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FACSIMILE TRANSMITTAL SHEET

TO: Michele Rosenfeld
Bill Mooney
✓ Rose Krasnow
FAX NO.: 301-495-2173

FROM: Steve Kaufman
Todd Brown

DATE: November 22, 2005

RE: Clarksburg Town Center/Affidavit of Les Powell

This transmittal consists of 3 pages, including cover sheet. If you do not receive all pages indicated, or have any other problems with reception, please call Cindy at 301.961.5184.

Comments/Instructions:

Attached is the signed Affidavit of Les Powell.

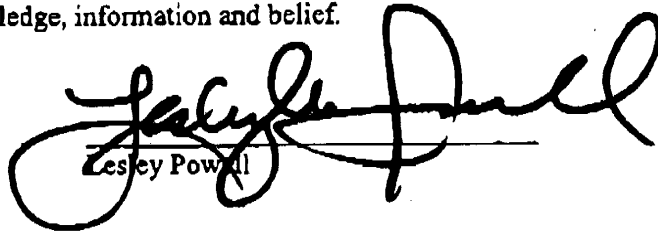
Confidentiality Notice: This facsimile contains confidential information which may also be legally privileged and which is intended only for the use of the addressee(s) named above. If you are not the intended recipient, you are hereby notified that any dissemination or copying of this facsimile, or the taking of any action in reliance on the contents of this telecopied information, may be strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone and return the entire facsimile to us at the above address via the U.S. Postal Service. Thank you.

AFFIDAVIT

I, Lesley Powell, am over 18 years old and state the following:

1. I am employed by the land planning and engineering consulting firm of Charles P. Johnson & Associates, Inc. ("CPJ"). My business address is Charles P. Johnson & Associates, Inc., 1751 Elton Road, Silver Spring, Maryland 20903. I have been employed by Charles P. Johnson & Associates, Inc. since 1984.
2. I am a professional landscape architect and a registered landscape architect licensed in the State of Maryland.
3. I have worked as a consultant for the developers of the Clarksburg Town Center since 2000, including Terrabrook Clarksburg LLC ("Terrabrook").
4. While working for Terrabrook, on occasion in the interest of time and convenience, I was authorized by Tracy Graves, Terrabrook's project manager, to sign Ms. Graves' name and attach her signature on behalf of Terrabrook to documents and plans submitted to The Maryland-National Capital Park and Planning Commission ("MNCPPC") by Charles P. Johnson & Associates.
5. In each instance referred to in Paragraph 4 above, I had been authorized with full knowledge by Ms. Graves on behalf of Terrabrook to submit the documents I had signed for her or attached her signature to as an official act of Terrabrook. To the best of my knowledge, each document and plan submitted to MNCPPC by CPJ on behalf of Terrabrook was authorized to be submitted by Terrabrook.
6. To the best of my knowledge and belief, no one at CPJ, Terrabrook or any of its consultants ever signed Wynn Withans name to any document or plan.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information and belief.


Lesley Powell

STATE OF ^{Virginia} ~~MARYLAND~~

*
* to wit:
*

COUNTY OF Fairfax

I HEREBY CERTIFY that on this 24 day of November, 2005, before me, a Notary Public in and for the State and County aforesaid, personally appeared Lesley Powell, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument and acknowledged that said individual executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Ch. E. P.
Notary Public

My Commission Expires: 8/31/08

[NOTARIAL SEAL]

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LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

November 21, 2005

NOV 21 2005
THE MARYLAND NATIONAL CAPITAL
PARK & PLANNING COMMISSION
MEDICAL DEPT
Stephen Z. Kaufman
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Todd D. Brown
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By Hand Delivery

Hon. Derick Berlage, Chair
and Members of the Montgomery
County Planning Board
Maryland-National Capital Park
and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Clarksburg Town Center

Dear Chairman Berlage and Members of the Planning Board:

On behalf of Newland Communities LLC and NNPII Clarksburg LLC (collectively, "Newland Communities"), this letter responds to and objects to the admission into evidence of the letters dated November 17th and 18th, 2005 from counsel for CTCAC with attached affidavits and resumes. The letters and attachments comprise an ill conceived effort to disparage the integrity of the professionals in both the public and private sectors who have worked diligently to implement the orderly development of the Clarksburg Town Center pursuant to the exercise of authority lawfully delegated by the Board to its professional staff.

Clearly, the letters and attachments are overwhelmingly prejudicial in their after the fact assertions. To the contrary, in today's modern workplace in the event a signature of any member of either the Planning Commission professional staff or a principal of the Master Developer or builders was signed by a different member of the staff or of an applicant's authorized private consultant it was we believe most certainly done at the direction and with the full knowledge of the intended signator¹. For example, the ill-conceived nature of this latest allegation is demonstrated by the comprehensive Office of Legislative Oversight ("OLO") report (submitted on November 8th, prior to our companion November 18, 2005 submission on behalf of Newland Communities), wherein OLO staff had previously interviewed Ms. Witthans, along with dozens of other MNCPPC and County staff. OLO concluded that actions were taken by staff to amend the initial site plans approved by the Planning Board (pp. 57, 89). It is inconceivable that during the course of OLO's investigation Ms. Witthans or other staff members would not have denied the validity of the site plan revisions if that was the case. Clearly, it was not.

¹ Affidavits to follow.

Hon. Derick Berlage, Chair
and Members of the Montgomery
County Planning Board
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Page 2

Moreover, whether the Board in hindsight would have agreed with the decisions made by staff pursuant to its delegated authority is an entirely distinct question from whether the revisions were in fact approved. The overwhelming evidence in this matter demonstrates the revisions were approved, plats were approved and recorded, permits were issued and relied upon by Newland Communities and the home builders; and, until very recently, thousands of building inspections were conducted without any indication from any government official or agency that alleged site plan violations had occurred. As a consequence, business decisions were made in reliance on these approvals, extensive infrastructure was constructed, and homes were built, inspected and sold to third parties.

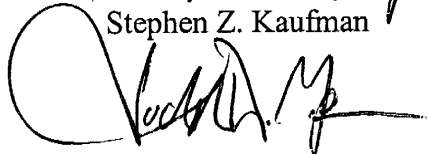
The November 17th and 18th, 2005 letters from counsel from CTCAC and their attachments should be stricken from the Record.

Sincerely

LINOWES AND BLOCHER LLP



Stephen Z. Kaufman



Todd D. Brown

cc: Mr. Douglas Delano
Martha Guy, Esq.
Sharon Koplan, Esq.
Kurt Fischer, Esq.
Robert Douglas, Esq.
Mr. William Mooney
Ms. Rose Krasnow
Michele Rosenfeld, Esq.
Timothy Dugan, Esq.
Kevin Kennedy, Esq.
Robert Brewer, Esq.
Barbara Sears, Esq.
Scott Wallace, Esq.
David Brown, Esq.

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

RECEIVED
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OCT 19 2005

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

October 19, 2005

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By Overnight Delivery

Hon. Derick Berlage, Chair
and Members of the Montgomery
County Planning Board
Maryland-National Capital Park
and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Clarksburg Town Center – Request for Reconsideration Concerning Phasing of Amenities

Dear Mr. Berlage and Members of the Planning Board:

This letter responds to the October 17, 2005 letter from counsel for the CTCAC. Please include this letter in the public Record.

Through its counsel, the CTCAC argues the Request for Reconsideration is untimely and states such request can only be made after a “final decision.” CTCAC then argues “Board decisions are final...only when they have been reduced to writing and the written opinion adopted by the Board in open session.” The CTCAC’s argument is extraordinary under the circumstances. In this matter, the Board has not issued an opinion for its initial finding of no violation of building heights as expressed at the April 14, 2005 hearing. Accordingly, no such opinion was adopted by the Board prior to the CTCAC requesting and the Board granting reconsideration of the decision. The reconsideration requested by the CTCAC and its endorsement by the Board is directly contrary to the position now taken by the CTCAC.

Second, the phasing trigger within the Phase I Site Plan Enforcement Agreement is absolutely clear. The language does not support the position advanced by Commissioner Perdue and accepted by the Board. The language specifically provides an outside date by which all community-wide facilities within Phase I must be provided (15 years), regardless of how many units within Phase I have been permitted. The Board’s decision also directly conflicts with other language in the Agreement *addressing the specific issue of recreation facility phasing*.

Hon. Derick Berlage
and Members of the Montgomery
County Planning Board
October 19, 2005
Page 2

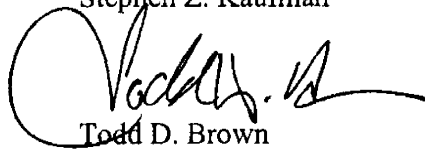
Such language requires recreational facilities and community-wide pathways within each phase to be constructed prior to 70% occupancy of such phase. Any other provision of the Phase I Site Plan Enforcement Agreement that does *not* specifically address the timing of amenities and recreation facilities lacks material relevancy to the issue. Only the two above-referenced provisions govern the specific issue considered by the Board, they are material, relevant, not ambiguous and compel reconsideration of the Board's decision.

Sincerely,

LINOWES AND BLOCHER LLP



Stephen Z. Kaufman



Todd D. Brown

SZK:srh

cc: County Councilmembers
Ms. Karen Orlansky
Mr. William Mooney
Ms. Rose Krasnow
Michele Rosenfeld, Esq.
Mr. Douglas Delano
Robert Brewer, Esq.
Timothy Dugan, Esq.
Kevin Kennedy, Esq.
Barbara Sears, Esq.
David Brown, Esq.
Kurt Fischer, Esq.
Robert Douglas, Esq.
Sharon Koplan, Esq.

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OCT 11 2005

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

October 11, 2005

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By Hand Delivery

Honorable Derick Berlage
Chairman and
Members of the Montgomery County Planning Board
Maryland-National Capital Park and Planning
Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Extension of Preliminary Plan No. 1-95042 (Clarksburg Town Center)

Dear Mr. Berlage and Members of the Planning Board:

On behalf of Newland Communities, LLC and NNPII-Clarksburg L.L.C. (collectively "Newland Communities"), the purpose of this letter is to request a two year extension of Preliminary Plan No. 1-95042 ("Preliminary Plan") for the Clarksburg Town Center. The reasons for this request are set forth in the attached letter to Rose Krasnow dated March 24, 2005. Please include this letter in the public Record.

On March 24, 2005, the Applicant requested an extension of the Preliminary Plan for a period of two years to facilitate completion of the Clarksburg Town Center project. On July 28, 2005, the Planning Board unanimously approved an interim extension of the Preliminary Plan until October 26, 2005. At that time, all parties anticipated the extension would have been long enough to permit the Board to complete its proceedings on alleged site plan violations prior to considering the two-year extension request. However, in light of the continuing nature of the site plan compliance review process, it is apparent the Board will not complete its review of such matters by October 26.

Accordingly, Newland Communities respectfully requests an additional six-month interim extension of the Preliminary Plan until April 26, 2005. As with the extension granted by the

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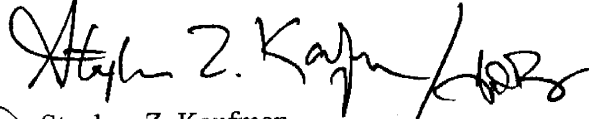
Derick Berlage
October 10, 2005
Page 2

Board at the July 28 hearing, this six-month extension would maintain the status quo only, and would not in any manner indicate a prejudgment by the Board on the merits of the two-year extension request. Newland Communities also requests that prior to the expiration of this additional six-month period, if granted, the matter be brought back to the Board for consideration of the two-year extension request to permit the project to proceed to completion.

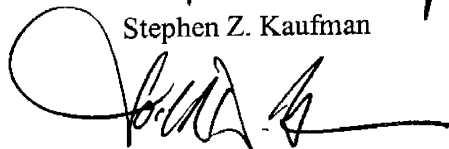
Thank you for your consideration.

Sincerely

LINOWES AND BLOCHER LLP



Stephen Z. Kaufman



Todd D. Brown

TDB:lrđ

Encl.

cc: William Mooney
Rose Krasnow
Douglas Delano
Michele Rosenfeld, Esquire
Cathy Conlon

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

September 28, 2005

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SEP 28 2005

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

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By Hand Delivery

Hon. Derick Berlage, Chairman
and Members of the Montgomery
County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Clarksburg Town Center

Dear Chairman Berlage and Members of the Planning Board:

On behalf of Newland Communities LLC and NNPII-Clarksburg, LLC ("Newland Communities"), this letter responds to the September 19, 2005 letter to you from counsel to the CTCAC ("CTCAC Letter"). Please include this letter in the public record.

Newland Communities objects to the procedure suggested by the CTCAC for the conduct of further hearings in this matter. First, we understand the Planning Board's October 6, 2005 hearing will be limited to the issues raised by the CTCAC in its July 14, 2005 letter to the Planning Board. Consideration of other matters at the October 6, 2005 hearing, including those non-specific allegations raised in the CTCAC September 19 letter and any issues related to the pending project plan amendment or site plan applications, would deny Newland Communities its due process right to adequate notice of the matters alleged and would further deny Newland Communities sufficient time to (i) review and understand the specifics of each additional allegation; (ii) conduct such research into the matters raised by the allegations as necessary for its response; and (iii) prepare such response based upon fact and not mere assertion. We therefore request that matters beyond the scope of the CTCAC's July 14, 2005 letter not be considered at the October 6, 2005 hearing. As to any changes contemplated by the pending applications, this Board will consider such matters at a future public hearing at which the CTCAC and others may participate to the extent desired.

Second, in the September 19, letter, the CTCAC again relies on general allegations of non-compliance. For the Board to assure itself of an accurate set of facts before taking any action in this matter, it is essential for Newland Communities to be apprised of each lot, street or other specific component of this development which the CTCAC contends does not comply with existing approvals. If Newland Communities has not been provided with the specifics of each additional allegation in sufficient time to prepare a response before the Board's second hearing

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Hon. Derick Berlage, Chairman
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scheduled for October 25, 2005, we will object on the Record to the inclusion of any testimony relating to non-specified allegations and request additional time to prepare our response. The alternative would be for the Board to provide Newland Communities and its consultants an opportunity to review plats, site plan drawings, engineering drawings, construction drawings, correspondence records, opinion conditions, and consult with one another and all relevant MNCPPC and County personnel *during* the public hearing on each allegation once the CTCAC has disclosed specific information as to lot/block, street reference, etc. Such process we strongly suggest would create an untenable situation for all parties and the Board and would not be in the best interest of the citizens of Montgomery County. Accordingly, without prior notice from the CTCAC, Newland Communities in fairness requests that the Board either not accept testimony on previously unspecified allegations or, to the extent specifics are clearly set forth in advance of the public hearing, provide Newland Communities with a reasonable opportunity to respond to each allegation, thus creating the potential need for yet another hearing on these matters.

Third, for the above reasons, Newland Communities also objects to the suggestion that the Board postpone the scheduled October 6, 2005 hearing in order to hold the two hearings on consecutive days or weeks. The October 6, 2005 hearing on the allegations raised in the CTCAC July 14 letter is scheduled, and Newland Communities has responded in depth to those allegations. The allegations lack substantive merit and should be reviewed by the Board on October 6 and rejected.

On behalf of our client we also object to the CTCAC's position that it need not "disclose" specific information about its allegations to Newland Communities. The mere suggestion in the September 19 letter that the CTCAC is unwilling even to disclose or specifically identify each allegation (as opposed to identifying its evidence supporting such allegation) is outrageous and betrays a clear intent to overwhelm the Board with a wide range of allegations and asserted fact without providing the developer with a reasonable opportunity to present evidence to the contrary.

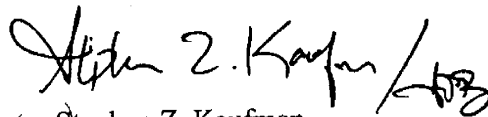
Lastly, on the question of fairness, it should again be noted that Newland Communities and its builders have applied for and received all permits in due course required by Montgomery County for the land development activities and building construction that has occurred to date. To our knowledge Park and Planning Staff reviewed and approved the current site plan designs as implemented, and no work on site has occurred contrary to those permits that have been duly issued. Newland Communities has also cooperated completely with Planning Commission Staff in its investigation of these matters and has provided opposing counsel with our detailed

Hon. Derick Berlage, Chairman
and Members of the Montgomery
County Planning Board
September 28, 2005
Page 3

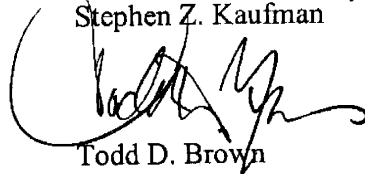
response to the allegations contained in the July 14 CTCAC letter well in advance of the October 6 hearing. Lastly, we believe everyone associated with this case is well aware that CTCAC members have spent enumerable hours with Planning Commission files and Staff. The suggestion by Counsel that access has been somehow denied is unwarranted and completely without merit.

Very truly yours,

LINOWES AND BLOCHER LLP



Stephen Z. Kaufman



Todd D. Brown

cc: County Council Members
Ms. Karen Orlansky
Mr. Charles Loehr
Mr. William Mooney
Ms. Rose Krasnow
Michele Rosenfeld, Esq.
Mr. Richard Croteau
Mr. Douglas Delano

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DAVID W. BROWN

November 23, 2005

Via Email

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

Re: Clarksburg Town Center

Dear Chairman Berlage:

Newland has asked the Board in a November 21, 2005 letter to strike my letters of November 17th and 18th, 2005, from the record in this proceeding. The letters were written on behalf of my client, the Clarksburg Town Center Advisory Committee ("CTCAC"). The request to strike should be denied. Newland effectively concedes the relevance of the analysis of the genuineness of document certifications and approvals by defending non-genuine signatures as authorized, albeit with a conclusory, incomplete and inadequate response.

Newland effectively asks the Board to simply defer to highly generalized OLO findings regarding staff-level approval of site plan amendments. Plainly, OLO was unaware of any lack of genuineness among the signatures on the documents. Indeed, it is only with the transmittal of CTCAC's findings last week that an admission has been extracted from Newland that many official document signatures are not genuine. Thus, even if OLO's findings were document-specific -- which they most certainly are not -- they would be an inadequate substitute for a Board determination of what transpired.

A determination of who signed which plans and why is highly relevant to the issues before the Board. An approved site plan is required by law to contain an agreement "[s]igned by the applicant ... to execute all the features and requirements that are part of the site plan;" §59-D-3.4(c)(1) (emphasis added), and a signature of the Chairman "or his designee, certifying Planning Board approval of the site plan." §59-D-3.4(c)(2) (emphasis added). Newland does not mention these requirements and is quite evidently disdainful of them in any event, by implying that they are meaningless "in today's modern workplace." Newland letter at 1. CTCAC disagrees. The "modern workplace" is not a place where legal requirements may be spurned at will.

Derick Berlage, Chairman
November 23, 2005
Page 2

Moreover, it is not CTCAC's intent to play "gotcha" with mere paperwork violations. Rather, the failure of Newland and the staff to follow proper procedure is relevant to the Board's assessment of what happened here. Whose story line is closer to the truth? Newland: all site plan amendments were closely scrutinized and explicitly approved by Ms. Witthans with exemplary professionalism. CTCAC: Newland built according to its own plan, knowing that a compliant Ms. Witthans would accept all the changes, if she even noticed them at all. Plainly, documentation replete with non-genuine signatures, in flagrant disregard of the requirements of §59-D-3.4, is relevant to that assessment.


The affidavits regarding signatures on plan amendments also directly undermine the claimed solemnity of the amendments and raise serious questions about their dates of creation. For example, the affidavits reveal the possibility of "cut-and-paste" signature blocks. Why would this have happened, other than to create after-the-fact documentation of supposedly orderly, timely approvals at an earlier time? In its various submissions to the Board, CTCAC has raised dozens of as yet unanswered questions about the probity of the documentation of site plan amendments. The affidavits only add to the list of questions that cry out for an answer – questions the brief OLO investigation never asked, let alone answered.

In the end, Newland's righteous tone should be contrasted with the quality of the "evidence" employed to demand that the Board avert its eyes from the latest concern CTCAC has raised. Newland relies on Mr. Powell, who states:

To the best of my knowledge and belief, no one at CPJ,
Terrabrook or any of its consultants ever signed Wynn
Witthans' name to any document or plan.

Powell Affidavit ¶6. This is, in fact, nothing more than a statement of complete ignorance regarding the Witthans' signatures, except with respect to Mr. Powell himself. Indeed, Mr. Powell would never be competent to provide evidence excluding signature-making by anyone but himself. Yet the Affidavit is worded to suggest otherwise, perhaps in the vain hope that the Board will be fooled into thinking it means more. In CTCAC's view, this one sentence confirms, in microcosm, everything CTCAC has been saying all along about Newland's manipulation of the site plan amendment process.

Sincerely yours,


David W. Brown

Derick Berlage, Chairman
November 23, 2005
Page 3

cc: William Mooney, Director
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
County Council