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September 6, 2018

Board of Supervisors of Albemarle County
Attn: Claudette Borgersen, Clerk
401 McIntire Road
Charlottesville, VA 22902
cborgersen@albemarle.org
Via Email and Hand Delivery

Amelia G. McCulley, Zoning Administrator
County of Albemarle
401 McIntire Road
Charlottesville, VA 22902
amcculle@albemarle.org
Via Email and Hand Delivery

RE: Petition for Appeal of Notice of Official Determination of Violation
No: VIO-2018-153

Dear Members of Board and Ms. McCulley:

As you know, I represent Route 29 LLC in connection with the proffers related to Hollymead Town Center Area A-1. I am in receipt of Ms. McCulley's letter to my client dated August 7, 2018 captioned "Notice of Official Determination of Violation" related to the unpaid invoices for Proffer 4, as referenced therein (the "Transit Proffer"), which is the subject of ongoing litigation (the "Notice of Violation"). I hereby submit this letter as a formal petition for appeal of the Notice of Violation pursuant to Virginia Code §15.2-2301, to request that Ms. McCulley reconsider her determination, and to the extent her decision remains unchanged, to petition the governing body to review the decision for the reasons and on the grounds more specifically set forth below.

History of the Transit Proffer Issue

The debate over the Transit Proffer goes back some time. The Transit Proffer was initially put in place by a prior owner and developer at the height of the real estate boom as part of ZMA-2005-00015. After the real estate market had crashed, the property was acquired by my client who requested certain proffer amendments in order to facilitate development within Area A-1, namely the Kohl's store. Among those proffer amendments was a request to amend the Transit Proffer which gained the support of the Planning Commission. Unfortunately, when those amendments got before the Board of Supervisors, it was determined that the public notice did not permit

amendment of the Transit Proffer, and so my client was faced with a choice to amend those other proffers that he could and to keep the Kohl's project moving forward or to start the process over and likely lose the Kohl's project. They chose to accept those proffer amendments which were possible at the time, saving the Kohl's project and planning to resubmit a proposed amendment to the Transit Proffer at a later date. This is all clear from the Board of Supervisors minutes for ZMA-2010-00014. It was everyone's expectation at that time (the County's and my client's) that the Transit Proffer would be amended.

In 2016, there was conversation within the County government related to a new commuter JAUNT bus (the "Commuter Bus") to travel from Hollymead Town Center to downtown Charlottesville and the University of Virginia. My client spoke at multiple public meetings, as did I on their behalf, informing the County that before it appropriated funds for this new Commuter Bus route in reliance on the application of the Transit Proffer, that it understand our position that the Transit Proffer is not triggered by a Commuter Bus that has nothing to do with any impacts caused by the development. Without addressing our repeated comments, the Board of Supervisors did authorize funding for the Commuter Bus.

We subsequently filed an application to amend the Transit Proffer (ZMA-2016-00002), held a community meeting at which there was no opposition expressed, and received nothing but understanding comments from the public and from County officials. Nevertheless, when the County's staff report was released, it not only recommended denial of the application, but was unable to cite even one favorable factor to our request – the first time in all of my years that I have seen such a one-sided staff report. We deferred our request so I could have follow-up conversations with staff regarding the nature of the report and my concern that important staff turnover in the midst of our application had led to some important oversights. Before we could even hold such a meeting with staff, my client was issued the first invoice for the full Transit Proffer amount. My client took that as a clear sign from the County that it had no intention on trying to amicably solve the issues before us, and consequently, filed the pending lawsuit over the Transit Proffer. That being said, my client always intended and still intends to reach an amicable resolution to this matter which involves a reasonably amended and jointly agreed proffer. We have made additional overtures regarding such discussions since the lawsuit has been pending, but, again, have received no real indication from the County that it desires an amicable resolution. The latest action, of course, has been the issuance of additional invoices and your Notice of Violation.

We believe this background is relevant to show that my client has not been ignoring the issue, but rather has been making a great deal of effort to (1) head off the issue before it became a problem by their initial comments at the public meetings, (2) attempt to resolve the issue through a proffer amendment application, and (3) attempt to engage in dialog regarding a mutual agreement, but unfortunately has not seen those efforts well-received or reciprocated. The context of the failure to pay the invoices is critical to understanding these matters and whether a Notice of Violation should have been issued.



The Underlying Arguments Regarding the Transit Proffer

It is also not possible to truly evaluate the appropriateness of the Notice of Violation without considering the underlying arguments being made related to the Transit Proffer and the changes in circumstance over time.

Before getting to the merits of the argument, it is important to note that conditions have changed significantly since the initial Transit Proffer was adopted in 2007. Around that time, the real estate market was at its peak and considerably more development than what we now see was contemplated at Hollymead Town Center ("HTC"). In addition, at that time, Route 29 was a much narrower road and was the only real option for getting people from Charlottesville to HTC. Now, there have been many transportation improvements including the widening of Route 29, the construction of Town Center Drive and the extension of Berkmar Drive. All of these improvements alleviate transportation-related concerns and minimize the potential impacts of the development on traffic. This leads us to the crux of the argument against the imposition of the Transit Proffer, and consequently to the request to reconsider and withdraw the Notice of Violation – HTC Area A-1 has not caused and is not anticipated to cause impact as would justify my client being required to pay \$500,000 toward the Commuter Bus.

Some of the relevant points are as follows:

1. The Transit Proffer only applies to HTC Area A-1. The Commuter Bus by its very definition is intended to take people who live in the HTC area to places closer to downtown Charlottesville, i.e., "commuters". HTC Area A-1 does not include any residential units, i.e., no commuters. Furthermore, the people who come to HTC Area A-1 to work are (a) minimal in number and (b) do not work typical 9-5 work day hours which would be served by the Commuter Bus. In other words, the Commuter Bus is not intended to, and does not, bring people to and from any of the businesses within HTC Area A-1, and more importantly, does not address any impact actually created by HTC Area A-1. Rather, over the course of its existence, the Commuter Bus has taken a mere handful of people who live near HTC to their jobs at UVA or in downtown Charlottesville. Again, this need is completely unrelated to the HTC Area A-1 development. My client could hire a van and a driver to shuttle those people at a fraction of the cost of the Transit Proffer if transporting these people were actually their responsibility.
2. HTC is a large development, and it seems County staff can get confused in trying to justify the application of the Transit Proffer by assessing the larger project. In fact, in their report for ZMA-2016-00002, Staff specifically tried to link HTC Area A-1 and A-2, stating, in part, "When Hollymead Town Center Area A was initially discussed, the transit proffer was intended to cover all of Area A, which is now Area A1 and A2. When the two projects were split, the proffer remained in the A1 proffers. The A2 proffers made provision for affordable housing, a pocket park and greenway, a 2 acre site for a recycling center or other public facility, and cash proffers for the residential uses. The transit proffer addresses the transportation/traffic impacts generated by Area A1 and A2." That is a complete misstatement of fact, because it is without question that the proffers for HTC Area A-1 only relate to Area A-1 as is clear on their face. As stated previously, the transportation/traffic impacts have already been addressed by the widening of Route 29 and the construction of additional, alternative roads – much of which it should be noted was funded by my client who has spent over \$11 Million in those efforts.



3. It is clear from the County's own Land Use Law Handbook and otherwise, that proffers are generally intended to address "the impacts resulting from a rezoning," and that they must be "reasonable," connected to the rezoning by an "essential nexus" and show "rough proportionality to the impacts they seek to address." The application of the Transit Proffer to the Commuter Bus, and the Notice of Violation that has arisen as a result, fail to meet any of those standards. As stated above, the Commuter Bus does not address any impact resulting from the rezoning. The rezoning of HTC Area A-1 did not create additional commuters. Any traffic impacts caused by the rezoning have been fully addressed by the widening of Route 29, the construction of Town Center Drive and the extension of Berkmar Drive. There are no transportation/traffic impacts left to address, and the Commuter Bus is certainly not the type of public transit contemplated by the original Transit Proffer.

For the foregoing reasons, we ask that you reconsider and rescind the Notice of Violation. We would hope this could be done in the context of working toward an agreed resolution to the Transit Proffer situation as a whole, but at a minimum, that it be rescinded pending determination by the Court whether the Commuter Bus was a legitimate trigger of the Transit Proffer.

Again, we believe there is reasonably middle ground here, but we certainly cannot find it unless the County is also attempting to do so. We, once again, ask that the County come to the table to discuss this issue in an attempt to resolve it. To the public, it seems on the surface very clear that this has been a simple "money grab," where the County tries to fit a square peg into a round hole just to get the maximum amount of money it can from proffers which may never otherwise be triggered. However, that interpretation goes against the nature of the individuals that I know and work with at the County, so I am asking that those honorable and well-intentioned individuals give this matter a fresh and objective look and help work with me to resolve it in everyone's best interest.

I look forward to your reply, and will be happy to meet to discuss or otherwise answer any questions or provide any additional information that may be helpful as you consider this appeal/petition.

Best regards.

Very truly yours,



Peter J. Caramanis

Cc: Greg Kamptner, County Attorney (via hand delivery)
Shellie S. Taylor, Esq.
Client (via email)

