

RECEIVED
1895
NOV 21 2005

Krass, Dorothy

From: Joy Johnson [joy@knopf-brown.com]
Sent: Monday, November 21, 2005 12:26 PM
To: MCP-Chairman

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

Cc: Rosenfeld, Michele; Krasnow, Rose; Carter, John; bsears@linowes-law.com; tbrown@linowes-law.com; tdugan@srgpe.com; rgbrewer@lercheary.com; kkennedy@srgpe.com; skaufman@linowes-law.com; brown@knopf-brown.com; synergiesinc@aol.com; shileykim@aol.com

Subject: Attachment to letter to Chairman Berlage from CTCAC 11 21 05

Dear Chairman Berlage:

Attached please find the attachment inadvertently omitted from the letter previously sent you this date 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 KNOPF & BROWN does not waive confidentiality privilege with respect hereto.

LAW OFFICES OF

KNOFF & BROWN
401 EAST JEFFERSON STREET
SUITE 208
ROCKVILLE, MARYLAND 20850
(301) 545-6100

FAX: (301) 545-6103

E-MAIL BROWN@KNOFF-BROWN.COM

WRITER'S DIRECT DIAL

(301) 545-6108

DAVID W. BROWN

MEMORANDUM

TO: Chairman Derick Berlage
Montgomery County Planning Board

FROM: David W. Brown
KNOFF & BROWN

DATE: November 21, 2005

RE: Clarksburg Town Center Advisory Committee – Analysis of
Slide Presentations by Newland, Bozzuto, and Miller and Smith

SLIDE NUMBER	ANALYSIS OF SLIDES – NEWLAND PRESENTATION
3	The April 13, 2000 meeting agenda from Wynn Witthans states that the meeting is being held “to discuss the general Terrabrook changes to CTC, especially the first section of SFD’s that they want to move along quite rapidly. This is an opportunity for our old review team to review the concepts prior to the applicant submitting them for staff level approval.” Contrary to implying that a major project concept change will be approved at the meeting, the memo specifically indicates that changes will be submitted for review at a later date. It also implies that initial changes apply to SFD’s in the first section (now known as Phase IB1). Based on the fact that the single family detached units within Phase IB1 changed very little from the approved Phase I Site Plan (garages and driveways were modified), this would serve to support the real intention of Condition 38 – enabling the staff to make truly minor amendments to units.
4-7	The July 17, 2000 memorandum from Wynn Witthans, with attachment of July 13, 2000 memorandum from SKG Architects & Planners, merely highlights the fact that staff anticipated handling some changes at a staff level and some at a Planning Board level. The memo also confirms that the decision regarding staff level versus Board level approvals will be decided at a later date when changes are reviewed more fully. A meeting for discussion of the submission is then scheduled for July 26, 2000. The attachment to the memo discusses a “revised Clarksburg Town Center master plan.” The Clarksburg Town Center Master Plan has not been revised. Clearly, SKG at the time was using erroneous language to refer to the concept plan being presented. The memo merely confirms CTCAC’s assertions that the developer intended from the beginning to track to its own plan rather than the Board-approved Project Plan and Site Plan. The concept plan shows significant alteration to every block within the project, with the exception of Phase IB1. Even so, Wynn’s memo does not imply, contrary to Newland’s November 3 rd presentation, that these changes would be accepted at a staff level. It only states that the proposed changes will be reviewed more fully at later dates.
8-15	The August 7, 2000 memo, with attachments, from Stephen Gang on street section re-

	<p>visions pertains to changes proposed to streets. Of note is the fact that most of the revisions shown are relative to streets within Phase II. Clearly, as discussed in Wynn's memo of July 17, 2000, none of these changes were anticipated to be approved at a staff level (as Phase II was not yet approved and had to come before the Board in a public hearing). The same can be said of slides 12-14 relative to the Pedestrian Pathway System Plan. Contrary to what Newland suggests at the November 3rd hearing (i.e. that a number of meetings with DRC and individuals from DPS served as approval for these changes), there is nothing on record to support that these street changes were approved in any DRC or other meetings. In fact, as late as June 6, 2002, Wynn Witthans, in a presentation to the Clarksburg Civic Association concerning the CTC Streetscape Plan (Exhibit A) states: "The reason for the street scape presentation was to involve the Clarksburg community. Once this plan is accepted, the developer's site plans must conform to the accepted streetscape plan. The streetscape plan is a 'road map' for planning. The purpose of the street scape plan is to define the character of the roadways in Clarksburg. This involves defining the roadway widths, the lighting type and placement, decorations, and the rural/urban character. This is a draft working document. The Planning staff would like comments from the CCA and the citizens of the Clarksburg area. This is the first preliminary effort to get this plan written. The Planning staff would like to get a final approval from the CCA in the Fall 2002 prior to approval from the Planning Board."</p>
16-23	<p>There are a number of questionable aspects to Les Powell's partial summary of CPJ meetings with MNCPPC and MCPS. These include multiple duplicate entries where the second entry matches the first with the exception of supplemental detail added to the second entry. (Example: Slide 16 contains two entries for 9/25/2000. Both entries reference 2.0 hours. The first entry Meeting Description lists "DRC meeting." The second entry lists "DRC meeting 'for site plan'.") Additionally, several entries contain uncharacteristic detail in comparison with typical entries. The uncharacteristic detail coincides with issues being stressed by Newland in its presentation. (Examples: Slide 16 entry for 12/1/00 regarding "Meeting with Malcolm Shaneman to review how the previously recorded lots would be handled and what format he wanted for waiver requested." Slide 21 entry for 10/8/2003 regarding "CTC2 10/8 mtg. @P&P w/Malcolm, Rich, Wynn & Nancy about 'plat of correction' issues the w/Wynn and Nancy about pool, then w/Dave, Nancy, Bill, Jim, and Bozzutto and Craftstar about site issues.")</p>
27	<p>This is amendment 98001A, also known as Phase 1B, Part 2, approved by Wynn Witthans on 8/3/01. As noted in our November 17, 2005 letter, the Wynn Witthans signature for this phase is not genuine. What we see on Slide 27 is a composite overlay which fails to show the real Phase 1B, Part 2 site plan underneath. The real Phase 1B, Part 2 site plan that was submitted would expose the pre-inclusion of the Phase 1B, Part 3 modifications in the area just above the blue area highlighted on this composite insert. Slide 27 also shows an approval date of 10/23/01. We have been unable to locate any approval relating to this amendment for that date. In addition, it shows a landscape approval date of 12/4/01. We have been unable to locate any landscape approval for that date either. There is an 8/3/01 landscape plan, again with signature by Wynn Witthans which is not genuine. Todd Brown's statement at p.40 of the transcript for 11/3/01 was that "there are signed plans with those dates for this amendment." We believe that statement to be false as it relates to 10/23/01 and 12/4/01.</p>
29	<p>This slide represents the alleged 12/17/01 pre-Bozzuto approval of the 8-98001 section</p>

	<p>1B-3. (It is also depicted as the pre-Bozzuto amendment in the Bozzuto PowerPoint™ presentation slide 27.) Our forensic examiner has effectively determined that the signature on the 12/17/01 site plan is not Wynn Witthans' signature, nor is it Tracy Graves' signature. The forensic examiner further clarified that the printing and dating within the developer's certificate block was in the hand of Les Powell. See CTCAC letter to the Board dated November 18, 2005. This amendment is not the 8-98001C amendment, as Bozzuto claims on its presentation slide 7 and as is noted within the minor amendment approval block on the actual document. (The actual 8-98001C amendment relates to Phase 1A approved on 5/30/03, two years later.) In addition, slide 29 shows that there was a DRC meeting on this amendment on 5/21/01. In fact, the DRC minutes for that meeting relate to a 22.14 acre site, which is the acreage involved in Phase 1B, Part 2 – i.e., the slide 27 amendment. Once again, the slide is actually a composite insert and the area depicted in purple is not the area that actually is the subject of the amendment document presented to the Board. The area that is shown depicts Bozzuto amendments of a later date, as depicted in Bozzuto slide 8 and in detail on the right hand side of Bozzuto slides 10 and 11. If one compares the purple area on Newland slide 29 with the actual document that it purportedly represents with a 12/17/01 approval date, it is evident that they simply do not match. Further, in comparing the alleged 12/17/01 amendment document information to the Amendment Application Log, we note that this particular amendment seems to have been squeezed in on an interlineation at some unknown later date from the actual date that it is purported to have been entered. Otherwise, it would have its own separate entry line within the log [H090].</p>
<p>31</p>	<p>This is a supplemental amendment to the initial Phase 1B, Part 2 (8-98001A). This amendment is referenced as 8-98001D, approved on 3/7/02. In this case, there are some discrepancies regarding the amendment application and fee. The application fee was filed and fee paid on the same day that the documents were prepared, or at least some of the documents (some of the documents are dated 11 days later on 2/22/02). This amendment was treated as a minor amendment, and apparently, at least in terms of the records made available to us, generated no concern or discussion about whether or not this was a legitimate subject for a minor amendment, notwithstanding the fact that lots were platted into what was once the public square. This Miller & Smith amendment is to be contrasted with the later Miller & Smith amendment (Amendment F) where a single setback amounting to a difference of 25 sq. ft. on one single lot generated considerable discussion and consternation as to whether or not it was an amendment that required Board approval rather than staff level approval. Ultimately, that amendment was approved at the top level of the staff, by Director Charlie Loehr as a minor amendment. Why, then, was this much more extensive amendment not considered something that should be brought before the Board? The only explanation that we can come up with is that at the time the F amendment was considered, the CTCAC had already been making noises about the amendment approval process and questioning data table standards adherence.</p>
<p>33</p>	<p>We have no record of any signatures approving this change in unit type, even fake signatures. There is no documentation whatsoever for this change, even though Todd Brown states in his testimony that the date of this signature set revision is 6/10/02 and that there is a signed site plan for this revision. There is no signed site plan for this revision in any of the documents submitted to the Board in support of Newland's PowerPoint™ presentation and we have been unable to locate any in Board files after months</p>

	of searching for all of the amendments. There is also no record of any fee being paid in the Amendment Application Log [H090] for this amendment.
35	This slide is referenced as a Site Plan/Landscape Revision for multi-family unit with garage with update of unit architecture. It is also depicted as the Bozzuto minor amendment on slides 8 and 9, and on the right hand side of slides 10 and 11 of the Bozzuto presentation. This is pitched by Newland merely as a refinement of the 12/17/01 Phase 1B, Part 3 amendment. In fact, as we explained in our October 25, 2005 presentation, the only reasonable way to view this amendment is as an attempt to incorporate prior changes for all of Phase 1B, Part 3 into a document signed by Clark Wagner for minor adjustments to the Bozzuto homes depicted in the northwest corner of the Phase 1B, Part 3 area. It would seem that all of the changes to the area within Phase 1B, Part 3 were effectively sought to be approved under the Clark Wagner signature, with all of the townhouse changes essentially coming in under the radar screen with no processing or consideration of any amendment. There is also no amendment fee record relating to the amendment as depicted in slide 35. In effect, what has happened is that because Newland could not defend the certification of this plan under the name Clark Wagner (who has no direct affiliation with Newland), Newland dredged up an earlier plan not in Board files supposedly approving all of the rest of Phase 1B, Part 3 except for minor revisions to the Bozzuto homes that are then attributed to the Wagner signature.
37	This is what is known as amendment 8-98001C, also known as Phase 1A, approved on 5/30/03 by Wynn Witthans. Again, her signature is not a genuine signature on that approval document. The Amendment "Site Plan File Number" on Page 1 of the Application is altered from an underlying letter to the letter "C," with the notation "OK per LP" (presumably Les Powell) and Page 2 of the application for this site plan amendment appears to be done in a different hand and ink than the rest of the application, suggesting a modification of this document after the fact [H030]. The DRC meeting on 7/31/01 has been discussed at length in earlier letters submitted to the Board, detailing CTCAC's belief that there was no substantive discussion of the relative merits of removing the Pedestrian Mews and truncating "O" Street. The DRC discussion was about the technical aspects of the street (90° turn, curb radii, etc.), rather than the land planning aspects of the pluses and minuses of amending the Mews or "O" Street. In addition, the DRC minutes note with regard to some adjustments to streets that certain waivers would be required, and the minutes themselves note that these waivers would be obtained at a later site plan review. In other words, those in attendance at the DRC meeting thoroughly anticipated that there would be a Board site plan review of this amendment.
39	This is the Park & Pool amendment which is the first amendment to Phase 2. This is the sum total of what Newland said about this amendment. "This is the pool clubhouse section in Phase 2. This was a site plan that was for the adjustments to the pool and to the park area within Phase 2. There is a signed staff signature set for this adjustment dated 11/12/03." This is to be contrasted with the extensive presentation made by CTCAC on 10/25/05 documenting at length the absurdities associated with this signature set. There is absolutely no rebuttal from Newland to the points made in our presentation.
41, 43, 45	Slide 41 shows the first of 4 amendments that Newland acknowledges do not have approved site plan signatures – all of which were ostensibly approved on 10/8/03. What Newland says is that these approvals are reflected on record plats that were presented

	<p>by staff to the Board as being in order and in compliance and appropriate for recordation. Newland does not explain how a plat of correction can amend a site plan – especially in view of the language contained in the “Notes” on the signed plats:</p> <p><i>Notes:</i></p> <p><i>1. All terms, conditions, agreements, limitations, and requirements associated with any Preliminary Plan, Site Plan, Project Plan, or any other Plan, allowing the development of the property, approved by the Montgomery County Planning Board, are intended to survive and not be extinguished by the recordation of this plat, unless expressly contemplated by the plan as approved.</i></p> <p>Our rhetorical question is ‘what is the point of a site plan if one can plat without regard to the site plan?’ Examination of the plats that are identified on slides 41, 43 and 45 reveals that all of these plats were prepared after 10/8/03. Newland does not offer as part of its documentary evidence any pieces of paper purporting to show what in fact was reviewed and considered at the 10/8/03 meeting. If these documents were prepared after the meeting, it seems all but impossible that the plats could have been considered at that meeting. The only documentation we have of the meeting is Les Powell’s billing notes of the meeting which show up on slide 21 in an uncharacteristically detailed entry.</p>
<p>47</p>	<p>What is true of slides 41, 43 and 45 is also true of slide 47, with one minor difference. Slide 47 involves 2 plats of correction. One plat is prepared before the 10/8/03 meeting, i.e., plat 22766, and one is prepared nearly one year after the meeting, plat 23038. These plats involve separate parcels, both depicted on slide 47. Hence, while it is possible that the meeting on 10/8/03 involved consideration of one already drawn plat, the same is not true for the other plat: i.e., it has the same defect as the alleged plats of correction on slides 41, 43 and 45.</p>
<p>49</p>	<p>We have two sets of documentation relating to slide 49. We have Wynn Witthans’ signature which appears to be clearly in her hand, dated 1/19/03 approving a minor amendment for the dumpster removal with a unit change. The interesting thing about this signature date is that it is almost 2 years before the date of preparation of the document that she is purporting to sign, showing a plotted date of 12/3/04. We have a second Wynn Witthans signature approval dated in 2005, following a stamped receipt of the amendment on 12/10/04 which would coincide with the plot date for the earlier version of the amendment. The signature block with Wynn Witthans’ signature appears again on this document and it appears again to be a valid signature of hers, although different from the earlier signature. The arrangement and wording of what was approved is different on this document than on the other document. In addition, the date has been changed from 1/19/03 to 1/19/05, although it appears that when it was first written it was written as January 17th. “Later” approval is completely uninformative with respect to what has been changed and approved because it is shown on a map of the entire Phase 1/Phase 2 site. Also noteworthy about this particular diagram is that there are significant alterations to the Project Data Table including a material alteration to the front yard setback requirement for townhouses, having changed it from 10’ to “non-applicable” at the very time that there was great consternation internal to Park and Planning regarding known front yard setback violations, as reflected in the Miller</p>

	& Smith email dialogue (detailed in Robert Brewer's letter of 11/17/05) culminating in a 1/25/05 approval of an amendment just 6 days, according to this record, after an amendment had been approved showing that there was no setback requirement for townhouses at all.
51	This is a revision to Phase 1A, referenced as 8-98001F. In contrast to virtually every other minor amendment, the documentation for this minor amendment is complete and conclusive. It demonstrates that there was extensive back and forth discussion between the applicant and the Board staff about whether or not this matter could be resolved as a minor amendment and it was conclusively decided that it should be a minor amendment by the director of the staff, Charlie Loehr. This decision is then reflected in a letter to Miller & Smith, signed by Wynn Witthans and dated 1/25/05, essentially confirming that it would be a minor amendment to allow reduction in the setback on a single lot from 10' to 8'. Attachments to Miller & Smith letter to the Board, dated November 17 th , provide Email correspondence indicating that the legal staff was involved in the analysis of this matter, effectively concluding that the front yard setback for townhouses was 10' and that it would be appropriate in this one instance to amend it to 8' to ratify a 2' X 12.5' foundation layout field mistake (i.e., a net adjustment of 25 sq. ft. from what was required according to the site plan Project Data Table). The documentation also includes the notation that the Planning Director found the setback amendment to be minor in nature and that additional landscaping added to the front area in question would create compatibility with adjacent units so that the goals and objectives of the site plan would not be frustrated in this instance even though there was a minor deviation from standards. The extensive and careful documentation of this change reflects the proper mode of analysis and decision making on a minor amendment. CTCAC does not regard it as a mere coincidence that this careful documentation came at the time that it did, in January of 2005.
53	This slide depicts the Phase 2 portion of the Manor Home amendments that were discussed at length in the CTCAC's 10/25/05 presentation to the Board. Newland's discussion of slide 53 before the Board answered none of the issues, questions or allegations raised by CTCAC at the 10/25/05 hearing. It should also be noted that the application for amendment for the Phase II Manor homes was initially logged in on the Amendment Application Log as Amendment 8-02014A on 9/8/04 and then overwritten with a B. [H090]. This amendment to Phase 2 was applied for on 9/8/04 and a DRC meeting date scheduled for 10/18/04 before there was an approval date on the Phase 2 signature set, which later turned out to be 10/14/04. Whether there was a DRC meeting on 10/18/04 or not is not known from the records, but it is fairly clear from the information disclosed that if there was a meeting on that date, it did not discuss this amendment. Nor does slide 53 disclose a DRC meeting date. The project application for this amendment is inconsistent with slide 53. Slide 53 shows 4 different units with a maximum of 12 multi-family dwellings in each unit for a total of 48 or fewer units, yet the application shows 58 units and references a record plat that is involved with the application known as 8-98001G (which is shown in slide 55).
55	The application for amendment 8-98001G in slide 55 is dated 2/2/05 but, in fact, as demonstrated by the application for slide 53, 8-02014B, the earlier application already accounts for the units supposedly brought forward in the later application. This later application was therefore completely unnecessary.
57	This slide represents the unapproved site plan amendment 8-98001E for Phase 1A, Part 4 which has yet to come before the Board and is, therefore, of no current significance

	in the case.
60-70	These slides depict the Project and Preliminary Plan views of the mews area as well as DRC meeting minutes of July 31, 2001, with attachments. CTCAC has never questioned that the mews was initially depicted as a street in the Project and Preliminary Plans. Instead, CTCAC focused on the reason for inclusion of the mews as a visual and walkable connection to the Church and historic district (described in detail in the staff report for Site Plan 8-98001 Phase I and noted by staff as an addition and amendment to the Project Plan). DRC meeting minutes and Transportation Committee Review notes do not serve as evidence that the elimination of the Pedestrian Mews or the significant truncation of "O" street were considered or approved.
72-78	Slide 73 represents an MPDU Location Plan "Signed by Terrabrook on 3/27/03." This plan is not actually approved until October 14, 2004, along with the Phase II Site Plan. CTCAC previously detailed the questionable aspects of the Phase II Site Plan approval and the fact that units were platted, permitted, built and even occupied prior to that date. The MPDU plan presented to the Board by Newland does not justify construction prior to MPDU agreement with DHCA. Slides 73-77 depict DRC meeting date and comments that do not specifically address or approve MPDU changes. Additionally, slide 78 depicts transcript notes from the February 10, 2005 Bozzuto Manor Home Hearing, during which the subject of MPDU's was raised, but not before the Board for consideration. This slide only serves to accentuate CTCAC's contentions regarding the shortfall in MPDUs at the time and Newland's presumptive reliance on as yet unapproved MPDU locations to compensate for that shortfall.
82-97	Covered in detail in CTCAC November 21, 2005 final submission letter.
98-103	CTCAC covered in its presentation to the Board on October 25, 2005 the issues surrounding the School and Park Site. As previously discussed, delay in approval of the school site did not warrant platting and permitting prior to approval of the Phase II Site Plan. It remains illegal to plat or permit prior to approval of a site plan signature set.
103-111	These slides cover the chronology of the pool and plaza amendment, but fail to answer why the amendment precedes the approval of the Phase II Site Plan.
112-116	Slides 112-116 have no substance. Newland's presentation to the Board neither responds to CTCAC's contentions regarding the failure to provide amenities in accordance with the Site Plan Enforcement Agreement phasing schedule, nor addresses the woefully inadequate amenities currently provided on-site.
117-119	In slides 117-119, Newland agrees with CTCAC's assessment that 35 single family detached lots are below the Board-approved development standard of 4000 sq. ft. The data table has never been amended and still depicts, even on alleged amendments, a 4000 sq. ft. minimum lot requirement. Plat records cannot serve as authorization vehicles for data standard amendments (as noted regarding slides 41-45). Nor is it self-evident from any of the site plan drawings that these lots are undersized. Newland remains in violation on these lots.
120-124	Covered in detail in CTCAC November 21, 2005 final submission letter.

SLIDE NUMBER	ANALYSIS OF SLIDES – BOZZUTO PRESENTATION
5	Bozzuto references the 8-98001G amendment as pertaining to Buildings 1-4. According to the Amendment Application for Amendment G, this amendment pertains only to one 12-unit Manor Home.
7	As noted in CTCAC's November 17, 2005 letter to the Board, the validity of the site plan represented by this slide is in serious question. Neither Wynn Witthans' signature nor Tracy Graves signature are authentic. In CTCAC's November 21, 2005 final submission letter, this site plan document and conditions surrounding production of the document are further detailed.
12	This slide represents approvals contained in the Phase II site plan, dated October 14, 2004. CTCAC has already presented to the Board issues pertaining to questionable aspects of the Phase II Signature Set and date.
14-15	All Manor homes are depicted too close to abutting buildings and in violation of setback requirements. At the Manor Home hearing on February 10, 2005, the staff did not present to the Board any amendments to the previously approved development standards. As of the date of review by the Board, the approved data table still reflected a requirement of 30' between end buildings for multi-family units and other dwelling units. All Manor Homes, if constructed as currently planned, will be in violation of side yard minimum requirements as well as end unit setback requirements.
17	<p>This slide depicts email correspondence of November 4, 2004 between Jackie Mowrey of Bozzuto and Wynn Witthans. The emails clearly indicate that Bozzuto is questioning whether Manor Home site plan revisions must go the Board for approval or whether they can be handled through staff level approval. Wynn's response makes clear that the plans will have to go the Planning Board for approval, pending citizen comments. What CTCAC finds disturbing about this exchange (as clearly presented to the Board in its presentation of October 25, 2005) is that the Manor Home amendments in question (amendments within both Phase I and II of the project to revise units from 9-unit to 12-unit dwellings) had already been submitted by Bozzuto and permits approved by Wayne Cornelius in June and August of 2004 respectively.</p> <p>Actions to schedule a hearing before the Board are of particular interest here in view of the chronology of events relative to CTCAC's actions at the time. See Tab 10 of the Planning Board Packet submitted by CTCAC for the July 7, 2005 hearing. First, CTCAC was questioning not only height standards, but all development standards at the time. Second, it is now clear that the staff, the Director and legal counsel for the Board were aware of rampant setback violations at the time. It is no coincidence that the data table contained in the site plan as presented to the Board during the February 10, 2005 Manor Hearing contains altered height and setback requirements. (The Board was not fooled by this attempt to get Board signature on a "4 story" definition of height within a data table. The applicant was required to guarantee that the units would not exceed 45' and to specify the height on the site plan.) This was an unabashed attempt to incorporate changes without Board or public awareness and supports CTCAC's assertions that the developer and builders proceed according to their own plans and attempt to paper over problems after the fact.</p>
27	Although building #9 is not yet built, Bozzuto clearly shows planned setback violations in on this slide of their presentation. One side measures 18.6' to the next building,

	the other side measures 12.6' to the next building; although each requires 30' setback according to the approved data table standards.
28-29	Again, building #10 is depicted as clearly in violation of setback requirements to adjacent buildings: 12.4' to one side; 10.8' to the other side. One side (10.8') is adjacent to an occupied Miller and Smith SFD home which requires 4' minimum for its setback, leaving 6.8' for the Manor Home's side setback (clear violation of the end unit setback requirements even as shown on Bozzuto's own presentation slides 9 and 29). The slide 29 data table is suspect, as detailed above in our comments to slide 17.

SLIDE NUMBER	ANALYSIS OF SLIDES – MILLER AND SMITH PRESENTATION
19	Approved signature set 8-98001B is referenced here. The current amendment documentation on file for this modification appears to be the first instance of private land platted into HOA “green” space and owned by private homeowners, who pay tax on the property. There are serious concerns with this relative to liabilities for homeowners, as well as the apparent disregard for area that was initially to be turned over to HOA. How was it determined, without public hearing to convert this parcel to private ownership? Where was the discussion on alternate HOA green space? As with the many other illegitimate amendments, this was done without Board hearing or input.
15	This slide represents Amendment D. Amendment in and of itself does not change the development standards (see slides 22-26). In view of this, Miller and Smith is still in violation of approved development standards for Net Lot Sq. Ft. requirements, Rear Yard Setback requirements, and Lot Width at Building Line requirements.
20	Record Plat 616-41 called out in Site Plan Amendment (21971) as amending all Arts and Crafts homes. This plat only covers lots 48-49 C and 38-41 D, not the lots called out as “larger lot be moved to the corner and <i>maintained</i> the approved 32 foot wide lots” (These are the arts and crafts/1920s on lots 30-34 block E, plat 616-43, 21973). This is problematic because the plat was not for the lots called out, and the 32’ lots had never been approved/platted (by Klebanoff or others), nor could they be approved by these plats (See Note 1 on all plats “all terms, conditions...”). Additionally, plat approvals once again pre-date amendment approvals (Plats dated 4/12/01; site plan dated 8/3/01).
20	Miller and Smith allege that 32’ wide lots were approved by Wynn Withhans’ signature on 8-98001D Signature Set, which is listed in Amendment Application Log from Park and Planning as 8-98001BC, dated 2/11/02. This slide shows a “site plan” which actually appears to be a landscaping plan. It is possible that it might be representative of a builder site plan, but not a developer site plan. Either way, it does not legally alter the approved data table or development standards.
20	Depicts Amendment D, submitted 2/11/02, with stated known “previously approved site plan #8-98001B”; Amendment site plan file number 8-98001? (looks like B to C to D).
22	Further documentation relative to Amendment D, showing changes to right side elevation only (specifically windows, not an authorized change to development standards).
25	Shows the landscaping only for lots 38-41: groundcover, tree, fence locations, also talks about use of ribbon driveways to reduce impervious area, but on-site not all have ribbon driveways
26	Shows a portion of a site plan with the statement “flipped large lot single family to corner lot for better streetscape.” Depicts buildings relative to grade; lot lines, FF and B grades; also shows a shift to property lines to the left 8 feet for Lots 21-24. This serves as Miller and Smiths argument for changes to development standards, even though the portion of the plan as presented in the slide does not match site plan 8-98001B.
29	Neither Amendment D, nor the “revised” record plat called out changes or amendments to development standards. <ol style="list-style-type: none"> 1. Board received plat in April 2001 w/ large house near HOA parcel, DPS 9/2001 2. Feb 2002, staff requests changes to lots, putting large lot on street; amendment

	D specific to Arts & Crafts homes only No mention is made and nothing is on record in project data tables to date highlighting a change to minimum lot width at front building line. (Refer to Record Plat Notes, 1.)
30	Based on the foregoing information, Miller and Smiths conclusions are inaccurate.
36-38	This slide does not actually depict lot 15 Block FF, as noted. It actually represents lots 33-35 Block C (as shown in pictures).
45	These lots did not meet minimum development standards for single family home net lot sq. ft. requirements. The 4,000 sq. ft. minimum was never changed on the data tables, and remains the binding development standard to date.
48	In this slide, Millar and Smith alleges that a 4' setback is appropriate for SFD home lot 5 block S. As the home is next to a Manor Home (end unit) requiring 30' setback, 4' is appropriate for a SFD, but not on this lot between the SFD and Manor Home.
50	We are unable to find this data table in any approved documents. There is no document, for instance, that approves a 3' side yard for single family homes. The setback for townhomes does not change with this data table, however.
52	The data table Miller and Smith relies upon is a compilation of other data tables and does not exist in public record as shown on this slide.
54-55	These slides neatly illustrate the creation of artificial terracing as used throughout our community by Miller and Smith and then used in their claims of reduced height
58	Any claim of new calculus for height determination in August, 2005 is beside the point; terracing happened after determination of height violations.