



DISTRICT COURT OF MARYLAND

**BEN C. CLYBURN**  
*Chief Judge*

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December 5, 2007

Dear Montgomery County Delegation:

I am writing to update you on the Rockville courthouse project and to correct the apparent misinformation regarding the proposal to relocate to the alternate Giant Food Store (Giant) site. Specifically and with the knowledge of the Governor, I am sharing the Department of General Services' (DGS) analysis of the alternate sites for the proposed courthouse project (Attachment). This independent analysis confirms the Judiciary's concerns that any relocation to an alternate site would involve considerable time delays, additional costs, and risks of litigation. A relocation to the Giant site would entail a costly redesign process that would impede DGS' ability to utilize construction funding until FY'2011 or 2012. For the reasons stated below and the conclusions of the report, the Judiciary continues to believe that the construction of the courthouse at the library site is the only prudent decision.

**Budgetary Process**

The City of Rockville proposes a "land swap" for the Giant site. Although the DGS report assumes such a "land swap," even if possible, that process would be sufficiently time consuming and costly enough to derail the current FY'09 construction funding timetable. That being said, the Judiciary bases its comments on DGS' assumption that such a "land swap" is possible. While it may be possible, it would not be advisable or cost effective because the land swap would not cover additional design costs, delayed implementation, and risk of litigation.

In its analysis of the independent report conducted by its consultant, DMJM, DGS raises several concerns with the former mayor's assertion that, "[d]emolition and redesign could both be completed within [the] next 6 to 9 months, translating into little, if any, overall delay." DGS correctly notes that, "the State budgetary process will not allow this to happen." Substituting a site would require that DGS request redesign funding approval from the Department of Budget and Management [DBM] and the Legislature during the upcoming legislative session. DGS Assistant Secretary Genetti states there is, "no funding available to [DGS] to start a redesign until after the next legislative session." Assuming the Legislature appropriates design funds, DGS could not begin a redesign until July 2008 at the earliest. Any architectural design is site

specific. The completed design documents for the library site involve a sloped contour. The proposed redesign for the Giant site would, at the very least, involve the redesign of the two lower floors. As such, the library design could not simply be “flipped” to the Giant site. As for the design of the Giant site, DGS projects a redesign cost between \$3 and \$5 million, depending on the road extensions at Maryland and Dawson avenues and the necessary reconfiguration cost for at least two floors of a new building. This additional \$3 to \$5 million would be above and beyond the \$5 million that has already been expended on the library site design. It is the design cost that will drive the eventual construction cost which is at this time unknown.

DGS projects that the redesign would take approximately 12 to 14 months<sup>1</sup>. DGS states in the report that it would not be able to utilize the construction money until FY’2011 or 2012, after the completion of the redesign document. The Judiciary has concerns whether the Governor and the Legislature would shelve these capital construction funds for the City of Rockville for, at least, two fiscal years. More important, other projects within the Judiciary are at risk of being further delayed and subjected to cost escalations.

### *Giant Site Analysis*

DGS has not conducted an indepth analysis of the Giant site or the existing structure on it. It has not analyzed the soils, topographical conditions, or any environmental issues with the property or razing the structure.

Another important concern raised by DGS is the proposed road extensions for Dawson and Maryland avenues. The City of Rockville has not yet included these road extensions, that would bisect the Giant site, in the city’s Capital Improvement Program. The city has not platted the road extensions, procured or subdivided the property or indicated a timeframe for accomplishing this process. Any new roads in front of the Giant site could cause the orientation of the building to change which would result in increased design costs.

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<sup>1</sup> DGS’ projected timeline of any redesign is, at best, speculative because of the threat of protracted litigation. Specifically, DGS’ 12 to 14 months design timeline assumes it can award any subsequent design work to the existing architectural firm, DMJM, by a modification of the existing contract. Because the projected cost for the redesign would be between \$3 and \$5 million, it is conceivable that a competitor design firm would challenge any such contract modification by filing a bid protest or law suit, asserting that the monetary amount of the modification constitutes a new procurement which should be competitively bid in accordance with the State Finance and Procurement Article, Code of Maryland. The Board of Public Works (BPW) would then be required to make an award after public hearing and a decision that such an award is in the best interest of the state.

*Proximity*

The library site is across the street from the District Court, the Circuit Court, the State's Attorney's Office (SAO) and the Office of the Public Defender (OPD). Therefore, the infrastructure needed for the courthouse in terms of mass transit, public parking, inmate transfer, and overall area security already exists. Its proximity to the Circuit Court provides for reduced travel time for professionals, staff, victims, witnesses, and other citizens conducting business with the courts. In Rockville, an individual who exercises his/her right to a jury trial is immediately sent from the District Court to the Circuit Court. This allows for same day jury trials. The case file is walked across the street by a bailiff. This proximity saves victims and witnesses from having to return to court yet another time. The Giant site is four times further away than the library site. Its location would require additional budgetary costs to rebuild the existing infrastructure. This additional distance would create logistical challenges for the State's Attorney's and Public Defenders as they transport witnesses, victims, evidence and case files the additional four blocks. Alternatively, they could request increases in their operating budgets to maintain satellite offices. Law enforcement and the detention center would also incur additional costs and security risks while transporting detainees.

*Conclusion*

Given the conclusions in the DGS report, the library site is the only acceptable site that allows construction to begin in FY'09. This project has been on the drawing board for nine years. The alternate site that has been suggested will result in delay, increased cost, and increased risks, not to mention the millions of dollars of unrecoverable costs already incurred. With all of the variables and subsequent approval requirements for any alternate site, construction would not be able to start in FY'09. In addition to an estimated cost escalation of \$2.5 million per year in construction costs and the additional \$3 to \$5 million in design cost, any relocation to a new site would force this project to delay other projects in Baltimore County, Baltimore City, and Harford County. Citizens in these respective jurisdictions have immediate needs for new facilities and should not suffer the consequences resulting from the continued delay caused by the Rockville project.

The Judiciary appreciates your support of a new District Courthouse at the library site and your continued efforts in this regard.

Sincerely,



Ben C. Clyburn  
Chief Judge

BCC/kap

Attachment

cc: Hon. Robert M. Bell  
Hon. Martin O'Malley  
Hon. Peter Franchot  
Hon. Nancy K. Kopp  
Hon. Norman H. Conway  
Hon. Ulysses Currie  
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