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December 11, 2014

**VIA ELECTRONIC AND HAND DELIVERY**

Susan Blackburn  
Zoning Administrator  
Department of Planning and Zoning  
Stafford County  
1300 Courthouse Road  
Stafford, Virginia 22554

RE: Request for Zoning Determination  
Assessor's Tax Map 29-60, portion  
3.3863 acres within Austin Ridge Commercial

Dear Ms. Blackburn:

The purpose of this letter is to request a zoning determination as to the applicability of Proffer 1A, Ordinance O90-20(R-4),<sup>1</sup> which restricts uses to residential and recreational, to a certain 3.3863 acre portion of Tax Map 29-60 known as "Austin Ridge Commercial" (see enclosed map of general area). This area is currently shown on the Stafford County Zoning Map as PD-1, with the referenced proffers. As discussed below, a 1994 zoning ordinance text amendment was effected requiring at least 10% commercial in all PD-1 districts. The 1997 rezoning of 14 acres, including the subject 3.3863 acres, from R-3 to PD-1 in 1997 created a new portion of the PD-1 district that was subject to the requirements of the amended ordinance. Further, Ordinance O9-20(R-4), effecting the 1997 rezoning and proffer amendment states on its face that the entire rezoning was "reordained." The contention advanced here is that the Board of Supervisors had no authority to adopt a proffer that was contrary to the plain language of the zoning ordinance in effect at the time of the rezoning. A detailed discussion follows.

**I. Zoning History of the Austin Ridge Development**

Austin Ridge was originally rezoned to PD-1, R-3, and B-2 in 1989, and subsequently rezoned in 1990. In 1997, a combination rezoning and proffer amendment was filed for 419

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<sup>1</sup> O90-20(R-4) was the ordinance number on the Board of County Supervisors' ordinance that approved reclassification RC97-06 on November 18, 1997.

acres, which reduced the residential density by 48%, and relocated the school and park sites to more centrally accessible locations. No portion of the then existing PD-1 area contained commercial uses. The proffer amendment application involved all 405 acres of the existing PD-1 area of the Property (based on the application) and 14 acres that were proposed to be rezoned from R-3 to PD-1. (Another proffer amendment/rezoning occurred in 2003, but no changes were made that are applicable here.)

## **II. Effect of the 1997 Combined Rezoning and Proffer Amendment**

The 1997 rezoning added 14 acres to the then existing PD-1 zoning district. Review of the staff report from William C. Shelly, Director of Planning to the Planning Commission, dated August 27, 1997 gives insight into the purpose of rezoning the 14 acres. In pertinent part, the staff report states on page 4 that:

... the reclassification of the 14 acres to PD-1 allows for flexibility in the southern portion of the development should the I-95 interchange at Courthouse Road severely impact the existing B-2, Commercial property on Courthouse Road.

The issue of flexibility specifically refers to the possibility of converting some of the PD-1 area to commercial if the existing B-2 area was reduced by construction of the I-95 interchange.

This referenced flexibility was made possible by the 1994 zoning text amendment. Before 1994, pursuant to Sec. 28-213 (1979 Ordinance), PD-1 developments, such as Austin Ridge, were not required to have commercial uses as a part of the PD-1 zoned area. Sec. 28-213 only provided that commercial use shall not exceed fifteen (15) percent of the total area of a PD-1 district. The proffer restricting PD-1 uses to residential and recreational was consistent with the underlying zoning ordinance before 1994.

An amendment requiring a commercial portion for PD-1 developments was enacted by the Stafford County Board of Supervisors on August 9, 1994. Ordinance No. 094-24 (enacted as Sec. 28-403), states in pertinent part:

### **Sec. 28-403**

(B) PD-1 site requirements. In addition to the requirements of subsection (a) above, to be considered for a classification as a PD-1 district, the tract of land shall conform to the following requirements:

(5) No less than ten (10) percent, nor more than thirty (30) percent of the total land area of the PD-1 district, shall be dedicated to commercial uses.

Accordingly, the Board of Supervisors had no authority to adopt a proffer that prohibited commercial development in a PD-1 district since such development was a specific requirement of the ordinance, and that portion of the Proffer Statement must be considered void as to the 14

acres. By rezoning the 14 acres from R-3 to PD-1 in 1997, the Board of Supervisors adopted a PD-1 district that was required to provide at least ten percent (10%) commercial uses. Since there is no other commercial acreage with Austin Ridge, the 3.3863 acres in question must be the required commercial component of the PD-1 district, and cannot be subject to the proffers restricting PD-1 uses to residential and recreational.

All subsequent submissions and approvals are consistent with the conclusion that the use for the 3.3863 acres is commercial. The 2003 proffer amendment/rezoning did not change the location or the number of residential and commercial uses. Furthermore, additional site plans have been approved for Austin Ridge showing the intended use for this area is commercial.

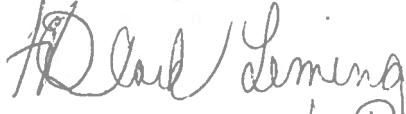
Date of Approval	Plan Type and Number	Description of Detail	Approved by
September 30, 1998	Austin Ridge Revised Preliminary Plan Sections 3C and 4-7	Page 3 of 9 shows area south of stream as "Commercial Area." It also explicitly shows a District Buffer C between residential to north and commercial area. Proffer 8F in both the 1997 and 2003 proffer amendments requires a buffer between the commercial and residential area.	Chairman of the Planning Commission
March 19, 2002	Zoning Administrator review of Austin Ridge Drive Extended III	IWR Review summary of agency comments indicate approval determination without further explanation.	Zoning Administrator
May 29, 2002	Austin Ridge Drive Extended III (to Route 630) Construction Plan, 210904	Sheet 9 of Construction Plan shows area south of stream and Section 7 as "Austin Ridge Future Commercial"	Jeff Harvey
November 1, 2002	Construction Plan for Austin Ridge Section 7	Page 17 of Construction Plan shows area south of Section 7 and stream as "future commercial."	Jeff Harvey

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### III. Conclusion

The referenced 3.3863 acres are not subject to Proffer 1A limiting development of the PD-1 area to residential and recreational uses. Please provide your official determination. The required application and fee are enclosed.

Yours Very Truly,

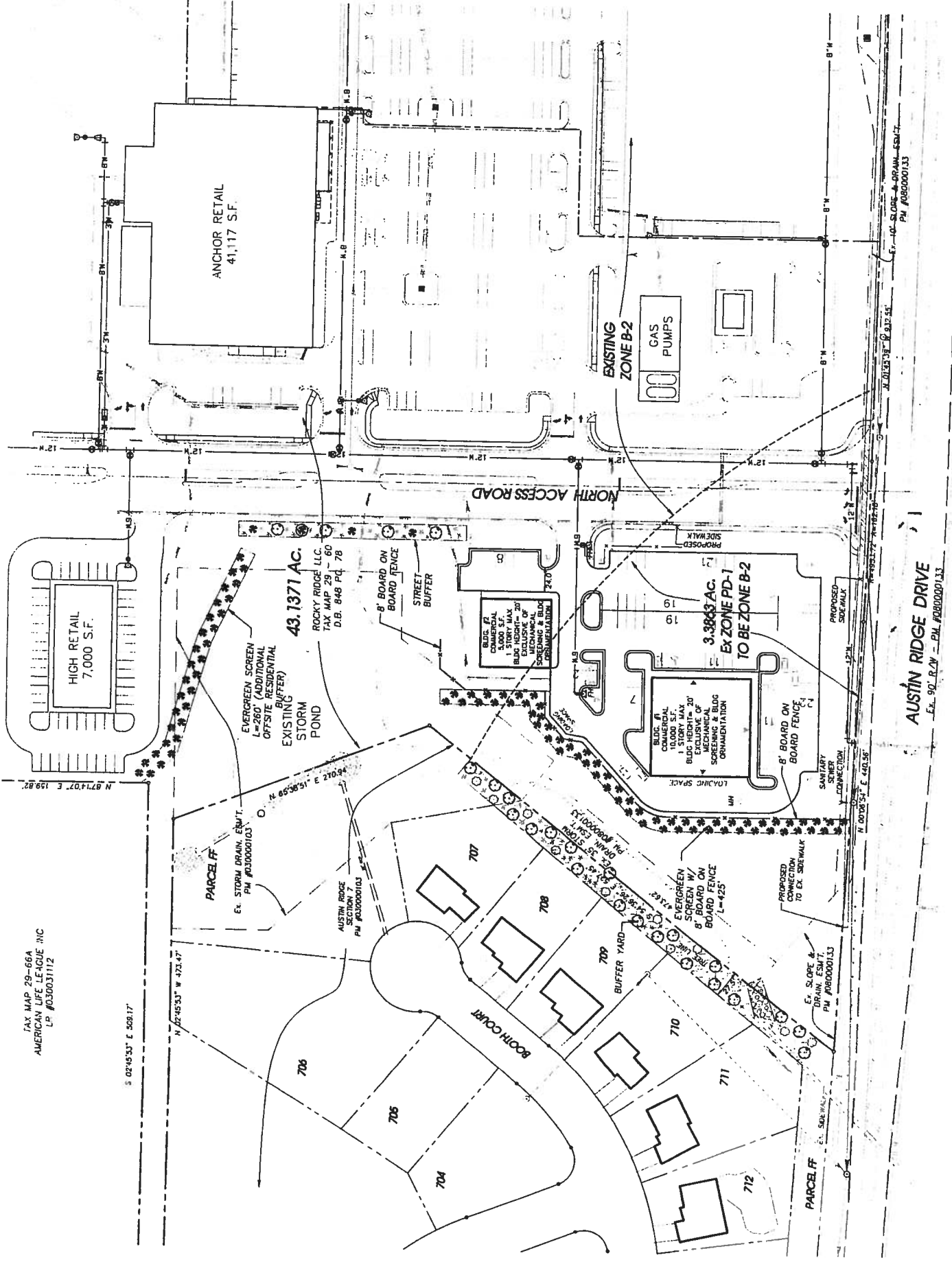
  
H. Clark Leming *by Dkt*

Enclosures

cc: Rick Wolff

TAX MAP 29-66A  
 AMERICAN LIFE LEIGUE INC  
 LP #030031112

S 02°45'33" E 508.17'



**BUFFER & SCREEN LEGEND**

- CANOPY TREE
- UNDERSTORY TREE
- SHRUB

**BUFFER YARD**

- WIDTH= 25' min.
- LENGTH= 45'
- 65 PLANTING UNITS/100' REQUIRED
- PLANTING UNITS REQ'D= 298
- PLANTING UNITS SHOWN= 298

**EVERGREEN SCREEN**

- WIDTH= 15' min.
- LENGTH= 685' TOTAL
- TWO STAGGERED ROWS OF EVERGREEN TREES AT LEAST 10' TALL WHEN PLANTED AND SEPERATED A MINIMUM OF 8'.

**STREET BUFFER**

- WIDTH= 5' min.
- LENGTH= 300'
- ONE ROW OF MIXED EVERGREEN AND CANOPY TREES AT LEAST 10' TALL WHEN PLANTED WITH SHRUBS INTERSPERSED BETWEEN THE TREES

AUSTIN RIDGE DRIVE  
 Ex. 90 R.2V - PL #08000133

ANCHOR RETAIL 41,117 S.F.  
 PM #08000133

EXISTING ZONE B-2  
 GAS PUMPS

3,3843 AC.  
 Ex ZONE PD-1  
 TO BE ZONE B-2

43,1371 AC.  
 ROCKY RIDGE LLC.  
 TAX MAP 29 - 60  
 D.B. 948 Pq. 78

HIGH RETAIL  
 7,000 S.F.

PARCEL FF  
 Ex. STORM DRAIN. EMT.  
 PM #03000103

AUSTIN RIDGE  
 SECTION 7  
 PM #03000103

PARCEL FF  
 Ex. SLOPE &  
 DRAIN. EMT.  
 PM #08000133

PARCEL FF  
 Ex. STORM DRAIN. EMT.  
 PM #03000103

PARCEL FF  
 Ex. STORM DRAIN. EMT.  
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