

Prutha Rueangvivatanakij  
Fairfax County Government  
Site Development and Inspections Division  
12055 Government Center Parkway  
Suite 535  
Fairfax, Va. 22035

Re: Encroachment Exception Request #2582-WRPA-006-1  
Water Quality Impact Assessment #2582-WQ-003-1  
K2NC LLC

Dear Mr. Rueanfivatrakij :

I wish to request that I be added as a speaker at the Public Hearing on the above referenced matter scheduled to be held on December 6, 2017 at your office at 2:00 PM.

I also wish to submit the attached documents for the public record:

- Request in the Circuit Court for Fairfax County for Preliminary and Permanent Injunctive Relief, Case # CL2017-5321 (6 pages)
- Restrictive Covenants governing Fairfax Hills, Va. subdivision (4 pages)
- Preliminary Injunctive Order (2 pages)

As you can see, I have brought a lawsuit against the developer to prohibit construction less than 75' from Woodlark Drive, pursuant to Covenant 8 of the Restrictive Covenants. Injunctive relief has been granted in that lawsuit. Please confirm that you have received all these documents, submitted them as written comments, and added them to the official record in this matter. Also please add me to the speakers list.

Thank you.



S. Richard Rio, Jr.

*November 20, 2017*

Attachments (12 pages)

**VIRGINIA**

**IN THE CIRCUIT COURT FOR FAIRFAX COUNTY**

<p><b>S. RICHARD RIO, JR.,</b></p> <p><b>Plaintiff,</b></p> <p><b>v.</b></p> <p><b>K2NC, LLC</b></p> <p><b>Serve: Sheila Konecke, Registered Agent</b> <b>803 Hallyard Court</b> <b>Leesburg, VA 20175</b></p> <p><b>Defendant.</b></p>	<p>Case No. _____</p>
---	-----------------------

**COMPLAINT FOR PRELIMINARY AND PERMANENT  
INJUNCTIVE RELIEF, AND SPECIFIC PERFORMANCE**

COMES NOW the Plaintiff, S. Richard Rio, Jr. ("Mr. Rio"), by and through his undersigned counsel, and hereby files this Complaint for Preliminary and Permanent Injunctive Relief, and Specific Performance and states as follows:

**PARTIES AND JURISDICTION**

1. Mr. Rio is an owner of real property and improvements located in the Fairfax County, Virginia, namely 4317 Woodlark Drive, Annandale, Virginia 22003 ("Rio Lot"). A true copy of the Deed for the Rio Lot is attached as Exhibit A.

2. The Rio Lot is located within the Fairfax Hills subdivision ("Fairfax Hills"). A certain Deed of Dedication dated March 27, 1941, and recorded in Deed Book S-14 at Page 551 of the Land Records of Fairfax County ("1941 Deed of Dedication") created Fairfax Hills. The 1941 Deed of Dedication contained numerous restrictive covenants applicable to the lots within Fairfax Hills. A true copy of the 1941 Deed of Dedication is attached as Exhibit B.

3. By virtue of his ownership of the Rio Lot, Mr. Rio has standing to enforce the restrictive covenants contained in the 1941 Deed of Dedication against any owner of any lot or lots in Fairfax Hills, as provided in covenant number twelve of the 1941 Deed of Dedication.

4. Pursuant to covenant number eight of the 1941 Deed of Dedication, “[n]o building shall be erected within seventy-five (75) feet of the front property line of any lot or lots in said Subdivision.”

5. Defendant K2NC, LLC (“K2NC”) is an owner of real property and improvements located in the Fairfax County, Virginia, namely 4104 Woodlark Drive, Annandale, Virginia 22003 (the “Property”). A true copy of the Deed for the Property is attached as Exhibit C.

6. The Property is a lot located in Fairfax Hills and is subject to the restrictive covenants contained in the 1941 Deed of Dedication. As the owner of the Property, K2NC is subject to the restrictions contained in the 1941 Deed of Dedication.

7. This Court has jurisdiction over all the parties as they all have an interest in, using, or possessing real property in Fairfax County, Virginia and/or transact business in Fairfax County, Virginia. Further this Court has jurisdiction pursuant to Virginia Code §§ 8.01-620.

8. Venue is proper in the Court pursuant to Va. Code Ann. § 8.01-262.

### **THE PROPERTY**

9. The allegations contained in paragraphs 1 through 8 are incorporated herein by reference as though fully set forth herein.

10. Fairfax County records indicate that K2NC applied for a building permit for the construction of a single family dwelling on the Property. Upon information and belief, the planned construction of the dwelling on the Property will be in violation of the covenant number

eight of the 1941 Deed of Dedication, in that it will involve the erection of a building within seventy-five (75) feet of the front property line of the lot.

11. Further, the Property is located in a Resource Protection Area as defined and provided for under the Chesapeake Bay Preservation Act and as designated by the Fairfax County Board of Supervisors. The Fairfax County Chesapeake Bay Preservation Ordinance (Fairfax County Ordinances, Section 118-1-1) requires the preservation of indigenous vegetation in Resource Protection Areas to the maximum extent practicable.

12. Mr. Rio, through counsel, has contacted K2NC to notify it that the Property is within Fairfax Hills and is subject to the Fairfax Hills covenants by letter dated March 24, 2017. The March 24<sup>th</sup> letter further advised K2NC of the 75 foot front setback covenants and the prohibition on removing trees from a Resource Protection Area. A true copy of the March 24, 2017 letter sent to K2NC is attached as Exhibit D. Despite Mr. Rio's requests that K2NC honor the covenants binding on its lot and its status as a Resource Protection Area, K2NC has proceeded with its application for a building permit and its construction plans.

#### **COUNT I – PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION**

13. Mr. Rio incorporates by reference the allegations contained in Paragraphs 1 through 12, above.

14. K2NC has failed and/or refused to honor the covenants contained in the 1941 Deed of Dedication, including particularly the seventy-five foot front property set back.

15. Upon information and belief, K2NC intends to remove trees from the Property, despite its status as a Resource Protection Area.

16. K2NC, if not immediately enjoined, will continue to be in violation of the 1941 Deed of Dedication and the requirements for a Resource Protection Area. Such actions will

prevent Mr. Rio from obtaining the benefits of the restrictive covenants that apply to all lots in Fairfax Hills. Further, K2NC's non-compliance with its obligations under the 1941 Deed of Dedication will cause continuing damage to Mr. Rio, Fairfax Hills, and its residents. Finally, the removal of the trees from this Resource Protection Area will irreparably alter the appearance of Fairfax Hills, thereby diminish the value of the properties in Fairfax Hills.

17. Mr. Rio does not have an adequate remedy at law because the damages he will suffer, if K2NC is not enjoined from constructing a swelling within 75 feet of the front property line in violation of the restrictive covenants and removing trees in violation of the requirements for Resource Protection Areas cannot be compensated by an award of money damages.

18. In order to avoid this irreparable harm, it is necessary that the Court direct K2NC to immediately cease construction unless and until construction can be completed in compliance with the 1941 Deed of Dedication and the requirements for a Resource Protection Area.

WHEREFORE, the premises considered, S. Richard Rio, Jr. prays for the following relief:

- (1) Enter a temporary or preliminary injunction directing the Defendant K2NC, LLC to cease construction on the Property in violation of the requirements of the 1941 Deed of Dedication and the Chesapeake Bay Preservation Ordinance;
  - (2) Enter a permanent injunctive order prohibiting the Defendant K2NC, LLC from any construction on the Property in violation of the requirements of the 1941 Deed of Dedication and the Chesapeake Bay Preservation Ordinance, and in particular prohibiting any building within seventy-five (75) feet of the front property line of the Property and prohibiting the removal of any trees from the lot;
- and

- (3) Award Plaintiff a judgment against the Defendant for its damages, including but not limited to the attorney's fees and costs incurred in bringing this action, damages being authorized by covenant number twelve of the 1941 Deed of Dedication; and
- (4) Such other, further and general relief as the Court may deem sufficient and proper in the circumstances.

### COUNT II – SPECIFIC PERFORMANCE

19. Mr. Rio repeats and realleges the allegations contained in paragraphs 1 through 18 as if set forth in their entirety herein.

17. K2NC violated and continues to violate the covenants and restrictions contained within the 1941 Deed of Dedication by applying for a building permit to construct a single family residence on the Property that will be erected within seventy-five (75) feet of the front property line of the lot in Fairfax Hills.

18. Mr. Rio is entitled to specific performance by K2NC to insure compliance with the restrictive covenants for Fairfax Hills. Mr. Rio is further entitled to specific performance by K2NC to prevent violation of the Chesapeake Bay Preservation Ordinance.

19. Mr. Rio does not have an adequate remedy at law because the damages he will suffer (if K2NC is not enjoined to cease construction) cannot be compensated by an award of money damages.

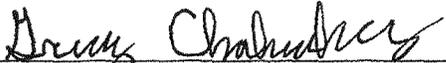
WHEREFORE, the premises considered, S. Richard Rio, Jr. prays for the following relief:

- (1) Enter a temporary or preliminary injunction directing the Defendant K2NC, LLC to cease construction on the Property in violation of the requirements of the 1941 Deed of Dedication and the Chesapeake Bay Preservation Ordinance;
- (2) Enter a permanent injunctive order prohibiting the Defendant K2NC, LLC from any construction on the Property in violation of the requirements of the 1941 Deed of Dedication and the Chesapeake Bay Preservation Ordinance, and in particular prohibiting any building within seventy-five (75) feet of the front property line of the Property and prohibiting the removal of any trees from the lot;
- (3) Award Plaintiff a judgment against the Defendant for its damages, including but not limited to the attorney's fees and costs incurred in bringing this action, damages being authorized by covenant number twelve of the 1941 Deed of Dedication; and
- (4) Such other, further and general relief as the Court may deem sufficient and proper in the circumstances.

Respectfully submitted,

**S. RICHARD RIO, JR.**

By Counsel,

  
\_\_\_\_\_  
Marla J. Diaz (Va. Bar No. 46799)  
Gregory A. Chakmakas (Va. Bar No. 87386)  
WHITEFORD, TAYLOR & PRESTON, LLP  
3190 Fairview Park Drive, Suite 800  
Falls Church, Virginia 22042  
(703) 280-9131  
(703) 280-9139 (facsimile)  
[mdiaz@wtplaw.com](mailto:mdiaz@wtplaw.com)  
[gchamakas@wtplaw.com](mailto:gchamakas@wtplaw.com)

2204774



PARKWAY" lying east of Parkway Road and thereon marked "Excluded" are expressly excepted from this subdivision and dedication.

And the party of the first part, as sole owner and proprietor of the said land embraced in this deed of dedication, subdivision and plat thereof, hereto attached, doth now certify that this subdivision of said land is made as shown on the said plat thereof hereunto attached and expressly made a part hereof, with the free consent and in accordance with the desire of the undersigned party of the first part, the said owner and proprietor thereof, and doth further certify that such statements shall have the same force and effect as if the same were endorsed by him upon the said plat hereto attached and expressly made a part hereof.

The said land now subdivided and dedicated being described in a survey thereof made by the said R. W. Berry and Sons as follows, to-wit:

Beginning for the same at an iron pipe heretofore planted at the north westerly corner of the said tract of land, being where the westerly boundary of the said tract of land intersects the southerly side of Little River Turnpike, as widened; thence with the outline of the said tract of land, the following courses and distances, S. 0° 14' 00" E. 2461.30 feet to an iron pipe; thence S. 82° 49' 30" E. 484.74 feet to a stone; thence S. 76° 44' 10" E. 557.80 feet to a point in Accotink Creek; thence N. 36° 03' 00" E. 341.70 feet to a point again in Accotink Creek; thence N. 7° 32' 00" E. 331.50 feet to a point again in Accotink Creek; thence N. 32° 14' 00" E. 808.60 feet to an iron pipe; thence leaving the outline of the said tract of land, N. 27° 29' 30" E. 332.58 feet to an iron pipe; thence with the arc of a curve to the left, having a radius of 1857.13 feet, an arc distance of 531.93 feet, the subtending chord bearing N. 16° 19' 40" E. 530.12 feet, to an iron pipe at the point of tangency; thence N. 8° 07' 20" E. 200.00 feet to an iron pipe; thence with the arc of a curve to the right, having a radius of 50.00 feet, an arc distance of 78.54 feet, the subtending chord bearing N. 53° 07' 20" E. 70.72 feet to an iron pipe at the point of tangency on the southerly side of Little River Turnpike, as widened; thence with the southerly side of Little River Turnpike, as widened, the following courses and distances, N. 81° 52' 40" W. 878.90 feet to an iron pipe, thence N. 81° 04' 50" W. 1241.60 feet to the place of beginning, the above described tract of land containing 85.43 acres of land, more or less.

LESS AND EXCEPT therefrom the 49,886 square feet of land shown on said plat in Lot Numbered Five (5), and the 49,480 square feet of said land shown on said plat in Lot Numbered Six (6), the land embraced in said Lot Numbered Five (5) and Lot Numbered Six (6) on said plat being hereby expressly excluded from this deed of dedication. (Reference to the said deed recorded as aforesaid and to said plat hereunto annexed is now made for more particular description of the land hereby subdivided and of the streets and park therein hereby dedicated).

Pine Ridge Drive shown on said plat is the identical street contemplated to be known as Catoma Drive and mentioned in a deed heretofore executed by the party of the first part, dated May 27, 1940 and recorded in Liber D, No. 14, page 135, of the said land records, conveying to Annandale Farm Homes, Incorporated, the two said Lots Numbered Five (5) and Six (6) now excluded

From said Pine Ridge Drive having been opened and dedicated.

to public use by Annandale Farm Homes, Incorporated, for the full sixty-foot width and the full depth of two hundred twenty-five feet on the easterly line of said Lot Numbered Five (5) and on the westerly line of said Lot Numbered Six (6), as shown on the plat hereunto annexed.

This Subdivision is made expressly subject to the following conditions and restrictions, which shall be construed as covenants real running with the land hereby subdivided and dedicated, to-wit:

1. No apartment houses, flats, rows of houses, duplex houses or places of amusement shall be erected or constructed on any of the lots in said Subdivision or any part thereof, and all buildings or structures shall be designed and used for the private residence of not more than one family
2. No dwelling house, (including attached garage) shall be erected on any one of said lots or any part thereof, costing less than \$4500.00 to construct, and no detached garage shall be erected on any one of said lots or any part thereof, costing less than \$500.00 to construct.
3. No lot in the said Subdivision or any part thereof shall ever be used or allowed to be used for manufacturing, mechanical business, hotel, tourist home, boarding house, theatre, night club, road houses or entertainment purposes or for any purpose which would be a nuisance to the owner or owners of any lot or lots in the said Subdivision.
4. No sign, billboard or other similar device shall be erected, placed or maintained upon the said property except "for sale" or "for rent" signs.
5. No lot or lots in said Subdivision or any part of any lot or lots shall ever be used or occupied by or directly or indirectly sold, demise, transferred, conveyed unto or in trust for, leased, or rented to any one not of the Caucasian race, except that this shall not exclude partial occupancy by domestic servants of another race employed by and in actual service at the time of such partial occupancy of any owner or owners of any lot or lots in said Subdivision.
6. No re-subdivision of any lot or lots shall be made without the prior consent in writing first had and obtained from the party of the first part or his assigns.
7. All commercial automobiles or trailers owned or used by the owners or occupants of any lot or lots in said Subdivision shall be housed and may not be parked on or in front of any lot or lots in said Subdivision.
8. No building shall be erected within seventy-five (75) feet of the front property line of any lot or lots in said Subdivision.
9. No cow, hogs, goats or sheep shall be kept upon any of said lots or any part thereof.
10. No commercial dog kennel for the raising, breeding, training or sale of dogs shall be kept, operated or maintained from or on any of said lots or any part thereof.
11. The front and side yards of each lot, when improved by the erection of a dwelling thereon shall be kept free from trash, weeds and uncut grass which has attained a height of six (6) inches.
12. If any owner of any lot or lots in said Subdivision shall violate or attempt to violate any provision or provisions of the aforesaid covenants, it shall be lawful for any other person or persons owning any lot or lots in

said Subdivision to institute any proceedings at law or in equity against the person or persons so violating or attempting to violate any such covenant, either to prevent him or them from so doing, or to recover damages for such violation.

13. Should any one of the aforesaid covenants, or any provision or provisions thereof, be held invalid by any Court having jurisdiction, such judgment of such Court shall in no wise affect or impair any of the other provisions either of that or any other covenant, all of which shall remain in full force and effect; and

WHEREAS, the party of the first part hereto did by his certain deed of trust dated July 6, 1938 and recorded in Liber B, No. 13, page 177 of said land records, convey a larger parcel of land containing 94.61 acres of which the land herein subdivided and dedicated is a portion, to the party of the second part hereto, in trust to Ethel Davis Reid, Wilson M. Farr, Executor and Trustee for Ella M. Davis under the last will and testament of John F. Davis, Perry F. Compton, Trustee of sundry bonds, all of which are fully set forth and defined in said deed of trust, the said bond thereby secured, payable to the order of said Wilson M. Farr, Executor and Trustee for Ella M. Davis under the last will and testament of John F. Davis having been duly assigned for value received, to the said Ruth D. Littleston, and bond thereby secured, payable to the order of Mary E. Davis, having been duly assigned for value received to the said Rose E. Makely; and

WHEREAS, the parties of the third part hereto are now the holders of all of the bonds secured by the said deed of trust and are willing to unite in this dedication of the aforesaid portion of said 94.61 acres of land:

NOW, THEREFORE, THIS DEED FURTHER WITNESSETH, that the party of the second part hereto and the parties of the third part hereto, do now hereby consent to the subdivision of the aforesaid land and to the dedication of the streets and park therein as shown on the plat hereunto annexed and expressly made a part hereof, such consent to such dedication to in no wise impair the lien of the aforesaid deed of trust on the lots shown in said Subdivision, the lien of said deed of trust as to the park and the streets shown in said Subdivision and dedication being hereby expressly released, subject, however, to the provision that if any one of said streets or any part thereof or said park or any part thereof as shown on said plat be vacated then the lien of said deed of trust shall attach thereto.

Witness the following signatures and seals:

Joseph L. Bristow (SEAL)  
Wilson M. Farr (SEAL)  
Trustee as aforesaid.  
Ethel Davis Reid (SEAL)  
Perry F. Compton (SEAL)  
Rose E. Makely (SEAL)  
Ruth D. Littleston (SEAL)

STATE OF VIRGINIA, COUNTY OF FAIRFAX, to-wit:

I, Ruth A. Mitchell, a Notary Public in and for the State and County aforesaid, and whose commission as such will expire on the 2nd day of February, 1942, do hereby certify that this day personally appeared before me in my said State and County JOSEPH L. BRISTOW, widower, and WILSON M. FARR, Trustee, whose names are signed to the foregoing deed of dedication dated the 27th day of March, 1941, and each then and there acknowledged the same before me.

GIVEN under my hand this 5th day of April, 1941.

Ruth A. Mitchell Notary Public as  
Aforesaid.

In the Clerk's Office of the Circuit Court of Fairfax County, Virginia,  
April 9, 1941, at 12 o'clock, M.  
This deed of dedication with plat attached was received, and with the certificates annexed, admitted to record.

Test: JOHN M. WHALEN, CLERK.

VIRGINIA

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

<p>S. RICHARD RIO, JR.,</p> <p>Plaintiff,</p> <p>v.</p> <p>K2NC, LLC</p> <p>Defendant.</p>	<p>Case No. CL2017-5321</p>
--	-----------------------------

PRELIMINARY INJUNCTION ORDER

THIS MATTER HAVING COME UPON Plaintiff's Motion for Emergency Temporary and Preliminary Injunctive Relief and, after a hearing on the preliminary injunction and argument of the parties, it is hereby

ADJUDGED, ORDERED AND DECREED that Defendant K2NC, LLC, and any parties acting on its behalf ~~shall not perform any construction activities on the Property~~ *are enjoined from erecting any building within 75 feet of the front property* located at 4104 Woodlark Drive, Annandale, Virginia 22003, including but not limited to *line, which is the line bounding Woodlark Dr, with final* removing any trees, clearing any land, or constructing any improvements ~~until further resolution of merits of this case.~~ *order of this Court; and* No bond shall be required of plaintiff.

as specified in section 8 The 1941 deed of Dedication

ENTERED THIS 5<sup>th</sup> DAY OF July, 2017

*David Bernhard*  
 Judge, Circuit Court for Fairfax County

**David Bernhard**

**I ASK FOR THIS:**

  
Marla J. Diaz (VSB# 46799)  
Gregory A. Chakmakas (VSB# 87386)  
WHITEFORD, TAYLOR & PRESTON, LLP  
3190 Fairview Park Drive, Suite 800  
Falls Church, Virginia 22042  
(703) 280-9131  
(703) 280-9139 (facsimile)  
[mdiaz@wtplaw.com](mailto:mdiaz@wtplaw.com)  
[gchamakas@wtplaw.com](mailto:gchamakas@wtplaw.com)  
*Counsel for Plaintiff*

SEEN AND Objected to as the Defendant has shown that  
  
the 75' setback has been waived  
& that the Plaintiff has failed to  
prove any of the elements necessary  
to demonstrate a right to a  
temporary injunction.

David G. McKennett, Esq. (VSB # 71257)  
Purnell, McKennett & Menke, PC  
9214 Center Street, Suite 101  
Manassas, VA 20110  
(703) 368-9196  
(703) 361-0092 (facsimile)  
[dmckennett@manassaslawyers.com](mailto:dmckennett@manassaslawyers.com)  
*Counsel for Defendant*

2208247