



MONTGOMERY COUNTY DEPARTMENT OF PARKS
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Item No. 17

MCPB Date: July 11, 2013

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Mary R. Bradford, *Director of Parks*
Michael F. Riley, *Deputy Director of Parks* MR

FROM: Megan S. Chung, *Associate General Counsel* MSC

SUBJECT: Conveyance of the Rock Creek Hills Local Park to Montgomery County

STAFF RECOMMENDATION: AFFIRM the authority of the Montgomery County Planning Board (the "**Board**") to approve the conveyance of the Rock Creek Hills Local Park (the "**Parcel 2**" or the "**Park**") to Montgomery County (the "**County**"), pursuant to the terms of the Transfer Agreement dated February 9, 1990 (the "**Transfer Agreement**"), by Montgomery County and Maryland-National Capital Park and Planning Commission (the "**Commission**"), and condition the conveyance of the Park on the following:

- (a) the County reimburse the Commission \$695,052.

BACKGROUND:

1. Previously, the Board of Education of Montgomery County, Maryland (the "**BOE**"), transferred to the County a certain parcel of ground then known as the Kensington Junior High School site, located in Kensington, Maryland.
2. The County then transferred a portion referred to as "Parcel 2" of the Kensington Junior High School site to the Commission, which became the Park, on the condition that if the BOE shall determine that Parcel 2 is needed for construction of a public school facility, and the County concurs with that determination, the Commission would transfer Parcel 2 to the County upon fulfillment of certain conditions – namely the reimbursement to the Commission of (a) the costs incurred by the Commission for improvements made to Parcel 2 and (b) prior payment made by

Commission to the County at the time of the transfer of Parcel 2 to the Commission (collectively, the "**Commission Reimbursement**").

3. In 2012, the BOE determined that Parcel 2 was needed to construct a middle school and the BOE sought the County's concurrence with the BOE's decision (the "**BOE Determination**").
4. The County subsequently concurred with the BOE Determination and issued a notice to the Commission of the County's exercise of its rights under the Transfer Agreement to reclaim Parcel 2 from the Commission.
5. The BOE and the County have fulfilled the Transfer Agreement conditions before the Commission is obligated to convey the Park back to the County. The County has further confirmed that the Commission requested reimbursement amount of \$695,052 is ready to be disbursed.
6. Under the terms of the Transfer Agreement, the Commission is obligated to convey the Park back to the County if the above conditions are fulfilled. The conditions are met now.

The 1990 Deed and Transfer Agreement attached as Attachment 1.

LIBER 9320 FOLIO 95

Parcel I.D. 13-501-954296

DEED

11/50
011 104 1007
11
2:
3:

THIS DEED is made this 10 day of May, 1990. by
and between MONTGOMERY COUNTY, MARYLAND, 101 Monroe Street,
Rockville, Maryland 20850, hereinafter called the "Grantor", and
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, 8787
Georgia Avenue, Silver Spring, Maryland 20910, hereinafter called
the "Grantee".

WITNESSETH:

WHEREAS, the Grantor is the owner in fee simple of a certain
parcel of ground situate and lying in Montgomery County, Maryland,
comprising approximately 21.6 acres and generally known as the
Kensington Junior High School site, located in Kensington,
Maryland, (hereinafter called the "Property"); and

WHEREAS, the Property was transferred to the Grantor by the
Board of Education of Montgomery County, Maryland, through a deed
recorded on March 23, 1988 in Liber 8198 at Folio 566 among the
Land Records of Montgomery County, Maryland, upon a determination
by the Board of Education of Montgomery County, Maryland, that
the Property was no longer needed for public school purposes, and
in accordance with Section 4-114 of the Education Article,
Annotated Code of Maryland; and

WHEREAS, the Montgomery County Council conducted a public
hearing on the alternatives for reuse of the property on March
18, 1986, approving an array of alternatives by Resolution No.
10-1989; and

AGRICULTURE TRANSFER TAX IN THE
AMOUNT OF \$ N/A
SIGNATURE LLE

APPROVED
ASSESSMENTS DIST

CREATING DATE May 17, 1990

RL

1990 MAY 17 AM 10:10
CLERK'S OFFICE
MONTGOMERY COUNTY, MD
EQ. FEE = MNCPPC

State Department of
Assessments & Taxation
for Montgomery County
LLE 06825

ROCK CREEK HILLS
LOCAL PARK

WHEREAS, the County Executive, by Executive Order No. 53-86, approved the joint reuse of the property by the COMMISSION and the Housing Opportunities Commission; and

WHEREAS, the County Council held a second public hearing on June 25, 1987, to consider the specifics of the proposed joint reuse, and approved said specifics, with conditions, by Resolution No. 11-548; and

WHEREAS, the COMMISSION and the COUNTY desire to effect the transfer of the property, subject to the conditions of approval, and to set forth their respective agreements in this regard.

NOW, THEREFORE, in consideration of the mutual promises made in the Transfer Agreement between the Grantor and Grantee dated February 9, 1990 attached hereto as Schedule A, the Grantor does hereby grant and convey in fee simple unto the Grantee, its successors and assigns, all that parcel or parcels of ground situate and lying in Montgomery County, Maryland, and more particularly described as follows:

Being a portion of the Kensington Junior High School site, comprising a total of 13.3874 acres, located in Kensington, Maryland, which portion of the property is described in Schedule B, attached hereto and made a part hereof.

TOGETHER with the improvements thereon erected and any and all of the rights, alleys, ways, waters, privileges and appurtenances in anywise appertaining thereunto.

SUBJECT to all restrictions, covenants, rights of way and easements of record.

SUBJECT to the conditions stated in the Transfer Agreement between the Grantor, Montgomery County, Maryland, and the Grantee, The Maryland-National Capital Park and Planning Commission, dated February 9, 1990, attached hereto as Schedule A and made a part hereof.

TO HAVE AND TO HOLD the said lot of ground and premises above described and mentioned unto and to the proper use and benefit of the said Maryland-National Capital Park and Planning Commission, its successors and assigns, in fee simple.

WITNESS the hand and seal of the said Grantor.

WITNESS:

[Signature]
REY JUNQUERA

MONTGOMERY COUNTY, MARYLAND


[Signature]
Sidney Kramer
County Executive

STATE OF MARYLAND)
COUNTY OF MONTGOMERY) ss:

I HEREBY CERTIFY that on this 10 day of May, 1990, before me, the subscriber, a Notary Public of the aforesaid State and County, personally appeared Sidney Kramer, who acknowledged himself to be the County Executive of Montgomery County, Maryland, and, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing in my presence the name of Montgomery County, Maryland.

My Commission Expires:

July, 1990

[Signature]
Notary Public


I HEREBY CERTIFY that I am an attorney duly admitted to practice before the Court of Appeals of Maryland and that the within instrument was prepared under my supervision.

Carol S. Rubin
CAROL S. RUBIN
ASSISTANT COUNTY ATTORNEY

Approved as to form and legality
Montgomery County, Md. County Attorney's Office
By: *William E. Gries* 4/27/90

AFFIDAVIT OF CONSIDERATION

The undersigned hereby certifies under the penalty of perjury that the actual consideration paid or to be paid for the foregoing conveyance including the amount of any mortgage or deed of trust assumed by the grantee is in the sum of \$120,737.39.

William E. Gries
William E. Gries
M-N C P P C

Grantor: Montgomery County, Maryland
101 Monroe Street
Rockville, Maryland 20850

Grantee: The Maryland-National Capital
Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Property Address: Saul Road & Haverhill Drive
Kensington, Maryland

Parcel I.D. #: Part of 13-501-954296

Title Insurance: N/A

MAY 17 1990

13-501-954296

of Taxes on assessments certified to the
Collector of Taxes for Montgomery County
and by 5/17/90 have been paid Dept. of
Finance Montgomery County, Md. This
statement is for the purpose of perceiving,
recording and is not assurance against
further taxation even for prior periods.
does it guarantee satisfaction of outst-
ing tax sales

TRANSFER TO GOVERNMENTAL, RELIGIOUS,
OR CHARITABLE ORGANIZATION

W. E. Gries
Douglas D. Boring

LIBER 9320 FOLIO 99

KENSINGTON JUNIOR HIGH SCHOOL SITE

TRANSFER AGREEMENT

THIS AGREEMENT, entered into this 9 day of Feb., 1989⁹⁰, by and between MONTGOMERY COUNTY, MARYLAND, a body corporate and politic (hereinafter referred to as the COUNTY), and the MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION (hereinafter referred to as the COMMISSION).

WITNESSETH:

WHEREAS, the COUNTY is the owner in fee simple of a certain parcel of ground situate and lying in Montgomery County, Maryland, comprising approximately 21.6 acres and generally known as the Kensington Junior High School site, located in Kensington, Maryland (hereinafter referred to as the PROPERTY); and

WHEREAS, the PROPERTY was transferred to the COUNTY by the Board of Education of Montgomery County, Maryland, upon a determination by the Board of Education of Montgomery County, Maryland that the PROPERTY was no longer needed for public school purposes, and in accordance with Section 4-114 of the Education Article, Annotated Code of Maryland; and

WHEREAS, THE Montgomery County Council conducted a public hearing on the alternatives for reuse of the PROPERTY on March 18, 1986, approving an array of alternatives by Resolution No. 10-1989; and

WHEREAS, the County Executive, by Executive Order No. 53-86, approved the joint reuse of the PROPERTY by the COMMISSION and the Housing Opportunities Commission; and

WHEREAS, the County Council held a second public hearing on June 25, 1987, to consider the specifics of the proposed joint reuse, and approved said specifics, with conditions, by Resolution No. 11-548; and

WHEREAS, the COMMISSION and the COUNTY desire to effect the transfer of the PROPERTY, subject to the conditions of approval, and to set forth their respective agreements in this regard,

NOW, THEREFORE, the parties hereto agree as follows:

1. The COUNTY shall convey to the COMMISSION, subject to all easements, rights-of-way, restrictions, covenants and any other encumbrances of record, and upon the COMMISSION's compliance with all agreements herein contained, all that parcel or parcels of ground situate and lying in Montgomery County, Maryland, comprising a total of 13.3874 acres, being a portion of the Kensington Junior High School site, located in Kensington, Maryland, which portion of the PROPERTY is described in Exhibit A, attached hereto and made a part hereof, and which portion is hereinafter referred to as PARCEL 2, together with any and all of the rights, alleys, ways, waters, privileges and appurtenances in any way appertaining thereunto, and subject to all restrictions, covenants, rights-of-way and easements of record.
2. The COMMISSION agrees to assume its proportionate share of debt service assigned to the COUNTY by virtue of its acquisition of the PROPERTY, which proportionate share is in the amount of ONE HUNDRED TWENTY THOUSAND SEVEN HUNDRED THIRTY-SEVEN and 39/100 (\$120,737.39) DOLLARS, including principal and interest. The COMMISSION agrees to pay the COUNTY the said debt service, in a lump sum amount, upon execution of this Transfer Agreement and prior to conveyance of PARCEL 2 to the COMMISSION by separate deed documents.
3. The COMMISSION agrees that PARCEL 2 shall be used as a park, and shall not be used for any other purpose whatsoever without the COUNTY's express written consent thereto.
4. The COMMISSION agrees that it shall not transfer any right, title or interest in PARCEL 2 or any portion thereof to any third party without the COUNTY's express written consent thereto, and that upon transfer of any right, title or interest in PARCEL 2 to a third party pursuant to the written consent of the COUNTY, any and all proceeds received by or accruing to the COMMISSION as a result of such a transaction shall be paid to the COUNTY by the COMMISSION within thirty (30) days after execution of any agreement or other document effecting the said transfer except that the COMMISSION shall be permitted to deduct from its payment to the COUNTY those amounts paid by the

LIBER 9 3 2 0 FOLIO 1 0 1

COMMISSION in order to acquire PARCEL 2 in accordance with Items 2 and 5 herein. The COUNTY may attach such other conditions to its approval as it deems necessary and appropriate.

5. The COMMISSION agrees to reimburse the COUNTY for any reasonable expense incurred by the COUNTY for survey work, recording fees, and any other cost incurred by the COUNTY in order that PARCEL 2 may be transferred to the COMMISSION. The COMMISSION shall effect the said reimbursement in the form of a lump sum payment, due within thirty (30) days after receipt of billing therefor from the COUNTY.
6. The COMMISSION agrees that in the event the Montgomery County Public Schools shall determine that PARCEL 2 is again needed for construction of a public school facility, and the County Executive concurs with that determination, the COMMISSION shall transfer PARCEL 2 to the COUNTY, upon the following conditions:
 - a. The COUNTY shall reimburse the COMMISSION for any amounts paid by the COMMISSION pursuant to items 2 and 5 hereinabove.
 - b. The COUNTY shall reimburse the COMMISSION for the documented cost of recreational improvements installed by the COMMISSION on PARCEL 2.
 - c. The COMMISSION acknowledges and agrees that reimbursement by the COUNTY for the cost of recreational improvements shall specifically exclude any amounts toward the purchase of substitute real property.
 - d. The COMMISSION acknowledges and agrees that any reimbursement by the COUNTY shall be subject to available appropriations.
7. The COMMISSION agrees that it will give primary consideration, in developing PARCEL 2, to the conservation of the trees and other unique natural features of the site for the continuing enjoyment of the surrounding community. Storm water erosion and runoff shall be kept to a minimum, and development on other than the flat portions of the site is to be carefully controlled.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to, be properly executed.

MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION

Attest:

By: A. Edward Nerone
SECRETARY - TREASURER

By: John F. Downs, Jr.
Executive Director

APPROVED AS TO LEGAL SUFFICIENCY
Downs
M-NCPPC Legal Department
Date: 1/21/90

Date: _____

MONTGOMERY COUNTY, MARYLAND

Attest:

By: Jeanne Poore

By: Lewis T. Roberts
Chief Administrative Officer

Date: 2/9/90

APPROVED AS TO FORM & LEGAL SUFFICIENCY
OFFICE OF THE COUNTY ATTORNEY

By: [Signature]

Date: 1/25/90

15340



DEVELOPMENT
CONSULTANTS
GROUP, INC.

SURVEYORS, ENGINEERS & LAND PLANNERS

Suite 102, 17904 Georgia Ave. Olney, Maryland 20832

301-924-4570

DESCRIPTION OF PARCEL 2, PART OF THE
KENSINGTON JUNIOR HIGH SCHOOL LOT
13.3874 ACRES

JUNE 18, 1987

Being all that piece or parcel of land situate, lying and being in the Wheaton (13th) Election District, Montgomery County, Maryland and being part of the land conveyed to the Montgomery County Board of Education from the Continental Life Insurance Company, Inc) by the following two (2) deeds: 1) Part of a deed dated March 11, 1938 and recorded in Liber 701 at Folio 331, and 2) Part of a deed dated April 16, 1937 and recorded in Liber 664 at Folio 258, both deeds being recorded among the Land Records of Montgomery County, Maryland.

Beginning at a point on the Western right of way of Haverhill Drive, said point being at the beginning of the South 02°22'14" West, 296.22 feet line of Block One, School Lot, as shown on a plat entitled Rockcreek Valley Estates, Section One and recorded in Plat Book 11 as Plat 785 among the Land Records of Montgomery County, Maryland, then with said lot, as now surveyed

1. South 02°19'58" West, 296.22 feet to a point, then
2. 424.57 feet along the arc of a curve to the right, having a radius of 413.82 feet and a chord bearing and distance of South 31°43'29" West, 406.19 feet to a point, then
3. South 61°07'01" West, 290.66 feet to a point, then
4. 344.83 feet along the arc of a curve to the right, having a radius of 506.68 feet and a chord bearing and distance of South 80°36'47" West, 338.21 feet to a point, then
5. North 79°53'26" West, 59.90 feet to a point, then running to cross and include part of the subject property
6. North 03°13'57" West, 539.09 feet to a rebar with cap set, then

SCHEDULE B

7. East 312.90 feet to a rebar with cap set, then
8. North 300.00 feet to a rebar with cap set, then
9. North $77^{\circ}33'59''$ East, 262.73 feet to a rebar with cap set, then
10. East 331.70 feet to a rebar with cap set on curve number 15 of the afore mentioned plat, then with said curve
11. 68.37 feet along the arc of a curve to the right, having a radius of 485.16 feet and a chord bearing and distance of South $01^{\circ}42'18''$ East, 68.31 feet to the place of beginning, containing 583,154 square feet or 13.3874 acres of land.

Subject to any and all easements and rights of way of record.

LIBER 9320 FOLIO 105

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3780



Clerk to the Circuit Court
Judicial Center
Rockville, Maryland 20850

Dear Clerk:

Please record among the Land Records of Montgomery County, Maryland the attached deed conveying land to The Maryland-National Capital Park and Planning Commission. The Commission is a State-created agency authorized to buy and sell property pursuant to Article 28 of the Annotated Code of Maryland and is exempt from transfer and recording fees. Your cooperation in this regard is appreciated.

Sincerely,

William E. Gries

William E. Gries
Land Acquisition Specialist

WEG/dw
Enclosure