Walker-Bey, James T.

From: Greg Smith <gpsmith@igc.org>
Sent: Monday, February 19, 2024 5:00 PM
To: Clerk of the Council; Brown, Donna J.
Cc: sustainhyattsville@gmail.com
Subject: Suffrage Point DSP 21001 - Revised Request to Deny Approval
Attachments: Suffrage Point DSP 21001 - Revised Request to Deny DSP and Variances - G Smith - 20240219.pdf; Suffrage Point DSP 21001 - Request to Deny Approval - G Smith - 20240216.pdf

Importance: High

Follow Up Flag: Follow up
Flag Status: Completed

Dear Ms. Brown,

Please confirm receipt of the attached revised comments.

Sincerely,

Greg Smith
(240) 605-9238

February 19, 2024

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

Via electronic delivery

Item: Suffrage Point – Detailed Site Plan 21001

Amended Comments and Exceptions

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

Dear Ms. Brown,

For the reasons stated below, I respectfully request that the District Council reverse the Prince George's County Planning Board's approval of Suffrage Point – Detailed Site Plan 21001 (DSP 21001), and deny approval of Werrlein's application.

I file these comments for protective and cautionary reasons, and this filing does not preclude the raising of these and any other issues before the District Council.

I serve on the Board of Save Our Sustainable Hyattsville, Inc. (Sustainable Hyattsville), which is an Sustainable Hyattsville is an all-volunteer, community-based non-profit organization that engages in public-interest research, education, and advocacy to protect communities and the environment, and to promote sustainability, good government, and civic participation. Sustainable Hyattsville's members have participated at every stage of the Prince George's County Planning Board's and District Council's administrative reviews of the Suffrage Point-Magruder Pointe project.

Incorporated by Reference

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

1. Comments and exhibits submitted to the Planning Board by Sustainable Hyattsville and other project opponents prior to and during the Board's first hearings of DSP 21001.

2. Comments and exhibits submitted to the District Council by Sustainable Hyattsville and other project opponents – including local residents and Sustainable Hyattsville members Julie Wolf and Allison Kole – prior to and during the Council's May 2023 hearing of DSP 21001. Ms. Kole attached to her comments public records that Sustainable Hyattsville obtained from

M-NCCPC in September 2022. Those records include numerous relevant emails between Planning staff and Werrlein attorney Norman Rivera regarding the questions of how to calculate density and how many houses and townhouses might be allowed through CSP 18002 and DSP 18005. They are highly relevant to the Planning Board's review of DSP 21001. Although Sustainable Hyattsville requested those public records in April 2022, M-NCPPC did not provide them until September 2022, well after the time that Sustainable Hyattsville could have used them in its comments on PPS 4-21052, and M-NCPPC did not include any records generated after early April 2022.

3. Legal memoranda filed by Carroll Holzer, *Esq.* 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.

4. 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;

5. 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;

6. 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;

7. 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;

8. Relevant county Functional Master Plans, including the Green Infrastructure Plan;

9. The City of Hyattsville's statements opposing CSP 18002, PPS 4-18001, DSP 18005, PPS 4-21052, and DSP 21001;

10. Comments submitted by the Anacostia Riverkeeper, Neighbors of Northwest Branch, and individual opponents of DSP 21001.

11. The County's Climate Action Plan, which, as a priority, calls for prohibiting construction in the 100-year floodplain;

12. 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 relative to annual rainfall between 1980 and 2010.

13. *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.

14. The hearing and case records for CSP 18002, PPS 4-18001, DSP 18005, and PPS 4-21052.

15. Relevant provisions of the Clean Water Act, applicable Maryland laws, and County's Water Resources Protection and Grading Code.

16. The 2016 effective FEMA Flood Insurance Study for Prince George's County.

Summary of Issues and Objections.

Werrlein still lacks the required state-federal floodplain authorization to alter the floodplain, nontidal and therefore fails to meet a mandatory condition imposed twice – in 2019 and again in 2022 – by the District Council. Werrlein, therefore fails to comply the mandatory condition that the District Council has imposed twice – in its June 2019 Final Decision and Order approving CSP 18002 and in its October 2022 Final Decision and Order approving CSP 18002 on remand from the Maryland Court of Special Appeals.

Werrlein still fails to present a legally valid density calculation. The method for calculated is dictated

Calculated in compliance with the Zoning Ordinance's clear definitions of "Density" and "Net Lot Area", and based upon alley, floodplain, and detached house acreages that Werrlein has presented in this and previous plans, the actual townhouse densities on the lower parcel, upper parcel, and entire property would

33 townhouses per net acre of Net Lot Area on the lower parcel; 18 townhouses per net acre of Net Lot Area sity

radically exceed the nine townhouses per acre that the would be:

Werrlein's Floodplain Study, DPIE's Gloo The Planning Board continues to fail to consider

I. Werrlein still lacks the required state-federal floodplain authorization and therefore fails to meet a mandatory condition imposed twice – in 2019 and again in 2022 – by the District Council.

In its 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.

As of this writing, MDE has not issued the required authorization to alter or disturb the 100-year floodplain, the adjacent nontidal wetland (the Trumbule Trail Bog), or the adjacent tributary to stream to the Northwest Branch.

On this basis alone, the Planning Board should have denied DSP 21001, and the Planning Director never should have accepted Werrlein's application as "complete" and ready for formal review. Similarly, the Planning Board and the District Council should have denied DSP 18005 in 2020, and the Planning Director never should have accepted that application as "complete." (DSP 18005 covered house and townhouse construction on the upper parcel, and infrastructure on the lower parcel.)

Any assertion that the original Floodplain Waiver Letter issued by the County's Department of Permitting, Inspections, and Enforcement (DPIE) in September 2018 or the new Floodplain Waiver Letter issued by DPIE in July 2023 satisfies this mandatory condition is incorrect. While that waiver is necessary, it clearly is not sufficient to meet the condition.

<u>County Agency Statements Demonstrating that DPIE's Floodplain Waiver Letters Are Necessary But Not Sufficient</u>

In it September 2018 Waiver Letter, DPIE stated:

> "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 July 2023 Waiver Letter, DPIE imposed the following specific conditions, stating:

> "Therefore, the waiver request is hereby approved with the following conditions:
>
> "1. Issuance of a Maryland Department of Environment (MDE) waterway construction permit and satisfaction of the MDE violations on this property is required, prior to issuance of any grading or building permits in the 100-year floodplain.
>
> "2. Issuance of a Notice of Intent (NOI) permit to discharge, issued by MDE, prior to issuance of County grading permits for the development in Phase two of the project (Outparcel 1 - tax account 1830132 -4.66 acres (Phase two)
>
> "3. FEMA LOMR approval is required after construction and prior to release of use/occupancy permits for structures adjacent to the floodplain.
>
> "4. This approval does not relieve the applicant of the 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."

DPIE essentially acknowledges that Werrlein lacked required state-federal approvals to disturb the floodplain, adjacent wetland, and adjacent stream when it submitted DSP 21001 and when

the Planning Board and District Council first heard the case. Werrlein stills lacks those approvals.

Condition 4 presents just one example of the absurdity of certain conditions imposed by the Planning Board and/or DPIE. Werrlein commenced the project in July 2019, and in the ensuing dumped stockpiles of soil and demolition debris on the lower parcel and in the 100-floodplain, which led to discharges of sediment pollution to the local stormwater system, which discharges directly to the tributary stream at the southern end of the lower parcel.

Werrlein recommenced work in May 2021, when it disturbed all, or nearly all, of the entire property, plus parkland owned by M-NCPPC.

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."

Maryland Department of the Environment Statements Demonstrating That DPIE's Waiver Letters Are Insufficient and the Werrlein Must Secure State-Federal Approvals.

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.

Werrlein has never presented a legally valid density calculation, and therefore has not demonstrated conformity with the Zoning Ordinance, the Sector Plan, or the cap that the District Council imposed in its October 2022 approval of CSP 18001 on court remand

1. Section 27-107.01(66) defines "Density" as "The number of 'Dwelling Units' per acre of 'Net Lot Area.' "

2. 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[.]' "

These two clear definitions dictate how density must be calculated in the R-55 Zone and other conventional residential zones. The Zoning Ordinance presents no instance in which density in these zones may or must be calculated based on Net Tract Area, as Werrlein and the Planning now assert in their latest attempt to make the townhouse densities appear to be less than the maximum allowed by the Zoning Ordinance or the District's Council's approval of CSP 18002.

To calculate residential density, one must perform two simple calculations:

One must calculate the Net Lot Area by subtracting from the Gross Lot Area any land within a street alley, or other public way, and any land within the 100-year floodplain.

Then one must then divide the number of dwelling units by the number of acres of Net Lot Area.

The math required here is simple and straightforward enough that any child who has met the learning goals set forth in Grade 3 Mathematics Course Syllabus Prince George's County Public Schools should be able to calculate this project's density.

The New Zoning Ordinance

The fact that residential density must be based on Net Lot Area is further reinforced by the Zoning Ordinance expresses the minimum allowable lot areas for various housing types in residential zone in terms of Net Lot Area, not Net Tract Area. 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 maximum allowed density of 6.7 dwelling units (generally for detached houses in the R-55

Zone); 6.7 houses per acre translates to 6500 square feet per dwelling unit, and vice versa. There is nothing unclear or ambiguous in these standards; and there is no reason to believe that town-houses densities and lot areas may or must be expressed any differently.

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."

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, the nine townhouse units per acre approved by the District Council through CSP 18002, 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:

1. 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 Item 9 in its General Notes Table for PPS 4-21052 that the lower parcel alley would have an area of .4 acre.

    Density Calculation:

    41 townhouses / (4.66 gross acres - 3.02 acres of floodplain - .40 acre of alley)
    = 33.1 townhouses per net acre of Net Lot Area

    More than five years into the review process for this project, Werrlein and the Planning Board now attempt to rely on a proposed (post-construction) floodplain area of just 1.29 acres. This is roughly 60 percent smaller than Werrlein had presented in its previous plans. This strategy fails on several points:

    b. Werrlein's plans, and county agency approvals, fail to account for climate change;

    c. MDE has not approved Werrlein application for approval to alter the floodplain.

d. Werrlein has failed to present sufficient evidence to demonstrate that its proposed floodplain delineation is accurate and likely meet the goals of the Zoning Ordinance, Plan 2035, the Sector Plan, or Subtitle 32

2. The townhouse density on the upper parcel would be 17.9 units per net acre of Net Lot Area, 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 presents 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 17.86 townhouses per net acre of Net Lot Area.

      Density Calculation:

      15 townhouses / (3.6 gross acres - 2.4 acres for attached houses - .36 acre of alley) = 17.9 townhouses per net acre of Net Lot Area

   This is nearly three times the 6.7 units per acre allowed by the Zoning Ordinance, and nearly 50 percent higher than the 12.3 townhouses per net acre allowed by the Council through its reapproval of CSP 18002.

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

   Density Calculation:

   72 houses and townhouses / (8.26 gross acres - 3.02 acres of floodplain - .76 acre of alleys)
   = 16.1 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 Petitioners'

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 Petitioner 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 you 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 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 Council Member Deni Taveras, who has 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.

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 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 Petitioners, Sustainable Hyattsville, and the City of Hyattsville to convince decision makers to avoid and correct this clear error. Therefore, we ask this Honorable Court to take judicial notice of these facts.

II. 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 approved by the District Council in October 2022, and any density found in adjacent or nearby R-55 communities.

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

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

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

These calculations exclude the pre-construction floodplain area and the alleys. 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 sidewalks and other public ways in any of its applications. The Planning Board should finally require it to do so now

In attempting to demonstrate that the townhouse densities would not exceed allowed maximums, the Applicant and Planning staff rely on a floodplain area of just 1.29 acre. 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 applications, in its Natural Resources Inventory, and in its Conceptual Stormwater Management Plan. Relying on this smaller area is improper and entirely speculative. This area and the methodologies used to derive it have not been subject to adequate public review, and MDE has not issued the required floodplain-wetland permit. This radically smaller floodplain area was never publicly presented by the Planning staff 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.

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 the previous District Council. Sustainable Hyattsville and its 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 in July 2018.

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

Sustainable Hyattsville has 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.

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 District Council and Planning Board regarding Werrlein's applications for several zoning land use approvals.

IV. Werrlein's Applications and Plans, and County Approvals, Fail to Account for Climate Change

Werrlein's current application and its floodplain delineations, stormwater management plans, sediment and erosion control plans, and floodplain study all appear to rely on obsolete climate data and fail to take into account clear evidence that climate change already is bringing more extreme weather – include more frequent, more severe storms -- and that this trend will continue and possibly accelerate.

Likewise, the County's approvals of Werrlein's application, studies and plans, and MDE's decision to issue Werrlein with coverage under MDE's obsolete 14GP also failed to account for, and protect from climate change.

In its plans, studies and applications, Werrlein has relied on NOAA's Atlas 14 precipitation data and intensity-duration-frequency (IDF) curve, even though those data and curves are obsolete by more than 20 years. Published in 2006, Atlas 14 relies on climate data no more recent than 2000.

V. Werrlein's Plans, DPIE's Approvals,and the Planning Board's Approvals Failed Account for Climate Change and Apply the Best Available Science

As it reviewed Werrlein's DSP application and the supporting documents submitted by Werrlein, DPIE, and other parties, the Planning Board should have accounted for climate change as fully as possible, and should apply the best available data, information, analysis, science, and policies.

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 metrics with decent years and decades generally showing the highest values.

Prince George's County and the State of Maryland are well aware that we face new climate normal. MDE is well aware that the data relied on for stormwater permits, flood plain permits and compensatory mitigation, erosion and sediment control plans, and other critical plans and decisions are obsolete, and have been obsolete for decades. 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.

We offer a few excerpts from relevant MDE publications, which should also hold for M-NCPPC, DPIE, and other county agencies.

WSA Climate Policy – Climate Change is Water Change

Climate change is water change. As an administration in a public regulatory agency that is responsible for water resources planning and issues water-related permits, we have a professional responsibility to ensure our decisions consider how a changing climate may impact activities that require WSA approval. Some of these climate change factors include sea level rise, storm surge, saltwater intrusion, increased precipitation, ocean acidification and extreme events including floods, heat waves, fires and drought. These can cause secondary impacts like erosion, landslides, harmful algal blooms, degradation of water sources prompting greater treatment needs, increased water demand, increased vulnerability of ecosystems and a decrease in the capacity of State waters to assimilate pollution loads.

Maryland Environment Article §2–1301 through 1306, which established the Maryland Climate Change Commission, compels each State agency to "review its planning, regulatory, and fiscal programs to identify and recommend actions to more fully integrate the consideration of Maryland's greenhouse gas reduction goal and the impacts of climate change". The statute specifically calls for consideration of 'sea level rise, storm surges and flooding, increased precipitation and temperature, and extreme weather events'."

WSA – Building Climate Resiliency

Background

Urban and riverine flooding is a growing issue in Maryland. The increasing number of extreme rainfall events that produce intense precipitation will continue to lead to more urban and riverine flooding events unless steps are taken to mitigate their impacts. The 2017 National Climate Assessment indicates that "heavy downpours are increasing nationally, especially over the last three to five decades. The largest increases are in the Midwest and Northeast. Increases in the frequency and intensity of extreme precipitation events are projected for all U.S. regions"1. The University of Maryland's Center for Disaster Resilience has characterized urban flooding as a "significant source of economic loss, social disruption, and housing inequality."2 The torrential downpours that Maryland recently experienced with Hurricane Ida overwhelmed drainage systems that flooded many roads, businesses, and homes, causing property damage and death. The even more severe impacts that were experienced in New York and New Jersey illustrate the growing public safety risk associated with extreme precipitation events.

Maryland worked to address these flooding issues in 2020 by updating Maryland's stormwater management law, signed by Governor Hogan, that became effective on June 1, 2021. The state's Stormwater Management Law, Environment Article 4-201.1, now requires the Maryland Department of the Environment (MDE) to report on the most recent precipitation data available, investigate flooding events since 2000, and update Maryland's stormwater quantity management standards for flood control. A report on MDE's plans to update stormwater quantity standards is due to the Maryland General Assembly by November 1, 2021, and thereafter, on updates to the stormwater management regulations and other regulations adopted pursuant to this statute**.** MDE is to report on the most recent precipitation data available, defined in the statute as "historical data that describes the relationship between precipitation, intensity, duration, and return period (frequency)." Known as intensity-duration-frequency (IDF) curves, this data is used in various hydrologic models to predict runoff rates and quantities. This information is the basis for both stormwater quality and quantity management design standards. The following are the most recent statewide precipitation data available:

- 2006 National Oceanic and Atmospheric Administration (NOAA) Atlas 14, Precipitation-Frequency Atlas of the United States, Volume 2,3 includes record data through December 2000;

- In early 2021, Maryland Department of Transportation (MDOT), along with the states of Delaware, Virginia, and North Carolina agreed to fund an update to the 2006 NOAA Atlas 14 precipitation data. This work, which began in federal fiscal year 2022, is expected to be completed within three years and will include future rainfall predictions;

- In May 2021, a consortium of universities and the RAND Corporation published forecasted precipitation information using two air emissions scenarios (RCP 4.5 and RCP 8.5), and two time periods (i.e., 2020-2070 and 2050-2100).The forecasted precipitation data can be found at midatlantic-idf.rcc-acis.org/.

The 2006 Atlas 14 precipitation data and the RAND Corporation climate projections incorporate regional atmospheric and topographic variability. Both are available for a number of locations across the state. Table 1 provides, for one location in Maryland, an example of the comparison of precipitation information between the 2006 Atlas 14, and the RAND Corporation's projections due to climate change.

Source: Advancing Stormwater Resiliency in Maryland (A-StoRM) – Maryland's Stormwater Management Climate Change Action Plan FY 2021 Data, report to the Governor, Senate and House, Maryland Department of the Environment, November 2021

There is no evidence in the record that Werrlein's studies or plans, or the agencies' approvals of Werrlein's plans and permit applications, take climate change into account. It is reasonable to assume that Werrlein and the agencies relied on precipitation or storm data contained in NOAA's Atlas 14. NOAA last revised Atlas 14 in 2006, and the precipitation data incorporated into Atlas 14 generally are no newer than 2000, meaning the precipitation data and storm Intensity, Duration, and Frequency Curves that

The FEMA floodplain map for this property and for Prince George's County is based upon a Flood Insurance Study (FIS) that became effective on September 16, 2016. That FIS was published by FEMA, and was developed jointly by FEMA, Prince George's County, and the City of Laurel.

Potential Sources of Flooding on This Property

Flooding on this property and the surrounding properties caused by or contributed to by water coming from multiple directions and sources:

- Precipitation falling directly on a property or surrounding properties
- Water flowing down the Northwest Branch
- Stormwater flowing directly onto the property from land at a higher elevation, e.g., the upper parcel and properties to its north and east, rather than via the Northwest Branch or a nearby tributary.
- Stormwater flowing through the local stormwater system and into the adjacent tributary stream
- Water driven up the Anacostia River and the Northwest Branch by high tides and/or storm surges
- The water table beneath the property

The FEMA Map for This Property Accounts for Just One of These Sources

- Water flowing down the Northwest Branch
- The storm surge analysis for the FEMA 2016 map did not extend up the Anacostia River and the Northwest Branch

FEMA Maps Are Non-Conservative and Potentially Non-Protective in the Following Ways

FEMA maps do not account for the following:

- Precipitation falling directly on a property or surrounding properties (Photos)
- Stormwater flowing directly onto the property from land at a higher elevation, e.g., the upper parcel and properties to its north and east, rather than via the Northwest Branch or a nearby tributary.
- Stormwater flowing through the local stormwater system and into the adjacent tributary stream
- Water driven up the Anacostia River and the Northwest Branch by high tides. (NOAA high tide maps)
- The water table beneath the property rising or being higher than normal due to heavy rains or other factors
- Changes in local land use and topography after a map published
- Changes in stream morphology by sediment loading or other factors after a map is published

FEMA maps assume that only one of these events takes place at a time. That is, FEMA 100-year floodplain maps are based on the one-percent probability that either of these events, but not both, will take place at the same time in a given year. They do not examine what happens if both of these events take place at the same time.

FEMA maps do not examine what happens if either or both of these events take place in conjunction with one or more of these events.

FEMA maps assume that water flow in a stream or river is not obstructed by, for instance, fallen trees or other debris being caught up at a low bridge and creating dam or partial dam.

This FEMA Map probably doesn't account for:

- Precipitation falling directly on the floodplain property or adjacent properties, whether in or near the floodplain.
- Precipitation falling on land that: a.is uphill from the floodplain; and b: may drain to the floodplain on its way to the water course or floodway. In this case, the local FEMA map would not count on stormwater generated
- Extreme high tides
- Climate Chang

Climate Change Impacts That This FEMA Map Probably Doesn't Account for:

- Changes in the intensity, duration, and frequency of storms
- Increases in the frequency of severe or extreme storms
- Sea level rise
- Higher storm surges due to sea level rise and-or more severe storms
- Higher tides due to sea level rise

VII. The Planning Board 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. Except to note, very briefly, in its resolution that opponents raised concerns about this issue, the Board's resolution fails even to mention climate change or global warming.

VIII. The Planning Board failed to give adequate weight to Werrlein's History of Environmental Violations and DPIE's failure to inspect, enforce, or even require Werrlein to obtain required county, state, and federal approval before commencing work on the upper parcel in 2019 and then across the entire property in 2021..

IX. Based upon the errors outlined above, the Planning Board could not credibly find that regulated environmental features would be preserved or restored to the fullest extent possible.

X. Based upon the errors outlined above, the Planning Board could not credibly find that the DSP 21001 would fulfill the purposes 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.

Sincerely,

Greg Smith
Board Member
Sustainable Hyattsville
4204 Farragut Street
Hyattsville, Maryland 20781
gpsmith@igc.org

February 16, 2024

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

Via electronic delivery

Item: Suffrage Point – Detailed Site Plan 21001

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

Dear Ms. Brown,

For the reasons stated below, I respectfully request that the District Council reverse the Prince George's County Planning Board's approval of Suffrage Point – Detailed Site Plan 21001 (DSP 21001), and deny approval of Werrlein's application.

I file these comments for protective and cautionary reasons, and this filing does not preclude the raising of these and any other issues before the District Council.

I serve on the Board of Save Our Sustainable Hyattsville, Inc. (Sustainable Hyattsville), which is an Sustainable Hyattsville is an all-volunteer, community-based non-profit organization that engages in public-interest research, education, and advocacy to protect communities and the environment, and to promote sustainability, good government, and civic participation. Sustainable Hyattsville's members have participated at every stage of the Prince George's County Planning Board's and District Council's administrative reviews of the Suffrage Point-Magruder Pointe project.

Incorporated by Reference

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

1. Comments and exhibits submitted to the Planning Board by Sustainable Hyattsville and other project opponents prior to and during the Board's first hearings of DSP 21001.

2. Comments and exhibits submitted to the District Council by Sustainable Hyattsville and other project opponents – including local residents and Sustainable Hyattsville members Julie Wolf and Allison Kole – prior to and during the Council's May 2023 hearing of DSP 21001. Ms. Kole attached to her comments public records that Sustainable Hyattsville obtained from M-NCCPC in September 2022. Those records include numerous relevant emails from between Planning staff and Werrlein attorney Norman Rivera regarding the questions of how

to calculate density and how many houses and townhouses might be allowed through CSP 18002 and DSP 18005. They are highly relevant to the Planning Board's review of DSP 21001. Although Sustainable Hyattsville requested those public records in April 2022, M-NCPPC did not provide them until September 2022, well after the time that Sustainable Hyattsville could have used them in its comments on PPS 4-21052, and M-NCPPC did not include any records generated after early April 2022.

3. Legal memoranda filed by Carroll Holzer, *Esq.* 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.

4. 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;

5. 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;

6. 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;

7. 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;

8. Relevant county Functional Master Plans, including the Green Infrastructure Plan;

9. The City of Hyattsville's statements opposing CSP 18002, PPS 4-18001, DSP 18005, PPS 4-21052, and DSP 21001;

10. Comments submitted by the Anacostia Riverkeeper, Neighbors of Northwest Branch, and individual opponents of DSP 21001.

11. The County's Climate Action Plan, which, as a priority, calls for prohibiting construction in the 100-year floodplain;

12. 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 relative to annual rainfall between 1980 and 2010.

13. *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.

14. The hearing and case records for CSP 18002, PPS 4-18001, DSP 18005, and PPS 4-21052.

15. Relevant provisions of the Clean Water Act, applicable Maryland laws, and County's Water Resources Protection and Grading Code.

16. The 2016 effective FEMA Flood Insurance Study for Prince George's County.

Issues and Objections.

I. Werrlein still lacks the required state-federal floodplain authorization and therefore fails to meet a mandatory condition imposed twice – in 2019 and again in 2022 – by the District Council.

In its 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.

As of this writing, MDE has not issued the required authorization to alter or disturb the 100-year floodplain, the adjacent nontidal wetland (the Trumbule Trail Bog), or the adjacent tributary to stream to the Northwest Branch.

On this basis alone, the Planning Board should have denied DSP 21001, and the Planning Director never should have accepted Werrlein's application as "complete" and ready for formal review. Similarly, the Planning Board and the District Council should have denied DSP 18005 in 2020, and the Planning Director never should have accepted that application as "complete." (DSP 18005 covered house and townhouse construction on the upper parcel, and infrastructure on the lower parcel.)

Any assertion that the original Floodplain Waiver Letter issued by the County's Department of Permitting, Inspections, and Enforcement (DPIE) in September 2018 or the new Floodplain Waiver Letter issued by DPIE in July 2023 satisfies this mandatory condition is incorrect. While that waiver is necessary, it clearly is not sufficient to meet the condition.

<u>County Agency Statements Demonstrating that DPIE's Floodplain Waiver Letters Are Necessary But Not Sufficient</u>

In it September 2018 Waiver Letter, DPIE stated:

> "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 July 2023 Waiver Letter, DPIE imposed the following specific conditions, stating:

> "Therefore, the waiver request is hereby approved with the following conditions:
>
> "1. Issuance of a Maryland Department of Environment (MDE) waterway construction permit and satisfaction of the MDE violations on this property is required, prior to issuance of any grading or building permits in the 100-year floodplain.
>
> "2. Issuance of a Notice of Intent (NOi) permit to discharge, issued by MDE, prior to issuance of County grading permits for the development in Phase two of the project (Outparcel 1 - tax account 1830132 -4.66 acres (Phase two)
>
> "3. FEMA LOMR approval is required after construction and prior to release of use/occupancy permits for structures adjacent to the floodplain.
>
> "4. This approval does not relieve the applicant of the 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."

DPIE essentially acknowledges that Werrlein lacked required state-federal approvals to disturb the floodplain, adjacent wetland, and adjacent stream when it submitted DSP 21001 and when the Planning Board and District Council first heard the case. Werrlein stills lacks those approvals.

Condition 4 presents just one example of the absurdity of certain conditions imposed by the Planning Board and/or DPIE. Werrlein commenced the project in July 2019, and in the ensuing dumped stockpiles of soil and demolition debris on the lower parcel and in the 100-floodplain, which led to discharges of sediment pollution to the local stormwater system, which discharges directly to the tributary stream at the southern end of the lower parcel.

Werrlein recommenced work in May 2021, when it disturbed all, or nearly all, of the entire property, plus parkland owned by M-NCPPC.

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."

Maryland Department of the Environment Statements Demonstrating That DPIE's Waiver Letters Are Insufficient and the Werrlein Must Secure State-Federal Approvals.

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.

II. Werrlein has never presented a legally valid density calculation, and therefore has not demonstrated conformity with the Zoning Ordinance, the Sector Plan, or the

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(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.

3. Section 27-107.01(66) defines “Density” as "The number of 'Dwelling Units' per acre of 'Net Lot Area.' "

4. 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, the nine townhouse units per acre approved by the District Council through CSP 18002, 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:

1. 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 Item 9 in its General Notes Table for PPS 4-21052 that the lower parcel alley would have an area of .4 acre.

      Density Calculation:

      41 townhouses / (4.66 gross acres - 3.02 acres of floodplain - .40 acre of alley)
      = 33.1 townhouses per net acre of Net Lot Area

   More than five years into the review process for this project, Werrlein and the Planning Board now attempt to rely on a proposed (post-construction) floodplain area of just 1.29 acres. This is roughly 60 percent smaller than Werrlein had presented in its previous plans. This strategy fails on several points:

      a. Werrlein’s plans, and county agency approvals, fail to account for climate change;

b. MDE has not approved Werrlein application for approval to alter the floodplain.

c. Werrlein has failed to present sufficient evidence to demonstrate that its proposed floodplain delineation is accurate and likely meet the goals of the Zoning Ordinance, Plan 2025, the Sector Plan, or Subtitle 32

2. The townhouse density on the upper parcel would be 17.9 units per net acre of Net Lot Area, 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 presents 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 17.86 townhouses per net acre of Net Lot Area.

      Density Calculation:

      15 townhouses / (3.6 gross acres - 2.4 acres for attached houses - .36 acre of alley) = 17.9 townhouses per net acre of Net Lot Area

   This is nearly three times the 6.7 units per acre allowed by the Zoning Ordinance, and nearly 50 percent higher than the 12.3 townhouses per net acre allowed by the Council through its reapproval of CSP 18002.

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

   Density Calculation:

   72 houses and townhouses / (8.26 gross acres - 3.02 acres of floodplain - .76 acre of alleys)
   = 16.1 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 Petitioners' 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 Petitioner 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 you 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 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 Council Member Deni Taveras, who has 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.

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 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 Petitioners, Sustainable Hyattsville, and the City of Hyattsville to convince decision makers to avoid and correct this clear error. Therefore, we ask this Honorable Court to take judicial notice of these facts.

III. 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 approved by the District Council in October 2022, and any density found in adjacent or nearby R-55 communities.

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

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

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

These calculations exclude the pre-construction floodplain area and the alleys. 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 sidewalks and other public ways in any of its applications. The Planning Board should finally require it to do so now

In attempting to demonstrate that the townhouse densities would not exceed allowed maximums, the Applicant and Planning staff rely on a floodplain area of just 1.29 acre. 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 applications, in its Natural Resources Inventory, and in its Conceptual Stormwater Management Plan. Relying on this smaller area is improper and entirely speculative. This area and the methodologies used to derive it have not been subject to adequate public review, and MDE has not issued the required floodplain-wetland permit. This radically smaller floodplain area was never publicly presented by the Planning staff 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.

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 the previous District Council. Sustainable Hyattsville and its 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 in July 2018.

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

Sustainable Hyattsville has 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.

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 District Council and Planning Board regarding Werrlein's applications for several zoning land use approvals.

V. Werrlein's Applications and Plans, and County Approvals, Fail to Account for Climate Change

Werrlein's current application and its floodplain delineations, stormwater management plans, sediment and erosion control plans, and floodplain study all appear to rely on obsolete climate data and fail to take into account clear evidence that climate change already is bringing more extreme weather – include more frequent, more severe storms -- and that this trend will continue and possibly accelerate.

Likewise, the County's approvals of Werrlein's application, studies and plans, and MDE's decision to issue Werrlein with coverage under MDE's obsolete 14GP also failed to account for, and protect from climate change.

In its plans, studies and applications, Werrlein has relied on NOAA's Atlas 14 precipitation data and intensity-duration-frequency (IDF) curve, even though those data and curves are obsolete by more than 20 years. Published in 2006, Atlas 14 relies on climate data no more recent than 2000.

VI. Werrlein's Plans, DPIE's Approvals,and the Planning Board's Approvals Failed Account for Climate Change and Apply the Best Available Science

As it reviewed Werrlein's DSP application and the supporting documents submitted by Werrlein, DPIE, and other parties, the Planning Board should have accounted for climate change as fully as possible, and should apply the best available data, information, analysis, science, and policies.

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 metrics with decent years and decades generally showing the highest values.

Prince George's County and the State of Maryland are well aware that we face new climate normal. MDE is well aware that the data relied on for stormwater permits, flood plain permits and compensatory mitigation, erosion and sediment control plans, and other critical plans and decisions are obsolete, and have been obsolete for decades. 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.

We offer a few excerpts from relevant MDE publications, which should also hold for M-NCPPC, DPIE, and other county agencies.

WSA Climate Policy – Climate Change is Water Change

Climate change is water change. As an administration in a public regulatory agency that is responsible for water resources planning and issues water-related permits, we have a professional responsibility to ensure our decisions consider how a changing climate may impact activities that require WSA approval. Some of these climate change factors include sea level rise, storm surge, saltwater intrusion, increased precipitation, ocean acidification and extreme events including floods, heat waves, fires and drought. These can cause secondary impacts like erosion, landslides, harmful algal blooms, degradation of water sources prompting greater treatment needs, increased water demand, increased vulnerability of ecosystems and a decrease in the capacity of State waters to assimilate pollution loads.

Maryland Environment Article §2–1301 through 1306, which established the Maryland Climate Change Commission, compels each State agency to "review its planning, regulatory, and fiscal programs to identify and recommend actions to more fully integrate the consideration of Maryland's greenhouse gas reduction goal and the impacts of climate change". The statute specifically calls for consideration of 'sea level rise, storm surges and flooding, increased precipitation and temperature, and extreme weather events'."

WSA – Building Climate Resiliency

Background

Urban and riverine flooding is a growing issue in Maryland. The increasing number of extreme rainfall events that produce intense precipitation will continue to lead to more urban and riverine flooding events unless steps are taken to mitigate their impacts. The 2017 National Climate Assessment indicates that "heavy downpours are increasing nationally, especially over the last three to five decades. The largest increases are in the Midwest and Northeast. Increases in the frequency and intensity of extreme precipitation events are projected for all U.S. regions"1. The University of Maryland's Center for Disaster Resilience has characterized urban flooding as a "significant source of economic loss, social disruption, and housing inequality."2 The torrential downpours that Maryland recently experienced with Hurricane Ida overwhelmed drainage systems that flooded many roads, businesses, and homes, causing property damage and death. The even more severe impacts that were experienced in New York and New Jersey illustrate the growing public safety risk associated with extreme precipitation events.

Maryland worked to address these flooding issues in 2020 by updating Maryland's stormwater management law, signed by Governor Hogan, that became effective on June 1, 2021. The state's Stormwater Management Law, Environment Article 4-201.1, now requires the Maryland Department of the Environment (MDE) to report on the most recent precipitation data available, investigate flooding events since 2000, and update Maryland's stormwater quantity management standards for flood control. A report on MDE's plans to update stormwater quantity standards is due to the Maryland General Assembly by November 1, 2021, and thereafter, on updates to the stormwater management regulations and other regulations adopted pursuant to this statute**.** MDE is to report on the most recent precipitation data available, defined in the statute as "historical data that describes the relationship between precipitation, intensity, duration, and return period (frequency)." Known as intensity-duration-frequency (IDF) curves, this data is used in various hydrologic models to predict runoff rates and quantities. This information is the basis for both stormwater quality and quantity management design standards. The following are the most recent statewide precipitation data available:

- 2006 National Oceanic and Atmospheric Administration (NOAA) Atlas 14, Precipitation-Frequency Atlas of the United States, Volume 2,3 includes record data through December 2000;

- In early 2021, Maryland Department of Transportation (MDOT), along with the states of Delaware, Virginia, and North Carolina agreed to fund an update to the 2006 NOAA Atlas 14 precipitation data. This work, which began in federal fiscal year 2022, is expected to be completed within three years and will include future rainfall predictions;

- In May 2021, a consortium of universities and the RAND Corporation published forecasted precipitation information using two air emissions scenarios (RCP 4.5 and RCP 8.5), and two time periods (i.e., 2020-2070 and 2050-2100).The forecasted precipitation data can be found at midatlantic-idf.rcc-acis.org/.

The 2006 Atlas 14 precipitation data and the RAND Corporation climate projections incorporate regional atmospheric and topographic variability. Both are available for a number of locations across the state. Table 1 provides, for one location in Maryland, an example of the comparison of precipitation information between the 2006 Atlas 14, and the RAND Corporation's projections due to climate change.

Source: Advancing Stormwater Resiliency in Maryland (A-StoRM) – Maryland's Stormwater Management Climate Change Action Plan FY 2021 Data, report to the Governor, Senate and House, Maryland Department of the Environment, November 2021

There is no evidence in the record that Werrlein's studies or plans, or the agencies' approvals of Werrlein's plans and permit applications, take climate change into account. It is reasonable to assume that Werrlein and the agencies relied on precipitation or storm data contained in NOAA's Atlas 14. NOAA last revised Atlas 14 in 2006, and the precipitation data incorporated into Atlas 14 generally are no newer than 2000, meaning the precipitation data and storm Intensity, Duration, and Frequency Curves that

The FEMA floodplain map for this property and for Prince George's County is based upon a Flood Insurance Study (FIS) that became effective on September 16, 2016. That FIS was published by FEMA, and was developed jointly by FEMA, Prince George's County, and the City of Laurel.

Potential Sources of Flooding on This Property

Flooding on this property and the surrounding properties caused by or contributed to by water coming from multiple directions and sources:

- Precipitation falling directly on a property or surrounding properties
- Water flowing down the Northwest Branch
- Stormwater flowing directly onto the property from land at a higher elevation, e.g., the upper parcel and properties to its north and east, rather than via the Northwest Branch or a nearby tributary.
- Stormwater flowing through the local stormwater system and into the adjacent tributary stream
- Water driven up the Anacostia River and the Northwest Branch by high tides and/or storm surges
- The water table beneath the property

The FEMA Map for This Property Accounts for Just One of These Sources

- Water flowing down the Northwest Branch
- The storm surge analysis for the FEMA 2016 map did not extend up the Anacostia River and the Northwest Branch

FEMA Maps Are Non-Conservative and Potentially Non-Protective in the Following Ways

FEMA maps do not account for the following:

- Precipitation falling directly on a property or surrounding properties (Photos)
- Stormwater flowing directly onto the property from land at a higher elevation, e.g., the upper parcel and properties to its north and east, rather than via the Northwest Branch or a nearby tributary.
- Stormwater flowing through the local stormwater system and into the adjacent tributary stream
- Water driven up the Anacostia River and the Northwest Branch by high tides. (NOAA high tide maps)
- The water table beneath the property rising or being higher than normal due to heavy rains or other factors
- Changes in local land use and topography after a map published
- Changes in stream morphology by sediment loading or other factors after a map is published

FEMA maps assume that only one of these events takes place at a time. That is, FEMA 100-year floodplain maps are based on the one-percent probability that either of these events, but not both, will take place at the same time in a given year. They do not examine what happens if both of these events take place at the same time.

FEMA maps do not examine what happens if either or both of these events take place in conjunction with one or more of these events.

FEMA maps assume that water flow in a stream or river is not obstructed by, for instance, fallen trees or other debris being caught up at a low bridge and creating dam or partial dam.

This FEMA Map probably doesn't account for:

- Precipitation falling directly on the floodplain property or adjacent properties, whether in or near the floodplain.
- Precipitation falling on land that: a.is uphill from the floodplain; and b: may drain to the floodplain on its way to the water course or floodway. In this case, the local FEMA map would not count on stormwater generated
- Extreme high tides
- Climate Chang

Climate Change Impacts That This FEMA Map Probably Doesn't Account for:

- Changes in the intensity, duration, and frequency of storms
- Increases in the frequency of severe or extreme storms
- Sea level rise
- Higher storm surges due to sea level rise and-or more severe storms
- Higher tides due to sea level rise

VII. The Planning Board 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. Except to note, very briefly, in its resolution that opponents raised concerns about this issue, the Board's resolution fails even to mention climate change or global warming.

VIII. The Planning Board failed to give adequate weight to Werrlein's History of Environmental Violations

IX. Based upon the errors outlined above, the Planning Board could not credibly find that regulated environmental features would be preserved or restored to the fullest extent possible.

X. Based upon the errors outlined above, the Planning Board could not credibly find that the DSP 21001 would fulfill the purposes 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.

Sincerely,

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