



October 11, 2022

Via email only: thomas.fleetwood@fairfaxcounty.gov

Thomas Fleetwood
Director, FCRHA
3700 Pender Drive
Fairfax, VA 22030

Re: Supplemental Opposition of the Reston Citizens Association to the Interim Agreement Concerning the Foulger-Pratt Proposal

Dear Director Fleetwood:

My client, Reston Citizens Association, (“RCA”) presented testimony at the September 15, 2022 hearing (“hearing”) of the Fairfax County Redevelopment and Housing Authority (“FCRHA”).

RCA is a non-profit, tax-exempt 501(c)3 corporation serving over 60,000 people who live in Reston. Founded in 1967, RCA is the only community-wide organization in which everyone that lives, works and plays in Reston has a voice. Its mission is to promote Reston’s vision and planning principles, to sustain and enhance its quality of life now and in the future, by serving as a non-partisan, action-oriented organization for all Restonians. To achieve its mission and goals, RCA collaborates with other community and Fairfax County organizations.

Although a couple of hearing participants unconditionally supported advancing to the Interim Agreement stage with Foulger-Pratt (“F-P”), most participants emphasized the drawbacks of the F-P proposal and the process. At the hearing, Dennis Hays of the RCA, presented testimony strongly opposing the FCRHA entering into the proposed Interim Agreement, *inter alia*, due to the severe redactions, and the lack of adequate answers to questions about the density, public safety, police operations, and library operations.

As set forth below, RCA hereby supplements its hearing testimony and reiterates its request (as also urged by many hearing participants) that the FCRHA refrain from entering into the Interim Agreement unless and until adequate vetting of the proposal is done by the community. In the RCA’s opinion, the proposal is not well thought through and should go back to the “drawing board” on basic issues such as library co-location and operation, density and comprehensive plan issues, before the project proceeds forward to the Interim Agreement phase, if at all.

1. If the Interim Agreement is executed now, the efficacy of community engagement on fundamental issues such as comprehensive plan compatibility, density and library co-location will be undermined.

Once the Interim Agreement is signed, the basic parameters of the F-P proposal are locked in and the fundamental framework is unlikely to change as the result of any subsequent public input, no matter how much *post hoc* “community outreach” is conducted.

The underlying assumptions upon which the F-P proposal rests, such as the appropriateness of library co-location,¹ the massive increase in allowable density, and the inconsistency with the overall Reston Comprehensive Plan currently under review,² require careful and complete community vetting **before** the Interim Agreement is executed. Otherwise, poor decisions will be cemented in place before any public input is allowed.

For example, once this Interim Agreement is signed, the colocation of the library on this approximately 4.5-acre Bowman Towne Center (“BTC”) parcel³ will be a foregone conclusion, despite the drawbacks of the site voiced by many of the hearing participants. That useful input from the library community is being actively discouraged is illustrated by the fact that paragraph 3 of the Interim Agreement entitled “Community Outreach” does not include any library group or representative in the list of presumed top tier “stakeholders.”

Moreover, it is clear that the so-called “Community Outreach” process outlined in the Interim Agreement is not going to delay the comprehensive plan and density-related aspects of the F-P proposal. Specifically, paragraph 3 d provides that after some “initial” community outreach, F-P is going to launch into the rezoning application itself. This would mean that the required comp plan amendment (to increase density) would also need simultaneously to be launched. All of this is pre-programmed in the Interim Agreement to be accomplished at a time well in advance of input derived from “community outreach” concerning comprehensive plan and density issues raised by the F-P proposal.

Paragraph R-2 of the Interim Agreement provides further evidence that there is no realistic opportunity for effective public input relating to the basic assumptions of the Interim Agreement. It indicates that the Board of Supervisors is **already** in the process of subdividing the 1.6 acres from the police parking lot to enable the land sale to FCRHA in order to piece together the BTC Parcel for F-P to rezone. Along with the rezoning and comp plan amendment which will take

¹ See Section 3 below for a more detailed discussion of the library-co location issue.

² See Section 4 below for a more detailed discussion of the comprehensive plan and density issue.

³ It is our understanding from paragraphs R-1 and R-2 of the proposed Interim Agreement that this BTC Parcel is to be created from the existing 2.89-acre FCRHA-owned parcel on which the 30 townhouses are located, and approximately 1.6 acres of the parking lot currently used by the police station and owned by Fairfax County.

place well before the conclusion of “community outreach,” this in-process land subdivision and transfer indicates that the F-P proposal already has the “green light” from the FCRHA and the Board of Supervisors.

Taken as a whole, the “Community Outreach” provisions appear to be focused on what is happening procedurally with the proposal and are not designed to elicit input to shape the actual proposal. Indeed, nothing in Section 56-575.9:1 Va. Code concerning interim agreements addresses community engagement. Significantly, the other “Interim Agreements” FCRHA has entered into with developers do not contain any references to a “community outreach program.”⁴ Most likely this is in recognition of the fact that once the Interim Agreement is signed, there is little the community can do to influence the proposal. Moreover, nothing in the PPEA indicates that public involvement should not be encouraged early in the process, long before the interim agreement stage is reached.

Accordingly, RCA repeats its request made at the hearing⁵ and echoes the sentiments of many of the other hearing participants, that the FCRHA defer signing the Interim Agreement. The FCRHA must revisit critical issues, including the basic density, land use harmony and library-related issues in a public forum to enable meaningful public input at this point in time, in order to determine the appropriate use of this land that is proposed for development.⁶

2. Lack of legally required transparency in FCRHA’s process resulted in a severely over-redacted proposal that could not adequately be vetted by the community in the truncated time provided by the FCRHA.

If FCRHA and/or F-P were at all interested in public input, they would have had an informational meeting in advance of the September 15 hearing on the Interim Agreement at which the developer could have responded to questions. The developer could have appeared at the September 15 hearing, again to answer questions. None of this happened.

Instead, the prevention of effective community participation in this process appears to be by design. There has been a concerted effort to prevent the opportunity for the submission of ideas other than those of F-P as to how to develop affordable housing on the BTC parcel, and how and even whether to integrate the library into the parcel.

⁴ See, e.g., the North Hill (2015) Interim Agreement https://www.fairfaxcounty.gov/procurement/sites/procurement/files/assets/documents/north_hill_interim_agreement.pdf.

⁵ See Testimony of Dennis Hays (RCA).

⁶ See e.g., Testimony of Rhonda Mefford (Edgewater HOA); Mona Tauber, (Paramount HOA); Tammi Petrine (Reston 2020).

First, we understand that the Norton Scott proposal was submitted within the May 16, 2022 deadline⁷ for competing proposals. The County's immediate dismissal of the Norton proposal without even informing the public of its existence indicates an unwillingness to provide the public with any information or alternatives that might slow down the FCRHA's promotion of the F-P proposal.

Second, and more importantly, it appears that the “unsolicited” proposal from F-P was kept from the public for months in apparent violation of the PPEA and thus in violation of the Dillon Rule. Specifically, the F-P proposal was statutorily required to be published on the County’s website pursuant to PPEA Section §56-575.17.⁸ Instead, sometime around the end of March, 2022, a heavily redacted proposal was posted and, my client has informed me that you stated a full version could be released right after the May 16, 2022 deadline. But the full version was never released and a slightly less redacted version was only made public on the County website in late August, 2022, immediately before the Labor Day holiday and approximately two weeks before the September 15, 2022 hearing on the Interim Agreement.

In the late August version, 16 pages --over one third of the proposal – were redacted. F-P explained the extensive redaction cryptically as “outlin[ing] our unique development strategy and plan” that is “based on our extensive experience and market position.” In view of these extensive redactions, it was difficult for the public to evaluate the F-P proposal or to provide meaningful input at the hearing.

Many of the participants of the September 15 hearing commented on the lack of transparency and the lack of available information on the F-P proposal and were dismayed that the Norton proposal was not even being considered.⁹

If the purpose of the hearing was indeed to get public input about proceeding to the interim agreement phase, the FCRHA went out of its way to keep the relevant information from the public, to the point of a possible violation of the PPEA.

However, as stated above, the statute contemplates the proposal (as opposed to the Interim Agreement itself) will be provided to the public long before the public hearing on the Interim Agreement. Moreover, a proposal as important as this one, that envisions drastically changing

⁷ The May 16, 2022 deadline for competing proposals was set forth in the undated “Notice of Receipt Of An Unsolicited Proposal For A Public-Private Partnership To Develop Affordable Housing And Library On The Site Known As Bowman Towne Court” and Addendum thereto dated of March 25, 2022 (collectively “Notice of Receipt and Addendum”).

⁸ Section 56-575.17 (A) Va. Code provides in pertinent part “Conceptual proposals submitted....to a responsible public entity shall be posted by the responsible public entity within 10 working days after acceptance of such proposals....”

⁹ See, e.g., Testimony of Ms. Mulston (Coalition for Planned Reston); Mr. Hays (RCA); Ms. Barthelson.

the permitted density and intensity of use of the property from 30 townhouses to 350 apartment units (well in excess of the maximum allowed PRC density of 50 units per acre),¹⁰ and thrusting a formerly free-standing library building into the mix, deserves more than a few weeks for the public vetting. And the public deserves more than a skeletal, heavily redacted proposal to vet. This intensity and mixture of uses, when combined with the security concerns of the police station, should not be sprung on the community with a minimal amount of notice and opportunity to review a complex set of documents.

Many of the participants of the September 15 hearing commented on the lack of transparency.¹¹ Despite the paucity of information available,¹² what was available demonstrated to many community members just how poorly this project is conceived and what a mismatch it is for the community. Accordingly, RCA strongly opposes executing the Interim Agreement until the proposal is improved.

3. No case has been made to co-locate the library with the proposed apartments and existing police and government center already at the site.

RCA joins with the eight others who testified at the hearing objecting to the sparsity of data about the proposed library and pointing out the inadvisability of co-locating the library on this already intense parcel.¹³

As Mr. Filippini, Vice President of Reston Friends of the Library, testified the library is a regional library that reaches out to underserved members of the community. He emphasized that the F-P plan does not allow for enough meeting and parking spaces and that the footprint of the library is missing from the F-P plans. The RCA agrees with Mr. Filippini's assessment that this is the busiest library in the County library system and, consequently, any move must be done carefully and with due regard for possible adverse consequences on the library and its patrons.

As one hearing participant put it, the library is a resource for the entire community and Reston should not be deprived of the opportunity to have a world class library.¹⁴ There has been no case

¹⁰ See, e.g., Testimony of Mr. Maupin and Ms. Petrine.

¹¹ See, e.g., Testimony of Ms. Mulston.

¹² By way of example, data needed to evaluate the proposal include an explanation of why the promised 43,000 square feet of library space has been reduced; information to determine the required police design setbacks; open space and green space requirements compliance, any kind of traffic generation estimates, to name a few missing pieces of information. This list is intended to be illustrative and not exhaustive; Even supporters of the P-H proposal admitted there was almost no information provided as yet to evaluate the F-P proposal. *See, e.g.,* testimony of Douglas Stewart, (Coalition for Smarter Growth).

¹³ See, e.g., Testimony of Ms. Rao, Mr. Filippini; Mr. Curtain, Ms. Barthelson; Mr. Ready; Ms. Tauber, and Ms. Petrine.

¹⁴ See Testimony of Mr. Ready.

made to collocate the library on this site, and Ms. Petrine offered several other appropriate locations for affordable housing of the type proposed by F-P that would spare disruption of the police parking lot and library services.

4. The Interim Agreement will enshrine in the BTC parcel unacceptable increased density and extreme disharmony with Reston's Comprehensive Plan.

Fundamental comprehensive plan and density assumptions cannot be easily revisited after approval of the Interim Agreement. As stated above, the "community outreach" after the Interim Agreement is signed will have been barely started when the comp plan amendment and the rezoning required of this F-P proposal is initiated. RCA agrees with those at the hearing¹⁵ who took the position that this BTC parcel should not be treated separate and apart from the rest of the Reston Comp Plan which is being reviewed by the Reston Comprehensive Plan Task Force. Moreover, to paraphrase the testimony of one hearing participant, the exclusion of the BTC site from the rest of the comp plan process circumvents the normal planning process and will result in jamming through the proposal with little public input.¹⁶

Conclusion

For the foregoing reasons, as well as those stated by RCA and others at the public hearing, the F-P proposal is not ready to reach the Interim Agreement phase.

The next public meeting of the FCRHA is on October 20¹⁷ and thus far there has been no attempt after the September 15 meeting to engage the community. Every indication is that it will vote to enter into this Interim Agreement, with the ephemeral promise that community outreach will come later in the process. While the community leaders who testified did an admirable job vetting some of the glaring problems, they did so with an almost insurmountable dual challenge of a lack of time and a significantly redacted proposal that hindered their review and rested on some basic assumptions that are contrary to the interests of the Reston residents.

If it signs the Interim Agreement, the FCRHA will set in motion a process which has as its foregone conclusion an unprecedented increase in density and disharmony with the Reston Comp Plan and an arguably inappropriate collocation of a regional library that is likely to prove incompatible with the other intense uses on the site.

¹⁵ See, e.g., Testimony of Ms. Tauber and Mr. Curtin.

¹⁶ See Testimony of Ms. Mefford.

¹⁷ The PPEA requires a hearing such on adoption of the interim agreement to be conducted **no later than 30 days** before an interim agreement is signed. RCA has confirmed that the next meeting of the FCRHA is October 20, 2022 and that the agenda for that meeting will not be published until the afternoon of October 17, 2022, therefore we must assume the Interim Agreement will be scheduled for a vote at that October 20 meeting.

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Accordingly, RCA requests the FCRHA to do the responsible thing and delay decision on the Interim Agreement until these important foundational issues are properly vetted and discussed with the community.

Respectfully submitted,



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