

ROSE HILL HOMEOWNERS ASSOCIATION

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December 21, 2009

VIA EMAIL ONLY

Mayor Marcuccio and City Council Members:
Rockville City Hall
111 Maryland Avenue
Rockville, MD 20850

RE: Commission on Common Ownership Community ("CCOC")

Dear Mayor and City Council:

On December 14, 2009, the Board of the Rose Hill Homeowner Association, representing our residents, unanimously voted to *oppose* the City of Rockville amending the Rockville City Code to allow Chapter 10B entitled "Common Ownership Communities" of the Montgomery County Code to apply within the City.

The Board of the Rose Hill Homeowners Association opposes the amendment for the following reasons:

1. Appropriate appeal procedures are already available.

The Rose Hill Homeowners Association ("RH HOA"), like other homeowners associations located in Montgomery County, Maryland, have extensive governing documents filed with the City. In these governing documents, the RH HOA has in place an Architectural Control Committee ("ACC") and detailed Architectural Control Committee guidelines, which have been approved by the community. The governing documents also outline the approval and appeal procedures for any grievance with a decision of ACC, which is to the full Board of the RH HOA. After that, additional procedures are available through the Rockville Mediation Program and/or the District Court to resolve any outstanding issues. The RH HOA does not believe there is a need for an additional layer of dispute resolution. In light of the procedures in place through the RH HOA and currently-available mediation, the alternatively offered through the CCOC appears unlikely to forestall the parties from seeking a resolution through the court system. Additionally, as the CCOC would require representation of the homeowner's association by attorneys, this would only fuel litigation to dismiss CCOC and proceed directly to District Court to obtain a binding decision.

2. Unnecessary levels of review create opportunities for abuse.

The purpose of the existing governing entities within a homeowner's association is to provide timely and specific response from a group that knows the community and the people who live in it. To permit a disgruntled homeowner the opportunity to further "appeal" a decision of two different groups within the RH HOA, namely the ACC and then the Board, would invite these homeowners to continue to maintain an inappropriate condition on the land, notwithstanding an opportunity to be heard and to appeal the initial decision. The delay introduced by the proposed CCOC could allow a homeowner to continue to engage in violative conduct that could become more difficult to cease and/or to restore the land to its original condition.

3. Unnecessary levels of review could create potential exposure to liability and lowers property values.

Dangerous and/or unsightly conditions that are allowed to persist upon land could create potential exposure to liability and lower property values. Delay in the ultimate resolution of an issue within the community invites litigation as conditions that are identified cannot be removed or corrected without this additional layer of "dispute resolution". For example, within the RH HOA, the installation of a pool requires that a fence also be installed. However, under the proposed CCOC, a homeowner may install the pool, refuse to install the fence, and while the ACC and then the Board may rightfully insist upon the immediate and prompt the installation of the fence pursuant to the guidelines and the approved application requirement, or wish to take proactive measures as outlined in our governing documents, the homeowner may take the issue to the CCOC for further "dispute resolution", thereby continuing to leave what some could argue is an attractive nuisance of the pool unguarded to children in the neighborhood. Although the City may also require a fence for the pool, the City's recourse is only as a fine, the RH HOA may install a temporary fence to minimize the nuisance and exposure. As another example, storing construction materials not for immediate use on the house could invite rodents to nest and could potentially create a hazardous condition upon the land that could injure lawful visitors. Again, any delay could continue to allow what some could argue is a hazard and nuisance to persist in the community, lowering property values and lowering homeowner standards in the City of Rockville. And again, the City may only fine individuals for the nuisance, whereas the RH HOA could take proactive measures to have the construction materials removed and stored, as appropriate. The consequence for any unlawful action of the Board is in the nature of economic damages, while the consequence for the failure of the Board to act or to be able to act is in the nature of personal injury for which the RH HOA could be held liable.

4. Disparate application.

The CCOC is deliberately disparate in its application and taxes only homeowners associations. Specifically, in the RH HOA, this represents a 5% increase in monthly dues, which the Board has worked diligently over the last 8 years to maintain at the same level without compromising services. To accommodate this \$3.00 fee, the RH HOA will have to increase its monthly dues. It should be noted that the RH HOA has approximately 20 MPDUs in the 126 home community who would be especially burdened by this fee. This is not just a tax on the middle class, but will strike those who, particularly in these economic times, are struggling to make ends meet from month to month. When these homeowners cannot or refuse to pay the fee, it will be the other homeowners who subsidize the cost. In the past 8 years, the RH HOA has only once participated in the Rockville Mediation Program which was an unsuccessful effort and which was viewed as a waste of time by both the Board and the homeowner. Conversely, the RH HOA has successfully addressed dozens of internal HOA matters that required neither the intercession of the courts, nor attorneys, nor City of Rockville resources. The mandated fee to participate in the CCOC would be yet another tax on selected citizens of the City of Rockville, for which these citizens will receive no value. The RH HOA also notes that this fee is in direct contravention to each city council member's campaign platforms to reduce unnecessary programs and additional costs of Rockville residents.

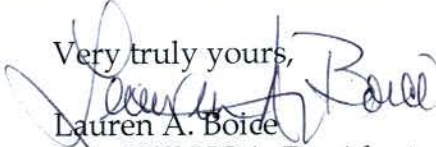
5. Undermining the role of the homeowner's association.

The trade off for high-density housing is the requirement that the development have a homeowners association to act as a buffer for resolving issues without using public resources. To require homeowners to participate in the CCOC undermines the purpose of the homeowners association and its boards, and effectively puts the management of all homeowners associations in the hands of the City and County. Those few who volunteer to serve on committees and especially the Board may not be willing to do so if the role is seen as providing non-binding recommendations that could be overturned by a different authority. Such a result could leave homeowners associations in the position of receivership of the Courts, as that is where issues will finally be decided.

The Rose Hill Homeowners Association respectfully requests that the Mayor and City Council vote NOT TO AMEND the Rockville City Code to allow Chapter 10B to apply within the City, or alternatively to allow homeowners associations to OPT OUT of the program.

Thank you for your consideration of our comments and our request.

Very truly yours,


Lauren A. Boice
Rose Hill HOA, President
For the Rose Hill HOA