

SULLIVAN, STYLES & BARROS, LLP

REAL ESTATE ZONING LITIGATION ESTATE PLANNING WEALTH PRESERVATION

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Via E-mail

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July 9, 2010

Zoning Commission
441 4th Street, NW
Suite 210S
Washington, DC 20001

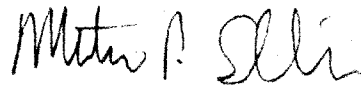
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D.C. OFFICE OF ZONING
2010 JUL 12 AM 8:46

Re: Response to Applicant's July 6 Submission Regarding Expiration of a PUD Approval; Zoning Commission Case No. 09-03.

Dear Chairman Hood and Members of the Zoning Commission:

The Fort Baker Drive Party requests that the Zoning Commission accept the attached filing past the 3 p.m. filing deadline for on-line submissions. While the Secretary did not provide a 3 p.m. deadline for this particular filing, the rules for filing an e-mail submission provide that a filing made after 3 p.m. should be accepted for the following day. We respectfully request that the Commission accept this submission into the record as if filed prior to 3 p.m. on July 9. (Estimated time of filing is 4:00 p.m. on July 9, 2010). Thank you.

Sincerely,



Martin P. Sullivan

cc: Paul Tummonds, Goulston & Storrs
Office of Planning
DDOT
ANC 7B

ZONING COMMISSION
District of Columbia

CASE NO.

09-03

EXHIBIT NO.

129

Via E-mail

zcsubmissions@dc.gov

July 9, 2010

Zoning Commission
441 4th Street, NW
Suite 210S
Washington, DC 20001

**Re: Response to Applicant's July 6 Submission Regarding Expiration of a
PUD Approval; Zoning Commission Case No. 09-03.**

Dear Chairman Hood and Members of the Zoning Commission:

This is a response from the Fort Baker Drive Party to the Applicant's July 6 submission, which was in response to the Commission's concerns regarding the timing of expiration of the PUD approval. The Fort Baker Drive Party objects to the Applicant's proposed timetable for expiration of the PUD approval, and suggests a time frame which is consistent with other PUD approvals.

Initial Period of Validity Should be Two Years

A review of previous Zoning Commission PUD approvals produces a nearly 100% practice (all but one case) of granting an approval for a period of two years (declaring that an applicant must file for a building permit application within two years), and providing that construction must begin within three years from the effective date of the order. The Applicant has provided no rationale for why the Commission should stray from this consistently-applied standard.

Period for Completion of the Project (Final Building Permit Application) Should be Three Years

This application, and every argument presented by the Applicant in support of Commission approval, has portrayed this project as a necessarily cohesive, concerted development project. The very concept of "Town Center" portrays a single project with integrated and complementary uses and structures. This proposal has never been trumpeted by the Applicant as a stand-alone Wal-Mart, with the purportedly beneficial residential uses sprouting 10 years later. Nor has the proposal been hailed as a solitary small-retail site, or a solitary residential site, with completion of other uses long delayed.

Rather, every portrayal by the Applicant has been that the ultimate public benefit in this project relates to the production of the Town Center as a whole, with complementary uses and structures providing a thriving, pedestrian-oriented neighborhood center. It was not until the draft Order that the Applicant let on that it intends to build out the Wal-Mart – or perhaps the residential Block 3 – within the next three years, and then possibly build nothing else for another 10 years, if ever. The construction of the entire Town Center within the same general time-frame is critical to the legitimacy of this Application's purported benefits. Even the Applicant would agree with this point, unless it is willing to argue instead that a Wal-mart alone is a great benefit sufficient by itself to merit PUD approval.

But the most outrageous impact of the 10-year approval period is that the neighbors and the community, in particular the Fort Baker Drive residents, will be subject to ongoing construction (and/or the property-value-depressing threat thereof) for the next 12 or 13 years or more. When the Fort Baker Drive residents purchased their single family homes in the low-density Hillcrest neighborhood – with the existing Skyland Shopping Center nowhere in sight – they never imagined that they would be forced to live through a 12-year period of construction of a Wal-mart and other high-density uses, directly abutting their back yards. The Fort Baker Drive Residents urge the Zoning Commission members to consider the length and impact of this time period. For one perspective, Mr. Puckrein's eight-year old daughter will be safely in college when the construction is completed, if in fact it is ever completed.

Not a Viable Town Center Project

The Applicant has presented no rationale for its request for such an extraordinary time period. The only possible rationale is that the project, as a whole, is simply not viable at this time, or in the near future. If *Skyland Town Center* is *Not Viable as a Town Center*, it should not be approved until the Applicant can prove such viability and commit to completing the Town Center within a reasonable time period. An approval for 10 years, requiring that only one building be started within four years, suggests an approval in search of a viable project. If the Town Center concept is viable, and again, this whole proposal relies on the benefit of the *Town Center* concept, then the Town Center should be entirely built within three or four years, not ten.

The Commission May Be Approving a Wholly Residential Project

Finally, in order to realize the purported benefits of this proposal, as well as the benefits which the entire community expects from this proposal, the Zoning Commission must condition any approval in a way that insures that such benefits will actually be provided. As currently proposed, the Applicant could build all of the Block 3 residential use – a portion of the overall project that the community never asked for (and one that they do not see as a benefit) – and then simply walk away. The Zoning Commission should instead provide that the Applicant must first

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construct the retail uses that have long been sought by the community, before it approves the construction of several hundred housing units with no guarantee of any further construction.

For the reasons provided above, the Fort Baker Residents Party urges the Zoning Commission to require the timely development of the Town Center as a whole, or not at all. The PUD should be valid for a period of two years, with no more than an additional two years to file building permit applications for all structures. The provision of certificates of occupancy for the residential units, and building permits for the townhouses, should be contingent on the Applicant securing certificates of occupancy for all or a major portion of the proposed retail spaces.

Sincerely,



Martin P. Sullivan

cc: Paul Tummonds, Goulston & Storrs
Office of Planning
DDOT
ANC 7B

¹ The Applicant's proposed conditions would provide for the revocation of only *non-residential* certificates of occupancy, in the event that the Applicant fails to meet the conditions for completion of the non-residential portion of the project.

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2010, a copy of this submission was mailed by U.S. Mail, and e-mailed, to the following:

Paul Tummonds, Esq.
Goulston Storrs
2001 K Street, NW
Suite 1100
Washington, DC 20006

ANC 7B
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Washington, DC 20020

Maxine Brown-Roberts
D.C. Office of Planning
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4th Floor
Washington, DC 20009

Jeffrey Jennings
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A handwritten signature in black ink, appearing to read "Martin P. Sullivan", written over a horizontal line.

Martin P. Sullivan