

**IN RE: GREENSPRING MANOR  
DEVELOPMENT PLAN AND  
ZONING HEARING**

(2310 West Joppa Road)

8<sup>th</sup> Election District

3<sup>rd</sup> Council District

Greenspring Joppa Falls, LLC

Owner and Developer

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BEFORE THE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

Case No. 08-0922 and

Case No. 2021-0250-SPH

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**MOTION FOR RECONSIDERATION**

Pursuant to Rule 4K of the Rules of Practice and Procedure before the Zoning Commissioner/Hearing Officer of Baltimore County, Owner/Developer Greenspring Joppa Falls, LLC, by undersigned counsel, hereby submits this Motion for Reconsideration, and, in support thereof, states as follows:

1. On July 31, 2023, a Combined Development Plan and Zoning Opinion and Order (the “Order”) was issued denying the green lined Development Plan marked and accepted into evidence as Developer’s Exhibit 1B (the “Plan”). The denial was based in part on certain “sewer incapacity and deficiencies” outlined in the Order. *See* Order, p. 130.

2. As explained below, Developer is asking the ALJ to exercise the authority contained in Rule 4K to reconsider the decision made in the Order and to convene a hearing and hear additional testimony from a Department of Public Works and Transportation (DPWT) representative.

3. Developer contends the ALJ’s findings on sewer capacity were based on misunderstandings with respect to the intent of internal emails from DPWT staff, the purpose of third party consultant reports obtained by DPWT, and conflicting statements from competing expert witnesses regarding the current state of the sewer system serving the Property.

4. For example, the ALJ interpreted an internal email from DPWT employee Dave Bayer that was written over two years before the decision was issued in this case to mean that “no units could be built at the Property without causing an SSO.” Order, p. 117, citing Prot. Ex. 90. Mr. Bayer’s email is repeatedly cited as an indication of the current state of the system, which the ALJ found to be incapable of handling even the existing sewage in the system: “It was clear to me that the sewage path from this Property cannot handle the existing sewage which flows along the path, much less the additional sewage which will come from adding 61 homes to the sewer system.” Order, p. 129. Indeed, the ALJ held “I place great amount of weight on expertise and knowledge of DPWT engineers and shown in the DPWT CPC comment and Dave Bayer’s internal email to DPWT colleagues, that if any homes were added to the sewer system, SSOs will occur. Order, p. 118. The ALJ also found that “DPWT and the Sewer Design team engineers have maintained their steadfast opposition to adding 61 homes to the sewer system due to inadequate capacity and concern for SSOs.” P. 120.

5. These findings all contradict the testimony from Eugene Cauley, who represented Development Plans Review (DPR) and DPWT on the first day of the HOH and testified that DPWT is recommending approval of the Development Plan:

Q. ...the only issue preventing your recommendation of approval of this plan is this gate issue to Mays Chapel Road?

A. Yes.

Q. Other than the gate, DPR is satisfied that this plan meets all other requirements and can be approved?

A. Yes.

Q. Okay. DPWT is recommending plan approval and deferring the gate issue to the Judge?

A. Correct.

T. 9/1/22 at p. 235.

6. Additionally, the ALJ disregarded testimony that the “Ramboll” and “Hazen” reports were long term planning documents and found that the reports “provide compelling evidence that the pipes in the sewage path from the Property are at over-capacity and that SSOs are predicted to result during the County-selected 10 yr/6 hr storm event.” Order, p. 126. She was not convinced, despite introduction of an email from Dave Bayer, that repairs had been made to the County’s sewer system downstream from the property. *See* Dev. Ex. 45A-B.

7. The ALJ directly stated that expert testimony was not the “best evidence” of the purpose of these reports and state of the system and that testimony from a DPWT representative was required in this case. Order, pp. 126-27.

8. As the ALJ is well aware, testimony from a DPWT sewer representative is not something that typically occurs in the context of an HOH. A DPR representative testifies on behalf of DPWT and relays whether there are any open issues or the department recommends approval of the development plan. That is precisely what occurred here, when Mr. Cauley introduced himself as follows before confirming that DPWT is recommending approval of the development plan:

Q. Go ahead and let us know who you’re reviewing for.

A. **Yes. Hello, good afternoon. My name is Mr. Eugene Cauley, I review for DPR, and also DPW.**

T. 9/1/22, p. 195; *see* pp. 235-36 for confirmation that DPWT recommended plan approval.

9. The purpose of consolidating DPWT’s position on development plans into one single witness is to prevent HOHs from taking multiple employees away from their jobs to attend and testify. Until very recently, DPR confirmation was deemed to be the “best evidence” – or at least sufficient evidence in an administrative forum, to explain DPWT’s issues and position regarding development plans. Obviously, from the ALJs decision in this case, she did not feel it was sufficient to convey DPWTs position with respect to sewer capacity.

10. Accordingly, Developer respectfully requests that the ALJ convene an additional hearing to consider testimony from a DPWT representative, which will clarify, among other issues, the state of the sewer system and purpose of the third party consultant reports retained by DPWT to evaluate the state of their sewer system. Indeed, the requirement to hear testimony from a DPWT representative on the issue of sewer capacity is a departure from all prior ALJ decisions, and when an administrative agency “changes a position clearly established in its own prior precedent it ‘must supply a reasoned analysis indicating the prior policies and standards are being deliberately changed, not casually ignored.’” *Frederick Classical Charter Sch. v. Frederick Cty. Bd. of Educ.*, 454 Md. 330, 406 (2017) (citing *Anastasi*, 77 Md. App. at 137) (emphasis added). Hearing from DPWT would give the ALJ the information needed to supply a reasoned analysis on the issue of sewer capacity.

11. This would not be the first time the ALJ’s office has convened a hearing to take additional testimony to clarify the County’s interpretation and application of a law/regulation. In at least two cases, PUD Case No. 09-0843 (the “PUD Case”) and 2627 Caves Road (the “Prior HOH”), just as in this case, Protestants’ counsel raised a novel issue that points out a potential shortcoming in a County agency’s interpretation and application of a law/regulation. In the PUD Case, the issue pertained to a County reviewing agency’s interpretation and application of stormwater management related-requirements prior to PUD development plan approval. In the Prior HOH, the issue pertained to a County reviewing agency’s interpretation and application of BCZR provisions governing the RC 5 Performance Standards prior to development plan approval. In both cases, just as this case, the issue at hand did not require any change to the development plan that was the subject of review and approval. There, as here, the issue could be resolved through additional testimony and analysis by a County agency after timely filing of a Motion for Reconsideration. And there, as here, the requisite reviewing County agency simply did not require the submission of additional information prior to recommending approval of the

development plan at the HOH, because that agency's review of the additional information would have otherwise occurred at a later stage of review of the development proposal. *See Monkton Pres. Ass'n v. Gaylord Brooks Realty Corp.*, 107 Md. App. 573, 585 (1996) (holding that Developer's obligation to comply with the applicable regulations does not end with approval of its development plan; the process "is indeed an 'ongoing process,' and the hearing officer's affirmation of the plan is just the first step").

12. As the ALJ properly determined in the PUD Case and the Prior HOH, this type of issue can be resolved most efficiently and fairly by permitting an additional hearing to take testimony on an outstanding issue. As the ALJ undoubtedly recognized when scheduling the additional hearing date in the PUD Case and Prior HOH, not permitting the additional hearing would unfairly prejudice a developer that was following the direction of a reviewing County agency, because the alternative is to require a developer to proceed all the way through the full development plan review and approval process again, even though the development plan itself is not required to change in order to resolve the issue at hand. Accordingly, Developer asks the ALJ to exercise similar discretion in this case, to hear from a DPWT witness, so that a more detailed and accurate state of the County's sewer system can be established in the record of this case.

13. The ALJ also found that the emergency access gate proposed in the rear of the Property violated BCZR Section 260.4.A.1 and the DPR Policy Manual, which prohibited approval of the Development Plan under BCC § 32-4-229. As was explained during the hearing, Developer proposed the gate as an accommodation to the residents of the Meadows/Boxwood communities, who expressed concerns over a "cut-through" road being established by virtue of the development proposal. Notwithstanding Developer's gesture to the Meadows/Boxwood community, DPR indicated in its comments and testimony that it could not fully support approval of the Development Plan, because it viewed installation of the gate as being violative of the requirements of the DPR Manual. Developer disagreed with DPR's interpretation of the

Manual, but Developer explained in its Memorandum that, if the ALJ determined the gate should not be installed for whatever reason, the ALJ could condition the order on *not* installing a gate. Given the discussion and rationale offered by the ALJ in the Order regarding the gate, and in order to obtain the full recommendation in favor of Development Plan approval from DPR (including DPWT), Developer is hereby asking the ALJ to permit Developer to offer a revised version of the Development Plan that would *eliminate the gate*, thereby establishing the connectivity contemplated under § 260 of the BCZR and unequivocal compliance with the DPR Manual.

### CONCLUSION

For the reasons stated herein, Developer respectfully requests that the ALJ grant Developer's Motion for Reconsideration and reconvene a hearing to consider testimony from a DPWT representative and to accept a revised version of the Development Plan that eliminates the proposed emergency access gate.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify on this 30<sup>th</sup> day of August, 2023 that a copy of the foregoing Post-Hearing Memorandum was emailed to: Michael R. McCann, P.A., 118 W. Pennsylvania Avenue, Towson, Maryland 21204 ([michael@mmccannlaw.net](mailto:michael@mmccannlaw.net)), Peter Zimmerman ([pzimmerman@baltimorecountymd.gov](mailto:pzimmerman@baltimorecountymd.gov)); Michael Wyatt ([mwyatt@wyattgunning.com](mailto:mwyatt@wyattgunning.com)); and Doug Sachse ([dsachse@dtslawoffices.com](mailto:dsachse@dtslawoffices.com)).



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