GREEHAN, TAVES, PANDAK & STONER PLLC
ATTORNEYS AT LAW
14520 AVION PARKWAY, SUITE 210
CHANTILLY, VIRGINIA 20151

RANDALL T. GREEHAN
E-MAIL: *rgreehan@gtpslaw.com*

TELEPHONE: 703-378-5770
FACSIMILE: 703-378-5771

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Fairfax County Board of Zoning Appeals
c/o Mavis E. Stanfield, Deputy Zoning Administrator for Appeals
Department of Planning & Zoning
Zoning Administration Division
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035

Re: Appeal Application A 2012-HM-020 ("the Appeal")
RN Golf Management, LLC
Tax Map Ref Nos. 17-4 ((11))4A, 26-1((2))8 and 26-1((5))4
Hearing Date: January 21, 2015

Chairman and Members of the Board of Zoning Appeals:

Our firm has been retained by RESCUE RESTON to review Appeal Application A 2012-HM-020 filed by RN Golf Management, LLC ("RN Golf"). RESCUE RESTON is an organization created and supported by property owners, concerned neighborhood clusters and other individuals in the Reston community. Many of RESCUE RESTON's members own property adjacent to the Reston National Golf Course, and others live nearby. RESCUE RESTON and its nearly 2,000 members and supporters agree with the County staff's determination that no redevelopment of the golf course property with residential uses can lawfully take place without an amendment to the Reston Master Plan, amendments to the existing approved Development Plans for the property, and the approval of a new PRC plan.

BACKGROUND FACTS

The Reston National Golf Course property is located on land that was zoned to the Residential Planned Community (RPC) district in three rezoning actions in 1971.[1] The Board of Supervisors approved rezoning applications C-135 and C-203 on February 17, 1971, and rezoning application C-281 on September 29, 1971. These rezonings covered approximately 450 acres.

[1] The golf course property is highlighted in yellow on **Exhibit 1**. Copies of pertinent RPC zoning regulations from 1971 are attached at **Exhibit 2**.

Reduced-sized copies of the Development Plans approved in conjunction with these three rezoning approvals are attached. **Exhibit 3**, the Development Plan approved with RZ C-135, clearly shows the golf course property as approved for "SOUTH GOLF COURSE" and "PERMANENT OPEN SPACE" "GOLF COURSE." (*See* **Exhibit 3**, sheets 2 of 5 and 3 of 5, in yellow.) Likewise, both **Exhibits 4 and 5**, the Development Plans for RZ C-203 and RZ C-281, show the golf course property approved for "SOUTH GOLF COURSE" and "PERMANENT OPEN SPACE." (*See* **Exhibits 4 & 5**, sheets 2 of 5 & 3 of 5, in yellow.)

Other specific areas on the same three approved Development Plans show locations where various residential uses are allowed, but *not* on the golf course portion of the property. For example, on **Exhibit 3** (the approved Development Plan for C-135), areas *outside* the golf course property were approved for "90 T.H, or PATIO HSE." uses at one location, and "285 T.H., PATIO or GARDEN COURT" at another location. (*See* **Exhibit 3**, sheet 3 of 5, in blue; other residential uses are identified with blue arrows.) Similar residential use designations are found on the Development Plans for C-203 and C-281—but, again, *not* on the golf course property. (*See* **Exhibits 4 & 5**, sheet 3 of 5, blue arrows.) Because the three legislatively approved Development Plans do *not* show residential uses on the golf course property, amendments to them would be required before any residential use could be allowed there.[2]

PERTINENT ZONING ORDINANCE REGULATIONS

The Zoning Ordinance in effect at the time of all three of these 1971 approvals required that *all* RPC zoning applications be "in accordance with the comprehensive plan"[3] and include a "development plan" showing, among other things, "the general location and the types of land uses, [and] the proposed densities of population in residential areas." (Zoning Ordinance §§ 30-2.2.2(A), -2.2.2(B)(2).) Zoning Ordinance § 30-2.2.2(E)(6) also stated that "[u]ses in the RPC District shall be permissible *only in those areas as designated on the development plan.*"[4] (Emphasis added.) Comparable language is also found in § 30-2.2.2(E)(1). Finally, § 30-2.2.2(B)(2) prohibited any significant modifications to a development plan without first going back through the public hearing process before the Planning Commission and the Board of Supervisors "in the same manner as the original application." Based on these provisions, it is

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[2] *See* **Exhibit 2** at § 30-2.2.2(B)(2); **Exhibit 8** at § 16-202(9).

[3] Unlike conventional zoning districts in which by-right uses may or may not be in conformance with the adopted Comprehensive Plan, in the RPC and PRC districts *all uses* are required to conform to the Comprehensive Plan. Thus, while RN Golf argues that the Comprehensive Plan does not matter in this appeal (Appeal at 7), that position is simply wrong because it seeks to ignore the unique requirements of the RPC District and because any residential use on the golf course property clearly would not comply with the adopted Reston Master Plan "open space" designation.

[4] In 1977, the RPC zoning district regulations were amended by ZO Amendment #324, but continued to mandate requirements essentially the same as § 30-2.2.2. (*See* **Exhibit 6**.)

clear that the development plans approved in 1971 limit and define how, and to what extent, the rezoned properties could be developed and used. Copies of all of the above-referenced ordinance sections are attached at **Exhibit 2**.

The current Zoning Ordinance contains virtually the same requirements in the current PRC (Planned Residential Community) district as in it did in the prior RPC district. Section 16-101 states that planned developments "shall substantially conform to the adopted comprehensive plan with respect to the type, character, intensity of use, and public facilities. Planned developments shall not exceed the density or intensity permitted by the adopted comprehensive plan." Section 6-301 states that "rezoning to and development under this [PRC] district will be permitted only in accordance with the comprehensive plan and development plan prepared and approved." Likewise, § 6-305(2) mandates that "[u]ses in the PRC shall be permitted only in those areas as designated on the approved development plan." Further, § 16-202(9) requires that "once a development plan has been approved, all subsequent approvals, uses and structures shall be in substantial conformance with the development plan. Should there be cause for amendment to the development plan or any portion thereof, such amendment shall be processed as a new submission." Copies of all of the referenced ordinance provisions are attached at **Exhibit 8**.

PERTINENT COMPREHENSIVE PLAN PROVISIONS

The Reston Master Plan has been incorporated by reference into the Fairfax County Comprehensive Plan. (*See* **Exhibit 7E**, Area III Plan, p. 32). The golf course property is shown on the current Land Use Plan of the Reston Master Plan as "Open Space" and on the current Community Facilities Plan in the Reston Master Plan as "Major Open Space: Parks, Golf Courses, Nature Center." (**Exhibits 7A & 7B**, Area III Plan, pages 199-200, red arrows.) Copies of Reston Master Plan maps from 1971 also show the golf course property planned for open space use. (*See* **Exhibits 7C & 7D**.)[5] Thus, from the 1971 to the present, the golf course property always has been intended and designated to be used as open space.

THE DETERMINATION APPEALED

On April 20, 2012, legal counsel for RN Golf sent a letter to the Zoning Administrator requesting confirmation of the zoning regulations applicable to the Reston National Golf Course property. (**Exhibit 9**.) In her June 20, 2012, reply letter, Cathy S. Belgin, Senior Assistant to the Zoning Administrator, addressed the issues raised by RN Golf's counsel, including the golf course property's zoning; the fact that no special exceptions, special permits, or variances had been approved for the property; and what zoning records show is developed on that property. (*See* **Exhibit 10**.) Ms. Belgin correctly noted that Zoning Ordinance § 16-202(9) mandates that "once a development plan has been approved, all subsequent approvals, uses and structures shall be in substantial conformance with the development plan." Her letter also correctly concluded that any future redevelopment of the Reston National Golf Course property for uses other than

[5] Even the most recently proposed Reston Master Plan Land Use Map shows the golf course property planned for recreational open space use. (*See* **Exhibit 7F.**)

open space, golf course, or park use would require an amendment to the Reston Master Plan, as well as approvals of Development Plan Amendments (for rezonings C-135, C-203 and C-281), and a new PRC plan. (**Exhibit 10** at 3.)

On or about July 20, 2012, legal counsel for RN Golf filed the Appeal challenging the June 20, 2012, determination by Ms. Belgin. (**Exhibit 11.**)

RN GOLF'S ARGUMENTS HAVE NO MERIT

A. Any Use of the Golf Course Property Must Conform With the Approved Development Plans

RN Golf argues that the "Subject Property was originally and now continues to be zoned for Residential Uses under the PRC" district and that the golf course property can be used for any residential uses. (Appeal at 1; 2 fn. 3; 7, 8.) These arguments are incorrect. In 1971, properties in the RPC District were sub-classified for Residential, Planned Convenience Center, Village Center, Town Center or Convention Center/Conference Center uses, with certain uses allowed in each sub-class. As to each sub-class, however, the Zoning Ordinance mandated that the only uses permitted were those "as shown on the approved development plan." (*See* **Exhibit 2**, § 30-2.2.2(E)(1)-(5).) Likewise, Zoning Ordinance § 30-2.2.2(E)(6) required that "[u]ses in an RPC District shall be permissible *only* in those areas as designated on the development plan" (emphasis added). Thus, while a property might have been located within an overall area sub-classified as Residential, what could actually be developed on that property is controlled by what is shown on an approved development plan. Notably, the Appeal fails to even mention § 30-2.2.2(E)(6).[6]

When rezoning applications C-135, C-203, and C-281 were approved in 1971, the properties covered by those applications were approved for the specific uses shown on their respective Development Plans. Again, while portions of the properties on the Development Plans were approved for residential uses, the Development Plans clearly show the golf course property was approved only for "GOLF COURSE" and "PERMANENT OPEN SPACE" use. (*See* **Exhibits 3, 4 & 5.**) In no way is residential use of the golf course property permitted by the approved Development Plans. And, as addressed in Zoning Ordinance § 30-2.2.2(B)(2), even in 1971, no significant modification to a development plan was allowed unless they went back through the Planning Commission and Board of Supervisors "in the same manner as the original application insofar as public hearings are concerned." The same is true now under Zoning Ordinance § 16-202(9). Changing uses from golf course and open space to residential clearly would require the residential use to be shown on an approved development plan. Here, before any residential use could be allowed, applications for and approvals of Development Plan amendments (and Comprehensive Plan amendments) would be required.

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[6] The likely explanation for this omission is that even RN Golf recognizes that any uses other than those shown on the approved Development Plans ("SOUTH GOLF COURSE" or "PERMANENT OPEN SPACE") expressly would violate this zoning requirement.

Put bluntly, RN Golf's statements are legally and factually incorrect that the golf course property is zoned for residential use and that RN Golf has the "legal right" to change the golf course use to residential without approval of a Comprehensive Plan amendment, a Development Plan amendment, and a new PRC Plan.

B. The Approvals of C-135, C-203 and C-281 Do Reference Specific Uses

RN Golf also challenges Ms. Belgin's June 20, 2012, letter by contending that the adopted ordinances for rezoning C-135, C-203 and C-281 do not mention any specific uses. (Appeal at 2.) This argument is nonsensical as it disregards that the RPC district zoning regulations at the time of the three rezoning approvals mandated that *every* RPC rezoning application include a development plan depicting "the general location and the types of land uses, [and] the proposed densities of population in residential areas." (*See* **Exhibit 2**, § 30-2.2.2(B)(2); **Exhibit 9**, § 16-302). Moreover, it ignores that the approved Development Plans state, *on their face,* that the golf course property was approved for the "SOUTH GOLF COURSE" and "PERMANENT OPEN SPACE." No matter what RN Golf argues, amendments to the existing Development Plans would be required before any non-golf course or non-open space use could be made of the golf course property, including residential development.[7]

C. Ms. Artman's 1993 Letter Does Not Support RN Golf's Position

In its Appeal, RN Golf repeatedly contends that Ms. Belgin's June 20, 2012, letter "dismisses" a zoning compliance letter issued in 1993 by Melinda Artman, Deputy Zoning Administrator. (Appeal at 6.) While RN Golf argues that the 1993 letter should be interpreted to mean that the golf course property was zoned to allow residential uses, that was not Ms. Artman's position at all. While Ms. Artman is no longer with the County, she still lives in Northern Virginia. At my request, Ms. Artman reviewed copies of the March 17, 1993, request letter from RN Golf's prior attorney and her own March 30, 1993, response letter (**Appeal Ex. H**), as well as pertinent zoning provisions. In response to RN Golf's argument, Ms. Artman stated

> My March 30, 1993 letter is simply a zoning compliance letter confirming that the use of a golf course on the property was legal under the PRC district regulations. My letter was in no way intended to imply that any use other than the golf course use was allowed on the property.

(*See* **Exhibit 12**.) Thus, contrary to the position taken by RN Golf in its Appeal, Ms. Artman's 1993 letter did not, and was not intended to, opine about the allowable use of the golf course property for anything other than the golf course. Ms. Artman's statement

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[7] In addition, because residential use would no longer be "open space," a Comprehensive Plan amendment also would be needed.

is entirely consistent with Ms. Belgin's position in her June 20, 2014, determination. (*See* **Exhibit 10** at 3.)

D. Notes on Subsequent Plans Do Not and Could Not Override the Approved Development Plans

RN Golf also argues that notes on certain plats attached to deeds of resubdivision and dedication approved after the adoption of the three rezoning applications and their accompanying Development Plans somehow help its cause. (Appeal at 2.) RN Golf is wrong in this regard as well. No matter what, such plats could not override an approved Development Plan or the Zoning Ordinance.[8] (*See* **Exhibits 2 & 8**; *see also* Zoning Ordinance §§ 30-2.2.2(E)(6), 6-305(2), 16-202(9).) The plat notes cited in the Appeal simply recognize that the golf course property may not be subdivided, built upon, or modified until all steps under Zoning Ordinance § 30-2.2.2 have been approved by appropriate Fairfax County officials, including approval of a final plat. (*See, e.g.*, **Appeal Ex. L** at DB3594/P43, Note F.) The notes do not, as argued by RN Golf, allow for final plats that would be inconsistent with the other requirements of § 30-2.2.2, including the requirement that only uses shown on the approved development plans are allowed.

RN Golf also mistakenly argues that because one entry on a tabulation chart on a plat (for Block 8, 36.0139 acres) attached to a deed of dedication (**Appeal Ex. I**) states "Type Density: Medium" and "Type Use: Rec-Golf Course," it therefore has the right to redevelop the entire golf course with medium-density residential uses. (Appeal at 5). This entry on the table is ambiguous and irrelevant at best—and simply wrong at worst. Again, the plat could not override the approved Development Plans. Furthermore, similar entries on two other plats submitted in the Appeal (**Appeal Exs. J & K**) show:

	Block	Type Density	Type Use
(on **Appeal Ex. J**)	4-A (48.2170 acres)	Open Space	Golf Course
(on **Appeal Ex. K**)	4 (81.8827 acres)	Open Space	Golf Course

(*See* **Appeal Ex. J** at DB3593/P43, **Appeal Ex. K** at DB3753/P204.) Thus, while RN Golf relies on a single entry on one plat, entries on two other plats cited in the Appeal support the opposite conclusion.

RN Golf argues that it should be allowed to short-circuit the required legislative process and simply obtain approval of a PRC plan to change the golf course and open space uses from what is clearly shown on the approved Development Plans. (Appeal at 1, 10.) That simply is not the case. As stated in Ms. Belgin's June 20, 2012, letter, to make such a change in use requires a

[8] County officials cannot lawfully grant approvals that violate Zoning Ordinance regulations. *Foster v. Geller*, 248 Va. 562, 568 (1994).

Development Plan Amendment and a Comprehensive Plan amendment, as well as a PRC Plan. (**Exhibit 10**.)

E. Permanent Open Space was Designated on the Approved Development Plans

RN Golf also argues that, because no separate plan of covenants or restrictions was filed in the land records stating that the golf course property was to be used for open space, the property must not have been intended to be open space. (Appeal at 4.) This position also fails. First, it flies in the face of what is clearly shown on all three approved Development Plans. Second, it disregards that the Development Plans were required to conform to the Reston Master Plan, which called for open space use of the golf course property.

Even if, hypothetically, the "PERMANENT OPEN SPACE" designations on the approved Development Plans did not exist, RN Golf still could not disregard the "GOLF COURSE" designations on those plans. Simply put, nothing that RN Golf argues would allow it to redevelop the site with residential uses without first obtaining a Reston Master Plan amendment, Development Plan amendments, and a PRC Plan approval.

F. The Approved Development Plans and Other Related Documents are Evidence of the Approved Uses

RN Golf further argues that Ms. Belgin has no evidence to rebut its positions. (*See* Appeal at 6-7.) To the contrary, there is abundant evidence. In addition to the former Zoning Administrator's 1995 official file reflecting that rezonings C-203 and C-281 were for golf course uses, the Development Plans for C-135, C-203, and C-281 all show the golf course property designated for "Golf Course" and "Permanent Open Space" use. (*See* **Exhibits 3, 4, 5**).

Other documents also support the Zoning staff's position. In regard to rezoning application C-135, a location map and a copy of the Planning Commission agenda for January 28, 1971, are attached. (**Exhibit 13**.) Notably, the agenda describes the purpose of the application as

> to rezone approx. 136.6529 ac. . . . [f]rom RE-2 to RPC for townhouses, patio homes, garden apts., garden court houses, high & medium rise apts., recreational facilities, *golf course & permanent open space.*

(**Exhibit 13** (emphasis added).) Likewise, in regard to rezoning application C-203, a location map and a copy of the Planning Commission agenda from January 28, 1971, are attached. (**Exhibit 14**.) The agenda describes C-203 as

> to rezone approx. 158.9388 ac. . . . [f]rom RE-2 to RPC for townhouses, patio, garden court lots, single-family lots, *open space (golf course)* & elementary school.

(**Exhibit 14** (emphasis added).) Finally, for rezoning C-281, a copy of the Planning Commission agenda for July 6, 1971, is attached. (**Exhibit 15.**) The agenda describes the C-281 application as

> to rezone approx. 109.2959 ac. . . . [f]rom RE-2 to RPC for townhouses, patio or garden apartments, *golf course, open space.* (Emphasis added.)

(**Exhibit 15.**) These additional documents clearly show that the three RPC rezonings in 1971 were intended for *golf course* and *open space* uses—separate and apart from any residential uses.

G. Proffer Authority Did Not Exist in 1971

RN Golf's Appeal also argues that the ordinances approving C-135, C-203, and C-281 contain no proffer language establishing uses or incorporating any plats or development plans. (*See* Appeal at 3, 3 n.2, 10.) RN Golf is well aware that proffer authority was not granted to Virginia localities until 1978. Thus, it is no wonder that the 1971 ordinances approving C-135, C-203, and C-281 did not mention proffers. The fact that the Reston Hospital Center rezoning in March 2010 (*see* Appeal at 3 fn. 2; Appeal Ex. G) included proffered conditions has no bearing whatsoever on the appeal at issue. As noted above, development plans in the RPC district were, and in the PRC district still are, required to show the proposed uses under the rezoning request. Approval of a development plan in conjunction with a rezoning request was mandatory, then and now. Likewise, uses and development in the RPC were, and in the PRC are still, required to conform to the approved development plans.

CONCLUSION

For the reasons stated above, Ms. Belgin's June 20, 2012, letter to RN Golf's legal counsel was correct. The golf course property cannot be developed with residential uses without an amendment to the Reston Master Plan, amendments to the existing approved Development Plans, and the approval of a new PRC plan. Therefore, RN Golf's Appeal Application A 2012-HM-020 should be denied by the BZA.

Sincerely,

Randall T. Greehan
on behalf of RESCUE RESTON

Exhibits attached

cc: RESCUE RESTON, Board of Directors
Supervisor Catherine M Hudgins, Hunter Mill District