

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
for**

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CU CASE NO. CU 21-06 and BOA CASE NO: A-6693

APPLICATION OF REFLECTION LIFE, INC.

ORDER DENYING MOTION TO RE-OPEN THE PUBLIC HEARING

A public hearing in the above case was held on July 30, 2021. Testimony at the public hearing raised concerns about the impact of necroleachate on groundwater and the Rocky Gorge Reservoir, which supplies drinking water to portions of Montgomery and Prince George's County. *See, e.g.*, T. 11-39. The Hearing Examiner initially closed the record of the public hearing on August 9, 2021. T. 202.

Due to the importance of the issue raised, the Hearing Examiner reopened the record on August 10, 2021, to permit an analysis and recommendation from the Montgomery County Department of Environmental Protection (MCDEP) on the environmental impact of necroleachate. Exhibit 55. MCDEP timely responded to the referral on August 30, 2021, and parties submitted comments on MCDEP's analysis. Exhibits 66, 67, 74. The record closed again on September 10, 2021. Exhibit 66.

Subsequently, the Office of Zoning and Administrative Hearings (OZAH) received correspondence from Dr. Linda Smoling Moore asking whether she could file a request to reopen the record. The Hearing Examiner replied in the affirmative and Dr. Moore filed her request on September 24, 2021. Exhibit 71.

Arguments of the Parties

In support of her request, Dr. Moore states that notice of the public hearing was defective for the following reasons (Exhibit 71):

1. Defective Notice

- a. Downstream homes served by Well Water that will be impacted by RP were not notified of the 12/15/2020 prefiling meeting (pp. 58-61, MCPB Item #6, 7.8.21):
 - i. Dr. Ramani B. Reddy, MD, Infectious Disease Specialist, 1000 Parrs Ridge Dr., owns property less than 1000 ft from the rear corner of the applicant's property. A stream from the applicant's property runs through Dr. Reddy's property; she is on well water. Dr. Reddy was never notified of CU #21-06

until recently contacted by concerned area residents. Dr. Reddy has significant concerns regarding the proposal.

- ii. With the exception of 98 year old Milton Weilder, none of the 92 downstream homes served by well water on Parrs Ridge Dr., Oak Hill Ln., Avoca Ln., Brodgen Rd., Batson Rd., Oursler Rd., or Link Rd. received notification.
 - iii. Dr. Reddy is the only resident of the 91 non-contacted residents with whom we have communicated, however we believe there are likely more who have concerns;
- b. Incorrect addresses and addressees were found on the 12/15/2020 prefilng meeting mailing list creating a false impression of communal support:
- i. "Remembrance Park Pre-Filing Community Meeting Notice List" on the surface appears comprehensive, but a majority of listed contacts I sampled were defective, outdated and/or listed incorrect addresses or addressee (e.g., Montgomery Preservation, Inc, Sandy Spring Ashton Rural Preservation Consortium, Sandy Springs Ashton Rural Preservation Association, Hampshire Greens HOA, etc.). Organizations I have spoken with report they did not receive notification.
 - ii. The first one brought to my attention was for the HG HOA, my resident community.
 - iii. Hampshire Greens Homeowners Association:
 - Notification letter sent to the wrong city and zip code and never delivered – Silver Spring, MD 20905 vs. Ashton, MD 20861.
 - The addressee, Mr. Steve Szot, has not been on the HOA Board for over 14 years.
 - Notification letter sent to the HG management company, IKO, was addressed to a person who left that company several years ago.
 - Special circumstance for HG: Mr. Ron Nesbitt contact Elsabet Tsfaye at Montgomery County Planning 1.6.2021 by email regarding the lack of notification (pp. 70-71; MCPB Item #g, 7.8.21). Although the applicant held a Zoom presentation for the HG HOA Board, board members have told me there were many unanswered questions. Mr. Nesbitt, who was tasked with follow-up for the HG HOA Board, was diagnosed with Pancreatic Cancer approximately mid-May and died July 29. The person he tasked with additional follow-up reported to me that no response was received from both phone and email attempts made to the contact person(s) provided by Mr. Nesbitt to obtain follow up information and seek answers to questions. HG residents were not informed of the situation.

- c. Insufficient time notification before the 12/15/2020 prefiling meeting creating a false impression of communal support:
 - i. A mailing date for the Notice of December 15, 2020, Pre-Filing Community Meeting was not provided. This is especially relevant as the meeting was held in the middle of the holiday season when many people have numerous events previously scheduled.
- d. Deficiencies with notification to environmental groups and the general public creating a false impression of environmental and public support:
 - i. Environmental groups historically have received email notification of planning applications with a potential environmental impact. None was received for CU#21-06. The Patuxent Watershed Protective Association (PWPA) and other environmentalists only became aware of this application by serendipitously hearing it mentioned on a news broadcast—approximately two weeks before the public hearing and the last day to register to present testimony at the hearing. Thus, although the applicants and their numerous experts had more than 6 months to prepare testimony, the only opposing witness had only 3 hours to prepare and submit a summary statement of his testimony and register to testify. This problem may have resulted from an oversight when changes to the Special Exception application process became a Conditional Use application. In my view this is evidence of grounds of deficient notification and cause to reopen the hearing.
- e. Deficiencies with public signs to notify public of the hearing creating a false impression of public support:
 - i. The applicants did post a sign on the property. However, it was during COVID restrictions, and most residents were not traveling. Further, downstream homeowners on well water would typically not turn north on New Hampshire and have the opportunity to pass the sign, but instead turn south. The great majority of Hampshire Greens residents would not see the sign either as they enter and leave Hampshire Greens from the Norbeck Road entrance, the Ednor Road entrance or approach or turn south when using the New Hampshire entrance.

Dr. Moore goes on to argue that the record of the public hearing did not fully address all the potential environmental impacts of necroleachate on the groundwater and green burials in general. She asserts these include the spread of antibiotic-resistant bacteria, carrion risks given the proposed burial depth, and a study conducted by the World Health Organization finding that rapid decomposition of bodies caused more groundwater pollution than traditional burial methods. Dr. Moore also believes that the hearing should be re-opened to consider the impact on property values of those living nearby, vagueness regarding reforestation plans, and many other issues.

Exhibit 74.¹

The Applicant responds by listing the outreach it performed to let groups and property owners know of the application. Exhibit 73. This includes meetings and notice required for the Applicant's subdivision and conditional use application. As required by the subdivision regulations, it held a pre-submission meeting with the Hampshire Greens Homeowners Association on November 19, 2020. The minutes of the meeting (submitted by the Applicant) demonstrate that several of the members of the Association attended. The Applicant's response also contains a photograph of the required sign posted by OZAH with clear visibility from New Hampshire Avenue, and a sign advertising the project for marketing purposes, and states that additional signs (required notice for the Subdivision Regulations) were posted as well.

Decision

The Zoning Ordinance requires two forms of notice for conditional use applications: an application sign posted on every road frontage of the property and a written notice of the public hearing mailed to adjoining and abutting property owners, and community, homeowners, renters and condominium associations within ½ mile of the property, and to any municipality within ½ mile of the site. Zoning Ordinance, §§59.7.5.1. and 59.7.5.2.C. and E. The application signs must be posted on the property within five (5) days after OZAH accepts the application; the written notice of public hearing must be sent at least 30 days before the public hearing. *Id.*

In addition to the statutorily required notice, OZAH's Rules of Procedure call for two additional forms of notice. OZAH must post the completed application and OZAH's hearing schedule on OZAH's website. Rules 2.3 and 2.5, *OZAH'S Amended Land Use Rules of Procedure* (adopted by Council Resolution 18-780 (April 25, 2017) (Rules). OZAH's Rules also specifically instruct applicants to use the Planning Department's records of homeowner's and civic association to ascertain those that fall within ½ mile of the subject property. The same rule directs applicants to use the property records of the Maryland State Department of Assessments and Taxation's records to ascertain the names and addresses of abutting and confronting property owners. Rule 2.4(b).

Courts have refused to graft additional requirements (such as whether individuals in the community would be likely to pass the sign) into statutorily required notice, as this could create arbitrary distinctions as to who would receive notice. *See, Sprenger v. PSC, 400 Md. 1, 32 (2007)* (Courts refused to incorporate non-statutory requirement for personal service of property owners within ½ mile of a project).

With that in mind, the record reflects that all notice required by both the Zoning Ordinance and OZAH's Rules has been given in this case. In addition, those in the vicinity had additional notice of the project as required by the subdivision regulations. The Hampshire Greens Homeowners Association had *actual* notice of the project, regardless of whether they communicated it adequately to their members. Given this, the Hearing Examiner does not find

¹ On September 28, 2021, the Hearing Examiner received a second request to re-open the record of the public hearing from Craig and Leigh Zimmerman. Exhibit 75. The Zimmerman's did not allege that notice was improper, instead voicing their environmental concerns, which echo Dr. Moore's.

that the public hearing should be re-opened.

As to the substantive questions raised by Dr. Moore, MCDEP advised that it reviewed and considered comments she submitted during their review and analysis, again mitigating against re-opening the public hearing.

For these reasons, the Hearing Examiner denies Dr. Moore's request to re-open the public hearing.

So Ordered this 29th day of September, 2021.



Lynn Robeson Hannan
Hearing Examiner

COPIES TO:

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