TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: Sherry Kinikin, Legislative Analyst

SUBJECT: Abandonment of Portion of Kensington Boulevard
DPWT Docket No. AB716
Kensington View Subdivision
Kensington 13th Election District

A portion of Kensington Boulevard in Kensington has been proposed for abandonment at the Kensington View Subdivision in Kensington. There is opposition to this abandonment.

The area proposed for abandonment consists of about 3,167 square feet of unimproved right-of-way and is adjacent to property for which 11250 Veirs Mill Road, LLC has a Petition for Special Exception (S-2719) pending with the Montgomery County Board of Appeals. If the abandonment is approved, 11250 Veirs Mill Road, LLC will likely seek to incorporate a portion of its abandoned area into the property for its proposed Special Exception for off-street parking of automobiles.

The Planning Board has strongly suggested that the right-of-way must be maintained for future use as a connecting road, and that the Planning Board is in the process of reviewing the Sector Plan for the planning area. The Planning Board staff has also recommended keeping this right-of-way as a needed connection between East Avenue and Veirs Mill Road. The Department of Transportation agrees with the recommendations of the Planning Board.

According to the Hearing Examiner, Outlot A will become totally landlocked unless it is re-subdivided into one of the adjacent lots and will have no access to a public road. No evidence was offered to suggest re-subdivision of Outlot A would be undertaken. Montgomery County Code Section 49-63(d) states, a right-of-way which is the sole means of access to any property must not be abandoned or closed. The Petitioner has not made a convincing case that the abandonment is necessary to protect the health, safety, and welfare of the residents near the right-of-way, and there was abundant testimony to the contrary. Virginia Sheard, Judy Higgins, Elizabeth Barry, and Stephanie Savolaine all objected to the project, saying that cars use East Avenue and it is used as a pedestrian path for Albert Einstein and Newport Middle School and the residential communities of Kensington View, Rock Creek Palisades, College View, and the Crossway Community. They also object to a commercial use in their
neighborhood. Elizabeth Barry lives in a house located at 2901 Kensington Boulevard and the adjacent Lot A since 1947.

Attached herewith is a proposed Resolution whereby the County Council may deny the abandonment of a portion of Kensington Boulevard in the Kensington View Subdivision in Kensington. Council staff recommends that this abandonment be denied.

Department of Transportation staff will be available for questions at the worksession.

**Attachments**
- Executive’s transmittal letter © 1
- Draft adoption resolution © 2-3
- Application letter © 4-7
- Public hearing notice © 8
- Hearing Examiner’s report © 9-17
- Map A ©18
- Map B ©19
- Letter from David Freishtat ©20-23
- Public Hearing Transcript ©24-72

f: kinikin/abandonments/AB716
MEMORANDUM

November 3, 2009

TO: Phil Andrews, President
   Montgomery County Council

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

SUBJECT: DPWT Docket No. AB716 Portion of Kensington Boulevard
         Kensington View Subdivision
         Kensington, 13th Election District

For your consideration, attached herewith is a proposed Resolution whereby the County Council may deny the abandonment of a portion of Kensington Boulevard in the Kensington View Subdivision in Kensington. Supporting data are submitted as follows:

1. Council Resolution

2. Letter requesting the abandonment from Shulman, Rogers et al on behalf of its client, 11250 Veirs Mill Road, LLC, the Applicant

3. A Public Hearing was held on September 15, 2008, as announced by Executive Order No. 174-08.

4. The Hearing Examiner’s Report and Recommendation

5. A location map and tax map for reference

ILrg

Attachments
By County Council

SUBJECT: Subject: DPWT Docket No. AB716
Abandonment – Portion of Kensington Boulevard
Kensington View Subdivision
Kensington, Maryland

Background

1. By letter dated April 25, 2008, from Shulman, Rogers et al on behalf of its client, 11250 Veirs Mill Road, LLC, the Applicant, a request was made to the County to abandon an unimproved portion of Kensington Boulevard in the Kensington View Subdivision in Kensington, Maryland.

2. A Public Hearing to consider the abandonment proposal was held on September 15, 2008, by the designee of the County Executive.


5. PEPCO did not respond within sixty (60) days after receiving notice and therefore, concurrence is presumed.

6. The Police Department did not respond within sixty (60) days after receiving notice, and therefore, concurrence is presumed.

7. The Montgomery County Planning Board recommended denial.

8. The Department of Fire and Rescue Services had no objection.

9. The Department of Transportation recommended denial; but if approved, it should be conditioned upon the Applicant granting any necessary easements for County storm drains and public utility facilities and recording a new record plat incorporating the former right-of-way.
10. VERIZON did not respond within sixty (60) days after receiving notice, and therefore, concurrence is presumed.

11. The County Executive recommends denial of the proposed abandonment.

**Action**

The County Council for Montgomery County, Maryland, finds that a portion of Kensington Boulevard in the Kensington View Subdivision consisting of approximately 3,167 square feet, is still necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and denies the abandonment request.

1. The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution denying the abandonment of the subject area.

2. Any person aggrieved by the action of the Council for denial of the abandonment request 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
April 25, 2008

The Honorable Isiah “Ike” Leggett
Montgomery County Executive
101 Monroe Street, 2nd Floor
Rockville, Maryland 20850

RE: 11250 Veirs Mill Road, LLC; Request for Abandonment of a portion of Kensington Boulevard

Dear County Executive Leggett:

On behalf of 11250 Veirs Mill Road, LLC, we wish to request abandonment of an area of approximately 3,167 square feet of unimproved Kensington Boulevard right-of-way from the southwestern boundary of Block F, Lot 13 (11227 East Avenue, Kensington, Maryland) to the right-of-way’s terminus at the southeastern boundary of Block C, Parcel P282 (11250 Veirs Mill Road/MD Rt. 586, Silver Spring, Maryland). The portion of Kensington Boulevard requested for abandonment presents a steep topography resulting in highly impracticable right-of-way.

The owners of the properties with a boundary adjacent to the proposed abandonment area are indicated on the enclosed tax map and are listed below:
- 11250 Veirs Mill Road, LLC who is the fee simple owner of Parcel P282 with a premises address of 11250 Veirs Mill Road/MD Rt. 586, Silver Spring, Maryland;
- 11250 Veirs Mill Road, LLC who is the fee simple owner of Lot 13, Block F with a premises address of 11227 East Avenue, Kensington, Maryland;
- Mr. Granville L. Berry, et al who is the fee simple owner of Block E, Lot 11 & Block E, Outlot A with a premises address of 2901 Kensington Boulevard, Kensington, Maryland; and
- Banc Realty, LLC who is the fee simple owner of Block B, Lot 9 with a premises address of 11300 Veirs Mill Road, Silver Spring, Maryland.

The area proposed for abandonment consists of about 3,167 square feet of unimproved right-of-way and is adjacent to property for which 11250 Veirs Mill Road, LLC has a Petition for Special Exception (S-2719) pending with the Montgomery County Board of Appeals. If the abandonment is
approved, 11250 Veirs Mill Road, LLC will likely seek to incorporate a portion of its abandoned area into the property for its proposed Special Exception for off-street parking of automobiles. Further, if the abandonment is approved, any utility lines or access contained within the right-of-way area proposed for abandonment will be preserved through appropriate land instruments.

We have enclosed with this request a tax map highlighting the proposed abandonment area, a list of property owners whose property abuts the right-of-way proposed to be abandoned, and a check in the amount of $2,500.00 as the filing fee for the proposed abandonment.

We look forward to a public hearing to review and discuss the requested abandonment. Should you or members of your Staff have any questions, please do not hesitate to contact us.

Sincerely yours,

SHULMAN, ROGERS, GANDAL, PORDY & ECKER, P.A.

David D. Freishtat

Anne Marie Vassallo

cc: Mr. Michael Cassedy (w/ filing fee per instruction)
Mr. Carlton Gilbert
Mr. Rob Klein
Ms. Virginia Sheard
Mr. Chris Lindsay
Mr. Brian Donnelly
List of property owners whose property abuts the right-of-way proposed to be abandoned

List provided pursuant to Montgomery County Code Ch. 49-62 (d)

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<td>Banc Realty, LLC</td>
<td>11300 Veirs Mill Rd. Wheaton, MD 20902</td>
<td>Lot 9</td>
</tr>
<tr>
<td>11250 Viers Mill Road, LLC</td>
<td>c/o Chris Lindsay Lindsay Automotive Group 1525 Kenwood Avenue Alexandria, VA 22302</td>
<td>Lot 13 Parcel 282 F</td>
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<tr>
<td>Mr. Granville L. Berry</td>
<td>2901 Kensington Boulevard Kensington, MD 20895</td>
<td>Lot 11 Outlot A E</td>
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<tr>
<td>David D. Freishtat, Esquire Attorney for 11250 Veirs Mill Road, LLC</td>
<td>Shulman, Rogers, Gandal, Pordy &amp; Ecker, P.A. 11921 Rockville Pike, Suite 300 Rockville, MD 20852</td>
<td>n/a n/a</td>
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<td>Abandonment of Portion of Kensington Boulevard Kensington View Subdivision, Kensington</td>
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<td>Effective Date</td>
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AB716

1. Pursuant to §49-62 of the Montgomery County Code (2004) as amended, the County Executive or his Designee shall conduct a Public Hearing at 1:00 p.m. on Monday September 15, 2008

101 Monroe Street, EOB Lobby Auditorium
Rockville, Maryland 20850

to consider an application received from Shulman, Rogers, Gandal, Pordy & Ecker, on behalf of its client, 11250 Veirs Mill Road, LLC, the Applicant, seeking abandonment of a portion of Kensington Boulevard in the Kensington View Subdivision in Kensington.

2. After the aforesaid Hearing, the Hearing Officer shall report his or her 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

By: Eileen Basaman
Associate County Attorney

APPROVED

Thomas J. Street
Assistant Chief Administrative Officer

Distribution:
Department of Public Works and Transportation
Department of Finance
IN THE MATTER OF:

PETITION OF 11250 VIERS MILL ROAD, LLC, Petitioners

ABANDONMENT OF A PORTION OF KENSINGTON BOULEVARD,
An unimproved right-of-way

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 April 25, 2008, from the law firm of Shulman, Rogers, Gandal, Pordy and Ecker, on behalf of 11250 Veirs Mills Road, LLC ("Petitioner"), to abandon a portion of Kensington Boulevard. Abandonment Petition No. AB716 seeks abandonment of 3167 square feet of unimproved area between East Avenue and Veirs Mill Road in the Kensington View community. The abandonment was sought on the basis that it is no longer necessary for public use under Montgomery County Code 49-63(e). The proposed abandonment area abuts three properties; 1) Lot 9 in Block B, owned by Banc Realty, LLC, 2) Lot 13 and Parcel 282 in Block F, owned by the Petitioner, and 3) Lot 11 and Out Lot A in Block E, owned by the Berry family.
Petitioner owns a car dealership business, Lindsay Ford, utilizing Parcel 282 in Block F. Petitioner also owns Lots 11, 12 and 13 in Block F. Petitioner has a pending application for Special Exception for Lots 11, 12 and 13 for off-street parking of automobiles. Petitioner suggests that it will likely seek to use a portion of the requested abandonment area for the off street parking of automobiles. Petitioner has offered to provide easements for access to any utilities contained in the proposed abandonment through an appropriate land instrument.

Pursuant to section 49-62(f) of the Montgomery County Code, a public hearing on the proposal was held at 1:00 pm on September 5, 2008, in the Lobby Level Auditorium of the Executive Office Building, 101 Monroe Street in Rockville, Maryland. Notice of Hearing was mailed to neighboring properties, the Kensington View Civic Association (KVCA) and was published in the Montgomery County Sentinel newspaper on September 4, 2008 and September 11, 2008. Testimony was received at the hearing and exhibits 1-25 were entered into the record. The record was held open for two weeks until 5:00 pm on September 29, 2008. Additional comments were received prior to closing of the records.

II. Summary of Testimony

Chris Lindsay, one of the owners of the Lindsay Ford dealership, located at 11250 Veirs Mill Road, presented his statement on behalf of the Petitioner. After presenting the family history of the dealership, Mr. Lindsay emphasized that the company believes in the landscaping and cleanliness of the dealership. He described the company’s involvement in the communities in which they do business and their charitable characteristic. Mr. Lindsay however acknowledged that three adjacent homes, Lots 11, 12 and 13 in Block F, which they bought when they acquired the dealership, are in terrible condition and were when they bought them. They have applied to rezone these lots. Combining those three lots with this
proposed abandonment will create the car storage facility. The Petitioner has indicated to the community that the facility will be landscaped with benches under the trees and sidewalks, all for the community to enjoy.

The Petitioner indicated that the proposed area has been designated in the Sector Plan for public use as the Kensington Boulevard Extension and pointed out that there is no accompanying explanation of this Kensington Boulevard Extension in the text of the 1989 Sector Plan.

The Petitioner called a licensed civil engineer, Steve Crum of MHG firm to testify. Mr. Crum testified that the maximum attainable grade, for a secondary road in the right of way, allowed by County regulation is 8.45% and for a primary road would be allowed a 6.2% grade. Mr. Crum stated that the grade for the road in the subject right of way would exceed these levels. He presented a grade establishment plan (Exhibits 13 and 21) in support of his argument. In both cases he assumed that the road can be built from its current terminus at East Avenue along the Master Plan route to Veirs Mills Road. MHG also submitted another grade establishment plan (Exhibit 23) for the record. In this plan Mr. Crum assumed that the terminus will be at the intersection of East Avenue and Upton Drive along East Avenue and Kensington Boulevard to Veirs Mills Road. With this grading plan, the County regulated grades are achievable, however Petitioner maintains that it may block entrances to several lots as the elevated road and retaining wall would pass in front of these houses. The Hearing Officer finds these assumptions to be conjecture and speculative. The nuances of how a road would be designed would be determined at the time of actual design and any entrances or additional right of way acquisitions would be determined at that time.
Kensington View Community, through KVCA and through individual comments, has overwhelmingly opposed the abandonment. KVCA (exhibit 19) has given three major reasons to oppose the abandonment. First, the right of way proposed to be abandoned is designated a “master plan connection” street in the 1990 Sector Plan for the Wheaton Central Business District and Vicinity for potential future use as secondary street, and that the right of way is currently used by pedestrians from Albert Einstein High School and Newport Middle School and the residential communities of the Kensington View, Rock Creek Palisades, College View and the Crossway Community. Second, the subject right of way is the only street access and street frontage for Outlot A, adjacent to 11 in Block E. Outlot A is zoned as R-60. Third, the right of way abandonment, if granted would result in a fenced and lighted commercial parking lot embedded into the residential neighborhood and immediately opposite to confronting occupied single family homes. Additionally, KVCA feels that the abandonment will undermine the residential character of the community, subvert the current Wheaton Central Business District and Vicinity Plan and will contradict the Plan’s goal of concentrating commercial development. Individual comments from the residents echoed the KVCA views and reasoning.

The Montgomery County Planning Board submitted a statement recommending a denial of the proposed abandonment. The Planning Board has given four reasons for recommending denial. First, at the time of preparation of Kensington/Wheaton Master Plan; Kensington Boulevard was seen as a needed connection and is still recommended to remain so. Second, the Planning Board is in the process of updating the Sector Plan and could re-consider the need for a master planned road in this location. However, until the adoption and approval of a new plan, the Approved and Adopted Wheaton Central Business District and vicinity Sector
Plan continues to govern. Third, if the road is built based on the 1989 Wheaton CBD Sector Plan, it will be required to meet the County guidelines for grade. Fourth, the abandonment would result in the unbuilt parcel (Outlot A) being landlocked and without frontage on a public right of way, which, pursuant to Montgomery County Code section 49-63(d) would require that the abandonment be denied.

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 (Exhibit 9) because it has 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. Washington Suburban Sanitary Commission has granted conditional approval (Exhibit 8) if it can maintain an easement to three sewer and water lines in the right of way. Montgomery County Department of Fire and Rescue Services has indicated (Exhibit 11) that it has no objection to abandonment, as it can still access East Avenue from the direction of University Boulevard. 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. Finally, the Department of Transportation (DOT, formerly referred to as the Department of Public Works and Transportation) recommended denial based on the fact that the subject right of way is referenced in the Master Plan for Kensington-Wheaton as a future connection.
However, if the abandonment is still approved, DOT would require that the Petitioner grant an easement for County storm drains and public utilities and record a new record plat incorporating the former right of way.

In all, eight individuals and entities have opposed the abandonment on various grounds while one entity had no objection and two entities have conditionally favored the abandonment.

**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.

In assessing 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, and 3) changes in fact and circumstances since the original dedication of the right-of-way. The Planning Board has strongly suggested that the right of way must be maintained for future use as a connecting road, and that the Planning
Board is in the process of reviewing the Sector Plan for the planning area. The Planning Board staff has also recommended keeping this right of way as a needed connection between East Avenue and Veirs Mill Road. Similarly, the Department of Transportation has echoed the recommendations of the Planning Board.

Petitioner's contention is that the right of way has been in the Master Plan as a "future" road for a very long time and implying that the County has no intention of building this road connection. Petitioner maintains that once its project is fully developed along with the adjoining lots, the abandonment will have benefits as a more community friendly and aesthetically pleasing location, however the community disagrees and believes that the private use of the right of way would have a significant negative impact by extending the car dealership directly into the residential neighborhood.

The County system of long term planning through Master Plans and subsequent Sector Plans has definite advantages of systematic development to accommodate needs and area requirements to benefit the community. This system of planning is inherently designed to protect the health, safety and welfare of the residents and looks to the long term build out of a community.

Based on the thorough review of the testimony and evidence of record, I find that if abandonment is granted Lot 11 in Block E will lose part of street frontage. Also, Outlot A will become totally landlocked unless it is re-subdivided into one of the adjacent lots and will have no access to a public road. No evidence was offered to suggest re-subdivision of Outlot A would be undertaken. Montgomery County Code Section 49-63(d) states, a right of way which is the sole means of access to any property must not be abandoned or closed. The Planning Board staff has recommended that the right of way should be retained as a future

7
road connection as the Sector Plan originally envisioned. Kensington View Community has an apprehension that Petitioner's commercial expansion will further become an encroachment into the residential community and that East Avenue will be frequented by commercial traffic jeopardizing the health and safety of the community. The Community believes that the abandonment challenges the health, safety and welfare of the Kensington View community.

Given the expression of the Planning Board, its staff and the Department of Transportation of the future need for the right of way, along with the testimony of the community and the ongoing use of the right of way, I find that there is a present and anticipated future use of the right of way. Further, the land use plan for the right of way has it continuing as a public right of way. The Petitioner has not made a convincing case that the abandonment is necessary to protect the health, safety and welfare of the residents near the right of way, and there was abundant testimony to the contrary. Further, even if the Petitioner had demonstrated that the right of way was not needed, or that abandonment was necessary to protect the health, safety or welfare of the nearby residents, the fact that the Outlot A would be left landlocked and without access requires that the right of way not be abandoned.

For the foregoing reasons and based on a full consideration of the information presented, I recommend that the request for abandonment be denied.

Respectfully submitted,

July 15, 2009

Diane Schwartz Jones
The Public Hearing Officer’s Recommendation for AB716 has been reviewed and the recommendation for denial of the abandonment request is approved.

Date: July 28, 2009

Isiah Leggett, County Executive
April 25, 2008

The Honorable Isiah "Ike" Leggett
Montgomery County Executive
101 Monroe Street, 2nd Floor
Rockville, Maryland 20850

RE: 11250 Veirs Mill Road, LLC; Request for Abandonment of a portion of Kensington Boulevard

Dear County Executive Leggett:

On behalf of 11250 Veirs Mill Road, LLC, we wish to request abandonment of an area of approximately 3,167 square feet of unimproved Kensington Boulevard right-of-way from the southwestern boundary of Block F, Lot 13 (11227 East Avenue, Kensington, Maryland) to the right-of-way's terminus at the southeastern boundary of Block C, Parcel P282 (11250 Veirs Mill Road/MD Rt. 586, Silver Spring, Maryland). The portion of Kensington Boulevard requested for abandonment presents a steep topography resulting in highly impracticable right-of-way.

The owners of the properties with a boundary adjacent to the proposed abandonment area are indicated on the enclosed tax map and are listed below:

- 11250 Veirs Mill Road, LLC who is the fee simple owner of Parcel P282 with a premises address of 11250 Veirs Mill Road/MD Rt. 586, Silver Spring, Maryland;
- 11250 Veirs Mill Road, LLC who is the fee simple owner of Lot 13, Block F with a premises address of 11227 East Avenue, Kensington, Maryland;
- Mr. Granville L. Berry, et al who is the fee simple owner of Block E, Lot 11 & Block E, Outlot A with a premises address of 2901 Kensington Boulevard, Kensington, Maryland; and
- Banc Realty, LLC who is the fee simple owner of Block B, Lot 9 with a premises address of 11300 Veirs Mill Road, Silver Spring, Maryland.

The area proposed for abandonment consists of about 3,167 square feet of unimproved right-of-way and is adjacent to property for which 11250 Veirs Mill Road, LLC has a Petition for Special Exception (S-2719) pending with the Montgomery County Board of Appeals. If the abandonment is
approved, 11250 Veirs Mill Road, LLC will likely seek to incorporate a portion of its abandoned area into the property for its proposed Special Exception for off-street parking of automobiles. Further, if the abandonment is approved, any utility lines or access contained within the right-of-way area proposed for abandonment will be preserved through appropriate land instruments.

We have enclosed with this request a tax map highlighting the proposed abandonment area, a list of property owners whose property abuts the right-of-way proposed to be abandoned, and a check in the amount of $2,500.00 as the filing fee for the proposed abandonment.

We look forward to a public hearing to review and discuss the requested abandonment. Should you or members of your Staff have any questions, please do not hesitate to contact us.

Sincerely yours,

SHULMAN, ROGERS, GANDAL, PORDY & ECKER, P.A.

David D. Freishtat

Anne Marie Vassallo

Enclosures

cc: Mr. Michael Cassedy (w/ filing fee per instruction)
Mr. Carlton Gilbert
Mr. Rob Klein
Ms. Virginia Sheard
Mr. Chris Lindsay
Mr. Brian Donnelly
List of property owners whose property abuts the right-of-way proposed to be abandoned
List provided pursuant to Montgomery County Code Ch. 49-62 (d)

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<th>NAME</th>
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<td>11250 Viers Mill Road, LLC</td>
<td>c/o Chris Lindsay</td>
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<td>1525 Kenwood Avenue Alexandria, VA 22302</td>
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<td>Mr. Granville L. Berry</td>
<td>2901 Kensington Boulevard Kensington, MD 20895</td>
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<td>David D. Freishtat, Esquire</td>
<td>Shulman, Rogers, Gandal, Pordy &amp; Ecker, P.A.</td>
<td>n/a</td>
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<tr>
<td>Attorney for 11250 Viers Mill Road, LLC</td>
<td>11921 Rockville Pike, Suite 300 Rockville, MD 20852</td>
<td>n/a</td>
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A hearing in the above-entitled matter was held on Monday, September 15, 2008, commencing at 1:06 p.m., in the Executive Office Building, 101 Monroe Street, Lobby Auditorium, Rockville, Maryland 20850, before:

DIANE R. SCHWARTZ JONES
Hearing Examiner
APPEARANCES

MICHAEL CASSEDY
Department of Transportation

DAVID D. FREISHTAT, ESQ.
Shulman, Rogers, Gandal, Pordy & Ecker, P.A.

CHRISTOPHER LINDSAY
Lindsay Automotive Group

STEPHEN E. CRUM
Macris, Hendricks and Glascock

ANNE MARIE VASSALLO, ESQ.
Shulman, Rogers, Gandal, Pordy & Ecker, P.A.

VIRGINIA SHEARD

JUDY HIGGINS

ELIZABETH BARRY

STEPHANIE SAVOLAINE

ELIZABETH DUCKETT
MS. SCHWARTZ JONES: Yes, this is not where we normally have our hearings set up. Good afternoon. Today is Monday, September 15th, 2008. The time is 1:05 p.m., and we are assembled in the Executive Office Building, the small auditorium located at 101 Monroe Street in Rockville, Maryland.

I am Diane Schwartz Jones, an assistant chief administrative officer for Montgomery County, Maryland, assigned as the designee of the County Executive to conduct this public hearing.

The subject of this hearing is abandonment petition number 716 for the abandonment of a portion of Kensington Boulevard. It is the application that was filed by 11250 Veirs Mill Road, LLC, by and through its attorney, Shulman, Rogers, Gandal, Pordy & Ecker.

This hearing is being held pursuant to Section 49-62F of the Montgomery County Code, and Executive Order number 174-08, which was effective July 11th, 2008. The purpose of the hearing is to obtain public input on the proposed abandonment, and to provide the County Executive with a sound factual record, and with the full benefit of citizen and community recommendations and comments in this decision making process.

Under section 49-63E of the County Code, the County
may close or abandon a right-of-way if that right-of-way is no longer needed for present or future public use, or if the abandonment or closing is necessary to protect the health, safety and welfare of the residents in the neighborhood.

Following the conclusion of the hearing and the closure of the record, I will make recommendations to the County Executive who in turn will make his recommendation to the County Council as to whether or not the right-of-way should be abandoned. The ultimate decision on this matter is determined by Montgomery County Council.

The record will be maintained by Michael Cassedy, who is with the Department of Transportation until the closure of the record at which time the record will be transmitted to me for consideration and recommendation.

It is my intention to hold the hearing record open for two weeks until 5:00 p.m. on September 29th, 2008, so that those who could not be with us today, and those who would like to respond to anything they hear today, or who don't have the opportunity to fully provide their comments today, can submit their comments in writing on the record.

Those comments that are in writing will be considered fully, just as any testimony given here today will be fully considered.

Written comments should be sent to Michael Cassedy with the Montgomery County as I mentioned Department of
Transportation. Mr. Cassedy will maintain the official hearing record through the close of the comment period, and as I indicated, he will then transmit it to me.

Comments should be sent to Mr. Cassedy's attention at the following. If by mail to 101 Monroe Street, Tenth Floor, Rockville, Maryland 20850, to the attention of Mr. Cassedy, and the comments should reference that they pertain to the proposed abandonment under consideration in abandonment number 716.

If they are sent by email, they should go to Michael.Cassedy at MontgomeryCountyMD.gov, or they can be sent by facsimile to 240-777-7259, and again as indicated, they should reference abandonment number 716. If anybody needs, I will repeat these again at the end of the hearing.

I don't see a lot of people here to testify today, so I'm not going to, unless I feel it necessary, I will not impose time limits. Generally, for individuals there's a three-minute time limit. For homeowners associations and civic groups, organizational speakers it's a five-minute time limit. But I think we have handful of people here to speak, so hopefully we won't need the time limits.

With that, what we're going to do is, Mr. Cassedy will speak first. He will speak about what the Department has done in terms of getting to the point that we're at today for this hearing. Then the applicant will have an
opportunity to present the rational for the applicant's position. And then I will be calling speakers from the list of speakers to provide their comments. Okay. Mr. Cassedy.

MR. CASSEDY: Thank you. I'm Mike Cassedy of the Department of Transportation. My office is charged with administering the abandonment process. As mentioned, this public hearing is being held to consider the County's abandoning a portion of Kensington Boulevard in the Kensington View Subdivision in Kensington.

The applicant is 11250 Veirs Mill Road, LLC. The aerial photo to my left, which is Exhibit 5, shows the subject right-of-way and the vicinity including the applicant's car dealership.

In fulfillment of the conditions of section 49-62 of the Montgomery County Code, my office requested comments from the public, appropriate governmental agencies, and public utility companies that might be affected by the proposed abandonment. I will now read into the record the evidence required by County Code.

Exhibit 1 is a letter dated April 25th, 2008, from Shulman, Rogers, Gandal, Pordy & Ecker on behalf of its client 11250 Veirs Mill Road, LLC, the applicant, requesting this abandonment.

Exhibit 2 is Executive Order 174-08 authorizing the public hearing.
Exhibit 3 is a list of the civic associations and citizens that were sent notices of the public hearing. Exhibit 4 is proof of newspaper advertising in the Montgomery County Sentinel May 29 and June 5th that may be in, or revise the dates. Exhibit 5 is the aerial photo to my left that I just referenced. Exhibit number 6 is plat number 303 which is the plat showing the right-of-way dedication. Exhibit 7 are photographs of the signs posted on August 12, and a work order indicating that they were so posted. Exhibit 8 from WSSC, an email dated July 30, 2008, approval conditioned upon being granted easements for its facilities. Exhibit 9 from Washington Gas, an email and letter dated July 25th expressing objection which can be lifted by the applicant granting an easement. Exhibit number 10 is a letter dated September 12, 2008, from Montgomery County Planning Board recommending denial. Exhibit 11 is an email dated August 5th from Department of Fire and Rescue Services expressing no objection. Exhibit 12 is a letter dated April 25th, 2001, from
Shulman Rogers with deeds for adjoining properties.

Exhibit 13 is a letter dated August 1, 2008, from Shulman Rogers with a grade establishment plan by MHG.

Exhibit 14 is a letter dated August 26, 2008, from Shulman Rogers with a title abstract for parcel P282/N226.

Exhibit 15 is Department of Transportation memorandum dated today, September 15, 2008, for a denial recommended due to the right-of-way being referenced in the Kensington/Wheaton master plan. However, if the abandonment is recommended for approval by the hearing officer, it must be conditioned upon the applicant granting easements for County storm drains and public utilities, if any, and recording a new record plat incorporating the former right-of-way.

Exhibit 16A is an email dated July 8, 2008, from Elizabeth Quinn, president of the Kensington View Civic Association opposing the abandonment.

Exhibit 16B is a letter with aerial photo of the right-of-way and vicinity dated May 5, 2008, from Virginia Sheard, board member of Kensington View Civic Association opposing the abandonment.

Number 17 are letters and emails, 17 as of today, from area residents opposing the abandonment.

Missing are comments from the Police Department, which I will endeavor to get prior to the close of the
record. If the hearing officer has any questions for me regarding the abandonment process, I'd be happy to answer them, and if she has any questions for the applicant, representatives are here and can answer those.

MS. SCHWARTZ JONES: I just have one question, Mr. Cassedy.

MR. CASSEDY: Yes.

MS. SCHWARTZ JONES: The dates of advertisement, is that what you need to clarify?

MR. CASSEDY: Yes, I don't think that's right. I think that that's, you know, I take this from a previous case, and the dates of our advertisement would be much closer to now.

MS. SCHWARTZ JONES: Do you have that in your record with you?

MR. CASSEDY: I may.

MS. SCHWARTZ JONES: Okay. Would you mind then if we come back to that.

MR. CASSEDY: Let me do that right now.

MS. SCHWARTZ JONES: Let's do this, if you don't mind.

MR. CASSEDY: Okay.

MS. SCHWARTZ JONES: What I'd like to do is, I'd like you to look through and find the current dates of advertisement so we can get it stated at this public hearing,
before the public hearing adjourns, and so we're going to receive here the dates of advertisement.

While you are looking for that, if you don't mind, I will go ahead and begin with the -- the first speaker I have signed up is Chris Lindsay with 11250. I guess it's the owner's representative. I don't know who that would be, do you? I'm sorry. I know Mr. Freishtat, who Mr. Freishtat is. So you're going to go ahead. Do you want Mr. Freishtat to speak for you?

MR. FREISHTAT: I'm going to ask him questions.

MS. SCHWARTZ JONES: You're going to do it through question and answer?

MR. FREISHTAT: If you don't mind.

MS. SCHWARTZ JONES: Okay. Let me just, if you don't mind, before we --

MR. FREISHTAT: Sure.

MS. SCHWARTZ JONES: -- just to be clear for those of you who perhaps don't attend these public hearings regularly, this is a public commentary, and it's not an adjudicatory hearing, a trial type hearing. I think that, you know, I certainly have no problems with Mr. Freishtat asking his client questions in order to bring the information out and make sure that it's all there in the record. But there would not be an opportunity provided for cross-examination. It's not that type of a hearing. That's number
Number two, that with respect to questions, you all may find as you go along that you have questions about the proposed abandonment.

This is not a question and answer session, so what will happen is, when we close the public hearing portion of this afternoon's proceeding, you are free to ask the applicant, Mr. Cassedy, whatever questions you might want to ask him. They can, you know, work with you to provide you the information you need at that time. With that, why don't you go ahead, Mr. Freishtat.

MR. FREISHTAT: First of all, I'd like to submit for the record a hearing statement.

MS. SCHWARTZ JONES: Thank you.

BY MR. FREISHTAT:

Q Mr. Lindsay, give your name, your address, and your occupation?

A My name is Chris Lindsay. I am the, one of the owners of the Lindsay Ford dealership adjacent to this property on Veirs Mill Road.

Q And I believe you have a statement to make for the hearing examiner. Please proceed.

A I don't know how much I want to go into this, but I just wanted to kind of give a history of Lindsay, and I will be very quick. But my grandfather started Lindsay Cadillac
in 1949. We have nine different franchises at five different
locations.

My grandfather started the Alexandria location in
1949. It was then then called Edgar's Oldsmobile Cadillac,
and he came from Capital Cadillac on 22nd and M Street where
Blackie's House of Beef is.

My father joined the company in 1963, and at my
grandfather's death in 1978 my father took over as chairman.
And he is still chairman today. He works out of the Cadillac
dealership.

We have, our Cadillac dealership, and I want to
keep bringing that one up because it is in a residential
neighborhood in Alexandria, Virginia. It's in the North View
Citizens Association. And we get along great with our North
View Citizens Association.

We pride ourselves particularly, at all of our
dealerships, on our landscaping and our cleanliness of the
dealerships. We are devoted and imbedded in our communities.
We are very charitable, and it seems when any local citizens
group has some kind of fund raiser, the car dealerships are
the first groups of people they call. And we're happy to
oblige to those requests.

As I said, we are right in the middle of North View
Citizens Association. There are pictures of the Cadillac
dealership on our website. It's eLindsay.com. I don't know
1 if I want to say that on public record. I'm not soliciting
2 business, but we are, the pictures are available at
3 eLindsay.com.

4 MS. SCHWARTZ JONES: I think this is contextual in
5 terms of where you are located, so I think that's it.
6 MR. LINDSAY: Okay. A little over three years ago
7 we purchased the Hill and Sanders dealership, which is the
8 oldest car dealership in Washington, D.C. Since that time,
9 we have spent over a quarter million dollars in improvements
10 to that dealership, and it needs more. It was an old
11 franchise, and it just, it was run down.
12 We've put fresh paint, fresh asphalt. We've put a
13 new used car facility on there. Those are some of the major
14 expenses. But again, the improvements never end. We want
15 this dealership to be attractive. We want it to be a stand
16 out in the community. We want to be the pride of the
17 community. And we spend, again, we spend a lot of money in
18 landscaping to do these things.
19 We bought three houses that are behind the
20 dealership at the same time we purchased the Ford dealership.
21 And I will tell you that the -- and they are at 11225, 223,
22 and 227 East Avenue. They are in terrible condition. They
23 were in terrible condition the day we bought them. And to be
24 quite honestly, I think they were in terrible condition the
25 day they were built.
MS. SCHWARTZ JONES: Are you showing lots 11, 12 and 13.

MR. FREISHTAT: Right.

MR. LINDSAY: Yes. They are an eyesore to the community. I don't question that at all. We have applied for a storage facility for our new cars. Currently, we park 200 new vehicles over at the shopping center across the street.

So we have applied to rezone those lots, and then we have applied for the abandonment of this road so that we can create this storage facility. And when I say storage facility, this -- people sometimes, you know, they just think of a storage lot, they think of this open parking lot. That's not the case with the Lindsay. We landscape these properties.

We've met with the community. We talked about extensive camouflaging, Leland cypresses, you know, a beautiful fence, benches where the community members could sit under the trees. And then a sidewalk that is not there now. And we have offered all of that.

We met with the neighbors a little over a year ago at the, is it Crossways Community Center. We showed them our plans. We showed them our intent. I was very open. I said, if you have any problems with our dealership, please call me. I have not heard back from them. They've never actually
contacted me. But we are open to dialogue, certainly. I think that's it for me.

MR. FREISHTAT: Okay. Thank you.

MS. SCHWARTZ JONES: Thank you, Mr. Lindsay.

MR. FREISHTAT: The next person will be Mr. Crum.

Give your name, address, and occupation.

MR. CRUM: Good afternoon. My name is Steve Crum with offices at 9220 Wightman Road, in Montgomery Village, Maryland 20886.

BY MR. FREISHTAT:

Q Are you a professional civil engineer in the State of Maryland?

A Yes, I am.

Q Licensed?

A Yes.

Q Have you qualified as an expert in civil engineering before any jurisdiction in this County or State?

A I've qualified as an expert in civil engineering before the zoning hearing examiner of Montgomery County, the Board of Appeals in Montgomery County, the Board of Appeals for the City of Rockville, the Planning Commission of the City of Rockville, Board of Appeals of Prince George's County, the Hearing Examiner of Prince George's County, the District Council in Prince George's County.

Q Okay. You're prepared some exhibits for this
hearing. I think one or two of them are in the record already. Could you just, in a narrative, explain to the hearing examiner what you prepared and what your conclusions are, particularly with respect to the proposed street that would be built, and this area that's to be abandoned, that's requested to be abandoned.

A We looked at a standard civil engineering drawing. It's called a grade establishment plan, that shows the existing grades and the proposed grades for the vertical alignment, or the horizontal alignment of a street. And we've looked at that.

The first exhibit we prepared followed the existing Kensington Boulevard alignment, horizontally, and applying the County's criteria for how steep a roadway can be, we found that Kensington Boulevard cannot be constructed within the right-of-way following the existing right-of-way alignment.

We also note that the master plan and the sectional map, sectional -- the Wheaton sector plan, shows an alignment differently than the current alignment for Kensington Boulevard whereby it curves from the northern end, and then rejoins East Avenue, and doesn't follow the Kensington Boulevard horizontal line that we've also prepared.

MS. SCHWARTZ JONES: I'm sorry. Can I jump in and ask you a question?
MR. CRUM: Sure.

MS. SCHWARTZ JONES: When you say, the present line, are you talking about what is dedicated as the right-of-way, that the master plan and the dedicated right-of-way don't correspond?

MR. CRUM: That's correct.

MR. FREISHTAT: Steve, I think, I believe you have some exhibits.

MR. CRUM: Yes.

MR. FREISHTAT: I think that would make it easier. I'm a visual guy also. I need to see it.

MS. SCHWARTZ JONES: I just wanted to make sure I understood what we were talking about, that I was going to ask you to provide the sector plan that you're talking about, but just to understand.

MR. CRUM: This is the first --

MS. SCHWARTZ JONES: Let's hold it up so everybody can see it. Yes, now everybody can look at it.

MR. CRUM: This is the grade establishment plan where we follow the existing horizontal alignment of Kensington Boulevard where it's currently platted. And these are the grades. And in order to connect the southern end of Kensington Boulevard with the northern end, it would require grades in excess of 19 percent.

And faintly sketched in here are the acceptable
roadway grades, the primary, which the master plan calls for any boulevard to be a primary residential street, we end up 14 feet below Veirs Mill Road. So we've determined that following the existing alignment, the street, a primary residential street could not be constructed in this right-of-way, with this horizontal alignment. And then in the Kensington --

MS. SCHWARTZ JONES: Even with cutting it, it can't be?

MR. CRUM: The maximum acceptable grade in the prime area is 8 percent, and even we run up at 8 percent, we won't, we don't get to 14 feet either. We don't rise fast enough. We'd have to rise over 19 percent to get to Veirs Mill where the elevation difference is over 25 feet, between Veirs Mill and where we would tie back in at East Avenue.

The Kensington sector plan and the Wheaton sector plan envisions that we would depart from the right-of-way, and we would apply a horizontal alignment that brings Kensington Boulevard and joins it to East Avenue.

MS. SCHWARTZ JONES: I'm trying to figure out where you are over there.

MR. CRUM: Okay. This is Georgia. This is Veirs Mill, and we're kind of off right here. The Planning Commission's sector plan says that we're going to take Veirs Mill, we're going to follow Kensington, we're going to dead
end Kensington, and we're going to curve the street and then align it with East Avenue.

MS. SCHWARTZ JONES: So the portion, and that is the portion --

MR. CRUM: This is the portion that is the subject --

MS. SCHWARTZ JONES: Is the subject --

MR. CRUM: -- for abandonment.

MS. SCHWARTZ JONES: -- that, for what you're seeking abandonment?

MR. CRUM: That's correct. So that's the alignment that planning staff has put in their sector plan saying, okay, we're going to dead end in Kensington here. We're going to curve this street which doesn't follow the right-of-way. It actually would require acquisition of the right-of-way in order to make that work.

So then we took that --

MR. CASSEDY: Steve --

MR. CRUM: Yes.

MR. FREISHTAT: It might be helpful if we mark those as exhibits --

MR. CASSEDY: That's what I want to do right now.

MR. FREISHTAT: -- so you could have them in the record.

MS. SCHWARTZ JONES: Okay, are we -- it might be
helpful to have them inside, instead of running with the 
written record. Do we have those in eight and a half by 11? 

MR. CASSEDY: I know we have --

MR. FREISHTAT: You have that one. We can give you 
copies of the others.

MS. SCHWARTZ JONES: Why don't we do that. Okay. 

So what we have now is what number exhibit are we up to, just 
for the record.

MR. CASSEDY: This one, if I was going to label it, 
but we have it over here, would be 21.

MS. SCHWARTZ JONES: Okay. So that is Exhibit 21. 

And then the sector plan extract --

MR. CASSEDY: Would be 22.

MS. SCHWARTZ JONES: -- would be 22.

MR. FREISHTAT: Proceed. And this would be 23, I 
believe, right.

MS. SCHWARTZ JONES: So what you're showing us is 
the --

MR. FREISHTAT: Proposed 23.

MR. CRUM: This is --

MS. SCHWARTZ JONES: Is this the grade plan?

MR. CRUM: This is a grade establishment also.

MS. SCHWARTZ JONES: Prepared by whom?

MR. CRUM: Prepared by MHG, and we have applied the 
sector plan alignment, horizontal alignment to Kensington
Boulevard. And we are coming from Veirs Mill Road. And we apply the County's criteria for a primary residential street and we find that the street does not rejoin the existing vertical alignment of East Avenue. It's really almost to the McDonalds.

MS. SCHWARTZ JONES: I have a question for you, that might involve, if the entire road, then, up here were reconstructed with it to meet up better, would that address the problem?

MR. CRUM: We've applied the County's vertical alignment criteria as the tangents which are straight sections, and how steep they can be. And there's also vertical curves that have to meet criteria. And when we apply the vertical curves, you get curves that are long enough that the tangent section ends up not being very long. And it does, it's only 6 percent here, which is acceptable. 8 percent is the maximum.

But by applying these vertical curves which are the site distance, the stopping distance is, and that's here, again, we end up with this street not rejoining the existing road. I mean, these dashed lines are the existing grades along the south line. So you can see there's a substantial amount of fill in this section of the roadway. In fact, we would, we've applied this vertical alignment and this horizontal alignment. We would effectively block access to
these first three houses, and there would be either a retaining wall holding the street up or it would be a fill slope that would, you wouldn't be able to access this new roadway from these houses, because they're too low.

MS. SCHWARTZ JONES: Where are they accessing now?

MR. CRUM: They access on East Avenue. And this is the grade of East Avenue currently, in order to make this connection between Veirs Mill East, as it's referred in the sector plan, you have to bring in a substantial amount of fill, and that fill translates into either a retaining wall, a right-of-way wall, or a fill slope. And this, because of the strengths of the right-of-way, you're probably not going to maintain well, but you wouldn't be able to get into this house's driveway, or this house's driveway, or this house's driveway without raising their driveways which means, technically, that we're blocking access to these two things.

MR. FREISHTAT: Anything else to add to that?

MR. CRUM: Let me see. I guess the only other thing is if there are utilities in this right-of-way, they can be accommodated through in the East Avenue location. And so if there were a requirement for pedestrian access to be within this right-of-way, it could be accommodating in an easement as well. Pedestrians can traverse much steeper grades than vehicles.

MS. SCHWARTZ JONES: And is that something that is
happening now? I mean, is this sort of used as a pedestrian walkway?

MR. CRUM: Currently, there's a driveway that serves 11300 Veirs Mill Road, which is an office building. It also has access to Veirs Mill Road, so it's kind of a back entrance to that office building.

MR. FREISHTAT: This office building here, this is an old aerial photo, apparently, this area to the southeast is the parking lot for this office building, and there is a little driveway that comes down that was put in by the owner of this dental/medical building here.

MS. SCHWARTZ JONES: And it comes down to where? I'm sorry.

MR. FREISHTAT: You can pull in off of Veirs Mill Road into the parking lot, and then go down the little driveway, which is very steep, the driveway down here to East Avenue.

MS. SCHWARTZ JONES: So there's vehicular access that right now is going on that right-of-way?

MR. FREISHTAT: Yes. Yes.

MS. SCHWARTZ JONES: It's being used, but it's only built to the standards of a driveway versus to the standards of --

MR. CRUM: It's not a public --

MR. FREISHTAT: Very steep slope right here at
Veirs Mill Road, going down maybe 20 feet. You can see it on
the topo. This is where the big, big drop is. And this
can be seen on the topo. This is where the big, big drop is. And this
can be seen on the topo. This is where the big, big drop is. And this
can be seen on the topo. This is where the big, big drop is. And this

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can be seen on the topo. This is where the big, big drop is. And this

can be seen on the topo. This is where the big, big drop is. And this

MR. CRUM: This is an attachment to the Planning
Commission staff report and it's a more current aerial
photograph.

MS. SCHWARTZ JONES: Okay. Now, the Planning Board
staff report is, we have that in the record?

MR. CASSEDY: We do.

MR. FREISHTAT: Yes.

MS. SCHWARTZ JONES: Okay. Thank you. Is that it?

MR. FREISHTAT: Just one thing more I want to add.

There is in the sector plan a provision that not only showed
a straightening where Kensington Boulevard is, but also a
hiker path. We would proffer to the Executive’s office that

if this road were abandoned, as part of our development of
our property, we would put in that hiker path as part of our
obligation. I know Mr. Leggett’s eager to increase
pedestrian movements, and we would pay for that. And that’s
our case.

MS. SCHWARTZ JONES: Okay. Thank you. Let’s see,

Anne Marie -- Anne Marie is with you, right?

MR. FREISHTAT: Yes.

MS. SCHWARTZ JONES: Okay. You have nothing to
say, right?

MS. VASSALLO: I do not.

MR. FREISHTAT: This time. Next time she will.


MS. SHEARD: I have a statement, but may I respond to a couple points made by the applicant, before I make my statement?

MS. SCHWARTZ JONES: You can. This is your time to speak.

MS. SHEARD: Okay. My name is Virginia Sheard and I live in the Kensington View community, and I'm a member of the association.

MS. SCHWARTZ JONES: Are you speaking on behalf of the Association?

MS. SHEARD: On behalf of the association, yes.

MS. SCHWARTZ JONES: Okay. Thank you.

MS. SHEARD: They have just referred to the office building on Veirs Mill Road. This is the office building on Veirs Mill Road. This is the area of the abandonment they were talking about. It doesn't go up to Veirs Mill Road. It goes from the end of this lot, which is an R-60 lot, from here down to East Avenue.

MS. SCHWARTZ JONES: I understood that to be the case.
MS. SHEARD: The traffic, cars do not enter from this side of the building. They come from this side of the building into a parking lot here, and most of the vehicular traffic associated on East Avenue in our neighborhood comes from this side, and then down here into the neighborhood. I'm not sure if there is an actual curb cut or, I think the grade at this point is too steep to come in on this side.

MR. FREISHTAT: Correct.

MS. SCHWARTZ JONES: That's what he said. That is what he said.

MS. SHEARD: The other thing to note on this drawing is, this is outlot A, which is what we discussed. This is the Barry's lot here. The right-of-way that is being requested would cut off, would deny them street access for this lot, and also take half of the existing occupied residential lot. And this is her driveway.

MS. SCHWARTZ JONES: Well, half of the frontage.

MS. SHEARD: Street frontage, yes. Half of the street frontage.

MS. SCHWARTZ JONES: Okay.

MS. SHEARD: I think it's 65 plus feet, and it would take about 35 feet of her street frontage. And this is her driveway. So they've denied her access to her driveway. And that is an occupied residence.

MS. SCHWARTZ JONES: Okay. Thank you.
MS. SHEARD: That's just for reference.

MS. SCHWARTZ JONES: And just so that I'm clear when I go back and read this, what we're talking about here is that the driveway on lot 11, block B, it fronts on the area being requested.

MS. SHEARD: Right. It's near the lot line.

MS. SCHWARTZ JONES: Okay. Thank you. And that would be on Exhibit 5. That's for my purposes.

MS. SHEARD: My name is Virginia Sheard and I live at 3303 Geiger Avenue in Kensington View. The community of Kensington View strongly opposes the proposed abandonment of a portion of Kensington Boulevard located on the north end of our neighborhood.

A focus group of residents have met with the applicant and represented this several times, researched the technical issues, and discussed the impact of this request on our neighborhood. We have sought legal advice from our attorney, David Brown of Knopf and Brown, to understand the applicable parts of the County Code and the technical issues, particularly regarding outlot A, which is a very contentious part of this.

Permitting the abandonment would adversely affect the character, integrity, and residential desirability of Kensington View for the benefit of one commercial activity.

And our opposition is based on the following points.
The subject roadway is designated a master plan connection for future use as a secondary road. It may be necessary to exercise this option at some future time to relieve the congestion at the intersection of Veirs Mill Road and University Boulevard, which is currently rated as a failing intersection.

A road that allows some residential traffic to bypass that intersection could relieve the pressure on the intersection. We do not want to purposely direct traffic into our streets, but if the County determines the need, we will actively participate in discussions to ensure that adequate buffering and landscaping is installed to minimize the adverse impact on the neighborhood.

When the County wants to proceed with this option, abandonment now would require that the County buy back the right-of-way at great public cost, as happened with the Maiden Lane in Bethesda.

The Council PHED Committee discussed an issue similar to this during the Twinbrook sector plan using a street. The future use of an unbuilt right-of-way is similar, of this unbuilt right-of-way is similar to our construction. The analysis and the statement through the PHED Committee by Glen Moreland is attached, and that's in our notebook.

MS. SCHWARTZ JONES: This is a notebook that you
have delivered for our consideration?

MR. CASSEDY: Yes.

MS. SHEARD: Yes.

MS. SCHWARTZ JONES: Okay. Very good.

MS. SHEARD: We didn't give the whole statement from Glen, just the highlighted part --

MS. SCHWARTZ JONES: Okay.

MS. SHEARD: -- where it discussed how the County would go about putting a road in an existing neighborhood in the future, and the time frame that it was talking about.

As stakeholders and participants in the revisioning process for the Wheaton sector plan, which is just beginning, we believe that all publically owned properties, including buildings, open spaces, and roadways, should be discussed in that forum.

One requirement for approval of an abandonment request is the determination that there is no public use for the subject area. Should be denied without a full public discussion of current and potential uses, and linkages can be evaluated and future options for this right-of-way determined in the larger context of Wheaton's vision for the future. It cannot be reasonably made at this time.

Part of the emphasis in Wheaton, because we have so many pedestrians from other countries, pedestrian safety is a big issue. And we are concentrating a lot on the linkages of
how people are going to get across our state roads and
between the new amenities and services that will be in the
redeveloped part of Wheaton. It won't happen in five years,
but 10-15 years down the road, as the sector plan revisions
the redevelopment into mixed use, mid-rise, there will be a
need for better pedestrian access.

The request for abandonment proceeding is directly
related to a request for another special exception for
parking by the dealership that will be deeply imbedded in the
residential area.

A commercial parking lot will have an advertise
impact on the character of the immediate residential area,
and the abandonment is allowed when it results in a vinyl
fence, commercially lighted parking lot, immediately adjacent
to and across East Avenue from an occupied home.

This would adversely affect the quality of life for
our neighbors and erode the integrity of our residential
community. Kensington View has already stated strong
opposition to the petition for the special exception.

Lot 13 on Kensington Boulevard is an owner occupied
home, and the Barrys also own the adjacent outlot that has
been the focus of discussion. The applicant contends that
this is not a buildable lot, and therefore it has no value or
need for street frontage. Our research shows that, in fact,
it is a buildable lot, and that the right-of-way must be
maintained as a public roadway to provide the owner with the  
option of developing it with the appropriate street frontage  
and access. Judy Higgins will discuss this in greater  
detail.

The outlot, as an alternative the outlot can also  
be combined with lot 11 as a redevelopment option. If the  
right-of-way is abandoned, the outlot become land locked,  
thereby denying the owner the right to develop their lot.  
Lot 11 would also lose half its street frontage, and access  
to its existing right-of-way, the driveway, if the right-of‐  
way is abandoned. And County policy requires street frontage  
for buildable lots and does not allow such lots to be land  
locked.

I would also like to make a couple of comments on  
the applicant's statement. Part of his statement discusses  
the word embedded, that embedded and surrounded. But he uses  
it in terms of the total dealership property. We're only  
talking about the right-of-way and the immediate area. The  
residential lots where the proposed parking lot would be are  
embedded in the residential area part of Kensington  
Boulevard.

We realize that Veirs Mill Road is not part of our  
residential neighborhood, and obviously is not imbedded in  
our residential neighborhood. Only the subject right-of-way  
and the associated petition for special exception are part of
the issues here.

We also disagree with Mr. Crum's statements about the grade establishment, because the Department of Transportation and the transportation planners at Park and Planning have reviewed the statement and reviewed the grade drawings and have come to the conclusion that it is, in fact, a feasible way -- there is, in fact, a feasible way to build, to construct a road should the County need it in the future.

So we are not experts in civil engineering or anything else, so we tend to rely on the Department of Transportation's review of these matters, as they design the roads.

And on page 11, the applicant states that it's inefficient policy to allow a dedicated right-of-way language in a state of uncertainty, and that the long dormant state of this particular parcel is evidence that there is no current or near future public use.

We're not talking about near future public use of this space. A right-of-way needs to be maintained for any kind of use, whether near or far. A sector plan covers a 20-year time frame. It's a long, term planning document, and we believe that the right-of-way must be maintained in public use for the option to be exercised, if necessary, at some future time, regardless of the time frame. I believe that's all of my comments at the moment. Thank you.
MS. SCHWARTZ JONES: Thank you. We'll go to the next speaker. Mike, did DOT go out and, have they gone out and looked at who is driving on that portion?

MR. CASSEDY: I don't know.

MS. HIGGINS: I can answer that.

MS. SCHWARTZ JONES: Are you Judy Higgins?

MS. HIGGINS: Yes.

MS. SCHWARTZ JONES: Well then you get the opportunity to do that now.

MS. HIGGINS: Actually, Renew Montgomery is currently working over there, so there's been a whole lot of people looking at that.

MS. SCHWARTZ JONES: Who has been?

MS. HIGGINS: Renew Montgomery, which is -- and they actually have done a lot of surveying for curbs and gutters, et cetera. So there's been a whole lot of --

MS. SCHWARTZ JONES: Has a traffic study been done over there to look at who is actually using that?

MS. HIGGINS: I don't think so, that we know of yet.

MS. SCHWARTZ JONES: Okay.

MS. HIGGINS: But that, I believe, is in the cards.

I'm sorry.

MS. SCHWARTZ JONES: Okay, so why don't you go ahead and present your public statement now. Thank you.
MS. HIGGINS: Okay. My name is Judy Higgins, and I'm just going to read it, if you don't mind?

MS. SCHWARTZ JONES: That's fine.

MS. HIGGINS: I, too, live in Kensington View, and oppose the proposed abandonment. I will primarily be addressing item 2, page 3 of our statement which has to do with outlot A, the land locked parcel.

Over the year, and this is my emotional statement.

Over the years, the County has allowed a proliferation of special exceptions, spot zoning, and other ad hoc land use decisions in Kensington View. The proposed right-of-way abandonment would further contribute to this growing erosion of the oldest residential community in the Wheaton area, a neighborhood under siege.

Our community asked Knopf and Brown, our longstanding counsel on land use matters, to evaluate Mr. Freishtat's claims regarding outlot A, which is Mrs. Barry's lot, next to lot 11. I will read from an email sent to us from David Brown of Knopf and Brown.

Outlot A is a part of a seven lot resubdivision of part of block E, section 2, of the 1925 subdivision of Kensington View. The resubdivision took place in 1946, and can be found in subdivision plat 1740 of the land records of Montgomery County, which we have supplied you in our binder.

Outlot A was given an outlot designation at that
time, rather than the usual numerical number for a buildable lot, because it failed to meet the requirement in the 1941 zoning code applicable at the time of subdivision for lots such as this one in the A residence zone that, no dwelling shall be built on a lot which does not abut upon and front directly on a public street or adequately rural right-of-way, section 3-C.6, 1941 ordinance.

The other development standard included a lot area requirement of 5,000 square feet, a front yard of 25 feet, a width of 50 feet at the front building line, side yards of seven feet, and a rear yard of 20 feet.

When these requirements are taken into account, in my opinion, there is a buildable area on outlot A adequate for a house, particularly for a house of the size and scale found in Montgomery County in 1946 when this lot was platted.

I conclude that but for the absence of a public street, outlot A would have been afforded the same status as the other lots in the resubdivision of part of block E.

Based on the foregoing, if outlot A were provided street frontage, it would become a buildable lot under the terms of 59-B-5.1 of the current zoning ordinance which provides as pertinent there that, any lot that was recorded by a subdivision plat prior to June 1st, 1958, and that was a buildable lot under the law in effect immediately prior to June 1st, 1958, is a buildable lot for building a one family
dwellings, even though the lot may have less than the minimum area for any residential zone.

Outlot A was buildable under the pre-1958 ordinance, i.e., the 1954 ordinance, which accompanied a rezoning of the property to R-60. This is because the 1954 development standards did not materially affect the buildability of outlot A as compared to the 1941 standards.

Comparing the A and R-60 zone development standards, there was only a minor change in the side yard requirement, and platted lots were between 5,000 and 6,000 square feet of lot area, and between 50 and 60 feet of lot width were grandfathered.

Outlot A has over 100 feet of frontage on the unbuilt Kensington Boulevard, and either 6,015 square feet according to subdivision plat 1740, 5,293 square feet according to State tax records. This is also Mr. Brown's statement.

Hence, there is no justification of Mr. Freishtat's undocumented and superficial conclusion that the outlot lacks value in its own right, and that abandonment will merely deprive and unbuildable lot of access to a public road. The available evidence justifies as a conclusion that abandonment will simply ensure the demise of a lot that would otherwise have significant value as a buildable lot, contingent upon building a road on the right-of-way on which it fronts.
MS. SCHWARTZ JONES: Okay.

MS. HIGGINS: This is, all of this is located in our binder.

MS. SCHWARTZ JONES: Okay. Thank you.

MS. HIGGINS: And it is all very well documented. I just want to say that, am I able to speak to something that happened earlier? Is that okay?

MS. SCHWARTZ JONES: That you heard today?

MS. HIGGINS: Yes.

MS. SCHWARTZ JONES: Absolutely.

MS. HIGGINS: Okay. Well, Mr. Lindsay was saying how they do this wonderful job in Alexandria. But you will note when you go into our binder, and I understand what he's saying about it being an old dealership, but it's been over a year since we have met with him, and we have asked him to clean up the property.

They currently have two other special exceptions, one in our, directly across from these, a couple houses up, and they have show cause hearings, which you will hear all about. But my point is that, you know, they don't appear to be good stewards of the land. And we have, in fact, met with Mr. Lindsay a number of times, and it's not been done.

MS. SCHWARTZ JONES: Okay, but understanding, for everybody to understand here that what we're looking at is whether or not there is a present or future public use, or
the closure of the --

MS. HIGGINS: Right.

MS. SCHWARTZ JONES: -- or the abandonment is necessary --

MS. HIGGINS: Right.

MS. SCHWARTZ JONES: -- to protect the health, safety or welfare. That those are the standards that I'll be looking at.

MS. HIGGINS: Right. That's good.

MS. SCHWARTZ JONES: But I would encourage, obviously, that the neighborhood and the business --

MS. HIGGINS: I just needed to say that.

MS. SCHWARTZ JONES: -- just as the government needs to work with its community. The next speaker --

MS. HIGGINS: Betsy Barry --

MS. SCHWARTZ JONES: I'm sorry?

MS. HIGGINS: Betsy Barry is the heir of Mrs. Marie Barry, who owns outlot A and lot 11.

MS. SCHWARTZ JONES: Okay.

MS. HIGGINS: Mrs. Barry has sent a statement. She's 84. She wasn't able to make it.

MS. SCHWARTZ JONES: She sent a -- okay, did you give it to --

MS. HIGGINS: Yes, she'd ask that she read it.

MS. BARRY: She's asked that I read it.
MS. SCHWARTZ JONES: She's asked that you read it. Are you --

MS. BARRY: I'm Elizabeth Barry.

MS. SCHWARTZ JONES: Well, let me go in order. Let me control this and I'll call the people to speak. Okay.

MS. HIGGINS: That's fine.

MS. SCHWARTZ JONES: Thank you. The next person signed up to speak is Stephanie Savolaine.

MS. SAVOLAINE: And I'm ready to speak, but Betsy could go first if that's okay with you.

MS. BARRY: Okay. That's fine. That's if you are willing to do that, that's fine. Okay. Go ahead, Ms. Barry.

MS. BARRY: Okay. I just have a little letter that she's drafted. To whom it may concern, my name is Marie Barry, and I'm 84 years old. I live in the house located at 2901 Kensington Boulevard, and the adjacent lot A. I have lived there since 1947, a little over 61 years.

This was a beautiful neighborhood in which to raise my family, and I have been very happy here. I am strongly opposed to the abandonment of Kensington Boulevard. I am worried about the affect the abandonment will have on my buildable outlot A, and what this will mean to my heirs.

This abandonment will take away access to my buildable outlot, and will essentially land lock my property from having a house built on it. This will greatly affect me
and my heirs. It saddens me to look out my front door at the houses of my friends and neighbors on East Avenue who raised their children with mine, now in horrible disrepair. It is clear to me that Lindsay has no regard for those of us who call this neighborhood our home.

I know I am but a small voice in this community, but I feel that my heirs and I have the most to lose from this abandonment of Kensington Boulevard. So again, I want you to know that I strongly oppose the abandonment of Kensington Boulevard.

MS. SCHWARTZ JONES: Okay. If you can bring the original letter to us.

MS. BARRY: We have. And may I also say that my husband and I and our family also live on Kensington Boulevard four houses down, and have for 21 years.

MS. SCHWARTZ JONES: Okay. And you obviously are opposed to this as well?

MS. BARRY: Yes.

MS. SCHWARTZ JONES: Okay. Thank you. Okay.

Ms. Savolaine.

MS. SAVOLAINE: Hi. My name is Stephanie Savolaine. I live at 11222 East Avenue, so I live across the street from the R-60 lot that Mr. Lindsay owns, at the end of East Avenue and caddy corner from this right-of-way that's under discussion today. Would you like me to point it out to
you on the map?

MS. SCHWARTZ JONES: I think I'm guessing it. This one or this one?

MS. SAVOLAINE: I'm further down at the other corner.

MR. FREISHTAT: To your left. To your left.

MS. SAVOLAINE: To your left.


MR. FREISHTAT: There you go. That's it.

MS. SAVOLAINE: That's it.

MS. SCHWARTZ JONES: Okay. You're lot number 7?

MS. SAVOLAINE: Yes.

MS. SCHWARTZ JONES: Okay.

MS. SAVOLAINE: Okay. So I am also strongly opposed to the right-of-way abandonment, and today I'd like to speak on behalf of the Kensington View Civic Association about impacts on the residential character of the community related to this abandonment. And this is primarily item number three in the paper that we've given to you. And there is supporting documentation in there as well for everything that I am going to outline for you here.

MS. SCHWARTZ JONES: Okay. Fine.

MS. SAVOLAINE: The right-of-way abandonment, if granted, would lead to the destruction of three single family
residences to make way for a fenced and lighted commercial parking lot directly across the street from my home. And the applicant's past conduct indicates that this will conclusively undermine the fragile residential character and desirability of Kensington View, depress the value of nearby homes, and discourage our currently abundant civic pride.

Despite Mr. Lindsay's statements to the contrary, the applicant has shown a consistent and rampant disregard for the needs and concerns of community residents. Specific examples include multiple citations for violating the terms of two existing special exception for parking, one on East Avenue and one on Kensington Boulevard, leading to an upcoming show cause hearing; multiple citations from the Department of Housing Code Enforcement for deplorable maintenance of three R-60 properties on East Avenue directly across the street from my home; unauthorized removal of an 80 to 100 year old stand of specimen trees, and related sediment control violations leading to stop work orders, citations and fines at those same properties in July of this year.

And by the way, the stop work orders were later violated. And widespread employee parking and commercial off loading of vehicles on East Avenue, which blocks ingress and egress for residents, and creates a frequent public safety hazard for those of us who live there.
We're growing tired of fighting so hard to maintain the residential integrity of our community. And we don't want to have to look at trash, commercial parking, and derelict houses across from our house on residential lots.

Mr. Lindsay's history of negligence leads us to believe that this road abandonment will just lead to more of the same, an enforcement nightmare for the County and a drain on the neighborhood for us.

Montgomery County has recognized the fragility of Kensington View due to commercial encroachment and speculation. A number of neighborhood streets are named in the current Wheaton CBD and vicinity sector plan as needing protection. And detailed references about that can be found in the binder.

Unfortunately, many homes and residential lots along the edges of our neighborhood are now being used for nonresidential purposes. The proposed right-of-way abandonment would further contribute to this growing erosion of the oldest residential community in the Wheaton area.

Finally, the commercial parking lot that would result from the proposed right-of-way abandonment will subvert the County's longer term policies on transit friendly living and smart growth. Why would we, as a County, agree to abandon a road and then put a storage lot for one car dealership in a thriving residential community just two
blocks from Metro, when people are now trying to hard to live
closer to public transit.

My husband and I moved to Kensington View because
we wanted to live within walking distance of Metro, and all
the wonderful businesses and restaurants in Wheaton. Now
that we have a child, we're even happier to be living within
the heart of a vibrant urban village where we can walk to
concerts and the library and a train hobby store and a cake
decorating store that my little four year old likes to go to
so much. Wheaton exposes our son to the world, and it's just
a few steps from our front door.

The reason that families like my own chose to live
in a place like Kensington View is that it also offers a
residential community where our children can grown and thrive
safely. Abandoning this road will lead to a commercial
parking lot deeply imbedded within our neighborhood, and will
discourage other families like my own from moving to
Kensington View.

This will derail the hard earned revitalization
that has been happening in recent years, devalue homes, and
discourage those of us who've tried so hard to make our urban
village a great place to live.

I also wanted to note something else that we've
submitted to you in the binder about East Avenue and the
zoning of the lots that are there. Lots 7 through 10 on East
Avenue, this is on the Lindsay side of East Avenue, were rezoned as C-2 by a map amendment in 1964 with the premise that the unbuilt portion of Kensington Boulevard would be developed for increased use and connectivity for those commercial lots there.

The applicant now seeks to convert the remaining section of East Avenue to commercial use by abandoning the same road for a parking lot. The logic of the opposing arguments used to justify commercial use of East Avenue seems contradictory at best, and is consistently at odds with the long term interest of the neighborhood residents.

MS. SCHWARTZ JONES: Thanks.

MS. SAVOLAINÉ: Thanks for considering my comments.

MS. SCHWARTZ JONES: Thank you. Sylvia Didone, do you wish to speak?

MS. DIDONE: No.

MS. SCHWARTZ JONES: Okay. And Elizabeth, I'm sorry, Duckett?

MS. DUCKETT: I'm not speaking.

MS. SCHWARTZ JONES: Okay. I just wanted to give you the opportunity since your name was on here, if you wished to.

MS. DUCKETT: Okay.

MS. SCHWARTZ JONES: With that, and you, as I indicated before, we're going to hold the record open for the
submission of written comments until 5:00 p.m. on September 29th. Before I close the hearing, though, I know that I had asked Mr. Cassedy to get the dates of the advertisement so that the record and everybody could hear the dates of the advertisement, and the record would be clear on this point.

MR. CASSEDY: That's right. Exhibit 4, the proof of newspaper advertising in the Sentinel, the dates that they ran were September 4 and September 11.

MS. SCHWARTZ JONES: The other thing that I wanted to say is that, again, you can submit written comments.

MR. FREISHTAT: Before you close the record, I wanted to ask that we keep it open for 21 days. They won't have the record available until 10 days from now.

MS. SCHWARTZ JONES: You want to be able to review the --

MS. SHEARD: We would like the record to remain open for at least a week after the transcript is available, if possible.

MS. SCHWARTZ JONES: Okay. When do we normally get them in?

MS. SHEARD: We're hearing that the transcript won't be available for two weeks.

MS. SCHWARTZ JONES: Well, let's clarify this point.

(Discussion off the record.)
MS. SCHWARTZ JONES: We don't need an artificial
time limit here. I have no problem with keeping the record
open for three weeks.

MS. SHEARD: We understood that if it was expedited
there was additional cost to the County, and there's no
reason for that.

MS. SCHWARTZ JONES: That's what I understand as
well.

MS. SHEARD: Just so we can have it available,
whenever it gets available.

MR. FREISHTAT: It doesn't matter. I mean, 21 days
is more than enough.

MS. SHEARD: That's fine.

MS. SCHWARTZ JONES: That's fine.

MR. FREISHTAT: Normal turn around time I think is
10 days.

MS. SCHWARTZ JONES: To be clear then, if we can go
back to the earlier point, too, where the record will be held
open for three weeks, and now you've put me at a
disadvantage, because I'm sure I'm into October, and I don't
know what date in October that becomes. Does anybody have a
calendar so I can see what date that becomes.

MR. FREISHTAT: I have one in my pocket.

(Discussion off the record.)

MR. FREISHTAT: Three weeks from today is --
MS. SCHWARTZ JONES: It's October 6th.

MR. FREISHTAT: -- one, two -- October 6th.

MS. SCHWARTZ JONES: So the record will now be held open until, for a period of three weeks until 5:00 p.m. on October 6th, 2008. And so, for the record, when it is put together, we can make that very clear from the beginning as well.

Once again, to submit written comments, they can be submitted one of three ways. They can be sent by mail to Mr. Michael Cassedy, Department of Transportation, 101 Monroe Street, Tenth Floor, Rockville, Maryland 20850. They should again refer to the fact that they pertain to the abandonment of a portion of Kensington Boulevard, abandonment petition number 716.

Comments can be sent by electronic mail to Michael.Cassedy, C-A-S-S-E-D-Y, at MontgomeryCountyMD.gov, or you may send them via facsimile also again to Michael Cassedy's attention 240-777-7259. And again, whatever mode you seek to send them by, you should indicate that it's for a portion of Kensington Boulevard, AB petition number 716.

The time is now five after 2:00 and the public hearing element of composing this record is now closed.

Thank you.

(Whereupon, at 2:07 p.m., the hearing was concluded.)
Deposition Services, Inc., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Department of Public Works and Transportation in the matter of:

Abandonment: Kensington Boulevard, AB-716

By:

Teresa S. Hinds, Transcriber