

MILES & STOCKBRIDGE P.C.

Richard A. DeTar
rdetar@milesstockbridge.com
(410) 820-0224

March 14, 2008

Ms. Cheril S. Thomas
Town Manger
Town of St. Michaels
300 Mill Street
St. Michaels, MD 21663

Re: Application for Amendments to Approved Growth Allocation Decision for the Concept Plan Known as the "Miles Point III-150' Plan" (the "Project"), Awarded by the Commissioners of St. Michaels, March 22, 2006

Dear Sherry:

Pursuant to Town of St. Michaels' Ordinance 357, this constitutes an application to amend certain conditions contained in the Commissioners of St. Michaels' Growth Allocation Decision for the above-referenced Project, dated March 22, 2006 (the "Approved Growth Allocation Decision"). This Application is being submitted jointly by the developer for the project, TND Development, Inc. ("TND Development"), and the record title owner of the land that is the subject of the Approved Growth Allocation Decision, Miles Point Property, LLC ("Miles Point"). TND Development and Miles Point shall collectively be referred to as the "Applicant." My firm will serve as legal counsel for the Applicant. By separate letter Miles Point is sending a check made payable to the Town of St. Michaels in the amount of \$20,000 to cover the filing fee for the above-referenced Application. It is my understanding that the Town will refund any portion of the filing fee that remains after deducting costs and expenses that the Town has incurred to process this Application. The form of the reimbursement will be to first apply these amounts to any costs or fees due and owing by Miles Point to the Town in connection with a pending application for the TND zone designation and then a cash refund.

This Application seeks amendments for two separate and distinct categories of conditions contained in the Approved Growth Allocation Decision. The first amendment involves Conditions 23 through 32 (the "SWM Conditions") relating to stormwater management. The second amendment involves Condition No. 61 which requires a public street connection from the Project to Yacht Club Road ("YCR"). We have prepared separate attachments intended to satisfy the application criteria specific to each category of amendment requested to the Approved Growth Allocation Decision. Exhibit 2 hereto contains all of the application requirements for

amendment of the SWM Conditions. Exhibit 3 contains the required application information with respect to Condition 61 and YCR. The Applicant has also submitted, with its application, all evidence it intends to rely upon for the Commissioners' deliberations relating to this request for Growth Allocation Amendments (Exhibits 3 through 13). As provided for in Ordinance 371 (which remains in effect as of the date of this submission), we are providing a full set of fifteen (15) copies of the entire Application along with a disc containing all Exhibits. For your convenience we are also including an Exhibit List.

In summary, with respect to the SWM Conditions the Applicant seeks a modification stating that compliance with the Town's comprehensive stormwater management ordinance, Ordinance No. 348, adopted by the Commissioners subsequent to the Approved Growth Allocation Decision, constitutes a safe harbor that the Applicant may comply with in lieu of complying with the customized SWM Conditions. It is the Applicant's understanding that the Commissioners crafted the customized SWM Conditions because the Town's stormwater management ordinance was outdated at the time of the Approved Growth Allocation Decision. Moreover, during their consideration of Ordinance No. 348, the Commissioners expressly stated their intention for Ordinance 348 to supplant the SWM Conditions for the Project.

Furthermore, while the Applicant intends to design its stormwater management system to comply with Ordinance No. 348, and does not intend to be adversarial (but must preserve its rights), we believe that it is to the Town's further advantage to approve this Amendment because Conditions 23 through 32 constitute *de facto* adoption of a stormwater management ordinance applicable solely to the Applicant's property, and not applicable to any other property owner in St. Michaels. Consequently, the customized SWM Conditions appear to violate the equal protection clause of both the United States and Maryland Constitutions and may be unenforceable. Pursuant to Condition 57 of the Approved Growth Allocation Decision, if the SWM Conditions are legally invalid, they are automatically removed from the Approved Growth Allocation Decision and the Decision otherwise remains in full force and effect. The SWM Conditions may also impact the Development Rights and Responsibilities Agreement between the parties.

In summary, Ordinance No. 348 is a more comprehensive and is a more thoughtfully developed regulatory scheme for managing stormwater development. It also insures that the Town's stormwater management regulations are consistently applied to all new projects within the Town. For these reasons we believe the Proposed Amendment to the SWM Conditions makes sense for both the Town and the Applicant.

With regard to Condition No. 61, the Applicant seeks removal of that aspect of the Condition requiring a connection to YCR because the Applicant believes that the Commissioners included this Condition based upon a belief that the decision whether to permit a road connection from the Project to YCR rested with the Talbot County Council. Since the date of the Approved Growth Allocation Decision, however, the Applicant has submitted an Annexation Agreement to the

Ms. Cheril S. Thomas
March 14, 2008
Page 3 of 4

MILES & STOCKBRIDGE P.C.

Town (in connection with its application for a TND zone designation for the Project),¹ that proposes to incorporate into the Town, *inter alia*, the entire portion of YCR that would be utilized to provide access to and from the Project to Maryland State Route 33. The Applicant is also obligating itself to pay for all reasonably required improvements along YCR and at the intersection of YCR and Route 33 as a result of one or more connections from the Project to YCR. Because, by virtue of the proposed Annexation Agreement, the Town will have control over whether to annex YCR and whether to permit one or more connections from the Project to YCR, this aspect of Condition 61 is no longer warranted. The remainder of Condition 61 will continue to require the Applicant to provide for proposed street connections between the Project and YCR for future consideration of the Commissioners and it shall continue to state that there shall be "no dead-end streets and no cul-de-sacs (exclusive of private alleys)." Finally, in the event there is not at least one (1) public street connection between the streets of the Proposed Project and YCR, the Applicant shall be required to maintain a private road connection suitable for emergency vehicles, including, but not limited to, fire trucks.

While the technical requirements for compliance with the growth allocation amendment criteria are described in Exhibits 2 and 3 hereto and the supporting evidence is contained in Exhibits 4 through 13, it is worthy of noting that the proposed growth allocation amendments: (1) do not require any changes to the Concept Plan approved in conjunction with the Approved Growth Allocation Decision, (2) do not adversely affect water quality or wildlife habitat, and (3) do not adversely affect consistency with the Comprehensive Plan.

Respectfully submitted,



Richard A. DeTar
Attorney for the Applicant

RAD/aje

cc: Miles Point Property, LLC
TND Development, Inc.

¹ The Applicant is proffering the Annexation Agreement for the Commissioners' consideration as a binding condition for TND approval. Please note that the Annexation Agreement submitted herewith (Exhibit 9) is slightly different than TND Exhibit 69A (which inadvertently has a blank in Section 4.1 at page 5. The Commissioners are not obligated to accept the terms of the Annexation Agreement, but the Applicant is obligated to make those terms available for the Town's consideration for the time period set forth in the Annexation Agreement.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of March, 2008, three (3) true and correct copies of the: (a) Letter/Application (Exhibit 1), and (b) Exhibits 2 through 13, were was hand delivered to the following:

Thomas T. Alspach, Esquire
Thomas A. Deming, Esquire
at:
295 Bay Street
P. O. Box 1358
Easton, Maryland 21601
In their anticipated capacities as:

Attorneys for Interveners/Opposition (anticipated)

and mailed via First Class U.S. Mail to the following:

H. Michael Hickson, Esquire
Banks, Nason & Hickson
113 Baptist Street
P.O. Box 44
Salisbury, MD 21803

In his capacity as:
Attorney for the Town of St. Michaels



Richard A. DeTar