

CONCERNED CITIZENS FOR PROPER LAND USE

*c/o Gerald W. Winegrad
1328 Washington Drive
Annapolis, MD 21403*

March 11, 2016

Ms. Maria Broadbent, Director
City of Annapolis Department of Neighborhood and Environmental Programs
City Hall
160 Duke of Gloucester
Annapolis, MD 21401

Re: Crystal Spring/Mas Que Farm Forest Stand Delineation Filed on February 19, 2016

Dear Director Broadbent,

We hereby submit these comments on behalf of Concerned Citizens for Proper Land Use on the filing of the new Forest Stand Delineation (FSD) by the developers of Crystal Spring (Crystal Spring Development, LLC) on February 19, 2016.

As you know, we attempted to appeal the City's initial approval of an FSD for the 111.04 acre development site. Our legal and technical issues with that FSD were never adjudicated, and the Circuit Court ruled that our opportunity to raise those issues would have to await the review and approval process of a final Forest Conservation Plan. We are reviewing the newly expanded FSD for 187.14 acres with respect to those and possibly other issues, and of course we reserve the right to raise and adjudicate such issues at the appropriate time. The following comments address the legality and appropriateness of expanding the forest conservation planning area to the 187.14 acres.

We have previously communicated our questions, concerns, and objections to you concerning the three previously filed Forest Conservation Plans for the 111.04 acre development site. These issues have been raised by phone, emails, in meetings with you, and in formal comments to you in our letters of June 21, 2013, July 31, 2014, and January 30, 2015. Most of these questions, concerns, and objections still remain and have not been resolved.

We urge you to reject the new FSD which would add 76.1 acres of Mas Que Farm to the Crystal Spring development site. We request that you consider these comments in support of this rejection:

I. DNEP ACCEPTED AS COMPLETE AND CORRECT THE FSD FOR THE DEVELOPMENT OF CRYSTAL SPRING ON MARCH 27, 2013.

We fail to see why the City should accept as complete and correct a new FSD for the development of Crystal Spring. The developers couch this new filing as an update of the previous FSD but nothing has changed regarding the boundaries of the properties or terms and condition under the 2005 Annexation Resolution (R-12-05) which was adopted by the City Council on November 28, 2005. Nor have there been any new submittals to DNEP or P & Z to develop any part of the property for which a new FSD was submitted, known as Mas Que Farm.

Any development of Mas Que Farm would violate the terms of the Annexation Resolution and require action by the City Council to amend the Annexation Agreement. DNEP should not allow the developers to increase the total area covered by the FSD from the 111.04 acres included in the Original FSD area which was accepted as complete and correct by DNEP three years ago. It is incomprehensible why the

developer now would come forward with a new FSD increasing the acreage to 187.14 acres to include Mas Que Farm.

The process of gaining acceptance by DNEP of the FSD for the development of the 111 acres at Crystal Spring began with a filing by the developers in August 2012. DNEP required many further FSD refinements and filings until accepting the current FSD as complete and correct (with necessary changes) on March 27, 2013.

All subsequent FCP filings with the City and all public comments, work sessions with the Planning Commission, meetings by the developers and opponents with you at DNEP and with other City agencies and officials, and presentations to the City Council and some of its Committees, were based on the current FSD. Now, three years after DNEP accepted the FSD as complete and correct, the developers have decided a new FSD is necessary adding 76 acres to the planned development site. This is after the developers, their attorneys and their engineers, including DNR certified forest stand delineators, studied and planned their development project and submitted their FSD and three subsequent FCP's based on this FSD on the 111 acre Crystal Spring site.

Throughout the process of the developer's filing three FCP's, the developers and DNEP have treated the total tract area under consideration as the 111 acres of Crystal Spring for which the FSD was approved. For example, DNEP noted that the "Total tract area is 111 acres." See DNEP comments of the FCP of June 28, 2013 at page 2 See <http://www.annapolis.gov/docs/default-source/dnep-documents-pdfs/06-28-2013-review-of-preliminary-fcp.pdf?sfvrsn=10>.

Again, DNEP noted that the "Total tract area is 111 acres." See page 1 of DNEP comments of August 8, 2014 to the developer on their FCP. DNEP noted at page 8 of those same comments: "According to the applicant, the property to be developed is 111 acres." See <http://www.annapolis.gov/docs/default-source/dnep-documents-pdfs/city-response-to-crystal-spring-fcp-revisions-of-june-25-2014.pdf?sfvrsn=10>

If the City were to accept this new FSD, we would request that the entire planned development process begin anew for this significantly enlarged planned development site. This should include beginning from the start the process for filing a new FCP for the entire site including the filing of wetland delineations, NRI's, etc., with full public input into the process. This must be done because we would be dealing with a much enlarged parcel of land and all previous filings were based on an acreage of 111, not the 176 acres proposed in the new FSD.

The developers contend that Maryland Code Article NR §5-1604 of the Forest Conservation Act requires this new FSD "for the entire site". Then why did they not file such a FSD in 2012 or subsequent to submitting three detailed FCP's which we and other members of the public reviewed as did DNEP, P & Z, and other City agencies?

DNEP should not accept this new FSD and, if it does, the entire development process should begin anew as the previously filed FCP's were based on only the 111 acres at Crystal Spring and the 82 acres of forest on that site.

II. ANNEXATION CONSERVATION EASEMENT REQUIREMENTS MUST BE MET.

Under Annexation Condition 19 of the 2005 Annexation Resolution annexing Mas Que Farm and Crystal Spring into the City of Annapolis, (Resolution No. R-12-05), a conservation easement is required to be placed on the land at Mas Que Farm once any development is approved for Crystal Spring. The developer's web site states that Ms. Richardson-Pearson's ownership is 79.13 acres abutting Crystal

Spring. The accepted FSD notes the acreage as 76.04 and the Annexation Agreement at Condition 19 notes the acreage as “approximately 75 acres.”

DNEP may not legally permit this Mas Que Farm acreage to be part of a subdivision plan in the FSD nor may it permit any of this “approximately 75 acres” to be developed. The developers may be filing this request for acceptance of an expanded FSD to allow them to construct stormwater management facilities on the Mas Que Farm land that is required under the Annexation Agreement to be preserved under a conservation agreement. This cannot be allowed.

In DNEP’s Letter of February 15, 2015 sending back the FCP of December 31, 2014, at page 14 of Planning and Zoning’s comments note this: “The collection of stormwater in two developed drainage areas, planning Area 2 and 2A, into a single (off the 111 acre contract purchase area) outfall point with a combined QIO of 134 CFS, is not sensitive SWM design. **This outfall point, off the 111 acre contract purchase area, falls within the 75 acre proposed conservation easement. Stormwater management from new, adjacent development is considered development. New development is not permitted within proposed conservation easement. All stormwater should be managed on-site.** Find these comments at <http://www.annapolis.gov/docs/default-source/dnep-documents-pdfs/city-response-to-crystal-spring-fcp-revisions-of-december-31-2014.pdf?sfvrsn=4>.

To accept this new FSD and this development scheme requires formal action by the City Council in approving an amendment to the Annexation Resolution annexing Mas Que Farm and Crystal Spring into the City of Annapolis (Resolution No. R-12-05).

The owner of both of the properties (Crystal Spring and Mas Que Farm), Janet Richardson-Pearson, has written a public letter to the Mayor and Aldermen that “By my voluntary act as part of annexing the property into the City of Annapolis, **over 70 acres will be put in a Preservation Trust to keep it undeveloped** in perpetuity...” See Ms. Richardson-Pearson’s attached Open Letter to the Mayor et al. of March 4, 2013. She also had her letter published in the *Capital*. By including Mas Que Farm in the subdivision planned development through a new FSD would violate the Annexation Agreement and the owner’s avowed intent to put all of Mas Que Farm into a Preservation Trust to keep it undeveloped in perpetuity.

In addition, the developers have repeatedly publicly pledged in their statements, web site, and in formal filings with DNEP, including FCPs, to place another conservation easement on at least 50 acres at Crystal Spring—all undeveloped land remaining outside the site’s development footprint. This easement would be in perpetuity and would prevent any further development on the site of Crystal Spring. The conservation easement would include all remaining forest, the wetlands, and their buffers on the 111 acre Crystal Spring site. See Ms. Richardson-Pearson’s Open Letter to the Mayor et al. “...and about half of the total 110 acres in the master plan are being preserved by the developers as forest, wetlands, farmland or open space. An unbelievable **70% of the land will not be touched.**” The reference is to the 180 acres annexed so that 70% of 180 acres = 126 acres “not to be touched”.

The developers have consistently reiterated these commitments. For example, Marshall Breines and Jim Eagan wrote in a *Capital* Guest Column on August 22, 2014 that “A total of 127 acres out of 190 will now be preserved in forest conservation, open space and critical areas **where no future development will be permitted.**” They repeated this position again in a *Capital* Guest Column on January 12, 2015 that “130-plus acres will be put in open space or forest conservation easements out of the 190 acres of property constituting the proposed development tract and the property to be retained by its owners.”

In filing another sketch plan with the City on April 28, 2015, Marshall Breines noted in his submittal letter to the City that “We also would like to point out that when we consider the entire Katherine Property Annexation Parcel, we are preserving more than 125 acres of forested and/or meadow areas. This represents a significant preservation effort which should be acknowledged as a positive contribution to the open space resources in the City of Annapolis.” See <http://www.annapolis.gov/docs/default-source/dnep-documents-pdfs/04-29-2015-letter-to-city-of-annapolis-4-28-15.pdf?sfvrsn=2>

If DNEP accepts the expanded FSD to allow Mas Que Farm to be added to the Crystal Spring planned development site as proposed, this would abrogate the Annexation Agreement requirements, the owner’s commitment to preservation undeveloped of Mas Que Farm, and the developer’s commitments to permanently keep the 75-76 acres of Mas Que Farm undeveloped.

Despite the insistence of the owner and developers that conservation easements will be granted to assure the preservation of the undeveloped acreage at Mas Que Farm and Crystal Spring whereby no future development will be permitted, no such easement has been approved by the City.

In DNEP’s Letter of February 15, 2015 sending back the FCP of December 31, 2014, at page 17 of Planning and Zoning’s comments note this: “The future conservation easement is not part of the Crystal Plan as there is no delineation noted on the project site plan. The fixed location of the conservation easement, even if it’s a general location, appears to conflict with the proposed project site plan. **The applicant should delineate the 75 acres conservation easement as part of the Prelim. FCP. Unless a portion of the "contract to purchase 111 acres" is included in the conservation easement, the portion of land remaining in the petitioner's ownership, outside the contract to purchase area, is only 64.5566 acres, approximately 10.5 acres short of the 75 acre requirement**

On December 21, 2015 we wrote you and Frank Biba at DNEP asking that any further processing of the Crystal Spring FCP or of any other filings on this development should be suspended for various reasons including the failure to adopt an appropriate conservation easement on Mas Que Farm. DNEP should respect P & Z’s admonition to the developer above and assure that before any further processing of the FCP or any FSD, details of the conservation easement, including the precise boundaries and terms for conservation, are agreed upon in a legally binding agreement.

On June 25, 2014, the developers did proffer a draft conservation easement as Exhibit B as part of their FCP filing of that date. This draft easement does not define the area of the easement and allows any form of agricultural activity at Mas Que Farm on a commercial or non-commercial basis. It also allows the construction of any structures or dwellings..."as needed in carrying out activities permitted by the conservation easement."

Gerald Winegrad served on the Board of the Maryland Environmental Trust for 16 years. MET is the state land trust and the Board examines and makes recommendations on conservation easements around the state. Gerald had a former MET staffer, an easement expert, look at the developer’s proffered easement and it was agreed that it was woefully inadequate as it would allow much development of the site. This development could include clearing of forest on the site to build large barns, buildings to store and sell farmed crops or farm-related items, buildings to house many more horse stalls, new roads for farm use, parking lots for visitors to the commercial farm buildings and for users of other structures, and much more. At a minimum, we agreed the easement should include a provision preserving existing forest and prohibiting the clearing of any forest except for safety reasons and a provision that any such clearing must be approved by the easement holder.

Before any further processing of the FSD or FCP occurs, DNEP should require that both of the perpetual conservation easements for Mas Que Farm and for Crystal Spring be clearly drafted and agreed upon including detailed metes and bounds. The easements should include provisions prohibiting any further development and clearing of forest on these sites and disallowing expansion of the Crystal Spring development into Mas Que Farm—whether for stormwater management facilities or otherwise. This is all the more critical with the new filing for an expanded FSD.

It should be noted that the developers have consistently stated that the stormwater leaving the Crystal Spring site after development would be as clean or cleaner as before development occurred and the development would not increase rate or volume, a pledge that has been confirmed over time including in recent discussions with Planning and Zoning officials. The developer's current web site states that: "100% stormwater retained/treated on site including gray water recycling." See www.crystalspringannapolis.com/userfiles/file/economic-benefits-forest-conservation.pdf

The site referred to is of course the 111 acre site of Crystal Spring. DNEP by accepting the newly filed FSD should not facilitate an abrogation of this pledge and of the Annexation Resolution by allowing Mas Que Farm to be added to the subdivision plan.

Any plans by the developers to clear any trees on Mas Que farm should not be condoned by DNEP given the terms of the Annexation Resolution and the pledges by Ms. Richardson-Pearson and the developers.

Rather than reiterate our request that you suspend all processing of the development plans for Crystal Spring, including the FCP, we are attaching the recent Memo sent to Mayor Pantelides which is similar to the one sent to you back on December 21, 2015.

We appreciate your consideration of these comments and those in the attached Memo to the Mayor while pondering the newly filed FSD and hope you will deny this significant expansion of the previously accepted FSD.

Respectfully Submitted,

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