DC Board of Zoning Adjustment

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17276

RICHARD B. NETTLER
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February 9, 2005

BY HAND

Mr. Joe Lawler
Regional Director, National Capital Region
National Park Service
1100 Ohio Drive, SW
Washington, D.C. 20242

Ms. Adrienne Coleman
Superintendent, Rock Creek Park
National Park Service
3545 Williamsburg Lane, NW
Washington, D.C. 20008

D.C. OFFICE OF ZONING
RECEIVED
2005 FEB 15 A 11: 03

Re: Whitehaven National Parkland

Dear Mr. Lawler and Ms. Coleman:

My firm and I represent Phillips Park LLC, the contract purchasers of the property located at 2101 Foxhall Road, N.W. We are in receipt of a copy of a letter written by William J. Snape, Esquire, on behalf of the Friends of Whitehaven, to you in which he petitions you to initiate proceedings under the National Environmental Policy Act (NEPA) for the purpose of reviewing the impacts of planned private development on the Whitehaven National Parkland.

In his letter Mr. Snape makes reference to the private development project being proposed by my clients. Although the Park Service may, of course, initiate whatever planning efforst are appropriate for its property, we are at a loss to see how NEPA applies to the purely private development being undertaken by our clients even if it is adjacent to some parkland. As you know, the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321, et seq., ("NEPA"), requires that federal agencies prepare a detailed statement on every proposal for a major federal action that may "significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C). The CEQ regulations require federal agencies to consider various factors in determining whether a proposed federal action "significantly" affects the quality of the human environment. 40 C.F.R. § 1508.27. However, our project and its review by District of Columbia agencies does not constitute a "major federal action."

BZA
Case No. 17276
Exhibit No. 32

Board of Zoning Adjustment
District of Columbia
CASE NO. 17276
EXHIBIT NO. 32

It is one thing to expect the National Park Service to plan for its own property, it is another thing to use any NPS obligations as a means of dealing with a special exception and local building permits. In fact, the District of Columbia Court of Appeals has said that the District of Columbia Board of Zoning Adjustment cannot even take into account compliance with the District's own environmental law and regulations when it considers an application before it.

Please feel free to contact me if you have any questions or would like to discuss this matter further.

Sincerely

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler

cc: Ellen McCarthy, D.C. Office of Planning
Doreen Thompson, D.C. Health and Environment
D.C. Board of Zoning Adjustment ✓