

RESOLUTION OF THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND

RESOLUTION NO. 15-25
Adopted on November 17, 2015

RE: SUMMER 2015 WATER AND SEWER AMENDMENTS - CASE #WS-15-08
(Beshers Land Company Number Two, LLC)

RECITALS

Pursuant to the authority contained in §9-503 of the Environment Article of the Maryland Code, the governing body of Frederick County, Maryland, has the authority to approve or deny amendments to its county water and sewerage plan after a duly advertised public hearing.

On July 30, 2015, Mr. Eric Beshers (“Applicant”) submitted an application to amend the Frederick County Water and Sewerage Plan (“Plan”) to reclassify 119.02 acres of land (“Beshers Property”) from No Planned Service (NPS) to S-5. This application was designated as Case #WS-15-08.

The Beshers Property is located on the West side of Plantation Road, adjacent to Linganore Creek, and is zoned Agriculture and Natural Resource. The property is not and has not been included in a designated community growth area as far back as the County’s 1972 Comprehensive Plan. Any development of the Beshers Property under its current water and sewerage plan classification and zoning would be through the use of private wells and individual septic systems.

In its application, the Applicant requested a change by using one of the Denied Access Line exceptions found in Section II (E) 7 of Chapter 1 of the Plan, which states:

7. Denied Access Lines

In order to properly regulate development and direct growth to appropriate locations in accordance with the Frederick County Comprehensive Plan, properties designated Agricultural/Rural or Natural Resource and located outside of a Community Growth Area on the County Comprehensive Plan will not be permitted to access lines identified as "Denied Access" on the official Water and Sewerage Plan Map except under one of the following conditions:

- (B) To provide service to properties where a written agreement with the County, executed prior to the creation of the Denied Access designation, obligated the County to permit access to the particular line to provide service to a specific property.

As part of the justification statement, the Applicant relied on a Contract for Water/Sewer Easement dated November 22, 1999 (“Contract”), in which the County agreed to pay \$5,150.00 (the appraised value of the easement), and also agreed to “provide a stub to be placed at a location herein specified by the Grantor as shown on Exhibit B.” In addition, the Contract stated:

This agreement contains all of the terms of the contract between the parties with respect to the obtaining of the necessary easement only and contains no representations as to any other issues relating to the provision of water or sewer service to the property. [Emphasis added].

On November 5, 2015, the County Council of Frederick County, Maryland (“Council”), held a duly advertised public hearing to consider Case #WS-15-08. In its report to the Council, County staff recommended denial of the reclassification, because the Contract obligated the County only to pay \$5,150.00 and to provide a sewer stub. Staff asserted that the terms of the Contract did not obligate the County to provide anything more, including but not limited to, sewer service for development of the Beshers Property. The Applicant argued that the price paid for the easement was below fair market value, and that an agreement to allow future connection was part of the Contract. After the Council heard arguments from the Applicant, staff, and others, it voted (4-3) to approve the requested amendment.

After the November 5, 2015 hearing, Staff uncovered additional documents relating to the the Contract, specifically a copy of the appraisal report prepared just prior to the time the Contract was executed. That appraisal stated the fair market value of the easement was \$5,150.00, and contradicted the Applicant’s argument on that subject.

On November 10, 2015, after having been notified of the newly discovered documents, the

Council voted (5-2) to reconsider Case #WS-15-08 so it could reconsider the matter, including the new evidence found by County staff.

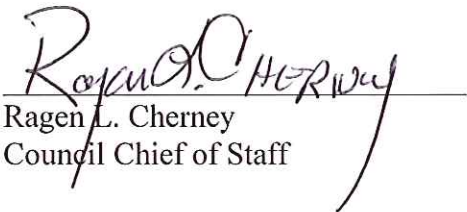
On November 17, 2015, the Council reopened the hearing on Case #WS-15-08, received the additional documentary evidence, and heard further testimony from the Applicant and County Staff. After hearing the additional evidence, the Council then voted (4-3) to deny the requested reclassification.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that Case #WS-15-08 (Beshers Land Company Number Two, LLC) is hereby denied based on the following:

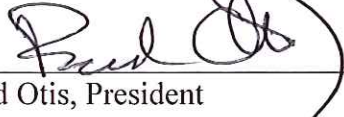
1. The Application did not meet the requirements for an S-5 classification, because the property is located outside the community growth area, and is zoned Agriculture and Resource Conservation.
2. The Application did not satisfy the criteria necessary to access to the Denied Access Line. Under Chapter 1, Article II (E) 7 (B) of the Water and Sewerage Plan, a property may obtain service from a Denied Access Line if a written agreement, executed prior to the creation of the Denied Access designation, obligated the County to permit access to the particular line to provide service to a specific property.
3. The written agreement on which the Applicant relied only obligated the County to pay \$5,150.00 and to provide a sewer stub. The Contract did not obligate the County to provide service for residential development of the Beshers Property.

The undersigned hereby certifies that this Resolution was approved and adopted as of the 17th day of November, 2015.

ATTEST:


Ragen L. Cherney
Council Chief of Staff

COUNTY COUNCIL OF
FREDERICK COUNTY, MARYLAND

By: 
Bud Otis, President

