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Transcript of Public Hearing

Date: July 13, 2023

Case: Public Hearing (AB 781)

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Transcript of Public Hearing
 Conducted on July 13, 2023

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1 MONTGOMERY COUNTY DEPARTMENT OF TRANSPORTATION 2 DEPARTMENT OF TRANSPORTATION ENGINEERING 3 -----x 4 IN RE: : 5 ABANDONMENT PETITION AB781 - : 6 APPLICATION TO ABANDON A PORTION OF : 7 THE PUBLIC RIGHT-OF-WAY LOCATED ON : 8 THE WEST SIDE OF MARYLAND 355, : 9 FREDERICK ROAD, OPPOSITE BRINK ROAD : 10 -----x 11 12 13 14 PUBLIC HEARING 15 Conducted Virtually 16 Thursday, July 13, 2023 17 2:07 p.m. EST 18 19 20 21 22 23 Job No.: 489778 24 Pages: 1 - 18 25 Recorded By: Shannon Hayes	1 A P P E A R A N C E S 2 3 MICHAEL PAYLOR (HEARING OFFICER - MCDOT) 4 DEMETRIES OBERC (MCDOT) 5 ROBERT BIRENBAUM 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
2	4
1 Hearing, Conducted virtually 2 3 4 5 6 7 8 9 10 11 12 Pursuant to Agreement, before Shannon Hayes, 13 Court Reporter. 14 15 16 17 18 19 20 21 22 23 24 25	1 C O N T E N T S PAGE 2 Proceedings 5 3 4 5 E X H I B I T S 6 (Retained by Counsel) 7 HEARING EXHIBIT PAGE 8 Exhibit A Application for Abandonment 11 9 Exhibit A1 Bike Path 11 10 Exhibit A2 Agreement 11 11 Exhibit B Abandonment Area 11 12 Exhibit C Map 12 13 Exhibit D Plaque 1203 12 14 Exhibit E Notice of Public Hearing 12 15 Comments 16 Exhibit E1 Email 12 17 Exhibit E2 Email 12 18 Exhibit F Mailing List 13 19 Exhibit F1 Notice of HOA 13 20 Exhibit F2 Notice of HOA 13 21 Exhibit G Executive Order 13 22 Exhibit H Picture 13 23 Exhibit I Advertisement 13 24 Exhibit J MCDOT Calendar Event 13 25

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<p style="text-align: right;">5</p> <p>1 PROCEEDINGS 2 (Whereupon, the court reporter was duly 3 sworn.) 4 MR. PAYLOR: So greetings and good 5 afternoon to -- to all of you. It's now 2:07 on 6 July 13th, 2023. We're conducting this hearing 7 virtually via Zoom, and we are here for a public 8 hearing on Abandonment Petition AB781 to consider 9 an application received from Montgomery County 10 Department of Transportation, Division of 11 Transportation Engineering to abandon a portion of 12 the public right-of-way located on the west side of 13 Maryland 355, Frederick Road, opposite Brink Road. 14 My name is Michael Paylor, and I am 15 the County Executive's designated Hearing Officer 16 with the County's Department of Transportation. 17 This right-of-way abandonment hearing is being 18 conducted pursuant to Section 4962F of the 19 Montgomery County Code. My role in the abandonment 20 process is to receive testimony concerning the 21 abandonment request, and then generate a report to 22 include a recommendation of action to the County 23 Executive concerning the Applicant's petition for 24 abandonment. In order to do this, I will consider 25 statements made during this hearing and written</p>	<p style="text-align: right;">7</p> <p>1 20878, or e-mail them to demetrius.oberc@montgomery 2 countymd.gov by July 28th, 2023, at 5:00 p.m. 3 There are a few ground rules that we must 4 cover before Mr. Oberc introduces the abandonment 5 petition -- petition in the record. First, please 6 turn off or silence your cell phones. Second, as 7 an issue of decorum, all participants must be given 8 due consideration. Those seeking to offer comments 9 following the close of Mr. Oberc's case for 10 abandonment are asked to be mindful of the time and 11 limit their comments to relevant matters. If an 12 interruption occurs, I will give the individual 13 their first warning. If there is a second 14 interruption, I will give that individual a second 15 warning, and they will then be muted. If that same 16 individual receives a third warning, that person 17 will be removed from the call. And if there are 18 several people making interruptions, I may close 19 the hearing. 20 Mr. Oberc will submit the case on 21 behalf of Montgomery County's Department of 22 Transportation, Division of Traffic Engineering, 23 and provide the reason why he believes the 24 right-of-way should be abandoned. After Mr. Oberc 25 has completed his case, those who have registered</p>
<p style="text-align: right;">6</p> <p>1 comments received within the comment period. 2 Comments and documents submitted to Mr. Oberc to 3 support or explain a position on this abandonment 4 case will be accepted until July 28th, 2023, at 5 5:00 p.m. 6 My report and recommendation will be 7 forwarded to the County Executive for consideration, 8 and the County Executive will then forward the 9 report to include the County Executive's 10 recommendation to the County Counsel. It is the 11 County Counsel that will decide whether to grant or 12 deny the Applicant's petition for abandonment. 13 Those who wish to speak at the hearing 14 today may submit a request to Mr. David Harris in 15 the Zoom chat. Following Mr. Oberc's petition on 16 behalf of Montgomery County Department of 17 Transportation, Division of Transportation 18 Engineering on why it believes the right-of-way 19 should be abandoned, those who have requested to 20 speak will be afforded the opportunity to make 21 relevant comments on the abandonment. For those 22 who wish to submit written comments, please submit 23 them to Mr. Demetrius Oberc at the Montgomery 24 County Department of Transportation, 100 Edison 25 Park Drive, 4th floor, Gaithersburg, Maryland</p>	<p style="text-align: right;">8</p> <p>1 to speak will be offered the opportunity to make 2 relevant comments. I now introduce Mr. Demetrius 3 Oberc from Montgomery County Department of 4 Transportation, who is a real estate specialist, to 5 present the case on behalf of the Department of 6 Transportation, Division of Transportation 7 Engineering. Mr. Oberc? 8 MR. OBERC: Thank you, Mr. Paylor. Good 9 afternoon, everyone. My name is Demetrius Oberc, 10 and I'm a real estate specialist with the property 11 acquisition section for Montgomery County 12 Department of Transportation. My section is 13 responsible for administering requests for the 14 abandonment of public right-of-way. As Mr. Paylor 15 noted, this process is governed by County Code 16 Article 49, Section 6, the County code details the 17 County Counsel's authority to abandon a public 18 right-of-way if it finds that (1) the right-of-way 19 is no longer needed for public use or anticipated 20 future public use, or (2) the abandonment is 21 necessary to protect the health, safety, and 22 welfare of the residents near the right-of-way to 23 be abandoned. 24 On or about April 15th, 2020, the 25 Applicant, Montgomery County Department of</p>

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<p style="text-align: right;">9</p> <p>1 Transportation, Division of Transportation 2 Engineering, DTE, as part of the original design of 3 the Frederick Road Bike Path, hereon referred to as 4 the Project, acquired a 2,655-square-foot perpetual 5 easement for bike path and a 388-square-foot 6 perpetual easement for a drainage facility, hereon 7 referred to as the Original Easement Areas, from 8 the Potomac Edison Company. Upon the recordation 9 of the Bike Path and Drainage Facility Easement 10 Agreement recorded in the Montgomery County Land 11 records, Library R59804 at Folio 165, hereon 12 referred to as the Original Easement Agreement, the 13 Original Easement Areas became part of the County's 14 public right-of-way. 15 Subsequent to the recordation of the 16 original easement agreement, the design of the -- 17 of the project was modified resulting in an 18 alignment -- realignment of the bike path and 19 drainage facility across the Potomac Edison 20 property. Because the property interests acquired 21 under the original easement agreement were recorded 22 in the county land records, it was necessary for 23 the County to acquire new easements for the 24 realigned path, and then agree to abandon the 25 property interest previously recorded through the</p>	<p style="text-align: right;">11</p> <p>1 consisting of 388 square feet. The abandonment of 2 these easements will not affect the use, enjoyment, 3 safety, and/or the County's ability to maintain the 4 existing bike path. As part of the administrative 5 process, we have provided the requisite notices to 6 other public agencies of budding property owners 7 and the public at large. During this process, we 8 have collected a number of exhibits that I will now 9 introduce into the hearing record. 10 Okay. David, can you put up our first 11 exhibit? Okay. Exhibit A is Montgomery County 12 Department of Transportation's Application for 13 Abandonment Memo dated March 9th, 2023. As part of 14 this, we have Exhibit A1, which is the 2020 Bike 15 Path and Drainage Facility Easement Agreement, 16 recorded April 15th, 2020, at Liber 59804, Folio 17 165. Exhibit A2, 2020 -- 2021 Bike Path Easement 18 Agreement dated -- dated September 14th, 2021, 19 Liber 64250, Folio 71. On Page 26, I have 20 highlighted the abandonment requirement as part of 21 this agreement. 22 (Exhibits A, A1 and A2 were marked.) 23 MR. OBERC: Exhibit B is the abandonment 24 area through an aerial. 25 (Exhibit B was marked.)</p>
<p style="text-align: right;">10</p> <p>1 Original Easement Agreement. 2 On or about September 14th, 2021, 3 the County and Potomac Edison entered into a bike 4 path easement agreement, hereon referred to as the 5 Revised Easement Agreement, through which Potomac 6 Edison granted to the County a perpetual easement 7 for a bike path consisting of 5,215 square feet, 8 more or less. The acquisition of the perpetual 9 easement described in the revised easement 10 agreement negates the need for the easement 11 described in the Original Easement Agreement. 12 Pursuant to the terms of the Revised Easement 13 Agreement, the County is now pursuing the 14 abandonment of the easements acquired through the 15 Original Easement Agreement. In light of the 16 realignment of the project and the recordation of 17 the Revised Easement Agreement, the easements 18 acquired through the Original Easement Agreement 19 are no longer needed for -- or present -- for 20 present or anticipated future public use. 21 The easements that are requested to 22 be abandoned are described as follows: (a) 23 perpetual easement for a bike path consisting of 24 2,655 square foot -- square feet perpetual -- and 25 (b) perpetual easement for drainage facility</p>	<p style="text-align: right;">12</p> <p>1 MR. OBERC: Exhibit C will be Plat 1083, 2 showing the original acquisition of 2,655 square 3 feet perpetual easement for bike path, shown in 4 red, and 388 square foot perpetual easement for 5 drainage facility shown in orange. 6 (Exhibit C was marked.) 7 MR. OBERC: Exhibit D, Plat 1203, the 8 acquisition of 5,215 square foot perpetual easement 9 for bike path, shown in blue. 10 (Exhibit D was marked.) 11 MR. OBERC: Exhibit E is the Notice of 12 Public Hearing Comment Solicitation to the County 13 Agencies and Utility Companies. Exhibit E1, the 14 Department of Permitting Services Section of Fire 15 Department Access and Water Supply having no 16 objection to this abandonment. Exhibit E2 Division 17 of Transportation Engineering and operations with 18 DOT having no comment. No other division commented 19 regarding this abandonment. 20 (Exhibits E, E1 and E2 were marked.) 21 MR. OBERC: Exhibit F is the Mailing 22 List of Solicited Neighborhood Associations. The 23 two associations without e-mail addresses were 24 provided certified mail. as shown on the following 25 exhibits. F1 is the notice to the HOA and Civics</p>

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<p style="text-align: right;">13</p> <p>1 via e-mail -- sorry about that -- and then F2 is 2 going to be the Notice to HOA and Civics via the 3 certified mail. 4 (Exhibits F, F1 and F2 were marked.) 5 MR. OBERC: And then Exhibit G is the 6 Executive Order Number 06623, and that approves the 7 public hearing for this abandonment petition. 8 (Exhibit G was marked.) 9 MR. OBERC: Exhibit H, Traffic Sign and 10 Public Hearing Posting, posted across the street at 11 the intersection of MD 355, Frederick Road at Brink 12 Road, on June 28th, 2023. 13 (Exhibit H was marked.) 14 MR. OBERC: Exhibit I, the Washington 15 Times Ad Proof Number 73916, advertisement dates of 16 June 29th and July 6th. 17 (Exhibit I was marked.) 18 MR. OBERC: And finally, Exhibit J is 19 the MCDOT Calendar Event Posting, posted May 23rd. 20 (Exhibit J was marked.) 21 MR. OBERC: And that is all the exhibits 22 I have for this, so I send this back over to 23 Michael Paylor 24 MR. PAYLOR: Thank you, Mr. Oberc. At 25 this time, those who have registered to speak on</p>	<p style="text-align: right;">15</p> <p>1 matter and pop back on. Otherwise, at the end of 2 that 15 to 30 seconds, we'll close the hearing out. 3 MR. BIRENBAUM: Are you going to keep 4 the hearing record open for a period of time for 5 anybody that wishes to submit comments, that person 6 who might have had those technical difficulties, 7 maybe for five days or something? 8 MR. OBERC: We have it open until on 9 July -- what was that, 28th? 10 MR. PAYLOR: Yeah. When -- if -- if 11 we'll allow. So since those 15 minutes are up, 12 I'll -- I'll offer my closing commentary that'll 13 cover that ground. We did not receive any 14 additional comments or any comments to be placed on 15 the record by participants, and since there are no 16 comments, I am declaring this hearing closed. The 17 hearing record will remain open until July 28, 2023 18 at 5:00 p.m. to accommodate any additional comments 19 for the record; and these comments and any other 20 correspondence may be addressed to Mr. Demetrius 21 Oberc at Montgomery County Department of 22 Transportation, 100 Edison Park Drive, 4th floor 23 Gaithersburg, Maryland 20878, or they may be -- 24 they may be e-mailed to 25 Demetrius.oberc@montgomerycountymaryland.gov by</p>
<p style="text-align: right;">14</p> <p>1 this abandonment case may do so. 2 MR. OBERC: We do have a participant 3 that showed up during the middle of my thing, but 4 is that too late? Is that -- 5 MR. PAYLOR: No, sir. If -- if there 6 are individuals now -- if that's -- if there's only 7 one individual, whoever, if anyone would like to 8 speak and add their comments to the record, they're 9 authorized to do so at this time. 10 MR. OBERC: I'm sorry. I think they 11 left anyways, so okay. 12 MR. PAYLOR: Okay. 13 MR. OBERC: I saw them pop up while I 14 was reading. 15 MR. PAYLOR: I did, too. Yes, thank you 16 for that. So -- so based on your -- your 17 observations, there are no other individuals on the 18 call that are seeking to comment or speak on the 19 case? 20 MR. OBERC: I do not see anybody outside 21 of our division or Planet Depos. 22 MR. PAYLOR: In the spirit of charity, 23 I'll allow maybe a 15- or 30-second pause to give 24 that person, if they had some kind of technical 25 difficulties, and opportunity to rectify their</p>	<p style="text-align: right;">16</p> <p>1 July 28th, 2023, at 5:00 p.m. So with that, thank 2 you, and -- and the hearing is ended. 3 (Off the record at 2:21 p.m.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

17

1 CERTIFICATE OF COURT REPORTER

2 I, Shannon Hayes, the officer before
3 whom the foregoing proceedings were taken, do
4 hereby certify that said proceedings were
5 electronically recorded by me; and that I am
6 neither counsel for, related to, nor employed by
7 any of the parties to this case and have no
8 interest, financial or otherwise, in its outcome.

9
10
11 *Shannon Hayes*

12 Shannon Hayes, Court Reporter

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1 CERTIFICATION OF TRANSCRIPT

2 I, Karen M. Galvez, do hereby certify
3 that the foregoing transcript, to the best of my
4 ability, knowledge, and belief, is a true and
5 correct record of the proceedings; that said
6 proceedings were reduced to typewriting under my
7 supervision; and that I am neither counsel for,
8 related to, nor employed by any of the parties to
9 this case and have no interest, financial or
10 otherwise, in its outcome.

11
12 *Karen M. Galvez*

13 Karen M. Galvez
14 Karen M. Galvez
15 Planet Depos, LLC
16 July 24, 2023

A			
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