

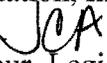
T&E COMMITTEE #1
February 4, 2013

Worksession

MEMORANDUM

January 31, 2013

TO: Transportation, Infrastructure, Energy & Environment Committee

FROM:  Jean Arthur, Legislative Analyst

SUBJECT: **Worksession: DOT Docket No. AB729 Waters Road Abandonment Town Sector, Germantown, 2nd Election District**

The Applicant, M SQ., LLC, has requested that a portion of the right-of-way of Waters Road be abandoned and closed. The abandonment will allow the realignment of Waters Road to connect directly with Maryland Route 118. Currently, Waters Road ends in a cul-de-sac. All properties abutting the right-of-way to be abandoned have access to public roads and no other property owners will be affected.

There is no controversy associated with this abandonment and the only issue raised by interested parties is that the applicant must grant easements to the County for maintenance and to any public utility affected. Normally, a request for abandonment with no controversy goes directly to the County Council for action. However, in this case, Council and Executive staff are requesting that the Council reject the recommendation submitted by the County Executive and instead adopt the abandonment with the conditions presented in this memorandum and the attached resolution prepared by Council staff. The hearing officer supports this request.

The County Executive's designee held a public hearing on May 16, 2012. Prior to the hearing, the County's Department of Transportation requested comments from the public, government agencies and public utility companies with the following results:

- Montgomery County Department of Fire and Rescue offered no objections to the abandonment, provided that the associated development must provide code compliant access approved by the Montgomery County Office of the Fire Marshal.
- Surrounding residents and a civic association were notified, but did not offer any comments.
- Verizon objected unless it is granted an easement to cover its existing and future facilities or the petitioner is willing to pay for the relocation or removal of its facilities.

- Washington Suburban Sanitary Commission stated it would require an easement.
- Washington Gas did not comment.
- Allegheny Power did not comment.
- PEPCO did not comment; we presume it has no objection.
- Montgomery County Public Schools did not comment.
- The Planning Board indicated that it would deal with the issue during the Preliminary Plan process. The applicant will not be able to proceed without meeting the Planning Board's conditions so those conditions will be included by reference.

The Montgomery County Department of Transportation recommended approval of the abandonment with the following conditions:

1. The Applicant must dedicate a new alignment for Waters Road to intersect with MD 118, and build that segment to County standards;
2. The abandonment would not be effective until the new alignment is open to traffic;
3. The Applicant must grant easements to the County for maintenance of storm drainage facilities and public utilities affected, and/or relocate these facilities and grant easements;
4. The Applicant must pay fair market value for that portion of the right-of-way that the County owns in fee simple; and
5. The Montgomery County Planning Board's approval of Preliminary Plan No. 120120250, Chestnut Ridge, and any conditions thereof.

The hearing officer adopted and recommended these conditions based on DOT's statement.

The problem arises with the first and second DOT conditions. The condition requires that the applicant dedicate a new alignment for Waters Road to intersect with MD 118 and build that segment to County standards. That condition, including the building, would have to be met before the abandonment takes effect.

A portion of the Applicant's property includes the area for the realignment of Waters Road recommended in the Germantown Employment Area Sector Plan (Approved and Adopted October 2009). Consequently, the Planning Board requires him to dedicate this new alignment, a condition to which he has agreed.

The parcel of land that is the subject of this abandonment is at the end of Waters Road in Germantown and is owned by the County. The County's right-of-way would allow Waters Road to be extended onto MD 118, Germantown Road.

The right-of-way also sits amidst land owned by someone who is in the approval process to develop the property. The property owner has asked the County to abandon the property. The County does not object to the abandonment, assuming the conditions listed above are met. The property owner has agreed to the conditions.

County does not object to the abandonment, assuming the conditions listed above are met. The property owner has agreed to the conditions.

However, since the subject right-of-way divides the property, the first condition would require the owner to excavate one side of the property, build the road, then excavate the other side, creating an unnecessary financial burden. It makes sense to do all the excavation at the same time.

To ease the burden on the land owner, Montgomery County Department of Transportation is recommending that the first condition be modified to make the abandonment effective, and therefore giving the property owner access to the land, upon the owner:

- dedicating the new alignment of Waters Road;
- obtaining a permit to build the road from the Department of Permitting Services; and
- posting a performance bond.

The performance bond guarantees that either the developer or the County, using the bond, will build the road.

Staff Recommendation

Council staff is recommending that the Council reject the resolution submitted by the County Executive in favor of the resolution attached at ©1-2. This resolution changes conditions 1 and 2 to make the abandonment effective upon the applicant dedicating the new alignment, obtaining a permit from the Department of Permitting Services to build that alignment and posting a performance bond. These conditions would guarantee that the road will be built and would not slow down work on the property.

This packet contains the following:

Draft Resolution	© 1-2
Executive's transmittal letter and draft resolution AB729	3
Survey descriptions and maps AB729	15-19
Map noting locations of areas to be abandoned	20
Letter requesting the abandonment from Stephen J. Orens & Casey L. Cirner	11-14
Public Hearing Officer's report	27-34

Resolution No: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DPWT Docket No. AB729
Abandonment – Portion of Waters Road
Town Sector, Germantown

Background

1. By letter dated February 3, 2012 from Miles & Stockbridge on behalf of its client, M SQ., LLC, the Applicant, a request was made for the County to abandon a portion of Waters Road in the Town Sector of Germantown. The portion of Waters Road right-of-way for which abandonment is sought adjoins property owned by the Applicant.
2. A Public Hearing to consider the abandonment proposal was held on May 16, 2012 by the designee of the County Executive.
3. Verizon objected unless an easement is granted for its facilities.
4. Washington Gas did not respond within 60 days, and therefore, concurrence is presumed.
5. Washington Suburban Sanitary Commission objected unless an easement is granted.
6. Neither PEPCO nor Allegheny Power responded within 60 days, and therefore, concurrence is presumed.
7. The Montgomery County Planning Board did not comment but rather requested additional time to consider the abandonment request with the Applicant's Preliminary Plan No. 120120250.
8. The Department of Transportation (DOT) recommended approval conditioned upon: a) the applicant must dedicate a new alignment for Waters Road to intersect with Germantown Road (MD 118) and build that segment to County standards; b) applicant must grant easements to the County for the maintenance of storm drainage facilities and any affected utilities and/or relocate these facilities and grant easements; c) applicant must pay fair market value for that portion of the right-of-way owned in fee by the County; and d) the abandonment is conditioned upon the Planning Board's approval of Preliminary Plan No. 120120250, Chestnut Ridge.

9. The Department of Fire and Rescue Services advised that Preliminary Plan No. 120120250 associated with the abandonment request must provide code compliant fire department vehicular access as approved by the Montgomery County Office of the Fire Marshal.
10. The Police Department did not respond within 60 days and therefore, concurrence is presumed.
11. The County Executive recommends approval of the proposed abandonment.

Action

The County Council for Montgomery County, Maryland, finds that a portion of Waters Road as described on the attached Schedules A and B prepared by MHG in the Town Sector of Germantown proposed for abandonment is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment subject to the following conditions which must be satisfied at Applicant's sole cost and expense prior to the abandonment becoming effective:

1. The Applicant must dedicate a new alignment for Waters Road to intersect with MD 118, obtain a permit from Montgomery County Department of Permitting Services to build the road, and post a performance bond;
2. The abandonment would not be effective until condition 1, above, has been met;
3. The Applicant must grant easements to the County for maintenance of storm drainage facilities and public utilities affected, and/or relocate these facilities and grant easements;
4. The Applicant must pay fair market value for that portion of the right-of-way that the County owns in fee simple;
5. The Montgomery County Planning Board's approval of Preliminary Plan No. 120120250, Chestnut Ridge, and any conditions thereof;
6. The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution approving the abandonment of the subject area; and
7. Any person aggrieved by the action of the Council for abandonment may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

This is a correct copy of Council Action.

Linda M. Lauer, Clerk of the Council

TRAN



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JCA
GO
CC
SBF
LL
JCA

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

January 14, 2013

TO: Nancy Navarro, President
Montgomery County Council

FROM: Isiah Leggett, County Executive
Office of the County Executive

SUBJECT: DPWT Docket No. AB729 Waters Road Abandonment
Town Sector, Germantown, 2nd Election District

I am attaching for your consideration a proposed Resolution which requests that the County Council approve the abandonment of a portion of Waters Road in the Town Sector of Germantown. The following supporting materials are also attached to this memorandum:

1. Proposed Resolution for the abandonment of a portion of Waters Road. See attachment 1.
2. A letter which initiated the abandonment process dated February 3, 2012 from Miles & Stockbridge on behalf of its client, M SQ., LLC, the Applicant. See attachment 2.
3. Executive Order No. 54-12, Effective Date 3/19/2012, which announced a Public Hearing to be held on May 16, 2012. See attachment 3.
4. A copy of the Hearing Examiner's Report and Recommendation. See attachment 4.
5. ADC Map 5046 and Tax Map EU42. See attachment 5.

IL/rg

Attachments

cc: Kathleen Boucher, ACAO

RECEIVED
MONTGOMERY COUNTY

2013 JAN 15 PM 3:31

ATTACHMENT NO. 1

Resolution No: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DPWT Docket No. AB729
Abandonment – Portion of Waters Road
Town Sector, Germantown

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1. By letter dated February 3, 2012 from Miles & Stockbridge on behalf of its client, M SQ., LLC, the Applicant, a request was made for the County to abandon a portion of Waters Road in the Town Sector of Germantown. The portion of Waters Road right-of-way for which abandonment is sought adjoins property owned by the Applicant.
2. A Public Hearing to consider the abandonment proposal was held on May 16, 2012 by the designee of the County Executive.
3. Verizon objected unless an easement is granted for its facilities.
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6. Neither PEPCO nor Allegheny Power responded within 60 days, and therefore, concurrence is presumed.
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8. The Department of Transportation (DOT) recommended approval conditioned upon: a) the applicant must dedicate a new alignment for Waters Road to intersect with Germantown Road (MD 118) and build that segment to County standards; b) applicant must grant easements to the County for the maintenance of storm drainage facilities and any affected utilities and/or relocate these facilities and grant easements; c) applicant must pay fair market value for that portion of the right-of-way owned in fee by the County; and d) the abandonment is conditioned upon the Planning Board's approval of Preliminary Plan No. 120120250, Chestnut Ridge.

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1. Applicants must dedicate a new alignment for Waters Road to intersect with MD 118, and build that segment to County standards;
2. The abandonment would not be effective until the new alignment is open to traffic;
3. The Applicant must grant easements to the County for maintenance of storm drainage facilities and public utilities affected, and/or relocate these facilities and grant easements;
4. The Applicant must pay fair market value for that portion of the right-of-way that the County owns in fee simple;
5. The Montgomery County Planning Board's approval of Preliminary Plan No. 120120250, Chestnut Ridge, and any conditions thereof;
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7. Any person aggrieved by the action of the Council for abandonment may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

This is a correct copy of Council Action.

Linda M. Lauer, Clerk of the Council

**SCHEDULE A
DESCRIPTION OF
ABANDONMENT OF
PART OF WATERS ROAD**

Being a parcel of land, located in Election District No. 2 of Montgomery County, Maryland, hereinafter described in, through, over and across the property acquired by Montgomery County, Maryland by Civil Action Case No. 40276 by document dated February 19, 1992 and recorded among the Land Records of Montgomery County, Maryland in Liber 10228 at Folio 584 and also part of existing Waters Road right-of-way and being more particularly described by Macris, Hendricks and Glascock, P.A. on January 13, 2012 in the Maryland State Plane NAD 83/91 datum as follows:

Beginning at a point on and 47.23 feet from the beginning of the 2nd or North 0°04'24" East, 108.74 foot line of a conveyance from Maurice Staquet and Monique Staquet to M SQ., LLC by deed dated September 25, 2009 and recorded among said Land Records in Liber 38114 at Folio 254; said point also being on the easterly right-of-way line of Waters Road, a variable width right-of-way, then binding with part of said 2nd line and the easterly limits of said Waters Road and all of the 2nd line of a conveyance from Maurice Staquet and Monique Staquet to M SQ., LLC by deed dated September 25, 2009 and recorded among said Land Records in Liber 38114 at Folio 250

1. South 00°06'44" West, 122.65 feet to a point at the end of the 1st or North 63°12'16" West, 104.52 foot line of said Liber 38114 at Folio 250; said point also being at the northerly corner of said Civil Action Case No. 40276, then binding with the northerly limits of said Civil Action Case No. 40276 and said 1st line
2. South 63°10'44" East, 104.52 feet to a point on the northerly right-of-way line of Germantown Road, Maryland Route 118 as delineated on SHA Plat No. 51179, then leaving said 1st line and the northerly limits of said Civil Action Case No. 40276 and binding with the northerly limits of said Germantown Road, Maryland Route 118 the following three (3) courses and distances

3. South 41°10'33" West, 82.95 feet to a point, then
4. South 60°33'37" West, 44.70 feet to a point, then
5. South 57°38'43" West, 36.07 feet to a point at the end of the 7th or South 0°15'11" west, 482.03 foot line of a conveyance from Vernon Martens, Jr., Successor Trustee of the Martens Family Trust to Buchanan Pinkard Germantown, LLC and Village West, LLC by deed dated December 15, 2011 and recorded among said Land Records in Liber 42903 at Folio 337; said point also being on the westerly limits of said Waters Road, then binding with part of said 7th line and the westerly limits of said Waters Road
6. North 00°49'36" West, 328.80 feet to a point, then leaving said 7th line and the westerly limits of said Waters Road to cross and include part of said Waters Road
7. 66.13 feet along the arc of curve deflecting to the left, with a radius of 185.00 feet and a chord bearing and distance of South 32°52'56" East, 65.78 feet to the point of beginning; containing an area of 16,236 square feet or 0.37273 of an acre of land and as delineated on Schedule B attached hereto and made a part hereof by this reference.

Certified correct to the best of our professional knowledge, information and belief and this survey/description was performed by me or under my supervision and is in conformance with Title 9, Subtitle 13, Chapter 6, Section 12 of the Minimum Standards of Practice for Land Surveyors. If the seal and signature are not colored, the document is a copy that should be assumed to contain unauthorized alterations. The certification obtained on this document does not apply to

Mc Hendricks and Glascock, P.A.
 Jonathan A. Russell, Property Line Surveyor
 Md. Registration No. 350
 Expiration Date: 10/15/2012



CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	66.13'	185.00'	20°28'54"	S 32°52'56" E	65.78'

N/F
 BUCHANAN PINKARD GERMANTOWN, LLC
 & VILLAGE WEST, LLC
 L.42903 F.337

7th or S 00°15'11" W, 482.03' LINE (L.42903 F.337)
 N 00°49'36" W 328.7983'

WATERS RD. ABANDONMENT

16,236 Sq. Ft.

POINT OF BEGINNING

WATERS ROAD

S 00°06'44" W 122.65' 47.23'

4th or S03°00'00"W, 183.35' LINE
 L.10228 F.584

2nd or N00°05'41"E 75.42'
 LINE L.38114 F.250

2nd or N00°04'24"E, 108.74' LINE
 L.38114 F.254

MONT. CO.
 CIVIL ACTION
 CASE No. 40276
 L.10228 F.584

3rd or N61°15'00"W, 162.05' LINE
 L.10228 F.584
 S 63°10'44" E 104.52'
 1st or N 63°12'16" W 104.52' LINE
 L.38114 F.250

N/F
 M SQ, LLC
 L.38114 F.250

N/F
 M SQ, LLC
 L.38114 F.254

N/F
 MARK A. WILDMAN
 L.14756 F.334

36.07'
 557.38' 43"W S60°33'37"W

44.70'
 547°10'33"W

82.95'
 GERMANTOWN ROAD
 MD RTE. No. 118
 SRC PLAT No. 51179

MSP NAD 83/913



SCHEDULE B
 PART OF
WATERS ROAD
ABANDONMENT

SCALE: 1" = 50' JANUARY, 2012
 MONTGOMERY COUNTY, MARYLAND



MHG

Macris, Hendricks & Glascock, P.A.
 Engineers • Planners
 Landscape Architects • Surveyors

5029 Old Market Road, Suite 107
 Mount Airy, N.C. 27030
 Phone: 704.485.1111
 Fax: 704.485.1112
 www.mhg.com

Project: 011-011-111
 Date: 01/11/12
 Title: Waters Road Abandonment

9

I:\11125\dwg\EP_11_01.dwg, Copyright © 2011 Macris, Hendricks & Glascock, P.A.

ATTACHMENT NO. 2

MILES & STOCKBRIDGE P.C.

Stephen J. Orens
301-517-4828
sorens@milesstockbridge.com

Casey L. Cirner
301-517-4817
ccirner@milesstockbridge.com

February 3, 2012

VIA HAND DELIVERY

The Honorable Isiah Leggett
County Executive
Office of the County Executive
101 Monroe Street, Second Floor
Rockville, Maryland 20850

Re: Petition for Street Closure and Abandonment of Part of Waters Road,
Germantown, Maryland - Petition of M SQ., LLC

Dear Mr. Leggett:

This letter serves as our request on behalf of our client, M SQ., LLC ("Petitioner"), pursuant to Title 6 of Chapter 49 of the Montgomery County Code, 2004, as amended (the "County Code") to close and abandon a portion of the right of way of Waters Road, a County Road located north of Maryland State Route 118 ("Md. 118") in Germantown, Montgomery County, Maryland. Md. 118 is also known as Germantown Road. The requested abandonment and closure of a portion of Waters Road will facilitate the relocation of Waters Road to connect directly to Md. 118, as recommended by the 2009 Germantown Employment Area Sector Plan ("Sector Plan").

The portion of Waters Road sought to be abandoned is a dead end street that terminates in a cul-de-sac. It does not provide access to any property that does not already have other, direct access, to public roads from other portions of Waters Road and other public streets. A copy of the survey and metes and bounds description of the portion of Waters Road hereby sought to be closed and abandoned is attached hereto as **Exhibit A**.

The cul-de-sac portion of Waters Road included in this abandonment request was established as part of the relocation and reconstruction of Md. 118 in 1992. Montgomery County acquired the right of way in which the cul-de-sac is located through the exercise of the county's power of eminent domain (condemnation) in an action in the Circuit Court for Montgomery County, Maryland docketed as Civil No. 40276-V. The remaining portion of Waters Road for which closure and abandonment is requested was established pursuant to Section 49-6(a) of the County Code as a prescriptive right of way for use by the public.

AD 101
Waters Road
Exhibit #

The Sector Plan, an amendment to the approved and adopted 1989 Germantown Master Plan, contemplates both the requested closure, abandonment and the realignment of Waters Road through Petitioner's property to connect directly to Md. Route 118. (See Sector Plan, pages 38 and 55.)

In fact, the area that will ultimately be dedicated by Petitioner and the adjacent property owner, Mark Wildman, for the right of way of realigned Waters Road is larger than the area of Waters Road sought herein to be abandoned. The area of Waters Road sought to be closed and abandoned totals 16,236 square feet and the area required for the realignment of Waters Road total 22,250 square feet. The Petitioner will be required to dedicate 16,250 square feet of its property for the Waters Road realignment. In addition, Mr. Wildman will be required to ultimately dedicate 6,000 square feet for the realignment (2,500 square feet of that area will initially be granted via an easement to the County for the realignment).

The relocated Waters Road will be constructed under the approved Preliminary Plan of Subdivision and approved Site Plan for the Martens Property and its alignment will be depicted on the proposed Preliminary Plan of Subdivision for Petitioner's Property. A conceptual development plan depicting the realignment of Waters Road and the existing utilities is attached hereto as **Exhibit B**. The alignment of relocated Waters Road and connection to Md. 118 will be in accord with the Sector Plan recommendations. The realignment details have been reviewed and given tentative approval by the Montgomery County Department of Transportation and by the Staff for the Planning Area 3 Division of the Maryland-National Capital Park and Planning Commission. The proposed realignment of Waters Road will improve circulation and provide additional transportation capacity for the Germantown Employment Area.

The Petitioner, M SQ., LLC, is the owner of Parcel P920 and Parcel P971 on Tax Map EU 342. The M SQ., LLC properties abut the portion of Waters Road now sought to be closed and abandoned pursuant to this request. In conjunction and simultaneously with this closure and abandonment request, M SQ., LLC will submit an application for approval of a Preliminary Plan of Subdivision seeking approval for the development of its properties and that portion of Waters Road for which abandonment is hereby requested in accordance with the development standards and procedures applicable to the RMX-2C Zone.

To facilitate the preliminary plan process and dedication for the realigned Waters Road, Petitioner has submitted a Natural Resource Inventory/Forest Stand Delineation ("NRI/FSD") Plan to M-NCPPC for review and approval. In conjunction with this abandonment, Montgomery County Department of Transportation's consent to the processing of the NRI/FSD is hereby requested.

Enclosed herewith as **Exhibit C** is a copy of Tax Map EU 342 with the portion of Waters Road sought to be closed and abandoned outlined in blue. The area of Waters Road acquired by condemnation is shown in a hatched configuration to differentiate it from that portion of the road acquired by prescription. The M SQ., LLC Properties are shaded in yellow. Also enclosed are aerial photos of the properties and Waters Road (**Exhibit D**), and a list of adjoining properties (**Exhibit E**).

The following additional information is submitted in support of the requested closure and abandonment. When Md. 118 was relocated and widened, Montgomery County acting on behalf of the Maryland State Highway Administration ("SHA"), acquired numerous properties by purchase, dedication and by eminent domain. One of the properties acquired through eminent domain was that part of the subject property then owned by Carl C. Grimes, *et. ux.* The Grimes property is identified on Right of Way Plat 51179 as Item 78967 containing 19,930 square feet or 0.457 acres.

Prior to the relocation of Md. 118, Waters Road intersected old Route 118, now Walter Johnson Drive. That intersection was eliminated when Md. 118 was relocated. Part of the Grimes Property (identified on Right of Way Plat 51179 as Item 78967) was retained by Montgomery County to provide right of way for the dead end termination of Waters Road in a cul-de-sac.

The portion of Waters Road, including the cul-de-sac, proposed for closure and abandonment will not be required for access to any property and will serve no foreseeable public use in the future following the reconstruction of Waters Road pursuant to the Sector Plan alignment and proposed on the Petitioner's Preliminary Plan of Subdivision. (See Section 49-63(c)(1) of the Montgomery County Code.)

The abandonment and closure of the subject portion of Waters Road is recommended by the Sector Plan and therefore its abandonment will protect the health, safety and welfare of the residents and workers in the area. (See Section 49-63(c)(2)(A) and Section 49-63(c)(2)(B) of the Montgomery County Code.)

The realigned access from Waters Road to Md. 118 that will be facilitated by the requested closure and abandonment and the realignment of Waters Road will provide safe and efficient pedestrian and vehicular traffic patterns and flows, together with alternatives, in the immediate neighborhood, for both local and through traffic. (See Section 49-63(c)(2)(B) of the Montgomery County Code.)

The approval and adoption of the Sector Plan recommending that Waters Road connect with Md. 118 constitutes a change in facts and circumstances since the establishment of Waters Road in its existing alignment. In other words, the prior action to eliminate the Waters Road/Md. 118 intersection in accordance with prior land planning recommendations no longer applies. (See Section 49-63(c)(2)(C) of the Montgomery County Code.)

M SQ., LLC owns the land immediately abutting the right of way proposed for abandonment and the abandonment and closure of the subject portion of Waters Road is not presently the sole means of access to any property. (See Section 49-63(d) of the Montgomery County Code.)

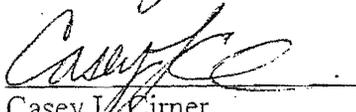
M SQ., LLC, as a binding element of the requested road closure and abandonment, agrees to submit an application for approval of a Preliminary Plan of Subdivision and further agrees that the abandonment and closure will be an acceptable condition of approval of that Preliminary Plan by the Planning Board.

Enclosed please find a copy of the check in the amount of \$2,500.00 in payment of the required fee. As requested by Michael Cassidy of the County's Department of Transportation, the original check has been enclosed with his copy of this letter.

We would be pleased to provide you with any additional information that you require in order to proceed with this abandonment request. Should you require further assistance, please do not hesitate to contact the undersigned.

Sincerely,


Stephen J. Orens


Casey L. Cirner

Enclosure: Copy of \$2,500.00 check to Montgomery County
Original enclosed with copy of letter sent to Michael Cassidy, DOT.

cc: M SQ., LLC
Mark Wildman
Michael Cassidy, DOT
Matthew Pohlhaus, Macris Hendricks and Glascock
Steven Crum, Macris Hendricks and Glascock

**SCHEDULE A
DESCRIPTION OF
ABANDONMENT OF
PART OF WATERS ROAD**

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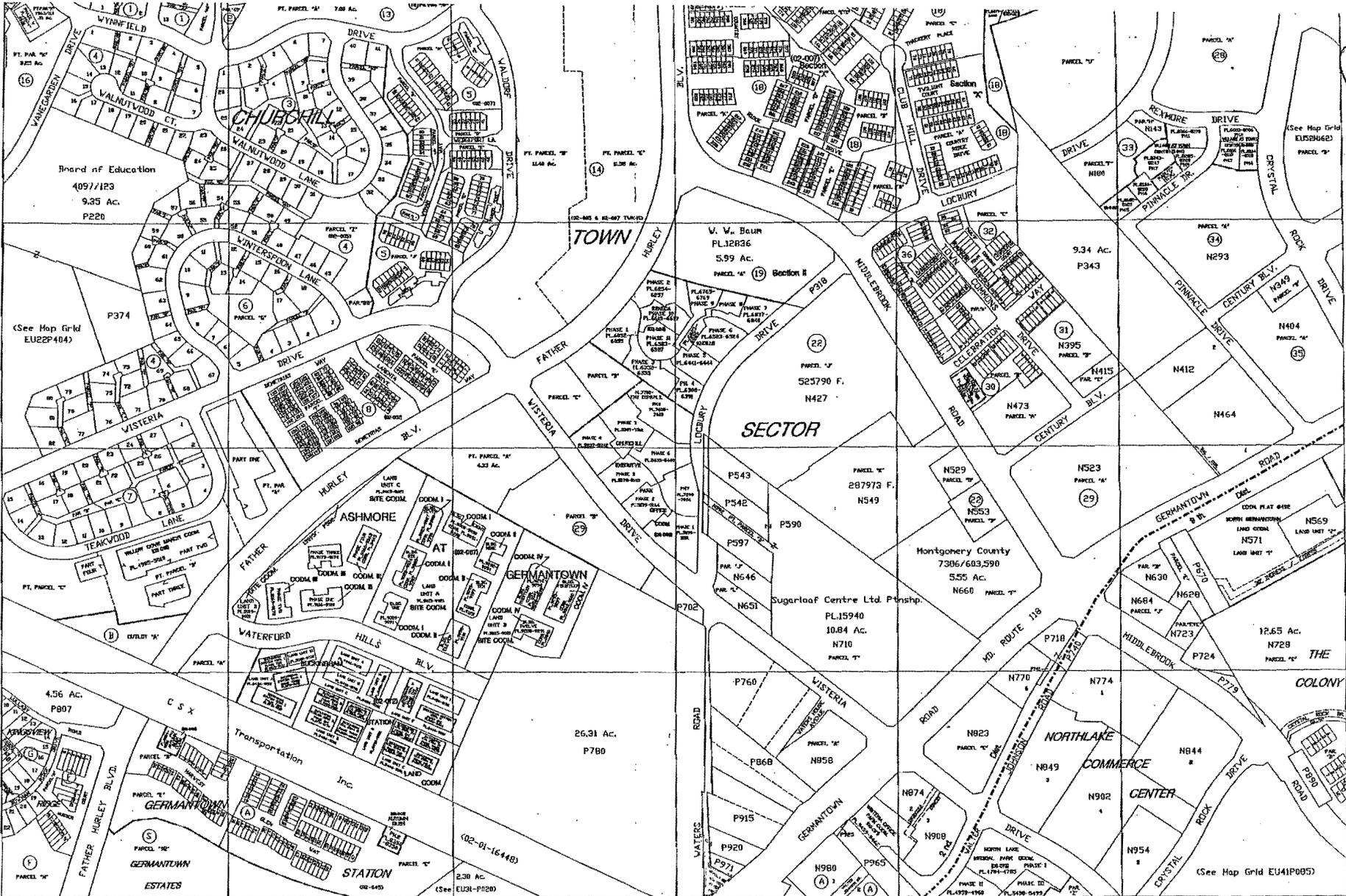
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5. South 57°38'43" West, 36.07 feet to a point at the end of the 7th or South 0°15'11" west, 482.03 foot line of a conveyance from Vernon Martens, Jr., Successor Trustee of the Martens Family Trust to Buchanan Pinkard Germantown, LLC and Village West, LLC by deed dated December 15, 2011 and recorded among said Land Records in Liber 42903 at Folio 337; said point also being on the westerly limits of said Waters Road, then binding with part of said 7th line and the westerly limits of said Waters Road
6. North 00°49'36" West, 328.80 feet to a point, then leaving said 7th line and the westerly limits of said Waters Road to cross and include part of said Waters Road
7. 66.13 feet along the arc of curve deflecting to the left, with a radius of 185.00 feet and a chord bearing and distance of South 32°52'56" East, 65.78 feet to the point of beginning; containing an area of 16,236 square feet or 0.37273 of an acre of land and as delineated on Schedule B attached hereto and made a part hereof by this reference.

Certified correct to the best of our professional knowledge, information and belief and this survey/description was performed by me or under my supervision and is in conformance with Title 9, Subtitle 13, Chapter 6, Section 12 of the Minimum Standards of Practice for Land Surveyors. If the seal and signature are not violet colored, the document is a copy that should be assumed to contain unauthorized alterations. The certification contained on this document does not apply to

M. A. Hendricks and Glascock, P.A.
 Jonathan A. Russell, Property Line Surveyor
 Md. Registration No. 350
 Expiration Date: 10/15/2012





U 2
EU 122

U
EU 562

N10400

W78000

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MARYLAND DEPARTMENT OF PLANNING
PROPERTY MAPS SECTION
PLAT NO. 12R36
SECTION II
SCALE 1"=200' (BY 1:2400)

EU 341

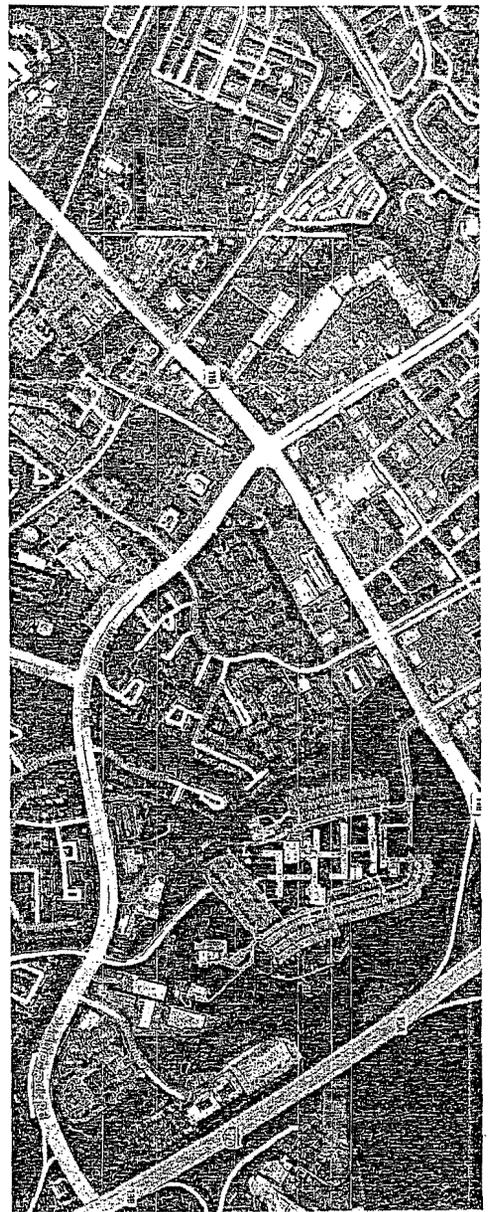
PROPERTY MAPS SECTION
PLAT NO. 12R36
SECTION II
SCALE 1"=200' (BY 1:2400)



E 4
MONTGOMERY

EXHIBIT
C

MAP EU 34
W.S.S.C. 227 NW 12
Location: GERMANTOWN



SITE EXHIBIT - AERIAL IMAGES
CHESTNUT RIDGE
 PARCELS P920 & P971
 2ND ELECTION DISTRICT - MONTGOMERY COUNTY - VARYLAND

EMIG
 Environmental Monitoring & Inspection Group, P.A.
 1000 N. 10th Street, Suite 100
 P.O. Box 100
 P.O. Box 100
 P.O. Box 100

Project No.	0112101114200000
Project Name	CHESTNUT RIDGE
Client	EMIG
Scale	1" = 100'
Date	11/20/10
Drawn by	EMIG
Checked by	EMIG

EXHIBIT
D

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	66.13'	185.00'	20°28'54"	S 32°52'56" E	65.78'

N/F
BUCHANAN PINKARD GERMANTOWN, LLC
& VILLAGE WEST, LLC
L.42903 F.337

7th or S 00°15'11" W, 482.03' LINE (L.42903 F.337)
 N 00°49'36" W 328.7983'

WATERS RD. ABANDONMENT

16,236 Sq. Ft.

S 00°06'44" W 122.65'

POINT OF BEGINNING

WATERS ROAD

4th or S03°00'00"W, 183.35' LINE
 L.10228 F.584

2nd or N00°05'41"E 75.42'
 LINE L.38114 F.250

2nd or N00°04'24"E, 108.74' LINE
 L.38114 F.254

MONT. CO.
 CIVIL ACTION
 CASE No. 40276
 L.10228 F.584

3rd or N61°15'00"W, 182.05' LINE
 L.10228 F.584
 1st or N 63°10'44" E 104.52'
 L.38114 F.250

N/F
 M SQ, LLC
 L.38114 F.250

N/F
 M SQ, LLC
 L.38114 F.254

N/F
 MARK A. WILDMAN
 L.14756 F.334

GERMANTOWN ROAD
 MD RTE. No. 118
 SRC PLAT No. 51179



SCHEDULE B
 PART OF
WATERS ROAD
ABANDONMENT

SCALE: 1" = 50' JANUARY, 2012
 MONTGOMERY COUNTY, MARYLAND



Macris, Hendricks & Glascock, P.A.
 Engineers • Planners
 Landscape Architects • Surveyors

8228 Wightman Park, Suite 100
 Montgomery County, Maryland
 20814-1701

Phone: 301-555-1100
 Fax: 301-555-1101
 www.mhga.com

Adjoining/Confronting Properties

Owner	Property
M SQ, LLC c/o Morton Taubman, Esquire 1201 15 th Street, NW, Suite 200 Washington, DC 2005	Parcel P920 Parcel P971
Mark Wildman 19515 Waters Road Germantown, MD 20874	Parcel P915
Buchanan Pickard Germantown, LLC Village West, LLC c/o Buchanan Partners 9841 Washingtonian Blvd., Suite 300 Gaithersburg, MD 20878	Parcel P780
Stephen J. Orens, Esquire Casey L. Cirner, Esquire Miles & Stockbridge, PC 11 N. Washington Street, Suite 700 Rockville, MD 20850	Counsel for Petitioner



MILES & STOCKBRIDGE P.C.

Stephen J. Orens
(301) 517-4828
sorens@milesstockbridge.com

Casey L. Cirner
(301) 517-4817
ccirner@milesstockbridge.com

VIA ELECTRONIC MAIL

May 30, 2012

Mr. Michael Cassidy
Montgomery County Department of Transportation
Office of Real Estate
100 Edison Park Drive, 4th Floor
Gaithersburg, MD 20878

Re: Abandonment Petition AB 729
Abandonment & Closure of Waters Road, Germantown

Dear Mr. Cassidy:

Pursuant to directions of the Hearing Officer at the public hearing on the above referenced Abandonment Petition, the Petitioner, M SQ LLC, hereby submits the following additional information to the Department of Transportation for inclusion in the public record.

The primary purpose of the requested abandonment and closure of Waters Road in Germantown is to facilitate a land swap between Montgomery County and the Petitioner, M SQ LLC, that will enable M SQ LLC to secure approval of pending Preliminary Plan of Subdivision Number 120120250 (the "Preliminary Plan") to consolidate the abandoned right of way with the adjacent M SQ LLC property (parcels 971 and 920) in exchange for M SQ LLC conveying a portion of its property to Montgomery County for the right of way required to relocate Waters Road as recommended by the Germantown Employment Area Sector Plan.

We understand that the County Department of Transportation and M SQ LLC have agreed that the respective values of the properties to be exchanged (16,236 square feet by Montgomery County and 16,250 square feet by M SQ LLC) are substantially equal and that sale of the abandonment right of way to M SQ LLC shall not require the payment of any additional consideration by M SQ LLC.

As stated during the hearing, the owners of the two properties that abut the abandoned right of way, M SQ LLC and the Buchannan Pickard Germantown LLC/Village West, LLC ("Buchannan Partners"), have agreed that the entirety of the abandoned right of way shall be conveyed solely

Client Documents:4832-9403-3423v1|20279-000000|5/30/2012

Page 2

to M SQ LLC in exchange for M SQ LLC conveying title of a portion of the M SQ LLC property to Montgomery County as additional right of way for relocated Waters Road. The Buchanan Partners have stated on the record that they have waived any right they may have to title to any portion of the abandoned right of way.

M SQ, LLC acknowledges that the Department of Transportation recommended that the abandonment of a portion of the existing Waters Road right of way be conditioned on the substantial completion of the construction of relocated Waters by Buchanan Partners and that relocated Waters Road be open for traffic as an uncompleted and not publically maintained roadway. M SQ LLC acknowledges that it will grant an easement to permit the road construction within that portion of M SQ LLC's property that will be swapped for the realignment of Waters Road promptly following approval of its pending Preliminary Plan and approval of the final realignment of Waters Road by all appropriate governmental entities.

It is the Petitioner's understanding that the County through its Department of Transportation designates M SQ LLC as its agent to continue to pursue approval of the Preliminary Plan that includes the County's exchange portion of Waters Road sought to be abandoned by this Petition and will execute such applications or other documents as may be required by the Maryland-National Capital Park and Planning Commission to complete the Preliminary Plan process. It is understood that recordation of the final plat shall not occur until completion of the construction of Waters Road and that County acceptance of that relocated roadway for maintenance by the County shall not be required as a condition of the abandonment becoming final.

We appreciate this opportunity to provide additional comments on the above-referenced abandonment petition. Should you have any questions or concerns, please do not hesitate to contact either of the undersigned.

Sincerely,


Stephen J. Orens


Casey L. Girner

cc: Morton Taubman, Esquire
Mark Wildman
Buchanan Partners
Robert Brewer, Esquire

ATTACHMENT NO. 3



MONTGOMERY COUNTY EXECUTIVE ORDER

COPY

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Abandonment of Portion of Waters Road Town Sector, Germantown	Executive Order No. 54-12	
Originating Department: Transportation	Department Number AB 01-10	Effective Date 3/19/2012

AB729

1. Pursuant to Section 49-62 of the Montgomery County Code (2004) as amended, the County Executive or his Designee shall conduct a Public Hearing

at 7:00 p.m. on Wednesday May 16, 2012
101 Monroe Street, EOB Lobby Auditorium
Rockville, Maryland 20850

to consider an application received from Miles & Stockbridge on behalf of its client, M SQ., LLC, the Applicant, seeking abandonment of a portion of Waters Road adjoining the Applicant's property in the Town Sector of Germantown.

2. After the aforesaid Hearing, the Hearing Officer shall report his findings and recommendations to the County Executive for further consideration as prescribed by County Code.

Approved as to Form and Legality
Office of the County Attorney

APPROVED

By: *Eric Willis*
Eric C. Willis
Assistant County Attorney
Date: 3/9/12

Ramona Bell-Pearson
Ramona Bell-Pearson
Assistant Chief Administrative Officer
Date: 3/19/12

Distribution:
Department of Transportation
Department of Finance
Office of the County Attorney

ATTACHMENT NO. 4



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

IN THE MATTER OF: Abandonment Petition AB729

**Petition for Street Closure and Abandonment of Portion of Waters Road,
Germantown, Maryland**

BEFORE: Michael L. Subin, Public Hearing Officer

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. Background

The property owner, M Sq., LLC (the "Applicant"), submitted a request, dated February 10, 2010, requesting the closure and abandonment of a portion of the right-of-way of Waters Road, a County road located north of Maryland State Route 118 ("Md. 118") in Germantown, Maryland. (Exhibit 1) The requested abandonment and closure of a portion of Waters Road will facilitate the relocation of Waters Road to connect directly to Md. 118 as recommended in the 2009 Germantown Area Sector Plan ("Sector Plan"). The Applicant states that the abandonment and partial closure area is a dead end street that terminates in a cul-de-sac. All abutting properties have direct access to public roads other than Waters Road. A copy of the survey and metes and bounds description of the portion of Waters Road to be closed and abandoned is attached as Exhibit A to Exhibit 1. The Applicant proposes that the County abandon the right-of-way as reflected on Exhibit 5. The area of Waters Road to be closed and abandoned totals 16,236 square feet and the area required for the realignment of Waters Road totals 22,250 square feet. The petitioner will be required to dedicate 16,250 square feet of its property for the Waters Road realignment. An adjacent property owner will be required to dedicate 6,000 square feet for the realignment.

Executive Order 54-12, authorizing the hearing, was issued on March 19, 2012. Notices were sent to nearby civic associations, residents, public utilities, and public agencies. (Exhibit 3) Public notice of the hearing appeared in *The Montgomery Sentinel* on May 3 and 10, 2012. (Exhibit 4) Signage was posted at the site of the abandonment and partial closure. (Exhibit 8) A

public hearing was held on May 16, 2012, at approximately 7:05 p.m., in the Executive Office Building lobby auditorium, 101 Monroe Street, Rockville, Maryland.

II. Summary of Testimony and Evidence

At the hearing on the proposed abandonment and partial closure, Mr. Michael Cassedy, representing the Montgomery Department of Transportation (“MCDOT”), testified on behalf of the Department. Mr. Cassedy read into the record the evidence and exhibits required by the Montgomery County Code (2004) as amended. He then testified as to the elements of the project as contained in section I, above. In addition to reading the exhibits into the record, Mr. Cassedy testified that his office requested comments from the public, government agencies, and public utility companies in fulfillment of the requirements of Montgomery County Code, Section 49-62 (2004) as amended. Mr. Cassedy listed MCDOT’s conditions for approval of the abandonment and partial closure as follows:

1. The Applicant must dedicate a new alignment for Waters Road to intersect with MD 118, and build that segment to County standards;
2. The abandonment would not be effective until the new alignment is open to traffic;
3. The Applicant must grant easements to the County for the maintenance of storm drainage facilities and public utilities affected, and/or relocate these facilities and grant easements, as applicable;
4. The Applicant must pay fair market value for that portion of the right-of-way in fee simple to the County; and,
5. The Montgomery County Planning Board’s approval of Preliminary Plan No. 120120250, Chestnut Ridge. (Exhibit 10)

Several witnesses representing the Applicant testified. The testimony indicated that the Applicant believes that the conditions as proposed by MCDOT are acceptable. The Applicant stated that they own the parcels abutting the area subject to the requested abandonment and partial closure. The Applicant also testified that the relocation of Waters Road is in accordance with the adopted Germantown Employment Area Sector Plan. Further, the Applicant stated that the road requested to be abandoned and partially closed is not the sole means of access for any surrounding property.

The Montgomery County Planning Board, via e-mail of April 4, 2012, indicated that they would be dealing with the issue during the Preliminary Plan process. (Exhibit 9) Since the Applicant will not be able to proceed without meeting the Planning Board's conditions, those conditions will be included by reference in the County's Executive's approval, if so decided.

The Montgomery County Department of Fire and Rescue Services, by e-mail dated May 23, 2012(Exhibit 17), offered no objections to AB729, provided that the associated development plan must provide code compliant access approved by the Montgomery County Office of the Fire Marshall. (Exhibit 17)

Verizon, by e-mail dated April 23, 2012, objected to the proposal unless granted an easement to cover its existing and future facilities or the petitioner is willing to pay for the relocation or removal of its facilities. (Exhibit 6)

The Washington Suburban Sanitary Commission (WSSC), by e-mail May 2, 2012, stated that if the public space were to be abandoned, they would require an easement. The width of the easement would depend on the diameter of the pipes at the location. (Exhibit 6) During their testimony, Applicant agreed to grant the easement.

Neither Washington Gas, Pepco, Allegheny Power, the Montgomery County Public School System, nor the Montgomery County Police Department provided any comments.

Nearby residents and their civic association were sent notices of the Public Hearing. However, neither the residents nor the civic association offered any oral or written testimony.

III. Conclusions and Recommendations

The abandonment of road rights-of way is governed by the provisions of sections 49-63, Montgomery County Code (2004) as amended. Section 49-63 permits application for abandonment of a right-of way by any person or government agency, provides for public agency and utility company review, and requires a public hearing with notice. I find that the hearing and notice procedures have been satisfied, and the public, public agencies, and utility companies have been given an opportunity to review the petition for abandonment and closure as described above.

Section 49-63 allows abandonment if the right-of-way is not needed for public use or if abandonment is necessary to protect the health, safety and welfare of the residents in the neighborhood. In determining health, safety and welfare issues, the Council may consider:

1) any adopted land use plan applicable to the neighborhood; 2) the safe and efficient pedestrian

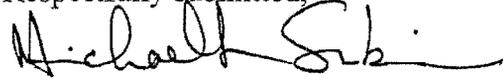
and vehicular traffic patterns and flows, together with alternatives in the immediate neighborhood for local and through traffic; or, 3) changes in fact and circumstances since the original dedication of the right-of way. In this case, the abandonment and partial closure turn on whether or not the right-of-way is needed for public use. I find that it is not and that the application meets all three criteria and should be approved.

However, this approval is predicated on the satisfaction of the following criteria:

1. The Applicant must dedicate a new alignment for Waters Road to intersect with MD 118, and build that segment to County standards;
2. The abandonment would not be effective until the new alignment is open to traffic;
3. The Applicant must grant easements to the County for the maintenance of storm drainage facilities and public utilities affected, and/or relocate these facilities and grant easements;
4. The Applicant must pay fair market value for that portion of the right-of-way in fee simple to the County; and,
5. The Montgomery County Planning Board's approval of Preliminary Plan No. 120120250, Chestnut Ridge and any conditions thereof. (Exhibit 10)

Signature Page Follows

Respectfully submitted,



Michael L. Subin

January 4, 2012³

Date

The Public Hearing Officer's Recommendations regarding AB 729 have been reviewed and are APPROVED.



Isiah Leggett, County Executive

January 7, 2012³ *MS*

Date

ATTACHMENT NO. 5

C° 14 NW

D

E

F

13 NW G

H

J

12 NW K

MAP 5046

77°17'15"

Joins Map 4928

77°16'30"

77°15'45"

77°15'00"



39°11'15"

227 NW

39°10'30"

226 NW

39°09'00"

224 NW

39°08'00"

223 NW

490,000 FT

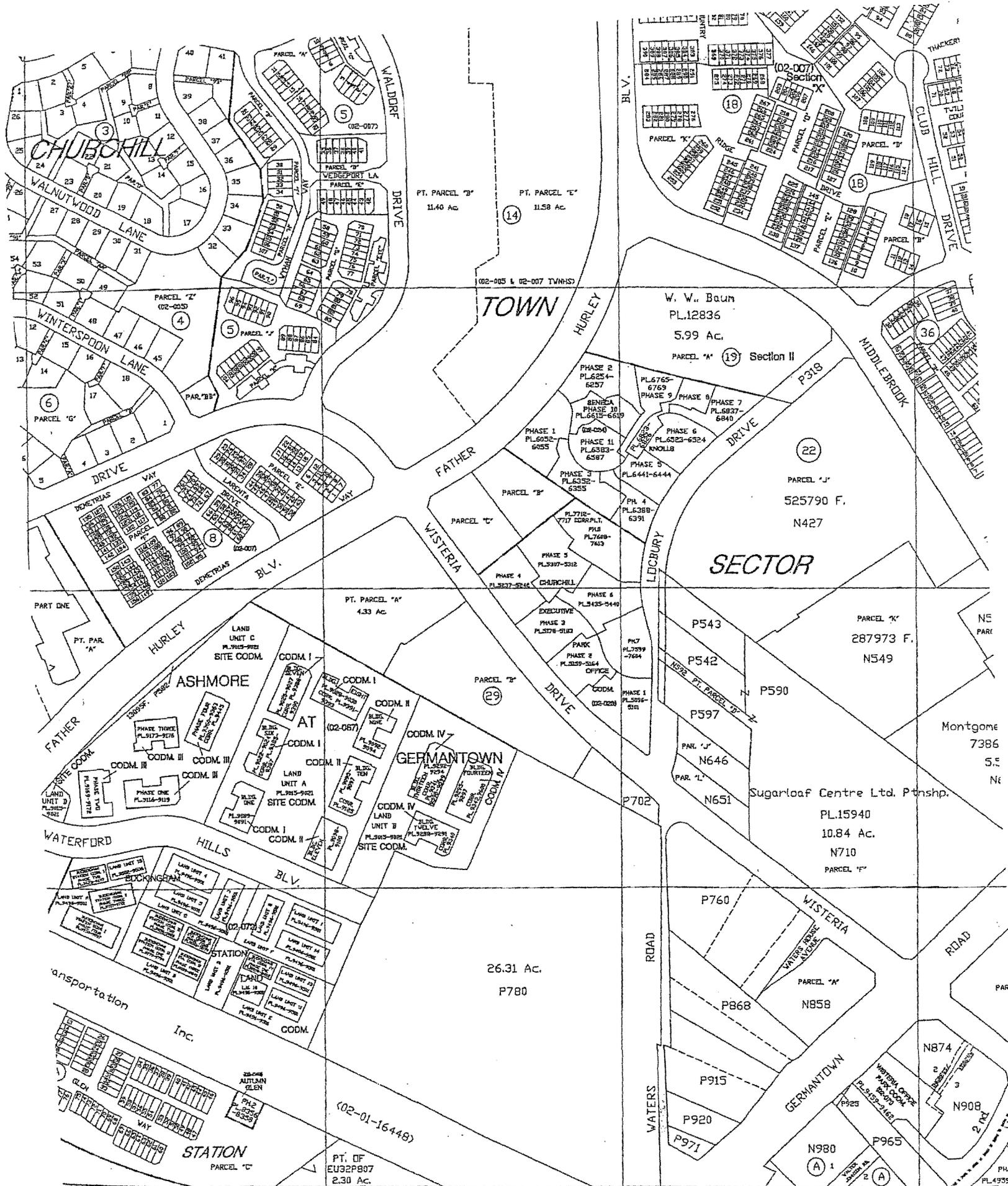
490,000 FT

Joins Map 5047 225 NW

490,000 FT

Waters Road

(22)



E 3

Tax Map EU 42

EU 341

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COMPILED BY
MARYLAND DEPARTMENT OF PLANNING
PROPERTY MAPPING SECTION

The information shown on this map has been compiled from deed
descriptions and plans and is not an aerial survey. It should not be
used for legal descriptions. Users desiring accurate data should refer to the
Maryland Department of Planning, Property Mapping Section,
Room 1101, 301 W. Preston St., Baltimore, MD 21201-3306.

PROPERTY LINE
SUBDIVISION BOUNDARY
TOWN BOUNDARY
PRIVATE ROAD
STREAM LINE

CONTINUING OWNERSHIP -
PARCEL NUMBERING - REFER TO IDENTIFY OWNERSHIP. MUST BE PRECEDED BY
SCALE 1"=200' (RF 1:2400)

REVISED TO:	DATE	BY	LEAD	LAST P. NO.	PHOTO	QUANTUM OVERLAP
	JUN. 07	ELE				