

**RYAN DAGGLE, T/A COMPLETE EFFORT  
FIRST TIME, LLC**

Appellant

vs.

**HOWARD COUNTY PLANNING BOARD &  
THE HOWARD HUGHES CORPORATION**

Appellees

: BEFORE THE  
:  
: HOWARD COUNTY  
:  
: BOARD OF APPEALS  
:  
: HEARING EXAMINER  
: BA Case No. 712-D

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**ORDER**

On April 16, 2015, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, conducted a hearing on the administrative appeal of Ryan Daggle, t/a Complete Effort First Time, LLC (Appellant). Appellant is appealing the Howard County Planning Board's letter decision of November 20, 2014 approving a plan revision of Site Development Plan SDP-13-020, consisting of the construction of Phases 2, 3 and 4 of the Downtown Columbia Multi-Use Pathway proposed to satisfy Community Enhancement, Program and Public Amenities (CEPPA) #12 of the Downtown Columbia Plan. Appellant timely filed an administrative appeal petition on December 19, 2014.

E. Alexander Adams, Esquire, represented the Appellant. Todd Brown, Esquire, represented The Howard Hughes Corporation (HHC). Paul Johnson, Deputy County Solicitor, represented the Planning Board.

Appellant introduced into evidence the exhibits as follows.

1. November 20, 2014 letter to Robert Jenkins, Vice President, Engineering & Construction,

The Howard Hughes Corporation, from Marsha McLaughlin, Executive Secretary, Howard County Planning Board, re: SDP-13-020 (plan revision) Planning Board approval

- 2.1-21\* Portions of Technical Staff Report for SDP-13-020 plan revisions
- 3. Photograph, deceleration lane at Howard Community College, Little Patuxent Parkway
- 4. Photograph, deceleration lane at 10611 Little Patuxent Parkway
- 5. Howard County Design Manual, Vol. III, Intersection Design Section 2.5.4 -- Minimum Curvature for Turning Movements and Traffic Studies Section 5.2.3 -- Design Year and Ultimate Development Year
- 6. September 22, 2014 email from Christopher Alleva to Heather Pandullo, re: SDP 13-020 multi-use path

\* The Hearing Examiner numbered the pages of this Exhibit

Upon conclusion of Appellant's case-in-chief, Appellee HHC motioned through counsel Todd Brown to dismiss the administrative appeal on the grounds that Appellant failed its burden of proof that the Planning Board's action was clearly erroneous, arbitrary and capricious, or contrary to law. For the reasons set forth herein, the Hearing Examiner is denying the appeal.

### **BACKGROUND**

On November 20, 2014, the Planning Board held a public meeting on a proposed plan revision of Site Development Plan SDP-13-020, consisting of the construction of Phases 2, 3 and 4 of the Downtown Columbia Multi-Use Pathway. The project was proposed in order to satisfy Community Enhancement, Program and Public Amenities (CEPPA) #12 of the Downtown Columbia Plan. Phases 2, 3 and 4 of the multi-use pathway (the SDP-13-020 MUP plan revisions) would be located along the south side of Little Patuxent Parkway. This appeal concerns in main part Phase 2 of the SDP-13-020 MUP plan revisions, which would begin at Cedar Lane, run past the Howard County General Hospital, the Howard Community College, several other uses and Appellant's property, ending at Broken Land Parkway. As approved, the SDP-13-020 MUP plan

revisions eliminate an ingress-only deceleration lane providing access to Appellant's property along Little Patuxent Parkway, replacing it with an ingress-only driveway.

Appellant and property owner Ryan Daggie t/a Complete Effort First Time, LLC, operates an auto repair facility, gasoline service station and car wash at 16011 Little Patuxent Parkway (the Property). There is also a convenience store with a strong lunch market, a pizza delivery operation, a high-customer lottery sales use and a car rental use. (The record is unclear as to whether Appellant owns or operates the store, lottery outlet, pizza delivery and car rental business.) Appellant is opposed to the SDP-13-020 MUP plan revisions as approved because it eliminates the deceleration lane off Little Patuxent Parkway providing access to the Property and believes the Planning Board did not make a specific finding that the approved ingress-only driveway is designed safely.

#### **THE ISSUES IN THIS CASE**

In the section of the administrative appeal petition providing for a brief description of error, fact, or law presented by the appeal, Appellant states the Planning Board failed to consider numerous errors of facts and violations of law when it erroneously approved the SDP-13-020 MUP plan revisions. In the petition section where an appellant may list "other factors" which the Appellant wishes the Hearing Authority to consider, Appellant refers to the Supplemental Statement included in the petition. This Supplement lists nine "facts and violations of the law" which the Planning Board allegedly failed to consider. At the hearing, however, Appellant stated through counsel that it would not present testimony or argument on the first eight "facts and

violations of the law," choosing instead to present the case in reference to # 9 only, the Planning Board's alleged approval of an unsafe design on a road (the elimination of the deceleration lane and its replacement by the ingress-only driveway) that has an accident rate 2.5 time the average for similar roads. Because Appellant declined to argue the first eight "pleadings" at the hearing, this Order does not reach the merits of these claims. Appellant also argued an issue not presented in the petition, the Planning Board's alleged failure to consider an alternative SDP-13-020 MUP plan revision that would retain the deceleration lane.

#### **Testimony of Appellant Witness Christopher Alleva**

Christopher Alleva testified to being knowledgeable about Howard County zoning laws and other regulations and to being employed by the Appellant. Mr. Alleva was presented as a witness to testify about the history of the deceleration lane providing access to the Property, the Property's ingress-egress traffic patterns, Appellant's business operation, an alternative SDP-13-020 MUP plan revision that would retain the deceleration lane and the alleged unsafe design of the approved ingress-only driveway.

#### **1. Appellant's Property**

Mr. Alleva testified to the history of the Property, which he explained was an early New Town plan (circa 1970) and intended to be developed as a gasoline service station and service garage through an approved site development plan showing the ingress-only deceleration lane accessing a driveway on the western portion of the Property. Further east of the deceleration plan is an egress-only driveway. On the Banneker Road Property frontage is an ingress-egress

driveway and about 150 feet south of this driveway, an ingress-only driveway. The portion of Little Patuxent Parkway in the area of the Property is classified as a minor arterial. Banneker Road is classified as a local collector. The intersection is signalized. There is currently a bus stop at the deceleration lane, which the approved SDP relocates (Appellant Exhibits 2.15, SDP Sheet C3.5).

Mr. Alleva also explained existing access and circulation patterns on the Property and the changes that would occur with the elimination of the deceleration lane. Certain vehicles now using the deceleration lane would have to make a hard right turn or go down to the southern Banneker Road ingress-only driveway, past the first ingress-egress driveway. The approved radius of the ingress-only driveway on Little Patuxent Parkway would cause many more conflicts on the lot. On redirect, Mr. Alleva explained the gasoline delivery truck serving the gasoline station drives down Governor Warfield Parkway, crosses Little Patuxent Parkway and enters the Property through one of the Banneker Road driveways and exits via the egress-only driveway on Little Patuxent Parkway. It was his further testimony that a number of diesel vehicles visit the Property because the gasoline service station sells diesel fuel. With the elimination of the deceleration lane, some diesel vehicles would have to use the southern Banneker Road ingress-only driveway (as the Hearing Examiner understood his testimony) because they could not make the turn.

## **2. The Elimination of the Ingress-Only Deceleration Lane and Appellant's Alternative MUP Segment Design**

Mr. Alleva introduced into evidence Appellant Exhibit 4, a photograph of the existing deceleration lane, which provides access to the ingress-only driveway on the western side of the

Property along Little Patuxent Parkway.<sup>1</sup> He also introduced portions of the technical staff report (TSR) for the SDP-13-020 MUP plan revisions. Appellant Exhibits 2.15 & 2.16, SDP Sheets C3.5 and C3.6, show the correlate approved MUP segment in the area of the now eliminated deceleration lane with an ingress-only driveway and the redesigned eastern egress-only driveway.

Appellant Exhibit 3 is a photograph of the deceleration lane at Howard Community College (HCC). Appellant Exhibit 4.12, SDP Sheet C3.2, shows the MUP segment retaining the deceleration lane. Appellant Exhibit 4.20, SDP Sheet C3.10, shows the MUP at South Entrance Road (a signalized intersection) and a little taper (deceleration lane) which is not being interfered with. On redirect and re-cross, Mr. Alleva described a median/island at the HCC deceleration lane. He described the landscape buffer area between the two driveways along Little Patuxent Parkway as a median/island.

Against this evidentiary backdrop, Mr. Alleva claimed the Planning Board failed to consider Appellant's alternative MUP segment design along Little Patuxent Parkway in the area of the former deceleration lane because the MUP segment along the HCC property was designed without disruption to the HCC deceleration lane. To this end, he introduced Appellant Exhibit 6, a September 22, 2014 email from him to Heather Pandullo (a Department of Planning and Zoning Development Engineering Division employee) referencing Appellant's submission of a far safer alternative that retains the deceleration lane and improves the access and path. As further

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<sup>1</sup> The parties sometimes used the popular meaning of "deceleration lane" when referring to what road engineers and DM Vol. III identify as an "auxiliary lane." An auxiliary lane has three component parts: the entering taper, the deceleration lane, and the storage area. DM III 2.5.5.

support for this claim, Mr. Alleva contended the TSR should have explained, but does not, the elimination of the deceleration lane and the safeness of the proposed MUP segment design with the ingress-only driveway.

HHC counsel cross-examined Mr. Alleva about the deceleration lane at the HCC. He responded that the deceleration lane is located at the signalized intersection with Harpers Farm Road. The deceleration lane at Appellant's Property supports a driveway and is not signalized. He was not surprised that the HCC deceleration lane at Harpers Farm Road was about 250 feet long. He thought the taper at Appellant's deceleration lane was about 100 feet, including the actual turn to where the curb begins to taper. When comparing SDP-13-020 MUP plan revisions Sheets CE3.2 and CE3.5 (Appellant Exhibit 2.15, 2.16), he agreed that the HCC deceleration lane was about twice as long. Additionally, no trees would be impacted at HCC. On a redirect question about the trees where Appellant has proposed an alternative MUP segment with the deceleration lane, Mr. Alleva testified to them being primarily located on property subject to Final Development Plan 233 and apparently owned by HHC. The one tree on Appellant's Property has met its physical lifetime and needs trimming. On further cross, he testified to the current taper being the sole, non-signalized deceleration lane providing access within Phase 2 of the approved SDP and the only taper impacted by the SDP-13-020 MUP plan revisions.

### **3. The Approved MUP Ingress-Only Driveway and Design Safety**

Mr. Alleva also testified it was Planning Board error to approve the SDP because the ingress-only driveway curb radius proposed to replace the deceleration lane is an unsafe design.

Concerning the actual design of the approved ingress-only driveway, Mr. Alleva testified the TSR does not discuss how the SDP-13-020 MUP plan revisions treat entrance roads or intersections. In his opinion, these are controlled by the Howard County Design Manual, Vol. III, (DM III), specifically Intersection Design Section 2.5.4 – Minimum Curvature for Turning Movements and Traffic Studies Section 5.2.3 – Design Year and Ultimate Development Year. In his view, the County should have considered Section 2.5.4, which sets the minimum fillet radius that will "permit a design vehicle to make a 90 degree turn [] consistent with those specified in Exhibit 9-19, *Edge-of-Traveled-Way Design for Turns at Intersections* and 9-20, *Edge of Traveled Way for Turns at Intersections* of AASHTO, 'A Policy on Geometric Design of Highways and Streets 2004.'" Mr. Alleva contended there were no actual studies about the safety of the approved ingress-only intersection (driveway) without a deceleration lane.

On cross-examination by Planning Board counsel, Mr. Alleva testified to being unaware of a county review by the technical agencies before any SDP was presented to the Planning Board. Page 2 of the TSR makes no mention of any Design Manual review or any safety effects on the driveway from the operation of the SDP when constructed. He disagreed that the TSR is a document prepared for the Planning Board. He is aware of a development approval process relating to New Town planning, but having reviewed the (SDP) file could find no mention of any agency reviewing the SDP and the issues surrounding the taper. Concerning the comment on page 2 of the TSR, noting that on 09/16/2014, the Petitioner was notified by Department that the plan revision to SDP-13-020 is approved subject to Planning Board approval, Mr. Alleva



responded there is no evidence of the required SDP technical review approval before it was presented to the Planning Board.

On further cross-examination, Mr. Alleva did not know the turning radius of the ingress-only driveway after the path is constructed in accordance with the SDP. He did not conduct any traffic study as to the impact of the designed driveway, believing it was the county's responsibility. He agreed that the correct speed limit is 40MPH. He has no evidence that the vehicles currently entering the Property will not be able to do so after the pathway was constructed. No entrances are being closed.

Appellant Exhibit 6 includes a document noting a proposed meeting between DPZ Director Marsha McLaughlin, Chad Edmondson, Mark Thompson and Paul Johnson and a September 23, 2014 email from the Director to Messrs. Johnson, Edmondson, Thompson and Laura Boone stating "Chris' memo raises 8 points at the end that I want to quickly review so we have good answers when this goes to the Planning Bd." These "8 points" are referenced in the September 22, 2014 email from Mr. Alleva to Ms. Pandullo, including in pertinent part, the issue of whether a speed study was conducted to prove the proposed curtailed access is safe.

#### **Testimony of Ryan Dagg**

Ryan Dagg testified to being the owner of the business at 16011 Little Patuxent Parkway and agreeable to the alternative MUP segment design presented by Mr. Alleva. He attended the Planning Board hearing on the SDP-13-020 MUP plan revision and expressed his opposition to the closing of the deceleration lane and his interest in the alternative plan.

## DISCUSSION AND ANALYSIS

### A Preliminary Matter

Hearing Examiner Rule of Procedure 9.3, Exhibits, permits documentary evidence to be submitted in the form of copies, excerpts, photographic reproductions, or by incorporation by reference. A party submitting an exhibit must provide at least one copy for the opposition. At the outset of the proceeding, Appellant witness Christopher Alleva presented testimony in reference to visual information/documents on his laptop, while projecting these "visuals" via the hearing room overhead projector. The Hearing Examiner disallowed this practice and permitted Appellant to make copies during a prolonged break to be introduced as exhibits in accordance with Rule 9.3.

Mr. Alleva subsequently presented testimony about diesel vehicles visiting the Property in reference to a photograph shown through the hearing room overhead projector. Because this photograph was not introduced into evidence, this Decision and Order references only Mr. Alleva's general testimony about these vehicles. Additionally, for expediency, during the prolonged break, Appellant copied and introduced into evidence only a portion of the SDP-13-020 MUP plan revisions TSR. For this reason, the Hearing takes notice of the entire TSR.

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The evidence of record indicates that Appellant Ryan Daggle appeared at the Planning Board hearing and raised the issue of the deceleration lane's elimination and the MUP segment design alternative. The issue was thus before the Planning Board for its consideration. Appellant

may thus not claim Planning Board error or arbitrary and capricious action to the extent that it did not consider Appellant's concerns when it approved the SDP-13-020 MUP plan revisions.

As to Appellant's argument that the approved ingress-only driveway curb radius is unsafe and that neither the County nor the Planning Board conducted any actual studies about the safety of the proposed ingress driveway without a taper/deceleration lane, or that the TSR should have commented on the issue, the Hearing Examiner finds this claim to be without merit. There is nothing in the record to support this declaration, only Mr. Alleva's general assertion that such a study was required.

The Planning Board at the public meeting on approval of the SDP revisions was not required to make an independent determination about the safety of the ingress-only driveway. This issue was addressed during the technical agency review of the SDP and the TSR noted this in the Site History Section (Page 2), referencing 09/16/2014, the date DPZ notified Petitioner that the plan revision to SDP-13-020 is approved subject to Planning Board approval. Appellant's argument that the TSR was required to address all safety and design issues would convert the TSR into a super-report combining the technical agency review and the SDP's compliance with all applicable regulations and policies. Although such a TSR might theoretically resolve what Mr. Alleva alluded to in his testimony as the problem of a subdivision review committee decision being unappealable, these recitations are not required in a TSR.

Appellant's claims about the "County's" or Planning Board's alleged failure to evaluate the ingress-only driveway for compliance with two sections of DM III are misplaced. The Hearing

Examiner read into the record DM III's purpose statement. Section 1.1.C states the Manual is generally compatible with AASHTO and the Maryland State Highway Administration, and is intended to supplement and substantially conform to AASHTO criteria. It further states the Manual's purpose is not to restrict design professionals, but to assist them in completing projects efficiently and economically within the framework of the design parameters established therein.

A further parsing of DM III Section 5.2.4 provides an important clue as to the ingress-only driveway's design and safety features. The second paragraph instructs users to remember that these radii specified in AASHTO, "A Policy on Geometric Design of Highways and Streets 2004," are minimums and result in turns being made at extremely slow speeds. "Though provision of larger radii is desirable for improved traffic movement, *it should be weighed against the resulting increase in pedestrian walking distance across the intersection roadways.*" (Emphasis added.)

Pedestrian walking distance across intersections (street intersections and driveways) was one of the safety issues necessarily considered in the approved SDP plan revisions for Phases 2, 3 and 4 of the MUP, including the provision of safe pedestrian crossing at the approved ingress-only driveway. General Note 9 on Sheet 1 of the SDP-13-020 MUP plan revisions included in the TSR states, "[a]ll proposed improvements shall meet applicable Howard County, AASHTO, MDMUTCD [sic] and the US Access Board Shared-Use Path Accessibility Guideline Proposed Rule Making (3/20/2010)." The Hearing Examiner takes notice pursuant to Hearing Examiner Rule 9.6 that "MDMUTCD" refers to the Maryland Manual on Uniform Traffic Control Devices, a document combining Federal Highway Administration rulemaking, the Maryland Supplement to the

MUTCD, with text identified as Standard, Guidance, Option or Support. The US Access Board Shared-Use Path Accessibility Guideline Proposed Rule Making (3/20/2010) refers to a proposed Federal Register Rulemaking by the Architectural and Transportation Barriers Compliance Board to propose accessibility guidelines for the design, construction, and alteration of pedestrian facilities in the public ROW pursuant to the American Disabilities Act. These guidelines inform the Shared-Use Path Design Guidelines approved as part of FDP-DC-MSW-1 (TSR, Page 3).

The General Note 9 reference to AASHTO is to the American Association of State Highway and Transportation Officials. The DM III Section 2.5.4 reference to AASHTO's "A Policy on Geometric Design of Highways and Streets 2004" is to what road engineers call the "Green Book." The Green Book, like Mr. Alleva's testimony, is heavily skewed to the geometrics or operational characteristics of an intersection (including street intersections and "Tee-intersections," or driveways) and intersection curb return radii that maximize vehicular movement. Since the adoption of the American Disabilities Act, intersection design has shifted in focus to give equal weight to facilitating the convenience, ease, and comfort of people traversing an intersection while enhancing the efficient movement of motor vehicles, buses, trucks, bicycles, and pedestrians, as embodied in the Shared-Use Path Design Guidelines approved as part of FDP-DC-MSW-1 and the US Access Board Shared-Use Path Accessibility Guideline Proposed Rule Making. In the language of the "new" road geometrics regime, the approved ingress-only driveway is also a mid-block pedestrian/cyclist crosswalk and the curb radius of the approved driveway/crosswalk would have been designed with a smaller turning radius to decrease crossing distances and

increase pedestrian and cyclist visibility while decreasing vehicle-turning speed, in compliance with these guidelines. Dustin Hoffman's character Ratso Rizzo's famous line "I'm walkin here" as he slaps the hood of a taxi in the movie Midnight Cowboy may be the swan song of the "old" regime.

The evidence of record, based wholly upon these laws, regulations and guidelines informing the design of Phases 2, 3 and four of the MUP, convinces the Hearing Examiner that the technical agencies had reviewed the SDP-13-020 MUP plan revisions and the ingress-only driveway/crosswalk for safety and that the Planning Board's approval formally acknowledged the safety of all MUP crosswalks, street intersections and driveways.

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Appellant declined to argue its allegation of Planning Board error for failure to require an amendment to the FDP for its Property for the multi-use pathway use, including showing the use on the FDP. Without weighing in on whether any such amendment is required, the Hearing Examiner here repeats her caution made to the audience at the end of the proceeding.

Appellant's claim has dire collateral implications for Columbia, for New Town zoning and for Howard County. The allegation that an FDP in the New Town zoning scheme embodied in Section 125 of the Howard County Zoning Regulations must be amended whenever a pathway (or trail or bike path) use is proposed, jeopardizes the considerable plans and the many hundreds of hours that county employees, citizens, community associations and other entities have committed these last several years to making accessible and expanding the pathway, trail and

bike path interconnected system currently proposed or being studied on every property with New Town zoning. These plans include the Columbia Association's "Connecting Columbia," which recommends the addition of 51.5 miles of pathways to create a more interconnected system (11.7 miles to be added by the Columbia Association, 38.2 miles to be added by the Howard County Government, including potential sidewalk and pathways within the roadway corridor, and 1.6 miles by others).<sup>2</sup> Another plan is "Bike Howard," The Howard County Bicycle Master Plan, 2-14-14 Draft. A third plan is the Howard County Office of Transportation Improvements to the Pedestrian Master Plan (WalkHoward), which will continue efforts to build a system of ADA accessible sidewalks, pathways, bus stops and roadway crossings to make walking easy and safe.

Although most existing paths have been located and may be expanded in the Open Space areas of New Town FDPs, which usually include pathways as a permitted use—but do not show them—the new paths, increased connections and reengineering of existing paths may be established on land controlled by FDPs which do not authorize and show "pathways" as a permitted land use, as Appellant alleged they should in the administrative appeal petition. By Appellant's logic, every FDP not showing these future pathways/trails and containing a note permitting a pedestrian or bike pathway or trail as a land use would have to be amended to accommodate the use, a potentially protracted and costly process.

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<sup>2</sup> Columbia Association, "Connecting Columbia: Active Transportation Agenda," 2012, Page iii. Copy on file.

**ORDER**

Based upon the foregoing, it is this **30<sup>th</sup> Day of April 2015** by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the appeal of Ryan Daggie t/a Complete Effort First Time, LLC, is hereby **DENIED**.

HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER



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Michele L. LeFaivre

Date Mailed: \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard de novo by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.