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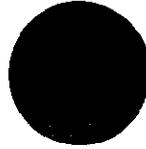
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September 19, 2005



Derick Berlage, Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910

**017494**

Re: Clarksburg Town Center

Dear Chairman Berlage:

On behalf of the Clarksburg Town Center Advisory Committee ("CTCAC"), I am writing to outline the subject matter of the issues CTCAC intends to address at the forthcoming violation hearing. In view of the decision by the Board to utilize two days for hearing, CTCAC would very much appreciate clear advance direction from the Board on the related scheduling and timing considerations identified below. This letter also serves as CTCAC's response to the September 13, 2005 letter from counsel for Newland Communities requesting the Board to establish "a date certain by which all allegations of nonconformity concerning the Town Center must be raised." Under separate cover, I will be responding to Newland's 14-page letter of September 7, 2005.

**Violations and Discrepancies**

CTCAC intends to address the following matters in the forthcoming violation hearings:

**1. Introduction**

CTCAC intends to first provide the Board an overview of the dramatic differences between what has actually been constructed on-site versus what was approved for the CTC. CTCAC will also explain the factual and legal infirmity in the notion that anything more than a mere fraction of the changes can actually be justified as staff-approved minor amendments.

**2. Significant Changes to Street and Block Layout**

CTCAC will detail, block-by-block, the discrepancies between what was approved and what has been (or is intended to be) built, in terms of street layout, block design and types of units constructed.

**3. Removal of Essential Plan Features**

CTCAC will identify the many essential features of the Project Plan/Site Plans that have been removed or significantly diminished. These include, but are not limited to (a) "O" Street, among other streets that have been eliminated or re-routed to the detriment of the initially planned street grid pattern; (b) the Pedestrian Mews from the Town Center to the Clarksburg United Methodist Church; (c) the amphitheater; (d) the multi-age playground behind General Store Road; (e) traffic calming measures; (f) one or more ponds; (g) street lighting and trees; and (h) certain recreational facilities. In addition, other features are threatened by Newland's proposed Project Plan Amendment (such as the connection to the Route 355/Historic District).

**4. Lot Development Standards Violations**

Closer inspection of what has been built in comparison to what was approved has revealed a much more wide-ranging set of lot development standards violations than just the building height and front setback violations adjudicated at the July 7<sup>th</sup> hearing. CTCAC will address the scope of the building height and front yard setback violations, but will also address violations of the following additional standards: (a) side yard minimums for multi-family dwellings; (b) rear yard minimums for (i) single-family, (ii) townhouse, and (iii) multi-family dwellings; (c) minimum space between end buildings for (i) townhouse and (ii) multi-family dwellings; (d) net lot area for single-family homes; (e) minimum lot width at building line for single-family homes; and (f) percentage rear yard coverage by accessory buildings.

**5. Violation of Code Standards for Private Streets and Alleys**

CTCAC will detail the substandard nature of tertiary residential streets and alleys within the CTC. This includes shortfalls in statutorily specified right-of-way widths as well as pavement widths.

**6. Phasing of Community-Wide Amenities/Absence of Amenities**

CTCAC will detail why, under the Site Plan Enforcement Agreement, community-wide amenities should already be in place, when, in fact, they are not. CTCAC will also discuss the balance of amenities due, based on the Project Plan.

**7. MPDU Phasing and Location Discrepancies**

Subject to how the Board deals with future MPDU location and quantity approvals, the current number and location of MPDUs reflect a marked pattern of

segregation and concentration of MPDU units. CTCAC will discuss concerns relative to current segregation of MPDUs and Developer intentions for future MPDU locations.

**8. Modification of Environmental/Storm Water Management Features**

Murphy's Grove Pond has undergone an unauthorized transition, according to the latest Developer plans, from "Permanent Pool" to "SWM" facility. CTCAC will explain why this is not in accordance with the Project Plan, and why the Pond should be built out as a permanent pond with an aeration system, as initially planned.

**9. Discrepancies in Open Space**

Significant questions have arisen concerning the Project Plan's proffered compliance with the requirement that 50% of the "non-amenity" residential area within the RMX-2 zone of the project remain privately held green area. CTCAC will detail and discuss concerns regarding reduction of overall green area and related issues arising from the Developer's expressed intent to transfer RDT-zoned property to the HOA as green area.

**10. Grading Changes**

There have been dramatic and detrimental changes from the approved Site Plan grades to the grades actually on-site. In some places, approved site plans showed finished grades for streets and adjacent areas of residential development at 10'-15' lower than the current on-site grades. CTCAC will discuss the effect of these changes on the community and its concerns regarding associated environmental impact.

**11. Fraudulent or Dubious Documentation and Practices**

To the extent not already detailed in points 1 – 10, the CTCAC will document unauthorized, irregular changes to, and other questionable aspects of, Board-filed documents critical to monitoring compliance with approved plans. These include, but are not limited to, (a) Phase IA Site Plan; (b) Site Plan Phase IB Part 2; (c) Phase IB Part 3 Site Plan; (d) Phase II Site Plan; (e) a large number of Subdivision Record Plats; and (f) related documents and communications.

**Scheduling and Timing Considerations**

As is obvious from the foregoing, the Board's decision to schedule at least two hearing days to work through this long list is appropriate. CTCAC believes that the optimum schedule is two full days of hearings in October, with CTCAC given two hours

on each day to present their position, and one hour each day for rebuttal. It is our understanding that tentative dates for the two hearings have been set for October 6<sup>th</sup> and October 27<sup>th</sup>. It is our strong belief, based on the interrelationship between violations, that the hearing should be scheduled for consecutive days. If the violation hearing days cannot be scheduled consecutively, they should at the least be scheduled for consecutive weeks. CTCAC is amenable to almost any set of consecutive dates the Board may find workable, even if that means pushing back the October 6<sup>th</sup> date. CTCAC requests prompt clarification from the Board on the hearing schedule in light of the foregoing.

### **Scope of October Violations Hearings and Due Process for Newland**

CTCAC has no wish to advocate any procedure that would deprive Newland Communities of "due process." However, CTCAC rejects the notion that due process requires CTCAC to identify with exhaustive precision the location of every instance of a Site Plan violation, or to disclose that information to Newland. Due process is provided with notice of the violation categories and an administrative hearing where evidence is presented, inculpatory or exculpatory. To that end, CTCAC has identified all the violation categories of which it is currently aware. In exhaustive meetings held with Staff over the past few weeks, CTCAC has provided documentation of specific instances of these violations to Staff. In addition, CTCAC will, to the best of its ability, complete the documentation process and submit materials to Staff in advance of the hearing.

CTCAC's success in providing a complete accounting of violations may be most directly influenced by whether CTCAC secures needed data already requested from Staff. This data either has or can be requested of CPJ on behalf of Newland and also from the GIS or other M-NCPPC resource. Included in the request is photogrammetric data that the CTCAC can then use to provide computer-assisted, quantified answers to questions about compliance with lot development standards, lot-by-lot and street-by-street. Whether CTCAC gets this data or not, Newland will have no difficulty in using its data to assess compliance in all the areas identified above, even without any further input from CTCAC. Indeed, if there is a "fairness" issue at all, it arises from the unfairness that a group of citizens, with no resources for a definitive assessment of Site Plan compliance, may be disadvantaged by denial of access to information that would help them monitor the reliability of self-serving conclusions that the Board can expect will come from Newland's analysis of the same data.

In any event, it is patently unacceptable and improper that CTCAC should, after some "date certain," be precluded from raising newly discovered problems or from presenting the Board with additional, newly discovered information on known problems, should such information come to light in the future. At this juncture, with the CTC far from complete, Newland and the builders remain completely and fully accountable for each and every Site Plan violation, regardless of date or date of discovery. This is an

Derick Berlage, Chairman  
September 19, 2005  
Page 5

obligation they have to the Board and the public, not to CTCAC. Moreover, even if the timeliness of anything CTCAC did or failed to do were relevant to what could be considered by the Board, considering CTCAC's and Newland's respective track records to date, it is ill-advised, inappropriate and insulting for Newland to suggest, that the CTCAC is engaged in a strategy of meting out "endless allegations" that are "mere assertions lacking in specificity," to the detriment of "the ongoing welfare of [the CTC] community." The Board should reject Newland's plea for a deadline for raising allegations of nonconformity.

Sincerely yours,

A handwritten signature in cursive script that reads "David W. Brown". The signature is written in black ink and includes a long horizontal flourish at the end.

David W. Brown

cc: Charles Loehr, Director  
Michele Rosenfeld, Esq.  
Rose Krasnow, Chief, Development Review  
John A. Carter, Chief, Community-Based Planning  
Barbara A. Sears, Esquire  
Todd D. Brown, Esquire  
Timothy Dugan, Esquire  
Robert G. Brewer, Jr., Esquire  
Montgomery County Council