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**MEMORANDUM TO:** Mayor and City Council  
Planning Commission

**FROM:** Gregory Mann, Planner

**DATE:** April 16, 2014

**SUBJECT:** Staff Analysis:  
Z-4355-2014  
Map Amendment Application  
14 Firstfield Road

**APPLICANT**

Craig Pittinger, Siena Corporation  
8221 Snowden River Parkway  
Columbia, MD 21045

**Owner**

ARE-14 Firstfield Road, LLC  
946 Clopper Road  
Gaithersburg, MD 20878

**TAX MAP REFERENCE:**

Tax Map: FT121

**Tax Account Numbers:**

Plat Number: 22015 – ID #09-03353020

**REQUEST**

The Siena Corporation has submitted a Zoning Map Amendment (rezoning) Application, Z-4355-2014. This Application is for a proposal to rezone 3.13 acres of land from a 4.60 acre parcel. The applicant is proposing to rezone the aforementioned land from the C-2 (General Commercial) Zone to the E-1 (Urban Employment) Zone.



14 Firstfield Road (The Property)

## **GENERAL INFORMATION**

Additional background information including Existing Land Characteristics and Adequate Public Facilities can be found in the Preliminary Staff Report, Exhibit #26 of Z-4355-2014.

## **LOCATION**

The subject property is located at 14 Firstfield Road, in the southeast quadrant of the intersection of Firstfield Road and Bank Street, in the City of Gaithersburg, Maryland.

## **JOINT PUBLIC HEARING**

The Mayor & City Council and the Planning Commission held a joint public hearing on application Z-4355-2014 on March 17, 2014<sup>1</sup>. The Planning Commission record for this application closed April 7, 2014 and the Mayor and City Council record closes on April 17, 2014.

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<sup>1</sup> The complete Z-4355-2014 record can be found and reviewed on the City's website: <http://www.gaithersburgmd.gov> on the City Projects Page.

## **REQUIRED ACTIONS**

The applicant is requesting a map amendment from the C-2 Zone to the E-1 Zone, in accordance with §24-196 (Map Amendments) of the City Code. This is a rezoning from one Euclidean Zone to another (as opposed to one of the City's Floating Zones, such as MXD Zone or an optional method of rezoning.) As a result, there is no site plan or use review required for the rezoning.

The burden of proof is on the applicant seeking a zoning classification to establish that there is "...substantial change in the character of the neighborhood or a mistake in the original zoning or comprehensive rezoning..." *Agneslane v. Lucas, 247 Md. 612 (1967)*. The applicant is arguing there was a mistake in the 1997 comprehensive rezoning of the subject property.

## **ANNEXATION AND ZONING HISTORY:**

### **Annexation:**

The subject property was annexed in to the Gaithersburg municipal limits by the Mayor and Town Council as part of the Diamond Farm – Brown Station Road annexation (X-087) by resolution R-25-66, which became effective in 1967. At the time of the annexation approval, the Mayor and Town Council established C-P (Commercial Office Park) zoning for the subject property.

### **Master Plan Land Use and Zoning:**

On June 26, 1967, the subject property was rezoned from C-P (Commercial Office Park) Zone to the newly established E-1 (Urban Employment) Zone by the Mayor and Town Council (Z-101, R-9-67, March 6, 1967). This was planned for the property during the annexation process as noted in Resolution R-21-67; however, the Town had not yet established the E-1 Zone.

In 1996, the City adopted the Neighborhood Five Land Use Plan. The aforementioned adopted Plan recommended changing the properties land use designation from Industrial-Research-Office to Commercial. The plan also recommended rezoning the subject property from the E-1 (Urban Employment) Zone to the C-2 (General Commercial) Zone. Please note that the Neighborhood Five Land Use Plan, which was adopted in 1996, is part of the 1997 Master Plan. In 1996, the Mayor and City Council subsequently adopted a comprehensive rezoning for the neighborhood, which included rezoning a portion of the subject property to the C-2 (General Commercial) Zone.

Over the next seven years, the property remained vacant. The property owner did receive site plan approval for SP-02-0006 on October 6, 2004 for an office/research facility, but it was not constructed.

During the hearing process of the Land Use Plan Element of the 2003 Master Plan, the Mayor and City Council agreed with the request of the property owner and changed the land use designation back to Industrial-Research-Office. Additionally, the aforementioned Master Plan, which was adopted April 6, 2004, recommended that the property be rezoned to the E-1 (Urban Employment) Zone. The Industrial-Research-Office land use and recommended E-1 zone was reconfirmed as part of the Land Use Plan Element of the 2009 Master Plan, adopted by the Mayor and City Council in December 2011 by Resolution R-88-11. The City did not comprehensively rezone any properties following the adoption of either the Land Use Plan Element of the 2003 or 2009 Master Plan.

### **Development History:**

Following annexation, the subject property was plated as Lot 2, Block C, Diamond Farm Subdivision (Plat 10190/R-139), in 1972. The original subdivision included both the subject property and the currently addressed 700 Quince Orchard Road (Watkins Johnson/DRS).

The office building located at 700 Quince Orchard Road was approved in 1972, and the site plan included a stormwater management facility for Lot 2, Block C located on the subject property. In August 2001, the Planning Commission approved Amendment to Final Plan AFP-01-025, which was a preliminary subdivision for proposed Lots 8 and 9, Block C. Subsequently, a Final Subdivision Plat was approved by the Planning Commission in October 2001, known as Lots 8 and 9, Block C (R-1113, County Plat 22015).

In 2002, the subject property obtained Final Site Plan approval for a 96,300 square foot office building (SP-02-0006). Extensions of the Final Site Plan were approved in 2003 and 2004. The approved office building was never constructed, and the approval expired in 2005.

The adjacent property at 1 Bank Street was granted Final Site Plan approval in 1969 for an office/bank building (S-171). That property was subdivided in 2010 into Lots 10 and 11, Block C (Plat 24141/R-1262) and subsequently obtained Final Site Plan approval for Lot 11 for a stand-alone bank, addressed as 5 Bank Street (SP-07-0007).

As was requested at the Public Hearing, Staff has prepared the following chart which displays the development history of both the subject and adjacent properties. The adjacent properties are addressed as 700 Quince Orchard Road, 1 Bank Street, and 5 Bank Street.

<b><u>14 Firstfield</u></b>	<b><u>700 Quince Orchard Road</u></b>	<b><u>1 &amp; 5 Bank Street</u></b>
<b>Subdivision</b>	<b>Subdivision</b>	<b>Subdivision</b>
Lot 8, Block C, Diamond Farm, Resubdivision of Lot 2, Block C, Diamond Farm  2001 – Subdivided into lots 8 and 9	Lot 9, Block C, Diamond Farm, Resubdivision of Lot 2, Block C, Diamond Farm  2001 – Subdivided into lots 8 and 9	Lots 10 & 11, Block C, Diamond Farm, Resubdivision of Lot 1, Block C, Diamond Farm  2010 - Subdivided to Lot 10 (Office Building) & Lot 11 (Bank)
Plat 22015/R-1113	Plat 22015/R-1113	Plat 24141/R-1262
Plated 02/11/1972, Plat 10190/R-139 Lot 2, Block C, Diamond Farm	Plated 02/11/1972, Plat 10190/R-139 Lot 2, Block C, Diamond Farm	Plated 10/29/1969, Plat 9435/152 Lot 1, Block C, Diamond Farm
<b>Annexation</b>	<b>Annexation</b>	<b>Annexation</b>
Annexation – X-087, DANAC - Diamond Farm - Brown Station Road, R-25-66	Annexation – X-087, DANAC - Diamond Farm - Brown Station Road, R-25-66	Annexation – X-087, DANAC - Diamond Farm - Brown Station Road, R-25-66
Annexation – 1966, zoned C-P	Annexation – 1966, zoned C-P	Annexation – 1966, zoned C-P
<b>Development</b>	<b>Development</b>	<b>Development</b>
S-304 (1972-1973) – Watkins Johnson (Office, Research Electronics development) for Lot 2. Included Stormwater Management facility for overall site (Lot 2) on current Lot 8	S-304 (1972-1973) – Watkins Johnson (Office, Research Electronics development) for Lot 2. Included Stormwater Management facility for overall site (Lot 2) on current Lot 8	S-171 (1969) – Approved office/bank building built on site, (1 Bank Street)
AFP-01-025 (2001) – Preliminary subdivision for proposed Lots 8 and 9, Block C	AFP-01-025 (2001) – Preliminary subdivision for proposed Lots 8 and 9, Block C	SP-07-0007 (2010) – Approval of bank and subdivision at 5 Bank Street.
2002, SP-02-0006 – Final Site Plan approval for 96,300 square foot office building (never constructed). Extension of Final Site Plan approval, 2003 & 2004. Expired 2005.		
<b>Master Plan / Zoning</b>	<b>Master Plan / Zoning</b>	<b>Master Plan / Zoning</b>
Originally zoned C-P	Originally zoned C-P	Originally zoned C-P
<i>Rezoned from C-P to E-1, 1967, Z-101</i>	<i>Rezoned from C-P to E-1, 1967, Z-101</i>	<i>Rezoned from C-P to E-1, 1967, Z-101</i>
<u>1970 Master Plan</u> Land use designation of Commercial-Industrial	<u>1970 Master Plan</u> Land use designation of Commercial-Industrial	<u>1970 Master Plan</u> Land use designation of Commercial-Industrial
<u>1974 Master Plan</u> Land use designation of Industrial-Research-Office	<u>1974 Master Plan</u> Land use designation of Industrial-Research-Office	<u>1974 Master Plan</u> Land use designation of Industrial-Research-Office
<u>1997 Master Plan</u> Adopted commercial designation and rezone to C-2 for part of parcel <i>Comprehensively rezoned from E-1 to C-2 for part of parcel</i>	<u>1997 Master Plan</u> Adopted Industrial-Research-Office designation and rezone to C-2 for part of parcel <i>Comprehensively rezoned from E-1 to C-2 for part of parcel</i>	<u>1997 Master Plan</u> Adopted commercial designation and rezone to C-2 <i>Comprehensively rezoned from E-1 to C-2</i>
<u>2003 Master Plan</u> Adopt Industrial-Research-Office land use designation and rezone to E-1 <i>Not comprehensively rezoned</i>	<u>2003 Master Plan</u> Not included as a specific map designation Retained Industrial-Research-Office designation	<u>2003 Master Plan</u> Not included as a specific map designation Retained commercial designation
<u>2009 Master Plan</u> Adopt Industrial-Research-Office land use designation and rezone to E-1 <i>Not comprehensively rezoned</i>	<u>2009 Master Plan</u> Not included as a specific map designation Retained Industrial-Research-Office designation	<u>2009 Master Plan</u> Not included as a specific map designation Retained commercial designation

## **STAFF ANALYSIS AND RECOMMENDATION**

### **Legal Analysis<sup>2</sup>:**

#### 1. Showing “mistake” in prior zoning

There is a “presumption of validity accorded to a comprehensive zoning” that must be overcome by evidence of a mistake or neighborhood change. *Boyce v. Sembly*, 25 Md. App. 43 (1975). Additionally, lack of conformity between the zoning category and the master plan does not show an error, as there is no requirement that zoning and the master plans conform. *People’s Counsel of Baltimore County v. Beachwood I Ltd. Ptnrshp.*, 107 Md. App. 627 (1995).

The applicant has the burden to provide “strong evidence” of a mistake to overcome the presumption that the zoning is valid and to justify a piecemeal rezoning affecting one property. *Stratakis v. Beauchamp*, 268 Md. 643 (1973). This can be a heavy burden, *Anne Arundel County v. Maryland National Bank*, 32 Md. App. 437 (1976), that requires direct evidence of an “actual and basic mistake” by the legislative body in making the decision to designate the property’s zoning classification. *Bartnik v. Calvert County Hospital*, 262 Md. 434 (1971). Courts have noted that a “more liberal” burden can be used when property would, as in this case, be reclassified among commercial categories – rather than being changed from a residential to a commercial zone. *Tennison v. Shomette*, 38 Md. App. 1 (1977). But evidence of the mistake must be presented, and it must emanate from the legislative body making the zoning decision – such as through the legislative body’s prior statements and findings. *Tennison*, 38 Md. App. at 7-8. And rather than a simple “mistake of judgment,” the evidence must show that “underlying assumptions or premises relied upon” were erroneous. *Mayor and Council of Rockville v. Rylyns Enterprises*, 372 Md. 514 (2002).

Mistakes based on inaccurate predictions cannot simply consist of inaccurate judgments, but must include evidence that “assumptions upon which a particular use was predicated” were proven “with the passage of time to be incorrect.” *Anne Arundel County v. A-PAC, Ltd.*, 67 Md. App. 122, 127 (1985), *citing Rockville v. Stone*, 271 Md. 655, 662 (1975) *and Boyce*, 25 Md. App. at 51. The evidence would have to show the legislative body based the zoning decision on a prediction of future events that turned out to be incorrect. *White v. Spring*, 109 Md. App. 692 (1996). Mistakes can also result from the failure to accurately predict future events that would bear on a parcel’s land use – either because the legislative body failed to consider certain facts, or their prediction became inaccurate due to later events “which the Council could not take account of.” *Anne Arundel County*, 67 Md. App. 122.

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<sup>2</sup> Analysis prepared by Assistant City Attorney, Frank Johnson

## 2. Siena's Assertion of Mistake

Siena points out in both its original and supplemental statements that the existing zoning does not conform to the 2003 and 2009 Master Plans. But there is no requirement that zoning and the master plans conform. *People's Counsel of Baltimore County v. Beachwood I Ltd. Ptnrshp.*, 107 Md. App. 627 (1995), *citing Howard County v. Dorsey*, 292 Md. 351 (1982). Siena also makes the general claim, in its original statement, that an error was committed "for whatever reason," but does not identify a specific error, such as in the "adequacy and accuracy" of the basis supporting the legislative body's decision. *White v. Spring*, 109 Md. App. 692, 699 (1996).

Siena filed a Supplemental Statement, in which it further argued how the Mayor and City Council made a mistake in the original 1997 rezoning of the property to the C-2 zone. Siena does not present additional evidence, but argues the Council based its rezoning decision on statements in the 1996 Neighborhood Five Land Use Plan, which stated that the property "could be developed with a commercial use," and that a restaurant or retail uses compatible with Quince Orchard Plaza – the shopping center across the street – could occur. Siena asserts subsequent events have proven these statements that such retail "could occur" were incorrect, as no retail, restaurant or any other commercial use has developed. But it has not argued that such retail could not occur. In referencing only the master plan, Siena has not provided any direct Council statement or direct finding beyond the statements in the 1997 master plan.

3. Even if mistake is shown, the Mayor and City Council would have discretion to leave the property C-2.

If Siena provides proof of an error by the City Council in zoning the property C-2 and not E-1 in 1997, rezoning it to E-1 now would be justified. *Strakatis*, 268 Md. 652-53. But it would not be mandated, as the City Council would not be required to make such a change. *White*, 109 Md. App. at 708; *Chesapeake Ranch Club v. Fulcher*, 48 Md. App. 223 (1981) *citing Hardesty v. Dunphy*, 259 Md. 718 (1970). Such a change has only been mandated when the property owner could show a deprivation of "all reasonable use" of the property if not rezoned. *People's Counsel of Baltimore County v. Prosser*, 119 Md. App. 150, 179 (1998) *citing Beachwood*, 107 Md. App. at 653. Thus, the rezoning decision would remain within the City Council's discretion as Siena has not asserted or provided evidence they would be deprived of all reasonable use of the property if it is not rezoned.

## **Planning Analysis:**

The applicant's request to rezone the property back to the E-1 zoning classification is in conformance with the currently adopted 2009 Master Plan. As such, staff would support both adopting the recommended land use designation and a unified zoning classification for the subject property, as is envisioned in the both the 2003 and 2009 Master Plans, if the applicant was found to meet their burden of proof to show a mistake was made in the subject property's current zoning.

The 2003 and 2009 Master Plan recommends the following land use and zoning actions:

- *Adopt Industrial-Research-Office land use designation*
- *Recommend zoning change from C-2 to E-1 for the northern portion of the lot*
- *Retain E-1 zoning on the southern portion of the lot*

## **Conclusion:**

While this application, Z-4355-2014, is in conformance with the both the 2003 and 2009 Master Plan recommendations, the applicant is required to prove there was a mistake with the 1997 comprehensive rezoning of the property, as the applicant has asserted. While staff is supportive of the recommendations of the 2009 Master Plan, it is important to note that consistency with the approved Master Plan is insufficient evidence to prove mistake, as stated earlier by Assistant City Attorney Johnson.

If the applicant provides evidence of a City Council error in zoning the property C-2 in 1997, rezoning the subject property to E-1 would be justified. If the rezoning requested is proven to be justified, Staff would have supported the requested Map Amendment, as it would bring the property into conformance with the approved 2009 Master Plan. However, based on the legal analysis provided by the Assistant City Attorney, it is Staff's opinion that the applicant has not submitted sufficient evidence to prove that a mistake was made by the Mayor and City Council in rezoning the property in accordance with the 1996 comprehensive rezoning.

## **STAFF RECOMMENDATION:**

Staff recommends **THAT THE PLANNING COMMISSION, BASED ON THE EVIDENCE OF RECORD AND THE STAFF ANALYSIS, RECOMMEND TO THE MAYOR & CITY COUNCIL DENIAL OF MAP AMENDMENT APPLICATION Z-4355-2014, AS THE APPLICANT HAS NOT MEET THE BURDEN TO PROVIDE STRONG EVIDENCE OF A MISTAKE TO OVERCOME THE PRESUMPTION THAT THE ZONING IS VALID AND TO JUSTIFY A PIECEMEAL REZONING AFFECTING THE PROPERTY.**

INDEX OF MEMORANDA  
**Z-4355-2014**

No. Exhibit

1. Application for Amendment to the Zoning Map, filed January 30, 2014
2. Applicant Statement in Support of the Rezoning Request
3. Legal Metes and Bounds
4. Zoning Map
5. Transportation Statement
6. Proof of Notice of Public Hearing as published in the February 19, 2014 and February 26, 2014 issue of the *Gaithersburg Gazette*
7. Adjoining and Confronting Property Owners
8. Notification Post Card for Joint Public Hearing for Z-4355-2014
9. Posting of Notice of Public Hearing Sign for Z-4355-2014
10. Notice of Public Hearing as published in the February 19, 2014 and February 26, 2014 of the *Gaithersburg Gazette*
11. Revised Applicant Statement in Support of the Rezoning Request and Exhibits
12. Memoranda from Assistant City Attorney Frank Johnson
13. Location Map
14. Applicant Power Point Presentation for Joint Public Hearing 03/17/2014
15. Parmer Correspondence
16. Schimke Correspondence
17. Eusebio Correspondence

18. Eusebio Correspondence Response
19. Deuser Correspondence
20. Deuser Correspondence Response
21. Bass Correspondence
22. Bass Correspondence Response
23. Marks Correspondence
24. Marks Correspondence Response
25. Marks Correspondence Response
26. Z-4355-2014 Preliminary Staff Report, Joint Public Hearing, March 17, 2014
27. Joint Public Hearing, March 17, 2014 Minutes

Z-4355-2014

**PLANNING AND CODE ADMINISTRATION**

City of Gaithersburg · 31 South Summit Avenue · Gaithersburg, Maryland 20877 · Telephone: (301) 258-6330 · Fax: (301) 258-6336  
[plancode@gaithersburgmd.gov](mailto:plancode@gaithersburgmd.gov) · [www.gaithersburgmd.gov](http://www.gaithersburgmd.gov)

**ZONING MAP AMENDMENT APPLICATION**

*All information must be complete to initiate processing of application*

**SUBJECT PROPERTY**

Street Address or Location 14 Firstfield Road or Lot 8, Block C, Diamond Farm Subdivision / Tax Map FT21 and Plat No. 22015

**APPLICANT/BILLING CONTACT**

Business Name Siena Corporation  
Primary Contact Craig Pittinger  
Street Address 8221 Snowden River Parkway Suite No. \_\_\_\_\_  
City Columbia State Maryland Zip Code 21045  
Telephone Numbers: Work 443-539-3070 Cell 410-299-7897 E-mail Address Pitt@Sienacorp.com

**OWNER**

Business Name ARE-14 Firstfield Road, LLC  
Primary Contact \_\_\_\_\_  
Street Address 946 Clopper Road Suite No. \_\_\_\_\_  
City Gaithersburg State Maryland Zip Code 20878  
Telephone Numbers: Work 301-947-1770 Cell \_\_\_\_\_ E-mail Address \_\_\_\_\_

**DEVELOPER**

Business Name Siena Corporation  
Primary Contact Craig Pittinger  
Street Address 8221 Snowden River Parkway Suite No. \_\_\_\_\_  
City Columbia State Maryland Zip Code 21045  
Telephone Numbers: Work 443-539-3070 Cell 410-299-7897 E-mail Address Pitt@Sienacorp.com

Joint Hearing - MCC & PC  
Z-4355-2014  
Exhibit #1

**AMENDMENT METHOD: (complete information for only one method)**

**Standard Re-Zoning Method**

Existing Zone     C-2     Proposed Zone     E-1     Number of Acres to Re-Zone     3.13 ac.    

**Standard Re-Zoning Optional Method**

Existing Zone \_\_\_\_\_ Proposed Zone \_\_\_\_\_

**SITE DETAILS:**

Site Area Sq. Ft.	_____	Commercial Sq. Ft.	_____	Number of Dwelling Units/Lot	_____
Site Area Acres	_____	Industrial Sq. Ft.	_____	Number of Dwelling Units/Acre	_____
Green Area Sq. Ft.	_____			Height of Tallest Building (Ft.)	_____
Green Area %	_____			Height of Tallest Building (Stories)	_____

**MXD with Sketch Plan Method**

Existing Zone \_\_\_\_\_ Site Plan to Amend \_\_\_\_\_  
Proposed Zone \_\_\_\_\_

<b>SITE DETAILS:</b>	Maximum	Minimum		Maximum	Minimum
Site Area Sq. Ft.	_____	_____	Number of Dwelling Units/Lot	_____	_____
Site Area Acres	_____	_____	Number of Dwelling Units/Acre	_____	_____
Green Area Sq. Ft.	_____	_____	Height of Tallest Building (Ft.)	_____	_____
Green Area %	_____	_____	Height of Tallest Building (Stories)	_____	_____
Commercial Sq. Ft.	_____	_____			
Institutional Sq. Ft.	_____	_____			

**PROJECT DESCRIPTION**

See attached Applicant Statement.

See Next Page for Submission Requirements

**THIS CHECKLIST IS A GENERAL GUIDE FOR ITEMS THAT ARE TYPICALLY REQUIRED FOR APPLICATIONS. PLEASE REFER TO CHAPTER 24, SECTION 196 (c) OF THE CITY CODE FOR COMPLETE REQUIREMENTS OR CONTACT PLANNING STAFF AT 301-258-6330 FOR FURTHER CLARIFICATION.**

### **SUBMISSION REQUIREMENTS**

- **Map or Plat, Five (5) hard copies, One (1) digital (DWF preferred) or PDF**
- **Legal Metes and Bounds, One (1) digital copy, PDF**
- **List of Affected Property Owners with Addresses, One (1) digital copy, PDF**
- **Applicant Statement**

### **If Optional Method Also Submit:**

- **Site, Architectural and Detail Plan, Five (5) hard copies, One (1) digital copy (DWF preferred) or PDF**
- **Preliminary Affordable Housing Plan**
- **Preliminary Stormwater Management Plans, Three (3) hard copies, One (1) digital copy (DWF preferred) or PDF**
- **Preliminary Traffic Impact Study**
- **Other Planning Commission Requested Material**

### **If MXD Zone Also Submit:**

- **Site, Architectural and Detail Plan, Five (5) hard copies, One (1) digital copy (DWF preferred) or PDF**
- **Concept Stormwater Management Plans, One (1) hard copy, One (1) digital copy (DWF preferred) or PDF**
- **Approved NRI and FSD Plans, One (1) hard copy, One (1) digital copy (DWF preferred) or PDF**
- **Proof of Compliance with MXD Regulations**
- **Other Planning Commission Requested Material**

**BEFORE THE MAYOR & COUNCIL OF THE CITY OF GAITHERSBURG, MARYLAND**

**IN THE MATTER OF THE APPLICATION OF  
SIENA CORPORATION FOR REZONING  
THE PROPERTY LOCATED AT  
14 FIRSTFIELD ROAD FROM THE C-2 ZONE  
TO THE E-1 ZONE**

\*  
\*       **ZONING MAP AMENDMENT**  
\*       **APPLICATION NO. \_\_\_\_\_**  
\*  
\*

**APPLICANT’S STATEMENT IN SUPPORT OF  
A ZONING MAP AMENDMENT APPLICATION**

**I. INTRODUCTION**

Siena Corporation (the “Applicant”) is the contract purchaser of a property consisting of approximately 4.6 acres (or 200,573 square feet) of land that is located at 14 Firstfield Road in the southeast quadrant of the intersection of Firstfield Road and Bank Street. The 4.6-acre site is a recorded lot that is identified as Lot 8, Block C, Diamond Farm subdivision (part of a resubdivision of Lot 2, Block C, Diamond Farm subdivision) on Tax Map FT21 and Plat No. 22015 recorded among the Land Records of Montgomery County. The southern portion of the 4.6-acre site, consisting of approximately 1.47 acres (or 64,273 square feet), is classified in the E-1 (Urban Employment) Zone. The northern portion of the 4.6-acre site, consisting of approximately 3.13 acres (or 136,300 square feet) (the “Property”), is classified in the C-2 (General Commercial) Zone and is the subject of this Zoning Map Amendment Application (the “Application”).

The 4.6-acre site, which includes the Property, is subject to the recommendations of the 2009 City of Gaithersburg Master Plan Land Use Plan (the “2009 Master Plan”). The 2009 Master Plan recommends this site be given a uniform land use designation and zoning category by adopting the “Industrial-Research-Office” land use designation, retaining the E-1 Zone on the southern portion of the site, and changing the zoning of the Property (the northern portion of the site) from the C-2 Zone to the E-1 Zone. A 1994 master plan draft recommended two land use designation options for the Property: retain as “Industrial-Research-Office” or redesignate to “Commercial”.<sup>1</sup> Subsequently, the Mayor & Council adopted the “Commercial” land use designation option and in 1996, the Property was rezoned from the E-1 Zone to the C-2 Zone as part of a comprehensive rezoning.<sup>2</sup> However, no development

<sup>1</sup> See 1997 Master Plan, pp. 14, 42.

<sup>2</sup> See 1997 Master Plan, pp. 14, 42.

has occurred on the Property for the last 17 years since the comprehensive rezoning to the C-2 Zone. The Property remains vacant. As a result, the Mayor & Council and Property owner at the time agreed that the correct land use and zoning recommendations for the Property should be the prior "Industrial-Research-Office" land use designation and E-1 Zone, which are reflected in the 2003 and 2009 Master Plans.

Given that the land use and zoning recommendations for the Property in the 2003 and 2009 Master Plans have reverted back to the prior "Industrial-Research-Office" land use designation and E-1 Zone, it appears a mistake occurred with the change to the "Commercial" land use designation and the comprehensive rezoning of the Property to the C-2 Zone. Based on mistake and the findings required under State law (as discussed further below), the Applicant respectfully requests rezoning the Property from the C-2 Zone to the E-1 Zone under the standard method of rezoning for approval in accordance with Sections 24-196 and 24-197 of the Zoning Ordinance.

The granting of this request to rezone the Property to the E-1 Zone would permit the "warehousing" use (not permitted in the C-2 Zone) on the Property. This would allow the Applicant to propose a 150,112 square-foot ezStorage self-storage facility (with 1,100 self-storage units, an ancillary office space, and a residential unit for the resident manager). The proposed self-storage facility will be similar to the existing ezStorage facility (similar in style and material) located north of the intersection of I-370 and MD 355. If the rezoning is granted, the Property will be required to go through the site plan process, which will ensure that the proposed self-storage facility will be compatible with existing and proposed development in the surrounding area.

## **II. PROPERTY DESCRIPTION**

As mentioned above, the Property consists of approximately 3.13 acres (or 136,300 square feet) of land located in the southeast quadrant of the intersection of Firstfield Road and Bank Street with frontages on both these streets. The Property is part of a recorded lot that is identified as Lot 8, Block C, Diamond Farm subdivision (part of a resubdivision of Lot 2, Block C, Diamond Farm subdivision) on Tax Map FT21 and Plat No. 22015 recorded among the Land Records of Montgomery County. A legal metes and bounds description of the Property is attached as Exhibit "A" and a plat of the Property is attached as Exhibit "B". The Property is currently zoned C-2. The Property has a slightly rolling topography and a portion of a stormwater management facility that serves both the Property and the adjacent property to the south. Although there is no forest on the Property, there are existing trees

located along the northern and western boundaries of the Property with the remaining Property covered with grass.

### **III. SURROUNDING AREA / NEIGHBORHOOD**

The surrounding area or neighborhood is bounded to the north by Clopper Road (MD Route 117), to the east by Quince Orchard Road (MD Route 124), to the south by Quince Orchard Boulevard, and to the west by the rear property lines of the E-1 zoned properties and Quince Orchard Boulevard.<sup>3</sup> To the south of the Property up to Quince Orchard Boulevard and west of the Property along Firstfield Road are properties zoned E-1 and developed with office buildings and surface parking spaces. To the east of the Property is a property zoned C-2 and developed with a freestanding bank and an office building. To the north of the Property are properties zoned C-2 and developed with commercial uses such as a retail shopping center, an office building, and freestanding restaurants. A plan showing the Property and the surrounding area or neighborhood is attached as Exhibit "C".

### **IV. MASTER PLAN RECOMMENDATIONS AND ZONING HISTORY**

In 1974, the land use designation for the Property was "Industrial-Research-Office" and in 1994, the Property was zoned E-1.<sup>4</sup> In a 1994 master plan draft, the Property was recommended for two land use designation options: retain as "Industrial-Research-Office" or redesignate to "Commercial".<sup>5</sup> Subsequently, the Mayor & Council adopted the "Commercial" land use designation option and in 1996, the Property was rezoned from the E-1 Zone to the C-2 Zone as part of a comprehensive rezoning.<sup>6</sup>

In the 1997 Master Plan Neighborhood Five Land Use Plan (the "1997 Master Plan"), the Property was located in Study Area 3, the same boundaries as the surrounding area or neighborhood as described above. The 1997 Master Plan described the two land use designation options noted above and indicated that the "Commercial" land use designation was adopted and the Property was rezoned to the C-2 Zone. The 1997 Master Plan further noted that by redesignating the Property commercial, a

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<sup>3</sup> The boundaries of the surrounding area or neighborhood are the same as those of Study Area 3 described and shown on page 13 of the 1997 Master Plan.

<sup>4</sup> See 1997 Master Plan, p. 42

<sup>5</sup> See 1997 Master Plan, pp. 14, 42.

<sup>6</sup> See 1997 Master Plan, pp. 14, 42.

restaurant or retail uses, compatible with Quince Orchard Plaza (the retail shopping center north of Bank Street), could occur.

In October 2002, the Property was approved for a 3-story office building with associated parking.<sup>7</sup> However, the office building was never constructed. No development has occurred on the Property for the last 17 years since the comprehensive rezoning to the C-2 Zone and the Property remains vacant.

Subsequently, the Mayor & Council and Property owner at the time agreed that the correct land use and zoning recommendations for the Property should be the prior “Industrial-Research-Office” land use designation and E-1 Zone, which are reflected in both the 2003 and 2009 Master Plans.<sup>8</sup> The 2009 Master Plan specifically recommends that the 4.6-acre site, which includes the Property, “be given a uniform land use designation and zoning category” by adopting the “Industrial-Research-Office” land use designation, retaining the E-1 Zone on the southern portion of the site, and changing the zoning of the Property (the northern portion of the 4.6-acre site) from the C-2 Zone to the E-1 Zone. For whatever reasons, however, the Property was not rezoned to the recommended E-1 Zone (a Euclidean Zone) by a comprehensive zoning map amendment. As such, in order to effectuate this rezoning, consistent with the 2003 and 2009 Master Plans, this Application is both necessary and appropriate.

## **V. ZONING MAP AMENDMENT APPLICATION REQUEST**

State law allows the legislative body to grant an amendment to change the zoning classification of a property based on a finding that there was a substantial change in the character of the neighborhood where the property is located or a mistake in the existing zoning classification. Md. Land Use Code Ann. §4-204(b)(2) (2013). The applicable standard for this Application is mistake in the existing zoning classification. As described above, the land use designation for the Property was previously “Industrial-Research-Office” and the Property was previously zoned E-1 in 1994. However, as a result of a change in the land use designation and zoning recommendations, the land use designation for the Property was changed to “Commercial” and the Property was rezoned to C-2 as part of a comprehensive rezoning in 1996. Although the Property was approved for a 3-story office building in October 2002, the construction of the office building never occurred. The Property remains vacant. Thereafter, the

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<sup>7</sup> The site plan for the proposed 3-story office building was SP-02-0006.

<sup>8</sup> See 2003 Master Plan, p. 82 and 2009 Master Plan, p. 41.

Mayor & Council and Property owner at the time that the Property was analyzed in the context of the master plan, agreed that the correct land use and zoning recommendations for the Property should be the prior "Industrial-Research-Office" land use designation and E-1 Zone, which are reflected in both the 2003 and 2009 Master Plans. Given that the land use and zoning recommendations for the Property in the 2003 and 2009 Master Plans have reverted back to the prior "Industrial-Research-Office" land use designation and E-1 Zone, it appears a mistake occurred with the change to the "Commercial" land use designation and the comprehensive rezoning of the Property to the C-2 Zone. Accordingly, based on the foregoing facts, the Mayor & Council can make a finding of a mistake in the existing zoning classification.

In addition, State law provides that if the purpose and effect of a proposed map amendment is to change a zoning classification, the legislative body is required to make findings of fact that address: (A) population change; (B) the availability of public facilities; (C) present and future transportation patterns; (D) compatibility with existing and proposed development for the area; (E) the recommendation of the planning commission; and (F) the relationship of the proposed amendment to the local jurisdiction's plan. *See MD Land Use Code Ann. Section 4-204(b)(1) (2013)*. The Applicant addresses these factors for the Mayor & Council to make the necessary findings as follows:

#### **A. Population Change**

According to the City's "Dwelling Units and Estimated Population" report dated July 2013, the City's current population is based on occupied dwelling units and the City's projected future population is based on completion of all approved residential units. Since the rezoning request is from a commercial zoning (C-2) to an urban employment zoning (E-1) for a proposed self-storage facility with one residential unit for the resident manager, the change in population will be minimal. Specifically, the change will be from no resident to one resident.

#### **B. Availability of Public Facilities**

On October 2, 2002, the Planning Commission approved a site plan for a 3-story office building on the Property and it was determined at the time that the Property can be adequately served by the public facilities, including the public water and sewer facilities for this area. The water and sewer categories for this area are W-1 and S-1, respectively. The proposed self-storage facility is a less

intensive use than the approved office building. Therefore, the public facilities found to be adequate for the office use will be adequate for the proposed self-storage “warehousing” use.

In addition, the proposed use will cause no impact on public education facilities.

### **C. Present and Future Transportation Patterns**

Since the Property is vacant, there is currently no traffic going in and out of the Property. The Applicant’s traffic consultant (The Traffic Group) prepared a memo dated February 7, 2014 to City Staff (attached as Exhibit “D”), addressing the surrounding road network, the proposed Corridor Cities Transit (“CCT”), and the bicycle and pedestrian plan based on a review of the 2009 City of Gaithersburg Transportation Master Plan (the “Transportation Master Plan”). The memo indicates that Firstfield Road (adjacent to the western boundary of the Property) is classified as a Collector Street with a minimum right-of-way of 80 feet and recommended for four lanes, which have been built. The memo also indicates that Bank Street (adjacent to the northern boundary of the Property) is classified as a Minor Collector with a right-of-way of 80 feet and recommended for four lanes, which also have been built. The memo states that the Transportation Master Plan lists the closest intersection to the Property (MD 117 and Firstfield Road) as adequate during both the AM and PM peak hour trips and that the Property is located near a Ride-On bus stop serving Ride-On Bus Route 56.

In addition, the memo describes the CCT following a 9-mile long alignment from the Shady Grove Metro Rail Station to the Metropolitan Grove MARC Station, with a portion of the alignment along MD 124 just east of the Property. The memo states that the CCT operations are currently scheduled to begin in the year 2021, but that significant planning, design, and construction needs to occur before operations can begin.

Finally, the memo discusses the bicycle and pedestrian plan for the area. The memo states that sidewalk is currently available on the north side of Bank Street and on the west side of Firstfield Road. Furthermore, the memo indicates that the Transportation Master Plan calls for a proposed bike lane along Firstfield Road and no upgrades are proposed along Bank Street.

### **D. Compatibility with Existing and Proposed Development for the Area**

The proposed self-storage facility is a permitted use in the E-1 Zone, which was the zoning of the Property before it was rezoned to C-2 in 1996. The proposed self-storage facility will be similar to the existing ezStorage facility (similar in style and material) located north of the intersection of I-370 and

MD 355, and will be compatible with the existing and proposed development for the area. As mentioned above, the properties to the south and west of the Property are zoned E-1 and developed with office buildings and surface parking spaces. In addition, to the east of the Property is a property zoned C-2 and developed with a freestanding bank and an office building; and to the north of the Property are properties zoned C-2 and developed with commercial uses such as a retail shopping center, an office building, and freestanding restaurants.

In addition, if the rezoning request is granted, the proposed project will be required to go through the site plan process, which will ensure that the proposed self-storage facility will be compatible with existing and proposed development for the area.

#### **E. Recommendation of the Planning Commission**

The 2009 Master Plan's land use and zoning recommendations for the Property for the Industrial-Research-Office land use designation and E-1 Zone were approved by the Planning Commission on November 16, 2011 by Resolution PCR-1-11. Accordingly, this rezoning request to rezone the Property to the E-1 Zone will achieve the Planning Commission's recommendations for the Property.

#### **F. Relationship of the Proposed Amendment to the Local Jurisdiction's Plan**

The 2009 Master Plan recommends the Industrial Research-Office land use designation and E-1 Zone for the Property. Accordingly, this request to rezone the Property from the C-2 Zone to the E-1 Zone will achieve the 2009 Master Plan's recommendations for the Property.

### **VI. PUBLIC INTEREST**

The Applicant believes that it would be in the public interest to grant this rezoning request for the reasons summarized below:

1. The rezoning will achieve the Master Plan recommendation to rezone the Property from the C-2 Zone to the E-1 Zone.
2. The rezoning will allow the proposed self-storage "warehousing" use on the Property and the development of an attractive, functional building that will be compatible with the surrounding area or neighborhood. As a result of the proposed improvement, the tax

assessment for the Property will increase, providing needed revenue to the State of Maryland, Montgomery County, and City of Gaithersburg.

3. The rezoning will allow a less intensive use (self-storage facility) than the uses allowed in the commercial zone (e.g., office building) that can be adequately served by the public facilities, including public water and sewer, and have no impact on the public education facilities.
4. The rezoning will allow the proposed self-storage facility that will have minimal impact on population and traffic.

## VII. CONCLUSION

For the reasons stated above, the Applicant respectfully requests that the Mayor & Council grant approval of this request to rezone the Property from the C-1 Zone to the E-1 Zone.

Respectfully submitted,

### LINOWES AND BLOCHER LLP

By: C. Robert Dalrymple  
C. Robert Dalrymple

By: Yum Yu Cheng  
Yum Yu Cheng

7200 Wisconsin Avenue  
Suite 800  
Bethesda, MD 20814  
(301) 961-5219

Attorneys for Applicant,  
Siena Corporation

**EXHIBIT "A"**  
**DESCRIPTION OF**  
**PART OF**  
**THE PROPERTY OF**  
**ARE-FIRSTFIELD/BANK STREET, LLC**  
**LIBER 20300, FOLIO 559**

**Being** a strip or parcel of land situated in the Gaithersburg (9<sup>th</sup>) District, Montgomery County, Maryland hereinafter described in, through, over and across the property acquired from BAE SYSTEMS AEROSPACE ELECTRONICS INC., a Pennsylvania corporation to ARE-FIRSTFIELD/BANK STREET, LLC, a Delaware limited liability company by deed dated December 13, 2001 and recorded among the Land Records of Montgomery County, Maryland in Liber 20300 at Folio 559; said property being Lot 8, Block C as shown on a plat of subdivision entitled, " LOTS 8 & 9, BLOCK C, DIAMOND FARM" and recorded among the said Land Records as Plat No. 22015; and being more particularly described in the meridian as established by the Maryland State Grid as defined by the North American Datum of 1983 and adjusted in 1991 (NAD 83/91) as now surveyed

**Beginning** for the said piece or parcel of land at the northwesterly end of the South 74°55'00" East, 25.81 foot plat line as shown on said plat, said point also being on the southerly right of way line of Bank Street (80' R/W) as shown on a plat of subdivision entitled, "PLAT SEVEN, LOT 2 IN BLOCK A & LOT 1 IN BLOCK C, DIAMOND FARM" and recorded among said Land Records in Plat Book 88 as Plat No. 9435; thence binding along said right of way

1. South 74°53'23" East, 25.81 feet to a point; thence leaving said right of way and binding along the common division line of said Lot 8, Block C and Lot 10, Block C as shown on a plat of subdivision entitled, " LOTS 10 & 11, BLOCK C, DIAMOND FARM" and recorded among said Land Records as Plat No. 24141
2. South 15°06'37" West, 348.86 feet to a point; thence leaving said division line and running so as to cross and include a part of said Lot 8, Block C
3. North 74°53'23" West, 397.96 feet to a point of curvature on the easterly right of way line of Firstfield Road (80' R/W); thence binding on said right of way

4. 305.13 feet along the arc of a non-tangent curve deflecting to the left, having a radius of 2800.00 feet and a chord of North 14°10'44" East, 304.98 feet to a point of non-tangency; thence leaving the said right of way and binding on the southerly right of way of aforesaid Bank Street, the following two (2) courses
5. North 55°15'47" East, 35.68 feet to a point of curvature; thence
6. 354.62 feet along the arc of a non-tangent curve deflecting to the right, having a radius of 3774.29 feet and a chord of South 77°34'53" East, 354.49 feet to the point of beginning; containing 136,300 square feet or 3.1290 of an acre of land, more or less, and being shown on Exhibit "B" attached hereto and made a part hereof by this reference.

The licensee below was in responsible charge of the preparation of this metes and bounds description and the survey work reflected in it, all in compliance with the requirements set forth in COMAR Title 09, Subtitle 13, Chapter 06, Regulation .12 of the minimum practice for Land Surveyors.

*Jan. 24, 2014* *Timothy F. Lee*  
Date \_\_\_\_\_

Timothy F. Lee  
Professional Land Surveyor  
Maryland Registration No. 21509  
License Expires: 07/13/15



# EXHIBIT "B"

## Surveyor's Certificate

I hereby certify to the best of my professional knowledge, information, and belief that; this sketch was prepared by me or under my direct supervision and that it is in compliance with the requirements set forth in COMAR Title 09, Subtitle 13, Chapter 06, Regulation .12 of the minimum standards of practice for Land Surveyors.



*Timothy F. Lee* Jan. 24, 2014  
 Timothy F. Lee Date

Professional Land Surveyor  
 Maryland Registration No. 21509  
 License Expires: 07/13/15

**LOT 1**  
 LOT 1, BLOCK E  
 DIAMOND FARM  
 PLAT NO. 10647

**BANK STREET**  
 (80' R/W)  
 PLAT BOOK 88 PLAT NO. 9435

P.O.B.

L=354.62'

S 74°53'23" E  
 25.81'

PINCHED PIPE FOUND

PART OF  
 LOT 8, BLOCK C  
 DIAMOND FARM  
 136,300 SQ.FT.  
 OR 3.1290 AC.

CURRENTLY ZONED C-2

**LOT 10**  
 LOTS 10 & 11, BLOCK C  
 DIAMOND FARM  
 PLAT NO. 24141

S 15°06'37" W 348.86'

ZONING LINE  
 N 74°53'23" W 397.96'

PROPERTY OF  
**ARE-FIRSTFIELD/BANK STREET, LLC**  
 LIBER 20300 FOLIO 559

CURRENTLY ZONED E-1  
 64,273 SQ.FT. or  
 1.4755 AC.

**LOT 9**

LOTS 8 & 9, BLOCK C  
 DIAMOND FARM  
 PLAT NO. 22015

**LOT 9**

**FIRSTFIELD ROAD**  
 (80' R/W)  
 PLAT BOOK 88 PLAT NO. 9435

N 55°16'47" E  
 35.68'

L=305.13'

R=2800.00'

①

**LOT 8**  
 LOTS 8 & 9, BLOCK C  
 DIAMOND FARM  
 PLAT NO. 22015  
 200,753 SQ.FT. or  
 4.6045 AC.

**LOT 5**  
 LOTS 4 TO 7, BLOCK A  
 DIAMOND FARM  
 PLAT NO. 8370

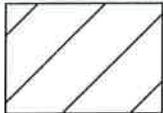
**LOT 4**

**LOT 3**

**LOT 6**

SCALE: 1" = 100'  
 (NAD 83/91)

### LEGEND



= PROPOSED REZONING AREA

Curve Table

Curve	Delta	Radius	Length	Tangent	Chord Bearing	Chord Dist.
1	06°14'38"	2800.00'	305.13'	152.72'	N 14°10'44" E	304.98'
2	05°23'00"	3774.29'	354.62'	177.44'	S 77°34'53" E	354.49'



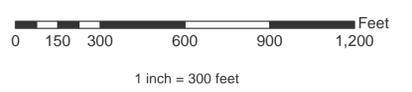
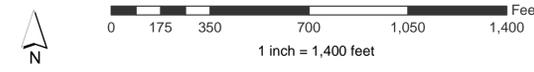
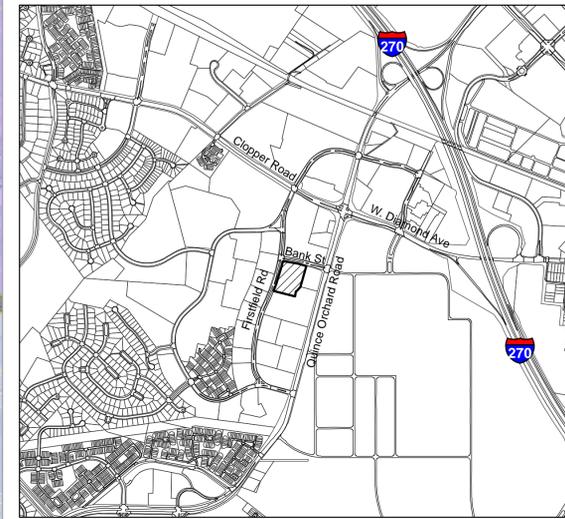
# SOLTESZ

ROCKVILLE OFFICE

2 Research Place, Suite 100 Rockville, MD 20850 P.301.948.2750 F.301.948.9067

Engineering // Planning // Environmental Sciences

www.solteszco.com

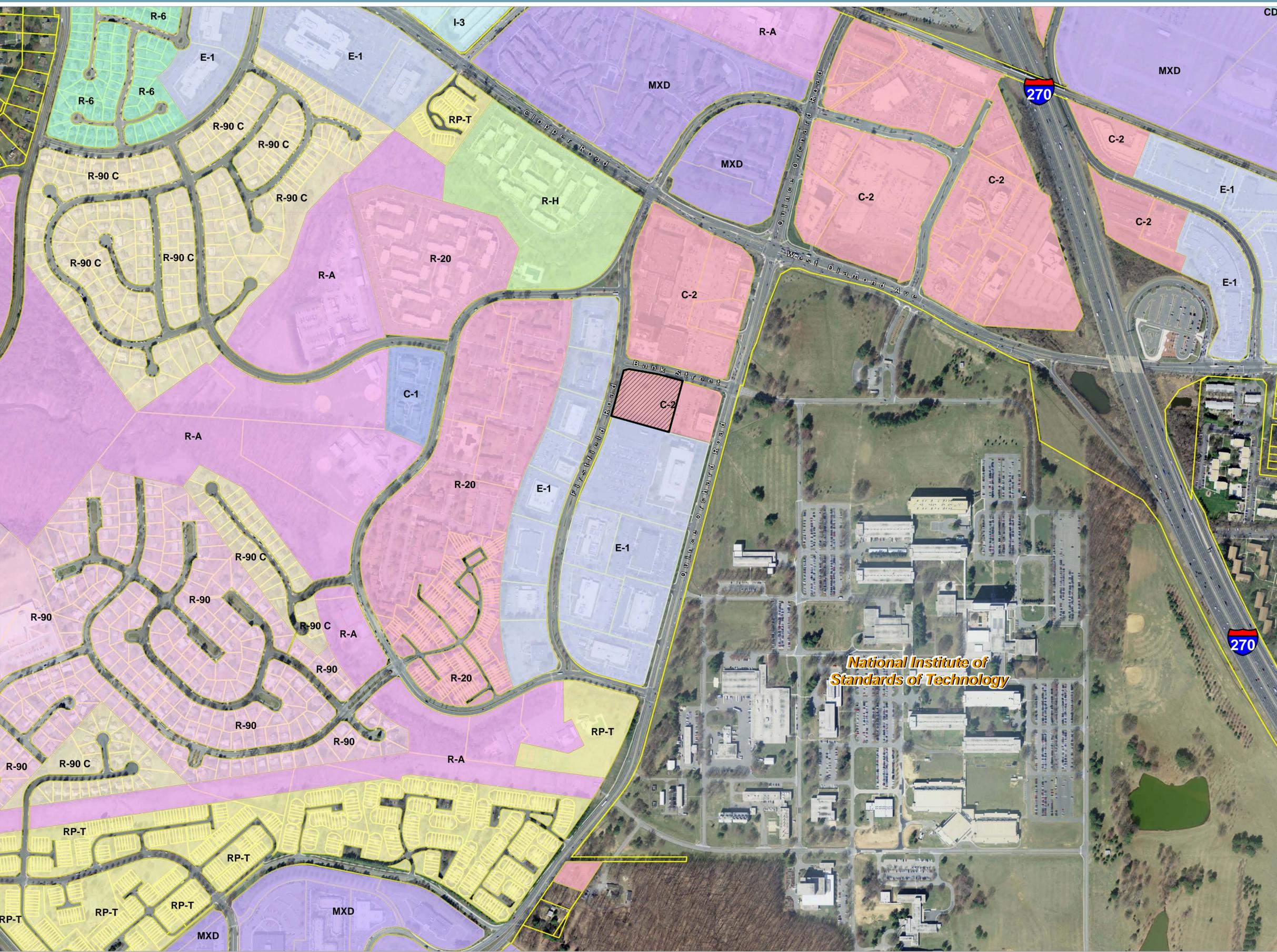


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The information, data, photographs and/or drawings ("information") contained herein are based, in part, on Geographic Information Systems ("GIS") software and content. GIS data is known to be inaccurate and approximate compared to survey data obtained through prevailing survey practices, particularly with respect to horizontal and vertical locations and dimensions. The user is cautioned to verify all data pursuant to accepted surveying and engineering practices.

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Joint Hearing - MCC & PC  
Z-4355-2014  
Exhibit #4

Exhibit C





A VETERAN-OWNED  
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**Baltimore, MD**

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**MEMO**

TO: Greg Mann  
FROM: Carl Wilson, Jr., P.E., PTOE  
DATE: February 12, 2014  
RE: 14 Firstfield Road-Z-4355-2014  
Zoning Map Amendment  
City of Gaithersburg, Maryland

OUR JOB NO: 2013-1116

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At your request, The Traffic Group, Inc. has reviewed the City of Gaithersburg Transportation Master Plan 2009 (published September 8, 2010) with respect to the Zoning Map Amendment for 14 Firstfield Road. The following elements of the plan were reviewed:

**Surrounding Road Network**

Firstfield Road is classified as a Collector Street with a minimum right-of-way of 80 feet. It is Master Planned for four lanes and currently is built to four lanes.

Bank Street is classified as a Minor Collector with a Master Planned right-of-way of 80 feet. Similarly, the Master Plan calls for a four-lane segment which is the existing condition.

The Master Plan provides Level of Service Analyses at multiple intersections within the City of Gaithersburg. The closest intersection to the site that was reviewed is at MD 117 and Firstfield Road, approximately ¼ of a mile north of the subject property. The Master Plan lists the intersection as adequate during both the AM and PM peak periods. No other immediately surrounding intersections were analyzed.

The property is located near a Ride-On bus stop that serves Route 56, which operates daily between Lakeforest Transit Center and Rockville Metro Station.

**CCT**

The Corridor Cities Transit Way (CCT) will follow an alignment along MD 124, just east of the subject site. Operations are currently scheduled to begin in the year 2021. Clearly, significant planning, design, and construction needs to occur before operations can begin. The CCT will follow a 9 mile long alignment from the Shady Grove Metro Rail Station to the Metropolitan Grove MARC Station.

Joint Hearing - MCC & PC  
Z-4355-2014  
Exhibit #5

**Exhibit "D"**

### **Bicycle and Pedestrian Plan**

Sidewalk is currently available on the north side of Bank Street and on the west side of Firstfield Road. The Master Plan calls for a proposed bike lane along Firstfield Road. No upgrades are proposed along Bank Street.

If you have any questions regarding this information, please do not hesitate to contact me.

CRW/clg

(I:\2013\2013-1116\_ ezStorage - Gaithersburg West\DOCS\CORRESP\ANALYST\Zoning Map Amendment1.docx)

# **NOTICE OF JOINT PUBLIC HEARING**

The Mayor and City Council and the Planning Commission of the City of Gaithersburg, Maryland, will conduct a joint public hearing on Zoning Map Amendment Z-4355-2014, filed by Craig Pittinger of Siena Corporation, on

**MONDAY  
MARCH 17, 2014  
AT 7:30 P.M.**

or as soon thereafter as this matter can be heard in the Council Chambers at 31 South Summit Avenue, Gaithersburg, Maryland.

This application is for a proposed rezoning of 3.13 acres of land from the C-2 (General Commercial) Zone to the E-1 (Urban Employment) Zone, in accordance with § 24-196 (Map Amendments) of the City Code. The Property is located at 14 Firstfield Road, in the southeast quadrant of the intersection of Firstfield Road and Bank Street in the City of Gaithersburg, Maryland.

Further information may be obtained from the Department of Planning and Code Administration at City Hall, 31 South Summit Avenue, between the hours of 8 a.m. and 5 p.m., Monday through Friday, or visit the City's website at [www.gaithersburgmd.gov](http://www.gaithersburgmd.gov).

Gregory Mann, Planner  
Planning and Code Administration

**Joint Hearing - MCC & PC  
Z-4355-2014  
Exhibit #6**

fullacctno	owner_name_line_1	owner_name_line_2	owner_address_line_1	owner_address_line_2	owner_address_city	owner_address_state	owner_address_zip_code
160903548781	MCKEON FIRSTFIELD LLC		17B FIRSTFIELD RD STE 101		GAITHERSBURG	MD	20878
160903548815	TALI HOLDING LLC		16744 WHITES STORE RD		BOYDS	MD	20841
160903625572	CAPITAL FIRSTFIELD LLC		17 FIRSTFIELD RD STE 200		GAITHERSBURG	MD	20878
160903507974	WOO FAMILY LLC		19420 BROOKEVILLE LAKES CT		BROOKEVILLE	MD	20833
160903548928	ONE FIRSTFIELD LLC		17B FIRSTFIELD RD STE 201		GAITHERSBURG	MD	20878
160903548894	MMG HOLDING LLC		17B FIRSTFIELD RD UNIT 1 #205		GAITHERSBURG	MD	20878
160903548837	NATIONAL CHRISTIAN CHOIR INC		17B FIRSTFIELD RD STE 108		GAITHERSBURG	MD	20878
160903548770	MCKEON FIRSTFIELD LLC		17B FIRSTFIELD RD STE 101		GAITHERSBURG	MD	20878
160903548861	ONE FIRSTFIELD LLC		17B FIRSTFIELD RD STE 201		GAITHERSBURG	MD	20878
160903548804	TALI HOLDING LLC		16744 WHITES STORE RD		BOYDS	MD	20841
160903507985	WOO FAMILY LLC		19420 BROOKEVILLE LAKES CT		BROOKEVILLE	MD	20833
160903548906	HEYMAN WILLIAM M REV LIV TR	HEYMAN SUE ANN REV LIV TR	1 GLEN EAGLES CT		SILVER SPRING	MD	20906
160903548848	NATIONAL CHRISTIAN CHOIR INC		17B FIRSTFIELD RD STE 108		GAITHERSBURG	MD	20878
160903548872	FIRSTFIELD ROAD LLC		17B FIRSTFIELD RD STE 203		GAITHERSBURG	MD	20878
160903548826	C & J LLC		17B FIRSTFIELD RD STE 106		GAITHERSBURG	MD	20878
160903548883	VANGUARDMEDICINE GROUP INNC		17B FIRSTFIELD RD STE 204		GAITHERSBURG	MD	20878
160903548792	GERACHTCHENKO NATALIA		16744 WHITES STORE RD		BOYDS	MD	20841
160903548850	ONE FIRSTFIELD LLC		17 B FIRSTFIELD RD STE 201		GAITHERSBURG	MD	20878
160903507963	BONNIE HILEMAN HOLDINGS LLC		17 FIRSTFIELD RD STE 100		GAITHERSBURG	MD	20878
160903548917	KANGO NASREEN M MD LLC		409 NATURE LN		ROCKVILLE	MD	20850
160900831548	JEMAL'S FIRSTFIELD LLC		C/O DOUGLAS DEVELOP CORP	702 H ST NW STE 400	WASHINGTON	DC	20001
160903353020	ARE-FIRSTFIELD/BANK STREET LLC		PO BOX 847		CARLSBAD	CA	92018
160900831322	RICKMAN-FIRSTFIELD ASSOC		15215 SHADY GROVE RD		ROCKVILLE	MD	20850
160900831311	SENECA CREEK COMMUNITY CHURCH	HOLDING COMPANY INC	13 FIRSTFIELD RD		GAITHERSBURG	MD	20878
160901621210	FEDERAL REALTY INVESTMENT TR		C/O DIR PROPERTY ANALYSIS	1626 E JEFFERSON ST	ROCKVILLE	MD	20852
160903353031	SIGNIA-IDT INC		700 QUINCE ORCHARD RD		GAITHERSBURG	MD	20878
160903676310	BANK STREET REALTY PARTNERS LLC		C/O MCSHEA MANAGEMENT INC	100 LAKEFOREST BLVD STE 500	GAITHERSBURG	MD	20877
160903676321	US REAL ESTATE LIMITED PARTNERSHIP		C/O PHILLIP MOLTZ	9830 COLONNADE BLVD SUITE 600	SAN ANTONIO	TX	78230



**NOTICE OF JOINT PUBLIC HEARING  
CITY COUNCIL AND PLANNING COMMISSION  
MONDAY, MARCH 17, 2014 at 7:30 PM  
City Hall Council Chambers  
31 S. Summit Avenue, Gaithersburg MD 20877**

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You are receiving this postcard to inform you of a proposal for change within 200 feet of your property or you have expressed an interest in the subject plan(s).

**APPLICATION TYPE:** REZONING  
**FILE NUMBER:** Z-4355-2014  
**LOCATION:** 14 Firstfield Road  
**PROPOSAL:** Rezoning of 3.13 acres of land  
from C-2 (General Commercial) to  
E-1 (Urban Employment)

**Joint Hearing - MCC & PC  
Z-4355-2014  
Exhibit #8**

For additional information, you may review the project file at the Planning and Code Administration offices located at City Hall, 31 S. Summit Avenue, Gaithersburg Maryland between the hours of 8:00 am and 5:00 pm Monday through Friday. You may also refer to the City web site at [www.gaithersburgmd.gov](http://www.gaithersburgmd.gov) or contact us via telephone at 301-258-6330.

## Gregory Mann

---

**From:** Cheng, Yum Yu - YYC <YCheng@linowes-law.com>  
**Sent:** Tuesday, February 11, 2014 3:31 PM  
**To:** Gregory Mann  
**Cc:** Craig B. Pittinger; Dalrymple, C Robert - CRD; J. Dan Fryer  
**Subject:** RE: Zoning Map Amendment - 14 Firstfield Road - Z-4355-2014

Greg,

Per our discussion, the signs were posted on Friday, February 7, 2014.

Yum Yu

Yum Yu Cheng

Linowes and Blocher LLP | 7200 Wisconsin Avenue, Suite 800 | Bethesda, Maryland 20814  
Direct: 301.961.5219 | Main: 301.654.0504 | Fax: 301.654.2801  
Email: [ycheng@linowes-law.com](mailto:ycheng@linowes-law.com) | Firm Website: [www.linowes-law.com](http://www.linowes-law.com)

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 **JOINT PUBLIC HEARING**

**Z-4355-2014**

**14 FIRSTFIELD ROAD**

FILE NO.

LOCATION

**ZONING MAP**

**AMENDMENT**

APPLICATION TYPE

**MONDAY**

**MARCH 17, 2014**

DAY

\* DATE

**7:30 P.M. GAITHERSBURG CITY HALL, 31 SOUTH SUMMIT AVE.**

\* SUBJECT TO CHANGE CALL 301-256-6330  
[www.gaithersburgmd.gov](http://www.gaithersburgmd.gov)

02/07/2014 15:51



**JOINT PUBLIC HEARING**

**Z-4355-2014**

**14 FIRSTFIELD ROAD**

FILE NO.

LOCATION

**ZONING MAP AMENDMENT**

APPLICATION TYPE

**MONDAY**

**MARCH 17, 2014**

DAY

\* DATE

**7:30 PM. GAITHERSBURG CITY HALL, 31 SOUTH SUMMIT AVE.**

\* SUBJECT TO CHANGE CALL 301-258-6330  
[www.gaithersburgmd.gov](http://www.gaithersburgmd.gov)

02/07/2014 16:01

# The Gazette

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This is to certify that the annexed advertisement of NOTICE OF JOINT PUBLIC HEARING published in the GAITHERSBURG Gazette newspapers, a weekly newspaper published in MONTGOMERY County, Maryland. The Ad appeared once a week for 2 week(s), before 2/22/14.

Copy of Ad Attached  
Ad Order Number

11308408

Publication Date(s)

2/12/14  
2/19/14

## NOTICE OF JOINT PUBLIC HEARING

The Mayor and City Council and the Planning Commission of the City of Gaithersburg, Maryland, will conduct a joint public hearing on Zoning Map Amendment Z-4355-2014, filed by Craig Pittinger of Siena Corporation, on

**MONDAY  
MARCH 17, 2014  
AT 7:30 P.M.**

or as soon thereafter as this matter can be heard in the Council Chambers at 31 South Summit Avenue, Gaithersburg, Maryland.

This application is for a proposed rezoning of 3.13 acres of land from the C-2 (General Commercial) Zone to the E-1 (Urban Employment) Zone, in accordance with § 24-196 (Map Amendments) of the City Code. The Property is located at 14 Firstfield Road, in the southeast quadrant of the intersection of Firstfield Road and Bank Street in the City of Gaithersburg, Maryland.

Further information may be obtained from the Department of Planning and Code Administration at City Hall, 31 South Summit Avenue, between the hours of 8 a.m. and 5 p.m., Monday through Friday, or visit the City's website at [www.gaithersburgmd.gov](http://www.gaithersburgmd.gov).

Gregory Mann, Planner  
Planning and Code Administration

Joint Hearing - MCC & PC  
Z-4355-2014  
Exhibit #10

Gazette Legal Advertising Department

Notary Public

My Commission Expires: November 30

**BEFORE THE MAYOR AND COUNCIL OF THE CITY OF GAITHERSBURG,  
MARYLAND**

**IN THE MATTER OF THE APPLICATION OF  
SIENA CORPORATION FOR REZONING  
THE PROPERTY LOCATED AT  
14 FIRSTFIELD ROAD FROM THE C-2 ZONE  
TO THE E-1 ZONE**

\*  
\* **ZONING MAP AMENDMENT**  
\* **APPLICATION**  
\* **NO. Z-4355-2014**  
\*

**APPLICANT’S SUPPLEMENTAL STATEMENT IN SUPPORT OF  
ZONING MAP AMENDMENT APPLICATION NO. Z-4355-2014**

Siena Corporation (the “Applicant”) hereby provides this Supplemental Statement in support of Zoning Map Amendment Application No. Z-4355-2014 (the “Rezoning Application”) for the 3.13-acre of land located in the southeast quadrant of the intersection of Firstfield Road and Bank Street (the “Property”)<sup>1</sup>. As noted in the Applicant’s Statement filed with the Rezoning Application, Maryland law allows the legislative body to grant an amendment to change the zoning classification of a property based on a finding that there was a substantial change in the character of the neighborhood where the property is located or a mistake in the existing zoning classification. Md. Land Use Code Ann. §4-204(b)(2) (2013). The basis for this Rezoning Application is a mistake in the existing zoning classification. In demonstrating mistake in zoning, there are several approaches, including (1) evidence showing that the initial premises of the Council with respect to the property were incorrect and consequently, the classification assigned at the time of the comprehensive zoning was improper; and (2) evidence of any events occurring subsequent to the time of the comprehensive zoning which would have proven that the Council’s assumptions and premises were incorrect with the passage of time.

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<sup>1</sup> For a more detailed description of the Property, see p. 1 of Applicant’s Statement filed with the Rezoning Application.

*Howard County v. Dorsey*, 292 Md. 351, 357-58 (1982). The latter approach is applicable in this case as discussed below.

At the time of annexation of the Property into the City (by Resolution R-21-67), the Property was rezoned from the C-P (Commercial Office Park) Zone to the then newly established E-1 (Urban Employment) Zone by the Mayor and Town Council on June 26, 1967 by Resolution R-9-67. Approximately 29 years later, in 1996, the Mayor and Council adopted the Neighborhood Five Land Use Plan that recommended changing the Property's land use designation from Industrial-Research-Office to Commercial and rezoning it from the E-1 Zone to the C-2 Zone (evidence that the uses allowed in the C-2 Zone are not appropriate for the Property). The Neighborhood Five Land Use Plan became part of the 1997 Master Plan. A copy of the relevant pages of the 1997 Master Plan is attached as Exhibit 1. The 1997 Master Plan recommendation for the Property states the following:

**Retain** part of Lot 2, Block C of Diamonds Farms (Map Designation 7) as **industrial-research-office** (Option A) or **redesignate to commercial** (Option B). Watkins-Johnson Corporation, owner of Lot 2, received site plan approval for this site in 1973 and the vacant portion is part of their stormwater management system. This vacant 3.3 acres could be developed with a commercial use (Option B) if the property were subdivided and a new storm water management system was completed. By redesignating part of Lot 2 commercial, a restaurant or retail uses, compatible with Quince Orchard Plaza, could occur.

**Land Use and Zoning Actions**

- Adopted commercial designation (Option B)
- Property rezoned to C-2

Prior to the completion of the 1997 Master Plan, the Mayor and Council chose to adopt the commercial designation and rezone the Property from the E-1 Zone to the C-2 Zone as part of a comprehensive rezoning of Neighborhood Five in 1996.

The assumptions made by the Mayor and Council at the time of the rezoning of the Property were that the Property “could be developed with a commercial use (Option B) if the property were subdivided and a new storm water management system was completed” and that “a restaurant or retail uses, compatible with Quince Orchard Plaza, could occur” by redesignating the Property commercial. As discussed below, events that occurred subsequent to the time of the comprehensive rezoning show that the Council’s assumptions that were the basis for comprehensively rezoning the Property from E-1 to C-2 in 1996 were proven incorrect. After the comprehensive rezoning, the Property was subdivided and a new stormwater management facility was approved for a 3-story office building in 2002 for Site Plan No. SP-02-0006. However, the office building was never constructed. No restaurant or retail uses, or any other commercial use have developed on the Property for the last 17 years and notwithstanding steady marketing efforts, the Property remains vacant since the Property was comprehensively rezoned to the C-2 Zone. Therefore, these events provide evidence showing that the assumptions made by the Mayor and Council at the time of the comprehensive rezoning in 1996 were proven incorrect.

Since the 1997 Master Plan, the Property has been the subject of two master plan amendments by the Mayor and Council, and in both instances, the Mayor and Council established that the comprehensive rezoning in 1996 was a mistake in that the assumptions made at that time supporting the rezoning to the C-2 Zone proved to be erroneous. In both instances, the Mayor and Council concluded as a matter of legislative policy that the correct land use and zoning recommendations for the Property should be the prior “Industrial-Research-Office” land use designation and the E-1 Zone, as reflected in both the 2003 and 2009 Master Plans (relevant

pages of which are attached as Exhibit 2 and Exhibit 3, respectively). The 2003 Master Plan (Exhibit 2) specifically recommends the following for the Property:

This land is located at the corner of Bank St & Firstfield Road and is a former storm water management pond. This property was recently approved as an office building and subdivided into lots 8 and 9.

In the 1997 Master Plan, part of this lot was designated Commercial and part was designated Industrial-Research-Office.

**Land Use and Zoning Actions:**

- Adopt Industrial-Research-Office land use designation
- Recommend Zoning change from C-2 to E-1.

In addition, the 2009 Master Plan (Exhibit 3) specifically recommends the following for the Property (referred to as the “northern portion of the lot” below):

This 4.6-acre lot is located at the corner of Bank St & Firstfield Road and is a former storm water management pond. In the 1997 Master Plan, part of this lot was designated Commercial and part was designated Industrial-Research-Office. This property was later approved for development with an office building and subdivided into lots 8 and 9. The northern portion of the lot is zoned C-2 and the southern portion is zoned E-1. It is recommended that the lot be given a uniform land use designation and zoning category.

...

**Land Use and Zoning Actions:**

- Adopt Industrial-Research-Office land use designation
- Recommend zoning changes from C-2 to E-1 for the northern portion of the lot
- Retain E-1 zoning on the southern portion of the lot.

The change in the land use and zoning recommendations for the Property to be rezoned back to the E-1 Zone in two separate master plans (the 2003 and 2009 Master Plans) adopted by the Mayor and Council provides strong evidence that a mistake in the comprehensive rezoning of the Property to the C-2 Zone in 1996 was made.

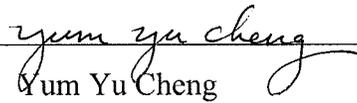
The Court of Appeals has held that when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize rezoning. *Mayor & Council of Rockville v. Stone*, 271 Md. 655, 662 (1974). Furthermore, a zoning map should be in accordance with a comprehensive plan. *Hewitt v. County Comm'rs.*, 220 Md. 48, 58 (1959). Unfortunately, the Mayor and Council did not comprehensively rezone the Property after the adoption of the 2003 and 2009 Master Plans to correct the mistake made in 1996 and to zone the Property consistent with the prevailing comprehensive master plan for the area and the Property (and this void in the City not comprehensively enacting a zoning change to implement the amendments made in the 2003 and 2009 Master Plans could in itself be deemed a mistake). This Rezoning Application is both necessary and appropriate in order to implement the changes in land use and zoning adopted by the Mayor and Council with both the 2003 and 2009 Master Plans, which changes are predicated by findings made by the Mayor and Council in both Master Plans that the comprehensive rezoning of the Property to the C-2 Zone in 1996 was a mistake. To correct the omission by the Mayor and Council in not adopting a comprehensive zoning map amendment to implement the changes made in both the 2003 and 2009 Master Plans, this Rezoning Application is needed to effectuate the rezoning of the Property from the C-2 Zone to the E-1 Zone, consistent with the recommendations of the 2003 and 2009 Master Plans.

Accordingly, for the reasons stated above and in the Applicant's Statement filed with the Rezoning Application, and to bring the zoning of the Property into conformance with the prevailing Master Plan regulating the Property, the Applicant respectfully requests that the Mayor and Council grant approval of this request to rezone the Property from the C-2 Zone to the E-1 Zone.

Respectfully submitted,

**LINOWES AND BLOCHER LLP**

By:   
C. Robert Dalrymple

By:   
Yum Yu Cheng

7200 Wisconsin Avenue  
Suite 800  
Bethesda, MD 20814  
(301) 961-5219

Attorneys for Applicant,  
Siena Corporation

\*\*L&B v/.

CITY OF GAITHERSBURG

NEIGHBORHOOD FIVE  
LAND USE PLAN

A MASTER PLAN ELEMENT



*Gaithersburg*

Published July 1997

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NEIGHBORHOOD FIVE LAND USE PLAN  
Adopted April 1996

MAYOR AND CITY COUNCIL

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CITY MANAGER

David B. Humpton

PLANNING AND CODE ADMINISTRATION

Jennifer Russel, Director

Long-Range Planning Team:

Michael La Place, Director

Glenn Mlaker, Planner\*

Publication Team:

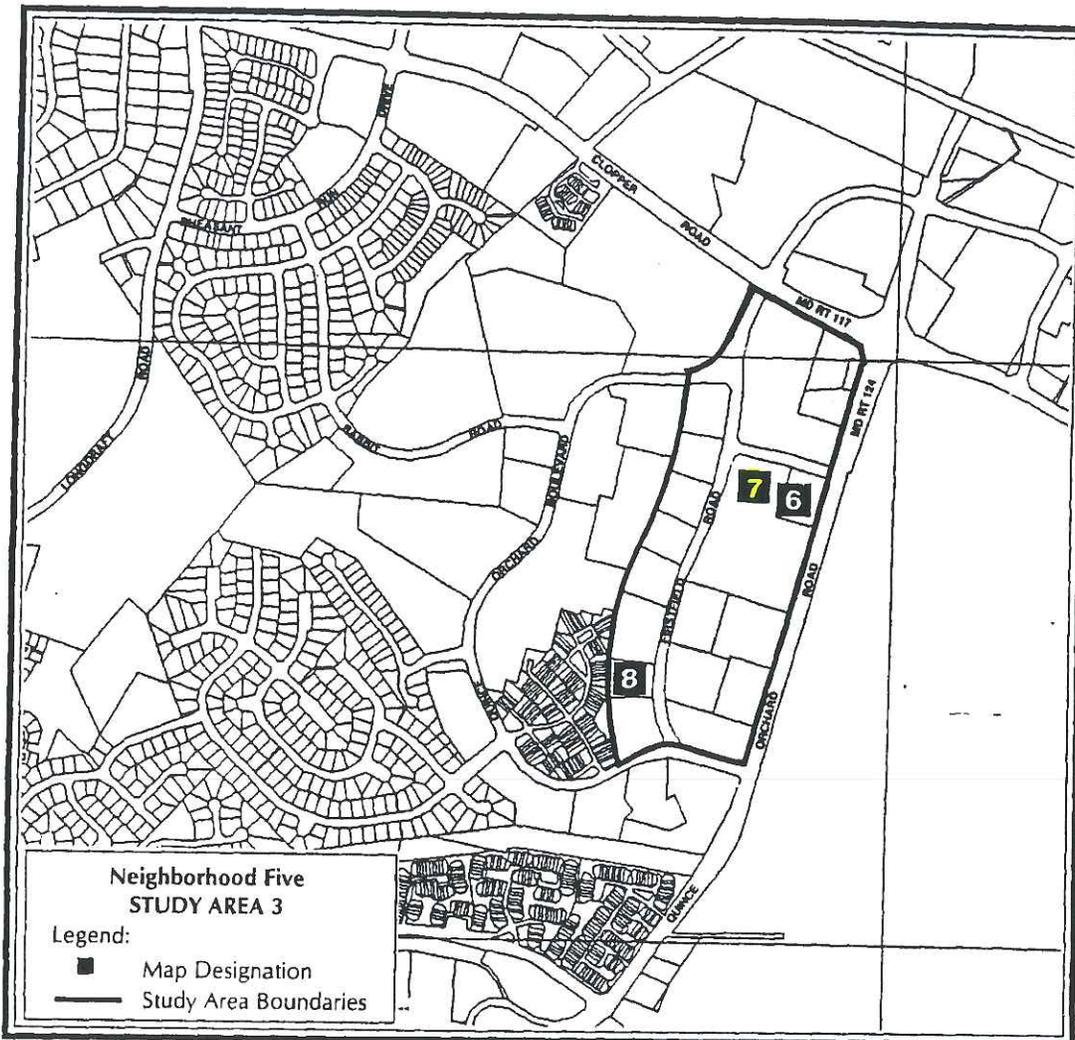
Patricia Patula, Publication Coordinator

María Fullerton, Graphics and Layout

Manisha Tewari, Geographic Information System

\* Principal Author

**STUDY AREA 3**



Total Area: 44 Acres  
 Predominant Land Use: Industrial-Research-Office

This study area is bounded on the north by Clopper Road (Maryland Route 117), to the east by Quince Orchard Road (Maryland Route 124), on the south by Quince Orchard Boulevard, and on the west by the rear property lines of the E-1 zoned office buildings and Quince Orchard Boulevard.

The northern portion of this study area consists of Quince Orchard Plaza which is a mixed commercial area comprised of a 245,657 square foot retail center, two freestanding restaurants and a seven-story 82,356 square foot office building. The middle and western parcels along Firstfield Road and Quince Orchard Road are industrial/research office buildings. The zoning consists of mainly E-1 and C-2.

Land use options, identified by map designation numbers on the Neighborhood Five Study Area 3 map on page 13 and listed in the chart beginning on page 42, are described as follows:

### Land Use Options

- 6** Retain Lot 1, Block C of Diamond Farms (Map Designation 6) as **industrial-research-office** (Option A) or **redesignate to commercial** (Option B). On Lot 1, there currently exists an office building that contains a bank, several medical offices, and other office related businesses. Option A should be selected if this site, currently zoned E-1, is viewed as an employment center. Option B recognizes that some of the uses and the orientation of this building relate better to the adjoining commercial area of Quince Orchard Plaza on the north side of Bank Street. A redesignation to commercial might suggest C-2 as an alternate zoning.

#### Land Use and Zoning Actions

- Adopted commercial designation (Option B)
- Property rezoned to C-2

- 7** Retain part of Lot 2, Block C of Diamonds Farms (Map Designation 7) as **industrial-research-office** (Option A) or **redesignate to commercial** (Option B). Watkins-Johnson Corporation, owner of Lot 2, received site plan approval for this site in 1973 and the vacant portion is part of their stormwater management system. This vacant 3.3 acres could be developed with a commercial use (Option B) if the property were subdivided and a new storm water management system was completed. By redesignating part of Lot 2 commercial, a restaurant or retail uses, compatible with Quince Orchard Plaza, could occur.

#### Land Use and Zoning Actions

- Adopted commercial designation (Option B)
- Property rezoned to C-2

- 8** Redesignate P551 as **institutional** (Map Designation 8). This parcel contains the 10,340 square foot Diamond Farms Post Office on 1.84 acres. The redesignation from industrial-research-office is logical due to the long-term commitment of the United States Postal Service.

#### Land Use and Zoning Actions

- Adopted institutional designation
- Zoning to remain E-1

NEIGHBORHOOD FIVE

LAND USE PLAN DESIGNATIONS AND COMPREHENSIVE REZONING  
1996

NEIGHBORHOOD FIVE LAND USE PLAN 1996

CITY OF GAITHERSBURG

MAP DESIG	STUDY AREA	SUBDIVISION/ PARCEL/LOT	ACRES	PROPERTY OWNERS	1994 ZONING	1974 LAND USE DESIGNATION	1994 DRAFT PLAN LAND USE DESIGNATION	PLANNING COMMISSION RECOMMENDATION	MAYOR & COUNCIL ADOPTION	ADOPTED ZONING
1	1	N746	2.23	City of Gaithersburg, Mont Co.	C-2	Comm	High Den Res	Inst	Inst	C - 2
2	1	Part of N770 Lot 10	1.06	McDonald Corporation	C-2	Comm	Comm	Comm	Comm	C - 2
3	1	N962, N904	2.21	Quince Tree Assoc. Partnership	C-2	Comm	Comm	Comm	Comm	C - 2
4	1	N39	6.46	Quince Tree Assoc. Partnership	C-2	Ind-Rsch-Off	Comm	Comm	Comm	C - 2
5	2	P15, P41, P67	2.60	Craig Dart Howard M. Mills	R-200 (County)	Low Den Res (County)	Low Den Res (Opt A) Res-Off (Opt B) Comm-Off-Res (Opt C) Comm (Option D)	Comm-Off-Res	Comm-Off-Res	
6	3	Lot 1 Block C	2.20	One Bank St. Ltd. Partnership	E-1	Ind-Rsch-Off Comm (Opt B)	Ind-Rsch-Off (Opt A)	Comm	Comm	C-2
7	3	Part of Lot 2 Block C	3.30	Watkins-Johnson	E-1	Ind-Rsch-Off	Ind-Rsch-Off (Opt A) Comm (Opt B)	Comm	Comm	C-2
8	3	P551	1.84	United States Postal Service	E-1	Ind-Rsch-Off	Inst	Inst	Inst	E - 1



*Gaithersburg*  
*A Character Counts! City*

**City of Gaithersburg**  
**LAND USE PLAN**

**2003**  
MASTER PLAN

**Exhibit 2**

# **CITY OF GAITHERSBURG 2003 MASTER PLAN**

## **MAYOR AND CITY COUNCIL**

Mayor Sidney A. Katz  
Council Vice President Ann T. Somerset  
Council Member Stanley J. Alster  
Council Member Geri Edens  
Council Member Henry F. Marraffa, Jr.  
Council Member John B. Schlichting

## **PLANNING COMMISSION**

Chairperson Blanche Keller  
Commissioner John Bauer  
Commissioner Victor Hicks  
Commissioner Leonard Levy  
Commissioner Danielle L. Winborne

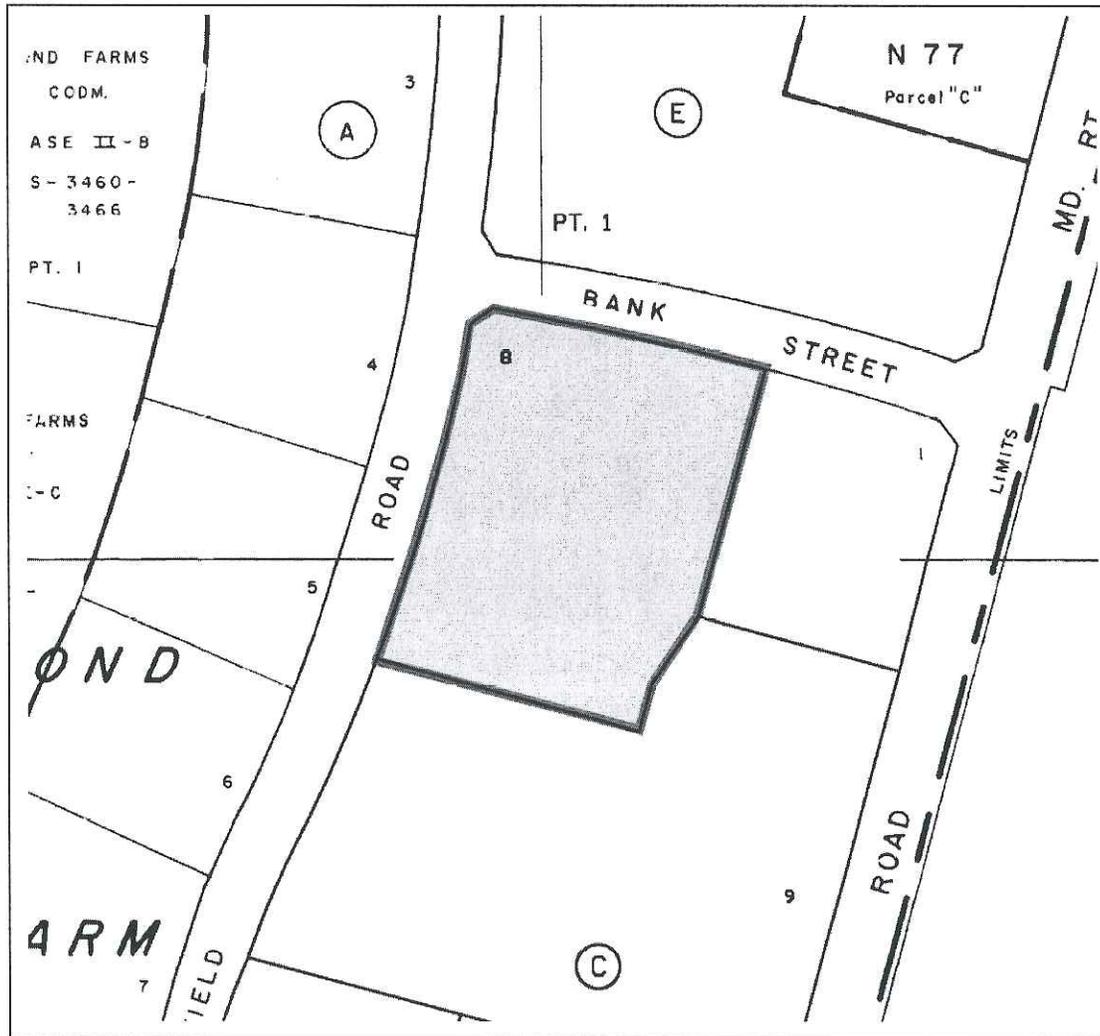
## **CITY MANAGER**

David B. Humpton

## **PLANNING AND CODE ADMINISTRATION**

Long Range Planning Team:  
Mark DePoe, Long Range Planning Director  
Kirk Eby, GIS Planner  
Daniel Janousek, Planner

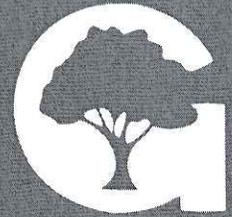
51. Designate Lot 8 Block C Diamond Farm as Industrial-Research-Office.



This land is located at the corner of Bank St & Firstfield Road and is a former storm water management pond. This property was recently approved as an office building and subdivided into lots 8 and 9. In the 1997 Master Plan, part of this lot was designated Commercial and part was designated Industrial-Research-Office.

**Land Use and Zoning Actions:**

- Adopt Industrial-Research-Office land use designation
- Recommend Zoning change from C-2 to E-1.



*Gaithersburg*  
*A Character Counts! City*

**City of Gaithersburg**

# **LAND USE PLAN**

**A Master Plan Element**

*Published December 20, 2011*

**2009**  
MASTER PLAN

Exhibit 3

# **CITY OF GAITHERSBURG 2009 MASTER PLAN**

## **LAND USE ELEMENT**

Planning Commission Approval: 11/16/2011, Resolution PCR-1-11  
Mayor and City Council Adoption: 12/19/2011, Resolution R-88-11

### **MAYOR AND CITY COUNCIL**

Mayor Sidney A. Katz  
Council Vice President Ryan Spiegel  
Jud Ashman  
Cathy C. Drzyzgula  
Henry F. Marraffa, Jr.  
Michael A. Sesma

### **PLANNING COMMISSION**

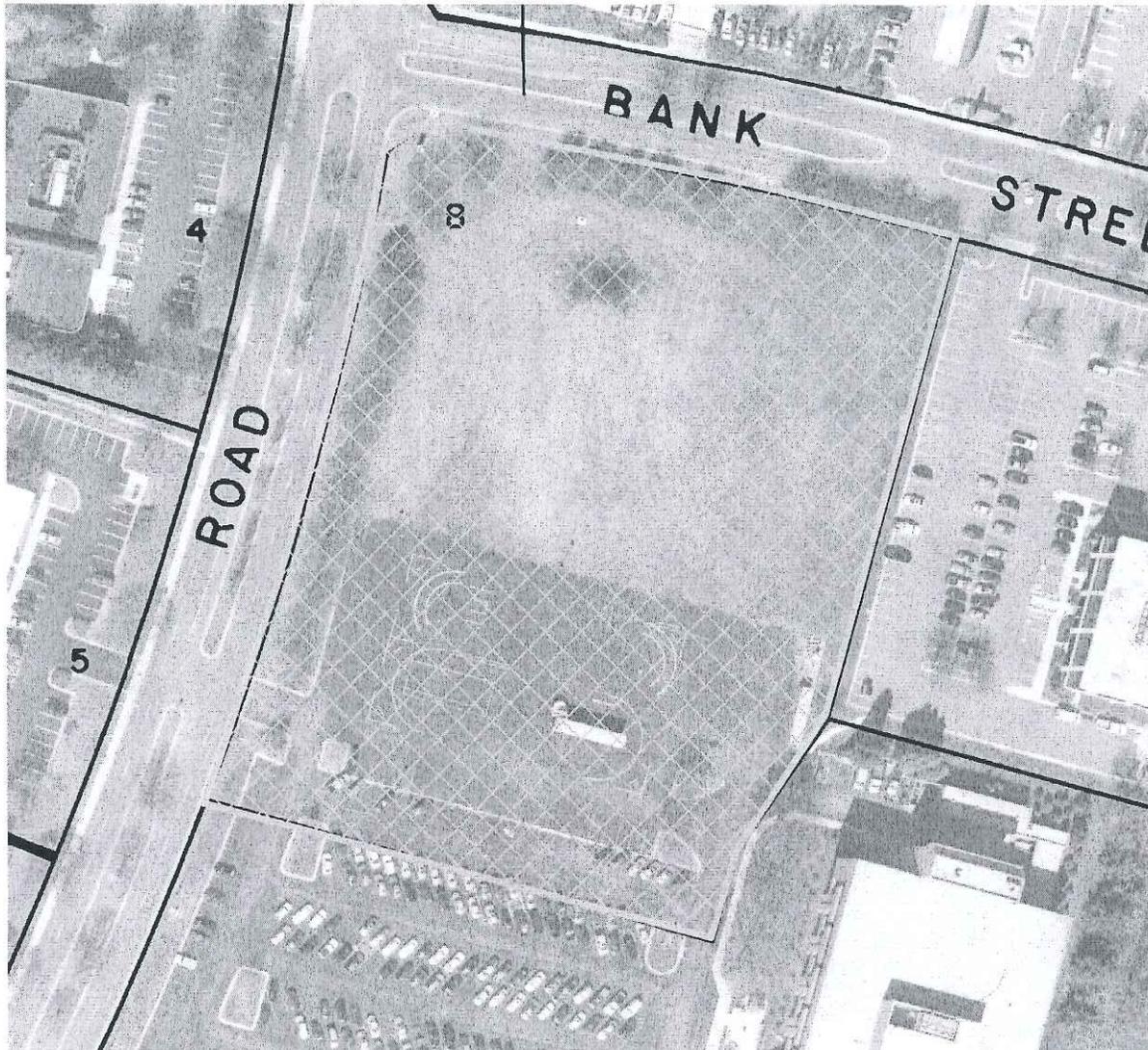
Chair John Bauer  
Vice-Chair Lloyd S. Kaufman  
Commissioner Matthew Hopkins  
Commissioner Geraldine Lanier  
Commissioner Danielle L. Winborne  
Alternate Commissioner Joseph Coratola

### **CITY MANAGER**

Angel L. Jones

### **PLANNING AND CODE ADMINISTRATION**

Raymond Robinson III, Lead, Long Range Planning  
Kirk Eby, GIS Planner

**10. 14 Firstfield Rd, 1 parcel, 4.6 acres****Lot 8 Block C Diamond Farm**

This 4.6-acre lot is located at the corner of Bank St & Firstfield Road and is a former storm water management pond. In the 1997 Master Plan, part of this lot was designated Commercial and part was designated Industrial-Research-Office. This property was later approved for development with an office building and subdivided into lots 8 and 9. The northern portion of the lot is zoned C-2 and the southern portion is zoned E-1. It is recommended that the lot be given a uniform land use designation and zoning category.

**Applicable Strategic Direction: Planning**

**Land Use and Zoning Actions:**

- Adopt Industrial-Research-Office land use designation
- Recommend zoning change from C-2 to E-1 for the northern portion of the lot
- Retain E-1 zoning on the southern portion of the lot

## MEMORANDUM

TO: Mayor and City Council  
Planning Commission

FROM: Frank Johnson, Assistant City Attorney

CC: Tony Tomasello, City Manager  
N. Lynn Board, City Attorney  
John Schlichting, Director of Planning and Code Administration

RE: Siena Corporation Application for Rezoning – 14 Firstfield Road

DATE: March 11, 2014

Siena Corporation has applied for rezoning of a 4.6 acre lot at 14 Firstfield Road to E-1 zoning. The property is currently partly zoned C-2; about 1.47 acres on the southern portion is already zoned E-1. In making their rezoning application, Siena Corporation asserts the current C-2 zoning is a mistake, as the property has not developed as the 1997 master plan predicted. This Memorandum updates the legal issues involved in considering whether the zoning is a mistake and in any rezoning.

### 1. Background

Siena Corporation has purchased the lot at 14 Firstfield Road, at the corner of Firstfield Road and Bank Street. It is partly zoned C-2; the southern portion, about 1.47 acres, is zoned E-1. Adjoining property further south is zoned E-1; property across Firstfield Road is zoned C-2, as is the adjacent lot on the side of 14 Firstfield Road, where a bank operates. Siena has applied to have the lot rezoned entirely to E-1 zoning.

No development has occurred on the property, and Siena Corporation indicates they wish to develop a 150,000 square-foot ezStorage facility. Such a warehousing facility would not be permitted within the C-2 zone. But such a facility would be permitted in E-1, so Siena seeks that zoning. The C-2 and E-1 zones are Euclidian zones, which cannot be changed outside of comprehensive rezoning, unless there is a showing of change or mistake. *Mayor and Council of Rockville v. Rylyns Enterprises*, 372 Md. 514 (2002), citing *Stratakis v. Beauchamp*, 268 Md. 643 (1973). Further, §4-204 of the Land Use Article of the Annotate Code of Maryland provides that an amendment to the zoning classification for property may be granted upon a finding by the legislative body that there was a substantial change in the character of the neighborhood where the property is located or a mistake in the existing zoning classification.

## 2. Siena's Assertion of Mistake

Siena in its initial statement asserts the property “for whatever reason” was not rezoned to the recommended E-1 zoning after both the 2003 and 2009 master plan adoptions, and argues rezoning to E-1 is necessary and appropriate. Siena also argues that the 2003 and 2009 recommendations show the City Council made a mistake in rezoning the property C-2 in the first place, in 1997.

Siena filed a Supplemental Statement, in which it further argues how the Mayor and City Council made a mistake in the original 1997 rezoning of the property to the C-2 zone. Siena argues the Council based its rezoning decision on statements in the 1996 Neighborhood Five Land Use Plan, which they adopted and which became part of the 1997 Master Plan and which stated that the property “could be developed with a commercial use,” and that a restaurant or retail uses compatible with Quince Orchard Plaza – the shopping center across the street – could occur. Siena asserts subsequent events have proven these statements that such retail “could occur” were incorrect, as no retail, restaurant or any other commercial use has developed. Siena also argues that the 2003 and 2009 Master Plan recommendations to rezone the property to E-1 also provide “strong evidence” that the 1997 C-2 rezoning was a mistake.

## 3. Standards for Showing Mistake

*Presumption of zoning validity.* There is a “presumption of validity accorded to a comprehensive zoning” that must be overcome by evidence of a mistake or neighborhood change. *Boyce v. Sembly*, 25 Md. App. 43 (1975). Additionally, there is no requirement that zoning and the master plans conform. *People's Counsel of Baltimore County v. Beachwood I Ltd. Ptnrshp.*, 107 Md. App. 627 (1995).

*Burden is on the Applicant to show mistake.* The applicant has the burden to provide “strong evidence” of a mistake to overcome the presumption that the zoning is valid and to justify a piecemeal rezoning affecting one property. *Stratakis*, 268 Md. at 652-53. This can be a heavy burden, *Anne Arundel County v. Maryland National Bank*, 32 Md. App. 437 (1976), that requires direct evidence of an “actual and basic mistake” by the legislative body in designating the property’s zoning classification. *Bartnik v. Calvert County Hospital*, 262 Md. 434 (1971). But it should be noted the courts have held a “more liberal,” less stringent burden can be used when property would, as in this case, be reclassified among commercial categories – rather than being changed from a residential to a commercial zone. *Tennison v. Shomette*, 38 Md. App. 1 (1977).

In any event, evidence of the error must be demonstrated through the legislative body’s prior statements and findings. *Tennison*, 38 Md. App. at 7-8. And rather than a simple “mistake of judgment,” the evidence must show that “underlying assumptions or premises relied upon” were erroneous. *Mayor and Council of Rockville v. Rylins Enterprises*, 372 Md. 514 (2002).

*Possible mistakes may include inaccuracies, misunderstandings and erroneous predictions.* Mistakes can include the legislative body's failure to take into account existing facts or a misunderstanding of existing facts. *Beachwood*, 107 Md. App. at 645. Mistakes can also result from the failure to accurately predict future events that would bear on a parcel's land use – either because the legislative body failed to consider certain facts, or their prediction became inaccurate due to later events “which the Council could not take account of.” *Anne Arundel County v. A-PAC, Ltd.*, 67 Md. App. 122 (1985).

Mistakes based on inaccurate predictions are based on “assumptions upon which a particular use was predicated” which are proven “with the passage of time to be incorrect.” *A-PAC, Ltd.*, 67 Md. App. at 127, *citing Rockville v. Stone*, 271 Md. 655, 662 (1975) and *Boyce*, 25 Md. App. at 51. The evidence would simply have to show the legislative body based zoning on a prediction that turned out to be incorrect. *White v. Spring*, 109 Md. App. 692 (1996).

While mistakes are usually factual, they can consist of legal errors, such as those including the legislative body's zoning authority in particular cases. *Rylyns Enterprises*, 372 Md. at 574-75. Regardless of the basis, the evidence must show what incorrect factual or legal presumptions were made, and that they were relied upon by the legislative body in making the zoning decision in question. *White v. Spring*, 109 Md. App. 692(1996).

4. If mistake is shown, the Mayor and City Council would have discretion either to rezone to the E-1 zone or leave the property C-2.

When a mistake is proven in a Euclidean zone, piecemeal rezoning of a single affected property such as 14 Firstfield Road is an option. *Strakatis*, 268 Md. 652-53. But the legislative body would not likely be required to make such a change. *White*, 109 Md. App. at 708; *Chesapeake Ranch Club v. Fulcher*, 48 Md. App. 223 (1981). Such a change is only required when the evidence shows the property would lose “all reasonable use” unless it is rezoned. *People's Counsel of Baltimore County v. Prosser*, 119 Md. App. 150 (1998). Thus, even if a mistake is proven, the rezoning decision would remain within the City Council's discretion barring proof the property would have no reasonable use if it is not entirely rezoned to E-1.

Additionally, only “rectification of the mistake” would be permitted. *Mack v. Crandell*, 244 Md. 193 (1966). Thus, if the City Council finds a mistake, it would only have the ability to (i) leave the property in the C-2 zone despite the mistake, or (ii) correct the mistake and rezone the property into the E-1 zone. *Overton v. Board of County Commissioners of Prince George's County*, 225 Md. 212 (1961).

QUINCE ORCHARD BLV

14 Firstfield Road  
Zoning Map Amendment Application

FIRSTFIELD RD

BANK ST

124

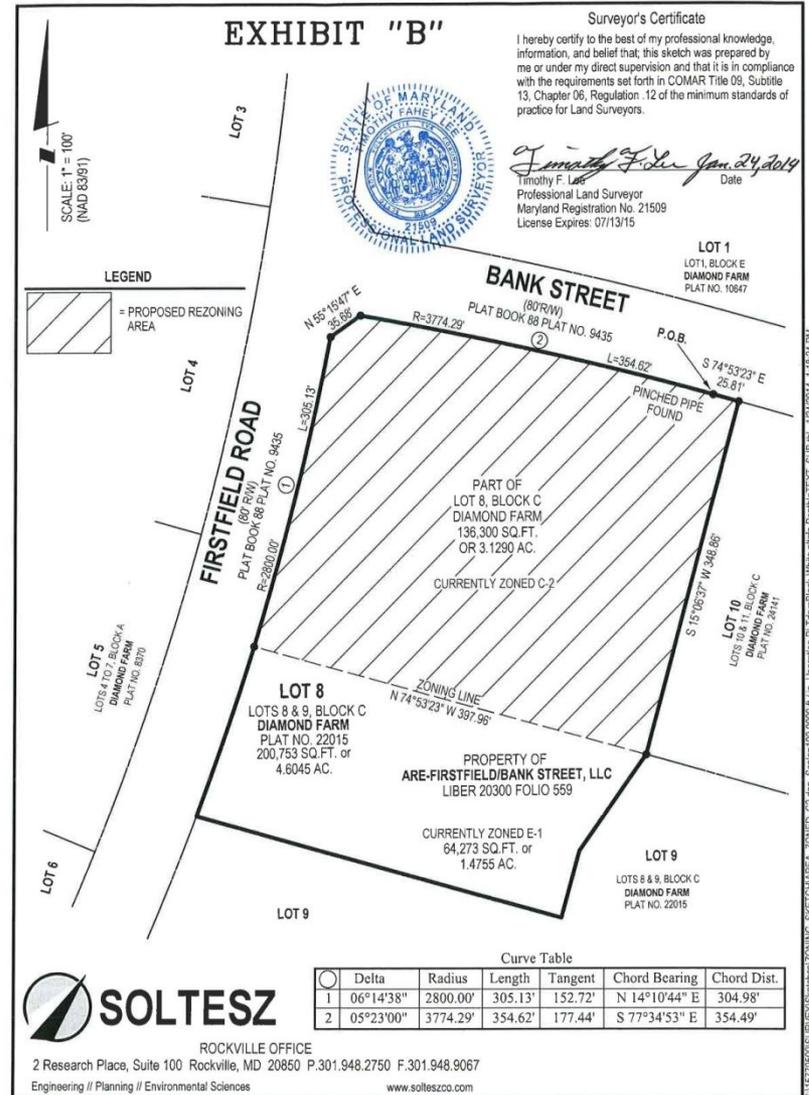
QUINCE ORCHARD RD

Joint Hearing - MCC & PC  
Z-4355-2014  
Exhibit #13

# Rezoning Request

- The property is currently split-zoned with the southern portion zoned E-1 (Urban Employment) and the northern portion zoned C-2 (General Commercial).
- The request is to rezone the northern portion (3.13 acres) from C-2 to E-1 in conformance with the current master plan recommendation for this lot to be given a uniform E-1 zoning category.

Joint Hearing - MCC & PC  
Z-4355-2014  
Exhibit #14



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# Basis for Rezoning

- Maryland law allows a property to be rezoned from one Euclidean to another Euclidean zone (C-2 to E-1 in this case) based on either a substantial change in the character of the neighborhood where the property is located or a mistake in the existing zoning classification.
- The basis for this Rezoning Application is a mistake in the existing zoning classification.

# Mistake in Zoning

- Maryland case law provides that mistake in zoning can be demonstrated by providing evidence of events that occurred subsequent to the time of the comprehensive zoning of the property to C-2, which have proven that the Council's assumptions and premises were incorrect with the passage of time.
- We will review the history of the property, the assumptions made by the Council, and the events that occurred proving those assumptions were incorrect.

# History of Property

- **1967** - Property annexed into the City by Resolution R-21-67 and rezoned from the C-P (Commercial Office Park) Zone to the then newly established E-1 (Urban Employment) Zone by Resolution R-9-67.
- **1996** - Mayor and Council adopted the Neighborhood Five Land Use Plan that recommended retaining the Industrial-Research-Office land use designation or redesignating the Property to Commercial, and then adopted the Commercial designation and comprehensively rezoned the Property from E-1 to C-2.
- **1997 Master Plan** - The Neighborhood Five Land Use Plan became part of this master plan which made the following recommendation for the Property:

**Retain** part of Lot 2, Block C of Diamonds Farms (Map Designation 7) as **industrial-research-office** (Option A) or **redesignate to commercial** (Option B). Watkins-Johnson Corporation, owner of Lot 2, received site plan approval for this site in 1973 and the vacant portion is part of their stormwater management system. This vacant 3.3 acres could be developed with a commercial use (Option B) if the property were subdivided and a new storm water management system was completed. By redesignating part of Lot 2 commercial, a restaurant or retail uses, compatible with Quince Orchard Plaza, could occur.

## **Land Use and Zoning Actions**

- Adopted commercial designation (Option B)
- Property rezoned to C-2

# Assumptions of the Council

- Assumptions made by the Council at the time of the rezoning of the Property were:
  - the Property “could be developed with a commercial use (Option B) if the property were subdivided and a new storm water management system was completed”; and
  - “a restaurant or retail uses, compatible with Quince Orchard Plaza, could occur” by redesignating the Property commercial.

# Subsequent Events Proving Assumptions Incorrect

- Events that occurred subsequent to the time of the comprehensive rezoning show that the Council's assumptions that were the basis for comprehensively rezoning the Property from E-1 to C-2 in 1996 were proven incorrect:
  - The Property was subdivided and a new stormwater management facility was approved for a 3-story office building in 2002 (Site Plan No. SP-02-0006). However, the office building was never constructed.
  - No restaurant or retail uses, or any other commercial use have developed on the Property and notwithstanding steady marketing efforts, the Property remains vacant since the Property was comprehensively rezoned to the C-2 Zone.

# Subsequent Events Proving Assumptions Incorrect

- Since the 1997 Master Plan, the Property has been the subject of two master plan amendments.
- In both master plan amendments, the Mayor and Council established that the comprehensive rezoning in 1996 was a mistake in that the assumptions made at that time supporting the rezoning to the C-2 Zone proved to be erroneous.
- In both instances, the Mayor and Council concluded as a matter of legislative policy that the correct land use and zoning recommendations for the Property should be the prior “Industrial-Research-Office” land use designation and the E-1 Zone, as reflected in both the 2003 and 2009 Master Plans.

# **Subsequent Events Proving Assumptions Incorrect**

- **2003 Master Plan Recommendations:**

This land is located at the corner of Bank St & Firstfield Road and is a former storm water management pond. This property was recently approved as an office building and subdivided into lots 8 and 9. In the 1997 Master Plan, part of this lot was designated Commercial and part was designated Industrial-Research-Office.

### **Land Use and Zoning Actions:**

- Adopt Industrial-Research-Office land use designation
- Recommend Zoning change from C-2 to E-1.

# Subsequent Events Proving Assumptions Incorrect

- **2009 Master Plan Recommendations**

(the Property is referred to as the “northern portion of the lot”):

This 4.6-acre lot is located at the corner of Bank St & Firstfield Road and is a former storm water management pond. In the 1997 Master Plan, part of this lot was designated Commercial and part was designated Industrial-Research-Office. This property was later approved for development with an office building and subdivided into lots 8 and 9. The northern portion of the lot is zoned C-2 and the southern portion is zoned E-1. It is recommended that the lot be given a uniform land use designation and zoning category.

...

### **Land Use and Zoning Actions:**

- Adopt Industrial-Research-Office land use designation
- Recommend zoning changes from C-2 to E-1 for the northern portion of the lot
- Retain E-1 zoning on the southern portion of the lot

# Finding of Mistake

- The change in the land use and zoning recommendations for the Property to be rezoned back to the E-1 Zone in 2 separate master plans (the 2003 and 2009 Master Plans) adopted by the Mayor & Council provides strong evidence that a mistake in the comprehensive rezoning of the Property to the C-2 Zone in 1996 was made.
- Accordingly, based on the subsequent events that occurred after the comprehensive rezoning of the Property from E-1 to C-2 in 1996 proving the assumptions made at the time of the comprehensive rezoning were incorrect, the Council can make a finding of mistake.

# Finding of Facts

Maryland law provides that if the purpose and effect of a proposed map amendment is to change a zoning classification, the legislative body is required to make findings of fact that address:

- 1) population change;
- 2) availability of public facilities;
- 3) present and future transportation patterns;
- 4) compatibility with existing and proposed development for the area;
- 5) recommendation of the planning commission; and
- 6) relationship of the proposed amendment to the local jurisdiction's plan.

## **Finding of Facts: (1) Population Change**

- According to the City's "Dwelling Units and Estimated Population" report dated July 2013, the City's current population is based on occupied dwelling units and the City's projected future population is based on completion of all approved residential units.
- Since the rezoning request is from a commercial zoning (C-2) to an urban employment zoning (E-1), the change in population will be minimal.

## **Finding of Facts: (2) Availability of Public Facilities**

- On October 2, 2002, the Planning Commission approved a site plan for a 3-story office building on the Property (Site Plan No. SP-02-0006).
- It was determined at the time that the Property can be adequately served by the public facilities.
- The proposed use is a less intensive use than the approved office building.
- Therefore, the public facilities found to be adequate for the office use will be adequate for the proposed use.
- Also, there will be no impact on the public education facilities.

# Finding of Facts: (3) Present & Future

## Transportation Patterns

- Since the Property is vacant, there is currently no traffic going in and out of the Property.
- Firstfield Road (adjacent to the western boundary of the Property) is classified as a Collector Street with a minimum right-of-way of 80 feet and recommended for four lanes, which have been built.
- Bank Street (adjacent to the northern boundary of the Property) is classified as a Minor Collector with a right-of-way of 80 feet and recommended for four lanes, which also have been built.
- The Transportation Master Plan lists the closest intersection to the Property (MD 117 and Firstfield Road) as adequate during both the AM and PM peak hour trips and that the Property is located near a Ride-On bus stop serving Ride-On Bus Route 56.

## Finding of Facts: (3) Present & Future Transportation Patterns

- The CCT following a 9-mile long alignment from the Shady Grove Metro Rail Station to the Metropolitan Grove MARC Station, with a portion of the alignment along MD 124 just east of the Property. The CCT operations are currently scheduled to begin in the year 2021, but significant planning, design, and construction needs to occur before operations can begin.
- The Bicycle and Pedestrian Plan for the area shows that sidewalk is currently available on the north side of Bank Street and on the west side of Firstfield Road.
- Also, the Transportation Master Plan calls for a proposed bike lane along Firstfield Road and no upgrades are proposed along Bank Street.

# **Finding of Facts: (4) Compatibility with Existing and Proposed Development**

- If the Property is rezoned back to the E-1 Zone, the proposed project will be required to go through the site plan process, which will ensure that the proposed use will be compatible with existing and proposed development for the area.
- The properties to the south and west of the Property are zoned E-1 and developed with office buildings and surface parking spaces; to the east of the Property are properties zoned C-2 and developed with a freestanding bank and an office building; and to the north of the Property are properties zoned C-2 and developed with commercial uses such as a retail shopping center, an office building, and freestanding restaurants.

## **Finding of Facts: (5) Recommendation of the Planning Commission**

- The 2009 Master Plan's land use and zoning recommendations for the Property for the Industrial-Research-Office land use designation and E-1 Zone were approved by the Planning Commission on November 16, 2011 by Resolution PCR-1-11.
- Accordingly, this rezoning request to rezone the Property to the E-1 Zone will achieve the Planning Commission's recommendations for the Property.

## **Finding of Facts: (6) Relationship of Proposed Amendment to Local Jurisdiction's Plan**

- The 2009 Master Plan recommends the Industrial Research-Office land use designation and E-1 Zone for the Property.
- Accordingly, this request to rezone the Property from the C-2 Zone to the E-1 Zone will achieve the 2009 Master Plan's recommendations for the Property.

# Public Interest

It would be in the public interest to grant this rezoning request because:

- 1) The rezoning will achieve the Master Plan recommendation to rezone the Property from the C-2 Zone to the E-1 Zone.
- 2) The rezoning will allow the proposed use on the Property and the development of an attractive, functional building that will be compatible with the surrounding area or neighborhood. As a result of the proposed improvement, the tax assessment for the Property will increase, providing needed revenue to the State of Maryland, Montgomery County, and City of Gaithersburg.
- 3) The rezoning will allow a less intensive use than the uses allowed in the commercial zone that can be adequately served by the public facilities and have no impact on the public education facilities.
- 4) The rezoning will allow the proposed use that will have minimal impact on population and traffic.

## Gregory Mann

---

**From:** John Schlichting  
**Sent:** Monday, March 24, 2014 4:51 PM  
**To:** Lauren Pruss; Trudy Schwarz; Gregory Mann  
**Subject:** FW: Opposed to Zone Change on Firstfield Road

FYI.

---

**From:** Sidney Katz  
**Sent:** Monday, March 24, 2014 10:29 AM  
**To:** Pamela Parmer  
**Cc:** Tony Tomasello; Doris Stokes; Monica Sanchez; Sidney Katz; Lynn Board; Cindy Hines; Dennis Enslinger; Cathy Drzyzgula; Michael Sesma; Henry Marraffa - External; Sidney Katz; Jud & Lee Ashman; Ryan Spiegel; John Schlichting  
**Subject:** Re: Opposed to Zone Change on Firstfield Road

Ms. Parmer,  
Thank you for your email. I am forwarding it to the city council and city staff so that they are aware of your thoughts as well. Sincerely,  
Sidney Katz

Sent from my iPhone

On Mar 24, 2014, at 10:16 AM, "Pamela Parmer" <[parmerpj@yahoo.com](mailto:parmerpj@yahoo.com)> wrote:

Dear Mayor Katz,  
I would like to register my opposition to changing the zone classification for 3.13 acres at 14 Firstfield Road.

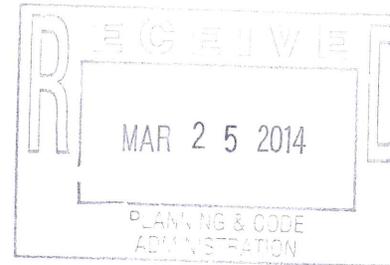
I think it's obvious that warehouse use is not compatible with the surrounding area and in my opinion will not only be unsightly, but will also encourage more unsightly facilities. I realize that my opposition to this change is likely futile and we will ultimately have an ugly, ezStorage facility in our neighborhood anyway. I expect you would feel the same if you still lived in West Riding.

I hope the zoning change fees and taxes to Siena Corp of Columbia will discourage them from purchasing the land; and that they move on to an industrial area where no zoning change would be required and where our community is not degraded and devalued as a result.

Pam Parmer  
728 Tiffany Court  
Gaithersburg MD 20878

***Paul and JoAnn Schimke***  
***734 Tiffany Court, Gaithersburg MD 20878***

March 22, 2014



Dear Mayor Katz:

Subject: Z-4355-2014, 14 Firstfield Road

We have reviewed the application to rezone this property from the C-2 (General Commercial) Zone to the E-1 (Urban Employment) Zone. We strongly urge that this rezoning not be approved, as the entire area around this property is currently being used for commercial use. JoAnn sat on the Neighborhood Five Land Use Plan Committee in 1996 and her committee felt this area should never be zoned for any industrial use because of future transportation plans, specifically the Corridor Cities Transitway. That is why the Neighborhood Five Land Use Plan Committee made the recommendation that this property be rezoned from E-1 (Urban Employment) to C-2 (General Commercial) to the Mayor and City Council. This recommendation was approved after a Public Hearing and adopted as part of the Land Use Element of the 1997 Master Plan.

It is our understanding that a portion of the land at the intersection of Firstfield Road and Bank Street was rezoned to E-1 (Urban Employment) in the Land Use Plan Element of the 2003 Master Plan by the Mayor and City Council at the request of the property owner. The owner received a site plan approval for an office/research facility in 2004, but it was never constructed. However, even though the office/research facility was never constructed, the E-1 (Urban Employment) zone was placed into the Land Use Plan Element of the 2009 Master Plan as well. We believe this was a mistake and that the entire property should be zoned as C-2 (General Commercial).

Thank you for allowing us the opportunity to provide our testimony.

Sincerely,

*R. Palsi*  
*JoAnn Schimke*

Paul and JoAnn Schimke



- cc: Mr. John Bauer, Planning Commission Chairman  
Mr. Gregory Mann, Planner ✓  
Mr. John Schlichting, Planning and Code Administration Director  
Ms. Trudy Schwartz, Community Planning Director  
Mr. Tony Tomasello, City Manager

Joint Hearing - MCC & PC  
Z-4355-2014  
Exhibit #16

## Gregory Mann

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**From:** Sidney Katz  
**Sent:** Sunday, March 30, 2014 6:11 PM  
**To:** Tony Tomasello; John Schlichting  
**Subject:** Fwd: Do we really want a storage facility on First Field Road?

Sent from my iPhone

Begin forwarded message:

**From:** eusebio linda <[leusebio@hotmail.com](mailto:leusebio@hotmail.com)>  
**Date:** March 30, 2014 at 4:51:31 PM EDT  
**To:** Michael Sesma <[MSesma@gaithersburgmd.gov](mailto:MSesma@gaithersburgmd.gov)>  
**Cc:** "[acfjeh2@starpower.net](mailto:acfjeh2@starpower.net)" <[acfjeh2@starpower.net](mailto:acfjeh2@starpower.net)>, "[csl.ldl@erols.com](mailto:csl.ldl@erols.com)" <[csl.ldl@erols.com](mailto:csl.ldl@erols.com)>, "[paulb36@rcn.com](mailto:paulb36@rcn.com)" <[paulb36@rcn.com](mailto:paulb36@rcn.com)>, Tony Tomasello <[TTomasello@gaithersburgmd.gov](mailto:TTomasello@gaithersburgmd.gov)>, John Schlichting <[JSchlichting@gaithersburgmd.gov](mailto:JSchlichting@gaithersburgmd.gov)>, Sidney Katz <[SKatz@gaithersburgmd.gov](mailto:SKatz@gaithersburgmd.gov)>, Henry Marraffa - External <[hmarraffa@starpower.net](mailto:hmarraffa@starpower.net)>, Jud Ashman <[JAshman@gaithersburgmd.gov](mailto:JAshman@gaithersburgmd.gov)>, "[cdrzyzgula@gaithersburgmd.gov](mailto:cdrzyzgula@gaithersburgmd.gov)" <[cdrzyzgula@gaithersburgmd.gov](mailto:cdrzyzgula@gaithersburgmd.gov)>, Ryan Spiegel <[RSpiegel@gaithersburgmd.gov](mailto:RSpiegel@gaithersburgmd.gov)>  
**Subject: Re: Do we really want a storage facility on First Field Road?**

We don't want nor do we need another storage facility near our neighborhood...

Concerned West Riding Homeowner,  
Linda Eusebio

Sent from my iPhone

On Mar 29, 2014, at 9:48 PM, "Michael Sesma" <[MSesma@gaithersburgmd.gov](mailto:MSesma@gaithersburgmd.gov)> wrote:

Anna,

Thank you for sharing your thoughts on this issue. We've received similar messages from others and I expect there will be more. We'll make sure these are included for the record. I share your concerns and made that quite clear during the joint public hearing on Monday.

Best wishes,  
Mike

Michael A. Sesma  
Council Member, City of Gaithersburg

---

**From:** [acfjeh2@starpower.net](mailto:acfjeh2@starpower.net) [[acfjeh2@starpower.net](mailto:acfjeh2@starpower.net)]  
**Sent:** Friday, March 28, 2014 5:21 PM  
**To:** [csl.ldl@erols.com](mailto:csl.ldl@erols.com); [leusebio@hotmail.com](mailto:leusebio@hotmail.com); [paulb36@rcn.com](mailto:paulb36@rcn.com)  
**Cc:** Sidney Katz; Henry Marraffa - External; Jud Ashman;

[cdrzyzgula@gaithersburgmd.gov](mailto:cdrzyzgula@gaithersburgmd.gov); Michael Sesma; Ryan Spiegel  
**Subject:** Fw: Do we really want a storage facility on First Field Road?

I agree with Patsy and Fred Marks. We do not need another storage facility near this neighborhood. Please read what they have to say, and pass this on to other residents in the neighborhood.

Anna Fraker

**From:** [Fred Marks](#)  
**Sent:** Friday, March 28, 2014 3:07 PM  
**To:** [Mark Deuser](#)  
**Cc:** [Bass Carolyn](#) ; [tpmarkey@aol.com](mailto:tpmarkey@aol.com) ; [Anna Fraker](#) ; [Deuser Kathryn](#) ; [Janet Sabins](#) ; [Jaskolski Ray](#) ; [Sabins John](#) ; [Janet Chase](#)  
**Subject:** Re: Do we really want a storage facility on First Field Road?

Here is the e-mail string for the Gaithersburg council copied from the web site.

[skatz@gaithersburgmd.gov](mailto:skatz@gaithersburgmd.gov), [hmarraffa@starpower.net](mailto:hmarraffa@starpower.net),  
[jashman@gaithersburgmd.gov](mailto:jashman@gaithersburgmd.gov), [cdrzyzgula@gaithersburgmd.gov](mailto:cdrzyzgula@gaithersburgmd.gov),  
[mesma@gaithersburgmd.gov](mailto:mesima@gaithersburgmd.gov), [rspiegel@gaithersburgmd.gov](mailto:rspiegel@gaithersburgmd.gov),

Here is what Patsy and I have to say about it to the council members:

No, we do not really want or need a storage facility on Firstfield Rd. I am sure we join our neighbors in West Riding, Mike Sesma and Henry Maraffa in opposing this intrusion into our quiet neighborhood. Taking the only open, green space on First Field and replacing it with the traffic flow and nuisance of a big storage facility will benefit only the 1% who will reap the profits without sacrificing the quiet and low traffic in the posh neighborhoods where they live. The neat, professional labs and offices already there do not create the sleazy, unkempt appearance of such storage facilities and do not create the hazard to traffic and our neighborhood children that such storage facilities impose.

There are already numerous storage facilities in the area, one as close as Metropolitan Drive just three blocks away. WE DO NOT WANT OR NEED ANOTHER STORAGE FACILITY IN OUR NEIGHBORHOOD. If such a storage facility is permitted, we will work diligently to see to it that West Riding votes in the next municipal election as a block to oust those who vote for the storage facility.

If you agree, please pass this on to your e-mail roster to forward to the council.

Sincerely,  
Fred & Patsy Marks



## Gregory Mann

---

**From:** Michael Sesma  
**Sent:** Sunday, March 30, 2014 7:43 PM  
**To:** eusebio linda  
**Cc:** acfjeh2@starpower.net; csl.lidl@erols.com; paulb36@rcn.com; Tony Tomasello; John Schlichting; Sidney Katz; Henry Marraffa - External; Jud Ashman; Ryan Spiegel; Cathy Drzyzgula  
**Subject:** Re: Do we really want a storage facility on First Field Road?

Linda,

Your email will be included in the record. Thanks for sharing your views on this issue.

Mike

Michael A. Sesma  
Council Member, City of Gaithersburg

On Mar 30, 2014, at 4:52 PM, "eusebio linda" <[leusebio@hotmail.com](mailto:leusebio@hotmail.com)> wrote:

We don't want nor do we need another storage facility near our neighborhood...

Concerned West Riding Homeowner,  
Linda Eusebio

Sent from my iPhone

On Mar 29, 2014, at 9:48 PM, "Michael Sesma" <[MSesma@gaitthersburgmd.gov](mailto:MSesma@gaitthersburgmd.gov)> wrote:

Anna,

Thank you for sharing your thoughts on this issue. We've received similar messages from others and I expect there will be more. We'll make sure these are included for the record. I share your concerns and made that quite clear during the joint public hearing on Monday.

Best wishes,  
Mike

Michael A. Sesma  
Council Member, City of Gaithersburg

---

**From:** [acfjeh2@starpower.net](mailto:acfjeh2@starpower.net) [[acfjeh2@starpower.net](mailto:acfjeh2@starpower.net)]  
**Sent:** Friday, March 28, 2014 5:21 PM  
**To:** [csl.lidl@erols.com](mailto:csl.lidl@erols.com); [leusebio@hotmail.com](mailto:leusebio@hotmail.com); [paulb36@rcn.com](mailto:paulb36@rcn.com)  
**Cc:** Sidney Katz; Henry Marraffa - External; Jud Ashman;  
[cdrzyzgula@gaitthersburgmd.gov](mailto:cdrzyzgula@gaitthersburgmd.gov); Michael Sesma; Ryan Spiegel  
**Subject:** Fw: Do we really want a storage facility on First Field Road?

I agree with Patsy and Fred Marks. We do not need another storage facility near this neighborhood. Please read what they have to say, and pass this on to other residents in the neighborhood.

Anna Fraker

**From:** [Fred Marks](#)  
**Sent:** Friday, March 28, 2014 3:07 PM  
**To:** [Mark Deuser](#)  
**Cc:** [Bass Carolyn](#) ; [tpmarkey@aol.com](#) ; [Anna Fraker](#) ; [Deuser Kathryn](#) ; [Janet Sabins](#) ; [Jaskolski Ray](#) ; [Sabins John](#) ; [Janet Chase](#)  
**Subject:** Re: Do we really want a storage facility on First Field Road?

Here is the e-mail string for the Gaithersburg council copied from the web site.

[skatz@gaitthersburgmd.gov](mailto:skatz@gaitthersburgmd.gov), [hmarraffa@starpower.net](mailto:hmarraffa@starpower.net),  
[jashman@gaitthersburgmd.gov](mailto:jashman@gaitthersburgmd.gov), [cdrzyzgula@gaitthersburgmd.go](mailto:cdrzyzgula@gaitthersburgmd.go),  
[mesima@gaitthersburgmd.gov](mailto:mesima@gaitthersburgmd.gov), [rspiegel@gaitthersburgmd.gov](mailto:rspiegel@gaitthersburgmd.gov),

Here is what Patsy and I have to say about it to the council members:

No, we do not really want or need a storage facility on Firstfield Rd. I am sure we join our neighbors in West Riding, Mike Sesma and Henry Maraffa in opposing this intrusion into our quiet neighborhood. Taking the only open, green space on First Field and replacing it with the traffic flow and nuisance of a big storage facility will benefit only the 1% who will reap the profits without sacrificing the quiet and low traffic in the posh neighborhoods where they live. The neat, professional labs and offices already there do not create the sleazy, unkempt appearance of such storage facilities and do not create the hazard to traffic and our neighborhood children that such storage facilities impose.

There are already numerous storage facilities in the area, one as close as Metropolitan Drive just three blocks away. WE DO NOT WANT OR NEED ANOTHER STORAGE FACILITY IN OUR NEIGHBORHOOD. If such a storage facility is permitted, we will work diligently to see to it that West Riding votes in the next municipal election as a block to oust those who vote for the storage facility.

If you agree, please pass this on to your e-mail roster to forward to the council.

Sincerely,  
Fred & Patsy Marks

## Gregory Mann

---

**From:** Sidney Katz  
**Sent:** Sunday, March 30, 2014 2:54 PM  
**To:** Tony Tomasello; John Schlichting  
**Subject:** Fwd: storage facility

Sent from my iPhone

Begin forwarded message:

**From:** Mark Deuser <[mrkdsr@gmail.com](mailto:mrkdsr@gmail.com)>  
**Date:** March 30, 2014 at 2:16:44 PM EDT  
**To:** <[skatz@gaithersburgmd.gov](mailto:skatz@gaithersburgmd.gov)>, <[hmarraffa@starpower.net](mailto:hmarraffa@starpower.net)>, <[jashman@gaithersburgmd.gov](mailto:jashman@gaithersburgmd.gov)>, <[cdrzyzgula@gaithersburgmd.gov](mailto:cdrzyzgula@gaithersburgmd.gov)>, <[mstesma@gaithersburgmd.gov](mailto:mstesma@gaithersburgmd.gov)>, <[rspiegel@gaithersburgmd.gov](mailto:rspiegel@gaithersburgmd.gov)>  
**Subject: Re: storage facility**

**Hello!**

**We also wish to bring to your attention that we oppose the proposed storage facility on First Field Road.**

**Sincerely,**

**Mark and Kathryn Deuser**

861 Diamond Drive  
301 926 9244

## Gregory Mann

---

**From:** Michael Sesma  
**Sent:** Sunday, March 30, 2014 4:01 PM  
**To:** Mark Deuser  
**Cc:** Tony Tomasello; John Schlichting; Sidney Katz; Henry Marraffa - External; Jud Ashman; cdrzyzgula@gaitthersburgmd.go; Ryan Spiegel  
**Subject:** RE: storage facility

Mark and Kathryn,  
Thanks for sharing your views. This will be included in the record.  
Mike

Michael A. Sesma  
Council Member, City of Gaithersburg

---

**From:** Mark Deuser [mrkdsr@gmail.com]  
**Sent:** Sunday, March 30, 2014 2:16 PM  
**To:** Sidney Katz; Henry Marraffa - External; Jud Ashman; [cdrzyzgula@gaitthersburgmd.go](mailto:cdrzyzgula@gaitthersburgmd.go); Michael Sesma; Ryan Spiegel  
**Subject:** Re: storage facility

**Hello!**

**We also wish to bring to your attention that we oppose the proposed storage facility on First Field Road.**

**Sincerely,**

**Mark and Kathryn Deuser**

861 Diamond Drive

301 926 9244

## Gregory Mann

---

**From:** Sidney Katz  
**Sent:** Friday, March 28, 2014 9:04 PM  
**To:** Tony Tomasello; John Schlichting  
**Subject:** Fwd: storage facility

Sent from my iPhone

Begin forwarded message:

**From:** <[calmwind65@aol.com](mailto:calmwind65@aol.com)>  
**Date:** March 28, 2014 at 8:30:14 PM EDT  
**To:** <[skatz@gaithersburgmd.gov](mailto:skatz@gaithersburgmd.gov)>, <[hmarraffa@starpower.net](mailto:hmarraffa@starpower.net)>, <[jashman@gaithersburgmd.gov](mailto:jashman@gaithersburgmd.gov)>, <[cdrzyzgula@gaithersburgmd.gov](mailto:cdrzyzgula@gaithersburgmd.gov)>, <[msesma@gaithersburgmd.gov](mailto:msesma@gaithersburgmd.gov)>, <[rspiegel@gaithersburgmd.gov](mailto:rspiegel@gaithersburgmd.gov)>  
**Subject:** storage facility

Hello!

We also wish to bring to your attention that we oppose the proposed storage facility on First Field Road.

We concur with the points made in the email of Fred and Patsy Marks.

Sincerely,  
Carolyn and Mitch Bass

## Gregory Mann

---

**From:** Michael Sesma  
**Sent:** Saturday, March 29, 2014 9:51 PM  
**To:** calmwind65@aol.com  
**Cc:** Sidney Katz; Henry Marraffa - External; Jud Ashman; Cathy Drzyzgula; Ryan Spiegel; Tony Tomasello; John Schlichting  
**Subject:** RE: storage facility

Dear Carolyn and Mitch,

Thank you for sharing your thoughts on this issue. We've received similar messages from others and I expect there will be more. We'll make sure these are included for the record. I share your concerns and made that quite clear during the joint public hearing on Monday.

Best wishes,  
Mike

Michael A. Sesma  
Council Member, City of Gaithersburg

---

**From:** [calmwind65@aol.com](mailto:calmwind65@aol.com) [calmwind65@aol.com]  
**Sent:** Friday, March 28, 2014 8:30 PM  
**To:** Sidney Katz; Henry Marraffa - External; Jud Ashman; [cdrzyzgula@gaitthersburgmd.go](mailto:cdrzyzgula@gaitthersburgmd.go); Michael Sesma; Ryan Spiegel  
**Subject:** storage facility

**Hello!**

**We also wish to bring to your attention that we oppose the proposed storage facility on First Field Road. We concur with the points made in the email of Fred and Patsy Marks.**

**Sincerely,  
Carolyn and Mitch Bass**

## Gregory Mann

---

**From:** Sidney Katz  
**Sent:** Friday, March 28, 2014 4:41 PM  
**To:** Tony Tomasello; John Schlichting  
**Subject:** FW: Do we really want a storage facility on First Field Road?

FYI

---

**From:** Fred Marks [fred@fmadirect.com]  
**Sent:** Friday, March 28, 2014 3:14 PM  
**To:** Sidney Katz; Henry Marraffa - External; Jud Ashman; [cdrzyzgula@gaithersburgmd.go](mailto:cdrzyzgula@gaithersburgmd.go); Michael Sesma; Ryan Spiegel  
**Subject:** Fw: Do we really want a storage facility on First Field Road?

Here is what Patsy and I have to say about it to you council members:

No, we do not really want or need a storage facility on Firstfield Rd. I am sure we join our neighbors in West Riding, Mike Sesma and Henry Maraffa in opposing this intrusion into our quiet neighborhood. Taking the only open, green space on First Field and replacing it with the traffic flow and nuisance of a big storage facility will benefit only the 1% who will reap the profits without sacrificing the quiet and low traffic in the posh neighborhoods where they live. The neat, professional labs and offices already there do not create the sleazy, unkempt appearance of such storage facilities and do not create the hazard to traffic and our neighborhood children that such storage facilities impose.

There are already numerous storage facilities in the area, one as close as Metropolitan Drive just three blocks away. WE DO NOT WANT OR NEED ANOTHER STORAGE FACILITY IN OUR NEIGHBORHOOD. If such a storage facility is permitted, we will work diligently to see to it that West Riding votes in the next municipal election as a block to oust those who vote for the storage facility.

Sincerely,  
Fred & Patsy Marks  
727 Regent Ct,  
Gaithersburg, MD 20878

# Zone change may make way for sto

## ■ Applicant wants rezone from commercial to urban employment

BY JENN DAVIS  
STAFF WRITER

Plans for a new self-storage facility in Gaithersburg could solidify if the city rezones land near Quince Orchard Plaza.

Gaithersburg's City Council and Planning Commission are considering changing the zone classification for 3.13 acres at 14 Firstfield Road, part of a larger 4.6-acre site. A joint public hearing was held Monday evening to discuss the matter.

Currently, the 3.13-acre portion is part of a general commercial zone, while the rest of the property is labeled as an urban employment zone, according to city documents.

Siena Corp. of Columbia, the applicant and contract purchaser of the property, has requested that the city rezone the parcel, making it an urban employment zone instead of general commercial.

Yum Yu Cheng, an attorney with Bethesda-based Linowes and Blocher, who was representing Siena Corp., said the change would permit warehousing use, which is not allowed under commercial zoning.

Warehouse use is in line with the applicant's interest in placing a self-storage building on the property, she said.

The idea would be to construct a 150,112-square-foot ezStorage facility. It would include 1,100 self-storage units, an office space and a residential unit for the resident manager, according to city documents.

Councilman Mike Sesma questioned if the warehouse use would be compatible with the land use of the surrounding areas.

Cheng cited high demand for warehouse use as the reason it would work well in the area, which is surrounded by a variety of land uses.

"...This is a use that's in demand and it's in close proximity to office uses, as well as residential uses," Cheng said. "In terms of its use, it's something that's needed and demanded by the market...."

Gaithersburg resident Richard Arkin was the

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## Gregory Mann

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**From:** Michael Sesma  
**Sent:** Saturday, March 29, 2014 9:45 PM  
**To:** Fred Marks  
**Cc:** John Schlichting; Tony Tomasello; Sidney Katz; Henry Marraffa - External; Jud Ashman; Cathy Drzyzgula; Ryan Spiegel  
**Subject:** RE: Do we really want a storage facility on First Field Road?

Fred,

Thank you for sharing your thoughts on this issue. We've received similar messages from others and I expect there will be more. We'll make sure these are included for the record. I share your concerns and made that quite clear during the joint public hearing on Monday.

Best wishes,  
Mike

Michael A. Sesma  
Council Member, City of Gaithersburg

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**From:** Fred Marks [fred@fmadirect.com]  
**Sent:** Friday, March 28, 2014 3:14 PM  
**To:** Sidney Katz; Henry Marraffa - External; Jud Ashman; [cdrzyzgula@gaitthersburgmd.go](mailto:cdrzyzgula@gaitthersburgmd.go); Michael Sesma; Ryan Spiegel  
**Subject:** Fw: Do we really want a storage facility on First Field Road?

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## Gregory Mann

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**From:** Michael Sesma  
**Sent:** Saturday, March 29, 2014 9:48 PM  
**To:** acfjeh2@starpower.net; csl.lidl@erols.com; leusebio@hotmail.com; paulb36@rcn.com  
**Cc:** Tony Tomasello; John Schlichting; Sidney Katz; Henry Marraffa - External; Jud Ashman; cdrzyzgula@gaithersburgmd.go; Ryan Spiegel  
**Subject:** RE: Do we really want a storage facility on First Field Road?

Anna,

Thank you for sharing your thoughts on this issue. We've received similar messages from others and I expect there will be more. We'll make sure these are included for the record. I share your concerns and made that quite clear during the joint public hearing on Monday.

Best wishes,  
Mike

Michael A. Sesma  
Council Member, City of Gaithersburg

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**From:** [acfjeh2@starpower.net](mailto:acfjeh2@starpower.net) [acfjeh2@starpower.net]  
**Sent:** Friday, March 28, 2014 5:21 PM  
**To:** [csl.lidl@erols.com](mailto:csl.lidl@erols.com); [leusebio@hotmail.com](mailto:leusebio@hotmail.com); [paulb36@rcn.com](mailto:paulb36@rcn.com)  
**Cc:** Sidney Katz; Henry Marraffa - External; Jud Ashman; [cdrzyzgula@gaithersburgmd.go](mailto:cdrzyzgula@gaithersburgmd.go); Michael Sesma; Ryan Spiegel  
**Subject:** Fw: Do we really want a storage facility on First Field Road?

I agree with Patsy and Fred Marks. We do not need another storage facility near this neighborhood. Please read what they have to say, and pass this on to other residents in the neighborhood.

Anna Fraker

**From:** [Fred Marks](#)  
**Sent:** Friday, March 28, 2014 3:07 PM  
**To:** [Mark Deuser](#)  
**Cc:** [Bass Carolyn](#) ; [tpmarkey@aol.com](mailto:tpmarkey@aol.com) ; [Anna Fraker](#) ; [Deuser Kathryn](#) ; [Janet Sabins](#) ; [Jaskolski Ray](#) ; [Sabins John](#) ; [Janet Chase](#)  
**Subject:** Re: Do we really want a storage facility on First Field Road?

Here is the e-mail string for the Gaithersburg council copied from the web site.

[skatz@gaithersburgmd.gov](mailto:skatz@gaithersburgmd.gov), [hmarraffa@starpower.net](mailto:hmarraffa@starpower.net), [jashman@gaithersburgmd.gov](mailto:jashman@gaithersburgmd.gov),  
[cdrzyzgula@gaithersburgmd.go](mailto:cdrzyzgula@gaithersburgmd.go), [msema@gaithersburgmd.gov](mailto:msema@gaithersburgmd.gov), [rspiegel@gaithersburgmd.gov](mailto:rspiegel@gaithersburgmd.gov),

Here is what Patsy and I have to say about it to the council members:

No, we do not really want or need a storage facility on Firstfield Rd. I am sure we join our neighbors in West Riding, Mike Sesma and Henry Maraffa in opposing this intrusion into our quiet neighborhood. Taking the only open, green space on First Field and replacing it with the traffic flow and nuisance of a big storage facility will benefit only the 1% who will reap the profits without sacrificing the quiet and low traffic in the posh neighborhoods where they live. The neat, professional labs and offices already there do not create the sleazy

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If you agree, please pass this on to your e-mail roster to forward to the council.

Sincerely,  
Fred & Patsy Marks

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**MEMORANDUM TO:** Mayor and City Council  
Planning Commission

**FROM:** Gregory Mann, Planner

**DATE:** March 17, 2014

**SUBJECT:** Preliminary Background Report:  
Z-4355-2014  
14 Firstfield Road

**APPLICANT**

Craig Pittinger, Siena Corporation  
8221 Snowden River Parkway  
Columbia, MD 21045

**OWNER**

ARE-14 Firstfield Road, LLC  
946 Clopper Road  
Gaithersburg, MD 20878

**TAX MAP REFERENCE:**

Tax Map: FT121

**TAX ACCOUNT NUMBERS:**

Plat Number: 22015 – ID #09-03353020

**REQUEST**

Yum Yu Cheng, Esquire, on behalf of the Siena Corporation, has submitted a Zoning Map Amendment (rezoning) Application, Z-4355-2014. This Application is for a proposal to rezone 3.13 acres of land from a 4.60 acre parcel. The applicant is proposing to rezone the aforementioned land from the C-2 (General Commercial) Zone to the E-1 (Urban Employment) Zone.

Joint Hearing - MCC & PC  
Z-4355-2014  
Exhibit #26



14 Firstfield Road

## **LOCATION**

The subject property is located at 14 Firstfield Road, in the southeast quadrant of the intersection of Firstfield Road and Bank Street, in the City of Gaithersburg, Maryland.

## **REQUIRED ACTIONS**

### **Zoning Map Amendment Z-4355-2014**

The applicant is requesting a map amendment from the C-2 Zone to the E-1 Zone, in accordance with §24-196 (Map Amendments) of the City Code. This is a rezoning from one Euclidean Zone to another (as opposed to one of the City's Floating Zones such as MXD Zone or an optional method of rezoning.) As a result, there is no site plan review required for the rezoning.

## **EXISTING LAND USE/PROPERTY CHARACTERISTICS:**

The subject property is a recorded lot that is identified as Lot 8, Block C, Diamond Farm subdivision. The property is currently vacant and contains a stormwater management facility. The existing stormwater management facility services both the subject and adjacent properties.

## **ANNEXATION AND ZONING HISTORY:**

### **Annexation:**

The subject property was annexed in by the Mayor and Town Council as part of the Diamond Farm – Brown Station Road annexation by resolution R-25-66, which became effective in 1967. At the time of the annexation approval, the Mayor and Town Council established C-P (Commercial Office Park) zoning for the subject property.

### **Master Plan Land Use and Zoning:**

On June 26, 1967, the subject property was rezoned from C-P (Commercial Office Park) Zone to the newly established E-1 (Urban Employment) zone by the Mayor and Town Council (R-9-67, March 6, 1967). This was planned for the property during the annexation process as noted in Resolution R-21-67; however, the Town had not established the zone.

In 1996, the City adopted the Neighborhood Five Land Use Plan. The aforementioned adopted Plan recommended changing the properties land use designation from Industrial-Research-Office to Commercial. The plan also recommended rezoning the subject property from the E-1 (Urban Employment) zone to the C-2 (General Commercial) zone. Please note that the Neighborhood Five Land Use Plan, which was adopted in 1996, is part of the 1997 Master Plan. In 1996, the Mayor and City Council subsequently adopted a comprehensive rezoning for the neighborhood, which included rezoning the subject property to the C-2 (General Commercial) zone.

Over the next seven years, the property remained vacant. The property owner did receive site plan approval for SP-02-0006 on October 6, 2004 for an office/research facility, but it was not constructed. During the hearing process of the Land Use Plan Element of the 2003 Master Plan, the Mayor and City Council agreed with the request of the property owner and changed the land use designation back to Industrial-Research-Office. Additionally, the aforementioned Master Plan, which was adopted April 6, 2004, recommended that the property be rezoned to the E-1 (Urban Employment) zone. The Industrial-Research-Office land use and proposed E-1 zone was reconfirmed as part of the Land Use Plan Element of the 2009 Master Plan, adopted by the Mayor and City Council in December 2011 by Resolution R-88-11. The City did not comprehensively rezone any properties following the adoption of either the Land Use Plan Element of the 2003 or 2009 Master Plan.



## **Traffic Impact and Transportation**

Since the subject property is currently vacant, the property generates no traffic. Since there is no specific development plan as part of this application, there is not a requirement to evaluate the traffic generated from the site as noted in § 24-245. However, staff submits the following information for the Planning Commission and Mayor and City Councils evaluation of the application.

The current development approval, Preliminary Site Plan Approval SP-02-0006, for a Bio-Tech Facility, did not require additional traffic mitigation of the existing infrastructure. The surrounding roadway system is constructed in accordance with the Transportation Element of the Master Plan. The roadway infrastructure was planned and constructed to handle the E-1 zone allowed uses for this subdivision.

Additionally, the subject property is serviced by Ride On Bus route 56 within a 1,000 foot walking distance. Also, within the vicinity of the subject property is the future Corridor Cities Transit (CCT) route on Quince Orchard Road. The distance to the proposed station is currently not available until the final planning stages of the transit way.

## **Schools**

The proposed E-1 Zone does not permit residential uses, and will not generate any students. Therefore, the schools test for adequate facilities is not required, § 24-246.

## **Water and Sewer Services and Public Utilities**

The subject property maintains W-1 and S-1 category designation (areas served by community systems which are either existing or under construction). Service does exist and, therefore, the application complies with the requirements of the City's Adequate Public Facility Ordinance (APFO) for water and sewer, § 24-247.

## **Fire and Emergency Services**

The subject property is currently within the ten-minute response areas of the Montgomery County Fire and Rescue stations, Station 8 (Montgomery Village), Station 31 (Darnestown (MD Rte. 28) Road) and Station 22 (Germantown). Additionally, the subject property is located adjacent to the National Institute of Technology (NIST), which has its own emergency vehicles and also responds even though they are not part of the Montgomery County System. Therefore, adequate fire and emergency services are provided § 24-248.

**SUMMARY:**

The applicant has submitted for consideration Zoning Map Amendment Application Z-4355-2014, rezoning from the C-2 (General Commercial) zone to the E-1 (Urban Employment) zone. This is a complete application as defined by §§ 24-196 and 24-197 for zoning map amendments. A joint public hearing with the Mayor and City Council and the Planning Commission has been scheduled for March 17, 2014. Following the public hearing, staff will complete a staff analysis of the application.



# *City of Gaithersburg*

31 South Summit Avenue  
Gaithersburg, Maryland 20877

## Mayor and City Council Regular Session Minutes City Hall - Council Chambers Monday, March 17, 2014

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### **I. CALL TO ORDER**

A Mayor and City Council Regular Session was called to order at 7:30 p.m. with Mayor Katz presiding. Council Members present: Ashman, Drzyzgula, Marraffa, Sesma, and Spiegel. Staff present: City Manager Tomasello, Assistant City Manager Enslinger, City Attorney Board, Economic Development Director Lonergan, Chief of Police Sroka, Acting Director of Public Works Mumpower, Community Services Division Manager Herndon, Chief of Police Sroka, Planning and Code Administration Director Schlichting, Legislative Affairs Manager Sanchez, Senior Recreation Program Supervisor Ludington, Planner Mann, Community Services Program Coordinator Orellana, Sergeants S. Eastman, Leache and Vance, Corporals Hurtt, Bellard, C. Eastman and Fairfield, Officers Bennett, Bower, S. Eastman, Grubic, Johannesen, Maskey, McCarthy, and Municipal Clerk Stokes. Planning Commission present for joint public hearing: Bauer, Kaufman, and Lanier.

### **II. PLEDGE OF ALLEGIANCE**

The Pledge was led by Cub Scout Pack 1199 and Leader Joanne Wachhoklder, Gaithersburg, Maryland.

### **III. INVOCATION**

In lieu of a formal invocation, Mayor Katz called for a moment of silence.

### **IV. APPROVAL OF MINUTES**

#### **A. Regular Session held February 18, 2014**

Motion was made by Jud Ashman, seconded by Michael Sesma, that the minutes from the Regular Session held on February 18, 2014, be approved.

Vote: 5-0

**V. CONSENT****A. Resolution of the Mayor and City Council Authorizing the City Manager to Enter into a Contract for the Installation of a Sports Field Lighting System for Criswell Automotive Field at Kelley Park**

This resolution authorized the City Manager to enter into a contract for the installation of sports field lighting at Kelley Park with I & Y Construction, LLC, 340 Snyder Creek Road, New Enterprise, Pennsylvania 16664, in the amount of Four Hundred Thirty-Three Thousand One Hundred Twenty-Five Dollars (\$433,125); said funds to be expended from the Capital Improvements Budget.

Motion was made by Cathy Drzyzgula, seconded by Michael Sesma, that a Resolution of the Mayor and City Council Authorizing the City Manager to Enter into a Contract for the Installation of a Sports Field Lighting System for Criswell Automotive Field at Kelley Park (Resolution No. R-13-14), be approved.

Vote: 5-0

**VI. APPOINTMENTS****A. Resolution of the City Council Confirming Appointments and Reappointments to the Community Advisory Committee, Economic and Business Development Committee and Gaithersburg Arts and Monuments Funding Corporation**

This resolution confirmed the following appointments and reappointments, effective April 1, 2014: Community Advisory Committee, Paul Brounstein, (appointment), 5 Norwich Court, 20878, William Dube (appointment), 1101 K Street NW, Suite 610, Washington, D.C. 20005, William Roberts (appointment), 9809 Gable Ridge Terrace, Apt C, Rockville, Maryland 20850, two-year terms; Gaithersburg Arts and Monuments Funding Corporation, Jaree Donnelly (appointment), 311 Kent Square Road, Studio 102, 20878, two-year term; Community Advisory Committee, Carol LeVine (reappointment), 211 Amberfield Lane, 20878, Carol Martin (reappointment), 23 Norwich Court, 20878, and DeVeda Powell (reappointment), 5 Seville Way, 20878, two-year terms; and the Economic and Business Development Committee, Robyn Renas (reappointment), 21 Briscoe Street, 20878, two-year term.

Motion was made by Cathy Drzyzgula, seconded by Ryan Spiegel, that a Resolution of the City Council Confirming Appointments and Reappointments to the Community Advisory Committee, Economic and Business Development Committee and Gaithersburg Arts and Monuments Funding Corporation (Resolution No. R-14-14), be approved.

Vote: 5-0

**VII. PRESENTATIONS****A. Presentation of the Gaithersburg Police Department Awards for the Officer of the Year and Supervisor of the Year**

Chief of Police Sroka announced the selection of Officer Larbi Dakkouni as the 2013 Officer of the Year and Corporal Brian Hurtt as the 2013 Supervisor of the Year. Officer Larbi Dakkouni was named Officer of the Year for his competence, dedication and for consistently going above and beyond what is expected. He demonstrated extraordinary energy and resourcefulness in his overall exemplary performance. Corporal Brian Hurtt was named 2013 Supervisor of the Year for displaying a strong commitment to all personnel and advancing the effectiveness and efficiency of the Gaithersburg Police Department by his individual contributions and by supervising the work of other detectives and officers.

**B. 2013 Fourth Quarter Employee Recognition Awards**

City Manager Tomasello joined by Mayor Katz recognized and presented the 2013 Fourth Quarter Employee Recognition Award to Community Services Program Coordinator Lisette Orellana for spearheading the City's 2013 Holiday Giving Program, partnering with Toys for Tots and serving a Thanksgiving dinner for seniors at the Oaks at Olde Towne. The Gaithersburg Police Department Scenario Based Training Team comprised of the following Taser instructors, firearms instructors, defense tactics instructors and role players: Sergeants Shawn Eastman, John Leache and Chris Vance, Corporals Brian Hurtt, Matt Bellard, Chad Eastman and Kathy Fairfield, Officers Jonathan Bennett David Bower, Shane Eastman, Noah Grubic, Gregg Johannesen, Paul Maskey and Dan McCarthy, were recognized for their proactive efforts and actions to prevent injury, loss of life, or damage to/loss of property by providing better training for members of the Gaithersburg Police Department.

**C. Certificate of Recognition and Presentation of the Mid-Atlantic Recreation and Parks Sports Alliance Awards**

Senior Recreation Program Supervisor Ludington joined by Mayor Katz, presented Certificates of Recognition and awards to the following individuals:

Heather France received this year's "Good Sports Award for Coaches" for her exceptional passion for supporting the youth in our community and having a "whatever it takes!" attitude. Alfie Riley, President of the Gaithersburg Sports Association, received the "Good Sports Award for Administrators" for his dedicated passion to revamp the Association's baseball program. The City recognized Mr. Riley for his hard work and achievements.

**D. 2014 State Legislative Session and the City's Legislative Priorities Update**

Legislative Affairs Manager Sanchez provided an update on the following:

1. Highway Users Revenue - once passed, the City will receive over one million dollars. The funds is expected to be allocated to all municipalities. Delegate Clagett introduced a bill that would require all municipalities to report on how Highway User Revenue is spent. This bill will assist with meeting the needs of municipalities.
2. HB 1369/SB 913 Ethics Law - staff team lead by City Attorney Board and

Council Member Ashman has been working on a narrow bill to amend the Ethics law that passed in 2010. Two of the amendments are related to real property located within the state and the financial interest of elected official's spouses and dependent children. She noted that said information will be held confidential with the local ethics board.

3. SB 397 Political Subdivisions - Legal Notice Posting Requirements for posting legal ads on websites. Noted that the bill was unable to attract attention. Reported that Council Member Drzyzgula testified on behalf of the City in support of this bill.
4. HB 1102/SB 954 Casey Community Center Bond Bill Request - stated that the bond hearings were very successful. Parks and Recreation staff did testify. The City is requesting One Hundred Thirty Thousand Dollars (\$130,000) for needed repairs at the Center.
5. Montgomery County Public School Construction - this bill would provide additional funding but has been stalled and it is unlikely that it will move further in the process this year.
6. HB 929 Speed Camera Program - bill has many changes including a title definition of a school zone, an annual audit report requirement and erroneous citations. City Attorney Board is reviewing the changes for clarification.
7. Minimum wage - bill moving forward to raise the current minimum wage from \$7.25 to \$10.10/hr. by the year 2017. The Senate is holding working groups. The bill would allow exceptions for restaurants and bars that make less than \$250,000 per year. Noted that in Montgomery and Prince Georges Counties, the law will be effective October 1, 2014, increasing to \$11.50 by 2017.
8. Stated a bill came out that would require candidates running for local office to file their campaign finance reports not only with the City, but with the State within ten (10) days of the deadline. The reports will be handled by the State Board of Elections. Enforcement is not being addressed at this time. Many Council Members expressed their disappointment with the lack of information provided from the bill and the impact on local authority.
9. Stated that there were several bills regarding artificial turf fields. One bill would exempt public program space funding for the fields. Another bill would require the City to have signs warning people of the high heat, washing your clothes and hands and other health related warnings. The City testified in opposition to the bills.
10. Maryland Sustainable Tax Credit - bill was reauthorized and a new component was added to the program to authorize the use of funds for historic commercial projects.

The City's legislative staff and the District 17 Delegation will provide a wrap-up of the session on Monday, April 21, 2014. The Mayor and City Council expressed thanks to Legislative Affairs Manager Sanchez for her hard work.

## **VIII. PUBLIC COMMENTS**

Speakers from the public.

1. Richard Arkin, 121 Selby Street, referred to a memorandum he sent to the City requesting that the record be reopened on the proposed parking ordinance to receive additional testimony in regard to inaccurate minutes recorded of his testimony and another speaker. Suggested the City Council defer taking final action.

**IX. PUBLIC HEARING****A. Consider Proposal to Refinance the 2009 Economic Development Revenue Bonds of the City of Gaithersburg for Asbury Atlantic, Inc. and Asbury-Solomons, Inc.**

*Cheryl Guth, Bond Counsel, McGuire Woods, LLP*, presented the public hearing regarding the proposed issuance of economic development revenue bonds for the benefit of Asbury Atlantic, Inc. and Asbury-Solomons, Inc. for a refinancing of the construction bond issued and approved in 2009. The hearing is required under the Internal Revenue Code provisions because of the extension of the maturity of the bonds.

In a letter dated February 27, 2014, the two Maryland nonstock corporations requested that the City issue and sell bonds pursuant to the Maryland Economic Development Revenue Bond Act and then loan the proceeds of the sale, not to exceed sixteen million dollars (\$16,000,000), to Asbury Atlantic Inc. and Asbury-Solomons, Inc. for the following purposes: refunding the outstanding principal amount of the City's Economic Development Revenue Bonds (Asbury Maryland Obligated Group – AMV Construction Project); funding a debt service reserve fund for the Bonds, if any; and paying certain costs of issuance and/or other related costs.

It was noted that the request is for limited obligation bonds, payable solely to the extent that Asbury repays the loan from the bond proceeds to the City. In the case of default, the City would have no obligation and Asbury would pay all the financing expenses. For the record it was stated that the taxpayers of Gaithersburg are not responsible for the bonds.

*Michael Connell, Chief Financial Officer*, responded to several questions stating that the new maturity date of the bonds would be seven years out (2022). The existing construction bonds were used for the new development that had been completed in Phase I of the project. Asbury is seeking to refinance for Phase II and proceed with other additions to the campus. He noted that Asbury has the ability to pay off the loan, but in the best interest of the Asbury community, the proposed refinancing would allow Asbury to keep reserves, have a lower interest rate, receive an upgrade investment rating, and pay down the debt.

Speakers from the public:

1. *Bill Root, resident of Asbury Methodist Village*, opposed to the requested proposal and asked the City to not approve the refinancing of the 2009 Economic Revenue Bonds.
2. *Charles Benjamin, resident of Asbury Methodist Village*, been involved with financial institutions for over 40 years. In favor of refinancing the 2009 bonds for Asbury before the rates increase.
3. *Fred Headlinger, resident of Asbury Methodist Village*, in favor of 2009 bonds and expressed that Asbury staff and Board are doing what is in the best interest of the community.

There were no other speakers.

Motion was made by Ryan Spiegel, seconded by, Cathy Drzyzgula, that the record on Public Hearing to Consider Proposal to Refinance the 2009 Economic Development Revenue Bonds of the City of Gaithersburg for Asbury Atlantic, Inc. and Asbury-Solomons, Inc., remain open until 5 p.m. on Thursday, March 27, 2014.

Vote: 5-0

**X. JOINT PUBLIC HEARING**

**A. Application to Rezone 3.13 Acres of Land from a 4.60 Acre Parcel from C-2 (General Commercial) to E-1 (Urban Employment) in Accordance with § 24-196 (Map Amendments) of the City Code. The Property is Located at 14 Firstfield Road, in the Southeast Quadrant of the Intersection of Firstfield Road and Bank Street, in the City of Gaithersburg, Maryland.**

Planner Mann presented the joint public hearing advertised in the *Gaithersburg Gazette* on February 19 and 26, 2014, and the property properly posted. Currently there are 12 exhibits in the record file. The applicant submitted application, Z-4355-2014, requesting a rezoning of 3.13 acres of land from a 4.60 acre parcel located at 14 Firstfield Road. The applicant is requesting a reclassification of the subject property, proposing to rezone the aforementioned land from the C-2 (General Commercial) Zone to the E-1 (Urban Employment) Zone. This application is for a map amendment for rezoning from one Euclidean Zone to another (as opposed to one of the City's Floating Zones such as MXD Zone or an optional method of rezoning.) As a result, there is no site plan review required for the rezoning. This request reinforces the Cities recommendation to rezone the subject property in the Land Use Element of the 2003/2009 Master Plan. He noted that Assistant City Attorney Johnson submitted a memorandum dated March 11, 2014, concerning finding approval for this type of amendment.

*Yum Yu Cheng, Linowes and Blocher*, representing applicant Siena Corporation, presented the application and spoke on the existing land use and rezoning request. She stated that Siena believes that a mistake was made by the Mayor and City Council with the rezoning of the property and referenced Maryland Case Law.

The memorandum mentioned above stated the following:

Siena in its initial statement asserts the property "for whatever reason" was not rezoned to the recommended E-1 zoning after both the 2003 and 2009 master plan adoptions, and argues rezoning to E-1 is necessary and appropriate. Siena also argues that the 2003 and 2009 recommendations show the City Council made a mistake in rezoning the property C-2 in the first place, in 1997.

Siena filed a Supplemental Statement, in which it further argues how the Mayor and City Council made a mistake in the original 1997 rezoning of the property to the C-2 zone. Siena argues the Council based its rezoning decision on statements in the 1996 Neighborhood Five Land Use Plan, which they adopted and which became part of the 1997 Master Plan and which stated that the property "could be developed with a commercial use," and that a restaurant or retail uses compatible with Quince Orchard Plaza – the shopping center across the street – could occur. Siena asserts subsequent events have proven these statements that such retail "could occur" were incorrect, as no retail, restaurant or any other commercial use

has developed. Siena also argues that the 2003 and 2009 Master Plan recommendations to rezone the property to E-1 also provide "strong evidence" that the 1997 C-2 rezoning was a mistake.

Ms. Cheng noted the surrounding neighborhoods and reviewed the history and a subsequent of events for the land use and zoning for said property. She stated that the rezoning change would permit warehouse use that is compatible with surrounding land uses and believe that it would be in the best interest of the public. Others present representing the applicant were Robert Dalrymple, Linowes and Blocher, Carl Wilson, Traffic Group, Jack Helman, Siena Corporation and K.C. Reed, Soltesz.

Questions were raised in regard to a mistake made and the difference with other surrounding properties, compatible use with surrounding properties, future development, and transportation elements. The Planning Commission was asked to provide guidance to the Mayor and City Council.

Speaker from the public:

Richard Arkin, 121 Selby Street, suggested that even though the warehouse use is a permitted use, it is not a compatible use. Further suggested that the failure to rezone the property 18 years ago still does not mean that the applicant's request to rezone is in the best interest of the City.

There were no other speakers.

Motion was made by Commissioner Kaufman, seconded by, Commissioner Lanier, that the Planning Commission hold their record open until 5 p.m. on Monday, April 7, 2014.

Vote: 3-0

Motion was made by Henry F. Marraffa, Jr., seconded by, Cathy Drzyzgula, that the City Council hold their record open until 5 p.m. on Monday, April 17, 2014.

Vote: 5-0

**XI. FROM THE MAYOR AND CITY COUNCIL**

**A. Announcements**

**Jud Ashman**

- 1. Expressed his condolences to the McQuighan family for the loss of Denise McQuighan. Read the following statement:

When I was first sworn in to office in 2007, I paid tribute to a few of the people who, in my opinion, make this City what it is. They're the sort of people whom you don't often read about in the paper; they're not looking for attention. They care about the City, they watch what we do here, they support us, they let us know when they think we're on the right track or the wrong track, but they're generally content to stay in the background.

A week and a half ago, our community suffered the tragic loss of one of

these wonderful people. A dear friend, a great neighbor, and an outstanding citizen, Denise McQuighan lost a battle to cancer and was taken from us.

In terms of public life, Denise was active in a lot of campaigns over the years, from Ed Bohrer, to Mary Boerger, to Phil Andrews, to Ann Somerset, to Dolly Kildee, to many of us up here. Denise played a key role for the community during the Boundary Study when Northwest High School was opening. She served on the City's Ad Hoc Elections Committee in 2008. She was a supporter of local theater, as well as the Book Festival and the Wells Robertson House.

But, to me, it's the stuff you don't see that hits hardest. Because every day, in quiet ways, Denise made our city a better place. She was quick to help out a neighbor. She supported all the kids... in fact, Denise was known for sending her delicious cookies to everyone else's kids for graduations and when they moved away for college. She and her family were the ones leading the carols around the neighborhood. If Norman Rockwell were doing his work here in Gaithersburg, Denise and her family would've been his subjects.

In my life and in my public service, Denise has always been one of those treasured voices of conscience and problem-solving and values who's in my thoughts when I'm sorting things out. She'll still be with me. Denise McQuighan was taken from us far too early. Even so, she was here long enough to make our community a better place in innumerable ways, to leave a legacy of public service, charity, and general goodness.

I know my colleagues here at the dais and, by extension, the City of Gaithersburg, join me in sending our fond condolences to the McQuighan family – to Tom and their three amazing children - for a loss that is most certainly theirs, but also ours to share.

Mayor Katz asked for a moment of silence in honor of Denise McQuighan.

#### **Ryan Spiegel**

1. Echoed condolences to the family of Denise McQuighan.
2. Thanked Public Works staff for their snow removal efforts.
3. Congratulated Gaithersburg Police Department Officers and other award recipients.
4. Congratulated Will Roberts for being appointed to the Community Advisory Committee and thanked him for serving the City of Gaithersburg.
5. Wished all a Happy St. Patrick's Day and Happy Purim.

#### **Henry F. Marraffa, Jr.**

1. Wished everyone a happy St. Patrick's Day and stated that the St. Patrick's Day Parade was a great time had by all.
2. Attended the National League of Cities annual conference and mentioned a new concept that he will provide information to staff.
3. Visited with the Montgomery County Rotary Club and discussed items regarding economic development.
4. Attended the Landlord-Tenant Breakfast.
5. Attended the Olde Towne Advisory Committee meeting.
6. Attended the Annapolis luncheon which provided an opportunity to talk

with constituents.

7. Announced the vacancies on various City Committees.

### **Cathy Drzyzgula**

1. Announced the various events occurring in the City during the month of March.
2. Stated that she would like to see more multi-use paths for bikers and walkers, connecting all parts of the Gaithersburg communities. In addition, better connections from parking spaces to the stores the parking lot serves.

### **Michael Sesma**

1. Announced that a closed meeting was held at City Hall by the Mayor and City Council on Tuesday, February 18, 2014, at approximately 8:45 p.m., pursuant to a motion adopted unanimously. The meeting was proposed to be closed pursuant to the State Government Article of the Annotated Code of Maryland Sections 10-508(a)(8) to consult with staff, consultants, or other individuals about pending or potential litigation and 10-508(a)(1)(i) to discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction. The topics discussed were the Vallejos v. Bowers, et al., case and the annual review of the City Manager. Present at the meeting were Mayor Katz, Council Members Ashman, Drzyzgula, Marraffa, Sesma and Spiegel, City Manager Tomasello (left at 9:05 p.m. and returned at 9:20 p.m.), City Attorney Board (present for entire session), Assistant City Manager Enslinger, Chief of Police Sroka, and Assistant City Attorney Johnson (left at 9:02 p.m.). Upon conclusion of the discussion, the closed meeting was adjourned at approximately 10:00 p.m.
2. Thanked Council Member Ashman for the words expressed for Denise McQuighan.
3. Expressed his condolences for the family of Kate Daniels who passed away in late February.
4. Extended best wishes to Mayor Bruce Wahl, Maryland Municipal League President-Elect who is recovering from a recent emergency.
5. Congratulated and thanked the Gaithersburg Police Officers, other staff and coaches recognized this evening for their commitment to the Gaithersburg community.
6. Attended the National League of Cities annual conference. Stated that the core values and majority priorities for the League were addressed.

### **Mayor Sidney A. Katz**

1. Requested the following motion for closed executive session:

Motion was made by Jud Ashman, seconded by Michael Sesma, that the Mayor and City Council of the City of Gaithersburg conduct a closed executive session tonight, Monday, March 17, 2014, immediately following the scheduled meeting pursuant to the State Government Article of the Annotated Code of Maryland, Sections 10-508(a)(1)(i) to discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction and 10-508(a)(7) to consult with counsel to obtain legal advice. The topics to be

discussed are the annual review of the City Manager and the implementation of the State Ethics Law requirements.

Vote: 5-0

2. Reported on a discussion with Steve Silverman, Director of the Montgomery County Department of Economic Development, about the possible incubator relocation. Stated that that Mr. Silverman will continue to work with staff on a solution.
3. Announced two upcoming work sessions of the Mayor and City Council scheduled for Monday, March 24, 2014, to discuss a Capital Bikeshare Program and on Monday, March 31, 2014, to discuss the development of a Water Quality Protection Program.
4. Announced that the next regular session of the Mayor and City Council is scheduled for Monday, April 7, 2014.
- 5.

## **XII. FROM THE CITY MANAGER**

1. Spoke on the Health Corporative Refund from the City's insurance provider.
2. Discussed the creation of a working group regarding snow removal. Stated that the group will discuss the notification process, enforcement actions, performance of contract crews, HOA action and other subjects.

## **XIII. ECONOMIC DEVELOPMENT UPDATE**

1. Reiterated that staff is working daily with the county and property owners in the City to explore options for the incubator issue mentioned above.
2. Attended the International Council of Shopping Centers Mid-Atlantic Conference. Stated that he had the opportunity to connect with retailers and developers and co-manned the booth for the Montgomery Business Development Corporation.
3. Announced that the Metro Business Media released an article on the top five worse markets for office space in the D.C. Region. Stated that the City was not on said list, but was on the list for the top five best sub-markets for office space.
- 4.

## **XIV. ORDINANCES / RESOLUTIONS / REGULATIONS**

### **A. An Ordinance of the Mayor and City Council to Amend Chapter 14 of the City Code Entitled "Motor Vehicles and Traffic," Article II Entitled "Stopping, Standing and Parking," Section 14-7 Entitled "Parking Prohibited at Specified Times," and Section 14-8 Entitled "Posted Time Limit Restriction"**

Chief of Police Sroka presented the proposed Ordinance stating that it would amend Chapter 14 of the City Code entitled "Motor Vehicles and Traffic," so as to delete language from Section 14-7 entitled "Parking Prohibited at Specified Times," and Section 14-8 entitled "Posted Time Limit Restriction". The Mayor and City Council held a public hearing on February 18, 2014. The Council's record closed at 5 p.m. on February 28, 2014. Due to a citizen's opposition to amend Section 14-8, staff recommended the City Council reopen their record, accept testimony submitted, further investigate proposed amendments to Section 14-8, and continue the action on Section 14-7 only.

Motion was made by Michael Sesma, seconded by, Jud Ashman, that the record on an Ordinance of the Mayor and City Council to Amend Chapter 14 of the City Code Entitled "Motor Vehicles and Traffic," Article II Entitled "Stopping, Standing and Parking," Section 14-7 Entitled "Parking Prohibited at Specified Times," and Section 14-8 Entitled "Posted Time Limit Restriction", be reopened to accept additional written testimony.

Vote: 5-0

Motion was made by Ryan Spiegel, seconded by, Cathy Drzyzgula, that the record on an Ordinance of the Mayor and City Council to Amend Chapter 14 of the City Code Entitled "Motor Vehicles and Traffic," Article II Entitled "Stopping, Standing and Parking," Section 14-7 Entitled "Parking Prohibited at Specified Times," be closed and Section 14-8 Entitled "Posted Time Limit Restriction", remain open indefinitely.

Vote: 5-0

Motion was made by Cathy Drzyzgula, seconded by Jud Ashman, that an Ordinance of the Mayor and City Council to Amend Chapter 14 of the City Code Entitled "Motor Vehicles and Traffic," Article II, Entitled "Stopping, Standing and Parking," Section 14-7 Entitled "Parking Prohibited at Specified Times" (Ordinance No. O-4-14), be adopted.

Vote: 5-0

**XV. FROM THE CITY ATTORNEY / OTHER STAFF**

No report from other staff.

Council Member Sesma acknowledged and thanked William Dubie present at the meeting and appointed to serve on a City committee.

**XVI. CORRESPONDENCE**

A. **Staff**

**XVII. ADJOURNMENT**

There being no further business to come before this session of the City Council, the meeting was duly adjourned at approximately 9:36 p.m.

Respectfully submitted,

Doris Stokes,  
Municipal Clerk