Broberg, Brad

Subject: FW: Lakewood CD-2 Expansion Ordinance Compliance Confirmation and removal of Tokalon Drive

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From: Jung, Michael <MJung@clarkhill.com>
Sent: Tuesday, May 30, 2023 11:54 AM
To: Broberg, Brad <bbroberg@winstead.com>
Subject: RE: Lakewood CD-2 Expansion Ordinance Compliance Confirmation and removal of Tokalon Drive

Thank you for your detailed email. I will review it in detail and respond, but may or may not do that before the draft ordinance is released by staff. If at that point there are provisions that don't make sense for the entire expansion area or portions thereof, I will certainly address that issue. Prior to that point, however, we are all reacting to what we think will be in the ordinance rather than what is actually proposed.

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From: Broberg, Brad <bbroberg@winstead.com>
Sent: Tuesday, May 30, 2023 11:13 AM
To: Jung, Michael <MJung@clarkhill.com>
Subject: RE: Lakewood CD-2 Expansion Ordinance Compliance Confirmation and removal of Tokalon Drive

[External Message]

Thanks Michael,

Once I started working on a response last Friday it just kept growing (and growing and growing...) so I decided not to bother you over the Memorial weekend.

I'm so sorry for the length but it's very important. There is just so much wrong here. The summary is that (1) what neighbors petitioned was happening, wasn't happening, (2) they didn't limit the scope of the ordinance to the problem they petitioned to address, (3) they let those petitioned believe facts that weren't accurate, and (4) they let those petitioned believe that the meetings were preliminary and only for discussion and information gathering purposes but it wasn't. The Chief Planner at the time, Bill Hersch, confirmed one aspect of the petitioner's message in the pre-application meeting - that noncontributing homes would only face development restrictions (setbacks and height, for example), not architectural (style) restrictions. The chair of the committee confirmed multiple times through the meetings that that was idea during petitioning and that that position changed late in the ordinance crafting meetings on December 14, in meeting 10. That was year-end just before the holidays and was a meeting attended by only 15 people, 14 of whom lived in contributing homes plus a builder who specializes in Tudor remodels but doesn't live in the proposed district. That builder drove a good bit of the discussion on the change to restrictions on noncontributing homes. Many votes against that were e-mailed to the City and we've requested that those be counted in any "consensus." There is plenty of other bloat too. What happened was misleading, very disappointing and

inappropriate. Most of this and more is posted on the NotoCD2.com website – please take a look if you have time. Below is my much longer version with more detail. I think the detail is important.

I agree the process is backwards. I shared that view with The Advocate last Thursday and in many meetings with our Tokalon neighbors. A suggested ordinance would have been much better first, along with some neighborhood-only meetings to let folks know what they were in for before City involvement. In the pre-application meeting, Bill Hersch said that the neighborhood committee should have held meetings just with neighbors – but they didn't. Pre-City meetings aren't required, but would have been good and neighborly and increased participation and inclusivity. Only after those meetings should the petitioning process have started. That would have given folks the potential to see how far the committee wanted to or could potentially go with it, and let a little debate and fact-finding happen before the bus left the station. That may have helped narrow the scope the way the ordinance suggests it should before the actual petition was crafted.

Instead of some pre-application neighborhood meetings though, a pleasant couple came to our door, told my wife they live a couple streets over and that they were petitioning to "save historic homes" in Lakewood. They said builders were tearing down historic homes and if my wife would sign the petition, that would just mean she was for meetings with neighbors (no mention of the City) to see if an ordinance that would protect our neighbors' historic homes was something the neighborhood was interested in pursuing. While we can debate the technical truth of it, the message was clearly presented as all very innocuous, preliminary and information-gathering. The cause was noble – they just needed our help to protect their beautiful old home and homes like theirs. There was no discussion about it not being subject to a vote (which Bill Hersch said was a flaw that needed to be addressed in an ordinance amendment) or that neighbors really couldn't retract their support without showing up at public hearings over a year later. There was no discussion that the City would take it from there and start the unavoidable process toward building an ordinance. There was nothing said about non-historic homes being restricted other than with respect to setbacks and the kinds of restrictions that might prevent builders from filling the lots. Other than that, it was all about the terrible things happening to historic homes.

The nice couple at our door, our neighbors, needed our help. My wife signed to have some preliminary discussions, to learn more, and see what we - our neighbors and us – could do to prevent builders from buying historic homes and then tearing them down against the seller's wishes. The Advocate chimed in with "Save the Dilbecks" headlines and pictures at the top of the article of the stately old homes that just might be bulldozed next. The publicity and message was compelling and very clear – beautiful historic Dilbecks are being torn down by evil builders. Let's meet to hear and discuss what those old homes' owners can or want to do about that with our help. If they want that, like the nice couple at our door did, maybe we can help was what my wife's thought. Except that's not really what's happening here and that's not how the process worked or what the goal really became. Yet we were locked in.

None of the 12 tear downs over 12 years (1 per year on average) recited in the Determination of Eligibility was a "historic" home. None were "contributing" styles. The proposed regulations wouldn't have prevented a single one of those tear downs. Before and after pictures of all those recited tear downs are attached. Folks can differ on whether what replaced them is something they like personally, but they're pretty darn nice compared to what they replaced. Look for yourself. Those few homes in 12 years certainly aren't destroying the neighborhood or any historic home. The messaging was false, pure and simple. The messaging was compelling though and we thought we were helping our neighbors save their homes. It achieved the goal of gaining support, but was false nonetheless. That same frustration about the messaging of the petitioners was commonly repeated among Tokalon neighbors in meetings we've had.

Where we are now is not about neighbors getting together and voluntarily subjecting their historic Tudors and Spanish Eclectic homes to demolition restriction with our help. Where we are now is not rooted in any true history of such demolitions actually happening. Those folks' homes simply are NOT being torn down. The premium price they enjoy is too big a barrier. Instead, history shows that the demolitions were to homes of the neighbors of those people – some were by builders, others were by the owners. Those were all non-contributing homes – homes that are being replaced with better ones. Most of the replacements (8 of 12) are in contributing, or close to contributing styles - by choice, not

by force. The committee should have been happy about most of those and clear and transparent about what was actually occurring. A few are not contributing and only one is the committees' detested "modern" style. Those that are in contributing styles improve the contributing style numbers – and in the committee's view at least, improve the character of the neighborhood by making it more homogenous than it currently is, more development-like in others' views.

As ordinance-crafting meetings progressed, the messaging changed from 'help us save our historic homes that are being torn down' to - 'let's prevent the ranch and other non-contributing style owners from becoming something we dislike.' Or 'let's make Lakewood into our own homes' image.' The process easily permits that vocal minority to impose their aesthetic on others at meetings attended by only 15 of 275 owners. The meeting where Trevor Brown, Bill Hersch's replacement as Chief Planner, says the consensus was changed from noncontributing restrictions only addressing setback-type issues to the full panoply of restrictions was on December 14, the busiest time of year. That meeting was only attended by 15 people – the majority being committee members themselves. The neighborhood committee chair expressed her view on that revised goal in one recorded meeting –

"I have in my mind as many contributing houses as possible, and I want a demo clause [unlike existing CD-2] because I don't want so much new construction. Some new construction, fine. A lot of new construction, not fine. Because they're going to tear down every ranch, and every minimal traditional, and everything they can and they're going to put up siding everywhere."

Where's the message about saving the historic homes in that? That's let's-restrict-other's focused. That's not 'let's get the neighbors together to save our Dilbecks and Hutsells and old historic homes.' That's not 'how do we get our neighbors to help us save our own homes from the wrecking ball.' That's restricting others when the speaker, the leader of the cause, isn't in the shoes of those others. The committee's Determination of Eligibility doesn't reflect a single historic home tear down supporting their message. At that rate, no historic home in the boundaries will ever be torn down. And siding? On the 12 tear downs the committee moved forward with to support their message, there was more "siding" on the homes torn down than on those that replaced them. Good reasons to do something need to be rooted in facts, accuracy and transparency. Good reasons turn bad when they are rooted in fiction and conjecture and are misleading.

The petitioners also said this was an "expansion" of the existing CD-2 and that we should talk with some current CD-2 folks because they love it. So we did, and they don't. We spoke with folks who have been through the process. They said it was an expensive and delay-producing disaster and they wouldn't wish it on anyone. Once again, our investigation resulted in a different story than we were told.

Common sense suggests an "expansion" of a CD is limited in some way to or materially informed by the existing district. The ordinance itself says the City should produce "amendments" to the existing CD, not an entirely new ordinance. That word, "expansion," unquestionably implies basic similarity. The petitioners suggesting that discussions with existing CD-2 members will inform of its effects suggests similarity. But if you live in a noncontributing home being restricted to certain styles, what good does talking to someone in a CD that you're expanding from when that existing CD doesn't restrict non-contributing home styles? That unfortunate word – "expansion" - resulted in so much confusion that it was discussed in the pre-application meeting, after most petitions were already signed. Responding to a neighbor saying she thought that "expansion" meant it would be the same, and that what was being discussed wasn't really an "expansion," the chair of the neighborhood committee responded this way (you can hear this at 1 hour 40 minutes into the posted pre-application meeting):

"That is true, the City, I think, made us call it an expansion because it's contiguous with another area. It's true that it's not an expansion of the existing. It's contiguous with the Lakewood [CD-2]. That is misleading - that it's called an 'expansion,' because we get to create it in our own unique way."

Yet the 'misleading' of neighbors continued in the petitioning and in the later meetings – but at that point continued with full awareness that using that word without explanation misleads those being petitioned. No correction or

explanation was posted or issued for those who couldn't make the meetings. To continue misleading folks in that way may not be a violation of any ordinance, but it would have been good and neighborly to put that message out and discuss it in the petitioning process. You should tell people when you're standing on their doorstep that their home can get restricted even though the existing CD doesn't restrict similar homes. You should explain that expansion means "contiguous" in this case, and that all restrictions can be completely different than the existing CD you're contiguous with. There are so many differences between what's being proposed for the "expansion" versus what the existing CD-2 has, that there is zero point to them being connected at all – that "requirement" is completely meaningless. I'm 100% confident that that wasn't the intent when the ordinance was passed, but that's where we are. As the neighbor questioning it in the meeting put it, and the chair of the committee agreed, "it's not an expansion, it's just another conservation district." Something got lost along the way here.

As far as non-contributing homes go, Bill Hersch, the former Chief Planner, said this in the pre-application meeting in response to someone asking - what about houses that "don't have any architectural style?" (which drew a big laugh from the crowd):

"That's something called non-contributing.... Their architectural style does not appreciably contribute to the overall architectural style of the neighborhood. A lot of times the ordinance will say, for non-contributing buildings, [they] may be remodeled however they want to be remodeled, but they still have to meet the setbacks, the height, the lot coverage and things like that. So that way it's not just about architecture. ***And it's not about making a ranch style house look like a colonial revival house. We don't want to change that***."

That was the very first meeting. That was good news for those owners. Although they are the ugly ducklings, just like the existing CD-2, Bill said they won't be restricted to any particular style. Those owners could relax. That confirmed what the petitioners said - keep the facades of the historic Tudors and Spanish Eclectics and leave the others alone other than size limits.

But a goal now actually is to make ranches look like colonial revival houses or one of only 4 other styles – or those ugly ducklings are stuck in their ranch - forever. "And it's not about making a ranch style house look like a colonial revival house. We don't want to change that," Bill said. Then Bill left. Nearly 7 months later the topic of restricting non-contributing homes' styles first reemerged. Purportedly, on December 14, the "group" decided to change the approach that had been promised to the non-contributing owners in a meeting of 15 supporters living in contributing-style homes. Vitriol about various specific houses started and went on for some time. That got repeated in the very last meeting where the chair of the committee confirmed that restricting non-contributing homes styles wasn't the initial petitioning idea, but she goes on to say that the "consensus" over time was that the "group" wanted to restrict "them" (i.e., "them" is their non-contributing neighbors) to prevent house X from ever getting built again in our neighborhood. You can hear that history very specifically discussed at 1:22:34 into the recording of meeting 15. The chair of the committee says this in response to my wife's statement that she was misled by the change to restrict noncontributing home styles –

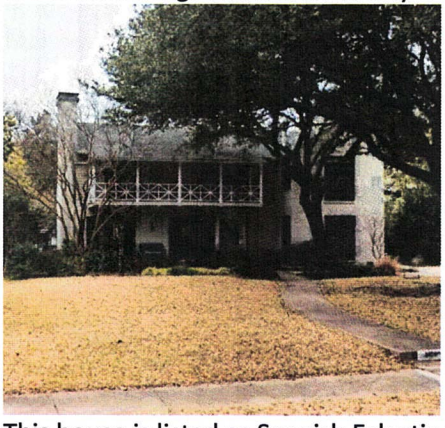
"So, I want to comment on how this evolved, because I know what was said during the petitioning and, the thought was, like in CD-2, if something's noncontributing, or, in some other CDs, if something's noncontributing, you can't make it more non-contributing. Like if something's non-contributing you can't go over the height or the setbacks standards. That was the thinking. And the discussions that happened over the last, you know, however many meetings we talked about styles and contributing/noncontributing, it evolved to where we are because, if noncontributing has no regulation, then someone could apply for a remodel of a noncontributing home, take it down to, you know, a couple of walls and then rebuild like that black brick house on [X street] that everyone, most people, complain about."

Exactly. The committee petitioned on no style restrictions on noncontributing houses. That's confirmed in meeting 1, meeting 10 and meeting 15. It's 100% consistent with what Bill Hersch, the original Chief Planner, had said in the very first meeting and the assurance he gave non-contributing owners. It's consistent with the message by the nice neighbors who wanted our help to put restrictions on their historic old home. Developmental standards were all the noncontributing homes might face. There would be no architectural style limits. The chairwoman confirmed that that

changed at meeting 10. She confirmed that the focus of that change was to prevent an anecdotal eye sore that she said most people "complain about." Is it okay to tell folks who own noncontributing homes to relax and go home if they're concerned about style restrictions because that's not going to happen, and then do that anyway? That was a complete about-face from what was promised in the petitioning process and in the initial pre-application meeting. Non-contributing homeowners relied on the petitioner's focus as confirmed by Bill's representation. Why would anyone expect that to change and why should they have to attend meetings they don't have time for to defend against that prospect? It's not right.

Again, the meeting where the approach changed was a holiday season meeting attended by 15 people who were mostly on the committee but who all, evidently, hate that one house. We know there were e-mails to the City from many more people than were in the meeting itself objecting to those restrictions. A "consensus" still has to include all votes, but it doesn't. How can one thing be confirmed publicly in the initial meeting and then revised after neighbors had relied on it?

Like most people, we missed that December 14 meeting. But once we discovered the about-face on noncontributing homes, we decided non-contributing owners on the DoE inventory should be informed that there had been a change. We put flyers on all their doors. While we walked the neighborhood, we noticed homes that weren't matching the inventory's listed styles so we decided to audit the inventory. The Determination of Eligibility says 75% of the homes are contributing. But the inventory is wrong. Below is a picture of just one example of an inventory home.



This house is listed as Spanish Eclectic on the inventory. In one meeting where various styles were being introduced in the slide presentation, this same home was shown as an example of Monterey style. It's not a contributing Spanish Eclectic, it's a noncontributing Monterey style. This is a committee member's home. That in itself is shocking, but there are lots of other misclassifications. Those others are listed on the NotoCD2.com website – there are 80 listed incorrectly by our count. Our audit confirms that there are actually more non-contributing homes throughout the inventory than contributing. The proposed boundary is actually 53% non-contributing, not 25% - that's a huge difference. There are remarkable examples of contributing styles in the proposed boundaries, but they are not the predominant styles. They stick out because they're mainly on Lakewood and Lakeshore and in a row on a few blocks on main feeder streets. People drive by them regularly and think they define the "character" of the neighborhood and all other streets. They don't. The proposed expansion is only 47% contributing. Doesn't the DoE have to be at least substantially accurate? Should the City and the process move forward knowing about material inaccuracies? Is it fine to petition on materially inaccurate statistics and false messaging? Is it okay to perpetuate a misleading statement?

It's also not true that we don't know what the ordinance will say. We don't know the exact words in every instance, but we absolutely do know what the ordinance is likely to restrict. The meetings are recorded, and there are summaries posted on the City website recapping the City's view of the purported "consensus" for the entirety of the anticipated regulations. Unlike the committee, no one at the City is providing process guidance to those with opposing views so we're left on our own. Show up at CPC or City Council public hearings and be counted is all that's offered. We can't sit on our hands as the bus is nearing its destination. We went through those recordings and summaries with our neighbors and we posted that purported "consensus" on the NotoCD2.com website. All the concepts are there for the reading and many were drawn from other CDs, so for those, we do know the likely wording. We listened to all 24.5

hours of meeting recordings (some over and over) and we've had meetings with Tokalon neighbors and discussed those views. I've personally spent several hundred hours on this and my wife has spent many more as have others of our neighbors. That's time we don't have and never wanted to spend on this. It's been very, very time-consuming for a lot of us so I hope you can respect that diligence and effort and the frustration and disappointment we're feeling.

The Tokalon neighbors are not blindly voting solely philosophy about less regulation being better – that's not fair. They've met, they've read, they've listened and they're communicating with each other. They're making informed decisions for themselves about things that matter deeply and personally to each of them – things they don't want for themselves or for their neighbors who don't want them either. There's inclusion and transparency in the Tokalon process. This whole ordinance endeavor is about voting against one or a few anecdotal personal eyesores that some dislike, and pushing a flawed process to prevent that thing from ever happening again. It ignores what's actually happening in favor of might or could happen but isn't. Instead, Tokalon neighbors are voting for each other. They're considering the cost, sure. Their considering the burden, sure. They're considering the market and its impact over time. They're considering their neighbor's wishes. They're considering the truth of the history, the truth of the message, and they're seeing with their own eyes what their neighbors are capable of if left to their own choices. They're voting for the positive in their neighbors, not against their neighbors' tastes, real or imagined. They know the facts now and aren't buying the false message.

But even if they were voting blindly for less regulation, that's fine too. What's wrong with that? That's not a reason to denigrate or discount their vote. Voting count is how the petition got in the door, why is that insufficient to get folks out? Voting for regulation promulgated on false facts, false fears and false messaging can't be preferred. Something is being done to our neighbors that they don't want and have never had done to them before – why isn't it enough to count their votes against it?

Philosophically speaking, I think most people would agree that if I got some friends together and we voted to do something to your property that was, in your view, restricting your home in a way you don't want to be restricted (not to mention much more restrictively than originally presented), your vote as to your own property should actually carry more weight than mine. To opt out, you shouldn't be compelled to convince me or anyone else that the rights you currently have and have lived under for the last 100 years are worth preserving. The burden to demonstrate that the sky is actually falling, and that it's necessary to change those historical rights and restrict others against their will should be the much greater burden, but it seems to be backward here. People shouldn't have to show up at 15 semi-monthly meetings to play defense just in case what they were told by petitioners and at the initial meeting changes. They shouldn't be limited to public hearings – as though this was no more important than changing some commercial zoning from one thing to another. The rights affected here are infinitely more personal – our homes are a reflection of us. Just saying "no" should absolutely be sufficient.

To say that contributing homes are actually more restricted or even that everyone shares equally in the restrictions are both false too. The homes of those who live in the contributing Spanish Eclectics built in the '20s aren't getting torn down. They're not rebuilding from scratch. Those houses aren't undergoing major façade renovations, they're not appearing on Fixer Upper. They're just getting repaired and maybe some new windows. Those new windows will need to be approved, that's true. Optically, the ordinance may have a much longer list of restrictions for those houses, but those houses already display those required characteristics. The length of the comparative lists is misleading, except when you force a ranch, for example, to "eventually become a colonial revival." Then the restrictions are in full play. Trevor repeated that goal over and over later in these meetings. That's approval for every defining characteristic of the appearance of the noncontributing owner's new home. The substantially greater burden and cost will absolutely be borne by those owners. Not surprisingly, the committee members overwhelmingly live in beautiful contributing homes with existing styles and features that the proposed ordinance mirrors.

The neighbors on Tokalon don't want to participate in a process that forces any of our neighbors who are against this to have to participate. There are voluntary options that the neighbors could have explored and still should. Tokalon is 53% non-contributing according to the Determination of Eligibility (more like 60% if the inventory were more accurate). It's not predominantly the 5 selected styles and we don't want it filled with only those 5 styles. How unfortunate we will be

one day to live in a neighborhood with only 5 style homes – that's a development. We have contemporary here. We have lots of other styles. We've had tear downs and we've had renovations through all kinds of eras and market conditions and the street is still great and, slowly, it just keeps getting better. We have existing historic homes currently under renovation in their existing contributing styles – by choice, not by force. We think diversity is good. We want to continue to evolve and we want to encourage innovation and progress. Freedom of our neighbors' own choices is what got the street here.

Forcing others to do something you said they wouldn't have to do isn't good for the neighborhood - it's divisive. Promoting a process as informational that isn't merely informational isn't neighborly. Asking for help to protect your own home and then sweeping others' homes into restrictions isn't right. The ordinance allows such things to easily happen and this is a prime example. The ordinance promotes that division. As the focus changes from setbacks to aesthetics, it requires that homes be placed into buckets. The labels are "good" and "bad," keep these, demolish and replace those. Build what some prefer and others don't. It's polarizing by nature and it pits neighbors against each other. We disagree that our neighbors need protection against the choices they're making for themselves. We disagree that owners on other streets have a greater right to keep us in the expansion boundaries they chose without us than we do. We've democratically voted to have our street removed from the boundary we don't agree to. We're voting for our neighbors, not against them. We believe in each other and don't "hate" what any of our neighbors have done. They'll make good choices. Tokalon will be fine and will continue to be one of the most appealing streets in Lakewood without these regulations. We choose our neighbors and their choices.

Thanks Michael. Again, I am so sorry for the length. Let me know when you've had a chance to read it and if there are things worthy of discussion, I'll make myself available.

Regards,

Brad

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From: Jung, Michael <MJung@clarkhill.com>
Sent: Friday, May 26, 2023 2:01 PM
To: Broberg, Brad <bbroberg@winstead.com>
Subject: RE: Lakewood CD-2 Expansion Ordinance Compliance Confirmation and removal of Tokalon Drive

Boundary changes to a proposed CD expansion are within the City Council's discretion under Development Code § 51A-4.505(e)(2)(D). Likewise, the CPC's recommendation regarding such changes is within its discretion. The is no established percentage of support or opposition that requires, authorizes, or prohibits a boundary change.

Speaking individually, I will be far less swayed by the percentage in support or opposition than I will be by the stated reasons for support or opposition. I am very disappointed by some residents who have decided, in advance of knowing what the ordinance will say, that they are against inclusion. The "this is my property and I can do with it whatever I want" rationale will have little traction with me – if there are good reasons why an area should be included or excluded, I want to hear about that, but philosophical opposition to the idea of conservation districts was, in my view, already considered and overruled by the City when it enacted the conservation district ordinance.

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From: Broberg, Brad <bbroberg@winstead.com>
Sent: Tuesday, May 23, 2023 1:06 PM
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[External Message]

Hi Michael. Apologies for all the e-mails – looks like I had your address wrong on the attached CD-2 e-mail.

Also, Renee Umsted with The Advocate is doing some interviews with Tokalon neighbors. She mentioned that you and she spoke about this process recently and that you told her you could change the expansion area boundaries. What's required to do that? More than 50% of all lots on Tokalon are opposed to being included.

Best,

Brad

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