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Transcript of Hearing

Date: September 14, 2020

Case: AB772 (White Flint) Abandonment Hearings, In re

Planet Depos

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DEPARTMENT OF TRANSPORTATION
FOR MONTGOMERY COUNTY, MARYLAND

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In Re: :
APPLICATION FOR : No. 772
ABANDONMENT :

-----x

PUBLIC HEARING
Conducted Virtually
Monday, September 14, 2020
11:00 AM

Job No.: 321780
Pages: 1 - 19
Recorded by: Lee Utterback

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1 Hearing, conducted virtually.

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10 Pursuant to agreement, before Lee Utterback,
11 AAERT CER, Notary Public in and for the State of
12 Maryland.

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A P P E A R A N C E S

MICHAEL PAYLOR, HEARING OFFICER
Montgomery County Department of Transportation
Division of Transportation Engineering
100 Edison Park Drive
4th Floor
Gaithersburg, Maryland 20878
Phone: (240) 777-8792

ALSO PRESENT:

JOSHUA TRACY
TIARA MCCRAY
ROBERT BIRENBAUM, ESQUIRE
PEGGY SCHWARTZ
MICKEY PAPILLON
ERIC WILLIS
CALEB WELSH, MVC TECHNICIAN

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(Retained.)

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P R O C E E D I N G S

MR. PAYLOR: Well, greetings. Good morning to all of you. It's now 11:00 on the 14th day of September 2020. As you know, we're conducting this hearing virtually via Zoom. We are here for the public hearing for Abandonment Petition AB-772, which is the abandonment of portions of Executive Boulevard and Old Georgetown Road for the White Print [sic] -- White Flint project. My name is Michael Paylor and I am the county executive's designated hearing officer, and will be conducting this hearing, and then, following the comment period, writing a recommendation for the county executives.

After my report has been presented to the county executive, the report will be submitted to the county council staff for their review and recommendation to the council. When able to provide a timeline for this process, but should you request to be updated on the process of this report, please submit your questions to Mr. Joshua Tracy. After this hearing is closed, the record will remain open for 14 days and close at 5:00 p.m. on September 28th, 2020.

Any comments between now and then should

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1 be sent to Mr. Joshua Tracy, Montgomery County
2 Department of Transportation, 100 Edison Park
3 Drive, 4th floor, Gaithersburg, Maryland, 20878.
4 There are a few ground rules that we should cover
5 before Mr. Tracy introduces the abandonment
6 petition into record. First, please turn off or
7 silence your electronic devices, and second, as an
8 issue of decorum, all participants must be given
9 their due consideration. Everyone who has made
10 known in advance that they would like to make
11 comments will be afforded the opportunity to do
12 so. Additional comments will be open to
13 participants at the end of the meeting.

14 If an interruption of a presenter
15 occurs, I will give the interrupting individual
16 their first warning and if there's a second
17 interruption, I'll give that individual a second
18 warning and they will be muted. And if that same
19 individual receives a third warning, that person
20 will be removed from the call. And -- and while
21 we don't expect this to occur, if there are
22 several people making interruptions, I will, or I
23 will consider, closing the hearing. And -- and so
24 without further ado, I'll now introduce Mr. Joshua
25 Tracy from the Montgomery County Department of

1 Transportation, who is a real estate specialist,
2 to present the case. Josh?

3 MR. TRACY: Thank you, Mr. Paylor, for
4 that introduction. As you said, we are here for
5 the abandonment case 772, which is portions of
6 Executive Boulevard and Old Georgetown Road in
7 Rockville, Maryland in the White Flint area. I'm
8 now going to read the exhibits into the record.
9 If I could have the -- Mr. Utterback or -- excuse
10 me, yeah. Okay. Mr. Welsh, bring up the exhibits
11 and I'll read through them.

12 MVC TECHNICIAN: Yes. Stand by.

13 MR. TRACY: Thank you. Thank you. All
14 right. I'm going to have to read through the
15 following exhibits. Exhibit A, which is a letter
16 dated May 7th, 2020, from Eric Willis, chief of
17 the Property Acquisition Section on behalf of
18 MCDOT, requesting the abandonment of two separate
19 portions of Executive Boulevard and Old Georgetown
20 Road.

21 The next will be Exhibit B, which is a
22 public hearing authorization via Executive Order
23 085-20, which is effective June 30th of 2020.

24 Exhibit C, which is a notice of public
25 hearing published on the county's MCDOT calendar

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1 website.

2 Exhibit D, which is proof of the
3 newspaper advertisement of the public hearing for
4 two consecutive weeks on August 31st, 2020, and
5 September 7th, 2020, in the Washington Times.

6 Exhibit E is a photo of signage at the
7 abandonment site advertising the hearing.

8 Exhibit F is the plat of the abandonment
9 for the Executive Boulevard portion.

10 Exhibit G is a legal description of the
11 Executive Boulevard portion to be abandoned.

12 Exhibit H is a plat of the abandonment
13 for Old Georgetown Road, portion.

14 Exhibit I is a legal description of Old
15 Georgetown Road portion to be abandoned.

16 Exhibit J, which is a Google Earth
17 overlay of the 2 proposed abandonment areas.

18 Exhibit K, which is an excerpt from the
19 White Flint sector plan.

20 Exhibit L, which is a White Flint west
21 sector plan map.

22 Exhibit M, which is the Montgomery
23 County Department of Transportation, Office of
24 Transportation Policy Development review team
25 memorandum, which is dated May 26th, 2020,

1 recommending approval.

2 Exhibit N is an e-mail from the
3 Montgomery County Division of Permitting Services
4 dated August 27th, 2020, saying the department has
5 no comment to the subject abandonment.

6 Exhibit O is an e-mail from Montgomery
7 County Department of Permitting Services, Office
8 of the Fire Marshal saying the department supports
9 the proposed abandonment.

10 Exhibit P is a letter from the Maryland
11 National Capital Park and Planning Commission
12 supporting the proposed abandonment.

13 Exhibit Q is an e-mail from Washington
14 Gas stating the utility has no objection to the
15 proposed abandonment.

16 Exhibit R is a county council resolution
17 18-21 for a previous abandonment, 739.

18 Exhibit S is the Executive Boulevard
19 deed.

20 Exhibit T, which is an Executive
21 Boulevard plat number 9672.

22 And Exhibit U, which is a standard
23 road-conveyance deed from SHA. All right. I
24 submit those exhibits to the record and I will now
25 turn it back over to Mr. Paylor.

1 MR. PAYLOR: All right. At this time,
2 the expectation is that the -- was there a -- the
3 participant or the petitioner's case for
4 abandonment will be presented at this time?

5 MR. WILLIS: And that's correct, Mr.
6 Paylor. And for the record, my name is Eric
7 Willis. I'm the chief of the Property Acquisition
8 Section within MCDOT's Division of Transportation
9 Engineering. We are the applicant to this
10 request. It's a little unusual to have our
11 division be an applicant. In this case, we're the
12 applicant because we are the fee simple owner of
13 the right-of-way that's in question. And Mr.
14 Tracy, going through the exhibits, you know,
15 included in there: The deed from SHA which
16 conveyed the Old Georgetown right-of-way, what
17 we're calling a turn there.

18 And then there was also a deed of land
19 that we purchased when Executive Boulevard was put
20 in in the 1970s, I believe, where we became the
21 fee simple owner of this section of Executive
22 Boulevard that is also subject to this
23 abandonment. By way of background, the reason
24 we're doing this is it's in furtherance of the
25 White Flint sector plan and the road improvements

1 that are set forth in that sector plan. And so I
2 think it might be helpful at this point if we
3 could pull up that -- that exhibit, I believe it's
4 Exhibit K, which is the sector plan, pages out of
5 the sector plan.

6 MVC TECHNICIAN: Yes. Stand by.

7 MR. WILLIS: Thank you. And so as you
8 can see in the document in the -- or the -- the
9 diagram there, the -- the one near the bottom. I
10 don't know if we can zoom a little bit in there,
11 but that sort of sets forth what the planned road
12 network is going to be. And you can see some --
13 through here, Executive Boulevard, which now sort
14 of breaks off to the left and then connects to Old
15 Georgetown Road, is actually being straightened so
16 that it's going to go up to Old Georgetown Road
17 and then even further up into the Pike and Rose
18 development there.

19 And so that -- that road improvement,
20 part of it is built, up until what's shown here as
21 Market Street. It's now called Banneker Street.
22 But that road, Executive Boulevard Extension, is
23 built up to Market Street and then it's in the
24 process of being built all the way to Old
25 Georgetown Road. That extension allows for the --

1 the intersection of Old Georgetown Road and
2 Executive Boulevard to be rebuilt and it's
3 basically being moved north and it's going to
4 create a 4-way direct, you know, intersection --
5 you know, perpendicular intersection. And so the
6 curve that now exists on Old Georgetown, is going
7 to go away.

8 That area will become excess
9 right-of-way. And that's shown -- it's in the top
10 left of the -- the box there, with the 3 in it.
11 You can kind of see where Executive Boulevard
12 currently comes and this little area where the
13 turn flares. And the -- the sector plan has sort
14 of put that out there for -- suitable for future
15 development. So what we're doing -- and the road
16 improvements are ongoing now, the construction is
17 ongoing. So what we're trying to do is fulfill
18 the -- the vision of the master plan. And one way
19 to do that is by abandoning what will become
20 excess right-of-way and allow for that land to
21 then be incorporated into a development.

22 And so if you can go down -- I think --
23 just scroll down a little bit, there is another
24 excerpt from the appendix of that sector plan that
25 actually showed how the county council was

1 anticipating these future abandonments. If you
2 can just scroll a little bit further down. Yeah,
3 right there. And so this is pulled from the
4 appendix, this attachment, and it's showing
5 Executive Boulevard. And this is this piece of
6 Old Georgetown, the curve that I just mentioned as
7 being suitable for abandonment. So that's what
8 we're trying to do in this case. Next, if you can
9 pull up the Exhibit L, and sort of show how this
10 is coming into play. I think that's the -- part
11 of the overall roadway network.

12 Right. So again, we have the roadway
13 network. You can see Executive Boulevard being
14 realigned to connect in the blue there, sort of
15 the aqua color, with Old Georgetown Road. And
16 this curve showing, kind of the -- the shaded
17 slightly red, maybe a little pinkish, as being
18 what will become excess right-of-way. The
19 Executive Boulevard piece is just right across the
20 street, just a little corner there as the
21 Executive and Old Georgetown intersection
22 straightens out. So that area will also become
23 excess right-of-way once the intersection is
24 built. And then finally, if you could just pull
25 up the Exhibit J, which is the Google Earth

1 overlay.

2 MVC TECHNICIAN: Yes. Stand by.

3 MR. WILLIS: Yeah. You can get an image
4 for how this looks sort of in reality. Yeah,
5 thank you. And again, the curve from Old
6 Georgetown, this actually extends slightly onto
7 Executive Boulevard on the -- the east side of Old
8 Georgetown. And then you can also see this little
9 piece, sort of a trapezoidal piece at the corner
10 of what we call the guardian property.

11 And so the -- and I should mention the
12 -- the remainder of Executive Boulevard to the
13 east of Old Georgetown Road has previously been
14 abandoned. And that was done by a resolution. I
15 forget which exhibit, but it was incorporated into
16 the record. I believe it was 8, exhibit --
17 resolution number 18-21. So that area has already
18 been freed up. The road is actually closed right
19 now for construction.

20 MR. TRACY: That would be Exhibit R.

21 MR. WILLIS: Exhibit R. Thank you. And
22 so it's our contention in all this that after the
23 intersect is built -- and the aerial shows it
24 pretty well how you're going to have -- Executive
25 Boulevard and Old Georgetown are going to

1 essentially create a straight line where they're
2 going to connect once the new intersection is
3 built. And again, once the intersection is built,
4 these areas become excess right-of-way and will no
5 longer be necessary for present public use or
6 anticipated future use. The one thing, Mr.
7 Hearing Examiner, to consider is perhaps this
8 abandonment becomes effective upon the -- the --
9 the intersection being complete, the construction
10 of the new intersection being complete.

11 Presently, this area is still being used
12 for traffic, but it will become excess. One of
13 the reasons with the timing is we didn't want to
14 have the construction be completed and then have
15 to, you know, sequentially go through an
16 abandonment process and then allow things to
17 happen. And so we're trying to anticipate what's
18 going to happen once the -- once the road
19 construction is complete. And this area becomes,
20 again, excess right-of-way not needed for present
21 or anticipated future use. And that would be my
22 case.

23 MR. PAYLOR: Thank you very much. At
24 this time, are there any comments that
25 participants wish to make on this abandonment

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1 petition? No -- no additional comments. All
2 right. Very well. If there are no additional
3 comments or anyone else who wishes to speak, I'm
4 going to declare this hearing closed. As I
5 mentioned earlier, the record will remain open
6 until September 28, 2020, to accommodate any
7 additional comments for the record. And those
8 comments and any other correspondence may be
9 addressed to Mr. Joshua Tracy, Montgomery County
10 Department of Transportation, 100 Edison Park
11 Drive, Gaithersburg, Maryland, 20878. Thank you
12 and this hearing is now ended.

13 MR. WILLIS: Thank you.

14 MR. TRACY: Thank you. No, we don't
15 need a rush. Okay. I -- I think so.

16 (Off the record at 11:17 AM.)

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CERTIFICATE OF COURT REPORTER

I, Lee Utterback, AAERT CER, the officer
before whom the foregoing proceedings were taken,
do hereby certify that said proceedings were
electronically recorded by me; and that I am
neither counsel for, related to, nor employed by
any of the parties to this case and have no
interest, financial or otherwise, in its outcome.



Lee Utterback, AAERT CER, Court Reporter

CERTIFICATION OF TRANSCRIPT

I, Mary Lide, do hereby certify that the foregoing transcript, to the best of my ability, knowledge, and belief, is a true and correct record of the proceedings; that said proceedings were reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.



Mary Lide, AAERT-CET

Planet Depos, LLC

9/25/2020

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