

To Members of the Zoning Board,

This petition before you should have been immediately dismissed for several reasons.

**FUELING STATION.** The mere fact that the Fueling Station as part of this project as defined in the CEF criteria is specifically an Excluded use under Item 9, stating, “Gasoline, fuel oil, liquefied petroleum, and compressed natural gas, bulk storage” are not permitted under a CEF should have rendered this petition invalid. For Chairman Jones, Christina Rigby and David Yungmann to rule that the motion to dismiss under these grounds was Tabled is mind-boggling.

**ZONING BOARD’S ZONING AUTHORITY IS BROADER THAN DPZ’S AUTHORITY WHICH REPORTS TO ANOTHER BRANCH OF COUNTY GOVERNMENT.** The county council is a co-equal branch of county government through Title 16, subtitle 2 of the Howard County Charter. Article 9, section 910 of the county charter gives the County Council subpoena power. When the zoning board voted unanimously for these witnesses to appear before the board, they were politely exercising this power, and the county executive refused to permit employees who serve at his discretion to appear and testify. The chairperson of the Zoning Board instead of pursuing those witnesses chose to cover for the county executive’s disregard for the law.,

Consequently, it can be reasonably assumed information is missing or omitted which is adverse to the Petitioner’s presentation. Denial of the Petition would confirm the Zoning Board’s authority as a separate entity. The Zoning Board was unable to hear answers to the questions raised in the TSR, which the Director was unable to answer. As a result, several important criteria questions could not be asked or answered.

**MIHU and TRAFFIC TESTIMONY.** There was testimony about traffic but there was no Traffic Study Exhibit submitted by the Petitioner before resting its case. The Director of DPZ, the only witness from the county could not answer several of the MIHU AND TRAFFIC questions which were in the technical staff report; these questions were statements in the TSR about the amenities. MIHU, and traffic. The answers the Director provided were also not satisfactory, further raising questions on whether the DPZ and county are following the law or interpreting it as they see fit, or are directed.

**MISSING EXHIBITS.** Section 121.0.K.1 provides that DPZ approves a Site Development Plan that “conforms substantially to all exhibits of the Development Concept Plan approved by the Zoning Board.” The Exhibits admitted into evidence in this case are listed in this case. No other evidence shall be considered by the Zoning Board or any reviewing agency. No Traffic Study Exhibit has been admitted into evidence during testimony except for the power point presentation. The traffic expert’s testimony did not provide information necessary to legally inform the Zoning Board of required information.

Also, HCCA raised a concern about the absence of other exhibits required by the Zoning Regulations. Section 121.0.J.3.C in The procedure for the Creation of a CEF District states that “A summary of the questions, concerns and comments raised at the preliminary hearing shall be provided by the petitioner in accordance with Section 16.128(C), included in the application, and attached to the Technical Staff Report produced by the Department of Planning and Zoning.” The TSR appears to lack this information. The HCCA believes that the failure to satisfy the regulations is grounds for dismissal of the petition. During cross-examination, the Director of DPZ stated that those provisions only apply to a meeting that was held with the prior council. However, Part D of the same Section says “The petitioner shall comply with all provisions of Section 16.128(C)—(J) before, during, and after the initial meeting.” It appears as though DPZ is interpreting the regulations instead of executing it to the letter.

**THE REQUIRED FISCAL NOTE IS DEFECTIVE.** Next, Section 121.0.J.4.B states that “If the CEF Development Concept Plan proposes the conversion of non-residentially zoned land to residential uses, the Technical Staff Report shall also include a fiscal note that evaluates the impact of the

proposal on County tax revenues, as well as estimates of the future expenses to the county for providing public facilities and services for the residential uses.” During cross-examination the director of DPZ stated this only applies to CEF-R, however the zoning regulations make no such distinction.

The Criteria are clear when they apply to a CEF-R. For example, Criterion 5 specifically spells out CEF-R when stating “A proposed CEF-R District is not located in an existing non-residential zoning district unless the proposed CEF-R District adjoins a residential zoning district.” It seems clear from the criteria where it applies to just CEF-R and CEF in general. This is another instance of where the letter of the regulation is not executed

The HCCA continues to believe that the absence of a Fiscal Note and the summary of questions and concerns raised at the preliminary hearing are grounds for dismissal of the case.

**CEF CRITERIA.** The project fails criteria 8, 9B, and 9C. According to the technical staff report “if the site is developed according to the base density, eight family lots could be realized...and a subdivision of eight lots would not trigger the traffic enhancements.” The petitioner further claims that “the potential to rectify current conditions with costly MD-108 and Sheppard Lane improvements...are unlikely under existing conditions.” In other words the zoning board is being asked to change the zone type to build nearly 1500 units with 1560 parking spaces, to resolve traffic problems that would not be addressed had eight homes been built.

HCCA notes that the basis for the TSR conclusions on traffic conditions were not admitted into evidence by neither DPZ or the traffic engineer during his testimony. Requests to question the county’s traffic engineer were rebuffed by the County Executive. Nevertheless, the data presented to DPZ illuminates certain glaring flaws that are worth mentioning here:

It indicates that “all intersections are currently operating within acceptable level of service when considering critical lane volume (CLV) under existing conditions.” It goes on to say that “with the additional impact associated with the development of the subject site, the intersection of MD 108 at Sheppard Lane will continue to exhibit level of service ‘F’ conditions.” The summary of

findings does not reconcile with TSR justification of adding 1500 units and 1560 parking spaces to trigger changes enhancements that would not take place under the existing conditions of eight lots. Either the enhancements are not needed because the roads meet the level of service standard or not. Further, the DPZ Director testified that the county has not conducted APFO tests. That means the TSR conclusions solely rely on the petitioner's data, where a clear conflict of interest exists.

The data that forms the basis for the TSR conclusions evaluates three traffic conditions. In the first group of analysis, it concludes that the existing traffic conditions are within the acceptable level of service using the Critical Lane Volume methodology, which is the methodology employed by APFO.

When the petitioner's traffic engineer was asked to explain this conclusion he indicated that the CLV methodology is a simplistic method. This statement was confusing because it seemed to imply that APFO is not a good standard. Either APFO is the standard to determine adequacy or not. The petitioner cannot submit a petition that tries to emulate APFO on one hand, while producing a witness that seems to have little trust in APFO's ability to determine adequacy of public facilities.

Next the data assumed background traffic or traffic due to projects that have been approved but not built. Using those assumptions, only MD108 at Sheppard Lane fails at morning and evening peak hours. The engineer testimony was that the traffic assumptions were based not just on MD108 but also other minor roads not covered by APFO. This was confusing since the TSR data clearly presents results in terms of the road conditions on MD108 and at those minor road intersections. The testimony purports to present an "Adequate Road Facilities Test Evaluation and Traffic Study...". HCCA reiterates that this study was not admitted into evidence as part of witness testimony, and cannot form the basis for a decision and order.

Interestingly, the traffic engineer stated that the traffic studies for some of the projects listed in the background development were prepared by his company employing similar methodology. Ostensibly, the purpose of the traffic testimony for Erickson is to demonstrate that the project can move forward. When those background projects were under consideration, it was concluded that they would not result in additional traffic issues. It turns out

that the conclusions at the time were incorrect and now the same traffic study agency is using those incorrect conclusions to justify a project for its new client can move forward.

**THE TSR IS INSUFFICIENT.** The TSR presents unanswered questions and little evidence that the proposed enhancements meet Petitioner's burden of proof that CEF requirements are met. For example, only four out of the eight road improvements are described as "enhancements". According to the TSR many of the transportation enhancements are already needed and would not mitigate the added demands from a retirement community with 1560 parking spaces. Furthermore, there is also question of the improvements taking place. The TSR says that "the office of transportation noted potential issues with implementing certain enhancements such as acquiring necessary rights-of-way, construction easements, and SHA approvals that could preclude constructing certain streetscape projects."

So DPZ recommended "payment in-lieu" of the enhancements, which as we well know is an area fraught with controversy because the fees are not based on the actual cost of providing the service. The inconsistency in justifying the project with respect to transportation improvements renders the conclusions unreliable as there is no level of certainty that the county will not be saddled with the mitigation costs thereby contributing to the county's debt, effectively negating any purported benefit of a CEF.

Furthermore, it is troubling that the petitioner expects to be shielded from quantitative scrutiny of the enhancement while simultaneously making the case that the enhancements are proportional to the proposed development. The petitioner uses terms such as compatible, proportional, and innovative without qualification. The petitioner claims that the project is compatible with the community. The petitioner claims that the project's enhancements are proportional to the project itself. And the most egregious of them all, the petitioner states that a gas station is somehow an innovative product that is allowed by right in a CEF. The CEF calls for new innovative use categories, and an unrelated study performed after the passage of the CEF zoning law called gas stations "innovative". That study does not mean that gas stations are allowed in this CEF proposal. Strangely, it was asked whether the gas station will include electric charging stations. If a basis for concluding a gas

station is innovative is that it includes a battery charging station, that is gross distortion of the term “innovative”.

**MIHU.** Another aspect of the proposal that troubles the HCCA was the MIHU structure. Here again we would have preferred to question the county representative who agreed to the structure. Unfortunately, the Housing Commission Director who was a prospective witness was blocked by the County Executive along with the County’s Traffic Engineer who evaluated the traffic study. First the MIHU requirement of 10% was reduced to 8%. Why? – When it clearly states in the CEF Zoning Regulations – “The CEF petition shall comply with the Moderate Income Housing Unit requirements that were in effect for the zoning district for the property immediately before the CEF District was established on the property. If there were no Moderate Income Housing Unit requirements for the previous zoning district, a minimum of 10% of the total number of dwelling units shall be Moderate Income Housing Units.” The petitioner would have us accept testimony that the county requested the arrangement. If the County representative was allowed to testify, we would ask why the county did not request for the scholarship fund on top of the 10% rather than cutting into the minimum of 10%.

**PETITIONER GETS \$2 MILLION.** Petitioner is gratuitously offered to replace the 2% with a \$2 million deposit scholarship fund in perpetuity. This deposit would also be nonrefundable. So not only does the petitioner get to reduce its affordable housing obligation, it also gets to keep its nonrefundable \$2 million deposit scholarship fund in perpetuity.

**HOWARD COUNTY SENIORS ARE NOT COMPARATIVELY BENEFITED BY PETITIONER’S CCRC MODEL COMPARED TO OTHER CCRC MODELS IN HOWARD COUNTY.** Prospective residents of this retirement home will need to cough up 100s of thousands of dollars before they set foot in the community. It is unclear how the needs of Howard County’s older adults is being met since according to a study by the Howard County Department of Community Resource and Services, older adults 65 and older in Howard County are more likely to have household incomes below the median and over 50% of them also still carry a mortgage. Therefore it is worth asking whether the project would really service Howard County’s older adults or out-of-county clients. The HCCA wants all older adults to be

taken care of, but finds it problematic that the project is cloaked with a benevolent goal of benefiting county residents. The doubt on whether this project benefits Howard County residents is further heightened when looking at County's Senior Housing Master Plan, where the emphasis lies in providing housing for older adults within stable and attractive communities through maintenance, renovation, and modification of existing homes.

When the developer intends to meet its affordable housing obligations through alternative compliance, how does this help older adults in Howard County find affordable housing? In the same DCRS report, older adults stated their first priority was to remain at home while aging. Their second priority was quality transportation. Would the county's objective of meeting the needs of older adults better be met by expanding programs that allow older adults to age in place? Why is the county relegating them to the outskirts of the county with little access to public transportation instead of a downtown area where most facilities are walkable?

The petitioner's testimony with respect to paratransit was troubling as the petitioner sought to severely underestimate the need for paratransit by employing data used in a different facility. The witness was not able to answer how the differences in location and the assumptions employed by the Central Maryland Transit Development Plan affect the number of paratransit trips. According to the internal memo submitted as part of the TSR, the Americans with Disability Act mandates that fixed route transit services provide paratransit services to origins and destinations within  $\frac{3}{4}$  mile of fixed route. The memorandum further states that the petitioner is proposing both a significant change in residential density coupled with a land use type associated with high paratransit demand. An analysis by the Regional Transportation Agency of Central Maryland estimates this development would generate 1,134 paratransit trips a month. Instead of working with the Office of Transportation to develop a plan to meet the goals and intent of PlanHoward 2020 as requested, the petitioner seeks to severely understate the number of trips to 295 by comparing to its Charlestown campus – where it is not clear whether the fixed route conditions and requirements would exist.

**PETITIONER'S FISCAL AND ECONOMIC EVALUATION DO NOT MEET INDEPENDENT REVIEW STANDARDS.** The HCCA recommends that the

Zoning Board scrutinize the Summary Evaluation of the Fiscal and Economic Effects of the facility to Howard County as prepared by the petitioner. The report appears to make some glaring hand-waving arguments about the fiscal impacts.

First the study calculates that the average cost of utilizing county services is approximately \$1,500 per person. This per-capita cost is calculated by removing the \$630 million of school budget from the \$1.1 billion general fund and dividing the balance by the county population of 325,000. The county's education system is inextricably linked to the overall budget. The report has not adequately justified why the entire budget with the fire and rescue expenses should not be averaged over the 325,000 residents instead of averaging a portion of the budget. This would lead to cost of \$3700 per person; not \$1,500. This would lead to a cost of \$6.3 million for the 1,700 new residents of the CCRC; not \$2.55 million as the report estimated.

Second, then the analysis states that "some level of efficiency is assumed in adding 1,700 new residents of the CCRC to the county and assumes this level of efficiency reduces this cost by 50% to \$1.27 million." The report conditionally states, "If that efficiency results..." which is an assumption without any basis. There is zero justification for eliminating 50% of the total cost.

Third, the office of transportation's analysis on the impact on paratransit services is approximately \$680,000 a year due to a projected 1,134 paratransit trips a month. Office of Transportation (OoT) further suggests "to ensure consistency with PlanHoward 2030's policies, OoT recommends the petitioner work with OoT to develop a plan to meet the goals and intent of PlanHoward 2030, with focus on policy 7.6.D to ensure the burden on transportation operations is managed in a cost-effective manner." Without scrutinizing the calculated tax revenue of \$6.87 million, this would lead to a net fiscal loss of approximately negative \$180 thousand. Not \$4.11 million as the report suggests.

**ACTUAL ALTERNATIVE COST OF ENHANCEMENTS IF SEPARATELY INSTALLED BY HOWARD COUNTY IS NOT MEASURED AGAINST THE FUTURE INFRASTRUCTURE AND MAINTENANCE COSTS THAT WILL**



## **BURDEN HOWARD COUNTY'S LIMITED BUDGET IN PERPETUITY.**

HCCA also implores the Board to ask whether the DPZ and other agencies have considered the cost to the county of providing the enhancements instead of accepting Petitioner's proposal to provide "intended" enhancements at a cost which is likely to be far greater than the cost of a traffic light at Linden Linthicum intersection and a playground. Both of which cost a fraction of the millions the County spent to realign Sheppard Lane to benefit the developer's Garden Center shopping center, which met strong opposition. The County spent millions which benefited a developer without any guaranteed return, instead of providing enhancements long requested by the community, as noted in the testimony by the River Hill representative. Now a developer is requesting a CEF zone which converts Agricultural Preservation property into commercial property when several of the potential costs and benefits are yet to be determined, and the financial analysis is defective. Since the CEF is supposed to provide some community benefits, where is the guarantee this will occur since even the TSR, which is essentially a regurgitation of the petition, notes the developer could put money in an escrow account rather than build the enhancements? Or pay a fee in lieu of any reimbursement requirements.

**COMMUNITY SUPPORT IS GENERATED BY HOWARD COUNTY'S FAILURE TO PROVIDE A TRAFFIC LIGHT AND A PLAYGROUND.** The petitioner touts community support as one of the reasons to approve this project.

One of the prevailing concerns raised over the course of the hearing is that if this project is not approved, it could lead to another less desirable project that could congest roads more or the schools like a high density residential development. So one question the zoning board should ask is, "is the community being coerced into supporting the project out of fear rather than an affirmative and enthusiastic support for the project." Or is the community being baited into supporting a project in return for a few enhancements the county was unwilling to provide. The cost to the county is likely to be far greater than the few enhancements that the developer is required to provide and maintain in perpetuity.

**IN CONCLUSION, IT WOULD BE A DISSERVICE TO HOWARD COUNTY TO ACCEPT THE PROPOSAL CONTAINING OMISSIONS,**

UNANSWERED QUESTIONS, A DECEPTIVE FISCAL ANALYSIS, A FAILURE TO PROVIDE 10% MIHUs, A FAILURE TO PROVIDE AN ESSENTIAL TRAFFIC STUDY, AND NO CREDIBLE PROJECTIONS OF BENEFITS TO SENIORS AND HOWARD COUNTY. INSTEAD, OF MEETING ITS BURDEN OF PROOF PETITIONER'S PROPOSAL SUGGESTS THAT APPROVAL WOULD CREATE FAR WORSE, AND LONG LASTING BUDGET AND ECONOMIC PROBLEMS FOR HOWARD COUNTY.

Approving this project will not help provide affordable housing to Howard County's older adults. It will not provide them quality transportation. It will not improve road conditions. It will just add to the county debt.

Hiruy Hadgu

HCCA Board of Directors