



# Town Of Myersville

**TOWN HALL**  
301 Main St., P.O. Box 295  
Myersville, MD 21773

**MAYOR & COUNCIL**

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August 27, 2012

Honorable Kimberley Bose  
Secretary, Federal Energy Regulatory Commission  
888 First Street NE, Room 1A  
Washington, DC 20426

ORIGINAL

FILED  
SECRETARY OF THE  
COMMISSION  
AUG 28 P 12:27  
FEDERAL ENERGY  
REGULATORY COMMISSION

**RE: DOCKET NO. CP12-72-000  
ALLEGHENY STORAGE PROJECT - TOWN ZONING DETERMINATION**

Dear Secretary Bose:

The Myersville Mayor & Council received an application requesting approval of a Site Master Plan to construct a natural gas compressor station on property situated within the Town limits from Dominion Transmission, Inc. (referenced as Town zoning application #ZA-12-03). As you are aware, this application was submitted concurrently with the application before the Federal Energy Regulatory Commission, Docket Number CP12-72-000. After conducting a public hearing on the application August 1, 2012, the Town Council voted to reject the application due to its inconsistency with the Myersville Comprehensive Plan and applicable Town Codes, therefore zoning approval is denied and building permits cannot be issued for this project. Please find enclosed a copy of the #ZA-12-03 Findings and Decision reflecting the Town's official determination for reference in the FERC commissioners' consideration.

Furthermore, the Mayor & Council would also request the revisions to the FERC Environmental Assessment, page 10 released June 15, 2012 to reflect that the Town of Myersville serves as the regulatory authority for development review, subdivision approval and Forest Conservation plan review. Also, please be aware that according to a June 19, 2012 conversation with Mr. Bill Paul, Chief of Combustion & Metallurgical Operations/Review with the Maryland Department of the Environment, an Air Quality Permit application from the Applicant was submitted in February 2012, however it cannot be processed for review unless local zoning approval is granted. Your consideration incorporating these requested revisions is appreciated.

Please do not hesitate to contact me at Mayor@Myersville.org or Town Planner & Zoning Administrator Bradford Dyjak at 301-293-4281 or BDyjak@Myersville.org with any questions or comments regarding this case.

Respectfully,  
**MAYOR & COUNCIL**  
**MYERSVILLE, MARYLAND**

*Wayne S. Creadick, Jr.*  
Wayne S. Creadick/Jr.  
Mayor

RE: Docket No. CP12-72 - August 27, 2012

CC: Carolyn Moss, Dominion Transmission, Inc.  
Amanda Prestage, Dominion Transmission, Inc.  
Mark Viani, Attorney McGuire Woods LLP  
John Mazelon, Fox & Associates, Inc.  
Myersville Town Council members  
Myersville Planning Commission members  
Kristin Aleshire, Town Manager  
Bradford Dyjak, Town Planner  
Kathy Gaver, Town Clerk  
File



**Town Of Myersville**  
**MAYOR & COUNCIL**

301 Main St, P.O. Box 295  
 Myersville, MD 21773

<p><b>THE APPLICATION OF:</b></p> <p><b>DOMINION TRANSMISSION, INC.</b></p> <p><b>AMENDMENT TO A</b></p> <p><b>SITE MASTER PLAN</b></p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p><b>BEFORE THE</b></p> <p><b>MAYOR &amp; COUNCIL OF</b></p> <p><b>TOWN OF MYERSVILLE, MD</b></p> <p><b>ZONING APPLICATION #ZA-12-03</b></p>
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**FINDINGS AND DECISION**

This matter comes before the Town of Myersville Mayor & Council on the application of Dominion Transmission, Inc. (hereinafter “the Applicant”) who requested an amendment to a previously approved Site Master Plan for the subject property. This application is made by the Applicant in order to construct and operate a natural gas compressor station and develop the land in accordance with the proposed amendment to the Site Master Plan.

The existing Site Master Plan was approved August 14, 2007 and in accordance with §165-143.G of the Town Code, the validity of the previously approved plans does not expire. The Applicant submits its amendments to the plan in accordance with §165-143.H. Amendments to Overlay Zone Master Plans are submitted and reviewed in accordance with the process for approving the original overlay zoning district and corresponding Master Plan. In addition, specific conditions must be met within the overlay district prior to approval of the Master Plan.

The application does not include any requests for zoning changes nor modifications to existing Town regulations, but instead seeks a determination from the Town as to whether the application meets the requirements within the existing Code. The existing Highway Employment Overlay zoning would remain, and the applicant has indicated that it is requesting approval of its application pursuant to Section 165-150.C “Highway Employment Overlay (HEO) District – Permitted uses” that considers “Public utility structures and buildings” as a permitted use subject to special conditions as outlined in Section 165-150.D.

The property for which this request is sought is owned by Mr. Salvatore and Mrs. Fulvia Battiata and consists of 21.08 acres, more or less, located at the northwest intersection of Milt Summers Road and Myersville Road (MD Route 17) (hereinafter “the Property”). The Property is further identified as Parcel 436 on the Frederick County Tax Map number 46 and is situated within the GC (General Commercial) base zoning district with an HEO (Highway Employment Overlay) zone.

The application was submitted to the Town April 5, 2012 and introduced at the Mayor & Council's May 8, 2012 regular meeting whereby the application was referred to the Planning Commission for comment. Furthermore, it was noted that the Planning Commission held its required public hearing June 20, 2012 and formally recommended that the Mayor & Council reject the application on June 26, 2012. A duly advertised public hearing before the Mayor & Council was held on August 1, 2012 whereby all witnesses testifying were sworn by Mayor Wayne Creadick, Jr.

At the hearing, testimony was presented by Mr. Bradford Dyjak, Town of Myersville Planner and Zoning Administrator, the Applicant, represented by Mr. Mark Viani, Attorney from McGuire Woods, the recognized organization (the Opposition) Myersville Citizens for a Rural Community, represented by Mr. Ted Cady, Secretary, and two members of the public.

In addition to the testimony presented at the public hearing, the Mayor & Council considered all of the following information (though not exclusively) in establishing findings of fact:

1. Observations from the two site visits to the Leesburg and Chambersburg DTI facilities;
2. DTI's Application before the FERC – Docket No. CP12-72;
3. FERC Environmental Assessment – released June 15, 2012;
4. The existing Site Master Plan – as approved August 14, 2007;
5. The Town Comprehensive Plan – as adopted March 9, 2010;
6. Section 165-143 of the Town Code “Overlay Zones- Master Plan”;
7. Section 165, Article XIX of the Town Code “Highway Employment Overlay”;
8. Testimony received at both the Mayor & Council and Planning Commission public hearings and written comments submitted by the Applicant, recognized organization and public; and
9. Town Planning Commission's Official Recommendation – presented July 10, 2012.

In finding whether the amendment to the Site Master Plan should be approved or denied, the Mayor & Council reviewed the specific criteria in Section 165-143.F:

1. Compliance with Article 66B of the Maryland Annotated Code
2. Consistency with the Town Comprehensive Plan
3. Whether it comports with sound planning practices and principles
4. Compliance with the restrictions and principles specified for the particular overlay zoning district – the Highway Employment Overlay district (HEO).

In reviewing the aforementioned criteria, the Mayor & Council makes the following findings with regard to application #ZA-12-03:

- 1. The application is inconsistent with the Town Comprehensive Plan.**
  - a. The proposed use would diminish the Comprehensive Plan goal of maintaining the small town character of Myersville by removing a valuable commercial resource for the Town, this property being geographically situated in a unique location that could provide for commercial growth in an area that is physically separated from the main residential area of the Town.
  - b. The Comprehensive Plan's goal to provide for a sound economic base in town would not be met by the proposed use. DTI has indicated that only 1-3 employees would be employed at the compressor station and the intensity of this use would severely jeopardize the prospects of viable economic development of the remainder of the property.
- 2. The application is inconsistent with the intent and special conditions of the Highway Employment Overlay district.**
  - a. There is no direct benefit to the public, limited job potential and the proposed use detracts from economic development of the property and adjacent properties.
  - b. The application does not provide for either public amenities or enhanced pedestrian connectivity and circulation as required under §165-150.E(3)(c)&(d) of the Town Code. Instead, the proposed use and land bays would isolate and deter pedestrian interaction – both within the property itself and with other adjacent areas.
  - c. Harmonious and connected site design is not achieved by functionally segregating the two land use bays as this aspect runs contrary to the HEO and Overlay Zones in general.
  - d. The application proposes a private, fenced compound, which is not consistent with the stated purpose of the HEO zone. Furthermore, the proposed layout would not provide a public street as required by §130-39.I "Street Layout" thus not meet the road frontage requirements under §165-150.E(1)(a)[2].
  - e. The application before the Town is an amendment to the existing Site Master Plan and is incompatible with the approved plan since it removes

the proposed commercial and office park component and integrated development components of the plan. The proposed compressor station would consume a plurality of developable area within the property and decrease the proposed employment opportunities for local residents as expressed within both the Comprehensive Plan goals and Intent of the HEO district.

**3. The proposed primary use for the property would pose a hazard to public health in contravention of §165-150.D(1) of the Town Code due to the processing of inherently hazardous material,**

- a. According to the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration (USDOT PHMSA) October 2010 publication of – *Building Safe Communities: Pipeline Risk and its Application to Local Development Decision*, “Risks to the public from hazardous liquid and gas transmission pipelines result from the potential unintentional release of products transported through the pipelines. Releases of products carried by pipelines can impact surrounding populations, property, and the environment, and may result in injuries or fatalities as well as property and environmental damage.... Natural gas releases pose a primarily acute hazard (p. 7)”.
- b. Furthermore, “Stakeholders should be aware of the relative risks of transmission pipelines when considering land use and development decisions near transmission pipelines (USDOT PHMSA p. 20)”.
- c. Regular emergency blow-down tests of the facility could release as much as 15,000 cubic feet of gas at each instance, subjecting residents to highly volatile organic compounds.
- d. The inherent risks of the proposed use are not sufficiently addressed as an emergency event could prompt evacuation of people within proximity to the property far beyond the ½ mile study area contained within the FERC Application and Environmental Resource Reports. Based upon the 2010 United States Census, there are over 2,000 residents located within a one mile radius of the property and the Fire Hall at the Myersville Municipal Center serves as designated emergency evacuation center for the community and is located within this impact radius. Therefore, emergency response and evacuation efforts could be jeopardized by the proposed use.

**4. The proposed primary use for the property would pose a nuisance to the public by reason of noise in contravention of §165-150.D(1).**

- a. Sound emissions would disturb the adjacent properties and potentially disrupt the rights commonly enjoyed by other property owners. Furthermore, the emission of low-frequency noise would pose a nuisance to the public.
- b. The application does not properly take into account required regular emergency “blow-downs” of the compressor station which would induce continuous sounds that would exceed the State of Maryland standards (COMAR §26-03.A(1)) for commercial operations – beyond the 67dBa allowed during daytime.

**5. The proposed primary use is not a permitted use as allowed under §165-150.C “Permitted uses [HEO]”. Whereas, the Applicant testified that it sought approval of its request under the premises that the proposal to operate a natural gas compressor station would be considered a “public utility” and a permitted use per §165-150.C(19), the Mayor & Council finds that the proposed primary use is not a public utility or essential service as defined in §165-11.**

- a. The nature and intent of the compressor station is such that it would process natural gas for the purpose of transporting it to various distribution points. Therefore, the public would not be directly served by facility, nor is there existing or planned natural gas service within the Town or surrounding community.
- b. Legal definition – A “public utility” can be reasonably determined to exist if “[the entity] has held itself out as ready, able and willing to serve the public” (*Black’s Law Dictionary*, 1232 (6<sup>th</sup> Edition 1990)) and the Mayor & Council find that the Applicant does not meet this threshold as it serves as an intermediary and is not established to serve the public, but rather its customers (gas distributors, etc.).
- c. Compressor stations are not regulated by the Maryland Public Service Commission. While the Commission “regulates gas, electric, telephone, water, and sewage disposal companies”, the Applicant is not registered with the PSC, and therefore not considered a public utility or public service nor is it regulated as such – whether inter or intra-state.

- d. Whereas, the local distribution companies that the Applicant has listed as its customers for the *transmission* of natural gas in its FERC application (*Docket No. CP-12-72-000*) may be considered public utilities (Washington Gas & Light, Baltimore Gas & Electric and TW Phillips) since they have filings as utilities with their respective state public utility commissions, while the Applicant does not.
- e. The Applicant has previously stated that it "...does not provide a public utility service in the State of West Virginia (or any other state)" before the West Virginia Public Service Commission in *Case No. 07-1006-GT-G-C Delby Pool v. Dominion Transmission, Inc. and Hope Gas, Inc., dba Dominion Hope*.
- f. The Applicant indicated in its FERC application, (*Environmental Resource Report # 10*) that "the incremental firm transportation services will be provided utilizing DTI's existing transmission system in conjunction with the proposed facilities". As a result the product being transported it is not for direct public usage nor is the Applicant the end utility or distribution entity.

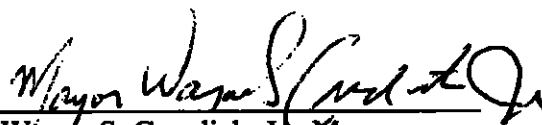
Based upon all of the foregoing, the Mayor & Council determines that the Applicant shall be denied its request as presented to amend the existing Site Master Plan in application #ZA-12-03. At the conclusion of the Mayor & Council's August 1, 2012 public hearing, a motion to deny the application, in accordance with the aforementioned inconsistencies with the Town Code and Town Comprehensive Plan, was made by Councilman Mark Etheridge. The motion was seconded by Councilman Brett Bidle and approved 5-0.

**ADOPTED BY THE TOWN OF MYERSVILLE, MARYLAND  
MAYOR & COUNCIL on the 27<sup>th</sup> day of August, 2012.**

**ATTEST:**

**BY:**

  
Kathy Gaver, Town Clerk (Seal)

  
Wayne S. Creadick, Jr., Mayor



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