

E008276

 Microsoft Outlook - Memo Style
 03/03/15 08:58 AM

We only received 3 of the 4 attachments he sent.

Mark Pohl said to include ~~the~~ his testimony if he could show he originally sent it before 5pm

XEROX®

writtentestimony

From: Takoma Transit <takoma.transit@yahoo.com>
Sent: Monday, March 02, 2015 5:41 PM
To: writtentestimony
Cc: Takoma Transit
Subject: Fw: Testimony Docket R14-01 Takoma Station JD
Attachments: 01) D Paris, Takoma JD Report, March 2, 2015.pdf; 02) Attachments PARP D Paris 2014-15.pdf; 03) D Paris, Takoma Station Downsizing 09-25-08.pdf

Hello-

This is the email that I sent at 4:20 PM. Three of the four files are attached. I removed the fourth which is the largest.

Is this satisfactory?

Thanks for your help.

Dave

----- Forwarded Message -----

From: Takoma Transit <takoma.transit@yahoo.com>
To: "writtentestimony@wmata.com" <writtentestimony@wmata.com>; "writtentestimony@wmata.com" <writtentestimony@wmata.com>
Cc: "takoma.transit@yahoo.com" <takoma.transit@yahoo.com>
Sent: Monday, March 2, 2015 4:20 PM
Subject: Testimony Docket R14-01 Takoma Station JD

Hello-

The attached testimony is submitted regarding Docket R14-01, dealing with proposed Takoma Station changes. Four PDF formatted files are attached. Please scan them in order from 1-4.

If I send a duplicate copy of this email, it will not be necessary to place both in the record.

Please let me know if there is any problem or if you have any questions. I will try to respond quickly.

Thank you for your attention.

Sincerely,

Dave Paris

Attachments:

- 01) D Paris, Takoma JD Report, March 2, 2015
- 02) Attachments PARP D Paris 2014-15
- 03) D Paris, Takoma Station Downsizing 09-25-08
- 04) Attachments re Takoma Downsizing 09-25-08

E008276

01) D Paris Takoma JD Report March 2 2015.pd
03/03/15 09:30 AM



David B. Paris, Esq.

901 Larch Avenue, Takoma Park, MD 20912
301-270-3168, Takoma.Transit@yahoo.com

March 2, 2015

By Email: writtentestimony@wmata.com

Mr. Thomas Downs, Chairperson
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Rc: Proposed Changes to Takoma Station, WMATA Hearing No 595, Docket R14-01

Dear Chairman Downs:

While it is commendable that WMATA has moved in a positive direction from offering space-consuming townhouses to an apartment building, the present proposal for joint development should be rejected because it is unclear whether existing station land will be needed to accommodate the DC streetcar system that is being currently planned. Once again, WMATA has proposed to develop station property before determining whether the property is truly surplus. Moreover, WMATA continues to be unforthcoming regarding the station parkland.

The 1974 WMATA Takoma Station Parkland plan remains the operative transit plan for Takoma Station because the 2007 Townhouse Plan improperly sought to convey dedicated parkland, without diligently investigating its status. The adoption of the 2007 plan was a breach of fiduciary duty since there was no evidence in the record of a careful search for documentation regarding to the status of the parkland. The identification of the Takoma Station parkland in the 1974 Takoma Station plan followed by the building of the designated park constructively is credible proof of parkland dedication. WMATA has advanced no evidence to the contrary.

While the 1974 plan changed the face of Takoma Station, no element of the 2007 Townhouse Plan has been realized. The 2007 plan is a nullity because it has not been finalized by the PUD process and adopted in final form by the WMATA Board following a second compact hearing. Takoma Station has no townhouses with two-car garages, no mini-park, and no altered transportation elements. The bus bays, kiss and ride area, and handicapped dropoff zone are all based on the 1974 plan. *See generally attached*, David Paris, Letter to Letitia A, Thompson, Regional Administrator, FTA , Takoma Station Downsizing ("FTA Letter"), July 25, 2008

The 1974 Takoma Station plan and a rival "Citizen's" proposal both shared the central element of permanent parkland. The Takoma Station plan containing a parkland buffer was created by WMATA after the DC Office of Planning and Management announced support for the Citizen's

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Parkland station design plan, which also was favored by an ad-hoc committee of the Montgomery County Council monitoring Takoma Station planning and subsequently by the full council. The DC Government's support for the Citizen's Parkland proposal was intended to pressure WMATA to incorporate parkland into the Takoma Station plan. according to DC planners who regularly attended meetings of Neighbors Incorporated and the Save Takoma Park Committee, citizens groups involved with the planning of Takoma Station. DC supported the WMATA plan after the park element was added.

On June 17, 1974, several days before WMATA adopted the Takoma Station design plan, the WMATA Assistant Director of Planning wrote a Montgomery County planning counterpart that the WMATA proposal was more park oriented than the citizen design because "*the so-called 'pocket' park to the northeast of the facility would be substantially the same under either plan. In addition, examination of the two plans shows that there would be more green space in total provided under the Authority plan than under the citizens plan.*" *FTA Attachments: Letter of Mathew Platt, Assistant Director, WMATA Office of Planning to Robert M. Winick, Chief Transportation Planning Division, MNCPPC, June 17, 1974 (emphasis added).*

The language of the face of the resolution adopting the 2007 Takoma Station/Townhouse Plan clearly indicates that the incomplete document was to be finalized by the DC Zoning Commission with regard to pedestrian safety and handicapped access. "Resolved, That the Board request that the DC Office of Planning, a part of the District's PUD process, consider the Montgomery County alternative on the Takoma Metrorail Station as it relates to pedestrian safety and handicap[ped] access" WMATA Resolution, November 8, 2007

Moreover, the WMATA Board's adoption of the staff report on the 2007 compact hearing also relegated other important and controversial issues to the Planned Unit Development (PUD) hearing process. The hearing report failed to resolve or even to address the critical failure of the joint development proposal to comply with the 50-foot buffer required by the Takoma Central District Plan (CDP) and the Federal Transit Administration (FTA) to protect residences abutting Takoma Station. *See attached* David Paris, Letter to Letitia A, Thompson, Regional Administrator, FTA, Takoma Station Downsizing ("FTA Letter"), July 25, 2008, p. 3. Similarly, a staging plan to keep Takoma Station operational during the construction process and to protect the surrounding community from construction impact, was reserved for the PUD process. *Id.* Finally, the PUD process never had an opportunity to address the failure of the 2007 Townhouse Plan to follow the CDP policy requiring replacement of all parking spaces removed for development. *Id* at 10-11.

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In 2007, WMATA General Manager John B. Catoe informed Ike Leggett, Montgomery County Chief Executive that if either the FTA or the PUD review processes resulted in “material changes to the project, the project would be returned to WMATA for a second compact hearing process.” *See FTA Attachments: Letter Catoe to Leggett, Montgomery, November 5, 2007.* Similarly, the Takoma Station Joint Sales Agreement recognizes that an alteration in station design might require a second compact hearings. *FTA Attachments: WMATA/EYA, Sales Agreement, June 20, 2005, Section 4.02 (G) (Compact Hearing), p. 13; see also FTA Letter, p. 1-15.*

The WMATA compact does not give the WMATA board authority to delegate a signatory to finalize unfinished planning documents. It is the exclusive responsibility of the WMATA Board, not the DC Zoning Commission, to develop a “mass transit plan for the immediate and long-range plans of the Zone.” WMATA Compact § 13. The WMATA compact requires that the transit agencies made decisions for the benefit of “the transit zone” not just one signatory. WMATA Compact §§ 13, 14, & 15. A station transit plan is to be adopted by the WMATA Board with input and information from the WMATA signatories. *Id.*

It is contrary to the regional character of the WMATA compact for the transit agency to abdicate its judgement to the unsupervised wishes of the District of Columbia, the jurisdiction where Takoma Station is physically located. *See c.f. Helmuth and Associates v WMATA*, 414 F. Supp. 408, 409-410 (D. Md. 1976) (A WMATA signatory may not enact information disclosure legislation that would burden the WMATA compact). The WMATA Board is required to take independent action to ratify any design changes emerging from the PUD process and to submit the final design to the FTA. The 2007 Takoma Station plan was neither finished by the PUD process nor adopted by the WMATA Board following a second compact hearing.

The amount of available Takoma Station land remains unclear because WMATA is arbitrarily and capriciously secreting documentation regarding the status of Takoma Station open space that appears to have been dedicated as parkland during the 1970's. For nine months (274 days) my request for the documentation, which should have been provided to the general public prior to the Takoma Station compact hearing rather than being subject to WMATA's Public Access to Records Policy (PARP), has been ignored completely. *See PARP Attachments: Testimony and PARP request of June 1, 2014.* It is apparent that WMATA is not committed to an ethic of transparency. A 2006 PARP request revealed that WMATA staff claimed that they had documentation that they lacked. This history plus the paucity of documentation regarding Takoma Station parkland warrants greater transparency, rather than continued stalling tactics.

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WMATA has ignored my request for the Takoma Station joint development hearing record to contain detailed documentation regarding WMATA's efforts to preserve and locate historic Takoma Station documents. "In 2006, WMATA was unable to locate more than a few pieces of documentation relating to the planning, land use, design, construction, maintenance, and inventorying of the Takoma Station parkland/green space area. Additionally, WMATA was unable to provide any documents relating to the archiving of historic papers or the hiring of professional archivists or historic researchers to find missing documentation." *See PARP attachments*, David B. Paris, Email to WMATA, August 6, 2014 p. 1.

My August 6, 2014 communication to WMATA timely answered a set of follow-up questions submitted by WMATA on July 23, 2014. I pointed out WMATA's obligation to provide the information prior to the Takoma Station hearing. But also noted that it also could be supplied subject to one WMATA official's promise to make Takoma Station joint development information free from the procedural entanglements of WMATA's PARP policy and in the spirit of another official's claim that WMATA is willing to provide Takoma residents with "unlimited access" to WMATA files regarding missing 1970's documents. *Id* at 4, and 5 quoting Email from Art Lawson to Dan Tangherlini, Member WMATA Board and Director, June 30, 2005, containing notes made by Gene Counihan (" I indicated that WMATA is committed to open government and I further pledged to get them any and all public information they requested in a timely manner and would do so without a formal PARP request.")

Since a July 2015 form letter, the sole communication that I received from WMATA regarding my PARP request, despite several status inquiries, has been a terse October 3 email stating in totality "I apologize for the delay in getting back to you. We are completing our response regarding whether you are eligible for a waiver and will provide a response shortly." *See PARP attachments*: Email from Kesylia Thom, October 23, 2014. Five months later, no further response has been received and the information remains unavailable.

Nine months of delay, with WMATA neither ruling on my PARP request nor providing the requested information, makes it appear that the WMATA staff are arbitrarily and capriciously withholding from the public information regarding the status of station open space impacted by the proposed joint development. Past acknowledgments from WMATA officials of untransparent practices, and promises of open government policies, keep turning out to be no more credible than WMATA's promise to dedicate Takoma Station parkland. History reveals a pattern of misinformation from WMATA staff regarding material matters relating to the joint development of Takoma Station, including the claim that alternatives to townhouses had been considered.

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An earlier PARP request revealed that that the WMATA staff lacked documentation that they claimed showed that alternatives to Takoma Station townhouses already had been considered. The information appears to have been intended to sabotage a charette that was conceived to provide an opportunity to consider a specific apartment building proposal. *See Paris FTA at 21-22.* Right before the vote it was represented to the board that:

the residents who met with Mr. Graham told him that. during the TCDP process, they were not allowed to consider other alternatives to the proposal from Eakin-Youngentob Associates (EYA) for townhouse development on the site that had been previously approved by WMATA. They asked him to convene a new planning process to enable them to explore other possibilities. Staff who participated in the TCDP process disagree with these residents. **Staff notes and meeting handouts confirm** that DCOP did not limit the opportunity for the community to create a new vision for the site and that townhome development was the alternative that was ultimately selected out of a **range of others** that were considered. (emphasis added)

See FTA Attachments: WMATA, Metro Electronic Action Document, MEAD #99220, January 5, 2006.

At the last minute, consideration of the apartment proposal was bared from the charrette. Months later, a WMATA attorney responding to a PARP request, admitted that the transit authority was unable to produce any “staff notes or meeting handouts confirming” the staff’s written assertion that alternatives to townhouses had been considered.

With our previous responses, we included documents entitled ‘Takoma Central District Plan Community Charrette Common Direction I and II (‘I’ and ‘II’ are handwritten on the documents). These are the meeting handouts referenced in the MEAD. **We believe the mention of ‘notes’ in the MEAD is a reference to these handouts, a reference to documents that no longer exist at WMATA or in error.** (emphasis added)

See FTA Attachments: Letter from Philip T. Staub, Associate General Counsel, WMATA, to Dr. Sabrina Alcorn Baron, President, Historic Takoma, Inc., October 25, 2006; Letter of Dr Baron to P. Staub, October 20, 2006.

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WMATA's bad faith is further exemplified by the Takoma Station environmental evaluation's unprofessional and cavalier claim that "[n]o park is located on the site. No impact is projected." without providing any explanation regarding missing documentation such as land inventories and correspondence seeking federal permission to use the land for a purpose different from the federally funded purpose of parking. The biased environmental evaluation failed to address the statement of WMATA planning officer Mathew Platt that the 1974 Takoma Station plan had more parkland than the alternative proposal, which conspicuously has "Urban Park" written on its face, accompanied by little depictions of trees.

Moreover, the biased environmental evaluation conveniently fails to disclose that the hearing report indicates the possibility that, if the parking lot is sold, a portion of the "open space" might be used for a DC streetcar terminal. Therefore, the incredible claims that no parkland is involved and that no impact is projected are indications that the faux environmental evaluation was intended to provide a *pro forma* justification for the joint development proposal rather than an unbiased analysis. The possibility that the streetcar terminus could be located at either Takoma or Silver Spring stations provides no basis for discounting the possible impact on Takoma Station parkland if Takoma becomes the designated terminus.

The hearing report seems to mischaracterize my position regarding the Takoma Station parkland and to misstate my name. It notes that "Jack Paris" is one of two persons who supported "excluding all development to save the entire area for future transit needs." SR 18. Instead, David Paris testified that it is "unclear whether existing station land will be needed to accommodate the DC streetcar system that is being currently planned. Once again, WMATA has proposed to develop station property before determining whether the property is truly surplus."

Rather than supporting excluding the property from development, I further wrote, "[w]hen it is clear that no further Takoma Station land is required for transit uses and the existing parkland, including the apartment buffer area is preserved, then I have no objection to the sale of the surface parking area for a residential apartment. A carfree apartment building next to Takoma Station and the Metropolitan Branch Trail will be very appealing to persons wishing to live an environmentally responsible lifestyle." *See WMATA Attachments: David Paris, Takoma Station Joint Development Testimony, June 30, 2014, p. 1.* I continue to believe that WMATA "should commit itself to enhancing the buffer park as a resource to serve transit users, cyclists, and residents. When the pending streetcar issue is settled, WMATA should promptly seek competitive ideas for a creative carless apartment proposal for the parking lot area." *Id.* at 3.

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It is about time that WMATA puts its house in order and levels with everyone about the status of the parkland. Please hire a team of outside forensic historians or archivists to seek the missing documentation including land inventories prepared regularly for federal authorities, and to investigate the paper trail, if any, depicting WMATA's past efforts to find or to destroy the information. Drop the sweetheart deal with EYA and seek fresh ideas. I look forward to someday seeing an apartment on the parking lot site, but I place greater priority on seeing progress regarding WMATA ethics, integrity, transparency, transit service and parkland. Additionally, I would like to see some form of jitney transportation system to accompany additional station parking for transit patrons dealing with physical challenges and the elimination of all other station parking.

Thank you for your attention.

Sincerely,



David B. Paris, Takoma Park

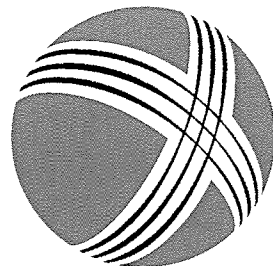
Attachments:

- 01) D Paris Re Takoma JD Report, March 2, 2015
- 02) PARP Attachments, 2014-15 materials
- 03) Letter to Letitia A. Thompson, Regional Administrator, FTA , July 25, 2008
- 04) FTA Attachments to Thompson Letter, July 25, 2008

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 02) Attachments PARP D Paris 2014-15.pdf
 03/03/15 09:28 AM

xerox



DAVID B. PARIS

ATTORNEY AT LAW

901 Larch Avenue, Takoma Park, MD 20912
301-270-3168. Takoma.Transit@yahoo.com

August 6, 2014

Ms. Keysia A Thom, PARP/Privacy Policy Administrator
Office of General Council
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Ref: Takoma Station PARP Request No 14-0138

Dear Ms. Thom:

The following is submitted in response to the questions contained in your email communication of July 23, 2014.

1) Describe the purpose for your request of these records, and your intended use of them

This request seeks documents providing information about whether the Takoma Station parking lot is surplus land available for sale for private development and about prior WMATA efforts to identify and preserve historic documents about Takoma Station. The sale is in the public interest only if the parking lot is not needed for transit purposes. If the existing Takoma Station green space has been reserved as parkland, as suggested by 1974 correspondence between WMATA and Montgomery County planners, discussed below, then the surface parking lot should be retained, at least until the DC Government makes a final determination regarding a proposed Georgia Avenue NW trolley alignment.

Whether the green space is parkland or temporary open space is relevant to any analysis of whether the parking lot is surplus land. Documents unearthed in response to this request might necessitate that the Takoma Station compact hearing be reopened to consider testimony that the proposed land transaction is not in the public interest because it seeks to sell land that needs to be held to accommodate a possible DC trolley terminal.

I am further seeking information regarding WMATA's efforts to preserve and locate historic Takoma Station documents. In 2006, WMATA was unable to locate more than a few pieces of documentation relating to the planning, land use, design, construction, maintenance, and inventorying of the Takoma Station parkland/green space area. Additionally, WMATA was unable to provide any documents relating to the archiving of historic papers or the hiring of professional archivists or historic researchers to find missing documentation.

The missing paper trail includes submissions to the Urban Mass Transit Administration (UMTA) seeking federal permission to convert to parkland/green space use a portion of Takoma station land that originally was purchased with federal assistance to accommodate a surface parking lot. The missing documents would be likely to reveal whether the parking lot's land use description was converted to parkland or surplus land. Several Federal Transit Administration attorneys have confirmed that federal approval of such a conversion would have been required.

In 2006, WMATA also failed to produce a single Takoma Station Excess Real Property Inventory and Utilization Plan. *See* FTA, Revised Grant Management Guidelines Circular 5010.1C, dated October 1, 1998, Number C-98-31, Chapter 1 Project Administration, 7 - Excess Property, Chapter 2 Management of Real Property, and Appendix: Joint Development Projects.

Real estate inventories that WMATA has failed to produce list property immediately adjacent to Takoma Station. In a 1994 letter, WMATA General Counsel Richard L. Polk wrote a Maryland counterpart that WMATA discovered that it owned surplus real property belonging to Jessup Blair Park, in Montgomery County, Maryland, while preparing a federally mandated inventory of WMATA property.

[I]n its review of real property holdings as required by federal law, WMATA identified the subject lots on Blair Road as excess to its needs and offered them for sale to the public at fair market value.

Letter of Richard L. Polk, General Counsel, WMATA, to Ronald D. Schiff, General Council, Maryland National Capital Park and Planning Commission, March 18, 1994.

WMATA has stated many times that it is unable to find relevant documents relating to its alleged undertaking to dedicate as parkland Takoma Station land that originally was purchased to house a larger parking lot. The 2007 hearing report claims that "[t]here are no pledges by WMATA, as Mr. Paris insists that would 'maintain' a park, and, therefore, no such representations upon which anyone could reasonably rely to create an estoppel argument," but observes elsewhere that the citizen plan described the open area as an "urban park." Hearing report pp 5, 51; *see also* Letter of Richard A White, WMATA GM, to Hon. Paul Sarbanes, September 14, 2005, p2. (claiming community groups were unable to find proof of a WMATA promise, despite (supposedly) having been given "unlimited access to WMATA files")

The 2007 Takoma Station hearing report fails to acknowledge that the DC Government's support for the Citizen's Parkland proposal was intended to pressure WMATA to incorporate parkland into the Takoma Station plan, according to DC planners who regularly attended meetings of Neighbor's Incorporated and the Save Takoma Park Committee. The WMATA Takoma Station plan was released on April 11, 1974, only five days after the DC Office of Planning and Management announced support of the

Citizen's Parkland station design plan, which also was favored by an ad-hoc committee of the Montgomery County Council that was created to monitor Takoma Station planning and subsequently by the full council.

On June 17, 1974, several days before the WMATA Takoma Station design plan was adopted, the WMATA Assistant Director of Planning wrote a Montgomery County planning counterpart¹ that the WMATA proposal was even more park friendly than the citizen parkland alternative design.

the so-called 'pocket' park to the northeast of the facility would be substantially the same under either plan. In addition, examination of the two plans shows that there would be more green space in total provided under the Authority plan than under the citizens plan.

Letter of Mathew Platt, Assistant Director, WMATA Office of Planning to Robert M. Winick, Chief Transportation Planning Division, MNCPPC, June 17, 1974.

The requested documentation regarding the status of the parkland/open space will aid understanding of both WMATA and the public regarding available land uses for Takoma Station and possibly keep WMATA from making further mistakes regarding station planning. In 2007, I was among Takoma residents who urged WMATA to construct a space-efficient apartment building at Takoma Station rather than automobile-oriented townhouses with two-car garages. See Ruth Foster and David Paris, Metro Opens Doors to Automobiles, Washington Post OP Ed, October 21, 2007.² Although I am gratified that WMATA is now proposing such an apartment building,³ I am concerned that the timing of the proposal is inappropriate in light of the relatively recent DC Government proposal to use Takoma Station land as the terminus for the Georgia Avenue Trolley line.⁴ If the trolley terminal is placed in Silver Spring, the Takoma station parking lot might properly be considered to be surplus.

My PARP request cannot reasonably be construed as overbroad or burdensome. Scant historic documentation has been provided in response to previous searches. Moreover, WMATA has not objected to far broader search requests submitted by parties including the City of Takoma Park, Historic Takoma, and DC Advisory Neighborhood Commissioners. To assist WMATA researchers, I have provided WMATA with relevant

¹ On December 20, 1973 the WMATA board unanimously adopted a resolution limiting Takoma station parking to 100 spaces and directing planning staff to prepare a revised station plan within four months incorporating the views of DC and Montgomery County planners, in consultation with affected citizens.

² www.washingtonpost.com/wp-dyn/content/article/2007/10/19/AR2007101901976.html

³ In 2007, I correctly testified that an apartment building would be more likely than townhouses to survive an economic downturn. Several ongoing Takoma condominium buildings were converted to rentals to accommodate the changing economy. An apartment might already have been constructed on the site if WMATA had not been hamstrung with an environmentally and economically unfriendly townhouse design.

⁴ The possibility of terminating the DC Georgia Avenue trolley line at Takoma Station was raised subsequent to 2008. A study of the subway line began in October 2013.

historic documents. However, no further information will be found if WMATA goes through the motions of looking for the highly relevant documents and establishes financial barriers to inhibit the dissemination of the long overdue documents.

2) Explain how disclosure of these records will significantly further the public's understanding of the operations or activities of the authority.

It is suspicious that WMATA is unable to find information that it has a legal and/or fiduciary obligation to retain and share with the public. The embarrassing dearth of Takoma Station information includes missing relevant reports, such as property inventories and surplus property plans, submitted to UMTA. The significance of the information has been discussed in the answer to question #1. The need of the public for the information is urgent, since WMATA is moving toward making an irrevocable decision regarding the proposed land sale. The interests of WMATA will be served if this PARP request unearths information that has escaped previous searches. The requested documents should have been provided on the WMATA web site prior to each of the Takoma compact hearings and, if found, might require reopening of the current hearing

WMATA's cavalier treatment of historic searches is exemplified by the failure of its response to a 2006 PARP request to identify even a single document evidencing WMATA's efforts to find missing Takoma Station documents. This request once again gives WMATA an opportunity to counter community suspicions that WMATA views such searches as pro forma rituals and to live up to its prior rhetoric about proving open access to its Takoma Station records.

In 2005, WMATA General Manager, Richard White, wrote to US Senator Paul Sarbanes that Takoma residents granted "unlimited access to WMATA files have been unable to locate any documents substantiating this alleged 'promise'" to maintain Takoma Station parkland.⁵ White's attempt to use missing WMATA documents to evidence the absence of a promise to dedicate parkland was particularly inappropriate in light of the embarrassing paucity of Takoma Station documentation unprofessionally thrown together in warehoused boxes, for which his letter offers neither an explanation nor an apology. Additionally, the letter sidesteps addressing the widespread Takoma community perception that WMATA systematically has withheld information about the Takoma Station joint development program.

In 1999, WMATA refused to acknowledge the possible sale of Takoma Station land until a Takoma Park City employee signed a non-disclosure agreement, which was so restrictive that the council was "under the impression that no mention could be made of any detail of the plan without being exposed to costly legal action."⁶ The overbroad and unethical agreement attempted to prohibit the distribution of information that was public in character, such as details contained in requests for proposals that already had been

⁵ Letter of Richard White, WMATA GM to Hon Paul Sarbanes, September 14, 2005, p. 2.

⁶ Luke Mines, Council Has Signed Agreement to Keep Mum on Townhouse Plan, Takoma Gazette, March 1, 2000; John Drake, Resident Group to Battle Secrecy, Washington Times, February 29, 2001.

distributed to prospective developers. Rhetoric aside, it is obvious that WMATA has not treated the Takoma community as a partner in the development effort.

Only seventeen days before the unapologetic White letter, Gene Counihan, WMATA Government Relations Officer, conceded to Takoma residents attending an August 28, 2005, meeting that WMATA had provided the community with inadequate information about Takoma Station joint development. Residents attending the meeting reported that Counihan appeared to be quite shaken by detailed accounts of WMATA not sharing basic information about plans to construct townhouses with two-car garages at Takoma Station. The confidentiality agreement was brought to his attention.

In a memorandum Counihan summarized his concerns about reports of WMATA's efforts to withhold information about the proposed Takoma Station joint development:

- 4) It was clear that there is significant interest in the community about the details of this project. It is also clear that there are community members who feel that WMATA has not always been very open in past dealings with the community.
- 5) I indicated that WMATA is committed to open government and I further pledged to get them any and all public information they requested in a timely manner and would do so without a formal PARP request.
- 6) I believe the community will be aggressive in advancing their views on this project. WMATA may not always agree with their views, but we must and will work with them in an open and honest manner throughout the process.

See Email Art Lawson to Dan Tangherlini, Member WMATA Board and Director, DC Department of Transportation⁷ June 30, 2005, containing notes made by Gene Counihan.

It would be highly inappropriate for WMATA to hold hostage the requested urgently needed information, of general interest and notoriety, by demanding that a member of the general public pay for a search of records that WMATA should have provided to interested parties prior to the June 18, 2014, compact hearing. When Mr. Counihan promised Takoma residents "*any and all public information they requested in a timely manner and would do so without a formal PARP request,*" he clearly was not waiving either PARP's transparency goals or WMATA's fiduciary responsibilities. *Id.* (emphasis added). It is in the public interest for the community to have a more complete and accurate understanding of the history of Takoma Station planning.⁸

⁷ In 2006, Tangherlini, who also attended the meeting, served as Acting WMATA General Manager, replacing Richard White who was dismissed by the WMATA Board on January 11, 2006.

⁸ The PARP policy favors the distribution of documents "to the greatest extent possible unless exempted from disclosure." The PARP allows WMATA to "continue to make such records available without

3) Describe how you intend to disseminate these records to the public and how broad an audience you anticipate the disclosure will receive.

Thousands of transit users and Takoma residents have an interest in the material that I am requesting. I would like for the WMATA response to be included in the Takoma Station hearing report that is currently being prepared and to be made available on the WMATA Takoma Station community outreach web page. *See Takoma Station Joint Development, Docket R14-01, Hearing No 585.* I will also actively supply the information to local government officials, the FTA, and Takoma area residents/nonprofits, but my potential efforts will only supplement WMATA's fiduciary responsibility to inform the public.

4) If your request is on behalf of an organization describe the organization, including its expertise in matters associated with these records and how your organization is actively involved in disseminating information to the public.

I am an individual member of a large community of Takoma area transit user and residents who have an interest in Takoma Station mass transit and development.

5) Describe any commercial or profit interest that you or your organization has in these records, and how this commercial interest, if any, compares to the public interest described by your previous answer.

My interest in the records is solely non-financial and non-commercial. I am only a patron of the area subway and bus systems and a resident of Takoma Park.

Finally, my previous letter requested expedited treatment of this information request, to accommodate WMATA's hearing timetable and an urgent public need for the information. I again ask that this request be dealt with expeditiously and without charge, subject to the waiver of PARP procedural roadblocks, promised by Gene Counihan and in the spirit of GM White's willingness to provide "unlimited access" to WMATA files regarding 1970's documents. This request for the waiver of all PARP procedural requirements is true and correct to the best of my knowledge.

Thank you for your attention. Please contact me if I can provide any further assistance.

Sincerely,



David B. Paris

DAVID B. PARIS

ATTORNEY AT LAW

901 Larch Avenue, Takoma Park, MD 20912
301-270-3168, Takoma.Transit@yahoo.com

June 30, 2014

Mr. Thomas Downs, Chairman
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Ref: Proposed Changes to Takoma Station, WMATA Hearing No 595, Docket R14-01

Dear Chairman Downs:

While it is commendable that WMATA has moved in a positive direction from space consuming townhouses to an apartment building, the present proposal for joint development should be rejected because it is unclear whether existing station land will be needed to accommodate the DC streetcar system that is being currently planned. Once again, WMATA has proposed to develop station property before determining whether the property is truly surplus.

Further, the amount of available station land remains unclear because WMATA has not been forthcoming providing documentation regarding the status of station parkland that was dedicated during the 1970's, presumably with the agreement of the federal government. I am therefore formally requesting that WMATA include in the hearing record and hearing report either the documentation, which WMATA is required to retain, or a detailed explanation of why such fundamental information remains unavailable. My letter submitted pursuant to the WMATA Public Access to Records Policy details some of the missing documents.

When it is clear that no further Takoma Station land is required for transit uses and if the existing parkland, including the apartment buffer area is preserved, then I have no objection to the sale of the surface parking area for a residential apartment. A carfree apartment building next to Takoma Station and the Metropolitan Branch Trail will be very appealing to persons wishing to live an environmentally responsible lifestyle. Carless apartment residents will provide low impact benefits of increased population without some of the costs and waste associated with feeding our society's automobile addiction.

The unearned and unwarranted legacy status that WMATA has accorded EYA is reminiscent of the sort of unethical, contractual preferences that led the Department of Transportation's Office of the Inspector General to criticize the Metropolitan Washington

Airport Authority.¹ Renewal of the relationship between WMATA and EYA undercuts any claim that the transit agency is becoming a more responsible steward of public resources.

It is not in the best interest of the public for WMATA to further tie itself to EYA's unimaginative, uncooperative, and community unfriendly workproduct. In 2008, a Takoma Voice newspaper account accurately identified the "smoldering disdain" that characterized an EYA principal's presentation to the Takoma Park council. The EYA representative proclaimed that "the profit to EYA on the entire project was 'marginal,' that the only reason they were there [attending the council meeting] was due to pressure from the Maryland governor's office, that they might not actually make the changes they were presenting, and they didn't really care what Takoma Park thought, they were going ahead with it."²

When the amount of surplus land available can be determined, Takoma Station joint development should be subject to competitive bidding, like any other project. EYA's unsuitability to construct a transit-oriented Takoma Station apartment building is evident from its dogged pursuit of uninspired, automobile-oriented, space-consuming townhouses rather than an environmentally efficient apartment building. The construction of a Takoma Station apartment building should have the benefit of competing ideas and a diversity of approaches that will not be provided by another sweetheart deal with EYA.

If not for EYA's intransigence, the contemplated green rental building could be standing today despite the economic downturn that we experienced during the second half of the decade. In contrast, the market for new townhouses followed the depressed residential market. In my October 2007, testimony I pointed out that "a rental residential building adds flexibility to accommodate to changing market needs and the provision of retain units could address community need to replace retail units that are replaced by condominium conversions."³ Both WMATA and EYA should take responsibility for the consequences of their pursuit of the townhouses.

Beginning in 1971, the DC Government repeatedly tried to reduce the number of Takoma Station parking spaces recognizing that automobiles are the least efficient and most costly means of getting riders to the subway. Today, It would be in the public interest for new development to provide station and residential parking only for residents and riders with special needs. In 1974, the Montgomery County Council urged that 20 of 100 total spaces be set aside for riders with special needs. The current number of total spaces should be eliminated or reduced significantly and, perhaps 40 ADA reserved spaces should be designated to replace the current paltry number of spaces presently set aside. Further, a

¹ Office of Inspector General, Department of Transportation. Audit Report MWAA's Weak Policies and Procedures Have Led to Questionable Procurement Practices, Mismanagement, and a Lack of Overall Accountability, Report No: AV-2013-006, November 1, 2012.

² Gilbert, Marginal at Best, Takoma Voice, Oct 10, 2008 tpssvoice.com/2008/10/10/marginal_at_best/.

³ David Paris, Re Proposed Sale of Takoma Station Public Land, Docket Number RO6-5, Hearing Number 175, October 5, 2007 (I incorporate by reference my 2007 testimony into this record).

mechanism should be created to permit the temporary use of special needs spaces by persons with short-term medical issues, such as broken legs.

Eliminating residential and general Takoma Station automobile parking significantly reduces the apartment building's height and density. In return for this benefit, it is fair to expect a future developer and WMATA to contribute to starting up a jitney service and enhancing the community buffer park. A well-planned and maintained park will increase the attractiveness of the proposed apartments and serve as a welcoming presence drawing transit users and cyclists into the Takoma business community, which has a low-rise ambiance that many will prefer to Silver Spring or Wheaton.

To address the legitimate concerns of neighbors, any parking-free apartment building must be accompanied by a renewed commitment, by all area governments, WMATA, and any building owner to develop and enforce an enhanced strict neighborhood parking policy. The DC Neighborhood Parking Protection Act of 2013 is an example of legislation seeking to improve the enforceability of lease prohibitions on tenant automobile ownership. According to sponsor Council Member Tommy Wells, the act "gives the mayor, through DDOT, the authority needed to grant a property owner's request to make the property ineligible for residential parking permits when they've negotiated an agreement with their neighbors to let the project move forward."⁴

A Takoma Station shuttle loop or door-to-door jitney would benefit a far greater number of transit users than the small number of drivers willing a daily lottery for the current limited number of parking spaces. A transit solution, serving the needs of both commuters and short term users, provides the most reliable, environmentally sound, and democratic service for persons who are unable to get to Takoma Station by walking, biking, or taking ordinary buses.

Please reject the premature and unimaginative current proposal. Despite some improvements, the proposal involves the same bankrupt team that brought us the prior transit unfriendly proposal to construct townhouses with two-car garages. WMATA should commit itself to enhancing the buffer park as a resource to serve transit users, cyclists, and residents. When the pending streetcar issue is settled, WMATA should promptly seek competitive ideas for a creative carless apartment proposal for the surplus land.

Thank you for your attention,



David Paris, Takoma Park

⁴ Citypaper, June 4, 2013.

DAVID B. PARIS

ATTORNEY AT LAW

901 Larch Avenue, Takoma Park, MD 20912
301-270-3168, Takoma.Transit@yahoo.com

June 30, 2014

Ms. Keysia A Thom, PARP/Privacy Policy Administrator
Office of General Council
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Ref: Takoma Station PARP Request

Dear Ms. Thom:

I request the following information pursuant to the Washington Metropolitan Area Transit Authority Public Access to Records Policy. (P/1 9.3/0, 2005)

- 1. Evidence of Efforts to Locate Original Takoma Station Planning Documents:** Please provide all documents, in any way, related to efforts known by WMATA to identify, locate, characterize, organize, collect, secure, preserve, destroy, analyze, secrete, or disseminate documents relating to the original planning of Takoma Station, a Washington, DC facility maintained by the Metropolitan Washington Area Transit Authority.
- 2. The Original Planning of Takoma Station:** Please provide all documents related to the original 1973 and 1974 planning of Takoma Station and to the subsequent implementation of the parking and parkland/open space elements of the plan.
- 3. Federal Review of Change from Parking to Parkland:** Please provide the particular portion of any record from 1971 to 2006, identifying any actual or contemplated change in the use of land at Takoma Station. At various times between 1971 and 1975, the number of parking spaces at Takoma Station was reduced from 450 to 100 spaces. I am seeking the documentation associated with any Urban Mass Transit Administration (UMTA) or Federal Transit Administration (FTA) decision to allow the land, which originally was acquired for parking, to be used for a different purpose. Such permission would be required for land purchased with federal funds for a particular purpose.
- 4. Takoma Station Land Inventory:** From 1973 to 2006, please provide the particular portion of any document identifying the status, maintenance, and disposition of WMATA or Federal owned land at Takoma Station. This request includes, without limitation, any WMATA inventory of Takoma Station land, including, for example, any baseline system inventory, any surplus property inventory, and any "Excess Real Property Inventory and Utilization Plan" involving the said property.

5. Investigation of Misplaced Documents: Please provide a copy of any WMATA or third party investigations that have been conducted regarding the misplaced documents relating to the planning of Takoma Station. This request includes attempts to reconcile the missing documents with WMATA's document policies.

I hope that the following historic information will be of assistance fulfilling this request.

Historic Context of Takoma Station Planning

In 1974, when the final site plan for Takoma Station was approved, it would have been necessary for WMATA to obtain Federal Urban Mass Transit Administration (UMTA) permission to convert the use of the federally funded land from an automobile parking lot to parkland. In the early 1970's, the Takoma Station land in question was acquired by WMATA, with UMTA assistance. Property was acquired and land was condemned for automobile parking facilities. *See generally* WMATA, Takoma Station Public Hearing Staff Report, Re: Docket Number R06-5, Hearing No. 175 ("Hearing Report"), August 13, 2007, p. 2-6;¹ *see also generally* David Paris, Testimony Re: Proposed Relocation of Bus Facilities and Parking Changes at Takoma Station, Docket Number R06-5, Hearing No. 175, October 5, 2007.

"When planning for the original Metrorail system began, WMATA proposed building a surface parking lot at Takoma Station containing 450 Park & Ride spaces and 16 Kiss & Ride spaces. Community and political opposition in the District of Columbia (the "District") caused WMATA to substantially cut back on proposed parking at Takoma Station and other District stations." *Id.* at 3.

In December 1973, the WMATA board unanimously voted to reduce Takoma Station parking to 100 spaces. *Id.* at 4. Subsequently, the final Takoma Station site plan "placed parking in the "same general area as the previous plan" but included a total of 100 non-commuter parking spaces, which include 45 Kiss & Ride spaces and 2 handicapped spaces. The new plan had 9 bus bays (versus 6 in the earlier plan); provided for 3 vehicular access points with all trees "asked to be preserved" remaining." *Id.* at 4, citing Jackson Graham, WMATA, General Manager, Memorandum to WMATA Board, May 29, 1974, p. 1 (including attached WMATA Proposed Site Plan, May 2004.)

The 2007 hearing report neglected to explain that the preservation of trees commented upon by General Graham was accomplished by the dedication of a significant portion of Takoma Station parkland. UMTA approval of such a significant change in land use would have been required pursuant to 49 CFR 18.31 (b). This letter is seeking both the relevant documents relating to the UMTA review of the significant change in the use of federally funded land and evidence that WMATA has searched for the information diligently.

¹ See http://www.wmata.com/about/community/Takoma_landing.cfm

In early 1974, the DC Government initially preferred a citizen plan for Takoma Station that included a park to protect adjoining residential communities and businesses. Subsequently, WMATA and the DC Office of Planning and Management created an alternative plan that also redesigned a green buffer zone, on land that was originally purchased, with federal assistance, for a 450-car parking lot. With the support of the DC Government, which had long lobbied against having any parking at Takoma Station, the WMATA board adopted the WMATA parkland proposal.

On June 17, 1974, several days before the WMATA board adopted the final Takoma Station site plan, the dedication of parkland was confirmed by a letter written by Matthew Platt, Assistant Director, WMATA Office of Planning, to an official of the Maryland National Capital Park and Planning Commission.

It would appear that the so-called 'pocket' park to the northeast of the facility would be substantially the same under either plan. In addition, examination of the two plans shows that there would be more green space in total provided under the Authority plan than under the citizens plan. This is due to the fact that under the Authority plan there is no separate additional bus roadway required from the bus loading area to Eastern Avenue as is the case under the citizens plan. Therefore, the total paving necessary for the bus facility would be greater under the citizens plan than under the Authority plan. In addition, the citizens plan would require the cutting down of the trees in the Cedar Street portion of the site, which is avoided under the Authority plan.

See attached Letter by Matthew Platt, Assistant Director, WMATA Office of Planning, to Robert M. Winick, Chief, Transportation Planning Division, MNCPPC, June 17, 1974.

WMATA was accommodating the request of a coalition of D.C. and Maryland citizens for the creation of a Takoma Station buffer-park to replace community parkland that was removed during the process of constructing the WMATA right-of-way and to protect the residential community from the environmental impact of the subway.

Metro construction has removed a significant amount of park land that was shared by the two communities along their border at Jessup Blair Park. It is reasonable and fitting that the agency which removed this valuable park land replace it for the mutual benefit of District and Maryland residents.

The open space would act as an oasis in what will become a heavily traveled area. The park plantings will act as a visual screen and sound absorption unit and will help to rectify the imbalance in air quality created by traffic to the site.

See attached Plan Takoma and Save Takoma Park Committee, Memorandum to WMATA, D.C. City Council, and Montgomery County Council, April 28, 1974 (including attached Save Takoma Park Committee, Citizen Plan, February 1974).

Moreover, the minutes of the June 20, 1974, WMATA board discussion specifically refers to the parkland. The board went on to adopt the proposed WMATA station site plan of May 1974.

Mr. Fauntroy reported that the staff recommendation was to place the kiss & ride facility at the northern portion of the site, with access to Eastern Avenue, which would place the **major portion of the park buffer** on Cedar Street.

Mrs. Garrott reported that the Montgomery County Council supported the citizen plan which had been proposed whereby the kiss & ride facilities would be placed to the east of the bus bays with access off the relocated Cedar Street putting the **major park buffer** on Eastern Avenue. She contended that the plan recommended by the staff will have a serious adverse impact on Montgomery County and its citizens.

See WMATA Board Minutes, June 20, 1974, p. 5 and June 27, 1974. (emphasis added)
The Takoma Station site plan remained unamended for over thirty years.

The proposed sale of Takoma Station land is subject to the FTA's broad discretionary approval authority, because the land was purchased with federal assistance. 49 C.F.R. 18.31. Real estate acquired by a grantee is to be "used for the originally authorized purposes as long as needed for that purpose." § 18.31 (b). However, "[w]hen real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency." § 18.31(c). Moreover, even in the absence of a WMATA application, the FTA possesses the authority to direct the disposition of the Takoma Station property. "[T]he policy of the Department of Transportation is that grantees or subgrantees who do not take appropriate disposition actions for real property can be directed by the awarding agency to take such actions." 53 FR 8084, March 11, 1988; § 18.31 (d) (penalty if disposition is without FTA permission

Without the requested information, the FTA will be unable to evaluate the WMATA request for permission to downsize the station facilities. For example, information regarding the past disposition of the use of the land would be necessary to permit calculation of the value of the land if WMATA were to be required to compensate the FTA for the public land that WMATA wishes to sell. Federal regulations provide that land subject to a federal grant is to be sold for development, the FTA might require the payment of compensation that would "be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale

David B. Paris, Esq.
June 30, 2014
Page 5 of 5

Takoma Station Joint Development
Docket R14-01, Hearing No 595

after deduction of any actual and reasonable selling and fixing-up expenses." 49 CFR 18.31 (c) (2).

In Conclusion

I request that the WMATA exercise any discretion in favor of sharing records that otherwise might be exempt from disclosure. Since I do not believe that it is likely that such old records will be found to be exempt, I am going to eschew the usual boilerplate about how to handle exempt material. However, to the maximum extent possible, I wish to retain the option of requesting greater specificity, if any requested material is deemed exempt. Additionally, please advise me of any records that have been destroyed and please back up any incidents with any relevant documentation, including copies of any relevant WMATA document policy.

I am seeking information that WMATA is legally required to maintain and to provide, therefore I do not believe that I should be charged a processing fee. The material is relevant to the question of whether WMATA should be holding rather than selling land that might be needed to accommodate a DC trolley system. WMATA should only be selling surplus land that is unneeded for transit purposes.

Please provide the aforesaid information in electronic digital form if the information is readily reproducible in such a format. Please disclose the listed documents, as they become available to you, without waiting until all the documents have been assembled. I request that you process the request as expeditiously as possible and liberality exercise any discretion in favor of release of requested information.

If you have any questions or to keep me apprised of the progress of complying with this request please do not hesitate to contact me.

Thank you for your attention.

Sincerely,



David Paris

Attachments re Information Request by David Paris

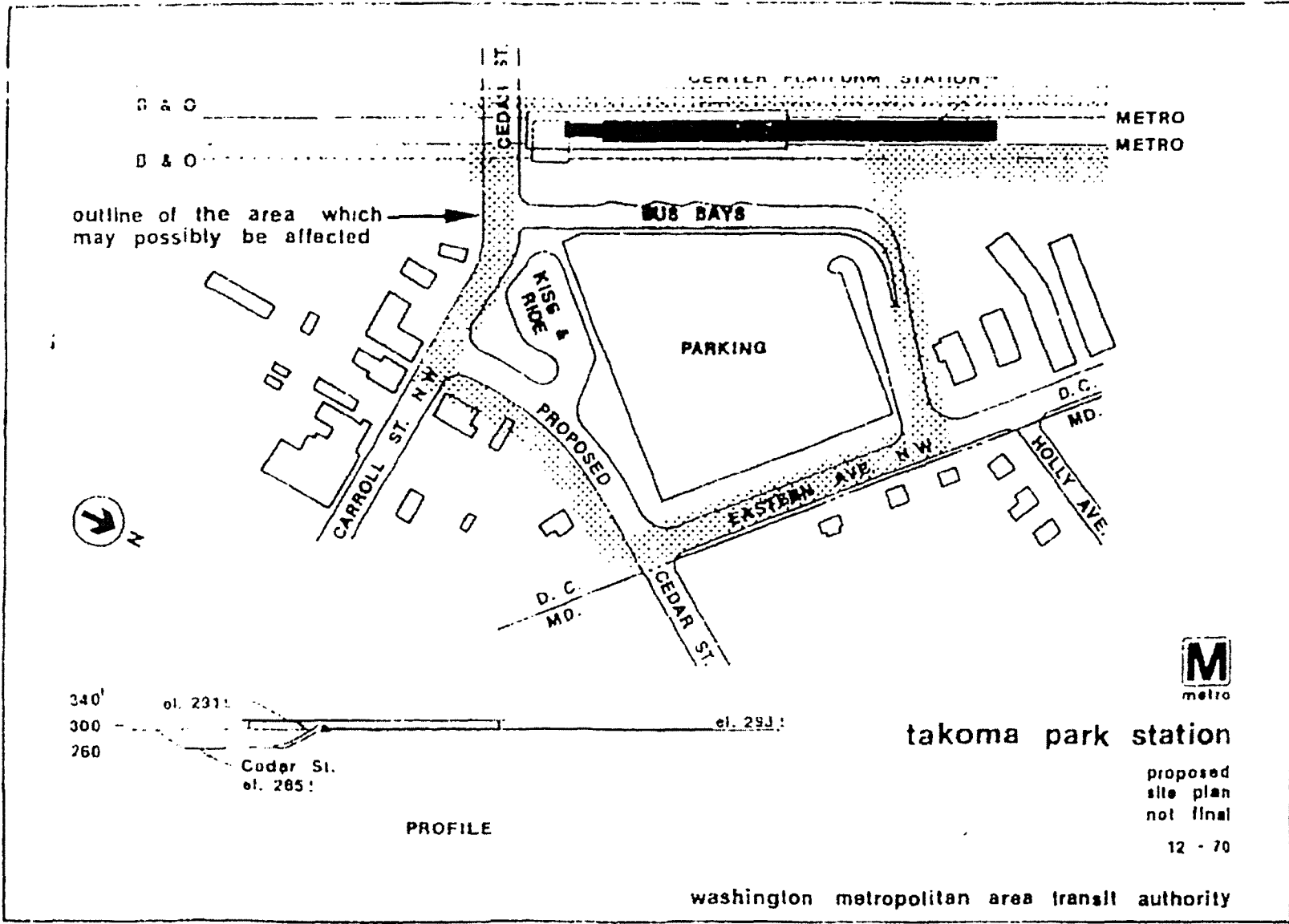
Takoma Station Site Plan Showing 450 Parking Spaces, Dec 1970

Takoma Station Plan Showing "Urban Park," February 1974

Plan Takoma / Save Takoma Park Committee Memo, April 28, 1974

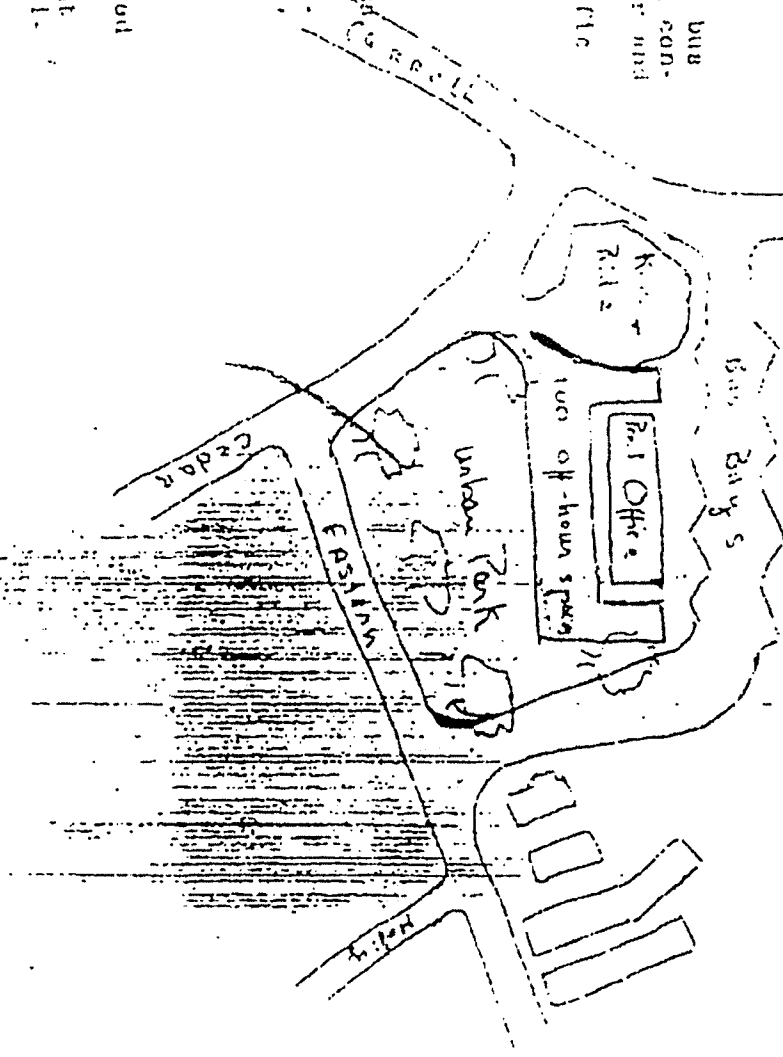
Letter Robert Winick, MNCPPC to Mathew Platt, WMATA supporting the Citizen Plan, which features an "Urban Park," June 3, 1974

Letter Platt to Winick stating that WMATA plan provides more parkland and saves more trees than the citizen plan, June 17, 1974



Adv. planning of Urban Park

- I. Formally endorsed two-way bus circulation, eliminating confusion on Carroll, State and Eastern.
- II. Jointing up on Carroll traffic flow bus movement
- III. Street bus stop, number
- IV. Off-street facility shelter
- V. Also street stop and
- VI. Ideal use of the Urban Park
- VII. Foot Office room
- VIII. Transportation available
- IX. Takoma, State and Urban Park
- X. Shared use same ZIP code
- XI. Urban Park would serve as exception to use to people the impact of City's congested Metro area. Foot Office and Urban Park use are consistent with WMATA public use acquisition procedure.



Urban Park

Urban Park

Save Takoma Park Committee
February, 1974

For information, call: Finance,
Mingus, 588-4644

PLAN TAKOMA, DISTRICT OF COLUMBIA
SAVE TAKOMA PARK, MARYLAND

April 28, 1974

TO: Members of the WMATA Board of Directors
Members of the District of Columbia City Council
Members of the Montgomery County Council

In accordance with the December 21, 1973 resolution of the WMATA Board which required the restudy of the Takoma Metro site and parking lot by the citizens and the affected jurisdictions of the District of Columbia and of Montgomery County, Maryland, the citizens of Takoma have completed the following activities:

1. Planning Review Meetings:
Plan Takoma and The Save Takoma Park Committee sponsored a series of site planning workshops to review the relevant facts with interested citizens and public officials from the District of Columbia and from Maryland.

Public officials attending included representatives from the D.C. Office of Planning and Management, and from the Division of Highways and Traffic. Maryland representatives were from the Maryland National Capital Park and Planning Commission offices of Planning and of Transportation.

In all, three joint workshops were held in March where alternate plans were discussed.

2. Site Review Tour:
On March 31, 1974, the two citizen organizations sponsored a tour of the Metro site for interested citizens and public officials. Mr. Brent Oldham, Deputy Director of the D.C. Office of Planning and Management, Bill Middleton of this office, Lael Adams and George Vaughn from the Maryland Park and Planning Commission were among those participating in the tour.

The tour consisted of a review of alternate plans for the site prepared by the D.C. Planning staff, and of a walk around the area to consider the suitability of the plans to the site.

3. Establishment of Site Plan Priorities:
Following the tour, a set of priorities for station site design were agreed upon:

The principal of non-commuter parking at the Takoma Metro site was unanimously endorsed.

The realignment of the bus bays, parallel to the Metro track, with entrances on Carroll and Eastern Avenues was considered to provide good bus circulation and easy commuter access to the station platform.

The concentration of Kiss 'n Ride and off-hour parking spaces in the south-eastern segment of the site, with access from improved Cedar Street, is regarded as the solution to the need for separation of bus and automobile traffic, and as the design which makes most efficient use of the site.

The principal that the excess land, generated by the site redesign, should be used as a buffer for the surrounding residential neighborhood was endorsed.

4. Consideration of Alternative Site Plans:

The citizens reviewed five alternative plans for the site, prepared at their request by the D.C. Office of Planning and Management. These plans may be characterized as follows:

- a) WMATA ALL-OVER PARKING PLAN - calls for spreading 100 parking spaces all over the existing site originally designed for 450 spaces.
- b) COMMERCIAL DEVELOPMENT PLAN - calls for commercial development of retail stores on the site.
- c) RESIDENTIAL HIGH DENSITY PLAN - calls for high density garden apartments on the site.
- d) TOWN HOUSE PLAN - calls for development of 20 to 25 town houses on the site along Eastern Ave. and Cedar St., with adequate off-street parking, and a park area.
- e) ENTRANCE PARK PLAN - calls for the use of excess land as a park to identify the entrance to the Nation's Capital, to serve the needs of the nearby District and Maryland residents, and to provide an esthetically pleasing environment for the Takoma Metro Station.

As a result of this review, the citizens concluded unanimously that the alternatives presented in Plans a, b, and c, were inappropriate for the site and the neighborhood.

The reasons for this rejection were the following:

The citizens and the planners have agreed that any intensive commercial or residential development of the site would generate traffic and density problems which the existing streets in both the District and in Maryland would be unable to handle.

Moreover, traffic from development would interfere and compete with commuter traffic to the station.

Lastly, commercial development of the site would compete with the extensive commercial area already in existence which is looking to the advent of Metro for its revitalization.

5. Endorsement of Entrance Park Plan:

The citizens concluded that the Entrance Park Plan was most suitable to the character and needs of the surrounding neighborhood and least in conflict with the principal of easy access to the station. The reasons given for this were:

a) The use of excess land on the WMATA site as park land is consistent with the public use type of acquisition which WMATA employed.

b) Metro construction has removed a significant amount of park land that was shared by the two communities along their border at Jessup Blair Park. It is reasonable and fitting that the agency which removed this valuable park land replace it for the mutual benefit of District and Maryland residents.

c) The open space would act as an oasis in what will become a heavily travelled area. The park plantings will act as a visual screen and sound absorption unit and will help to rectify the imbalance in air quality created by traffic to the site.

Some citizens felt that the Town House Plan would be acceptable at some future time only if adequate off street parking and park facilities were provided, and if it could be demonstrated that there would be no adverse effect on the traffic flow to the station. The majority view however was that this alternative was undesirable.

Copies of the alternate plans are attached.

In addition to the general site plan approved by the citizens, the following needs were also identified:

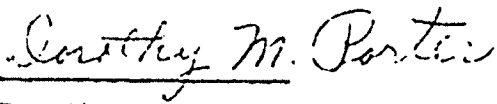
- Provide adequate lighting for the entrance to the station under the railroad crossing
- Provide a second entrance to the station at the rear to allow for pedestrian traffic from Piney Branch road, Montgomery College and environs.
- Provide bike and pedestrian paths along the metro tracks toward Montgomery College to allow entry of traffic from Maryland.
- Provide landscape buffers around station and parking areas.
- Provide an enclosed, heated station adequate to shelter waiting passengers.

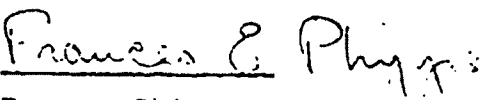
Plan Takoma 4
Save Takoma Park

The citizens of Takoma thank you for this opportunity to participate in the planning of a metro site which will be of benefit both to the rapid rail system and to the surrounding jurisdictions.

Sincerely,


Ray Hays, Plan Takoma, D.C.


Dorothy Porter, Save Takoma Park, Md.


Frances Phipps, Save Takoma Park, Md.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
REGIONAL AND METROPOLITAN DISTRICTS IN MONTGOMERY AND PRINCE GEORGE'S COUNTIES, MARYLAND



Regional Headquarters Building
8707 Georgia Avenue
Silver Spring, Maryland 20907

589-1480
Area Code 301

June 3, 1974

Mr. Mathew Platt, Assistant Director
Office of Planning
Washington Metropolitan Area
Transit Authority
600 5th Street N. W.
Washington, D. C.

Dear Mr. Platt:

The citizens on the Maryland side of the Takoma Metro station have developed a site plan which differs from the WMATA staff plan. This plan is the result of many meetings that the Maryland citizens have had with the citizens of Takoma, D. C. and with representatives of the D. C. Office of Planning and Management.

The staff of the Montgomery County Planning Board believe that the Maryland citizens plan has meritable features which should be taken into account in the selection of a final plan for the station site. Due to the lack of sufficient time, this plan has not been reviewed by the Planning Board.

Enclosed are copies of the Maryland citizens plan with a summary of its important features prepared for the WMATA Boards' review. The numbers on the plan show the location to which the numbered features in the summary correspond.

Sincerely,

Robert M. Winick, Chief
Transportation Planning Division

GV:bks

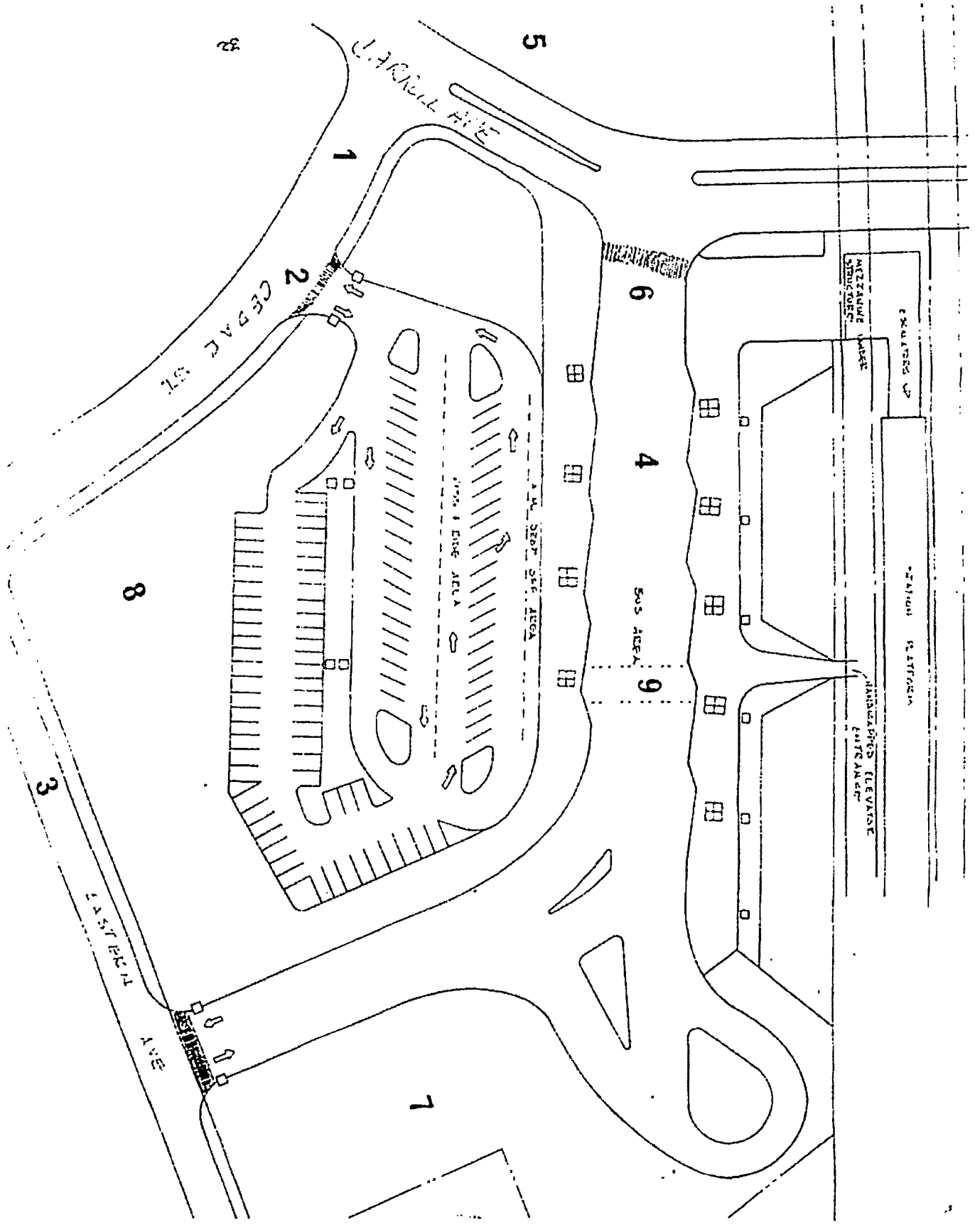
Enclosures

SUMMARY OF IMPORTANT FEATURES OF THE
MARYLAND CITIZENS PLAN FOR THE TAKOMA METRO SITE

1. Largest access road (Cedar Street) will be a new and improved 4-lane street which is not used as access to the site on the WMATA plan.
2. Entrance of "Kiss & Ride" on Cedar Street will separate and intercept much of the auto traffic before it conflicts with bus traffic.
WMATA design of "K & R" entrance on Eastern Avenue will cause a mix of all auto traffic with bus traffic.
3. Eastern Avenue is a narrow 2-lane street. WMATA has placed the heaviest burden of auto and bus traffic on a street least capable of handling it.
4. Arrangement of bus bays, as located on the Maryland citizens plan, places mass transit passengers closer to the platform entrance thus encouraging mass transit usage.
5. District businessmen along Carroll Avenue have endorsed citizens site plan proposal as more advantageous to them, than WMATA plan, because of location of parking lot.
6. In both citizen and WMATA proposals, 1/3 of all bus passengers (approx. 1000 people) will have to cross the bus lanes. In citizens proposal, an additional estimated 300 auto passengers will be negligible compared to 1000.
7. Placement of a park portion adjacent to the apartments on Eastern Avenue will serve the dual function of protecting District residents and as a "pocket" park for the children who now have no place to play. It will also preserve the existing trees and the grade site of this portion of the site, by sloping slowly toward Eastern Avenue, will add a visual feature at the bus entrance to the Metro site.

8. Placement of the remaining portion of the park will serve as a buffer to the residential areas fronting on Eastern Avenue and Cedar Street. It will also serve to minimize the inevitable impact of Metro upon an established neighborhood and to re-inforce the goals outlined in both the Takoma Park Sector Plan (done by Maryland National Capital Park and Planning Commission) and in the draft working papers for the sector plan on the D. C. side being developed by the Office of Planning and Management.

9. Curb breaks and ramps should be provided at strategic locations to allow wheel-chair users of Metro to reach the elevator entrance for the handicapped. Such curb breaks and ramps have been installed along G Street N. W.



222-4/11



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

500 Park Street, N.W., Washington, D. C. 20001

Telephone (202) 537-1234

JUN 7 1974

- BOARD OF DIRECTORS
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Mr. Robert M. Winick
 Chief, Transportation Planning
 Division
 Maryland-National Capital Park
 and Planning Commission
 8787 Georgia Avenue
 Silver Spring, Maryland 20907

Dear Bob:

This is in response to your letter of June 3, 1974 in which you transmitted for discussion purposes a site plan of the Takoma Station based upon citizens recommended modification of the WMATA staff plan. We have reviewed the plan and the attached summary of the important features. The following comments are based on a comparison of that plan and our staff recommended site plan and are itemized by subject in the same order as the summary included in your letter.

1. The width of Cedar Street does not by itself make it the best street for access to our kiss & ride and parking area. In fact, the entrance shown on your site plan is located near the intersection of Carroll and Cedar Streets. Traffic will be coming from both directions on Carroll, thus making left and right turns into Cedar Street and immediately having to queue up to make a left turn into the kiss & ride site. This could cause congestion at the Carroll-Cedar intersection and interfere with traffic flow on Carroll Street. The Eastern Avenue access to the kiss & ride facility removes the entrance from this conflict area.

2. The anticipated use of the Eastern Avenue bus access of less than 10 buses per hour would reduce any conflict with the kiss & ride area to a minor consideration. Furthermore, nearly half the traffic to the kiss & ride area will be coming along Eastern Avenue and will still have to cross the Eastern Avenue bus access on the citizens plan.

3. Recognizing that Eastern Avenue is only a two-lane street, we have designed our bus facility to minimize use of this street. The auto traffic anticipated for Eastern Avenue is well within capacity of the two-lane street. In addition, the Montgomery County Department of Transportation has suggested



green space fronting on residential property on Cedar Street. It would appear what is taken away from one residential area is added to the other and, therefore, I do not see any benefit of one plan over the other in this regard. It would also appear that neither plan would have an adverse impact on the sector plans being developed in either the District of Columbia or Maryland.

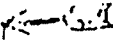
9. The curb breaks and ramps necessary for wheelchair users could be provided under the citizens plan; however, they still would have to cross the bus roadway and, in addition, as noted in item 4 above, would require a shift of bus bays moving them further away from the station entrance. In other words, the curb breaks and ramps could not cut through a bus bay.

In summary, the Authority staff position is that the recommended plan will provide better internal circulation for transit users while at the same time not having any more adverse impact, if any, on the area than does the citizens plan.

Sincerely,



Matthew Platt
Assistant Director
Office of Planning

cc: Montgomery County Council 
Montgomery County DOT
WSTC

Subject: RE: PARP Request No. 14-0138
From: Thom, Keysia A. (KThom@wmata.com)
To: takoma.transit@yahoo.com;
Cc: jwmontague@wmata.com;
Date: Friday, October 3, 2014 2:28 PM

Dear Mr. Paris,

I apologize for the delay in getting back to you. We are completing our response regarding whether you are eligible for a fee waiver and will provide a response shortly.

Best Regards,

Keysia A. Thom

PARP/Privacy Policy Administrator

WMATA Office of General Counsel

600 5th Street, NW

Washington, DC 20001

202.962.2058 (direct line)

202.962.2550 (facsimile)

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From: Takoma Transit [mailto:takoma.transit@yahoo.com]
Sent: Thursday, October 02, 2014 8:55 AM
To: Thom, Keysia A.
Cc: Takoma Transit
Subject: Re: PARP Request No. 14-0138

Dear Ms Thom-

Please apprise me of the status of PARP Request No. 14-0138, which was filed on July 1, 93 days ago. Your last communication was received on July 23. You failed to respond to either my letter of August 6 or my communication of September 22.

Thank you for your attention.

Sincerely,

Dave Paris

From: Takoma Transit <takoma.transit@yahoo.com>
To: Keysia A. Thom <kthom@wmata.com>
Cc: Takoma Transit <takoma.transit@yahoo.com>
Sent: Monday, September 22, 2014 2:14 PM
Subject: Re: PARP Request No. 14-0138

Dear Ms Thom-

Please apprise me of the status of PARP Request No. 14-0138. The last correspondence that I received regarding the application was on July 23.

Thanks for your attention.

Dave Paris

From: Takoma Transit <takoma.transit@yahoo.com>
To: "kthom@wmata.com" <kthom@wmata.com>
Cc: "takoma.transit@yahoo.com" <takoma.transit@yahoo.com>
Sent: Wednesday, August 6, 2014 5:02 PM
Subject: Re: PARP Request No. 14-0138

Hello- Attached is a duplicate copy of my letter responding to your questions. Thanks,
Dave P

From: Takoma Transit <takoma.transit@yahoo.com>
To: "kthom@wmata.com" <kthom@wmata.com>
Cc: Montague W. <jwmontague@wmata.com>; "takoma.transit@yahoo.com" <takoma.transit@yahoo.com>
Sent:
Subject: Re: PARP Request No. 14-0138

Dear Ms. Thom:

Attached is a letter responding to the questions contained in your July 23, 2014 email. Please confirm receipt of my letter and let me know if you need anything further.

Thanks for your attention.

Sincerely,

Dave Paris

From: "Thom, Keysia A." <KThom@wmata.com>
To: "takoma.transit@yahoo.com" <takoma.transit@yahoo.com>
Cc: "Montague, Joshua W." <jwmontague@wmata.com>
Sent: Wednesday, July 23, 2014 2:12 PM
Subject: PARP Request No. 14-0138

Dear Mr. Paris:

This acknowledges your request for a copy of the following records:

(1) any and all documents, in any way, related to efforts known by WMATA to identify, locate, characterize, organize, collect, secure, preserve, destroy, analyze, secrete, or disseminate documents relating to the original planning of the Takoma Metrorail Station;

(2) all documents related to the original 1973 and 1974 planning of the Takoma Metrorail Station and to the subsequent implementation of the parking and parkland/open space elements of the plan;

(3) any record from 1971 to 2006, identifying any actual or contemplated change in use of the land at the Takoma Metrorail Station, including the documentation associated with any UMTA or FTA decision to allow the land which was originally acquired for parking to be used for a different purpose;

(4) the particular portion of any document identifying the status, maintenance, and disposition of WMATA or Federal owned land at the Takoma Metrorail Station from 1973 – 2006 including, but not limited to, WMATA inventory of the Takoma Metrorail Station land, and any baseline system inventory, surplus property inventory and any "Excess Real Property Inventory and Utilization Plan" involving the said property; and

(5) any WMATA or third party investigations that have been conducted regarding the misplaced documents relating to the planning of the Takoma Metrorail Station, including attempts to recognize the missing documents with WMATA's document policies.

We received your request on July 1, 2014. Your request is being processed pursuant to the Public Access to Records Policy (PARP), which can be viewed on our website at http://www.wmata.com/about_metro/public_rr.cfm, under the section marked, "Legal Affairs." Generally, we aim to issue decisions on a request for records within 20 working

days after the date of receipt of the request. However, we note that you requested that we process this request expeditiously. We interpret this as a request for expedited processing. We note that you did not provide a basis for why you should be considered for expedited treatment. Therefore, we are not able to determine that you are eligible for expedited treatment.

In accordance with PARP § 7.10.2 (b) (ii), the requester must establish an urgency to inform the public about an actual or alleged WMATA government activity. "Urgency" contemplates that the information has a particular value that will be lost if not disseminated quickly (i.e. breaking news story of general public interest). Pursuant to PARP § 7.10.2 (c), a requester who seeks expedited processing must provide a written statement, explaining in detail the basis for requesting expedited processing. The written statement must be accompanied by a signed statement that the "forgoing is true and correct to the best of" your knowledge. Please provide this statement in order for us to determine whether your request warrants expedited treatment, unless you have decided to forego the request for expedition.

Additionally, we note that this request appears to be very broad. We are in the process of obtaining estimates, and if the estimates indicate that your request is burdensome, we will ask you to narrow your request.

Although we cannot yet provide you with any records, I can impart some general information now:

Exemptions:

Certain types of information are exempt from disclosure under the PARP. The exemptions include the following: (1) information that could compromise WMATA's infrastructure or security; (2) contractor proprietary information; (3) internal deliberations on policy matters; (4) attorney-client privileged communications; (5) information that if released would cause a clearly unwarranted invasion of personal privacy; and (6) certain information compiled for law enforcement purposes. Generally, WMATA's response will not include any exempt information.

Fees:

Our PARP provides for the assessment of fees associated with a request if it takes more than two hours of staff time to search for, assemble and review the requested records. This fee is calculated at the employees' basic rate of pay, plus an additional 50% to cover benefits, for the time spent responding to this request. Also, there is a 15 cents per page copying fee beyond the first 100 pages, which are provided free of charge. In general, a request is considered an agreement to pay all applicable fees. Advance payment is required where the fees are likely to exceed \$250.

Your request states that you should not be charged a processing fee because WMATA is legally required to maintain and provide the records that you are seeking. We interpret this to mean that you are requesting a fee waiver. However, your request does not sufficiently establish a basis for a fee waiver. In order for us to make a decision regarding granting you a fee waiver, please respond to the following:

- 1) Describe the purpose for your request of these records, and your intended use of them.
- 2) Explain how disclosure of these records will significantly further the public's understanding of the operations or activities of the Authority.
- 3) Describe how you intend to disseminate these records to the public, and how broad an audience you anticipate the disclosure will receive.
- 4) If your request is on behalf of an organization, describe that organization, including its expertise in matters associated with these records and how your organization is actively involved in disseminating information to the public.
- 5) Describe any commercial or profit interest that you or your organization has in these records, and how this commercial interest, if any, compares to the public interest described by your previous answers.

After reviewing your responses, we will inform you in writing of our decision regarding your request for a fee waiver. Please provide a response by August 6, 2014 or we will process your request without consideration for a fee waiver.

Future correspondence should reference the PARP request number noted above. If you have any substantive legal questions, please contact Josh Montague, Assistant General Counsel via telephone at 202-962-1275 or via email at jwmontague@wmata.com. You may also contact me via telephone at 202-962-2058 or via email at kthom@wmata.com if you require clarification on any administrative matters.

Best Regards,

Keysia A. Thom
PARP/Privacy Policy Administrator
WMATA Office of General Counsel
600 5th Street, NW
Washington, DC 20001
202.962.2058 (direct line)
202.962.2550 (facsimile)

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E008276

03) D Paris Takoma Station Downsizing 09-25-0
03/03/15 09:31 AM



David B. Paris, Esq.
901 Larch Avenue, Takoma Park, MD 20912
301-270-3168; DavidParis.Takoma@verizon.net

September 25, 2008

By Email: Letitia.Thompson@dot.gov

Letitia A. Thompson, Regional Administrator
Federal Transit Administration, Region III
1760 Market Street, Suite 500
Philadelphia, PA 19103-4124

Re: Takoma Station Joint Development Review

Dear Ms. Thompson:

I request that the Federal Transit Administration reject the untimely and inadequate Washington Metropolitan Transit Authority (WMATA) application for permission to sell 75% of the land at Takoma Station in the District of Columbia to accommodate the development of private townhouses with two-car garages. The FTA is compelled to reject the application because it will be impossible to evaluate whether the proposal is in the best interests of the transit system or in compliance with the Americans with Disabilities Act (ADA). Moreover, the WMATA board inappropriately delegated to the District of Columbia government, a WMATA signatory, authority to finalize the plan design.

The Incomplete WMATA Proposal Must be Rejected

The WMATA application is fundamentally defective. A 2005 FTA letter to WMATA clearly specified that the final application must include the hearing record, documentation of local government support and a "final site plan." However, none of these important elements has been included with the recent WMATA submission. Letter from Brian Glenn, Director, Washington Metropolitan Office, FTA, to Gary Malasky, WMATA, October 31, 2006. As a result, the FTA is compelled to reject the inadequate proposal submitted by WMATA.

It appears that the hearing record regarding this proposal is so damaging that WMATA is willing to risk rejection rather than to submit it for FTA scrutiny. The record will reflect the overwhelming community opposition to this imprudent attempt to privatize public land that is needed for transit purposes. WMATA has good reason to be ashamed of its hearing report. The failure of the report to identify the weight of public comment is a radical deviation from WMATA's usual method of precisely tabulating the number of speakers advocating particular positions at hearings. *See e.g.* WMATA, Public Hearing Staff Report, Glenmont Parking Structure, Hearing No. 174, Docket No. R06-4, April 6, 2006, 37-38. (Alternative A-6 speakers, Alternative B and/or oppose Alternative A-37 speakers, Alternative A or B-4 speakers, No Build-13 speakers, other-1 speaker.)

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The untimely Takoma Station plan cannot be perfected until a final site plan emerges from the District of Columbia Planned Unit Development (PUD) and Historic Preservation Review Board (HPRB) processes. Yet WMATA is postponing these critical reviews until after the FTA has approved the land sale. The FTA is being improperly presented with an inadequate preliminary concept plan that fails to address, let alone resolve, critical longstanding design issues.

The WMATA board resolution of November 5, 2007, identifies the contingent state of the station design submitted to the FTA. Instead of resolving Montgomery County concerns about the replacement transit facility, the WMATA resolution and hearing report designates the DC government as the agent to address an unfinished joint development design proposal through the DC Planned Unit Development (PUD) process.

Resolved, That the Board request that the DC Office of Planning, a part of the District's PUD process, consider the Montgomery County alternative on the Takoma Metrorail Station as it relates to pedestrian safety and handicap[ed] access.

WMATA Resolution, November 8, 2007. The resolution was an attempt to address the request of Isiah Leggett, Montgomery County Executive, who asked to delay voting on the joint development until WMATA resolved the plan's deficiencies. Text of Live Internet Discussion with Ike Leggett, October 18, 2007; *see also* Letter of Isiah Leggett, Montgomery County Executive, to John B. Catoe, Jr., WMATA General Manager, October 23, 2007 (requesting consideration of an alternative design).¹

During its public discussion leading up to the WMATA resolution, there was no indication that the WMATA board was considering going directly to the FTA, circumventing the process that was intended to resolve jurisdiction differences. This alteration of plans violates the WMATA charter since the transit authority is advancing to the FTA without having modified the station transit plan to reflect the site plan emerging from the PUD process and without having voted to submit a final site plan to the FTA.

The WMATA Board's adoption of the staff report on the compact hearing relegated further important and controversial issues to the PUD hearing process. The hearing report avoided taking responsibility for addressing or attempting to resolve the controversial and critical failure of the present concept plan to comply with the 50-foot buffer required by the Takoma Central District Plan (CDP) and the FTA² to protect residences abutting

¹ At the last minute, WMATA failed to follow through on publicly announced commitment to allow Friends of Public Transit, an organization of DC and Maryland residents, to make a presentation to the WMATA Board of an alternative proposal to build a small transit-oriented apartment building on the existing station hardscape area. *See generally*, David Paris, Testimony WMATA Compact Hearing, Hearing No. 175 Docket No. R06-5, October 5, 2007, pp. 23-26 (avoidable expenditure of two thirds of sales revenue just to get the property into "shape."), pp. 38-39 (alternative plan); pp. 41-51 (WMATA staff misstatement regarding alternatives consideration).

² The FTA has "recommended" that WMATA and its developer "incorporate" the "findings and recommendations of the Takoma Central District Plan" into the site plan for the joint development of

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Takoma Station. Hearing Report, *infra*, p. 31. The WMATA report states:

The Takoma Central District Plan provided for a landscaped buffer not less than 50 feet between WMATA transit uses and nearby residences, such as multi-family structures along Eastern Avenue. The plan, as proposed, locates the access road to Eastern Avenue approximately 36 feet from the closest apartment building. Because this access road will be public, WMATA staff believe this issue is one better left to the District PUD process during which it is typical for the developer to provide studies assess impacts. (footnote removed)

While not a WMATA facility, the staff concludes that there may be some unqualified impact from the location of the new public access road and the analysis of the net impact should be left to the DC PUD process.

WMATA, Final Public Hearing Staff Report, Takoma Station (Hearing Report), November 5, 2007, p. 31.

Additionally, the suppressed staff report reserved for the PUD process the development and approval of a construction staging plan to cope with the physical and environmental disruption that inevitably will accompany the use of heavy earthmoving equipment to level the sloping station land area to accommodate townhouses. This delay avoided an inevitable unfavorable comparison of the townhouse proposal with an alternative proposal designed in harmony with the land by concentrating development in a transit-oriented green apartment building on the existing hardscape area. See Hearing Report p. 46. WMATA has neither acknowledged nor attempted to value the cost to Takoma Station patrons of the massive disruption caused by months of heavy equipment work.

The PUD and HPRB reviews should take place before both the compact hearing and the WMATA Board adoption of a final site plan. The last minute cancellation of WMATA's 2006 Takoma Station compact hearing was in response to Brian Glenn's letter communicating that the joint development submission needed to provide both a "final site plan" and "documentation of support for the Joint Development proposal from the local government." *Id.* The hearing was canceled because WMATA realized that it would be necessary to hold the compact hearing after the DC reviews. This was the timetable reflected in a draft WMATA response written immediately after the Glenn letter was received:

The timeline for FTA approval, as clarified in your letter, will likely cause WMATA to conduct the compact hearing after the approval of the joint

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development proposal by the local jurisdiction and after approval of the final site plan. This change may lengthen the joint development process and increase the risks to the selected developer.

Draft Letter to be signed by Gary Malasky, Director, WMATA Office of Property and Development Management, dated November 11, 2005 (“DRAFT BY CONS JMD AS OF NOVEMBER 17, 2005” – located at top of page); responding to Letter from Brian Glenn, FTA, to Gary Malasky, WMATA, October 31, 2005.³

It is clear that the WMATA board is legally required to consider whether to ratify the plan that emerges from the DC PUD and HPRB review process and that the plan must be the subject of a compact hearing. WMATA General Manager John Catoe has acknowledged that if the PUD process results in “material changes to the project, the project would be returned to WMATA for a second compact public hearing process.” Letter of John B. Catoe, General Manager, WMATA, to Isiah Leggett, Chief Executive, Montgomery County, Maryland, November 5, 2007; see also WMATA/EYA, Takoma Station Joint Development Sales Agreement, June 20, 2005, § 4.02 (G) (Compact Hearing), p. 13. (Alteration of the station design might require a second compact hearing).

The Takoma Station hearing was held by WMATA “to amend its mass transit plan” to reflect the proposed sale of station land and “corresponding relocation and reconfiguration of transit facilities.” WMATA Notice of Public Hearing, Proposed Relocation of Bus Facilities and Parking Changes at Takoma Station,” August 11, 2006. The contingent plan subsequently approved by the WMATA board is not the transit plan contemplated by the hearing notice and authorized by the WMATA compact.

The compact does not give the WMATA Board authority to designate signatories to finalize unfinished planning documents. It is the exclusive responsibility of the WMATA Board, not the DC Zoning Commission, to develop a “mass transit plan for the immediate and long-range needs of the Zone.”⁴ WMATA Compact § 13. The WMATA Compact requires the transit agency to make decisions for the benefit of the “transit zone,” not just one signatory. WMATA Compact §§ 13, 14 & 15. A station transit plan is to be adopted

³ WMATA took the Brian Glenn October 31, 2005, letter very seriously. Its receipt appears to have prompted the immediate cancellation of the compact hearing scheduled for November 2, 2007, which was to be followed by board action and finally the PUD and HPRB reviews. The draft WMATA response was written a week after the date of the canceled hearing.

⁴ The WMATA Compact repeatedly relies upon the term “transit zone” when setting forth WMATA’s responsibilities, scope of service, and planning perspective. See WMATA Compact § 12 (k) (scope of public hearings); § 13 (a) (scope of transit plan); § 14 (scope of planning coordination relating to both transportation and development); § 14 (planning considering data relating to “the zone and the separate political subdivisions”). Moreover, the Washington Metropolitan Area Transit Zone is defined as “the District of Columbia, the cities of Alexandria, Falls Church and Fairfax and the counties of Arlington, Fairfax, and Loudoun and political subdivisions of the Commonwealth of Virginia located within those counties, and the counties of Montgomery and Prince George’s in the State of Maryland and political subdivisions of the State of Maryland located in said counties.” WMATA Compact § 3.

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by the WMATA board with input and information from the WMATA signatories. *Id.* Plans are to be considered subject to the “duty and responsibility of each member of the Board to serve as liaison between the Board and the body [sic] which appointed him to the Board.” Compact § 14 (b); *see also* Montgomery County Code Washington Suburban Transit District § 87-18 (b) (1);⁵ *See generally* WMATA Compact §5 (b) (oath of office; will support constitution, laws, and “will faithfully discharge the duties of the office upon which I am about to enter.”)

It is contrary to the regional character of the WMATA compact for the transit agency to abdicate its judgment to the unsupervised wishes of the District of Columbia, the jurisdiction where the station facility is physically located. *See c.f. Helmuth & Associates v. WMATA*, 414 F. Supp. 408, 409-410 (D. Md. 1976) (A WMATA signatory may not enact information disclosure legislation that would burden the WMATA compact.) The WMATA Board must make an independent determination to ratify any design changes emerging from the PUD process and to submit the final design to the FTA.

The FTA is required to deny WMATA permission to sell off Takoma Station public land because WMATA has made an untimely submission of an incomplete and fatally flawed station design that would undermine the future integrity of Takoma Station.

Unresolved Design Deficiencies Require Rejection

Changes in the site plan required to address design concerns are likely to be significant, since the present concept plan contains many unresolved problems. Unless the identified issues are resolved, the facilities plan will remain substandard and the record of the joint development application will not contain evidence of local government support for the proposed land sale.

The WMATA joint development proposal is inconsistent with important elements of the DC Central District Plan (CDP) that mandate that Takoma Station development must include a 50-foot buffer, replace all existing station parking on the station site, involve density of 65 to 95 units at 22 to 32 units per acre, encourage one parking space per residential unit, and provide development that is compatible with the transportation functions of Takoma Station. *Infra.* The DC Zoning Commission and the Historic Preservation Review Board have exclusive jurisdiction to determine the compatibility of the proposed development with such planning goals. The DC Mayor’s office and executive branch lacks authority to override the DC Comprehensive plan or to direct the outcome of matters that will be before the DC review bodies.

⁵ The Washington Suburban Transit Commission is required to “use its best efforts to assure that the mass transit plan adopted by the authority shall be coordinated with.... “[t]he general development plans for Montgomery and Prince George’s counties and for all cities and towns located in such counties exercising planning powers.” Mont Code WSTD § 87-18 (b) (1). (The WSTD was created by statute in the same year that the WMATA Compact was enacted. *See* Chapter 870, Laws of Maryland 1965.)

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The CDP, an element of the DC Comprehensive Plan, expressly recommends that any Takoma Station development should be subject to PUD review.

Any final redevelopment proposal for the [Takoma Station] site will be required to undergo all of the applicable development review processes required by Metro and the DC Government, including design review by the DC Historic Preservation Review Board. It is also recommended that the site development plan for such a project be reviewed as a Planned Unit Development (PUD) to ensure appropriate public involvement and review.

Takoma CDP, January 2002, prepared by Smithgroup for the DC Office of Planning (DCOP), at 53-54. Moreover, the WMATA Board resolution approving Takoma Station development specifically recognized that the PUD process would address outstanding design deficiencies and unresolved issues regarding the Takoma Station development. WMATA Resolution, *supra*.

The FTA repeatedly has “recommended” that WMATA and its developer “incorporate” the “findings and recommendations of the Takoma Central District Plan” and of the Takoma Transportation Study (TTS)⁶ into the site plan for Takoma Station joint development.

To insure that WMATA takes into account the impacts, if any, on traffic caused by the resultant development at the Takoma Park Station, FTA recommends that you delay any further action on this Joint Development project until the results of the traffic study are announced and you have a chance to evaluate the findings. We also recommend that you ensure that EYA, the proposed developer, incorporate these findings, and the recommendations of the Takoma Central District Plan, into their new site plan for the project.

Letter of Brian Glenn, FTA, to Denton U. Kent, WMATA, September 10, 2002; *see also* Letter from FTA Administrator Jennifer Dorn to U.S. Senator Paul Sarbanes, November 1, 2002; Letter from FTA Administrator Jennifer Dorn to U.S. Congressman Christopher Van Hollen (Dorn Letter), May 28, 2003, p. 1 (referencing the Glenn letter to Kent).

The CDP requires the provision of a 50-foot buffer to protect the residential home and apartment dwellers living within proximity of any Takoma Station development.

⁶ The CDP recommended preparation of the TTS, and the DC City Council provided for the direct incorporation as an addendum to the CDP of findings of the TTS pertaining to traffic mitigation strategies. DC Council, Report of the Committee of the Whole on the Takoma Central District Plan Accompanying Proposed Resolution PR 14-614 with Recommendations Adopted by Council on June 4, 2002, p. 6.

A landscaped buffer of no less than fifty feet should be provided between the Metro station's transit functions and existing residential uses, such as the multi-family structures to the north along eastern avenue.

CDP at 52. However, the present concept plan fails to provide the required 50-foot buffer. Moreover, as already explained, the Takoma Station hearing report prepared by the WMATA staff and approved by the WMATA board reserved for the PUD process the responsibility to review the failure of the present concept plan to provide for the 50-foot continuous buffer prescribed by the CDP. WMATA Resolution and WMATA Hearing Report, *supra*. Residents of the apartments, who must wait for the PUD review, believe that the claimed 35-foot buffer area might be including a portion of apartment property.

The proposed joint development application additionally violates the CDP goal that no private development should be approved at Takoma Station unless it is consistent with the station's transit functioning.

The Takoma Metro station represents a significant public investment in mass transit. It is imperative that the Metro site continues to serve transit needs first, and the revitalization goals of the community second.

CDP at 51, 43-44.

The policy that the transportation functions of Takoma Station must be accorded primary planning importance is restated elsewhere in the DC Comprehensive Plan:

Place a priority on meeting transit needs at the Takoma Metro station and accommodate all Metro and Ride-On services on the station site itself.

District of Columbia Comprehensive Plan—Mayor's Draft, Rock Creek Park East Area Element—Policy Focus Area: Takoma Park Central District (Policy RCE-2.1.5).

The CDP specifies that “[t]he suggested development threshold for the Metro station site is approximately 65-95 townhomes at 22-32 units/acre.” CDP at 52.⁷ However, the joint development application provides no explanation for WMATA's conversion of the CDP's suggested development range for Takoma Station from 65 to 95 townhouses to 85 to 95 townhouses. CDP at 52. It appears that WMATA arbitrarily and capriciously insisted on building 85 townhouse units even though the cost of providing so many townhouses is inconsistent with the CDP admonition that any development at Takoma Station must be consistent with the primary transit mission of the public facility.

⁷ The CDP improperly identifies a development threshold of 65 to 95 townhouses. It should not identify a range as a threshold. The development threshold is 65 townhouses. WMATA appears to have arbitrarily changed the threshold from 65 to 85 townhouses. A threshold denotes a region marking a boundary.

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At a December 2005 WMATA lunchtime forum, former WMATA General Manager Richard White was asked why the EYA joint development proposal failed to comply with the Takoma CDP requirement for replacement of all existing public Takoma Station surface parking spaces displaced by development and for the provision of a minimum 50-foot buffer to protect the residential community surrounding Takoma Station. White responded that to accommodate transit-oriented development it was necessary to sacrifice parking accessibility and protection of the adjoining community.

The plan for the Takoma station site contained in the Takoma Central District Plan is conceptual. It was not engineered to determine whether all of the proposed elements could actually fit on the site. In refining its concept plan with its engineers and WMATA technical staff, the developer determined that, in order to increase the bus facilities on site to meet future projected transit needs, provide a green space of the size mandated by the Takoma Central District Plan and meet the residential density requirements of transit oriented development with at least 85-95 units, the parking lot had to be reduced and the 50-foot buffer compromised in certain locations. The **site plan for this project is not fixed in stone at this stage** and there will ample opportunity for public input at the WMATA Compact Public Hearing and the BZA and Historic Preservation Review Board hearings in the future as this project moves through the entitlement process.

WMATA Lunchtime Forum, December 2, 2005. (emphasis added)

White's statement implies incorrectly that, during the CDP process, WMATA was unaware that Takoma Station lacked space for the elements of the EYA joint development project. However, the WMATA staff comments on the CDP reflect WMATA's unseemly desire to free up land for EYA at all costs by avoiding the addition of two bus bays, by cannibalizing half of a community parking lot, by replacing the designated village green with a kiss-and-ride facility, and by reducing the buffer areas. WMATA Staff Comments on the Takoma CDP, October 31, 2001; *see also* Email Toni Frasier, DCOP, to Elisa Hill, WMATA, November 5, 2001, containing prior Email Hill to Frasier, November 2, 2001, 4:38 PM. So much for putting transit first.

The available land area of the Takoma Station site is unable to accommodate both the appropriate transit facilities and the 85 townhouses that WMATA unreasonably insists on building. The joint development application does not even attempt to explain why WMATA has not investigated placing 85 units in an apartment building constructed on the site of the present hardscape. An apartment building designed in harmony with existing transit facilities might generate greater profit to WMATA even if the land is sold at a lower rate in return for public benefits. A carefully designed apartment facility would be more compatible than townhouses with transportation, affordable housing, and environmental goals. Additionally, unlike townhouses, an apartment building would be sufficiently flexible to accommodate current economic conditions that favor construction

of a rental facility. Rental units would meet an important community need, provide the transit authority with an ongoing income stream through ground leasing options, and permit the transit authority to gain the benefit of any appreciation of property value. Some transit authorities obtain substantial portions of their operating expenses from ground leasing.

Unfortunately, the WMATA staff failed to investigate the apartment alternative with due diligence. Instead, the WMATA staff inaccurately represented to the WMATA board that an apartment alternative had already been considered and rejected during the CDP process. See discussion, *infra*. Moreover, the WMATA staff has presumed to compare the EYA and FTT designs, without bothering to ascertain the facts. For example, the WMATA staff inaccurately wrote on a comparison chart:

Drop-off for disabled is adjacent to the Metro elevator entrance. However, the access to the parking garage which requires payment upon exit for all cars, even those just dropping someone off.

WMATA, Comparison of Friends of Takoma Park [sic] Transit Plan (Lex Ulibarri) with the Eakin/Youngtob Associates, Inc. (EYA) Plans, undated.⁸ A simple meeting or telephone discussion would have communicated that payment upon exiting was not required for a metered parking garage. At the last minute, WMATA failed to follow through on a public commitment to permit a presentation to the WMATA Board by Lex Ulibarri, the designer of the apartment alternative. This commitment, which was first publicly communicated to participants at a March 4, 2007, design charette, subsequently was reiterated by two successive WMATA General Managers.

The WMATA staff's pursue of a development alternative that threatens the transportation integrity of Takoma Station is emblematic of the extent to which WMATA's core functions have been subverted by its real estate holdings.⁹ WMATA has an inappropriate financial and institutional incentive to convert land into townhouses instead of adding bus routes at Takoma Station. The structural conflict of interest between WMATA's public transit responsibility and its real estate business was evidenced by the transit agency's efforts to twist the CDP goal of meeting transit needs first into a perverse attempt to convert the small area of remaining Takoma Station parkland into a kiss and ride area.

⁸ This WMATA document appears oblivious to the danger of providing a drop-off area for physically challenged individuals in the middle of a busy traffic circle. "Current level of parking for the disabled is maintained. Drop-off for disabled is adjacent to the Metro elevator entrance in the bus turnaround area, providing easy drop-off and pick-up." *Id.* Ironically, subsequently, WMATA moved the ADA access point to a location in the WMATA parking garage that will force mobility-impaired patrons to walk significantly farther than would the Friends of Takoma Transit alternative.

⁹ One of the new bays was to accommodate a possible new Ride On route to take both Maryland and DC residents to the 6,000-job consolidated FDA facility at White Oak. *See* Ride On Official Questions Plan for Takoma Metro Bus Bays, *Takoma Gazette*, August 10, 2005. The Washington Adventist Hospital is an activity center that wants to move from Takoma Park to the White Oak area. Maryland policymakers appear to share a concern that the access of Takoma Park residents to any future hospital facility not be restricted.

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The WMATA staff wrote to the DCOP:

In keeping with the strategy of meeting transit needs first, the area identified as the “Village Green” would be an ideal place relative to the station entrance for Kiss & Ride and taxis rather than having these functions occupy curb space on Carroll and Cedar Streets as shown.

WMATA CDP Comments, p. 2.

The WMATA staff disinterest in meeting the transit needs of the public is evident in the poor Kiss and Ride and ADA drop-off facilities that are provided by the concept plan that WMATA chose to submit. See discussion, *infra*. To feed the EYA project’s hunger for space, WMATA is shoehorning transit facilities into an artificially constrained area rather than providing a safe, secure, and attractive environment for transit users.

The sparse joint development application fails to contain even a scintilla of documentation capable of supporting an FTA finding that WMATA is maintaining satisfactory continuing control over Takoma Station despite the failure of the concept plan to set aside land to accommodate the construction of additional bus bays in the future.¹⁰ The WMATA action is contradictory to the finding of the 2003 multi-jurisdictional District of Columbia and City of Takoma Park transportation study that found that Takoma Station requires 12 bus bays to address long-term needs. DMJM + Harris, Takoma Transit Study (TTS), Final Report, July 2003, at 88.¹¹

Further, WMATA proposes to replace 149 existing public surface parking spaces with a 121 spaces in a parking garage and with 19 spaces scattered among the townhouses. This action is directly contrary to the TTS goal of preserving the number and short-term character of existing Takoma Station parking spaces.

¹⁰ Moreover, at the November 2006 meeting of the WMATA Joint Development Task Force, the poor quality of the ridership projections and justifications for the number of bus bays was criticized by members of the task force. See David Paris, Testimony WMATA Compact Hearing, Hearing No. 175 Docket No. R06-5 (Paris Testimony), October 5, 2007, p. 14. WMATA has admitted that its general ridership projections are inadequate. At the May 22 WMATA Board meeting, GM Catoe confessed that the “projections we’ve been using are based on population and job growth, but they don’t factor in the effect of gasoline prices on ridership.” WMATA Press Release, Metro Preparing for More People to Shift to Transit if Gasoline Prices Continue to Skyrocket, May 22, 2008.

¹¹ The TTS understates transit need at Takoma Station because its authors did not feel that the Purple Line subway extension was sufficient advanced to take into account. TTS Table 25 (not attached). Similarly, the TSS did not appear to take into account Montgomery county land use and transit decisions to “locate more jobs in the White Oak area” and to “bolster activity in Langley Park in conjunction with planning for the Purple Line.” Montgomery County 10-Year Transportation Plan, Summer 2004. The TTS did not plan for the impact of the Takoma-Langley intermodal transit facility, which will soon be constructed. *Id.* (designated as TR-10); Blanchard, Presentation Takoma Park City Council, February 21, 2006 (construction by Spring, 2011).

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A 1:1 replacement ratio for the existing parking spaces at the Metro station should be implemented with redevelopment at the Takoma Metro site. Short-term parking only for Metrorail patrons should be provided on site and commuter (long-term) parking should continue to be prohibited on site.

TTS at 91.

It is dishonest for WMATA to attempt to count existing neighborhood parking spaces as replacement spaces. WMATA's 19 replacement spaces result from a "double-dipping" count of Cedar Street parking located outside Takoma Station grounds. WMATA is also claiming that transit patrons will be using 36 new street parking spaces that would be located in front of the proposed townhouses. However, under DC regulations, the new spaces are likely to become exclusively resident permit-only spaces.

Resident parking is not the functional equivalent of non-commuter parking for transit patrons. Unlike WMATA-controlled spaces on the Takoma Station lot, neither the existing nor the new street spaces would be available exclusively for non-commuter transit users. Replacement spaces need to be under the control of WMATA, available for the exclusive use of transit patrons. The residential street parking does not foster the interests of the transit facility, as recognized by the TTS. Obviously, WMATA is short-changing the replacement spaces because it wants to avoid constructing an even more expensive parking garage. This failing is a further indication that the joint development proposal is economically unfeasible.

The two-car garages provided for most of the townhouses are inconsistent with the CDP policy to encourage the provision of one automobile for each residential unit.

New development adjacent to the Metro station should seek to promote transit use by minimizing development of parking spaces. (encourage a 1 to 1 unit/parking space ratio and on-street parking)

CDP at 53

The so-called "option" of building townhouses with one-car garages is illusory, because even well-intentioned owners may be unable to accept the present market risk of trying to sell a house that lacks a two-car garage. In contrast, an apartment's shared parking facility would permit residents to live automobile-free, yet to maintain the option to start renting parking spaces if there is a change of need. The group facility could also provide an alternative to automobile ownership by providing space for rental flex-cars. Units of various sizes would help to create a greater balance of occupants and help to accomplish other social goals.

The WMATA application should be rejected because it conflicts with DC planning goals.

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Montgomery County Concerns Remain Unaddressed

Exhibit 8 of WMATA's joint development submission contains only a terse one-paragraph email from Philip McLaughlin, an employee of the Montgomery County Department of Transportation, stating that the provision of 6 bus bays "meets our requirements." This casual email submission, which does not even state his precise title, hardly qualifies as requested "[d]ocumentation of support for the Joint Development proposal from the local government." WMATA Exhibit 8, Email from Philip McLaughlin, Ride On, to Tariq Bushnaq, Project Manager, WMATA Joint Development and Adjacent Construction, March 3, 2006, *see also* Glenn Letter, October 31, 2006.

Internal WMATA email shows that in August 2006, five months following the McLaughlin email, key WMATA employees believed that Montgomery County Ride On continued to harbor serious reservations about the adequacy of the proposed Takoma Station facilities. Email of Marsha Kaiser, Senior Planner, PB Placemaking (WMATA consultant), August 18, 2006, 6:39 PM. ("It was an outstanding issue through our involvement" which was immediately prior to the March 4, 2006 Takoma Station community planning workshop.)¹²

The McLaughlin email continues by warning that "the center island layout is not desirable" for transit because it will create "potential conflicts with layover buses and regular bus service." *Id.* The implication of his terse assessment is that the existing station design offers layover facilities that are qualitatively and quantitatively superior. Presently the stop contains 3-4 *de facto* layover bays that are regularly used by Ride On buses. An August 21, 2008, WMATA cover letter transmitting the joint development application erroneously states that "[c]urrently, there are 9 bus bays and no layover spaces at the station" WMATA's misrepresentation has already been identified by Jeffrey Silverstone, a Takoma Park resident, who recently informed the FTA that the existing transit facilities include "4-5 spaces being used as informal layover spaces: there are two on the turnaround and one across from the turn-around. The fourth space is on Cedar St. (designated as a Taxi stand but too far from the station for taxis to use) and the possible fifth is an existing unused bus bay." Email from Jeffrey Silverstone to Letitia A. Thompson, FTA, September 1, 2008.

The proposed layover island imposes a medial wall of idling buses that obscures the clear line of vision of the present bus bay waiting area and makes it more difficult for both transit users and WMATA employees to identify possible danger or to assess the status of buses waiting at the bus bays that are obscured by the island barrier. WMATA's Station Site and Access Planning Manual (SSAPM) states that "[p]edestrian barriers (fencing/landscaping) may be provided to discourage or prevent crossing at undesignated areas" but that "barriers should not impede visibility." SSAPM, March 2007, Ch. 2.5.2, p.

¹² See Prejudice Toward Maryland section of this letter, *infra*, which quotes from several email communications which indicate WMATA's lack of certitude about the Montgomery County Ride On position regarding the proposed Takoma Station facilities.

2-15. However, the wall of buses will impede visibility within the station area and between the station entrance and the proposed village green minipark.

The center island encourages dangerous pedestrian practices. Because the wall of layover buses will block visual cues regarding the status of some of the bus bays, passengers are more likely to become impatient about following prescribed restrictions to unimpeded pedestrian movement. Unable to see whether their bus is waiting, bus patrons will tend to rush across the bus bay area instead of safely using crosswalks. Conflict is inevitable between passengers and buses, particularly the vehicles that are laying over. WMATA's abysmal safety record is too well known to require much documentation. For example, just three weeks after General Manager John Catoe took over management of the WMATA system, a Metrobus was involved in a double fatality. Mr. Catoe responded by announcing that he was making pedestrian safety his "top priority." WMATA Press Release, Region Focuses on Pedestrian Safety After Woman Fatally Struck by Bus, February 18, 2007. Unfortunately, at Takoma Station WMATA is not following up on its promises to improve safety any more than it is fulfilling its claimed commitment to foster transit-oriented development. Evidently, WMATA is more interested in gaming the FTA system with an incomplete and inadequate station facilities design than in living up to its safety first and transit first sloganeering.

McLaughlin also observes that the idling bus bays are not fully functional, since they cannot be used by transit patrons. Exhibit 8. "Potential Conflicts" between "layover busses and regular service busses" are exacerbated by the need for some of the layover buses to exit and reenter the bus bay area in order to get into particular service bays. *Id* This practice is likely to alarm passengers who might believe that their bus is leaving without stopping for passengers. WMATA's design standards contemplate better integration of layover and service bus bays than the proposed design provides. "Lanes for bus storage should be located in proximity and within view of the bus bays to allow layover buses to move to their assigned bay when it becomes vacant or at the scheduled time for boarding." SSAPM, Ch. 2.5.2, p. 2-15.

WMATA's submission to the FTA also neglects to include and acknowledge a letter from Arthur Homes, Director of the Montgomery County Department of Transportation that urges the resolution of all outstanding safety, access, and ADA-suitability issues "prior to WMATA Board action on the proposed project." Letter from Arthur Holmes, Director, Montgomery County Department of Transportation to John B. Catoe, Jr., WMATA General Manager, October 16, 2007. The Holmes letter, which was written 19 months after the March 3, 2006 McLaughlin email, identifies problems involving the WMATA plan's inappropriate mixing of vehicular traffic on the proposed Takoma Station traffic circle. The letter's recommendation that WMATA "restrict all private vehicular access into the traffic circle," is consistent with WMATA's 2007 design standards, which specify that the "separation of modes is necessary to reduce conflicts and ensure adequate access and circulation." *Id*; SSAPM, Ch. 2-2, p. 2-5.

Director Holmes expresses concern that the ineffective placement of the Kiss and Ride and ADA drop-off areas will encourage the use of the circle as a *de facto* drop-off location. *Id.* “The handicapped rider drop-off and access to the station elevator in the proposed joint development design will permit drivers to use the traffic circle and to drop off handicapped riders in the traffic circle because it is the closest point to the elevator entrance.” *Id.*, *see also* City of Takoma Park Resolution 2006-58, October 3, 2006. Director Holmes further points out that the placement of a fence along the inside perimeter of the circle is not a complete solution because the fence will encourage even more hazardous drop-offs in intersection areas, particularly when the weather is poor. *Id.* This view is echoed by testimony presented to WMATA by James Deluigi, a respected Takoma Park architect specializing in ADA compliance and adaptive facilities. He testified to WMATA that the proposed poorly implemented ADA facilities are likely to encourage “a tendency by some to drop off patrons with disabilities at the circle where the drive through openings occur in the now proposed fence.” James Deluigi, AIA, CSI, WMATA/EYA Takoma Metro Development Plan ADA Violations Assessment, October 5, 2007.

WMATA station design standards specify that Kiss and Ride facilities should be located close to station entrances. SSAPM, Ch. 1.3.4, p. 1-6. “Kiss & Ride facilities that are not convenient to use, too congested, too remote from the station entrance, or have poor visibility, will encourage motorist[s] and taxis to find another location in the station site or adjacent streets for pick-up/drop-off activity that may cause undesirable conflicts with other traffic, particularly in a Joint Development site.” SSAPM, Ch. 2.6, p. 2-16. The placement of both the ADA and the Kiss and Ride drop-off areas too far from the station entrances is a fatal defect of the proposed station design.

WMATA also has failed to heed the Montgomery County recommendation to “minimize the distance from the handicap drop off to the elevator entrance.” *Id.* The segregation of the presently integrated ADA drop-off and Kiss and Ride areas substantially lengthens the path to the elevator entrance and worsens the isolation of mobility-challenged patrons. During morning rush hours,¹³ WMATA proposes to abandon the most vulnerable transit patrons in a deserted parking garage that remains empty until 10:00 AM every weekday. The resulting isolation and lack of supervision will endanger mobility-challenged patrons by significantly increasing the likelihood of problems not being discovered promptly and by attracting opportunistic criminal activity.

It is disgraceful that WMATA is providing more dangerous facilities for mobility-challenged users than its recently enacted design standards require for ordinary patrons. The WMATA best practices standards “[e]ncourage active uses adjacent to parking areas to reduce the perceived isolation of parking lots” used by ordinary patrons. SSAPM, Ch.

¹³ Since the station opened in the 1978, the station parking has been unavailable until after rush hour because it is intended for the short-term convenience of transit users not for commuters. Therefore, placement of the ADA commuter parking in a parking garage that is otherwise intended for non-commuter parking is has the undesirable consequence of isolating and endangering a vulnerable population.

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4.1.4, p. 4.3; see c.f. SSAPM, Ch. 3.9.4, p. 3-10 (activity desirable around parking structures). Certainly, a higher standard of care is warranted (and legally mandated) to protect mobility-challenged transit patrons, who would be served poorly by the segregated, isolated proposal that has been justly criticized by Montgomery County.

The design concerns expressed by Montgomery County have also been identified by the Equal Rights Center, the successor of the Disability Rights Council of Greater Washington, which successfully prosecuted a lawsuit that led to a settlement that included a commitment from WMATA to improve the provision of its paratransit services. *See c.f. Disability Rights Council of Greater Washington v. WMATA*, 242 F.R.D. 139 (D.D.C. 2007); *see attached* BNA ADA Manual, DC Area Transit Agency Settles Class Action for \$2.2 Million Over Service For Disabled, July 19, 2007, p. 1.

The Equal Rights Center has explained why the proposed transit facilities modifications would “make the station inaccessible” to patrons requiring ADA-compliant facilities.

The [present] Takoma Park station combines the Kiss and Ride location with the accessible elevator entrance, promoting convenient and noticeable integration of people who do not have disabilities and people who do. The ADA specifically recognizes that goods and services provided in an integrated manner is a fundamental test of nondiscrimination, while providing segregated services relegates persons with disabilities to the status of second-class citizens. The new plan for the station would create another Kiss and Ride location that is not accessible and that would promote segregation of people with disabilities from others.

Letter from Jenifer Conrad, Disability Rights Sr. Project Coordinator, Equal Rights Council (aka Disability Rights Council of GW) to Emeka Moneme, Director, DC Department of Transportation, November 2, 2007.

The FTA is required to reject the WMATA application because of the serious unresolved transit issues, which include the failure of the project plan to provide ADA-compliant facilities, and because the application has not supplied documentation of local government support for the joint development. Moreover, it will not be possible for the FTA to assess the ADA compliance of a concept design that is subject to substantial further modification.

Disturbing WMATA Prejudice Toward Maryland

There is considerable documentation in the record of the Takoma Station compact hearing chronicling a disturbing pattern of WMATA staff animosity and prejudice pertaining to the views of Maryland jurisdictions and residents regarding the planning of Takoma Station. In comparison, it appears that WMATA and the DC Office of Planning were working together hand in glove.

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The WMATA compact provides that WMATA planning must coordinate with “the general plan or plans for the development of the Zone” and “the development plans of the various political subdivisions embraced within the Zone.”¹⁴ See WMATA Compact § 14 (a) (2) (3). Instead of coordinating with Maryland planning, the WMATA submission has relegated Maryland concerns to a *post hoc* PUD hearing. WMATA is required to engage in a cooperative transportation process with the transportation agencies of all signatories, not just the agency where property is physically located.

WMATA’s willingness to compromise the interests of Ride On is particularly inappropriate since Ride On is the largest provider of Takoma Station bus transit services. Moreover, Maryland taxpayers paid for a portion of the cost of constructing Takoma Station and it is likely that Maryland taxpayers will be asked to share in the expense of future Takoma Station facility improvements.¹⁵

WMATA’s past behavior has prompted the FTA to remind WMATA that Takoma Station is utilized by residents of both the District of Columbia and Maryland.

FTA acknowledges that, although the joint development project is within the boundaries of the District of Columbia, the station serves patrons from both the District and Maryland. Because the station provides Metrorail access to both the District and Maryland customers, we do not believe that the jurisdictional boundary is a factor in assessing the impact of such a project

Dorn Letter, *supra*, p. 1.

In 2000, WMATA actively attempted to impede the ability of the Takoma Park City government to communicate with its residents by refusing to supply information regarding plans for the joint development of Takoma Station unless the city entered into an illegal agreement prohibiting disclosure of public information about the project. Takoma Gazette, "Council had Signed Agreement to Keep Mum on Townhouse Plan," March 1, 2000. Additionally, during the ten-year pendency of Takoma Station planning, WMATA refused to apply to Takoma Station planning two sets of revised joint development policy procedures that were intended to increase public and jurisdictional participation in the planning process. WMATA, Joint Development Policies and

¹⁴ The term transit zone is used very precisely by the WMATA Compact in relationship to “signatories” and individual jurisdictional components of WMATA signatories. While the term transit zone is used to describe WMATA’s legal and planning responsibilities, reference to signatory jurisdictions seems to be mainly reserved for discussion of uniquely local activities, such as the selection of WMATA Board members. See WMATA Compact § 1 (h) (transit zone is WMATA service area); *compare e.g.* §§ 13, 14 (signatories and political subdivisions)

¹⁵ The WMATA Joint Development Task Force recommends that WMATA “encourage local jurisdictions to use the proceeds of station area-related tax revenue to fund needed station improvements.” *Id.*, p. 17, (Recommendation 7c). The February draft of the task force report specifies the levying of impact taxes within a half-mile radius of transit stations. It is unlikely that a Takoma Station taxing district would be limited to only the DC side of the station, yet WMATA and the DC Government have denied both the City of Takoma Park and Montgomery County a seat at the Takoma Station planning table.

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Guidelines, July 21, 2005, and February 21, 2002. Both sets of reforms were motivated in substantial part by the decade-long Takoma Station planning disaster, according to Former WMATA Acting General Manager Dan Tangherlini. Meeting with Friends for Takoma Transit, July 18, 2006.

WMATA was so desperate to cannibalize public land for the townhouses that it inappropriately tried to provoke interjurisdictional conflict between two WMATA signatories by suggesting that the District of Columbia land should not be wasted on Maryland bus bays. Instead of putting transit needs first, WMATA has been attempting to undercut Ride On, a fellow transit services agency.

Ride-On has requested an additional 2 bus bays at this station to meet its future needs. The District of Columbia must determine whether it will support Ride-On's request which may further reduce the land available for development. If Ride-On's request for additional facilities at this station is honored, the drawing does not provide sufficient space devoted to the Bus Egress/Access (bus bay) area to accommodate 10 bus bays which include the expanded needs of Ride-On and allow the Cedar Street bus idling issue to be resolved on the Metro site.

WMATA CDP Comments, *supra*, p. 2.

Precisely one year earlier, on October 31, 2000, Howard P. Benn, Chief, Customer Operations and Support, Montgomery County Department of Public Works and Transportation, wrote a letter warning that development should not "come at the expense" of compromising the ability of Takoma Station to perform its core transportation functions.

While we have learned that WMATA and the District of Columbia do not anticipate expanding bus service into this Metro station, the Transit Division does envision expansion of Ride On services at the station. Expansion is expected to better serve the newly annexed portions of Montgomery County that are part of Takoma Park and to provide for overall transit growth in Takoma Park and environs. (particularly the area to the north that is associated with the new FDA development). Ride On operations would require one to three additional bus bays plus the continuation of existing layover sites at the station.

It should be noted that bus-to-bus transfers at Metro stations often involve more passengers than those transferring to Metrorail. While Ride On supports increased development at Metro stations, it is critical that such development not come at the expense of transit passengers. These passengers are best served when bus operations are adequately provided and planned for."

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Letter from Howard P. Benn, to Suzanne Ludlow, Planner, City of Takoma Park, October 31, 2000; *see also* Letter from Carolyn G. Biggins, Chief, Division of Transit Services, Montgomery County, to Denton U. Kent, Director, Office of Property Development and Management, WMATA, June 19, 2001 ("In the longer term we anticipate that there will be a need to provide service from the Takoma Metrorail station to the FDA White Oak employment center.").

Five years later, the Takoma Gazette reported that Howard Benn had never been shown conceptual site plans for the Takoma Station development that a WMATA spokesperson said that Ride On had approved. Sean Sands, Ride On Official Questions Plan for Takoma Metro Bus Bays, Takoma Gazette, August 10, 2005. Additionally, it was reported that WMATA failed to supply Ride On with a copy of the land sales contract with EYA that had been signed months earlier. "The factual statement is that we have seen nothing recent, and our comments [about a reconfigured bus station] are related to what we had seen in 2000 and 2001," Benn told the Gazette. "I'd have to see something [current], but we haven't," he added. *Id.* In 2000, Ride On requested up to three additional bays, the same number that was recommended by the TTS.

Benn requested further detail than was provided by the earlier conceptual design plan that had been circulated by WMATA.

From Ride On's perspective, Benn said he would like to see something beyond a conceptual site plan -- "something a bit more definitive" -- in order to evaluate how the joint development will affect county bus service. The concern is based, in part, on the fact that in 2000 and 2001, there were at least as many Ride On users as there were Metrobus users at the station, if not more.

Takoma as a station is a very important station to us because of the service to our riders, and the circulation access has been an important issue," Benn said. "That is why we were so pointed before on the topic. We just don't know what's become of it."

Id.

It is further disturbing that WMATA employees believe that certain subsequent Ride On concessions regarding the station design derived from coercion rather than resolution of technical issues.

The statement that ride-on buses need more bays is contrary to information we received in a meeting where the Ride-On staff said they looked at what we had and were okay with it. Initially they had said they wanted more but rescinded later after some arm twisting I think. Confirm this with Ride-On or someone in WMATA who would know more than we do but our reports don't mesh so we need to get it right.

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Email of Kathleen Mitchell to Marsha Kaiser, PB Placemaking, August 18, 2006, 6:26 PM. Kaiser's response reveals that Ride On representatives did not support the infrastructure improvements when interviewed during the first quarter of 2006.

We can take the Ride On reference out. You must have arm twisted them after we interviewed them. It was an outstanding issue through our involvement.

Email of Marsha Kaiser, *supra*. The above-cited reference was to the possibility that more bus bays might be needed in the future.

In contrast to the obvious lack of communication between WMATA and Ride On, there is a close collaborative relationship between WMATA and the DC Office of Planning (DCOP). A few days before the November 2005 compact hearing, Elisa Hill, the manager of the Takoma Station joint development effort for WMATA, encouraged DCOP to present testimony that was beyond Hill's understanding of the scope of the compact hearing.

The hearing is supposed to focus only on the replacement transit facilities. [O]f course, everything will be addressed by the community. You should emphasize the conformity of the replacement facilities with the Central District Plan but your support of the entire concept is crucial and you should talk about the project as a whole. We do need your testimony.

Email E. Hill to R. Taylor, October 27, 2005, responding to Email of Taylor to Hill, ("can we talk about the plan in general.").

At a meeting on November 30, 2005, WMATA Real Estate Chair Jim Graham told a group of DC and Maryland residents that input from DC residents was more welcome at a proposed Takoma Station planning workshop than input from Maryland residents. This was a reiteration of a statement that he made during a WMATA Town Meeting earlier in the month. Transcript, WMATA Town Hall Meeting, November 9, 2005, pp. 71-72.

WMATA email regarding Takoma Station decision-making contains numerous indications of WMATA staff prejudice toward Maryland. Elisa Hill, who managed the Takoma Station joint development for WMATA, advised the WMATA team preparing an environmental evaluation of the joint development project that the biased advocacy document should understate impact on Maryland. "There should be less emphasis on Takoma Park, MD and more on the fact that the site is in the District of Columbia in this document," Hill stated. Email from Elisa Hill, August 22, 2006, 3:06 PM, imbedded in Email from Ed Maginnis to Jack Lester, EYA, August 22, 2006, 4:25 PM. WMATA Attorney Edward Maginnis replied: "Thanks Elisa... those were all good pickups. I've revised the EE [environmental evaluation] accordingly." *Id.*

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The WMATA attitude toward Maryland appears to be particularly shortsighted and self-destructive in light of the support of many Maryland legislators for the creation of a dedicated funding source for WMATA.

The Unfinalized WMATA Plan Should be Rejected

Until the final Takoma Station site plan emerges from the PUD process, the FTA will not be in a position to evaluate the untimely WMATA submission. The FTA therefore should reject the WMATA proposal. It would be poor public policy to encourage WMATA to burden the FTA with an unfinished plan by selectively omitting the portions of an application that are most likely to generate controversy or rejection.

WMATA has treated the hearing transcript and the staff hearing report like radioactive documents that must be suppressed at all costs. Postponement of the PUD hearing process, which is likely to take about one year, appears to have been intended to limit the issues encountered by the FTA and to avoid prolonged scrutiny of WMATA's suspect ridership estimates during a period of anticipated skyrocketing gas prices and unprecedented growth in transit ridership.¹⁶

WMATA should not be permitted to "hopscotch"¹⁷ over the zoning process that its board specified as a forum for resolution of Montgomery County concerns and other outstanding issues, such as the size of the buffer, identified in the hearing report. The untimely proposal is too contingent to permit an objective review of whether the proposed changes would be in the best interests of transit users, including persons requiring ADA-compliant facilities. It would be an abuse of authority for the FTA to speculate about the resolution of far-reaching unresolved elements of the proposal.

A two-stage FTA review might be appropriate if the planning process had been less protracted and if WMATA had acted with greater diligence. However, it would be inappropriate to reward WMATA for its failure to resolve longstanding issues, such as buffering and internal circulation and for its history of manipulating the Takoma Station planning process. *See generally*, Paris Testimony, pp. 39-51.

¹⁶ Recently, WMATA has been forced to acknowledge the possibility that rising gasoline prices will motivate an unprecedented surge in transit usage. This admission has begun a process that inevitably will expose WMATA's strained justifications for eliminating the ability of Takoma Station to accommodate expanded bus capacity. At the May 22 WMATA Board meeting, GM Catoe confessed that the "projections we've been using are based on population and job growth, but they don't factor in the effect of gasoline prices on ridership." He announced that he has initiated the development of "an energy contingency plan to help us cope with a huge shift to public transit that could be coming." WMATA Press Release, *Metro Preparing for More People to Shift to Transit if Gasoline Prices Continue to Skyrocket*, *supra*, May 22, 2008.

¹⁷ In response to pressure from the DC Government, the WMATA consideration of the Takoma Station joint development plan skipped the WMATA Board's committee process. The vote was taken without the benefit of deliberation and voting by the WMATA real estate committee. Therefore, the failure to resolve outstanding issues was accompanied by the WMATA Board departing from its customary decision-making process, despite the controversial character of the Takoma Station issue.

A multi-step review would tend to segment the FTA's perception of the fundamental flaws of a development proposal that compromises and downsizes the core transit functions of Takoma Station. Moreover, the integrity of the PUD process is likely to be prejudiced by the concern of DC Zoning Commissioners that altering the site plan would necessitate a compact hearing that otherwise might not be required.

A bifurcated analysis would cause further damage to the interests of Maryland jurisdictions, adjoining residents, and transit users whose concerns have remained unaddressed for over eight years. In July 2000, WMATA supplanted an ongoing planning process by awarding development "site control" to a developer with a history of only producing townhouses. *See generally* Hearing Report, p. 9, *see generally* Paris Testimony, *supra*, pp. 39-41.

Additionally, WMATA has attempted to conduct its joint development planning as untransparently as possible. *Id.* WMATA even coerced the Takoma Park City Government into signing an agreement not to disclose otherwise public documents. *See* Agreement to Keep Mum, *supra*. Although the WMATA planning excesses inspired revisions in the WMATA Joint Development Guidelines and Procedures, none of the modifications was applied to the pending Takoma Station joint development. Paris Testimony, *supra*, at 41.¹⁸

An Apartment Alternative Was Never Considered

Six years after the award of exclusive development rights, the WMATA Board authorized the expenditure of \$125,000 for an alternative planning charette to address community concern that alternative designs had not been adequately considered.¹⁹ However, the WMATA staff sabotaged the remedial process by misrepresenting the character of previous planning efforts in an apparent attempt to set the stage for actions to protect the entrenched townhouse proposal from competition. *See generally* Paris Testimony, *supra*, pp. 41-44.

The WMATA staff misrepresented to the WMATA board that an apartment alternative had been considered during the planning process:

the residents who met with Mr. Graham told him that, during the TCDP process, they were not allowed to consider other alternatives to the proposal from Eakin-Youngentob Associates (EYA) for townhouse development on the site that had been previously approved by WMATA. They asked him to convene a

¹⁸ Brian Glenn, Director of the FTA Washington Metropolitan Office, was under the misimpression that WMATA was applying its current joint development policies to Takoma Station planning. Telephone Conversation between Brian Glenn and David Paris, October 1, 2007.

¹⁹ See WMATA, Approval of the FY 07 Project Development Program, May 26, 2006 (Attachment 1 FY 06 Project Development Program Status) ("Takoma Station Planning Charette" \$125,000 scheduled completion May 2006),

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new planning process to enable them to explore other possibilities. Staff who participated in the TCDP process disagree with these residents. **Staff notes and meeting handouts confirm that DCOP did not limit the opportunity for the community to create a new vision for the site** and that townhome development was the alternative that was ultimately selected out of a range of others that were considered. (emphasis added)

See WMATA, Metro Electronic Action Document, MEAD #99220, January 5, 2006.

Eight months after the workshop where the damage was done, the WMATA staff was forced to back down from its untrue assertion that the construction of a compact apartment building had been considered during the process of preparing the CDP. A WMATA attorney admitted that the transit authority was unable to produce any “staff notes or meeting handouts confirming” the staff’s written assertions.

With our previous responses, we included documents entitled ‘Takoma Central District Plan Community Charrette Common Direction I and II (‘I’ and ‘II’ are handwritten on the documents). These are the meeting handouts referenced in the MEAD. **We believe the mention of ‘notes’ in the MEAD is a reference to these handouts, a reference to documents that no longer exist at WMATA or in error.** (emphasis added)

Letter from Philip T. Staub, Associate General Counsel, WMATA, to Dr. Sabrina Alcorn Baron, President, Historic Takoma, Inc., October 25, 2006; Letter of Dr. Baron to P. Staub, October 20, 2006; SmithGroup, Community Charrette Common Direction, November 29, 2000.

The WMATA employees would not have had personal knowledge of the CDP (aka Small Area Plan) meetings, since they “rarely participated in the public meetings that occurred in the fall and winter of 2000–2001,” according to a paper written by David Schneider, a graduate student who at the time was at the University of Maryland School of Public Affairs. He explained:

The Takoma Voice reported Councilmember Fenty’s frustration over Metro’s ‘characteristic’ absence from community meetings to discuss the Small Area Plan. ‘I’ll take a bit of the blame for that’, [Fenty] said, explaining WMATA representatives tend to appear at the planning meetings only when his office pressures them. He promised to be more active in making sure the transit agency participates in the future, but commented that having to do so was ‘like chasing after kindergarteners.’

David Schneider, *Common Ground: A Development Dispute in Takoma, DC*, March 19, 2003,²⁰ *citing* Catherine Dolinski, *Takoma DC Small Area Plan Still Snarled*, *The Takoma Voice*, February 2001. It should be noted that the lack of engagement of WMATA employees in the CDP planning process²¹ was despite the admonition of the FTA that the recommendations of the CDP and TTP processes should be incorporated into the joint development planning. Dorn Letter, *supra*.

The falsehood that an apartment alternative had already been considered provided the WMATA staff with “cover” for converting the March 4, 2006, Takoma Station Planning workshop into a vehicle “to identify potential improvements to the EYA plan.” WMATA, *Takoma Metrorail Community Planning Session (Workshop Report)*, April 11, 2006, p. 2. The workshop report even distorts the true purpose of the event, which was to consider the alternative of constructing an apartment building in harmony with the existing transit facilities.

To address the **perception** of limited public involvement, WMATA was requested to conduct an open public meeting around the project to solicit community issues and concerns that could be addressed and thereby improve the EYA plan. (emphasis added)

WMATA Workshop Report, p. 1.

Therefore, a cash-strapped public mass transit agency appropriated \$125,000 for a planning process to address the *perception* of limited public involvement rather than actually to seek an alternative design to address serious community concerns about design- and transportation-related deficiencies of a space-consuming, automobile-oriented townhouse design that required the sacrifice of Takoma Station public transit facilities.

Two days before the workshop, WMATA abruptly announced that the purpose of the workshop had changed. Marsha Kaiser,²² a consultant conducting community outreach for the workshop/charette, communicated to one member of the community that the workshop would not entertain formal presentations of community-produced apartment designs. Paris Testimony, pp. 44-46. Her email mentioned that WMATA made the decision after having monitored a meeting where the development plan received

²⁰ Found at: home.att.net/~takoma/community/commonground.doc

²¹ Which was confirmed by several members of the CDP citizens working group.

²² WMATA engaged Marsha Kaiser to perform community outreach for the workshop effort. She was an insensitive choice since she was embroiled in a legal proceeding regarding a matter that led to her well-publicized resignation from a responsible position with the Maryland Department of Transportation. Subsequent to the workshop, the proceeding was settled subject to her stipulation that she had supervised contracts contrary to previous instructions. It is likely that Nat Bottingheimer, WMATA Director of Planning, was aware of these circumstances, because upon her resignation, MDOT appointed him to replace her in an acting capacity. See *In the Matter of Marsha Kaiser*, Before the State Ethics Comn, Complaint No. C-8-06, May 31, 2006; <http://ethics.gov.state.md.us/conflictenforce.htm>.

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overwhelming support from members of the Takoma community. Email Response from Marsha Kaiser, PBP, to Sabrina Baron, HTI, March 1, 2006. Therefore, WMATA reached a decision only after it had assessed that there was widespread support for the alternative design.

Even without a presentation, the Friends of Takoma Transit alternative dominated the workshop. Additionally, an overwhelming majority of participants expressed a strong distaste for the townhouse proposal. The morning and evening summary presentations by the eleven Parsons Brinkerhoff (PB) facilitators indicated that ten and a half out of eleven tables overwhelmingly preferred the apartment alternative over the townhouses. Yet the workshop report censored all reference to the weight of participant opinion or the content of the morning and evening summaries. The summaries were all the more remarkable since they were being delivered despite the efforts of some workshop facilitators to undermine the apartment proposal. *See* Email from Faith Wheeler, DC ANC Commissioner, to Jim Graham, Director, WMATA Board, May 5, 2006; see also Email from Catherine Tunis to Takoma Voice Listserv, April 8, 2006 5:08 PM.²³ The workshop report contained a sanitized account of the workshop sessions. “At the end of the session, each facilitator again reported out the discussion and ideas of his or her working group.” *Id.* at 3. Moreover, contrary to WMATA’s representations at the event, a draft of the workshop report was not circulated to participants for comment.

Under the unique circumstances of this case, the adoption of a two-step process would inappropriately reward WMATA for having engaged in a highly unprofessional planning process that included the Takoma Station planning workshop/charette. WMATA has never identified a single low-footprint building alternative proposal that was considered during the process of preparing the CDP. The Charette Common Directives are general documents that do not depict a single alternative plan. There is no justification for the FTA to settle for a draft concept plan.

In Conclusion

The initial FTA review of the Takoma Station concept plan identified a number of questions that can only be answered by consulting a final site plan. FTA Preliminary Review of Takoma Joint Development Concept Plan, attached to email from Brian Glenn, FTA, to Elisa Hill, WMATA, July 29, 2005. Three years later, most of the identified issues remain unresolved—buffer, bus bays, parking, financial return, net

²³ “We were told by our table's facilitator that...we HAD to just comment on the EYA proposal. We weren't shrinking violets that collapsed at the suggestion--the facilitator simply refused repeatedly to do what we asked. I understand that similar conversations occurred at nearly every other table.” Tunis Email, *supra*. “[A]t the outset of the Planning Session, the head facilitator made it clear that discussion was to be restricted to the EYA proposal—different from what we had discussed with you...in spite of the instructions, some facilitators openly reported...on how enthusiastically their tables supported various elements of the Friends of Takoma Transit proposal as opposed to the ETA proposal.” Wheeler Email, *supra*

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profit, and infrastructure cost. The FTA will not be capable of evaluating these elements of the WMATA proposal until a final plan emerges from the DC PUD and HPRB review processes.

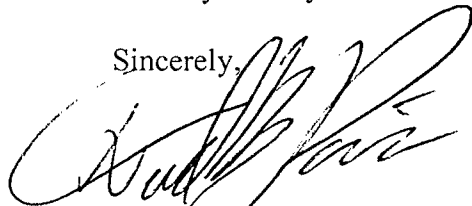
The Glenn analysis questioned WMATA's failure to provide a "[b]uffer of 50' between Metro facilities and multi-family dwellings on Eastern Avenue." *Id.* However, the buffer and certain bus circulation issues have been relegated to the PUD hearing. *Id.* Similarly, the gross financial revenue from the sale is dependent on the number of market-rate townhouses permitted by the PUD process. The same applies to the "estimated value of the replacement WMATA facilities and the landscaping for the Village Green" mini-park. *Id.* WMATA reports that "[t]he actual cost of replacement facilities and upgrades will not be determined until after the District PUD process, and bids are obtained." WMATA Board Action/Information Summary, MEAD 99881, Administrative Item #1, November 8, 2007.

Please reject the WMATA request for permission to privatize three-quarters of Takoma Station land. At a minimum, the FTA should refrain from deferring to WMATA's failure to exercise judgment regarding each of the unresolved design elements that were delegated to the DC zoning process and relegated to post FTA resolution. Joint development applicants should not be rewarded for constraining the scope of FTA review by avoiding controversial but important issues or by limiting the scope of development alternatives to the design least appropriate for transit-oriented development. Neither should WMATA be officially encouraged to disseminate false information about the nature of the planning process, to extract agreements from municipalities not to disclose otherwise public information, to underplay and ignore community opposition to a joint development proposal, and to ignore all CDP findings that it deems to be inconvenient.

Finally, if the FTA denies the current application, please direct that any future planning for Takoma Station development must apply current WMATA joint development guidelines that are intended to increase public and jurisdictional involvement in the planning process. The benefit of the process revisions should inure to the benefit of the residents of all compact jurisdictions, including the residents of Takoma neighborhoods.

Thank you for your attention.

Sincerely,



David B. Paris, Esq.

Enclosures

cc: Mr. Brian Glenn, PE.
Ms. Nancy A. Greene, Esq.
Mr. Jayme Blakesly, Esq.

