TITLE: Manors at Ballenger Creek
(formerly Younkins PUD)

FILE NUMBER: S-1147; APFO #12176

REQUEST: APFO LOU Amendment

PROJECT INFORMATION:

ADDRESS/LOCATION: North side of English Muffin Way
TAX MAP/PARCEL: TM 86, Parcel 6
COMP. PLAN: Medium Density Residential
ZONING: PUD
PLANNING REGION: Adamstown
WATER/SEWER: S-3/W-3

APPLICANT/REPRESENTATIVES:

APPLICANT: D.R. Horton, Inc.
OWNER: N/A
ENGINEER: N/A
ARCHITECT: N/A
ATTORNEY: Tracie Clabaugh, Esq.

STAFF: Rodney Winebrenner, DUSWM
Kathy Mitchell, Asst. County Attorney

RECOMMENDATION: Approval

ATTACHMENTS:

Exhibit 1 – Proposed First Amendment to APFO LOU
Exhibit 2 – Original APFO LOU
STAFF REPORT

ISSUE

Whether the Planning Commission should approve an amendment to the APFO Letter of Understanding dated January 11, 2012 (the “Original Letter”) for the Manors at Ballenger Creek (formerly known as the Younkins PUD)?

BACKGROUND

D.R. Horton is the successor in interest to the original fee simple property owner (YBC Investors, Inc.) of the project previously referred to as the Younkins PUD (and now known as Manors at Ballenger Creek). The proposed First Amendment is for the purpose of amending Section B. on page 2 of the Original Letter in order to limit and confirm D.R. Horton’s responsibility for the upgrade of certain existing 12” sewer lines to 15”/16” diameter depending upon pipe materials and as otherwise provided in in the First Amendment.

D.R. Horton is requesting approval of the First Amendment based on a sewer capacity study, prepared by Harris Smariga & Associates, Inc. (the “Sewer Capacity Study”), for the Younkins PUD, which was completed after the date of the Original Letter. The results of the Sewer Capacity Study show that only certain sections of the 12” sewer lines need to be upgraded to 15”/16” diameter.

ANALYSIS AND FINDINGS

The proposed amendment removes references to certain sections of the 12” sewer lines in paragraph B on page 2, as shown below:

“B. Sewer. Prior to approval of the 170th Equivalent Dwelling Unit or “tap” (combination of recorded lots and taps sold) that drains from the MXD/PUD project to the vicinity of existing MH-14 in New Design Road, unless previously constructed by others, the Developer of Younkins PUD (now known as Manors at Ballenger Creek) shall be responsible for upgrading only the following existing 12” sewer lines to 15”/16” diameter depending upon pipe materials required between the following existing Manholes: 9 to 8, [3 to 2] 2 to 1, 1 to 1A, 1A to 101 (County Contract 114B-SW) and [section] 101 to 100 [and 100 to 5] (County Contract 10B-S)”.

The language shown in brackets and bold is proposed to be removed from the Original Letter.

Based upon its review of the Sewer Capacity Study, DUSWM agrees that D.R. Horton should only be responsible for the upgrade of certain 12” sections of the sewer lines to 15”/16” diameter. The changes are shown above and reflected in the attached First Amendment.

RECOMMENDATION

Staff has reviewed the proposed amendments to the Original Letter and recommends that the Planning Commission approve the First Amendment.
FIRST AMENDMENT TO
Adequate Public Facilities Letter of Understanding
Younkins PUD

This First Amendment to Adequate Public Facilities Letter of Understanding, Younkins PUD (the “First Amendment”) is made this ___ day of __________, 2015, by and between the Frederick County Planning Commission (the “Commission”) and D.R. Horton, Inc., a Delaware corporation, successor in interest to YBC Investors, Inc. (“D.R. Horton”).

Explanatory Note: YBC Investors, Inc. executed that certain Adequate Public Facilities Letter of Understanding for Preliminary Plat #S-1147, AP #12176, dated January 11, 2012 (the “Letter”) for the property described as the Project in the Letter. YBC Investors, Inc. subsequently conveyed the real property subject to the Letter and known as the Younkins PUD (and now known as Manors at Ballenger Creek) to D.R. Horton and D.R. Horton is now considered the Developer of the Project under the Letter. This First Amendment is made for the purpose of amending Section B. on page 2 of the Letter in order to limit D.R. Horton’s responsibility required for the upgrade of certain existing 12” sewer lines as provided herein.

The Letter is hereby amended, as follows:

1. The Explanatory Note set forth above is incorporated into the Letter as if fully restated herein.
2. Section B. on page 2 of the Letter is hereby deleted and replaced with the following:

   “B. Sewer. Prior to approval of the 170th Equivalent Dwelling Unit or “tap” (combination of recorded lots and taps sold) that drains from the MXD/PUD project to the vicinity of existing MH-14 in New Design Road, unless previously constructed by others, the Developer of Younkins PUD (now known as Manors at Ballenger Creek) shall be responsible for upgrading only the following existing 12” sewer lines to 15”/16” diameter depending upon pipe materials required between the following existing Manholes: 9 to 8, 2 to 1, 1 to 1A, 1A to 101 (County Contract 114B-SW) and 101 to 100 (County Contract 10B-S)”.

3. Except as herein modified, the remainder of the Letter (including but not limited to the second paragraph under Section B.) shall remain unchanged and in full force and effect.

[Signatures on the following page]
D.R. Horton, Inc., a Delaware corporation

By: ___________________________ ____________________________
   Name: ___________________________ Date:
   Title: ___________________________

Frederick County Planning Commission:

By: ___________________________ ____________________________
   Chair ___________________________
   Date:

Attest:

By: ___________________________ ____________________________
   Name: ___________________________
   Date:
   Title: ___________________________

Planner’s Initials/Date ___________________
County Attorney’s Office Initials/Date ___________________

(Approved as to Legal Form)
COMMUNITY DEVELOPMENT DIVISION
FREDERICK COUNTY, MARYLAND
Department of Planning and Development Review
30 North Market Street • Frederick, Maryland 21701
www.co.frederick.md.us

ADEQUATE PUBLIC FACILITIES LETTER OF UNDERSTANDING

Younkins PUD
Preliminary Plat #S-1147  AP #12176

In General: The following Letter of Understanding ("Letter") between the Frederick County Planning Commission ("Commission") and the YBC Investors, Inc. ("Developer"), together with its/their successors or assigns, sets forth the conditions and terms which the Commission deems to be the minimum necessary improvements dealing with school, water, sewer, and road improvements that must be in place for the property identified below to be developed, as proposed under the approved Younkins PUD Residential Phase II Subdivision (the "Project"), in compliance with the Frederick County Adequate Public Facilities Ordinance ("APFO").

The Developer, its successors or assigns, hereby agrees and understands that unless the required improvements are provided in accordance with this Letter, APFO requirements will not be satisfied and development will not be permitted to proceed.

This Letter concerns itself with the Developer’s 43.1 +/- acre parcel of land, which is zoned Planned Unit Development (PUD), and located in the north west quadrant of New Design Road and English Muffin Way Extended with arterial road access on English Muffin Way. This APFO approval will be effective for development of 56 single family detached homes and 181 townhouses, or any variation such that the intensity of vehicle trips or student generation is not increased, which is shown on the subdivision plat for the above-referenced Project, which was conditionally approved by the Commission on January 11, 2012.

Schools: The Project is projected to generate 62 elementary school students, 27 middle school students and 38 high school students. Based on these numbers and considering enrollment projections from pipeline development, the school adequacy test fails for the elementary school level. The developer has chosen the option to mitigate the school inadequacy by paying the School Construction Fees under Section 1-20-62 of the APFO. This project is eligible to utilize the School Construction Fee option per the criteria set forth in Section 1-20-62 of the APFO. The School Construction Fees shall be paid prior to plat recordation based on the specific fees listed at that time in Section 1-20-62(E), per unit type and school level to be mitigated.

Water and Sewer Improvements: The Property has a water and sewer classification of W-4 (Dev.), S-4 (Dev.). The Division of Utilities and Solid Waste Management (DUSWM) has provided a finding of conditional approval regarding sewer and water facilities to serve this project based on a sewer study prepared by HARRIS Smariga & Associates Inc., dated December 16, 2011.
A. **Water:** The proposed water system to serve the Project will consist of a network of both public and private service connections shown on the approved Phase II Utility Plan. Developer will construct a sixteen inch (16") water line within proposed English Muffin Way Extended from an existing line at the intersection of New Design Road and English Muffin Way, westbound along English Muffin Way to Alan Linton Boulevard, and in Alan Linton Boulevard.

B. **Sewer:** Prior to approval of the 170th Equivalent Dwelling Unit or "tap" (combination of recorded lots and taps sold) that drains from the MXD/PUD project to the vicinity of existing MH-14 in New Design Road unless previously constructed by others, the Developer of Younkins MXD and/or PUD shall be responsible for upgrading the following existing 12" sewer lines to 15/16" diameter depending upon pipe material required between the following existing Manholes: 9 to 8, 3 to 2, 2 to 1, 1 to 1A and 1A to 101 (Contract 114B-SW) and section 101 to 100 and 100 to 5 (County Contract 10B-S).

While the public sewer and water facilities are currently adequate to serve the project, the applicant recognizes that capacity is not guaranteed until purchased. APFO approval for sewer and water does not guarantee that plats will be recorded and building permits will be issued. Plat recordation and building permit issuance are subject to compliance with the Annotated Code of Maryland, Environment Article Section 9-512, et seq. and all applicable county regulations, including but not limited to, Sec. 1-16-106 of the Frederick County Subdivision Regulations.

**Road Improvements:** An October 13, 2011 Traffic Impact Analysis and subsequent revisions dated November 8 and December 22, 2011, were prepared to address APFO requirements and propose mitigation for falling facilities. The analysis is based on traffic generation of a total amount of 168 am and 216 pm weekday peak hour trips.

As a condition of the APFO approval of the Project, the Developer is required to construct the following improvements (or in the case of escrow account contributions pay its proportionate contribution to the following escrow accounts):

1. **Maryland Route 85/English Muffin Way.**
   a. Contribute the appropriate share to existing Escrow Account No. 3253 (Old 21551) (installation of traffic signal); the estimated inflated cost of the Road Improvement is $60,000. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 6.6%. Therefore the Developer hereby agrees to pay $3,900 to the escrow account for this Road Improvement.

   b. Contribute the appropriate share to existing Escrow Account No. 3761 for the re-striping of the existing eastbound through lane as a shared eastbound left-through lane and the modification of the traffic signal timings to allow for split phasing between the eastbound and westbound approaches. The estimated cost of the Road Improvement is $104,888. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 6.6%. Therefore the Developer hereby agrees to pay $6,818 to the new escrow account for this Road Improvement.

2. **New Design Road/English Muffin Way.**
   a. Install a traffic signal when warranted, justified and deemed necessary by the County. The current estimated cost of the signal is $220,000. The Developer shall have the right to utilize all funds held in Escrow Account No. 3286 to help defray the cost of such improvement(s) and be
reimbursed by future developers up to this Developer’s established fair share responsibility of 53% of total cost. The Developer shall be entitled to meet its obligations by placing with the County a bond, letter of credit or cash payment in the amount of 125% of the estimated cost of the signal, such estimate to be approved by the County, prior to the issuance of any building permits. The Developer shall be entitled to continue with the project after placement of the surety, and shall install the signal at such time as approved by the County. Should the signal still not be warranted and justified by the issuance of the last building permit, the County shall be responsible for its implementation using funds previously set aside by the developer, with unused surety, if any, returned in full upon completion of work.

b. Construct, or cause to construct, a two-lane approach on eastbound English Muffin Way for sufficient length as determined by the County;

3. New Design Road/Corporate Drive.

a. Contribute the appropriate share to existing Escrow Account No. 3247 (Old 21564) (Installation of traffic signal); the estimated inflated cost of the Road Improvement is $156,800. As determined by DPDR-Traffic Engineering Staff, the Developer’s proportionate share of this Road Improvement is 4.8%. Therefore the Developer hereby agrees to pay $7,526 to the escrow account for this Road Improvement.

b. Contribute the appropriate share to existing Escrow Account No. 3764 for the construction of eastbound and westbound right turn lanes on Corporate Drive. The estimated cost of the Road Improvement is $587,364. As determined by DPDR-Traffic Engineering Staff, the Developer’s proportionate share of this Road Improvement is 4.8%. Therefore the Developer hereby agrees to pay $28,193 to the escrow account for this Road Improvement.

4. New Design Road/Crestwood Blvd.

a. Contribute the appropriate share to existing Escrow Account No. 3306 (Old 21582) for Southbound Right Turn Lane - The estimated cost of the Road Improvement is $241,000. As determined by DPDR-Traffic Engineering Staff, the Developer’s proportionate share of this Road Improvement is 3.0%. Therefore the Developer hereby agrees to pay $7,230 to the escrow account for this Road Improvement.

b. Contribute the appropriate share to existing Escrow Account No. 3307 (Old 21556) for a Traffic Signal - The estimated cost of the Road Improvement is $200,000. As determined by DPDR-Traffic Engineering Staff, the Developer’s proportionate share of this Road Improvement is 3.0%. Therefore the Developer hereby agrees to pay $6,000 to the escrow account for this Road Improvement.

5. MD 85/Crestwood Blvd.

a. Contribute the appropriate share to existing Escrow Account No. 3257 (Old 21555) for an additional southbound Through Lane - The estimated inflated cost of the Road Improvement is $296,000. As determined by DPDR-Traffic Engineering Staff, the Developer’s proportionate share of this Road Improvement is 3.4%. Therefore the Developer hereby agrees to pay $10,060 to the escrow account for this Road Improvement.

b. Contribute the appropriate share to existing Escrow Account No. 3279 (Old 21584) for a Westbound Acceleration Lane - The estimated cost of the Road Improvement is $103,870. As determined by DPDR-Traffic Engineering Staff, the Developer’s proportionate share of this
6. MD 85/1-270 Ramp Intersections

a. Contribute the appropriate share to existing Escrow Account No. 3258 (Old 21580) for I-270 Southbound Ramps and MD 85 Intersection - The estimated cost of the Road Improvement is $753,600. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 1.9%. Therefore the Developer hereby agrees to pay $14,320 to the escrow account for this Road Improvement.

b. Contribute the appropriate share to existing Escrow Account No. 3259 (Old 21581) for I-270 Northbound Ramps and MD 85 Intersection - The estimated cost of the Road Improvement is $753,600. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 2.2%. Therefore the Developer hereby agrees to pay $16,580 to the escrow account for this Road Improvement.

7. MD 351/Corporate Intersection

Contribute the appropriate share to existing Escrow Account No. 3762 for a roundabout - The estimated cost of the Improvement is $1,242,700. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 1.1%. Therefore the Developer hereby agrees to pay $13,791 to the new escrow account for this Road Improvement.

8. MD 351/Crestwood Boulevard

a. Contribute the appropriate share to existing Escrow Account No. 3763 for the installation of double southbound left turn lanes on MD 351 - The estimated cost of the Road Improvement is $205,095. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 2.9%. Therefore the Developer hereby agrees to pay $5,948 to the escrow account for this Road Improvement.

b. Contribute the appropriate share to existing Escrow Account No. 3344 for the installation of a shared southbound through/right turn lane along Ballenger Creek Pike - The estimated cost of the Road Improvement is $170,000. As determined by DPDR-Traffic Engineering Staff, the
Developer's proportionate share of this Road Improvement is 2.9%. Therefore the Developer hereby agrees to pay $4,930 to the escrow account for this Road Improvement.

c. Contribute the appropriate share to existing Escrow Account No. 3345 for the installation of a separate northbound right turn lane along Ballenger Creek Pike - The estimated cost of the Road Improvement is $165,000. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 2.9%. Therefore the Developer hereby agrees to pay $4,786 to the escrow account for this Road Improvement.

d. Contribute the appropriate share to existing Escrow Account No. 3347 for the installation of a free westbound right turn (or double right turn) lane along Crestwood Boulevard - The estimated cost of the Road Improvement is $158,730. As determined by DPDR-Traffic Engineering Staff, the Developer's proportionate share of this Road Improvement is 2.9%. Therefore the Developer hereby agrees to pay $4,603 to the escrow account for this Road Improvement.

9. **English Muffin Way:** The Developer will construct a partial section of English Muffin Way extended for its entire length through the Younkins property, from just west of New Design Road to the connection with Elmer Derr Road near the Linton property border, with the remainder of the full section to be constructed by the Developer of Wedgewood West (previously Younkins MXD). The section to be constructed by the Developer would be a two lane closed section to provide one lane in each direction as a half section and two eastbound lanes when dualized.

The road escrow contributions of $188,795 must be paid in full prior to recordation of final plats. Should this payment not be made within one year of the execution of this Letter, the County reserves the right to adjust this amount, based on an engineering cost index. The constructed road improvement (2b. above) must be guaranteed in full prior to the issuance of any building permits and constructed prior to issuance of a certificate of occupancy for any dwelling units in the Project.

**Period of Validity:** The APFO approval is valid for six (6) years from the date of Commission approval; therefore, the APFO approval expires on January 11, 2018.

**Disclaimer:** This Letter pertains to APFO approval only, and shall not be construed to provide any express or implied rights to continue the development process. The Project remains subject to all applicable rules and regulations, including but not limited to those related to zoning, water and sewer, and subdivision. The Planning Commission's jurisdiction and authority is limited by State and County law, and approvals may be required from other local or state governmental agencies before the proposed development can proceed.
DEVELOPER: YBC INVESTORS, INC.

By: [Signature]
Name: Mark Matan
Title: Manager

Date: 1/3/12

FREDERICK COUNTY PLANNING COMMISSION:

By: [Signature]
Name: John McClurkin, Chair or Robert Lawrence, Secretary

Date: 1/11/12

ATTEST:

By: [Signature]
Name: Gary Hessong, Director, Permitting & Inspections

Date: 1/11/12

Planner’s Initials / Date 12/30/11
County Attorney’s Office Initials / Date
(Approved as to legal form)

Younkins PUD LOU
January 11, 2012
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