

Terry L. Baker, *President*
Jeffrey A. Cline, *Vice President*



John F. Barr
Wayne K. Keefer
LeRoy E. Myers, Jr.

100 West Washington Street, Suite 1101 | Hagerstown, MD 21740-4735 | P: 240.313.2200 | F: 240.313.2201
WWW.WASHCO-MD.NET

BOARD OF COUNTY COMMISSIONERS
December 19, 2017
Agenda

- 10:00 A.M. INVOCATION AND PLEDGE OF ALLEGIANCE
CALL TO ORDER, *President Terry L. Baker*
APPROVAL OF MINUTES – DECEMBER 12, 2017
- 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. HAGERSTOWN URBAN IMPROVEMENT PROJECT – GRANT AGREEMENT AND SUB-RECIPIENT AGREEMENT REVIEW AND APPROVAL – *Jim Hovis, Chief Operations Officer, County Administrators Office and Susan Buchanan, Senior Grant Manager, Office of Community Grant Management*
- 10:30 A.M. **PUBLIC HEARING: APPLICATION FOR MAP AMENDMENT RZ-17-006 -**
Travis Allen, Comprehensive Planner, Planning & Zoning Department
- 10:45 A.M. YOUTH MERITORIOUS AWARDS - *Tiffany Miller and Bd of Co Commissioners*
- 10:55 A.M. JURISDICTIONS WITH LOCAL PREFERENCE (INFORMATIONAL PURPOSES ONLY) – *Rick Curry, Director, Purchasing Department*
- 11:00 A.M. INTERGOVERNMENTAL COOPERATIVE PURCHASE (INGT-17-002) ONE (1) REGULAR CAB DUMP TRUCK FOR PARKS & FACILITIES – *Rick Curry, Director, Purchasing Department and John Pennesi, Deputy Director, Parks & Facilities*
- 11:05 A.M. BID AWARD (PUR-1372) PURCHASE OR LEASE AND SUPPLYING OF GOLF CARTS FOR WASH.CO. BLACK ROCK COURSE - *Rick Curry, Director, Purchasing Department and Darrell Whittington, Golf Director, Black Rock Golf Course*
- 11:10 A.M. BID AWARD (PUR-1370) SNOW REMOVAL EQUIPMENT ONE (1) NEW AIRCRAFT DEICE TRUCK WITH RAPID HEAT AND FORCED AIR SYSTEM – *Brandi Naugle, Buyer, Purchasing Department and Phil Ridenour, Director, Hagerstown Regional Airport*

11:15 A.M. **CONTRACT AWARD (PUR-1360) CITY/COUNTY LANDFILL GAS MITIGATION**
– *Brandi Naugle, Buyer, Purchasing Department and Dave Mason, Deputy Director,*
Environmental Management, Solid Waste Division

11:20 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; to consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State; and to consult with counsel to obtain legal advice on a legal matter.)

12:10 P.M. **RECONVENE IN OPEN SESSION**

12:25 P.M. **ADJOURNMENT**



Open Session Item

SUBJECT: Hagerstown Urban Improvement Project-Grant Agreement and Sub-Recipient Agreement Review and Approval

PRESENTATION DATE: December 19, 2017

PRESENTATION BY: James B. Hovis, Director, Office of Community Grant Management; Susan Buchanan, Sr. Grant Manager, Office of Community Grant Management

RECOMMENDED MOTION: Move to approve the presented sub-recipient agreements for execution to the Urban Improvement Project (UIP) partners for consideration and formal approval by their respective Boards; Allow for non-substantive modifications to the sub-recipient agreements with the concurrence of the County Attorney; and upon execution of all three sub-recipient agreements, approve the execution of the Fiscal Year 2018 Capital Projects Grant Agreement between the State of Maryland (Funder), the County (Grantee), Washington County Board of Education, University System of Maryland, and the Maryland Theatre(Recipients).

REPORT-IN-BRIEF: In 2017, the Hagerstown Urban Improvement Project received a \$1.5 million dollar Maryland Capital Bond Bill award. The Bond Bill language designated Washington County as the Grantee and The Maryland Theatre, Washington County Board of Education, and the University System of Maryland-Hagerstown as the beneficiaries. As the grantee, the County is responsible to draft and enter into sub-recipient agreements with the beneficiaries. Upon execution of the sub-recipient agreements the County and beneficiaries must agree to and execute the Capital Projects Grant Agreement to receive awarded funding.

Should approval be provided upon the agreements presented herein, any substantive requests from sub-recipients will be brought before the Board for formal approval.

DISCUSSION: The sub-recipient agreement primarily serves as a means to detail agreed upon financial considerations as well as the obligations associated with the receipt of such funding. The entire agreement is contingent upon receipt of funding from the State. The document details specific reporting procedures and remedies available to the County for a default of agreement. Most importantly, the document incorporates the Capital Project Grant Agreement into the sub-recipient agreement and holds the beneficiaries responsible to the same conditions and requirements as the County. The agreement also serves to limit the County's risk of fiscal recovery by the funder in the event of a default of agreement.

Per the February 2017 executed MOU with the UIP partners, the fiscal year 2018 award of \$1,500,000 will be dedicated to the Urban Education Campus. The State's capital budget does include \$6,000,000 in additional funding for the UIP project through fiscal year 2022. Also per agreement and contingent upon continued funding, the Urban Education Campus will receive an

additional \$500,000 of the Grant in fiscal year 2019 and \$500,000 of the Grant in fiscal year 2020 for a total award of \$2,500,000.

In fiscal years 2021 and 2022 the Maryland Theatre is scheduled to receive \$2,500,000 of the Grant each year respectively for a total award of \$5,000,000.

FISCAL IMPACT: The execution of the sub-recipient agreements and the Capital Grant Agreement will have no fiscal impact to the County. However, the County could be responsible initially for fiscal recovery in the event of a default by the sub-recipient. The sub-recipient agreement will provide the County remedies to recover any liabilities from the sub-recipients of the awarded funding.

CONCURRENCES: County Administrator, Director, Office of Community Grant Management.

ALTERNATIVES: Deny the awarded funding thereby eliminating the need for the sub-recipient agreement.

ATTACHMENTS: Capital Projects Grant Agreement, Draft Sub-Recipient Agreements

AUDIO/VISUAL TO BE USED: N/A

CAPITAL PROJECTS GRANT AGREEMENT

This Agreement ("**Agreement**") is entered into this ___ day of _____, 20___, by and between the State of Maryland ("**State**"), acting through the Board of Public Works (**BPW**), and Board of County Commissioners of Washington County ("**Grantee**"), whose federal taxpayer identification number is _____ and the Maryland Theatre Association, Inc. ("**Beneficiary**") whose federal taxpayer identification number is _____, and the Board of Education of Washington County ("**Beneficiary**") whose federal taxpayer identification number is _____ and the University System of Maryland ("**Beneficiary**") whose federal taxpayer identification number is _____.

Recitals

- A. Grantee has requested grant assistance from the State and has completed the Capital Projects Grant Application.
- B. The General Assembly has authorized this Grant titled **Hagerstown Revitalization** provided that Grantee expends the money only for the purposes outlined below.
- C. Grantee has no property interest in the Project, which is owned by the Beneficiaries, the Maryland Theatre Association, Inc., the Board of Education of Washington County, and the University System of Maryland.

Therefore, the State, Grantee, and Beneficiaries agree as follows:

1. Purpose. Grantee and Beneficiary may use grant funds for the following purpose only ("**Project**"): For the planning, design, construction, and capital equipping of the Maryland Theatre and the Barbara Ingram School for the Arts and for the University System of Maryland at Hagerstown. (See **Enabling Act**: DGS Item 123, Chapter 022 of the Laws of Maryland 2017; which is incorporated herein by reference.)
2. Grant. After the BPW approves this Agreement, the State shall periodically provide grant funds ("**Grant**") to, or on behalf of, Grantee or Beneficiary not to exceed the lesser of: (\$1,500,000.00) One Million Five Hundred Thousand Dollars or the amount of Grantee's matching fund according to the matching fund requirement as stated in the Enabling Act.
3. Termination or Reduction of Authorization. The BPW, in its sole discretion, may reduce or terminate the authorization to provide the Grant in the event: (a) Grantee fails to provide evidence of the required matching fund by 6/1/2024; or (b) no part of the Project is under contract by 6/1/2024 or (c) the Project is abandoned. The Enabling Act's authorization automatically terminates for any grant funds that are unexpended or unencumbered by 6/1/2024.

4. Matching Fund. If the Enabling Act requires, Grantee must provide and expend a matching fund. Failure to prove any required matching fund may affect the authorization pursuant to Paragraph 3 of this Agreement.
5. Disbursement of Grant. Subject to the availability of funds, the BPW may periodically authorize payment to, or on behalf of, Grantee or Beneficiaries funds in an amount not to exceed the Grant amount.
6. Limitations on Use. The BPW or its designee may, in its sole discretion, disapprove requests for disbursement or expenditure of Grant funds that are not consistent with or are not specifically related to the Project purpose or this Agreement generally.
7. Term. This Agreement terminates if the BPW terminates the grant authorization under Paragraph 3 without issuing bonds. Otherwise, this Agreement is in effect so long as any State general obligation bonds issued, sold, and delivered to provide funds for this Grant, remain outstanding, or for such longer period as the parties may agree.
8. Payment Procedure. Payment procedures contained in the most recent edition of *Maryland Capital Grants Projects: Information for State of Maryland Capital Grant Recipients* [<http://dgs.maryland.gov/pages/grants/index.aspx>] are incorporated herein by reference. The State shall make payment to, or on behalf of, Grantee or Beneficiaries in accordance with those procedures and any other terms and conditions as the BPW, in its sole discretion, may impose.
9. Reports:
 - (a) Section 7-402 of the State Finance and Procurement Article, Annotated Code of Maryland, requires Grantee to submit a verified report that fully and accurately accounts for appropriate Grant expenditures. Requests for payment made in accordance with Paragraph 8 of this Agreement are deemed to comply with Section 7-402.
 - (b) Grantee shall submit other reports or information as the State may periodically require, including project status reports and certified audit reports.
10. Communications. Communications must be addressed as follows:

To the State:

Office of the Comptroller
Capital Grants Program Administrator
80 Calvert Street, Room 215
Annapolis, Maryland 21404-0466

Department of General Services
CGL Program Manager
301 W. Preston Street, Room 1405
Baltimore, Maryland 21201

To the Grantee:

To the Beneficiary:

To the Beneficiary:

To the Beneficiary:

11. Default. A default is Grantee's or Beneficiaries' breach of any of the covenants, agreements, or certifications contained in this Agreement.

12. Remedies Upon Default.

(a) Upon the occurrence of any default, the State, as the BPW in its sole discretion determines, may do one or more of the following:

(i) Require Grantee or Beneficiaries to repay the Grant, in whole or in part.

(ii) Recoup the amount of the Grant already paid from funds due the Grantee or Beneficiaries from any other current or future State grant or loan or any other funds, otherwise due and owing Grantee or Beneficiaries.

(iii) Withhold further payments under this Agreement.

(iv) Terminate this Agreement.

(b) In addition to the rights and remedies contained in this agreement, the State may at any time proceed to protect and enforce all rights available to it. All rights and remedies survive the termination of this Agreement.

13. Disposition of Property. Grantee or Beneficiaries may not sell, lease, exchange, give away, or otherwise transfer or dispose of any interest in real or personal property acquired or improved with Grant funds ("**Grant-Funded Property**") unless the BPW gives prior written consent. This includes transfer or disposition to a successor on the merger, dissolution, or other termination of the existence of Grantee or Beneficiaries. Grantee or Beneficiaries shall give the BPW written notice at least 60 days before any proposed transfer or disposition. When consenting to a transfer or disposition, the Board of Public Works may in its sole discretion require the grantee or beneficiaries to repay a percentage of the proceeds that are allocable to the grant.

14. Inspection and Retention of Records. Grantee and Beneficiaries shall permit any duly authorized representative of the State to inspect and audit all records and documents of Grantee or Beneficiaries relating to this Grant. Grantee and Beneficiaries shall retain such records for at least three years after this Agreement terminates.

15. Insurance.

- (a) For any item of Grant-Funded Property that has an original fair market value of \$5,000 or more, Grantee or Beneficiaries shall, at its own expense and for the reasonable useful life of that item, obtain and maintain all risk of fire and extended coverage insurance or such similar insurance coverage as may be appropriate for the full value of the item or in amounts as may be commercially reasonable under the circumstances. Grantee's or Beneficiaries' insurer must be authorized to issue the policy in the State. Each such policy shall by its terms:
 - (i) Name the State as an additional loss payee thereunder.
 - (ii) Be considered primary and non-contributory with respect to any other insurance, if any, provided by the State.
 - (iii) Be cancelable only on at least 30 days written notice to Grantee or Beneficiaries, as applicable, and to the BPW.
- (b) On request, Grantee or Beneficiaries shall, provide the BPW or its designee with satisfactory evidence of insurance.
- (c) Proceeds of insurance required by this Paragraph may be applied as the BPW, in its sole discretion, shall determine toward replacement of Grant-Funded Property or toward repayment of the Grant to the State.
- (d) The BPW or its designee in its sole discretion may determine that Grantee or Beneficiaries may self-insure Grant-Funded Property if Grantee or Beneficiaries has adequate financial resources.

16. Indemnification. Grantee and Beneficiaries are responsible for, and shall defend, indemnify, and hold harmless the State, its officers, agents, and employees, whether or not the State be deemed contributorily negligent, from all suits, actions, liability, or claims of liability (including reasonable attorneys' fees) arising out of:

- (a) The Project, including its construction.
- (b) Grantee's and Beneficiaries' use, occupancy, conduct, operation, or management of the Project.
- (c) Any negligent, intentionally tortious, or other act or omission of Grantee, Beneficiaries, or any of its agents, contractors, servants, employees, subtenants, licensees, or invitees in connection with the Project.
- (d) Any injury to or death of any person or damage to any property occurring in, on, or as a direct or indirect result of the Project or any of Grantee's or Beneficiaries' activities in connection therewith.

17. Registration. Grantee is a (charitable) (religious) organization registered with the Maryland Secretary of State in accordance with the Annotated Code of Maryland [Business Regulation Article or Corporations and Association Article]; is in good standing; and has filed all of its required reports with the Maryland Secretary of State.

Check if YES

Check if NOT APPLICABLE and explain:

18. Commercial and Employment Nondiscrimination. Grantee and Beneficiaries shall:
- (a) Not discriminate in the selection, hiring, or treatment of any employee, employment applicant, vendor, supplier, subcontractor, or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any other unlawful use of characteristics unrelated to performance.
 - (b) Include a clause similar to sub-paragraph (a) in any contract under this Grant.
 - (c) Post, and cause contractors to post, in conspicuous places notices setting forth the nondiscrimination policy.
19. Drug and Alcohol Policy. Grantee and Beneficiaries each certify that it shall make a good faith effort to eliminate illegal drug use and alcohol and drug abuse from its workplace. Specifically, Grantee and Beneficiaries shall each:
- (a) Prohibit the unlawful manufacture, distribution, dispensation, possession, or use of drugs in its workplace.
 - (b) Prohibit its employees from working under the influence of alcohol or drugs.
 - (c) Not hire or assign to work on an activity funded in whole or part with State funds, anyone whom it knows, or in the exercise of due diligence should know, currently abuses alcohol or drugs and is not actively engaged in a bona fide rehabilitation program.
 - (d) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if it or its employee has observed the violation or otherwise has reliable information that a violation has occurred.
 - (e) Notify employees that drugs and alcohol abuse are banned in the workplace, impose sanctions on employees who abuse drugs and alcohol in the workplace, and institute steps to maintain a drug-free and alcohol-free workplace.
20. Compliance with Applicable Law. Grantee and Beneficiaries each hereby represents and warrants that it:
- (a) Is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
 - (b) Is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the Grant term;
 - (c) Shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Grant.
 - (d) Shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Grant.

21. Non-Debarment. Neither Grantee nor Beneficiaries, nor any of its officers, directors, or any of its employees directly involved in obtaining or performing grants or contracts with public bodies has:
- (a) Been convicted of bribery, attempted bribery, or conspiracy to bribe in violation of any state or federal law.
 - (b) Been convicted under any state or federal statute of any offense enumerated in Section 16-203 of the State Finance and Procurement Article, Annotated Code of Maryland.
 - (c) Been found civilly liable under any state or federal antitrust statute as provided in Section 16-203 of the State Finance and Procurement Article, Annotated Code of Maryland.
22. Non-Collusion. Neither Grantee nor Beneficiaries, nor any of its officers, directors, or any of its employees directly involved in obtaining or performing grants or contracts with public bodies has:
- (a) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in obtaining or performing this Grant.
 - (b) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of any bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with this Grant.
23. Financial Disclosure. Grantee and Beneficiaries are aware of, and will comply with, Section 13-221 of the State Finance and Procurement Article, Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases or other agreements reaches \$100,000, file with the Maryland Secretary of State certain specified information to include disclosure of beneficial ownership of the business.
24. Political Contributions. Grantee and Beneficiaries are aware of, and will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$200,000 or more shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.
25. No Contingent Fees. Neither Grantee nor Beneficiaries have employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for Grantee or Beneficiaries, to solicit or secure the Grant. Neither Grantee nor Beneficiaries have paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of the Grant.

26. No Lobbying Fees. In accordance with Section 7-221 of the State Finance and Procurement Article, Annotated Code of Maryland, each of Grantee and Beneficiary certifies that no State money has been paid or promised to any legislative agent, lawyer, or lobbyist for any service to obtain the legislation establishing or appropriating funds for the Grant.
27. Non-hiring of State Employees. No State employee whose duties as such employee include matters relating to or affecting the subject matter of this Grant, shall, while so employed, become or be an employee of Grantee or Beneficiaries.
28. Amendment. The Agreement may be amended only in a writing signed by the parties.
29. Assignment. Grantee may not assign this Agreement without the prior written approval of the BPW. If the BPW approves an assignment, this Agreement shall bind Grantee's successors and assigns.
30. Entire Agreement. This Agreement represents the complete and final understanding of the parties. No other understanding or representations, oral or written, regarding the subject matter of this Agreement, shall be deemed to exist or to bind the parties at the time the parties sign the Agreement.
31. Maryland Law. Maryland laws govern the interpretation and enforcement of this Agreement.

By their signatures, the parties so agree:

WITNESS:

GRANTEE:

By: _____ (Seal)

Name: _____

Title: _____

BENEFICIARY:

BENEFICIARY:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

BENEFICIARY:

By: _____


Name: _____

Title: _____

STATE OF MARYLAND
BOARD OF PUBLIC WORKS

By: _____
Sheila McDonald
Executive Secretary

Approved as to form and legal
sufficiency for the State of Maryland.
Board of Public Works General Counsel
as of _____

_____ Date

BPW APPROVAL: DGS Item ____-CGL (____/____/20____)

CAPITAL PROJECTS GRANT AGREEMENT
Standard Form




**HAGERSTOWN REVITALIZATION PROJECT
CAPITAL PROJECTS BOND BILL
SUBRECIPIENT AGREEMENT
FISCAL YEAR 2018**

THIS SUBRECIPIENT AGREEMENT ("Agreement") is made this ____ day of _____, 2017, by and between **BOARD OF EDUCATION OF WASHINGTON COUNTY, MARYLAND** a body corporate of the State of Maryland (the "Subrecipient") and the **BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, MARYLAND**, a body corporate and politic and a political subdivision of the State of Maryland (the "County").

RECITALS

The Maryland General Assembly has authorized a Grant titled Hagerstown Revitalization-Maryland Theatre, Barbara Ingram School, University System of Maryland (collectively, the "Hagerstown Revitalization Project" or "HRP"). The authorization of this grant in the form of a Bond Bill was authorized by the Maryland General Assembly and enacted into Law by Chapter 022, Acts of 2017.

Pursuant to a CAPITAL PROJECTS GRANT AGREEMENT (the "Grant Agreement") between the State of Maryland ("State") acting through the Board of Public Works (BPW) and the County, a copy of which is attached hereto as Attachment #1 and is incorporated into and made a part of this Agreement upon its execution, the County has received an award of grant funds for the HRP Project in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the "Grant") in Fiscal Year 2018. The purpose of the Grant is to provide funding for the planning, design, construction, and capital equipping of the Maryland Theatre and the Barbara Ingram School for the Arts and for the University System of Maryland at Hagerstown, located in Washington County, Maryland.

As part of the Grant Agreement, Subrecipient has agreed to comply with all requirements of the Grant as set forth in the Grant Agreement and any subsequent amendments to the Grant Agreement, and the County has therefore designated Subrecipient to be the beneficiary of the authorized funding for eligible expenses, and according to prior agreement has allocated One Million Five Hundred Thousand (\$1,500,000.00) ("Subrecipient Grant Funds") of the award herein contained to Subrecipient for that purpose.

It is further agreed and understood that the County anticipates additional Bond Bill Authorizations for the same purpose herein contained in fiscal years 2019, 2020, 2021, and 2022. Therefore, contingent upon the receipt of additional bond bill authorizations in the amounts anticipated, the Subrecipient will receive allocations as follows: fiscal year 2019 - Five Hundred Thousand Dollars (\$500,000.00); fiscal year 2020 - Five Hundred Thousand Dollars (\$500,000.00); fiscal year 2021 - Zero Dollars (\$0.00); and fiscal year 2022 - Zero Dollars (\$0.00).

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and intending to be legally bound, the parties agree as follows:

1. Subrecipient shall faithfully perform and certify the performance of the "Project" as outlined in the Grant Agreement.
2. Subrecipient recognizes there are no matching funds associated with the acceptance of this grant as stated in the Enabling Act.
3. The County, as recipient of grant funds, shall reimburse Subrecipient on a periodic basis in an amount equal to the actual expenses incurred for approved Grant activities as certified to the County by Subrecipient using prescribed forms. The receipt of State grant funds from BPW is a condition precedent to the County's obligation to reimburse as set forth in this paragraph.
4. Subrecipient shall maintain accurate financial records and shall prepare and certify all reports required by the Grant Agreement and this Agreement. Certified reports shall be provided to the assigned Washington County Office of Community Grant Management Grant Manager ("OCGM Grant Manager") for approval and forwarding to the State.
5. Subrecipient agrees to submit all required or requested fiscal and programmatic reports to the OCGM Grant Manager in a timely manner upon a reasonable request. For reports with established due dates, Subrecipient agrees to submit all required reports on or before the corresponding due date.
6. Subrecipient acknowledges that the County reserves the absolute right to take corrective action for failure to comply with established reporting requirements. Corrective action includes, but is not limited to, withholding of payments, instituting financial penalties, and declaring Subrecipient in default this Agreement.

7. Subrecipient acknowledges that payments for work performed under the provisions of this Agreement shall be made utilizing a "reimbursement method" unless otherwise specified and agreed to by all parties subject to this Agreement.
 - (a) Disbursement of funds under this Agreement shall be for actual expenses determined by the Grantee to have been properly incurred and allowable by the Grant Agreement.
 - (b) Subrecipient may request funds to pay for eligible, actual costs already incurred in connection with the Project. The Grantee shall have the right at any time to request the Subrecipient provide additional supporting documentation in connection with any request for disbursement.
 - (c) The Request for Disbursement should utilize the Payment Request form which is available at www.dgs.maryland.gov/documents/grants/payment-req.pdf and provided as an attachment to this document labeled Attachment 2. The request must include supporting documentation, including receipts, invoices, and cancelled checks.
 - (d) The Grantee has the right to withhold disbursement of the Subrecipient Grant Funds if it is determined that the Subrecipient is not performing or completing the Project in accordance with the terms of this Agreement.

8. The parties agree that Subrecipient shall act as an independent contractor for the purposes of fulfilling its duties and obligations under this Agreement.

Deleted: Subrecipient agrees to hold the County harmless and to indemnify the County against all claims, suits and actions arising out of any of Subrecipient's duties and obligations under this Agreement. In addition,

9. Subrecipient shall be subject to the same terms and conditions applicable to the County as contained in the Grant Agreement between the County and State. Should a conflict arise during the performance of administration of the project between this Agreement and the Grant Agreement, the terms of the Grant Agreement shall prevail.

Deleted: t

10. Subrecipient recognizes that the County shall designate the assigned OCGM Grant Manager to administer the Grant Agreement and this Agreement.

11. The designated contact person for Subrecipient shall be Dr. Boyd I. Michael, III, Superintendent of Schools, 10435 Downsville Pike, Hagerstown, Maryland 21740, 301-766-2816, MichaBoy@wcps.k12.md.us. The contact person shall be responsible to

Deleted: the President of the Washington County Board of Education or his/her designee.

ensure that all communications received from the County in relation to the Grant Agreement and this Agreement is attended to in a timely manner.

12. Any modifications to the Project as described in this Agreement, which is mutually agreed upon by the County, State, and Subrecipient may be incorporated in this Agreement by a written letter of amendment upon approval by all parties.
13. Subrecipient recognizes the responsibility of the County or its agents to periodically monitor the fiscal and programmatic records of the Subrecipient pertaining to this Agreement and agrees to cooperate with any reasonable request(s) in relation to the monitoring.
14. Subrecipient shall permit the County, OCGM, or their agents, and authorized representatives of the State to inspect and audit all data and records of Subrecipient relating to its performance under this Agreement.
15. If the Subrecipient contracts any portion of the work to another organization, person(s), business or entity they must follow all provisions related to procurement, contractor selection, debarment, and necessary contract clauses, required by the County and the State. All eligible contracts including contracts for matching funds will need to be submitted to the State for approval prior to requesting reimbursement for incurred costs. The subrecipient must provide evidence to the County that any selected person, business, or entity is not debarred from doing business with the State prior to entering into any binding contract to perform work related to the Project. Detailed instructions regarding the procedures for obtaining State approval for contracts granted under this award are found in the Maryland Capital Grants Projects (Information for State of Maryland Capital Grant Recipients) found at <http://dgs.maryland.gov/Documents/grants/cglbook.pdf>.
16. In accordance with State preference, Subrecipient acknowledges that all correspondence, questions, or concerns in relation to this Agreement should be directed to the OCGM Grant Manager or Director of the OCGM.
17. In performance of its obligations under this Agreement, Subrecipient, its agents, employees and assigns, shall comply with all applicable State, federal, and local laws, regulations and requirements. Subrecipient agrees to promptly notify the appropriate OCGM Grant Manager in the event of allegations or evidence of theft, misappropriation of funds, or any other criminal act or civil litigation.

18. The following provisions regarding equal employment opportunity shall apply:
- A. Subrecipient shall comply with all applicable federal, State and local laws, rules and regulations pertaining to equal employment opportunity and shall not discriminate in any manner against any employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, marital status, national origin, ancestry or disability of a qualified individual with a disability. Subrecipient will take affirmative action to insure that applicants are employed and employees are treated fairly during employment without regard to their race, color, religion, creed, age, sex, sexual orientation, marital status, national origin, ancestry or disability of a qualified individual with a disability. Such action shall include, but not be limited to the following: employment, promotion, demotion, transfer, recruitment, or recruitment advertising, furloughs or terminations, rates of pay or other forms of compensation, and selection for training, including apprenticeships. Subrecipient shall post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - B. Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, age, sex, sexual orientation, marital status, national origin, ancestry or disability of a qualified individual with a disability.
 - C. Subrecipient shall permit access to its books, records and accounts by the State, County, OCGM, or their agents for purposes of investigation to ascertain compliance with this section.
 - D. If Subrecipient fails to comply with the nondiscrimination clauses of this Agreement, this Agreement may be cancelled in whole or in part by written notice from the County and Subrecipient may be declared ineligible for further agreements with the County. Subrecipient shall include the provisions of the foregoing paragraphs in every subcontract or purchase order so that such provision will be binding upon each subcontractor or vendor. Subrecipient will take such action with respect to any subcontract or purchase order as the County may direct as means of enforcing such provisions including sanctions

for noncompliance. Provided, however, that if Subrecipient becomes involved in or is threatened with litigation with the subcontractor or vendor as a result of such direction by the County, Subrecipient may request the County to enter into such litigation to protect the interest of the County.

19. Default, Repayment and Remedies:

- a) A default under this Agreement shall occur if:
 - 1. Subrecipient fails to obligate and expend the Subrecipient Grant Funds within the time frames set forth in Section 3 of the Capital Projects Grant Agreement;
 - 2. There is any use of the Subrecipient Grant Funds by Subrecipient for any purpose other than authorized by the Act, the Regulations, any documents promulgated under the Regulations, this agreement, and as specifically described in the Purpose description located in Section 1 of the Capital Projects Grant Agreement; or
 - 3. There is a breach of any covenant, agreement, provision, representation, warranty or certification of Subrecipient which was made in this Agreement or the Capital Projects Grant application.

- b) Upon the occurrence of any default, the County shall have the right to terminate this Agreement by notice to Subrecipient, subject to the provisions of Section 12 of the Capital Projects Grant Agreement, Pursuant to Section 12(a) of the Capital Projects Grant Agreement; upon default the County may:
 - 1. Require Subrecipient to repay the Grant, in whole or in part.
 - 2. Recoup the amount the Grant already paid from funds due the Subrecipient from any other current or future State or County grant or loan or any other funds, otherwise due and owing Subrecipient.
 - 3. Withhold further payments under this Agreement.
 - 4. Terminate this Agreement.

- c) ~~Subrecipient shall have thirty (30) days from the date the County's notice was postmarked to cure the default, unless the State or County~~

Deleted: Except in the case of a default under Section 20(a) (1) of this Agreement,

requests the repayment of any Subrecipient Grant Funds in which case Subrecipient shall immediately return the Subrecipient Grant Funds to the County. If repayment has not requested and, after the conclusion of the thirty (30) day period, Subrecipient has not cured the default to the satisfaction of the County, the County may terminate this Agreement.

- d) In the event of termination of this Agreement:
 - 1) Subrecipient's authority to request any further disbursement shall immediately cease and Subrecipient shall have no right, title, or interest in or to any of the Subrecipient Grant Funds not disbursed; and
 - 2) The County may demand the immediate repayment of all or a portion of the Subrecipient Grant Funds which have been disbursed.
- e) Any and all of the County's remedies may be exercised contemporaneously, and all of such rights shall survive any termination of this Agreement.
- f) If a default occurs, the County may at any time proceed to protect and enforce all rights available to the County under the Regulations, the Act, at law or in equity, or by any other appropriate proceedings, which rights and remedies shall survive the termination of this Agreement. Furthermore, no failure or delay by the County to insist upon the strict performance of any term, condition, representation or warranty of this Agreement or to exercise any right, power or remedy shall constitute a waiver of any such term, condition, representation or warranty nor preclude the County or State from exercising any such right, power, or remedy at any later time.

- 20. All covenants, agreements, representations and warranties made in this Agreement and in any other documents delivered pursuant hereto shall survive closeout of the Capital Projects Grant Agreement and shall continue in full force and effect until the County has complied with all terms and conditions of the close-out agreement executed by and between State and the County for the Project.

- 21. In accordance with the guidelines of the Capital Projects Grant program, no officer, member or employee of the County, or other local public agencies which exercise any functions or responsibilities in review or approval of the undertaking or carrying out of this Agreement, shall have any personal interest, direct or indirect, apart from his or her official duties, in this Agreement or its proceeds.
- 22. This Agreement contains the entire understanding and obligations of the parties and supersedes all prior representation, understandings, and communications. Furthermore, this Agreement shall not be construed to imply that the County will pay for any expenses incurred by Subrecipient as provided above and beyond the period ending June 1, 2024.

DULY EXECUTED on behalf of the parties as of the day and year first written.

ATTEST/WITNESS:

BOARD OF EDUCATION OF WASHINGTON COUNTY, MARYLAND

Deleted: BOARD OF ¶
Deleted: EDUCATION

BY: _____
Melissa A. Williams, President

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, MARYLAND

Vicki C. Lumm, Clerk

BY: _____
Terry L. Baker, President

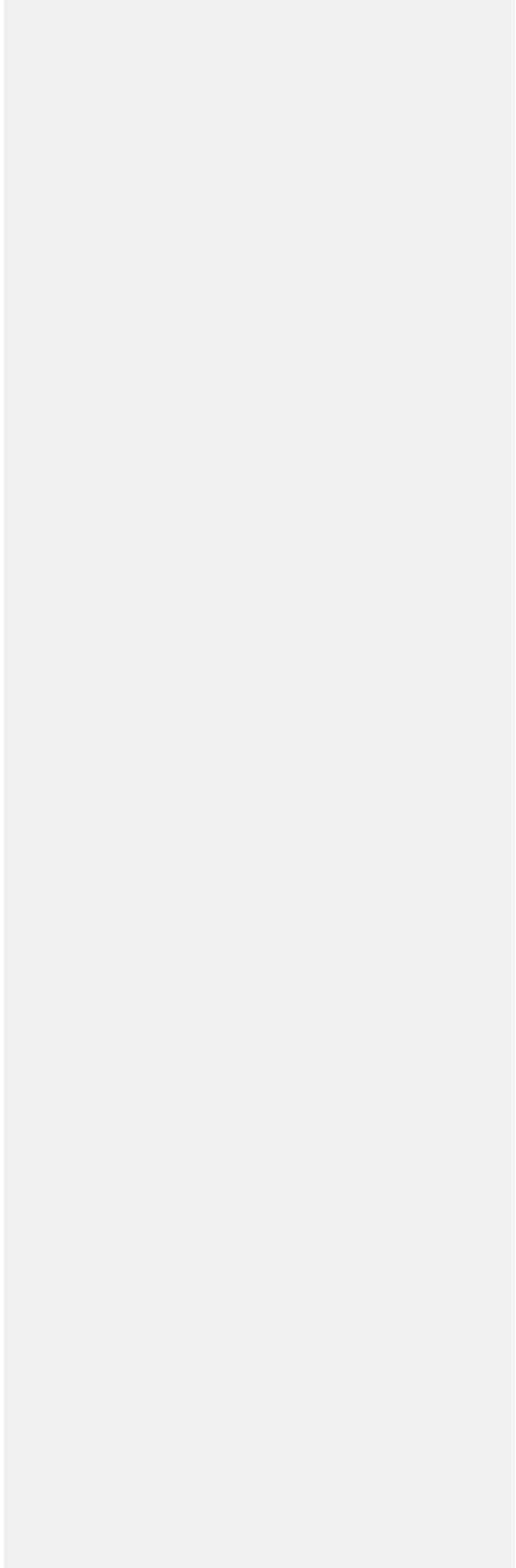
Approved:

James B. Hovis, Director
Washington County Office of
Community Grant Management

Approved as to form and
legal sufficiency:

John M. Martirano
County Attorney

DRAFT



**HAGERSTOWN REVITALIZATION PROJECT
CAPITAL PROJECTS BOND BILL
SUBRECIPIENT AGREEMENT
FISCAL YEAR 2018**

THIS SUBRECIPIENT AGREEMENT (“Agreement”) is made this _____ day of _____, 2017, by and between **THE MARYLAND THEATRE ASSOCIATION** a Maryland non-profit corporation of the State of Maryland (the “Subrecipient”) and the **BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, MARYLAND**, a body corporate and politic and a political subdivision of the State of Maryland (the “County”).

RECITALS

The Maryland General Assembly has authorized a Grant titled Hagerstown Revitalization-Maryland Theatre, Barbara Ingram School, University System of Maryland. (collectively, the “Hagerstown Revitalization Project” or “HRP”) The authorization of this grant in the form of a Bond Bill was authorized by the Maryland General Assembly and enacted into Law by Chapter 022, Acts of 2017.

Pursuant to a CAPITAL PROJECTS GRANT AGREEMENT (the “Grant Agreement”) between the State of Maryland (“State”) acting through the Board of Public Works (BPW) and the County, a copy of which is attached hereto as Attachment #1 and is incorporated into and made a part of this Agreement upon its execution, the County has received an award of grant funds for the HRP Project in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the “Grant”). The purpose of the Grant is to provide funding for the planning, design, construction, and capital equipping of the Maryland Theatre and the Barbara Ingram School for the Arts and for the University System of Maryland at Hagerstown, located in Washington County, Maryland.

As part of the Grant Agreement, Subrecipient has agreed to comply with all requirements of the Grant as set forth in the Grant Agreement and any subsequent amendments to the Grant Agreement, and the County has therefore designated Subrecipient to be the beneficiary of the authorized funding for eligible expenses, and according to prior agreement has allocated Zero Dollars (\$0.00) (“Subrecipient Grant Funds”) of the award herein contained to Subrecipient for that purpose.

It is further agreed and understood that the County anticipates additional Bond Bill Authorizations for the same purpose herein contained in fiscal years 2019, 2020, 2021, and 2022. Therefore, contingent upon the receipt of additional bond bill authorizations in the

amounts anticipated, the Sub-recipient will receive allocations as follows: fiscal year 2019 - Zero Dollars (\$0.00); fiscal year 2020 - Zero Dollars (\$0.00); fiscal year 2021 - Two Million Five Hundred Thousand Dollars (\$2,500,000.00); and fiscal year 2022 - Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and intending to be legally bound, the parties agree as follows:

1. Subrecipient shall faithfully perform and certify the performance of the "Project" as outlined in the Grant Agreement.
2. Subrecipient recognizes there are no matching funds associated with the acceptance of this grant as stated in the Enabling Act.
3. The County, as recipient of grant funds, shall reimburse Subrecipient on a periodic basis in an amount equal to the actual expenses incurred for approved Grant activities as certified to the County by Subrecipient using prescribed forms. The receipt of State grant funds from BPW is a condition precedent to the County's obligation to reimburse as set forth in this paragraph.
4. Subrecipient shall maintain accurate financial records and shall prepare and certify all reports required by the Grant Agreement and this Agreement. Certified reports shall be provided to the assigned Washington County Office of Community Grant Management Grant Manager ("OCGM Grant Manager") for approval and forwarding to the State.
5. Subrecipient agrees to submit all required or requested fiscal and programmatic reports to the OCGM Grant Manager in a timely manner upon a reasonable request. For reports with established due dates, Subrecipient agrees to submit all required reports on or before the corresponding due date.
6. Subrecipient acknowledges that the County reserves the absolute right to take corrective action for failure to comply with established reporting requirements. Corrective action includes, but is not limited to, withholding of payments, instituting financial penalties, and declaring Subrecipient in default this Agreement.
7. Subrecipient acknowledges that payments for work performed under the provisions of this Agreement shall be made utilizing a "reimbursement method" unless otherwise specified and agreed to by all parties subject to this Agreement.

- (a) Disbursement of funds under this Agreement shall be for actual expenses determined by the Grantee to have been properly incurred and allowable by the Grant Agreement.
 - (b) Subrecipient may request funds to pay for eligible, actual costs already incurred in connection with the Project. The Grantee shall have the right at any time to request the Subrecipient provide additional supporting documentation in connection with any request for disbursement.
 - (c) The Request for Disbursement should utilize the Payment Request form which is available at www.dgs.maryland.gov/documents/grants/payment-req.pdf and provided as an attachment to this document labeled Attachment 2. The request must include supporting documentation, including receipts, invoices, and cancelled checks.
 - (d) The Grantee has the right to withhold disbursement of the Subrecipient Grant Funds if it is determined that the Subrecipient is not performing or completing the Project in accordance with the terms of this Agreement.
8. Subrecipient agrees to hold the County harmless and to indemnify the County against all claims, suits and actions arising out of any of Subrecipient's duties and obligations under this Agreement. In addition, the parties agree that Subrecipient shall act as an independent contractor for the purposes of fulfilling its duties and obligations under this Agreement.
9. Subrecipient shall be subject to the same terms and conditions applicable to the County as contained in the Grant Agreement between the County and State. Should a conflict arise during the performance of administration of the project between this Agreement and the Grant Agreement, the terms of the Grant Agreement shall prevail.
10. Subrecipient recognizes that the County shall designate the assigned OCGM Grant Manager to administer the Grant Agreement and this Agreement.
11. The designated contact person for Subrecipient shall be the President of the Maryland Theatre Association or his/her designee. The contact person shall be responsible to ensure that all communications received from the County in relation to the Grant Agreement and this Agreement is attended to in a timely manner.

12. Any modifications to the Project as described in this Agreement, which is mutually agreed upon by the County, State, and Subrecipient may be incorporated in this Agreement by a written letter of amendment upon approval by all parties.
13. Subrecipient recognizes the responsibility of the County or its agents to periodically monitor the fiscal and programmatic records of the Subrecipient pertaining to this Agreement and agrees to cooperate with any reasonable request(s) in relation to the monitoring.
14. Subrecipient shall permit the County, OCGM, or their agents, and authorized representatives of the State to inspect and audit all data and records of Subrecipient relating to its performance under this Agreement.
15. If the Subrecipient contracts any portion of the work to another organization, person(s), business or entity they must follow all provisions related to procurement, contractor selection, debarment, and necessary contract clauses, required by the County and the State. All eligible contracts including contracts for matching funds will need to be submitted to the State for approval prior to requesting reimbursement for incurred costs. The subrecipient must provide evidence to the County that any selected person, business, or entity is not debarred from doing business with the State prior to entering into any binding contract to perform work related to the Project. Detailed instructions regarding the procedures for obtaining State approval for contracts granted under this award are found in the Maryland Capital Grants Projects (Information for State of Maryland Capital Grant Recipients) found at <http://dgs.maryland.gov/Documents/grants/cglbook.pdf>.
16. In accordance with State preference, Subrecipient acknowledges that all correspondence, questions, or concerns in relation to this Agreement should be directed to the OCGM Grant Manager or Director of the OCGM.
17. In performance of its obligations under this Agreement, Subrecipient, its agents, employees and assigns, shall comply with all applicable State, federal, and local laws, regulations and requirements. Subrecipient agrees to promptly notify the appropriate OCGM Grant Manager in the event of allegations or evidence of theft, misappropriation of funds, or any other criminal act or civil litigation.
18. The following provisions regarding equal employment opportunity shall apply:
 - A. Subrecipient shall comply with all applicable federal, State and local laws, rules and regulations pertaining to equal employment opportunity and shall

not discriminate in any manner against any employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, marital status, national origin, ancestry or disability of a qualified individual with a disability. Subrecipient will take affirmative action to insure that applicants are employed and employees are treated fairly during employment without regard to their race, color, religion, creed, age, sex, sexual orientation, marital status, national origin, ancestry or disability of a qualified individual with a disability. Such action shall include, but not be limited to the following: employment, promotion, demotion, transfer, recruitment, or recruitment advertising, furloughs or terminations, rates of pay or other forms of compensation, and selection for training, including apprenticeships. Subrecipient shall post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- B. Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, age, sex, sexual orientation, marital status, national origin, ancestry or disability of a qualified individual with a disability.
- C. Subrecipient shall permit access to its books, records and accounts by the State, County, OCGM, or their agents for purposes of investigation to ascertain compliance with this section.
- D. If Subrecipient fails to comply with the nondiscrimination clauses of this Agreement, this Agreement may be cancelled in whole or in part by written notice from the County and Subrecipient may be declared ineligible for further agreements with the County. Subrecipient shall include the provisions of the foregoing paragraphs in every subcontract or purchase order so that such provision will be binding upon each subcontractor or vendor. Subrecipient will take such action with respect to any subcontract or purchase order as the County may direct as means of enforcing such provisions including sanctions for noncompliance. Provided, however, that if Subrecipient becomes involved in or is threatened with litigation with the subcontractor or vendor as a result of such direction by the County, Subrecipient may request the County to enter into such litigation to protect the interest of the County.

19. Default, Repayment and Remedies:

- a) A default under this Agreement shall occur if:
1. Subrecipient fails to obligate and expend the Subrecipient Grant Funds within the time frames set forth in Section 3 of the Capital Projects Grant Agreement;
 2. There is any use of the Subrecipient Grant Funds by Subrecipient for any purpose other than authorized by the Act, the Regulations, any documents promulgated under the Regulations, this agreement, and as specifically described in the Purpose description located in Section 1 of the Capital Projects Grant Agreement; or
 3. There is a breach of any covenant, agreement, provision, representation, warranty or certification of Subrecipient which was made in this Agreement or the Capital Projects Grant application.
- b) Upon the occurrence of any default, the County shall have the right to terminate this Agreement by notice to Subrecipient, subject to the provisions of Section 12 of the Capital Projects Grant Agreement, Pursuant to Section 12(a) of the Capital Projects Grant Agreement; upon default the County may:
1. Require Subrecipient to repay the Grant, in whole or in part.
 2. Recoup the amount the Grant already paid from funds due the Subrecipient from any other current or future State or County grant or loan or any other funds, otherwise due and owing Subrecipient.
 3. Withhold further payments under this Agreement.
 4. Terminate this Agreement.
- c) Except in the case of a default under Section 20(a) (1) of this Agreement, Subrecipient shall have thirty (30) days from the date the County's notice was postmarked to cure the default, unless the State or County requests the repayment of any Subrecipient Grant Funds in which case Subrecipient shall immediately return the Subrecipient Grant Funds to the County. If repayment has not requested and, after the conclusion of the thirty (30) day period, Subrecipient has not cured the default to the satisfaction of the County, the County may terminate this Agreement.

- d) In the event of termination of this Agreement:
 - 1) Subrecipient' s authority to request any further disbursement shall immediately cease and Subrecipient shall have no right, title, or interest in or to any of the Subrecipient Grant Funds not disbursed; and
 - 2) The County may demand the immediate repayment of all or a portion of the Subrecipient Grant Funds which have been disbursed.
 - e) Any and all of the County's remedies may be exercised contemporaneously, and all of such rights shall survive any termination of this Agreement.
 - f) If a default occurs, the County may at any time proceed to protect and enforce all rights available to the County under the Regulations, the Act, at law or in equity, or by any other appropriate proceedings, which rights and remedies shall survive the termination of this Agreement. Furthermore, no failure or delay by the County to insist upon the strict performance of any term, condition, representation or warranty of this Agreement or to exercise any right, power or remedy shall constitute a waiver of any such term, condition, representation or warranty nor preclude the County or State from exercising any such right, power, or remedy at any later time.
20. All covenants, agreements, representations and warranties made in this Agreement and in any other documents delivered pursuant hereto shall survive closeout of the Capital Projects Grant Agreement and shall continue in full force and effect until the County has complied with all terms and conditions of the close-out agreement executed by and between State and the County for the Project.
21. In accordance with the guidelines of the Capital Projects Grant program, no officer, member or employee of the County, or other local public agencies which exercise any functions or responsibilities in review or approval of the undertaking or carrying out of this Agreement, shall have any personal interest, direct or indirect, apart from his or her official duties, in this Agreement or its proceeds.
22. This Agreement contains the entire understanding and obligations of the parties and supersedes all prior representation, understandings, and communications.

Furthermore, this Agreement shall not be construed to imply that the County will pay for any expenses incurred by Subrecipient as provided above and beyond the period ending June 1, 2024.

DULY EXECUTED on behalf of the parties as of the day and year first written.

ATTEST/WITNESS:

THE MARYLAND THEATRE ASSOCIATION

BY: _____

Benito Vattelana, President

ATTEST:

Vicki C. Lumm, Clerk

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND

BY: _____

Terry L. Baker, President

Approved:

James B. Hovis, Director
Washington County Office of
Community Grant Management

Approved as to form and
legal sufficiency:

John M. Martirano
County Attorney

**HAGERSTOWN REVITALIZATION PROJECT
CAPITAL PROJECTS BOND BILL
SUBRECIPIENT AGREEMENT
FISCAL YEAR 2018**

THIS SUBRECIPIENT AGREEMENT (“Agreement”) is made this ____ day of _____, 2017, by and between **THE UNIVERSITY SYSTEM OF MARYLAND**, a Body Corporate of the State of Maryland (the “Subrecipient”) and the **BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, MARYLAND**, a body corporate and politic and a political subdivision of the State of Maryland (the “County”).

RECITALS

The Maryland General Assembly has authorized a Grant titled Hagerstown Revitalization-Maryland Theatre, Barbara Ingram School, University System of Maryland (collectively, the “Hagerstown Revitalization Project” or “HRP”). The authorization of this grant in the form of a Bond Bill was authorized by the Maryland General Assembly and enacted into Law by Chapter 022, Acts of 2017.

Pursuant to a CAPITAL PROJECTS GRANT AGREEMENT (the “Grant Agreement”) between the State of Maryland (“State”) acting through the Board of Public Works (BPW) and the County, a copy of which is attached hereto as Attachment #1 and is incorporated into and made a part of this Agreement upon its execution, the County has received an award of grant funds for the Hagerstown Revitalization Project (HRP) in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the “Grant”). The purpose of the Grant is to provide funding for the planning, design, construction, and capital equipping of the Maryland Theatre and the Barbara Ingram School for the Arts and for the University System of Maryland at Hagerstown, located in Washington County, Maryland.

As part of the Grant Agreement, Subrecipient has agreed to comply with all requirements of the Grant as set forth in the Grant Agreement and any subsequent amendments to the Grant Agreement, and the County has therefore designated Subrecipient to be the beneficiary of the authorized funding for eligible expenses, and according to prior agreement has allocated Zero Dollars (\$0.00) (“Subrecipient Grant Funds”) of the award herein contained to Subrecipient for that purpose.

It is further agreed and understood that the County anticipates additional Bond Bill Authorizations for the same purpose herein contained in fiscal years 2019, 2020, 2021, and 2022. Therefore, contingent upon the receipt of additional bond bill authorizations in the

amounts anticipated, the Sub-recipient will receive allocations as follows: fiscal year 2019 - Zero Dollars (\$0.00); fiscal year 2020 - Zero Dollars (\$0.00); fiscal year 2021 - Zero Dollars (\$0.00); and fiscal year 2022- Zero Dollars (\$0.00).

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and intending to be legally bound, the parties agree as follows:

1. Subrecipient shall faithfully perform and certify the performance of the "Project" as outlined in the Grant Agreement.
2. Subrecipient recognizes there are no matching funds associated with the acceptance of this grant as stated in the Enabling Act.
3. Subrecipient shall maintain accurate financial records and shall prepare and certify all reports required by the Grant Agreement and this Agreement. Certified reports shall be provided to the assigned Washington County Office of Community Grant Management Grant Manager ("OCGM Grant Manager") for approval and forwarding to the State.
4. Subrecipient agrees to submit all required or requested fiscal and programmatic reports to the OCGM Grant Manager in a timely manner upon a reasonable request. For reports with established due dates, Subrecipient agrees to submit all required reports on or before the corresponding due date.
5. Subrecipient acknowledges that the County reserves the absolute right to take corrective action for failure to comply with established reporting requirements. Corrective action includes, but is not limited to, withholding of payments, instituting financial penalties, and declaring Subrecipient in default this Agreement.
6. Subrecipient agrees to hold the County harmless and to indemnify the County against all claims, suits and actions arising out of any of Subrecipient's duties and obligations under this Agreement. In addition, the parties agree that Subrecipient shall act as an independent contractor for the purposes of fulfilling its duties and obligations under this Agreement.
7. Subrecipient shall be subject to the same terms and conditions applicable to the County as contained in the Grant Agreement between the County and State. Should a conflict arise during the performance of administration of the project between this Agreement and the Grant Agreement, the terms of the Grant Agreement shall prevail.

8. Subrecipient recognizes that the County shall designate the assigned OCGM Grant Manager to administer the Grant Agreement and this Agreement.
9. The designated contact person for Subrecipient shall be the Chancellor of the University System of Maryland or his/her designee. The contact person shall be responsible to ensure that all communications received from the County in relation to the Grant Agreement and this Agreement is attended to in a timely manner.
10. Any modifications to the Project as described in this Agreement, which is mutually agreed upon by the County, State, and Subrecipient may be incorporated in this Agreement by a written letter of amendment upon approval by all parties.
11. Subrecipient recognizes the responsibility of the County or its agents to periodically monitor the fiscal and programmatic records of the Subrecipient pertaining to this Agreement and agrees to cooperate with any reasonable request(s) in relation to the monitoring.
12. Subrecipient shall permit the County, OCGM, or their agents, and authorized representatives of the State to inspect and audit all data and records of Subrecipient relating to its performance under this Agreement.
13. If the Subrecipient contracts any portion of the work to another organization, person(s), business or entity they must follow all provisions related to procurement, contractor selection, debarment, and necessary contract clauses, required by the County and the State. All eligible contracts including contracts for matching funds will need to be submitted to the State for approval prior to requesting reimbursement for incurred costs. The subrecipient must provide evidence to the County that any selected person, business, or entity is not debarred from doing business with the State prior to entering into any binding contract to perform work related to the Project. Detailed instructions regarding the procedures for obtaining State approval for contracts granted under this award are found in the Maryland Capital Grants Projects (Information for State of Maryland Capital Grant Recipients) found at <http://dgs.maryland.gov/Documents/grants/cglbook.pdf>.
14. In accordance with State preference, Subrecipient acknowledges that all correspondence, questions, or concerns in relation to this Agreement should be directed to the OCGM Grant Manager or Director of the OCGM.

15. In performance of its obligations under this Agreement, Subrecipient, its agents, employees and assigns, shall comply with all applicable State, federal, and local laws, regulations and requirements. Subrecipient agrees to promptly notify the appropriate OCGM Grant Manager in the event of allegations or evidence of theft, misappropriation of funds, or any other criminal act or civil litigation.
16. The following provisions regarding equal employment opportunity shall apply:
 - A. Subrecipient shall comply with all applicable federal, State and local laws, rules and regulations pertaining to equal employment opportunity and shall not discriminate in any manner against any employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, marital status, national origin, ancestry or disability of a qualified individual with a disability. Subrecipient will take affirmative action to insure that applicants are employed and employees are treated fairly during employment without regard to their race, color, religion, creed, age, sex, sexual orientation, marital status, national origin, ancestry or disability of a qualified individual with a disability. Such action shall include, but not be limited to the following: employment, promotion, demotion, transfer, recruitment, or recruitment advertising, furloughs or terminations, rates of pay or other forms of compensation, and selection for training, including apprenticeships. Subrecipient shall post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - B. Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, age, sex, sexual orientation, marital status, national origin, ancestry or disability of a qualified individual with a disability.
 - C. Subrecipient shall permit access to its books, records and accounts by the State, County, OCGM, or their agents for purposes of investigation to ascertain compliance with this section.
 - D. If Subrecipient fails to comply with the nondiscrimination clauses of this Agreement, this Agreement may be cancelled in whole or in part by written notice from the County and Subrecipient may be declared ineligible for further agreements with the County. Subrecipient shall include the provisions of the foregoing paragraphs in every subcontract or purchase

order so that such provision will be binding upon each subcontractor or vendor. Subrecipient will take such action with respect to any subcontract or purchase order as the County may direct as means of enforcing such provisions including sanctions for noncompliance. Provided, however, that if Subrecipient becomes involved in or is threatened with litigation with the subcontractor or vendor as a result of such direction by the County, Subrecipient may request the County to enter into such litigation to protect the interest of the County.

17. Default, Repayment and Remedies:

a) A default under this Agreement shall occur if:

1. Subrecipient fails to obligate and expend the Subrecipient Grant Funds within the time frames set forth in Section 3 of the Capital Projects Grant Agreement;
2. There is any use of the Subrecipient Grant Funds by Subrecipient for any purpose other than authorized by the Act, the Regulations, any documents promulgated under the Regulations, this agreement, and as specifically described in the Purpose description located in Section 1 of the Capital Projects Grant Agreement; or
3. There is a breach of any covenant, agreement, provision, representation, warranty or certification of Subrecipient which was made in this Agreement or the Capital Projects Grant application.

b) Upon the occurrence of any default, the County shall have the right to terminate this Agreement by notice to Subrecipient, subject to the provisions of Section 12 of the Capital Projects Grant Agreement, Pursuant to Section 12(a) of the Capital Projects Grant Agreement; upon default the County may:

1. Require Subrecipient to repay the Grant, in whole or in part.
2. Recoup the amount the Grant already paid from funds due the Subrecipient from any other current or future State or County grant or loan or any other funds, otherwise due and owing Subrecipient.
3. Withhold further payments under this Agreement.
4. Terminate this Agreement.

- c) Except in the case of a default under Section 20(a) (1) of this Agreement, Subrecipient shall have thirty (30) days from the date the County's notice was postmarked to cure the default, unless the State or County requests the repayment of any Subrecipient Grant Funds in which case Subrecipient shall immediately return the Subrecipient Grant Funds to the County. If repayment has not requested and, after the conclusion of the thirty (30) day period, Subrecipient has not cured the default to the satisfaction of the County, the County may terminate this Agreement.
- d) In the event of termination of this Agreement:
 - 1) Subrecipient's authority to request any further disbursement shall immediately cease and Subrecipient shall have no right, title, or interest in or to any of the Subrecipient Grant Funds not disbursed; and
 - 2) The County may demand the immediate repayment of all or a portion of the Subrecipient Grant Funds which have been disbursed.
- e) Any and all of the County's remedies may be exercised contemporaneously, and all of such rights shall survive any termination of this Agreement.
- f) If a default occurs, the County may at any time proceed to protect and enforce all rights available to the County under the Regulations, the Act, at law or in equity, or by any other appropriate proceedings, which rights and remedies shall survive the termination of this Agreement. Furthermore, no failure or delay by the County to insist upon the strict performance of any term, condition, representation or warranty of this Agreement or to exercise any right, power or remedy shall constitute a waiver of any such term, condition, representation or warranty nor preclude the County or State from exercising any such right, power, or remedy at any later time.

18. All covenants, agreements, representations and warranties made in this Agreement and in any other documents delivered pursuant hereto shall survive closeout of the Capital Projects Grant Agreement and shall continue in full force and effect until the

County has complied with all terms and conditions of the close-out agreement executed by and between State and the County for the Project.

19. In accordance with the guidelines of the Capital Projects Grant program, no officer, member or employee of the County, or other local public agencies which exercise any functions or responsibilities in review or approval of the undertaking or carrying out of this Agreement, shall have any personal interest, direct or indirect, apart from his or her official duties, in this Agreement or its proceeds.
20. This Agreement contains the entire understanding and obligations of the parties and supersedes all prior representation, understandings, and communications. Furthermore, this Agreement shall not be construed to imply that the County will pay for any expenses incurred by Subrecipient as provided above and beyond the period ending June 1, 2024.

DULY EXECUTED on behalf of the parties as of the day and year first written.

ATTEST/WITNESS:

University System of Maryland

BY: _____
XXXXXXXXXXXXX, Chancellor

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND

Vicki C. Lumm, Clerk

BY: _____
Terry L. Baker, President

Approved:

James B. Hovis, Director
Washington County Office of
Community Grant Management

Approved as to form and
legal sufficiency:

John M. Martirano
County Attorney



Agenda Report Form

Open Session Item

SUBJECT: PUBLIC HEARING – Application for Map Amendment – RZ-17-006

PRESENTATION DATE: December 19, 2017; 10:30 a.m.

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

Case	Application	Applicant/Property Owner	Proposed Amendment
RZ-17-006	Map	Applicant: Divelbiss & Wilkinson Property Owner: 17119 Virginia Ave., LLC	Washington County Zoning Ordinance – Application for Map Amendment: <ul style="list-style-type: none">▪ Property location: SE of the intersection of Virginia Avenue & Hickory School Road (0.528 acres) 17109 Virginia Avenue, Hagerstown, MD)▪ Existing Zoning: RS – Residential, Suburban▪ Requested Zoning: BG – Business, General

Attachments:

Ordinance Amendment Application with Justification Statement and rezoning site maps
Staff Report and Analysis dated September 1, 2017

Planning Commission Report and Recommendation dated October 30, 2017

(All attachments are available with the online version of the Agenda Report Form at <https://www.washco-md.net/index.php/county-commissioners/bocc-meeting-archive-2017/>.)



FOR PLANNING COMMISSION USE ONLY
 Rezoning No. RZ-17-006
 Date Filed: _____

RECEIVED

JUL 12 2017

WASHINGTON COUNTY PLANNING COMMISSION
 ZONING ORDINANCE MAP AMENDMENT APPLICATION

WASHINGTON COUNTY
 PLANNING DEPARTMENT

17119 Virgina Ave., LLC

Applicant

127 Britner Ave Williamsport, MD 21795

Address

Andrew Wilkinson, Esq.

Primary Contact

*on 12424 Pennsylvania Ave #302
 Hagerstown, Md 21742*

Address

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

301-791-9222

Phone Number

awilkinson@divelbisslaw.com

E-mail Address

Property Location: 17109 Virginia Ave., Williamsport, MD 21795

Tax Map: 48 Grid: 24 Parcel No.: 767 Acreage: 0.528

Current Zoning: RS Requested Zoning: BG

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.

[Signature]

Applicant's Signature

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

My commission expires on 05-23-2021

[Signature]

Notary Public



FOR PLANNING COMMISSION USE ONLY

<input type="checkbox"/> Application Form	<input type="checkbox"/> Names and Addresses of all Adjoining & Confronting Property Owners
<input type="checkbox"/> Fee Worksheet	<input type="checkbox"/> Vicinity Map
<input type="checkbox"/> Application Fee	<input type="checkbox"/> Justification Statement
<input type="checkbox"/> Ownership Verification	<input type="checkbox"/> 30 copies of complete Application Package
<input type="checkbox"/> Boundary Plat (Including Metes & Bounds)	

FOR PLANNING COMMISSION USE ONLY

Rezoning No. _____

Date Filed: _____



WASHINGTON COUNTY DEPARTMENT OF
PLANNING & ZONING FEE WORKSHEET

FOR PLANNING COMMISSION USE ONLY
Rezoning No. _____
Date Filed: _____

PLEASE COMPLETE ONLY THE
SECTION THAT APPLIES.

Applicant's Name: 17119 Virginia Ave., LLC Date: 07/11/2017

Zoning Ordinance Map Amendment	\$ 2,000.00
Number of Acres * <u>0.528</u> x \$20.00 per acre	\$ <u>11.00</u>
Engineering Review Fee	\$ 150.00
Technology Fee	\$ <u>15.00</u>
TOTAL FEES DUE – MAP AMENDMENT	\$ <u>2176.00</u>

Text Amendment	\$ 2,000.00
Choose One: <input type="checkbox"/> Adequate Public Facilities Ordinance	
<input type="checkbox"/> Forest Conservation Ordinance	
<input type="checkbox"/> Solid Waste Plan	
<input type="checkbox"/> Subdivision Ordinance	
<input type="checkbox"/> Water and Sewer Plan	
<input type="checkbox"/> Zoning Ordinance	
<input type="checkbox"/> Other: _____	
Technology Fee	\$ <u>15.00</u>
TOTAL FEES DUE – TEXT AMENDMENT	\$ <u>2,015.00</u>

Forest Conservation Exemption	\$ 25.00
Technology Fee	\$ <u>15.00</u>
TOTAL FEES DUE – FOREST EXEMPTION	\$ <u>40.00</u>

Please make checks payable to **Washington County Treasurer**.

FOR PLANNING COMMISSION USE ONLY

Rezoning No. _____

Date Filed: _____

JUSTIFICATION STATEMENT

OWNER: 17119 VIRGINIA AVE., LLC

PROPERTY: 17109 VIRGINIA AVENUE, HAGERSTOWN, MD 21740

This justification statement for a piecemeal zoning map amendment is submitted on behalf of 17119 Virginia Ave., LLC (the “Applicant”) owner of the property located on the east side of Virginia Avenue (Tax Map 48, Parcel 767, Acct. # 26-007097) and generally known as **17109 Virginia Avenue, Hagerstown, Maryland** consisting of +/- 0.528 acres (the “Property”). The Maryland Department of Assessments and Taxation Real Property Data Sheet for the Property is attached hereto and incorporated herein as **Exhibit A**. The Deed for the Property is attached hereto and incorporated herein as **Exhibit B**.

The Applicant hereby requests that the zoning classification for the Property be changed from “RS” (Residential-Suburban) to “BG” (Business-General).

During the 2012 Comprehensive Rezoning of the Urban Growth Area, zoning of the Property was not changed and remains RS. A copy of the current Zoning Map and the 2005 Zoning Map are attached hereto and incorporated herein collectively as **Exhibit C**. It is the Applicant’s assertion that not rezoning the Property from a residential classification to the commercial classification constituted a “mistake” which justifies the Applicant’s within request.

In a leading decision on the concept of “mistake” in zoning, the Maryland Court of Special Appeals explained:

“[T]he presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council’s action was premised initially on a misapprehension.... Error or mistake may also be established by showing that events occurring subsequent to the comprehensive zoning have proven that the Council’s initial premises were incorrect.... ‘On the question of original mistake, this Court has held that 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.’” Boyce v. Sembly, 25 Md.App. 43, 50-51 (1975) (quoting Rockville v. Stone, 271 Md. 655, 662 (1974)).

Purpose of Business General

Pursuant to the Article 12 of the Washington County Zoning Ordinance, the purpose of the BG zoning district "...is to provide appropriate locations for businesses of a more general nature than might be expected to be found in a neighborhood." In addition, the Property is classified for Commercial Use in the Comprehensive Plan and the Land Use Plan of 2002.

Mistake in Zoning

In deciding not to rezone the Property in the Comprehensive Rezoning of 2012, the Board of County Commissioners failed to account for following then-existing facts or trends which were reasonably foreseeable:

- The Property is classified for Commercial Use in the Comprehensive Plan and the Land Use Plan of 2002.
- The Property is surrounded by properties zoned as BG and BL.
- The Property fronts along heavily travelled Virginia Avenue (Rte. 11).
- The Property is located within the Virginia Avenue corridor that has experienced increased commercial uses since the adoption of the Zoning Ordinance and since the zoning of the Property to RS as evidenced by: (1) the Property's designation for Commercial Use in the Comprehensive Plan and the Land Use Plan of 2002, and (2) the increase of commercial uses and development along the Virginia Avenue corridor from I-81 to the Massey Boulevard Area.

The Board of County Commissioners' failure to take the foregoing facts sufficiently into consideration in 2012 led to the misapprehension that the Property was conducive to and most suitable for a residential use, when such use is contrary to the expected commercial use envisioned by the Comprehensive Plan and the Land Use Plan of 2002.

Factors of Section 27.3 of the Zoning Ordinance

Pursuant to Section 27.3 of the Zoning Ordinance, "[i]n order for an amendment, modification, repeal, or reclassification of such district as herein provided, the local legislative body shall make findings of fact in each specific case including, but not limited to, the following matters:

- (a) The report and recommendations of the Planning and Zoning Commission.
- (b) Population change in the area of the proposed change.
- (c) Availability of public facilities in the area.
- (d) Present and future transportation patterns in the area.
- (e) Compatibility with existing and proposed development of the area including indication of neighboring sites identified by the Washington County Historic Sites Survey and subsequent revisions or updates.
- (f) The relationship of the proposed change to the Adopted Plan for the County, Development Analysis Plan Map and Policies.
- (g) That there was a substantial change in the character of the neighborhood where the property is located, or
- (h) That there was a mistake in the existing zoning classification.
- (i) Whether there has been a convincing demonstration that the proposed rezoning would be appropriate and logical for the subject property.

Analysis of Section 27.3 Factors

Regarding these factors, the Applicant submits the following information for consideration by the Board of County Commissioners of Washington County to support this request:

- (a) The report and recommendation of the Planning and Zoning Commission will occur after this application is submitted.
- (b) The Property is in the “Halfway” census-designated place (“CDP”). According to the U.S. Census Bureau, the population of the Halfway CDP in census year 2000 was 10,065. The population increased 7% to 10,701 persons by census year 2010. By comparison, the Washington County 2016 Ten Year Capital Improvement Plan (the “CIP”) notes the population of Washington County increased between 2000 and 2010 by 12% (131,923 to 147,430). While the population of the Halfway CDP has increased, it has done so at a rate less than Washington County.
- (c) Public water and sewer services are available to the Property.
- (d) The Highway Inquiry Map, maintained by the Washington County Department of Information Technology GIS Office, lists Virginia Avenue as a Primary Arterial Road. Upon a review of the projects listed in the 2017- 2026 CIP, there are no

CIP projects planned for the portion of Virginia Avenue adjacent to the Property or the surrounding parcels, roads, or other infrastructure near the Property.

- (e) The rezoning of the Property will be compatible with existing uses in the area and likely any proposed and future development. Bound on all sides by commercially zoned properties, both BL and BG, and by the primary arterial road of Virginia Avenue, the Property is suitable to the land-uses permitted by the BG zoning classification requested by the Applicant.
- (f) The Property is classified for Commercial Use in the Comprehensive Plan and the Land Use Plan of 2002. The Property is uniquely suitable for commercial uses given that commercial use is called for in the Comprehensive Plan and the Land Use Plan and is surrounded by commercially zoned property.

The immediate neighbors consist of a car wash (17119 Virginia Avenue) and a construction company (17051 Virginia Avenue). Immediately across Virginia Avenue is a restaurant (17102 Virginia Avenue).

Virginia Avenue is listed as a major policy area for commercial uses in the Comprehensive Plan. The Property is situated in the Hagerstown Growth Area Boundary where infrastructure and utilities are available for use by the Property. The rezoning of the Property does not result in the diminution of agricultural land in the County as the Property is not zoned or used for agricultural purposes.

- (g) As part of the analysis for mistake, Applicant suggest that a substantial change in the character of the neighborhood has occurred since the adoption of the Zoning Ordinance and since the zoning of the Property to RS as evidenced by the increase of commercial uses and development along the Virginia Avenue corridor from I-81 to the Massey Boulevard Area resulting in the designation of the Property for Commercial Use in the Comprehensive Plan and the Land Use Plan of 2002.

- (h) Applicant asserts that there was a mistake in the 2012 Comprehensive Rezoning as noted above.

- (i) The proposed rezoning would be appropriate and logical. As noted above, the Property is classified for Commercial Use in the Comprehensive Plan and the Land Use Plan. The Property is surrounded by commercially zoned property. The Property is surrounded by actual commercial occupants. Virginia Avenue is as a major policy area for commercial uses in the Comprehensive Plan. The Property is situated in the Hagerstown Growth Area Boundary where infrastructure and utilities are available for use by the Property. Commercial uses and development along the Virginia Avenue corridor from I-81 to the Massey Boulevard Area have increased since the adoption of the Zoning Ordinance and since the original zoning of the Property to RS.

Search Result for WASHINGTON COUNTY

View Map		View GroundRent Redemption			View GroundRent Registration					
Account Identifier:		District - 26 Account Number - 007097								
Owner Information										
Owner Name:		17119 VIRGINIA AVE LLC		Use:	RESIDENTIAL					
Mailing Address:		127 BRITNER AVE LLC WILLIAMSPORT MD 21795-0000		Principal Residence:	NO					
				Deed Reference:	/05514/ 00233					
Location & Structure Information										
Premises Address:		17109 VIRGINIA AVE WILLIAMSPORT 21795-0000		Legal Description:	PAR D 0.528 AC 17109 VIRGINIA AVE					
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	3903
0048	0024	0767		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		
1932		2,254 SF				23,426 SF				
Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation				
2	YES	STANDARD UNIT	BRICK	1 full/ 1 half	1 Detached					
Value Information										
		Base Value	Value	Phase-in Assessments						
			As of	As of	As of					
			01/01/2017	07/01/2016	07/01/2017					
Land:		51,700	51,700							
Improvements		98,200	81,200							
Total:		149,900	132,900	149,900	132,900					
Preferential Land:		0				0				
Transfer Information										
Seller: SMITH DENNIS R SR			Date: 06/01/2017		Price: \$173,000					
Type: ARMS LENGTH IMPROVED			Deed1: /05514/ 00233		Deed2:					
Seller: JACKSON DAVID W & LAURA L			Date: 04/20/2015		Price: \$142,800					
Type: ARMS LENGTH IMPROVED			Deed1: /04948/ 00129		Deed2:					
Seller: SAUM DOUGLAS C			Date: 09/20/2002		Price: \$120,000					
Type: ARMS LENGTH IMPROVED			Deed1: /01833/ 00301		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:						

Tax Identification No.: 26-007097

Property Address: 17109 Virginia Avenue, Williamsport, MD 21795

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made and entered into this 1st day of June, 2017, by and between DENNIS R. SMITH, SR., party of the first part ("Grantor") and 17119 VIRGINIA AVE., LLC, a Maryland limited liability company, party of the second part ("Grantee").

WITNESSETH:

THAT in consideration of the sum of ONE HUNDRED SEVENTY-THREE THOUSAND AND 00/100 DOLLARS (\$173,000.00), cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the said party of the first part does hereby grant, convey, and assign unto the said party of the second part, its successors and assigns, in fee simple and with SPECIAL WARRANTY, all those certain lots or parcels of real estate, with the improvements thereon and the appurtenances thereunto, situate, lying, and being in the City of Williamsport, Washington County, Maryland, and being more particularly described as follows:

All that lot or parcel of land known and designated as "Lands of Douglas C. Saum, Liber 696, folio 744" set forth on a Simplified Plat of Subdivision for Douglas C. Saum recorded in Liber 1095, folio 33, among the Land Records of Washington County, Maryland.

TOGETHER WITH and subject to the rights of others in and to the use of a right of way set forth in a confirmatory Right of Way by and between The Potomac Edison Company d/b/a Allegheny Power, a Maryland and Virginia Corporation, and Douglas C. Saum, recorded in Liber 1833, folio 296, among the Land Records of Washington County, Maryland.

AND BEING the same real estate conveyed to Dennis R. Smith, Sr., by Deed dated April 17, 2015, and recorded April 20, 2015 among the Land Records of Washington County, Maryland, in Liber 4948, at Folio 0129.

FURTHER SUBJECT TO AND TOGETHER WITH all those rights, reservations, restrictions, covenants, conditions, easements, and rights-of-way as may appear of record in the Office of the Clerk of the Circuit Court of Washington County, Maryland.

AND the said party of the first part hereby covenants that it will warrant specially the property hereby granted; and that it will execute such further assurances of the same as may be requisite.

The undersigned certifies that he is a resident of the State of Maryland, or that this was his primary residence, and therefore is exempt from the tax withholding requirements of Section 10-912 of the Tax-General Article of the Annotated Code of Maryland.

[Acknowledgements Begin on Following Page]

SPECIAL WARRANTY DEED
(Signature Pages)

WITNESS the following signature and seal.

SELLER:

Dennis R. Smith
Dennis R. Smith, Sr.

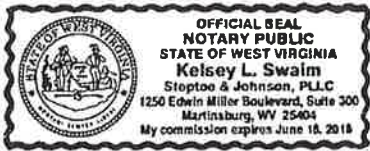
STATE OF West Virginia, COUNTY OF Berkley, TO-WIT:

I, Kelsey L. Swaim, a Notary Public of said State, acknowledge that on June 1, 2017, Dennis R. Smith, Sr., whose name is affixed to this instrument, appeared before me in said County and acknowledged the same.

My commission expires: June 18, 2018.

[NOTARIAL SEAL]

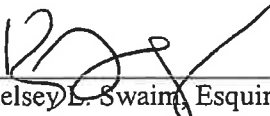
KLS
Notary Public



WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 5514, p. 0235, MSA_CE18_5466. Date available 06/06/2017. Printed 07/11/2017.

ATTORNEY CERTIFICATION

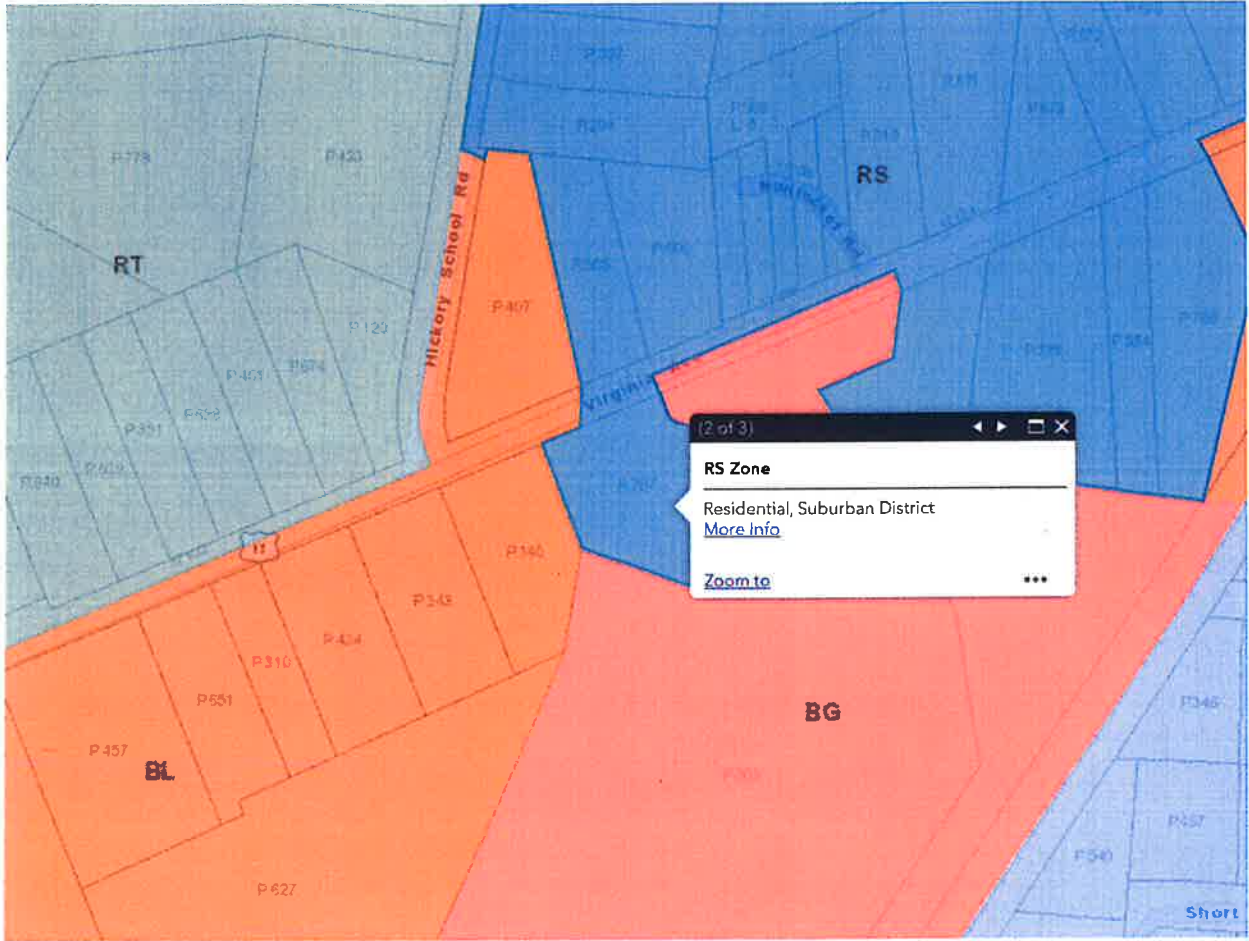
The undersigned hereby certifies that I am an Attorney duly admitted to practice before the Court of Appeals of the State of Maryland, and that the within instrument was prepared under my supervision.


Kelsey L. Swaim, Esquire

Mail To:

Steptoe & Johnson PLLC
1250 Edwin Miller Blvd.
Suite 300
Martinsburg, WV 25401

VICINITY MAP





LIST OF ADJOINING AND CONFRONTING PROPERTY OWNERS

- 1) Jessie S. Ecker and Amanda L. Ecker
 - a. Premises Address: 17110 Virginia Avenue
Williamsport, Maryland 21795
 - b. Mailing Address: 17110 Virginia Avenue
Williamsport, Maryland 21795
 - c. Map/Parcel: 0048/0506
 - d. Tax Account ID: 26-003288

- 2) Richard L. Souders
 - a. Premises Address: 17108 Virginia Avenue
Williamsport, MD 21795
 - b. Mailing Address: 17108 Virginia Avenue
Williamsport, Maryland 21795
 - c. Map/Parcel: 0048/505
 - d. Tax Account ID: 26-027071

- 3) Carmines Italian Restaurant, LLC
 - a. Premises Address: 17102 Virginia Avenue
Williamsport, Maryland 21795
 - b. Mailing Address: 17102 Virginia Avenue
Williamsport, Maryland 21795
 - c. Map/Parcel: 0048/0407
 - d. Tax Account ID: 26-17742

- 4) Advertising, Inc.
 - a. Premises Address: Virginia Avenue
Williamsport, Maryland 21795
 - b. Mailing Address: 355 South Potomac Street
Hagerstown, Maryland 21740
 - c. Map/Parcel: 0048/0140
 - d. Tax Account ID: 26-000173

- 5) 17119 Virginia Ave, LLC
 - a. Premises Address: 17119 Virginia Avenue
Williamsport, Maryland 21795
 - b. Mailing Address: 127 Britner Avenue
Williamsport, Maryland 21795
 - c. Map/Parcel: 0048/0309
 - d. Tax Account ID: 26-024307



Vicinity Map
Scale: 1" = 1000'

Surveyor's Certification
I hereby certify to the best of my professional knowledge and belief that the plan shown herein is correct, that it is all of the lands as conveyed by David W. Liber, Sr. to Dennis R. Smith, Sr. by deed dated and recorded April 17, 2015, and that the same are located in the County of Washington, Maryland. I also certify that this document was prepared by myself and that the survey work reflected herein is in compliance with the requirements set forth in COMAR 17.03.02. I also certify that I am a duly licensed Professional Land Surveyor under the laws of the State of MD License No. 10950, Expiration on June 28, 2018.

Dennis R. Smith, Sr.
Professional Surveyor
Date: 5-7-17

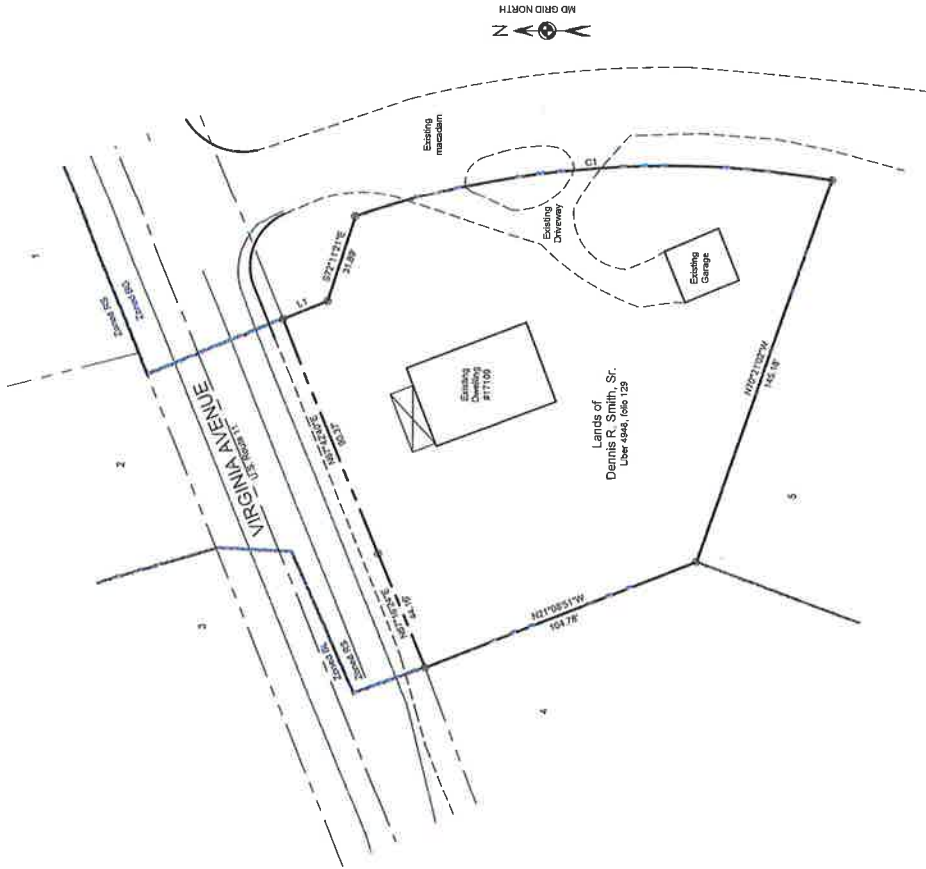
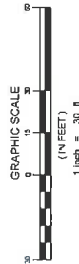


NOTES:
1. Purpose of this drawing is to show the boundary, zoning, and adjoining zoning of the lands owned by Dennis R. Smith, Sr., Liber 4948, lots 129
2. Parcel is currently zoned R2 - Residential, Suburban
3. Proposed zoning is B2 - Business, General

LEGEND
[Symbol] = County Zoning Boundary

No.	NE	Address
1	Frederick	17108 Virginia Avenue
2	Richard L. Soderstrom	17108 Virginia Avenue
3	Carmines Italian Restaurant, LLC	45100292 Virginia Avenue
4	Advertising Inc.	299/257 Virginia Avenue
5	17119 Virginia Avenue, LLC	2400/669 17119 Virginia Avenue

Neighboring Properties	Address
Williamson	1870 Keller Avenue, Williamsport, MD 21785
1870 Keller Avenue	1870 Keller Avenue, Hagerstown, Maryland 21742
12008 Keller Avenue	12008 Keller Avenue, Smithsburg, Maryland 21783
3655 South Potomac Street	3655 South Potomac Street, Hagerstown, Maryland 21740
127 Britner Avenue	127 Britner Avenue, Williamsport, Maryland 21785



LINE	BEARING	DISTANCE
L1	S27°12'05"E	17.34'
C1	S45°20'	124.44'
C2	S45°20'	172.89'
C3	S45°20'	504.333333'

Zoning Exhibit
for
Todd Snook

Situate along the south side of Virginia Avenue
WASHINGTON COUNTY, MARYLAND

TAX MAP # 48-24-787	EXHIBIT # 205	
DRAFTING NUMBER	OF	OF
DRAWN BY: LEB	DATE: 5.18.17	
CHECKED BY:	DATE:	
SCALE:	1" = 30'	

FREDERICK SEIBERT & ASSOCIATES, INC. ©2017
CIVIL ENGINEERS SURVEYORS LANDSCAPE ARCHITECTS LAND PLANNERS
1000 WASHINGTON STREET, GREENCASTLE, PENNSYLVANIA 17225
TEL: 717-658-1725 FAX: 717-658-1725
20 WEST BALTIMORE STREET, GREENCASTLE, PENNSYLVANIA 17225
TEL: 717-658-1725 FAX: 717-658-1725



Washington County

M A R Y L A N D

DEPARTMENT OF PLANNING & ZONING

COMPREHENSIVE PLANNING | LAND PRESERVATION | FOREST CONSERVATION | GIS

September 1, 2017

Case #: RZ-17-006

Application for Map Amendment Staff Report and Analysis

Property Owner(s)	:	17119 Virginia Ave., LLC
Applicant(s)	:	Divelbiss & Wilkinson
Location	:	SE of the intersection of Virginia Ave & Hickory School Rd
Election District :		#26 – Halfway
Comprehensive Plan Designation	:	Commercial
Tax Map	:	48
Parcel(s)	:	767
Acreage	:	.528 acres
Existing Zoning	:	RS – Residential, Suburban
Requested Zoning	:	BG – Business, General
Date of Hearing :		September 18, 2017

I. Background and Findings Analysis:

1. Site Description

Parcel 767 is located in the Urban Growth Area that surrounds the City of Hagerstown as well as the Towns of Funkstown and Williamsport. More specifically, the property is found immediately adjacent to the intersection of Virginia Avenue/U.S. 11 and Hickory School Road, approximately 1/3 mile northeast of the I-70 overpass between Halfway and Williamsport.

The site itself is .528 acres in size and currently contains two story brick home built in 1932. The home is in good condition and was occupied at the time the planner made a site visit on July 27th, 2017. The current occupants are renters who will soon be vacating the property, according to an in-person conversation with the tenants on the same date.

The portion of the site where the house sits has been graded flat and has been cleared of vegetation. The parcel is wooded south and west of the house, containing mature forest. A garage, shed and additional outbuilding sit to the rear of the house. The shed and outbuilding are the property of the current tenant, and will soon be removed, according to conversations with that party. The home sits directly adjacent to the Valley Car Wash, which has a substantial stormwater management facility in front of it, facing Virginia Avenue. The car wash is upslope from Parcel 767. A utility box sits on the subject parcel in the ground in the northeast corner of the property near the car wash access road.

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.

100 West Washington Street, Suite 2600 | Hagerstown, MD 21740 | P: 240.313.2430 | F: 240.313.2431 | TDD: 7-1-1

WWW.WASHCO-MD.NET

Parcel 767 is 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.

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 County residents 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 (City of Hagerstown)

The parcel is served by existing (W-1) public water facilities as they are located within the Urban Growth Area. Water service in this area is provided by the City of Hagerstown, which also owns the distribution system. All surrounding properties in the vicinity are also served by the City and designated W-1. 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 parcel is served by existing (W-1) public sewerage facilities within the Urban Growth Area. The County owns the collection system and handles the effluent treatment at the Conococheague Wastewater Treatment Plant. Nearly all adjacent properties are also designated W-1 and served by the same treatment facility.

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

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

The subject parcel is 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 3/4 mile away from the property in question.

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

Schools

Elementary - Hickory, Middle – Springfield, High School - Williamsport

The subject site is within the districts of Hickory Elementary, Springfield Middle and Williamsport High schools. The requested zoning classification, Business General, 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

The subject property is located on Virginia Ave/U.S. 11. The stretch of U.S. 11 that borders the property is classified as Other Principal Arterial in the Transportation Element of the County's 2002 Comprehensive Plan, in terms of mobility and access characteristics. **Other Principal Arterial** roads are designed to carry greater than 20,000 vehicles in Average Daily Traffic. The County's classifications system is based upon the Federal Highway Functional Classification System, but modified to reflect local road conditions.

Parcel 767 has approximately 135 feet of road frontage on Virginia Avenue, extending northeast from the intersection of Halfway Boulevard and Downsville Pike to the northwest. An existing right turn lane runs in front of the property on northbound Virginia Avenue for approximately 500 feet, primarily to provide access to the Valley Car Wash located immediately southeast of the parcel in question. A driveway spurs off of the access road serving the Car Wash into Parcel 767, providing its only current access. There is no middle turn lane on Virginia Avenue in the vicinity of the property, but there is ample shoulder space on both sides of the road allowing traffic to detour around vehicles turning across two lanes of traffic.

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 parcel on County, State or Federal roads, according to a review of short and long term transportation planning documents.

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. Traffic counts from the Maryland State Highway Administration (SHA) were recorded at a select few points on the portion of Virginia Avenue between Halfway Boulevard and the I-70 overpass. These counts offer the most stable

location during the 30-year time period surveyed below. The traffic volume data shown in the table is expressed in annual average daily traffic volumes (ADT).

Table 2: Traffic Volumes 1985-2015

Year	Virginia Ave/U.S. 11 between Halfway Blvd & I-70
2015	11,392
2010	12,530
2005	12,650
2000	14,250
1995	10,225
1990	14,575
1985	9,700

Source: Maryland State Highway Administration

As shown in Table 2 above, traffic volumes on Virginia Avenue between Halfway Boulevard and the I-70 overpass have declined over the 30 year period surveyed. Traffic volumes in the vicinity of the subject parcel reached their peak in 1990, at 14,575 ADT. Between 2000 and 2015, traffic on U.S. 11 near the property declined by 20%, dropping from 14,250 to 11,392 ADT during the fifteen year period. 2016 ADT, not shown in the table was 12,080, a 6% increase from 2015.

The State Highway Administration had **no comment** in their review of the rezoning application.

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

1. *"Any proposed development that has the potential to generate a significant amount of new traffic may require a traffic impact study as part of the Site Plan."*
2. *"Access management is controlled by the Maryland State Highway Administration due to this being located on a State road. A new access onto a State road would require a Maryland State Highway Administration entrance permit and would need to comply with MD SHA requirements."*
3. *"Determination of adequate site plan requirements (landscaping, buffering, parking, lighting, etc.) will be required and reviewed during the Site Plan stage."*

Public Transportation

This area is served by Route 441 of the County Commuter. Route 441 travels between the Washington County Transit Center in Hagerstown and the Town of Williamsport. The route operates six days per week, between Monday and Saturday.

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

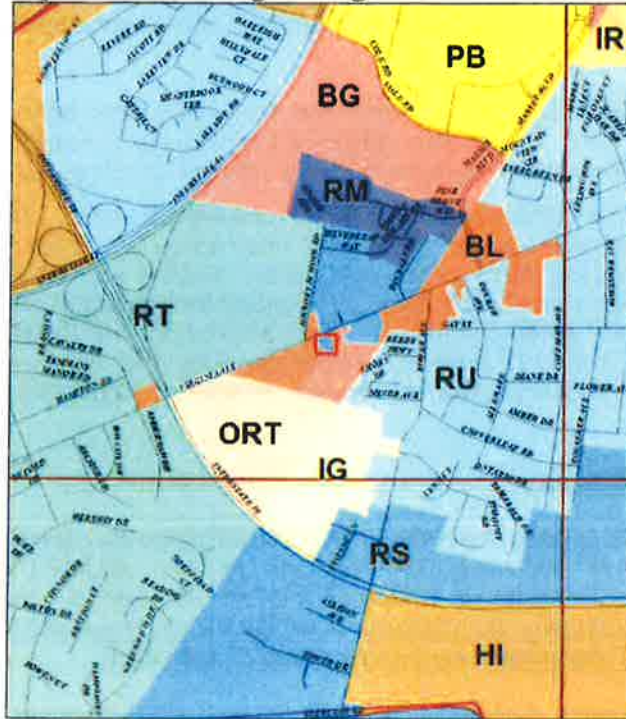
The subject parcel is presently zoned Residential Suburban (RS) and is requesting to change its zoning to Business, General (BG). The purpose of the BG zoning district is:

"... to provide appropriate locations for businesses of a more general nature than might be expected to be found in a neighborhood."²

² Washington County Zoning Ordinance, Section 12, Purpose

Select principal permitted uses within this zoning district include retail businesses, hotels, drive-in restaurants, veterinary clinics, auto sales and service facilities and more. New development in a BG zoning district must be served by public water and sewer facilities.

Map 1: Surrounding Zoning Classifications



There is a mix of zoning classes in the immediate vicinity of the subject parcel (red box) in question, as shown in Map 1 above. South of Virginia Avenue, in the land that immediately abuts the roadway, is predominantly a mixture of commercial zoning classifications. Blocks of BG and BL (Business, Local) border the subject property to the south and west. The nearest active residential use, proximate to the site, on this side of U.S. 11 is located roughly 375 feet northeast, where the first of three consecutive parcels in that stretch remain. North of Virginia Avenue is primarily residential zoning classes of various densities, including Residential, Suburban (RS), Residential, Transition (RT), and Residential, Multifamily (RM).

Land use in the area surrounding the property follows naturally with the zoning described above. Single family residences are interspersed with commercial businesses such as the Valley Car Wash, Carmine's Italian Restaurant and Dollar General.

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 is one historic site located within a 0.5 mile radius of the proposed rezoning area. This site, the Charlton Farm, is described below.

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

- WA-I-382: late-19th century farmstead with 2-story brick house, frame bank barn and outbuildings on 27 acres.

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 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.

The 2002 Washington County Comprehensive Plan designates eight policy areas specific to Urban and Town Growth Areas. The property subject to this rezoning is located in the **Commercial** sub-policy area. The Comprehensive Plan offers the following definition for this policy area:

"This classification encompasses all types of commercial uses. The areas zoned Business Local, Business General and the High Interchange One areas primarily devoted to commercial land uses make up this policy area. Existing and anticipated land uses include retail shopping from malls down to neighborhood shopping centers, as well as restaurants, specialty stores and offices. Major policy areas are located around Valley Mall, Prime Outlets & the I-70 & MD 65 interchange, along Dual Highway and I-70 & U.S. 40 interchange, Pennsylvania Avenue, Virginia Avenue and the I-81 Maugans Avenue interchange."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 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.

³ 2002 Washington County, Maryland Comprehensive Plan, Page 243

The applicant of this case has indicated in their justification statement that they believe there has been a **mistake** in the designation of the existing zoning classification. 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. Maryland case law has consistently established that evidence of these factors must be considered cumulatively, not individually, if the applicant is to demonstrate proof of a mistake in the designation of the current zoning. Correspondingly, a substantial change in any one individual factor doesn't necessarily illustrate that substantial change has occurred in the neighborhood overall.

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 The input of property owners, local officials, staff and the general public was solicited and considered in the assignment of each parcel affected by the Comprehensive Rezoning.

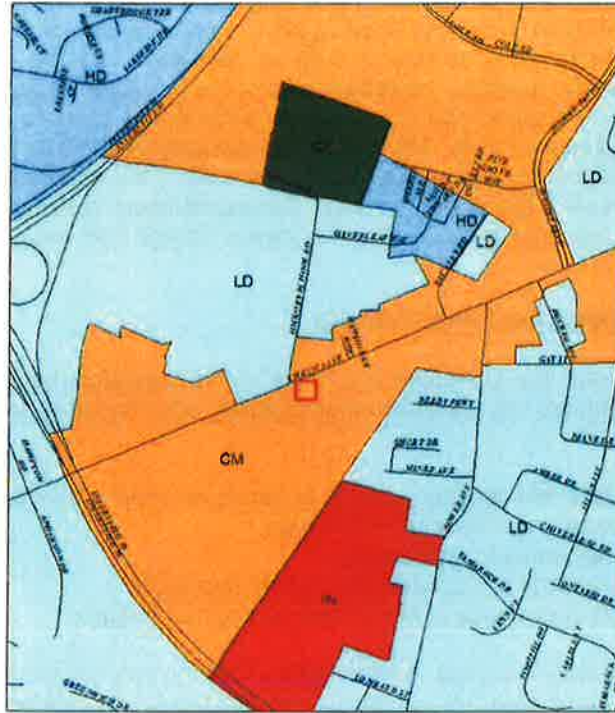
The applicant contends that a mistake was made by the governing body in the continued assignment of the Residential, Suburban (RS) zoning classification. Prior to 2012, Parcel 767 had also been zoned as RS, in keeping with predominant residential and agricultural character that dominated land in the vicinity the parcel during much of the 20th century. The applicant contends that the retention of the existing zoning class in 2012 was a mistake principally because the property:

1. *"Was designated as Commercial in the Land Use Plan of the 2002 Washington County Comprehensive Plan;"*
2. *"Is surrounded by others zoned Business, Local (BL) and Business, General (BG);"*
3. *"Has frontage along heavily travelled Virginia Avenue."*

The evidence present at the time of the 2012 rezoning does support the above assertions made by the applicant. First, the map below shows that the intended land use for the parcel in the 2002 Comprehensive Plan was Commercial (tan color). Nearly all of the land along Virginia Avenue in this area was given the same land use designation in the plan, acting as a buffer from the road to the Low Density Residential areas behind.

⁴ Washington County Ordinance No. ORD-2012-08

Map 2: 2002 Comprehensive Plan Land Use Designations



Second, **Map 1 on page 5**, which shows the current zoning, does display the presence of BL and BG zoning in the immediate vicinity of the parcel. This is particularly true on the south side of Virginia Avenue where immediately adjacent parcels were rezoned from residential to commercial zoning in 1981 (RZ-229), 1992 (RZ-92-11) and 1998 (RZ-98-13).

Third, as noted in the site description at the beginning of this report, the site does indeed have approximately 135 feet of road frontage on Virginia Avenue as the applicant asserts.

All three of these facts were in evidence at the time of the 2012 Urban Growth Area Comprehensive Rezoning.

B. Changes in the Character of the Neighborhood

To a lesser extent, the applicant also argues that there has been a **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 zoning;*
3. *Proof that these changes resulted in a change in the character of the neighborhood.*

Confusingly, in their justification statement the applicant classifies one additional fact as demonstrating proof of both a mistake being made in the current zoning (p.2) and as evidence of change in the character of the neighborhood (p.4). It is the planner’s opinion that their final argument is more so an attempt to describe a change in the neighborhood not a mistake in the zoning:

1. The Virginia Avenue corridor between Massey Boulevard and I-81 has seen an increase in commercial uses since the adoption of the Zoning Ordinance and since the (*original*) zoning of the Property to RS. (emphasis added by staff)

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.***"⁵

In cases where 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.⁶ Such evidence has not been offered by the applicant demonstrating such a linkage.

Washington County's Zoning Ordinance has been in place for more than 40 years, thereby representing an unreasonable length of time to evaluate neighborhood change from, as change would clearly be inevitable over that time span.

The most recent piecemeal rezoning (RZ-98-13) occurred nearly twenty years ago, lending further credence to the stable character of the neighborhood.

A comparison of the zoning prior to the UGA Comprehensive Rezoning in 2012 (Map 3) and the current zoning (Map 4) also reveals little substantive difference between the two. The major changes that are noticeable (outlined in green on Map 3 and shown uniformly in Green on Map 4) – such as the parcels which transitioned from HI-1 and HI-2 to BG, RT and RU; BG to ORT; RR to RT - reflect an administrative reorganization in the naming of zoning classes, the relocation of where select uses are permitted to these newly created classes and even an increase in strictly residential zoning near the I-70/81 intersection, not wholesale changes in land use. The elimination of the HI-2 zoning district, which allowed predominantly high density residential uses in addition to some light industrial uses, and eventual dispersal among other existing residential and commercial zoning districts is an example of this type of administrative reorganization. In essence, the names may have changed, but the uses remained largely the same.

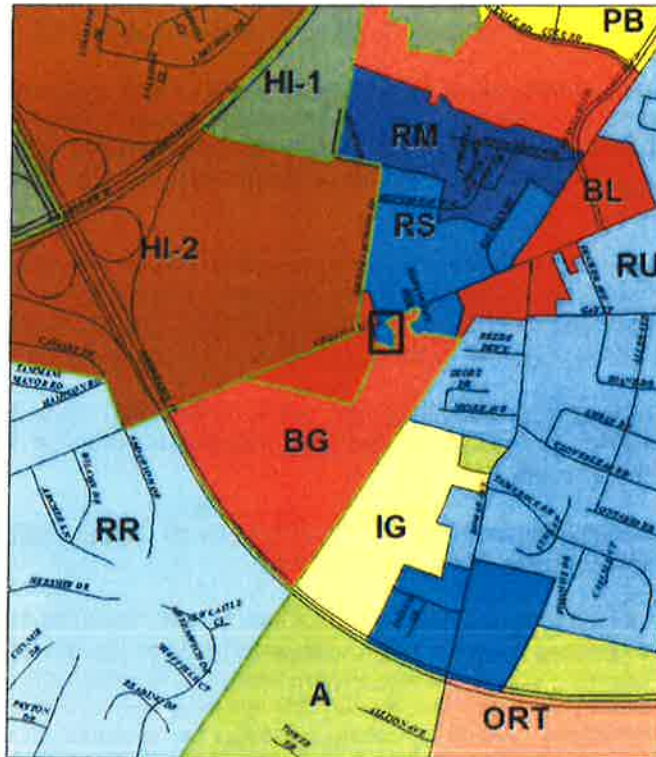
Ultimately, the takeaway from these two maps is that adjacent land use patterns reflect the buildout of commercial zoning that had been established prior to the year 2000. Therefore, **commercial development along Virginia Avenue in this area reflects intentional planning decisions made prior to 2012**, not a change in the character of the neighborhood or a fact missed by the legislative body during their deliberations.

Note: The subject parcel is outlined in black on each map.

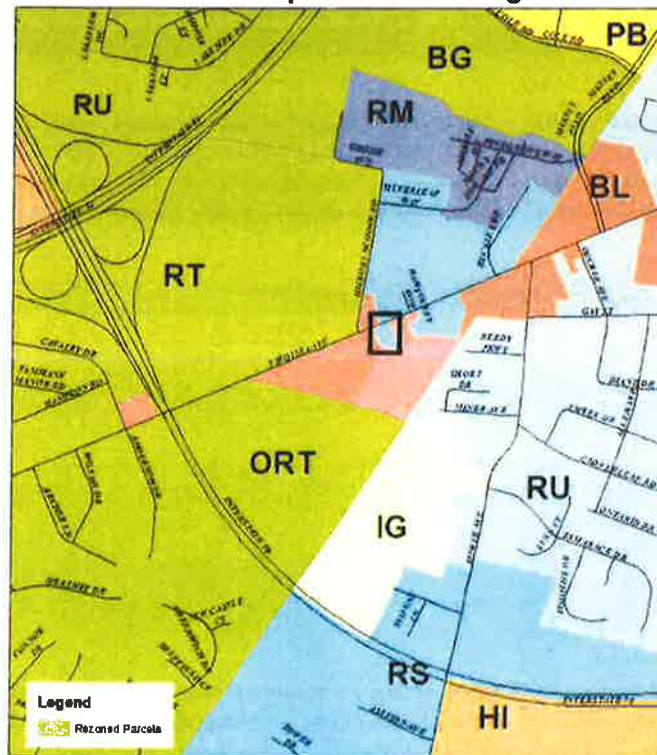
⁵ Guide to Maryland Zoning Decisions, 5th Edition, Stanley Abrams referencing Maryland Court of Appeals Case Buckel v. Board of County Commissioners of Frederick County, 80 Md. App. 305, 562 A.2d 1297 (1989)

⁶ Town of Somerset v. County, 229 Md. 42 (1962) & Runyon v. Glackin, 45 Md. App. 457, 413 A.2d 291 (1980)

Map 3: Zoning prior to UGA Rezoning (July 1, 2012)



Map 4: Current Zoning



Furthermore, the applicant has not concretely established what the boundaries of the "neighborhood" are. This is one of the primary questions that must be answered in order to prove that substantial change has occurred in the neighborhood. As a result, it is impossible to determine whether they have met their legal burden in showing that the neighborhood character has changed "substantially" since the 2012 UGA rezoning as a result of recent U.S. 11 development.

C. Other Neighborhood Changes

In summarizing this report's background data in regards to population growth, water and sewer availability, road improvements and traffic counts, one can also conclude the following about recent changes to the "neighborhood":

- Population growth has occurred at a **slower** rate in the Halfway Election District than the County as a whole.
- Water and sewer service has long been available at this site.
- There are **no new major roadway projects** planned in the vicinity that will affect road capacity, traffic flow, or alignment.
- Traffic counts do not show a recent notable increase, and have actually **decreased from their peak** ADT counts in the 1990s and early 2000s

These facts conclude that the neighborhood has developed according to the vision previously directed by local government officials without "substantial" change.

III. Recommendation:

The applicant has claimed that there has been a substantial change in the character of the neighborhood since the last comprehensive rezoning and that the legislative body erred in the application of the current zoning classification.

In order to prove that the character of a neighborhood has changed substantially since 2012, the applicant must:

- Define the boundaries of the neighborhood,
- Demonstrate that substantial changes have occurred since the last Comprehensive Zoning Plan, and
- Show that those changes resulted in the altered character of the neighborhood.

The applicant has not offered conclusive evidence that this has occurred since the 2012 UGA Comprehensive Rezoning. Neighborhood boundaries have not been clearly defined. The remaining circumstantial evidence provided by the applicant to address this question merely demonstrates that the "neighborhood" has developed according to the vision planned for by the County for the past 10-20 years.

The applicant has presented compelling evidence that a mistake may have been made by the legislative body in the application of the current zoning at the time of the 2012 UGA Comprehensive Rezoning. These facts that may not have been fully considered include: a Commercial designation in the 2002 Comprehensive Plan, compatibility with other commercially zoned properties, and the importance of the parcel's road frontage on Virginia Avenue.

Furthermore, in talking with senior Planning Department staff, it seems likely that the retention of the RS designation at time of the UGA Comprehensive Rezoning was principally driven by the fact that the house on Parcel 767 was occupied and actively being used as a residential property. The recent purchase of the property has changed these circumstances, and the residence will soon be vacant.

Overall, given the largely commercial character of the south side of Virginia Avenue, the applicant's petition to rezone the property from RS to BG is found by the planner to be logical given the

Staff Report and Analysis
RZ-17-006 – 17119 Virginia Avenue LLC

compatibility with the surrounding zoning. The legislative body should, however, closely consider all of the permitted uses within the BG zoning class to determine whether they would potentially fit the present character of the neighborhood. If the legislative body finds these uses acceptable, the planner finds that the proposed rezoning would not be a detrimental change to the neighborhood.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Travis Allen", written in a cursive style.

Travis Allen
Comprehensive Planner



Washington County

M A R Y L A N D

DEPARTMENT OF PLANNING & ZONING

COMPREHENSIVE PLANNING | LAND PRESERVATION | FOREST CONSERVATION | GIS

October 30, 2017

RZ-17-006

APPLICATION FOR MAP AMENDMENT
PLANNING COMMISSION RECOMMENDATION

Property owner(s): 17119 Virginia Avenue, LLC
Applicant(s): Divelbiss & Wilkinson
Location: Southeast of the intersection of Virginia Avenue and Hickory School Road
Election District: #26 - Halfway
Comprehensive Plan Designation: Commercial
Zoning Map: 48
Parcel(s): Parcel 767
Acreage: 0.528 acres
Existing Zoning: RS – Residential Suburban
Requested Zoning: BG – Business General
Date of Public Meeting: September 18, 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-17-006 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, 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, and comments of interested parties provided during the public rezoning information meeting.

The Commission evaluated the applicant's supporting documents claiming that it was a mistake to retain the current RS zoning during the 2012 Urban Growth Area rezoning because the property is included in a commercial land use designation on the Land Use Map in the County's adopted Comprehensive Plan, the existing Business General zoning and uses on three sides of the parcel and the location on a heavily traveled commercial corridor. The Planning Commission concluded that the requested Business General zoning would be appropriate in light of the surrounding commercial uses and the dwindling residential uses in the vicinity.

Copies of the application, Staff Report and Analysis, 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,

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

TA/STG/dse
Attachments

cc: Andrew Wilkinson, Divelbiss & Wilkinson
file



Open Session Item

SUBJECT: Youth Meritorious Award Presentation

PRESENTATION DATE: Tuesday, December 19, 2017

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.

December 2017 – Cassie Bedard – 12th South Hagerstown High School
Parent(s) – David and Sophia Bedard
Hometown – Hagerstown, MD
Nominated by Caitlin Myers

December 2017 – Erika Karlin – 12th North Hagerstown High School
Parent(s) – Vicki Stone
Hometown – Hagerstown, MD
Nominated by Carol Kreykenbohm-Barnhart

December 2017 – Purity Nyanaro – 11th North Hagerstown High School
Parent(s) – Oire Spalatin and Sabella Nyanaro
Hometown – Hagerstown, MD
Nominated by Carol Kreykenbohm-Barnhart

December 2017 – Maegan Aleshire – 11th North Hagerstown High School
Parent(s) – James and Carol Aleshire
Hometown – Hagerstown, MD
Nominated by Carol Kreykenbohm-Barnhart

FISCAL IMPACT: N/A

CONCURRENCES: N/A

ALTERNATIVES: N/A

ATTACHMENTS: Student Summaries

AUDIO/VISUAL NEEDS: N/A

Youth Meritorious Award Summary for

Cassie Bedard
12th Grade Student
South Hagerstown High School
Nominated By: Caitlin Myers

Parent(s) – David and Sophia Bedard

Caitlin Myers endorsed the following:

Cassie Bedard has been an exceptional student throughout her four years at South High. While being a member of the Academic Leadership Academy, Cassie has taken a rigorous course load to help her prepare for college. She has excelled in school competitions such as “We the People” and “National History Day”. Cassie also works tirelessly as Drum Major for the South High marching band where she uses her leadership skills to manage one of the biggest bands in school history. Cassie is a joy to have around as she always has a smile on her face and a positive attitude!

Youth Meritorious Award Summary for

Erika Karlin
12th Grade Student
North Hagerstown High School
Nominated By: Carol Kreykenbohm-Barnhart

Parent(s) – Vicki Stone

Carol Kreykenbohm-Barnhart endorsed the following:

A National Merit Commended student, Erika Karlin represents North Hagerstown High School all year on the athletic field as a long distant runner on the cross country team, indoor and outdoor track teams. An academic standout, Erika is in the top 10% of her class and is a member of the school's John D. Zentmyer Honor Society.

Leadership has been demonstrated by creating and leading a concussion discussion group at North Hagerstown High School to raise awareness of brain injuries in high school athletics. Last year she was a web designer for a nonprofit to raise living standards worldwide, focusing on rural Cameroon. In addition to her outstanding academic and athletic performance, Erika works part time at American Eagle and Rita's getting ready to attend college next fall. North Hagerstown High School is proud to nominate Erika Karlin for the Youth Meritorious Award.

Youth Meritorious Award Summary for

Purity Nyanaro

11th Grade Student

North Hagerstown High School

Nominated By: Carol Kreykenbohm-Barnhart

Parent(s) – Oire Spalatin and Sabella Nyanaro

Carol Kreykenbohm-Barnhart endorsed the following:

What a delightful young woman anyone would be proud to call daughter. Purity Nyanaro is a junior IB student at North Hagerstown High School. Purity is the type of person others migrate towards. She is kind and generous with her time and words. She truly enjoys and enriches the classroom and the activities she is involved with here at school and in the community. She is very active in her church's youth group reaching out to other youth's in the community.

As a member of the Unified Tennis Team, Purity took the time to help others learn basics and was constantly overheard encouraging the other team members. She is also involved with Key Club, a student service club, unified bocci ball, and student government. The student government advisor describes Purity as a "doer", never needing to be asked when something needs to be done; she just jumps in and gets it done. Her leadership is demonstrated through her respectful interaction with others as she approaches tasks in and outside the classroom. She is truly a team player, leading and encouraging all.

Youth Meritorious Award Summary for

Maegan Aleshire

11th Grade Student

North Hagerstown High School

Nominated By: Carol Kreykenbohm-Barnhart

Parent(s) – James and Carol Aleshire

Carol Kreykenbohm-Barnhart endorsed the following:

Maegan has one of the strongest work ethics I have observed in a student. She is diligent and focused on a future that will involve helping others. She is a member of the John D. Zentmyer Honor Society and currently ranks 10th in a class of 281 students. I first observed Maegan's compassion on the tennis court where she is a two year member of the Unified Tennis Team. She is positive and supportive to all. She also represents North Hagerstown High School as a member of the indoor and outdoor track teams.

As Vice-President of the Student Government Association, Maegan is the point person of "NHHS's Food bank". She gives countless hours collecting food, checking expiration dates, sorting and stocking shelves. Here at North Hagerstown High School we are proud to describe Maegan as a "Role model" for other students. She is Awesome!



Agenda Report Form

Open Session Item

SUBJECT: For Informational Purpose Only – Jurisdictions with Local Preference

PRESENTATION DATE: December 19, 2017

PRESENTATION BY: Rick Curry, CPPO – Purchasing Director, Purchasing Dept.

REQUESTED INFORMATION: The information being provided is not a recommendation or that of a consideration; it is only to provide the Board with information that was requested regarding jurisdictions that do or do not have local preference.

County	Local Preference
Allegheny	Yes, Within (5%)
Anne Arundel	No, Unless Tie Bid
Baltimore	No
Baltimore City	No
Calvert	No
Caroline	Not Available
Carroll	No
Cecil	Yes
Charles	Yes
Cumberland City	Yes
Dorchester	No
Frederick	No
Frederick City	Yes
Garrett	Reciprocal
Hagerstown City	No
Harford	No
Howard	Yes
Kent	No
Montgomery	Yes
Prince Georges	Not Available
Queen Anne's	No
Saint Mary's	No
Somerset	No
Talbot	No
Washington	No
Wicomico	No
Worcester	No



Agenda Report Form

Open Session Item

SUBJECT: Intergovernmental Cooperative Purchase (INGT-17-002) – One (1) Regular Cab Dump Truck for Parks & Facilities

PRESENTATION DATE: December 19, 2017

PRESENTATION BY: Rick Curry, CPPO, Director - Purchasing Department and John Pennesi, Deputy Director of Public Works/Parks & Facilities

RECOMMENDED MOTION: Move to authorize by Resolution, Parks & Facilities to purchase one (1) 4x2 regular cab dump truck from *Johnson Truck Center, LLC* of Landover, MD. The cost of the truck is \$116,677.00 (which includes a five (5) year 100,000 mile warranty) and to utilize another jurisdiction's contract (#001B7400466) that was awarded by the State of Maryland Department of General Services Office of Procurement and Logistics statewide contract for various dump trucks.

REPORT-IN-BRIEF: Parks & Facilities is requesting to purchase one (1) regular cab dump truck to replace a vehicle that is eighteen (18) years old and exceed the County's Vehicle and Equipment Types and Usage Guidelines. The County's replacement guidelines for vehicles greater than 33,000 lbs. GVWR is recommended at a ten (10) year economic life cycle. The replaced vehicles will be advertised on GovDeals.com for auctioning.

The Code of Public Laws of Washington County, Maryland (the Public Local Laws) §1-106.3 provides that the Board of County Commissioners may procure goods and services through a contract entered into by another governmental entity, in accordance with the terms of the contract, regardless of whether the County was a party to the original contract. The State of Maryland Department of General Services Office of Procurement and Logistics took the lead in soliciting the resulting agreement. If the Board of County Commissioners determines that participation by Washington County would result in cost benefits or administrative efficiencies, it could approve the purchase of this service in accordance with the Public Local Laws referenced above by resolving that participation would result in cost benefits or in administrative efficiencies.

The County will benefit with direct cost savings in the purchase of this service because of the economies of scale this buying group leveraged. I am confident that any bid received as a result of an independent County solicitation would exceed the spend savings that the State of Maryland's bid provides through this agreement. Additionally, the County will realize savings through administrative efficiencies as a result of not preparing, soliciting and evaluating a bid. This savings/cost avoidance would, I believe, be significant.

DISCUSSION: N/A

FISCAL IMPACT: Funds are budgeted in the Parks & Facilities' Capital Improvement Plan (CIP) account (VEH008) in the amount of \$130,000.00.

CONCURRENCES: N/A

ALTERNATIVES:

1. Process a formal bid and the County could possibly incur a higher cost for the purchase, or
2. Do not award the purchase of the dump trucks.

ATTACHMENTS: Johnson Truck Center, LLC's quote.

AUDIO/VISUAL NEEDS: N/A



LANDOVER
 3801 Ironwood Place
 Landover, MD 20785
 301-832-9100
 301-832-9123 fax

GAINESVILLE
 5509 Wellington Road
 Gainesville, VA 20155
 703-753-7002
 703-753-6038 Parts Fax
 703-753-6239 Service Fax

www.JohnsonTruckcenter.com

Authorized Dealer for



December 5, 2017

Washington County
 Parks and Facilities dept.
 1307 S. Potomac Street
 Hagerstown, MD 21740

Attn: John Pennesi

As you know, Johnson Truck Center, LLC has been awarded a Blanket Purchase Order, BPO # 001B7400466, for the State of Maryland for Various Dump Trucks.

Please accept this letter as an official offering to Washington County to purchase (1) Regular Cab Dump Truck (Line Item # 16) for \$116,677.00.

Please do not hesitate to contact me with any questions by any of the following means:

kfricia@johnsontruckcenter.com

301-832-9137, Direct Office

443-414-6136, Cell

Thank you for this opportunity and I look forward to servicing you.

Respectfully,

Kirk E. Fricia
 Govt. Sales



Agenda Report Form

Open Session Item

SUBJECT: Bid Award (PUR-1372) Purchase or Lease and Supplying of Golf Carts for Washington County's Black Rock Course

PRESENTATION DATE: December 19, 2017

PRESENTATION BY: Rick Curry, CPPO – Purchasing Director and Darrell Whittington – Golf Director at Black Rock Golf Course

RECOMMENDED MOTION: Move to award the bid to the lowest responsive, responsible bidder *Golf Car Specialties, LLC* of Pottstown, PA, based on **Option No. 1** (6-year lease) for a total amount of **\$57,977.84 per year** for a total **6-year cost of \$347,867.04** and Alternate No. 1 (6-year lease) at an annual amount of **\$1,793.20** for a total 6-year coast of **\$10,759.20**, for Grand Total of **\$358,627.24** and contingent upon final approval of the lease documents by the County Attorney's Office.

REPORT-IN-BRIEF: The recommended award option is for the leasing and supplying of seventy-two (72) rental golf carts and one (1) heavy-duty range cart with a requirement of the exchange for new carts at the end of three (3) years. This recommended option also includes a service agreement of (a) weekly maintenance, (b) winter-time service of the fleet, and (c) 24-hour emergency service. At the end of the 6-year lease, the golf carts are returned to the vendor. Should the County wish to own the carts at the end of a lease, it would need to pay fair-market value to purchase the carts as well as purchase an additional maintenance service agreement. However, due to wear and tear on the golf carts, the Black Rock Board originally decided to replaces its carts every three (3) years. It has been common practice to also raise the cart fee \$1.00 upon receiving new carts every three (3) years.

The Invitation to Bid (ITB) was advertised locally in the newspaper and on the County's website, as well as on the State of Maryland's "eMaryland Marketplace" website. Sixteen (16) persons/companies registered/downloaded the bid document on-line. Three (3) vendors submitted bids as indicated on the bid tabulation matrix. The present 6-year lease expires January 19, 2018.

DISCUSSION: N/A

IMPACT: Funds for Golf Carts Rental in the amount of \$64,620.00 are budgeted in Line Item Account No. 535030-46-46020 of FY' 18 budget.

CONCURRENCES: Division Director of Public Works

ALTERNATIVES: N/A

ATTACHMENTS: Bid Tabulation Matrix

AUDIO/VISUAL NEEDS: N/A

PUR-1372

Purchase or Lease and Supplying of Golf Carts for Washington County's Black Rock Golf Course

	E-Z-GO, a Division of Textron, Inc. Augusta, GA	Golf Car Specialties, LLC Yamaha Golf Cars Pottstown, PA	Horizon Distributors, Inc. Frederick, MD	
Option 1: (6 year lease)			Years 1-3	Years 4-6
Interest Rate	4.0%	4.0%	3.39%	5%
Total Annual Lease Amount of 8 Payments	\$65,276.00	\$57,977.84	\$58,313.60*	\$68,812.48**
Total Lease Cost Over Six-Year Period	\$391,656.00	\$347,867.04	\$381,372.24	

Alternate 1: (Fold-down Windshields) ADDITIONAL AMOUNT to be added to Option 1			Years 1-3	Years 4-6
Total Annual Lease Amount of 8 Payments	\$0.00	\$1,793.20	\$2,304.00	\$2,448.00
Total Lease cost Over Six-Year Period	\$0.00	\$10,759.20	\$14,256.00	

Option 2: (Straight Purchase)			Years 1-3	Years 4-6
Total Purchase Cost	\$457,100.00****	\$630,240.00	\$343,060.00	\$172,910.00****
			\$515,970.00	

Alternate 1: (Fold-down Windshields) ADDITIONAL AMOUNT to be added to Option 2			Years 1-3	Years 4-6
Total Purchase Cost	\$0.00	\$640,320.00	\$6,624.00	\$6,840.00
			\$13,464.00	

**** Corrected to "written" figures from Proposal Form from figures read at bid opening.

Remarks/Exceptions:

Horizon Distributors, Inc.

*Lease includes balloon payment of \$194,300.00, payable by Horizon Distributors, Inc. upon pick-up of the seventy-two (72) 2018 Club Car Precedent i2 gas golf cars and one (1) 2018 Club Car Carryall 500 driving range picker.

**Lease includes balloon payment of \$201,500.00, payable by Horizon Distributors, Inc. upon pick-up of the seventy-two (72) 2021 Club Car Precedent i2 gas golf cars and one (1) 2021 Club Car Carryall 500 driving range picker.

*** Includes trade-in value of \$194,300.00 for seventy-two (72) 2018 Club Car Precedent gas golf cars and one (1) 2018 Club Car Carryall 500 driving range picker.



Open Session Item

SUBJECT: Bid Award (PUR-1370) Snow Removal Equipment – One (1) New Aircraft Deice Truck with Rapid Heat and Forced Air System

PRESENTATION DATE: December 19, 2017

PRESENTATION BY: Brandi Naugle, Buyer, CPPB – Purchasing Department and Phil Ridenour, Director – Hagerstown Regional Airport

RECOMMENDED MOTION: Move to award the bid for One (1) New Aircraft Deice Truck with Rapid Heat and Forced Air System to **Ground Support Specialist, L.L.C** of Horn Lake, MS. for the lowest bid in the amount of \$289,690.00.

REPORT-IN-BRIEF: On December 4, 2017, the county received a total of two (2) bids for the Deice Truck. The bid was published in the local newspaper, listed on the State of Maryland’s “eMaryland Marketplace” website, and on the County’s website. Eight persons/companies registered/downloaded the bid document online.

DISCUSSION: N/A

FISCAL IMPACT: The equipment is in the Airport CIP budget (EQP031) with funding at 90% Federal Aviation Administration (FAA), 5 % State, and 5 % County, the budget balance as of December 7, 2017 is \$663.065.15.

CONCURRENCES: N/A

ALTERNATIVES: N/A

ATTACHMENTS: The complete Bid Tabulation may be viewed at:
<https://www.washco-md.net/wp-content/uploads/2017/12/purch-pur-1370-bidtab.pdf>

AUDIO/VISUAL NEEDS: N/A

PUR-1370
Snow Removal Equipment
One (1) New Aircraft Deice Truck with Rapid Heat and Forced Air System

Item No.	Description	Ground Support Specialist, L.L.C. Horn Lake, MS	Textron Ground Support Equipment, Inc. Marinette, WI
1	Snow Removal Equipment - One (1) New Aircraft Deice Truck with Rapid Heat and Forced Air System	\$289,690.00	\$361,375.00

Remarks/Exceptions:

**Textron Ground Support Equipment
Marinette, WI**

1. Chassis:

#o - No, Deviation

8. Heating System:

#a,i - Estimated heat-up time: 6 minutes

10. Fluid Storage Tanks:

#b - Yes, Deviate

Specification Deviations:

<u>Page</u>	<u>Section</u>	<u>Exception</u>
TS-2	1.o	Battery disconnect adjacent to battery compartment
TS-5	10.a	Tank configuration - 1700 De-ice, 400 Anti-ice
TS-6	13.b	Extended Warranty - 3 years, free of charge



Agenda Report Form

Open Session Item

SUBJECT: Contract Award (PUR-1360) City/County Landfill Gas Mitigation

PRESENTATION DATE: December 19, 2017

PRESENTATION BY: Brandi Naugle, CPPB, Buyer – Purchasing Department and Dave Mason, P.E. Deputy Director – Division of Environmental Management

RECOMMENDED MOTION: Move to award the contract for City/County Landfill Gas Mitigation to **Sterns, Conrad and Schmidt Consulting Engineers, Inc.** of Reston, VA. for the lowest bid in the amount of \$1,287,641.00.

REPORT-IN-BRIEF: The bid was advertised on the State of Maryland’s “eMaryland Marketplace” website and on the County’s web-site; and in the local newspaper. Twenty-three (23) registrants/vendors accessed the County’s website and the county received three (3) bids on December 4, 2017 as stated on the bid tab matrix. City/County Landfill Gas Mitigation to include, but not limited to: installation of Soil-Bentonite Barrier Wall, vents, pavement restoration and disturbed area restoration as shown on contract plans. Bidder must complete the project within Forty-Five (45) consecutive calendar days of liquidated damages in the sum of Five-Hundred (\$500) dollars for each consecutive calendar day may be applied.

DISCUSSION: N/A

FISCAL IMPACT: Funding in the amount of \$1,593,424.99 is available in the Department's Capital Improvement Plan (CIP) account 515000-31-21010(LDI056).

CONCURRENCES: N/A

ALTERNATIVES: N/A

ATTACHMENTS: The complete Bid Tabulation may be viewed at:
<https://www.washco-md.net/wp-content/uploads/2017/12/purch-pur-1360-bidtab-2.pdf>

AUDIO/VISUAL NEEDS: N/A

PUR-1360
City - County Landfill Gas Mitigation

				Sterns, Conrad and Schmidt Consulting Engineers, Inc. Reston, VA		EnviroTrac Ltd. Yaphank, NY		Kinsley Construction, Inc. York, PA	
No.	Item	Unit	Qty.	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	Civil Works	LS	1	\$251,070.00	\$251,070.00	\$320,000.00	\$320,000.00	\$619,000.00	\$619,000.00
2	Erosion and Sediment Control	LS	1	\$59,706.00	\$59,706.00	\$25,000.00	\$25,000.00	\$30,000.00	\$30,000.00
3	Underground Utilities	LS	1	\$32,355.00	\$32,355.00	\$37,000.00	\$37,000.00	\$40,000.00	\$40,000.00
4	Soil-Bentonite Barrier Wall	VSF	47,000	\$17.50	\$822,500.00	\$17.40	\$817,800.00	\$11.75	\$552,250.00
5	Vertical Passive Vents	EA	37	\$2,956.00	\$109,372.00	\$2,500.00	\$92,500.00	\$2,600.00	\$96,200.00
Total Base Bid (Items 1 through 5)				\$1,275,003.00		\$1,292,300.00		\$1,337,450.00	
C-1	Contingent Unclassified Excavation	CY	50	\$13.50	\$675.00	\$60.00	\$3,000.00	\$50.00	\$2,500.00
C-2	Contingent Excavation of Buries Waste and Transport to 40 West Landfill	TON	50	\$62.00	\$3,100.00	\$75.00	\$3,750.00	\$100.00	\$5,000.00
C-3	Contingent General Soil Fill	CY	50	\$82.00	\$4,100.00	\$90.00	\$4,500.00	\$30.00	\$1,500.00
C-4	Contingent Class I Riprap	CY	50	\$88.00	\$4,400.00	\$115.00	\$5,750.00	\$150.00	\$7,500.00
C-5	Bentonite	TON	1	\$363.00	\$363.00	\$400.00	\$400.00	\$300.00	\$300.00
Total Contingent Bid Items (C-1 through C-5)				12,638.00		\$17,400.00		\$16,800.00	
Total Sum Bid for Base Items 1 Through 5 PLUS Contingent Items C-1 through C-5				1,287,641.00		\$1,309,700.00		\$1,354,250.00	