

June 13, 2017

Mr. Marc Cote
Delaware Department of Transportation
P. O. Box 778
Dover, DE 19903

**RE: Intercollegiate Studies Institute ("ISI") – App. No. 2016-0623-S
3901 Centerville Road, Wilmington, DE**

Dear Marc:

As you know my client, ISI, is in the process of securing final minor record plan approval for the expansion of its historic property located at 3901 Centerville Road, Wilmington, DE 19807. The project involves an approximately 12,880 sf expansion for a conference center and library (the "Project").

As you also know, I have worked on behalf of the development community for many years and have always enjoyed a positive working relationship with you and others in DelDOT. However, despite repeated attempts both by me and my client, we have failed to get an affirmative response to the request that you reconsider DelDOT's demand as it relates to the dedication of right-of-way ("ROW") on the final record plan for this Project. I write one more time formally to request that DelDOT agree to a modified dedication as more fully outlined herein so as to avoid additional unnecessary expense and potentially expensive litigation.

As you know, Centerville Road is part of the Red Clay Creek Historic Byway (the "Byway") and under the Memorandum of Agreement ("MOA"), it is expressly provided that this road is not targeted for expansion, as there are significant historic, cultural and natural resources along the Byway. My client's property has approximately 1014 feet of frontage along Centerville Road.

Notwithstanding that there is little likelihood that Centerville Road will be expanded, my client is agreeable to a temporary construction easement ("TCE") of 15'. With the current 16.5' right of way from the center line and an additional 23.5' reserved for future public use already extracted and shown on prior record plans, the 15' TCE should be more than sufficient for any drainage and grading work. We firmly believe that this is an accommodation, as there is no actual right-of-way needed or attributable to the Project, which will allow the property to be used

more beneficially, but which will generate only intermittent additional traffic and will trigger no need for a change in access or traffic flow patterns.

Under the Supreme Court's ruling in *Koontz v. St. John's River Water Management Dist.*, 133 S. Ct. 2586 (2013); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); and *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), any right-of-way extraction must be measured and have a specific nexus and at least rough proportionality with the impacts of the expansion giving rise to the demanded dedication. DelDOT's insistence upon a 30' ROW for "potential construction of a shoulder, associated drainage and utility facilities" and an additional 15' easement beyond that as a condition of issuing a letter of no objection ("LONO") for this plan does not meet that standard. To-wit:

1. The 30-ft ROW for "potential construction of a shoulder, associated drainage and utility facilities" and additional 15' for construction easement" has no reasonable relation to the impact of the Project on the Byway, and is thus an unreasonable and unconstitutional condition.
2. The ROW is not intended to cure any present traffic issues or any issues that could arise from the Project. Instead, it is only intended for future construction that may never happen.
3. Because the ROW is not intended to alleviate any impact of the Project, it cannot be said to bear a reasonable relation to the Project.
4. Moreover, for any future road construction to take place, DelDOT would have to obtain ROWs from other properties along the Byway, and may likely have to pay some compensation for such ROWs. By extracting the ROW from ISI now, DelDOT is essentially depriving ISI of compensation for the ROW (in the form of a permit condition that bears no reasonable relation to the Project or any traffic impact).
5. It is significant that ISI's use is not typical of the rest of the properties on Centerville Road. Even if DelDOT extracts the ROW now from ISI, it will likely not be able to get ROWs from the other properties for the future road construction which will likely be minor residential subdivisions, if anything.
6. Last, but not least, the Byway MOU signed by DelDOT in 2008 recites: "It is understood that the BYWAY does not anticipate expanded tourism or recreation, does not encourage bicycle usage on roads other than those designated by DelDOT as having average or above average cycling conditions, and recognizes that pedestrian access will remain limited to public institutions given the predominance of private land." This MOU appears to contradict DelDOT's assertion that "any future roadway improvements would most likely be to install a 5-ft shoulder that would serve pedestrians, bicyclists and a refuge area for motorists," which has been the stated rationale for requesting the ROW.

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Please confirm that the alternative TCE proposed above by ISI will be accepted and the LONO will be issued, or my client will be forced to protect and preserve its property rights through more aggressive affirmative action, which I truly hope will not be necessary.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Wendie C. Stabler', with a long horizontal flourish extending to the right.

Wendie C. Stabler

cc: Mr. Charles Copeland
Mr. Paul Rhein
Ms. Carol Ohm