TO FILE

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March 29, 2011

W. Carl Richards, Jr.
Permits and Development Management
Zoning Review Supervisor
111 W. Chesapeake Avenue
Towson, MD 21204

Re: Gast Construction/ Devonport
Case Nos.: XV-877 & 07-541-SPHA

Dear Carl:

Per your request, I am writing this to you in anticipation of my meeting with you and Mitch Kellman/Jared Barnhart of Daft McCune Walker, Inc. relating to the impact and utilization of Bill No. 78-10 on the above project.

By way of background, the Devonport project was approved by way of a written opinion and order issued by then Zoning Commissioner Wiseman on January 31, 2008 (copy attached). Through that order, the Commissioner approved a red-lined Development Plan for the project pursuant to the development review regulations and process in Article 32, Title 4 of the Baltimore County Code. The Devonport property is comprised of approximately 12.51 acres, split zoned BL (4.72 acres) and BMB (7.79 acres). The property is a water front property on Middle River, near the intersection of Old Eastern Ave. and Eastern Blvd. (Md. Rt. 150).

The project was divided into four lots. Lot 1 is 2.94 acres and was approved for development as a marina, including water slips, piers, parking and an associated building. Lot 3 features a building historically used as a tavern (Commodore Inn) and is 1.21 acres. Lot 4 is also 1.21 acres and will be improved with a building to be used for commercial/office purposes.

Lot 2 generates the issue which we wish to discuss. Lot 2 is the residential component of the project. It proposed 38 townhouse units in a condominium regime. That lot is 6.93 acres in area and is predominantly zoned BMB.

In addition to the Development Plan approval, the Hearing Office (Zoning Commissioner) also granted a series of variances for the project. These related to all of the lots, including the residential layout for Lot 2. The variances included setbacks required by the CMDP, parking variances and a modified parking plan.

Jeff Perlow was the reviewer on this project and plan. In his amended development plan comment (attached)[1]; he addressed the somewhat unusual density question associated with the residential component/Lot 2. As he noted, no residential zone immediately adjoined this business zoned property and therefore, pursuant to BCZR Section 302, the density is in accordance with the DR 5.5 regulations. The property line and zoning lines for this property are somewhat unusual in that they do not match. Therefore, even though there is DR16 on the neighboring lot (which is separated by a private road), the subject property does not "adjoin" that lot because of the zoning line's location relative to the separating road. Thus, in Jeff's view there is no "adjoining residential zone" to this property. The density was thus based upon the DR 5.5 regulations.

Last summer, the County Council enacted Bill 78-10. That bill establishes certain parameters (as they relate to the application of the BCZR) when a residential condominium development is converted from a condominium regime to a fee simple (individual lots of record) subdivision. Specifically, the bill states that the bulk and setback regulations which were applied to the original development plan are the "only" standards that are applicable. The Bill therefore exempts the owner/developer from needing to comply with standards that would have applied had the original plan been approved as a fee simple (and not a condominium) development. The Bill identifies two conditions necessary in order for it to apply. First, the property must be within the Chesapeake Bay Critical Area. The Devonport project clearly is. Second, the bill applies only to properties zoned DR 5.5, 10.5 and 16.

Mitch Kellman, Jared Barnhart and I met with Arnold Jablon about this recently to discuss the application of the Bill to this project. As we discussed, the Devonport property is zoned BL and BMB but is governed (as Jeff's memo pointed out) by the DR 5.5 regulations. Arnold concluded that the bill does apply to Devonport if no "special advantage" was gained because the property was zoned a business classification. In other words, Arnold stated that if the development was exempt the application of a certain regulation because of its business zoning (that would have otherwise been applicable if the property were actually zoned DR 5.5) then he would question if the Bill applies. He specifically mentioned RTA and asked that we meet with you to confirm that no "special advantage" was gained.

We have looked at the RTA regulations. We do not believe they apply and would not have applied even if the Devonport property was zoned DR 5.5. As noted above, the subject property does not "immediately adjoin" any DR zone. We immediately adjoin business zoned property. As a matter of fact, the closest DR zone is to the south and is DR 16. Had we been able to utilize DR 16 as the adjacent zone, we would have had more density to use but we could not; as Jeff

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[1] Jeff's comment is incorrectly dated May 27, 2008. The DPC was on November 14, 2007 and an original Development Plan comment was prepared by Jeff on that date. His amended comment was submitted after the DPC, but before the HOH on December 7, 2007.

pointed out. Because we did not adjoin any DR zone, no RTA was generated under BCZR 1B01.1.B.1.b. As you know, that section requires an adjacent property be zoned DR in order to generate an RTA.

We have also looked at other zoning regulations. We have found nothing (insofar as parking, setbacks or other bulk regulations) that we avoided or obtained some special advantage because we were zoned business. Moreover, other County regulations were applied as if the property was zoned DR 5.5 (e.g. open space regulation through Recreation and Parks based upon the DR 5.5 governance of the plan). In sum, we found no "special advantage" that was gained because the property was zoned a business classification. To the contrary, certain requirements were imposed because the DR 5.5 regulations were applied. These requirements would have been different had the property not been business zoned.

I would appreciate the opportunity to meet with you in order to confirm our conclusions. If you agree, the owner wishes to move forward with the conversion of the property from a condominium to a fee simple layout.

Very truly yours,

Lawrence E. Schmidt

LES: jkl
Enclosure
CC: Mitch Kellman, Daft McCune Walker, Inc.
Jared L. Barnhart, E.I.T, Daft McCune Walker, Inc.
Charlie Gast, Gast Construction Company, Inc.
David K. Gildea, Esquire
Jason T. Vettori, Esquire

ACCEPTED & APPROVED (Bill No. 78-10 applies)

W. Carl Richards, Jr.
Zoning Review Chief