

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CENTER HALL * SOUTHERN MARYLAND HIGHER EDUCATION CENTER
44219 AIPIRT ROAD * CALIFORNIA, MARYLAND
Tuesday, December 7, 2004**

Present: Marie Underwood, Chairperson
George Allan Hayden, Vice Chair
Greg Callaway, Member
Ronald C. Delahay, Member
Michael Hewitt, Member
Joseph R. Densford, Attorney for the Board of Appeals
Denis Canavan, Director, Department of Land Use & Growth

Management
Yvonne Chaillet, Planner III, LUGM
Sharon Sharrer, LUGM Recording Secretary

Present as an observer was the Board's second Alternate, David Wayne Miedzinski. A sign-in sheet is on file in the Department of Land Use & Growth Management (LUGM). All participants were sworn in. The Chair called the meeting to order at 6:35 p.m.

PUBLIC HEARING

ZAAP #99-0093 – MCINTOSH SUBDIVISION APPEAL

Pursuant to Section 66.1 of the St. Mary's County Zoning Ordinance, adopted August 1, 1990, appeal of the St. Mary's County Planning Commission's February 28, 2000 decision to approve Section I, Phase I and the phasing plan for McIntosh Subdivision. The property contains 792.836 acres, is zoned Rural Preservation District (RPD), and is located on the west side of McIntosh Road approximately 3,800 feet southeast of MD Route 235 in Hollywood, MD; Tax Map 19, Block 18, parcel 59.

Owner: Robert S. Gollahon
Present: Gorman E. Getty, III, representing Robert Gollahon
Heidi Dudderar, Assistant County Attorney, representing St.
Mary's County
Joseph R. Densford, representing the Board of Appeals

Applicant's Exhibit A-17 Exhibit book with timeline created by Warren L. Parker
Applicant's Exhibit A-18 Curriculum Vitae for Warren L. Parker

At the Board of Appeal's meeting on October 14, 2004, it was decided that the Applicant's case would be heard first, followed by the County's presentation of their case.

Mr. Getty explained that the Board is being asked to take into consideration that a record already exists. There is a complete set of transcripts from the previous hearing, along with a complete copy of the exhibits from that hearing. He explained that he would continue on from the point the previous hearing left off. He presented a memorandum prepared on behalf of Mr. Gollahon which, he explained, sets forth a procedural history including a description of the prior proceedings and a synopsis of the legal standards.

Ms. Dudderar objected to the memorandum. She said that she believed that the agreement in October was that only excerpted parts of the record would be prepared and presented to the Board, not a legal argument. Mr. Getty explained that the memorandum is not intended to be a legal argument. Ms. Dudderar responded that she would withdraw her objection as long as she has the opportunity to provide her argument and conclusion in a memorandum to the Board prior to the time that the Board makes a decision on the case.

Mr. Getty presented Exhibit A-17, an exhibit book with a timeline prepared by Mr. Parker. Ms. Dudderar objected based on the ambiguity during the last hearing regarding exhibits being marked as exhibits, and exhibits being accepted into evidence. She said that she had only received a copy of this exhibit earlier in the day and had not had the opportunity to thoroughly examine it. Mr. Getty responded that he had received only an oral report from the County, with no report from Mr. Lewallen; and that there is no discovery in these processes. The Chairman said that the only alternatives would be to continue the hearing until December 8, 2004 to allow Ms. Dudderar the opportunity to examine the exhibit, or to move on with the hearing. Ms. Dudderar said that she would just lodge the objection and they could move on.

Warren L. Parker, who provides consulting services on explosive matters in both criminal and civil matters, testified as an expert witness for the Applicant. He explained that he provides reviews and analysis of explosive incidents and accidents, as well as safety surveys of explosives manufacturing plants. Mr. Parker said that he attended the Army Ammunition Officers Course at Aberdeen Proving Ground, Maryland in 1954; and further training in military explosives, munitions, chemical, biological, and nuclear weapons at the Explosive Ordnance Disposal and Nuclear Weapons Disposal courses at the U.S. Naval School located in Indian Head, Maryland. He retired from the Army in 1973, and retired from ATF in 1995. Mr. Parker's resume was provided by Mr. Getty as Applicant's Exhibit A-18.

Mr. Parker said that he had reviewed records from all previous proceedings involving the proposed McIntosh Subdivision, including the minutes from the previous hearing, and had also visited the site. He said that he created a timeline using these records, as well as articles from local newspapers, to organize all of the records and to help put everything into perspective. This information was provided by Mr. Getty as Applicant's Exhibit A-17.

Mr. Parker gave an overview of the history of the site, regarding to the manufacture and remediation of explosives. He explained that the facility was actively used for the production of munitions from late in 1953 through December of 1956, when all activities ceased. Thiokol acquired the property in 1958, as part of a larger acquisition. When Thiokol thought to market the property in 1966-1967 as a housing development, a former employee was concerned enough about the proposal to come forward. Thiokol sent representatives to interview this former employee, and was concerned about the information they received and decided to have the contamination problem assessed.

Mr. Parker explained that Thiokol developed a management plan for remediation in 1991. They contacted the County Administrator, the St. Mary's County Health Department, and MDE regarding their plans to locate and remediate buried explosives in 1992. A geophysical survey was done by Geophex, Ltd. to determine the extent of the explosive contamination on the site. Mr. Parker explained that this survey covered the entire site and found anomalies relating to ordnances only at the old plant site and test track area. Thiokol hired Human Factors Applications, Inc. (HFA), an explosives contractor, to provide support in their clearance of trash and other old building debris from the site so that further geophysical surveys could be accomplished. The results of these surveys were compared to aerial photos from 1957, which were taken during the time that munitions were being manufactured on the property. Thiokol brought in three former employees and conducted both joint and separate interviews regarding actions which were taken during the time period when munitions were being manufactured and tested at the site. All of this information was used to determine that there were 26 sites, which were all located within the area of the old production and test facilities, which warranted further investigation.

Mr. Parker testified that, during the course of his work with ATF, he had visited the site at Thiokol's request. During that site visit, he went over the plans and procedures to clean up the site, and looked at what had been uncovered at that time. He provided Thiokol and the State Fire Marshal with copies of the EPA rule regarding emergency destruction operations for explosives

being recovered. Mr. Parker explained that, at the time of his visit to the site, HFA was conducting lane searches. They had established grid patterns throughout the site, making sure that they covered every part of the grid. Every time they got a response from their equipment, they placed a flag and continued until they had the entire area flagged.

Mr. Parker said that the State of Maryland provided authority to HFA and Thiokol to make disposal of those explosives which were recovered. There were technical problems with the incinerators developed by Thiokol for the disposal of ordnance. The State of Maryland, through MDE, established a timeframe for HFA to dispose of ordnance that had been recovered. Thiokol was cautioned not to accumulate any more materials than could be disposed of in the timeframe for the emergency permit. There was already considerable accumulation by the time this request was made. HFA was still finding ordnance materials when the permit was issued. Mr. Parker explained that EPA told them to stop all recoveries. This left holes in final report from HFA.

Mr. Parker explained that in November of 1998 MDE determined that all of the work under the permit had been completed. This ended HFA's involvement in the site. HFA had spent more than two years, and about 40,000 man hours, on the site. They recovered 1,360 pounds (gross) of explosive laden items. The reports show 300 pounds as the net explosive weight recovered. MDE, reviewing HFA's final report in 1999, noted that some sites were left in an uncompleted state. They contacted HFA and conducted interviews, determining that there were 7 sites which had not been completed. At this time, Mr. Gollohan was told that he shouldn't permit entry to the site until additional remediation was completed.

In August of 1999, Apex Environmental, Inc. prepared a work plan to accomplish the cleanup effort. MDE provided specific comments on what they would like to see added to the work plan for the explosive clearance operations to ensure that the work was completed adequately. The office of the State Fire Marshal sent a letter with a list of comments of things that he wanted to have included in the work plan. Apex prepared changes in the proposed work plan based on these comments. In September of 1999, the St. Mary's County Health Department was notified that activities to clean up the property had commenced. In October of 1999, the State Fire Marshal approved the work plan.

Mr. Parker said that a survey instrument, effective to a depth of 20 feet into the earth, was used to find anomalies. Grids were laid out to plot any anomalies. Mr. Parker explained that once the site surveys produced an anomaly, then a more detailed survey was done with a hand-held instrument. In some cases, one foot of soil was removed and sifted with mechanical sifter. Then the site would have been surveyed again to determine if there were any remaining anomalies. He said that these steps would have been repeated until there were no further indications that there were any explosive ordnance items in that location.

Mr. Parker explained that Mr. Gollohan received a letter from MDE stating that MDE has no basis for imposing restrictions on the property, and that the responsibility for removal of ordnance related items from the property had been delegated to the State Fire Marshal's office.

Mr. Getty asked Mr. Parker about the sensitivity of the ordnance materials recovered. Mr. Parker explained that none of items tested were sensitive to hammer fall tests. In burn tests, where ordnance items were placed in a pipe and then the pipe was placed in a fire, none of the items tested reacted strongly enough to cause the pipe to break. Some items did experience a reaction within the pipe. Based on those test results, the items were allowed to be shipped as reactive waste rather than as explosives.

Mr. Getty asked Mr. Parker why ATF didn't become actively involved in this site during the early 1990's, when he was initially contacted by Thiokol. Mr. Parker responded that, while Thiokol would have loved to have ATF involved as a moderator, ATF had no jurisdiction since the explosives were never going to enter into commerce. He explained that the State Fire Marshal has a set of regulations which is more stringent, in some aspects, than the federal regulations.

Mr. Parker explained that Mr. Getty had contacted him and asked that he to take a look at everything he could find out about the property and organize it in such a manner so that he could make an assessment of what had happened, the effectiveness of what had happened, and any remaining impediments to this property being developed for residential use. Mr. Parker said that he had heard argument, in the transcripts, to the fact that the site was polluted; a walking nightmare, in fact. He explained that the records do not reflect activity on the property other than ordnance recovery over the years. The site was not a dumping ground for explosives. The items found on property belonged there. There was no evidence that people introduced anything that didn't belong there. He said that there had been some problems. Mr. Parker said that some of these problems were taken care of in an unethical, and today unlawful, way. But, he explained, in those days the laws were different, and the problems were different.

Mr. Parker said that he feels that the actions by HFA, had they been allowed to proceed logically, would have resulted in cleanup. He said that the efforts by UXB just put the icing on the cake. He believes that there may be a detonator or two running around there somewhere, but that it's not very dangerous. He said it is more likely that a kid would injure himself stepping on a rusty nail, in the construction material from building the homes, than from a detonator. Mr. Parker said that the explosive violence of a detonator is similar to a ladyfinger firecracker, which can be purchased at a roadside stand in Virginia or North Carolina, or a bottle rocket, which has a slightly larger charge. Based on the tests conducted by UXB the detonators would most likely produce a flash about equivalent to a common match. He said that, after the burial of these materials and the exposure to the elements, they probably are insensitive, and that is why they didn't react to the hammer fall test. Mr. Parker explained that he was taught that explosives are assumed to be in their most dangerous state at all times, and to take every precaution, until you know differently. He said he has had the ability to look at every aspect of the sensitivity of these items during his research.

Mr. Parker said that he feels that the remediation efforts of Thiokol showed a very good management plan, at least as good as the best required by DOD, with efforts to keep the community involved. Letters were sent to County Commissioners' office, to the State Fire Marshal, MDE, and the St. Mary's County Health Department reporting every step of the way, and responding every time in a positive manner. He explained that he felt that HFA, UXB, and Apex recovered as many of the explosive materials as could possibly have been recovered. None of the site surveys expressed any concerns for explosives outside of the actual manufacturing and testing areas. Geophex did a survey in 1992 using one set of instrumentation. Apex duplicated that survey in 1999, using another type of instrumentation. Neither survey found any ordnance outside of those areas identified by the former employees.

Mr. Parker said that he feels that the historic restrictions which were placed on the property because of the contamination now have no need to exist. He feels that the deed restricted area could now have unrestricted use. He said that he concurred with Mr. Sease opinion that the property was safe for residential development. Mr. Parker said that although there could be several detonators remaining on the property, he feels that this is not a hazard that could get someone hurt. His comparison of all of the information available has made him confident that the site has been remediated. He explained that there is no report of injury or exposure to explosives during any of the operations on the property including logging, reforestation, perc tests, and hunting activities.

Mr. Parker concluded that the only explosives ever found were found in the manufacturing and test site areas. Commercial dynamite was not found on the property. Only military dynamite, which deteriorates differently and is made to be combat safe and insensitive to bullet impact, was found. He said that there appeared to be a misunderstanding of what the site was really all about with Mr. Lewallen's findings. Mr. Parker said that the emphasis seemed to go to the sensationalism of finding rocket motors and inert HEAT rounds. Mr. Parker said that it appeared that Mr. Lewallen didn't understand the relationships of the manufacturing test site, and

the materials it took to make the plant site go round. Mr. Parker feels that inappropriate emphasis was placed on the dangers of things that weren't really dangerous at all. He said that there would have been absolutely no value in using this site to test live rounds. Mr. Parker explained that there is no evidence that live rounds were ever fired on that site. He said that there was no explosion without a permit. Mr. Parker said that the site is as safe as it will ever be, and what is there is not ever going to be a problem. He said that he feels that the entire site is safe for residential development.

Ms. Dudderar asked Mr. Parker if he was an expert on geophysical technology. Mr. Parker responded that he is not an expert in this area. Ms. Dudderar asked if he had testified that one or more of the surveying devices used would have been able to detect ordnance buried up to 80 feet deep. Mr. Parker said yes, that was correct. Ms. Dudderar asked if this would include unexploded ordnance the size of a ¼ inch detonator. Mr. Parker said that the surveying devices would not be able to detect a single detonator buried 80 feet deep. Ms. Dudderar asked if he could tell her at what depth a single ¼ inch detonator could be found by this equipment. Mr. Parker responded that he didn't have any idea. Ms. Dudderar asked about the 20 foot spacing patterns used with the magnetometer. Mr. Parker responded that the surveys done with 20 foot spacing would have covered the entire area, using overlapping coverage, somewhat like an x-ray or an MRI uses.

Ms. Dudderar asked why only 10 of the 26 sites had certifications of clearance. Mr. Parker responded that HFA did not do a site certification, as UXB did, and that it is not a requirement. He explained that the site certification was something UXB did as a superior service.

Ms. Dudderar mentioned a letter from one Thiokol employee to another, from 1967, which discusses that the condition of the containers is unknown. The letter states that "pushing a shovel through a rusted out can into several hundred thousand detonators would probably be all she wrote for the shoveler." She asked if Mr. Parker had read the letter. Mr. Parker responded that he did read that letter. Ms. Dudderar explained that the letter said that there were supposed to be five 5-gallon buckets of detonators buried at the site. The letter estimated that there were several million detonators, and said that popping one at a time is still the proper, and only sure, way of disposing of them. She asked if it would still be his opinion that the likelihood of danger is negligible. Mr. Parker said that he had used that document, and the paragraphs cited, to compare with where things were being found by both HFA and UXB. He said that finding a barrel or can of the detonators was no problem. Both HFA and UXB reported finding them buried down to four feet. He said that this coincides with the depth at which they were told that items were being buried. Mr. Parker said that the fact that the information matched up proves that it is a factual document.

Ms. Dudderar asked how many detonators were found. Mr. Parker said that more than a million detonators were found. Ms. Dudderar said that Mr. Parker had testified that the warheads which were found were filled with wax. She asked him to look at an exhibit which shows that one was filled with high explosive, one was plaster filled, and one half was high explosive. Mr. Parker said that the warheads had no testing mechanism and he believes, in that case, it was assumed that they was high explosive, since they weren't sure.

Ms. Dudderar showed Mr. Parker a letter from March of 1993. The letter, from Mr. Parker's supervisor at ATF, expressed concern that these explosives would create a public safety hazard until they were recovered and destroyed. Ms. Dudderar asked if unrecovered or undestroyed items would create a safety hazard. Mr. Parker responded that they certainly would, but that the letter was talking about 5-gallon buckets and ammunition cans containing detonators buried throughout the property on numerous sites. She said that the letter continued that the deterioration that is observable on the detonators is as a result of their being buried for nearly 40 years, making their safety for transportation or storage extremely questionable. She asked if Mr. Parker was saying that they were questionable for safe transportation or storage but not

questionable as a public safety concern on the property. Mr. Parker said that what he was concerned about when he wrote letter, and when he visited the site while working for ATF, was that they had already accumulated numerous plastic buckets filled to brimming with detonators and any time large quantities of explosives are assembled, whose condition is unknown, you assume that the explosives are hazardous and you deal with them safely.

The Chairman explained that the hearing would be continued on December 8, 2004.

ORDERS APPROVED

The Board authorized the Chairman to review and sign the orders. The Chair reviewed and approved as submitted the following Orders:

CUAP #04-2116 – Tsirigotis
VAAP #04-1653 – Lanedon Subdivision, Lot 21
VAAP #04-1652 – Lanedon Subdivision, Lot 22
VAAP #04-0213 – Golden Beach Subdivision
VAAP #03-120-042 – Pegg Run Townehomes
CUAP #04-131-008 – Kronlund Pit #1
CUAP #00-130-022 – Seventh District Volunteer Rescue Squad

ELECTION OF OFFICERS

The Chairman explained that the election of officers could not take place in December, as previously discussed. Due to the requirements of the By-Laws, the election of officers will take place at the Board of Appeal's January meeting.

ADJOURNMENT

The meeting was adjourned at 10:06 p.m.

Sharon J. Sharrer
Recording Secretary

Approved in open session: January 13,
2005

George Allan Hayden
Vice Chair