

Proffers

Eastwood Properties, Lackawanna Drive

RZ 2006-LE-026

March 29, 2007

Pursuant to Section 15.2-2303(A), Code of Virginia, 1950 as amended, the undersigned Applicant and Owners, in this rezoning proffer that the development of the parcel under consideration and shown on the Fairfax County Tax Map as Tax Map Reference 90-3((3))6, 7, 8 (hereinafter referred to as the "Property") will be in accordance with the following conditions (the "Proffered Conditions"), if and only if, said rezoning request for the PDH-2 Zoning District is granted. In the event said rezoning request is denied, these Proffered Conditions shall be null and void. The Owners and Applicant, for themselves, their successors and assigns hereby agree that these Proffered Conditions shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board of Supervisors of Fairfax County, Virginia, in accordance with applicable County and State statutory procedures. The Proffered Conditions are:

I. GENERAL

1. Substantial Conformance. Subject to the provisions of Article 16 of the Fairfax County Zoning Ordinance (hereinafter referred to as the "Zoning Ordinance"), development of the Property shall be in substantial conformance with the Conceptual Development Plan/Final Development Plan (CDP/FDP), prepared by Charles P. Johnson & Associates, Inc., consisting of 5 sheets, dated June 9, 2006, revised through February 28, 2007.

2. Maximum Lot Yield. The development shall consist of a maximum of 8 single family detached units. Except as may be further qualified by these proffered conditions, minor modifications to the building envelopes including house location and sizes may be permitted in accordance with Section 16-403 of the Zoning Ordinance.

3. Establishment of HOA. Prior to subdivision plat approval, the Applicant shall demonstrate that the Property will be governed by a Homeowners Association (HOA) and be subject to a Declaration of Covenants, Conditions and Restrictions consistent with the requirements of Article 2 of the Zoning Ordinance.

4. Dedication to HOA. In conjunction with the appropriate subdivision plan review process, open space, common areas, pipestem drive, and amenities not otherwise conveyed or dedicated to the County shall be dedicated to the HOA and maintained by the same.

5. Disclosure. Prior to entering into a contract of sale, prospective purchasers shall be notified in writing by the Applicants of the maintenance responsibility for the pipestem drive, stormwater management facilities, grass-crete pavers, common area landscaping and any other open space amenities, and shall acknowledge receipt of this information in writing. The deeds of conveyance and HOA documents shall expressly contain these disclosures.

6. Garages. A minimum of two side-by-side parking spaces shall be provided within the garage of each new dwelling unit. Any conversion of garages that will preclude the parking of vehicles within the garage is prohibited. A covenant setting forth this restriction 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 and shall run to the benefit of the Board of Supervisors and the HOA and this restriction shall be included in the HOA documents.
7. Energy Conservation. All dwellings on the Property shall meet the thermal guidelines of the CABO Model Energy Program for energy efficient homes, or its equivalent as determined by DPWES for either gas or electric energy systems, as may be applicable.
8. Signs. No temporary signs (including “popsicle” style paper or cardboard signs), which are prohibited by Article 12 of the Zoning Ordinance and Chapter 7 of Title 33.1, and Chapter 8 of Title 46.2 of the Code of Virginia, shall be placed on or offsite by the Applicant or at the Applicant’s direction. The Applicant shall direct its agents and employees involved with the Property to adhere to this proffer.
9. Construction Hours. Construction shall only occur between the hours of 7:00 a.m. until 7:00 p.m. Monday through Friday, 8:00 a.m. until 6:00 p.m. on Saturday and 9:00 a.m. until 6:00 p.m. on Sunday. Construction activities shall not occur on the holidays of Memorial Day, July 4th, Labor Day, Thanksgiving, Christmas, Easter, and New Years Day. The construction hours shall be posted on the property. The allowable hours of

construction as specified in this proffer shall be listed within any contract with future sub-contractors associated with construction on the site.

10. Architecture. The fronts of the dwelling units and the sides of the units on Lots 1, 4 and 8 will be constructed with brick and/or stone materials, exclusive of windows, doors, shutters and trim. Vinyl, hardi-plank or other similar cementitious siding products or a combination of these shall be used on the other sides and backs, exclusive of windows, doors, shutters and trim, although vinyl will only be used where the ultimate spacing between dwelling units will be 15 feet or greater. The retaining walls, as depicted on the CDP/FDP, shall be faced with masonry materials and shall be earthtone in color.
11. Lot Typical. The minimum front, side and rear yards for Lots 2 through 8 shall be consistent with that shown on the typical lot layout on the CDP/FDP. For corner Lot 1, the minimum front yard shall be 25 feet, the minimum side yard shall be 10 feet and the minimum rear yard shall be 25 feet. Decks, bays, windows, patios, chimneys, areaways, mechanical equipment and other similar appurtenances may encroach into minimum yards as established on the "lot typical" generally described on the CDP/FDP and in this proffer, as permitted by Section 2-412 and Article 10 of the Zoning Ordinance, as applicable.
12. Construction Staging. There shall be no staging or parking of construction vehicles, construction equipment, or construction workers vehicles on Lackawanna Drive or Dudrow Road associated with the construction of the proposed houses.

II. TRANSPORTATION

13. Right-of-Way Dedication. At the time of recordation of the first record plat or upon demand, whichever occurs first, right-of-way to 27.5 feet from the centerline of Lackawanna Drive and Dudrow Road, as shown on the CDP/FDP, shall be dedicated and conveyed to the Board of Supervisors in fee simple with density reserved subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance.

14. Pipestem Drive. The pipestem drive shall be constructed by the Applicant with materials and to the pavement thickness standard of private streets as set forth in the Public Facilities Manual (PFM), subject to DPWES approval. Prior to entering into a contract of sale, prospective purchasers shall be notified of the existence of the pipestem drive and the associated maintenance obligations and such information shall be included in the HOA documents.

15. Length of Driveways. The driveway on each residential lot shall have a minimum of 18 feet of pavement available for parking without infringing into the right-of-way or sidewalk area and shall be a minimum of 18 feet in width.

16. Frontage Improvements. Prior to the issuance of the first Residential Use Permit, the Applicant shall construct improvements along the property's entire frontage on Lackawanna Drive to 18 feet from the centerline to face of curb, as approved by

DPWES. A 5 foot wide sidewalk will also be provided as part of the road improvements on Lackawanna Drive, as approved by DPWES.

17. Public Access Easements. A public access easement in a form approved by the County Attorney shall be placed on the pipestem drive within the approved development.

III. HOUSING TRUST FUND

18. Housing Trust Fund. At the time of the first building permit issuance, the Applicant shall contribute a sum equal to one-half of one percent (0.5%) of the projected sales price for each dwelling unit on the Property to the Fairfax County Housing Trust Fund, as determined by the Department of Housing and Community Development in consultation with the Applicant to assist the County in its goal to provide affordable dwellings. The projected sales price shall be based upon the aggregate sales price of all of the units, as if those units were sold at the time of the issuance of the first building permit and is estimated through comparable sales of similar type units.

IV. ENVIRONMENTAL

19. Stormwater Management Facilities and Best Management Practices Techniques. Stormwater Management and Best Management Practices (BMP's) shall be provided, as approved by DPWES, in the area shown on the CDP/FDP. The area surrounding the detention facility shall be landscaped to the maximum extent possible, as determined by

the Urban Forest Management, in accordance with the planting policies of the Board of Supervisors and as generally shown on Sheet 2 of 5 of the CDP/FDP. Specifically, water-tolerant grasses will be utilized in the base of the pond.

20. Limits of Clearing and Grading. The Applicant shall conform strictly to the limits of clearing and grading as shown on the CDP/FDP subject to the installation of utilities and/or trails as determined necessary by the Director of DPWES. If it is determined necessary to install utilities and/or trails outside of the limits of clearing and grading as shown on the CDP/FDP, they shall be located in the least disrupting manner possible as determined by 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 the limits of clearing and grading that must be disturbed.

21. Tree Preservation. The applicant shall submit a tree preservation plan as part of first and all subsequent subdivision plan submissions. The 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, and reviewed and approved by the Urban Forest Management (UFM), DPWES. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees 10 inches in diameter or greater and located within 20 feet to either side of the limits of clearing and grading shown on the CDP/FDP for the entire site. The tree survey shall also include areas of clearing and grading not shown on the CDP/FDP resulting from engineering requirements, such as off-site clearing and grading for utilities and

stormwater outfall. 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 will maximize the survivability of trees identified to be preserved, such as: crown pruning, root pruning, soil treatments, mulching, fertilization, and others as necessary, shall be included in the plan.

22. Tree Value Determination. The Applicant shall retain a professional with experience in plant appraisal, such as a certified arborist or landscape architect, to determine the replacement value of all trees 10 inches (10”) in diameter or greater and located within twenty (20) feet of the outer edge of the limits of clearing and grading (i.e. outside the limits of clearing and grading) as shown on the CDP/FDP which are identified to be preserved on the Tree Preservation Plan. These trees and their value shall be identified on the Tree Preservation Plan at the time of the first submission of the Subdivision Plan. The replacement value shall take into consideration the age, size and condition of these trees and shall be determined by the “Trunk Formula Method” contained in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture, subject to review and approval by UFM, DPWES.

23. Tree Bonds. In order to provide a remedy for any unintended disruption to trees required to be preserved under these proffers, at the time of subdivision plan approval, the Applicant shall both post a cash bond and a letter of credit or similar corporate surety bond payable to the County of Fairfax to ensure preservation and/or replacement of the

trees for which a tree value has been determined in accordance with the previous proffer (hereinafter the "bonded trees") that die or are dying due solely to unauthorized construction activities. The Applicant shall have no obligation for trees that die or are dying for reasons unrelated to unauthorized construction activities. The letter of credit or corporate surety bond shall be equal to fifty percent (50%) of the replacement value of the bonded trees. The cash bond shall consist of thirty three percent (33%) of the amount of the letter of credit or corporate surety bond.

During the time period in which the Tree Bond is required to be held, should unauthorized construction activity cause any bonded trees to die, or be removed, the Applicant shall replace such trees at its expense. As stated above, the Applicant shall have no obligation to replace trees that die or are dying for causes unrelated to unauthorized activities. The replacement trees shall be of equivalent size, species, and/or canopy cover as approved by UFM and shall incorporate native plant species. In addition to this replacement obligation, the Applicant shall also make a payment equal to the value of any Bonded Tree that is dead or dying or improperly removed due to unauthorized activity. This payment shall be determined based on the "Trunk Formula Method" and paid to a fund established by the County for furtherance of tree preservation objectives. Upon release of the site performance bond, any amount remaining in the tree bonds required by this proffer shall be returned/released to the Applicant. At the time of approval of the final RUP, the Applicant may request a release of any monies remaining in the cash bond and a reduction in the letter of credit or corporate surety bond to an amount up to twenty percent (20%) of the total amounts originally committed provided they are in good standing with the tree proffer commitments.

Any funds remaining in the letter of credit or cash bond will be released concurrently with the site performance bond release, or sooner, if approved by UFM.

24. Protection of Existing Understory Vegetation and Soil Conditions in Tree Preservation Areas. All tree preservation-related work occurring in or adjacent to tree preservation areas shall be accomplished in a manner that minimizes damage to vegetation to be preserved in the lower canopy environment, and to the existing top soil and leaf litter layers that provide nourishment and protection to that vegetation. Any removal of any vegetation or soil disturbance in tree preservation areas including the removal of plant species that may be perceived as noxious or invasive, such as poison ivy, greenbrier, multi-floral rose, etc. shall be subject to the review and approval of UFM.

25. Use of Equipment. Except as qualified herein, the use of motorized equipment in tree preservation areas will be limited to hand-operated equipment such as chainsaws, wheel barrows, rake and shovels. Any work that requires the use of motorized equipment, such as tree transplanting spades, skid loaders, tractors, trucks, stump-grinders, etc., or any accessory or attachment connected to this type of equipment shall not occur unless pre-approved by UFM.

26. Root Pruning and Mulching. The Applicant shall 1) root prune, 2) mulch, and 3) provide tree protection fencing in the form of four foot (4') high, fourteen (14) gauge welded wire attached to six foot (6') steel posts driven eighteen inches (18") into the ground and placed no further than ten feet (10') apart, or other forms of tree protection fencing

approved by UFM, DPWES for all tree preservation relevant areas. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets and demolition plan sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by UFM, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- Root pruning shall be done with a trencher, vibratory plow to a depth of eighteen inches (18").
- Root pruning shall take place prior to any clearing and grading, or demolition of structures.
- Root pruning shall be conducted with the supervision of a certified arborist.
- Tree protection fence shall be installed immediately after root pruning, and shall be positioned directly in the root pruning trench and backfilled for stability, or just outside the trench within the disturbed area.
- Immediately after the Phase II Erosion and Sedimentation activities are complete, mulch shall be applied at a depth of four inches (4") extending ten feet (10') inside the undisturbed area without the use of motorized equipment.
- A UFM representative shall be informed when all root pruning and tree protection fence installation is complete.

27. Tree Preservation Walk-Through. The Applicant shall retain the services of a certified arborist or landscape architect, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the pre-construction meeting. Before or during the pre-construction meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with a UFM representative and a representative from the Lee District Land Use Committee to determine where adjustments to the clearing limits can be made to increase the area of tree preservation; increase the survivability of trees at the edge of the limits of clearing and grading; facilitate the removal of trees adjacent to the limits of clearing and grading; facilitate tree preservation activities such as root pruning or fencing; or

facilitate the installation of erosion and sediment control devices. Such adjustment shall be implemented. Trees that are identified specifically by UFM in writing as dead or dying may be removed as part of the clearing operation, but it is noted that unless a dead or dying tree presents a safety hazard, attempts will be made to retain the tree. The dead or dying tree may be topped in order to be retained if that eliminates the problem of a safety hazard. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump grinding machine in a manner causing as little disturbance as possible to the adjacent trees and associated understory vegetation and soil conditions.

28. Tree Protection Fencing. All trees shown to be preserved on the Tree Preservation Plan shall be protected by tree protection fencing, as proffered above. Tree protection fencing shall be installed prior to any clearing and grading activities including the demolition of any existing structures at the limits of clearing and grading as shown on the demolition, and Phase I & II erosion and sediment control sheets, as may be modified during the tree preservation walk through with an UFM representative. All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. 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. Five (5) working days

prior to the commencement of any clearing, grading, or demolition activities, but subsequent to the installation of the tree protection devices including fencing, UFM and Lee District Supervisor staff 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 UFM.

29. Site Monitoring. During any clearing or tree/vegetation structure removal or transplantation of vegetation on the subject site, a representative of the applicant shall be present to monitor the process and ensure that the activities are conducted as proffered and as approved by UFM. The applicant shall retain the services of a certified arborist or landscape architect to monitor all construction work and tree preservation efforts in order to ensure conformance with all tree preservation proffers/conditions, and UFM approvals. The inspection/monitoring schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by UFM, DPWES. The Lee District Supervisor shall be notified of the name and contact information of the Applicant's representative responsible for site monitoring at the tree preservation walk-through meeting.

30. Landscaping. Landscaping shall be consistent with the quality, quantity and general location shown on the Landscape Plan on Sheet 2 of the CDP/FDP. At the time of planting, the minimum caliper for deciduous trees shall be two and one-half (2.5) inches to three (3) inches and the minimum height for evergreen trees shall be seven (7) feet.

Actual types and species of vegetation shall be determined pursuant to more detailed landscape plans approved by Urban Forest Management at the time of subdivision plan approval. Such landscape plans shall provide tree coverage and species diversity consistent with the Public Facilities Manual (PFM) criteria, as determined by Urban Forest Management.

31. Conservation Easement. The area identified on the CDP/FDP as “proposed conservation easement” shall remain as undisturbed, except for areas necessary for installation of utility easements or trails determined necessary by the Director, DPWES. These undisturbed areas shall be subject to a conservation easement running to the benefit of Fairfax County, in a form approved by the County Attorney. Such easement shall prohibit the removal of trees except those which are diseased, noxious or hazardous or within utility or trail easements and the erection of fences or any other structures. If a tree is dead but does not pose a safety hazard, attempts will be made to retain the tree. The dead or dying tree may be topped in order to be retained if that eliminates the problem of a safety hazard. The homeowner’s association covenants shall contain clear language delineating this area, the restrictions in that area including the prohibition of any structures, fences, etc. and the responsibilities of individual homeowners. This Conservation Easement shall be recorded prior to final bond release.

32. Reforestation. A reforestation plan for that area on the CDP/FDP shown to be reforested shall be submitted concurrently with the first and all subsequent subdivision plan submissions for review and approval by UFM and shall be implemented as approved.

This plan shall be developed and implemented in accordance with the standards specified in Par. (f) of Section 118-3-3 of the Chesapeake Bay Preservation Ordinance and as reviewed and approved by Urban Forest Management, DPWES. The plan shall propose an appropriate selection of species based on existing and proposed site conditions to restore the area to a native forest cover type. The reforestation plan shall include, but not be limited to the following:

- plant list detailing species, sizes and stock type of tree and other vegetation to be planted
- soil treatments and amendments if necessary
- mulching specifications
- methods of installation
- maintenance
- morality threshold
- monitoring
- replacement schedule

After removal by hand of the existing shed in the northern corner of the site within the Conservation Easement, the area shall be reforested as specified in this proffer. After removal of the existing garage in the southern portion of the site, the area within the Conservation Easement shall be reforested as specified in this proffer. To the greatest extent possible, existing Mountain Laurel shrubs on the site within the areas to be graded will be used as reforestation material.

33. Demolition of Existing Structures. The demolition of existing features and structures shall be conducted in a manner that does not impact on individual trees and/or groups of trees that are to be preserved as reviewed and approved by Urban Forest Management, DPWES. Methods to preserve existing trees may include, but not be limited to, the use

of super silt fence, welded wire tree protection fence, root pruning, mulching, as approved by the Urban Forest Management.

34. Grass-Crete Paver Maintenance. On or before bond release for the proposed development, and as a condition thereto, the Applicant shall deposit \$3,000 into an escrow account established for the benefit of the HOA for future maintenance, repair and upkeep of the grass-crete pavers utilized in the off-street parking off of the pipestem drive. The HOA documents shall expressly state that the grass-crete pavers shall be maintained as pervious surfaces.

V. Recreation Facilities

35. Recreation Contribution. At the time of subdivision approval, the Applicant shall contribute the sum of \$955.00 per approved residential unit approved for the total number of dwelling units, to the Fairfax County Park Authority or use on recreational facilities in the general vicinity of the subject property, subject, however, to a credit for expenditures on-site for a gazebo, benches, trail and other similar facilities in open space areas depicted on the CDP/FDP.
36. Park Authority Contribution. In addition to Proffer 34 above, the Applicant shall contribute \$10,070 to the Fairfax County Park Authority prior to the issuance of the first Residential Use Permit for park purposes and/or facilities in the area.

VI. SCHOOLS

37. Prior to the issuance of the first building permit, the Applicant shall contribute \$23,260 to the Board of Supervisors (“Board”) to be utilized for the provision of capital facilities within the Fairfax County schools serving this development.

VII. Successors and Assigns

These proffers shall bind and inure to the benefit of the Applicant and his/her successors and assigns.

VIII. Counterparts

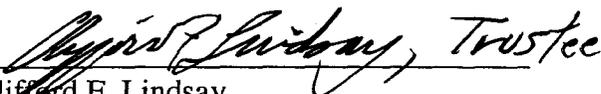
These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one and the same instrument.

TITLE OWNERS AND APPLICANTS SIGNATURES TO FOLLOW ON THE NEXT PAGE:

Clifford F. Lindsay

Trustee for the Joyce F. Lindsay Revocable Trust

Title Owner of TM 90-3((3))6


Clifford F. Lindsay

Trustee for the Joyce F. Lindsay Revocable Trust

Joseph A. Gillespie

Trustee for the Joseph A. Gillespie Trust

Title Owner of TM 90-3((3))7



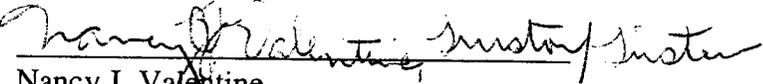
Joseph A. Gillespie

Trustee for the Joseph A. Gillespie Trust

Nancy J. Valentine

Trustor/Trustee of the Nancy J. Valentine Trust

Title Owner of TM 90-3((3))8

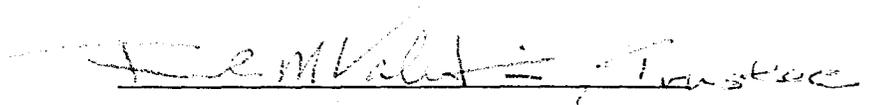

Nancy J. Valentine

Trustor/Trustee of the Nancy J. Valentine Trust

Richard M. Valentine

Trustee of the Nancy J. Valentine Trust

Title Owner of TM 90-3((3))8

A handwritten signature in cursive script that reads "Richard M. Valentine, Trustee". The signature is written in dark ink and is positioned above a horizontal line.

Richard M. Valentine

Trustee of the Nancy J. Valentine Trust

EASTWOOD PROPERTIES, INC.
CONTRACT PURCHASER
of TM 90-3((3))6, 7, 8

By: Eastwood Properties, Inc.

Name *Richard L. Labbe*

Richard L. Labbe

Title: President/Secretary/ Treasurer