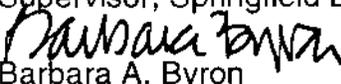


FAIRFAX COUNTY, VIRGINIA

MEMORANDUM

DATE: April 1, 2005

TO: Elaine McConnell
Supervisor, Springfield District

FROM: 
Barbara A. Byron
Director, Zoning Evaluation Division

SUBJECT: RZ/FDP 2001-SP-041: Fair Chase (Dix-Cen-Gato)

This is in response to the letters from William Fogarty dated February 7, 2005 and March 14, 2005, (attached) requesting that the Board of Supervisors refuse an offer of 2,077 square feet of open space for the Fair Chase subdivision as provided for in Par. 4 of Sect. 2-704 of the Zoning Ordinance.

Fair Chase created several parcels as part of the subdivisions of the site. Parcel F was created for the development of a wet stormwater management facility and to be preserved as open space and Parcel E was created for the development of stacked condominiums. The developer requests to expand the boundaries of Parcel E by 2,077 square feet to facilitate the location of a sidewalk for the stacked townhouses within the parcel, which results in the decrease of Parcel F by 2,077 square feet. With the approval of the Fair Chase subdivision Parcel F was recorded as open space owned by the Fair Chase Homeowner's Association and Parcel E was still controlled by the developer. The additional 2,077 square feet within Parcel E would ultimately be part of the condominium owner's common open space instead of the umbrella homeowner's association open space, but would remain open space regardless if it was located in Parcel E or F and would not result in any net loss of open space by the community. Since the 2,077 square would be temporarily transferred back to the developer and not common open space the Board of Supervisors must first refuse the offer of the open space to facilitate the boundary line adjustment.

The open space offered to the Board of Supervisors is only 2,077 square feet and located in an area that is not adjacent to other open space parcels owned by the Board of Supervisors or the Park Authority. In staff's opinion, the acceptance of the open space would not create a benefit to the County and there would be no harm in the Board of Supervisors in refusing the open space as requested by the developer.

cc: Peter Murphy, Planning Commissioner, Springfield District
Leslie Johnson, Deputy Zoning Administrator, Permit Review Division, DPZ
Michelle Brickner, Assistant Director, Land Development Services, DPWES
Angela Rodeheaver, Section Chief for Site Analysis, DOT
Craig Carinci, Director, Environmental and Facilities Inspection Division, DPWES
Kevin Guinaw, Chief, Special Projects/Applications Management Branch, ZED, DPZ
File: RZ/FDP 2001-SP-041; MIS 0505 010; Imaging; Reading File



WALSH COLUCCI
LUBELEY EMRICH
& TERPAK PC

William A. Fogarty
(703) 528-4700 Ext. 48
wfogarty@arl.thelandlawyers.com
Fax: (703) 528-6050

March 14, 2005

RECEIVED
Department of Planning & Zoning
MAR 15 2005
Zoning Evaluation Division

Via Overnight Delivery

Marlae Schnare
Office of Supervisor Elaine McConnell
Fairfax County Board of Supervisors
12000 Government Center Parkway
Suite 233
Fairfax, VA 22035

Re: Fair Chase Subdivision

Dear Ms. Schnare:

I am following up on an email, with a letter attached, that was sent on February 7, 2005, to Supervisor McConnell, with regard to the need for a formal "offer and rejection" from the Board of Supervisors, regarding the Fair Chase Project near the Government Center. A copy of the email transmittal is attached for your ease of reference. I understand that the matter was referred to Kris Abrahamson, who communicated by email to Mark Liberati, who is the engineer from BC Consultants. I apologize for any confusion arising out of our original transmittal, which was meant merely as a first step in identifying the process to be implemented. This letter hopefully clarifies our request, and provides the pertinent documentation needed by you and the County staff.

This matter relates to a requirement of the Fairfax County Attorney's Office, whenever there is a boundary line adjustment involving a conveyance of even a small portion of property by a homeowners association. These situations typically arise in cases made necessary by slight engineering adjustments that are required when actual construction takes place, and it is discerned that slight adjustments need to be made to a boundary line.

The specific ordinance in question is Section 2-702(4) of the Zoning Ordinance, which states that before any conveyance can be made by a homeowners association, the property must be "offered" to the Board of Supervisors. It is clear that the intent of this Ordinance is to prevent associations from conveying entire parcels of homeowner association property to third parties. However, as a technical matter, this ordinance must be complied with, even in situations of minor boundary line adjustments.

As further background information with regard to this procedure itself, I have enclosed a copy of the Board summary from May 6, 2002, in which I had to obtain a similar offer and rejection of property for HOA property in the Laurel Crest Subdivision. A copy of this summary is enclosed herein, and provides the reference to the action taken by Supervisor Hyland at that time.

In our present situation, we would need the same assistance from Supervisor McConnell, to the effect of placing this request on the Board agenda, and providing a motion that the Board refuses the offer of HOA property in the Fair Chase Subdivision.

I would now like to provide specific information with regard to this subdivision. The record plat for Fair Chase was recorded on July 9, 2000 in Deed Book 15565 at page 419 among the land records of Fairfax County, Virginia. I have enclosed a copy of the recorded Deed and plat of subdivision. Numerous lots and parcels were created, including Parcels E and F. Parcel E is to be developed as a multifamily condominium building. The adjacent parcel, Parcel F, is owned by the homeowners association and contains stormwater management facilities.

A small sliver of land from Parcel F is needed to accommodate the construction of the necessary infrastructure associated with the proposed condominium building, so that a sidewalk associated with the condominium building is on condominium property, and not Parcel F. Again, as with prior examples of these boundary line adjustments, this need for this small sliver of property is necessitated by the actual location of the condominium building and its sidewalk.

I have enclosed a copy of the proposed Deed of Resubdivision, and the plat, which will create this boundary line adjustment. You will note that the amount of area to be conveyed by the Association from Parcel F to Parcel E is 2,077 square feet. The sliver varies from approximately 5.5 to 7.1 feet in width.

Whenever an HOA conveys property, there is a need for the County to be certain that the project continues to be in compliance with items such as open space requirements. I believe that the approval of this plat by the Office of Site Development Services is an indication that these open space requirements are still met. However, I understand that there is a need for your office to research this issue with County Staff. To facilitate matters, I am sending a copy of this letter, with enclosures, to Kris Abrahamson.

I apologize if my original letter gave the impression that there is property to be conveyed to the Board. Again, as stated above, I simply need to provide the County Attorney with notice that the Board has refused the offer of conveyance of property so that we can complete this boundary line adjustment. For your files, I have also enclosed a copy of

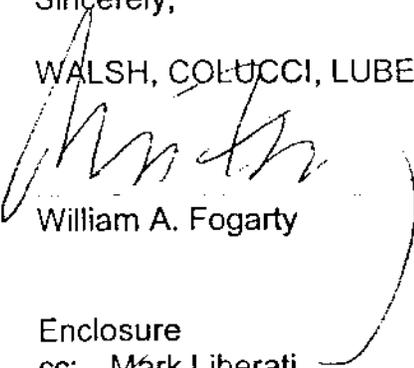
Marlae Schnare
March 14, 2005
Page: 3

the response memorandum from Al Oakley of the Fairfax County Attorney's Office, indicating the need for this Board action.

If you need any further information or documentation, please let me know. I look forward to working with you to get this placed on the Board agenda.

Sincerely,

WALSH, COLUCCI, LUBELEY, EMRICH & TERPAK, P.C.



William A. Fogarty

Enclosure

cc: Mark Liberati

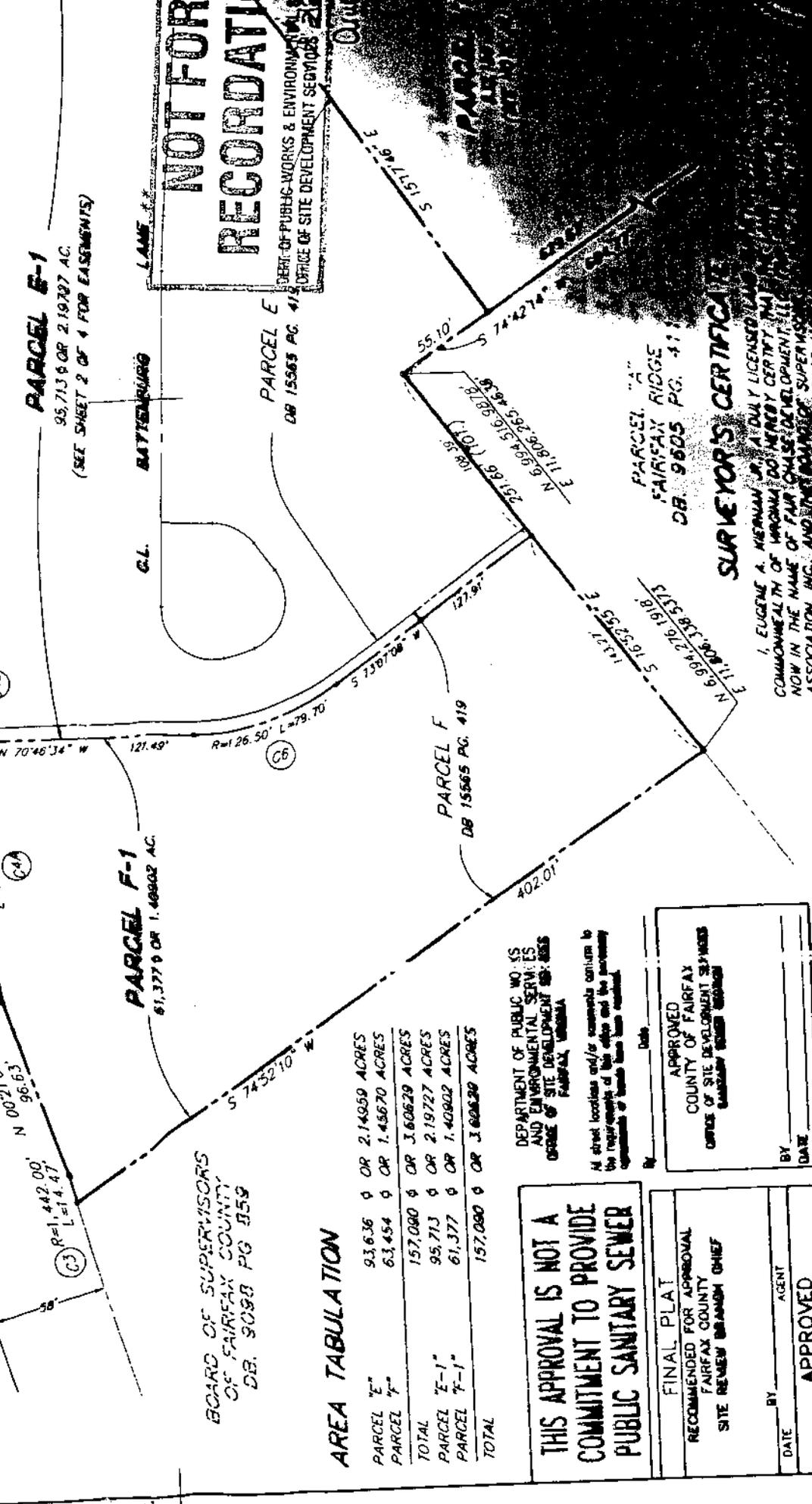
✓ Kris Abrahamson, w/encl., via overnight delivery

K:\WAFOG\waf ltrs.05\Schnare 3-14-05.doc

C3	1442.00'	188.67'	94.47'	188.54'	N 13°05'41" E	726.02'
C4	1454.00'	138.60'	69.35'	138.54'	N 12°06'29" E	527.41'
C4A	1454.00'	50.07'	25.04'	50.07'	N 15°49'31" E	158.24'
C4B	1454.00'	133.70'	66.90'	133.65'	N 2°18'07" E	578.44'
C5	1442.00'	79.70'	41.22'	78.39'	N 89°49'33" W	3625.58'
C6	126.50'					

7.) POSSIBILITIES REQUIRED THE SUBMITTAL OF SOIL REPORTS. A COPY OF SOIL REPORT IS AVAILABLE FROM DPWRES.
 PER FAIRFAX COUNTY CHESAPEAKE BAY PRESERVATION AREA MAP NO. 56 - 1, DATED 11/18/03 AND PER COUNTY PLAN NO. 1619-SP-01, THIS PLAN COMPLIES FULLY WITH THE AMENDMENT OF CHAPTER 118 (CHESAPEAKE BAY PRESERVATION ORDINANCE) OF THE CODE OF THE COUNTY OF FAIRFAX ADOPTED BY THE BOARD OF SUPERVISORS ON JULY 7, 2003 EFFECTIVE ON NOVEMBER 18, 2003.

8.) PER OFFER #23, PARCEL R WAS CONVEYED TO THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA BY DEED OF CONSOLIDATION, RESUBDIVISION, DEDICATION, EASEMENT, VACATION, CONVEYANCE AND RELEASE AND OF DECLARATION OF COVENANTS RECORDED IN DEED BOOK 15565 AT PAGE 419 AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.



BOARD OF SUPERVISORS OF FAIRFAX COUNTY
 DE. 9098 PG 859

PARCEL F-1
 61,377.9 OR 1.40902 AC.

PARCEL E-1
 95,713.9 OR 2.19727 AC.
 (SEE SHEET 2 OF 4 FOR EASEMENTS)

PARCEL E
 DB 15565 PG. 419

PARCEL F
 DB 15565 PG. 419

PARCEL "A"
 FAIRFAX RIDGE
 DB 9605 PG. 419

AREA TABULATION

PARCEL "E"	93,636	0	OR	2.14959	ACRES
PARCEL "F"	63,454	0	OR	1.45670	ACRES
TOTAL	157,090	0	OR	3.60629	ACRES
PARCEL "E-1"	95,713	0	OR	2.19727	ACRES
PARCEL "F-1"	61,377	0	OR	1.40902	ACRES
TOTAL	157,090	0	OR	3.60629	ACRES

DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES
 OFFICE OF SITE DEVELOPMENT SERVICES
 FAIRFAX, VIRGINIA

If street locations and/or easements conform to the requirements of this office and the necessary easements of record have been recorded.

THIS APPROVAL IS NOT A COMMITMENT TO PROVIDE PUBLIC SANITARY SEWER

DATE: _____ BY: _____ AGENT: _____

APPROVED

DATE: _____ BY: _____ AGENT: _____

APPROVED

FINAL PLAT
 RECOMMENDED FOR APPROVAL
 FAIRFAX COUNTY
 SITE REVIEW BRANCH CHIEF

APPROVED
 COUNTY OF FAIRFAX
 OFFICE OF SITE DEVELOPMENT SERVICES
 SANITARY SEWER DIVISION



**WALSH COLUCCI
LUBELEY EMRICH
& TERPAK PC**

William A. Fogarty
(703) 528-4700 Ext. 48
wfogarty@arl.thelandlawyers.com
Fax: (703) 528-6050

February 7, 2005

BY TELECOPY

Supervisor Elaine McConnell
Fairfax County Board of Supervisors
Springfield Government Center
6140 Rolling Road
Springfield, VA 22152

Re: Fair Chase, Section 1, Parcels E & F, Resubdivision

Dear Supervisor McConnell:

I am writing on behalf of the developer of the Fair Chase, Section 1 Subdivision project, located along Legato Road. Design changes for the Condominium Units to be located on Parcel E, Section 1, Fair Chase ("Parcel E") have resulted in Parcel E not meeting the size requirements in order to accommodate the actual building structures. A lot line adjustment between Parcels E & F, Section 1, Fair Chase will correct this problem by conveying additional square footage to Parcel E from the common area (Parcel F), but will result in a minor reduction in open space of about 2,077 square feet. With this reduction, the project will continue to be in compliance with open space requirements.

In order to allow the approval and recordation of the plat for the resubdivision of the Parcels E & F, Section 1, Fair Chase an offer of the open space being conveyed back to Parcel E must first be made to the County. Please consider this letter as the offer to the County of the open space of 2,077 square feet, as provided for in Paragraph 4 of Section 2-702(4) of the Zoning Ordinance. I would ask that the offer be refused at the next Board meeting, on February 28, 2005, so that we can proceed with the resubdivision.

I will be in contact with Steve Edwards to discuss any necessary details. I thank you for your assistance.

Sincerely,

WALSH, COLUCCI, LUBELEY, EMRICH & TERPAK, P.C.

William A. Fogarty

J:\CENTEX\506.71\Board offer, Parcel F, Sec 1, Fair Chase.doc

PHONE 703 528 4700 FAX 703 525 3197 WWW.THELANDLAWYERS.COM
COURTHOUSE PLAZA 2200 CLARENDON BLVD., THIRTEENTH FLOOR ARLINGTON, VA 22201-3359

LOUDOUN OFFICE 703 737 3633 MANASSAS OFFICE 703 330 7400 PRINCE WILLIAM OFFICE 703 680 4664