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Wednesday, June 25, 2008

Webb Tract lawsuit could block county construction

by Sebastian Montes | Staff Writer
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Property owner, federal government in legal dispute

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Fifty-two years ago, the federal government condemned 72 acres of countryside northeast of Gaithersburg to build a missile installation to defend against Communist incursion. Written into the 1955 deed was a provision that barred “human habitation” and “gatherings of more than twenty-five persons” around the underground missile bays.

The Cold War thawed. The Nike missile program was dissolved, its launch sites dismantled. Roads and neighborhoods and the Montgomery County Airpark were built around Nike site W-94 — along what is now Snouffer School Road. Bordering to the south, a 130-acre plot called the Webb Tract has sat mostly unused for most of the decades since.

Now, more than a half-century later, a land restriction around the missile bays could stymie a sweeping plan hatched by County Executive Isiah Leggett to upgrade and relocate seven county operations — two to the Webb Tract.

At issue in a lawsuit filed in October in U.S. District Court in Greenbelt is the “human habitation” clause.

Owner Miller and Smith Inc., which bought the Webb Tract for more than \$20 million in late 2004, construed the phrase to mean only residential buildings are barred from the site.

The federal government — represented by U.S. District Attorney Rod J. Rosenstein, Assistant U.S. Attorney General Larry D. Adams, and Army General Counsel Benedict S. Cohen — argues that the clause applies to “any manner of human endeavor and activity.”

The government said it will file litigation “to prevent construction and use of commercial buildings for use as a warehouse, storage or office space,” according to court records.

The federal government entered into negotiations to sell the land to a private developer in 2001. In 2006, the government deemed the land suitable for sale and asked for more than \$1.2 million to release the easement. After negotiations over that cost, Miller and Smith filed suit in October.

Representatives from Miller and Smith and the U.S. government did not respond to requests for comment.

In January, the government asked Judge Roger Titus to dismiss the case in part because a statute of limitations had expired.

Miller and Smith’s countermotion disagrees, and notes that the government wants to build an office building there, despite the restrictions.

Both parties have agreed to research the issues further until Aug. 1.



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The disputed 18 acres are at the Webb Tract’s northern end, where Leggett’s plan calls for a new training academy for police and fire rescue services and a new food distribution warehouse for the county school system. County officials involved with the relocation plan said they had not seen the lawsuit until The Gazette inquired in May. Assistant Chief

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Administrative Officer Diane Schwartz Jones said the county is looking into how the suit might affect the relocation plan.

It is already a precarious plan, several Montgomery County Council members said.

Council President Michael J. Knapp (D-Dist. 2) of Germantown attended a June 13 meeting with leaders of Montgomery Village, where development of the Webb Tract has been a community concern for years.

He said the “very ambitious project” — involving seven different county agencies and five pieces of land — will take the dominoes falling just right to pull off.

The East Village Homes Corp., a 5,000-resident community that borders the Webb Tract, is “expressly and completely” opposed Leggett’s plan.

The community’s leaders said in a May 30 letter to Leggett and the council that “there are other, more creative, more cost-effective ways to provide those services that will not create the anticipated level of community disruption and loss of private property value.

“A more suitable alternative for the Webb Tract and an alternate plan for relocation of county service facilities will serve the greater good of all county residents,” according to the letter.

Council members attending the Montgomery Village Foundation’s annual county leaders breakfast — Knapp, Marc Elrich, Philip M. Andrews and Nancy M. Floreen — said they want more information on how Leggett’s relocation plan will shake out.

“If his numbers are right, this is a pretty bold and brilliant stroke,” said Elrich (D-At Large) of Takoma Park.

“The devil, of course, is in the details, and we don’t have any details,” said Floreen (D-At Large) of Garrett Park. “These are such big details that this is going to be pushed years out, no matter what happens. This is not happening tomorrow, even if we all love it — and we don’t.”

To Learn More:

The East Village Homes Corp. and the Montgomery Village Foundation are hosting a town hall forum at 7 p.m. July 10. Topics for discussion are a county proposal to build a new police and fire rescue training facility, and a county schools food warehouse, on the Webb Tract property along Snouffer School Road. The North Creek Community Center is at 20125 Arrowhead Road.

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