


City of Alexandria, Virginia

20
9-23-03

MEMORANDUM

DATE: SEPTEMBER 22, 2003

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER 

SUBJECT: DUKE STREET PEDESTRIAN CONCOURSE AND OPENING OF INITIAL PATENT AND TRADEMARK OFFICE FACILITIES

ISSUE: City Council consideration of the Duke Street Pedestrian Concourse and the upcoming issuance of a certificate of occupancy (CO) for two buildings and a parking garage in the Patent and Trademark Office (PTO) project.

RECOMMENDATIONS: That City Council:

- (1) Consider this memorandum, including the additional “concourse” mitigation measures that are identified and the condition proposed for the CO for the 1,772-space PTO east garage that would prevent PTO from using more than 1,300 spaces for monthly PTO parkers until the concourse is complete, along with the earlier memoranda (attached) that identify other “concourse” mitigation measures and discuss reasons for not withholding the PTO CO;
- (2) Decide against directing the City Manager to withhold the CO for the first two PTO office buildings and the east PTO parking garage;
- (3) Instruct the Manager to:
 - (a) hold a community meeting to discuss the concourse construction, the PTO move-in and the mitigation efforts that will be in effect prior to the opening of the concourse,
 - (b) vigorously enforce all “concourse” mitigation measures identified in this and the attached memoranda,
 - (c) report to Council each month on the progress (or lack of progress) on the concourse construction and mitigation measures,
 - (d) docket the concourse matter for Council consideration at a legislative meeting whenever progress on the concourse construction falls, or appears likely to fall, significantly behind schedule, and ensure the presence of representatives of the Carlyle Development Corporation at any such meeting,
 - (e) work with Corman Construction (as discussed below, the contractor selected for the concourse project) to identify construction methods and techniques that will reduce the time needed for the concourse construction, and

- (f) work with PTO to ensure that, after the agency's move to Alexandria, the percentage of its employees using transit is maintained at its current percentage (approximately 50%), or even a higher percentage.

BACKGROUND: In March 2000, City Council approved an amendment to the Carlyle Special Use Permit (SUP) to allow for the construction of PTO at Carlyle. This SUP required Carlyle Development Corporation (CDC), the SUP applicant, to construct a pedestrian tunnel beneath Duke Street from the west side of Dulaney Street to the north side of Duke Street by December 31, 2003. In April 2003, City staff were notified by CDC that the schedule for the concourse was in serious jeopardy.

On June 23, 2003, City Council received a memorandum (Attachment 1) outlining the history of the concourse since the SUP approval in March 2000. The memorandum included a list of mitigation measures that CDC was to provide because the concourse would not be constructed on time. The memorandum also included a schedule provided by CDC indicating that the concourse would be completed by June 30, 2004.

On August 15, 2003, a second memorandum was sent to Council (Attachment 2) that provided an update of the status of the concourse construction plans and information on the scheduled move-in of the initial PTO buildings. This memorandum also described the different parties responsible for the PTO construction (LCOR) and the concourse construction (CDC).

Staff made a presentation to Council on the concourse at the September 9 legislative meeting. At that time, Council expressed concerns about the construction schedule for the concourse, the commuting trends of PTO employees (including transit ridership), and pedestrian safety during the concourse's construction, and sought additional measures that would mitigate the impacts of the delayed opening of the concourse.

DISCUSSION

Concourse Construction

On September 16, Corman Construction, Inc., was awarded the contract for the concourse construction by CDC. Corman is a large contractor that has done several similar projects in the area. Importantly, it is very familiar with working in and near WMATA right-of-way and has personnel who have received the training required by WMATA for construction work adjacent to its right-of-way. This advanced training, as well as Corman's familiarity with WMATA's permit requirements and preferences, will help expedite the construction of the concourse.

City staff met with CDC and Corman on September 16, the same day that the contract was awarded, and discussed several aspects of the concourse project. Corman presented an alternative phasing for the concourse construction that reduces the number of phases, and thereby shortens the period of construction. City staff is reviewing this phasing to evaluate the benefits

that it may present. Corman is working on a detailed construction schedule which will be submitted to the City by September 26. Corman has expressed confidence that it will be able to meet the June 30 deadline for completing the concourse.

Staff had thought that additional hours of night work would significantly expedite the completion of the concourse. However, Corman now anticipates that evening and night work will be necessary only in connection with portions of the electrical duct bank relocation and with some of the work immediately adjacent to the WMATA tracks. Corman will be contacting nearby businesses and residences to notify them of the upcoming work, and will have a contact person identified for concerns related to the project. In the event it turns out that additional night work will expedite completion of the concourse or is needed to make up for weather-related delays, we will be prepared to entertain a request for additional night work, accompanied by appropriate noise permits and mitigation measures.

PTO Move-In

PTO employees are scheduled to begin the move to the Alexandria campus on December 8. On that date, employees will start moving into Buildings C and E, and will start using the east garage (see Attachment 3). In early October, the installation of furniture, computers and other equipment will begin. PTO expects to move 200 to 300 employees per week into Building E in December, and the same number per week into Buildings C and E from early January on. It expects both buildings to be completely occupied, with about 2,600 employees, by March 1. The entire campus is expected to be fully occupied, with 7,100 employees, by the summer of 2005, if not a few months earlier.

PTO offers several programs that encourage its employees' use of transit. Employees using transit are eligible to receive a \$100 per month subsidy. Slightly more than 50% percent of PTO employees are now enrolled in this program, and the sign-up to date for the program after the move to Alexandria shows no reduction in this rate of participation. This subsidy can be used only for transit, and any unused portion has to be returned at the end of each month. Employees who purchase monthly parking at the PTO garage are ineligible for the transit subsidy, and will be charged \$125 a month for parking. Thus, there is an out-of-pocket differential of \$225 per month for employees who presently use transit but decide to drive to the Alexandria campus and to obtain monthly parking in the garage instead. PTO management believes this differential to be a strong financial disincentive for employees to shift their mode of travel, and does not expect the delay in the concourse opening to diminish the transit ridership of PTO employees.

PTO also offers an extremely flexible work schedule. Employees can arrive in the morning anytime between 5:30 and 10:30 a.m. According to a survey conducted by PTO, approximately 30% of employees arrive at work before 7:30 a.m. and 30% arrive after 8:30 a.m.; almost 50% depart before 5:00 p.m.; 17% depart after 6:00 p.m. Employees also have the flexibility to work 80 hours anytime within every two-week period, and not necessarily five days a week. In fact, 58% of PTO employees regularly work four days a week or nine days in their two-week work

period. This means that almost 60% of the PTO workforce regularly work 10-hour (or more) days on-site, and therefore have arrival and departure times, in part or in whole, outside of the morning and evening rush hour period.

PTO also will be providing a relocation package to all employees before the move to the Alexandria campus. This package will contain maps and customized information describing transit and pedestrian routes to the PTO campus. In this package of materials, PTO will urge employees who plan to drive to use Eisenhower Avenue, not Duke Street, as the primary access point to the campus. Thus, employees will be urged to take the Beltway to the Eisenhower Connector or Telegraph Road exit, and then to travel on Eisenhower Avenue to the campus and garage.

In considering the utility of this instruction, it is important to note the geographical distribution of the residences of the PTO employees who will be relocating to Alexandria. Data provided by PTO show that a significant majority of its employees reside in Virginia south or west of the City (i.e., outside of the Beltway), and in Prince George's County and other Maryland counties to the south. For employees driving to the new PTO campus from these locations, the instruction to access the campus from the Beltway and Eisenhower Avenue makes perfect sense. If, therefore, these locations supply a substantial percent of the employees who elect to drive to the new PTO campus (a reasonable assumption since most of these locations lack direct Metro access to Alexandria), it is very likely that a substantial percent of employee vehicle trips will enter and depart the campus along the Beltway and Eisenhower Avenue.

In order to reduce the potential of PTO "transit" employees switching to driving while the concourse is unavailable, we are adding a condition to the certificate of occupancy for the 1,772-space east parking garage. This condition would bar PTO, until the concourse is complete, from making more than 1,300 spaces available to monthly employee parkers. The garage's remaining 472 spaces (27% of the total) would be available to the public at an hourly rate of \$4.00. This number of spaces, 1,300, is designed to prevent PTO from providing monthly spaces to more than the number of PTO employees who currently drive (i.e., about 50% of the 2,600 employees in Buildings C and E).

This condition will help reinforce PTO's commitment to a 50% transit ridership rate for the 2,600 employees scheduled to move into the project during its first phase, will help establish and maintain transit ridership patterns, will discourage a movement away from transit usage, and will reduce single-occupancy vehicle use during the initial phase of occupancy in PTO.

Finally, in considering the issuance of a CO for the first phase of PTO buildings, it is relevant to note that PTO has already given notice that it is vacating much of its Crystal City leased space starting this December. Also, it has entered almost 100 contracts in connection with its move to Alexandria, ranging from furniture and equipment purchases, to phone installations, to movers, to food service vendors – all premised on a move starting in early December. Indeed, for more than a year, PTO has intended and planned to move a considerable amount of new furniture and

equipment into Buildings C and E in October and November of this year; absent a CO, this furniture and equipment would have to be stored off-site. Similarly, a considerable amount of office space would have to be found, and paid for, if the CO were not issued and the employee move-in not allowed to occur in early December. These are not insignificant consequences. More important, perhaps, they are consequences to PTO that arise from an “SUP non-compliance” for which PTO was not and is not responsible.

Concourse Mitigation

Several additional mitigation items have been defined since the Council meeting on September 9.

CDC has submitted the first draft of a pedestrian and traffic evaluation of the Duke Street corridor. This study recommends transit and pedestrian improvements beyond those contained in the Traffic Management Plan (TMP) for Carlyle and the conditions of the SUP. These improvements include temporary shelters for shuttle users, alternate routes for the shuttle buses, temporary fencing along Duke between Dulaney and John Carlyle to prevent pedestrians from crossing Duke mid-block, and enhanced cross walks and pedestrian signage. Staff is currently evaluating the plan, will likely identify additional measures to be taken, and will work with CDC on the plan’s implementation prior to December 8.

CDC will provide a police presence at the intersection of Duke and Dulaney Streets during the morning and evening peak periods to provide traffic control at the intersection and to assist pedestrians. The City will provide a police presence at other nearby intersections if conditions require.

The shuttle service between the King Street Metro Station and the PTO campus will begin on December 8, not in early January. CDC will be conducting test runs of the shuttle prior to December 8 to determine the routing and the number of buses required to achieve the mandated five-minute headway. Based on the geographical distribution of PTO employees, City and PTO staff believe that the primary destination for transit riders will be the King Street station. However, this will be continuously evaluated and enhanced shuttle service to the Eisenhower station will be provided if and as needed.

CDC has begun work on public information and outreach on the concourse, both for residents and employees in Carlyle as well as the surrounding areas. City staff are working to schedule a community meeting to discuss the concourse construction, the PTO move-in and the mitigation efforts that will be in effect prior to the opening of the concourse. This meeting will be held in mid to late October.

Based on the selection of Corman Construction to construct the concourse, its experience in projects similar to the concourse and in working with WMATA, and its initial dealings with the City, staff believe that the June 30 deadline for opening the concourse is reasonable and doable, absent serious weather-related and similar circumstances. We also believe all the mitigation

measures that have been identified will offset many of the impacts flowing from the delayed concourse opening, and that the CO condition that limits monthly PTO employee parkers to 1,300 spaces will go far both in keeping current “transit using” employees from shifting to the automobile and in preventing additional PTO cars from traveling to the City due to the delayed opening.

For these reasons, I urge Council to adopt the recommendations set out at the beginning of this memorandum.

FISCAL IMPACT: None

ATTACHMENTS:

1. June 23, 2003, memorandum to Council
2. August 15, 2003, memorandum to Council
3. PTO Phasing Plan

STAFF: Richard J. Baier, Director, T&ES
Tom Culpepper, Deputy Director of Transportation, T&ES
Emily A. Baker, City Engineer, T&ES
Art Dahlberg, Director, Code Enforcement
Eileen Fogarty, Director, Planning and Zoning

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 23, 2003

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: PHILIP SUNDERLAND, CITY MANAGER

FROM: RICHARD J. BAIER, P.E., DIRECTOR
TRANSPORTATION & ENVIRONMENTAL SERVICES

SUBJECT: DUKE STREET CONCOURSE

On March 21, 2000, City Council approved an amendment to the Carlyle Special Use Permit condition that requires Carlyle Development Corporation (CDC) to construct a pedestrian tunnel, by December 31, 2003, under Duke Street from the west side of Dulany Street to the north side of the Duke Street right-of-way. The condition reads as follows:

A pedestrian tunnel under Duke Street from the west side of Dulany Street to the west side of Diagonal Road and related items shall be designed and constructed, or in the case of some related items reconstructed, by the applicant at its sole expense to the satisfaction of the Directors of T&ES and P&Z. The related items shall consist of adjoining sidewalks, medians and the plaza at the Crescent Park, as well as lighting, gates, signage, security features and a kiosk or similar structure. No construction north of Duke Street shall be required except the minimum necessary to connect with the north side of the Duke Street right-of-way. Construction of the tunnel shall be completed by December 31, 2003, unless the U.S. Patent and Trademark Office relocation to Carlyle does not proceed, in which case the construction of the tunnel shall be completed by a date to be determined by City Council. Upon completion of construction of the tunnel and acceptance of the tunnel by the City, the City shall assume full responsibility for the tunnel, including all maintenance and liability, except that CDC and its successors or assigns acceptable to the City shall be responsible, at its or their sole expense, for providing cleaning/custodial services for the tunnel and for the costs to provide security for the tunnel. The City Manager shall determine the type and extent of security to be provided in the tunnel. The City Manager shall also determine the hours of operation for the tunnel. Funds for tunnel security may come from the TMP account for Carlyle, to the extent such funds are not otherwise obligated under paragraph 2 of the TMP.

In August 2000, the Carlyle/PTO Task Force appointed a Traffic Subcommittee to evaluate the tunnel concept and make recommendations on architectural character and opportunities for public art to the Carlyle Design Review Board. The committee renamed the tunnel a concourse

to avoid the negative connotations associated with a below grade crossing. The Task Force informed CDC that it was anxious to meet with CDC's designers, as soon as they were selected.

In the summer of 2000, the City was informed by CDC that a traditional design-bid-build type of contractual arrangement was to be implemented for the concourse. This refers to a stand-alone design contract being issued for the architectural and engineering services. Then the plans that are developed under that contract are bid, and a separate construction contract is awarded.

The City was subsequently informed that CDC had decided to switch to a design-build type of contract. This refers to one contract being issued to a team including both design and construction services. In March 2001, City staff met with CDC to review constructibility issues and constraints that would be included in that contract. City staff expressed concern at that time that a contract had still not been awarded. Staff were given a schedule indicating that construction of the concourse would begin in February 2003 and be completed by November 2003. Following this meeting, staff was periodically reassured that the project was progressing.

In December 2001, City staff met with the designers selected by CDC and learned that CDC had reverted back to a design-only contract. Staff reviewed the project with the designers, and CDC was asked to make a presentation to the next meeting of the Task Force.

In January 2002, City staff met with WMATA staff to review the physical and regulatory constraints associated with constructing the concourse in close proximity to WMATA's existing infrastructure. In March 2002, CDC submitted preliminary plans to the City for review. Meetings were held between City staff and the CDC designers in April, May and June 2002 which involved coordination with WMATA and Dominion Virginia Power. This coordination is necessary because WMATA will be constructing the sidewalk connection for the City to meet the north side of the concourse and because CDC's contractors must receive approval from WMATA to work adjacent to the Metro tracks. In addition, Dominion Virginia Power owns an electrical duct bank which runs under Duke Street and provides the power for the King Street Metro Station. This duct bank currently lies within the alignment of the proposed concourse and must be relocated by CDC. LCOR was also involved in the coordination, as LCOR is required to provide intersection improvements on Duke Street in the vicinity of the concourse. At the May 2002 meeting, the City was given a schedule for construction which indicated that the final construction plans would be complete by mid-December 2002.

In June 2002, the Carlyle Design Review Board approved the concept and architectural character of the new plaza in the park in front of Time Life, the landscaping and the concourse. In October 2002, the Design Review Board accepted the material finish details for the concourse, including the wall design for future display of public art (by others).

In December 2002, City staff had another meeting with CDC's design team, WMATA and Dominion Virginia Power. In January 2003, CDC's designer submitted several alternatives for the duct bank relocation to Dominion Virginia Power for its review and approval. Staff had

several telephone conversations with CDC, WMATA and Dominion Virginia Power in order to assist and expedite the commencement of construction.

In February 2003, a site plan for the concourse was submitted to the City for review. City staff were notified that the plans were not 100% complete, but agreed to go ahead and begin reviewing them because staff was concerned about the schedule slippage.

On April 10, 2003, CDC sent a letter to the City stating that the schedule for construction of the concourse appeared to be in serious jeopardy. Staff met with CDC and its design team in May and June to resolve all outstanding CDC plan issues and identify ways to expedite the construction. In addition, interim pedestrian safety measures were also discussed for the period between the initial occupancy of PTO and the completion of the concourse.

CDC has committed to completing the concourse by June 30, 2004. CDC also has agreed to:

- Provide shuttle service from the King Street Metro Station to the PTO campus to achieve a five minute headway during the morning and evening peak periods. This will continue until the concourse opens.
- Construct bus shelters at the PTO campus to accommodate PTO employees using the shuttle.
- Provide physical barriers to channelize pedestrians crossing Duke Street to provide for safe crossing opportunities.
- Implement a public information program, including a brochure, to educate employees commuting to Carlyle about the status of the concourse, safe pedestrian routes, and the availability of the shuttle and transit subsidies.
- Provide traffic and pedestrian analysis of the Duke Street corridor to identify potential changes to signal timing to facilitate pedestrian crossings.
- Provide funding for a special City inspection process and an inspection to oversee the expedited construction schedule.
- Pay the City a penalty in the amount of \$5,000 per day in the event the concourse is not completed and accepted by the City by June 30, 2004.

A letter from Lloyd Clingenpeel of CDC outlining these commitments is attached.

Staff will monitor the revised schedule and interim mitigation measures, and will provide regular reports at Council meetings in the fall.

Attachment

cc: Michele Evans, Assistant City Manager
Eileen Fogarty, Director, Planning & Zoning
Arthur Dahlberg, Director, Code Enforcement
Emily Baker, P.E., City Engineer



CARLYLE

Carlyle Development Corporation
110 Franklin Road, S.E.
Roanoke, Virginia 24042-0059

June 18, 2003

Philip Sunderland
City Manager
City of Alexandria
Room 3500, City Hall 301 King Street
Alexandria, Virginia 22314

Re: Duke Street Pedestrian Concourse

Dear Mr. Sunderland:

As we discussed last week, the construction of the planned pedestrian concourse under Duke Street, required pursuant to condition 25 of the Carlyle Special Use Permit has been delayed and we do not expect that the facility will be completed by December 31, 2003. The delay has been caused by a variety of factors, some of which are beyond the control of Carlyle Development Corporation ("CDC"). Rather than focus on the reasons for the delay, we wish to work with the city to 1) accelerate the completion date as much as possible and 2) encourage transit usage by employees moving to Carlyle between January 1, 2004 and the completion of the pedestrian concourse. CDC has committed the funding for construction of the Duke Street Pedestrian Concourse and looks forward to working with the City toward completion as soon as possible. To accomplish these purposes, we agree to the following:

Acceleration of Construction Schedule:

1. CDC through coordination with the city staff has changed the sequence of construction to reduce the total completion time.
2. At the suggestion of city staff, CDC has agreed to use high early strength concrete that allows a faster curing period.
3. Final revisions of the construction plans by CDC's engineers will be submitted by July 15, 2003.
4. We expect final approval of the construction plans by the City no later than August 6, 2003.
5. CDC will issue its Request for Qualifications (RFQ) to potential contractors no later than June 27, 2003.
6. CDC will issue the Request for Proposals (RFP) for construction no later than July 17, 2003.
7. Provided responsive bids are received, the award of the construction contract will occur on September 15 with the issuance of the notice to proceed on September 16, 2003.

Marketing Office
1755 C Duke Street
Alexandria, VA 22314

tel (703)739-7600
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- 8. The construction contract will include a firm completion date with penalties for late delivery.
- 9. CDC will propose to the City a temporary closure (three to five weeks) of the southbound lanes of Diagonal Road approaching the intersection with Duke Street. Temporary use for construction equipment may shorten the construction schedule by as much as four weeks.
- 10. CDC will allow a "soft" opening of the concourse, permitting pedestrian use as soon as the structure is safe for passage, before the final decorative finishes are completed.
- 11. CDC will fund a position to provide special City inspections and oversight of the concourse construction process from the date construction of the concourse commences to the date of the concourse's "soft" opening (the date when CDC has completed its construction obligations necessary to permit safe passage for pedestrians).

Project and Construction Schedule

Based on implementation of the actions listed above by CDC and the City including the temporary closure of the southbound lanes of Diagonal Road, we project the following construction schedule for the Duke Street pedestrian concourse improvements required of Carlyle Development Corporation by condition 25 of the Carlyle Special Use Permit:

Award of Construction Contract:	September 15, 2003
Notice to Proceed:	September 16, 2003
Soft Opening for pedestrian traffic:	April 19, 2004
Restoration of normal traffic patterns on Duke Street:	May 1, 2004
Completion:	June 30, 2004

Maintenance of Pedestrian Access to and from the King Street Metro Station

- 1. CDC in cooperation with the Carlyle Community Council (CCC) (operator of the Carlyle TMI and existing transit shuttle) will provide a shuttle service between the King Street Metro Station and Buildings C and E of the USPTO campus. A plan for the size, number, frequency and route of additional shuttle buses will be submitted no later than October 1, 2003 to T&ES for review and approval. This plan will be reasonably designed to achieve five minute maximum peak period (both AM and PM) headways or such maximum headway as otherwise approved by the Director of T&ES. This additional shuttle service will commence in accordance with the approved plan no later than January 2, 2004. Following completion of CDC's obligation to construct the pedestrian concourse pursuant to condition 25, shuttle service shall be provided pursuant to the terms of the Carlyle TMI

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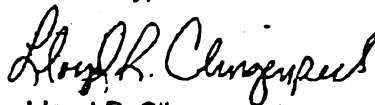
2. CDC has commenced and will continue regular coordination meetings with USPTO, LCC and T&ES.
3. CDC will construct a bus shelter or shelters on Dulany Street for USPTO employees using the proposed shuttle service. The number, design and location of the shelters will be determined by the Director of T&ES pursuant to condition 23 of Carlyle SUP. The shelters will be installed by January 2, 2004, provided timely approvals and design specifications are given by the City.
4. CDC will submit to T&ES for review and approval a plan for barriers or similar physical measures to channel pedestrians to the Duke Street surface pedestrian crossings along the Carlyle frontage no later than September 1, 2003. Provided the city approvals are granted in time, the required improvements will be installed by December 31, 2003.
5. LCCR has agreed to complete installation of the second pedestrian crossing at Duke and John Carlyle Street no later than November 1, 2003.
6. CDC will implement a public information program, including a brochure, to educate employees commuting to Carlyle (including USPTO employees) on the status of the pedestrian concourse, the availability of safe and convenient pedestrian routes to and from transit stations, and the availability of transit incentives through the Carlyle TMP by November 15, 2003. CDC will also provide temporary signs guiding pedestrians from the King Street Metro Station to the new USPTO buildings.
7. CDC will provide a study by a qualified transportation engineer to determine whether the existing pedestrian phases of traffic signals at Duke Street/ Dulany/ Diagonal and Duke Street/ John Carlyle are sufficient to accommodate the projected additional pedestrians coming to the USPTO offices during the period prior to completion of the pedestrian concourse.

Late Completion Penalty

CDC agrees to pay to the city a penalty in the amount of \$5,000 per day in the event the improvements required of the applicant pursuant to condition 25 of the Carlyle SUP are not completed by July 1, 2004. This penalty will not be imposed for each day of delay caused by *force majeure* or by unreasonable delay caused by the city, WMATA or other governmental agencies.

This agreement shall be contingent on the City not imposing any other fines or penalties nor withholding any permits or approvals in relation to development in Carlyle solely on the basis of the delay of completion of the pedestrian concourse by December 31, 2003.

Sincerely,



Lloyd R. Clingenpeel,
Senior Real Estate Manager

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Seen and Agreed:


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City of Alexandria, Virginia

MEMORANDUM

DATE: AUGUST 15, 2003

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER 

SUBJECT: DUKE STREET CONCOURSE

This memorandum (i) provides a brief update on the status of the Duke Street concourse, (ii) summarizes the additional mitigation measures and requirements that the party responsible for the concourse, the Carlyle Development Corporation, will undertake because of its failure to deliver the concourse by the end of this year, and (iii) addresses the question whether the City should prohibit the occupancy of any U.S. Patent and Trademark Office buildings until construction of the concourse has been completed.

On June 23, 2003, we forwarded a memorandum to the Mayor and Council that addressed the requirement in the Carlyle Special Use Permit for the construction of a concourse, or tunnel, which would run under Duke Street approximately between Dulany Street and Diagonal Road, that explained the history of this concourse project and the progress that had been and not been made, that relayed the notification given by the Carlyle Development Corporation (CDC) that the concourse would not be completed by the SUP due date of December 31, 2003, and that described the measures that CDC had committed to undertake regarding the construction of the concourse and measures to mitigate the impacts that may follow its delayed opening. A copy of that memorandum is attached.

Since that memorandum was prepared, CDC has submitted a revised set of concourse plans for review by City staff. Also, CDC is now distributing construction plans to contractors for bidding, and anticipates that a construction contract will be awarded on September 15, 2003. Under its current construction schedule, CDC intends to open the concourse to pedestrian traffic, as a "soft opening," in mid-April 2004. This "soft opening" will allow pedestrians to use the concourse, while additional finish work is being completed. CDC has committed to complete the concourse construction, so it is ready for City acceptance, by June 30, 2004.

Because CDC will not meet the December 31, 2003, concourse "due date," and because the U.S. Patent and Trademark Office (PTO) will start occupying the first building of its new campus at

the end of December 2003,¹ staff has required CDC to provide several mitigation measures and to meet several other requirements. CDC has agreed to provide these measures and to meet these requirements. They are as follows:

First, CDC will provide a special shuttle service, Monday through Friday, from the King Street Metro Station to the PTO campus. This shuttle service will be designed to achieve a five minute headway between shuttles during peak periods. This service will continue until the opening of the concourse; it will then be adjusted to comply with the requirements of the Carlyle Traffic Management Plan SUP.

Second, CDC will provide special bus shelters at the PTO campus to accommodate the PTO employees who use this five-minute-headway shuttle service.

Third, CDC will implement a public information program, including publication of a brochure, to educate PTO employees about transit opportunities, the availability of federally-provided transit subsidies, the five-minute-headway shuttle service, the status of the concourse construction, and safe pedestrian routes. This program will be start no later than the beginning of December 2003.

Fourth, CDC will perform a traffic and pedestrian analysis of the Duke Street corridor to identify changes to intersection signal timings and other measures that will need to be made to facilitate the substantial pedestrian crossings across Duke street which will occur prior to the opening of the concourse. Following the analysis, CDC will implement the identified changes and measures.

Fifth, in order to channel pedestrians crossing Duke Street and to provide for safe crossings, CDC will construct temporary physical barriers (of a size and appearance approved by the City) along Duke that will prevent pedestrians from crossing other than at appropriate locations. CDC will also provide necessary and appropriate signage and pavement markings as approved by the City. Most, if not all, of these measures will be removed once the concourse is open.

¹ PTO employees are scheduled to begin moving into the first two PTO buildings in early to mid-December 2003. Approximately 1,305 employees will occupy one building (located at the northeast corner of the campus), and 1,055 employees will occupy the other (just south of the first). Complete occupancy of these buildings is expected to occur by mid-February 2004, or about eight weeks before the anticipated "soft opening" of the concourse. The next phase for the occupancy of PTO buildings is scheduled to start in the fall of 2004.

In addition to the two office buildings, one of the two PTO garages (along the eastern side of the campus) will be completed in October 2003. This garage contains approximately 1,725 spaces. The other parking garage, along the western side of the campus, will be completed in July 2004.

Sixth, CDC will provide funding for a special City inspection process that will enable the City to have a permanent presence at the concourse construction site. This will allow the City to expedite the processing of permits, to answer questions and monitor construction, and generally to ensure that the construction remains on schedule.

Seventh, CDC will pay a penalty to the City in the amount of \$5,000 for each day after July 1, 2004, that the concourse remains not completed and not accepted by the City. (Also, CDC will include provisions in its concourse construction contract that require its contractor to pay financial penalties to it, CDC, for delays in the concourse construction.)

Some individuals have questioned whether the City should prohibit PTO from occupying any of its buildings until construction of the concourse under Duke Street has been completed, and whether such a prohibition is necessary to preserve the "integrity" of the SUP process.

Were PTO, or LCOR which is the party constructing the PTO campus and leasing the buildings to PTO, responsible for the construction of the concourse and the "holder" of the SUP concourse requirement, I would agree that consideration should be given to barring occupancy of the PTO buildings until the concourse is completed and accepted by the City. Here, however, it is an entirely different party, CDC, that is, in the first instance, responsible for the concourse construction and the "holder" of the SUP concourse requirement.

Practically all of the infrastructure requirements in the Carlyle SUP are imposed in the first instance on CDC, as the initial owner of the land in Carlyle and the original SUP applicant, and not on the actual developer of a particular block or parcel within Carlyle or the tenant who might occupy the developed space. In acquiring land in Carlyle and paying a purchase price to CDC, LCOR (and indirectly PTO) has in effect already paid for the construction -- indeed, for the timely construction -- by CDC of the concourse and other SUP-required infrastructure within and adjacent to the Carlyle community. In addition, since they lack any primary responsibility for the concourse construction, LCOR and PTO are not in any sense at fault in the delay of this construction. Thus, to now penalize LCOR and PTO for the failure of CDC to deliver the concourse on time would not be consistent with the structure of the Carlyle SUP, with the financial transactions already engaged in by LCOR and PTO, with the absence of any "fault" on the part of these parties, or with their reasonable reliance that CDC would meet its SUP obligations.

For these reasons, I do not believe it appropriate that the City prohibit PTO from occupying any of its buildings until the concourse under Duke Street is completed; nor, importantly, do I believe that such a prohibition is necessary to preserve the "integrity" of the Carlyle SUP or, more generally, of the City's SUP process.

We would be pleased to answer any questions you may have regarding this subject. If you have any, please give me or Rich Baier a call.

Attachment


cc: Richard J. Baier, Director, T&ES
Tom Culpepper, Deputy Director of T&ES
Emily Baker, City Engineer
Arthur Dahlberg, Director, Code Enforcement
Eileen Fogarty, Director, Planning & Zoning

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 23, 2003

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: PHILIP SUNDERLAND, CITY MANAGER 

FROM: RICHARD J. BAIER, P.E., DIRECTOR
TRANSPORTATION & ENVIRONMENTAL SERVICES

SUBJECT: DUKE STREET CONCOURSE

On March 21, 2000, City Council approved an amendment to the Carlyle Special Use Permit condition that requires Carlyle Development Corporation (CDC) to construct a pedestrian tunnel, by December 31, 2003, under Duke Street from the west side of Dulany Street to the north side of the Duke Street right-of-way. The condition reads as follows:

A pedestrian tunnel under Duke Street from the west side of Dulany Street to the west side of Diagonal Road and related items shall be designed and constructed, or in the case of some related items reconstructed, by the applicant at its sole expense to the satisfaction of the Directors of T&ES and P&Z. The related items shall consist of adjoining sidewalks, medians and the plaza at the Crescent Park, as well as lighting, gates, signage, security features and a kiosk or similar structure. No construction north of Duke Street shall be required except the minimum necessary to connect with the north side of the Duke Street right-of-way. Construction of the tunnel shall be completed by December 31, 2003, unless the U.S. Patent and Trademark Office relocation to Carlyle does not proceed, in which case the construction of the tunnel shall be completed by a date to be determined by City Council. Upon completion of construction of the tunnel and acceptance of the tunnel by the City, the City shall assume full responsibility for the tunnel, including all maintenance and liability, except that CDC and its successors or assigns acceptable to the City shall be responsible, at its or their sole expense, for providing cleaning/custodial services for the tunnel and for the costs to provide security for the tunnel. The City Manager shall determine the type and extent of security to be provided in the tunnel. The City Manager shall also determine the hours of operation for the tunnel. Funds for tunnel security may come from the TMP account for Carlyle, to the extent such funds are not otherwise obligated under paragraph 2 of the TMP.

In August 2000, the Carlyle/PTO Task Force appointed a Traffic Subcommittee to evaluate the tunnel concept and make recommendations on architectural character and opportunities for public art to the Carlyle Design Review Board. The committee renamed the tunnel a concourse

to avoid the negative connotations associated with a below grade crossing. The Task Force informed CDC that it was anxious to meet with CDC's designers, as soon as they were selected.

In the summer of 2000, the City was informed by CDC that a traditional design-bid-build type of contractual arrangement was to be implemented for the concourse. This refers to a stand-alone design contract being issued for the architectural and engineering services. Then the plans that are developed under that contract are bid, and a separate construction contract is awarded.

The City was subsequently informed that CDC had decided to switch to a design-build type of contract. This refers to one contract being issued to a team including both design and construction services. In March 2001, City staff met with CDC to review constructibility issues and constraints that would be included in that contract. City staff expressed concern at that time that a contract had still not been awarded. Staff were given a schedule indicating that construction of the concourse would begin in February 2003 and be completed by November 2003. Following this meeting, staff was periodically reassured that the project was progressing.

In December 2001, City staff met with the designers selected by CDC and learned that CDC had reverted back to a design-only contract. Staff reviewed the project with the designers, and CDC was asked to make a presentation to the next meeting of the Task Force.

In January 2002, City staff met with WMATA staff to review the physical and regulatory constraints associated with constructing the concourse in close proximity to WMATA's existing infrastructure. In March 2002, CDC submitted preliminary plans to the City for review. Meetings were held between City staff and the CDC designers in April, May and June 2002 which involved coordination with WMATA and Dominion Virginia Power. This coordination is necessary because WMATA will be constructing the sidewalk connection for the City to meet the north side of the concourse and because CDC's contractors must receive approval from WMATA to work adjacent to the Metro tracks. In addition, Dominion Virginia Power owns an electrical duct bank which runs under Duke Street and provides the power for the King Street Metro Station. This duct bank currently lies within the alignment of the proposed concourse and must be relocated by CDC. LCOR was also involved in the coordination, as LCOR is required to provide intersection improvements on Duke Street in the vicinity of the concourse. At the May 2002 meeting, the City was given a schedule for construction which indicated that the final construction plans would be complete by mid-December 2002.

In June 2002, the Carlyle Design Review Board approved the concept and architectural character of the new plaza in the park in front of Time Life, the landscaping and the concourse. In October 2002, the Design Review Board accepted the material finish details for the concourse, including the wall design for future display of public art (by others).

In December 2002, City staff had another meeting with CDC's design team, WMATA and Dominion Virginia Power. In January 2003, CDC's designer submitted several alternatives for the duct bank relocation to Dominion Virginia Power for its review and approval. Staff had

several telephone conversations with CDC, WMATA and Dominion Virginia Power in order to assist and expedite the commencement of construction.

In February 2003, a site plan for the concourse was submitted to the City for review. City staff were notified that the plans were not 100% complete, but agreed to go ahead and begin reviewing them because staff was concerned about the schedule slippage.

On April 10, 2003, CDC sent a letter to the City stating that the schedule for construction of the concourse appeared to be in serious jeopardy. Staff met with CDC and its design team in May and June to resolve all outstanding CDC plan issues and identify ways to expedite the construction. In addition, interim pedestrian safety measures were also discussed for the period between the initial occupancy of PTO and the completion of the concourse.

CDC has committed to completing the concourse by June 30, 2004. CDC also has agreed to:

- Provide shuttle service from the King Street Metro Station to the PTO campus to achieve a five minute headway during the morning and evening peak periods. This will continue until the concourse opens.
- Construct bus shelters at the PTO campus to accommodate PTO employees using the shuttle.
- Provide physical barriers to channelize pedestrians crossing Duke Street to provide for safe crossing opportunities.
- Implement a public information program, including a brochure, to educate employees commuting to Carlyle about the status of the concourse, safe pedestrian routes, and the availability of the shuttle and transit subsidies.
- Provide traffic and pedestrian analysis of the Duke Street corridor to identify potential changes to signal timing to facilitate pedestrian crossings.
- Provide funding for a special City inspection process and an inspection to oversee the expedited construction schedule.
- Pay the City a penalty in the amount of \$5,000 per day in the event the concourse is not completed and accepted by the City by June 30, 2004.

A letter from Lloyd Clingenpeel of CDC outlining these commitments is attached.

Staff will monitor the revised schedule and interim mitigation measures, and will provide regular reports at Council meetings in the fall.

Attachment

cc: Michele Evans, Assistant City Manager
Eileen Fogarty, Director, Planning & Zoning
Arthur Dahlberg, Director, Code Enforcement
Emily Baker, P.E., City Engineer



CARLYLE

Carlyle Development Corporation
110 Franklin Road, S.E.
Roanoke, Virginia 24042-0059

June 18, 2003

Philip Sunderland
City Manager
City of Alexandria
Room 3500, City Hall 301 King Street
Alexandria, Virginia 22314

Re: Duke Street Pedestrian Concourse

Dear Mr. Sunderland:

As we discussed last week, the construction of the planned pedestrian concourse under Duke Street required pursuant to condition 25 of the Carlyle Special Use Permit has been delayed and we do not expect that the facility will be completed by December 31, 2003. The delay has been caused by a variety of factors, some of which are beyond the control of Carlyle Development Corporation ("CDC"). Rather than focus on the reasons for the delay, we wish to work with the city to 1) accelerate the completion date as much as possible and 2) encourage transit usage by employees moving to Carlyle between January 1, 2004 and the completion of the pedestrian concourse. CDC has committed the funding for construction of the Duke Street Pedestrian Concourse and looks forward to working with the City toward completion as soon as possible. To accomplish these purposes, we agree to the following:

Acceleration of Construction Schedule:

1. CDC through coordination with the city staff has changed the sequence of construction to reduce the total completion time.
2. At the suggestion of city staff, CDC has agreed to use high early strength concrete that allows a faster curing period.
3. Final revisions of the construction plans by CDC's engineers will be submitted by July 15, 2003.
4. We expect final approval of the construction plans by the City no later than August 6, 2003.
5. CDC will issue its Request for Qualifications (RFQ) to potential contractors no later than June 27, 2003.
6. CDC will issue the Request for Proposals (RFP) for construction no later than July 17, 2003.
7. Provided responsive bids are received, the award of the construction contract will occur on September 15 with the issuance of the notice to proceed on September 16, 2003.

Marketing Office
1755 C Duke Street
Alexandria, VA 22314

tel (703)739-7600
fax (703)836-5570

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June 18, 2003
Page 2

- 8. The construction contract will include a firm completion date with penalties for late delivery.
- 9. CDC will propose to the City a temporary closure (three to five weeks) of the southbound lanes of Diagonal Road approaching the intersection with Duke Street. Temporary use for construction equipment may shorten the construction schedule by as much as four weeks.
- 10. CDC will allow a "soft" opening of the concourse, permitting pedestrian use as soon as the structure is safe for passage, before the final decorative finishes are completed.
- 11. CDC will fund a position to provide special City inspections and oversight of the concourse construction process from the date construction of the concourse commences to the date of the concourse's "soft" opening (the date when CDC has completed its construction obligations necessary to permit safe passage for pedestrians).

Project Construction Schedule

Based on implementation of the actions listed above by CDC and the City including the temporary closure of the southbound lanes of Diagonal Road, we project the following construction schedule for the Duke Street pedestrian concourse improvements required of Carlyle Development Corporation by condition 25 of the Carlyle Special Use Permit:

Award of Construction Contract:	September 15, 2003
Notice to Proceed:	September 16, 2003
Soft Opening for pedestrian traffic:	April 19, 2004
Restoration of normal traffic patterns on Duke Street:	May 1, 2004
Completion:	June 30, 2004

Maintenance of Pedestrian Access to and from the King Street Metro Station

- 1. CDC in cooperation with the Carlyle Community Council (CCC) (operator of the Carlyle TMI and existing transit shuttle) will provide a shuttle service between the King Street Metro Station and Buildings C and E of the USPTO campus. A plan for the size, number, frequency and route of additional shuttle buses will be submitted no later than October 1, 2003 to T&ES for review and approval. This plan will be reasonably designed to achieve five minute maximum peak period (both AM and PM) headways or such maximum headway as otherwise approved by the Director of T&ES. This additional shuttle service will commence in accordance with the approved plan no later than January 2, 2004. Following completion of CDC's obligation to construct the pedestrian concourse pursuant to condition 25, shuttle service shall be provided pursuant to the terms of the Carlyle TMI

June 18, 2003
Page 3

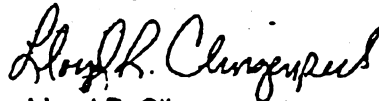
2. CDC has commenced and will continue regular coordination meetings with USPTO, LCC and T&ES.
3. CDC will construct a bus shelter or shelters on Dulany Street for USPTO employees using the proposed shuttle service. The number, design and location of the shelters will be determined by the Director of T&ES pursuant to condition 23 of Carlyle SUP. The shelters will be installed by January 2, 2004, provided timely approvals and design specifications are given by the City.
4. CDC will submit to T&ES for review and approval a plan for barriers or similar physical measures to channel pedestrians to the Duke Street surface pedestrian crossings along the Carlyle frontage no later than September 1, 2003. Provided the city approvals are granted in time, the required improvements will be installed by December 31, 2003.
5. LCC has agreed to complete installation of the second pedestrian crossing at Duke and John Carlyle Street no later than November 1, 2003.
6. CDC will implement a public information program, including a brochure, to educate employees commuting to Carlyle (including USPTO employees) on the status of the pedestrian concourse, the availability of safe and convenient pedestrian routes to and from transit stations, and the availability of transit incentives through the Carlyle TMP by November 15, 2003. CDC will also provide temporary signs guiding pedestrians from the King Street Metro Station to the new USPTO buildings.
7. CDC will provide a study by a qualified transportation engineer to determine whether the existing pedestrian phases of traffic signals at Duke Street/ Dulany/ Diagonal and Duke Street/ John Carlyle are sufficient to accommodate the projected additional pedestrians coming to the USPTO offices during the period prior to completion of the pedestrian concourse.

Late Completion Penalty

CDC agrees to pay to the city a penalty in the amount of \$5,000 per day in the event the improvements required of the applicant pursuant to condition 25 of the Carlyle SUP are not completed by July 1, 2004. This penalty will not be imposed for each day of delay caused by force majeure or by unreasonable delay caused by the city, WMATA or other governmental agencies.

This agreement shall be contingent on the City not imposing any other fines or penalties nor withholding any permits or approvals in relation to development in Carlyle solely on the basis of the delay of completion of the pedestrian concourse by December 31, 2003.

Sincerely,



Lloyd R. Clingenpeel,
Senior Real Estate Manager

June 18, 2003
Page 4

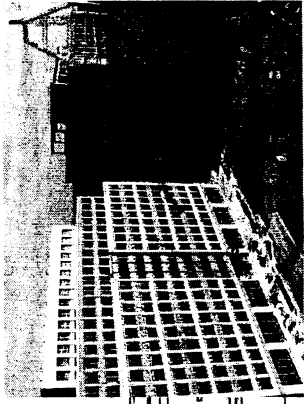
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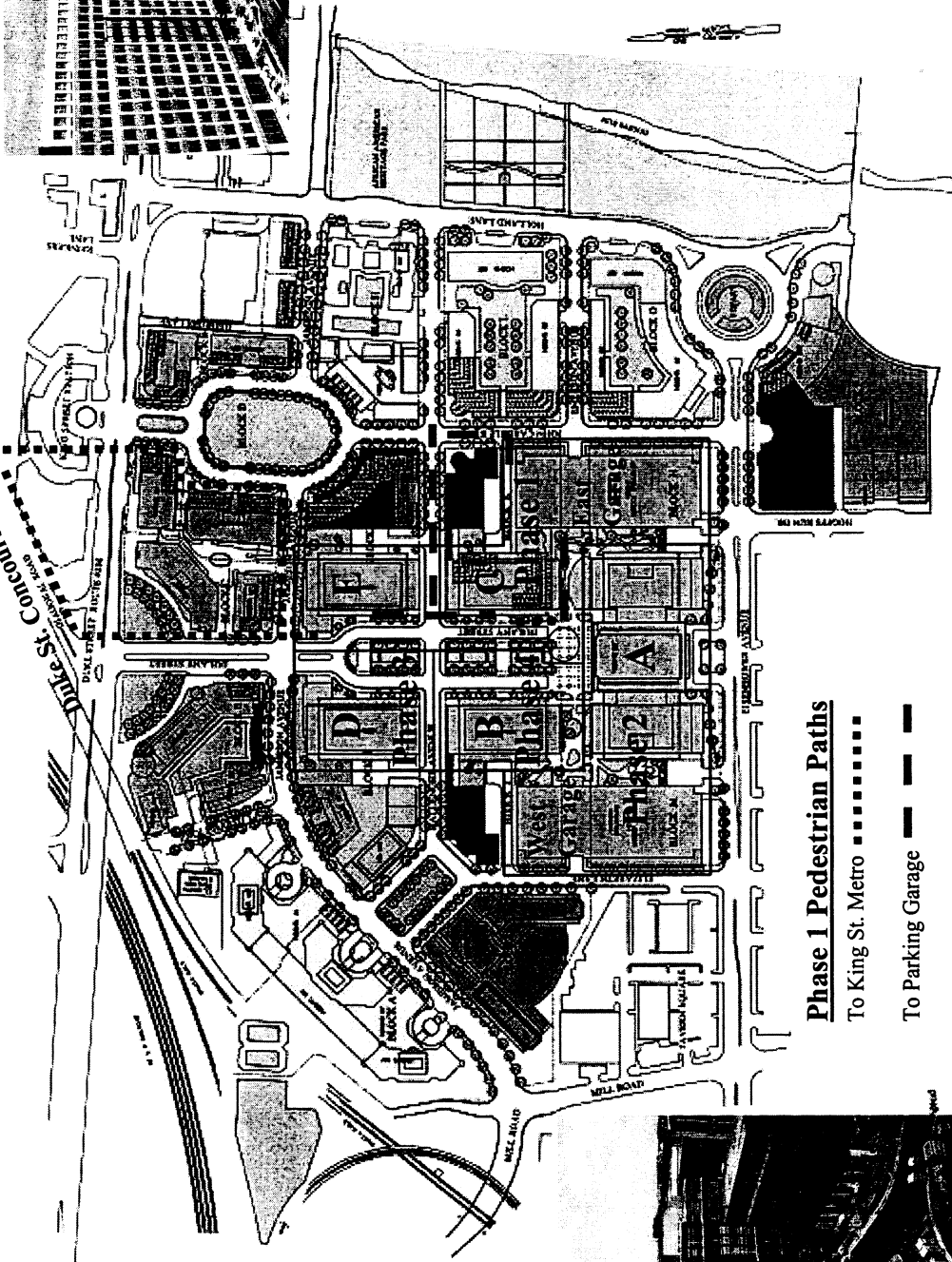
PTO Phasing Plan

King St. Metro

Dulany St. Concourse



Dulany St. looking south at turnaround



Phase 1 Pedestrian Paths

To King St. Metro

To Parking Garage



Dulany St. looking north to Metro

delivered 9/22/03

20
9-23-03



Ginny Hines Parry
<ghparry@fortebrio.com>

09/19/2003 08:02 PM

To: "William D. Euille" <wmeuille@wdeuille.com>, Del Pepper <delpepper@aol.com>, Joyce Woodson <council@joycewoodson.net>, Paul Smedberg <SmedbergPC@aol.com>, Rob Krupicka <KROBK@aol.com>, Andrew Macdonald <MacdonaldCouncil@msn.com>, Ludwig Gaines <ludgaines@aol.com>
cc: <jackie.henderson@ci.alexandria.va.us>
Subject: September 23, 2003, Docket Item #20: PTO Pedestrian Concourse

September 19, 2003

The Honorable Mayor and Members of City Council
Room 2800
City Hall
314 King Street
Alexandria, VA 22314

RE: Docket Item #20, September 23, 2003 Regular City Council Meeting

Dear Mayor and City Councilmembers,

Alexandrians for Sensible Growth (ASG) wishes to commend Mayor William Euille for directing the City Manager at the September 9, 2003 City Council meeting not to issue the certificate of occupancy (CO) for the Patent and Trademark Office (PTO) until the Council has further reviewed the issue of the delayed completion of the pedestrian tunnel. ASG also commends the entire City Council for their rigorous, serious, and thoughtful discussion during the work session. The developer's failure to complete the tunnel by the expressed deadline of December 31, 2003 is a very serious matter and warrants the close scrutiny of the Council.

ASG is writing to urge the Mayor and City Council to continue to withhold the CO until the pedestrian tunnel is completed. Significantly, this was the recommendation of then-Director of Planning Sheldon Lynn in a memo written to the Planning Commission on February 1, 2000 and later transmitted to the City Council. Lynn states on page 35 of the memo:

'The City's transportation consultant and City staff have determined that a pedestrian tunnel under Duke Street at the Dulany/Diagonal intersection is necessary to accommodate the substantial pedestrian traffic accessing the Metrorail Station from Carlyle....Since the need for this improvement has now been established, staff is now specifically recommending that it be required to be built, and that it be in place prior to the release of certificates of occupancy for the PTO.'

Clearly, the city regards the pedestrian tunnel as transportation infrastructure critical to the PTO project. Much of City Council's basis for approving PTO was premised on the representation that 45% of the 7,100 PTO workers would use public transportation. Requiring that Carlyle Development Corporation (CDC) complete the tunnel by a specific date -- December 31, 2003 -- is further proof of the city's commitment that the tunnel be operational prior to the PTO opening.

The safety and well being of PTO employees and visitors crossing Duke Street was a legitimate concern in 1990 and is still true today. It is imperative that the tunnel be completed before any PTO employees move into the new buildings to ensure their safety. Moreover, adding hundreds and possibly thousands of pedestrians to Duke Street during the morning and

evening rush hours further compromises an already overcongested thoroughfare. The pedestrian tunnel will encourage Metrorail use and improve vehicular flow on Duke Street.

All parties, including CDC, the city, PTO, LCOR, the General Services Administration and Norfolk Southern, have been well aware of the need, as well as the requirement, for this pedestrian tunnel for at least 3 and 1/2 years. The City was also aware of the developer's reluctance to build the tunnel in 2000. On page 30 of the February 1, 2000 memo, Lynn states that the developer 'strongly prefers to simply provide enhanced crosswalks at Duke Street.'

Page 32 of Lynn's memo also indicates the developer's reluctance to pay for the tunnel. To provide further incentives, the developer was allowed 70,000 square feet of more buildable space and was released from a previous requirement to construct a 145-unit subsidized elderly housing building. These incentives were estimated in 2000 to be worth over \$3.5 million. Given these indicators, the city should have been more vigilant in its oversight of this SUP requirement.

The critical need, as well as the expectations, for completing the pedestrian tunnel prior to the opening of PTO are well documented. City Council should remain vigilant and stand by the original staff recommendation to withhold the certificate of occupancy until the pedestrian tunnel is finished.

Sincerely,

Ginny Hines Parry, President
Alexandrians for Sensible Growth
317 Skyhill Road
Alexandria, VA 22314
703-212-0982
ghparry@fortebrio.com

delivered 9/22/03 20
9-23-03



Ginny Hines Parry
<ghparry@fortebrio.com>
>

09/22/2003 11:51 AM

To: "William D. Euille" <wmeuille@wdeuille.com>, Del Pepper
<delpepper@aol.com>, Joyce Woodson
<council@joycewoodson.net>, Paul Smedberg
<SmedbergPC@aol.com>, Rob Krupicka <KROBK@aol.com>,
Andrew Macdonald <MacdonaldCouncil@msn.com>, Ludwig Gaines
<ludgaines@aol.com>
cc: <jackie.henderson@ci.alexandria.va.us>
Subject: Docket Item #20, September 23, 2003 Regular City Council Meeting

September 22, 2003

The Honorable Mayor and Members of City Council
Room 2300
City Hall
301 King Street
Alexandria, VA 22314

RE: Docket Item #20, September 23, 2003 Regular City Council Meeting

Dear Mayor and City Council Members,

There is an incorrect reference to the PTO in the first sentence of the fifth paragraph in the letter from Alexandrians for Sensible Growth which was emailed to you on September 19, 2003. The sentence should have read: "The safety and well being of *Carlyle-area* employees and visitors crossing Duke Street was a legitimate concern in 1990 and is still true today."

The initial 1990 special use permit for the Carlyle development required that a pedestrian "grade-separated crossing" be built and paid for by the developer when directed to do so by the City to serve pedestrians using the King Street Metro Station. For over twelve years the developer has been on notice that eventually it could be required to build it. Specifically, for over three years, the developer has been on notice that a tunnel must be completed by December 31, 2003.

The current City Council should uphold the decisions made by the Planning Commission and City Council in 1990 and 2000. The Planning Commission and the City Council, by adopting in March 2000 Condition #25 in the SUP, made a commitment to PTO employees, PTO and GSA, and to the residents of Alexandria that the tunnel would be completed before PTO opened. Now--at the eleventh hour-- is not the time to renege on that commitment. Nor should any major changes to the SUP be made without following well established procedures for amending an SUP, or without the benefit of the Planning Commission's input and a public hearing to inform the Council's decision.

Many thanks for your attention to this matter.

Sincerely,

Ginny Hines Parry, President
Alexandrians for Sensible Growth
317 Skyhill Road
Alexandria, VA 22314
703-212-0982
ghparry@fortebrio.com

delivered 9/22/03

20

9-23-03



J Bennett
<jb900@yahoo.com>

09/22/2003 04:26 PM

To: Bill Euille <alexvamayor@aol.com>, Ludwig Gaines
<ludwig@gainwithgaines.com>, Rob Krupicka <rob@krupicka.com>,
Andrew Macdonald <macdonaldcouncil@msn.com>, Del Pepper
<delpepper@aol.com>, Paul Smedberg <smedbergpc@aol.com>,
Joyce Woodson <council@joycewoodson.net>
cc: Phil Sunderland <phil.sunderland@ci.alexandria.va.us>, Jackie
Henderson <jackie.henderson@ci.alexandria.va.us>
Subject: Concourse/Tunnel

Dear Mayor and City Council,

I watched the work session on the above and also read the staff report. While all are disappointed that the concourse will not open at the time planned originally, I do not see that its delayed completion is a catastrophe, nor do I think it wise to delay opening the PTO.

With the interim steps being required of the responsible party, plus the relatively small volume of PTO users before June 30, I think that the situation will work out just fine. Consider that before June 30, the number of PTO employees using the King Street Metro station during rush hours will be about 1,000 for the am and the same in the pm. Further consider that they will arrive and depart over a two hour period. By my calculations that averages to about fifty people on each train (assumes 20 trains during the two period). That number can easily be accommodated by the shuttle service or just walking across the street.

We do need to carefully monitor the period before June 30 to learn what problems might appear relating to pedestrian and auto traffic, so that the City can take mitigation steps before the other phases open, and to assist further with planning for East and West Eisenhower Valleys.

Joe Bennett

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<http://sitebuilder.yahoo.com>

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9-23-03



"Newbould, Peter"
<pnewbould@apa.org>

09/23/2003 05:16 PM

To: "Andrew Macdonald (E-mail)" <AHMacdonald@his.com>, "Euille, Hon. Bill" <wmeuille@wdeuille.com>, "Jackie Henderson (E-mail)" <jackie.henderson@ci.alexandria.va.us>, "Ludwig Gaines (E-mail)" <ludwig@gainwithgaines.com>, "Paul Smedberg (E-mail)" <campaign@paulsmedberg.org>, "Pepper, Hon. Del" <delpepper@aol.com>, "Rob Krupicka (E-mail)" <rob@krupicka.com>, "Woodson, Hon. Joyce" <council@joycewoodson.net>

cc:

Subject: Duke Street Concourse

Please keep the pressure on Carlisle Development Corp. to complete the pedestrian concourse ASAP, and consistent with the design recommendations of the Task Force on Carlyle/PTO.

FYI, here's the letter that I sent to Council on this subject on June 9.

<<TRCA concourse ltr.doc>>

Peter Newbould
President, Taylor Run Citizens Association
202-336-5889 (o)



TRCA concourse ltr.doc

Taylor Run Citizens Association

<http://taylor-run.alexandria.va.us/> P.O. Box 16321, Alexandria, VA 22302

June 9, 2003

Alexandria City Council
City Hall

Dear Mr. Mayor and Councilors:

I am writing to express the opposition of the Taylor Run Citizens Association to any suggestion that Norfolk Southern be given a waiver of the Special Use Permit condition that a Duke Street pedestrian underpass be completed by December 31, 2003, prior to the opening of the Patent and Trademark Office buildings.

We urge that the City compel LCOR to spend what may be necessary in order to expedite the construction of the pedestrian "concourse." This essential feature of the PTO project was discussed extensively over several years in the Ad Hoc Task Force on Carlyle/PTO, of which I was the member representing Taylor Run. All parties have had more than sufficient time to plan prior to construction. After delaying submitting design plans to the City the developer now asserts the difficulty of relocating water, gas, sewer and electrical lines in the area to be excavated. My teenage daughters might well respond, "Well, duh."

The perils of opening PTO buildings without completion of the concourse are several. After having encouraged the PTO management to have their employees use Metro to and from work it would be most unfortunate to lose one or more attempting to cross the Duke Street traffic. Ridership patterns will likely be established early. And continued delay on concourse construction will inevitably lead to proposals to cut back on design features that were carefully considered to make the concourse safe and esthetically pleasant to use.

We urge the Council to act on this matter expeditiously.

Sincerely,

Peter Newbould
President

Peter Newbould, 2003 President, 506 Robinson Court, Alexandria, VA 22302
703-548-6517 pnewbould@apa.org

20
9-23-03



<SHAssociation@aol.com>

09/23/2003 02:34 PM

To: <jackie.henderson@ci.alexandria.va.us>

cc:

Subject: Please include in tonight's Council docket!!

TO: City Clerk

Please include the letter in tonight's package to Council because it relates to Item #20 on the docket for the September 23, 2003 Regular City Council meeting.

Mayor and City Council
City Hall
Alexandria, VA

Re: PTO Pedestrian Tunnel SUP Requirements

Dear Mayor and City Council:

At its September 16, 2003 meeting, Seminary Hill Association, Inc. (SHA) discussed the Duke Street pedestrian tunnel, and the failure of the Carlyle Development Corporation (CDC) to meet the SUP requirement to build the tunnel before the Patent and Trademark Office (PTO) complex is occupied. SHA strongly urges the City Council to take both disciplinary and remedial actions in accordance with the terms of the Special Use Permit and as allowed by law. Specifically, SHA believes that withholding the certificate of occupancy until the tunnel is at least functional is appropriate under the circumstances.

We are very concerned with the significant delay on the construction of the PTO pedestrian tunnel under Duke Street, the City Manager's August 15, 2003, and September 22, 2003, memoranda and the proposed response. At the outset, the tunnel is scheduled to be Docket Item #20 on tonight's agenda. The City Manager provided Council with one day's notice to review his memorandum, which includes a request that Council decide against directing withholding of the CO and approval of a mitigation plan that raises many questions and has several significant weaknesses.

This is an important matter because the PTO SUP was approved in March 2000 based, in large part, on the construction of that tunnel to facilitate the use of public transportation. Importantly, the City recommended in at least two places in connection with approving the SUP that the CO should not be issued until completion of the tunnel. There has been little or no progress on the tunnel in three and a half years. As you know, many civic associations and other organizations have requested that the certificate of occupancy be delayed until the tunnel is complete primarily for health, safety, and traffic and congestion concerns, as well as credibility of the City. We have the following concerns with the issue as presented to Council tonight and the proposed response:

1. The issue here is that there has been a material breach of the SUP requirements, and what enforcement and accountability options are available to respond. We suggest withholding the CO. In both the August 15 and September 22 memoranda, the City Manager dismisses the possibility of withholding the occupancy permit because, in his legal judgment, PTO and LCOR are not legally responsible for the delay. This conclusion is not only

legally suspect, it is also inappropriate to base a decision on our view of the contractual relationship between GSA, PTO, LCOR and CDC. Which party is legally liable for the delay is a matter among the parties to the contract and provides no basis (one way or the other) for the City to reach its decision. The question is whether and how to hold CDC accountable for failure to meet a key term in the SUP. We believe that withholding the permit is not only appropriate but sends an important message that the City will enforce the plain terms of its SUPs and that parties to a SUP will be held responsible to its requirements. If that leads to GSA, PTO or LCOR having a cause of action against CDC, that is between them. Moreover, by inappropriately interjecting ourselves into a potential contractual dispute, we may also expose ourselves to potential liability if and when that dispute lands in court. In this instance, CDC is essentially alleging a "differing site condition," a well-known legal defense in federal government contracts. We should not be in the middle of this contractual dispute or let it affect our judgment. Moreover, any failure of CDC to meet its schedule is a matter governed by the contract between the parties, which includes remedies available. The City Manager provides no explanation of why the City of Alexandria and its citizens should "bail out" a contractor who failed to meet its responsibilities.

2. The proposed mitigation plan significantly amends a material term of arguably the most important SUP in the history of the City. An amendment of this magnitude and import should be required to go through the normal process with public notification and input. In this regard, the City Manager requests that City Council make a decision during a legislative session to exclude any public input into the decision. We believe a matter of this public and policy importance deserves an airing. The suggestion that the staff hold "community meetings" after the fact is inadequate to provide for a fair hearing. Our experience has been that these "after the fact" community meetings are ineffective and do not allow for the meaningful discussion and input that the normal process provides.

3. The proposed mitigation plan has significant weaknesses and raises many questions that require careful review. The mitigation calls for closing at least part of Callahan Drive, an important road between Duke and King. Moreover, while the City Manager touts the PTO's encouragement of public transportation, each program cited in the September 22, 2003 memorandum is nothing more than garden-variety programs available at any federal agency. In short, PTO offers nothing that it is not already required by law to do. Moreover, we knew of many of these measures at the time the SUP was approved, meaning that the City concluded that a tunnel is necessary even though the same inducements to take public transportation existed when it approved the SUP. Significantly, no mention is made of telecommuting, a federal policy many federal agencies have pursued to ease congestion and commuting burdens. These significant matters are exactly the reason why it is important to understand the nature and scope of the proposal and have public notification and input.

4. The standard that should be applied in this instance is what is in the best interests of the City of Alexandria and its citizens. In that regard, the City Manager's recommendations focus exclusively upon what is in the best interests of PTO, LCOR, CDC, GSA and other organizational entities. These are large organizations capable of protecting and advancing their own interests. Noticeably absent is any discussion or reference to the best interests of the City of Alexandria, nor is there any discussion of why the City should reverse its March 2000 decision to withhold the CO until completion of the tunnel. The City's focus should be on whether waiving a material term of an important SUP without the benefit of public notification

and hearing and without fully understanding the impacts to health, safety and congestion is inappropriate and contrary to law and policy.

For the above reasons, SHA requests that you direct the City Manager to withhold the CO, and provide the community with a full and fair opportunity to review the impacts of this amendment to the SUP and potential disciplinary and remediation actions.

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