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MCP-Chairman

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Sent: Wednesday, November 23, 2005 2:06 PM
To: MCP-Chairman
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Subject: Letter from CTCAC

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

Dear Chairman Berlage:

Please find attached a letter from David Brown on behalf of CTCAC. Please add it to the record.

Sincerely yours,
Joy Johnson
Office Administrator

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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
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John A. Carter, Chief, Community-Based Planning
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