

## Moses, Leonard D.

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**Sent:** Tuesday, February 9, 2021 4:51 PM  
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**Subject:** ROW Royal Farms #220 and SE 4816  
**Attachments:** Petition for Appeal and Request for Oral Argument.pdf; Petition for Appeal and Request for Oral Argument SE 4816.pdf

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TWO FARMS, INC., Applicant  
  
IN RE: APPLICATION TO  
AUTHORIZE THE ISSUANCE  
OF BUILDING PERMITS  
FOR STRUCTURES WITHIN A  
PROPOSED RIGHT-OF-WAY

\* BEFORE THE  
\* COUNTY COUNCIL FOR  
\* PRINCE GEORGE’S COUNTY  
\* SITTING AS THE  
\* DISTRICT COUNCIL  
\* CASE NO. \_\_\_\_\_

ROW Royal Farms #220

\* \* \* \* \*

**PETITION FOR APPEAL AND REQUEST FOR ORAL ARGUMENT**

Dharam Singh Goraya, 217 Biddle Road, Accokeek, Maryland 20607, Harshdeo Goraya, 217 Biddle Road, Accokeek, Maryland 20607, Gucharan Boparai, 510 Biddle Road, Accokeek, Maryland 20607, Sharon Gregerson, 403 Biddle Road, Accokeek, Maryland 20607, Kulbir Singh, 301 Biddle Street, Accokeek, Maryland 20607, Navinderdeep Singh, 15814 Livingston Road, Accokeek, Maryland 20607, Pat Hale, 508 Biddle Road, Accokeek, Maryland 20607, Neil Tillman, 15503 Helen Drive, Accokeek, Maryland 20607, Linda Tillman, 15503 Helen Drive, Accokeek, Maryland 20607, Sangee Tharmarajah, 15979 Livingston Road, Accokeek, Maryland 20607 (business address), Sulojana Tharmarajah, 15797 Livingston Road, Accokeek, Maryland 20607 (business address), and Farmington Woods HOA (collectively “Citizen-Protestants”) by their attorney, G. Macy Nelson, appeal the decision of the Zoning Hearing Examiner (“Examiner”), dated January 11, 2021, to approve the issuance of building permits for structures within a proposed right-of-way.

## Procedural History

In a Decision regarding ROW Royal Farms #220 dated May 1, 2019, the Examiner recommended that any and all building permits for structures within a proposed right-of-way be authorized in conjunction with approval of Special Exception 4816 for a gas station.

On November 1, 2019, the District Council (“Council”) remanded ROW Royal Farms #220 to the Examiner (“Remand Order”). The Remand Order instructed the Examiner “to receive and evaluate additional evidence” regarding “[t]he ownership of the Accokeek Exxon” and to present additional testimony or evidence, if any, relating to the specific criteria for approval outlined in PGCC § 27-259(g)(1)(A)–(D). Remand Order 5. The Remand Order also stated “that the Examiner shall reopen the record to receive and evaluate additional evidence” on four additional subjects:

1. Whether the entire property cannot yield a reasonable return to the owner if PGAtlas only depicts the proposed interchange to encumber approximately  $\pm$  40 percent or  $\pm$  1.14 acres of the property;
2. The Table of Uses in the C-S-C Zone for the subject property which would not require issuance of a permit or permits to build within proposed rights-of-way as depicted by PGAtlas;
3. The existing uses on the subject property and the return to the owner without issuance of a permit or permits to build within proposed rights-of-way as depicted by PGAtlas; and
4. How the integrity of the 2014 General Plan or Plan 2035 will be preserved if the District Council approved issuance of a permit or permits to build within proposed rights-of-way as depicted by PGAtlas.

Remand Order 9.

On January 11, 2021, the Examiner issued her proposed decision (“Decision”) authorizing the issuance of building permits for structures within a proposed right-of-way.

### **Argument**

The Council should reverse the Examiner’s Decision to approve the right-of-way because the Examiner erred legally and factually.

Citizen-Protestants set forth below in italics the pertinent portions of the Council’s Remand Order. Citizen-Protestants then quote the relevant portion of the Examiner’s Decision. Citizen-Protestants then present the grounds for the appeal with appropriate references to the record and the Examiner’s decision. Citizens-Protestants also, where appropriate, set forth proposed findings of fact and conclusions of law.

The first issue identified in the Remand Order was:

*The ownership of the Accokeek Exxon—i.e.—testimony or evidence shall be received on whether the parents of Sangeetha Tharmarajah own the business entity as a corporation, a general partnership, a joint venture, a limited liability company, a limited partnership, or a sole proprietorship. Once ownership is clarified on remand, if necessary, the person, persons, or entity may register to become a party or person of record in this case.*

Remand Order 5.

Regarding the ownership issue, the Examiner stated, “neither the Tharmarajahs nor SFMC[] had standing to file the May 31, 2019 Tharmarajah Exceptions to the Zoning

Hearing Examiner's Decision approving the Right-of-Way." Decision 46. That ruling is both legally incorrect and irrelevant.

The ruling was legally incorrect for several reasons. First, the Council's Remand Order stated, "The Tharmarajahs have standing to file exceptions or request review of the Examiner's recommendation." Remand Order 4. Second, Sangee Tharmarajah testified about the ownership of the Accokeek Exxon. Accokeek Exxon is operated by the Saraniya Fuel Marketing Corporation Inc. SFMC owned by Sulojana and Appiah Tharmarajah. The physical property (i.e., convenience store, gasoline pumps, etc.) is owned by Saraniya Fuel Marketing Corporation, Inc. January 21, 2020 Transcript at 5. Saraniya Fuel Marketing Corporation Inc. does not own the land; the land is owned by Global Montello Group and Alliance Energy. *Id.*; *see also* Exhibits 30 A, B. Saraniya Fuel Marketing Corporation Inc. has a franchisee and lease agreement on the land with the Global Montello Group and Alliance Energy. *Id.* at 21; *see also* Exhibit 31. The rent guidelines within the agreement states "Maximum rent is the most Global may annually charge a lessee dealer [Saraniya Fuel Marketing Corporation Inc.] for rent, except as expressly stated herein. It is determined by multiplying the property value by 12 percent and adding the real property tax." *Id.* at 16-17; *see also* Exhibit 31.

The Examiner erred factually when she suggested that SFMC was not in good standing with SDAT. Decision 46. On February 27, 2020, the Examiner admitted into evidence as Exhibit 130 SDAT's certificate that SFMC was in good standing. The Examiner stated, "Exhibit 130 is the certificate of good standing." February 27, 2020 Transcript at 52. SFMC satisfies any test for standing.

In any event, whether the Tharmarajahs or SFMC had standing to appeal the Examiner's decision dated May 1, 2019 is irrelevant to the Citizen-Protestants' current appeal of the Examiner's decision dated January 11, 2021. The Council called up the special exception and right-of-way cases on January 25, 2021. For that reason, the Council need not consider the standing of any citizen or appellant.

The second issue identified in the Remand Order was:

*The criteria for approval to authorize the issuance of a permit within proposed rights-of way—i.e.—the Tharmarajahs, or any other party or person of record, shall be allowed, through their attorney or pro se, to present additional testimony or evidence, if any, relating to the specific criteria for approval outlined in PGCC § 27-259(g)(1A)-(D).*

Remand Order 5.

The Examiner erred legally and factually when she gave little weight to the testimony of Dharam Singh Goraya. Mr. Goraya resides on 217 Biddle Road in very close proximity to the proposed Royal Farms and satisfies any test for standing. He presented testimony relevant "to the specific criteria for approval outlined in PGCC § 27-259(g)(1A)-(D)."

The third issue identified in the Remand Order was:

*Whether the entire property cannot yield a reasonable return to the owner if PGAtlas only depicts the proposed interchange to encumber approximately  $\pm 40$  percent or  $\pm 1.14$  acres of the property[.]*

Remand Order 9.

Citizen-Protestants except to the Examiner's findings and conclusions regarding the third issue. Regarding this issue, the Examiner incorrectly concluded:

(65) In sum, the testimony clearly established that the value of the four parcels assembled far exceeds the value of each of the four parcels valued separately. With the encumbrance as shown on PGAtlas, and without the authorization to construct within the proposed right-of-way, there is likely to be only one right-in/right-out access point along Livingston Road; Biddle Road would need to be widened from its current twenty (20) foot right-of-way to a seventy (70) foot right-of-way and improved; at least one existing building on Parcel 55 would need to be razed; and each of the three developable parcels would almost assuredly be limited to attracting only destination retail uses, which would be likely to generate only approximately thirty percent (30%) of what could otherwise be generated by a pass-by retail use upon an assemblage of the four parcels. Since a pass-by retail use upon an assemblage of the parcels would require a full and unlimited access along Livingston Road, which could not occur without approval of the ROW, as well as parking along the Livingston Road frontage, the entire property cannot yield a reasonable return to the owner with the ultimate right-of-way as shown upon PGAtlas, even though it would only encumber approximately +/-forty percent or +/-1.14 acres of the property.

#### Decision 51–52.

The Council should find that the entire property can yield a reasonable return to the owner because PGAtlas only depicts the proposed interchange to encumber approximately  $\pm$  40 percent or  $\pm$  1.14 acres of the property.

Exhibits 18 and 20 depict the four parcels on the Subject Property and the right of way depicted in the PGAtlas. Approximately 40% of the Subject Property is subject to the right-of-way. December 17, 2019 Transcript at 65, 70. Slightly less than two acres of the Subject Property are not subject to the right-of-way. *Id.* at 64–65, 68.

The Statement of Justification and witnesses described the existing uses. Parcel 52 was improved in 1982 with an electrician's office. Dan LaPlaca testified:

[T]he owner of the business had passed away over a year ago and his widow, I don't know if she tried very hard to lease the building or not,

but it was vacant and it was not being used. And I would guess that the per square footage rental rate that I estimated for the Clagett building would be the same, her building was the same age, was slightly bigger, had a little bit more parking but it was also further off, off the road. So \$11 to \$17 a square foot.

*Id.* at 149.

Parcel 53 was improved in 1959 with a bank. Parcel 54 was improved in 1959 and is currently used as a realtor's office. Remand Order at p. 6. Parcel 55 was improved in 1958 and is "currently being leased to a church for \$35,000 a month." *Id.* at 141.

Approximately 90% of the parcel at the northwest corner of the Subject Property where the electrical company was located is not subject to the right-of-way. *Id.* at 71. A large percentage of the parcel just to the east of the parcel at the northwest corner of the Subject Property where the bank was located is not subject to the right-of-way. Exhibits 18, 20. A significant portion of the parcel that touches the southeast corner of the Subject Property where the church is located is not subject to the right-of-way. *Id.* The smallest parcel at the northeast corner of the Subject Property is subject to the right-of-way. *Id.*

The Council should credit People's Counsel statement that, ". . . an argument can be made and probably will be made that the individual four owners can yield a reasonable return on their individual lots with regards to the percent of the right-of-way that encompasses their lots." December 17, 2019 Transcript at 72-73.

The Subject Property is zoned C-S-C. *Id.* at 68. Exhibit 23 is the Use Table for the C-S-C zone. Michael Lenhart testified that one could have a business on the portion of the Subject Property not subject to the right-of way with access from Biddle Road. *Id.* at 92. Edward Steere identified certain "destination uses" that would be appropriate for the



Subject Property such as a “furniture store,” “sit down restaurant,” “insurance office,” or “real estate office.” *Id.* at 118, 122.

Dan LaPlaca testified about the rental income the four parcels could generate individually. *Id.* at 148–80. On average, each of the four parcels would generate “\$30,000 a year.” *Id.* at 164. Mr. LaPlaca testifies that the best use of the Subject Property that is not subject to the right-of-way is “a nice upscale restaurant or a furniture store.” *Id.* at 153–54.

Mr. Steere testified that “pass-by” uses generate more income than “destination” uses. *Id.* at 119. Mr. LaPlaca testified that, “There is nothing you could put there that would approach the value of one of these highway retail uses.” *Id.* at 154.

The law does not authorize the Examiner to grant the application if the Subject Property can yield a reasonable return even if the Applicant could generate more income if the Examiner granted the application.

For all of these reasons, the Examiner finds that the entire property can yield a reasonable return to the owner because PGAtlas only depicts the proposed interchange to encumber approximately  $\pm 40$  percent or  $\pm 1.14$  acres of the property.

The fourth issue identified in the Remand Order was:

*The Table of Uses in the C-S-C Zone for the subject property which would not require issuance of a permit or permits to build within proposed rights-of-way as depicted by PGAtlas[.]*

Remand Order 9.

Regarding the fourth issue, the Examiner incorrectly concluded:

At the hearing on this matter, the Table of Uses for the C-S-C Zone, which are found at §27-461, was submitted into the record as Exhibit 23. In point of fact, however, it is impossible to determine any particular uses “which would not require issuance of a permit or permits to build within proposed rights-of-way as depicted by PGAtlas” as stated in the Order of Remand. Any use permitted by right in the C-S-C Zone could occupy any of the existing buildings on any of the four parcels. However, if one wishes to obtain a permit to build a new structure upon any of the subject parcels, the proposed use will not be relevant to whether one would be required to obtain permission to build within the proposed rights-of-way depicted on PGAtlas. The determination of whether a use can locate upon a particular property encumbered by a proposed right-of-way is not dependent upon the proposed use. Rather, it would depend upon the size and configuration of the property, the size of the building for the contemplated use, access requirements, the location of the use upon the property, the amount and location of parking that would be required to support the use, landscaping requirements, and other technical requirements of the Zoning Ordinance such as setbacks and minimum lot size and frontage. This finding, therefore, cannot be addressed without the evaluation of a site plan to review these and other factors for any specific use in the Table of Uses contained in § 27-461. *See* 12.17.2019 T.p. 185-186.

#### Decision 52.

Citizen-Protestants except to the Examiner’s findings and conclusions regarding the fourth issue. It is possible to determine particular uses “which would not require issuance of a permit or permits to build within proposed rights-of-way as depicted by PGAtlas.” The Applicant’s witnesses identified such uses. Dan LaPaca testified that on average, each of the four parcels would generate “\$30,000 a year.” December 17, 2019 Transcript at 164. Mr. LaPlaca testified that the best use of the Subject Property that is not subject to the right-of-way is “a nice upscale restaurant or a furniture store.” *Id.* at 153–54.

The fifth issue identified in the Remand Order was:

*The existing uses on the subject property and the return to the owner without issuance of a permit or permits to build within proposed rights-of-way as depicted by PGAtlas[.]*

Remand Order 9.

Regarding the fifth issue, the Examiner concluded:

As discussed in the response to the third issue addressed *supra*, Mr. Daniel LaPlaca, the real estate agent for the property owners, testified that the annual rental income for the Clagett parcel on the corner of Livingston Road and Biddle Road (Parcel 52) would be in the range of \$27,000.00 to \$30,000.00, and the amount rental income for Parcel 53 would be approximately \$33,000.00 to \$35,000.00, and the annual rental income for Parcel 53 would be approximately \$33,000.00 to \$35,000.00 per year. *See* 12/17/2019 T.p., 150. The annual rental income for Parcel 54 was estimated by Mr. LaPlaca to be about the same as that of Parcel 52 (approximately \$27,000.00 to \$30,000.00), and the annual rental income for Parcel 55, (based upon the actual rental amount for a church that was located there in the recent past for \$3,500.00 per month) was estimated to be approximately \$42,000.00 per year. *Id.* at 142, 149. *See also Id.* pp. 163-164. As also previous noted, Charles Clagett testified that with the exception of a home improvement business upon Parcel 53, the buildings located upon Parcels 52, 54 and 55 are all currently vacant. *Id.* p. 82-83. Since the Authorization to Build within a Proposed Right-of-Way would only become an issue in connection with a redevelopment of any or all of the parcels, the testimony by Mr. LaPlaca with regard to the current rental values for each of those properties would represent the return to the owner without the issuance of a permit or permits to build within proposed rights-of-way as depicted by PGAtlas.

Decision 53.

Citizen-Protestants agree that particular uses exist “which would not require issuance of a permit or permits to build within proposed rights-of-way as depicted by PGAtlas.” The Applicant’s witnesses identified such uses. Dan LaPaca testified that on average, each of the four parcels would generate “\$30,000 a year.” December 17, 2019 Transcript at 164. Mr. LaPlaca testified that the best use of the Subject Property that is

not subject to the right-of-way is “a nice upscale restaurant or a furniture store.” *Id.* at 153–54.

The sixth issue identified in the Remand Order was:

*How the integrity of the 2014 General Plan or Plan 2035 will be preserved if the District Council approved issuance of a permit or permits to build within proposed rights-of-way as depicted by PGAtlas.*

Remand Order 9.

Regarding this issue, the Examiner incorrectly concluded:

Evidence on this issue was provided by the testimony of Applicant’s expert witness in land planning, Mr. Mark Ferguson. Mr. Ferguson testified that the recommendation for an interchange at MD 210/Livingston Road intersection is conditional only, in the sense that Plan Prince George’s 2035 states that the interchange should be built only “if necessary.” *See* 12/17/2019 T.p., 183, 185. *See also* Subregion 5 Master Plan, pp. 100, 101, 104. Since the State’s final Environmental Impact Statement, which was approved by the Federal Highway Administration, did not recommend the construction of the interchange at this location, but only intersection improvements, the interchange cannot at this time be found to be “necessary.” *Id.* at 183. Additionally, Mr. Ferguson testified that the General Plan “recommends deprioritizing improvements like this in any case, instead directing them toward centers and transit options.” *Id.* For these reasons, Mr. Ferguson concluded that “even with an entire encumbrance of the property, the integrity of those plans, including the General Plan, would be preserved. Under the PGAtlas taking with a smaller encumbrance of the property it would still be preserved for the same reasons.” *Id.* Based upon this testimony, the integrity of the 2014 General Plan and Plan 2035 will be preserved if the District Council approves this Application.

Decision 53–54.

The Council should find that the integrity of the 2014 General Plan or Plan 2035 will not be preserved if the Council approved issuance of a permit or permits to build within proposed rights-of-way as depicted by PGAtlas.

The Subject Property is located in the southwest quadrant of the intersection of MD 210 and Livingston Road at the gateway to Accokeek. “Subregion 5 is a diverse and important part of the County with a variety of living choices and employment opportunities for residents in the Developing and Rural tiers.” Subregion 5 Master Plan at 27. The Master Plan describes Accokeek as the most rural portion of Subregion 5. It states Accokeek retains a predominantly rural community character with community-oriented commercial development. *Id.*

Livingston Road, which is the linear, traditional heart of the Accokeek community, functions as the hub of community activity with the library, churches, small local businesses, the Fire House, the post office, and the other gathering places situated along a two-mile stretch. Attractive village scale commercial shopping areas are thriving in Accokeek, including small, locally serving commercial and office development on the south side of Livingston Road.

*Id.* Adults and children from around the region, “regard Accokeek as their destination for environmental education programs at the Hard Bargain and National Colonial Farms.”

*Id.*; Exhibit 105.

The Master Plan designates two commercial areas in Accokeek, “Accokeek Village on Livingston Road east of MD 210 and Manokeek Village on MD 228, also east of MD 210.” Subregion 5 Master Plan at 31. It also states, “. . . B&Js BBQ establishment and various commercial businesses located west of MD 210 are recognized as the heart of Accokeek.” *Id.* at 36. The Master Plan also describes Accokeek’s Livingston Road corridor in great detail, explaining:

with care and attention, the traditional character of Livingston Road, between the US Post Office and Keller’s Market, to the east, can be maintained and enhanced as additional development occurs. Today the

overall 'feel' of the roadway is one of quiet, slow-paced rural life. Views are generally closed because of extensive tree cover behind buildings.

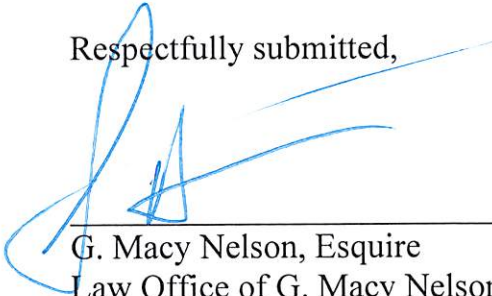
*Id.*

For these reasons, the Council should find that the design of the proposed Royal Farms will not preserve the integrity of the General Plan and Area Master Plan because the Royal Farms will conflict with Accokeek's rural character.

### **Conclusion**

For all of these reasons, Citizen-Protestants urge the Council to disapprove the application to authorize the issuance of building permits for structures within a proposed right-of-way.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9<sup>th</sup> day of February, 2021, a copy of the foregoing Petition for Appeal and Request for Oral Argument was mailed electronically and by first-class mail, postage pre-paid to:

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