

**Attachment 4**

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February 25, 2005

VIA FACSIMILE AND MAIL

(301) 495-1306

Derick Berlage, Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910.Re: **Indian Springs Development - Preliminary Plan No. 1-04108**

Dear Chairman Berlage and Members of the Board:

This letter is submitted on behalf of the Tivoli Homeowners Association, a community of 527 homes located on the opposite side of Bel Pre Creek from the Indian Spring Development. *Tivoli HOA urges the Board not to make the extension of Tivoli Lake Boulevard a condition of approval.*

We oppose the extension of Tivoli Lake Boulevard for 4 reasons:

- I. There is no need for the extension.
- II. The extension will not achieve the purpose for which the road was proposed in the Master Plan.
- III. The extension will have major adverse effects on the character and livability of the Tivoli community.
- IV. The extension will have major adverse effects on the environment, inconsistent with the goals of the Master Plan.

We understand that the applicant's plan proposes the Tivoli Lake Boulevard extension solely because the staff has so requested. We understand that the staff has request is because the Master Plan calls for the extension. At the pre-preliminary hearing, this Board deferred decision on the extension although called for in the Master Plan, noting that the Board "does not have enough information at this time to decide whether to extend Tivoli Lake Boulevard." (June 30, 2004 Decision, p.1).

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As the Board knows, recommendations are placed in Master Plans without the comprehensive and detailed analyses which are involved in preliminary plans of subdivision. The additional information that has come to light as part of the subdivision process compels the conclusion that the road should not be extended due to the absence of need, the adverse consequences that flow from its construction and it would actually better achieve the goals of the Master Plan if the road were not extended.

## I

### **THERE IS NO NEED FOR THE EXTENSION**

1. The applicant has concluded that the extension is **not** necessary to service the Indian Spring Development traffic. This is fully supported by the developer's traffic analysis. The road extension has been made part of the project solely at the request of the staff due to the Master Plan language for the extension.

2. Tivoli HOA's traffic expert, Ralph Schöfer, has analyzed the impact of the Indian Spring Development on the area road system both with and without the road extension. *See Attachment No. 1.* He has concluded, as the attachment readily demonstrates, the extension of Tivoli Lake Boulevard makes no significant improvement in key area intersections. While at certain intersections, there is some improvement from the Tivoli extension, e.g., Indian Springs Access Road and Layhill goes from LOS B to LOS A during evening peak, the intersection at Randolph and Tivoli goes from LOS A to LOS C during the morning peak. Transportation staff has acknowledged to us that there is no significant improvement that would result at critical intersections by the road extension.

3. The traffic volume used in the developer's analysis is probably overstated. It does not take into consideration the establishment of a shuttle bus, running at least during peak hours, from the Development to Metro. We understand that the applicant is not adverse to conditioning approval of the Development on the establishment of a shuttle system (and even if they were adverse, it is a reasonable condition given the likelihood of many trips to the nearby Metro stop and its limited parking). The actual volume of traffic may also be overstated by failure to recognize that the golf course community will attract numerous older/retired homeowners who will generate rush hour trips less than the norm.

4. If the extension is not put in place, the Development will be serviced by a road system similar to that servicing the Tivoli community which has worked satisfactorily for the past 19 years. The 527 dwelling units of the Tivoli community are serviced essentially by one road, Tivoli Lake Boulevard. There is a "back" alternative ingress and egress through residential streets, little used but available in emergencies

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should Tivoli Lake Boulevard be blocked (which has never happened). *See Attachment No. 2.* The approximately 550 dwelling units in the Indian Springs project would be serviced by the principal road, the existing Indian Springs Access Road, as improved with turning lanes connecting to Layhill. There also would be a "back" ingress and egress alternative which would be readily available for emergency vehicles in the unlikely event that the Indian Springs Access Road would be closed. *See Attachment No. 2.*<sup>1</sup>

## II.

### **TIVOLI EXTENSION WILL NOT ACHIEVE THE PURPOSE FOR WHICH THE ROAD WAS PROPOSED IN THE MASTER PLAN**

1. The 1989 Kensington/Wheaton Master Plan provides (p.98):

*Indian Springs Access Road...provides access to the Indian Spring Country Club. If and when redeveloped with another use, the Country Club should be provided with access from Layhill Road and Randolph Road. Access from Layhill Road should be provided by reconstructing the existing access road to the typical primary residential street standard. Access from East Randolph Road should be provided by extending the primary street named Tivoli Lake Boulevard. **The internal street network of any such development should be continuous but designed with the idea of preventing a cut-through traffic movement between Layhill Road and Randolph Road.**" (Emphasis added.)*

2. By its express language, the purpose of the Master Plan's proposed extension of the road is only to service the Indian Spring and Tivoli communities, **not** to

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<sup>1</sup> We believe that there will never be a need for this extension. Should the Board be concerned that some unanticipated changes might occur in the future warranting the extension, it could make a condition of approval the dedication of the right of way extension to the County for possible future roadway use but not require implementation of the roadway at this time.

We also note that the U.S. Corps of Engineers must grant a permit for the road extension. The Corps has indicated a permit would be granted only if there were a sufficient need shown and that the County would be a co-applicant for such permit. We believe neither criteria has been met, nor will it be.

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provide a cut-through road system to relieve pressure on area roadway intersections. *As a practical matter, there is no way to prevent the extension from becoming a major artery for through traffic. The extension of the road will result in creating a cut-through for traffic between Layhill Road and Randolph Road so as to avoid the Randolph/Georgia/Layhill intersections. (See Attachment No. 2).*

3. Tivoli HOA strenuously opposes the extension, finding no need for it to service its community, particularly in view of the adverse impacts that would be created by the road extension as discussed below. Similarly, the Indian Spring developer does not see such need for such road to service its proposed community. The road will be nothing but a major cut-through artery to a detriment of both communities.

4. The Master Plan provision providing for the extension is based upon the express premise that the Country Club will be redeveloped into an entirely different use. The applicant's proposal is for approximately 550 dwelling units, which is **over 200 dwelling units less** than the build-out that is possible under the zoning which the Master Plan assumed. This changed circumstance is yet another reason that the Master Plan recommendation should not be implemented.

5. We note that continuity between the Indian Spring and Tivoli communities will, even in the absence of the road extension, still be facilitated by the existence of an extensive hiker/biker trail through the Tivoli Lake Boulevard right of way which would include a hiker/biker bridge over the Bel Pre Creek. We understand the applicant has agreed to construct such a bridge at the request of the Parks Department (in the absence of a vehicular bridge). Such a trail is more consistent with the County's policy of encouraging walking/biking rather than car trips for short distances.

### III.

#### **THE ROAD EXTENSION WILL ADVERSELY AFFECT THE CHARACTER AND LIVABILITY OF THE TIVOLI COMMUNITY**

1. Tivoli Lake Boulevard bisects the Tivoli community of 527 homes - consisting of single family detached and single family attached homes. There is a sidewalk only on one side of the Boulevard. All of the community's public facilities - e.g., community center and playground are located on one side of the Boulevard. The little trafficked streets, including Tivoli Lake Boulevard, permit children to readily cross the street with minimal parental concern, to use the facilities. Adults as well as children walk in the street, push baby carriages, ride bicycles, etc. The character of the community and the street is a quiet residential one with a little traffic and little fumes and

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noise normally associated with much traffic. The character and desirability of this community and street will detrimentally be affected by the road extension because it will become a major traffic artery for cut-through traffic between Layhill and Randolph.

2. Exacerbating this detrimental effect is that there is insufficient to no parking on some of the streets off of Tivoli. Due to the narrow width of the street, the Fire Marshall has precluded parking on the street. This results in the affected houses having to use Tivoli Lake Boulevard for parking, creating an unsafe situation should the street become a major cut-through artery.

3. Further, many houses in Tivoli are located close to Tivoli Lake Boulevard, and one house in particular is almost on the Tivoli right of way extension.

#### IV.

### **THE ROAD EXTENSION IS INCONSISTENT WITH THE MASTER PLAN GOAL OF PROTECTING THE ENVIRONMENT**

1. Chapter 7 of the Master Plan, "Environmental Plan", notes that an objective of the Master Plan is to protect and improve stream valleys and other natural resources. With regard to Bel Pre Creek for example, it is noted that "a significant stream erosion problem occurs in Bel Pre Creek." (p.152). Under "Policies" and "Objectives" in the Master Plan, appropriate land use policies are imposed to protect the environment. Inconsistent with these objectives and policies is the proposed Tivoli Lake Boulevard extension. Had the information as to the detrimental effects of the proposed extension now known to the Board been available at the time of the Master Plan proposal, we believe the proposed road extension would never have been recommended.

2. The applicant's "Detailed Site and Environs Analysis and Justification Statement for the Redevelopment of Indian Spring County Club" at p.31, provides the following information:

- The extension has to cross Bel Pre Creek
- This involves crossing 450 ft. of flood plain
- Substantial grade differentials exist from the Tivoli community side of the creek to the Indian Spring side; Tivoli Lake Boulevard is at a 350 ft. elevation; the closest

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point of the Indian Spring property is at 304 ft. elevation  
(46 ft. difference)

- Average slopes along the path of the road extension are as steep as 30-35% with one 25 ft. segment containing a slope of 40%
- The depth and length of crossing requires "tremendous amounts of fill to create the roadway"
- "Between 1.5 and 2 acres of priority forest" will be cleared

We understand that because the Master Plan recommends the extension, the staff is bound to also require plans to contain that extension. However, the Planning Board has authority, and a legal responsibility, to weigh all factors, including inconsistent objectives of the Master Plan, changed circumstances, and the absence of need, to not implement Master Plan recommendations where appropriate. Here it is more than appropriate to not extend the boulevard.

### PROCEDURAL MATTERS

1. Pursuant to the Planning Board Rules, as amended, Section 5, on behalf of the Tivoli Homeowners Association and member households that this firm also represents, we request the right to cross examine each witness, including staff witnesses. This request is made as to each and every witness unless expressly waived during the hearing.

2. The Planning Board's Associate General Counsel, Michele Rosenfeld, in her Memorandum to the Board of January 13, 2005, noted that due process requires such right of cross-examination and that the Board Rules provide for it. (Mem., pp.1-2). This Memorandum is incorporated herein by reference.

3. Similarly, the Memorandum of Michele Rosenfeld notes that due process requires such matters as notice to interested parties, an opportunity for public testimony and the introduction of evidence. The Memorandum goes on to state that the Board's Rules provide for such due process.

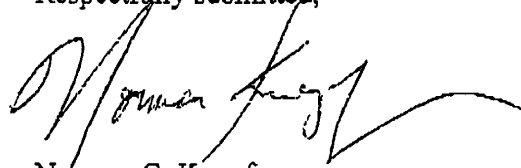
In the instant matter, we believe that the Rules are being applied so as not to afford due process and we object. Specifically, as of today (the Friday morning before the Thursday hearing), the staff report is still not available to provide notice to the parties as to the issues and facts that need to be addressed at the hearing, including whether the staff is recommending approval or denial. Notice is therefore deficient. Similarly, the

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parties are being limited to 3 minutes per person to testify and present evidence. This does not permit sufficient time.

Further, although the Board may permit cross-examination, we understand the practice is to allow no extra time for such cross-examination. Therefore while an individual is limited to 3 minutes to testify, that time is shortened by the time taken to ask questions.

Respectfully submitted,



Norman G. Knopf  
Attorney for Tivoli Homeowners  
Association

/attachments

cc: Marge Gertzman, President  
Tivoli Homeowners Association

**TABLE A****Proposed Indian Springs Subdivision****AM and PM Peak Hour Critical Lane Volumes at Impacted Intersections**

Source: October 5, 2004 Traffic Impact Analysis prepared by the Traffic Group

<b>Morning Peak Hour</b>	<b>CLV without Tivoli Lake Blvd</b>	<b>CLV with Tivoli Lake Blvd</b>
Md 182 & Bonifant Rd	D/1442	D/1442
MD 182 & Indian Spring Rd	D/1332	B/1136
Add Westbound Rt Turn Ln	D/1332	D/1136
MD 182 & Glenallan Ave	A/962	A/898
MD 182 & MD 97	B/1067	A/975
MD 97 & Randolph Rd	E/1585	E/1539
Randolph Rd & Glenallan Ave	E/1548	E/1596
Randolph Rd. & Tivoli Lake Blvd	A/994	C/1159
ndolph Rd & Kemp Mill Rd.	C/1202	C/1202
<b>Evening Peak Hour</b>	<b>CLV without Tivoli Lake Blvd</b>	<b>CLV with Tivoli Lake Blvd</b>
MD 182 & Bonifant Rd	D/1400	D/1400
MD 182 & Indian Spring Rd.	B/1056	A/852
Add Westbound Rt. Turn Ln	B/1056	A/852
MD 182 & Glenallan Ave.	C/1278	C/1190
MD 182 & MD 97	B/1121	B/1074
MD 97 & Randolph Rd.	E/1535	E/1590
Randolph Rd & Glenallan Ave	B/1108	C/1164
Randolph Rd & Tivoli Lake Blvd	A/870	A/921
Randolph Rd & Kemp Mill Rd	D/1382	D/1382



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Memo to: Norman Knopf, esq  
From: Ralph E. Schofer, P.E.  
Subject: Indian Springs Proposed Residential Development Intersection Analysis  
Date: December 16, 2004

Morning and evening peak hour critical lane volumes for eight impacted intersections, specified by MNCPPC, were forecast by the applicant's traffic engineer. These forecasts include the traffic demand resulting from the proposed Indian Springs development as well as existing traffic demand and traffic demand resulting from approved adjacent developments which are not yet built. These critical lane volumes are provided for the morning peak hour and for the evening peak hour, with and without the connection of the proposed Indian Springs development to existing Tivoli Lake Boulevard. (Thus for each intersection, four critical lane volumes are provided-- morning peak hour without the connection to Tivoli Lake Boulevard, morning peak hour with the connection to Tivoli Lake Boulevard, evening peak hour without the connection to Tivoli Lake Boulevard and evening peak hour with the connection to Tivoli Lake Boulevard.) These critical lane volume forecasts are shown on the accompanying Table A.

The intersection of Maryland SR 182 (Layhill Road) and Bonifant Road and the intersection of Randolph Road Kemp Mill Road are unaffected by the connection of the proposed development with Tivoli Lake Boulevard in either the morning or the evening peak hour period.

The Intersections of Maryland SR 183 (Layhill Road) and Glenallen Avenue is slightly improved by the connection of the proposed development with Tivoli Lake Boulevard, but not significantly: in the morning and the evening peak hours, with reductions of 64 and 88 peak hour vehicles respectively—the level of service does not change.

The intersection of Maryland RS 183 (Layhill Road) and Maryland SR 97 (Georgia Avenue) is slightly improved by the connection of the proposed development with Tivoli Lake Boulevard, but again, not significantly in either the morning or the evening peak hours. The level of service goes from B to A level in the morning peak hour with a reduction of 92 vehicles; the evening peak hour level of service does not change with a reduction of 47 vehicles.

The intersection of Maryland SR 97 (Georgia Avenue) and Randolph Road is very slightly improved by the connection of the proposed development with Tivoli Lake Boulevard during the morning peak hour with a reduction of 46 vehicles however, during the evening peak hour, critical lane volume increases by 55 vehicles. In neither case does the level of service "E" change.

## Intersection Impact of Tivoli Lake Boulevard Connection, December 15, 2004, Page 2

The intersection of Randolph Road and Glenallen Avenue is slightly worsened by the connection of the proposed development with Tivoli Lake Boulevard during the morning and the evening peak hour with increases of 48 and 56 vehicles respectively. The morning peak hour level of service is unchanged whereas the evening peak hour level of service decreases from "B" to "C."

The intersection of Randolph Road and Tivoli Lake Boulevard is significantly worsened by the connection of the proposed Indian Springs development with Tivoli Lake Boulevard during the morning peak hour-- increasing the critical lane volume from 994 vehicles to 1159 vehicles with a corresponding degradation of level of service from "A" to "C. During the evening peak hour, the critical lane volume at this intersection increases from 870 vehicles to 921 vehicles with no change in level of service.

The intersection of Indian Springs Road and Maryland SR 182 (Layhill Road) is improved by the connection of the proposed development with Tivoli Lake Boulevard. During the morning peak hour, the critical lane volume is reduced from 1332 to 1136 a reduction of 196 peak hour vehicles and level of service improves from "D" to "B." During the evening peak hour, the critical lane volume is reduced from 1056 vehicles to 852 vehicles -- a reduction of 204 peak hour vehicles and level of service is improved from "B" to "A."

It is apparent that the connection of the proposed Indian Springs development with Tivoli Lake Boulevard has no significant affect on the heavily loaded intersections in the vicinity of the development—Maryland SR 97 (Georgia Avenue) and Randolph Road; and Randolph Road and Glenallen Avenue. The connection of the proposed Indian Springs development with Tivoli Lake Boulevard actually increases vehicle volumes during the both the morning and the evening peak hours at these intersections with the exception of a slight reduction of peak hour vehicle volume at Maryland SR 97 (Georgia Avenue) Randolph Road of 46 vehicles per hour.

The reduction of peak hour traffic at Maryland SR 182 (Layhill Road) and Indian Springs Road is offset by the increase in traffic at Tivoli Lake Boulevard and Randolph Road. Peak hour volume changes at other MNCPPC specified intersections indicate a shifting around of some traffic—"increases here, reductions there" and are not significant.

The governmental agencies responsible for reviewing and approving the Tivoli Lake Boulevard connection will have to evaluate these relatively minor changes in peak hour traffic load at the critical intersections against the substantial environmental impact of the footprint of the fill to cross the Northwest Branch as well as the substantial monetary cost of the connection.



EXHIBIT 1  
SITE LOCATION MAP  
(GRID SPACING: 1/2 MILE)