

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
Montgomery County Department of Park and Planning

09/13/2005

## MEMORANDUM

**TO:** Cathy Conlon, Development Review  
Cherian Eapen, Transportation Planning

**FROM:** Piera Weiss, Community-Based Planning

**SUBJECT:** Request for Extension of Adequate Public Facilities Approval for  
1-82068

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### Background:

It is unusual for Community-Based Planning Staff to address subdivision requirements, however, because of the relationship of this request to the history of the *1990 Trip Reduction Amendment to the 1981 Eastern County Master Plan*, I have reviewed the contents of the June 17, 2005 letter from Kaiser Permanente's attorney, Mark Viani, as well as documents related to the previous extension request granted on April 26, 2001 in accordance with Sec 50-20, Article III, Subdivision Regulations. If the applicant concurs with the data and conclusion in this memorandum, then staff has no objection to the request for extension for an additional two years.

I reference the relevant section of Sec. 50-20, (c) (3) (iv), giving the Planning Board the ability to extend the validity period for APFO determination:

- (A) At least forty (40%) of the approved development has been built, is under construction, or building permits have been issued such that the cumulative amount of development will meet or exceed the percentage requirements of this paragraph:
- (B) All the infrastructure required by the conditions of the original preliminary plan approval has been constructed or payments for construction have been made; and
- (C) The development is an "active" project as demonstrated by at least 10 percent of the project having been completed within the last four years before an extension request is made. Or at least 5 percent of the project having been

completed with the last four years before an extension request is made, if 60 percent of the project has been built or is under construction.

There are points of clarification regarding the previous extension (April 2001) that need to be established in order to review the merits of the pending extension. The applicant was not familiar with the methodology staff used to establish the total amount of development for 1-82068 in 1990. The total amount of development approved in Preliminary Plan 1-82068 was modified in 1990 through the use of Trip Reduction Agreements executed in conformance with the *1990 Trip Reduction Amendment to the 1981 Eastern County Master Plan*. These agreements run with the properties independently of all other approvals or agreements.

The record of the previous extension four years ago (2001) incorrectly established a 60% overall completion and the associated 5% completion for the four years prior. Review of the data from those years indicates that the applicant met the 40% overall completion but not the 60% overall completion. In order for the previous extension to be considered valid, it must be established that the applicant met the 10% completion for four years prior to 2001. The data contained in the tables in this memorandum indicates the 2001 request for extension met both the 40% and 10% standard; therefore, the granting of the extension in 2001 extension was valid.

The 2005 request must once again establish that the overall percentage of completion has been met as well as the relevant additional required percentage of completion. Review of the data indicates that the overall completion has not yet reached 60 percent and therefore the 40% and 10% standards apply. This memorandum clarifies the conditions at the time of the 2001 extension and concludes that those requirements have been met, namely that there was a 40% overall completion and 10% in the prior 4 years. This memorandum confirms that an additional 10% completion for the four years between 2001 and 2005 has also occurred.

### **Analysis**

There are two points of clarification for the 2001 extension concerning the total amount of development allocated to Preliminary Plan 1-82068: how the numbers were calculated and the inclusion of all the properties.

While the total amount of development established by the trip reduction agreements was based on a .4 FAR, as described by the applicant in their 2001 request, it was modified by certain circumstances pertaining to each property owner's future plans. The total amount of development was not based on a calculation that multiplied land area by .4 to derive maximum development per parcel, as suggested by the applicant in the 2001 request. Each property owner calculated their total maximum square footage, converted the square footage into trip and then limited the maximum development to trips as per the *Trip Reduction Amendment*. MNCPPC staff reviewed and accepted the agreements and then the property owners then recorded these agreements in the land records. Those numbers are contained in Table 1.

Most of the original land area contained within the original subdivision was covered by the trip reduction agreements recorded by West\*Farm and Kaiser Permanente, but not all. Parcel Y was developed prior to 1991 and was not subject to any agreement since it was had already developed. The subdivision regulations require calculation of overall development for a preliminary plan, in order to determine eligibility for extension; development associated with Parcel Y must be included in the total as a separate item. This was omitted in the 2001 analysis.

Table 1 gives the total development associated with land area wholly covered by 1-82068 as modified by the trip agreements. Table 2 contains the properties, owners, and date of development and square footage for each parcel. Table 3 indicates properties developed prior to 1997. Table 4 shows development between 1997 and 2000. Table 5 shows development between 2001 and 2005.

**Conclusion**

The Applicant has met the 40% completion requirement overall. The total amount of development completed at the time of the previous extension request was 996,502 SF or 40%. (40% of 2,399,158 SF = 959,663 SF). In 2005 1,296, 634 SF or 54 % of the total development was completed.

Between 1997 and 2000, the ten percent (239,915 SF) requirement was more than met. 754,172 SF was built during that time period. Since 2001, an additional 300,132 square feet in excess of 10% of the entire development was completed.

It is Community-Based Planning Staff's conclusion that the applicant has met the requirements of the Subdivision Regulations that 40% of the overall development is completed and 10% be completed for both the first and second extension requests. If Transportation Staff reconfirms that the requirement under (3) (iv)(B), completion of infrastructure, was met, then all the conditions for consideration of an extension have been met. However, if the Planning Board grants an extension and the applicant does not build the square footage as allowed under the trip reduction agreement by July 2007, they applicant will lose all remaining approvals and must resubmit to APFO review. It should be underscored that a future APFO review cannot include more than the amount specified in the Trip Reduction Agreement unless the agreement is amended prior to APFO review.

Table 1: Total Allowed Development in Square Feet for Preliminary Plan 1-82068

Property/Owner	Square Footage
West*Farm/WesTech	1,968,699
Kaiser Permanente	367,959
Parcel Y	62,500
TOTAL	2,399,158

Table 2: Built Square Footage for all land subdivided under Preliminary Plan 1-82068 By Parcel, Zone, Owner and Year Built

A: Parcel #	B: Zone	C: Owner	D: Year Built	E: Building. Square Footage
RR	I-3	GBLLC	0000	0
SS	I-3	GBLLC	0000	0
BB	I-3	Kaiser	0000	0
CC	I-3	Kaiser	0000	0
Y*	I-3	Cameron	1988	62,500
PP	I-3	GBLLC	1989	39,600
QQ	I-3	GBLLC	1989	39,600
W	I-3	Kaiser	1989	46,300
RRR	I-3	USPS	1994	33,430
TT	I-3	SHA	1995	20,900
TTT	C-6	Target	1997	271,020
WWW	C-6	Kohl's	1997	185,152
AAAA	C-6	McDonalds	1999	10,000
ZZZ	C-6	Tosco Refining	2000	10,000
DDDD	C-6	7thDay Adv.	2000	80,000
XXX	C-6	First Security Bank	2000	49,200
OO/Tech I&II	I-3	GBLLC	2000	148,800
CCCC	C-6	SunTrust Bank	2001	10,000
VVV	C-6	Superfresh	2001	130,056
JJJ	C-6	Babies R Us	2001	74,800
HHHH	I-3	Clark Sec	2002	24,100
BBBB	C-6	Friendly's	2002	10,000
YYY	C-6	Frontier Dev.	2003	10,000
GGGG	I-3	Marriott Int.	2004	41,176
Total				1,296,634

Column A: Tax Assessor's records  
 Column B: Zoning Sheets  
 Column C: Tax Assessor's records  
 Column D: Date from Building Permits marked "Finaled" from DPS database or if not available, then noted as "date primary structure built" as contained in the Tax Assessor's records  
 Column E: Square Footage as approved in Site Plans or Mandatory Referrals. Staff notes that square footage may not reflect the actual buildings square footage, particularly is the building is in retail use. The Trip Reduction Agreements specified square footage for office or warehouse uses. If retail or other uses other than these were approved, the office equivalent was used. In the case of retail this means that for every square foot of retail, the office equivalent was 2 square feet.

Table 3: Properties Developed Prior To 1997

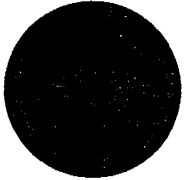
Parcel #	Zone	Owner	Year Built	Square Footage
Y	I-3	Cameron	1988	62,500
PP	I-3	GBLLC	1989	39,600
QQ	I-3	GBLLC	1989	39,600
W	I-3	Kaiser	1989	46,300
RRR	I-3	USPS	1994	33,430
TT	I-3	SHA	1995	20,900
TOTAL				242,330

Table 4: Properties Developed 1997 - 2000

Parcel #	Zone	Owner	Year Built	Square Footage
TTT	C-6	Target	1997	271,020
WWW	C-6	Kohl's	1997	185,152
AAAA	C-6	McDonalds	1999	10,000
ZZZ	C-6	Tosco Refining	2000	10,000
DDDD	C-6	7thDay Adv.	2000	80,000
XXX	C-6	First Security Bank	2000	49,200
OO/Tech I&II	I-3	GBLLC	2000	148,800
TOTAL				754,172

Table 5: Properties Developed 2001 - 2005

Parcel #	Zone	Owner	Year Built	Square Footage
VVV	C-6	Superfresh	2001	130,056
JJJ	C-6	Babies R Us	2001	74,800
CCCC	C-6	SunTrust Bank	2001	10,000
HHHH	I-3	Clark Sec	2002	24,100
BBBB	C-6	Friendly's	2002	10,000
YYY	C-6	Frontier Dev.	2003	10,000
GGGG	I-3	Marriott Int.	2004	41,176
TOTAL				300,132

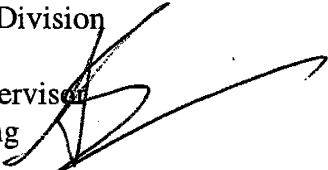



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
Montgomery County Department of Park and Planning

October 6, 2005

## MEMORANDUM

TO: Catherine Conlon, Supervisor  
Development Review Division

VIA: Shahriar Etemadi, Supervisor  
Transportation Planning 

FROM: Cherian Eapen, Planner/Coordinator  
Transportation Planning   
301-495-4525

SUBJECT: Kaiser Permanente – Parcels BB and CC; WestFarm Technology Park  
Request for Extension of Adequate Public Facilities to July 25, 2007, for subject  
parcels under Preliminary Plan No. 1-82068  
Plum Orchard Drive, Fairland/White Oak Policy Area

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This memorandum summarizes Transportation Planning staff's review of the subject request for an Adequate Public Facilities (APF) Extension for Parcels BB and CC under Section 50-20(c)(3)(iv)(B) of the Montgomery County Code, which required satisfying the following requirement for granting an APF extension for a subdivision:

“All of the infrastructure required by the conditions of the original preliminary plan approval has been constructed or payments for construction have been made”.

## RECOMMENDATION

Transportation Planning staff recommends approval of the above APF Extension request for two years, to July 25, 2007, since staff has determined that the applicant has met the requirements under Section 50-20(c)(3)(iv)(B) of the Montgomery County Code.

## DISCUSSION

Staff has made the above recommendation based on the finding that the applicant and/or the original applicant for Preliminary Plan No. 1-82068 (West\*Farm) has met:

- All traffic mitigation obligations required under Section 59-C-5.436 of the Montgomery County Code, Special Trip Reduction Guidelines for I-3 Projects (Attachment No. 1), and
- All public road improvement obligations required under the original preliminary plan (Attachment No. 2).

CE:gw

Attachments

cc: Ed Axler  
Mary Goodman  
Piera Weiss  
Karl Moritz  
Chuck Kines  
Michelle Rosenfeld  
Mark Viani  
Bill Kominers

mno to Conlon re Kaiser Permanente APF ext

Post Office Box 6611  
Rockville, Maryland 20849-6611



February 1, 1995

Mr. Mark Atz  
Division of Transit Services  
Montgomery County Department  
of Transportation  
110 North Washington Street  
Suite 200  
Rockville, MD 20850

RE: Traffic Mitigation--Westfarm/Kaiser Permanente

Dear Mr. Atz:

The purpose of this letter is to transmit to you on behalf of Kaiser Permanente, the Payment Summary Form that was inadvertently omitted from Kaiser Permanente's transmittal of its payment under the October 11, 1994 Traffic Mitigation Agreement (the "Agreement").

Please note that the enclosed Payment Summary Form reflects the payment made on December 23, 1994 in the amount of One Hundred Forty-four Thousand Nine Hundred Ninety-four Dollars and Twenty-five cents (\$144,994.25). This amount represents: (i) the TMP Installation due from Kaiser Permanente and (ii) prepayment in full of the remainder of Kaiser's obligation for the future TMP Installments under the Agreement. Therefore, this payment reflects 17.21 percent of the total TMP Payment of \$842,500.00.

As no building permits are being applied for at this time, Section III of the Payment Summary Form is indicated as "not applicable". Please further note that as Kaiser is making full prepayment of its obligation under the Agreement, no portion of this payment is allocated to what would otherwise be Kaiser's pro rata share of the Deposit permitted pursuant to Paragraph 7 (b) of the Agreement.

Capital Area Permanente Medical Group, P.C.  
Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.



Mr. Mark Atz  
February 1, 1995  
Page 2

Please make notation in your records to properly reflect Kaiser's full payment of its obligations to MCDOT under the Agreement.

Thank you for your attention to this matter.

Sincerely,

Kaiser Foundation Health Plan of the  
Mid-Atlantic States, Inc.



Thomas M. Heller

Enclosures

CC: Mr. Robert C. Merryman  
Mr. Thomas D. Fleury  
Ms. Jean Chait  
Gayle Libby-Curtiss, Esquire  
Thomas G. Kennedy, Esquire  
John J. Delaney, Esquire  
William Kominers, Esquire

EXHIBIT "E"

PAYMENT SUMMARY FORM

I. Payment Form Being Filed on December 23, 1994 with (check one):

- 1. Annual TMP Installment   X
- 2. Building Permit Application
- 3. Prepayment (full or partial)   X

II. Annual TMP Installment

- 1. Year of Agreement (1 through 10)       1
- 2. Amount of Payment       \$14,499.42

III. Building Permit Application

1. Lots previously receiving building permits

<u>Lot</u>	<u>Year</u>	<u>Applicable Per Lot Amount</u>
PP	existing	\$49,558.92
QQ	existing	\$49,558.82
W	existing	\$49,558.82

      N/A      

2. New Lot(s) requesting building permit(s)

<u>Lot</u>	<u>Year</u>	<u>Applicable Per Lot Amount</u>
[ # ]	[ 19 ]	[ \$ ]

      N/A      

3. Sum of 1 and 2

      N/A      

4. Total of previous TMP Installment Payments (including Deposit)

      N/A      

5. Total of previous Building Permit Payments actually paid, if any

      N/A      

6. Sum of 4 and 5

      N/A

7.. Difference Between Paragraph 3 and Paragraph 6. N/A

- (A) If Paragraph 3 is greater than Paragraph 6 (i.e., a deficiency exists), a Building Permit Payment must be paid at issuance of the new permit.
- (B) If Paragraph 6 is greater than Paragraph 3 (i.e., a surplus exists), no further payment is required at issuance of the new permit, and any surplus accrues toward future TMP Installments.

IV. Prepayment

1. Year of Agreement (1 through 10)	1
2. Year of last TMP Installment Paid (1 through 10)	1
3. TMP Payment Balance as of date hereof	\$758,250.00
4. Applicant's pro rata share of TMP Payment Balance in Paragraph 3	\$130,494.83
5. Amount Prepaid	\$130,494.83
[6. Years of Agreement (1 through 10) against which (____ through ____ ) partial prepayment is to be credited].	[ <u>N/A</u> ]

ex"E".j13  
5968.017

POST OFFICE BOX 5071  
Rockville, Maryland 20849-6011



December 16, 1994

Thomas D. Fleury  
Westfarm Associates Limited Partnership  
1600 Anderson Road  
McLean, VA 22102

Re: Payment of Costs Under Traffic Mitigation Agreement


Dear Mr. <sup>TD</sup>Fleury:

Attached is a check in the amount of \$144,994.25 which covers Kaiser's obligation to Westfarm Associates Limited Partnership as specified in the Traffic Mitigation Agreement.

If you have any questions, please call me at (301) 816-6514.

Sincerely,

Kaiser Foundation Health Plan of the  
Mid-Atlantic States, Inc.

  
Thomas M. Heller  
Manager of Facility Development  
& Property Services

Enclosure

CC: J. Marx  
File

P 387 844 386

**Receipt for Certified Mail**

No Insurance Coverage Provided  
Do not use for International Mail  
(See Reverse)

1. Recipient's Name (Print or Type)  
 2. Recipient's Address (Print or Type)  
 3. City, State, and Zip (Print or Type)  
 4. Daytime Telephone (Print or Type)  
 5. Recipient's Signature (Print or Type)  
 6. Signature of Addressee (Print or Type)  
 7. Signature of Sender (Print or Type)  
 8. Date (Print or Type)

Draw a line over top of envelope to the right of the return address

**CERTIFIED**

P 387 844 386

**MAIL**

KAISER FOUNDATION HEALTH PLAN, INC. MID-ATLANTIC STATES REGION  
 CAPITAL AREA PERMANENTE MEDICAL GROUP, P.C.  
 KAISER FOUNDATION HOSPITALS  
 ACCOUNTING OFFICE • BOX 7283 • ROCKVILLE, MD, 20849-7283  
 0611

INVOICE DATE	P.O. No.	DESCRIPTION	INVOICE No.	GROSS AMOUNT	DISCOUNT	BALANCE	REFERE
11/14/74		34224		144,974.75		144,974.75	BUS FA

DATE OF CHECK  
11/25/74

CHECK No.  
59957

THE ATTACHED CHECK IS PAYMENT FOR THE ITEMS DESCRIBED ABOVE



**Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.**

ACCOUNTING OFFICE BOX 7283 • ROCKVILLE, MD, 20849-7283

KAISER PERMANENTE  
 MID-ATLANTIC STATES REGION  
 DISBURSING AGENT FOR:  
 KAISER FOUNDATION HEALTH PLAN, INC.  
 CAPITAL AREA PERMANENTE MEDICAL GROUP, P.C.

DATE OF CHECK  
11/25/74

CHECK No.  
59957

The back of the document contains an artificial watermark - hold at angle to verify

PAY \*\*\* One Hundred Forty-Four Thousand Nine Hundred \*\*\*  
 \*\*\* HUNDRED FORTYFOUR THOUSAND NINE HUNDRED \*\*\*  
 CHECK AMOUNT 144,974.75

VOID 90 DAYS AFTER DATE ISSUED  
 OPERATING ACCOUNT

TO THE ORDER OF  
 WESTPARK ASSOCIATES  
 1600 ANDEFSCA AVE  
 ATTN: THOMAS C. FLEET

*Steve Wood*  
 AUTHORIZED SIGNATURE

② P 59957 ① 031001730 353 2626 21

**RELEASE AND TERMINATION OF  
PUBLIC IMPROVEMENT AGREEMENTS**

This Release and Termination of Public Improvement Agreements is made this 31 day of December 1998, by Montgomery County, Maryland, a political subdivision of the State of Maryland, for the Montgomery Department of Public Works and Transportation, an executive agency of the government of Montgomery County, Maryland, and successor -agency to the Montgomery County Department of Transportation (collectively "MCDPWT"), for the benefit of Westfarm Associates Limited Partnership, a Virginia limited partnership ("Westfarm") and GB, LLC ("Grosvenor"), successor-in-interest to part of the interest of Westfarm (Grosvenor and Westfarm being collectively referred to as "Owners").

FILED  
MOLLY Q. RUHL  
CLERKS OFFICE  
MONTGOMERY CO. MD

99 JAN 11 P 12:48

WHEREAS, Westfarm is the owner of certain land (the "Retail Property") and Grosvenor is the owner of certain other land (the "Property") each located in the Eastern Montgomery County planning area of Montgomery County, Maryland, in a subdivision known as West\*Farm Technology Park, as more fully described in Exhibit A and Exhibit B respectively, attached hereto.

WHEREAS, in order to satisfy certain traffic mitigation goals applicable to the Property, Westfarm entered into certain public improvement agreements (84-012 and 85-066) for the benefit of Montgomery County ("PIAs"). These PIAs were amended on April 25, 1986. The PIAs were further amended pursuant to an Agreement Accelerating Public Improvement Funds dated October 11, 1994. All references herein to the PIAs shall include references to all amendments thereto.

WHEREAS, under the PIAs, Westfarm was to pay to MCDPWT certain funds over a period of time.

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-m

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SERIALIZED  
INDEXED  
FILED  
JAN 11 1999  
MONTGOMERY CO. MD

WHEREAS, as of the date hereof, Westfarm has paid all funds which are due or will become due to MCDPWT and Owners have satisfied all obligations under the PIAs, including the provision for termination upon full payment set forth in Paragraph 4 of the Agreement Accelerating Public Improvement Funds, and therefore request that MCDPWT execute this instrument to evidence such facts.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, MCDPWT acknowledges and agrees that Owners have fully and completely satisfied all obligations under the PIAs and that as of the date hereof, the PIAs are hereby declared satisfied in full, and released and terminated.

Witness the hand and seal of Montgomery County, this 17<sup>th</sup> day of December 1998.

**MONTGOMERY COUNTY,  
MARYLAND**

By: *Douglas M. Duncan*  
Douglas M. Duncan,  
County Executive

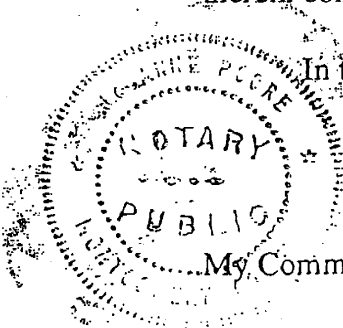
STATE OF MARYLAND;

to wit:

COUNTY OF MONTGOMERY;

I hereby certify that on this 17<sup>th</sup> day of December, 1998, before me, the undersigned subscriber, a notary public of the State and County aforesaid, personally appeared Douglas M. Duncan, known to me to be the person whose name is subscribed to the within instrument and did acknowledge that he executed the same for the purposes therein contained and signed his name in my presence.

In testimony whereof I have affirmed my official seal the date above written.



*JoAnne Poore*  
Notary Public

My Commission expires: June 1, 2002