

**MEMORANDUM**

March 19, 2010

TO: County Council  
FROM: <sup>GO</sup> Glenn Orlin, Deputy Council Staff Director  
SUBJECT: **Action**—abandonment of a portion of Lybrook Drive

A portion of Lybrook Drive in Bethesda's Burning Tree Valley Subdivision has been proposed for abandonment.

During its review of Bill 31-96 (Abandonments--Procedures) more than a decade ago, the Transportation, Infrastructure, Energy and Environment Committee indicated that a proposed abandonment or road closure should proceed directly to the Council unless there is some disagreement expressed over the abandonment. There had been an objection from Washington Gas, but it noted that it would remove its objection if the Applicant would provide an easement for a gas line. One of the conditions proposed by the Executive is for the Applicant to provide such an easement. Therefore, there is no remaining disagreement about this abandonment.

**Council staff recommendation: Approve this abandonment with the conditions suggested by the Executive and Hearing Examiner.**

Attachments

Executive's transmittal letter	©1
Draft adoption resolution	©2-3
Map noting location of proposed abandonment	©4
Hearing Examiner's report	©5-10



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

March 15, 2010

TO: Nancy Floreen, President  
Montgomery County Council

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

SUBJECT: DPWT Docket No. AB713, Portion of Lybrook Drive  
Lee Lloyd's Addition to Burning Tree Valley Subdivision  
Bethesda, 7<sup>th</sup> Election District

For your consideration, attached herewith is a proposed Resolution whereby the County Council may approve the abandonment of a portion of Lybrook Drive in the Lee Lloyd's Addition to Burning Tree Valley Subdivision in Bethesda. Supporting data are submitted as follows:

1. Council Resolution
2. Letter requesting the abandonment from Miles & Stockbridge on behalf of its client, AssetOne Construction, LLC, the Applicant
3. A Public Hearing was held on June 9, 2008, as announced by Executive Order No. 94-08.
4. The Hearing Examiner's Report and Recommendation
5. A location map and tax map for reference

Attachments

Resolution No: \_\_\_\_\_  
Introduced: \_\_\_\_\_  
Adopted: \_\_\_\_\_

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By County Council

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**SUBJECT:** DPWT Docket No. AB713  
Abandonment – Portion of Lybrook Drive  
Lee Lloyd’s Addition to Burning Tree Valley Subdivision  
Bethesda, Maryland

**Background**

1. By letter dated September 21, 2007, Miles & Stockbridge on behalf of AssetOne Construction, LLC, the Applicant, requested the County to abandon a portion of Lybrook Drive in the Lee Lloyd’s Addition to Burning Tree Valley Subdivision in Bethesda, Maryland. The portion of Lybrook Drive right-of-way for which abandonment is sought is shown highlighted on the attached Tax Map GN343.
2. A Public Hearing to consider the abandonment proposal was held on June 9, 2008, by the designee of the County Executive.
3. Washington Gas objected but would remove its objection if the Applicant would relocate the gas line and/or provide an easement for the gas line.
4. Washington Suburban Sanitary Commission had no objection.
5. VERIZON did not respond within 60 days and therefore, concurrence is presumed.
6. The Montgomery County Planning Board recommended approval.
7. The Department of Transportation recommended approval conditioned upon the Applicant granting easements for County storm drains and public utility facilities that might be located within the right-of-way and upon the Applicant filing a new record plat incorporating the former right-of-way into a lot with its adjoining property.
8. The Department of Fire and Rescue Services had no objection.
9. The Police Department did not respond within 60 days and therefore, concurrence is presumed.
10. PEPCO did not respond within 60 days and therefore, concurrence is presumed.

11. The County Executive recommends approval of the proposed abandonment with conditions.

Action

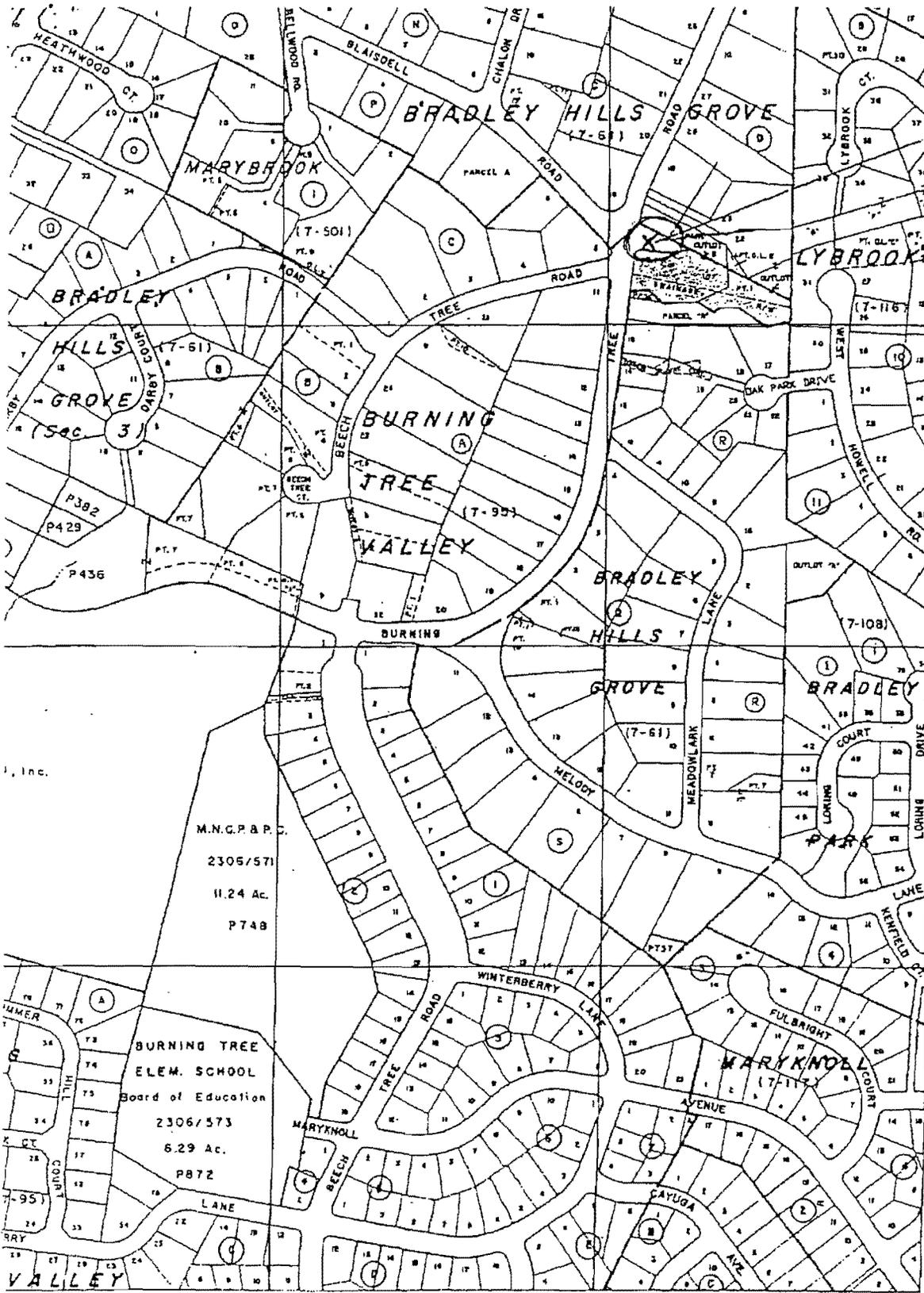
The County Council for Montgomery County, Maryland, finds that the portion of Lybrook Drive proposed for abandonment is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment, subject to the following conditions which must be satisfied at Applicant's sole cost and expense prior to the abandonment becoming effective:

1. The abandonment area must be subject to a permanent and perpetual public improvements easement sufficient in form and substance to allow for the current and future placement, maintenance and repair of utilities and drainage;
2. The form and substance of the easement referred to in 1) above must be approved for form and legal sufficiency by the Office of the County Attorney for Montgomery County, Maryland prior to the proposed abandonment taking effect; and
3. Applicant must prepare and record a new record plat in accordance with the requirements of Montgomery County Code Section 49-65(d), which plat must incorporate the abandonment area into a new lot formed by the abandonment area, the adjacent outlot, and lot referred to as Part of Lot 1, subject to the public improvement easements, with signature on the record plat of all necessary owners, mortgagees and lienholders of record.
4. The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution approving abandonment of the subject area.
5. 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.

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Linda M. Lauer, Clerk of the Council



AB 713  
 Unimproved  
 Lybrook Dr

GN 563  
 N 3

M.N.C.P.&P.C.  
 2306/571  
 11.24 Ac.  
 P748

BURNING TREE  
 ELEM. SCHOOL  
 Board of Education  
 2306/573  
 6.29 Ac.  
 P872

G 4  
 MONTGOMERY CO.,  
 MARYLAND

MAP GN 343  
 W.S.S.C. 210 NW 07  
 Location: BRADLEY HILLS GROVE

4

**OFFICE OF THE COUNTY EXECUTIVE  
EXECUTIVE OFFICE BUILDING  
ROCKVILLE, MARYLAND 20850**

**IN THE MATTER OF:**

PETITION OF AssetOne CONSTRUCTION LLC, Petitioner	* DEPARTMENT OF * TRANSPORTATION *
ABANDONMENT OF A PORTION OF LYBROOK DRIVE, An unimproved right-of-way	* * PETITION NO. AB 713 *

BEFORE: Diane Schwartz Jones, Public Hearing Officer

**PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION**

**I. Background**

The hearing and public comments in the captioned matter pertain to a request dated September 21, 2007, from the law firm of Miles & Stockbridge on behalf of AssetOne Construction, LLC ("Petitioner"), to abandon a portion of unimproved Lybrook Drive in the Lee Lloyd's Addition to Burning Tree Valley Subdivision in Bethesda, Maryland. Petitioner seeks abandonment for the purpose of consolidating an outlot, part of a lot, and the abandonment area into a single record lot upon which Petitioner proposes to construct a house. The area is to be incorporated into a new lot as is shown on the tax map attached to Petitioner's request for abandonment (See, Exhibit 1).<sup>1</sup> The abandonment area is triangular in shape with two sides approximately 175 feet long with a tapering width of up to approximately 70 feet. See, Plat no. 3899 attached to Exhibit 1.

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<sup>1</sup> The Exhibits comprising the Hearing Record are attached as Schedule 1.

Petitioner asserts that the road is not required for access to any property, serves no current public purpose and has no foreseeable future public use and should therefore be abandoned under Montgomery County Code 49-63(e). The proposed abandonment area is sandwiched between an outlot and a lot referred to as Part of Lot 1, both of which are owned by or under contract to be owned by the Petitioner.

Pursuant to Montgomery County Code section 49-62(f), a public hearing on the proposal was set by Executive Order 94-08 and held at 2:30 pm on Monday, June 9, 2008, in the Lobby Level Auditorium of the Executive Office Building, 101 Monroe Street in Rockville, Maryland.

Exhibit 2. Notice of Hearing was mailed to neighboring property owners, and the Bradley Hills Citizens Association and was published in the *Montgomery County Sentinel* newspaper on May 29, 2008 and June 5, 2008. Exhibits 3 and 4. Notice was also posted by sign at the right-of-way. Exhibit 7. Testimony was received at the hearing and Exhibits 1-12 were entered into the record. The record was held open for two weeks until 5:00 pm on June 23, 2008. Additional comments were received prior to closing of the record.

## II. Summary of Testimony

Mike Cassedy with the Department of Public Works and Transportation (currently referred to as the Department of Transportation or DOT) described the property and explained that the property adjacent to the right-of-way had at one time had a single family house that was destroyed by fire. The house could not be rebuilt without uniting the lot, the right-of-way and the outlot through subdivision. Additionally, the house could not be rebuilt in its former location due to the floodplain. Tr. P. 5.<sup>2</sup> Mr. Cassedy described how DOT met the requirements of Montgomery County Code section 49-62 and requested comments from the public, governmental

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<sup>2</sup> Tr. refers to the transcript of the hearing.

agencies and public utility companies. Several exhibits were introduced which included Exhibits 1-12 as described on Attachment 1.

Rebecca Walker with the law firm of Miles and Stockbridge spoke on behalf of the Petitioner. She was accompanied by Keith Burgess, the representative of Petitioner and the prospective occupant of the house to be built on the new lot to be created with the abandonment area. Also in attendance was Dave O'Bryan, a professional engineer. Ms. Walker submitted Exhibit 13 into the record which is a plan that locates a Washington Gas gas meter in the right-of-way for Burning Tree Road. Tr. Pps. 9-10. Mr. O'Bryan testified that in his opinion construction of Lybrook Road would be challenging because of an existing stream valley. Tr. P.15.

In administering the abandonment provisions of Chapter 49, the County Executive is required to solicit a response on the abandonment proposal from a variety of public agencies including each public utility authorized by the Public Service Commission to provide service within the area and any grantee of a franchise if the grantee is authorized to use or install facilities in the right-of-way. Washington Gas has objected to the abandonment because it may have a gas line in the right-of-way, however it will not object if the Petitioner would relocate the gas lines and/or provide an easement for the gas line (Exhibits 9 and 15). Petitioner responded that although it has been unable to locate any Washington Gas improvements within the Lybrook Drive right-of-way it intends to grant easements for public utilities and thus has no objection to granting such an easement to Washington Gas (Exhibit 16).

Washington Suburban Sanitary Commission has no objection to the abandonment (Exhibit 8). Montgomery County Department of Fire and Rescue Services indicated that it has no objection to the proposed abandonment (Exhibit 12). Montgomery County Police Department

had not submitted any statement at the close of the record. Under Montgomery County Code 49-62(g), if an agency or other party does not respond within 60 days after notice is first published under section 49-62(e), the County Executive must presume that the agency or other party does not oppose the proposal.

The Montgomery County Planning Board submitted a statement recommending approval of the proposed abandonment and included its Staff Report dated May 7, 2008. Exhibit 10. Planning Board Staff concluded that the unimproved right-of-way is not necessary for present or future public use and no adjacent lots would be landlocked as a consequence of the proposed abandonment. As described by Planning Board Staff and the record plat (Exhibit 6), Lybrook Drive was dedicated for public use as part of the Lee Lloyd's Addition to Burning Tree Valley Subdivision in 1954. It was intended to connect Burning Tree Road and West Howell Road, however due to the adverse impact on existing floodplain along Booze Creek and changes in the orientation of area roads, construction of Lybrook was infeasible and unnecessary. For these reasons Planning Board Staff recommended approval of the abandonment. See, Exhibit 10.

Finally, the Department of Transportation recommended approval of the requested abandonment conditioned on the Petitioner granting easements for County storm drains and public utility facilities that might be located within the right-of-way and upon Petitioner filing a new record plat incorporating the former right-of-way into a lot with its adjoining property. See, Exhibit 11.

### **III. Conclusions and Recommendations**

The abandonment of rights-of-way is governed by the provisions of Montgomery County Code Sections 49-62 and 49-63. Section 49-62 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. The hearing and notice procedures have been satisfied, and the public agencies and utility companies have been given an opportunity to review the Petition for Abandonment 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. Section 49-63(d) precludes abandonment of a right-of-way which is the sole means of access to any property. Planning Board Staff and the Department of Transportation have both concluded that the right-of-way is not needed for current or future public use. Planning Board Staff has pointed out that changes in road orientations and severe flood plain impacts make development of Lybrook Road infeasible. For these reasons and because the unimproved right-of-way does not serve as the sole means of access to any property, I find that the triangular unimproved Lybrook Drive right-of-way that is shown on the Exhibit 1, Exhibit 5 and Exhibit 10 is not necessary for current or future public use except as may be needed in connection with the locating of storm drains and utilities. Based on a thorough review of the testimony and the evidence of record, I recommend that the petition to abandon the unimproved right-of-way for Lybrook Drive be conditionally granted.

The proposed abandonment is recommended subject to satisfaction of the following requirements:

1) The abandonment area must be subject to a permanent and perpetual public improvements easement sufficient in form and substance to allow for the current and future placement, maintenance and repair of utilities and drainage;

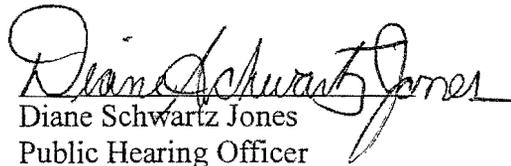
2) The form and substance of the easement referred to in 1) above must be approved for form and legal sufficiency by the Office of the County Attorney for Montgomery County, Maryland;

3) Petitioner must prepare the public improvement easement and cause the duly executed easement to be recorded in the Land Records for Montgomery County, Maryland prior to the proposed abandonment taking effect; and

4) Petitioner must prepare and record a new record plat in accordance with the requirements of Montgomery County Code Section 49-65(d), which plat must incorporate the abandonment area into a new lot formed by the abandonment area, the adjacent outlot, and lot referred to as Part of Lot 1, subject to the public improvements easements, with signature on the record plat of all necessary owners, mortgagees and lienholders of record.

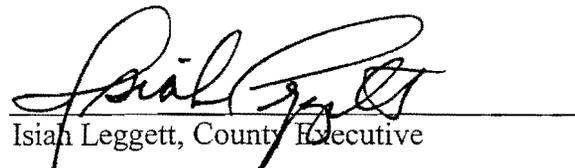
Respectfully submitted,

February 15, 2010

  
Diane Schwartz Jones  
Public Hearing Officer

The Public Hearing Officer's Recommendation for AB713 has been reviewed and the recommendation of conditional approval of the abandonment is accepted.

Date: Feb 18, 2010

  
Isiah Leggett, County Executive