



TOWN OF BOONSBORO

DEPARTMENT OF PLANNING, ZONING & ENGINEERING

WWW.TOWN.BOONSBORO.MD.US ♦ 301-432-5690

CONCEPT PLAN for THE PRESERVE AT FOX GAP RESIDENTIAL SUBDIVISION STAFF REPORT July 29th, 2019

PROJECT: BNCP19-02 – Concept Plan for The Preserve at Fox Gap Residential Subdivision

APPLICANT: The Preserve at Fox Gap, LLC
c/o Todd Easterday
20320 Ayoub Lane
Hagerstown, MD 21742

ENGINEER: Frederick, Siebert & Associates
128 S. Potomac Street
Hagerstown, MD 21740

PROPERTY INFORMATION: TM 0073 / G 0012 / P 0307 & 0308, 65.56 acres, Zoned MR, TC(-R), TR

LOCATION: Along the East Side of Old National Pike (US Alt 40) and south of Mousetown Road

PROPOSAL: 118 Lots, Single Family Detached, 43.34 acres

PROJECT NOTES:

1. This concept plan will be reviewed by the Mayor & Council of Boonsboro at the following public meetings over the next several months:
 - a. Mayor & Council Workshop Meeting, July 29th, 2019: Workshop Topic for Discussion
 - b. Mayor & Council Regular Meeting, August, 12th, 2019: Vote on ResolutionIf a resolution is passed by the Mayor & Council allowing the developer to submit a proposal for residential development of the property to the Town and the Town's Planning Commission for review (Project Note 5), the Planning Commission will review the plan at their August 27th, 2019 meeting.
2. This concept plan proposes a potential layout for a residential subdivision of 118 lots on 43.34 acres with the proposed breakdown of overall land area:
 - a. Residential Lots, Stormwater Management, etc. : 31.19 acres
 - b. Rights-of-Way: 7.46 acres
 - c. Open Space: 4.69 acresThe plan also depicts 0.27 acres of land dedicated for a water tower and 22.22 acres of "remaining lands" in two separate areas (15.51 acres zoned MR and 6.71 acres zoned TR).
3. All of the proposed residential lots fall within the Town Center Residential (TC(-R)) and Town Residential (TR) Zoning Districts. However, proposed lots 42-47, 54, 55, and 59 fall within an area of the property that will be rezoned to Suburban Residential (SR) during the next Comprehensive Plan Update. The developer is aware of this future comprehensive zoning map amendment as it was a Planning Commission recommended condition of approval for BNRZ18-01(rev), a zoning map amendment request approved by the Town's Mayor & Council in April of 2019, and referenced in Planning Commission meeting minutes from January 15th, 2019, February 5th, 2019 (workshop), and February 26th, 2019, and Mayor & Council meeting minutes from January 22nd, 2019 and February 4th, 2019 (both the Public Hearing and Regular Meeting). Knowing this, the developer and their engineers met the SR zoning requirements for minimum lot sizes and setbacks for lots 42-47, 54, 55, and 59.
4. All of the property depicted in the concept plan, and any development of the property, is subject to the property owners' Annexation Agreement, dated December 28th, 2006.



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5. The property owner's aforementioned annexation agreement states, *"The remaining portion of the Property, excluding the Commercial Parcel, shall not be developed, nor shall any site plan, subdivision plat or other development application be submitted to the Town by the Petitioner, except as permitted by amendment to this annexation agreement. The Petitioner shall not commence or submit any proposal for residential development of the property to any board, commission, representative or agency of the Town for residential development of the Property or any part thereof until permission to submit such proposal shall have been granted to the Petitioner by resolution of the Mayor and Council, which permission may be withheld or conditioned in the absolute, sole, subjective discretion of the Mayor and Council. The Petitioner in his absolute, unconditional and sole discretion may de-annex the Property, or any part thereof, in the event a moratorium is imposed on the Property or any amendment to this annexation agreement is found to be unacceptable to Petitioner, in his sole discretion."*
6. Per a letter from the Town dated July 18th, 2018, the property owner has purchased (and owns) eight (8) sewer taps (wastewater benefit) to date from the Town of Boonsboro for a total price of \$92,880.59. Per the Town's current policy for the distribution of water and sewer capacity within the municipal boundary for the Town of Boonsboro, any additional "taps" for both water and sewer (wastewater) can be acquired by the developer on a first-come, first-serve basis based upon the available and unused capacity in the Town of Boonsboro's permitted water appropriation and at the wastewater treatment plant. Current prices for taps in the Town of Boonsboro are \$8,550 for water service, \$13,550 for sewer service, and a \$1,000 connection fee.
7. The property for which this concept plan was submitted was recently the subject of a zoning map amendment request (BNRZ18-01(rev)) and approval. Ordinance 2019-01, which has been effective since April 28th, 2019, rezoned 4.53 acres from MR to GC, 6.71 acres from MR to TC(-R), 16.85 acres from TR to TC(-R), and 2.04 acres from TR to GC. GC stands for General Commercial, TR stands for Town Residential, MR stands for Multi-Family Residential, and TC(-R) stands for Town Center Residential.
8. The Comprehensive Plan and the Washington County Water and Sewerage Plan will be reviewed for consistency with respect to this Concept Plan. This Staff Report will review the concept for Comprehensive Plan consistency (see below). Unless otherwise noted by Town of Boonsboro staff, the preliminary plat/site plan for this Concept Plan (the next step in the Development Review Process) will need to conform with the following Town Ordinances (and potentially others not listed below):
 - a. Town of Boonsboro Zoning Ordinance
 - b. APFO / Ordinance for Growth Management
 - c. Land Subdivision Ordinance (2006) and Amendments
 - d. Site Plan, Landscaping, and Street Light Requirements (2009-04)
 - e. Street Standards (2010-01)
 - f. Parking (2012-01)
 - g. Washington County Stormwater Management, Sediment, and Erosion Control Ordinance
 - h. Washington County Sensitive Areas Ordinance
 - i. Washington County Floodplain Ordinance
 - j. The Town Code for the Town of Boonsboro – Chapters 6, 7, and 11
 - k. The Town Charter (more generally)
 - l. Town Water Specifications
 - m. Town Sewer Specifications



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9. The concept plan does not indicate forest conservation requirements via the forest conservation ordinance (Washington County) that would result from development of the property.
10. Preliminary Ordinance Review (for consistency with Town Ordinances listed above, Town Ordinance Review below is not complete)
 - a. Zoning Ordinance Section 305.B.5.: Single Family Homes are permitted by-right in the TC(-R), TR, and SR zoning districts.
 - b. Zoning Ordinance Section 401.A.1.: Minimum Lot sizes, minimum lot widths, and minimum setbacks are correctly listed on the concept plan for TC(-R) and TR, but not listed for SR. The minimum lot size for SR is 15,000 square feet, the minimum lot width for SR is 100 feet, and the minimum setbacks are 20 feet (front), 15 feet (sides), and 25 feet (rear). More information is needed to determine whether lots 43-46, 54, 55, and 59 comply with the aforementioned dimensional requirements for Suburban Residential.
 - c. Zoning Ordinance Section 512.A.: The Planning Commission may require adequate provision for landscaping/screening in order to protect adjoining properties.
 - d. Zoning Ordinance section 513 (required Open Space): The Open Space requirement for the TC(-R) zoning district is 10% of the total parcel area, and the open space requirement for the TR and SR zoning districts is 15% of the total parcel area. The concept plan lists 13%. The development will be required to conform with the zoning ordinance.
 - e. Zoning Ordinance section 601.B.1.: Single family dwellings require 2 parking spaces per unit. Street Parking must accommodate 8 foot wide parking spaces that are at least 22' long (602.A.1.).
 - f. Section 702 of the Land Subdivision Ordinance: The depth of residential lots shall not be less than one (1) or more than three (3) times its width. In addition, panhandle lots, defined as polygonal shaped lots with the appearance of a pan, flag, or staff in which the handle is used as the point of access to a street or road, shall not be permitted. Lots 29, 43, 46, 54, 55, and 59 are depicted as panhandle lots.
 - g. Block Length (Table 7.1 of the Land Development Ordinance) will be taken into account in the final design of the proposed residential subdivision and may alter the layout in the concept plan.
 - h. Section 708 of the Land Subdivision Ordinance: The cul-de-sacs in the concept plan should be designed to conform with Section 708 of the ordinance.
 - i. Per Section 711 of the Land Subdivision Ordinance, sidewalks will be required along all public rights of way and streets in the proposed residential subdivision.
 - j. Ordinance 2009-04: Ordinance 2009-04 specifies the requirements for site plans and landscaping. The proposed landscaping layout will need to be designed in accordance with these requirements. Traffic signs, lights, and all signage needs to be delineated on the site plan.



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Street trees will be provided by the developer, shall be planted along each side of all streets, and shall be placed at intervals no greater than 30 feet (See Section 719.I.).

- k. Street Standards (2010-01): The Street Standards ordinance must be complied with. Details 1, 4, 5, 7, 8, and 9 are of particular importance to this concept plan.
- l. Sidewalks: Sidewalks are required to be constructed per the Town Charter and Town Ordinances and designed in conjunction with Detail 9.0 of the Street Standards Ordinance. Sidewalks are not adequately shown on the concept plan.
- m. Washington County Stormwater Management Ordinance: Minimal land dedicated for stormwater management is shown in the concept plan. All development must comply with the stormwater management ordinance for Washington County.

STAFF COMMENTS (Comprehensive Plan Review):

1. This revised concept plan was reviewed by Staff on July 2nd and 3rd, 2019. Comprehensive Plan Review (for consistency) is meant to serve as a guide for the Town and for developers. Unlike ordinances and codes, the comprehensive plan is not law. However, it is a helpful tool for guiding the growth and development of communities.
2. The Washington County Water and Sewerage Plan states that the BMUC has a policy that requires each developer (except minor subdivisions of 5 or less units) to provide a minimum new water supply of 108,800 gpd (70 gpm) in the form of a new well to be connected to the existing distribution system (Page III-8), and that the BMUC is willing to make extensions of the sewer system within the Growth Area, but only for annexed properties (it remains Town policy that public sewerage will not be extended beyond corporate boundaries) (Page IV-15).
3. Assuming an average household size of 2.4 people (per page 2-1 of the Comprehensive Plan), this conceptual development would add a maximum of 283 people to the Town's population.
4. The Comprehensive Plan recommends 30 acres of park and open space per 1,000 residents, 15 acres of which should be for active recreation uses. For the projected population increase resulting from this development, that results in a recommendation of 8.49 acres of open space with 4.25 acres available for active recreation. While open spaces are shown on the plan, there are no open spaces dedicated for active recreation shown on the plan. The closest municipal open space recreation area for residents of this proposed neighborhood is Shafer Park, which is on the other side of Town. An entire section of our Town's Comprehensive Plan is titled, "As the Town grows, the distribution of its park land is an important consideration." (Page 5-7). Staff recommends working with the developer to facilitate more open space and the dedication of an active recreation area in this part of Town such as a public or community park or similar amenity. There are several locations on land that this developer owns that could be good candidates for a new public park for the Town of Boonsboro. Map 3.2 (Future Land Use) in the Comprehensive Plan even indicates a park (in green) on part of the subject property. Staff also recommends collaboration between the developer, the Town Planning & Zoning Department, and the MD State Highway Administration to facilitate pedestrian connectivity all the way to Shafer Park. This can be achieved by facilitating sidewalk improvements and connectivity on South Main Street between the proposed residential development and the new Sycamore Run development, which has a



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planned and bonded pedestrian connection to Shafer Park via the right-of-way along Monument Drive at the intersection of Monument Drive and Potomac Street.

5. Emergency vehicular access (fire, ambulance, police, etc.) will likely be an issue in this proposed subdivision if the long-term plan only facilitates one way in and one way out of the proposed subdivision. This should be discussed at both the concept plan stage and during development review.
6. Page 2-9 of the Comprehensive Plan states that, with existing withdrawal permits, the Town can provide drinking water for approximately 920 new EDU, in addition to existing customers. It also states that the wastewater treatment plant will be able to serve approximately 960 new EDUs, in addition to existing customers. These projections were current in 2009, the year the comprehensive plan was last updated and approved. The Comprehensive Plan states that neither figure was adequate, at that time, to support projected development through 2030, and that an expanded groundwater appropriate permit may be necessary, as well as further upgrades to the treatment plant. More analysis is necessary to determine how many EDUs of drinking water and discharges to the wastewater treatment plant the Town can provide today, in 2019. The water analysis will be available to the Mayor & Council at their July 29, 2019 workshop.
7. Page 2-12 of the Comprehensive Plan states that “The outer edges of those properties (the 2006 Annexation properties) are not envisioned as being fully developed through 2030, and would be held as a transition area (agriculture, forestry, or open space) between the Town and the surrounding unincorporated portion of Washington County. The proposed residential development would border the municipal boundary with Washington County. The public hearings and meetings for the recent zoning map amendment request for the property (BNRZ18-01(rev)) revealed that adjacent property owners to this particular property would like buffers to be both considered and incorporated into the approved layout and design of any residential subdivision in the area. This is something the Mayor & Council and Planning Commission should consider before giving approval to any residential development on the subject property. Buffers between the new residential subdivision and the adjacent property owners in Washington County would work towards meeting this intent of rural buffers and transition areas in the comprehensive plan.
8. Sidewalks were mentioned in the Ordinance Review section of this staff report. Page 2-13 of the Comprehensive Plan states that new development should be connected to the Town Center by roads and paths (including sidewalks and trails) in appropriate locations. The plan also highlights the importance of linkages between the Town’s park and recreation facilities. New and existing parks should be linked via sidewalks or paths, with clearly marked pedestrian crossings on major streets (such as South Main Street) (Page 5-8). Staff recommends working with the developer and the state highway administration to further establish and connect the sidewalk network along South Main Street between Ostertag Pass and Monument Drive.
9. The property does contain areas with slopes greater than 25%. Therefore, there are some steeper slopes and similar areas of this property that could create erosion and sediment control issues. The developer should take extra care in these sensitive areas, where tighter contour lines reveal areas with steeper slopes. Chapter 9 of the Comprehensive Plan is wholly dedicated to addressing the Town’s vision for sensitive areas within the municipal boundary. All new development should avoid sensitive areas (page 3-6).



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10. Smart Neighborhood Principles, which include efficient use of infrastructure, socioeconomic diversity, transportation choice, environmental quality, sustained economic health, sense of community, and logical extension and integration of communities (detailed on pages 3-7 through 3-9 of the Comprehensive Plan) should be considered carefully when reviewing this conceptual development proposal, particularly as they relate to a range of housing options and prices, pedestrian and bicycle activity, new public spaces, and the connectivity of pedestrian and open space networks.
11. The housing section of the comprehensive plan states the need in Boonsboro for affordable, workplace housing. More information is needed from the developer regarding the size and price point of the homes in the concept plan. A considerable market exists in Boonsboro for affordably priced units (page 8-3). This section of the plan also discusses the need for senior housing, a greater diversity of housing types, and tapping into a higher income housing market. As of the year 2000, 67% of the homes in Boonsboro were single family detached homes. That number likely only has risen since that time, due to the construction of the Fletcher's Grove and Sycamore Run housing developments.
12. In addition to the Washington County SWM Ordinance, the Town's Comprehensive Plan recommends that the Town require Environmental Site Design for new development (page 4-11). Also, it is a stated goal in the Comprehensive Plan to encourage the minimization of impervious surfaces in new development, through careful guidance of development projects (page 4-13). Staff recommends working with the developer to minimize the overall amount of impervious surfaces in the proposed development.
13. Table 4.1 on Page 4-3 of the Comprehensive Plan indicates that the available capacity on the Town's drinking water system in 2009 was 230,000 gallons per day, or 920 EDUs. The Table (4.1) also projects a water system deficit with projected growth by 2030, which could lead to development restrictions if not properly addressed. Table 4.2 on page 4-8, the same demand and capacity table but for the wastewater treatment plan, also shows a potential deficit with projected growth by 2030. *The Mayor & Council should reference the newly drafted water capacity analysis developed by staff and use this document as a guide for water capacity moving forward.*
14. The Plan's Water Resources Element stresses the Town's need for additional drinking water sources (page 4-3). Town Staff recommends working with the developer to find solutions to the Town's drinking water capacity concerns. In addition, Town Staff recommends working with the developer, and all Town developers, to try and solve the Town's ongoing Inflow & Infiltration (I&I) issues described on page 4-9 of the Comprehensive Plan. Phase I of the I&I has already been completed. The Town must search for grant funding, developer contributions, or Town resources to complete Phase II of the I&I project and other alternative projects that will solve I&I issues.
15. Page 4-5 of the Comprehensive Plan mentions system water loss, which remains a critical issue for the Town of Boonsboro today, ten years later, in 2019.
16. A question for the future would be whether this proposed development will have an HOA or if it will be solely reliant on Town Ordinances, Codes, and Charters.
17. The project, if allowed to proceed forward and eventually submitted to the Boonsboro Planning Commission, will be forwarded to the Boonsboro Volunteer Fire Department for their input and review. The project will also be forwarded to the agency responsible for reviewing school demands.



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18. **Staff recommends that the Mayor & Council use this workshop meeting for a more comprehensive discussion of the proposal, including discussions on utility capacity, public improvements, and whether or not to allow the plan to be submitted to the Planning Commission for review. Staff also recommends being prepared to vote on a resolution to allow the Petitioner to forward this concept plan to the Planning Commission at their next regular meeting, scheduled for Monday, August 12, 2019.**
19. Staff will prepare a full analysis of the Town's current capacity on the Boonsboro-Keedysville Water System ahead of the July 29th workshop so that available water capacity can be a part of the discussion regarding this proposed residential subdivision.
20. Staff will prepare a draft resolution (2019-06) for the Mayor & Council ahead of the workshop meeting.
21. The Planning Commission, BMUC, and Mayor & Council have a joint meeting scheduled for Tuesday, August 27, 2019, during the time of the regularly scheduled Planning Commission meeting that evening.

Respectfully Submitted,

Ethan Strickler
Town Planner/Zoning Administrator

BEFORE THE MAYOR AND COUNCIL OF BOONSBORO

RESOLUTION NO. 2004-04

TO ENLARGE THE CORPORATE BOUNDARIES OF THE TOWN,
BY ADDING THERETO 96.1918 ACRES,
MORE OR LESS
(EASTERDAY LAND DEVELOPMENT, LLC, ET AL.)

RESOLUTION of The Mayor and Council of Boonsboro, adopted pursuant to Article XI-E of the Constitution of Maryland and §19 of Article 23A of the Annotated Code of Maryland, to enlarge the corporate boundaries of The Town of Boonsboro, as identified in the charter of the Town, by adding or annexation to the present corporate boundary, the parcel of property described by courses and distances in the description attached to this Resolution as Attachment A.

WHEREAS, the parcel of land to be annexed is owned by Todd E. Easterday, Michael D. Easterday, Jacob Easterday, Jeanette Easterday and Easterday Land Development, LLC, Petitioners, and the State Roads Commission; and

WHEREAS, Petitioners have presented to the Mayor and Council of The Town a petition proposing annexation of the property described in this Resolution; and

WHEREAS, the Mayor, as the presiding officer of the Town, has caused the signatures thereon to be verified, and has ascertained that the Petition otherwise conforms to the requirements of §19(c) of Article 23A of the Annotated Code of Maryland, and thereupon introduced this Resolution at a public meeting of the Mayor and Council of the Town on August 2, 2004, and

WHEREAS, pursuant to publication of notice, in accordance with §19(d) of Article 23A, a public hearing was conducted in the Town on the 20th day of October, 2004;

NOW THEREFORE, BE IT RESOLVED by the Mayor and Council of Boonsboro, as follows:

SECTION I. The corporate boundaries of The Town of Boonsboro be and the same are hereby enlarged by adding or annexing thereto the lands adjoining the present corporate boundaries of the Town, as particularly described in Attachment A of this Resolution.

SECTION II. The persons, if any, residing in the area hereby annexed, and their property, shall be and are hereby added to the corporate boundaries of the Town, subject to the provisions of the Charter of the Town, and the acts, ordinances, resolutions, and policies of the Town, without special conditions relating to municipal taxation, services or facilities, or other special treatment of residents or property in the area hereby annexed.

SECTION III. The lands annexed herein shall be and are hereby zoned TR, MR and GC, as described in the description of proposed zoning district boundaries attached to this Resolution as Attachment B, and incorporated herein by reference.

SECTION IV. Section 104 of the Municipal Charter of the Town be and is hereby amended to include the lands described in this Resolution.

SECTION V. Petitioners shall pay all costs, engineering fees, attorneys fees, costs of insertion of public notices, and all other expenses incurred by the Town in connection with the annexation.

AND BE IT FURTHER RESOLVED, that this Resolution shall become effective at the end of forty-five (45) days following the date of its enactment, unless a proper petition for referendum hereon shall be filed, as permitted by law.

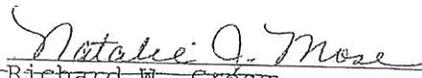
BY ORDER OF THE MAYOR AND COUNCIL OF THE TOWN OF BOONSBORO.

THE MAYOR AND COUNCIL OF BOONSBORO

By: 
Charles F. Kauffman, Jr., Mayor

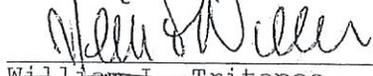

Howard W. Long, Asst. Mayor


Raymond D. Grove


~~Richard W. Gross~~
Natalie J. Mose


Richard E. Hawkins, Sr.

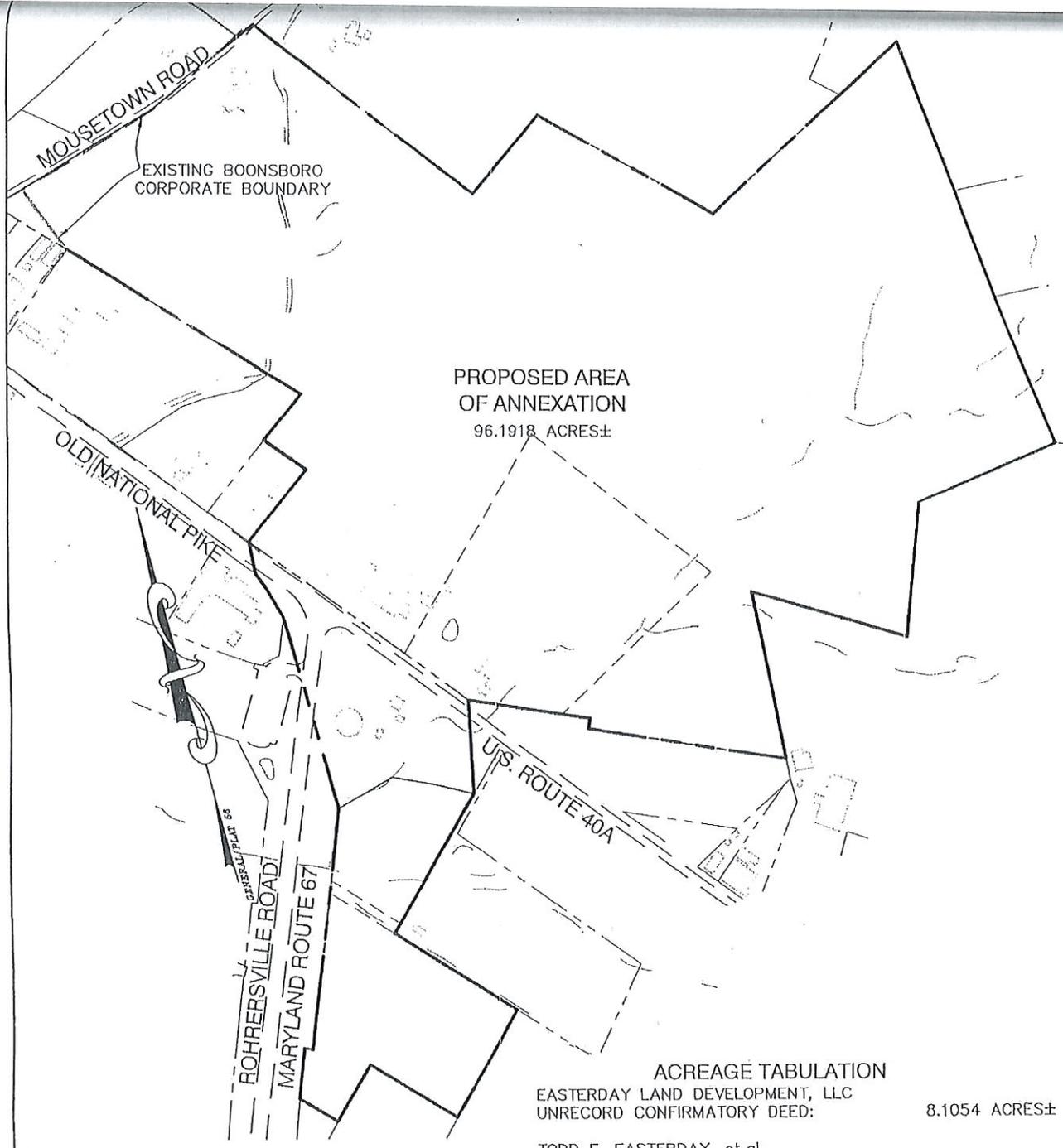

~~Gene W. Smith~~
Kevin M. Hoffmann


William L. Tritapoe
MERVIN F. NUICE

INTRODUCED: August 2, 2004

ENACTED: December 28, 2006

EFFECTIVE: February 12, 2007



PROPOSED AREA
OF ANNEXATION
96.1918 ACRES±

ACREAGE TABULATION

EASTERDAY LAND DEVELOPMENT, LLC UNRECORD CONFIRMATORY DEED:	8.1054 ACRES±
TODD E. EASTERDAY, et.al. LIBER 2264, FOLIO 245:	83.0202 ACRES±
STATE ROADS COMMISSION RIGHT OF WAY:	5.0662 ACRES±
TOTAL AREA OF ANNEXATION:	96.1918 ACRES±

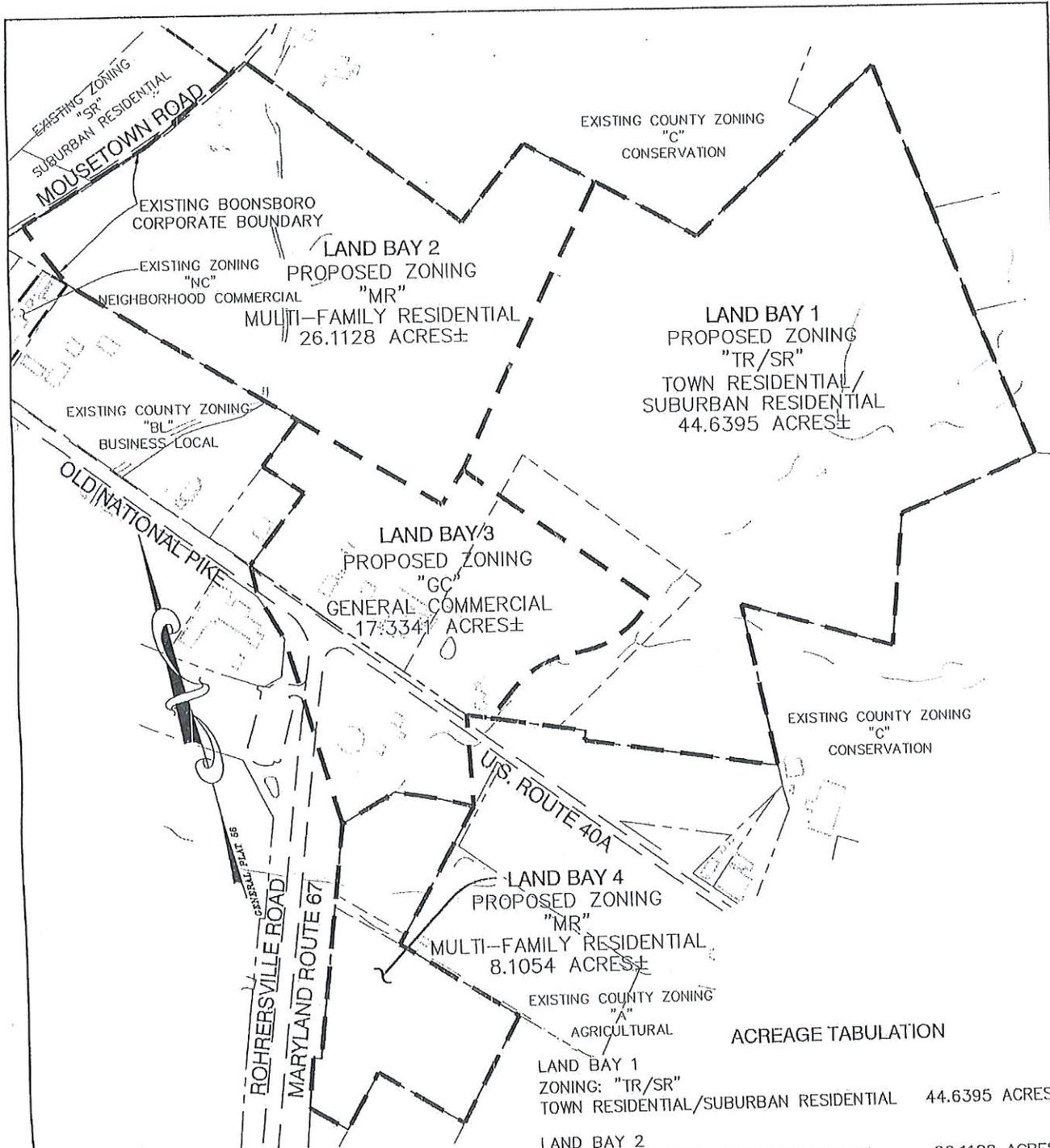
PLAT OF PROPOSED ANNEXATION
OF THE LANDS OF
**TODD E. EASTERDAY, MICHAEL D. EASTERDAY, JACOB
EASTERDAY, AND JEANETTE EASTERDAY**
AND
EASTERDAY LAND DEVELOPMENT, LLC
SITUATED ALONG THE U.S. ROUTE 40A (OLD NATIONAL PIKE) AT IT'S
INTERSECTION WITH MARYLAND ROUTE 67 (ROHRERSVILLE ROAD)
WASHINGTON COUNTY, MD

DRAWN BY:
RBB
CHECKED BY:

GERALD A. CUMP & ASSOCIATES, INC.
SURVEYORS & ENGINEERS

121 East Baltimore Street

ELECT. DIST: 06
TAX MAP: 73
DATE:



ACREAGE TABULATION

LAND BAY 1 ZONING: "TR/SR" TOWN RESIDENTIAL/SUBURBAN RESIDENTIAL	44.6395 ACRES±
LAND BAY 2 ZONING: "MR" MULTI-FAMILY RESIDENTIAL	26.1128 ACRES±
LAND BAY 3 ZONING: "GC" GENERAL COMMERCIAL	17.3341 ACRES±
LAND BAY 4 ZONING: "MR" MULTI-FAMILY RESIDENTIAL	8.1054 ACRES±
TOTAL:	96.1918 ACRES±

PLAT OF PROPOSED ZONING
OF THE LANDS OF
**TODD E. EASTERDAY, MICHAEL D. EASTERDAY, JACOB
EASTERDAY, AND JEANETTE EASTERDAY**
AND
EASTERDAY LAND DEVELOPMENT, LLC

SITUATED ALONG THE U.S. ROUTE 40A (OLD NATIONAL PIKE) AT IT'S
INTERSECTION WITH MARYLAND ROUTE 67 (ROHRERSVILLE ROAD)
WASHINGTON COUNTY, MD

DRAWN BY:

ELECT. DIST:

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, made as of this 28th day of December, 2006, by and between THE MAYOR AND COUNCIL OF BOONSBORO, a municipal corporation (the "Town") and Easterday Land Development, LLC, a Maryland limited liability company, Jacob E. Easterday, Jeanette Easterday, Todd Easterday, and Michael Easterday (collectively, the "Petitioner")

W I T N E S S E T H:

WHEREAS, Petitioner has petitioned the Mayor and Council of the Town to annex certain land (the "Property") into the corporate limits of the Town; and

WHEREAS, a resolution (the "Annexation Resolution") was duly introduced in response to the petition, and a public hearing was conducted by the Town in accordance with Md. Ann. Code, Article 23A, §19; and

WHEREAS, the Town has determined to enact the Annexation Resolution and to annex the property upon the terms and conditions set forth in the Resolution and in this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto, for themselves, their successors and assigns, intending to be legally bound, under seal, agree as follows:

1. Representations of Petitioner. The Petitioner holds legal and equitable title to the Property in fee simple.
2. Effective Date. This Agreement shall take effect upon the effective date of the Annexation Resolution.
3. Zoning and Land Use. In order to reduce school overcrowding, preserve public health, safety and welfare, reduce traffic congestion, and to reserve sufficient utility capacity to meet other annexation and development objectives of the Town, including the allocation of utility capacity to facilitate the earliest possible dedication, design and construction of Warrior Boulevard, the Town, by the action of its Mayor and Council (the "Mayor and Council") by duly enacted by resolution in accordance with the customary procedures of the Town, shall have the unconditional right under this Agreement or any amendment to this Agreement, to limit the uses and densities of development

of the Property, in accordance with the authority conferred upon the Town under Md. Ann. Code, Art. 66B, §4.01(c)(2). Such authority to limit uses and densities shall include, but not be limited to, the right on the part of the Town to require any residential development of the Property to follow a phasing schedule established by the Mayor and Council. The requirements of this paragraph shall be in addition to and not in substitution of any condition imposed on development by the Boonsboro Planning Commission.

The Petitioner shall be permitted to develop the portion of the Property to be zoned GC General Commercial, along the north side of Alternate Route 40, comprising 17.3341 acres, more or less (the "Commercial Parcel"), in accordance with the usual requirements of the land use and other ordinances of the Town, as the same may be amended from time to time.

The remaining portion of the Property, excluding the Commercial Parcel, shall not be developed, nor shall any site plan, subdivision plat or other development application be submitted to the Town by the Petitioner, except as permitted by amendment to this Annexation Agreement. The Petitioner shall not commence or submit any proposal for residential development of the property to any board, commission, representative or agency of the Town for residential development of the Property or any part thereof until permission to submit such proposal shall have been granted to the Petitioner by resolution of the Mayor and Council, which permission may be withheld or conditioned in the absolute, sole, subjective discretion of the Mayor and Council. The Petitioner in his absolute, unconditional and sole discretion may de-annex the Property, or any part thereof, in the event a moratorium is imposed on the Property or any amendment to this Annexation Agreement is found to be unacceptable to Petitioner, in his sole discretion.

4. Utilities. It is the intention of the Mayor and Council to reasonably, fairly and equitably apportion the available water and sewer capacity of the Town among the owners or developers of several parcels of land being annexed into the Town, after reserving to the Town such water and sewer capacity as the Town may determine to be appropriate to provide for in-fill development and other utility needs and purposes of the public or the Town. It is intended and acknowledged by the parties to this Agreement that the density of permitted development of the Property shall be restricted by the availability of public utility capacity.

As a condition of the provision of utility service for any development of the Property, the Petitioner may be required to enter into an amendment to this Agreement providing for a monetary contribution, which may be in the form of a utility tap fee purchase commitment or otherwise, to provide for the cost of design and construction of a municipal wastewater treatment plant, and for improvements to the water and sewerage distribution systems of the Town, and for such other purposes as the Mayor and Council may determine. Unless otherwise determined by the Mayor and Council, no development of the Property shall occur until the completion of the proposed wastewater treatment plant, and until the amendment of this Agreement to provide for the allocation of utility capacity and the manner of funding, debt service and construction of the proposed wastewater treatment plant and other utility facilities needed for development of the Property.

Petitioner shall reimburse the Middletown Valley Bank ("the Bank") for Petitioner's proportionate benefit of utility extension expenses incurred by the Bank, as determined by the Mayor and Council, for the extension of utilities which may serve both the Bank and the Property of the Petitioner.

The Petitioner shall bear the cost and expense of extending municipal utility services to the Property, which shall be accomplished in accordance with the applicable policies and requirements of BMUC.

5. Warrior Boulevard Extension. The Petitioner hereby agrees not to commence development on the residential portion of the Property until traffic studies have been completed by the Petitioner that are acceptable to the Mayor and Council for development. The Petitioner may be required, in an amendment to this Agreement, to make a monetary contribution toward the construction of Warrior Boulevard. The Petitioner shall provide, at its expense, such traffic studies with respect to the development of any portion of the Property as may be requested from time to time by the Mayor and Council or the Boonsboro Planning Commission.

6. Public Education. The Petitioner shall not commence residential development, other than development limited to senior housing in compliance with the provisions of the Fair Housing Amendments Act of 1988, as amended from time to time, until the Mayor and Council shall determine that schools serving the property are adequate, or programmed to be adequate, to serve the development proposed. The Petitioner may be required

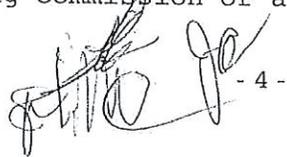
to contribute to the cost of public school facilities as a condition of development approval by the Mayor and Council, which shall be established by amendment to this Agreement.

7. Moratorium, etc. The Town reserves the absolute right to impose a moratorium on the development of the Property, in the reasonable discretion of the Town. In order to ensure concurrency of development and infrastructure, or for the purpose of providing an incentive to the Petitioner to comply with the provisions of this Agreement, the Town may, in its discretion, suspend or delay the issuance of building permits with respect to the construction of residential or other improvements on the Property. In addition to any other remedy for the breach of any obligation under this Agreement, the Town, upon resolution of the Mayor and Council, may issue a stop work order with respect to any aspect of the development of the Property, and the Petitioner shall promptly comply therewith.

8. Costs and Expenses. Petitioner shall, upon demand, pay or reimburse the Town for its expenses incurred in connection with the annexation of the Property, including but not limited to the expense of publication of notice, surveying and engineering fees, amendment of the zoning map of the Town, and the amendment of the description of the municipal boundary of the Town, together with the reasonable attorney's fees incurred by the Town, including fees incurred by the Town in the annexation, the preparation, negotiation or amendment of this Agreement, and in any action concerning the interpretation or enforcement of this Agreement in which a judgment is not entered against the Town.

9. Engineering, Permitting and Inspection Services. In the event the Town determines to engage outside engineering, permitting or inspection services with regard to any aspect of the development of the Property, the cost of such services shall be borne by the Petitioner, and shall be reimbursable to the Town on demand.

10. Commercial Development. For the purpose of facilitating the development of the Commercial Parcel, the Boonsboro Municipal Utilities Commission ("BMUC") shall allocate to the Petitioner a sufficient number of water and sewer taps, not exceeding Forty-eight (48) EDU's, upon payment of the then prevailing monetary consideration for such taps, as established from time to time by BMUC, final, unappealable approval by the Boonsboro Planning Commission of a site plan for the development


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of the Commercial Parcel, completion of improvements to the intersection of MD Route 67 and Alternate Route 40 as may be required by the State Highway Administration of Maryland or the Mayor and Council, and compliance by the Petitioner with all other applicable requirements for such development. The taps acquired by the Petitioner for commercial development are not assignable or otherwise transferable by the Petitioner without prior approval of the Mayor and Council, and shall expire and be of no further force or effect three (3) years from the time of payment of consideration therefore, if not used prior thereto.

11. Miscellaneous. If any provision of this Agreement, or of any amendment hereto, shall be determined by a final, unappealable order of any court of competent jurisdiction to be invalid or unenforceable, such judicial determination shall not affect the remaining provisions of this Agreement, or of any amendment hereto, which are conclusively deemed and intended by the parties hereto to be severable. The provisions of this Agreement are intended to run with the lands of the Petitioner, and shall be jointly and severally binding and enforceable upon the Petitioner, and the Petitioner's heirs, personal representatives, successors and permitted assigns. This Agreement may be recorded among the Land Records of the Clerk of the Circuit Court for Washington County. Petitioner consents to the jurisdiction and venue of the courts of Maryland sitting in Washington County, and with respect to actions triable of right in Federal court, to the Federal courts sitting in Maryland. No action may be commenced by Petitioner in any other jurisdiction or venue without the prior written consent of the Town. The Petitioner waives the right to trial by jury and all right to consequential damages. No assignment of this Agreement, or of any right or obligation hereunder, shall be permitted or effective unless the same shall have been approved in writing by the Town. This Agreement represents the entire agreement of the parties, and no modification shall be effective unless in writing and executed by or on behalf of all of the parties hereto; except that the approval of parties no longer holding an interest in title to the Property at the time of any such modification shall not be required with respect to any such amendment. In order to preclude any application of the Rule Against Perpetuities, the parties agree that this contract shall expire, unless otherwise previously terminated, on the last day of the time period legally permitted by the Rule Against Perpetuities in the State of Maryland.

12. Authorization. Each of the undersigned signing this Agreement in a representative capacity certifies that the

signatory is duly authorized to execute this Agreement on behalf of the Petitioner as indicated and to bind the Petitioner to the terms hereof.

WITNESS the execution of this Agreement as of the day and year first above written.

WITNESS/ATTEST: THE MAYOR AND COUNCIL OF BOONSBORO

Barbara Rodenhiser
Barbara Rodenhiser, Clerk

By: *C. Kauffman* (SEAL)
Charles F. Kauffman, Jr., Mayor

PETITIONERS:

EASTERDAY LAND DEVELOPMENT, LLC

Tom S. Walker

By: *J. Easterday* (SEAL)
Managing Member

Tom S. Walker

Jacob E. Easterday (SEAL)
Jacob E. Easterday

Tom S. Walker

Jeanette Easterday (SEAL)
Jeanette Easterday

Tom S. Walker

Todd Easterday (SEAL)
Todd Easterday

Tom S. Walker

Michael Easterday (SEAL)
Michael Easterday

THE MAYOR AND COUNCIL OF BOONSBORO

RESOLUTION 2019-06 (DRAFT)

**AUTHORIZING PERMISSION FOR THE PRESERVE AT FOX GAP, LLC TO SUBMIT A
CONCEPT PLAN FOR RESIDENTIAL DEVELOPMENT AT THE EASTERDAY ANNEXATION
PROPERTY**

WHEREAS, The Mayor and Council of Boonsboro is a municipal corporation; and

WHEREAS, Resolution No. 2004-04 enlarged the corporate boundaries of the Town of Boonsboro by adding thereto 96.1918 acres, more or less, owned by Easterday Land Development, LLC et. al.; and

WHEREAS, the Annexation Agreement made as of December 28th, 2006 by and between the Mayor and Council of Boonsboro, a municipal corporation (the “Town”) and Easterday Land Development, LLC, a Maryland limited liability company, Jacob E. Easterday, Jeanette Easterday, Todd Easterday, and Michael Easterday, gave the Town the unconditional right to limit the uses and densities of development of the Property, in accordance with the authority conferred upon the Town under Md. Ann. Code, Art. 66B, Sec.4.01.c.2. at the time the agreement became effective;

NOW THEREFORE, BE IT RESOLVED by the Mayor and Council of Boonsboro that The Preserve at Fox Gap, LLC is hereby authorized to submit a proposal for residential development of the remaining portion of the property referenced by both Resolution No. 2004-04 and the Annexation Agreement between The Mayor and Council of Boonsboro and Easterday Land Development, LLC, a Maryland limited liability company, Jacob E. Easterday, Jeanette Easterday, Todd Easterday, and Michael Easterday (collectively, the “Petitioner”) dated December 28th, 2006.

ATTEST:

Mayor and Council of Boonsboro

Heather Slough, Town Clerk

Howard W. Long, Mayor

[SEAL]

Rickard Byrd, Assistant Mayor

Marilee Kerns, Council Member

Anthony Nally, Council Member

Terri Hollingshead, Council Member

Ricky Weaver, Council Member

Date of Introduction: July 29, 2019

Date of Passage:

Effective Date:

Raymond Hanson, Council Member