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## MEMORANDUM

**TO:** SEAN MOYLAN, ESQ.

**CC:** KEN BELSHE, JERRY CAMERON, ADAM MENGEL,  
AL HADEED, ESQ.

**FROM:** MICHAEL D. CHIUMENTO III *mc3*

**DATE:** JUNE 5, 2020

**RE:** THE GARDENS / PUD SITE PLAN APPLICATION

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Thank you for meeting with me and my client to discuss your comments from the County's TRC responses. It was very productive in that we clearly understand the legal issues you raised. As such, the following are my responses to those issues.

### 1. PUD Conceptual Site Plan:

Per section 1.1 of the PUD Agreement (the "Agreement"), the rezoning is to facilitate development of the Property as provided in the Agreement and the **approved** Conceptual Site Plan (**Ex. A**). I emphasize the "approved" plan because it became clear to me that some at the County and the public may have been looking at the wrong plan. The approved plan is general in nature and provides for three areas of development as further defined in the Agreement. The approved Conceptual Site Plan provides for (i) Public Lands area, (ii) Commercial/Multifamily area and, (iii) single family attached/single family detached/golf course area. The approved Conceptual Site Plan also depicts (i) general areas of known to be wetlands, (ii) lands to be dedicated to local governments, and (ii) other improvements. Most importantly, the approved Conceptual Site Plan does not show the location of lots, amenities, roads, or the golf course.

As is typically provided, the Agreement and approved Conceptual Site Plan is just that – conceptual. Rarely do PUD agreements provide level of details of lots, amenities or the golf course at this point in the process for many reasons including lack of engineered plans. Historically, an applicant process gets the PUD approved, then the PUD Site Plan, and then the Preliminary plat. Each step of this process gets more detail through engineering and agency review.

To support this notion, please consider Section 4.7 and 4.8 of the Agreement which states that the approved Conceptual Site Plan may change at the discretion of the Developer so long as it complies with the general land uses and applicable development criteria. Moreover, if there is a conflict between the approved Conceptual Site Plan and the Agreement, the Agreement controls. These sections further demonstrate that general and conceptual nature of the Agreement and the approved Conceptual Site Plan as just that – conceptual.

In summary, we agreed that you would review the application for PUD Site Plan based on the approved Conceptual Site Plan (**Ex. A**). We believe that such review will lead you to the conclusion that the proposed PUD Site Plan, as required by Section 3.04.03, LDC, is consistent with the Agreement and approved Conceptual Site Plan.

## **2. Entitlements:**

The Agreement specifically provided for all entitlements and a conceptual plan. The entitlements are discussed in Section 4 of the Agreement. The Agreement allows for development in three areas as shown on the approved Conceptual Site Plan: (i) Sect 4.2, Residential/Golf Community area, (ii) Sect 4.3, Commercial Area and, (iii) Sect 4.4, Public lands. Each area allows for the following:

- (i) Residential/Golf area: 453 residential units (150 MFR) and 100,000 sq. ft of private commercial uses described therein
- (ii) Commercial area: 230,964 sq. ft of commercial, retail and multifamily uses.
- (iii) Public Land: Approximately 1200 acres have or will be dedicated to the public for various uses including but not limited to public services and preservation.

These entitlements are generally described in each section. Neither the Agreement nor approved Conceptual Site Plan provide any further detail despite what others may erroneously assert. The proposed PUD Site Plan is the first phase of this project showing 350 single family residential dwelling units. The remaining areas in the Residential/Golf area is noted as future development which could include the golf course and other amenities, the 100,000 square feet of private commercial, the remaining residential homes, or some combination of all. This is consistent with the Agreement and the approved Conceptual Site Plan.

## **3. Traffic/Access:**

In 2005, the PUD was found consistent with the County's Comprehensive Plan. Consistency was predicated on the traffic analysis provided at that time. As part of the preliminary plat application a detailed traffic study reviews traffic issues such as turning movements, signalization, turn lanes etc. The traffic study concludes that there are no traffic issues associated with this first phase of development.

As for access, the proposed PUD Site Plan is consistent with the Agreement and the

approved Conceptual Site Plan. Section 5.5 of the Agreement governs this issue. Section 5.5 states in pertinent part that access shall be provided from State Road 100 and John Anderson Highway. Furthermore, “the developer **MAY ALSO** provide below grade or areal crossings over John Anders Highway...”. This Section clearly provides that the developer shall: (i) provide access to the development from SR 100 and John Anderson, and (ii) may also provide the at or above grade crossing but such is not a requirement. More importantly is the Agreement’s use of the word also which further emphasizes that other crossings of John Anderson may be provided at the Developers discretion – it is not required.

In conclusion, the proposed PUD Site plan is consistent with the Agreement and the approved Conceptual Site Plan. My client is trying to develop the first phase of the project by developing only 350 single family lots in the Residential/Golf course area. We all agree that nothing in the Agreement requires or limits the number of lots that can be develop on the east or west side of John Anderson. Moreover, we agree that the Agreement does not dictate the layout or time of construction of the golf course. It is crystal clear that the proposed PUD Site Plan showing 350 residential units and amenities is consistent with the Agreement and the **approved** Conceptual Site Plan (**Ex. A**).

Once you have had an opportunity to review the approved Conceptual Site Plan and the Agreement, please provide me with your comments or questions. Again, thank you for your time.