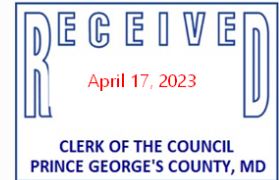


April 17, 2023



Donna J. Brown  
Clerk of the County Council  
Wayne K. Curry Administration Building  
1301 McCormick Drive  
Largo, MD 20774

Item: Suffrage Point – Detailed Site Plan 21001

Request that the District Council Vacate, or Reverse and Remand, the Prince George's County Planning Board's Approval of Detailed Site Plan 21001 (PGCPB 2023-15)

Dear Ms. Brown,

For the reasons stated below, Save Our Sustainable Hyattsville, Inc. (Sustainable Hyattsville) and the undersigned individual Persons of Record (Victoria Boucher, Daniel Broder, Edgar Butt, Helen Butt, Amanda Eisen, Nina Faye, Shanna Fricklas, Mark Graham, Mary Graham, Theresa Immordino, Allison Kole, Irene Marsh, Edward Porter, Greg Smith, and Julie Wolf) (collectively "Citizen Protestants") submit these comments and exceptions, and respectfully request that the District Council either vacate, or reverse and remand, the Prince George's County Planning Board's approval of Suffrage Point – Detailed Site Plan 21001 (DSP 21001). These comments and exceptions are filed for protective and cautionary reasons, and their filing does not preclude the raising of these and any other issues before the District Council.

Sustainable Hyattsville is an all-volunteer community organization that engages in public-interest research, education and advocacy to promote sustainability, protect communities and the environment, and promote good government. Our organization and its members have engaged in the public debate over Magruder Pointe-Suffrage Point since early 2018. Sustainable Hyattsville and its members have participated in Prince George's County Planning Board's and District Council's administrative processes regarding Suffrage-Magruder Pointe.

We have provided Prince George's County agencies and the Maryland Department of the Environment with abundant evidence that demonstrates that Werrlein has, for more than three years, operated well outside of the regulatory regime, and has violated county, state, and federal environmental laws. That evidence has included maps, satellite photos, ground-level photos and videos, and other items

### **Brief Case History**

The Planning Board originally scheduled its hearing of DSP 21001 for January 7, 2023; however, on that day, the Planning Board voted to continue the hearing to January 12. The Board then heard substantial public testimony on a range of relevant issues on January 12. After hearing that testimony, the Board voted to continue the hearing to February 2, to hear testimony on a narrow range of issues. The Board heard public testimony on those issues on February 2 then voted, three to one, to approve DSP 21001. (Sustainable Hyattsville believes it was inappropriate for the Board to

limit that hearing to such a narrow range of issues.) The Board adopted PGCPB 2023-15 on March 2, 2023. Notice of the Planning Board's decision was mailed to Persons of Record on March 7, 2023.

On March 13, 2023, the District Council elected to hear Oral Arguments in this case. Notice of the District Council's decision and the hearing date was mailed to Persons of Record on or about March 20, 2023.

On April 16, 2023, Sustainable Hyattsville submitted to the Clerk of the Council a request that the District Council reschedule Oral Arguments and extend the written comment by a reasonable amount of time due to serious defects in the case record published on the Council's web site.

### **Incorporated by Reference**

We incorporate by reference the following documents, many of which we are submitted to the Planning Board:

1. Exhibits submitted by Sustainable Hyattsville to the Planning Board.
2. Legal memoranda filed by Mr. Holzer on behalf of Sustainable Hyattsville and Hyattsville residents in CAL 19-22819, our challenge to District Council's June 2019 approval of CSP 18002, in our appeal to the Court of Special Appeals, and related to the previous District Council's 2022 consideration of CSP 18002 on remand.
3. Comments submitted to the Maryland Department of the Environment (MDE) by Sustainable Hyattsville, the Anacostia Riverkeeper, and Neighbors of the Northwest Branch, opposing Werrlein's belated July 2021 application for authorization to disrupt the 100-year floodplain, a nearby non-tidal wetland, and the adjacent tributary to the Northwest Branch;
4. MDE's 45-day comments letter regarding Werrlein's defective application for the authorization; where MDE asked Werrlein to provide missing essential information, and asked Werrlein to explain how it came to be operating in the floodplain without the required authorization;
5. The 2004 Gateway Arts District Sector Plan, and the City of Hyattsville requests during the development of that Sector Plan to rezone the lower parcel and properties to Open Space because they lie in the floodplain and should be developed;
6. Various Anacostia Watershed Restoration Plans and Agreements to which Prince George's County and/or the State of Maryland are signatories, and which generally call for protecting and floodplains and wetlands, and protecting and expanding forests and wetlands;
7. Relevant county Functional Master Plans, including the Green Infrastructure Plan;
8. The City of Hyattsville's statements opposing CSP 18002, PPS 4-18001, DSP 18005, PPS 4-21052, and DSP 21001;

9. Comments submitted by the Anacostia Riverkeeper, Neighbors of Northwest Branch, and individual opponents of DSP 21001.
10. The County's Climate Action Plan, which, as a priority, calls for prohibiting construction in the 100-year floodplain;
11. The New Normals climate data set published by the National Oceanographic and Atmospheric Administration (NOAA) in 2021, which show that annual rainfall between 1990 and 2020 had risen significantly over the annual rainfall between 1980 and 2010.
12. *Developing Future Projected Intensity-Duration-Frequency (IDF) Curves: A Technical Report on Data, Methods, and IDF Curves for the Chesapeake Bay Watershed and Virginia*, which was published by RAND, which the Maryland Department of the Environment prominently cites on its web site.
13. The hearing and case records for CSP 18002, PPS 4-18001, DSP 18005, and PPS 4-21052.
14. Relevant provisions of the Clean Water Act, applicable Maryland laws, and County's Water Resources Protection and Grading Code.

## Brief Description of the Property and Proposed Project

The subject property was once the site of the Washington Suburban Sanitary Commission's headquarters building, which was listed on the state and national historic registers. The property comprises roughly eight acres on two main parcels – an upper (or northern) parcel of approximately 3.6 acres, and a lower (or southern) parcel of 3.98 to 4.66 acres.

Werrlein proposes to build 41 townhouses at higher than legally allowed densities, plus sidewalks and a wide alley, on the lower parcel.

The lower parcel's 4.66 acres include the "Clover Street Easement," a .6 acre parcel that the City of Hyattsville had used and maintained as open green space and as public parkland for decades. That land borders the lower parcel on the west, and has large, mature oak trees and a playground. Werrlein assumed ownership of that land through a final plat in early 2021.

According to Federal Emergency Management Administration maps, most or all of the lower parcel lies with the 100-year floodplain of the Anacostia River and its Northwest Branch.

According to delineations and statements by Werrlein in its previous applications to the County, roughly three acres of the lower parcel lie within the 100-year floodplain

However, according to the 100-floodplain delineation map developed by Prince George's County Department of Permitting, Inspections and Enforcement (DPIE), the entire lower parcel sits within the 100-year floodplain of the Northwest Branch of the Anacostia River. That map is available through PG Atlas, which is maintained by the Planning Department, and was developed at the sub-watershed level. According to the delineation map developed by the Federal Emergency Management Administration (FEMA), the majority of the lower parcel sits with the 100-year floodplain; however, last fall FEMA acknowledged that its delineations are obsolete due to climate change.

The lower parcel also lies near a forested non-tidal wetland, the Trumbule Trail Bog. In commenting on DSP 21001 before the Planning Board, Sustainable Hyattsville presented abundant evidence the current delineations of the 100-year floodplain and perhaps of the non-tidal wetland may be obsolete and inaccurate in light of climate change, construction within the watershed, and tree and forest loss within the watershed and sub-watershed.

The lower parcel lies adjacent to:

1. a primary Northwest Branch tributary and the forested stream valley through which it flows;
2. Magruder Woods Park, which shelters that wetland and stream valley, and which is owned by the Maryland-National Capital Park and Planning Commission;
3. David C. Driskell Community Park, which is owned by the City of Hyattsville and which is heavily used by the public for active recreation , social gatherings, and enjoyment of nature; and

#### 4. families' homes.

Driskell Park and Magruder Woods Park border to the south on Northwest Branch Stream Valley Park, and the tributary mentioned above flows into the Northwest Branch roughly 400 yards south of the lower parcel.

According to Flood Factor, a probabilistic tool developed by the nonprofit First Street Foundation, multiple homes along 40th Place are at moderate to severe risk of being flooded. With Flood Factor and in First Street's June 2020 First National Flood Risk Assessment, the nonprofit offers a first-order, nation-wide analysis of the flood risks properties face in light of climate changed-induced changes to precipitation.

Please see: <https://firststreet.org> and

[https://floodfactor.com/city/hyattsville-maryland/2441250\\_fsid](https://floodfactor.com/city/hyattsville-maryland/2441250_fsid)

When it approved the Gateway Arts District Sector Plan in November 2004, the Prince George's County Council wisely rezoned the lower parcel from R-55 (which allows medium-density, single-family detached houses) to Open Space. The Council did so at the City of Hyattsville's request, and on the recommendation of the Prince George's County Planning Board and Planning Department, with the understanding that this would help attain the goal of expanding public open space. The City had asked the Council to rezone the lower parcel and other properties to Open Space, and the Council agreed, because those properties lay within the 100-year flood plain and should not be developed for residential or commercial uses.

The upper parcel is steeply sloped, and has erodible and/or highly erodible clay soils. Until July 2019, the upper parcel was the home of the historic WSSC headquarters building. When Werrlein began to demolish that building and disturb most of the parcel, it had no valid raze (demolition) permit from the Prince George's County Department of Permitting, Inspections and Enforcement (DPIE), no county grading permits, no approved erosion and sediment control plan, and no state-federal stormwater plan. county grading. After Sustainable Hyattsville filed a formal complaint with DPIE Director Melinda Bolling regarding the illegal demolition, Ms. Bolling acknowledged via email on July 18, 2019, that Werrlein had no valid permit. Yet DPIE took no meaningful enforcement action.

Over the course of several months, Werrlein destroyed the building, ground it up into rubble on site, and graded and grubbed more than one acre on the upper parcel. Werrlein left much of the upper parcel stripped of vegetation, stockpiled massive piles of soil and demolition debris on the site, and made no effort to stabilize the exposed soils or stockpiles.

The upper parcel is across the street from dozens of families' homes and uphill of other families' homes. Some of those downhill homes are very near the lower parcel and within or very near the currently delineated 100-year floodplain. The same holds much of the city-owned Driskell Park, and the M-NCPPC-owned Magruder Woods Park and Northwest Branch Stream Valley Park.

## Environmental Justice

According to the US Environmental Protection Agency's Environmental Justice Screening and Mapping Tool, between 59 and 96 percent of residents living in nearby and immediately downstream census tracts are people of color. In addition, based on federal standards, more than 40 percent of the residents living in some of those census tracts have low incomes. Downstream communities, of course, bear the consequences of upstream actions. In recent years, communities downstream of the site have experienced significant flooding. As detailed below, during numerous rain events, Werrlein has discharged sediment and possibly other pollutants onto Gallatin Street, into the local stormwater system, into the adjacent Northwest Branch tributary, and/or into the Northwest Branch.

## Section 303(d) Impairments of the Northwest Branch and the Anacostia River

Under Section 303(d) of the Clean Water Act, the Department lists the lower Northwest Branch and the Anacostia River as impaired for total suspended solids, biological oxygen demand, phosphorus, nitrogen, heptachlor epoxide, enterococcus, trash, and PCBs. The lower Northwest Branch may also be impaired for habitat alterations, lack of riparian buffer, chloride, and sulfate.

Through its numerous violations of county, state and federal laws Werrlein has repeatedly discharged significant sediment loads into the Northwest Branch, and thereby undermined attainment of Water Quality Standards and other metrics.

## **Summary of Errors in the Planning Board's Approval**

### **I. The Planning Board erred when it found that DSP 21001 conforms to Conceptual Site Plan 18002 (CSP 18002).**

On at least two critical points, DSP 21001 fails to conform with CSP 18002 and with the District Council's June 2019 final decision and order approving CSP 18002:

- A. **Werrlein lacks the required floodplain authorizations.** In June 2019 Final Decision and Order approving CSP 18002, the District Council stipulated that, at the time of the Detailed Site Plan, Werrlein must demonstrate that it has all required floodplain authorizations. The Council imposed that same condition in its October 2022 Final Decision and Order re-approving CSP 18002.

The Planning Board assertion that the September 27, 2018 Floodplain Waiver Letter issued by DPIE satisfies this mandatory condition is incorrect. While that waiver is necessary, it clearly is not sufficient to meet the condition.

In that Waiver Letter, DPIE states:

“This approval does not relieve the applicant of responsibility for obtaining any other approvals, license or permits in accordance with Federal, State or local requirements and does not authorize commencement of the proposed project.”

In its December 15, 2022, Technical Referral Memo on DSP 21001, DPIE states:

“The applicant is required to secure state and federal permits from FEMA, MDE, and the US Army Corps of Engineers; however, before impacts to the floodplain can be constructed.”

On its web site, the Maryland Department of the Environment (MDE) states the following:

“The [National Flood Insurance Program] requires counties and towns to issue permits for all development in the 100-year floodplain. Development is broadly defined to include any man-made change to land, including grading, filling, dredging, extraction, storage, subdivision of land, and the construction or improvement of structures. If state and federal permits are required, development may not begin until all necessary permits are issued. Proposed development must not increase flooding or create a dangerous situation during flooding, especially on another person's property. If a structure is involved, it must be constructed to minimize damage during flooding.

“In addition to local permits, activities in the 100-year nontidal floodplain require State Waterway Construction Permits, and activities within 25 feet of or in nontidal wetlands require wetland permits from Water and Science Administration (WSA)/Maryland Department of the Environment (410-537-3745). Activities that may change tidal wetlands require Tidal Wetlands Permits from WSA (410-537-3837). To get applications for any of the above State permits, call 1-800-876-0200. Enforcement assistance can be obtained by calling WSA at (410) 537-3510 or 1-800-922-8017.”

Werrlein has not secured the required state-federal authorization to alter the floodplain, the site-adjacent non-tidal wetland, or the Northwest Branch tributary that emerges from beneath the lower parcel. Therefore, the Planning Board should not have accepted DSP 21001 for review, and it should have approved DSP 21001. In fact, the Planning Board should not have accepted DSP 18005 for review, and the Planning Board and the District Council should not have approved it in 2020.

Werrlein did not even apply for that required state-federal authorization until late July or early August 2021, well after it had graded, grubbed, and otherwise disturbed nearly the entire lower parcel, as well as adjacent M-NCPPC land. Werrlein applied only after Sustainable Hyattsville reported to MDE in May 2021 that Werrlein was working on both parcel, and in the floodplain, without required state-federal permits, and nearly two months after MDE had inspected the site, found Werrlein to be in significant non-compliance, and directed Werrlein to stop all grading and to stabilize all stockpiles of soil and demolition debris.

MDE convened a public hearing on Werrlein’s application in December 2021. The City of Hyattsville, Sustainable Hyattsville, the Anacostia Riverkeeper, Neighbors of the Northwest Branch, and numerous Hyattsville residents filed comments opposing Werrlein’s application.

MDE has not approved Werrlein's application. Therefore, the Planning Board should not have approved or even accepted DSP 21001 for review, and the District Council should not do it now.

**B. The densities sought by Werrlein for the entire project, for townhouses on the upper parcel, and for townhouses on the lower parcel radically exceed the maximum density allowed by the Zoning Ordinance, the 12.3 townhouse units per net acre improperly approved by the District Council in October 2022, and any density found in adjacent or nearby R-55 communities. (Sustainable Hyattsville and numerous individual Persons of Record**

The density on the lower parcel would be 33 townhouses per net acre.

The townhouse density on the upper parcel would be 17.9 units per acre.

The density of houses and townhouses on the entire property would be 16 units per acre.

**II. The Planning Board erred in approving a DSP that would result in a townhouse density that radically exceeds the maximum density allowed by the Zoning Ordinance, the 12.3 townhouse units per net acre approved by the previous District Council in October 2022, and any density found in adjacent or nearby R-55 communities.**

The Planning Board asserts that, based on an approved floodplain area of just 1.29 acre, DSP 21001 would result in a density of 12.2 townhouses per acre, and therefore would not exceed the maximum density of 12.3 townhouses per acre. As we note above and below, this acreage is radically smaller (60 percent smaller) than the floodplain acreages (2.95 acres to 3.02 acres) that the Applicant has presented in its previous zoning and land use application, in its Natural Resources Inventory, and in its Conceptual Stormwater Management Plan. The Planning Board identifies no source for this radically smaller floodplain area, and provides no rationale for suddenly relying on it rather than the floodplain areas presented by the Applicant in previous plans, and relied upon by the Planning Board and the District Council in previous approvals

This radically smaller floodplain area was never publicly presented by the Planning or any other party when previous District Council, in July 2022, discussed the Court of Special Appeals remand of CSP 18002, and in October 2022, approved a density of 12.3 townhouses per acre. Please see the attached transcripts from the Council's July 12, 2022, public meetings Sustainable Hyattsville

In DSP 21001 and throughout the history of this project, Werrlein has repeatedly failed or refused to present a legal Density Calculation, and it has been allowed to by the Planning Department, the Planning Board, and previous District Council. Sustainable Hyattsville members have raised concerns about Werrlein's approach and the illegal, misleading reliance on a gross acreage of 8.26 acres at every, or nearly every, Planning Board and District Council hearing, beginning on July 26, 2018.

Relevant Law



1. Zoning Ordinance Section 27-548.23(b) states, "Development District Standards may modify density regulations only to meet the goals of the Development District and the purposes of the D-D-O Zone. Development District Standards may not permit density in excess of the maximum permitted in the underlying zone."
2. Section 27-442(h) sets the maximum density in the R-55 zone at 6.7 dwelling units per Net Acre of Net Lot/Tract Area.
3. Section 27-442(b) sets the Minimum Net Lot Area in the R-55 Zone at 6,500 square feet per dwelling unit. This standard is consistent with the density standard because 6.7 dwelling units per acre translate to 6500 square feet per dwelling unit, and vice versa. There is nothing unclear or ambiguous in these standards.
4. Section 27-107.01(66) defines "Density" as "The number of 'Dwelling Units' per acre of 'Net Lot Area.' "
5. Section 27-107.01(161) defines Net Lot Area as "The total contiguous area included within the 'Lot Lines' of a 'Lot,' excluding:
  - i. 'Alleys,' 'Streets,' and other public ways; and
  - ii. Land lying within a 'One Hundred (100) Year Floodplain[.]' "

#### Relevant Facts and Argument

The densities sought by Werrlein for the entire project, for townhouses on the upper parcel, and for townhouses on the lower parcel radically exceed the maximum density allowed by the Zoning Ordinance in the R-55 zone, and any density found in adjacent or nearby R-55 communities. The resulting densities conflict with Gateway Arts District Sector Plan's goals and standards for Traditional Residential Neighborhoods.

Calculated according to the Zoning Ordinance's relevant provisions and :

1. The townhouse density on the upper parcel would be 17.9 units per acre, based upon the following facts.
  - a. The gross area of the upper parcel is 3.6 acres.
  - b. At Item 9 of its General Notes Table for PPS 4-18001, Werrlein states that the area of the alley on the upper parcel will be .36 acres. Per the Zoning Ordinance, this acreage may not be included in the Net Lot Area when calculating the townhouse density.
  - c. In its Density Calculation Table for DSP 18005, which covers houses and townhouses on the upper parcel, and infrastructure on the lower parcel, Werrlein allocates 2.4 acres to the detached houses on the upper parcel. (Please see below for how Werrlein presented a misleading Density Calculation in DSP 18005.)
  - d. The combined area of the alley and the land Werrlein allocates to detached houses equals 2.76 acres, which logically and legally must be subtracted from the upper parcel's gross

area to derive the net acres available for the 15 townhouses. That leaves just .84 acres for the townhouses, which results in a density of 17.9 townhouses per net acre.

Density Calculation:

$15 \text{ townhouses} / (3.6 \text{ acres} - 2.4 \text{ acres} - .36 \text{ acre}) = 17.9 \text{ townhouses per net acre}$

2. The townhouse density on the lower parcel would be roughly 33 units per acre, based upon:
  - a. An assumption that the area of the lower parcel is 4.66 acres, even though various sources place the area at either 3.98 or 4.1 acres, and even though Werrlein did not assume ownership by final plat until early 2021, well after the approvals of CSP 18002, PPS 4-18001, and DSP 18005;
  - b. Werrlein's statement at Item 8 in the General Notes Table for PPS 4-18001 that 3.02 acres of the property lies in the floodplain; and
  - c. Werrlein's statement at in its General Notes Table that the lower parcel alley would have an area of .38 acre.

Density Calculation:

$41 \text{ townhouses} / (4.66 \text{ acres} - 3.02 \text{ acres} - .40 \text{ acre}) = 33.1 \text{ townhouses per net acre}$

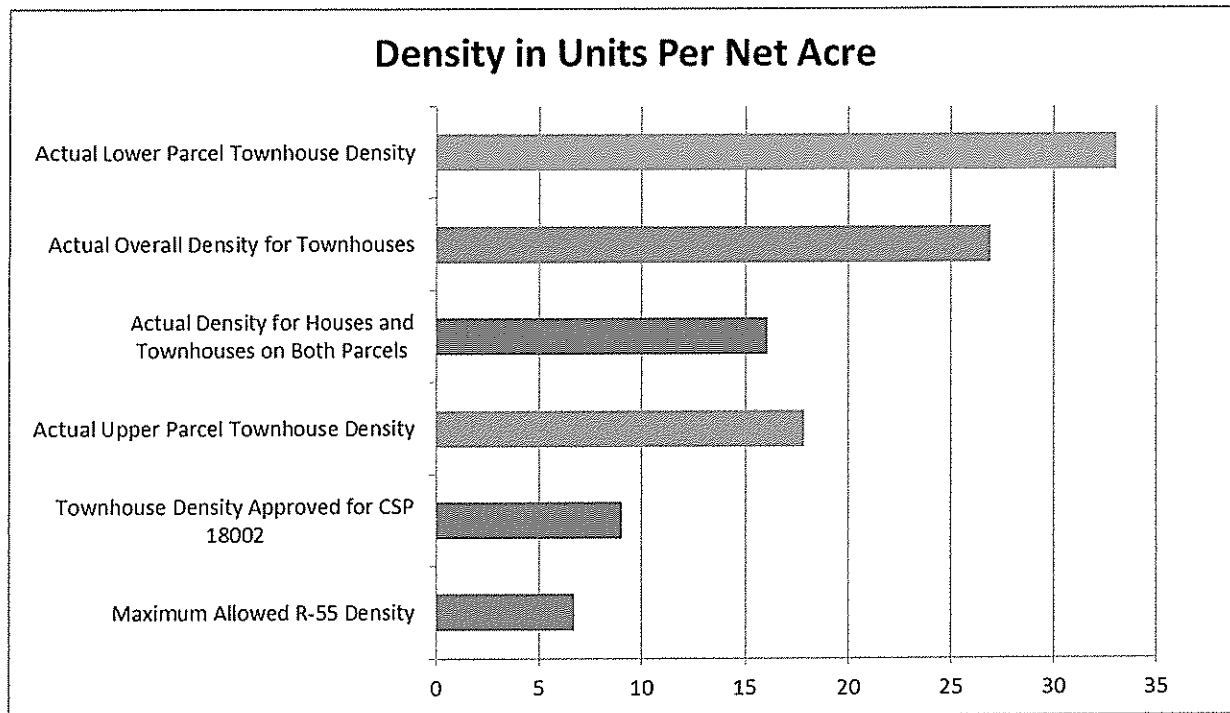
3. The overall density for the entire property would be roughly 16 units per acre, based on the above facts.

Density Calculation:

$72 \text{ houses and townhouses} / (8.26 \text{ acre} - 3.02 \text{ acres} - .76 \text{ acre}) = 16.1 \text{ units per net acre}$

These densities rise even higher if sidewalks and other public ways, perhaps including utility easements, are subtracted from the gross area. The density for detached houses also would rise when all public ways are subtracted to derive the available net lot area. To our knowledge, Werrlein has never provided an acreage for those sidewalk and other public ways in any of its applications, and neither the Planning Board nor the District Council has required it to.

The lower parcel density and the overall densities for the entire property may fall slightly if the floodplain and lower parcel alley overlap; however, the densities still would radically exceed the maximum allowed R-55 density, the nine townhouses per acre approved by the District Council through CSP 18002, and any density found in nearby R-55 neighborhoods.



As we note above, over the course of more than four years and five applications, Werrlein has never submitted a legal and legitimate Density Calculation for any of its plans. Rather than submit a legal Density Calculation and comply with the Zoning Ordinance, Werrlein has lobbied the Planning Department, the Planning Board, and the District Council to calculate density in way that clearly conflicts with Ordinance, *i.e.*, based on gross acres rather than net lot area.

On September 30, 2020, Planning Board Counsel David Warner sent Greg Smith the July 11, 2018 email below from Norman Rivera to Planning staff – Whitney Chellis and Jill Kosack – and an attachment containing Mr. Rivera’s engineer’s calculations. Mr. Warner sent Mr. Rivera’s email to Mr. Smith in a partial response to a public records request that Mr. Smith had filed in mid-August 2020. Mr. Rivera sent his email to Ms. Chellis and Ms. Kosack roughly one week before the Planning Board published the Technical Staff Report for CSP 18002 and barely two weeks before the Planning Board heard and approved CSP 18002.

From: Norman Rivera <normanrivera2012@gmail.com>  
 Sent: Wednesday, July 11, 2018 11:17 AM  
 To: Chellis, Whitney <Whitney.Chellis@ppd.mncppc.org>  
 Cc: Kosack, Jill <Jill.Kosack@ppd.mncppc.org>  
 Subject: Re: Magruder pointe

Thank you and please see the attached which can keep the density at 9/acre.

Sincerely,

Norman

First of all, thank Whitney for your prompt review. I think the best way to do the calculations is to count the floodplain in order to maintain 9 d.u.'s per acre which the City also supports. The following is my engineer's calculations. The singles are fine and the towns can stay at 9 with the floodplain. Please let me know at your convenience so we can finalize this. Again, thank you.

**SF lot area only = 7.9 units/ac**  
**[16units/2.02ac]**

**TH with all HOA and all alley, no floodplain = 11.3 units/ac**  
**[56units/4.96acres]**

**TH with all HOA, all alleys, and floodplain = 9.0 units/ac**  
**[56units/6.24acres]**

So, all the way back in July 2018, Mr. Rivera was, essentially, suggesting to senior planning staff that the way to make the townhouse density appear to be less than nine units per acre was to calculate density in a way that clearly conflicted with the Zoning Ordinance. Planning staff apparently decided to do just that. And so did the Planning Board. And so did the previous District Council. At each step of the process for CSP 18002, PPS 4-18001, and DSP 18005.

Mr. Rivera's claim that the City of Hyattsville supported that approach is odd given that the City Council has never voted to support this project or to calculate density in a way that conflicts with the law.

On October 8, 2020, four days after the District Council heard and approved Detailed Site Plan 18005, Mr. Warner sent Mr. Smith the email below:

From: "Warner, David" <david.warner@mncppc.org>  
To: Greg Smith <gpsmith@igc.org>  
CC: PIA <piarep@mncppc.org>  
Subject: RE: Magruder pointe  
Date: Fri, 9 Oct 2020 03:21:38 +0000

Mr. Smith

We concluded the additional search and the only density calculations submitted by Werrlein pursuant to your request are those that were contained on the Detailed Site Plan (a copy of which was in the casefile for the hearing earlier this week). Please let me know if you need anything else.

Thank you,  
David

In its Density Calculation Table for DSP 18005, Werrlein misleadingly attempted to make the townhouse density on the upper parcel appear to be legal and appear to less than nine units per

acre by dividing those 15 upper-parcel townhouses by the entire gross area of both parcels minus the 3.02 acres in the floodplain and the 2.4 acres allocated to detached houses. Werrlein then claimed that the townhouse density would be just 5.63 units per acre, 16 percent lower than the density of the detached houses on the upper parcel.

Given the central importance of this issue, the following exchange between then-Council Member Deni Taveras, who championed this project beyond reason, and Deborah Borden, who was then Deputy General Counsel for Park and Planning, is disturbing. This exchange took place at the District Council's October 5, 2020 hearing of DSP 18005, and can be found in the attached exhibits.

TAVERAS: And now folks are doing some back-of-the-envelope calculations that are seeming to be assuming certain areas of the parcel to up the amount of units per acre. Can we have somebody speak to that specifically?

CHAIR: So, I know Mr. Zhang is still listed. We do have Ms. Deborah Borden, Deputy General Counsel. I don't know if she could speak to that.

MS. TAVERAS: Yeah, I know it was highly mathematical, but if somebody can –

MS. BORDEN: I can attempt to help you out with this. For the record, this is Deborah Borden. I'm Deputy General Counsel for Park and Planning. Generally speaking, the way that FAR, which is our measure of density, the way it is calculated is you take the gross floor area, and actually, I can read directly from the Code. You take –

MS. TAVERAS: Yeah, (inaudible) that is a net lot area, so the net, is your net floor area the same thing as net lot area?

MS. BORDEN: No, the floor area ratio, and I'm reading directly from the Code, this is Definition 91 in the Code. The ratio of the gross floor area of all buildings or structures on a lot to the area of that lot.

The ratio of the gross floor area of all buildings or structures on a lot to the area of that lot. Now, the important part here for our discussion today is the area of that lot. We have always looked at that as the gross area of the lot.

Whenever you have a lot, that means it's gone through some sort of platting process. And whenever we plat a lot, we take away land for sidewalks, for roads, for sometimes public utility easements. We carve off a piece of that property. And so, when you're talking about, you know, developing density calculations, you include the gross area of the lot, not the net area because that area has been dedicated to public use for that lot and for that community, right, because you can't have a street that literally goes nowhere.

So, in calculating density, no, we don't use the net lot area. We use the gross lot area, because that land has already been donated to the public, but they should get the benefit of that because they have dedicated that land, but it still technically belongs to that lot. That make sense?

MS. TAVERAS: Yes, yes, thank you. Thank you for that clarification.

Sustainable Hyattsville presented abundant evidence that, in light of climate change and other factors, the floodplain delineations presented by the Applicant, and relied upon by the Planning Board, may not be current, accurate, or protective.

In its plans, studies and applications, Werrlein apparently has relied on NOAA's Atlas 14 precipitation data and intensity-duration-frequency (IDF) curve, even though those data and curves are obsolete. Published in 2006, Atlas 14 generally relies on climate data no more recent than 2000.

**IV. The Planning Board erred when it failed to take a close, hard look at whether the stormwater management plans rely on precipitation data and assumptions that probably are obsolete and non-protective, in light of climate change and other factors.**

Rather than address this issue in any serious way, the Planning Board simply ignored the evidence in the record and/or dismissed it as irrelevant. The Board's resolution fails even to mention climate change or global warming.

**V. The Planning Board erred when it failed to find that regulated environmental features would be preserved or restored the fullest extent possible.**

**VI. The Planning Board erred when it failed to take a close, hard look at whether the project and DSP 21001 would fulfill the purposed of the Zoning Ordinance, General Plan, Sector Plan, the Clean Water Act, applicable Maryland laws, County's Water Resources Protection and Grading Code, and plans and agreements to restore the Anacostia River and Chesapeake Bay.**

Floodplain and wetland delineations may be obsolete due to climate change, development in the watershed, significant loss of trees in Hyattsville and the watershed, and other factors. Sustainable Hyattsville has raised this critical issue in comments to the Prince George's County District Council and Planning Board regarding Werrlein's applications for several zoning and land use approvals. We also raised this issue with MDE in our comments opposing Werrlein's June 2021 request for coverage under 14GP.

With respect to forest and tree canopy loss, the City of Hyattsville suffered a net loss of 30 percent (236 acres) of its tree canopy between 2009 and 2020. In addition, the County has approved development projects that have led or will lead to significant forest loss.

Data presented by the National Oceanic Atmospheric Administration in its New Normals show that total annual precipitation and the frequency and intensity of storms have increased in our region. For example, annual rainfall totals at BWI airport increased by nearly five and a half inches from the 1981-2010 period to the 2006-2020 period, which the Chesapeake Legal Alliance rightly describes as "an astounding rate of change in a climatological blink of an eye."

Please see NOAA New Normal data sets for annual precipitation, maximum temperatures, and average annual temperatures in Prince George's County and the District of Columbia, which are sharing via Google Drive. These data, covering 1895 to 2021, show increases in all three metric with decent years and decades generally showing the highest values.

Maryland is well aware that we face new normals, and that the data relied on for stormwater permits, flood plain permits, and other critical plans and decisions are obsolete, and have been obsolete for some time. MDE's Water and Science Administration refers the public to RAND's analysis of Atlas 14 data. RAND's robust demonstrates that Atlas 14 data and intensity duration, and frequency curves have under-forecast trends in recent years, and that they underestimate projected storms and precipitation.

### **Summary of Werrlein's Long-standing, Ongoing Environmental Violations**

Sustainable Hyattsville has submitted abundant evidence that Werrlein has failed to comply with environmental laws and permit. That evidence includes photos and videos taken by Sustainable Hyattsville volunteers, Environmental Compliance Inspection reports from the Maryland Department of the Environment, Werrlein's application for a Non-tidal Wetland Permit, our comments opposing Werrlein's applications, and evidence that Werrlein's plans and the County's approvals fail to account for the more frequent and more severe storms that climate change already is bringing.

Sustainable Hyattsville volunteers have documented Werrlein's violations since July 2019, through correspondence to environmental agencies and through hundreds of photos and videos, taken on scores of days. We timely submitted a very small subset of those images to you, spanning the months from June 2020 to May 7, 2022. We also timely submitted MDE Inspection Reports, covering 19 site visits from June 2, 2021 to March 25, 2022. MDE has never found Werrlein to be in compliance. And DPIE, once it finally began to inspect and report, after we engaged MDE, has found Werrlein to be out of compliance many times.

1. When Werrlein began to demolish the WSSC building in July 2019, it had no valid permit. After Sustainable Hyattsville filed formal complaint with DPIE Director Melinda Bolling, she acknowledged that Werrlein had no permit. Rather than penalize Werrlein for its flagrant violation, DPIE issued an ephemeral, meaningless stop-work order then immediately issued Werrlein an extension on a permit that had expired more than 10 months prior and that may have been improperly issued to begin with.
2. Werrlein also appears to have violated state and federal law by failing to notify MDE and the US Environmental Protection Agency that it planned to demolish a building that once contained asbestos and that may still have contained asbestos at the time of demolition. These notices are required under the National Emissions Standards for Hazardous Air Pollutants and by Maryland law. They also allegedly are required for county raze permits. US EPA and MDE staff have confirmed in writing that they did not find the required notices in their records.
3. During the summer and fall of 2019, Werrlein demolished the building, ground it up on site then left multiple massive piles of soil and demolition waste on the site, completely exposed to wind and precipitation. Neighbors complained of fugitive dust blowing from the demolition site onto their properties, and one family has reported that every member of her household developed respiratory problems during the demolition.

4. During that demolition, Werrlein undertook substantial grading and grubbing, leaving a large area of soil, as well as those massive piles, fully exposed to wind and precipitation. They made no attempt to stabilize those soils or that demolition waste.

Werrlein undertook that work without gaining approval for required plans and without securing required state-federal permits. It had no approved erosion and sediment control plan, no grading permits, and no state-federal permit for construction-related stormwater.

5. During numerous storms in 2020, 2021, and 2022, Werrlein has discharged sediment pollution, and possibly other pollutants, onto Gallatin Street, into the local stormwater systems, and into the Northwest Branch via primary tributaries. Sustainable Hyattsville members have documented those violations with photos and videos since June 2020 to this month. Yet in the summer of 2020, Werrlein Project Manager Karl Granzow reportedly told a local reporter that there had never been any discharges from the site.

That tributary flows through a nearby forested wetland then through a forested stream valley then into the Northwest Branch about 400 yards south of the lower parcel. If those soils or that demolition waste contained toxic materials, there is a good chance some of those toxics flowed into the local stream, into the Northwest Branch, and possibly into the Anacostia River. As we note below, MDE and the US EPA list the Northwest Branch and the Anacostia as impaired for multiple pollutants and conditions.

6. On or about May 13, 2021, Werrlein began to regrade the upper parcel and to expose large areas of soil on the lower parcel. They also cut down trees and other vegetation, and grubbed right down to the stream. For several days, they had no silt fencing in place. As you know, Werrlein had none of the required state-federal permits. In fact, they hadn't even applied for those permits. Soon after Werrlein commenced that work, Sustainable Hyattsville alerted MDE. We did so after checking MDE's on-line databases and consulting with MDE permitting staff. MDE staff confirmed that Werrlein had no permits after checking MDE databases and after inspecting the site on June 2nd.

7. These violations are all the more egregious because:
  - a. Much of the surrounding and downstream communities are environmental justice communities, according the US EPA; and
  - b. Section 303(d) of the Clean Water Act, MDE and the US EPA lists the lower Northwest Branch and the Anacostia River as impaired for total suspended solids, biological oxygen demand, phosphorus, nitrogen, heptachlor epoxide, enterococcus, trash, and PCBs. The lower Northwest Branch may also be impaired for habitat alterations, lack of riparian buffer, chloride, and sulfate.



MS. BORDEN: Dernoga does not agree.

MS. TAVERAS: Well, I mean, that's fine. I mean the --

CHAIR: I just want to note Mr. Dernoga's question when Ms. Taveras is done so.

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CHAIR: Thank you, Ms. Taveras. Let me turn, Mr. Dernoga, I believe, had a question or a response.

MR. DERNOGA: Legal opinion. I was endeavoring to be completely quiet through this event, and I don't pretend to have done the density calculations. In fact, I messaged Mr. Brown and said, do they look good, and he said, they look accurate. So, I was good.

"However, the discussion around what the definition of density is, I'm just sorry, but Ms. Borden is conflating two different things. And she only read the definition of floor area ratio. Floor area ratio is used in the Zoning Ordinance for intensity for commercial, industrial buildings and things of that nature. Density is for dwelling units, and there's a definition of density which she did not read, which says, the number of, quote, dwelling units, close quote, per acre of, quote, net lot acre is the gross track acre is used to calculate density except as noted in a particular section. If you go to net lot acre, it generally, not always, but generally subtracts out the floodplain." So, I haven't done the definition, I haven't done the calculation on the tentative calculation.

Part of what I gathered Mr. Smith said at least in terms of, the terms he was using in calculating density are correct. You can't use floor area ratio to calculate residential density as far as I know, and this is right out of the Zoning Ordinance and I've messaged it to our attorney. I'd love to hear what our attorney thinks. Rather than getting any legal advice from Park and Planning's attorney or Mr. Rivera or Mr. Smith, I'd like to get legal advice from Mr. Kumar.

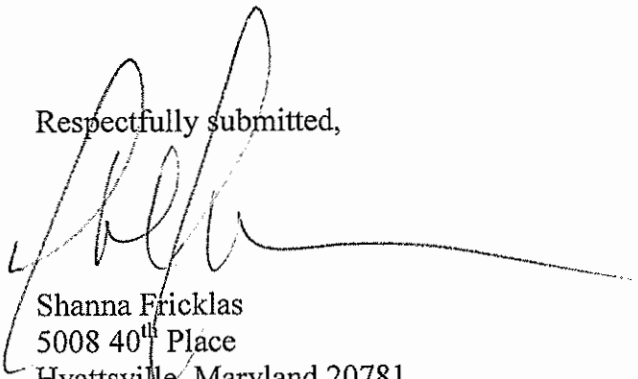
CHAIR: Okay, if Mr. Kumar is on, but I mean, Mr. Dernoga, you read directly from the statute, so I'm not sure what other clarification, but if Mr. Kumar could --

MR. DERNOGA: But I did, Ms. Borden didn't. She read from some other part of the statute that's not relevant.


The emails and District Council hearing discussion above present information that is highly relevant to this case. They help illuminate where, when, and how an error significant enough to cause the Court of Special Appeals to reverse the District Council approval of CSP 18002 may have originated and then persisted throughout the Planning Board's and District Council's decisions regarding this project -- despite persistent efforts by Sustainable Hyattsville and the City of Hyattsville to convince decision makers to avoid and correct this clear error.

**III. The Planning Board erred when it failed to take a close, hard look at whether the floodplain delineations for property are current, accurate, and protective.**

Respectfully submitted,

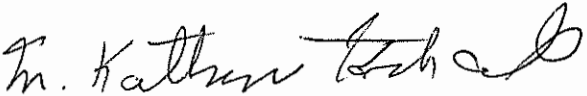


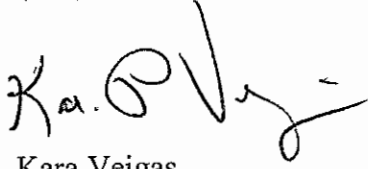
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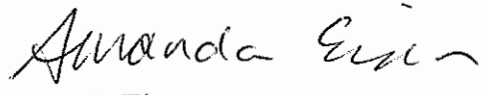
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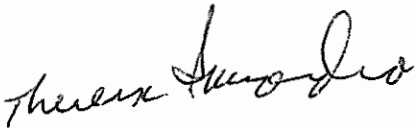


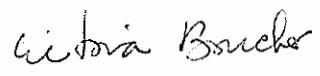
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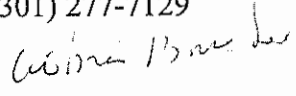


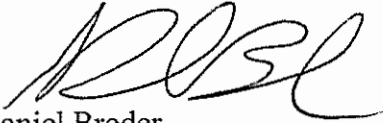
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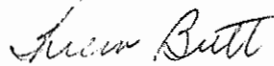
  
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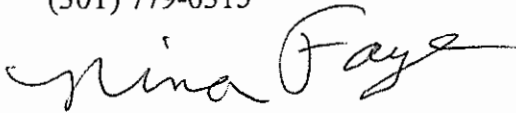


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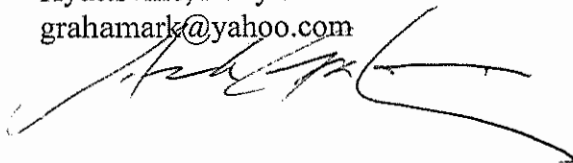
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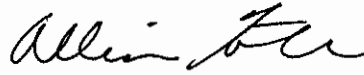
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