



100 West Washington Street, Suite 1101 | Hagerstown, MD 21740-4735 | P: 240.313.2200 | F: 240.313.2201
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BOARD OF COUNTY COMMISSIONERS

January 30, 2018

Agenda

- 10:00 A.M. INVOCATION AND PLEDGE OF ALLEGIANCE
CALL TO ORDER, *President Terry L. Baker*
APPROVAL OF MINUTES – JANUARY 9, 2018 AND JANUARY 16, 2018
- 10:05 A.M. COMMISSIONERS' REPORTS AND COMMENTS
- 10:10 A.M. REPORTS FROM COUNTY STAFF
- 10:15 A.M. CITIZENS PARTICIPATION
- 10:20 A.M. YOUTH MERITORIOUS AWARD PRESENTATION – *Tiffany Miller, Office of Community Grant Management and Board of County Commissioners*
- 10:30 A.M. FY19 RURAL LEGACY PROGRAM GRANT – APPROVAL TO SUBMIT APPLICATION AND ACCEPT AWARDED FUNDS – *Stephanie Lapole, Grant Manager, Office of Community Grant Management and Eric Seifarth, Rural Preservation Administrator, Planning and Zoning*
- 10:35 A.M. APPROVAL OF MEMORANDUM OF AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY AND FEDERAL PRISON INDUSTRIES, INC. (DBA UNICOR) – *David Mason, P.E., Deputy Director, Department of Solid Waste and Watershed Programs*
- 10:40 A.M. BID AWARD (PUR-1368) ROOF REPLACEMENT OF THE CONTROL BUILDING AT THE CONOCOCHIEGUE WASTEWATER TREATMENT PLANT – *Rick Curry, Director, Purchasing Department and Rocky Bishop, Chief of Maintenance, Department of Water Quality.*
- 10:45 A.M. DELIBERATION / DECISION ON APPLICATION FOR ZONING MAP AMENDMENT RZ-17-003 – *Travis Allen, Comprehensive Planner, Department of Planning and Zoning*
- 10:55 A.M. APPROVAL OF OFFER ON 59 WINTER STREET (FORMER WINTER STREET ELEMENTARY SCHOOL) – *Susan Small, Real Property Administrator*
- 11:00 A.M. APPROVAL OF OFFER ON 22930 FEDERAL LOOKOUT (JDC) – *Susan Small, Real Property Administrator*

11:05 A.M. CLOSED SESSION

(To discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom this public body has jurisdiction; or any other personnel matter that affects one or more specific individuals.)

11:50 A.M. DEPART FOR SPICHER'S APPLIANCE TO MEET COMPTROLLER PETER FRANCHOT – Shop Maryland Energy Tax-Free Weekend, February 17-19, 2018



Agenda Report Form

Open Session Item

SUBJECT: Youth Meritorious Award Presentation

PRESENTATION DATE: Tuesday, January 30, 2018

PRESENTATION BY: Tiffany Miller & Board of County Commissioners

RECOMMENDED MOTION: No motion or action is requested or recommended.

REPORT-IN-BRIEF: The following individuals have been selected for the Youth Meritorious Award for the month of November. They were selected based on their scholastic achievement, leadership qualities, community service performed or other positive contributions to their school or community.

January 2018 – Rachel Gross – 8th Springfield Middle School
Parent(s) – James and Romaine Gross
Hometown – Hagerstown, MD
Nominated by Romaine Gross

January 2018 – Hunter Briscoe – 8th Springfield Middle School
Parent(s) – Dave and Amberly Briscoe
Hometown – Williamsport, MD
Nominated by Jennifer Joyce

FISCAL IMPACT: N/A

CONCURRENCES: N/A

ALTERNATIVES: N/A

ATTACHMENTS: Student Summaries

AUDIO/VISUAL NEEDS: N/A

Youth Meritorious Award Summary for

Rachel Gross

8th Grade Student

Springfield Middle School

Nominated By: Romaine Gross

Parent(s) – James and Romaine Gross

Romaine Gross endorsed the following:

I am nominating my daughter, Rachael Gross, for the Washington County Youth Meritorious Award. Rachael is an outstanding student and has been on the Distinguished Honor Roll (straight A's) every semester in middle school and has had straight A's all throughout elementary school. She has been in the STEM (Science Technology Engineering Math) magnet programs through elementary and middle schools. She has been recognized as a STAR student at school and frequently receives complementary postcards from her teachers who recognize her excellent work in class and her positive attitude. She is also currently enrolled in high school geometry in the Hybrid Geometry curriculum and in Introduction to Engineering Design, another high school level class. Rachael is a conscientious and hard worker who puts forth her best effort in all she does academically and in her extra-curricular activities.

Rachael has been an avid dancer at The City Ballet School in Hagerstown, MD since she was four years old. She has participated in the production of The Nutcracker for eight years. She dances ballet, pointe, tap, jazz, and modern and is now a member of the Western MD City Ballet Company. She also has been involved in athletics, playing soccer in fall and spring seasons up until last year (as her dancing schedule has required her to focus full-time on those classes), and has placed in the top ten runners in numerous cross country races at school. She has been involved in orchestra, 24 Club, SGA, and yearbook club. Rachael has also volunteered at the MS Walk in Hagerstown and Frederick, MD and at the City Ballet's Princess Tea Party as an entertainer and server. Rachael has a smile on her face all of the time, is the first to say 'thank you', and has a heart of gold. We are so proud of her character and achievements.

Youth Meritorious Award Summary for

Hunter Briscoe

8th Grade Student

Springfield Middle School

Nominated By: Jennifer Joyce

Parent(s) – Dave and Amberly Briscoe

Jennifer Joyce endorsed the following:

Hunter Briscoe is an 8th grade student at Springfield Middle School. He is involved in the WEB program at school that helps grade 6 students' transition to middle school. He is a strong student and has been on the Honor Roll numerous times.

He is involved in volunteering at the Williamsport Retirement Village at least once a week. He is also an assistant captain on the U14 Hagerstown Bulldogs Ice Hockey team where he has played for many years. Hunter is an exceptional young man who works hard to do well and help others.



Agenda Report Form

Open Session Item

SUBJECT: FY19 Rural Legacy Program Grant – Approval to Submit Application and Accept Awarded Funds

PRESENTATION DATE: January 30, 2018

PRESENTATION BY: Stephanie Lapole, Grant Manager, Office of Community Grant Management and Eric Seifarth, Rural Preservation Administrator, Planning & Zoning

RECOMMENDED MOTION: Move to approve the submission of the grant application for the fiscal year 2019 Rural Legacy Program, in the amount of \$2,388,000 and to accept awarded funding.

REPORT-IN-BRIEF: Each year the Department of Planning and Zoning submits a funding request to the Maryland Department of Natural Resources for the purchase of easements in the County's Rural Legacy Area. Rural Legacy properties are lands of significant agricultural, historic, environmental, public and cultural value inside of the designated Rural Legacy Area boundary, which is concentrated around the Antietam Battlefield. Past Rural Legacy grants have significantly contributed to the progress Washington County has made toward the stated goal of 50,000 permanently preserved acres of prime and productive farm and open space land.

DISCUSSION: The Office of Community Grant Management has reviewed the grant application and funding guidelines. There are no unusual conditions or requirements attached to the acceptance of the grant.

FISCAL IMPACT: There are recurring department operating expenses for the inspections of the easement properties by staff. Time required for inspections are 8 hours per year or \$300.00 per year and the cost is covered by the Department of Planning and Zoning.

CONCURRENCES: N/A

ALTERNATIVES: Deny approval for the submission of this request

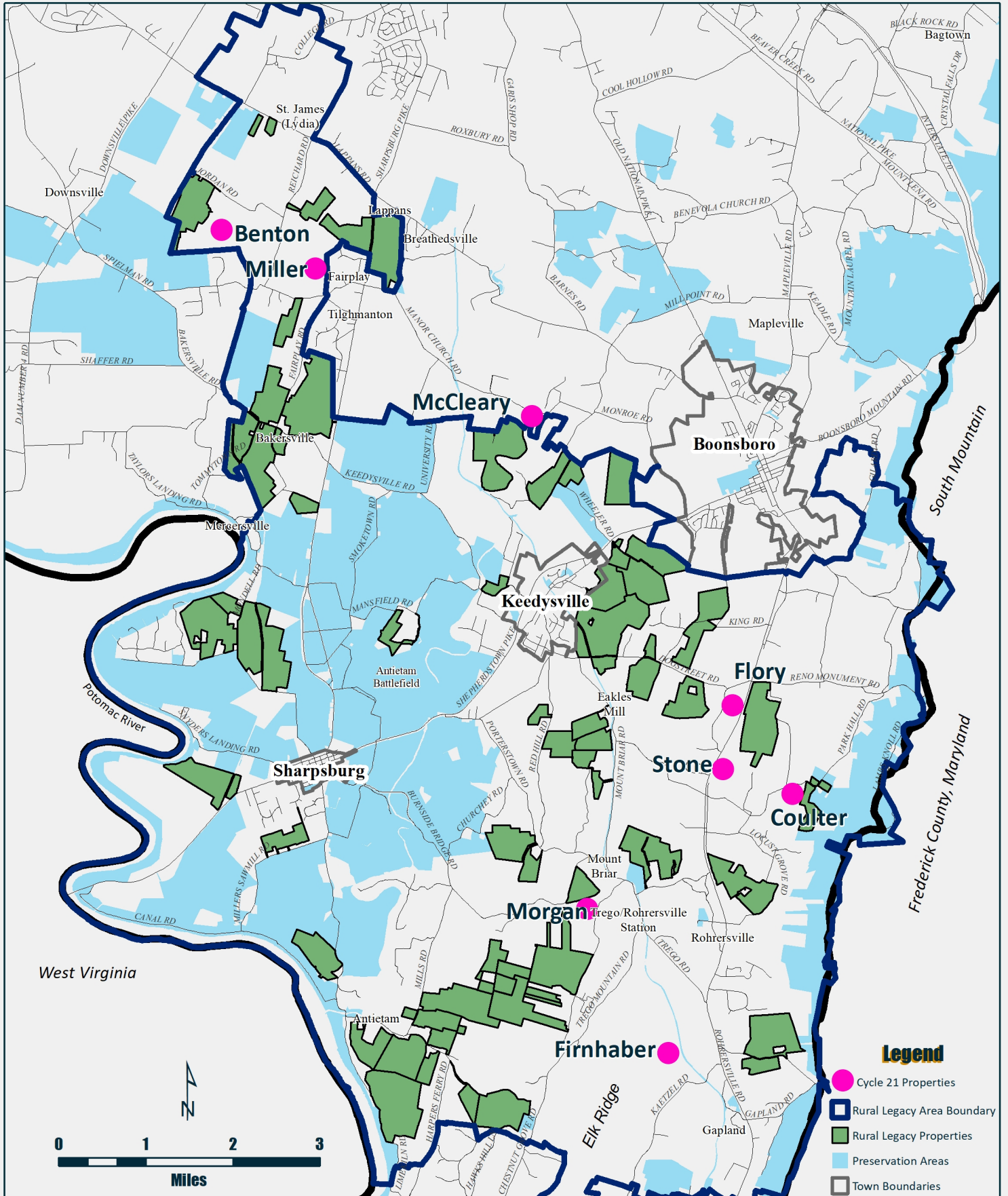
ATTACHMENTS: Rural Legacy Map

AUDIO/VISUAL NEEDS: N/A

Rural Legacy Area-Washington County, Maryland

Attachment A

Application-Target Parcels Cycle 21- FY '19



Prepared by the Washington County
Planning Department GIS 01-16-2018

Document Path: S:\Policy\RuralLegacy\CycleMaps\RLAreaCY21FY19.mxd



Agenda Report Form

Open Session Item

SUBJECT: Approval of Memorandum of Agreement between the Board of County Commissioners of Washington County and Federal Prison Industries, Inc. (DBA UNICOR)

PRESENTATION DATE: January 30, 2018

PRESENTATION BY: David A. Mason, P. E., Deputy Director – Department of Solid Waste and Watershed Programs

RECOMMENDED MOTION: Motion to approve the Memorandum of Agreement with UNICOR for the Electronics Recycling Program.

REPORT-IN-BRIEF: UNICOR has asked for an increase from \$0.18 per pound to \$0.20 per pound for TV's, CRT's and LCD monitors. All other items will continue to be accepted at no cost. In addition to the rate increase, the Contract also states that the County will be responsible for transportation cost; this was not included in the previous MOA. The transportation cost thru UNICOR is estimated to be \$635 per truck load.

DISCUSSION: The Department has researched costs of electronics recycling in surrounding areas and found the average is \$0.20 per pound. The Department, in an attempt to reduce transportation cost, sent a request for bids to 17 local firms for transportation of electronics to the UNICOR facility, but did not receive any bids. The Department will continue to advertise the electronics on GovDeals.com, to which we have had limited success.

FISCAL IMPACT: All costs will be paid from Account 588040-21-21200, \$63,000.00.

CONCURRENCES: County Attorney's Office, Purchasing Department

ALTERNATIVES: N/A

ATTACHMENTS: N/A

AUDIO/VISUAL NEEDS: N/A

**MEMORANDUM OF AGREEMENT
BETWEEN THE
BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY,
MARYLAND AND
FEDERAL PRISON INDUSTRIES, INC.**

PURPOSE: The Board of County Commissioners of Washington County, Maryland (“Customer”), a body corporate and politic and a political subdivision of the State of Maryland, and Federal Prison Industries, Inc. (trade name “UNICOR”) enter into this Memorandum of Agreement (“MOA”) effective upon the date of final signature of this agreement. Customer agrees that it may provide UNICOR certain electronic equipment in lieu of abandonment and destruction to benefit Customer, the environment and to improve public health, safety, and welfare. UNICOR agrees to use the electronic equipment in meeting its mission of providing opportunities for job training and skills development of inmates.

CONFIDENTIAL INFORMATION: Confidential information, as referenced in this agreement, shall mean any and all technical and non-technical information belonging to each disclosing party and designated as confidential or secret, including, but not limited to, techniques, inventions, know-how of processes, apparatus, equipment, software programs, and proposed products, documents and activities of such disclosing party, and further includes, without limitation, any information, procurement requirements, purchasing, manufacturing customer lists, sales or service customer lists, vendor customer lists, business forecasts, sales and merchandising, and marketing plans and information.

Each receiving party agrees that it will not copy or use in any way confidential information, except to the extent necessary for negotiations, discussions, or consultations with personnel or authorized representatives of the disclosing party for the purposes described above. Unless otherwise provided herein, the furnishing of any confidential information hereunder shall not constitute the granting of any right or license to copy or use such information in any way.

Each receiving party agrees that, except as may be required by court order or overriding federal law, it shall disclose the disclosing party’s confidential information only to those of its employees who need to know such information. Each receiving party also agrees to advise each such employee, before he or she receives access to the confidential information, of the obligations of the receiving party under this agreement.

RELATIONSHIP OF THE PARTIES: UNICOR and Customer are independent contractors. Neither party shall represent itself as being an agent of the other party in any manner. This agreement shall not be construed as an agreement of partnership, of joint venture, or any other form of business arrangement other than as an agreement between independent parties. UNICOR or Customer will not make any representations or commitments on behalf of one another without prior written consent.

CUSTOMER RESPONSIBILITIES: Customer may provide some or all of its electronic equipment to UNICOR for recycling or reuse. Customer will pay twenty cents (\$0.20) per pound for all Televisions, CRT monitors and LCD monitors. All other items listed below will be accepted free of charge. Customer will arrange and pay for the transportation of electronic equipment to UNICOR’s recycling facilities.

Customer understands that all materials generated from this operation are recycled, resold, or reused. Overall administration of this MOA is the responsibility of the designated Customer Point of Contact and UNICOR Point of Contact identified herein. Customer may supply any of the following electronic equipment to UNICOR:

Audio/Visual Equipment	Bar Coding Equipment	Batteries (see below)
BlackBerrys	Blu-Ray & DVD Players	Cable TV Boxes
Calculators	Cameras	CD ROM Drives
Cell Phones	Circuit Boards	Communications Equipment
Computer Equipment	Connectors/Cords	Fax Machines
Hard/Floppy Drives	Laptops	Mainframes/Servers
Memory Sticks/Boards	Microfiche Readers	Microscopes
Modems	Monitors	Motherboards
Network/Video/Sound Cards	Oscilloscopes	PDA's
Phone Equipment	Plotters/Copiers	Power Supplies/Strip
Printers	Radios	Scanners
Scrap Copper	Shredders	Streaming Media Players
Tape Drives	Telescopes	Televisions
Test Equipment	Toasters	Toner Cartridges
UPSs	Video Game Consoles	Wire/Cable (<u>except</u> fiber optic cable)

Batteries: UNICOR will accept all types of batteries except for alkaline and Lithium ion polymer soft side batteries. UNICOR will accept lead acid batteries, nickel-cadmium batteries, lithium batteries, etc.

Other electronics may be accepted by prior arrangement and approval with the UNICOR Point of Contact listed herein. This does not include consumer appliances such as air conditioners, refrigerators, or washers and dryers, which may be recycled per a separate agreement. UNICOR reserves the right of refusal, at Customer's expense, for any load received not in accordance with this MOA.

UNICOR will not accept equipment with bio hazards, radioactive material, white goods, and items containing refrigerant and liquids. These items will be returned to Customer at the Customer's expense.

UNICOR RESPONSIBILITIES: UNICOR will provide the materials, personnel and facilities to process electronic equipment for recycling or reuse in a secondary market. The storage, treatment or disposal of any electronic equipment shall be done in accordance with all applicable local, state, and federal regulations. UNICOR will provide written certification of recycling or destruction (whichever is appropriate) to Customer upon request. UNICOR will provide documentation that all equipment donated by Customer is processed by a factory certified under the Responsible Recycling Practices for Electronics Recyclers (R2:2013) standard.

PROCEDURAL COORDINATION: A designated representative of the Customer will notify UNICOR by telephone at least three (3) business days in advance of any pickup or delivery of electronic equipment. UNICOR will confirm the date and times acceptable for pickup at Customer's location or delivery to UNICOR. The confirmation must occur within at least two (2) business days of the

telephonic notification. If necessary, changes to the pickup/delivery date or time will be coordinated between the Customer Point of Contact and the UNICOR Point of Contact.

PREPARATION, PACKAGING AND TRANSPORTATION: Customer will make reasonable efforts to ensure that any confidential information, proprietary data, or software has been removed from any equipment transferred to UNICOR. If any confidential information, proprietary data, or software is found by UNICOR, it will notify the Customer within two (2) business days of discovery. UNICOR will secure and preserve confidential information, proprietary data, or software, regardless of the media, for seven (7) business days, after which it will either be returned to Customer at Customer's expense or destroyed, as directed by Customer.

Packing and packaging will be to specifications provided by the UNICOR Point of Contact. CPUs, televisions, and monitors will normally be stacked on pallets and shrink wrapped in place. Small printers, faxes, keyboards, and other miscellaneous electronics will normally be packed in palletized Gaylord boxes. UNICOR is responsible for informing customer of any required security clearances that could affect or delay the delivery. UNICOR will establish security measures to minimize damage, loss, or theft of equipment within its control until it is processed.

EQUIPMENT TRANSFER: Customer will prepare the documentation transferring all material to UNICOR. Customer, at its option, may provide a weight and truck seal number for the load. UNICOR, upon processing the material, will verify the truck seal (if utilized) and the weight of the shipment, as requested by the Customer.

TERM: The term of this MOA is in effect indefinitely, beginning on the date of final signature of this agreement. Either party may terminate this MOA by written thirty (30) day notification to the other party. The addresses are as follows:

CUSTOMER

Board of County Commissioners
100 West Washington Street, Ste. 1101
Hagerstown, MD 21740

UNICOR

Recycling Business Group
400 1st Street NW
Washington, DC 20534

With a copy to:

Office of the County Attorney
100 West Washington Street, Ste. 1101
Hagerstown, MD 21740

PAYMENT: UNICOR shall invoice Customer for items containing CRTs. Customer shall pay UNICOR within thirty (30) days from the date of invoice. Any amount for which payment is overdue shall accrue interest at the Prompt Payment Interest Rate. Any unpaid invoices that are one hundred-eighty (180) days past due will be sent to the U.S. Department of the Treasury for collections. Payment to UNICOR shall be made by either electronic funds transfer using www.pay.gov or by check sent to the following address via a tracked (tracking number) delivery:

Federal Prison Industries, Inc. (UNICOR)
P.O. Box 11890
Lexington, KY 40578-1890



Open Session Item

SUBJECT: Bid Award (PUR-1368) - Roof Replacement of the Control Building at the Conococheague Wastewater Treatment Plant

PRESENTATION DATE: January 30, 2018

PRESENTATION BY: Rick Curry, CPPO, Director - Purchasing Department and Rocky Bishop, Chief of Maintenance – Department of Water Quality

RECOMMENDED MOTION: Move to award the bid for the roof replacement of the Control Building at the Conococheague Wastewater Treatment Plant (CWwTP) to the responsive, responsible, bidder Detwiler *Roofing* of New Holland, PA who submitted the lowest total lump sum amount of **\$66,460.00**.

REPORT-IN-BRIEF: On December 13, 2017, the County accepted bids for the roof replacement project. The Invitation to Bid (ITB) was advertised locally in the newspaper and on the County’s web site, as well as on the State’s “eMaryland Marketplace” web site. Six (6) vendors were represented at the Pre-Bid Conference. The project is to be substantially completed within forty-five (45) consecutive calendar days of the Notice to Proceed. Eighty-seven (87) persons/companies registered/downloaded the bid document on-line.

DISCUSSION: The original roof was installed on the CWwTP Control Building around 1990. The roof has exceeded its life expectancy and water is infiltrating through the roof. The Contractor will be replacing the existing membrane and installing new TPO roof system with a system that has a twenty-five (25) year warranty.

FISCAL IMPACT: Funds in the amount of \$255,000.00 are budgeted in Water Quality’s Capital Improvement Plan (CIP) account 37-40010-BLD096.

CONCURRENCES: Deputy Director of Division of Environmental Management

ALTERNATIVES: N/A

ATTACHMENTS: Bid Tabulation Matrix

AUDIO/VISUAL NEEDS: N/A

PUR-1368
Roof Membrane Replacement at Conococheague WwTP Plant Control Bldg. located at
16232 Elliott Pkwy, Williamsport, MD

Vendor	Total Lump Sum Bid
Detwiler Roofing New Holland, PA	\$66,460.00
RRH Associates, LLC Huntingtown, MD	\$68,790.00
Heidler Roofing Services Hagerstown, MD	\$73,467.00
Ron Ruff Roofing, Inc. Baltimore, MD	\$73,695.00
Flynn Mid-Atlantic, LP Linthicum, MD	\$85,615.00
Allstate Contractor, Inc. Centreville, VA	\$120,000.00

Remarks/Exceptions:

Flynn Mid-Atlantic, LP

Price does not include for any Prevailing Wages, Minority Participation, Badging and/or Bonds



Agenda Report Form

Open Session Item

SUBJECT: Deliberation/Decision on Application for Zoning Map Amendment RZ-17-003

PRESENTATION DATE: January 30, 2017

PRESENTATION BY: Travis Allen, Comprehensive Planner, Washington County
Department of Planning and Zoning

RECOMMENDED MOTION: Move to approve or deny zoning map amendment request.

REPORT-IN-BRIEF: Application is being made to amend the official zoning map for Washington County, Maryland. The applicant is requesting to change the zoning of land located on the NW side of Downsville Pike, one-quarter mile north of Interstate 70 (Tax Map 57; Parcels 210 & 408) from existing Residential, Suburban (RS) to Highway Interchange (HI).

DISCUSSION: Detailed discussion of the proposed amendment can be found in the Staff Report and Analysis dated September 8, 2017, attached hereto.

FISCAL IMPACT: None.

ATTACHMENTS: Ordinance amendment application with justification statement and rezoning site maps.
Staff Report and Analysis dated September 8, 2017
Planning Commission report and recommendation

AUDIO/VISUAL NEEDS:



FOR PLANNING COMMISSION USE ONLY
 Rezoning No. RZ-17-003
 Date Filed: 7-12-17

RECEIVED

WASHINGTON COUNTY PLANNING COMMISSION
 ZONING ORDINANCE MAP AMENDMENT APPLICATION

JUL 12 2017

WASHINGTON COUNTY
 PLANNING DEPARTMENT

Downsville Pike Land, LLC

Applicant

10306 Remington Drive

Address

Hagerstown, MD 21740

Primary Contact

Christopher R. Smith

Address

- Property Owner
- Attorney
- Other: _____
- Contract Purchaser
- Consultant

301-733-4365 EXT 203

Phone Number

crsmith@myactv.net

E-mail Address

Property Location: 10662 Downsville Pike and 10656 Downsville Pike, Hagerstown, MD

Tax Map: 0057 Grid: 0002 Parcel No.: 210&408 Acreage: 1.6

Current Zoning: RS-Residential Suburban Requested Zoning: HI-Highway Interchange

- Reason for the Request:
- Change in the character of the neighborhood
 - Mistake in original zoning

PLEASE NOTE: A Justification Statement is required for either reason.

Chris Smith

Applicant's Signature

Subscribed and sworn before me this 11 day of July, 2017.

My commission expires on May 23, 2021 *Anne M. Traley*
 Notary Public

FOR PLANNING COMMISSION USE ONLY

- Application Form
- Names and Addresses of all Adjoining & Confronting Property Owners
- Fee Worksheet
- Vicinity Map
- Application Fee
- Justification Statement
- Ownership Verification
- 30 copies of complete Application Package
- Boundary Plat (Including Metes & Bounds)

EXHIBIT A

Real Property Data Search w3

Search Result for WASHINGTON COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Account Identifier:	District - 26 Account Number - 023114	

Owner Information			
Owner Name:	DOWNSVILLE PIKE LAND LLC	Use:	RESIDENTIAL
Mailing Address:	10306 REMINGTON DR 2ND FLR HAGERSTOWN MD 21740-0000	Principal Residence:	NO
		Deed Reference:	/05486/ 00190

Location & Structure Information									
Premises Address:					Legal Description:				
10656 DOWNSVILLE PIKE HAGERSTOWN 21740-0000					0.50 ACRES 10656 DOWNSVILLE PIKE				
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0057	0002	0408		0000				2017	Plat Ref:

Special Tax Areas:	Town:	NONE
	Ad Valorem:	
	Tax Class:	

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use		
1928	900 SF		21,780 SF			
Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
2	YES	STANDARD UNIT	FRAME	1 full		

Value Information				
	Base Value	Value	Phase-in Assessments	
		As of	As of	As of
		01/01/2017	07/01/2016	07/01/2017
Land:	8,700	8,700		
Improvements	10,200	10,200		
Total:	18,900	18,900	18,900	18,900
Preferential Land:	0			0

Transfer Information		
Seller: CARBAUGH BONNIE L ET AL	Date: 04/24/2017	Price: \$50,000
Type: ARMS LENGTH IMPROVED	Deed1: /05486/ 00190	Deed2:
Seller: RICE ANITA V	Date: 12/07/2015	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /05119/ 00426	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information			
Partial Exempt Assessments:	Class	07/01/2016	07/01/2017
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00 0.00	0.00 0.00

Tax Exempt:	Special Tax Recapture:
Exempt Class:	NONE

Homestead Application Information	
Homestead Application Status:	No Application

Homeowners' Tax Credit Application Information	
Homeowners' Tax Credit Application Status:	No Application
Date:	

EXHIBIT p10 B

Tri-State Signature Settlements, LLC
File No. TE-10107M
Tax ID # 26-023114

This Deed, made this 21st day of April, 2017, by and between Connie Proctor, Bonnie L. Carbaugh, Ronald G. Rice and Donald W. Rice, GRANTORS, and Downsville Pike Land, LLC, a Maryland Limited Liability Company, GRANTEE.

- Witnesseth -

That for and in consideration of the sum of Fifty Thousand And 00/100 Dollars (\$50,000.00), which includes the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt whereof is hereby acknowledged, the said Grantors do grant and convey to the said Downsville Pike Land, LLC, in fee simple, all that lot of ground situate in the County of Washington, State of Maryland and described as follows, that is to say:

All the following described lot of land, together with any improvements thereon situate in Washington County, Maryland, on the Northwest side of the Downsville Hagerstown Turnpike, about two miles South of Hagerstown, and being more particularly described as follows:

Beginning at a stone standing near the west or northwest side of the Hagerstown and Downsville Turnpike and at the end of the 17th or South 79 ¼ degrees East 89 ½ perch line of a deed from Edward A. Shaffer, Executor, to John H. Eldridge, dated July 13, 1892, and running thence reversing said 17th line North 79 ½ degrees West 181 feet, then leaving the outlines of the aforesaid deed 2 degrees East 185 feet, passing a stone on the North side of the aforesaid turnpike to the middle of said turnpike, then with the turnpike North 63 degrees East 252 feet to the place of beginning; containing approximately 0.50 acres of land, more or less.

Subject to and together with the covenants, restrictions, rights of way and easements of record applicable thereto.

Being the same property described and conveyed in the deed from Bonnie L. Carbaugh, Personal Representative of the Estate of Arthur T. Samuels unto Bonnie L. Carbaugh, Ronald G. Rice, Connie Proctor and Donald W. Rice dated July 17, 2015, and recorded December 7, 2015 in Liber 5119 at folio 0426 among the Land records of Washington County, Maryland.

Together with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

To Have and To Hold the said tract of ground and premises above described and mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Downsville Pike Land, LLC, in fee simple.

And the Grantors hereby covenant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property hereby granted; and that they will execute such further assurances of the same as may be requisite.

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 5486, p. 0190, MSA, CE 18, 5438, Date available 04/27/2017, Printed 07/11/2017.

MARYLAND FORM WH-AR

Certification of Exemption from Withholding Upon Disposition of Maryland Real Estate Affidavit of Residence or Principal Residence

2017

Based on the certification below, Transferor claims exemption from the tax withholding requirements of §10-912 of the Tax-General Article, Annotated Code of Maryland. Section 10-912 provides that certain tax payments must be withheld and paid when a deed or other instrument that effects a change

in ownership of real property is presented for recordation. The requirements of §10-912 do not apply when a transferor provides a certification of Maryland residence or certification that the transferred property is the transferor's principal residence.

1. Transferor Information

Name of Transferor Bonnie L. Carbaugh

2. Reasons for Exemption

Resident Status

I, Transferor, am a resident of the State of Maryland.

Transferor is a resident entity as defined in Code of Maryland Regulations (COMAR)03.04.12.02B(11), I am an agent of Transferor, and I have authority to sign this document on Transferor's behalf.

Principal Residence

Although I am no longer a resident of the State of Maryland, the Property is my principal residence as defined in IRC 121 (principal residence for 2 (two) of the last 5 (five) years) and is currently recorded as such with the State Department of Assessments and Taxation.

Under penalty of perjury, I certify that I have examined this declaration and that, to the best of my knowledge, it is true, correct, and complete.

3a. Individual Transferors

Witness

Bonnie L. Carbaugh

Name

Bonnie L. Carbaugh

Signature

3b. Entity Transferors

Witness/Attest

Name of Entity

By

Name

Title

MARYLAND FORM WH-AR

Certification of Exemption from Withholding Upon Disposition of Maryland Real Estate Affidavit of Residence or Principal Residence

2017

Based on the certification below, Transferor claims exemption from the tax withholding requirements of §10-912 of the Tax-General Article, Annotated Code of Maryland. Section 10-912 provides that certain tax payments must be withheld and paid when a deed or other instrument that effects a change

in ownership of real property is presented for recordation. The requirements of §10-912 do not apply when a transferor provides a certification of Maryland residence or certification that the transferred property is the transferor's principal residence.

1. Transferor Information

Name of Transferor Connie Proctor

2. Reasons for Exemption

Resident Status [X] I, Transferor, am a resident of the State of Maryland.

[] Transferor is a resident entity as defined in Code of Maryland Regulations (COMAR)03.04.12.02B(11), I am an agent of Transferor, and I have authority to sign this document on Transferor's behalf.

Principal Residence [] Although I am no longer a resident of the State of Maryland, the Property is my principal residence as defined in IRC 121 (principal residence for 2 (two) of the last 5 (five) years) and is currently recorded as such with the State Department of Assessments and Taxation.

Under penalty of perjury, I certify that I have examined this declaration and that, to the best of my knowledge, it is true, correct, and complete.

3a. Individual Transferors

Witness

Connie Proctor

Name

Signature

3b. Entity Transferors

Witness/Attest

Name of Entity

By

Name

Title

LR - Deed (w Taxes)
Recording Fee - ALL
20.00

Name: Rice
Ref:
LR - County Transfer
Tax - linked 0.00
LR - Surcharge - linked
40.00

LR - Recordation Tax -
linked 380.00
LR - State Transfer Tax
- linked 250.00
LR - NR Tax - kd 0.00

SubTotal: 690.00

Total: 710.00
04/24/2017 04:09

CC21-RZ
#8241708 CC0403 -
Washington
County/CC04.03.03 -
Register 03

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 5486, p. 0196, MSA_CE18_5438, Date available 04/27/2017, Printed 07/11/2017.

This page not to be counted in calculating Recording Fee

**Clerk of Circuit Court
Washington County, Maryland**

Dennis J. Weaver, Clerk
24 Summit Avenue
Hagerstown, MD 21740
301-790-7991

For Clerks Use Only

Improvement Fee	40.00
Recording Fee	20.00
County Transfer Tax	
Recordation Tax	380.00
State Transfer Tax	250.00
Non-Resident Tax	
TOTAL	690.00

Real Property Data Search w3

Search Result for WASHINGTON COUNTY

View Map		View GroundRent Redemption			View GroundRent Registration		
Account Identifier:		District - 26 Account Number - 023173					
Owner Information							
Owner Name:		DOWNSVILLE PIKE LAND LLC			Use:		RESIDENTIAL
Mailing Address:		10306 REMINGTON DR 2ND FLR HAGERSTOWN MD 21740-0000			Principal Residence:		NO
					Deed Reference:		/05488/ 00165
Location & Structure Information							
Premises Address:		10662 DOWNSVILLE PIKE HAGERSTOWN 21740-0000			Legal Description:		1.10 ACRES 10662 DOWNSVILLE PIKE
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:
0057	0002	0210		0000			
					Assessment Year:		2017
					Plat No:		
					Plat Ref:		
Special Tax Areas:				Town:		NONE	
				Ad Valorem:			
				Tax Class:			
Primary Structure Built		Above Grade Living Area		Finished Basement Area		Property Land Area	County Use
1950		1,196 SF				1.1000 AC	
Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation	
1 1/2	YES	STANDARD UNIT	BRICK	1 full			
Value Information							
		Base Value		Value		Phase-in Assessments	
				As of		As of	
				01/01/2017		07/01/2016	
				As of		As of	
				07/01/2017		07/01/2017	
Land:		61,000		61,000			
Improvements		65,600		65,600			
Total:		126,600		126,600	126,600		126,600
Preferential Land:		0					0
Transfer Information							
Seller: RICE ANITA VIRGINIA		Date: 04/26/2017			Price: \$175,000		
Type: NON-ARMS LENGTH OTHER		Deed1: /05488/ 00165			Deed2:		
Seller:		Date:			Price: \$0		
Type:		Deed1: /01770/ 00701			Deed2:		
Seller:		Date:			Price:		
Type:		Deed1:			Deed2:		
Exemption Information							
Partial Exempt Assessments:		Class		07/01/2016		07/01/2017	
County:		000		0.00			
State:		000		0.00			
Municipal:		000		0.00 0.00		0.00 0.00	
Tax Exempt:				Special Tax Recapture:			
Exempt Class:				NONE			
Homestead Application Information							
Homestead Application Status: No Application							
Homeowners' Tax Credit Application Information							
Homeowners' Tax Credit Application Status: No Application				Date:			

EXHIBIT plc B

Tri-State Signature Settlements, LLC
File No. TE-10106M
Tax ID# 26023173

This Deed, made this 21st day of April, 2017, by and between **The Estate of Anita Virginia Rice, Estate No. 69124**, Grantor; and **Downsville Pike Land, LLC**, a Maryland Limited Liability Company, party of the second part, GRANTEE.

Whereas, on February 12, 2014, the Orphans' Court of Washington County, State of Maryland (the "Court") granted administration of the Estate of the Decedent to Connie J. Proctor as Personal Representative of the Estate of the Decedent in Estate No. 69124.

Whereas, Grantor in the capacity as Personal Representative in the Estate of the Decedent has complete and full power and authority by law, to grant and convey the entire fee simple interest in the hereinafter described property; and

Whereas, as part of the administration of the Estate of the Decedent, Grantor desires to convey the entire fee simple estate in the hereinafter described property to the Grantee.

- **Witnesseth** -

That in consideration of the sum of **One Hundred Seventy-Five Thousand And 00/100 Dollars (\$175,000.00)**, which includes the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt whereof is hereby acknowledged, the said GRANTOR as Personal Representative as the Estate of the Decedent, does hereby grant and convey to **Downsville Pike Land, LLC**, in fee simple, all that lot of ground situate in the County of Washington, State of Maryland and described as follows, that is to say:

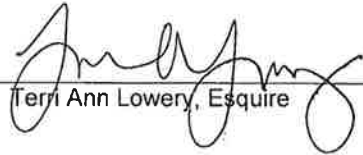
All that lot or parcel of land situate along the Northwest side of the Hagerstown Downsville Road approximately one and six tenths (1.6) miles from the Corporate Limits of the City of Hagerstown, in District No. 26, Washington County, Maryland and being more particularly described as follows:

Beginning at a stone planted at the end of the South 78 degrees 30 minutes west 89 and 5/10 perch line of the deed from Mary E. Stockslager, widow, to Albert L. Stockslager and wife, dated August 6, 1927, and recorded in Liber No. 178, folio 94, one of the land records of Washington County, Maryland, said stone being in or near the Northwest margin of the aforesaid Hagerstown-Downsville Road and at the North east corner of the parcel of land conveyed by the Downsville and Hagerstown Turnpike Company of Washington County to Arthur T. Samuels and Edna M. Samuels, his wife, by deed dated May 3, 1919 and recorded in Liber No. 155, folio 185, another of the Land Records of Washington County and running thence with the closing line of the first mentioned deed North 62 degrees 45 minutes East 133 feet to a point in said Road, thence crossing a portion of the Road North 27 degrees 15 minutes West 24 feet to an iron pipe in the Northwest margin thereof, thence leaving the Road and running North 59 degrees 50 minutes West 337 feet to an iron pipe, thence South 22 degrees 36 minutes West 212 feet to an iron pipe in the boundary of the entire tract conveyed to Stockslager as aforesaid, thence with said boundary line South 78 degrees 15 minutes East 88 feet, more or less, to the Northwest corner of the aforesaid parcel of land conveyed to Arthur T. Samuels and wife, thence binding on said parcel South 78 degrees 15 minutes East 181 feet, more or less, to the place of beginning, containing one and one tenth acres of land, more or less.

SAVING AND EXCEPTING all that property located along the northwest side of the Downsville Pike in the Twenty Sixth Election District of Washington County, Maryland, as shown on State Highway Administration Plat No. 54605 (Rev. 7/15/97); together with any and all right of vehicular ingress and egress across those portions of the right of

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 5488, p. 0165, MSA_CE 18_5440, Date available 04/28/2017, Printed 07/11/2017.

THIS IS TO CERTIFY that the within Deed was prepared by, or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.


Terri Ann Lowery, Esquire

AFTER RECORDING, PLEASE RETURN TO:
Tri-State Signature Settlements, LLC
1185 Mount Aetna Road
Hagerstown, MD 21740

LR - Deed (w Taxes)
 Recording Fee - ALL 20.00
 Name: downsville pike
 Ref:
 LR - County Transfer
 Tax - linked 625.00
 LR - Surcharge -
 linked 40.00
 LR - Recordation Tax -
 linked 1,330.00
 LR - State Transfer
 Tax - linked 875.00
 LR - NR Tax - lkd 0.00
 =====
 SubTotal: 2,890.00
 =====
 Total: 3,423.00
 04/26/2017 10:52
 CC21-TR
 #0254008 CC0403 -
 Washington
 County/CC04.03.04 -
 Register 04

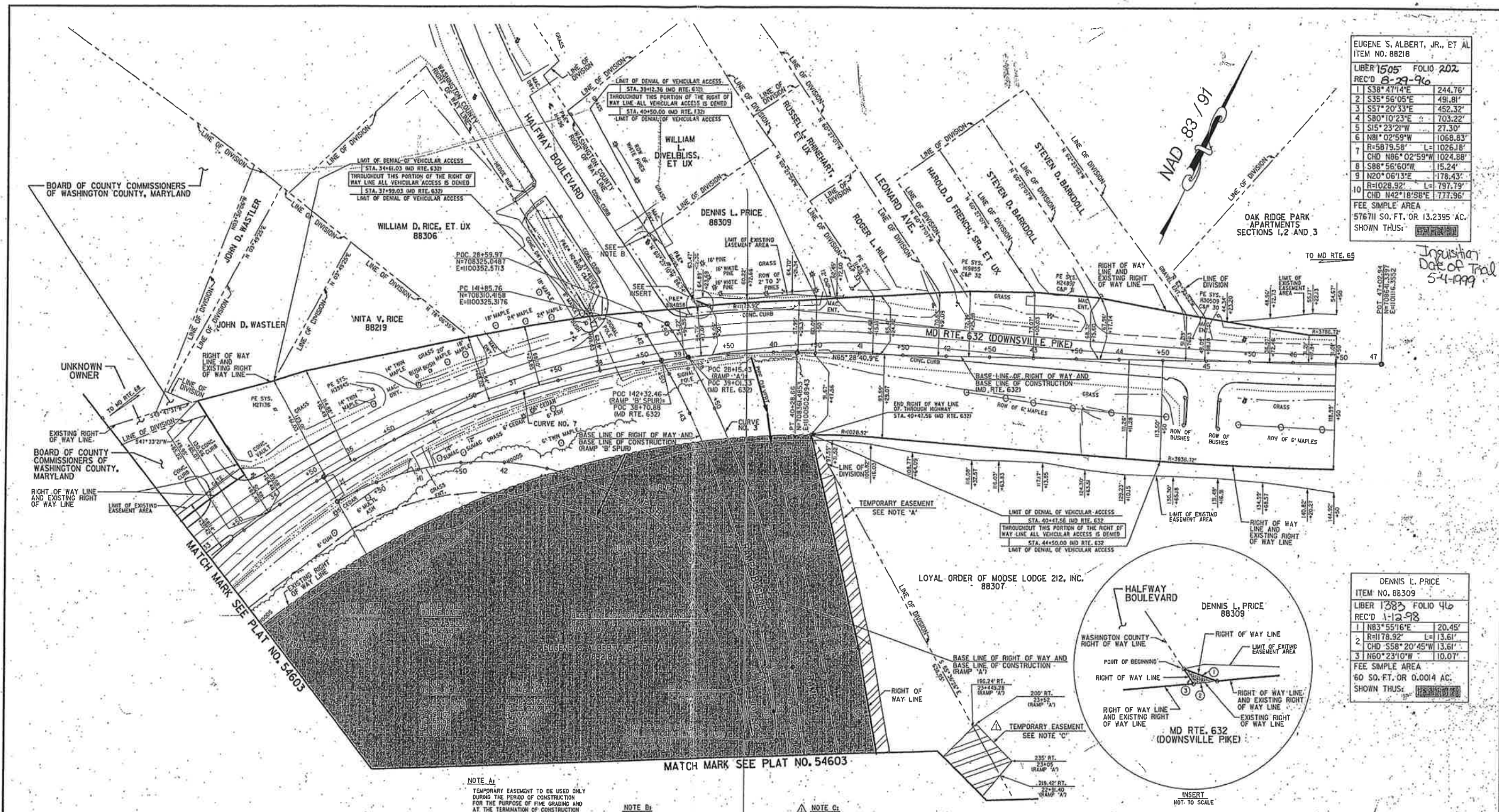
WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 5488, p. 0169, MSA_CE18_5440. Date available 04/28/2017. Printed 07/11/2017.

This page not to be counted in calculating Recording Fee

**Clerk of Circuit Court
 Washington County, Maryland**

Dennis J. Weaver, Clerk
 24 Summit Avenue
 Hagerstown, MD 21740
 301-790-7991

<u>For Clerks Use Only</u>	
Improvement Fee	40.00
Recording Fee	20.00
County Transfer Tax	625.00
Recordation Tax	1330.00
State Transfer Tax	875.00
Non-Resident Tax	
TOTAL	2890.00



EUGENE S. ALBERT, JR., ET AL
ITEM NO. 88218

LIBER 1505 FOLIO 202
REC'D 8-29-96

1	S38°47'14"E	244.76'
2	S35°56'05"E	491.81'
3	S57°20'33"E	452.32'
4	S80°10'23"E	703.22'
5	S15°23'21"W	27.30'
6	N81°02'59"W	1068.83'
7	R=5879.58' L=1026.18'	
8	S88°56'60"W	15.24'
9	N20°06'13"E	178.43'
10	R=1028.92' L=797.79'	
	CHD N42°18'58"E	177.96'

FEE SIMPLE AREA
576711 SQ. FT. OR 13.2395 AC.
SHOWN THUS: [Symbol]

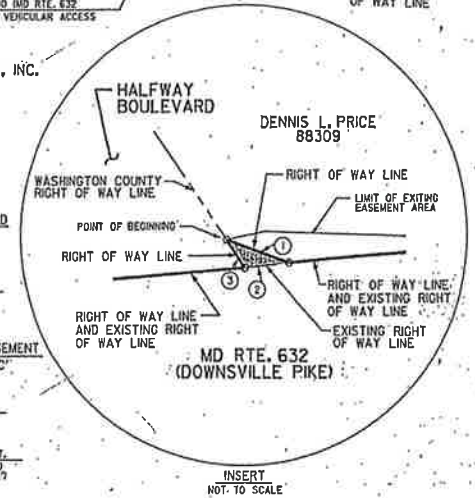
Inquisition
Date of Trial
5-4-99

DENNIS L. PRICE
ITEM NO. 88309

LIBER 1383 FOLIO 416
REC'D 1-12-98

1	N83°55'16"E	20.45'
2	R=178.92' L=13.61'	
3	N60°23'10"W	10.07'

FEE SIMPLE AREA
60 SQ. FT. OR 0.0014 AC.
SHOWN THUS: [Symbol]



NOTE A:
TEMPORARY EASEMENT TO BE USED ONLY DURING THE PERIOD OF CONSTRUCTION FOR THE PURPOSE OF FINE GRADING AND AT THE TERMINATION OF CONSTRUCTION ALL RIGHTS HEREBY ACQUIRED BY THE STATE HIGHWAY ADMINISTRATION - STATE ROADS COMMISSION SHALL THEN TERMINATE AND REVERT TO THE PROPERTY OWNERS.

NOTE B:
END OF THE 8TH OR NORTH 61/2" WEST BY 1/2 FEET LINE OF A DEED FROM VINCE K. PRICE TO DENNIS L. PRICE RECORDED AUGUST 27, 1984 IN LIBER 120, FOLIO 816.

NOTE C:
TEMPORARY EASEMENT TO BE USED ONLY DURING THE PERIOD OF CONSTRUCTION FOR THE PURPOSE OF SHOULDER REPAIR AND AT THE TERMINATION OF CONSTRUCTION, ALL RIGHTS HEREBY ACQUIRED BY THE STATE HIGHWAY ADMINISTRATION - STATE ROADS COMMISSION SHALL THEN TERMINATE AND REVERT TO THE PROPERTY OWNERS.

I HEREBY CERTIFY TO THE MARYLAND DEPARTMENT OF TRANSPORTATION, STATE HIGHWAY ADMINISTRATION THAT THE PROPERTY LINES SHOWN HEREON ARE CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF BASED ON THE FIELD SURVEY PERFORMED UNDER MY SUPERVISION, AND THE RECORD DESCRIPTIONS THEREOF, AND THAT THIS PLAT MEETS THE REQUIREMENTS AS CONTRACTED FOR BY THE MARYLAND DEPARTMENT OF TRANSPORTATION, STATE HIGHWAY ADMINISTRATION.

DATE: 5/8/97
SIGNATURE: [Signature]
ROBERT L. GREEN, JR. MD. REG. NO. 471



LEGEND

- REVERTIBLE EASEMENT FOR SUPPORTING SLOPES.
- REVERTIBLE EASEMENT OR RIGHT FOR SPECIAL PURPOSE AS INDICATED BY NOTATION ON THIS PLAT.
- PERPETUAL EASEMENT FOR SPECIAL PURPOSE AS INDICATED BY NOTATION ON THIS PLAT.
- PERPETUAL EASEMENT FOR DRAINAGE FACILITY AS INDICATED BY NOTATION ON THIS PLAT.
- ARROW INDICATES GENERAL DRAINAGE PATTERN.
- PERPETUAL EASEMENT TO DISCHARGE FLOW OF WATER FROM OR INTO EXISTING WATERWAY OR NATURAL DRAINAGE COURSE.
- PERPETUAL EASEMENT TO DISCHARGE FLOW OF WATER UPON EXISTING GROUND.
- APPROXIMATE GENERAL DRAINAGE FLOW PATTERN (NOT TO SCALE-FOR EXPLANATORY PURPOSE ONLY).

A PORTION OF THIS RIGHT OF WAY IS FOR AN EXPRESSWAY AND NO ACCESS EITHER VEHICULAR, PEDESTRIAN, AND/OR ANIMAL WILL BE PERMITTED ACROSS THE LINES DESIGNATED 'RIGHT OF WAY LINE OF THROUGH HIGHWAY' EXCEPT BY MEANS OF SUCH PUBLIC ROAD CONNECTIONS AS ARE AUTHORIZED BY LAW.

SENT TO RECORD OFFICE: FEBRUARY 9, 1998
APPROVED BY CHAIRMAN: JANUARY 7, 1998

BOOKS: 13590 M&B, 20385 TRAV, 24990 TRAY
REVISIONS: T-15-97, 13405, 13406
PART OF PLATS: 13405, 13406

LOCATED IN WASHINGTON COUNTY
PREPARED BY THE WILSON T. BALLARD COMPANY
CONSTRUCTION PROJECT: I-70 / MD632 INTERCHANGE
CONSTRUCTION PROJECT NO: WA9335172

PROJECT ENGINEER: [Signature]
CHIEF PLATS AND SURVEYS: [Signature]

STATE OF MARYLAND
DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION
STATE ROADS COMMISSION

RIGHT OF WAY PROJECT: I-70 / MD 632 INTERCHANGE
RIGHT OF WAY PROJECT NO: WA9335172
FEDERAL AID PROJECT NO: NH-70-1 (214)N
SCALE: 1" = 50'
PLAT No. 54605

EXHIBIT C

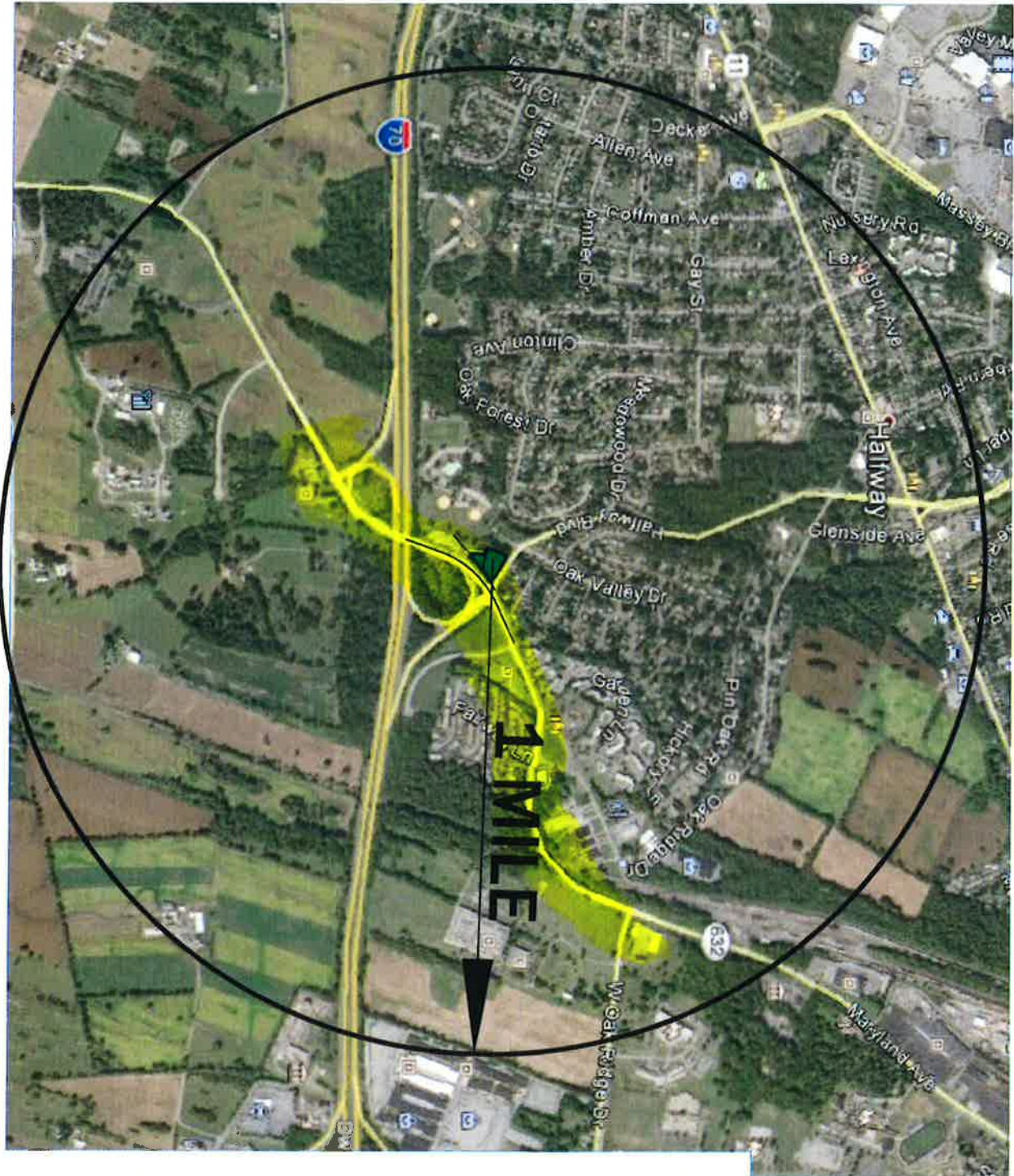
ADJOINING PROPERTY OWNER LIST

<p>TAX MAP 0057 PARCEL 0495 TAX ID#26-038308</p> <p>Washington Co. Commissioners Court House Hagerstown, Maryland 21740</p>	<p>TAX MAP 0057 PARCEL 0565 TAX ID#10-031478</p> <p>632 Joint Venture LLP P.O. Box 889 Hagerstown, Maryland 21741-0889</p>
<p>TAX MAP 0057 PARCEL 0208 TAX ID#26-023017</p> <p>Karen J. Funk Eric F. Funk 17906 Halfway Boulevard Hagerstown, Maryland 21740-1332</p>	<p>TAX MAP 0057 PARCEL 0375 TAX ID#10-014263</p> <p>Washington Co. Commissioners Court House Annex Hagerstown, Maryland 21740</p>
<p>TAX MAP 0057 PARCEL 0432 TAX ID#26-006821</p> <p>William Lee Divelbliss 17910 Halfway Boulevard Hagerstown, Maryland 21740</p>	<p>TAX MAP 0057 PARCEL 0329 TAX ID#26-018862</p> <p>John D. Wastler 10650 Downsville Pike Hagerstown, Maryland 21740-1734</p>
<p>TAX MAP 0057 PARCEL 0311 TAX ID#26-022134</p> <p>Dennis L. Price Diane C. Price 10702 Downsville Pike Hagerstown, Maryland 21740-1774</p>	<p>INTERSTATE 70 (I-70) Highway</p> <p>State Highway Administration Box 717 Baltimore, Maryland 21203</p>
<p>TAX MAP 0049 PARCEL 0270 TAX ID#26-033306</p> <p>Glenn S. Rea, Jr. 10801 Oak Valley Drive Hagerstown, Maryland 21740-7868</p>	

**L&B 6436201v1/13291.0001

EXHIBIT D

EXHIBIT B



SHEET 1 OF 1

PROJECT NO. 17-21200
 DATE: 08/20/17
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]

REZONING EXHIBIT B
DOWNSVILLE PIKE LAND LLC
 SITUATE NORTH OF DOWNSVILLE PIKE & EAST OF HALFWAY BLVD.
 ELECTION DISTRICT 28
 WASHINGTON COUNTY, MARYLAND

DATE	REVISION	DRAWN BY

FOX & ASSOCIATES, INC.
 ENGINEERS • SURVEYORS • PLANNERS
 951 MI. AETNA ROAD
 HAGERSTOWN, MD. 21740
 PHONE: (301)333-8553
 or (301)116-7250
 FAX: (301)333-1813
 www.foxandassociates.com



EXHIBIT B

JUSTIFICATION STATEMENT
DOWNSVILLE PIKE LAND, LLC, APPLICANT

The Map Amendment sought is based upon the following:

1. DESCRIPTION OF THE SITE.

Downsville Pike Land, LLC (the “Applicant”) is the owner of two parcels of land, located at 10656 and 10662 Downsville Pike, totaling 1.60 acres and situated along the northwest side of Maryland Route 632 (Downsville Pike), immediately south of its intersection with Halfway Boulevard (the “Site”). A copy of the rezoning vicinity map is included with this application as Exhibit A. The Site is located adjacent to the Maryland Rte. 632/I70 Interchange, and is currently developed with 2 aged single-family residences. Land uses within the Site’s 1-mile zoning neighborhood (the “Rezoning Neighborhood”) contain a mix of commercial and residential developments. Immediately to the south of the Site is one residence and the Marty L. Snook Regional Park as well as a State Highway Administration Park and Ride. To the north are primarily residential neighborhoods. To the south are I70 and the interchange (south of I70 is the Callas Contractors property), and to the east are the site of a coming new Sheetz store, several other commercial uses including the Health at Work site, and a mix of other commercial and residential uses. An aerial photograph of the Site showing the Rezoning Neighborhood and the various residential and commercial developments in the vicinity of the Site is attached as Exhibit B.

The official zoning classification of the Site, pursuant to the Washington County Zoning Ordinance (the “Zoning Ordinance”), is Residential, Suburban District (RS)¹. (Exhibit A). As shown on Exhibit A, the Site adjoins the Downsville Pike/I70 interchange, a public park, and the coming new Sheetz convenience store. Other than the home immediately to the south of the Site,

¹ The purpose of the RS zoning district is “to provide appropriate locations in the Urban and Town Growth Areas for single and two-family residential dwellings on moderately sized lots and limited community service type uses.”

all other residences nearby are either north of Halfway Boulevard or west of the parks from the Site. While there are residential neighborhoods nearby, the Site's location at the exit from I70 next to a Park and Ride (which attracts numerous commuters) and across from the proposed Sheetz store make it singularly inappropriate for continued residential use. The Applicant is requesting a map amendment to change the zoning classification of the Site from RS to Highway Interchange (HI) due to its immediate adjacency to the I70/Downsville Pike interchange and the proliferation of commercial uses along Downsville Pike.

Prior to 2012, the Site was zoned RS, but the interchange land located across Downsville Pike (hereinafter, the "Interchange Parcel") was zoned RM. As explained in greater detail below, the Washington County Board of County Commissioners (the "Board") in 2012 rezoned the Interchange Parcel from its prior RM zoning to the HI classification during the comprehensive rezoning of the Urban Growth Area that became effective on July 1, 2012 (*See* Ordinance No. ORD-2012-08) (the "Comprehensive Rezoning"), but the Site retained its RS zoning. Similarly, parcels 262 and 464 on Tax Map 56 and parcel 258 on Tax Map 57, south of I70 and within the rezoning neighborhood, were rezoned to HI in 2012. (see Exhibits C and D to show change in zoning during the Comprehensive Rezoning)

For the reasons set forth below the Applicant submits that the decision of the Board during the Comprehensive Rezoning to rezone the Interchange Parcel to the HI district, but NOT further deciding to rezone the Site to the same HI district, resulted from legal mistake, in that the Board did not take into account that the HI zoning district was significantly more appropriate for the Site as well as for the Interchange Parcel.

The Applicant further submits that there has been a substantial change in the character of the Rezoning Neighborhood sufficient to justify the rezoning request. Based on both mistake in zoning and change in the character of the neighborhood, the Applicant requests that the Site be reclassified to the HI zoning district.

THE PURPOSE OF THE HI DISTRICT IS TO "PROVIDE SUITABLE LOCATIONS FOR COMMERCIAL ACTIVITIES OR LIGHT INDUSTRIAL LAND USES

THAT SERVE HIGHWAY TRAVELERS, PROVIDE GOODS AND SERVICES TO A REGIONAL POPULATION, OR USES THAT HAVE A NEED TO BE LOCATED NEAR THE INTERSTATE HIGHWAY SYSTEM TO FACILITATE ACCESS BY A LARGE NUMBER OF EMPLOYEES, OR THE RECEIPT OR SHIPMENT OF GOODS BY HIGHWAY VEHICLES. IN ADDITION TO PROVIDING ACCESSIBLE LOCATIONS, THE HIGHWAY INTERCHANGE DISTRICT IS INTENDED TO PROTECT THE SAFE AND EFFICIENT OPERATION OF THE INTERCHANGE AND TO PROMOTE ITS VISUAL ATTRACTIVENESS.

2. ZONING HISTORY OF THE SITE

The Site, being located within the Urban Growth Area boundary around the City of Hagerstown, was among those “17,000 parcels and 38,000 acres of land” rezoned as part of the Comprehensive Rezoning of the Urban Growth Area in 2012. *See* Ordinance No. ORD-2012-08, p. 1. In adopting the Comprehensive Rezoning, the Board’s goal was to “promote compatibility amongst varied uses while providing the range of land uses needed to accommodate the needs of a growing community.” *See* Ordinance No. ORD-2012-08, p. 6. During the Comprehensive Rezoning process, the Board eliminated the agriculture zone in the Urban Growth Area which “resulted in the assignment of different zoning classification to 8,861 acres of land ... [and] all of the reclassifications result in ... ***decreases in land area devoted to residential and commercial*** uses.” *See* Ordinance No. ORD-2012-08, p. 5 (emphasis added). To that end, the Comprehensive Rezoning of the Urban Growth Area was aimed to “positively reflect the general planning principles of providing for increased diversity, density, and intensity of uses as proximity increases towards the urban core of the County.” *See* Ordinance No. ORD-2012-08, pp. 5-6. Given the Site’s location adjacent to the I70 interchange, near extensive commercial development existing and occurring to the east and with the less intense single-family residential development separated from the Site to the west and north, divided by roads (Halfway Boulevard) and parks, the HI district should have been deemed as appropriate for the Site as it

was for the Interchange Parcel, which was comprehensively rezoned to HI zone from its prior residential RM zoning under the goals of the 2012 comprehensive rezoning.

The Comprehensive Rezoning was guided by the principles and recommendations contained in the 2002 comprehensive plan for the County (the “Comprehensive Plan”) which identifies, as major goals, the objective of promoting “the retention and expansion of existing businesses and industry while encouraging the development of new manufacturing and hi-tech industries to broaden the employment base” and providing “locations for new industry that encourage the use of existing infrastructure facilities and that take advantage of the interstate transportation system” *See Comprehensive Plan, p. 13.*

The Site, being located within the urban core of the County and adjacent to a highway interchange, is clearly appropriate for the HI zoning district, and designation of the HI zoning classification is compatible with the adjoining and nearby properties. At the time of the comprehensive rezoning of the Urban Growth Area was adopted, the Planning Department advised the Board that “at least 75% of those specific [zoning modification] requests received from property owners were approved,” and that the Board would have opportunities in the future to address certain areas of the Urban Growth Area if it elected to do so. *See Board of County Commissioners Meeting Minutes from April 17, 2012, p. 3.* Therefore, the Applicant submits that if the Board were today to apply the very same policy criteria that it did during the 2012 Comprehensive Rezoning, it would not designate the Site in the RS district but rather would re-classify the Site to the HI district.

3. CHANGES TO THE NEIGHBORHOOD.

While the Site has been used for residential purposes long before the enactment of the Ordinance, changes to the neighborhood have occurred since the original and last Comprehensive Rezoning. During the Comprehensive Rezoning, several of the parcels within the Rezoning

Neighborhood were zoned to more intensive uses. As stated above, the Interchange Parcel was rezoned HI from RM-Residential Multi-Family, and the above referenced Parcels 262, 464 and 258, located south of I70 were rezoned from ORT-Office Research and Technology to HI. Similarly, the Marty Snook Park parcel was also rezoned from A-Agricultural to RS. Finally, the approval of the new Sheetz convenience store immediately across Downsville Pike from the Site will greatly influence changes to the Rezoning Neighborhood.

In addition, traffic travelling through the Rezoning Neighborhood has significantly increased since the Comprehensive Rezoning. As shown on the Maryland Department of Transportation, State Highway Administration Annual Average Daily Traffic 2009-2015 chart, (Exhibit E), traffic on that portion of Downsville Pike from Halfway Boulevard to Downsville Pike increased from 10,960 daily trips in 2012 to 12,361 daily trips in 2015. Notably, average daily trips have increased each year since 2012.

4. LEGAL ARGUMENT.

A. The Law.

A local legislative body (in Washington County, the Board of County Commissioners) may approve a piecemeal zoning map amendment, which changes the zoning classification of a property outside of the comprehensive planning process, upon finding that either there was a mistake in the existing zoning classification or that there has been a substantial change in the character of the neighborhood where the property is located. Md. Ann. Code Lane Use, §4-204(b)(2).

B. Mistake In Zoning.

Mistake in zoning, as defined by the Maryland Court of Appeals in numerous opinions related over the years, is proved by introducing evidence that shows either that the approving body failed to take into account factors at the time of comprehensive zoning which would (or should) have justified a different zoning classification, or that events have occurred subsequent to the comprehensive rezoning which show that the approving body's assumptions and premises have

since proved to be invalid. Howard County v. Dorsey, 292 Md. 351, 438 A.2d 1339 (1982). Specifically, “when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize a rezoning.” Mayor of Rockville v. Stone, 271 Md. 655, 319 A.2d 536 (1974); see also Anne Arundel County v. A-Pac Ltd., 67 Md. App. 122, 506 S. 2d 671 (1986) (stating, “when subsequent events demonstrate that any significant assumption made by the Council at the time of the comprehensive rezoning was invalid, the presumption of validity accorded to the comprehensive rezoning is overcome.”). In addition, the “evidentiary burden [of proving error in existing zoning] can be accomplished ... by producing evidence that the Council failed to make any provision to accommodate a project, trend or need which it, itself, recognized as existing at the time of the comprehensive rezoning.” Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137 (1975), citing also Jobar Corp. v. Rodgers Forge Community Ass'n., 236 Md. 106, 202 A.2d 612 (1964) and Rohde v. County Board of Appeals 234 Md. 259, 199 A.2d 216 (1964).

In the case at hand, evidence exists and is presented herein which specifically and unequivocally shows that:

(1) In adopting the Comprehensive Rezoning of the Urban Growth Area, the Board intended to “positively reflect the general planning principles of providing for increased diversity, density, and intensity of uses as proximity increases towards the urban core of the County.” See Ordinance No. ORD-2012-08, pp. 5-6. The Board mistakenly retained the RS zoning on the Site while rezoning the neighboring Interchange Parcel to the HI district instead of accounting for the Site’s ideal location for HI uses and its unsuitability as an ongoing residential area due to the I70 interchange substantially similar to the situation facing the Interchange Parcel;

(2) At the time the Board maintained the RS zoning district on the Site, it also reclassified the adjoining Interchange Parcel from the RM district to the HI district despite the fact that the Interchange Parcel is undevelopable and the same facts and circumstances which justified the change in zoning for the Interchange Parcel apply to the Site. The Board did not account for the fact that designating this Site as HI would be compatible and consistent with its reclassification for the Interchange Parcel. The Board made a legal mistake by failing to recognize that the adjoining Interchange Parcel, like the Site, fronts on Downsville Pike and is significantly impacted by the traffic leaving I70, such that future development of both properties should be oriented toward highway uses and not residential uses.

This evidence is sufficient to allow the Board to grant the requested rezoning on the basis of a mistake in the existing zoning.

C. Change in the Character of the Neighborhood.

In determining if there has been a substantial change in character of the neighborhood, one must first determine what constitutes the neighborhood. Montgomery v. Board of County Commissioners for Prince George's County, Maryland, et al. 263 Md. 1, 280 A.2d 901 (1971). The concept of a neighborhood is a flexible one, and will vary according to the geographical location involved. Montgomery, at 5. The Applicant asserts that while adjoining properties located along Halfway Boulevard to the west are similarly zoned RS, the "neighborhood" should more properly include those commercially zoned and/or utilized properties adjoining the Site along the east side of Downsville Pike, including the coming Sheetz convenience store immediately across from the Site, zoned HI and further including the land zoned HI and ORI south of I70. The neighborhood that faces the same situation as the Site, in reality, is not the nearby residential neighborhoods along Halfway Boulevard but more appropriately is the commercial corridor along Downsville Pike and near or adjacent to its interchange with I70. The Downsville Pike commercial corridor is highlighted in yellow on Exhibit B.

While the Site has been used for residential purposes for many years, it is currently uninhabited and is, frankly, uninhabitable. Changes to the neighborhood have occurred since the both original comprehensive zoning and the 2012 Comprehensive Rezoning. During the Comprehensive Rezoning, several parcels within Applicant's defined neighborhood were zoned to more intensive uses. As stated above, the Interchange Parcel was rezoned HI from RM, and the above referenced Parcels 262, 464 and 258, located south of I70 were rezoned HI from ORT. The adjacent Marty Snook Park land was also rezoned from A to RS.

In addition, as stated above, traffic within the neighborhood has also increased significantly. As shown on Exhibit C, traffic on that portion of Downsville Pike from Halfway Boulevard to Downsville Pike increased from 10,960 daily trips in 2012 to 12,361 daily trips in 2015. Notably, average daily trips have increased each year since 2012.

When considering the issue of "substantial change in a neighborhood, the County should consider 'all changes and pertinent facts' together in totality." The Bowman Group v. Dawson Moser, 112 Md.App. 694, 686 A.2d 643 (1996). In Bowman case, the Court upheld the rezoning of appellant's property by taking into consideration the following factors: 1) previous rezonings; 2) upgrades made to roads; and 3) new water and sewer lines. Id. Considering that multiple parcels in the neighborhood have been rezoned to HI, there has been a significant increase in traffic along Halfway Boulevard and Downsville Pike, improvements made to Halfway Boulevard, and the recently approved and coming Sheetz convenience store, these facts in totality clearly establish that there has been a substantial change in the neighborhood sufficient to justify the proposed map amendment, and that the requested HI zoning for the Site is more appropriate than the existing RS zoning.

In addition, the County anticipated and provided for the future development of the Site when including the Property in the Urban Grown Area. The commercial corridor along Downsville Pike and rezoning of parcels in the neighborhood have transformed the neighborhood significantly and will continue to do so in the future. As stated, the Site would be better suited for a commercial use permitted by the HI District, given its location along Halfway Boulevard, Downsville Pike and the

I70 interchange and the impact of the interchange and the adjacent Park and Ride property on the continuing ability to use the Site for residential purposes, as well as its proximity and access to I70.

In conclusion, the Applicant avers that it is conclusive that a substantial change in the character of the neighborhood has occurred which legally justifies a decision to approve the requested rezoning.

5. AVAILABILITY OF PUBLIC FACILITIES.

- a. Public Water and Sewer. Public water and sewer are currently available to serve the Site.
- c. Protective Services. The Site will be served by the Halfway Fire Company. Police protection will be provided by the Washington County Sheriff's Department.

6. PRESENT AND FUTURE TRANSPORTATION PATTERNS.

The Site is bounded by Halfway Boulevard and Downsville Pike and could potentially be serviced by entrances on either or both roads. Highway access to the Site is via the Downsville Pike/I70 Interchange, making access for both regional and local travelers convenient and safe. These roads and this interchange are ideal for the requested HI zoning. Both Downsville Pike and Halfway Boulevard are classified as Arterial Roads.

7. COMPATIBILITY WITH EXISTING AND PROPOSED DEVELOPMENT FOR THE AREA.

As stated above, the Site is surrounded by a mix of residential and commercial uses, and the adjacent properties to the east along Downsville Pike are all classified in the HI district, and compatible with the requested zoning classification for the Site. A new Sheetz convenience store will be located immediately across Downsville Pike from the Site. The Site's proximity to

the I70 interchange and the adjacent Park and Ride make continued residential use clearly unsuitable. The Site is well suited to serving the travelling public, however, due to this proximity, and thus the requested HI zoning makes much more sense from a land use perspective than the existing residential zoning.

8. POPULATION CHANGE.

The Site is currently unoccupied and this is unlikely to change in any circumstance. Rezoning the Site to HI will have no effect on the population of the Rezoning Neighborhood. The population of the Rezoning Neighborhood is, however, growing.

9. COMPREHENSIVE PLAN.

The Comprehensive Plan identifies, as major goals, the objective of promoting “the retention and expansion of existing businesses and industry while encouraging the development of new manufacturing and hi-tech industries to broaden the employment base” and providing “locations for new industry that encourage the use of existing infrastructure facilities and that take advantage of the interstate transportation system” *See Comprehensive Plan, p. 13*. In addition, the Comprehensive Plan discusses the need to sustain and expand existing businesses. *See Comprehensive Plan, p. 60*. The proposed rezoning of the Site to HI will allow for the redevelopment of the Site from a decrepit and aging single family residence to a much more appropriate retail operation serving the neighborhood and the travelling public along Downsville Pike and I70. Given the Site’s location at the intersection of Halfway Boulevard and Downsville Pike (both Arterial Roads) and being at the end of the off-ramp from I70, such a commercial use is much more suitable for the Site and in keeping with the Comprehensive Plan. The Comprehensive Plan also identifies that appropriate commercial site locations should reflect the need to be located where the market can best be served. *See Comprehensive Plan, p. 61*. The Applicant avers that a commercial site located at the intersection of Halfway Boulevard and

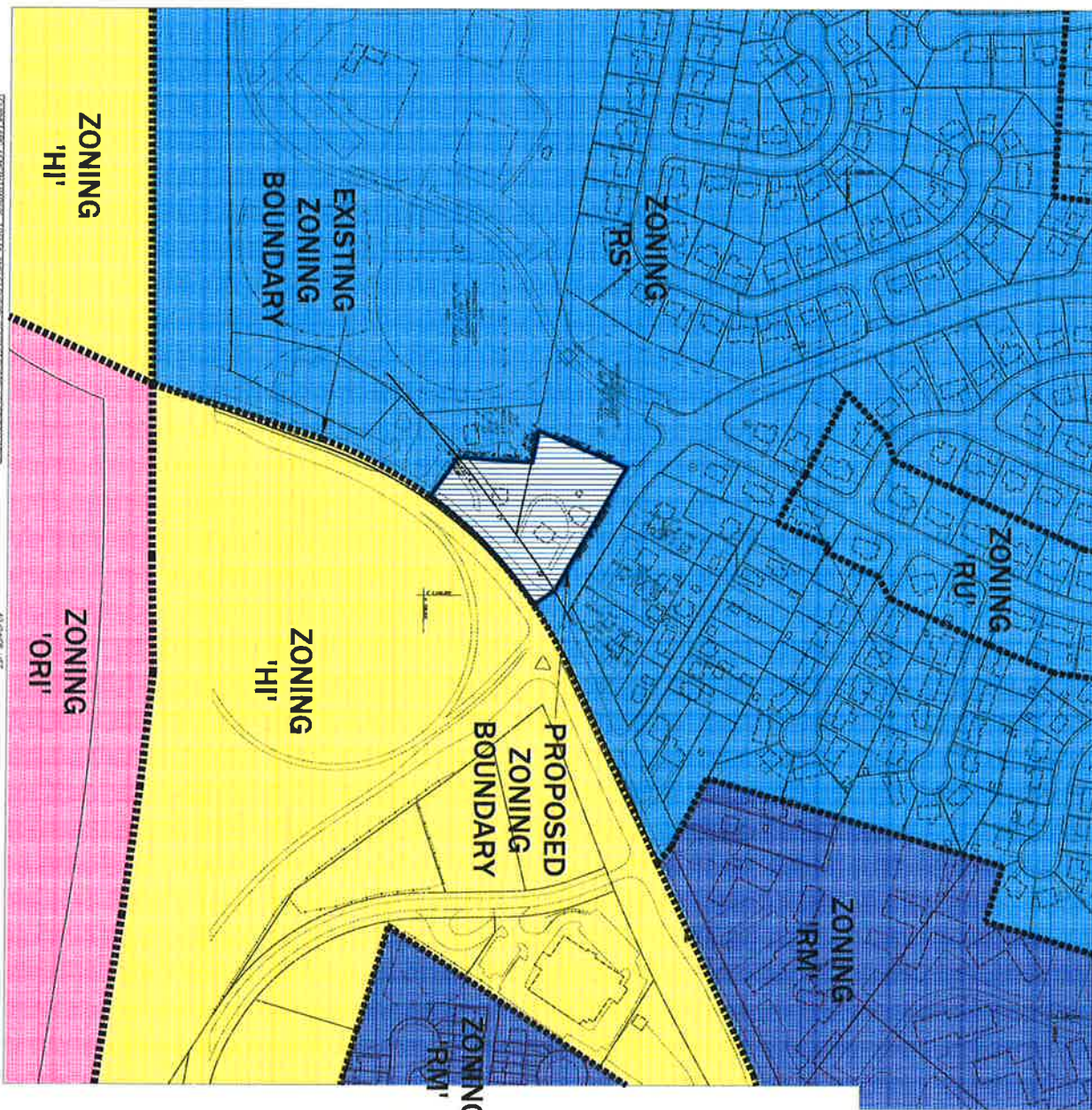
Downsville Pike and directly across from the I70 off-ramp and adjacent to the Park and Ride is an ideal location for a commercial use to serve the Halfway and South Hagerstown markets as well as interstate travelers.

8. CONCLUSION.

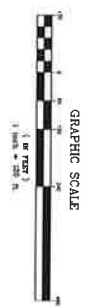
The Applicant requests that the Board approve this rezoning application as the request meets all of the legal requirements for map amendments under the Washington County Zoning Ordinance and under Maryland law to be approved. The Applicant's requested zoning map amendment will remedy the Board's failure to designate the Site for HI use. Moreover, the requested zoning map amendment will correct the Board's failure to take into account various factors related to the Site at the time of comprehensive rezoning which would have justified the HI zoning classification, and will properly reflect the substantial changes to the Rezoning Neighborhood outlined in this statement.

**L&B 6445218v1/13291.0001

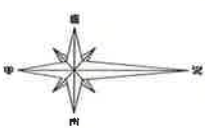
EXHIBIT A



DATE: 11/11/2007
 TIME: 10:00 AM
 PROJECT: DOWNSVILLE PIKE LAND LLC
 SHEET: 1 OF 1
 DRAWN BY: J. B. BROWN
 CHECKED BY: J. B. BROWN
 APPROVED BY: J. B. BROWN
 DATE: 11/11/2007
 TIME: 10:00 AM
 PROJECT: DOWNSVILLE PIKE LAND LLC
 SHEET: 1 OF 1
 DRAWN BY: J. B. BROWN
 CHECKED BY: J. B. BROWN
 APPROVED BY: J. B. BROWN



LEGEND
 AREA TO BE REZONED FROM RS TO HI (1.60 AC.)
 EXISTING ZONING BOUNDARY



PROJECT NO. 11-2007
 DATE: 11/11/2007
 SHEET: 1 OF 1
 DRAWN BY: J. B. BROWN
 CHECKED BY: J. B. BROWN
 APPROVED BY: J. B. BROWN

REZONING EXHIBIT
DOWNSVILLE PIKE LAND LLC
 SITUATE NORTH OF DOWNSVILLE PIKE & EAST OF HALFWAY BLVD.
 ELECTION DISTRICT 26
 WASHINGTON COUNTY, MARYLAND

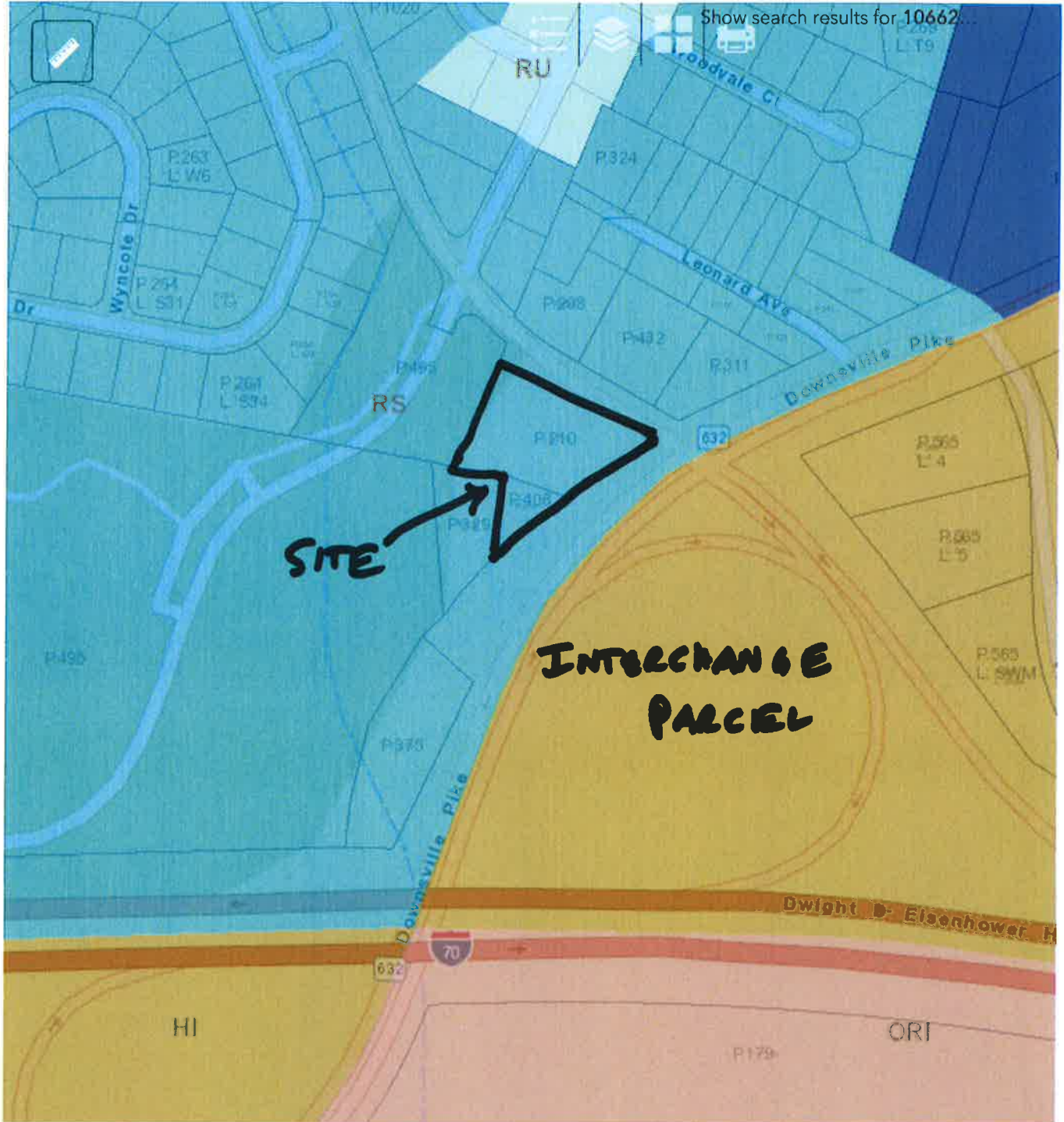
FOX & ASSOCIATES, INC.
 ENGINEERS • SURVEYORS • PLANNERS
 881 MT. AETHA ROAD
 WASHINGTON, MD 21740
 PHONE: (301)733-8500
 or (301)416-7250
 FAX: (301)733-1853
 82 WORMANS MILL COURT
 SUITE 102
 FREDERICK, MD 21701
 PHONE: (301)919-0660
 FAX: (301)955-6009



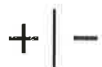
EXHIBIT 10-G



▼	10662 downsville pike	✕	🔍
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2012 ZONING

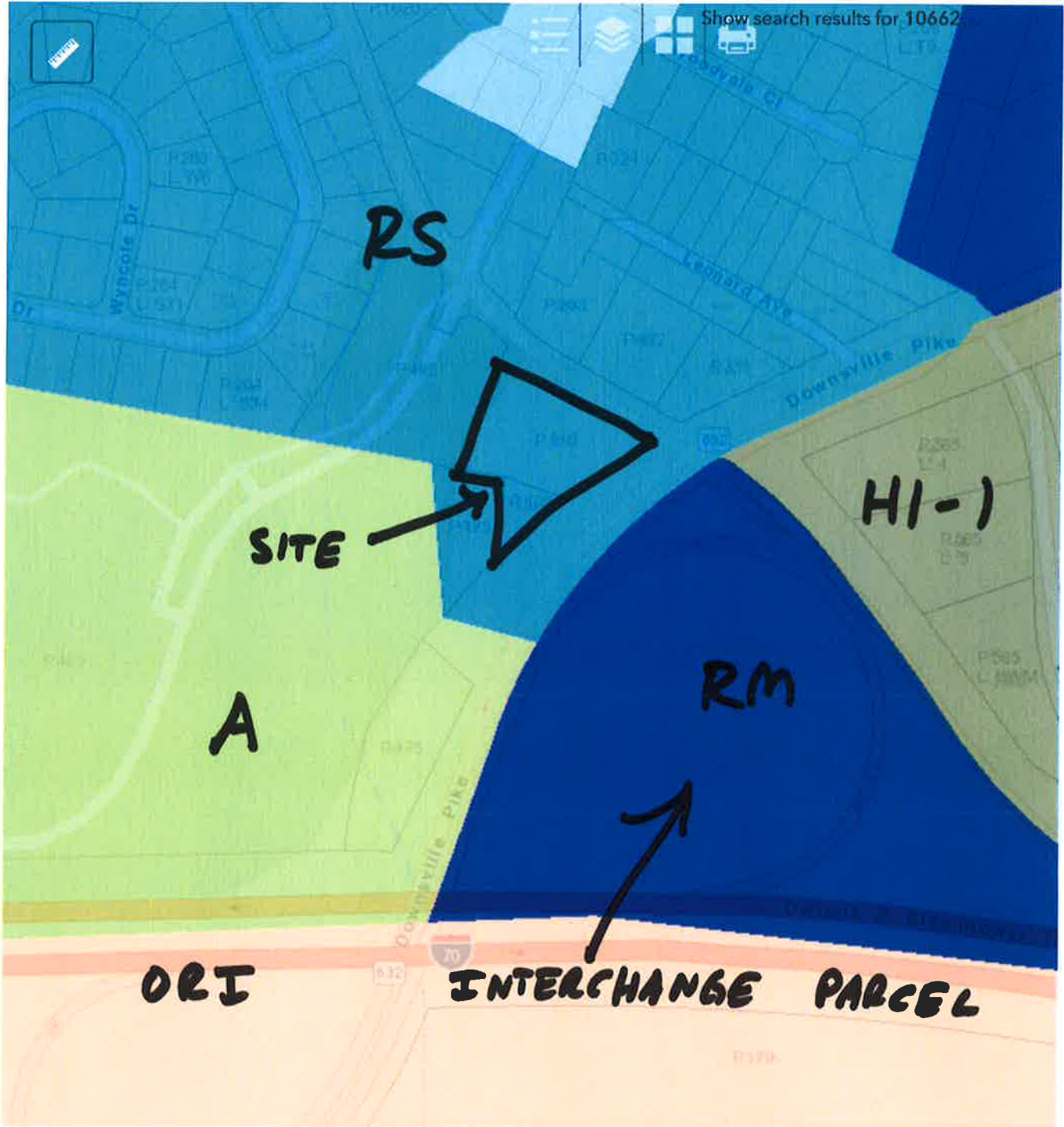


-77.750 39.611 Degrees

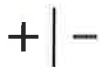
EXHIBIT *plc G*



10662 downsville pike X Q



2005 ZONING



300ft

-77.750 39.611 Degrees

EXHIBIT p10 G

**MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION
OFFICE OF PLANNING AND PRELIMINARY ENGINEERING
DATA SERVICES ENGINEERING DIVISION**

AADT'S OF STATIONS FOR THE YEARS 2009 - 2015

This report reflects the Annual Average Daily Traffic (AADT) in Maryland for the last seven years (2009 through 2015). It contains the county, route, mile point, location ID, location description (description of the road segment for which the AADT applies) and the historic AADT for each station. The report is sorted by county, route, and mile point in ascending order.

Stations denoted by a "P" followed by a four-digit number, contain data collected from Automatic Traffic Recorders (ATR's). These ATR's collect length, volume and/or classification data, which is then downloaded, loaded into a database and validated on a daily basis. Stations denoted by a "T" followed by a four-digit number, contain data provided by Maryland Toll Authority.

Stations denoted by a "B" or "S" followed by a multiple-digit number, contain data from Maryland's portable count program. The portable count program only collects volume and/or classification data, which is manually validated and loaded. The data for these stations is collected on a three or six year cycle depending on the roadway. Growth Factors are applied to counts which were not taken during the current year.

The AADT data contained in this report is estimated. The AADT estimates are derived by taking 48-hour machine count data and applying factors from permanent count stations.

A special numeric code was added to the AADT numbers, starting in 2006, to identify the years when the count was actually taken. The last digit represents the number of years prior to the actual count. Where "0" represents the current year when data was collected (in 2015), "1" represents the count taken in 2014, "2" represents the count taken in 2013, "3" represents the count taken in 2012 and so forth.

MARYLAND DEPARTMENT OF TRANSPORTATION
 STATE HIGHWAY ADMINISTRATION
 DATA SERVICES ENGINEERING DIVISION
 ANNUAL AVERAGE DAILY TRAFFIC (AADT) 2009-2015

As of: 06/21/2016



ROUTE	ROADNAME	LOCATION	BEGIN MP	END MP	LOCATION DESCRIPTION	AADT									
						2009	2010	2011	2012	2013	2014	2015			
MD 67	ROHRERSVILLE RD	B3982	2.80	5.10	YARROWSBURG RD TO GAPLAND RD	4,402	4,270	4,191	4,202	4,320	4,321	4,432			
MD 67	ROHRERSVILLE RD	B3983	5.10	12.20	GAPLAND RD TO US 40AL	5,422	5,420	5,321	5,332	5,130	5,131	5,252			
MD 68	CLEARSPRING RD	B4022	0.00	2.74	US 40 TO MD 66	2,482	2,580	2,531	2,542	2,533	2,534	2,505			
MD 68	CLEARSPRING RD	B3984	2.74	3.92	MD 66 TO CEDAR RIDGE RD	1,922	2,050	2,011	2,022	2,120	2,121	2,172			
MD 68	CLEARSPRING RD	B3985	3.92	7.31	CEDAR RIDGE RD TO US 11	4,532	4,510	4,421	4,432	4,040	4,041	4,142			
MD 68	CONOCOCHIEGUE ST	B3986	7.31	8.29	US 11 TO IS 81	3,162	3,310	3,321	3,292	3,050	3,041	3,122			
MD 68	LAPPANS RD	B3967	8.29	10.48	IS 81 TO MD 632	9,602	10,170	9,981	10,002	10,960	10,951	11,212			
MD 68	LAPPANS RD	B3969	10.48	13.35	MD 632 TO MD 65	4,662	4,740	4,651	4,662	4,643	4,644	4,765			
MD 68	LAPPANS RD	B3970	13.35	16.58	MD 65 TO BARNES RD	2,592	2,670	2,581	2,562	2,573	2,574	2,645			
MD 68	LAPPANS RD	B3971	16.58	18.50	BARNES RD TO US 40AL	2,202	2,140	2,101	2,112	2,112	2,130	2,182			
MD 77	FOXVILLE RD	B3980	0.00	0.17	MD 64 TO WOLFVILLE RD	4,511	4,552	4,220	4,231	4,231	4,213	4,314			
MD 77	FOXVILLE RD	B3981	0.17	2.51	WOLFVILLE RD TO PLEASANT VALLEY RD	3,821	3,852	3,500	3,511	3,492	3,493	3,584			
MD 77	FOXVILLE RD	B3983	2.51	3.02	PLEASANT VALLEY RD TO FREDERICK COIL	3,381	3,412	3,130	3,141	3,141	3,132	3,214			
MD 144	WASHINGTON ST	B3994	0.00	1.47	US 40 TO WESTERN MARYLAND PKWY	4,502	4,640	4,661	4,622	4,622	4,990	4,981	5,112		
MD 144	WB WESTERN PIKE	B3991	0.00	2.77	RAMPS NORTH OF IS 68 TO LOCHER RD	972	983	964	975	960	961	982			
MD 144	WB WESTERN PIKE	B3992	2.77	3.67	LOCHER RD TO MD 894	4,051	4,082	4,003	4,014	3,995	2,650	2,711			
MD 144	WB MAIN ST	B3993	3.67	5.91	MD 894 TO IS 70	8,201	8,272	8,123	8,144	8,105	6,770	6,931			
MD 418	RINGGOLD PIKE	B3995	0.00	2.77	MD 60 TO MD 64	4,060	4,091	4,012	4,023	4,004	4,005	4,190			
MD 418	RINGGOLD PIKE	B3997	2.77	4.62	MD 64 TO PENNSYLVANIA STL	5,880	5,931	5,822	5,833	5,804	5,805	6,320			
MD 491	RAVEN ROCK RD	B3999	0.00	4.69	MD 64 TO FREDERICK COIL	2,130	2,151	2,112	2,123	2,114	2,115	2,200			
MD 491	RAVEN ROCK RD	B3999	6.40	6.78	FREDERICK COIL TO MD 560	2,130	2,151	2,112	2,123	2,114	2,115	2,200			
MD 494	FAIRVIEW RD	B4000	0.00	0.84	PENNSYLVANIA STL TO MD 57	2,701	2,722	2,680	2,691	2,682	2,663	2,754			
MD 494	FAIRVIEW RD	B4036	0.84	6.00	MD 57 TO BLACKBERRY LA	1,641	1,652	1,580	1,581	1,572	1,573	1,614			
MD 494	FAIRVIEW RD	B4001	6.00	6.83	BLACKBERRY LA TO MD 63	3,451	3,482	3,170	3,181	3,172	3,173	3,254			
MD 550	FORT RITCHIE RD	B4003	0.00	1.81	FREDERICK COIL TO PENNERSVILLE RD	1,871	1,882	1,893	1,884	1,895	1,895	1,945			
MD 550	PEN MAR RD	S2011210333	1.81	2.01	PENNERSVILLE RD TO PEN MAR RD	1,210	1,210	1,201	1,201	1,202	1,203	1,234			
MD 615	HEAVENLY ACRES RIDGE	B4004	0.00	4.35	IS 70 RAMP TO PENNSYLVANIA STL	581	592	583	584	585	580	500			
MD 632	DOWNSVILLE PIKE	B4005	0.00	2.24	MD 63 TO MD 68	2,521	2,542	2,493	2,504	2,495	2,420	2,481			
MD 632	DOWNSVILLE PIKE	B4006	2.24	5.12	MD 68 TO HALFWAY BLVD	5,601	5,652	5,553	5,564	5,545	5,640	5,781			
MD 632	DOWNSVILLE PIKE	B4026	5.12	6.71	HALFWAY BLVD TO DOWNSVILLE PIKE	12,081	12,152	10,960	10,871	10,892	12,050	12,361			
MD 845 A	S MAIN ST	B210043	0.00	1.23	MD 34 TO MD 34	490	491	482	483	484	485	480			
MD 903	MOUNTAIN RD	B210074	0.25	1.16	MOUNTAIN RD (BACK) TO NATIONAL PIKE (AHEAD)	80	81	82	83	84	85	100			
CO 6	MOUNTAIN RD	B210074	0.00	0.25	PENNSYLVANIA STL TO MD 903 (AHEAD)	80	81	82	83	84	85	100			
CO 23	WOODMONT RD	B210063	0.00	6.33	PEARRE RD TO MD 144	174	185	185	195	195	70	71			
CO 3	PENNSYLVANIA AVE	S2011210321	0.81	1.79	188 TO PENNSYLVANIA AVE	4,240	4,251	4,232	4,233	4,344					

Note: AADTs that are bold and italicized are counted that year



DEPARTMENT OF PLANNING & ZONING
COMPREHENSIVE PLANNING | LAND PRESERVATION | FOREST CONSERVATION | GIS

September 8, 2017

Case #: RZ-17-003

**Application for Map Amendment
Staff Report and Analysis**

Property Owner(s) :	Downsville Pike Land, LLC
Applicant(s) :	Christopher R. Smith
Location :	NW side of Downsville Pike, ¼ mile North of I-70
Election District :	#26 – Halfway
Comprehensive Plan Designation :	Low Density Residential
Zoning Map :	57
Parcel(s) :	P. 210 & P. 408
Acreage :	1.60 acres (P. 210: 1.10 ac; P. 408: .50 ac)
Existing Zoning :	RS – Residential, Suburban
Requested Zoning :	HI – Highway Interchange
Date of Hearing :	September 25, 2017

I. Background and Findings Analysis:

1. Site Description

The subject parcels are located along the northwest side of Downsville Pike, approximately .25 miles north of Interstate 70. The total acreage of the two parcels that are the subject of this rezoning case is 1.60 acres. Each is described below:

Subject Parcel #1: Tax Map 57; Grid 002; Parcel 210 – The parcel has a regular rectangular shape consisting of 1.10 acres. A single family detached residence and a dilapidated accessory structure sit currently on the parcel, accessed from Halfway Boulevard. The property sits atop a small hill which slopes moderately to the southwest towards Marty Snook Park. Mature trees and brush cover much of the parcel. There are no environmentally sensitive areas on the property.



Subject Parcel #2: Tax Map 57; Grid 002; Parcel 408 – The triangular shaped parcel comprises .50 acres. The **Anita Rice House** (historic site WA-I-692) is located on the parcel, and is currently in poor condition. Mature trees and brush surround the house, which sits mid-slope between Parcel 210 and Parcel 329. There are no environmentally sensitive areas on the property.

Both properties are located within the Urban Growth Area that surrounds the City of Hagerstown and the Towns of Williamsport and Funkstown. An intermittent stream, Saint James Run, separates adjacent parcel 329 from the Park at the base of the hill, just offsite.

2. Population Analysis

To evaluate the change in population, information was compiled from the US Census Bureau over a thirty-year time frame. A thirty year horizon was chosen to show long term population trends both in the election district of the proposed rezoning, as well as the overall trends of the County.

The two parcels subject to this rezoning are located within the Halfway Election District (#26). As shown in the table below, the population in this district has grown more slowly than the County has over the thirty year time frame between 1980 and 2010. District 26 has grown 13.54% over the thirty year period (.45%) per year while the County as a whole has increased in population by 30.36% (1.01% per year) during the same period. Both jurisdictions experienced their greatest population increase between 2000 and 2010, within the time period in question.

Table 1: Halfway Election District Population Trends

Population Trends 1980 - 2010			
Year	Area	Population	% change from previous decade
1980	District	9489	
	County	113086	
1990	District	9418	-0.7%
	County	121393	7.3%
2000	District	9854	4.6%
	County	131932	8.7%
2010	District	10774	9.3%
	County	147430	11.7%

Source: US Census Bureau

3. Availability of Public Facilities

A. Water and Sewerage

The adopted Water and Sewerage Plan for the County establishes the policies and recommendations for public water and sewer infrastructure to help guide development in a manner that helps promote healthy and adequate service to citizens. By its own decree, the purpose of the Washington County Water and Sewerage Plan is "...to provide for the continued health and well-being of Washington Countians and our downstream neighbors..."¹ This is achieved through implementing recommendations within the County Comprehensive Plan and the Water and Sewerage Plan to provide for services in a timely and efficient manner and by establishing an inventory of existing and programmed services.

Water:

W1-Existing Service (County Line – City Treatment)

¹ Washington County, Maryland Water and Sewerage Plan 2009 Update, Page I-2

Both parcels are served by existing (W-1) public water facilities as they are located within the Urban Growth Area. Water distribution lines in this area are owned by the County while treatment is provided by the City of Hagerstown. Areas immediately adjacent to the subject properties, along Downsville Pike are designated as W-3, programmed service (City), in the County's 2009 Water and Sewerage Plan. The City of Hagerstown Water Division offered no comment on the proposed development when sent the application for review.

Wastewater:

W1-Existing Service (County)

The subject parcels are served by existing (W-1) public sewerage facilities within the Urban Growth Area. The County provides wastewater service for this area at the Conococheague Wastewater Treatment Plant. Adjacent areas along Downsville Pike are also programmed for service (W-3) by the County within its Water and Sewerage Plan.

The Department of Water Quality is the wastewater provider for this area and, therefore, the application was sent to the Department of Water Quality for review and comment. The Department had no comments for this application.

B. Emergency Services

Fire and Emergency Services:

Volunteer Fire Company of Halfway (1114 Lincoln Avenue) – 1 mile away

Parcels 210 and 408 are located within the service area of the Volunteer Fire Company of Halfway. This same entity also provides the nearest emergency rescue services. Their station is located approximately 1 mile away from the properties subject to the rezoning.

A copy of this application was sent to the Halfway Fire Company as well as to the Washington County Division of Emergency Services. No comments were received.

Schools

The subject site is within the districts of Lincolnshire Elementary, Springfield Middle and Williamsport High schools. The requested zoning classification, Highway Interchange (HI), does not allow for residential development. Therefore, there would be **no school capacity mitigation requirements** for pupil generation under the County's Adequate Public Facilities Ordinance.

4. Present and Future Transportation Patterns

Highways – Access and Traffic Volume

Halfway Boulevard (which borders parcel 210 to the north) and MD 632/Downsville Pike (borders both subject parcels to the east) are both classified as minor arterial in the Transportation Element of the County's 2002 Comprehensive Plan. This classification accounts for mobility and access characteristics of the roadway in its categorization. **Minor Arterial** roads are designed to carry between 5,000 – 25,000 Average Daily Traffic in urban areas. The County's road classification system is based upon the Federal Highway Functional Classification System, but modified to reflect local road conditions.

Parcel 210 has approximately 300 feet of road frontage on Halfway Boulevard, extending from the intersection of Halfway Boulevard and Downsville Pike to the northwest. The two parcels combined have approximately 500 feet of road frontage on Downsville Pike, extending south from this same intersection.

The southbound and northbound travel lanes on Downsville Pike are divided by a median. This median extends north of the Halfway Boulevard intersection for approximately 500 feet until ending near Ventura Drive. It runs south of this intersection for approximately ½ mile until ending at the I-70E off-ramp. The median then extends briefly again for approximately another 600 feet as Downsville Pike turns southwest.

At present, **no new major roadway projects** affecting capacity or traffic flow realignment are currently slated to occur in the immediate vicinity of the subject parcels on County, State or Federal roads, according to a review of short and long term transportation planning documents.

Of roads in the vicinity of this rezoning application, the Hagerstown/Eastern Panhandle MPO's current Long Range Transportation Plan (Direction 2040) proposes the widening of I-70 to six lanes throughout the County, including the segment that runs just south of the subject parcels. These proposed improvements have not yet obtained funding or approval at this time. The County's 2002 Comprehensive Plan also calls for widening of I-70 between the Frederick County Line and the MD 63 interchange within its Transportation Element.

In addition to evaluating public access of a parcel for rezoning purposes, it is also important to evaluate traffic generation and existing traffic volumes. This is commonly accomplished through analysis of historic and existing traffic counts as well as any existing traffic impact studies. The intersection of Halfway Boulevard and Downsville Pike, located immediately adjacent to the two parcels to the northeast, offers a proximate location which has had recorded traffic counts from the Maryland State Highway Administration (SHA) throughout the time period shown below. The traffic volume data shown in the chart is expressed in annual average daily traffic volumes.

Table 2: Traffic Volumes 1980-2015

Year	Downsville Pike @ Halfway Blvd
2015	12,361
2010	12,152
2005	13,175
2000	6,900
1995	6,250
1990	14,600
1985	11,000

Source: Maryland State Highway Administration

As shown in the table above, traffic volumes have remained relatively consistent during the last ten years. Traffic volumes have grown 1.7% between 2010 and 2015. The significant dip in traffic volumes at this location between 1995 and 2000 is likely explained by I-70 interchange construction during that same period, causing traffic to divert onto other roads. Accordingly, the sharp increase in traffic volume in 2005 at this location coincides with the project's completion.

The State Highway Administration had no comment after receiving a copy of the rezoning application.

The zoning application was also sent to the Division of Plan Review and Permitting and they have supplied the following comment regarding traffic impacts:

1. Engineering Plan Review: *"Any development of the area to be rezoned that generates a large amount of traffic may require a **new access location onto Halfway Boulevard**. Any access location onto Halfway Boulevard will necessarily be in close proximity to the intersection with MD 632, which may result in traffic flow issues. A **traffic study** may be required to determine, among other things, the impact on MD 632/Halfway Blvd intersection. In addition, Halfway Boulevard is classified as a minor arterial which requires a **minimum 500 feet spacing requirement between access locations**. Any new access onto Halfway Blvd would have to meet that requirement."*

2. "Any proposed development will require a site plan prepared in accordance with Zoning Ordinance Article 4, Section 4.11 to be submitted, reviewed, and approved by the Washington County Plan Review Department."
3. "New development will have to meet the requirements of the Highway Interchange District found in Article 19 of the Washington County Zoning Ordinance. In particular, additional buffer yards with solid fencing and vegetative screening will be required between the HI zoned property and the adjacent Residential Suburban zoned properties."

Public Transportation

This area is not served by public transportation. Routes 111 and 112 (Valley Mall Via Rosehill/Summit) of the Washington County Commuter both travel south along Downsville Pike to its intersection with Oak Ridge Drive, roughly ½ mile north of the subject parcels, but the routes then continue to the northwest along Oak Ridge Drive.

5. Compatibility with Existing and Proposed Development in the Area:

Both of the subject parcels are currently zoned Residential Suburban (RS) and both are requesting a change to Highway Interchange (HI). The purpose of the HI zoning district is:

"...to provide suitable locations for commercial activities or light industrial land uses that serve highway travelers, provide goods and services to a regional population, or uses that have a need to be located near the interstate highway system to facilitate access by a large number of employees, or the receipt or shipment of goods by highway vehicles..."²

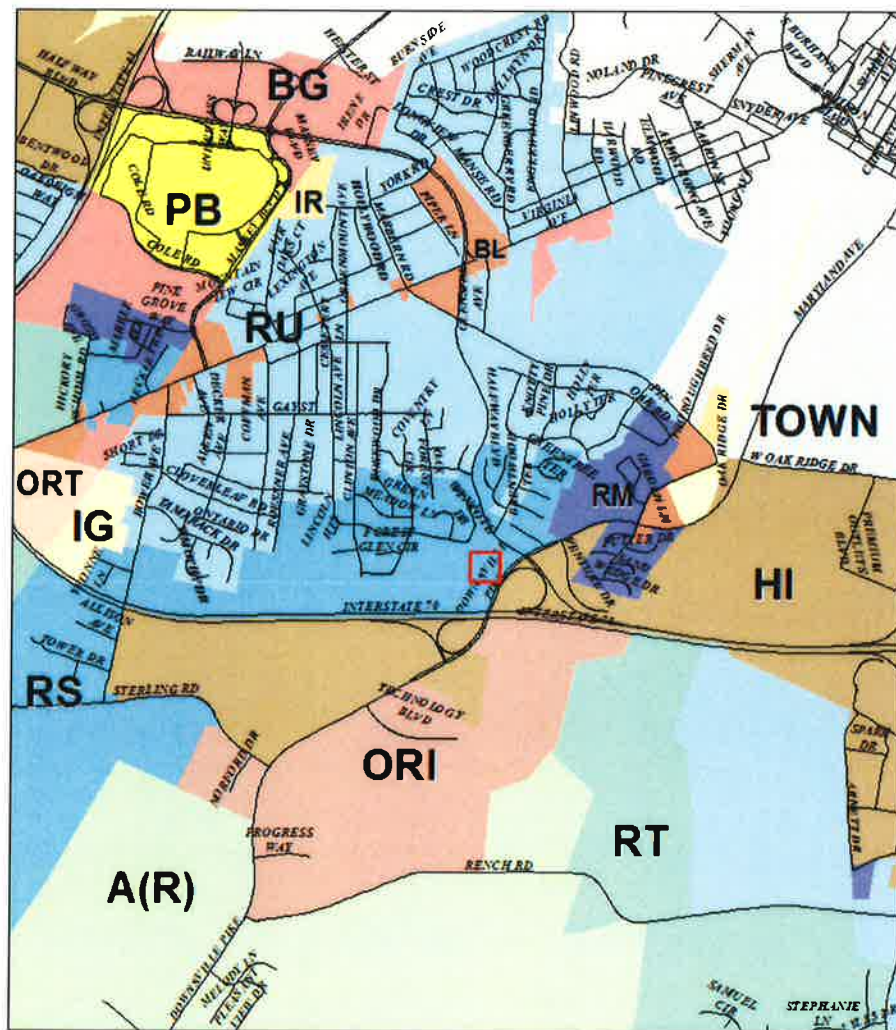
Select principal permitted uses within this zoning district include retail trades, businesses and services, including but not limited to the following and any use permitted in the BL District, **drive-in restaurants, hotels, animal hospitals, auto sales and service establishments** and more. New development in a BG zoning district must be served by public water and sewer facilities.

There is a mix of zoning classes in the immediate vicinity of the two parcels (red box) in question, as shown in Map 1 on the next page. Residential Suburban surrounds the properties to the north and west above Interstate 70. The RS block gives way to Residential Urban just beyond that, in those same directions. To the northeast is a Residential Multifamily (RM) district, while Highway Interchange (HI) lies due east across Downsville Pike above I-70. Below I-70, one finds HI to the southwest; Office, Research and Industry (ORI) to the south and Residential Transition (RT) to the southeast.

In terms of land use in the area surrounding the rezoning, residential and parkland dominate north of I-70. Marty Snook Memorial Park borders the subject parcels to the west. A park and ride lot is immediately south of adjacent parcel 329. Health at Work, a health care facility in the Meritus system, is just northeast of Halfway Boulevard. Callas Contractors, a construction firm, is found just after the I-70 underpass on Downsville Pike to the south. A small cluster of mostly retail businesses is found at the intersection of Downsville Pike and Oak Ridge Drive roughly ½ mile northeast.

² Washington County Zoning Ordinance, Section 19.1, Purpose

Map 1: Surrounding Zoning Classifications



A. Historic Sites

Another important component of compatibility is the location of historic structures on and around the parcels being proposed for rezoning. According to the Washington County Historic Sites Survey there are approximately 6 historic sites located within a 0.5 mile radius of the proposed rezoning areas. One of the six historic sites, the Anita Rice House, is located within the boundary of parcel 408, which is subject to this rezoning. Below is a listing of existing historic resources left within a 0.5 mile radius of the subject parcels.

Existing historic sites onsite:

- WA-I-692: “**Anita Rice House**” ca. 1900-1910, vernacular, 2-story wood frame dwelling located within Parcel 408.

Existing historic sites within ½ mile: (Marsh Head land grant)

- WA-I-691: “Eldridge Tenant House,” ca. 1900 vernacular , 2-story wood frame dwelling constructed as employee housing for adjoining Shafer Farm (.25 miles away).

- WA-I-264: "Shafer Farm," mid-19th agricultural complex encompassing five buildings including a 2-story brick farmhouse, two barns, smokehouse and stone springhouse associated with prominent early residents of Washington County (1/3 mile away).
- WA-I-388: "David's Friendship," 18th century, 2-story stone farmhouse associated with prominent early residents of Washington County (1/2 mile away).
- WA-I-389: "Thomas-Adams House," late 19th century 2-story brick farmhouse and wash house outbuilding associated with prominent early residents of Hagerstown (1/2 mile).
- WA-I-376: "Stockslager Farm," mid-19th century 2-story brick cased log house now converted to commercial through property adaptive reuse (1/2 mile).

6. Relationship of the Proposed Change to the Adopted Plan for the County:

The purpose of a Comprehensive Plan is to evaluate the needs of the community and balance the different types of growth to create a harmony between different land uses. In general, this is accomplished through evaluation of existing conditions, projections of future conditions, and creation of a generalized land use plan that promotes compatibility while maintaining the health, safety, and welfare of the general public.

Each of the properties is located in the sub-policy area Low Density Residential. The Comprehensive Plan offers the following definition for this policy area:

*"This policy area designation would be primarily associated with single-family and to a lesser degree two-family or duplex development. It is the largest policy area proposed for the Urban Growth Area and becomes the main transitional classification from the urban to rural areas."*³

7. "Change or Mistake" Rule

When rezonings are not part of a comprehensive rezoning by the governing body, individual map amendments (also known as piecemeal rezonings) are under an obligation to meet the test of the "Change or Mistake" Rule. The "Change or Mistake" Rule requires proof by the applicant that there has been either: a substantial change in the character in of the neighborhood since the last comprehensive zoning plan, or a mistake in designating the existing zoning classification.

As part of the evaluation to determine whether the applicant has proven whether there has been either a change or mistake in the zoning of a parcel, the Maryland Annotated Code Land Use Article and the Washington County Zoning Ordinance state that the local legislative body is required to make findings of fact on at least six different criteria in order to ensure that a consistent evaluation of each case is provided. Those criteria include: 1) *population change*; 2) *the availability of public facilities*; 3) *present and future transportation patterns*; 4) *compatibility with existing and proposed development for the area*; 5) *the recommendation of the planning commission*; and 6) *the relationship of the proposed amendment to the local jurisdiction's Comprehensive Plan*.

Even when change or mistake has been sufficiently sustained, it merely allows the local governing body the authority to change the zoning; it *does not require* the change. When conditions are right for a change the new zone must be shown to be appropriate and logical for the location and consistent with the County's Comprehensive Plan.

II. Staff Analysis:

The analysis of a rezoning request begins with a strong presumption that the current zoning is correct. It is assumed that the governing body performed sufficient analysis, exercised care, and gave

³ 2002 Washington County, Maryland Comprehensive Plan, Page 243

adequate consideration to all known concerns when zoning was applied to a parcel of land. However, there are instances by which a case can be established to show that the governing body either erred in establishment of the proper zoning of a property or that enough change has occurred within the neighborhood surrounding the property since the governing body's last assessment to require a new evaluation of the established zoning designation.

The applicant of this case has indicated in their justification statement that they believe that there has been both a **mistake** in the current zoning **and** a **substantial change in the character of the neighborhood** since the last comprehensive rezoning in 2012. As noted in the prior section describing the "Change or Mistake" Rule, the Washington County's Zoning Ordinance requires data to be presented to the local legislative body on factors such as population change, present and future traffic patterns, the availability of public facilities, the relationship of the proposed change to the Comprehensive Plan and its compatibility with existing and proposed development in order to determine how the area subject to rezoning has evolved over time.

A. Evidence for Mistake in the Current Zoning

In order to demonstrate that a mistake was made by the regulatory body in applying the existing zoning classification to the parcel, the applicant must establish error occurred as a result of factors such as:

- 1. A failure to take into account projects or trends probable of fruition;**
- 2. Decisions based on erroneous information;**
- 3. Facts that later prove to be incorrect;**
- 4. Events that have occurred since the current zoning; or**
- 5. Ignoring facts in evidence at the time of zoning application.**

The last Comprehensive Rezoning in Washington County was completed in 2012, affecting the Urban Growth Area that surrounds the City of Hagerstown and the towns of Williamsport and Funkstown. The Rezoning affected approximately 17,000 parcels and 38,000 acres of land.⁴ Information such as population projections, growth trends, transportation and infrastructure data, and the recommendations of the Comprehensive Plan were considered as a part of this effort. The input of property owners, local officials, County staff and the general public was also solicited and considered in the assignment of each parcel affected by the Comprehensive Rezoning.

The applicant's primary assertion in offering proof that a mistake was made in the designation of the current zoning classification is to question whether the location and characteristics of parcels 210 and 408 make them more representative of adjacent residential or commercially zoned areas. The applicant contends that the Board of County Commissioner's erred in their decision during the 2012 UGA Comprehensive Rezoning to rezone the land radiating northeast and southwest from the I-70 interchange to HI, but not the adjacent parcels which are the focus of this rezoning.

The applicant claims that factors such as the following were not fully considered by the Board in their decision:

- The separation of parcels 210 and 408 from adjacent residential areas to the north and west by Halfway Blvd and Marty Snook Park;
- The proximity of other commercial development to the east, and
- The proximity of the I-70 interchange (both for its development potential and traffic impacts on a residential use)

⁴ Washington County Ordinance No. ORD-2012-08

For these reasons, the applicant feels that the subject parcels should have been considered similarly situated to those located adjacent to the I-70 interchange which were rezoned to HI in 2012 by the Board.

Given the Board's decision in 2012 was to retain the RS zoning classification for these parcels, we can only conclude that the governing body judged that the site more closely fit the character of the nearby residential neighborhoods than it did adjacent areas that either had or were given a commercial zoning class.

We can surmise that there are good reasons for such a conclusion. As noted by the applicant on multiple occasions within his justification statement, the parcel has a **long history of residential usage**. Residential use on parcel 408 goes back more than 100 years, for example.

In addition to the established residential history of these properties, there are also **challenges with the existing transportation patterns**. The location of the two parcels at the intersection of Halfway Blvd and MD 632 presents a challenge in terms of access, as noted by SHA in their comments on page 5 of this report. There is a concrete median running north and south along MD 632 from approximately 500 feet south of the intersection with I-70 eastbound off ramp north to Venture Drive, with the only interrupted area being at Halfway Blvd in the vicinity of the site.

It is evident from this configuration that the State Highway Administration is attempting to limit the number of left hand turn movements in this vicinity due to its proximity with Interstate off ramps and high volumes of traffic. While the developer may not be asking for an additional break in the median, creating a retail destination area on these properties could increase the amount of U-turn traffic at the intersection with Halfway Boulevard and create additional traffic issues at this intersection. Furthermore, there is very limited road access to Halfway Boulevard. Almost the entire road frontage along Halfway Boulevard has dual left turn lanes meaning that traffic entering the site will need to cross two lanes of on-coming traffic. The alternative to access on the subject parcel would be to divert access to the entrance of Marty Snook Regional Park. This presents a safer access point but then has an impact on the traffic related to the park.

For these reasons, it is reasonable to assume that the local legislative body took in the relevant factors and concluded that the continuation of the RS zoning class was a good fit at this particular location.

B. Evidence for Substantial Change in the Character of the Neighborhood

In addition to the claim that the Board made a mistake in the application of the current zoning, the applicant also argues that there has been a substantial **change** in the character of the neighborhood since the time of the last comprehensive zoning plan. In order to demonstrate that a substantial change has occurred in the character of the neighborhood since the passage of the last Comprehensive Zoning Plan, the applicant must establish:

1. *What area reasonably constitutes the "neighborhood" of the subject property;*
2. *The changes that have occurred in the neighborhood since the comprehensive rezoning;*
3. *Proof that these changes resulted in a change in the character of the neighborhood.*

Maryland case law has consistently established that these factors must be considered cumulatively, not individually, if the applicant is to demonstrate proof that a substantial change in the character of the neighborhood has occurred. Correspondingly, a substantial change in any one individual factor doesn't necessarily illustrate that substantial change has occurred in the neighborhood overall.

C. Neighborhood Definition

In determining what reasonably constitutes the neighborhood surrounding parcels 210 and 408, we again confront the challenge of answering the question presented within the prior “mistake” section: is this site more similarly situated to nearby residential or commercial areas? The Applicant’s Exhibit B presents their interpretation of the boundaries of the neighborhood. While this Exhibit displays an aerial photo utilizing a 1 mile radius around the site to encompass the “neighborhood,” the applicant narrows down its borders considerably by saying:

“The neighborhood that faces the same situation as the Site, in reality, is not the nearby residential neighborhoods along Halfway Boulevard but more appropriately the commercial corridor along Downsville Pike and near or adjacent to its interchange with I-70.”⁵

While the concept of a neighborhood is flexible according to its geographical context, as the applicant notes citing *Montgomery v. Board of County Commissioners for Prince George’s County (1971)*, subsequent Maryland case law demonstrates that the neighborhood must be reasonable, not “unduly restrictive” and include the “immediate environs of the subject property.”⁶

The neighborhood defined by the applicant in the aerial photograph meets this test, appropriately encompassing the influence of the commercial and residential areas that are immediately adjacent. The applicant’s above written statement however fails the “immediate environs” and “unduly restrictive” tests that would render their interpretation of the neighborhood’s boundaries fairly debatable by marginalizing all of the surrounding property zoned for residential uses (zoning classes RS and RM) in the immediate vicinity of the property to the west, north and northeast as being immaterial to the site. By extension, Marty Snook Park, which is also zoned RS, and directly abuts the property on two sides, would also be excluded by this narrow neighborhood definition. The applicant reinforced this narrowed interpretation by highlighting the Downsville Pike commercial corridor in the application package provided to the planner.

D. Changes that have occurred in the Neighborhood

The applicant contends in their Justification Statement that a substantial change has occurred in the character of the neighborhood since the 2012 Comprehensive Rezoning of the UGA. As evidence they offer:

1. *The rezoning of several adjacent parcels as a part of the 2012 Urban Growth Area Rezoning to all for more intensive uses*
2. *An increase in annual average daily traffic at the intersection of Halfway Boulevard and Downsville Pike from 2012 to 2015*
3. *The approval of a new Sheetz across Downsville Pike from the site*

i. Zoning Changes in the Vicinity

Typically, piecemeal rezoning cases seeking to establish a claim that there has been a change in the character of the neighborhood should use the last comprehensive rezoning of the area as their starting point to illustrate substantial change. **“Changes contemplated prior to the last comprehensive are usually not relevant in determining whether a substantial change has occurred to support rezoning of the property”⁷.**

⁵ Applicant’s Justification Statement, P.7

⁶ *Sedney v. Lloyd*, 44 Md. App. 633, 410 A.2d 616 (1980)

⁷ Guide to Maryland Zoning Decisions, 5th Edition, Stanley Abrams referencing Maryland Court of Appeals Case *Buckel v. Board of County Commissioners of Frederick County*, 80 Md. App. 305, 562 A.2d 1297 (1989)

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Though not typical, there have been cases whereby the Maryland Court system has provided leeway for applicants to use zoning and other changes that occurred prior to the last comprehensive rezoning to be used as evidence of a substantial change; however, they must be coupled with evidence showing substantial change after the fact.

"Changes which may have occurred prior to the last comprehensive rezoning need not be wholly disregarded when a change from that zoning is under consideration. It may be, as was the case here, that it was a rather close question in the minds of the officials concerned whether a change in the zoning of the land involved should not have been made at the time of the last comprehensive zoning, and additional changes thereafter may bring the zoning status of the land as to which action is sought over the line dividing different zones."⁸

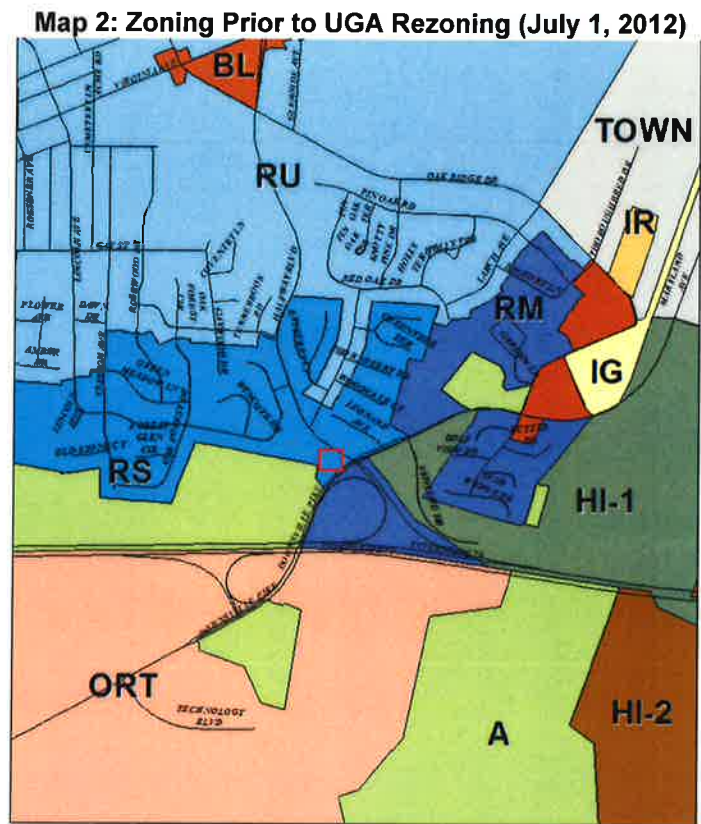
In this case the applicant does not call out specific rezoning cases that occurred previous to the last comprehensive rezoning adopted in 2012. Rather the applicant simply states that the comprehensive rezoning in and of itself constitutes a substantial change. This argument has repeatedly been struck down in the court system due to the fact that the point of a comprehensive rezoning is to analyze historic changes and future growth projections to establish the appropriate zoning on parcels in their jurisdiction. If the property owner felt aggrieved by the decision they had the option to appeal the rezoning of the property at that time.

For the sake of argument, Staff has reviewed the zoning of the area prior to the 2012 Urban Area Comprehensive Rezoning. Map 2 shows the zoning in the vicinity just before the Comprehensive Rezoning of the UGA. This image provides a baseline image from which to detect how the area's zoning has changed in the time since 2012.

In Map 2 we can see that both before and after the adoption of the Comprehensive UGA Rezoning in 2012, the subject parcels were zoned Residential Suburban (RS). At that time, the properties were bounded on the north and northwest by RS zoning; Agricultural (A) zoning to the south and west; Highway Interchange (HI-1) to the east, and Residential Multi-family to the south, east and northeast. South of Interstate 70 Office, Research and Technology (ORT), Agricultural and Highway Interchange (HI-2) zoning could be found within the immediate vicinity of the site.

The HI-2 zoning district, which was a predominantly high density residential zoning district that also allowed some light industrial uses, was located roughly ½ mile southeast of the subject parcels. These prior zoning classifications can be seen in Map 2 below, which approximates the site location in a red box.

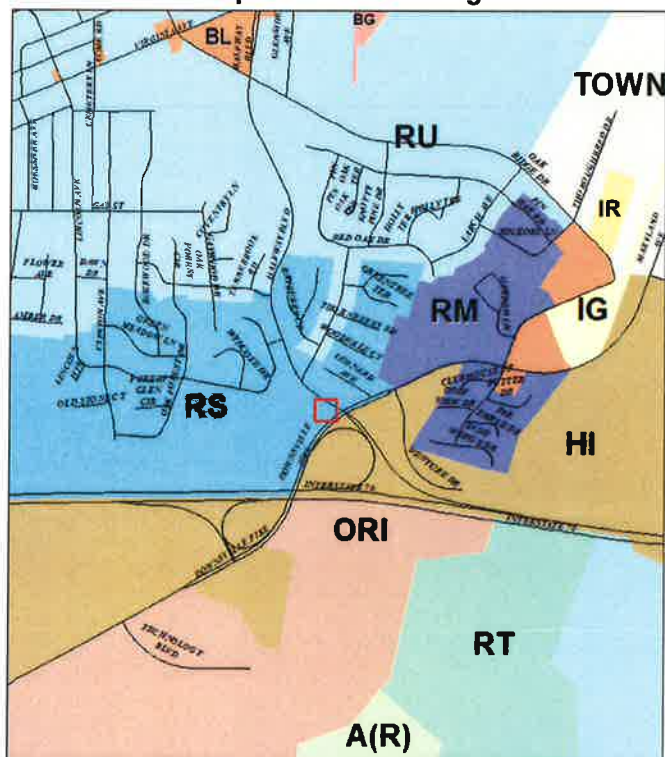
⁸ Town of Somerset v. County, 229 Md. 42 (1962) & Runyon v. Glackin, 45 Md. App. 457, 413 A.2d 291 (1980)



The current zoning, shown below, demonstrates the effects of Urban Area Comprehensive Rezoning. The old Agricultural zoning classification that applied to several adjacent parcels in the vicinity was eliminated, necessitating their reassignment to new zoning classes. By and large, most of these parcels were assigned to varying residential classes that are fitting of the gradually decreasing density that signals the transition from the core to the fringes inside of the Urban Growth Area. Notably, Marty Snook Park was assigned to the RS zoning class as it was determined that this designation most closely fit its most immediate neighborhood, in addition to allowing the park as a principal permitted use. The HI-2 district has also been replaced by the similar Residential Urban (RU) zoning class with the repeal of the HI-2 classification in 2012.

The RM zoning district adjacent to the parcels subject to this rezoning also was changed to HI during the 2012 UGA Comprehensive Rezoning. It's important to understand that the RM zoning for this parcel was in place prior to the completion of the I-70 interchange that significantly transformed immediate portions of the neighborhood following its completion in 1999. Thus, in 2012 when the UGA Comprehensive Rezoning occurred, the rezoning of the Interchange Parcel reflected administrative recognition that the site conditions on the parcel had been transformed by the construction and reflected that in the zoning. The same could not be said of parcels 210 and 408, where the onsite and surrounding neighborhood conditions remained largely the same as they were in the past. Accordingly, the site conditions of the Interchange Parcel (which encompasses the recently approved Sheetz) were qualitatively different than those found on parcel's 210 and 408, to significant degree, when the decision was made by the Board to rezone the former to HI, but keep the latter parcels as RS.

Map 3: Current Zoning



Aside from the interchange parcel, additional expanded areas of Highway Interchange (HI) also appear on Map 3. These new areas demonstrate administrative recognition with stakeholder input, during the Comprehensive Urban Growth Area Rezoning, of the land use changes that had occurred in the area as a result of the completion of the I-70 interchange at Downsville Pike in 1999. The HI wedges shown below radiate outward from the boundaries of this interchange, replacing notable portions of the former ORT immediately south of I-70. ORT became ORI (Office, Research and Industry) in the remaining portion, which allowed for a greater range of uses within a similar zoning class.

These comprehensive rezoning changes encompass parcels 258, 262, and 264, which are specifically noted by the applicant in their Justification Statement as being indicative of substantial neighborhood change. As stated above in discussing the interchange parcel, these properties are qualitatively different sites than parcels 210 and 408. They are located distant to any dense residential neighborhoods and have long been planned for either commercial industrial use. Their location directly on I-70 makes their use unsuitable for anything but these types of uses, in contrast to the subject parcels, which clearly are influenced by the adjacent park and residential neighborhoods. It is debatable whether these particular parcels should be considered part of the “neighborhood” given these characteristics, and their distant location to the parcels in question.

The rezoning of the block of parcels to the east of the subject site from HI-1 to HI represents administrative recognition that existing uses on those properties, such as Premium Outlets on parcel 176, serve a regional population in keeping with the definition of the present HI zoning district. Given the location of the subject site; bordered by a park and substantial residential neighborhoods, a zoning classification that serves primarily a local, not regional population, would seem more logical for the site.

The last approved piecemeal rezoning in the immediate vicinity of the site occurred in 2000 (RZ-00-002), lending further credence to the stable character of the neighborhood.

Summarily, from a zoning standpoint, the changes which occurred in the neighborhood resulting from the construction of the I-70 interchange at Downsville Pike were considered and responded to by the implementation of the Comprehensive Rezoning of UGA the 2012. Since that time, there hasn't been significant activity that suggests substantial change has occurred in the neighborhood, as evidenced by the lack of requests for piecemeal rezoning.

Note: Applicant's Exhibit D is labeled "2012 Zoning" but actually shows the Current Zoning just after the UGA Rezoning took place in that year.

ii. Changes in Average Annual Daily Traffic

While the applicant presents accurate data on the on Annual Average Daily Traffic from the State Highway Administration between 2012 and 2015, it is important to understand the caveats to the Applicant's conclusion that traffic is increasing to a considerable degree in the neighborhood.

First, traffic count data was considered by the Board as a part the Urban Area Comprehensive Rezoning in 2012, and was factored into the ultimate decisions about the appropriate zoning classification for the subject parcels, and the surrounding area. Second, traffic data can vary considerably from year to year at any given location, due to factors that may not necessarily be locally derived. If, for example, construction work on a nearby arterial road necessitates closure or diversion of traffic to alternate routes, neighboring roads can see short-term upticks in traffic that may not necessarily be indicative of long-term traffic increases.

Long-term traffic data tells a different story about area traffic volume than the short term data presented by the Applicant at the Halfway Boulevard/Downsville Pike intersection. The applicant's Exhibit E makes this clear, as does Table 2 of this report on page 2.

Exhibit E shows that traffic did increase from 2012 to 2015 (10,871 to 12,361 ADT) as the Applicant contends. This trend obscures the fact that the 2012 traffic count also represented a slight **decrease** in traffic volume from 2011 (10,960 in 2011 to 10,871 ADT in 2012).

- Traffic also **decreased** in the three years prior to 2012 (12,152 in 2010 to 10,871 in 2012).
- Further, the 2015 traffic count represents a 15.33% **decrease** from the peak traffic count at this location, which occurred in 1990, as shown in Table 2 (14,600 in 1990 to 12,361 in 2015 ADT).

In effect, the traffic at this intersection has yet to regain the volume that it reached prior to the construction of the interchange at I-70 and Downsville Pike. Thus, while traffic has marginally increased in the last few years at this intersection, the increase has not increased traffic volume to past its historic levels.

A traffic impact analysis was also conducted in February 2017 as a part of the development review process for the Sheetz gas station and convenience store recently approved by the Planning Commission and noted by the applicant for this proposed rezoning. The study concluded that traffic volume has remained largely flat at the Downsville Pike/Halfway Blvd intersection in the time since the interchange was constructed in 1999.⁹

iii. Relationship to 2002 Washington County Comprehensive Plan

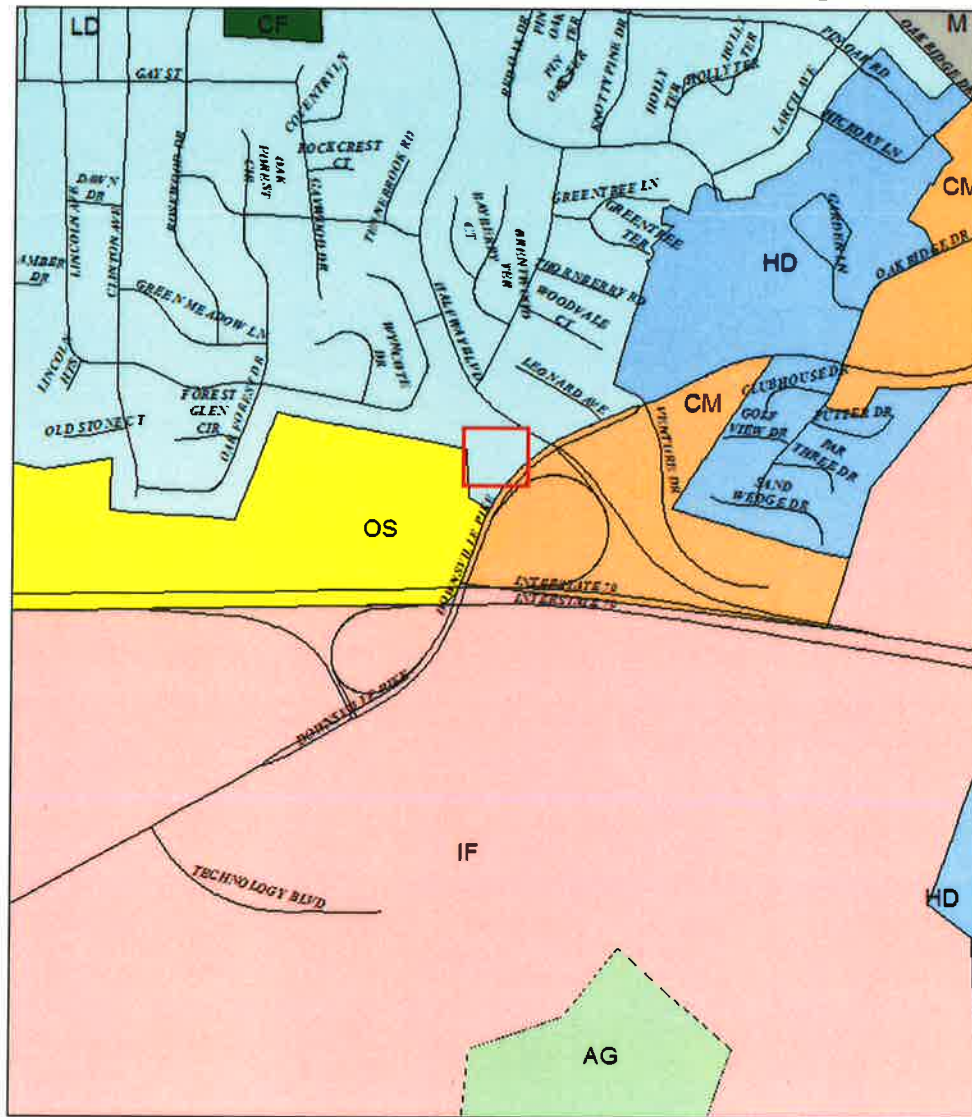
In 2002 the Washington County Comprehensive Plan was updated. As part of that update an evaluation of existing and projected land uses were evaluated to develop a guide for future land use

⁹ Traffic Impact Analysis (TIS-17-001) conducted February 13, 2017 by Street Traffic Studies, Ltd.

decisions in the County; the Land Use Map. This map provides a generalized analysis and projection of land uses in various regions of the County. The Land Use Map was heavily consulted as part of the Urban Growth Area Rezoning.

As shown in the map below, cropped from the adopted Land Use Map in Chapter 12 of that Plan, the County projected that land within and surrounding the subject parcels to develop in the manner eventually realized in the 2012 Comprehensive Rezoning: Industrial Flex (IF) south of I-70 and east of Downsville Pike; Low and High Density Residential (LD, HD) to the north, Commercial (CM) surrounding the northern Interchange Parcel and Open Space (OS) for Marty Snook Park. By and large, what was projected in this map has been borne out on the ground over the last 14 years. Thus, projected changes in the neighborhood were largely accounted for in prior long range planning and comprehensive rezoning efforts by the County. The 2002 Comprehensive Land Use Map can be seen below.

Map 4: 2002 Comprehensive Plan Land Use Map



iv. Recommendation:

The applicant claims that both a mistake in the designation of the existing zoning and a substantial change in the character of the neighborhood have or did occur since the time of the last comprehensive rezoning, thereby warranting their petition to rezone the property from RS to HI.

The burden of the applicant in a "Mistake" case is to provide evidence that the Board:

1. Failed to take into account projects or trends probable of fruition,
2. Made decisions based on erroneous information,
3. Used facts that later prove to be incorrect,
4. Couldn't have foreseen events that have occurred since the current zoning,
5. Ignored facts in evidence at the time of zoning application.

The burden of the applicant in a "Change" case is to illustrate three points:

1. Defining the boundaries of the neighborhood,
2. Demonstrating that substantial changes have occurred since the last Comprehensive Rezoning Plan, and
3. Showing that those changes resulted in the altered character of the neighborhood.

Regarding the charge of mistake, this analysis has revealed that the Board very likely did consider the facts presented by the applicant during the UGA Comprehensive Rezoning (such as the challenges and unique characteristics of the site's location noted on page 9), and concluded in 2012 that the site more closely fit with the residential neighborhoods to the north and west, than it did the commercial neighborhoods located to the east and south for reasons such as those provided on that same page.

The analysis has also revealed that the applicant has not met the burdens in proving that a substantial change has occurred in the neighborhood since the 2012 UGA Rezoning. First, the applicant fails to reasonably define the neighborhood boundaries by marginalizing the adjacent residential neighborhoods and parkland that immediately abut the property to the north and west in favor of those parcels in the vicinity that are zoned commercial. Second, the changes cited by the applicant which have occurred in the neighborhood; in terms of zoning changes in the vicinity, traffic counts, and road improvements, were all considered and accounted for in full during the Comprehensive Rezoning of the Urban Growth Area in 2012. Accordingly, the building of a new Sheetz store nearby should be recognized as an example of planned growth, not as evidence of neighborhood change.

Finally, as stated on page 10, "***Changes contemplated prior to the last comprehensive are usually not relevant in determining whether a substantial change has occurred to support rezoning of the property.***"¹⁰ Insufficient evidence beyond the intentional changes resulting from the UGA Rezoning itself have been offered by the applicant demonstrating recent substantial change in the character of the neighborhood since 2012.

When paired with the background information cited at the beginning of this Staff Report, such as the Halfway District population growing more slowly than the County as a whole and modest growth in traffic volume, a picture emerges that substantial change in the character of the neighborhood has not occurred in the past five years.

¹⁰ Guide to Maryland Zoning Decisions, 5th Edition, Stanley Abrams referencing Maryland Court of Appeals Case Buckel v. Board of County Commissioners of Frederick County, 80 Md. App. 305, 562 A.2d 1297 (1989)

Staff Report and Analysis
RZ-17-003 Downsville Pike Land LLC

Consequently, the staff analysis has concluded that convincing proof has not been offered by the applicant demonstrating either a mistake in the current zoning, or a substantial change in the character of the neighborhood since the 2012 UGA Rezoning in their petition to rezone the property from RS to HI.

Respectfully Submitted,



Travis Allen
Comprehensive Planner



DEPARTMENT OF PLANNING & ZONING
COMPREHENSIVE PLANNING | LAND PRESERVATION | FOREST CONSERVATION | GIS

October 30, 2017

RZ-17-003

**APPLICATION FOR MAP AMENDMENT
PLANNING COMMISSION RECOMMENDATION**

Property owner(s):	Downsville Pike Land, LLC
Applicant(s):	Christopher R. Smith
Location:	Northwest side of Downsville Pike, ¼ mile north of I-70
Election District:	#26 - Halfway
Comprehensive Plan Designation:	Low Density Residential
Zoning Map:	57
Parcel(s):	Parcel 210 and Parcel 408
Acreage:	1.60 acres (P. 210 – 1.10 ac.; P. 408 - .50 ac.)
Existing Zoning:	RS – Residential Suburban
Requested Zoning:	HI – Highway Interchange
Date of Public Meeting:	September 25, 2017

RECOMMENDATION

The Washington County Planning Commission took action at its regular meeting held on Monday, October 2, 2017 to recommend approval of Map Amendment RZ-17-003 to the Board of County Commissioners. The Commission considered the applicant's claim that there was a mistake in the zoning of the property during the 2012 Comprehensive Urban Growth Area Rezoning and that there has been a change in the character of the neighborhood since the 2012 Comprehensive UGA rezoning. The Commission evaluated the supporting documentation submitted with the application and the applicant's presentation during the public rezoning information meeting. The Commission also considered the Staff Report and Analysis, verbal comments of interested parties provided during the public rezoning information meeting and written comments received by the Department of Planning & Zoning.

The Commission evaluated supporting documents submitted with the application that cited the location near the interchange, other Highway Interchange rezonings, traffic impacts, and the recent abandonment of the parcels for residential purposes as support for the mistake claim. Further, the Planning Commission considered the applicant's proposition that other zoning changes have occurred in the neighborhood along the Downsville Pike and continued commercial development along with traffic impacts have caused change in the character of the neighborhood. The Planning Commission recognized that continued residential use may be difficult in light of intersection expansions that will further complicate residential access and, that in the future, commercial uses may be more suitable and able to accommodate access restrictions.

120 West Washington Street, 2nd Floor | Hagerstown, MD 21740 | P: 240.313.2430 | F: 240.313.2431 | TDD: 7-1-1

Copies of the application, Staff Report and Analysis, written comments, minutes of the September 18, 2017 public rezoning information meeting, and the unapproved minutes of the October 2, 2017 regular meeting are attached.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen T. Goodrich".

Stephen T. Goodrich, Director
Washington County Department of
Planning & Zoning

TA/STG/dse
Attachments

cc: Bruce Dean, Linowes & Blocher
file



Agenda Report Form

Open Session Item

SUBJECT: Approval of Offer on 59 Winter Street (Former Winter Street Elementary School)

PRESENTATION DATE: January 30, 2018

PRESENTATION BY: Susan Small, Real Property Administrator, Division of Engineering

RECOMMENDED MOTION: Move to approve the terms of the sale of the property located at 59 Winter Street as presented and to execute the necessary documentation for an agreement of sale.

REPORT-IN-BRIEF: The property was formally listed on April 24, 2017. Staff has been presented with a formal offer on the property and would like the Board to consider the approval of the terms of the offer and move forward with the execution of a formal agreement of sale and related steps necessary to consummate the transaction.

DISCUSSION: The disposition of the property will be pending approval from the Maryland Board of Public Works (BPW). County Staff is working with BPW to submit an application for their agenda. The offer details are below.

Offer:
\$300,000 purchase price
100% buyer paid closing costs; to include all fees and commissions
90-day feasibility period
Contingent upon approval of the Board of Public Works
Right of first refusal for BOCC within 5 years of purchase
\$5,000 down to be held in seller's agent escrow

FISCAL IMPACT: \$300,000 revenue from the sale of the property.

CONCURRENCES: Director of Engineering

ALTERNATIVES:

ATTACHMENTS: Aerial Map

AUDIO/VISUAL NEEDS: N/A

59 Winter Street





Agenda Report Form

Open Session Item

SUBJECT: Approval of Offer on 22930 Federal Lookout (JDC)

PRESENTATION DATE: January 30, 2018

PRESENTATION BY: Susan Small, Real Property Administrator, Division of Engineering

RECOMMENDED MOTION: Move to approve the terms of the sale of the property located at 22930 Federal Lookout as presented and to execute the necessary documentation for an agreement of sale.

REPORT-IN-BRIEF: The property was formally listed on April 24, 2017. Staff has been presented with a formal offer on the property and would like the Board to consider the approval of the terms of the offer and move forward with the execution of a formal agreement of sale and related steps necessary to consummate the transaction.

DISCUSSION: The disposition of the property will be pending approval from the Maryland Board of Public Works (BPW). County Staff is working with BPW to submit an application for their agenda. The offer details are below.

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\$5,000 down to be held in seller's agent escrow

FISCAL IMPACT: \$300,000 revenue from the sale of the property.

CONCURRENCES: Director of Engineering

ALTERNATIVES:

ATTACHMENTS: N/A

AUDIO/VISUAL NEEDS: N/A

22930 Federal Lookout

