

PROFFERS

D.R. HORTON, INC.

RZ. 2003-MV-060

January 24, 2006

Pursuant to Section 15.2-2303(a) Code of Virginia, 1950, as amended, the owners and D.R. Horton, Inc., (hereinafter referred to as the "Applicant"), for themselves, their successors and assigns in RZ 2003-MV-060, filed for property identified as Tax Map 108-1 ((1)) 12, 13, 14, 15 and 16; and 108-1 ((3)) 1, 2 and 2A (hereinafter referred to as the "Application Property") hereby proffers the following, provided that the Board of Supervisors approves a rezoning of the Application Property to the PDH-8 District in conjunction with a Conceptual/Final Development Plan (CDP/FDP) for residential development.

1. CONCEPTUAL/FINAL DEVELOPMENT PLAN –

- a. Subject to the provisions of Section 16-402 of the Fairfax County Zoning Ordinance (hereinafter referred to as the "Zoning Ordinance"), development of the Application Property shall be in substantial conformance with the CDP/FDP, consisting of twelve (12) sheets prepared by VIKA, Inc. dated November 3, 2003, and revised through January 24, 2006.
- b. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the CDP/FDP may be permitted as determined by the Zoning Administrator. The Applicant reserves the right to make minor adjustments to the layout, internal lot lines, location of retaining walls, and lot sizes of the proposed subdivision at time of site/subdivision plan submission, provided they are in substantial conformance with the CDP/FDP.
- c. Notwithstanding that the CDP/FDP is presented on twelve (12) sheets and said CDP/FDP is the subject of Proffer 1a. above, it shall be understood that the CDP shall be limited to the points of access, location and amount of open space, limits of clearing and grading, and the total number and general location of units and type of units. The Applicant has the option to request Final Development Plan Amendments ("FDPAs") for elements other than CDP elements from the Planning Commission for all of, or a portion of, the CDP/FDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance.

2. TRANSPORTATION –

- a. Applicant shall construct a five (5) foot wide concrete sidewalk within the residential development as shown on the CDP/FDP.

- b. Prior to the issuance of the first Residential Use Permit (RUP), the Applicant shall construct a right turn lane into the Application Property as shown on the CDP/FDP, and funds escrowed as part of the proffers approved in conjunction with RZ 2001-MV-018 for such purpose shall be released from escrow to the Applicant once improvements are completed.
- c. Prior to the issuance of the first RUP, the Applicant shall close the existing entrance from Telegraph Road to the Lyndam Hill Phase I subdivision to the south. The Applicant shall accomplish the vacation/abandonment of the entrance for the benefit of the Lyndam Hill Phase I Homeowners Association (HOA). The pavement shall be scarified, and the area re-seeded by the Applicant. Upon recordation of the deed of vacation/abandonment, funds escrowed as part of the proffers approved in conjunction with RZ 2001-MV-018 for such purpose shall be released from escrow to the Applicant once improvements are completed. In the event that the Board of Supervisors does not approve this vacation, the Applicant shall apply for a Proffered Condition Amendment (PCA) for the Application Property.
- d. Applicant reserves density credit as may be permitted by the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance for all dedications as may be reasonably required by Fairfax County or Virginia Department of Transportation (VDOT) whether such dedications occur prior to or at time of site/subdivision plan approval.

3. LANDSCAPING AND OPEN SPACE –

- a. Applicant shall provide a landscape plan, which shall be coordinated with and approved by the Urban Forester, as part of the first and all subsequent submissions of the site/subdivision plan. The landscape plan shall be in substantial conformance with the landscape concepts plan, as shown on Sheet 4 of the CDP/FDP, as to the quantity and quality of plantings, and in general conformance with the location of plantings. The Applicant shall work with the Urban Forester to select plant species that in addition to meeting other landscaping requirements, such as durability, availability and aesthetics, shall also aid in the maintenance of air quality. Evergreen trees shall be a minimum height of seven (7) feet and deciduous trees shall have a minimum caliper of two and one half to three (2 ½ - 3) inches at the time of planting.
- b. A tree preservation plan shall be submitted as part of the first and all subsequent site/subdivision plan submissions. The tree preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, reviewed and approved by the Urban Forest Management, DPWES. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of trees greater than ten (10) inches in diameter and within twenty (20) feet to either side of the limits of clearing and grading as shown on the CDP/FDP for the entire

site. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the CDP/FDP, and those additional areas in which trees can be preserved as a result of final engineering. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture. Specific tree preservation activities that maximize the survivability of trees identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and other as necessary, shall be included in the tree preservation plan and provided as determined necessary by the Urban Forester.

- c. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection. Tree protection fencing in the form of a four (4) foot high fourteen (14) gauge welded wire fence attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart, shall be erected at the final limits of clearing and grading as shown on the demolition, and Phase I and II erosion and sediment control sheets. The fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structure on the Application Property. The installation of all tree protection fence types shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three (3) days prior to the commencement of clearing, grading, or demolition activities, but subsequent to the installation of the tree protection devices, Urban Forest Management, DPWES and the District Supervisor shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by Urban Forest Management, DPWES.
- d. The Applicant shall coordinate with DPWES and the Urban Forester to minimize any impact from encroachment into the RPA/EQC, which may only occur because of the reasons listed below. Any encroachment that may occur as a result of the actions listed below shall result in a minimal disturbance of the RPA/EQC and the Applicant shall replant any disturbed area. The Applicant shall strictly conform to the limits of clearing and grading as illustrated on the CDP/FDP subject to the installation of necessary storm drain utilities as may be required by DPWES, bio-retention basin and woodchip trail as determined necessary by the Director of DPWES. If determined necessary to install necessary storm drain utilities as may be required by DPWES, bio-retention basin and/or woodchip trail, they shall be located in the least disruptive manner necessary as determined by the Urban Forest Management, DPWES. A replanting plan shall be developed and implemented, subject to approval by the Urban Forest Management, DPWES, for any areas outside of the limits of clearing and grading that may be disturbed.

- e. Applicant shall construct a seven (7) foot fence, as shown on sheet 5 of the CDP/FDP, and provide a ten (10) foot vegetated buffer along the northern periphery as generally indicated on the CDP/FDP, in order to provide additional buffering from the adjacent industrial property, which is further identified as tax map parcel 108-1 ((1)) 8C.
- f. Applicant shall provide an additional off-site landscaping buffer, as shown on sheet 4 of the CDP/FDP, along the southern periphery of the adjacent property, which is further identified as tax map parcel 108-1 ((1)) 47B, provided that the Applicant can secure an agreement at no cost from the owners of Parcel 47B. If the Applicant is unable to secure such an agreement, the Applicant shall demonstrate in writing that such attempts were made.
- g. In addition to the landscaping shown on the CDP/FDP, the Applicant shall provide Category 1 evergreen tree plantings, in conformance with Public Facilities Manual (PFM) standards within a planting strip that shall be a minimum of seven (7) feet wide between the noise wall and the sidewalk along Telegraph Road, subject to the approval of Urban Forest Management, and as shown in Exhibit 2 attached to these proffers.
- h. The Applicant shall provide a transplanting plan as part of the site/subdivision plan for review and approval by Urban Forest Management, DPWES, and shall implement the plan as approved. The plan shall be prepared by a professional with experience in the preparation of tree transplanting plans, such as a certified arborist or landscape architect. Depending upon site constraints, the plan shall address one or all of the following items, as determined by Urban Forest Management, DPWES:
 - The species and sizes to be transplanted;
 - The existing locations of the trees;
 - The proposed final locations of the trees;
 - The proposed time of year when the trees will be moved;
 - The transplant methods to be used, including mulching and watering, and is necessary, support measures such as cabling, guying and staking;
 - Details regarding equipment to be used to transplant plant materials and, if the trees are to be relocated into a preservation area, the routing of such equipment.

4. PARKS AND RECREATION –

- a. Pursuant to Paragraph 2 of Section 6-110 and Paragraph 2 of Section 16-404 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall

expend the sum of Nine Hundred Fifty-five Dollars (\$955.00) per approved lot. On-site recreation facilities shall include, but are not limited to, a woodchip trail, and multiple community open spaces, including a central area with a gazebo, picnic tables, and playground equipment and naturalized open space area, as shown on the CDP/FDP. The balance of any funds not expended on-site shall be contributed to the Fairfax County Park Authority at time of site/subdivision plan approval for recreation facilities located in proximity to the Application Property.

- b. Applicant shall coordinate with the Urban Forester to field locate the woodchip trail in order to minimize the impact on the RPA.
- c. In addition to proffer 4a above, the Applicant shall contribute the sum of one thousand dollars (\$1,000.00) per single family dwelling approved to the Fairfax County Park Authority at time of final bond release for recreation facilities in the area.
- d. The Applicant shall provide playground equipment in accordance with PFM standards and consistent with the typical tot lot shown in the Community Recreation Area Layout on Sheet 5 of the CDP/FDP. Playground equipment shall include, at a minimum, one (1) slide, a climbing apparatus, two (2) riders and two (2) swings.

5. STORMWATER MANAGEMENT – BEST MANAGEMENT PRACTICES –

The Applicant shall provide an on-site Stormwater Management (SWM)/Best Management Practices (BMP) facility on the Application Property as shown on the CDP/FDP in accordance with the requirements of the Public Facilities Manual (PFM) and Chesapeake Bay Preservation Ordinance unless waived or modified by DPWES. In order to restore a natural appearance to the proposed SWM dry pond, the landscape plan shall show the restrictive planting easement for the pond, and landscaping in all areas outside of that restrictive planting easement shall be provided to the maximum extent feasible in accordance with the planting policies of Fairfax County.

6. GEOTECHNICAL REPORT

Prior to site/subdivision plan approval, if required by DPWES, and in accordance with the provisions of the Public Facilities Manual, the Applicant shall submit a geotechnical study of the Application Property to the Geotechnical Review Board. The Applicant shall incorporate appropriate engineering practices as recommended by the Geotechnical Review Board and DPWES into the design to alleviate potential structural problems, to the satisfaction of DPWES. The recommendations of the Geotechnical Review Board shall be implemented by the Applicant.

7. AFFORDABLE HOUSING –

At the time of first building permit approval, a contribution shall be made to the Fairfax County Housing Trust Fund of 0.5% of the estimated sales price of all single-family dwelling units. The amount of said contribution shall be determined by the Department of Housing and Community Development.

8. DESIGN –

- a. All residential units that are designed with a driveway shall have a minimum driveway length of eighteen (18) feet from the edge of the garage to the inside edge of the sidewalk.
- b. All homes constructed on the Application Property shall meet the thermal standards of the CABO Model Energy Program for energy efficient homes, or its equivalent, as determined by DPWES, for either electric or gas energy systems.
- c. The private streets shown on the CDP/FDP shall be constructed of materials and depth of pavement consistent with the Public Facilities Manual Standards for public streets.
- d. The Applicant shall comply with the retaining wall details as shown on the CDP/FDP. The retaining walls shown behind Lots 43-61 and around the stormwater management pond shall be tiered with a maximum wall height of six (6) feet and minimum planting strip of eight (8) feet between the walls. The retaining walls shall not exceed a cumulative height of twenty-five (25) feet. The retaining wall shown on Lot 1 and 2 shall not exceed a height of six (6) feet, and on Lots 9-12 shall not exceed five (5) feet. The Applicant shall coordinate with the Urban Forester to determine the most appropriate landscaping for the open space areas between the retaining walls and provide such landscaping prior to the issuance of the first RUP for the lot(s) adjacent to the retaining wall, and weather permitting to ensure survival of landscaping. The retaining walls shall be constructed as interlocking block walls with consistent materials and appearance to those constructed on the Lyndam Hill Phase I subdivision, which was approved pursuant to RZ 2001-MV-018, as shown in Exhibit 1 attached to these proffers. Further, the Applicant shall install a fence/railing at the top of each proposed retaining wall. The fences/railing shall be a similar design to those fences/railings installed on the retaining walls within the Lyndam Hill Phase I subdivision and graphically depicted in attached Exhibit 1.
- e. All units shall be designed with a maximum average individual rear yard grade of four percent (4%), and no greater than five percent (5%) on any individual lot, for the first twelve feet (12) of the rear yard, measured from the back of the unit. Beyond the first twelve (12) feet of the rear yard, the slope shall not exceed a ratio of 3:1 in accordance with Public Facilities Manual standards. However, the Applicant

reserves the right to construct landscape walls not to exceed a height of two (2) feet in rear yards beyond the first twelve (12) feet. This maximum grade of the rear yard and a grade representation graphic shall be disclosed to all prospective homeowners in a disclosure memorandum prior to entering into a contract of sale and included in all HOA documents.

- f. For those lots located within the Pohick Church Historic Overlay District, the Applicant shall provide the following:
 - 1. Construction design, including fenestration materials, textures, color, architectural features, finishes, lighting, building elements, elevations, signs, site features, landscaping, fencing, and/or other elements subject to Architectural Review Board (ARB) review and approval in accordance with Article 7 of the Zoning Ordinance shall be submitted to the Architectural Review Board (ARB) for review and approval in accordance with the Article 7 of the Zoning Ordinance.
 - 2. The location within a historic district and the required review and approval by the ARB of exterior design changes shall be disclosed in the HOA documents prepared for the Application Property.
- g. The homes constructed on the Application Property shall be in conformance with that shown on Sheets 9, 10, 11, and 12 of the CDP/FDP.
- h. A minimum of five (5) homes on the Applicant Property shall be designed at initial construction to permit the option of conversion of at least one (1) entrance on the ground level to a handicap accessible entrance, as defined in the Fair Housing Act.
- i. All balconies, sunrooms, patios, decks, enclosed/screened porches and chimneys on residential units shall be constructed consistent with the typical lot layouts shown on Sheet 2 of the CDP/FDP.
- j. All single family detached units shall be designed with a minimum side yard setback for each dwelling unit of five (5) feet, and a total combined minimum setback for both side yards of fourteen (14) feet. Chimneys, stoops, bay windows and similar features may encroach within the minimum side yard setback, provided that no encroachments (other than fencing) shall be permitted within five (5) feet of any side yard lot line. The minimum setbacks shall be disclosed to all prospective homeowners in a disclosure memorandum prior to entering into a contract of sale and included in all HOA documents.
- k. All single family detached units shall be designed with a minimum rear yard setback of fourteen (14) feet for each dwelling unit, as illustrated on Sheet 2 of the CDP/FDP. Features such as decks and patios shall be permitted in any rear yard in accordance

with Zoning Ordinance requirements. The minimum setbacks for accessory structures shall be disclosed to all prospective homeowners in a disclosure memorandum prior to entering into a contract of sale and included in all HOA documents. In addition, the disclosure memorandum shall notify prospective homeowners that the minimum rear yard setback may limit the future construction of such features as decks, additions, sunrooms, and porches. This notification shall also be included in the HOA documents.

9. NOISE ATTENUATION –

- a. In order to reduce interior noise to a level of approximately DNL 45 dBA, residential units located within 217 feet of the centerline of Telegraph Road, and within noise contour levels DNL 65 to 70 dBA, shall include the following acoustical treatment measures:
 1. Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.
 2. Doors and windows shall have a laboratory STC of at least 28 unless glazing constitutes more than 20 percent of any façade exposed to noise levels of DNL 65 dBA or above. If glazing constitutes more than 20 percent of an exposed facade, then the glazing shall have a STC rating of at least 39.
 3. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.
- b. In order to reduce exterior noise in rear yards to a level of DNL 65 dBA, for any rear yard area, an architecturally solid privacy fence(s), with a maximum height of eight (8) feet, [with no gaps or openings in the fence(s) except for drainage] shall be provided by the Applicant as shown of the CDP/FDP.
- c. Regardless of exterior noise levels, nothing herein shall be construed to restrict or otherwise limit the functional use of balconies, patios, sunrooms or decks on residential units, as illustrated in the typical lot layouts shown on Sheet 2 of the CDP/FDP.
- d. The Applicant reserves the right to pursue other methods of mitigating highway noise impacts if it can be demonstrated, through an independent noise study as reviewed and approved by DPWES prior to site/subdivision plan approval, in coordination with the Department of Planning and Zoning (DPZ), that such other methods will be effective in reducing interior noise levels to approximately DNL 45 dBA and exterior noise levels to approximately DNL 65 dBA, and if these methods are in substantial conformance with the CDP/FDP and proffers.

- e. All initial purchasers of homes shall be notified in writing at the time of initial contract execution by the Applicant of the proximity of Davison Airfield and the potential for periodic noise from aircraft. A notation to this effect shall be included in every Deed of Conveyance to ensure proper notification to all future purchasers, and disclosed within the HOA documents.
- f. The first and all subsequent submissions of site/subdivision plans shall identify all units located within areas requiring noise attenuation.

10. HERITAGE RESOURCES –

- a. Prior to any land disturbing activities on the Application Property, Applicant shall conduct a Phase I archaeological study of the Application Property, using twenty-five (25) foot shovel intervals, and provide the results of such studies to the Resource Management Division of the Fairfax County Park Authority (“Heritage Resources”) within thirty (30) days of completion of the study. If deemed necessary by Heritage Resources, the Applicant shall conduct a Phase II and/or Phase III archaeological study on only those areas of the Application Property identified for further study by Heritage Resources. The studies shall be conducted by a qualified archaeological professional approved by Heritage Resources, and shall be reviewed and approved by Heritage Resources. The studies shall be completed prior to subdivision plat recordation.
- b. If the Phase I, Phase II, and/or Phase III studies conclude that significant artifacts are present on the Application Property, Heritage Resources shall notify Applicant in writing within thirty (30) days of the submission of the study results to Heritage Resources of its desire to conduct additional investigations. Applicant shall provide access to the Application Property so that Heritage Resources may conduct additional investigations for a period of two months from the date of notification provided that said investigations shall not interfere with the proposed construction and development schedule of the Application Property or affect the number of lots or lot layout as shown on the CDP/FDP. Additional time may be permitted to conduct such investigations if mutually agreed to by the Applicant and Heritage Resources.

11. MISCELLANEOUS –

- a. These proffers shall bind and inure to the benefit of the Applicant and his or her successors and assigns.
- b. All initial purchasers of homes shall be notified in writing at the time of initial contract execution by the Applicant of the location of I-6 zoned property to the north, which is further identified as tax map parcel 108-4 ((1)) 8C (the “Industrial Property”) and the HOA documents shall include notification that industrially zoned

property is located to the north of the Application Property. Said notification shall include a list of uses permitted within the industrial district as well as those uses permitted with the approval of a special permit or special exception application.

- c. The Applicant shall establish a homeowners' association for the Application Property to own, manage and maintain community owned land and improvements. Said maintenance obligations, including maintenance of private streets, shall be disclosed to contract purchasers of residential units within the Application Property and shall be disclosed in the homeowners' association documents prepared for the Application Property.
- d. The homeowners' association shall have the authority to assign a portion of the surface parking spaces to the owners of the single family attached units without garages. This authority to assign parking spaces shall be disclosed in all homeowners' association documents.
- e. A covenant that provides that garages shall be used for purposes that will not interfere with their intended purpose of parking vehicles and that garages may not be converted to living space, shall be recorded among the land records of Fairfax County in a form approved by the County Attorney prior to the sale of any lots. The covenant shall run to the benefit of the HOA and the Fairfax County Board of Supervisors. Initial purchasers shall be advised in writing of this use restriction prior to entering into a contract of sale.
- f. No temporary signs (including "Popsicle" style paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia, shall be placed on the Application Property or off-site to assist in the initial sale of homes on the Application Property. Furthermore, the agents and employees involved in the marketing and sale of the residential units on the Application Property shall be directed to adhere to this proffer.
- g. The Applicant shall contribute the sum of one hundred and eighty thousand dollars (\$180,000.00) to the Fairfax County Board of Supervisors for improvements to schools that are located in the vicinity of the Application Property. Said contribution shall be made at time of site/subdivision plan approval for the Application Property.
- h. The Applicant shall diligently pursue acquisition of the parcel of land currently owned by VDOT along Telegraph Road as shown on the CDP/FDP. Attempts at acquisition shall include a minimum of two attempts to contact VDOT in writing, documented through Certified Mail, regarding the possible acquisition of the above-mentioned parcel. Should the Applicant be unable to acquire said parcel, this documentation shall be submitted to DPWES at the time of site/subdivision plan

submission. If acquired, said parcel shall remain as open space owned by the homeowners' association or conveyed to adjacent property owners as outlots.

- i. All of the improvements described herein shall be constructed concurrent with development of the Application Property.

~~[SIGNATURES BEGIN ON THE FOLLOWING PAGE]~~

CONTRACT PURCHASER:

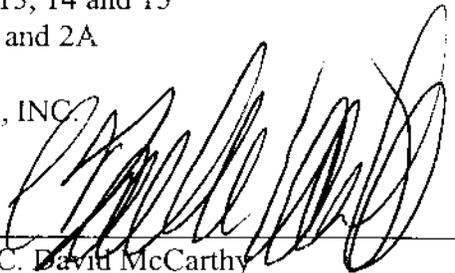
108-1 ((1)) 16

APPLICANT/TITLE OWNER:

108-1 ((1)) 12, 13, 14 and 15

108-1 ((3)) 1, 2 and 2A

D.R. HORTON, INC.

By: 

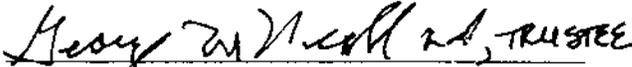
Name: C. David McCarthy

Its: Vice President

[SIGNATURES CONTINUED ON NEXT PAGE]

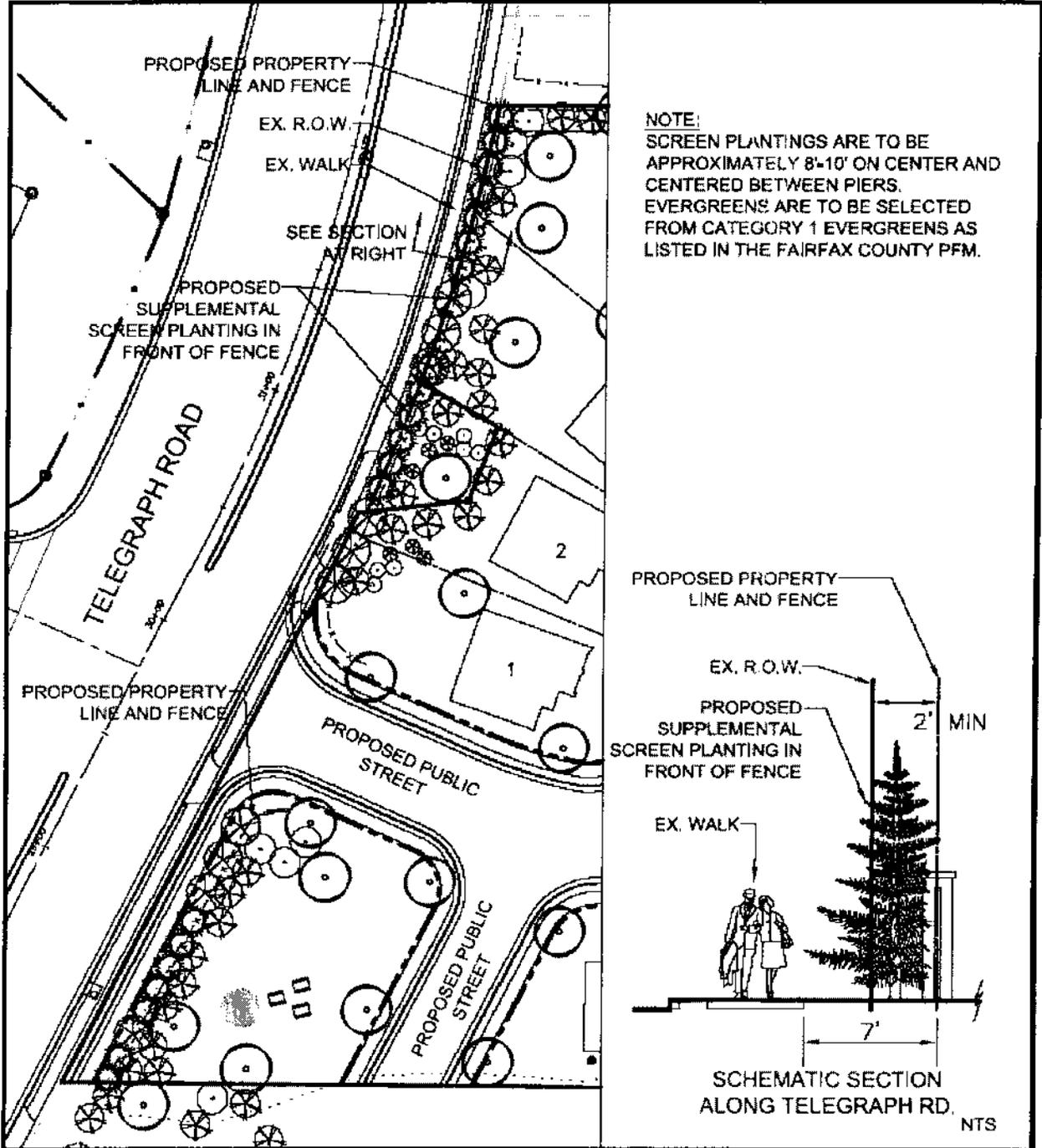
RZ 2003-MV-060

TITLE OWNER:
TAX MAP 108-1 ((1)) 16


GEORGE M. NEALL, II, TRUSTEE

[SIGNATURES END]

Exhibit 2



NOTE:
 SCREEN PLANTINGS ARE TO BE APPROXIMATELY 8'-10' ON CENTER AND CENTERED BETWEEN PIERS.
 EVERGREENS ARE TO BE SELECTED FROM CATEGORY 1 EVERGREENS AS LISTED IN THE FAIRFAX COUNTY PFM.

LYNDAM HILL II—
**SUPPLEMENTAL SCREEN PLANTING @
 NOISE ATTENUATION FENCE ALONG TELEGRAPH RD.**

SCALE: 1" = 50'-0"
 JULY 1, 2005



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