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BY HAND DELIVERY

February 22, 2010

Stephen Gardner
Project Manager
Department of Planning
1 Harrison Street, S.E., 3rd Floor
Leesburg, Virginia 20177-7000

RE: ZCPA 2006-0003/ZMAP 2006-0011, Stone Ridge Commercial

Dear Stephen:

This letter includes our response to the proffer review comments regarding the February 1, 2010 proffer statement as discussed with you and Larr Kelly on February 16th.

Enclosed with this submission are three copies each of the revised draft proffer statement and a comparison with the February 1st version of the proffers. Seventeen copies of the revised Application plan set will be delivered to you under separate cover.

The staff review comments are summarized below (noted in *Italics*) and followed by our response.

Department of Building and Development (comments dated 2/5/10)

1. In regard to proffer I., I note that the applicant has referenced a Concept Development Plan dated February 1, 2010. However, the CDP that accompanied this referral is dated December 11, 2009. I suggest that this inconsistency be eliminated.

The CDP now has a last revision date of February 22, 2010, and Proffer 1 has been revised accordingly.

2. In further regard to proffer I., I note that the applicant has added a sentence indicating that the development layout shown on Sheets 10 and 11 are only illustrative. However, since this proffer does not proffer conformance to Sheets 10 and 11, I suggest that this provision be moved to Proffer III.B.1., wherein the pedestrian circulation shown on Sheets 10 and 11 is proffered.

As discussed at our meeting on February 16th, Proffer I has been revised to reference the proffered elements of Sheets 10 and 11, namely, the pedestrian circulation system and the Land Bay limits of development.

3. In regard to proffer I.C., I note that the applicant has indicated that all of Land Bay EE2A "may" be consolidated with the Remaining Portion of Land Bay EE2. The applicant then goes on to include a lump sum cash payment due upon the first issuance of a zoning permit in "the consolidated Land Bay." However, as written, there is a possibility that the Land Bays will not be consolidated, and it is not clear how this payment is to be made in such event. I suggest that either the applicant indicate that the Land Bays "shall" be consolidated or that a provision be added to indicate how the payment will be made in the event that the Land Bays are not consolidated.

Proffer I.C. has been revised to change "may" to "shall" as suggested.

4. In regard to proffer I.E.2., it is not completely clear how the credit against the linkage requirement is intended to work. The applicant has indicated that they shall receive a credit of 80,000 square feet upon approval of this application, even if nothing is constructed, and that they shall receive credit for all floor area above 80,000 square feet at the time of issuance of zoning permits for such square footage. The applicant then indicates that they shall demonstrate, at the time of each site plan approval within Land Bay FF2B, that a cumulative minimum square footage of 120,000 square feet will be achieved within the Land Bay. For the sake of clarity, I suggest, in the fifth line of the proffer, that a period be placed after the phrase "in Land Bay FF2B." I further suggest that the phrase "for which the Owner shall receive" be changed to "The Owner shall receive" so as to begin a new sentence. Finally, I suggest that the applicant clarify how they intend to demonstrate compliance with this requirement at the time of each site plan.

The referenced proffer has been revised and clarified as suggested.

5. In regard to proffer I.E.2.g., in the first line thereof, I suggest that the phrase "be designed to" be deleted.

The referenced proffer has been revised as suggested.

6. In regard to proffer II.B., in the second paragraph thereof, I suggest, in the third line thereof, that the phrase "for Permitted Uses" be changed to "for any use." I then suggest that the parenthetical be deleted. I am concerned with the applicant's use of the phrase "Permitted Uses" as this is a term of art in the County's Zoning Ordinance which excludes Special Exception Uses, and its use could be misinterpreted at a later date.

As discussed at our meeting on February 16th, the phrase "Permitted Uses" has been replaced by the original "residential uses" language.

7. In regard to proffer II.B.3., in the fourth line thereof, I suggest that the phrase "a Permitted Use" be changed to "any use".

As noted above in the response to comment 6, "Permitted Use" has been replaced with "residential."

8. In regard to proffer II.B.4., in the eleventh line thereof, I suggest that the phrase "a Permitted Use" be changed to "any use".

As noted above in the response to comment 6, "Permitted Use" has been replaced with "residential."

9. In regard to proffer II.B.6., in the seventh line thereof, the applicant uses the phrase "decision to accept conveyance" and states that this is "as set forth in Proffer III.G.3." However, Proffer III.G.3. requires that the County "request conveyance", not make a "decision to accept conveyance." I suggest that this inconsistency be eliminated in order to avoid confusion in the future.

Proffer II.B.6. has been revised to be consistent with the "request conveyance" language in Proffer III.G.3.

10. In further regard to proffer II.B.6., and its relation to proffer III.G.3., I note that the applicant has indicated that Millstream Drive is to be open for use two years after the County requests dedication of the site. I urge staff to review the adequacy of this timeframe.

The referenced timeframe has been discussed with staff and has been deemed adequate by staff.

11. In regard to proffer II.B.7., in the second line thereof, I suggest that the phrase "to be" be inserted prior to the phrase "bonded and constructed."

The referenced proffer has been revised as suggested.

12. In regard to proffer II.B.8., in the seventh and eighth lines thereof, I suggest that the phrase "said request to be received by the Owner prior to the issuance of the zoning permit that represents a cumulative total of more than 120,000 square feet of commercial floor area in Land Bay FF2B be deleted. I see no reason to tie the County's request for this road improvement to a set level of development.

As discussed at our meeting on February 16th, the referenced proffer has been revised to tie the Phase 2 portion of the Southpoint Drive extension to the completion of the 4-lane divided West Spine Road between Tall Cedars Parkway and Route 50, and the receipt of a request from the County to construct Phase 2.

13. In further regard to proffer II.B.8., I note that one of the prerequisites for the applicant to construct Phase II of Southpoint Drive is to have the applicant construct the improvements to the intersection of Southpoint Drive and Gum Spring Road. However, it appears that these intersection improvements are a part of the Phase II construction, and so this sets up a "Catch-22" situation. I suggest that this proffer be clarified.

Proffer II.B.8. has been clarified as suggested.

14. In regard to proffer II.B.10., which refers to Destiny Drive, I note that this roadway is not shown on the CDP. I am uncertain whether Destiny Drive intersects with another roadway at the southern boundary of Stone Ridge or whether there are intersection improvements that are needed there. I urge staff to check the adequacy of this proffer.

Destiny Drive does not intersect with another roadway at the southern boundary of Stone Ridge, but is planned to continue into the adjacent Kirkpatrick Farm subdivision.

15. In regard to proffer II.F.4., in the fifth line thereof, the applicant refers to the "Lenah Loop Road, as identified in the Revised Countywide Transportation Plan." However, in a quick review of the Revised Countywide transportation Plan, I do not see a reference to the "Lenah Loop Road." There is a reference to the "Lenah Connector", but I do not know if these are intended to be the same things. I urge staff to make sure that the correct road is being referenced.

Proffer II.F.4. has been revised to reference the "Lenah Connector", in accordance with the current Revised Countywide Transportation Plan.

16. In regard to proffer III.G.3., I note that in order for the applicant to be required to dedicate Public Use Site #3, the County must request conveyance of such a site within one year of approval of this application. I suggest that a provision be included whereby the applicant must notify the County, at least 30 days prior to the expiration of the one year period, that the one year due date is impending. Additionally, I urge staff to make sure this timeframe is adequate.

Proffer III.G.3. has been revised to provide the County with at least 30 days notice of the expiration of the one year period.

17. In further regard to proffer III.G.3., concerning Public Use Site #3, I note that there is nothing herein to indicate what use is intended for the property if the County does not request conveyance. I suggest that this be addressed.

Proffer I.E.1.a. describes the PD-IP uses and floor area for Land Bay 7, which is the site of Public Use Site #3. If the County does not request conveyance of Public Use Site #3, Land Bay 7 will be developed in accordance with proffer I.E.1.a. Proffer III.G.3. has been revised to address this concern and a note has been added to Sheet 4 of the CDP.

18. In regard to proffer III.G.4.a., I note that it appears that if the applicant constructs the Commuter Parking, then they shall be entitled to reimbursement from the funds contributed under proffer III.A.2. of ZMAP 1994-0017, to the extent that such funds are available, and that if such funds are insufficient, then the applicant shall bear the responsibility for such additional costs. Similarly, if the County constructs the Commuter Parking from the funds contributed pursuant to proffer III.A.2., of ZMAP 1994-0017 and that if such funds are insufficient, then the County shall bear any additional costs. If my reading of this proffer is incorrect, then I suggest that it be clarified.

Your reading of the referenced proffer is correct.

19. In regard to Exhibit B. in Phase IIIA, in the "Road Improvements" column, I suggest that the phrase "a Permitted Use" be changed to "any use." This is found in two places in the column. Similarly, in the "Units Allowed" column, under Phase IIIB as well as Phase IIIA, I suggest that the phrase "Permitted Uses" be changed to "uses."

As noted above in the response to comment 6, "Permitted Use" has been replaced with "residential."

20. These proffers will need to be signed by all landowners, and be notarized, prior to the public hearing on this application before the Board of Supervisors.

Comment acknowledged.

We believe this response letter, the revised proffers, and the amended Application plans address all remaining staff comments. We look forward to the Board of Supervisors public hearing on March 8, 2010.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Very truly yours,

Cooley Godward Kronish LLP

Jeffrey A. Nein, AICP
Senior Land Use Planner

Enclosures

cc: Roy R. Barnett, Van Metre Companies
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