

Kasey Thomsen

From: Clayton Hodges <clay.c.hodges@gmail.com>
Sent: Friday, January 27, 2023 11:54 PM
To: Kinsey O'Shea; Kafi Howard; Kali Casper
Cc: Town Council; planningcommision@blacksburg.gov
Subject: Stormwater and Variance Request input for RZN 22-0004-Glade Spring Crossing
Attachments: RZN 22-0004 Glade Spring Crossing - SWM and Variance Observations.pdf

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Kinsey/Kali/Kafi/Planning Commission/Town Council Members,

I'm writing with regards to the Glade Spring Crossing development. Actually, I'm not writing to take a stand one way or the other on the overall project development. As with all projects, there are both good and bad components. However, since I have taken the time to review the application and staff's analysis, I was surprised by a few items that were requested in the application. Since my career has been centered around land development and stormwater management in the Blacksburg area and I work with staff on almost a daily basis, I thought that I would at least jot down some of my observations about a small subset of the project components, including concerns about several of the variances requested.

Please let me know if you have any questions after reviewing the attached document, and thank you for your service to the Town.

Clayton Hodges

January 27, 2023

Kinsey O'Shea
Senior Town Planner
Town of Blacksburg
400 South Main Street
Blacksburg, VA 24062-9003

RE: RZN 22-0004-Glade Spring Crossing

Town Staff, Planning Commission, Town Council,

I am writing to you concerning RZN22-0004 Glade Spring Crossing project. I have been reluctant to write to you related to the project and had planned to keep my distance from and provide no comment on this rezoning request, especially with the Town partnering in the project on the affordable housing and stormwater components. However, since I receive regular updates on the project, I thought I would at least offer my insight on a few items that have piqued my interest with regards to this application. I am offering neither a statement of support nor opposition to the project overall...just some observations based on by 25+ years of site development within the Town that should be considered when evaluating specific components (mainly requested variances) of the proposal. Hopefully, some of these will aid in at least providing background for the decisions put before the Town.

A Brief Biography....

Prior to completing my PhD, I started my career as a land development engineer working on projects--mostly in Blacksburg--starting in 1996 (and continuing today). As some of you likely know, my major academic interest focuses on urban stormwater management. My PhD dissertation (completed in 2016) focused on "Optimization of BMP Selection for Distributed Stormwater Treatment Networks" with funding primarily coming from the Virginia Department of Transportation (VDOT). After completing my dissertation, I also held a role as Research Assistant Professor at Virginia Tech for several years where one of my primary research responsibilities was administering a research contract between the Town of Blacksburg and Virginia Tech that aided the Town in several aspects of its responsibilities as an MS4. Tasks included updates to the Town's infrastructure GIS, stream monitoring, and special projects, one of which included analysis of the Glade Springs property to determine the impact of construction of large detention facilities on the receiving channel downstream. I mention all of this not to provide details on any specific projects, but to explain my history regarding both stormwater runoff and land development within the Town and to establish my familiarity with Town standards and its watersheds.

RZN 22-0004: Stormwater Management Related Items

From a regulatory perspective, I am relatively certain that the proposed development can meet the required criteria outlined in the current Town of Blacksburg stormwater management ordinance. However, since this is a rezoning request, both Planning Commission and Town Council should consider several specific items related to the proposal that should be addressed as part of the process due to the proposed density increase of the rezoning request. Although these may not typically be required in a by-right project, the request for such an increased density adjacent to this receiving stream warrants additional considerations to protect the public, private property, and the environment—especially with the Town providing substantial project funds.

1. Proposed Wet Pond and Existing Impairment of Toms Creek.

The DEQ environmental mapper (apps.deq.virginia.gov/EDM/) lists Toms Creek as impaired for Escherichia coli (E. coli) and Temperature. Under sources of impairment, number one is municipal (Urbanized High Density) areas. Another section of the summary discussed that the stream has a ‘...moderate impact from sedimentation that is possibly caused by residential development in the headwaters.’ My assumption is that at this point, Staff/Planning Commission/Town Council are all aware of these impairments. The initial impairment was temperature, which usually when addressed will cause a domino effect in terms of stream degradation. As seen in the current impairment list, the next domino has fallen, and the impairment now includes E. coli.

The development plan currently put forth appears to indicate that large ponds will be installed to aid in flooding issues downstream. I have walked the channels downstream and can attest that channel incision is a major problem downstream and needs to be addressed. However, without proper care, the addition of wet ponds will almost certainly increase the thermal impact downstream due to solar heating of the impounded water. This effect is very clear in published research studies. Although extended detention will attenuate velocity in the immediate receiving channel, thereby likely reducing immediate downstream erosion, the health of the system may not be restored due to overheating of the discharge. One way to combat this is to provide substantial canopy surrounding both the wet pond and receiving channel. This would typically require a longer/skinnier more sinuous impoundment to provide for substantial coverage. The current plan does not appear to address this issue. Based on the variance requests, instead it appears that the developer is requesting an exception (or at least an extended deferral) to landscaping requirements. Due to the ecology of the site and the current impairment of the receiving channel, the opposite should be requested by the Town if large impoundments continue to be part of the project.

Also, please note that impoundment of water over existing jurisdictional streams is considered an impact by the Army Corps of Engineers/DEQ and must be mitigated if the impact reaches certain thresholds. Typically, the way to mitigate is to plant a substantial tree canopy buffer along an unforested stream segment on the same property, if possible. There are additional sections of stream on the property that could meet this mitigation requirement with modification of the plan. Payment for credits can also be used as a mitigation measure; however, with thermal impairment already established for downstream segments, preference should be made to onsite or downstream mitigation, if available—especially to continue Blacksburg’s role as an environmental steward.

2. Curb and gutter conveyances

There is a variance request for elimination of curb and gutter along sections of Road A and all of Road E. From my perspective in walking the watersheds of Blacksburg for the GIS update project, this is a mistake and will cost the Town of Blacksburg more than the upfront cost of the curb and gutter to the developer in the long run. The applicant indicates that the ditches are not necessary and can provide several benefits. However, of these listed benefits, the increased shoulder for parking is the only one likely to be preserved in the long-term. If you

review the neighborhoods in Town that are 10+ years old that started with roadside ditches, in most you will find no current ditch section due to sediment buildup over time (see Figure 1, Montgomery Street). Note that there are many examples of this in Town. Since the ditches would be in the right of way, it would be the Town's responsibility to maintain the ditches and culverts through regular cleaning. Public Works has stated that they will not do this, so it is the homeowner's responsibility. The homeowner has no incentive to do this since it affects the aesthetics of their property (and ease of mowing). Resulting sedimentation and infill of ditches will either force water into the road or along the edge of the road, which accelerates replacement timeframes, or it is directed into a private Owner's property, with damage caused by stormwater exiting the Town right of way likely resulting in replacement costs covered by the Town.



Figure 1. Example of Town Street with “roadside ditches and driveway culverts”, Google Street View.

Although there are some nominal benefits for ditches with long retention times to allow for infiltration, the expectation for this development is that from a stormwater residence time perspective that the water will quickly enter a storm sewer network from the ditches which will greatly reduce the positive impacts of ditching (for infiltration). Again, in the long run with regards to deferred maintenance costs that will be incurred by the Town due to direction of stormwater into the streets, this variance request should be denied.

3. Canopy Cover

Establishment of canopy can have a huge impact in both the quantity and thermal profile of runoff. A rapidly established tree canopy will provide shade to impervious areas and surface water impoundments that can decrease the thermal impact of a development on the environment. Part of the reason that the canopy requirements are in place are due to these ecological considerations and are not solely a question of aesthetics. For this project

establishing canopy as rapidly as possible is imperative to prevent further downstream impairment caused by this development. Therefore, I recommend that the Town not only denies the request for 'Landscaping Succession', but instead requires the caliper of trees planted around the proposed stormwater impoundments and creek banks be increased to assure maximum shading as soon as possible. Based on my evaluation of the applicant's submittal, it appears that the sole consideration for this is cost to the project, which historically has not been considered a valid reason for granting a variance.

4. DEQ Guidance Memo No 22-2012, Effective Date (projected at 2/20/23, per DEQ)

Staff, Planning Commission, and Council should review and consider DEQ guidance in GM 22-2012 when evaluating this proposal. This guidance is related to stormwater management and erosion and sediment control. Among other items that may be relevant to this application, Section 5.302.D.1 now requires adjustment of post-development curve numbers to match the next hydrologic soil classification. This is being implemented to accept that in situ soils within the disturbed area are highly compacted during the development process. The Town should consider this methodology as part of this development request. Based on the proposed relative sizes of the impoundments, it is expected that quantity goals can still be met easily—even with this modification.

5. Steep Slopes and Distributed Stormwater Management

The steep slopes, especially towards the southern (Glade Road) side of the project will promote rill erosion since sheet flow typically concentrates more quickly on steep slopes. The few "3D" renderings of the development are not truly 3D since they don't take the ground grading into account and erroneously show the site as flat. Some of these issues may be lessened using distributed stormwater management.

Typically, distributed stormwater management is more environmentally friendly since it more closely maintains the subsurface hydrology of the site. Distributed management usually attempts to promote groundwater recharge to the extent possible throughout the site's disturbed areas through the incorporation and rain gardens/bioretention or other infiltrative stormwater BMPs. This strategy more closely mimics the predevelopment hydrology of a site. The effect is maintained soil stability and a natural cooling of superheated surface water as it infiltrates into the ground or resurfaces down gradient as interstitial flow.

In a typical by-right project, the Town would not be able to dictate the method of stormwater management to meet regulatory requirements. However, there is some latitude in a rezoning request, especially when the Town is providing partial funding. With a request of this nature showing a large increase in density on steep slopes that is discharging into a thermally impaired section of receiving stream, some consideration should be given to additional thermal attenuation measures.

6. Regional Analysis for Upstream Impoundments.

When proposing a large impoundment such as the one on this plan, it is good engineering practice to determine if the act of greatly extending the discharge time period through detention will have a negative impact downstream, such as with the confluence with Toms

Creek. It is possible that the timing of the flood peak from upstream reaches of Toms Creek (from the north end of Town) is such that the largest peak reaches the confluence after the peak from this tributary has already discharged downstream (under current conditions). By extending the outflow duration through detention—even though the peak is diminished—the peak downstream of the of confluence could increase and exacerbate existing flooding issues. So, in effect, although the peaks don't align now, they could become coincident with the proposed configuration. Since the Town is partnering on this project, the Planning Commission/Town Council should require this analysis to be performed to ensure that no liability concerns for the Town exist due to the impoundment of stormwater at this location.

RZN 22-0004: Additional Development Related Items

Several other site plan components, especially in terms of variances requested have piqued my interest. The affordable housing component of the request is something in this proposal that I think rightly interests the staff/Planning Commission/Town Council since we (the general Blacksburg population) are very constrained in offerings available within the Town limits. However, it appears from review of the variances proposed in the application that the developer may incorrectly believe that the Town's interest in the affordable housing component will force them to turn a blind eye to typical required (by code) components of Town development. The effect of allowing some of these variance requests would be creation of a development that does not meet the standards of a typical Town of Blacksburg project—with a substantial amount of funding coming from the Town. The Town's standards are not elitist, but instead are focused on producing a safe environment for our citizens while promoting a balanced quality of life. The unintended consequence of accepting many of these variances would be providing affordable housing in a development that doesn't meet many of the standards afforded to the rest of the Town. Several of these specific requests are discussed in detail below:

1. Variance request for sidewalks along Streets A and E

The developer has indicated that sidewalks are not critical to the development due to the need to '...evaluate the cost effectiveness of each infrastructure item to maintain affordability in the overall development.' The reasoning is that the adjacent section of the Village at Toms Creek does not have sidewalk along the street. This is technically true. However, what the application fails to mention is that there is a trail down the middle of the right of way that is used heavily by the adjacent neighbors:



Figure 2. Median multi-use trail at VATC installed in lieu of sidewalks.

The developer also argues that ditches make installation of sidewalk difficult, and that density of the proposed development may suffer if sidewalk is required due to an installation requirement. Two notes on this point are 1) requiring curb and gutter and sidewalk on a single side of the street would likely not significantly impact density or slopes as argued and 2) maximizing the density of the development should not be a primary concern driving the Town's consideration of this project. The primary argument of denying this request is maximizing safety for residents and their families—you can't put a price tag on that, and safety always has been a Town of Blacksburg standard.

2. Variance for Road Slope and Length of Landings

A variance for road slope and length of landings should be weighed carefully. Many of these requirements have been evaluated over many decades by VDOT prior to resulting in the current recommendations, incorporated ultimately into the Town standards. These criteria have been established with safety in mind. Consider that it is likely that school buses will be traversing these streets daily. A school bus length is in the 45-foot range. I believe that consideration for a school bus plus one other passenger vehicle on the relatively flat landing should be made. This may push the length to around 100' due to separation between vehicles. VDOT does allow for steeper slopes in 'mountainous' areas. I haven't specifically looked at the grading but believe it will be difficult to make this connection to Village Way South without extensive concessions by the adjoining properties on both sides. The landing length of 100' puts you past both structures at 1225 Village Way South and 1301 Village Way South. That is going to be a fixed impact. The discussion of slope for the remainder of the alignment will be based on safety. **I strongly recommend having the developer produce a 3D image of this connection showing both adjacent residences (to scale) prior to acting on this item.**

One final note here. The concept behind that R/W onto Village Way South historically was to provide access for what was then Phase III of the VATC with approximately 16 dwellings accessing Village Way South from that proposed phase (Figure 3). There was no through connection proposed to Glade Road when that was envisioned. Therefore, this proposal is a completely different use case that should be considered when evaluating whether this connection with the proximity of the neighboring residences is still viable at the slopes proposed with the projected traffic volumes.



Figure 3. Planned density and connectivity to this site when R/W was envisioned.

3. Driveways/Parking

The applicant is requesting to reduce the setback from the edge of a driveway to a property line. Also, they are requesting that spaces be allowed to back directly into the street. It's actually very difficult to find examples of this scenario in Town, but I was able to find an example on Jefferson Street as shown in Figure 4.



Figure 4. Example of street acting as parking lot along Jefferson Street

Obviously, this is not allowed by Town code, or in any recent medium to large scale by-right or planned developments due to safety concerns. Figure 4 is not exactly what the applicant is requesting since there is additional maneuvering room behind the cars along Jefferson Street. In the applicant's proposal, the lines are being pushed all the way to the edge of the road (Figure 5). In effect, portions of the roads will look like parking lots with only a roll top curb separating the parking spaces from the street.

Off-street parking is the standard in Blacksburg for a reason, and that reason is safety of citizens. It is extremely difficult to find examples of where this situation exists in the Town, and none from recent by-right, CUP, or rezoning projects onto public streets.



Figure 5. Annotated version of the applicant's street views

Additionally, the few "3D" renderings of the development are not truly 3D since they don't take the ground grading into account and erroneously show the site as completely flat. In Figure 5, it is quite likely that the floor elevations between the two adjacent units shown could vary by 1-2 feet. Particularly at the stairs/sidewalk into the units this transition will be tricky. **Please request true 3D renderings of one of the steeper streets with high density in order to see clearly how the parking/rooflines/greenspace look with the projected slopes.**

RZN 22-0004: General Thoughts Concerning Variances Requested

The general theme of the variances requested for the project seem to be to increase density and drive down the per dwelling unit development cost of the project, with many—if approved—affecting the overall safety and quality-of-life aspects of the project. Based on my experience, the Town Staff, Planning Commission, Town Council, and BZA are not flippant about approving variances from the standards when making determinations—especially if cutting costs is really the only provided reason. Even one person injured—or worse, killed—due to cost saving measures that go against established engineering standards and Town Code, just can't be enacted. Some of these requests, like large-scale backing directly into Town streets or eliminating sidewalks are not in the best interest of public safety. In staff's review of the variances requested, they seem to take the public's interest to heart, and I want to second their professional opinions on these items. It's unfortunate that the developer who has responded to the Town's very reasonable request to partner on an affordable housing venture is now asking the Town to publicly approve a project that violates many of the Town's (and VDOT's) long-standing safety standards.

Please let me know if you have any questions regarding the information/commentary that I've provided regarding this application.

Sincerely,



Clayton C. Hodges

Clayton Hodges, PhD, PE

CCH/

Kasey Thomsen

From: Anne McClung
Sent: Thursday, January 26, 2023 9:40 AM
To: Kasey Thomsen; Kinsey O'Shea
Subject: Fw: Glade Spring Crossing managed succession plan

Follow Up Flag: Follow up
Flag Status: Flagged

From: Vikki Fix <vikkifix@gmail.com>
Sent: Thursday, January 26, 2023 9:39 AM
To: Planning Commission; Matt Hanratty; Leslie Hager-Smith; anderson@math.vt.edu; John Bush; Lauren Colliver; Michael Sutphin; Kinsey O'Shea; Jerry Ford; Susan Mattingly
Subject: Glade Spring Crossing managed succession plan

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Dear Planning Commission members, Town Council persons, and Blacksburg city staff,

I think the Glade Spring Crossing managed succession plan is very unrealistic concerning the costs and work needed to create areas of native plants.

I am a member of the local Master Naturalist and Native Plant Society chapters. I have planted and maintained several native plant gardens. These gardens take a great deal of work. In the spring, summer, and fall, I spend at least 5 mornings each week working in one of the three gardens that I'm presently maintaining.

I also have served on the Landscaping Committee at the Village at Toms Creek. Mowing takes up a good portion of the landscaping budget. Homegrown National Park and other organizations are encouraging homeowners to mow less and provide more native plants to help pollinators and provide habitat for wildlife on their lots and HOA common areas. I think it is good that Glade Spring Crossing is considering fewer mowed areas and more native areas.

In the existing woodland areas, the Glade Spring Crossing plan noted that the HOA will need to get rid of invasive plants. The Village at Toms Creek spent at least \$7000 last year to remove invasives in our open space areas and that has only scratched the surface of the work that needs to be done.

In the Glade Spring Crossing grazing and bulldozed areas, a seed bank in the soil created over the years will cause many more invasive plants than native plants to grow. For example, there must be thousands of seeds in the soil from several autumn olives on the land that will sprout into new trees. It is going to take much more than once a year to monitor and get rid of the invasive plants. In the bulldozed areas, the compacted soil will require several years of planting lots of native plants to get the areas off to a good start.

I encourage the city to

- require more planting than the developer has committed to,
- require the developer to get rid of all the invasives before the property is handed over to the HOA,

- provide a realistic plan to the HOA for the maintenance of these areas.

The current plan seems to allow the developer to cut his costs and put the burden on the homeowners. I suspect that the costs in the first 10-15 years of maintaining the open space area will be the same or more than the costs of mowing they are not having to do. This development is supposed to provide affordable and workforce housing. Homeowners should not be faced with huge costs to maintain the open space areas.

Sincerely,

Vikki Fix, 1301 Village Way S, Blacksburg

Kasey Thomsen

From: Anne McClung
Sent: Thursday, January 26, 2023 9:14 AM
To: Kasey Thomsen; Kinsey O'Shea
Subject: Fw: GSC Rezoning and Development

From: Kristen Klein <kristen.klein930@gmail.com>
Sent: Wednesday, January 25, 2023 6:52 PM
To: Kristen Klein
Subject: GSC Rezoning and Development

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Hello there,

My name is Kristen Chung, and I am a current resident of the Villages of Tom's Creek. I am writing to you with concerns regarding the proposed rezoning of Glade Spring Crossing and the proposal of the development between Village Way South and Glade Spring Road. I wanted to write and express my concerns as you all are in the process of considering the proposal from the developers and how it impacts our town and community.

First of all, my family and I moved to Blacksburg this past summer, with our two young sons. We specifically chose the Villages of Tom's Creek because of the community feel and the uniqueness of the neighborhood. We were drawn to the neighborhood because of all the green spaces, sidewalks and paths, walkability, variety of homes, and being completely separate from the campus craziness. There are several elements of the new development that jeopardizes what we love so much about our community.

First and foremost is safety. We are very concerned what will happen to our street if the proposed cut-through road is added. Our house/front porch sits less than ten feet away from the road. While in any other neighborhood this would be a concern considering we have two young boys, but on Village Way South it has felt very safe. We have very little traffic on our road. Most families with dogs and kids use the street and shared median to walk, play, bike, and just hang out. In fact, the intersection of the proposed cut-through is often a busy spot with kids doing laps on bikes or just running around. Our road also has no sidewalks so all foot traffic is on the road and median.

There is no question that traffic will increase significantly if the cut-through is added. Adding the road will increase traffic as people from our neighborhood will use it to gain quick access to University and the shopping centers and people from the new development will use it as a cut-through to get onto 460. It seems that the proposed cut-through road itself is narrow, with no sidewalks, adding to our safety concerns.

On the other hand, instead of adding a road for cars as a cut-through which would destroy so much of the community of the Villages of Tom's Creek, why not create a walkable path between the current neighborhood and proposed development. That would instead increase the community feel for both spaces.

We understand the value of the land and knew at some point it may be developed. We just hope that all aspects of the project and the impacts are considered. We know that the developers are using Affordable Housing as a main point of their proposal, yet there seems to be such a small number of affordable houses actually being considered. There are also so many environmental factors to consider here, in a town that strives

for sustainability. What are the impacts of the new development on Tom's Creek, run-off from street parking, building such a high-density project on the watershed, turning so much green space into asphalt, building on steep slopes and considering erosion, etc. Again, while we know that a development at some point may be built, we just hope that it's one that fits into the community that currently exists, rather than harming it, and aligns itself with the sustainability goals of the town.

We appreciate your time and thank you for reading this email as you consider the rezoning on Glade Springs Crossing and the development in question.

Kristen and Matthew Chung

Kasey Thomsen

From: Anne McClung
Sent: Thursday, January 26, 2023 9:15 AM
To: Kasey Thomsen; Kinsey O'Shea
Subject: Fw: Proposed Glade Springs Crossing Development

From: Landon Marston <landon.marston@gmail.com>
Sent: Monday, January 23, 2023 9:26 PM
To: Leslie Hager-Smith; Planning Commission; Susan Anderson
Subject: Proposed Glade Springs Crossing Development

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Hello,

My name is Landon Marston and I live at 1901 Forest Lane in the Village of Tom's Creek (VATC). I'm writing concerning the proposed development adjacent to VATC, Glade Springs Crossing.

As you are likely aware (or soon will be) a petition was passed around VATC opposing the Glade Springs Crossing. While I signed the petition, I am not opposed to the proposed development, just some of the incidental impacts, which I believe can be mitigated with thoughtful planning. I realize that many of my neighbors are opposed to any development on that property. In my opinion, that position is untenable given the expected growth of VT/Blacksburg and the lack of housing, especially affordable housing, near campus/town. With that said, there are some traffic/accessibility issues that should be addressed.

One of the best aspects of VATC is the community's walkability. The increased traffic through the community due to the Glade Springs Crossing will markedly increase traffic through VATC according to the [developer's proposal](#). South Village Way between Forest Lane and the proposed entrance to the Glade Springs Crossing does not have a sidewalk or trail. I would estimate 80-100 VATC residents regularly walk on that portion of roadway daily. However, a significant increase in traffic will make this lightly used portion of road less safe for walking. Furthermore, 15 children live on Forest Lane and at least a dozen more on the noted stretch of South Village Way and the proposed entrance to the new development. The increased traffic increases the risks of vehicle-pedestrian accidents.



If this version of the Glade Springs Crossing development is to move forward, I would strongly encourage you to consider the following improvements to make the plan safer and more acceptable to all involved communities.

- Add speed bumps at the bottom and top of the hill on Village Way South (denoted with red lines in the figure above). This will slow thru traffic along this pedestrian pathway. Alternatively (or additionally), a sidewalk could be added to this section of roadway. Yet another alternative would be not to connect the two communities by roadway but only by walking/biking trails.
- The new development on Tom's Creek Drive (e.g., Union apartments) and University Drive has increased traffic between VATC and VT/Blacksburg. Traffic will further increase with additional development on Tom's Creek. While Tom's Creek Road has a designated bike lane, the increase in traffic is making it more dangerous to use these bike lanes, especially during peak traffic times. One suggestion is to improve bike lanes/add a new trail on Glade Road and Old Glade Road to better connect VATC and Glade Springs Crossing to VT and downtown. The [city's 2021 comprehensive plan](#) shows that improved bike lanes/trails and sidewalks in this area are already planned but it isn't clear when this will be implemented. This may be a good opportunity to implement these plans. Ideally, this would include a bike path separated from the roadway. Such a trail would encourage increased bike commuting and ease increasing vehicular traffic in the area.

Thanks for your consideration.

Kind regards,
Landon Marston

Kasey Thomsen

From: Anne McClung
Sent: Thursday, January 26, 2023 9:15 AM
To: Kasey Thomsen; Kinsey O'Shea
Subject: Fw: Questions re: RZN22-0005

From: James Whitener <whitenej@vt.edu>
Sent: Monday, January 23, 2023 5:08 PM
To: Planning Commission; Matt Hanratty; Leslie Hager-Smith; Susan Anderson; John Bush; Lauren Colliver; Michael Sutphin; Kinsey O'Shea; Jerry Ford; Susan Mattingly
Subject: Questions re: RZN22-0005

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Hello,

My name is Jim Whitener, and I live in the Village of Tom's Creek. I am also a member of the Tom's Creek Sustainability Coalition. I have attended most of the meetings re: the Glade Spring Crossing (GSC) request for rezoning and the proposal for the aforementioned development between Glade Road and Village Way South. I have numerous concerns/questions regarding the rezoning and the proposed development. I have so many concerns that I will limit this email to only a few of them, and will send subsequent emails re: my other concerns.

My first concern occurred when I contacted Planning Staff to inquire about the development proposal, and was told it was "too early" make inquiries. I was told that the questions about the development proposal should wait, because the rezoning had not been reviewed or approved. When I replied that proposal was attached to the rezoning request, and that the two were inextricably linked, why was it too early to inquire about the development proposal? I was eventually told that if I wanted to review the proposal file at Planning, that I should file a FOIA request. That, to me at least, seemed a little strange.

At the first Planning Commission Work Session I attended on January 17, 2023, Matt Hanratty from the Town Manager's office described the \$2-million ARPA funds for the GSC project for affordable housing as a subsidy. That is an appropriate description. Yet, during the work session, when questioned by the Commission regarding which 24-lots would be affordable housing, the Applicant declined to respond because she did not want to limit the flexibility of the project, even though she admitted they already knew where the 24-lots were located. So, the Town is going to give a \$2-million subsidy to the developer for 24-lots and the developer declines to tell the Town what they are buying? And, by my calculations, that is \$83,333.33 per lot which can only be described as "shotgun" lots (I'll write you in a subsequent email re: lot sizes and placements). The homes are squeezed in, and under questioning from the Commission, it would seem the Applicant is unable to move locations of buildings because of the required setbacks.

IMHO, this whole process seems rather rushed, but the Applicant describes it as “Flexibility,” and I would call it vague, especially in light of the aforementioned exchange between the Commission and the Applicant on January 17. And, to be redundant, the vagueness of responses despite the \$2-million subsidy seems vague, if not opaque. Yet, it would appear this project is being fast-tracked which will lead to future problems requiring variances. And, since the rezoning is inextricably tied to the proposal, at a minimum, this rezoning should be delayed/denied until the Applicant can be more forthcoming regarding the proposal.

I have reviewed the proposal available online, which resulted in multitudinous questions, which I will address at a later date. That being said, an overarching observation I have has to do with the numerous requests for variances accompanying this proposal. And, these requests for numerous variances will only increase if the rezoning and development proposal are approved (i.e., as noted by the Legends proposal near the Gucci Kroger and the Old Middle School property development). And, apparently these requests for variances and future variances will most likely be approved, despite the aforementioned \$2-million subsidy, the details of which are shrouded in mystery. And, as noted in Section 3-3 of the Blacksburg Zoning Ordinance:

“No such variance shall be authorized by the board unless it finds all three of the following:

1. That the strict application of this chapter would cause undue hardship.
2. That such hardship is not shared generally by other property in the same zoning district and the same vicinity.
3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.”

Already, #3, supra, would seem to predispose the denial of the proposal.

Why is this rezoning request being fast-tracked, with multiple variance requests already being requested (with more to come, obviously)? And, why is this project being subsidized by the Town with \$2-million in ARPA funds, when the proposal is so vague and/or the Applicant will not provide details on what the Town is getting for its \$2-million?

I have other questions regarding this matter, which I will pose in subsequent emails. And, I am sure other questions will arise when the Planning Commission meets in Work Session on January 31, 2023.

I look forward to hearing from you,

Jim Whitener

Kasey Thomsen

From: Robin Jones <robindavisjones@gmail.com>
Sent: Friday, January 20, 2023 9:35 AM
To: Planning Commission; Matt Hanratty; Leslie Hager-Smith; Susan Anderson; John Bush; Lauren Colliver; Jerry Ford; Susan Mattingly; Michael Sutphin; Kinsey O'Shea
Subject: More Signatures from TOB Residents
Attachments: VATC Third Round Signatures.pdf

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Town Council and Town Planning Commission,

Attached are more signatures who oppose rezoning to accommodate the current Glade Springs Crossing concept plan because of safety concerns due to increased traffic resulting from proposed connectivity AND the negative environmental impact to Toms Creek.

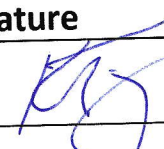
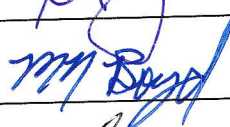

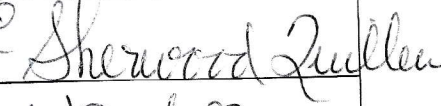

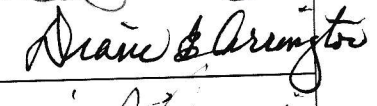


With this submission, the total number of residents who wish to be heard via this is now- 213. The process for this project puts residents at a disadvantage. These are our homes and lives and the threat to that is not acknowledged or considered. The developer should not have the only voice in this decision.

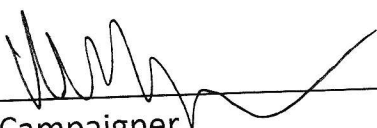
Our concerns were not elevated by members of Planning Commissioners at the meeting this week. Could the Coalition and the undersigned receive assurance that the submissions have been read and considered?

The volume of variances requested should be an indicator that the land and connector are overburdened by the proposed concept. We ask that the density be decreased. And the narrow, unsafe, non pedestrian friendly VWS connector "road" be abandoned as it adds no value to the project, but in fact detracts from the culture and safety of BOTH communities.

On their behalf,
Robin Jones

We, the residents of the Town of Blacksburg, oppose rezoning to accommodate the Glade Springs Crossing concept plan because of safety concerns due to increased traffic resulting from proposed connectivity AND the negative environmental impact to Toms Creek.

| Print Name | Address | Email | Signature |
|--------------------|---------------------------------|----------------------------|--|
| Karen Torgersen | 1209 Redbud Rd Blacksburg VA | Karen.Torgersen@gmail.com |  |
| Michael Boyd | " | vtmikeboyd@gmail.com |  |
| Steven White | 711 JEFFERSON BLACKSBURG VA | sketchysteven@gmail.com |  |
| Sherwood Zuller | 1612 Honeysuckle Dr | sherwoodpquillen@gmail.com |  |
| Hunter Gresham | 711 Jefferson St | hunter@gresham@gmail.com |  |
| Diane Arrington | 1009 McBRIDE CRANE | DEARRINGTON48@yahoo.com |  |
| Jamie P. Steed | 905 McBryde | jamie.p.steed@olive.com |  |
| Mary Anne Theadore | 1013 Mourning Dove Dr. | engae1@olive.com |  |
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 Campaigner

 Date

We, the residents of the Town of Blacksburg, oppose rezoning to accommodate the Glade Springs Crossing concept plan because of safety concerns due to increased traffic resulting from proposed connectivity AND the negative environmental impact to Toms Creek.

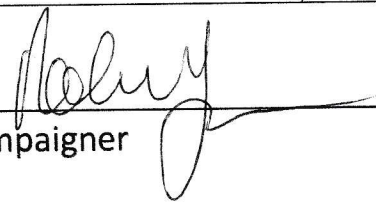
| Print Name | Address | Email | Signature |
|-------------|--------------------|-----------------------|---|
| Andrew Katz | 711 VILLAGE WAY N. | Katz5andrew@gmail.com |  |
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Andrew Katz
Campaigner

1/14/23
Date

We, the residents of the Town of Blacksburg, oppose rezoning to accommodate the Glade Springs Crossing concept plan because of safety concerns due to increased traffic resulting from proposed connectivity AND the negative environmental impact to Toms Creek.

| Print Name | Address | Email | Signature |
|-------------|--|------------------------|-------------|
| GARY BARGER | 1700 TRILLIUM LN. BLACKSBURG, VA. 24060 | garybarger01@gmail.com | Gary Barger |
| Rosa Barger | 1700 Trillium Ln. Blacksburg VA 24060 | Rosita45@aol.com | Rosa Barger |
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1/14/2023

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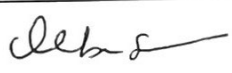

We, the residents of the Town of Blacksburg, oppose rezoning to accommodate the Glade Springs Crossing concept plan because of safety concerns due to increased traffic resulting from proposed connectivity AND the negative environmental impact to Toms Creek.

| Print Name | Address | Email | Signature |
|----------------|--------------------------|----------------|----------------|
| Kathleen Lalli | 1510 Poplar Ridge Circle | llalli@cox.net | Kathleen Lalli |
| LOUIS P. LALLI | 1510 Poplar Ridge Circle | llalli@cox.net | Louis P. Lalli |
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Adele Whitener
Campaigner

01-18-2023
Date

We, the residents of the Town of Blacksburg, oppose rezoning to accommodate the Glade Springs Crossing concept plan because of safety concerns due to increased traffic resulting from proposed connectivity AND the negative environmental impact to Toms Creek.

| Print Name | Address | Email | Signature |
|----------------|-------------------------------------|------------------------|---|
| DEBRA STOMBLER | 1626 HONEY SUCKLE DR., B'BURG, VA | JOSTOMBLER @ GMAIL.COM |  |
| Jon Stompler | 1626 Honeysuckle Dr. Blacksburg, VA | Vfjow5@gmail.com |  |
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 Campaigner

 Date

Kasey Thomsen

From: Anne McClung
Sent: Monday, January 16, 2023 4:34 PM
To: Kasey Thomsen
Subject: FW: Supplement to Opposition to Rezoning for Glade Springs Crossing
Attachments: Toms Creek Coalition Supplemental Re GSC Connectivity.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

From: Robin Jones <robindavisjones@gmail.com>
Sent: Monday, January 16, 2023 4:27 PM
To: Planning Commission <PlanningCommission@blacksburg.gov>; Matt Hanratty <mhanratty@blacksburg.gov>; Leslie Hager-Smith <LHager-Smith@blacksburg.gov>; Susan Anderson <anderson@math.vt.edu>; John Bush <jbush@blacksburg.gov>; Lauren Colliver <lcolliver@blacksburg.gov>; Jerry Ford <jford@blacksburg.gov>; Susan Mattingly <smattingly@blacksburg.gov>; Michael Sutphin <msutphin@blacksburg.gov>; Kinsey O'Shea <KOShea@blacksburg.gov>
Subject: Supplement to Opposition to Rezoning for Glade Springs Crossing

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Town Council and Town Planning Commission,

Please accept the following Supplemental to the Toms' Creek Sustainability Letter to TOB on January 9th with 185 signatures. Since that time, over 20 additional signatures have been acquired. I will send these separately. I haven't received confirmation of receipt from everyone of the Letter as requested so if you didn't get it, please let me know.

The attached document, challenges the assumption of use and legal status of Parcel ID: 120660 for the use of the connector on VWS. In fact, based on our research this connectivity may be forbidden by plat, declaration, and TOB ordinances This may make moot our previous argument against the logic and necessity of the connector altogether, but in combination should be enough to give serious pause and abandon.

Also- for any member willing to view to location in question, I would be happy to host.

On behalf of the Coalition,
Robin Jones
1224 Village Way S.

Tom's Creek Sustainability Coalition
Village at Toms Creek (VATC) Supplemental Re: Parcel ID 120660

The purpose of this Memo is to contest the TOB's belief that Parcel ID: 120660 in the VATC is available for development as a connector of a major thoroughfare street through the VATC.

The Final Subdivision Plat of VATC, Phase III lists this parcel as a private, limited easement, not as a major public right of way. "Over-burdening" an easement is forbidden.

Issue: For what purpose did the original plat designate Parcel 120660?

Facts: The Final Subdivision Plat for VATC, filed at Bk 25, Page269-280) lists this parcel as only a limited easement and not a right of way. Sheet 1 of 12 provides the abbreviations of P.U.E for public utility easement and R/W for right of way. Sheet 8 of 12 shows three public utility easements (PUE's) on this parcel. One of these easements is the STEP sewer system along the south end of all Lots on VWS. In addition, a three-acre holding pond easement attached to the west side of this parcel required utility access to maintain it.

In sum, four easements exist on or near this parcel, all of which require access for maintenance. Finally, a locked gate at the bottom of the two track-path down the middle of this parcel for utility vehicles prevents any public use. This locked gate has existed for 22 years, a lengthy time during which the developer and VATC members have substantially relied in their assessment of the parcel's purpose.

Nowhere does the plat contain any indication (using the r/w symbol), nor have the actions of the developer suggested, that this parcel was meant to be a major public right of way. This was no minor omission because the Plat designates Village Way South (VWS) as a P/W, thus clearly indicating no intent or desire to make this a street comparable to VWS. In fact, the GSC Proposal indicates the need to intrude on adjacent Lots on both sides of this parcel in order to comply with minimum street regulations. Because the proposed connector grossly "overburdens" this easement, the GSC Proposal request two variances from street regulations, and even then, cannot add normal sidewalks.

Conclusion: The Developer did not intend this parcel to become a major public right of way. Limited access rights of way are implied in many utility easements. However, these limited rights are very narrow. Thus, by not expressly listing this parcel as a right of way, the developer gave notice to all members of only an implied limited right of way for the utility companies to service the utility. Since the south part of all the houses on VWS contain STEP sewer systems, the Developer needed to provide limited access to the TOB truck tanks to service these sewer systems and to the utility companies to service the other utilities. Members could easily conclude, without more express notice, that this parcel was meant as only a very limited right of way, not a right of way for thoroughfare-type connectivity.

By proposing to re-make this easement into a thoroughfare, the GSC and TOB have “over-burdened” this limited easement.

The Declaration of Covenants and Restrictions provides numerous time limits during which the developer and TOB can make substantial changes.

Issue: What is the strength of the many “easements of enjoyment” given by the Developer in the Preamble of the Declaration and in many other provisions of the Declaration?

Facts: Time limits exist throughout the Declaration. They limit the power of the Developer to unilaterally alter established conditions. For example, ARTICLE II provides a “five year” limitation from the last Supplemental Declaration in which the Developer can make “substantial changes” in the Development Plan. To our knowledge, the Seventh Supplemental Declaration was recorded on August 7, 2015. Although ARTICLE II expressly applies to the Developer’s power to add more lands within VATC, this express limit circumscribes the Developer’s right to continue imposing additional changes that upset the reliance of members on the present status. Members have an implied right to expect no further changes after five years.

Conclusion: The Developer cannot continually make “additions and modifications” indefinitely, and the members of VATC have a right to the safety, security, and peace of mind that 22 years of reliance have provided. Substantial changes violate these reasonable expectations, and we submit that the retroactive attempts by the Developer, TOB, and the VATC Board of Trustees (listed below) violated these specific and general “easements of enjoyment” expressly provided throughout the Declaration.

The Developer, on January 8, 2021 and more than five years after August 7, 2015, conveyed to the VATC Association fee simple ownership in Parcel 120660 by General Warranty Deed that also attempted to redesignate the parcel as a “Future Right of Way”.

Issue: Can the Developer re-designate by deed of conveyance, rather than by TOB ordinance procedures, an easement into a “future right of way”? And can such a major redesignation be done after five years?

Facts: This deed misrepresented this parcel as a “designated Phase III Future Right of Way”. The deed cited Plat 25, page 269 (more accurately it should be p. 276). But nowhere on that Plat does the Plat “designate” this parcel as a “Future Right of Way.” Thus, more than five years after the last Declaration, the developer is trying to **re-designate** the purpose of this parcel.

A similar 10-year time limit suggests the Developer cannot unilaterally alter the Declaration as filed. ARTICLE IX Section 2 states that the Developer can alter the Declaration for 10 years, but after that, it must obtain 67% of member votes. These time limits place good faith time limits on the power of the Developer to retroactively change recorded items. The Developer, TOB, VATC, and GSC ought to recognize and honor these limits in good faith.

Twenty-two years of reliance have been summarily dismissed by all four parties, and over 200 signatures submitted to the TOB express the anger of town citizens at this retroactive redesignation.

Conclusion: Given the proximity of GSC's filing of its PRD Plan, this **re-designation** of parcel 120660 appears in bad faith and contrary to the best interests of the homeowners who bought parcels from the Developer. Never in the 20 years of VATC development did the Developer give any persons buying Lots any notice of any intent to redesignate this easement into a right of way for a major thorough fare through the Village. Given this substantial negative change, it becomes clear that the Developer violated the implied rights of enjoyment expressly stated in Declaration. Whether by active collusion or ignorant mistake, this **major redesignation** added retroactively to the records without notice and hearing from the members violates the reliance of members on the Declaration and other representations.

Upon becoming owner in fee simple of this parcel as a common area of VATC, the VATC Association violated rights of its member given in ARTICLE IV, Section 2. Easement of Enjoyment which requires "the assent of sixty-seven percent (67%) of the votes of a Quorum of the Owners" before it conveys, or transfers, all or any part of the Common Areas,..."

Issue: Can the VATC Association convey common property to the TOB without prior consent of its members and without following TOB zoning requirements?

Facts: One year after receiving fee ownership of Parcel 120660, and on February 23, 2022, VATC conveyed by DEED OF DEDICATION Parcel 120660 to the Town of Blacksburg "for public right-of-way purposes (the ROW)". In more astounding language, the deed stated that "it was the desire and intent" of Grantor to dedicate the Property for use as a Town right of way, ..." (Instrument # 2022001758, E-recorded in Clerk's Office)

The Toms Creek Sustainability Coalition has submitted 200 signatures of persons who disagree that it was the "desire and Intent" of VATC to make such a dedication of valuable Common Area. No vote was taken to determine this intent, and surely 67% of members did not consent to the stated intent nor the conveyance.

ARTICLE IV, Section 2 (h) provides one narrow exception to the right of the Association to transfer part of the Common Areas. That exception can be used only if it is "pursuant to a recorded subdivision plat . . . for the purpose of adjusting Lot lines or otherwise in connection with the orderly subdivision and development of the Properties, provided that: . . . (4) "the adjustment shall not materially alter the Common Area." This is a very limited exception to correct Lot lines and preserve orderly progress for the benefit of the Properties --- not the benefit of the public. Even then, this exception is limited to minor adjustments and not allowed for "material" alterations.

Conclusion: Clearly, VATC cannot convey at will the Common Areas owned and used collectively by members for easement access without the consent of the 67% of the members,

especially if the conveyance “materially alters the Common Area.” Section 2 (h) (4) This conveyance “materially alters” Parcel 120660 from a private utility access easement open only to utility servicers, into a major thorough fare street open to the entire public.

For 20 years, members of VATC relied on the recorded plat designations and the actions of the Developer and TOB suggesting this parcel contains very limited functions. The signatures of over 200 individuals indicate that these retroactive actions are a “material” breach of their enjoyment rights. Further, the locked gate at the bottom of the parcel for 20 years denies that it is the “desire and intent” of VATC members to make this a public right of way open to hundreds of cars that will inevitably speed through the neighborhood.

Many other provisions of the VATC Declaration of Covenants and Restrictions make it clear that the VATC Association has violated the letter and intent of its own Declaration that is designed to protect the ‘right of enjoyment’ of its members.

ARTICLE VIII Sections 1 and 2 provide guidance on how to interpret the language stated above. It states: “[T]he Association shall not without the consent of sixty-seven percent (67%)” of its members “sell or transfer the Common Areas or other property owned by the Association.” However, note carefully this exception: “The granting of easements for public utilities or other public purposes consistent with the intended use of the Properties, . . . shall not be deemed a transfer within the meaning of this clause.” Clearly, VATC has the power to convey Common Property for easement access to utility companies; but the conveyance of Common Area to re-designate it as a massive public right of ways is not granted to the Association. Granting such a power to the Board of Trustees would jeopardize every member’s property right and open the door to vindictive uses of the power.

The TOB is estopped by Virginia common law from accepting this conveyance from VATC of common open space because the TOB has denied this type of conveyance to members of VATC (citing TOB ordinances requiring a public hearing process for this zoning amendment).

Issue: Can the TOB require consent of 67% of VATC members and HOA public hearing processes for zoning amendments when members seek to purchase open common space, and then not follow the same procedures when common open space is conveyed to the TOB. In short, is the TOB estopped under equity principles from such a conveyance.

Facts: On other occasions, the TOB forbade members of VATC from taking common open space by conveyance. The TOB cited Ordinances 1216 and 1289 public hearing processes that are required before the reduction of Common Area can be allowed.

Specifically, the TOB stated: “[A] reduction in the approved common open space, such as the purchasing of a portion of the required common open space by an individual, would need to be approved by the owners of the common open space and submitted to and approved by the Town of Blacksburg as a revision to the approved Master Plan.” The Town stated: “While the HOA may allow for this request [to take common open space by conveyance] in its

regulations, it does not supersede Town regulations and the approved Ordinances 1216 and 1289 which do not allow for this sale.” (Written Determination – DET20-0008)

The common space at issue in this written determination is directly attached to parcel 120660, and thus its proximity suggests similar requirements for similarly situated property.

Conclusion: Hardly has a more major revision occurred that angers so many members of VATC as this attempt to make a major alteration in this limited easement. Yet the TOB did not require its own procedures prior to participating in the revision and this conveyance.

Principles of equity estop the TOB from this revision and this conveyance.

Public officials have the duty not only to act in good faith, but also to give the appearance of good faith. Public trust grows only if both duties are honored.

The appearance of these two convenient conveyances, with **re-designations** of the purpose of Parcel 120660, and without notices to members of the major change from an unused private easement to a proposed public thoroughfare, does not suggest good faith to affected landowners (as 185 signatures attest). Notice and copies of the intended deeds could have easily been posted in VATC minutes. Changing an established neighborhood into a thoroughfare that will exist for the next 100 years is a substantial, material change.

THEREFORE, we respectfully request that the TOB and GSC developers abandon your attempt to retroactively convert a limited easement into an “overburdened” major right of way. Abandoning it fairly distributes traffic from each development out to its own connector street: VATC to Toms Creek, and GSC to Glade Road.

IN SUPPORT OF THIS REQUEST, we have stated the following grounds:

- 1) There was no express designation of “r/w” on this parcel in the Final Plat;**
- 2) numerous time limit provisions in the Declaration restrain the power of the Developer to ex post facto declare this parcel to be a future right of way in a deed filed long after the time limits expire;**
- 3) the VATC Association violated provisions of their own Declaration by conveying common area property to the TOB without the consent of 67% of its members;**
- 4) the TOB is estopped from receiving common area property whose conveyance is done by a process that the TOB has forbidden under its own ordinances;**
- 5) the GSC Proposal, by its first two request for variances, effectively admits its own plan will “over-burden” it to the extent that it intrudes on the property of adjoining Lots; and**
- 6) the letter and spirit of these legal provisions, and the spirit of the TOB’s Comprehensive plan, have been violated, and in total, these violations substantially deny VATC member the “easements of enjoyment” promised throughout the Declaration.**