

Forensic Document Examiners, Inc.

AFFIDAVIT

WE HEREBY AFFIRM UNDER THE PENALTIES OF PERJURY AS FOLLOWS:

1. My name is Katherine Mainolfi Koppenhaver. My address is 403 Haslett Road, Joppa, Maryland 21085. I am over the age of 18 and competent to testify.

Attached hereto and incorporated herein as Exhibit A is a copy of my Curriculum Vitae that sets forth my background and experience that qualifies me to undertake the examination requested and render the opinions given in this report. The facts and qualifications referred to therein are true and I am a competent court-qualified Certified Document Examiner.

2. My name is Mary Helen Bean. My address is 3927 Deer Park Court, Havre de Grace, Maryland 21078. I am over the age of 18 and competent to testify.

Attached hereto and incorporated herein as Exhibit B is a copy of my Curriculum Vitae that sets forth my background and experience that qualifies me to undertake the examination requested and render the opinions given in this report. The facts and qualifications referred to therein are true and I am a competent court-qualified Forensic Document Examiner.

3. We have been asked to examine the following documents:

4. **Developer's Certificates:**

- E-1: Site Planting Plan, Clarksburg Town Center, Phase 1B, Part 3 consisting of eleven (11) pages, each bearing the handprinting and signature of Tracy Z. Graves, dated 08/02/02. Copy.
- E-2: Site Development Plan, Clarksburg Town Center, Phase 1B, Part 2 consisting of five (5) pages, with page one bearing the signature of Tracy Z. Graves, dated 6/28/01. Copy.
- E-3: Site Planting Plan, Clarksburg Town Center, Phase 1B, Part 2 consisting of a cover and nine (9) pages, with cover page bearing the signature of Tracy Z. Graves, dated 6/28/01. Copy.

P. O. Box 324
Fax: 410-538-8548

Joppa, Maryland 21085
www.forensicdocumentexaminers.com

410-679-8257
Va 703-671-7347

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4. Developer's Certificates (Continued):

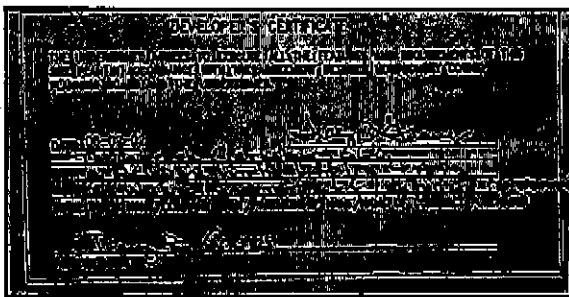
- E-4: Site Development Plan, Clarksburg Town Center, Phase 1B, Part Three consisting of three (3) pages, each bearing the handprinting and signature of Tracy Z. Graves, dated 11/14/01. Copy.
- E-5: Site Development Plan, Clarksburg Town Center, Phase 1A consisting of eleven (11) pages, each bearing the handprinting and signature of Tracy Z. Graves, dated 4/28/03. Copy.
- E-6: Site Landscape Plan, Clarksburg Town Center, Phase 1A consisting of a cover and twenty (20) pages, each bearing the handprinting and signature of Tracy Z. Graves, dated 04/24/03. (Two are dated 05/23/03 and one's date is not visible.) Copy.

5. Exemplars

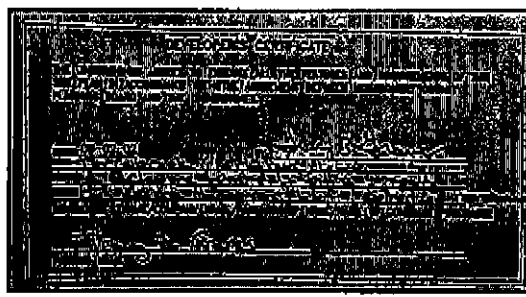
- S-1: Clarksburg Town Center Sign-in Sheet containing the known handprinting of Les Powell, dated 2/11/05. Copy.
- S-2: Clarksburg Town Center Preliminary Meeting Sign-in Sheet containing the known handprinting of Les Powell and Tracy Graves, not dated. Copy.
- S-3: Site Planting Plan, Clarksburg Town Center, Phase 1B, Part 2 with cover page and nine (9) pages, with the cover page bearing the known signature of Les Powell, dated 11/14/01. Copy.

Opinions

- 6. E-1: All pages contain the identical Developer's Certificate as shown on E-1a & E-1c:



E-1a

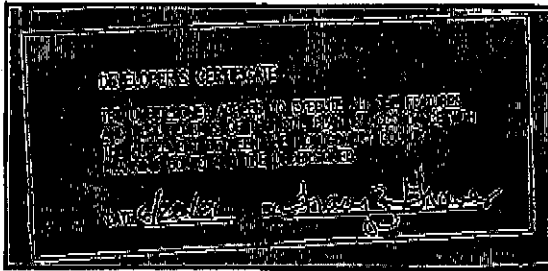


E-1c

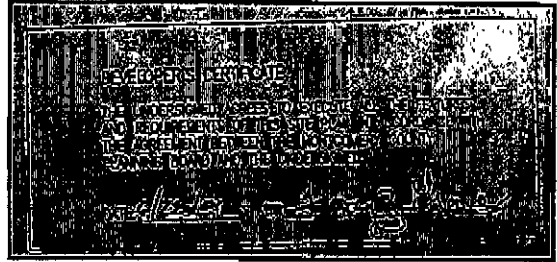
These certificates are cut and pasted. One or all are copies from a model since it is impossible for anyone to duplicate their handwriting and signature.

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7. E-2: Only Page 1 contains a Developer's Certificate. It is seen below.



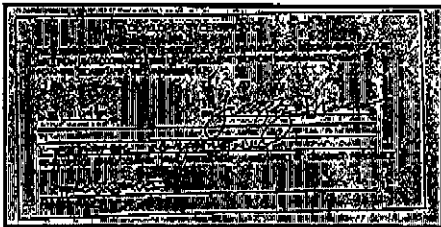
E-2



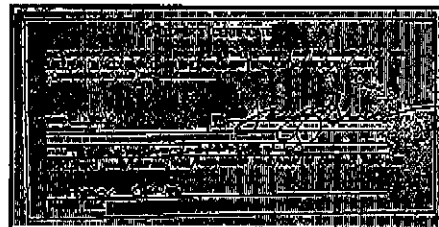
E-3

8. E-3: Only the cover page contains a Developer's Certificate and it is identical to E-2. However, it is a deteriorated copy indicating that it had been cut and pasted from a previous version, perhaps E-2.

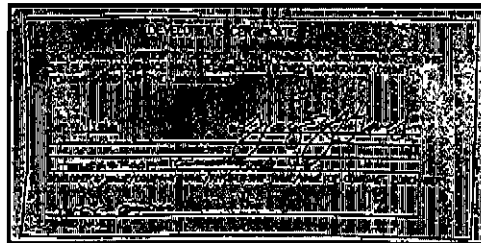
9. E-4: Each Developer's Certificate has been filled in separately. The handprinting and dates were not written in the same hand as E-1, 2 and 3. They are written in the same hand as handprinting and date of Les Powell. See exhibit C.



E-4a



E-4b



E-4c

10. E-5: All pages contain the identical Developer's Certificate as E-1, except on each, the date, 4/28/03 has been entered separately. There is evidence of white-out being used on the dates indicating that the same form was being used with changes of the dates.

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E-5a



E-5b

11. E-6: All pages contain the identical Developer's Certificate as E-1 and E-5 but some are dated 04/24/03 in one font; some are dated 04/24/03 in a different font, and two are dated 05/23/03. Examples follow.



E-6a



E-6c



E-6r



E-6h

12. The handprinting and signatures of Tracy Graves on E-4 were not written in the same hand as the signatures of Tracy Graves on E-1, E-2, E-3, E-5 and E-6.



E-4a



E-6



E-4b



E-4c

Forensic Document Examiners, Inc.

I, Katherine Mainolfi Koppenhaver do solemnly declare and affirm that the foregoing statements of fact are true and correct.

Katherine M. Koppenhaver

November 17, 2005

Date

Katherine Mainolfi Koppenhaver
Certified Document Examiner

I, Mary Helen Bean, do solemnly declare and affirm that the foregoing statements of fact are true and correct.

Mary Helen Bean

November 17, 2005

Date

Mary Helen Bean
Forensic Document Examiner

CURRICULUM VITAE

CERTIFICATION Certified by the National Association of Document Examiners (NADE) 1986
BOARD CERTIFIED Board Certified by the Board of Forensic Document Examiners (BFDE) 2004
DIPLOMATE Awarded Diplomat Status by NADE in 1996
PROFICIENCY RATING Participated in Proficiency Testing through Latrobe University with 96% accuracy

COURT-QUALIFICATIONS Testified in court and deposition over 300 times in:

U. S. District Court for Maryland	Circuit & District Court of Harford County
U. S. District Court of Virginia	Circuit Court of Calvert County
United States Court of Federal Claims, Wash., DC	Circuit & Orphans Court of Cecil County, Maryland
Tribunal of Gothenberg, Sweden	Circuit Court of Wicomico County
Regional Trial Court of Makati City, Manila	Orphan's Court of Charles County
Superior Court of the District of Columbia	District Court of Queen Anne's County
Superior Court of Sussex County, Georgetown, DE	Circuit Court of Montgomery County
Superior Court of Madison County, New York	District Court of Worcester County
Probate Court of Clark County, Las Vegas, Nevada	Alcohol Beverage Control Board, Washington DC
Circuit Court of Alexandria, Virginia	American Arbitration Association
Circuit Court of Arlington County, Virginia	Arbitration Hearing in Rehoboth, Delaware
Circuit Court of Fairfax County, Virginia	American Labor Arbitration Board
Circuit Court of Fauquier County, Warrenton, VA	Board of Law Examiners for Maryland
District Court of Manassas, Manassas, Virginia	Inquiry Panels for Attorney Grievance Commission
Circuit Court of Norfolk, Virginia	Maryland Vehicle Administrative Hearings
Circuit, District, Orphans Court of Anne Arundel Co.	NASD Arbitration
Circuit, District, Orphans Court of Baltimore City	Securities Arbitration Board
Circuit, District, Orphans Court of Baltimore County	Unemployment Hearings, Baltimore City & County
Circuit, District, Orphans Court of Carroll County	Bexar County, San Antonio, Texas
Circuit, District, Orphans Court of Howard County	Corpus Christi, Texas
San Francisco, California	Houston, Texas
Circuit, District, Orphans Court of Prince George Co.	

TYPES OF CASES

I have given opinions on cases involving suspect signatures, disputed wills, poison pen letters, graffiti, industrial espionage, altered medical records, check mark identification, sequence of writing, embezzlement, typewritten documents and disguised handwritings since 1983. I have examined over 2000 cases in the past 22 years.

FORMAL EDUCATION

- Harford Community College with Associate of Applied Science in Criminal Justice with highest honors.
- Questioned Document Course at Northern Virginia Community College. & George Washington University.

SPECIALIZED TRAINING

- Attended Seminars sponsored by NADE on questioned documents annually since October 1982.
- *Handwriting Identification* by Judith Housley, CDE & Jeanette Farmer, July 24 & 25, 1989, Wash, DC.
- *Ink and Paper Analysis* by Albert H. Lyter III of Federal Forensic Associates, Philadelphia, Pennsylvania.
- *Document Examination Seminar* by Marcel Matley and Ted Widmer, 1992, San Francisco, California.
- National Handwriting Seminar, American Board of Forensic Examiners, Aug. 5-9, 1993, Branson, MO.
- National Academy of the American Board of Forensic Examiners, Aug. 4-7th, 1994, Branson, MO.
- Association of Forensic Document Examiners Seminar, Sept. 9-11, 1994, Las Vegas, NV.
- American Board of Forensic Examiners, Expert Witnessing, 7 credit hours, Feb. 22, 1995, Honolulu, HI.
- AFDE & International Graphonomics Society Symposium, August 7-11, 1995, London, Ontario Canada.
- International Association of Questioned Document Examiners (IAQDE), Sept. 28th, 1995, Kansas City, Kansas.
- Court Testimony Professional Development Seminar for Document Examiners by Larry Ziegler, 10/2/96.
- Forgery Investigators Association of Texas Seminar, April 18, 1997, Georgetown, Texas.
- Holistic Analysis: Physiological & Psychological Foundations, Forensic Applications, Marcel Matley, 8/8/99.
- American Academy of Forensic Science, QD General Sessions (1993, 1995, 1996, 1997, 2004)
- Mid-Atlantic Association of Forensic Scientists, Questioned Document Sessions (1993 thru 1998)
- The National Forensic Center Conferences (NFC) (1991, 1992, 1995 thru 1997)
- Economic Crime Summit, May 9-12, 1999 in Orlando, FL & May 7-10, 2000 in Austin, Texas
- IAQDE Annual Educational Seminar, Sept. 24-28, 2002. Sarasota, FL
- AFDE & IGS Symposium, November 2-5, 2003, Phoenix Arizona & October 20-23, 2004, Rochester, New York
- SEAK, June 17-18, 2005 Cape Cod.
- AFDE Symposium, October 26-29, 2005 San Antonio, TX

66 Seminars and Workshops attended.

SEMINARS PRESENTED – 64 with at least 22 being one full day.

- *Signature Verification and Forgery Alert* for bank tellers through the American Institute of Banking.
- *How To Be A Credible Witness*, Towson State University, Harford and Essex Community Colleges.
- *Business of Document Examination*, Seminar by Handwriting Services of California, 1992.
- *Portable Questioned Document Equipment*
National Handwriting Seminar of the American Board of Forensic Handwriting Analysts, Aug. 9, 1993.
- *Document Examination Workshop*, AHAF, Los Angeles, CA, October 9, 1993.
- *Disguised Writing*, National Academy of the American Board of Forensic Examiners, Aug. 4, 1994.
- *Qualifying As An Handwriting Expert*, Beverly Hills, CA, March 18, 1995.
- *Reducing Losses from Forged and Fraudulent Checks*, Dallas, Texas, June 15, 1995.
- *Qualifying As An Expert Witness*, Dallas, Texas, June 17, 1995.
- *Handprinting*, National Academy of the American Board of Forensic Examiners, Aug. 4, 1995.
- *Check Identification and Classification for Law Enforcement Officers*,
Dallas, Texas, June 12, 1995; Houston, Texas, August 15, 1995; Oklahoma City, OK, May 21, 1996.
- *Document Examination Workshop*, AHAF, Tucson, Arizona, October 21, 1995.
- *Technical Advances for Questioned Document Examiners*, NFC, San Diego, California, November 4, 1995.
- *Winning Tactics at Deposition & Detecting Technologically Produced Fraudulent Documents*, NFC, CA.
- *Exhibit Preparation and Handling in Court*, NFC, Tampa, FL., Nov. 7, 1997.
- *The Business of Document Examination*, AHAF, Denver, CO, Aug. 5, 1999.
- *Desktop Forgery through Scanning*, ASIS, Orlando, FL, Sept. 11, 2000 and Nov. 21, 2000 Balto. Chapter.
- *The Handwriting of the Blind, A Case Study*, IAQDE, Sarasota, Florida, September 28, 2002.
- *Presenting A Professional Image*, Santa Monica, California, July 20, 2003.
- *Painting Word Pictures*, AHAF Conference, Costa Mesa, California July 25, 2003
- *Court Procedures*, The School of Forensic Document Examination, Oct 15-17 2004, Dallas, TX
- *Supporting Your Opinion*, The School of Forensic Document Examination, Oct 14th & 15th, 2005

FOR THE NATIONAL QUESTIONED DOCUMENT EXAMINERS ASSOCIATION

- Dallas, Texas Nov. 15, 1992.
- Kansas City, MO, June 11 & 12, 1994.
- Shawnee Mission, KS, November 7 & 8th, 1996.
- Dallas, TX, January 11, 1996 & January 9th, 1997.
- Dallas, Texas, March 17th & 18th, 2001
- Atlanta, Georgia on Sept. 18 & 19, 1993.
- Dallas, Texas, June 10-11th, 1995.
- Dallas, Texas, March 1 & 2nd, 1997.
- Dallas, Texas, March 18 & 19th, 2000

TOPICS INCLUDE: *Check Points, Principles of Document Examination, Multiple Personalities and Other Identity Problems, Identifying Handprinting, The Telltale Dot and Trash Marks, and Semantics*

LECTURES PRESENTED AT NADE CONFERENCES

- *Case of A Promissory Note*, 1987.
- *Evaluating Evidence*, 1990
- *Red Flags*, 1994.
- *PreConference Workshop*, 1997.
- *Workshop on Qualifying as an Expert*, 1998
- *Development of Children's Handwriting*, 2000
- *Bond Salon Training in Cross-Examination*, 2001
- *How not to Testify*, 2004
- *Evidence*, 1989.
- *Impeaching the Expert Witness*, 1992
- *Our Profession and It's Problems*, 1995
- *Hired to Criticize, An Ethical Problem*, 1997
- *Demonstrative Evidence*, 1999
- *Professional Panic*, 2002
- *Distinguishing Between Disguise & Simulation*, 2003
- *Handling Criticism* 2005

PAPERS PRESENTED

- *Disguised Writing in Anonymous Writing Cases*
International Graphonomics Society, London, Ontario, Canada, August 10, 1995.

BOOKS PUBLISHED

- *Evaluating Evidence*, 1990
- *The Business of Document Examination*, 1991, Revised 1997
- *How To Be A Credible Witness or Taking the Fear Out of Testifying*, 1992
- *A Selection of International Penmanship Systems*, 1993
- *Demonstrative Evidence*, 1996
- *Scientific Document Examination Manual*, 1997
- *Book Reviews*
- *How to Qualify As an Expert Witness*
- *Attorney's Guide to Document Examination*, Quorum Books, Greenwood Publishers, 2002
- *The Principles of Document Examination*, (College Textbook & Workbook), 2003 – Taught at East Tennessee University

DOCUMENT EXAMINATION COURSE WRITTEN

- Commissioned to write a Basic Course in Document Examination for the National Questioned Document Examiners Association in Texas. Completed and copyrighted in 1994. Course was certified in Oklahoma.

ARTICLES PUBLISHED IN THE NADE JOURNAL - 35 articles published:

- *Do's and Don'ts for Accuracy in Suspect Document Cases*, August 1983, also in *The Daily Record* on March 2, 1983.
- *Qualifying as an Expert in Court*, Nov. 1987.
- *Handling Cross Examination*, May 1988.
- *Evidence*, November 1989.
- *Preparing Court Exhibits*, February 1990.
- *Identifying Class Characteristics vs Individual Characteristics*, February 1990.
- *Disguised Writing*, May 90.
- *Letter of Opinion*, May 90.
- *Working with Lawyers & Their Clients*, Aug. 90.
- *Evaluating Evidence - A Systematic Examination of Handwriting Characteristics in Suspect Document Cases*, November 1990.
- *How To Be A Credible Witness*, February 1991.
- *Interpreting the Writing Movement for Identification Purposes*, May, 1991.
- *Reducing Losses from Forged and Fraudulent Checks*, August, 1991.
- *Desktop Forgery*, August, 1991.
- *The Karlene Ann Griffith Case*, November 1991.
- *The Techniques of Cross-Examination*, May 1992.
- *The Elements of Fraud*, August 1992.
- *Handwriting Systems of the World*, Nov. 1992.
- *Impeaching the Expert*, November 1992.
- *Fundamental Truths About Handwriting*, April '93
- *Equipping Your Document Laboratory*, Nov 1993.
- *The Jack the Ripper Diary*, February 1994.
- *Principles of Handwriting Identification*, July 94.
- *Handprinting*, July 1994.
- *The TellTale Dots*, December, 1994.
- *Detecting Erasures in Pen and Pencil Writing*, Spring, 1995.
- *Deposition Testimony*, Spring 1996.
- *Principles of Identification*, December 1996
- *The Care & Preservation of Documents*, 1997
- *Descriptive Terminology*, Spring 1998
- *Why Document Examiners Disagree*, Winter 1998
- *Examination of a Passport*, Summer 1999
- *Demonstrative Evidence*, Spring 2000
- *Enough Exemplars*, Fall 2000
- *The Road to Graphic Maturity*, Summer 2001
- *Distinguishing Between Disguise & Simulation*, 2003

OTHER PUBLICATIONS

- Editor of the *Communique*, bi-monthly newsletter for NADE since 1990.
- Was Co-Editor of *The NADE Journal* published 3-4 times a year through 1998.
- *Collecting Documents in Questioned Document Cases*, *The MISA Messenger*, Vol. 5, No. 7, July 1997
- *The Care and Preservation of Documents*, *The MISA Messenger*, Vol. 5, No. 8, August, 1997
- *From Graphology to Document Examination*, *The Vanguard*, January-March 2000.
- *The Document Examiner*, *The Vanguard*, July-September, 2000.
- *Qualifying As An Expert In Court*, *The Vanguard*, April - June 2001.
- *Presenting Testimony in Court*, *The Vanguard*, July - September 2001.
- *How To Help Consumers & Businesses Deter Document Forgery*, *White Collar Crime Fighter*, 7/00.
- *Outsmarting Today's High Tech Forgers and Counterfeiters*, *White Collar Crime Fighter*, 6/04
- *New High-Tech Tools for Busting Forgers and Counterfeiters*, *White Collar Crime Fighter*, 10/04.

ARTICLES PUBLISHED IN THE DAILY RECORD

- *Executive Order Provides Reforms To Improve Efficiency in Federal Court* on February 11, 1992.
- *Impeaching Experts on the Stand* on March 16, 1992.
- *Attorneys Should Ask Themselves Questions When Choosing Expert* on Sept. 5, 1992.
- *Careful Research Necessary Before Engaging in Cross-Examination* on Oct. 20, 1992.

MEMBERSHIPS and AWARDS

- National Association of Document Examiners 1982 to present.
President of NADE 1990 -1994. Re-elected President 2000 - 2005.
- NADE Document Examiner of the Year in 1991.
- Expert Witness Institute, London, England (EWI) 2001 to present.
- American Society for Industrial Security (ASIS)
- Fraud Investigators Association of Texas, formerly Forgery Investigators Association of Texas (FIAT)
- Maryland Investigators and Security Association (MISA).
- ASTM Main Committee 30 - Sub Committee 02 Questioned Document Section, 2004.
- Volunteer of the Year 2001 by the Maryland Volunteer Lawyers Service.

RESEARCH

- At the Handwriting Analysis Research Library in Greenfield, Massachusetts
- At the Baltimore Law Library, Towson State University, New York Research Library, Library of Congress, Peabody Institute, University of Maryland Resource Library, Enoch Pratt Library, Baltimore County Libraries.

Mary Helen Bean
Forensic Document Examiners, Inc
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Joppa, MD 21085

Forensic Document Examiner
(410) 679-8257
marvhbean@comcast.net

CURRICULUM VITAE

EDUCATION

- BA Degree, Secondary Mathematics Education, SUNY Oneonta
- Master's Degree, Education, Loyola College, MD
- Graduate Courses at Southern Oregon College, University of Iowa, Western Maryland College

SPECIALIZED TRAINING

Apprentice to Katherine Mainolfi Koppenhaver, CDE, Forensic Document Examiners, Inc., 7/02-7/05

RELATED EXPERIENCE

- edited Katherine Mainolfi Koppenhaver's on-line course in Forensic Document Examination
- on-line teacher for K.M. Koppenhaver's course in Forensic Document Examination
- edited K.M. Koppenhaver's college text "Forensic Document Examination, Principles and Practices"

AREAS OF SPECIAL INTEREST

- disguised writing
- handprinting
- conducting research on synchronous writing

MEMBERSHIPS

National Association of Document Examiners (NADE)

SEMINARS ATTENDED

Annual NADE Conference, Quebec, Canada, 5/19-5/21/05

- On-Line Signature Verification: Fundamentals and Recent Developments
- Symbolic and Semantic Analysis of Anonymous Letters
- Picaso Software
- Macro Photography with the Use of the Computer
- Introduction to Analysis and Characterization of Gel Ink Pens
- Comparative Analysis
- Easy and Difficult Traits to Imitate in Forged Handwriting
- The Bush Guard Documents Controversy

14th Annual National Expert Witness Conference, SEAK, Hyannis, MA, 6/16-6/17/05

TYPES OF CASES

I have rendered opinions in over eighty cases involving suspect signatures, altered documents, anonymous letters, and handwriting identification.

11/17/05

Exhibit C

S-1

▶ LES POWELL CPJA 301 434 7000

S-2

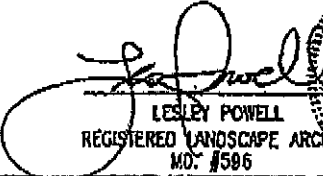
▶ LES POWELL CHARLES P. JOHNSON 301-434-7000
↳ ASSOC.


S-3

LANDSCAPE ARCHITECT CERTIFICATE

I HEREBY CERTIFY THAT THE INFORMATION
SHOWN HEREON IS CORRECT AND TAKEN
FROM AVAILABLE PLANS AND RECORDS.

11/14/01
DATE


LESLEY POWELL
REGISTERED LANDSCAPE ARCHITECT
NO. 596



LAW OFFICES OF
KNOFF & BROWN
401 EAST JEFFERSON STREET
SUITE 206
ROCKVILLE, MARYLAND 20850
(301) 545-6100

FAX: (301) 545-6100
E-MAIL EBROWN@KNOFF-BROWN.COM
WRITER'S DIRECT DIAL
(301) 545-6105

DAVID W. BROWN

November 7, 2005

REVISED

Via Email

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

RECEIVED
1854
NOV 07 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Re: Clarksburg Town Center

Dear Chairman Berlage:

This letter is a preliminary response of the Clarksburg Town Center Advisory Committee (CTCAC) to the developer/builder presentations on November 3, 2005. CTCAC intends to provide a more complete, detailed response before the record closes, possibly in multiple installments. For present purposes, however, CTCAC believes it important that a misleading perception integral to the November 3rd presentations not be allowed to linger.

Reduced to its essence, what the Board heard last Thursday was the claim that all CTC site plan changes were approved at the staff level according to a Board-approved delegation of approval authority – one upon which the developer/builders relied and had the right to rely. Moreover, if the Board is at all unhappy now with the fruits of that process, it is legally powerless to repudiate its results and lacks the impartiality to sort out blame between the regulatory staff and the objects of regulation.

The Board should recognize these assertions for what they are: a sweeping claim of immunity, without regard to intent or consequence. Thus, Newland tells the Board it should reverse its findings of building height and setback violations, notwithstanding that its own data (from CPJ) confirms hundreds of excessive heights and scores of inadequate front yard setbacks. Indeed, the logic of the developer/builder position is all but limitless: anything stamped approved by Ms. Withans is immune, whether she was aware of the scope and extent of the changes or not, without regard to her (or any other staff member's) view of the merit of the changes, and without regard to whether the changes merited Board-level consideration.

The CTCAC, on the other hand, does not view Newland or the builders as the hapless victims of a derailed staff-level approval process that the Board is seeking to get back on the tracks at their expense. Critical evidence was presented by CTCAC on

Derick Berlage, Chairman
November 7, 2005
Page 2

October 25th that Newland and the builders did not wait for approval from Ms. Witthans to initiate development. Rather than rely on such approvals, they went forward on the assumption that *pro forma* approvals would be forthcoming later. This unrebutted evidence is flatly inconsistent with Newland/builder claims on November 3rd that her approvals were the talismans to change. Until a more complete response can be prepared, an example highlighted from our PowerPoint™ presentation concerning the Phase 1A Amendment will suffice to illustrate the point.

Slides 34-37 summarize what happened with respect to the townhouse purchased by CTCAC member Kim Shiley. The Board should recall Newland's claim, in its September 7, 2005 letter, that her purchase was made possible because the Phase 1A Amendment changed front-loaded townhomes to rear-loaded townhomes with detached garages – units that "did not even exist on the Phase I Site Plan the CTCAC seeks to enforce." *Id.* at 12. The reality is that Ms. Shiley's purchase was effectuated long before the change to a rear-loaded townhouse was approved.

What follows is the undisputed chronology in the documentary record for Ms. Shiley's townhome:

March 24, 1999 – Phase I Site Plan, Sheet 3

Shows area of Shiley lot to be part of Block D, lots 5-10, with front-loaded garage townhomes and a rear parking lot.

April 25, 2002 – Plat 22366 (Copy attached)

Apparent Board approval signature date for plat 22366 (Derick Berlage) completely redesigning Block D, adjusting its boundaries, and redesignating it as Block DD. [Why this date precedes all other dates on the plat is not explained.]

August 5, 2002 – Plat 22366

Apparent preparation date for plat 22366; signature date for surveyor's certificate.

August 7, 2002 – Plat 22366

Signature date for Owner's certificate (Tracy Graves, Terrabrook Vice President).

November 19, 2002 – Plat 22366

Date of plat recordation in the Montgomery County Land Records.

December 12, 2002 – Terrabrook-Miller & Smith Sale

Terrabrook sells Miller & Smith Lots 15-20, Block DD (along with a number of other lots in other blocks) for \$835,000. The deed is recorded on January 10, 2003, liber 22765, folio 538.

January 19, 2003 – Miller & Smith – Shiley Contract

Kim Shiley enters into a binding contract with Miller & Smith to deliver a townhouse with detached garage in the rear on Lot 16, Block DD.

February 25, 2003 – Building Permit 298734

Miller & Smith applies for permit to build Shiley Residence.

April 23, 2003 – Building Permit 298734

DPS issues building permit 298734. Construction commences almost immediately thereafter.

May 30, 2003 – Phase 1A Amendment

May 30, 2003 is the date Newland and the builders claim the Phase 1A Amendment was "approved" by Ms. Witthans. There is no documentation authorizing platting or permitting prior to this date.

Last Thursday, Newland offered not one iota of explanation for how it could presume approval of the Phase 1A Amendment and plat Ms. Shiley's home far in advance of the Phase 1A Amendment approval. Nor did Miller & Smith deign to explain how it felt free to sell her, in a binding contract, a unit it had no lawful ability to deliver at the time the contract was entered into, and then proceed with permitted construction prior to Phase 1A Amendment approval. There is only one possible explanation, which is why the Board heard nothing about it on November 3rd: the Witthans "approval" was mere paperwork Newland and the builders had no doubt would eventually be routinely approved. The absence of that approval was therefore no impediment to construction. The obvious mindset was to feed the flames of a hot housing market as quickly and as expediently as possible, without regard to honoring obligations delineated in a comprehensive, integrated, interrelated site plan approved by the Board in the late 1990's, unless and until, upon full

Derick Berlage, Chairman

November 7, 2005

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and careful reflection, a change was in order. The proper inference to be drawn, on this record, is that Newland and the builders regarded Condition 38 as *carte blanche* to make any changes they wanted, whenever they wanted them, in the confident expectation they would be ratified later.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "David W. Brown", written in black ink. The signature is fluid and extends across the width of the page.

David W. Brown

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

OWNER'S CERTIFICATE

I, the undersigned, owner of the property shown and described in this subdivision, hereby certify that the boundaries shown hereon are correct and true to the best of my knowledge and belief, and that I have caused a survey to be made by a duly licensed and qualified surveyor, and that the same has been approved by the Board of Commissioners of Montgomery County, Maryland. I hereby certify that the same is a true and correct copy of the original record of the survey, and that the same has been filed for record in the Office of the Clerk of the Board of Commissioners of Montgomery County, Maryland.

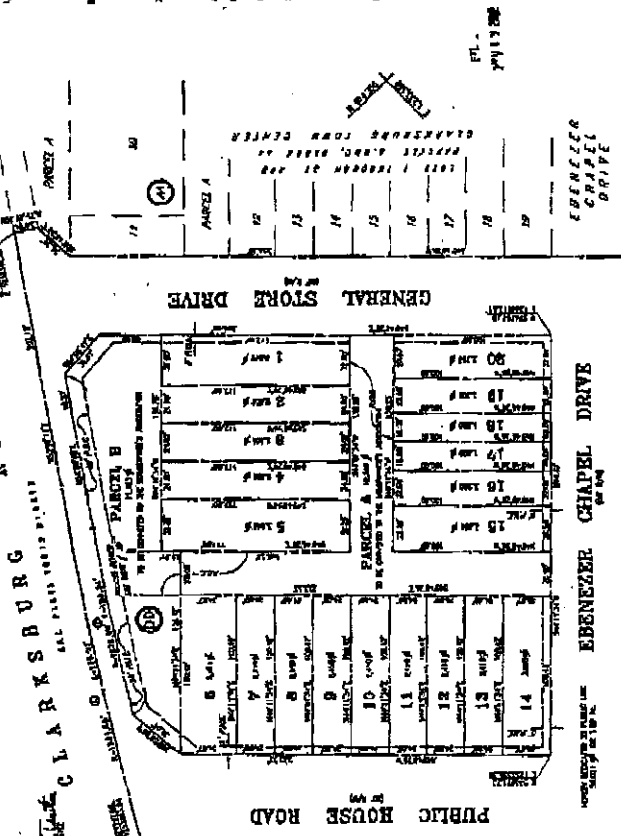
8-7-02
 [Signature]
 [Signature]
 [Signature]

SURVEYOR'S CERTIFICATE

I, the undersigned, a duly licensed and qualified surveyor, hereby certify that the boundaries shown hereon are correct and true to the best of my knowledge and belief, and that I have caused a survey to be made by a duly licensed and qualified surveyor, and that the same has been approved by the Board of Commissioners of Montgomery County, Maryland.

[Signature]
 [Signature]
 [Signature]

CLARKSBURG ROAD



EBENEZER CHAPEL DRIVE

PUBLIC HOUSE ROAD

GENERAL STORE DRIVE

SUBDIVISION RECORDED PLAT
 LOTS 1 THROUGH 29 AMO
 PARCELS A & B, BLOCK DD
CLARKSBURG
TOWN CENTER
 CLARKSBURG (2ND) DISTRICT
 MONTGOMERY COUNTY, MARYLAND
 SCALE: 1"=40'

- NOTES:**
- The boundaries shown hereon are based on a survey made by [Name] on [Date].
 - The boundaries shown hereon are based on a survey made by [Name] on [Date].
 - The boundaries shown hereon are based on a survey made by [Name] on [Date].
 - The boundaries shown hereon are based on a survey made by [Name] on [Date].
 - The boundaries shown hereon are based on a survey made by [Name] on [Date].
 - The boundaries shown hereon are based on a survey made by [Name] on [Date].
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 - The boundaries shown hereon are based on a survey made by [Name] on [Date].
 - The boundaries shown hereon are based on a survey made by [Name] on [Date].
 - The boundaries shown hereon are based on a survey made by [Name] on [Date].

Lot No.	Area (Sq. Ft.)	Area (Acres)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
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22		
23		
24		
25		
26		
27		
28		
29		

CDJ
 74455
 414-53
 MSA SSI 12VH-28235



PROPERTY OF
 CLARKSBURG CLARKSBURG, LLC
 11110000 01-0000

[Signature]
 [Signature]
 [Signature]

#1

LAW OFFICES OF

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FAX: (301) 545-6103

E-MAIL BROWN@KNOFF-BROWN.COM

WRITER'S DIRECT DIAL

(301) 545-6105

DAVID W. BROWN

November 2, 2005

RECEIVED
1710
NOV 02 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Via Email

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

Rc: Clarksburg Town Center

Dear Chairman Berlage:

I write on behalf of the Clarksburg Town Center Advisory Committee (CTCAC) to respond to the October 31, 2005 letter from counsel for Craftstar and NVR. To be perfectly frank, had the letter been written on April Fool's Day instead of Halloween, it would undoubtedly have been viewed as an amusing parody of disconsolate corporate souls, adroitly able to point in every conceivable direction--except the obviously correct one--in search of a scapegoat for their woes. But this is November, not April, and a substantive reply is in order.

The principal focus of the letter is on Ms. Witthans: a demand for her subpoena three days before the hearing, the claim that the Board can engineer such a subpoena even if it lacks direct power to compel her attendance, the claim of denial of due process absent her testimony under oath, and repetitive variations of the same that cast aspersions on the Board as cowardly and CTCAC as a group of blackmailers. The contemptible name-calling will, as it so richly deserves, be ignored. The substantive claims relating to Ms. Witthans' anticipated testimony also need not be addressed, because they all ignore the fundamental fact common to all the builders: Ms. Witthans is not the source of their problem, the developer is. Borrowing the title of a popular children's book, the question must be asked: "Where's Newland?"

What is perhaps most remarkable about the Craftstar/NVR letter is its source. If Ms. Witthans is a key witness as to builder responsibility under amended site plans, as is claimed, then *a fortiori*, she is a key witness as to developer responsibility. After all, it is the developer, not any builder, that is supposed to submit and certify the site plan amendments that are the principal focus of CTCAC's claims in this proceeding. Improper or inadequate approvals of such plans affect the developer first and foremost. Under the circumstances, the Board would be fully justified in ignoring the plea of Craftstar/NVR unless and until expressly adopted by Newland.

Derick Berlage, Chairman
November 2, 2005
Page 2

If Newland is in agreement with the Craftstar/NVR position, we respectfully refer the Board to CTCAC's presentation to the Board on October 25th. There we emphasized that Ms. Witthans' reasons for approving site plan amendments could not alter their illegality. Hence, learning why she acted as she did, while it might help the Board to understand how best to ensure no repetition of the problem, could not exculpate Newland for not obtaining Board approval for major site plan amendments, or the builders for proceeding to build in a manner that was a significant departure from any Board-approved site plan. Thus, assuming, as builder counsel claim, that Ms. Witthans' testimony would fully confirm her complete, knowing and intentional approval of every change wrought by Newland and the builders, the outcome would be unchanged. Ms. Witthans is not an essential witness for a full and fair proceeding and the Board need not wrestle with the tortured arguments of counsel for why it can and should obtain her testimony in this case.

Moreover, in a number of instances, site plan amendment illegality does not turn solely on a difference of opinion on what Ms. Witthans may have approved as a minor amendment within staff approval authority, but rather on obviously defective approval documentation. The following are illustrative: (a) one site plan amendment was not properly certified by the developer in the first place (Phase 1B3 Amendment); (b) in another case, permitting and building according to the amended site plan actually predates the ostensible Witthans' approval date (Phase 1A Amendment); and (c) Ms. Witthans appears to have "approved" a draft "amendment" to a plan even before the underlying plan was ostensibly approved (Pool & Plaza Amendment predating Phase II "signature set").


Only one other point in the letter merits response: the claim that Ms. Witthans' actions may not be repudiated by the Board under agency principles. Craftstar/NVR counsel cite no Maryland caselaw for the proposition that, under traditional agency principles, a Board agent can bind the Board to her error, excusing the developer and builders for reliance on such error. This claim is made in the Craftstar/NVR Letter at 4 n.6, bolstered by an erroneous, misleading analysis of Maryland zoning law on this point. The definitive analysis of zoning estoppel is set forth in Sycamore Realty Co. v. People's Counsel of Baltimore County, 344 Md. 57, 684 A.2d 1331 (1996). Immediately after discussing the case Craftstar/NVR chiefly relies upon, i.e. Permanent Fin. Corp. v. Montgomery County, 308 Md. 239, 518 A.2d 123 (1986), the Court of Appeals concluded: "We have never adopted zoning estoppel in Maryland." 684 A.2d at 1336 (emphasis in original). Thus, a proper reading of Permanent in light of Sycamore Realty is that the County is not estopped from challenging permitted work, after construction, if the permit was issued mistakenly. Thus, an error by Board staff does not bind the Board. That is why, in Permanent, the Court upheld the County decision ordering work stopped on the illegal fifth floor (penthouse) that had been mistakenly permitted. 518 A.2d at 126, 132. Post-Sycamore, zoning estoppel is all but a dead letter in Maryland, as Sycamore made plain that instead Maryland relies on a well-established "vested rights" concept, 684 A.2d

Derick Berlage, Chairman
November 2, 2005
Page 3

at 1336-37. Under "vested rights," the developer/builder, once he has substantial construction underway in good faith, is protected from "any subsequent change of the applicable building or zoning regulations." 684 A.2d at 1336 (emphasis added). In this case, there have been no claims raised by CTCAC that depend upon applying any different laws to the developer or builders than the laws under which various CTC construction was approved by the Board.

In sum, the Board should not feel obliged to delay the hearing process in this case to honor Craftstar/NVR's last-minute request to subpoena Ms. Withans, and should disregard the remainder of their missive as well.

Sincerely yours,



David W. Brown

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

Krass, Dorothy

From: Joy Johnson [joy@knopf-brown.com]
Sent: Wednesday, November 02, 2005 1:39 PM
To: MCP-Chairman
Cc: Rosenfeld, Michele; Krasnow, Rose; Carter, John; bsears@linowes-law.com; tbrown@linowes-law.com; tdugan@srgpe.com; rgbrewer@lerchearty.com; shileykim@aol.com; synergiesinc@aol.com; brown@knopf-brown.com; Mooney, William
Subject: Letter to Chairman Berlage from CTCAC - 11 02 05

Dear Chairman Berlage:
Attached please find a letter from Mr. Brown.
Sincerely yours,
Joy Johnson
Office Administrator

KNOPF & BROWN
401 E. Jefferson Street
Suite 206
Rockville, MD 20850
(301) 545-6100
lawfirm@knopf-brown.com

=====
SECURITY NOTICE: This communication (including any accompanying document(s)) is for the sole use of the intended recipient and may contain confidential information. Unauthorized use, distribution, disclosure or any action taken or omitted to be taken in reliance on this communication is prohibited, and may be unlawful. If you are not the intended recipient, please notify the sender by return e-mail or telephone and permanently delete or destroy all electronic and hard copies of this e-mail. By inadvertent disclosure of this communication KNOFF & BROWN does not waive confidentiality privilege with respect hereto.

11/2/2005

#1

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E-MAIL BROWN@KNOFF-BROWN.COM

WRITER'S DIRECT DIAL

(301) 545-6105

DAVID W. BROWN

November 2, 2005

RECEIVED
17/6
NOV 02 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Via Email

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

Re: Clarksburg Town Center

Dear Chairman Berlage:

I write on behalf of the Clarksburg Town Center Advisory Committee (CTCAC) to respond to the October 31, 2005 letter from counsel for Craftstar and NVR. To be perfectly frank, had the letter been written on April Fool's Day instead of Halloween, it would undoubtedly have been viewed as an amusing parody of disconsolate corporate souls, adroitly able to point in every conceivable direction--except the obviously correct one--in search of a scapegoat for their woes. But this is November, not April, and a substantive reply is in order.

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What is perhaps most remarkable about the Craftstar/NVR letter is its source. If Ms. Withans is a key witness as to builder responsibility under amended site plans, as is claimed, then *a fortiori*, she is a key witness as to developer responsibility. After all, it is the developer, not any builder, that is supposed to submit and certify the site plan amendments that are the principal focus of CTCAC's claims in this proceeding. Improper or inadequate approvals of such plans affect the developer first and foremost. Under the circumstances, the Board would be fully justified in ignoring the plea of Craftstar/NVR unless and until expressly adopted by Newland.

Derick Berlage, Chairman
November 2, 2005
Page 2

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Moreover, in a number of instances, site plan amendment illegality does not turn solely on a difference of opinion on what Ms. Witthans may have approved as a minor amendment within staff approval authority, but rather on obviously defective approval documentation. The following are illustrative: (a) one site plan amendment was not properly certified by the developer in the first place (Phase 1B3 Amendment); (b) in another case, permitting and building according to the amended site plan actually predates the ostensible Witthans' approval date (Phase 1A Amendment); and (c) Ms. Witthans appears to have "approved" a draft "amendment" to a plan even before the underlying plan was ostensibly approved (Pool & Plaza Amendment predating Phase II "signature set").

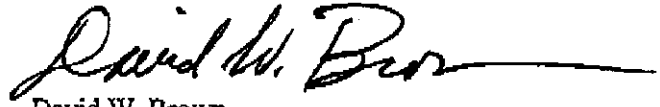
Only one other point in the letter merits response: the claim that Ms. Witthans' actions may not be repudiated by the Board under agency principles. Craftstar/NVR counsel cite no Maryland caselaw for the proposition that, under traditional agency principles, a Board agent can bind the Board to her error, excusing the developer and builders for reliance on such error. This claim is made in the Craftstar/NVR Letter at 4 n.6, bolstered by an erroneous, misleading analysis of Maryland zoning law on this point. The definitive analysis of zoning estoppel is set forth in Sycamore Realty Co. v. People's Counsel of Baltimore County, 344 Md. 57, 684 A.2d 1331 (1996). Immediately after discussing the case Craftstar/NVR chiefly relies upon, i.e. Permanent Fin. Corp. v. Montgomery County, 308 Md. 239, 518 A.2d 123 (1986), the Court of Appeals concluded: "We have never adopted zoning estoppel in Maryland." 684 A.2d at 1336 (emphasis in original). Thus, a proper reading of Permanent in light of Sycamore Realty is that the County is not estopped from challenging permitted work, after construction, if the permit was issued mistakenly. Thus, an error by Board staff does not bind the Board. That is why, in Permanent, the Court upheld the County decision ordering work stopped on the illegal fifth floor (penthouse) that had been mistakenly permitted. 518 A.2d at 126, 132. Post-Sycamore, zoning estoppel is all but a dead letter in Maryland, as Sycamore made plain that instead Maryland relies on a well-established "vested rights" concept, 684 A.2d

Derick Berlage, Chairman
November 2, 2005
Page 3

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In sum, the Board should not feel obliged to delay the hearing process in this case to honor Craftstar/NVR's last-minute request to subpoena Ms. Withans, and should disregard the remainder of their missive as well.

Sincerely yours,

A handwritten signature in black ink that reads "David W. Brown". The signature is written in a cursive style with a long horizontal line extending to the right.

David W. Brown

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

Krass, Dorothy

From: Joy Johnson [joy@knopf-brown.com]
Sent: Wednesday, November 02, 2005 1:39 PM
To: MCP-Chairman
Cc: · Rosenfeld, Michele; Krasnow, Rose; Carter, John; bsears@linowes-law.com; tbrown@linowes-law.com; tdugan@srgpe.com; rgbrewer@lerchearly.com; shileykim@aol.com; synergiesinc@aol.com; brown@knopf-brown.com; Mooney, William
Subject: Letter to Chairman Berlage from CTCAC - 11 02 05

Dear Chairman Berlage:

Attached please find a letter from Mr. Brown.

Sincerely yours,
Joy Johnson
Office Administrator

KNOPF & BROWN
401 E. Jefferson Street
Suite 206
Rockville, MD 20850
(301) 545-6100
lawfirm@knopf-brown.com

=====
SECURITY NOTICE: This communication (including any accompanying document(s)) is for the sole use of the intended recipient and may contain confidential information. Unauthorized use, distribution, disclosure or any action taken or omitted to be taken in reliance on this communication is prohibited, and may be unlawful. If you are not the intended recipient, please notify the sender by return e-mail or telephone and permanently delete or destroy all electronic and hard copies of this e-mail. By inadvertent disclosure of this communication KNOFF & BROWN does not waive confidentiality privilege with respect hereto.

11/2/2005

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FAX: (301) 545-6103

E-MAIL BROWN@KNOPF-BROWN.COM

WRITER'S DIRECT DIAL

(301) 545-6105

DAVID W. BROWN

October 31, 2005

Delivery by Hand

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

RECEIVED
17/4
OCT 31 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND DEPARTMENT OF GENERAL SERVICES
PARK AND PLANNING COMMISSION

Re: Clarksburg Town Center

Dear Chairman Berlage:

This letter is written on behalf of the Clarksburg Town Center Advisory Committee ("CTCAC") to provide corrections to the PowerPoint presentation, as noted during the October 25, 2005 hearing; to provide in a condensed format the information presented at the hearing; and to provide detail of the analysis underlying our conclusions, as requested by the Board. The information transmitted with this letter is thus not new information.

I. CORRECTIONS TO POWERPOINT PRESENTATION

During the hearing, CTCAC orally noted minor corrections to the PowerPoint Presentation. CTCAC has made these corrections to Pages 9, 33, 42, 43, 76, 91, and 95 of the PowerPoint presentation (enclosed with this letter in CD format – File name: "10-25-05 CTCAC Hearing Final – Revised"). The corrections are predominantly relative to typographical or reference errors. Two data table corrections have been made:

- PowerPoint Page 33, Summary Analysis of Changes by Block, has been corrected to include "Block B."
- PowerPoint Page 95, Rear Yard Setback Violations (Multi-family), has been changed to clarify that two of seven, versus seven, units are found to be in violation.

Attachments 1 and 4 of my October 24, 2005 pre-hearing letter contained the tables as represented on PowerPoint Pages 33 and 95 respectively. A hard copy of the corrected PowerPoint pages (enclosed) serves as replacement for Attachments 1 and 4 of my letter.

Derick Berlage, Chairman
October 31, 2005
Page 2

II. REFORMATTING OF PREVIOUSLY PRESENTED DATA

During the hearing, CTCAC presented to the Board a chronology of site plan documents including those approved by the Board and those allegedly processed by staff as "minor amendments" without Board approval. CTCAC presented information regarding the questionable timing of the "amendments" as well as the impact of the amendments relative to the major changes to blocks and previously approved plan features. This information was presented in the form of multiple slides. For the Board's convenience, CTCAC has combined all of this information into one condensed chart (enclosed with this letter in CD format – File name: "CTC-Document Map").

III. UNDERLYING DETAIL OF AERIAL IMAGE ANALYSIS

During the hearing, CTCAC presented summary tables of violations, based on the analysis performed on aerial data provided by Planning Board staff. CTCAC also discussed specific examples of violations and demonstrated the data analysis methodology using the RemoteView™ software program. At the hearing, the Board requested that the underlying data analysis be provided to staff and to the developer. In response to this request, CTCAC has prepared aerial data images showing specific calculations for street and setback violations (enclosed with this letter in CD format – File name: "Aerial Data Supplement to CTCAC 10-25-05 Hearing Presentation). To further address the Board's request, and to assist staff in its review of data provided, CTCAC will work with Rose Krasnow, Jeff Zyontz and/or John Schlea using the RemoteView™ software.

As can readily be seen, none of the information transmitted with this letter is new.

Sincerely yours,



David W. Brown

Enclosures: CD containing PowerPoint files
Replacement pages for Attachments 1 and 4 of October 24, 2005 letter

cc: 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

Fraudulent and Dubious Documentation – Examining “Minor” Amendments

BLOCK	STREET	UNIT	APARTMENT	TRAILER	POOL
A	X	X		X	X
B	Murphy Grove Pond				
C	X	X		X	X
D	X	X		X	X
E	X	X		X	X
F	X	X		X	X
G		X		X	X
H	X	X		X	X
I				X	
J	X		X		X
K					X
L	X	X		X	X
M	X	X		X	X
N	X	X		X	X
O		X		X	X
R	X	X		X	X
S	X	X		X	X
T	X	X		X	X
AA	X	X		X	X
DD	X			X	X
EE	X	X		X	X
FF	X			X	X
GG		X		X	X

October 25, 2005

Prepared by CTCAC

Development Standard Violations – Rear Yard Setback (Multi-family)

CTCAC finds 2 of 7 Multi-family units
Violate the 10' Rear Yard requirement

Street	Lot/Block	Measurement
Clarksburg Square Rd	Parcel M, Block A	18
Clarksburg Square Rd	Parcel M, Block A	10.1
Clarks Crossing at Clarksburg Sq	Blgd 1	11.6
Clarksburg Square Rd	Blgd 2	17.1
Overlook Park	Parcel AA	3.7
Clarksburg Square Rd	Parcel B block M	10.8
Clarks Crossing	Parcel H	8.7

October 25, 2005

Prepared by CTCAC

Replacement Attachment 4

LINOWES
AND | BLOCHER LLP
ATTORNEYS AT LAW

RECEIVED
1708
OCT 31 2005

#4

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

October 25, 2005

Barbara A. Sears
301.961.5157
bscars@linowes-law.com

Scott C. Wallace
301.961.5124
swallace@linowes-law.com

Mr. Derrick Berlage, Chairman, and Members
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Bozzuto Homes, Inc. - Clarksburg Town Center

Dear Chairman Berlage and Members of the Planning Board:

This office represents Bozzuto Homes, Inc. (Bozzuto¹), the builder of certain multi-family buildings in Clarksburg Town Center ("CTC"), identified as Buildings 1, 2, 3, 4 and 9 in Phase I and Buildings 5, 6, 7, 10, 11 and 12 in Phase II (collectively the "Bozzuto Buildings").¹ By email sent by Rose Krasnow, Chief, Development Review Division, to the undersigned on October 12, 2005, we were advised that the Clarksburg Town Center Advisory Committee ("CTCAC") would present to the Planning Board allegations of violations of zoning and subdivision regulations pertaining to the CTC, including the Bozzuto Buildings (the "Alleged Violations"), at a public hearing scheduled for October 25, 2005 and that a public hearing was scheduled for November 3, 2005 for Bozzuto, along with the other developers and builders in the CTC, to respond to the Alleged Violations. As discussed below, the purpose of this letter is state Bozzuto's objection to the consideration of any Alleged Violations pertaining to the Bozzuto Buildings at the proceedings of October 25, 2005, or at any of the subsequent proceedings, because Bozzuto has not been provided due notice as to the nature and extent of the Alleged Violations as required by law.

In particular, the October 12, 2005 email from Ms. Krasnow stated that CTCAC was required to deliver to all parties a list of the Alleged Violations, and all written materials pertaining thereto, by October 18, 2005. This email further stated "[a]ny additional violations raised after [October 18, 2005] will be excluded from the record in the pending hearings." In this regard, we are in receipt of the following documents: (1) a letter dated October 18, 2005 from David Brown, attorney for CTCAC, to the Planning Board (the "10/18/05 CTCAC Letter") and (2) an undated Staff Report from Ms. Krasnow to the Planning Board listing the allegations made by the CTCAC that will be presented to the Planning Board on October 25th. However, neither the 10/18/05 CTCAC Letter nor the Planning Board Staff Report provides any specificity as to: (1) the evidence in support of the Alleged Violations; (2) the Bozzuto Building(s) or, as applicable,

¹ Buildings 7, 9, 10, 11 and 12 are also known as the "Manor Houses."

Mr. Derrick Berlage, Chairman, and Members
Montgomery County Planning Board
October 25, 2005
Page 2

underlying parcel(s) that are the subjects of the Alleged Violations; or (3) the terms, conditions, and/or restrictions of the underlying Planning Board approvals which are alleged to have been violated. Accordingly, Bozzuto has not been provided due notice, as required by law, of the Alleged Violations pertaining to the Bozzuto Buildings and, therefore, the Planning Board is precluded by law from prosecuting any Alleged Violations pertaining to the Bozzuto Buildings at the pending hearings.

In this regard, by letter to Ms. Krasnow dated September 27, 2005, attached hereto as Attachment "1", we advised that due notice to Bozzuto in this matter dictates that, at a minimum, the Planning Board provide Bozzuto with a clear statement of any Alleged Violations including: (1) the specific terms, conditions, and/or restrictions upon which the Bozzuto Buildings were approved that are not being complied with; (2) the specific section(s) of the Zoning Ordinance, Subdivision Regulations and/or other County law that the Bozzuto Buildings are alleged to violate; (3) the specific Bozzuto Building (s) and/or underlying parcel(s) that are alleged to be in violation; (4) to the extent any violation(s) involves a specific development standard such as height or setbacks, a quantification of the extent of the Alleged Violations; and (5) a copy of any documents (including, but not limited to, inspection reports and field visit notes), plans or other materials that the Planning Board is relying on to substantiate the Alleged Violations and, once given such due notice, that Bozzuto be given adequate time to review and prepare a response to such Alleged Violations.

In view of the fact that Bozzuto has not been provided due notice, as required by law, of the Alleged Violations, we must object to the Planning Board's consideration of any Alleged Violations pertaining to the Bozzuto Buildings at the pending hearings. Please include this letter in the record of this matter. Thank you.

Very truly yours,

LINOWES AND BLOCHER LLP



Barbara A. Sears



Scott C. Wallace

Mr. Derrick Berlage, Chairman, and Members
Montgomery County Planning Board
October 25, 2005
Page 3

cc: Mr. Charles Loehr
Mr. William Mooney
Ms. Rose Krasnow
Michele Rosenfeld, Esq.
Mr. Michael Ma
Mr. Thomas Bozzuto
Mr. Chris Herrin
Mr. Clark Wagner
Ms. Jackie Mowery