

1 MONTGOMERY COUNTY DEPARTMENT OF TRANSPORTATION

2 -----x

3 SSL INVESTMENT PARTNERS II, LP, :

4 Petitioner, : Case No.

5 vs. : N/A

6 MONTGOMERY COUNTY DEPARTMENT :

7 OF TRANSPORTATION, :

8 Respondent. :

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PUBLIC HEARING

15

Conducted Virtually

16

Wednesday, February 15, 2023

17

1:01 p.m. CST

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23 Job No.: 467010

24 Pages: 1 - 20

25 Recorded By: Paul Kaminski



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1 Public Hearing, conducted virtually

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15 Pursuant to Agreement, before Paul Kaminski,

16 Notary Public in and for the State of Tennessee.

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1                   A P P E A R A N C E S

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3 ON BEHALF OF THE PETITIONER:

4           PATRICIA HARRIS, ESQUIRE

5           LERCH, EARLY & BREWER,

6           7600 Wisconsin Avenue, Suite 700

7           Bethesda, Maryland 20814

8           301.841.3832

9

10 ON BEHALF OF MONTGOMERY COUNTY DOT:

11           TIARA MCCRAY (PROPERTY ACQUISITIONS)

12           MONTGOMERY COUNTY DEPARTMENT OF

13           TRANSPORTATION (1100167)

14           DIVISION OF TRAFFIC ENGINEERING AND

15           OPERATIONS

16 100 Edison Park Drive, 4th Floor  
17 Gaithersburg, Maryland 20878  
18 240.777.2190  
19 (Present via videoconference)

20

21 ALSO PRESENT:

22 JOSE THOMMANA (MCDOT - HEARING OFFICER)

23 IAN P. DUKE (VIKA Maryland, LLC)

24 STEVE VAN DORPE (Silverstone Senior

25 Living)

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1 C O N T E N T S

2 ARGUMENT	PAGE
3 By Ms. McCray	7
4 By Ms. Harris	13

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7 E X H I B I T S

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1                   P R O C E E D I N G S  
2                   (Whereupon, the court reporter was duly  
3 sworn.)  
4                   MR. THOMMANA: Okay. Greetings and good  
5 afternoon, everybody. It is now 1:00 on February  
6 15th, 2023. We are conducting this hearing  
7 virtually via Zoom, and we are here for a public

8 hearing on Abandonment Petition AB783, to consider  
9 an application received from SSL Investment  
10 Partners to abandon a portion of the public  
11 right-of-way located at the northwest corner of  
12 11565 Old Georgetown Road. My name is Jose  
13 Thommana and I am the County Executive's  
14 designated Hearing Officer with the County's  
15 Department of Transportation.

16           This right-of-way abandonment hearing is  
17 being conducted pursuant to Section 49-62(f) of  
18 the Montgomery County Code. My role in the  
19 abandonment process is to receive testimony  
20 concerning the abandonment request, and then write  
21 a report and recommendation to the County  
22 Executive regarding -- concerning the Applicant's  
23 petition for abandonment. In order to do this, I  
24 will consider statements made during this hearing,  
25 written comments received within the comment

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1 period. Comments will be accepted until February  
2 24th, 2023, at 5:00 p.m., as well as documents  
3 submitted to Mr. David Harris to support or

4 explain a position on this abandonment case.

5           My report and recommendation will then  
6 be forwarded to the County Executive for  
7 consideration, and the Executive will then forward  
8 the report and the County's -- County Executive's  
9 recommendation to the County Council. It is the  
10 County Council that will decide whether to grant  
11 or deny the Applicant's petition for abandonment.  
12 For those who wish to submit written comments,  
13 please submit them to Mr. David Harris at the  
14 Montgomery County Department of Transportation,  
15 100 Edison Park Drive, 4th Floor, Gaithersburg,  
16 Maryland, 20878, or e-mail them to  
17 david.harris@montgomerycountymd.gov by Feb. 24th,  
18 2023.

19           There are a few ground rules that we  
20 must cover before Ms. Tiara introduces the  
21 abandonment petition in the record. First, please  
22 turn off or silence your cell phones. Second, as  
23 an issue of decorum, all participants must be  
24 given due consideration. Those seeking to offer  
25 comment following the close of the Petitioner's

1 case for abandonment are asked to be mindful of  
2 the time and to limit their comments to relevant  
3 matters. If an interruption occurs, I will give  
4 that individual their first warning. If there is  
5 a second interruption, I will give that individual  
6 a second warning and they will be muted. If the  
7 same individual receives a third warning, that  
8 person will be removed from the call. And if  
9 there are several people making interruptions, I  
10 may close the hearing.

11           Follow -- following Ms. Tiara McCray's  
12 introduction, the Applicant will submit its case  
13 for why it believes the right-of-way abandonment  
14 -- the right-of-way should be abandoned. And  
15 after the Applicant has completed its case, those  
16 who have registered to speak will be afforded the  
17 opportunity to make relevant comments. With that,  
18 I'll turn it over to Tiara.

19           MS. MCCRAY: Thank you, Mr. Thommana.  
20 Good afternoon, everyone. As Jose has already  
21 stated, my name is Tiara McCray and I am with the  
22 Property Acquisitions Section from Montgomery  
23 County DOT. It's my section that's responsible  
24 for administering requests for the abandonment of



25 public rights-of-way. As Mr. Thommana noted



1 earlier, this process is governed by County Code  
2 Article 49, Section 6, and the County Code details  
3 that the County Council's -- it is the County  
4 Council's authority to abandon a public  
5 right-of-way if it finds that (1) the right-of-way  
6 is no longer needed for public use or anticipated  
7 future public use, or (2) the abandonment is  
8 necessary to protect the health, safety, and  
9 welfare of the residents near the right-of-way to  
10 be abandoned.

11           The Applicant, SSL Investment Partners  
12 II LP, currently owns lots 9, 10 and 5 of Block 1  
13 and Parcel 613 and 614 in the Towson Center  
14 subdivision located at 11565, 11575, and 11605 Old  
15 Georgetown Road and -- or -- excuse me -- 5995  
16 Executive Boulevard. Upon the -- one of these  
17 parcels is County-owned right-of-way reference of  
18 S21 and SHA-32 as a result of the reconstruction  
19 of the Executive Boulevard and Old Georgetown Road  
20 construction in North Bethesda, Maryland, which is

21 also known as the Western Workaround. Pursuant to  
22 our preliminary plan approval, these lands are --  
23 will ultimately form two lots, Lots 1 and 2. The  
24 petition abandonment area is a portion of public  
25 right-of- way on Lot 1 covering approximately 166



1 square feet, located at the northwest corner of  
2 the property near 11565 Old Georgetown Road, and  
3 is part of Phase 1 of the Grand Park Development  
4 Plan.

5           The Applicant is the contract purchaser  
6 of Phase 1 of the development plan and is seeking  
7 the abandonment in order to facilitate the  
8 construction of steps that will allow access to  
9 the ground floor retail space as described in the  
10 Grand Park Development Plan. According to the  
11 Applicant's petition, the maximum projection of  
12 the steps will be about 11 feet from the face of  
13 the building. In the Applicant's petition, it  
14 asserts that the public right-of-way is no longer  
15 serving current or future public use.

16           Additionally, the Petitioner has met

17 with staff from the Department of Permitting  
18 Services, the Department of Transportation  
19 Development Review Committee, and the  
20 Maryland-National Capital Park and Planning  
21 Commission, Montgomery County. As reflected in  
22 previous correspondence and comments to be  
23 included in the record, the agencies have no  
24 objection to the proposed abandonment to  
25 accommodate the location of the proposed steps

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1 within the truncation at the corner of Old  
2 Georgetown Road.

3           As part of the administrative process,  
4 we have provided the requisite notices to other  
5 public agencies, abutting property owners and the  
6 public at large. During this process, we have  
7 collected a number of exhibits that I will now  
8 introduce into the hearing record. Please let me  
9 know when you can see my screen.

10           UNKNOWN: Now.

11           MR. THOMMANA: See it.

12           MS. MCCRAY: Thank you. Exhibit A is

13 the Applicant's abandonment petition received July  
14 14th, 2022; that's Pages 1 through 11. Exhibit B  
15 is Plat 9050, establishing the right-of-way for  
16 Old Georgetown Road, Page 12. Exhibit C is the  
17 Executive Order number 191-22, authorizing today's  
18 public hearing for AB783 on Page 13. Exhibit D is  
19 the abandonment aerial that highlights the  
20 petitioned right-of-way area, Page 14. Exhibit E  
21 is the comment solicitation e-mails that were  
22 submitted to County agencies, submitted on October  
23 20th, 2022, Pages 15 and 16. Exhibit F is the  
24 comment solicitation e-mails that were sent out to  
25 public utility companies, also submitted October



1 20th, Pages 17 and 18.

2           Exhibit G is the Washington Times Ad,  
3 Number 69339, advertising this public hearing which  
4 ran on February 1st and February 8th, Page 19.  
5 Exhibit H, the public hearing traffic sign, both a  
6 request and copies of the signed submission and a  
7 picture of the sign out in the right-of-way.  
8 Excuse me. The hearing sign was installed January

9 27th, 2023. Exhibit I is a Go Montgomery  
10 advertisement request, the ad running on February  
11 1st, 2023, advertising the public hearing, Pages 23  
12 through 26. Exhibit J is the MCDOT calendar  
13 advanced submission which was submitted October  
14 20th, notifying today's public hearing.

15           Exhibit K is the HOACA and certified  
16 mailing list. The list includes HOA members,  
17 civic association members, and the adjoining --  
18 adjoining property owner who received their  
19 notification via certified mail, return receipt  
20 requested. Exhibit M is a general public notice  
21 and mailing list for certified folks sent out  
22 January 25th. Oh, I think I might have skipped  
23 over one. Sorry, that is the e-mail list that  
24 went out. Here is the certified letter that went  
25 out on January 25th, and was delivered --



1 delivered -- excuse me -- January 28th. Exhibit N  
2 is the Department Of Transportation Development  
3 Review Committee comment dated December 5th from  
4 Brenda Pardo via Rebecca Tormo, providing no

5 objection with some conditions, Pages 32 and 33.  
6 Exhibit O is the Department of Transportation  
7 Division of Traffic, Engineering, and Operations  
8 comment dated November 17th from Mark Terry with  
9 no objection to the abandonment.

10           Exhibit P, Montgomery County Police  
11 Policy and Planning Division comment dated  
12 December 22nd from Captain Stacey Flynn with no  
13 objection to the abandonment. Exhibit Q,  
14 Department of Transportation Division of  
15 Permitting Services, Fire and Rescue, comment  
16 dated November 3rd from Marie Labad; no objection  
17 to the abandonment. Excuse me. Exhibit R is the  
18 Maryland-National Capital Park and Planning  
19 Commission comment dated October 25th -- excuse me  
20 -- received from Matthew Folden via e-mail,  
21 supporting the abandonment petition as discussed  
22 in the staff report for the Grand Development  
23 Application -- excuse me -- Grand Park Development  
24 Application, which has been included in the record  
25 in the following pages. The record is



1 significantly long, so I will skip to the end, but  
2 it is Pages 37 through 92.

3 All right. Exhibit S is the WSSC  
4 comment dated December 15th from Catalina Munozo  
5 -- I hope I'm pronouncing that right -- providing  
6 consent to vacate the petitioned right-of-way with  
7 expressed conditions, Pages 93 and 94. Exhibit T,  
8 a Washington Gas comment dated November 22nd from  
9 Colin Burke with no objection to the abandonment.  
10 Exhibit U -- Exhibit U is a PEPCO comment dated  
11 December 6th, 2022 from Crystal Green with no  
12 objection. Exhibit V is the affidavit of  
13 publication dated February 8th, certifying the  
14 hearing advertisement ran on February 1st and 8th,  
15 Page 97. And Exhibit W is the Applicant's hearing  
16 presentation, which I believe Ms. Harris will go  
17 ahead and utilize shortly after here, Pages 98  
18 through 103. And I will skip to the end. One  
19 second. Thank you, Mr. Thommana. I'll go ahead  
20 and turn this back over to you.

21 (Exhibits A through W were marked.)

22 MR. THOMMANA: All right. So Ms.  
23 Harris, if you're ready, you can start.

24 MS. HARRIS: Certainly. Thank you. For  
25 the record, Pat Harris with Lerch, Early & Brewer



1 on behalf of the Applicant, SSL Investment  
2 Partners, better known as Silverstone, who is the  
3 contract purchaser of Phase 1 of the property that  
4 Ms. McCray had identified. As noted, this is a  
5 request for an abandonment of 166 square feet of  
6 -- of right-of-way. With me this evening -- or  
7 this -- sorry -- this afternoon is Steve Van Dorpe  
8 from Silverstone and Ian Duke representing VIKA  
9 Engineering. I want to make some general remarks,  
10 and then Mr. Van Dorpe and Mr. Duke are here if  
11 there are any questions for them.

12           So if I could share my screen. And I  
13 would note that the PowerPoint that I'm about to  
14 present was provided to Mr. Harris yesterday. Can  
15 you see my screen? Wait a minute.

16           MR. THOMMANA: Yes.

17           UNKNOWN: Yep.

18           MS. HARRIS: And it says, Petition for  
19 abandonment, yes?

20           MS. MCCRAY: Yes, ma'am.

21           MS. HARRIS: Okay. So the overall



22 property is at the intersection of Old Georgetown  
23 Road and Old Georgetown Road, which is newly  
24 constructed Old Georgetown Road and Old Georgetown  
25 Road. I'm pleased to see that Google has already



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1 updated its map to -- to show the Western  
2 Workaround. So the property is this -- the  
3 overall property is this 3.35-acre parcel which  
4 was recently platted. The Planning Board approved  
5 the plat on February 2nd and it has now -- I don't  
6 know if we -- actually if we have a plat number  
7 yet or not, but the -- the plat was approved by  
8 the Planning Board, showing the entire property.

9           As noted, the subject property is what's  
10 referred to on this condo plat as Condo Unit  
11 number 1, and that is the project that Silverstone  
12 will be developing with a residential care  
13 facility consisting of independent living and  
14 assisted living. And most importantly for these  
15 purposes, on the ground floor, there will be  
16 retail, and the retail was something that Park and  
17 Planning emphasized that was important to them to

18 activate the streets along Old Georgetown Road and  
19 Old Georgetown Road.

20           What this plan doesn't show is that part  
21 of this, the overall development of this property,  
22 will include a roadway, a -- a drive aisle,  
23 really, that goes east-west but that breaks up the  
24 -- the retail portions of the ground floor. And  
25 at the northern portion of the retail is a fairly

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1 small space which has prompted this abandonment  
2 request. Because in order to access the property,  
3 there needs to be stairs into the property, and we  
4 realized that our only two options were either to  
5 put the stair within the property boundaries,  
6 which would then further decrease the limited  
7 amount of retail space, or we could construct the  
8 stairs outside of the property boundary within  
9 this -- the right-of-way, which was the preferred  
10 option. And we, as -- again, as noted, the Park  
11 and Planning, DOT staff, and DPS staff were very  
12 comfortable with that approach, but the problem is  
13 that you can't have stairs within a public

14 right-of-way, which has prompted the request to  
15 abandon 166 square feet.

16           The -- I would note that the site plan  
17 resolution for this property does have a condition  
18 that provides as follows: Prior to the first use  
19 and occupancy certificate, the Applicant must  
20 obtain the County's approval for the abandonment  
21 of approximately 170 square feet of Old Georgetown  
22 right-of-way to accommodate the steps at the  
23 northwest corner of the building or amend the  
24 plans to eliminate the need for the abandonment.  
25 The proposed abandonment area is shown on this



1 sheet in blue and, as noted, it projects a maximum  
2 of 11 feet out from the face of the building,  
3 leaving a very generous remaining right-of-way  
4 from the back of curb, which ranges from 26.4 feet  
5 to 33.8 feet, so there certainly is sufficient  
6 remaining right-of-way.

7           We believe that this application  
8 satisfies the County Code requirement 49-63(c)(1)  
9 in that the right-of-way is no longer necessary

10 for present public use or anticipated public use  
11 in the foreseeable future. And, again, most  
12 notably, after, if in fact it is determined that  
13 the abandonment may occur, there still will be  
14 sufficient right-of-way remaining, at a minimum,  
15 26.4 feet from back of curb. And I would further  
16 note, as I mentioned previously, that the  
17 abandonment has -- is -- has -- does have the  
18 support of DPS, DOT, and Park and Planning.

19           And so, with that, unless there are any  
20 questions for our two witnesses, I would urge the  
21 Hearing -- Hearing Examiner's support and  
22 recommendation for the abandonment supported by  
23 the agencies, and there is no evidence that  
24 there's a -- either a current use or a foreseeable  
25 public future use for this 166-foot-square area.

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1 Thank you.

2           MR. THOMMANA: I do not have any  
3 questions at this time, so if there is -- is there  
4 anybody signed up or anybody joined or sent  
5 anything about comments?

6 MS. MCCRAY: I don't see any in the  
7 chat, and, to my knowledge, no one else has signed  
8 up to make a -- a comment during the hearing.

9 MR. THOMMANA: Okay. So we will go  
10 ahead and then end this hearing at this time.  
11 There's no further comment and we'll proceed to  
12 review any written comments, if they do come in,  
13 by the 24th -- I'm sorry; I don't have the date  
14 right in front of me -- the 24th of February 2023  
15 by 5:00 p.m.

16 MS. HARRIS: Thank you.

17 UNKNOWN: Thank you.

18 MS. MCCRAY: Thank you.

19 MR. THOMMANA: Thank you.

20 (Off the record at 1:20 p.m.)

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2 I, Paul Kaminski, the officer  
3 before whom the foregoing proceedings were taken,  
4 do 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.

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12 Paul Kaminski, 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

13 \_\_\_\_\_

14 Karen M. Galvez

15 Planet Depos, LLC

16 March 1, 2023

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