

## MEMORANDUM

DATE: MAY 13, 2013, 1 PM  
TO: TOWN OF UNIVERSITY PARK COMMON COUNCIL  
FROM: JOHN ROGARD TABORI, MAYOR  
RE: CAFRITZ COUNCIL MEETING, MONDAY, MAY 13

Colleagues,

I am writing you before the Council Meeting to discuss a number of concerns that I have about the stance that we are about to take on the Cafritz Preliminary Plan of Subdivision. In presenting the Town position we must be careful to ensure that our concerns are well grounded and that we do not make easily refutable arguments, or that we take the discussion into policy domains that lie outside of the matter at hand. It is also important that we distinguish between the Zoning Conditions that pertain to the Preliminary Plan of Subdivision and the Detailed Site Plan.

The items that are most problematic are the responses to the bridge conditions. The items are the requirement to show the placement of the bridge on the plans as required by Zoning Condition 25a; the requirement to "establish a funding mechanism," under Condition 25b; "provide letter from the CSX and the University of Maryland...that recommend approval of the CSX Crossing as shown on the Preliminary Plan and identify the land or right-of-way acquisition cost, if any...", under Condition 25c; and "[p]rovide cost estimates for the design, permitting and construction of the CSX Crossing, including off-site land or right-of-way acquisition costs, if any", under Condition 25d.

I would argue that while it is appropriate to ask for additional particulars about the bridge under Condition 25a, it is likely that the Planning Board will accept the modified DP with the J-Option on it as a sufficient response to this condition. They will do so in light of the fact that the Prince George's Department of Public Works and Transportation has apparently been willing to bless the J-Option if it retains the 300 radius curvature. As Ed Papazian noted at our last meeting, this is a softer more maneuverable curve than the 250 foot radius curves found on most highway cloverleaf exits, which are designed to safely allow trailer trucks to exit a highway. A 300 foot radius curve bridge theoretically will carry a hook and ladder fire engine, trailer trucks, and standard length buses with little difficulty. Of equal importance is the requirement stated in the Condition 25a that the bridge must be able to service pedestrians and bicycles. I understand from the various meetings that I have attended in Upper Marlboro that the bridge is intended to have 2 five foot sidewalks, 2 five foot wide bicycle lanes, and 2 twelve foot vehicular lanes. Dr. Faramarz Mokthari has noted these dimensions in his referral contained in the PPS Staff Report. I would like these dimensions to be memorialized as a condition, or as a general note on the plans thereby ensuring that the bridge will be built to these minimum specifications. This seems a more positive approach and in keeping with our longstanding policy requiring a relatively robust bridge design that can serve as a viable connector to the east side of the CSX tracks. I would also like to be sure that the 13 foot discrepancy between the University of Maryland and the Cafritz Preliminary Plan is addressed. I would condition the PPS such that this discrepancy is cleared up by the time of the DSP or plat signature. This allows for assurance rather than putting us in the position of being ignored because we do not offer a solution out of the problem. While the development team will need to resolve the 13 foot discrepancy by the time of the first permit, it is probably better if we can force the discrepancy to be resolved by the time of the DSP hearing now scheduled for May 23. The further down the road the project goes the less control and influence we will have.

The second concern with the approach adopted last Thursday goes to the financial plan. I believe we make a big mistake in arguing *that we should reject the financial plan because we object in whole or part to special taxing districts on political or moral grounds*. Special Taxing Districts are allowed under both State and County law. I would strongly argue that we should not under any circumstances place ourselves in the dubious position of attempting to argue against someone exercising a well defined legal

procedure or right. More importantly, we make a huge mistake in my opinion by arguing that they have not met the requirement to establish a financial mechanism under 25b if we do not carefully separate the PPS requirement from the DSP requirement. It is very clear that all they have to do is “establish” the funding mechanism by Preliminary Plan of Subdivision. Governmental approval is not required by the PPS. Under the first part of Condition 25b, all the applicant has to do is demonstrate that they have laid out a process whereby they can meet the funding requirement at the PPS stage. At this point, the applicant has not met the DSP requirement that they have permission from any authorizing government agencies prior to DSP approval, which is carefully laid out in the “which” clause that follows the establishment clause. Less clear in my opinion is whether they have met the second half of 25b, which states that the applicant shall “establish a system of financial assurances, performance bonds, or other security to ensure completion of construction and establish a timetable for construction, of the CSX in accordance with the Preliminary Plan.” The Planning Staff for all practical purposes do not address this latter issue, appearing to put it off until the DSP. When I look at the financial/funding plan, the timetable is there (although somewhat sparse); the system of assurances is missing. The question for us is two-fold: Do we read this section of 25b as a PPS requirement or a DSP requirement, and if the former, how do we want to condition it so as to ensure that the requirement is met and when.

The potentially most problematic of the conditions that the applicant must meet at PPS, are the “conditions” encompassed in 25c. Please read this condition carefully. It only requires that CSX and the University of Maryland “**recommend approval** of the CSX Crossing, as shown on the Preliminary Plan and identify the land or right-of-way acquisition cost,” [emphasis added] The requirement is not to have approval, but a recommendation of approval. Both signers on the CSX and the Maryland letters have the authority to make such a recommendation. They do not have final approval authority. Both letters and the CSX emails clearly state this understanding. The Maryland letter is detailed and clear in this regard, laying out the path to approval and referencing the point by which such approval must be achieved as laid out in Condition 26a. The CSX letter and emails are less specific than the Maryland letter. While they clearly say that CSX is willing to allow a crossing as long as it meets key technical requirements, it effectively puts off the point of final approval to the first permit as defined in Condition 26a.

Finally, the applicant clearly meets condition 25d, which only calls for them to “provide **cost estimates** for the design, permitting and construction of the CSX Crossing, including off-site land or right-of-way acquisition costs, if any.” By judging this condition as not met, I would argue that we risk not being taken seriously before the Planning Board, and eventually before the District Council.

When the bridge conditions were designed, they were specifically constructed so as to act as a funnel driving the Cafritz development team toward the construction of the bridge. From both an enforcement perspective and a policy perspective, I believe it is very important that we not attempt to impose conditions that belong to the DSP or permit stages at the Preliminary Plan of Subdivision, or assert that the applicant has not met conditions which they clearly have met. The idea is to stay at the table, not to withdraw from the fray, to make the Planning Board and the District Council respect our views, not disregard them.

Thank you for your attention