

THE LAW
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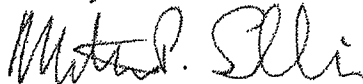
December 10, 2009

Zoning Commission
441 4th Street, NW
Suite 210
Washington, DC 20001
Fax (202) 727-6072**Re: Statement of Opposition from Party Status Applicants; Zoning Commission**
Case No. 09-03

Dear Members of the Commission:

Enclosed is a Statement of Opposition to Zoning Commission Application No. 09-03 for the Skyland Town Center. This Statement is being filed on behalf of party status applicants Joanne Harris and Gary Puckrein, Ron and Cherise Cole, Karen and Dennis Sibert, and Cynthia Brock-Smith. Also attached as Exhibit A to the Statement is a professional analysis of the Gorove/Slade traffic impact study, prepared by Joe Mehra of MCV Associates, Inc. The party status applicants wish to call Mr. Mehra, retained only yesterday, as an expert witness in this evening's hearing. Mr. Mehra's CV is also attached.

Sincerely,



Martin P. Sullivan

enclosure

ZONING COMMISSION
District of Columbia
CASE NO. 09-03
EXHIBIT NO. 46ZONING COMMISSION
District of Columbia
CASE NO. 09-03
EXHIBIT NO. 46

**BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA**

December 10, 2009

APPLICATION # 09-03

Party Opponent Applicants:

Gary Puckrein and Joanne Harris 2929 Fort Baker Drive, SE

Ron and Cherise Cole 2933 Fort Baker Drive, SE

Karen and Dennis Sibert 2937 Fort Baker Drive, SE

Cynthia Brock-Smith 2939 Fort Baker Drive, SE

STATEMENT IN OPPOSITION

I. Introduction.

The above-referenced Fort Baker Drive residents (the "Fort Baker Residents") oppose Zoning Commission Application No. 09-03 in its current form, and urge the Zoning Commission to consider (i) the Comprehensive Plan, as discussed below, which addresses the Fort Baker Residents specifically; (ii) the overwhelming visual, sound, security, and lighting impacts that would be inflicted upon the Fort Baker Residents as a result of the construction, operation, and existence of the proposed structures; (iii) the potential damage to the Fort Baker Residents' homes from the C-3-A - sized construction that will take place a few feet from their homes in what is now a transitional R-5-A zone district; (iv) the potential storm water management impacts resulting from eliminating a large, wooded, transitional R-5-A zone (at a much higher elevation than Fort Baker Drive) and replacing it with the proposed Block 1, leaving little or no permeable surface; (v) the privacy and safety concerns from residents that would find themselves a literal "stone's throw" from a massive rooftop parking lot towering over their back yards; (vi) the negative traffic impacts to the entire area from nearly doubling the amount of retail, adding over 450 residential units, and providing 1,698 parking spaces, all adjacent to the Hillcrest single-family dwelling neighborhood; (vii) the specific traffic impacts on Fort Baker Drive and other cut-through streets, which are not addressed in the Applicant's traffic study; and (viii) the economically and emotionally devastating impact that the construction, operation, and the mere existence of the Skyland Town Center, as proposed, will have on the Fort Baker Residents, as a result of the aforementioned factors.

The Fort Baker Residents understand that there is considerable pressure in favor of approving this application, and they are generally in favor of a reasonable Skyland redevelopment as well. But where most residents in this area may suffer from traffic headaches and other such collateral adverse effects, the Fort Baker Residents are being told that they must sacrifice much more for the good of this project. They are being told that they must sacrifice the peace of their current home and family lives, and their investments in their homes, so that the City and the Applicant can squeeze every last available inch of profit, or at least good publicity, out of the Skyland property. It is a wildly disproportionate and unjust investment that the Fort Baker Residents are being told they must make – with no real attempt at mitigation by the Applicant.

II. Comprehensive Plan.

A. Required Buffer. In the District Elements of the Comprehensive Plan, Chapter 17, Action FNS-2.7.B directs the City, the Zoning Commission, and the Applicant to:

“Work with property owners to develop and maintain a suitable visual, sound and security buffer between Skyland Shopping Center and the adjacent residential areas along Fort Baker Drive.” (10 DCMR 1717.6)

The Applicant has not provided the Fort Baker Residents with any evidence that it intends to develop a suitable buffer between Skyland Town Center and Fort Baker Drive. For the visual buffer, the Applicant proposes, instead, to eliminate the existing buffer between Fort Baker Drive and Skyland Shopping Center (the wooded R-5-A section of the subject property), and replace it with a large retail store towering over the Fort Baker Residents, with a few trees as a token “buffer.” This is a very specific provision, and it therefore should take precedence over other general aspects of the Comprehensive Plan, and it should be given primary consideration by the Commission. The failure to meet this requirement is clear and convincing evidence that the proposed PUD is inconsistent with the Comprehensive Plan and must therefore be denied pursuant to 11 DCMR 2403.4.

B. Soil Erosion. It does not appear that the Applicant has addressed the Comprehensive Plan Policy FNS-1.2.4 to "[r]educe soil erosion and stabilize slopes at "hot spots," particularly the Skyland/Alabama Avenue area..." (10 DCMR 1709.4.)

C. Other Comprehensive Plan Issues. The proposal is inconsistent with the Comprehensive Plan in other respects, as well, including: the policy that zoning designations for the Far Northeast and Southeast Area reflect and protect the existing low density land use pattern while allowing for infill development *that is compatible with neighborhood character.*" (10 DCMR 1708.2); that infill development in this area should "*generally be similar in density to what exists today.*" (10 DCMR 1707.2); and a policy to encourage "new businesses and activities that provide needed retail services to the adjacent neighborhoods and *that are compatible with surrounding land uses.*" (10 DCMR 1708.5) (emphasis added in all cases). The proposed Town Center and Target are clearly not compatible with the character of the abutting single-family dwelling neighborhood.

III. PUD Evaluation Standards.

The Fort Baker Residents will testify as to the expected negative impacts of the proposed project upon them and their properties, and will show that the current proposal is not compatible with the Comprehensive Plan, and is also not in accordance with the PUD Evaluation Standards of Section 2403 of the Zoning Regulations, as follows (in part):

Section 2403.3 - The Commission shall evaluate the impact of the project on the surrounding area and must find that it is not unacceptable. The proposed project would clearly have unacceptable impacts on the surrounding area that are not capable of being mitigated without major revisions to the Application. In addition to the negative impacts discussed above, there would also be significant negative impacts due to traffic and parking. Please see the report from MCV Associates, Inc., analyzing the Applicant's Traffic Impact Study, attached hereto as Exhibit A.

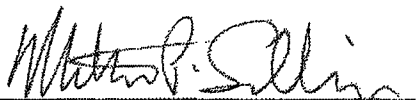
Section 2403.4 - The Commission shall find that the proposed PUD is not inconsistent with the Comprehensive Plan. See the discussion above which shows that this proposal is clearly inconsistent with the Comprehensive Plan.

Section 2403.8 – The Commission must judge and balance the relative value of the benefits offered in the proposal against the potential adverse effects thereof. The potential adverse effects to the Fort Baker Residents are obvious, extraordinary, and intensely concentrated upon these residents. In response, the Applicant has not offered any reasonable proposal for mitigating or resolving such acute adverse effects. While the proposal offers benefits for the larger surrounding neighborhood, and for the District in general, the Fort Baker Residents would be required to bear the brunt of the corresponding adverse effects, which, in addition to being incompatible with PUD evaluation standards and the Comprehensive Plan, is patently unfair.

IV. Conclusion.

The Application does not meet the necessary PUD Evaluation Standards of Section 2403 of the Zoning Regulations, and will cause significant and irreparable harm to the Fort Baker Residents and their properties. Therefore, the Zoning Commission must deny the Application.

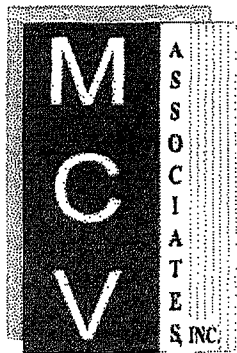
Respectfully submitted, on behalf of the Fort Baker
Residents



Martin P. Sullivan
D.C. Bar No. 460458
December 10, 2009

Exhibit A

Memorandum from Joe Mehra, P.E. PTOE from MCV Associates, Inc. dated December 10, 2009



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MEMORANDUM

TO: Martin P. Sullivan

FROM: Joe Mehra, P.E. PTOE

SUBJECT: Skyland Town Center

DATE: December 10, 2009

JOB: J-710

REVIEW OF "TRAFFIC IMPACT STUDY FOR THE SKYLAND TOWN CENTER PUD,
prepared by Gorove/Slade Associates, Inc., dated September 2009.

The traffic study follows the generally accepted industry guidelines for conducting a traffic impact study. However, several assumptions that were made to arrive at the conclusions are not valid or have not been confirmed. Some of the discrepancies and shortcomings of the traffic analysis are presented.

STUDY AREA INTERSECTIONS – The study analyzed intersections that are adjacent to the site and included only one intersection farther away from the site (Alabama Avenue/Branch Avenue). Figure 8 shows that 35% of the site traffic (more than a third) will be coming on Naylor Road, to and from the north. However, Gorove/Slade did not include a single intersection on this approach route for analysis. The intersection of Naylor Road/Minnesota Avenue should have been included in the analysis. Similarly, 25% of the site traffic will be coming on Good Hope Road, to and from the northwest. However, Gorove/Slade did not include a single intersection on this approach route for analysis. The intersection of Good Hope Road/Minnesota Avenue should have been included in the analysis.

Fort Baker Drive is a good candidate for cut-through traffic. The intersection of Fort Baker Drive and 30th Street should have been included in the analysis.

EXISTING CONDITIONS TRAFFIC DATA – All traffic analysis is based on traffic data collected in the year 2006. The data is three years old. This data was used by Gorove/Slade in the Synchro model in December 2008 (more than two years after the data was collected). The Institute of Transportation Engineers (ITE) Recommended Practice for Traffic Impact Analysis for Site development states, that traffic volume data should be no older than one year. Gorove/Slade should have collected traffic data at a typical intersection in the year 2008 and compared with the older data to show that the traffic volumes have not changed significantly since the data was collected three years ago and the use of such data would not result in erroneous results.

EXISTING CONDITIONS LEVELS OF SERVICE – Gorove/Slade used the Synchro model to compute levels of service during the AM and PM peak hours. The Synchro Model worksheets are included in the Appendix to the traffic report. A comparison of the worksheets and the summary results included in Table 1 show several discrepancies. For example, the vehicle delay for the intersection of Good Hope Road/Naylor Road/25th Street is shown as 60.2 seconds per vehicle, whereas the model shows 76.6 seconds, almost 27 percent higher. Similarly, the vehicle delay for the intersection of Alabama Avenue/Naylor Road is shown as 39.1 seconds per vehicle, whereas the model shows 50.2 seconds, almost 28 percent higher.

BACKGROUND CONDITIONS LEVELS OF SERVICE – The Synchro Model was used to compute levels of service in the background conditions similar to the existing conditions. The industry practice is to use the same signal timings and phasings as the existing conditions, unless the signal phasings are being changed. Further, since the signals are generally on a coordinated system, changing of signal timing at one intersection can impact the overall system. Changes should not be made unless DDO concurs with the changes. It seems that Gorove/Slade has changed traffic signal timings at several intersections in the background conditions in comparison to the existing conditions. The signal timing changes has actually resulted in the background conditions operating better than the existing conditions due to individual intersection signal timing change, even though there is an increase in traffic volumes. An example is the intersection of Alabama Avenue/Naylor Road, the 50.2 seconds per vehicle delay in existing conditions decreases to 39.8 seconds per vehicle in the background conditions.

SITE TRAFFIC GENERATION – Gorove/Slade used the ITE Trip Generation Report to compute AM and PM peak hour trips and reduced them to account for passer-by trips, synergy reductions and Alternate mode reductions. The 25% reduction in passer-by trips is reasonable. In terms of the reduction due to synergy, Table 6 shows that almost 46 percent of the vehicle trips leaving the apartments in the PM peak hour are going to the on-site retail. There is no justification for using such a high synergy factor. A 25 percent synergy would be an acceptable number.

Table 6 also shows that the vehicle trips to and from the site were further reduced by 30 percent due to the Naylor Road Metrorail station, located approximately one mile from

the site. Further, Gorove/Slade refers to the WMATA 2005 Development-Related Ridership Survey II as the source for this percentage reduction and a quote from the traffic report, "Using the models provided in the study and given the distance from the Naylor Road Metrorail, a 30% reduction was applied to the residential and commercial trips." A review of this WMATA study shows that all residential and commercial sites that were studied were within approximately one-half mile of a metrorail station. No sites were one mile away from the station. Further, the study showed that the metrorail mode share for residential uses was 31% for one-half mile distance from the station (Table 11, Page 32 of the WMATA Report). Further, the WMATA report shows that the average Metrorail mode share for all retail sites surveyed was 29%, See Table 15 of WMATA Report (all sites were within 1,700 feet of a Metrorail station). The WMATA data clearly shows that using 30% mode share for a Metrorail station located one mile away is too high.

The use of reasonable and acceptable reduction factors for synergy trips and mode share trips will result in an increase of vehicular trip generation shown in Table 6 of Gorove/Slade report.

TOTAL CONDITIONS LEVELS OF SERVICE – As noted earlier, the signal timing should be the same as in the existing conditions and background conditions. Gorove/Slade changed the signal timing at most of the intersections in analyzing the levels of service with the site traffic. The intersection of Alabama Avenue/Branch Avenue is projected to operate at better levels of service than the background conditions without any roadway improvements but with a significant increase in traffic. In some cases the clearance intervals have been reduced when analyzing the levels of service. This results in a better level of service than otherwise. The clearance intervals are a major safety issue. The clearance intervals cannot be changed unless roadway conditions change. Due to these reasons the computed levels of service are erroneous and cannot be used to evaluate the impact of the project.

The traffic study as well as DDOT has emphasized the need to accommodate pedestrian crossings and pedestrian safety in the traffic analysis. The levels of service analysis does not incorporate an increased level of pedestrian activity. The incorporation of the increased pedestrian activity can reduce the intersection levels of service.

CONCLUSIONS – The traffic analysis has the following shortcomings:

1. Did not incorporate critical intersections in the analysis even though a significant portion of the site traffic would be passing by these intersections
2. Made some assumptions that are clearly invalid in terms of vehicle trip generation. Correcting for these assumptions would result in an increase in site trip generation.
3. The levels of service analysis has not used the signal timing consistently, with the consequence, that background conditions are projected to be better than the existing conditions even though there is an increase in traffic and no

intersection improvements were included. Further, the conditions with the site developed are also projected to be better than the background conditions without any intersection improvements but including a significant increase in traffic.

4. The clearance intervals have been reduced in comparison to the existing conditions data.

5. The use of the correct data in trip generation, pedestrian activity and levels of service analysis may result in several more intersections failing with the site traffic.

6. Due to the above listed shortcomings, the traffic study results are invalid and cannot be used to assess the site impacts.

Jawahar (Joe) Mehra, P.E. PTOE

President, MCV Associates, Inc

Education

- MS/1972/Industrial Engineering
- BS/1969/Mechanical Engineering

Registration/Certification

- Professional Engineer: TX, VA, MD, DE
- PTOE

Affiliations

- Fellow, Institute of Transportation Engineers
- Member, Transportation Research Board

Summary

Mr. Mehra has over thirty-five years of experience in the areas of project management, traffic engineering and transportation planning. He has managed numerous traffic engineering/operations studies including traffic analysis, impact studies and data collection. He has managed several traffic engineering studies in the Washington DC including the K Street Busway Study, the EISF preparation for Logan Circle residential development, EIS for PEPCO Project, The Bus rapid Transit Study, TIS for various land uses, etc.

Relevant Experience

Traffic Engineering. He has managed several traffic engineering studies with extensive experience in traffic simulation models such as Synchro, CORSIM and TRANSYT-7F. He managed the traffic analysis study for Fort Meade that used the CORSIM Model to evaluate roadway improvements to accommodate security measures implemented after September 11, 2001. He was also the Project Manager for a three year transportation planning "on-call" contract with VDOT for Region 2. As part of this contract the Tysons Corner area was analyzed using the Synchro model. Approximately 40 signalized intersections were analyzed for the existing conditions and future conditions. CORSIM Model was also used on several other projects to evaluate corridors such as the Route 207 corridor in Caroline County, the Eisenhower Avenue corridor for the Patent and Trademark Office in Alexandria, etc. Other traffic engineering studies that he has managed include the Route 58 (Pennington Gap Bypass) Traffic Engineering Study for VDOT, Route 1/123 Interchange Study, etc.

Transportation Planning/Forecasting. He was the Project Manager for the Dulles Corridor Metrorail Project - Station Traffic Circulation Study For Preliminary Engineering Extension To Dulles Airport / Route 772 to validate the station layouts and the traffic forecasts as they relate to station access issues for the Metrorail Extension. He has conducted statewide, regional, corridor and subarea planning studies in Washington, DC, Fauquier County, Warren County, Fairfax County, Loudoun County (using COG's Version 2 Model and VIPER that resulted in the County's Comprehensive transportation plan), Chesterfield County, Richmond area, Hampton Roads, Tri-Cities, Prince William County, etc. in Virginia; Montgomery County, Baltimore County, St. Mary's County, Charles County, Prince George's County, Germantown, Silver Spring, etc. in Maryland; York County, Pennsylvania; St. Louis, Missouri; Denver, Colorado; New York City, Connecticut, etc. using MINUTP, TMODEL2, EMME/2 or QRSII. He has managed multimodal planning studies for a broad range of clients. He was the Project Director for the New Approach Study for Integrating Transportation and Development in the National Capital Region using the MINUTP model. He was the Principal Investigator of a FHWA study on Analysis and Use of Trip Generation Rates resulting in S.I.T.E. Handbook and updated NCHRP 187 trip rates. He was MCV's Project Manager on a multi-disciplinary team to prepare the Georgetown Branch Transitway MIS in Maryland. He managed the Charles Town Circulation Study and the Leesburg Downtown Courts Transportation Study.

Environmental Planning. He has managed several environmental assessments and impact statements with emphasis on data collection, transportation, air quality, land use and noise using State and Federal guidelines. These studies were performed at regional, local and project levels. Some examples include the Georgetown Branch Transitway EIS/MIS, Traffic/Air Quality Analysis for the US 1/MD 201 Corridor Study EIS, US 301/MD 197 Interchange Study, Route 15 Bypass Noise Study (including barrier design) in Leesburg, Virginia, etc.



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Urgent

For Review

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Information**

● **Comments:**

Please accept the attached for filing in tonight's Zoning Commission Case No. 09-03