



HOWARD COUNTY PUBLIC WORKS BOARD

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Cory J. Summerson, Chairperson
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Michael P. McLellan, Member
Pedro Ramirez, Member
Alan Whitworth, Member

Minutes of the Howard County Public Works Board – June 8, 2021

Members present: Mr. Cory Summerson, Chairperson, Ms. Abby Glassberg, Vice Chairperson, Mr. Pedro Ramirez, and Mr. Alan Whitworth.

Staff present: Thomas J. Meunier, Executive Secretary; John Alcorn, Engineering Specialist II, John Seefried, Assistant to the Director, Public Works; Carl Katenkamp, Acting Chief, Real Estate Services Division; Phyllis Watson, Administrative Analyst, Real Estate Services Division; Rachel Roehrich, Recording Secretary, Real Estate Services Division.

Mr. Summerson called the meeting to order at approximately 7:40 p.m.

1. **Approval of minutes:** Mr. Summerson indicated that the first item on the agenda is the approval of the minutes of April 13, 2021. Mr. Summerson asked if everyone had a chance to review the minutes.

Motion: On a motion made by Ms. Glassberg and seconded by Mr. Ramirez, the Board unanimously approved the minutes of April 13, 2021.

At this time, Mr. Summerson decided to change the order of the Agenda in order to hear the Gaither's Chance project before the Sheppard's Lane project as there was more interest and testimony for Sheppard's Lane.

2. Public Works Board Road Acceptance

- (a) **Subdivision:** Gaither's Chance, Lots 1-18, Buildable Preservation Parcel A & Non-Buildable Preservation Parcels B, C & D
R/SW Agreement No. F-15-043
Road Names: Gaither's Chance Drive, Ten Oaks Road (widening)
Petitioner: MB Development Company LLC

Staff Presentation: Ms. Watson, Administrative Analyst, Real Estate Services Division, indicated that MB Development Company LLC, a Maryland limited liability company, has presented a petition to the Director of Public Works for the acceptance of Gaither's Chance Drive and Ten Oaks Road (widening), located within Gaither's Chance, Lots 1-18, Buildable Preservation Parcel A & Non-Buildable Preservation Parcels B, C & D. The Bureau of Engineering has inspected the subdivision and certifies that all public improvements have been constructed in accordance with the approved plans and specifications and meets the criteria for acceptance under the Section 18.202 of the Howard County Code. The Bureau of Engineering recommends that the public improvements be accepted into the County's system of publicly owned and maintained facilities.

Board Comments: None.

Public Testimony: None.

Motion: On a motion made by **Mr. Whitworth**, and seconded by **Ms. Glassberg**, the Board unanimously recommended that the Director of Public Works accept the public improvements located in **Gaither's Chance, Lots 1-18, Buildable Preservation Parcel A & Non-Buildable Preservation Parcels B, C & D.** into the County's system of publicly owned and maintained facilities.

At this time, it was noted that **Abby Glassberg** would abstain from any actions on the next project. Mr. Summerson also noted that three written testimonials for the Sheppard Lane project from Amanda Clifton, Omayma Kishk, Alan Schneider and David Elsaesser, which were forwarded to the Board before the meeting for review.

- (b) Subdivision: Plat of Dedication for Road Realignment of Sheppard Lane
R/SW Agreement No. F-18-099
Road Names: Sheppard Lane
Petitioner: River Hill Square LLC

Staff Presentation: **Ms. Watson**, Administrative Analyst, Real Estate Services Division, indicated that MB Development Company LLC, a Maryland limited liability company, has presented a petition to the Director of Public Works for the acceptance of **Sheppard Lane located in Plat of Dedication for Road Realignment of Sheppard Lane.** The Bureau of Engineering has inspected the subdivision and certifies that all public improvements have been constructed in accordance with the approved plans and specifications and meets the criteria for acceptance under the Section 18.202 of the Howard County Code. The Bureau of Engineering recommends that the public improvements be accepted into the County's system of publicly owned and maintained facilities.

Public Testimony: **Mr. Alan Schneider**, asked what the procedure for the order of presentation would be? Mr. Summerson explained that the statement was read, followed by any questions from the Board, followed by questions from the Public in which the petitioner would have a chance to answer or respond. Mr. Schneider then asked if the Public would have a chance to respond to any response of the petitioner, and Mr. Summerson confirmed the Public would. Mr. Schneider stated that his statement was presented in written form and asked if he needed to read it. Mr. Summerson stated that the Petitioner may not have read his statement and suggested it may be best to read aloud. Mr. Schneider then deferred to Mr. Elsaesser to present his testimony first.

Mr. David Elsaesser, located at 5737 Whistling Winds Walk, Clarksville, Maryland, stated that the bulk of his presentation on paper was about the fact that the public was not given a chance to comment on the road realignment project before the Public Works Board before the project actually happened as stated in the County Code in Section 18.200 and accepted by the Board. Mr. Elsaesser asked why the whole procedure did not come up before the whole procedure and road was moved, which he believed was illegal. He further stated that his presentation stated that the whole planning with Route 108 was ignored by the County and petitioner, but he believed Howard County has more of a responsibility to look at what planning has been done. He felt that his rights as a citizen and taxpayer were not taken seriously by Howard County because he felt the whole movement of the road was hidden from the community. He stated the announcement of the meeting happened after the road was moved, and he had many slides as part of his presentation to demonstrate why the road movement was a bad idea. Mr. Elsaesser felt there was a much better alternative to align Sheppard Lane rather than aligning it for

the sole purpose of providing a driveway for the Developer in his opinion. Mr. Elsaesser then stated that he wanted to know why this project was not presented to the people of Howard County before the road was moved. He further stated that Section 18.200 states that the project should have been advertised and residents should have been allowed to present counter proposals, which he stated he was not given that opportunity. Mr. Elsaesser stated he did have a counter proposal he could have presented which he felt would have been far superior for the citizens of Howard County. Mr. Elsaesser stated the County acquired a right-of-way on the east side of Sheppard Lane which could have been straightened and made into a perfect standard intersection, which he believed would have been much easier to do as well as provide other benefits. Mr. Elsaesser stated by improving Sheppard Lane on the east side it would have created a through lane to the east which would have prevented the choke point that creates traffic backups. The other benefit for his counter proposal for the east side of Sheppard Lane improvements is that it would have created a standard, safe intersection. He believes the angle was improved from 55 to 63 degrees, which Mr. Elsaesser stated the developer stated that the angle should have been improved to 70 degrees which is the minimum the State would accept. Furthermore, Mr. Elsaesser stated that the road has a substandard angle and substandard curvature, which Mr. Elsaesser believed is more prone to lead to accidents. Mr. Elsaesser stated that his point was that the County should have had this meeting beforehand to allow people to present alternatives before the road was moved. He felt that if the road was moved the other way it would have created two through lanes in each direction, rather than how the road is now, which he stated not only creates a choke point and backups, but other problems such as rerouting through neighborhoods and side streets.

Mr. Elsaesser also stated there was a former study by Sabra-Wang and Associates, Inc. funded by the County in 2015 which showed two through lanes through Sheppard was suggested. It was also suggested to keep the 5-lane section of road in River Hill downtown straight through past Sheppard. Mr. Elsaesser stated that the planning that the County had paid for was ignored, and he felt that this project was done for the benefit of the development and that it was hidden from the public. Mr. Elsaesser felt the only reason citizens found out was because in January 2019, Mr. Jim Irvin wanted to give River Hill Square contracting authority for its signalized entrance which needed a resolution brought before the County Council.

Lastly, **Mr. Elsaesser** stated his main points with regard to the Sheppard's Lane realignment is that the road approach to MD 108 is substandard because the angle is still substandard, and the vertical/horizontal curvature is substandard, in which he felt the requirements were waived in order to install the road. Mr. Elsaesser felt the road was built not for the public interest, but for the private interest, and Mr. Elsaesser tasked the Board to make a recommendation on whether the road was in the public interest. Furthermore, Mr. Elsaesser tasked the Board members to make a recommendation that the road was not in the public interest.

At this time, **Mr. Summerson** asked if Mr. Seefried wanted to address any comments before moving on to any further testimony. **Mr. Seefried** stated that he didn't have a history with the project as he only became Acting Chief of Engineering after his counterpart retired. Mr. Seefried then addressed Section 18.201 and Section 18.202 regarding the procedure and practice of the County Code as the projects are brought to the Board once the construction is complete for approval from the Board. The appropriate procedure for this type of project is to receive approval at the end of the project.

Mr. Elsaesser stated Section 18.201 that counter petitions may be presented to the Board of Public Works and the Board should take into consideration the reason contained therein together with such

testimony. Mr. Elsaesser further stated that Howard County should not be moving a road onto such property until the property is acquired and in the Public interest. Mr. Elsaesser asked how the County could acquire a piece of land and move a road onto it before determining if it is in the Public interest? Mr. Elsaesser further stated that the funds (\$1.3 Million) for this realignment were not allocated money, but it came from the Capital Improvement Program, which he felt the County should have more oversight for the community to have some say before the road was moved to enable the shopping center.

Mr. Seefried stated that he understood Mr. Elsaesser took exception to the alignment of the road as he thought better options were available, and that it was not necessarily about the allocation of funds, but the permission of a different entity to act as the developer. Mr. Seefried further stated there was a plan that was approved and once the work is completed the process is to come before the Public Works Board to recommend for acceptance. Mr. Elsaesser further stated that Board of Public Works has never stated that the project is in the public interest and Mr. Elsaesser felt that the Public Works Board needs to state if it is in the Public interest or if it is not, which he believes to be the case.

Mr. Summerson stated that they would move forward with other public testimony.

Ms. Susan Gray, 6510 Paper Place, Highland, MD 20777. Ms. Gray stated that she got involved with Public Works and State Highways when Liz Bobo tried to run a bypass through her community west of Clarksville. Ms. Gray further stated that she has watched for 35 years as deals have been cut and made under the table and the public learns about them at the very end. She stated that in 1994, she and former Prince George County Solicitor wrote an amendment to Howard County Chart Charter, Section 202.G which was put on the ballot and passed. Section 202.G requires any restatement or amendment to the Howard County General Plan be done by original bill by the County Council, subject to referendum, if enough signatures are gathered. Ms. Gray explained that Sheppard's Lane and 108 is on the general plan. She stated the planning process was required to have a public hearing and to have the plan for changing the design passed by original bill, which she stated never happened. Ms. Gray further stated that the Public Works Board would be changing the general plan of Howard County if it was approved and is accepted into the road system. Ms. Gray expressed that acceptance of this road would not be a little snarky violation of some little regulation of County Law, and she totally appreciated what Mr. Elsaesser was stating. Ms. Gray stated this would be major constitutional law violations of the rights of the citizens of Howard County, such as the right to put a matter on the ballot. She stated under Maryland Law the Public Works Board could say no to accepting the project, as well as require the road be torn up and the process started over again. Ms. Gray felt that the road should be torn up and the process started over in order to redo the planning in the public interest.

Mr. Schneider asked if the slide show that Mr. Elsaesser's slide show was available to the Board for viewing and Mr. Summerson confirmed it was. Mr. Schneider further addressed that the cost of the project was advanced out of the general fund of Howard County, and stated that if advanced out of the general fund it should have been done according to regulations of Howard County. Mr. Schneider further stated if done by regulations of Howard County, which require in public interest and if any waiver that is should be improved through put, improve the intersection, and improve safety which it did not do. Mr. Schneider stated if the money was loaned without competitive bidding for the developer to make those improvements the very least that should have been done would be to reimburse the funds (\$1.3 million) plus any adverse consequences the public would suffer or damages.

Lastly, **Mr. Schneider** stated that the petitioner had no standing and that there is no backing for the petition to be presented because it needs to be presented by the developer or subdivider, which he stated River Hill Square, LLC was neither. When looking at the chart associated with the petition, Mr. Schneider stated the land where the road transition is made is owned by someone else. Mr. Schneider stated due to this, the petition should be denied.

Mr. Seefried responded by listing some concerns from the previous testimonies. He stated there are a number questions in terms of the procedures for the waivers of standards, the standing of the petitioner, the question of whether or not this is in Public interest, as well as the matter of Constitutional and County law. In light of all the things in question, Mr. Seefried moved for the recommendation for approval be tabled at this meeting. Mr. Seefried did state the recommendation for approval was based on having an approved plan, and that the construction was in accordance with the approved plan. Mr. Seefried continued that several of the comments/testimonies are about how the plan was made and what went into the plan, in which the testimony is appreciated, but again the project would be tabled at this time until questions and concerns could be researched.

Mr. Breeden proceeded with his response to the testimonies by stating that he was not involved in 2013 when Steve Kline went through the process to have the property zoned, and River Hill Square, LLC has only been involved for the last 3-4 years. Mr. Breeden believes the intersection has been a bad intersection for the last 30-40 years. Mr. Breeden also stated that the presentation presented by Mr. Elsaesser was also made at other public meetings including before the County Council. Mr. Breeden explained Howard County did not ultimately decide where the road went as State Highways makes the final determination. Furthermore, Howard County and State Highways determined together where the road would go, and Mr. Elsaesser made his presentation and counter proposal at that time as well. Mr. Breeden understands that Mr. Elsaesser thought the road should go either in front of the cemetery or to the north, but Mr. Breeden stated the cemetery did not want the road there and there is another right-of-way issue where Mr. Elsaesser wanted the road. Mr. Breeden felt that the County Council determined the road was of Public interest when they decided to move forward with the road. Mr. Elsaesser did present before the County Council at that time, but ultimately the County Council approved the road and moved forward.

Mr. Seefried then asked if anyone had any other options other than the one brought by Ms. Gray which was to tear up the road and start over. There was no comments from the Public.

In response to Mr. Breeden, Mr. Elsaesser stated that CR-3 (County Resolution 3) brought before the County Council in January 2019 made it clear that it was approving the fact that the County did not have to go through the competitive bidding process. No money was being allocated or approved with regard to the road realignment. Therefore, Mr. Elsaesser felt that the Council saw the project for what it was but trusted there was a process with the road realignment. Mr. Elsaesser believed the Public Works Board was the forum in which to question if the road was in the Public interest or not before the road was moved. He further stated that he is not trying to tear up the road as it is there, but warned that the road is dangerous.

Board Comments: **Mr. Ramirez** expressed discontent with regard to a picture included within Mr. Elsaesser's presentation. Mr. Ramirez stated the picture of a memorandum of a student killed along the road was not at the location of this road realignment, but a different location nowhere near the road in question. Mr. Ramirez stated that he took offense to Mr. Elsaesser using the picture for his benefit within his presentation as he knew the student personally, and Mr. Elsaesser apologized. Mr. Whitworth asked if the plan was approved by the State and if it met federal regulations for safety? Mr. Seefried

confirmed there was a State permit which was closed out due to completion of the project. Mr. Whitworth further asked if there was a traffic study done with regard to vision, sight distance and traffic flow. Steve Breeden confirmed there was a traffic study was done in conjunction with Ericson and was vetted by State Highway. Mr. Breeden further confirmed that the construction has been inspected and built properly. Mr. Whitworth also asked if the State supersedes County regulations in this aspect as it is a State road and Mr. Breeden confirmed that the State determines where the intersection actually goes, not the County and the State reviews all of the federal regulations for traffic, sight distance and safety.

Once all of the public testimonies were heard and the Board had a chance to ask questions, Mr. Summerson confirmed again that this project had been tabled, pulled from a vote, and would be heard at a later time.

There being no further business, the Public Works Board meeting adjourned at approximately 8:53 p.m.



Thomas J. Meunier
Executive Secretary



Rachel Roehrich
Recording Secretary