



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of March 17, 2007**

SUPPLEMENTAL REPORT

DATE: March 14, 2007

SUBJECT: Enactment of an Ordinance to Vacate a Portion of the Right-Of-Way of 23rd Street South, of Variable Width, Located Between South Shirlington Road and South Kenmore Street, Adjacent to Parcels Known as: the Ada S. Thompson Estate at Nauck (RPC # 31-022-004); Part of Lots 13 and 14, Subdivision of Mary Norris (RPC # 31-022-099); Lot 15, Subdivision of Mary Norris (RPC # 31-022-005); Lot 1, Block 1, Nauck Subdivision (RPC # 31-023-001); and Lot 24, Block 1, Nauck Subdivision (RPC # 31-023-002); with Conditions.

DISCUSSION: The proposed Ordinance to Vacate was presented to the Arlington County Transportation Commission the evening of March 8, 2007. Condition 2 of the Ordinance to Vacate requires the Applicant to grant an access easement over the proposed vacation area to the owners of the adjacent properties to the north. Condition 3 of the Ordinance to Vacate requires the Applicant to dedicate a public utilities and public ingress and egress easement to the County over, under, across, and through the entire proposed vacation area. The Transportation Commission's recommendation to the County Board of approval of this Ordinance to Vacate raised an issue regarding the County's ability to regulate parking and vehicular traffic in the private easement required in Condition 2 of the Ordinance to Vacate, and in the public utilities and public ingress and egress easement required in Condition 3 of the Ordinance to Vacate. The Transportation Commission also raised the issue of whether the County would have the ability to develop the easement area as a street in the future if more right-of-way is obtained, and amendments are made to the Master Transportation Plan and Nauck Village Center Action Plan.

Additional language, highlighted on Attachment 1 herein, is added to Condition 3 of the Ordinance to Vacate, to address the issue raised by the Transportation Commission. The additional language requires that the deed of easement for the public utilities and public ingress and egress easement specifically state that the County will have the right to regulate the vehicular traffic and parking in the public utilities and ingress and egress easement area. Because the private access easement the Applicant is required to grant by Condition 2 of the Ordinance to Vacate is over the same surface area as the public utilities and public ingress and egress easement, the County's authority to regulate traffic and parking in the County's easement will resolve any traffic and parking problems in the private easement area. The additional language also permits, but does not obligate, the County to build sidewalk and street in the public utilities and public ingress and egress, which addresses the Transportation Commission's second issue.

County Manager: _____

County Attorney: _____

Staff: Michael R. Halewski, Real Estate Bureau, DES

Report Date: 3/14/2007

The last issue raised by the Transportation Commission concerned the security of the County's consideration. The County is receiving, as compensation for the vacation, the provision for additional affordable dwelling units using the additional density obtained by the vacation. The structuring of the financing for this project should provide adequate protection for the County's investment, ensuring that these additional units will remain affordable dwelling units for the requisite time period. Staff has included an additional condition of the vacation requiring the Deed of Vacation to include a covenant running with the land obligating the grantee to maintain the additional dwelling units made available by the additional density as affordable dwelling units for a period of not less than sixty (60) years. This will provide additional assurance that the compensation to the County for the vacation will be adequately protected. This new condition is Condition 5 in the Ordinance to Vacate, attached to this Supplemental Report as "Attachment 1."

In addition, three words were added to Condition 2 of the Ordinance to Vacate to clarify that the private easement required to be granted by the Applicant to the owners of the adjacent properties to the north does not interfere with the rights of the County and the public.

ATTACHMENT 1

AN ORDINANCE TO VACATE A PORTION OF THE RIGHT-OF-WAY OF 23RD STREET SOUTH, OF VARIABLE WIDTH, LOCATED BETWEEN SOUTH SHIRLINGTON ROAD AND SOUTH KENMORE STREET, ADJACENT TO PARCELS KNOWN AS: THE ADA S. THOMPSON ESTATE AT NAUCK (RPC # 31-022-004); PART OF LOTS 13 AND 14, SUBDIVISION OF MARY NORRIS (RPC # 31-022-099); LOT 15, SUBDIVISION OF MARY NORRIS (RPC # 31-022-005); LOT 1, BLOCK 1, NAUCK SUBDIVISION (RPC # 31-023-001); AND LOT 24, BLOCK 1, NAUCK SUBDIVISION (RPC # 31-023-002); WITH CONDITIONS.

BE IT ORDAINED that, pursuant to a request by AHC, Inc. (“Applicant”), on file in the offices of the Department of Environmental Services, a portion of the Right-of-Way of 23rd Street South, between South Shirlington Road and South Kenmore Street, adjacent to parcels known as: the Ada S. Thompson Estate at Nauck (RPC # 31-022-004); Part of Lots 13 and 14, Subdivision of Mary Norris (RPC # 31-022-099); Lot 15, Subdivision of Mary Norris (RPC # 31-022-005); Lot 1, Block 1, Nauck Subdivision (RPC # 31-023-001); and Lot 24, Block 1, Nauck Subdivision (RPC # 31-023-002); as shown on the plat attached to this Ordinance as Exhibit “A” entitled “Plat Showing the Vacation of a Portion of 23rd Street South, Liber M4 Folio 551 and Deed Book 713 Page 138, Arlington County, Virginia”, prepared by Adtek Engineers, Inc., dated November 16, 2006, Revised January 9, 2007 and March 1, 2007 (the “Plat”), designated as, "23rd Street South – Hereby Vacated, Liber M4 Folio 551" and at the cross-hatched portions of, "Part Lot 12," "Part Lot 13," and, "Part Lot 14" on the Plat, be, and the same is hereby vacated, subject to the following conditions:

1. Applicant shall comply with all the conditions and requirements of the Ordinance to Vacate a Portion of a 10-Foot Storm Sewer Easement Across Certain Portions of the Property at 2300, 2308, and 2330 Shirlington Road, Between 23rd Street South and 24th Street South, RPC #31022004, #31022003 and #31022006, with Conditions, enacted January 21, 2006.
2. Applicant shall dedicate, or cause to be dedicated, to the owners of the neighboring properties, commonly known as 2221 S. Kenmore St. and 2244 S. Shirlington Road (Including RPC #s 31-023-001, 31-023-002, 31-023-003, and 31-023-004), a deed of easement for ingress and egress, over and across the entire vacated area. The deed of easement shall specify that the neighboring property owners' right to enter over and across the vacated area pursuant to this easement shall be non-exclusive, and shall not interfere with the rights of the County and the public to enter over and across the same area pursuant to the deed of easement for public utilities and public ingress and egress over, under, across, and through the entire vacated required in Condition 3 of this Ordinance of Vacation. Such deed of easement of ingress and egress shall terminate upon the redevelopment of the neighboring properties. This ingress and egress easement will allow the owners of the neighboring properties to continue to have motor vehicle access to their properties across the vacated area until such time as the neighboring properties are redeveloped, as provided in Condition 24 of Use Permit # U-3130-05-1.

Applicant shall, at Applicant's expense, record the deed of easement in the Land Records of Arlington County, Virginia.

3. Applicant shall dedicate, or cause to be dedicated, to the County Board of Arlington County, Virginia, a deed of public utilities and public ingress and egress easement, over, under, across, and through the entire vacated area, free of all liens and encumbrances. The Applicant agrees that the deed of public utilities and public ingress and egress easement shall provide, among other things, that the County shall have the right to use and control the vacated portion of 23rd Street South, including, but not limited to, regulating vehicular traffic and parking. The deed of public utilities and public ingress and egress easement further shall permit, but not obligate or require, the County to construct or maintain the street or sidewalks, and shall permit public use of the Public Utilities and Public Ingress and Egress Easement areas for street, sidewalk, pedestrian, vehicular, and related public purposes. The deed of easement shall specify that the rights of the public to enter over and across the vacated area for ingress and egress shall be non-exclusive, and shall not prohibit the neighboring property owners from entering over and crossing the same area pursuant to the deed of easement for ingress and egress required in Condition 2 of this Ordinance of Vacation. The deed of easement shall be, as to substance, form, purpose, location and dimensions, acceptable to the Director of DES, or his designee, and be acceptable as to form by the County Attorney. Applicant shall, at Applicant's expense, record the deed of easement in the Land Records of Arlington County, Virginia.
4. The Applicant shall prepare and submit to the County a Deed of Vacation, all deeds of easement required to be dedicated to the County Board, and all plats and other documents necessary to satisfy the conditions of this Ordinance of Vacation, subject to the approval of such deeds and documents by the County Manager, or his designee, and acceptable in substance and in form by the County Attorney.
5. The Deed of Vacation shall include a covenant running with the land, in favor of the County Board of Arlington County, obligating the Applicant, its successors in interest and title, heirs and assigns, as indicated below. Such covenant relates to land adjacent to the vacated area, which land and area are part of the development that is subject to Use Permit # U-3130-05-1.

"Grantee covenants and agrees to maintain a total of six (6) dwelling units on the parcels of real property, currently identified as Arlington County Real Property Code ("RPC") numbers 31-022-099, 31-022-003, 31-022-004, 31-022-005, and 31-022-006, as affordable dwelling units (the term 'affordable dwelling units' being defined as units rented to households at or below sixty percent (60%) of the Area Median Income for the Washington, D.C. Metropolitan Area, said Area Median Income being determined and periodically published by the United States Department of Housing and Urban Development) for a continuous period of not less than sixty (60) years from the date of this Deed of Vacation."

The Deed shall be executed by the owners of the parcels of real property indicated by the RPCs above, together with all persons and entities necessary to consent to such covenant.

6. The Applicant shall pay all fees, including the fees for review, approval and recording of the required documents associated with the Ordinance of Vacation.
7. The Deed of Vacation shall not be executed on behalf of the County Board until all the conditions and requirements of this Ordinance are satisfied.
8. The Applicant shall record all plats and the Deed of Vacation, and all required deeds of easement.
9. All conditions of the Ordinance of Vacation shall be met by noon on January 21, 2008, or this Ordinance of Vacation shall become null and void without the necessity of any further action by the County Board.