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Admitted: VA

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July 2, 2024

VIA FIRST CLASS MAIL AND E-MAIL

Jason E. Hickman, Esq.
Compton & Duling, L.C.
12701 Marblestone Drive, Ste. 350
Prince William, VA 22192

Re: Sweetspire Rezoning - REZ2023-00008, Sweetspire

Dear Mr. Hickman:

This letter is in response to your letter of June 20, 2024.

First, the Association's Board of Directors has never refused to meet with your clients, KCG Development, LLC ("KCG") or 12700 Marblestone Dr. A, LLC ("Marblestone"), regarding the Sweetspire Rezoning¹. The Board has attempted to coordinate a meeting to discuss the Sweetspire Rezoning; however, your clients insisted that they control the meeting and the information presented. This type of meeting format is not collaborative, nor does it lend itself to a constructive discussion amongst the parties. In lieu of reaching a compromise, your clients scheduled their own meeting without the Association's involvement, and then scheduled a subsequent meeting on the exact same date as an Association meeting, forcing the membership to choose between the two meetings.

Second, your correspondence to the Association's Board and membership as well as your letters and documentation submitted to the Planning Commission, Staff, and Board of Supervisors overshadow and diminish the Board's primary concerns: the interplay between the Sweetspire Rezoning and the Declaration for Prince William County Center ("Declaration").

The Sweetspire Rezoning is comprised of +/- 7.1 acres identified as GPINs 8193-01-2294, 8093-92-9812, 8093-92-9013 and 8093-91-9595. All four of these parcels are owned by Marblestone². Of these four parcels, only GPIN 8193-01-2294, commonly referred to as Parcel

¹ KCG is the Applicant for the Sweetspire Rezoning and Marblestone is the owner of the property subject to the rezoning.

² GPIN 8193-01-2294 (formerly known as GPIN 8193-01-3193) was conveyed to Marblestone by Special Warranty Deed recorded at Instrument Number 201105310045216; GPINs 8093-92-9812 and 8093-92-9813 were conveyed to

Jason E. Hickman, Esq.
July 2, 2024
Page 2

A, Landbay A (“Landbay A”)³, has been subjected to the Association’s Declaration. In our letter of March 13, 2024, we advised you that in order to annex the other three parcels into the Declaration, your clients must obtain membership approval as annexing land constitutes a Material Amendment under the Declaration. We also advised you that your clients must obtain approval from the Association’s Board of Directors to rezone any property subject to the Declaration and amend the proffers. You refuted these allegations by claiming that KCG is not an Owner under the Declaration but rather a Builder. You also contend that Landbay A is not deemed a Lot under the Declaration, and that your client is not seeking to annex additional land into the Declaration, so Association approval is not required.

As explained below, these arguments are not supported by the Declaration.

(i) Under the Declaration, Landbay A is a Commercial Lot.

The term “Lot” is defined in the Declaration as “a portion of the Property designated as a separate subdivided lot of record *or any other parcel of Submitted Land held in separate ownership* (but not including any Common Area, common area or common elements of a Subassociation or real estate dedicated for public purposes), including any improvements (emphasis added).” The Declaration further defines a “Commercial Lot” to be “any Lot upon which the improvements *or planned improvements* are to be used and occupied primarily for non-residential purposes, including without limitation offices, office buildings, commercial condominium units, day care centers (excluding nonprofit day care within a church), retail uses, restaurants, hotels, or similar non-residential uses (emphasis added).” The Declaration defines “Property” as “at any given time, the Submitted Land together with all improvements and appurtenances thereto now or hereafter existing.”

Landbay A became Submitted Land of the Declaration and a portion of the Property pursuant to that Supplementary Declaration for Prince William County Center (“Landbay A Supplementary Declaration”) recorded in the Clerk’s Office of the Circuit Court of Prince William County, Virginia (“Land Records”) on May 17, 2004, at Instrument Number 200405170082669. The Landbay A Supplementary Declaration expressly provides that Landbay A “shall from the date this Supplementary Declaration is recorded, be subject to the Declaration...” At the time of recording, all of Landbay A was owned in fee simply by Marblestone’s predecessor in title, PWTC Office, LLC⁴, and all of Landbay A is now owned by

Marblestone by General Warranty Deed recorded at Instrument Number 202108130094884; and GPIN 8093-91-9595 was conveyed to Marblestone by General Warranty Deed recorded at Instrument Number 202010300102211.

³ Identified as Parcel A, Landbay A, Prince William Town Center, as the same appears duly dedicated, platted, and recorded at Instrument Number 20021108016366, among the land records of Prince William County, Virginia.

⁴ Special Warranty Deed recorded at Instrument Number 200401200009776.

Jason E. Hickman, Esq.
July 2, 2024
Page 3

Marblestone. Therefore, Landbay A constitutes a Lot under the Declaration because it is a parcel of Submitted Land held in separate ownership.

Furthermore, Landbay A is a Commercial Lot under the Declaration because Landbay A is subject to existing proffers and development conditions that require the parcel to be developed with an office building with retail or restaurant uses on the first floor.⁵ The Declaration expressly provides that a Lot is categorized by *either* the Lot's existing improvements *or* its planned improvements. Since Landbay A is currently planned to be developed with non-residential uses such as office, retail, and restaurant, it constitutes a Commercial Lot under the Declaration.

(ii) Under the Declaration, Marblestone is an Owner.

An "Owner" is defined under the Declaration as "one or more Persons who own a Lot in fee simple but does not mean any Person having an interest in a Lot solely by virtue of a contract or as security for an obligation." The term "Person" is defined in the Declaration as "a natural person, corporation, limited liability company, partnership, association, trust or other entity capable of holding title or any combination thereof."

Marblestone is an Owner under the Declaration because they are a Person and own Landbay A in fee simple.

(iii) Marblestone must seek prior written approval from the Association's Board of Directors to rezone Landbay A and amend the proffers applicable to Landbay A because Marblestone is not a Builder⁶, and KCG is not an Owner or a Builder.

Article 8, Section 8.6(b) of the Declaration provides, in part:

"No Owner shall seek to rezone or amend the proffers affecting such Owner's Lot without the prior written approval of the Declarant during the Development Period, or thereafter without the prior written approval of the Board of Directors. The Declarant reserves the right to seek to rezone or amend the zoning or proffers applicable to any portion of the Property or the Additional Land during the Development Period without

⁵ REZ #2000-00132, Proffer Statement approved November 21, 2001, #13(A)(1) provides that Landbay A, in its entirety, as described on the Town Center Schematic Land Use Plan, shall be part of the SUP Property. The SUP Conditions approved November 21, 2001 pursuant to PLN #2000-0133 provide in #10 that Landbay A will have an office building and the Design Guidelines & Development Standards state that Landbay A will contain an office building 3 stories in height with the allowance for retail or restaurant uses on its first floor.

⁶ "Builder" is defined by the Declaration as a Person (other than the Declarant) who is regularly in the business of and who purchases a portion of the Submitted Land solely for the purpose of constructing improvements for resale or rental.

Jason E. Hickman, Esq.
July 2, 2024
Page 4

the joinder or approval of the Association or any Owner (except the Owner of the real estate described in the application and directly affected by the amendment) or Mortgagee.”

And Article 8, Section 8.4 of the Declaration states:

“Notwithstanding any other provision of the Association Documents, neither the restrictions in this Article nor the Rules and Regulations of the Association shall apply to any otherwise lawful acts or omissions of the Declarant or any *Builder approved by the Declarant during the Development Period*. This exception for Builders shall be subject to such rules as may be established by the Declarant for safety or to maintain the appearance of the Property (emphasis added).”

Under Article 8, Section 8.4 of the Declaration, only Builders approved by the Declarant during the Development Period do not need consent to rezone or amend the proffers affecting their Lot. The Association has no record of KCG or Marblestone being designated as a Builder by the Declarant⁷, nor has any such record been produced. Therefore, neither KCG nor Marblestone are exempt from the approval requirements of Article 8, Section 8.6(b).

Furthermore, neither KCG nor Marblestone may seek to be designated as a Builder by the Declarant because the Declarant no longer exists. The Declarant’s Articles of Cancellation were accepted by the Virginia State Corporation Commission on January 29, 2019, and no assignment of any Special Declarant Rights were found recorded among the Land Records as required by Article 5 of the Declaration.

Lastly, Article 5, Section 5.2(a) states, in part, that:

“If at any time no Declarant (or holder of Special Declarant Right) exists and a portion of the Submitted Land or the Additional Land has not been developed, then a successor declarant who owns such undeveloped Submitted Land or Additional Land may be appointed by an amendment to the Declaration made pursuant to Section 15.2.”

Section 15.2 of the Declaration pertains to amendments to the Declaration *by the Association*. Therefore, Marblestone, KCG, and the owners of any Additional Land, cannot be deemed a successor “declarant” unless there is an amendment to the Declaration submitted to and approved by the membership in accordance with Section 15.2 of the Declaration.

In sum, Landbay A may not be rezoned, nor its proffers amended, without the prior approval of the Association’s Board of Directors and such approval was required to be sought by the Owner of Landbay A.

⁷ The Declarant is Prince William Town Center, LLC.

Jason E. Hickman, Esq.
July 2, 2024
Page 5

(iv) GPINs 8093-92-9812, 8093-92-9013 and 8093-91-9595 are not annexed into the Declaration, and cannot be deemed annexed by the Sweetspire Rezoning.

As explained above, GPINs 8093-92-9812, 8093-92-9013 and 8093-91-9595 have not been annexed into the Declaration, yet they are included in the application for the Sweetspire Rezoning. The application pending before the Planning Commission fails to disclose this material fact and treats these three parcels as an extension of Landbay A without regard to the provisions of the Declaration.

Your correspondence dated June 20, 2024, states that “[a]though only one hundred sixty-six (166) apartments will be located within the Prince William County Center, KCG is willing to pay assessments on all [186] apartments...” While you failed to explain where you derived this number, we presume this means you anticipate 166 apartments will be constructed on Landbay A and the remaining 20 will be constructed on the three parcels that are not annexed into the Declaration.

As previously relayed to you, the only way the occupants of the three aforementioned parcels will be entitled to use PWCC’s Common Area and subject to Assessment is if those three parcels are annexed into the Declaration by a vote of the membership in accordance with Article 15 of the Declaration. The Board will not negotiate an alternative payment arrangement and circumvent the voting rights of the membership.

(v) The number of apartment units to be constructed on Landbay A violates the terms of the Declaration.

The existing proffers and development conditions provide that the maximum number of planned residential dwellings allowed to be construed within the Association is 687 units⁸. Increasing the number of planned dwellings by greater than 10% constitutes an Extraordinary Action under Article 15, Section 15.4(b)(2) of the Declaration, which requires a vote of the membership.

The Sweetspire Rezoning anticipates the construction of 186 apartment units and in your June 20, 2024 letter, you contend that only 166 apartments will be located within Landbay A. Accordingly, the number of proposed dwelling units intended to be constructed on Landbay A exceeds the 10% threshold set forth in the Declaration and cannot be approved without a membership vote in accordance with Article 15 of the Declaration.

⁸ REZ #2000-00132, Proffer Statement approved November 21, 2001, #13(A)(2) provides that the maximum number of residential units permitted on the SUP Property (which includes Landbays A – F, inclusive) shall not exceed 687.

Jason E. Hickman, Esq.
July 2, 2024
Page 6

In sum, the overall project outlined in the application for the Sweetspire Rezoning violates multiple provisions of the Declaration. Based on the concerns of its membership and the applicable provisions of the Declaration, the Association's Board of Directors does not approve the rezoning of Landbay A or the amendment of any proffers affecting Landbay A.

If KCG continues with the Sweetspire Rezoning, the Board reserves the right to file for injunctive relief to stop any proceeding before the Planning Commission or Board of Supervisors. Additionally, if Marblestone continues with the Sweetspire Rezoning, the Board reserves the right to file for emergency injunctive relief pursuant to Article 19, Section 19.6 and then invoke the alternative dispute resolutions procedures set forth therein. If action is taken against your clients, the Association will seek recovery of its legal fees and costs.

In sum, the Declaration does not allow KCG to come into an existing community of more than two decades and undertake a material change in the development plan of the community, certainly not over the objections of the Association. Until you obtain the express prior written approval of the Association, the Board of Directors will continue to oppose the Sweetspire Rezoning and any attempts to violate the Declaration.

Should you have any questions, please contact me at jcardenas@reesbroome.com or (703) 790-1911.

Sincerely,

REES BROOME, PC

By: 

Juan R. Cardenas

KLB

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