



FREDERICK COUNTY PLANNING COMMISSION

April 9, 2014

TITLE: Talbot Ridge Farm, Section 3, Lots 4-8

FILE NUMBER: S-1087, AP 12935 (APFO N/A, FRO 12937)

REQUEST: **Agricultural Cluster Concept Plan Approval**
The Applicant is requesting Concept Plan approval for a 5-lot Agricultural Cluster subdivision on a 250.59-acre property.

PROJECT INFORMATION:

ADDRESS/LOCATION: Located on the east side of Talbot Run Road, opposite of Peddicord Road

TAX MAP/PARCEL: Map 71, Parcel 18

COMP. PLAN: Agricultural/Rural

ZONING: Agricultural

PLANNING REGION: New Market

WATER/SEWER: No Planned Service

APPLICANT/REPRESENTATIVES:

APPLICANT: David E. Fleming Family Limited Partnership

OWNER: David E. Fleming Family Limited Partnership

SURVEYOR/ENGINEER: Vanmar Associates, Inc.

ARCHITECT: N/A

ATTORNEY: N/A

STAFF: Mike Wilkins, Principal Planner II

RECOMMENDATION: Conditional Approval

ATTACHMENTS:

EXHIBIT 1- Concept Plan

EXHIBIT 2- Letter dated December 2, 2013 from David Fleming to the Planning Commission

STAFF REPORT

ISSUE

The Applicant is requesting Concept Plan approval for a 5-lot Agricultural Cluster subdivision on a 250.59-acre property.

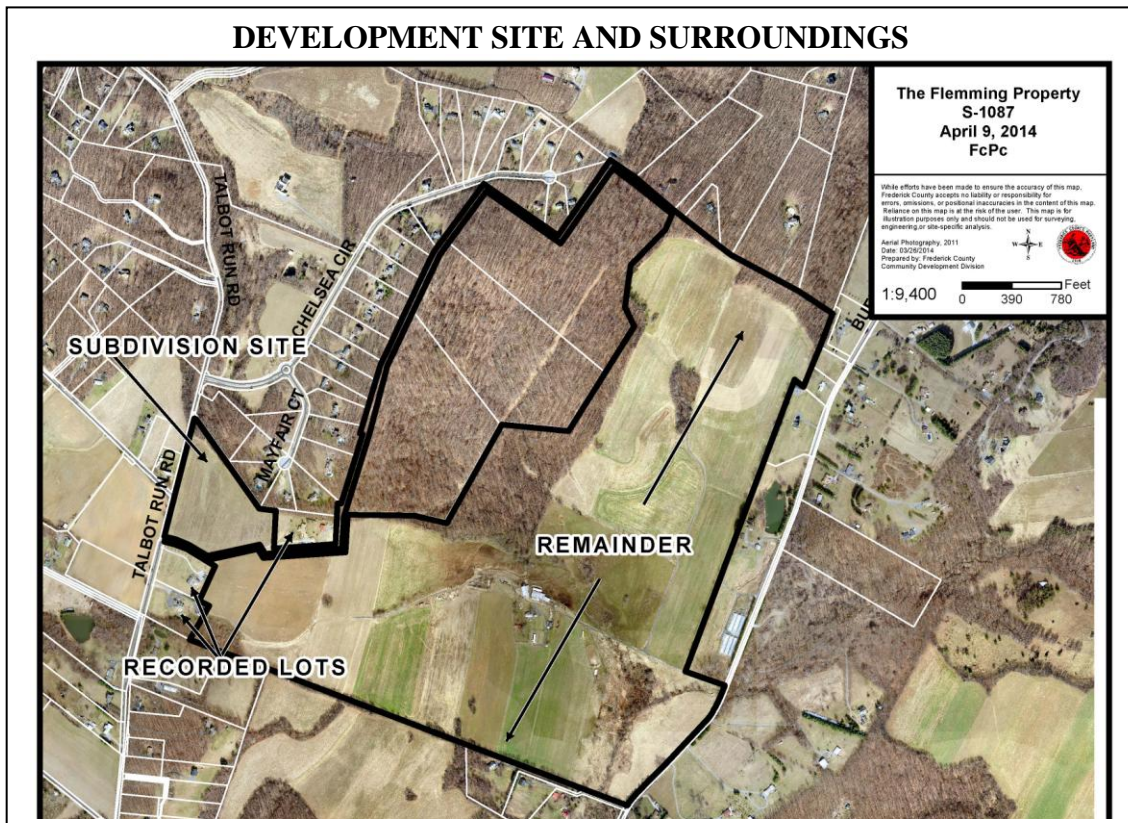
BACKGROUND

The Applicant proposes to utilize the Agricultural Cluster provisions of §1-19-7.300(C) to increase the total lot yield of the property from 3 lots plus a remainder, to 8 lots plus a remainder.

This property has been the subject of several previous subdivision applications:

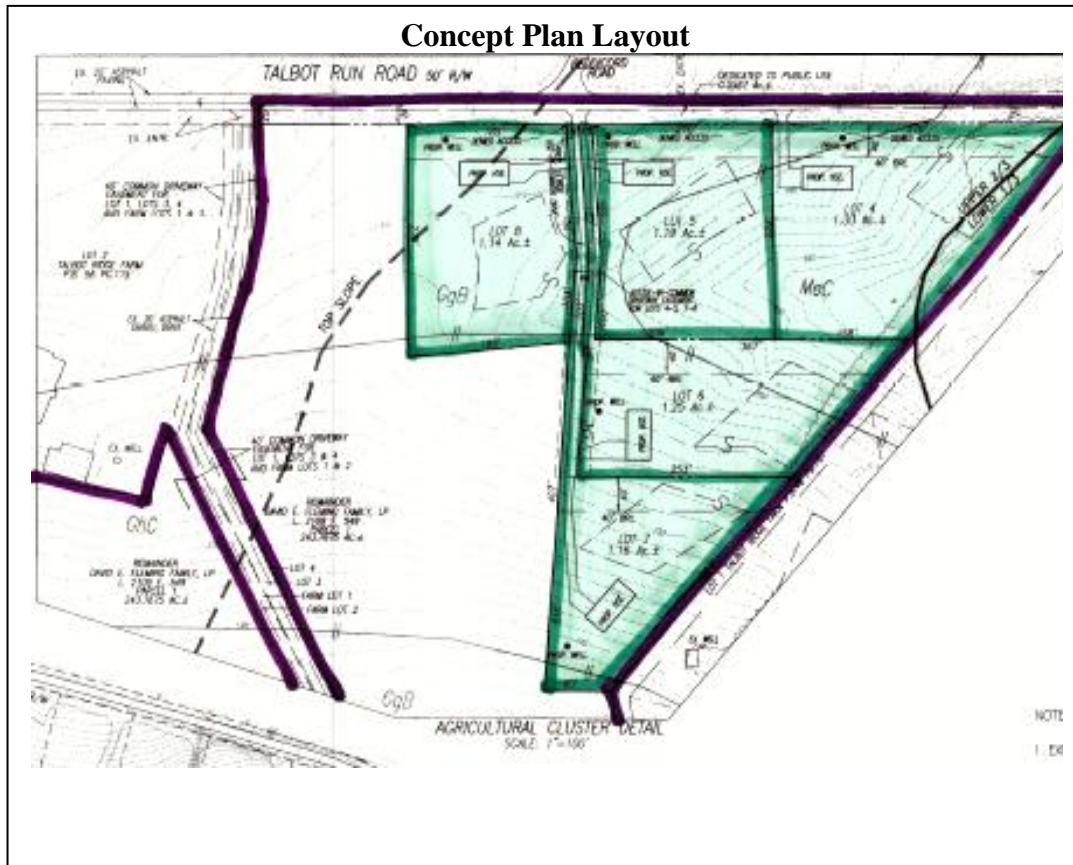
- In 1992, a 3.4714 acre lot was created (Talbot Ridge Farm, Section 1, Lot 1, P.B. 49 P.G. 161).
- In 1995, two lots totaling 6.00 acres were recorded (Talbot Ridge Farm, Section 1, Lots 2 and 3, P.B. 56 P.G. 115).
- In January 1996, an Ag Cluster Concept Plan for the subject parcel and an adjoining parcel was approved by the FcPc for 11 lots.
- In February 1996, the FcPc reviewed a Preliminary Plan application for the 11 lot Ag Cluster and granted approval for percolation testing only. It appears this plan never moved forward due to failure to pass the APFO for school adequacy.

This proposed 5-lot Ag Cluster subdivision will create a total of 8 lots since 1965 and is a major subdivision. However, any major subdivision approval for this project (including approval of a modification to allow panhandles and APFO) will be reviewed during the preliminary plan review process.



Existing Site Characteristics

The property consists of a single parcel containing 250.59. Approximately 209 acres is utilized for farming and 34 acres is forested (including approximately 27 acres preserved under Frederick County FRO easements). The 6.83 acres proposed to be subdivided into lots is currently used for farming.



ANALYSIS

A. ZONING ORDINANCE REQUIREMENTS

1. § 1-19-7.300. AGRICULTURAL DISTRICT.

§1-19-7.300(B): *The minimum lot size for single-family dwellings will be 40,000 square feet...*

§1-19-7.300(C)(2)(c): *Clustering Requirements. Minimum lot size, width and yard areas shall be as specified in the Agricultural District. Lot size shall average not more than 1.5 acres in size with no lots exceeding 2 acres. The Planning Commission shall have the authority to grant modifications to lot sizes based on percolation and other Health Department requirements.*

All of the proposed lots meet the minimum 40,000 sq ft lot size requirement. The proposed minimum lot width (100 feet) and yard areas (40 foot front yard, 30 foot rear yard, and 10 foot side yard) meet Agricultural District requirements in accordance with §1-19-6.100 Design Requirements of the Zoning Ordinance.

The average lot size of the 5 proposed lots is 1.25 acres, and the largest lot is 1.53 acres. However, when incorporating the 3 previously recorded lots, the project fails to meet the maximum and average lot size requirements. The 3 previously recorded lots total 9.47 acres and range between 3.00 acres and 3.47 acres in size, which exceed the maximum 2.00 acre lot size provision. The average size of all 8 lots (3 existing and 5 proposed) is 1.967 acres, which does not meet the mandatory 1.50 acre average lot size.

The code states; *The Planning Commission shall have the authority to grant modifications to lot sizes based on percolation and other Health Department requirements.* The Applicant submitted a justification letter which is attached to this report (Exhibit 2). In this letter the Applicant argues that the last two lots to be recorded from the property (Talbot Ridge Farm, Section 1, Lots 2 and 3, P.B. 56 P.G. 115) are oversized due in part to difficulties encountered during the percolation testing. However, the original application for these two recorded lots (dated January 21, 1993) illustrate that the lots were designed to be situated on 6.355 acres. Percolation test results from the Health Department are dated April 8, 1993, three months after the 3 acre+ lots were proposed. Therefore Staff does not agree that the oversized lots were a result of percolation testing.

Staff notes that in January 1996, the Planning Commission granted approval of an Ag Cluster Concept Plan for 11 lots on the subject parcel and an adjoining parcel. The Staff report for this application notes that the previously recorded lots exceed the maximum 2.00 acre maximum lot size, but the proposed 11 lots were designed not to exceed 1.10 acres in size, which resulted in compliance with the 1.50 acre average lot size requirement (the current application will result in a 1.967 acre average lot size).

Staff recommends that the Planning Commission consider the Ag Cluster regulations in the Zoning Ordinance and the previous subdivision history of this property to determine if the proposed lots meet the purpose, intent, and clustering requirements specified in the code.

§1-19-7.300(C)(1): Clustering: Purpose and intent.

- (a) *To encourage the conservation of farmland in the Agricultural Zoning District by planning the residential development allowed in the zone to provide for the best obtainable siting, access and location of lots on a tract.*
- (b) *To provide for a well-planned development while minimizing the use of prime agricultural land.*

§1-19-7.300(C)(3): Procedures:

- (b) *The Planning Commission will have final approval over the location and layout of the proposed clustering of lots. The Planning Commission shall consider the following when reviewing Concept Plans.*
 - 1. *Soils. The cluster plan should minimize the use of the higher quality soils (class I, II and III as designated in the soils classification study) and maximize the use of steeper sloped areas, areas of poorer soils and areas which are otherwise less productive for agricultural uses.*
 - 2. *Surrounding land use and zoning. The cluster plan shall consider the existing land uses and zoning in the vicinity. Generally, new lots which are adjacent to existing development or residential zoning are preferred to creating an isolated cluster of new houses.*

The proposed five-lot subdivision is situated along Talbot Run Road, adjacent to an existing 32-lot subdivision (Talbot Run Estates). Most of the 250 acre property consists of Class II and III prime agricultural soils (Class II= GhB & GoB, Class III= GgB, GhC, & MeC). Proposed Lots 4, 5, and 8 are within Class II soils, and Lots 6 and 7 are situated within Class III soils. However, the other areas of the property with adequate road frontage for subdivision also consist of Class II and III soils. The proposed lots are situated adjacent to existing development and existing residential zoning, providing for the most

desirable location on the farm for subdivision.

Zoning Ordinance Requirements Findings/Conclusions: The proposed subdivision will meet all Zoning Ordinance requirements if the FcPc grants a modification of lot size and otherwise determines that the design meets the Ag Cluster provisions.

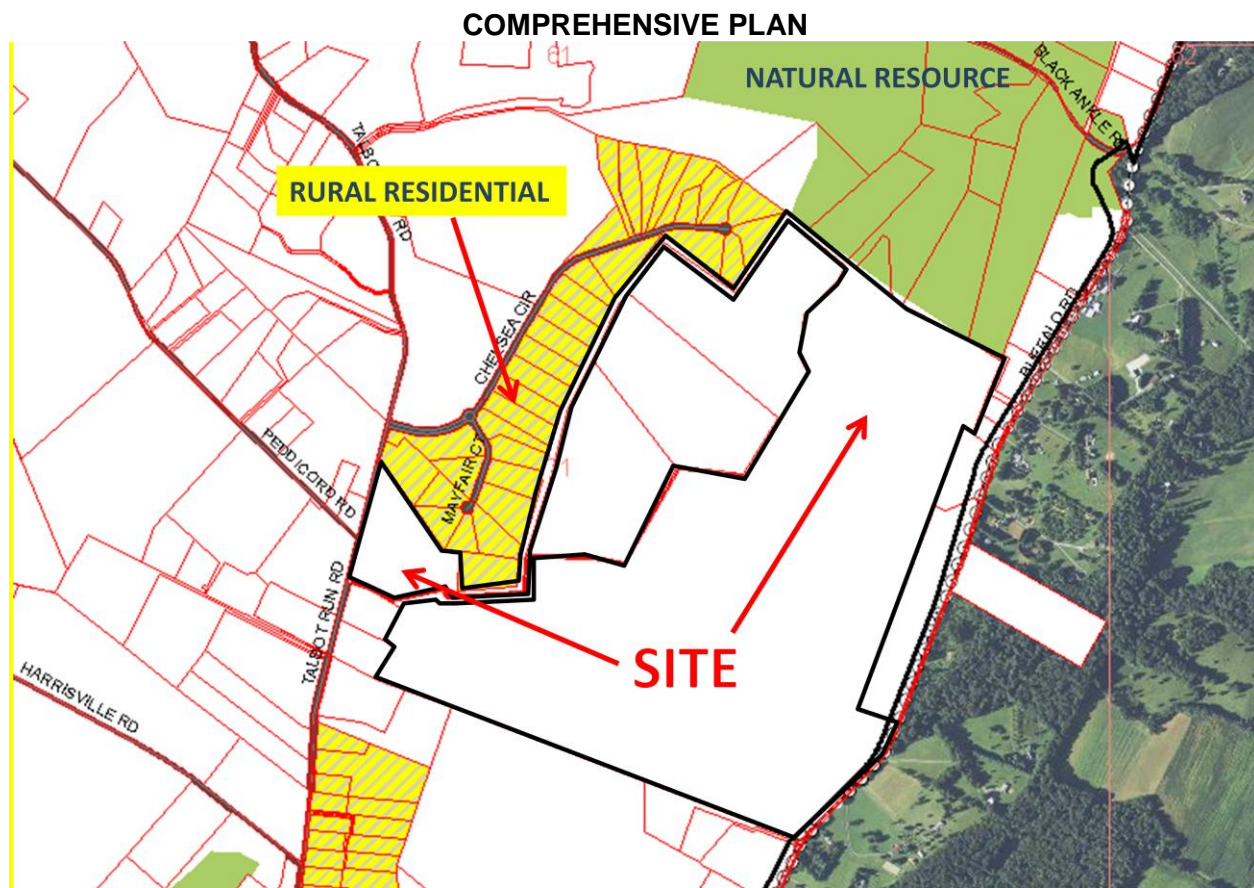
B. SUBDIVISION REGULATION REQUIREMENTS

1. **Land Requirements §1-16-217 (A):** *The land use pattern of the Comprehensive Plan and the district regulations of the zoning ordinance shall form the basic theme of the design pattern of the proposed subdivision.*

The subject property has an Agricultural/Rural Comprehensive Plan land use designation (see map below). The proposed land use and subdivision design complies with the Comprehensive Plan and will meet Zoning Ordinance requirements if the FcPc determines that the design meets the Ag Cluster provisions.

2. **Land Requirements §1-16-217 (B):** *The subdivision design shall take advantage of the uniqueness of the site reflected by topography, soils, the wooded areas, water bodies and the relationship to adjoining subdivisions and land uses, both proposed and existing.*

The site design takes advantage of the site topography, wooded areas, water bodies, and adjoining subdivisions, and land uses. The area of the proposed subdivision does not contain any water bodies or forest. As previously discussed, the proposed subdivision is located adjacent to existing rural residential lots.



3. **Preliminary Plan, Required Information §1-16-72 (B)(19)(a & b):** Soil types: (a) Soils type(s) information shall be provided and appropriate boundaries shown on the plan. In the event that "wet soils" are located on or within 100 feet of a proposed residential subdivision, a soils delineation report shall be prepared by a licensed soil scientist or professional engineer registered in the State of Maryland. The soils delineation report shall be submitted for review prior to Planning Commission approval of the plan. The Division may waive this requirement if the "wet soils" are located within open space areas.

Soils information and boundaries are provided on the plan. There are no wet soils within 100 feet of the proposed lots.

4. **Road Access Requirements. Public Facilities §1-16-12 (B)(3)(b):** For major subdivisions; Lots must access a publicly-maintained road with a continuously paved surface that is at least 20 feet in width.

The proposed lots will access Talbot Run Road, which has an existing 20 foot wide travelway. Lot access will meet the Subdivision Regulation requirements.

5. **Lot Size and Shape. Panhandle Lots §1-16-219 (C)(2):** Panhandle lots may be approved by modification of the Planning Commission in major subdivisions only when it is determined by the Commission that "excellence of design" will be achieved or that such lots are inaccessible to the road due to odd shape and/or topographical constraints. In each case, the Planning Commission will determine "excellence of design" based on the spatial relationship of the panhandle lot to other lots and the public road. Only physical design criteria such as odd shape and road inaccessibility, topography, existing utilities, proposed and existing well and septic constraints (Health Department criteria) and natural or man-made features shall be used by the Planning Commission in granting modifications for panhandle lots in major subdivisions.

Proposed Lots 6 and 7 are designed as panhandle lots. A common driveway is proposed within the panhandles of these lots. The proposed common driveway will serve the panhandle lots (Lots 6 and 7) as well as Lots 5 and 8. Staff supports this panhandle design in order to facilitate the Agricultural Cluster requirements of clustering the lots and avoiding stripping the lots along the road. Note 8 on the Concept Plan states "lot owners are responsible for any common driveways serving their lots" and "the County will not be responsible for maintenance of common driveways". The Planning Commission will be required to consider a modification to allow panhandles in a major subdivision at the Preliminary Plan phase of this project.

7. **Water and Sewer Facilities. Public Facilities §1-16-12 (C):** The proposed subdivision shall be disapproved unless each building lot has been approved for individual and/or community sewerage and water facilities by the Health Department.

The property has a water and sewer classification of No Planned Service and the proposed lots must utilize private wells and septic systems. The percolation tests will be performed after the approval of this concept plan. Wells must be drilled prior to lot recordation.

Subdivision Regulation Requirements Findings/Conclusions: The project will meet all Subdivision Regulation requirements once all agency comments and conditions are met.

C. OTHER APPLICABLE REGULATIONS

1. **Stormwater Management – Chapter 1-15.2:** Stormwater management will be provided in accordance with the Maryland SWM Act of 2007. Stormwater management will be addressed with future plan submittals.
2. **APFO – Chapter 1-20:** This subdivision is subject to meeting APFO requirements. APFO will be reviewed at the Preliminary Plan phase of the development.
3. **Forest Resource Ordinance – Chapter 1-21:** A partial forest stand delineation (FSD) has been submitted and is under review. The development site contains no forest and it is anticipated that FRO mitigation will be provided through the purchase of banking credits. A Combined Preliminary/Final Forest Conservation Plan must be submitted simultaneously with the next phase of the subdivision process (Preliminary Plan). FRO mitigation must be provided prior to lot recordation, grading permits, or building permits, whichever is applied for first.

Summary of Agency Comments

Other Agency or Ordinance Requirements	Comment
Development Review Engineering (DRE):	Conditional Approval. Road layback work will be required along the lot frontages.
Development Review Planning:	Hold. Must meet all agency and FcPc comments and conditions.
State Highway Administration (SHA):	N/A
Div. of Utilities and Solid Waste Mngt. (DUSWM):	N/A
Health Dept.	Conditionally Approved.
Office of Life Safety	N/A
DPDR Traffic Engineering	Approved
Historic Preservation	Approved

RECOMMENDATION

If the Planning Commission grants the requested lot size modification and otherwise finds that the proposed subdivision meets the Ag Cluster provisions of the Zoning Ordinance, then Staff has no objection to the conditional approval of the Concept Plan.

Based upon the findings and conclusions as presented in the staff report the application meets or will meet all applicable Subdivision, Zoning, APFO, and FRO requirements if the FcPc grants the requested lot size modification and otherwise finds that the development meets the requirements of the Ag Cluster provisions. Should the FcPc grant approval of this application (S-1087, AP 12935), Staff recommends that the following items be added as conditions to the approval:

1. The Applicant shall comply with all Staff and agency comments through the completion of the plan.
2. The FRO plan must be approved prior to approval of a preliminary subdivision plan. FRO mitigation must be provided prior to lot recordation, grading permits, or building permits, whichever is applied for first.
3. Concept Plan approval shall become null and void at the end of one (1) year from the date of FcPc approval unless a preliminary plan has been submitted for approval.

PLANNING COMMISSION ACTION

MOTION TO APPROVE

I move that the Planning Commission **APPROVE S-1087 (AP 12935) with conditions** as listed in the staff report for the proposed Talbot Ridge Farm, Section 3, Lots 4-8 Agricultural Cluster concept plan, and grant the requested lot size modification, based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.

Exhibit #2

December 2, 2013

Robert J. Lawrence, Chairman, FCPC
30 North Market Street
Frederick, Maryland 21701

Project Name: Talbot Ridge Farm
Project No. 12935

Dear Chairman Lawrence and Planning Commission Members:

I have prepared this letter and analysis in response to the oversize lots comment made by the Planning Department staff and its effect on my Agricultural Cluster project.

The question about the size of the first 3 parcels was previously addressed, evaluated and approved by the Frederick County Planning Commission after a hearing held on January 26, 1996. At that time the Planning Commission voted to approve an 11 lot Ag Cluster subdivision on the Talbot Ridge Subdivision concept plan.

The reason that each of the first 3 parcels being larger than 2 acres were the result of health department requirements, topography, existing improvements and Planning Department guidance.

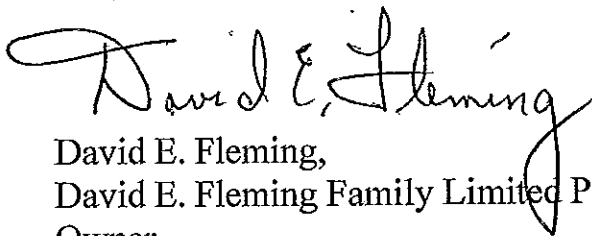
1. The first parcel recorded in 1992, (Lot 1) was improved with a house and driveway leading to Talbot Run Road. This house was built and occupied by my mother until her death. The house on Lot 1 was constructed on the top of the ridgeline. The well and outbuildings are located to the rear of the house and the detached garage is located to the side of the house. With the location of the well, outbuildings and well on the adjoining property the reserve septic area was required to be located in the front of the lot and extends to near the front lot line. Although there was an existing asphalt paved roadway near the southern side of the parcel, upon review the parcel was required to have a long non-used, paper panhandle along the northern property line instead of recording the paved roadway from the parcel to Talbot Run Road. This was imposed in order to not create a separate subdivision on the farm. In order to record the lot it was necessary to increase the parcel area by 0.48 acres to provide the paper panhandle. Therefore, based on the reasoning above it was necessary to increase Lot 1 above the 2 acre maximum.

2. The second and third parcels, (lots 2 and 3) were recorded in 1995 along Talbot Run Road. Lot 3 contained environmental features such as a stream, steep slopes and forested lands. A Forest Conservation Easement of 0.67 acres was recorded on Lot 3 and required to be maintained in its natural condition. Lot 3 experienced difficulties during percolation testing and eventually was approved with a sand mound type septic system toward the front of the lot and well location toward the rear of the lot. Lot 2 appeared to be a natural fit between the north line of Lot 3 and the southern side of the existing driveway and easement leading to Lot 1. Lot 2 had a broad swale bisecting the middle of the lot. The septic area passed percolation testing toward the front of the lot near the Lot 3 lot line and the well was located near the rear of the lot. Lot 2 depth was approximately 86 feet less than Lot 3.

Therefore, I respectfully request that the extenuating circumstances outlined above as well as the prior determination by the Planning Commission be considered as a basis for allowing the proposed 5 lot Ag Cluster subdivision to proceed. Further, it is agreed that each of the proposed Ag Cluster lots will be well below the maximum lot size guideline and on a combined basis with the first 3 lots will be within the 2 acre maximum lot size standard. I consider it worth mentioning that as a landowner I had no idea that in subsequent years, I risked the potential of not being allowed to create an agricultural cluster subdivision because of the oversized lots. I am unfamiliar with any notice provided me or placed on the recorded plats indicating such condition. The approval of the previous Agricultural Cluster Subdivision in 1996, a year after Lots 2 and 3 were recorded, supports my request that creating oversize lots was not a definitive prohibition to creating an Agricultural Cluster Plan.

Thank you for consideration in this matter and if you have any questions or concerns please feel free to contact me.

Very truly yours,



David E. Fleming,
David E. Fleming Family Limited Partnership
Owner

cc: Michael W. Wilkins, Principal Planner II
T. Michael VanSant, LS