



THE LAW OFFICE OF
Michele
Rosenfeld LLC

March 27, 2014

Mr. Tom Downs, Chairman of the Board
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington DC 20001

RE: March 27, 2014 WMATA Agenda Item No. IX.B
Takoma Amended Joint Development Agreement and Compact Public Hearing

Dear Mr. Downs:

On behalf of my client, Historic Takoma, Inc., (“Historic Takoma”) I request that the WMATA Board defer a vote on the Takoma Amended Joint Development Agreement (“Agreement”) and on setting a Compact Public Hearing for the Takoma Metro site (“Takoma Metro”) that EYA has proposed for the construction of multifamily housing (“Development”). There are several compelling reasons that justify this request, as summarized below.

As you know, the Takoma Metro property is unique in that it lies within the National Register District of Takoma Park in the District of Columbia (established in 1980) and is directly adjacent to and contiguous with the National Register District of Takoma Park in Maryland (established in 1976). The Takoma Metro property was originally purchased with federal mass transit funding sometime prior to the opening of the station in 1978. Action on the proposed Joint Development Agreement at this time is premature for a number of reasons.

- 1. An independent review has found that the traffic study performed by WMATA significantly underestimated traffic impacts of the EYA development, is inconsistent with industry standard practices, and should be redone before the project moves forward.**

The reviewer, MCV Associates, Inc., found significant methodological problems that includes underestimating the severity of existing traffic conditions (level of service) at key intersections that were found in other recent traffic studies, a major inconsistency; a failure to adequately account for the traffic impacts of several other planned and approved development projects near the proposed EYA development and their cumulative impact; and an assumption that conditions improved after the EYA development without accounting for changes required in the roadway network. The Report (provided in full at Exhibit 1) concludes that projections regarding future traffic conditions “are meaningless, since they are based on erroneous traffic forecasts,” and further recommends that WMATA’s study should be redone “using the industry standard procedures.” Exhibit 1 page 4.

- 2. The Development is inconsistent with the District of Columbia’s Central District Plan with respect to height and density and under current zoning laws cannot be approved, and so must be redesigned before the project moves forward.**

The District of Columbia’s zoning laws require that any rezoning of the Metro Station be consistent with the Comprehensive Plan in order to be approved. The Development cannot be built unless and until the site is rezoned. The Takoma Central District Plan (“Comprehensive Plan”), adopted in 2002 and incorporated into the current Comprehensive Plan, **recommends a residential density of 22 - 32 dwelling units/acre**. The concept drawing provided with the Development is inconsistent with the Comprehensive Plan in at least three material respects: (1) the density is greater than the Comprehensive Plan recommends; (2) the building height exceeds the Comprehensive Plan recommendations; and (3) the concept plans for the Development call for a multifamily (and not townhome) use. It is a waste of governmental and community resources to send forward to the DC zoning officials a concept plan that – on its face – violates the District’s Comprehensive Plan recommendations and thus is ineligible for rezoning. Moreover, the Development violates not only the letter but the spirit of the “community planning process” that resulted in the 2002 Takoma Central District Plan. The Development must be postponed until the Development is redesigned consistent with the Comprehensive Plan. Alternatively, the Comprehensive Plan should be updated and WMATA’s action deferred until that process is complete, at which time the Development proposal must be reviewed for consistency with Plan recommendations in effect at that time.

- 3. WMATA must amend the Joint Development Agreement to reflect the Federal Transit Administration’s (“FTA”) obligation to undergo Section 106 review (under the National Historic Preservation Act) before any transfer to EYA occurs.**

The Metro Station, acquired with federal funds, is located within the National Register District of Takoma Park in the District of Columbia and abuts the National Register District of Takoma Park in Maryland. Because of its funding source, WMATA cannot dispose of the land unless and until the Federal Transit Administration approves the transfer, which it reviews pursuant to certain substantive review criteria. The Development will affect the Historic Districts in both jurisdictions, as well as specific historic resources (e.g., the Cady-Lee property, in the District of Columbia’s Historic District). The FTA must submit the Metro Station project for Section 106 review *before* the FTA can authorize the transfer of this land to the developer. The Development will affect the Takoma Park Historic Districts within the District of Columbia and Maryland, and review in **both** jurisdictions must be completed before the property can be transferred to a private owner. The Agreement must be amended accordingly.

- 4. Disposition of the Metro Station property cannot occur without Federal Transit Authority concurrence, which constitutes a federal action that subjects the Development (a) to federal National Environmental Policy Act (NEPA) review;¹ and**

¹ 42 U.S.C. 4321 *et seq.* See also “An FTA Update on Joint Development,” November 1, 2012 page 26. http://www.fta.dot.gov/documents/Joint_Development_Guidance.pdf.

(b) to an assessment of the Development's impacts on the affected historic resources in the District of Columbia and in Maryland under "Section 4(f)" of the Department of Transportation Act of 1966.²

The Development's approval is contingent on FTA's review and concurrence with the proposed Joint Development proposal. This federal action requires two levels of review of the Joint Development proposal before the FTA can approve the transfer of real property from WMATA to the developer, *i.e.*, FTA must subject the Development for review under NEPA and Section 4(f) review for impacts on historic resources. Absent FTA's concurrence with the disposition of the Metro Station property associated with the Development, the project cannot move forward. In light of the fact that the project is dependent on FTA action, the project is subject to both NEPA and Section 4(f) review and the Joint Development Agreement must be amended to require that these processes be followed before disposition can occur. The Agreement must be amended accordingly.

For all of these reasons, Historic Takoma asks that the WMATA Board postpone action on the Development Agreement and postpone setting a Compact Hearing date until these issues are fully addressed. Historic Takoma also joins with the City of Takoma Park's opposition as reflected in Resolution No. 2013-68 (Exhibit 2) and the Advisory Neighborhood Council's opposition as reflected in Resolution No. 13-1105 (Exhibit 3).

Sincerely,

/s/

Michele Rosenfeld

Exhibits

Cc: WMATA Boardmembers Mortimer Downey, Alvin J. Nichols, Catherine Hudgins,
Muriel Bowser, Marcel Acosta, Michael Goldman and James Dyke
U.S. Representative Eleanor Holmes Norton
U.S. Senator Benjamin Cardin, Maryland
U.S. Representative Van Hollen, Maryland
Mayor Vincent C. Grey, District of Columbia
Phil Mendelson, Chair, City Council of the District of Columbia
David Grosso, At-Large, City Council of the District of Columbia
David Catania, At-Large, City Council of the District of Columbia
Anita Bonds, At-Large, City Council of the District of Columbia
Vincent Orange, At-Large, City Council of the District of Columbia
Muriel Bowser, District of Columbia Councilmember, Ward 4
Maryland Senator Jamie Raskin
Maryland Delegate Sheila Hixon
Maryland Delegate Tom Hucker

² Department of Transportation (DOT) Act of 1966, now codified at 49 U.S.C. 303 and 23 U.S.C. 138. The transit-related regulations are found at 23 CFR 771.135.

Maryland Delegate Heather Mizeur
County Executive Isiah Leggett, Montgomery County, Maryland
Mark Elrich, Montgomery County At-Large Councilmember
George Leventhal, Montgomery County At-Large Councilmember
Nancy Floreen, Montgomery County At-Large Councilmember
Hans Riemer, Montgomery County At-Large Councilmember
Cherri Branson, Montgomery County Councilmember, District 5
Bruce Williams, Mayor, City of Takoma Park, Maryland
Seth Grimes, Councilmember, Ward 1, City of Takoma Park, Maryland
Peter M. Rogoff, Administrator, Federal Transit Administration
Brigid Hynes-Cherin, Regional Administrator Region 3, Federal Transit Administration
David Maloney, District of Columbia State Historic Preservation Office
Maryland Historical Trust Executive Director Rodney Little
Terry Bellamy, Director DC Department of Transportation,
Co-Chair DC/MD Neighbors for Takoma Transit Pamela Ellison, District of Columbia
Co-Chair DC/MD Neighbors for Takoma Transit Jacqueline Davison, Takoma Park,
Maryland
Stephanie K. Meeks, Executive Director and Chief Executive Officer, National Trust for
Historic Preservation
Ronald Austin, Chair, Advisory Neighborhood Commission 4B
Douglass Sloan, Vice Chair, Advisory Neighborhood Commission 4B
Sara Green, Commissioner, Advisory Neighborhood Commission 4B
Frederick Grant, Commissioner, Advisory Neighborhood Commission 4B
Faith Wheeler, Commissioner, Advisory Neighborhood Commission 4B
Brenda Parks, Commissioner, Advisory Neighborhood Commission 4B
Brenda Speaks, Commissioner, Advisory Neighborhood Commission 4B
Judi Jones, Commissioner, Advisory Neighborhood Commission 4B
Yvonne Jefferson, Commissioner, Advisory Neighborhood Commission 4B
Diana Kohn, President, Historic Takoma, Inc.