

Crumbie, Jon

From: Michael Tigue <mtigue@outlook.com>
Sent: Friday, January 20, 2017 9:56 AM
To: Crumbie, Jon
Subject: Additional Documents

Jon,

The following is the text of a communication that Norton Commons stating setting out its opposition and the reasons therefore to removal of the decal lane and introduction of gated access. It also responds to Councilman Downard's communication.

Please ensure that it is incorporated into the public record of these proceedings.

In a message dated 12/22/2016 4:42:18 P.M. Eastern Standard Time, mpatterson@nortoncommons.com writes:

December 22, 2016

Bill, Tom and WPPA:

This correspondence is in response to Bill Bardenwarper's email dated December 20, 2016, and a letter from Kelly Downard sent to BOZA also dated December 20, 2016.

Norton Commons was pleased to see the continued inclusion of the deceleration lane as agreed upon in the modified development plan and CUP Application. However, we are also surprised by the inclusion of another material change to the plan, primarily concerning the inclusion of a gated entrance to Chamberlain Senior Living ("CSL") off of Chamberlain Lane. As each recipient of this letter is aware, Norton Commons settled past protracted litigation regarding the site in question in reliance upon a plan that showed both *a deceleration lane and no gate* at the Chamberlain Lane entrance.

CSL, Norton Commons, and WPPA voluntarily executed the settlement agreement in reliance upon a development plan (the "Plan") that was reviewed and approved by all parties on or about Feb. 20, 2015 (the "Agreement"). The Plan was attached as Exhibit A to the Agreement. Pursuant to the Agreement, CSL and its affiliates were obligated to provide Norton Commons at least twenty-one (21) days prior notice of any material changes to the Plan. As you know, the Plan was previously materially changed without prior notification to Norton Commons when the deceleration lane was removed from the Plan and previously presented to BOZA for approval. Now it has apparently been materially altered again without the requisite notification to Norton Commons. The repeated lack of notice is a repeated breach of the Agreement's terms.

More importantly, if the Plan is materially altered as CSL proposes, the Agreement becomes null and void and Norton Commons will vigorously oppose such modifications as they will significantly and negatively affect the Norton Commons and surrounding communities, including WPPA.

The proposed modifications are problematic for two primary reasons. First, the modified plan includes a gate at the Chamberlain Lane entrance and the addition of over 50 beds to the facility. As the Plan appeared at the time of settlement, trips to and from CSL were to be split between Norton Commons and Chamberlain Lane as there was no gate limiting entry and exit onto Chamberlain. Norton Commons agreed to the Plan in material reliance on that fact. Sometime after the Agreement was executed, a proposal for an increase of beds was requested by CSL. While the bed increase alone could have been met without opposition under the Plan, the recent addition of the gate would result in *all traffic to and from CSL* - now increased with over 50 additional beds - routing exclusively through Norton Commons except for deliveries and EMS. This will substantially increase traffic through the Norton Commons community. Indeed, the proposed gate would increase traffic and strain our development and the Chamberlain Lane roundabout in a way never contemplated under the Agreement. Such strain would decrease the efficacy and functionality of the roundabout, thereby also negatively impacting surrounding areas. The addition of over 50 beds to the facility exacerbates these issues. Accordingly, Norton Commons cannot and will not agree to the Chamberlain Lane entrance gate.

Second, Norton Commons is in receipt of a letter from Kelly Downard opposing inclusion of the agreed-upon deceleration lane. We are uncertain as to why a city councilman who is soon to exit his public role is involved in a matter we resolved privately via settlement almost two years ago. Especially when that councilman will no longer be on the council at the time of the BOZA hearing on this matter. Candidly, Norton Commons is baffled as to why the parties would execute the Agreement based upon the Plan - which showed such vast improvements from the original proposed use of the property - to only later oppose the same Plan in favor of changes that jeopardize safety and increase traffic in an area already under strain. The deceleration lane was clearly included in the Plan, CSL's developer expressly agreed to its inclusion to assuage traffic and safety concerns, and members of Public Works have stated on various occasions that they are not opposed to it. Therefore, there is no reasonable basis for moving forward with any plan that does not include the deceleration lane.

Further, Mr. Downard is incorrect when he states that Norton Commons' concerns about traffic and safety are "based on conjecture." To the contrary, our concerns are based on county-required and county-regulated traffic studies, community feedback, and the very tangible experience of driving the area in question every single day for over fifteen years. While Norton Commons has great respect for Mr. Downard, we believe it to be his comments that are based on conjecture and should not be considered by BOZA or anyone else. Regardless of his uninvited comments, the Agreement and Plan include the deceleration lane, and Norton Commons will oppose any modification that does not contain that lane.

In sum, the Agreement is still in place regarding the proposed development of the CSL site. The modifications discussed above are material changes which will result in a breach of the Agreement. Please be advised that Norton Commons will oppose such changes, and expressly reserves all legal rights and remedies in that regard.

Thank you,

Marilyn O. Patterson

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Crumbie, Jon

From: Michael Tigue <mtigue@outlook.com>
Sent: Friday, January 20, 2017 9:53 AM
To: Crumbie, Jon
Subject: Additional Documents

Jon,

The following is the text of an email communication we received **after** the first development plan purporting to explain why the decal lane was removed. As before, please include in the public record of these proceedings.

From: Bill Bardenwerper [mailto:wbb@bardlaw.net]
Sent: Monday, February 01, 2016 3:43 PM
To: Michael Tigue
Cc: Marilyn Patterson; 'Kent Gootee (kgootee@mindelscott.com)'; David Mindel; Nick Pregliasco; Anna Curley; Nanci Dively
Subject: Chamberlain Senior Care Plan approved at BOZA

Michael: Sorry 'bout this apparent "misunderstanding" w/re to the decal lane. I forwarded your letter to Kent and just spoke with him. Neither of us can recall why/when the decel lane was removed from the plan. Kent seems to recall that WPPA didn't want it and that the project didn't generate enough traffic to justify it. But beyond possibly that, he can't recall whether Metro Works, Metro Transportation Engineering and/or BOZA cared one way or another or even what our client's position on it was. So he's starting a search of his files to try to track the plans from showing the decel land to removing it. I wish I had a recollection of this issue, but I don't. I will let you know pretty quickly though, once Kent presumably figures this out, after which we can together figure out what to do. Okay? Many thanks. BB

Bill Bardenwerper
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Crumbie, Jon

From: Michael Tigue <mtigue@outlook.com>
Sent: Friday, January 20, 2017 9:50 AM
To: Crumbie, Jon
Subject: Additional documents
Attachments: Chamberlain Settlement Plan.pdf; BOZA HEARING_cond_N.pdf

Jon,

Attached are the development plan exhibit to the parties settlement agreement.

It is the plan that all parties agreed would initially be submitted to BOZA for approval.

It has the decal lane and no gate.

Also attached is a transcript of the previous BOZA hearing in which the decal lane was removed without NC's knowledge.

Please ensure these two documents are included in the public record of these proceedings.

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