

**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

September 28, 2005

**Stephen Z. Kaufman**  
301.961.5156  
[skaufman@linowes-law.com](mailto:skaufman@linowes-law.com)  
**Todd D. Brown**  
301.961.5218  
[tbrown@linowes-law.com](mailto:tbrown@linowes-law.com)

**By Hand Delivery**

Hon. Derick Berlage, Chairman  
and Members of the Montgomery  
County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Clarksburg Town Center

Dear Chairman Berlage and Members of the Planning Board:

On behalf of Newland Communities LLC and NNPII-Clarksburg, LLC ("Newland Communities"), this letter responds to the September 19, 2005 letter to you from counsel to the CTCAC ("CTCAC Letter"). Please include this letter in the public record.

Newland Communities objects to the procedure suggested by the CTCAC for the conduct of further hearings in this matter. First, we understand the Planning Board's October 6, 2005 hearing will be limited to the issues raised by the CTCAC in its July 14, 2005 letter to the Planning Board. Consideration of other matters at the October 6, 2005 hearing, including those non-specific allegations raised in the CTCAC September 19 letter and any issues related to the pending project plan amendment or site plan applications, would deny Newland Communities its due process right to adequate notice of the matters alleged and would further deny Newland Communities sufficient time to (i) review and understand the specifics of each additional allegation; (ii) conduct such research into the matters raised by the allegations as necessary for its response; and (iii) prepare such response based upon fact and not mere assertion. We therefore request that matters beyond the scope of the CTCAC's July 14, 2005 letter not be considered at the October 6, 2005 hearing. As to any changes contemplated by the pending applications, this Board will consider such matters at a future public hearing at which the CTCAC and others may participate to the extent desired.

Second, in the September 19, letter, the CTCAC again relies on general allegations of non-compliance. For the Board to assure itself of an accurate set of facts before taking any action in this matter, it is essential for Newland Communities to be apprised of each lot, street or other specific component of this development which the CTCAC contends does not comply with existing approvals. If Newland Communities has not been provided with the specifics of each additional allegation in sufficient time to prepare a response before the Board's second hearing

L&B 516485v2/04063.0025

Hon. Derick Berlage, Chairman  
and Members of the Montgomery  
County Planning Board  
September 28, 2005  
Page 2

scheduled for October 25, 2005, we will object on the Record to the inclusion of any testimony relating to non-specified allegations and request additional time to prepare our response. The alternative would be for the Board to provide Newland Communities and its consultants an opportunity to review plats, site plan drawings, engineering drawings, construction drawings, correspondence records, opinion conditions, and consult with one another and all relevant MNCPPC and County personnel *during* the public hearing on each allegation once the CTCAC has disclosed specific information as to lot/block, street reference, etc. Such process we strongly suggest would create an untenable situation for all parties and the Board and would not be in the best interest of the citizens of Montgomery County. Accordingly, without prior notice from the CTCAC, Newland Communities in fairness requests that the Board either not accept testimony on previously unspecified allegations or, to the extent specifics are clearly set forth in advance of the public hearing, provide Newland Communities with a reasonable opportunity to respond to each allegation, thus creating the potential need for yet another hearing on these matters.

Third, for the above reasons, Newland Communities also objects to the suggestion that the Board postpone the scheduled October 6, 2005 hearing in order to hold the two hearings on consecutive days or weeks. The October 6, 2005 hearing on the allegations raised in the CTCAC July 14 letter is scheduled, and Newland Communities has responded in depth to those allegations. The allegations lack substantive merit and should be reviewed by the Board on October 6 and rejected.

On behalf of our client we also object to the CTCAC's position that it need not "disclose" specific information about its allegations to Newland Communities. The mere suggestion in the September 19 letter that the CTCAC is unwilling even to disclose or specifically identify each allegation (as opposed to identifying its evidence supporting such allegation) is outrageous and betrays a clear intent to overwhelm the Board with a wide range of allegations and asserted fact without providing the developer with a reasonable opportunity to present evidence to the contrary.

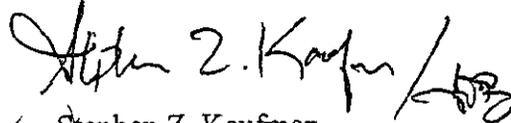
Lastly, on the question of fairness, it should again be noted that Newland Communities and its builders have applied for and received all permits in due course required by Montgomery County for the land development activities and building construction that has occurred to date. To our knowledge Park and Planning Staff reviewed and approved the current site plan designs as implemented, and no work on site has occurred contrary to those permits that have been duly issued. Newland Communities has also cooperated completely with Planning Commission Staff in its investigation of these matters and has provided opposing counsel with our detailed

Hon. Derick Berlage, Chairman  
and Members of the Montgomery  
County Planning Board  
September 28, 2005  
Page 3

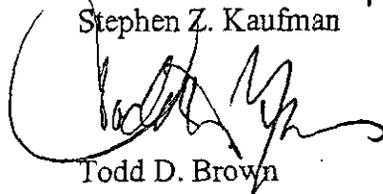
response to the allegations contained in the July 14 CTCAC letter well in advance of the October 6 hearing. Lastly, we believe everyone associated with this case is well aware that CTCAC members have spent enumerable hours with Planning Commission files and Staff. The suggestion by Counsel that access has been somehow denied is unwarranted and completely without merit.

Very truly yours,

**LINOWES AND BLOCHER LLP**



Stephen Z. Kaufman



Todd D. Brown

cc: County Council Members  
Ms. Karen Orlansky  
Mr. Charles Loehr  
Mr. William Mooney  
Ms. Rose Krasnow  
Michele Rosenfeld, Esq.  
Mr. Richard Croteau  
Mr. Douglas Delano