Loudoun County, Virginia
www.loudoun.gov
Office of the County Administrator
1 Harrison Street, S.E., 5th Floor, P.O. Box 7000, Leesburg, VA 20177-7000
Telephone (703) 777-0200 • Fax (703) 777-0325

At a business meeting of the Board of Supervisors of Loudoun County, Virginia, held in the County Government Center, Board of Supervisors' Meeting Room, 1 Harrison St., S.E., Leesburg, Virginia, on Tuesday, April 20, 2010 at 9:00 a.m.

IN RE: APPL 2010/0003/ZEBRA VENTURES LLC

Mr. Miller moved that the Board of Supervisors uphold and wholly affirm the December 15, 2009 proffer determination issued by the Zoning Administrator.

Seconded by Ms. McGimsey.

Voting on the Motion: Supervisors Buckley, Burk, Burton, Delgaudio, Kurtz, McGimsey, Miller and Waters – Yes; Chairman York – No.

A COPY TESTE:

DEPUTY CLERK FOR THE LOUDOUN
COUNTY BOARD OF SUPERVISORS

(16-APPL-2010-0003 – Zebra Ventures LLC)

ATTACHMENT 1

VICINITY MAP

North

#1

DEPARTMENT OF BUILDING AND DEVELOPMENT
STAFF REPORT

BOARD OF SUPERVISORS PUBLIC HEARING

DATE OF HEARING: March 8, 2010

SUBJECT: **APPEAL 2010-0003**
ZEBRA VENTURES LLC

PROJECT STAFF: Dan Schardein, Zoning Administrator
Bradley Polk, Proffer Auditor

APPLICANT: Zebra Ventures LLC
c/o DuPont Fabros Development LLC

REPRESENTATIVE: Antonio J. Calabrese
Cooley Godward Kronish LLP
11951 Freedom Drive
Reston, VA 20190-5656

ISSUE: An appeal under the Revised 1993 Loudoun County Zoning Ordinance of a proffer determination in regard to the development of WorldCom, written by Zoning Administration, dated December 15, 2009. The determination found that pursuant to ZMAP 1998-0003, Proffer II.D., the installation of a traffic signal at Site Entrance "M" along Route 625 (Waxpool Road), as shown on the approved concept development plan, is required by the property owner of record because the traffic signal has been warranted by the Virginia Department of Transportation.

LOCATION: The property is located on the south side of Waxpool Road and on the north side of Loudoun County Parkway (Route 607).

TAX MAP/PARCEL: Tax Map 79 ((84)), Parcel A (PIN# 061-36-2081-000)

ZONING: PD-OP (Planned Development-Office Park) under the Revised 1993 Loudoun County Zoning Ordinance.

ACREAGE OF PROPERTY: Approximately 71.08 acres

ATTACHMENT 2

ELECTION DISTRICT: Dulles

DECISION DEADLINE: April 13, 2010

SURROUNDING ZONING:		**USES:**
North:	PD-IP	Hotel, Restaurant
South:	PD-OP	Office
East:	PD-OP	Vacant, Office
West:	PD-OP and PD-IP	Vacant, Office

STAFF RECOMMENDATION: Uphold the December 15, 2009 proffer determination and deny APPL 2010-0003.

SUMMARY OF APPEAL:

Zebra Ventures LLC (the "Appellant"), the property owner of record, alleges that since the parcel (PIN #061-36-2081-000) that Site Entrance "M" would provide access to has not been developed, they should not have to install the warranted traffic signal at this Site Entrance. The Appellant further alleges that all of the traffic contributing to the traffic signal being warranted is caused by traffic entering and leaving Waxpool Road Center, the entrance for which is located on the northern side of Waxpool Road immediately opposite the designated location for Site Entrance "M."

DRAFT MOTIONS:

1. A. I move to suspend the rules. AND

   B. I move that the Board of Supervisors uphold and wholly affirm the December 15, 2009 proffer determination based on the findings contained in this Staff Report.

OR

2. I move that the Board of Supervisors adopt an alternate motion.

RELEVANT ZONING ORDINANCE PROVISIONS:

The provisions of the Revised 1993 Loudoun County Zoning Ordinance that are germane to this appeal are as follows:

1. **Section 6-1209** **Proffered Conditions.** As part of an application for a rezoning, a property owner may proffer in writing the provision of reasonable conditions to apply and be part of the rezoning sought to be approved by said application. Proffered conditions may include written statements, development plans, profiles, elevations, or other demonstrative materials and shall be subject to the following procedures and regulations:

(D) **Proffers Govern Development.** Proffered conditions shall become a part of the zoning regulations applicable to the property unless subsequently changed by an amendment to the Zoning Map, which amendment is not part of a comprehensive implementation of a new or substantially revised zoning ordinance, and such conditions shall be in addition to the specific regulations set forth in this Ordinance for the zoning district in question.

(E) **Substantial Conformance Required.** Upon approval of a rezoning with proffers, any site plan, subdivision plat, development plan or other application for development thereafter submitted shall be in substantial conformance with all proffered conditions. No development shall be approved by any County official in the absence of said substantial conformance.

(F) **Substantial Conformance Defined.** For the purpose of this Section, substantial conformance shall be determined by the Zoning Administrator and shall mean that conformance which leaves a reasonable margin for adjustment due to final design or engineering data but conforms with the general nature of the development, the specific uses, and the general layout depicted by the plans, profiles, elevations, and other demonstrative materials proffered by the applicant.

2. **Copy Teste, Proffers, and Zoning Modifications associated with ZMAP 1998-0003** (approved June 17, 1998) (Attachment 2)

The proffers that are applicable to this appeal are Proffers II.D.(1)(d) and II.D.(2) of ZMAP 1998-0003, which are provided below.

II. TRANSPORTATION PROFFERS

D. SIGNALIZATION

(1) Proffered Signals. The Owner shall install signalization at such time as warranted by VDOT criteria (i.e.. the Manual on Uniform Traffic Control Devices) at the intersections of:

(a) Route 625/Site Entrance C
(b) Route 625 Realigned/Site Entrance D
(c) Route 607/Site Entrances E-K
(d) Route 625/Site Entrances M-N
(e) Route 625/Site Entrance L; provided that the Owner shall not be obligated to contribute more than fifty percent (50%) of the cost of signalization of this intersection if the landowner on the opposite side of Waxpool Road constructs a public street from such property which connects with this entrance.
(f) Route 625/Panorama Parkway

(2) If at the time the necessary warrants for any of the foregoing traffic signals are met WorldCom or a wholly-owned subsidiary is the owner of all land fronting on the intersection where the signal is warranted, WorldCom shall be

responsible for paying for the cost of such signal. The Protective Covenants, to be established by the Owner at the time of sale of any land within the Property to an entity unrelated to WorldCom, shall provide for a procedure and formula for the collection and payment of future signalization costs from such unrelated entities.

3. **The Code of Virginia sections that are germane to this appeal include:**
§ 15.2-2301. Same; petition for review of decision. – Any zoning applicant or any other person who is aggrieved by a decision of the zoning administrator made pursuant to the provisions of § 15.2-2299 may petition the governing body for review of the decision of the zoning administrator. All petitions for review shall be filed with the zoning administrator and with the clerk of the governing body within thirty days from the date of the decision for which review is sought and shall specify the grounds upon which the petitioner is aggrieved.

BACKGROUND:

1. April 15, 1998 – Board of Supervisors adopts a resolution of intent to amend the Zoning Map to PD-OP for the WorldCom Property.

2. June 17, 1998 – Board of Supervisors approves ZMAP 1998-0003, WorldCom (Attachment 2).

3. Undated – Statement of Justification provided with Ashburn Corporate Center, SPEX 1998-0015, SPEX 1998-0016, and SPEX 1998-0017 [SPEX applications approved May 5, 1999], contains the following reference to improvements to Waxpool Road to be completed by WorldCom: "The primary entrance to Ashburn Corporate Center is planned at a median crossover across from one of the WorldCom entrances which ultimately will be signalized." The primary entrance into Ashburn Corporate Center is the entrance opposite WorldCom site entrance "M" (Attachment 5).

4. July 31, 1998 – "Ashburn Corporate Center Traffic Impact Study" (revised September 14, 1998) prepared by Wells & Associates, LLC, concludes that a pro-rata contribution toward the provision of a traffic signal at each site entrance on Route 640 [currently Route 625] when warranted by VDOT is required to accommodate traffic generated by the Ashburn Corporate Center development (Attachment 6).

5. November 4, 1998 – Memorandum from Art Smith, Principal Transportation Planner to Garvan R. Armstrong, Project Planner for Ashburn Corporate Center (SPEX 1998-0015, SPEX 1998-0016, and SPEX 1998-0017) contains the following reference to WorldCom proffered improvements to the transportation system along Route 625: "Contribute toward new traffic signals at the intersection of Route 625 with WorldCom Driveways located opposite the entrances to the Loudoun Station Lots" (Attachment 7).

6. 1999 to 2001 – Build out of WorldCom (now Verizon) campus (1,994,927 square feet of office space) occurs.

7. September 20, 2000 – The Board of Supervisors approves Ashburn Corporate Center, SPEX 1998-0015, SPEX 1998-0016, and SPEX 1998-0017 with no condition of approval requiring

contributions toward the traffic signal at Route 625 and the entrance to the hotel/WorldCom Site Entrance "M".

8. June 29, 2007 –The Appellant acquires four parcels of the MCI (WorldCom)/Northern Virginia Campus, including the subject property (PIN #061-36-2081-000).

9. March 10, 2009 – VDOT Traffic Engineering issues a memorandum stating that a fully operational traffic signal is warranted at the Waxpool Road and Waxpool Road Center Main (Western) Entrance, which is located at WorldCom Site Entrance "M", traffic study was prepared for DuPont Fabros during the review of a site plan for the Ashburn Corporate Center, STPL 2008-0017.

10. December 15, 2009 – Zoining Administration issues a proffer determination (ZCOR 2009-0265) to request that Zebra Ventures LLC, the property owner of record, design and install a traffic signal at Waxpool Road and WorldCom Site Entrance "M" (Attachment 3).

11. January 4, 2010 – Staff from Zoning Administration and the Office of Transportation Services meet with Jeff Nein of Cooley Godward Kronish LLP to discuss the December 15, 2009 proffer determination. No resolution is reached on the issues contested by the property owner, Zebra Ventures LLC.

12. January 13, 2010 – An appeal (APPL 2010-0003) of the proffer determination is filed by Antonio J. Calabrese of Cooley Godward Kronish LLC on behalf of the Appellant (Attachment 4).

SUMMARY OF APPELLANT'S POSITION:

The appellant's basis for appeal is set forth in Attachment 4.

ZONING ADMINISTRATOR'S POSITION:

The Zoning Administrator's position is that the Appellant is responsible for the installation of a traffic signal at Site Entrance "M" along Route 625 (Waxpool Road) as shown on the approved concept development plan. The traffic signal has been warranted by the Virginia Department of Transportation (VDOT) and is required to be installed by the property owner of record, pursuant to the proffers for WorldCom, ZMAP 1998-0003.

Proffer II.D. sets forth the requirements for installation of proffered signals which are to be installed "at such time as warranted by VDOT criteria".

II. TRANSPORTATION PROFFERS

D. SIGNALIZATION

(1) ***Proffered Signals. The Owner shall install signalization at such time as warranted by VDOT criteria (i.e.. the Manual on Uniform Traffic Control Devices) at the intersections of:***

(a) Route 625/Site Entrance C
(b) Route 625 Realigned/Site Entrance D
(c) Route 607/Site Entrances E-K

(d) ***Route 625/Site Entrances M-N***
(e) Route 625/Site Entrance L; provided that the Owner shall not be obligated to contribute more than fifty percent (50%) of the cost of signalization of this intersection if the landowner on the opposite side of Waxpool Road constructs a public street from such property which connects with this entrance.
(f) Route 625/Panorama Parkway

A Memorandum from Arsalan (Alex) Faghri with VDOT Traffic Engineering, dated March 10, 2009 (Attachment 3), warrants that a fully operational traffic signal be installed on Route 625 (Waxpool Road) at a location that corresponds to the WorldCom access point designated as Site Entrance "M" on the approved Concept Development Plan. Therefore, pursuant to ZMAP 1998-0003, Proffer II.D.(1)(d), the Appellant must commence installation of the traffic signal at the intersection of Route 625 (Waxpool Road) and Site Entrance "M". It is noted that the traffic signal warrant study was prepared for DuPont Fabros during the review of a site plan for an office building at Ashburn Corporate Center, STPL 2008-0017.

The Appellant alleges that since their parcel is vacant and undeveloped, they should not be forced to pay for the warranted traffic signal. The Appellant attaches significance to Proffer II.D.(1)(e), pursuant to which WorldCom only proffered to contribute 50% of the cost of the traffic signal located at Site Entrance "L", and argues that this 50% contribution was because Worldcom was responsible for only half of the traffic generated at that location. It is the appellant's position that, since the subject parcel is vacant and contributes no traffic, the Appellant should not be responsible for any costs of traffic mitigation.

However, the Appellant's reliance on Proffer II.D.(1)(e) actually supports the correctness of the Zoning Administrator's determination on this issue. Pursuant to the plain language of the controlling Proffer II.D.(1)(d), the vacant and undeveloped status of the Appellant's parcel has no bearing on the installation of the traffic signal once its installation is warranted by VDOT. If the consideration of traffic from across the street had been intended, it would have been written into Proffer II.D.(1)(d) just as it was written into Proffer II.D.(1)(e). Further, the subject parcel is part of the larger WorldCom zoning map amendment (ZMAP 1998-0003), pursuant to which approval of approximately 1,994,927 square feet of improvements have been constructed since 1999. When the zoning map amendment for WorldCom was considered, the traffic system improvements were not considered on a lot by lot basis, but for the WorldCom project as a whole. The Appellant's argument, however, considers solely the subject parcel and not the impacts of the WorldCom project in its entirety.

Additionally, the approved applications for Ashburn Corporate Center (SPEX 1998-0015, SPEX 1998-0016, and SPEX 1998-0017), located on the northern side of Waxpool Road immediately opposite Site Entrance "M," anticipated the signalization of Waxpool Road at WorldCom's Site Entrance "M." For example, the Statement of Justification for Ashburn Corporate Center indicated that the primary entrance to Ashburn Corporate Center would be at a median crossover across from one of the WorldCom entrances which ultimately would be signalized (Attachment 5). Also, the proposed main entrance for the Ashburn Corporate Center is the Waxpool Road Center Main Entrance currently located on the northern side of Waxpool Road immediately opposite Site Entrance "M." Further, the traffic study for Ashburn Corporate Center recognized the need for the shared entrances with WorldCom that would be signalized along Waxpool Road (Attachment 6). However, since the proffers for WorldCom were approved prior to the approval of the Ashburn Corporate Center special

exception applications, these special exception applications were approved without any conditions of approval that would have required Ashburn Corporate Center to contribute toward the installation of a traffic signal at the intersection of Waxpool Road and Site Entrance "M" apparently because this traffic signal was anticipated to be provided by WorldCom. Comment #13 from the Office of Transportation Services review of Ashburn Corporate Center states "The applicant should provide any remaining contribution necessary to fully fund traffic signals necessary at joint entrances with WorldCom on Routes 640/625 (Attachment 7).

Finally, Proffer II.D.(2) provides that WorldCom shall be responsible for paying the cost of such signal when WorldCom or a wholly-owned subsidiary is the owner of all land fronting on the intersection where the signal is warranted. The subject property, which is owned by the Appellant, fronts on the intersection where the signal is warranted. Additionally, Proffer II.D.(2) obligated WorldCom to establish Protective Covenants to provide for a procedure and formula for the collection and payment of future signalization costs from future owners unrelated to WorldCom. Thus, any disagreement over whether or not the Appellant or WorldCom (UUNet Technologies) is responsible for the cost of the warranted traffic signal is a legal contractual issue between WorldCom and Zebra Ventures LLC.

The Zoning Administrator respectfully requests that the Board of Supervisors uphold and wholly affirm the December 15, 2009 proffer determination based upon the following Findings:

1. The Appellant, Zebra Ventures, LLC, is the owner of the subject parcel (PIN #061-36-2081-000);
2. The subject parcel is part of the development approved with the rezoning known as WorldCom (ZMAP 1998-0003);
3. ZMAP 1998-0003 Proffer II.D.(1)(d) requires the owner of the subject parcel to install a traffic signal at Site Entrance "M" at such time as warranted by the Virginia Department of Transportation;
4. ZMAP1998-0003 Proffer II.D.(2) obligates the owner of the subject parcel to be responsible for paying for the costs of such signal; and
5. The Virginia Department of Transportation has determined that a fully operational traffic signal is warranted at the subject location.

ATTACHMENTS:

Number	Description	Pages
1	Vicinity Map	A1
2	Copy Teste, Approved Proffers, Concept Development Plan, WorldCom, ZMAP 1998-0003	A2 – A22
3	December 15, 2009 Proffer Determination	A23 – A26
4	Appeal Application	A27 – A64
	VDOT Warrant Analysis for traffic signal at Waxpool Road and Waxpool Road Center Western Entrance/ WorldCom Site Entrance M	A65 – A124
5	Statement of Justification SPEX 1998-0016 Ashburn Corporate Center	A125 – A128
6	Ashburn Corporate Center Traffic Impact Study July 31, 1998, Revised September 14, 1998 (without appendix containing traffic counts)	A129 – A180
7	Memorandum from Art Smith to Garvan R. Armstrong In re: Ashburn Corporate Center dated November 4, 1998	A181 – A184