Washington County
MARYLAND

FOR PLANNING COMMISSION USE ONLY
Rezoning No. RZ-20-001
Date Filed: 1-20-2020

WASHINGTON COUNTY PLANNING COMMISSION
ZONING ORDINANCE MAP AMENDMENT APPLICATION

The Jone L. Bowman Residuary Trust
Applicant

■Property Owner □Contract Purchaser
□Attorney □Consultant
□Other: _____

10228 Governor Lane Blvd #3004 Williamsport MD 21795
Address

Thomas O. Britner, Esquire
Primary Contact

(301) 223 1076
Phone Number

10228 Governor Lane Blve #3004 Williamsport MD 21795
Address

TBritner@DMBowman.com
E-mail Address

Property Location: 11115, 11111, & 11107 Hopewell Road Hagerstown, Maryland 21740

Tax Map: 48 Grid: 22 Parcel No.: 246 Acreage: 8.0251

Current Zoning: HI (Highway Interchange) Requested Zoning: RT (Rural, Transition)

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.

THOMAS OLIVER BRITNER
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 8, 2021

Applicant's Signature

Subscribed and sworn before me this 21st day of January, 2020.

My commission expires on 11/8/2021

Thomas O Britner
Notary Public

FOR PLANNING COMMISSION USE ONLY

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

Washington County
MARYLAND

FOR PLANNING COMMISSION USE ONLY
Rezoning No. RZ-20-001
Date Filed: 1-20-2020

WASHINGTON COUNTY PLANNING COMMISSION
ZONING ORDINANCE MAP AMENDMENT APPLICATION

Linda Lou Ebersole Family Irrevocable Trust
Applicant

■Property Owner □Contract Purchaser
□Attorney □Consultant
□Other: _____

11119 Hopewell Road, Hagerstown, Maryland 21795
Address

Thomas O. Britner, Esquire
Primary Contact

(301) 223 1076
Phone Number

10228 Governor Lane Blvd #3004 Williamsport, MD 21795
Address

TBritner@DMBowman.com
E-mail Address

Property Location: 11119 Hopewell Road, Hagerstown, Maryland 21795

Tax Map: 48 Grid: 22 Parcel No.: 246 Acreage: 3.6176

Current Zoning: HI (Highway Interchange) Requested Zoning: RT (Rural Transition)

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.

THOMAS OLIVER BRITNER
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 8, 2021

Linda L Ebersole
Applicant's Signature

Subscribed and sworn before me this 20th day of January, 2020.

My commission expires on 11/8/2021

Thomas O Britner
Notary Public

FOR PLANNING COMMISSION USE ONLY

□ Application Form
□ Fee Worksheet
□ Application Fee
□ Ownership Verification
□ Boundary Plat (Including Metes & Bounds)
□ Names and Addresses of all Adjoining & Confronting Property Owners
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Washington County
MARYLAND

FOR PLANNING COMMISSION USE ONLY
Rezoning No. RZ-20-001
Date Filed: 1-20-2020

WASHINGTON COUNTY DEPARTMENT OF PLANNING & ZONING FEE WORKSHEET

PLEASE COMPLETE ONLY THE SECTION THAT APPLIES.

Applicant's Name: The Jone L. Bowman Residuary Trust & Linda Lou Ebersole Family Irrevocable Trust Date: 1/20/2020

Zoning Ordinance Map Amendment . . . . . $ 2,000.00

Number of Acres * 11.64 x $20.00 [1 acre minimum] per acre . . . . . $ 232.80

Engineering Review Fee . . . . . $ 150.00

Technology Fee . . . . . $ 15.00

TOTAL FEES DUE – MAP AMENDMENT . . . . . $ 2397.80

*Minimum charge of $20.00 [if less than one acre]

Text Amendment . . . . . $ 2,000.00

Choose One:
- ☐ Adequate Public Facilities Ordinance
- ☐ Forest Conservation Ordinance
- ☐ Solid Waste Plan
- ☐ Subdivision Ordinance
- ☐ Water and Sewer Plan
- ☐ Zoning Ordinance
- ☐ Other: _____

Technology Fee . . . . . $ 15.00

TOTAL FEES DUE – TEXT AMENDMENT . . . . . $ 2,015.00

Forest Conservation Exemption . . . . . $ 25.00

Technology Fee . . . . . $ 15.00

TOTAL FEES DUE – FOREST EXEMPTION . . . . $ 40.00

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

WASHINGTON COUNTY PLANNING COMMISSION
ZONING ORDINANCE MAP AMENDMENT

REQUIRED APPLICATION MATERIALS CHECKLIST

All materials must be clearly labeled
(Original plus 30 copies of all materials are required)

2,325.51 for Lot 2,3,4
2,237.36 for Lot 1

X2 1. **Application Form**: A completed and signed application form.

X2 2. **Fee Worksheet and Application Fee**: A completed Fee Worksheet and the Application Fee must be submitted at the time application is made. Checks must be made payable to the "Washington County Treasurer".

____ 3. **Ownership Verification**: Proof of ownership interest in the subject property, including a copy of the current deed to the property; OR, if the application is made by a contract purchaser, a copy of the fully-executed Contract of Sale.

Exhibit 1 4. **Boundary Plat**: A boundary description, including metes and bounds, prepared and sealed by a land surveyor registered in the State of Maryland.

____ 5. **List of the Names and Addresses for all Adjoining and Confronting Property Owners**: A list of the names and addresses, obtained from the latest property tax assessment record, of owners of adjoining or confronting properties, improved or unimproved, including properties separated by streets, railroads, or other rights-of-ways. (Must have house numbers or P.O. box numbers.)

Exhibit 2 6. **Vicinity Map**: An 8 ½" x 11" page size map showing the zoning of all property within 1,000 feet of the site.

7. **Justification Statement:** A written explanation of the reasons why the map amendment is being sought, setting forth in sufficient detail to properly advise County officials as to the justifications for the rezoning change. Applications for floating zones shall include such information as required by the respective Articles of the Ordinance. Other applications must address the following information:

   a. A statement as to whether or not there is evidence of mistake in the current zoning, and, if so, the nature of the mistake and the facts to support the allegation.

   b. A statement as to whether or not there is evidence of a substantial change to the character of the neighborhood subsequent to the most recent comprehensive rezoning including the nature of the change, all facts to support the allegations, and a description of the neighborhood.

Real Property Data Search

Search Result for WASHINGTON COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District** - 26 **Account Number** - 004535

Owner Information

Owner Name:	EBERSOLE LINDA LOU TRUSTEE & MERING DONALD R TRUSTEE	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	11119 HOPEWELL RD HAGERSTOWN MD 21740-2104	**Deed Reference:**	/01702/ 00896

Location & Structure Information

Premises Address:	11119 HOPEWELL RD HAGERSTOWN 21740-0000	**Legal Description:**	LOT 1 3.6176 ACRES 11119 HOPEWELL RD

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	6462
0048	0022	0246	26020527.22	0000			1	2020	Plat Ref:	

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1820	3,660 SF		3.6100 AC	

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
2	YES	STANDARD UNIT	BRICK/ SIDING	5	3 full/ 1 half	1 Detached	

Value Information

	Base Value	Value	Phase-in Assessments	
		As of 01/01/2020	As of 07/01/2019	As of 07/01/2020
Land:	86,100	86,100		
Improvements	303,600	311,100		
Total:	389,700	397,200	389,700	392,200
Preferential Land:	0			0

Transfer Information

Seller: BOWMAN JONE L ET AL	**Date:** 10/04/2001	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /01702/ 00896	**Deed2:**
Seller: BOWMAN JONE L	**Date:** 12/28/2000	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /01620/ 00351	**Deed2:**
Seller: CHAPMAN JAMES J JR	**Date:** 03/28/1996	**Price:** $280,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /01618/ 00183	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Real Property Data Search

Search Result for WASHINGTON COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District** - 26 **Account Number** - 041597

Owner Information

Owner Name:	BOWMAN DONALD M TRUSTEE	**Use:**	COMMERCIAL
		Principal Residence:	NO
Mailing Address:	10228 GOVERNOR LN BLVD #3002 WILLIAMSPORT MD 21795-4064	**Deed Reference:**	/05210/ 00033

Location & Structure Information

Premises Address:	11107 HOPEWELL RD HAGERSTOWN 21740-0000	**Legal Description:**	LOT 4 1.8975 ACRES 11107 HOPEWELL RD

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	6462
0048	0022	0246	30000.22	0000			4	2018	Plat Ref:	

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
			1.8900 AC	000000

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
			/				

Value Information

	Base Value	Value	Phase-in Assessments	
		As of 01/01/2018	As of 07/01/2019	As of 07/01/2020
Land:	66,100	66,100		
Improvements	0	0		
Total:	66,100	66,100	66,100	66,100
Preferential Land:	0			0

Transfer Information

Seller: BOWMAN JONE L	**Date:** 04/25/2016	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05210/ 00033	**Deed2:**
Seller:	**Date:**	**Price:** $0
Type:	**Deed1:** /01618/ 00183	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

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

Real Property Data Search

Search Result for WASHINGTON COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District** - 26 **Account Number** - 041600

Owner Information

Owner Name:	BOWMAN DONALD M TRUSTEE	**Use:**	COMMERCIAL
		Principal Residence:	NO
Mailing Address:	10228 GOVERNOR LN BLVD #3002 WILLIAMSPORT MD 21795-4064	**Deed Reference:**	/05210/ 00033

Location & Structure Information

Premises Address:	11111 HOPEWELL RD HAGERSTOWN 21740-0000	**Legal Description:**	LOT 3 2.9608 ACRES 11111 HOPEWELL RD

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	6462
0048	0022	0246	30000.22	0000			3	2018	Plat Ref:	

Special Tax Areas: None

Town: None
Ad Valorem: None
Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
			2.9600 AC	000000

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
			/				

Value Information

	Base Value	Value	Phase-in Assessments	
		As of 01/01/2018	As of 07/01/2019	As of 07/01/2020
Land:	97,000	97,000		
Improvements	0	0		
Total:	97,000	97,000	97,000	97,000
Preferential Land:	0			0

Transfer Information

Seller: BOWMAN JONE L	**Date:** 04/25/2016	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05210/ 00033	**Deed2:**
Seller:	**Date:**	**Price:** $0
Type:	**Deed1:** /01618/ 00183	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

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

Real Property Data Search

Search Result for WASHINGTON COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District** - 26 **Account Number** - 041619

Owner Information

Owner Name:	BOWMAN DONALD M TRUSTEE	**Use:**	COMMERCIAL
		Principal Residence:	NO
Mailing Address:	10228 GOVERNOR LN BLVD #3002 WILLIAMSPORT MD 21795-4064	**Deed Reference:**	/05210/ 00033

Location & Structure Information

Premises Address:	11115 HOPEWELL RD HAGERSTOWN 21740-0000	**Legal Description:**	LOT 2 3.1668 ACRES 11115 HOPEWELL RD

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	6462
0048	0022	0246	30000.22	0000			2	2018	Plat Ref:	

Special Tax Areas: None

Town: None

Ad Valorem: None

Tax Class: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
			3.1600 AC	000000

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
			/				

Value Information

	Base Value	Value	Phase-in Assessments	
		As of 01/01/2018	As of 07/01/2019	As of 07/01/2020
Land:	103,600	103,600		
Improvements	0	0		
Total:	103,600	103,600	103,600	103,600
Preferential Land:	0			0

Transfer Information

Seller: BOWMAN JONE L	**Date:** 04/25/2016	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05210/ 00033	**Deed2:**
Seller:	**Date:**	**Price:** $0
Type:	**Deed1:** /01618/ 00183	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2019	07/01/2020
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

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

Thomas O. Britner, Esquire
10228 Governor Lane Blvd. Suite #3004
Williamsport, Maryland 21795

January 20, 2020

Department of Planning & Zoning
Washington County Admin. Complex
100 W. Washington Street, Suite 2600
Hagerstown, Maryland 21740

Re: Justification Statement for Piecemeal Rezoning of 11119, 11115, 11111, & 11107 Hopewell Road Hagerstown, Maryland 21740

Dear Sir or Madam:

I represent the *Linda Lou Ebersole Family Irrevocable Trust* and the *Jone L. Bowman Residuary Trust* (collectively referred to as the **"Applicant"**). On behalf of the Applicant, please accept this letter as the required Justification Statement for the requested rezoning (i.e. down-zoning) of the Property (defined below) from its current HI (Highway Interchange) classification to an RT (Residential, Transition) classification. All referenced exhibits are hereby incorporated as part of this letter.

The Linda Lou Ebersole Family Irrevocable Trust is the title owner 11119 Hopewell Road, Hagerstown, Maryland 21740 (**"Lot 1"**). *The Jone L. Bowman Residuary Trust* is the title owner of 11115, 11111, & 11107 Hopewell Road, Hagerstown, Maryland 21740 (**"Lot 2"**, **"Lot 3"** & **"Lot 4"** respectively). For purposes of this letter, the term **"Property"** shall collectively refer to Lot 1, Lot 2, Lot 3, and Lot 4. The Property is described on Tax Map 48 as Parcel 246, and is more accurately described on Plat No. 6462 attached as **Exhibit 1**.

Situated upon Lot 1 is a fully restored historical farmhouse and outbuildings (known as the Chapman Farm) originally built circa 1820. The farmhouse has been used by Mr. and Mrs. Ebersole as their permanent residence for the last twenty (20) years.

Current Zoning

A vicinity map showing the current HI zoning classification of the Property as well as the zoning classifications of the adjacent and surrounding properties is attached as **Exhibit 2**.

The Property's current HI zoning was granted during the 2012 Comprehensive Rezoning (hereinafter the **"2012 Rezoning"**). The County originally proposed RT zoning for the Property in connection with the 2012 Rezoning. The County's original proposal is shown on page 5 item #22 on the spreadsheet entitled *Requests and Comments to County Commissioners Received During UGA Public Hearing July 26, 2011*, a copy of which is attached as **Exhibit 3**. However, the Applicant requested that the Property be rezoned HI rather than RT. This request was set forth in the July 26, 2011 letter to the Washington County Board of County Commissioners (hereinafter the **"Request Letter"**) attached as **Exhibit 4**.

The Request Letter set forth three (3) main arguments justifying Applicant's request that the Property be zoned HI: (i) HI zoning of the Property would be consistent with the adjacent property to the North[1] (hereinafter **"Parcel 245"**); (ii) the Property is in close proximity to Interstate 81; and (iii) the Applicant anticipated that the most likely use of the Property would be commercial development in conjunction with the adjacent property to the South[2] (hereinafter **"Parcel 695"**). Based upon the arguments set forth in the Request Letter submitted by the Applicant, the County rezoned the Property HI as part of the 2012 Rezoning.

Mistakes in 2012 Rezoning

The Applicant now contends that the HI zoning assigned to the Property as a result of the 2012 Rezoning constituted a good-faith mistake. The Applicant has submitted a Zoning Ordinance Map Amendment Application respectfully requesting that the Property be rezoned (i.e. down-zoned) from HI to RT.

As per Maryland case law, to sufficiently demonstrate "mistake" the petitioning party must show that existing facts, or reasonable future projects or trends, were not taken into consideration at the time of the zoning. See generally, Boyce v. Sembly 334 A.2d 137, 142-143 (Md. App. 1975); and White v. Spring, 109 Md. App. 692, 675 A. 2d 1023 (1996). Moreover, with regard to the question of original mistake, "when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize a rezoning." Mayor and Council of Rockville v. Stone, 271 Md. 655, 662 (Md. 1974).

In this case, at the time of 2012 Rezoning, the County (and Applicant) did not take into account (i) the existing fact that substantial road improvements would be necessary to make the Property suitable for commercial development; and (ii) the existing fact that public water is generally unavailable to the Property. In addition, the County's reliance upon the assumption[3] that the Property would most likely be developed in conjunction with Parcel 695 has proved to be erroneous with the passage of time. These three (3) mistakes are set forth in greater detail below.

Substantial Road Improvements

Access to and from the Interstate, suitable for large commercial vehicles, is a critical component of commercial development consistent with HI zoning. As per the Washington County zoning ordinance, HI zoning was established for commercial activities that *"serve highway travelers"* and for uses *"that have a need to be located near the interstate highway system to facilitate access by a large number of employees, or the receipt or shipment of goods by highway vehicles."*

Interstate access to and from the Property may be achieved from I-81 Exit 3 (Virginia Ave) or I-81 Exit 5 (Halfway Blvd). The Property is located 1.74 miles (9,189 L.F) from Exit 3

[1] 11159 Hopewell Road, Hagerstown, Maryland 21740 (Map 48, Parcel 245), which is currently zoned HI.
[2] 36 +/- acres fronting Hopewell Road, Hagerstown, Maryland 21740, (Map 48, Parcel 695), which is currently zoned HI.
[3] This assumption was set forth in the Request Letter.

and 1.768 miles (9,338 L.F) from Exit 5. This distances from Exit 3 and Exit 5 are generally described on the drawing attached as **Exhibit 5**. Access to the Property from Exit 3 is the most desirable; however, this route is restricted by the one-lane bridge[4] on Hopewell Road located near the intersection of Hopewell Road and Wright Road. Due to this one-lane bridge, access to the Property from Exit 3 by large commercial vehicles would be impractical. Moreover, large portions of Hopewell Road located between Exit 3 and Exit 5 consist of a narrow two-lane road without shoulders. Specifically, a 2,981 L.F portion of Hopewell Road located between the Property and Exit 5 lacks shoulders, and a 3,673 L.F. portion of Hopewell Road between the Property and Exit 3 lacks shoulders. The lack of shoulders on large portions of Hopewell Road makes access to the Property by large commercial vehicles impractical. Due to these existing conditions, the Applicant contends Hopewell Road is currently inadequate for commercial development of the Property consistent with HI zoning.

Following the 2012 Rezoning, the Applicant consulted an engineering firm for the purpose of determining the extent of road improvements necessary to achieve commercial access to and from the Interstate via Exit 3. The engineering firm produced the **"Concept Plan"** attached as **Exhibit 6** and **Exhibit 7** and incorporated as part of this letter. The Concept Plan reflects the construction of a new road of 4,750 L.F with an 80' R.O.W cutting through Parcel 695 and Parcel 245. The Concept Plan requires: (i) the crossing of a 100 year flood plain (stations 11+50 thru 18+50); (ii) 548 L.F of stream realignment; (iii) the disturbance of 9,615 S.F of wetlands[5] (stations 11+50 thru 18+50); (iv) the removal and relocation of portions of Wright Road; and (v) the cooperation of the owner of Parcel 245. The forgoing are depicted on the drawings attached as **Exhibit 8** and **Exhibit 9**. The Applicant contends that the road improvements depicted on the Concept Plan would cost in excess of one million dollars ($1,000,000), and could be restricted or prohibited by environmental issues.

The Applicant also contends that Interstate access to and from the Property via Exit 5 would also require substantial road improvements. At a minimum, in order to accommodate access by large commercial vehicles, shoulders would need to be added to the 2,981 L.F portion of Hopewell Road between the Property and Exit 5. Moreover, the Applicant also anticipates that upgrades to the railroad crossing located to the North of the Property would be likely.

In sum, the extent of the road improvements required for the commercial development of the Property are largely impractical. The Applicant contends that the County (and Applicant) made a good-faith mistake, by not considering the extent of road improvements that would be required to make the Property suitable for commercial development, when it granted the HI zoning in connection with the 2012 Rezoning.

General Lack of Public Water Service.

A consistent and reliable source of public water and sewer are critical components to commercial development consistent with HI zoning. Reliance on a water well and/or septic system for commercial development would be highly undesirable (if not impossible). While public sewer service is available to the Property through the County, public water is generally

[4] This one-lane bridge crosses Semple Run.

[5] Designated by the National Wetlands Inventory.

unavailable. Public water to the Property can only be provided by the City of Hagerstown (the **"City"**). Unfortunately, the Property is located outside of the boundaries of the City's Medium-Range Growth Area. *Map 4-2: Water and Wastewater Priority Areas,* depicting the Medium Range Growth Area is attached as **Exhibit 10**. According to the *City of Hagerstown Water and Wastewater Policy* (hereinafter the **"Policy"**) the City "will not extend water or wastewater services beyond the Medium-Range Growth Area" unless a special exception applies. A copy of the Policy is attached as **Exhibit 11**.

At this time, the Property does not qualify for any special exception under the Policy. The only possible route to obtaining public water from the City would be to qualify for the "Economic Development Project" exception[6]. However, given the relatively small size of the Property, it is unlikely that a large scale industrial end user, with enough political clout to justify the Policy exception, would have interest in the Property.

In sum, the Property's lack of access to public water makes commercial development consistent with HI zoning impractical. Conversely, reliance on water wells and/or septic systems for light residential development consistent with RT zoning would not be impractical. The Applicant contends that the County (and Applicant) made a good-faith mistake by not considering the general unavailability of public water to the Property when it granted the HI zoning in connection with the 2012 Rezoning.

Development Assumption Proved Erroneous with Passage of Time.

As set forth in the Request Letter, the Applicant originally assumed that the Property would most likely be commercially developed in conjunction with Parcel 695. The County relied (in-part) upon the Applicant's assumption when it granted the HI zoning in connection with the 2012 Rezoning. In the seven (7) plus years that have passed since the 2012 Rezoning, despite its best efforts, the Applicant has had no success in procuring a commercial end user for the Property or the Adjacent Parcel 695. This failure is largely attributable to the commercial development issues described above (i.e. the requirement of extensive road improvements and general lack of public water). In addition, family members of the Applicant have expressed interest in building single family homes on the Property.

The issues associated with the commercial development, combined with the family member's interest in utilizing the Property for residences, has caused the Applicant to abandon its intent to commercially develop the Property. The Applicant contends that the original assumption, that the Property would be developed in conjunction with Parcel 695, has proved to be erroneous with the passage of time. Therefore, the County's (and Applicant's) reliance upon this errant assumption constitutes a good-faith mistake.

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[6] The Policy makes an exception for Economic Development Projects of an industrial and/or non-retail nature. The proposed Economic Development Project requires recommendation of the County Commissioners, the City and County Economic Development Directors, and the Directors of Utilities to, and approval by Mayor and Council.

Additional Material Facts Supporting Amendment

The Applicant respectfully requests that appropriate consideration be given to the additional facts numerated below supporting the requested change in zoning from HI to RT.

1. Mr. and Mrs. Ebersole (whose primary residence is located on Lot 1) would like to give their daughter and son-in-law (Samantha and Nick Bodnar) Lot 2 so that they may build a single family home for their residence.

2. The Property is currently configured for residential use. In the year 2000, the Applicant subdivided the Property into four (4) parcels intended for single family homes. Please see the plat attached as Exhibit 1. The plat depicts future homes on Lot 2, Lot 3, and Lot 4.

3. The 2012 Rezoning transformed the Ebersole residence upon Lot 1 into a non-conforming use. The Rezoning of the Property from HI to RT will act to correct this anomaly.

4. RT zoning of the Property is appropriate and consistent with the surrounding neighborhood. Numerous adjacent parcels located to the North and West are zoned RT. Please see Exhibit 2.

Conclusion

The Applicant respectfully submits that a piecemeal rezoning of the Property is justified due to good-faith mistakes; and that a change in the current zoning of HI to RT is appropriate.

Very truly yours,

Thomas O. Britner

Thomas O. Britner, Esquire

E-mail: Tbrtiner@DMBowman.com

ACREAGE SUMMARY

JONE L. BOWMAN DEED ACREAGE		
P. 806	2.6316	AC. ±
P. 245	+12.0980	AC. ±
EXISTING TOTAL:	14.7296	AC. ±
LOT 1	– 3.6176	AC. ±
LOT 2	– 3.1668	AC. ±
LOT 3	– 2.9608	AC. ±
LOT 4	– 1.8975	AC. ±
PARCEL A	– 0.8560	AC. ±
PARCEL B	– 1.6829	AC. ±
DEDICATED R.O.W.	– 0.5480	AC. ±
DONALD M. BOWMAN:		
P. 695	34.03	AC. ±
PARCEL A	+ 0.8560	AC. ±
PARCEL B	+ 1.6829	AC. ±
DONALD M. BOWMAN TOTAL ACREAGE	36.5689	AC. ±

15. NO BUILDING PERMITS WILL BE ISSUED FOR LOTS 2, 3 AND 4 UNTIL SEEDLINGS ARE PLANTED AND INITIAL INSPECTION BY WASHINGTON COUNTY PLANNING DEPARTMENT STAFF HAS BEEN COMPLETED.

NOTE:
INTERIOR LINES OF PARCELS 246 (TRACT 1, PARCEL 2) AND 806 ARE VACATED BY THIS PLAT.

AREA HEREBY DEDICATED FOR ROAD WIDENING 23,870 SQ. FT. OR 0.5480 AC. (FROM EXISTING PROPERTY LINE TO 30' FROM CENTERLINE)

NORTH TO AGREE WITH DEED IN L. 1261, F. 358

HOPEWELL ROAD – MINOR COLLECTOR (60' ULTIMATE R/W)

LOT 1
3.6176 AC.±
ADDRESS: 11119 HOPEWELL ROAD

PARCEL B
1.6829 AC.±

LOT 4
1.8975 AC.±

LOT 3
2.9608 AC.±

LOT 2
3.1668 AC.±

PARCEL A
0.8560 AC.±

FOREST CONSERVATION AREA "B"
1.4394 AC.

100 YEAR FLOOD PLAIN AND FOREST CONSERVATION AREA "A"
1.2506 AC.±

AREA COVERED BY QUIT-CLAIM DEED TO WILLIAM J. BUDZENSKI BY LIBER 1424, FOLIO 894 PARCEL 1 AND 2 OWNED BY JONE L. BOWMAN L. 1261, P. 358

NOTE:
THE LIMITS OF THE STREAM BUFFER SHALL BE THE SAME AS THE 100 YEAR FLOOD PLAIN LIMITS.

R 50 WH WETLANDS ALONG SEMPLES RUN AS SHOWN ON WETLANDS INVENTORY MAP WILLIAMSPORT, MD--WV.

P/O P. 246, 806
JONE L. BOWMAN
L. 1261, F. 358
L. 1261, F. 364
1.6829 AC.±
HEREBY ADDED TO P. 695

P/O P. 246
JONE L. BOWMAN
L. 1261, F. 358 **
0.8560 AC.±
HEREBY ADDED TO P. 695

P/O P. 246
JONE L. BOWMAN
L. 1261, F. 358
TRACT No. 2
15.3394 AC.±
W.C. PLAT No. 1792 &
W.C. PLAT No. 6373

P/O P. 246
JONE L. BOWMAN
L. 1261, F. 358
TRACT No. 1, PARCEL No. 2
0.1329 AC.±
W.C. PLAT No. 1792

P. 245
HOPEWELL-CUSHWA FARMS CORP.
L. 536, F. 441

P. 32
STEVEN D. FULTON
L. 1177, F. 398

P. 761
WILLIAM J. BUDZENSKI
L. 1305, F. 1092
L. 1424, F. 894

P. 808
JONE L. BOWMAN
L. 1261, F. 364
2.6316 AC.±
W.C. PLAT No. 1792

P. 247
HELEN R. SWEAR
L. 570, F. 211

P. 695
DONALD M. BOWMAN
L. 741, F. 884
34.03 AC.±

1" IRON PIPE (FND)
1.5" IRON PIPE (FND)
CORNER FENCE POST (FND)
EXISTING BRIDGE
EXISTING 66"x72" CMP FLOW
MAGNETIC SIGNAL
EXISTING "SEMPLES RUN"
EXISTING FENCE
PROPOSED WELL
PROPOSED SEPTIC AREA
PROPOSED ENTRANCE (TYP.)
CMP No. 25
CMP No. 24
CMP No. 26
GUY POLE
PE No. H10959
PE No. H11170
R.R.S. (FND @ 3.45')
4'± HIGH WOOD FENCE
FIELD LOCATED TRENCH (TYP.)
FIELD LOCATED PERC (TYP.)
EXISTING DRIVEWAY
ROCK OUTCROPS
CONC. MON. SET
5/8" REBAR W/ CAP SET
FENCE POST (FND)
UNDERGROUND FUEL OIL TANK
1 STORY STONE/WOOD WELL/PUMP HOUSE
YARD HYDRANT
EX. WELL
BRICK WALK
LINE HEREBY VACATED
2 STORY BRICK DWELLING F.F. ELEV. 483.16
1-1/2 STORY STONE/WOOD GARAGE
STONE WALL (TYP.)
1 STORY STONE/WOOD SHOP
PATIO STONE
FIREPLACE
POND
4'± HIGH WIRE FENCE
PLANTED STONE (FND.)
EXISTING FENCE
ARBORVITAE HEDGE
SITE
VICINITY MAP
SCALE: 1" = 2000'

LEGEND

- 5/8" REBAR W/CAP--SET (UNLESS OTHERWISE N
- MONUMENT – FOUND OR SET (AS NOTED)
- QUIT--CLAIM AREA *(SEE NOTE BELOW)
- FLOOD PLAIN AREA AND FOREST CONSERVATION AREA **
- WETLANDS AREA
- SEPTIC AREA
- EASEMENT FOR INGRESS AND EGR HOPEWELL ROAD TO FOREST CONS AREA "B".
- PARCEL LINE
- SOILS LINE

LINE TABLE

LINE	DIRECTION	DISTANCE
L1	N 57°22'33" E	40.56'
L2	N 57°30'15" W	308.93'
L3	N 39°34'57" W	363.26'
L4	N 62°25'43" E	193.80'
L5	N 39°38'05" E	95.42'
L6	N 62°25'43" E	5.70'
L7	S 29°23'46" W	4.37'
L8	N 28°59'12" W	589.48'
L9	N 59°36'05" E	101.60'
L10	N 09°37'03" W	358.39'
L11	N 59°36'05" E	145.26'
L12	N 39°38'05" E	50.00'
L13	N 27°11'52" E	264.57'
L14	N 27°11'52" E	21.93'
L15	S 49°39'58" E	31.74'
L16	S 70°16'42" E	52.17'
L17	S 28°07'48" W	22.41'
L18	S 61°52'12" E	106.00'
L19	N 28°07'48" E	38.00'
L20	S 70°16'42" E	303.19'
L21	N 59°03'50" E	339.17'
L22	N 20°41'05" E	70.03'
L23	S 57°30'15" E	71.89'
L24	N 39°36'05" E	10.53'

CURVE TABLE

CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	200.00'	129.07'	66.87'	126.84'	N 78°05'20" E	36°58'30"
C2	295.00'	191.03'	61.38'	120.19'	N 09°46'50" E	23°30'26"
C3	197.00'	98.37'	50.77'	98.32'	N 12°26'41" E	28°54'07"
C4	180.00'	175.03'	97.06'	170.87'	N 01°24'23" W	55°40'13"
C5	295.00'	72.45'	36.41'	72.27'	N 14°29'55" E	14°04'17"
C6	130.00'	128.01'	69.73'	122.90'	S 01°15'48" E	56°26'04"
C7	247.00'	134.80'	83.65'	133.28'	S 12°26'41" W	28°54'07"
C8	245.00'	102.10'	51.80'	101.36'	S 09°57'57" W	23°52'30"

SOILS LIST

DUNNING AND MEDWIN SILTY LOAM
HAGERSTOWN EXTREMELY ROCKY LOAM, 0 TO 25% SLOPES, MODERATELY ERODED
HAGERSTOWN SILT LOAM, 0 TO 3% SLOPES
HAGERSTOWN SILT LOAM, 0 TO 8% SLOPES, MODERATELY ERODED
HAGERSTOWN VERY ROCKY SILTY CLAY LOAM, 3 TO 15% SLOPES, MODERATELY ERODED
WARNERS LOAM, 0 TO 8% SLOPES
SOURCE: SOIL SURVEY OF WASHINGTON COUNTY, MARYLAND, ISSUED OCTOBER, 1962.

ADDRESS TABLE

LOT NO.	ADDRESS
1	11119 HOPEWELL ROAD
2	11115 HOPEWELL ROAD
3	11111 HOPEWELL ROAD
4	11107 HOPEWELL ROAD

GRAPHIC SCALE
100 0 50 100 200
SCALE IN FEET
1" = 100 Ft.

NOTE: THE 1.2506 ACRES OF PARCEL B ARE WITHIN THE 100 YEAR FLOOD PLAIN AND ARE BEING DESIGNATED AS FOREST CONSERVATION AREA "A". THE 1.4394 ACRE FOREST CONSERVATION AREA "B" IS WITHIN LOTS 2,3 AND 4. THE TOTAL FOREST CONSERVATION AREA ON THIS PLAT IS 2.69 ACRES.

* NOTE: THE QUIT CLAIM IN L. 1424, P. 894 DID NOT COME FROM THE JONE L. BOWMAN CHAIN OF TITLE AND IS NOT RECOGNIZED BY JONE L. BOWMAN. THIS INSTRUMENT IS HOWEVER A DEED OF RECORD AND IS ACCORDINGLY SHOWN.

PLAT NO. 6462
DATE: DEC 27 2000
WASHINGTON COUNTY

OWNER: JONE L. BOWMAN
10702 HOPEWELL ROAD
WILLIAMSPORT, MARYLAND 21795
PHONE: (301) 223-9135

C:\977004\P-FPLAT

DRAWN BY	C.L.P.
DATE	05/16/00
CHECKED BY	
DATE	
APPROVED BY	
DATE	
SCALE	1" = 100'
REVISIONS:	
REV. PER AGENCY COMMENT R.A.W. 11/27/00	
REV. PER AGENCY COMMENT R.A.W. 10/15/00	

DAVIS, RENN & ASSOCIATES, INC.
ENGINEERS PLANNERS SURVEYORS
P.O. BOX 246 HAGERSTOWN, MARYLAND 21741
TELEPHONE 301-739-5580

PRELIMINARY / FINAL PLAT
FOR
JONE L. BOWMAN
PROPERTY MAP 48 BLOCK 22 PARCEL 115, 246 & 806 ELECTION DISTRICT 26 WASHINGTON COUNTY, MARYLAND

SHEET NO.	1 OF 2
PROJECT NO.	977004
FILE NO.	C-1370

EXHIBIT #1 tables

msa SSU 1255-5972-1

GENERAL NOTES

1. ZONING: "HI-2" HIGHWAY INTERCHANGE DISTRICT
2. MINIMUM BUILDING RESTRICTION LINES: FRONT – 40', SIDE – 15' & REAR – 50' (FROM "A")
3. AN EIGHT FOOT (8') WIDE EASEMENT FOR UTILITIES AND DRAINAGE TO BE RESERVED ON THE INTERIOR OF EACH SIDE AND REAR LOT LINES. A TEN FOOT (10') WIDE EASEMENT FOR UTILITIES AND DRAINAGE TO BE RESERVED ALONG THE FRONT LOT LINE.
4. WATER WELLS WILL BE UTILIZED.
5. 10,000 SQ. FT. SEPTIC AREAS WILL BE UTILIZED.
6. THE TOTAL DRAINAGE AREA FOR THIS SITE IS LESS THAN 400 ACRES.
7. THERE ARE WETLANDS ALONG SEMPLES RUN PER WETLANDS INVENTORY MAP WILLIAMSPORT, MD, WV., AS SHOWN HEREON.
8. THERE IS A 100-YEAR FLOOD PLAIN ON THIS SITE PER F.I.R.M. PANEL No. 240070-0090A EFFECTIVE MAY 1, 1978.
9. LOTS 1, 2, 3 AND 4 LANDS SHALL UTILIZE HOPEWELL ROAD FOR ACCESS.
10. EXISTING CONTOURS WERE OBTAINED FROM A FIELD SURVEY BY DAVIS, RENN & ASSOCIATES, INC. IN JULY, 1999.
11. THE DISTANCE BETWEEN THE CENTERLINE OF DRIVES ON LOT 1 AND LOT 2, LOT 2 AND LOT 3 AND LOT 4 AND 50' WIDE ALTERNATE ENTRANCE STRIP IS 101'.
12. ACCESSORY STRUCTURES ARE PERMITTED IN ACCORDANCE WITH SECTION 4.10 AND 23.5(b) AND SHALL NOT BE PLACED ON THE PROPERTY UNTIL THE PRINCIPAL STRUCTURE HAS BEEN CONSTRUCTED ON THE PROPERTY.
13. THE REAR SETBACK IS GREATER ON LOTS 2, 3 AND 4 DUE TO THE FOREST CONSERVATION EASEMENT AREA.
14. AN ENTRANCE PERMIT WILL BE REQUIRED FOR INGRESS/EGRESS TO FOREST CONSERVATION AREA B.
15. NO BUILDING PERMITS WILL BE ISSUED FOR LOTS 2, 3 AND 4 UNTIL SEEDLINGS ARE PLANTED AND INITIAL INSPECTION BY WASHINGTON COUNTY PLANNING DEPARTMENT STAFF HAS BEEN COMPLETED.
16. A FINAL FOREST CONSERVATION PLAN HAS BEEN PREPARED AND SUBMITTED TO WASHINGTON COUNTY (MAP FILE No. B-1292, DATED 09/11/00).

SENSITIVE AREA NOTICE

THE STREAM BUFFER SHOWN ON THIS PLAT IS ESTABLISHED PURSUANT TO THE REQUIREMENTS OF THE WASHINGTON COUNTY SUBDIVISION ORDINANCE ARTICLE IV, SECTION 406, IN AN EFFORT TO PRESERVE OR IMPROVE WATER QUALITY. THE PROPERTY OWNER IS REQUIRED TO ESTABLISH AND THEREAFTER MAINTAIN IN PERPETUITY VEGETATIVE GROUND COVER IN ACCORDANCE WITH AGRICULTURAL BEST MANAGEMENT PRACTICES RECOMMENDED BY THE WASHINGTON COUNTY SOIL CONSERVATION DISTRICT. NO PERMANENT STRUCTURES AND NO CONSTRUCTION ARE PERMITTED WITHIN THE STREAM BUFFER EXCEPT THOSE DESIGNED TO IMPROVE WATER QUALITY OR FLOW AS APPROVED BY THE WASHINGTON COUNTY PLANNING COMMISSION IN ACCORDANCE WITH ALL APPLICABLE REGULATIONS, LAWS AND POLICIES. NO SEPTIC SYSTEM SHALL BE CONSTRUCTED WITHIN THE BUFFER NOR SHALL ANY SEPTIC RESERVE AREA BE ESTABLISHED WITHIN THE BUFFER.

"ENVIRONMENTALLY SENSITIVE AREAS"

1. THERE ARE NO FLOODPLAINS, STEEP SLOPES, STREAMS AND RELATED BUFFERS, OR HABITAT OF THREATENED OR ENDANGERED SPECIES IDENTIFIED BY THE U.S. FISH AND WILDLIFE SERVICE PER 50 CFR 17 AS REQUIRED TO BE SHOWN BY SECTION 314 OF THE SUBDIVISION ORDINANCE AND SECTION 4.21 OF THE ZONING ORDINANCE, EXCEPT AS SHOWN HEREON.

INTERIM FACILITIES PROVISION CERTIFICATION

IN COMPLIANCE WITH COMAR 10.17.01.05.B. (1) AND (2), THE INDIVIDUAL WATER SUPPLY AND/OR SEWER SYSTEM IS HEREBY PERMITTED ON A TEMPORARY INTERIM BASIS. FUTURE LOT OWNERS ARE ADVISED THAT THE INDIVIDUAL SYSTEMS SERVING THE LOT INDICATED ON THIS PLAT ARE OF A TEMPORARY INTERIM NATURE AND THAT CONNECTION TO A FUTURE COMMUNITY SYSTEM SHALL BE MADE WITHIN ONE (1) YEAR OR LESS AFTER THE SYSTEM BECOMES AVAILABLE.

CERTIFICATE OF APPROVAL OF INDIVIDUAL WATER SUPPLY AND INDIVIDUAL SEWERAGE SYSTEM

I HEREBY CERTIFY THAT THE MINIMUM OWNERSHIP AREA COMPLIES WITH THE MINIMUM WIDTH AND MINIMUM AREA REQUIREMENTS SPECIFIED IN COMAR 10.17.0303. SUCH MINIMUM OWNERSHIP SHALL REMAIN EQUAL TO THE MINIMUM WIDTH AND MINIMUM AREA SET FORTH IN COMAR 10.17.03A(2) UNTIL COMMUNITY SEWERAGE AND WATER HAVE BEEN MADE AVAILABLE. NOT MORE THAN ONE PRINCIPAL BUILDING MAY BE ERECTED OR CONSTRUCTED ON A LOT, OR LOTS, CONTAINED IN THE MINIMUM OWNERSHIP AREA AS ESTABLISHED BY COMAR 10.17.03A.(2) UNTIL COMMUNITY SEWERAGE HAS BEEN MADE AVAILABLE.

DATE 12 Dec 2000 SIGNATURE: _____
COUNTY HEALTH OFFICER

FOREST CONSERVATION STATEMENT

THERE SHALL BE NO DISTURBANCES OF THE AREA LABELED "FOREST CONSERVATION AREA" BY ANY REGULATED ACTIVITY AS DEFINED IN THE FOREST CONSERVATION ORDINANCE UNTIL THAT REGULATED ACTIVITY AND ITS ASSOCIATED FOREST DISTURBANCE IS REVIEWED AND APPROVED BY THE WASHINGTON COUNTY PLANNING COMMISSION ACCORDING TO THE REQUIREMENTS AND STANDARDS OF THE FOREST CONSERVATION ORDINANCE IN EFFECT AT THE TIME. IN ADDITION, CONSTRUCTION ACTIVITIES IN UNFORESTED AREAS SHALL NOT DISTURB THE FOREST CONSERVATION AREAS.

PROPERTY OWNERS ARE ADVISED THAT THERE ARE PENALTIES AND FINES ASSOCIATED WITH VIOLATION OF THESE RESTRICTIONS. ACTIVITIES OF A RECREATIONAL OR PASSIVE NATURE ARE PERMITTED IN FOREST EASEMENT AREAS PROVIDING THERE IS NO FOREST DISTURBANCE. REMOVAL OF THE EXISTING FOREST OR INHIBITION OF ITS NATURAL GROWTH PROCESSES.

THIS NOTE, OR REFERENCE TO THE EXISTENCE ON THIS PLAT, SHALL BE INCLUDED IN EACH AND EVERY DEED OF CONVEYANCE FOR THE THREE LOTS SHOWN ON THIS PLAT.

CERTIFICATE FOR LENDING INSTITUTIONS

WE DO ASSENT TO THIS PLAN OF SUBDIVISION:
KEYSTONE FINANCIAL MORTGAGE CORP.

V.P.

WITNESS _____ DATE 7/19/2000

OWNERS STATEMENT

WE DO HEREBY CERTIFY, FOR OURSELVES AND OUR PERSONAL REPRESENTATIVES, HEIRS AND ASSIGNS, THAT WE ARE THE LEGAL AND TRUE OWNERS OF THE PROPERTY SHOWN HEREON AND DESCRIBED ON THIS PLAT AND THAT WE HEREBY ADOPT THE PLAN OF SUBDIVISION SHOWN HEREON, HEREBY ESTABLISH THE MINIMUM BUILDING RESTRICTION LINES SHOWN HEREON, HEREBY DEDICATE TO PUBLIC USE ALL UTILITY AND DRAINAGE EASEMENT AREAS AND ALL ALLEY, STREET AND ROAD RIGHTS-OF-WAY DESIGNATED ON THIS PLAT, HEREBY AGREE TO KEEP OPEN ALL SPACES AND RECREATION AREAS SHOWN HEREON AND HEREBY AGREE THAT SAID DEDICATION SHALL NOT IMPOSE ANY RESPONSIBILITY ON THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY REGARDING THE SUBJECTS OF SUCH DEDICATIONS UNTIL LEGAL ACCEPTANCE THEREOF BY SAID BOARD, AND WE HEREBY RESERVE THE FEE SIMPLE TITLE TO THE LAND UNDERLYING SAID EASEMENTS AND RIGHTS-OF-WAY, OPEN SPACES AND RECREATION AREAS AND, WITH REGARD TO THE SAID EASEMENTS AND RIGHTS-OF-WAY, HEREBY AGREE TO CONVEY THE SAME TO SAID BOARD, FOR THE USE OF SAID WASHINGTON COUNTY, WITHOUT CONSIDERATION, UPON THE LEGAL ACCEPTANCE OF SAID EASEMENTS AND/OR RIGHTS-OF-WAY BY SAID BOARD.

THIS DEED AND AGREEMENT OF DEDICATION SHALL BE BINDING UPON OUR GRANTEES, ASSIGNS, SUCCESSORS, HEIRS AND PERSONAL REPRESENTATIVES.

WITNESS OUR HANDS AND SEALS THIS 26 DAY OF June 2000

Jone L Bowman
JONE L. BOWMAN

David M. Brown
WITNESS

WE ALSO CERTIFY THAT THE COMMUNITY WATER AND/OR COMMUNITY SEWERAGE SYSTEM PROPOSED FOR THIS SUBDIVISION WILL BE AVAILABLE TO ALL LOTS OFFERED FOR SALE. WE ALSO CERTIFY THAT PLANS FOR THE COMMUNITY WATER SUPPLY AND/OR COMMUNITY SEWERAGE SYSTEM FACILITIES, INCLUDING ANY NECESSARY POINT OF DISCHARGE, HAVE BEEN APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

THERE ARE NO SUITS, ACTIONS AT LAW, LEASES, LIENS, MORTGAGES, TRUSTS, EASEMENTS OR RIGHTS-OF-WAY AFFECTING THE PROPERTY INCLUDED IN THIS PLAN OF SUBDIVISION EXCEPT THE FOLLOWING: MORTGAGE IN LIBER 1291, FOLIO 366.

AND ALL PARTIES HAVING AN INTEREST THEREIN HAVE HEREUNTO AFFIXED THEIR SIGNATURES INDICATING THEIR ASSENT TO THIS PLAN OF SUBDIVISION.

WE DO HEREBY ASSENT TO THIS PLAN OF SUBDIVISION.

WITNESS OUR HANDS AND SEALS THIS 26 DAY OF June 2000

Jone L Bowman
JONE L. BOWMAN

David M. Brown
WITNESS

FINAL APPROVAL GRANTED: 12-8-2000
DATE

WASHINGTON COUNTY PLANNING COMMISSION
BY: Robert C. Arch
CHAIRMAN

SURVEYOR'S STATEMENT

I HEREBY CERTIFY THAT THE PLAN SHOWN HEREON IS CORRECT; THAT IT IS A SUBDIVISION OF THE LANDS CONVEYED BY STEPHEN ALLEN CHAPMAN AND ELLEN WALLACE CHAPMAN FARRELL TO JONE L. BOWMAN BY DEED DATED MARCH 28, 1998 AND RECORDED AMONG THE LAND RECORDS OF WASHINGTON COUNTY, MARYLAND IN LIBER 1261 AT FOLIO 358 AND BY STEPHAN A. CHAPMAN TO JONE L. BOWMAN BY DEED DATED MARCH 28, 1998 AND RECORDED AMONG THE LAND RECORDS OF WASHINGTON COUNTY, MARYLAND IN LIBER 1261 AT FOLIO 364 AND BY STEVEN B. FULTON TO JONE L. BOWMAN BY DEED DATED DEC. 26, 2000 AND RECORDED AMONG THE LAND RECORDS OF WASHINGTON COUNTY, MARYLAND IN LIBER 1618 AT FOLIO 153 AND THAT PROPERTY CORNERS WERE FOUND OR SET AS SHOWN HEREON.

Jedd W. Beall 11-01-2000
DATE

JEDD W. BEALL
PROPERTY LINE SURVEYOR
MD REGISTRATION NO. 540

STATE OF MARYLAND · JEDD W. BEALL · No. 540 · REGISTERED PROPERTY LINE SURVEYOR

PLAT FEE-4 2.00
RECORDING FEE 3.00
TOTAL 5.00
Rcpt # 02915
DJH KB DJK & 2976
DEC 27, 2000 01:26 PM

PLAT NO. 6463
DATE: DEC 27 2000
WASHINGTON COUNTY

P-FPLAT

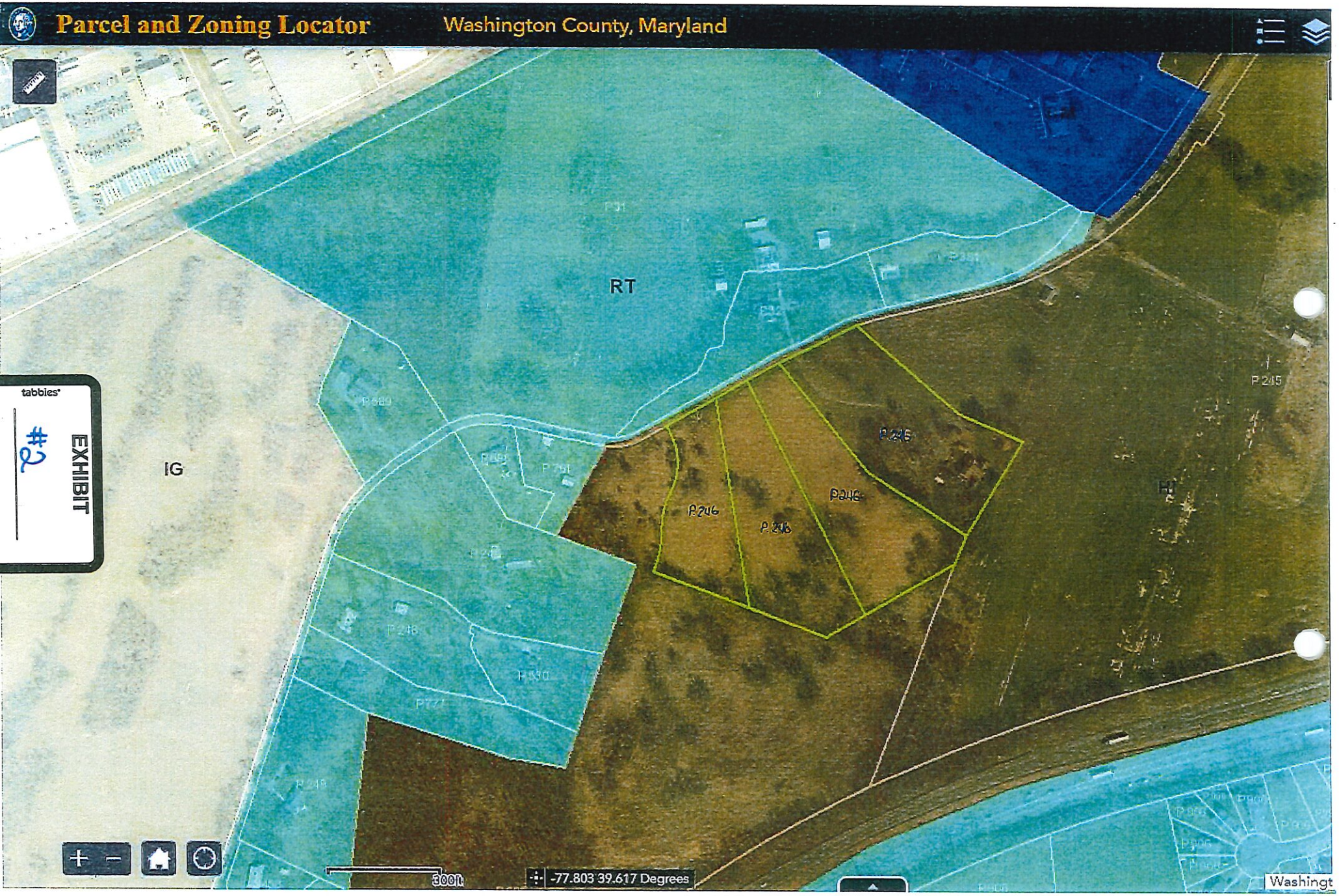
	DRAWN BY G.L.P. DATE 06/14/00	
	CHECKED BY DATE	
REV. PER AGENCY COMMENT R.A.W. 11/27/00	APPROVED BY DATE	
REV. PER AGENCY COMMENT R.A.W. 10/19/00	SCALE NONE	
REVISIONS:		

DAVIS, RENN & ASSOCIATES, INC.
ENGINEERS PLANNERS SURVEYORS
P.O. BOX 246 HAGERSTOWN, MARYLAND 21741
TELEPHONE 301-739-5580

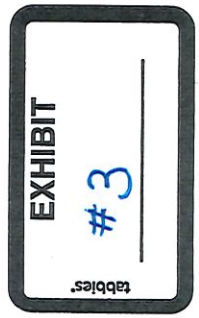
PRELIMINARY / FINAL PLAT
FOR
JONE L. BOWMAN
PROPERTY MAP 48 BLOCK 22 PARCEL 115, 246 & 248 ELECTION DISTRICT 28 WASHINGTON COUNTY, MARYLAND

SHEET NO.	2 OF 2
PROJECT NO.	977004
FILE NO.	C-1370

MSA SSU 1255-5972-2


Parcel and Zoning Locator
Washington County, Maryland
RT
IG
HI
P 245
P 246
P 246
P 246
P 246
tabbies
#2
EXHIBIT
300 ft
-77.803 39.617 Degrees
Washingt

#	NAME	PROPERTY ADDRESS	MAP BLOCK PARCEL	EXISTING ZONE	CURRENT PROPOSED ZONE	HEARING REQUESTED ZONE (1)	PREVIOUS REQUESTED ZONE (2)	REQUEST / ISSUES	OTHER COMMENTS	FURTHER ACTION NEEDED
21	Bowman 2000 LLC	West side of Greencastle Pike between I-70 and Huyetts in front of Highland Manor	36/21/0415	A	BL	HI	HI-1 (PC Req. 5)	* Property is already planned for commercial use (strip center) * BL zoning would limit uses on the property * Heavy commercial traffic in the area. (3)		To comply with owner request change map designation to HI Designated on approved subdivision plat as future commercial area for the Highland Manor subdivision. Additional Review
22	Jone L. Bowman (also L. & JR Ebersole)	Hopewell Road (located between Hopewell Rd. and I-81)	48/22/0246 Lots 1-4 and parcels A&B	HI-2	RT	HI	No prior formal request	* HI would be consistent with parcel to the north * Close proximity to I-81 * Anticipated to be developed with adjacent parcel		To comply with owner request change map designation to HI. Concentration of existing residential development nearby. Consider during review of #11. Additional Review
23	Westfields Investment LLC Represented by Jeremy Holder	9455 Morning Walk (day care facility address)			RT			* Make sure that day care facilities are a principal permitted use in the proposed RT zone * Adopt 23.8 with recommended changes to allow project to be executed as originally proposed 1) Do not want to be a non-conforming use 2) Proposed amendments should protect the lot sizes and dimensions previously approved under clustering plan (3)		Text changes already made to RT district and Section 23.8 No further changes needed.
24	William Rankin	16827 National Pike	36/23/407	IG	IG	HI	No prior formal request	* Surrounded by HI zoned properties with commercial uses * There have been commercial uses on this property for approximately 40 years * No retail currently allowed because of IG zoning (3)		To comply with owner request change map designation to HI Existing HI zone is 900 ft west. Existing zoning is IG on E,S & W, Ag on north. Proposed zoning is IG on E, S, & W, PI on north.
25	Diakon Lutheran Social Ministries Represented by Jason Divelbiss	11110 Robinwood Drive	50/09/0295		RS (50 ac.) ORI (173 ac)	 ORI	(PC Req. 155)	* RS zone would be consistent with the current use and future plans for the property	* Verify that the dividing line for the zoning is in the appropriate location and consistent with recent subdivision plat.	No further changes needed. Request addressed prior to hearing.
26	Thomas/Bennett/Hunter Represented by Kevin Beaver	Hump Road	49/02/0001	IM	IG	IG		* No objection to proposed zoning designation * Requesting text change to IG district - proposed 1000' setback between residential property and IG property makes intended use of property impossible * Intended use of property could be considered recycling, which would require operation to take place in an enclosed structure-would make the business unfeasible and could force them to move the business to another county * Believes tree screening would be sufficient (3)		No map changes needed. To comply with speaker request regarding text, modify setbacks in IG zone, allow screening as substitute, modify definition of recycling to remove requirement that it be conducted inside building.



- The Property Owner has already prepared a plan for a commercial "strip center" on the Property;

- Based upon the heavy, commercial nature of the traffic along MD Rte. 63 from the I-70 interchange to Huyett's Crossroads, HI zoning is the most appropriate classification for all properties (i) at the Huyett's intersection; and (ii) fronting on MD Rte. 63 in this area. On the same basis, any commercial users of this Property are unlikely to be in the character of "neighborhood commercial" as contemplated by the BL (Business, Local) zoning.

On the basis of the foregoing, as well as the oral testimony presented during the public hearing conducted on Tuesday, July 26, 2010 and the previous written correspondence dated October 22, 2010 and oral testimony presented October 12, 2010 with regard to this property, please consider amending the proposed zoning map amendments to reflect a HI (Highway Interchange) zoning district for my client's Property.

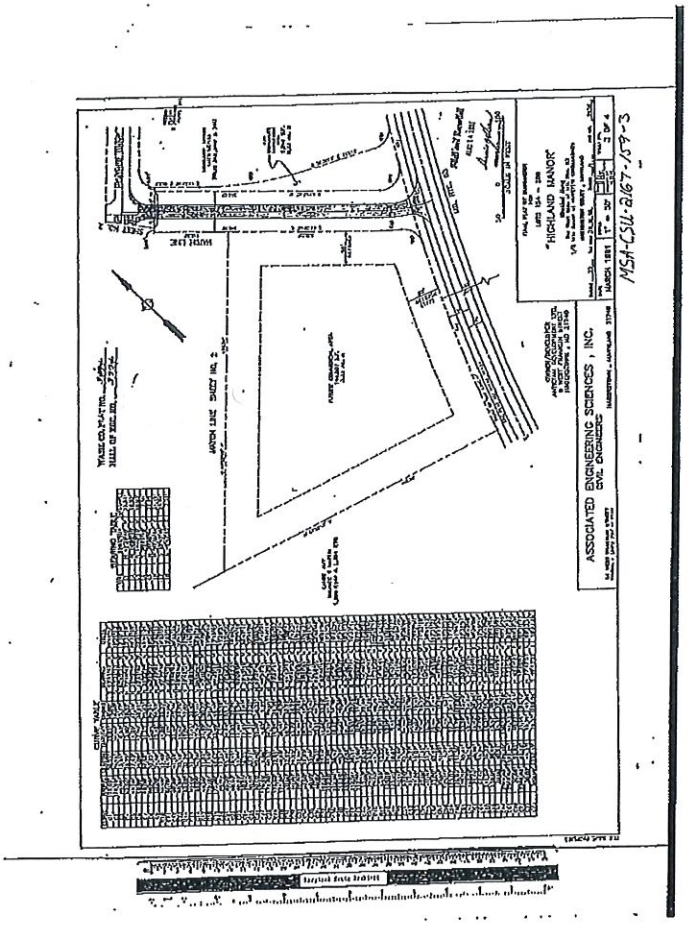
As always, thank you for your time and consideration in this matter and please do not hesitate to contact me if you would like any additional information or further explanation.

Very truly yours,

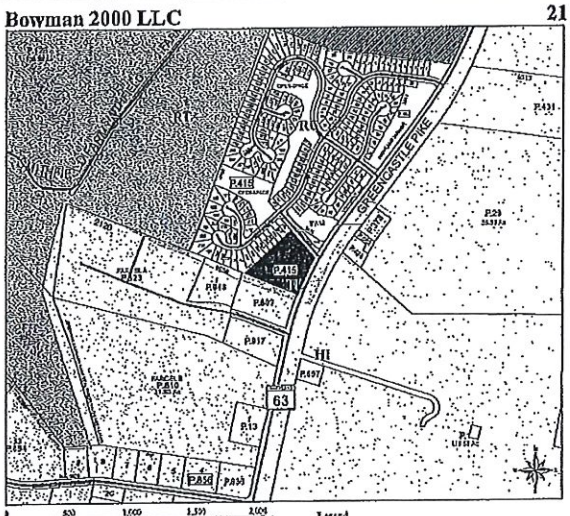
DIVELBISS & ASSOCIATES

Jason M. Divelbiss
Attorney at law

Email: jdivelbiss@divelbisslaw.com



Bowman 2000 LLC 21



Location within the Urban Growth Area (see green)

Legend

Original Planning Commission Number: 5

Map:36
Grid:21
Parcel(s):415 Lot(s):
Location Description: W/S Greencastle Pike between I-70 and Huyetts in front of Highland Manor

Current Proposed
Requested Zoning

Previous Request: HI-1

#22

DIVELBISS & ASSOCIATES
Attorneys at Law

13424 Pennsylvania Ave.
Suite 302
Hagerstown, MD 21742

(301) 791-9222
(301) 791-9266 FAX

Attorneys:
Jason M. Divelbiss
Tracie C. Weaver
Kent N. Oliver

Staff:
Melanie A. Donaldson
Anna G. Adams

July 26, 2011

Washington Co. Bd. of County Commissioners
c/o Wash. Co. Planning Commission
Washington County Administrative Annex
80 West Baltimore Street
Hagerstown, MD 21740-6003

Re: Urban Growth Area Comprehensive Rezoning

Property Owners:
Jone L. Bowman and Linda & JR Ebersole

Subject Properties:
Tax Map 48, Grid 22, Parcel 246 (Lots 1-4 and Parcels A & B) (26-041619; 041600, 041597 & 004535)

Dear County Commissioners:

On behalf of my clients who owns the +/- 14.18 acre property located at 11107, 11111, 11115 & 11119 Hopewell Road, as well as remaining lands Parcel A & B (the "Property"), I respectfully request that the Property be zoned HI (Highway Interchange) rather than RT (Residential, Transition) as is currently recommended.

The Property is located on the south side of Hopewell Road with the only one (1) parcel (Parcel 695) between this Property and I-81.

The Property is currently zoned HI-2 and is un-improved except for a single-family dwelling located on Lot 1 which is owned and occupied by Mr. and Mrs. Ebersole.

Notwithstanding a prior subdivision in contemplation of residential development (Plat No. 6462), the Property Owners now anticipate that the most likely use for this Property is to be developed in conjunction with adjacent Parcel No. 695 which is adjacent to I-81 and is recommended for HI zoning.

EXHIBIT
#4
tabbies

In addition to Parcel 695 to the East, the adjacent parcel to the North is also recommended for HI zoning. To the South of this property is a flood plain area that would serve as a natural buffer to the existing residences along the east side of Hopewell Road.

On the basis of the foregoing, as well as the oral testimony presented during the public hearing conducted on Tuesday, July 26, 2010, please consider amending the proposed zoning map amendments to reflect a HI (Highway Interchange) zoning district for my client's Property.

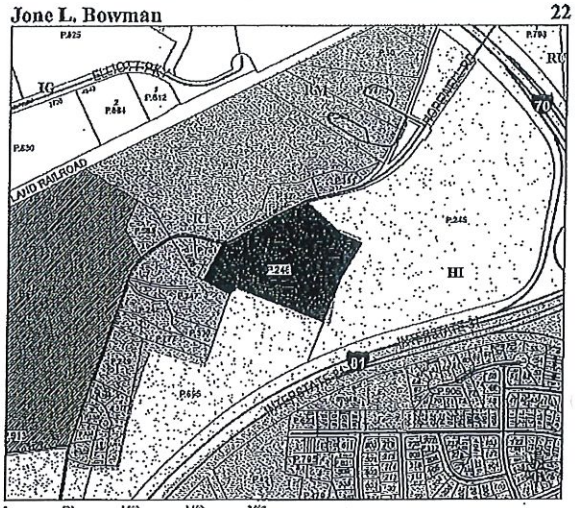
As always, thank you for your time and consideration in this matter and please do not hesitate to contact me if you would like any additional information or further explanation.

Very truly yours,

DIVELBISS & ASSOCIATES

Jason M. Divelbiss
Attorney at law
Email: jdivelbiss@divelbisslaw.com

Jone L. Bowman 22



Location within the Urban Growth Area (see green)

Legend

Original Planning Commission Number:

Map:48
Grid:22
Parcel(s):246 Lot(s):
Location Description:Hopewell Road
(located between Hopewell Rd. and I-81)

Current Proposed Zoning:RT
Requested Zoning:HI

Previous Request: No prior formal request

#24

RECEIVED
JUL 26 2011
WASHINGTON COUNTY
PLANNING DEPARTMENT

William L. Rankin
473 Ashton Dr.
Falling Waters, W. Va., 25419
301-988-7770

July 13, 2011

Washington County Board of County Commissioners
Planning and Zoning
80 W. Baltimore Street
Hagerstown, Md. 21740
Attn. Steve Goodrich, Kathy Kroboth

Dear Sirs:

My name is William L. Rankin and I am writing in reference to the property that I own at 16827 National Pike. Parcel ID number 24-003078. This property is zoned "IG". Every since I bought this property in 2002, there has been talk of rezoning this area to "HI 1". I am asking you to vote on this and in fact change this zoning to "HI 1" For the following reasons:

The building on this property was put up around 1972, and the business was Roland's Chain Saws. They also sold Cub Cadet lawn tractors. This was definitely a retail business. When I opened Rankin's Used Golf Carts, I was told that I could not operate a retail business because of the "IG" zoning. It had to be manufacturing. Finally they allowed me to open because I did do some rebuilding of golf carts.

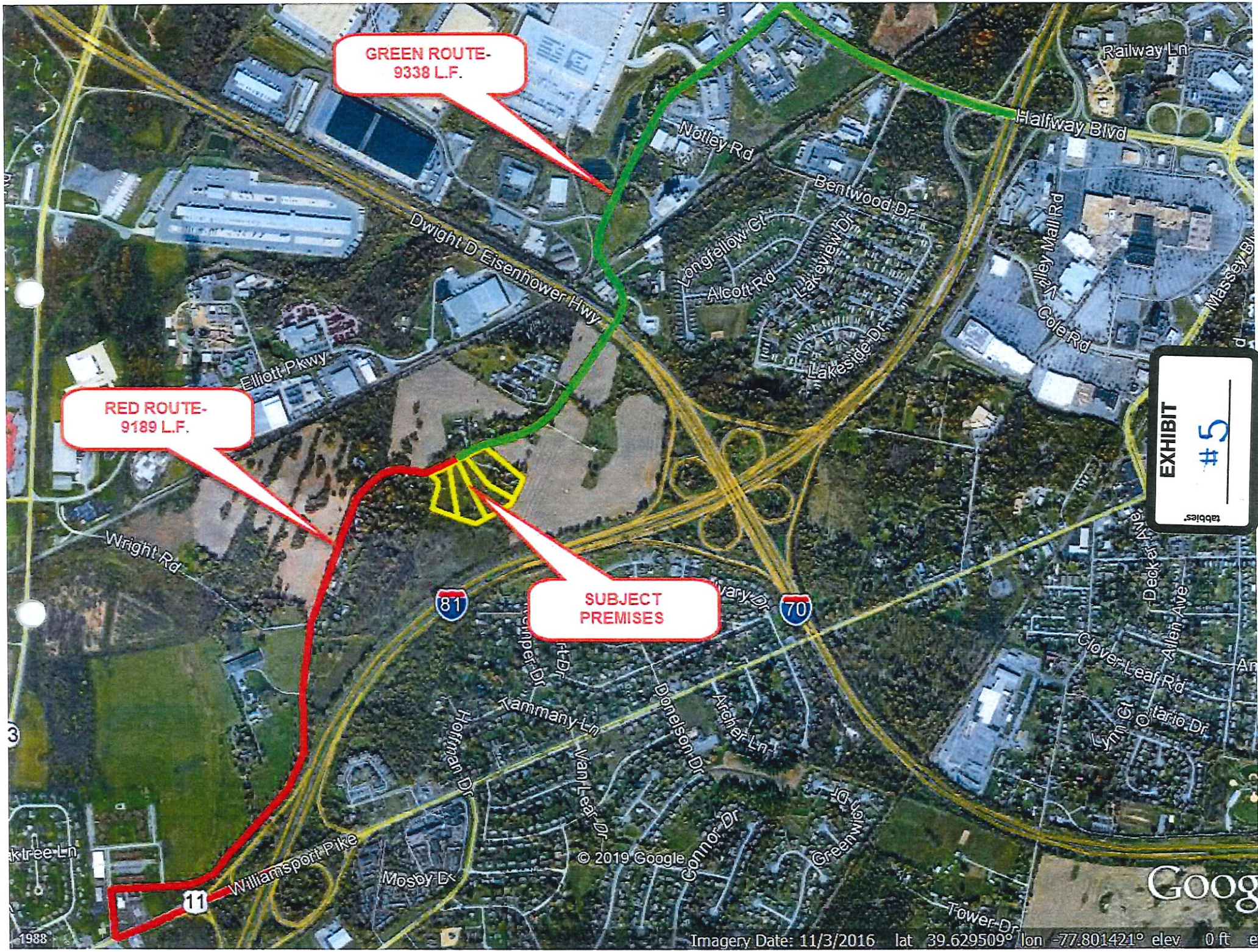
Last summer I was forced to close that business due to the poor economy and I let my business license expire. Between my property taxes, insurance, and electric bill, it costs me over $10,000 per year just to keep this property and I have no income at all. I have put my property on the market for sale or lease, but again the zoning has been a deterrent. So, just to try and keep my head above water and pay these bills, my wife and I have decided to try and open a "Flea Market".

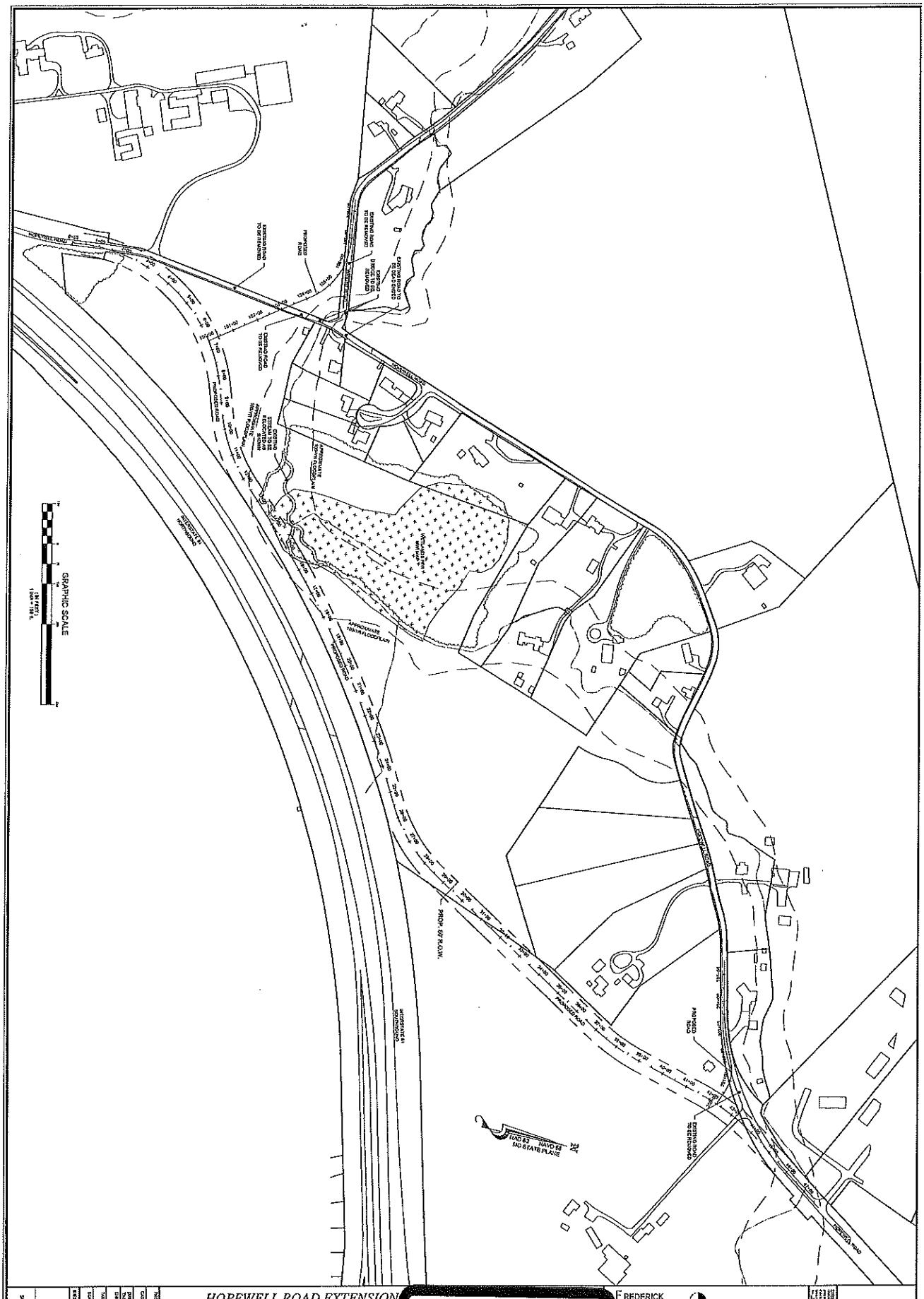
In trying to do the right thing and be a law abiding citizen we went to Zoning to apply for a permit and license for the Flea Market. Again the zoning issue came up. We cannot do retail business under "IG" zoning! I pointed out that this property has been retail for the last 40 years, but I was told that the zoning was for manufacturing. I have talked with Leroy Myers, Ruth Anne Callahan, and Robert Mandley about this problem. They have suggested that I write this request to you, and also attend the hearing set for July 26th at 7 PM.

I would like to point out that 800 feet west of my property the "HI 1" zoning is present and continues to Hewetts Cross Roads. In that area there are many retail businesses. Also, since I have been there, I have never received any complaints about my business. So I am requesting that the zoning be changed to "HI 1". If, for some reason this cannot be done, I would ask that you issue a "text amendment" as you did for the Washington County Free Library to allow me to continue my Flea Market. Also I would request that you put me on your agenda to speak at the July 26th hearing.

Thank you for your consideration.

Sincerely yours
William L. Rankin


GREEN ROUTE-
9338 L.F.
RED ROUTE-
9189 L.F.
SUBJECT
PREMISES
EXHIBIT
#5
Railway Ln
Halfway Blvd
Notley Rd
Bentwood Dr
Dwight D Eisenhower Hwy
Longfellow Ct
Alcott Rd
Lakeview Dr
Lakeside Dr
Valley Mall Rd
Cole Rd
Massey Blvd
Elliott Pkwy
Wright Rd
81
70
Tammany Ln
Donelson Dr
Archer Ln
Van Lear Dr
Hoffman Dr
Connor Dr
Greenwich Dr
Tower Dr
Clover Leaf Rd
Allen Ave
Decker Ave
Ontario Dr
Lynn Ct
Mosby Dr
Williamsport Pike
11
© 2019 Google
Imagery Date: 11/3/2016 lat 39.629509° lon -77.801421° elev 0 ft



PROJECT NO. 4012
CAD DWG FILE 4012-CONCEPT.DWG
DWN BY TMF
DATE 07-14-2015
CHK BY
DATE
TAX MAP
ELECTION DIST.
SCALE 1" = 150'
SHEET TITLE
CONCEPT PLAN
C-101
SHEET 1 OF 1

HOPEWELL ROAD EXTENSION

Situate along the east side of Hopewell Road
between [illegible]
Williamsport, Maryland
WASHINGTON COUNTY, MARYLAND

CLIENT:
BOWMAN DEVELOPMENT
10023 GOVERNOR LANE BOULEVARD, SUITE 3302, WILLIAMSPORT, MD 21795
Client Phone

UNDER AGENCY RE

FREDERICK
SEIBERT &
ASSOCIATES, INC.
ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS • LAND PLANNERS
SOUTH POTOMAC STREET, HAGERSTOWN, MARYLAND 21740
WEST BALTIMORE STREET, GREENCASTLE, PENNSYLVANIA 17225
NORTH HANOVER STREET, CARLISLE, PENNSYLVANIA 17013

FOR CONST CTION

EXHIBIT
#6

HOPEWELL ROAD EXTENSI

Situate along the east side of Hopewell Road
between Pittsville Rd & Mowbray Terrace
Williamsport, MD 21795
WASHINGTON COUNTY, MARYLAND

UNDER ARMOUR R

VERTICAL CONSTRUCTION

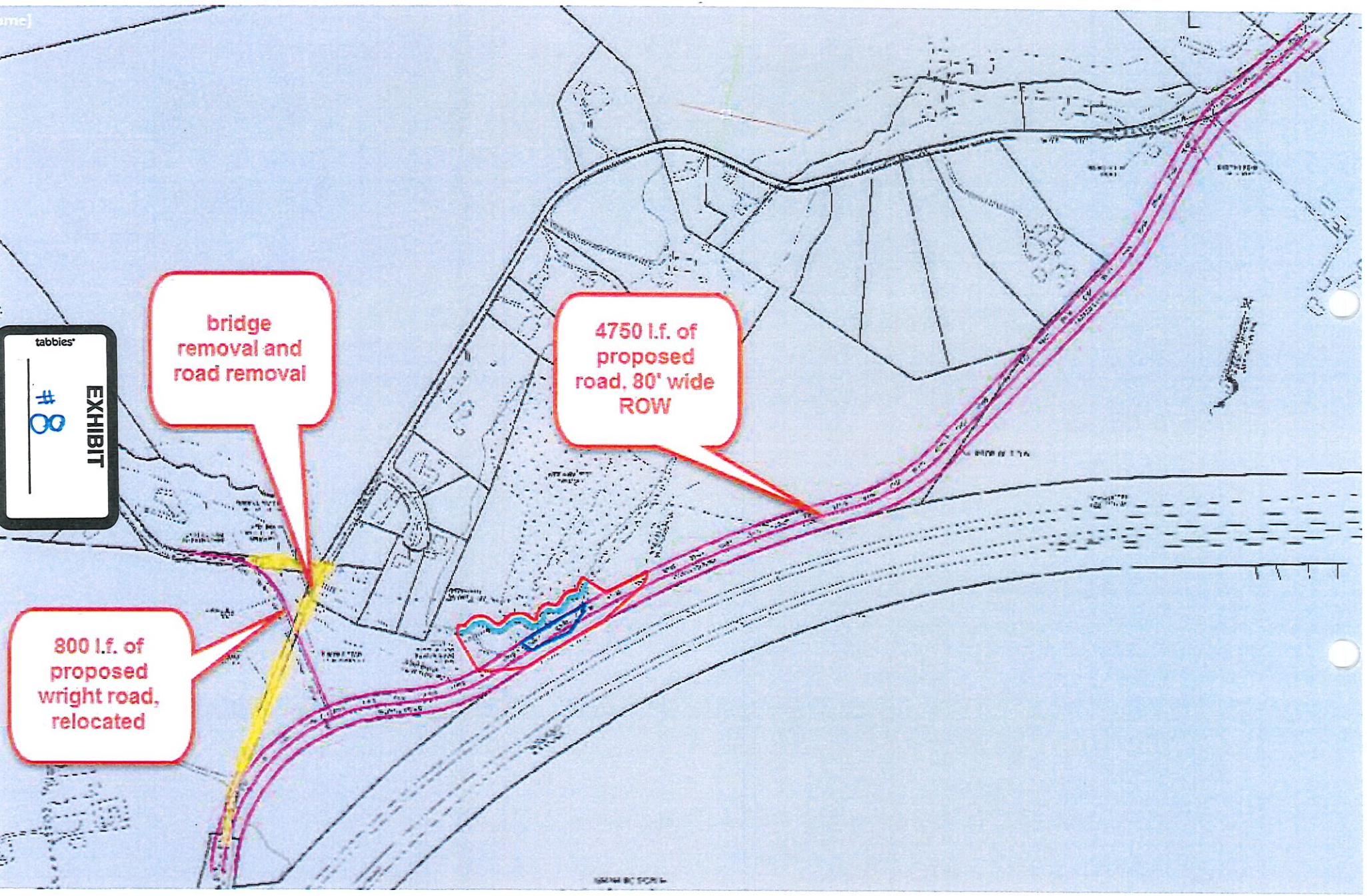
CLIENT:
BOWMAN DEVELOPMENT
10223 GOVERNOR LANE BOULEVARD, SUITE 3002, WILLIAMSPORT, MD 2
Client Phone

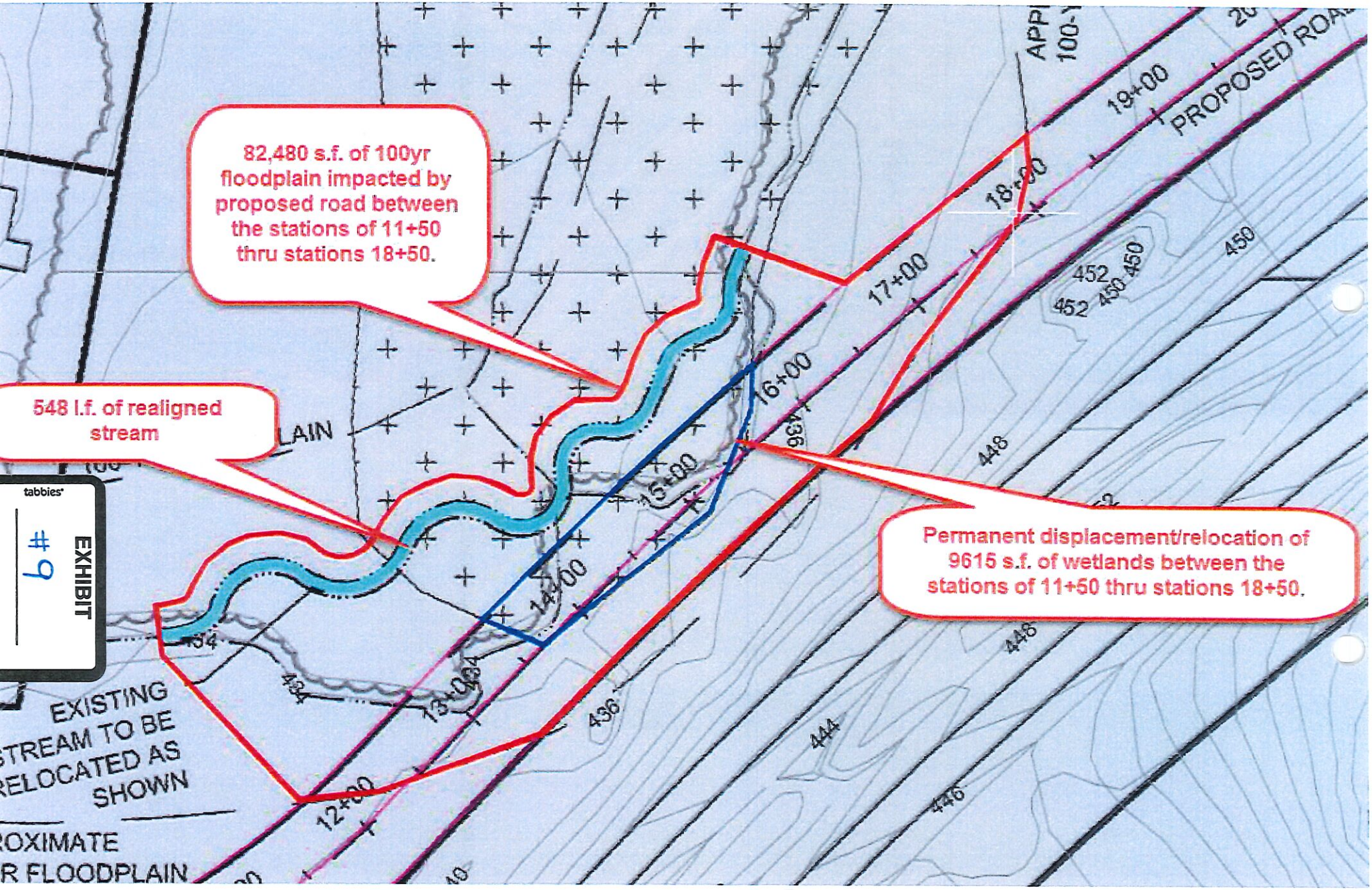
FREDERICK SEIBERT & ASSOCIATES, INC.
CIVIL ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS • LAND PLANNERS
128 SOUTH POTOMAC STREET, HAGERSTOWN, MARYLAND 21740
29 WEST BALTIMORE STREET, GREENCASTLE, PENNSYLVANIA 17225
101 NORTH HANOVER STREET, CARLISLE, PENNSYLVANIA 17013

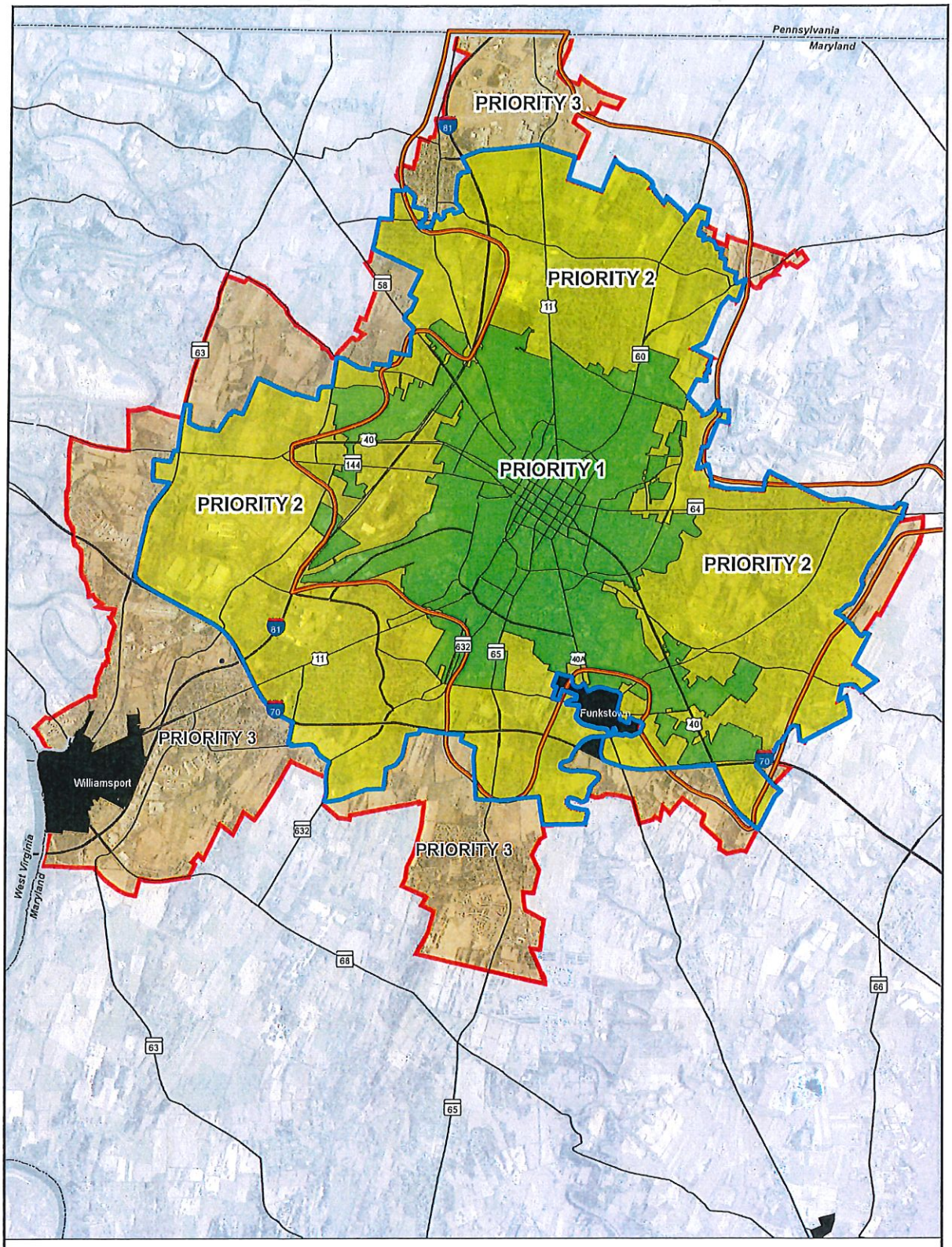
CONCEPT PLAN
SHEET 1 OF 1
C-101

SHEET TITLE
SCALE 1" = 100'
TAX MAP
GRID
PARCEL
DATE 07-14-2015
SURVEY
TEST
DATE
ENVIRONMENTAL
DATE
DESIGN CONCEPT DWG.
DATE
CAD/WATER
PROJECT NO. 4512

EXHIBIT
#7
tabbies


bridge removal and road removal
4750 l.f. of proposed road, 80' wide ROW
800 l.f. of proposed wright road, relocated
tabbies
EXHIBIT
#8


82,480 s.f. of 100yr floodplain impacted by proposed road between the stations of 11+50 thru stations 18+50.
548 l.f. of realigned stream
Permanent displacement/relocation of 9615 s.f. of wetlands between the stations of 11+50 thru stations 18+50.
EXHIBIT
#6
tabbies
EXISTING STREAM TO BE RELOCATED AS SHOWN
PROPOSED ROA
19+00
18+00
17+00
16+00
15+00
14+00
13+00
12+00
452
450
448
444
446
436
434



visionHagerstown 2035 *Comprehensive Plan*

Map 4-2: Water and Wastewater Priority Areas

N

- Major Road
- Corporate Boundary
- Medium-Range Growth Area (MRGA)
- Long Range Growth Area
- Consolidated General Service Agreement "Designated Area"

Priority Areas
- 1
- 2
- 3

0 0.5 1 1.5 2 Miles

New or expanded wastewater service denied, except for health and safety reasons.

Note: Funkstown and Williamsport purchase water from Hagerstown.

aryland FIPS (feet)

MD Imagery, 2014;

n Dept, 01/27/17 (rev. 10/27/17)

EXHIBIT

tabbies

10

City of Hagerstown
Water and Wastewater Policy
Adopted: February 24, 2004
Amended: July 29, 2008
Amended: September 22, 2009

The City of Hagerstown will not extend water or wastewater services beyond the Hagerstown Medium-Range Growth Area or the Hagerstown Long-Range Growth Area as defined in the City's Annexation Policy, and shall not allow new connections to the existing lines located outside the Hagerstown Medium-Range Growth Area or Long-Range Growth Area. Reference: City of Hagerstown 2008 Comprehensive Plan, Policy 4-4. The following seven exceptions may be granted:

1. Condemnation or Impending Failure of an Existing Private Water or Septic System. The governing health authority has provided a request with documentation or certification to the Utilities Department that, to obtain a water or wastewater service connection, the existing private water or wastewater system for an existing dwelling or nonresidential building has been condemned, or has impending failure, and a reasonable alternate system is otherwise not available. Service approved by the Utilities Department using this exception is contingent upon acceptance and signing of a service contract by the owner providing for the allocation of costs of extending and maintaining the service to the property and that such service shall be subject to all applicable policies, procedures and practices. Reference: City of Hagerstown 2008 Comprehensive Plan, Policy 4-4.

2. System Improvement. Upon the recommendation of the Director of Utilities to, and approval by, the Mayor and Council, a system extension would provide a vital improvement or enhancement to the operation or efficiency of the water and/or wastewater system.

3. Connection to an Existing Lot of Record. Service approval by the Utilities Department is contingent upon the following: (a) outside the Long-Range Growth Area, lot was an existing lot of record prior to February 24, 2004; (b) between the Medium-Range Growth Area and Long-Range Growth Area boundaries, lot was an existing lot of record prior to April 22, 2008; (c) lot is contiguous to a right-of-way containing a City water or wastewater line that was in existence at the time the property became a lot of record. Any exception the Utilities Department may determine is warranted will be given with the following limitations and conditions: (a) the maximum allocation shall not exceed two hundred (200) gallons per day or one dwelling unit, or 400 gpd for a two-family dwelling if allowed by County zoning and if does not involve a subdivision; and b) service is contingent upon acceptance and signing of a service contract by the owner providing for the allocation of costs of extending and maintaining the service to the property and that such service shall be subject to all applicable policies, procedures and practices.

4. Redevelopment of a Property Containing an Existing Customer. Service approval by the Utilities Department using this exception is contingent upon there being no addition of land area to the existing lot(s) of record containing the existing customer(s) and there being no increase in the existing allocation as a result of the redevelopment.

5. Pre-existing Water or Wastewater Agreement. Service approval by the Utilities Department using this exception is contingent upon a water or wastewater agreement having been in place prior to July 29, 2008, which guaranteed water or wastewater service to this property as a condition of the construction and/or provision of land for the construction of the water or wastewater line at issue.

6. Economic Development Project. Service approval using this exception is contingent upon recommendation of the County Commissioners, the City and County Economic Development Directors, and the Director of Utilities to, and approval by, the Mayor and Council, for a vital economic development project located in a targeted area for industrial and/or non-retail commercial development.

7. Pre-Annexation Agreement. Service approval by the Utilities Department using this exception is contingent upon a pre-annexation agreement having been approved by the Planning Department and recorded in the County Courthouse prior to April 22, 2008.

The granting of exceptions one through five above is contingent upon the property owner submitting a pre-annexation agreement to the City of Hagerstown that offers the property for annexation at such time as the corporate boundaries of the City reach the property and the Mayor and City Council determines annexation to be advantageous to the City of Hagerstown. For exception number six above, this pre-annexation agreement requirement may be subject to negotiation between the City of Hagerstown and Washington County.

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RESOLUTION

CITY OF HAGERSTOWN 2008 COMPREHENSIVE PLAN

H.B. 1141 AMENDMENTS:
WATER RESOURCES ELEMENT

WHEREAS, the Mayor and City Council of the City of Hagerstown have reviewed these proposed amendments to the City of Hagerstown's 2008 Comprehensive Plan to complete the Water Resources Element requirements of H.B. 1141; and,

WHEREAS, citizen input and public discussions of these draft amendments, as well as the previously adopted text for the Water Resources Element in 2008 and 2009, were invited through a series of public meetings, including Public Hearings and Work Sessions; and,

WHEREAS, the Planning Commission and Planning staff have submitted these proposed amendments to the 2008 Comprehensive Plan for the Mayor and City Council's consideration and adoption; and,

WHEREAS, the Mayor and City Council considers these amendments to the 2008 Comprehensive Plan to be for the best interest and welfare of the citizenry and public in general of the City of Hagerstown,

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, that these amendments to the City of Hagerstown's 2008 Comprehensive Plan for compliance with H.B. 1141 be, and are hereby adopted.

BE IT FURTHER RESOLVED, by the Mayor and City Council of Hagerstown, Maryland that this Resolution shall become effective immediately upon its passage.

WITNESS:

Donna K. Spickler
Donna K. Spickler, City Clerk

MAYOR AND CITY COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

BY: R E Bruchey II
Robert E. Bruchey, II, Mayor

DATE OF PASSAGE: 09/28/10
EFFECTIVE DATE: 09/28/10

EXHIBIT
#11

Water Resources Element

Introduction

This element establishes policies to guide the provision of future wastewater and water service to, and the management of nonpoint source nutrient loading from the City and its Medium-Range Growth Area (MRGA). It complies with the Water Resources Element requirements of Article 66B of the Annotated Code of Maryland, §1.04.b.1 (iii)—as modified by Maryland House Bill 1141, passed in 2006. Figure 4-1 delineates water and wastewater service areas as of 2007 (the baseline year for WRE data).

At the time of publication of this Water Resources Element, Washington County was evaluating options to complete the countywide Water Resources Element requirements. The City anticipates working closely with the County to achieve their common Water Resources goals. This Water Resources Element, adopted in 2010, replaces the Water and Wastewater Element of the 2008 Comprehensive Plan.

Wastewater Service

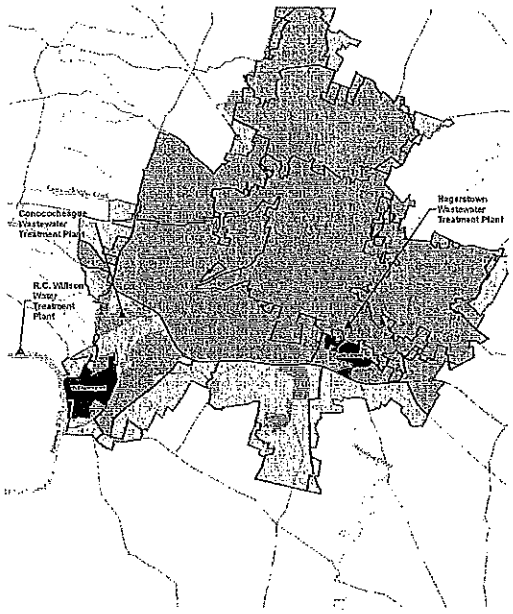
Goals for Wastewater Service

1. Ensure that adequate wastewater capacity exists to serve future growth.
2. Consistently meet all regulatory requirements to help protect public health and the environment, in particular reducing the environmental impact on Antietam Creek.

Wastewater Issues Addressed by this Element

1. As a result of entering into a consent judgment with the Maryland Department of the Environment (MDE) in January 2005, the City must limit provision of new wastewater service until its wastewater treatment plant (WWTP) upgrades are complete in 2011.
2. Upon resolution of the consent judgment, the City will have a limited supply of unused sewage treatment capacity. The City must therefore maximize the efficiency of its wastewater system, and needs to make long-term wastewater allocation decisions that support its growth management and annexation policies.
3. State policy[1] limits wastewater treatment capacity based on the total amount (or load) of nitrogen and phosphorous discharged into a receiving water body. Hagerstown discharges treated effluent into Antietam Creek, which is a tributary to the Chesapeake Bay, and is thus subject to a nutrient discharge cap. Hagerstown's wastewater policy needs to focus on minimizing or reducing discharges.

[1] Specifically, the Chesapeake Bay 2000 Agreement, the 2004 Chesapeake Bay Restoration Act, and subsequent Maryland Department of the Environment guidelines.



City of Hagerstown Comprehensive Plan
Figure 4-1: 2007 Water and Wastewater Service Areas

4. Inflow and Infiltration (I/I) currently consumes approximately ten percent of the planned design capacity of the City's wastewater treatment plant, reducing the amount of capacity that is available to serve new and existing development.

5. The limited sewage treatment capacity in Hagerstown and Washington County necessitates a coordinated wastewater service approach between the City and County.

Wastewater System Overview

Hagerstown provides wastewater treatment service to all customers within the City's corporate boundaries, as well as some unincorporated portions of Washington County. The Consolidated General Services Agreement of 1997 (GSA) delineates the portions of the County that receive sewage treatment service from Hagerstown. This agreement is described in the Recent Relevant Policies section of the Plan Introduction.

Within Hagerstown's corporate boundaries, sewage flows through approximately 140 miles of City-owned wastewater lines and 27 pumping stations, and is treated at the Hagerstown Wastewater Treatment Plant (WWTP). The Hagerstown WWTP is located on Antietam Creek near Frederick Street, and has a current design capacity of 8.0 million gallons per day (MGD). It discharges to Antietam Creek (via a short segment of an unnamed tributary). Annual average daily flow between 2005 and 2007 was 6.88 MGD, although this figure includes a substantial volume of Inflow and Infiltration (I/I—see discussion below). After upgrades are completed in 2010, the Hagerstown WWTP will process wastewater using Enhanced Nutrient Removal (ENR) technology, the best available technology for reducing the nitrogen and phosphorus concentrations in discharged effluent.

Portions of the Hagerstown Urban Growth Area (UGA—collectively the City, Medium-Range and Long-Term Growth Areas), are served by Washington County's Conococheague WWTP. This 4.1 MGD facility currently uses Biological Nutrient Removal (BNR) technology, with ENR upgrades tentatively targeted for completion by the end of 2011. Some flows from Hagerstown are also transferred to the Conococheague WWTP per the Flow Transfer Agreement (see discussion below). The City and the County may continue to look for additional flows that could be transferred in the future. Figure 4-1 shows the areas served by the Hagerstown and Conococheague plants. As the figure shows, the Hagerstown WWTP treats all sewage from the City, as well as some areas outside the corporate boundaries. In these unincorporated areas, ownership of wastewater lines is split between the City and Washington County.

The City does not allow new wastewater connections outside of the 2008 Annexation Policy Area (the 2002 Hagerstown UGA), except in specific circumstances set forth in the City's Annexation Policy and its Water and Wastewater Policy (see the Recent Relevant Policies section of the Plan Introduction). These exceptions include cases where the non-municipal water or wastewater system does not meet health and safety standards—such as failing septic systems—or cases where service extension would improve system-wide operations or efficiency.

Annexation and Water and Wastewater Service

As described in the Recent Relevant Policies section of the Plan Introduction, the 2008 Annexation Policy defines the relationship between annexation and the provision of City services, such as wastewater and water service. In order to receive new or expanded water service, a property owner must agree to be annexed into the City. Property owners outside of the Consolidated GSA's Designated Area (Figure 1-11) must also agree to annexation in order to receive new or expanded wastewater service, while property owners inside the Designated Area are exempt from this requirement for wastewater service. Properties that cannot be annexed because they are not adjacent to City boundaries must sign a preannexation agreement. Some of these parcels are shown in Figure 2-4.

The 2008 Annexation Policy's goal is for the City of Hagerstown to become the full provider of municipal services in the Hagerstown UGA. Hagerstown already provides water service to the entire UGA, but the Annexation Policy's goal is not likely to be achieved for wastewater service.

Hagerstown and Washington County have a Flow Transfer Agreement that allows the transfers of some wastewater flow from City wastewater collection system to the Conococheague WWTP via the Newgate interceptor. Maximum use of the flow transfer system could capture as much as 5,000 Equivalent Dwelling Units (EDU)[3] of capacity for the Hagerstown WWTP, reducing unused capacity at the Conococheague WWTP by an equal amount.[3] Approximately 300,000 gallons per day (gpd) of wastewater are currently transferred using this infrastructure.

The City included a "sunset" clause in the Flow Transfer Agreement, whereby all but a small amount of the Flow Transfer system's capacity would be returned to the City upon expiration of the Flow Transfer Agreement in 2023.

Limitations on Current Wastewater Allocation

Hagerstown's ability to grant new wastewater service was significantly limited when the City entered into a Consent Judgment with the Maryland Department of the Environment (MDE) on January 12, 2005. The Consent Judgment came in response to a series of discharge violations that had allowed partially treated wastewater to enter Antietam Creek from the Hagerstown WWTP. The Consent Judgment identifies specific projects to resolve Inflow and Infiltration and treatment problems in the City's collection system and upgrade the WWTP's headworks and disinfection systems. As part of the state's Bay Restoration legislation, the City must also implement ENR at the facility. During these upgrades, the City will also expand the WWTP's capacity to 10.5 MGD. This capacity corresponds to the WWTP's nutrient discharge cap (see discussion below).

[2] Wastewater demand is measured in Equivalent Dwelling Units (EDU), which reduces residential and non-residential wastewater demand to a "common denominator." An EDU represents the amount of wastewater capacity required by one dwelling unit. The City uses 200 gallons per day per EDU. Although lower than the statewide average of 250 gpd per EDU, this figure is based on recorded water demand (averaging 235 gpd per dwelling unit) and wastewater flows (160 gpd per unit) in the Hagerstown system.

[3] Source: Washington County Wastewater Infrastructure Management Plan for the Hagerstown UGA, 2005

While WWTP upgrades are being implemented, the Consent Judgment requires Hagerstown to set separate annual limits on allocations of new wastewater treatment capacity for new development and existing development. Existing development is defined as development projects in the City or Washington County that received site plan or final plat approval prior to January 12, 2005, infill lots, and increased service to existing non-residential customers.

The City prepares and submits to MDE an annual Sewer Capacity Allocation Plan (SCAP) to guide the allocation of new capacity. For new development the Consent Judgment caps annual new allocations at 120,000 gallons per day (GPD). The 2009 SCAP (the most recent available) divides this allocation into four categories:

i. Discretionary reserve—City and County projects (15,000 GPD)
ii. County projects (25,000 GPD)
iii. City residential projects (50,000 GPD)[4]
iv. City non-residential projects (30,000 GPD)

The Consent Judgment does not specifically cap allocations for existing development. The 2009 SCAP allocates 116,000 GPD for existing development, divided into three categories:

i. County projects (46,000 GPD)
ii. City residential projects (40,000 GPD)
iii. City non-residential projects (30,000 GPD)

Inflow and Infiltration Concerns

Upgrades to the City's WWTP and improvements to the collection system will increase the treatment capacity of Hagerstown's wastewater system. These upgrades and improvements will particularly help to reduce the large volumes of stormwater and groundwater that enter the City's collection system, causing the system to experience high flow rates. In 2003, for example, wastewater customers discharged an average of 4.4 MGD into the sewage collection system, but the actual flows into the WWTP averaged 11.2 MGD—higher than the plant's 8.0 MGD capacity at the time. In especially wet weather, this flow has peaked at 30 MGD.[5]

This undesired extraneous flow, known as "Inflow and Infiltration" (I/I), takes up wastewater system capacity that should be reserved only for wastewater, effectively limiting the system's overall capacity. Much of the I/I flow is caused by damaged wastewater lines or leaking manhole covers. In some cases, roof drains and sump pumps are also illegally connected to the wastewater collection system instead of the storm water collection system. The City estimates that approximately 1,000,000 gpd (5,000 EDU) of I/I flows were present in the wastewater collection system in 2007, of which as

[4] 800 gpd were removed due to overage in 2006.

[5] Source: City of Hagerstown.

much as 340,000 gpd (1,700 EDU) of I/I can reasonably be eliminated through repair projects, which began in 2003.

The City has two major rehabilitation projects planned for reducing I/I into the system. Both projects began in 2009 and are expected to be completed in 2011. The City continuously monitors the system to detect groundwater migration into the system and makes repairs as necessary. The City has smoke tested the entire wastewater collection system and has been working with property owners to mitigate illegal drain connections to the system.

Projected Wastewater Demand and Capacity

Even after the completion of WWTP upgrades and subsequent resolution of the Consent Judgment, Hagerstown will have a limited amount of unused wastewater capacity to allocate to future growth. The Population Projections section of the Plan Introduction (specifically Table 1-3) describes projected development in Hagerstown through 2028, the horizon year for this plan.

Table 4-1 shows the relationship between projected growth and available wastewater treatment capacity. Once ongoing upgrades are completed, the Hagerstown WWTP alone will have adequate wastewater capacity to support the City's projected growth through 2028.

Table 4-1: Projected Development and Wastewater Capacity, 2028

All units in EDU	Projected Growth
1 Projected residential demand (housing units)	6,605
2 Projected non-residential demand (EDU)	2,202
3 *Total Projected Demand (1+2)*	8,807
4 Unused wastewater treatment capacity available for future development (EDU)	13,013
5 Additional Capacity (EDU), I&I Repairs	1,700
6 Additional Capacity (EDU) via transfer	3,580
7 **Net Unused Capacity [(4+5+6)-3]**	12,205

a: Non-residential demand is assumed to be one-quarter of total wastewater demand. This reflects the residential/non-residential split for SCAP allocations within the City.

b: Includes 18,083 EDU of total available capacity, minus 2,272 EDU reserved for "turned-off accounts"—wastewater connections that exist but are not currently used. (18,083 EDU is derived by subtracting the average daily flows from 2005-2007 of 6.88 MGD from the WWTP's final capacity of 10.5 MGD.)

c: Assumes a maximum flow transfer of 5,000 EDU, minus existing flow transfer of approximately 1,500 EDU.

Potential Ultimate Wastewater Demand and Capacity

The 2008 Comprehensive Plan calls for expansion of Hagerstown's corporate boundaries, re-use and redevelopment of vacant and underutilized land in the City and MRGA, and some new development in undeveloped portions of the MRGA. Tables 4-2 through 4-4 are based on "buildout," or ultimate potential development in the MRGA (corresponding directly with the potential development shown in Table 2-1). This potential development

is a larger amount of development than the *projected* development—the amount of development that the City believes will occur through 2028—in Tables 1-3 and 4-1.

Table 4-2 shows the estimated amount of wastewater capacity—approximately 25,270 EDU—that will be needed to serve the ultimate amount of development that could occur in the City and the Medium-Range Growth Area (MRGA), based on the land uses and densities described in the Growth Management and Land Use Element.

Table 4-2: Ultimate Wastewater Demand
(Assumes Maximum Development in City and MRGA)

Category	Demand (EDU)
Future Development in Hagerstown (2008 Corporate Boundaries)	
1. Potential residential development (From Table 2-1)	8,213
2. Potential new non-residential demand	2,738
3. Subtotal: Potential Demand in Hagerstown (1 + 2)	10,951
Future Development in the Medium-Range Growth Area	
4. Undeveloped Medium Density Residential land (acres)	847
5. Assigned yield of Medium Density development (dwelling units per acre)	7.0
6. Potential new Medium Density residential units (4 x 5)	5,082
7. Undeveloped Moderate Density residential land (acres)	1,955
8. Assumed yield of Moderate Density development (dwelling units per acre)	3.5
9. Potential new Moderate Density residential units (7 x 8)	6,673
10. Potential Residential Demand in Medium-Range Growth Area (6 + 9)	9,755
11. Potential Non-Residential Demand in Medium-Range Growth Area [a]	4,565
12. Subtotal Potential Demand in Medium-Range Growth Area (10 + 11)	14,319
13. Grand Total: Potential Development in Medium-Range Growth Area (3 + 12)	25,270

Notes

a: Washington County has identified a need for approximately 5,000 EDU of wastewater capacity to serve 4,130 acres of economic development land (corresponding to a mixture of IDE and IMD land uses), for an average of approximately 1.2 EDU per acre. Line 11 applies that factor to the 3,736 acres of similarly-designated land in the MRGA, outside of the 2008 corporate boundaries.

Source: Environmental Resources Management, based on data provided by the City of Hagerstown Department of Planning and Zoning

Table 4-3 summarizes the relationship between ultimate potential wastewater demand (Table 4-2) and future available capacity. After upgrades and expansions, the Hagerstown WWTP will have enough unused wastewater capacity to serve approximately 15,811 new EDUs. This is adequate to serve some, but not all of the ultimate wastewater demand of the MRGA. After I&I repairs, and accounting for MRGA development that would be directly served at the Conococheague WWTP,[6] an additional 989 EDU (approximately 0.2 MGD) of wastewater treatment capacity would be needed to serve the entire MRGA.

[6] This figure is based on undeveloped land outside of the Consolidated GSA's boundary, generally located to the northwest and southwest of Hagerstown's 2008 corporate boundaries. It includes residential and non-residential demand.

Table 4-3: Ultimate Wastewater Demand vs. Capacity in Hagerstown WWTP
(Assumes Maximum Development in City and MRGA)

	EDU
1 Total potential development (from Table 4-2)	25,270
2 Available capacity in Hagerstown WWTP (from Table 4-1)	15,813
3 Future MRGA development treated at Conococheague WWTP [a]	5,770
4 Additional capacity at Hagerstown WWTP after I&I repairs	1,700
5 **Capacity Deficit, using Hagerstown WWTP alone (1 – all other values)**	(989)

Notes

a: Approximately 3,900 acres of MRGA land designated for various types of residential and non-residential uses falls within the Conococheague WWTP's service area (outside of the Consolidated GSA boundary). This land could support approximately 9,093 new residential units, and 3,677 EDU of non-residential development.

Source: Environmental Resources Management, based on data provided by the City of Hagerstown Department of Planning and Zoning

If the Flow Transfer Agreement sunsets and is not extended, the City and the County will need to prioritize service areas within the MRGA and potentially shrink overall UGA boundaries to reflect reduced wastewater treatment capacity.

Regional Wastewater Considerations

Three public WWTPs serve the MRGA: the Hagerstown and Conococheague facilities described above, and the Funkstown WWTP, a 0.15 MGD lagoon-based system that serves the Town of Funkstown. If the Hagerstown, Funkstown, and Conococheague WWTPs were managed to make maximum use of their available capacity (including technology upgrades and expansions, as permitted under nutrient caps), all potential demand in the MRGA could be satisfied, as shown in Table 4-4.

Table 4-4: Ultimate MRGA Wastewater Demand vs. Capacity in UGA
(Assumes Maximum Development in City and MRGA)

	EDU
1 Available Capacity in Hagerstown, Conococheague, and Funkstown WWTPs [a]	33,460
2 Total potential development in City and MRGA (from Table 4-2)	25,270
3 Turned off accounts in Hagerstown WWTP system	2,272
4 Additional capacity at Hagerstown WWTP after I&I repairs	1,700
5 **Net Available Wastewater Treatment Capacity, Hagerstown UGA (1 – 2 – 3 + 4)**	7,618

Notes

a: These figures assume maximum expansion of the Hagerstown, Conococheague, and Funkstown WWTPs, through provisions of the state's nutrient trading policy—see "Policy Based Approaches" below.

Source: Washington County Water and Wastewater Infrastructure Management Plan

Achieving this objective could require expansion of the Hagerstown and Conococheague WWTPs through nutrient trading (see below), and continued (and likely expanded) use of the Flow Transfer Agreement. That agreement's "sunset" clause would need to be removed, and the agreement would have to be extended past the 2023 expiration date.

In the long term (beyond 2028), the UGA's wastewater treatment plants would not have adequate capacity to serve buildout of the City, MRGA, and Long Range Growth Area

(LRGA). The land use policies of the 2002 Washington County Comprehensive Plan would allow for as much as 30,000 EDU of additional wastewater flows from the LRGA alone (the portion of the UGA outside of the City and MRGA), compared to a net available wastewater treatment capacity of 7,618 EDU, per Table 4-4. Additional wastewater treatment capacity could be obtained through nutrient trading under the state's Policy for Nutrient Cap Management and Trading,[7] or possibly through the establishment of a spray irrigation system for wastewater disposal (see Technological Approaches, below).

If expansion of the MRGA is deemed desirable to serve additional or alternative growth priorities of the City or the County, such boundary adjustments must be based on the availability of water and wastewater capacity to serve the expanded area as well as the impact such expansion would have on the capacity to serve the ultimate demand in the MRGA and the LRGA.

Washington County Water and Sewer Infrastructure Committee

In 2004, the Maryland General Assembly created a 21 member Washington County Water and Sewer Infrastructure Commission assigned to identify significant water and wastewater needs in Washington County, as well as methods for addressing those needs. The Commission's Final Report, published in June 2006, found that potential development in the UGA (including the City, MRGA, and LRGA) could create a net wastewater shortfall of more than 42,000 EDUs.[8] The Infrastructure Commission report also made four broad recommendations:

1. **Update City and County Comprehensive Plans to incorporate "realistic considerations of water and wastewater capabilities."**
2. **Update the County's Water and Sewer Master Plan and expand the Master Plan's scope to more robustly link water and wastewater policies with land use policies.**
3. **Coordinate Operations of Water and Sewer Facilities in Washington County.** This recommendation encourages more communication and sharing of information among County and municipal water and wastewater officials, and improved sharing of facilities through interconnections (flow transfer systems) and capacity trading (the Bubble Concept).
4. **Consider an Evaluation of Merger or Consolidation of Water and Sewer Operations in Washington County.**

This Comprehensive Plan addresses recommendation #1 and provides information for recommendation #2. Recommendation #3 has, to some extent, been replaced by the state's nutrient trading policy and the interjurisdictional cooperation requirements of HB 1141. However, it is the City's intent to work with the County to preserve the Flow Transfer Agreement. Implementation of recommendation #4 would require review and approval by some combination of City, County, and State officials, and is not the City's priority through 2028.

[7] Information available at: http://www.mde.state.md.us/Water/nutrientcap.asp

[8] Source: Washington County Infrastructure Commission Final Report (June 2, 2006), page 16.

Nutrient Discharges and Assimilative Capacity

While physical capacity (MGD) is an important factor, the discharge permits for major WWTPs in Maryland (including the Hagerstown and Conococheague WWTPs) are based on nutrient discharges, specifically nitrogen and phosphorus. Nutrients, along with sediment, are the primary contributors to degraded water quality in the Chesapeake Bay and its tributaries. As a result of Maryland's participation in the Chesapeake Bay 2000 Agreement and resulting state policies designed to help restore the Bay, water and wastewater planning must take into account the "assimilative capacity" of a receiving body of water—the mass of nutrients that the stream can receive while still maintaining acceptable water quality. This section describes the limits on assimilative capacity, and options to achieve nutrient goals, as they apply to the WWTPs that serve Hagerstown.

TMDL

One measure of assimilative capacity is the Total Maximum Daily Load (TMDL), a series of calculations required by the Federal Water Pollution Control Act (Clean Water Act). A TMDL is the maximum amount of pollutant that a water body, such as a river or a lake, can receive without impairing water quality. Water bodies are classified as "impaired" when they are too polluted or otherwise degraded to support their designated and existing uses. The TMDL is typically expressed as separate discharge limits from point sources such as WWTPs, as well as non-point sources such as stormwater or agricultural runoff.

The impaired waters list is referred to as the 303(d) list, named after the section in the Clean Water Act that establishes TMDLs. The Antietam Creek watershed is impaired by nutrients, but no nutrient TMDL has been prepared for this watershed. The Conococheague Creek and Marsh Run watersheds (the other watersheds covered by the MRGA) are not impaired by nutrients. MDE is collaborating with the US Environmental Protection Agency (EPA) to develop a uniform set of TMDLs for the Chesapeake Bay and all of its tributaries, including Antietam Creek. These TMDLs are initially anticipated to be developed by the end of 2010. Future updates of this Comprehensive Plan should take into account these forthcoming regulations and/or limitations.

Point Source Caps

To address nutrient loads from point sources such as WWTPs, the state has established Chesapeake Bay Tributary Strategy point source caps for all WWTPs with discharges greater than 0.5 MGD. These caps are numerical limits on the amount of nitrogen and phosphorus that WWTPs can discharge to the Bay and its tributaries (expressed as pounds per year of nitrogen and phosphorus). Nitrogen and phosphorus point source caps have been established for the Hagerstown and Conococheague WWTPs. Because there are no completed TMDLs for the receiving waters for these point sources, the point source caps determine the allowable nutrient discharges from the WWTPs that serve Hagerstown and the MRGA.

Antidegradation

Another factor relating to assimilative capacity is antidegradation—the state policy that significantly limits new or expanded discharge permits that would degrade water quality. The focus of the antidegradation policy is on Tier II (high quality) waters, as defined by the US Environmental Protection Agency (EPA). None of the streams near Hagerstown are designated as Tier II.

Point Source Discharges

Table 4-5 lists the nutrient caps, as well as existing and projected future nutrient discharges for the Hagerstown and Conococheague WWTPs. This Water Resources Element assumes that by 2028, both WWTPs will be upgraded to ENR technology. As shown in Table 4-5, the Hagerstown WWTP would meet its nutrient caps, with capacity for as much as approximately 10,000 EDU of development after 2028.

Table 4-5. Point Source Nutrient Discharges, MRGA

WWTP		Hagerstown	Conococheague (MRGA Portion)[a]
Projected Capacity, 2028	MGD	10.50	4.50
Existing Nutrient Loads (lbs/year), 2007	TN	165,000	51,200
	TP	10,000	7,600
Nutrient Caps (lbs/year)[b]	TN	97,458	20,000
	TP	7,309	1,500
Projected Average Daily Flow, 2028	MGD	8.51	3.67
Treatment Technology, 2028		ENR	ENR
Estimated Nutrient Discharges (lbs/year), 2028	TN[c]	78,059	18,935
	TP[d]	2,602	1,065
Remaining Discharge Capacity (Overage), in lbs/year	TN	19,399	1,065
	TP	4,707	(393)

Notes:

a: This WRE estimates that existing residential units and non-residential acreage in the portion of the MRGA served by the Conococheague WWTP, account for approximately 40 percent of the current wastewater volume and nutrient loading handled by the plant. Existing loads and caps therefore reflect 40 percent of the total existing nutrient loads (26,000 lbs/year nitrogen and 4,100 lbs/year phosphorus) and total nutrient caps (50,032 lbs/year TN and 3,752 lbs/year TP).

b: Estimated existing nutrient loads and nutrient caps based on MDE's ENR Fact Sheets for the Hagerstown and Conococheague WWTPs. The cap shown for the Conococheague WWTP is pro-rated, as described in note 1. (http://www.mde.state.md.us/Water/CBWRF/pop_up/enr_status_map.asp).

c: TN = Total Nitrogen (lbs/year); TP = Total Phosphorus (lbs/year)

d: The Hagerstown WWTP will use Ferric Chloride to reduce phosphorous to loading to 0.1 mg per liter of effluent (source: Hagerstown Utilities Department). This is substantially lower than the standard ENR assumption of 0.3 mg/l, assumed for Conococheague and other ENR facilities statewide. Discharge concentrations of 3 mg/l TN are assumed for both facilities.

Development in the portion of the MRGA served by the Conococheague WWTP could exceed its share of that facility's overall phosphorus cap. The County's forthcoming Water Resources Element should determine whether the facility as a whole would meet its phosphorus cap. The section below discusses options to address these potential nutrient overages.

Considerations for Addressing Long-Term Wastewater Issues

Coordinated effort between the City and County will be necessary to determine how to best address the long-term deficit of wastewater treatment capacity in the Hagerstown UGA. A number of future upgrades, innovations, and policy decisions—including some suggested by the Infrastructure Commission—could be considered to help minimize or eliminate this deficit. Some potential technological and policy-based approaches are listed below.

Technological Approaches

- **Additional I/I repairs.** As previously discussed, the City estimates that a total of 5,000 EDU of I&I exist in the Hagerstown WWTP system, of which 1,700 EDU are reasonably correctable in the near term.
- **Septic Disconnection.** The state's nutrient trading policy awards nutrient credits for the connection of septic systems (failing or otherwise) to public wastewater systems. The Washington County Water and Sewer Infrastructure Commission's Final Report identified as many as 3,700 EDU that could be converted from septic to public wastewater,[9] with resulting nitrogen credits granted to the public WWTP.[10]
- **Participation in a nutrient trading system.** The state's nutrient trading policy allows WWTPs with excess nutrient discharge capacity to trade or sell that capacity (as measured in pounds of nitrogen and/or phosphorus) to other WWTPs within the same trading area (in Hagerstown's case, the Potomac basin). Washington County is also investigating a Countywide trading system that could effectively create a common "pool" of nutrient discharge credits.
- **Spray Irrigation.** With this technique, treated wastewater effluent is applied to specially designated agricultural fields, where crops (not used for human or animal consumption) take up most of the remaining nitrogen and phosphorus. When properly operated, spray irrigation (or other similar techniques broadly referred to as "land application") can effectively reduce nutrient discharges to zero. Soil, slope, and geology are critical considerations in siting a spray irrigation facility. Underlying geology in and around Hagerstown (particularly limestone karst formations) may not make spray irrigation infeasible.
- **Wastewater reuse ("graywater" reuse).** Treated wastewater can be reused to sustain landscaping, or as process water in industrial activities. Typical examples of wastewater reuse in Maryland include the use of graywater as a coolant at power plants, or to water golf courses. In other parts of the United States, graywater has been used to recharge aquifers. This technique is not permitted in Maryland, but may be a long-term consideration.

[9] Source: Washington County Infrastructure Commission Final Report (June 2, 2006), page 4. The Commission estimated that the cost of upgrading all of these units would be approximately $118 million.

[10] The state policy allows credits of 7.5 lbs/year of nitrogen per septic EDU retired within 1,000 feet of a perennial waterway; and 4.6 lbs/year per septic EDU for all other systems. This is equivalent to the nitrogen generated by 2-3 dwelling units in an ENR facility such as Hagerstown or Conococheague.

- **Improved Treatment Techniques.** ENR is among the most efficient sewage treatment processes available to municipal treatment plants. Future technological advances may provide increased wastewater treatment efficiency—and therefore additional wastewater treatment capacity—but such technologies are not yet available.

Policy-Based Approaches

While technological solutions should be considered, these approaches alone are not likely to address the long-term wastewater capacity deficit in the Hagerstown region, and may prove extremely costly to implement. Policy decisions, such as those described below, will need to supplement technological approaches.

- **"Turned Off Accounts"** in the City total approximately 2,272 EDU of wastewater and water capacity. While some of these turned-off accounts are reserved for planned or ongoing development, others are likely dormant connections to existing structures or lots of record. Reclaiming turned-off EDUs that are not associated with likely development or preferred redevelopment areas could give the city a pool of wastewater allocations. These allocations could be used to encourage infill development or redevelopment, reducing the demand for extensions of wastewater service outside of the Corporate Boundaries.
- **Lower than anticipated demand** from the Hagerstown-Washington County Economic Development Commission's focus areas. The County currently identifies a need for 5,000 EDU of capacity for these areas, but the recent trend is toward warehouse, light industrial and distribution uses, which require less water and wastewater capacity than other employment uses.
- **Revised Washington County zoning regulations** that reduce development capacity, permitted densities, intensities and yield in the LRGA.
- **Reduced and constrained Urban Growth Area boundaries** which decrease the amount of acreage that might eventually be served by public water and sewer systems.
- **Revised assumptions about future growth.** For example, the County's Wastewater Infrastructure Management Plan shows development capacity for 18,553 EDU in the City of Hagerstown, whereas Table 4-2 shows capacity for only 10,951 EDU.

Water Service

Goals for Water Service

1. Provide a sustainable uninterrupted potable water supply to all customers served by the Hagerstown Water System.

2. Identify and implement viable projects to protect and/or enhance Hagerstown's water supply.

Water Service Issues Addressed by this Element

1. Recent growth in Hagerstown and the surrounding communities has increased water demand requiring an evaluation of and potential upgrades to the City's water treatment and distribution infrastructure.

Water System Overview

The City of Hagerstown is the primary provider of potable water to all residential, commercial, and industrial customers in the Hagerstown UGA, as well as some customers outside the UGA, particularly in the Martins Crossroads area. Hagerstown also provides potable water to the towns of Smithsburg, Williamsport, and Funkstown which own, operate, and maintain their own distribution systems. The water service area as of 2007 (excluding Smithsburg), is shown in Figure 4-1.

The City owns and operates two potable water treatment plants: the R.C. Willson Plant (WTP) and the W.M. Breichner Plant (BTP). The WTP draws its water from the Potomac River in Williamsport, and is the City's main source of water. WTP has a maximum treatment capacity of 20 MGD, with a permitted appropriation for surface water from the Potomac River of 15 MGD. However, the WTP's transmission lines can only accommodate 13.5 MGD. The BTP draws its water from the Edgemont Reservoir near Smithsburg, and is primarily used to supplement production during high demand periods and when system maintenance reduces available supplies from the WTP. The BTP has a maximum treatment capacity of 4.5 MGD and a permitted appropriation for surface water from the Edgemont Reservoir of 700,000 gpd.

The City's water distribution system is comprised of approximately 400 miles of water mains. Currently, there are over 2,000 fire hydrants throughout the distribution system, used for both fire suppression and system maintenance.

In 2005, Hagerstown produced and delivered 11 MGD of water, almost all of which was drawn from the Potomac River. Of that total, 18 percent (approximately 1.98 MGD) is "unaccounted for" or system water loss—water that is distributed but not used at a metered location. This is in excess of the 10 percent system water loss benchmark established by MDE policies.

The City does not allow new water connections outside of the 2008 Annexation Policy Area, except in specific circumstances set forth in the City's Annexation Policy and its

Water and Sewer Policy (see the Recent Relevant Policies section of the Plan Introduction). These exceptions include cases where the non-municipal water or wastewater system does not meet health and safety standards—such as failing septic systems, cases where service extension would improve system-wide operations or efficiency, cases where pre-existing water and/or wastewater agreements and pre-annexation agreements commit service connections or where the Mayor and City Council determine that extension of services would be important for significant economic development opportunities for the City.

Annexation and Water Service

As described in the Recent Relevant Policies section of the Plan Introduction, the 2008 Annexation Policy defines the relationship between annexation and the provision of water service. In order to receive new or expanded water service, a property owner must agree to be annexed into the City. Properties that cannot be annexed because they are not adjacent to City boundaries must sign a preannexation agreement. Some of these parcels are shown in Figure 2-4.

Projected Water Demand and Capacity

The Hagerstown water system has adequate capacity to meet current water demand: the combined water treatment appropriation for the WTP and BTP is 15.7 MGD, while peak daily water demand is 13 MGD during summer months (July–September). Average annual daily demand is 11 MGD.

The demands for service on the Hagerstown water supply are anticipated to increase as the growth of nearby towns creates additional water demand. Table 4-6 shows the permit and usage activity for the three towns currently utilizing the Hagerstown water supply. Hagerstown anticipates that the Town of Smithsburg will request additional water allocations (more than doubling the Town's current allocation) in order to accommodate the growth projections in their 2008 Comprehensive Plan. Both Funkstown and Williamsport have experienced minimal growth in recent years (the average daily water usage in 2007 was approximately 60% of permitted withdrawal) and are not anticipating substantial growth in the near future. This suggests that existing water permit allocation from Hagerstown to these two towns should be sufficient for the life of this Plan.

Table 4-6: Existing and Projected Water Demand from Towns

All units in EDU (except where specified)

Town	Water Agreement Permit	Average Daily Use (2007)	Unused Allocation in Permit	Anticipated Permit Increase Request [a]	Total Water Demand [a]
Funkstown	680	415	265	0	680
Smithsburg	1,315	1,205	110	1,700	3,015
Williamsport	3,595	2,015	1,580	0	3,595
Total (EDU)	5,590	3,635	1,955	1,700	7,290
Total (MGD)	1.118	0.727	0.391	0.340	1.458

Notes:

a: Anticipated permit increase requests and total water demand are both through 2028.

Prior to the adoption of the 2008 Comprehensive Plan, the City committed water service to a number of development projects outside the MRGA while administering the Annexation Policy. As of December 31, 2007, outstanding commitments remain for approximately 1,690 dwelling units (338,000 gpd) and approximately 22 EDU's (4,407 gpd) of non-residential development. Detail on these projects is provided in the Appendix. As of August 2008, all but one of the residential developments on this list had an adequacy or mitigation program approval under the County Adequate Public Facilities Ordinance, permitting construction to begin in the near future as the strength of the housing market permits.

While the Plan recommends that no additional new service be provided beyond the MRGA before 2028, a possible exception is identified for employment centers in the County's economic development target areas at the Airport and Friendship Technology Park (I-70 at MD 632). If the City and the County determine that the provision of water service is critical for projects in the target areas and therefore adopt special service agreements for these areas, the anticipated demand for water service from the undeveloped land in the two target areas, as of August 2008, is approximately 175 EDU's (350 vacant acres at Friendship and 100 vacant acres at the Airport with an estimate usage of 3900 gpd or 19.5 EDU's per 50 acre project).

Table 4-7 shows that existing water supplies are adequate to serve existing and projected water demand in the City, MRGA, and economic development target areas outside of the MRGA through 2028.

Table 4-7: Projected (2028) Development and Water Supply

All units in EDU (except where specified)

1	Existing peak water demand [a]	65,000
2	New residential demand (EDU) [b] through 2028	6,605
3	New non-residential demand (EDU) [b] through 2028	2,202
4	Increase/Subtract committed projects by towns [c]	755
5	Water demand from LRGA Properties with Annexation Policy approvals [d]	656
6	Total Demand 2028 (MGD)	77,218
7	Total Water Supply [e]	78,500
8	Net Unused Capacity (EDU) 2028	1,282
9	Net Unused Capacity (in MGD) 2028	0.2

Notes:

a: Existing average daily demand is 13 MGD, at 200 gpd per EDU.

b: Non-residential demand is assumed to be one-quarter of total water demand.

c: Anticipated new demand from three Towns with water permits. Combines unused existing permit allocations plus anticipated permit increase requests as shown in Table 4-6.

d: Total water commitments outside MRGA from Annexation Policy approvals predating April 2008 are 1,712 EDU. Line 5 assumes that half of these commitments will be activated by 2028.

e: Existing supply is 15.7 MGD, at 200 gpd per EDU.

However, other factors indicate the need for additional water sources and upgraded treatment and distribution facilities to serve projected growth. These factors include:

- Water demand during summer months (July–September) peaks at 13MGD, effectively reducing the amount of water available to serve future growth.
- The Edgemont Reservoir is eutrophic,[11] making its raw water difficult to treat during summer months. The BTP is not a viable water source during the summer.
- The Hagerstown treatment and distribution system was constructed in the 1920s, and is aging—as shown by the high system water loss figure. The system needs to be upgraded to meet existing demand and future development.
- Recent amendments to the Safe Drinking Water Act could necessitate modifications to the treatment and distribution system (including the WTP and BTP plants) to address by-products of the chlorination process.
- Treatment of raw water supplies creates wastewater that has to meet Clean Water Act discharge requirements. The wastewater lagoons at the WTP have to be upgraded to meet these standards, and it is also likely that the upgrades will be required for the wastewater lagoons at the BTP.
- The Hagerstown water system currently provides water to approximately 88,000 customers and is classified as a medium system by Maryland Department of the Environment. Based on the projections in this Comprehensive Plan, it is anticipated that Hagerstown will be classified as a large system (serving 100,000 or more customers) by 2028, if not sooner. Large water systems are subject to additional monitoring requirements and accelerated schedules for regulatory compliance.
- As the City accommodates the growth demands of Smithsburg and explores the provision of water service to other towns with water deficiencies in our region, the demands on the Hagerstown water supply could increase further.

Potential Ultimate Water Demand and Capacity

While existing water supplies are adequate to serve some projected development, they are not adequate to serve the total potential development (i.e., "buildout") in the City and MRGA. Table 4-8 shows a potential deficit of approximately 16,237 EDU (or 3.2 MGD). In addition, the Infrastructure Commission report shows a deficit of more than 27,000 EDUs throughout the UGA (including the City, MRGA, and LRGA). Buildout would not occur until well beyond 2028 (if at all). However, it is important to highlight this imbalance so that Washington County—whose zoning regulations govern the MRGA—can use its own WRE to evaluate and, if necessary, alter land use policies in the MRGA.

Considerations for Addressing Long-Term Water Issues

To address the long-term water supply deficit, new or expanded water sources, increased raw water appropriation, and upgraded treatment and distribution systems will be needed. In addition, the following projects in the City's Capital Improvement Program can improve overall system efficiency and narrow the gap between buildout demand and supply.

[11] This term describes a body of water that typically has high concentrations of nutrients, resulting in water treatment challenges.

Table 4-8: Hagerstown Water System Supply and Ultimate Demand
(Assumes Maximum Development in City and MRGA)

All units in EDU (except where specified)	Average Daily Flow
1 Available Water Supplies [a]	78,500
2 Existing Water Demand (average daily demand) [b]	65,000
3 Potential new water demand in City and MRGA	25,270
4 New demand (net of units lost to attrition from City approvals) [c]	9,457
5 Total potential water demand in MRGA (2 + 3)	94,737
6 Net available water supply (1-5) (EDU)	(16,237)
7 Net available water supply (MGD)	(4.2)

Notes:
a: Existing supply is 15.75 MGD, at 200 gpd per EDU.
b: Existing average daily demand is 13 MGD, at 200 gpd per EDU.
c: Includes total water commitments outside of the MRGA (1,712 EDU), and 2,755 EDU of demand from Towns, per Table 4-7.

- **Additional Supplies.** New supplies could come in the form of increased withdrawals from the Potomac River (requiring an increased appropriation permit from MDE), or from other sources, such as groundwater. The City should work with MDE to determine the best option for new or expanded water sources.
- **General Repairs** at the Edgemont Reservoir and in other locations to address leaks and reduce water loss. Cutting system water loss in half would reduce the buildout water deficit shown in Table 4-8 by one-third.
- **Source Water Protection** (Watershed Improvements and Reservoir Improvements). Stream restoration and watershed enhancement projects are planned to reduce the amount of sediment entering the Edgemont Reservoir, making this a more viable and productive year-round source.
- **Storage.** Replacement of the West End Reservoir (near Hellane Park) with water storage tanks. Related improvements began in 2007, with Phase II beginning in June 2009. The new concrete tanks and removal of the existing reservoir are consistent with the Safe Drinking Water Act.
- **Distribution System.** Transmission mains from the WTP will be replaced with larger mains to address system deficiencies. Additional planned water system projects will address deteriorating pipe, system pressure, and water quality. New meters are being installed to provide more efficient and accurate service.

Water Conservation

Water conservation is a low-cost option for extending the life of existing water supplies. The Maryland Water Conservation Plumbing Fixtures Act (MWCPFA) requires that new plumbing fixtures sold or installed as part of new construction are designed to conserve water. Future efforts to upgrade the water distribution system will contribute to water conservation by reducing system water loss due to leaks.

Beyond these regulatory requirements and major capital projects, the City could also proactively promote water conservation through a concerted public education program,

and by coordinating with the State to seek funding for upgrades to appliances and water fixtures. Careful planning of stormwater management techniques, as well as the location and species of landscaping on City streets can help to reduce or eliminate outdoor watering needs, thus reducing Citywide water demand.

Nonpoint Source and Total Nutrient Loading

Goals for Nutrient Loading

1. Ensure that the City's environmental and development ordinances reflect the most recent state stormwater and nonpoint source pollution policies.
2. Use nonpoint source nutrient modeling to guide the location, amount, and type of development in and around the City.

Nutrient Loading Issues Addressed by this Element

1. State regulations regarding stormwater management have been updated since adoption of the 2008 Comprehensive Plan. The City's development ordinances should be updated to reflect state policy.
2. Development in Hagerstown and the surrounding communities contributes nonpoint source nutrient loads to Antietam Creek, Conococheague Creek, and Marsh Run. It is important to estimate this nutrient loading and the effect that future development could have on water quality.

Programmatic Assessment of Nonpoint Source Policies

Nonpoint sources (NPS) of nutrient pollution include stormwater runoff from roads and lawns, erosion and sediment from construction, agricultural runoff, atmospheric deposition, and any other source other than an outfall pipe. These sources are called nonpoint because they involve widely dispersed activities, and hence are difficult to measure. All non-point sources of pollution eventually reach the waters of the Chesapeake Bay unless filtered or retained by some structural system or non-structural techniques.

Nutrient reduction technologies for nonpoint source pollution are generally referred to as "Best Management Practices" (BMPs). Examples of these technologies can include vegetated (or "green") roofs, bioretention areas within landscaping beds, permeable pavement, and erosion controls. Non-structural controls, such as vegetated buffers around streams and at the edge of paved areas, are extremely effective in reducing the amount of pollutants that reach waterways.

This section characterizes the policies and procedures in place—or that need to be implemented—to manage nonpoint source pollution in Hagerstown.

Maryland Stormwater Management Act

The 2000 Maryland Stormwater Design Manual, Volumes I & II is incorporated by reference into the City Code, and serves as the official guide for stormwater principles, methods, and practices.

The 2007 Maryland Stormwater Management Act, passed by the General Assembly, mandated substantial revision of the Stormwater Design Manual. The most notable provision of the 2007 Act is the requirement that new development use Environmental Site Design (ESD) techniques , which are intended to "maintain pre-development runoff characteristics" on the site. ESD techniques are based on the premise that stormwater management should not be seen as stormwater disposal. Instead of conveying and treating stormwater in large, costly end-of-pipe facilities located at the bottom of drainage areas, ESD addresses stormwater through the use of small, cost-effective landscape features that are frequently located onsite. It is an effective means of managing both stormwater quality and quantity. As of early 2010, the City was in the process of revising Chapter 213 (Stormwater Management) of its code to incorporate ESD and other stormwater management policies contained in the Stormwater Management Act of 2007.

As one of Maryland's oldest cities, Hagerstown is a location that the state's longstanding Smart Growth policies identifies as otherwise ideal for new development and redevelopment. Although the City intends to comply with the 2007 Act, there are substantial concerns that the 2007 Stormwater Act and subsequent guidance published by MDE may inhibit redevelopment in Hagerstown.

The 2007 Act requires "new" development to meet substantially more stringent stormwater management benchmarks than for "redevelopment." However, the City is concerned that meeting the stormwater management benchmarks for "redevelopment" is an impediment to financially viable urban redevelopment. This is particularly true, given other challenges that already complicate urban redevelopment, such as environmental clean-ups and the need to modify or replace utilities and other infrastructure.

In addition, the City is concerned about application of new ESD standards to multi-phase developments. In many of these cases, site-wide stormwater systems that complied with previous stormwater regulations have already been installed, and overall project financing is based on the previous generation of stormwater requirements. Requiring such developments to change long-established infrastructure designs could make such projects financially infeasible, thus discouraging otherwise suitable development.

While the City appreciates and supports the state's overall intention of reducing nonpoint source pollution of the Chesapeake Bay and its tributaries, it is the City's contention that *some* reduction of nutrients and other pollutants (as would be achieved with less stringent stormwater requirements) is preferable to no improvement at all (as would be the case if ESD requirements push land developers to greenfield sites in the MRGA rather than redevelopment within the existing fabric of the City.)

Other Nonpoint Source Management Policies and Considerations

Septic Systems within Corporate Boundaries

Approximately 2,600 residences and 1,000 acres of non-residential development in the MRGA are served by individual septic systems (all of which were outside of the City's Corporate Boundaries as of 2008). The largest concentration of residential septic systems are along MD 64 (Jefferson Pike), primarily in the Robinwood area east of Hagerstown, and in the northeastern corner of the MRGA, north of Longmeadow Rd and east of Marsh Pike (the Paradise Manor and Longmeadow neighborhoods).

The City's policy is to provide public wastewater service to all annexed properties. However, many of the areas most likely to be annexed through 2028 already receive public wastewater service. Thus, the nonpoint source models used to prepare this Element do not assume the disconnection of large numbers of septic systems (see Total Nutrient Loads below).

Stormwater Retrofits

While ESD will be required for all new development and redevelopment in Maryland, already-developed areas often have older, less efficient stormwater management (SWM) facilities—or no SWM facilities at all. Stormwater retrofits can replace older SWM facilities with ESD-compliant systems, thereby helping to reduce nonpoint source pollution. However, such retrofits can be costly. The City (working cooperatively with the County and state agencies) should identify and target retrofits to stormwater "hotspots" in the MRGA—areas where untreated or minimally-treated stormwater has the most significant impact on water quality.

Nutrient Loads and Assimilative Capacity

This section discusses the implications of the Comprehensive Plan's Future Land Use Plan on nonpoint source nutrient loads, total nutrient loads (nonpoint and point source), and impervious surface. The City of Hagerstown and the MRGA occupy portions of three major or "eight-digit" watersheds,[12] all of which are part of the Potomac River watershed and the Chesapeake Bay basin: Antietam Creek, Conococheague Creek, and Marsh Run. These watersheds are shown on Map 4-2. The information provided in this section is intended to contribute to Washington County's analysis of Countywide nutrient loading in these watersheds.

Total Nutrient Loading

Nonpoint source (NPS) nutrient loads were evaluated using a NPS model developed by MDE. More detail on the NPS evaluation methodology is presented in the Water Resources section of the Comprehensive Plan Appendix. Table 4-9 shows the estimated current and future (2028) nonpoint source (including septic systems), point source, and total nutrient loadings for the MRGA. These loadings reflect the City's existing and likely future land use pattern, as well as the point source information in Table 4-5.

[12] This refers to the numeric classification system used by the Maryland Department of the Environment.

Table 4-9: Total Nutrient Loads, Existing and Projected
(For the portion of watersheds covered by the City and MRGA)

(all data in lbs/year)			Antietam Creek Watershed	Conococheague Creek Watershed	Marsh Run Watershed	Total
Existing	Nonpoint	TN	160,015	105,440	15,159	280,614
		TP	12,199	8,071	1,192	21,462
	Point	TN	165,000	11,200	0	176,200
		TP	10,000	1,500	0	11,600
	Total	TN	325,016	116,640	15,159	456,814
		TP	22,199	9,571	1,192	33,062
2028 [a]	Nonpoint	TN	124,045	79,186	11,234	214,465
		TP	8,916	6,798	921	16,571
	Point	TN	78,059	18,935	0	96,994
		TP	2,602	1,893	0	4,495
	Total	TN	202,104	98,121	11,234	311,459
		TP	11,518	8,628	921	21,067

Notes:
a: Assumes full implementation of the Maryland Tributary Strategy Best Management Practices.

Overall loading rates are expected to drop by 2028, due to two factors. The first is the ongoing ENR upgrade of the City's WWTP. In addition, nonpoint source nutrient loads would decrease, due to use of ESD in new development, redevelopment, and stormwater retrofits. These assumptions about reduced nonpoint source nutrient loading are built into the state-generated nonpoint source model used in this analysis.

As discussed on Page 4-9 (the "TMDL" section), no TMDLs or other measures of assimilative capacity have been developed for any of Hagerstown's watersheds. As such, the City has insufficient information to determine whether its watersheds can accommodate the nutrient loads shown in Table 4-9. This finding should be revised upon completion of TMDLs for Hagerstown's watersheds—as part of EPA's Chesapeake Bay TMDL project.

Impervious Surface Coverage

Impervious surfaces are primarily human-made surfaces, such as roads, rooftops, and sidewalks, which do not allow rainwater to enter the ground. The amount of impervious surface in a watershed is a key indicator of water quality. In areas with large amounts of impervious surface, stormwater tends to carry larger loads of pollutants (including, but not limited to nutrients) into nearby streams, at higher volumes, contributing to excess erosion and higher water temperatures. Water quality in streams tends to decline as impervious surfaces approach seven to ten percent of the total area of a watershed. Water quality drops sharply as impervious surface approaches 25 percent of a given watershed. Table 4-10 shows the existing and projected future impervious surface in the MRGA.

Table 4-10: Impervious Surface Estimates, Existing and Projected
(For the portion of watersheds covered by the City and MRGA)

		Antietam Creek Watershed	Conococheague Creek Watershed	Marsh Run Watershed	Total
Percent of Watershed in the MRGA [a]		12.5%	21.4%	12.8%	14.6%
Existing	Acres	3,773	2,155	472	6,399
	Percent	25.5%	24.1%	27.4%	25.1%
2028	Acres	4,683	2,432	629	7,743
	Percent	31.6%	27.2%	36.5%	30.4%
Net	Acres	910	277	157	1,344
	Percent	6.1%	3.1%	9.1%	5.3%

a: Indicates the percent of the watershed in Washington County that falls within the MRGA. The portions of the Antietam and Conococheague watersheds in Pennsylvania are not included.

As might be expected in a developed area, impervious surface percentages in the MRGA are relatively high, comprising 30 percent of the total area of the MRGA by 2028. However, a few factors must be considered. First, the MRGA accounts for less than 15 percent of the total combined area of the Antietam Creek, Conococheague Creek, and Marsh Run watersheds. Second, the adverse environmental impacts of impervious surfaces can be mitigated through effective stormwater management practices, such as the state's ESD requirements, as well as riparian management and stream restoration efforts.

Finally, as one of Maryland's major cities, Hagerstown is intended to be developed. It would be unreasonable to expect Hagerstown to reduce its impervious surface to rural standards. To the degree that the City's policy is to promote infill development, this Comprehensive Plan's net effect is to minimize new impervious surface in the MRGA and in Washington County as a whole.

Choice of Land Use Plan

As required by HB 1141 and the state's WRE guidance in *Models and Guidelines 26*, this WRE evaluates the water resources impacts of the existing development and the 2008 Comprehensive Plan's Future Land Use Plan. Future nutrient loads from Hagerstown will be significantly decreased due to WWTP upgrades and improved stormwater management practices.

More important, water and wastewater capacity is a critical component of the overall policies contained in the Comprehensive Plan. In particular, the information about limited water and especially wastewater capacity in the Hagerstown UGA (first compiled in the Water and Wastewater Element, which was the forerunner of this Water Resources Element) was the basis for the City's definition of the MRGA as its primary growth area through 2028. The City's policy of encouraging infill development was also influenced by the recognition of existing water and wastewater infrastructure.

Based on the findings contained in this WRE, the Future Land Use Plan established in the 2008 Comprehensive Plan is upheld.

Relationship to State and Local Land Use Goals

Senate Bill 276 (2009) amends Article 66B to require the establishment of a statewide goal for increasing the amount of development within Priority Funding Areas (PFAs) and decreasing development outside of PFAs. As part of this law, jurisdictions must also establish (beginning in 2011) local land use goals for the amount of development inside of PFAs. This Water Resources Element strongly supports the concentration of development in the MRGA, a portion of the Hagerstown PFA. As such, the Hagerstown Comprehensive Plan will result in progress toward the statewide (and eventually the local) land use goals.

Water Resources Policies

Policy 4-1. Hagerstown will use water and wastewater policy to support this Comprehensive Plan's growth management goals. The 2008 Annexation Policy will continue to guide the provision of water and wastewater service outside of Hagerstown's corporate boundaries. The City will only provide new or expanded water and wastewater services to properties that annex into the City or that enter into preannexation agreements with the City, except as specifically exempted in the 2008 Annexation Policy.[13]

Policy 4-2. Hagerstown will continue to coordinate wastewater and water planning and implementation with Washington County.

- Wastewater: Through continued cooperation with Washington County, wastewater capacity will be available for all new development in the City of Hagerstown and the Medium Range Growth Area, as well as other priority areas within the Long Range Growth Area.[14]
- Water: Through continued cooperation with Washington County and the towns of Williamsport, Smithsburg, and Funkstown, water capacity will be available for all new development in the City of Hagerstown and the Medium Range Growth Area, as well as other priority areas within the Long Range Growth Area.

Policy 4-3. Hagerstown will maximize the capacity of its wastewater system.

Policy 4-4. This Comprehensive Plan establishes tiered priority areas for new or expanded water and wastewater service, as delineated on Figure 4-2 and defined here:

- *Priority 1.* Infill and redevelopment within the 2008 Corporate Boundary. Highest priority for new or expanded water and wastewater allocations.
- *Priority 2.* Medium-Range Growth Area. Second priority for new or expanded water and wastewater service.[15]
- *Priority 3.* Long-Range Growth Area. Existing service will be maintained. New service is not anticipated before 2028, but may be considered for employment centers, in support of City and County economic development and other goals and policies in this Plan.

[13] The exemption states that Hagerstown cannot require annexation or the execution of a preannexation contract as a condition for provision of wastewater service within the Consolidated GSA's Designated Area.
[14] This policy modifies the 2004 Annexation Policy's goal of "becoming the full provider of municipal services" in the UGA.
[15] Some service in the MRGA may be provided by Washington County, especially in the area between I-81, I-70, MD-632 (e.g. Friendship Technology Park) and the 2008 Corporate Boundaries.

City of Hagerstown Comprehensive Plan

Figure 4-2: Water and Wastewater Priority Areas

Legend

Priority Areas

Priority 1 Priority 3

Priority 2 Wastewater Service by Others

New or expanded sewer service denied, except for health and safety reasons.

Note: Funkstown and Williamsport purchase water from Hagerstown.

No water or wastewater service will be provided outside of the Long-Range Growth Area except for health and safety reasons. Any existing or future water lines extending outside of the Long-Range Growth Area shall be considered restricted and no additional connections will be permitted, except for health and safety reasons.

Policy 4-5. Hagerstown will ensure adequate future water system supply by continuing to monitor system capacity and water use.

Policy 4-6. The City will continue to set aside at least 15 percent of its annual wastewater allocation for new development to be used for non-residential development, with priority given to Business-Employment uses (see Chapter 2) and industrial uses.

Policy 4-7. The City will continue the existing rate structure and other policies that encourage water conservation.

Policy 4-8. The City will pursue expanded intejurisdictional coordination with the County and municipal utilities within the Hagerstown UGA, focusing on improving operational efficiencies by merging overlapping functions such as laboratories, administration or training, among others things.

Policy 4-9. Hagerstown will reduce its nonpoint source nutrient loads through more stringent stormwater management requirements for development, selective stormwater retrofits, and other actions as appropriate.

Water Resources Implementation Actions

Action 4-1. Continue to use and update the Sewer Capacity Allocation Plan (SCAP), as changes in priorities, policies, and regulations occur.

Action 4-2. Reduce Inflow and Infiltration into the sewage collection system by continuing ongoing repair efforts. Consider providing incentives for private land developers to perform I/I reductions.

Action 4-3. Renew the Flow Transfer Agreement with Washington County and remove the "sunset" clause to make flow transfers permanent. Work with Washington County to fully implement the Flow Transfer agreement to transfer sewage from City wastewater lines to the County's Conococheague WWTP.

Action 4-4. Investigate alternate ways to manage wastewater capacity, such as:

a. Participation in the state's nutrient trading policy, specifically when extending wastewater service to homes and businesses on individual septic systems. The City also may be able to "sell" excess capacity, given the findings of Tables 4-1 and 4-5.

b. Implementation of more efficient treatment technology as it becomes available.

c. Re-assignment of allocation from vacant and under-utilized commercial and industrial properties when they redevelop. This could include recoup of some "turned off accounts."

d. Exploration of reuse of grey water from the Hagerstown Wastewater Treatment Plant where feasible—such as for watering of golf courses or athletic fields, or for industrial processes—as means of conserving water resources and reducing nutrient discharges to Antietam Creek.

Action 4-5. As part of future updates to the Comprehensive Plan, revise the data, policies, and implementation actions in this Water Resources Element to reflect TMDLs established by the US EPA and MDE.

Action 4-6. Continue to update the Hydraulic Model to determine water system dynamics and deficiencies. Use the model to guide decisions as they pertain to system improvements including, but not limited to, system storage requirements, pumping station upgrades, and distribution system improvements.

Action 4-7. Continue to monitor produced water and billed water to reduce the system water loss to 10 percent or less, per MDE policy.

Action 4-8. Continue to monitor average day and peak day water usage to better predict when it is appropriate to approach MDE for an amendment to the current water allocation of 15 MGD from the Potomac River.

Action 4-9. Implement practices that are protective of the Edgemont watershed and water quality.

Action 4-10. Offer to develop cooperative agreements with Washington County on appropriate situations and conditions for the provision of water and/or wastewater services outside the Medium Range Growth Area. In particular, discuss extension of services to economic development target areas at the Airport and Friendship Technology Park, as well as selected residential areas.

Action 4-11. Working with Washington County, identify and prioritize the correction of stormwater "hotspots" in the City and MRGA. Identify and use state, federal, and other funding sources to implement stormwater retrofits in these areas.

Action 4-12. Advocate for more flexible state stormwater management standards for redevelopment properties and multi-year phased developments.

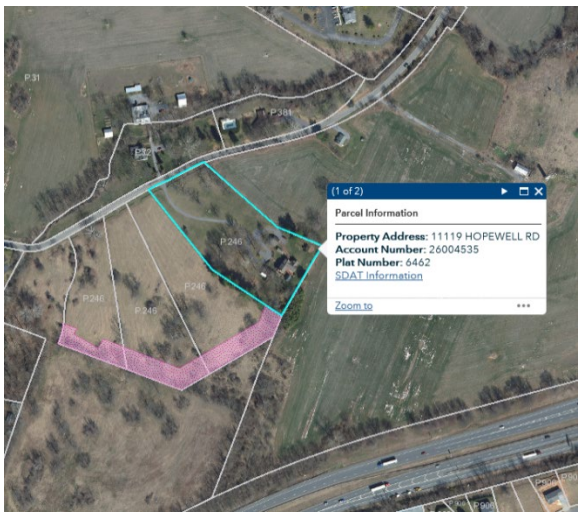
May, 2020 Case #: RZ-20-001

Application for Map Amendment
Staff Report and Analysis

Property Owner(s)	:	Donald M. Bowman Trustee
Applicant(s)	:	Jone L. Bowman Residuary Trust, Linda Lou Ebersole Family Irrevocable Trust
Location	:	S/S Hopewell Rd, 1/3 mile south I-70 underpass
Election District	:	#26 – Halfway
Comprehensive Plan Designation	:	Low Density Residential
Zoning Map	:	48
Parcel(s)	:	P. 246
Acreage	:	11.64 acres (4 lots)
Existing Zoning	:	HI – Highway Interchange
Requested Zoning	:	RT – Residential, Transition
Date of Meeting	:	May 18, 2020

I. Background and Findings Analysis:

1. Site Description



The site is located at 11107, 11111, 11115 and 11119 Hopewell Road, approximately 1/3 mile south of Interstate 70. The total acreage of the four lots subject to this rezoning case is 11.64 acres. All properties are located within the Urban Growth Area (UGA) that surrounds the City of Hagerstown and the Towns of Williamsport and Funkstown.

Currently, three of the four lots are undeveloped land which is being used for agricultural purposes. A 1.44-acre forest easement encompasses the rear portion of these three lots, numbers 2-4. Lot 1 has an existing home built upon it.

There are no floodplain areas within the proposed rezoning site itself, but a perennial stream, Semple Run, runs through the adjacent residential properties located immediately across Hopewell Road before turning south and crossing the road just west of 11107 Hopewell 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.

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

Table 1: Halfway Election District Population Trends

Population Trends 1980 - 2010			
Year	Area	Population	% change from previous decade
1980	District	9,489	
	County	113,086	
1990	District	9,418	-0.7%
	County	121,393	7.3%
2000	District	9,854	4.6%
	County	131,932	8.7%
2010	District	10,774	9.3%
	County	147,430	11.7%

Source: US Census Bureau

3. Availability of Public Facilities

A. Water and Sewerage

The adopted Water and Sewerage Plan for the County establishes the policies and recommendations for public water and sewer infrastructure to help guide development in a manner that helps promote healthy and adequate service to citizens. By its own decree,

the purpose of the Washington County Water and Sewerage Plan is "…to provide for the continued health and well-being of Washington Countians and our downstream neighbors…"[1] This is achieved through implementing recommendations within the County Comprehensive Plan and the Water and Sewerage Plan to provide for services in a timely and efficient manner and by establishing an inventory of existing and programmed services.

Water:

W-5-Long Term Planned Service (City of Hagerstown)

Public water is not currently available at the site. The site is permitted to access water by well. The site is given the W-5 designation in the County's 2009 Water and Sewerage Plan, denoting long term planned service. Neighboring parcels in the vicinity of the site generally also do not have present access to public water. The City of Hagerstown Water Division offered no comment on the proposed development when sent the application for review.

Wastewater:

S-3-Programmed Service (County)

The subject parcels are programmed for public sewer service in the Water and Sewer Plan, but are currently slated to utilize onsite septic systems. Future wastewater service would be provided by the County at the Conococheague Wastewater Treatment Plant. Most neighboring parcels in the immediate vicinity also utilize onsite septic systems.

Neither the Washington County Health Department nor the Department of Water Quality offered comment the application when routed a copy for review.

B. Emergency Services

Fire and Emergency Services:

Volunteer Fire Company of Halfway (1114 Lincoln Avenue) – 1.5 miles away

The proposed rezoning site 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 1.5 mile away from the subject properties.

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

A copy of this application was sent to the Washington County Division of Emergency Services. No comments were received.

C. Schools

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

The subject site is within the districts of Williamsport Elementary, Springfield Middle and Williamsport High schools. The requested zoning classification, Residential Transition (RT), would have the potential to generate students which are tracked under the County's Adequate Public Facilities Ordinance (APFO) to determine school capacity.

The APFO went into effect in 2004. The four-lot subdivision at the proposed rezoning site occurred in 2000. Therefore, while the proposed zoning classification would be expected to generate students that would impact the schools noted above, the pupil generation is considered as being part of the background enrollment for these schools. In essence, the impact of the subdivision should already be accounted for in present school capacity projections. **Accordingly, these lots would not be subject to the school capacity mitigation requirements of the APFO under present circumstances**. If the lots were subdivided again in the future, they would become subject to APFO requirements, provided they had a residential zoning classification at the time.

4. Present and Future Transportation Patterns

Highways – Access and Traffic Volume

The proposed rezoning site is located on Hopewell Road. The Functional Road Classification for Hopewell Road is as a minor collector in the Transportation Element of the 2002 Comprehensive Plan. This classification accounts for mobility and access characteristics of the roadway in its categorization. **Minor Collector** roads are designed to carry between 1,000 – 3,000 Average Daily Traffic in rural areas, and 2,000 to 10,000 vehicles daily in urban areas. The County's road classification system is based upon the Federal Highway Functional Classification System, but modified to reflect local road conditions.

All lots within the subdivision are plated to be served by individual driveways accessing Hopewell Road.

Approximately ½ mile south of the site, Hopewell Road intersects with Wright Road. Within the County's current 10-year Capital Improvement Plan (2020-2029), funds have been earmarked for the relocation of Wright Road. Approximately 2,000 linear feet of Wright Road will be rerouted to the north of its current alignment, onto adjacent parcel 57, through what is currently agricultural land. The project, which is contingent upon developer contributions and grant funding, would result in the creation of a 3-lane closed section road (one lane in each direction with a continuous left turn lane). Wright Road frequently experiences flooding issues as much of the road is located within the floodplain.

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. As the proposed rezoning site is located on a County road, the only available data on traffic in the vicinity comes from nearby intersections with other County roads.

The County's Division of Engineering & Construction Management collected single day traffic counts at a number of locations in the vicinity of the site in 2016. These locations include the intersections of Hopewell Road and Hunters Green Parkway (north of the site), Hopewell Road near Shawnee Terrace (south), plus Wright Road and Elliott Parkway. Since these were first time collections at these locations, trends cannot be discerned. These counts do however give us an idea of traffic volume occurring in the "neighborhood." The highest traffic volume was recorded at Hopewell Road near its intersection with Hunters Green Parkway at 2046 vehicles. This intersection is within the Hopewell Valley Industrial Park. The lowest count was at Wright Road near Elliott Parkway where 1073 vehicles were counted.

Table 2: 2016 County Traffic Volumes

Hopewell Road at Hunters Green Parkway	2046
Hopewell Road near Shawnee Terrace	1453
Wright Road near Elliott Parkway	1073

Source: Washington County Division of Engineering and Construction Management Traffic Inventory Map

Washington County Engineering Plan Review had no comment after receiving a copy of the rezoning application.

Public Transportation

This area is not directly served by public transportation. Routes 441 of the Washington County Commuter travels along Virginia Avenue in the vicinity south of the site from Hagerstown to Williamsport.

The Hopewell Express, an employment shuttle provided by the Washington County Community Action Council, serves the Hopewell Valley Industrial Park from downtown Hagerstown. It does not travel along Hopewell Road as far south as the rezoning site, however.

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

A. Zoning

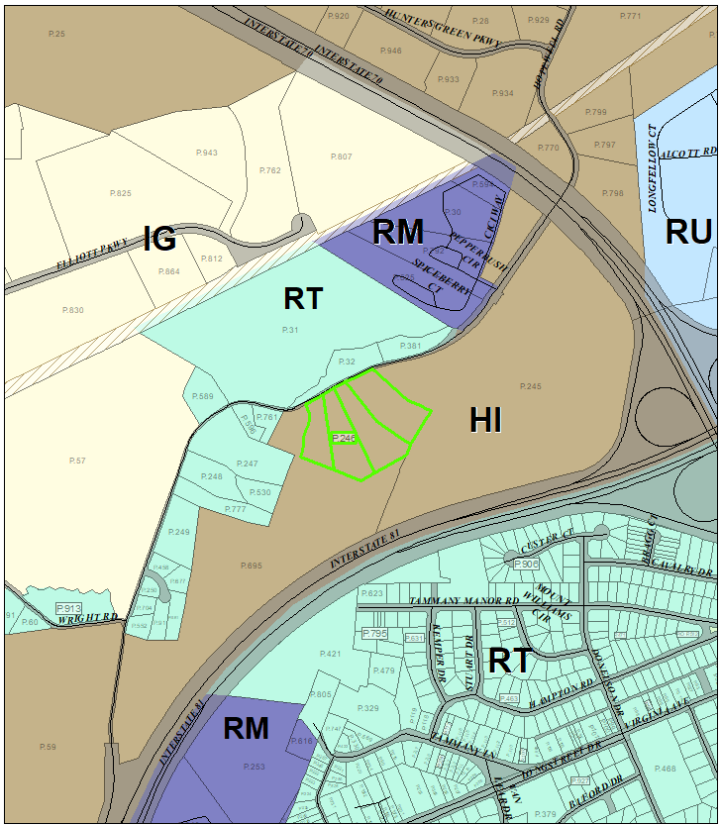
The subject parcels are currently zoned Highway Interchange (HI) and are requesting to change to Residential Transition (RT). The purpose of the RT zoning district is:

"…to provide appropriate locations for single-family and two-family residential development in Urban and Town Growth Areas. The Residential, Transition District is usually located on the outer fringes of the Growth Areas, rather than the inner core, and is intended to be the least dense residential district in the Growth Areas at a density of between 2 and 4 dwelling units per acres …"[2].

Aside from single-family, two-family and semi-detached residences, other select principal permitted uses allowed in a RT zoning district include agriculture, churches, schools, mixed use developments and childcare facilities. Land uses such as bed and breakfasts, banquet and reception facilities and home-based businesses are allowed by special exception.

[2] Washington County Zoning Ordinance, Section 7A

Map 1: Surrounding Zoning Classifications



There is a mix of zoning classes in the immediate vicinity of the four lots subject to this rezoning which are highlighted in green above on Map 1. Highway Interchange (HI) surrounds the properties to the south, northeast and southwest near the intersection of I-70 and I-81. Above I-70 along Hunters Green Parkway is also HI, part of the Hopewell Valley Industrial Park. The land along Elliott Parkway, which backs up to a railroad line, is zoned Industrial General.

To the north, across Hopewell Road, and to the south, below I-81, is Residential Multifamily (RM) and Residential Transition (RT). Residential Urban (RU) is found in the northwest corner of the I-70/I-81 intersection.

B. Land Use

In the immediate "neighborhood" which is formed naturally around Hopewell Road as it passes under I-70, is bounded by the railroad line to the north and I-81 to the south, the land use is entirely residential or agricultural. Both single-family residential and multifamily apartments (Hopewell Manor and Hopewell Station) are found in the vicinity. Lakeside trailer park is found nearby on the north side of I-70, where it intersects with I-81.

This "neighborhood" is mostly self-contained by the barriers presented by these major transportation routes. Therefore, the heavily industrial lands along Elliott Parkway and in Hopewell Valley Industrial Park have limited influence on the immediate environs of these four lots.

C. Historic Sites

Another important component of compatibility is the location of historic structures on and around the parcels being proposed for rezoning. According to the Washington County Historic Sites Survey there are 3 existing historic sites located within an approximately ½ mile radius of the proposed rezoning areas. One of the three sites, known as Sprechers Mill, is located on Lot 1 of the area subject to this rezoning. Below is a listing existing historic resources within a ½ mile radius of the subject parcels.

- WA-I-357: "Sprechers Mill House," early-19th century, 2-story brick dwelling associated with Sprechers Mill (gristmill) formerly located nearby on Semple Run. Listed on National Historic Register.
- WA-I-356: "Hopewell Hereford Farm," early-19th, vernacular, farm complex encompassing 2-story stone house and two bank barns, associated with Sprechers Mill.
- WA-I-364: "Salisbury Mill Site and House (Sprechers Mill)" early-18th century, 1.5-story stone farmhouse associated with Sprechers Mill formerly located on same property.

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

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

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

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

[3] 2002 Washington County, Maryland Comprehensive Plan, Page 243

3. "Change or Mistake" Rule

When rezoning's are not part of a comprehensive rezoning by the governing body, individual map amendments (also known as piecemeal rezoning's) 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 (2012), 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.

The applicant of this case has indicated in their justification statement that they believe that a **mistake** was made by the local legislative body to rezone the property in 2012. As noted in the prior section describing the "Change or Mistake" Rule, the Washington County's Zoning Ordinance requires data to be presented to the local

legislative body on factors such as population change, present and future traffic patterns, the availability of public facilities, the relationship of the proposed change to the Comprehensive Plan and its compatibility with existing and proposed development in order to determine how the area subject to rezoning has evolved since the comprehensive rezoning.

1. 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 that an error occurred as a result of factors such as:

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

The last Comprehensive Rezoning in Washington County was completed in 2012, affecting the Urban Growth Area that surrounds the City of Hagerstown and the towns of Williamsport and Funkstown. The Rezoning affected approximately 17,000 parcels and 38,000 acres of land.[4] Information such as population projections, growth trends, transportation and infrastructure data, and the recommendations of the Comprehensive Plan were considered as a part of this effort. The input of property owners, local officials, County staff and the general public was also solicited and considered in the assignment of each parcel affected by the Comprehensive Rezoning. Landowners were also given the opportunity to appeal the rezoning of their property at that time if they felt aggrieved by the Board's decision.

The applicant contends that the Board of County Commissioner's erred in their decision during the 2012 UGA Comprehensive Rezoning to rezone the lots in question to HI. The applicant claims that factors such as following were not fully considered by the Board in their 2012 decision:

- The existing fact that substantial road improvements would be necessary to make the property suitable for commercial development;
- The existing fact that public water is generally unavailable to the property;
- The assumption that the property would likely be developed in conjunction with neighboring Parcel 695.

[4] Washington County Ordinance No. ORD-2012-08

i. Property Background Information

Before analyzing the applicant's assertion that the local legislative body erred in their decision to rezone the property in 2012 from HI-2 to HI, its important to understand some background context on the property's developmental history.

First, the original intent of the owner for the property was to develop them as residential lots. This is evident by virtue of the recordation of Washington County Plats 6462-6463 in 2000 which created the four-lot subdivision (Applicant's Exhibit 1). Lot 1, as noted earlier, already had a house on it at that time which dated to the early 1800s and was built in the vicinity of a nearby grist mill which operated during the same time period. The plat, which depicts proposed locations of dwellings and septic areas, therefore represented a continuation of the rural residential land use long present in the area of the site.

Second, the zoning of the property prior to 2012 was HI-2. The now repealed HI-2 zoning district was a predominantly high-density residential zoning district that also allowed some light industrial uses. The rezoning of the property from HI-2 to HI, which does not allow residential development, thereby constituted an intensification of the permitted land uses on the property from its historical pattern of development.

Finally, a significant factor in the Board's decision to rezone the property to HI in 2012 was a formal request from the property owner (Applicant's Exhibit # 4). The applicant's request was based upon the following reasoning or assumptions:

1. The proximity of the property to I-81;
2. The HI zoning would match adjacent parcel 245 (located immediately north of the site);
3. The parcel would be developed in tandem with parcel 695 (also owned by Mr. Bowman, located immediately south of the site)

This request contradicted the County's original proposed zoning for the site in 2012, which was RT (Applicant's Exhibit # 3, line 22). RT is what the applicant is currently requesting for the property.

ii. Substantial Road Improvements

The applicant's first assertion in their contention that a mistake was made to rezone the property to HI in 2012 is that substantial road improvements would be necessary to make the property suitable for commercial development. Consistent with the conditions

described in the applicant's Justification Statement, **the suitability of the existing road network in the area to provide for the size or volume of vehicles consistent with an HI zoning designation is highly questionable**.

As noted by the applicant, while there is proximate access to I-81 Exit 3 (Virginia Avenue near Williamsport) less than 2 miles from the subject site, Hopewell Road itself is entirely unsuitable for commercial vehicle traffic in its present condition. Hopewell Road beyond the I-70 underpass can be generally characterized as a typical narrow County road with limited or no shoulders in certain segments. Further, at the intersection of Hopewell and Wright Road, it is necessary to cross a narrow one-lane bridge over Semple Run in order to proceed to I-81 Exit 3.

The applicant goes on to present cost estimates, environmental concerns and other considerations that would essentially make the necessary road improvements to Hopewell Road to serve a commercial/industrial use infeasible (Applicant's Exhibits # 5 - # 9). Commercial vehicle access to I-81 Exit 5 (Halfway Blvd), of similar distance to the rezoning site as Exit 3, would also likely necessitate significant road improvements such as shoulder widening and potentially an upgrade to the railroad crossing just beyond the I-70 underpass where Hopewell Road intersects the CSX rail line.

Further, as noted earlier in this staff report, the existing path of Wright Road frequently experiences closures due to flooding as much of the road is located within the floodplain. For this reason, the County has budgeted for the relocation of the road within its current 10-Year CIP. Therefore, the present condition of Wright Road, which would provide an alternate route to I-70 Exit 24 (MD-63) for truck traffic from a prospective commercial/industrial business at the subject site, is also inadequate for the task.

Thus, staff agrees with the applicant that substantial road improvements would have to be made to the current condition of multiple roads in the vicinity in order to adequately and safely serve a commercial or industrial business at the site of this rezoning. The existing conditions of Hopewell Road as well other alternative routes that would potentially serve the heavy vehicle traffic generated by an HI use would certainly have been evident to the Board at the time of its decision in 2012.

ii. Public Water Availability

The applicant's second major argument in support of a mistake in the current zoning is the lack of public water available to the site. Adequate water and sewer infrastructure are imperative to serve the needs of commercial or industrial land uses. The ability these types of businesses to operate on a well and septic system is typically impractical, as it carries

risks to public health and limits the potential for future expansion of operations at the same site. Therefore, public water and sewer access is optimal to serve commercial and industrial land uses in most cases.

The current W-5 (Long Term Planned Service) and S-3 (Programmed) service designations in the County's 2009 Water and Sewer Plan for the site were noted earlier in this report. These designations indicate that while connection to public sewer service is generally available to the site, public water (via the City of Hagerstown) is not readily available to the site.

It's additionally pointed out by the applicant that **these lots lie outside the City's Medium-Range Growth Area (MRGA)**. **Properties within the MRGA are prioritized by the City for connection to public water or sewer service when it becomes available while those outside the MRGA are not eligible for connection unless a special exception applies**. It is not clear that the site in question would qualify for a special exception under the City's water and sewer connection policies, particularly if it was not developed in tandem with adjacent properties that might then cause such a project to be viewed as a significant boost to economic development for the City and County.

Therefore, when one combines both the difficulty of providing adequate road access with the current hurdles to connecting with public water to the site, it is evident that significant infrastructural hurdles exist to develop these properties into a large scale commercial or industrial use as might be expected with an HI zoning designation. The City's exceptions to its water and sewer policies for extending service outside the MRGA, as well as the boundaries of the MRGA, and the current service designations were all in evidence in 2012 at the time of the Comprehensive Rezoning.

iii. Future Development Assumptions

At the time of the Comprehensive Rezoning of the UGA, it was the assumption of the landowner that that this property would be developed in tandem with parcel 695, also owned by Mr. Bowman, located to the south. This assumption was set forth in the applicant's request letter mentioned previously. Ultimately, the barriers already discussed to the development of a commercial or industrial use at the site (roads, public water) have proven to be a significant hinderance to developing either of the two parcels in question owned by Mr. Bowman. As a result, the assumption utilized by both the applicant and the Board during the 2012 Comprehensive Rezoning proved to be incorrect with the passage of time.

III. Recommendation:

The applicant has claimed that a mistake was made to rezone the property from HI-2 to HI in 2012. The burden of the applicant in a "Mistake" case is to provide evidence that the Board:

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

Regarding the charge of mistake, while not the sole basis for the County's decision to apply the HI zoning classification to the property in 2012, the property owner's request for this classification surely played a large role in the County's decision. The passage of time has revealed that the rationale utilized to justify the rezoning at the time, such as the proximity of the site to I-81 and the potential for it to build out as a commercial or industrial use in tandem with neighboring parcels, was incorrect. It is also likely that further consideration about the present adequacy of public infrastructure (roads, water and sewer) to support development of this intensity in this location may not have been given full consideration in the decision to apply the HI zoning.

Consequently, staff concludes that convincing proof has been offered by the applicant demonstrating that a mistake was made to rezone the property from HI-2 to HI in 2012. The applicant's request for the RT zoning classification is entirely logical for the present subdivision of the property and its past development history. The development of a residential use on these properties would fit the existing character of the neighborhood and place significantly less burden on existing public infrastructure in the vicinity. It would also allow the County to proceed with capital road projects, such as the relocation of Wright Road out of its current location in the floodplain, in the timeline currently laid out in the CIP without additional pressure to move up the timeline for capital improvements.

Respectfully Submitted,

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