

City of Alexandria, Virginia

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6-24-03

MEMORANDUM

DATE: JUNE 20, 2003

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *ps*

SUBJECT: CONSIDERATION OF METHODS FOR ADVISING HOMEOWNERS OF FUTURE DEVELOPMENT

ISSUE: Potential disclosure requirements to effect homebuyers' education..

RECOMMENDATION: That City Council receive this report. Staff will continue to include notice requirements in development approvals and continue to study this issue.

BACKGROUND: At its public hearing on the Potomac Greens development proposal, Council voiced concern about the dilemma faced by homeowners who buy property in a development without being aware of the future plans and requirements for that development as well as for the area around it. Council asked staff to explain the City's approach to the issue and to explore options for additional steps that the City could take to educate owners about future plans for their area.

In the recent Potomac Greens context, some homeowners in the Old Town Greens development evidently did not know that the adjacent land to the north would be developed with additional townhouses, and that Potomac Greens Drive would be continued north for cars to access that development. Some did not realize that nearby land adjacent to the railroad tracks was planned for a dog park, with pedestrian access via a pedestrian bridge. Some apparently did not understand that, despite pictures displayed by their builders, there was no legal requirement for a large green buffer area immediately next to their development. The Old Town Greens development approval occurred in 1995 and included no requirement that the builder/developer notify purchasers about future plans for nearby development. The Potomac Yard concept plan approval occurred in 1999, after Old Town Greens was approved. Notice to the owners of the Old Town Greens site about the Potomac Yard concept plan was provided to adjacent land owners, but the owners of Old Town Greens at the time was the builder and a few early home purchasers.

More recently, staff has included conditions in development project approvals requiring that developers notify purchasers, by providing brochures on specific subjects, including specific information in the actual sales documents, and even requiring that homeowner association and condominium documents recite facts about the development and surrounding uses. The

following are summaries of a few examples (the full text of the relevant conditions are attached).

- In the Summers Grove development case (townhouses at South Van Dorn and Eisenhower Avenue), the developer was required to present a “disclosure statement,” reviewed by the City Attorney, signed by potential buyers, and filed with the City, identifying nearby industrial uses, such as the Waste to Energy plant, the firing range, the railroad and metro operations, and heavy truck traffic. The developer was also required to submit for City approval the homeowners’ association agreement, which was to include similar notification
- At Ford’s Landing, the developer was required to provide a brochure to each home purchaser regarding the stormwater requirements, including the HOA responsibilities to maintain stormwater facilities. The developer was also required to include in the HOA documents language approved by the City Attorney notifying homeowners regarding restrictions on the use of parking garages, visitor parking spaces and emergency vehicle easement areas.
- The Aleman apartment development at 5000 Eisenhower Avenue requires that renters sign a disclosure statement which includes information about nearby industrial uses and truck traffic, and about future Eisenhower Avenue traffic projections.
- At Ashton Manor (five single family homes at Beauregard and Ashton Streets), each home purchaser must sign a disclosure statement identifying elements of the site plan, including emergency vehicle areas and restrictions as to conservation easements and constructions of decks.
- As part of the Old Town Crescent (Slaters Lane condominiums) approval, the condominium association covenants are required to include notice of many aspects of the development, including landscape maintenance, trash disposal and parking restrictions.
- In the recent Potomac Greens townhouse project, the developer is required to include a section in the homeowner agreement and to obtain signed disclosure statements from purchasers to provide notice to purchasers about the development and about plans for the surrounding area. Notice is required regarding, for example, the Mirant plant, Reagan National Airport, and the approved plan for Potomac Yard. Notice about prior environmental conditions of the Potomac Yard and Greens sites, parking restrictions, design requirements, and maintenance of open space areas is also required. Finally, the notice documents must also include information about the potential for a future Metro site, a future pedestrian bridge, and a future special taxing district.

Despite the above requirements, there have been occasional complaints about development circumstances that should have been understood by homeowners. For example, staff has received complaints about the Waste to Energy plant from residents of Summers Grove. Parking issues have surfaced at Fords Landing. Residents from the recently occupied apartment complexes in the western portion of Eisenhower Avenue continue to complain about noise,

traffic and the Waste to Energy plant.

In discussing the phenomenon with our counterparts in Planning Departments in Montgomery, Arlington and Fairfax Counties, staff learned that homeowners there are making similar complaints, even though recent development approvals in those jurisdictions also include notification requirements very similar to the type of notice required by Alexandria. The assumption is that the combination of a transient population, densely developed communities and the townhouse form itself may lead to owners being less involved and less apt to inquire about development circumstances and city plans for the future. Whatever the genesis of the problem, the fact that the apparent lack of knowledge about future plan requirements occurs in other jurisdictions shows that the phenomenon is not unique to Alexandria.

Options for additional notice

Staff believes that its approach to providing notice to homeowners and renters should be continued. If Council wants to take additional steps, the following should be considered as methods of providing more notice.

1. Require the developer to record a simple one page notice form in the land records. The existing approach by staff requires several forms of notice, but does not require documents to be filed in the land records. Thus, while generally effective for the first time home buyers, subsequent home buyers may be less aware of applicable requirements, previous planning processes and anticipated development within an area due to the transient nature of many of the City residents. Therefore, one approach is to require additional documentation from the developer to alert all purchasers: a one page, general statement regarding the development itself, with a general alert that there are development conditions related to the home being purchased, that surrounding development may be planned and approved, and that the purchaser should contact the Planning Department for updated information regarding surrounding development. The document would be filed in the land records and thus would be included as part of any title report. The language of the proposed recorded document would have to be simple, concise and adequate to put purchasers on notice of additional information and sources of information, but not so overwhelming or legalistic that it would be ignored as part of the contract documentation, often intimidating to purchasers.
2. Require realtors to obtain a signed land use disclosure statement. Many prospective home buyers are often not aware of the applicable Master Plan, zoning and development conditions for a property prior to purchasing a property. Therefore, purchasers are not always aware of the appropriate land use questions to ask their realtors. An alternative to augment the current practice of including disclaimers and conditions with the homeowners association documents would be to require all realtors to obtain a separate document signed by each prospective purchaser prior to settlement. The document could include development requirements for the development plus historic district requirements, future plans for the area, and more. Again, planning staff would work on a document style and condition language and would work with the real estate community on the appropriate language. The purchaser would have to acknowledge through signature that he fully understands and acknowledges all applicable requirements for the

property being purchased. It would be the responsibility of each realtor to ensure the correct information was assigned within each category.

These are two possible alternatives to ensure that residents are more aware of development requirements prior to purchasing homes, although these approaches will not entirely resolve the issues of residents being aware of all conditions and requirements of a property prior to purchasing a property.

ATTACHMENT: Sample development conditions for notice to purchasers

SAMPLE DEVELOPMENT CONDITIONS FOR NOTICE TO PURCHASERS

Potomac Greens # DSUP #2002-026 (Not Yet Constructed)

1. Prior to the release of the first certificate of occupancy for the project, the City Attorney shall review and approve the language of the Homeowner's Agreement to ensure that it conveys to future homeowners the requirements of this development special use permit, including the restrictions listed below and other restrictions deemed necessary by the City Attorney. The applicant shall present a disclosure statement to potential buyers disclosing the following conditions to the satisfaction of the Directors of P&Z, T&ES and the City Attorney. The HOA language shall establish and clearly explain that these conditions cannot be changed except by an amendment to this special use permit approved by City Council.
 - a. Neighboring uses surrounding Potomac Greens include the Mirant Power Plant, Metro operations and other heavy railway operations, and the nearby Reagan National Airport and its associated flight paths, including a flight path directly over the Potomac Yard site. These uses are located within the immediate vicinity of the project and are permitted to continue indefinitely.
 - b. Prior history of the Potomac Yard has created environmental hazards, conditions, related studies and past or on-going remediation efforts. Past use of the Potomac Greens site includes disposal of fly-ash and dredge spoilings.
 - c. Individual townhouse garages may be utilized only for parking; storage which interferes with the use of the garages for vehicle parking is prohibited.
 - d. Vehicles shall not be permitted to park on sidewalks, in driveways which obstruct sidewalks, on any emergency vehicle easement, or on any portion of the interior alley. The Homeowner's Association shall maintain a contract with a private towing company to immediately remove any vehicles violating this condition.
 - e. No decks shall be permitted, except those decks that do not protrude beyond the property line.
 - f. Exterior changes or additions to units shall not be permitted without approval of City Council or the Director of Planning and Zoning, as determined by the Director.
 - g. No overhangs (bays, balconies, decks, architectural projections, etc.) shall protrude into the alleys, emergency vehicle easements, or ingress/egress easements below 14.5 feet above grade. No vertical support posts and other impediments shall impede garage entrances.

- h. All landscaping and screening shown on the final landscape plan shall be maintained in good condition and may not be reduced without approval of City Council or the Director of Planning and Zoning, as determined by the Director.
- i. The Homeowners Association documents shall disclose to all prospective buyer(s) through the sales literature and documents, sales contracts etc. that the internal open space areas not dedicated to the City for public parkland will be owned and maintained by the HOA, although the spaces are encumbered by public access easements and are accessible to the residents of the community and general public.
- j. A parcel in the northwestern portion of the site has been dedicated to the City for a possible WMATA Metrorail station rail station at Potomac Yard in accordance with CDD #99-01.
- k. A future pedestrian bridge may be located on the southwestern portion of Potomac Greens, along Potomac Greens Drive. A bridge will be constructed by the current owner of Potomac Yard, or their successors, after 1,000,000 sq. ft. of development in Potomac Yard as specified in the CDD conditions of approval.
- l. If the City establishes a special taxing district for this area for a transit improvement project to raise funds to finance transit capital projects or transit operating programs and services which would serve, in part, Potomac Greens (such as, but not limited to, assisting in the financing of a new Metrorail station adjacent to Potomac Greens), in accordance with the TMP for Potomac Yard, all owners of property within this development, including fee-simple owners and the HOA shall be required to participate in the district.
- m. The approved Potomac Yard Concept Plan permits 1,900,000 square feet of office space, a 625 room high-rise hotel, 1700 additional residences, and 135,000 square feet of retail development, in addition to the existing 600,000 square foot Potomac Yard Shopping Center, on the west side of the CSX and WMATA Metro rail corridor, immediately adjacent to Potomac Greens. The buildings closest to Potomac Greens are permitted to rise to heights of 110 feet. Additionally, the leases with the Potomac Yard Shopping Center expire around the year 2018. It is anticipated that the shopping center site will redevelop at higher density, similar to that approved around the Potomac Yard town center and in the Arlington portion of Potomac Yard, immediately north of Four Mile Run.

Samuel Madden DSUP # 2002-029 (Not Yet Constructed)

- 1. Prior to the release of the first certificate of occupancy for the project, the City Attorney shall review and approve the language of the Homeowner's Agreement to ensure that it

conveys to future market rate homeowners and public housing residents the requirements of this development special use permit, including the restrictions listed below. The HOA language shall establish and clearly explain that these conditions cannot be changed except by an amendment to this special use permit approved by City Council.

- a. Individual townhouse garages and spaces within the partially below grade parking garages may be utilized only for parking; storage which interferes with the use of the garages for vehicle parking is prohibited.
- b. Vehicles shall not be permitted to park on sidewalks, in driveways which obstruct sidewalks, on any emergency vehicle easement, or on any portion of the interior alley. The Homeowner's Association shall maintain a contract with a private towing company to immediately remove any vehicles violating this condition.
- c. Market rate and public housing residents of this development are not eligible for any on-street permit parking permits.
- d. No decks shall be permitted, except the rooftop decks shown on the approved site plan.
- e. Exterior changes or additions to units shall not be permitted without approval of City Council or the Director of Planning and Zoning, as determined by the Director.
- f. No balconies, bay windows, or any other improvements shall be allowed to encroach into the space above an emergency vehicle easement.
- g. All landscaping and screening shown on the final hardscape plan shall be maintained in good condition and may not be reduced without approval of City Council or the Director of Planning and Zoning, as determined by the Director.
- h. The Homeowners Association documents shall disclose to all prospective buyer(s) through the sales literature and documents, sales contracts etc. that the internal public access easement including the streets and sidewalks will be for general public use and the potential liability for the easement. (P&Z)

Mill Race DSUP#2002-003 (Not Yet Constructed)

1. The applicant shall present a disclosure statement to all renters, and condominium owners signed prior to signing any lease or contract of purchase. The statement shall disclose the following:
 - a. That retail uses including but not limited to restaurants, bakeries, banks bookstores, clothing, clothing accessories, department stores, drugstores, dry

cleaners, florists, groceries, jewelry, restaurants and any similar use deemed by the Director of Planning & Zoning shall occur within the first floor retail spaces and that outdoor dining will likely be associated with any restaurants and the retail uses will generate noise and truck traffic on the public and internal streets surrounding the project and may have extended hours of operation.

- b. The specific language of the disclosure statement to be utilized shall be provided to the City for approval by the Director of P&Z and City Attorney, prior to release of any CO for residential units. (P&Z)
2. The applicant shall prepare, as part of its leasing/purchasing agreements, appropriate language to inform tenants/owners of the transportation management plan special use permit and conditions therein, prior to any lease/purchase agreements; such language to be reviewed and approved by the City Attorney's office.
3. The applicant shall present a disclosure statement to potential buyers disclosing the following to the satisfaction of the Director of P&Z and the City Attorney:
 - a. That the Metrorail track and other railway operations are located within the immediate vicinity of the project and will be permitted to continue indefinitely.
 - b. That Eisenhower Avenue is a major arterial and will increase to six (6) lanes due to future traffic.

Old Town Crescent DSP # 2000-008

1. All homeowners and condominium association covenants shall be approved by the City Attorney prior to applying for the first certificate of occupancy permit for the project. The association covenants shall include the conditions listed below, which shall be clearly expressed in a separate section of the covenants.
 - a. The principal use of the garages and parking spaces shall be for passenger vehicle parking only; storage which interferes with the use of a parking space for a motor vehicle is not permitted.
 - b. Vehicles shall not park or encroach into the alley.
 - c. No decks, balconies, bay windows or any other exterior projections shall be permitted, unless shown on the approved development plan for the project.
 - d. The surface visitor parking spaces shall be reserved for the use of the condominium and townhouse guests.
 - e. No more than one parking space shall be assigned to a specific condominium unit; the remainder of the spaces shall be available for residents and guests of the condominiums, with at least 10% of the spaces available to visitors.
 - f. The hardscape plaza on the eastern portion of the condominium building shall be for the use of the residents and guests of the proposed condominium and townhomes.
 - g. The maintenance of the private alley and visitor parking spaces shall be the

- mutual responsibility of the homeowners and condominium association.
- h. All landscaping and open space areas within the development shall be maintained by the homeowners and condominium owners.
 - i. Trash and recycling cans must be stored within the units/garages; they may not be stored within the alley.

Ashton Manor DSP # 2000-005

1. All prospective homeowner's shall be informed of the restrictions imposed on the landowners by the elements of this proposed site plan, including:
 - a. Conservation easement restrictions;
 - b. Emergency vehicle and ingress/egress easements restrictions; and
 - c. Zoning limitations on the construction or expansion of decks.The developer shall provide a signed disclosure letter from each purchaser prior to the release of a certificate of occupancy permit for that unit.

Aleman - DSUP # 99-062

1. The applicant shall present a disclosure statement to all renters, to be signed by all renters prior to signing any lease. The statement shall disclose the following:
 - A) That commercial and industrial uses, a municipal incinerator, the Alexandria Police Department pistol range, a storage facility, the Capital Beltway, Metrorail tracks and other railway operations are located within the immediate vicinity of the project, are permitted to continue indefinitely, and will generate noise and truck traffic on the public streets surrounding the project.
 - B) That Eisenhower Avenue is a major four-lane arterial and that future traffic is expected to increase significantly on it as development along Eisenhower Avenue continues.

The specific language of the disclosure to be utilized shall be provided to the City for approval by the Director of P&Z and City Attorney, prior to release of any CO for residential units.

Summers Grove SUP#95-0153

1. The applicant shall present a disclosure statement to potential buyers disclosing the following to the satisfaction of the Director of P&Z and the City Attorney:
 - A) That heavy industrial uses, the City Waste-To-Energy Plant, the Police Firing

Range and Metrorail tracks and other railway operations are located within the immediate vicinity of the project, are permitted to continue indefinitely, and will generate truck traffic, including empty garbage trucks emanating odors, on the public streets surrounding the project.

- B) That Eisenhower Avenue is a major four-lane arterial and that future traffic is expected to increase significantly on it as development along Eisenhower Avenue continues.

The disclosure statements shall be signed by purchasers to acknowledge they are aware of these facts, and the developer shall provide a copy to the City prior to the release of each CO.

2. The developer shall notify prospective buyers, in its marketing materials of the following:
 - A) the location of visitor parking spaces, that availability of such visitor parking is limited, and that residents are prohibited from parking in the visitor parking spaces and will be subject to towing should they violate this restriction.
 - B) that all parking, loading and unloading of vehicles, including automobiles, moving vans, furniture delivery trucks, etc., is strictly prohibited on Eisenhower Avenue, Van Dorn Street and the Metro Road and is subject to penalty, including fines. Loading and unloading of vehicles shall be permitted only on the private streets, alleys, and driveways within the development.
 - C) that there are heavy industries to the north and an incinerator to the east which may not be controlled beyond current levels.
 - D) that the site is surrounded by roads on which the number of vehicles including heavy trucks and garbage trucks can be expected to increase in coming years.
3. Submit a homeowners' agreement (HOA) prior to applying for the first certificate of occupancy for the project, for approval by the City Attorney. Such HOA shall include the conditions listed below, which shall be clearly expressed in a separate section of the HOA. Also, such section within the HOA shall include language which makes clear that the SUP conditions listed shall not be amended without the prior approval of City Council:
 - A) All parking, loading and unloading of vehicles, including automobiles, moving vans, furniture delivery trucks, etc., is strictly prohibited on Eisenhower Avenue, Van Dorn Street and Metro Road and is subject to penalty, including fines. Loading and unloading of vehicles shall be permitted only on the private streets,

alleys, and driveways within the development.

- B) The principal use of townhouse unit garages shall be for passenger vehicle storage only.
- C) Exterior building improvements by future residents, including above ground decks not included on the approved plans or different from the approved plans, shall require the approval of the Director of Planning and Zoning or City Council, as determined by the Director, and the purchasers shall be so advised.
- D) Vehicles shall be prohibited from parking in the emergency access easements, and vehicles parked in townhouse unit parking spaces shall be prohibited from encroaching upon such easements or adjacent pedestrian walkways.
- E) No decks, balconies, bay windows, or any other improvements shall encroach into the space above an emergency vehicle easement.
- F) Amount of parking available for visitor parking and that areas designated for visitor parking shall be restricted to visitor parking use only.
- G) All required landscaping and screening shall be maintained in good condition.
- H) Residents will be required to contribute to a "sinking fund" established to maintain any BMP facilities in operating condition.

Ford's Landing SUP#96-06

- 1. The developer shall furnish each home purchaser with a brochure describing the stormwater Best Management Practices installed at the development and outlining the responsibilities of the homeowners and the Homeowners' Association with respect to their upkeep. Upon activation of the Homeowners' Association, the developer shall further furnish five copies of this brochure per unit to the association for distribution to subsequent homeowners.

- 23. The applicant shall submit homeowner's agreement (HOA) for approval by the City Attorney, prior to applying for the first certificate of occupancy permit. Such HOA shall include the conditions listed below, which shall be clearly expressed in a separate section of the HOA. Also, such section within the HOA shall include language which makes clear that the SUP conditions listed shall not be amended without the approval of City Council.

- A) The principal use of the individual garages shall be for passenger vehicle storage only.
- B) Exterior building improvements by future residents, including above ground decks not included on the approved plans or different from the approved plans, shall require the approval of the Director of Planning and Zoning or City Council, as determined by the Director.
- C) No vehicles shall park the emergency access easements and no vehicles parked in unit garages or driveways shall encroach upon such easements or adjacent pedestrian walkways.
- D) No decks, balconies, bay windows, or any other improvements shall encroach into the space above an emergency vehicle easement.
- E) Parking spaces designated for visitor parking shall be restricted to visitor parking use only.
- F) All required landscaping and screening, including landscaping in the median and traffic circle areas in the proposed public right-of-ways, shall be maintained in good condition. (P&Z)