

**IN THE ST. MARY'S COUNTY BOARD OF APPEALS**

**ZAAP NUMBER 19-110-023**

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**TIEDE SUBDIVISION APPEAL**

**FIFTH ELECTION DISTRICT**

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

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**ORDERED BY:**

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

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**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.

- The Plat of Abandonment is not a formally recognized document. The spirit and intent of the Plat of Abandonment serves to vacate Lots 1 through 5 in accordance with § 30.2.5 of the Subdivision Ordinance.
- The Plat of Abandonment “abolish[ed] the easements, rights of way and Lots, as shown hereon.” Ex. 4, Att. 4.
- There is no evidence that the Property, if apart from Persimmon Hills, Section 1, would create any adverse consequences.

#### **The Evidence Submitted at the Hearing by the Appellee**

The Department of Land Use & Growth Management presented the following evidence:

- Section 30.2.5 of the Subdivision Ordinance outlines the only means by which part of a plat may be vacated and deemed null and void. T.D. Murray did not follow that process when he recorded the Plat of Abandonment. Accordingly, the Plat of Abandonment did not vacate Lots 1 through 5 from Persimmon Hills, Section 1 or deem those lots to be null and void.
- T.D. Murray sold at least one lot before recording the Plat of Abandonment. Consequently, the first clause of Subdivision Ordinance § 30.2.5.a was not met, which provides, “Any plat or any part of a plat may be vacated by the owner, *at any time before the sale of any lot therein.*” (Emphasis added).
- Moreover, because “all of the owners” in Persimmon Hills, Section 1 failed to vacate Lots 1 through 5, those lots similarly were not vacated under § 30.2.5.a.
- Furthermore, there is no evidence that the Plat of Abandonment was “approved by the Planning Commission in like manner as plats of subdivisions,” as required by § 30.2.5.b.

- Finally, the language of the Plat of Abandonment did not serve to declare the “plat to be null and void.” Rather, T.D. Murray’s own language demonstrates his “purpose” towards that instrument, which was to merely abandon the lots and easements on the Property, convert the abandoned area to “Open Space,” and relocate the density of those lots to the neighboring Ben Oaks Subdivision.

### **Decision**

Upon review of the facts and circumstances, the Board finds and concludes that the decision of the Director of Land Use & Growth Management is to be upheld. Several factors support our determination.

This case presents an issue of interpreting the language of § 30.2.5 of the Subdivision Ordinance. Like reviewing courts, the Board will “begin with the normal, plain meaning of the language of the statute. If the language of the statute is unambiguous and clearly consistent with the statute’s apparent purpose, our inquiry as to legislative intent ends ordinarily and we apply the statute as written, without resort to other rules of construction.” *Lockshin v. Semsker*, 412 Md. 257, 275 (2010) (internal citations omitted).

Here, Subdivision Ordinance § 30.2.5 unambiguously, and with immense precision, outlines the only process by which a plat may be vacated and deemed to be null and void. Accordingly, the Board will look no further than the plain meaning of the text of § 30.2.5 of the Subdivision Ordinance.

First, the Plat of Abandonment failed to vacate the Property from Persimmon Hills, Section 1 under Subdivision Ordinance § 30.2.5.a because T.D. Murray sold a lot in Persimmon Hills, Section 1 before recording the Plat of Abandonment. Section 30.2.5.a requires, in pertinent part, “*any part of a plat may be vacated by the owner, at any time before the sale of any lot therein . . . by*

a written instrument, in recordable form declaring that plat to be null and void.” (Emphasis added). Here, the Persimmon Hills Subdivision, Section 1 plat was recorded in 1991. Ex. 3, Att. 2. T.D. Murray was the owner of the Persimmon Hills Subdivision, Section 1 plat. *Id.* In 1995, T.D. Murray sold Lot 97, a lot in Persimmon Hills, Section 1. Ex. 3, Att. 13. T.D. Murray recorded the Plat of Abandonment in 2008. Ex. 3, Att. 3. Given that T.D. Murray sold Lot 97—i.e., “any lot”—in Persimmon Hills, Section 1 prior to recording the Plat of Abandonment, the Plat of Abandonment failed to vacate Lots 1 through 5 pursuant to the Subdivision Ordinance.

Next, the Plat of Abandonment failed to vacate the Property from Persimmon Hills, Section 1 under § 30.2.5.a because “all the owners” in Persimmon Hills, Section 1 did not vacate Lots 1 through 5 from the subdivision. Again, section 30.2.5.a requires, in pertinent part, “*any part of a plat may be vacated . . . by all the owners*, by a written instrument, in recordable form declaring that plat to be null and void.” (Emphasis added). Here, the Appellant conceded on cross-examination, and there is no evidence to rebut that concession, that “all the owners” of the Persimmon Hills, Section 1 subdivision did not, once “any lot” was sold, declare Lots 1 through 5 to be null and void. As none of the requirements in subsection A were not met, this Board need not look any further to uphold the Director of LUGM’s decision. For completeness, however, the Board will look to subsection B.

The Plat of Abandonment failed to vacate the Property from Persimmon Hills, Section 1 under § 30.2.5.b because there is no evidence that the Planning Commission “approved” the Plat of Abandonment “in like manner as plats of subdivisions.” In fact, there is no record that the Planning Commission—or the Planning Director in his delegated authority—approved any instrument—“in recordable form” or otherwise—declaring Lots 1 through 5 to be vacated or null and void and separate from Persimmon Hills, Section 1.

Finally, Notes 4 and 5 of the Plat of Abandonment do not serve to vacate Lots 1 through 5 from Persimmon Hills, Section 1 or deem those lots to be null and void. In fact, these notes explicit his intent to the contrary. T.D. Murray wrote:

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.

Nothing in this language, or in any prior or subsequent action by T.D. Murray, suggests any intent to vacate Lots 1 through 5. Rather, T.D. Murray’s use of the word “purpose” in the above language is illustrative. This choice of word highlights his “purpose” solely to abandon the lots and easements on the Subject Property, convert the abandoned area to “Open Space,” and relocate the density of those lots to the neighboring Ben Oaks Subdivision. Most significantly, however, even if his purpose were to vacate Lots 1 through 5, his intention is of no consequence under Subdivision Ordinance § 30.2.5.a. The Plat of Abandonment was recorded almost 15 years after T.D. Murray—the owner—sold at least one lot in the subdivision, and “all of the owners” similarly did not declare Lots 1 through 5 to be vacated or null and void from Persimmon Hills, Section 1.

### **ORDER**

PURSUANT to the appeal of Jason G. Tiede of an administrative decision under Chapter 23 of the St. Mary’s County Comprehensive Zoning Ordinance to appeal the January 8, 2020 decision of the Director of Land Use & Growth Management that determined the Appellant’s Property is part of the Persimmon Hills Subdivision, Section 1; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, that the January 8, 2020 decision of the Director of Land Use & Growth Management determining the Appellant's Property is a part of the Persimmon Hills Subdivision, Section 1 is upheld.

Date: Sept 10, 2020

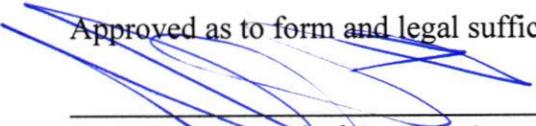
  
George A. Hayden, Chairman

Those voting to uphold the decision:

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

Those voting to reverse the decision:

~~Approved as to form and legal sufficiency~~

  
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Steve Scott, Board of Appeals Attorney

**NOTICE TO APPELLANT**

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.