

*City of Alexandria, Virginia***MEMORANDUM**

DATE: JANUARY 26, 2009

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: FAROLL HAMER, DIRECTOR  
DEPARTMENT OF PLANNING AND ZONING

THROUGH: JAMES K. HARTMANN, CITY MANAGER

SUBJECT: CITY COUNCIL'S PUBLIC HEARING FOR DOCKET ITEM 7  
ON JANUARY 24, 2009 (POTOMAC YARD TOWN CENTER,  
LANDBAY G)

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**ISSUE:** An error occurred during the Council's public hearing for Docket Item 7, the Town Center at Potomac Yard (Landbay G), on January 24, 2009. The staff did not establish a correct record concerning their position regarding the Planning Commission's condition requiring an agreement between the City and the developer establishing the public's right to speech, demonstration and assembly (the same as they are entitled to in Market Square) in the main plaza.

**RECOMMENDATION:** Rectify this error by either:

- 1) Considering a motion to amend Term 13 of Docket Item 7 as previously adopted by Council; or
- 2) Directing staff to submit a letter or report correcting the record and discussing the options going forward given the precedent-setting nature of this subject.

**BACKGROUND:**

*A. January 24<sup>th</sup> Hearing*

The purpose of this memo is to rectify an error that occurred during the Council's public hearing of January 24, 2009. For Docket Item No. 7, the Town Center at Potomac Yard

(Landbay G), staff was asked at the beginning of the hearing if we agreed to the applicant's revised conditions as presented in their letter of January 23, 2009. The staff inadvertently indicated that they agreed with all aspects of the letter (there were numerous conditions, all of which, with the exception of this one, we agreed to), and in doing so neglected to point out that one of the applicant's revisions eliminated a condition that was added and unanimously adopted by the Planning Commission at their hearing on January 6, 2009.

The condition is as follows:

**13. (CONDITION AMENDED BY THE PLANNING COMMISSION)** The applicant shall provide a perpetual public access easement(s) for the Town Center Green, the Galleria, the Mews, the expanded Fire Station open space and all other open space areas, excluding the courtyards and rooftop decks for each block. The perpetual open space easement(s) shall enable the open space areas to be to fully accessible to the public for hours and guidelines approved by the Directors of RP&CA and P&Z in consultation with the Applicant. The applicant shall enter into an agreement with respect to the Town Center Green which shall be binding on its successors as well as itself, prepared by the City Attorney and counsel for the applicant, then recorded, granting to the public the same rights to speech, demonstration, and assembly that the public is entitled to at Market Square of City Hall. The easements shall include provisions to close portions of the open space for repair and maintenance, and for periodic closure of the one-way street adjacent to the Town Center Green from vehicular traffic.

Staff in no way intended to represent that we agreed with the applicant to eliminate this condition. As a threshold matter, Since staff also serves as staff to the Planning Commission, so we are obligated to support the plan as adopted by that body. Secondly, this condition is a very important one both for this project and for other major projects going forward. The activities allowed in a public space that is part of a new mixed-use community in so far as speech, demonstration and assembly are concerned is of utmost importance to the City of Alexandria. This is an issue that should be carefully researched, analyzed and discussed in terms of a city-wide policy, as it will apply to future redevelopment at Landmark Mall, Landbay F in Potomac Yard, the waterfront, public space in Carlyle, and many other small area plans and new developments in Alexandria. There are many different aspects to this issue that will require balancing the conflicting rights of the property owner, the business and resident occupants of the development, the city and the public, as well as maintenance and process issues.

*B. Opportunities for Correction*

Planning staff consulted with the Office of the City Attorney, and were advised as follows:

Should Council wish to consider changing the condition as adopted, Council could make a motion to amend Term 13 of the SUP. Such a motion would be focused only on Condition No. 13 of the staff report, would allow staff to correct the record to indicate that the staff opposed the applicant's elimination of this condition and provide Council with any additional information it needed to consider. Council could then either leave the term unchanged, thereby adopting the applicant's position, adopt the term as proposed by the Planning Commission or alter the condition itself.

Alterations to the condition could be done by revising Condition 13 to adopt the Planning Commission's language, or alternatively to add language that states that Town Center Green will be subject to any city-wide public space speech, assembly and demonstration policy adopted by the Council in the future. Another option would be to amend condition No. 15, which already requires an MOU between the applicant and the City (P&Z, RP&CA, and T&ES) dealing with conditions under which the City may use the space, to add language ensuring that the Town Center Green will function as a public open space or public plaza similar to Market Square. The MOU must be to the satisfaction of the directors of the three afore-mentioned departments.

Whether or not Council votes to amend its previous action and adopt or amend the condition as passed by the Planning Commission, we recommend that Council direct the staff to prepare a policy document and schedule a worksession or other opportunities for discussion with the Planning Commission, City Council and the community in the future concerning a policy that would deal with the need to ensure appropriate freedoms of speech, assembly and demonstration on open space and plazas that are specifically intended to serve a public and civic function, regardless of ownership.