BERRYVILLE AREA DEVELOPMENT AUTHORITY

AGENDA

Wednesday, June 24, 2020 -- 7:00pm

Berryville – Clarke County Government Center Main Meeting Room
101 Chalmers Court – Berryville, Virginia

1. Call to Order – Allen Kitselman, Chair

2. Approval of Agenda

3. Approval of Minutes – May 27, 2020 meeting

4. Public Hearing - Final Plat and Site Plan – McNeil Drive
House of Lords, Inc. and Ding Yi Wang, Owners (Jon Erickson, Morris & Ritchie Associates, Agent) are requesting Final Plat and Site Plan approval in order to construct an extension of McNeil Drive, creating a two-lot subdivision on the parcel identified as Tax Map Parcel number 14-5-251E zoned Business Commercial (BC). SP 01-20

5. Discussion of Public Hearing

6. Set Public Hearing – Final Plat Hermitage Phase V
Duane Brown (Marsh and Legge Land Surveyors, PLC, Agent; Hermitage, LLC, Owner) is requesting final subdivision plat approval for the creation of 71 single-family residential lots on the property identified as Tax Map Parcel numbers 14A4-((A))-23 (23.42 acres) and 14-A-11A (35.25 acres), zoned R-1 Residential and DR-1 Residential, respectively. MASD 01-20

7. Other Business

8. Adjourn

UPCOMING MEETING:
Wednesday, July 22, 2020 (7:00pm) – Regular Meeting

BERRYVILLE AREA DEVELOPMENT AUTHORITY

REGULAR MEETING
Wednesday, May 27, 2020 at 7:00pm
Berryville-Clarke County Government Center – Main Meeting Room
101 Chalmers Court – Berryville, Virginia

The COVID-19 pandemic emergency having prompted adjustments to the customary meeting procedure, the Berryville Area Development Authority conducted this meeting according to emergency procedures approved in the April meeting of the full Berryville Town Council. No more than ten people, including Authority members, staff, and the public, were allowed in the meeting area at any time. Two members of the Authority participated by telephone, and the meeting was livestreamed on YouTube.

A meeting of the Berryville Area Development Authority (BADA) was held on Wednesday, May 27, 2020.

ATTENDANCE

Authority Members Present at the Government Center: Allen Kitselman, Chair; David Weiss

Authority Members participating remotely: George Ohrstrom, Vice Chair; Kathy Smart

Authority Members Absent: Matt Bass; Tom Parker

Staff present: Christy Dunkle, Berryville Community Development Director

CALL TO ORDER

Chair Kitselman called the meeting to order at 7:00pm.

APPROVAL OF AGENDA

The Authority voted to approve the agenda as presented.

Yes:	Kitselman, Ohrstrom (moved), Smart, Weiss (seconded)
No:	None
Absent:	Bass; Parker

APPROVAL OF MINUTES

The Authority voted to approve the minutes of the February 26, 2020 meeting as presented.

Yes:	Kitselman, Ohrstrom, Smart (seconded), Weiss (moved)
No:	None
Absent:	Bass; Parker

Final Plat and Site Plan – McNeil Drive

House of Lords, Inc. and Ding Yi Wang, Owners (Jon Erickson, Morris & Ritchie Associates, Agent) are requesting Final Plat and Site Plan approval in order to construct an extension of McNeil Drive, creating a two-lot subdivision on the parcel identified as Tax Map Parcel number 14-5-251E zoned Business Commercial (BC). SP 01-20

Chair Kitselman asked staff to describe the request.

Ms. Dunkle provided an overview of the application. She said Mr. Echols is requesting the approval of a Final Plat in order to extend McNeil Drive and the proposed road extension created a two-lot subdivision. She said the applicant has also included a Site Plan for the construction of the road. Ms. Dunkle added that cursory comments have been provided to the applicant. Vice Chair Ohrstrom asked whether those comments had been addressed and Ms. Dunkle said they had not. Vice Chair Ohrstrom asked about the timing of reviews. Ms. Dunkle said that the Town's engineer and staff will review the street construction as the secondary streets are now maintained by the Town.

Chair Kitselman recognized Alton Echols, applicant. Mr. Echols said he has sold the property to Mr. Wang and described the history of this area from the mid-1990's until present day. He referenced a number of concept plans including a medical arts building; hotel; gas and convenience store; and fast food restaurants. He said a spur road would be a detriment to the site. He said he sold a parcel to the Byrd family that would extend access to their property north of Mr. Wang's property.

There was a discussion about information received by staff and forwarded to BADA members including Mr. Echols' "Executive Summary Statement of the Facts" and a letter from John Foote, representing North Buckmarsh, LLC, dated May 27, 2020. It was determined by Authority members that the letter would be discussed at the public hearing.

Mr. Weiss noted that it would be beneficial for the two property owners to discuss the matter and come to a resolution for a second access to the North Buckmarsh, LLC parcel adding that it is not required by the locality.

There was a discussion about setting the public hearing. Mr. Weiss recommended having Robert Mitchell attend the public hearing proposed for June 24, 2020. Authority members were in agreement.

There being no further discussion, Authority members set the public hearing for June 24, 2020 at 7:00pm.

Ms. Dunkle referenced the applicant's "Executive Summary Statement of Facts" noting that the Town had not "insisted on the dedication and construction" of an access road adjacent to a proposed Medical/Dental Office Building adding that no Site Plan application has been submitted for approval for this use.

OTHER BUSINESS

Ms. Dunkle said the BADA and Berryville Planning Commission will need to approve the Final Plat for the Hermitage Subdivision. Staff has been discussing logistics for such a meeting in light of the current pandemic. She asked Authority members if the date would work for them and they agreed to holding a public hearing at their regular meeting scheduled for July 22, 2020. Ms. Dunkle said she would discuss the matter with the chair of the Planning Commission.

ADJOURN

There being no further business, Chair Kitselman adjourned the meeting at 7:23PM.

Allen Kitselman, Chair

Christy Dunkle, Clerk

Berryville Area Development Authority Report Summary

June 24, 2020

Item Title
Public Hearing - Final Plat and Site Plan – McNeil Drive

Prepared By
Christy Dunkle

Public Hearing

House of Lords, Inc. and Ding Yi Wang, Owners (Jon Erickson, Morris & Ritchie Associates, Agent) are requesting Final Plat and Site Plan approval in order to construct an extension of McNeil Drive, creating a two-lot subdivision on the parcel identified as Tax Map Parcel number 14-5-251E zoned Business Commercial (BC). SP 01-20

Background/History/General Information

Adjacent property notices were mailed on June 9, 2020. The public hearing notice was published in the Winchester Star on Wednesday, June 10 and Wednesday, June 17, 2020. No comments were received in the Planning Office.

Staff has received a fourth submission from the applicant (dated June 10, 2020). This application eliminates the request for Site Plan approval and identifies the Final Plat as the only approval he is seeking.

May 27, 2020 Staff Report

Alton Echols, president of House of Lords, Inc., and Ding Yi Wang are requesting approval of a Final Plat and Site Plan which would create two lots fronting on an extension of McNeil Drive.

Final Plat

The Final Plat submission identifies right-of-way for a new public street which extends McNeil Drive from its current terminus to existing Chamberlain Street. The original configuration included a t-intersection and an east-west extension of Chamberlain. The proposed road has created a second parcel. Lot 1 is 4.1982 acres and Lot 2 is 2.0535 acres. Both parcels have been annexed into the Town and are zoned BC Business Commercial which is regulated under Section 610 of the Berryville Zoning Ordinance.

There has been no indication from the owners of the type of uses that would be developed on these parcels. Accordingly, additional transportation requirements may be required (e.g., turn lanes, additional right-of-way) due to vehicle trips generated from the respective parcels.

Site Plan

The Site Plan for the construction of a public street is currently under review by Town Public Works and Utility staff and Pennoni Engineering. The Town maintains the secondary streets within the corporate limits. The streets are included in the VDOT Urban Highway System and Maintenance Inventory and are constructed to VDOT specifications.

The Site Plan identifies a water main extension however does not identify further extension of the existing sanitary sewer facilities. Other items noted by Planning staff and forwarded to the Agent are identified below.

As the proposed road construction and limits of disturbance are under one acre, the Site Plan is not required to be approved by the Department of Environmental Quality. It will be reviewed by Pennoni Engineering as part of their process.

Findings/Current Activity

Staff has not received an updated Final Plat addressing comments submitted by Town staff (sent April 16 and May 20, 2020) or Pennoni Engineering (June 12 and June 17, 2020) from the applicant. Comments include those related to utilities; subdivision and zoning ordinance requirements; and inconsistencies on the plat.

May 27, 2020 Staff Report

Mr. Echols has submitted several applications for this project. As previously referenced, Town staff has forwarded the latest plans and plat to Pennoni Engineering for review and comment.

Below are general comments by Planning staff:

1. *Staff has requested additional Site Plan information including the location water and sewer laterals, street lights, sidewalk on the south side of McNeil, and parcel entrances.*
2. *The Berryville Area Plan identifies the need for access to the northern-most parcel owned by North Buckmarsh LLC. Staff has discussed the application with John Byrd (owner) who indicated he had been contacted by Mr. Echols. Staff sent a letter to Mr. Byrd encouraging the ownership members to discuss access with the applicant.*
3. *The Town Zoning Ordinance includes requirements for improvements and minimum standards for transportation networks. These requirements are based on trips generated by use. As the uses of these parcels has not been identified, additional road improvements may be required in the future.*

Financial Considerations

May 27, 2020 Staff Report

N/A

Schedule/Deadlines

Staff is recommending that the BADA continue the public hearing to the July 22, 2020 meeting to be addressed after the joint meeting with the Planning Commission.

May 27, 2020 Staff Report

Staff is requesting that the BADA set a public hearing for the June 24, 2020 meeting.

Other Considerations

N/A

Recommendation

Continue the public hearing to the July 22, 2020 meeting.

Attachments:

- Public hearing notice published in the Winchester Star on Wednesday, June 10 and Wednesday, June 17, 2020.
- Application and attachments on which the public hearing notice was published dated April 20, 2020
- Final Plat
- McNeil Drive Street Extension Site Plan
- Portion of the Berryville Area Plan describing Sub-Area 7
- Berryville Area Plan Land Use Map
- Vicinity map
- Letter from John Foote, Walsh Colucci Lubeley & Walsh PC distributed at the May 27, 2020 BADA meeting
- Applicant's fourth submission dated June 10, 2020
- "Statement of Facts" submitted by Mr. Echols prior to the May 27, 2020 BADA meeting.

BERRYVILLE AREA DEVELOPMENT AUTHORITY PUBLIC HEARING

The Berryville Area Development Authority will hold the following public hearing at 7:00 p.m., or as soon after as this matter may be heard, on **Wednesday, June 24, 2020**, in the Main Meeting Room, Second Floor, of the Berryville/Clarke County Government Center, 101 Chalmers Court, Berryville, Virginia to consider the following:

Final Plat and Site Plan – McNeil Drive House of Lords, Inc. and Ding Yi Wang, Owners (Jon Erickson, Morris & Ritchie Associates, Agent) are requesting Final Plat and Site Plan approval in order to construct an extension of McNeil Drive, creating a two-lot subdivision on the parcel identified as Tax Map Parcel number 14-5-251E zoned Business Commercial (BC). SP 01-20

Please note: COVID-19 restrictions may be in effect

Copies of the applications, amendments, and maps may be examined at the Town Business Office, Berryville/Clarke County Government Center (101 Chalmers Court), First Floor, Berryville, Virginia during regular business hours. Additional information may be obtained by calling Community Development Director Christy Dunkle at 540/955-4081. Any person desiring to be heard on this matter should appear at the appointed time and place.

The Town of Berryville does not discriminate against disabled persons in admission or access to its programs and activities. Accommodations will be made for disabled persons upon prior request.

By order of the Berryville Area Development Authority
Christy N. Dunkle,
Community Development Director

LAND DEVELOPMENT APPLICATION TOWN OF BERRYVILLE

(Please print or type)

Current Property Owner House of Lords, Inc. and Ding Yi Wang

Owner's Address 400 Custer Court Berryville, VA 22611

Phone 540-955-2618

Agent (Contact Person) Morris & Ritchie Associates - Jon Erickson

Agent's Address 604 South King St, Ste 200 Leesburg, VA 20175

Phone 703-994-4047

Check Appropriate Request:

RECEIVED

APR 2 0 2020

Town of Berryville, VA

___ Subdivision - creating more than 2 lots

_X_ Minor Subdivision - single lot divided into 2 lots

_____ Boundary Line Adjustment

_X_ Site Plan

_____ Rezoning

_____ Text Amendment: _____Zoning or _____Subdivision Ordinance

_____ ARB Certificate of Appropriateness

_____ Town of Berryville Utilities

_____ Other: _____

Complete As Applicable:

Nature of Request/Proposal: Creation of two lots and ROW for proposed street connecting existing McNeil Drive and Chamberlain Street - Approval of "Record Plat" (for Two Lots(2) and Street Right of Way Dedication).

Tax Map & Parcel Number(s): 14-5-251E

Size of Project Site: 7.0358 ac

Proposed # of Lots: 2 Existing Zoning BC

Owner or Agent: The information provided is accurate to the best of my knowledge. I understand that the Town may deny, approve, or conditionally approve the request for which I am applying. I certify that all property corners have been clearly staked and flagged.

Signature: _____ Date: 3/27/20

Owner: I have read this completed application, understand its intent, and freely consent to its filing. Furthermore, I grant permission to the Town Planning Department and other government agents to enter the property and make such investigations and tests, as they deem necessary. I acknowledge that in accordance with Article X of the Subdivision Ordinance I am responsible for costs incurred for review of subdivision and/or development plans by the Town's engineer and that any other required tests or studies will be carried out at owner/agent expense

Signature: House of Lords, Inc for Ding Yi Wang, Land Contract Owner Date: 04/17/2020

Clifton C. Echols, Jr. - President

OFFICE USE ONLY

Public Hearing Required? _____ Dates Advertised _____

Adjoining Property Owners Notified? _____

Action Taken: _____

RECEIVED

APR 2 0 2020

Town of Berryville, VA

April 17th 2020

Town of Berryville
101 Chalmers Court
Suite A
Berryville, Va 22611

Christy Dunkle Town Planner/ Assist. Town Manager

Subject: Site Development Application for Extension of McNeal Street thru to Chamberlain Street creating a Two (2) Lot Subdivision.

Dear Christy:

Per your Memorandum dated Thursday, April 16th, 2020 I wish to resubmit a revised application for the Site Development of a 7 Acre Parcel between McNeal and Chamberlain Streets just North of Martins and McDonalds in the Town of Berryville. This development will extend the public Street (McNeal) North and West to its connection with Chamberlain Street.

Different combinations for Lot Subdivision may occur in the future depending upon market conditions and whether the Byrd land North of Lot A desires to jointly develop a roadway connecting their property with McNeal Street. It should be noted that if the 12 Acres Byrd Property is ever connected, it may require a right turn In/Out on Rt. 340.

In closing, local Market Demand will determine future development and the need for farther Subdivision of Parcels A and B.

Although the current quarantine may prohibit an in person meeting, I will be available for farther details by phone.

Best Regards,

Alton C. Echols, Jr. - President

Alton C Echols, Jr. - President

House of Lords, Inc.

Zoning classifications of adjoining areas enjoy presumption of legislative validity and equal protection until the presumption is overcome by evidence of discrimination. Board of Supvrs. v. Rowe, 216 Va. 128, 216 S.E.2d 199 (1975).

When spot zoning illegal. — Spot zoning is illegal when the zoning ordinance is designed solely to serve the private interests of one or more landowners; but, if the legislative purpose is to further the welfare of the entire county or city as part of an overall zoning plan, the ordinance does not constitute illegal spot zoning. Board of Supvrs. v. Fralin & Waldron, Inc., 222 Va. 218, 278 S.E.2d 859 (1981).

Exclusion of use related to police power upheld. — The exclusion from a zoning district of a particular use, or category of uses, will be upheld where that exclusion is substantially related to a proper exercise of the police power. Board of Supvrs. v. Rowe, 216 Va. 128, 216 S.E.2d 199 (1975).

B. Interim Ordinances.

There is no special statutory provision for interim zoning ordinances. Matthews v. Board of Zoning Appeals, 218 Va. 270, 237 S.E.2d 128 (1977).

And all zoning ordinances subject to same statutory requirements. — In the absence of specific authority for interim zoning, all zoning ordinances, however titled, are subject to the same statutory requirements. Matthews v. Board of Zoning Appeals, 218 Va. 270, 237 S.E.2d 128 (1977).

Effect of invalidating interim zoning ordinance. — See Matthews v. Board of Zoning Appeals, 218 Va. 270, 237 S.E.2d 128 (1977).

C. Specific Examples.

1. Ordinances Held Arbitrary.

An ordinance which excludes a large number of otherwise legitimate retail business uses from a retail business district, when nothing in the record shows that the uses excluded would be more detrimental to the public welfare than the uses permitted, is unreasonable and arbitrary. Board of Supvrs. v. Rowe, 216 Va. 128, 216 S.E.2d 199 (1975).

Single-district ordinance. — Enactment of an eight-district zoning ordinance, based upon a comprehensive zoning plan and permitting varying lot sizes and some commercial and industrial development, within one year following enactment of a single-district zoning ordinance, which permitted of right only minimum lot sizes of two acres, indicated, when the basic characteristics of the county were unchanged, that the single-district ordinance was arbitrary, unreasonable and invalid. Matthews v. Board of Zoning Appeals, 218 Va. 270, 237 S.E.2d 128 (1977).

Although such a single-district ordinance would provide maximum flexibility for the political subdivision, it would create maximum doubt and uncertainty for a landowner faced with the necessity of obtaining a special use permit over vocal opposition. Matthews v. Board of Zoning Appeals, 218 Va. 270, 237 S.E.2d 128 (1977).

Amendment to a county zoning ordinance, in establishing maximum rental and sale prices for units in the development, exceeds the authority granted by this article to the local governing body because it is socio-economic zoning and attempts to control the compensation for the use of land and the improvements thereon. Board of Supvrs. v. DeGroff Enters., Inc., 214 Va. 235, 198 S.E.2d 600 (1973).

Condition requiring private developers to construct public facilities unconstitutional. — There is nothing in the Constitution, enabling statutes or case law of Virginia which empowers the sovereign to require private landowners, as a condition precedent to development, to construct or maintain public facilities on land owned by the sovereign, when the need for such facilities is not substantially generated by the proposed development. The private money necessary to fund the performance of such requirements is property, and such requirements violate the constitutional guarantee that no person shall be deprived of his life, liberty or property without due process of law. Board of Supvrs. v. Rowe, 216 Va. 128, 216 S.E.2d 199 (1975).

As is required dedication of fee for provision of road. — A local governing body does not have the power to enact a zoning ordinance that requires individual landowners, as a condition to the right to develop their parcels, to dedicate a portion of their fee for the purpose of providing a road, the need for which is substantially generated by public traffic demands rather than by the proposed development. Board of Supvrs. v. Rowe, 216 Va. 128, 216 S.E.2d 199 (1975).

2. Ordinances Upheld.

An ordinance prohibiting use of land for certain purposes does not violate the zoning statute. West Bros. Brick Co. v. City of Alexandria, 169 Va. 271, 192 S.E. 881 (1937).

Ordinance providing parking permits only to residents and certain other persons. — A county zoning ordinance directing the county manager to determine those residential areas especially crowded with parked cars from outside the neighborhood, providing for free parking permits to be issued only to

NOTES

1. THE PROPERTY SHOWN HEREON IS LOCATED ON CLARKE COUNTY TAX ASSESSMENT MAP #14-5-251E.
2. THE PROPERTY WAS ACQUIRED IN DEED BOOK 421 PAGE 10 AND DEED BOOK 421 PAGE 12 IS NOW IN THE NAME OF HOUSE OF LORDS, INC.
3. THE PROPERTIES DELINEATED ON THIS PLAT ARE CURRENTLY ZONED BC BUSINESS COMMERCIAL DISTRICT.
4. THE BOUNDARY SHOWN HEREON IS BASED ON A BOUNDARY LINE ADJUSTMENT PLAT AS RECORDED IN PLAT BOOK 9 PAGE 50 AND FIELD SURVEY PERFORMED BY MORRIS & RITCHIE ASSOCIATES, INC. IN APRIL 2016.
5. THE PROPERTY SHOWN HEREON IS CLASSIFIED AS ZONE X, (AREAS DETERMINED TO BE OUTSIDE THE 500 YEAR FLOOD PLAIN) ACCORDING TO FLOOD INSURANCE RATE MAP OF CLARKE COUNTY, VIRGINIA, MAP NUMBER 51043C0061D, EFFECTIVE DATE: SEPTEMBER 28, 2007.
6. ALL PREVIOUS RECORDED RIGHTS-OF-WAY, EASEMENTS OR OTHER INTEREST OF THE COUNTY REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SHOWN ON THIS PLAT.
7. THE PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY NOT NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.

OWNERS' CERTIFICATE

THE FOREGOING SUBDIVISION, AS APPEARS IN THE ACCOMPANYING PLAT IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS, PROPRIETORS, AND TRUSTEES, IF ANY.

HOUSE OF LORDS, INC. DATE

NOTARY PUBLIC

STATE OF _____

CITY/COUNTY OF _____

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 20 . BY _____

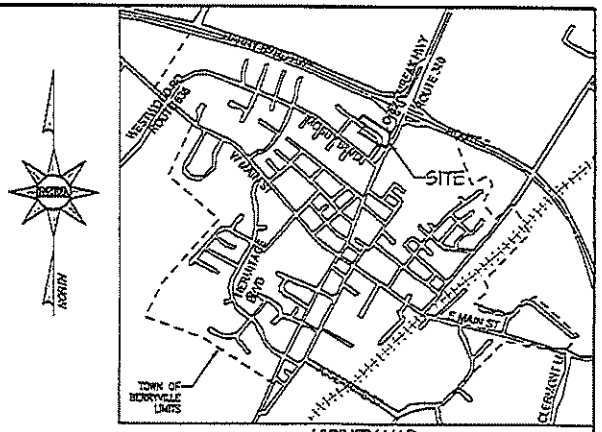
ON BEHALF OF _____.

NOTARY PUBLIC MY COMMISSION EXPIRES

SURVEYOR'S CERTIFICATE

I, JON K. ERICKSON, A DULY LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, HEREBY CERTIFY THAT THE PROPERTY IDENTIFIED BY TAX MAP #14-5-251E WAS ACQUIRED BY DEED BOOK 421 PAGE 10 AND DEED BOOK 421 PAGE 12 AND BOUNDARY ADJUSTED BY PLAT BOOK 5 PAGE 65 AND PLAT BOOK 9 PAGE 50 IS CURRENTLY OWNED BY HOUSE OF LORDS, INC., ALL AMONG THE LAND RECORDS OF CLARKE COUNTY, VIRGINIA.

JON K. ERICKSON VLS #2951



VICINITY MAP
SCALE="1"=2000'

AREA TABULATION

PARCEL	AREA
14-5-251-E	306,480 SF OR 7.0358 AC
LOT 1	182,873 SF OR 4.1982 AC
LOT 2	89,453 SF OR 2.0535 AC
RIGHT-OF-WAY	34,154 SF OR 0.7841 AC
TOTAL	306,480 SF OR 7.0358 AC

ZONING REQUIREMENTS

MINIMUM DISTRICT AREA: FOUR (4) ACRES

MAXIMUM BUILDING HEIGHT: FORTY (40) FEET

LOT REQUIREMENTS:

A. MINIMUM LOT SIZE: 20,000 SQUARE FEET

B. MINIMUM LOT WIDTH :100 (100) FEET

C. MINIMUM YARD REQUIREMENTS

1. FRONT YARD: FORTY (40) FEET
2. SIDE YARD: TWENTY-FIVE (25) FEET, (40 FEET ON STREET SIDE CORNER LOT)
3. REAR YARD: TWENTY-FIVE (25) FEET
4. WHERE A LOT IS CONTIGUOUS TO PROPERTY LOCATED IN ANY RESIDENTIAL DISTRICT, ALL BUILDINGS SHALL HAVE A MINIMUM SETBACK OF 40 FEET FROM COMMON PROPERTY LINES.

RECORD PLAT
ON THE LANDS OF
HOUSE OF LORDS, INC.
DEED BOOK: 421 PAGE: 10
DEED BOOK: 421 PAGE: 12
TOWN OF BERRYVILLE, VIRGINIA

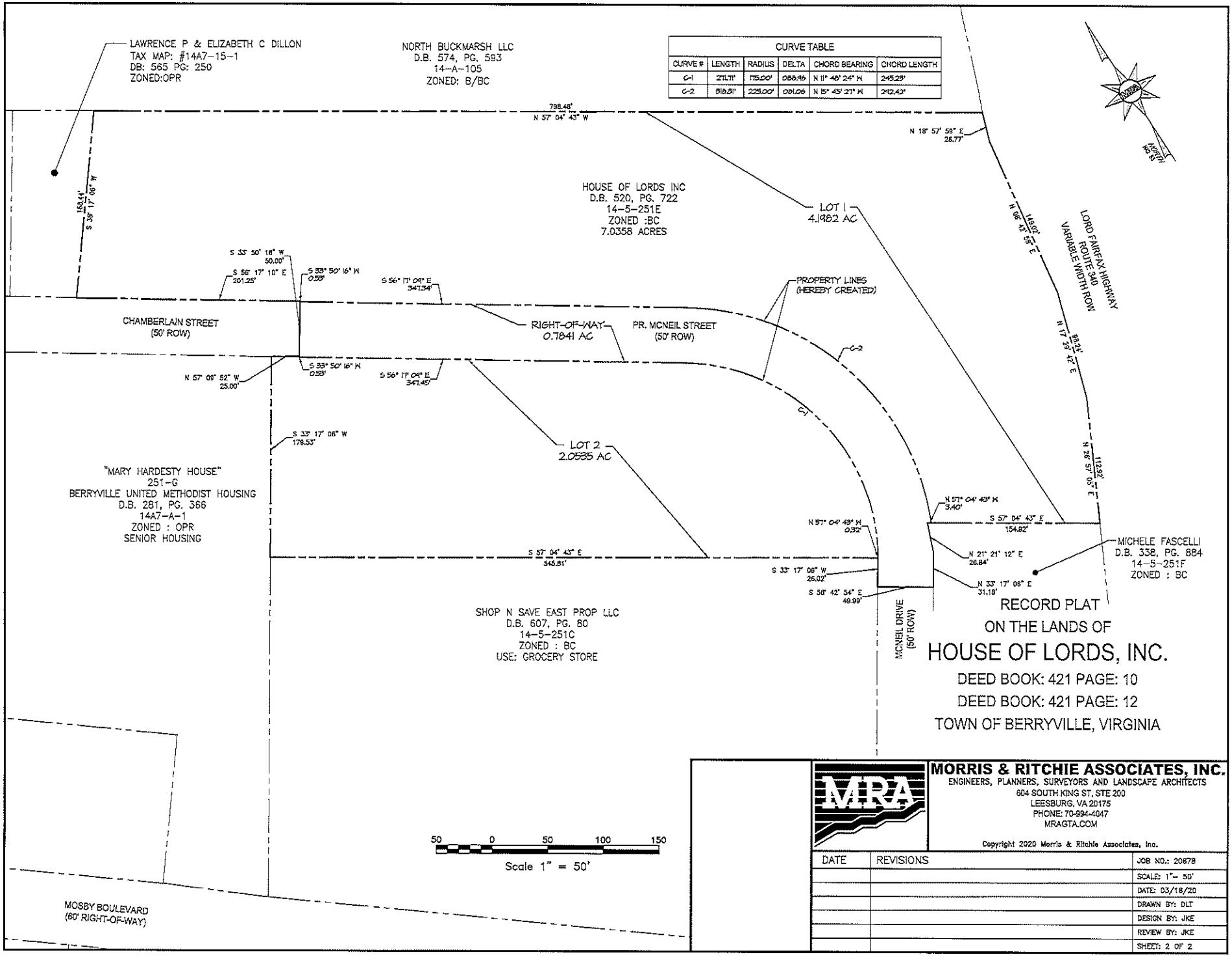
APPROVAL BLOCK

SUBDIVISION ADMINISTRATOR DATE

BERRYVILLE AREA DEVELOPMENT AUTHORITY (BADA) DATE

MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
604 SOUTH KING ST, STE 200
LEESBURG, VA 20175
PHONE: 70-894-4047
MRAGTA.COM

DATE	REVISIONS	
		JOB NO.: 22078
		SCALE: N/A
		DATE: 03/16/20
		DRAWN BY: DLT
		DESIGN BY: JKE
		REVIEW BY: JKE
		SHEET: 1 OF 2



MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
604 SOUTH KING ST, STE 200
LEESBURG, VA 20175
PHONE: 70-994-4047
MRAGTA.COM

DATE	REVISIONS	
		JOB NO.: 20678
		SCALE: 1"= 50'
		DATE: 03/18/20
		DRAWN BY: DLT
		DESIGN BY: JKE
		REVIEW BY: JKE
		SHEET: 2 OF 2

MCNEIL STREET EXTENSION

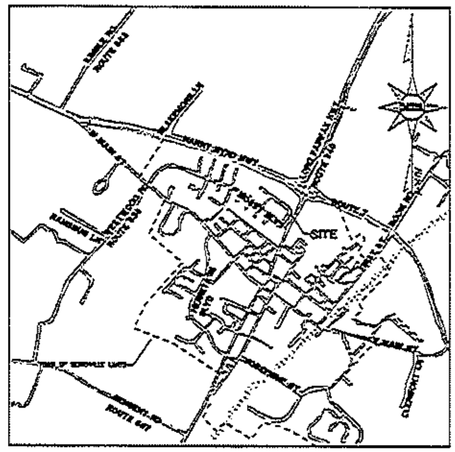
SITE PLAN

TOWN OF BERRYVILLE, VIRGINIA

GENERAL NOTES

1. THE PROPERTY DELINEATED HEREON IS LOCATED ON CLARKE COUNTY TAX MAP #14-A-251C.
2. TOPOGRAPHY SHOWN HEREON IS BASED ON A FIELD RUN SURVEY PERFORMED BY MORRIS & RITCHIE ASSOCIATES, INC. IN APRIL 2016 AND JANUARY 2020. HORIZONTAL DATUM IS BASED ON NAD 83 AND VERTICAL DATUM IS BASED ON NAD 88.
3. THE BOUNDARY IS BASED ON EXISTING LAND RECORDS AND A SURVEY PERFORMED BY MORRIS & RITCHIE ASSOCIATES, INC. IN APRIL 2016.
4. EROSION AND SEDIMENT CONTROL MEASURES SHALL BE PROVIDED IN ACCORDANCE WITH THE "VIRGINIA EROSION AND SEDIMENT CONTROL HANDBOOK" AND THE TOWN OF BERRYVILLE EROSION AND SEDIMENT CONTROL ORDINANCE.
5. THE APPROVAL OF THESE PLANS SHALL IN NO WAY RELIEVE THE DEVELOPER OR HIS AGENT OF ANY LEGAL RESPONSIBILITY WHICH MAY BE REQUIRED BY THE CODE OF VIRGINIA OR ANY OTHER ORDINANCE ENACTED BY THE TOWN OF BERRYVILLE.
6. ALL UNDERGROUND UTILITIES WITHIN STREET RIGHT-OF-WAYS SHALL BE INSTALLED TO THE REQUIRED DISTANCE BEYOND THE RIGHT-OF-WAY LINE PRIOR TO THE INSTALLATION OF ANY SUB SURFACE MATERIAL, CURB AND GUTTER, OR SIDEWALK.
7. CONTRACTORS SHALL ARRANGE FOR THE LOCATION OF ALL UNDERGROUND FACILITIES PRIOR TO THE CONSTRUCTION INCLUDING TEST HOLES TO PHYSICALLY LOCATE UNDERGROUND UTILITIES AS NECESSARY.
8. THESE PLANS MAKE NO REPRESENTATION AS TO SUBSURFACE CONDITIONS AND THE PRESENCE OF SUBSURFACE WATER OR THE NEED FOR SUBSURFACE DRAINAGE FACILITIES.
9. THE HORIZONTAL AND VERTICAL LOCATIONS OF ALL EXISTING UTILITIES, AS SHOWN HEREON, ARE APPROXIMATE ONLY. NO GUARANTEE IS HEREIN MADE OR IMPLIED THAT ALL EXISTING UNDERGROUND UTILITIES ARE SHOWN. IT SHALL BE THE CONTRACTOR'S AND/OR THE OWNER'S RESPONSIBILITY TO CONTACT UTILITY COMPANIES AND TO VERIFY THE TYPE, SIZE, AND LOCATION OF ALL EXISTING UTILITIES PRIOR TO STARTING THE WORK. ANY DISCREPANCIES IN OR FROM THE INFORMATION SHOWN HEREON SHALL BE REPORTED TO MORRIS & RITCHIE ASSOCIATES, INC. PRIOR TO COMMENCING CONSTRUCTION.
10. IN ORDER TO DETERMINE THE EXACT HORIZONTAL AND VERTICAL LOCATION OF A GIVEN UTILITY AND TO ASSIST THE CONTRACTOR AND/OR OWNER IN DETERMINING AREAS OF SPECIAL CONCERN, MORRIS & RITCHIE ASSOCIATES, INC. HAS INDICATED HEREON CERTAIN LOCATIONS WHERE TEST PITS SHOULD BE EXCAVATED PRIOR TO COMMENCING CONSTRUCTION. THESE INDICATIONS ARE NOT INTENDED TO BE ALL INCLUSIVE AND WILL NOT RELIEVE THE CONTRACTOR AND/OR OWNER OF THE RESPONSIBILITY OF DIGGING ADDITIONAL TEST PITS, AS MIGHT BE REQUIRED BY ACTUAL SITE CONDITIONS. ANY DISCREPANCIES FOUND BETWEEN ACTUAL AND ASSUMED CONDITIONS SHALL BE BROUGHT TO THE IMMEDIATE ATTENTION OF MORRIS & RITCHIE ASSOCIATES, INC.
11. APPROVAL OF THIS PLAN DOES NOT GRANT APPROVAL TO TRESPASS ON OFF-SITE PROPERTY.
12. WATER AND SANITARY SEWER UTILITIES SHALL BE INSTALLED IN CONFORMANCE TO THE TOWN OF BERRYVILLE.
13. THE APPROVAL OF THESE PLANS SHALL NOT RELIEVE THE OWNER OF COMPLYING WITH OTHER APPLICABLE LOCAL, STATE, & FEDERAL REQUIREMENTS.
14. DURING ALL CONSTRUCTION STAGES, ACCESS FOR FIRE AND RESCUE VEHICLES AND ADEQUATE STANDPIPE SYSTEMS WILL BE PROVIDED. THIS COMMITMENT DOES NOT RELIEVE THE OWNERS FROM COMPLYING WITH ALL OTHER LEGAL REQUIREMENTS RELATING TO FIRE AND RESCUE ACCESS AND SYSTEMS.
15. A PRECONSTRUCTION MEETING, INCLUDING MRA, TOWN OF BERRYVILLE PERSONNEL, AND DCD IS REQUIRED PRIOR TO THE START OF CONSTRUCTION.
16. NECESSARY PRECAUTIONS SHALL BE TAKEN BY THE CONTRACTOR TO PROTECT EXISTING SERVICES AND MAINS, AND ANY DAMAGE TO THEM DUE TO HIS NEGLIGENCE SHALL BE REPAIRED IMMEDIATELY AT HIS OWN EXPENSE.
17. THE CONTRACTOR SHALL NOTE THAT IN CASE OF A DISCREPANCY BETWEEN THE SCALED AND THE FIGURED DIMENSIONS SHOWN ON THESE PLANS, THE FIGURED DIMENSIONS SHALL GOVERN.
18. IT SHALL BE DISTINCTLY UNDERSTOOD THAT FAILURE TO MENTION SPECIFICALLY ANY WORK WHICH WOULD NORMALLY BE REQUIRED TO COMPLETE THE PROJECT SHALL NOT RELIEVE THE CONTRACTOR OF HIS RESPONSIBILITY TO PERFORM SUCH WORK.
19. CONTRACTOR IS SOLELY RESPONSIBLE FOR CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES, PROCEDURES, AND SAFETY PRECAUTIONS AND PROGRAMS.
20. THE CONTRACTOR SHALL NOTIFY THE FOLLOWING AGENCIES AT LEAST (5) FIVE WORKING DAYS BEFORE STARTING WORK SHOWN ON THESE DRAWINGS:
    A. MISS UTILITY 811
21. ALL REFERENCES TO TAMPED FILL WITHIN THIS PLAN SET THAT REFER TO AASHTO DESIGNATION T-180 METHOD-C AND/OR ASTM D-1557 SHALL BE COMPACTED TO A MINIMUM DENSITY OF 95% IN ACCORDANCE WITH ASTM D-698 IN MAXIMUM 8 INCH LIFTS. ALL COMPACTION MUST COMPLY WITH ARTICLE 16 SECTION 3-307.
22. THIS PROJECT IS SERVED BY PUBLIC WATER AND SEWER.
23. CONTRACTOR SHALL VERIFY TO HIS SATISFACTION, THE FINAL EARTHWORK NUMBERS PRIOR TO COMMENCEMENT OF SITE WORK. MRA MAKES NO GUARANTEE THAT ON SITE SOILS WILL BE SUITABLE FOR STRUCTURAL FILL, OR THAT THE EARTHWORK WILL BALANCE. CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE ACTUAL EARTHWORK NUMBERS ENCOUNTERED DURING CONSTRUCTION.
24. ALL SPOT ELEVATIONS ALONG PROPOSED CURB AND GUTTER ARE BOTTOM OF CURB ELEVATIONS UNLESS OTHERWISE NOTED.
25. ALL STORM DRAIN PIPE LESS THAN AND INCLUDING 12" IN SIZE SHALL BE PVC, SCHEDULE 40 OR SDR-35, OR HDPE (AGS N-12). ALL STORM DRAIN PIPE LARGER THAN 12" SHALL BE HDPE (ADS N-12), CLASS III RCP, OR ALUMINIZED STEEL TYPE-2.
26. WATER AND SANITARY SEWER SHALL BE INSTALLED PER THE TOWN OF BERRYVILLE WATER & SEWER CONSTRUCTION STANDARDS & SPECIFICATIONS.
27. IF ANY ARCHEOLOGICAL, HISTORIC RESOURCES OR CEMETERIES ARE DISCOVERED DURING EXCAVATION THE CONTRACTOR SHALL STOP WORK IMMEDIATELY IN THE AREA OF DISCOVERY AND NOTIFY THE TOWN OF BERRYVILLE AND MORRIS & RITCHIE ASSOCIATES, INC. NO FURTHER WORK IN THE AREA SHALL BE PERMITTED UNTIL RELEASED BY THE TOWN OF BERRYVILLE AND MORRIS & RITCHIE ASSOCIATES, INC.
28. ANY MONUMENT SIGNAGE THAT WILL BE UP MUST BE REVIEWED AND APPROVED BY THE TOWN OF BERRYVILLE PRIOR TO INSTALLATION.

RESPONSIBLE LAND DISTURBER
NAME
CERTIFICATION #
EXP. DATE
1. The Responsible Land Disturber is that party responsible for carrying out the land disturbing activity as set forth in the plans.
2. NOTE: An on-site pre-construction meeting is required with the Owner, Site Contractor, Public Works, & Designer prior to commencing any site work.
3. The contractor will possess a Land Disturbance Permit prior to any site work or construction.



VICINITY MAP
SCALE: 1" = 2000'

OWNER
HOUSE OF LORDS INC
400 CUSTER COURT
BERRYVILLE, VA 22611
CONTACT: ALTON ECHOLS
PHONE: 540-955-2618

APPLICANT/DEVELOPER
HOUSE OF LORDS INC
400 CUSTER COURT
BERRYVILLE, VA 22611
CONTACT: ALTON ECHOLS
PHONE: 540-955-2618

ENGINEER
MORRIS & RITCHIE ASSOCIATES, INC.
604 SOUTH KING STREET, STE 200
LEESBURG, VA 20175
CONTACT: JON K. ERICKSON
PHONE #: 703-994-4047
EMAIL: jerickson@mragta.com

Sheet Index	
Sheet Number	Sheet Title
1	COVER SHEET
2	SITE NOTES
3	SITE DETAILS
4	EXISTING CONDITIONS
5	SITE PLAN
6	ROAD PROFILE
7	E&S PHASE I AND II
8	E&S NOTES & DETAILS
9	ESC NOTES
10	DRAINAGE AREA MAPS
11	STORMWATER MANAGEMENT & STORM PROFILES
12	DETAILS
13	DETAILS

T.D.H. APPROVAL
APPROVING AUTHORITY
CHAIRMAN OF BERRYVILLE AREA DEVELOPMENT AUTHORITY
ZONING ADMINISTRATOR
OWNER

LEGEND

- EX. R/W LINE
- EX. PROPERTY LINE
- EX. ADJ. PROPERTY LINE
- EX. 10' CONTOUR
- EX. 2' CONTOUR
- EX. TREE LINE
- EX. BUILDING
- EX. EASEMENT
- EX. PAVEMENT
- EX. CURB
- EX. WALKWAY
- EX. STORM DRAIN
- EX. WATER LINE
- EX. SANITARY LINE
- EX. OVERHEAD LINE
- EX. UNDERGROUND CONDUIT
- EX. GAS LINE
- EX. FENCE LINE
- EX. STREAM
- EX. STREAM BUFFER
- EX. POND LINE
- EX. FLOODPLAIN
- EX. CRITICAL AREA
- EX. FOREST BUFFER
- EX. WETLAND LINE
- SOILS LINE
- EX. SEPTIC RESERVE AREA
- EX. RETAINING WALL
- EX. ZONING LINE
- I.P.F. IRON PIPE FOUND
- I.P.S. IRON PIPE SET
- I.R.F. IRON REBAR FOUND
- I.R.S. IRON REBAR SET
- EX. SIGN
- EX. LIGHT POLE
- EX. UTILITY POLE
- EX. SPOT ELEVATION
- PROP. R/W LINE
- PROP. PROPERTY LINE
- PROP. LOT LINE
- PROP. 1' CONTOUR
- PROP. 2' CONTOUR
- PROP. 10' CONTOUR
- PROP. TREE LINE
- TREELINE TO BE REMOVED
- PROP. FOREST CONSERVATION LINE
- PROP. BUILDING
- PROP. BLDG SETBACK LINE
- PROP. CURB
- PROP. ROAD CENTER LINE
- PROP. LIMITS OF DISTURBANCE
- PROP. SEPTIC RESERVE AREA
- PROP. EASEMENT LINE
- PROP. METAL FENCE
- PROP. WOOD FENCE
- PROP. SANITARY LINE
- PROP. STORM DRAIN LINE
- PROP. WATER LINE
- PROP. OVERHEAD LINE
- PROP. UNDERGROUND CONDUIT
- PROP. CABLE TV LINE
- PROP. ELECTRIC LINE
- PROP. GAS LINE
- REINFORCED SILT FENCE
- SILT FENCE
- SUPER SILT FENCE
- PROP. HYDRANT
- PROP. VALVE
- PROP. SANITARY CONNECTION
- PROP. SPOT ELEVATION
- PROP. SIGN
- PROP. LIGHT POLE
- PROP. PARKING SPACE COUNT
- PROP. STORM STRUCTURE NUMBER
- EX. STORM STRUCTURE
- PROP. STORM MANHOLE
- PROP. SANITARY MANHOLE
- PROP. SANITARY STRUCTURE ID

REVISIONS	DATE

MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SCIENTISTS AND LANDSCAPE ARCHITECTS

COVER SHEET
MCNEIL STREET EXTENSION
SITE PLAN
TOWN OF BERRYVILLE, VIRGINIA

SHEET: 1 OF 13

SITE DATA

PROJECT: MCNEIL STREET EXTENSION

ZONING: BC - BUSINESS COMMERCIAL

TAX MAP # 14-5-251E

OWNER OF RECORD: HOUSE OF LORDS, INC.

REFERENCE: DEED BOOK 421 PAGE 10 AND DEED BOOK 421 PAGE 12

PROPOSED USE: ROAD

CURRENT USE: VACANT

FLOOD ZONE: ZONE X - AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOODPLAIN, AS SHOWN ON FEMA FLOOD INSURANCE RATE MAP OF TOWN OF BERRYVILLE, CLARKE COUNTY, VIRGINIA, COMMUNITY PANEL NUMBER 51043C0061O, EFFECTIVE DATE: SEPTEMBER 28, 2007.

DISTANCE TO NEAREST SCHOOL = +/-2500 FEET (CLARKE COUNTY HIGH)

TOTAL AREA = 7.0358 ACRES
LOT 1 AREA= 4.1982 ACRES
LOT 2 AREA= 2.0535 ACRES
ROW AREA= 0.7841 ACRES
LOD = 0.99 ACRES
IMPERVIOUS AREA = 0.68 ACRES

DAILY VEHICLE TRIPS = 1,890 ADT

NO TITLE REPORT FURNISHED.

SETBACK INFORMATION TABLE

	FRONT	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	40'	40'	[illegible]	[illegible]	[illegible]

TEST PIT NOTE:

= TEST PIT REQUIRED (SEE GRADING SHEETS)

IN ORDER TO DETERMINE THE EXACT HORIZONTAL AND VERTICAL LOCATION OF A GIVEN UTILITY AND TO ASSIST THE CONTRACTOR AND/OR OWNER IN DETERMINING AREAS OF SPECIAL CONCERN, MRA HAS INDICATED HEREIN CERTAIN LOCATIONS WHERE TEST PITS SHOULD BE EXCAVATED PRIOR TO COMMENCING CONSTRUCTION. THESE INDICATIONS ARE NOT INTENDED TO BE ALL INCLUSIVE AND WILL NOT RELIEVE THE CONTRACTOR AND/OR OWNER OF THE RESPONSIBILITY OF DIGGING ADDITIONAL TEST PITS, AS MIGHT BE REQUIRED BY ACTUAL SITE CONDITIONS. ANY DISCREPANCIES FOUND BETWEEN ACTUAL AND ASSUMED CONDITIONS SHALL BE BROUGHT TO THE IMMEDIATE ATTENTION OF MRA BY CALLING 703-904-4047. FURTHERMORE, TEST PITS HAVE BEEN PLACED WHERE KNOWN UTILITIES EXIST. UPON CALLING MISS UTILITY, SHOULD THE CONTRACTOR IDENTIFY EXISTING UTILITIES NOT SHOWN ON OUR PLAN, MRA MUST BE CALLED IMMEDIATELY AT 703-904-4047.

REVISIONS	DATE

MORRIS & RITCHIE ASSOCIATES, INC.

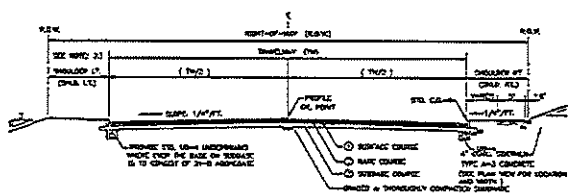
SITE NOTES

MCNEIL STREET EXTENSION
SITE PLAN
TOWN OF BERRYVILLE, VIRGINIA

SHEET: 2 OF 13

TYPICAL ROADWAY SECTIONS

SCALE: NONE



UNDIVIDED ROADWAY

STREET NAME	CLASSIFICATION/TERRAIN	ADT	DESIGN SPEED	①	②	③	R.O.W.	TW.	SHLD. (CT.)	SHLD. (FT.)
[illegible]	[illegible]	[illegible]	25	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	7'	7'

ROADWAY NOTES:

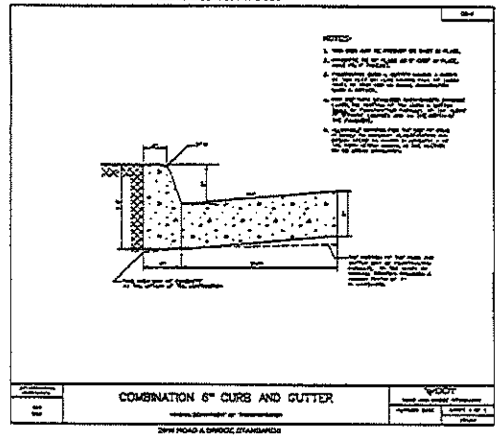
1) [illegible]

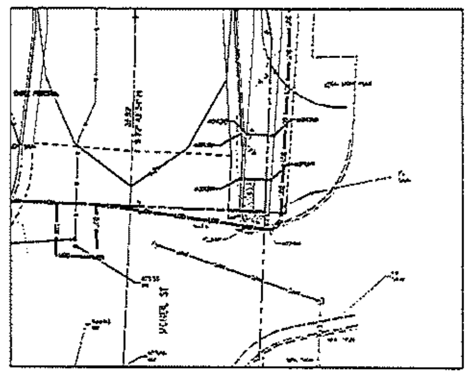
2) [illegible]

3) [illegible]

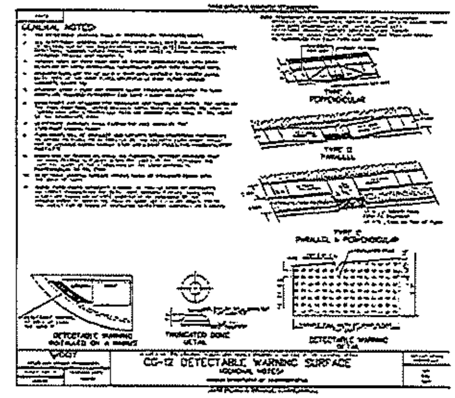
4) [illegible]

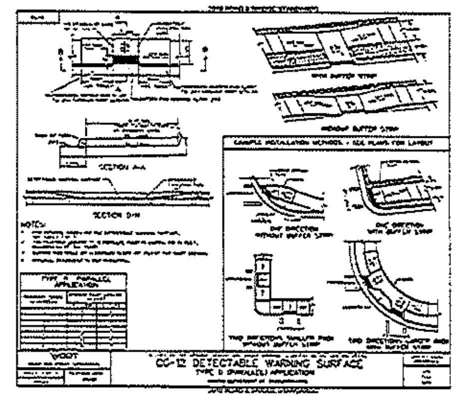
CONCRETE S/W DETAIL (N.T.S.)





HANDICAP RAMP DETAIL
SCALE: 1"=10'





REVISIONS	DATE

MORRIS & RITCHIE ASSOCIATES, INC.

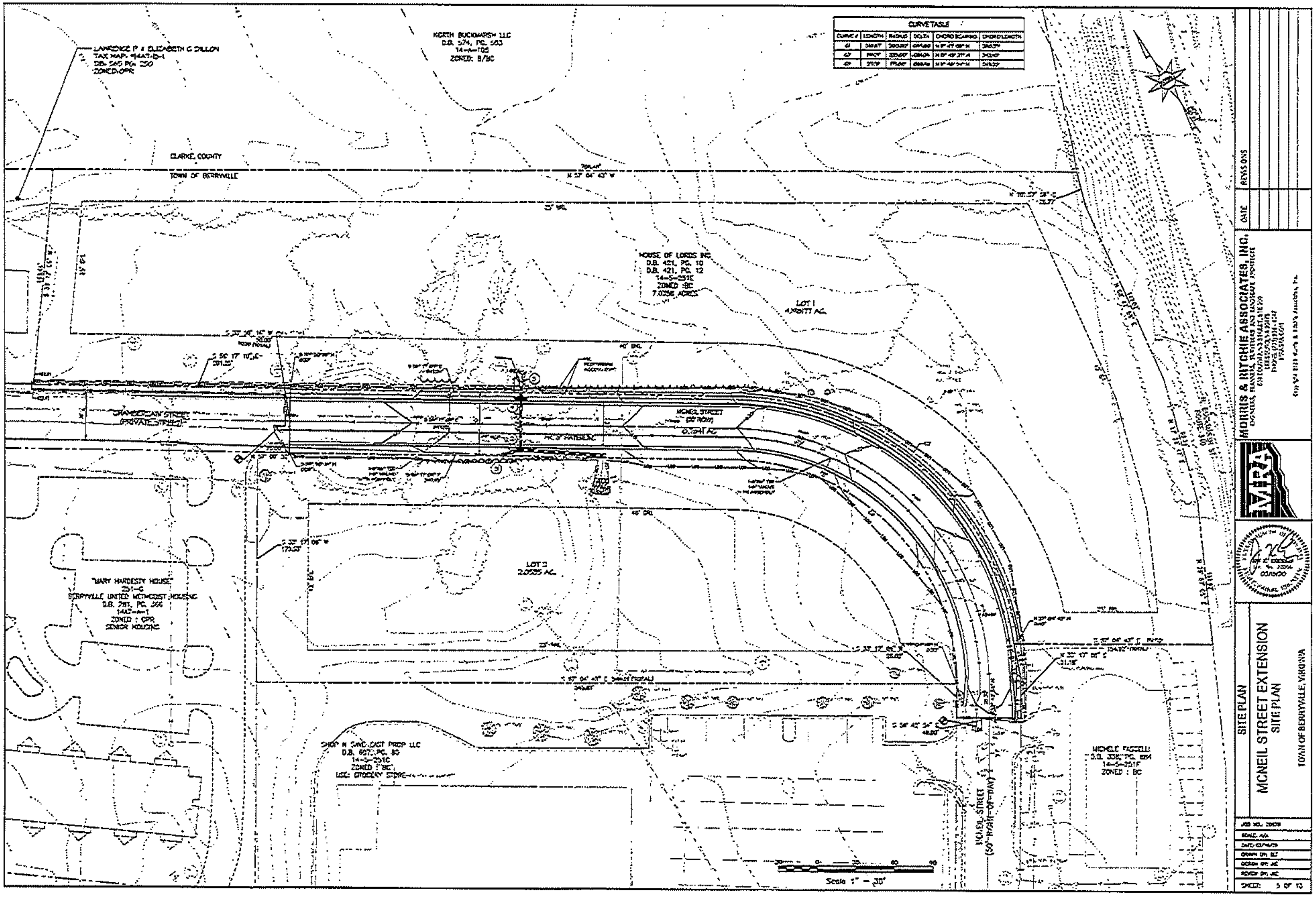
SITE DETAILS

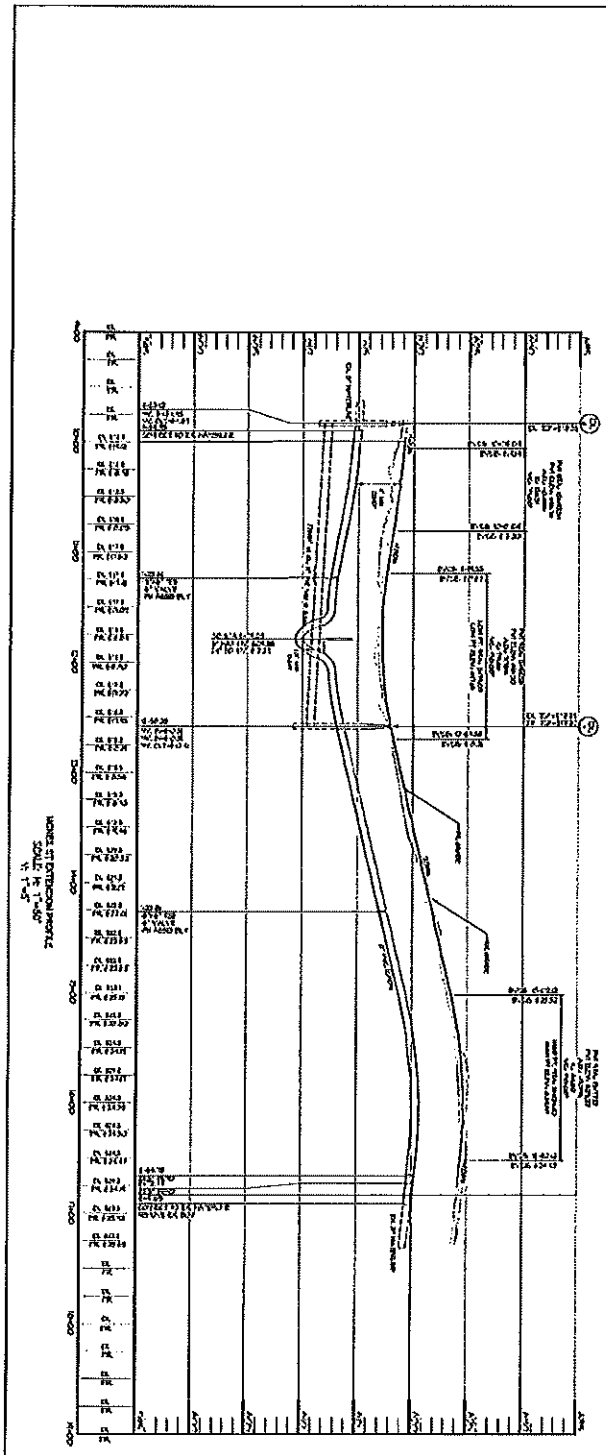
MCNEIL STREET EXTENSION
SITE PLAN

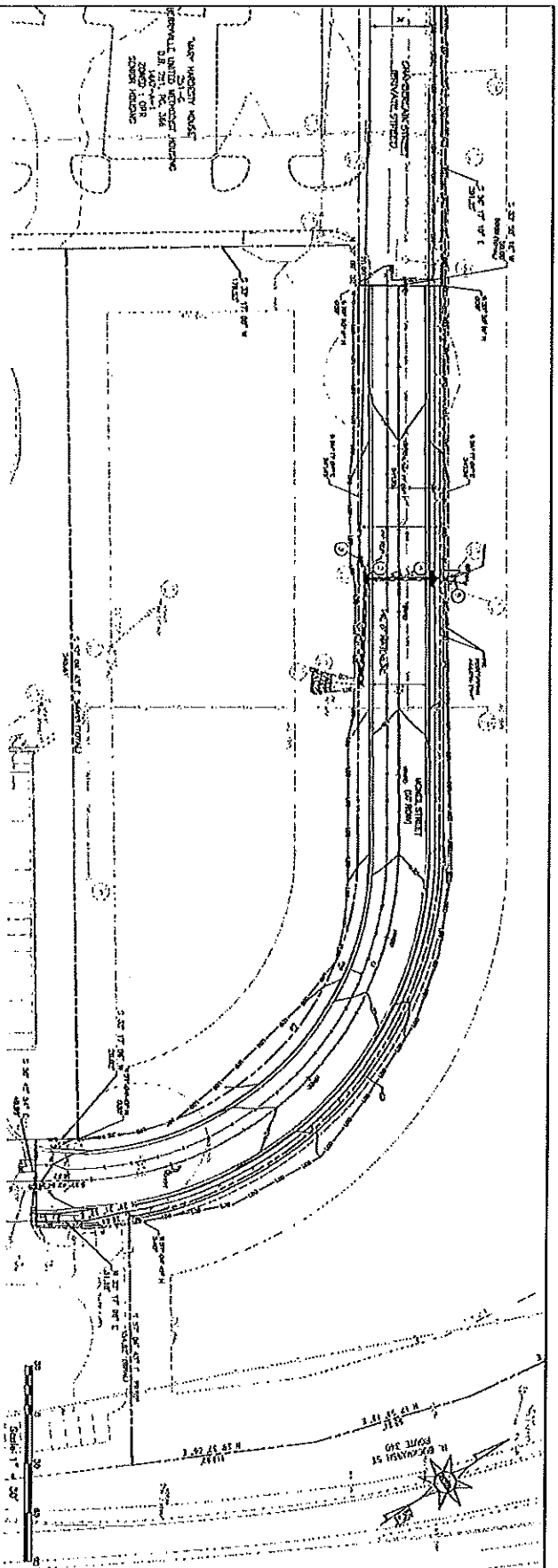
TOWN OF BERRYVILLE, VIRGINIA

SHEET 3 OF 13

EXISTING CONDITIONS
MCNEIL STREET EXTENSION
SITE PLAN
TOWN OF BERRYVALE, VARGINIA
MORRIS & RITCHIE ASSOCIATES, INC.
DATE
REVISIONS
MCNEIL STREET
CHAMBERLAIN STREET
CLARKE COUNTY
TOWN OF BERRYVALE
NORTH BOOKMARK LLC
LAWRENCE F & ELIZABETH G ZILLION
MARY HARRIOTT HOUSE
BERRYVILLE UNITED METHODIST HOUSING
HOUSE OF LORDS INC
DAVID K DAVIS EAST PROP LLC


CURVE TABLE
LAWRENCE P & ELIZABETH C DILLON
NORTH BUCKMARSH LLC
D.B. 574, PG. 563
14-A-105
ZONED: B/BC
CLARKE COUNTY
TOWN OF BERRYVILLE
HOUSE OF LORDS INC
D.B. 421, PG. 10
D.B. 421, PG. 12
14-5-251C
ZONED :BC
7.0356 ACRES
LOT 1
CHAMBERLAIN STREET
(PRIVATE STREET)
MCNEIL STREET
(50' ROW)
LOT 2
2.0525 AC.
"MARY HARDESTY HOUSE"
BERRYVILLE UNITED METHODIST HOUSING
ZONED : DPR
SENIOR HOUSING
SHOP N SAVE EAST PROP LLC
D.B. 657, PG. 80
14-5-251C
ZONED :"BC"
USE: GROCERY STORE
MICHELE FASCELLI
14-5-251F
ZONED : BC
(50' RIGHT-OF-WAY)
Scale 1" = 30'
MORRIS & RITCHIE ASSOCIATES, INC.
MRA
DATE
REVISIONS
SITE PLAN
MCNEIL STREET EXTENSION
SITE PLAN
TOWN OF BERRYVILLE, VIRGINIA
SHEET: 5 OF 13





ROAD PROFILE

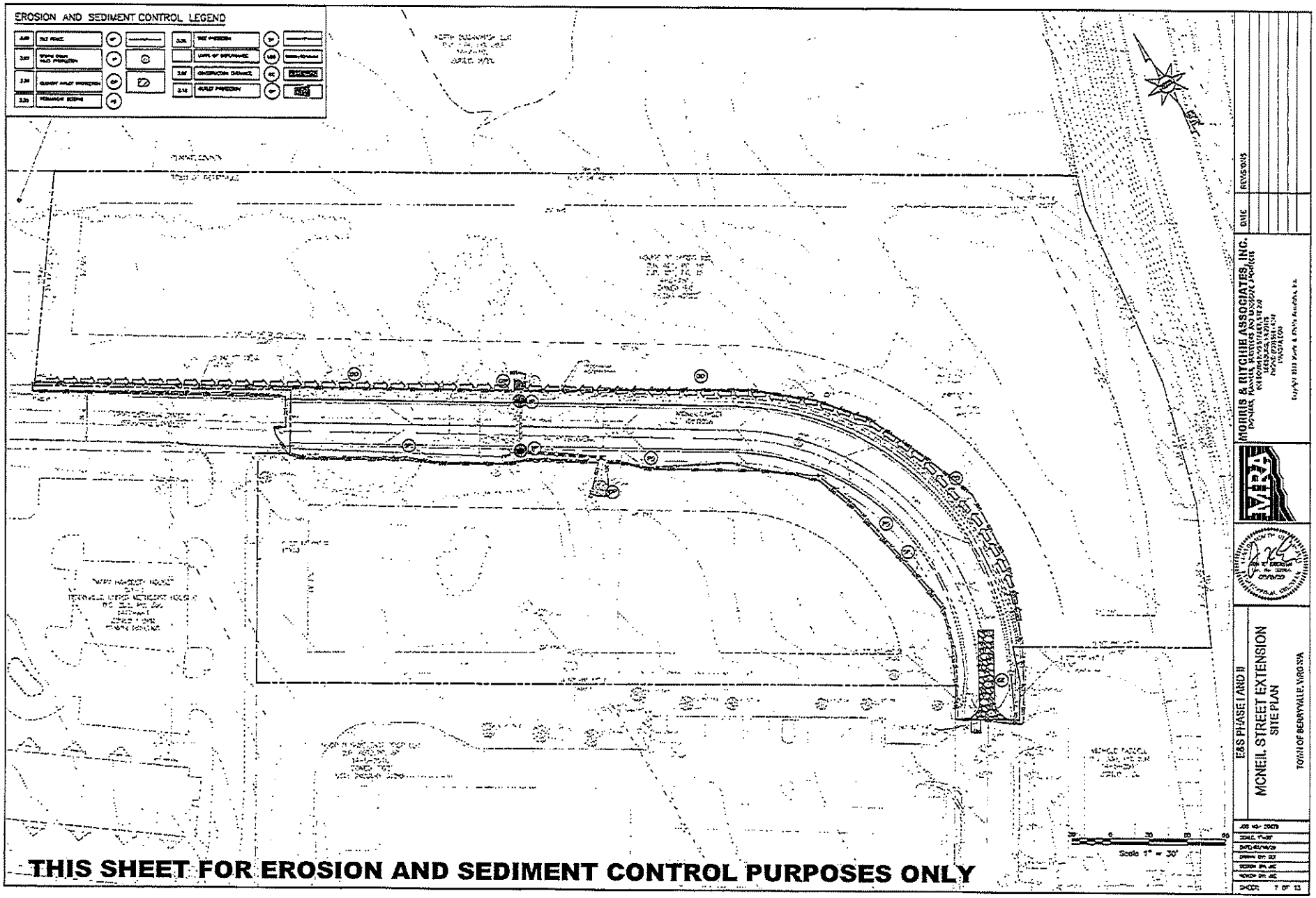
MCNEIL STREET EXTENSION
SITE PLAN

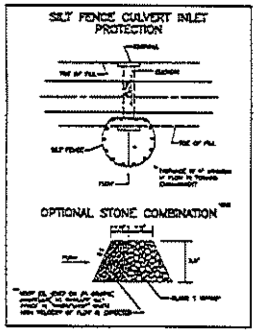
TOWN OF BERRYVILLE, VIRGINIA

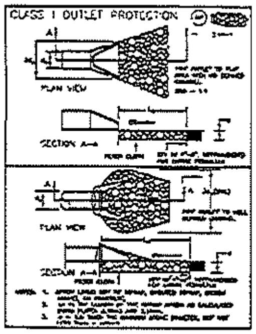
MRA

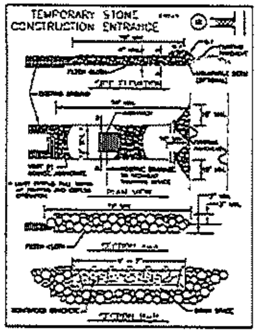
MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS

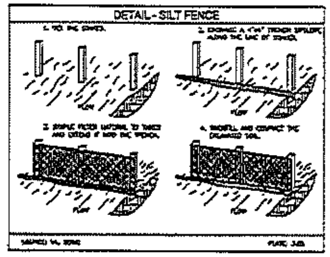
DATE	REVISIONS

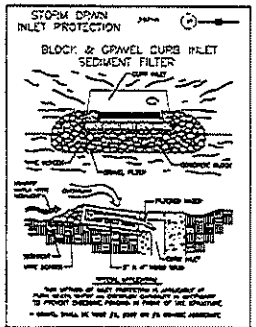

EROSION AND SEDIMENT CONTROL LEGEND
THIS SHEET FOR EROSION AND SEDIMENT CONTROL PURPOSES ONLY
Scale 1" = 30'
MORRIS & RITCHIE ASSOCIATES, INC.
MCNEIL STREET EXTENSION
SITE PLAN
TOWN OF BERRYVILLE, VIRGINIA
E&S PHASE I AND II

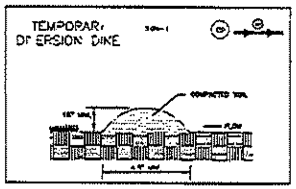












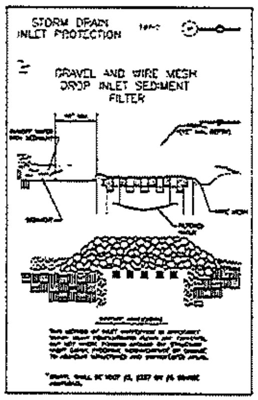


TABLE 3.32-C
SITE SPECIFIC SEEDING MIXTURES FOR APPALACHIAN / MOUNTAIN AREA

[illegible]

TABLE 3.35-A
ORGANIC MULCH MATERIALS AND APPLICATION RATES

[illegible]

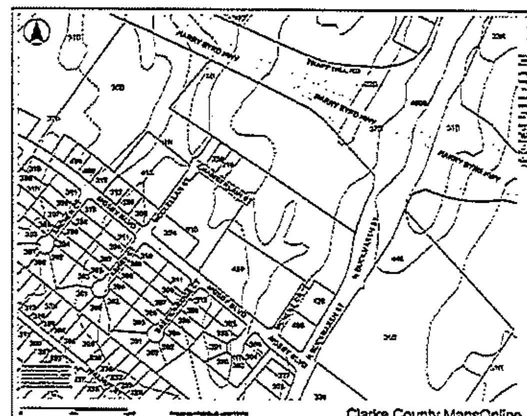
TABLE 3.31-B
ACCEPTABLE TEMPORARY SEEDING PLANT MATERIALS
"QUICK REFERENCE FOR ALL REGIONS"

[illegible]

OUTLET PROTECTION DIMENSIONS							
Outlet Structure No.	Outlet Pipe	Flow Q (cfs)	La (feet)	W (feet)	3Do (feet)	d50 (inches)	Rip-rap VDOT
120	30	15.04	12	14	9	0.5	CL AI

SOILS MAP

SCALE: 1" = 500'



SOILS LEGEND

NUMBER	NAME	HYDROLOGICAL GROUP
31B	TIMBERVILLE SILT LOAM	D
37B	POPLIMENTO-ROCK OUTCROP COMPLEX	C
36B	POPLIMENTO SILT LOAM	C
33B	POPLIMENTO SILT LOAM	C

SOIL INFORMATION WAS TAKEN FROM THE "SOIL SURVEY OF CLARKE COUNTY, VIRGINIA" ISSUED SEPTEMBER 1982 AND PROVIDED BY THE USDA.

DATE	REVISIONS

MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS

E&S NOTES & DETAILS
MCNEIL STREET EXTENSION
SITE PLAN
TOWN OF BERRYVILLE, VIRGINIA

JOB NO.: 20679
SCALE: N/A
DATE: 03/14/20
DRAWN BY: SCT
DESIGN BY: AC
REVIEW BY: AC
SHEET: 6 OF 13

MS-19 EROSION & SEDIMENT CONTROL NOTES

[illegible]

EROSION & SEDIMENT CONTROL NARRATIVE

[illegible]

THE SITE IS SURROUNDED BY COMMERCIAL AREAS TO THE SOUTH, RESIDENTIAL LOTS TO THE WEST, VACANT LOT TO THE NORTH AND AND ROUTE 7 TO THE EAST.

[illegible]

GENERAL EROSION & SEDIMENT CONTROL NOTES

ES-1 UNLESS OTHERWISE INDICATED, ALL VEGETATIVE AND STRUCTURAL EROSION AND SEDIMENT CONTROL PRACTICES WILL BE CONSTRUCTED AND MAINTAINED ACCORDING TO MINIMUM STANDARDS AND SPECIFICATIONS OF THE VIRGINIA EROSION AND SEDIMENT CONTROL HANDBOOK AND VIRGINIA REGULATIONS 9VAC25-840 EROSION AND SEDIMENT CONTROL REGULATIONS.

ES-2 THE PLAN APPROVING AUTHORITY MUST BE NOTIFIED ONE WEEK PRIOR TO PRE-CONSTRUCTION CONFERENCE, ONE WEEK PRIOR TO THE COMMENCEMENT OF LAND DISTURBING ACTIVITY, AND ONE WEEK PRIOR TO THE FINAL INSPECTION.

ES-3 ALL EROSION AND SEDIMENT CONTROL MEASURES ARE TO BE PLACED PRIOR TO OR AS THE FIRST STEP IN CLEARING.

ES-4 A COPY OF THE APPROVED EROSION AND SEDIMENT CONTROL PLAN SHALL BE MAINTAINED ON THE SITE AT ALL TIMES.

ES-5 PRIOR TO COMMENCING LAND DISTURBING ACTIVITIES IN AREAS OTHER THAN INDICATED ON THESE PLANS (INCLUDING, BUT NOT LIMITED TO, OFF-SITE BORROW OR WASTE AREAS), THE CONTRACTOR SHALL SUBMIT A SUPPLEMENTARY EROSION CONTROL PLAN TO THE OWNER FOR REVIEW AND APPROVAL BY THE PLAN APPROVING AUTHORITY.

ES-6 THE CONTRACTOR IS RESPONSIBLE FOR INSTALLATION OF ANY ADDITIONAL EROSION CONTROL MEASURES NECESSARY TO PREVENT EROSION AND SEDIMENTATION AS DETERMINED BY THE PLAN APPROVING AUTHORITY.

ES-7 ALL DISTURBED AREAS ARE TO DRAIN TO APPROVED SEDIMENT CONTROL MEASURES AT ALL TIMES DURING LAND DISTURBING ACTIVITIES AND DURING SITE DEVELOPMENT UNTIL FINAL STABILIZATION IS ACHIEVED.

ES-8 DURING DEWATERING OPERATIONS, WATER WILL BE PUMPED INTO AN APPROVED FILTERING DEVICE.

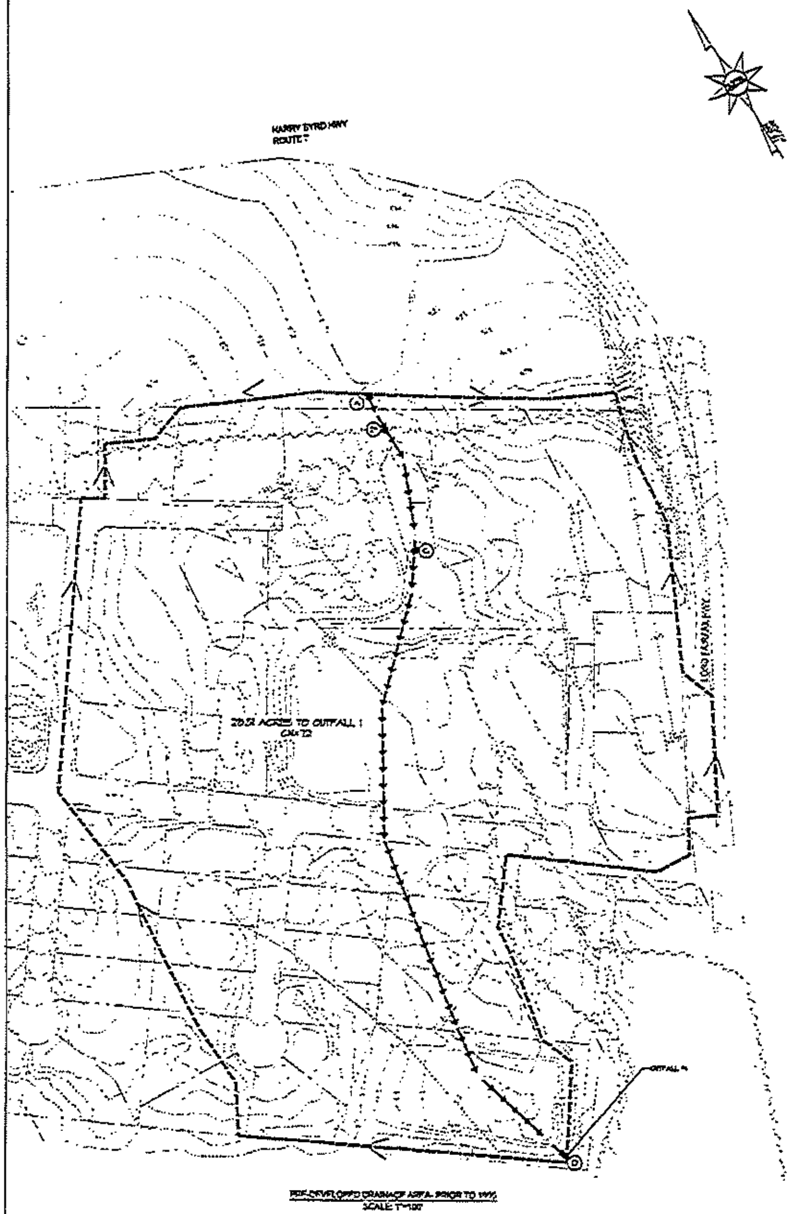
ES-9 THE CONTRACTOR SHALL INSPECT ALL EROSION CONTROL MEASURES PERIODICALLY AND AFTER EACH RUNOFF-PRODUCING RAINFALL EVENT. ANY NECESSARY REPAIRS OR CLEANUP TO MAINTAIN THE EFFECTIVENESS OF THE EROSION CONTROL DEVICES SHALL BE MADE IMMEDIATELY.

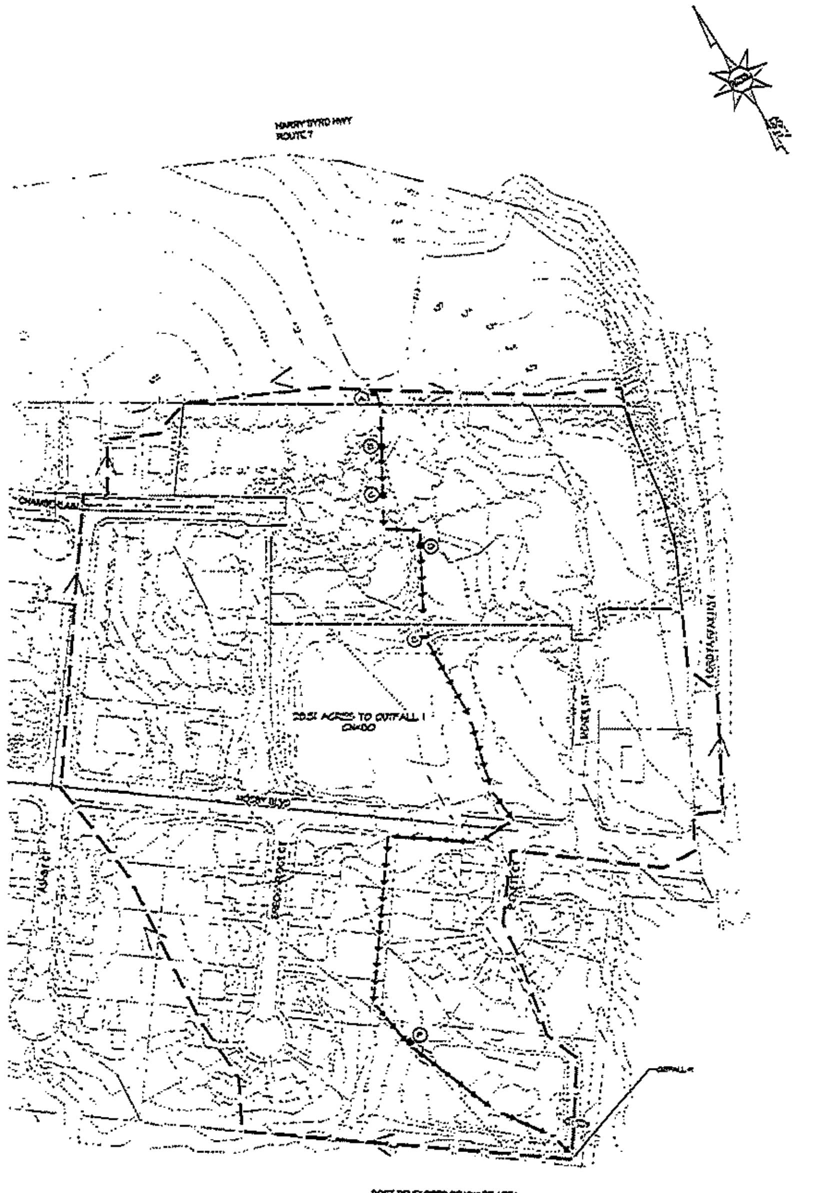
DATE	REVISIONS

MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS

ESC NOTES
MCNEIL STREET EXTENSION
SITE PLAN
TOWN OF BERRYVILLE, VIRGINIA

SHEET: 8 OF 13





Scale 1" = 100'

REVISIONS	DATE

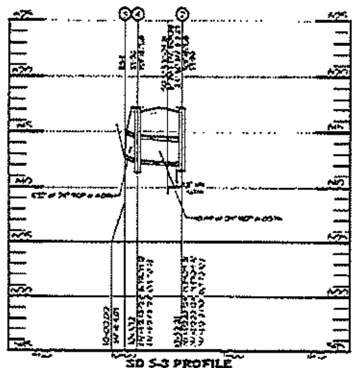
MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS

DRAINAGE AREA MAPS

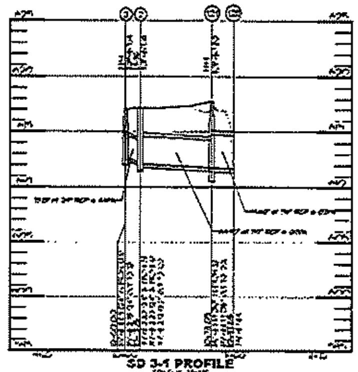
MCNEIL STREET EXTENSION
SITE PLAN

TOWN OF BERRYVILLE, VIRGINIA

JOB NO.: 20478	
SCALE: N/A	
DATE: 03/14/29	
DRAWN BY: BLF	
DESIGN BY: JKC	
REVIEW BY: JKC	
SHEET: 10 OF 13	



SD 5-3 PROFILE



SD 3-1 PROFILE

STORM STRUCTURE SCHEDULE		
STR. NO	TYPE	TOP ELEVATION
2	ES-1	813.03
4	DI-3C	817.19
3	MH-1	817.34
2	DI-3C	817.18
121	MH-1	814.20

PROJECT DESCRIPTION

THE PROPOSED PROJECT CONSISTS OF THE DEVELOPMENT OF AN UNDEVELOPED PROPERTY LOCATED AT THE END OF MCNEIL STREET IN BERRYVILLE, CLARKE COUNTY, VIRGINIA. THE SUBJECT PROPERTY CURRENTLY HAS A GRAVEL TURNAROUND AREAS AT EACH STREET END OF MCNEIL AND CHAMBERLAIN STREETS. THE REMAINING AREAS CONSIST OF WOODS AND GRASS.

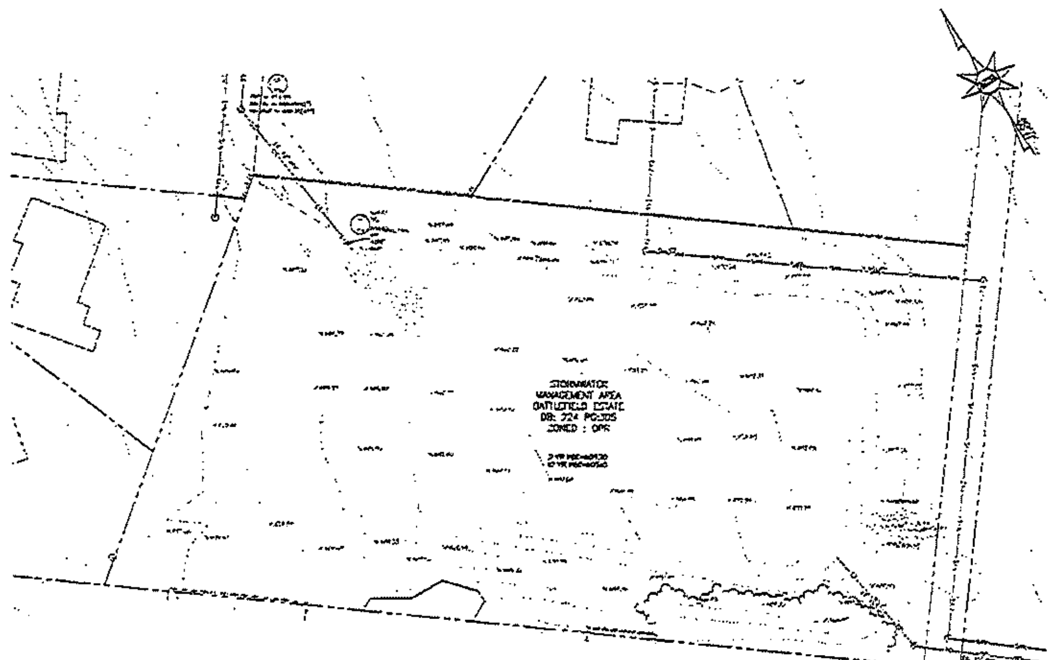
THE PROJECT PROPOSES TO CONSTRUCT A 36' ROAD TO CONNECT CHAMBERLAIN STREET TO MCNEIL STREET.

STORMWATER MANAGEMENT & BMP NARRATIVE

PER VIRGINIA DEQ STORMWATER REQUIREMENTS AND OUR LIMITS OF DISTURBANCE BEING LESS THAN 1.00 ACRES, DEQ REVIEW AND APPROVAL IS NOT REQUIRED FOR THIS PROJECT.

PER THE TOWN OF BERRYVILLE'S STORMWATER ORDINANCE, THE 2-YEAR AND 10-YEAR STORM EVENTS WILL NEED TO BE LESS THAN PRE-DEVELOPED FLOW RATES.

CURRENTLY THE SITE DRAINS TO THE EXISTING STORMWATER MANAGEMENT POND SOUTH OF PICKETT COURT. THE POST-DEVELOPED CONDITION DRAINS TO THE EXISTING STORMWATER MANAGEMENT POND VIA AN EXISTING STORM SEWER. THE PRE-DEVELOPED CONDITION WAS ANALYZED PRIOR TO THE POND AND BATTLEFIELD ESTATES BEING BUILT. AN ANALYSIS OF THE POND PEAK FLOW RATES ARE SHOWN IN THE TABLE ON THIS SHEET FOR THE 2 YEAR AND 10 YEAR STORM EVENTS AND THE POND IS FOUND TO HAVE THE CAPACITY TO HANDLE THE INCREASED PEAK FLOW.
THE EXISTING STORM SEWER HAS BEEN ANALYZED AND IS FOUND TO HANDLE THE POST-DEVELOPED FLOWS. SEE MCNEIL STREET EXTENSION STORM WATER MANAGEMENT REPORT FOR CALCULATIONS.



EX. PICKETT CT DETENTION POND
SCALE: 1"=30'

Scale 1" = 30'

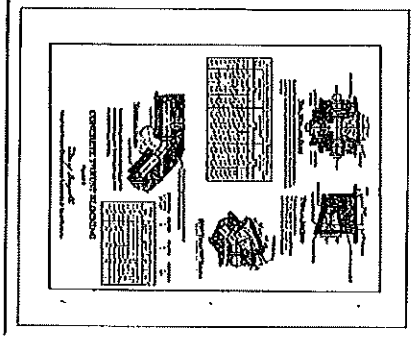
DATE	REVISIONS

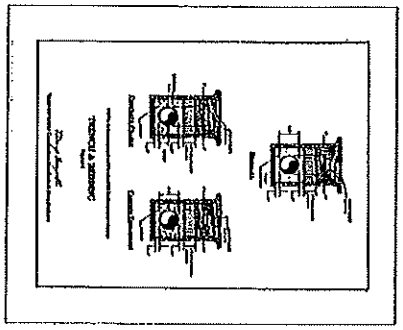
MORRIS & RITCHIE ASSOCIATES, INC.

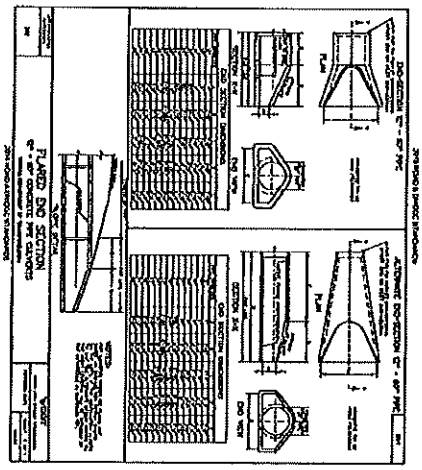
STORMWATER MANAGEMENT & STORM PROFILES

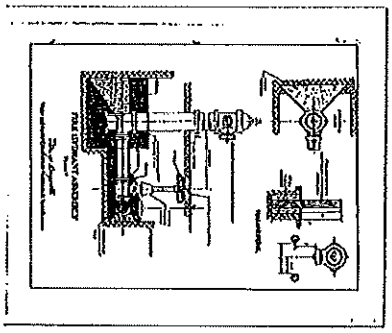
MCNEIL STREET EXTENSION
SITE PLAN
TOWN OF BERRYVILLE, VIRGINIA

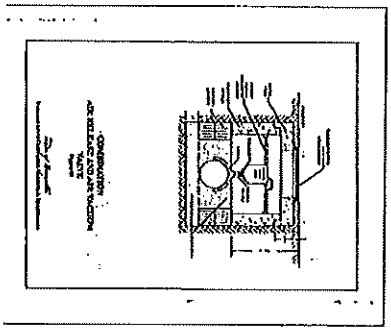
SHEET 11 OF 13











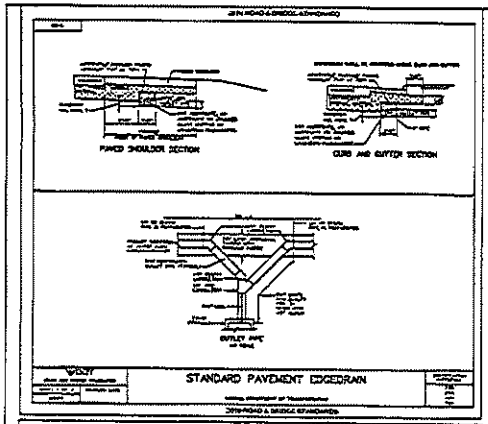
DETAILS

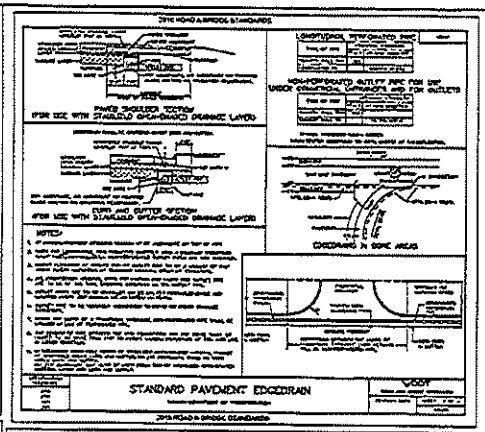
MCNEIL STREET EXTENSION
SITE PLAN

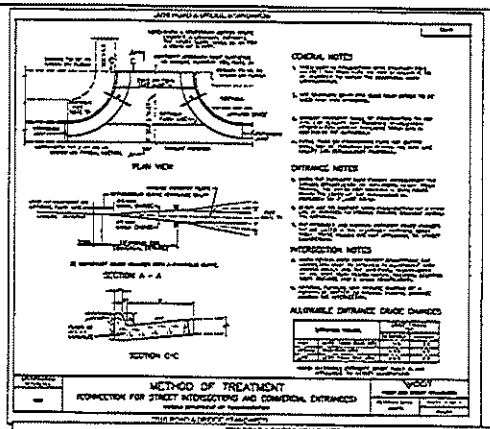
TOWN OF BERRYVILLE, VIRGINIA

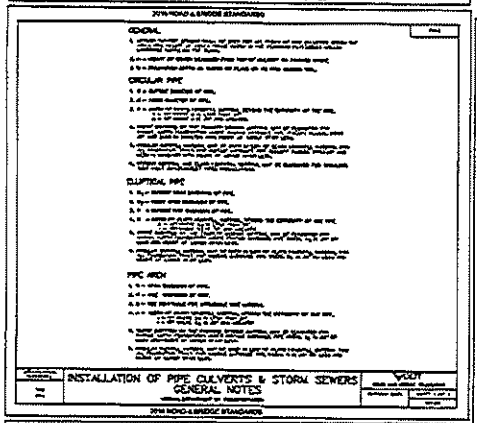
MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS

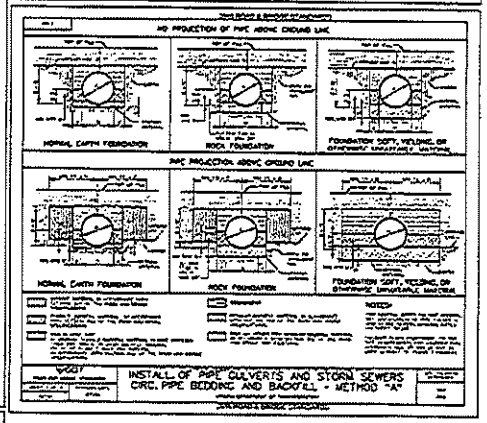
DATE	REVISIONS

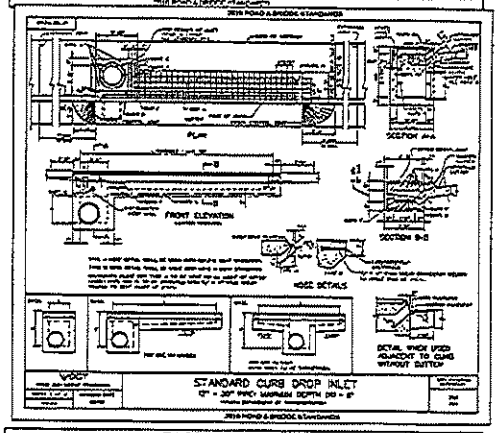


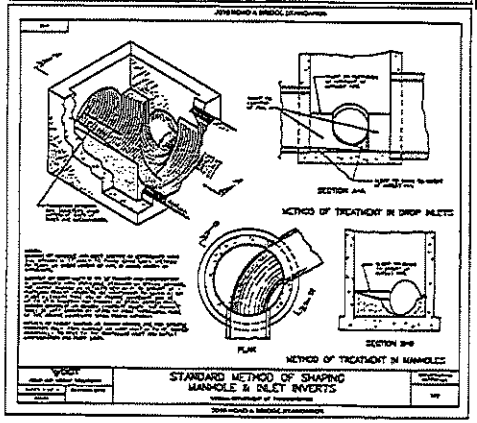


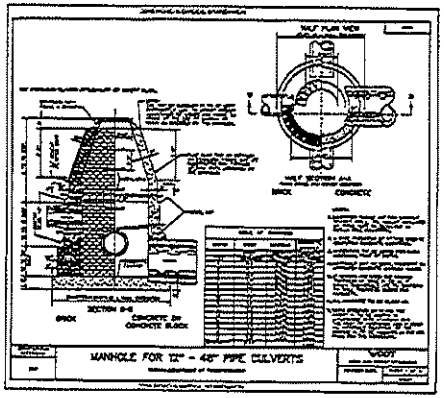


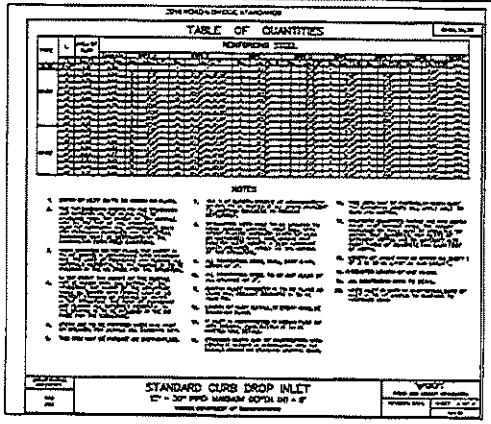












MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
MRA

DETAILS

MCNEIL STREET EXTENSION
SITE PLAN

TOWN OF BERRYVILLE, VIRGINIA

DATE	REVISIONS

JOB NO: 23670
SCALE: N/A
DATE: 10/24/08
DRAWN BY: RJ
DESIGN BY: JK
REVIEW BY: JK
SHEET: 12 OF 13

well as, adequate public street linkages within the overall planning precinct. The private sector should design and construct public roads in the planning precinct necessary to carry the ultimate traffic loadings for the projected development. In addition, transportation plans shall provide for bikeways as well as internal pedestrian movements via sidewalks and paths.

SUB-AREA 7

Name: **NORTHERN GATEWAY/MOSBY HIGHWAY COMMERCIAL**
Acreage: **23.1 acres**
Land Use Designation: **Highway and Visitor Commercial**
Annexed: **Yes**

Sub-Area 7, containing approximately 23 acres, is situated in the southwest quadrant of the Route 7 Bypass/Route 340 highway interchange, being bordered on the north and east by these roads. The southern boundary abuts Mosby Boulevard. The Sub-Area is zoned Business Commercial BC which provides locations for highway commercial uses including restaurants and motels. The Highway Access Corridor Overlay District also covers a portion of this Sub-Area – 300 feet south of the Route 7 right of way. Approximately 13 acres of Sub-Area 7, including the Food Lion and Bank of Clarke County, have been annexed by the Town.

The land use designation for Sub-Area 7 is Highway and Visitor Commercial. The Highway and Visitor Commercial land uses are established to provide locations within the Berryville Area for highway oriented business and commercial activities such as retail uses dependent on automobile access, restaurants, lodging, and offices. The locational characteristics of the Highway and Visitor Commercial uses solidify the goals of both the Town and County to expand the tax base while preventing the spread of urban-scale commercial development into rural portions of the County and providing for such development in the area of the County where urban services are available.

The transportation network in Sub-Area 7 must allow for access to the northern-most parcel. The roads within this Sub-Area must also be brought into the Town's secondary street system to allow for public access to both developed and undeveloped parcels. As this location is the northern entrance to the Town, aesthetics reflected in architectural design and landscaping shall be considered as a part of the development in this area. Direct access to North Buckmarsh Street should be limited, prohibiting full entrances with the possibility of right in/right out ingress/egress. Consideration shall also be given to completing connectivity between McNeill Drive and Chamberlain Street to facilitate traffic to use McClellan Street in order to exit the Sub-Area via Mosby Boulevard. This will help to minimize stacking and other access management concerns with traffic attempting to exit the Sub-Area via McNeill Drive to use the signalized intersection at Mosby Boulevard and North Buckmarsh Street.

The Highway and Visitor Commercial Land use policy is designed to encourage business and commercial employment uses in a master planned setting, with an emphasis on low density, well landscaped development. This strategy is in keeping with the Town and County's firm commitment to the preservation of its existing residential neighborhoods and the semirural lifestyle of the outlying community, while ensuring the economic vitality and stability of the County and the Town.

Private developers shall coordinate their work to establish a master site plan for the surrounding Sub-Areas (Sub-Area 4, 5, 6 and 7) as a condition of any specific land use approval. A consistent design theme shall be established for all proposed buildings within the Sub-Area. Given the locational and topographic characteristics of this Sub-Area, development shall emphasize low intensity building coverage, quality landscaping and buffering as well as the preservation of the extensive natural drainageways which impact the site. Site planning and design shall address stormwater management and preserve the existing natural swales and ridges.

Development intensity in the Business Commercial Zoning District proposed for this Sub-Area should not exceed a 0.3 floor area ratio (FAR), based on the net developable area within the Sub-Area. The Sub-Area has an estimated development capacity of 210,000 square feet of leasable area.

The type and scale of commercial uses should relate to the architectural styling, massing, and materials described in the guidelines for the Historic Access Corridor while serving the prevailing marketplace needs. The planning of public streets, and water and sanitary sewer service shall address both on-site and off-site improvements as a condition of approval.

SUB-AREA 8

Name: CEMETERY
Acreage: N/A
Land Use Designation: N/A
Annexed: Yes

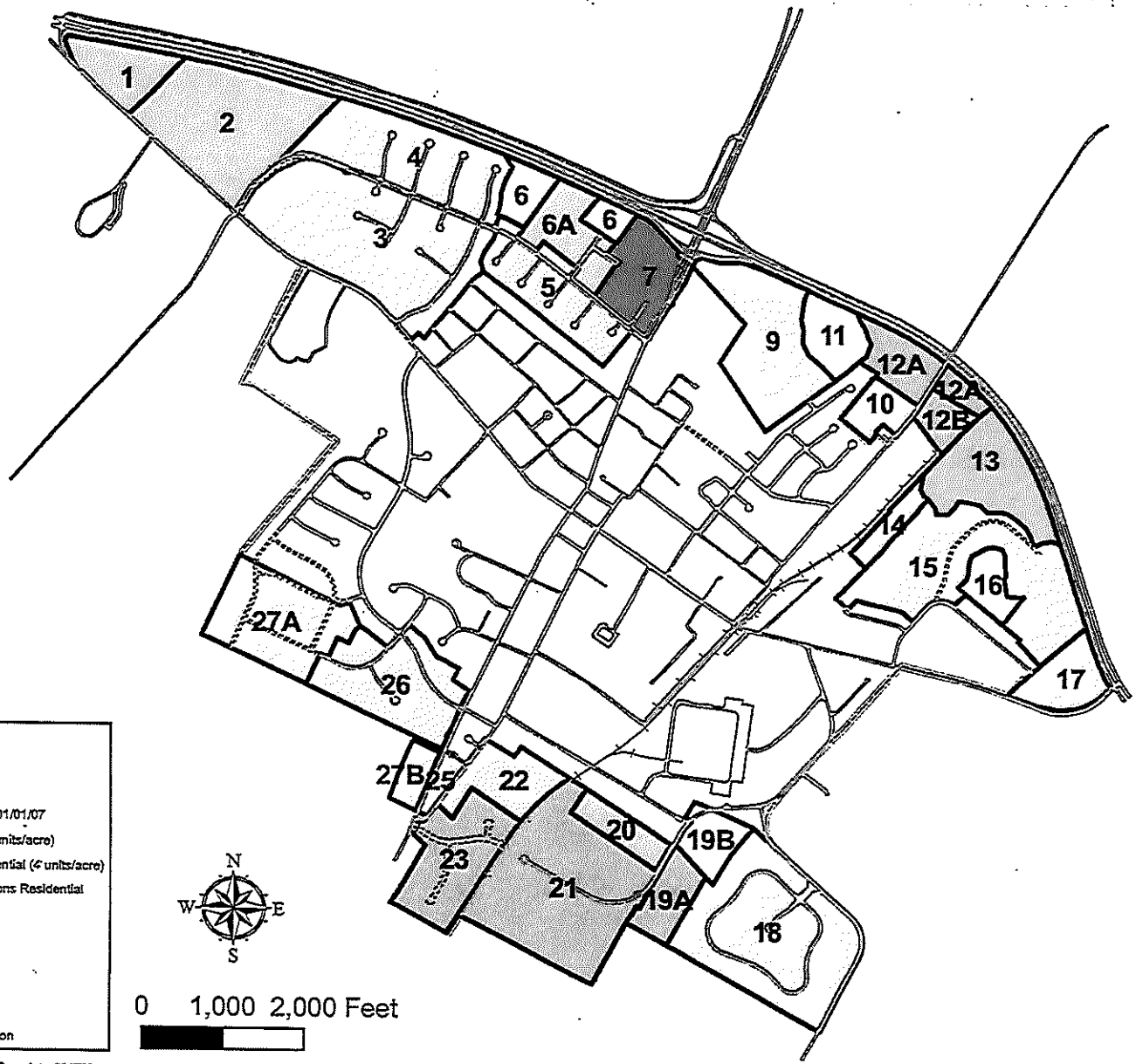
Sub-Area 8, containing approximately 22.2 acres, is located immediately north of the Town of Berryville, on the east side of Route 340. The Sub-Area is developed entirely as Green Hill Cemetery, with the entire Sub-Area under the ownership of the cemetery corporation. The parcels within this Sub-Area are zoned Institutional ITL. Since this original Sub-Area does not have development potential, it is removed from the revised Plan.

SUB-AREA 9

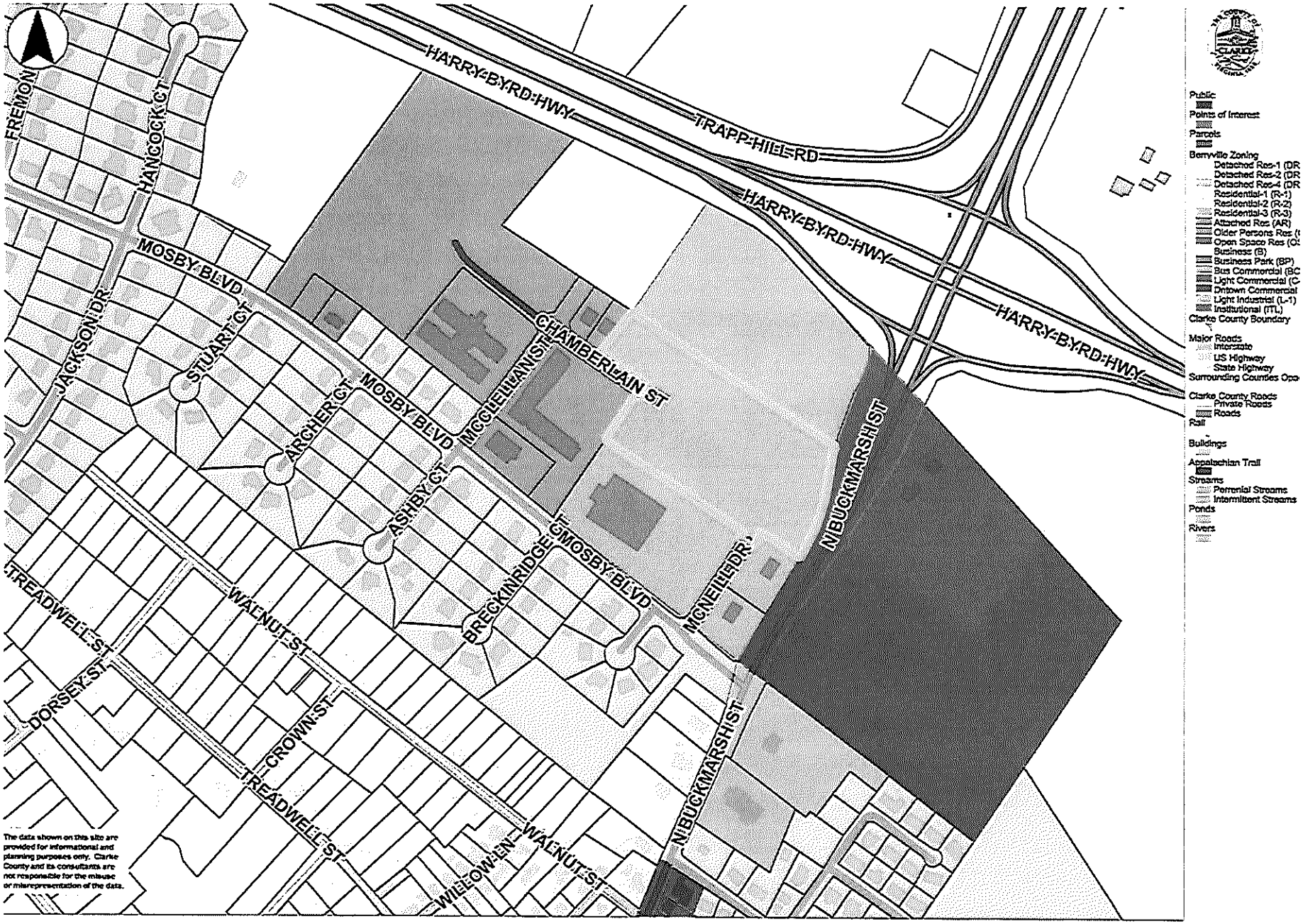
Name: NORTHERN RESIDENTIAL GROWTH AREA
Acreage: 41.7 acres
Land Use Designation: Low Density Residential
Annexed: Yes

Sub-Area 9, a portion of the farm referred to as Soldier's Rest, contains approximately 41.7 acres and is located in the southeast quadrant of the Route 7 Bypass/Route 340 interchange. A major ridge formation constitutes the largest part of the Sub-Area's eastern boundary, with the balance following the Sub-Area 11 boundary, a minor swaled drainage way that runs in a northerly direction towards Route 7 Bypass. The southerly boundary corresponds to an east-west ridge that approximately delineates the line between Annexation Area B and the previous Town corporate limits. Route 7 Bypass provides the northerly limits of the Sub-Area, with Green Hill Cemetery serving as the western limits of this undeveloped property. Sub-Area 9 is currently zoned Detached Residential – 2 (DR-2). The entire Sub-Area is located within town limits.

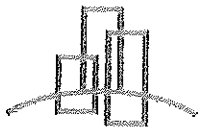
MAP 4 -- Berryville Area Plan Land Uses (2015)



Document Path: G:\arcgis_maps\bap\BAP_update_2013\Map_4_BAP_land_uses_2015.mxd



VICINITY MAP



WALSH COLUCCI
LUBELEY & WALSH PC

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

May 27, 2020

Via E-Mail Only

Mr. H. Allen Kitselman, III
Chair, Berryville Area Development Authority
101 Chalmers Court, Suite A
Berryville, Virginia 22611

Re: The Subdivision and Development of Town of Berryville Parcel 14-5-251E Parcel

Dear Chairman Kitselman and Members of the Authority:

This firm represents North Buckmarsh, LLC, the owner of property well known to the Town and the County, located to the immediate north of the above-referenced parcel. We are, of course, aware that an application has been filed for approval of a Minor Subdivision, and a Land Development Application for a Site Plan for the street right-of-way dedication for an extension of McNeil Street to Chamberlain Street, and for the subdivision of that 7+ acre parcel into two lots.[1]

North Buckmarsh has a significant concern with the Applications that it wishes to bring to the attention of the Town and the Berryville Area Development Authority. The Applicant does not wish to dedicate right-of-way from existing McNeil Street to the North Buckmarsh Parcel.

The Applicant has maintained that the Town is without legal authority to require either the dedication of right-of-way for this purpose, or the construction of an extension of McNeil to

[1] The cover letter attached to the Land Development Application refers to it as a "Site Development Application for Extension of McNeal [sic] Street creating a Two (2) Lot Subdivision." This would suggest an intention not only to create the subdivision, but also to build McNeil. It would be very helpful if the Applicant had present development plans, though it does not appear from the Staff Report that there are any such plans. That does not, however, affect the concerns expressed in this letter or the applicable legal requirements.

North Buckmarsh. It has submitted to the BADA an "Executive Summary" of what it maintains are the applicable facts and law, with its Applications, asserting that Virginia localities have no authority of any kind to require a landowner to dedicate land to public roads that a landowner does not want to dedicate.[2] Unfortunately, while that memorandum provides a general outline of certain elements of Virginia law as it applies to municipalities, and to their powers in connection with public infrastructure, it is wholly insufficient insofar as these Applications are concerned.

No state or federal case, or Virginia statute, stands for the proposition that a locality is completely powerless to require the dedication of right-of-way for public purposes, provided there is a nexus between such a requirement and a rough proportionality between the requirement and the need created by a development. In fact, this is what the Virginia Supreme Court effectively confirmed in Bd. of Supv'rs v. Rowe, 216 Va. 128 (1975), and what the United States Supreme Court has consistently held in its Takings jurisprudence. It is only when a locality goes beyond that, and expects a landowner to satisfy a need that is generated by the public at large, as was the case in Rowe and similar cases, or when it demands construction of improvements to existing public streets as a condition of the approval of plans and permits, that a constitutional or statutory problem arises. That is not what the Town seeks in this case. Rather, it is narrowly focused on assuring interparcel access bearing a reasonable nexus to the development of the Applicant's property, and doing so by seeking what, in generous terms, is very limited right-of-way, to further a legitimate public goal.

A developer cannot escape its obligations by the expedient of filing a site plan for a public improvement prior to surrounding it with development later. In this case, the 7.0358 acres of the Applicant's property could support almost 92,000 square feet of commercial development, given the .30 FAR permissible in the Business Commercial District to which it is already zoned. Even if the land were not developed to its full potential, there is very likely to be a substantial trip generation from its use, and that trip generation will necessitate improvements to the road network. That will have a significant impact on land both to its south, and to its north.

It should be noted that the Applicant already proposes to dedicate right-of-way to the Town for the extension of McNeil both as a necessity for its development, and as a condition of approval of its plans. It is aware of the necessity of road improvements to develop its property, it just doesn't want to let another property benefit from that development – this is, however, a situation that is experienced by almost every development of any consequence, which this will inevitably be.

As the BADA also knows, the Berryville Area Sub-Area 7 Plan has long contemplated that (a) the North Buckmarsh property is to be annexed into the Town, it being in Annexation Area B, and (b) that

---

[2] North Buckmarsh does not request that the Applicant construct a road connection to its Parcel, only that it comply with the requirements of applicable statutes and the Berryville Area Plan and dedicate the necessary right-of-way, and when time comes permit construction of that extension.

[t]he transportation network in Sub-Area 7 must allow for access to the northern-most parcel. The roads within this Sub-Area must also be brought into the Town's secondary street system to allow for public access to both developed and undeveloped parcels. . . . Direct access to North Buckmarsh Street should be limited, prohibiting full entrances with the possibility of right in/right out ingress/egress.

It has been North Buckmarsh's long understanding that providing two access points to North Buckmarsh is consistent with the Town's Plan and that a straight extension of McNeil Street to North Buckmarsh's property is the best access for future development. This is reinforced by the Staff Report itself, which includes as the Planning Staff's General Comment Number 2 that "[t]he Berryville Area Plan identifies the need for access to the northern-most parcel owned by North Buckmarsh LLC."

Third, every local government is aware of the requirements of Va. Code § 15.2-2232(A) with respect to the mandatory force of a locality's comprehensive plan.

A. Whenever a local planning commission recommends a comprehensive plan or part thereof for the locality and such plan has been approved and adopted by the governing body, it shall control the general or approximate location, character and extent of each feature shown on the plan. Thereafter, unless a feature is already shown on the adopted master plan or part thereof or is deemed so under subsection D, no street or connection to an existing street . . . whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the commission as being substantially in accord with the adopted comprehensive plan or part thereof.

***

C. Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval. . . .

* * *

D. Any public area, facility or use as set forth in subsection A which is identified within, but not the entire subject of, a submission under either § 15.2-2258 for subdivision may be deemed a feature already shown on the adopted master plan, and, therefore, excepted from the requirement for submittal to and approval by the commission or the governing body; provided, that the governing body has by ordinance

> or resolution defined standards governing the construction, establishment or authorization of such public area, facility or use. . . . [3]

The Applications that have been made through the BADA have not, so far as North Buckmarsh is aware, been subjected to a Comprehensive Plan Conformity Review under this statute. If they were, they cannot have been found in conformance with the applicable Plan because the Applicant has simply failed to satisfy its requirements for providing access directly to North Buckmarsh. Unlike virtually all other aspects of the Comprehensive Planning process, § 15.2-2232 is binding on localities and landowners alike and if a road extension is not consistent with the Plan, it cannot be approved.

Still further, Va. Code § 15.2-2241, setting out the mandatory provisions of a local subdivision ordinance, requires that each such ordinance address

> [t]he coordination of streets within and contiguous to the subdivision with other existing or planned streets within the general area as to location, widths, grades and drainage, including, for ordinances and amendments thereto adopted on or after January 1, 1990, for the coordination of such streets with existing or planned streets in existing or future adjacent or contiguous to adjacent subdivisions[.]

To this end, Article III, B 1 of the Berryville Subdivision Ordinance expressly says that

> No final plat or plan shall be approved until the Administrative Body is assured that the following will have been provided:
>
> 1. Construction of, and right-of-way dedication for, required vehicular travel lanes, service drives, driveway entrances, or other access connections, which will permit vehicular travel <u>within the subdivision, and to and from adjacent properties</u>.

Even though one Application in this instance is for a simple two lot subdivision, as to which the Town is generous in its administration, Article II, § E 1 of the Berryville Subdivision Ordinance has this to say about the Application before the BADA

> 1. <u>Division of single lot or parcel of land</u>
>
> Where a single lot or parcel of land is proposed to be divided into not more than two (2) parcels, any one or more of the requirements of this

[3] This provision is not automatic, but is rather entirely discretionary with the locality, which "may" deem a feature already on the Plan. It is clear from the Staff Report, however, that this is not a finding that can be made because the Staff expressly observes that the Applications are not consistent.

> Ordinance may be waived by the Administrative Body, and be subject to staff approval, provided that such subdivision:
>
> a. conforms in area and street frontage to the regulations and requirements of the zoning district regulations of the governmental entity wherein the land lies;
> b. does not involve any new public street, road or easement of access;
> c. does not, in the opinion of the County, Town or state, obstruct any natural drainage or planned transportation facility;
> d. does not adversely affect any part of any adopted Comprehensive Plan and/or the Berryville Area Plan, as adopted[.]

Since the extension of McNeil Street is shown on the proposed Site Plan rather than the Record Plat, as it should be, § 314.7 of the Berryville Zoning Ordinance with regard to Site Development Plans mirrors these requirements.

> To further the intent of this Section and to protect public safety and general welfare, no site plan shall be approved until the Administrative Body is assured that improvements will be made which meet the following minimum standards:
>
> (a) Streets and Rights-of-Way
>
> 1. Streets, driveways, access roads and rights-of-way shall be constructed and dedicated, and existing streets widened and improved as necessary, when the need for such streets and improvements is generated by the proposed development, or is indicated in the Berryville Comprehensive Plan and/or its Berryville Area Plan component.

Our Supreme Court has said that the Takings Clause of the United States and Virginia Constitutions are to be read as imposing identical limits on governmental authority. Those limits are implicated only when a locality compels a landowner to dedicate right-of-way that has no nexus to, and is not "roughly proportional" to, the impact of a given development (as the Ordinance itself reflects). Thus, while a provision of a Comprehensive Plan that exceeds this constitutional limitation would be problematic, the limited extension of a right-of-way dedication to an adjacent property that is called for in the Berryville Area Plan and local ordinances, with the future intentions of the Applicant to develop its property, would not run afoul of that flexible standard.

North Buckmarsh wishes to make it clear, however, that it does not oppose the development of the Applicant's property so long as road access is provided to North Buckmarsh consistently with the Berryville Area Plan that would permit the highest and best use of the Parcel. The Applicant's land, as is North Buckmarsh, is zoned for commercial use, and the continued commercial development of the area of the Town near the intersection of North

Buckmarsh Street and Harry Byrd Highway is beneficial to all parties. North Buckmarsh remains willing to discuss with the Town and the Applicant how the extension of right-of-way for McNeil Street to the North Buckmarsh boundary may reasonably be made.

But it did not want the Town or the BADA to be under any misunderstanding as to what it believes the proper grounds for analysis of the Applications, and the legal requirements applicable to them, to be. The Town and the BADA can require this access as a condition of approval of the Applications.

We appreciate your kind consideration of these concerns.

Very truly yours,

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

John H. Foote

JHF/jf

cc: Christy Dunkle
North Buckmarsh, LLC

June 9, 2020

Town of Berryville
101 Chalmers Court
Suite A
Berryville, Virginia 22611

Attn: Christy Dunkle
Town Planner, Zoning Administrator

Dear Christy: Attached you will find the following:

1. Our Land Development Form eliminating the request for a Site Plan Approval dated April, 27, 2020, and
2. A revised cover letter for our request to extend McNeil St. thru to Chamberlain, and
3. A Sketch Plan previously submitted with the applications for "The Retreat of Berryville" and Robert Regan Village which includes tentative uses for the 7 acres known as Tax Map 14-5-251E.
4. A Sketch Plan previously submitted showing more potential uses with required parking for the 7 Acres known as Tax Map 14-5-251-E.
5. A Sketch Plan showing a potential 1.6 Acre Site for a 711 Gas/Convenience Store.
6. A check for $100.00... the difference in fees for Preliminary/Final Subdivision rather than a Two Lot Subdivision, Site Plan, and Final Plat
7. A request for 4 Zoning Administrator Questions.

Thank you in advance for your attention to the above.

Respectfully,
Alton C. Echols, Jr.
Alton C Echols, Jr
President House of Lords, Inc.

LAND DEVELOPMENT APPLICATION TOWN OF BERRYVILLE

(Please print or type)

RECEIVED
JUN 10 2020
Town of Berryville, VA

Current Property Owner House of Lords, Inc. and Ding Yi Wang

Owner's Address 400 Custer Court Berryville, VA 22611

Phone 540-955-2618

Agent (Contact Person) Morris & Ritchie Associates - Jon Erickson

Agent's Address 604 South King St, Ste 200 Leesburg, VA 20175

Phone 703-994-4047

Check Appropriate Request:

ALG

___ Subdivision - creating more than 2 lots

__X__ Minor Subdivision - single lot divided into 2 lots (Preliminary/Final)

ALG

_____ Boundary Line Adjustment

~~__X__~~ Site Plan (No Site Plan Required)

_____ Rezoning

_____ Text Amendment: _____ Zoning or _____ Subdivision Ordinance

_____ ARB Certificate of Appropriateness

_____ Town of Berryville Utilities

_____ Other: _____

FEES REQUIRED:

Preliminary Plat	$4000
2 Lots	100
Final Plat	1000
2 Lots	100
E and S	550
SWM	175
	$5925

ALG

Complete As Applicable:

Nature of Request/Proposal: Creation of two lots and ROW for proposed street connecting existing McNeil Drive and Chamberlain Street - Approval of "Record Plat" (for Two Lots(2) and Street Right of Way Dedication).

Tax Map & Parcel Number(s): 14-5-251E

Size of Project Site: 7.0358 ac

Proposed # of Lots: 2 Existing Zoning BC

Owner or Agent: The information provided is accurate to the best of my knowledge. I understand that the Town may deny, approve, or conditionally approve the request for which I am applying. I certify that all property corners have been clearly staked and flagged.

Signature: _____ Date: 3/27/20

Owner: I have read this completed application, understand its intent, and freely consent to its filing. Furthermore, I grant permission to the Town Planning Department and other government agents to enter the property and make such investigations and tests, as they deem necessary. I acknowledge that in accordance with Article X of the Subdivision Ordinance I am responsible for costs incurred for review of subdivision and/or development plans by the Town's engineer and that any other required tests or studies will be carried out at owner/agent expense

House of Lords, Inc for Ding Yi Wang, Land Contract Owner

Signature: ~~Clifton C. Echols, IV - President~~ Date: ~~04/17/2020~~ 6/9/2020

OFFICE USE ONLY

Public Hearing Required? _____ Dates Advertised _____

Adjoining Property Owners Notified? _____

Action Taken: _____

June 9th, 2020

Town of Berryville
101 Chalmers Court
Suite A
Berryville, Va 22611

Christy Dunkle Berryville Town Planner/ Zoning Administrator
Subject Two Lot Preliminary Final Subdivision

Dear Christy:

I wish to withdraw our application for Site Development of the 7 Acres between McNeil and Chamberlain Streets just North of Martins and McDonalds in the Town of Berryville. The two Lot Preliminary/Final Subdivision will extend the public Street (McNeil) North and West to its connection with Chamberlain Street.

The extension of McNeil Street will include approval for the following:

1. A Preliminary/Final Subdivision for Two Lots.
2. Construction Drawings for Extension of McNeil Street thru to Chamberlain.
3. Dedication Easements as required.
4. A Final Plat for 2 Lots (Northern Lot (A) containing 4.4 Acres and Southern Lot (B) containing 2 Acres.

In closing, Market Demand will determine any future subdivision of Parcels A and B. Exhibits 1, 2, and 3 are included as current projections.

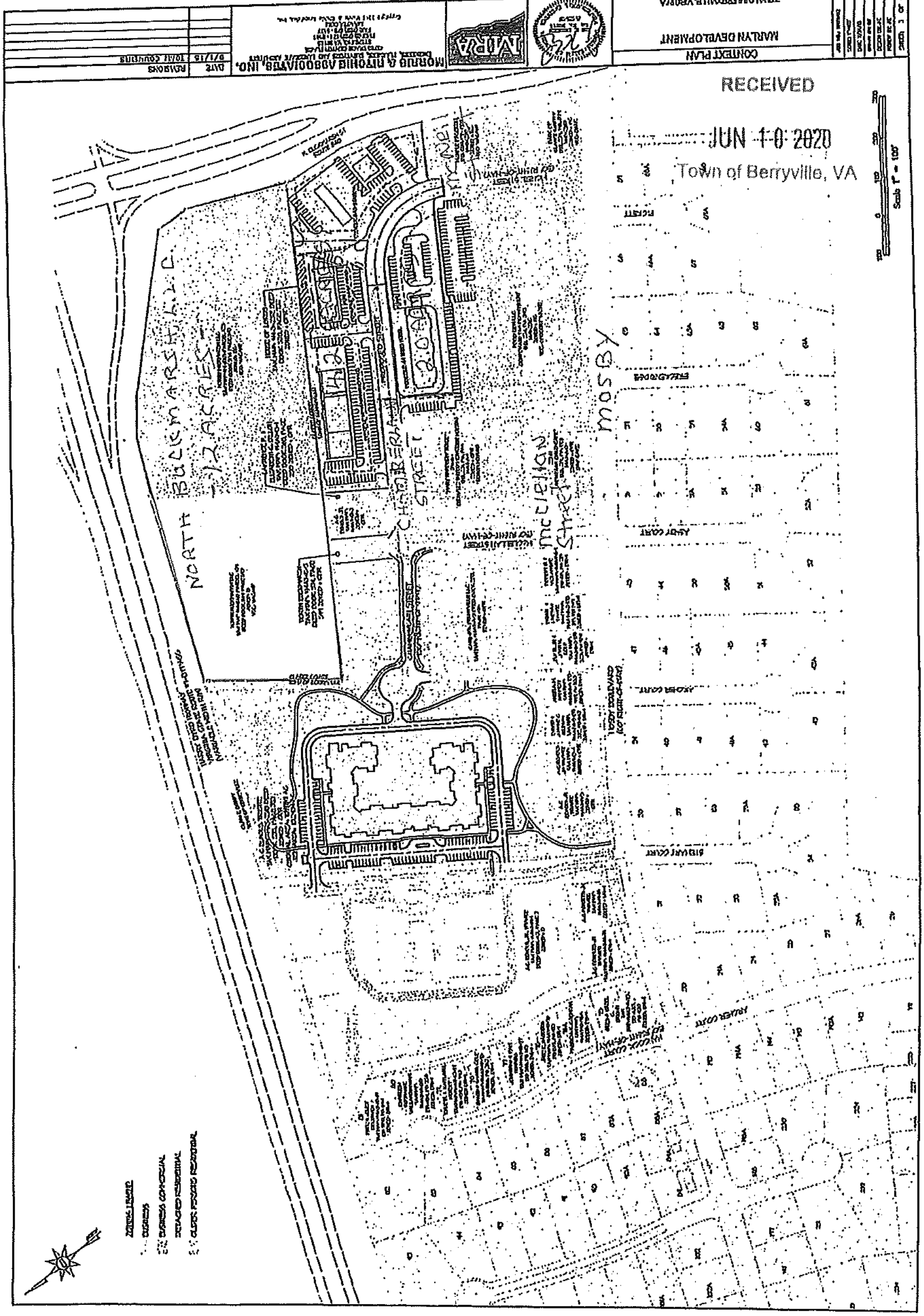
Exhibit 1 - Shows several potential uses for the 4.4 acres. However, if the need arises, the western two potential areas contain 2.6 Acres which is sufficient to support a 100 Room Inn/Hotel.

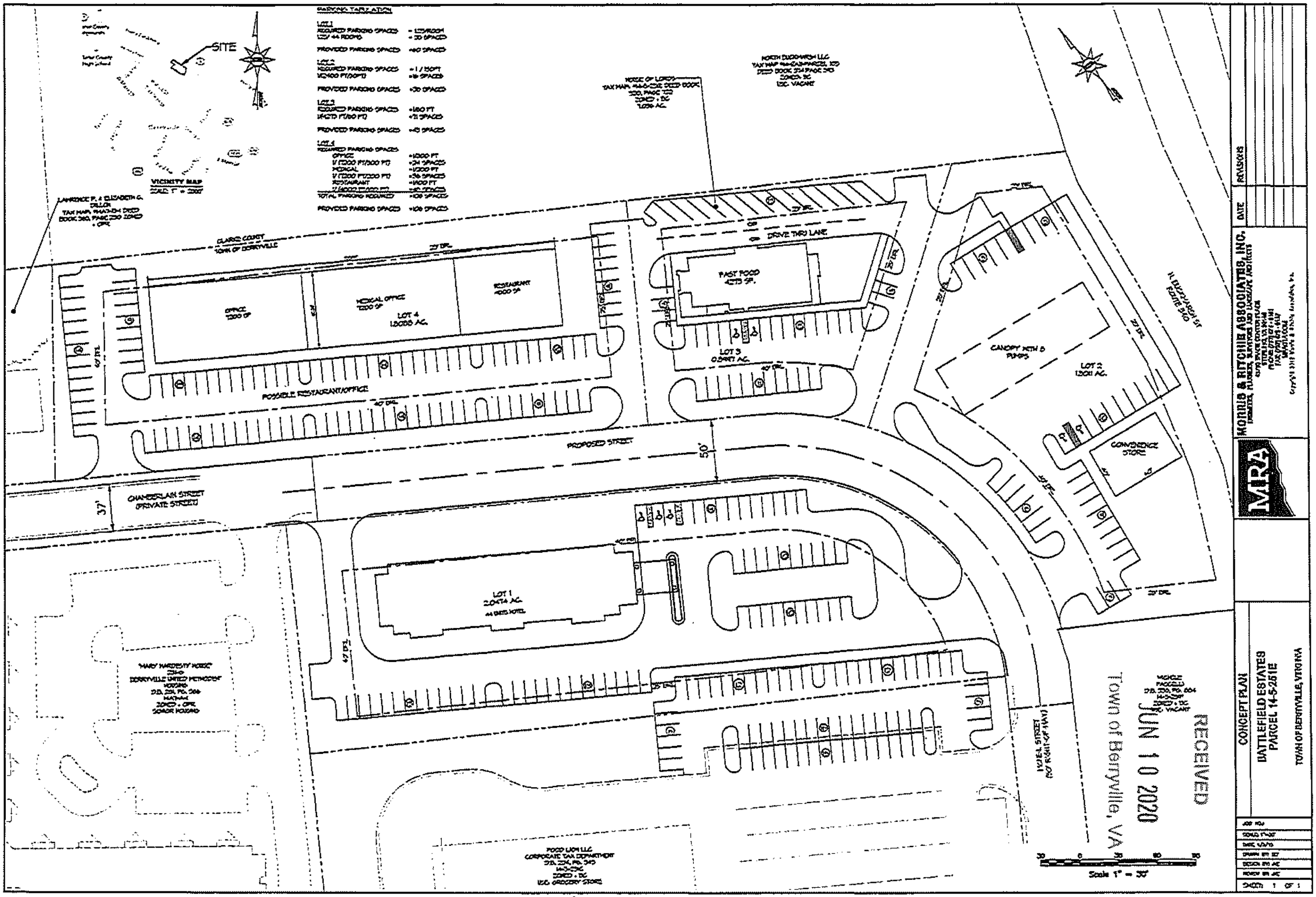
Exhibit 2 - Shows a Sketch Plan for 43 Acres previously developed North of Mosby.

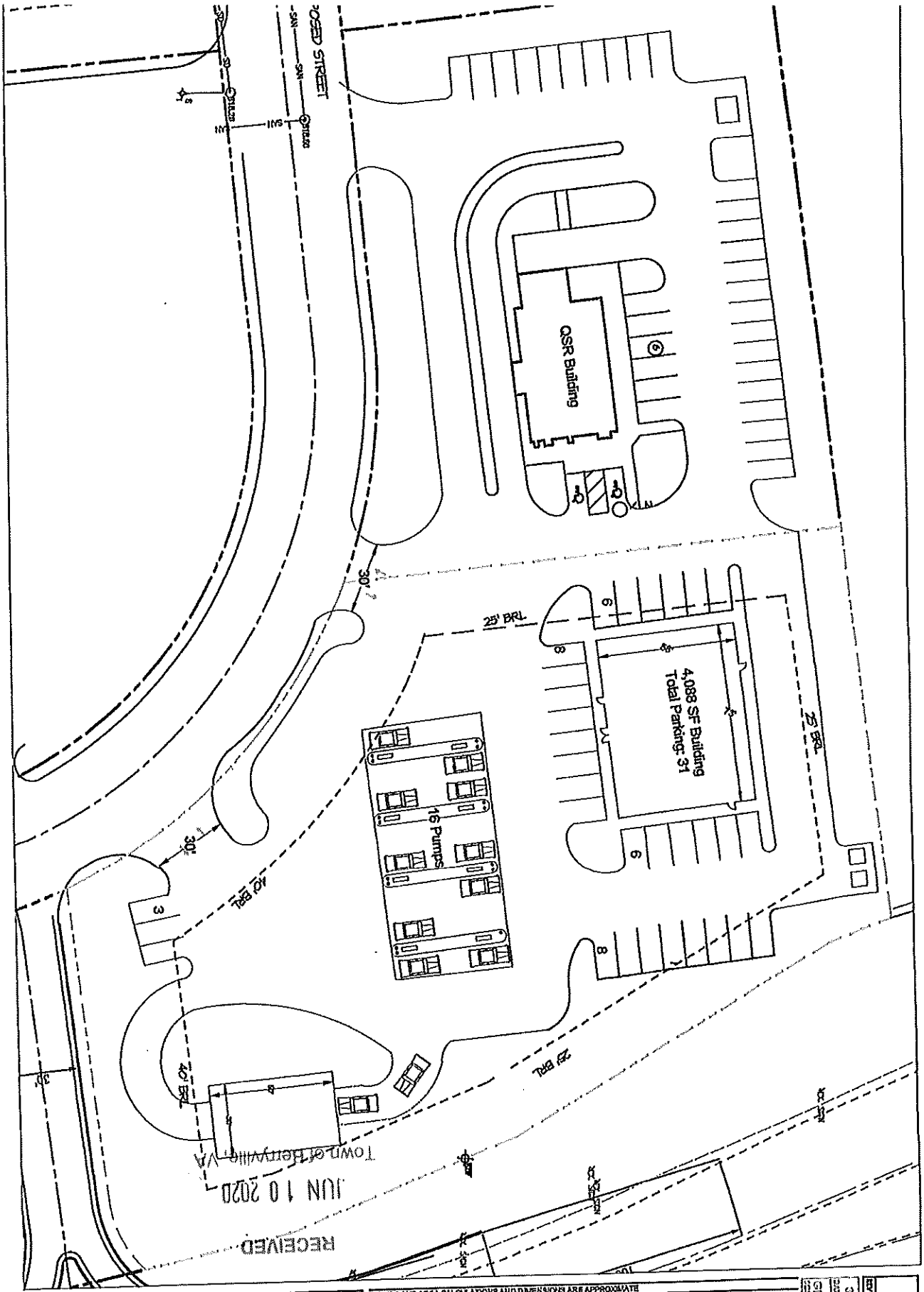
Exhibit 3- Shows and area East of Rt. 340 and South of Route 7 for a potential site for the gas/convenience store with a location adjacent to Route 340.

Respectfully,

Alton C Echols, Jr.,
President House of Lords, Inc.


RECEIVED
JUN 10 2020
Town of Berryville, VA
CONTEXT PLAN
MARLYN DEVELOPMENT
TOWN OF BERRYVILLE, VIRGINIA
MORRIS & RITCHIE ASSOCIATES, INC.
NORTH
Buckmarsh LLC
~12 ACRES
Chamberlain
STREET
McClellan
Street
mosby
142
200A





1240 N. MAIN AVE. | SUITE 140 | SANFORD, FLORIDA 32771

N3 REAL ESTATE

REAL ESTATE DEVELOPMENT | INVESTMENTS | WWW.N3REALESTATE.COM

NOTE: LAND AREA CALCULATIONS AND DIMENSIONS ARE APPROXIMATE

7 ELEVEN GAS STATION & 4088 SF STORE W/ CAR WASH

340 & VA-7 | BERRYVILLE | VIRGINIA

This site plan is preliminary in nature and subject to change. It is subject to governmental codes, tenant mix, and civil engineering requirements as will be dictated by the governing city or municipality.

RECEIVED

JUN 10 2020

Town of Berryville, VA

BERRYVILLE SUBDIVISON QUESTIONS

(Subdivision Application Tax Plat 14-5-251-E)

1. **Questions: Whether a request for a Two Lot Final Subdivision Plat requires a Public Hearing Notice for both the Preliminary and Final Plats, and**

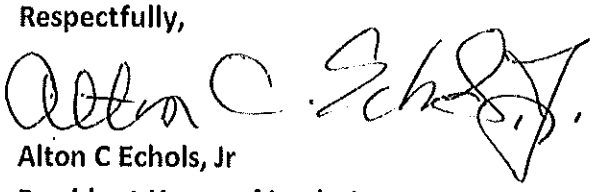
2. **Question: Whether the request for approval for Construction Drawings extending McNeil Street to Chamberlain Street requires a Site Plan Application, and**

3. **Question: Whether at Subdivision, or at Site Plan...Is the proper time to address the question of where to place, if required, an "Inter Parcel Access" Easement.**

4. **Question: Whether an In-Person Sketch Plan conference is required for our application and if so, when can you, in your role as the Town Planner... schedule it to be done?**

Thank you in advance for your attention to the above.

Respectfully,



Alton C Echols, Jr
President House of Lords, Inc.

STATEMENT OF FACTS

The Town of Berryville has adopted a Subdivision Ordinance (July 2019), applicable to "all land which is under the incorporated jurisdiction of the Town of Berryville *and to that land identified as 'Area B' in the Clarke County/Town of Berryville Annexation Agreement.*" (Berryville Subdivision Ordinance [hereinafter "Subd. Ord."], Art. I.A., at p. 1 (July 2019)) (emphasis added). Specifically, Area B is "that land which is in Clarke County, contiguous to the Town of Berryville and described in Attachment 'B' of the Clarke County/Town of Berryville Annexation Agreement." (Subd. Ord., Art. IX, at p. 50 (definition of "Area B")).

The Berryville Subdivision Ordinance generally provides that "[i]t is hereby declared to be the policy of the Town of Berryville to consider the subdivision of land as subject to the power of the Town to implement the Berryville Area Plan and the Town Comprehensive Plan." (Subd. Ord., Art. I.B., at p. 1). The "Berryville Area Plan" is defined as "[t]he comprehensive planning document for Area B and and sub-areas within the Town of Berryville." (Subd. Ord., Art. IX, at p. 50.)

Under Article III, entitled "Subdivision Improvements Required," the Berryville Subdivision Ordinance provides in relevant part:

> B. TRANSPORTATION IMPROVEMENTS.
>
> No final plat or plan [[1]] shall be approved until the Administrative Body [[2]] is assured that the following will have been provided:

---

1 A "final plat" is defined as "the final map of all or a portion of a subdivision or site plan which is presented to the proper review authority for final approval." (Subd. Ord., Art. XI, p. 53 (definition of "plat, final")).

2 "The Berryville Area Development Authority is hereby designated as the Administrative Body of the Town Council for the subdivision of land in that area known as Area B which is the subject of the subdivision application and for which no final certificates of occupancy have been granted." (Subd. Ord., Art. II.C. 1., p. 3.)

1. *Construction of, and right-of-way dedication for, required vehicular travel lanes, service drives, driveway entrances, or other access connections, which will permit vehicular travel within the subdivision, and to and from adjacent properties.*
2. Construction of, or fee dedication for, widening of existing roads, existing roads on new alignments and proposed roads, all as indicated on the adopted Berryville Area Plan and where the need for such roads are substantially generated by the proposed subdivision.
3. Subdividers shall be required to reserve right-of-way for major highways and interstate highways where applicable. Dedication of rights-of-way for any major public transportation improvements shall be as indicated on the transportation element of the Berryville Area Plan.
4. Subdividers shall be required to dedicate and construct off-site streets, or to improve existing streets if, in the opinion of the Town, the subdivision does not have adequate ingress or egress.

. . . .

(Subd. Ord., Art. III.B. 1. - 4.) (emphasis added).

The Berryville Subdivision Ordinance specifically defines the term "off-site" as "pertaining to areas and/or functions not within the boundaries of a subdivision or proposed subdivision." (Subd. Ord., Art. IX, p. 52 (definition of "off-site")) (emphasis added). The ordinance, however, does not define the term "site-related."

Article IV of the Subdivision Ordinance, entitled "Subdivision Design Standards," further provides that "[s]ubdivision streets shall be provided and designed to give access to adjoining acreage in conformance with the Berryville Area Plan and to the satisfaction of the Town." (Subd. Ord., Art. IV.B. 11.b., p. 19.) The design standards further provide, regarding "Subdivision entrances," as follows:

13. Subdivision entrances

a. No subdivision shall be approved unless the principle means of access thereto, and all streets within, shall conform to the standards of the Virginia Department of Transportation.
b. Each entrance onto any public road for vehicular traffic to and from such subdivision shall be subject to the approval of the Administrative Body upon the

advice of the Virginia Department of Transportation Highway Engineer and shall be constructed in accordance with the applicable design standards of the Town of Berryville and/or the Virginia Department of Transportation.

c. *Where traffic generated by a subdivision exceeds 2,000 vehicle-trips per day, such subdivision shall provide connectors to any existing public road(s) at two locations.* Where only one connection is feasible, the entrance roadway must be a four-lane divided highway with a length of not less than 250 feet or as otherwise recommended by the Virginia Department of Transportation. There shall be no curb cuts along this four-lane divided entrance road.

(Subd. Ord., Art. IV.B. 13., p. 20) (emphasis added).

North Buckmarsh, LLC ("North Buckmarsh"), owns a 12-acre plus/minus tract of land, labeled Parcel 105 on the concept plan. The parcel is located in Clarke County within Area B immediately adjacent to the Town of Berryville. The parcel is located to the north of McNeal and Chamberlain Streets. Starting from Mosby and going north on McClellan through its intersection with Chamberlain Street is a lot and right-of-way earlier purchased by North Buckmarsh as a potential access providing ingress to and egress from the "landlocked" 12-acre parcel.

The North Buckmarsh property is known as the Byrd Parcel since it is owned by the Byrd family. The Virginia Department of Transportation (VDOT) paid the Byrds damages when construction of the Route 7 Bypass landlocked the parcel.

If North Buckmarsh proposes to subdivide in the future, they can use the right-of-way as the access road for the proposed subdivision. This right-of-way can provide adequate, safe, and efficient access to and from the 12 acres. If the proposed subdivision generates less than 2,000 vehicle trips per day, there is no requirement for a second entrance to accommodate traffic to be generated by a future subdivision of the 12 acres.

House of Lords, Inc. and Ding Yi Wang (hereinafter called House of Lords/Ding Wang)

proposes a 2 lot subdivision of their seven acres for their commercially zoned land that lies within the Area B of the Town of Berryville. This commercially zoned land lies immediately adjacent to the southern boundary of the North Buckmarsh parcel. Adequate access to the land to be subdivided by House of Lords/Ding Wang is pre-existing.

However, the Berryville Area Comprehensive Plan has indicated that a second or alternate entrance must be constructed through the land proposed to be subdivided by House of Lords/Ding Wang in order to provide a second access from the Byrd Parcel, in accordance with the following provision of the Berryville Area Development Plan governing Sub-Area 7 of Area B (the North Buckmarsh property is located within Sub-Area 7):

> "The transportation network in Sub-Area 7 must allow for access to the northern-most parcel. The roads within this Sub-Area must also be brought into the Town's secondary street system to allow for public access to developed and undeveloped parcels. . . .."

(2015 Berryville Area Plan, p. II-18.)

Although House of Lords/Ding Wang has offered to sell to the owners of the Byrd Parcel an entrance between a proposed Medical/Dental Office Building and an adjacent fast food franchise, the Town has insisted on the dedication and construction of a separate, access road between the fast food franchise and a gasoline convenience station to the adjacent North Buckmarsh property. By complying with the Town's exaction, House of Lords/Ding Wang will have to dedicate more than $100,000 worth of land and will also have to construct a road improvement at an approximate cost of $200,000. The dedication and the construction of such roadway will primarily benefit the adjacent Byrd Parcel and is not required to provide any access to House of Lords/Ding Wang's proposed subdivision.

First Question Presented: Can a Virginia Town Require a Subdivider to Dedicate and Construct a Road Improvement for the Sole or Primary Purpose of Providing Access to Adjacent, Landlocked Property?

I. A Town Cannot Require A Subdivider To Dedicate and Construct A Road Improvement For The Primary Purpose of Providing Access To An Adjacent, Landlocked Property.

A. General Principles of Virginia Law Regarding Powers of Localities to Adopt Subdivision Regulations.

Virginia continues to adhere to Dillon's Rule of Strict Construction of Municipal Powers. The Dillon Rule provides that municipal corporations, such as the Town of Berryville, have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable. *Board of Supervisors of Augusta County v. Countryside Inv. Co., L.C.*, 258 Va. 497, 503, 522 S.E.2d 610, 613 (1999); *Board of Supervisors of Fairfax County v. Horne*, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975); *Kansas-Lincoln, LC v. County Board of Arlington*, 66 Va.Cir. 274, 2004 WL 2850651, *1 (Va.Cir.Ct.–Arlington County, Dec. 10, 2004) (No. 04-326) ("Virginia is a Dillon's Rule state; therefore local governing bodies only have powers expressly granted by the state legislature, fairly and necessarily implied powers from the expressly granted powers, and essential and indispensable powers."). "When a local ordinance exceeds the scope of this authority, the ordinance is invalid." *Board of Supervisors of Augusta County v. Countryside Inv. Co., L.C.*, 258 Va. at 503, 522 S.E.2d at 613.

The Virginia Supreme Court has stated that "the Dillon Rule is applicable to determine in the first instance, from express words or by implication, whether a power exists at all."

Commonwealth v. County Board of Arlington County, 217 Va. 558, 575, 232 S.E.2d 30 (1977). "If the power cannot be found, the inquiry is at an end." *Id.* All reasonable doubt over whether legislative authority exists "must be resolved *against* the local governing body." *Board of Supervisors of Powhatan County v. Reed's Landing Corp.*, 250 Va. 397, 400, 463 S.E.2d 668, 670 (1995) (emphasis added); *accord, Sinclair v. New Cingular Wireless PCS, LLC*, 283 Va. 567, 576, 727 S.E.2d 40 (2012); *Marble Technologies, Inc. v. City of Hampton*, 279 Va. 409, 417, 690 S.E.2d 84 (2010).

With respect to subdivision control, the Virginia Supreme Court has held that "the General Assembly, in providing for local control of land subdivision [in the Virginia Land Subdivision and Development Act, V.C.A. § 15.2-2240 et seq.], delegated to each locality a portion of the police power of the Commonwealth." *Board of Supervisors of Augusta County v. Countryside Inv. Co.*, 258 Va. at 502, 522 S.E.2d at 612; *see also National Realty Corp. v. City of Virginia Beach*, 209 Va. 172, 174-175, 163 S.E.2d 154, 156 (1968) ("The legislature, in providing for local control of land subdivision, delegated to each locality a portion of the police power of the State."). The Virginia high court has also recognized, however, that "[t]he power of a municipality, unlike that of the State legislature, *must be exercised pursuant to an express grant*." *National Realty Corp. v. City of Virginia Beach*, 209 Va. at 175, 163 S.E.2d at 156 (emphasis added); *accord, Shilling v. Jimenez*, 268 Va. 202, 207, 597 S.E.2d 206 (2004); *Board of Supervisors of Augusta County v. Countryside Inv. Co.*, 258 Va. at 503, 522 S.E.2d at 612.

In *National Realty Corp.*, the Virginia Supreme Court held that absent express statutory authority a local subdivision ordinance could not impose a fee for the examination and approval

of final subdivision plats,[3] while in *Countryside Inv. Co.*, the Court held that provisions of the Augusta County Subdivision Ordinance which specified the sizes and shapes of lots that could be subdivided and which prohibited subdivisions that did not maintain a rural environment were unauthorized by the Virginia subdivision control enabling statutes and hence invalid under the Dillon Rule. Similarly, in *Shilling*, the Virginia Supreme Court held that the Loudoun County Board of Supervisors had no power by local ordinance to give neighboring landowners the right to challenge subdivision approvals in the local circuit court. 298 Va. at 207 ("No such grant of power is to be found in the statutory scheme governing land subdivision.").

Similarly, in *Strong v. Orange County BOS*, 85 Va.Cir. 396, 2012 WL 9734165 (Va.Cir.Ct. Oct. 1, 2012), the Orange County Circuit Court, per Judge Peatross, concluded that the provisions adopted by the Orange County Board of Supervisors as part of its subdivision ordinance permitting the limitation of subdivision development on a time delayed basis , to one subdivision of a parcel every four years (so-called "slow growth" provisions), were invalid under the Dillon Rule. The court reasoned that, "[i]n looking at Code Section 15.2-2241, which prescribes mandatory provisions which must be included in the subdivision ordinance, and 15.2–2242, which prescribes optional provisions that may be included in a subdivision ordinance, this Court cannot find authority which permits the [Orange County Board of Supervisors] to legislate a time delay on the subdivision of lots into a minimum of two acre parcels as permitted by the zoning ordinance." 2012 WL 9734165, *3.

Thus, "pursuant to the strict construction required by the Dillon Rule, [a local governing

---

3 Following the *National Realty Corp.* decision, the General Assembly enacted an amendment specifically requiring the inclusion in a subdivision ordinance of a provision "for the imposition of reasonable fees and charges for the review of plats and plans[.]" Va.Code Ann. § 15.2-2241(9).

body] does not have unfettered discretion when deciding what matters it may include in its subdivision ordinance." *Board of Supervisors of Augusta County v. Countryside Inv. Co.*, 258 Va. at 504, 522 S.E.2d at 613. "Rather, the [local governing body] must include those requisites which are mandated in Code § 15.2-2241[4] and may, at the [local governing body's] discretion, include the optional provisions of a subdivision ordinance contained in Code § 15.2-2242[5]."

---

4 Va.Code Ann. § 15.2-2241 provides in pertinent part that "[a] subdivision ordinance *shall* include reasonable regulations and provisions that apply to or provide," among other things:

. . . .

> 4. For the extent to which and the manner in which streets shall be graded, graveled or otherwise improved and water and storm and sanitary sewer and other public utilities or other community facilities are to be installed;
>
> 5. For the acceptance of dedication for public use of any right-of-way located within any subdivision or section thereof, which has constructed or proposed to be constructed within the subdivision or section thereof, any street, curb, gutter, sidewalk, bicycle trail, drainage or sewerage system, waterline as part of a public system or other improvement dedicated for public use, and maintained by the locality, the Commonwealth, or other public agency, and *for the provision of other site-related improvements required by local ordinances for vehicular ingress and egress,* including traffic signalization and control, for public access streets[.]
>
> V.C.A. § 15.2-2241(4) & (5) (emphasis added).

5 Va.Code Ann. § 15.2-2242 provides that "[a] subdivision ordinance *may* include," among other things:

. . . .

> 4. Reasonable provision *for the voluntary funding of off-site road improvements* and reimbursements of advances by the governing body. . . .
>
> 5. In Arlington County, Fairfax County, Loudoun County, and Prince William County, in any town located within such counties, in Bedford County, Pittsylvania County, Spotsylvania County, and Stafford County, or in the Cities of Alexandria, Chesapeake, Fairfax, Falls Church, Hampton, Manassas, Manassas

Id. In addition, "the [local governing body] is entitled to exercise discretion only to the extent permitted by Code §§ 15.2-2241 and 15.2-2242." *Id.* The local governing body "is not, however, permitted to ignore the requisites contained in Code §§ 15.2-2241 and -2242[.]" 258 Va. at 504-505, 522 S.E.2d at 613.

Finally, Va.Code Ann. § 15.2-2200[6], "a general declaration of the General Assembly's intent for Chapter 22 of Title 15.2 concerning planning, subdivision of land, and zoning, does not confer upon [a local governing body] the power to enact a subdivision ordinance which is more expansive than the enumerated requisites contained in Code §§ 15.2-2241 and -2242." *Board of*

> Park, and Portsmouth, *provisions for payment by a subdivider or developer of land of a pro rata share of the cost of reasonable and necessary road improvements, located outside the property limits of the land owned or controlled by him but serving an area having related traffic needs to which his subdivision or development will contribute, to reimburse an initial subdivider or developer who has advanced such costs or constructed such road improvements.* Such ordinance may apply to road improvements constructed after July 1, 1988, in Fairfax County; in Arlington County, Loudoun County, and Prince William County, in any town located within such counties, in Bedford County, Pittsylvania County, Spotsylvania County, and Stafford County, or in the Cities of Alexandria, Chesapeake, Fairfax, Falls Church, Hampton, Manassas, Manassas Park, and Portsmouth, such ordinance may only apply to road improvements constructed after the effective date of such ordinance. . . .
>
> V.C.A. § 15.2-2242(4) & (5) (emphasis added).

6 Va.Code Ann. § 15.2-2200 provides that

> This chapter is intended to encourage localities to improve the public health, safety, convenience and welfare of its citizens and to plan for the future development of communities to the end that transportation systems be carefully planned; that new community centers be developed with adequate highway, utility, health, educational, and recreational facilities; that the need for mineral resources and the needs of agriculture, industry and business be recognized in future growth; that residential areas be provided with healthy surroundings for family life; that agricultural and forestal land be preserved; and that the growth of the community be consonant with the efficient and economical use of public funds.

Supervisors of Augusta County v. Countryside Inv. Co., 258 Va. at 505, 522 S.E.2d at 614.

The Virginia Attorney General has similarly observed that "'[a]uthority for requirements imposed on land subdividers and developers must be found in the subdivision enabling statutes and may not be implied from other more general grants of local power.'" 2000 WL 33912674, *1 (Va. Att'y Gen. Oct. 13, 2000) (Opinion of Mark L. Earley, Attorney General, given to the Honorable R. Creigh Deeds), quoting 1992 Op. Att'y Gen. 53, 55-56. Attorney General Mark Earley concluded that because "[n]either § 15.2-2241 nor § 15.2-2242 authorizes a governing body to enact provisions in a subdivision ordinance prescribing a minimum time period for a lot to be in existence prior to being subdivided," a provision in a subdivision ordinance allowing the subdivision of a lot only if the lot was in existence as of September 30, 1995, or had been in existence a minimum of five calendar years "is, in my opinion, void and unenforceable." *Id.*

B. Subdividers Cannot Be Required To Dedicate Land For And Construct Improvements That Are Not Related To The Specific Need To Provide Ingress and Egress To A Proposed Subdivision Or To Handle Traffic To Be Generated By The Proposed Subdivision.

In Virginia, it is well settled that a landowner cannot be required to dedicate land for or construct, at his or her own expense, public roads or other public facilities as a condition of a subdivision, site plan, or other land-use approval, particularly where the need for those facilities is generated by public traffic rather than by the proposed subdivision or development. In the leading case of *Board of Supervisors of James City County v. Rowe*, 216 Va. 128, 216 S.E.2d 199 (1975), landowners whose land fronted on a public highway challenged the action of the Board of Supervisors of James City County rezoning their land from B-1, Commercial to a new classification termed B-2, Business Tourist Entry District. The new zoning classification

required landowners in the B-2 district to, among other things, (1) dedicate a 55-foot wide strip of their land for use as a service road, including curbs, sidewalks, and a landscaped median strip, and (2) construct a service road "in accordance with the applicable standards of the Virginia Department of Highways" and maintain the median strip.

The evidence of record established that "[t]he substantial need the service road is designed to serve is not that of the landowners[,]" since their properties abutted a public highway and already had full access to that highway. 216 Va. at 138 n. 6, 216 S.E.2d at 208 n. 6. Rather, the Board's own evidence showed that "the primary need for the service road arises from the projected increase in tourist travel between Williamsburg and Busch Gardens." *Id.*

In striking down the dedication requirement, the Virginia Supreme Court initially noted that, in the case before it, "[w]e are not concerned with the creation of a subdivision but with development of individually-owned parcels of land." 216 Va. at 138, 216 S.E.2d at 208. The court then ruled as follows:

> The precise question before us is whether a local governing body has the power to enact a zoning ordinance that requires individual landowners, as a condition to the right to develop their parcels, to dedicate a portion of their fee for the purpose of providing a road, *the need for which is substantially generated by public traffic demands rather than by the proposed development*. Our enabling statutes delegate no such power. Moreover, Article I, § 11, of the Constitution of Virginia expressly and unequivocally provides "that the General Assembly shall not pass any law . . . whereby private property shall be taken or damaged for public uses, without just compensation." The dedication requirement of 8A [the rezoning ordinance] offends that constitutional guarantee, and we hold that it is invalid.

216 Va. at 138-139, 216 S.E.2d at 208-209 (emphasis added; footnotes omitted).

The *Rowe* court, however, expressly reserved decision on the question of "whether, when land is subdivided as defined in Code § 15.1-465 [now § 15.2-2240], local governments are empowered by necessary implication of the language of the statutes to require, as the price of

subdivision approval, *dedications* for access roads or other public facilities[.]" 216 Va. at 139 n. 9, 216 S.E.2d at 209 n. 9 (emphasis in original). The *Rowe* court likewise reserved decision on whether local governments have "the power to require *construction* or *maintenance* of such facilities" as a condition of subdivision approval. *Id.* (emphasis in original).

The Virginia Supreme Court subsequently addressed, in part, the second of these two reserved questions in *Hylton Enterprises, Inc. v. Board of Supervisors of Prince William County*, 220 Va. 435, 258 S.E.2d 577 (1979). Hylton Enterprises, Inc. (Hylton) filed a petition under former V.C.A. § 15.1-475 against the Prince William County Board of Supervisors, alleging that the Board had arbitrarily and capriciously denied a final subdivision plat for development of a subdivision in Dale City solely because Hylton had refused to reconstruct portions of two state secondary roads abutting the subdivision. The parties stipulated that Hylton's plat and plans complied with all ordinances and statutes except for Hylton's failure to show that it would assume the cost of making certain improvements to Routes 640 and 643 that abutted the property. The trial court approved Hylton's plat subject to the condition that Hylton construct in the areas designated thereon, certain improvements to Routes 640 and 643 "where those roads abut the subject subdivision." 220 Va. at 437, 258 S.E.2d at 578. Hylton appealed, challenging the condition imposed by the trial court.

The Virginia Supreme Court framed the question presented as "whether a local governing body may require, as a prerequisite to approval of a subdivision plat, that the developer construct improvements to existing public highways that abut the subdivision." 220 Va. at 436, 258 S.E.2d at 578. The court pointed out that it was undisputed that Hylton's subdivision "will substantially increase the use of Routes 640 and 643." 220 Va. at 439, 258 S.E.2d at 580. Indeed, the

evidence showed, for example, that the traffic generated by the subdivision would account for 45% to 47% of the estimated number of vehicles that would be using Route 643 after the subdivision's completion. The court further pointed out that it was "not concerned with the question of dedication of the land for the highway improvements *because the evidence shows conclusively that Hylton has agreed to dedicate the necessary land for that purpose.*" *Id.* (emphasis added). Rather, the question before the Hylton court was confined to "whether, in the absence of agreement, Hylton may be required to pay a portion of the cost of improving these secondary roads." *Id.*

The *Hylton* court initially acknowledged the "corollary to Dillon's Rule," namely that "the powers of boards of supervisors are fixed by statute and are limited to those conferred expressly or by necessary implication." 220 Va. at 440, 258 S.E.2d at 581, citing *Board of Supervisors of Fairfax County v. Horne*, 216 Va. at 117, 215 S.E.2d at 455. The question therefore boiled down to whether the Board had either the express or necessarily implied power to impose the road improvement exaction as a condition of subdivision approval.

The court then reviewed V.C.A. § 15.1-489 [now § 15.2-2283], which required (and continues to require) that local zoning ordinances be designed "to provide for adequate . . . convenience of access" and to facilitate the provision of public requirements, including adequate transportation. The court also reviewed V.C.A. § 15.1-466, which at the time of the *Hylton* decision generally authorized localities to adopt subdivision ordinances containing reasonable regulations and provisions that apply to or provide:

> 2. For the coordination of streets within and contiguous to the subdivision with other existing or planned streets within the general area as to location, widths, grades and drainage[;]

. . . .

> 4. For the extent to which and the manner in which streets shall be graded, graveled or otherwise improved[;]
>
> 5. For the acceptance of dedication for public use of any right-of-way located within any subdivision or section thereof, which has constructed or proposed to be constructed within the subdivision or proposed to be constructed within the subdivision or section thereof, any street[.]

V.C.A. § 15.1-465(A)(2), (4), (5) [now § 15.2-2241(2), (4), (5)].

Based on its review of these statutory provisions, the *Hylton* court concluded that "[t]here is no express authority in this statute for local ordinances to require a subdivider to construct improvements to existing public roads." 220 Va. at 440, 258 S.E.2d at 580.

Nor could this power be necessarily implied from those powers express conferred on municipalities and counties by V.C.A. §§ 15.1-489 and 15.1-466:

> Nor do we find any necessarily implied authority for that purpose. Authorization under the enabling zoning statute to assure adequate access to a residential planned community does not imply authorization to exact payment for improvement of existing public highways. Similarly, the authority granted by the statute to localities to coordinate streets within and contiguous to a subdivision with other existing or planned streets does not imply authority to charge a private landowner for the expense of reconstructing public highways.

220 Va. at 440-441, 258 S.E.2d at 581.

Indeed, the *Hylton* court pointed to the statute's express conferral of authority for the exaction, in certain circumstances, of pro-rata contributions to the cost of constructing off-site sewer and drainage (and now also water) improvements, *see* V.C.A. § 15.1-466(j) [now § 15.2-2243], as negating any necessarily implied authority for requiring a subdivider to construct improvements to existing state secondary roads abutting his or her subdivision. 220 Va. at 440, 258 S.E.2d at 580-581. The court reasoned that "[t]his express authorization significantly

evidences the legislative intent that *only provisions explicitly approved by the General Assembly may be included in local subdivision ordinances*." 220 Va. at 440, 258 S.E.2d at 581 (emphasis added).

Finally, the *Hylton* court determined that, while nothing in the Virginia statutes establishing the secondary system of state highways "expressly precludes a county from requiring a developer to construct needed secondary road improvements", this did not "itself suffice to authorize such power." 220 Va. at 441, 258 S.E.2d at 581. The court reasoned that

> Ever since 1932, financing the construction, repair and maintenance of the State primary and secondary highway systems has constituted a major function of our State government. The theory of centralized control in and allocation of funds by an objective arbiter presupposes that priorities for highway improvements will be established on a statewide basis in accordance with traffic demands scientifically ascertained, and will not comprise a disconnected assortment of decisions made under the influence of local pressures. Determination of the appropriate method or methods of funding highway projects is a policy decision affecting all areas of the State, a decision that is peculiarly within the exclusive province of the General Assembly.

Id.

The *Hylton* court therefore concluded, in invalidating the condition attached by the trial court to its approval of Hylton's plat, that

> there was no authority, express or necessarily implied, for the County to require Hylton to construct portions of Routes 640 and 643, and . . . the trial court erred in so ruling.

Id.

Subsequent to its decision in *Hylton*, the Virginia Supreme Court followed and applied its holding in *Rowe* to a case involving an attempt by a local government to condition the grant of a special use permit upon the landowner's compliance with public facility dedication and construction conditions, where the need for these facilities was not generated by the landowner's

proposed use of his property. In *Cupp v. Board of Supervisors of Fairfax County*, 227 Va. 580, 318 S.E.2d 407 (1984), the Cupps owned and operated a plant nursery business on Route 7 in Fairfax County. When the nursery began operations in 1972, the Cupps' property was zoned RE-1, permitting the use of the property for a nursery as of right.

In 1978, however, the Fairfax County Board of Supervisors adopted an amendment to its zoning ordinance making plant nurseries a special exception use. The Cupps, being a "grandfathered use," were not immediately affected by the new ordinance. When the Cupps sought to modify and expand the layout of their plant nursery in 1979, however, they were required to obtain a special exception permit to permit the modification.

In their report recommending that the Cupps' special exception application be approved, the Fairfax County Planning Commission further recommended that such approval be conditioned upon the following two conditions, among others:

> 5. Construction of a deceleration/right turn lane for entrance to the plant nursery; and
>
> 6. [D]edication of right-of-way to 100 feet from the centerline for a third eastbound lane and a standard service drive, the exact amount of dedication to be set by DEM at the time of site plan review. Construction of the third lane and the service drive can be deferred until such time as the site redevelops.

227 Va. at 585, 318 S.E.2d at 409. Due in large part to the Cupps' unwillingness to comply with these conditions, the special exception application was eventually denied by the Fairfax County Board of Supervisors.

On appeal from the trial court's decision finding the dedication and construction conditions valid, the Virginia Supreme Court held that "the road dedication and construction requirements were invalid, 227 Va. at 588, 318 S.E.2d at 411, for two reasons. First, the court

rejected Fairfax County Board of Supervisors' contention that it had the power, as a condition to the approval of the Cupps' special exception application, to require the Cupps to dedicate land to the county and to build a right-turn lane and a service road. The Board pointed to the following provision of the Virginia zoning enabling act to support its contention:

> A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:
>
> . . . .
>
> (c) For the granting of special exceptions under suitable regulations and safeguards; and notwithstanding any other provisions of this article, the governing body of any city, county or town may reserve unto itself the right to issue such special exceptions.

V.C.A. § 15.1-491(c) [now § 15.2-2286(A)(3)].

The Virginia high court in *Cupp* found "nothing in this language which empowers the Board to impose the road dedication and construction requirements which it claimed it was empowered to impose." 227 Va. at 594, 318 S.E.2d at 414. The court reasoned as follows:

> In Virginia, we adhere to Dillon's Rule and a corollary thereto, that "the powers of boards of supervisors are fixed by statute and are limited to those conferred expressly or by necessary implication." *Hylton v. Prince William County*, 220 Va. 435, 440, 258 S.E.2d 577, 581 (1979). The right to grant special exceptions "under suitable regulations and safeguards" does not imply the power to require a citizen to turn land over to the county and build roads for the benefit of the public.

Id.

The *Cupp* court went on to hold that, even assuming the Board did have the authority to condition the grant of a special exception upon compliance with public road dedication and construction requirements, "it could not do so in this case *because the dedication and construction requirements were unrelated to any problem generated by the use of the subject property*." 227 Va. at 594, 318 S.E.2d at 414 (emphasis added). Evidence of record established that approximately 35,000 vehicles used Route 7 each day, while the Cupps' plant nursery

averaged only 25 customers per day. Moreover, Mr. Cupp testified that the modification to the layout of the nursery would not expand the services offered nor increase the number of customers. He also testified that no accidents had occurred at the entrance to the nursery's driveway. Most significantly, a witness for the Board admitted that the dedication and construction requirements were not imposed because of any problem generated by the Cupp property, but because of general conditions prevailing along Route 7.

In view of these facts, the *Cupp* court found its prior decision in *Rowe* to be controlling:

> The Cupps contend that our decision in *Bd. Sup. James City County v. Rowe*, 216 Va. 128, 216 S.E.2d 199 (1975), and *Hylton v. Prince William County*, 220 Va. 435, 258 S.E.2d 577 (1979), have resolved the question whether dedication and construction requirements, not generated by the use, can be imposed. We think that *Rowe* is virtually on all fours with the present problem; therefore we will rely upon it. . . .
>
> . . . .
>
> . . . On the strength of *Rowe*, it is plain that the dedication and construction requirements could not be imposed by the Board.

227 Va. at 594-596, 318 S.E.2d at 414-415.

In *Cupp*, the Virginia Supreme Court, while acknowledging that Cupps' reliance on *Hylton* as well as *Rowe*, distinguished *Hylton* as follows: "*Hylton*, though related, concerned a subdivision development; therefore, it is *factually* distinct." 227 Va. at 595, 318 S.E.2d at 414 (emphasis added).

Most recently, in *Potomac Greens Associates Partnership v. City Council of City of Alexandria*, 761 F.Supp. 416 (E.D.Va. 1991), *vacated on other grounds*, 6 F.3d 173 (4th Cir. 1993), the federal district court for the Eastern District of Virginia relied on *Rowe*, *Hylton*, and *Cupp* to invalidate an attempt by the City of Alexandria to require a landowner to construct

additional lanes to a public highway as a condition of site plan approval. The plaintiff developer in *Potomac Greens* owned a 38.5-acre parcel of land adjacent to the George Washington Memorial Parkway across from Daingerfield Island. In 1987, the developer submitted a site plan to the City of Alexandria proposing the construction of 16 buildings containing approximately 2.35 million square feet of office space and 100,000 square feet of retail space. Both the city planning commission and the city council voted to disapprove the site plan, in part because the developer refused to comply with a proposed condition that the developer construct two additional lanes to the George Washington Memorial Parkway (one lane on each side of the Parkway). The developer's suit challenging the denial of the site plan was originally filed in the Circuit Court for the City of Alexandria and was removed to district court.

On cross-motions for summary judgment, the developer argued that the road construction condition was in excess of the city's powers. The district court agreed, pointing out that "[t]here is no express authorization for a developer of land to make off-site improvements at his expense to the surrounding highways." 761 F.Supp. at 421. Rather, the only authority delegated to the city to exact contributions for off-site improvements concerned sewerage, water, and drainage facilities. *Id.*, citing V.C.A. § 15.1-466(A)(10) [now § 15.2-2243]. The court further found no implied authority for the road construction condition, saying:

> As to any implied authority to require a developer to improve public highways, *the Virginia Supreme Court has ruled that no such authority exists. Hylton Enterprises v. Board of Supervisors of Prince William County*, 220 Va. 435, 258 S.E.2d 577 (1979); *see Board of Supervisors of James City County v. Rowe*, 216 Va. 128, 216 S.E.2d 199 (1975); *Cupp v. Board of Supervisors of Fairfax Co.*, 227 Va. 580, 318 S.E.2d 407 (1984) . . . .
>
> Neither the proportionate costs statute [then V.C.A. § 15.1-466(A)(10), now V.C.A. § 15.2-2243] nor the local zoning power gives the City the authority to require the developer of Potomac Greens to build two additional lanes on the

George Washington Memorial Parkway as a condition to site plan approval. 761 F.Supp. at 421-422. *See also* Office of the Virginia Attorney General, Opinion No. 14-0601, 2014 WL 6387159, *4 (Va.A.G. Nov. 3, 2014) ("while [the City of] Chesapeake has authority to require adequate drainage and/or dedication of right-of-way as conditions of approving a site plan, and while its decisions in such matters are presumed to be valid, *its power to withhold a building permit until a site plan is approved is subject to the Dillon Rule* and the constitutional limits discussed above. *To the point, such conditions may be imposed only if they are reasonably necessitated by the proposed development. If they are not, they exceed statutory authority* and may constitute an unconstitutional taking of private property without just compensation.") (Opinion rendered to Member, House of Delegates, Lionel Spruill, Sr., by Mark R. Herring, Attorney General) (emphasis added).

More recently, the Virginia General Assembly has amended the statutes governing subdivision and site plan approval to permit a subdivision and/or site plan ordinance to include (1) reasonable provision for the "*voluntary* funding of off-site road improvements" by a subdivider or developer, Va.Code Ann. § 15.2-2242(4) (emphasis added); *see also Board of County Supervisors of Prince William County v. Sie-Gray Developers, Inc.*, 230 Va. 24, 28-29, 334 S.E.2d 542, 545-546 (1985) (even though county did not have authority to require subdivider to make improvements to existing highway, contract requiring such improvements was enforceable where subdivider voluntarily entered into contract), and (2), in certain designated localities,[7] provisions for payment by a subdivider or developer of his or her "pro-rata

---

7 V.C.A. § 15.2-2242(5) provides:

In Arlington County, Fairfax County, Loudoun County, and Prince William

share of the cost of reasonable and necessary road improvements," located outside the property being developed "but serving an area having related traffic needs to which his subdivision or development will contribute." Va.Code Ann. § 15.2-2242(5).

The Town of Berryville does not appear to be among those designated localities which are authorized to adopt pro-rata share reimbursement provisions as part of its subdivision regulations pursuant to Va.Code Ann. § 15.2-2242(5). Even if it were, the Town of Berryville has yet to implement this statutory authority by adopting appropriate amendments to its subdivision regulations. The current Town of Berryville Subdivision Ordinance nowhere provides, as required by § 15.2-2242(5), "for the adoption of a pro rata reimbursement plan." *Id.* Such a plan must include (1) "reasonable standards to identify the area having related traffic needs," (2) reasonable standards "to determine the total estimated or actual cost of road improvements required to adequately serve the area when fully developed in accordance with the comprehensive plan or as required by proffered conditions," and (3) reasonable standards "to

---

> *County, in any town located within such counties, in Bedford County, Pittsylvania County, Spotsylvania County, and Stafford County, or in the Cities of Alexandria, Chesapeake, Fairfax, Falls Church, Hampton, Manassas, Manassas Park, and Portsmouth*, provisions for payment by a subdivider or developer of land of a pro rata share of the cost of reasonable and necessary road improvements, located outside the property limits of the land owned or controlled by him but serving an area having related traffic needs to which his subdivision or development will contribute, to reimburse an initial subdivider or developer who has advanced such costs or constructed such road improvements. Such ordinance may apply to road improvements constructed after July 1, 1988, in Fairfax County; in Arlington County, Loudoun County, and Prince William County, in any town located within such counties, in Bedford County, Pittsylvania County, Spotsylvania County, and Stafford County, or in the Cities of Alexandria, Chesapeake, Fairfax, Falls Church, Hampton, Manassas, Manassas Park, and Portsmouth, such ordinance may only apply to road improvements constructed after the effective date of such ordinance.
>
> (Emphasis added).

determine the proportionate share of such costs to be reimbursed by each subsequent subdivider or developer within the area[.]" *Id.*

Finally, the General Assembly has authorized, effective July 1, 2007, certain designated localities[8] to assess or impose "road impact fees." Va.Code Ann. §§ 15.2-2317 to 15.2-2327. This statutory authority, however, is specifically limited to the levy of fees against new developments "in order to generate revenue to fund or recover the costs of reasonable road improvements[9] *benefitting the new development*." Va.Code Ann. § 15.2-2318 (definition of "Impact Fee") (emphasis added). The statute further provides that "[i]mpact fees may not be assessed and imposed for road repair, operation and maintenance, nor *to meet demand which existed prior to the new development*." *Id.* (emphasis added).

In this case, the Town of Berryville, through its comprehensive plan, is seeking to exact, as a condition of subdivision approval, the dedication of on-site land and the construction on that land of a road improvement that is not related to the provision of ingress and egress to the proposed subdivision nor to handle the additional traffic to be generated by the proposed subdivision, but rather is designed solely to achieve the goal of the Berryville Area Plan to

---

8 Road impact fees may be assessed or imposed by "any locality that has adopted zoning pursuant to Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 and that (i) has a population of at least 20,000 and has a population growth rate of at least 5% or (ii) has population growth of 15% or more. For the purposes of this section, population growth shall be the difference in population from the next-to-latest to the latest decennial census year, based on population reported by the United States Bureau of the Census." V.C.A. § 15.2-2317. Berryville may qualify on the basis that the latest census shows a population growth of 15% or more.

9 The term "road improvements" is defined by the statute as including "construction of new roads or improvement or improvement or expansion of existing roads as required by applicable construction standards of the Virginia Department of Transportation, or the applicable standards of a locality with road maintenance responsibilities, to meet increased demand attributable to new development." Va.Code Ann. § 15.2-2318 (definition of "Road Improvements"). The term does not include "on-site construction of roads which a developer may be required to provide pursuant to §§ 15.2-2241 through 15.2-2245." *Id.*

provide a second access from the adjacent, landlocked land in Sub-Area 7 (the Byrd parcel) to the nearby commercial area in Berryville. This exaction, however, is beyond the power of the Town of Berryville to impose as a condition of subdivision approval.

First, Section 15.2-2241(5) only permits either (1) the exaction of a dedication of land "within any subdivision or section thereof" for "any street, curb, gutter, sidewalk, bicycle trail, drainage or sewerage system, waterline as part of a public system or other improvement dedicated for public use . . . and for the provision of *other site-related improvements required by local ordinances for vehicular ingress and egress* . . . [and] for public access streets." (Emphasis added). The term "other" means "different or distinct for that already mentioned; *additional, or further*." Black's Law Dictionary 1253 (4th ed. 1968) (emphasis added). The use of the term "other" implies that the power to exact a dedication of land is restricted to "site-related improvements."

The Virginia statutes nowhere define the terms "site-related" or "site-related improvement." The Virginia Attorney General, however, has indicated that a "site-related improvement" means one that "must be related to the need generated, in whole or in part, by the proposed [subdivision] development, as opposed to traffic demands unrelated to the proposed development":

> Section 15.1-466(A)(e) [now § 15.2-2241(4)] authorizes provisions in a subdivision ordinance that regulate the extent to which and the manner in which streets within a subdivision shall be improved. Section 15.1-466(A)(f) [now 15.2-2241(5)] authorizes requirements that regulate the acceptance of dedication for public use of any right-of-way *and the requirement of site-related improvements for vehicular ingress and egress*. Prior Opinions of this Office have held that a subdivision ordinance may require a dedication for right-of-way or other public use; *however, the requirement must be related to the need generated, in whole or in part, by the proposed development, as opposed to traffic demands unrelated to the proposed development. See* Reports of the Attorney General: 1984-1985 at

296; 1982-83 at 165; 1978-79 at 255.

1985-86 Va. Op. Atty. Gen. 83 (Va.A.G.), 1985-86 Va. Rep. Atty. Gen. 83, 1986 WL 221210, *3 (June 17, 1986) (Opinion rendered to the County Attorney for Albemarle County, George R. St. John, by Gerald L. Baliles, Attorney General) (emphasis added).

In this case, the dedication of land and construction of the road improvement in question is not a "site-related improvement" that is required by a Berryville ordinance "for vehicular ingress and egress" or for "public access" to House of Lords/Ding Wang's proposed subdivision. The road improvement in question is not needed in order to accommodate the ingress and egress of traffic generated by the proposed subdivision. Rather, construction of the separate entrance is being mandated solely in order to meet the goal of the Berryville Area Plan to provide a second access from the adjacent, landlocked Byrd property. It is a non-site related improvement, the need for which is not being generated, in whole or in part, by House of Lords/Ding Wang's proposed subdivision, but rather by unrelated traffic demands, namely the need for traffic access to the adjacent Byrd property.

Nor is the proposed exaction authorized by V.C.A. § 15.2-2242(4), which allows only "*voluntary* funding of *off-site* road improvements." (Emphasis added.) The subdivider in this case, unlike the subdivider in *Sie-Gray Developers*, has not voluntarily agreed to fund construction of the road improvement in question, and, in any case, the improvement is not "off-site."

Finally, authority for the involuntary exaction of the road improvement in question here is further negated by the Virginia General Assembly's enactment of statutes authorizing certain localities (a) to adopt subdivision ordinance provisions allowing a subdivider to be charged its

"pro-rata share of the cost of reasonable and necessary road improvements," V.C.A. § 15.2-2242(5), or (b) to impose "road impact fees" designed "to generate revenue to fund or recover the costs of reasonable road improvements benefitting the new development." V.C.A. § 15.2-2318. Nowhere has the Virginia General Assembly expressly authorized a locality to impose *the full cost* of a non-site related road improvement on a subdivider or other developer, absent a voluntary agreement by the subdivider or developer to fund the improvement. *Cf. Smith v. Culpeper County Board of Supervisors*, 22 Va. Cir. 82, 85 (Va.Cir.Ct.–Culpeper County, Oct. 18, 1990) (No. 145-C-89) ("The County has no authority to require the Subdividers to improve a public road without agreement of the Subdividers, *see* Code § 15.1-466(E) [now § 15.2-2242(4)], and by requiring for approval of an otherwise valid preliminary plat of subdivision, off-site public road improvements, it has acted without authority."). Yet, that is what the proposed exaction in question here would do.

In short, the Virginia statutes draw a firm distinction between, on the one hand, site-related road improvements, the entire cost of whose dedication and construction may be imposed on a subdivider as a condition of subdivision approval, and, on the other hand, non-site related road improvements, which can only be funded through either a voluntary agreement, or a cost-sharing scheme whereby the subdivider is required, at most, to pay only his proportionate or pro-rata share of the cost of dedicating the land for and constructing the non-site related improvement. Thus, in view of the Dillon Rule of strict construction of municipal powers, the Town of Berryville has not been delegated the power to require a subdivider to dedicate land for and/or construct a non-site related road improvement, and, thus, the requirement of the Town's Administrative Body, as a condition of subdivision approval, that House of Lords/Ding Wang

dedicate land for and construct a non-site related road improvement, that is not needed to provide adequate ingress and egress to the proposed subdivision, is void.

Second Question Presented: Would the McNeal Road Extension Dedication/Construction Exaction Constitute A Taking In Violation Of Va.Const. Art. I, § 11?

II. The McNeal Road Extension Dedication/Construction Exaction Would Constitute A Taking In Violation Of Va.Const. Art. I, § 11.

In *Rowe* and *Cupp*, the Virginia Supreme Court invalidated as an unconstitutional taking of private property the exaction from a landowner or developer, as a condition of a land use approval, of a dedication of land to be used for public road widening purposes. By analogy to *Rowe* and *Cupp*, requiring, as a condition of subdivision plat approval, a dedication of land for a road extension that would serve solely or primarily to provide access to adjacent, landlocked property, rather than being substantially related to the projected needs of the proposed subdivision, would likewise offend the takings clause of Va.Const. Art. I, § 11.

At least one Virginia circuit court has expressly so held. In *Butler v. City Planning Commission of City of Winchester*, 2 Va. Cir. Rptr. 450 (City of Winchester 1977), the Winchester Planning Commission refused to approve the petitioner's plan for a subdivision, because it failed to dedicate land to accommodate a through road known as the "Southern Loop." The Southern Loop was planned as an arterial highway which would traverse the petitioner's land and was shown on the "Thoroughfare Plan" adopted by the City of Winchester in 1969. The City of Winchester's zoning regulations expressly prohibited the erection of structures within 25 feet of the arterial highway rights of way as shown on the Plan. It was stipulated that "the only

ground upon which approval of the petitioner's plan was denied was the failure to take cognisance for the setback lines on the Thoroughfare Plan." *Id.* at 450.

In holding that the city's attempt to require the dedication of a right of way for the through road as a condition of subdivision approval was unconstitutional, the Circuit Court of the City of Winchester, per Judge Elliott Marshall, initially recognized that such a condition would clearly be invalid if attached to the right to develop an unsubdivided parcel. The court said:

> If it were not for the fact that the petitioners are subdividers, there could be no doubt that the ordinance, so far as it applied to them, would be violative of their constitutional guaranties against the taking of property without due process and adequate compensation. It was so held in *Bd. Sup. James City County v. Rowe*, 216 Va. 128. Until and unless they decided to apply to the Planning Commission for approval of their plat ignoring that portion of the "Southern Loop" projected across their property they could use the land covered by the proposed right of way for the erection of any structures or for any purpose they saw fit, even though they might thwart the worthy design for the solution of vexatious future traffic problems of the city. The only means of prevention of such use would be exercise of eminent domain.

Id. at 450-451.

As the *Butler* court recognized, however, "*Rowe* carefully abstained from deciding whether or not a subdivider might be required to dedicate such a right of way as a condition precedent to approval of a subdivision plan." *Id.* at 451. Thus, the question presented in *Butler* was "whether the City's power to regulate the subdivision of land within its borders . . . gives it the right to withhold approval unless the subdivider's plan takes cognizance of the 'Southern Loop' with its 25 foot setback lines, the obvious result of which would require the subdivider to dedicate that portion of the 'Loop' to public use." *Id.*

The *Butler* court then decided that the city's power to require dedications as a condition of subdivision approval was limited to those rights of way needed for public facilities

"specifically and uniquely attributable to the proposed development":

> The Legislature has gone a long way in granting to the City broad powers over zoning and subdivision of lands, and very properly so. The orderly planning of its growth demands that the City regulate the size and shapes of lots, the projection of streets, the guaranty of adequate water, sewer and other facilities, etc. To some extent the good of the City as a whole as well as that of the residents of the subdivision require proper planning, which quite frequently is not in the pecuniary interest of the private owners of the subdivision.
>
> However, *the general rule seems to be that the developer "may be required to donate only that portion of the land to be divided as may be needed for the public uses that will result from the activities specifically and uniquely attributable to the proposed development."* McQuillin, Sec. 25.146 at 433, (3d Ed. Revd. Vol. 1976).

Id. at 451-452 (emphasis in original).[10]

Alternatively, the *Butler* court indicated, by its reliance on two law review articles interpreting *Rowe*, that "requirements for the dedication of land for streets or other public facilities" must at a minimum "substantially relate to the projected needs of the proposed [subdivision] development":

> There are two articles in the University of Richmond Law Review (No. 10, p. 440, and No. 11, p. 21), which deal with the power of a municipality to impose dedication and land use restrictions on subdividers. Both analyze and apply the holding in *Rowe*.
>
> It is the conclusion of both authors that any restrictions for the use of the property or requirements of dedication of streets or other public facilities as conditions precedent to approval of proposed subdivision plats *must substantially*

---

10 The circuit court in *Butler* thereby adopted the Illinois "specifically and uniquely attributable" test for determining the validity of subdivision exactions. *See, e.g., People ex rel. Exchange National Bank v. City of Lake Forest*, 40 Ill.2d 281, 239 N.E.2d 819, 822 (1968). *See generally* 8 E. McQuillin, *The Law of Municipal Corporations* § 25.118.75 (3d ed. Westlaw October 2005). The Virginia Supreme Court recognized the existence of this test in a footnote in its *Rowe* decision. *Board of Supervisors of James City County v. Rowe*, *supra*, 216 Va. at 137 n. 5, 216 S.E.2d at 207 n. 5 (recognizing that courts in other jurisdictions have required "the public facility for which dedication is required be reasonably related to or 'specifically and uniquely attributable' to the needs expected to be generated by the proposed development.") (citations omitted).

> *relate to the projected needs of the proposed development*; *ergo*, if the proposed dedications relate to the needs of the municipality or public as a whole, "there could be little doubt that under contemporary Virginia law, a municipality *cannot constitutionally transfer the costs of facilities, predominantly public in nature, to either a subdivision developer or to future residents of that subdivision.*" 11 U. of Rich. L. R. 21, 23. "It is submitted that the Supreme Court of Virginia will permit local governments to require mandatory dedications as conditions precedent to land development if the landowner is a subdivider *and the subdivision generates a need for such a public dedication.*" "But it appears from this decision (*Rowe*) that Virginia will not allow great expansion of local zoning power in controlling certain aspects of land use." 10 U. of Rich. L. R. 440, 447.

Id. at 452 (emphasis in original).

The *Butler* court also specifically rejected the "rational relationship" approach of the California Supreme Court first set forth in *Ayres v. City of Los Angeles*, 34 Cal.2d 31, 207 P.2d 1 (1949) (upholding city's refusal to approve subdivision unless developer dedicated new streets and widened existing streets to conform to city's general plan for the growth of the city).

Applying these general principles to the facts of the case before it, the circuit court in *Butler* concluded the city's requirement that the subdivider dedicate right of way for the Southern Loop through road was not sufficiently related to the projected needs of the proposed subdivision development to pass constitutional muster:

> It could scarcely be said that the primary purpose of the "Loop" would be to benefit the residents of the subdivision. The terminology applied to the "Loop" indicates that it is intended to be "a thoroughfare"; "an arterial highway." The evidence discloses that it is designed to "by-pass the central business district." Although it will no doubt provide some access to the subdivision the main purpose is to carry through traffic from other portions of the city *across* the petitioner's land. In fact it is proposed that it be a four lane limited access highway.
>
> It is regrettable that the petitioners will be able, perhaps unreasonably and capriciously, to place an imposing obstacle in the way of the City's progress. If the subdivision plan is carried out the erection of structures on the proposed route of the "Loop" might render the costs of right of way prohibitive and thus multiply the City's traffic problems, *but if the "Thoroughfare Plan" is to become a reality*

> *the whole of the populace of the City must pay for it. I do not believe that Ordinance 18-4 as applied to the property of the petitioners is constitutional* and I will so decree.

2 Va. Cir. at 453 (emphasis added); *accord*, *People ex rel. Exchange National Bank of Chicago v. City of Lake Forest*, *supra*, 40 Ill.2d 281, 239 N.E.2d 819, 822-823 (1968) (city's refusal to approve plan of resubdivision for failure to dedicate land for new public roadways exceeded bounds of permissible and reasonable regulation and would have constituted taking of private property for public use without just compensation, where two lots in the resubdivision would front on and have direct access to existing public road and new roadways would benefit only a neighboring subdivision which had two landlocked lots); *R.G. Dunbar, Inc. v. Toledo Plan Commission*, 52 Ohio App.2d 45, 367 N.E.2d 1193, 1196 (1976) (city plan commission could not require, as a condition for a subdivision plat approval, that developer dedicate a right of way for a major thoroughfare not attributable to developer's activities, but, rather, for the benefit of the general public).

Courts in other jurisdictions have likewise held that off-site road improvement or construction exactions which are not substantially related to the needs generated by the proposed subdivision are invalid as not bearing any "rational nexus" or "reasonable nexus" to needs created by and the benefits conferred upon the subdivision. *See, e.g., Howard County v. JJM, Inc.*, 301 Md. 256, 282, 482 A.2d 908, 921 (1984) (invalidating county ordinance requiring subdivision developer to set aside land for through road; "in order to exact from a developer a setting aside of land for highway purposes there must be a reasonable nexus between the exaction and the proposed subdivision. No such nexus has been shown here."); *Land/Vest Properties v. Town of Plainfield*, 117 N.H. 817, 379 A.2d 200 (1977) (striking down a condition

attached to a plat approval requiring subdivider to bear the entire expense of upgrading two highways leading to, but outside, the subdivision where the construction would have conferred benefits on other owners of undeveloped land fronting on the access roads); *Longridge Builders, Inc. v. Planning Board*, 52 N.J. 348, 245 A.2d 336, 337-338 (1968) (striking down off-site road paving exaction imposing total cost of road construction on one developer even though other undeveloped lands would benefit from improved road; "the subdivider could be compelled only to bear that portion of the cost which bears a rational nexus to the needs created by, and benefits conferred upon, the subdivision.").

The circuit court's decision in *Butler* is on all fours with the situation presented here regarding the Town of Berryville's action in requiring House of Lords/Ding Wang, as a condition of obtaining subdivision approval, to dedicate land for and construct a right of way to be used as an extension of McNeal Road that is primarily needed to provide an access road for the adjacent, landlocked Byrd property. The need for the extension of McNeal Road will not be as a result of activities "specifically and uniquely attributable to the proposed development." Nor does this dedication and construction condition "substantially relate to the projected needs of the proposed development." Rather, the main or primary purpose of the proposed extension of McNeal Road is to carry traffic form the neighboring landlocked Byrd property into the commercial area of Berryville as called for by the Berryville Area Plan. Consequently, to the extent that the provisions of the Town of Berryville subdivision regulations could be read to require such a dedication of right of way by House of Lords/Ding Wang, they are unconstitutional under the principles of *Rowe* and *Cupp*, as applied and refined by the circuit court in *Butler*.

Third Question Presented: Would The McNeal Road Dedication/Construction Exaction Constitute A Taking In Violation Of The Fifth Amendment?

III. The McNeal Road Dedication/Construction Exaction Would Constitute A Taking In Violation Of The Fifth Amendment.

The United States Supreme Court's decisions in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994) "provide important protection against the misuse of the power of land-use regulation. In those cases, [the Supreme Court] held that a unit of government may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his property unless there is a 'nexus' and 'rough proportionality' between the government's demand and the effects of the proposed land use." *Koontz v. St. John's River Water Management District*, 570 U.S. 595, 599 (2013).

In *Nollan,* landowners challenged the California Coastal Commission's decision to condition the Nollans' building permit – the Nollans wanted to demolish an existing bungalow and construct a three-bedroom house -- on the grant of a lateral easement across their beachfront that would connect two public beaches. 483 U.S. at 828. The Court noted that it had long recognized that land-use regulation does not effect a Fifth Amendment taking if it "'substantially advance[s] legitimate state interests' and does not 'den[y] an owner economically viable use of his land.'" *Id.*at 834 (*quoting Agins v. Tiburon,* 447 U.S. 255, 260 (1980)). It pointed out that prior cases had not elaborated on the standards for determining what type of connection was required between the regulation and the state interest. *Id.* The Court went on to require an "essential nexus" between the condition and the state's purpose, and found that such a nexus was lacking in *Nollan. Id.* at 837. The absence of a nexus left the Coastal Commission in the

position of simply trying to obtain an easement through "gimmickry," which converted a valid regulation of land use into "'an out-and-out plan of extortion.'" *Id.* (citation omitted).

The Court revisited the exactions issue in *Dolan,* a case in which the city conditioned approval of a commercial building expansion on the dedication of land for both (a) a public greenway for flood control and (b) a pedestrian/bicycle pathway. 512 U.S. at 379-80. The *Dolan* Court found that, unlike in *Nollan,* there was some connection between the conditions and the proposed expanded commercial development. *Id.* at 387-88. It then went on to consider the degree of connection required, and ultimately settled on an "intermediate position" similar to that employed by numerous state courts, i.e., that the municipality must show some form of "reasonable relationship" between the required dedication and the impact of the proposed development. *Id.* at 389-91.[11] The Court, however, thought the term "reasonable relationship" might be confusingly similar to the term "rational basis," and thus created a new term: "rough proportionality." *Id.* at 391; *see also id.* ("No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.").[12]

---

11 The Supreme Court in *Dolan* specifically rejected the position of certain "state courts [, such as the Illinois Supreme Court, that] require a very exacting correspondence, described as the 'specifi[c] and uniquely attributable' test. . . . Under this standard, if the local government cannot demonstrate that its exaction is directly proportional to the specifically created need, the exaction becomes 'a veiled exercise of the power of eminent domain and a confiscation of private property behind the defense of police regulations.'" 512 U.S. at 389-90 (quoting *Pioneer Trust & Savings Bank v. Mount Prospect*, 22 Ill.2d 375, 381, 176 N.E.2d 799, 802 (1961)). The Supreme Court in *Dolan* concluded that "[w]e do not think the Federal Constitution requires such exacting scrutiny, given the nature of the interests involved." 512 U.S. at 390.

12 The "rough proportionality" test adopted by the U.S. Supreme Court in *Dolan* is similar to the alternative test discussed by the Virginia Circuit Court in *Butler*, requiring the dedication of land for streets or other public facilities "*substantially* relate to [, i.e., not exactly or mathematically match or be directly proportional to,] the projected needs of the proposed

Applying the "rough proportionality" test to the exactions made by the City of Tigard, Oregon, the Supreme Court in *Dolan* determined that neither exaction met the test and was therefore violative of the Fifth Amendment. In particular, with regard to the required dedication of an easement for a pedestrian/bicycle pathway, the Court initially conceded that "the city was correct in finding that the larger retail sales facility proposed by [Dolan] will increase traffic on the streets of the [city's] Central Business District," specifically "the city estimates that the proposed development would generate roughly 435 additional trips per day." *Id.* at 395. While observing that "[d]edications for streets, sidewalks, and other public ways are generally reasonable exactions to avoid excessive congestion from a proposed property use," the Court concluded:

> But on the record before us, the city has not met its burden of demonstrating that the additional number of vehicle and bicycle trips generated by petitioner's development reasonably relate to the city's requirement for a dedication of the pedestrian/bicycle pathway easement. The city simply found that the creation of the pathway "could offset some of the traffic demand ... and lessen the increase in traffic congestion."
>
> As Justice Peterson of the Supreme Court of Oregon explained in his dissenting opinion, however, "[t]he findings of fact that the bicycle pathway system '*could* offset some of the traffic demand' is a far cry from a finding that the bicycle pathway system *will*, or is *likely to*, offset some of the traffic demand." . . . No precise mathematical calculation is required, but the city must make some effort to quantify its findings in support of the dedication for the pedestrian/bicycle pathway beyond the conclusory statement that it could offset some of the traffic demand generated.

Id. at 395-96 (emphasis Justice Peterson's).

The *Dolan* court concluded by saying

> Cities have long engaged in the commendable task of land use planning, made necessary by increasing urbanization, particularly in metropolitan areas such as

---

[subdivision] development." *Butler*, 2 Va. Cir. at 452 (emphasis added).

> Portland. The city's goals of reducing flooding hazards and traffic congestion, and providing for public greenways, are laudable, but there are outer limits to how this may be done. "A strong public desire to improve the public condition [will not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."

Id. at 396 (quoting *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922)).

Most recently, the Supreme Court addressed the scope of the *Nollan-Dolan* doctrine in *Koontz v. St. John's River Water Management District*. In that case, the defendant Florida water management district denied permits that would have allowed a landowner to develop the northern 3.7 acres of his property while granting the district a conservation easement over the remaining 11 acres, because the landowner refused to agree to the district's further requirement that he hire contractors to make improvements to District-owned land several miles away. Believing the district's demands for off-site mitigation to be excessive in light of the limited environmental effects that his building proposal would have caused, Koontz filed suit in Florida state court, asserting, among other claims, a cause of action under Fla.Stat. § 373.617(2), to recover "monetary damages" for a state agency's action that constitutes "an unreasonable exercise of the state's police power constituting a taking without just compensation."

The Florida trial court, after a two-day bench trial, concluded the northern section of the subject property had already been "seriously degraded" by extensive construction on the surrounding parcels. In light of this finding and Koontz's offer to dedicate nearly three-quarters of his land to the district in the form of a conservation easement, the trial court concluded that any further mitigation in the form of payment for offsite improvements to district property lacked both a nexus and rough proportionality to the environmental impact of the proposed construction. The trial court accordingly held that the district's actions were unlawful under *Nollan* and *Dolan*.

The Florida Supreme Court reversed. A majority of that court distinguished *Nollan* and *Dolan* on two grounds. First, unlike in *Nollan* or *Dolan,* the water district did not approve Koontz's application on the condition that he accede to the district's demands; instead, the district denied his application because Koontz refused to make concessions. Second, the majority drew a distinction between a demand for an interest in real property (what happened in *Nollan* and *Dolan*) and a demand for money. The majority acknowledged a division of authority over whether a demand for money can give rise to a claim under *Nollan* and *Dolan,* and sided with those courts that have said it cannot.

On appeal, in an opinion by Justice Alito, the United States Supreme Court reversed the Florida Supreme Court. The *Koontz* Court initially summarized the *Nollan-Dolan* doctrine by saying that these decisions:

> allow[] the government to condition approval of a permit on the dedication of property to the public so long as there is a "nexus" and "rough proportionality" between the property that the government demands and the social costs of the applicant's proposal. . . . Our precedents thus enable permitting authorities to insist that applicants bear the full costs of their proposals while still forbidding the government from engaging in "out-and-out ... extortion" that would thwart the Fifth Amendment right to just compensation. . . . Under *Nollan* and *Dolan* the government may choose whether and how a permit applicant is required to mitigate the impacts of a proposed development, *but it may not leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts.*

570 U.S. at 605-06 (emphasis added).

The Court then held that "[t]he principles that undergird our decisions in *Nollan* and *Dolan* do not change depending on whether the government *approves* a permit on the condition that the applicant turn over property or *denies* a permit because the applicant refuses to do so. We have often concluded that denials of governmental benefits were

impermissible under the unconstitutional conditions doctrine." 570 U.S. at 606 (emphasis in original). The Court further reasoned that

> Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation. As in other unconstitutional conditions cases in which someone refuses to cede a constitutional right in the face of coercive pressure, the impermissible denial of a governmental benefit is a constitutionally cognizable injury.

Id. at 607.

The *Koontz* Court refrained, however, from deciding whether a landowner could assert a cause of action for damages under 42 U.S.C. § 1983, or some other federal statute, for such an impermissible denial of a land use approval where the landowner refuses to accede to the permitting authority's extortionate demand for property. The Court stated as follows:

> Where the permit is denied and the condition is never imposed, nothing has been taken. While the unconstitutional conditions doctrine recognizes that this *burdens* a constitutional right, the Fifth Amendment mandates a particular *remedy* – just compensation – only for takings. In cases where there is an excessive demand but no taking, whether money damages are available is not a question of federal constitutional law but of the cause of action—whether state or federal—on which the landowner relies. Because petitioner brought his claim pursuant to a state law cause of action, the Court has no occasion to discuss what remedies might be available for a *Nollan/Dolan* unconstitutional conditions violation either here or in other cases.

Id. at 608-09 (emphasis in original).

The *Koontz* court, by a 5-4 majority, further held that "so-called 'monetary exactions' must satisfy the nexus and rough proportionality requirements of *Nollan* and *Dolan*." *Id.* at 612.

In view of *Nollan*, *Dolan*, and *Koontz*, the Town of Berryville's proposed exaction of a dedication of land for and the construction of an extension of McNeal Street from Berryville's commercial area in order to provide traffic access to the landlocked Byrd property adjacent to

House of Lords/Ding Wang's proposed subdivision does not satisfy the nexus and rough proportionality requirements of those decisions. The exaction does not have an essential nexus to a legitimate governmental interest, since the construction of the street extension is not needed to provide adequate access to House of Lords/Ding Wang's proposed subdivision. Even assuming there was such a nexus, imposing the entire cost of the right-of-way and its *construction cost* for the second access road extension on Hours of Lords/Ding Wang, for an extension that primarily benefits the Byrd property does not meet the "rough proportionality" test.

Therefore, should the Town's Administrative Body grant a subdivision approval subject to a condition imposing on the subdivider, House of Lords/Ding Wang, an exaction of a right-of-way dedication and the construction of the extension of McNeal Street to provide traffic access to the adjacent Byrd property, such decision would be challenged as a "fifth amendment taking." Alternatively, if the Town's Administrative Body denies subdivision approval because House of Lords/Ding Wang refuses to accede to this extortionate condition, the denial of such subdivision approval can be challenged by way of either (a) a state court appeal of the denial, or by (b) an action under 42 U.S.C. § 1983 brought in either state or federal court to have the denial set aside as violating the *Nollan-Dolan* unconstitutional conditions doctrine. In a § 1983 action, House of Lords/Ding Wang would be entitled to recover its attorney's fees. Whether compensatory damages could also be recovered remains an open question.

Berryville Area Development Authority Agenda Item Report Summary

June 24, 2020

Item Title
Set Public Hearing – Final Plat Hermitage Phase V

Prepared By
Christy Dunkle

Set Public Hearing – Final Plat Phase V Hermitage

Duane Brown (Marsh and Legge Land Surveyors, PLC, Agent; Hermitage, LLC, Owner) is requesting final subdivision plat approval for the creation of 71 single-family residential lots on the property identified as Tax Map Parcel numbers 14A4-((A))-23 (23.42 acres) and 14-A-11A (35.25 acres), zoned R-1 Residential and DR-1 Residential, respectively. MASD 01-20

Background/History/General Information

The request before the BADA is for final subdivision plat approval for the final phase of the Hermitage subdivision. The subdivision, which began construction in 1998, was originally slated for 290 houses. The lots in Phase V were located in the Town and Annexation Area B. As such, action for this request requires a public hearing by both administrative bodies (PC and Berryville Area Development Authority). All 53.30 acres of the property have been annexed by the Town. A vicinity map is included as an attachment to this staff report.

Town Council approved a rezoning of the property in September of 2019 in order to align the lot layout with the R-1 and DR-4 zoning designations. Minimum lot sizes in R-1 and DR-1 are 15,000 square feet and 20,000 square feet, respectively.

The Virginia Department of Environmental Quality began oversight of the Town of Berryville stormwater management program in 2017. Due regulation changes in effect with the final phase, several houses have been eliminated due to stormwater regulations that require additional property for "conservation areas." These areas will be maintained by a homeowners' association. Phase V will be the only portion of the Hermitage subdivision that will be under the management of an HOA.

Phase V will see a continuation of Tyson Drive to the southern intersection with Norris. At this point, the road will continue as Dunlap Drive.

Findings/Current Activity

All approvals have been received by staff for the construction plans of Phase V including engineering review and the Virginia Department of Environmental Quality.

Financial Considerations

N/A

Schedule/Deadlines

Staff is requesting that the BADA set a joint public hearing with the Berryville Planning Commission for Wednesday, July 22, 2020 at 7:00pm.

Other Considerations

N/A

Recommendation

Set a public hearing for Wednesday, July 22, 2020 at 7:00pm.

Attachments:

- Section 201 R-1 Residential of the Berryville Zoning Ordinance
- Section 602 DR-1 Detached Residential of the Berryville Zoning Ordinance
- Phase V vicinity map
- Phase V final plats

ARTICLE II – DISTRICT REGULATIONS

SECTION 201 - R-1 RESIDENTIAL DISTRICT

201 STATEMENT OF INTENT

The R-1 District is composed of quiet, low-density residential areas plus undeveloped areas where similar residential construction appears likely to occur. The standards set forth for this district are designed to stabilize and protect the essential character of the areas so delineated, to promote and encourage a suitable environment for family life where there are children, and to prohibit all commercial activities. Development is, therefore, limited to relatively low concentration and permitted uses are limited to single-unit dwellings, plus selected additional uses such as schools, parks, churches, and certain public facilities that serve the residents of the district. No rooming houses are permitted.

201.1 USES PERMITTED BY RIGHT

Only one use and its accessory buildings and/or uses may be erected on any lot or parcel of land in the R-1 Residential District.

(a) Single-family dwellings.

(b) Schools and offices for Clarke County Public Schools and related non-profit organizations **(07/16)**.

(c) Churches.

(d) Parks and playgrounds.

(e) Off-street parking for permitted uses in the district as set forth in Section 305.

(f) Accessory buildings and Temporary Family Health Care Structures as defined; however, garages, carports, porches, and stoops attached to the main building shall be considered part of the main building. Accessory buildings may be located in a rear yard area, but shall not be located closer than five (5) feet from any property line or to any other structure. **(11/10)**

(g) Public utilities: poles, lines, distribution transformers, booster and relay stations, pipes, meters, and other facilities necessary for the provision and maintenance of public utilities, including water and sewage systems.

(h) Signs as set forth in Section 307.

(i) Travel trailers, which shall not be stored within the front setback area, and which shall be prohibited from occupancy. **(5/83)**

(j) Fences as set forth in Section 303.

201.2 USES PERMITTED BY SPECIAL PERMIT

(a) Home Occupations. **(4/86)**

(b) Planned Research Offices, as defined in Section 102.

201.3 AREA REGULATIONS

The minimum lot area shall be fifteen thousand (15,000) square feet.

201.4 SETBACK REGULATIONS

Structures shall be located thirty-five (35) feet or more from any street right-of-way which is fifty (50) feet or greater in width, or fifty (50) feet or more from the center of any street right-of-way less than fifty (50) feet in width. **(5/94)**

201.5 FRONTAGE REGULATIONS

The minimum lot width at the setback line shall be one hundred (100) feet. Minimum width at the street right-of-way line shall be fifty (50) feet.

201.6 YARD REGULATIONS

(a) Side - Each side yard shall be a minimum of fifteen (15) feet.

(b) Rear - Each rear yard shall be a minimum of thirty (30) feet in depth.

201.7 LOT COVERAGE

Any structure or structures shall not occupy more than thirty (30) percent of the total area of the lot.

201.8 HEIGHT REGULATIONS

(a) Buildings may be erected up to three (3) stories but shall not exceed thirty-five (35) feet in height.

(b) A public or semi-public building such as a school, church, or library may be erected to a height of sixty (60) feet from grade, provided that required front, side, and rear yards shall be increased one (1) foot for each foot in height over thirty-five (35) feet.

(c) Church spires, belfries, cupolas, municipal water towers, chimneys, flues, flagpoles, television antennae, and radio aerials are exempt. Parapet walls may be up to four (4) feet above the height of the building on which the walls rest.

(d) No accessory building that is within twenty (20) feet of any party lot line shall be more than one (1) story high. All accessory buildings shall be less than the main building in height.

201.9 SPECIAL PROVISIONS FOR CORNER LOTS

(a) Of the two sides of a corner lot fronting on streets, the shortest side shall be deemed to be the front.

(b) Each corner lot shall have a minimum width at the setback line of one hundred twenty (120) feet.

(4/92) SECTION 602 - DETACHED RESIDENTIAL-1 (DR-1) DISTRICT

602.1 PURPOSE AND INTENT

The Detached Residential-1 (DR-1) District is created to provide for single-family detached residences in a carefully planned pattern, compatible with the Comprehensive Plan's goals for residential development in the Town of Berryville and within the precincts of the Berryville Area Plan. A maximum density of one (1) unit per net developable acre establishes a low-density district for detached residences. This district shall be applied with the intent of preserving existing natural features and vegetation, promoting excellence in site planning and landscape design, and encouraging housing of compatible scale and architectural character.

602.2 PERMITTED USES

(a) Single-family detached dwellings.

(b) Accessory uses to include detached carports and garages, tool sheds, children's playhouses, doghouses, private swimming pools and Temporary Family Health Care Structures as established in Section 323. **(11/10)**

(c) Municipal utilities.

602.3 SPECIAL PERMIT USES

(a) Bed and breakfast lodging occupying more than 300 square feet of a residence

(b) Cemeteries

(c) Churches and shrines

(d) Fire stations **(10/94)**

(e) Home occupations as defined in Section 315

(f) Libraries and museums **(12/93)**

(g) Plant nurseries, with no sale of nursery products permitted on premises

(h) Private or public schools parks, playgrounds, and related uses

(i) Public utility uses (sub-stations, pump stations, storage tanks, etc.) and related easements, except for municipal utilities

(j) Recreational uses, such as public swimming pools, tennis courts, and golf courses

602.4 MAXIMUM DENSITY

(a) One (1) dwelling unit per net developable acre.

(b) A maximum floor area ratio of 0:15 shall apply to uses other than residential.

602.5 LOT SIZE, YARD AND BULK REQUIREMENTS FOR CONVENTIONAL LOTS

(a) Lot area: Minimum--40,000 square feet; maximum--60,000 square feet. (Refer to Section 615.2 regarding the impact of Critical Environmental Areas on lot size requirements.)

(b) Minimum lot width

(1)	Interior lot:	125 feet **(7/04)**
(2)	Corner lot:	150 feet **(7/04)**

(c) Minimum yard requirements

(1)	Front yard:	40 feet **(7/04)**
(2)	Side yard:	15 feet
(3)	Rear yard:	50 feet (residences) **(7/04)**
(4)	Accessory structure:	5 feet (rear and side setbacks)
(5)	Maximum building height:	35 feet

602.6 MINIMUM DISTRICT SIZE FOR CLUSTER SUBDIVISION

Minimum district size for cluster subdivision is four acres.

602.7 LOT SIZE, YARD AND BULK REQUIREMENTS FOR CLUSTER LOTS

(a) Minimum lot Area: 20,000 square feet, Maximum Area 45,000 square feet **(7/04)** (Please refer to Section 614 regarding the impact of critical environmental areas on lot size requirements.)

(b) Minimum lot width:

(1)	Interior lot:	100 feet
(2)	Corner lot:	120 feet

(c) Minimum lot yard requirements:

(1)	Front yard:	35 feet
(2)	Side yard:	15 feet
(3)	Rear yard:	45 feet **(7/04)**
(4)	Accessory structure:	5 feet (rear and side setback)

(d) Maximum building height: 35 feet

602.8 OPEN SPACE REQUIREMENTS FOR DETACHED RESIDENTIAL (DR-1) SUBDIVISIONS

(a) In subdivisions approved for cluster development, a minimum of 15 percent of the net site area which excludes 100-year floodplains, sinkholes, and slopes exceeding 25 percent and 50 percent of land with slopes between 15 and 25 percent shall be open space dedicated to common usage and ownership.

602.9 ADDITIONAL REGULATIONS

(a) Refer to Article III for general regulations and other provisions which may supplement those cited herein.

(b) Refer to Section 305 for off-street parking requirements.

(c) Refer to specific Overlay Zoning Districts, where applicable.

(d) Refer to Section 611 for special regulations relating to cluster subdivisions, open spaces and critical environmental areas.

(e) The lot size, yard, and bulk requirements in effect at the time of subdivision plat approval prior to January 1, 2011 shall remain applicable to such subdivisions until July 1, 2017. The foregoing shall not be effective unless any unreleased performance bonds and agreements or other financial guarantees of completion of public improvements in or associated with the subdivision are continued in force. **(12/14)**

602.10 ADDITIONAL REGULATIONS

(a) Refer to Article III for general regulations and other provisions which may supplement those cited herein.

(b) Refer to Section 305 for off-street parking requirements.

(c) Refer to specific Overlay Zoning Districts, where applicable.

(d) Refer to Section 615.2 for special regulations relating to cluster subdivisions, open spaces, and critical environmental areas.

(e) Refer to Section 317 Karst Features for additional requirements. **(7/04)**

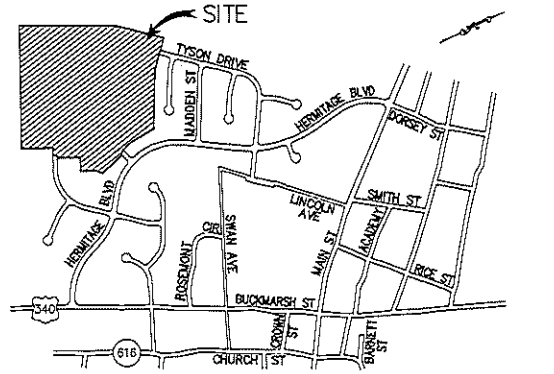
0 1000 2000 ft

Printed on 06/15/2020 at 11:32 AM

Clarke County MapsOnline

CURVE TABLE						
CURVE	DELTA	RADIUS	ARC	TANGENT	CHORD	BEARING
1	105°14'12"	775.00'	1,423.46'	1,014.33'	1,231.64'	N12°42'31"W
2	19°42'16"	500.00'	171.95'	86.83'	171.11'	N14°49'15"E
3	68°14'02"	500.00'	595.45'	338.74'	560.88'	N29°08'54"W
4	13°10'30"	500.00'	114.97'	57.74'	114.72'	N56°40'40"W
5	22°51'03"	500.00'	199.41'	101.05'	198.09'	S83°32'36"W
6	40°17'44"	340.00'	239.12'	124.74'	234.22'	N45°10'45"W
7	90°00'00"	35.00'	54.98'	35.00'	49.50'	N20°19'37"W
8	04°39'12"	525.00'	42.64'	21.33'	42.63'	N22°20'47"E
9	08°54'15"	525.00'	81.59'	40.88'	81.51'	N15°34'04"E
10	83°12'46"	35.00'	50.83'	31.08'	46.48'	N52°43'20"E
11	11°37'18"	525.00'	106.49'	53.43'	106.31'	N88°31'05"E
12	12°20'45"	525.00'	113.12'	56.78'	112.91'	N76°32'04"E
13	03°35'02"	475.00'	29.71'	14.86'	29.71'	S75°53'33"W
14	16°28'16"	475.00'	136.55'	68.75'	136.08'	S85°55'12"W
15	84°39'28"	35.00'	51.71'	31.88'	47.14'	N43°30'56"W
16	08°22'48"	525.00'	76.79'	38.46'	76.72'	N05°22'38"W
17	10°14'26"	525.00'	93.83'	47.04'	93.71'	N14°41'13"W
18	10°14'26"	525.00'	93.83'	47.04'	93.71'	N24°55'38"W
19	10°14'26"	525.00'	93.83'	47.04'	93.71'	N35°10'04"W
20	10°14'26"	525.00'	93.83'	47.04'	93.71'	N45°24'30"W
21	10°14'25"	525.00'	93.83'	47.04'	93.71'	N55°38'55"W
22	02°29'47"	525.00'	22.87'	11.44'	22.87'	N62°01'01"W
23	12°24'59"	475.00'	102.94'	51.67'	102.73'	N57°03'25"W
24	00°45'31"	475.00'	6.29'	3.14'	6.29'	N50°28'10"W
25	90°00'00"	35.00'	54.98'	35.00'	49.50'	N05°05'25"W
26	01°52'11"	800.00'	26.11'	13.05'	26.11'	S38°58'30"W
27	06°52'03"	800.00'	95.89'	48.00'	95.83'	S34°36'23"W
28	07°00'44"	800.00'	97.91'	49.02'	97.85'	S27°39'58"W
29	06°51'45"	800.00'	95.82'	47.97'	95.76'	S20°43'45"W
30	06°51'45"	800.00'	95.82'	47.97'	95.76'	S13°52'00"W
31	06°51'56"	800.00'	95.86'	47.99'	95.81'	S07°00'10"W
32	06°51'57"	800.00'	95.86'	47.99'	95.81'	S00°08'13"W
33	06°51'57"	800.00'	95.86'	47.99'	95.81'	S06°43'43"E
34	06°51'57"	800.00'	95.87'	47.99'	95.81'	S13°35'40"E
35	07°32'43"	800.00'	110.00'	55.09'	109.92'	S20°38'00"E
36	07°11'43"	800.00'	100.46'	50.30'	100.40'	S28°30'13"E
37	07°11'43"	800.00'	100.47'	50.30'	100.40'	S35°41'56"E
38	07°11'44"	800.00'	100.47'	50.30'	100.40'	S42°53'39"E
39	07°11'44"	800.00'	100.47'	50.30'	100.40'	S50°05'23"E
40	07°11'45"	800.00'	100.47'	50.30'	100.40'	S57°17'07"E

CURVE TABLE						
CURVE	DELTA	RADIUS	ARC	TANGENT	CHORD	BEARING
41	04°26'37"	800.00'	62.04'	31.04'	62.03'	S63°06'18"E
42	58°59'50"	35.00'	36.04'	19.80'	34.47'	S35°49'42"E
43	90°00'00"	35.00'	54.98'	35.00'	49.50'	S69°40'23"W
44	06°26'02"	750.00'	84.22'	42.15'	84.18'	N62°06'36"W
45	09°13'04"	750.00'	120.66'	60.46'	120.53'	N54°17'02"W
46	09°13'03"	750.00'	120.66'	60.46'	120.53'	N45°03'59"W
47	09°13'01"	750.00'	120.65'	60.46'	120.52'	N35°50'57"W
48	09°13'00"	750.00'	120.65'	60.45'	120.52'	N26°37'56"W
49	09°12'59"	750.00'	120.64'	60.45'	120.51'	N17°24'56"W
50	09°12'58"	750.00'	120.64'	60.45'	120.51'	N08°11'57"W
51	09°12'58"	750.00'	120.64'	60.45'	120.51'	N01°01'01"E
52	09°12'57"	750.00'	120.64'	60.45'	120.51'	N10°13'58"E
53	08°23'00"	750.00'	109.74'	54.97'	109.64'	N19°01'57"E
54	09°42'30"	750.00'	127.08'	63.69'	126.93'	N28°04'41"E
55	06°58'39"	750.00'	91.34'	45.72'	91.28'	N36°25'15"E
56	90°00'00"	35.00'	54.98'	35.00'	49.50'	N84°54'35"E
57	10°29'12"	525.00'	96.09'	48.18'	95.96'	S55°20'01"E
58	02°41'18"	525.00'	24.63'	12.32'	24.63'	S81°55'16"E
59	13°50'06"	475.00'	114.70'	57.63'	114.42'	S56°20'52"E
60	14°25'55"	475.00'	119.65'	60.14'	119.33'	S42°12'51"E
61	14°25'55"	475.00'	119.65'	60.14'	119.33'	S27°46'56"E
62	14°25'55"	475.00'	119.65'	60.14'	119.33'	S13°21'01"E
63	13°02'00"	475.00'	108.05'	54.26'	107.82'	S00°22'57"W
64	17°46'26"	475.00'	147.35'	74.27'	146.76'	S15°47'10"W
65	90°00'00"	35.00'	54.98'	35.00'	49.50'	S69°40'23"W
66	18°21'04"	315.00'	100.89'	50.88'	100.46'	N56°09'05"W
67	11°37'29"	315.00'	63.91'	32.07'	63.80'	N41°09'48"W
68	60°28'17"	15.00'	15.83'	8.74'	15.11'	N05°06'55"W
69	71°44'43"	55.00'	68.87'	39.77'	64.46'	N10°45'08"W
70	78°04'22"	55.00'	74.94'	44.60'	69.28'	N85°39'41"W
71	79°14'22"	55.00'	76.06'	45.53'	70.15'	S15°40'58"W
72	60°57'19"	55.00'	58.51'	32.37'	55.79'	S54°24'53"E
73	50°41'39"	15.00'	13.27'	7.11'	12.84'	S59°32'43"E
74	06°16'39"	365.00'	39.99'	20.01'	39.97'	S37°20'12"E
75	14°20'02"	365.00'	91.31'	45.90'	91.08'	S47°38'33"E
76	10°31'03"	365.00'	67.00'	33.59'	66.91'	S60°04'05"E
77	90°00'00"	35.00'	54.98'	35.00'	49.50'	S20°19'37"E
78	31°00'10"	35.00'	18.94'	9.71'	18.71'	S09°10'18"W
79	31°00'10"	35.00'	18.94'	9.71'	18.71'	N40°10'28"E
80	58°59'50"	35.00'	36.04'	19.80'	34.47'	N85°10'28"E



Vicinity Map
Scale 1"=1,000'

LOTS SUMMARY			
ZONE DR-1		ZONE R-1	
LOT NO.	AREA	LOT NO.	AREA
220	20,049 SQ. FT.	256	23,714 SQ. FT.
221	20,051 SQ. FT.	257	19,394 SQ. FT.
222	20,968 SQ. FT.	258	18,487 SQ. FT.
223	22,058 SQ. FT.	259	18,900 SQ. FT.
224	22,630 SQ. FT.	260	21,093 SQ. FT.
225	22,441 SQ. FT.	261	22,667 SQ. FT.
226	22,440 SQ. FT.	262	22,034 SQ. FT.
227	22,440 SQ. FT.	263	19,127 SQ. FT.
228	22,439 SQ. FT.	264	15,224 SQ. FT.
229	24,535 SQ. FT.	265	15,224 SQ. FT.
230	21,426 SQ. FT.	266	15,224 SQ. FT.
231	21,426 SQ. FT.	267	15,224 SQ. FT.
232	21,426 SQ. FT.	268	15,209 SQ. FT.
233	21,426 SQ. FT.	269	15,412 SQ. FT.
234	20,054 SQ. FT.	270	15,136 SQ. FT.
235	20,113 SQ. FT.	271	15,011 SQ. FT.
236	20,114 SQ. FT.	272	15,072 SQ. FT.
237	20,115 SQ. FT.	273	17,733 SQ. FT.
238	20,117 SQ. FT.	274	15,150 SQ. FT.
239	20,119 SQ. FT.	275	15,150 SQ. FT.
240	20,122 SQ. FT.	276	15,341 SQ. FT.
241	20,125 SQ. FT.	277	16,265 SQ. FT.
242	20,128 SQ. FT.	278	16,141 SQ. FT.
243	20,318 SQ. FT.	279	17,461 SQ. FT.
244	20,071 SQ. FT.	280	15,169 SQ. FT.
245	23,040 SQ. FT.	281	16,201 SQ. FT.
246	26,003 SQ. FT.	282	17,393 SQ. FT.
247	22,013 SQ. FT.	283	15,818 SQ. FT.
248	22,013 SQ. FT.	284	15,344 SQ. FT.
249	22,013 SQ. FT.	285	15,225 SQ. FT.
250	23,622 SQ. FT.	286	15,179 SQ. FT.
251	20,572 SQ. FT.	287	15,296 SQ. FT.
252	22,654 SQ. FT.	288	15,668 SQ. FT.
253	22,427 SQ. FT.	289	15,669 SQ. FT.
254	23,470 SQ. FT.	290	15,669 SQ. FT.
255	35,420 SQ. FT.	TOTAL	568,024 SQ. FT.
TOTAL	790,599 SQ. FT.	TOTAL	13.4992 ACRES
TOTAL	18.1497 ACRES		

AREA SUMMARY		
AREA IN ZONE DR-1 LOTS	18.1497 ACRES	
AREA IN ZONE R-1 LOTS	13.4992 ACRES	
TOTAL AREA IN LOTS	31.6489 ACRES	31.6489 ACRES
AREA IN OPEN SPACE A1	10.2545 ACRES	
AREA IN OPEN SPACE A2	0.4218 ACRES	
AREA IN OPEN SPACE B	2.6036 ACRES	
AREA IN OPEN SPACE C	1.5816 ACRES	
AREA IN OPEN SPACE D	0.8092 ACRES	
TOTAL AREA IN OPEN SPACE	15.6707 ACRES	15.6707 ACRES
AREA IN RIGHT-OF-WAY RESERVATION		0.4310 ACRES
AREA IN RIGHT-OF-WAY		5.5547 ACRES
TOTAL AREA SUBDIVIDED		53.3053 ACRES
	ZONE DR-1	ZONE R-1
NUMBER OF LOTS	36	35
AVERAGE LOT SIZE	21,961 SQ. FT.	16,801 SQ. FT.
MINIMUM LOT SIZE	20,049 SQ. FT.	15,011 SQ. FT.

MINIMUM SETBACK REQUIREMENTS
ZONE DR-1 (LOTS 220-255)
FRONT = 35'
REAR = 45'
SIDE = 15'
ZONE R-1 (LOTS 256-290)
FRONT = 35'
REAR = 30'
SIDE = 15'

NOTES:

1. ALL LOTS ARE SINGLE FAMILY DETACHED.
2. ALL LOTS ARE SUBJECT TO A 15' SLOPE, UTILITY AND DRAINAGE EASEMENT ALONG ALL STREET RIGHTS-OF-WAY AND A 10' UTILITY AND DRAINAGE EASEMENT ALONG THE REAR AND SIDE PROPERTY LINES.
3. THIS FINAL RECORD PLAT IS BASED UPON CONSTRUCTION PLANS TITLED "HERMITAGE-PHASE 5" PREPARED BY PENNONI ASSOCIATES INC., PLANS DATED FEBRUARY 22, 2019, LAST REVISED ON NOVEMBER 12, 2019.
4. THE EXISTING TEMPORARY TURN-AROUND EASEMENTS (SHOWN HEREIN) ARE HEREBY VACATED. THE SIGHT DISTANCE EASEMENTS, STORM EASEMENTS, WATER EASEMENTS, INGRESS-EGRESS EASEMENTS, STORMWATER MANAGEMENT EASEMENTS, STORMWATER MANAGEMENT ACCESS AND STORM EASEMENTS ARE HEREBY CREATED.
5. ALL OPEN SPACE AREAS ARE SUBJECT TO A CONSERVATION EASEMENT (HEREBY CREATED).
6. IRON RODS ARE TO BE SET AT ALL LOT CORNERS.
7. EXISTING ZONING: R-1 AND DR-1.

APPROVED BY

Virginia Department of Transportation _____ Date _____
Town Planner _____ Date _____
Planning Commission Chairman _____ Date _____

OWNER'S CERTIFICATE

The above and foregoing subdivision of the land of SILVER LAKE PROPERTIES, INC., as appears in the accompanying plats, is with the free consent and in accordance with the desires of the undersigned owners, proprietors and trustees, if any.

_____ Date _____

NOTARY PUBLIC

I, _____, a Notary Public in and for the State of Virginia, at large, do certify that _____, whose name is signed to the foregoing Owner's Certificate, has acknowledged the same before me in my state.

Given under my hand this _____ day of _____, 2020.

My commission expires _____.

_____

SURVEYOR'S CERTIFICATE

I hereby certify that the property contained in this subdivision is a portion of the property that was conveyed to SILVER LAKE PROPERTIES, INC., by deed dated October 1, 1997, said deed recorded in the Office of the Clerk of the Circuit Court of Clarke County, Virginia in Deed Book 277 at Page 373.

_____
P. Duane Brown, L.S.

COMMONWEALTH OF VIRGINIA
P. Duane Brown
Lic. No. 001285
LAND SURVEYOR

FINAL PLAT
HERMITAGE ~ PHASE V
TOWN OF BERRYVILLE
CLARKE COUNTY, VIRGINIA

I07527	DRAWN: RY PDB/HRK
COVER SHEET	DATE: MAY 7, 2020
SHEET 1 OF 6	

MARSH & LEGGE LAND SURVEYORS, P.L.C.
560 NORTH LOUDOUN STREET - WINCHESTER, VIRGINIA 22601
PHONE (540) 667-0466 - FAX (540) 667-0469 - EMAIL office@marshandlegge.com

SHEET INDEX	
LOTS	SHEET
220–224	3
225–232	4
233–236	5
237–241	4
242–253	3
254	4
255–256	5
257–268	6
269–286	5
287–290	6
OPEN SPACE A1	3 & 4
OPEN SPACE A2	3
OPEN SPACE B	5 & 6
OPEN SPACE C	3 & 6
OPEN SPACE D	6

0 100 200 400

SCALE: 1"=200'

COMMONWEALTH OF VIRGINIA
P. Duane Brown
Lic. No. 001265
LAND SURVEYOR

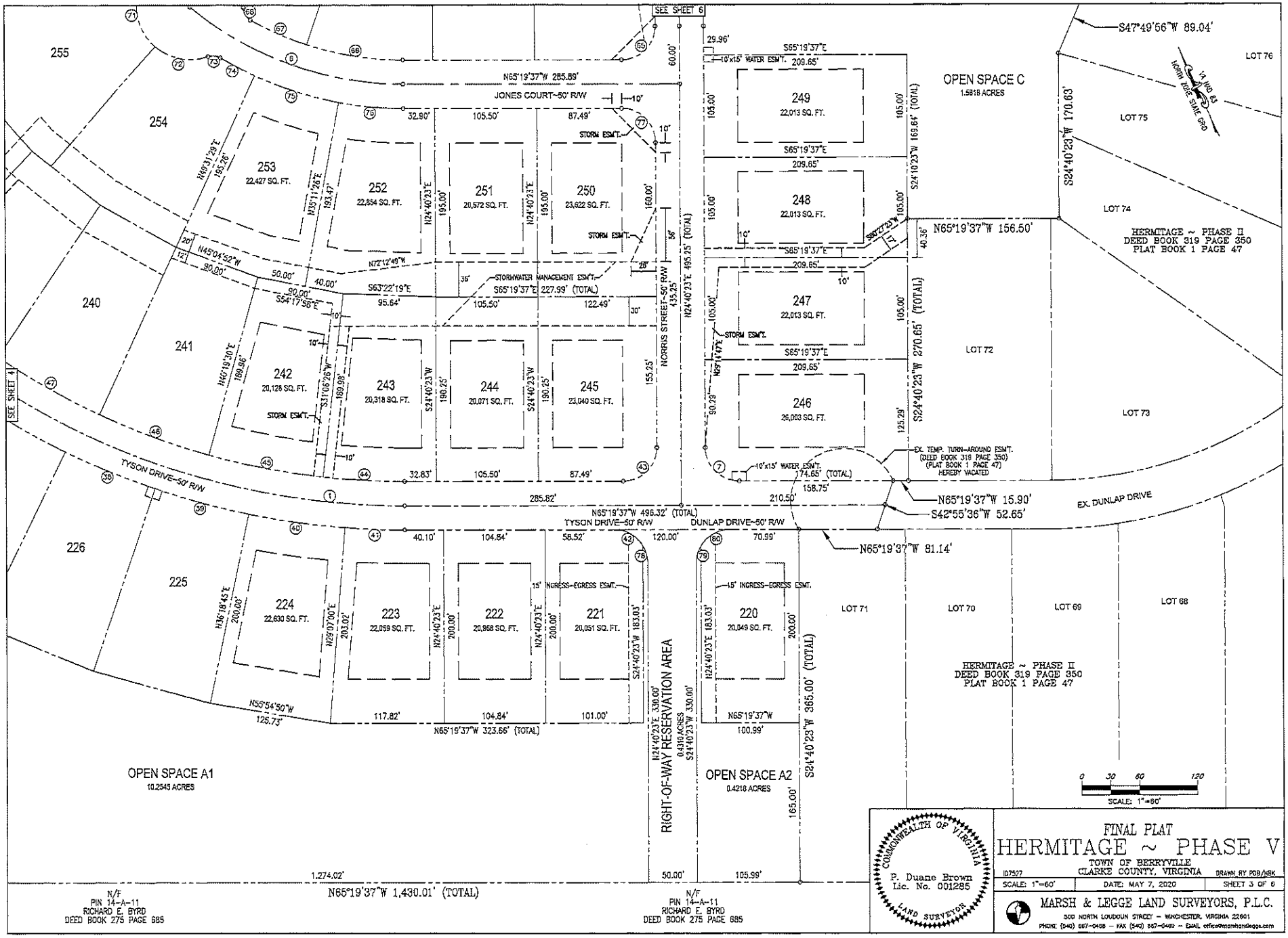
FINAL PLAT

HERMITAGE ~ PHASE V

TOWN OF BERRYVILLE
CLARKE COUNTY, VIRGINIA

ID7527		DRAWN BY PDB/HRK
SCALE: 1"=200'	DATE: MAY 7, 2020	SHEET 2 OF 6

MARSH & LEGGE LAND SURVEYORS, P.L.C.
560 NORTH LOUDOUN STREET – WINCHESTER, VIRGINIA 22601
PHONE (540) 667-0468 – FAX (540) 667-0469 – EMAIL office@marshandlegge.com



FINAL PLAT

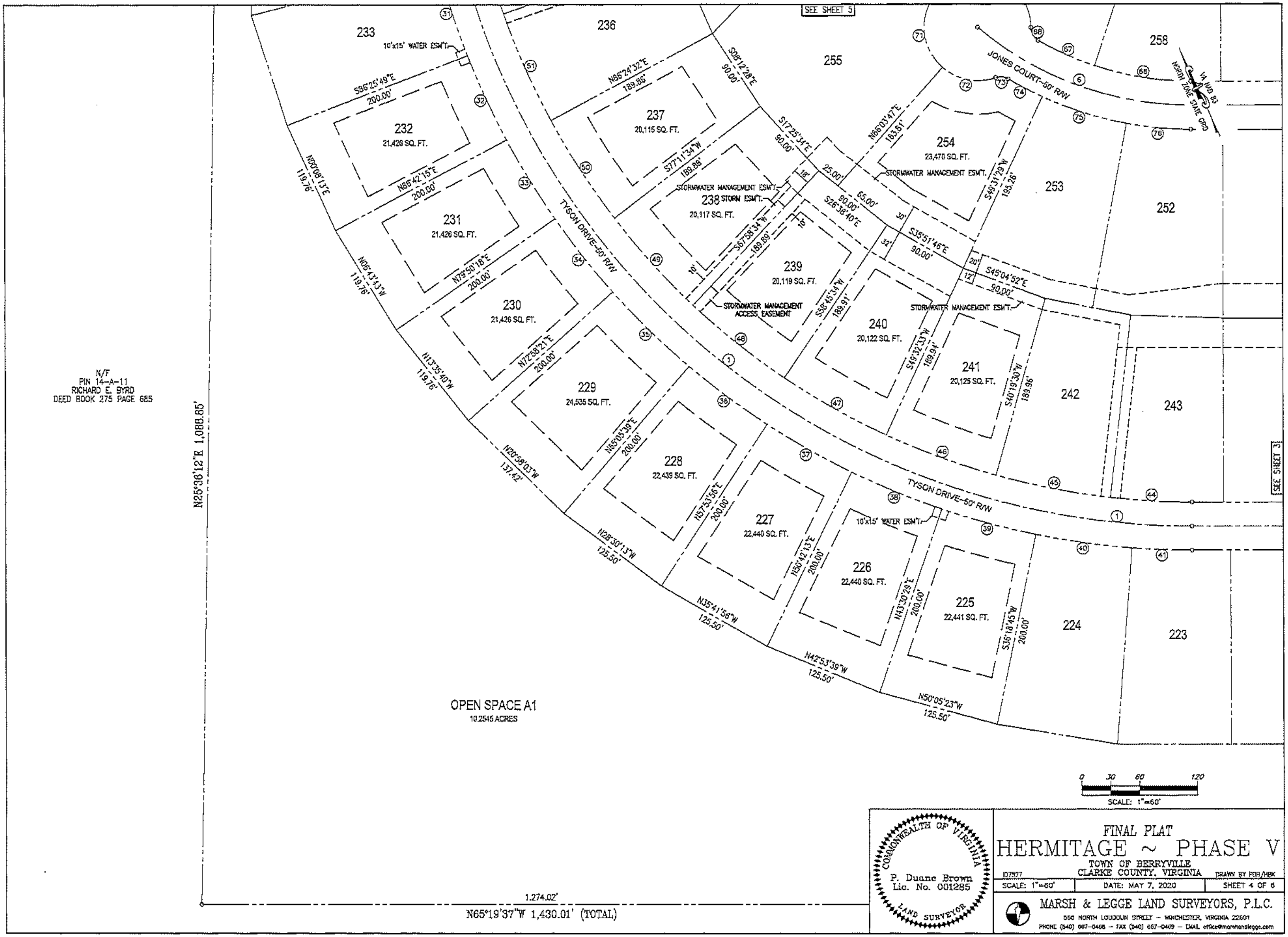
HERMITAGE ~ PHASE V

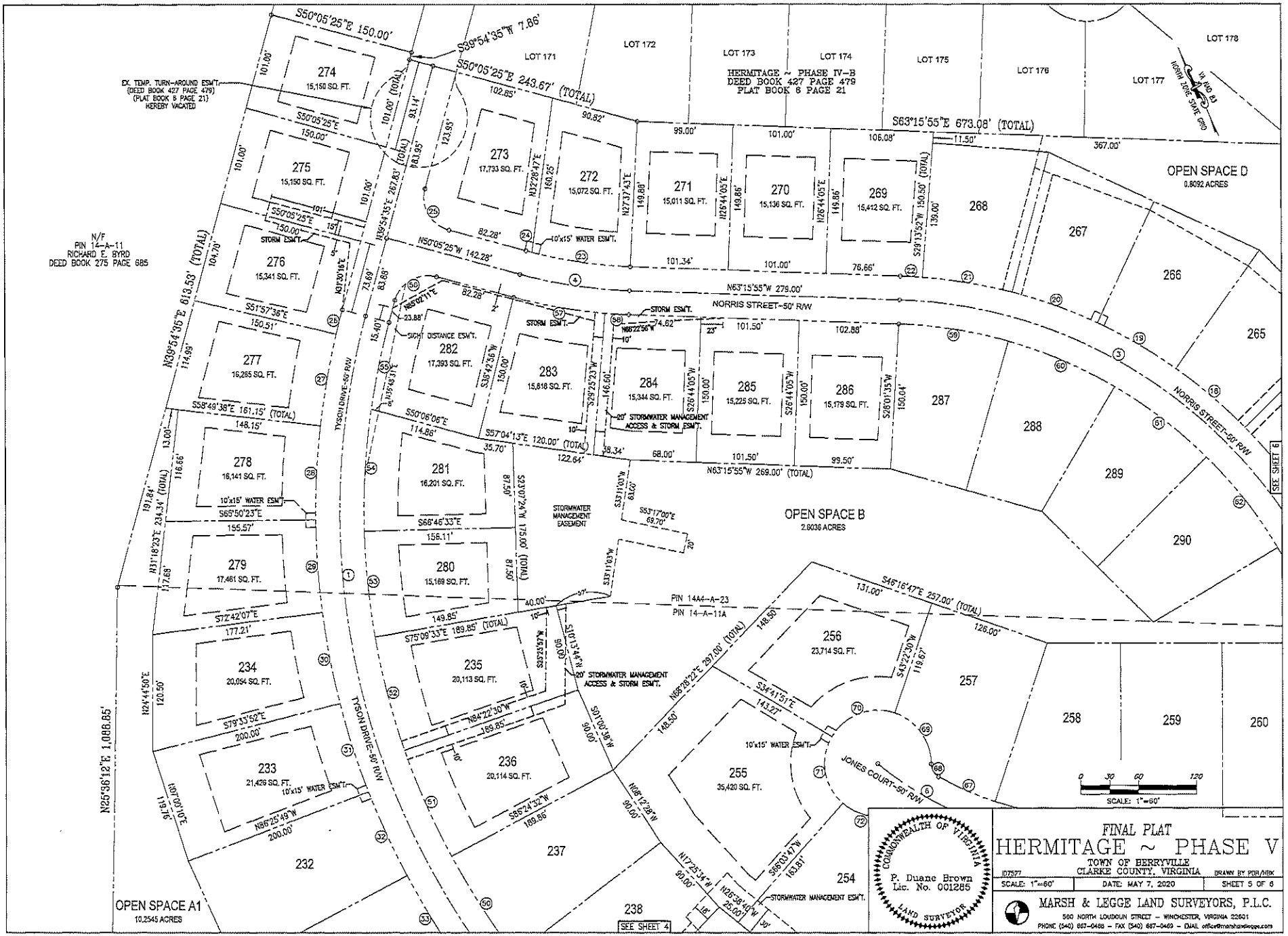
TOWN OF BERRYVILLE
CLARKE COUNTY, VIRGINIA

ID7527		DRAWN BY POB/MBK
SCALE: 1"=60'	DATE: MAY 7, 2020	SHEET 3 OF 6

COMMONWEALTH OF VIRGINIA
P. Duane Brown
Lic. No. 001285
LAND SURVEYOR

MARSH & LEGGE LAND SURVEYORS, P.L.C.
300 NORTH LOUDOUN STREET ~ WINCHESTER, VIRGINIA 22601
PHONE (540) 667-0408 ~ FAX (540) 667-0409 ~ EMAIL office@marshandlegge.com


FINAL PLAT
HERMITAGE ~ PHASE V
TOWN OF BERRYVILLE
CLARKE COUNTY, VIRGINIA
ID7527
DRAWN BY PDB/HBK
SCALE: 1"=60'
DATE: MAY 7, 2020
SHEET 4 OF 6
MARSH & LEGGE LAND SURVEYORS, P.L.C.
560 NORTH LOUDOUN STREET – WINCHESTER, VIRGINIA 22601
PHONE (540) 667-0468 – FAX (540) 667-0469 – EMAIL office@marshandlegge.com
COMMONWEALTH OF VIRGINIA
P. Duane Brown
Lic. No. 001285
LAND SURVEYOR
0 30 60 120
SCALE: 1"=60'
SEE SHEET 5
SEE SHEET 3
VA NAD 83
NORTH ZONE STATE GRID
JONES COURT-50' R/W
TYSON DRIVE-50' R/W
N/F
PIN 14-A-11
RICHARD E. BYRD
DEED BOOK 275 PAGE 685
OPEN SPACE A1
10.2545 ACRES
N25°36'12"E 1,088.85'
1,274.02'
N65°19'37"W 1,430.01' (TOTAL)
232
21,426 SQ. FT.
231
21,426 SQ. FT.
230
21,426 SQ. FT.
229
24,535 SQ. FT.
228
22,439 SQ. FT.
227
22,440 SQ. FT.
226
22,440 SQ. FT.
225
22,441 SQ. FT.
237
20,115 SQ. FT.
238
20,117 SQ. FT.
239
20,119 SQ. FT.
240
20,122 SQ. FT.
241
20,125 SQ. FT.
254
23,470 SQ. FT.
233
236
255
258
253
252
242
243
224
223
10'x15' WATER ESM'T.
STORMWATER MANAGEMENT ESM'T.
STORM ESM'T.
STORMWATER MANAGEMENT ACCESS EASEMENT
S86°25'49"E 200.00'
N00°08'13"E 119.76'
N86°42'15"E 200.00'
N05°43'43"W 119.76'
N79°50'18"E 200.00'
N13°35'40"W 119.76'
N72°58'21"E 200.00'
N20°58'03"W 137.42'
N65°05'39"E 200.00'
N28°30'13"W 125.50'
N57°53'56"E 200.00'
N35°41'56"W 125.50'
N50°42'13"E 200.00'
N42°53'39"W 125.50'
N43°30'29"E 200.00'
N50°05'23"W 125.50'
S36°18'45"W 200.00'
N85°24'32"E 189.86'
S08°12'28"E 90.00'
S77°11'34"W 189.89'
S17°25'34"E 90.00'
S67°58'34"W 189.89'
S26°38'40"E 90.00'
S58°45'34"W 189.91'
S35°51'46"E 90.00'
S49°32'33"W 189.94'
S45°04'52"E 90.00'
S40°19'30"W 189.96'
N66°03'47"E 163.81'
S49°31'29"W 195.26'
25.00'
65.00'



FINAL PLAT

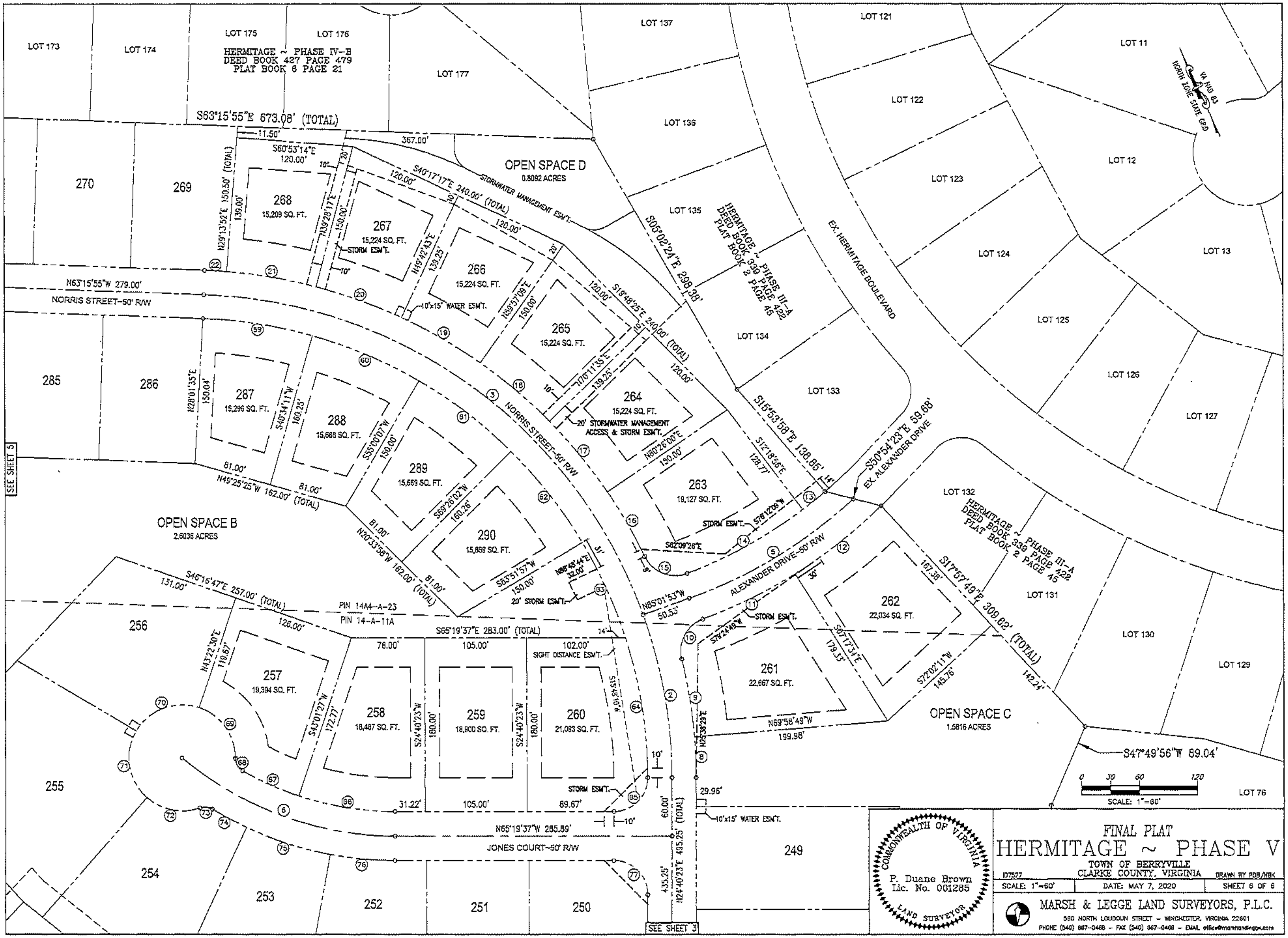
HERMITAGE ~ PHASE V

TOWN OF BERRYVILLE
CLARKE COUNTY, VIRGINIA

ID7527 | DRAWN BY PDB/HBK
SCALE: 1"=60' | DATE: MAY 7, 2020 | SHEET 5 OF 6

COMMONWEALTH OF VIRGINIA
P. Duane Brown
Lic. No. 001285
LAND SURVEYOR

MARSH & LEGGE LAND SURVEYORS, P.L.C.
500 NORTH LOUDOUN STREET ~ WINCHESTER, VIRGINIA 22601
PHONE (540) 667-0488 ~ FAX (540) 667-0489 ~ EMAIL office@marshandlegge.com


VA NAD 83
NORTH ZONE STATE GRID
LOT 173
LOT 174
LOT 175
LOT 176
HERMITAGE ~ PHASE IV-B
DEED BOOK 427 PAGE 479
PLAT BOOK 6 PAGE 21
LOT 177
LOT 137
LOT 136
LOT 135
LOT 134
LOT 133
LOT 132
LOT 131
LOT 130
LOT 129
LOT 76
LOT 121
LOT 122
LOT 123
LOT 124
LOT 125
LOT 126
LOT 127
LOT 11
LOT 12
LOT 13
HERMITAGE ~ PHASE III-A
DEED BOOK 339 PAGE 422
PLAT BOOK 2 PAGE 45
EX. HERMITAGE BOULEVARD
EX. ALEXANDER DRIVE
S50°54'23"E 59.68'
S63°15'55"E 673.08' (TOTAL)
S05°02'24"E 298.38'
S15°53'58"E 138.85'
S17°57'49"E 309.62' (TOTAL)
S47°49'56"W 89.04'
OPEN SPACE D
0.8092 ACRES
STORMWATER MANAGEMENT ESM'T.
OPEN SPACE B
2.6036 ACRES
OPEN SPACE C
1.5816 ACRES
NORRIS STREET-50' R/W
ALEXANDER DRIVE-50' R/W
JONES COURT-50' R/W
N63°15'55"W 279.00'
N65°19'37"W 285.89'
S65°19'37"E 283.00' (TOTAL)
S46°16'47"E 257.00' (TOTAL)
N24°40'23"E 495.25' (TOTAL)
PIN 14A4-A-23
PIN 14-A-11A
20' STORMWATER MANAGEMENT ACCESS & STORM ESM'T.
10'x15' WATER ESM'T.
SIGHT DISTANCE ESM'T.
20' STORM ESM'T.
STORM ESM'T.
268
15,209 SQ. FT.
267
15,224 SQ. FT.
266
15,224 SQ. FT.
265
15,224 SQ. FT.
264
15,224 SQ. FT.
263
19,127 SQ. FT.
262
22,034 SQ. FT.
261
22,667 SQ. FT.
260
21,093 SQ. FT.
259
18,900 SQ. FT.
258
18,487 SQ. FT.
257
19,394 SQ. FT.
287
15,296 SQ. FT.
288
15,668 SQ. FT.
289
15,669 SQ. FT.
290
15,669 SQ. FT.
270
269
285
286
256
255
254
253
252
251
250
249
SEE SHEET 5
SEE SHEET 3
SCALE: 1"=60'
COMMONWEALTH OF VIRGINIA
P. Duane Brown
Lic. No. 001285
LAND SURVEYOR
FINAL PLAT
HERMITAGE ~ PHASE V
TOWN OF BERRYVILLE
CLARKE COUNTY, VIRGINIA
ID7527
DRAWN BY PDB/HRK
SCALE: 1"=60'
DATE: MAY 7, 2020
SHEET 6 OF 6
MARSH & LEGGE LAND SURVEYORS, P.L.C.
560 NORTH LOUDOUN STREET - WINCHESTER, VIRGINIA 22601
PHONE (540) 667-0468 - FAX (540) 667-0469 - EMAIL office@marshandlegge.com