

LAW OFFICES
GIBBS AND HALLER
1300 CARAWAY COURT, SUITE 102
LARGO, MARYLAND 20774

EDWARD C. GIBBS, JR.
THOMAS H. HALLER
JUSTIN S. KORENBLATT

(301) 306-0033
FAX (301) 306-0037
gibbshaller.com

May 19, 2021



Ms. Donna J. Brown
Clerk
Prince George's County Council
Sitting as the District Council
County Administration Building
Upper Marlboro, Maryland 20772

RE: DSP-04067-10 and DDS-672 (Woodmore Commons)

Dear Ms. Brown:

The referenced cases have been called up for review by the Prince George's County Council, sitting as the District Council ("District Council"). I represent the applicant and the owner of the property forming the subject matter of these applications, Balk Hill Ventures LLC. The principals of Balk Hill Ventures LLC developed and constructed the commercial component of Woodmore Towne Centre which is immediately adjacent to the property forming the subject matter of this application.

The Property

Balk Hill Ventures LLC was the owner of two recorded parcels known as Parcel 1 and Parcel 2. Parcel 1 has been further subdivided and now consists of Parcels 10 and 11 (Parcel 11 has now been conveyed). Parcels 10 and 11 comprise a total of 9.34 acres while Parcel 2 comprises 8.6 acres. All of the land owned by Balk Hill Ventures LLC is currently zoned M-X-T (Mixed Use Transportation Oriented). These parcels are part of a larger development project which comprises approximately 125.4 acres and which is also zoned M-X-T and which is known as Balk Hill.

As noted above, Parcel 1 has now been further subdivided into Parcel 10 and Parcel 11. Parcel 10 comprises 2.04 acres. The balance of what was previously Parcel 1 (Parcel 11) was the subject of a Detailed Site Plan (DSP-04067-09) which was approved by the District Council in November of 2020. That Detailed Site Plan approved the construction of 268 multifamily dwelling units, a 5,000 square foot clubhouse and various areas of open space.

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A copy of a map depicting Parcels 2, 10 and 11 is marked Exhibit "A" and attached hereto. Those parcels are outlined thereon in red.

Parcel 2 and Parcel 10 are jointly the subject of DSP-04067-10 and DDS-672.

Current Development Proposal/DSP-04067-10/Woodmore Commons

Parcel 2 is proposed to be developed exclusively with commercial retail and commercial office uses. Parcel 2 has frontage on MD 202 (Landover Road), St. Joseph's Drive and Ruby Lockhart Boulevard. Access to Parcel 2 is proposed to be gained exclusively from a full turning movement into the site from Ruby Lockhart Boulevard. There, a driveway entrance will provide access via a private road into the development. Three individual pad sites will front along St. Joseph's Drive. These will include a Chase Bank, an Arby's Restaurant and a Chick-Fil-A restaurant. Along the eastern boundary of Lot 2, an office building is proposed along with an inline commercial building which will accommodate multiple tenants. Finally, an additional pad site (for which no user has yet been identified) will be located along Ruby Lockhart Boulevard frontage. Parking for the individual uses will be located on each site. Further, a large parking area will be provided within the center of the site. Parcel 10 is located immediately north of Parcel 2 across Ruby Lockhart Boulevard. It has frontage on Ruby Lockhart Boulevard and St. Joseph's Drive. It will have two points of access. A full turning movement access will be provided along the property's Ruby Lockhart Boulevard frontage. In addition, a right-in/right-out turning movement is proposed at a point along St. Joseph's Drive. Parcel 10 is proposed to be improved with a 7-11 convenience store with gasoline service.

All of the uses being proposed on both Parcel 2 and Parcel 10 are permitted as a matter of right in the M-X-T Zone. However, due to the requirements of the M-X-T Zone, a Detailed Site Plan must be processed and approved.

Development History of Balk Hill

As noted above, Parcel 2 and Parcel 10 are part of a much larger land area comprising a total of 125.4 acres and known as the Balk Hill development. The entirety of Balk Hill is zoned M-X-T. The overall Balk Hill project was zoned to the M-X-T Zone in 2002 pursuant to the approval of Zoning Map Amendment Application A-9956-C. The applicant was Rocky Gorge Homes. Ultimately, D.R. Horton acquired all of the residential units which were approved (393 residential units). All of the residential units have now been constructed.

Conceptual Site Plan (CSP-03001)

A Conceptual Site Plan for the entire 124.5 acres was approved by the Planning Board on September 11, 2003 (CSP-03001). The District Council did not elect to review that Conceptual Site Plan. It approved 393 residential units, 20,000 square feet of commercial retail space and 328,480 square feet of "commercial" space as well as other permitted uses which did not exceed the established trip cap.

Preliminary Subdivision Plan (4-03094)

The Prince George's County Planning Board of the Maryland-National Capital Park and Planning Commission ("Planning Board") approved a Preliminary Subdivision Plan (4-03094) on February 19, 2004. All of the Balk Hill property was included within that Preliminary Subdivision Plan, including Parcels 1 and 2.

Detailed Site Plan (DSP-04067)

The initial Detailed Site Plan (DSP-04067) for Balk Hill was approved by the Planning Board on September 29, 2005. There have been a number of revisions to DSP-04067. However, all revisions (with the exception of DSP-04067-09 and DSP-04067-10) dealt with the residential component of Balk Hill.

Revenue Authority Ownership

On June 20, 2012, D.R. Horton conveyed Parcels 1 and 2 to the Revenue Authority of Prince George's County.

Balk Hill Ventures LLC

Balk Hill Ventures became the contract purchaser of Parcels 1 and 2. As contract purchaser, Balk Hill Ventures filed a request to amend two zoning conditions which had been attached to the approval of the original rezoning (A-9956-C). The conditions in question were Condition 5 and Condition 10. The District Council approved the amendment of those Conditions. The amendment to Condition 5 clarified that any use permitted in the M-X-T Zone would be permitted to be developed on Parcels 1 and 2.

Revision to Conceptual Site Plan (03001-01)

A revision to the Conceptual Site Plan (CSP-03001-01) was approved by the Planning Board on May 30, 2019 and thereafter by the District Council on October 15, 2019. This revision dealt only with Parcels 1 and 2.

Preliminary Subdivision Plan (4-18024)

A new Preliminary Subdivision Plan was filed for Parcels 1 and 2. The Plan was assigned the number 4-18024. It proposed dividing Parcel 1 into two individual lots (Parcels 10 and 11). Parcel 2 is to be divided into seven individual lots (Parcels 3 thru 9 inclusive). This Preliminary Subdivision Plan approved development of Parcel 1 and Parcel 2 with approximately 70,000 square feet of commercial space and 268 multifamily residential units.

Detailed Site Plan 04067-09

This Detailed Site Plan, as noted above, was approved by the Planning Board on May 14, 2020. It was ultimately also reviewed and approved by the District Council on November 10, 2020. This Detailed Site Plan, as approved, authorized the development of the 268 multifamily residential units on what is now Parcel 11.

Detailed Site Plan/DSP-04067-10 and DDS-672

As noted above, the instant Detailed Site Plan proposes exclusively commercial development. As also noted, all of the uses being proposed are permitted as a matter of right in the M-X-T Zone. DDS-672 proposed a departure to allow standard sized parking spaces to have dimensions of 9'x 18' instead of 9.5' x 19'. DSP-04067-10 and DDS-672 were approved by the Planning Board on April 1, 2021.

As explained earlier, most of the commercial development is occurring on what is now Parcel 2 (but which has Preliminary Subdivision Plan approval to be divided into seven individual lots). Parcel 10, as also previously explained above, is proposed to be developed with a convenience store with gas sales. All of the architecture utilizes high quality materials and finishes in order to create architectural interest. Access is safe and efficient. Further, the Prince George's County Planning Board of the National Capital Park and Planning Board ("Planning Board") has found that all parking and loading being proffered to be provided will provide adequate parking and loading needs for the development of the project. The Planning Board's approval of DSP-04067-10 is set forth in Resolution PGCPB No. 2021-43. This Detailed Site Plan was the subject of multiple referral reviews from various agencies. Ultimately, a staff report was issued which recommended approval subject to conditions. Thereafter, the case was considered by the Planning Board on March 18, 2021. It was unanimously approved by the Planning Board at the conclusion of the hearing. Thereafter, on April 1, 2021, the Planning Board's Resolution of approval was adopted. Subsequently, the case appeared on the District Council's agenda as a case pending finality. At that time, the District Council elected to hear the case.

Response to Document Filed by Samuel H. Dean

Mr. Samuel H. Dean testified in opposition to the Detailed Site Plan before the Planning Board on March 18, 2021. While Mr. Dean did not file an appeal from the action of the Planning Board, he has filed a document titled "Testimony" and dated May 24, 2021 and which recommends that the District Council reverse the Planning Board and deny DSP-04067-10. This letter contains essentially the same arguments that Mr. Dean made before the Planning Board in both a letter and testimony on March 18, 2021. The gravamen of Mr. Dean's comments relate to a connector road known as I-310 which would run between Ruby Lockhart Boulevard and Landover Road. Mr. Dean alleges that the issue of the I-310 connector was first addressed in the rezoning of Balk Hill pursuant to the District Council's approval Order in A-9956-C. There, he notes that the District Council's rezoning was approved subject to a number of conditions. One of those, Condition 3(c), provided as follows:

- 3. Future submitted plans shall demonstrate provision of adequate right-of-way for the following facilities: ...**

* * * * *

A concept for future ramps to and from the west via Ruby Lockhart Boulevard between MD 202 and St. Josephs' Drive.

Mr. Dean notes that Condition 3(c) was repeated in the District Council's Order of March 22, 2018 (Zoning Ordinance No. 2-2018) when the District Council amended Conditions 5 and 10. At that time, all other previously enacted conditions (not just Condition 3(c)) were simply restated. That is normal procedure. It does not mean that conditions which were not the subject of revision had not been satisfied.

Mr. Dean apparently alleges that the connector road known as I-310 runs through the Balk Hill property. He then posits that pursuant to Section 27-259, improvements can only be constructed within a proposed right-of-way if those improvements are specifically approved to be erected within a right-of-way by the District Council pursuant to a separate proceeding.

However, the Applicant submits the connector road known as I-310 was never located on the Balk Hill property. Rather, it was located on property to the east currently known as the Woodmore Overlook development. Significantly, it is the Applicant's belief that the same or similar arguments as Mr. Dean is making in this case were made in the Woodmore Overlook Detailed Site Plan case and more recently, in a request by Woodmore Overlook to amend one of the conditions attached to its rezoning. That case was considered

and the applicant's request in that case was approved by the District Council pursuant to its Order of April 26, 2021 in Zoning Map Amendment Application A-10020-C-01.

Mr. Dean's assertions are also incorrect for the following reasons:

1. This is a Detailed Site Plan. Detailed Site Plans have as their subject matter the design of improvements to be constructed on a property including the location of buildings and landscaping, the location of parking and the location of access points. Architecture and building materials are also appropriate considerations. The locations of roadways which could impact the property are not the subject of Detailed Site Plans. Those considerations are made earlier during the entitlement approval process, specifically and most frequently at the time of Conceptual Site Plan and Preliminary Subdivision Plan. (See Zoning Ordinance, Sections 27-281 (Purpose of Detailed Site Plan), 27-282 (Submittal requirements); 27-285 (Required Findings)).

2. I-310 is not located on the Woodmore Commons property. Section 27-259 of the Zoning Ordinance has no application to this property or this application. During the course of the hearing before the Planning Board in this case, Mr. Thomas Masog of the Park and Planning Transportation Division was called upon to discuss the impact of the roadway I-310 on the Woodmore Commons project. Mr. Masog's testimony appears in the transcript of the Planning Board hearing at T. 159-163.¹ Mr. Masog explained that the roadway I-310 while called a ramp is actually designated an industrial road. He explained to the Planning Board that I-310 is proposed to connect between Ruby Lockhart Boulevard and Landover Road. It is shown on the 1990 Largo/Lottsford Master Plan and also within the 2009 Master Plan of Transportation (T. 159). Mr. Masog explained that the roadway designation and location on those plans is not based on property lines. The 1990 Largo/Lottsford Master Plan does not show property lines and the 2009 Master Plan of Transportation does not show property lines either. The ultimate location for a road as shown on the Master Plan of Transportation occurs through coordination with the Department of Permitting, Inspections and Enforcement and the Maryland State Highway Administration (where applicable). The 2009 Master Plan of Transportation refers to I-310 as a "New Road" with project limits connecting "Ruby Lockhart Way to Landover Road" within a 70 foot right-of-way. Reference is made to the Largo/Lottsford Master Plan

¹References herein to "T. ____" are references to the Transcript of Testimony commemorating testimony presented before the Planning Board at its hearing on DSP-04067-10 on March 18, 2021.

of 1990. Significantly, page 73 of the Master Plan of Transportation which includes an introduction to the maps depicting various roads within the County contains the following statement:

"The entries in this map set are approximations and illustrations of the detailed recommendations in the plan text. In case of conflict between items in the maps and in the text, the plan text is controlling. (2009 Master Plan of Transportation, page 73)."

Mr. Henry Zhang, the staff writer in DSP-04067-10 also gave testimony before the Board on this issue. (T. 162-165). Mr. Zhang correctly stated that the location for I-310 was determined to cross the King property which is the parcel immediately east of Woodmore Commons and which is now known as Woodmore Overlook.² Mr. Zhang testified that this occurred at the time of the approval of the Preliminary Subdivision Plan for the King property. (T.163) Mr. Zhang was correct. The King property (now Woodmore Overlook) was the subject of Preliminary Subdivision Plan 4-10022. The Planning Board Resolution of approval in that case (PGCPB No. 12-13) was approved on February 23, 2012. In order to establish adequacy of transportation facilities, mitigation was being proposed by that applicant. Part of that mitigation included a proposal to dedicate and construct I-310 across the King property between Ruby Lockhart Boulevard and Landover Road. It should be noted that the Planning Board Resolution approving the Preliminary Subdivision Plan for the King property also noted that the Zoning Map Amendment Application (A-10020-C) approving a rezoning of the King property to the M-X-T Zone had included a condition also requiring that the I-310 roadway between Ruby Lockhart Boulevard and Landover Road be shown on the Conceptual Site Plan for the King property.³

3. Condition 3(c) in Zoning Map Amendment Application A-9956C, as referenced by Mr. Dean, has no continuing application to the Woodmore Commons development. While Condition 3(c) was attached to the rezoning of Balk Hill, the original Conceptual Site Plan (CSP-03001) for Balk Hill contained a finding indicating that the need for adequate right-of-way as stipulated in Condition 3 of the rezoning had been satisfied. Similarly, when the original Preliminary Subdivision Plan for Balk Hill was approved by the Planning Board on March 11, 2004, the Planning Board made yet

²The Woodmore Overlook property is marked with an asterisk on Exhibit "A".

³The applicant requests that the District Council take administrative notice of PGCPB No. 12-13 approving Preliminary Subdivision Plan 4-10022 for the King property.

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another finding that the right-of-way needs identified in Condition 3 of the District Council's Order in A-9956-C had been satisfied. (Planning Board Resolution PGCPB No. 0433 approving Preliminary Subdivision Plan 4-03094).

Also, when Balk Hill Ventures LLC became the contract purchaser of Parcels 1 and 2, it filed a revision to the original approved Conceptual Site Plan. That revision was initially approved by the Planning Board on May 30, 2019 (PGCPB- No. 1971, CSP-03001-01). Within its Resolution of approval, the Planning Board found that the Conditions of A-9956-C had been addressed through previous approvals and development on the Balk Hill property. The District Council ultimately reviewed and also approved CDP-03001-01.

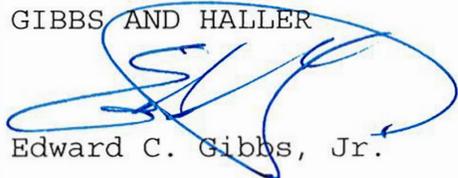
Finally, the current Applicant, Balk Hill Ventures LLC, also filed a new Preliminary Subdivision Plan for Parcels 1 and 2 (4-18024). In its Resolution of approval (PGCPB- No. 19-109), the Planning Board once again confirmed that "all required rights-of-way have been dedicated" as required under Condition 3(a) of 9956-C (see page 14 of Planning Board Resolution).

All of the above issues are also the subject of findings by the Planning Board in its Resolution approving this Detailed Site Plan DSP-04067-10 (see pages 23-24 of Resolution PGCPB No. 02021-43).⁴

Finally, pursuant to entitlement approvals for the adjoining Woodmore Overlook development, the industrial roadway designated as I-310 is actually under construction on that property. (T. 10-11).

In view of all of the above, the concerns raised by Mr. Dean are incorrect and do not warrant a reversal of the Planning Board decision in DSP-04067-10 and DDS-672. The staff and the Planning Board made findings, based upon facts, that all required criteria for the approval of this Detailed Site Plan were met and satisfied.

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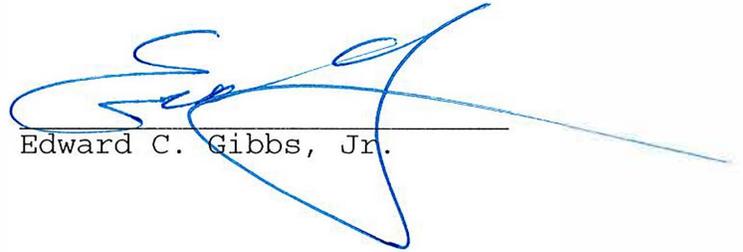
Edward C. Gibbs, Jr.

⁴All of the Orders and Resolutions referenced herein and which relate to the Balk Hill project are part of the record of this application.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this letter was mailed by first-class mail, postage prepaid, on May 19, 2021 to the parties of record in DSP-04067-10. Further, this letter was also sent by electronic transmission on May 19, 2021 to the individuals listed on Exhibit "B".



Edward C. Gibbs, Jr.

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OVERLAY MAP

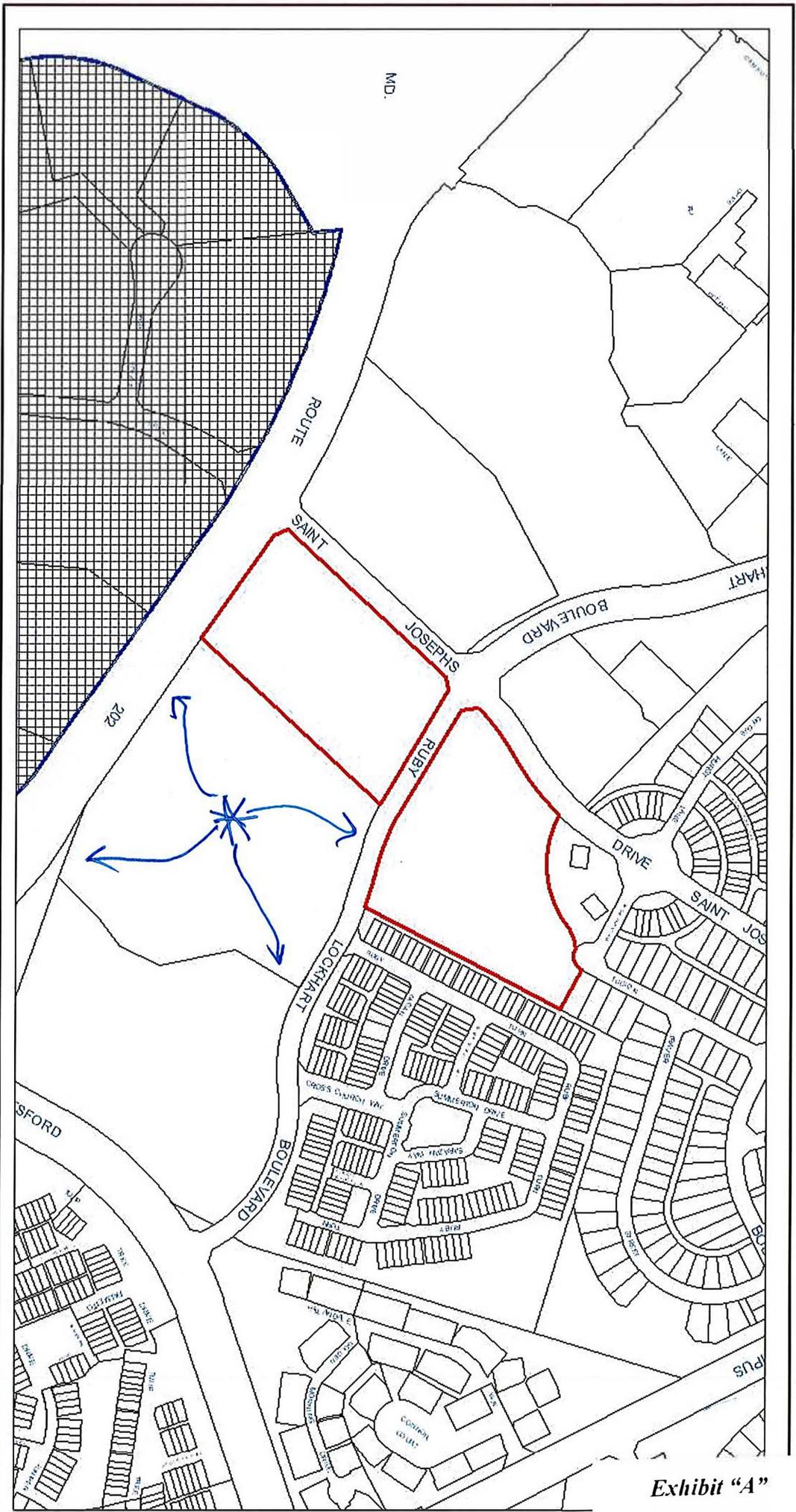


Exhibit "A"

Edward C. Gibbs, Jr.

From: unique41@verizon.net
Sent: Tuesday, April 20, 2021 8:03 PM
To: 'Hunt, James'; 'LaRay Benton'
Cc: 'Jones, Jessica'; 'Warner, David'; Edward C. Gibbs, Jr.
Subject: RE: REQUEST FOR ELECTRONIC COPY OF M-NCPPC PLANNING BOARD DECISION ON DSP-04067-10 & DDS-672

Thanks

From: Hunt, James <James.Hunt@ppd.mncppc.org>
Sent: Tuesday, April 20, 2021 7:23 PM
To: unique41@verizon.net; 'LaRay Benton' <laraybenton@gmail.com>
Cc: Jones, Jessica <Jessica.Jones@ppd.mncppc.org>; Warner, David <david.warner@mncppc.org>; 'Edward C. Gibbs, Jr.' <egibbs@gibbshaller.com>
Subject: RE: REQUEST FOR ELECTRONIC COPY OF M-NCPPC PLANNING BOARD DECISION ON DSP-04067-10 & DDS-672

Good Evening Mr. Dean,

Below is the list of speakers that registered to speak for the subject applications. If you have any further questions, please let me know.

Andrew	Lohr	alohr@bohlereng.com
Edward	Gibbs	egibbs@gibbshaller.com
Chris	Duffy	cd@hp-llc.com
Samuel	Dean	unique41@verizon.net
LaRay	Benton	LARAYBENTON@GMAIL.COM
Edward	Gibbs	egibbs@gibbshaller.com
Chris	Duffy	cd@hp-llc.com
Robert	Barbour	rbarbour8391@hotmail.com
Tanya	Woolfolk	tanyawoolfolk@gmail.com
Glen	Cook	gcook@trafficgroup.com
Wes	Guckert	wguckert@trafficgroup.com
Billy	Ancheta	Cr125birchwood@yahoo.com
Erika	Fareed	ErikaFareed@gmail.com
Denise	Dyer	deniseedyer@gmail.com
Bilatina	Yifru	Bilatinayifru@gmail.com
Derek	Curtis II	dion1318@yahoo.com
Bec	Beccles	cebeccles@gmail.com
Jo	Vi	Sunnydaze330@gmail.com
Ky	Gibbs	Drkygibbs@gmail.com
Felecia	Hogue	felecia.hogue@hotmail.com
Mesay	Bekure	eth007@hotmail.com
Jasmine	Smith	Jsmir1636@gmail.com
Ashley	Hayes	mh.hayeshouse@gmail.com
Cashenna	Cross	Koolmint_2000@yahoo.com
Danita	Saunders	nitasaun@yahoo.com