

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
at Norfolk

COUNTER FILED

2002 AUG -9 A 10:38

In re:

TRAK AUTO CORPORATION

Case No.: 01-72167-DHA
Chapter 11

U.S. BANKRUPTCY COURT
NORFOLK DIVISION

Debtor

* * * * *

**LIMITED OBJECTION OF MH PROPERTY, LLC. TO DEBTOR'S MOTION
TO CONDUCT STORE CLOSING SALES AND ESTABLISH BAR DATE**

MH Property, LLC., creditor and party in interest ("MH Property"), by and through undersigned counsel, and pursuant to 11 U.S.C. §§ 363 and 365, files this Limited Objection to the Debtor's Motion to Conduct Store Closing Sales and Establish Bar Date ("Motion") and in support thereof states as follows:

1. On or about July 5, 2001 ("Petition Date"), Trak Auto Corporation, the Debtor ("Debtor") filed a voluntary petition under chapter 11 of the United States Bankruptcy Code ("Code"). The Debtor owns and operates numerous auto supply stores in several states.
2. On or about July 30, 2002, the Debtor filed the Motion. In the Motion, the Debtor seeks authority to conduct store closing sales at the properties which are to cease operations. These locations are identified in the Motion. Additionally, stores which are to continue operations are to be sold to Advanced Auto Parts ("Advanced"). The Motion contemplates that the Debtor will assume and assign the leases for the stores which will be sold to Advanced.
3. MH Property is the Debtor's landlord for the store located at 6300 New Hampshire Avenue, Takoma Park, Maryland. The Debtor and MH Property are parties to a lease ("Lease") for this store.¹ The Debtor is in default under the terms of the Lease.

¹The Lease is between Shoppers Food Warehouse, Corp. and the Debtor. MH Property acquired the Lease when it purchased the property in June 2001.

4. Specifically, the Lease requires the Debtor to pay the real property taxes associated with the store. See Exhibit 1, Lease at ¶ 7.2. The Debtor has failed to pay the real property taxes for the period of July 1, 2001 through June 30, 2002. The Debtor owes MH Property Thirty-Four Thousand, Two Hundred Forty-One Dollars and .47/100 (\$34,241.47) in real estate taxes for this period. See Exhibit 2.

5. Additionally, the Debtor has failed to make payment for the taxes for the tax year running from July 1, 2002 through June 30, 2003. See Exhibit 3. These taxes are due and must be paid by September 30, 2002. The Debtor owes MH Property Thirty Thousand, Four Hundred Seven Dollars and .99/100 (\$30,407.99) for the property taxes for this time period.

6. Further, the Lease requires the Debtor to pay as extra rent a percentage of its sales. See Exhibit 1, at ¶2.2. Therefore, the Lease requires the submission of sales reports so the Landlord may calculate this extra rent. The Debtor has failed to submit these sales reports as required since July, 2001. Therefore, it is likely that the Debtor has failed to tender all rent owed to the Landlord and the Debtor is in default for failure to pay percentage rent.

7. According to the Motion, the store at 6300 New Hampshire Avenue, Takoma Park, Maryland is to be transferred to Advanced. MH Property objects to the assumption and assignment of the Lease by the Debtor because the Lease is in default. Specifically, as indicated above, the Debtor has failed to pay property taxes owed and failed to submit sales reports in a timely fashion.

8. Pursuant to § 365 of the Code, a Debtor may assume and assign a lease only if all defaults are cured or adequate assurances are provided that the defaults will be cured. This requires that the trustee demonstrate the ability to cure defaults under the contract and make future payments. See In re Superior Toy and Manufacturing Co., 78 F.3d 1169 (7th Cir. 1996);

Wainer v. A.J. Equities, Ltd, 984 F.2d 679 (5th Cir. 1993). Further, the Debtor must provide adequate assurance of future performance under the lease. 11 U.S.C. § 365(b).

9. In this case, the Debtor cannot assume the Lease because the Debtor is in default. The Debtor owes the landlord at least Sixty-Four Thousand, Six Hundred Forty-Nine Dollars and .46/100 (\$64,649.46) pursuant to the terms of the Lease and must cure this default. Further, the Debtor has not provided any assurances of future performance under the Lease. No financial information on Advanced has been provided and therefore, there is no information on Advanced's ability to perform under the Lease. Therefore, pursuant to § 365(b) of the Code, the Debtor cannot assume and assign the Lease to Advanced.

10. Additionally, the Lease requires the Debtor to pay reasonable attorney's fees associated with enforcement of lease obligations. Section 365 of the Code permits the collection of attorney's fees in enforcing lease obligations. See In re Shangra-La, Inc., 167 F.3d 843 (4th Cir. 1999). These fees must be paid to cure the default and permit the assumption of the Lease.

11. MH Property objects only to the assumption and assignment of the lease for the property located at 6300 New Hampshire Avenue, Takoma Park, Maryland and does not object to the store closing sales or assumption and assignment by the Debtor of its other leases.

12. Undersigned counsel is on vacation with his family in South Carolina through August 15, 2002, and therefore, requests that a hearing on this Objection, to the extent required by the Court, be set after August 15, 2002.

13. Pursuant to Local Rule 9013, no memorandum of law accompanies this Objection, and MH Property relies on the sources cited herein.

WHEREFORE, MH Property, LLC. respectfully requests that this Court enter an Order that:

- A. Sustains the Limited Objection to the Debtor's Motion to Conduct Store Closing Sales and Establish Bar Date;
- B. Denies the Debtor's request to assume and assign the Lease for the property located at 6300 New Hampshire Avenue, Takoma Park, Maryland; and
- C. Grants such other and further relief as justice and equity demand.

Respectfully submitted,

Richard Rosenblatt
 Richard B. Rosenblatt, #33802
 The Law Offices of Richard B. Rosenblatt, PC.
 30 Courthouse Square, Suite 302
 Rockville, Maryland 20850
 (301) 838-0098

Counsel for MH Property, LLC.

Certificate of Service

I HEREBY CERTIFY that on the 8th day of August, 2002, a copy of the foregoing, Limited Objection to the Debtor's Motion to Conduct Store Closing Sales and Establish Bar Date by was served by first class mail, postage pre-paid on:

Peter G. Zemanian, Esquire
 Wilcox & Savage, P.C.
 1800 Bank of America Center
 Norfolk, Virginia 23501

James T. Lloyd, Jr., Esquire
 Trapani, Bernard & Lloyd, PLC
 City Centre, Suite 200
 223 E. City Hall Avenue
 Norfolk, Virginia 23510

December 29, 2004

C. Robert Dalrymple
301.961.5208
bdalrymple@linowes-law.com

BY HAND

Ms. Catherine Conlon
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Preliminary Plan No. 1-01067E (the "Preliminary Plan"); East Hampshire Center (the "Project") - Request for Extension of Preliminary Plan Validity Period (the "Extension Period")

Dear Ms. Conlon:

Summary

The purpose of this letter is to provide further justification for the Extension Request for a limited period of time and to respond to the opposition to this Extension Request by the City of Takoma Park (the "City"). The Applicant is requesting a 73 day extension of the Preliminary Plan validity period, during which time the Applicant can submit a record plat of subdivision to validate the preliminary plan of subdivision approval and utilize the extensive engineering and architectural plans developed in anticipation of constructing the Project (a self storage facility which is essentially ready for construction pending purely ministerial governmental approvals). The Planning Board is properly empowered to grant the Extension Request pursuant to the regulations set forth in Section 50-35(h)(3) of the Subdivision Regulations. Succinctly stated, the basis for the Extension Request relates to the inability of the Applicant (at no fault of its own) to record the plat validating the Preliminary Plan due to pending bankruptcy and litigation issues involving a tenant, which issues precluded the altering of the premises (because of the cloud on title resulting from the bankruptcy/litigation) which would occur with dedication requirements associated with the Preliminary Plan and subsequent record plat.

The opposition to the Extension Request by the City is a thinly veiled attempt to block a permitted use in the C-2 zone under the guise of requesting site plan review. The City's arguments against the Extension Request and reliance upon the Takoma Park/East Silver Spring Commercial Revitalization Overlay Zone (the "Overlay Zone") in seeking site plan review (as elaborated upon in letters transmitted to the Staff on December 27, 2004 from

Ms. Catherine Conlon
December 29, 2004
Page 2

Councilmember Bruce Williams and City Attorney Susan Silber) are misplaced and factually and legally erroneous. The requirement for site plan review (and generally for the application of the provisions of the Overlay Zone) is not associated with the subdivision process but rather relates to whether or not a building permit application was applied for as of the effective date of the mapping of the Overlay Zone (See Section 59-C-18.216(a)(i)). Because this Project has a currently pending building permit application (See Attachment "1" hereto, this being the current status of the building permit application from DPS records as of December 29, 2004) which predated the mapping of the Overlay Zone, site plan (and application of the Overlay Zone generally) is not required. Site plan review (and application of the Overlay Zone provisions) is wholly irrelevant to the issue of whether the Extension Request for the Preliminary Plan should be granted. Nevertheless, while the Overlay Zone is not in play, site plan review did *de facto* occur in conjunction with the original Preliminary Plan approval, and many of the purposes of the Overlay Zone are indeed satisfied by the Project approved with the Preliminary Plan (economic revitalization, enhanced pedestrian environment and improved circulation, vastly upgraded water quality/stormwater management, etc.).

Procedural History

To briefly recap the procedural history of this Project, the Preliminary Plan was approved by Opinion of the Board mailed on August 17, 2001 (attached hereto as Attachment "2"), subject to several specific conditions. The approval period was for 37-months from the date of mailing, or September 17, 2004. By letter dated September 13, 2004, the Applicant requested a 120 day extension of the validity period, citing in that letter reasons justifying the Extension Request (a copy of which letter is attached hereto as Attachment "3" (which reasons are summarized herein as well). On September 30, 2004, the Planning Board approved the Extension Request, thereby extending the validity period of the Preliminary Plan to January 31, 2005. By letter dated November 10, 2004, the City requested that the Planning Board reconsider the decision to extend the Preliminary Plan, citing to inadequate notice having been provided to the City (the City having been a party of record to the original proceedings for the Preliminary Plan). On November 19, 2004, M-NCPPC staff transmitted a letter (the "November 19 Staff Letter", Attachment "4") to Mayor Porter of the City indicating that the Planning Staff agreed that notice had been improperly given for the Extension Request and indicating that the Staff would request that the Board reconsider the Extension Request approval. On December 9, 2004, the Planning Board voted to reconsider the Extension Request and to set the Extension Request for further public hearing after proper notice could be provided. The effect of this reconsideration vote was to suspend the extension of the Preliminary Plan validity period. The Extension Request remains timely noted pursuant to Section 50-35 of the Subdivision Regulations.

Ms. Catherine Conlon
December 29, 2004
Page 3

Justification for Extension Request

The Preliminary Plan is eligible for extension of the validity period under both Sections 50-35(h)(3)(d)(i) and (ii) of the Subdivision Regulations:

d. Grounds for Extension of the Validity Period of a Preliminary Plan. The Planning Board may only grant a request to extend a validity period of a preliminary plan if the Board is persuaded that:

(i) Delays, subsequent to the plan approval by the government or some other party, central to the applicant's ability to perform the terms or conditions of the plan approval, have materially prevented applicant from validating the plan, provided such delays are not created or facilitated by the Applicant; or

(ii) the occurrence of significant, unusual, and unanticipated events, beyond the Applicant's control and not facilitated or created by Applicant, has substantially impaired Applicant's ability to validate its plan and that exceptional or undue hardship (as evidenced, in part, by the efforts undertaken by Applicant to implement the terms and conditions of the plan approval in order to validate its plan) would result to Applicant if the plan were not extended.)

To validate the Preliminary Plan approval, the Applicant was required to record a record plat for all the property delineated on the approved preliminary plan (the "Property") within 37 months, or by September 17, 2004. Approximately one month after the Applicant acquired the Property, the existing tenant on the Property, Trak Auto, filed for bankruptcy in the Federal Bankruptcy Court. Pursuant to bankruptcy laws, the Applicant was precluded from recording a plat until the issues of bankruptcy were finally resolved and released from the protection of the Bankruptcy Court. The Bankruptcy Court ultimately awarded all of Trak Auto's assets to Advanced Auto, and the Applicant initiated efforts with Advanced Auto to have previously executed agreements with Trak Auto relating to the redevelopment of the Property (and the platting of the Property) implemented, clearing the way for the recordation of the plat and redevelopment of the Property for the intended self-storage use. Unfortunately, however, Advanced Auto failed to honor the agreements previously entered into between the Applicant

Ms. Catherine Conlon
December 29, 2004
Page 4

and Trak Auto, and litigation ensued. Through the pendency of the bankruptcy and litigation proceedings, it was not possible to establish the necessary clear title to the Property for purposes of altering the Property through the recordation of the plat. The primary issues relative to recording the plat involved the changing boundaries of the Property (the leased premises) as a result of dedication required as part of the Preliminary Plan approval. While the Applicant has diligently pursued resolution of these issues, and recently (i.e., in the last several days) has made sufficient progress in resolving the issues to permit plat recordation, the issues impacting the ability to record the plat during the initial validity period of the Preliminary Plan approval were beyond the control of the Applicant.

During the pendency of the bankruptcy proceedings and subsequent litigation with Advanced Auto, the Applicant pursued a building permit from the Montgomery County Department of Permitting Services, a tree removal permit and stormwater management approval from the City and all other necessary regulatory approvals (including SHA approvals) for the self-storage facility (a summary of the Applicant's efforts to obtain all other regulatory approvals for the Project during the validity period of the Preliminary Plan, and the City's extensive involvement in these processes, is documented by the project civil engineer in Attachment "5" hereto). Without record plat approval, however, it was not possible for the Applicant to have permits issued and to implement the development approvals. With the expiration of the Preliminary Plan validity period due to expire on September 23, 2004, the Applicant, on September 17, 2004, timely requested the extension of the Preliminary Plan approval validity period for 120 days, during which time it expected to resolve the outstanding dispute with Advanced Auto and to record a plat, thus validate the Preliminary Plan approval and allowing permits to be issued and construction activity to commence.

The bankruptcy proceedings involving Trak Auto and the subsequent litigation involving Advanced Auto, both of which precluded the Applicant from being able to finalize and record the subdivision plat, constituted delays subsequent to the approval of the Preliminary Plan created by other parties essential to the Applicant's ability to record the plat, which materially prevented the Applicant from validating the Preliminary Plan (which delays were not created or facilitated by the Applicant in any regard, and in fact, the Applicant diligently worked to remove the obstacles during the validity period but simply ran out of time).

These circumstances equally translate into the occurrence of significant, unusual and unanticipated events, beyond Applicant's control and not facilitated or created by Applicant, which substantially impaired Applicant's ability to validate the plan through recordation of a plat. Additionally, the extensive architectural and engineering which has been initiated and completed by the Applicant to secure the government approvals to build the Project, as

Ms. Catherine Conlon

December 29, 2004

Page 5

evidenced by fully completed building permit, tree permit and stormwater management applications, SHA approvals, and other regulatory approvals necessary to construct the Project (again as further documented in Attachment 5), all evidence efforts undertaken by the Applicant to implement the terms and conditions of the Preliminary Plan approval in order to validate the plan. All conditions of approval of the Preliminary Plan, in fact, were addressed by the Applicant during the validity period of the Preliminary Plan with the exception of the recordation of a plat. The costs and the time incurred in pursuing a new preliminary plan approval, for both the Applicant and the reviewing agencies, would create unnecessary and cumbersome burdens based upon factual circumstances not caused or created by the Applicant.

It is of great importance to note that the original Preliminary Plan approval underwent a *de facto* site plan review process voluntarily by the Applicant, and with the substantial involvement of the City and the Planning Board staff. Attached hereto as Attachment "6" is a letter dated July 17, 2001 from the Mayor of the City, attaching to that a Resolution of the City Council summarizing the process undertaken cooperatively by the Applicant and the City in the review of the initial Preliminary Plan. In recognizing in the Resolution that the Applicant was not required to be subjected to site plan review authority in pursuit of the Preliminary Plan approval in 2001, the Council specifically acknowledged that "through the subdivision process the Applicant has voluntarily agreed to discuss improvements typically called for in a site plan review with M-NCPPC Staff, City of Takoma Park Staff, and the Takoma Park City Council." The Resolution further stated that the City Council "appreciates the Applicant's effort to obtain citizen and Council input on the proposed development". The Resolution went on to set forth several conditions of approval that the City, through the *de facto* site plan review process, desired to see as part of the subdivision review process. These conditions requested by the City indeed were voluntarily agreed to by the Applicant as part of the Preliminary Plan approval and the subsequent applications for building permit, tree removal permit, stormwater management approvals and other necessary regulatory approvals. Accordingly, given that site plan review *de facto* occurred in conjunction with the original approval, the City's current request to force site plan review (irrelevant to the subdivision process) disregards the documented history of the processes relating to the Preliminary Plan, disregards the undisputable fact that the Applicant voluntarily incorporated the City's site plan equivalent comments in the current plans for the Project and is of absolutely no merit in the Planning Board's deliberation of this Extension Request. These facts by themselves call out the disingenuous current efforts of the City to disrupt the implementation of this Project.

The facts and circumstances which affected the ability of the Applicant to record a plat to validate the Preliminary Plan are compelling and indisputable and are appropriate grounds for the granting by the Planning Board of an extension of a validity period. Furthermore, the

Ms. Catherine Conlon
December 29, 2004
Page 6

City's efforts to require site plan review as part of the subdivision process are misplaced and clearly are intended to dislodge the permitted self storage use. The City has cited no relevant or compelling argument to counter the Applicant's basis for having the Extension Request granted, and the basis upon which the Planning Board granted the Extension Request on September 30, 2004 remains unchanged.

Extension Period Requested

The Applicant originally requested a 120 day approval period, and the Planning Board granted this validity period extension allowing for the validity period to be extended until January 31, 2005. While the Applicant was making significant progress in resolving the underlying disputes which had prevented the recordation of the plat during the original validity period (as discussed above), for all intents and purposes, the ability of the Applicant to process a record plat to validate the Preliminary Plan during this 120 day extension period terminated on November 19, 2004, with the transmittal of the November 19 Staff Letter to the City acknowledging there to be a notice issue and indicating that the matter would be brought for reconsideration to the Planning Board. Suffice it to say that the Applicant's efforts to record a plat (or to pursue any other approvals for the Project) after that time and up to the Planning Board's December 9 vote to reconsider the Extension Request were not cooperatively received at any level of the government approval process. As of the November 19 Staff Letter, there were 73 days remaining in the 120 day extension period. It is therefore this remaining 73 day extension period that the Applicant now seeks to have reinstated by the Planning Board, during which time the Applicant may continue its pursuit of the recordation of a plat (and failure to timely do so would result in expiration of the Preliminary Plan approval).

Conclusion

In summary, the facts and circumstances are such that the criteria for allowing an extension of the Preliminary Plan validity period are met. Site plan review now sought by the City is not appropriate or lawful, and previous considerable input from the City (voluntarily agreed upon by the Applicant and of the same nature as site plan review – as set forth in the City Resolution attached as Attachment 6) is fully engrained in the original Preliminary Plan approval. Given all of the facts and circumstances unique to this case, and the limited nature of the Extension Request to allow the completion of a nearly completed process, we urge the Planning Board to reinstitute the Preliminary Plan approval for 73 days to allow the Applicant to complete the extensive efforts already undertaken by the Applicant to validate the plan and to construct the Project. We will be present during the public hearing on this matter to answer any questions

Ms. Catherine Conlon
December 29, 2004
Page 7

that you have, and please do not hesitate to contact us if you are in need of additional information or clarification of the Applicant's position.

Very truly yours,

LINOWES AND BLOCHER LLP



C. Robert Dalrymple

cc: The Honorable Derick Berlage
Planning Board Members
Tariq A. El-Baba, Esq.
Rose Krasnow
Harvey Maisel
Stephen Goley



DPS/Application Details

Status

Commercial Building

Permit/License: 246444

Application Details

[Help](#)

Permit Number 246444

Site Address

Application Date 04/26/2001

6300 New Hampshire AVE

Issue Date

Takoma Park

Final Date

MD 20912-

Work Type Construct - Storage Building

Lot - Block -

Subdiv. Wheaton Outside**

Square Footage 86250

Application Status

Value \$2,000,000.00

In Process

Contractors

ID Name Address

Not available

Licenses

Contractor License Name Address

Not available

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Attachment "1"

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(53)

Date Mailed: August 17, 2001

Action: Approved Staff Recommendation
Motion of Comm. Bryant, seconded by
Comm. Perdue with a vote of 3-0;
Comms. Bryant, Holmes, and Perdue
Voting in favor
Comm. Wellington absent

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-01067

NAME OF PLAN: EAST HAMPSHIRE CENTER

On 04/11/01, MAISEL-HOLLINS DEVELOPMENT COMPANY submitted an application for the approval of a preliminary plan of subdivision of property in the C-2 zone. The application proposed to create 1 lot (19,435 square feet retail/storage and 86,046 square feet of storage warehouse) on 2.15 acres of land. The application was designated Preliminary Plan 1-01067. On 07/19/01, Preliminary Plan 1-01067 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-01067 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-01067.

Approval, subject to the following conditions:

- (1) Approval of this preliminary plan is limited to no more than 8,551 square feet of retail with 10,884 square feet of storage and 86,046 square feet of self-storage warehouse
- (2) Limit access to New Hampshire Avenue (MD 650) to one existing right-in/right-out driveway through closure of the existing right-in/right-out driveway closest to the New Hampshire Avenue/Eastern Avenue intersection
- (3) Coordinate specific design requirements for the MD 650 site access with the Maryland State Highway Administration (SHA)
- (4) Provide a bus shelter on or in the vicinity of the property to mitigate site traffic impacts in accordance with the Local Area Transportation Review (LATR) Guidelines
- (5) Compliance with the conditions of approval with the City of Takoma Park stormwater management approval letter, Approval No. SW01-09
- (6) Prior to recording of plats, submit final landscape, lighting and parking facilities plan for technical staff review and approval. Landscape plan to include streetscape schedule for all rights of way
- (7) Parking facilities plan is limited to the uses described above in Condition No. 1. Any change in the mix of uses which results in an increase in the required number of parking spaces may require further Planning Board review

(54)

Attachment "2"

- (8) No free-standing (pole-mounted) commercial signage is to be erected on the site
- (9) All road rights-of-way shown on the approved preliminary plan shall be dedicated by the applicant, to the full width mandated by the Silver Spring- Takoma Park Master Plan, unless otherwise designated on the preliminary plan
- (10) Record plat to provide for full width dedication of New Hampshire Avenue, Sligo Mill Road and Western Avenue
- (11) Access and improvements as required to be approved by MDSHA prior to issuance of access permit
- (12) Conditions of approval of the City of Takoma Park stormwater management approval dated 5-24-01
- (13) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to this date, a final record plat must be recorded for all property delineated on the approved preliminary plan, or a request for an extension must be filed
- (14) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion
- (15) Necessary easements

EAST HAMPSHIRE LLC
8627 16th Street
Silver Spring, MD 2 0910

September 13, 2004

Angela P. Brown
Development Review Division
MNCP & PC
8787 Georgia Avenue
Silver Spring, MD 20910

RE: East Hampshire Center
1-01067

Dear Ms. Brown:

On June 4, 2001 our organization acquired the referenced development with the intent of adding an additional building and making significant site improvements to the existing Track Auto including bio-retention and landscape.

After having worked closely with our development team, which included two of the commission staff members, and securing all of the necessary approvals, Track declared voluntary bankruptcy. This occurred on July 5, 2001, one month after settlement.

After this filing we were in limbo until the judge awarded the assets to Advanced Auto. At that time we hoped to proceed but they chose not to agree to the Track agreements, and after 1½ years in court we are now hoping to settle within the next 120 days. The attorneys are drafting the necessary documents that will allow us to proceed.

The Department of Permitting Services granted us an extension to our building permit after considering these circumstances.

We request a 120 day extension of this plan that will allow us to proceed with the environmental and aesthetic improvements to this development.

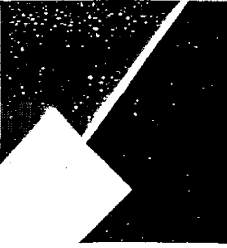
Included for your connivance is a copy of the Track bankruptcy filing and our extension from the Permitting Services.

Thank you for your consideration,

Harvey B. Maisel

Cc: Robert Dalkymple
Enclosure

4611
CATHY CONTIN
- 4542 -
4540
FIND. PLAN
ST



November 19, 2004

The Honorable Kathy H. Porter, Mayor
The Honorable Bruce R. Williams, Councilmember, Ward 8
City of Takoma Park
7600 Maple Avenue
Takoma Park, Maryland 20912

Dear ^{Kathy} ~~Ms. Porter~~ and ^{Bruce} ~~Mr. Williams~~:

I am writing in response to your November 10, 2004, letter to Chairman Berlage requesting reconsideration of the recently granted extension for the East Hampshire Center in Takoma Park. We agree that notice of this application was not given correctly and, in light of this, the Planning Board is being asked to reconsider the case.

We expect to present the matter of reconsideration to the Board on either the 2nd or 9th of December. If they decide in favor of the request, every effort will be made to reschedule the subsequent hearing on the extension itself soon thereafter. The Board will be meeting on December 16th and 23rd but not on December 30, 2004. We will keep you informed each step of the way.

Please contact me if you have any questions.

Sincerely,

Rose G. Krasnow, Chief
Development Review Division

cc: ✓ Catherine Conlon
Tariq El Baba
Takoma Park City Council
Pinecrest Citizens Association

G:/DEVREV/CTRACK 2004-1593 East Hampshire

(57)

Attachment "4"

Message

Ilgenfritz, Pat A. - PAI

From: Dalrymple, C Robert - CRD
Sent: Wednesday, December 29, 2004 10:45 AM
To: Ilgenfritz, Pat A. - PAI
Subject: FW: Review of Takoma Park Ltr 11-10-04.doc

pp

-----Original Message-----

From: Goley, Steve [mailto:sgoley@mhgpa.com]
Sent: Wednesday, December 29, 2004 10:31 AM
To: hbmaisel@maiselhollins.com; Dalrymple, C Robert - CRD
Subject: Review of Takoma Park Ltr 11-10-04.doc

As requested here is a chronology of MHG communications related to agency approval.
Good Luck and let me know if you need anything else
Steve

Stephen V. Goley, P.E., Project Manager
Macris, Hendricks and Glascock, P.A.
Engineers • Surveyors • Planners • Landscape Architects
9220 Wightman Road, Suite 120
Montgomery Village, MD 20886-1279

301•670•0840 x 1022
fax: 301•948•0693
web: www.mhgpa.com

(58)

RE: MHG #2001.102.11
 Project Name: East Hampshire Center
 Developer: Maisel-Hollins Development Co.
 Date: December 27, 2004

Review of letter from the City of Takoma Park's Mayor, Kathy Porter, and Councilmember, Ward 3, Bruce R. Williams to Mr. Derick Berlage, Chairman of the Montgomery County Planning Board, MNCPPC, and dated, November 10, 2004.

The letter requests that the board reconsider the extension of the preliminary plan approval # 1-01067E granted on September 30, 2004. They claim to not have been notified of the request for extension by Maisel Hollins Development Co.

MHG has been asked to review the chronology of activities taken by this office to determine if MHG requests and subsequent City responses show that the City was aware that the preliminary plan extension was in progress, or at least that the City was aware that the developer was intent on re-activating the plans.

Chronology of MHG communications activities via email, fax, transmittals and letters - related to agency approvals and permitting.

Date	From	To	Description
2004			
Letter 12-23	Ali Khalilian	Doug Seivers	the SWM renewal is on hold until the City's appeal to the Preliminary Plan extension is heard.
Email 12-17	Doug Seivers	Bret Linkletter	Review of MHG efforts, request for name of person to whom an appeal can be made. No response at this time
Email 12-14	HB Maisel	Steve Goley	SWM check for \$100 cleared in Nov.
Email 12-13	Steve Wilde	Steve Goley	Looked up SWM check sent with package on SWM renewal package on 11-18, it was from MH, contact them to see if cleared
Email 12-13	Steve Wilde	Steve Goley	SWM permit application, mylars and fee was submitted to Takoma Park on 10-18-04
FAX 12-10	Doug Seivers	Aki Khalilian	Letter from MC DPS extending SWM approval,
Transmittal 12-7	Doug Seivers	Brett Linkletter	Sediment Control Permit Letter confirming 1-year extension
Email 11-16	Anila Angjeli	Steve Goley	Sent revised site plan sketch

Email 11-9	Doug Seivers	HB Maisel	Brett linkletter called and requested a revised plan. Doug said he will try to get a revised plan to Takoma Park on 11-10.
FAX 11-1	Doug Seivers	Michael Hollins	Tree Protection Plan Agreement
Email 10-29	Doug Seivers	HB Maisel	Summary of tree plan revisions
Transmittal 10-19	Doug Seivers	Brett Linkletter	Tree Removal Permit Application Tree Protection Plan Agreement Full Size Tree Protectionlan Full Size Landscape/Tree _ Replacement plan Tree Inventory List 2 - \$25 checks for Tree Removal Permit and Tree Protection Plan review and posting.
Email 10-18	John Wysong	Steve Goley	Will update MSHA bond amount and send to MH Dev. Co.
Email 10-15	Greg Cooke	John Wysong	MSHA plans are still good, need to update bond by adding 15%
Email 10-11	Ali Kalilian	Steve Wilde	Duration of permit has expired, but he recommended to Deputy Director (Daryl Braithwaite ?) that only updated reviw fee be considered for renewal according to code 20023-06-10C-15. He requested original mylars for resealing (with approval stamp)
Email 10-5	Steve Goley	HB Maisel	Contacted Takoma SWM Dept, plan is still good, call him when you want a pre-construction meeting. Advised setting up pre-construction meeting as soon as possible.
Email 10-1	Steve Goley	HB Maisel	Reasons why permits cannot come within one week.
Email 9-30	Steve Goley	HB Maisel	Update on permitting issues: SWM/Soil Erosion Takoma Park Tree Removal Permit
Email 9-29	Steve Goley	HB Maisel	Summary of outstanding permitting issues: MSHA, WSSC, Tree Removal, and SWM/Soil Erosion. Updating the site plan per info rec'd today from the Architect.
Email	HB Maisel	Steve Goley	Request details of costs, bonds,

9-28			procedures to secure permits for construction
Email 9-2	Steve Goley	HB Maisel	Sent updated list of adjacent and confronting owners, and transmitting five copies of the preliminary plan, via US mail
Email 9-20	HB Maisel	Steve Goley	Applied for 120 day extension
Email 8-10	Scott Roser	Steve Goley	Rec'd draft Takoma Park ordinance, section 10C-8, from Ali Khalilian in response to MHG telephone request. The request was made by Scott with no mention of a particular property.
2002			
Trans 07-08	Steve Goley	MC DPS Bill Cambell	Copy of City of Takoma Park SWM approval sheet
Email 07-08	Steve Goley	TP Delester Monk	Request to have Takoma Park sign off on building permit – When?
Email 5-29	John Wysong MHG	Steve Goley	Greg Cooke (MSHA) approved bond amount
FAX 05-24	John Wysong MHG		Bond Amount calculations
Trans 05-13	George Haskins MHG	Steve Cary MNCPPC Environmental	Revised tree planting plan – per comments received from MNCPPC
Trans 05-13	George Haskins MHG	Brett Linkletter TP	Revised tree planting plan – per comments received from MNCPPC
Email 05-09	Greg Cooke MSHA	John Wysong MHG	Discussion of and Approval for driveway entrance size
Email 05-09	John Wysong MHG	Steve Goley	Discussion of driveway entrance size
Letter 04-08	John Wysong MHG	Dennis German MSHA Community Design	MHG has revised plans per MSHA comments rec'd: list revisions, please review and issue permits
Letter 04-08	John Wysong MHG	Rajababu Veermachaneni MSHA, Hydraulics	MHG revised plans - list revisions, request approval
Trans 04-5	George Haskins MHG	Greg Cooke MSHA	Planting plans – revised per site plan changes requested by architect
Trans 04-05	George Haskins MHG	Brett Linkletter TP	Planting plans – revised per site plan changes requested by architect
Trans 04-05	George Haskins MHG	Steve Cary MNCPPC	Planting plans – revised per site plan changes requested by architect

		Environmental	
Trans 04-05	George Haskins MHG	Harvey Maisel	Planting plans – revised per site plan changes requested by architect
Email 04-03	Greg Cooke MSHA	John Wysong MHG Cc Goley, Maisel, Haskins, Hendricks	MSHA will make call on entrance design and will work with the commission on LS and sidewalk issues.
Email 03-29	John Wysong MHG	Greg Cooke MSHA	Attached LS sketch showing LS in ROW generated due to concerns by MNCPPC and others
Letter 03-26	Thereasa Avila Wash Gas	John Wysong MHG	Coordinate gas crossings
Letter 03-21	Steve Goley	Harvey Maisel	Discussion of test pit requirement in order to construct the storm drain system as proposed
Trans 03-30	George Haskins MHG	Brett Linkletter TP	SHA Planting Sketch
Email 03-01	Steve Goley	Greg Cooke MSHA	Checking on access permit
Letter 02-21	George Haskins MHG	Harvey Maisel	Tree replacement agreement for TP Signature required
Email 02-06	Steve Wilde MHG	Steve Goley MHG	Sediment and SWM plans going to TP today by courier with check and application
Email 02-04	Steve Wilde MHG	Steve Goley MHG	Sediment and SWM plans went to MC DPS on 2-1
Email 01-31	Steve Wilde MHG	Steve Goley MHG	He met with Delester Monk at TP regarding plans
Email 01-16	Jonathan Russel MHG	Steve Goley MHG	Re; telecom with Rich Weaver MNCPPC, plat is approved
Email 01-09	Doug Seivers MHG	Steve Goley MHG	Tree Replacement plan is approved by TP
2001			
Trans 11-30	Steve Goley	Malcolm Shaneman	LS Lighting plans and Tree Replacement Plan
Trans 09-14	Steve Goley	Malcolm Shaneman	Preliminary Subdivision Plans – approved copies
Letter 09-06	Scott Roser MHG	Danita Lee- Bryant Liason ot Tree Commission, TP	Request hearing be scheduled on 09-18
Letter 09-06	James Hendricks	Rick Finn, City Administrator, TP	Reviewed Tree Plan approval requirements and stated that since the appeals period expired, that the plan is approved

Trans 07-12	Steve Goley	Malcolm Shaneman	Preliminary Subdivision Plans – mylars
Letter 09-06	James Hendricks	Dave Niblick MCDPS	Related to understanding of parking requirements based on storage area and retail use
Email 06-15	Scott Roser	Steve Goley	Copy of email from Joel Gallihue (TP liason for Economic and Community Development) To Bob Dalrymple thanking for attending council session on Monday - review of issues that came up. Request to consider green roof
Email 06-07	Scott Roser	Steve Goley	Copy of email from Joel Gallihue to Bob Dalrymple giving date of Council hearing as June 11, 2001 at 8:30, who will attend?
Email 06-07	Scott Roser	Maisel Cc, Goley	Monk (TP) will complete review of SWM on 05-24, he will forward comments to Gallihue
Letter 05-03	Steve Wilde MHG	Delester Monk (TP DPW)	Submitting a revised SWM concept showing the requested Biofiltration system
Email 04-21	Bob Dalrymple	Steve Goley and Roser	TP TRC is scheduled for 04-30 at 2:00 PM
Email 04-24	Mike Plitt	Steve Goley	MNCPPC DRC is scheduled for 05- 07, PP #1-01067
Email 04-17	Scott Roser	Suzanne Ludlow, TP Economic and Community Development Cc goley, monk	Thank her for message that the plans that he submitted will be forwarded to Delester Monk
Letter 04-12	MHG	Notice of Application to Adjacent Owners	Preliminary Plan # 1-01067 was filed
Trans	Steve Goley	Malcolm Shaneman	Preliminary Plans and check for \$4525
Letter 03-22	Vic Bryant	Carol Martin MNCPPC Environmental	Request for Forest Exemption
Trans 02-08	Steve Goley	MCDPS	Request for SC number before concept approval

City of Takoma Park
7500 Maple Avenue
Takoma Park, Maryland 20912

TELEPHONE (301) 270-1700
FAX (301) 270-8794

OFFICE OF THE
MAYOR

July 17, 2001

The Montgomery County Planning Board
Arthur Holmes, Jr., Chairman
8787 Georgia Avenue
Silver Spring, Maryland 20910

Dear Chairman Holmes:

On Thursday, July 19, 2001 the Preliminary Plan Review # 1-01067 comes before you for consideration. The Takoma Park City Council has coordinated with your staff and the applicant to develop a City position on a proposed development. Please note the attached City Council Resolution #2001- 45 which outlines our position.

As the Council deliberated on this matter, we developed a consensus that every effort should be made to encourage neighborhood retail uses at this site, now and in the future. The proposed use will eliminate a significant portion of existing parking. This may preclude the marketing of this property for future use by neighborhood-serving users. The Council encourages the Board to allow for the maximum potential parking that may be needed for future retail uses of the existing retail building prior to approving the proposed development on this property.

Thank you for your consideration of our position on this proposed development.

Sincerely,



Kathy Porter
Mayor

\enclosures\

Introduced By: Councilmember Stewart

Resolution No. 2001 - 0045

**Proposed Development of a Self Storage Facility at 6300 New Hampshire Ave.
(East Hampshire Center)**

- WHEREAS, The Takoma Park Master Plan provides direction for the "Maryland Gateway at Eastern and New Hampshire Avenues," specifying 1) this area shall serve highway commercial and neighborhood commercial needs, 2.) a gateway treatment at the corner of Eastern and New Hampshire, 3.) a boulevard streetscape along New Hampshire, and 4.) Property owner participation in upgrading the appearance of the streetscape, AND
- WHEREAS, The Takoma Park Master Plan identifies Site Plan Review as a necessary tool for realizing the aforementioned goals and to this end, supports adoption of the Commercial Revitalization Overlay Zone, AND
- WHEREAS, Maisel Hollins Property LLC of Lanham, MD (the Applicant) has acquired and proposed to develop an 86,250 square foot self storage facility at 6300 New Hampshire Ave. ; AND
- WHEREAS, The property is zoned C-2 (commercial) and the proposed use of self storage is permitted as of right under Sec. 59-C-4.2 of the Montgomery County Zoning Ordinance; AND
- WHEREAS, The Applicant has submitted building permit application to the Montgomery County Department of Permitting Services for the proposed self storage facility; AND
- WHEREAS, The City and MNCPPC do not have site plan review authority over this development because the Applicant's submission of the building permit application precedes approval of the pending Sectional Map Amendment which would create the Commercial Revitalization Overlay Zone and require Site Plan Review for the proposed development; AND
- WHEREAS, The Applicant has also submitted a subdivision application to MNCPPC, not to split the parcel, but rather to formally record this property as a plat in Montgomery County, since a parcel that is transferred by deed cannot be issued a building permit; AND
- WHEREAS, Through the subdivision process the applicant has voluntarily agreed to discuss improvements typically called for in a Site Plan Review with MNCPPC Staff, City of Takoma Park Staff and the Takoma Park City Council.

WHEREAS, The Applicant is also required to obtain City of Takoma Park permits for storm water management and for any tree removal or work in the critical root zone of regulated trees; AND

WHEREAS, The Takoma Park Open Space Committee has recommended to the City Council that any proposed development maintain the green space in the rear of the property to serve as a buffer between residential and commercial uses.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF TAKOMA PARK, MARYLAND THAT the City Council hereby:

1.) Notes that it would be the preference of the Council to have a development in this area that better serves the neighborhood as called for in the Takoma Park Master Plan. However, the Council recognizes, with disappointment, that the proposed use is permitted by-right in the C-2 (commercial) zone of the Montgomery County Zoning Ordinance.

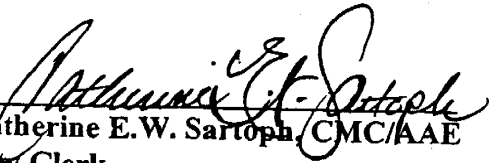
2.) Appreciates the applicant's effort to obtain citizen and council input on the proposed development and clarifies that the following improvements are critical to the success of this difficult proposal:

- a. Compliance with all City Urban Forest, Storm water and Noise requirements.**
- b. Limitation of the height of the building to below the grade of Sligo Mill Road and prohibition of mechanical equipment on the roof.**
- c. Provision of adequate parking, circulation and loading, giving full consideration to what is needed for any higher intensity commercial uses, now and that may be made on the site in the future and the maximum sizes of delivery vehicles.**
- d. Provision of an attractive building façade that presents an appealing view from the perspectives of both Eastern and New Hampshire Avenues.**
- e. That the building shall be designed and constructed in a manner that provides an appearance that is consistent and supported with the abutting residential properties and serves in a positive fashion supporting the City Gateway**
- f. Provision of modest signage that is sensitive to building design, coordinated with existing signage and provides clear direction to potential users of the site. Do not utilize pole mounted signs.**
- g. All lighting shall be directed down and away from adjacent residential properties on Eastern Ave. and Sligo Mill Road in a manner that prevents unnecessary glare, reflection or spill-over of light.**
- h. Green building techniques should be given further consideration provided they may be accomplished with a design that is sensitive to adjacent residences.**

- i. Provision of or contribution of funds for boulevard streetscape improvement of New Hampshire Avenue *over and above* any tree replacement required by the City Tree Ordinance.

ADOPTED THIS 9TH DAY OF July, 2001.

ATTEST:


Catherine E.W. Sartoph, CMC/AAE
City Clerk

ABRAMS & WEST, P.C.

ATTORNEYS AT LAW

SUITE 760N

4550 MONTGOMERY AVENUE

BETHESDA, MARYLAND 20814-3304

(301) 951-1550

FAX: (301) 951-1543

JAMES L. PARSONS, JR.
OF COUNSEL

WRITER'S DIRECT DIAL NUMBER
(301) 951-1570

E-MAIL: "jwest@awslaw.com"

KENNETH R. WEST
STANLEY D. ABRAMS

PRACTICING IN MARYLAND AND
THE DISTRICT OF COLUMBIA

January 12, 2005

Robert C. Dalrymple, Esq.
Linowes & Blocher, LLP
7200 Wisconsin Avenue
Suite 800
Bethesda, Maryland 20814

**RE: 6300 New Hampshire Avenue
Takoma Park, Maryland**

Dear Mr. Dalrymple:

We represent M-H Property, LLC in its capacity as a plaintiff in the case of MH Property, LLC v. Advance Store Company, Case No. AW 03-CV-2944, pending in the United States District Court for Maryland. This letter with attachments is intended to provide background information which is germane as to why MH Property has been unable to file a subdivision plat for the above identified property.

MH Property purchased 6300 New Hampshire Avenue in, I believe, the latter part of 2001. The prior owner entered into a lease on May 19, 1995 with Trak Auto [Super Trak Corporation]. This was a ten (10) year lease with the three five (5) year options. Attached please find a copy of the first page of the lease as well as "Schedule A" which is a legal description of the property. The property consists of a building and a large parking lot.

At some point, Trak Auto filed for bankruptcy. I am not a bankruptcy attorney; however, my understanding is that a bankruptcy filing essentially stays and maintains all of the bankrupts' legal obligations pending a resolution by the bankruptcy court.

As part of a work-out of Super Trak's bankruptcy, Advance Stores purchased 80 of Super Trak's leases nationwide, including the lease for 6300 New Hampshire Avenue. In the meantime MH Property purchased the subject property and then began communicating with Advance Stores in an effort to obtain their consent to construction of a self-storage facility on a portion of the parking lot and also to dedication of a portion of the property to State Highway Administration.

Robert Dalrymple, Esq.
January 12, 2005
Page -2-

MH's efforts essentially fell on deaf ears. On September 11, 2003, MH Property as lessor filed a landlord-tenant action against Advance Stores in the State District Court for Montgomery County, Maryland and trial was to occur on October 22, 2003. However, Advance Stores removed the case to the United State District Court for Maryland (the "Federal Court"). At that point, we were hired to represent MH Property. We attempted to have the case remanded back to the State Court but on March 14, 2004, the federal court denied our motion, finding that diversity of citizenship existed.

At that point, discovery was started. I have visited the site on a number of occasions and state that Advance has use and occupancy of the entire site.

In August, 2004, the parties commenced negotiations and by December, 2004, an agreement in principle was achieved providing for both MH Property's construction of the self-storage facility and dedication of property to State Highway. Achievement of a written agreement has been delayed due to Advance's key employees being unavailable over the Christmas holiday and its attorney's trial schedule. I am advised, however, that she is now working on the agreement.

I hope this information is of some help.

Regards.

Sincerely,



Kenneth R. West

KRW:dw
Enclosure

EXHIBIT A

LEASE

THIS INDENTURE OF LEASE, made and entered into this 19th day of May, 1995 by and between SHOPPERS FOOD WAREHOUSE CORP., hereinafter call "Lessor", owner of the hereinafter demised premises, and SUPER TRAK CORPORATION, a Delaware corporation, hereinafter called "Lessee".

WITNESSETH

That for and in consideration of the rental hereinafter reserved, and of the mutual covenants, agreements, and conditions hereinafter contained, Lessor does hereby lease to Lessee, and Lessee does hereby rent from Lessor, a building containing approximately 19,500 square feet, as shown outlined in red on the site plan attached hereto as Schedule A (hereinafter referred to as the "Building", together with the adjacent sidewalks, parking areas, aisles, landscaped areas, improvements, exits and entrances (the "Adjacent Property"), subject to the terms of this Lease. The Building together with the Adjacent Property and the improvements thereon may be referred to in this Lease as the "Premises" or the "demised premises", or the "shopping center". The demised premises are shown outlined in green on Exhibit "A" and are more particularly described in Exhibit "B" hereto. The demised premises are located in Prince George's County, Maryland.

This Lease is made for the term and upon the covenants and agreements hereinafter expressed to wit:

ARTICLE 1: TERM

1.1 The term of this Lease shall commence on the earlier of (a) 180 days after the delivery of possession of the demised premises to Lessee, or (b) the date Lessee actually commences to do business in the demised premises. If Lessee's commencement of business in the demised premises shall be delayed by reason of governmental regulations, unavailability of material or labor, acts of God, strikes, lockouts, or other matters beyond Lessee's control which preclude Lessee from commencing to do business within the time herein limited, or if despite Lessee's prompt and diligent efforts, Lessee has not received all permits, including sign permits, necessary to do any of its work, the date of the commencement of the term of this Lease shall be postponed for a period equal to the duration of such delay.

1.2 The demised premises shall be delivered to Lessee in broom-clean condition, with the Lessor's Work as defined in Schedule "C" hereto substantially completed, and after at least ten days written notice, and Lessee shall perform the lessee's work, all as set out on Schedule C attached hereto and made a part hereof.

1.3 The term of this Lease shall, except as hereinafter provided, end at midnight on the last day of the 120th full calendar month after the commencement of the term.

1.4 Intentionally deleted.

1.5 If for any reason the term of this Lease shall not have commenced within twelve (12) months from the date hereof, the Lease shall automatically and ipso facto terminate and no longer be of any force and effect. Nothing in the preceding sentence shall impair or affect the right of either party hereto to any remedy for breach by the other of any obligation under this Lease occurring prior to such termination.

SCHEDULE "B"

DESCRIPTION OF PROPERTY

Attached to and forming a part of that certain Lease and Memorandum of Lease executed under date of May 1962 1995 by and between SHOPPERS FOOD WAREHOUSE CORP., as Lessor, and SUPER TRAK CORPORATION, as Lessee.

1. LEGAL DESCRIPTION OF PREMISES. Description of the Premises demised herein, located in Prince George's County, Maryland:

BEGINNING at the stone on the District of Columbia-Maryland boundary line which is also the northeasterly side of Eastern Avenue at the intersection with the southeasterly side of Sligo Mill Road and running thence with the southeasterly side of Sligo Mill Road North $42^{\circ} 10' 30''$ East 284.44 with the second line of the deed dated August 21, 1952 from the Safeway Stores, Incorporated to the Metropolitan Life Insurance Company, and recorded among the Land Records of Prince George's County, Maryland in Liber 1547 at Folio 392, thence leaving the southeasterly side of Sligo Mill Road and running South $46^{\circ} 06' 50''$ East 294.57 feet with a portion of the third line of said deed to a pipe set on the northwesterly right of way line for New Hampshire Avenue as shown on the State Roads Commission of Maryland Plat No. 13195, Contract 736-2-320, thence leaving said third line and running the two following courses and distances with the lines of said right of way plat South $30^{\circ} 01' 10''$ West 288.44 feet to a point, thence South $87^{\circ} 30' 10''$ West 15.00 feet to a point on the aforementioned District of Columbia-Maryland boundary line, thence North $45^{\circ} 01' 10''$ West 344.88 feet with said boundary line and also with the northeasterly side of Eastern Avenue to the place of beginning of this description, containing a calculated area of 93,659 square feet or 2.150 acres of land. Excepting any discrepancies resulting from a deed dated November 7, 1955 from Metropolitan Life Insurance Company to the State Roads Commission of Maryland pursuant to contract No. P736-2-320.

2. Except for changes required by any legal authority having jurisdiction or necessitated by any act or omission of Lessee, Lessor will not do or permit any changes to the Premises without the prior consent of Lessee, not to be unreasonably withheld, conditioned or delayed.



City of Takoma Park
7500 Maple Avenue
Takoma Park, Maryland 20912

Attachment J

TELEPHONE (301) 270-1700
FAX (301) 270-8794

OFFICE OF THE
MAYOR

July 17, 2001

The Montgomery County Planning Board
Arthur Holmes, Jr., Chairman
8787 Georgia Avenue
Silver Spring, Maryland 20910

Dear Chairman Holmes:

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Sincerely,



Kathy Porter
Mayor

\enclosures\

Introduced By: Councilmember Stewart

Resolution No. 2001 - 0045

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(East Hampshire Center)**

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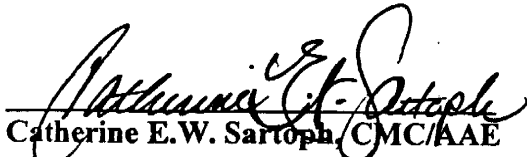
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ADOPTED THIS 9TH DAY OF July, 2001.

ATTEST:


Catherine E.W. Sartoph, CMC/AAE
City Clerk

