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April 7, 2015

HAND-DELIVERED

Chairman and Members of the Fairfax County Board of Zoning Appeals
c/o Lorraine Giovinazzo, Clerk, Board of Zoning Appeals
12055 Government Center Parkway, Suite 801
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

Chairman Ribble and Members of the Board of Zoning Appeals:

Thank you for the opportunity to provide the Board of Zoning Appeals (BZA) with a response to the April 1, 2015, submission by the Appellant, RN Golf Management (RN Golf).

1. RN Golf has not established that "residential" use is shown on any development plan for the golf course property.

Zoning Ordinance § 30-2.2.2, as it was in effect in 1971 when the three pertinent rezoning applications (C-135, C203 & C-281) were approved, provided clear and unambiguous language regarding the role of development plans in the RPC District. Zoning Ordinance § 30-2.2.2(E), Column 1: Permitted Uses, Paragraph 1, plainly stated that uses in the PRC district include "[a]ll uses permitted by right or by special permit in any residential district except RM-3 *only in locations shown on the approved development plan.*"[1] (Emphasis added.) (Rescue Reston Exh. 2.) Likewise, Zoning Ordinance § 30-2.2.2(E)(6), clearly mandated that "[u]ses in an RPC District shall be permissible *only in those areas as designated on the development plan.*" (Emphasis added.) (Rescue Reston Exh. 2.)

Neither the 1977 re-adoption of § 30-2.2.2 (Rescue Reston Exh. 6) nor the 1978 adoption of the new PRC District (Rescue Reston Exh. 8) changed any of the 1971 RPC requirements regarding the mandate that only uses shown on a development plan were allowed in the district. *See, e.g.,* § 30-2.2.2(A) ("rezoning to and development under this district will be permitted only in accordance with a comprehensive plan and development plan") and § 30-2.2.2(G)(1)("'[u]ses in the RPC District shall be permitted only in those areas as designated on the approved

[1] The RM-3 exception is not pertinent to this matter.

development plan) (Rescue Reston Exh. 6); § 6-305(2) ("[u]ses in a PRC District shall be permitted only in those areas designated on the approved plan") (Rescue Reston Exh. 8).

In this appeal, RN Golf has not presented a shred of evidence that *any* development plan shows residential use for the golf course property. To the contrary, each and every development plan shows the location of the golf course property designated as "South Golf Course" and "Permanent Open Space." (*See* Rescue Reston Exhs. 3, 4 & 5.) The Zoning Administrator has certified the C-203 and C-289 development plans as the final approved versions. There is no legitimate reason to conclude that the approved development plan for C-135 (approved the same day as the C-203 development plan) would have shown any uses for the golf course property other than "South Golf Course" and "Permanent Open Space" – just as is referenced on the C-135 development plan located by Rescue Reston (*see* Rescue Reston Exh. 3).[2]

Applying the clear requirements of the Zoning Ordinance to this appeal, absent a development plan showing "residential" use of the golf course property, the County Zoning staff had no authority to conclude that residential use was legislatively authorized by the Board of Supervisors at that location; nor does the BZA have any such authority. To conclude otherwise would be to illegally rezone the golf course property as prohibited by *Krisnathevin v. Board of Zoning Appeals*, 243 Va. 251, (1992). (Rescue Reston Exh. 20.)

2. RN Golf misinterprets the purpose and intent language of the RPC (and PRC) District.

While RN Golf references the "flexibility" language found in Zoning Ordinance § 6-301 (RN Golf 4/1/15 submission at 1), it misinterprets the provision. "Flexibility" refers to "removing many of the requirements of the restrictions on conventional zoning." Zoning Ordinance § 6-301.[3] Flexibility in changing uses from what was approved by the Board of Supervisors is another matter which has clearly been ruled illegal by the Supreme Court of Virginia in *Krisnathevin v. Board of Zoning Appeals*, 243 Va. 251, 254 (1992) (Rescue Reston Exh. 20 at 2.) . To change legislatively–approved uses, as RN Golf desires, requires amendments to the applicable development plans and to the comprehensive plan. *See* §§ 30-2.2.2(B)(2)(last paragraph) and 16-202(2) & (9). This is precisely what Ms. Belgin's June 20, 2012, determination correctly concluded.

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[2] RN Golf's reliance on *one* entry on a density tabulation chart shown on *one* deed of dedication plat is misguided. That entry lists a 36-acre parcel with the "Type Density of "Medium" and a "Type Use" of "Rec-Golf Course." (*See* Appeal Exh. I) As argued by the County and Rescue Reston, that *one* entry is incorrect. First, it does not comply with what is shown on any development plan. Second, it is even contradicted by the references on other deed plats submitted by RN Golf. On the other deed plats, density tabulation charts show the golf course property having a "Density Type" as "Open Space" and a "Type Use" as "Golf Course." (*See* Appeal Exh. J at deed book/page 3596/43; Exh. K at deed book/page 3753/204-05.) If RN Golf's position were correct, all the density types for the golf course property would be the same on all the deed plats. That simply is not the case.

[3] Just as some examples, in Zoning Ordinance § 6-306, the PRC District has no lot size requirements for each use or building, and no minimum lot width requirement. Likewise, in § 6-307, Bulk Regulations, the PRC District has no requirements relating to maximum building height, minimum floor area ratio, and/or maximum percentage of lot coverage.

3. RN Golf does have a by-right use of its property – the use which the original rezoning applicant requested and had approved.

While RN Golf contends that "[u]nder the Opposition's theory, Appellants possess no by-right use of its property" (4/1/15 RN Golf submission at 2), this argument is patently wrong. RN Golf, as did its predecessors in title, including Gulf Reston, Inc. (the actual applicant on all three pertinent rezoning applications), has the by-right use of a golf course. This is the use of the property that Gulf Reston requested in C-135, C-203 and C-281 and the use which has been successfully maintained for the past 40+ years at this location. While apparently RN Golf now wants to change that use, to do so it must go through the Zoning Ordinance's recognized process as Mr. Belgin's determination letter correctly concluded.

4. Discrepancies between the approved development plans and what is actually on the ground is not totally unexpected.

Zoning Ordinance § 30-2.2.2(B)(2) in effect in 1971 required that development plans show "the *general* location and the types of land uses," "densities of population in residential areas," as well as such other things as the general location of recreational facilities and thoroughfares. (Emphasis added.) As well, § 30-2.2.2(B)(2)(last paragraph) allowed administrative revisions to the development plan as long as no "significant modification" was proposed. (*See* Rescue Reston Exh. 2.) The text of Zoning Ordinance §§ 16-203 and -204 also allows "minor modifications" from the development plan to be shown on subsequently filed PRC plans and subdivision plats.

Considering the foregoing ordinance provisions, it stands to reason that that some changes to what is shown on a development plan would occur on the ground. Rescue Reston is not aware of why changes on the ground, if any,[4] were made, but presumably if changes were made they were all thought to be within the scope of the provisions at the time allowing such administrative ("minor") modifications. Notably, none of the purported "discrepancies" identified by RN Golf eliminate the underlying golf course and open space uses.

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[4] To the extent that RN Golf has relied upon Fairfax County GIS data to determine the extent of any "discrepancies," information about the County's GIS system specifically notes that "[t]hese maps are for information purposes only and may not represent actual conditions" and that "[t]he property lines on the parcel layer have a positional accuracy of 8 to 10 ft. The planimetric features (building outlines, etc.) have a positional accuracy of 2 to 3 ft. Therefore, the imagery and parcels may not have exact alignment. Precise determination of parcel boundaries must be made by a licensed surveyor using the location information recorded on the property deed on file with the Circuit Court." *See, e.g.*, http://icare.fairfaxcounty.gov/ffxcare/main/home.aspx; http://www.fairfaxcounty.gov/gis/VirtualFairfax/Support.aspx#disclaimer. Unless RN Golf has undertaken a survey by a licensed surveyor, the extent of any "discrepancies" is questionable.

5. RN Golf's position would render meaningless the development plan requirement in the RPC/PRC District.

Without question, development plans are a fundamental part of the RPC/PRC zoning. As noted above, numerous sections of the Zoning Ordinance (past and present) recognize that no use or development may occur in the PRC District without such use being shown on an approved development plan. RN Golf, however, argues that "a rezoning applicant need not, however, enumerate on its development plan any or all of the myriad individual uses the applicant might establish in order for the applicant's development plan to be approved" (RN Golf 4/1/15 submission at 3.) RN Golf's argument is incorrect. First, the argument flies in the face of Zoning Ordinance §§ 30-2.2.2(E)(2), 30-2.2.2(E)(6), and 6-305(2), which all mandate that no *uses* are allowed in the RPC (and PRC) District unless and until they are *shown on* an approved development plan. Second, here, whether or not specific uses needed to be shown on a development plan is totally irrelevant, because specific uses were shown. The uses shown included various residential uses on certain portions of the application properties, but "South Golf Course" and "Permanent Open Space" are the specific uses shown on the golf course property. RN Golf's position would render the development plan requirement in the RPC/PRC District meaningless, despite its fundamental importance in this special zoning district.

According to RN Golf, despite what was requested by an applicant at the time of rezoning and shown on any development plan approved with a rezoning, and without having to get approval from the Board of Supervisors, any landowner can unilaterally decide to change his property's use, as long as the use change is to another of the "60+ available uses controlled by sub-category designation." (*See* 4/1/15 RN Golf submission at 3.) This position is simply false and absurd. If RN Golf were correct, *all* the landowners in the so-called "Residential subcategory" could decide to do all residential uses, despite what was clearly shown on their development plans; landowners could unilaterally change from low density residential to high density residential, or from townhouses to garden apartments, or from community uses or affordable dwelling unit development to single family detached dwellings – or vice versa. *See* Zoning Ordinance § 6-302(A). Such a "wild west" scenario is not, and never was, intended or permitted in the RPC/PRC District. This is certainly *not* the "flexibility" envisioned by the RPC/PRC District.

6. The deed plats submitted by RN Golf do not control the property's zoning and RN Golf's interpretation of the plat notes is still wrong.

Nothing in the Zoning Ordinance allows a deed of dedication or a deed of subdivision, the types of deeds relied upon by RN Golf (*see* Appeal Application Exhs. I-L) , to control the zoning use of properties in the RPC/PRC District. In the RPC/PRC District, as noted repeatedly above, it is the legislatively-approved development plan that controls such uses. Anything in a deed, or on its plat, contrary to an approved development plan, is illegal and void. *See Foster v. Geller*, 248 Va. 562, 568 (1994); *Hurt v. Caldwell*, 222 Va. 91, 97 (1981).

Furthermore, even if for the sake of argument a deed of dedication or subdivision (or their attached plats) could control zoning uses, the plat "note" upon which RN Golf relies simply

does not support its position. The note reads: "This block constitutes recreational open space and may not be subdivided, built upon, altered or modified, except after an amended final plan has been approved as provided in Section 30-2.2.2 of the Fairfax County Zoning Ordinance." See, e.g. Appeal Exhs. J & K. RN Golf asserts that the term "final plan" in these plats approved in 1972-1974 must mean a "PRC plan," a term not even included in the Zoning Ordinance until 1978. Looking at the Zoning Ordinance in effect in the 1971-74 timeframe proves otherwise. In that Zoning Ordinance, following the approval of a rezoning to the RPC District and its corresponding development plan, the applicant had to first submit "a preliminary plat" to the Director of County Development for review and approval, and then "a final plat." Zoning Ordinance § 30-2.2.2(B)(3). The only "plan" ever referenced in § 30-2.2.2 is "a development plan." *See, e.g.,* Zoning Ordinance § 30-2.2.2(B)(2) & (3). Considering the plat note in light of the Zoning Ordinance in effect at the time of the plats' approval, "amended final plan" meant a amended final development plan. The note is simply a statement reflecting that before the recreational open space use could be subdivided, built upon, etc., the change in use had to be reflected on a final amended version of a development plan. The note is not, as RN Golf contends, permission to allow administrative changes in a PRC plan to legislatively-approved uses on previously approved development plans.

7. The Comprehensive Plan is more than a guide in the RPC/PRC District.

While the Comprehensive Plan may just be a guide in traditional zoning districts, that is not the case in the RPC/PRC District. Throughout the RPC/PRC District, the vital importance of the Comprehensive Plan and the Reston Master Plan, and the recognition that uses and development must comply with them, is highlighted. *See, e.g.,* § 30-2.2.2(A)(last paragraph) (*see* Rescue Reston Ex. 2), 30-2.2.2(A)(last paragraph)(*see* Rescue Reston Ex. 6), and 6-301(last paragraph) (*see* Rescue Reston Ex. 8). Here, there is no dispute that the Reston Master Plan, incorporated into the County's Comprehensive Plan, has always designated the golf course property for open space and golf course uses. It would be totally arbitrary and unreasonable to conclude that in 1971, when the Reston Master Plan and County Comprehensive Plan called for open space on the golf course property, and the Zoning Ordinance required that any rezoning to and use of PRC-zoned property had to comply with the Comprehensive Plan, that the Board of Supervisors would have authorized residential use of the golf course property. Therefore, to obtain such a use, RN Golf would need to obtain approval of a Comprehensive Plan amendment, as well as development plan amendments, from the Board of Supervisors.

8. RN Golf's position disregards all of the other documentation regarding the rezonings of C-135, C-230 and C-281.

Finally, RN Golf's position improperly asks the BZA to blindly ignore that the rezoning applications, statements of justification and legal advertisements for C-135, C-230 and C-281, all of which proposed golf course and open space uses for the golf course property (separate from any residential uses also shown on the development plans). All of these documents support the development plans for C-203 and C-281 certified by the Zoning Administrator, as well as the C-135 development plan located by Rescue Reston. None of them support RN Golf's arguments in this appeal. As reflected in the statements of justification, only on the "balance of the land,"

outside the golf course property, was there ever intended to be any residential uses. (*See* Rescue Reston Exhs. 19A & 19B.)

Conclusion

The development plans for C-135, C-203 and C-281, the applications for these rezonings, the statements of justification for these rezonings, the legal advertisements for these rezonings, the Reston Master Plan and Fairfax County Comprehensive Plan, the requirements of the Zoning Ordinance that only *uses* shown on a development plan may be conducted in the RPC/PRC District, and 40+ years of operation at this location, all support the County's and Rescue Reston's position that the golf course property only is approved for golf course and open space uses. *Krisnathevin v. Board of Zoning Appeals*, 243 Va. 251 (1992), made crystal clear that changes in use require legislative approval by the Board of Supervisors. Before residential use can legally be authorized on the golf course property, legislative approvals amending the development plans and the Comprehensive Plan are required from the Board of Supervisors.

For all the reasons stated above, and those previously submitted in writing and in person at the BZA's hearing, Ms. Belgin's June 20, 2012, determination should be affirmed by the BZA and RN Golf's appeal denied.

Sincerely,

Randall T. Greehan
Counsel for Rescue Reston

cc: Connie Hartke, President, Rescue Reston
David Burns, Rescue Reston
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