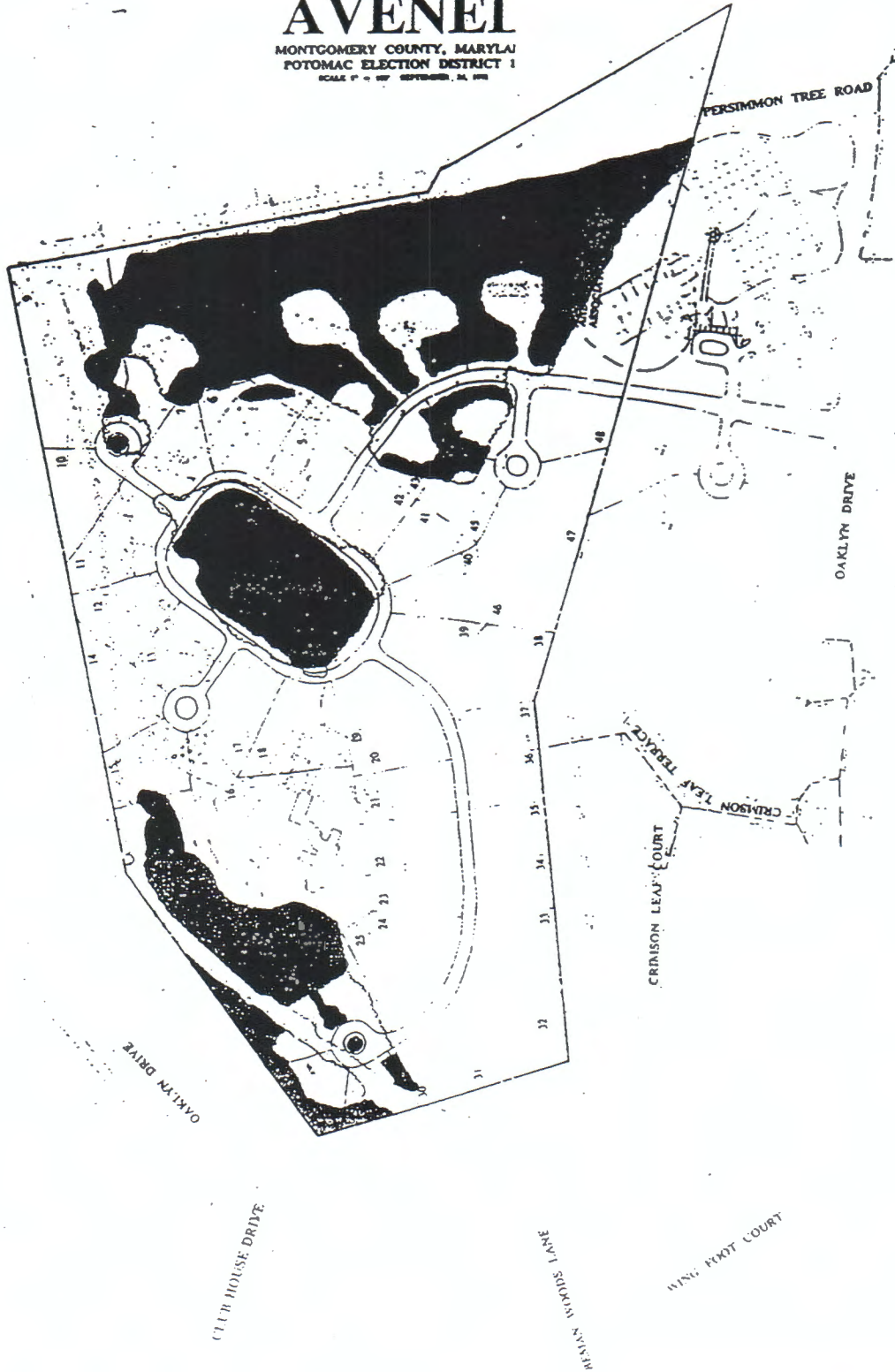
GEF

FRANKLIN & ASSOCIATES
ARCHITECTS
1000 E. 10TH ST.
ANN ARBOR, MI 48106
(313) 763-1100

SITE PLAN
FIGURE 4

FOREST COVER ILLUSTRATIVE **RAPLEY** AT **AVENEL**

MONTGOMERY COUNTY, MARYLAND
POTOMAC ELECTION DISTRICT 1
SCALE 1" = 100' SEPTEMBER, 24, 1974



OWNERS/DEVELOPERS
POTOMAC INVESTMENT
ASSOCIATES
1401 WEST DIAMOND AVENUE
CATERBURG, MD 20747

NOTES:

Total Forest Cover: 12.3
Total Forest Retained: 8.6
ADJACENT ARE IMMEDIATELY

BOUNDARY AND TOWN BY DENNEY & DAY

FOREST COVER UNDER PROPOSED ZONING
FIGURE 6

C. Planning and Zoning History

The site was initially zoned for two-acre residential density by comprehensive zoning in 1958. This zoning classification was reaffirmed by comprehensive zoning on September 30, 1980, which also applied RE-2C zoning to the adjacent Avenel tract as a watershed protection measure.

The 1980 comprehensive zoning reclassified 10,420 acres and was designed to implement the Potomac Subregion Master Plan, approved and adopted in May, 1980. The plan recommended the site and a nearby 30-acre former school site for RE-2 zoning as well as all properties located along the north side of Persimmon Tree Road. However, the master plan recommended the adjacent Avenel tract for the RE-2C Zone which allows the same density as the RE-2 Zone but permits a cluster form of development as approved by the Planning Board during the subdivision stage. Avenel was authorized for a total density of 379 dwelling units under the 1980 zoning. The 1980 master plan recommendation is depicted on the following page.

The rationale for using different zoning classifications for these two adjacent properties is ambiguous. Both the site and Avenel share similar topographical and environmental characteristics and are located along the south side of Persimmon Tree Road which appears to be a more logical dividing point between zoning categories. Nevertheless, the opposition contends that the smaller size of the site was a distinguishing factor and the Technical Staff apparently used different ownership patterns and the belief that the site was developed and committed as distinguishing factors. The master plan does not articulate these distinctions.

In October, 1980, the Functional Master Plan for Preservation of Agricultural and Rural Open Space was adopted and approved which recommended the use of a TDR program for preservation purposes. The master plan recommended that areas for preservation be designated as TDR sending areas and other locations elsewhere in the County be designated as TDR receiving areas. However, the October master plan did not identify any receiving areas although Potomac was destined to become a future receiving area.

The TDR program was implemented by comprehensive zoning in 1981 when the designated preservation areas were established as TDR sending areas. In 1982, the Potomac Master Plan was amended to designate several TDR receiving areas and one of these areas included the then 948-acre Avenel tract at a density of 1,000 dwelling units. The master plan amendment also identified a portion of Avenel as a potential location for an Advanced Wastewater Treatment (AWT) plant and indicated that the TDR density was premised on the AWT plant not being located there. Because of the uncertainties associated with the location of the AWT plant, the 1982 amendment recognized the possibility of a future master plan amendment to adjust the TDR density for the remainder of Avenel if the AWT plant is located there. Subsequently, the Washington Suburban Sanitary Commission acquired a portion of Avenel for the AWT plant.

On May 21, 1984, during the period when a master plan amendment was under consideration, the owners of the subject property, Mr. and Mrs. Rapley, filed a letter with the District Council and the Planning Board requesting that the property be considered for the same density levels as were being considered for Avenel. Ex. 30, Appendix A. Because the letter was filed near the end of the joint District Council-Planning Board deliberations, a decision was made at the



The 1984 master plan amendment was not implemented by comprehensive zoning based on the mistaken assumption that the TDR receiving area density could be applied through the planning and subdivision process without zoning authorization. Avenel was approved for development at subdivision with a lot configuration that carefully located two-acre lots along its perimeters except where Avenel abutted the subject property. Smaller adjacent lots were approved in a manner that apparently assumed interior development of the subject property at a higher density than authorized under the current zoning. As Avenel began to develop, its TDR density was challenged in a lawsuit filed by WMCCA, which resulted in a court decision on April 1, 1987 invalidating the TDR program. West Montgomery Co. Citizens Association v. Maryland-National Capital Park and Planning Commission, 309 Md. 183, 522 A.2d 1328 (1987).

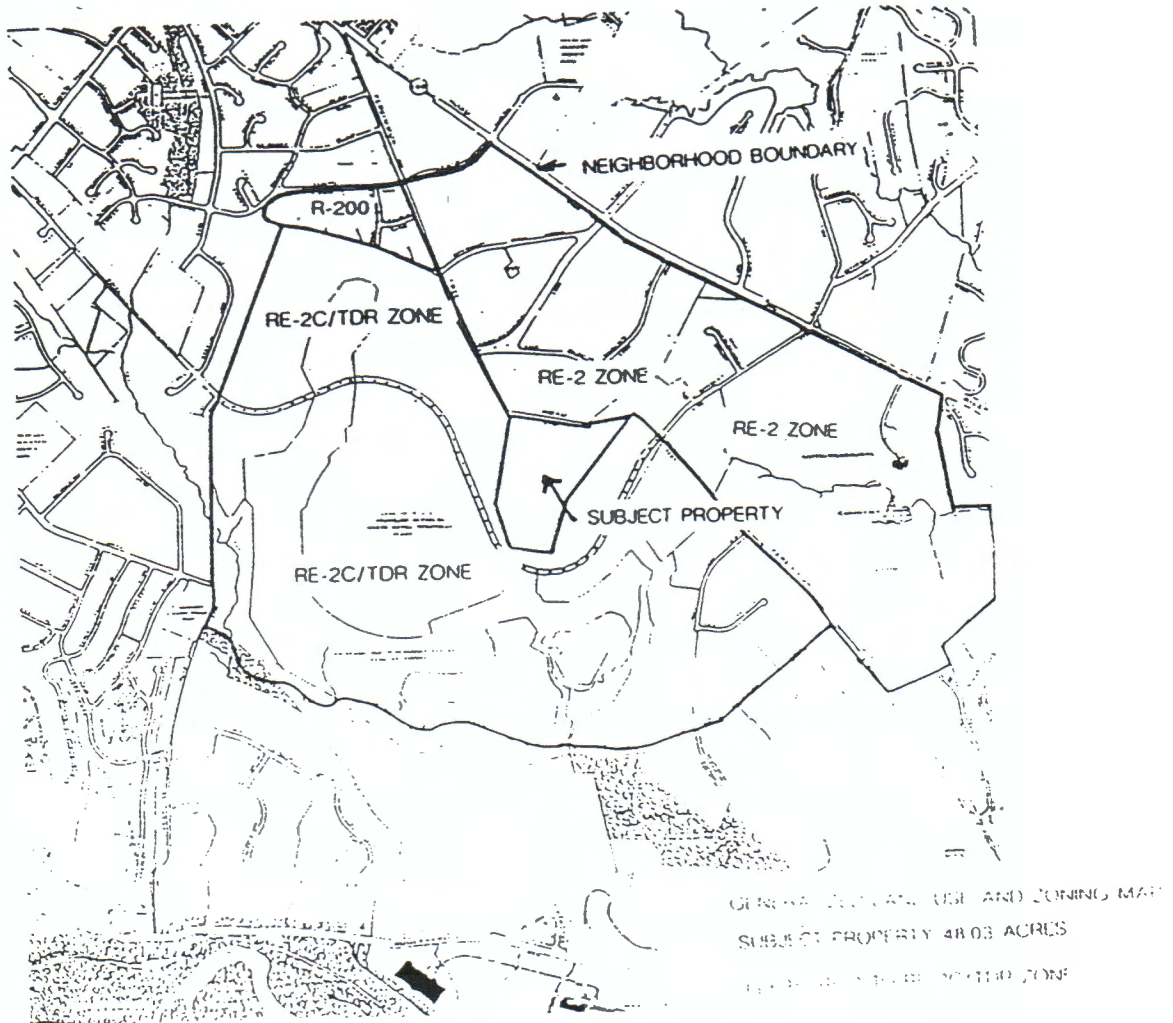
The court held that failure to establish TDR receiving area zones was improper and recommended reestablishment of the TDR program by the use of appropriate TDR zones designated on the zoning map. On June 17, 1987, with the death of the Rapleys and the conveyance of their daughter's remaining interest, the Applicant acquired full title to the subject property. The District Council adopted curative zoning text amendments establishing appropriate TDR zones and applied them by Sectional Map Amendment, G-585, on July 10, 1987, when Avenel was reclassified from the RE-2C Zone to the RE-2C/TDR Zone. The 1987 zoning applied the TDR Zone to about 1,300 acres including Avenel and a 30-acre former school site previously classified under the RE-2 Zone and located just east of the subject property. The school site had been previously acquired by the Applicant for incorporation into Avenel and designated as a TDR receiving area by the 1984 master plan amendment. The 1987 zoning did not consider the application of TDR Zones to the subject property or any other property not previously designated on the master plan for TDR density. The characterization of the 1987 zoning as comprehensive is a disputed issue and will be evaluated later in this report.

In 1991, the Applicant renewed the outstanding request that the subject property be considered for TDR density under a separate master plan amendment. The request is still pending and the evidence does not reflect any contemplated master plan review until at least 1995 or any approval expected before 1998. Faced with this administrative impasse, the Applicant filed G-698 to secure TDR density by local map amendment without prior master plan authorization. The Technical Staff reported that there have been no previous local map amendment applications pertaining to the subject property.

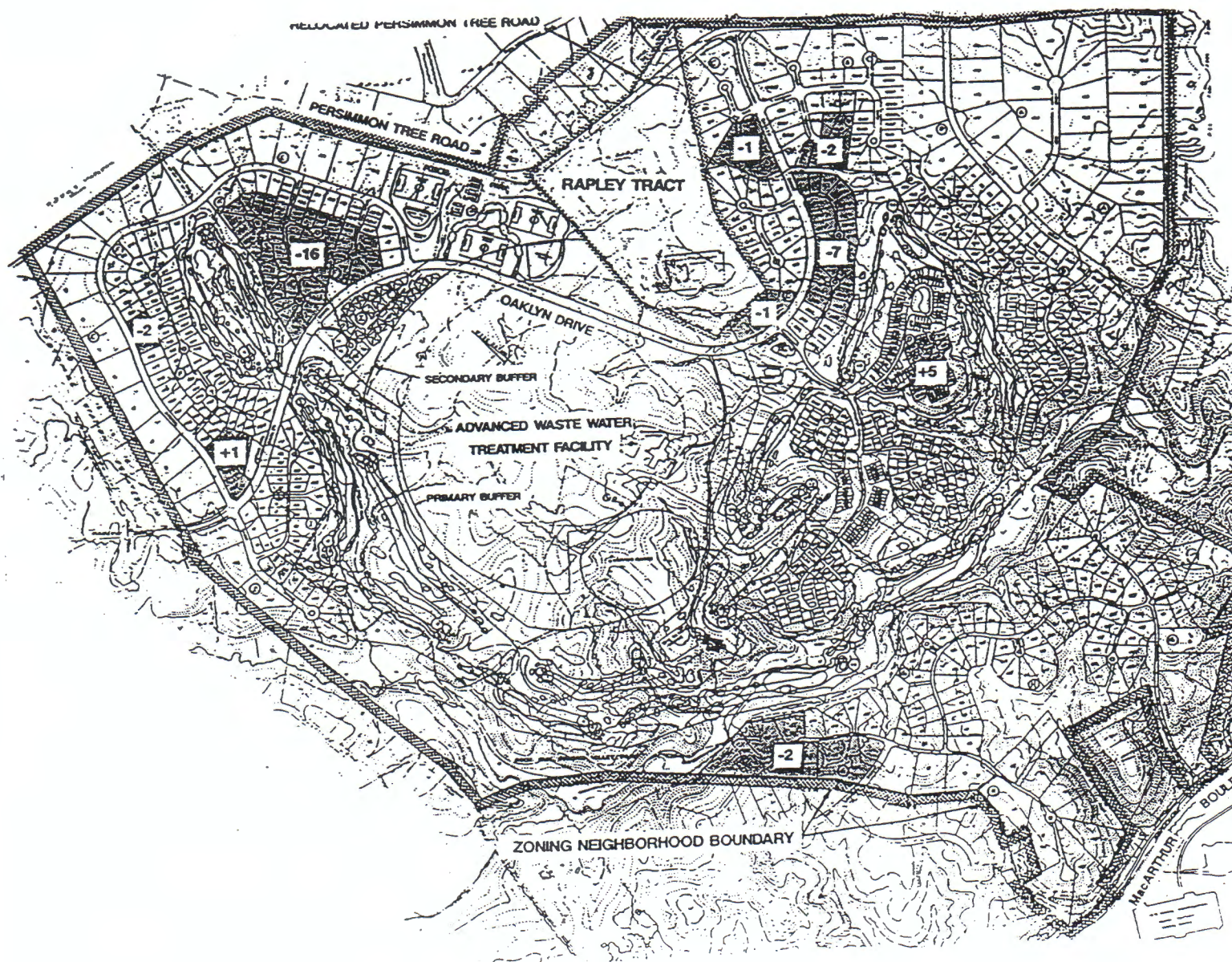
D. Zoning Neighborhood

Both the RE-2C/TDR and RE-1 Zones are Euclidean and their evaluation requires delineation of a zoning neighborhood. The Technical Staff defined the neighborhood as bounded on the north by Logan Drive, River Road and the Congressional Country Club; on the east by Congressional Country Club, Persimmon Tree Road and Saunders Lane; on the south by the Rock Run Stream which bisects a portion of Avenel; and on the west by Avenel and Logan Drive. The Staff's neighborhood would exclude 109 homes located in the southern portion of Avenel

which have access to MacArthur Boulevard. This neighborhood is depicted below.



The Applicant proposed a smaller neighborhood which includes all of Avenel, the subject property and the lots fronting along the north side of Persimmon Tree Road. The Applicant's neighborhood includes the 109 Avenel homes excluded from the Staff's neighborhood. The Applicant's neighborhood is depicted below.



I conclude that the most reasonable neighborhood is formed by using elements from both the Technical Staff's and the Applicant's proposed neighborhoods. Therefore, the zoning neighborhood used to evaluate these two requests is bounded on the north by River Road, on the east by Congressional Country Club and Avenel, on the south by Avenel, and on the west by Avenel and Logan Drive. This neighborhood is large enough to reflect the low and medium density character of the area and include all properties that will likely be affected by the proposed zoning because of traffic and other factors. The neighborhood also includes all of Avenel and locates the subject property at the center rather than at the edge.

E. Land Use and Zoning Pattern

The land use and zoning pattern of the neighborhood is characterized by homes built under low and medium density residential zoning. Most of the lots confronting the site and located along the north side of Persimmon Tree Road range in size between 2 to 3.57 acres and are developed under the RE-2 Zone. Avenel is the dominant land use and contains a mix of housing types and densities and open space uses developed under the RE-2C/TDR Zone. The remainder of the housing is developed under the R-200 and RE-2 Zones.

Land uses also include extensive recreational and public facilities. The Congressional Country Club is located to the northeast, east of Bradley Boulevard and between River Road and Persimmon Tree Road and is classified under the RE-2 Zone. The Avenel TPC Golf Course is located south and west of the subject property. Also located within Avenel is a 34-acre local park and the Rock Run Stream Valley Park. The proposed AWT plant site is located to the south and west of the subject property.

F. Changes in the Neighborhood

Changes occurring in the zoning neighborhood are not disputed although the relevance of these changes is a contested issue which will be evaluated later in this report. Since the 1980 comprehensive zoning, several unanticipated changes have occurred. Avenel was designated as the site for the AWT facility and its authorized density was increased from 379 to 850 dwelling units. These changes were first acknowledged by a master plan amendment in 1984, followed by zoning in 1987. A nearby 30-acre former school site was reclassified from the RE-2 Zone to the RE-2C/TDR Zone in 1987 and incorporated into Avenel. In 1988, Persimmon Tree Road was realigned and improved at its intersection with Bradley Boulevard and Oaklyn Drive. A sewer service category change was approved for the subject property on April 17, 1990, reclassifying it from sewer service category S-6 to S-3, which permits use of the cluster method of development.

G. Availability and Adequacy of Public Facilities in the Area

The preponderance of the evidence indicates that public facilities are both adequate and available and will not be adversely affected by the proposed development. Stormwater management is provided by a pond located within Avenel which is deemed to possess adequate capacity to serve the proposed development. The subject property lies within the Rock Run Creek Basin and sewer service can be provided by a system of trunk sewers which extend along Rock Run Creek. An existing 8-inch sewer line is located within Avenel along Beman Woods Way and

possesses sufficient elevation to serve by gravity flow all the proposed lots on the subject property. This service can be accomplished by extending an 8-inch sewer line to the subject property. A 10-inch water main is located along Oaklyn Drive approximately 100 feet south of the subject property and connection to it can be readily made to service the proposed development. Both sewer and water facilities are deemed adequate to support the proposed development.

Public transportation is located in the general vicinity. The subject property is located about 5.5 miles from the Rockville Metro Station and morning and evening bus service is provided by Ride-On or Metrobus along River Road, about one-half mile from the subject property, along MacArthur Boulevard, about two miles from the subject property, and along Bradley Boulevard to the Connelly School, approximately 1,000 feet from the subject property.

The M-NCPPC's Transportation Planning Division conducted a review of the proposed development and concluded that rezoning to either zoning category could be accommodated within existing transportation capacity and would not have an adverse impact on nearby intersections or roads. The Technical Staff's analysis noted that the two adjacent intersections at Persimmon Tree Road and Bradley Boulevard and River Road and Bradley Boulevard currently operate within acceptable levels of service and would not be adversely affected by the proposed development. The Applicant's expert transportation engineer provided testimony which corroborated the Staff's findings.

Several people in opposition raised concerns about potential traffic from increased density, especially if the proposed recreational facility is approved. This evidence was adequately rebutted by the Applicant. The proposed development would not have any measurable or adverse impact on traffic levels. The proposed development would provide for superior access and safer traffic movements. The traffic impact of the proposed recreational facility would be evaluated if and when a special exception is requested. Evidence indicates that its traffic impact would be largely confined to interior Avenel roads. The opposition testimony did not impeach the Staff's ultimate conclusion that the proposed development would conform with all the County's transportation standards.

The area possesses a number of recreational amenities including trails and parks. Avenel includes a network of pedestrian walkways, equestrian trails and bikeways. Avenel Local Park, a 34.6 acre public park, contains soccer fields, tennis courts, a softball field, a multi-purpose court, several tot lots, an open play area and a jogging path. The Rock Run Stream Valley Park is located within one-half mile of the subject property. The Great Falls recreational area, the Chesapeake and Ohio Canal, the Carderock recreation area, and the Cabin John Regional Park are all located within three miles of the subject property. Other facilities such as fire and rescue services, police, health care services and libraries are all located within a five-mile radius of the site.

IV. SUMMARY OF EVIDENCE

For the convenience of the reader, the testimony is grouped into the following categories: Applicant's case in chief, community testimony in support, community testimony in opposition, government witness, and Applicant's rebuttal.

A. Applicant's Case in Chief

James R. Crawford qualified as an expert witness in the field of land planning and site design. He prepared the development plan and described the subject property, the proposed development, the zoning neighborhood, and the land use and zoning pattern of the area. He concluded that the Planning Board, when it approved Avenel, did not intend for the subject property to be developed with two-acre lots because it approved smaller lots adjacent to the site and two-acre lots elsewhere along the perimeter where Avenel confronts two-acre density. He also concluded that the proposed development is superior to development under the current zoning because it would avoid cutting an access road to Persimmon Tree Road with a substantial loss of trees.

Mr. Crawford proposed a zoning neighborhood that includes all of the Avenel and confronting properties that are likely to be affected by the proposed zoning. He contended that the Staff's neighborhood extends too far north and excludes portions of Avenel that should be considered because of the common planning and zoning history. Nevertheless, he concluded that either neighborhood is acceptable for purposes of analysis of the zoning issues. He concluded that the neighborhood has changed in character since 1980 from rural to a suburban residential community.

Mr. Crawford testified extensively about the planning and zoning history of the site and the adjacent Avenel tract. The subject property was historically part of Avenel and was carved out of it. In 1980 the master plan recommended that large areas located on the south side of Persimmon Tree Road be classified in the RE-2C Zone, a category established to protect the environmentally sensitive watershed. Inexplicably the plan neglected to recommend the subject property or a nearby 30-acre former school site for the RE-2C Zone despite environmental characteristics similar to Avenel. He concluded that Persimmon Tree Road is the logical zoning boundary between the RE-2 and RE-2C Zones.

Mr. Crawford speculated that the zoning disparity between Avenel and the subject property was based only on the separate ownerships existing at the time. This theory is supported by the fact that the former school site was rezoned to the same classification as Avenel after it was acquired by the Applicant. He also contended that the Technical Staff incorrectly characterized the subject property as a developed and committed parcel when in fact it was no more developed than Avenel. In 1980, comprehensive zoning implemented the erroneous master plan recommendation. The master plan was amended in 1982 and again in 1984 to implement the TDR program and applied a TDR density of 850 units to Avenel and the 30-acre former school site. He concluded that had the subject property been acquired by the Applicant at that time and had the Staff not incorrectly designated it as committed and developed, it would have been designated as a TDR receiving area in 1984. He also concluded that the 1987 zoning was not comprehensive in nature because it only addressed the TDR designated properties and did not follow any comprehensive study or evaluate other land suitable for TDR density.

Mr. Crawford concluded that the proposed development conforms with the land use and density recommendations of the master plan. The 1982 amendment, which authorized TDRs for this area, provided as rationale the convenient access of Avenel to the beltway and downcounty areas. The subject property possesses these same advantages. The proposed development provides for the same land use recommended by the master plan, that is, residential single-family detached homes.

The proposed development also conforms with the density recommended by the 1984 master plan amendment or 869 dwelling units for the combined Avenel-Rapley properties. -

Mr. Crawford concluded that the current zoning applicable to the subject property was applied by virtue of a mistake in the last comprehensive zoning. He concluded that regardless of whether the last comprehensive zoning is determined to be 1980 or 1987, a mistake occurred and the property is eligible for rezoning. Persimmon Tree Road forms a logical dividing point between zoning categories and both the subject property and the 30-acre former school site should have been included under the RE-2C Zone when the comprehensive zoning of 1980 was adopted because these properties share the same physical characteristics as Avenel with respect to watershed protection. The Technical Staff erroneously concluded that the subject property was a developed and committed property when, in fact, it was not. In 1982, when the master plan designated Avenel as TDR Receiving Area No. 33, it should have included the subject property as an undeveloped and uncommitted property. In 1984, the Rapleys requested TDR density, but their request was postponed indefinitely. In 1984, the Planning Board approved development of Avenel that assumed higher density lots on the subject property. On June 17, 1987, the subject property was acquired by the Applicant which clearly established that the site was an uncommitted and undeveloped property. Nevertheless, the July, 1987 rezoning ignored these facts pertaining to the subject property. He concluded that the subject property should have been accorded the same treatment as the 30-acre former school site which was rezoned in 1987. He concluded that the facts and assumptions relied upon by the District Council in both 1980 and 1987 were invalid with respect to the subject property.

Mr. Crawford concluded that the proper rectification for the mistake is to reclassify the subject property to either the RE-2C/TDR Zone or the RE-1 Zone. The advantage of reclassifying the property to the RE-2C/TDR Zone would allow 48 dwelling units to be developed as an integral part of Avenel and would correct the previous omission of the site from the TDR receiving area. The RE-1 Zone would allow for the same density under a cluster form of development. He concluded that the RE-1 Zone is preferable because it is easier to implement and would not require the use of TDRs.

Mr. Crawford concluded that the zoning neighborhood has changed in character enough to permit the reclassification sought. If the 1980 comprehensive zoning is used as the measuring point to evaluate change, the rural character of the neighborhood has evolved into a suburban residential enclave. The application of TDRs to Avenel resulted in a density increase from 379 to 850 dwelling units in 1987. If 1987 is the measuring point to evaluate change, several changes have also occurred since that time. In 1988, Persimmon Tree Road was realigned and reconfigured from a narrow, winding two-lane road into a better aligned road within an 80-foot right-of-way as it extends to its intersection with Bradley Boulevard. Lastly, in 1990, the sewer service category for the subject property was changed from S-6 to S-3 which permits the cluster form of development unavailable under the current zoning. He concluded that all these changes demonstrate that the neighborhood has changed in character enough to permit the rezoning because a lower threshold of change applies when use and density increases are slight and the change proposed is simply from one residential subcategory to another.

Mr. Crawford finally concluded that the proposed development is in the public interest. Public facilities are deemed to be available and adequate. The overall density of Avenel, including its open space areas, amounts to 0.85 units per acre or 1.6 units per acre without open space. The proposed development will be compatible with either density level. He disagreed with the Technical Staff that there is a need for a master plan amendment in order to be eligible for the RE-2C/TDR Zone. Such a position, he concluded, is inconsistent with the 1987 TDR court decision.

Grace Fielder qualified as an expert witness in the field of site design, land planning and landscape architecture. She described site development under the current zoning which would involve access from Persimmon Tree Road. Access through Summer Gate Lane would require relocation of utilities already in place and it is only economically feasible to relocate them if the density on the subject property supports it. Current access to the site is located at the northwest corner near a curve with limited sight distance. In order to avoid this traffic hazard, site access must be located further east, although a slope will require substantial cutting and removal of trees. With development under existing zoning, only about half of the existing trees would remain.

Ms. Fielder described the proposed development as environmentally superior because it would retain substantially more trees. Tulip poplar trees located at the center of the site would be preserved as a centerpiece for the development and trees, landscaping and setbacks would be provided along the perimeter. She concluded that the proposed development meets the design standards for both the RE-2C/TDR and the RE-1 Zones. She also concluded that the proposed development would be compatible with adjacent and confronting lots. The proposed development would be beneficial to the community because it would complete Avenel.

Edward Papazian qualified as an expert witness in the field of traffic and transportation engineering. He conducted a traffic evaluation which analyzed existing traffic patterns in the area, traffic likely to be generated by approved development, and the impact of the two alternative zoning requests. He concluded that the proposed development, when considered with the reduced Avenel density, will not generate any additional traffic congestion or affect intersection levels of service. He concluded that the proposed development will have no detrimental impact on the capacity of area roads. In response to the opposition's concerns about potential traffic from the proposed recreational facility, he indicated that much of the traffic will use the internal Avenel road system and will not adversely impact the area during peak hours.

Don Woodsmall is the Director of Development and General Counsel for Potomac Investment Associates, the General Partner of the Applicant. He explained that the subject property was acquired by the Applicant in 1987 but was under contract since 1984. The subject property was historically part of Avenel and was never a developed or committed parcel. The Applicant proposes to incorporate the tract into Avenel and use it for the combined master plan density of 869 dwelling units in an efficient, harmonious and better form of land use.

Mr. Woodsmall explained that the current zoning requests were filed after a lengthy review of development possibilities for the site. In 1990, the Applicant convened a study group of Avenel residents to review development potential for the property. At one time, a retirement community was considered but rejected because of mixed support. By 1992, the Applicant decided to incorporate the subject

property into Avenel as a residential component at a density level consistent with the master plan for the combined development of the Avenel and Rapley properties. Letters were sent to residents of the area informing them of the proposal. The response is overwhelmingly in favor of the proposed development and 125 people requested membership in the proposed recreational facility. Some misinformation about the proposed development was anonymously disseminated, which mischaracterizes the proposed development as a mixed use, multi-family and commercial project. He met with members of the community to explain the proposed development and successfully concluded an agreement with confronting property owners along the north side of Persimmon Tree Road.

Mr. Woodsmall concluded that the current zoning is based on mistaken facts and assumptions. A number of factors were ignored when planning and zoning decisions were made by the County in 1984 and 1987. He also concluded that the proposed development will conform with the master plan in terms of land use and density because the subject property contains the same locational characteristics and topographical features that justified Avenel as a TDR receiving area. The rezoning will also permit a needed recreational facility which will include 2,000 square feet for the homeowners association offices.

Mr. Woodsmall testified that the Applicant has unsuccessfully sought a master plan amendment to incorporate the subject property into Avenel. The previous owners made a similar request that has been pending since 1984. The Applicant's most recent request, filed on January 28, 1991, was deferred based on work schedules and limited staff resources. The master plan will be reviewed sometime in 1995 with adoption expected no earlier than 1998. He rejected the notion that the RE-2C/TDR Zone can only be approved with a prior master plan amendment. He characterized the Staff's interpretation as a catch-22 situation where zoning is unavailable without a master plan amendment, but a request for such an amendment cannot be acted upon within a reasonable time. Of the two alternative requests, he expressed preference for the RE-1 Zone because it is easier to implement and will accomplish the same objectives as the RE-2C/TDR Zone.

A.M. Natelli, General Partner of Potomac Investment Associates Limited Partnership, attended the hearing but did not testify. Instead, he filed a letter taking issue with WMCCA's position that the RE-2C/TDR Zone requires master plan conformity:

The logical conclusion from such a position is that a property can never be afforded the Euclidean Zone of RE-2C/TDR, or any of the other TDR Zoning Classifications except through the Master Plan Process. To hold this position, is to suggest that the process established to seek changes in zoning classifications for a property can never be brought before the zoning hearing examiner to achieve a Euclidean Zone with a TDR designation.

For WMCCA to make such an argument, is indeed specious. WMCCA, in an effort to scuttle the development of Avenel, went to great efforts, successfully attacking the then established TDR process in place in Montgomery County. The Court of Appeals found, based on WMCCA's legal position,

that establishing TDR receiving areas was a zoning action and required pursuit of the zoning process, not simply using the County's planning powers expressed through the Master Plan.

* * *

Contrary to the position now being taken by WMCCA and the Planning Board staff, mandatory Master Plan recommendation for TDR zoning is not a part of Montgomery County's corrected TDR zoning process. [Ex. 139, pp. 1-3]

B. Community Comments in Support

Charles A. Irish, Jr., a professional engineer and land surveyor, lives within Avenel in a house abutting the southeast corner of the subject property. He believes the proposed zoning will benefit the community because of additional recreational facilities, tree preservation, and safer access.

Donna Citrin is an 11-year resident of Persimmon Tree Road and lives directly across the street from the subject property. She is the spokesperson for Persimmon Tree Road Property Owners who confront the subject property and are signatories to an agreement with Potomac Investment Associates. She described the particulars of the agreement and indicated support for the proposed zoning because it would provide certainty with respect to development of this large tract. The confronting property owners believe that the proposed zoning is a logical extension of Avenel and support its approval because it is sensitive to environmental concerns and adjacent properties.

Tom Bernitt and his wife purchased property in Avenel and support the proposed rezoning. The Applicant's plan for development provides for an orderly arrangement that will fit harmoniously within Avenel and satisfies the goals of the master plan. The aesthetics of the community will be improved because the proposed development is superior to development under the current zoning.

Robert Mitchell is President of C/I Mitchell and Best, Company, which owns several lots within Avenel. He supports the proposed development because it will achieve compatibility within Avenel and with abutting properties. It will also promote the objectives of Avenel. The proposal will provide opportunities for a recreational facility that will benefit the entire community. The proposal will also provide for about two acres of additional tree cover that would otherwise be lost if the site is developed under the existing zoning. He is familiar with the planning and zoning history of the site and believes that it was excluded from a TDR receiving area because it was not under common ownership with Avenel in 1984. Otherwise, it would have been included within the TDR receiving area. It only makes sense to extend the TDR receiving area to include this property and make it part of Avenel.

John C. Alexander is a contract purchaser for a home in Avenel. He supports the proposed zoning and believes the site should be included within Avenel.

Bob Banner is a resident of Avenel and supports the proposed zoning because it is preferential to development under the current zoning. For example, access from Persimmon Tree Road is hazardous and the proposed access through Avenel

will be a superior access route. The loss of two acres of trees through development under the current zoning is unwarranted. The proposed development will not disrupt Avenel residents or others living in the neighborhood. The proposed recreational facility will be an asset for the community.

A number of letters and petitions were filed in support of the proposed zoning by residents of the zoning neighborhood. These letters support the rezoning to incorporate the subject property into Avenel. Several of the letters also support the rezoning because it will enable the Applicant to proceed with a proposed recreational facility to serve the community.

C. Community Testimony in Opposition

William O. Bittman, Esquire, resides on Bradley Boulevard just outside the main entrance to Avenel. He opposes the proposed rezoning on the basis that the change-mistake rule requires strong evidence which has not been demonstrated. He also expressed concern about traffic likely to be generated by the proposed recreational facility which anticipates 300 to 400 families as members. The recreational facility traffic must use a single access point into Avenel and will likely cause congestion at that intersection. He filed two legal memoranda which address the issues of master plan conformity and the level of proof required for change-mistake.

Carol Trautschold, a resident of Avenel, testified in opposition to the proposed rezoning. She indicated that two years ago the Applicant proposed to develop the site with 95 retirement homes, a 20,000 square foot three-story manor house with 189 assisted-care units, a gasoline station, a restaurant, a child care facility and a recreational area. This proposal produced intense opposition from the community and the Applicant abandoned the proposal. However, the RE-2C/TDR Zone would permit most of the retirement concept to be implemented as a special exception. She is concerned that development of this type would destroy the character of the area. The subject property should be retained under its current zoning because it is a part of the Persimmon Tree Road neighborhood and its development should be consistent with the two-acre density of its neighbors.

Mary Ann Thane testified on behalf of the WMCCA in opposition to the proposed rezoning. TDR zoning should only be applied to a receiving area designated on a master plan. The 1987 TDR court decision did not negate the role of the master plan in the TDR program. RE-2C zoning was established to preserve large areas of environmentally sensitive land and Avenel met that criteria. However, the subject property is too small and, for that reason, it was not given an RE-2C classification in 1980.

Ms. Thane concluded that there is no change in the character of the neighborhood. The 1987 zoning was comprehensive and constitutes the measuring point for evaluation of change. The only two changes cited by the Applicant, the realignment of Persimmon Tree Road and the sewer service category change, do not constitute evidence that the character of the neighborhood has changed. The neighborhood's character was rural in 1987 and it is the same today.

Ms. Thane concluded that there was no mistake in the application of RE-2 zoning to the subject property in 1980 or 1987. When the TDR designation was first applied to Avenel in 1982, consideration was given to the use of Moderately Priced Dwelling Units (MPDUs) under the County's affordable housing program. Because the

subject property is too small for the MPDU program and was in a different zoning classification, it did not qualify for the same density as Avenel. Moreover, the subject property was not an uncommitted large area like Avenel. She also distinguished the subject property from the 30-acre former school site fronting on Persimmon Tree Road. The master plan designated that site for alternative use as the Persimmon Tree Local Park. During the deliberations on the 1984 master plan amendment, the County accepted an exchange where the park was relocated within Avenel and the 30-acre former school site was designated for residential development within Avenel. There is no factual basis to compare the subject property to the former school site. There was no mistake made when the subject property was excluded from the TDR receiving area.

Ms. Thane reviewed the history of the subject property. It was considered for inclusion as a TDR receiving area in 1984, but the Planning Board concluded that the property owner should seek a future master plan amendment. Later the same year, the Applicant obtained a contractual interest to acquire the subject property after the death of the Rapleys. She contended that the Applicant should have asked for a master plan amendment following its 1984 contract. Any mistake in the 1987 zoning is directly attributable to the Applicant's failure to request a master plan amendment until 1991, well after the 1987 zoning.

Ms. Thane finally concluded that the Potomac Master Plan is not outdated, as suggested by the Applicant, but represents a viable planning document that continues to promote the Potomac area as a desirable place to live. The proposed rezoning would permit smaller lots that are out of character with development along Persimmon Tree Road and would be detrimental to other properties located there. She concluded that there is no justification for the rezoning requested.

Several letters were filed in opposition to the proposed zoning from residents of the zoning neighborhood. The opposition generally opposed the zoning based on lack of master plan conformity and adverse traffic and environmental impact from higher density development.

WMCCA through its President, Nels J. Ackerson, and other representatives who appeared or testified at the hearing filed a written summary of their position that the TDR receiving area designation and zoning must be in conformance with the master plan, that the Zoning Ordinance requires master plan conformity as a prerequisite to TDR zoning, that the Applicant is not being denied an opportunity to obtain TDR designation, and that the 1987 zoning was comprehensive and there is insufficient evidence of change or mistake.

Mary Ann Thane also filed an individual reply to Mr. Natelli's statement, providing in part:

WMCCAs position in [the TDR litigation]... was never that the TDR Master Plan process was invalid but that it was an incomplete process. In fact, our position is exactly as stated ... and was the determination of the Maryland Court of Appeals. Judge John McAuliffe, in his Opinion on page 23, states:

"The major deficiency in this entire process is the absence of the final step in the planning and zoning process--the amendment of the zoning map, and where necessary the zoning text, to implement the changes

recommended by the Master Plan. Certainly comprehensive planning should form an integral part of the process of identifying TDR receiving areas and assigning density classifications. Once the planning has been accomplished and the recommendations made, however, it becomes the duty of the legislative authority to make any necessary changes in the zoning law. Ordinarily, these changes are accomplished through a sectional map amendment, which once proposed enjoys a strong presumption of validity and correctness and requires no showing of change or mistake."

The Master Plans designating TDR receiving areas were not invalidated by the Court of Appeals so there was no need to "re-instate" them. The TDR process was made valid by the County Council in two steps, as follows; first they amended the Zoning Ordinance to include TDR zones and second they applied those TDR zones to sites designated in the various County-wide master plans through comprehensive zoning in sectional map amendments. [Ex. 142, pp. 1-2]

D. Government Witness

Denis Canavan, a Planner with the M-NCPPC, testified about the TDR program and its application to the subject property. He has been associated with the TDR program since its inception. He concluded that the 1987 zoning was comprehensive in nature because the Planning Board and District Council examined all receiving areas designated by the master plan and most of them were rezoned to the new TDR zones. The 1987 zoning applied to over 14,000 acres and rezoned over 1,300 acres. The District Council characterized the 1987 zoning action as comprehensive. The 1987 zoning was supported by the 1980 master plan as amended in 1982 and 1984 and meets the indicia for comprehensiveness specified by the Maryland court decisions.

Mr. Canavan conceded that the 1987 zoning was also curative in nature and responded to the TDR court decision very quickly. The 1987 zoning focused exclusively on correcting the flaw in the TDR program identified by the court. He conceded that the purpose of the zoning was limited to providing legal validity for those properties that were already designated for TDR receiving areas, and the process did not examine all potential TDR sites. Not all properties designated as TDR receiving areas on master plans were rezoned. There was no opportunity to consider a master plan amendment even though the request to include the subject property within the TDR receiving area was first submitted in 1984. He also conceded that the 1987 zoning, as it applied to the Potomac area, considered only ten properties.

Mr. Canavan concluded that the RE-2C/TDR Zone requires master plan conformity and therefore the subject property is not eligible for approval of this zone until the master plan is amended to designate it as a TDR receiving area. He based his conclusions on several provisions of the Zoning Ordinance including the definition of "receiving area", §59-A-2.1, and the standards for development under the TDR option of the RE-2C/TDR Zone, §59-C-1.331(b), both of which require TDR designation on a master plan. He concluded that the RE-2C/TDR Zone is one of the

zones specified in the Zoning Ordinance for master plan conformity. If the zoning is granted for the RE-2C/TDR Zone without a master plan amendment limiting density, the site could be developed with 96 dwelling units, a density he concluded would be incompatible with both Avenel and the surrounding area.

Mr. Canavan acknowledged that the proposed development, as depicted by the nonbinding plan, is a better alternative than development of the site under the current zoning because it provides for superior access and site design. He also acknowledged that the proposed development is achievable under both alternative zoning categories, but indicated that the RE-1 Zone requires the Planning Board to waive the minimum 50-acre size for cluster and approve the design layout under a discretionary approval process.

E. Applicant's Rebuttal

The Applicant filed extensive rebuttal materials which challenged the opposition's position on master plan conformity, level of evidence for change-mistake and "comprehensiveness" of the 1987 zoning. The Applicant contended in part:

The Opposition Memoranda quote from ... West Montgomery County Citizen's Assoc. v. M-NCPPC, ... and conclude that the case mandates that Master Plan compliance is a prerequisite to TDR receiver zoning designation. However, the Opposition Memoranda fail to acknowledge that the very same paragraph refers to such planning efforts as amounting to "recommendations" (i.e., nonbinding) and, more importantly, that the paragraph was expressly written to address "Sectional Map Amendment" rezonings rather than the type of Euclidean local map amendments that are at issue herein. To require absolute Master Plan compliance in a Euclidean local map amendment case would be contrary to Maryland law, and violative of due process, particularly given the demonstrated inability of ... [the Applicant] to obtain a timely reconsideration of the erroneous assumptions in the Master Plan with regard to the Rapley Tract. Further, to require absolute Master Plan compliance even in a Sectional Map Amendment would make the zoning function merely a perfunctory rubber stamp of the Master Plan, when the Master Plan is intended only as a "recommendation".

Next, the Opposition Memoranda quote the Zoning Ordinance definition of "receiving area" and conclude that this definition imposes a statutory mandate for Master Plan compliance. Once again, these Memoranda overlook the fact that this definition preceded and is contrary to the West Montgomery ruling because it does not reference the only absolute requirement for TDR receiver designation--that it be applied through a legislative zoning action of the District Council. Assuming, arguendo, that the definition could be interpreted as Mr. Bittman and WMCCA suggest, given the evidence of record, this would merely lead to the conclusion that RE-1 (as requested in Case No. G-704) is

the appropriate zoning classification for the Rapley Tract since it does not require TDR designation or use. [Ex. -144, p. 2]

V. ZONING ISSUES

These applications involve several disputed zoning issues. Both the RE-2C/TDR Zone and the RE-1 Zone are Euclidean zoning districts and must be evaluated under the so-called "change-mistake" rule, which uses the last comprehensive zoning as a baseline to measure evidence of either change or mistake. A dispute exists as to whether the last comprehensive zoning occurred in 1980 or 1987. Moreover, depending on when the last comprehensive zoning occurred, the evidence is in dispute as to whether there is sufficient change in the character of the neighborhood to permit the rezoning sought, or whether the last comprehensive zoning was based on a mistake. Therefore, the analysis of zoning issues must begin with the last comprehensive zoning.

A. Last Comprehensive Zoning

The Applicant contends that the 1987 zoning was not comprehensive, but merely a curative zoning action designed to reestablish the TDR program and did not involve any comprehensive study or reevaluation of appropriate sites for other TDR receiving areas. As evidence of the narrow focus of the 1987 zoning, the Applicant argues that only 10 properties were considered for TDR zoning and eight actually zoned for TDR density. No other properties or zoning were considered. The Applicant also contends that pertinent facts relating to the subject property were ignored when the 1987 zoning was applied. These facts involve the undeveloped character of the property, the Planning Board's approval of abutting lots in Avenel which assume a higher interior lot density for the subject property, and the transfer of ownership to the Applicant. These facts, the Applicant argues, demonstrate the suitability of the property for TDR density and, had they not been ignored, TDR zoning would have been applied to the subject property. The Applicant also contends that the District Council itself considers the 1987 zoning to be curative and not comprehensive as evidenced by its resolution of approval in Zoning Application G-653, Ex. 105, Resolution No. 11-2044, adopted May 29, 1990, where the 1980 comprehensive zoning was described as the last comprehensive zoning. The Applicant concludes that the 1987 zoning does not satisfy the indicia of comprehensiveness as established by Maryland court decisions. See, Ex. 87.

Both the opposition and the Technical Staff conclude that the 1987 zoning was in fact comprehensive because the District Council said it was in its resolution, Ex. 126, Res. No. 11-392, dated July 10, 1987, and because the zoning covered a comprehensive area of 14,675 acres and actually rezoned 1,327 acres. Moreover, the 1987 zoning was based on a careful study that was made in a series of master plan decisions in 1980, 1982 and 1984. The 1987 zoning implemented these planning decisions as suggested by the TDR court decision and meets all necessary elements of a comprehensive zoning action.

I conclude that the 1987 zoning is comprehensive in nature. The zoning covered over 14,000 acres and, even though it only rezoned about 1,300 acres, this area certainly meets the test of a substantial area required for comprehensiveness. In both Montgomery County v. Woodward and Lothrop, 280 Md. 686, 376 A.2d 483 (1977); and Montgomery County v. District Land, 274 Md. 691, 337 A.2d 712 (1975),

smaller areas were involved which were deemed sufficient to meet the test of comprehensiveness. The leading case on the indicia of comprehensiveness, MRAZ v. County Commissioners of Cecil Co., 291 Md. 81, 433 A.2d 771 (1981), acknowledged that the comprehensive nature of rezoning is not diminished simply because few changes in zoning are made. The 1987 zoning action was clearly well-thought out and the product of a careful and extensive study as evidenced by the two 1980 master plans, and amendments in 1982 and 1984. While it is true that the 1987 zoning was limited only to TDR zoning and ignored pertinent facts relating to the subject property's suitability for this zoning, these flaws do not diminish the comprehensive nature of the zoning and are more appropriately considered under the mistake doctrine.

The resolution for Zoning Application G-653, relied upon by the Applicant as evidence that the last comprehensive zoning occurred in 1980, was based on this Hearing Examiner's misguided analysis in a case where the comprehensiveness of the 1987 zoning was not a contested issue. The consequences of labelling the 1987 zoning as noncomprehensive are readily apparent in this case where the Applicant now argues that the 1987 zoning serves as evidence of change which, if applied to the entire area subject to the TDR zoning scheme, would open up vast areas of the County for rezoning under the change theory. These consequences were certainly not intended by the District Council when it approved G-653. The resolution for Zoning Application G-653, with its mischaracterization of the 1987 zoning, does not serve as persuasive evidence to repudiate the District Council's earlier characterization of the 1987 zoning as comprehensive.

B. Change

The Applicant must establish the area reasonably constituting the zoning neighborhood, identify changes occurring within this neighborhood since the last comprehensive zoning, and demonstrate that these changes are sufficient to permit the rezoning. Both a reasonable definition of the zoning neighborhood and a description of the changes occurring in it since the last comprehensive zoning are identified earlier in this report.

A disputed issue involves whether the changes so identified provide a sufficient basis to permit the rezoning. The Applicant correctly contends that a proposal to shift from one residential density category to another without a change in land use is evaluated under a lower evidentiary standard than a shift in use category. In other words, the evidence of change need not be as great for the proposed zoning as it would be for a request for commercial zoning at this same location. Nevertheless, the lower evidentiary standard does not mean that any evidence of change will suffice to show change in character of the neighborhood.

The only evidence of change since 1987 involves a minor road and intersection improvement and a sewer service category reclassification for the subject property. The Applicant argues that these changes manifest a shift in the character of the neighborhood from rural to suburban and conforms with the level of proof used to support rezoning in Application G-612, which involved a 716-acre tract located at New Hampshire Avenue and Ednor Drive in a different planning area. The Technical Staff analysis correctly distinguished G-612 on its facts. The case has no precedential value for these two requests.

The major change in the character of the neighborhood was achieved with the Avenel rezoning in 1987 which established it as the dominant use with suburban residential densities. The Applicant failed to show how a minor road and intersection improvement and sewer category reclassification after 1987 affected the character of the neighborhood established by the 1987 zoning. The Applicant contends that the character was changed from rural to suburban, but this change already occurred in 1987 and the character of the neighborhood was not further affected by the post-1987 changes. The Technical Staff confirmed this view and concluded that the evidence of change is insufficient to permit rezoning even under the lower evidentiary threshold. I conclude that there is insufficient evidence of change to support either zoning request.

C. Mistake

The Maryland courts have approved piecemeal zoning reclassifications based on evidence showing that the zoning authority, at the time of the last comprehensive zoning, based its actions on incorrect information or ignored pertinent facts. Howard County v. Dorsey, 292 Md. 351, 438 A.2d 1339 (1982). In this case, there is evidence that the District Council ignored pertinent facts or was misinformed about the subject property when it adopted the last comprehensive zoning in 1987. These facts relate to the ownership and development potential of the subject property, the Planning Board's approval of abutting lots in Avenel that pose compatibility problems for any development under the current zoning, the longstanding request for master plan review of the subject property, and the Technical Staff mischaracterization of the property as developed and committed.

The opposition contends that some of these facts were not disclosed to the District Council by the Applicant and any mistake in the 1987 zoning was self-inflicted. It may be true that the Applicant neglected to disclose the ownership change, although the record does not contain sufficient evidence to make this finding of fact. However, even assuming nondisclosure of the ownership change, the flaws of the 1987 zoning cannot be placed at the Applicant's doorstep. The many participants in the process focused entirely on correcting the TDR scheme and this narrow focus caused mistakes that would not otherwise have been committed. Most of the flaws in the 1987 zoning involved actions of public agencies. These factors played a critical role in the property not being considered as a TDR receiving area under the RE-2C/TDR Zone in 1987. This evidence provides sufficient basis for the District Council to find that a mistake occurred when the 1987 comprehensive zoning was adopted.

Once a mistake is established, the applicant must demonstrate that the proposed zoning is an appropriate rectification. The extension of the RE-2C/TDR zoning to the subject property would be an appropriate rectification because that is the same zoning classification that was applied to similarly situated properties located along the south side of Persimmon Tree Road contiguous to the subject property. The request for the RE-1 Zone is not an appropriate rectification for the mistake because, despite the Applicant's assertions about its ease of implementation and convenience, it does not promote the TDR zoning objectives or provide for an appropriate zoning district for this area or provide suitable development controls in conjunction with the master plan and the subdivision process.

D. Public Interest

The Applicant must further show that the proposed zoning is in the public interest. The public interest evaluation is required by the State enabling law, Art. 28, Md. Code Ann., §7-110, and relates to whether or not approval of either zoning request would aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development within the regional district. In conducting this evaluation, the District Council normally considers current planning recommendations, master plan conformity, impact on public facilities, and other relevant factors.

1. Current Planning Recommendations

Both the Planning Board and Technical Staff concluded that both applications are inappropriate at this time. The Planning Board is narrowly divided on the eligibility issue. It appears from the evidence that both the Planning Board and Technical Staff generally consider the nonbinding development plan a better alternative than development under the current zoning, but they consider application of the proposed zoning to be a problem because of the lack of master plan conformity and the necessary master plan guidelines to control development at the subdivision stage.

2. Master Plan Conformity and Voting Requirements

The master plan currently recommends continuation of the existing zoning. When combined with a negative Planning Board recommendation, an absence of master plan conformity triggers a super-majority voting requirement and six affirmative votes are needed to approve Application G-704 for the RE-1 Zone. However, the RE-2C/TDR Zone was not established until 1987, well after the master plan was last amended in 1984, and, therefore, the super-majority requirement does not apply to G-698. Art. 28, Md. Code Ann. §8-104(b).

3. Consistency with Master Plan is a Prerequisite for TDR Zoning

Application G-698, while not subject to a super-majority vote, is blocked from favorable consideration at this time because of the need for consistency with the master plan.

a. The Consistency Doctrine

The Applicant argues that master plans are generally only guides and application of a master plan conformity requirement for the RE-2C/TDR Zone would be contrary to the TDR court decision, West Montgomery Co. Citizens Association v. Maryland-National Capital Park and Planning Commission, *supra*. While the Applicant is correct that master plans have been traditionally viewed as guides and not mandatory regulations, Abrams, Guide to Maryland Zoning Decisions, §5.2 (3rd Ed. 1992), a growing trend recognizes what is known as the consistency doctrine, that is, a requirement imposed by either statute or court decision that land use approvals must be consistent with master plans. Fasano v. Board of County Comm'rs of Washington Co., 264 Op. 574, 507 P.2d 23 (1973); Haines v. City of Phoenix, 151 Ariz. 286, 727 P.2d 339 (1986); Board of County Comm'rs of Cecil Co. v. Gaster, 285 Md. 233, 401 A.2d 666 (1979); Coffey v. Maryland-Nat'l. Capital Park and Planning Comm., 293 Md. 24, 441 A.2d 1041 (1982). The new State Planning Act imposes a

consistency requirement on local governments to ensure that local plans will be consistent with the new state growth policy and local land use regulations will be consistent with local plans by July 1, 1997. Art. 66B, Md. Code Ann. §4.09 (1992 Cum. Supp). Presumably, the local regulations include zoning and zoning map amendments.

Several of the zoning districts established in Montgomery County explicitly require consistency with the master plan before a specific location is eligible for the zoning. For example, the Euclidean CBD Zones provide that they can only be applied at locations "...recommended for that zone on an approved and adopted master plan..." §59-C-6.214. Other zoning districts that require explicit consistency with the master plan include the TSR Zones, §59-C-8.24, the Mineral Resource Recovery (MRR) Zone, §59-C-12.2, and the Overlay Zone, §59-C-18.3. Indeed, the Court of Appeals of Maryland acknowledged the consistency requirement as it applies to the MRR Zone in Boyds Civic Association v. Montgomery County Council, 309 Md. 683, 526 A.2d 598 (1987). Several zoning districts use substantial compliance with the master plan for eligibility; e.g., §59-C-7.11 (P-D Zones). Other zoning districts use master plan conformity for alternative eligibility, e.g., §59-C-1.72 (RT Zones), §59-C-4.301(a) (CT Zones), §59-C-4.330 (CP Zones) and §59-C-4.360 (C-3 Zone). Finally, several zoning districts use master plan conformity for an optional method of development, e.g., §59-C-10.2 (RMX Zones). The master plan also plays an important role in the subdivision process and general conformity is a requirement. Chap. 50, Mont. Co. Code, §35(1).

Nothing in the West Montgomery case is contrary to this trend. The court did not invalidate the use of the master plan as a tool in land use regulation. The court only ruled that the plan cannot replace zoning which is a necessary element in the TDR scheme. Both planning and zoning play an important role in the implementation of the reestablished TDR program.

b. Prerequisite for RE-2C/TDR Zone

The Applicant argues that the RE-2C/TDR Zone is eligible for application by local map amendment without prior master plan designation. This contention is only partially correct. The RE-2C/TDR Zone may be applied by local map amendment, but its operative provisions clearly demonstrate an intent to require consistency with the master plan in both the application and implementation of the zone. The RE-2C/TDR Zone fits within the category of zoning districts that require consistency as a prerequisite although its relevant provisions are scattered throughout the Zoning Ordinance and are not found at one convenient location.

The consistency requirement is found in several provisions. For example, the RE-2C/TDR Zone authorizes a maximum density of up to 2 dwelling units per acre, which would translate into 96 units for the subject property, §59-C-1.332(c), but the maximum density must be reduced at subdivision to conform with master plan limits on density and other development guidelines. §59-C-1.391. The RE-2C/TDR Zone can only be fully used when located in a "receiving area", which by definition must be "[a]n area designated on an approved and adopted...master...plan appropriate for development beyond its base density through the transfer of development rights." §59-A-2.1. Admittedly, the clarity of these scattered provisions could be improved and it may have been better practice to include the consistency requirement as part of §59-C-1.331 using the same language as applied to the CBD Zones.

Notwithstanding possible flaws in draftmanship, the RE-2C/TDR Zone cannot be applied without a prior master plan designation because the use of the optional method of development makes density limitation and other development guidelines contained in the master plan a critical part of the zoning. See, §§59-C-1.331(b) and 59-C-1.391. While it is possible to implement the zone under the standard method of development without prior master plan designation, this result would preclude use of the optional method for properties not previously designated on master plans and would create sub-classes within the same zoning district which may violate principles of uniformity. Art. 28, Md. Code Ann., §8-102. It is unlikely that the District Council intended this result when it adopted the RE-2C/TDR Zone. I conclude that consistency with the master plan is a necessary prerequisite for the application of the RE-2C/TDR Zone and Application G-698 fails this requirement at this time.

4. Consideration of Master Plan Amendment for G-698

If the master plan is amended, density limits and other development guidelines can be adopted which would assure that development of the site under the TDR option would be in conformity with these restrictions. See, §59-C-1.391. Any attempt to use the standard method of development, although not contemplated under this proposal, would also be evaluated against the master plan. Chap. 50, Mont. Co. Code, §35(1). A master plan amendment could include the proposals for tree preservation, low density perimeter lots, site access, road configuration, and equestrian easements as part of the development guidelines.

The master plan will need to be amended if the RE-2C/TDR Zone is a feasible alternative. A strong case can be made for TDR designation for the subject property. There is evidence in the record showing that the subject property possesses characteristics which would enable it to meet the same public interest objectives that justified the RE-2C/TDR Zone for the adjacent Avenel development. Also, the evidence indicates that development under the RE-2C/TDR Zone would conform with adjacent development at Avenel and would not adversely affect other adjacent development. The RE-2C/TDR Zone provides for better development than available under the current zoning because of superior access, more compatible lot sizes and environmental and recreational amenities.

Given the factual circumstances which prompted the filing of this application, it seems only fair that after a nine-year hiatus the master plan should finally be reviewed to determine the appropriateness of this site for the RE-2C/TDR Zone developed with the proposed amenities. The master plan process can evaluate the factors supporting designation of the subject property for the RE-2C/TDR Zone or better articulate the rationale for excluding it. The process also provides the community with an opportunity to provide comments about the proposal. A limited master plan amendment could certainly be completed within a six-month period or sooner if so directed by the District Council. If the property is designated as a TDR receiving area with appropriate development guidelines, the G-698 zoning request can be approved without further proceedings. For this reason, a deferral rather than a remand is a preferred option.

In the event that the property is not designated on an amended master plan as a TDR receiving area, the matter may then be remanded for reevaluation of the issues of mistake and the super-majority voting requirement. In the meantime, the RE-2C/TDR Zone should be reviewed for purposes of determining whether or not a

clarifying text amendment is needed to make explicit the master plan conformity requirement. With the existing language, doubts may be raised in future proceedings about the use of the master plan to evaluate the eligibility of the TDR Zones for particular locations when they are not so designated on the master plan.

5. Public Facilities

The preponderance of evidence demonstrates that the proposed development will not have an adverse impact on public facilities. The concerns expressed about potential traffic congestion were not supported by factual data and these concerns can be evaluated again by the Planning Board at subdivision or the Board of Appeals at a special exception proceeding. The concerns as expressed in their present form do not provide an adequate basis for denial of either zoning request.

Uncontested evidence demonstrates that the proposed development would satisfy public interest objectives. Water, sewer and stormwater management facilities are available and adequate to serve the proposed development. Other public facilities such as schools, libraries, parks and public safety agencies are located within a reasonable distance of the site.

The development of the site under the TDR program would also advance public policy objectives relating to the preservation of agriculture and rural open space. The proposed development would be consistent with the density prevalent in this area of the county and provides for development consistent with approved lots both adjacent to and confronting the site.

6. Application G-704

Application G-704 for the RE-1 Zone does not advance public interest objectives because it does not enjoy the same factual or equitable considerations that pertain to G-698. The RE-1 Zone is contrary to all planning recommendations and would be a new zoning category for this area. Development of the site under the RE-1 Zone would not contain sufficient safeguards to assure development in a manner compatible with adjacent development. Indeed, the RE-1 Zone allows for densities twice the approved density prevalent along Persimmon Tree Road. The agreement with confronting property owners to limit density at this location cannot be made a condition of the zoning and cannot be used as evidence that the public interest will be achieved. The RE-1 Zone does not bear sufficient relationship to the public interest to justify it.

VI. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, I make the following conclusions:

1. that the last comprehensive zoning occurred in 1987 and there is insufficient evidence of change in the character of the neighborhood since that time to permit reclassification of the subject property to either the RE-1 Zone or RE-2C/TDR Zone;
2. that there is sufficient evidence to conclude that a mistake occurred in the 1987 comprehensive zoning because

facts pertaining to the subject property were ignored or misconstrued;

3. that the requested reclassification to the RE-2C/TDR Zone is a proper rectification for the mistake;
4. that the requested reclassification to the RE-1 Zone is not a proper rectification for the mistake;
5. that the requested reclassification to the RE-2C/TDR Zone does not, at this time, bear sufficient relationship to the public interest because it does not conform with the master plan but would satisfy public interest objectives if the master plan is amended to designate the subject property as a TDR receiving area eligible for the RE-2C/TDR Zone; and
6. that the requested reclassification to the RE-1 Zone does not bear sufficient relationship to the public interest to justify it.

VII. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-698, for the reclassification from the RE-2 Zone to the RE-2C/TDR Zone of 48.032 acres known as the Rapley/MacMartin tract, located on Persimmon Tree Road west of the intersection with Bradley Boulevard and Oaklyn Drive, Potomac, in the 10th Election District, be deferred for a six-month period to permit a limited master plan review.

I further recommend that if the subject property is designated as a TDR receiving area and eligible for the RE-2C/TDR Zone by virtue of a future master plan amendment, Application G-698 be granted for the RE-2C/TDR Zone in the amount requested without further proceedings; or, in the alternative, if not so designated, the application be remanded for further evaluation of the mistake and voting requirement issues.

I finally recommend that Zoning Application No. G-704, for the reclassification from the RE-2 Zone to the RE-1 Zone of the same property, be denied.

Dated: July 22, 1993

Respectfully submitted,

Philip J. Tierney
Hearing Examiner

PJT:nz

Resolution No.: 12-1520
Introduced: March 1, 1994
Adopted: March 1, 1994

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
WITHIN MONTGOMERY COUNTY, MARYLAND

By: District Council

Subject: Approval of Potomac Subregion Master Plan Amendment for the
Rapley Tract (Planning Board Final Draft Plan)

Background

1. On January 11, 1994, the Montgomery County Planning Board transmitted the Final Draft Amendment to the Potomac Subregion Master Plan for the Rapley Tract to the District Council and to the County Executive. The Final Draft Plan revises the recommended zoning for the Rapley Tract from RE-2 to RE-2C/TDR2 with a maximum development potential of 48 units. Additional guidelines for the development of the Rapley Tract are also proposed.
2. On December 16, 1993, the County Executive indicated to the District Council that since the Rapley Tract amendment to the Potomac Subregion Master Plan deals only with one individual tract and does not raise any infrastructure issues, a fiscal impact analysis will not be provided.
3. The Final Draft Plan amends the Master Plan for the Potomac Subregion, May 1980, as amended July 1984, and is also an amendment to the General Plan for the Physical Development of Montgomery County, Maryland.
4. On February 24, 1994, the County Council held a public hearing on the Final Draft Plan. The Final Draft Plan Amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.
5. On February 28, 1994, the Planning, Housing, and Economic Development Committee held a worksession to review the issues raised in connection with the Final Draft Plan. The committee recommended approval of the Final Draft Plan as revised by the committee to clarify the guidelines for the development of the Rapley Tract.
6. On March 1, 1994, the County Council reviewed the Final Draft Plan for the Rapley Tract and the committee's recommended revision.

Action

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland approves the following resolution:

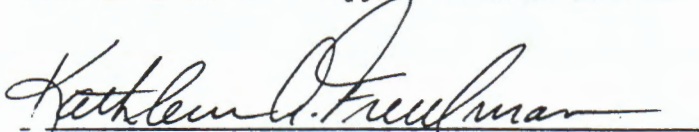
The Potomac Subregion Master Plan Amendment for the Rapley Tract, dated December 1993, is approved with the following revision:

Page 11, last paragraph:

Nonetheless, the 1600 feet from center of site maximum odor detection limit that resulted from the modeling was used as a guide for the delineation of the outer boundary of the secondary buffer, and will be the closest distance where residential development will be allowed except for a small portion of the Rapley Tract. The golf course, in most directions, provides an additional odor and aesthetic buffer and further improves the compatibility of the plant with the community. Some seven acres of the Rapley Tract are within 1,600 feet of the planned AWT Plant. However, the Environmental Project Report referred to above, did not indicate that any part of the Rapley Tract was required for a buffer, and for this reason, this plan amendment permits up to 3 new housing units to be developed on that portion of the Rapley Tract that is within 1600 feet of the AWT Plant.

Note: Double underlining indicates Council additions.

This is a correct copy of Council action.



Kathleen A. Freedman, CMC
Secretary of the Council

Z/715/2 - 3



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

MCPB NO. 94-05

M-NCPPC No. 94-06

RESOLUTION

WHEREAS, The Maryland-National Capital Park and Planning Commission, by virtue of Article 28 of the Annotated Code of Maryland (the "Regional District Act"), is authorized and empowered, from time to time, to make and adopt, amend, extend, and add to a General Plan for Physical Development of the Maryland-Washington Regional District; and

WHEREAS, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, pursuant to said law, held a duly advertised public hearing on December 9, 1993, on the Public Hearing (Preliminary) Draft of a proposed amendment to the Potomac Subregion Master Plan, 1980, Montgomery County, Maryland, as amended, being also an amendment to the General Plan for the Physical Development of the Maryland-Washington Regional District within Montgomery County, Maryland as amended; and

WHEREAS, the Montgomery County Planning Board, after said public hearing and due deliberation and consideration, on December 16, 1993, approved the Planning Board (Final) Draft of the proposed amendment to the Potomac Subregion Master Plan, 1980, as amended, recommended that it be transmitted by the Montgomery County Executive to the District Council for its approval; and

WHEREAS, the Montgomery County Executive, on December 16, 1993, anticipated that he saw no need to comment on the Planning Board (Final) Draft of the proposed amendment to the Potomac Subregion Master Plan, 1980, as amended; and

WHEREAS, the Montgomery County Planning Board transmitted the Planning Board (Final) Draft of the proposed amendment to the District Council on January 11, 1994; and

WHEREAS, the Montgomery County Council, sitting as the District Council for the portion of the Maryland-Washington Regional District lying within Montgomery County, held a public hearing on February 24, 1994, wherein testimony was received concerning the Planning Board (Final) Draft of the proposed amendment; and

MCPC No. 94-05
M-NCPPC No. 94-06
Page Two

WHEREAS, the District Council, on March 1, 1994, approved the Planning Board (Final) Draft of the amendment to the Potomac Subregion Master Plan, 1994, as amended, subject to the modifications and revisions set forth in Resolution No. 12-1520;

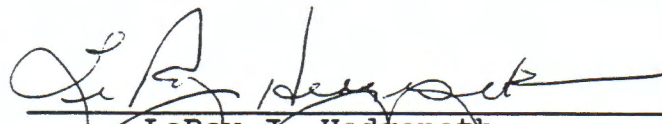
NOW, THEREFORE, BE IT RESOLVED, that the Montgomery County Planning Board and The Maryland-National Capital Park and Planning Commission do hereby adopt said Amendment to the Potomac Subregion Master Plan, as amended, together with the General Plan for the Physical Development of the Maryland-Washington Regional District, within Montgomery County, Maryland, as amended; and as approved by the Montgomery County District Council in the attached Resolution No. 12-1520; and

BE IT FURTHER RESOLVED, that these amendments and appropriate certificate of adoption shall be recorded on the maps, plan, and descriptive matter, said certificate shall contain the signature of the Chairman, Vice Chairman, and Secretary-Treasurer of this Commission; and

BE IT FURTHER RESOLVED, that copies of said Amendment shall be certified by The Maryland-National Capital Park and Planning Commission and filed with the Clerk of the Circuit Court of each of Montgomery and Prince George's Counties, as required by law.

* * * * *

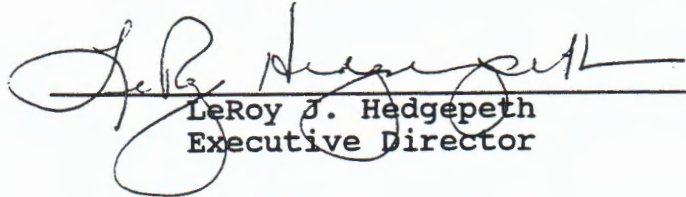
THIS IS TO CERTIFY that the foregoing is a true and correct copy of a Resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Floreen, seconded by Commissioner Baptiste, with Commissioners Hussmann and Richardson voting in favor of the motion, with Commissioner Aron absent, at its regular meeting held on Thursday, March 3, 1994, in Silver Spring, Maryland.



LeRoy J. Hedgepeth
Executive Director

* * * * *

THIS IS TO CERTIFY that the foregoing is a true and correct copy of a resolution adopted by The Maryland-National Capital Park and Planning Commission on motion by Commissioner Hussmann, seconded by Commissioner McNeill, with Commissioners Hussmann, McNeill, Brown, Rhoads, Baptiste, Floreen and Boone voting in favor of the motion, with Commissioners Aron, Richardson, and Dabney being absent at its regular meeting held on Wednesday, March 16, 1994, in Silver Spring, Maryland.



Leroy J. Hedgepeth
Executive Director

ACKNOWLEDGMENTS

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**THE
MARYLAND-NATIONAL
CAPITAL
PARK & PLANNING COMMISSION**

*8787 Georgia Avenue,
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POTOMAC SUBREG AMEND