



Fort Lincoln Civic Association, Inc.

P.O. Box 41025, Washington, D.C. 20018

www.ftlincoln.org

June 14, 2013

BY EMAIL : bzasubmissions@dc.gov

D.C. Board of Zoning Adjustment
441 4th St., N.W.
Suite 200 South
Washington, D.C. 20001

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18576
EXHIBIT NO. 23

RECEIVED
D.C. OFFICE OF ZONING
2013 JUN 14 PM 3:51

Re: Application of Fort Lincoln Banneker Townhouses, LLC
BZA Case No. 18576

Dear Board Members:

The above-referenced application is scheduled for hearing before the BZA at 9:30 am on June 25, 2013. When the application was filed on April 8, 2013, notice of the June 25th hearing was sent to the affected SMD Commissioner, Robert King. However, because of a reorganization of ANC 5C no other ANC 5C commissioner received notice of the hearing. Additionally, although Commissioner King scheduled an information meeting in his SMD for June 1, 2013, he circulated notice of that meeting to only a tiny portion of the 3,500 person Fort Lincoln community.

Accordingly, with the exception of Commissioner King, ANC 5C knows nothing about the substance of BZA Application No. 18576. And, because Commissioner King waited until June 1, 2013 to convene an information meeting in Fort Lincoln, the Fort Lincoln Civic Association and the Fort Lincoln community have not had an opportunity to study the zoning application, take a position on it, and decide whether to move to intervene as parties at the June 25th hearing. Compounding this situation is the fact that both ANC 5C and the Fort Lincoln Civic Association will be in summer recess until late September 2013.

ACCORDINGLY, the Fort Lincoln Civic Association ("FLCA") supports what we understand will be a written request by ANC 5C to postpone the June 25th BZA hearing. Additionally, to repair the damage that has been done, the FLCA requests that the order postponing the hearing direct that the applicant (Fort Lincoln Banneker Townhouses, LLC):

>Work with the chairperson of the FLCA's Planning & Zoning Committee to schedule and publicize a meeting *in Fort Lincoln* this summer, at a mutually agreeable time and date, to which all Fort Lincoln residents will be invited - to be publicized by a posting on the FLCA website (www.ftlincoln.org), through email on the 11 Fort Lincoln housing cluster list serves and by general leafleting and

posting throughout Fort Lincoln (with the latter expense incurred by Commissioner King from his ANC budget or by the applicant from its funds);

>Work with the chair (Commissioner Jacqueline Manning) of ANC 5C to schedule a meeting of the developers with ANC 5C commissioners, at 1805 Bladensburg Road, N.E. this summer, at a mutually agreeable time and date;

>At both meetings, representatives of the developer and of the D.C. Office of Planning shall make a full presentation, provide handouts to all interested attendees and respond to questions about this proposed development as well as other proposed and ongoing developments in Fort Lincoln, so that all of the developments can be considered in a meaningful and holistic manner;

>Thereafter, the FLCA Planning and Zoning Committee shall have 30 days in which to issue a report and recommendations to the FLCA's Board of Directors for consideration at the Board's September 2013 meeting, and the FLCA Board shall be given an opportunity at its September 2013 meeting to vote to support or oppose the zoning application.

>To permit these events to take place (including a decision on intervention by the FLCA), a hearing on the application in BZA Case No. 18576 shall not be scheduled before October 22, 2013.

Background

The Fort Lincoln Civic Association, Inc. ("FLCA") was incorporated in October 2000 and has as its general boundary the area covered by the Fort Lincoln Urban Renewal Plan in northeast Washington, D.C. The Fort Lincoln community has over 3,500 residents and all are members of the FLCA. Fort Lincoln has two ANC Commissioners, who each represent a portion of the Fort Lincoln community. The FLCA is the only entity in Fort Lincoln that represents all Fort Lincoln residents. See: www.ftlincoln.org

A review of the file for Case No. 18576 confirms the obvious – preparation of BZA Application No. 18576 commenced more than two years ago. All manner of charts, studies and exhibits were prepared during that time period. Yet the developer held only a single meeting in Fort Lincoln, on June 1, 2013, to which notice was circulated only to a tiny portion of Fort Lincoln (where Commissioner Robert King lives) and perhaps in the building (at 2855 Bladensburg Road, N.E.) where the June 1st meeting was held in a cramped and tiny room.

In particular, the two Fort Lincoln housing clusters (Summit Village Condos and Hillside Village Condos) immediately adjacent to the proposed development site received no written notice of the June 1st information meeting or of the 15-5

vote Commissioner King would hold (there was no notice, in his meeting flyer, that a vote would be taken) on that date.

Also, despite our website (www.ftlincoln.org), P.O. Box, and our monthly public meetings, Commissioner King failed to give the FLCA *timely* notice of the application (back on April 8, 2013, when he received notice), so that our Planning & Zoning committee would have a reasonable amount of time in which to research the matter, become informed, and make a recommendation to the FLCA Board on whether to intervene and whether to support or oppose the application.

This action by Commissioner King is of a piece with his ongoing disregard for the participatory involvement of Fort Lincoln residents in their own community's development. Commissioner King has a shameful and documented history of claiming the Fort Lincoln community was made aware of zoning applications, when that is demonstrably not the case. *See e.g.*, http://www.thecommondenominator.com/111802_news2.html

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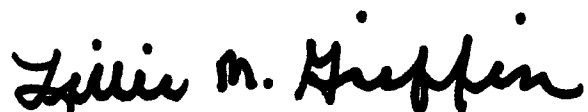
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Consequently, we ask that this body vote to postpone the hearing and direct compliance with the above-listed basic due process protections, *or* to deny the application in Case No. 18576, subject to reconsideration of your vote after compliance with the pre-conditions listed above.

By establishing this due process precedent, this body will ensure that development is not "sprung" on the Fort Lincoln community, or on ANC 5C, too late for those bodies to understand, oppose and/or minimize environmental, quality-of-life and other consequences of a development that is not permitted by zoning laws, and requires an application for a "variance" from the protections those laws intended.

Sincerely,

A handwritten signature in black ink that reads "Lillie M. Griffin". The signature is written in a cursive, flowing style.

Lillie M. Griffin
FLCA President

Attachment

The Common Denominator

Washington's Independent Hometown Newspaper

Fort Lincoln rezoning under fire

ANC disputes endorsement as hearing nears

(Published November 18, 2002)

By JOHN DeVAULT

Staff Writer

Residents of Fort Lincoln New Town are alleging improper moves aimed at creating a false appearance of strong local support for a zoning change sought by an embattled real estate developer working in partnership with the D.C. government to construct a long-delayed shopping center on the city's eastern edge.

The focus of their charges is Advisory Neighborhood Commissioner Robert King, whose single-member district (5A12) wholly encompasses Fort Lincoln New Town. The residents' charges are being echoed – and amplified – by some of King's fellow ANC 5A commissioners.

King narrowly survived an election challenge on Nov. 5 to retain his ANC position. Challenger Regina Russell lost by 24 votes and made King's authoritarian style a major issue in the campaign.

Critics say King conducted a surprise – what some called "illegal" – vote seeking support for the zoning change from those attending an Oct. 23 ANC meeting, where developer Michele V. Hagans, president of Fort Lincoln New Town Corp., spoke to residents about proposed commercial and residential projects at Fort Lincoln.

Hagans needs the zoning change in order to go forward with development of the shopping center. The new zoning would substantially change the Urban Renewal era community's original development plan.

"I was taken aback by Mr. King's surprise motion. It wasn't on the agenda," said Fort Lincoln homeowner Chaka Burgess.

"My concern was that the residents were poorly informed at best by a purely verbal presentation," he said. "There was nothing on paper for anybody to consider at all."

Others said that because the ANC meeting was a monthly "community meeting," open to residents from all of ANC 5A's 12 single-member districts, only a minority of the attendees were Fort Lincoln residents – thus making an informed vote to demonstrate that neighborhood's sentiments toward the zoning change in their district impossible. The zoning commission, like other D.C. agencies, is required by law to accord "great weight" to an ANC's vote when making decisions.

The bottom line, according to ANC 5A11 Commissioner Martha Pappano, is that King "tried to conduct a single-member district vote at a community meeting, and you can't do that. It was an illegal vote."

As King hastily pushed for the vote, the meeting – at which Mayor Anthony A. Williams had fielded contentious queries earlier in the evening – quickly collapsed into chaos, as some of King's fellow-ANC commissioners denounced the unscheduled vote as illegal. ANC Chairman Norma Broadnax quickly ruled the

meeting adjourned and the commissioners, except for King, walked out. Meanwhile, some audience members loudly stated their objections as King spoke over them, pressing on with the vote after the meeting was adjourned.

King declared that the "ayes" had won and last week affirmed that he would submit that result to the D.C. Zoning Commission when it considers the proposed Fort Lincoln zoning change at a hearing on Nov. 25.

The vote, King said, was "absolutely" valid.

However, last week the executive board of the Fort Lincoln Civic Association Inc., a resident group, voted to submit a letter to the zoning commission protesting the vote and contesting its validity.

"We want to make sure the air is clear about what occurred, and if there's any effort to say that the community in any shape had notice and had a vote to approve this, that's not the case," said civic association president Reginald Lyons Sr.

Also last week, Pappano and other ANC 5A commissioners spoke out against what they called their unexpected discovery that Chairman Broadnax drafted a letter on Nov. 7 giving King the right to carry support for the proposed zoning change to the Nov. 25 zoning hearing on behalf of all 12 ANC 5A commissioners. They say no vote by commissioners on the issue has been held.

"I'm flabbergasted," said Pappano. "It makes me extremely curious why a letter like this was drafted, when I know no vote was taken. ...It leads me to believe something underhanded is going on here."

Broadnax said last week she did "not recall" any conversation with King prior to the Oct. 23 ANC meeting about his plans to call an unscheduled vote. But she volunteered that she and King discussed the Nov. 7 letter for the zoning commission before the Oct. 23 meeting.

Fort Lincoln New Town, located along the Prince George's County line in far Northeast Washington, is the product of a unique 1975 public-private agreement among the D.C. and federal governments and, originally, Washington developer Theodore Hagans. After Hagans' death in a plane crash in 1985, his daughter Michele Hagans assumed control of the Fort Lincoln development companies.

In August, the Fort Lincoln Civic Association filed a \$60 million lawsuit against the Hagans companies, charging that they violated a central provision of the 1975 agreement virtually from the day it was signed. That provision, they assert, provided for the transfer of Fort Lincoln's 360 acres of federal land to the Hagans companies, under financially favorable terms, only in return for the companies' setting up and substantially funding a nonprofit resident-run corporation to help plan and run Fort Lincoln New Town.

The suit charges that the Hagans companies enjoyed the deal's benefits: Even today, the companies control but pay no taxes on the approximately half-portion of Fort Lincoln they have failed to develop, which sits idle – though full of millions of dollars in roads, sewers and other infrastructure funded by D.C. tax dollars – and off-limits to anyone else.

But, the suit charges, the Hagans companies hid the multimillion-dollar financial commitments to residents laid out in the public-private agreement, which they say include a 25 percent ownership share in the Hagans real estate management firm that was never delivered them.

(As a result of the 1975 contract, it was two D.C. agencies, the National Capital Revitalization Corp. and the city Office of Planning, that submitted the proposed Fort Lincoln zoning change to the zoning commission.)

Fort Lincoln resident Roy Pearson, sought to connect the civic association's lawsuit and the current controversy.

"That's what our whole lawsuit is about – to get the funding for meaningful participation by residents in the planning of their community," he said. "Right now, people have no meaningful idea what this zoning change is about – a change from C-3 something to XYZ. It's just gibberish."

He noted that if the new shopping center is built, it will sit on a new section of road just down the street from Thurgood Marshall Elementary School, bringing heavy traffic past the school for the first time.

"But there have been no traffic studies done," he said. "Hagans suggested it was actually premature to do traffic studies."

Homeowner Burgess added: "She said, 'We may need to put down some rumble strips.' That's just not a serious response."

At the Oct. 23 meeting, held at Thurgood Marshall school, Fort Lincoln residents faulted Hagans for the continuing dearth of hard information about her long-stalled plans.

"Every time we have a meeting, it targets the same thing: 'We're going to do it. We're going to do it,'" a resident told Hagans. "Well, I've been waiting 10 years for you to do something here," he said.

Hagans acknowledged that although her company is in "discussions" with big-box stores like Costco and Shoppers Food Warehouse and that she also wants "sit-down restaurants" for the retail strip, not a single store or restaurant has signed on as part of the project.

According to a spokesman at The Peterson Companies, the developer working with Hagans on the retail center, a groundbreaking date has not been set.

Hagans said she could give residents little information about the lot size, design or price of any of the 90 proposed single-family homes that would be part of the new development. (Hagans said about 450 townhouses are also on the drawing board.)

She promised, however, that Fort Lincoln residents would have the first chance to buy a house if they are built.

"I have made a commitment to have Fort Lincoln residents in here before we open it up to the general market," she said.

But that promise raised the eyebrows of one audience member, Deborah Crain, the Williams administration's Ward 5 coordinator in the Office of Planning.

"I don't know if that's even legal," she said last week. The proposed homes are slated to be sold at market rate.

"It doesn't feel right. I don't want her to step on any landmines or tell people something she later has to retract," Crain said.

At the Oct. 23 meeting, King's call for a vote on the zoning change followed those somewhat testy exchanges between Hagans and residents.

The vote was initiated when King signaled Hagans to recognize Edward Henry Wolterbeek, a Fort Lincoln resident and perennial Republican Ward 5 council candidate sitting in the audience.

Wolterbeek then rose and, reading from a sheet of paper, announced, "Bob King asked me to put on the floor a motion...that we overwhelmingly endorse and favor (the zoning amendment)."

Asked about that motion after the meeting, Wolterbeek replied, "I have no idea what the motion was. Bob King said, 'Make a motion,' so I made a motion. Bob King and I rub each other."

King contested that account. "Hell no, I didn't ask him," he said.

King also defended his right to call for a vote from residents attending the meeting. He argued that since the Oct. 23 meeting was held on his home ground, at Fort Lincoln (ANC 5A's meetings rotate to a different member's single-member district each month), he was hosting that month's meeting. And since, in that capacity, the chairman had turned the floor over to him, he argued that he had a right to call for a vote if he chose.

"There's nothing in the rules says I can't call a vote," King said.

But, said ANC 5A06 Commissioner Mary Baird Currie, "That is something we don't do."

Currie said that issues affecting only residents of a single district are meant to be handled at a single-member district meeting, "so we know that community has had a chance to discuss, reflect and vote."

The result of those deliberations, she said, "are what the commissioner brings back to the ANC as a whole," whose members may vote to support or oppose the decision reached at the single-member level.

On the subject of the Nov. 7 letter from Broadnax giving King power to represent ANC 5A at the upcoming zoning commission hearing, King said last week that Broadnax told the other commissioners about the letter and his designation at a "committee of the whole" ANC meeting on Nov. 7.

"She put it out there for people, and nobody raised an objection, so that carried," he said.

He said that he will take the letter with him to the zoning hearing and will tell the commission that the proposed change has the expressed support of both Fort Lincoln residents and his fellow ANC commissioners.

But other commissioners at the Nov. 7 meeting – which took place around a single oblong table in a room roughly the size of a trailer home – said that vote never took place.

"I was there from the beginning to the end of that meeting, and I didn't hear that," said Pappano. "No vote on the ANC's position on the matter before the zoning commission was taken at that meeting."

ANC 5A10 Commissioner Ruth Goodwin agreed. "It was never brought out on that table, and we did not vote on that," she said.