

MEMORANDUM

June 11, 2009

TO: Transportation, Infrastructure, Energy and Environment Committee
FROM: ^{GO} Glenn Orlin, Deputy Council Staff Director
SUBJECT: Abandonment of an unimproved alley in the Crestview Subdivision in Bethesda

An unimproved alley in the Crestview Subdivision in Bethesda has been petitioned for abandonment by its two adjacent property homeowners. The right-of-way, which is has remained in a natural state since it was first designed as a right-of-way in 1920, is 15' wide and 170' long.

The Planning staff had objected to the abandonment, noting that the 170'-long segment was part of a 700'-long unimproved right-of-way that could potentially be used as a pedestrian connection. However, the Planning Board concluded that such a connection was impractical for the foreseeable future. There were no other objections to the abandonment.

Council staff recommendation: Approve these abandonments with the conditions suggested by the Executive and Hearing Examiner.

Attachments

Transmittal letter from the County Executive	©1
Draft adoption resolution	©2-3
Application for abandonment	©4
Public hearing advertisement	©5
Hearing Examiner's report	©6-12
Maps noting location of abandonment	©13-14



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

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Trans

Isiah Leggett
County Executive

MEMORANDUM

ACK Agn 6-15-09
TVE

May 6, 2009

TO: Phil Andrews, President
Montgomery County Council

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

SUBJECT: DPWT Docket No. AB714, Unimproved Alley
Crestview Subdivision, Bethesda, 7th Election District

For your consideration, attached herewith is a proposed Resolution whereby the County Council may approve the abandonment of a portion of a 15-foot wide, unimproved alley in the Crestview Subdivision in Bethesda. Supporting data are submitted as follows:

1. Council Resolution
2. Letter requesting the abandonment from Howard N. Tarnoff, Robyn Miller-Tarnoff, Joseph P. Bailey and Wendy Bailey
3. A Public Hearing was held on June 9, 2008, as announced by Executive Order No. 126-08.
4. The Hearing Examiner's Report and Recommendation
5. A location map and tax map for reference

IL/rg

Attachments

Resolution No: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DPWT Docket No. AB714
Abandonment – Portion of Alley off Keokuk Street
Crestview Subdivision, Bethesda, Maryland

Background

1. By letter dated November 14, 2007, from Howard N. Tarnoff, Robyn Miller-Tarnoff, Joseph P. Bailey and Wendy Bailey, the Applicants, application to the County was made to abandon a portion of an unimproved alley off of Keokuk Street in the Crestview Subdivision in Bethesda. The subject area consists of a 170 feet long segment of the 15 feet wide paper alley off of Keokuk Street to the end of Lot 28 between 4926 Westway Drive and 5011 Keokuk Street.
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 unless granted a 10-foot wide easement from Crescent Street to Keokuk Street for planned future expansion.
4. Washington Suburban Sanitary Commission had no objection.
5. VERIZON had no objection.
6. The Montgomery County Planning Board recommended approval.
7. The Department of Public Works and Transportation (now Department of Transportation) recommended approval conditioned upon the Applicants granting easements for County storm drains and public utilities, if any, and recording a new record plat incorporating the former right-of-way.
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. The County Executive recommends approval of the proposed abandonment.

Action

The County Council for Montgomery County, Maryland, finds that the portion of the unimproved alley, approximately 170 feet long by 15 feet wide, from Keokuk Street to the end of Lot 28 between 4926 Westway Drive and 5011 Keokuk Street, 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:

1. The area proposed for abandonment must be subject to permanent and perpetual public improvement easements sufficient in form and substance to allow for the current and future placement, maintenance and repair of utilities and drainage, the form and substance of which must be approved by the Office of the County Attorney for Montgomery County, Maryland.
2. The Applicants must prepare the public improvement easement and cause it to be duly executed by all necessary owners, mortgagees and lienholders of record and to be recorded in the Land Records for Montgomery County, Maryland prior to the proposed abandonment taking effect.
3. Applicants must prepare for signature by the property owners a plat or plats redefining the portions of the abandonment area going with 4926 Westway Drive and 5011 Keokuk Street and Lot 4 Block M in the Westgate Subdivision, if applicable.
4. Prior to recordation of the new plat or plats, the Bailey's must have conveyed to the Tarnoffs any interest they may have in the portion of the abandonment area to be included in the Tarnoff's property at 5011 Keokuk Street. The instrument of conveyance must be recorded prior to the recordation of the new plat(s).
5. The Applicants must bear all costs for the preparation and recordation of all necessary legal documents and plats.
6. The County Attorney must record among the Land Records of Montgomery County, Maryland, a copy of this Resolution approving the abandonment of the subject area.
7. Any person aggrieved by the action of the Council for abandonment may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

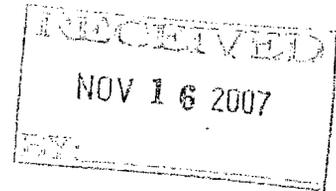
This is a correct copy of Council Action.

Linda M. Lauer
Clerk of the Council

AB 714

Exh. b. T 1

November 14, 2007



The Honorable Isiah Leggett, County Executive
Executive Office Building
101 Monroe Street, 2nd Floor
Rockville, MD 20850

Re: Request for Land Abandonment

Dear County Executive Leggett:

Pursuant to Montgomery County Code, we request the abandonment of the unimproved public right of way adjacent to our properties as shown on the attached survey. Thank you for your consideration of our request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Howard N. Tarnoff".

Howard N. Tarnoff
Robyn Miller-Tarnoff
5011 Keokuk Street
Bethesda, MD 20816
Tel: 301-320-4491

A handwritten signature in cursive script, appearing to read "Joseph P. Bailey".

Joseph P. Bailey
Wendy Bailey
4926 Westway Drive
Bethesda, MD 20816
Tel: 301-263-0253

Attachments: Tax Map HM23
Application Fee (in copy to Michael Cassedy)

cc: Michael Cassedy, DPWT
Executive Office Building
101 Monroe Street, 10th Floor
Rockville, MD 20850



MONTGOMERY COUNTY EXECUTIVE ORDER

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

Subject: Abandonment of Unimproved Alley off of Keokuk Street Crestview Subdivision, Bethesda	Executive Order No. 126-08	Subject Suffix AB
Originating Department: Public Works and Transportation	Department Number AB 03-08	Effective Date 5/29/08

AB714

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 2:45 p.m. on Monday June 9, 2008
101 Monroe Street, EOB Lobby Conference Room
Rockville, Maryland 20850

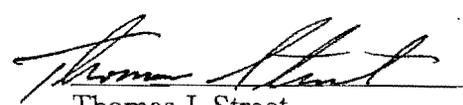
to consider an application received from Mr. Howard N. Tarnoff and Mr. Joseph P. Bailey, the applicants, seeking abandonment of a portion of an unimproved alley off of Keokuk Street in the Crestview subdivision in Bethesda.

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

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

IN THE MATTER OF:

PETITION OF HOWARD TARNOFF AND
ROBYN MILLER-TARNOFF
Applicants

And

JOSEPH P. AND WENDY BAILEY
Co-Applicants

ABANDONMENT OF A PORTION OF
AN ALLEY OFF KEOKUK STREET IN
THE CRESTVIEW SUBDIVISION, BETHESDA
An unimproved right-of-way

BEFORE:

* DIANE SCHWARTZ JONES
* PUBLIC HEARING OFFICER
*

* DEPARTMENT OF
* TRANSPORTATION
* PETITION NO. AB 714
*

PUBLIC HEARING OFFICER'S REPORT AND RECOMMENDATION

I. Background

Howard N. Tarnoff, Robyn Miller-Tarnoff, Joseph P. Bailey and Wendy Bailey, by letter dated November 14, 2007, jointly petitioned the County to abandon a portion of an unimproved alley off Keokuk Street in the Crestview Subdivision in Bethesda, Maryland. See, Exhibit 1¹.

The portion of the unimproved alley sought to be abandoned is a 170 feet long segment of the 15' wide paper alley off of Keokuk Street to the end of Lot 28 between 4926 Westway Drive and 5011 Keokuk Street. The right-of-way was dedicated to public use in 1920 by Plat number 213 and is located between the properties of the two sets of applicants. See, Exhibits 12 and 16.

¹ Exhibit References are to items designated in the Hearing Record as Exhibits and are not attachments to this Report and Recommendation.

The abandonment was sought on the basis that the right-of-way has not been used and is no longer necessary for public use under Montgomery County Code section 49-63(e).

A public hearing on the request was held on June 9, 2008 at approximately 3:00 pm in the Lobby Level Auditorium of the Executive Office Building, 101 Monroe Street in Rockville, Maryland. Notice of Hearing was mailed to neighboring properties and the Brookdale Citizens' Association. See, Exhibit 3. Public notice of the hearing was published in the *Montgomery County Sentinel* newspaper on May 29, 2008 with a second publication on or before June 5 2008 per the Certification of the Montgomery County Sentinel. See, Exhibit 4. The right-of-way was duly posted with notice of the hearing as well. See, Exhibit 8.

Testimony was received at the hearing and exhibits 1-14 were entered into the record. The record was held open for two weeks until 5:00 pm on January 22, 2008. There are two additional Exhibits 15 – 16 included in the record.

II. Summary of Testimony and Evidence

The right-of-way for which abandonment is sought is located between the properties of the Tarnoffs and the Baileys. It is part of a right-of-way that was dedicated to public use when the Crestview Subdivision was created by Plat 213 filed October 8, 1920 (Exhibit 6) and corrected by Correction Plat filed as Plat 572 on May 15, 1935 (Exhibit 7). The abandonment area is 170 feet long and is identified as "A" between 4926 Westerway Drive and 5011 Keokuk Street as shown on Exhibit 16. It is *not* the area designated as "B" between 4926 Westway and 4963 Crescent Street on Exhibit 16.

The right-of-way was created as described above and not out of the subdivision in which the Tarnoffs reside. Nonetheless, the parties have agreed that if the right-of-way is abandoned, they will divide the abandoned area. Hearing Tr. P. 12. The request for abandonment originates

out of the Tarnoffs' desire to construct an addition to their kitchen, but being limited in their ability to do so because they cannot obtain the necessary permit due to setbacks from their lot line.

The paper alley is separated from the Bailey's land by a fence, but it is not separated from the land of the Tarnoffs. Mr. Bailey testified that there is no foot traffic at all over the right-of-way. Hearing Tr. P. 11. Mr. Bailey further testified that he and his wife have not been maintaining the area which is mostly trees and ground cover, but the Tarnoffs have been performing any maintenance. Hearing Tr. P. 13.

The Montgomery County Planning Board ("Planning Board") on behalf of the Maryland National Capital Park and Planning Commission considered the request for abandonment and, while the Planning Board staff recommended denial of the request, the Planning Board disagreed and recommended approval of the abandonment. The Planning Board concluded that public use of the alley right-of-way for any pedestrian facilities is impractical in the foreseeable future. See, letter dated May 19, 2008 and included in the record as Exhibit 12.

Planning Board staff in its review noted that the 170 feet alley strip proposed for abandonment was part of a 700 feet long pedestrian alley that has not been improved with any surface improvements. Staff notes in its memo included in Exhibit 12 that the abandonment area "visually appears to have been assumed in to the lots to which it adjoins." Staff notes that abandonment of the area would leave behind a 530 feet long dedicated right-of-way which would compromise the original intent of the dedication as no suitable public usage could be attained. Planning Board staff concluded that "the right-of-way of a portion of alley being abandoned is not necessary for present public use but abandonment of the subject alley does not serve the original intent of the area subdivision to promote pedestrian connectivity in the future."

In addition to the request sought from the Planning Board pursuant to the requirements of Montgomery County Code Section 49-62(h), the Department of Transportation sought responses from the Washington Suburban Sanitary Commission (“WSSC”), public utilities and the Department of Fire and Rescue Services. WSSC sent a letter dated April 21, 2008 that it has no facilities within the proposed abandonment area and consents to the abandonment. See, Exhibit 9. This abandonment was conditioned upon the Planning Board approving the abandonment within 180 days of the date of the letter. The Planning Board approved the abandonment on May 19, 2008 which was well within the 180 days noted in the WSSC letter.

Washington Gas Light by letter dated April 23, 2008 and referred to as Exhibit 10 indicated that it has a gas line in the area of the proposed abandonment and objects unless it is granted a 10’ easement from Crescent Street to Keokuk Street for a planned future expansion.

Verizon by letter dated April 23, 2008 advised that it does not have existing facilities which conflict with the abandonment petition and that it therefore does not object to the requested abandonment. See, Exhibit 11.

The Department of Transportation, previously referred to as the Department of Public Works and Transportation, by memorandum dated June 5, 2008 indicated its approval of the abandonment subject to the condition that the applicants grant easements for County storm drains and public utilities that could be located within the existing right-of-way. The Department further required that the applicants file a new record plat incorporating the former right-of-way area into the adjacent parcels. See, Exhibit 13.

A letter was received from neighboring residents, William and Kathleen McElroy supporting the abandonment request noting that they see several benefits flowing from the granting of the abandonment request but not identifying any particular benefit. See, Exhibit 14.

Finally, the Department of Fire and Rescue Services sent an email indicating that it has no comments on the requested abandonment.

III. Discussion

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.

The right-of-way in question was dedicated nearly a full century ago and has never, over the ensuing decades, been put to the use envisioned at the time of dedication. Montgomery County Code section 49-63 permits the County Council to abandon a right-of-way if it is no longer needed for present or for anticipated use in the foreseeable future. No evidence was presented that there is any future use or need to be made of the right-of-way other than for possible utilities which can be accommodated by an easement. The Planning Board found that there is no present use and that any foreseeable pedestrian use in the future is impractical. The Planning Board staff, while recommending against the denial, offered no evidence at all of any anticipated public use in the foreseeable future. Given the absence of any demonstration of need for the right-of-way for pedestrian use and the passage of nearly nine decades without any such use substantiates to the Hearing Officer that the right-of-way is not necessary for public use.

The only potential future uses identified were for utilities (a gas line and storm drainage and other utilities) and both Washington Gas and the Department of Transportation respectively indicated that an easement would be an acceptable means of addressing this potential use.²

In addition to comments received from the utility companies, the Department of Fire and Rescue Services raised no objection to the abandonment and indicated that it has no comment on the proposed abandonment.

IV. **Conclusions and Recommendations**

Based on a thorough review of the testimony and the evidence of record, and provided that easements are granted for all existing and future utilities and storm drains within the existing right-of-way, and that a plat incorporating the right-of-way into the adjoining parcels is recorded, I find that the 170' portion of the alley shown on Attachment 1 is no longer necessary for current or anticipated future use. The area to be abandoned is generally described as a 170 feet long segment of the 15' wide paper alley off of Keokuk Street to the end of Lot 28 between 4926 Westway Drive and 5011 Keokuk Street. A plat incorporating the abandoned area into the adjoining parcels of the applicants plus a small area of Lot 4 on Attachment B to Exhibit 12 should clearly identify the division of the right-of-way. Additionally, because the plat will not serve to convey a property interest, any interest to go to the Tarnoffs should be duly conveyed by appropriate instrument of conveyance, whether via quitclaim deed or otherwise.

I therefore recommend that the proposed abandonment be granted subject to satisfaction of the following requirements:

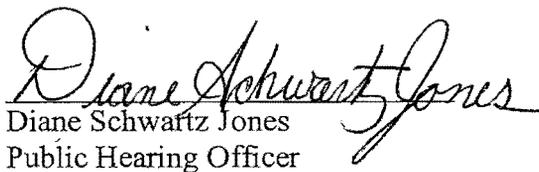
- 1) The area proposed for abandonment must be subject to a permanent and perpetual public improvements easements sufficient in form and substance to allow for the

² Washington Gas indicated on the one hand that it has identified a gas line "in the area" and that it wanted an easement for "a planned future pressure connection." It is not clear if Washington Gas actually has facilities within the right-of-way. An easement in place of the right-of-way can address both existing and future facilities.

current and future placement, maintenance and repair of utilities and drainage, the form and substance of which must be approved by the Office of the County Attorney for Montgomery County, Maryland;

- 2) Applicants must prepare the public improvement easement and cause it to be duly executed by all necessary owners, mortgagees and lienholders of record and to be recorded in the Land Records for Montgomery County, Maryland prior to the proposed abandonment taking effect;
- 3) Applicants must prepare for signature by the property owners a plat or plats redefining the portions of the abandonment area going with 4926 Westway Drive and 5011 Keokuk Street and Lot 4 on Attachment B, if applicable; and
- 4) Prior to recordation of the new plat or plats, the Bailey's must have conveyed to the Tarnoffs any interest they may have in the portion of the abandonment area to be included in the Tarnoff's property at 5011 Keokuk Street. The instrument of conveyance must be recorded prior to the recordation of the new plat(s).

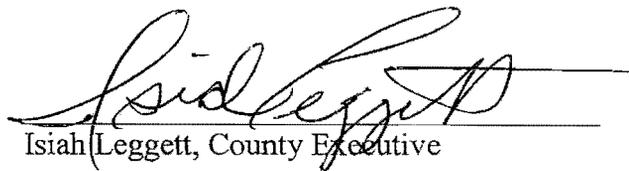
Respectfully submitted,

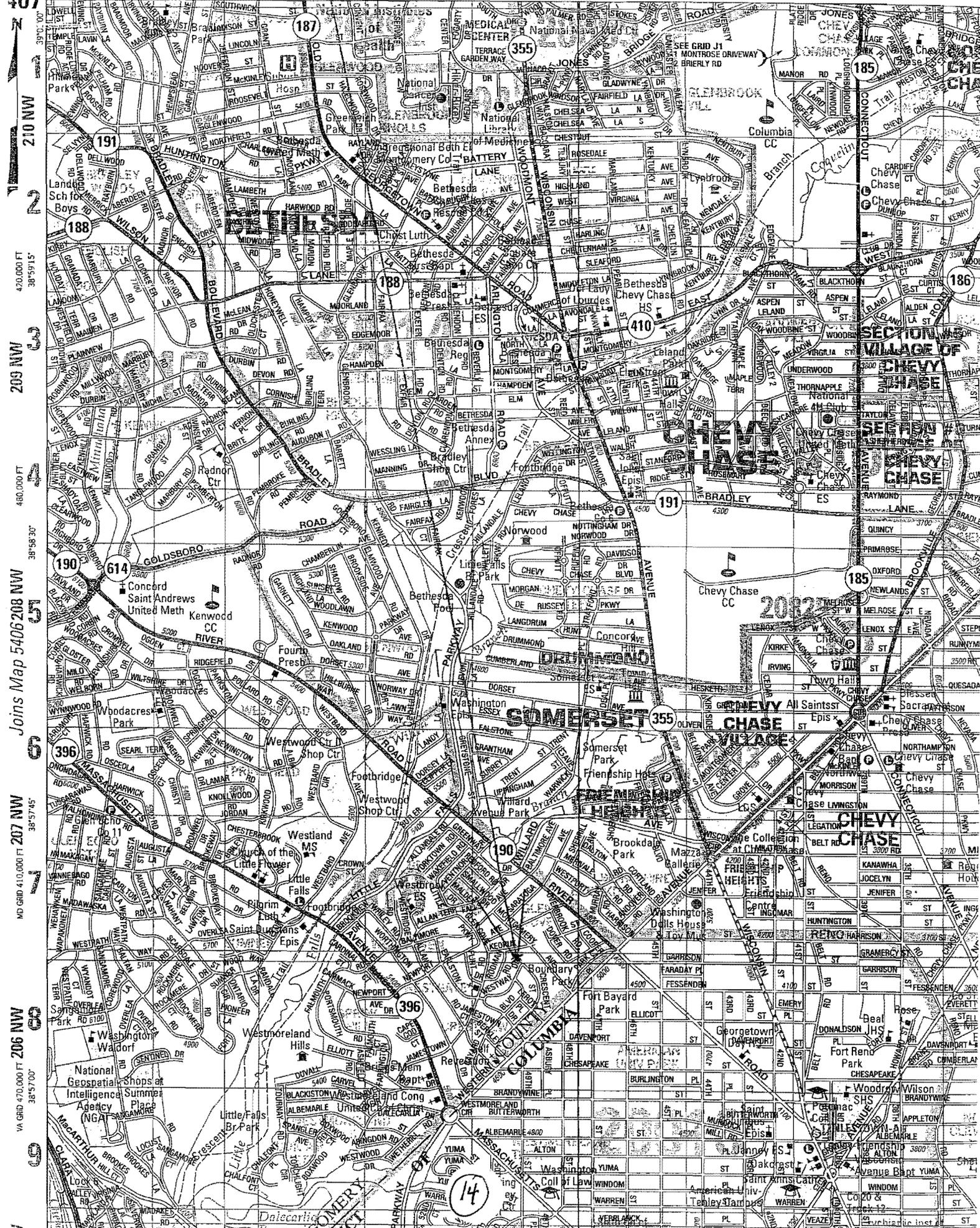


Diane Schwartz Jones
Public Hearing Officer
March 31, 2009

The Public Hearing Officer's Recommendation for AB714 has been reviewed and is approved.

Date: April 1, 2009


Isiah Leggett, County Executive



Joins Map 5406 208 NW

207 NW

206 NW

VA GRID 470,000 FT 38°57'00"

210 NW

209 NW

480,000 FT 38°58'30"

410,000 FT 38°57'45"

470,000 FT 38°57'00"

VA GRID 470,000 FT 38°57'00"

14

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