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Via E-Mail: jpezzullo@cranstonri.org

Cranston Plan Commission
c/o Jason Pezzullo, Planning Director
City of Cranston
869 Park Avenue
Cranston, RI 02910

Re: Cranston Crossing

Dear Plan Commission Members:

We represent the Applicant with regard to the above-referenced proposed Major Alteration to the existing Mixed-Planned District (MPD) zoning for the subject property (the "Application"). We are writing in response to correspondence from Attorney Amy Goins, counsel for Cranston Neighbors for Smart Development, to Director Pezzullo dated November 20, 2020. Contrary to Attorney Goins' proposition, the Application is not required to be accompanied by an application for a major land development project, nor is such Application defective in any other way.

Attorney Goins relies on R.I. Gen. Laws 45-23-61(b) for the proposition that the Application is defective because the Applicant did not simultaneously apply for major land development approval. R.I. Gen. Laws 45-23-61(b) reads:

"Where an applicant **requires** both planning board approval and council approval for a zoning ordinance or a zoning map change, the applicant shall first obtain an advisory recommendation on the zoning change to the planning board, as well as conditional planning board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain a conditional zoning change from the council, and then return to the planning board for subsequent required approval(s)." (emphasis added)

The Applicant has not applied for major land development approval, nor is the Applicant required to do so at this stage of the process. In accordance with the requirements of Section 17.100.040.E.2 of the Cranston Zoning Ordinance (the "Ordinance"), pertaining to Major Alterations of an existing MPD zone, the Applicant has followed the rezoning procedures set forth in Section 17.100.040 of the Ordinance. This requires that the Applicant proceed with a rezoning request before the City Council pursuant to Section 17.100.040.C of Ordinance. First,

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the procedure for a Major Alteration to an MPD set forth in the Ordinance does not require an applicant to simultaneously apply for major land development approval. Moreover, the plain and clear language of R.I. Gen. Laws 45-23-61(b) indicates that the precedence of approvals doctrine applies when an applicant “requires” both planning board approval and council approval. In the instant case, the Applicant does not require Plan Commission approval. The Applicant is merely seeking a rezoning of the property, through the mandated process for a Major Alteration of an existing MPD as set forth in the Ordinance. The Applicant may, if it elects to do so, submit for one or more major land development approvals, if applicable, at some time in the future, if it elects to proceed with the development/construction or one of more of the proposed phases of the project as set forth in the MPD. Under Attorney Goins’ theory, every applicant for a zone change that may invoke major land development approval in the future (should a landowner elect to proceed with the development of the property as rezoned) would be required to submit for major land development approval at the same time it submits its zone change application. This would preclude an applicant from seeking a zone change in and of itself, which would be both an absurd and unintended result. Moreover, this has certainly not been the practice in the City of Cranston with respect to zone changes, whether or not such zone change involved an MPD. R.I. Gen. Laws 45-23-61(b) is inapplicable in the present case, as the Applicant does not require Plan Commission approval at this time.

Moreover, the Ordinance specifically addresses the present issue. Section 17.100.040.D.1 provides:

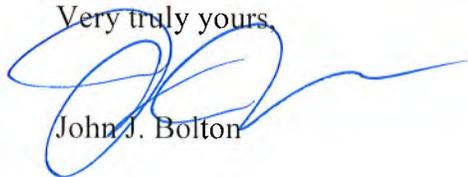
“City council approval of the MPD application shall carry with it approval of the FODP. This approval shall bind the developer to construction of the development in substantial conformance with the element of the FODP. This approval shall not hereafter supersede the City subdivision approval process as specified in Section 13.06 of this charter. Whether or not subdivision is necessary, the applicant shall submit proper applications and documentation for approval by the planning commission for every phase or section of the FODP, **as they are proposed for development.**”

Accordingly, the Ordinance specifically contemplates that an applicant may apply for Plan Commission approval for each phase of its MPD, at the time such phase is proposed for development, subsequent to the approval of the FODP by the City Council as part of the MPD rezoning process.

In conclusion, the Applicant’s present Application, consistent with the zone change process before the City Council, is in conformance with both State law and the Ordinance. The Applicant is not required to present an application for major land development approval at this time, and may elect to do so, for each phase of the proposed MPD, at some time in the future, subsequent to the completion of the rezoning process with the City Council.

Thank for your continued consideration of this matter.

Very truly yours,



John J. Bolton

JJB/lab

Cc: Christopher M. Rawson, City Solicitor (via email)
Stephen H. Marsella, Assistant Solicitor (via email)