Dear Planning Board Members:

What appears to be an innocuous amendment of Condition No. 13 of MCPB Resolution No. 10-129, on the subdivision of Barnesville Oaks to conform it with a recent amendment of the zoning code concerning farm labor housing raises serious issues that cause me to make an exception to my practice of refraining from comment on matters before the planning board.

As the staff report notes, this amendment does not alter the density or configuration of the subdivision approved in 2010 but it does make it possible for the farm parcels to be further subdivided for as many as 7 more lots. To do so would be contrary to the findings of staff and board when the subdivision was approved for 21 lots, 3 outlets, and 2 farm parcels. A great deal was made in the 2010 staff report (pp. 8-10), of the importance of retaining the large farm parcels and the board incorporated the staff findings by reference in its resolution.

The condition in the resolution that is immediately affected by this amendment is No. 13. It requires the seven tenant houses in the farm parcels to be counted in the maximum density of 33 residential allowed by the RDT (now AR) Zone on the parent parcels. In one sense it stated the obvious, i.e., an 840 acre tract could theoretically yield a maximum of 33 lots for principal residences. The only reason for requiring the tenant houses to be counted appears to have been to emphasize the intention of the board that the farm parcels should not be further subdivided. That clearly was the rationale of the 2010 staff report, which states at page 19: "While the original application proposed 31 new lots in addition to the 2 farm houses and 7 tenant dwellings, the current proposal reduces the number of lots so that there will be no more than 33 total dwellings(the maximum permitted at 1 dwelling per 25 acres). The farm houses and tenant dwellings will remain on two unplanted farm remainders." (Italics added)

Because the present amendment does not propose further subdivision and the staff accepts the view that the amendment is a benign measure to recognize the farm labor housing provision in the code that allows such units as accessory to the principal dwelling, if the board accepts the staff recommendation, it should reaffirm its 2010 finding under the subdivision regulations that 21 lots, 3 outlets, and 2 farm parcels is the appropriate configuration of the property in conformity with the AROS master plan. This finding was, and still is, consistent with law and practice that the maximum density allowed in a zone is not an entitlement to it. In approving a subdivision to harmonize development with its environs and to conform to the policies of the master plan the board may reduce the allowable density, as it did in this case..

Assuming the good faith of the applicant, there should be no objection to such a condition. In any event, there is no equity in the density represented by the tenant houses, since the property was not owned by a farmer when it was subdivided. Whether Stud Farm LLC is a farmer or developer, or both, TDRs retained for the tenant houses can be sold for BLT easements to developers that need them to meet optional method requirements under CR or other zones. At prevailing values, they could provide a substantial windfall for investment in the farm operation.

There is a second matter on which the board should take this opportunity to act. It appears that NV, the developer of the property, in selling the farm parcels and residential lots, has encumbered them with covenants that violate Condition 12 of the 2010 Resolution. If the record plat does not contain the note required by Condition 12 it may also be in violation. The Board should insist, as a condition of approving this application, that the covenants restricting or prohibiting any agricultural uses be removed as being contrary to public policy.

Royce Hanson