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September 2, 2022

VIA HAND DELIVERY
and ELECTRONIC MAIL - djbrown@co.pg.md.us

Hon. Donna J. Brown, Clerk of the Council
Prince George's County Council
14741 Governor Oden Bowie Dr.
Upper Marlboro, MD 20772

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SEP - 2 2022

CLERK OF THE COUNCIL
PRINCE GEORGE'S COUNTY MARYLAND

RE: CDP-0505-02; TCP-1-004-2021-02
(National Capital Business Park)
OPPOSITION TO APPEAL

Dear Madam Clerk:

Enclosed please find National Capital Business Park's Opposition to Exceptions and Request for Oral Argument for filing in the above-referenced matter.

Very truly yours,



Arthur J. Horne, Jr.

Enclosure

cc: G. Macy Nelson, Esq.
Alex Votaw, Esq.
Rajesh A. Kumar, Esq.
David Warner, Esq.
The Honorable Calvin S. Hawkins

Amendment and TCP 1 were approved unanimously by the Planning Board at a public hearing held on May 5, 2022. Further, a resolution was approved unanimously by the Planning Board on or about May 19, 2022, approving both applications with conditions.

I. DESCRIPTION OF THE PROPERTY & CDP AMENDMENT

The Applicant is the owner of the NCBP which is approximately a 442± acre site that is currently being developed as an employment park. The Applicant's property is located north of Leeland Road and west of US 301. The property is proximate to major transportation routes and is currently classified in the LCD (426.52 +/- acres), IE (15 +/- acres), and AR (0.78 +/- acres) Zones. The types of uses proposed for the NCBP will include warehouse/distribution, office, light industrial/manufacturing, and/or institutional uses as approved by the District Council in Basic Plan A-9968-03. The majority of uses within the NCBP are anticipated to be warehouse/distribution uses. The NCBP is currently under development with site infrastructure, grading, and clearing activities currently underway in accordance with previously granted entitlement approvals that are final and beyond appeal.

The CDP Amendment only applies to the 426.52 acres in the LCD Zone portion of the NCBP. The primary purpose of the CDP Amendment is to reflect an increase in the potential gross floor area for the NCBP to 5.5 million square feet as approved in Basic Plan A-9968-03. Despite the potential building square footage increase, this CDP amendment does not propose any increase in the developable land area previously approved in CDP-0505-01. The building blocks of the NCBP are identical to those

approved in CDP-0505-01 and include interconnecting and continuous streets and complimentary building types. The CDP Amendment is organized in a manner that allows for buildings to be developed on appropriate portions of the property while minimizing impacts to sensitive environmental features in the overall site. Specifically, the project is identified to be developed with warehouse/distribution, office, light industrial/manufacturing, and/or institutional type uses similar to those in the abutting Collington Center (also an employment center in the LCD Zone). The CDP Amendment also continues to show a 20-acre public park along the west side of the stream valley and north side of Leeland Road that will have direct vehicular access to Leeland Road. Vehicular access to the National Capital Business Park will be provided via an extension of existing Queens Court within Collington Center.

II. PREVIOUS ENTITLEMENT HISTORY

The NCBP has a significant entitlement/approval history which includes, but is not limited to, the following approvals:

- **Basic Plan Amendment A-9968-02**

A-9968-02 for the NCBP was approved for the subject property by the District Council on April 12, 2021 (Zoning Ordinance No. 2-2021), to delete all previously approved residential uses on the property and replace them with up to 3.5 million square feet of employment and institutional uses permitted on 442 +/- acres of the LCD Zone portion of the subject property.

- **Comprehensive Design Plan Amendment CDP-0505-01 & TCP1- 004-2021**

On April 15, 2021, the Planning Board approved CDP-0505-01 (PGCPB Resolution No. 2021-50), amending the previously approved CDP with five conditions. The amendment deleted previously approved residential uses and replaced them with 3.5 million square feet of employment and institutional space, in accordance with A- 9968-02.

- **Forest Harvest Operation & Erosion and Sediment Control Plan No. FH-145-21**

Plan approved by the Soil Conservation District on June 22, 2021.

- **Haul Road/Timber Transport Permit No. 21506-2021-00**

Permit issued by DPIE on July 2, 2021.

- **Preliminary Plan of Subdivision 4-20032 & TCP1-004-2021-01**

An overall PPS 4-20032 for the NCBP was approved by the Planning Board at a public hearing on September 9, 2021. Said application included 36 parcels to support the development of up to 3.5 million square feet of warehouse/distribution, office, light industrial/manufacturing, and/or institutional space on the property.

- **Specific Design Plan SDP-1603-01(for infrastructure) & TCP2-026-2021-01**

An overall specific design plan for infrastructure is approved on January 27, 2022, by the Prince George's County Planning Board via Planning Board Resolution 2022-10.

- **TCP2-026-2021**

Signature approval of tree conservation plan 2 received February 18, 2022.

- **County Wide Sectional Map Amendment ("CMA")**

On April 1, 2022, the NCBP is officially rezoned to the LCD (426.52 +/- acres), IE (15 +/- acres), and AR (0.78 +/- acres) Zones.

- **Rough Grading Permit No. 29083-2021-G**

Permit issued by DPIE on April 26, 2022.

- **Basic Plan Amendment A-9968-03**

A-9968-03 for the NCBP was approved for the subject property by the District Council on May 16, 2022 (Zoning Ordinance No. 6-2022), approving 5.5 million square feet of employment and institutional uses permitted on 442 +/- acres of the LCD Zone portion of the subject property.

- **Comprehensive Design Plan Amendment CDP-0505-02**

On May 19, 2022, the Planning Board approved CDP-0505-02 (PGCPB Resolution No. 2022-53), amending the previously approved CDP with seven conditions. The amendment approved 5.5 million square feet of gross floor area, in accordance with A-9968-03. The remainder of the subject property, consisting of 15 acres in the IE Zone, and 0.78 acres in the AR Zone, was not included in this amendment.

- **Preliminary Plan of Subdivision 4-21056**

An overall PPS 4-21056 for the NCBP was approved by the Planning Board via resolution PGCPB No. 2022-70 on June 9, 2022. Said application included 27 parcels to support the development of up to 5.5 million square feet of warehouse/distribution, office, light industrial/manufacturing, and/or institutional space on the property.

OPPOSITION TO EXCEPTIONS

The Appellants' appeal of the CDP Amendment and the TCP1 is limited to only three points of contention set forth in their memorandum filed with District Council on or

about June 21, 2022. The Applicant responds to these three items as follows:

i.) **The Planning Board's approval of CDP-0505-02 is not based on an illegal special law.**

The Appellants' incorrectly assert that CB-22-2020 is an "illegal special law" that requires the denial of the CDP Amendment. CB-22-2020 was a text amendment to the Prince George's County Zoning Ordinance approved by this Council on July 14, 2020. The District Council is authorized under Section 22-104 of the Land Use Article, Maryland Annotated Code to adopt and amend the text of zoning laws for Prince George's County. It is undisputed that CB-22-2020 is legislation that was properly submitted, reviewed, and enacted according to procedures in the adoption of legislation set forth in the Prince George's County Zoning Ordinance (See sections 27-214 through 27-218, Prince George's County Zoning Ordinance). None of the Appellants participated in the properly advertised public hearings related to the adoption of CB-22-2020. Further, none of the Appellants filed any judicial appeal directly challenging the validity and adoption of CB-22-2020. Additionally, it is important to note that CB-22-2020 did not alter or include any required findings of approval for a CDP amendment, which was the specific application type before the Planning Board.

Conversely, the Appellants are now attempting to file a collateral attack against said legislation as part of the instant CDP Amendment appeal before the District Council by incorrectly claiming that it is an illegal special law. Adoption of zoning text amendments (such as CB-22-2020) are quasi-legislative actions and not quasi-judicial zoning actions, and challenges to the adoption of zoning text amendments must come in

proceedings other than administrative appeals.

Notwithstanding the fact that the Appellants have never filed a direct judicial challenge to CB-22-2020, to successfully claim that legislation is an illegal special law, the Appellants have the burden of demonstrating the presence of numerous factors based on the legislative history of the case. The Appellants have only included select items from the administrative record related to CB-22-2020 as part of the record of this CDP Amendment. In this regard, the Appellants' claims are not supported by complete record nor conclusive evidence indicating that CB-22-2020 meets the criteria necessary for the finding of a "special law".

First, the Appellants did not present any conclusive evidence that CB-22-2020 only applies to the NCBP. The Appellants could not make this assertion because the legislation is facially neutral and applies equally to all properties that meet the general requirements of CB-22-2020 both now and in the future. The Appellants are also unable to produce any persuasive evidence in the record that any individuals or businesses sought or received special advantages from the District Council related to the adoption of CB-22-2020. The Appellants make a misguided claim that brief testimony in support of the legislation given by the Applicant's counsel at a public meeting of the District Council somehow demonstrates that the Applicant inappropriately sought and received special advantages in the adoption of the legislation. This is simply not the case and is an absurd proposition. Participation of the Applicant's counsel in a public legislative process to support a text amendment does not qualify as an attempt to exert improper influence over

the District Council. CB-22-2020 was presented as draft legislation by the District Council, and not the Applicant.

The criteria set forth in CB-22-2020 allowing eligible properties to utilize standards of the E-I-A zone are also reasonable. To be eligible under CB-22-2020, a property must have formerly been zoned E-I-A, be a large tract of property equaling 400 or more acres, be adjacent to an existing railroad line, and be adjacent to an existing employment center developed utilizing the E-I-A zone. Further, all roadways supporting future employment uses on the property must connect directly to the street network of an adjacent employment center. It is certainly reasonable for properties that meet all the above criteria within the R-S Zone to be considered an appropriate receiving area for employment uses eligible to develop using E-I-A Zone standards.

The adoption of CB-22-2020 also has a significant public interest underlying its enactment. At the time of its adoption on July 14, 2020, the entire nation, state, and county were in the middle of an unprecedented pandemic related to the spread of COVID-19. The impacts of this pandemic impacted (and continue to impact) day-to-day life for all county residents and placed severe limitations on economic growth within the region. CB-22-2020 was a direct attempt by the District Council to place appropriate modifications to the Prince George's County Zoning Ordinance to create the opportunity for expansion of the commercial tax base and creating new jobs within the County at a time when it was desperately needed. It should be noted that economic benefits testified to, and anticipated as part of the NCBP include (but are not limited to) the following:

- **Job Creation:** Preliminary estimates indicate that the NCBP will create upwards of 6,000 new jobs when fully built out. These job estimates do not include temporary jobs related to the construction and site development of the NCBP. (See Planning Board Decision, p. 14).

- **Commercial Tax Base Increase:** The NCBP, once fully developed and occupied, will significantly increase the County's commercial tax base. (See Planning Board Decision, p. 14). For example, it is estimated that the assessed value (including land, improvements, and personal property) of the NCBP will be over \$500,000,000.00. It is also estimated that the project will generate approximately \$24,000,000.00 million in annual tax revenue.

- **Road Improvements to US 301:** Based on the analyses contained in the traffic impact study for the NCBP, it is anticipated that the proposed employment park would result in the contribution of up to approximately 10 million dollars to the current US 301 CIP project (based on an assumption of up to 5.5 million square feet for the NCBP). It is anticipated at this time that the NCBP's US 301 CIP contribution will be utilized by the Applicant to construct a third northbound thru lane along US 301 from Leeland Road to the north of Trade Zone Avenue. The Applicant is also proffering the construction of a full-movement signal at the intersection of US 301 & Queens Court, subject to SHA approval. The construction of a signal at this location will help alleviate existing congestion at the intersection of US 301 and Trade Zone Avenue. (See Planning Board Decision, p. 17)

and 27).

Finally, the Appellants claim that CB-22-2020 is somehow an “illegal special law” should be barred by the equitable doctrine of laches. Laches applies when there is an unreasonable and prejudicial delay in the assertion of one’s rights. *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 584 (2014); see *Liddy v. Lamone*, 398 Md. 233, 244 (2007) (“[F]or the doctrine [of laches] to be applicable, there must be a showing that the delay [in the assertion of a right] worked a disadvantage to another”) (quoting *Simpers v. Clark*, 239 Md. 395, 403 (1965)). As stated above, the Appellants waited approximately 674 days from the adoption of CB-22-2020 to their first appearance during the Planning Board hearing for the CDP Amendment (via counsel) to allege that CB-22-2020 is somehow an illegal special law.

This is an exceptional passage of time for the Appellants to remain silent on the validity of CB-22-2020 and represents an unreasonable and prejudicial delay in the assertion of any claim related to the legislation. During said 674-day time period, the Applicant has spent millions of dollars in obtaining needed entitlements and permits for the development of the NCBP. Most of these approvals were obtained through properly advertised public hearing processes before the Planning Board and District Council that were never opposed (or even attended) by the Appellants. In reliance upon these approvals, development at the NCBP has already begun with the initiation of grading, clearing, installation of SWM facilities, and other site development activities (based on previous entitlements that are beyond appeal). In fact, so much time has passed since

the adoption of CB-22-2020 that several significant planning and zoning activities have occurred in the County including: i.) the adoption of a completely new County Zoning Ordinance; ii.) the approval of the CMA which rezoned the majority of the NCBP to the new LCD Zone; and iii.) the adoption of the 2022 Bowie, Mitchellville, & Vicinity Master Plan (which designates the NCBP and the adjacent Collington Center as part of the new “Collington Local Employment Area”). As a result of these significant events, CB-22-2020 is part of a now superseded Zoning Ordinance, the NCBP is no longer in the R-S Zone and has been rezoned to the LCD Zone, and the project is now part of an entirely new master plan that strongly recommends employment/industrial uses for the site. The Appellants’ untimely attempt to undermine the validity of CB-22-2020 so long after its adoption could result in incredible financial damages for the Applicant.

The Appellants chose not to directly challenge the validity of CB-22-2020 immediately after its adoption by the District Council and waited hundreds of days thereafter to attack its validity as part of an appeal of the CDP Amendment. The Appellants’ failure to timely assert its challenge to the District Council’s legislative adoption of CB-22-2020 has resulted in significant prejudice to the Applicant and such a claim should be barred by laches.

For all these reasons, the Applicant respectfully requests that the District Council dismiss any claims by the Appellants that CB-22-2020 is an illegal special law.

ii.) The Planning Board’s approval of CDP-0505-02 in fact did satisfy Section 27-521(a)(1) of the Zoning Ordinance.

The Appellants incorrectly assert that the Planning Board erred by approving the

CDP Amendment in contradiction to Section 27-521(a)(1) of the Zoning Ordinance. Said section states in part that the Planning Board should find that the CDP Amendment be “*in conformance with the Basic Plan approved by application per section 27-195.*” The Planning Board clearly made this required finding in its resolution of approval (See Planning Board Decision, p. 12). As mentioned above, the Applicant had filed Basic Plan Amendment A-9968-03 for the NCBP prior to filing the CDP Amendment. Basic Plan Amendment A-9968-03 was approved by the District Council on May 16, 2022, and the Planning Board approved its resolution for the CDP Amendment on May 19, 2022 (3 days after the approval of A-9968-03).

It should also be pointed out that the Planning Board went to great lengths in its decision to show how the proposed CDP Amendment conformed with Basic Plan Amendment A-9968-03. Those findings can be found on pages 5 through 10 of the Planning Board’s final decision. Further, the Planning Board included in its final decision a condition 1(d) which required that prior to certification of the CDP Amendment that the Applicant had to “Obtain final approval of A-9968-03 from the District Council.” (See Planning Board Decision, p. 33). As mentioned above, Basic Plan Amendment A-9968-03 was approved by the District Council on May 16, 2022. As such, condition 1(d) has been satisfied.

Finally, the Appellants assertion ignores section 27-478(c) of the Zoning Ordinance which clearly states that all 3 phases of a Comprehensive Design Zone development (i.e., basic plan, comprehensive design plan, and specific design plan) “may be filed or

considered concurrently.” The fact that the CDP Amendment was pending concurrently at the same time as the CDP Amendment in no way invalidates the actions of the Planning Board in this case.

Based on the above, it should be abundantly clear that the Planning Board made the appropriate and required findings pursuant to Section 27-521(a)(1) of the Zoning Ordinance when determining that the CDP Amendment conformed to Basic Plan Amendment A-9968-03. As such, the Appellants’ argument should be dismissed by the District Council.

iii.) The Planning Board did not err when it approved TCP1-004-2021-02.

The Appellants incorrectly assert that the Planning Board erred by approving the TCP1. First, the Appellants mistakenly claim that the Applicant was required to obtain a specimen tree removal variance before the TCP 1 could be approved. The Applicant did not obtain, nor did it request approval in the TCP1 to remove any additional specimen trees, so no variance was required. As such, the TCP1 did not approve removal of any additional specimen trees that were not previously approved for removal as part of past entitlements. The Planning Board also made findings that a specimen variance request would be needed in the future for the removal of additional specimen trees and said request “shall be submitted with the acceptance of the PPS or SDP, as appropriate.” (See Planning Board Decision, p. 20).

As mentioned previously, the NCBP has a long entitlement history that involves the review and approval removal of specimen trees pursuant to all applicable requirements of

Subtitle 25 of the County Code. The District Council can take administrative notice of the Planning Board's findings as part of its decision of approval in Preliminary Plan 4-21056 as it discusses the long and detailed history of specimen tree variance approvals for the overall NCBP (See Planning Board Resolution PGCPB No. 2022-70, p. 39-42). The Applicants' TCP1 was consistent with all prior approvals involving the removal of specimen trees.

Finally, the Appellants erroneously claim that page A-16 of the 2018 Environmental Technical Manual requires that the TCP1 demonstrate how the Applicant has exhausted all on-site preservation methods (See Appellants' Memorandum p. 8-9). However, Page A-16 of the 2018 Environmental Technical Manual only concerns drawing and submission requirements for a Type 2 Tree Conservation Plan (TCP2). The Planning Board approved a TCP1 (not a TCP2) in conjunction with the CDP Amendment. As such, there was no requirement for the Applicant's TCP1 to conform with the specific requirements for a TCP2, and the Planning Board made no error in approving the TCP1. For these reasons the Appellants' objections to the Planning Board's approval of the TCP 1 should be dismissed by the District Council.

CONCLUSION

In conclusion, the CDP Amendment meets all legal criteria of approval in the Zoning Ordinance and is supported by substantial evidence in the record. Conversely, there is no evidence in the record that the Planning Board made any error in approving

the CDP Amendment or the TCP1. For these reasons, the Appellants' appeal in this matter should be dismissed by the District Council.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of September, 2022, a copy of the foregoing Opposition was mailed, postage prepaid to:

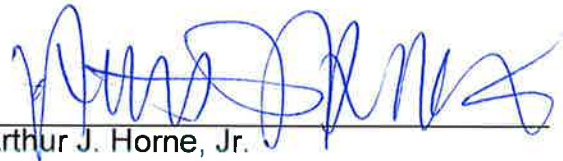
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Persons of Record (List Attached)
(By U.S. Mail Only)



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