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City Attorney Banks
Mayor, Vice Mayor and Members of Council
City Manager Hartmann
Deputy City Manager Jinks
Director of Planning & Zoning Hamer

Ladies, Gentlemen:

While this letter is precipitated by Mr. Banks' August 3rd letter to me, I am addressing my response to all of you as I believe the issues at hand remain of considerable concern to the residents of Alexandria and warrant the consideration and attention of each of you. Skirting the issues has, in the eyes of many, gone on long enough. We are overdue for pointed explanations, clear direction as to what we should and should not expect of you (see "Strategic Plan" and "Goals") and, ultimately, for accountability. I continue to raise these issues to try and get them behind us while hopefully learning from the experience so that they are not destined to be repeated.

I note that Mr. Banks' letter addresses me as a member of the Alexandria BRAC-133 Advisory Group, which I am. However, I want to make it clear that I have never addressed any of you (other than at Advisory Group meetings) in that capacity. While active and continuing discussions with numerous residents lead me to believe that many share my views, I do not in any manner want to suggest that I represent anyone but myself. I am certainly in no way authorized to speak on behalf of the Advisory Group.

Mr. Banks, thank you for your prompt response to the matters which I raised in my July 30th email to Mr. Hartmann. I certainly have no desire nor intention to challenge your knowledge of the law. However, I would suggest that your letter continues to leave questions and confusion in the minds of much of the electorate. Undoubtedly many of those issues are for our politicians to address. In the interest of bringing clarity and hoped for resolution to these matters, allow me to amplify what I believe that list includes. While I would note that numerous other BRAC-related questions remain without answers, I will try to focus this communication on issues relating to "open space".

I think the community is well aware of the fact that DoD is very much a law unto itself. Given that, I do not believe many have any expectation of DoD taking responsibility for providing the subject open space. Rather, the crux of the matter would appear to be the inference that because DoD need not abide by our zoning regulations then the former owner of the land is somehow released from all of its related pre-existing commitments and obligations. To many, that simply does not make sense. Accordingly, it seems appropriate to continue the effort to determine what we actually received as contrasted with what it appears we were promised.

1. **Definition of "Open Space"**: Thank you for the Zoning Ordinance's definition of "Open Space". I would hope that all of you accept that much of it really does not help a layman clearly understand what the community should or should not expect.
 - 1.1. What does "ground level" mean? If one plants grass on the roof of a 5 storey parking structure, is that ground level? It has previously been implied that would meet the definition.
 - 1.2. Do you believe that most people understand what is intended by the requirement that a portion must be "eight feet or more in width"? Do the cross-hatched lane dividers, medians and roadway shoulders on the site plans we have been provided all meet this criteria?

- 1.3. What does "unobstructed" mean when open space can apparently be behind DoD security perimeters and completely inaccessible, even visually, to the public?
- 1.4. The definition says "Not used in whole or in part as roads...maneuvering aisles...loading berths..." yet on the plans provided, entrance driveways and all the bus parking berths are cross-hatched, apparently indicating they meet the City's criteria for open space. Are we missing some nuance?
- 1.5. The definition goes on to say "The purpose of open and usable space is to provide areas of trees, shrubs, lawns, pathways...for the use and enjoyment of residents, visitors and other persons." I would note the use of the word "and" rather than "or". How does confining access to 6,409 people, all requiring DoD security clearance and the vast majority of whom do not reside in our City, meet this requirement? It would appear to many that the patchwork quilt of slivers of grass hardly meets any reasonable definition of "usable".
- 1.6. After you provide us site plans indicating acres of mature trees seemingly representing the stated requirements of a DSUP can you appreciate citizens' concerns when we find nothing like them on the final plan much less on the ground, with acres of mature trees having been bulldozed to the point of elimination? Can you appreciate that some people might feel they were misled and that perhaps "big business" prevailed at the community's expense?

Those of you who have attended Beaugard Small Area Plan meetings are hopefully well aware of the community's desires and expectations. People speak of wanting open space in which to push strollers, to walk their dogs, to have their kids play ball. I trust you would agree that the "open space" supposedly provided at BRAC-133 is a long way from meeting any of those expectations. Needless to say, I do not think anyone is anticipating that DoD security clearance might be a future precondition of accessing Beaugard Area "open space". Should that expectation be misguided, it would be in everyone's best interest to make the community well aware of it before the SAP proceeds any further.

2. **Open Space Obligations:**

- 2.1. At one point Mr. Banks states "The 6.5 acres in open space...was required..." and four paragraphs later states "...despite the lack of legally required open-space amenities for the site...". Can you appreciate this is rather confusing to the public? Could we get clarity on this issue - are SUPs and DSUPs legally binding?
 - 2.1.1. Mr. Banks also states that "Plaza I contains approximately 27.5 acres in total". In Section III B, the DSUP states the "Site Area" to be 25.6 acres and in Section IV it states the "Development Site Area" is 20.05 acres. Could we get clarity as to why these numbers are at substantial variance and/or how the seemingly similar terms, in fact, differ materially in scope?
 - 2.1.2. Given the 20.05 acre "development site area" and the fact that, at the time, it was "vacant, except two occupied office buildings built under previous approval" one might logically conclude that it is that vacant portion which DoD subsequently purchased, which appears to be 15.914 acres.
 - 2.1.3. It would seem logical that the "new" 6.5 acre open space commitment related directly (and exclusively) to what the City was now allowing to be built on the undeveloped 15.914 acres, rather that retroactively apply to (much less be met by) some previously completed development area. In turn, it would seem appropriate that the only open space considered as having now met the open space requirement should be that provided within the 15.914 acre parcel.
- 2.2. I trust you can appreciate that the seemingly piecemeal patchwork of slivers of grass is, in the public's eye, something very different than was represented on the site plans incorporated in the DSUP.

- Among other things, the DSUP referenced two separate 2.5 acre areas of "preserved trees", the vast majority of which would appear to fall within the confines of the land purchased by DoD.
- 2.2.1. The DSUP specifically stated that "A revised landscape plan shall be provided...to the satisfaction of the Directors of P&Z and RC&PA". Has that been done?
 - 2.2.2. It also stated that "...the plan shall provide the level and quality of landscaping depicted on the preliminary plan." Is the City now suggesting that obligation has been met? A patchwork of grass medians is an acceptable substitute for acres of mature trees?
- 2.3. I do not believe anyone is suggesting the DSUP applies to DoD. What the community does not understand is how Duke's selling to DoD relieves them (Duke) of seemingly pre-existing obligations. DoD did not take this land by eminent domain; they bought it from an apparently willing seller. A seller who seemingly marketed and sold the land despite a long-standing obligation to provide a portion of it to the City as open space. What does DoD or Federal law have to do with it and how does that relieve Duke of their apparent obligations (as they sell open space obligated to the community, receiving \$6.6 million per acre for it)? What are we failing to understand?
- 2.3.1. Applying similar logic - if Duke had had a major real estate tax liability to the City with respect to this property would that obligation simply be waived as DoD now owns the property and they do not pay real estate taxes?
- 2.4. I would also refer you to the Mayor's January 4, 2008 letter to Duke's legal counsel wherein it was stated "...any City support of the Mark Center site...is contingent upon the City obtaining significant financial compensation to off-set its multi-year loss of future real estate taxes." Per the Mayor's July 29, 2008 letter to James S. Turkel, the City did "strongly" support the site, which begs several questions:
- 2.4.1. What "significant financial compensation" has the City received? How does it compare in amount with the lost "future real estate taxes", the present value of which the Mayor estimated to be \$60 million in his aforementioned January 4th letter?
 - 2.4.2. The Mayor's January 4th letter made no reference to the City's expectations with respect to the provision of "open space" in Plaza I. Why not?
 - 2.4.3. The Mayor's January 4th letter did not mention any City expectations with respect to the "zoning" requirements then in place. In his April 5, 2010 letter to me the Mayor does state that "...the land owners indicated to the City that their proposals were within the zoning envelope that the City had previously approved" - contentions which do not appear to be borne out by reality. Are residents not due some explanation? How do we protect ourselves against similar misrepresentations in the future? To whom do we entrust that responsibility?
- 2.5. Further to the PILT concept noted in the Mayor's April 5, 2010 letter to me - if it was apparently obvious to the City that DoD's involvement in this transaction was about to force the City to forego considerable open space, was any commensurate compensation to the City discussed with DoD as a precondition to the City's support for this site?
- 2.6. To be fair, let us not lay all of this at the Mayor's feet. Where was the rest of our City Administration and City Council through all this? As has been repeatedly noted, many of you were copied on Mr. Jinks' August 13, 2008 letter to the Army, mentioning all the enticements of Mark Center. Apparently no one had any issue with the contents of that letter. And who - truly - has made substantial "recovery" efforts since?

3. Extent of "Missing" Open Space:

- 3.1. While it is doubtless self-evident that most in this community would prefer Duke had sold the property to an entity other than the Federal government (especially one with the capacity and obligation to pay those \$60 million in real estate taxes!) that should not be seen as any reason, in and of itself, to chastise Duke. In turn, I and others believe it incumbent on the City to ensure the letter(s) of all relevant agreements are being adhered to. In the interests of fairness, if Duke has chosen to be generous beyond their obligations, they deserve the community's appreciation for doing so.
- 3.2. That said, it is rather difficult to accept that "a more detailed analysis" is not being done because "that would be both time consuming and costly". I believe that's the first we have heard of the City adopting this position.
 - 3.2.1. It is almost two years since the site selection was announced. That would seem to be ample time to make this assessment.
 - 3.2.2. This property was sold for \$6.6 million per acre. Currently it is suggested we are "short" roughly 2.5 acres of open space. Given that as a starting frame of reference, to suggest that any given analysis might be "costly" by comparison is difficult to understand.
- 3.3. I believe citizens would like the City's affirmation that they have verified and agree with the calculations as opposed to simply having accepted an estimate provided by Duke. Would you accept my estimate of the extent (or value) of my property?

4. Valuation and Pavor:

- 4.1. Why is the City looking to DoD for the "open space mitigation payment"? Was the obligation to provide this open space not Duke's? And they did not provide it, they sold it!
- 4.2. Despite the community's perception that Duke was obligated to provide the open space to the community, free of charge, DoD chose to pay \$6.6 million an acre for it using OUR (the taxpayers') money! Is someone now suggesting that DoD ought to use even more of the taxpayers' money to pay a second time (this time being a mitigation payment) for the same open space which the DSUP indicated we would receive for no charge? Can you appreciate that is a little hard to swallow?
- 4.3. As for the value, it is difficult to understand why the City appears to feel it needs "real estate valuation experts" to determine this. Do we not already pay for a real estate appraisal department at City Hall? A willing buyer paid a willing seller \$6.6 million an acre - does that not clearly establish the value? Or is someone suggesting DoD overpaid for the land (using \$105 million of taxpayers' money)? Please explain why this is apparently so difficult and why, in this case, "time consuming and costly" don't appear to be of concern.

As we move forward on the Beauregard Corridor plan it is critical the community understand the process and what we are or are not agreeing to, or what is being agreed to on our behalf. We need to learn from the BRAC experience. We need to minimize surprises and the leadership of that effort logically falls to our elected leadership and to City staff.

Sincerely,

Donald N. Buch

cc: Joanna Frizzell, Assistant City Attorney
Dave Dexter, Chair, Alexandria BRAC-133 Advisory Group