

STAFFORD COUNTY, VIRGINIA

PROFFER STATEMENT

Applicant: Winding Creek Owner LLC (the “Applicant”)

Property Owner: John J Musselman, Trustee of the Earl F. Musselman Trust (the “Owner”)

Property: Tax Parcel 29-4 (the “Property”)

Rezoning Request: From A-1 to R-1

Project Name: Winding Creek (the “Project”)

Date: May 12, 2017

County File No. RC 16151330
CUP 16151334

1. General Requirements.

(a) The following proffers are being made pursuant to Sections 15.2-2298 and 15.2-2303, et al. of the Code of Virginia (1950), as amended, and Section 28-161, et seq. of the Stafford County Zoning Ordinance. The proffers provided herein are the only proffered conditions offered in this rezoning application, and any prior proffers to which the Property (as generally defined above and shown on the GDP) may be subject to or previously offered with the Applicant’s application or otherwise previously proffered are hereby superseded by these proffers, and further said prior proffers are hereby void and of no further force and effect. In addition and notwithstanding the foregoing, the proffers provided hereunder are conditioned upon and become effective only in the event the Applicant’s rezoning application No. RC 16151330 and associated conditional use permit application 16151334 are approved (including through applicable appeal periods) by the Stafford County Board of Supervisors (the “County”).

(b) Subject to the terms hereunder, the Property will be developed in accordance with that certain generalized development plan entitled “Winding Creek Generalized Development Plan” dated May 2014, as last revised August 29, 2016, with addition of revised sheet 11 dated April 27, 2017, prepared by Bowman Consulting, attached hereto as Exhibit A (the “GDP”), which plan includes a clustered development with a maximum of ninety-seven (97) single family detached units (“Units” or Unit”). The aforesaid number of units are subject to the approval of the Applicant’s companion conditional use permit application #16151334.

(c) For purposes of the final site plan, which will supersede the GDP, proposed parcel lines, parcel sizes, building envelopes and footprints, access points, building sizes, building locations, public road locations, private driveway, road and travel way locations, interparcel

connectors, RPAs and wetland areas, utility locations, storm water management facilities, and dimensions of undeveloped areas shown on the GDP may be relocated and/or amended from time-to-time by the Applicant to address final development, engineering, and design requirements and/or compliance with federal or state agency regulations including, but not limited to, VDOT, DEQ, Army Corps of Engineers, etc., and compliance with the requirements of the County's applicable development regulations and design standards manual.

2. Architecture & Materials. For purposes of the proposed development, the architectural design of the Units shall be in general accordance with the renderings attached hereto as Exhibit B (the "Renderings"). The Renderings are illustrative only and do not depict the final elevations for this Project. In this regard, the Renderings depict (i) a commitment to a general type, character, and quality of architectural design, details and materials; and (ii) the general types of architectural and decorative elements and features. In addition, the Units will specifically include the following:

(a) The front elevation of 75% of the Units will consist of a minimum of 60% brick, natural stone, or cultured stone (excluding doors, windows and garages). All homes will include beaded vinyl and Applicant will offer fiber cement siding as an option to buyers.

(b) The side elevation facing the street of a Unit on a corner lot will have at least two operable windows.

(c) All Units will have brick or stone to grade on any side facing a street (including corner lots).

(d) All Units will include pitched roofs symmetrically sloped no less than 5:12, except that porches and attached sheds may be no less than 2:12 and all Units will avoid continuous roof planes on the front side of dwellings by incorporating gables as depicted on the Renderings.

3. Entrance Features. The Applicant agrees to construct an entrance monument out of brick or stone utilized in the development. The client has attached a rendering which reflects the general architectural features and materials of the entrance sign.

4. Transportation. The Applicant, subject to necessary County and VDOT approvals for the development of the Project, agrees to provide the following in-kind transportation proffers, all as generally shown and noted on the GDP:

(a) The Applicant agrees to dedicate 0.84 acres of right of way along Winding Creek Road to widen the right of way to a width of sixty feet (60'), all in the areas generally shown and noted on the GDP.

(b) The Applicant agrees to dedicate 0.78 acres of right of way for the relocation of Embrey Mill Road, all in the areas generally shown and noted on the GDP.

(c) Subject to the terms and conditions provided herein, the Applicant agrees to provide the following in kind offsite transportation proffers:

(1) the construction of right turn tapers and acceleration lanes off of Winding Creek Road into the southernmost entrance of the Project, all as depicted on the GDP; and

(2) the construction of certain road improvements along Winding Creek Road extending from the end of the northernmost entrance of the Project to the intersection of Winding Creek Road and Flatford and Walpole Streets (approximately 1250 feet), all as generally shown and noted on the GDP (collectively the “Winding Creek Road Improvements”). All Winding Creek Road Improvements shall be designed and constructed in general accordance with the attached GDP and will follow the Virginia Department of Transportation (“VDOT”) RRR guidelines (with waivers potentially required for shoulder widths and pavement radii), and further subject to final County and VDOT review and approval of the construction plans and completed under VDOT permit. With the exception of any temporary construction, private or public storm water easements or other similar easements, the Winding Creek Improvements will be constructed and located within dedicated right of way area, including without limitation any improvements that include retaining walls. The Winding Creek Road Improvements are estimated as approximately One Million Dollars (\$1,000,000) in total costs.

In the event the Applicant is unable to obtain easement approvals and/or right of way area(s) dedication from any third party property owner that are necessary for the construction of the Winding Creek Road Improvements, the Applicant shall petition the County to utilize its condemnation authority to obtain necessary public easements and/or right of way areas to construct said improvements. In this event, the Applicant shall provide the following:

- Written request to the County to utilize its condemnation authority to obtain the subject easements and right of way areas;
- The names of the record owners, the property addresses, tax map parcel numbers for each landowner from whom such right-of-way and/or easements are sought.
- Plats, plans and profiles showing the necessary right-of-way and/or easements to be acquired and showing the details of the proposed transportation improvements to be located on each such property.
- An independent appraisal of the value of the right-of-way and easements to be acquired, and any and all damages to the residue of the involved property, said appraisal to be performed by an appraiser licensed in Virginia and approved by the County.

- A 60-year title search of each involved property.
- Documentation demonstrating to the County's satisfaction Applicant's good faith, best efforts to acquire the right-of-way and/or easements, at a cost of at least the appraised value of the involved property interests.
- A letter of credit acceptable to the County, cash or equivalent (from a financial institution acceptable to the County) in an amount equal to the appraised value of the property to be acquired, and all damages to the residue, together with an amount representing the County's estimate of its cost of condemnation proceedings, in a form permitting the County to draw upon the same as necessary to effectuate the purposes hereof.
- An Agreement signed by Applicant's representative and approved by the County Attorney whereby Applicant agrees to pay all costs of the condemnation, including expert witness fees, court costs, exhibit costs, court reporter fees, attorneys' fees for the Office of the County Attorney or attorney retained by the County, and all other costs associated with the litigation, including appeals. The Agreement shall specifically provide that in the event the property owner is awarded in the condemnation suit more than the appraised value estimated by Applicant's appraiser, Applicant shall pay to the County the amount of the award in excess of the amount represented by the letter of credit or cash deposit within fifteen (15) days of the award.

In the event that the County does not secure access to the public easements or right-of-way areas necessary for the Winding Creek Road Improvements within six (6) months of the Applicant providing all of the preceding information, the Applicant shall be relieved from having to construct the Winding Creek Road Improvements, and thereafter agrees to pay One Million Dollars (\$1,000,000) in total transportation cash proffers, which One Million Dollars (\$1,000,000) shall be payable per residential unit of \$10,309.27 prior to the issuance of a certificate of occupancy for each unit.

In the event the Applicant is able to obtain easements and/or right of way areas necessary to complete the Winding Creek Road Improvements, whether by third party agreements or County condemnation, the Applicant agrees to complete the Winding Creek Road Improvements prior to the County's issuance of the 21st certificate of occupancy permit for the Project.

(d) The Applicant agrees to construct a sidewalk to Winding Creek Road and a painted crosswalk connecting the east and west sides of Winding Creek Road, all in the areas generally shown and noted on the GDP.

(e) The transportation improvements (not otherwise required for the development) and/or dedications of right of way, as provided above under this Section 4, are an in kind transportation proffers for purposes of this rezoning. The dedications described under Sections 4 (a) and (b) shall be provided as part of the first (final & approved) subdivision plan for the Property.

5. Preservation of Open Space. The 10.326 acres of land shown and labeled as “Open Space Parcel E” on the GDP shall be preserved as open space and not developed or disturbed, except for park purposes in the event the County accepts the dedication of said parcel. In this regard, Open Space Parcel E will be dedicated to the County upon the approval of the first section of the final subdivision plan of the Property. In the event the County does not desire to accept the dedication, Open Space Parcel E will be placed in a conservation easement. Notwithstanding the foregoing, in the event the Applicant is unable to obtain the acceptance of a third party holder for the conservation easement, then Open Space Parcel E will be conveyed to the Project’s Homeowners’s association (as described below under Section 7) and encumbered by restrictive covenants that will prohibit the development of said parcel. The fair market value of the dedication and preservation of open space is approximately \$913,875.27.

6. Cash Contributions. For purposes of this rezoning and in addition to other proffers described hereunder, the Applicant agrees to pay \$1,439,557.00 or \$14,840.80 per unit in aggregate cash proffers, all as described in more detail below. These cash proffers are also subject to annual increases to be calculated on a yearly basis commencing two (2) years after the date of final County approval of this proffer statement. Such increases shall be calculated by multiplication of the Marshall-Swift Index and not the Consumer Price Index of the Department of Labor Statistics for the current year by the original per unit cash proffer amount. All cash proffers shall be paid by the Applicant upon the issuance of a final certificate of occupancy by the County for each Unit (e.g. 97 single family detached units).

These voluntary cash proffers, paid by the Applicant to the County, shall be allocated based on the following:

- (a) **Schools:** \$1,266,923.00 (\$13,061.06 per Unit). *
- (b) **Parks & Recreation:** \$0.00
- (c) **Transportation:**\$0.00
- (d) **Libraries:** \$57,519.00 (\$593.00 per Unit)
- (e) **Fire & Rescue:** \$74,151.00 (\$764.44 per Unit)
- (f) **General Government:** \$40,964.00 (\$422.30 per Unit)

* Notwithstanding anything to the contrary under this proffer statement, \$650,000.00 of the total of the abovementioned “Schools” proffer shall be set-aside for North Stafford High School

capital facility improvements so long as such improvements are approved and funded within seven (7) years of the approval of this proffer statement. If the aforesaid does not occur, these funds may be utilized for general Schools capital facility purposes.

7. Covenants. The Applicant, prior to developing the Property, shall encumber the Property with a declaration of conditions, covenants, restrictions, and easements for the purpose of (a) protecting the value and desirability of the property; (b) facilitating the planning and development of the project in a unified and consistent manner; (c) preserving the Open Space Parcel E; and (d) providing for the installation, maintenance, and repair for all landscaping, on-site amenities, open space, other common areas and applicable offsite improvements described above under Section 4 (c). The Applicant will also create a property or homeowner’s association as a non-stock corporation under the laws of Virginia (the “HOA”) that will provide and ensure oversight and structure for services provided, quality standards, intercampus relationships, and common area maintenance.

In addition, for all future property owners abutting the VEPCO easement shown on the GDP, the Applicant will provide each buyer a disclosure notice identifying the fact that overhead power lines may be constructed within the VEPCO easement in the future.

8. Fire Sprinklers in Residential Units. The Applicant agrees to offer as an option to purchasers of any of the Units, but not as a requirement, fire sprinkler systems within said Units. In no event shall these fire sprinkler systems be a requirement for purposes of construction and/or permitting, but rather only an option payable by purchasers of the Units.

9. Environmental Impact Mitigation. The Applicant proffers the following for any lot depicted on the GDP as being located within a Critical Resource Protection Area (“CRPA”):

- (a) Subsequent to the issuance of a building permit and prior to the issuance of an occupancy permit for the construction of a single-family dwelling on any residential lot or parcel with lot lines within the CRPA, a sign shall be installed by the developer identifying the landward limits of the CRPA and notification will be provided to the County Zoning Administrator after completion. Such signs shall conform to the Critical Resource Protection Area Signage Policy and shall be installed at the expense of the developer in accordance with the Critical Resource Protection Area Signage Policy.
- (b) No certificate of occupancy shall be issued for a single-family dwelling on any residential lot or parcel with lot lines within the CRPA until the installation of any required plant materials is completed and documentation of such is submitted to the County Zoning Administrator.
- (c) The deeds for such lots shall include deed restrictions providing the following:
 - i. The property owner shall be responsible for the maintenance and replacement of all vegetation as may be required by the provisions of the County’s Chesapeake Bay Preservation Area Overlay District.

- ii. Plant material within the CRPA shall be tended and maintained in healthy growing condition and free from refuse and debris at all times.
- iii. Diseased plant materials shall be replaced during the next planting season, as may be required by the provisions of the County's Chesapeake Bay Preservation Area Overlay District.
- iv. No certificate of occupancy shall be issued until the installation of any plant materials required by the County's Chesapeake Bay Preservation Area Overlay District is completed and documentation of such is submitted to the County Zoning Administrator.

10. Historic Preservation. The Applicant agrees to perform a Phase 1 Archeology Study on the Property if historical artifacts are discovered during development of the Property, and to perform a Phase 2 Archeology Study on the Property if required by the said Phase 1 Archeology Study.

11. Belmont Museum. The Applicant agrees to pay to the Belmont Museum, upon the approval of the first residential occupancy permit within the Project, the sum of \$30,000.00 for purposes of assisting the museum with any facility improvements or for other general museum purposes.

12. Purchase of Development Rights Program. The Applicant will voluntarily donate and gift the aggregate sum of \$500,000.00 directly to the Stafford County Purchase of Development Rights Program ("PDR Program"). This sum shall be paid to the Board of Supervisors for the PDR Program on or before the issuance of the 50th residential certificate of occupancy permit for the Project. In the event the Applicant fails to make this donation and gift to the PDR Program, the said \$500,000.00 commitment shall convert to a cash proffer obligation ("Cash Proffer Conversion") and shall be due and payment made to the County prior to the issuance of the 51st residential certificate of occupancy permit. The Cash Proffer Conversion, pursuant to the sole discretion of the Board of Supervisors, may be applied to public schools, transportation, parks and recreation, fire and rescue and/or other capital facility programs.

13. Miscellaneous. The Applicant agrees to provide the following proffers:

- (a) Proposed development shall be limited to 97 single-family detached dwelling units.
- (b) Open Space Parcels "A" (outside the VEPCO easement) and "D" shall include a 20-foot street buffer, consisting of a double row of evergreen trees, between residential lots and along the Winding Creek Road right-of-way, as shown on the GDP.
- (c) Open Space Parcel "C" shall include a variable width street buffer, consisting of a double row of evergreen trees, between residential lots and along the Winding

Creek Road right-of-way, to the maximum extent allowed by the lot configuration generally as shown on the GDP.

- (d) Each lot shall contain foundation landscaping and at least one (1) tree shall be provided in the rear yard, with a 1" caliper or 6-8' tall at planting.
- (e) The Applicant will install and construct a tot lot in the general location as shown on the GDP and a picnic/pavilion area, the availability and location of said picnic/pavilion area to be determined at time of final engineering.
- (f) The Applicant agrees to provide a landscape buffer, consisting of a double row of evergreen trees, between Lot 43 and 44 and the adjacent property owner, as shown on sheet 9 of the GDP.

[AUTHORIZED SIGNATURES TO FOLLOW]

APPLICANT ACKNOWLEDGMENT & CONSENT

Winding Creek Owner LLC,
a Virginia limited liability company

By: _____
Name: _____
Title: _____

STATE/Commonwealth of _____,
CITY/COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this ___ day of April, 2017, by _____, _____ of Winding Creek Owner LLC, on behalf of said company.

Notary Public

My Commission expires: _____
Notary Registration number: _____

OWNERS ACKNOWLEDGMENT & CONSENT

The Earl F. Musselman Trust created November 28, 2001

BY: _____
John J. Musselman, Trustee

COMMONWEALTH OF VIRGINIA,
CITY OF FREDERICKSBURG, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2017, by John J. Musselman, Trustee for The Earl F. Musselman Trust created November 28,
2001.

Notary Public

My Commission expires: _____
Notary Registration number: _____

EXHIBIT A

Generalized Development Plan

See attached “Winding Creek Generalized Development Plan” dated May 2014, as last revised August 29, 2016, with addition of revised sheet 11 dated April 27, 2017, and prepared by Bowman Consulting.

EXHIBIT B

Renderings

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