

Resolution No.: 15-1505
Introduced: June 20, 2006
Adopted: June 27, 2006

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Payment for Clarksburg Town Center Mediation

Background

1. On January 17, 2006 the Council agreed to fund one-third of the costs of the Clarksburg Town Center (CTC) mediation, including the costs of the mediator, retired Baltimore County Circuit Court Judge Barbara K. Howe, and planners to assist the Clarksburg Town Center Advisory Committee (CTCAC), subject to review of costs.
2. On January 27, 2006 the following parties entered into a mediation agreement: CTCAC; Newland Communities, LLC and NNP II – Clarksburg, LLC (collectively “Newland”), the development manager and developer of CTC; and six builders of homes in CTC (Miller and Smith at Clarksburg LLC, NV Homes, Craftstar, Porten Companies, Inc., BA Clarksburg, LLC and Clarksburg Two, LLC). The mediator, Judge Howe, and representatives of two architectural and urban design firms, Duany Plater Zyberk & Company, LLC (“DPZ”) and Torti Gallas and Partners, Inc. (“Torti Gallas”), also executed the mediation agreement.
3. The mediation agreement confirmed that the fees and expenses of the mediator, the rental of rooms for the mediation, and the expenses of DPZ, the firm selected by CTCAC to advise it, would be borne one-third by Newland and one-third by the builders collectively. The parties had previously requested that the County assume the remaining one-third of the mediation costs because CTCAC was not in a position to pay these costs and the impartiality of the mediator and the CTCAC adviser might be questioned if the developer and builders were solely responsible for payment of their fees. The mediation agreement also confirmed that the fee for the rental of the rooms and related expenses would not exceed \$5,500.00, the fee and expenses of Judge Howe would not exceed \$70,000, and the fee for DPZ would not exceed \$60,000. The mediation agreement did not include a ceiling on DPZ’s expenses, but DPZ stated that its expenses would not exceed \$10,000.
4. Mediation sessions were conducted on January 24, 25, and 31; February 16; March 9, 14, and 28; and April 3, 4, and 5, 2006. The mediation resulted in a settlement agreement that set forth the terms of a detailed proposed plan of compliance for consideration by the Planning Board. The plan of compliance included a new design for a neo-urban town center, substantial improvements to parks and recreation areas, including the construction of an indoor lap pool and community buildings, and \$1 million in additional funding over the established budget for landscaping and streetscaping.

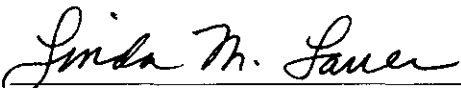
5. On June 1, 2006 M-NCPPC staff recommended that the Planning Board approve the plan of compliance and find that the plan's approval resolves all findings of violations in CTC, including alleged violations that have not yet been resolved by the Planning Board. On June 15, 2006 the Planning Board approved the staff recommendations.
6. The settlement agreement called for establishment of new architectural and design guidelines for areas of the Town Center that have not yet been constructed, including the retail area. The parties had hoped to address these matters in the context of the mediation, but there was insufficient time to do so. CTCAC requested that DPZ continue to serve as its adviser in the formulation of the new guidelines, with additional fees and expenses for these services not to exceed \$50,000. Judge Howe has also performed additional services in connection with obtaining regulatory approval of the plan of compliance, including presenting it on behalf of the parties to the Planning Board on June 15, 2006. Judge Howe stated that her fees and expenses for these additional services would not exceed \$10,000.
7. Costs billed to date include fees and expenses totaling \$66,419.76 for DPZ and \$69,674.59 for Judge Howe. (As noted above, costs for the additional services of DPZ and Judge Howe will not exceed \$50,000 and \$10,000, respectively.) Other costs are \$4,875, paid to the City of Gaithersburg, owner of the Kentlands mansion, where initial mediation sessions were held, and \$1,130, paid to Elite Reporting Service, which transcribed the parties' assent to the settlement agreement and related agreements.
8. The County's one-third share of the \$142,099.35 in CTC mediation costs billed to date is \$47,366.45. The County's one-third share of the additional services of DPZ and Judge Howe will not exceed \$20,000. Thus the County's total one-third share of CTC mediation costs will not exceed \$67,366.45.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The Council authorizes payment of the County's one-third share of CTC mediation costs, subject to review of costs. Payment must be made from the FY06 and FY07 budgets of the Council Office to DPZ and Judge Howe in a total amount that does not exceed \$67,366.45. Payment of this total amount discharges the County's entire obligation with respect to the County's share of CTC mediation costs.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council