Appendix G: Correspondence from Community

Note: The correspondence provided in this section does not represent all of the correspondence received by Staff through letters, emails and phone conversations since April of 2007, primarily since much of the correspondence related to the numerous extensions that were requested and approved by the Planning Board. However, the correspondence is on record at the M-NCPPC and can be made available upon request.

Kronenberg, Robert

From: ELIZABETH FORREST [betforrest@verizon.net]
Sent: Tuesday, October 21, 2008 8:58 AM
To: Don Praisner; Duchy Trachtenberg; George Leventhal; Marc Elrich; Mike Knapp, V.P.; Nancy Floreen; Phil Andrews; Roger Berliner; Valerie Ervin
Cc: Kathleen Miller; Susan Singer-Bart; Miranda Spivack; Krasnow, Rose; Kronenberg, Robert; Joseph Alfandre; Presley, Amy; Jean Cryor; John Robinson; MCP-Chairman; Stanley, Rollin; Maskal, Nellie; Ike Leggett
Subject: Last chance to save CTC
Attachments: file0080DDTAC-CC.pdf

To Mike Knapp, Marc Elrich, George Leventhal and Roger Berliner - I want to applaud you all for the courage and intelligence to have shown by really looking at Chapter 14 and recognizing the flaws. Thank you for wanting to right the wrong by introducing Bill 36-07. It is a sad state of affairs when some elected officials (Nancy Floreen, Valerie Ervin, Duchy Trachtenberg, Don Praisner, and Phil Andrews) dismiss overwhelming evidence of the misuse of a Developement District Tax presented to them by citizens and side with Developers and Builders who fund their campaigns. This is nothing more then a huge gift to them and it is being paid for by a select few citizens.

We are coming to the close of building in Montgomery County so why then are these five members deciding it is time for a few citizens to pay for general infastructure all of Clarksburg and surrounding area's will use. Why haven't these five members made the builders and developers pay for general infastructure that allows them to sell their homes for huge profits.

You have one last chance to prevent the funeral of homeowners in Clarksburg Town Center, Clarksburg Village and Arora Hills, please look deeply into your concience and make the tough but correct decision. Dismiss the Deveolpment District Tax and look at Clarksburg as a whole.

Sincerely,

Betty Forrest
Attached is a summary of the recommendations the Clarksburg Development District Advisory Committee made.

Clarksburg Development District Advisory Committee

Chapter 14 - Development District
Recommendations

History

Chapter 14 - Development District was drafted by County Executive Staff with input from the County Council attorney and the private sector. There was Council Committee review prior to Council action. The Development district legislation was first adopted by the Council in 1994, with subsequent amendments in 1996 and 1997. The initial Council vote to adopt it was 7 in favor and 1 against and 1 abstention. Further questions should be directed towards Council Attorney - Mike Fadden

The Council unanimously adopted the first development district resolution regarding Clarksburg Town Center in September 2000. Members of the Council at that time were:

1. Phil Andrews
2. Derick Berlage
3. Nancy Dacek
4. Howard Denis
5. Blair Ewing
6. Isiah Leggett
7. Marilyn Praisner
8. Michael Stubin
9. Steve Silverman

The Council also unanimously adopted the second development District resolution for the Clarksburg Town Center in March 2003. Members of the County Council at that time were;

1. Phil Andrews
2. Howard Denis
3. Nancy Floreen
4. Mike Knapp
5. George Leventhal
6. Tom Perez
7. Marilyn Praisner
8. Michael Subin
9. Steve Silverman

The third and final resolution has not been voted on or approved but the $17,000,000 for "General Infrastructure" to be financed by a "Development District" i.e. Clarksburg Town Center is in the 2007 budget.

Mr. Silverman's office said: "The goal of the Development District legislation was to create a means for providing the significant infrastructure required for a community like Clarksburg and to be able to provide it in a coordinated rather than piecemeal way. This was realistically the only way that the Clarksburg Town Center community could be built and begin to provide some of the housing so many of our residents need.

We anticipated that the other large communities in Clarksburg would also create development districts. The smaller subdivisions in Clarksburg will pay very high impact taxes to help pay for their infrastructure needs and of course, general taxpayers throughout the county help pay for the lion's share of the new Clarksburg schools and all the public safety infrastructure such as the Clarksburg fire station.

As a result of the mediated agreement between the Clarksburg Town Center Committee and the

developer and builders, there will need to be changes to the Planning Board's land use approvals for the Town Center. Afterwards, we may need to look at the current requirements for the Town Center Development District. I look forward to seeing the report and recommendations of the Clarksburg Development District Advisory Committee when their work is completed"

Reason's why the Development District Concept failed in Clarksburg:

- Improper, incomplete or non existing notification to buyers regarding being in a development district and what it entailed by the Developers or the builders:
  a. No buyer was informed that only one subdivision, Clarksburg Town Center, was to be in a Development District and pay for "General Infrastructure"
  1. Civic Center/Library - $4,640,000 - TBD - ETA TBD
  2. Stringtown Road 800 foot gap - $550,000 - 50% - ETA - June 2005
  3. Stringtown Road extension I-355 to I-270 - $1,600,00 - 25% - ETA June 2007
  4. Stringtown Road (M-355 to Snowden Farm Parkway) - $4,435,000 - 100% - Nov 2003
  5. Snowden Farm Pkway (Clarksburg Rd to Stringtown Rd)$2,270,000 - 100%-Nov2003
  6. Lowering M-355 at Stringtown Road - $905,000 - 100% - June 2004
  7. Clarksburg Road - $1,340,000 - 100% - Nov 2004
  8. WSSC 20 inch Water Main - $779,000 - 100% - Dec 2004
  9. Greenway Trails - $460,000 - 100% - Dec 2005
  Total $17,000,000
  10. Clarksburg Square/OverlookPark Roads - $2,900,000 - TBD
  11. MD-355/MD 121 Intersection - $100,000 - TBD
  Total $19,979.00
  This General Infrastructure enables all the other 18 subdivisions to exist and thrive.
  B. Resale buyers, as far as we can see, were not notified of being in as Development District at all.
  C. Residents do not realize that the "Specail Area Tax" under State tax and County Tax on their Tax bill is not the Development District Tax.
  D. Investors made a tremendous profit by buying and flipping homes but paid nothing towards the infrastructure.
  - Original Developer of Clarksburg Town Center was prepared to pay for "General Infrastructure" dictated by the Montgomery Planning Board. When Newland Communities became the Developer, the original Attorney for the sale of the farm and knowledgeable of the Master Plan for Clarksburg Town Center - Steve Kaufman petitioned to the County Council to pass this expense on to the residents of Clarksburg Town Center.

- In the Master Plan it is repeatedly stated that development in Clarksburg should not be allowed to proceed unless there was financing available first. Emphasis was placed on alternative methods of financing not simply on the Development District as the only alternative.

- Montgomery Planning Board was not in favor of making this a Development district, and passing the costs on to the homeowners. It was clearly stated throughout the Master Planning process (repeatedly by Jean Onufry) that any alternative methods should be

borne by the Developers, not the citizens of Clarksburg - and that any alternative methods of financing development should not unduly burden Clarksburg taxpayers.

- What is the amount of Impact fees collected so far with regards to the Development of Clarksburg? Where are these fees and why can't they be deducted from the "General Infrastructure" costs? Mr. Siverman stated that the other smaller communities would be paying significantly higher impact fees to make up the difference, what is the amount of impact fees paid by the residents of:
  1. Clarksburg Town Center
  2. Clarksburg Village
  3. Greenway Village (Aurora Hills)
  4. Clarksburg Ridge
  5. Highlands at Clarksburg
  6. Parkside
  7. Catawba Manor
  8. Gateway Commons/Orchard Run
  9. Burnt Hills Estates
  10. Urley Ridge
  11. The Glen at Hurley ridge
  12. The Meadows at Hurley Ridge
  13. Summerfield Crossing
  14. Park Ridge
  15. Miller and Smith - Running Brook Drive
  16. Miller and Smith - near Post office (not stated yet)
  17. Miller and Smith - north of Clarksburg Road on east side of MD-355
  18. Cabin Branch

  Aren't the impact fees paid by the builder?

- Where are the front footage fees and why can't they also be used to reduce the amount of bonds to be issued to pay for General Infrastructure.

- The homes here in Clarksburg are selling for hundreds of thousands of dollars more then ever anticipated and the taxes collected reflect this. Why are the higher taxes not being taken into consideration to pay for the general infrastructure? Next year we are due for a raise in the assessments of our homes. Has Montgomery County factored in this raise in income through taxes as a way to lower the amount needed to pay for the general infrastructure?

- Keenan Rice, who works for Municap, Inc., was brought into Committee discussions at the "Best Practices" sessions. Mr. Rice commented that normally a Development District is formed to pay for Specialty Projects not required infrastructure. He said that these Districts are funded first to speed up the process, Montgomery County is unique in that they pay for them after the fact.

- It is troublesome that many of the County Council's campaign fees of more then 60% come from developers and their attorney's.

- In other parts of the Country (California) where there are Development Districts, the houses in a development district are priced well below market value to make up for the difference to pay for the 25 year bonds. This was not the case in Clarksburg Town Center, we paid as much for our homes as anyone else in Clarksburg. We alone will be paying between $1000 and $1,800 more then anyone else in Development District Taxes for a home of similar value in another subdivision in Clarksburg. Homeowners will be buying homes in other communities for comparable homes, rather then pay the unfair additional development tax in Clarksburg Town Center.

Clarksburg Subdivisions - Oct 2008

1. Clarksburg Town Center
2. Clarksburg Village
3. Arora Hills $1,100,000
4. Grace Farms (~~$800,000~~ & up)
5. Park Ridge ($800,000 & up)
6. Burnt Hill ($800,000 & Up)
7. Clarksburg Ridge (across the street from western CTC)
8. Catawba Manor (Across the street from Western CTC)
9. Parkside (across the street from Western CTC)
10. Highlands at Clarksburg (across the street from western CTC)
11. Gateway Commons (right angle from western CTC)
12. Hurley Ridge
13. The Meadows at Hurley Ridge
14. The Glen at Hurley Ridge
15. Woodcrest
16. Running Brook - Miller & Smith
17. East Side - Miller & Smith (near the post office)
18. Garnkirk - Miller & Smith - north on 355 after Clarksburg Road backing onto Parkside, Catawba Manor & Clarksburg Ridge
19. Summerfield Crossing
20. Cabin Branch
21. 22. Comsat/LCor Property
23. Greenridge Acres
24. Miles-Coppola (Clarsburg Station)
25. The original name of Clarksburg's first sub-division?

Kronenberg, Robert

From: Andrew Moden [andrewmoden@hotmail.com]
Sent: Wednesday, October 22, 2008 11:05 AM
To: MCP-Chairman
Cc: Cryor, Jean; Alfandre, Joe; john.robinson@mncppc-mc.org; Kronenberg, Robert
Subject: Plan support for Clarksburg Town Center from concerned resident!!

My name is Andrew Moden, and I have been a resident of the Clarksburg Town Center since 2004. I was part of the group that met with both CTCAC and Newland Communities to gather information and make an informed decision on what was best for our neighborhood. I also feel that the plans submitted by Newland are in the best interest of our community. To extend the process any further will continue to be a detriment to our community and a detterent for those individuals interested in moving in or moving out.

I wanted to make sure that other voices are being heard in our community. I look forward to our Town Center being completed and providing the beautiful area that was described to us when we first purchased here 5 years ago and that I still see in the newly submitted plans.

Thank you for your time.

Andrew Moden
23927 Burdette Forest Road
Clarksburg, MD 20871
301-972-5042

Kronenberg, Robert

From: Colleen - Home [purplesams@verizon.net]
Sent: Wednesday, October 22, 2008 8:46 AM
To: Kronenberg, Robert
Subject: Re: CTC Landscaping issues

Mr. Kronenberg,

As you know, the Development District for CTC was approved by the council. Now that Newland is going to get their $17M (which is the exact amount the Newland is to pay for amenities and enhancements for the violations), I would like to make sure we get a retail center that is what we want. We do not want some strip mall with inadequate parking and that has no outdoor seating for its restaurants. For instance, we do not want another Highlands Center, it is almost unusable. The parking is horrible, it is not customer friendly, and thus the businesses end up closing.

The citizens of CTC should get more not less (which is what the new plan proposes) because of the DD taxes. Newland needs to build what was promised in the compliance plan.

Thank you again for taking the time to meet with me (and other members of the community) to review the site plans. I hope you found this a good use of your time. Please let me know what I can do to help ensure this happens and Newland meets all their obligations.

Regards.

Colleen Martin

----- Original Message -----
From: Kronenberg, Robert
To: Colleen - Home
Cc: Phyllis Foellmer ; Sue Schottland ; Andy.Jakab@montgomerycountymd.gov ; Kaye, Joshua ; ehsan.motazedi@montgomerycountymd.gov
Sent: Tuesday, September 23, 2008 11:34 AM
Subject: RE: CTC Landscaping issues

Thank you. We will see you there.

Robert

From: Colleen - Home [mailto:purplesams@verizon.net]
Sent: Tuesday, September 23, 2008 10:34 AM
To: Kronenberg, Robert
Cc: Phyllis Foellmer; Sue Schottland; Andy.Jakab@montgomerycountymd.gov; Kaye, Joshua; ehsan.motazedi@montgomerycountymd.gov
Subject: Re: CTC Landscaping issues

Mr. Kronenberg,

This is to confirm our meeting on Thursday at 8:30. Please meet us in the condominium parking lot behind the corner of Clarks Crossing and Clarksburg Square Road. We look forward to talking with you.

Colleen

----- Original Message -----
From: Kronenberg, Robert
To: Colleen - Home
Cc: Phyllis Foellmer ; Sue Schottland ; Andy.Jakab@montgomerycountymd.gov ; Kaye, Joshua ; ehsan.motazedi@montgomerycountymd.gov
Sent: Tuesday, September 16, 2008 4:08 PM
Subject: RE: CTC Landscaping issues

Ms. Martin,

Great to meet you last night at the meeting as well. I can meet at 8:30 at Clarksburg. Please tell me where you want to meet. I have invited the inspector from Montgomery County-DPS and the M-NCPPC Site Plan inspector.

Robert

From: Colleen - Home [mailto:purplesams@verizon.net]
Sent: Tuesday, September 16, 2008 3:06 PM
To: Kronenberg, Robert
Cc: Phyllis Foellmer; Sue Schottland
Subject: Re: CTC Landscaping issues

Mr. Kronenberg,

It was nice to meet you last night. Phyllis, Sue, and I can meet with you on Thursday, the 25th. Unfortunately we can not all be there all day due to previous commitments. At least 2 of us can meet you with either in the morning or the afternoon. If we meet in the morning, we would have to be finished by noon. If we meet in the afternoon, we can not begin until 1:30pm.

Please let us know what time is more convenient for you.

Thank you.

Colleen

"Laissez Les Bon Temps Roulez"

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----- Original Message -----
From: Kronenberg, Robert
To: Colleen - Home
Sent: Monday, September 15, 2008 8:47 AM
Subject: RE: CTC Landscaping issues

Ms. Martin,

Thank you for the email. We were notified of the landscaping differences when the plan was submitted and did send an inspector out back in April/May. As you point out it is a mess and the inspector had difficulty in determining what

was approved, installed and changed. I spoke with CTCAC members about this problem and intend to address it in the staff report.

If you and other members of the Grounds Committee are able, it would be helpful to meet on site and go over the issues. I can arrange a meeting with our inspector and the inspector from the County-DPS.

Next Thursday (9/25) is open all day for me.

Robert

From: Colleen - Home [mailto:purplesams@verizon.net]
Sent: Saturday, September 13, 2008 9:58 AM
To: Kronenberg, Robert
Subject: CTC Landscaping issues

Mr. Kronenberg,

I am a resident of Clarksburg Town Center (CTC) and a member of the HOA Grounds Committee. I am concerned that the beatification of CTC is in jeopardy with the new plans that have been submitted by Newland. There is major landscaping that is not going to occur because of these new plans. Please ensure that the Planning Board and staff require of Newland to adhere to all the features and requirements of the baseline certified landscaping site plans. Exhibit A to the compliance plan staff report dated June 2006 is a list of these plans.

I am concerned that we will not get the required landscaping that the plans call for. We have recently implemented a Yard of the Month award in order to thank those members of the community that take care of their yards. Those that win get a small sign for their front yard. We are trying our best to make something good out of what Newland has created (which is a mess) within CTC. Newland should be held to their already approved landscaping commitments. I suggest that you send an inspector to CTC to audit what is in place versus what the plans require, you will be amazed as to what is lacking already.

I am available to discuss this and other issues within CTC at any time.

Colleen Martin
13010 Blacksmith Drive
Clarksburg, MD

Kronenberg, Robert

From: Emily Lederer [emily_lederer@hotmail.com]
Sent: Tuesday, October 21, 2008 10:33 PM
To: MCP-Chairman
Cc: Cryor, Jean; Alfandre, Joe; john.robinson@mncppc-mc.org; Kronenberg, Robert
Subject: Plan support for Clarksburg Town Center from concerned resident!!

Importance: High

Dear Planning Board Chairman Hanson:

My name is Emily Lederer, and I have been a resident of Clarksburg Town Center since 2002. Along with a group of fellow concerned residents, I have studied the latest plans submitted by Newland for our community, and I would like it on the record that I, and many other residents I have spoken to, support and are happy with these plans and sincerely hope they will be approved by the Planning Board on November 6th.

Our group of concerned residents have recently met privately with both the CTCAC and Newland to hear the facts about the plan from all involved parties, and after hearing from all sides and forming my own opinion, I feel, without a doubt, that the changes in the most recently submitted plans were made in our community's best interest. I do not want a plan enforced on our community that has been rejected in an RFP process by the market as a whole, and therefore strongly support why the changes in the revised plan were made.

I know that for a long time the only Clarksburg residents that have been publicly vocal have been those with negative opinions, but please know there are many of us that would like this community to move forward in a positive manner, which starts with the approval of what we feel is a wonderful plan for our community!

We hope are voices will be heard and considered.

Thank you so much,
Emily Lederer
23601 Sugar View Drive
Clarksburg, MD 20871
301-528-9811

Kronenberg, Robert

From: ELIZABETH FORREST [betforrest@verizon.net]
Sent: Thursday, October 23, 2008 7:09 PM
To: Derek Thomas; Daniel Van Epp; LaDonna Monseers; Robert McLeod
Cc: Susan Singer-Bart; Kathleen Miller; Sue Schottland; Phyllis Foellmer; Leslie Donaldson; Hazel Slemmons; Betty Forrest; Colleen - Home; Mitchell, Kathleen; Miranda Spivack; Krasnow, Rose; Kronenberg, Robert; Joseph Alfandre; Presley, Amy; Jean Cryor; John Robinson; MCP-Chairman; Stanley, Rollin; Maskal, Nellie; Don Praisner; Duchy Trachtenberg; George Leventhal; Marc Elrich; Mike Knapp, V.P.; Nancy Floreen; Phil Andrews; Roger Berliner; Valerie Ervin; Yol Kwon; Ursula Watkins; Sergio G. Contero; Sally Bebawy; Robert Price; Robert & Dominika Borkowski; Ricardo Trujillio; Phil Marti; Patricia O'Callaghan; Mike Wakefield; Michele Raptosh; mhmalagon@verizon.net; Megan Doney; Marjan Afshar; Mahmuda Jamshed; Luzmila Gravina; Katie Gasque; Jesse Lewis; Jean Casey; Jaya Mehra; Ido Achrak; Dee Baris; Danbi & Sanduck Lee; Cyndi Schaff; Cari Lunenfeld; Angela & David Hoyos; Susie Ritz; Fran Davis; Andrea Burton; Catherine Duquesnoy; Charles & Louise Bryant; Charles Pace; Charlette Fedders; Dennis Kelsh; El Cooper; Ellen & David Holman; Eugene Mary Estes; Hsinyi Tsang; Janet & Geoffrey Valdivia; Jeff & Shelby Yingling; Jin Sook Cho; Karen Harding; Ken & Berna Yuen; Mabeline Taguchi; Mei-Ling Yeh; Micheline Amegnran; Pete Torres; Sharon DiMaria; Stan & Judy Weightman; Susan & Devin Edwards; Taki Pritsios; Thea Harding; Tom Perrone; Vijay & Kiran Sangar; Wendy Harris; Kim Shiley; Lynn Fantle
Subject: Fw: CTC

To Newland Corporate:

Please do not have anyone from Newland Communities in Clarksburg Respond they all talk with forked tongue. They do what they are told by Corporate and are being duly congratulated and I'm sure compensated for aiding and abetting in the funeral of Clarksburg Town Center. We took motion pictures of their victory dance over the graves of the residents of CTC when the Cajoled County Council Members made their primeval decision.

When I moved here, the first thing I did was join the Clarksburg Civic Association - good people with old fashioned ideas so sadly missing in our society now. I then joined the Grounds Committee in CTC and became President (we were demoted to a Garden Club once we asked and found out detrimental information), I also became President of Clarksburg Condominium II and now am Project Coordinator of the Deficiency Project for Condo I & II Vs Bozzuto, I was asked to serve on the Development District Tax Advisory Committee, obviously I am an activist and will not stand by while an enemy attacks my home, and my investment and my neighbors.

Your company while appearing to be the ideal corporate types underneath are cut throats and wheeler dealers of the worse kind. Unfortunately I saw through you all right from the beginning and your secret meetings with ad company's (I paid for my own coffee) and the ever famous meeting in the cottage, and secluded dinners (which I was never asked to thank god) these were all meant to sway my allegiance from a group that only had CTC's best interests at heart. I was told they were not my friends, certainly Newland was not! You will make your money and leave behind devastation, but do you care nooooooooooooo! You've made the quota, we're your most profitable community yet! Congratulations!

Newland Communities should be put on the list of the most devious developers in the USA.

Disgusted - Betty Forrest

----- Original Message -----
From: ELIZABETH FORREST
To: Royce Hanson
Sent: Thursday, October 23, 2008 8:04 AM
Subject: CTC

Dear Planning Board:

You are our last hope for sanity in Montgomery County.

Please DO NOT approve the latest horrendous plans submitted by Newland.

We would have had amazing plans at the end of 2007 but once again Newland is trying to bully officials into giving them their way even if it is illegal and dangerous and will put the final nail in the coffin of CTC.

We have had just about every bad thing dumped on us and you are our last hope that there is an honest and thoughtful part of government in Montgomery County.

We need the master vision of the retail center not Newlands way of making obscene profits to the detriment of the citizens who will be saddled with the kind of retail center which will fail miserably.

We need more retail square footage

We need parking garages

We need streets in the retail center wide enough that they will be accepted by Montgomery County and enough room to have tables outside the restaurants

We need our precious water shed protected

We DO NOT need a huge retaining wall which endangers our water shed and is a costly item to maintain.

Please have the courage to stand up to a Developer who has done everything in their power to commit wrong doings in order to max out their profits on the backs of the residents of CTC.

Thank You
Betty Forrest
P.S. Please spot check some of the e-mails you get to make sure they are from residents of CTC and Clarksburg, Newland has been known to have shills send in messages and come to meetings.

Kronenberg, Robert

From: bfantle@aol.com
Sent: Friday, October 24, 2008 12:04 PM
To: Kronenberg, Robert
Subject: Fwd: Citizens for a Better Clarksburg

Hi Robert, i just wanted to confirm you received the following documents yesterday and this morning for inclusion into the staff report. They have been provided by me and my citizens group Citizens for a Better Clarksburg.

RCLCO Full Report CTC 3-14-07.pdf
RCLCO Project Audit CTC 3-16-07.pdf
RFP pages.pdf
RFP Distribution List.pdf
Gibbs Report Jan 2008.pdf
StreetSense.pdf
Saul Centers Proposal.pdf
Area Properties.pdf

Thanks

Barry Fantle
President
Citizens for a Better Clarksburg

LAW OFFICES OF
KNOPF & BROWN
401 EAST JEFFERSON STREET
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ROCKVILLE, MARYLAND 20850
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FAX: (301) 545-6103
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WRITER'S DIRECT DIAL
(301) 545-6105

DAVID W. BROWN

November 3, 2008

Rollin Stanley, Planning Director
Maryland-National Capital Park
and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Clarksburg Town Center (Project Plan Amendment 91994004B; Preliminary Plan Amendment 11995042A; and Site Plan 820070220) Board Hearing

Dear Mr. Stanley:

I write on behalf of the Clarksburg Town Center Advisory Committee, Inc. ("CTCAC"), pursuant to ¶ 5.F.(b) of the Manual of Development Review Procedures to register CTCAC's objections to the Staff Report published on October 27, 2008 for the Board's November 6, 2008 hearing on the above-referenced matters. This is the second of two letters being sent on behalf of CTCAC today. The first letter explains that the Staff Report fails to properly address the fundamental question for the Board at the hearing: **do the plans submitted by Newland conform to the Compliance Program**? This letter presents CTCAC's objections and concerns regarding the staff findings and recommendations on the plans submitted by Newland in furtherance of the Compliance Program. Please publish this letter on the Board's website as prescribed in the Manual.

These comments reflect the fact, as detailed in my first letter, that the Staff Report's detailed findings and recommendations are not expressed in terms of adherence to the Compliance Program, but rather from the perspective of traditional plan review standards and procedures. While this was necessary, it is hardly sufficient, and I address some of the most serious deficiencies. CTCAC's comments are presented in the chart accompanying this letter. It is organized to follow the organization of the findings and recommendations in the Staff Report: numerically, starting with the Project Plan, then the Preliminary Plan and finally the revised Site Plan. This format is used for convenience of all concerned. It effectively excludes prioritization among concerns, but

CTCAC believes the Staff should be obliged to respond to all concerns in any event. Either CTCAC or I will be available at the hearing to amplify on these matters and on any concerns that might have been overlooked in preparing the enclosed chart.

Sincerely yours,

David W. Brown

/enclosure

cc: Chairman Royce Hanson
Montgomery County Planning Board Member John Robinson
Montgomery County Planning Board Member Jean Cryor
Montgomery County Planning Board Member Joseph Alfandre
David Lieb, MNCPPC
Rose Krasnow, MNCPPC
Robert Kronenberg, MNCPPC

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DAVID W. BROWN

WRITER'S DIRECT DIAL
(301) 545-6105

November 3, 2008

Rollin Stanley, Planning Director
Maryland-National Capital Park
and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Clarksburg Town Center (Project Plan Amendment 91994004B; Preliminary Plan Amendment 11995042A; and Site Plan 820070220) Board Hearing

Dear Mr. Stanley:

I write on behalf of the Clarksburg Town Center Advisory Committee, Inc. ("CTCAC"), pursuant to ¶ 5.F.(b) of the Manual of Development Review Procedures to register CTCAC's objections to the Staff Report published on October 27, 2008 for the Board's November 6, 2008 hearing on the above-referenced matters. This is the first of two such letters from CTCAC. The second letter will be a more detail-oriented response to the staff findings and recommendations for these matters. This letter presents fundamental concerns that transcend those details. Please publish this letter on the Board's website as prescribed in the Manual.

The Staff Report fails at the most fundamental level. While the Report makes passing reference to the fact that what is before the Board is a Compliance Program, the Staff Report does not identify, except in very generic terms (at p. 9), the elements of the Compliance Program. As a result, the Board is offered no detailed findings or recommendations in terms of the fundamental question for the Board at the hearing: **do the plans submitted by Newland conform to the Compliance Program**? Instead, the staff presents the Board with nearly 40 pages of findings and recommendations on submitted plans, solely from the perspective of traditional plan review standards and procedures. While this was necessary, it is hardly sufficient.

There is only a brief outline, as part of Appendix C, of the "major differences and similarities between...the Plan of Compliance and the current application," as if such "differences and similarities" were of only passing interest. The reality, however, is that the whole point of the hearing is to ensure that there are no material "differences" between the Compliance Program and the current application. The Compliance Program can be found in Appendix C. On September 18, 2008, I provided the Board with Testimony relating to the request for a 90-day extension of the Project Plan, which can be found in Appendix H. That Testimony provides background, particularly for those Board members who were not on the Board in 2005-06, on how Newland site plan violations went from partial adjudication to mediation to extinguishment as a result of a Settlement Agreement that led to the Compliance Program the Board approved in the summer of 2006.

The Staff Report takes note of the Board's Compliance Program "Findings in Formal Disposition of the Violations," but fails to note that the Board, immediately after making these Findings ordered Newland "to **comply strictly** with each of the elements, terms and conditions of the Compliance Program . . ." Resolution at 6 (Aug. 17, 2006) (emphais added). Despite this standard established by the Board in approving the Compliance Program, the Staff Report states, without focus on the central hearing issue, as follows:

> The Application as submitted does not fully comply with all of the terms as specified in the Compliance Program, specifically with respect to the parking structures, amenities and materials associated with the retail center, playgrounds and the proposed phasing.

Staff Report at 10. The Report goes on to suggest that this is of no problem unless Newland does not adhere to the new conditions" being proposed. Id. The "new conditions" are all tied to the Staff's findings and recommendations on the project, preliminary and site plans, not on an appraisal of conformity to the Compliance Program. This is profoundly mistaken. Some "new conditions" may be appropriate, but they are no substitute for requiring adherence to the Compliance Program. That is for the Board to ensure; the Staff cannot presume the freedom to recommend alterations to a legally binding program of site plan violation remediation by treating this matter as just another plan approval proceeding.

The Staff Report (at 67) does specify, in the third recommended Site Plan condition, that the board require Newland to comply with the "conditions of approval for the Plan of Compliance Resolution...." This is, at best, a difficult-to-enforce "catch-all" requirement that is not an effective, workable substitute for a full and careful appraisal of whether the proffered plans do, in fact, comply with all the "conditions of approval," which would include the obligation of strict compliance with all of "the elements, terms and conditions of the Compliance Program." Those elements, terms and conditions are

found not in the Plan of Compliance Resolution itself, but rather in the numerous documents specified in ¶3 of the Resolution to constitute the Compliance Program.

It is difficult to overstate the significance and magnitude of the Staff Report's failure to address the relevant question before the Board and provide a detailed assessment of Compliance Program conformity. The process that led to the Compliance Program was unprecedented in scope and objective, to say nothing of the unique public role the Board, the County Executive and the County Council expected CTCAC to fulfill in the reformulation of plans to move forward in Clarksburg from a focus on Newland and builder wrongdoing to completion of the Town Center. The negotiations began in January 2006, leading first to a Settlement Agreement in April 2006, then to a jointly submitted 12-page, single spaced "Description of Major Elements Making Up Plan of Compliance" in May 2006, and ultimately Board approval in a hearing in June 2006, as reflected in its August 2006 Resolution. The process was long and laborious and, most importantly, the end result was a set of highly interdependent requirements approved by the Board that could not be even marginally reconfigured later without upsetting a carefully and delicately balanced agreement. The gave-and-take of mediation, project economics and practical difficulties made for many difficult decisions. For example, while CTCAC felt that many residences built in violation of plan standards should be corrected rather than grandfathered, it became clear that this would divert finite funds available to enhance the retail core, another primary CTCAC objective. In every case, CTCAC chose grandfathering of existing construction in order to achieve better results for future construction in the retail core area. To compromise now on what was agreed to by the parties and required by the Board would unravel years of selfless hard work by CTCAC on behalf of the public, the County and the Board.

In approving the Compliance Program, and requiring Newland "to comply strictly," the Board in 2006 incorporated into the Compliance Program all the choices CTCAC had made in negotiations that were agreed to by Newland and the builders. The Board understood that the amended plans it would be reviewing as a result were not plans devoid of this history, but rather the interdependent resolution of a lengthy set of partially adjudicated site plan violations. The Board expressed the point in its approval Resolution as follows:

> The terms and conditions of the Compliance Program approved by this Resolution are intended by the Board as remedial measures that shall be **legally required** in order to address certain violations...with respect to the Project Plan, various site plans and certain amendments thereto, whether or not those site plans and amendments were approved under lawful authority to do so.
>
> The elements, terms, and conditions of the Compliance Program approved under this Resolution are the result of a

> voluntary mediation and negotiation process undertaken by and on behalf of the Complainant and Respondents; and, as expressed in this Resolution, such elements, terms and conditions of the Compliance Program shall be deemed and constitute the knowing and voluntary proffer of the Respondents tendered for the purpose of settling and disposing of the Violations in accordance with the lawful authority of the Board.

Board Resolution at 2 (Aug. 17, 2006) (emphasis added).

I do not wish to suggest that, in making plan recommendations, the Staff Report is completely divorced from impact on Compliance Program requirements. Some are implicated, but not explicitly evaluated in those terms, such as the Compliance Program requirement for two parking structures in the retail core area. Staff Report at 19. By not systematically addressing conformity to all the elements of the Compliance Program, the Staff recommendations are not simply an unreliable indicator of what is needed to ensure such conformity; they are also an indiscriminate bull in the china shop, upsetting the balance struck in the interdependent requirements in the Compliance Program. To cite one example, the "Description of Major Elements Making Up Plan of Compliance," which was incorporated into the Compliance Program by the Board, states in ¶ B.7. of the Detailed Plan of Compliance that "[t]he depth of the retail uses along General Store Drive shall be 60 feet." Hence, the Staff should have informed the Board whether this requirement was met in Newland's submitted plans, and whether Staff intended for this requirement to be met in Parcel MM after implementing the recommendation to convert the proffered surface parking for this Parcel into structured parking. There is a clear interdependence here, because one cannot impose prescriptive structured parking requirements in that Parcel without at the same time assessing the impact on the length of the adjacent buildings for retail uses.

What should the Board do in the face of a hearing date of November 6th and a seriously incomplete Staff Report as of November 3rd? The Staff should attempt to rectify its omission before then, if possible, but in any case the Board should not defer the hearing, even if the Staff is unable to correct the problem, because there is much for the Board to consider, at least on a preliminary basis. No final decisions should be made by the Board, however, until it has the benefit of the Staff's element-by-element appraisal of Compliance Program conformity, as well as the materiality of any nonconformities found, in relation to a broader view of the interdependent Compliance Program requirements. That appraisal would then be the logical focus of comment by all interested parties at a subsequent, hopefully final hearing.

Sincerely yours,

David W. Brown

David W. Brown

cc: Chairman Royce Hanson
Montgomery County Planning Board Member John Robinson
Montgomery County Planning Board Member Jean Cryor
Montgomery County Planning Board Member Joseph Alfandre
David Lieb, MNCPPC
Rose Krasnow, MNCPPC
Robert Kronenberg, MNCPPC

Blackman, Jason

From: Nancy Garner [nancyg@212software.com]
Sent: Tuesday, November 04, 2008 12:04 PM
To: MCP-Chairman
Subject: Supporting Clarksburg Town Center

We support Clarksburg Town Center and would very much like to move forward and improve our quality of life.

Thank you ,
Gerald & Nancy Garner
23808 Grapevine Ridge Terrace
Clarksburg, MD 20871

Blackman, Jason

From: Nicolle Spitulnik [nicolleschneider@hotmail.com]
Sent: Tuesday, November 04, 2008 1:02 PM
To: MCP-Chairman
Subject: I SUPPORT CLARKBURG TOWN CENTER!!!!