



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of June 17, 2008**

DATE: June 1, 2008

SUBJECT: Amendment and Re-enactment of an Ordinance to Vacate a 30-foot wide Storm Drainage Easement, a 20-foot wide Storm Drainage Easement, two 5-foot wide Sanitary Sewer Easements, and a 5-foot wide Sanitary Sewer and Service Connection Easement, all Across Certain Portions of the Property at 5400, 5442, 5444, 5446, 5448, 5500, 5502, and 5510 Columbia Pike, Lots 1-A, 1-B, 4-B, 2-A-1, and 3-A-1 Columbia Village, RPC #28004004 and #28004005, with Conditions.

Original Applicant & Extension Applicant: West Columbia Pike, LLC

By: M. Catharine Puskar, Esquire
Walsh, Colucci, Lubeley, Emrich & Terpak, P.C.
2200 Clarendon Blvd., Suite 1300
Arlington, VA 22201

C.M. RECOMMENDATIONS:

1. Enact the attached Ordinance to Amend and Reenact an Ordinance to Vacate a 30-foot wide Storm Drainage Easement, a 20-foot wide Storm Drainage Easement, two 5-foot wide Sanitary Sewer Easements, and a 5-foot wide Sanitary Sewer and Service Connection Easement, all Across Certain Portions of the Property at 5400, 5442, 5444, 5446, 5448, 5500, 5502, and 5510 Columbia Pike, Lots 1-A, 1-B, 4-B, 2-A-1 and 3-A-1 Columbia Village, RPC #28004004 and #28004005, with Conditions.
2. Authorize the Real Estate Bureau Chief or his designee to execute the Deed of Vacation and all related documents, and accept deeds of easement and deeds of dedication for public storm drainage facilities and public sanitary sewer facilities related to the above described Ordinance on behalf of the County Board, subject to approval of such deed(s), as to form, by the County Attorney.

ISSUE: The Applicant has requested a two year extension of a previously approved Ordinance of Vacation to allow for time to resolve outstanding easement and encroachment concerns. The lines that are replacing the vacated storm sewer and sanitary sewer lines have been constructed and are operational. There are no issues identified in this request.

County Manager: _____

County Attorney: _____

Staff: Linda Eichelbaum Collier, DES, Real Estate Bureau

SUMMARY: The Applicant has requested the amendment and reenactment of an Ordinance of Vacation associated with Use Permit #U-3126-05-01, for the purpose of extending, for two additional years, the expiration date of the ordinance originally enacted by the County Board on July 9, 2005. As provided in the 2005 Ordinance, which authorized the vacation of two storm drainage easement areas and three sanitary sewer easement areas on the subject property, subject to conditions, the Applicant has until noon on July 9, 2008, to complete all of the conditions contained therein.

Although the storm and sanitary sewer facilities replacing those in the vacated areas have been built and are operational, all of the conditions of the 2005 Ordinance have not been satisfied. The Applicant seeks the two year extension to permit time for: a) County approval of the required off-site easement; b) resolution of the building façade encroachments that will result after the required dedications; and c) resolution of the location of the electric vault in the area required to be dedicated.

Upon enactment of the Amended Ordinance (Attachment 1), the Applicant would be given two additional years to satisfy the conditions of the vacation ordinance. Except for the expiration date, all other conditions of the 2005 Ordinance are incorporated into, and made part of, the Amended Ordinance. With completion of the conditions specified in the Amended Ordinance and recordation of the Deed of Vacation by the Applicant before the expiration date of the Amended Ordinance, the County's interests in the vacated storm and sanitary easement areas will be extinguished.

BACKGROUND: On July 9, 2005, the County Board approved the Use Permit, allowing redevelopment of the Property under the Columbia Pike Form Based Code by construction of a 10 story residential building with ground floor retail. At the same time, in order to facilitate the redevelopment of the Property, the County Board enacted the 2005 Ordinance.

The 2005 Ordinance vacated, subject to conditions, two storm drainage easements and three sanitary sewer easements, all as described therein and below in this report. As of present, all of the conditions of the 2005 Ordinance have not been satisfied. The Applicant has fulfilled the conditions related to approval of new storm and sanitary sewer plans, construction of the new storm and sanitary sewer facilities and execution of a surety bond to ensure construction of the facilities. Conditions relating to securing all required new easements on and off-site and recordation of all plats and deeds of dedication have not been met. Once the required dedications are made in fee, several areas of encroachment will result due to location of building features in the fee area, and the proposed relocation of an electric vault in the fee area. The developer and the County are addressing how to best resolve those issues. The property was one of the first properties approved under the Columbia Pike Form Based Code and as such, all of the public sidewalk and street dedications are required in fee, up to the Required Building Line (RBL) of the Property. To address building appendages and overhangs that are required by the Form Based Code, subsequent projects approved under the Form Based Code allow the developer to grant the County an easement for public purposes, with a reservation for approved building appendages, for the six feet closest to the building, instead of dedicating the total right-of-way in fee.

DISCUSSION: In order to allow construction of the development approved in the Use Permit, the Applicant has requested vacation of portions of existing public utility easements and the removal and relocation of the existing storm sewer drainage facilities and the sanitary sewer facilities located on the Property. The Applicant agreed to relocate (and has relocated) these public utilities, at its own expense. A portion of the relocated public facilities was relocated within the Property boundaries, other portions were relocated to the public right-of-way of Columbia Pike, pursuant to County and the Virginia Department of Transportation (“VDOT”) permits, and the remainder was relocated on one or more adjacent properties.

The public utility easement areas that are the subject of the Amended Ordinance are depicted on Sheet 2 of 2 of a plat attached hereto as Exhibit “A” entitled “Plat Showing the Vacation of Various Easements on Lots 1-A, 1-B, 2-A-1, 3-A-1, & 4-B, Columbia Village, Deed Book 1356, Page 127, Deed Book 1397, Page 90, Deed Book 1473, Page 1, Arlington County, Virginia” prepared by VIKA Incorporated, dated August 16, 2005, and revised April 17, 2008 (“Plat”). A vicinity map of the project is attached hereto as Exhibit “B”.

The Amended Ordinance (Attachment 1) is subject to a number of conditions that are designed to ensure dedication of new easements for relocated facilities on the Property; acquisition of any needed and related easements on adjacent properties by the Applicant; acquisition of all required permits to work in the public rights-of-way; construction of the relocated public facilities by the Applicant; and acceptance of the relocated public facilities by the County. Once all pertinent public easements are recorded by the Applicant in the Land Records of Arlington County, the construction of the relocated facilities by the Applicant is accepted by the County and all other conditions of the Ordinance are satisfied, then the County will execute the Deed of Vacation.

With the enactment of the Ordinance, upon satisfaction of the conditions, and upon recordation of the Deed of Vacation, the County’s interest in the vacated portions of the subject easements will be extinguished.

Legal and Physical Description: The Property is located on the south side of Columbia Pike at South Greenbrier Street. The site is owned by West Columbia Pike, LLC. The County obtained the Easements requested to be vacated as follows:

1) 30-foot wide storm drainage easement and 20-foot wide storm drainage easement to construct a 96-inch storm sewer in the approximate location of where Bailey’s Branch creek would otherwise have flowed, by Deed of Dedication, recorded in 1958 in Deed Book 1331, at Page 11; and

2) 5-foot wide sanitary sewer easement by Deed of Vacation and Rededication, recorded in 1958 in Deed Book 1331, at Page 508. The easement accommodates a 12-inch sanitary sewer main that crosses the site, from west to east, south of the above-referenced 30-foot wide storm drainage easement. In 1961, in a Deed of Easement recorded in Deed Book 1456, at Page 536, a 5-foot wide sanitary sewer and service connection easement was conveyed to the County on Lots 2-A-1, 3-A-1, and 4-A-1. Lot 4-A-1 has since been resubdivided and is now represented on the plat submitted for this Vacation request as Lot 4-B.

3) 5-foot wide sanitary sewer easement, by Deed of Easement, recorded in 1962 in Deed Book 1483, at Page 298.

Public Notice: Public notice was given in accordance with the Code of Virginia. Notices were placed in the May 20, 2008 and May 27, 2008 issues of the Washington Times for the County Board meeting of June 17, 2008.

Compensation: Staff recommends that no compensation be required from the Applicant for vacating the aforesaid public utilities easements. The Applicant, as a condition of approval of the vacation request, is required to, and has, at its own expense, relocated these public utilities to a location that meets, in all respects, with the approval of the County. In addition, the Applicant shall obtain, for the County and in a form approved by the County Attorney, all appropriate easements necessary to facilitate the relocation.

FISCAL IMPACT: None.

CONCLUSION: It is recommended that the County Board enact the attached Ordinance to Amend and Reenact an Ordinance to Vacate a 30-Foot Wide Storm Drainage Easement, a 20-Foot Wide Storm Drainage Easement, Two 5-Foot Wide Sanitary Sewer Easements, and a 5-Foot Wide Sanitary Sewer and Service Connection Easement, all Across Certain Portions of the Property at 5400, 5442, 5444, 5446, 5448, 5500, 5502, And 5510 Columbia Pike, Lots 1-A, 1-B, 4-B, 2-A-1, And 3-A-1 Columbia Village, RPC #28004004 and #28004005, with Conditions.

ATTACHMENT 1

ORDINANCE TO AMEND AND REENACT AN ORDINANCE TO VACATE A 30-FOOT WIDE STORM DRAINAGE EASEMENT, A 20-FOOT WIDE STORM DRAINAGE EASEMENT, TWO 5-FOOT WIDE SANITARY SEWER EASEMENTS, AND A 5-FOOT WIDE SANITARY SEWER AND SERVICE CONNECTION EASEMENT, ALL ACROSS CERTAIN PORTIONS OF THE PROPERTY AT 5400, 5442, 5444, 5446, 5448, 5500, 5502, AND 5510 COLUMBIA PIKE, LOTS 1-A, 1-B, 4-B, 2-A-1, AND 3-A-1 COLUMBIA VILLAGE, RPC #28004004 AND #28004005, WITH CONDITIONS.

BE IT ORDAINED that an Ordinance to Vacate a 30-Foot Wide Storm Drainage Easement, a 20-Foot Wide Storm Drainage Easement, Two 5-Foot Wide Sanitary Sewer Easements, and a 5-Foot Wide Sanitary Sewer and Service Connection Easement, all Across Certain Portions of the Property at 5400, 5442, 5444, 5446, 5448, 5500, 5502, And 5510 Columbia Pike, Lots 1-A, 1-B, 4-B, 2-A-1, and 3-A-1 Columbia Village, RPC #28004004 and #28004005, with Conditions, previously enacted by the County Board of Arlington County on July 9, 2005, is hereby amended and reenacted to read in its entirety as follows:

BE IT FURTHER ORDAINED that, pursuant to a request by West Columbia Pike, L.L.C. (the “Applicant”), on file in the offices of the Department of Environmental Services, that portions of a 30-foot wide Storm Drainage Easement, a 20-foot wide Storm Drainage Easement, two 5-foot wide Sanitary Sewer Easements, and a 5-foot wide Sanitary Sewer and Service Connection Easement, (collectively “Easements”), all Easements running across certain portions of the Property at 5400, 5442, 5444, 5446, 5448, 5500, 5502, and 5510 Columbia Pike, Lots 1-A, 1-B, 4-B, 2-A-1, and 3-A-1 Columbia Village, RPC #28004004 and #28004005 (“Property”), and as depicted on Sheet 2 of 2 of a plat entitled “Plat Showing the Vacation of Various Easements on Lots 1-A, 1-B, 2-A-1, 3-A-1, & 4-B, Columbia Village, Deed Book 1356, Page 127, Deed Book 1397, Page 90, Deed Book 1473, Page 1, Arlington County, Virginia” prepared by VIKA Incorporated, dated August 16, 2005, and revised April 17, 2008 (“Plat”) and attached to the County Manager’s Report dated April 1, 2008 as Exhibit “A,” are hereby vacated, subject to the following conditions:

1. A. The Applicant shall submit, for review and approval, to the Department of Environmental Services, a Utility Relocation Plan and engineering design (jointly “Plan”), in compliance with the Arlington County Department of Environmental Services’ Construction Standards and Specifications, which Plan shall be subject to approval by the Director of Environmental Services, or his designee, for the relocation of all public facilities, in whole or in part, located within the portions of the easements vacated by this Ordinance of Vacation.
- B. The Applicant shall provide to the County a bond, letter of credit, or other security, in an amount and in a form as determined by, and acceptable to, the County Manager or his designee, for the construction, relocation, removal, or abandonment of all existing utility facilities to be relocated pursuant to the approved Plan.

2. The Applicant's Plan shall, among other things, demonstrate that the engineering design for the relocated storm sewer facilities and sanitary sewer facilities comply with the Arlington County Department of Environmental Services Construction Standards and Specifications to ensure that the hydraulic capacities of the utilities will be maintained. The engineering design shall incorporate a construction design that allows for future maintenance, by the County, of the relocated utilities, including excavation, while maintaining the structural integrity of both the utilities and all adjacent structures and buildings. If Applicant is unable to meet the then current County easement standards and specifications, it shall be the Applicant's responsibility to develop an engineering design that is otherwise acceptable to the County and will ensure that the relocated public utilities can still be accessed adequately for future maintenance, by the County, and repair. Such design plans shall be submitted by the Applicant for review and approval by the Director of the Department of Environmental Services, or his designee, as part of the Plan.
3. The Applicant shall dedicate, or cause to be dedicated, to the County Board, any and all public storm sewer and sanitary sewer easements to accommodate the relocated public facilities within the easements to be vacated, at locations to be approved by the Director of the Department of Environmental Services or his designee. Such deeds shall be, as to substance, form, purpose, location and dimensions, acceptable to the Engineering Bureau Chief, or his designee, and be acceptable as to form by the County Attorney.
4. Before the Deed of Vacation is executed and delivered to the Applicant by the County, the Applicant shall construct the relocated public facilities required by the County within such easements in accordance with County Standards and Specifications. Such facilities shall be subject to acceptance by the Director of the Department of Environmental Services, or his designee, and shall be conveyed by such deeds of easement.
5. The Applicant shall be responsible for the costs and expense of the design and construction, the acquisition of all permits (including, but not limited to, Virginia Department of Transportation permits), and the dedication of all necessary off-site public easements required for relocating the storm and sanitary sewers necessitated by the proposed Columbia Village Form Based Code development (Use Permit U-3126-05-01). Each deed of easement or deed of dedication shall be signed by all entities having an interest in the property(ies) upon, within, over and through which the easement(s) is being dedicated.
6. The Applicant shall obtain the vacation or extinguishment of all other legal interests in the Property that are necessary for the approved Plan to be implemented.
7. The Applicant shall prepare and submit to the County a Deed of Vacation, all required deeds of easement and deeds of dedication of the Property and on adjacent properties, all plats and other necessary documents, subject to the approval by the County Manager, or his designee, and acceptable in substance and in form by the County Attorney.
8. The Applicant shall record all plats and the Deed of Vacation, and all required deeds of

9. The Applicant shall pay all fees, including the fees for review, approval, and recording of all required documents associated with the Ordinance of Vacation.
10. The Deed of Vacation shall not be executed on behalf of the County Board until all the requirements of this Ordinance are satisfied.
11. All conditions of the Ordinance of Vacation shall be met by noon on July 9, 2010, or the Ordinance of Vacation shall become null and void without the necessity of any further action by the County Board.

EXHIBIT B

VICINITY MAP SHOWING SUBJECT PROPERTY LOCATION



5400, 5442, 5444, 5446, 5448, 5500, 5502, and 5510 Columbia Pike

Boldface line on this schematic indicates the boundary lines of the Property