



# FREDERICK COUNTY PLANNING COMMISSION

May 14, 2014

**TITLE:** Middletown Valley Estates, Lots 6A and 6B

**FILE NUMBER:** S-578, AP 14255 (APFO N/A, FRO 14256)

**REQUEST:** Combined Preliminary/Final Plat Approval

The Applicant is requesting approval to resubdivide Lot 6 into two lots, a modification of 1-16-219(C)(2) to allow a panhandle lot in a major subdivision, and a modification of 1-16-12 (B)(3)(b) to allow a major subdivision on a road that has less than a 20 foot wide paved travelway.

## PROJECT INFORMATION:

ADDRESS/LOCATION: Located along Bennies Hill Road, 670 feet southeast of MD 17.  
TAX MAP/PARCEL: Map 74, Parcel 209  
COMP. PLAN: Agricultural/Rural  
ZONING: Agricultural  
PLANNING REGION: Brunswick  
WATER/SEWER: No Planned Service

## APPLICANT/REPRESENTATIVES:

APPLICANT: Brent Rutley  
OWNER: Brent Rutley  
SURVEYOR/ENGINEER: B&R Design Group  
ARCHITECT: N/A  
ATTORNEY: N/A

**STAFF:** Mike Wilkins

**RECOMMENDATION:** Conditional Approval

## ATTACHMENTS:

EXHIBIT 1- Combined Preliminary/Final Plat  
EXHIBIT 2- Justification statement for a modification of 1-16-12 (B)(3)(b) (road width)  
EXHIBIT 3- Justification statement for a modification of 1-16-219(C)(2) (panhandle)

# STAFF REPORT

## ISSUE

The Applicant is requesting preliminary/final plat approval for 1 new residential single family lot on a 3.16 acre site.

## BACKGROUND

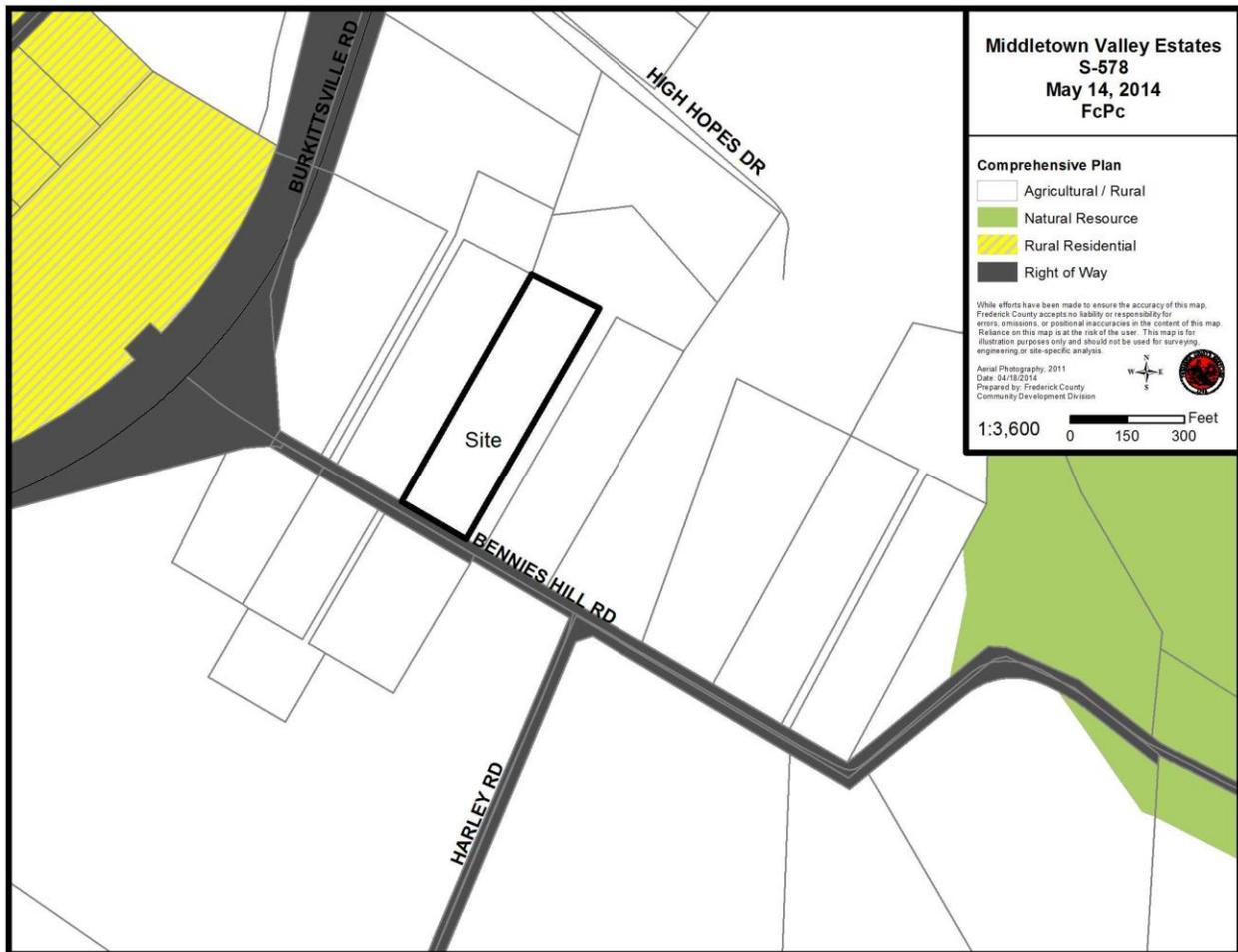
This property has been the subject of several previous subdivision applications since 1965. The Middletown Valley Estates subdivision was once part of a much larger tract of land, from which 26 lots have been recorded.

- 1971- Lots 1-14, Middletown Valley Estates
- 1986- Lots 2B and 2C, Middletown Valley Estates
- 1989- Lots 1-9, High Hopes Farm subdivision
- 1997- Lot 3B, Middletown Valley Estates

Since more than 6 lots have been created from the original 1965 parcel, this application is considered a major subdivision, requiring FcPc review and approval.

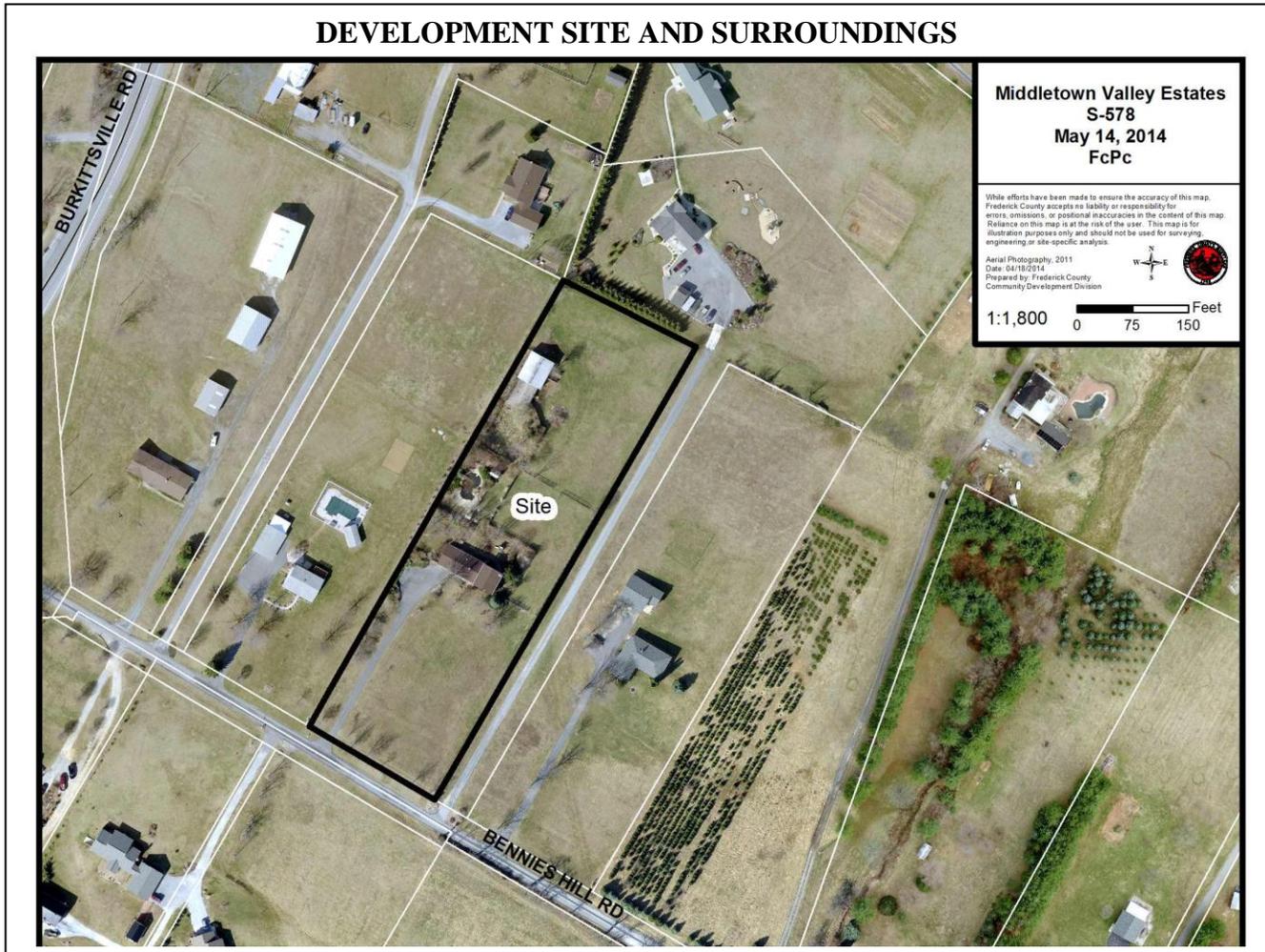
Per 1-19-7.300 of the Zoning Ordinance, a subdivision of up to 3 lots is permitted on parcels with Agricultural zoning that existed as of August 18, 1976. Lot 6 was recorded in 1971 and is therefore eligible for subdivision under these provisions.

## COMPREHENSIVE PLAN



## Existing Site Characteristics

The site consists of open yard area with an existing house, swimming pool, and barn. The site adjoins existing Agriculturally zoned residential lots on all sides.



## ANALYSIS

### A. ZONING ORDINANCE REQUIREMENTS

- District Regulations, Design Requirements For Specific Districts §1-19-6.100: Agricultural District (A):*** Single family residential requirements: 40,000 square foot minimum lot size, 100 foot minimum lot width, 40 foot front setback, 30 foot rear yard setback, and 10 foot side yard setback, 30 foot maximum structure height.

The proposed lots meet the minimum 40,000 square foot (0.92 acres) lot size requirement. Lot 6A will be 1.616 acres and Lot 6B will be 1.5464 acres. The required front, rear, and side setbacks are shown or noted on the plan and meet the Zoning Ordinance requirements.

## Zoning Ordinance Requirements Findings/Conclusions

The proposed subdivision will meet all Zoning Ordinance requirements.

### **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 reflects a Comprehensive Plan land use designation of Agricultural/Rural. As discussed in the Frederick County Comprehensive Plan, areas with an Agricultural/Rural land use designation may include active farmland, fallow lands, and residential subdivisions that have been developed under the Agricultural zone. The proposed land use and subdivision design complies with the Comprehensive Plan and meets Zoning Ordinance requirements.

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 does not contain any unique topography, soils, wooded areas, or water bodies. The proposed lot will have a land use identical to the surrounding 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. (b) If residential lots are proposed within "wet soils" then a geotechnical report is required to be submitted by a professional engineer registered in the State of Maryland. A note shall be placed on the plan that all construction shall be in conformance with the geotechnical report.*

The site does not contain wet soils.

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 lot will access Bennies Hill Road, which is 670 feet from MD 17 (Burkittsville Road). Bennies Hill Road is 20 feet wide for the first 360 feet from MD 17. The remaining 310 feet between the 20 foot wide road section and the driveway serving Lot 6 is 18 feet wide, which does not meet the minimum 20 foot wide paved road surface requirement.

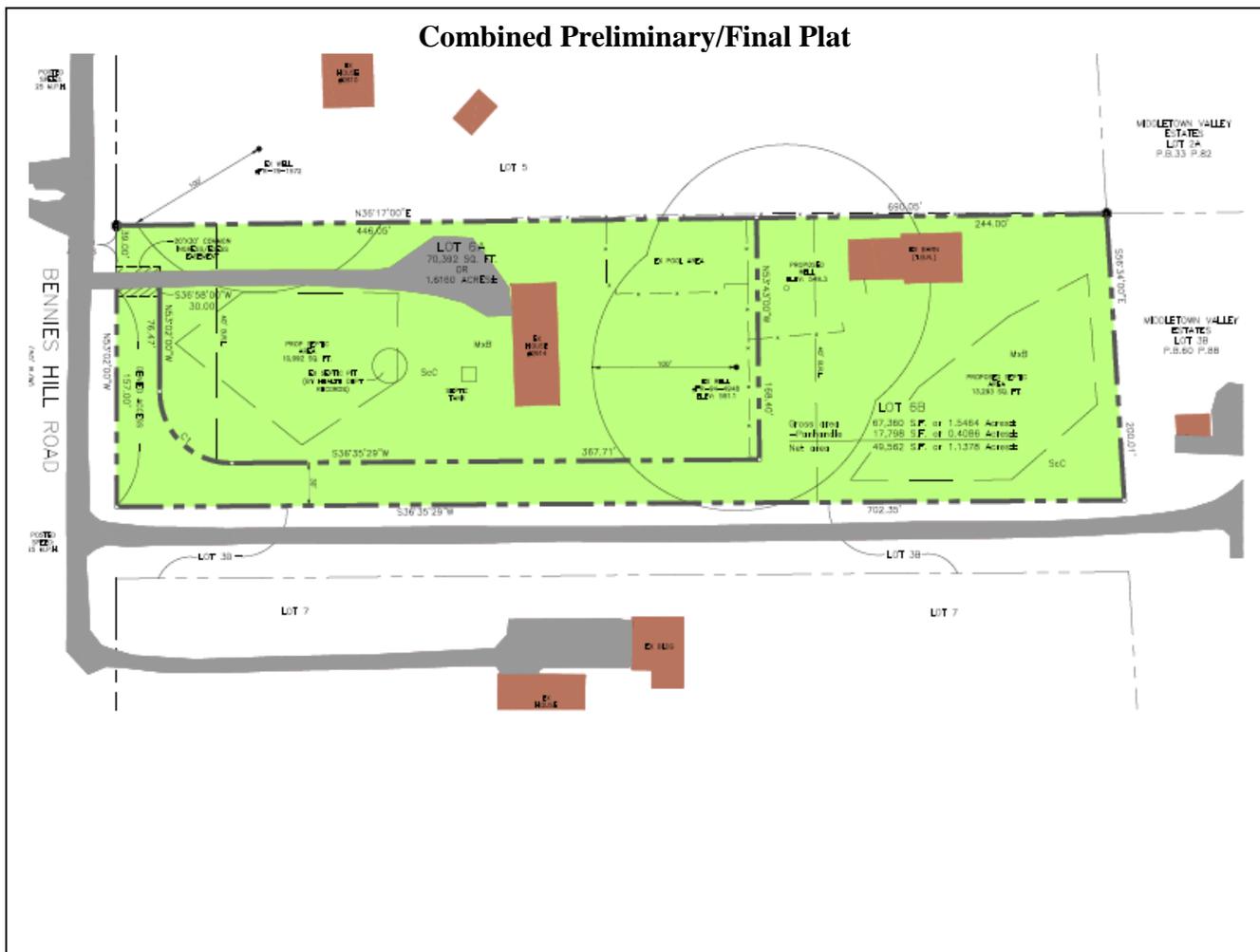
The Applicant is requesting a modification of the 20 foot travelway width requirements (See Exhibit 2). Section 1-16-30 (A) of the Subdivision Regulations states;

*Where the Planning Commission finds that because of unusual circumstances of shape and topography or other physical features or conditions of the proposed subdivision, or because of the nature of adjacent developments, extraordinary hardship may result from strict compliance with this chapter, there may be granted a modification of this chapter when requested by the subdivider or developer. However, no such modification shall be granted*

which will have the effect of nullifying the intent and purpose of the Comprehensive Plan, the zoning regulations, this chapter or any other pertinent rules, regulations or laws of the county. In granting modifications, the Planning Commission may require such conditions as will, in its judgment, secure substantially the objections of the standards of the requirements so waived or modified.

The Applicant's justification statement (Exhibit 2) asks the Planning Commission to find that the required 20 foot travelway requirement would be an extraordinary hardship, citing the fact that they are only creating one new lot, it is a very short distance between the lot and the 20 foot wide section of the road, and the expense of improving Bennies Hill Road to a 20 foot width.

Staff does not object to the approval of this single new lot with the current travelway width. The distance between the lot and MD 17 is only 670 feet, and more than half of this distance meets the 20 foot wide travelway requirement. The remaining 310 feet falls short by only 2 feet, and the 18 foot wide section is wider than the travelway width requirement for minor subdivisions (16 feet).



**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 Lot 6B will access Bennies Hill Road via a 30 foot wide panhandle. The existing driveway entrance that serves the existing Lot 6 will be used by proposed Lot 6B as a common access drive. The Applicant has submitted a justification letter (Exhibit 3) that explains why the panhandle design is necessary. The Applicant discusses several site constraints that necessitate the use of a panhandle design, but the most important of these is the fact that the current entrance location is the only location along the property frontage where safe sight distance can be achieved. Notes on the plan state that the lot owner is responsible for maintenance of the common driveway and panhandle area.

Section 1-16-219 (C)(4) allows the tiering (stacking of lots one behind another) of up to three lots when certain criteria are met, including requiring the houses on the tiered lots to be oriented so as to prevent the fronts of houses facing into the backs of other houses. Therefore Staff recommends that a note be placed on the plat requiring the house on Lot 6B to be constructed to face the southeast lot line to prevent the front of this house from facing into the rear of the house on Lot 6A.

Staff does not object to the use of the panhandle design. This panhandle lot will be adjacent to another panhandle lot approved by the Planning Commission in 1997, and the design is the only design that will provide a safe driveway location.

In order for Planning Commission to approve these panhandle lots, it must find that the lots meet “excellence of design based on the spatial relationship of the panhandle lot to other lots and the public road” or “that such lots are inaccessible to the road due to odd shape and/or topographical constraints.”

**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 (NPS) and must utilize private septic areas and wells. Per §1-16-12 (C)(2), all wells and septic areas must be approved by the Health Department prior to lot recordation.

### **Subdivision Regulation Requirements Findings/Conclusions**

The project will meet all Subdivision Regulation requirements once all agency comments and conditions are complied with, if the Planning Commission grants a modification of §1-16-12 (B)(3)(b) to waive the 20 foot wide travelway width requirement, and if the Planning Commission finds that the panhandle lot meets the requirements of §1-16-219 (C)(2).

### **C. OTHER APPLICABLE REGULATIONS**

**Stormwater Management – Chapter 1-15.2:** Stormwater management will be provided in accordance with the Maryland SWM Act of 2007. SWM review for the proposed large, single family lot will occur at the time of building permit application.

**APFO – Chapter 1-20:** As provided in section 1-20-7(B), this subdivision is exempt from meeting APFO, being the 2<sup>nd</sup> lot from the original parcel since 1991.

**Forest Resource Ordinance – Chapter 1-21:** The Applicant has filed a Declaration of Intent to exempt Lot 6A from FRO requirements. Lot 6A is exempt from the FRO with a Real Estate Transfer exemption

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because the lot is already developed with a house, well, and septic and no new development is proposed. Proposed Lot 6B is subject to FRO. The FRO plan was submitted and is approved by Staff. The 0.31 acre FRO mitigation requirement will be met by purchasing banking credits.

**Summary of Agency Comments**

<b><i>Other Agency or Ordinance Requirements</i></b>	<b><i>Comment</i></b>
<b><i>Development Review Engineering (DRE):</i></b>	Conditionally Approved: existing driveway apron must meet common use apron standards or be upgraded.
<b><i>Development Review Planning:</i></b>	Hold. Must meet all agency and FcPc comments and conditions.
<b><i>State Highway Administration (SHA):</i></b>	N/A
<b><i>Div. of Utilities and Solid Waste Mngt. (DUSWM):</i></b>	N/A
<b><i>Health Dept.</i></b>	Hold. Lot 6B well must be drilled and perc tested. Existing well must meet current standards.
<b><i>Office of Life Safety</i></b>	N/A
<b><i>DPDR Traffic Engineering</i></b>	Approved
<b><i>Historic Preservation</i></b>	Approved

**RECOMMENDATION**

Staff has no objection to conditional approval of the Combined Preliminary/Final Plat.

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 Planning Commission grants a modification of §1-16-12 (B)(3)(b) to waive the 20 foot wide travelway width requirement, and if the Planning Commission finds that the panhandle lot meets the requirements of §1-16-219 (C)(2).

Should the FcPc grant approval of this application (S-578, AP 14255), including approval of the two modification requests, 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 Combined Preliminary/Final Plat approval is valid for three (3) years from the date of FcPc approval. Therefore, the Plat approval expires on May 14, 2017.
3. A note shall be placed on the plat requiring the house on Lot 6B to be constructed to face the southeast lot line to prevent the front of this house from facing into the rear of the house on Lot 6A.

**PLANNING COMMISSION ACTION**

MOTION TO APPROVE

I move that the Planning Commission **APPROVE S-578 (AP 14255) with conditions** as listed in the staff report for the proposed preliminary/final plat, including approval of a modification of §1-16-12 (B)(3)(b) to waive the 20 foot wide travelway width requirement and approval of the modification of §1-16-219 (C)(2) to permit a panhandle lot in a major subdivision, based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.