


**MEMORANDUM**

October 4, 2013

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney  
Glenn Orlin, Deputy Council Administrator 

SUBJECT: **Action:** Bill 24-13, Streets and Roads – Authorization of Construction – Amendments

**Transportation, Infrastructure, Energy and Environment Committee recommendation (3-0): approve the Bill as introduced.**

Bill 24-13, Streets and Roads – Authorization of Construction – Amendments, sponsored by Councilmembers Berliner, Floreen, and Riemer, was introduced on July 30. A public hearing was held on September 10 and a Transportation, Infrastructure, Energy and Environment Committee worksession was held on September 30.

**Background**

Bill 24-13 would:

- continue to require the Executive to hold a public hearing before authorizing an assessment of costs for constructing a road;
- repeal the requirement that the Executive authorize the construction of a road before beginning construction; and
- require the Director of Transportation to hold a hearing to receive comments on the design of a road before beginning construction.

A County road construction project must be approved in the County's Six-Year Capital Improvements Program (CIP). Construction cannot begin until the road project is funded in the County's Capital Budget. Charter §304 requires the Council to hold public hearings on the proposed budget and the proposed CIP before final approval. Many County road projects are also "special capital improvement projects" that must be authorized by separate legislation after a public hearing and may also be petitioned to referendum before the voters. Despite these opportunities for public input during the CIP and budget process, current law also requires the Executive to hold a public hearing and authorize a road construction project that is already included in the approved CIP before beginning construction. Bill 24-13 would eliminate this duplicative step in the process.

The Bill would continue to require the Executive to conduct a hearing before authorizing an assessment against adjoining properties to finance the road project where the affected

property owners can challenge the proposed assessment. Although the Executive often receives comments from the public on the design of the project at the authorization hearing, the Bill would require the Director of the Department of Transportation (DOT) to hold a public hearing just to receive comments on the design before beginning construction.

### **Public Hearing**

There were no speakers at the September 10 public hearing.

### **T & E Committee Worksession**

The Transportation, Infrastructure, Energy & Environment Committee reviewed the Bill at a worksession on September 30, 2013. The Department of Transportation said that the Executive Branch supported the Bill. The Committee unanimously recommended approval of Bill 24-13 as introduced.

### **Discussion**

The need for Bill 24-13 arises from the Thompson Road Connection project in the Capital Improvements Program. This project, which was first identified in the *Cloverly Master Plan* (adopted by the Council in 1997), would close a 300 foot-wide gap between Rainbow Drive and Thompson Road next to Briggs Chaney Middle School in the Good Hope Estates neighborhood of Cloverly.

The County Executive initially recommended funding this project in 2008 as part of his Recommended FY09-14 CIP, and it has been recommended by the Executive and approved by the Council in every CIP since. The funds for design were also appropriated in 2008. The design of the road project has been changed: the roadway would be 24 feet wide instead of 36 feet, and an improved access for school buses to Briggs Chaney Middle School would be built. The total cost of the project (including design) is \$780,000. A separate traffic calming project on Rainbow Drive just west of this project has been completed to mitigate speeding in the neighborhood.

In January 2012, the Executive recommended appropriating \$628,000 for site improvements and utility work, construction, and supervision for this project, as part of his Recommended FY13-18 CIP. In May 2012 the Council appropriated these funds as part of the FY13 Capital Budget. The DOT plan was to initiate construction in 2013.

After the design was completed, the Executive held a public hearing for this project on September 12, 2012. The Executive's hearing examiner drafted a report on February 22, 2013 finding that the project was not in the public interest and recommended that the Executive deny construction of the project. The hearing examiner's report is at ©11-17. On February 25, 2013, the Executive denied authorization for the project to proceed. This was the first time an Executive has used this authority to unilaterally prevent an approved project from proceeding to construction.

The Bill would not reverse the Executive's decision on this project. The Thompson Road Connection project can be re-examined as part of the deliberations on the FY15-20 CIP next

year. The issue is whether or not the Executive should continue to have the unilateral authority to terminate a road project that has been duly programmed and appropriated by the Council. Such authority exists for no other type of County Government project. Elsewhere in the Charter and the County Code the Executive's role in capital projects is to make recommendations, but only the Council can approve a project. The Executive may veto a project, but the Council can override the veto with six affirmative votes.

Bill 24-13 would, however, retain the requirement of an Executive hearing for a road project before any assessments against abutting property owners are authorized to help fund it. This is appropriate, since the final costs upon which the assessments would be based are not known until the design is complete. The actual assessments would have to be approved by the Council. Based upon experience over the past three decades, such an Executive hearing would rarely happen, if ever, because Council staff cannot cite a single road project funded by assessments during that time. Nevertheless the assessment option should be left open.

Bill 24-13 also requires DOT rather than the Executive to hold a hearing to solicit public comments on the design prior to construction. Through such hearings DOT is able to get feedback on its road design from those immediately impacted, and often this feedback results in latter-stage design modifications that, while not significant to the cost or purpose of the project, are significant to residents and businesses abutting the project.

**Committee recommendation (3-0): approve the Bill as introduced.**

This packet contains:	<u>Circle #</u>
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Bill No. 24-13  
Concerning: Streets and Roads -  
Authorization of Construction -  
Amendments  
Revised: July 24, 2013 Draft No. 8  
Introduced: July 30, 2013  
Expires: January 30, 2015  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmembers Berliner, Floreen, and Riemer

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**AN ACT** to:

- (1) require the Executive to hold a public hearing before authorizing an assessment of costs for constructing a road;
- (2) repeal the requirement that the Executive authorize the construction of a road before beginning construction of the road;
- (3) require the Director of Transportation to hold a hearing to receive comments on the design of a road before beginning construction of the road; and
- (4) generally amend the law governing the construction of streets and roads.

By amending

Montgomery County Code  
Chapter 49. Streets and Roads  
Sections 49-52, 49-53, and 49-54

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. Sections 49-52, 49-53, and 49-54 are amended as follows:**

**49-52. An assessment of costs for road [Road] construction to be authorized by County Executive; Council to assess benefits.**

(a) The County must not [build] assess the cost of constructing any road as a benefit to adjacent property unless the [County] Executive has issued an order authorizing the [construction] assessment. After the Executive has authorized the [road] assessment, the County Council may assess the cost of construction by resolution as a benefit to all property adjacent to the road’s right-of-way and specially benefited by its construction as provided in this Section.

\* \* \*

**49-53. Public hearing; notice.**

(a) Before [any] an assessment for road construction [or assessment] is authorized, the County Executive or a designee must hold a public hearing. Any person who would be subject to an assessment or otherwise affected by the location or construction of the road is entitled to be heard at the hearing. Notice of the hearing must be sent by certified or registered mail, at least 2 weeks before the scheduled date of the hearing, to the owners of each property that would be subject to an assessment, as listed in the records of the Department of Finance.

\* \* \*

[(d) A public hearing need not be held under this Section before a sidewalk or shared use path is constructed if:

- (1) the sidewalk or path can be constructed entirely in one or more existing public rights-of-way without a detailed engineering design;

- 27 (2) (A) a civic association, homeowner's association, or other  
 28 organization, which includes a substantial number of  
 29 owners of property located on the proposed route of the  
 30 sidewalk or path, has filed a notice of its support for the  
 31 sidewalk or path with the Executive or a designee; or  
 32 (B) if no such organization has filed a notice of support, a  
 33 petition signed by a majority of owners of property located  
 34 on the proposed route of the sidewalk or path has been  
 35 filed with the Executive or a designee; and  
 36 (3) the Executive finds, after the Executive's designee has given  
 37 notice to and met with residents of the area, that no significant  
 38 controversy has arisen that would require a public hearing to be  
 39 held.]

40 **49-54. Authorization of an assessment of costs for construction;**  
 41 **recommendation of assessments to Council.**

- 42 (a) If, after the hearing, if any, required by Section 49-53 is held, the  
 43 [County] Executive finds that the public interest requires [all or part of  
 44 any] the [road construction project] assessment under consideration to  
 45 be carried out, the Executive must authorize the [road to be built]  
 46 assessment as required in this Chapter.  
 47 (b) As soon as practicable after the Executive authorizes [the] an  
 48 assessment of costs for road construction [road] under this Section, and  
 49 after the hearing, if required, is held under Section 49-53, the [County]  
 50 Executive must forward to the [County] Council a written report  
 51 recommending any proposed assessments based on the estimated cost of  
 52 building the road. The report must describe the work to be done and  
 53 state, with particularity, what portion of the cost of the construction, if

54 any, should be paid by the adjacent properties and what portion, if any,  
55 of the cost should be paid by the County under this Chapter.

56 (c) The recommendations must be based on the actual costs of publishing  
57 notices, conducting hearings, advertising for bids, and engineering, and  
58 the anticipated costs of financing to be incurred before the Council  
59 adopts the assessment resolution. Each cost assessment must be  
60 computed on the basis of linear frontage of adjacent properties, except  
61 as otherwise provided in this Chapter. The report must also estimate the  
62 dollar amount of the cost share to be paid by adjacent properties.

63 (d) Prior to beginning construction of any road, the Director of  
64 Transportation, or his or her designee, must hold a public hearing to  
65 receive comments on the proposed design of the road.

66 *Approved:*

67

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Nancy Navarro, President, County Council Date

68 *Approved:*

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Isiah Leggett, County Executive Date

70 *This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council Date

## LEGISLATIVE REQUEST REPORT

Bill 24-13

*Streets and Roads – Authorization of Construction – Amendments*

**DESCRIPTION:** The Bill would continue to require the Executive to hold a public hearing before authorizing an assessment of costs for constructing a road and repeal the requirement that the Executive authorize the construction of a road before beginning construction. The Bill would also require the DOT Director to hold a hearing to receive comments on the design of a road before beginning construction.

**PROBLEM:** Requiring the Executive to hold a public hearing before authorizing the construction of any road adds a duplicative step for a County road construction project because a County road project is already subject to a public hearing before it is approved as part of the County's Capital Improvements Program and funded in the capital budget.

**GOALS AND OBJECTIVES:** Eliminate a duplicative step for a County road project.

**COORDINATION:** Department of Transportation

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Robert H. Drummer, Senior Legislative Attorney, Glenn Orlin, Deputy Council Administrator

**APPLICATION WITHIN MUNICIPALITIES:** To be researched.

**PENALTIES:** None





ROCKVILLE, MARYLAND

MEMORANDUM

August 21, 2013

TO: Nancy Navarro, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget  
Joseph F. Beach, Director, Department of Finance *JAH*

SUBJECT: Council Bill 24-13, Streets and Roads – Authorization of Construction – Amendments

Attached please find the fiscal and economic impact statements for the above-referenced legislation.

JAH:dl

Attachment

c: Kathleen Boucher, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
Joseph F. Beach, Director, Department of Finance  
Robert Hagedoorn, Department of Finance  
Alex Espinosa, Office of Management and Budget  
Brady Goldsmith, Office of Management and Budget  
Naeem Mia, Office of Management and Budget  
Henri Apollon, Office of Management and Budget

**Fiscal Impact Statement**  
**Council Bill 24-13, Streets and Roads – Authorization of Construction - Amendments**

1. Legislative Summary.

**The Bill would continue to require the Executive to hold a public hearing before authorizing an assessment of costs for constructing a road and repeal the requirement that the Executive authorize the construction of a road before beginning construction. The Bill would also require the DOT Director to hold a hearing to receive comments on the design of a road before beginning construction.**

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

N/A

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

N/A

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

N/A

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

N/A

6. An estimate of the staff time needed to implement the bill.

**Under current legislation, we prepare for and hold Public Hearings with the purpose to determine if the project is needed for a public purpose. The proposed bill would also require that we prepare for and hold Public Hearings although the purpose would be to receive comments on the proposed design of a road. The staff time required for preparation and holding of the Public Hearing would be unchanged.**

7. An explanation of how the addition of new staff responsibilities would affect other duties.

**As noted in the response to question #6 above, there would be no change in staff time as a result of this proposed bill. Therefore, there would be no affect on other duties.**

8. An estimate of costs when an additional appropriation is needed.

N/A

9. A description of any variable that could affect revenue and cost estimates.

N/A

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

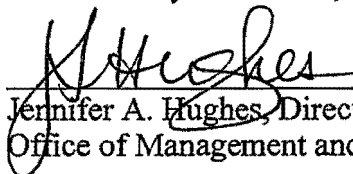
N/A

11. If a bill is likely to have no fiscal impact, why that is the case.

**See response to question #6 above. There should be no fiscal impact because the staff time required should not change.**

12. Other fiscal impacts or comments.

13. The following contributed to and concurred with this analysis: Tony Alexiou, DOT and Brady Goldsmith, OMB.

  
\_\_\_\_\_  
Jennifer A. Hughes, Director  
Office of Management and Budget

8/21/13  
Date

**Economic Impact Statement**  
**Bill 24-13, Streets and Road – Authorization of Construction - Amendments**

**Background:**

This legislation would:

- require the County Executive (Executive) to hold a public hearing before authorizing an assessment of costs for constructing a road;
- repeal the requirement that the Executive authorize the construction of a road before beginning construction of the road;
- require the Director of Transportation (Director) to hold a hearing to receive comments on the design of a road before beginning construction of the road; and
- generally amend the law governing the construction of streets and roads.

**1. The sources of information, assumptions, and methodologies used.**

Montgomery County Department of Transportation (MCDOT) provided information. As stated in the background section, Bill 24-13 amends the procedure that requires the Executive “to conduct a public hearing before authorizing an assessment against adjoining properties to finance the road project where the affected property owners can challenge the proposed assessment.” The assessment process would not change under Bill 24-13 and therefore there is no economic impact.

**2. A description of any variable that could affect the economic impact estimates.**

There is no economic impact (see paragraph #1)

**3. The Bill’s positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.**

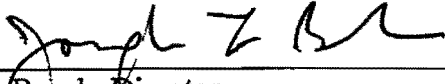
There is no economic impact (see paragraph #1).

**4. If a Bill is likely to have no economic impact, why is that the case?**

Please see paragraph #1.

**5. The following contributed to and concurred with this analysis: David Platt and Rob Hagedoorn, Finance, and Al Roshdieh, Deputy Director, Department of Transportation (MCDOT);**

**Economic Impact Statement**  
**Bill 24-13, Streets and Road – Authorization of Construction - Amendments**



\_\_\_\_\_  
Joseph F. Beach, Director  
Department of Finance

8/20/13

\_\_\_\_\_  
Date



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

**IN THE MATTER OF: Thompson Road Connection**

**Proposed construction of a 300-foot section of Rainbow Drive from its terminus to an intersection with Thompson Road.**

**BEFORE: Michael L. Subin, Public Hearing Officer**

**PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION**

**I. Background**

The request for this project was initiated by the Montgomery County Department of Transportation (hereinafter "MCDOT"). Project Description Form 500912 (hereinafter "the PDF") (Exhibit 3) states that the road will provide a connection for residents between Thompson Road and Rainbow Drive. The proposed project is planned to provide additional access for emergency responders to Briggs Cheney Middle School (hereinafter "the School") and residents along both Thompson Road and Rainbow Drive. The proposed project is for a 300-foot extension of Rainbow Drive, from its current terminus to an intersection with Thompson Road. Both roads are located in Cloverly, within the Fifth Election District of Montgomery County, MD. The project is also within the Upper Paint Branch Special Protection Area. The proposed project was originally recommended in the 1981 Eastern Montgomery County Master Plan and again in the 1997 Approved and Adopted Cloverly Master Plan. Total costs of the project are expected to be \$780,000, including engineering, land, site acquisition, utilities, construction, and construction inspection. Pursuant to § 49-53 of the Montgomery County Code (2004), as amended, MCDOT has determined that there are no properties which are considered to be specially benefited by the proposed improvements and, therefore, no properties will be subject to special assessments.

Executive Order 155-12 (hereinafter "EO 155-12"), pursuant to the Montgomery County Code, Section 49-53 (2004) as amended, authorizing the hearing, was issued on August 23, 2012. (Exhibit 1) Public notices for the hearing appeared in *The Washington Post* on August 30

and September 6, 2012, and *The Gazette Newspapers* on August 29 and September 5, 2012. (Exhibit 4) Notices regarding the proposed project and hearing dates were mailed to citizens in the area to be impacted, the Briarcliff Meadows Homeowners Association, the Montgomery County Board of Education, Montgomery County Public Schools, Briggs Chaney Middle School, the Maryland National Capital Parks and Planning Commission, and the Department of Fire and Rescue Services. (Exhibit 2) A public hearing was held on September 12, 2012, at approximately 7:30 p.m., in the Lobby Auditorium of the Executive Office Building, 101 Monroe Street, Rockville, MD 20850. The record was held open until September 26, 2012 at 5:00 p.m.

## II. Summary of Testimony and Evidence

### Project Description

The project proposal was described by Mr. Bruce Johnston, Chief of the Division of Capital Development for MCDOT. Mr. Johnston testified that the purpose of the project as one which would improve the roadway network connectivity for the community and decrease response time for emergency response to the community and the Middle School.

Mr. Johnston further testified as to the elements of the proposed project: The project provides for a three hundred-foot extension of Rainbow Drive as a two-lane, open-section, primary roadway;<sup>1</sup> the construction of a 3-foot wide flat bottom ditch along both sides of the roadway; installation of two yard inlets and a manhole with an 18-inch diameter, reinforced concrete pipe connecting to the existing storm drain; installation of streetlights and street trees along the proposed roadway; reconfiguration and reconstruction of the bus lot at Briggs Chaney Middle School; the construction of a 24-foot wide bituminous concrete driveway from the bus lot to the proposed intersection of Rainbow Drive and Thompson Road; removal of 157 feet of 4-foot wide existing concrete sidewalk between south side of Thompson Road and the entrance to the existing bus lot; construction of 240-feet of four-foot wide concrete sidewalk along the south side of the proposed section of Rainbow Drive; 104-feet of four-foot wide concrete sidewalk along the west side of Thompson Road; 237-feet of a six-foot wide concrete sidewalk along the east side of the proposed driveway to the School; and, removal of six trees that range from two inches in diameter to eight-inches in diameter with replacement by two-inch diameter trees.

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<sup>1</sup> Montgomery County Code §49-31 defines a primary roadway as a road meant primarily for circulation in residential zones, although some through traffic is expected.

In accordance with Council Resolution 13-198, three conditions were required to be met before the connection could be constructed: 1. the connection would have to be designed and budgeted to include traffic calming devices such as circles and traffic humps; 2. the connections was not to occur sooner than when Norbeck Road Extended was open to traffic; and, 3. the connection was not to occur prior to the completion of a County in initiated study of cut-through traffic on the primary and secondary residential street system with the areas bounded by Spencerville Road., Peach Orchard Road, Briggs Cheney Road, and Good Hope Road to include Rainbow Drive and Thompson Road along with implementation of the measures identified to address cut-through traffic. According to Mr. Johnston, all of the conditions have been met. Significantly, Rainbow Drive has been reduced to a width of 24-feet from 36-feet at various locations between Valencia Street and Briggs Cheney Middle School. In addition, two median islands on Rainbow Drive have been installed. The reconstruction of the existing school bus lot, as requested by the Montgomery County Public School System, and the addition of the driveway to improve bus circulation at the school has occurred.

**Testimony and Written Comments**

Joined by Ms. Claire Iseli of Councilmember Marc Elrich's staff, the Hearing Officer observed the area of the proposed roadway on December 12, 2012. It was observed the both Rainbow Drive and Thompson Road are two lane, one lane in each direction, roads. With the exception of Briggs Cheney Middle School, the neighborhood consists of single family homes. Significantly, far less vehicle traffic was observed either on Thompson Road or the section of Rainbow Drive to be extended as compared to the other roads in the area. That network of roads provides connectivity between Spencerville Road (Rt. 198), Briggs Cheney Road, and Peach Orchard Road. The traffic calming measures recently installed appear no have little, if no, impact. The extension would provide no additional connectivity to public transportation, recreation centers, religious institutions, or shopping centers. Given the existing networks, there does not appear to be any benefit to be gained for public safety purposes. In fact, the Hearing Officer, as a technical matter, inquired as to whether the extension would provide any benefit to public safety. He was informed that DFRS already has established routes and procedures for the area. Therefore, there would be no additional public safety benefits to be gained by connecting Rainbow Drive and Thompson Road.



Marjorie Davis, President of the Good Hope Estates Civic Association stated that she had sent out 600 surveys to residents of the Civic Association requesting to know whether they were for or against the project. Forty-two percent of those surveyed returned the questionnaire. Three-quarters of the respondents replied negatively. Ms. Davis summarized the concerns made by those who responded: 1. the connector would increase traffic from Peach Orchard Road to Good Hope Road; 2. excessive speed by automobiles and school buses passing through, even under current conditions; 3. and, safety issues for children walking to school, and for those walking and biking through the neighborhood despite the absence of sidewalks; and, 4. expenditures for a project that was not desired by the community. She also expressed the concern of the community that the traffic calming measures are ineffective. Ms. Davis also noted that there is no depiction of what the intersection of Rainbow Drive and Thompson Road would look like, especially since Thompson Road takes a 90-degree turn at the point of the connection. In sum, she stated that the community is opposed to the project.

Mr. Ken Barnes, a former Vice-President of the Civic Association, referred to the 1997 Approved and Adopted Cloverly Master Plan. He stated that during the Master Plan process, the Civic Association expressed its opposition to the connector. Mr. Barnes, echoing the testimony of Ms. Davis, remarked that even school buses tend to speed on both Thompson Road and Rainbow Drive. He also observed that the traffic calming which have been put in place have had minimal to no impact. He also expressed the concern that the connector would encourage cut-thru traffic to Spencerville and Briggs Cheney Roads through Peach Orchard Road.

The testimony of the remaining speakers and written remarks from several individuals reflected the statements made by Ms. Davis and Mr. Barnes. That testimony was overwhelmingly against this proposed project.

### **III. Conclusions and Recommendations**

Section 49-53(a) of the Montgomery County Code, 2004, as amended, mandates that “[b]efore any road construction or assessment is authorized, the County Executive or a designee must hold a public hearing. Any person who would be subject to an assessment or otherwise affected by the location or construction of the road is entitled to be heard at the hearing. Notice of the hearing must be sent by certified or registered mail, at least 2 weeks before the scheduled date of the hearing, to the owners of each property that would be subject to an assessment, as listed in the records of the Department of Finance.” Sec. 49-53(b) enumerates the information to

be supplied in the notification. Sec. 49-53(c) mandates that “[a] summary of the notice provided for in this Section must be published twice in a newspaper of general circulation in the County before the scheduled date of the hearing. The summary must tell where a full copy of the notice may be obtained.” I find that the hearing and notice procedures have been satisfied, and that public agencies and other interested entities have been given an opportunity to review this specific project as requested by the MCDOT.

The connection would increase circulation in the neighborhood. However, it would also provide increased access to Spencerville Road (Md. Rt. 198), Briggs Cheney Road, and Peach Orchard Road. It would also provide easier access to commercial areas along both Spencerville and Briggs Cheney Roads, thus potentially increasing traffic along both Thompson Road and Rainbow Drive. While the definition of a primary road includes the recognition that some through traffic is to be expected, an application of the balancing test would lead one to conclude that any benefit to residents that may be provided by the connector would be far out-weighted by the negative impact expressed by the witnesses. The residents on both streets already have easy access to the main roads in the area, and the majority of benefits would inure to vehicles from outside the neighborhood. Traffic in the area of Briggs Cheney Middle School would also increase, potentially impacting the safety of the students and school buses. It is also important to note that both Thompson Road and Rainbow Drive are two lane roads. Of note, is MCDOT’s testimony that the width of Rainbow Drive between Valencia Street and Briggs Cheney Middle School was recently *reduced* from 36 to 24-feet for the purpose of obtaining traffic calming measures. Further, while the Hearing Officer did note that other traffic calming measures had been installed, they did not appear as if they have been effective. The Hearing Officer and the County are always quite concerned about emergency response. Although the Department’s testimony stated that emergency response might be improved by the connection, technical discussions with DFRS revealed that no positive impacts would be realized.


Consequently, I do not find that the proposed connector will be in the public interest. The “public interest” is a broad concept that manifests itself in a variety of contexts. When, as here, a construction project is involved, the project will be considered to be in the public interest if it will do such things as promote the general health and safety of the citizenry, protect the environment, preserve open space, or otherwise advance the community’s quality of life. *See City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 701 (1999)). This

includes providing for the safe and efficient flow of vehicular and pedestrian traffic. (*See Wheaton Moose Lodge No. 1775 v. Montgomery County, Maryland*, 41 Md. App. 401, 397 A.2d 280 (1979)). I find that the proposed connection *does not* meet any of the tests enumerated above.

Based upon a thorough review of all testimony and evidence on the record, I conclude that the construction of the Thompson Road Connection to not be in the public interest and recommend that the County Executive DENY construction of the project.

SIGNATURE PAGE FOLLOWS

Respectfully submitted,



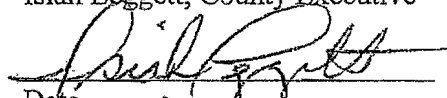
Michael L. Subin, Hearing Officer

February 22, 2013

Date

The Hearing Officer's Report and Recommendation for construction of the Thompson Road Connection in Colesville, Silver Spring, Maryland has been reviewed and the proposed project is hereby DENIED authorization to proceed.

Isiah Leggett, County Executive



Date

2/25, 2013