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6032-16-8625; 6032-27-2904; 6032-18-1323; 6032-19-2488; 6032-09-6779;  
6022-98-3780; 6022-89-5778; 6022-79-9295; 6022-79-0855; 6022-78-5738;  
6022-69-3132; 6022-68-8449; 6022-58-8260; 6022-57-4199; 6022-67-3088;  
6022-77-5780; 6022-76-7256; 6022-66-9552; 6022-96-1121; 6032-06-3415



**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
APPLE MANOR SUBDIVISION**

THIS Amended and Restated Declaration of Covenants, Conditions and Restrictions for Apple Manor Subdivision ("Restated Declaration") is made this 28<sup>th</sup> day of September, 2010, by and between DON NEESE, MELINDA NEESE, MEHRMAH PAYANDEH, ANDREW B. BELLINGHAM, DACY C. BELLINGHAM, THE MELANIE FEIN MANAGEMENT TRUST, MELANIE FEIN, TRUSTEE, JAMES REES, JOE VERGA, KAY BRADY, JOAN DUSZKA, DARRELL DUSZKA, FRED HANSCOM, CAROLYN LUMB, ALAN LUMB, JON NIXON and MONICA NIXON (collectively, the "Owners").

WHEREAS, pursuant to a Declaration of Covenants, Conditions and Restrictions Affecting Apple Manor Subdivision (Formerly Known as Leeds Manor Orchard Subdivision) dated February 23, 1995, and recorded February 24, 1995, among the land records of Fauquier County, Virginia in Deed Book 735 at Page 84 (the "Original Declaration"), Virginia Beef Corporation, a Virginia corporation (the "Original Declarant") subjected to the terms and conditions thereof certain lots depicted on a plat entitled "Boundary Line Adjustment Plat (Plat Two) on Apple Manor Subdivision" prepared by James H. Harris and Associates, Inc., dated April 30, 1993, and recorded with an Owner's Consent Statement, such plat recorded among the aforesaid land records in Deed Book 696 at Pages 1546-1578 (said lots depicted on the aforesaid plat and the underlying land collectively are hereinafter referred to as the "Property");

WHEREAS, the Original Declaration was amended by a Deed of Modification of Covenants, Conditions and Restrictions Affecting Apple Manor Subdivision (Formerly known as

September 22, 2010

- 1 -

*Walsh Colucci Et AL  
43/10 Prince William Pk W  
Prince William Va 22192  
Colew Park 1 Ste 300*

**EXAMINED &  
RETURNED**

Leeds Manor Subdivision) dated July 27, 1995, and recorded July 28, 1995, among the land records of Fauquier County, Virginia in Deed Book 741 at Page 906, and later amended by a Deed of Modification of Covenants, Conditions and Restrictions Affecting Apple Manor Subdivision (Formerly Known as Leeds Manor Subdivision) dated May 9, 1997, and recorded June 9, 1997, among the aforesaid land records in Deed Book 779 at Page 1121 (collectively, the "Amendments") (the Original Declaration and the Amendments, collectively are hereinafter referred to as the "Existing Declaration");

WHEREAS, a portion of the Property has been re-subdivided creating new lots duly dedicated, platted and recorded in Deed Book 1279 at Page 616 (Lot 4R-1 Revised), in Deed Book 1279 at Page 653 (Lots 7R-1A, 7R-1B and 7R-1C), in Deed Book 1279 at Page 645 (Lots 8A, 8B and 8C) and in Deed Book 1279 at Page 636 (Lots 9R-1A and 9R-1B), among the land records of Fauquier County, Virginia, and such re-subdivision is hereby ratified;

WHEREAS the lots comprising the Property are depicted on a plat prepared by Carson Ashley entitled "Exhibit Showing Apple Manor Subdivision", and dated September 1, 2010 (hereinafter the "Plat");

WHEREAS, all of the lots within the Property have been conveyed from the Original Declarant to the Owners;

WHEREAS, the Existing Declaration provides that the terms and conditions thereof may be changed or terminated in whole or in part by recordation of an instrument signed by the then Owners of two-thirds (2/3) of the lots (with one vote per Lot) in the Property; and

WHEREAS, the undersigned Owners, representing <sup>sixty eight</sup>    percent (68%) of the Lots desire to amend and restate the terms and conditions of the Existing Declaration as herein provided;

September 22, 2010

- 2 -

NOW, THEREFORE, the undersigned, for and on behalf of the parties, constituting the owners of no less than two-thirds of all of the lots within the Property as of the date hereof, do hereby amend and restate the terms and conditions of the Existing Declaration, with the intent that the Existing Declaration shall have no further force and effect and that henceforth the Property shall be and hereby is subjected to this Restated Declaration, and the terms and conditions hereof shall be covenants deemed to run with the land, as follows:

1. The following definitions shall be applicable throughout this Restated Declaration:

1a. "Back Lots" shall mean and refer to collectively those lots making up a portion of the Property that are duly dedicated, platted and recorded in Deed Book 1279 at Page 653 (Lots 7R-1A, 7R-1B and 7R-1C), in Deed Book 1279 at Page 645 (Lots 8A, 8B and 8C) and in Deed Book 1279 at Page 636 (only Lots 9R-1A), among the land records of Fauquier County, Virginia.

1b. "Back Road" shall mean and refer to the easement reserved for the exclusive benefit of the Back Lots in the Road Maintenance Agreement, as defined in Subparagraph 1j hereof.

1c. "Lot" shall mean and refer to each of the lots comprising the Property as reflected on the Plat, including the Back Lots.

1d. "Lot Owner" or "Owner" shall mean and refer to the Owners of Lots comprising the Property, their respective heirs, successors and assigns. The current Lot Owners or Owners are identified as the following individuals: Lot Numbers 1R and 2R: Don Neese and Melinda Neese; Lots 3, 4R-1 Revised, 5R, 6R, 7R-1A, 7R-1B, 7R-1C, 8A, 8B, 8C, 9R-1A and 9R-1B: Mehrmah Payandeh; Lot 10: Andrew and Dacy Bellingham; Lots 11R, 16, 17R & 20R: The Melanie Fein Management Trust, Melanie Fein, Trustee; Lot 12R: James Reese; Lot 13: Joe Verga and Kay Brady; Lot 14: Joan Duszka and Darrell Duszka; Lot 15: Fred Hanscom; Lot 18R: Carolyn Lumb and Alan Lumb; Lot 19R: Jon Nixon and Monica Nixon.

September 22, 2010

- 3 -

1e. "Serviced Lot" shall mean and refer to Lots 2R, 3R, 4R-1, Lot 9R-1B, 11R, 12R, 13, 15, 16, 17R, 18R, 19R. The term Serviced Lot shall not include lots 1R, 14 and 20R.

1f. "Partially Serviced Lot" shall mean and refer to lots 5R, 6R, 7R-1A, 7R-1B, 7R-1C, 8A, 8B, 8C, 9R-1A and 10R.

1g. "Non-serviced Lot" shall mean and refer to any lot that borders State Route 688, but not Apple Manor Road, and specifically lots 1R, 14 and 20.

1h. "Road Easement" shall mean and refer to the easement fifty feet (50') in width as shown on the Plat and identified thereon as "50' Wide Ingress/Egress & Utility Easement Hereby Granted", with the exception of that portion identified on the Plat and labeled "Road Easement Hereby Vacated", which portion is vacated as provided below.

1i. "Road Fee" shall mean and refer to the amount each Owner of a Serviced Lot and Partially Serviced Lot shall pay annually per Lot owned to a road maintenance fund as provided below. Serviced Lots shall pay the established Road Fee. Partially Serviced Lots shall be obligated to pay the Road Fee at one-half (1/2) the established Road Fee at such time as the earlier of i) the construction of a home on such a Lot commences if no home is constructed as of the date of the adoption of this Restated Declaration, or ii) the adoption of this Restated Declaration if a part-time or permanent home exists on the Partially Serviced Lot at the time this Restated Declaration is adopted.

1j. "Road Maintenance Agreement" shall mean and refer to a Declaration of Ingress/Egress Easement and Road Maintenance Agreement recorded in Deed Book 1298 at Pages 1544 through 1553 among the land records of Fauquier County, Virginia, which specifies the road maintenance obligations attributable to the Back Lots as identified therein and for an easement described therein, such easement shown on an exhibit attached thereto.

2. The Lots within the Property shall be used for single family residential, limited agricultural, and/or recreational purposes only, as more particularly described herein. Limited forestry pursuits will be permitted only on Lots 3R, 4R-1 (Revised), 5R, 6R, 7R-1A, 7R-1B, 7R-1C, 8A, 8B, 8C, 9R-1A, 9R-1B, and 10R provided that selective harvesting of individual trees will not be harmful to the integrity of the forest and the harvest will improve the health of the forest. There shall be no clear cutting on any Lots except to establish a house site, access roads or outbuildings. Limited clear cutting is permitted on Lots 7R-1A, 7R-1B, 7R-1C, 8A, 8B and 8C for an orchard or pasture. No live trees will be harvested for timber within the following areas: i) one-hundred (100) feet of the common boundary lines of Lots 8B and 10R, ii) one-hundred (100) feet of the common boundary lines of Lots 8C and 10R, iii) one-hundred (100) feet of the common boundary lines of Lots 9R-1A and 10R, and iv) one-hundred (100) feet of the common boundary lines of Lots 9R-1B and 10R. Prior to commencement of any selective harvesting of individual trees as allowed by this provision, the Lot Owner shall notify the Road Maintenance Committee, as defined below, of the selective harvesting to be conducted and such Owner shall pay an amount mutually agreed upon by the Lot Owner and the Road Maintenance Committee, such amount to be held in escrow by the Road Maintenance Committee; said escrow amount shall be used, immediately upon completion of such timber harvesting, to restore that portion of the Road Easement affected by the timbering equipment to its original pre-timbering condition, including grading and additional gravel, if necessary, with any amount remaining to be returned to such Owner.

3. An easement for the purposes of ingress and egress to and from Virginia Route 688 and the construction, installation, operation and maintenance of public utility easements is hereby reserved over the Road Easement for the benefit of all Lot Owners. That portion of the

easement reserved by the Existing Declaration that is identified as "Road Easement Hereby Vacated" on the attached Plat is hereby vacated, and the consent and approval of such vacation is shown by the signatures and seals affixed to this Restated Declaration of the Owners of more than two-thirds (2/3) of the Lots (with one vote per Lot). No fencing, gates or obstruction may be placed in or across the Road Easement unless the Owners of all Lots (except Lots 1R and 20R) behind said fencing, gates or obstruction agree in writing. The gates may be locked only upon the written agreement of the Owners of all of the Lots behind the said fencing and gates. For the purposes of this Restated Declaration, "behind" shall mean and refer to those Lots that lie on the side opposite of any fence, gate or obstruction from the entrance to Apple Manor Subdivision at State Route 688. Once a gate has been established by a group of Lot Owners as provided herein, the Road Easement behind said gate shall be for exclusive use of those Owners behind said gate for so long as they maintain the gate and the Road Maintenance Committee shall not be required to maintain that section of the Road Easement during such period. Any gate, fencing or obstruction across the Road Easement may be removed by any Owner of a Lot behind such gate, fencing or other obstruction if it is not approved in writing by the Owner(s) of all of the Lots behind such obstruction, or if one of the Owners of a lot behind such obstruction revokes an earlier approval of the obstruction, and the Lot Owner who erected such obstruction shall have no recourse at law or in equity against the individual or entity arising out of their removal of such obstruction.

3a. Animals belonging to Lot Owners may be moved through or across the Road Easement but may not be kept, stored or grazed within the Road Easement.

3b. The Road Easement may be used by the Lot Owners and their guests, for limited recreational purposes which specifically include, and are limited to, pedestrian travel and

September 22, 2010

- 6 -

bicycles. Only that portion of Apple Manor Road from the entrance of the property at Route 688 to the southern property corner of Lot 3 and that portion of Audubon Trail from Apple Manor Road to the corner of Lot 14 may be used by Owners, and their guests for horseback riding. Horseback riding on other portions of the Road Easement may be done only with permission of an Owner of the Lot subject to those portions of the Road Easement, which may be granted or withdrawn at any time. Any Lot Owner who uses or allows his guest to use any portion of the Road Easement for limited recreational purposes or horseback riding does so at his or her own risk, and agrees to hold all other Lot Owners harmless from any injury or loss arising from such use and further pledges his or her Lot to cover any such liability. Notwithstanding the foregoing, the use of the Road Easement for commercial purposes associated with a horse stable operation within the property or any other commercial operation within the Property shall be prohibited.

3c. The Back Road is not subject to the terms of this Restated Declaration and the use of the Back Road is restricted to the terms of the separate Road Maintenance Agreement, and the reference to such agreement herein does not create a right of ingress and egress over the Back Road for any Lot Owner or member of the public.

4. The maintenance and repair of the Road Easement shall be at the expense of the Owners of Serviced Lots and Partially Serviced Lots pursuant to the provisions herein. Owners of Non-serviced Lots shall not incur fees for those Non-serviced Lots and shall not be entitled to vote for the members of the Road Maintenance Committee. The initial annual amount of the Road Fee for each Owner of a Serviced Lot shall be \$500, and the corresponding fee for Partially Serviced Lots shall be half (1/2) that amount, which shall be paid to the Road Maintenance Committee and deposited in a federally insured bank account dedicated solely to a road maintenance fund for the benefit of the Property. The Road Maintenance Committee shall

inform the Lot Owners in writing annually as to where such payment shall be directed. A late fee of \$50.00 per month shall be due for any balance of the Road Fee not paid by the end of January. The Road Fee shall be due on January 1 of each year and collected in advance. The Road Maintenance Committee shall inform all Lot Owners in writing (including by electronic mail) of the names of any Lot Owners that have failed to pay the Road Fee. Further, the Road Fee may be adjusted upward or downward, as needed, by the vote of the Owners of a majority of the Lots that have paid the prior and current years Road Fee, with the date of recordation of this Declaration as the starting point for the purpose of determining whether Serviced Lot Owners' accounts are current, with Lot Owners entitled to two votes per Serviced Lot owned and one vote per Partially Serviced Lot owned.

A Road Maintenance Committee consisting of up to three (3) Lot Owners of Serviced Lots and Partially Serviced Lots that are obligated to pay a Road Fee shall be established which shall use the road maintenance fund to cover the costs of the Work, as defined below; in order to be eligible for service on the Road Maintenance Committee, a Lot Owner shall be current in their prior and current Road Fees. The Road Maintenance Committee shall administer the road maintenance program for the Property as a whole which shall include the maintenance (including snow removal up to any driveway on a lot with a permanent residence), repair, re-graveling or replacement of any roadway (including shoulders, if any) within the Road Easement, maintenance and repair of drainage ditches in the Road Easement, and maintenance of areas of the Road Easement outside of any roadway or drainage ditch necessary for the proper functioning of the roadway within the Road Easement (collectively the "Work"). The Road Maintenance Committee shall not be obligated to perform any Work on Apple Manor Road after it intersects the common property line of Lots 3R and 4R-1 (Revised) and heads in a north-

easterly direction, nor shall it be obligated to perform any Work on Audubon Trail after it intersects with Orchard Hill Lane, nor shall it be obligated to perform any Work on Orchard Hill Lane. The Road Maintenance Committee is empowered to contract with an insured third party for the Work on behalf of the Lot Owners. The Road Maintenance Committee shall procure insurance, if necessary, related to its obligations hereunder. If a Lot Owner(s) has/have erected a gate across the Road Easement in accordance with the terms of this Restated Declaration, the Road Maintenance Committee shall have no obligation to maintain the area behind such gate during the period when the gate is in place; during such period, except for those Lot Owners requiring access to their Lot over that portion of the Road Easement behind a gate, none of the Lot Owners or their guests shall have a right of recreation or ingress or egress over that portion of the Road Easement behind a gate without permission of a lot owner behind such gate. If maintenance is necessary for safe and reasonable ingress and egress on the Road Easement behind the gate, or on a portion of the Road Easement where the Road Maintenance Committee is not required to perform Work pursuant to the provisions hereof, the Owners of such Lots behind the gate shall be responsible equally for the reasonable cost of the maintenance of that portion of the Road Easement. Furthermore, regardless of whether a gate is erected, for those portions of the Road Easement where the Road Maintenance Committee is not obligated to perform Work, the Road Easement may only be used by those Lot Owners (and their guests) that travel over it as a means of accessing their Lot, unless express permission otherwise is given by the Lot Owner whose Lot have frontage on such portion of the Road Easement. Any Lot Owner voluntarily performing Work to any portion of the Road Easement behind a gate shall do so at his or her own risk, and agrees to hold all other Lot Owners harmless from any injury or loss arising from performance of the Work. Any downed trees affecting the Road Easement shall be

September 22, 2010

- 9 -

promptly removed (i) by the Road Maintenance Committee in portions of the Road Easement that it maintains and (ii) by the Lot Owner whose tree has fallen in any other portion of the Road Easement.

4a. Volunteer performance of the Work to the Road Easement by Lot Owners or others requires written approval from the Road Maintenance Committee in advance. Such Work on a volunteer basis may not be done in lieu of the payment of the Road Fee. Any Lot Owner voluntarily performing Work to the Road Easement shall do so at his or her own risk, and agrees to hold all other Lot Owners harmless from any injury or loss arising from performance of the Work.

4b. The Road Maintenance Committee shall determine the Work to be performed and inform lot owners of the Work to be performed with available funds. The members of the Road Maintenance Committee shall be elected annually by the Owners of the Serviced Lots and Partially Serviced Lots who have paid the prior and current years Road Fee, and who are present, or provide a proxy, at a meeting called for that purpose upon thirty (30) days advance notice. The ownership of a Serviced Lot shall create the right to cast two votes for each Serviced Lot and one vote for each Partially Serviced Lots that has paid the prior and current year Road Fees. Proxies shall conform to the requirements of Virginia Code Section 13.1-847 (B). Up to three (3) nominees, receiving the most votes in a single round of balloting shall be elected to the Road Maintenance Committee for a term of one (1) year.

4c. Each Lot Owner shall be responsible for mowing the grass within the Road Easement located on each Lot that he or she owns, provided that Lot Owners may enter into an agreement with the Road Maintenance Committee whereby such Committee would be responsible for this mowing in return for compensation.

September 22, 2010

- 10 -

5. All buildings shall be set back as required by Fauquier County Zoning Ordinances for any front, side or rear Lot lines. Additional irrevocable setback line and building setback line restrictions affecting Lot 11R are contained in paragraph 27.

6. All Lot Owners are responsible for installation and maintenance of their own septic and water supply systems. Any such system shall comply with all applicable laws, rules, and regulations of the Commonwealth of Virginia and Fauquier County, Virginia. Each Lot Owner shall obtain property liability insurance that covers the entirety of each Lot he or she owns, including that portion within the Road Easement.

7. The annual meeting for the election of the Road Maintenance Committee shall be called by any member of the committee and shall be scheduled to take place each and every year between April 1 and June 30. Notice shall be given by email or regular mail sent to the address of record for each Lot Owner kept by the Fauquier County Office of the Tax Assessor, no less than thirty (30) days before the meeting. If the annual meeting of the committee is not called by a member thereof by May 15 of any year, any Lot Owner entitled to vote in the election for such committee may call for such meeting by giving notice in the same manner as provided in this paragraph. At the annual meeting the Road Maintenance Committee shall provide a summary of the income, expenditures and balance of the road maintenance fund. No votes may be taken on any subject not included in the notice, except that any Lot Owner entitled to vote in the election for the committee shall have the right to bring a matter to vote at the annual meeting of the committee by providing written notice of the issue to be voted on to any member of the committee on or before March 1 of any year.

All decisions of the Road Maintenance Committee shall be made in good faith and in accordance with the terms of this Amended Declaration. The remedy for a finding by a majority

of Lot Owners (one vote per Lot owned) entitled to vote in the committee that a decision was not made in good faith shall be limited to such decision being invalidated. No member of the Road Maintenance Committee shall be personally liable for any decision made.

8. No outbuilding, basement, tent, shack, garage, mobile home, shed, barn or temporary building of any kind shall be used as a residence, either temporarily or permanently.

9. Erosion control practices as prescribed by County authorities shall be adhered to during and after construction.

10. During construction of any buildings on the Lots, the removal of mud and debris tracked onto the Road Easement shall be the responsibility of the Owner of the Lot under such construction. Each Lot Owner, upon completion of such construction, shall be individually responsible for immediately restoring the Road Easement along side the property to the standard of the improved roads in the Property, including grading and addition of gravel and repair of ditches and culverts. In the event an Owner of a Lot builds a dwelling on a Lot that abuts the Road Easement, that Owner shall, at his sole expense, repair and/or improve that portion of the Road Easement abutting and located on his Lot to the standard of the other portions of the Road Easement existing at the time.

11. No mobile homes shall be permitted to be used upon a Lot within the Property except for a limited period, not to exceed one year, for use by contractors and construction crews, during construction of a single family house. As set forth in Paragraph 8 hereof, no such mobile home may be used as a residence at any time.

12. With the exception of utilities serving Lots 3, 5R, 6R, 7R-1A, 7R-1B, 7R-1C, 8A, 8B, 8C and 10R, all future utilities on each Lot including electric, telephone and other utility lines and connection, shall be located underground so as not to be visible.

13. An easement is reserved 15 feet in width, in the area lying within the Road Easement that abuts the property lines of the Lots, for the purpose of installation or maintenance of public utilities, including the right to remove and, or, trim trees, shrubs, or plants. This reservation is for the purpose of providing for the practical installation of such utilities as and when any public authority or utility company may serve said parcels.

14. Fencing along Lot boundaries fronting on those portions of the Road Easement maintained by the Road Maintenance Committee shall be of stone, wood or wood products. High tensile wire, woven wire or barbed wire may be used on the Lots for the containment of livestock or pets, the protection of gardens, and to demarcate the boundaries of Lots. Tennis courts or swimming pools may be enclosed with chainlink anchor fencing or other similar fencing. No fencing shall encroach upon the Road Easement, except for fencing attached to a gate established by a group of Lot Owners as set forth in Section 3 hereof. Any fence that meets the criteria set forth above, and that exists as of the date this Restated Declaration is filed and recorded in the Fauquier County land records, shall be considered to be approved.

15. No purchaser or Owner shall be allowed to subdivide or re-subdivide any Lots herein so as to produce a greater number of Lots than currently exist, and this provision is irrevocable and may not be modified or eliminated as otherwise permitted herein, notwithstanding any changes or modifications of Fauquier County regulations which might later permit such subdivision.

16. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Hunting with firearms and the discharge of firearms by Lot Owners or their guests on their respective Lot(s) shall be allowed where permitted by State law. No minibikes, motor bikes, trail

bikes or other kind of vehicle may be used for recreational purpose on any Lot if such use becomes an annoyance or nuisance to any other Lot Owner.

17. Household pets and other animals including livestock or fowl may be raised, bred or kept on any Lot provided they are properly fenced outside of the Road Easement and the poultry housed in a screened area at least 100 feet from all Lot lines. No swine, commercial dog kennels commercial poultry operations, or other commercial operations open to the general public will be permitted. No structure or activity for the sale or sampling of any agricultural product on the Property shall be permitted unless (a) made the subject of a written agreement executed by the Owners of no fewer than two-thirds (2/3) of the Lots and (b) the structure or activity is permitted by Fauquier County. Notwithstanding the foregoing, Lots with direct access to and that border State Route 688 may allow the public to pick and purchase fruits and vegetables from orchards and gardens, provided the Road Easement is not used for access to such lots by members of the public.

18. There shall be no junk, unlicensed or inoperable vehicles parked on the Lots except within roofed enclosures.

19. All Lots, improved or unimproved, shall be maintained in a neat and sightly manner at all times including the portion of the Lot on the Road Easement.

20. No sign of any kind shall be displayed to public view on a Lot except customary name and address signs of not more than two (2) square feet and lawn signs of not more than four (4) square feet in size advertising a Lot for rent or sale. No sign shall be placed at the entrance from Route 688.

21. No minibikes, motor bikes, snowmobiles or any other kind of motorized recreational vehicle may be used by anyone on the Road Easement.

22. The Owners of Lots burdened by the Road Easement shall not be liable for any injuries incurred by anyone using said easement area unless upon a finding of gross negligence or intentional wrongful act, in which case the Lot Owner at fault shall indemnify and hold harmless all other Lot Owners from any injury or loss arising from such act and in which case he or she further pledges his or her Lot to cover any such liability.

23. The Lot Owners shall be responsible for maintaining and enforcing the terms of this Restated Declaration. The Lot Owners shall have the right to amend, add to, or delete any covenants herein, except those contained in covenant numbers 15 and 27, by an instrument executed by the Owners of three-quarters (3/4) of the Lots (with one vote per Lot) and recorded among the land records of Fauquier County, Virginia.

24. Any Owner shall have the right to enforce all restrictions, conditions and covenants, including those related to Road Fees, now or hereafter imposed by the provisions of this Restated Declaration, and any other issue arising between or among the Lot Owners relating in any way to the Property, but only first by submitting the matter to binding arbitration pursuant to Virginia Code Section 8.01-577, *et seq*, such arbitration to be conducted by the American Arbitration Association (the "AAA"), or its successor, in accordance with its commercial Arbitration Rules then in effect. Costs for the arbitrator and any court filing fees shall be paid by the non-prevailing party. Failure by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Notwithstanding the foregoing provisions requiring submission disputes under these covenants first to binding arbitration, adverse parties may specifically agree to have a dispute arising out of the enforcement or interpretation of these covenants considered by the appropriate court of Fauquier County, provided all parties to the action agree in writing. Arbitration filings or court actions

consistent with the provisions hereof to collect outstanding Road Fees shall be brought against the offending Lot Owner in the name of one of the members of the Road Maintenance Committee followed by "Member of the Apple Manor Road Maintenance Committee", or alternatively by a Lot Owner in his or her own name.

25. In no event shall any outstanding obligation of any Owner constitute a lien upon any Lot unless a judgment lien for such outstanding obligation is properly docketed in the land records of Fauquier County Circuit Court.

26. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect the validity of the other provisions which shall remain in full force and effect. Use of the plural herein shall be deemed to include the singular and use of the singular herein shall be deemed to include the plural. The word "Owner" or "Lot Owner" and the pronouns used therefore herein shall be construed as masculine or feminine, or singular or plural, as the sense requires, and shall include all successors and substitutes hereunder.

27. The Owners of Lot 11R shall be prohibited from constructing any residence, building or structure of any size on the portion of Lot 11R identified as ""Building Restriction Line Hereby Granted" "No Structures To Be Built In This Area"" on the Plat (and as depicted on a plat dated May 8, 1997 prepared by Carson, Harris & Associates, LLC and entitled "Plat Showing Lot-9R and A Building Restriction Line on Lot-11R, Apple Manor Subdivision" recorded in Deed Book 779 at Pages 1126-1129). Further no house or building shall be built on Lots 11R, Lot 4R-1 (Revised), 9R-1A or 9R-1B that is higher than 2 ½ stories above grade; grade being as defined in the Fauquier County Zoning Ordinance in effect at the time of the construction of such building. Further, all buildings for any purpose constructed on Lot 11R shall be setback at least 200 feet from any common boundary line of Lots 4R-1 (Revised), 9R-

1A, 9R-1B, and 11R. The covenants contained in this paragraph numbered 27 are irrevocable and can never be changed by the Declarant or the Lot Owners.

IN WITNESS WHEREOF, the undersigned Owners of the Lots so noted have executed this instrument in accordance with paragraph 24 of the Original Declaration, recorded at Deed Book 735 Page 84, on the dates indicated below, and represent the Owners of at least two-thirds (2/3) of the Lots within the Apple Manor Subdivision as of the date of this instrument:

<b>OWNER</b>	<b>LOT NUMBER(S)</b>
_____	<u>1R, 2R</u>
Don Neese	

STATE OF \_\_\_\_\_ }  
COUNTY/CITY OF \_\_\_\_\_ } To wit:

I hereby certify that Don Neese appeared before me and affixed his/her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_.

Registration Number: \_\_\_\_\_.

<b>OWNER</b>	<b>LOT NUMBER(S)</b>
_____	<u>1R, 2R</u>
Melinda Neese	

STATE OF \_\_\_\_\_ }  
COUNTY/CITY OF \_\_\_\_\_ } To wit:

I hereby certify that Melinda Neese appeared before me and affixed his/her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_.

Registration Number: \_\_\_\_\_.

{SIGNATURES AND NOTARIES APPEAR ON THE FOLLOWING PAGES}

September 22, 2010

- 17 -

OWNER

LOT NUMBER(S)

Mehrmah Payandeh  
Mehrmah Payandeh

3R, 4R-1 (Revised), 5R, 6R, 7R-1A,  
7R-1B, 7R-1C, 8A, 8B, 8C, 9R-1A, and  
9R-1B

STATE OF New York }  
COUNTY/CITY OF NASSAU } To wit:

I hereby certify that Merhmah Payandeh appeared before me and affixed his/her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid. *on Sept. 22, 2010*

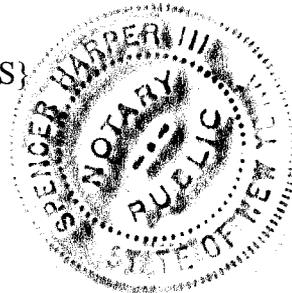
Spencer Harper, III  
Notary Public

My Commission expires: \_\_\_\_\_

Registration Number: \_\_\_\_\_

**SPENCER HARPER, III**  
Notary Public, State of New York  
No. 02HA5039677  
Qualified in New York County  
Commission Expires Feb. 21, 2011

{SIGNATURES AND NOTARIES APPEAR ON THE FOLLOWING PAGES}



September 22, 2010

- 18 -

OWNER

LOT NUMBER(S)

Partow Payandeh  
Mehrma Payandeh by her attorney in fact,  
Partow Payandeh

3R, 4R-1 (Revised), 5R, 6R, 7R-1A,  
7R-1B, 7R-1C, 8A, 8B, 8C, 9R-1A, and  
9R-1B

STATE OF NEW YORK }  
COUNTY/CITY OF NASSAU } To wit:

I hereby certify that Partow Payandeh, attorney in fact for Mehrma Payandeh, appeared before me and affixed her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid. *on Sept. 22, 2010*

Spencer Harper III  
Notary Public

My Commission expires: \_\_\_\_\_.

Registration Number: \_\_\_\_\_.

SPENCER HARPER, III  
Notary Public, State of New York  
*35* No. 02HA5039677  
Qualified in New York County *2010*  
Commission Expires Feb. 21, \_\_\_\_\_

{SIGNATURES AND NOTARIES APPEAR ON THE FOLLOWING PAGES}



September 22, 2010

- 19 -

**OWNER**

**LOT NUMBER(S)**

\_\_\_\_\_  
Dacy C. Bellingham

\_\_\_\_\_  
10R

STATE OF \_\_\_\_\_ }  
COUNTY/CITY OF \_\_\_\_\_ } To wit:

I hereby certify that Darcy Bellingham appeared before me and affixed his/her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_.

Registration Number: \_\_\_\_\_.

**OWNER**

**LOT NUMBER(S)**

\_\_\_\_\_  
Andrew B. Bellingham

\_\_\_\_\_  
10R

STATE OF \_\_\_\_\_ }  
COUNTY/CITY OF \_\_\_\_\_ } To wit:

I hereby certify that Andrew Bellingham appeared before me and affixed his/her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_.

Registration Number: \_\_\_\_\_.

{SIGNATURES AND NOTARIES APPEAR ON THE FOLLOWING PAGES}

September 22, 2010

- 20 -

**OWNER**

**LOT NUMBER(S)**

\_\_\_\_\_  
The Melanie Fein Management Trust  
Melanie Fein, Trustee

\_\_\_\_\_  
11R, 16, 17R, 20R

STATE OF \_\_\_\_\_ }  
COUNTY/CITY OF \_\_\_\_\_ } To wit:

I hereby certify that Melanie Fein, Trustee appeared before me and affixed his/her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_.

Registration Number: \_\_\_\_\_.

September 22, 2010

- 21 -

OWNER

LOT NUMBER(S)

*James Rees*  
James Rees

12R

STATE OF Virginia  
COUNTY/CITY OF Fauquier

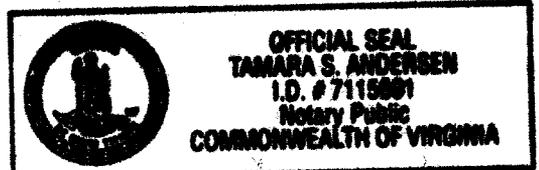
}  
} To wit:

I hereby certify that James Rees appeared before me and affixed his/her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid.

*Tamara S. Andersen*  
Notary Public Tamara S Andersen

My Commission expires: June 30 2011

Registration Number: 7115691



{SIGNATURES AND NOTARIES APPEAR ON THE FOLLOWING PAGES}

September 22, 2010

- 22 -

**OWNER**

**LOT NUMBER(S)**

\_\_\_\_\_  
Joe Verga

13  
\_\_\_\_\_

STATE OF \_\_\_\_\_ }  
COUNTY/CITY OF \_\_\_\_\_ } To wit:

I hereby certify that Joe Verga appeared before me and affixed his/her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_.

Registration Number: \_\_\_\_\_.

**OWNER**

**LOT NUMBER(S)**

\_\_\_\_\_  
Kay Brady

13  
\_\_\_\_\_

STATE OF \_\_\_\_\_ }  
COUNTY/CITY OF \_\_\_\_\_ } To wit:

I hereby certify that Kay Brady appeared before me and affixed his/her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_.

Registration Number: \_\_\_\_\_.

{SIGNATURES AND NOTARIES APPEAR ON THE FOLLOWING PAGES}

September 22, 2010

- 23 -

OWNER

LOT NUMBER(S)

Joan Duszka  
Joan Duszka

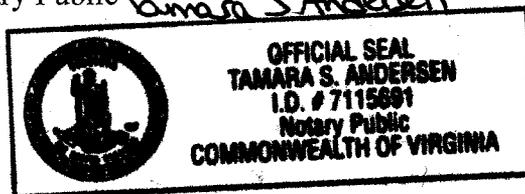
14

STATE OF Virginia }  
COUNTY/CITY OF Fauquier } To wit:

I hereby certify that Joan Duszka appeared before me and affixed his/her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid.

Tamara S. Andersen  
Notary Public Tamara S. Andersen

My Commission expires: June 30, 2011.  
Registration Number: 7115691



OWNER

LOT NUMBER(S)

Darrell Duszka  
Darrell Duszka

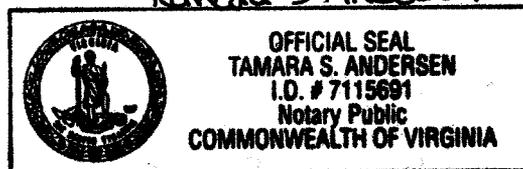
14

STATE OF Virginia }  
COUNTY/CITY OF Fauquier } To wit:

I hereby certify that Darrell Duszka appeared before me and affixed his/her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid.

Tamara S. Andersen  
Notary Public Tamara S. Andersen

My Commission expires: June 30, 2011.  
Registration Number: 7115691



{SIGNATURES AND NOTARIES APPEAR ON THE FOLLOWING PAGES}

OWNER

LOT NUMBER(S)

[Signature]

15

Fred Hanscom

STATE OF Virginia  
COUNTY/CITY OF Fauquier

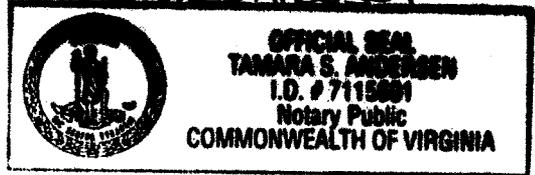
}  
} To wit:

I hereby certify that Fred Hanscom appeared before me and affixed his/her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid.

[Signature]  
Notary Public Tamara S. Andersen

My Commission expires: June 30, 2011

Registration Number: 7115691



{SIGNATURES AND NOTARIES APPEAR ON THE FOLLOWING PAGES}

September 22, 2010

- 25 -

OWNER

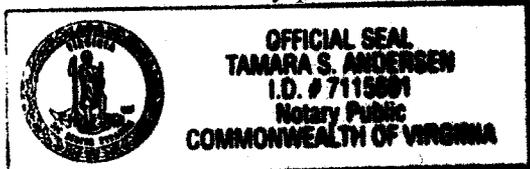
LOT NUMBER(S)

Carolyn Lumb  
Carolyn Lumb

18R

STATE OF Virginia }  
COUNTY/CITY OF Fauquier } To wit:

I hereby certify that Carolyn Lumb appeared before me and affixed his/her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid.



Tamara S Andersen  
Notary Public Tamara S Andersen

My Commission expires: June 30 2011

Registration Number: 7115691

OWNER

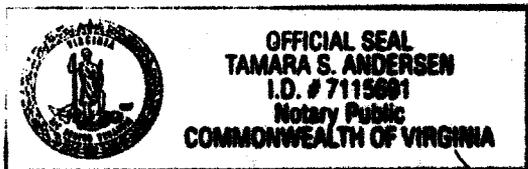
LOT NUMBER(S)

Alan Lumb  
Alan Lumb

18R

STATE OF Virginia }  
COUNTY/CITY OF Fauquier } To wit:

I hereby certify that Alan Lumb appeared before me and affixed his/her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid.



Tamara S Andersen  
Notary Public Tamara S Andersen

My Commission expires: June 30 2011

Registration Number: 7115691

{SIGNATURES AND NOTARIES APPEAR ON THE FOLLOWING PAGES}

OWNER

LOT NUMBER(S)

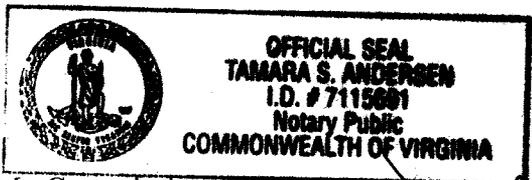
Jon Nixon  
Jon Nixon

19R

STATE OF Virginia  
COUNTY/CITY OF Fauquier

} To wit:

I hereby certify that John Nixon appeared before me and affixed his/her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid.



Tamara S. Andersen  
Notary Public Tamara S Andersen

My Commission expires: June 30 2011

Registration Number: 7115891

OWNER

LOT NUMBER(S)

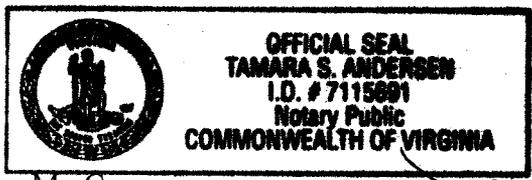
Monica Nixon  
Monica Nixon

19R

STATE OF Virginia  
COUNTY/CITY OF Fauquier

} To wit:

I hereby certify that Monica Nixon appeared before me and affixed his/her signature to this instrument in my presence, a notary public in and for the jurisdiction aforesaid.

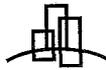


Tamara S. Andersen  
Notary Public Tamara S Andersen

My Commission expires: June 30 2011

Registration Number: 7115891

-----0-----



Michael J. Coughlin  
(703) 680-4664 Ext. 113  
mcoughlin@pw.thelandlawyers.com  
Fax: (703) 680-2161

**WALSH COLUCCI  
LUBELEY EMRICH  
& WALSH PC**

September 29, 2010

Gail H. Barb, Clerk  
Fauquier County Circuit Court  
40 Culpeper Street  
Warrenton, VA 20186

Re: Recordation of Amended and Restate Covenants

Dear Ms. Barb:

Enclosed for recordation among the land records of Fauquier County is a document entitled Amended and Restated Declaration of Covenants, Conditions and Restrictions for Apple Manor Subdivision (the "Restated Covenants") and an exhibit referred to in the document.

The exhibit is for informational purposes, and it also clarifies a portion of a private ingress-egress easement that is being vacated. There is no subdivision of land occurring, no County owned easement affected, and the Restate Covenants/exhibit do not implicate any provisions of the Fauquier County subdivision ordinance. Enclosed please find an Attorney General Opinion from 2009 that opines

that localities are not authorized to require the review and approval of boundary survey plats and physical survey plats as a prerequisite for recordation. It is further my opinion that circuit court clerks may not refuse to record such plats based solely on the lack of such review and approval from the local planning official.

The enclosed exhibit does not even rise to the level of a boundary survey, and therefore does not require County approval.

You will also note that the enclosed Restated Covenants include unexecuted signature pages. We are aware of that and request that the document be recorded as-is.

Kindly return the original Restated Covenants after they are recorded and return them in the enclosed self-addressed, stamped envelope. Should you have any questions concerning this matter, please do not hesitate to call me at 202-494-2813. Thank you for your assistance in this matter.

Very truly yours,

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

Michael J. Coughlin

Enclosures

PHONE 703 680 4664 | FAX 703 680 6067 | WWW.THELANDLAWYERS.COM  
GLEN PARK I | 4310 PRINCE WILLIAM PARKWAY, SUITE 300 | PRINCE WILLIAM, VA 22192-5199  
ARLINGTON OFFICE 703 528 4700 | LOUDOUN OFFICE 703 737 3633

ATTORNEYS AT LAW

28



**COMMONWEALTH of VIRGINIA**

*Office of the Attorney General*

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

February 25, 2009

The Honorable Robert B. Bell  
Member, House of Delegates  
P.O. Box 406  
Richmond, Virginia 23218

Dear Delegate Bell:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

**Issues Presented**

You ask whether the *Virginia Code* authorizes localities to require the review and approval of boundary survey plats and physical survey plats<sup>1</sup> by local planning officials as a prerequisite to recordation. You further ask whether clerks of the circuit court are authorized to refuse to record boundary survey plats and physical survey plats until after the review and approval of such plats by local planning officials.

**Response**

It is my opinion that localities are not authorized to require the review and approval of boundary survey plats and physical survey plats as a prerequisite for recordation. It further is my opinion that circuit court clerks may not refuse to record such plats based solely on the lack of such review and approval from the local planning official.

**Background**

You relate that land surveyors have advised you that several Virginia localities apply an informal policy requiring all boundary and physical survey plats to be reviewed and approved by local planning officials as a prerequisite to recordation. You believe that these localities base their actions upon the delegated authority to regulate land development and the subdivision of land. Further, you state that such

---

<sup>1</sup>You advise that the boundary and physical surveys about which you inquire are surveys that do not change or alter property lines or create new parcels of land. Further, you explain that a boundary survey is a survey or a retracement of the metes and bounds of an existing parcel of land based on a prior survey or deed description of the property. A physical survey is a survey of a lot or parcel which also shows the location of all structures, physical and recorded encumbrances, and manmade physical features located within the property's existing boundaries. For purposes of this opinion, any reference to "boundary survey plats" and "physical survey plats" means the surveys you describe and about which you inquire unless otherwise noted.

The Honorable Robert B. Bell  
 February 25, 2009  
 Page 2

policies are not included in those localities' published ordinances governing the development and subdivision of land. You note that these policies effectively prevent surveyors from recording such plats until after local planning officials have reviewed and approved them.

Furthermore, you advise that some circuit court clerks have refused to accept such boundary and physical survey plats for recordation until the plats were reviewed and approved by local planning officials. You state that the circuit court clerks of these localities have related they are without authority to accept such plats for recordation without the approval of the local planning officials.

You note that the standards for boundary and physical surveys, as developed by the Virginia Board of Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, are set forth in 18 VAC §§ 10-20-370 and 10-20-380. Finally, it is your understanding that surveys that do require review and approval by local planning officials prior to recordation are: (1) subdivision surveys, where an existing parcel is being subdivided into two or more parcels; (2) boundary or property line adjustment surveys, where the boundary line between parcels is changed from the original survey or deed description, but no new parcels are created; and (3) any survey, by any other name, which changes a property line or creates new parcels or lots.

#### Applicable Law and Discussion

The overriding goal of statutory interpretation is to discern and give effect to legislative intent.<sup>2</sup> The Commonwealth follows the rule of strict construction of statutory provisions.<sup>3</sup> The power of a county governing body "must be exercised pursuant to an express grant"<sup>4</sup> because the powers of a county "are limited to those conferred expressly or by necessary implication."<sup>5</sup> This rule is corollary to the Dillon Rule that municipal corporations similarly are limited in their powers.<sup>6</sup> Thus, the powers of localities acting through either a local planning commission or a local governing body are fixed by statute and are limited to those powers granted expressly or by necessary implication and those that are essential and indispensable.<sup>7</sup>

Localities enact subdivision ordinances pursuant to delegation by the General Assembly of the police power of the Commonwealth.<sup>8</sup> The rule of strict construction applies in interpreting the statutory authority of local governing bodies to adopt land use regulations.<sup>9</sup> Consequently, authority for imposed requirements must be found in the subdivision enabling statutes and may not be implied from other more general grants of local powers.<sup>10</sup>

<sup>2</sup>See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); *Vollin v. Arlington Co. Electoral Bd.*, 216 Va. 674, 678-79, 222 S.E.2d 793, 797 (1976).

<sup>3</sup>2003 Op. Va. Att'y Gen. 45, 46.

<sup>4</sup>*Nat'l Realty Corp. v. Va. Beach*, 209 Va. 172, 175, 163 S.E.2d 154, 156 (1968).

<sup>5</sup>*Bd. of Supvrs. v. Horne*, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975).

<sup>6</sup>*Id.*

<sup>7</sup>*Ticonderoga Farms, Inc. v. County of Loudoun*, 242 Va. 170, 174, 409 S.E.2d 446, 448 (1991).

<sup>8</sup>See 1989 Op. Va. Att'y Gen. 100, 101.

<sup>9</sup>See Op. Va. Att'y Gen.: 1992 at 59, 61; 1990 at 94, 96.

<sup>10</sup>See, e.g., *National Realty*, 209 Va. at 176-77, 163 S.E.2d at 157-58 (noting general authority to impose fees for licenses and permits did not authorize specific fee for review of subdivision plat).

The Honorable Robert B. Bell  
 February 25, 2009  
 Page 3

Virginia's subdivision enabling statutes are detailed in Article 6, Chapter 22 of Title 15.2, §§ 15.2-2240 through 15.2-2279. Section 15.2-2240 requires that counties, cities, and towns adopt a subdivision ordinance "to assure the orderly subdivision of land and its development." Section 15.2-2258 requires that any person desiring to subdivide a tract of land must submit a plat of the proposed subdivision to the local subdivision agent for approval. Sections 15.2-2259, 15.2-2260, and 15.2-2261 govern the actions of the local planning commission and the locality regarding such plats and the approval and validity thereof. Section 15.2-2260(A) also authorizes a local governing body to enact an ordinance providing for submission of preliminary subdivision plats for tentative approval as a part of the orderly subdivision of land within its jurisdiction.<sup>11</sup> Finally, §§ 15.2-2259 and 15.2-2260 impose time constraints for the approval of subdivision plats.

Article 6 is replete with express grants of powers to local governing bodies and their authorized agents to administer and enforce subdivision regulations as they relate to survey plats.<sup>12</sup> I find no express statutory authority elsewhere in Title 15.2 for a Virginia locality to require a review and approval of boundary survey plats and physical survey plats by local planning officials as a prerequisite for recordation.

The Dillon Rule of strict construction also is applicable to constitutional officers.<sup>13</sup> Article VII, § 4 of the Constitution of Virginia creates the office of circuit court clerk and provides that a clerk's duties "shall be prescribed by general law or special act."<sup>14</sup> As a general rule, circuit court clerks have no inherent powers, and the scope of their powers must be determined by reference to applicable statutes.<sup>15</sup> A 1987 opinion of the Attorney General (the "1987 Opinion") concludes that, "[a]s a general rule, a clerk is not responsible for determining if an instrument to be recorded is sufficient to meet the requirements of any particular provision of law."<sup>16</sup> Further, the 1987 Opinion concludes

that a clerk may record a plat of division without the approval of the subdivision agent of the locality upon the oral assertion of the person presenting the plat for recordation on behalf of the owner that the subdivision ordinance does not apply to the plat of division offered for recordation. I would suggest, however, that the clerk make a notation on the plat of division concerning the oral assertion that the ordinance does not apply to the division of the parcel in question.<sup>[17]</sup>

<sup>11</sup> See 2006 Op. Va. Att'y Gen. 71, 74.

<sup>12</sup> See, e.g., VA. CODE ANN. § 15.2-2245(A) (2008) (granting power to act on performance bonds); § 15.2-2254(2) (2008) (granting power to approve plats for recordation); § 15.2-2259 (2008) (granting power to planning commission to act on plats); §§ 15.2-2260, 15.2-2261(B)(1), 15.2-2271(1) (2008) (granting various powers to governing body regarding plats).

<sup>13</sup> See, e.g., Op. Va. Att'y Gen.: 2006 at 200, 201; 1984-1985 at 284, 284.

<sup>14</sup> See also § 15.2-1600(A) (2008) (parallel statute).

<sup>15</sup> See *Mendez v. Commonwealth*, 220 Va. 97, 102, 255 S.E.2d 533, 535 (1979) (stating that "authority of a clerk of court to administer an oath or take an affidavit is purely a creature of statute"); *Harvey v. Chesapeake & Potomac Tel. Co.*, 198 Va. 213, 218, 93 S.E.2d 309, 313 (1956) (noting that duties of clerk related to filing and lodging of court papers are ministerial); 21 C.J.S. *Courts* § 136 (2006); Op. Va. Att'y Gen.: 2001 at 121, 122; 1987-1988 at 80, 81.

<sup>16</sup> 1987-1988 Op. Va. Att'y Gen. 208, 210.

<sup>17</sup> *Id.*

The Honorable Robert B. Bell  
February 25, 2009  
Page 4

I find no statutory provision authorizing a circuit court clerk to refuse to record boundary survey plats and physical survey plats until after the review and approval of such plats by local planning officials. Pursuant to the authority granted in Article 6, a circuit court clerk may refuse to record boundary survey plats and physical survey plats that are: (1) subdivision surveys, where an existing parcel is being subdivided into two or more parcels; (2) boundary or property line adjustment surveys, where the boundary line between parcels is changed from the original survey or deed description, but no new parcels are created; or (3) a survey, by any other name, which changes a property line or creates new parcels or lots.<sup>18</sup> However, the boundary survey plats and physical survey plats about which you inquire do not meet these criteria.<sup>19</sup>

**Conclusion**

Accordingly, it is my opinion that localities are not authorized to require the review and approval of boundary survey plats and physical survey plats as a prerequisite for recordation. It further is my opinion that circuit court clerks may not refuse to record such plats based solely on the lack of such review and approval from the local planning official.

Thank you for letting me be of service to you.

Sincerely,



William C. Mims  
Acting Attorney General

1:213; 1:941/08-105

---

<sup>18</sup> See, e.g., §§ 15.2-2254, 15.2-2258, 15.2-2265, and 15.2-2275 (2008).

<sup>19</sup> See *supra* note 1.

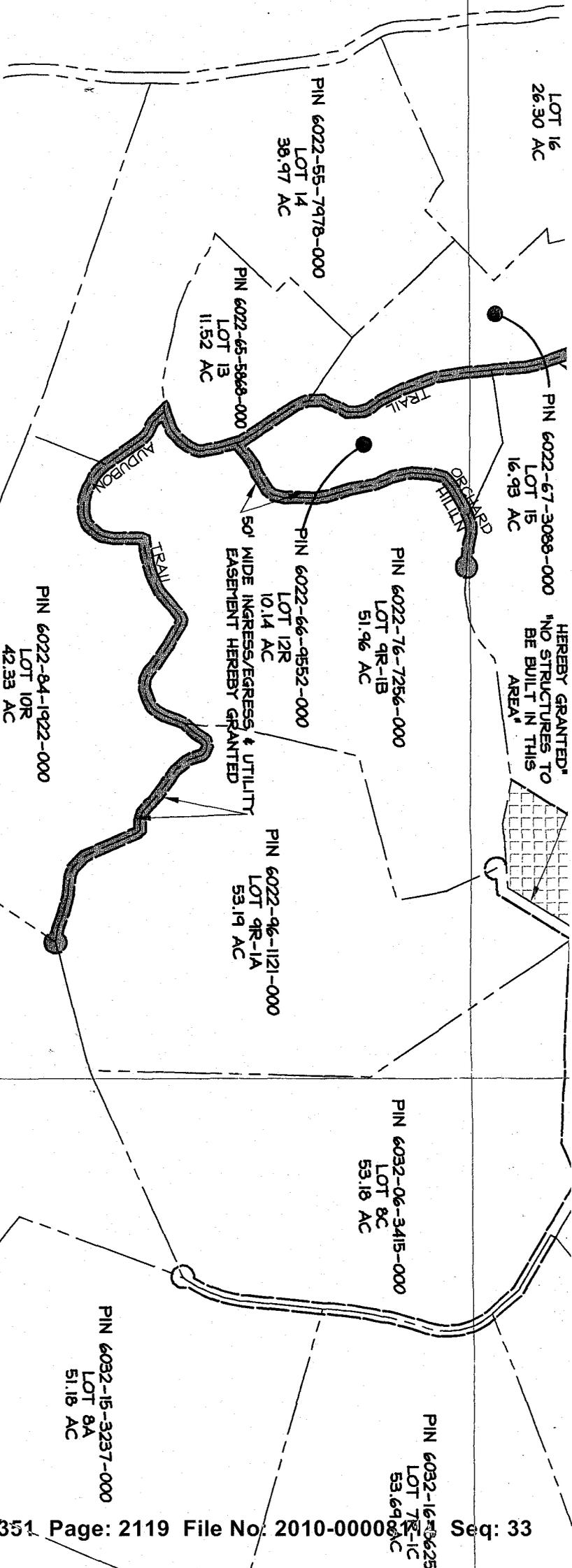
32

33

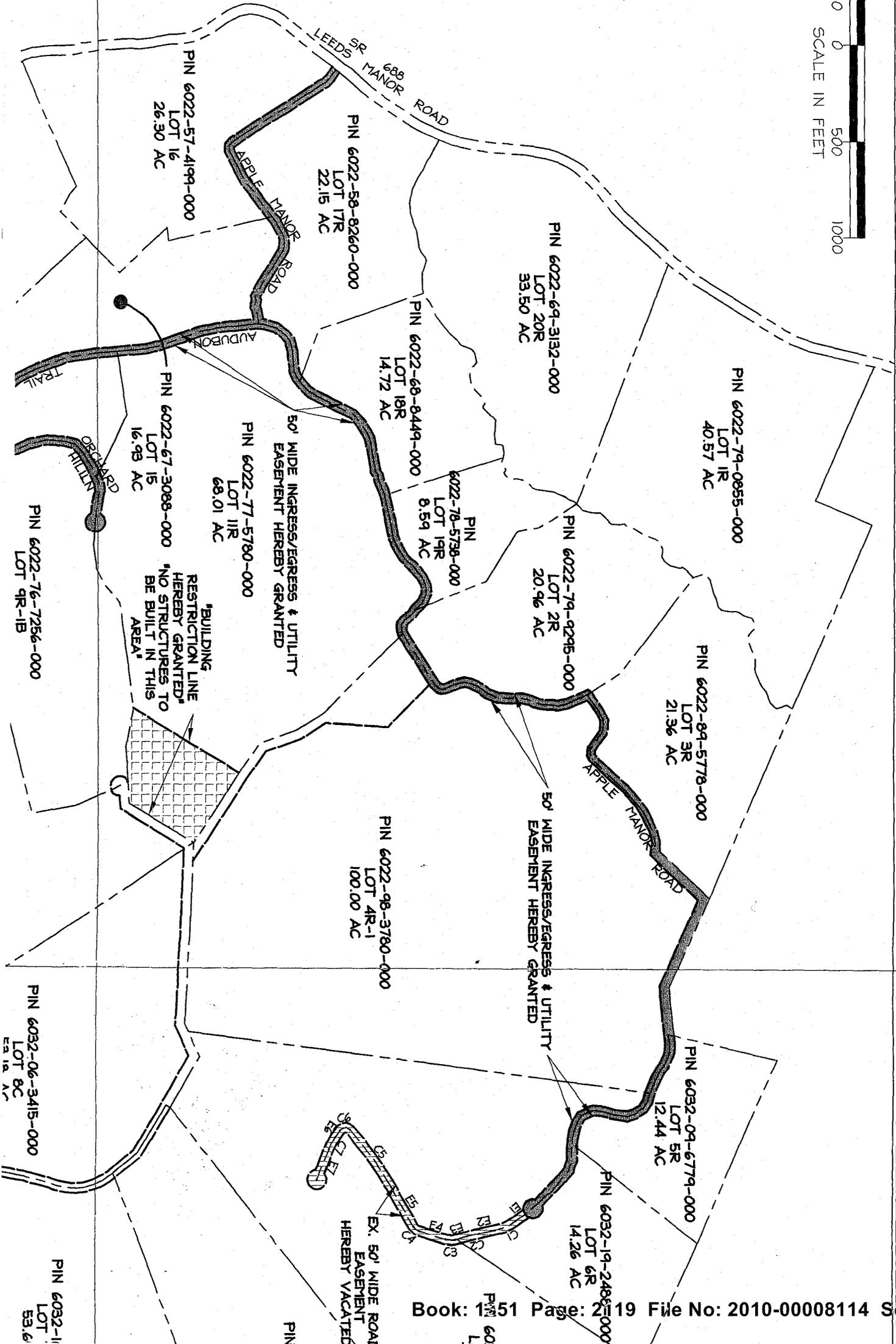
INGRESS / EGRESS EASEMENT HEREBY VACATED

BEGINNING AT A POINT, SAID POINT BEING S 33° 23' 18" E 50.00 FT. FROM THE RADIUS POINT OF THE CUL DE SAC OF APPLE MANOR ROAD, DULY PLATTED AT DEED BOOK 696, PAGE 1546. THENCE WITH THE STARTING POINT, THE FOLLOWING COURSES AND DISTANCES:

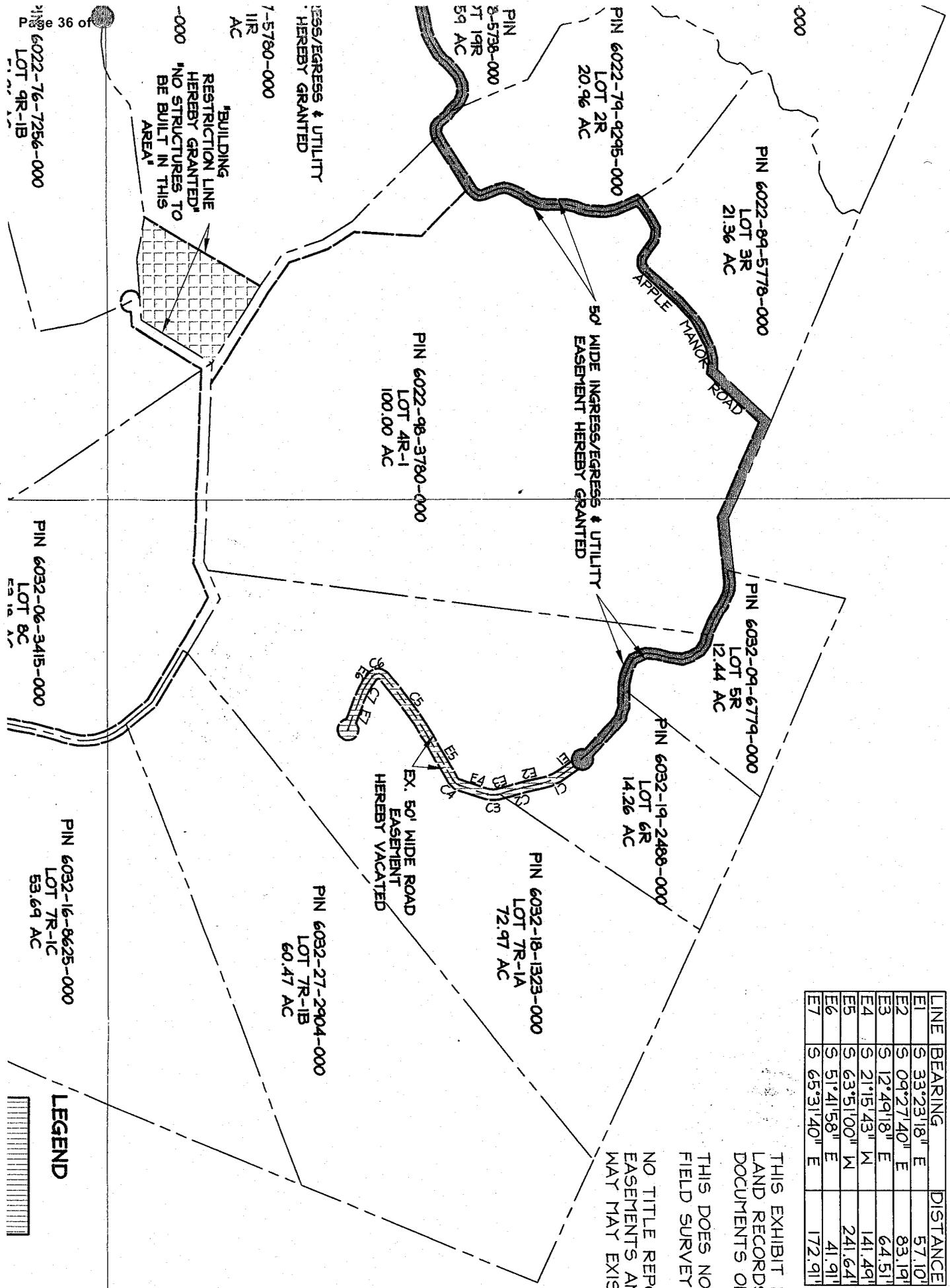
S 33° 23' 18" E 57.10 FT. TO A POINT;  
 N 18.25 FT. ALONG THE ARC OF A CURVE, HAVING A RADIUS OF 283.16 FT. ;  
 S 09° 27' 40" E 83.19 FT. TO A POINT;  
 S 9.98 FT. ALONG THE ARC OF A CURVE, HAVING A RADIUS OF 1,022.68 FT. ;  
 S 12° 49' 18" E 64.51 FT. TO A POINT;  
 49.46 FT. ALONG THE ARC OF A CURVE, HAVING A RADIUS OF 83.15 FT. ;  
 S 21° 15' 43" W 141.49 FT. TO A POINT;  
 38.14 FT. ALONG THE ARC OF A CURVE, HAVING A RADIUS OF 51.31 FT. ;  
 S 63° 51' 00" W 241.64 FT. TO A POINT;  
 363.79 FT. ALONG THE ARC OF A CURVE, HAVING A RADIUS OF 1,666.01 FT. ;  
 58.53 FT. ALONG THE ARC OF A CURVE, HAVING A RADIUS OF 32.55 FT. ;  
 S 51° 41' 58" E 41.91 FT. TO A POINT;  
 69.66 FT. ALONG THE ARC OF A CURVE, HAVING A RADIUS OF 288.63 FT. ;  
 S 65° 31' 40" E 172.91 FT. TO THE RADIUS POINT OF THE CUL DE SAC, HEREBY VACATED.



34







LINE	BEARING	DISTANCE
E1	S 33°23'18" E	57.10'
E2	S 09°27'40" E	83.19'
E3	S 12°49'18" E	64.51'
E4	S 21°15'43" W	141.49'
E5	S 63°51'00" W	241.64'
E6	S 51°41'58" E	41.91'
E7	S 65°31'40" E	172.91'

CURVE RAD.	ARC
C1	283.16'
C2	1022.68'
C3	83.15'
C4	51.31'
C5	1666.01'
C6	32.55'
C7	288.63'

THIS EXHIBIT PLAT IS BASED ON THE GIS LAND RECORDS AND RECORDED DOCUMENTS OF FAUQUIER COUNTY. THIS DOES NOT REPRESENT AN UPDATED FIELD SURVEY BY THIS FIRM. NO TITLE REPORT FURNISHED. OTHER EASEMENTS AND/OR RIGHTS OF MAY MAY EXIST.

RECORDED IN CLERKS OFFICE OF FAUQUIER ON September 29, 2010 AT 12:50:49 PM \$0.00 GRANTOR TAX PD AS REQUIRED BY VA CODE §58.1-802 STATE: \$0.00 LOCAL: \$0.00 FAUQUIER COUNTY, VA GAIL H BARB CLERK OF CIRCUIT COURT

*Gail H Barb*, Clerk

**LEGEND**