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# THE CLARKSBURG TOWN CENTER PROJECT

## A FACT-FINDING REVIEW

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### THE PROJECT

The Clarksburg Town Center (CTC) Project sits on approximately 268 acres located in the northern part of Montgomery County. Clarksburg Joint Venture purchased the property with the intent of developing a Neo-Traditional community, based on a town planning principle that features narrow streets, alleys, closely spaced street lamps, and no minimum building setbacks.

The CTC Project site changed ownership twice in the past six years. In 1999, Terrabrook Clarksburg LLC purchased the site from Clarksburg Joint Venture. In October 2003, NNPII-Clarksburg, LLC (Newland Communities) became the owner of the CTC Project. Newland Communities remains today as the developer of the CTC Project.

### THE ASSIGNMENT

In July 2005, the County Council assigned the Office of Legislative Oversight the task of conducting an independent fact-finding review of the Clarksburg Town Center Project. The Council asked OLO to:

- Develop a chronology of events for the approvals and implementation of the CTC Project;
- Identify flawed processes, lack of coordination, or other problems that occurred during the approvals and implementation of the CTC Project; and
- Provide the Council with recommendations for next steps.

OLO's methodology combined interviews with an extensive document review. The names of the 125 individuals who provided information to OLO are on Page 4. The 342 source documents used by OLO in its fact-finding are available for viewing in an on-line Appendix.

### EXECUTIVE SUMMARY

The Clarksburg Town Center Project is the product of a series of development reviews, approvals, and actions over the past 11 years. The Office of Legislative Oversight's fact-finding review found that much of "what went wrong" with the CTC Project can be attributed to flaws in the regulatory process established by the Planning Board and its staff for the approval and implementation of Preliminary Plans of Subdivision, Project Plans, and Site Plans.

In sum, OLO found that the CTC Project was subject to a regulatory process that lacked predictability and reliability, clear decision documents, the establishment of fixed development standards, complete records, and transparency. Contributing factors to these problems were the CTC Project Developer's own actions, gaps in inter-agency coordination, and underlying ambiguities in the County's laws that govern the regulatory process.

OLO also found that, when faced with community questions and complaints about the CTC Project, the Planning Board and its staff did not respond in a fair or effective way. The agency did not adequately comply with requests for documents and information, sent confusing and mixed messages to the community, and failed to carry out a timely, thorough fact-based investigation.

Finally, OLO found that the County Council's previous approach to overseeing the work of the Planning Board and its staff did not serve to identify the serious shortcomings in management, law, and oversight evidenced by the CTC Project. Since July 2005, the Council has taken a more active approach to overseeing the Planning Board's activities.

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## A CHRONOLOGY OF KEY EVENTS

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- Spring 1994:** Council approves Clarksburg Master Plan.
- Summer 1995-Spring 1999:** Planning Board approves the CTC Project Plan, Preliminary Plan, and Phase I Site Plan, which delegates broad amendment authority to staff. The development standards in the decision documents are not identical; the data table dimensions do not match the drawing.
- Winter 1999-Spring 2000:** Terrabrook buys the CTC Project and hires an architect to prepare a revised “more neo-traditional” concept plan; the revised plan contains fewer units, more housing types, and numerous layout changes. P&P staff begin an internal review.
- Winter 2001:** Terrabrook publishes a Design Guideline Booklet, based on the revised concept plan, that establishes lot by lot project design controls; it displays heights of 4 stories and variable setbacks.
- August 2001:** DPS issues the first CTC Project building permit. P&P staff sign off that it “complies with the approved site plan” because the setbacks on the permit application match the Signature Set drawing. Neither P&P staff nor DPS staff check for compliance with a height standard.
- P&P staff approve the first of ten amendments that are reviewed and approved at the staff level (2001-2005). Some amendments reflect Terrabrook’s revised concept plan; others address more specific issues. Not all amendments are well documented.
- June 2002:** The Board approves the Phase II Site Plan. In 2003, P&P staff authorize the recordation of 25 plats before the Phase II Signature Set is signed (October 2004).
- October 2003:** Newland Communities purchases the CTC Project.
- Summer 2004:** CTCAC raises questions about Newland Communities’ retail proposal and the height of an existing building.
- Fall 2004:** P&P staff give CTCAC different answers to their questions about building height. CTCAC has trouble obtaining documents. In December, P&P staff write to CTCAC that no height violations exist because the structures built match the 4 story height standard in the Board Opinion.
- January 2005:** CTCAC meets with Board Chairman who sees two possible interpretations of the height standard. He advises CTCAC to send a letter requesting a Board hearing.
- April 2005:** Board holds its first violation hearing. In preparing her staff report, the P&P Site Plan Reviewer edits a data table to make it consistent with the Board Opinion. The Board finds (4-1) that no height violations exist. Soon after the hearing, CTCAC locates an unmarked version of the data table and informs P&P.
- May 2005:** The Site Plan Reviewer resigns and the Board votes to reconsider its finding of no violation. The Board directs P&P staff to work out a settlement among the parties. Staff’s efforts are unsuccessful.
- July-November 2005:** The Board holds a series of violation hearings to consider allegations of different site plan violations. To date, the Board has found setback, height, phasing, and amenity violations.

*CTC = Clarksburg Town Center  
P&P = Department of Park and Planning  
DPS = Department of Permitting Services  
CTCAC = Clarksburg Town Center Advisory Committee  
Board = Montgomery County Planning Board*

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## FINDINGS AND RECOMMENDATIONS

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### HIGHLIGHTS OF FINDINGS

**1. The regulatory process established by the Planning Board and its staff lacked predictability and reliability, failed to adopt clear decision documents, lacked a complete record, and was not sufficiently transparent.**

The decision documents that the Planning Board and its staff approved for the CTC Project contain ambiguous language and internal inconsistencies. As a result, the regulatory process failed to produce one clear and certain set of approval conditions, including development standards such as height and setback.

The Planning Board and its staff did not effectively prepare or maintain the official record of documents for the CTC Project. Examples of this are: undated documents, documents with missing pages, and documents that appear to be composite versions of others. As a result, the agency is not able to produce a reliable and complete set of all CTC Project approvals, which in turn compromises the government's ability to determine developer compliance.

The Planning Board's approval of the Phase I Site Plan included a condition that gave staff enhanced authority to approve amendments. The amendment documentation is both confusing and incomplete. The use of this amendment authority raises questions about the transparency of the regulatory process.

**2. The CTC Project Developer contributed to the confusion in the record of approvals.**

The CTC Project Developer prepared, submitted, and signed documents that contained errors and internal inconsistencies. Further, when members of the CTC Project Developer's team noticed discrepancies in the decision documents, they did not insist on returning to the Planning Board for clarification.

**3. Gaps in inter-agency coordination contributed to problems with the CTC project.**

Neither the Department of Park and Planning nor the Department of Permitting Services had a system in place to check whether building permit applications met the height standards in the approved CTC Project Site Plans.

DPS issued more than 75 building permits for the CTC Project before the Department of Housing and Community Affairs and the developer executed an MPDU Agreement. This sequencing did not comply with the MPDU law.

**4. The laws governing the regulatory approval process for the CTC Project contain ambiguities in the process to be followed and the assignment of agency responsibilities.**

The law does not specify the procedural rules for the Planning Board to follow when deciding regulatory matters.

The law creating the Residential Mixed Use zone (RMX) does not specify how and when the Planning Board must establish certain and enforceable height standards.

The law does not provide clear and certain direction on how Project Plans differ from Site Plans, how to amend approved plans, or when to establish development standards. The law also does not contain precise rules on how to interpret documents.

The law does not clearly assign agency responsibility for ensuring that building permits are issued only when the permit is in compliance with the approved Site Plan.

**5. Significant problems were found in how the Planning Board and its staff handled questions and complaints from members of the Clarksburg community about CTC Project Plans, both approved and pending.**

When faced with community inquiries and complaints about the CTC Project, the Planning Board and its staff did not adequately answer questions or adequately comply with requests for documents. In addition, staff from different parts of the agency provided different answers about how to interpret documents and how to pursue concerns about compliance with approved plans.

Further, when confronted with specific complaints about alleged Site Plan violations and with knowledge that the decision documents were open to interpretation, the Planning Board and its staff failed to carry out a timely and thorough fact-based investigation of its own.

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### RECOMMENDATIONS FOR NEXT STEPS

The authority and responsibility to systematically address the management, legal, and oversight issues identified by OLO's fact-finding review of the CTC Project rests with the County Council. OLO proposes a program for reform that consists of three sequential recommendations for Council action:

**First, the Council should articulate clear and certain expectations for the characteristics of the regulatory process and translate those expectations into law and regulations.**

**Second, the Council should direct the Planning Board Chairman to submit, no later than January 15, 2006, a comprehensive management improvement plan to address the flaws that OLO observed in the regulatory process.**

**Third, the Council should revise how it approaches its annual budget review and semi-annual meetings with the Planning Board in order to sharpen the Council's oversight of the Montgomery County portion of M-NCPPC.**

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## SOURCES OF INFORMATION

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