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Via Email

Jason Pezzullo, Planning Director
City of Cranston
869 Park Avenue
Cranston, Rhode Island 02910
jpezzullo@cranstonri.org

Re: Cranston Crossing MPD Application – Objection of Cranston Neighbors for Smart Development

Dear Mr. Pezzullo:

As you know, we represent Cranston Neighbors for Smart Development ("Cranston Neighbors"), which is a group of concerned residents seeking to protect the City's character, and which supports smart development that balances the well-being and quality of life of the City's residence with economic growth. Specifically, Cranston Neighbors wishes to place upon the record a major legal concern with the proposed development known as Cranston Crossing. This letter is intended to inform the City Plan Commission and the City Council of that concern, detailed herein.

In addition to this procedural issue, Cranston Neighbors has substantive concerns with the proposal. These substantive concerns will be addressed in a separate report from our planning and zoning expert, Kevin Flynn. It is our position that the legal issue addressed herein warrants, at a minimum, a pause in the planned schedule for review and approval of the MDP application. It is our intent to raise this now in the hopes that it can be corrected through the joint efforts of the developer and the City, so that it does not need to be addressed through future litigation.

I. The MPD application must be accompanied by an application for a master plan approval of a major land development project, pursuant to state law and the City's regulations.

A fatal flaw with the MPD application is that it is an application for a zoning ordinance amendment that includes plans for a development, but does not include an application for major land development project approval. The proposed development is a major land development project, under both state law and Cranston's regulations. See R.I. Gen. Laws § 45-23-32(24) ("All nonresidential land development projects are considered major land development plans."); Cranston Subdivision Regulations § IV(A)(1)(a) and (A)(2)(b) (defining a land development project that proposes to construct a Mixed Use Planned Development as a major land development). Section 45-23-61(b) of the Development Review Act, which regulates land development project review and approval, and supersedes all municipal ordinances and regulations, states as follows:

> (b) *City or town council.* Where an applicant requires both planning board approval and council approval for a zoning ordinance or zoning map change, the applicant shall first obtain an advisory recommendation on the zoning change from 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).

It is beyond debate that the application proposes a major land development project. It is also acknowledged by all involved that the development requires a zoning ordinance amendment. Therefore, there is no question that under the precedence of approvals statute, the developer is obligated to submit an application for a major land development project – not on its timetable, but contemporaneously with the MPD application.

The idea behind the precedence of approvals statute is that the legislative body – in this case, the City Council – needs to be fully informed about the development for which the proposed zoning ordinance amendment is paving the way. As you'll remember, this is the procedure that was recently utilized for the review and approval of 100 Sockanosset, a/k/a the Topgolf project. For that project, the developer simultaneously submitted (1) an application for an amendment to the existing MPD; and (2) a master plan application for the project. The CPC issued an advisory recommendation on the zone change concurrently with granting conditional master plan approval for the development. When the City Council considered the MPD amendment, there were no questions about what it was approving, because the CPC had vetted everything appropriately. This is exactly how it is supposed to work. The way the developer and the City intend to proceed here is putting the cart before the horse, in violation of state law.

Here, Section 4 of the applicant's 'Narrative Outline' dated November 12, 2020, sets forth nine distinct categories of development standards: frontage and setbacks, maximum lot coverage, building height, building spacing, drainage, buffers, parking and loading, signage, and lighting. For five of these categories, the narrative states that these requirements "shall be as set forth on the FODP [Final Overall Development Plan]." For two of these categories, the narrative states that the requirements "shall be approved by the City Plan Commission in the event an applicant

seeks Major Land Development approval for such Parcel." For the drainage category, the narrative states that drainage shall comply with the City Code and shall be approved by the Director of Public Works. So effectively, the only development standard that is nailed down in the narrative is height. The narrative gives absolutely no idea what the Council is actually approving for any development standards other than height. That is not the way that this process is supposed to work.

Sec. 17.100.030 of the Zoning Ordinance indicates that "[t]he granting of approval of a mixed-use planned district constitutes two actions," the first being an amendment to the zoning map and the second being "City council approval of the final overall district plan." In asking the Council to approve an MPD application that effectively states 'to be determined,' the applicant is asking the Council to write it a blank check.

The City's Subdivision and Land Development Regulations (the "Regulations") spell out exactly how the process is supposed to work, in accordance with state law as explained above. Section IV(A) sets forth special requirements applicable to Land Development Projects/Planned Districts. The Regulations set forth the rezoning procedure, in pertinent part as follows: "Master Plan: The applicant is required to present the Preliminary Overall District Plan to the Planning Commission for conditional Master Plan approval at a recommendation on the PODP for the zoning change."

The MPD application cannot stand in for the land development project application. They are two different items with different requirements, review procedure, and ramifications for appeal. Accordingly, the CPC should decline to provide a recommendation, or should provide a negative recommendation, on the proposed MPD amendment, because it was not accompanied by a master plan application, as required by state law and the City's regulations.

We appreciate your consideration of this issue and look forward to further discussing our objections to the proposed development during the upcoming public meetings in December.

Sincerely,

URSILLO, TEITZ & RITCH, LTD.

/s/ Amy H. Goins, Esq.

cc: John Bolton, Esq.
Christopher Rawson, Esq.
Cranston Neighbors for Smart Development
Kevin M. Flynn

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