

HARMONY PLACE
ASSOCIATES, LLC

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Appellant

2010 MAY 21

A COURT

IN THE

COURT OF SPECIAL APPEALS
OF MARYLAND

v.

CLERK
COURT OF SPECIAL APPEALS

September Term, 2009

No. 2087

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT
COUNCIL

THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

RECEIVED
MAY 21 2010

Appellee

LEGAL DEPARTMENT
PRINCE GEORGE'S COUNTY

**APPELLEE DISTRICT COUNCIL'S MOTION
TO STAY ADMINISTRATIVE PROCEEDINGS**

Appellee County Council of Prince George's County, Maryland, sitting as the District Council, hereby moves the Court for an order staying further administrative proceedings before the Prince George's County Planning Board in the case designated as SP- 07066, for the following reasons:

1. The case pending in this Court is an appeal from a final order of the Circuit Court for Prince George's County, Maryland (Chapdelaine, J.), dismissing the complaint for mandamus and declaratory judgment filed by appellant Harmony Place Associates, LLC. The mandamus-declaratory judgment complaint challenged, for factual and legal reasons, the validity of the District Council's order remanding SP-07066 to the Planning Board.

2. Appellant, referred to here as HPA, claims in this appeal, as shown in its brief, the invalidity and illegality of the District Council's remand order for the case designated SP-07066. In the first sentence on the first page of its brief, HPA states: "This appeal results from the action of . . . the District Council . . . that [is] beyond the scope of the District Council's authority."

3. HPA, in short, argues the invalidity and illegality of a District Council remand order, E. 337-40, for SP-07066. In the trial court and in this Court, HPA's position is clearly in opposition to the remand order, and to any compliance by HPA with this order. The HPA opposition is based on facts it asserts in its complaint.

4. The following facts have just come to the attention of undersigned counsel. After HPA filed its notice of appeal to this Court, it attempted, in or about March or April 2010, to reactivate its site plan case, SP-07066, to comply with the remand order, the same administrative order this Court is reviewing in this appeal. HPA is presently in the process of presenting to the Planning Board a slightly revised version of the site plan (or, to be accurate, one of two site plans) it presented to the Planning Board and District Council.

In 2008, the Planning Board for SP-07066 approved two alternative site plans, with different parking structures. (HPA believes only one site plan was approved, but the record shows otherwise.) The District Council thereafter reviewed and remanded the SP-07066 case to the Planning Board. HPA then filed a complaint for mandamus

and declaratory judgment in the trial court, to attack the validity of the Council's remand order. The trial court dismissed the complaint, and the court's dismissal order is the subject of this appeal.

5. HPA in the trial court and in this Court continues to claim the invalidity of the District Council's remand order. But in SP-07066 proceedings before the Planning Board, HPA is in the process of *following* and *complying* with that same administrative order.

6. In administrative proceedings before the Planning Board, HPA should be estopped from going forward and complying with the same administrative order whose validity it challenges in this Court. *See Dept. of Human Resources v. Kamp*, 180 Md.App. 166, 208-09, 949 A.2d 43 (2008), *aff'd*, 410 Md. 645, 980 A.2d 448 (2009) (judicial estoppels); *Abrams v. American Tennis Courts, Inc.*, 160 Md. 213, 221-23, 862 A.2d 1094 (2004), *cert. denied*, 386 Md. 181 (2005) (same). HPA should not be permitted to argue here the remand order's invalidity – based on facts in its voluminous record extract – while relitigating its SP-07066 application, under the same remand order, before the Planning Board and District Council. *Chaney Enterprises Ltd. Pshp. V. Windsor*, 158 Md.App. 1, 39-42, 854 A.2d 233 (2004) (reviewing cases).

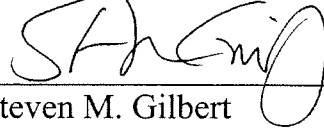
7. The present motion is filed under the Court of Appeals' admonition in *City of Bowie v. Planning Board*, 384 Md. 413, 863 A.2d 976 (2004). There the Court, in reviewing a preliminary plat and final plat approval for a property near Bowie, held that the Planning Board was authorized to move forward and approve a final plat, in the

absence of a stay of administrative proceedings before the Board. 384 Md. at 434-39 & n.15, 863 A.2d 976.

8. A proposed order is filed herewith, to stay further administrative proceedings, before Planning Board and District Council, in the case designated SP-07066.

Respectfully submitted,

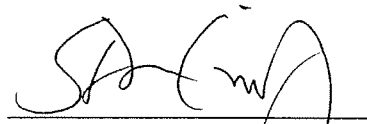
COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT
COUNCIL



Steven M. Gilbert
Principal Counsel
Office of County Council
County Administration Building
Upper Marlboro, Maryland 20772
301.952.5261

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of May, 2010, a copy of this motion was mailed first-class, postage prepaid, to M. Celeste Bruce, Esquire, and Megan Bramble Owings, Esquire, 7979 Old Georgetown Road, Suite 400, Bethesda, Maryland 20814.



Steven M. Gilbert

HARMONY PLACE
ASSOCIATES, LLC

Appellant

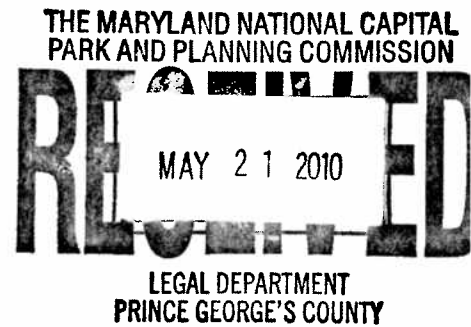
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AFFIDAVIT OF COUNSEL

I, Steven M. Gilbert, hereby depose and say:

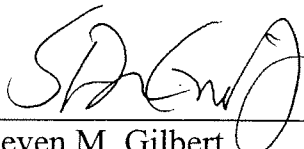
1. I am an adult, over the age of eighteen years, with personal knowledge of the facts stated below. I am competent to testify as a witness to all facts in this affidavit.
2. I am an attorney, admitted to practice before the Court of Appeals of Maryland in 1976. I am counsel of record for appellee County Council of Prince George's County, Maryland, sitting as the District Council, in the present case.
3. I am personally familiar with all administrative proceedings, as reflected in the administrative record, for the detailed site plan case designated SP-07066. In October 2008, the District Council remanded SP-07066 to the Planning Board, and appellant Harmony Place Associates filed a complaint for mandamus and declaratory judgment, challenging the validity of the District Council's remand order.

4. In this Court, appellant continues to challenge the validity of the Council's remand order, and to claim the Council's lack of authority to pass the order. Appellant's invalidity claims are founded in large part on the facts allegedly shown in its large record extract, as to Bowie ex parte communications, the transcript of the District Council's oral argument hearing, and other matters.

5. But appellant has recently, in or about March or April, 2010, attempted to revive its SP-07066 application before the Planning Board. Present Planning Board records held by Ruth Grover and Steven Adams, planners in the Urban Design Section of the Planning Department, reflect the reopening of SP-07066 and its likely placement on a Planning Board agenda for a date (a Thursday) in June 2010.

6. Appellant Harmony Place Associates is thus taking fundamentally inconsistent positions, moving forward in this Court on one set of facts and before the Planning Board on another. In this Court appellant claims the invalidity of the District Council's SP-07066 remand, largely on factual grounds. But before the Planning Board, appellant is in the process of complying with the remand order.

I HEREBY DECLARE AND AFFIRM, under the penalties of perjury, that the statements made above are true and correct.



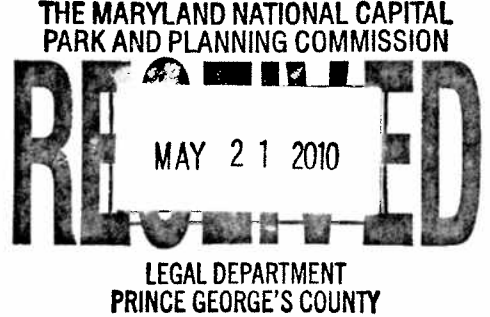
Steven M. Gilbert

Date: 20 May 2010

HARMONY PLACE :
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COUNTY COUNCIL OF PRINCE :
GEORGE'S COUNTY, MARYLAND, :
SITTING AS THE DISTRICT :
COUNCIL :
Appellee :

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ORDER
(Stay of Administrative Proceedings)

UPON CONSIDERATION of the motion by appellee County Council of Prince George's County, Maryland, sitting as the District Council, to stay further administrative proceedings, during the pendency of the present case in this Court, and any response thereto, it is, this _____ day of _____, 2010, by the Court of Special Appeals of Maryland:

ORDERED, that the motion is GRANTED; and it is

FURTHER ORDERED, that while the present appeal is pending in this Court, and until issuance of the mandate, all further administrative proceedings in the detailed site plan case designated as SP-07066 are hereby STAYED.

Chief Judge
Court of Special Appeals of Maryland