



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

November 5, 2010

Jeffrey J. Fairfield, P.C.
459 Herndon Parkway, Suite 14
P.O. Box 546
Herndon, VA 20172-0546

Re: Interpretation for RZ/FDP 2002-HM-043, Arrowbrook Centre: Phasing of Park
Dedication, Life Estate

Dear Mr. Fairfield:

This is in response to your letters of September 15, 2010, and October 26, 2010, (copies attached) requesting an interpretation of the proffers and Conceptual Development Plan (CDP) accepted by the Board of Supervisors in conjunction with the approval of RZ 2002-HM-043 and the Final Development Plan (FDP) and development conditions approved by the Planning Commission with FDP 2002-HM-043. As I understand the question, it is whether the proposed phasing of park dedication would be in substantial conformance with the proffers, the CDP/FDP and development conditions. This determination is based on your letter and attached exhibits entitled "Arrowbrook Park, FCPA Dedication Exhibit," prepared by Patton Harris Rust & Associates and dated July 21, 2010.

You have indicated that construction of the proffered active recreational park has been completed in Land Bay E-F of the Arrowbrook Centre project and is ready for dedication to the Park Authority pursuant to Proffer 30. The proffer requires construction and dedication of the active recreational park within five years of the effective date of Rezoning 2002-HM-043 which was February 3, 2006. Included in the proffer language is provision for a portion of the land subject to a life estate owned by Mr. and Mrs. Meiselman to be dedicated at a later date. In order to allow the proffered dedication of the active recreational park to occur at this time, subdivision of Land Bay E-F would need to occur in order to separate the life estate parcel. To subdivide this parcel alone is not possible because it is less than five acres and does not have public street frontage.

In order not to delay dedication of the active park, Arrowbrook has proposed a boundary line adjustment to create a new Parcel 4A comprised entirely of that part of Land Bay E-F developed with the active park. The boundary line adjustment would further append the remainder of Land Bay E-F, including the life estate, to Parcel 3 which would be re-designated Parcel 3A. Each parcel would then contain more than five acres as shown in the submitted exhibit.

Mr. Fairfield
Page 2

Arrowbrook proposes to retain the balance of Land Bay E-F consisting of the life estate and the land area between it and Centreville Road and would dedicate it to the Park Authority after the completion of the life estate. Prior to that time, Arrowbrook would obtain subdivision approval for a new Parcel 4B (2.6 acres) comprised of this land area. The configuration of these parcels and the timing of dedications would be detailed in an agreement between Arrowbrook and the Park Authority.

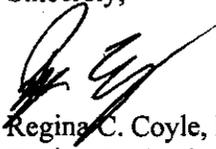
The land area between the life estate and Centreville Road is shown on the approved CDP/FDP to include a trail and landscaping along Centreville Road. Proffer 29A allows for the deferral of the trail construction until the life estate is completed, subject to bonding and construction of an alternative trail connection. In your October 26, 2010, letter, you have confirmed that the landscaping improvements shown on the CDP/FDP along Centreville Road will be installed per approved Site Plan 1504-SP-002 prior to the dedication of the active recreational park. No changes to the proffer commitments are proposed.

On September 22, 2010, a letter was submitted by Sandy Stallman, Manager, Park Planning Branch, indicating Fairfax County Park Authority support for the requested park dedication phasing. The letter indicates that the present request was initiated in response to Park Authority concerns.

It is my determination that the proposed phasing of park dedication, as described above and depicted in the submitted interpretation exhibit, to allow dedication of the active recreation park at the present time, and dedication of the life estate and residual of Land Bay E-F upon completion of the life estate at a later date, would be in substantial conformance with the proffers, the CDP/FDP, and development conditions, subject to final approval by the Park Authority and the Department of Public Works and Environmental Services. This determination has been reviewed with the Park Authority and has been made in my capacity as the duly authorized agent of the Zoning Administrator.

If you have any questions regarding this interpretation, please feel free to contact Kevin Guinaw at (703) 324-1290.

Sincerely,



Regina C. Coyle, Director
Zoning Evaluation Division, DPZ

RCC/O:KGUINAWINTERPRETATIONSARROWBROOK CENTRE.DOC

Attachments: A/S

cc: Catherine M. Hudgins, Supervisor, Hunter Mill District
Frank A. de la Fe, Planning Commissioner, Hunter Mill District
Diane Johnson-Quinn, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ
Ken Williams, Plan Control, Land Development Services, DPWES
Albert W. Oakley, Assistant County Attorney
Julie B. Cline, Project Coordinator, Park Authority
Jack Weyant, Director, Environmental and Facilities Inspection Division, DPWES
Kevin Guinaw, Chief, Special Projects/Applications Management Branch, ZED, DPZ
File: RZ/FDP 2002-HM-043, Imaging, Reading File

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26 October 2010

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Department of Planning & Zoning
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Zoning Evaluation Division

Regina C. Coyle, Director
Zoning Evaluation Division
Department of Planning and Zoning
County of Fairfax
Fairfax County Governmental Center
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

BY HAND

**SUPPLEMENTAL STATEMENT TO THE
REQUEST FOR INTERPRETATION
OF APPROVED ZONING PROFFERED CONDITIONS
PURSUANT TO SECTION 18-204.5. OF THE
FAIRFAX COUNTY ZONING ORDINANCE**

*Re: Arrowbrook Centre
RZ/FDP 2002-HM-043
Hunter Mill District*

Dear Ms. Coyle:

On behalf of the undersigned landowner, Arrowbrook Centre, LLC, I hereby supplement the Request for Interpretation I submitted to you on 15 September 2010. This statement is being provided in response to your inquiry directed to staff for the Fairfax County Park Authority. You asked for clarification as to the status of certain landscaping improvements called for by the FDP in the vicinity of the Meiselman Life Estate.

The various landscaping improvements described in the FDP for installation along the frontage of Land Bay E-F with Centreville Road upon what will become future Parcel 4B are within the scope of the approved Arrowbrook Centre Recreational Facilities Site Plan, 1504-SP-002. Arrowbrook Centre, LLC, as the applicant in this approved and bonded site plan, is obligated to install these landscape improvements. In point of fact, much of this landscaping is already installed, the remaining plants and trees are scheduled to be planted later this week in preparation for bond release prior to dedication.

The above referenced zoning application was approved with proffered conditions for a turn key community and passive park depicted in the FDP. The proffered park amenities were carefully negotiated between the applicant and the Park Authority throughout the zoning process. The various stakeholders have continued to coordinate with the applicant, engineers

Regina C. Coyle, Director
Zoning Evaluation Division
Fairfax County Department of Planning and Zoning
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and construction team to address issues that have arisen during the construction phase of this park. Additionally, the applicant and the Park Authority are diligently collaborating in the development of a detailed use agreement that will serve to guide the future joint programming and maintenance of this unique park. We anticipate this agreement will be finalized and executed in the very near future.

In the process of developing the use agreement, Park Authority staff raised concerns regarding the obstacles to the timely subdivision of the active recreation park in light of the existing Life Estate within the dedication area. The request for interpretation submitted by Arrowbrook Centre, LLC to you last month was a response to Park Authority concerns. The proposed phasing of dedication will resolve these concerns.

Phasing the dedication in no way releases the land owner from completion of proffered elements to be constructed or installed, including construction of an eight-foot wide asphalt trail and landscaping along Centreville Road. Construction of the trail, in accordance with the proffers, may be delayed until expiration of the Meiselman Life Estate. Landscaping along Centreville Road located within the area to be dedicated to the Park Authority is being installed as part of the construction of the active recreation park. As this is an element of the approved and bonded site plan, this landscaping must be installed and approved by the site inspector prior to bond release which is a precondition to the dedication of Arrowbrook Park.

A dedication ceremony is scheduled for November 13, 2010. We would greatly appreciate issuance of your opinion prior to that date and in sufficient time to proceed to closing on the dedication and to record the necessary legal documents. As always, we do appreciate your cooperation. If you have any questions, please let me know.

Very truly yours,



JEFFREY J. FAIRFIELD

Co-Manager, Arrowbrook Centre, LLC

JJF:lm

Enclosures

cc: Albert W. Oakley, Esquire, Office of the Fairfax County Attorney
Gayle Hooper, Fairfax County Park Authority
Sandy Stallman, Fairfax County Park Authority
Julie B. Cline, Fairfax County Park Authority
David H. Steigler, RLA, Patton, Harris Rust and Associates, Inc.
Hon. Catherine M. Hudgins, Supervisor, Hunter Mill District

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Department of Planning & Zoning

SEP 15 2010

Zoning Evaluation Division

15 September 2010

Regina C. Coyle, Director
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Department of Planning and Zoning
County of Fairfax
Fairfax County Governmental Center
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

BY HAND

**REQUEST FOR INTERPRETATION
OF APPROVED ZONING PROFFERED CONDITIONS
PURSUANT TO SECTION 18-204.5. OF THE
FAIRFAX COUNTY ZONING ORDINANCE**

*Re: Arrowbrook Centre
RZ/FDP 2002-HM-043
Hunter Mill District*

Dear Ms. Coyle:

On behalf of the undersigned landowner, Arrowbrook Centre, LLC, I hereby submit this request for an interpretation of approved zoning proffered conditions pursuant to § 18-204 of the Fairfax County Zoning Ordinance and its other applicable provisions. I enclose check number 1635 drawn on the account of Arrowbrook Centre, LLC with Wachovia Bank and payable to the order of the County of Fairfax in the sum of \$500.00 to cover the processing fee for this request.

I. My contact information for purposes of this request is as follows:

Jeffrey J. Fairfield, Co-Manager
Arrowbrook Centre, LLC
P. O. Box 546
Herndon, Virginia 20172-0546
Telephone: (703) 437-9200
e-mail: jeff@jjfpc.com

II. The request pertains to the following property and zoning application:

Parcels 3 and 4, Arrowbrook Centre
Tax Map Number 016-3-01-0039A3 (Parcel 3, Arrowbrook Centre)
Tax Map Number 016-3-01-0039A4 (Parcel 4, Arrowbrook Centre)
Rezoning Application RZ/FDP 2002-HM-043 and its associated
Proffers approved December 5, 2005

III. The specific Proffers relevant to this request are as follows:

Proffer 29.A.
Proffer 30.
Proffer 30.A.
Proffer 30.H.(iv)

IV. The following exhibits are submitted in support of this Request and are attached hereto:

Exhibit 1: Proffer 29.A. and 30.
Exhibit 2: Sheet 4 and 15 of the approved Final Development Plan
Exhibit 3: Meiselman Life Estate Exhibit
Exhibit 4: Arrowbrook Park Dedication/Non-Dedication Area
Exhibit 5: Arrowbrook Park FCPA Dedication Exhibit
Exhibit 6: Agreement Relating to the Arrowbrook Centre Athletic Field,
Urban Park and Community Green (Excerpts from a Draft dated
August 27, 2010)

Please note this request does not propose a minor modification from the approved Proffers which would either (1) change tabulations from those on the approved final development plan or (2) add buildings, addition to buildings, or new accessory structures.

V. A discussion of the specific interpretation request, and the reasons why the request is a minor modification as defined in the Zoning Ordinance, follows.

Regina C. Coyle, Director
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Overview.

By its Ordinance enacted on December 5, 2005, the Board of Supervisors rezoned certain land in Hunter Mill Magisterial District commonly referred to as Arrowbrook Centre to the PDC District subject to a Final Development Plan revised through October 28, 2005 and Proffers dated December 5, 2005 in addition to various development conditions not relevant to this request. The Ordinance as adopted delayed the effective date of the rezoning until the applicant paid certain funds as required by state law into the Route 28 Transportation Improvements Tax District. This was accomplished on February 3, 2006. The Final Development Plan for Arrowbrook Centre ("FDP") provides for a mixed-use community comprised of not more than 2,233,600 gross square feet developed in separate phases subject to various triggers as set forth in the Proffers. Proffer 8. states that all internal streets shall be private. The FDP divides the rezoned land into six (6) land bays, Land Bays A, B, C, D, E-F and G. Only Land Bay E-F is pertinent to this request.

To date no construction of any buildings or other vertical improvements has been commenced at Arrowbrook Centre other than a pavilion located on Land Bay E-F intended for dedication to the Fairfax County Park Authority ("the Authority"). Proffer 30. obligates the applicant to construct and dedicate to the Authority, within five (5) years after the effective date of the rezoning, an improved park for active recreational uses ("the active park"). The FDP locates the active park on Land Bay E-F. At this time, construction of the active park is substantially complete. Arrowbrook Centre, LLC, as the owner of Land Bay E-F, and also as the rezoning applicant in RZ/FDP 2002-HM-043, proposes to dedicate the active park to the Authority once all pre-dedication conditions are fulfilled. Arrowbrook Centre, LLC and FCPA have tentatively scheduled dedication of the active park for November, 2010 before the fifth (5th) anniversary of the Arrowbrook Centre rezoning on February 3, 2011.

Pertinent Proffers.

In pertinent part, Proffer 30.A. reads as follows:

"The Applicant shall dedicate in fee simple to FCPA approximately 23 acres of land identified as Land Bays E-F and G on the CDP/FDP, less and except on a temporary basis the land area occupied by the life estate of Mr. and Mrs. David I. Meiselman as more full described in this Proffer, for development of public parkland. This area consists of approximately 6.8 acres in Land Bay E-F and 2.68 acres of Land Bay G located outside of the Resource Protection Area ("RPA") and area for private road use. At the FCPA's option, the streetscape elements and community stage on Land Bay E-F to the FCPA can be either

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dedicated with the applicant providing maintenance in perpetuity, or may be retained in fee simple by the Applicant, with public access easements and private maintenance responsibilities.” [emphasis added]

In pertinent part, Proffer 30.H(iv) reads as follows:

“Mr. and Mrs. David I. Meiselman reserve and retain the right to reside in their dwelling on Land Bay E-F for the duration of their lives pursuant to the terms of a certain life estate homestead. The life estate homestead includes the main dwelling, accessory structures, and approximately one acre of surrounding land including the driveway providing access to the dwelling as depicted on Sheets 4 and 15. The life estate is also served by an appurtenant ingress-egress easement across a portion of Land Bay E-F in order to provide access to Centreville Road along the course of the main entrance road. Upon expiration of the life estate, the area of the life estate shall be dedicated in fee simple to FCPA except as may be permitted in Proffer 31 below.”

Proffer 31 addresses the alternative dispositions of the historical structures on the Meiselman Life Estate, after expiration of same. They are not pertinent to this Request.

The final paragraph of Proffer 30 reads as follows:

“Prior to the first site plan approval for development of buildings on the Property, the Applicant shall enter into an agreement with the [the Authority], in a form acceptable to the County Attorney, setting forth the details of the dedication and facility construction in accordance with the specifications of this proffer.”

Facts and Issues Presented Specific to this Request.

Mr. and Mrs. David I. Meiselman currently reside upon the Meiselman Life Estate. They have consistently expressed their intention to remain in possession of their life estate indefinitely. The Meiselman Life Estate, as depicted in Exhibits 3 and 4 attached, consists of approximately one (1) acre, and it forms an island entirely within the boundaries of Land Bay E-F. In the course of composing a draft of the agreement with the Authority as contemplated in the last paragraph of Proffer 30, it became apparent that execution and delivery of a deed of dedication vesting ownership of Land Bay E-F in the name of the Authority, less and except the Meiselman Life Estate, and in the manner directed by Proffer 30 would constitute a division of a parcel of land with one resulting parcel, i.e. the Meiselman Life Estate, having less than five (5) acres. Hence, this division of land falls

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within the scope of the Subdivision Ordinance of the County of Fairfax, Chapter 101 of the Fairfax County Code, and its associated regulatory procedures.

Furthermore, upon further review of the relevant provisions of the Subdivision Ordinance, it has also become apparent the Meiselman Life Estate does not meet the minimum requirements for a subdivided parcel of land because it lacks frontage on a public street. Waivers of the public street frontage requirement may be granted by the Board of Supervisors, on a case by case basis, but only where the private street serving the parcel for which the waiver is requested was constructed and recorded in the land records before June 28, 1993. *see County Code § 101-2-2*. Because the private street serving the Meiselman Life Estate (Arrowbrook Centre Drive) was constructed after the rezoning on February 3, 2006, no waiver is available. Hence, dedication of Land Bay E-F, less and except the Meiselman Life Estate, in accord with Proffer 30 is a legal impossibility.

In order to overcome this obstacle, Arrowbrook Centre, LLC is proposing a minor variation of the dedication sequence for Land Bay E-F which it believes is in substantial conformance with the Proffers. Arrowbrook Centre, LLC is ready to dedicate that portion of Land Bay E-F improved with the active park. It has offered to retain the balance of this land bay consisting of the Meiselman Life Estate augmented by the land area between it and the public street, Centreville Road. Applicant will dedicate this residue of Land Bay E-F to the Authority within a reasonable time after the Meiselman Life Estate ends. Before that time arrives, the applicant will file and obtain approval of a subdivision plat for Arrowbrook Centre to include among its constituent parcels a new Parcel 4B comprised of that residue of Land Bay E-F reserved for dedication to the Authority after the Meiselman Life Estate has ended.

In order not to delay dedication of the active park while an application to subdivide Land Bay E-F is processed, the applicant has proposed a boundary line adjustment outside the purview of the subdivision process. This boundary line adjustment will create a new Parcel 4A comprised entirely of that part of Land Bay E-F developed with the active park, excluding however various streetscape elements and the community stage the Authority has chosen not to take as per its prerogative in Proffer 30A. The boundary line adjustment will further append the remainder of Land Bay E-F, including the Meiselman Life Estate, to current Parcel 3 which will be re-designated as Parcel 3A. Each parcel will contain more than five (5) acres. This will allow a timely dedication of the active park to occur this fall. See Exhibit 6.

Arrowbrook Centre, LLC proposes to document its obligation for this dedication sequence and procedure with respect to Land Bay E-F. This will be accomplished through

its written agreement with the Authority. A copy of the draft agreement, in relevant part, is attached as Exhibit 7. It is important to note the written agreement does not purport, and indeed cannot, modify the Proffers. Nor does the agreement alter in any fashion the applicant's obligations under the Proffers. The applicant remains bound by Proffer 29.A. which is unaffected by this request. This proffer requires applicant to construct a pedestrian and bicycle trail on the residue of Land Bay E-F which it will retain pending expiration of the Meiselman Life Estate. Significantly, this same proffer lets the applicant defer construction of the trail until after the Meiselman Life Estate terminates. The applicant has already filed a site plan, Plan Number 1504-SP-004 (the Centreville Road Trail Plan), for these trail and related improvements including pedestrian handrails and some limited landscaping improvements along the public street frontage as per the FDP. This site plan has been administratively approved but has not been bonded in light of its deferred construction time.

The applicant is still obliged to dedicate the entirety of Land Bay E-F to the Authority in accord with the Proffers. The minor modification will serve to reserve that part of Land Bay E-F which is unrelated to the active park, including the Meiselman Life Estate, with the applicant so that the active park may be timely and expeditiously dedicated to the Authority as per the Proffers. See Exhibit 7., pages 6-9.

Applicable Standard and Analysis.

§ 18-204.5. of the County's Zoning Ordinance authorizes minor modifications to proffered conditions when the Zoning Administrator determines that such modifications are in substantial conformance with the proffered conditions and are in response to "...issues of topography, drainage, underground utilities, structural safety, layout, design, vehicular circulation, or requirements of the Virginia Department of Transportation or Fairfax County..." [emphasis added]

The Zoning Ordinance defines "substantial conformance" as being a level of conformity which leaves a "reasonable margin for minor modification" provided:

- such modification is consistent with and does not materially alter the character of the approved development including the uses, layout and relationship to the adjacent properties depicted on the approved final development plan;
- such modification is consistent with any proffered or imposed conditions that govern development of the site; and,

Regina C. Coyle, Director
Zoning Evaluation Division
Fairfax County Department of Planning and Zoning
15 September 2010
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— such modification is in accordance with the requirements of this Ordinance.”

When read together, these legal standards invest the Zoning Administrator with substantial latitude to interpret and apply proffered zoning conditions in light of extraneous factors and circumstances as long as (i) the modification does not implicate any of three (3) provisos included in the above-cited definition of “substantial conformance” and (ii) such factors and circumstances are among the list of permitted issues enumerated in the text above.

The request in this instance calls for a minor modification to Proffer 30.A. to defer dedication of a part of Land Bay E-F so that the bulk of this land bay as developed with the active park may be dedicated and placed into public use as soon as possible. This minor modification is a response to the layout and design of the Meiselman Life Estate coupled with the requirements of the Fairfax County Subdivision Ordinance. Together these issues, which are among those included in the list, combine to prevent a literal adherence to the proffer as written. Consequently, the second requirement is met.

Moreover, the minor modification does not implicate any of the three (3) provisos which would preclude substantial conformance. First the modification is consistent with and does not materially alter the character of the approved development. The entirety of Land Bay E-F will still be dedicated to the Authority and placed into perpetual public use. All of the proffered public improvements will be constructed prior to dedication. The modification simply means the portion of Land Bay E-F most significant to the public interest, the active park, will be dedicated as soon as possible prior to the February 3, 2011 proffered deadline. Proffer 30. articulates the importance of the timely and expeditious construction and dedication of the active park. This minor modification fulfills that goal. The minor modification does not affect any other land bay or any other element or attribute of the FDP. Hence, the first proviso is not implicated.

Likewise, the minor modification does not run afoul of either the second or the third provisos. This minor modification does not alter any proffered or other condition which governs development of the site. The modification does not change or alter in any manner or fashion the specific public improvements the applicant is obliged to construct. Moreover, it does not alter the timing for construction of any of these improvements. Proffer 29.A. already authorizes deferral of construction of the pedestrian and bicycle trail on the portion of Land Bay E-F to be retained by the applicant until the Meiselman Life Estate has expired.

Finally, the minor modification does not violate any provision of the Zoning Ordinance. In addition, it achieves compliance with the Subdivision Ordinance. The

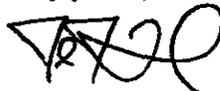
Regina C. Coyle, Director
Zoning Evaluation Division
Fairfax County Department of Planning and Zoning
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page 8

modification does not request or involve any the seven (7) prohibited modifications which are listed in § 18-204.5.A.(1)-(7) of the Zoning Ordinance. There is no change in either the land area or in the intensity of uses from those approved in the Proffers. The modification does not affect parking requirements or affect allowed or approved uses. There is no reduction of approved transitional screening, buffering, landscaping, or open space. There are no changes in the approved vertical improvements which would relate to bulk, mass, orientation, or location. There is no change in clearing or grading, and nothing affects any aspect of the storm water management plan for Arrowbrook Centre. Finally, there are no buildings or additions to buildings proposed or contemplated by this minor modification.

Consequently, the Zoning Administrator has ample authority to find and determine that this minor modification is allowable under § 18-204.5. of the Zoning Ordinance. The undersigned landowner and applicant hereby requests the Zoning Administrator make such a finding and determination in accord with this request and issue an opinion that dedication of Land Bay E-F to the Authority in the sequence set out in the last two (2) full paragraphs on page 5. of this letter is a permitted minor modification within the meaning of Article 18, § 18-204.5, of the Zoning Ordinance. Applicant agrees, if so requested by the Zoning Administrator as a condition of any such opinion, to expressly commit to the foregoing dedication procedure in its written agreement with the Authority.

Finally, Applicant respectfully requests an expedited review of this request so as to permit and allow dedication of the active park to the Authority on or before November 5, 2010 as currently contemplated by the applicant and the Authority. Please let me know if you have any questions or need additional information.

Very truly yours,

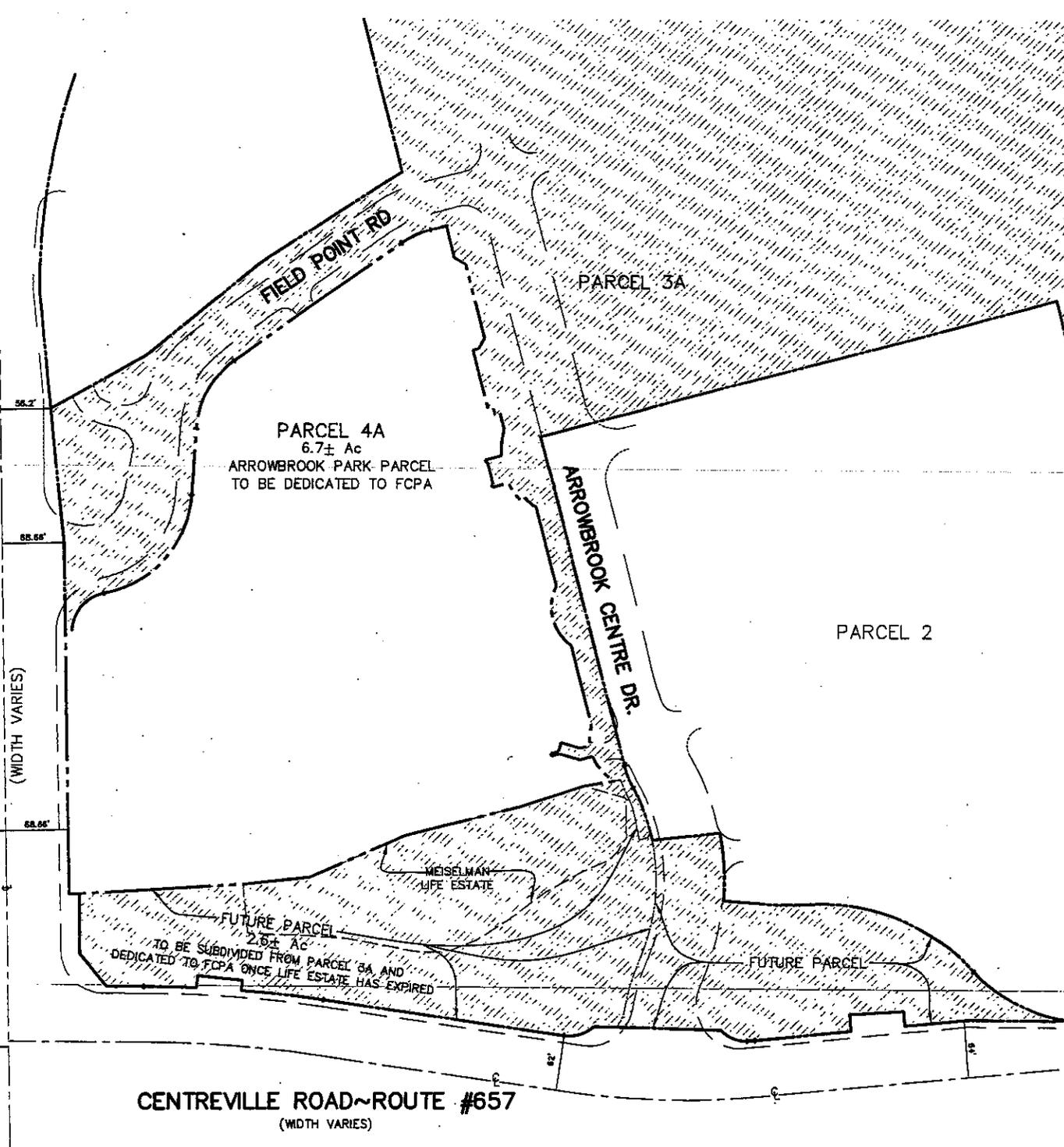
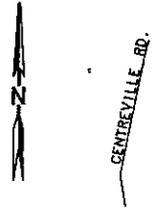
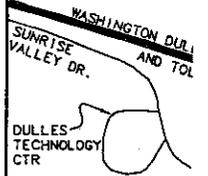


JEFFREY J. FAIRFIELD
Co-Manager, Arrowbrook Centre, LLC

JJF:lm

Enclosures

cc: Albert W. Oakley, Esquire, Office of the Fairfax County Attorney
Sandy Stallman, Fairfax County Park Authority w/o enclosures
Julie B. Cline, Fairfax County Park Authority w/o enclosures
David H. Steigler, RLA, Patton, Harris Rust and Associates, Inc. w/o enclosures



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