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AND BLOCHER LLP
 ATTORNEYS AT LAW

June 16, 2005

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OFFICE OF THE CHAIRMAN
 THE MARYLAND NATIONAL CAPITAL
 PARK AND PLANNING COMMISSION

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Mr. Derick P. Berlage, Chairman,
 and Members of the
 Montgomery County Planning Board
 8787 Georgia Avenue
 Silver Spring, MD 20910

Re: Kingstead Farm, Damascus

Dear Chairman Berlage and Members of the Planning Board:

On behalf of our clients, Jane, Mary and Douglas King (the "Kings"), owners of the Kingstead Farm in Damascus, Maryland (the "Property"), the purpose of this letter is to request your reconsideration of the recent potential development and density decision made during your June 9th worksession on the Draft Damascus Master Plan concerning the Property, based on what we believe to be incorrect information provided from your staff concerning the potential environmental impacts that would occur if the northern portion of the Property is allowed to utilize public sewer capacity. We understand that staff has subsequently agreed that such reconsideration is appropriate, and will be making a revised recommendation to you at your June 30th worksession.

To provide you with background for this request, you will recall that during your discussions regarding the Property at your June 9th worksession, environmental planning staff proffered that the extension of sewer from the proposed southern development area on the Property to the northern development area on the Property would have a significant negative impact on the Little Bennett Creek stream valley, due to the alignment of the sewer on the west side of Kings Valley Road, through wetlands and along the stream valley buffer. This information unfortunately was not correct and was not the sewer alignment being proposed by the Kings' engineering consultants. The actual proposed alignment, as supplied in several previous correspondence to you, as more fully described below, clearly shows the proposed sewer extension on the east side of Kings Valley Road, mainly along the existing road and with only a single perpendicular crossing of a small tributary of Little Bennett Creek.

More importantly, as previously demonstrated, this proposed alignment would be constructed in a very environmentally sensitive way and have minimal impact on the Little Bennett Creek stream valley. A new exhibit reflecting the most recent proposal presented on June 9th, showing the proposed sewer extension in relation to Little Bennett Creek and its associated wetlands, as

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well as a cover letter from Rodgers Consulting and a sewer profile, are attached as Exhibit "A". This exhibit reflects a slight realignment of the sewer from previous proposals, resulting from the most recent development layout, which resolves any sewer depth issues from the previous scenarios. As you can see from this exhibit, the actual proposed sewer alignment is markedly different than that shown to you by staff last Thursday.

Additionally, during your worksession, staff also unfortunately linked the environmental impacts of extending sewer to the Kings Valley, Smart/Miner and Rice/Conway properties, where it was alleged WSSC would require 9,000 feet of gravity sewer through the Little Bennett stream valley, with the proposed sewer extension on the Kingstead Property. The development areas proposed for these properties are significantly north and east of the developable portions of the Kingstead Property and their proposed developments are not in any way associated with the Kingstead Property and its concept plan. As demonstrated herein and in our previous correspondence, sewer can be extended in a sensitive environmental design to the Kingstead Property without any of the impacts associated with a possible sewer extension to properties further north. Accordingly, the Kingstead Property and any impacts associated with its development clearly should have been considered independently from these other properties. We understand that staff is aware of this confusion and that it was partially the basis for the proposed revised recommendation to you.

Further, as indicated above, in response to previous misunderstandings of your staff concerning the proposed sewer extension for the Property, clarification was first made of the actual alignment and sewer extension proposal in our November 4, 2004 letter and attached exhibits (Exhibit "B"). The viability of this proposed sewer extension was later confirmed by WSSC, as explained in our December 22, 2004 letter to you and the attached letter from WSSC dated December 20, 2004, both of which are attached hereto as Exhibit "C". On February 16, 2004, in response to a staff report erroneously alleging the Property would be served by grinder pumps, Mark Friis, of Rodgers Consulting, Inc., submitted another letter to you, enclosing a plan and profile, again demonstrating the feasibility and environmentally sensitive nature of the proposed gravity sewer for both the northern and southern portions of the Property. A copy of this letter is attached hereto as Exhibit "D". Finally, in response to the most recent staff report, Mark Friis and this office sent an email, dated June 8, 2005, to you, a copy of which is attached hereto as Exhibit "E", which again clarified that the proposed sewer extension had been designed in an environmentally sensitive way, perpendicular to a small tributary and outside of any forested wetlands. Despite these numerous attempts to clarify the record, we believe at your June 9th worksession staff did not fully and accurately present to you the proposed alignment the property owner proffered, which minimized the environmental impact of a sewer extension for the Property. We respectfully believe it was largely upon this misinformation that your decision not

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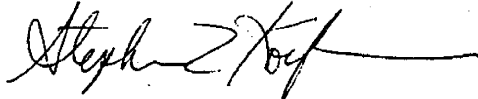
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to recommend the proposed development for the Property was based. We therefore request that, at the final worksession, reconsideration of the King Property decision be made in light of staff's revised recommendation, the information provided herewith, and information previously provided regarding the actual proposed sewer alignment and its comparatively minimal environmental impact.

Based on the foregoing, we hope the Board will reconsider its June 9th decision regarding the Property at the final worksession on the Draft Damascus Master Plan, now scheduled for June 30, 2005. As noted above, we understand and appreciate that staff is in agreement with this request. If you have any questions or concerns, please feel free to contact us.

Very truly yours,

LINOWES AND BLOCHER LLP



Stephen Z. Kaufman



Erin E. Girard

cc: Judy Daniel
Jane, Mary and Douglas King
Mark Friis

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July 13, 2005

Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Damascus Master Plan;
Request for Reconsideration of Preliminary Decision
Made at Worksession No. 5 for the Southwest Transition Area

Dear Chairman Berlage and Members of the Planning Board:

For your Worksession No. 6, to be conducted on July 28th, the owners of the Kings Valley Limited Partnership, Smart/Miner and Rice/Conway properties ask that you consider the following information and request:

1. STATEMENT.

THE THREE PROPERTIES REFERENCED ABOVE WOULD NOT BE DESIGNATED WITH A "RED STAR" ("PROPERTIES LIKELY TO CAUSE SERIOUS ENVIRONMENTAL IMPACTS TO LITTLE BENNETT STREAM VALLEY") IF A PUMP STATION IS USED TO SUPPORT NEW DEVELOPMENT RATHER THAN A LENGTHY EXTENSION OF GRAVITY SEWER.

2. BACKGROUND.

At Worksession No. 5 on the Damascus Master Plan conducted on June 9, 2005, the Planning Board considered Staff's recommendations that could increase the potential density of development on our clients' properties. The Kings Valley Ltd. Partnership property (115 acres), the Smart/Miner property (15.55 acres) and the Rice/Conway property (35 acres) were considered for development under RNC .4/TDR densities rather than their existing respective RE-2C and RDT zoning.

3. PRELIMINARY DECISION AND BASIS FOR THE DECISION.

After discussing the various "red star" and "green triangle" properties, the Planning Board voted not to increase density on our clients' properties for reasons which had a valid planning premise. That is, if the subject properties could only be served by an extension of public gravity sewer for a distance of more than 9,000 linear feet in the Little Bennett Creek stream valley, there would be disastrous environmental consequences to the stream valley.

4. PROPERTY OWNERS' REQUEST.

The owners of the Kings Valley Ltd. Partnership property, the Smart/Miner and the Rice/Conway properties ask that you RECONSIDER your preliminary decision regarding zoning and density on their properties based on the following information, the most important parts of which was not known by the Staff and the Board on June 9th.

A. Extension of gravity sewer in Little Bennett Creek.

If it would take a 9,000± foot gravity sewer line to serve our clients' properties, then they could understand the Board's reluctance to support higher residential density at significant expense to the environment of the Little Bennett Creek Watershed. However, M-NCPPC is not bound by WSSC's preferences for gravity sewer service. In the instance of our clients' properties, the dual goals of generating housing and protecting the watershed can be achieved by means other than extension of a gravity sewer line of such magnitude.

Just to be clear, WSSC policy documents (Memo ENG 04-10) state that gravity sewer is the preferred method for providing public sewer service. The Commission recognizes, however, that use of pump stations is an option that should be considered if the project is greater than fifty units. The combined dwelling units that could be created on the Kings Valley, Smart/Miner and Rice/Conway properties under the RNC option described in the June 3 Staff Report is a theoretical maximum of 135 dwelling units (with fewer units being more likely). Hence, these properties are eligible for pump station service and are not limited to exclusively gravity sewer service. The point being that it is the County Council, based on Planning Commission recommendations, that should make this ultimate decision, not the preferences of WSSC. **Had the pump station option been given more consideration during the June 9 discussions, the Board would not have concluded that the subject properties warranted a "red star" designation.**

B. Suitability of properties for pump station usage.

In lieu of a lengthy extension of a gravity sewer line in a stream valley, the Damascus Master Plan could instead recommend that the Kings Valley, Smart/Miner and Rice/Conway properties be served by a pump station to be constructed by the property owners. The pump station could be located on either side of the unnamed tributary of Little Bennett Creek, on the Rice property or on the Kings Valley property, near the stream but outside of any stream valley, buffers or forested areas. Effluent from the Smart/Miner and Rice/Conway will gravity flow to the pump station to be collected with waste water from the Kings Valley development. The sewage

would then be routed in a proposed street uphill to an existing sewer manhole in Bethesda Church Road with no additional stream buffer disturbances.

C. ENVIRONMENTAL IMPACTS OF USE OF PUMP STATION.

In its Report and presentation on June 9, Staff was concerned that a stream crossing to serve a pump station on the west side of the unnamed tributary would cause unacceptable disturbance to the upper portion of the tributary. That concern could be completely eliminated by placing the pump station on the east side of the unnamed tributary but for several engineering and practical reasons, the property owners' preferred (but not mandatory) location for a pump station would site it on the west side of the tributary.

Such siting could be accomplished, however, without the environmental damage anticipated by Staff. After the June 9 Planning Board worksession, engineers and environmental consultants for the property owners visited the site and IDENTIFIED A LOCATION WHERE THERE COULD BE NO ENVIRONMENTAL DAMAGE BY SUCH A STREAM CROSSING! This goal would be achieved due to the following circumstances:

(1) Utility poles supporting electric lines run parallel and adjacent to (and in some instances, on top of) the unnamed Little Bennett Creek tributary (see attached photos) at the proposed stream crossing location. There, the electric company has cut a path through the adjacent woods to run an electric line to serve the Rice residence (see attached photos). The gravity sewer line from Smart/Miner and Rice/Conway could be located within this already cleared area so that A GRAVITY SEWER LINE TO THE PUMP STATION WOULD NOT DISTURB EXISTING FORESTED AREAS.

(2) Field investigation and studies of soils maps indicate that it may be possible to cross the stream channel with a gravity sewer to the pump station BY TUNNELING UNDER THE STREAM. This method of construction would avoid even temporary disturbance of the stream and would eliminate, or at least minimize, disturbance to the wetlands adjacent to the stream in the area of the crossing.

(3) Even if "open-cut construction" to accommodate the stream crossing was necessary, our clients' environmental engineers (McCarthy & Associates) report that the sewer line:

"...can be located up-slope of any regulated waters, including jurisdictional wetlands. The sewer line crossing appears to be insignificant as well, as it can pass at right angles to the unnamed tributary limiting the impact roughly 500 or fewer square feet."

D. BURDEN ON WATERSHED NOT ASSOCIATED WITH STREAM CROSSING FOR GRAVITY SEWER LINE.

Implicit in the Staff's Report dated June 3 and the presentation on June 9, was the premise that additional residential density, separate and apart from the issue of the location and extent of gravity sewer, would be detrimental to the Little Bennett Creek Watershed. That assumption does not give due credit to the form of development proposed by our clients, nor the environmental measures that are contemplated to protect the Watershed, including:

- (1) Open space for the three properties is substantial!

There is approximately 75% open space associated with the three combined properties computed individually as follows:

Kings Valley Ltd. Partnership	83%
Smart/Miner	60%
Rice/Conway	60%

(2) Residences and associated streets, stormwater management and utilities are located outside of forest stands and distances from stream buffers and known seeps.

(3) The owners will construct stormwater management facilities that provide redundant water quality controls as required in Special Protection Areas of the County.

(4) Imperviousness of the proposed development will be less than 10% of the acreage of the combined tracts.

E. PRESSURE FOR ADDITIONAL DEVELOPMENT BY GRANTING OF THIS REQUEST.

In the opinion of the property owners' engineers and planners, the measures described above would allow for residential density to be increased on the subject properties without any adverse affect on the watershed. In fact, areas of the highest environmental sensitivity would be conveyed to M-NCPPC. The Staff's theme at the June 9 worksession seemed to be that "if they come, others will follow" and that granting additional density on the Kings Valley, Smart/Miner and Rice/Conway properties would stimulate new requests for public sewer service and additional development, the cumulative affect of which would be harmful to the Watershed. That assumption is overstated and, is, nevertheless a policy decision to be left to the Planning Board and the County Council.

In summary, the Planning Board's majority decision on June 9th not to increase density on the Kings Valley Ltd. Partnership, Smart/Miner and Rice/Conway properties was understandable based on information available to Staff and the Board Members at the time of your deliberations. However, as this letter points out, use of a pump station eliminates the Planning Board's fears about damage to the Little Bennett Creek stream valley, particularly since current conditions (viewed by your Staff in a field visit) mean that a sewer outfall can be extended across the upper reaches of the unnamed tributary without the loss of trees and, if deemed necessary, without any disturbance to the tributary itself.

Thank you for your consideration of these comments and this request for reconsideration at the July 28th work session.

Sincerely yours,

MILLER, MILLER & CANBY

A handwritten signature in black ink that reads "Jody Kline". The signature is written in a bold, cursive style with a horizontal line above the name.

Jody S. Kline

JSK/dlt

Enclosures

cc: Judy Daniel
Mary Dolan (w/o attachments)
Katherine Nelson
Carter Willson
Jim Glascock
Victoria Bryant
Kevin McCarthy (w/o attachments)
J. R. Smart
Sara Rice
Joe Rice