

FDP 2011-PR-023-04 AND PCA/CDPA 2011-PR-023 – RENAISSANCE CENTRO TYSONS, LLC AND CITYLINE PARTNERS LLC

Decision Only During Commission Matters
(Public Hearing held on February 4, 2016)

Commissioner Lawrence: Thank you, Mr. Chairman. Mr. Chairman, I'm going to ask to do something unusual tonight. Ordinarily, at the end of a deferral period, the motion is made – up or down on the application. Tonight, I would like to take a few minutes, with your indulgence, to detail the highlights – the key points of what has happened in proffer revisions. If that's okay, I'd like to do it that way.

Vice Chairman de la Fe: Okay.

Commissioner Lawrence: It will take me a few minutes. Everybody should now have a copy of the – what the applicant sent in on March the 15th. It's the redline version of proffers – including the proffer in question, which is 92.2. What I'm going to do is to look at the key points of that revision and a couple of subsequent changes – I will say that I was on the phone today with staff on this. I – I ask your patience because I believe we have solved the problems. I will make a motion at the end of this explanation. Commissioners will remember we had the public hearing on February 4th and the application received very good support, except for one thing – which was that the applicant claimed bonus density for including WDUs, but the proffers read such that we could end up – the County could end up with no WDUs and instead money. What that amounts to or – it's a crude way of putting it, but what that would have amounted to is dollars for density. And that is not what the Plan contemplates at all. The Plan states specifically that money is not desired. We spent some time working to get that out of the proffer and I think I can demonstrate tonight that we have done that. If you look at the – the printouts you got of the – of the proffer in question – it begins on page 9 of quite a few pages – but don't worry, I'll be doing high points only. The applicant has now moved from a – I think it was a 16 percent bonus density to 20 percent, which is – from my point of view – okay in this situation. They're going to build a range of units from 110 to 140 and if they convert some of the live/work units to residential units, it could go to 150. On page 9, there's a – an example – I think it shows up in blue – I hope it does on you all's copies – at the bottom of 92.1 – showing how the 20 percent would be calculated. It's calculated off the base units, right – and not off the total units that would be constructed. And that's okay. That's how the Plan envisions it. So that's all right. What that means is they'll end up with some calculated number of WDUs to be provided. If we go to the next page – page 10 – we get into a lot of red lines and blue lines. And what they're saying there is that these units may be in the building, not in the building, or in some combination. If they're not in the building, they will be in Tysons, okay? And probably, it could end up with them all being not in the building, but we would still get the WDUs and they would still be in Tysons and that's the whole point. Notice the big letter B there, about two-thirds of the way down the page. The applicant shall provide no less than 65 percent of the proffered 20 percent – now that proffered 20 percent is the number they got by dividing their total number of units by 1.2 – so they're going to provide 65 percent of that either on-site or off-site or a combination. No qualification. It's a complete commitment – a complete statement. Let's see, the next point that matters – there is a reference

in the statement – a statement made earlier on that the 20 percent is going to be 20 percent, as may be adjusted. There was formerly in this proffer – and I think it’s in your copy – a little Roman three – Romanette three – and what it talks about is the idea of redistributing, among the various income stages, these units. And in that happening, there would be a reduction of units – one unit for these redistributions. That’s gone. There will be no reduction of the number of units once calculated – none. We have, then, a – the rest of the proffer really concerns itself with – okay, how are we going to know that we’re going to get these units that you’ve committed to? And there are several different methods to be employed. One method is if it’s going to be off-site, then it’s going to be in a building that has been entitled – in other words, it will be in a future building that does not yet have its entitlement in Tysons. It’ll be in a building that has been zoned and there will be contractual arrangement – a four-cornered contractual arrangement with the builders of that building to include a number of WDUs in satisfaction of this proffer for this building. And there are various assurances that those kinds of things will be for life. There are several events in the proffer that matter. One of them is at site plan. So if they get entitlement, then the next big event is going to be at site plan. And at site plan, they need to be able to demonstrate what they’ve done in the way of WDUs. If, at the time of site plan, they can demonstrate that they’ve got all 20 percent of it – however they got it – to the County’s satisfaction, then they’re done. More realistically, they’ll probably be somewhere in process at site plan so the proffer continues with, “Okay, what if we haven’t got them all by site plan time?” And under those circumstances, the applicant proffers to do a diligence for the remainder of the WDUs and to come to arrangements, which – when furnished with the evidence they describe in the proffer – should satisfy the County that, in fact, there will be a WDU. Then, we have – at prior to the first RUP being issued – so site plan is in now – probably a year or so from entitlement, maybe more, and the first RUP might be issued – maybe two years after that for construction. So we’re talking about a fairly extended period of time for them to do their searching. And prior to first RUP, they need to be able to demonstrate that they have what units they have and they need to provide the bonifides for each of these units that they say they’re going to provide to the County. If they get all 20 percent at that point, prior to the first RUP, then they’re done. But if they don’t have all 20 percent at that point, then the search goes on. And what happens then is – if they end up after a period of three years with something less than 80 percent of that number we ended up with – if it was 20 units, then it would be 80 percent of 20. They end up with something less than 80 percent of that number we arrived at, then they’re going to give a demurrage to the County in the amount of – I think it’s \$85,000 per unit that they haven’t provided. Now that – it’s 80 percent of 20. We’re talking about maybe seven units that are left so if it’s less than 80 percent, it would be 7 times the – times the amount demurrage. Suppose they did better than that. Suppose they got 80 percent, but not 100 percent. If they got 80 percent but not 100 percent, then the demurrage goes down. It would be \$75,000 per unit, according to the proffer. So in the event that we don’t get WDUs, we do get money, but there is no situation in which they get the density and we get nothing but money. And there’s fairly good reason to believe that they’re incentivized to produce – not money for us because we don’t want that – but WDUs. The proffer spends a lot of words making that clear. I went over it as best I could. We have also looked at it with staff. I had a conversation today with the County Attorney. I think I haven’t said anything that isn’t true, per the proffer. I believe I condensed it and church-leagued it, but I think I’ve done that accurately. I think we have every reason to believe that this will take care of the apparent conflict we had with McLean. Also, this applies only to steel-and-concrete, high-rise condominiums in Tysons in the magic circle. So this is not a – this is not a – we’re not creating that’s going to – people are going to come in from all over the County and say,

“Well you did this here, why can’t you do that with us. So, I know this is very last minute and I don’t very easily – or like – take any position that is different from the staff’s. Please understand that the staff has had essentially zero tolerance to fully assess the proffer. So when I make my motion, it’s going to be – it’s going to contain a proviso that staff will continue its assessment between this time and the Board date of this proffer and may well have additional comments and suggestions. We are not leaving it here altogether. Now I need a couple of things from the applicant’s representatives. Ms. Strobel, thank you.

Lynne Strobel, Applicant’s Agent, Walsh, Colucci, Lubeley & Walsh, PC: Good evening. Mr. Chairman, members of the Commission, my name is Lynne Strobel. I represent Renaissance.

Commissioner Lawrence: First, have I presented a reasonable depiction of the new Proffer 92.2?

Ms. Strobel: Yes, sir.

Commissioner Lawrence: Thank you. Secondly, will your client agree to this proffer? We don’t have a signed example of it. We need to have that by the time it gets to the Board.

Ms. Strobel: Yes, sir. That is understood.

Commissioner Lawrence: Thirdly, do you understand that staff needs to continue its assessment of this proffer between now and the Board date?

Ms. Strobel: Yes, sir.

Commissioner Lawrence: Fourthly, do you accept the development conditions that are included with this – this package.

Ms. Strobel: Yes. The applicant accepts the development conditions.

Commissioner Lawrence: Thank you very much.

Ms. Strobel: Thank you.

Commissioner Lawrence: I’m going to do something that’s not ordinarily done. I’d like to acknowledge the efforts of the applicant and the applicant’s representatives. We have had – we’ve formed a late Friday evening let’s-peruse-proffers-and-burn-the-midnight-oil club at one point. They have done good work in – in converting the thing. I’d like also to recognize the efforts that have been put in by key members of staff that are here present tonight, whose faces I’m sure you’re all familiar with – and a couple of faces that aren’t here tonight and they are Suzanne Wright and Cathy Lewis. This is not a small matter, but I think we have reached a reasonable position on the matter. I will differ from staff’s conclusion that they recommend denial. That recommendation is there because they have no time to assess what we have here, but they have seen and have had time to be exposed to it – what it is we have here – and I haven’t heard anyone jumping from the eighth floor window. So I think we’re – I think we’ve got what the Planning Commission needs to have to make a sensible recommendation to the Board. Okay, does anybody have any questions?

Commissioner Hart: Mr. Chairman?

Vice Chairman de la Fe: Yes, Mr. Hart.

Commissioner Hart: Yes, thank you. Before we – before we go on the verbatim – or are we on it?

Vice Chairman de la Fe: We are.

Commissioner Hart: Two minor edits. On page 13 at the top in that Paragraph X, first line – there's a misplaced apostrophe – it's the Board of Supervisors. On page 15, toward the bottom, that Paragraph little I – in the first line, the comma should be deleted. I hope somebody else has gone through every bit of this, but I did want to say one other thing following on Commissioner Lawrence's comments. I think we appreciate, collectively, Commissioner Lawrence's efforts and patience to straighten this out before we send it up to the Board. I thought the night of the public hearing, we had some pretty tense moments. This was a – it's – it puts us in a difficult situation to make a decision on a very complicated issue where we don't have all the information. I think we depend on staff and an applicant both – two applicants, in this case – to work constructively together to try to – to resolve the differences. It doesn't always work out. On this one, I wasn't sure that it would, but it seems to have and I think that's thanks to Commissioner Lawrence's patient efforts and his reliable wisdom on this sort of thing. And I certainly appreciate that and I think the rest of us do as well. Thank you.

Vice Chairman de la Fe: Okay. Anything else?

Commissioner Lawrence: Along the line of typos, in the beginning of the proffer, you liked the big A so well, you used it twice so you may want to check your outline again when you go through to finalize.

Commissioner Flanagan: Mr. Chairman?

Vice Chairman de la Fe: Yes, Commissioner Flanagan.

Commissioner Flanagan: I listened as carefully as I could, but I thought I heard a contradiction so I'd like to have that clarified, if you would, please. You originally stated that it was unacceptable to have dollars for density. That was stated, I believe.

Commissioner Lawrence: I did. I did say that.

Commissioner Flanagan: And we're doing is not – will not result in dollars for density.

Commissioner Lawrence: That's right.

Commissioner Flanagan: But then, later on, you said in the event that we only wind up with cash – could you explain that last statement? Why – if we – is it possible we could only wind up with cash?

Commissioner Lawrence: Thank you, Commissioner Flanagan. If I said that, I misspoke. In fact, I think the last correction – major correction we did to this proffer was to eliminate some language, which could be construed in such a way that we would only end up only with cash. There is now no way – I think I did say that – in which we will end up only with cash. They get the density all right, but we get at least 65 percent – and hopefully better than that – of WDU's – maybe not in the building, but in Tysons.

Commissioner Flanagan: Thank you. I think that answers that.

Vice Chairman de la Fe: Anything else? Yes, Commissioner Ulfelder.

Commissioner Ulfelder: I would like to second Commissioner Hart's remarks and just say this appears complicated, but the thrust is clear, which is to honor the WDU policy that is in effect for Tysons and do it in the context of a – what I think everyone agreed at the time of the public hearing – is an exciting and very positive project that will come into Tysons. And to try to keep that process moving while we are also going to be engaging in a review of the WDU policy for Tysons specifically, as it relates to these kinds of buildings – this kind of situation. And I very much appreciate Commissioner Lawrence's very hard work to try to get us to this – to get us to this point and I will be supporting the motion.

Commissioner Lawrence: Mr. Chairman?

Vice Chairman de la Fe: Yes.

Commissioner Lawrence: Thank you, Commissioner Ulfelder. And you've touched on a subject that I'd like to speak on a little bit. There is, in fact, a committee, which is engaged in revisiting the proffer so – I'm sorry, the WDU policy in Tysons. It's headed by someone who nobody here ever knew. It's a man named Walter Alcorn, who had nothing to do with the Tysons Plan whatsoever. That committee has started its work, but – of course – there's no way they're going to finish by the time – it's time to do something about this work here, which is why it was so important to get this resolved now rather than simply say, "Well, we'll just wait a few months and keep deferring." I couldn't do that. It wouldn't have been fair to the applicant at all. But it is in process and there will be some result from that. That's – there's language in the proffer you may have noticed that says the applicant can enter into new policies and that's what that refers to. Thank you, Mr. Chairman.

Vice Chairman de la Fe: Okay. Are you ready? Oh, I'm sorry.

Commissioner Keys-Gamarra: And I do appreciate all the hard work. I know we have been talking about this process and I know that we've come a long way. You did mention that the staff will continue to work with, I believe, the applicant and there may well have – they may well have additional requirements. Can you give me – or anyone give me some explanation of how those requirements, if staff does have additional concerns, will be handled.

Commissioner Lawrence: What they will do is work through their suggestions and comments with the applicant – and along with the Supervisor – and make sure that the proffers, by the time the thing gets to the Board, reflect staff's considered judgment.

Vice Chairman de la Fe: Okay.

Commissioner Lawrence: Now there may be issues on which they agree to disagree and that has happened in the past and will in the future, but that gives staff a chance to way in on the thing – which they have not had because everything has happened so fast and so late.

Vice Chairman de la Fe: Anything else? Okay.

Commissioner Lawrence: All right. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS OF FDP 2011-PR-023-04 AND, IN THE EVENT OF SUCH APPROVAL, PCA/CDPA 2011-PR-023 FROM RENAISSANCE CENTRO AND CITYLINE PARTNERS, RESPECTIVELY.

Commissioner Hedetniemi: Second.

Vice Chairman de la Fe: Seconded by Commissioner Hedetniemi. Is there any discussion? Hearing and seeing none, all those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries.

Commissioner: Thank you all very much. And I repeat, thanks to the applicant. Thanks to staff. We have preserved the integrity of the Plan. Well done.

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(The motion carried by a vote of 11-0. Commissioner Murphy was absent from the meeting.)

JLC