

February 18, 2013

MEMORANDUM TO : Canal Run HOA Board of Directors

FROM : Townhouse Task Force

SUBJECT : Report on the condition of the Townhouse area

### **Background**

At the November 5, 2012 meeting of the Canal Run Homeowner's Association (HOA), the Board of Directors voted unanimously to establish a task force co-chaired by John Price and David August to take a comprehensive look at issues facing the townhouse area located on Swains Lock Ct. The task force was directed to look at the present ownership status of the Townhouse area and to establish a comprehensive document outlining the current standing issues that are going on in the Townhouse area observed during an inspection of the area and to make recommendations as to who is responsible for making repairs for the area. The task force was directed to report back to the Board of Directors with its findings. Mark Hershfield, the Board President, assisted the task force with the development of this report.

In order to fulfill its mission the task force conducted a walking tour along with the HOA President and a townhouse resident of the entire townhouse area in December 2012. The task force also reached out to the Frederick County Community Development Division to obtain documents concerning the townhouse area and to get further information on what is and was planned for the area. The task force reached out to the part of the Community Development Division responsible for Storm water management facilities to get more information on the retention pond in the townhouse area. The task force also reached out to Potomac Edison for information on a non-functioning light in the area and the County Attorney's Office to discuss the handicap access ramp issue. Finally, the task force conducted a walk through with an individual from the Community Development Division in February to verify the findings in the report. Those individuals noted problems in the townhouse area and follow up action is expected on various items below.

## **Historical Overview**

In September 1997, Frederick County approved a plan from PV I, LLC to build Townhouse Phase 1T, which was to consist of 36 lots. By 2001, R&J Builders, Inc. had completed the 12 lot section of the townhouse area, which backs up to Ballenger Creek Pike. In June 2005, Frederick County approved a revised plan from PV I, LLC labeled as Phase 6B. Phase 6B included a revised plan for the townhouse area and the proposed lots adjacent to the townhouse area, which will be referred to as the “water tower lots.”

Phase 6B included several changes to the Phase 1T plan. Most significantly the revised plan decreased the number of townhouse lots from 36 to 24, eliminating the row of townhouses that would back up to US Route 15 and decreasing the number of lots on the right side of the court facing US Route 15. As will be discussed below, the revised plan also made changes to multiple sidewalk proposals in the original plan. The remaining units were built by Drees Homes. These units were constructed between 2009 and 2011 and the last townhouse unit was sold to its initial owner in December 2011.

At the time of this report, all of construction in the townhouse area has been completed. According to the developer, all of the common areas are now the property of the HOA. The task force verified with the county that the construction bond for this area, however, has not been released. Therefore, the developer is still responsible for top coating the street and sidewalk repair along with other obligations contained in the revised plan (as will be discussed below). The county indicated that the bond release would not take place until the entire Phase 6B project is completed, which includes the water tower lots. Construction on the water tower lots has not yet commenced.

## **Findings/Observations**

### **Sidewalk/Road Issues**

#### **1 Sidewalk Ramps**

The Americans with Disabilities Act (ADA) requires that new and altered facilities be accessible. Title II of the ADA covers sidewalk and street construction and transit accessibility, referencing the ADA Accessibility Guidelines or the Uniform Federal Accessibility Standards for new construction and alterations undertaken by or on behalf of a state or local government. The Department of Justice title II regulation specifically requires that curb ramps be provided when sidewalks or streets are newly constructed or altered.

No access ramps exist in the townhouse area. Neither the construction plan for Phase 1T or Phase 6B indicate that access ramps should be built in this area. In fact, the Phase 6B plan does not include access ramps for the water tower lots even though access ramps exist in all the other areas with single family homes. According to the Frederick County Community Development Division the construction drawings are supposed to contain all elements required by local, state and Federal law. The Community Development Division staff recommended that the HOA discuss this issue with staff in the County Attorney's Office to ensure that the areas comply with the ADA. A preliminary conversation has taken place on this issue. All parties appear to be very concerned with this situation and resolution of this issue has been identified as a high priority.

Currently, at least one disabled family lives in the townhouse area. The lack of availability of such ramps has caused hardship to this family and causes problems for families with young children who use strollers.

#### **2 Uneven Sidewalks**

Upon an inspection of the townhouse area it was noticed that sidewalks located in front of Unit 2190 are uneven and one is lifting up. Such uneven sidewalks are an impediment to foot traffic and a general eye sore to the community. Other sidewalk areas were observed to be in a condition in need of repairs (such a fact is to be expected as some of the sidewalks have existed for over a decade and sidewalks need periodic maintenance).



### **3 Missing Sidewalks**

While the townhouse area has sidewalks immediately in front of each unit, there is no sidewalk leading into Swains Lock Ct. This is an issue because the bus stop for this section of the community is located at the beginning of Swains Lock Ct. To get to the bus stop children have to walk in the street. Therefore, the lack of sidewalk extensions creates a safety hazard in this area.

The Phase 1T plan included a sidewalk leading into the townhouse area on the side of the street towards the water tower lots. The plan also included a small area of sidewalk along the side of the proposed units on the left side of the court facing US Route 15. For some reason, which could not be explained by the Community Development Division staff, these sidewalks were removed from the Phase 6B plan. The plan includes no explanation for this change. In fact, Community Development Division staff noted that sidewalks are not supposed to “dead end” and the sidewalks are, as a general rule, supposed to be continuous in nature. Community Development Division staff took note of this situation upon inspection.



#### **4 Potential sinkhole in the sidewalk**

Residents have identified an area of the sidewalk in front of the block of townhouses on the left hand side of the court where a sinkhole existed during construction. Residents are concerned that the area has never been fixed. The existence of a sinkhole could result in damage to the sidewalk and could pose an ongoing safety risk. Community Development Division staff appeared concerned with this area of sidewalk and the fact that the area already appeared to be sinking in slightly.

#### **5 Additional Blacktop Located behind Townhouses**

A running path was established going through the townhouse area. Due to planning changes a different blacktopped path was constructed leaving an unfinished path in the community. While there is no danger imposed by this extra path, the path itself serves no purpose to the community. Community Development Division staff took note of this path upon inspection.



## 6 Top Coating

At the present time the townhouse area has not been top coated. Due to the lack of top coating the street appears to be in disrepair and the uneven nature has led to problems for vehicles. While the developer has previously pledged to top coat the area in the spring of 2012, there is concern that the top coating may be delayed until the lots under the water tower have been developed.

This concern has been validated by the Frederick County Community Development Division as Phase 6B not only includes the townhouse area but the lots below the water tower. Therefore, top coating will not take place until the entire Phase is completed (the same standard applies to all other phases in Canal Run). Given the fact that no construction has begun in the water tower lots it could be years before the townhouse area is top coated.

During the inspection, individuals from the Community Development Division noted that two inlets on the far right side of the parking lot are in disrepair. They noted that this could cause problems for any car that parked in front of the inlet. The inspectors indicated that repairs to the inlets would have to take place prior to the top coating and that the needed repair could be extensive.



## Landscaping Issues

### 1 Retention Pond (Biofilter) and Accompanying area

There is a retention pond located in the corner of Swains Lock Ct. The Phase IT plan identifies it as a water quality facility and the Phase 6B plan did not alter this designation. After discussions with the Frederick County Community Development Division responsible for Storm water management facilities, the retention pond was identified as a biofilter, which was transferred over to the HOA (most likely in April 2010 along with the other common areas in the community). The biofilter has lots of over growth and trees in the area. Some of the trees appear to be dead and take away from the aesthetics of the area. In addition, garbage is collecting in this area.

In close proximity to the biofilter there is a small area of land that appears to have never been landscaped. A review of landscaping maps provided by the developer to the HOA does not indicate any reason why this area is not subject to general land maintenance practices (i.e. lawn mowing).



## **2 Sound Barrier (Separation wall between Townhouses and US Route 15)**

Per the original building maps for the townhouse area, the property bordering US Route 15 was supposed to be a line of townhouse, but due to planning changes that took place prior to the submission of the Phase 6B plan they were not built. In their place a large hill was created to separate US Route 15 from the Townhouse area. This hill appears to have never been landscaped at all. The map provided by the developer does not clarify who owns this area. The Phase 6B plan, however, indicates that the entire sound barrier is common area that has been transferred over to the HOA. The area is full of overgrowth and does not match the surrounding character of the community.



## **3 Preexisting trees**

According to residents that have lived in the townhouse area for over a decade, there previously was a row of trees planted in front of the sound barrier. According to these same residents, the trees were accidentally removed by landscapers and were never replaced. An inspection of the area indicates that only one tree (one that is not in the best of health) currently remains in this area.

A review of Page 9 of the Phase 6B plan confirms that there are supposed to be three red maple trees in front of the sound barrier (only one exists). For some reason, two trees were planted but have not yet been replaced.



#### **4 Additional trees/vegetation**

The townhouse area is objectively not an area with much vegetation. A review of Page 9 of the Phase 6B plan indicates that this should not be the case. All total the townhouse area and water tower lots should have 454 plants/trees. Of significance, most of this vegetation is supposed to exist in the townhouse area, yet is not presently in place. This includes about a quarter of the plants, which are supposed to be placed in the easement between the original row of townhouse units in Ballenger Creek Pike. This also includes a Maple tree next to the court of townhouses on the left side of the court and additional vegetation in areas all around the court.

Vegetation is essential to the aesthetics of any community. The lack of vegetation, even though some townhouses have been completed for over thirteen years, hinders the resale value of the units. The existing vegetation simply does not come close to matching what is ultimately planned for this area of the community.



#### **5 Tree Trimming**

An inspection of the current trees in the townhouse area indicates that they most likely have never been pruned and extra growth has been noted. The lack of proper maintenance has taken away from the aesthetics of the trees.

## **6 Common area next to Unit 2160**

The Common area next to Lot 2160 upon inspection appears to have never been completed. The area looks to have never had sod put down and is currently covered in weed growth. An inspection of all of the maps does not explain why this particular area has not been treated. The area has been transferred over to the HOA according to the developer.



## **7 Field Located to left of Townhouse area**

An inspection of the field to the left of the Townhouse area shows it to be an area that has not received appropriate landscaping services. The lack of services has led to substantial overgrowth. It is not clear why an area indicated on the landscaping map as belonging to the HOA has not been mowed over the course of the years. Since the area is listed on the map provided to the landscaping company, the area should be maintained going forward.

## **8 Entrance to the townhouse area**

The Beautification Committee is currently looking at proposals to improve the

entrance to the townhouse area. Specifically, the Committee is looking into pricing information for a new entrance sign and has engaged in conversations with the landscaping company about planting vegetation around the sign. According to residents, vegetation existed around the signs, but was removed and not replaced by community members in 2011.

All indications are that Insignia Homes will begin developing the water tower lots in the near future. To enter that area of the community, prospective buyers will have to pass through the current entrance to the townhouse area. Improvements to that area of the community may assist Insignia Homes in selling the water tower lots.

## **Additional Safety Issues**

### **1 Lamp Post in corner of Swains Lock Ct.**

In the far corner of the townhouse area in the vicinity of the retention pond is a lamp post that is currently not functioning and appears to the naked eye to be leaning in one direction. Through conversations with multiple residents, it has been indicated that this light has not functioned for years most likely dating back to 2007. The cause of this issue has not been verified. However, resident accounts and the Phase 6B plans provide a likely explanation for what happened to the light.

The Phase 6B plan indicates that certain water and sewage infrastructure had to be removed due to the change in the number of units on the right side of the court. Resident accounts corroborate that water and sewage vehicles were present (and doing work) right before the lamp post was knocked out of service. It is not clear for whom the individuals were working for, but most likely due to the services provided they were agents of the developer (the other alternative is they were agents of the builder at that time, Drees Homes). The one thing that is clear is that the lamp post outage predated the transfer of ownership to the HOA and should have been repaired prior to the transfer.

Potomac Edison is aware that the light is not functioning and has been aware so for some time. The task force began a conversation with Potomac Edison about fixing the light. Since Potomac Edison had difficulty in tracking down the record for when the outage was first reported and could not verify if and when the HOA stopped being billed for the light, the task force recommended to Potomac Edison that in exchange for the light being fixed free of charge, the HOA would not attempt to recoup any fees that might have been charged while the light was not

working. On February 14th, a representative from Potomac Edison agreed to the proposal and stated that repair of the light would begin the week of February 18th. This item will be considered closed upon the repair being completed.

## 2 Yard inlet located behind Unit 2160

There is a yard inlet that is located behind Unit 2160. After examination the grate was just placed on top of a deep concrete drain. The grate can be lifted and removed with ease (as task force members did with ease during the visit to the



area). The existence of such a grate poses a significant safety risk to the community. The grate is listed on the Phase 1T and Phase 6B plans. The Community Development Division staff has repeatedly stated that all amenities and structure indicated on the plan must be completed and inspected prior to bond release. The inspectors from the Community Development Division were also note sure of the purpose of the yard inlet and listed it as an item to follow up on.



### 3 Field Located to left of Townhouse area

This field is used by children in the townhouse area. This field borders Ballenger Creek Pike. Ballenger Creek Pike is a high traffic road. There does not exist any protection, i.e. a fence or a wall between this field and the road. As this area is used primarily by children, there is a risk to the safety of children. According to the Phase 6B plan, this area will not be subject to further development and no such barrier is identified on the plan.

### 4 Verizon Box 2183 (Located between Unit 2161 & 2163)

Residents indicate that children have been playing on this box and it is coming out of the ground. Upon inspection by the task force, the box does not appear to be properly placed in the area and therefore poses a safety risk to the residents. Task force members reached out to Verizon about the box. On February 15th, Verizon staff came out and fixed the box.



## **Recommendations**

- 1 The HOA should continue a dialogue with the Frederick County Community Development Division to make the responsible parties aware of the issues with sidewalks in the townhouse area.
- 2 Due to the presence of disabled individuals, the HOA should immediately work with Frederick County to address the issue of the lack of access ramps and work with the County to ensure the developer puts in place the appropriate ramps.
- 3 The HOA should work with Frederick County staff to explore why a sidewalk does not go to the end of Swains Lock Ct. as well as the other sidewalk that was removed from the revised plan and, if possible, ensure that the developer constructs a sidewalk prior to bond release.
- 4 The HOA should request to participate in any inspection where the developer will be released from bond for this area to ensure that the problems identified in this report are resolved prior to the bond release.
- 5 The HOA should have Frederick County officials inspect the biofilter and make recommendations to the HOA on how to increase the aesthetic value of the area.
- 6 Prior to the inspection, the HOA, through the Beautification Committee, should sponsor a clean up day focused on cleaning up the biofilter area.
- 7 The HOA should work with the landscaping company to ensure that all common areas in the townhouse area are receiving the proper landscaping treatment going forward.
- 8 The HOA should create a plan to enhance the aesthetics of the sound barrier in the townhouse area.
- 9 The HOA should work with Frederick County to ensure that all vegetation listed in Page 9 of the Phase 6B, which is associated with the townhouse area, be put in place immediately, including the replacement of trees that have been removed at no fault of the HOA.
- 10 The HOA, through the Beautification Committee, should work with the landscaping company to develop a plan to prune and maintain vegetation in

the townhouse area.

- 11 The HOA should work with Frederick County to ensure that the common area near Unit 2160 is of the same quality as the surrounding areas or alternatively develop a plan to at a minimum replace the overgrowth with flowers or plants.
- 12 The HOA, through the Beautification Committee, should engage in conversations with Insignia Homes and the Developer to create a plan to improve the entrance to the Townhouse area with the goal of agreeing to share the expenses for such improvements.
- 13 The HOA should work with the Community Development Division to ensure that the Developer secures the yard inlet behind Unit 2160.
- 14 The HOA should look into the cost of erecting a fence or wall between a field and Ballenger Creek Pike.