



TOWN COUNCIL SPECIAL MEETING
Monday, December 16, 2024 @ 7:00pm
Town Hall Upstairs Conference Room

1. Roll Call
2. HEPTAD, LLC's Appeal of Zoning Administrator's December 4, 2024 Issuance of Notice Noncompliance with Proffered Conditions and Enforcement Order.
3. Adjourn



REGULAR COUNCIL MEETING AGENDA STATEMENT

Meeting Date: December 16, 2024

Item# 02

Agenda Item: HEPTAD, LLC's Appeal of Zoning Administrator's December 4, 2024 Issuance of Notice Noncompliance with Proffered Conditions and Enforcement Order.

Summary: HEPTAD, LLC appeals the issuance of Notice of Noncompliance with Proffered Conditions and Administrative Enforcement by the Zoning Administrator on December 4, 2024.

NOTE: Virginia Code §15.2-2301 – "Any zoning applicant or any other person who is aggrieved by a decision of the zoning administrator made pursuant to the provisions of §15.2-2299 may petition the governing body for review of the decision of the zoning administrator..."

Meetings: Closed Session December 9, 2024.

Proposed Motions:

- 1) I move that Council, having considered the record and presentations from the zoning administrator and the representative for HEPTAD, LLC, affirm the decision of the Zoning Administrator in issuing and ordering the Notice of Noncompliance with Proffered Conditions and Administrative Enforcement on December 4, 2024.
- 2) I move that Council, having considered the record and presentations from the zoning administrator and the representative for HEPTAD, LLC, reverse the decision of the Zoning Administrator in issuing and ordering the Notice of Noncompliance with Proffered Conditions and Administrative Enforcement on December 4, 2024.

Moved _____ Seconded _____

VM Sealock _____ Ingram _____ Veienthal _____ Rappaport _____ DeDomenico-Payne _____ Wood _____



TOWN OF FRONT ROYAL
DEPARTMENT OF PLANNING & ZONING
102 E. MAIN STREET
PO BOX 1560
FRONT ROYAL, VIRGINIA 22630-1560
(540) 635-4236

LAUREN KOPISHKE
Director of Planning & Zoning
Zoning Administrator
lkopishke@frontroyalva.com

HAND DELIVERED

by J. Walker

HEPTAD, LLC
Joseph F Silek, Jr., Esq.
43 Chester Street
Front Royal, Va 22630

December 4, 2024 @ 2:15pm

Re: Rezoning RZ# 05-07-56
Notice of Noncompliance with Proffered Conditions and Administrative Enforcement
CORRECTED

Mr. Silek,

In 2012, the Front Royal Town Council approved an application submitted by HEPTAD, LLC ("HEPTAD") to rezone Tax Parcels #20-A21-2-1 and 20A20-2-11, totaling approximately 98.25 acres ("Property"), from Suburban Residential (R-S) District to Planned Neighborhood Development (PND) District. As part of the conditional rezoning, the Town accepted HEPTAD's proffered conditions contained in its Proffer Statement, amended January 31, 2012. Per proffered conditions 3.1.3.4 and 3.1.3.6, HEPTAD was to submit a Development Plan, in accordance with Town Code Section 175-37.18, following the date of written notice from the Town that the Industrial Development Authority of the Town of Front Royal and the County of Warren, Virginia ("EDA") would be responsible for the design and construction of the Leach Run Improvements. Written notice was given in the form of a *Memorandum of Understanding No. 1* for Leach Run Parkway Access, dated the 30th day of September, 2014, between the Town and HEPTAD. In your letters to me of October 2, 2023 and May 31, 2024, you acknowledged the numerous annual extensions of HEPTAD's one (1) year deadline for filing a Development Plan. By letter dated June 11, 2024, I notified you of Town Council's denial of HEPTAD's most recent request for a deadline extension following the previous six (6) month extension granted by Town Council.

PLEASE TAKE NOTICE that, as Zoning Administrator for the Town of Front Royal and as authorized and mandated by Virginia Code §15.2-2299 and Town Code §§175-37.5(F) and 175-149 (C), I order, as the only enforcement remedy available to me because HEPTAD's failure to file a Development Plan in noncompliance with proffered conditions 3.1.3.4 and 3.1.3.6 cannot be cured, that conditional rezoning RZ# 05-07-56 be and is hereby revoked, with the Property's zoning reverting back to the Suburban Residential (R-S) zoning district.

Sincerely,

Lauren Kopishke

Lauren Kopishke
Director of Planning and Zoning | Zoning Administrator

Received By:

Jessica Pomeroy



**WALSH COLUCCI
LUBELEY & WALSH PC**

John H. Foote
(703) 680-4664 Ext. 5114
jfoote@thelandlawyers.com
Fax: (703) 680-2161

December 6, 2024

Via E-Mail & First Class Mail

Ms. Lauren Kopishke
Planning Director/Zoning Administrator
Town of Front Royal
102 East Main Street
Front Royal, Virginia 22630

Re: Amended Appeal of the December 4, 2024, Notice

Dear Ms. Kopishke:

Please find attached Heptad's amended appeal of the Notice dated December 4, 2024. I appreciate being provided the corrected version of your Notice.

Thank you very much for your assistance. Please let me know when the Council intends to take this up.

Sincerely yours,

WALSH, COLUCCI,
LUBELEY & WALSH, P.C.



John H. Foote

JHF/jf
Enclosure

ATTORNEYS AT LAW

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cc: Heptad, LLC
George Sonnett, Esq.
Matthew Westover, Esq.
Brooke West, Esq.

COPY

**Amended Proffer Appeal to the Town Council of the Town of Front Royal,
Virginia from the Rezoning RZ# 05-07-56 Notice of Noncompliance with
Proffered Conditions and Administrative Enforcement CORRECTED,
dated December 4, 2024¹**

On Behalf of Heptad, LLC

Submitted December 6, 2024

Heptad, LLC (“**Heptad**”), hereby appeals the CORRECTED Notice of Noncompliance with Proffered Conditions and Administrative Enforcement issued by Ms. Lauren Kopishke, the Front Royal, Virginia, Zoning Administrator, on December 4, 2024 (the “**Notice**”), which is attached hereto and incorporated herein by reference.

While appeals of any order, requirement, decision, or determination made by the zoning administrator in the administration or enforcement of Article 7 of Chapter 22, Subtitle II, of Title 15.2, of the Code of Virginia, or any ordinance adopted pursuant to that Article 7, are to the Town’s Board of Zoning Appeals, appeals of notices for alleged proffer violations issued under Virginia Code Ann. § 15.2-2299, such as the Notice here, are to the local governing body. Va. Code Ann. § 15.2-2301.

Heptad is aggrieved by the Notice and hereby appeals it to the Town Council of the Town of Front Royal (the “**Town Council**”).

¹ Counsel for Heptad was not provided with the Corrected document prior to filing its initial appeal in this matter. The Zoning Administrator kindly provided that new document after seeing the appeal referencing the initial Violation Notice. This appeal replaces the first of these documents in its entirety.

The substance of the “Notice” issued by the Zoning Administrator

According to the supposed “Notice,” Heptad was required by Proffers 3.1.3.4 and 3.1.3.6 of the 2012 rezoning of its Property to submit a “Development Plan” pursuant to Town Code, § 175-37.18, after written notice by the Industrial Development Authority of the Town of Front Royal and Warren County (the “EDA”) that it (the EDA) would be responsible for the design and/or construction of the Leach Run Improvements. This written notice was allegedly given in the form of “*Memorandum of Understanding No. 1 for Leach Run Parkway Access*,” dated September 30, 2014, between the Town and Heptad. The Notice further claims that Heptad has acknowledged the deadlines for filing a Development Plan under the Town’s Zoning Ordinance, and that on June 11, 2024, the Zoning Administrator notified Heptad of Town Council’s denial of Heptad’s latest request for a deadline extension.

The Zoning Administrator then asserts that she has no other option but, and the legal right, to enforce the proffered conditions under Va. Code Ann. § 15.2-2299, and Town Code §§ 175-37.5(F) and -149(C), by unilaterally revoking Heptad’s conditional rezoning RZ# 05-07-56. She claims to do so on the grounds that Heptad failed to file a Development Plan in accordance with Town Code, §175-37.18 and, therefore did not comply with the above Proffer conditions 3.1.3.4 and 3.1.3.6, by failing to file a Development Plan in accordance with Town Code, §175-37.18.

She asserts that the property is now, once again, zoned to its previous Suburban Residential (R-S) Zoning.

The basis of Heptad's appeal

1. There is no authority under which a zoning administrator may unilaterally downzone property as an “enforcement” mechanism.

Quite simply there is no general authority in Virginia law whereby a Zoning Administrator or any other authority than the governing body of a locality may “revoke” a previously approved conditional zoning. The governing body itself must do so through the same process by which the original zoning was effected.²

The Zoning Administrator asserts that she has authority to revoke Heptad's conditional rezoning under Va. Code Ann. § 15.2-2299 and Town Code § 175-37.5(F) and 149(C). However, enabling authority cannot be derived from a local ordinance. It

² There is but one exception in all Virginia law that proves the point. Va. Code § 15.2-4606, which governs “Multicounty Transportation Improvement Districts,” and which exist only in Fairfax and Loudoun Counties along the Route 28 corridor, contains a subparagraph C. It shows that the General Assembly knows how to provide for a non-legislative consequence to a rezoning approval.

That subparagraph says

[f]or any property within the district for which a county changes its zoning classification from commercial or industrial use to residential use upon the written request or approval of the owner, the county shall require the simultaneous payment from the property owner of a sum representing the present value of the future special improvements taxes estimated by the county to be lost as a result of such change in classification. On a case-by-case basis, however, the board of supervisors may, in its sole discretion, defer for no more than 60 days the effective date of such change in zoning classification. Upon deferral, the lump sum provided for in this subsection shall be paid to the county in immediately available funds acceptable to the county before the deferred effective date. If the landowner fails to make this lump sum payment as and when required, the change in zoning classification shall not become effective and the ordinance shall be void.

must originate from the Virginia Code itself. Thus, the sole source of authority relied on by the Zoning Administrator in issuing the Notice is Va. Code Ann. § 15.2-2299.

That section says, in full, that

[t]he zoning administrator is vested with all necessary authority on behalf of the governing body of the locality **to administer and enforce conditions attached to a rezoning or amendment to a zoning map**, including (i) the ordering in writing of the remedy of any noncompliance with the conditions; (ii) the bringing of legal action to insure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and (iii) requiring a guarantee, satisfactory to the governing body, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the governing body, or agent thereof, upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits, as may be appropriate.

Va. Code Ann. § 15.2-2299 (emphasis added).

While the authority vested in the zoning administrator under § 15.2-2299 is broad, it is solely for the purpose of “administering and enforcing” “conditions attached to a rezoning.” *Id.* It does not provide the zoning administrator any authority to zone or rezone property. Rather, her express authority includes:

- (i) the ordering in writing of the remedy of any noncompliance with the conditions;
- (ii) the bringing of legal action to insure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and

- (iii) requiring a guarantee, satisfactory to the governing body, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the governing body, or agent thereof, upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part.

The statute is clear that the failure to meet all conditions “shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits, as may be appropriate.” Va. Code Ann. § 15.2-2299. Missing from the statute is anything that authorizes the zoning administrator, or even the governing body, to undo unilaterally and administratively a legislative action previously undertaken by the governing body.

Moreover, conditions applicable to a proffered rezoning cannot be undone administratively, which is exactly what the zoning administrator purports to have done by “revoking” the PND classification that was accorded this property by the Town Council in 2012, thanks to other directly relevant statutory provisions.

Va. Code Ann. § 15.2-2286(A)(7) expressly prescribes the authority to amend or change zoning regulations and classifications, providing that a zoning ordinance may provide for

the amendment of the . . . district maps from time to time. . . . Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated (i) by resolution of the governing body; (ii) by motion of the local planning commission; or (iii) by petition of the owner, contract purchaser with the owner's

written consent, or the owner's agent therefor, of the property which is the subject of the proposed zoning map amendment, addressed to the governing body or the local planning commission, who shall forward such petition to the governing body

There is no zoning enabling authority that allows for administrative or unilateral rezoning of the property. All such changes to the zoning maps of a locality must be made consistently with this section of the Code.

Further, the zoning enabling legislation for all forms of conditional zoning makes it plain that

[o]nce proffered and accepted as part of an amendment to the zoning ordinance, the conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions. However, the conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

Va. Code Ann. §§ 15.2-2297, -2298,³ and -2303.

Further still, Va. Code Ann. § 15.2-2298, the source of Front Royal's conditional zoning authority, contains a subparagraph B, which says that:

[i]n the event proffered conditions include a requirement for the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area

³ Front Royal has enacted its conditional zoning ordinance provisions under Va. Code Ann. §15.2-2298. Front Royal Zoning Ord. § 175-150.

ratio, or the density of use permitted in the zoning district applicable to the property, shall be effective with respect to the property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

These are plain statutory restrictions against a change in the zoning of proffered properties. In this case and with regard to § 15.2-2298(B), it is indisputable that Heptad proffered substantial cash payments for substantial public improvements (to wit, Leach Run Parkway) “the need for which [was] not generated solely by the rezoning itself.” Va. Code Ann. § 15.2-2298(B). While the Town Council may believe that there has been a “change in circumstances substantially affecting the public health, safety, or welfare,” that determination cannot be made by the Zoning Administrator, and it cannot be made by the Council on the basis given in the Notice of Heptad’s failure to submit a Development Plan.⁴

The only discernible change in circumstances, as far as Heptad can perceive, is in the decision of the Virginia Court of Appeals to entertain an interlocutory appeal concerning the order of the Warren County Circuit Court, which sustained the Town’s demurrers in the ongoing litigation. This development appreciably heightens the prospect that the Town may be held liable for its rejection of Heptad’s Proffer Amendment – a proposal that would have facilitated the development of its land. It

⁴ It has been Heptad’s insistence that changed circumstances as to it are at the heart of its need for, and legal right to, amendments to the very proffers that the Zoning Administrator now seeks to “enforce” by exterminating them. Had Heptad’s Proffer Amendment been approved by the Town Council, there would be no currently ongoing dispute.

is no secret that the Town harbors an aversion to this development and appears prepared to thwart it by means fair or foul. Heptad remains resolute in its intention to vindicate its position, and ensure the realization of its lawful rights.

Thus, it is evident from the statutes cited above that if a proffer condition remains alive as a matter of law – until a subsequent map amendment changes the zoning on the property covered by the conditions, as provided by these statutes – then a local zoning administrator cannot “enforce” a proffered condition by eviscerating the rezoning to which it attaches.

2. There are statutory provisions authorizing the revocation of other legislative land use actions, but they may only be undertaken by further legislative action.

There is no doubt that a special use permit may be revoked by a board of zoning appeals, should it have the authority to issue such permits, or by the governing body if it has reserved that right to itself,⁵ provided that each of those bodies gives notice and holds a hearing as provided by Va. Code § 15.2-2204 before doing so,.

The only time statutory that a zoning administrator, rather than a BZA or a governing body, may revoke a permit⁶ is when, acting on behalf of the local governing

⁵ Va. Code Ann. § 15.2-2309(7).

⁶ A Zoning Administrator can revoke a Zoning Permit, but not after 60 days from its issuance, even if wrongly issued. Va. Code Ann. § 15.2-2311(C), Bd. of Supervisors of Richmond Cty. v. Rhoads, 294 Va. 43 (2017). Such other permits as those for occupancy, buildings, and similar work may only be revoked in accordance with the codes specifically governing their issuance. And yet the Zoning Administrator here maintains that she can revoke a zoning more than a decade after its approval.

body, he or she revokes a permit for a temporary family health care structure, and then only if the permittee for such a structure violates any provision of the applicable statute under which that permit was issued. Va. Code §15.2-2292.1(G). There is no parallel authority in the Virginia Code with respect to rezonings.

3. The Town's requirements for a Development Plan within a specific period of time after a PND Rezoning, and its position that a failure to provide a timely such Plan invalidates the Rezoning itself is invalid as being without enabling authority and violates the Dillon Rule.

The Town's requirement for the filing of a Development Plan within one year of the approval of a PND Rezoning as a condition of the validity of the Rezoning⁷ is itself illegal, and contrary to the Dillon Rule, for there is no basis in the zoning enabling legislation for such a requirement.

First, the Town's requirements say nothing whatsoever about the consequences of failing to submit a timely development plan, and the Zoning Administrator is not at liberty to make up a consequence. (This is why she has claimed the authority to manufacture a mortal consequence by invoking a power she does not possess).

While the Town Council may require a "plan of development" prior to the issuance of building permits to assure compliance with the regulations of the Zoning Ordinance (Va. Code Ann. § 15.21-2286(A)(8)), no enabling authority permits a locality to mandate a site plan, a subdivision plan, or a plan of development within

⁷ Section 175-37.18 of the Town's Zoning Ordinance.

any specific time after the approval of a rezoning.⁸ This, however, is precisely what the Town has purported to do with its Development Plan requirement.

With the sole exception referenced in note 1, above, Virginia has no enabling authority for zoning ordinance provisions that cause a rezoning simply to expire, whether because of the passage of time, or because of the failure of a condition, or because a zoning ordinance says it to be so.

4. A locality may change the zoning classification of any parcel within its jurisdiction. However, to do so it must follow the rezoning process just as must every other party seeking an amendment of the zoning map.

Once it understands that the Zoning Administrator cannot do what she has attempted, the Town Council may be tempted to rezone the Heptad Property itself. However, if a local governing body rezones property without the consent of the landowner, and if that rezoning reduces formerly permitted residential density, then it is what is known as a “piecemeal downzoning.” This is broadly defined as a rezoning (1) that the local governing body initiates on its own motion, (2) that selectively addresses the landowner's single parcel, and (3) that “reduces the permissible residential density below that recommended by a duly-adopted master plan.” Bd. of Supervisors v. Greengael, L.L.C., 271 Va. 266, 284 (2006); Turner v. Bd. of County Supervisors, 263 Va. 283 (2002); see also, Board of Supervisors v. Snell Constr. Corp., 214 Va. 655, 658 (1974).

⁸ Once those plans have been submitted and approved, however, they have a statutorily established lifespan. But a property owner may decline to submit such a plan for its property for years, for economic or other reasons.

When a rezoning is classified by the court as piecemeal, the fairly debatable burden shifts to the benefit of the property owner and all have thus far been uniformly overturned in the courts.

By attempting to downzone the Heptad Property without going through the critical legislative process, one that cannot be delegated, the Town has sought to avoid the public scrutiny that would be involved and thus to camouflage its insidious purpose.

Prayer for Relief

Heptad respectfully requests the Town Council reverse the Notice, dismiss it, and find that the 2012 Rezoning of the Heptad Property, together with its associated proffers, remains valid and in full force and effect subject to the claims made in the pending litigation.

Respectfully submitted.



John H. Foote, VSB 14336
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LAUREN KOPISHKE
Director of Planning & Zoning
Zoning Administrator
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HAND DELIVERED by J. Wells

HEPTAD, LLC
Joseph F Silek, Jr., Esq.
43 Chester Street
Front Royal, Va 22630

December 4, 2024 @ 2:15pm

Re: Rezoning RZ# 05-07-56
Notice of Noncompliance with Proffered Conditions and Administrative Enforcement
CORRECTED

Mr. Silek,

In 2012, the Front Royal Town Council approved an application submitted by HEPTAD, LLC ("HEPTAD") to rezone Tax Parcels #20-A21-2-1 and 20A20-2-11, totaling approximately 98.25 acres ("Property"), from Suburban Residential (R-S) District to Planned Neighborhood Development (PND) District. As part of the conditional rezoning, the Town accepted HEPTAD's proffered conditions contained in its Proffer Statement, amended January 31, 2012. Per proffered conditions 3.1.3.4 and 3.1.3.6, HEPTAD was to submit a Development Plan, in accordance with Town Code Section 175-37.18, following the date of written notice from the Town that the Industrial Development Authority of the Town of Front Royal and the County of Warren, Virginia ("BDA") would be responsible for the design and construction of the Leach Run Improvements. Written notice was given in the form of a *Memorandum of Understanding No. 1* for Leach Run Parkway Access, dated the 30th day of September, 2014, between the Town and HEPTAD. In your letters to me of October 2, 2023 and May 31, 2024, you acknowledged the numerous annual extensions of HEPTAD's one (1) year deadline for filing a Development Plan. By letter dated June 11, 2024, I notified you of Town Council's denial of HEPTAD's most recent request for a deadline extension following the previous six (6) month extension granted by Town Council.

PLEASE TAKE NOTICE that, as Zoning Administrator for the Town of Front Royal and as authorized and mandated by Virginia Code §15.2-2299 and Town Code §§175-37.5(F) and 175-149 (C), I order, as the only enforcement remedy available to me because HEPTAD's failure to file a Development Plan in noncompliance with proffered conditions 3.1.3.4 and 3.1.3.6 cannot be cured, that conditional rezoning RZ# 05-07-56 be and is hereby revoked, with the Property's zoning reverting back to the Suburban Residential (R-S) zoning district.

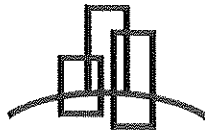
Sincerely,

Lauren Kopishke

Lauren Kopishke
Director of Planning and Zoning | Zoning Administrator

Received By:

Jessica Pomeroy



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LUBELEY & WALSH PC

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June 18, 2024

Via E-Mail & First Class Mail

Ms. Lauren Kopishke
Zoning Administrator
Town of Front Royal
P. O. Box 1560
Front Royal, Virginia 22630

Re: Heptad Request for a Zoning Determination

Dear Ms. Kopishke:

As you know, this firm represents Heptad, LLC, in connection with its ongoing efforts to develop its property. We write to request your formal zoning determination as to the following question.

In 2012 the Heptad Property on Leach Run Parkway, and with which you are well familiar, was rezoned by the Town Council to the PND zoning classification. For many years, the Town Council thereafter consistently granted an extension of the requirement for the preparation and submission "for review and approval an engineered Development Plan...", a plan that is an essential prerequisite to PND development. See § 175-37.18 of the Town Zoning Ordinance. On June 11, 2024, however, the Town Council denied the most recent extension, one that had been requested on May 31, 2024.

Under the Town's Zoning Ordinance, Heptad cannot now submit a Development Plan under the PND provisions, since its time for doing so has long since lapsed, but for the extensions. Given the quite specific requirements of the PND Ordinance, it would therefore appear that the property is either (a) no longer zoned PND and has reverted to its pre-existing R-S zoning, or (b) if Heptad's property is still zoned PND, it can no longer be developed at all without further discretionary legislative approval, which Heptad is not obliged to seek. This latter outcome

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necessarily raises the question whether there has been a regulatory taking of the Property, since the inability to develop the land has deprived it of all or virtually all of its economically viable use. There can be no PND development, and the land cannot even be lawfully farmed. The Council has rendered it useless.¹ Moreover, the Zoning Ordinance does not provide any alternative to the foregoing.

Heptad respectfully requests your formal determination that its Property has reverted to its R-S zoning classification.

The Planning and Zoning Fee Schedule effective July 1, 2020, and available online, does not provide a fee for a zoning determination. If this is in error, please let us know.

Thank you for your kind attention to this.

Very truly yours,

WALSH, COLUCCI,
LUBELEY & WALSH, P.C.



John H. Foote

JHF/jf

¹ The United States Supreme Court has found categorical takings treatment appropriate where regulation denies all economically beneficial or productive use of land. "As we have said on numerous occasions, the Fifth Amendment is violated when land-use regulation 'does not substantially advance legitimate state interests or *denies an owner economically viable use of his land.*'" (Internal citations omitted; emphasis added). *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015-1016

Virginia concurs. "In land use cases, no economically viable use of the property means that "the government's action deprives the landowner of all economic use of the land." *Helmick v. Town of Warrenton*, 254 Va. 225, 233 (1997). . . . The issue is not whether the landowner may make the highest and best use of the property but whether the landowner may make a viable economic use of the property *under the existing zoning.*" *Freezeland Orchard Co. v. Warren County*, 61 Va. Cir. 548 (2001) (emphasis added).

cc: John McGavin, Esq.
George Sonnett, Esq.
Joe Silek, Esq.
Doug Napier, Esq.
Robert Light, Esq.
Matthew Westover, Esq.
Brooke West, Esq.

COPY

CERTIFIED ACTION OF THE GOVERNING BODY OF THE TOWN OF FRONT ROYAL

I hereby certify that the foregoing is the formal action pertaining to HEPTAD, LLC request for a one-year extension to submit a development plan by recorded vote in the minutes of the regular meetings of the Front Royal Town Council held:

- **July 28, 2014**
Councilman Tewalt moved, seconded by Councilman Tharpe, that Council approve the Second Extension of Proffer Deadlines agreement and authorize the Mayor to execute the agreement on behalf of the Town.
Vote: Yes – Funk, Hrbek, Parker, Sayre, Tharpe and Tewalt
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Darr did not vote as there was no tie to require his vote)
- **September 14, 2015**
CONSENT AGENDA
A. COUNCIL APPROVAL – HEPTAD, LLC Request for Extension
Councilman Tewalt moved, seconded by Councilman Egger, that Council adopt the Consent Agenda as presented.
Vote: Yes – Connolly, Egger, Funk, Hrbek, Tewalt and Tharpe
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Darr did not vote as there was no tie to require his vote) (By Roll Call)
- **November 28, 2016**
COUNCIL APPROVAL – HEPTAD – One Year Extension to Submit Development Plan
Councilman Tewalt moved, seconded by Connolly that Council approve a request from HEPTAD, LLC for a one-year extension to submit their required development plan for property referred to as Swan Estates (HEPTAD) until December 3, 2017.
Vote: Yes – Connolly, Egger, Hrbek, Meza, Tewalt and Tharpe
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Darr did not vote as there was no tie to require his vote)
- **November 13, 2017**
COUNCIL APPROVAL – HEPTAD Request One-Year Extension to Submit Development Plan
Vice Mayor Tewalt moved, seconded by Councilman Connolly that Council approve a request from HEPTAD, LLC for a one-year extension to submit their required development plan for property referred to as Swan Estates (HEPTAD) until December 3, 2018.
Vote: Yes – Connolly, Gillispie, Meza, Morrison, Sealock and Tewalt
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Tharpe did not vote as there was no tie to require his vote) (By Roll Call)
- **November 26, 2018**
CONSENT AGENDA ITEMS
D. COUNCIL APPROVAL – HEPTAD Request for 1-year Extension to Submit Dev Plan
Vice Mayor Tewalt moved, seconded by Councilman Gillispie that Council approve the consent agenda as presented.
Vote: Yes – Connolly, Gillispie, Meza, Morrison, Sealock and Tewalt
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Tharpe did not vote as there was no tie to require his vote) (By Roll Call)

- **November 25, 2019**
CONSENT AGENDA ITEMS – (ROLL CALL VOTE REQUIRED)
B. COUNCIL APPROVAL – HEPTAD Request for One-Year Extension for Development Plan
Councilman Holloway moved, seconded by Councilman Meza that Council approve the consent agenda as presented.
Vote: Yes – Gillispie, Holloway, Meza, Sealock, Tewalt and Thompson
 No – N/A
 Abstain – N/A
 Absent – N/A **BY ROLL CALL**
- **December 14, 2020**
COUNCIL APPROVAL OF CONSENT AGENDA ITEMS
A. HEPTAD Request for One-Year Extension to Submit Development Plan
 Council approved the request from HEPTAD, LLC to extend their deadline to submit a development plan until December 3, 2021.
Councilman Meza moved seconded by Vice Mayor Sealock to approve all Consent Agenda Items with the exception of Item C "Budget Amendment for VESTA Upgrade Project Call/Radio Recording Services that was removed previously by roll call vote.
Vote: Yes – Councilmen Sealock, Cockrell, Meza and Thompson
 No – N/A
 Abstain – N/A
 Absent – Councilmen Gillispie and Holloway
- **November 22, 2021**
CONSENT AGENDA ITEMS
F. HEPTAD Request for One-Year Extension to Submit Development Plan
Council approved the request from HEPTAD, LLC to extend their deadline to submit a development plan for one (1) year ending December 3, 2022.
Councilman Thompson moved seconded by Vice Mayor Cockrell to approve the Consent Agenda, as presented.
Vote: Yes – Vice Mayor Cockrell, Councilmembers Gillispie, Lloyd, McFadden, Morris, Thompson
 No – N/A
 Absent – N/A
 Abstain – N/A **ROLL CALL**
- **November 28, 2022**
CONSENT AGENDA ITEMS
A. HEPTAD Request for One Year Extension to Submit Development Plan
Council approved a one-year extension to HEPTAD to file a Development Plan, pursuant to Town Code 175-37.18.
Vice Mayor Cockrell moved seconded by Councilwoman Morris that Council approve the consent agenda as presented.
 Vice Mayor Cockrell advised that she was happy to work with the County on the asset transfer of the bucket truck to Warren County.
Vote: Yes – Vice Mayor Cockrell, Councilmembers Gillispie, Morris, Rogers, Sealock and Thompson
 No – N/A
 Absent – N/A
 Abstain – N/A **ROLL CALL**
- **December 11, 2023 for six months**
A. HEPTAD Request for a One-Year Extension to Submit Development Plan
Councilman Rappaport moved seconded by Councilman Wood that Council approve a six-month extension for HEPTAD to file a Development Plan, pursuant to Town Code 175-37.18.
Vote: Yes – Councilmembers Sealock, Rappaport, DeDomenico-Payne, Wood
 No – Councilmembers Ingram and Morris
 Absent – N/A
 Abstain – N/A **ROLL CALL**

- June 10, 2024 Regular Work Session

Councilwoman Morris moved seconded by Councilwoman DeDomenico-Payne that Council deny an extension of the deadline for submission of a Planned Neighborhood Development Plan, pursuant to Town Code §175-37.18, as requested by HEPTAD LLC by letter dated May 31, 2024.

Vote: Yes – Councilmembers Ingram, Morris, DeDomenico-Payne

No – Councilman Rappaport

Absent – Vice Mayor Sealock and Councilman Wood

Abstain – N/A

ROLL CALL

Tina L. Presley 12/13/24
Tina L. Presley, Clerk of Council





**Town of Front Royal, Virginia
Council Agenda Statement**

Page 1
Item No. 7(D)

Meeting Date: November 26, 2018

Agenda Item: COUNCIL APPROVAL – HEPTAD Request for One-year Extension to Submit Development Plan

Summary: Council is requested to consider approval of a request from HEPTAD, LLC to extend their deadline to submit a development plan. Town Code requires that a development plan be submitted within one (1) year of approval of the Master Land Use Plan. The Town Code also allows the deadline to be extended by Town Council. Council approve a one-year extension in 2016 and 2017. The current extension expires December 3, 2018.

HEPTAD, LLC is the owner of the proposed development referred to as Swan Estates. It was conditionally rezoned to the PND District in 2012.

Budget/Funding: None

Attachments: Letter from Lawson & Silek P.L.C.

Meetings: Work Session held November 19, 2018

Staff

Recommendation: Approval ✓ Denial

Should Council wish to remove this item from the consent agenda, the following motion would allow approval of this request:

Proposed Motion: I move the Town Council approve the request from HEPTAD, LLC for a one-year extension to submit their required development plan for property referred to as Swan Estates (HEPTAD) until December 3, 2019.

*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance

*To be clear and concise, motions should be made in the positive

Approved By: JW

LAWSON AND SILEK, P.L.C.

43 CHESTER STREET
POST OFFICE BOX 602
FRONT ROYAL, VIRGINIA 22630
TELEPHONE: (540) 635-9415
FACSIMILE: (540) 635-9421
EMAIL: RLIGHT@LAWSONANDSILEK.COM

November 5, 2018

Jeremy F. Camp, Director
Department of Planning & Zoning
Town of Front Royal
102 East Main Street
Front Royal, Virginia 22630

Email: jcamp@frontroyalva.com

RE: Heptad – Request for Extension on Development Plan

DELIVERED BY ELECTRONIC MAIL ONLY

Dear Jeremy:

As you know, pursuant to Town Code §175-37.18, the Town Council granted Heptad an extension on the requirement to file the Development Plan required by the Town Code. The extension is scheduled to expire on December 3, 2018. I am writing this letter on behalf my client to request from the Town Counsel an additional extension of the Development Plan requirement to at least December 3, 2019. Please treat this letter as Heptad's statement of justification for such a request.

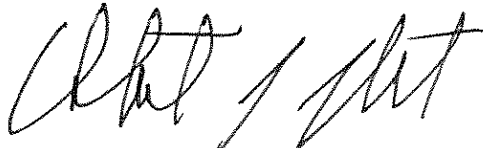
My client has continued to actively and diligently market the property. Indeed, since the first quarter of this year, the property has been actively listed with John Lesinski of Colliers International. Although Heptad has had multiple discussions with interested parties, those discussions have unfortunately not yet resulted in any firm offers. Thus, Heptad respectfully requests the extension so as to allow the continued listing of the property and to hopefully bring about a successful sale of the property for development as contemplated by the approved rezoning proffers.

We respectfully request that this matter be placed on the Town Council's regular meeting agenda for approval. We also ask that you copy us with any Town communications, notices, or meeting agendas referencing this request.

Jeremy F. Camp
November 5, 2018
Page Two (2)

Thank you in advance for your assistance, and please contact Joe or me with any additional questions.

Respectfully,

A handwritten signature in black ink, appearing to read "Robert J. Light", written in a cursive style.

Robert J. Light

Cc: Heptad, LLC

COPY



**Town of Front Royal, Virginia
Council Agenda Statement**

Page 1
Item No. 8(B)

Meeting Date: November 25, 2019

Agenda Item: COUNCIL APPROVAL – HEPTAD Request for One-Year Extension to Submit Development Plan

Summary: Council is requested to consider approval of a request from HEPTAD, LLC to extend their deadline to submit a development plan. Town Code requires that a development plan be submitted within one (1) year of approval of the Master Land Use Plan. The Town Code also allows the deadline to be extended by Town Council. Council has approved a one-year extension every year since 2016.

HEPTAD, LLC is the owner of the proposed development referred to as Swan Estates. It was conditionally rezoned to the PND District in 2012.

Budget/Funding: None

Attachments: Letter from Lawson & Silek P.L.C., Draft Master Land Use, and Code Section for Extension

Meetings: Work Session held November 18, 2019

Staff

Recommendation: Approval _____ Denial _____

Should Council wish to remove this item from the consent agenda, the following motion would allow approval of this request:

Proposed Motion: I move that Council approve the request from HEPTAD, LLC for a one-year extension to submit their required development plan for property referred to as Swan Estates (HEPTAD) until December 3, 2020.

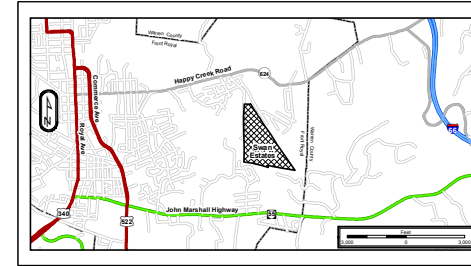
*Note: Motions are the formal & final proposal of Council,
proposed motions are offered by Staff for guidance

*To be clear and concise, motions should be made in the positive

Approved By: MT

Swan Estates By Heptad LLC

March 4, 2011
Master Land Use Plan
A Planned Neighborhood Development



Vicinity Map

Project Information

General Information

Tax Map* 20-A21-2-1 and 20-A20-2-11, instrument 030007026
Total Area: 98 +/- Acres
Current Zoning: (R-S) Suburban Residential

Open Space Information:

Total Area in Open Space: 43.74 Acres (44.6%)
Open Space comprised of Conservation Land: 34.84 Acres
Open Space comprised of Recreation Land: 8.9 Acres

Developable Area Information:

Total developable area: 54.26 Acres (55.4%)
Area in Single Family Dwelling Category: 11.87 Acres
Area in Townhouse Category: 12.59 Acres
Area in Multi-Family Category: 20.6 Acres
Area in Commercial Category: 9.2 Acres
Proposed Single Family Units: 37-54 +/- (minimum size lots of 3,000 sq. ft)
Proposed Townhouse Units: 112 +/-
Proposed Multi Family Units: 252-336 +/-

Summary

Total Number of Units: 450*
Average Density: 4.09-5.12 units per acre +/-
Percentage of Land in open Space : 44.6%

* maximum allowable amount and will be result of any combination of unit types as determined by final design

Sheet Index

1. Cover Sheet
2. General Location Plan
3. Boundary Survey
4. Slope Analysis
5. Topography Map
6. Trip Distribution and Road Classification
7. Floodplain and Wetland Delineation
8. Leach Run Parkway Layout
9. Function Use Plan-Land Bay Layout

Swan Estates Master Land Use Plan

Happy Creek Magisterial District
Front Royal, Virginia



No.	Date	Revisions

Design Firm

J. Duggan & Associates
Landscape Architecture
151 Windy Hill Lane, Winchester, VA 22602
540/674-2475 www.jdugganandassociates.com

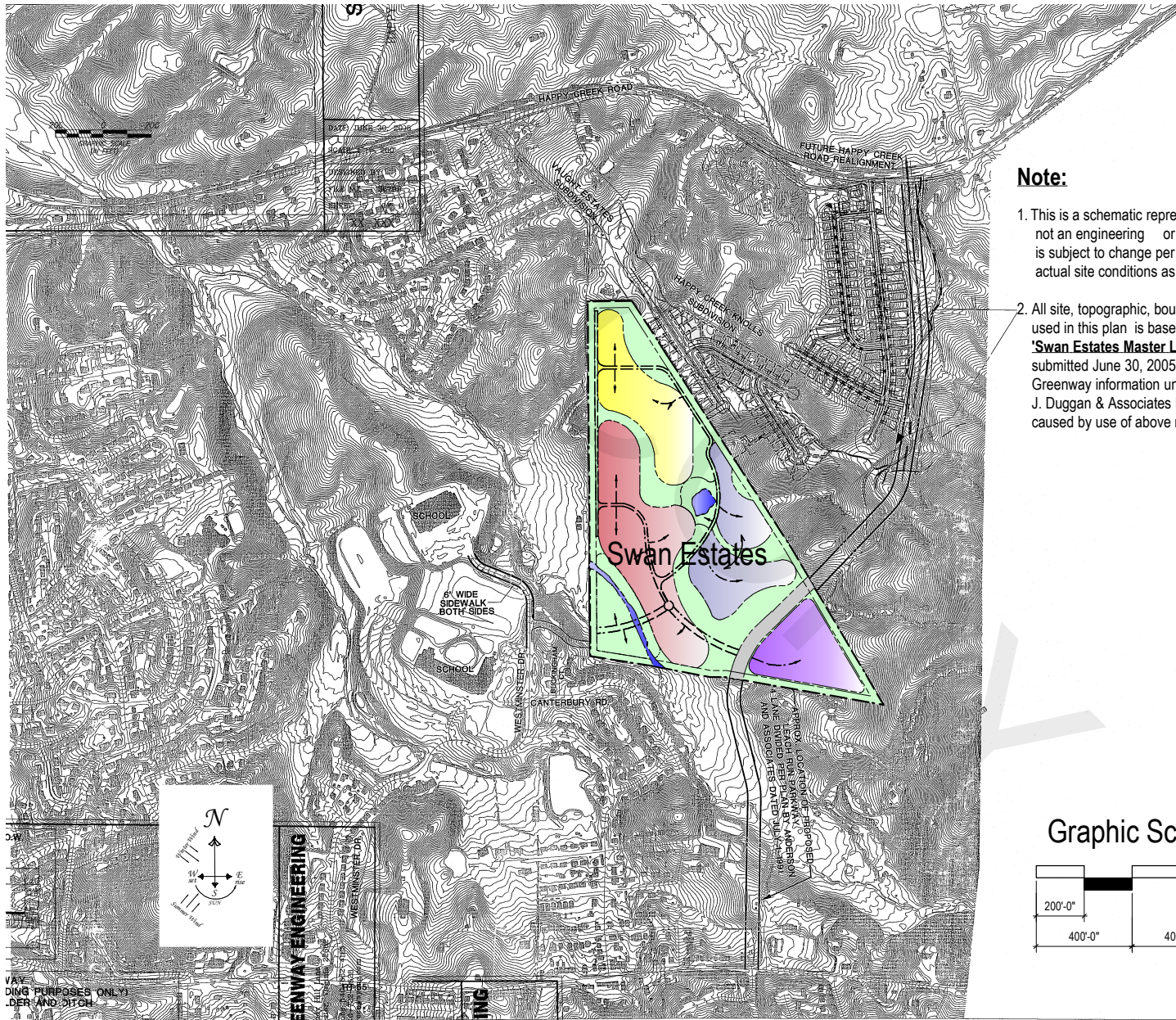
Consultant

Project Title
Master Land Use Plan

Drawing Title
Cover Sheet

Project Manager
J Duggan RLA

Drawn By TM/JD	Scale as shown
Reviewed By JD	Drawing No.
Date 3-4-2011	1 of 9
CAD File	Total Sheets



Swan Estates

Master Land Use Plan

Happy Creek Magisterial District
Front Royal, Virginia



No.	Date	Revisions
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Design Firm



151 Windy Hill Lane, Winchester, VA 22602
540/674-2475
www.jdugganandassociates.com

Consultant

Project Title

Master Land Use Plan

Drawing Title

Generalized Location Plan

Project Manager
J Duggan RLA

Drawn By
TM/JD

Scale
as shown

Reviewed By
JD

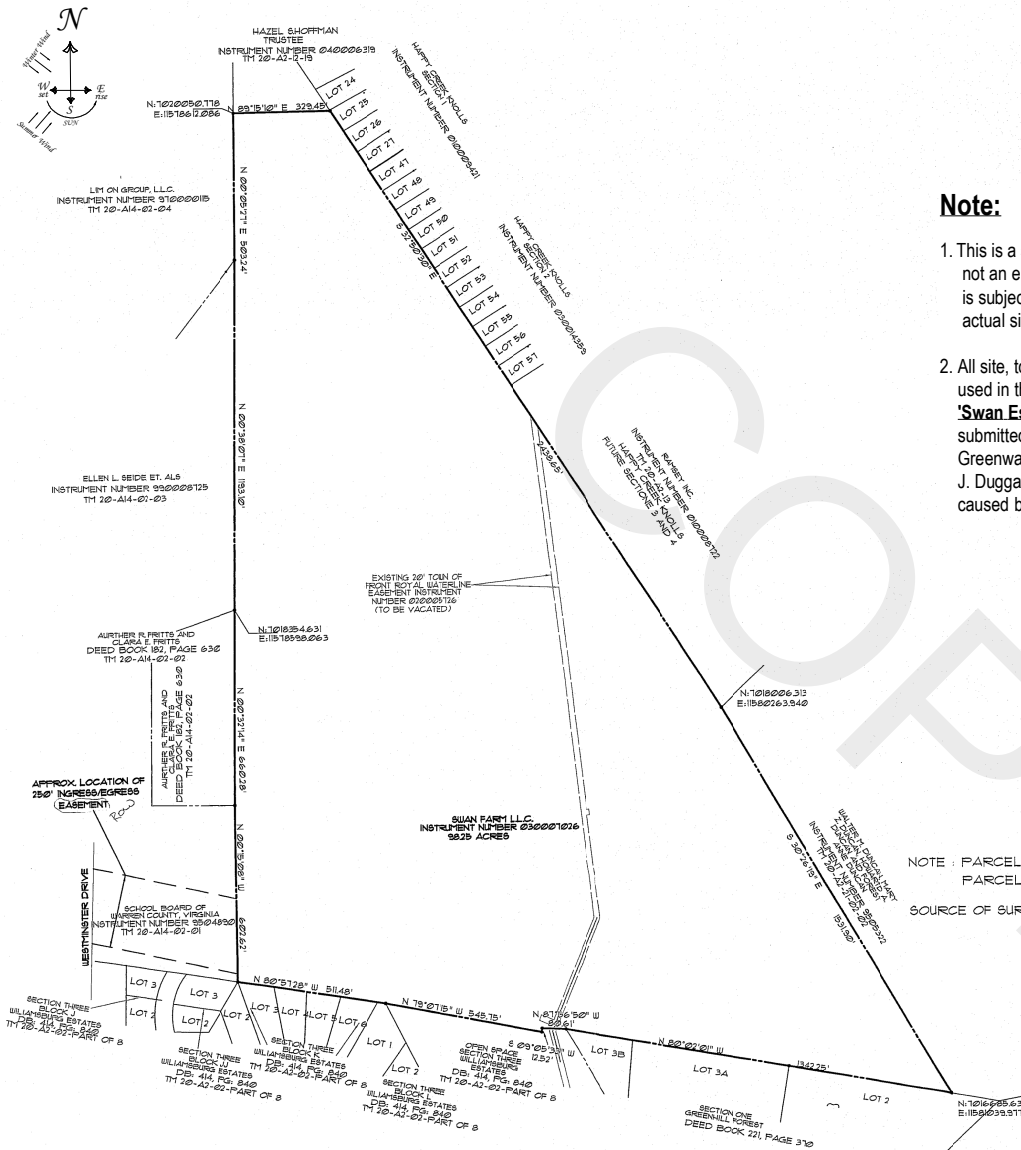
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Date
3-6-2011

2 of 9

CAD File

Total Sheets



Note:

1. This is a schematic representation of proposed land uses, not an engineering or construction document. Plan as shown is subject to change per final design, engineering constraints and actual site conditions as yet to be determined.
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NOTE : PARCEL ONE 91.13 ACRES SHOWN ON THIS DRAWING.
PARCEL TWO 5.2 ACRES IS NOT SHOWN ON THIS DRAWING.
SOURCE OF SURVEY : BOUMAN CONSULTING GROUP DATED MARCH 28, 2005.

Swan Estates

Master Land Use Plan

Happy Creek Magisterial District
Front Royal, Virginia



No.	Date	Revisions

No.	Date	Revisions



151 Windy Hill Lane, Winchester, VA 22602
540/674-2475 www.jdugganandassociates.com

Consultant

Project Title
Master Land Use Plan

Drawing Title
Boundary Survey

Project Manager
J Duggan RLA

Drawn By
JD

Scale
as shown

Reviewed By
JD

Drawing No.
3-4-2011

CAD File
3 of 9

Total Sheets



Note:

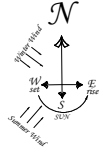
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Swan Estates Master Land Use Plan

Happy Creek Magisterial District
Front Royal, Virginia



No.	Date	Revisions
Design Firm		
 J. Duggan & Associates Landscape Architecture 151 Windy Hill Lane, Winchester, VA 22602 540/674-2475 www.jdugganandassociates.com		
Consultant		
Project Title		
Master Land Use Plan		
Drawing Title		
Slope Analysis		
Project Manager		
J Duggan RLA		
Drawn By	Scale	
JD	as shown	
Reviewed By	Drawing No.	
JD		
Date		
3-4-2011		
CAD File	Total Sheets	
	4 of 9	



LM ON GROUP, LLC
INSTRUMENT NUMBER 110000015
TH 20-A14-02-04

ELLEN L. REIDE, ET AL
INSTRUMENT NUMBER 100000010
TH 20-A14-02-03

AURORA R. FRITS AND
CLARA E. FRITS
DEED BOOK 10, PAGE 630
TH 20-A14-02-02

AURORA R. FRITS AND
CLARA E. FRITS
DEED BOOK 10, PAGE 630
TH 20-A14-02-02

SCHOOL BOARD OF
WARREN COUNTY, VIRGINIA
INSTRUMENT NUMBER 100000010
TH 20-A14-02-03

SECTION THREE
WILLIAMSON ESTATES
DEED BOOK 21, PAGE 310
TH 20-A14-02-PART OF B

SECTION THREE
WILLIAMSON ESTATES
DEED BOOK 21, PAGE 310
TH 20-A14-02-PART OF B

SECTION THREE
WILLIAMSON ESTATES
DEED BOOK 21, PAGE 310
TH 20-A14-02-PART OF B

SECTION THREE
WILLIAMSON ESTATES
DEED BOOK 21, PAGE 310
TH 20-A14-02-PART OF B

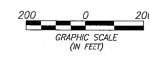
SECTION ONE
GREENHILL FOREST
DEED BOOK 21, PAGE 310

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NOTES :

- (1) NAD 1983 DATUM, 2' CONTOUR INTERVAL
- (2) SOURCE OF TOPOGRAPHY: BOWMAN CONSULTING GROUP DATED DEC. 21, 2004.



Swan Estates

Master Land Use Plan

Happy Creek Magisterial District
Front Royal, Virginia



Design Firm

J. Duggan & Associates

Landscape Architecture

151 Windy Hill Lane, Winchester, VA 22602
540/674-2475 www.jdugganandassociates.com

Consultant

Project Title

Master Land Use Plan

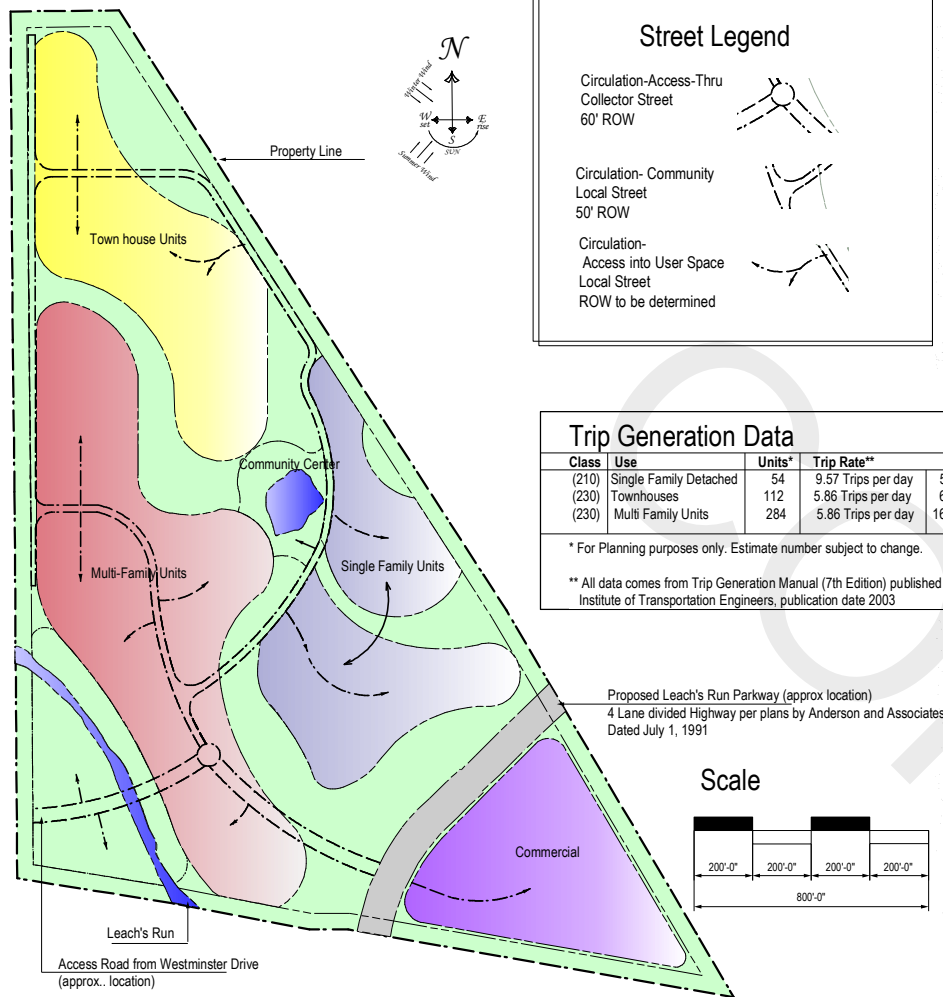
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Topography Map

Project Manager

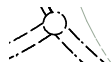
J. Duggan RLA

Drawn By JD	Scale as shown
Reviewed By JD	Drawing No.
Date 3-4-2011	5 of 9
CAD File	Total Sheets



Street Legend

Circulation-Access-Thru
Collector Street
60' ROW



Circulation- Community
Local Street
50' ROW



Circulation-
Access into User Space
Local Street
ROW to be determined



Trip Generation Data

Class	Use	Units*	Trip Rate**	VPD
(210)	Single Family Detached	54	9.57 Trips per day	516.78 VPD
(230)	Townhouses	112	5.86 Trips per day	656.32 VPD
(230)	Multi Family Units	284	5.86 Trips per day	1664.24 VPD

* For Planning purposes only. Estimate number subject to change.

** All data comes from Trip Generation Manual (7th Edition) published by: Institute of Transportation Engineers, publication date 2003

Proposed Leach's Run Parkway (approx location)
4 Lane divided Highway per plans by Anderson and Associates
Dated July 1, 1991

Scale

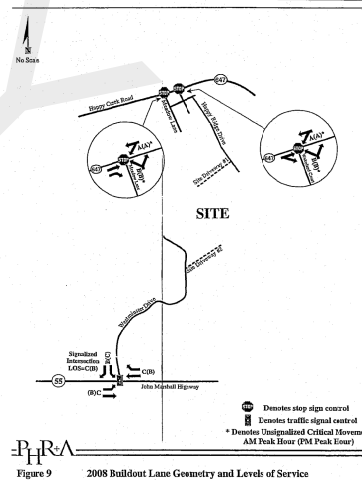
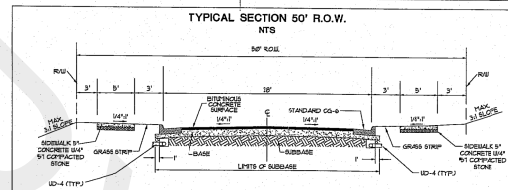
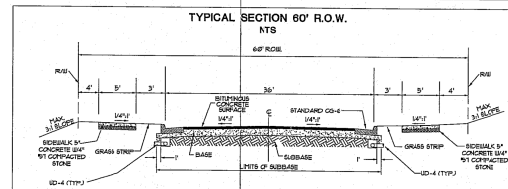
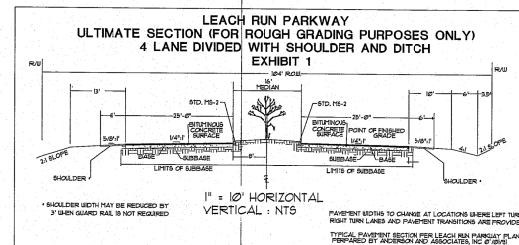
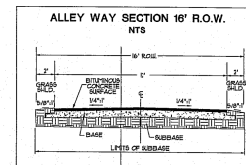
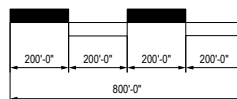


Figure 9 2008 Buildout Lane Geometry and Levels of Service

Swan Estates

Master Land Use Plan

Happy Creek Magisterial District
Front Royal, Virginia



No.	Date	Revisions
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Design Firm



151 Windy Hill Lane, Winchester, VA 22602
540/674-2475 www.jdugganandassociates.com

Consultant

Project Title

Master Land Use Plan

Drawing Title

Trip Distribution and
Road Classification Plan

Project Manager
J Duggan RLA

Drawn By
JD

Scale
as shown

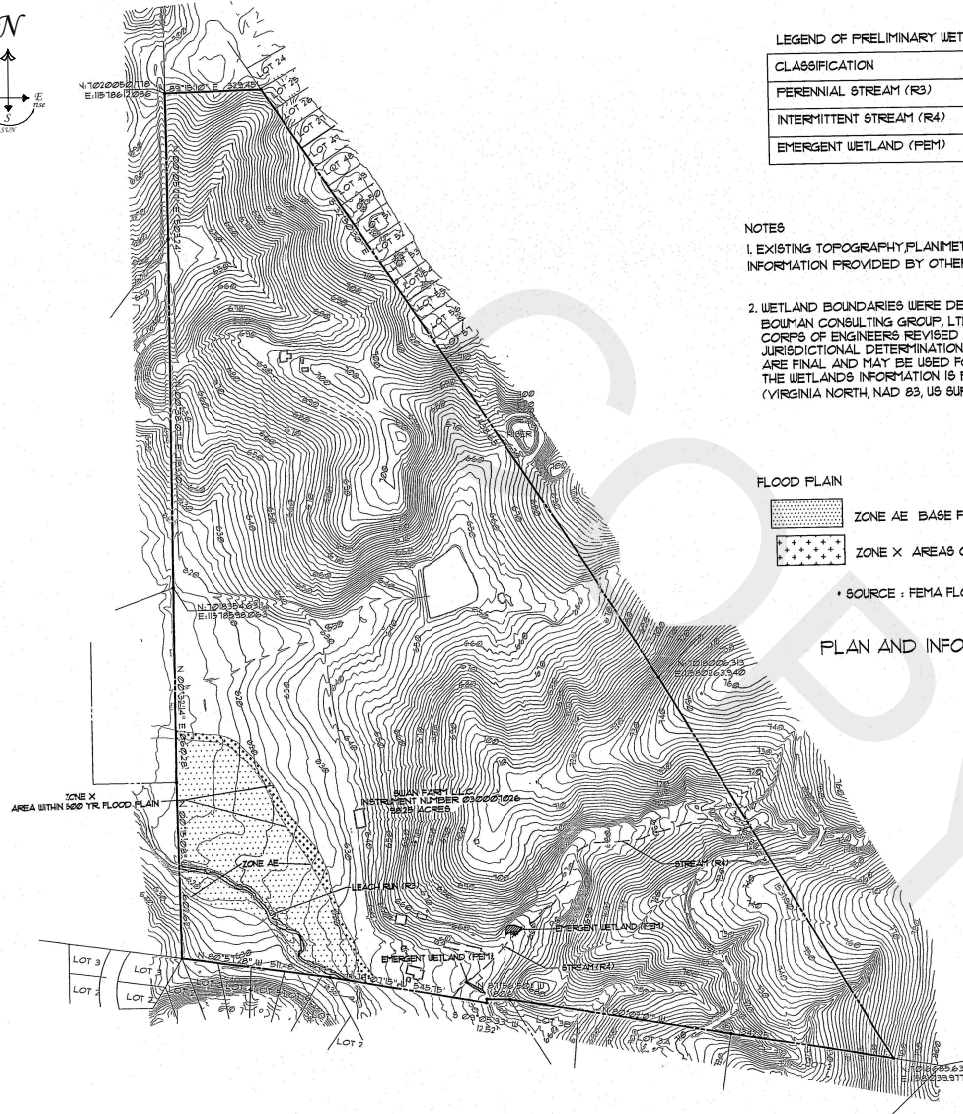
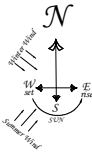
Reviewed By
JD

Drawing No.

Date
3-4-2011

CAD File

6 of 9
Total Sheets



LEGEND OF PRELIMINARY WETLANDS	
CLASSIFICATION	
PERENNIAL STREAM (R3)	
INTERMITTENT STREAM (R4)	
EMERGENT WETLAND (PEM)	

NOTES

1. EXISTING TOPOGRAPHY, PLANIMETRIC AND BOUNDARY INFORMATION PROVIDED BY OTHERS.

2. WETLAND BOUNDARIES WERE DELINEATED AND GPS SURVEYED BY BOWMAN CONSULTING GROUP, LTD., IN APRIL 2005. THE U.S. ARMY CORPS OF ENGINEERS REVISED THE WETLAND BOUNDARIES DURING A JURISDICTIONAL DETERMINATION DATED JUNE 15, 2005. THESE BOUNDARIES ARE FINAL AND MAY BE USED FOR PLANNING OR ENGINEERING PURPOSES. THE WETLANDS INFORMATION IS PROVIDED AT STATE PLANE COORDINATES (VIRGINIA NORTH, NAD 83, US SURVEY FEET).

FLOOD PLAIN

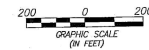
	ZONE AE BASE FLOOD ELEVATION DETERMINED
	ZONE X AREAS OF 500 YEAR FLOOD

* SOURCE : FEMA FLOOD MAP # 510161-0003-B TOWN OF FRONT ROYAL DATED JULY 15/2008.

PLAN AND INFORMATION SHOWN PER BOWMAN CONSULTING GROUP.

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Swan Estates
Master Land Use Plan
Happy Creek Magisterial District
Front Royal, Virginia



No.	Date	Revisions
-----	------	-----------

Design Firm



151 Windy Hill Lane, Winchester, VA 22602
540/674-2475 www.jdugganandassociates.com

Consultant

Project Title

Master Land Use Plan

Drawing Title

Floodplain and Wetland Delineation

Project Manager
J Duggan RLA

Drawn By
JD

Scale
as shown

Reviewed By
JD

Drawing No.

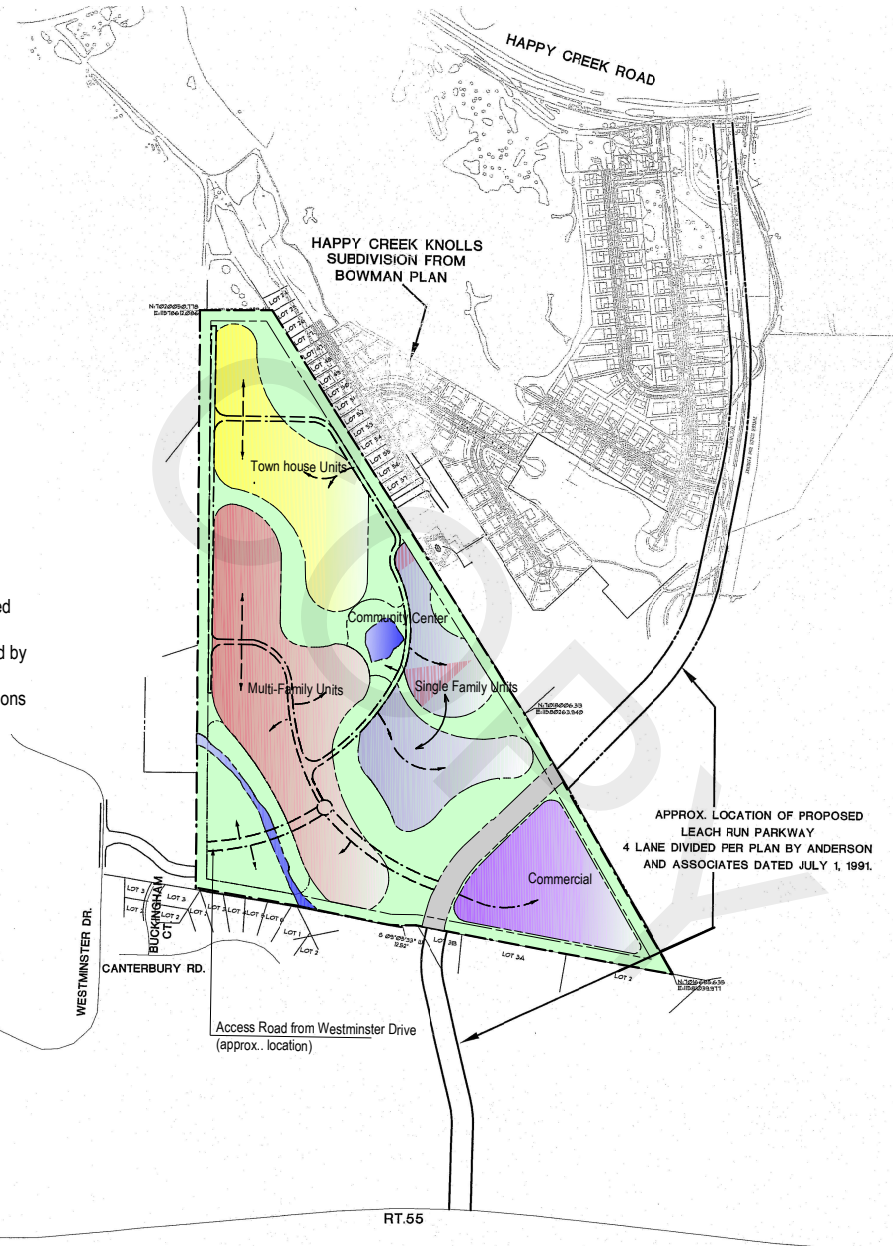
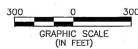
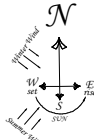
Date
3-4-2011

CAD File

7 of 9
Total Sheets

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Swan Estates

Master Land Use Plan

Happy Creek Magisterial District
Front Royal, Virginia



No.	Date	Revisions

Design Firm

J. Duggan & Associates

Landscape Architecture

151 Windy Hill Lane, Winchester, VA 22602
540/674-2475 www.jdugganandassociates.com

Consultant

Project Title

Master Land Use Plan

Drawing Title

Leach Run Parkway Layout

Project Manager
J Duggan RLA

Drawn By
JD

Scale
as shown

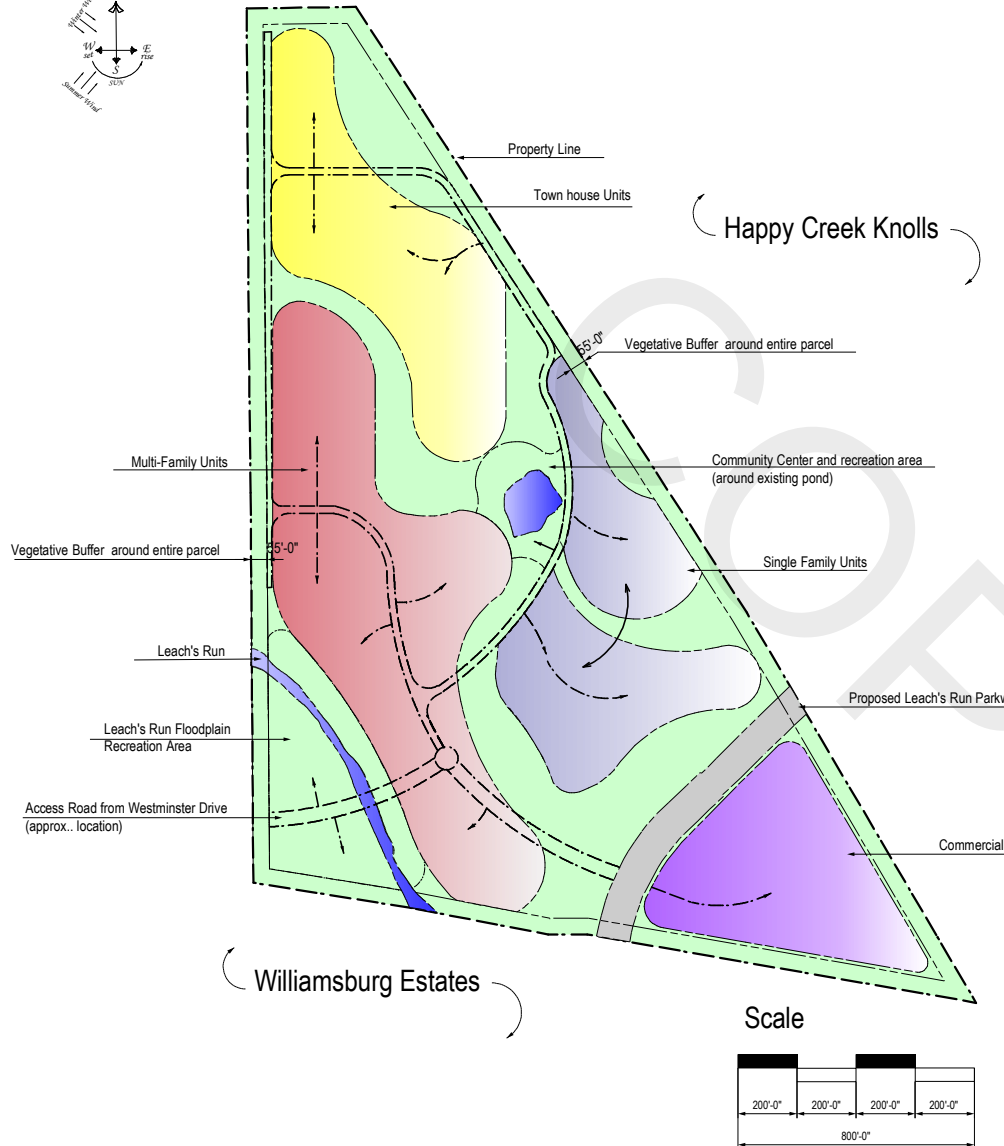
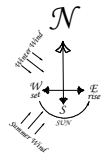
Reviewed By
JD

Drawing No.

Date
3-4-2011

CAD File

8 of 9
Total Sheets



Legend

- Open Space
- Residential Use Single-Family
- Residential Use Town Houses
- Residential Use Multi-Family
- Commercial Use
- Open Space-Water

- Circulation-Access-Thru
- Circulation- Community
- Circulation- Access into User Space

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Swan Estates

Master Land Use Plan

Happy Creek Magisterial District
Front Royal, Virginia



Design Firm

J. Duggan & Associates
Landscape Architecture
151 Windy Hill Lane, Winchester, VA 22602
540/674-2475 www.jdugganandassociates.com

Consultant

Project Title
Master Land Use Plan

Drawing Title
Functional Use Plan-
Land Bay Layout

Project Manager
J Duggan RLA

Drawn By JD	Scale as shown
Reviewed By JD	Drawing No.
Date 3-4-2011	
CAD File	9 of 9 Total Sheets

175-37.18 DEVELOPMENT REVIEW (PND)

Within one year of approval of a Master Land Use Plan for development of a Planned Neighborhood, prior to the approval of building permits, the applicant shall prepare and submit for review and approval an engineered Development Plan, along with the fee as established in the approved schedule of fees. The applicant may petition the Town Council for an extension of time for submission of a development plan, provided such extension is requested at least 20 days prior to the expiration of the one-year period. The Town Council may grant an extension upon demonstration of good cause for up to one year.

COPY



Council Agenda Statement

Item # 8A

Meeting Date: December 14, 2020

Agenda Item: HEPTAD Request for One-Year Extension to Submit Development Plan

Summary: Council is requested to consider approval of a request from HEPTAD, LLC to extend their deadline to submit a development plan. Town Code requires that a development plan be submitted within one (1) year of approval of the Master Land Use Plan. The Town Code also allows the deadline to be extended by Town Council. Council has approved a one-year extension every year since 2016.

HEPTAD, LLC is the owner of the proposed development referred to as Swan Estates. It was conditionally rezoned to the PND District in 2012.

Budget/Funding: N/A

Meetings: Work Session held December 7, 2020

Should Council wish to remove this item from the consent agenda, the following motion would allow approval of this request:

Proposed Motion: I move that Council approve the request from HEPTAD, LLC to extend their deadline to submit a development plan until December 3, 2021.

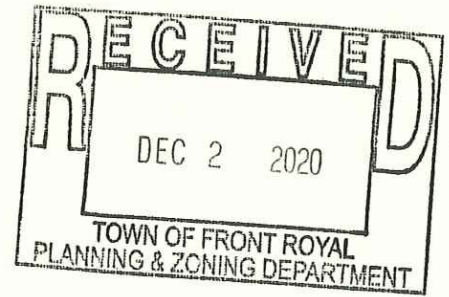
Approved By: SWA

Moved _____ Seconded _____

VM Sealock _____ Cockrell _____ Gillispie _____ Holloway _____ Meza _____ Thompson _____

JOSEPH F. SILEK, JR., P.C.

43 CHESTER STREET
POST OFFICE BOX 602
FRONT ROYAL, VIRGINIA 22630
TELEPHONE: (540) 635-9415
FACSIMILE: (540) 635-9421
E-MAIL: JSILEK@SILEKPC.COM



December 2, 2020

Timothy Wilson, Director
Department of Community Development & Planning
Town of Front Royal
102 East Main Street
Front Royal, Virginia 22630

Re: Heptad, LLC – Renewed Request for Extension

DELIVERED BY HAND DELIVERY

Dear Mr. Wilson:

Please be advised that I represent Heptad, LLC. Last year, the Town Council granted Heptad's request for an extension of the requirement to file a Development Plan pursuant to Town Code §175-37.18. At that time, it was my understanding that, unlike prior years, this extension approved by the Town Council was for a longer period. Unfortunately, for the 2019 extension, I did not receive a letter from the Town confirming the extension or its terms. Nevertheless, it has recently come to my attention that such extension may have been only for one (1) year. I would respectfully ask that you check Town Council records from November or December of 2019 to confirm my understanding that the extension was for longer than one (1) year and, if so, to confirm when that extension would expire. If the extension was for only one (1) year, please treat this letter as a request for an additional one-year extension.

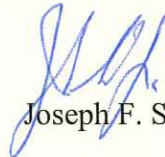
As justification for the request, I am pleased to report that recently Heptad has entered into a contract for the purchase of the Heptad property. Under the terms of that contract, closing is expected to take place in late August 2021. Obviously, it is in the best interests of both the Town and my client that this transaction close.

I respectfully request that this matter be placed on the earliest regular meeting of the Town Council. I also ask that you copy me with any Town communications, notices, or meeting agendas referencing this request.

Timothy Wilson, Director
December 2, 2020
Page Two (2)

Thank you in advance for your assistance, and please contact me with any additional questions.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "J. Silek, Jr.", is positioned above the printed name.

Joseph F. Silek, Jr.

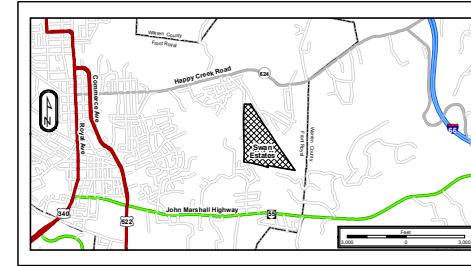
Cc: Heptad, LLC

COPY

Swan Estates By Heptad LLC

March 4, 2011
Master Land Use Plan
A Planned Neighborhood Development

FOR A COMPLETE MASTER PLAN SEE THE
DIRECTOR IN THE PLANNING/COMMUNITY
DEVELOPMENT DEPARTMENT



Vicinity Map

Project Information

General Information

Tax Map* 20-A21-2-1 and 20-A20-2-11, instrument 030007026
Total Area: 98 +/- Acres
Current Zoning: (R-S) Suburban Residential

Open Space Information:

Total Area in Open Space: 43.74 Acres (44.6%)
Open Space comprised of Conservation Land: 34.84 Acres
Open Space comprised of Recreation Land: 8.9 Acres

Developable Area Information:

Total developable area: 54.26 Acres (55.4%)
Area in Single Family Dwelling Category: 11.87 Acres
Area in Townhouse Category: 12.59 Acres
Area in Multi-Family Category: 20.6 Acres
Area in Commercial Category: 9.2 Acres
Proposed Single Family Units: 37-54 +/- (minimum size lots of 3,000 sq. ft)
Proposed Townhouse Units: 112 +/-
Proposed Multi Family Units: 252-336 +/-

Summary

Total Number of Units: 450*
Average Density: 4.09-5.12 units per acre +/-
Percentage of Land in open Space : 44.6%

* maximum allowable amount and will be result of any combination of unit types as determined by final design

Sheet Index

1. Cover Sheet
2. General Location Plan
3. Boundary Survey
4. Slope Analysis
5. Topography Map
6. Trip Distribution and Road Classification
7. Floodplain and Wetland Delineation
8. Leach Run Parkway Layout
9. Function Use Plan-Land Bay Layout

Swan Estates
Master Land Use Plan
Happy Creek Magisterial District
Front Royal, Virginia



No.	Date	Revisions

Design Firm

J. Duggan & Associates
Landscape Architecture
151 Windy Hill Lane, Winchester, VA 22602
540/674-2475 www.jdugganandassociates.com

Consultant

Project Title
Master Land Use Plan

Drawing Title
Cover Sheet

Project Manager
J. Duggan RLA

Drawn By TM/JD	Scale as shown
Reviewed By JD	Drawing No.
Date 3-4-2011	1 of 9
CAD File	Total Sheets



Council Consent Agenda Statement

Item # 10F

Meeting Date: November 22, 2021

Agenda Item: HEPTAD Request for One-Year Extension to Submit Development Plan

Summary: Council is requested to consider approval of a request from HEPTAD, LLC to extend their deadline to submit a development plan. Town Code requires that a development plan be submitted within one (1) year of approval of the Master Land Use Plan. The Town Code also allows the deadline to be extended by Town Council. Council has approved a one-year extension every year since 2016. HEPTAD, LLC is the owner of the proposed development referred to as Swan Estates. It was conditionally rezoned to the PND District in 2012.

Budget/Funding: None

Meetings: Work Session held November 8, 2021

Should Council wish to remove this item from the consent agenda, the following motion would allow approval of this request:

Proposed Motion: I move that Council approve the request from HEPTAD, LLC to extend their deadline to submit a development plan for one (1) year ending December 3, 2022.

Moved _____ **Seconded** _____

Cockrell _____ **Gillispie** _____ **Lloyd** _____ **McFadden** _____ **Thompson** _____

JOSEPH F. SILEK, JR., P.C.

43 CHESTER STREET
POST OFFICE BOX 602
FRONT ROYAL, VIRGINIA 22630
TELEPHONE: (540) 635-9415
FACSIMILE: (540) 635-9421
E-MAIL: JSILEK@SILEKPC.COM

October 15, 2021

Lauren Kopishke, Planning Director
Department of Community Development & Planning
Town of Front Royal
102 East Main Street
Front Royal, Virginia 22630

Re: Heptad, LLC – Renewed Request for Extension

DELIVERED BY HAND DELIVERY

Dear Ms. Kopishke:

Please be advised that I represent Heptad, LLC. Last year, the Town Council granted Heptad's request for an extension of the requirement to file a Development Plan pursuant to Town Code §175-37.18. The Town Council approved such a request last year. Hence, please treat this letter as a request for an additional one-year extension.

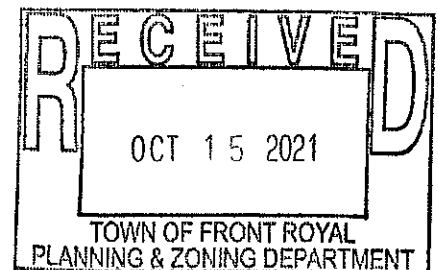
As justification for the request, I am pleased to report that Heptad is in discussions with several potential buyers (including home builders who develop projects nationally) to purchase the Heptad property. Obviously, it is in the best interests of both the Town and my client that this transaction close. In prior years, the Town Council has been supportive of my client's marketing and negotiating efforts with respect to the Heptad project and have routinely granted annual extensions of the deadline for filing a Development Plan.

I respectfully request that this matter be placed on the earliest regular meeting of the Town Council. I also ask that you copy me with any Town communications, notices, or meeting agendas referencing this request. Thank you in advance for your assistance, and please contact me with any additional questions.

Very Truly Yours,

Joseph F. Silek, Jr

Cc: Heptad, LLC





Council Consent Agenda Statement

Item # 10A

Meeting Date: November 28, 2022

Agenda Item: HEPTAD Request for One-Year Extension to Submit Development Plan

Summary: Council has received a letter from Joseph F. Silek Jr., dated October 6, 2022 requesting an extension of the requirement to file a Development Plan for HEPTAD, pursuant to Town Code 175-37.18. The Town Code requires that a development plan be submitted within one (1) year of approval of the Master Land Use Plan and allows the deadline to be extended by Council. Council has approved the extension every year since 2016. Council is requested to approve the extension as requested.

Budget/Funding: None

Meetings: Work Session held November 14, 2022

Should Council wish to remove this item from the consent agenda, the following motion would allow approval of this request:

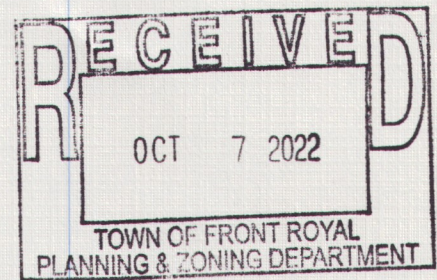
Proposed Motion: I move that Council approve a one-year extension to HEPTAD to file a Development Plan, pursuant to Town Code 175-37.18.

Moved _____ *Seconded* _____

Cockrell _____ *Gillispie* _____ *Morris* _____ *Rogers* _____ *Sealock* _____ *Thompson* _____

JOSEPH F. SILEK, JR., P.C.

43 CHESTER STREET
POST OFFICE BOX 602
FRONT ROYAL, VIRGINIA 22630
TELEPHONE: (540) 635-9415
FACSIMILE: (540) 635-9421
E-MAIL: JSILEK@SILEKPC.COM



October 6, 2022

Lauren Kopishke, Planning Director
Department of Community Development & Planning
Town of Front Royal
102 East Main Street
Front Royal, Virginia 22630

Re: Heptad, LLC – Renewed Request for Extension

DELIVERED BY HAND DELIVERY

Dear Lauren:

Last year, the Town Council granted Heptad's request for an extension of the requirement to file a Development Plan pursuant to Town Code §175-37.18. Please treat this letter as a request for an additional one-year extension.

As justification for the request, the Town and Heptad are currently in negotiations to amend the previously approved rezoning proffers which will impact the final scope of the project. Based on the schedule you previously provided me, it is unlikely that the Town Council will have considered and vote don the proposed proffer amendments by December. Obviously, it is in the best interests of both the Town and my client that the Town Council grant (consistent with past practice) an annual extension of the deadline for filing a Development Plan so as to permit itself time to consider the proffer amendments.

I respectfully request that this matter be placed on the earliest regular meeting of the Town Council. I also ask that you copy me with any Town communications, notices, or meeting agendas referencing this request. Thank you in advance for your assistance, and please contact me with any additional questions.

Very Truly Yours,

Joseph F. Silek, Jr

Cc: Heptad, LLC



Council Regular Meeting Agenda Statement

Item # 11

Meeting Date: December 11, 2023

Agenda Item: HEPTAD Request for One-Year Extension to Submit Development Plan

Summary: Council has received a letter from Joseph F. Silek Jr., dated October 2, 2023 requesting an extension of the requirement to file a Development Plan for HEPTAD, pursuant to Town Code 175-37.18. The Town Code requires that a development plan be submitted within one (1) year of approval of the Master Land Use Plan and allows the deadline to be extended by Council. Council has approved the extension every year since 2016.

Budget/Funding: None

Meetings: Work Session held November 13, 2023

Proposed Motions:

I move that Council approve a one-year extension to HEPTAD to file a Development Plan, pursuant to Town Code 175-37.18.

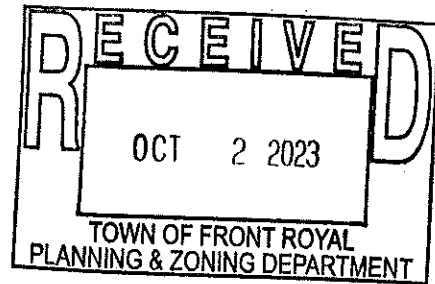
I move that Council deny a one-year extension to HEPTAD to file a Development Plan, pursuant to Town Code 175-37.18

Moved _____ Seconded _____

VM Sealock _____ Ingram _____ Morris _____ Rappaports _____ DeDomenico-Payne _____ Wood _____

JOSEPH F. SILEK, JR., P.C.

43 CHESTER STREET
POST OFFICE BOX 602
FRONT ROYAL, VIRGINIA 22630
TELEPHONE: (540) 635-9415
FACSIMILE: (540) 635-9421
E-MAIL: JSILEK@SILEKPC.COM



October 2, 2022

Lauren Kopishke, Planning Director
Department of Community Development & Planning
Town of Front Royal
102 East Main Street
Front Royal, Virginia 22630

Re: Heptad, LLC – Renewed Request for Extension

DELIVERED BY HAND DELIVERY

Dear Lauren:

Last year, the Town Council granted Heptad's request for an extension of the requirement to file a Development Plan pursuant to Town Code §175-37.18. Please treat this letter as a request for an additional one-year extension.

As justification for the request, on August 28, 2023, the Town Council denied Heptad's proffer amendment application. Shortly thereafter, on September 13, Van Metre Communities, L.L.C., the contract purchaser for the project, terminated the contract because of the denial. As a result, Heptad will need to restart the marketing process for the property. Heptad will need at least an additional year to seek a new purchaser for the project who can be in a position to prepare and file a Development Plan. Over the past eleven (11) years, the Town Council has consistently granted an annual extension of the deadline for filing a Development Plan so as to permit Heptad the time it has needed to bring this project to fruition – a project which the Town Council's own consultants have recognized will be beneficial to the Town. We believe that the Council's action has unfortunately set the project back significantly, and we thus believe we had to take steps to protect the company, but what has happened can at least potentially be mitigated by this extension.

I respectfully request that this matter be placed on the earliest regular meeting of the Town Council. I also ask that you copy me with any Town communications, notices, or meeting agendas referencing this request.

Thank you in advance for your assistance, and please contact me with any additional questions.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'J. Silek, Jr.', with a stylized, cursive-like script.

Joseph F. Silek, Jr

cc: Heptad, LLC
John H. Foote, Esq.
George Sonnett, Esq.
Olaun Simmons, Esq.

COPY



CLOSED MEETING AGENDA STATEMENT

Meeting Date: June 10, 2024

Item# 05

MOTION ON TO GO INTO CLOSED MEETING

[to be approved by affirmative recorded vote, with motion set forth in detail in the minutes]

I move that Town Council convene a closed meeting, pursuant to Sections 2.2-3711 and 2.2-3712 of the Code of Virginia, for the following purposes and that Council consider taking action on these matters in open session:

1) pursuant to Section 2.2-3711(A)(8) of the Code of Virginia, for consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel, more specifically, a) an offer to purchase a conditionally vacated portion of 7th Street (3,390 square feet) located at its intersection with Kibler Street and b) a request from HEPTAD, LLC.

Motion to Certify Closed Meeting at its Conclusion

[At the conclusion of the Closed Meeting, immediately re-convene in open meeting and take a roll call vote on the following:]

I move that Council certify that to the best of each member's knowledge, as recognized by each Council member's affirmative vote, that only such public business matters lawfully exempted from Open Meeting requirements under the Virginia Freedom of Information Act as were identified in the motion by which the Closed Meeting was convened were heard, discussed or considered in the Closed Meeting by Council, and that the vote of each individual member of Council be taken by roll call and recorded and included in the minutes of the meeting of Town Council.

Moved _____ Seconded _____

VM Sealock _____ Ingram _____ Morris _____ Rappaport _____ DeDomenico-Payne _____ Wood _____

RECEIVED
MAY 31 2024



TOWN OF FRONT ROYAL
PLANNING & ZONING DEPARTMENT

Joseph F. Silek, Jr. PC
Front Royal, VA

43 CHESTER STREET
POST OFFICE BOX 602
FRONT ROYAL, VIRGINIA 22630
TELEPHONE: (540) 635-9415
FACSIMILE: (540) 635-9421
E-MAIL: JSILEK@SILEKPC.COM

May 31, 2024

Lauren Kopishke, Planning Director
Department of Community Development & Planning
Town of Front Royal
102 East Main Street
Front Royal, Virginia 22630

Re: Heptad, LLC – Renewed Request for Extension

DELIVERED BY HAND DELIVERY

Dear Lauren:

Last year, the Town Council granted Heptad's request for an extension of the requirement to file a Development Plan pursuant to Town Code §175-37.18 until June 11, 2024. Please treat this letter as a request for an additional one-year extension.

As justification for the request, on August 28, 2023, the Town Council denied Heptad's proffer amendment application. As you are aware, the litigation between the Town and Heptad challenging the denial of the proffer amendment application is pending. Currently, a hearing before the Warren County Circuit Court is scheduled for June 3 on the Town's motion to dismiss (demurrer). It is highly unlikely that the Court will have ruled on the Town's demurrer by June 11. What is more, if the demurrer is overruled, it will take some time before the litigation would be resolved by a trial on the merits. In short, neither the Town nor Heptad will know the outcome of this litigation prior to June 11.

Heptad will need at least a 1-year extension both for the resolution of the pending litigation and to find a new purchaser for the project who will be in a position to prepare and file the Development Plan. For over a decade, the Town Council has consistently granted extensions of the deadline for filing a Development Plan so as to permit Heptad the time it needs to bring this project to fruition – a project which the Town Council's own consultants have recognizes will be beneficial to the Town.

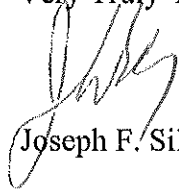
I respectfully request that this extension request be placed on the earliest regular meeting of the Town Council. I also ask that you copy me with any Town communications, notices, or meeting agendas referencing this request.



Joseph F. Silek, Jr. PC
Front Royal, VA

Thank you in advance for your assistance, and please contact me with any additional questions.

Very Truly Yours,



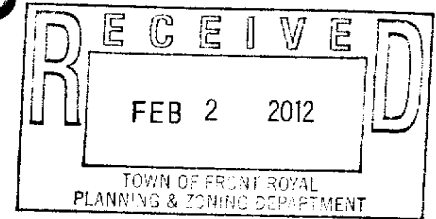
Joseph F. Silek, Jr

Cc: Heptad, LLC
John Foote, Esq., counsel for Heptad, LLC



000178 APR 13 2012

PROFFER STATEMENT



REZONING: RZ# 05-07-56
Suburban Residential (R-S) District to Planned Neighborhood
Development (PND) District

PROPERTY: 98.25 acres +/-;
Tax Parcel #20-A21-2-1 and Tax Parcel # 20A20-2-11

APPLICANT: HEPTAD, LLC

PROJECT NAME: Swan Estates

**ORIGINAL DATE
OF PROFFERS:** June 30, 2005
Amended November 2005
Amended March 2006
Amended April 15, 2011
Amended January 31, 2012

Preliminary Matters

Pursuant to Section 15.2-2296 et. seq. of the Code of Virginia, 1950, as amended, and the provisions of the Town of Front Royal Zoning Ordinance with respect to conditional zoning, the undersigned Applicant hereby proffers that in the event the Town Council of Front Royal, Warren County, Virginia, shall approve Rezoning Application #05-07-56 for the rezoning of approximately 98.25 acres from the Suburban Residential (R-S) District to Planned Neighborhood Development (PND) District, development of the subject property shall be done in general conformity with the terms and conditions set forth herein, except to the extent that such terms and conditions may be subsequently amended or revised by the Applicant and such be approved by the Front Royal Town Council in accordance with the said Code and Zoning Ordinance. In the event that such rezoning is not granted, then these proffers shall be deemed withdrawn and have no effect

000179 APR 13 2013

whatsoever. In the event this application is denied by the Front Royal Town Council (the "Council"), such denial is appealed to a court of competent jurisdiction, and this rezoning application is thereafter remanded to the Council for reconsideration, then the Applicant may elect to readopt all or any portion hereof, in a writing specifically for that purpose; if no such election is made, these proffers shall be withdrawn and shall be invalid.

Dedications and improvements proffered herein shall be provided at the time of development of that portion of the Property that contains or will be served by the dedication or improvement, unless otherwise specified herein. These proffers shall be binding upon the Applicant and its legal successors, heirs, or assigns.

The subject property, identified as the Anna Swan Estate, and more particularly described as the lands owned by Heptad, LLC, being all of Tax Map Parcels 20-A21-2-1 and 20A20-2-11 by virtue of a deed dated August 14, 2009 and recorded among the land records of the Warren County Circuit Court Clerk's Office as Instrument No. 090004959. More particularly consisting of Tax Map Parcels 20-A21-2-1, containing 97.7395 acres, more or less, as shown by plat of survey dated May 5, 2003, prepared by Mark D. Smith, L.S., of Greenway Engineering, entitled "Boundary Survey of the land of Anna Swan Estate, Town of Front Royal, Warren County, Virginia" and recorded as Instrument number 030007026, and Tax Map Parcel 20-A20-2-11, containing .52 acres, more or less, as shown by plat of survey dated May 3, 1957, prepared by S. M. Boyd, Jr., C.L.S., recorded in Warren County Deed Book 102, page 300.

000130 APR 13 2011

I. Master Land Use Plan

The Applicant hereby proffers to develop the 98.25 acre property in substantial conformance with a Master Land Use Plan (Master Plan) approved as part of the rezoning application, subject to revisions by the Applicant due to lot layout and road alignment in accordance with final engineering considerations. The Master Land Use Plan is intended to illustrate the systems of roadways that will provide access to the land bays and serve the single-family residential lots, parking areas and community facilities therein. The Master Land Use Plan generally identifies the single-family detached residential land bays, the multi-family residential land bays, the single-family attached residential land bays, and the commercial use land bay. The Master Land Use Plan consists of the following:

1. Cover Sheet – June 30, 2005, Revised November 2005, March 2006, March 2011
2. Generalized Location Plan – June 30, 2005, Revised November 2005, March 2006, March 2011
3. Boundary Survey – June 30, 2005, Revised November 2005, March 2006, March 2011
4. Slope Analysis – June 30, 2005, Revised November 2005, March 2006, March 2011
5. Topography Map – June 30, 2005, Revised November 2005, March 2006, March 2011

000181 APR 13 2011

6. Trip Distribution & Road Classification Plan – June 30, 2005, Revised November 2005, March 2006, March 2011
7. Flood Plain and Wetlands Delineation – June 30, 2005, revised November 2005, March 2006, March 2011
8. Leach Run Parkway Layout – June 30, 2005, Revised November 2005, March 2006, March 2011
9. Functional Use Plan- Land Bay Layout – June 30, 2005, Revised November 2005, March 2006, March 2011

II. **Design Guidelines**

The Applicant hereby proffers the Swan Estates Design Guidelines prepared by Joe Duggan & Associates, submitted concurrent with, and as an appendix to, this proffer statement. Design Guidelines may be revised by the Applicant in accordance with final engineering considerations. The Swan Estates Design Guidelines shall generally have the same force and effect as if incorporated herein. and the Applicant, in developing the Property, shall generally conform to such Design Guidelines; however, modification and alternatives shall be allowed provided such modifications and alternatives achieve the same intent. If any provision of the Swan Estates Design Guidelines shall subsequently be found to be invalid, the remaining provisions shall remain intact. Provided, however, notwithstanding anything in the Swan Estate Design Guidelines to the contrary, the applicant hereby proffers that the foundation of any residential structure shall be faced with brick, natural stone, synthetic stone, colored textured concrete, stamped concrete, or any combination thereof.

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III. **Transportation**

3.1 **Leach Run Parkway**

3.1.1 **Right of Way Dedication**

3.1.1.1 The final subdivision plat (a "Record Plat") for the first phase of the development of the Property shall include dedication of right-of-way for Leach Run Parkway as it traverses the Property presently as described in the Plan and Profile of Proposed Leach Run Parkway dated July 1, 1991 (the "Leach Run Parkway Dedication"), **provided** that Applicant shall be entitled to a credit for the Leach Run Dedication as provided for in Proffer 7.2.1 below.

3.1.1.2 The horizontal alignment of future Leach Run Parkway shown on Sheet 8 of the Master Plan as it traverses the Property is established and set by the rezoning approval.

3.1.2 **Leach Run Parkway Improvements**

3.1.2.1 Subject to the terms and conditions set forth as part of Proffer 3.1.3 below, prior to and as a condition of the issuance of the 130th building permit, the Applicant shall design and engineer four (4) lanes of Leach Run Parkway to VDOT standards running from State Route 55 (John Marshall Highway) and across the Property and terminating at the northeast corner of the Property as shown on the Master Land Use Plan. If desired by the Town, Applicant shall include a bicycle lane in its design of the portion of

000183 APR 13 20

Leach Run Parkway running across the Property. In addition, the Applicant shall engineer and construct two (2) lanes of Leach Run Parkway to VDOT standards running from State Route 55 (John Marshall Highway) and across the Property and terminating at the northeast corner of the Property as shown on the Master Land Use Plan. Applicant's obligation is to design, grade, and provide drainage improvements for four (4) lanes of Leach Run Parkway and to engineer and construct two (2) such lanes as set forth herein shall be referred to collectively as the "Leach Run Improvements."

3.1.3 Terms & Conditions to Leach Run Improvements.

3.1.3.1 On or before two (2) years from approval of the rezoning, the Town shall have acquired all right-of-way sufficient to permit construction of the Leach Run Improvements from Route 55 (John Marshall Highway) to the northern boundary of the Property as shown on the Master Land Use Plan.

3.1.3.2 Within two (2) years from approval of the rezoning application for Swan Estates, the Town, on its own application and at its sole expense, shall have obtained all special use permits required pursuant to the Front Royal Town Code necessary to permit construction of two (2) lanes of the Leach Run Improvements.

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3.1.3.3 Within two (2) years from approval of the rezoning application for Swan Estates, the Town and the Applicant have entered into a mutually satisfactory memorandum of understanding which shall, among other things, include provisions delineating the parties' responsibilities with respect to construction of the Leach Run Improvements.

3.1.3.4 Notwithstanding anything in these Proffers or Chapter 175 of the Front Royal Town Code to the contrary, the Applicant shall not be required to submit a Final Development Plan pursuant to Section 175-37.18 of the Front Royal Town Code until after (i) the provisions of Proffer 3.1.3.1 through Proffer 3.1.3.3 have been satisfied or waived or (ii) the date after that the Town, Warren County, or other state or local agency have given written notice of their election to design and construct the Leach Run Improvements pursuant to Proffer 3.1.3.6 below .

3.1.3.5 Failure by the Town to comply with the terms of Proffer 3.1.3.1 through Proffer 3.1.3.3 above shall relieve Applicant of its obligations to make any of the Leach Run Improvements and shall have no impact on the maximum number of units allowed herein. Provided, however, this Proffer 3.1.3.5 shall not be interpreted to

000185 APR 13 2

have any impact on Applicant's obligation to make cash proffers pursuant to the terms and conditions of Article VII herein.

3.1.3.6 In the event that the Town, the County of Warren, Virginia, or other state or local agency (e.g., the Industrial Development Authority of the Town of Front Royal and Warren County, Virginia (the "EDA")) give written notice to the Applicant that ~~it~~ the Town, the County of Warren, Virginia, or other state or local agency will be responsible for the design and/or construction of the Leach Run Improvements, the Applicant shall no longer be responsible for the design and/or construction of the Leach Run Improvements as of the date of such written notice. However, the Applicant shall remain responsible for the payment of the Cash Proffers set forth in Section VII of these Proffers, with the Town Proffers to be used to defray the construction and design costs of the Leach Run Parkway Improvements. The decision by the Town, Warren County or other state or local agency to assume the responsibility of designing and/or constructing the Leach Run Parkway Improvements shall remove the limitation on Applicant's building permits as set forth in Proffer 3.1.2.1.

3.1.3.6.7 In the event that the Applicant and the Council mutual agree to change the deadlines set forth in Proffer 3.1.3.1 through

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Proffer 3.1.3.3 above, such agreement shall be memorialized in a writing signed by the Applicant and the Mayor without the necessity of amending this Proffer Statement.

3.2. Off-Site Swan Estates Drive to Existing Westminster Drive.

The Applicant proffers to engineer, design and construct an extension of Swan Estates Drive to connect to existing Westminster Drive to the west of the subject property (Tax Map 20-A21-2-1) across property currently owned by the Warren County School Board (Tax Map 20-A14-2-1) (the "Westminster Connector") conditioned upon an agreement between the Town and School Board as to the final location and legal status of the property across which the Westminster Connector will be built. The Applicant proffers to make its best efforts to have the School board dedicate the Westminster Connector easement to the Town in fee simple. In the interest of public safety and general welfare, the Westminster Connector will provide an alternate access to the public schools located on Westminster Drive. In the event that (i) the School Board does not dedicate the Westminster Connector to the Town in fee simple and (ii) responsibility for the Leach Run Improvements has not been assumed by the Town, Warren County, or any other state or local agency pursuant to Proffer 3.1.3.5, the Applicant agrees to construct the Leach Run Improvements first, subject to the terms and conditions set forth in Proffer 3.1.3.

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3.3 Construction Entrance.

Applicant shall construct a temporary construction entrance road from Virginia State Route 55 to the Property within the Leach Run Parkway alignment shown in the 1991 Plan and Profile (the "Construction Entrance"). The purpose of the Construction Entrance shall be to permit access to the Property for construction and development. No construction traffic shall access the Property via Westminster Drive. Provided, however, notwithstanding anything in these Proffers to the contrary, Applicant's obligations in this Proffer 3.3 are conditioned upon the Town having right of way from Route 55 to the southern boundary of the Property sufficient to allow ingress and egress for construction vehicles between the Property and Route 55.

3.4 Interparcel Connection.

Subject to the terms and conditions set forth in Proffer 3.1.3 above, no interparcel connection to Happy Creek Knolls subdivision shall be constructed until the completion of the connection to State Route 55.

IV. Residential

4.1. Residential Density

4.1.1 The maximum number of dwelling units to be constructed on the Property shall not exceed four hundred and fifty (450) dwelling units.

4.1.2. In general conformance with the Master Plan the single-family detached land bays shall contain between thirty seven (37) and fifty four (54) dwelling units; the single-family attached land bays

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shall contain between one hundred (100) and one hundred twelve (112) dwelling units; and the multi-family land bays shall contain between two hundred fifty two (252) and three hundred twenty six (326) dwelling units. The Applicant reserves the right to adjust the above mix of housing unit types but in no case shall the total number of units exceed four hundred fifty (450).

4.2. Phasing

The Applicant hereby proffers that residential development shall be phased such that building permits shall not be issued for more than fifty (50) dwelling units every twelve (12) months. For the purposes of this provision, the first twelve-month period shall be considered the first full twelve (12) months following the beginning of construction on the Swan Estates project. All units not developed within the specified twelve-month period shall be carried forward to the next twelve-month period.

V. Community Design

5.1. Design

The Applicant agrees to provide an overall continuity of design within the community by means of selecting standards for the following elements, which will be uniformly specified and applied over the entire project, excluding areas within the public rights-of-way or public property:

1. Custom mailbox design.
2. Standardized common area fencing styles and color.
3. Standardized private residential fencing styles and color.

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4. Community color selections to create neighborhood theme.
5. Uniform site furnishing selection (benches and trash receptacles).
6. Custom designed street signage and stop signage.
7. Landscaping at the entrance monuments along Swan Estates Drive selected to provide for a repetition of the neighborhood flower color scheme and theme trees throughout the community.

5.2. Architectural

- 5.2.1. The Applicant shall develop architectural and design covenants for the overall community. Said covenants will establish an architectural review board for the purpose of review and approval of all architectural elevations, exterior architectural features (including but not limited to fences, railings, walls and decks) for all uses within Swan Estates, as well as any publicly provided structures located on sites dedicated for public use. These covenants are intended to assure a continuity of overall architectural appearance, quality material selection, and a cohesive color palate for all structure within the entire development.
- 5.2.2. The Applicant shall construct all homes in conformance with the Design Guidelines referenced in Section II of these proffers. These homes shall utilize brick, stone, masonry and/or stucco on the front elevation facing the addressing street. Siding may be used if a porch extends across a portion of the front of a house. In

000190-42813²

the event siding is utilized, all siding shall be a minimum of six inches (6") wide and shall not be made from aluminum.

5.3. Multi-Family Dwelling Units. The Applicant hereby proffers that all multi-family dwelling units shall be in a condominium form of ownership consistent with Virginia law.

5.4. Signage

The Applicant shall provide an entrance feature with entry sign on the right and/or left side of Swan Estates Drive. The entrance feature shall be in conformance with Section 175-106 of the Town Zoning Ordinance or applicable successor provision. The sign may be lighted from the front at ground level with a minimal amount of illumination. Landscaping both in front of and behind the signage and wall will be provided. The sign shall have either stone or brick columns and will be compatible with and closely related to the themes and color schemes for the overall community. All signage shall comply with Section 175-106 of the Town Zoning Ordinance or successor provision thereto, except as waived or modified by the Town.

5.5. Lighting

Any exterior lighting of common use recreation areas shall be directed downward and inward to reduce glare on adjacent properties, the public and/or private right-of-way, and upward stray illumination.

5.6. Landscape Adjacent to Adjoining Property

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5.6.1. Happy Creek Knolls. The Applicant shall provide a landscape area

within the fifty-five foot (55') perimeter buffer and along the common boundary with the Happy Creek Knolls subdivision either through tree preservation and/or installed landscaping. This landscape area will be owned and maintained by the property owners association and will not be part of any private lot. If the Applicant elects to not provide tree preservation in connection with this landscape area, the landscape area will be planted at a rate of one (1) tree per forty (40) linear feet with a minimum of twenty-five percent (25%) deciduous trees within said area.

5.6.2. Williamsburg Estates. The Applicant shall provide a landscape area on the south side of Swan Estates Boulevard and along the common boundary with the Williamsburg Estates subdivision Section 3, Block K, Lots 3-6 either through tree preservation and/or installed landscaping. The installed landscaping will include a double row of evergreen trees adjacent to Swan Estates Boulevard. This landscape area will be owned and maintained by the home owners association and will not be part of any private lot.

5.6.3 Additional Commercial Buffer. In addition to the 55' vegetative buffer surrounding the Commercial portion of the project (as reflected in the Master Land Use Plan), the Applicant hereby proffers an additional 50' vegetative buffer along the property line of the subject property where the Commercial portion

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of the project lies adjacent to Green Hills Subdivision (the "Additional Commercial Buffer"); provided, however, that the Applicant shall be under no duty to maintain or add new plantings to the Additional Commercial Buffer.

5.7. Recreational Amenities

5.7.1 Neighborhood Park. Before the seventy sixth (76th) building permit is issued, the Applicant shall design and submit a site plan for a neighborhood park of 3.5 acres in size, more or less, to applicable government agencies for review (the "Neighborhood Park"). Once the site plan is approved, the Applicant shall complete the construction of the Neighborhood Park in accordance with the above-mentioned approved site plan and dedicate the land and improvements for the Neighborhood Park to Warren County. The location of the Neighborhood Park and its associated amenities shall be located in the general area shown on the Master Plan. The Neighborhood Park shall be designed in accordance with the document titled " Comprehensive Parks and Recreation Facilities Master Plan; Warren County Virginia Parks and Recreation" dated March 2007 and the description of both Mini and Neighborhood Parks on page 36 of that plan. The park will include a field area that will allow multi-purpose sports for children of all ages; a playground for younger children ranging from toddler to 12 years; a picnic area that will include picnic tables and possibly a walking trail. However, if Warren County makes it known that different amenities are desired, they will be substituted as

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needed in place of the amenities offered above. In the event that Warren County accepts the dedication of the Neighborhood Park, the Applicant shall receive a credit against the Warren County Proffers for the value of the dedicated land as set forth in Proffer 7.5.1 below. Alternatively, in the event that the County declines to accept the aforesaid dedication, the Neighborhood Park shall be dedicated to an HOA created pursuant to Section VI below, and the Applicant shall not receive any credits against the Warren County Proffers.

5.7.2 Passive Recreation Area. Additionally, the Applicant shall provide passive recreation on the Property consisting of a bird habitat preservation area, to be located in the general area shown on the Master Plan. Active development of and use in the bird habitat area will be limited to areas outside of any wetlands or other resource protection areas. Only those activities that are allowed by appropriate regulatory agencies without additional permitting will be allowed inside such areas. No applications for additional use in these areas will be made.

5.8 Schools Sidewalk

The Applicant hereby proffers to construct, on the west side of Westminster Drive, a concrete sidewalk six feet (6') wide beginning approximately at the northern entrance to the Warren County High School and ending approximately at the southern most entrance to the Hilda J. Barbour Elementary School (the "Schools Sidewalk"). The Applicant will construct this portion of the Schools Sidewalk to Town standards after the final approval of the subject rezoning and after the issuance of all applicable permits

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necessary for such construction. This obligation is conditional upon the granting of any necessary easements or dedications by the School Board to allow such construction; the Applicant shall then begin construction within sixty (60) days of written notification by the Town of Front Royal requesting such construction. The exact location of the sidewalk is to be determined by the Town of Front Royal, with the approval and agreement of the Applicant and the School Board.

5.9 Commercial Entrance Aesthetic. To the extent possible and commercially reasonable, the aesthetic elements of the entrance corridor for the commercial portion of the project shall be generally consistent with the visual elements of the entrance corridor of the residential portions of the project. Further, the aesthetic of the residential and commercial entrance corridors for the project shall, to the extent possible and commercially reasonable, be generally consistent with the aesthetic of Leach Run Parkway.

VI. Creation of a Homeowner's Association

6.1. A homeowners association ("HOA") shall be created for the residential portions of the Property and shall be made responsible for the maintenance and repair of all common areas, together with such other responsibilities, duties and powers as are customary for such associations or as may be required for such HOA herein.

6.2. In addition to such other responsibilities and duties as may be assigned or as may be set forth herein, the HOA shall have title to and responsibility for all common open space areas not otherwise dedicated to public use and common buffer areas located

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outside of residential lots, to include, but not limited to, the entry of feature sign proffered herein.

6.3. The Applicant shall provide to the HOA, at the time of completion of the development, temporary funding for the purpose of maintaining open space areas; the HOA shall assume financial responsibility for its responsibilities at the time it is financially solvent and the Applicant shall have no further obligation to provide supplemental funding to the HOA.

VII. **Cash Proffers.**

7.1 **Town Proffers.**

7.1.1 **First 335 Dwelling Units.** In the event this rezoning is approved, for the first three hundred and thirty five (335) dwelling units, the Applicant will pay to the Town of Front Royal a per unit contribution of \$18,000 for each single-family residential detached dwelling unit (SFD) ; \$11,000.00 for each single family residential attached dwelling unit (SFA); and \$9,000.00 for each multi-family dwelling units (MDU) which contributions shall be used by the Town solely for the planning, design, engineering, right of way acquisition and/or construction of Leach Run Parkway.

7.1.2 **Remaining 115 Dwelling Units.** In the event this rezoning is approved, for the remaining one hundred fifteen (115) dwelling units, the Applicant will pay to the Town of Front Royal a per unit contribution of \$9,000.00 for each single family detached residential unit (SFD);

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\$5,500.00 for each single family residential attached dwelling unit (SFA);
and \$4,500.00 for each multi-family dwelling unit (MDU), which
contributions shall be used by the Town solely for the planning, design,
engineering, right of way acquisition and/or construction of Leach Run
Parkway.

7.1.3 Time of payment of Town Proffers. The Applicant shall pay the
applicable amount of Town Proffers at the time that the Applicant receives
an occupancy permit for a residential dwelling unit (whether attached,
detached, or multi-family in nature).

7.2 Credits Against Town Proffers. The Applicant shall receive a dollar-
for-dollar credit against the aforesaid Town Proffers for the following costs actually
incurred by the Applicant:

7.2.1 The fair market value, as mutually determined between the
applicant and the Town, of the land being offered as part of the Leach Run
Land Dedication, shall have a maximum value of One Hundred Thousand
and 0/100 Dollars (\$100,000.00) per acre;

7.2.2 The engineering, design and construction costs associated with
constructing the Leach Run Improvements as provided for in Proffers
3.1.2 & 3.1.3; and

7.2.3 The engineering, design and construction costs associated with
constructing the Construction Entrance as provided for in Proffer 3.4.

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7.3 Accounting of Credits to Town Proffers. An accounting of the credits accrued by the Applicant shall be undertaken by the Town, in cooperation with the Applicant, and the credits available for the future phases of the development shall be determined.

7.4 Escrow of Town Proffers. In the event the Town elects to have the Applicant construct the Leach Run Improvements as provided in Proffers 3.1.2 & 3.1.3 above, the per unit contribution set out in Proffer 7.1 shall be placed in third party escrow (such third party escrow agent and the escrow agreement to be mutually agreed upon by the Town and the Applicant), and shall be paid over to the Applicant to reimburse it for the actual audited cost of the engineering, design, and construction of Leach Run Parkway. The Town and the Applicant shall enter into a mutually satisfactory agreement that sets out responsibilities of the parties; provided that until such agreement is entered into, the Applicant shall not be obligated to make the Leach Run Improvements, and provided further that the Applicant shall not unreasonably condition or withhold approval of such agreement. Upon the completion of the Leach Run Improvements, and if the actual audited cost of the engineering, design, and construction of the Leach Run Improvements do not exceed the escrowed contribution proffers and projected future proffer payments, the remaining per-unit contributions, if any, shall be made directly to the Town of Front Royal for use in those projects related to (i) trails and/or bike paths as outlined in the Town of Front Royal Capital Improvement Plan and/or (ii) signalization improvements at the intersection of State Route 55 and Leach Run Parkway. Nothing

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7.5.1. For all 450 Dwelling Units. In the event this rezoning application is approved, the Applicant will pay to Warren County, Virginia a per unit sum of \$5,500.00 prior to and as a condition of the issuance of an occupancy permit for each dwelling unit constructed on the Property (SFD, SFA, or MDU).

7.5.2 For the final 115 Dwelling Units. In addition, in the event this rezoning application is approved, for the final 115 dwelling units, the Applicant will pay to Warren County a per unit contribution of \$9,000.00 for each SFD; \$5,500.00 for each SFA; and \$4,500.00 for each MDU.

7.5.3 Proffer Designation. All County Proffers provided for herein shall be designated for Warren County Public Schools.

7.5.4 Credits Against County Proffers. Notwithstanding the foregoing Proffer 7.5, the audited costs of the engineering, design, and construction of the Neighborhood Park as provided in these Proffers shall be credited against the aforesaid Warren County Proffers, provided further that the Applicant shall be entitled to a credit for the dedication of the land for the Neighborhood Park, with such land dedication credit being a maximum of One Hundred Thousand and 0/100 Dollars (\$100,000.00) per acre.

7.5.5 Time of payment of County Proffers. The Applicant shall pay the applicable amount of County Proffers at the time that the Applicant applies for an occupancy permit for a residential dwelling unit (whether attached, detached, or multi-family in nature).

7.6 Assumption of Leach Run Parkway Improvements by Locality. In the event that the Town, Warren County, and/or any state or local agency (e.g., the EDA)

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occupancy permit for a residential dwelling unit (whether attached, detached, or multi-family in nature).

7.6 Assumption of Leach Run Parkway Improvements by Locality. In the event that the Town, Warren County, and/or any state or local agency (e.g., the EDA) notify the Applicant in writing that it will assume responsibility for the design and construction of the Leach Run Parkway Improvements as provided for in Proffer 3.1.3.5, the Applicant shall remain responsible for the payment of the Town Proffers and the County Proffers. Moreover, the Town Proffers shall be used for the purpose of defraying the costs and expenses associated with the design and construction of the Leach Run Parkway Improvements.

VIII. Comprehensive Plan Conformity

Approval of the subject zoning map amendment and its constituent parts, including Proffers, Master Plan, and Design Guidelines, by the Town Council of Front Royal, Warren County, Virginia, constitutes a finding that the subject zoning map amendment is found to be in substantial conformance with the Town of Front Royal adopted Comprehensive Plan.

IX. Miscellaneous Provisions

9.1 Monetary contributions as set forth in this Proffer Statement that are paid to the Town of Front Royal after 24 months from the date of rezoning approval shall be adjusted in accordance with the Urban Consumer Price Index ("CPI-U"), as published by the United States Department of Labor. The adjustment shall be calculated from the CPI-U published most nearly to and following January 1st from that date 24

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months after rezoning approval and the date the contributions are paid, subject to a cap of 3% per year, non-compounded.

X. **Signature**

The conditions proffered above shall be binding upon the heirs, executors, administrators, assigns, and successors in the interest of the Applicant and owner. In the event the front Royal Town Council grants this rezoning and accepts the conditions, the proffered conditions shall apply to the land rezoned in addition to other requirements set forth in the Front Royal Code.

This Proffer Statement supersedes any proffer statements previously submitted in connection with this application and this Property.

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SIGNATURE PAGE TO FOLLOW.

WARREN COUNTY, VIRGINIA
LAND RECORDS

000201 APR 13 2012

APPLICANT:

HEPTAD, LLC

By:

Ronald Llewellyn

Ronald Llewellyn, Manager

STATE OF VIRGINIA

CITY/COUNTY OF

Warren

TO-WIT:

The foregoing instrument was acknowledged before me this 1st day of July 2012, by Ronald Llewellyn, in his capacity as Manager of HEPTAD, LLC.

My commission expires: 11-30-15

Notary Registration Number: 173689

Debra B. Brown
NOTARY PUBLIC



Debra B. Brown
Commonwealth of Virginia
Notary Public
Commission No. : 173689
My Commission Expires 11-30-15

INSTRUMENT #120002053
RECORDED IN THE CLERK'S OFFICE OF
WARREN COUNTY ON
APRIL 13, 2012 AT 04:23PM

JENNIFER R. SIMS, CLERK
RECORDED BY: AKU

Aku

MEMORANDUM OF UNDERSTANDING No. 1
LEACH RUN PARKWAY ACCESS

THIS MEMORANDUM OF UNDERSTANDING No. 1 FOR LEACH RUN PARKWAY ACCESS (hereinafter "this MOU"), dated this 30th day of September, 2014, by and between the TOWN OF FRONT ROYAL, VIRGINIA, a Virginia municipal corporation (hereinafter "the Town"), and HEPTAD, LLC, a Virginia limited liability company (hereinafter "the Applicant").

WITNESSETH:

WHEREAS, the Applicant executed an Amended Proffer Statement on January 31, 2012 (hereinafter the "Proffer Statement"); and

WHEREAS, the Proffer Statement contained certain terms and conditions if the Town approved Rezoning Application #05-07-56 for the rezoning of approximately 98.25 acres from Suburban Residential (R-S) to Planned Neighborhood Development (PND) District; and

WHEREAS, the Town approved the Proffer Statement as part of the Applicant's rezoning application for the Property on April 9, 2012; and,

WHEREAS, the Proffer Statement proffers cite a Master Land Use Plan of development including a Trip Distribution and Road Classification Plan (copy attached hereto as "Exhibit A") showing the approximate location of an access point from the east and from the west from the lands of the Applicant to the proposed Leach Run Parkway, and provide for the dedication by the Applicant to the Town of right-of-way for Leach Run Parkway; and,

WHEREAS, Proffer 3.1.3.1 of the Proffer Statement states that within two (2) years from approval of the rezoning, the Town shall have acquired all right-of-way sufficient to permit construction of the Leach Run Improvements from Route 55 to the Northern Boundary of the Property; and,

WHEREAS, Proffer 3.1.3.2 of the Proffer Statement states that within two (2) years from approval of the rezoning, the Town shall have obtained all special use permits required pursuant to the Front Royal Town Code necessary to permit construction of two (2) lanes of the Leach Run Improvements; and,

WHEREAS, Proffer 3.1.3.3 of the Proffer Statement states that within two (2) years from approval of the rezoning, the Town and the Applicant shall have entered into a Memorandum of Understanding which shall include provisions detailing the parties' responsibilities with respect to construction of the Leach Run Improvements; and.

WHEREAS, on or about July 28, 2014, the Town and the Applicant extended the proffer deadlines for Proffers 3.1.3.1 through 3.1.3.3 for one hundred and twenty (120) days from August 5, 2014; and,

WHEREAS, the parties acknowledge that the Industrial Development Authority of the Town of Front Royal, Virginia and the County of Warren, Virginia (hereinafter "the EDA"), and not the Town, is acquiring the necessary rights-of-way for, and constructing, the Leach Run Improvements, to be conveyed by the EDA, upon completion in accordance with approved design and construction standards, to the Town; and,

WHEREAS, on September 23, 2014, the Town of Front Royal Planning Commission approved the EDA's Site Development Plan #DEV14-05-215, for the design plans of Leach Run Parkway, said site development plan including design accommodations for access, including a median crossing and turn lanes at the location of the planned access point adjacent to the property owned by the Applicant, as shown on page Sheet 37 of the Grading Plan and as also shown on a plat and survey prepared by John H. Genthner, L.S. entitled, "Plat Showing Dedication of Right of Way and Easements On the Property of Heptad LLC, Instr. #090004959" dated July 25, 2014 (copies attached hereto as "Exhibit B"), substantially in conformance with the Applicant's Master Land Use Plan; and,

WHEREAS, the Applicant seeks assurances from the Town that the Applicant, its successors or assigns, shall have the right to construct access entrances from the east and west sides of Leach Run Parkway in the location as shown in Exhibits A and B.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Town and the Applicant agree as follows:

1. The above recitals are incorporated herein and made part hereof.
2. Conditioned upon the acquisition of the necessary rights-of-way for, and upon the construction of, the Leach Run Parkway/Leach Run Improvements by the EDA, all of which shall be acquired and constructed in conformity with fully-approved design and construction standards, and further conditioned upon the conveyance of all such rights-of-way and improvements by the EDA to the Town and the Town's approval of Final Development Plan and final subdivision plat submitted by the Applicant, or its successors and assigns, showing the same access location, the Town will allow the Applicant to construct access entrances from the east and west sides of Leach Run Parkway in the location as shown in Exhibits A and B.
3. The parties may enter into such additional MOUs, pursuant to the deadline provided in Proffer 3.1.3.3, as the parties may deem necessary to further detail the parties' responsibilities with respect to construction of the Leach Run Improvements or other matters as mutually agreeable to the parties as contemplated by the Rezoning Proffers.

4. In the event that the parties mutually agree to extend the deadlines for the entry of any subsequent memoranda of understanding, the Town Council of the Town hereby grants to the Mayor of the Town the authority to change such deadlines on behalf of the Town Council.

IN WITNESS WHEREOF, the parties hereafter have made and executed this Memorandum of Understanding for Leach Run Parkway Access effective the day and year above first written.

(SEAL)

Mayor of the Town of Front Royal

Attest: JSB

By: TW

Print Name: Steven Burke

Print Name: Timothy W Darr

Title: Town Manager

Title: Mayor of Front Royal

Date:

(SEAL)

Heptad, LLC

Attest: Robert S. Llewellyn

By: Ronald Llewellyn

Print Name: Ronald Llewellyn

Ronald Llewellyn, managing Member

Title: ATM

Title: Managing Member

Date: Sept. 29, 2014

Approved as to form:

JSB for

George M. Sonnett, Jr.
Assistant Town Attorney



Swan Estates By Heptad LLC

March 4, 2011
Master Land Use Plan
A Planned Neighborhood Development



Vicinity Map

Project Information

General Information

Tax Map* 20-A21-2-1 and 20-A20-2-11, instrument 030007026
Total Area: 98 +/- Acres
Current Zoning: (R-S) Suburban Residential

Open Space Information:

Total Area in Open Space: 43.74 Acres (44.6%)
Open Space comprised of Conservation Land: 34.84 Acres
Open Space comprised of Recreation Land: 8.9 Acres

Developable Area Information:

Total developable area: 54.26 Acres (55.4%)
Area in Single Family Dwelling Category: 11.87 Acres
Area in Townhouse Category: 12.59 Acres
Area in Multi-Family Category: 20.6 Acres
Area in Commercial Category: 9.2 Acres
Proposed Single Family Units: 37-54 +/- (minimum size lots of 3,000 sq. ft)
Proposed Townhouse Units: 112 +/-
Proposed Multi Family Units: 252-336 +/-

Summary

Total Number of Units: 450*
Average Density: 4.09-5.12 units per acre +/-
Percentage of Land in open Space : 44.6%

* maximum allowable amount and will be result of any combination of unit types as determined by final design

Sheet Index

1. Cover Sheet
2. General Location Plan
3. Boundary Survey
4. Slope Analysis
5. Topography Map
6. Trip Distribution and Road Classification
7. Floodplain and Wetland Delineation
8. Leach Run Parkway Layout
9. Function Use Plan-Land Bay Layout

Swan Estates
Master Land Use Plan

Happy Creek Magisterial District
Front Royal, Virginia



No.	Date	Revisions
-----	------	-----------

Design Firm

J. Duggan & Associates

Landscape Architecture

151 Woody Hill Lane, Winchester, VA 22602
540/874-2475 www.jdugganandassociates.com

Consultant

Project Title

Master Land Use Plan

Drawing Title

Cover Sheet

Project Manager
J Duggan RLA

Drawn By
TM:JD

Scale
as shown

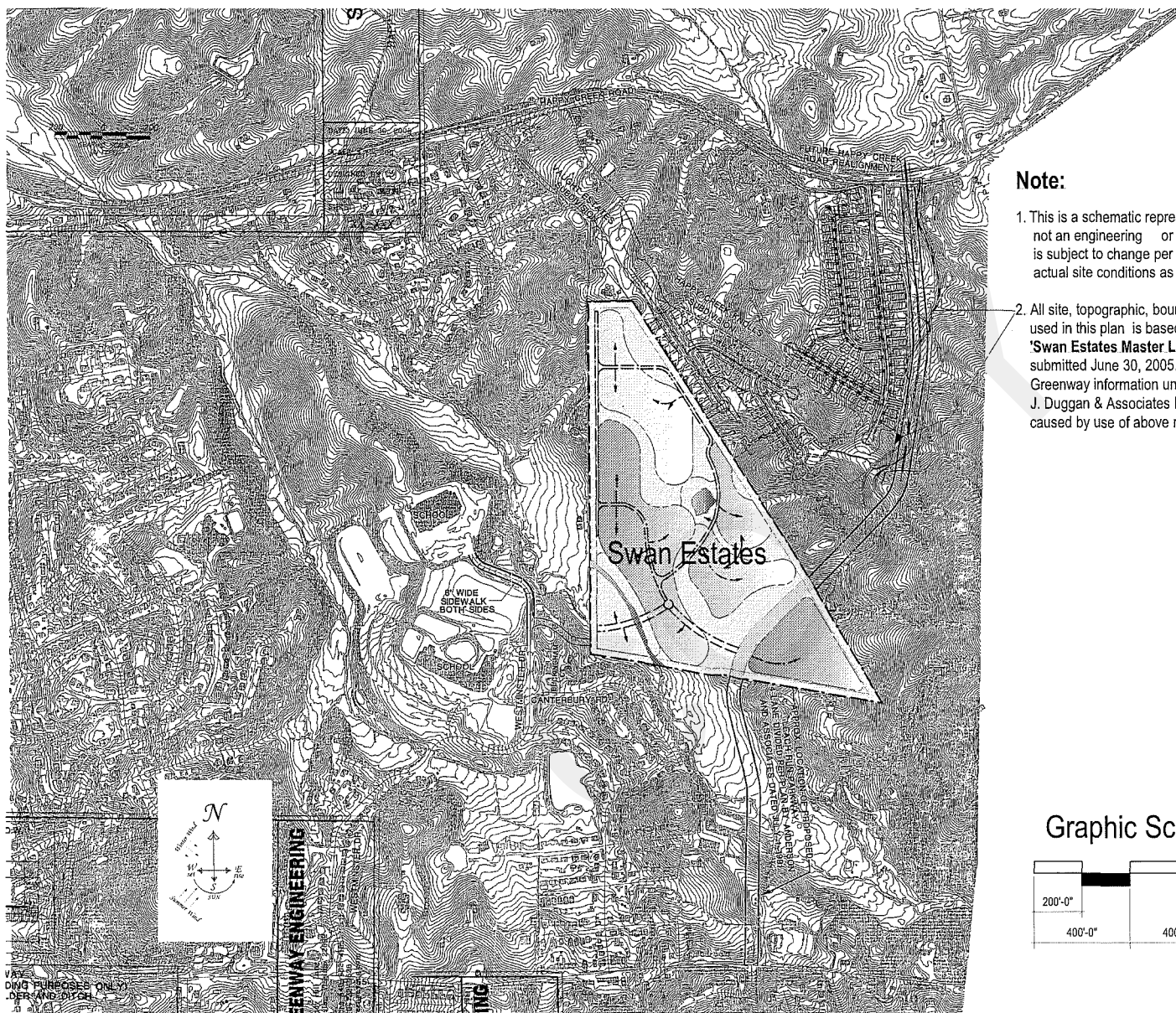
Reviewed By
JD

Drawing No.

Date
3-4-2011

CAD File

1 of 9
Total Sheets



Note:

1. This is a schematic representation of proposed land uses, not an engineering or construction document. Plan as shown is subject to change per final design, engineering constraints and actual site conditions as yet to be determined.
2. All site, topographic, boundary and other relevant site information used in this plan is based on information contained in the plan titled 'Swan Estates Master Land Use Plan' by Greenway Engineering submitted June 30, 2005. All recent traffic information done provided by Greenway information under separate agreement with Heptad LLC. J. Duggan & Associates P.C. is not responsible for any errors/omissions caused by use of above referenced information.

Swan Estates Master Land Use Plan

Happy Creek Magisterial District
Front Royal, Virginia



No.	Date	Revisions
-----	------	-----------

Design Firm

J. Duggan & Associates

Landscape Architecture

151 Windy Hill Lane, Winchester, VA 22602
540/974-2475 www.jdugganandassociates.com

Consultant

Project Title
Master Land Use Plan

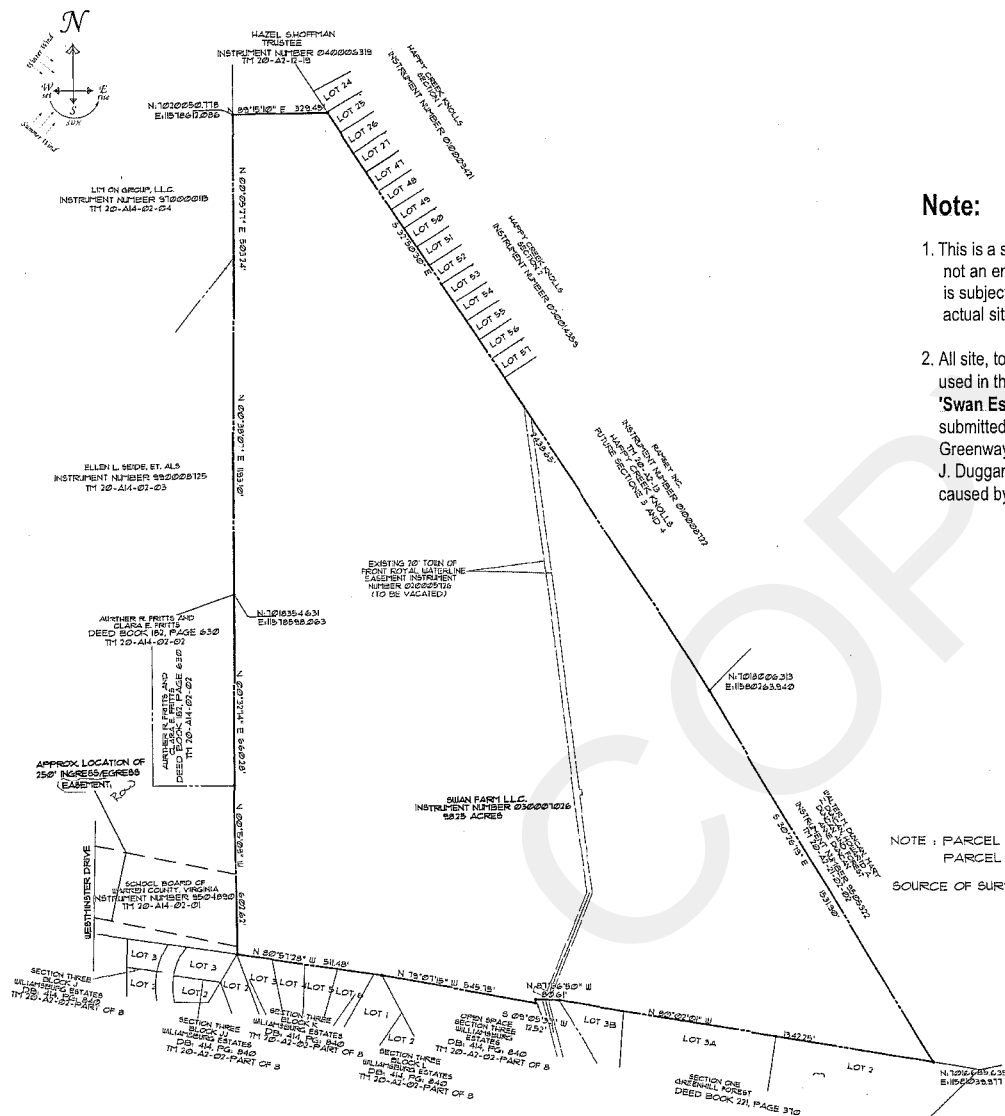
Drawing Title
Generalized Location Plan

Project Manager
J. Duggan RLA

Drawn By	Scale
TMD/JD	as shown

Reviewed By	Drawing No.
JD	

Date	
3-4-2011	
CAD File	2 of 9
	Total Sheets



Note:

1. This is a schematic representation of proposed land uses, not an engineering or construction document. Plan as shown is subject to change per final design, engineering constraints and actual site conditions as yet to be determined.
2. All site, topographic, boundary and other relevant site information used in this plan is based on information contained in the plan titled 'Swan Estates Master Land Use Plan' by Greenway Engineering submitted June 30, 2005. All recent traffic information done provided by Greenway information under separate agreement with Heptad LLC. J. Duggan & Associates P.C. is not responsible for any errors/omissions caused by use of above referenced information.

Swan Estates

Master Land Use Plan

Happy Creek Magisterial District
Front Royal, Virginia



No.	Date	Revisions
-----	------	-----------

Design Firm



151 Windy Hill Lane, Winchester, VA 22602
540/674-2475
www.jdugganandassociates.com

Consultant

Project Title

Master Land Use Plan

Drawing Title

Boundary Survey

Project Manager

J. Duggan RLA

Drawn By

JD

Scale

as shown

Reviewed By

JD

Drawing No.

Date

3-4-2011

CAD File

3 of 9

Total Sheets



Note:

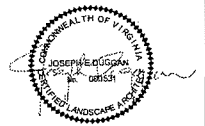
1. This is a schematic representation of proposed land uses, not an engineering or construction document. Plan as shown is subject to change per final design, engineering constraints and actual site conditions as yet to be determined.
2. All site, topographic, boundary and other relevant site information used in this plan is based on information contained in the plan titled 'Swan Estates Master Land Use Plan' by Greenway Engineering submitted June 30, 2005. All recent traffic information done provided by Greenway information under separate agreement with Heptad LLC. J. Duggan & Associates P.C. is not responsible for any errors/omissions caused by use of above referenced information.

LEGEND

- < 15.00 % SLOPES
- 15.00 to 40.00 % SLOPES
- > 40.00 % SLOPES

200 0 200
GRAPHIC SCALE
(IN FEET)

Swan Estates **Master Land Use Plan** Happy Creek Magisterial District Front Royal, Virginia



No.	Date	Revisions
-----	------	-----------

Design Firm

J. Duggan & Associates

Landscape Architecture

151 Windy Hill Lane, Winchester, VA 22602
540/974-2475 www.jdugganandassociates.com

Consultant

Project Title
Master Land Use Plan

Drawing Title
Slope Analysis

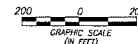
Project Manager
J Duggan RLA

Drawn By	Scale
JD	as shown

Reviewed By	Drawing No.
JD	

Date
3-4-2011

CAD File	4 of 9
Total Sheets	



Happy Creek Magisterial District
Front Royal, Virginia



151 Windy Hill Lane, Winchester, VA 22602
540/974-2475 www.jdugganandassociates.com

Master Land Use Plan

Topography Map

Project Manager
J Duggan RL

Scale as shown

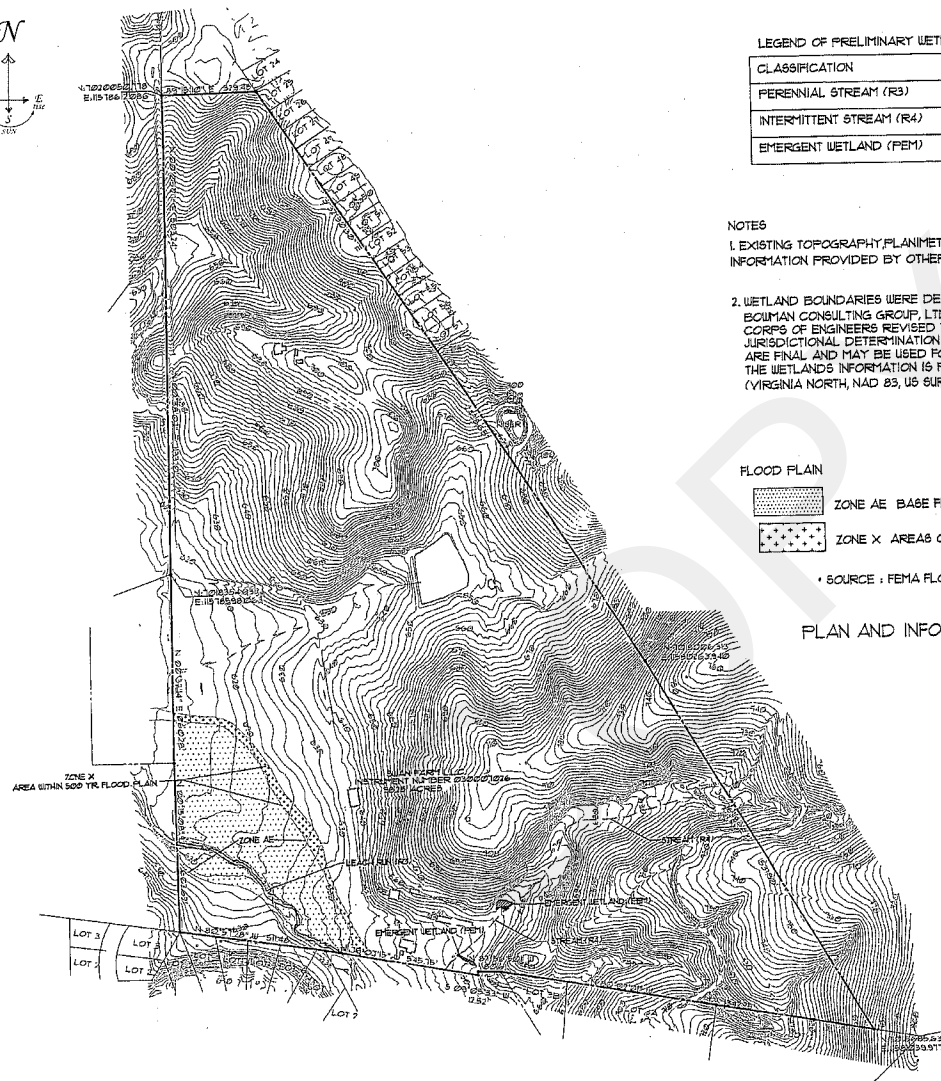
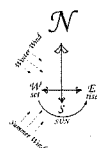
Drawing No.

Date	3-4-2011
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CAD File

5 of 9

Total Sheets



LEGEND OF PRELIMINARY WETLANDS

CLASSIFICATION
PERENNIAL STREAM (R3)
INTERMITTENT STREAM (R4)
EMERGENT WETLAND (PEM)

NOTES

1. EXISTING TOPOGRAPHY, PLANIMETRIC AND BOUNDARY INFORMATION PROVIDED BY OTHERS.

2. WETLAND BOUNDARIES WERE DELINEATED AND GPS SURVEYED BY BOWMAN CONSULTING GROUP, LTD. IN APRIL 2005. THE U.S. ARMY CORPS OF ENGINEERS REVISED THE WETLAND BOUNDARIES DURING A JURISDICTIONAL DETERMINATION DATED JUNE 15, 2005. THESE BOUNDARIES ARE FINAL AND MAY BE USED FOR PLANNING OR ENGINEERING PURPOSES. THE WETLANDS INFORMATION IS PROVIDED AT STATE PLANE COORDINATES (VIRGINIA NORTH, NAD 83, US SURVEY FEET).

FLOOD PLAIN

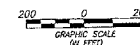
	ZONE AE BASE FLOOD ELEVATION DETERMINED
	ZONE X AREAS OF 500 YEAR FLOOD

* SOURCE : FEMA FLOOD MAP # 510161-0003-B TOWN OF FRONT ROYAL DATED JULY 15, 1988.

PLAN AND INFORMATION SHOWN PER BOWMAN CONSULTING GROUP.

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Swan Estates Master Land Use Plan

Happy Creek Magisterial District
Front Royal, Virginia



No.	Date	Revisions
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Design Firm

J. Duggan & Associates

Landscape Architecture

151 Windy Hill Lane, Winchester, VA 22602
540/734-2475 www.jdugganandassociates.com

Consultant

Project Title

Master Land Use Plan

Drawing Title

Floodplain and Wetland Delineation

Project Manager
J. Duggan RLA

Drawn By
JD

Scale
as shown

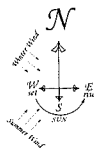
Reviewed By
JD

Drawing No.

Date
3-4-2011

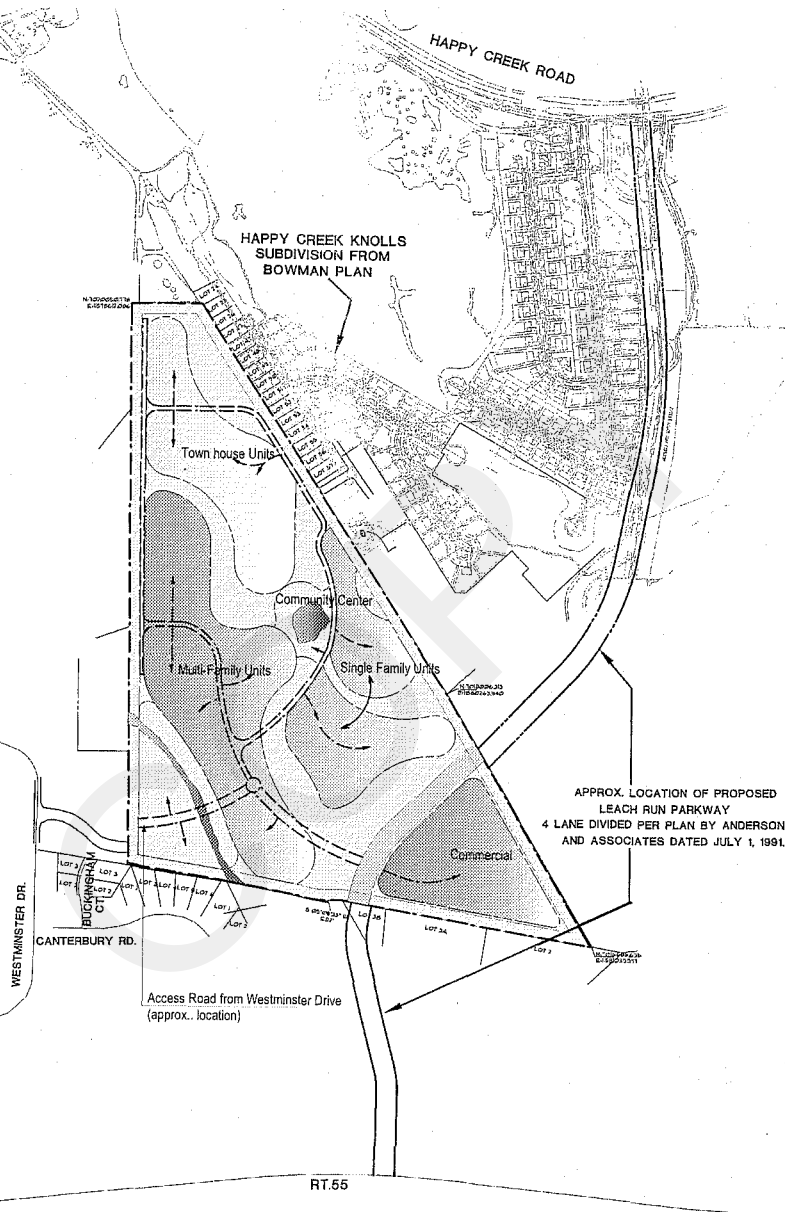
CAD File

7 of 9
Total Sheets



Note:

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Swan Estates Master Land Use Plan Happy Creek Magisterial District Front Royal, Virginia



No.	Date	Revisions
-----	------	-----------

Design Firm



151 Windy Hill Lane, Winchester, VA 22302
540.674.2475
www.jdugganandassociates.com

Consultant

Project Title

Master Land Use Plan

Drawing Title

Leach Run Parkway Layout

Project Manager
J. Duggan RLA

Drawn By
JD

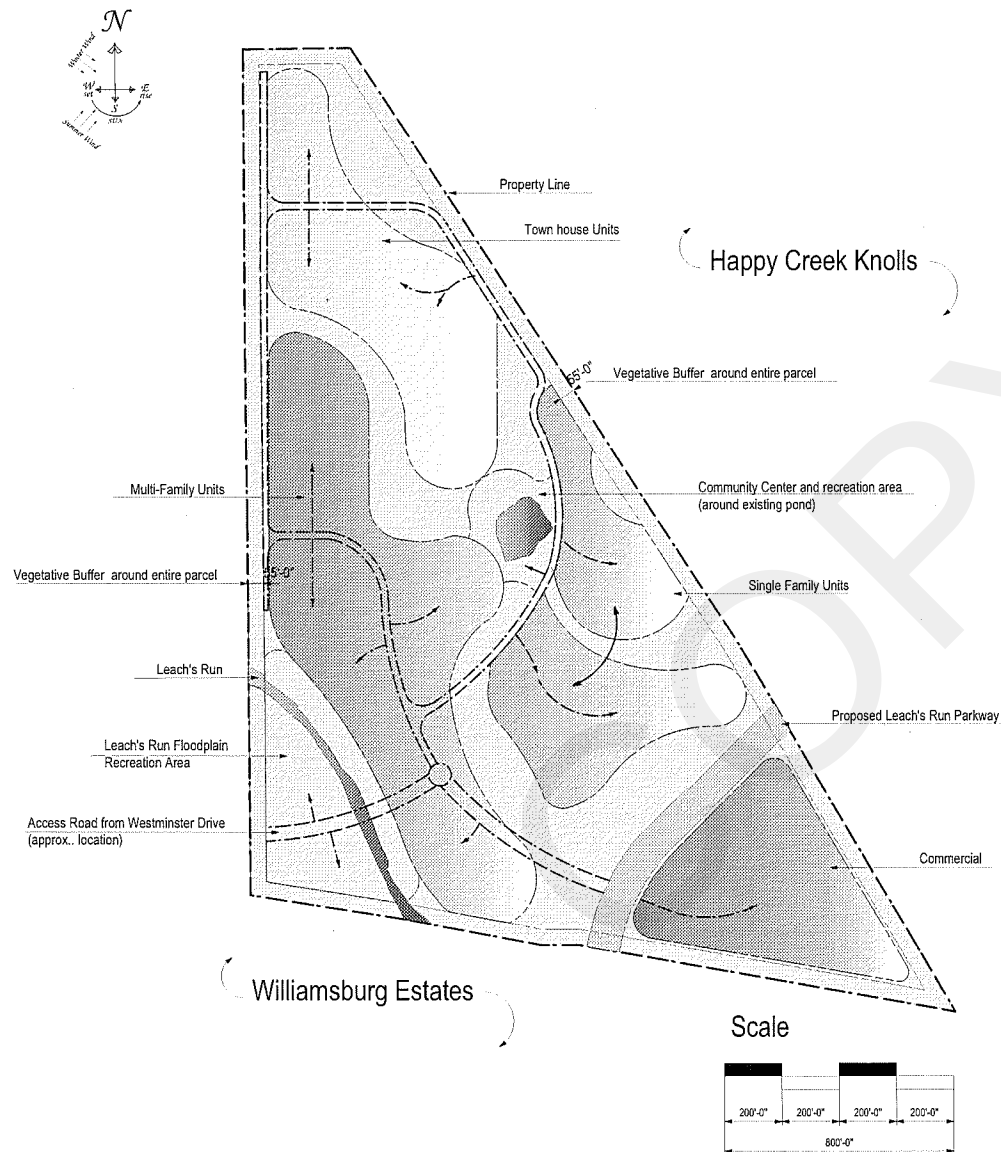
Scale
as shown

Reviewed By
JD

Drawing No.

Date
3-4-2011

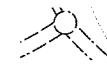
CAD File
8 of 9
Total Sheets



Legend

Open Space	
Residential Use Single-Family	
Residential Use Town Houses	
Residential Use Multi-Family	
Commercial Use	
Open Space-Water	

Circulation-Access-Thru



Circulation- Community



Circulation- Access into User Space



Note:

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Swan Estates

Master Land Use Plan

Happy Creek Magisterial District
Front Royal, Virginia



No.	Date	Revisions
-----	------	-----------

Design Firm



151 Windy Hill Lane, Winchester, VA 22602
540/674-2475 www.jdugganandassociates.com

Consultant

Project Title

Master Land Use Plan

Drawing Title

Functional Use Plan-
Land Bay Layout

Project Manager

J. Duggan RLA

Drawn By

JD

Scale

as shown

Reviewed By

JD

Date

3-4-2011

CAD File

9 of 9
Total Sheets

NOTES:

1. THE PARCEL SHOWN HEREON IS IDENTIFIED AS WARREN COUNTY, VIRGINIA TAX MAP NUMBER 20A21-2-1.
2. ALL LAND RECORDS REFERRED TO HEREIN ARE RECORDED IN WARREN COUNTY, VIRGINIA.
3. THE PURPOSE OF THIS PLAT IS FOR DEDICATION OF RIGHT OF WAY AND STORM DRAINAGE, TEMPORARY CONSTRUCTION EASEMENTS AND IT IS NOT INTENDED TO BE USED FOR ANY OTHER PURPOSE.
4. THIS PLAT WAS PREPARED WITHOUT BENEFIT OF A TITLE REPORT. THE PROPERTY MAY BE SUBJECT TO EASEMENTS NOT SHOWN HEREON.
5. REFERENCE IS HEREBY MADE TO THE CONSTRUCTION PLANS FOR LEACH RUN PARKWAY, CURRENTLY UNDER DEVELOPMENT BY PENNONI ASSOCIATES, INC.
6. THE BASIS OF MERIDIAN IS VA SPCS NAD83 NORTH ZONE (2011 ADJUSTMENT), ESTABLISHED BY A GPS SURVEY BY THIS FIRM DATED AUGUST 13, 2013. THE GROUND COORDINATES REFERENCED HEREON ARE BASED ON APPLICATION OF AN INVERTED COMBINED SCALE FACTOR (PROJECTION SCALE FACTOR X ELEVATION FACTOR):

COMBINED SCALE FACTOR: 0.99993443994
BASE POINT = N 7017738.04
E 11581007.64
7. THE TEMPORARY CONSTRUCTION EASEMENT TO BECOME NULL AND VOID AT SUCH TIME AS LEACH RUN PARKWAY CONSTRUCTION IS COMPLETE AND BONDS HAVE BEEN RELEASED.
8. THE RIGHT WAY CORNERS WILL BE SET FOLLOWING CONSTRUCTION.
9. ACCESS EASEMENT MAY BE RELOCATED TO CONFORM TO ACTUAL TRAVEL WAY AT TIME OF DEVELOPMENT.

NOTARY STATEMENT:

COMMONWEALTH OF VIRGINIA:
COUNTY OF:

I, THE UNDERSIGNED NOTARY PUBLIC, IN AND FOR THE STATE AND COUNTY AFORESAID, WHOSE COMMISSION EXPIRES ON THE DAY OF 20 DO HEREBY CERTIFY THAT WHOSE NAME IS SIGNED TO THE FOREGOING OWNERS DEDICATION, HAS APPEARED BEFORE ME AND PERSONALLY ACKNOWLEDGED THE SAME IN MY JURISDICTION AFORESAID.

GIVEN UNDER MY HAND THIS _____ DAY OF _____, 20

NOTARY PUBLIC

OWNERS CONSENT AND DEDICATION:

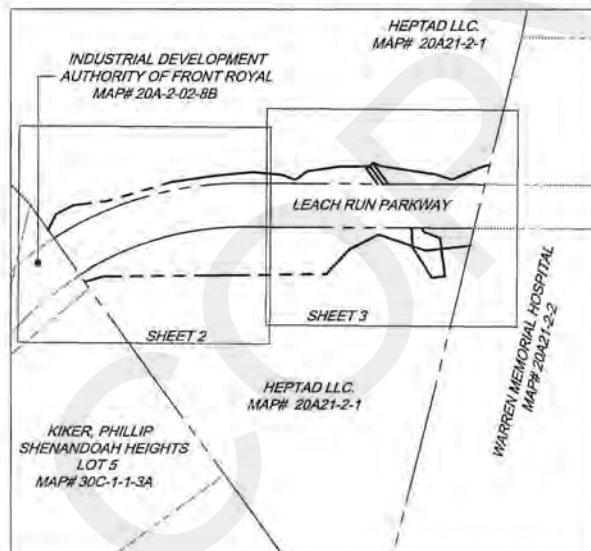
THIS PLAT SHOWING STREET DEDICATION, AND CREATION OF STORM DRAINAGE, TEMPORARY CONSTRUCTION AND ELECTRIC EASEMENTS IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS, PROPRIETORS, AND TRUSTEES, IF ANY.

AGENT, HEPTAD LLC. DATE

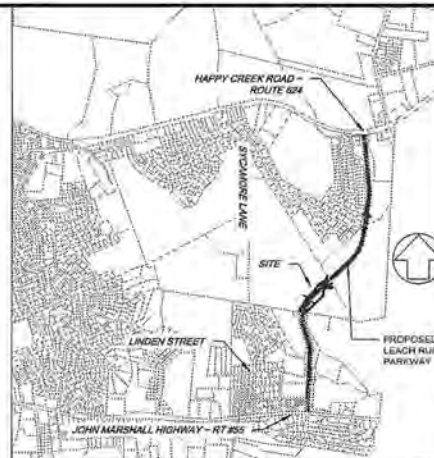
CERTIFICATE OF APPROVAL:

THE PLATTING OR DEDICATION OF THE FOLLOWING DESCRIBED LAND, A PORTION OF WARREN COUNTY, VIRGINIA TAX MAP NUMBER 20A21-2-2, IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS, PROPRIETORS AND TRUSTEES, IF ANY.

AGENT- WARREN COUNTY SUBDIVISION ADMINISTRATOR DATE:



KEY MAP
N.T.S.



VICINITY MAP
1" = 2000'

OWNER:

HEPTAD LLC
195 PARK RIDGE COURT
FRONT ROYAL, VIRGINIA 22630

EXHIBIT

tabbles

B

SURVEYOR'S CERTIFICATE:

I, JOHN H. GENTNER, A DULY LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT THE PROPERTY AND RIGHT-OF-WAY DEDICATION SHOWN HEREIN IS CURRENTLY IN THE NAME OF HEPTAD LLC, AS RECORDED IN INSTRUMENT #090004959, AMONG THE LAND RECORDS OF WARREN COUNTY, VIRGINIA.



Consulting Engineers

Pennonni

PLAT SHOWING
DEDICATION OF RIGHT OF WAY
AND EASEMENTS ON
THE PROPERTY OF
HEPTAD LLC.
INSTR #090004959
FRONT ROYAL, VIRGINIA

ALL DOCUMENTS PREPARED BY PENNONI ASSOCIATES ARE IMPROVEMENTS OR SERVICES IN RESPECT OF THE PROJECT. THEY ARE NOT UNDERTAKEN OR MAINTAINED TO BE SUITABLE FOR THE ROUTE BY OWNER OR OTHERS OR EXTENSION OF THE PROJECT OR ON ANY OTHER PROJECT. ANY ROUTE WITHOUT WRITTEN VERIFICATION OR ADAPTATION BY PENNONI ASSOCIATES FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT OWNERS RISK AND WITHOUT LIABILITY FOR LEGAL EXPOSURE TO PENNONI ASSOCIATES, AND OWNER SHALL INDEMNIFY AND HOLD HARMLESS PENNONI ASSOCIATES FROM ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES ARISING OUT OF OR RESULTING FROM THE PROJECT.

PROJECT NO.
WRRN1302
SHEET
1 of 3

SCALE
N/A
DATE
2014-05-22
DRAWN BY
PFF
APPROVED
JHG

DRAWING NO.
WRRN1302-VR-EASE-HEPTAD

Pennonni Associates Inc.

208 Church Street, SE
Leesburg, VA 20176 - 703.777.3616

HEPTAD LLC.
MAP# 20A21-2-1
INST# 090004959

TEMPORARY CONSTRUCTION
EASEMENT
HEREBY CREATED
(28,635 SQ. FT.)

PROPOSED C/I FULL ACCESS
ENTRANCE LOCATION

N/E TOWN OF FRONT ROYAL
INST# 9506397

MATCHLINE 3

LEACH RUN PARKWAY
102,082 SQ. FT. OR 2.343 AC.
HEREBY DEDICATED
FOR PUBLIC STREET PURPOSES

PROPOSED C/I FULL ACCESS
ENTRANCE LOCATION

1
Δ = 66°24'28"
R = 765.00'
L = 884.46'
T = 499.10'
PC = 120+95.47
PI = 125+37.70
PT = 129+79.93
STA. @ PROP. = 125+41.71

PROP. LEACH RUN
PARKWAY (R.O.W.)

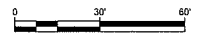
INDUSTRIAL DEVELOPMENT
AUTHORITY OF FRONT ROYAL
MAP# 20A-2-02-88
INST# 050013024

PROP. LEACH RUN
PARKWAY (R.O.W.)

N/E KIKER, PHILLIP
SHENANDOAH HEIGHTS
LOT 5
MAP# 30C-1-1-2A
DB 405 PG 698

HEPTAD LLC.
MAP# 20A21-2-1
INST# 090004959

TEMPORARY CONSTRUCTION
EASEMENT
HEREBY CREATED
(66,083 SQ. FT.)



IRS DENOTES IRON ROD SET

Consulting Engineers



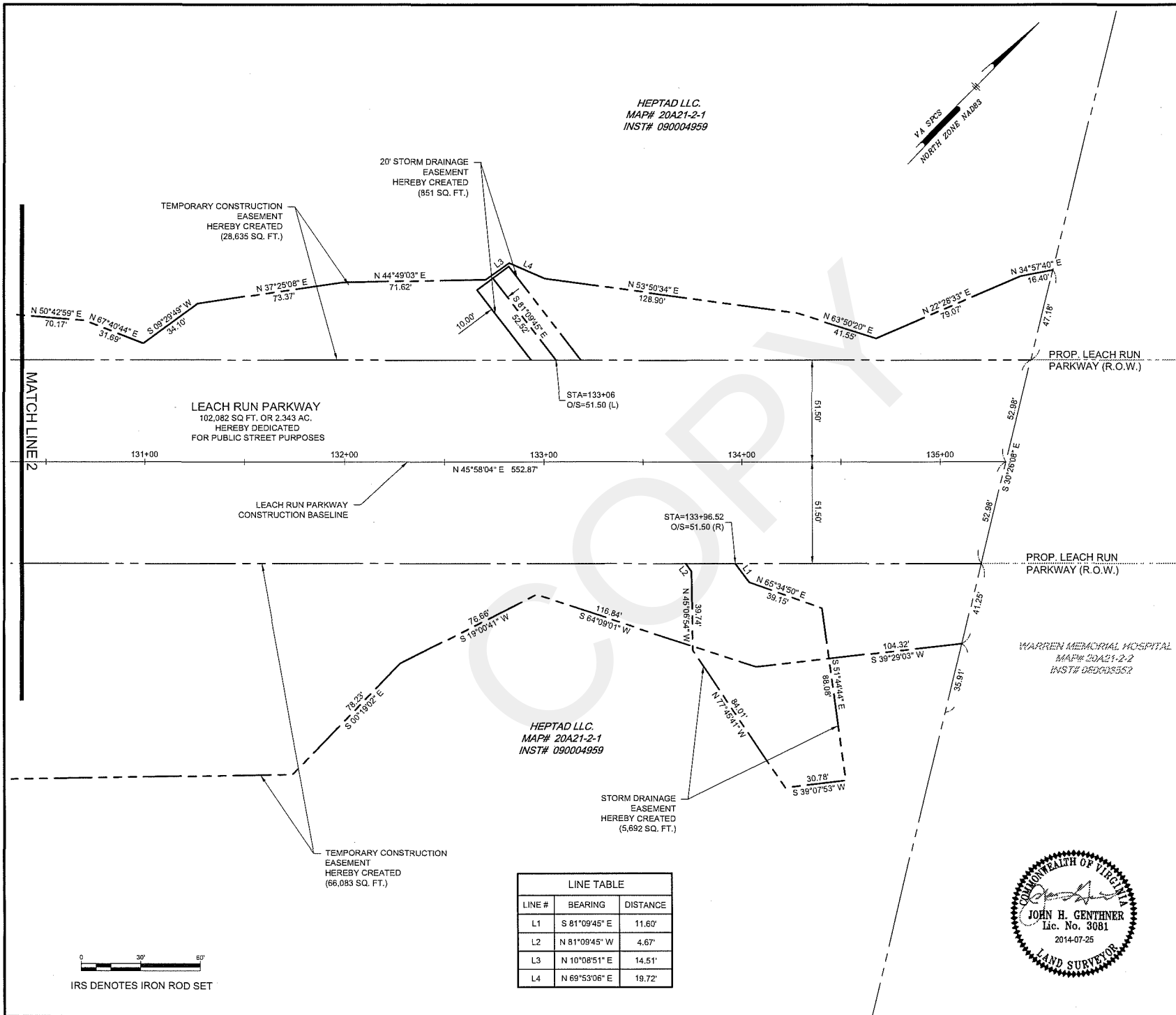
DATE	NO.	REVISIONS	BY
2014-07-25	3	ADDED CENTER-LINE OF FULL ACCESS ENTRANCES	PFF
2014-07-16	2	REMOVED ELECTRIC AND ACCESS ESMIT	PFF
2014-08-13	1	ADDED ACCESS EASEMENT	PFF

PLAT SHOWING
DEDICATION OF RIGHT OF WAY
AND EASEMENTS ON
THE PROPERTY OF
HEPTAD LLC.
INST# 090004959
FRONT ROYAL, VIRGINIA

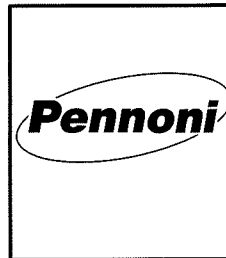
ALL DOCUMENTS PREPARED BY PENNONI ASSOCIATES ARE INSTRUMENTS OF SERVICE IN RESPECT OF THE PROJECT. THEY ARE NOT INTENDED OR REPRESENTED TO BE AVAILABLE FOR REUSE OR ADAPTION OR EXTENSION OF THE PROJECT OR ON ANY OTHER PROJECT. ANY REUSE WITHOUT WRITTEN MODIFICATION OR ADAPTION BY PENNONI ASSOCIATES FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY OR LEGAL EXPOSURE TO PENNONI ASSOCIATES. PENNONI ASSOCIATES SHALL INDEMNIFY AND HOLD HARMLESS PENNONI ASSOCIATES FROM ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES ARISING OUT OF OR RESULTING THEREFROM.

Pennoni Associates Inc.

PROJECT NO. WRRN1302	
SHEET 2 of 3	
SCALE 1" = 30'	DATE 2014-05-22
DRAWN BY PFF	APPROVED JHG
DRAWING NO. WRRN1302-VR-EASE-HEPTAD	



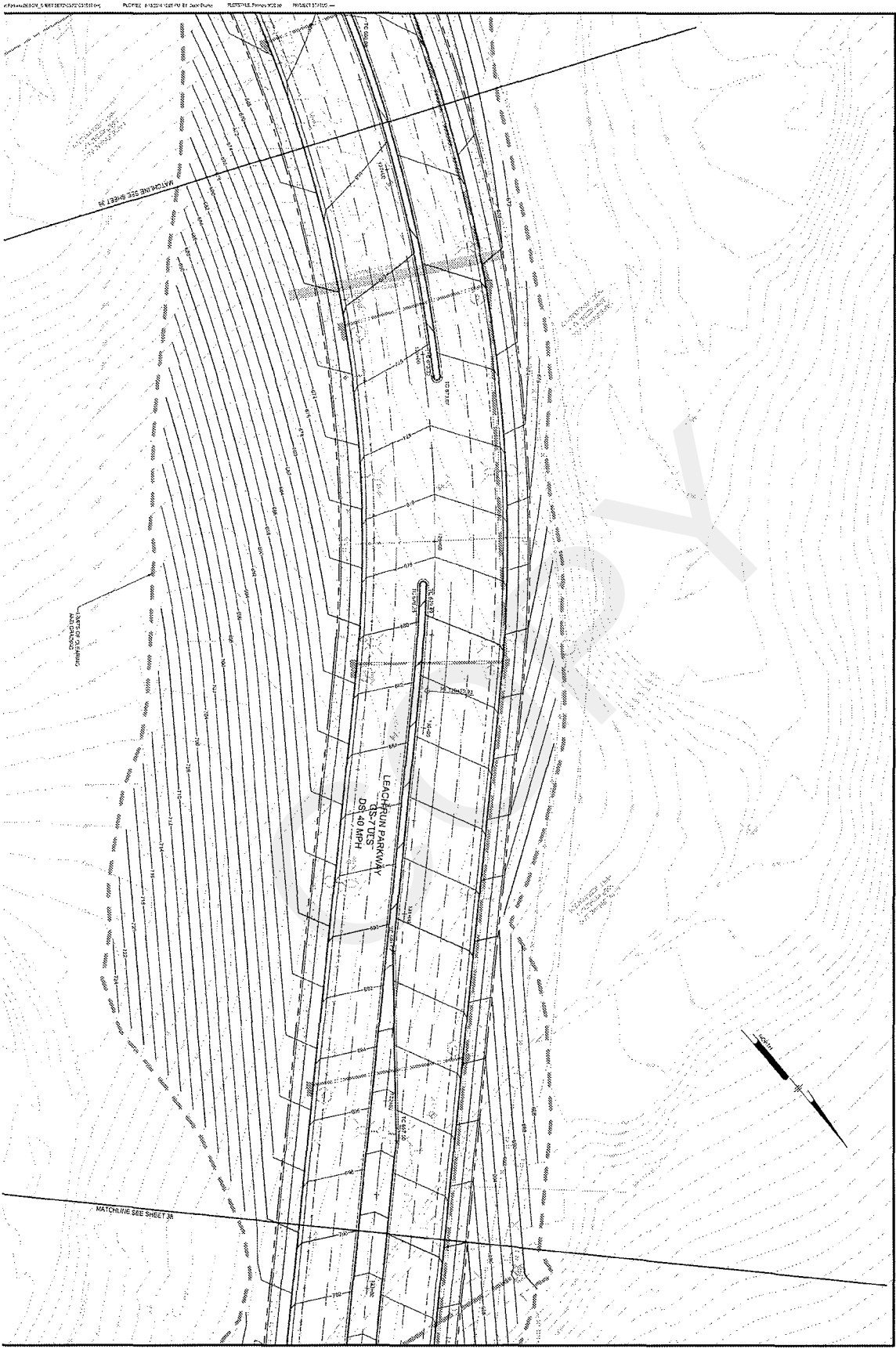
Consulting Engineers



DATE	NO.	REVISIONS	BY
2014-07-25	3	ADDED CENTER-LINE OF FULL ACCESS ENTRANCES	PFF
2014-07-16	2	REMOVED ELECTRIC AND ACCESS ESMAT	PFF
2014-08-13	1	ADDED ACCESS EASEMENT	PFF

208 Church Street, SE
Leesburg, VA 20175 - 703.777.3616

Pennonni Associates Inc.



LEACH RUN PARKWAY WARREN COUNTY, VIRGINIA GRADING PLAN FRONT ROYAL/WARREN COUNTY EDA 400-D KENDRICK LANE FRONT ROYAL, VIRGINIA		ALL DIMENSIONS MUST BE VERIFIED BY CONTRACTOR AND OWNER MUST BE NOTIFIED OF ANY DISCREPANCIES BEFORE PROCEEDING WITH WORK. FRED D. AMEN JR. Lic. No. 11760 2014-06-15 PROFESSIONAL ENGINEER	Pennoni PENNONI ASSOCIATES INC. 208 Church Street, SE Leesburg, VA 20175 T 703.777.3616 F 703.777.3725
DATE: _____ BY: _____ REVISIONS:	DATE: _____ BY: _____ REVISIONS:		