



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

ATTACHMENT 5

(1 of 4)

NOTICE OF ADMINISTRATIVE ORDER
IN ACCORDANCE WITH CHAPTER 22A OF
THE MONTGOMERY COUNTY CODE

February 9, 2004

Mr. Paul Lynch, Jr.
Site Manager
Harkins Builders
2201 Warwick Way
Marriottsville, Maryland 21104

Re: Parcel P961, Deer Park

Dear Mr. Lynch:

As you are aware, on December 9, 2003, an inspector for the Maryland-National Capital Park and Planning Commission identified the recent clearing of forest on about 15,531 square feet of the above-referenced parcel. It is the Commission's understanding that Harkins Builders stockpiled soils on this cleared area as part of construction activities for the Selbourne House at St. Mark's on St. Mark's Parish, Parcel B, at 12801 Old Columbia Pike, Silver Spring, MD. 20904. Parcel B is adjacent to Parcel P961, Deer Park. The Commission's records indicate that the forest clearing and stockpiling activities on Parcel P961, Deer Park was not part of an approved forest stand delineation ("FSD") or a forest conservation plan ("FCP") as required by Montgomery County Code ("Code"), Chapter 22A ("Forest Conservation Law" or "FCL").

On April 24, 2003, a final FCP was approved for the Selbourne House at St. Mark's. (FCP no. 1-02110). It approved the clearing of 3.1 acres of forest on St. Mark's Parish, Parcel B with a requirement for on-site and off-site forest mitigation. However, it did not include any grading or clearing of forest outside of Parcel B. In addition, on October 3, 2003, Commission staff denied a request made by Mr. Thomas Niederberger of Harkins Builder to clear forest on Parcel P961, Deer Park. The proposed clearing activity was for the purpose of stockpiling and storage for the Selbourne House at St.

Mark's construction activities. It was not for necessary infrastructure for the project and the forest on Parcel P961, Deer Park, is not part of any approved land development project for that property.

Montgomery County Code, Chapter 19, requires that a property owner obtain a sediment and erosion control permit from Montgomery County Department of Permitting Services ("DPS") prior to commencing any disturbance of more than 5,000 square feet of land in the County. Before DPS may issue a sediment and erosion control permit, the property owner must comply with the requirements of Montgomery County's Forest Conservation Law. Mont. Co. Code, §§ 19-3A, 22A-4(b), 22A-11(d)(3). The FCL provides, that, unless exempt, a property owner must receive review and approval of an FSD and a FCP, prior to undertaking the land disturbing activity. Mont. Co. Code, §§ 22A-4, 22A-10, 22A-11(d). According to inspections by Commission staff, Harkins Builders destroyed approximately 15,531 square feet of forest in violation of the approved FCP for the Selbourne House at St. Mark's and contrary to the denial of the request to remove forest on Parcel P961, Deer Park. These violations of the Montgomery County Forest Conservation Law may be sanctioned accordingly.

The civil fine issued by the Commission on December 9, 2003, in accordance with § 22A-16(a) of the Code, fines Harkins Builders One Thousand Dollars (\$1,000.00) for its Forest Conservation Law violation. A second fine for Five Hundred Dollars (\$500.00) was issued on January 9, 2004 for failure to remove the stockpile dirt from the cleared area by January 9th, as agreed to by Harkins Builders. The stockpile was removed from the cleared area by January 14th, as verified by the M-NCPPC inspector. In addition, by this letter, and in accordance with §§ 22A-16(d) and 22A-17 of the Code, the Commission is instituting the following additional enforcement actions:

- (A) As the Planning Director, and in accordance with §22A-17, I am issuing an administrative order requiring corrective action be undertaken by Harkins Builders as detailed in Attachment One to this letter; and
- (B) On March 18, 2004, the Montgomery County Planning Board will hold a public hearing to consider the amount of the administrative civil penalty to be imposed on Harkins Builders pursuant to §22A-16(d). In determining the amount of the civil penalty at the hearing, pursuant to §22A-16(d)(2), the Board will consider the willfulness of the violation; the damage or injury to tree resources; the cost of corrective action or restoration; any adverse impact on water quality; the extent to which the current violation is a part of a recurrent pattern of the same or similar type of violation committed by the violator; and other relevant factors. As detailed in that Section, the penalty imposed by the Planning Board must be not less than \$0.30¹ and up to \$1.00² per square foot of forest cleared.

¹ This amount is identified in §5-1608(c) of the Natural Resources Article of the Maryland Code.

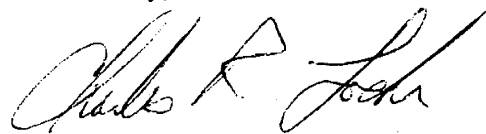
² This amount is the maximum amount established by the Montgomery County Council by 1992 L.M.C., ch. 4 § 2.

At the Planning Board hearing, staff will be recommending an administrative civil penalty of \$0.90 per square foot of forest cleared (or, \$13,978), minus the cost of completing the corrective action detailed in Attachment One. In making this recommendation, staff considered the fact that Harkins Builders cleared forest on property that it did not own, even after staff denied Harkins Builders' request to clear the forest. The property is located in the Paint Branch watershed, which is a Use III stream system, indicating overall high quality water resource conditions. The clearing, however, was not done in an environmental buffer area.

As required by §22A-20, the hearing before the Planning Board regarding the imposition of an administrative civil penalty is scheduled for March 18, 2004 in the Planning Board's Hearing Room at 8787 Georgia Avenue, Silver Spring, Maryland 20910. At this hearing, Harkins Builders will have an opportunity to be heard by the Board before it makes its final decision on the amount of the penalty. Additionally, at the March 18, 2004 hearing, Harkins Builders may elect to have a hearing before the Board on the administrative order for corrective action, as required by §22A-20(d).

Harkins Builders may request to meet with staff to discuss the administrative order and staff's recommended civil penalty prior to the March 18th Planning Board hearing. If Harkins Builders would like to meet with staff or has any questions, please contact Ms. Candy Bunnag at (301) 495-4543.

Sincerely,



Charles R. Loehr
Director of Park and Planning

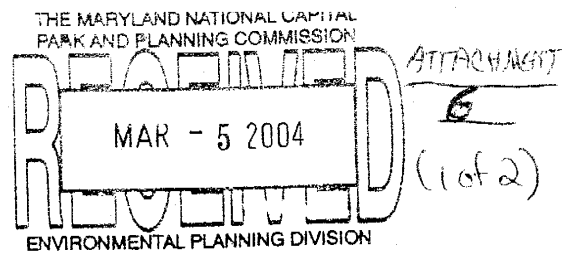
Attachment One – Corrective Action

cc: Michele Rosenfeld, M-NCPPC – Legal
David Wigglesworth, M-NCPPC
Douglas Johnsen, M-NCPPC
Michael Ma, M-NCPPC

CL:CB:cb

ATTACHMENT ONE
CORRECTIVE ACTION FOR HARKINS BUILDERS
PARCEL P961, DEER PARK

1. Harkins Builders must obtain approval from the property owner of Parcel P961, Deer Park for restoring the cleared area.
2. Harkins Builders shall prepare, submit, and implement a planting plan to reforest this cleared area. The planting plan must be submitted to M-NCPPC for review and approval by March 31, 2004. The planting plan shall include details and specifications for land preparation, planting, and minimum two-year maintenance of the planted area as set forth for a forest conservation plan in the "Trees, Approved Technical Manual", M-NCPPC, September 1992. At a minimum, the planting schedule shall include five species of native one-inch caliper trees and three species of native container-grown, 18-inch tall shrubs at the rate of 200 trees/acre (total 71 trees) and 33 shrubs/acre (total 12 shrubs). The planting plan shall also include measures for deer protection and non-native, invasive species controls.
3. The restoration plan must be implemented by June 1, 2004.



HARKINS BUILDERS, INC. 2201 WARWICK WAY, MARIOTTSVILLE, MD 21104 (410) 750-2600
www.harkinsbuilders.com

March 3, 2004

Ms. Michele Rosenfeld
Ms. Candy Bunnag
Mr. David Wigglesworth
The Maryland-National Capital Park & Planning Commission
Montgomery County Dept. of Park and Planning
8787 Georgia Avenue
Silver Spring, MD 20910

Ladies and Gentlemen:

Thank you for granting an audience to Mr. Niederberger and myself last Wednesday, February 25, 2004 to explain the chronology of events that lead up to the clearing of approximately 15,531 square feet of parcel P961, Deer Park as outlined in Mr. Loehr's letter to Harkins of February 9, 2004. A recap of our discussion of February 25, 2004 is outlined below:

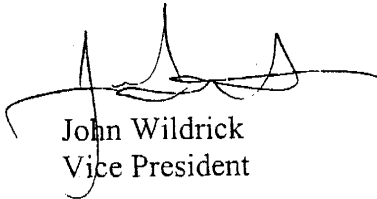
1. July 21, 2003 Harkins is granted permission from the property owner of parcel P961, Deer Park to clear a small sparsely wooded area of that parcel in order to facilitate topsoil storage during the construction of the new St. Marks Senior Housing Facility. Harkins is also directed on this date to Montgomery County Sediment and Erosion Control Officials by Site Solutions, the civil engineers of record for the St. Marks project, to determine the procedure for acquiring Governmental permission for small lot clearing.
2. August 5, 2004 Montgomery County Sediment and Erosion Control Officials approve Harkins's request and forward the application to Maryland-National Capital Park and Planning Commission (M-NCPPC) for final approval.
3. September 25, 2003 Harkins contacts M-NCPPC and learns that M-NCPPC needed among other things, a copy of the letter from the owner of parcel P961, Deer Park, granting Harkins permission to clear this area of its property before an approval of Harkins' application could be issued.

4. September 26, 2003 Harkins hand delivers the requested documents to M-NCPPC and leaves M-NCPPC under the misconception that an M-NCPPC approval was eminent and written approval would be in hand early the following week. Harkins, believing that approval was now just a matter of processing the paper work, initiates clearing on that same day.
5. September 27, 2004 Harkins installs sediment control devices and moves topsoil onto this lot for storage over the winter.
6. October 3, 2003 M-NCPPC denies Harkins application for clearing.

In consideration that the area cleared on the above parcel contained minimal tree grow and was predominately covered with multi-flora rose vines and briars as evidenced by the photos Harkins provided M-NCPPC on February 25, 2004 and in further consideration that Harkins did not clear this parcel in defiance of an M-NCPPC denial, Harkins respectfully requested that M-NCPPC recommend to the Planning Board that the penalty imposed on Harkins not exceed \$0.30 per square foot of area cleared and that the \$700.00 application fee originally paid by Harkins be applied toward offsetting the total penal sum. Moreover, Harkins agreed to reforest the area cleared as outlined in the attachment provided with Mr. Loehr's letter of February 9, 2004 and requested that the penal sum be applied to offset Harkins' cost of reforesting the cleared area.

Respectfully yours,

Harkins Builders, Inc.



John Wildrick
Vice President

cc: Mr. Charles R. Loehr, Director of M-NCPPC
Mr. Douglas Johnsen, M-NCPPC
Mr. Michael Ma - M-NCPPC
Craig Stephens, Harkins Builders, Inc.
Tom Niederberger - Harkins Builders, Inc.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

ATTACHMENT 7
(1 of 2)

April 15, 2004

Mr. John Wildrick
Vice President
Harkins Builders, Inc.
2201 Warwick Way
Marriottsville, Maryland 21104

Re: Parcel P961, Deer Park

Dear Mr. Wildrick:

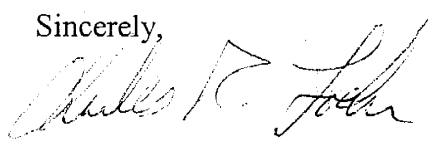
Thank you for your letter of March 3, 2004. Maryland-National Capital Park and Planning Commission staff has further reviewed all the information regarding the forest clearing and stockpiling activities on Parcel P961, Deer Park, including your request to set the administrative civil penalty at \$0.30 per square foot of area cleared minus both the costs of reforesting the cleared area and a \$700 application fee. According to your letter, the \$700 fee was "originally paid by Harkins". Commission staff does not agree with your request. We would offer the following as a counter-proposal:

1. The items that constitute the corrective action must be implemented as follows:
 - a. Obtain approval by May 1, 2004 from the property owner of Parcel P961 to restore the cleared area.
 - b. Staff has received Harkins Builders' proposed reforestation plan, dated April 5, 2004, and is in the process of reviewing it. Once a reforestation plan is approved, it must be implemented by September 1, 2004. This is a revision of the planting date in the administrative order for corrective action because of staff's concern that small trees planted this spring may be adversely affected by the expected emergence of large numbers of cicadas.
2. An administrative civil penalty set at \$0.50 per square foot of area cleared (sum of \$7765.50), instead of \$0.90 per square foot. This would be exclusive of the cost for reforesting the cleared area. It would also be exclusive of the \$700 amount. Staff is not aware of any \$700 application fee that was charged by M-NCPPC.

Finally, staff would like to correct some of the statements in your March 3rd letter. Montgomery County Department of Permitting Services (DPS) did not approve a sediment control permit on August 5, 2004 for the clearing activity on Parcel P961, Deer Park. In fact, a notice of violation for failure to obtain a sediment control permit for land disturbing activities was issued by DPS on October 15, 2003. In addition, prior to issuing a denial of the forest conservation exemption request, Commission staff did not indicate that approval for the request was pending.

Harkins Builders must respond in writing to staff's counter-proposal by April 26, 2004. If Harkins Builders does not agree with the counter-proposal, a hearing before the Planning Board regarding the administrative civil penalty will be held on May 15, 2004. Please contact Ms. Candy Bunnag at (301) 495-4543 if you have any questions.

Sincerely,



Charles R. Loehr
Director of Park and Planning

Cc: Michele Rosenfeld, M-NCPPC legal
Candy Bunnag, M-NCPPC
Cathy Conlon, M-NCPPC
David Wigglesworth, M-NCPPC
Douglas Johnsen, M-NCPPC
Michael Ma, M-NCPPC

CL:CB:cc

ATTACHMENT 8

(1 of 4)

HARKINS BUILDERS, INC. 2201 WARWICK WAY, MARRIOTTSVILLE, MD 21104 (410) 750-2600
www.harkinsbuilders.com

April 22, 2004

Mr. Charles R. Loehr, Director of Park & Planning
The Maryland-National Capital Park & Planning Commission
Montgomery County Dept. of Park and Planning
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Parcel P961, Deer Park

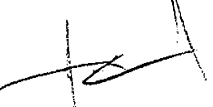
Dear Mr. Loehr:

I am in receipt of your letter of April 15, 2004 received in our office via certified mail yesterday, April 21, 2004. Please be advised that Harkins Builders, Inc. stands behind its statements contained in its letter of March 3, 2004. Enclosed herewith you will find a copy of our cancelled check for the Application Fee. Please note that our check dated August 5, 2003 in the amount of \$770.00 was deposited into the County's account on August 12, 2004. Also, enclosed herewith is documentation evidencing Montgomery County's approval of the sediment control review by Mr. Mark Etheridge on August 5, 2004. The approval from the property owner of Parcel P961 as requested in your letter of April 15, 2004 will follow under separate cover. However, it is the M-NCPPC that desires this reforestation, not the owner of this property.

In consideration of this evidence and the other facts contained in our letter of March 3, 2004, I respectfully request that M-NCPPC reconsider its penalty as set forth in its April 15, 2004 letter without a hearing and accept our reforestation proposal plus the \$770.00 application fee as a full accord and satisfaction and payment in full for all costs, penalty and damages incidental to this matter.

Sincerely,

Harkins Builders, Inc.

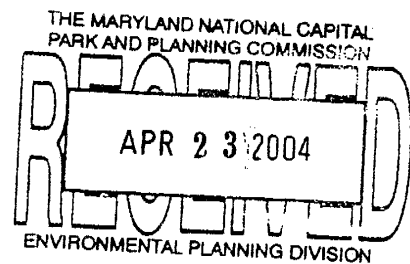

John Wildrick
Vice President

Enclosures

cc: Michele Rosenfeld, Candy Bunnag, David Wigglesworth, Cathy Conlon, Douglas Johnsen, Michael Ma, Mike Ebrahimi, Craig Stephens

Via Certified Mail

Attachment
8





HARKINS BUILDERS, INC.
2201 Warwick Way
Marriottsville, MD 21104

SUNTRUST MID-ATLANTIC

2 0000098955

65-270/550

John, FY / ATTACHMENT
8
(2 of 4)

Date 05 Aug 2003

Pay Amount \$770.00***

Void after 180 days

Pay *****SEVEN HUNDRED SEVENTY AND XX/100 DOLLAR*****

To The Order Of MONTGOMERY COUNTY, MD
100 Maryland Avenue
Rockville, MD 20850

Authorized Signature

J. Blair Carter
Authorized Signature

CN 209120

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SUNTRUST BLT 08122003

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APR 12 2003

0427 86118

MONTGOMERY COUNTY
DEPARTMENT OF PERMITTING SERVICES
FOR DEPOSIT ONLY



DPS/Application Details

Reviews

Sediment Control Permit

Permit/License: 209120

Please call 240-777-6320 to reach a representative.

Description	Status	Reviewer	Review Agencies		Complete Date
			Start Date	Help	
Forest Conservation Requirement	Pending		08/05/2003		
Sediment Control Review	Approved	Mark Etheridge	08/05/2003		08/05/2003

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MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive . 101 Monroe Street . Rockville, Maryland 20850

Subject: Schedule of Fees for Permits, Licenses and Inspections – METHOD 3	Number: 14-03
Originating Department: DEPARTMENT OF PERMITTING SERVICES	Effective Date: July 1, 2003

8. The fee for a change-of-legal-description or other administrative revision to a Sediment Control Permit or a Floodplain District Permit is 50% of the minimum permit fee.
9. The fee for replacement of a Performance Bond, Cash Bond, Irrevocable Letter of Credit, or Certificate of Guarantee is \$60. If the purpose of the replacement is to reduce the amount of the instrument due to partial completion of stormwater-management facilities, the fee is \$120.

B. Small-Land-Disturbing-Activities-Sediment-Control Permits

1. Single-family residential lots or parcels:
 - a. 10,000 square feet, or fewer \$ 350
 - b. 10,001 – 20,000 square feet \$ 700
 - c. Over 20,000 square feet \$1,050

C. Forest-Harvest Activities Sediment Control Permits

D. Maintenance-of-Stormwater-Management-Facilities Sediment-Control Permits

E. Other Sediment-Control Permits

1. Per square feet of disturbed area \$0.035
2. Minimum fee \$1,050

F. Technical Revisions to Permits (no increase in disturbed area) 35% of original fee

1. Minimum fee \$1,050
2. Maximum fee \$2,300

G. Sediment-Control-Permit Extension

1. Small-Land-Disturbing-Activities and Forest-Harvest-Activities permits may not be extended.

+ 10%
\$ 770.⁰⁰



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

April 30, 2004

ATTACHMENT 9

Attachment
9

Mr. John Wildrick
Vice President
Harkins Builders, Inc.
2201 Warwick Way
Marriottsville, Maryland 21104

Re: Parcel P961, Deer Park

Dear Mr. Wildrick:

I have received your letter dated April 22, 2004. After reviewing the information with my staff, I do not accept Harkins Builders' proffer. I do not agree that the information contained in your letter warrants reconsideration of staff's recommendation for the amount of the administrative civil penalty. The \$770 noted in your letter is a fee paid to the Montgomery County Department of Permitting Services (DPS) as part of an application for a sediment control permit. It is not a fee paid to M-NCPPC. With respect to the "approved" status of the sediment control review, it is a DPS approval of the submitted control plan, which allows the sediment control application to go forward in the permit review process. It is not an issuance of the sediment control permit. It should be noted that a DPS letter, dated December 4, 2003, to Mr. Thomas Niederberger, of Harkins Builders, stated that the sediment control permit was denied.

A public hearing to set the amount of the administrative civil penalty will be held by the Montgomery County Planning Board on May 13, 2004. At the Planning Board hearing, staff will be recommending the administrative civil penalty stated in the notice of administrative order, dated February 9, 2004. Staff's recommended civil penalty is \$0.90 per square foot of forest cleared (or \$13,978), minus the cost of completing the reforestation of the cleared area.

If you have any questions, please contact Ms. Candy Bunnag at (301) 495-4543.

Sincerely,

Charles R. Loehr
Director

CRL:CB:ss\D:\Director's Letters\LtrWildric.doc

cc: Michele Rosenfeld-M-NCPPC Legal
Candy Bunnag, M-NCPPC
David Wigglesworth, M-NCPPC
Douglas Johnsen, M-NCPPC
Michael Ma, M-NCPPC