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October 6, 2011

VIA E-MAIL AND FEDERAL EXPRESS

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***Re: Parcels I, II, III and IV as shown on enclosed
DRWC Master Plan Impacts Plan***

Dear Alan, Tom and Sarah:

On behalf of the owners of property owned by Beach Street Corp., Berks Street Corp., Dyott Corp. and Columbus Boulevard Associates, L.P. (collectively, the former Cramp Shipyard Properties, hereinafter referred to as the "Shipyard properties"), I want to thank each of you for meeting with us on Tuesday, September 27.

The purpose of this letter is to formally request that the Shipyard properties be removed from the scope of the Master Plan for the Central Delaware (Final Draft July 2011) (the "Master Plan").

Since none of the exhibits included in the Master Plan adequately demonstrate the full impact of the Master Plan, we retained Kennedy & Associates to prepare a document titled "DRWC Master Plan Impacts Plan" ("Impacts Plan"), which we shared with you at our meeting and a copy of which is enclosed. The Impacts Plan illustrates the severe impact on the utility of these properties that would result from the implementation of the Master Plan. The Shipyard properties comprise 57.25 acres. As a result of the implementation of the Master Plan, the net area available for development would be 10.71 acres, or less than 20% of the total acreage of the properties. Whereas these properties presently comprise two non-contiguous parcels, the implementation of the Master Plan would decimate their value by chopping them up into 13



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separate parcels. No property owner would or should stand by while his properties are decimated in this fashion.

The Shipyard properties should be removed from the scope of the Master Plan for many reasons, not the least of which are (a) legal reasons, (b) planning reasons and (c) practical reasons, as explained below.

Legal Reasons. Implementation of the Master Plan, as it applies to these properties, is both illegal and unenforceable. It is illegal for the following reasons:

1. Government has no right to condition the issuance of a zoning permit on the applicant's willingness to grant a public use easement over his property. Under zoning ordinances that are enacted pursuant to the Master Plan, an applicant for a zoning permit will be required to grant or dedicate easements for public use. At the meeting on September 27, I provided you with copies of the pertinent pages of the Penn Praxis document titled "Action Plan for the Central Delaware: 2008-2018" ("Action Plan"), which was used to develop the Master Plan. An additional set of these pages is enclosed. The Action Plan concluded that it is legal for the City to condition the issuance of a zoning permit on the grant of a public use easement. This conclusion is wrong.
 - a. None of the cases cited in the footnotes to the Action Plan support the conclusion that it is legal under Pennsylvania or federal law to condition the issuance of a zoning permit on the grant of a public use easement over the applicant's property.
 - b. At the September 27 meeting, we gave you copies of Pennsylvania cases, including a Pennsylvania Supreme Court case and Commonwealth Court cases, stating that imposing such a condition on the issuance of a zoning permit violates the Pennsylvania Constitution. We also gave you copies of U.S. Supreme Court cases stating that imposing such a condition on the issuance of a zoning permit violates the 5th Amendment to the U.S. Constitution. An additional set of these cases is enclosed.
 - c. We believe it would benefit DRWC to seek an opinion of its legal counsel. We are available to meet at any convenient time with your lawyers to discuss this issue in further detail.



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2. The ordinance, if adopted, would constitute a temporary taking, giving rise to a claim for damages. Under federal and state law, the ordinance constitutes a temporary taking of the portions of our properties that could not be used for any economic purpose – i.e., the land that would be dedicated to public uses. The temporary taking claim would include severance damages – i.e., damages to the remainder of the property caused by its diminished utility as affected by the unconstitutional public uses. These claims would be compensable in a de facto condemnation case which would be filed once the ordinance is held to be unconstitutional.
 - a. Cloud of condemnation. Damages for the temporary taking, based on the unconstitutionality of the ordinance, would be increased by the negative impact on value caused by the cloud of condemnation that forms over a property which results from public knowledge that a condemnation will likely occur.
3. Illegality of the proposed zoning. The DRWC should not encourage City Council to adopt a zoning ordinance that cannot be enforced. The treatment of our properties cannot be reconciled with the constitutional limitations imposed on zoning as an exercise of the City's police power. None of our properties advance the implementation of the key element of the Master Plan – viz., to have a continuous public trail along the waterfront – since the properties are shoehorned between the PECO and Glasgow properties and the Glasgow and Conrail properties. Nor can our properties advance the implementation of public access to the waterfront inasmuch as this would require the exercise of the power of eminent domain. It is also illegal to zone a property in such a way that it constitutes a moratorium on development so that, in a later condemnation, the City will not have to pay for an improved property.
4. Vested rights. Certain G-2 industrial uses for our properties are vested against future zoning changes because permits were issued before the G-2 zoning classification was changed to C-3. Apparently, DRWC failed to investigate the status of our properties, leading Tom Corcoran to incorrectly characterize their legal status in his August 31 letter. Kennedy & Associates prepared the enclosed "Approved Zoning Permits Plan" that illustrates the uses and structures for which permits were issued under the G-2 zoning classification in force when the



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applications were made. As a result, the development rights under these permits are vested.

5. Financial burden on the City's taxpayers. The prospect of numerous de facto takings resulting from the implementation of the Master Plan exposes the City and its taxpayers to unnecessary financial burdens. The affected property owners will be entitled to substantial compensation (aside from the City's costs to litigate these claims), which can be avoided by excluding the Shipyard properties from the Master Plan.

Planning Reasons. In addition to the fact that any zoning of the type contemplated in the Master Plan would be illegal, there are a number of planning reasons why our properties should be excluded from the Master Plan. These reasons are as follows:

1. Craig Schelter's letter, dated August 26, 2011. Please see Craig Schelter's letter to Tom Corcoran, dated August 26, 2011, a copy of which is enclosed. Craig's letter outlines a number of planning considerations that should result in the removal of the Shipyard properties from the scope of the Master Plan.
2. The City is decades away from developing a public park on the Shipyard properties. Before turning our properties into a public park, the City would first be developing public parks on land that is already under public ownership. The City will have years of work and will spend many millions of dollars to build public parks on the land it already owns. All of this would occur before the City would get to our properties – even if it had the legal right and resources to do so now.
3. Useless destruction of value based on speculation. Our properties are the largest assemblage of privately held vacant land in the area covered by the Master Plan. To destroy the development potential of these properties by separating them from the river, imposing various public uses (trails, parks and roads) and thereby destroying their value, cannot be justified as sound planning. With all of the changes contemplated for this area, it is a textbook case of improper planning to chop them up into 13 fragments.



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4. Undefined impacts of I-95 construction. Reconstruction of I-95 will cause substantial disruptions during construction and will also change the immediate neighborhood in ways that cannot necessarily be predicted. Until I-95 is extended and other changes take place, it is mere speculation to conclude that the Master Plan represents the best planning for our properties. Better planning is to leave these properties in their current status pending further study.
5. Financial burden on the City's capital and operating budgets. We are not aware that the City is financially capable of including the costs associated with the implementation of the Master Plan in its capital budgets and/or its operating budgets. We have asked for this information but it has not been provided. We ask for this information once again.
6. 2014 District Plan. The City Planning Commission, as part of its 2035 comprehensive planning process, is scheduled to prepare a District Plan for this area in 2014. The better strategy would be to work together during this period to find a "win-win" solution.

Practical Reasons.

1. There is no urgency to include our properties in the Master Plan at this time.
 - a. Lack of resources. Despite requests made by Craig Schelter, the DRWC has not identified the projects included in the \$65 million budget it has suggested nor has the DRWC identified the sources of funds that would be necessary to implement the Master Plan, including the development of public parks and a public trail along the river. Even if it had the legal right to develop the Shipyard properties as a public park or for a public trail at this time, the City is not in a financial position to do so.
 - b. Physical obstacles. Our properties are physically separated from properties to the south. There is no sense in developing any of our properties for public uses until further plans are developed for the Glasgow, PECO and Conrail properties.



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2. Including our properties in the Master Plan will result in litigation challenging its implementation.
 - a. Our clients will prevail in litigation. Since the underlying concept of the Master Plan is to create public uses through zoning rather than through eminent domain and since this concept violates the Constitutions of Pennsylvania and the United States, our clients will prevail in a lawsuit challenging the zoning.
 - b. The City's actions will result in a condemnation case. The affected property owners will be entitled to obtain damages from the City for a temporary taking if the Master Plan is implemented.
3. Litigation challenging the legality of the zoning will serve as a blueprint for other owners of property affected by the Master Plan. As a result of instituting litigation to establish that the zoning is unconstitutional, owners of property who are not currently opposing the Master Plan will learn that the Master Plan is illegal and may decide to oppose the Master Plan.
4. Our clients have the most to lose by acquiescing in the Master Plan and the most to gain by litigating. The Shipyard properties represent the largest amount of privately owned vacant land affected by the Master Plan. Further, these properties are the most severely affected by the implementation of the Master Plan. This gives our clients the most reason to litigate of all of the affected landowners.
5. By forcing the issue, the City may be foreclosing development possibilities for our properties that would benefit all parties concerned. As the Central Delaware properties are developed over time, alternatives may develop for our properties that create a win-win situation for both the City and our clients. Possibilities for the development of our properties may develop over time that cannot be presently foreseen. These possibilities may be foreclosed as a result of litigation establishing that zoning to implement the Master Plan would be illegal.

We have no interest in derailing the Master Plan and do not wish to see the Master Plan fall victim to litigation – litigation that surely will end with a court ruling overturning the implementation of the Master Plan as an unconstitutional exercise of the City's police powers.



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We have been charged with the obligation to protect the property owned by our clients. Our clients have the financial resources and the will to commence and carry litigation to a final conclusion. The legal and planning team assembled by our clients will provide strong and vigorous representation in order to prevent the imposition of public uses on our properties by the illegal zoning ordinances contemplated by the Master Plan.

In my experience, few things in the law are “open and shut,” but this situation is as close to “open and shut” as it gets. Don’t take my word for it. Any lawyer who knows this area of the law will tell you the same thing once they read the cases we have provided to you.

In another situation, there might be less urgency to resolving the issues addressed in this letter. However, from our perspective, the Master Plan “train” has left the station and is picking up speed quite rapidly. This means that our clients have to move just as quickly to slow down the “train” so that the issues raised at our meeting and in this letter can be appropriately addressed. This requires that our properties be removed from the scope of the Master Plan.

Finally, we heard from you that the Master Plan is only *aspirational*. We do not share this view. DRWC is about to approve the Master Plan and send it on to the Planning Commission for adoption as part of the City’s Comprehensive Plan. From there, DRWC expects City Council to implement the Master Plan through zoning ordinances, a place for which has been reserved in the current proposed Zoning Code. DRWC has just published a request for proposals for the design of the public trail through our properties. This is “operational” – not “aspirational.” DRWC is the main proponent of a plan that we view as an attempt to abrogate constitutionally guaranteed property and due process rights. Using the term “aspirational” doesn’t change the fact that, if the DRWC has its will, our properties would be rezoned in accordance with the Master Plan at the earliest possible time.



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We would like to meet again as soon as possible after you have the opportunity to obtain legal advice on the issues we have raised. Hopefully, we can meet again sometime next week.

Sincerely,

Herbert Bass

HB/sbb

Enclosures

cc: James J. Anderson
Craig A. Hoogstraten
Neil Sklaroff, Esquire
Joseph A. Meo, Esquire
G. Craig Schelter