DATE: June 17, 2005

SUBJECT: Enact an Ordinance to Vacate a 30-foot wide Storm Drainage Easement, a 20-foot wide Storm Drainage Easement, two 5-foot wide Sanitary Sewer Easements, and a 5-foot wide Sanitary Sewer and Service Connection Easement; all Across Certain Portions of the Property at 5400, 5442, 5444, 5446, 5448, 5500, 5502, and 5510 Columbia Pike; Lots 1-A, 1-B, 4-B, 2-A-1, and 3-A-1 Columbia Village; RPC #28004004 and #28004005, with Conditions.

Applicant:
West Columbia Pike, L.L.C.

By:
Ms. M. Catherine Puskar, Esquire
Walsh, Colucci, Lubeley, Emrich & Terpak, P.C.
2200 Clarendon Blvd, 13th Floor
Arlington, Virginia 22201

C. M. RECOMMENDATIONS:

1. Enact an Ordinance to Vacate a 30-foot wide Storm Drainage Easement, a 20-foot wide Storm Drainage Easement, two 5-foot wide Sanitary Sewer Easements, and a 5-foot wide Sanitary Sewer and Service Connection Easement; all Across Certain Portions of the Property at 5400, 5442, 5444, 5446, 5448, 5500, 5502, and 5510 Columbia Pike; Lots 1-A, 1-B, 4-B, 2-A-1, and 3-A-1 Columbia Village; RPC #28004004 and #28004005 (“Property”), with Conditions; and

2. Authorize the Engineering Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services, to execute, on behalf of the County Board, the Deed of Vacation and all related documents, and accept deeds of easement and deeds of dedication for public storm drainage facilities and public sanitary sewer facilities on behalf of the County Board, subject to approval as to form of all documents by the County Attorney, regarding the above described Ordinance.

ISSUE: None.

SUMMARY: The Applicant has requested the vacation of two storm drainage easement areas and three sanitary sewer easement areas, all situated on the Property on the south side of Columbia Pike that is currently occupied by an aging, multi-tenant commercial facility. The
proposed vacations would facilitate a redevelopment plan (Use Permit Application #U-3126-05-01), based on the Columbia Pike Form Based Code that was concurrently submitted by the Applicant. The proposed redevelopment plan would require relocation of the storm drainage and sanitary sewer facilities (and their associated easements), that currently cross portions of the Property, to accommodate the new construction. All costs associated with the relocation of the public utilities and dedication of all related public easements will be at the Applicant’s expense.

BACKGROUND: The Property is located on the south side of Columbia Pike at South Greenbrier Street. The site is owned by Edward and Marie Petros, who have given their written consent to the redevelopment application by West Columbia Pike, LLC. The site is currently improved with an aging, multi-tenant, mixed-use facility which functions primarily as a neighborhood retail center. There are several public easements currently existing on this Property for storm drainage purposes and for sanitary sewer purposes.

In 1958, by Deed of Dedication recorded in Deed Book 1331, at Page 11, the County acquired a 30-foot wide storm drainage easement and a 20-foot wide storm drainage easement to construct a 96-inch storm sewer in the approximate location of where Bailey’s Branch creek would otherwise have flowed. These storm drainage easements represent two of the five easement areas that are the subject of this Vacation request.

In 1958, by a Deed of Vacation and Rededication, recorded in Deed Book 1331, at Page 508, the County vacated a 20-foot wide sanitary sewer easement in return for the rededication of a narrower 5-foot wide sanitary sewer easement in the center of the said vacated 20-foot easement. The easement accommodates a 12-inch sanitary sewer main that crosses the site, from west to east, south of the above-referenced 30-foot wide storm drainage easement.

In 1961, in a Deed of Easement recorded in Deed Book 1456, at Page 536, a 5-foot wide sanitary sewer and service connection easement was conveyed to the County on Lots 2-A-1, 3-A-1, and 4-A-1. Lot 4-A-1 has since been resubdivided and is now represented on the plat submitted for this Vacation request as Lot 4-B.

In 1962, in a Deed of Easement recorded in Deed Book 1483, at Page 298, a 5-foot wide sanitary sewer easement was granted to the County to allow a new connection from the Property to the then-built sanitary sewer main.

DISCUSSION: The Applicant has filed a request for approval of Use Permit #U-3126-05-01, which is the Applicant’s development plan proposal for Columbia Village. The Use Permit request is being presented to the Board concurrently with this request. As part of the Use Permit, the Applicant is proposing to develop the site under the Columbia Pike Form Based Code to construct a ten-story residential building with ground floor retail space.

In order to allow the placement of the proposed new construction, the Applicant has requested that portions of existing public utility easements be vacated and the Applicant be permitted to remove and relocated the existing storm sewer drainage facilities and the sanitary sewer facilities located on the Property. The Applicant proposes to relocate these public utilities, at Applicant’s
expense. A portion of the relocated public facilities will be relocated within the Property boundaries, with other portions proposed to be relocated to the public right-of-way of Columbia Pike, pursuant to County and the Virginia Department of Transportation (“VDOT”) permits, and the remainder will be relocated to one or more adjacent properties. This requires the vacation of the five easement areas in four recorded documents cited herein.

The public utility easement areas that are the subject of the vacation request are depicted on a plat attached as Exhibit “2” entitled “Plat Showing Vacation of Various Easements on Lots 1-A, 1-B, 2-A-1, 3-A-1, & 4-B, Columbia Village, Deed Book 1473, Pg. 1, Arlington County, Virginia” prepared by VIKA Incorporated, dated June 17, 2005. A plat showing the existing conditions on the Property is included as Exhibit “3”, followed by a vicinity map included as Exhibit “4”.

The attached Ordinance of Vacation (Exhibit “1”) is subject to a number of conditions that are designed to ensure the dedication of new easements for relocated facilities on the Property; the acquisition of any needed and related easements on adjacent properties are acquired by the Applicant; all required permits in the public rights-of-way are obtained by the Applicant; the relocated public facilities are built by the Applicant and are accepted by the County; and that all new easements for the said relocated facilities are dedicated to the County Board and recorded prior to the recordation of the Deed of Vacation. At that point, Deed of Vacation will be signed on behalf of the County Board and the County’s interest in the vacated portions of the easements will be extinguished.

As a condition of the Ordinance of Vacation, the Applicant will be required to obtain all the necessary public easements on adjacent properties; and obtain any required state/local right-of-way permits, where applicable, to permit the relocation of the said facilities within any public rights-of-way; and dedicate all necessary public easement on the Property to accommodate the said relocation of public facilities. The easement agreements must be in the County’s standard forms, and each agreement must be signed by all entities having any interest in the property(ies) on which the easement(s) is being granted. All easement agreements must be obtained and recorded, by the Applicant. Once all pertinent public easements are recorded by the Applicant in the Land Records of Arlington County; the construction of the relocated facilities by the Applicant is accepted by the County; and all other conditions of the Ordinance are satisfied, then the County will execute the Deed of Vacation.

At this time, more specific details pertaining to replacement easements/permits and of the engineering plans are not available. However, the Applicant will be required to submit a Utility Relocation Plan for review and approval by the Department of Environmental Services. The Utility Relocation Plan, as a condition of the County Board’s granting a Deed of Vacation, must be acceptable to the County. The new facilities must be constructed to County standards and specifications. When the new facilities are properly constructed and operational, they will be accepted by the County.

To address the relocation of the public utilities, several conditions have been written into the Ordinance of Vacation.

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This Board Report requests that the County Board approve the attached Ordinance, subject to the conditions therein. With the enactment of the Ordinance, upon satisfaction of the conditions, and upon recordation of the Deed of Vacation, the County’s interest in the vacated portions of the subject easements will be extinguished.

**Compensation:** Staff recommends that no compensation be required from the Applicant for vacating the aforesaid public utilities easements. The Applicant, as a condition of approval of the vacation request, is required to, at their own expense, relocate these public utilities to a location that meets, in all respects, with the approval of the County; and the Applicant shall obtain, for the County and in a form approved by the County Attorney, all appropriate easements necessary to facilitate the relocation.

**Public Notice:** Public notice was given in accordance with state law. Public notices were placed in the June 22, 2005 and June 29, 2005 issues of the Examiner.Washington for the July 9, 2005 County Board Meeting.

**FISCAL IMPACT:** The Applicant will relocate all required facilities and will dedicate all required easements, at its own expense, with no cost to the County.

**CONCLUSION:** It is recommended that the County Board enact the attached Ordinance to vacate five public utility easement areas which are recorded in four separate Deeds of Easement. The easement areas include a 30-foot wide Storm Drainage Easement, a 20-foot wide Storm Drainage Easement, two 5-foot wide Sanitary Sewer Easements, and a 5-foot wide Sanitary Sewer and Service Connection Easement; all across certain portions of Property boundaries located at 5400, 5442, 5444, 5446, 5448, 5500, 5502, and 5510 Columbia Pike; Lots 1-A, 1-B, 4-B, 2-A-1, and 3-A-1 Columbia Village; RPC #28004004 and #28004005 (the “Property”), subject to the following conditions:

1. **A.** The Applicant shall submit, for review and approval, to the Department of Environmental Services, a Utility Relocation Plan and engineering design (jointly “Plan”), in compliance with the Arlington County Department of Environmental Services’ Construction Standards and Specifications, which Plan shall be subject to approval by the Director of Environmental Services, or his designee, for the relocation of all public facilities, in whole or in part, located within the portions of the easements vacated by this Ordinance of Vacation.

   **B.** The Applicant shall provide to the County a bond, letter of credit, or other security, in an amount and in a form as determined by, and acceptable to, the County Manager or his designee, for the construction, relocation, removal, or abandonment of all existing utility facilities to be relocated pursuant to the approved Plan.

2. The Applicant’s Plan shall, among other things, demonstrate that the engineering design for the relocated storm sewer facilities and sanitary sewer facilities comply with the Arlington County Department of Environmental Services Construction Standards and

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Specifications to ensure that the hydraulic capacities of the utilities will be maintained. The engineering design shall incorporate a construction design that allows for future maintenance, by the County, of the relocated utilities, including excavation, while maintaining the structural integrity of both the utilities and all adjacent structures and buildings. If Applicant is unable to meet the then current County easement standards and specifications, it shall be the Applicant’s responsibility to develop an engineering design that is otherwise acceptable to the County and will ensure that the relocated public utilities can still be accessed adequately for future maintenance, by the County, and repair. Such design plans shall be submitted by the Applicant for review and approval by the Director of the Department of Environmental Services, or his designee, as part of the Plan.

3. The Applicant shall dedicate, or cause to be dedicated, to the County Board, any and all public storm sewer and sanitary sewer easements to accommodate the relocated public facilities within the easements to be vacated, at locations to be approved by the Director of the Department of Environmental Services or his designee. Such deeds shall be as to substance, form, purpose, location and dimensions, be acceptable to the Engineering Bureau Chief, or his designee, and be acceptable as to form by the County Attorney.

4. Before the Deed of Vacation is executed and delivered to the Applicant by the County, the Applicant shall construct the relocated public facilities required by the County within such easements in accordance with County Standards and Specifications. Such facilities shall be subject to acceptance by the Director of the Department of Environmental Services, or his designee, and shall be conveyed by such deeds of easement.

5. The Applicant shall be responsible for the costs and expense of the design and construction, the acquisition of all permits (including, but not limited to, Virginia Department of Transportation permits), and the dedication of all necessary off-site public easements required for relocating the storm and sanitary sewers necessitated by the proposed Columbia Village Form Based Code development (Use Permit U-3126-05-01). Each deed of easement or deed of dedication shall be signed by all entities having an interest in the property(ies) upon, within, over and through which the easement(s) is being dedicated.

6. The Applicant shall obtain the vacation or extinguishment of all other legal interests in the Property that are necessary for the approved Plan to be implemented.

7. The Applicant shall prepare and submit to the County a Deed of Vacation, all required deeds of easement and deeds of dedication of the Property and on adjacent properties, all plats and other necessary documents, subject to the approval by the County Manager, or his designee, and acceptable in substance and in form by the County Attorney.

8. The Applicant shall record all plats and the Deed of Vacation, and all required deeds of easement and deeds of dedication on the Property, and on adjacent properties, for the relocation of the public facilities.
9. The Applicant shall pay all fees, including the fees for review, approval, and recording of all required documents associated with the Ordinance of Vacation.

10. The Deed of Vacation shall not be executed on behalf of the County Board until all the requirements of this Ordinance are satisfied.

11. All conditions of the Ordinance of Vacation shall be met by noon on July 9, 2008, or the Ordinance of Vacation shall become null and void without the necessity of any further action by the County Board.
Exhibit “1”

AN ORDINANCE TO VACATE A 30-FOOT WIDE STORM DRAINAGE EASEMENT, A 20-FOOT WIDE STORM DRAINAGE EASEMENT, TWO 5-FOOT WIDE SANITARY SEWER EASEMENTS, AND A 5-FOOT WIDE SANITARY SEWER AND SERVICE CONNECTION EASEMENT, ALL ACROSS CERTAIN PORTIONS OF THE PROPERTY AT 5400, 5442, 5444, 5446, 5448, 5500, 5502, AND 5510 COLUMBIA PIKE, LOTS 1-A, 1-B, 4-B, 2-A-1, AND 3-A-1 COLUMBIA VILLAGE; RPC #28004004 AND #28004005, WITH CONDITIONS.

BE IT ORDAINED that, pursuant to a request by West Columbia Pike, L.L.C. (the “Applicant”), on file in the offices of the Department of Environmental Services, that portions of a 30-foot wide Storm Drainage Easement, a 20-foot wide Storm Drainage Easement, two 5-foot wide Sanitary Sewer Easements, and a 5-foot wide Sanitary Sewer and Service Connection Easement; all across certain portions of the Property at 5400, 5442, 5444, 5446, 5448, 5500, 5502, and 5510 Columbia Pike; Lots 1-A, 1-B, 4-B, 2-A-1, and 3-A-1 Columbia Village; RPC #28004004 and #28004005 (“Property”), are hereby vacated, subject to the following conditions:

1. A. The Applicant shall submit, for review and approval, to the Department of Environmental Services, a Utility Relocation Plan and engineering design (jointly “Plan”), in compliance with the Arlington County Department of Environmental Services’ Construction Standards and Specifications, which Plan shall be subject to approval by the Director of Environmental Services, or his designee, for the relocation of all public facilities, in whole or in part, located within the portions of the easements vacated by this Ordinance of Vacation.

B. The Applicant shall provide to the County a bond, letter of credit, or other security, in an amount and in a form as determined by, and acceptable to, the County Manager or his designee, for the construction, relocation, removal, or abandonment of all existing utility facilities to be relocated pursuant to the approved Plan.

2. The Applicant’s Plan shall, among other things, demonstrate that the engineering design for the relocated storm sewer facilities and sanitary sewer facilities comply with the Arlington County Department of Environmental Services Construction Standards and Specifications to ensure that the hydraulic capacities of the utilities will be maintained. The engineering design shall incorporate a construction design that allows for future maintenance, by the County, of the relocated utilities, including excavation, while maintaining the structural integrity of both the utilities and all adjacent structures and buildings. If Applicant is unable to meet the then current County easement standards and specifications, it shall be the Applicant’s responsibility to develop an engineering design that is otherwise acceptable to the County and will ensure that the relocated public utilities can still be accessed adequately for future maintenance, by the County, and repair. Such design plans shall be submitted by the Applicant for review and approval by the Director of the Department of Environmental Services, or his designee, as part of the Plan.
3. The Applicant shall dedicate, or cause to be dedicated, to the County Board, any and all public storm sewer and sanitary sewer easements to accommodate the relocated public facilities within the easements to be vacated, at locations to be approved by the Director of the Department of Environmental Services or his designee. Such deeds shall be, as to substance, form, purpose, location and dimensions, acceptable to the Engineering Bureau Chief, or his designee, and be acceptable as to form by the County Attorney.

4. Before the Deed of Vacation is executed and delivered to the Applicant by the County, the Applicant shall construct the relocated public facilities required by the County within such easements in accordance with County Standards and Specifications. Such facilities shall be subject to acceptance by the Director of the Department of Environmental Services, or his designee, and shall be conveyed by such deeds of easement.

5. The Applicant shall be responsible for the costs and expense of the design and construction, the acquisition of all permits (including, but not limited to, Virginia Department of Transportation permits), and the dedication of all necessary off-site public easements required for relocating the storm and sanitary sewers necessitated by the proposed Columbia Village Form Based Code development (Use Permit U-3126-05-01). Each deed of easement or deed of dedication shall be signed by all entities having an interest in the property(ies) upon, within, over and through which the easement(s) is being dedicated.

6. The Applicant shall obtain the vacation or extinguishment of all other legal interests in the Property that are necessary for the approved Plan to be implemented.

7. The Applicant shall prepare and submit to the County a Deed of Vacation, all required deeds of easement and deeds of dedication of the Property and on adjacent properties, all plats and other necessary documents, subject to the approval by the County Manager, or his designee, and acceptable in substance and in form by the County Attorney.

8. The Applicant shall record all plats and the Deed of Vacation, and all required deeds of easement and deeds of dedication on the Property, and on adjacent properties, for the relocation of the public facilities.

9. The Applicant shall pay all fees, including the fees for review, approval, and recording of all required documents associated with the Ordinance of Vacation.

10. The Deed of Vacation shall not be executed on behalf of the County Board until all the requirements of this Ordinance are satisfied.

11. All conditions of the Ordinance of Vacation shall be met by noon on July 9, 2008, or the Ordinance of Vacation shall become null and void without the necessity of any further action by the County Board.
Exhibit “2”

Insert Plat Showing Areas to be Vacated
Exhibit “3”

Insert Plat (2 pages) showing Existing Conditions
Exhibit “4”

VICINITY MAP SHOWING SUBJECT PROPERTY LOCATION ON WHICH PUBLIC UTILITY AREAS ARE PROPOSED BE VACATED UNDER COLUMBIA PIKE FORM BASED CODE USE PERMIT U-3126-05-01

5400, 5442, 5444, 5446, 5448, 5500, 5502, and 5510 Columbia Pike

Boldface line on this schematic indicates the boundary lines of the Property

Ordinance to Vacate certain portions of public storm drainage and sanitary sewer easements

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