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Transcript of Public Hearing

Date: May 4, 2021

Case: AB774 (Liberty Mill Road) Abandonment Hearing, In re

Planet Depos

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MONTGOMERY COUNTY DEPARTMENT OF TRANSPORTATION

-----x
In Re: :
Liberty Mill Road : No.
Abandonment Hearing : AB 774
-----x

HEARING
Conducted virtually
Tuesday, May 4, 2021
1:05 PM EST

Job No.: 371660
Pages: 1 - 39
Recorded By: Jesse Greer

1 Hearing, conducted virtually.

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10 Pursuant to agreement, before
11 Jesse Greer, Notary Public in and for the
12 State of Maryland.

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A P P E A R A N C E S

TIARA MCCRAY

DAN FRYER

JOSE THOMMANA

TIM LONGFELLOW

KEVIN FOSTER

JOSH TRACY

DARLENE KERR

CLARK WAGNER

ROBERT BIRENBAUM

ELIZABETH ROGERS

MARIAN FOCKE

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P R O C E E D I N G S

MR. THOMMANA: Greetings and good afternoon to all of you. It is now 1:06 p.m. On the 4th of May 2021. And we're conducting this virtual hearing via Zoom. We're here for Public Hearing on Abandonment Petition AB774, to consider an application received from Lerch, Early& Brewer Chartered on behalf of the Applicant, King's View Station Joint Venture, seeking the abandonment of portions of the existing right-of-way that fall outside of a proposed realignment of Liberty Mill Road in Germantown, Maryland.

My name is Jose Thommana and I am the County Executives designated hearing officer with the County's Department of Transportation. This right-of-way abandonment hearing is being conducted pursuant to Montgomery County Code, Section 49-62F. My role in the abandonment process is to write a report and make a recommendation to the County Executive concerning the applicant's petition for abandonment.

In order to do this, I will be considering statements made at the hearing, written comments received within the comment period, and comments will be accepted until May

1 18, 2021, at 5:00 p.m. And documents submitted to
2 support or explain a position. My report and
3 recommendation will then be forwarded to the
4 County Executive for consideration and the
5 Executive will then forward the report and the
6 Executive recommendation to the County Council.

7 It is the County Council that will
8 decide whether they -- whether to grant or deny
9 the applicant's petition for abandonment. For
10 those who wish to submit written comments, please
11 submit them to Ms. Tiara McCray, at the Montgomery
12 County Department of Transportation, 100 Edison
13 Park Drive, 4th Floor, Gaithersburg, Maryland
14 20878, or e-mail them to tiara.mccray@
15 montgomerycountymd.gov, by May 18, 2021. There
16 are a few ground rules that we must cover before
17 Ms. McCray introduces the Abandonment Petition
18 into the record.

19 First, please turn off or silence your
20 cell phones. Second, as an issue of decorum, all
21 participants must be given their due
22 consideration. Those seeking to offer comments
23 following the close of petitioner's case for
24 abandonment are asked to be mindful of the time
25 and to limit their comments to relevant matters.

1 Such comments should be confined to less than
2 three minutes. If an interruption occurs, I will
3 give that individual their first warning. If
4 there's a second interruption, I will give that
5 individual a second warning, and then they will be
6 muted.

7 If that same individual receives a third
8 warning, that person will be removed from the
9 court. And if there are several people making
10 interruptions, I may close the hearing. So
11 following Ms. McCray's introduction, the Applicant
12 will submit its case for why it believes the
13 right-of-way should be abandoned. After the
14 applicant has completed its case, those who were
15 registered to speak will be allowed to make
16 relevant comments. With that, I'll hand it over
17 to you, Tiara.

18 MS. MCCRAY: All right, thank you. I'm
19 going to change the host over to Joshua Tracy.
20 Joshua, are you good to go now?

21 MR. TRACY: Yes.

22 MS. MCCRAY: Okay. I'm going to stop my
23 screen sharing, Joshua. Let me know when you're
24 ready and I'll go ahead and -- I'll go ahead and
25 start while you pull up the exhibits. All right.

1 Thank you, Mr. Thommana. Good afternoon,
2 everyone. Again, my name is Tiara McCray and I'm
3 a Real Estate Specialist with the Property
4 Acquisitions Section for Montgomery County
5 Department of Transportation. My section is
6 responsible for administering request for the
7 abandonment of Public rights-of-way.

8 As Mr. Thommana noted earlier, this
9 process is governed by County Code Article 49,
10 Section 62. The code explains the County Council
11 may abandon a public right-of-way for two reasons.
12 If the Council finds that one; the right-of-way is
13 no longer needed for public use or anticipated
14 future public use or two; the abandonment is
15 necessary to protect health, safety, and welfare
16 of the residents near the right-of-way to be
17 abandoned.

18 In this case, Kings View Station Joint
19 Venture, the Applicant represented by Ms.
20 Elizabeth Rogers of Lerch, Early & Brewer has
21 petition for the abandonment of portions of
22 Liberty Mill Road, previously route 118 in
23 Germantown. The Applicant is proposing a
24 realignment and extension of Liberty Mill Road in
25 connection with their proposed redevelopment of

1 the surrounding area. To facilitate this
2 development, the Applicant is seeking to abandon
3 portions of the right-of-way that fall outside of
4 the realigned Liberty Mill Road.

5 The Applicant's proposal for the
6 realignment of Liberty Mill will complete the
7 connection between Clopper Road and Lehman Farm
8 Road. I'll leave it to the Applicant to address
9 these matters in greater detail during their
10 presentation. This hearing was authorized by the
11 County Executive's designee as a part of the
12 administrative process. We have provided the
13 requisite notices to other public agencies,
14 abiding property owners and the public at large.

15 As part of the process, we have
16 collected a number of exhibits that I will now
17 formally introduce into the hearing record. If my
18 colleague Joshua Tracy can put those on the
19 screen, I will identify each exhibit. Exhibit A,
20 page 1, is the Applicant Petition for Abandonment
21 received on March 2nd, 2021. Exhibit B, starting
22 on page 72. Thank you. Is Abandonment Exhibit
23 area, showing the color coded areas of Liberty
24 Mill Road to be abandoned.

25 Exhibit C on page 73 is the King's View

1 Station Floating Zone Plan, detailing the
2 Applicant's proposed development of the
3 surrounding property. Exhibit D, on page 74 is
4 the 1989 Germantown Masterplan, providing an
5 analysis of the Clopper village area. Exhibit E,
6 page 80, is the Montgomery County Department of
7 permitting services, Fire Department Access and
8 Water Supplies, comment, provided no objection to
9 the abandonment with conditions to review.

10 Any revisions to the September 16, 2019,
11 Kings View Station Department vehicular access and
12 water supply plan approval. Exhibit F on page 81
13 is the Montgomery County Department of permitting
14 services Division of Land Development. Comment;
15 providing no objection to the abandonment.
16 Exhibit G on page 82 is the Montgomery County
17 Department of Transportation, the Division of
18 Traffic Engineering and Operations.

19 Comment; providing no objection, noting
20 that there is an existing utility waterline along
21 the existing road alignment at the Applicant
22 should pay attention to. Exhibit H on page 83 is
23 WSSC's comment providing no objection to the
24 abandonment with conditions. Exhibit I is the
25 Montgomery County Department of Transportation

1 Development Review Committees comment. Excuse me,
2 on page 86, recommending approval of the
3 abandonment case with conditions.

4 Exhibit J, is the Washington Times ad
5 number 48164, proof with the advertisement dates
6 listed for April 23rd and April 30th on page 89.
7 Exhibit K on page 90 is the Montgomery County
8 Department of Transportation calendar event
9 posting a notice of the public hearing, which is
10 posted on February 24, 2001. Exhibit L on page 91
11 is the certified mail receipts for the public
12 hearing notices that were submitted via certified
13 mail on March 1st.

14 Exhibit M on page 96 is a Notice of
15 Public Hearing and Comment Solicitation that was
16 submitted to County agencies via e-mail to the
17 agency points of contact dated March 9th. Page
18 96. Thank you. Exhibit N on page 97 is the
19 Notice of Public Hearing and Comment Solicitation
20 that was submitted via e-mail to the company
21 points of contact dated March 9th. Exhibit O is
22 the mailing list for the a budding property owners
23 and H -- HOAs and community associations that were
24 notified via mail on page 98, thank you.

25 And then Exhibit P on page 99 is the HOA

1 and Civic Association contact list. The items
2 that are shown in yellow represent those who were
3 contacted via mail as they did not have an e-mail
4 address listed on file. The rest of the points of
5 contact on this list were notified via e-mail and
6 we'll see that in a later exhibit. Exhibit Q is
7 the Executive Order 22-21, approving the public
8 hearing for this particular Abandonment on page
9 100. Exhibit R is the traffic sign posting, the
10 public hearing.

11 This is posted on the corner of Clopper
12 Road and Liberty Mill Road and stumbled before
13 April 16, 2021. Exhibit S is the Notice of Public
14 Hearing that was submitted to HOAs and community
15 associations via e-mail dated March 9th. And then
16 Exhibit T. I actually have that one. It is the
17 Applicant's PowerPoint presentation that they will
18 showcase here. Thank you, Mr. Tracy, and I'll now
19 turn things back over to Mr. Thommana.

20 MR. THOMMANA: Okay. Thank you Tiara,
21 and Josh. We will now go to the presentation of
22 exhibits -- sorry, the Applicant's statement. And
23 I'll hand it over to you, Elizabeth.

24 MS. ROGERS: Okay. Thank you. Good
25 afternoon, everyone.

1 MR. THOMMANA: Good afternoon.

2 MS. ROGERS: Tiara, do you want me to
3 pull up the PowerPoint or are you okay? You're on
4 mute. But I think you're saying you were going to
5 do it?

6 MS. MCCRAY: Yeah. Josh, can you allow
7 me the opportunity to do that? Yes. Thank you.

8 MR. TRACY: Yes, if you had it.

9 MS. MCCRAY: Thank you.

10 MS. ROGERS: Great. Thank you. Good
11 afternoon. For the record, my name is Elizabeth
12 Rogers, for law firm of Lerch, Early & Brewer.
13 It's a pleasure to be here today on behalf of
14 King's View Station Joint Venture. The Applicant
15 for this abandonment application. With me here
16 today is Dan Fryer and Clark Wagner with Pleasants
17 Development representing the Applicant. We also
18 have Tim Longfellow and Kevin Foster with
19 Gutschick, Little & Weber, the land planners and
20 civil engineers for the project.

21 We are here today to request an
22 abandonment, as Ms. McCray mentioned of portions
23 of the Liberty Mill Road right-of-way, which was
24 formerly MD 118, which was expanded and relocated
25 predominantly in the 1980s. Portions of the old

1 MD 118 right-of-way have been adaptively reused,
2 whereas other portions, including the subject
3 right-of-way, have largely remained dormant.

4 That will soon change for this portion
5 of the right-of-way as the Applicant is proposing
6 to redevelop the surrounding vacant property with
7 a mixed-use, predominantly residential
8 development. In connection with that
9 redevelopment, the Applicant is proposing to
10 expand, oh, sorry extend, and realign the Liberty
11 Mill Road right-of-way to reintroduce the
12 connection between Clopper Road and Lehman Farm
13 Road. If you'll advance to the next slide. This
14 just is an aerial map that shows the location of
15 the property.

16 The property is comprised of several
17 individual parcels, generally located in the
18 southeast quadrant of the intersection of
19 Germantown Road and Clopper Road. You can see the
20 parcels identified within the yellow boundary,
21 with the exception of -- there's one parcel right
22 at the intersection of Liberty Mill and Clopper
23 that's owned by Pepco and not included in the
24 redevelopment application.

25 The property has frontage on Clopper

1 Germantown Road, Lehman Farm Road, and the Liberty
2 Mill Road right-of-way that runs through the
3 approximate center of the property. If you'll
4 advance to the next slide, please. The Liberty
5 Mill Road, right-of-way, as I mentioned, used to
6 be 118. But when 118 was expanded and relocated
7 in the 1980s, it was stubbed in a cul-de-sac. So
8 that's the current condition of Liberty Mill Road.

9 You can see the photos on your screen or
10 kind of as your proceeding south down Liberty Mill
11 Road from Clopper Road, if you'll advance to the
12 next slide, there some photos showing the
13 condition of the existing cul-de-sac belt bulb.
14 As you can see, the -- the roadway is relatively
15 poorly maintained, which we feel present safety
16 concerns today, especially given its condition,
17 but also the fact that it's surrounded by a vacant
18 land on all sides. There's really no eyes on the
19 street today. Therefore, to facilitate the
20 redevelopment of the property.

21 If you can advance to the next slide,
22 the applicant is proposing to redevelop the
23 property with commercial right up at the
24 intersection of Germantown and Clopper, and along
25 Clopper, and then residential town home units.

1 The applicant recently obtained approval of a
2 local map amendment to rezone the property from
3 the former R200 and TDR-6 zones to the commercial
4 residential neighborhood floating zone, with an
5 excellent FAR of 1.0.

6 During the rezoning process, the
7 Applicant -- Applicant worked very closely with
8 both DOT and Park and Planning staff on the design
9 and alignment of Liberty Mill Road. We originally
10 were proposing to create a series of internal
11 private streets within the development.

12 But based on feedback received from the
13 county, we redesign the project to provide for
14 predominantly public road connections, including
15 -- which is germane to this application, an S
16 curve road, which will be the realignment of
17 Liberty Mill Road, which runs through the
18 approximate center of the property and connects
19 Clopper and Lehman Farm Road.

20 The alignment was strategically designed
21 and working with the county to maintain the
22 existing access point on Clopper, and also in
23 accordance with the county's intersection spacing
24 requirements to align with the access point on the
25 opposite side of Lehman Farm Road, which is L

1 house circle. The final alignment and
2 configuration, although we've had significant
3 county input and the -- the design thus far will
4 be finalized in connection with the preliminary
5 plan of subdivision, which the applicant will be
6 filing in short order with the Montgomery County
7 planning board.

8 If you will advance to the next slide,
9 please. The proposed abandonment, this is just a
10 -- a rendering that showcases the proposed
11 development. As you can see, the proposed
12 abandonment, which will help facilitate this
13 redevelopment, will greatly improve pedestrian and
14 vehicular circulation. By extending the
15 connection between Clopper and Lehman Farm Road.

16 It will create an active through street
17 that has sidewalks on both sides and is activated
18 by public open spaces, town-homes and commercial
19 development. We are only seeking to abandoned
20 those portions of the right-of-way that fall
21 outside of the new Liberty Mill Road alignment,
22 which is shown on -- on the screen before you. We
23 -- as I mentioned we're previous -- we're
24 subsequently going to be seeking preliminary plan
25 approval from the Montgomery County Planning

1 Board.

2 As such, we are requesting some
3 flexibility with this abandonment application
4 regarding the areas to be abandoned. Our
5 application shows the outside extent of the right
6 of way that we believe needs to be abandoned to
7 accommodate this redevelopment. However, there is
8 a small chance that as we move through the
9 preliminary plan process and get comments from
10 Parking planning and DOT -- sorry that there might
11 be slight adjustments to the extent of the
12 abandonment. Sorry about that. If you'll advance
13 to the next slide.

14 You can kind of see where I'm going to
15 highlight an example of this. So we are currently
16 showing -- are requesting abandonment based on an
17 18.75 foot truncation right at the intersection of
18 Clopper and Liberty Mill Road. This is based on
19 Park and Planning, general desire to see narrower
20 curb cuts, especially in light of the county's
21 vision zero goals and priorities.

22 However, there's a chance as we moved
23 through the process that DOT may request a -- a
24 standard 25 foot truncation at this intersection,
25 which would result in approximately 204 square

1 feet less of abandonment area that would be
2 needed. So if you'll advance one more slide. On
3 the next slide, you'll see -- we've just proposed
4 a draft condition. Something to this effect that
5 would provide for some flexibility and make it
6 clear that kind of up to the 22,446 square feet
7 that we've requested in our application can be
8 abandoned.

9 I think this would actually be Exhibit B
10 based on the exhibits that Ms. McCray read into
11 the record.

12 But the actual amount of the
13 right-of-way will be finalized at the time of
14 preliminary plan of subdivision and reflected at
15 the record flat, which we know is needed to
16 formalize the abandonment application, and
17 conditions one and three here are very much in
18 align with conditions that DOT was recommending in
19 their letter of just recognizing that the
20 applicant obviously needs to dedicate the
21 additional right-of-way to complete the
22 realignment of Liberty Mill Road.

23 The only other comment I would just kind
24 of make here, in terms of conditions of approval
25 is on DOT's letter recommending approval of the

1 right of way. The last condition require --
2 included that the applicant need to relocate the
3 existing utilities into the new right-of-way, and
4 the only thing that I would request is that with
5 that similarly, there'd be some flexibility that
6 either the utilities be relocated, or the
7 applicant grant sufficient easements to
8 accommodate the existing utilities if they're
9 deemed not to need to be relocated.

10 If you'll advance just one more slide.
11 Thank you. This is just a diagram showing the
12 various components that we're seeking to abandoned
13 with our application. As demonstrated in the
14 applicant -- application that we submitted into
15 the record. The abandonment satisfies all the
16 required findings of the code and will result in
17 an approved circulation in and around the
18 property. The portions of the right-of-way that
19 we're seeking to abandoned are no longer needed
20 for present public use.

21 As I've mentioned, the current
22 right-of-way really isn't being used for the
23 purposes which was originally intended since MD118
24 had been relocated, and then actually instead,
25 this abandonment will facilitate improved

1 pedestrian vehicular circulation by allowing for
2 the re-introduction of that connection between
3 Clopper and Lehman Farm Road.

4 The abandonment promotes the goals and
5 objectives of the master plan by facilitating the
6 redevelopment of this underutilized vacant
7 property, and it will result in an enhanced
8 roadway network and improve pedestrian safety by
9 reintroducing connections between Clopper and
10 Lehman farm with sidewalks for improve pedestrian
11 safety along both sides of the roadway, and
12 lastly, the abandonment is supported by change of
13 facts and circumstances.

14 Since the original dedication, as we
15 mentioned several times, this used to be 118,
16 which was relocated and re-expanded in 1980s, and
17 the road since then has not really served any real
18 public purpose.

19 With that kind of overall summary, I
20 would just conclude by noting applicant
21 respectfully, you know, requests approval of the
22 abandonment as shown in our application materials
23 on our team, and including myself and the civil
24 engineers, land planners, and applicant are all
25 here to answer any questions you may have or if

1 you'd like us to go into anymore detail on the
2 application, we're more than happy to.

3 MR. THOMMANA: Sure. So I did -- I did
4 have one question. You talked about the utilities
5 being relocated and maybe if that's not needed to
6 have an easement in -- in -- instead of that so
7 that you can keep the existing utilities in -- in
8 the same location. What exactly are you -- are
9 you talking about in terms of utilities? Is it --
10 do you know where exactly that portion is?

11 MS. ROGERS: I can let Kevin Foster with
12 particular Weber maybe speak up. I know that when
13 I was reading the letter, it was just more of my
14 initial -- in connection with -- just as we were
15 beginning this preliminary plan process and there
16 some uncertainties still known exactly kind of
17 what may need to happen with the existing
18 utilities based on kind of the final design of the
19 project that's gonna be vetted as we move forward
20 with the site plan and preliminary plan.

21 That it would be helpful to have that
22 flexibility as we worked with the agencies through
23 those processes. If, for example, like a public
24 utility easement was something that was more
25 favorable in light of the -- the design of the

1 project, that there was that opportunity as
2 opposed to having to relocate them inside the new
3 right-of-way. But Kevin, I don't know if you have
4 anything additional to add to that. Kevin if --

5 MR. FOSTER: Yeah. Okay. Yes. The --
6 the existing utilities, we know there -- because
7 this was a major thoroughfare one time, many years
8 ago. Route 118, there was existing power lines
9 running along the entire length of that
10 right-of-way that runs through the property, as
11 well as a waterline, WSSC waterline. Both of
12 those still exist today, even though the road was
13 called a sect, those utilities continued going
14 down toward Lehman Farm Road.

15 They exist, we know exactly where they
16 are, and as part of our floating zone plan, we
17 actually planned the unit locations to keep the --
18 keep the utility lines where they were. So we
19 created a gap in the center to allow those
20 existing utilities to stay there, especially the
21 waterline that's serving multiple areas, not just
22 this site. It -- it seemed prudent to keep it
23 where it was and not try to move it. It didn't
24 need to be moved as long as -- as well as the
25 overhead power lines.

1 So we've already planned ahead for this
2 and we anticipate anytime that any of these
3 utilities or outside of the public right-of-ways.
4 We will have to grant the required right-of-ways
5 and easements that they -- they deem sufficient
6 during the preliminary plan process.

7 MS. ROGERS: The one thing I would add
8 and note that might be helpful to -- to the
9 hearing examiner is that some of those utilities,
10 including like the water line, run through some
11 environmentally sensitive areas on the property
12 that are kind of shown in the bottom corner of the
13 plan view, and, you know, relocating those could
14 also result in really undesirable impacts to those
15 environmental features, which include wetlands and
16 streams.

17 MR. THOMMANA: Okay, and -- and -- and
18 I'm -- as -- there was a couple of comments that
19 were made about, you know, the development review
20 approvals and also the traffic approval with some
21 conditions. I'm assuming those conditions will be
22 met. Is that the case?

23 MS. ROGERS: I'm sorry. Could you
24 clarify which -- which conditions you were -- were
25 referring to about development review conditions?

1 MR. THOMMANA: I do -- I do not know
2 what the exact conditions were, but it -- when Tiara
3 introduced the different exhibits. She did show
4 the development review approval from DOT and also
5 the traffic approval, both tech conditions with
6 them, and -- and I just wanted to make sure that
7 that is -- you know, also part of your plan to
8 meet those conditions?

9 MS. ROGERS: I -- I know I've seen,
10 like, the conditions of approval from DOT and
11 that's where the third condition that I was just
12 mentioning, the condition was specifically I can
13 read it; All existing utilities along the proposed
14 abandoned portions of Liberty Mill Road, shall be
15 relocated within the future realigned Liberty Mill
16 Road right away at the applicant's expense. So
17 that was the one we were just referring to in
18 terms of meetings and flexibility about easements
19 --

20 MR. THOMMANA: Okay.

21 MS. ROGERS: -- or existing utilities to
22 remain. The other two were -- were acceptable to
23 the applicant in terms of dedicating the
24 additional land needed for the realign Liberty
25 Mill Road, and maintaining any of the abandoned

1 portions of the right of way.

2 MR. THOMMANA: Okay. Okay. So -- so
3 for the utility and power, you're going to ask for
4 an exception from what -- what was requested?

5 MS. ROGERS: Yeah. We just like the
6 flexibility. We are -- we recognize that, you
7 know, we need to give either they -- either need
8 to be within the new Liberty Mill Road
9 right-of-way or sufficient easements granted to
10 the -- the various agency utilities in the county
11 to maintain the existing location.

12 MR. THOMMANA: Okay. Those are all the
13 comments or questions that I had and we can -- we
14 can open it up for -- for any public comment at
15 this time. So the first person we had or the only
16 person we had registered was Ms. Marian Focke. I
17 hope I'm pronouncing it correctly.

18 MS. MCCRAY: Marian I have send a
19 request for you to unmute yourself, please let me
20 know.

21 MS. FOCKE: Okay.

22 MS. MCCRAY: Yeah. Good to go.

23 MS. FOCKE: I unmuted. Okay. Yes, I
24 did have some concerns and you get a nice try on
25 my last name, but it's Focke.

1 MR. THOMMANA: I'm sorry.

2 MS. FOCKE: It was fun in college, trust
3 me. The one question that I had was: Why we're
4 getting more townhouses? And I assume that's been
5 addressed by some other area. But if you are
6 going to build up that side of Clopper, are you
7 going to put another traffic light in at Liberty
8 Mill?

9 Because you're going to have then, like,
10 four traffic lights coming up Clopper Road and
11 going up towards Boyd's within the space of maybe
12 quarter of a mile, and it's already a mess
13 assuming that people get back to work as it is,
14 and it's also become -- I've lived here for over
15 30 years. I have pollution hazard for several
16 hours of the day.

17 MR. THOMMANA: So --

18 MS. FOCKE: So is the accommodation --
19 are they going to put a traffic light in because I
20 live across the street from -- off of Liberty Mill
21 in Duchin and you're extending Liberty Mill on
22 what I'm going to call the west side of Clopper.
23 So getting out onto Clopper with people are going
24 to use a shortcut once you put that road in from
25 Lehman Farm out back onto Clopper Road.

1 MR. THOMMANA: Okay. Is there a map
2 maybe we could put up just to --

3 MS. FOCKE: Yeah. There's -- there's a
4 map that -- I've got the documents here that --
5 that were sent to the homeowners association but
6 this map is very difficult.

7 MR. THOMMANA: Okay.

8 MS. FOCKE: On the other side of Clopper
9 Road going east, Liberty Mill continues on down to
10 the railway station?

11 MR. THOMMANA: Correct.

12 MS. FOCKE: Okay?

13 MR. THOMMANA: Uh-huh.

14 MS. FOCKE: So what are they going to --
15 put a light in there once they open up Liberty
16 Mill on the west side?

17 MR. THOMMANA: So I don't know if the
18 traffic impacts have addressed that already or
19 even if you're at that stage of this point, but --

20 MS. FOCKE: Why -- that's gonna be
21 crucial to -- to where they're going to be, you
22 know, you're going to build 65 new townhouses or
23 whatever it is and a lot of those peoples may be
24 people that are going to want to be taking the
25 train and all of a sudden you're going to have

1 traffic that was once diverted up to what I'll
2 call the new 118 and that's how people go down.
3 It's going to be coming back-and-forth across the
4 new Liberty Mill.

5 MR. THOMMANA: Okay. So yeah, I -- I --
6 I -- I hear that -- that concern and we'll is
7 there some other concerns that you'd like to add,
8 while you have your time to speak so that we can
9 get everything in and then I can give the
10 applicant a chance to -- to talk to some of these
11 concerns that you've mentioned?

12 MS. FOCKE: My other big concern is that
13 there used to be an Esso station in this area that
14 you're redeveloping and when they paved that over
15 or they didn't really pave it over, but it's part
16 of what exists now of Liberty Mill on that side,
17 which is maybe about a quarter of a mile or
18 something. I don't know. It's -- it's 200 yards
19 of paved things.

20 They never, as far as I know, ever dug
21 up the gas tanks that are underneath that area and
22 even though it's marked on the map, as near as I
23 can tell, American Oil Co, they just kind of
24 pulled up stakes and left and I believe those gas
25 tanks underneath are still there and somebody

1 might want to check that before they try to do any
2 building.

3 MR. THOMMANA: Is that one of the
4 properties that is being redeveloped?

5 MS. FOCKE: It sure look -- well, they
6 -- it's all one area. If you take where the
7 Kingsview Shopping Center is, it's to the north of
8 that, but it's going to be right where you're
9 going to put the new Liberty Mill Road.

10 MR. THOMMANA: Okay. Yeah, go ahead.

11 MS. FOCKE: I think there's one other
12 thing I had. Okay. My main concern is you're
13 going to have four consecutive traffic lights
14 coming up Clopper Road, which is going to make it
15 impossible for anybody to get anywhere, during any
16 kind of rush hour. The other reason I can't
17 concerning I was hoping that you would address
18 this. What type of commercial properties are we
19 talking about?

20 Because currently in Kingsview Center
21 and across the street on the other side of Clopper
22 where there's another gas station, there are
23 numerous vacant properties, commercial properties
24 as it is and the idea of having commercial --
25 additional commercial development when this area

1 has, with the exception of the Giant food store
2 and the Montgomery County liquor store has -- had
3 quite a rotation over the past 30 years of
4 commercial properties and to add additional
5 commercial properties would be kind of iffy -- an
6 iffy proposition, even with the additional
7 townhouses.

8 And that's all I've got.

9 MR. THOMMANA: Okay. Well, thank you
10 for taking the time to attend this hearing and of
11 course, giving us all of your comments. And I'm
12 not sure if all of these comments are relevant to
13 the abandonment. Some of them are more
14 development related and we'll definitely take it
15 into consideration as we move through the process
16 now, would the applicant like to present some
17 answers or attempt to answer some of these
18 questions?

19 MS. ROGERS: Yes. I can start and then
20 Kevin, I'll turn it over to you for some of the
21 more technical responses.

22 I would note, I think as the hearing,
23 Sandra just noted that, you know, some of the
24 questions regarding the use of the -- and the
25 development of the property was something that was

1 thoroughly considered and discussed, embedded as
2 part of the rezoning to the property, which was
3 approved for the mixed use, predominantly
4 residential development townhomes, the property is
5 significantly constrained, which is what really
6 drives that and market demands for the townhouse
7 product type.

8 And in terms of the commercial
9 development, while that was determined to be the
10 most compatible, given the property's frontage on
11 Clopper Road, the specific users have not yet been
12 identified. We're just now beginning the site
13 plan and preliminary plan process and the
14 commercial will actually come in the second phase
15 of the site plan as the applicant secures users
16 for those -- those buildings. And in terms of the
17 -- the signal, I'll turn that over to Kevin. I --
18 I don't believe that we're proposing a traffic
19 signal at that intersection.

20 But you can address that and the gas
21 tanks if you have that information.

22 MR. FOSTER: Sure. No. As far as the
23 traffic signal goes, no we were anticipating
24 adding another traffic signal to Clopper Road.
25 With the layout of this development there multiple

1 ways that residents, either in the development or
2 neighboring residents can traverse the roads and
3 that was part of the plan, was to not funnel all
4 the traffic to a single point. We provided
5 private road aid that comes out to Darnestown
6 Road, Liberty Mill Road connect to Lehman Farm,
7 which also comes out to Darnestown.

8 So say somebody living in the
9 subdivision wanted to get to the train, the
10 easiest way for them to do that would be come out
11 to Darnestown Road and head west -- I mean, head
12 east on Darnestown through the traffic light
13 that's already at Clopper down Germantown Road and
14 either get on Accent Way or Dawson Farm Way back
15 over to get to the train. So there's multiple
16 ways to get there without having to go across
17 Clopper at Liberty Mill. That's kind of the
18 thought process behind how he had laid this out.
19 As far as the gas station.

20 As far as I know, those tanks were
21 removed with the -- when the building was raised.
22 Typically with MDV regulations, you're not allowed
23 to leave when gas stations are abandoned or taken
24 out of used to have to be removed, they're not
25 allowed to stay in the ground and that's part of

1 the permitting process.

2 MR. THOMMANA: Okay. Rob, I know you
3 wanted to make a comment, so do you want to jump
4 in at this point?

5 MR. BIRENBAUM: Sorry, not a comment,
6 just a quick question. Could you just please post
7 the overview of the area to be abandoned again?
8 That would just be helpful to show the points.
9 And could you just, please, just tell us from what
10 point to what point. It looks like -- I know that
11 you said the road ends in a cul-de-sac, but the
12 abandonment application is to actually abandon
13 even the -- the point beyond the cul-de-sac to
14 Lehman Farm Road; correct? That's -- that's where
15 there's nothing presently there; is that correct?

16 MS. ROGERS: That's correct. There's
17 nothing presently there, physically there. It's
18 our belief that that was a prescriptive
19 right-of-way and that the abandonment of that use
20 has abandoned the right-of-way, although we have
21 included it in this formal application request
22 just for comprehensive purposes to make sure that
23 the record is really clear moving forward, that
24 the entire stretch would be abandoned.

25 MR. BIRENBAUM: Okay. And presently, I

1 know that you said that you owned or the applicant
2 owns all of the properties surrounding this -- the
3 -- the road, including the part that's not being
4 presently used that way at all, except for the one
5 corner piece. The one corner piece you said was
6 owned by Pepco; is that correct?

7 MS. ROGERS: That's correct.

8 MR. BIRENBAUM: How do they access their
9 property?

10 MS. ROGERS: It's currently -- Kevin,
11 chime in and correct us, but it's currently
12 vacant. I know they had plans to put a substation
13 there, but it's not currently developed. So I
14 don't believe that there is any existing site
15 access, but Kevin --

16 MR. FOSTER: Yes, it is -- it's
17 currently vacant. They don't have to use there.
18 But the whole -- the edges of that property are
19 relatively level. So at sometime in the future,
20 they have pretty much direct access to two sides
21 of the property on Clopper Road and existing
22 Liberty Mill Road.

23 MR. BIRENBAUM: So they would continue
24 to have access to Clopper -- Clopper Road?

25 MR. FOSTER: Yes. We would not be

1 changing either of those two frontages.

2 MR. BIRENBAUM: Okay. The other thing
3 that was mentioned was that there's no preliminary
4 plan approval yet for this. One of the conditions
5 of abandonment is actually going to a record plat
6 and having this put into a subdivision plat. So I
7 was wondering what the plan was for taking it
8 through to that -- to that step and -- and so I
9 just wondered if you could elaborate on that as
10 well?

11 MS. ROGERS: Sure. Yes. So we are
12 planning to file both a concurrent site and
13 preliminary plan application with the planning
14 board probably in the next week or two. So we are
15 about to get underway with the subdivision
16 process, which based on their -- the regulation
17 should take a 120 days to get to the planning
18 board for approval and thereafter we would move
19 forward with the record plat.

20 MR. BIRENBAUM: Okay. And one of the
21 conditions also, as required by law if the counsel
22 were to grant an abandonment, is that all of this
23 be completed within five years. I just wanted to
24 make sure that you're not asking for any
25 additional time for that process.

1 MS. ROGERS: Just to clarify, the record
2 plat which I know effectuates the abandonment,
3 that's what has to be completed within the five
4 years; correct?

5 MR. BIRENBAUM: Correct. Yes. Okay.

6 MS. ROGERS: We are not asking for
7 additional time.

8 MR. BIRENBAUM: Okay.

9 MR. THOMMANA: All right. Is that it,
10 Rob?

11 MR. BIRENBAUM: That's -- that's all the
12 questions that I had.

13 MR. THOMMANA: All right. Thank you.

14 MR. BIRENBAUM: Thank you.

15 MR. THOMMANA: Okay. So there's no -- I
16 just want to confirm, other than Marian, there was
17 nobody else that -- that wanted to speak or had
18 any comments or that joined the call later on;
19 correct?

20 MS. ROGERS: I don't see any other
21 requests within the chats.

22 MR. THOMMANA: Okay. All right. Well,
23 I think I have, you know, answered all of my
24 questions and Rob asked some good, insightful
25 questions too. We will go ahead and process all

1 of this information and I will go ahead and once
2 this is done, go through the process of creating
3 the report and recommendation for the county
4 executive to review and then submit to the county
5 counsel and we'll -- we'll move forward from
6 there.

7 If there are no other questions or
8 comments, we can close this hearing. Okay. I
9 don't hear any other questions or comments. We're
10 done. Okay. Thank you so much. Thank you,
11 everybody for taking the time to come to this
12 hearing.

13 (Off the record at 1:48 PM.)

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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
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Jesse Greer, Court Reporter

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I, Olivia Wilke, 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.



OLIVIA WILKE, AAERT CET
Planet Depos, LLC
May 18, 2021

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