

Resolution No.: 16-306
Introduced: September 11, 2007
Adopted: September 25, 2007

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

By: Council President at the Request of the County Executive

SUBJECT: Purchase and sale agreement with Hampden Lane L.L.C.

Background


1. Section 49-11 of the County Code provides that the County Council may grant a right for the use of a public right-of-way after:
 - a) the applicant for the right to use a public right of way publishes the application once a week for three consecutive weeks in a newspaper of general circulation in the County;
 - b) the County Executive makes "diligent inquiry" into the value of the agreement and the adequacy of the proposed compensation the applicant will pay to the County;
 - c) the Executive holds a hearing on the application if any taxpayer or affected property owner objects to the right of use within 10 days after publication of the application;
 - d) the Executive makes a written recommendation to the Council about the right of use, including a description of the application and any objections to it, findings about the value of the right of use, and any other relevant matters; and
 - e) the Council decides that the right of use is expedient and proper.
2. On February 12, 19, and 26, 2007 Hampden Lane L.L.C. published notice of its application for a purchase and sale of the public right-of-way in the Washington Examiner. The Executive received no objection to the purchase and sale by the March 8, 2007 deadline and was therefore not required to conduct a hearing on the purchase and sale application.
3. On July 18, 2007, the Council received the Executive's recommendation to grant the purchase and sale of right-of-way requested by Hampden Lane, L.L.C. and a proposed purchase and sale agreement.

Action

The County Council for Montgomery County Maryland approves the following resolution:

The County Council finds that a purchase and sale of right-of-way to Hampden Lane, L.L.C. for the purpose of including the land within the boundaries of a development proposal is expedient and proper. The Council grants the right for the purchase and sale under the terms of the attached purchase and sale agreement.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council

PURCHASE AND SALE AGREEMENT

MONTGOMERY COUNTY, MARYLAND, a body corporate and politic of the State of Maryland (hereafter the "County"), and HAMPDEN LANE, LLC, a Maryland limited liability company on behalf of itself, its successors and assigns (hereafter "Purchaser") enter into this Purchase and Sale Agreement ("Agreement") this 25th day of September, 2007.

RECITALS

WHEREAS, Purchaser owns certain property known as 4901 Hampden Lane (more specifically described as Part of Lot 8 and Part of Lot 9, Block 24D, Edgemoor, Montgomery County, Maryland as shown on Plat Number 573 recorded in the Land Records of Montgomery County, Maryland and Lot 5 and Part of Lot 6, Block 24B, Edgemoor as shown on Plat Number 384, recorded in the Land Records of Montgomery County, Maryland) (collectively, the "Development Parcel"); and

WHEREAS, the County owns land adjacent to the Development Parcel, more particularly described in the Deed recorded in Liber 5623 at folio 612 in Montgomery County, Maryland and the Deed recorded in Liber 10019 at folio 714 in the Land Records of Montgomery County, Maryland and, as shown on Exhibit A (collectively, the "Subject Property"); and

WHEREAS, Purchaser entered into a Memorandum of Understanding and Agency Authorization dated April 6, 2004, with the County (the "MOU") by which, *inter alia*, the County authorized Purchaser to include the Subject Property in applications for development related to the Development Parcel; and

WHEREAS, the Subject Property consists of two splinter parcels held in fee simple by the County currently used for right-of-way purposes associated with Hampden Lane and Woodmont Avenue; and

WHEREAS, the County holds the land comprising Hampden Lane and Woodmont Avenue, excluding the Subject Property, by virtue of a dedication (collectively, Hampden Lane and Woodmont Avenue are the "Right-of-Way"); and

WHEREAS, Purchaser is proposing a residential development on the Development Parcel providing public benefits not otherwise required by any other relevant law or regulation and desires to purchase the Subject Property for purposes of including the Subject Property in the above-referenced development; and

WHEREAS, the Montgomery District Council approved Local Map Amendment G-819 and the associated Development Plan on July 25, 2006 which allow for multi-family development on the Development Parcel (the "Project"); and

WHEREAS, the Project provides such public benefits as (i) a fund reserved for MPDU owners to make purchase and/or ownership of the units more affordable (ii) Moderately Priced

Dwelling Units under Chapter 25A of the Montgomery County Code ("MPDUs"); and (iii) the upgrade and enhancement of a major pedestrian connection to the Bethesda Metro Station; and

WHEREAS, Purchaser intends to pursue all the necessary development approvals for the Project; and

WHEREAS, the County has concluded that residential development of the Development Parcel operates as an economic development vehicle in the County; and

WHEREAS, after purchasing the Subject Property, Purchaser will convey the Subject Property back to the County; and

WHEREAS, this transaction is exempt from Executive Regulation No. 31-97 ("Disposition of Real Property"); and

WHEREAS, the County has determined that the County will be adequately compensated for the development rights appending the Subject Property by virtue of the transfer of the Subject Property; and

WHEREAS, Purchaser has caused a description of the terms of this Agreement to be published once a week for three consecutive weeks in a newspaper having general circulation in the County; and

WHEREAS, the County and Purchaser desire to set forth the terms and conditions of the transfers of the Subject Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, this Agreement is entered into by and between the parties subject to the following terms and conditions:

1. INCORPORATION OF RECITALS.

The foregoing recitals are adopted and incorporated herein.

2. DEFINITIONS.

For the purposes of this Agreement, the following words, terms, phrases, and their derivations shall have the meanings given herein. The word "shall" is always mandatory. Any defined terms in the Recitals above are specifically incorporated into this Agreement.

2.1 "Effective Date" means the last date on which the parties hereto have executed this Agreement.

2.2 "Law" means any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, administrative order, certificate, order, or other requirement of the Federal Government, State, or County, or other Agency having joint or several jurisdiction over the

parties to this Agreement, in effect either on the Effective Date or at any time during the presence of the Facilities in the Public Right-of-Way.

2.3 "Person" means an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, and any other form of business association or organization of any kind.

2.4 "Record Plat" shall mean that certain record plat filed pursuant to Preliminary Plan No. 1-20070280.

3. **TRANSFER OF SUBJECT PROPERTY TO PURCHASER.**

Subject to the terms of this Agreement, the County agrees to transfer the Subject Property to Purchaser:

3.1 **PURCHASE PRICE AND TERMS OF PAYMENT.**

3.1.1 The purchase price to transfer the Subject Property to Purchaser shall be Two Hundred and Forty Thousand and 00/100 Dollars (\$240,000) (the "Purchase Price"). If closing occurs on or after January 1, 2008, the Purchase Price shall be increased at a rate of six percent (6%) per annum, prorated as of the closing date.

3.1.2 The entire balance of the purchase price shall be paid by Purchaser to County, in cash, by certified or bank cashier's check, or by Federal Funds wire transfer on the closing date.

3.2 **CLOSING.**

3.2.1 Closing on the transfer of the Subject Property to Purchaser shall be held at the office of an attorney or title company in Montgomery County, Maryland as selected by Purchaser (the "Title Company").

3.2.2 Closing shall take place within six (6) months of approval by the Montgomery County Planning Board of the Preliminary Plan associated with the Project, but no later than June 30, 2008. Purchaser shall notify the County of the date of closing not less than four (4) weeks prior to the proposed closing date. If Purchaser fails to close by June 30, 2008, the Purchaser will be in default of this Agreement and the County may elect to pursue the remedies provided in Section 9.

3.2.3 At closing, the County shall deliver (duly and fully executed, acknowledged and notarized as appropriate) a quit claim deed ("Purchaser Deed") in recordable form with covenants of further assurance and right to convey, conveying title to the Subject Property as required by the provisions of this Agreement.

3.3 CONDITIONS PRECEDENT TO THE OBLIGATION OF THE COUNTY TO SETTLE.

The obligation of the County to sell the Subject Property to Purchaser is subject to the following conditions:

3.3.1 Purchaser shall have received approval of Preliminary Plan No. 1-20070280, Site Plan No. 8-20070060 and the associated Record Plat by the Montgomery County Planning Board, as may be subsequently amended, or any other Preliminary Plan, Site Plan or Record Plat for the Development Parcel; and

3.3.2 Purchaser shall have entered into an agreement with the Montgomery County Department of Housing and Community Affairs, recorded in the Land Records of Montgomery County, to (i) reserve fifteen percent (15%) of the total number of units in the Project as MPDUs and (ii) to fund an account to make the purchase and ownership of the MPDUs more affordable.

4. TRANSFER OF SUBJECT PROPERTY TO COUNTY.

Subject to the terms of this Agreement, after purchasing the Subject Property, Purchaser agrees to transfer the Subject Property back to the County.

4.1 CLOSING.

Closing on the transfer of the Subject Property to the County shall be held at the office of an attorney or title company selected by the County and shall occur on the same day as the closing on the transfer of the Subject Property from the County to the Purchaser. At closing, Purchaser shall deliver to the County (duly and fully executed, acknowledged and notarized as appropriate) a special warranty deed ("County Deed") in recordable form with covenants of further assurance and right to convey, conveying fee simple title to the Subject Property as required by the provisions of this Agreement.

4.2 RECORDATION

The County Deed shall be recorded in the Land Records of Montgomery County, Maryland immediately after recordation of the Purchaser Deed.

5. REPRESENTATIONS AND WARRANTIES.

5.1 Purchaser has the power and authority to execute and deliver this Agreement, to consummate the transactions hereby contemplated, and to take all other actions required to be taken by the Purchaser pursuant to this Agreement; and this Agreement is valid and binding upon Purchaser in accordance with its terms. Purchaser is a duly organized and validly existing limited liability company in good standing under the laws of the State of Maryland.

5.2 Purchaser is not a party or potential party to any pending, threatened, or contemplated bankruptcy or similar proceeding under any federal, state or local laws which have resulted in alteration of or grant of relief from claims or creditors against Purchaser.

5.3 Purchaser shall not enter into any contracts, leases, service contracts, or any other type of binding agreement that would bind the County in the event Purchaser does not settle on the Subject Property.

5.4 Purchaser shall not encumber, or convey an interest in, the Subject Property before transferring the Subject Property to the County.

6. INDEMNITY AND WAIVER.

6.1 Purchaser hereby agrees, covenants, and warrants to protect, indemnify, and hold the County and its respective officers, members, employees, contractors and agents (collectively, the "Indemnified Parties") harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, liens, encumbrances, suits or actions and reasonable attorneys' fees, and the cost of the defense of the Indemnified Parties in any suit, including appeals, arising out of, or relating in any manner to all work or obligations undertaken by Purchaser pursuant to this Agreement, activities resulting therefrom and/or as a result of Purchaser's, or its contractors, subcontractors, agents, employees or invitees presence on, access to, or activities on or about the Subject Property.

6.2 The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

7. ADJUSTMENTS.

All fees, costs, expenses, transfer and recordation taxes (if any) and other assessments, associated with the Closings shall be paid by Purchaser, except the County shall be responsible for its own attorney's fees, as applicable.

8. FORCE MAJEURE

If an Act of God or any other event commonly defined as a Force Majeure occurs and renders performance under this Agreement impossible, this Agreement may be renegotiated by the parties to accommodate the changed conditions, including, but not limited to, an extension of the closing dates herein. Notwithstanding the foregoing, under any circumstance, the Purchase Price shall remain as defined in Paragraph 3.1 of this Agreement.

9. DEFAULT

If the Purchaser does not obtain the approvals referenced in Section 3.3.1 or fails to close by June 30, 2008, the County may void this Agreement.

If the Purchaser obtains the approvals referenced in Section 3.3.1 and fails to close by June 30, 2008, the County may decline to approve or execute the Record Plat.

10. ENTIRE AGREEMENT.

No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto. No waiver of any of the provisions of this Agreement or other agreements referred to herein shall be valid unless in writing and signed by the party against whom it is sought to be enforced. This Agreement contains the entire agreement between the parties relating to the purchase and sale of the Subject Property. All prior negotiations between the parties are merged in this Agreement, and there are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, expressed or implied, between them other than as herein set forth.

11. SURVIVAL OF REPRESENTATIONS, WARRANTIES AND AGREEMENT.

The representations, warranties, covenants, agreements and indemnities set forth in this Agreement shall remain operative and shall survive Closings under this Agreement and the execution and delivery of the Deed shall not be merged therein.

12. BENEFIT AND BURDEN.

All terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

13. GOVERNING LAW.

This Agreement is being executed by Purchaser and the County and shall be construed and enforced in accordance with the laws of the State of Maryland, without reference to its conflicts of law principles. In the event that suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the Montgomery County Circuit court in the state of Maryland.

14. HEADINGS.

The captions and headings herein are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

15. ASSIGNMENT.

Purchaser may assign its rights under the Agreement upon written notice to the County together with evidence of the formation and good standing of such entity. For the purposes of this Section, a transfer to a related entity in which the same principals maintain a majority interest shall not be considered an assignment.

16. NOTICES.

A notice or communication under this Agreement by or between the County and Purchaser shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service, or (c) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed:

County: Chief Administrative Officer
Executive Office Building
101 Monroe Street
Rockville, Maryland 20850

With a copy to:

County Attorney
Office of the County Attorney
101 Monroe Street, Third Floor
Rockville, Maryland 20878

And

Director, Department of Public Works and Transportation
101 Monroe Street
Rockville, Maryland 20850

Purchaser: Hampden Lane, LLC
c/o Triumph Development, LLC
8120 Woodmont Avenue, Suite 800
Bethesda, Maryland 20814

With a copy to: Stark, Meyers Eisler & Leatham LLC
11140 Rockville Pike, Suite 570
Rockville, Maryland 20852
Attention: Erica A. Leatham, Esquire

Notices shall be deemed given upon receipt in the case of personal delivery; three (3) days after deposit in the mail; or the next day in the case of overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above. All notices and approvals required in this Agreement must be in writing to bind the submitting or receiving party.

17. MISCELLANEOUS PROVISIONS.

17.1 This Agreement may not be amended except pursuant to a written instrument signed by both parties.

17.2 All exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement.

17.3 It is expressly understood that the County shall not be construed or held to be a partner or associate of Purchaser in the conduct of Purchaser's business.

17.4 In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably condition, delay or withhold its approval or consent.

WITNESS:

Debbie Richard

MONTGOMERY COUNTY, MARYLAND

By:

Timothy L. Firestine
Timothy L. Firestine
Chief Administrative Officer

Date: 6/20, 2007

WITNESS:

HAMPDEN LANE LLC, a Maryland limited liability company

By:

Title:

Jam Foy
Authorized Representative

APPROVED AS TO FORM AND LEGALITY
OFFICE OF THE COUNTY ATTORNEY
BY: Cliff S. Harp
DATE: 6/13/07

LSB'S F234
being all of Lot 28
Block 13

MONTGOMERY LANE - ULTIMATE 52' ROW

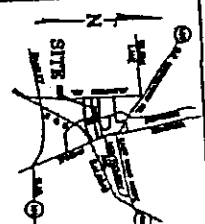
WODMONT AVENUE - EXISTING 80' ROW

HAMPDEN LANE - ULTIMATE 60' ROW

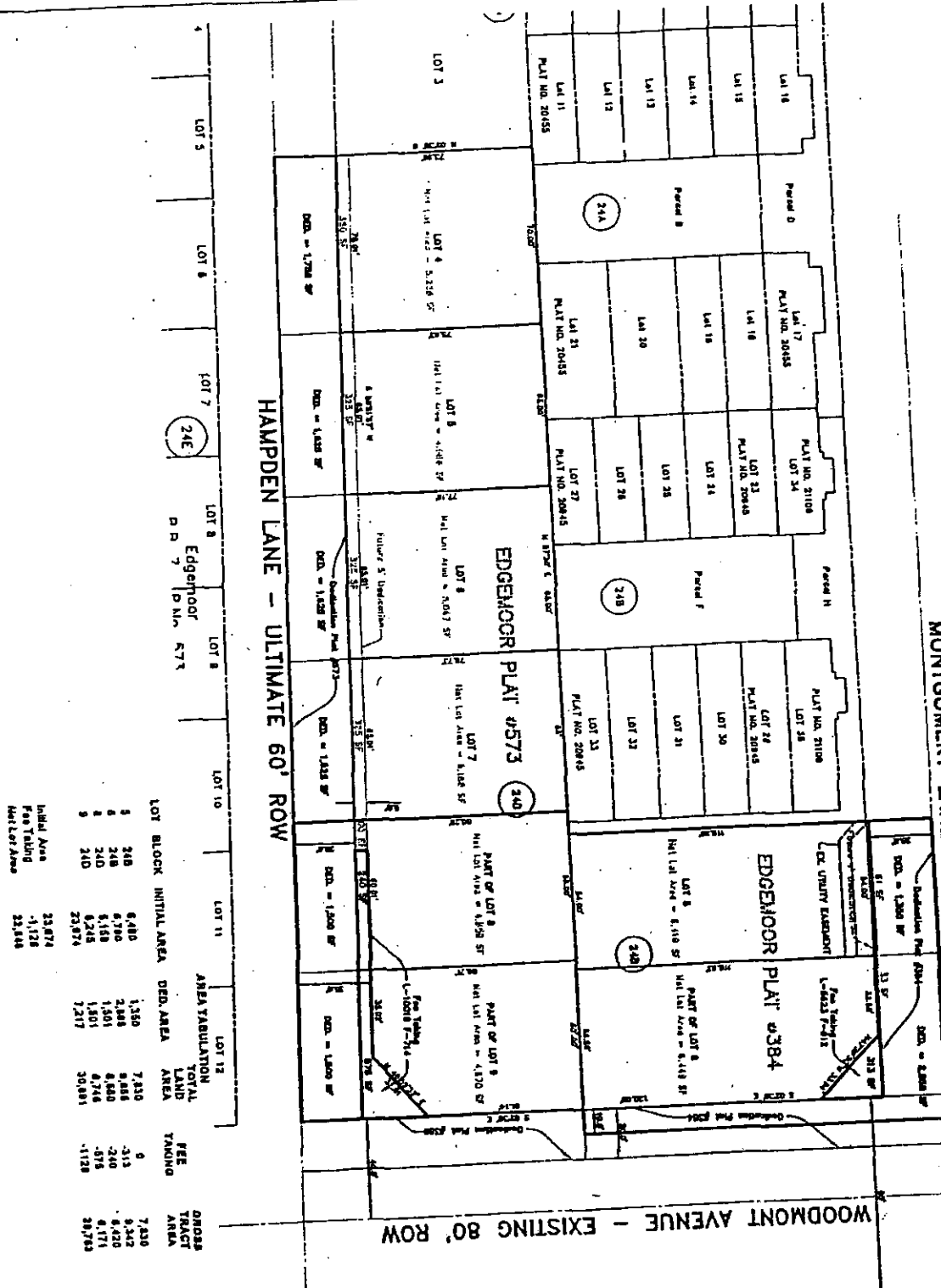
EDGEWOOD PLAT #573

EDGEWOOD PLAT #384

EXHIBIT "A"



VICINITY MAP
SCALE 1" = 500'



LOT	INITIAL AREA	DED. AREA	AREA TABULATION	TOTAL LAND AREA	NET TAKING	GROSS TRACT AREA
LOT 3	340	1,350	7,330	9,342	0	7,330
LOT 4	340	2,880	9,885	8,420	-240	8,420
LOT 5	340	6,790	1,501	6,580	-240	6,580
LOT 6	340	6,158	1,501	4,718	-875	4,718
LOT 7	340	6,248	1,501	4,718	-875	4,718
LOT 8	340	23,974	7,217	30,891	-1,128	29,763
LOT 9	340	23,974	7,217	30,891	-1,128	29,763
LOT 10	340	23,974	7,217	30,891	-1,128	29,763
LOT 11	340	23,974	7,217	30,891	-1,128	29,763
LOT 12	340	23,974	7,217	30,891	-1,128	29,763

EDGEWOOD
Lot 5, P.O. Lot 6, Block 248 & Lots 4-8, Block 249
7TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

MHC
Maryland, Virginia & Delaware, P.A.
Landmark Development & Surveyors
1000 Northpointe Blvd., Suite 100
Farmingdale, NY 11737

GROSS TRACT AREA EXHIBIT