

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

ZAAP NUMBER 19-110-023

TIEDE SUBDIVISION APPEAL

FIFTH ELECTION DISTRICT

DATES HEARD: JUNE 17, 2020 AND AUGUST 27, 2020

ORDERED BY:

**Mr. Hayden, Mr. Brown, Ms. Delahay,
Mr. Miedzinski, and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: September 10, 2020

Pleadings

Jason G. Tiede (“the Appellant”) appealed the January 8, 2020 administrative decision (ZAAP 19-110-023) of the Director of Land Use & Growth Management (“LUGM”) that determined the Appellant’s property is part of the Persimmon Hills Subdivision, Section 1.

Public Notification

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County, on May 27, 2020 and June 3, 2020. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the subject property was notified by mail, sent to the address furnished with the application. The agenda was also posted on the St. Mary’s County website on June 2, 2020. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

Public Hearing

Public hearings were conducted at 6:30 p.m. on June 17, 2020 and August 27, 2020 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented.

The Property and Procedural History

The subdivision plat for Persimmon Hills, Section 1 was recorded at Liber 34, Folio 93 on June 20, 1991. Ex. 3, Att. 2. In January 2008, T.D. Murray, owner of Lots 1 through 5 in Persimmon Hills, Section 1, recorded a Plat of Abandonment. Ex. 3, Att. 3. Notes 4 and 5 of the Plat of Abandonment are, in part, at the center of this appeal:

4. The purpose of this plat is to abandon Lots 1–5 and Abbey Place previously recorded at Plat Book 34:93 and 36:05, and convert the property to Open Space.
5. The density for Lots 1–5, Persimmon Hills has been relocated to Ben Oaks, Phase One recorded at Plat Book 59:64.

The 7.09-acre area where Lots 1 through 5 once stood is now listed on the Plat of Abandonment as Open Space A (“the Property”) and has an address of 27890 Three Notch Road, Mechanicsville, Maryland. In February 2019, the Appellant purchased the Property for \$875.00. Ex. 3, Att. 4. The Property is in the Rural Preservation District (“RPD”) zoning district and is identified on Tax Map 9, Grid 15, Parcel 339.

In August 2019, the Appellant submitted a Minor Subdivision Plan for Tiede Estates, Formerly Part of Persimmon Hills Section 1. Ex. 3, Att. 5. On January 8, 2020, the Director of LUGM wrote the Appellant, determining that “the property you own is a part of Persimmon Hills, Section 1,” the consequence of which is that the Appellant must connect to a public water system. Ex. 3, Att. 11. The Appellant filed a timely appeal of that decision. Ex. 3, Att. 12.

The St. Mary’s County Subdivision Ordinance

Pursuant to § 30.2.5 of the St. Mary’s County Subdivision Ordinance, “Voiding of Plats”:

- a. Any plat or any part of a plat may be vacated by the owner, at any time before the sale of any lot therein, or by all the owners, by a written instrument, in recordable form declaring that plat to be null and void.
- b. The instrument shall be approved by the Planning Commission in like manner as plats of subdivisions. The Planning Commission may reject any instrument that abridges or destroys the public rights in any public uses, improvements, streets or alleys within the subdivision.
- c. The instrument, once recorded, shall render the subdivision a nullity and divest all public rights in the streets, alleys and public grounds, and all dedications laid out or described on the plat.

The Evidence Submitted at the Hearing by the Appellant

The Appellant presented the following evidence:

- LUGM Director Hunt's decision has resulted in an unwarranted hardship and essentially rendered the Appellant's otherwise usable property as economically infeasible to develop.
- In 2008, T.D. Miller abandoned and vacated Persimmon Hills lots 1 through 5 and transferred the entire density to the neighboring Ben Oaks subdivision.
- Persimmon Hills and Ben Oaks were designed, approved, and subdivided as two distinct major subdivisions with 199 total lots. As originally conceived, Persimmon Hills, Section 1 was to have 88 original units/lots. Following the Plat of Abandonment, Persimmon Hills, Section 1 was to have 83. As originally conceived, Ben Oaks was to have 111 original units/lots. Following the Plat of Abandonment, Ben Oaks was to have 116.
- The Appellant was told by LUGM that the Property was independent of Persimmon Hills, Section 1 and that he must enter the subdivision process to develop the Property. He submitted a completed Development Review Application on August 7, 2019 for a one-lot minor subdivision.
- After the Appellant finished the Technical Evaluation Committee process, he was told that the Property in fact remained a part of Persimmon Hills, Section 1.
- Consequently, the Appellant must connect to Metropolitan Commission water at an estimated cost of \$75,000 to \$100,000. If he were permitted to be a standalone subdivision apart from Persimmon Hills, Section 1, he could make use of a private water source on the Property.