

I. OFFICE OF THE COUNTY ATTORNEY

(Dated July 23, 2004)

1. **Comment:** In regard to the preamble, and proffer I.A., there are references to a Concept Development Plan dated July 6, 2004. However, the CDP that was forwarded to me with this referral is dated July 7, 2004. I suggest that this inconsistency be eliminated.

**Response:** The preamble and proffer I.A. have been revised to eliminate this inconsistency.

2. **Comment:** In further regard to the preamble, in the twelfth line thereof, I suggest that the phrase "hereto which are incorporated" be changed to "hereto, which are both incorporated".

**Response:** The preamble has been revised accordingly.

3. **Comment:** In further regard to proffer I.A., I note that the Concept Plan shows two archaeological sites, but that there is nothing in the proffers to address what will be done in conjunction with these two sites. I suggest that this be addressed.

**Response:** Per the *Phase I Archeological Investigation* prepared by Thunderbird Archeological Associates, Incorporated, dated December 2003, the two archeological sites consist of outhouse remains and field scatter, both dating to the late 19<sup>th</sup> or early 20<sup>th</sup> Centuries. No further archeological work was recommended for these sites, therefore no further action will be taken in conjunction with these two sites.

4. **Comment:** In further regard to proffer I.A., I note that the applicant has referenced "a series of community civic/open space and active recreation areas". I also see that some of the active recreation facilities are shown in the minor floodplain, that there are areas marked as "SWM/BMP Area", that it is not clear if such areas are included in this referenced "series", and that there is a "civic/public safety" area but no "civic/open space" area. I suggest that these inconsistencies be clarified and eliminated as need be.

**Response:** Proffer I.A. has been revised to clarify these matters.

5. **Comment:** In further regard to proffer I.A., in the first line of the third paragraph thereof, I note that there is a reference to the "Villages at Round Hill". However, there is no indication on the Concept Plan as to where the Villages at Round Hill are located in relation to this project. I suggest that the Villages at

**Round Hill be better identified, or that the lots which will be subject to the condition spelled out in the third paragraph be otherwise identified.**

Response: The Concept Plan has been revised to more clearly indicate where the Villages at Round Hill are located.

**6. Comment: In further regard to proffer I.A., and the third paragraph thereof, I suggest that it be clearly stated that the decks for the proposed homes shall not encroach into the 50 foot buffer.**

Response: The Applicant has revised the Concept Plan to provide for a reduction of the buffer yard to zero upon consideration of support from the Department of Zoning Administration.

**7. Comment: In further regard to proffer I.A., in the fourth paragraph thereof, in the first line thereof, I suggest that the applicant add a parenthetical stating "(lots 1, 2, 3 & 4)" following the reference to "Route 719".**

Response: Proffer I.A. has been revised as suggested.

**8. Comment: In further regard to proffer I.A., and the fourth paragraph thereof, I suggest that it clarified that the three sides which will be faced with brick shall include the front and sides.**

Response: Proffer I.A. has been revised as suggested.

**9. Comment: In further regard to proffer I.A., in the fifth paragraph thereof, in the second line thereof, the applicant references "reverse frontage lots". Given the layout shown on the Concept Plan, it is not clear how reverse frontage lots are being incorporated. It appears that only shared driveways are being used. I suggest that this be clarified.**

Response: Proffer I.A. has been revised accordingly.

**10. Comment: In further regard to proffer I.A., in the fifth paragraph thereof, in the third line thereof, the applicant references "courtyard-style patio homes". I suggest that it be specified that these shall be laid out as shown on the Concept Plan.**

Response: Proffer I.A. has been revised to specify that the courtyard-style patio homes shall be laid out as shown on the Concept Plan.

**11. Comment: In regard to proffer I.C., in the last sentence thereof, the**

applicant indicates that "model homes" shall be exempt from the garage conversion restriction. I suggest that this be clarified to indicate that homes used as display models may use the garage for purposes other than parking until such time as they are sold and conveyed to a purchaser and no longer serve as a display model.

Response: Proffer I.C. has been revised to clarify that homes used as display models may use the garage for purposes other than parking until such time as they are sold and conveyed to a purchaser and no longer serve as a display model.

12. Comment: In regard to proffer II., concerning the extension of public sewer and water, I suggest that it also be stated that the extensions shall be at no cost to the Town of Round Hill, as well as the County and LCSA. I urge staff to ascertain the status of any agreements between the applicant and the Town of Round Hill for such sewer and water line extensions.

Response: The Applicant has begun discussions with the Town of Round Hill to ascertain how provision of water and sewer may be made.

13. Comment: In regard to proffer III.A., concerning the use of "minor floodplain", I find the designations on the Concept Plan to be confusing. It is not clear what portion of the CDP is designated as "creekside preserve" and which is designated as "minor floodplain". I suggest that this be clarified.

Response: The Concept Plan has been revised to clarify what is designated as "Creekside Preserve" and what is designated as minor floodplain.

14. Comment: In further regard to proffer III.A., and the statement that only certain uses will be allowed to locate in the "minor floodplain", I note that there are playing fields shown within part of the area that is either "minor floodplain" or is "creekside preserve", and that such use is not specified as being permitted. If these fields are in "minor floodplain" then such location is inconsistent with the language in the proffer. I suggest that this be clarified.

Response: Proffer III.A. has been revised to clarify that a portion of the playing fields may be located within the minor floodplain.

15. Comment: In regard to proffer III.C., in the first line thereof, the applicant states that "all lots shall be located outside of the areas designated as Creekside Preserve encompassing minor floodplain". Again, it is not clear from the Concept Plan exactly what area is being referenced. However, it appears that a portion of the minor floodplain is located on lot 1, which would be inconsistent with this proffer. I suggest that this be clarified.

Response: Proffer III.C has been revised to clarify that no lot designated for residential home construction shall lie within the minor floodplain.

16. Comment: In further regard to proffer III.C., the applicant states that "SWM/BMP facilities" may be located within the Creekside Preserve area. However, the Concept Plan does not show any such facilities within the Creekside Preserve area. Such facilities are shown as being located within the Village Green area and across the street from the Village Green. Therefore, I suggest that this reference be deleted.

Response: Proffer III.C. has been revised to delete this reference.

17. Comment: In regard to proffer III.D., wherein the applicant indicates the intention to locate a wet stormwater retention pond "above the Village Green", I find this statement to be confusing. It is not clear what is meant by the use of the phrase "above the Village Green". Additionally, the Concept Plan shows two SWM/BMP areas. I suggest that the applicant's intent be clarified.

Response: Proffer III.D. has been revised to clarify these matters.

18. Comment: In regard to proffer IV.A., in the second line of the second paragraph thereof, I suggest that the phrase "concurrent with such dedication" be inserted prior to the phrase "the Owners shall also convey".

Response: Proffer IV.A. has been revised as suggested.

19. Comment: In further regard to proffer IV.A., I urge staff to consider whether there is a need for any right of way or improvements for Route 719. If so, then I suggest that this be addressed. In addition, if such right of way or improvements are needed, then I suggest that consideration be given to specifying the timing for such dedication and/or construction. As written, there are provisions included only for turn lane improvements to Route 719, with no provisions included for the dedication of right of way for such turn lanes.

Response: Proffer IV.A. has been revised to provide for dedication to the County of right of way necessary to maintain uniform road width along Route 719. The Town of Round Hill has expressed that the existing section of Route 719 is to be maintained. Consistent with its Comprehensive Plan, the Town does not wish to upgrade Route 719 to a larger road.

20. Comment: In further regard to proffer IV.A., I note that the Concept Plan shows that traffic calming improvements are to be provided at the southern entrance to the Property. I suggest that this note on the Concept Plan be more fully

explained by specifying the steps the applicant intends to undertake to provide such traffic calming improvements.

Response: The Concept Plan has been revised to specify that concrete paver crosswalks shall be provided in the intersection at the southern entrance to the Property at Greenwood Drive.

21. Comment: In regard to proffer IV.B.1.a., in the second line thereof, I suggest that the phrase "the road network is to include" be changed to "the on-site road network shall include".

Response: Proffer IV.B.1.a. has been revised as suggested.

22. Comment: In further regard to proffer IV.B.1.a., in the second line thereof, I note that the applicant mentions the extension of "Greenwood Boulevard". There is no such road labeled on the Concept Plan. The only thing that approximates such designation is found on the vicinity map, which shows a "Greenwood Drive". I suggest that these inconsistencies be eliminated, and that the proposed road be labeled on the Concept Plan.

Response: The Concept Plan and proffer IV.B.1.a. have been revised accordingly.

23. Comment: In further regard to proffer IV.B.1.a., in the third and fourth lines thereof, I suggest that a period be placed after the word "Drive" and that the phrase "providing a critical link in the Round Hill area traffic flow pattern" be deleted.

Response: Proffer IV.B.1.a. has been revised as suggested.

24. Comment: In further regard to proffer IV.B.1.a., I note that the applicant has included a provision indicating that sidewalks shall be provided along all roads. However, it is not clear if this includes Route 719. I suggest that this be clarified.

Response: Proffer IV.B.1.a. has been revised to clarify that sidewalks shall be provided along all on-site roads. A new proffer IV.B.1.d. has been developed to clarify that the Applicant will construct, or bond for construction, trail connections along the Property's frontage on Route 719.

25. Comment: In regard to proffer IV.B.1.c., in the second line thereof, I suggest that the phrase "agrees to" be changed to "shall".

Response: Proffer IV.B.1.c. has been revised.

26. **Comment:** In further regard to proffer IV.B.1.c., concerning the provision of cash in lieu of construction, I question if this is only intended to be applicable to the turn lanes proposed in the first sentence of this proffer, or whether the intent is to have this provision apply to all of the transportation improvements. I suggest that this be clarified. Additionally, if the intent is to have it apply generally, then I suggest that the provision be contained in a separate proffer.

**Response:** Proffer IV.B.1.c. has been deleted.

27. **Comment:** In regard to proffer IV.B. generally, while I note that the applicant has included a cash in lieu of construction provision, I do not see a provision for the early dedication of right of way if need be. I suggest that such a provision be included.

**Response:** The Applicant will not be in a position to dedicate land until after development plans have been approved.

28. **Comment:** In regard to proffer IV.B.1.d., I note that the applicant has indicated the intent to provide a four foot wide public trail to connect to Magic Mountain Drive, "provided that the Homeowners Association of the Villages at Round Hill grants an easement". However, as depicted on the Concept Plan, it appears that the trail will also need to cross private property, and the Homeowners Association for the Villages at Round Hill have no authority to grant easements over private property. I suggest that consideration be given to moving the trail to a location that will not require an easement from private property owners. Additionally, I suggest that the name of the Homeowners Association for the Villages at Round Hill be verified to ensure its accuracy. One suggestion for trail relocation is to run the trail from the "SWM/BMP Area" through this applicant's open space buffer to Evening Star Drive, instead of Magic Mountain Drive.

**Response:** The Applicant has begun a dialog with the developer of the Villages at Round Hill to explore how the four foot wide trail to Park Heights Circle may be provided. The four foot trail may connect to Park Heights Circle by crossing Open Space Parcel V in the Villages at Round Hill.

29. **Comment:** In regard to proffer V.B.2., in the second sentence thereof, the applicant has indicated the intention to preserve wetlands and minor floodplain within the Creekside Preserve area of the Property. This is a stronger statement than was contained in proffer III.A. which allows for encroachments into the minor floodplain. I suggest that the inconsistency be eliminated. I also question whether the construction of recreational facilities in the minor floodplain constitutes the preservation of the floodplain.

Response: Proffer V.B.2. has been revised to clarify that the Applicant does not proffer that no activities will take place in any part of the minor floodplain.

30. Comment: In further regard to proffer V.B.2., in the seventh line thereof, the applicant has indicated that "if requested" the Village Green area will be conveyed to the Town of Round Hill. I suggest that it be clarified as to what entity is to make such request.

Response: The Town of Round Hill has requested and the Applicant has agreed that the Village Green be conveyed to the Town. The proffer statement has been clarified accordingly.

31. Comment: In further regard to proffer V.B.2., in the eighth and ninth lines thereof, the applicant has indicated the intent to construct three fields and convey them to the Town of Round Hill. I question whether the Town has been consulted about this to determine their interest in taking over the fields. Additionally, I note that the alternative is to hand the fields over to a "non-profit organization" if the Town does not want the fields. I urge staff to consult with the County's Department of Parks and Recreation to ascertain if the dedication of such fields to the County should be considered.

Response: The Town of Round Hill has requested and the Applicant has agreed that the entire area designated on the Concept Plan as Creekside Preserve, including the Active Recreation Area that contains the playing field, be conveyed to the Town.

32. Comment: In further regard to proffer V.B.2., in the last line thereof, the applicant has again referenced "Greenwood Boulevard", and I again suggest that the correct name be used and that it be labeled on the Concept Plan.

Response: Proffer V.B.2. has been revised as suggested, and Greenwood Drive has been labeled on the Concept Plan.

33. Comment: In regard to proffer V.B.3., concerning the dedication of trails to a community Homeowners Association, I have several suggestions for clarification. First, as there is no proffer indicating that the applicant intends to create a Homeowners Association, I suggest that such a commitment be placed into the proffers. Such association should be created prior to the approval of the first record plat for any portion of the property. Secondly, as there is no commitment in the proffers to offer the trails and open space areas to the Town of Round Hill, I suggest that this be clearly articulated before mentioning what the intent is if the Town does not accept such dedications. Third, since this land is currently located

within the County and there has been no indication that the Town intends to annex this area, I suggest that some provision be made to address whether the County desires the use of these facilities for parks and recreation purposes.

Response: The Town of Round Hill has requested and the Applicant has agreed that all trails and open spaces shall be conveyed to the Town.

**34. Comment:** In further regard to proffer V.B.3., which contemplates the annexation of this project into the Town of Round Hill, I suggest that a provision be placed in the proffers that clearly articulates that the proffers will run to the benefit of the Town and be enforceable by the Town in the event of such annexation.

Response: A new proffer has been added to provide that the proffers will run to the benefit of the Town and be enforceable by the Town in the event of annexation.

**35. Comment:** In regard to proffer V.B.4., in the first line thereof, I suggest that the word "areas" be inserted following the phrase "Village Green". I also suggest that it be clarified whether the portion of the property that is across the road from the Village Green, and labeled as "SWM/BMP Area" is considered to be part of the Village Green.

Response: Proffer V.B.4. has been revised as suggested. Proffer III.D. has been revised to clarify that the portion of property that is located across from the Village Green is Open Space upon which some stormwater management facilities may be located.

**36. Comment:** In further regard to proffer V.B.4., in the third line thereof, I suggest that the word "may" be changed to "shall". I also suggest that it be clarified whether the intent is for such fields to be outside of the floodplain.

Response: Proffer V.B.4. has been revised as suggested. It has been clarified that the playing fields may be partially located within the floodplain.

**37. Comment:** In further regard to proffer V.B.4., in the fourth line thereof, I suggest that the word "may" be changed to "shall".

Response: Proffer V.B.4. has not been revised as suggested, as the Applicant does not intend to proffer which active recreational activities must be conducted by users of the space.

**38. Comment:** In regard to proffer V.C., in the first line thereof, the applicant references "all significant trees". I suggest that the meaning of this phrase be clarified, or that such trees be identified on the Concept Plan. As written there is no

real way to know which trees are to be preserved.

Response: Tree Save Areas have been depicted on Sheets 4 and 5 of the concept Plan. The Applicant shall preserve trees within these areas that are located on the Property, but shall conduct selective trimming and general clean up consistent with good arboriculture practice. Proffer V.C. has been revised accordingly.

39. **Comment:** In regard to proffer VI.A., in the first sentence thereof, the applicant has indicated the intent to dedicate a two acre civic/public safety use site to the Town of Round Hill. I suggest that such provision be contained in a separate paragraph from the rest of this proffer, which deals with an annual contribution for fire and rescue purposes.

Response: A new proffer VI.A. has been developed to separate provisions for dedication of the Civic/Public Use Lot from provisions relating to annual contributions for fire and rescue purposes.

40. **Comment:** In further regard to proffer VI.A., I suggest that a timing mechanism be included to address when the civic use site will be provided.

Response: The Civic/Public Use Lot shall be dedicated to the Town of Round Hill at the time of record plat approval for adjacent areas on the Property.

41. **Comment:** In further regard to proffer VI.A., and the dedication of the civic use site, I question whether the County has any need for such site, as this site is located in the County, and may not be annexed by the Town. I suggest that consideration be given to having an alternate provision by which the site may be dedicated to the County rather than the Town.

Response: In their memo dated September 13, 2004, the Loudoun County Department of Fire-Rescue indicated that they do not wish the civic use site to be dedicated to the County.

42. **Comment:** In further regard to proffer VI.A., I suggest that the provisions concerning a contribution towards the fire and rescue services be contained in a separate proffer VI.B.

Response: Proffer VI.B. has been added as suggested.

43. **Comment:** In further regard to proffer VI.A., in the sixth line thereof, I suggest that the phrase "two (2)" be deleted, as it is confusing.

Response: The phrase "two (2)" has been replaced with the word "two".

44. **Comment:** In further regard to proffer VI.A., in the tenth line thereof, I suggest that the word "voluntary" be changed to "volunteer".

**Response:** Proffer VI.A. has been revised as suggested.

45. **Comment:** In further regard to proffer VI.A., in the twelfth line of the proffer, I suggest that the phrase "and be provided only to the remaining volunteer company" be added following the phrase "one-half".

**Response:** Proffer VI.A. has been revised as suggested.

46. **Comment:** In regard to proffer VII., in the second line thereof, I suggest that the phrase "and/or" be changed to "and".

**Response:** Proffer VII has been revised as suggested.

47. **Comment:** In regard to proffer VIII., in the second line thereof, I suggest that the word "third" be changed to "other".

**Response:** Proffer VIII has been revised as suggested.

48. **Comment:** In further regard to proffer VIII., in the fourth line thereof, I suggest that the phrase "undersigned is fully" be changed to "undersigned are fully".

**Response:** Proffer VIII has been revised as suggested.

49. **Comment:** These proffers will need to be signed by all landowners, and be notarized, prior to the public hearing on this application before the Board of Supervisors.

**Response:** This comment is acknowledged.

50. **Comment:** In regard to the signature lines, I note that there is only one line provided, while five individuals have been identified in the preamble as the Owners. Each of the identified individuals will need to sign the proffers.

**Response:** Signature lines and notarization forms have been added for the five Owners.

51. **Comment:** In regard to the proposed modification to Sections 3-507(E)

and 3-509(C), I suggest that it be clearly stated that the placement of the fifty foot buffer on the individual lots, rather than in common open space, will not allow for the encroachment of decks and accessory structures into the buffer. I further suggest that notice of such restriction should be included in the sales literature for the development and in the deeds of conveyance for the effected lots.

Response: The Applicant does not propose to modify Section 3-507(E) of the Zoning Ordinance. Any reference to this section was inadvertent. Upon consideration of support from zoning staff, the Applicant proposes to modify Section 3-509(C) to reduce the buffer yard to zero.

**XI. TOWN OF ROUND HILL**  
*(Dated September 15, 2004)*

1. Comment: The Town believes that there are too many patio homes planned for this project. The Town requests that the Applicant consider removing several patio quads and:

- i. Replace the quad lot with a larger lot suitable for a single family detached home or
- ii. Divide the quad lot in half and feature a senior-appropriate product (which could possibly be considered an ADU) with single-level living and smaller lot size.

Response: The Applicant cannot replace quad lots with larger single lots and maintain an economically reasonable yield. After further discussion with Town officials, the Town and the Applicant have agreed that the Applicant will allay these concerns by revising the Concept Plan to relocate selected patio homes to different locations within the development and constructing single-family dwellings on the lots previously occupied by those patio homes. In response to Comment 33 below, the Applicant has also agreed to provide four single-level living, senior appropriate homes.

2. Comment: The Town requests that the proffer statement and/or the CDP clearly state that all lots, including patio homes, will adhere to maximum impervious surface and lot coverage requirements per PDH-3 and R-8.

Response: The Concept Plan has been revised to clearly state that all lots, including patio homes, will adhere to applicable maximum impervious surface and lot coverage requirements. A detail has been added to Sheet 10 of the Concept Plan demonstrating that the smallest patio home lot meets the maximum impervious surface and lot coverage requirements.