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April 12, 2010

D.C. Zoning Commission
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: Zoning Commission Case No. 09-03 (Skyland Town Center) – Submission of the Fort Baker Drive Party.

Dear Members of the Commission:

I am writing on behalf of the Fort Baker Drive Party in response to the March 29 submission of Skyland Holdings, LLC (the “Applicant”). In its March 29 submission, the Applicant responded to requests from the Commission for additional information relating to visual impact and geological concerns of the proposed project.

It is apparent that the Fort Baker Drive homes will be uniquely and significantly affected by this development, and the Fort Baker Drive Party has moved forward in good faith with this process, having legitimate fears that the proposed construction could cause anything from a significant decrease in home values to the complete destruction of their homes by further destabilizing the soil supporting their homes.

The Applicant has opted not to respond to the Commission’s request for “very specific plans from the developer as to how they would want to protect [the four subject homes on Fort Baker Drive]”, and the Applicant has provided a balloon test that meets only one of seven recommended criteria.

Balloon Test/Visual Impact

The Applicant has failed to show the actual visual impact of the proposed development on the Fort Baker Drive residents. Applicant’s photos misrepresent the future appearance of the massive structures that will be as close as 130 feet to the Fort Baker Drive homes. For

ZONING COMMISSION
District of Columbia

CASE NO. 09-03
EXHIBIT NO. 105

comparison, the Commission can rely on the relationship between One Judiciary Square and the U.S. Tax Court across 3rd Street. This is the approximate distance from the Puckrein and Cole homes to the proposed Block One and Block Four structures. None of the Applicant's renderings fairly represents such a relationship – except perhaps for the bright yellow “matter-of-right” warehouse buildings towering over the Fort Baker homes.

The Fort Baker Drive Residents have hired an expert in photography and balloon tests to comment on the Applicant's attempted balloon test. We ask that the Commission admit Curt Westergard as an expert; Mr. Westergard's CV, along with his report, are attached hereto as Exhibit A.

Matter of Right Alternative.

In response to the Commission's request for information on the matter of right possibilities for the currently vacant, forested parcel nearest to Fort Baker Drive, the Applicant has provided a stunning bright yellow “warehouse” to represent the likely matter of right development on this spot. Notwithstanding the too obvious attempt to over-emphasize this potential alternative (1.8 FAR, 60% lot occupancy residential use), as it strives to de-emphasize its 330-foot long green wall of Wal-Mart, this particular analysis is irrelevant to the Commission's deliberation in this case.

The Comprehensive Plan requires the Skyland development to provide a suitable visual, sound, and security buffer, and to reduce soil erosion and stabilize slopes. Responding with the alternative of the most drastic matter of right possibility – in bright yellow and without the Applicant's claimed need to remove fill and lower the surface level – does nothing to prove the Applicant's case. Specifically, it addresses neither of the primary concerns of the Fort Baker Drive Party: soil stabilization, erosion, construction techniques, and the visual, light, and sound impacts of this proposed project on the Fort Baker Drive Residents.

Construction Mitigation Agreement.

At a meeting held at the offices of William C. Smith before the first hearing, and then in response to cross examination from the Applicant, The Fort Baker Residents communicated its objections and concerns about the proposed Construction Mitigation Agreement (“CMA”). It is misleading, therefore, for the Applicant to now rely on the claim that the Fort Baker Drive Party has not responded *in writing* to the CMA draft. The Applicant is well aware of Fort Baker Drive Party's opinion of the this draft, yet has made no meaningful attempt to communicate with the Fort Baker Party or to present any creative alternatives to the issue: how will the Applicant account for what could be irreversible and substantial damage to the Fort Baker Drive homes.

The Applicant may be relying on the fact that since so many interests support their proposal, the Commission will overlook the acute harm to be inflicted on just these four homes. Indeed, project supporters, while acknowledging this harm, have stated that the “common good” should outweigh the potential damage to these four homes. We do not think the Zoning Commission has applied such a standard to PUD considerations in the past, and we believe that no project is worth such a cost.

Construction Techniques, Soil Stabilization, Erosion Issues

On February 17th, the Commission asked the Applicant to provide “very specific plans” as to how the Applicant would protect the four Fort Baker Drive homes in the areas of soil stabilization, erosion, and construction techniques. This information was supposed to be provided in the March 29 submission so that the Fort Baker Drive Party would have an opportunity to respond. The Applicant did not substantively respond to this request on March 29. Instead, the Applicant intends to provide expert testimony on construction techniques at the April 21 hearing, effectively eliminating Fort Baker’s opportunity to respond.

Regarding erosion and soil stabilization, the Applicant apparently will not provide “specific plans” or expert testimony in response to the Commission’s request. The Applicant’s counsel has provided only a general description that effectively responds in a way that says: trust the Applicant; it will install some manner of storm water management system that will improve on the current erosion problem. This is intuitively as believable as the Applicant’s proposition that the proposed Wal-Mart, 470 housing units, and 315,000 square feet of retail will actually *improve* the current traffic situation. At any rate, the Applicant has not met its burden of proof to show that the proposal is not inconsistent with Comprehensive Plan Policy FNS-1.2.4: to reduce soil erosion and stabilize slopes at Far Northeast and Southeast erosion “hot spots,” particularly the Skyland/Alabama Avenue area.

In contrast to the Applicant’s efforts, the Fort Baker Drive Party has hired a civil engineer and geo-tech to provide some additional information. As the Commission will see, the scope of these experts’ reports is limited, since the Applicant has not yet provided any evidence to support its conclusion that the Fort Baker Drive Residents homes will not be negatively affected by construction or erosion factors. Based on Fort Baker’s experts’ reports, damage from erosion and construction as a result of the proposed project is likely to be substantial. See Exhibit B and Exhibit C. The Fort Baker Drive Party requests that Greg Budnik and Dan Rom be admitted as experts.

Opportunity to Present Evidence.

The Fort Baker Drive Residents may request, as a preliminary matter on April 21st that it be allowed to provide additional testimony responsive to the Applicant's testimony to be given on that date. All of the information to be submitted by the Applicant, involving balloon tests and geological information, involve new testimony in response to requests from the Commission. As such, this does not represent rebuttal testimony, but rather original testimony that should have been submitted in the Applicant's case-in-chief. It is patently unfair, most particularly in the area of Mr. Carnes's proposed testimony, to present this as "rebuttal" evidence and not provide Fort Baker any opportunity to respond.

This is made even more clear when considering that the Commission directed the Applicant to provide "very specific plans" about construction techniques and soil stabilization, and directed the Applicant to provide such information on March 29, so that Fort Baker would have the opportunity to respond.

Summary

The Applicant's March 29 submission is incomplete, misleading, and otherwise insufficient to meet its burden of proof to show that the proposed project is not inconsistent with the D.C. Comprehensive Plan. The Fort Baker Drive Residents are faced with the prospect of suffering significant harm as a result of this development proposal. They have asked for nothing other than that they not be made worse off as a result of this proposal. Their concerns have received no consideration from the Applicant or from the D.C. Office of Planning. The Fort Baker Drive Residents therefore urge the Zoning Commission to review the available evidence and determine that the current PUD proposal does not meet PUD evaluation standards and is inconsistent with the D.C. Comprehensive Plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin P. Sullivan". The signature is fluid and cursive, with the first name "Martin" and last name "Sullivan" clearly distinguishable.

Martin P. Sullivan

cc: Paul Tummonds, Esq.
ANC 7B
OP
DDOT

Exhibit A

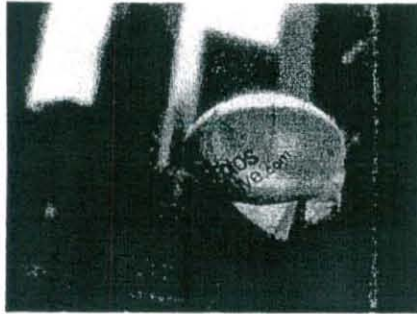


Curt Westergard

President

703.534.7500 x750

curt@airphotoslive.com



Curt Westergard is a licensed landscape architect, aerial photographer, educator, and President of Digital Design & Imaging Service, Inc. He has designed, built and is seeking patents on various custom tethered surveillance aerostats, optical configurations, and rapid-launch support equipment. He has over twenty-five years experience creating visual impact simulations of architectural, planning, and engineering projects in the United States and Europe. Curt has taught landscape design at MSU, professional development programs at Harvard University, and design graphics at technical universities in Europe. Outside of DDIS he enjoys time with his wife and two sons, windsurfing, drawing, languages, and flying balloons.

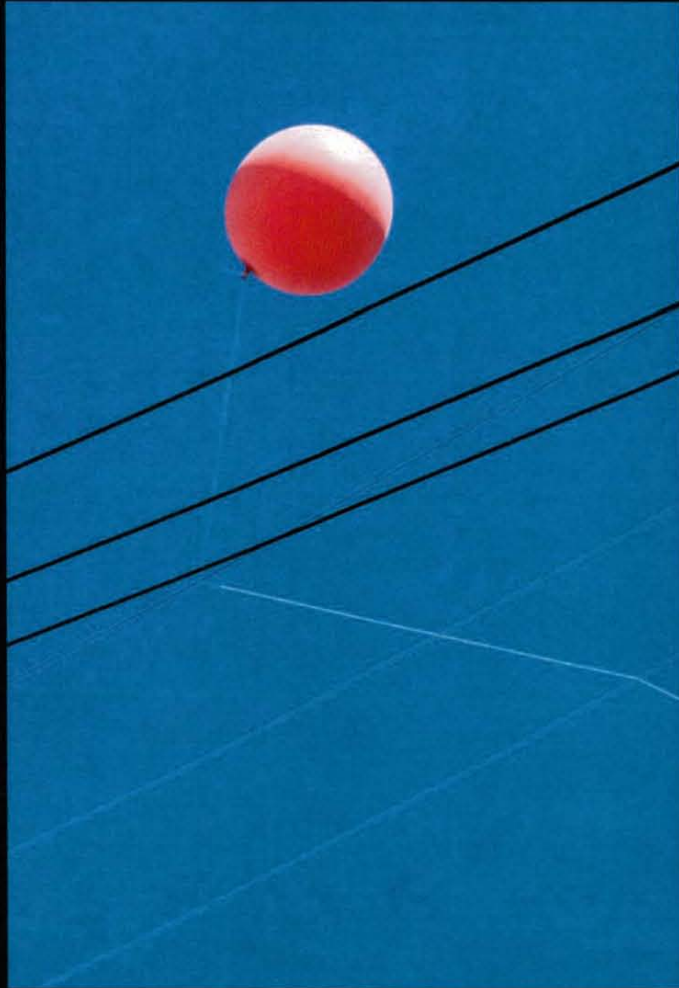
Education: Bachelors from Ithaca College, Masters in Landscape Architecture from Cornell University, & Ph.D. (coursework only) in 3D Visualization from the University of Michigan.

Purpose:

The general purpose of the following documents are to:

1. Review and critique the balloon test at Block 1 performed March 16th 2010.
2. Review two of developer's renderings in terms of their accuracy in portraying the visual impacts of the proposed Block 1 structure on the two nearest Ft. Baker Drive homes.
3. Illustrate and review the general impacts caused by the proposed Block 1 parking structure in terms of shadows during the day, artificial lights at night, and general visible changes to the shared forest and stream.

Criteria for Accurate Balloon Tests:



The **National Park Service**, the **Bureau of Land Management** and most zoning authorities have defined performance criteria for balloon tests used to produce visual impact renderings. These standards are summarized in many professional publications including the seminal dissertation *Landscape Portrayals: their use accuracy and validity in simulating proposed landscape changes*, by Dr. Steve Sheppard. Valid, defensible, replicable balloon tests should meet these and other basic industry standards:

1. The balloons height must be actively monitored with a laser range finder –especially when photos are being taken.
2. At each test site at least two trained operators must actively control the balloon's vertical and horizontal position.
3. The balloon must be maintained directly above the building's highest visible features and corners.
4. There must be real time communications between the aerostat operator and the field photographer or others observing the test.
5. The balloon must contain approximately 900 cubic feet of fresh pure helium to withstand winds above 8 knots.
6. The layout of the balloon positions should symbolize the key dimensions of proposed building's height and mass.
7. The balloon's height must take into account both the existing and the proposed topography.

Evaluation of Skyland Balloon Test:

Following the **National Park Service**, the **Bureau of Land Management** criteria for accurate, replicable and defensible balloon tests, the Skyland sponsored test on 3/16/2010 failed 6 of 7 key evaluation criteria. Specifically:

1. It appeared that none of the approximate 6 (six) balloons were monitored during the photography. A laser range finder or other surveyor tools did not appear to be employed when photos were made. The balloons height appeared to be determined by a nylon string, unattended, tied to a tree. The balloons, some tangled in trees and power lines, were moving dramatically up and down. HD video footage of portions of the test are available upon request.
2. The simultaneous balloon tests had **insufficient staff** on hand to monitor and adjust the heights. It appears they were lofted then left on their own in 10 to 12 knot winds.
3. Accurate and professionally located stakes appeared to reflect the corners of Skyland's Block 1. However, the balloons were not maintained directly above the building's key locations.
4. Based on the number of staff on hand and the number of balloons aloft, it was doubtful if the photographer received verification before each key shot. Without such active and real time communication, the photo captures an unknown reference marker. This leaves the 3d computer artist/designer without reliable vertical reference markers to simulate the building's true height.



Evaluation of Skyland Balloon Test:



5. The balloon size and shape should be of sufficient size and aerodynamic qualities to withstand moderate winds typical in this climate. Approximately 900 cubic feet of fresh pure helium is needed to generate 30 lbs of lift to withstand the day's 8 to 12 knot winds. 900 cubic feet of helium requires a balloon that is approximately 12 ft in diameter, and aerodynamically shaped. The contractor supplied 12" party balloons for Site 1 and 2.9 ft diameter red 'pie' balloons were used during this test. Throughout the test many of the balloons could not get to altitude or popped because of nearby trees. If possible the trees and access ways should have been cleared in advance. The test was conducted in too much wind for that size balloon. Temporary masts, used in many countries, would have been a more reliable mock-up structure.
6. The surveyor's stakeouts appeared to correctly symbolize the horizontal dimensions of Block 1. They did not, however, make reference to the tallest aspects of the proposed building. Demarking the highest points of a proposed structure allows better alignment of a 3d or 2d model on top of the base photograph. Elevated penthouse utility structures or parking lot lights, for example, were not reflected by balloon heights. This is important for shadow casting and previewing the building's impacts to the nearest neighbors.
7. The layout of the intended sites correctly reflected the compensation needed for topography. This is based on the data in *Exhibit C Balloon Test Elevations*. However, it appears in most of the simulations that some balloons were not even flying correctly when the field photographer took the photo. This unprofessional balloon test was typified by 3 toy party balloons snagged 8 feet off the ground at Location 1.

Summary:

The balloon test did not meet 6 of 7 basic industry standards. While the tests were correctly planned at the major corners of Block 1, horizontally, they were at drastically incorrect vertical positions. Part of this was due to heavy tree growth near several staked out locations. The balloons were insufficiently sized, monitored and communicated to the photographer. In the simulations from Ft. Baker the balloons appear to be either caught in trees, flying at drastically different altitudes or not visible at all. Superimposing a 3d model into a photograph with out these visual reference points produces unacceptable vertical errors. For these reasons the photosimulations generated from the balloon test data are not reliable indicators of the proposed building's height or horizontal position.

-----Curt Westergard, Landscape Architect. April 9th 2010

Vegetation Removal



Yellow indicates approximate zone for clearing current vegetative buffer

Vegetation Removal



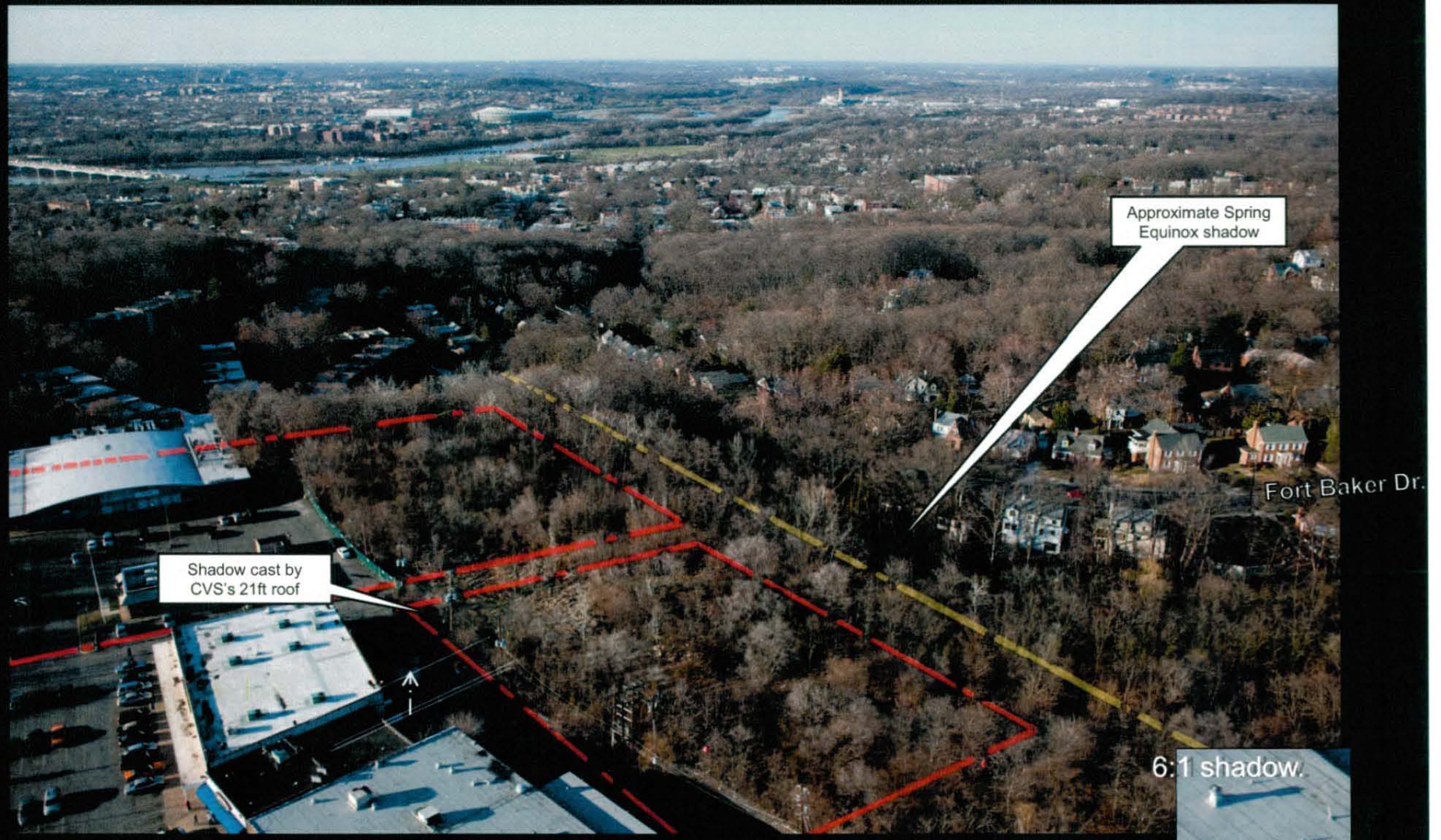
Red indicates removal of existing vegetation.

Impact to nearest neighbor



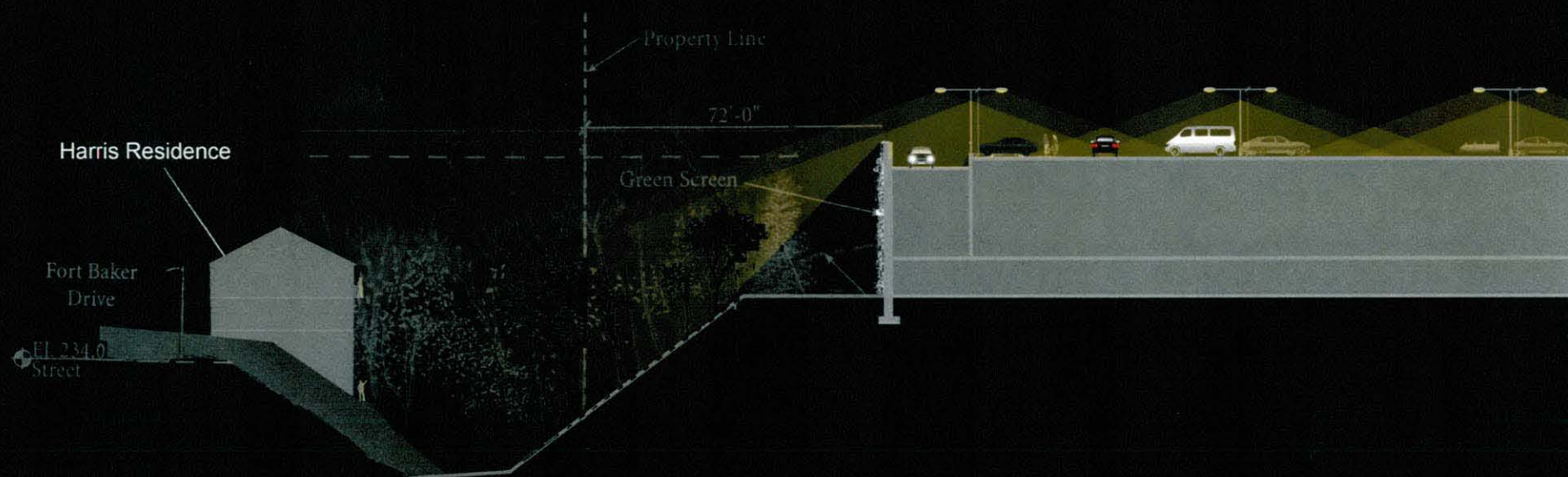
Red approximates the proposed foundation of Block 1's 41ft wall from the Cole residence.

Shadows



Shadows cast at 6:11 PM on March 16th, More than 1 hour before sunset.

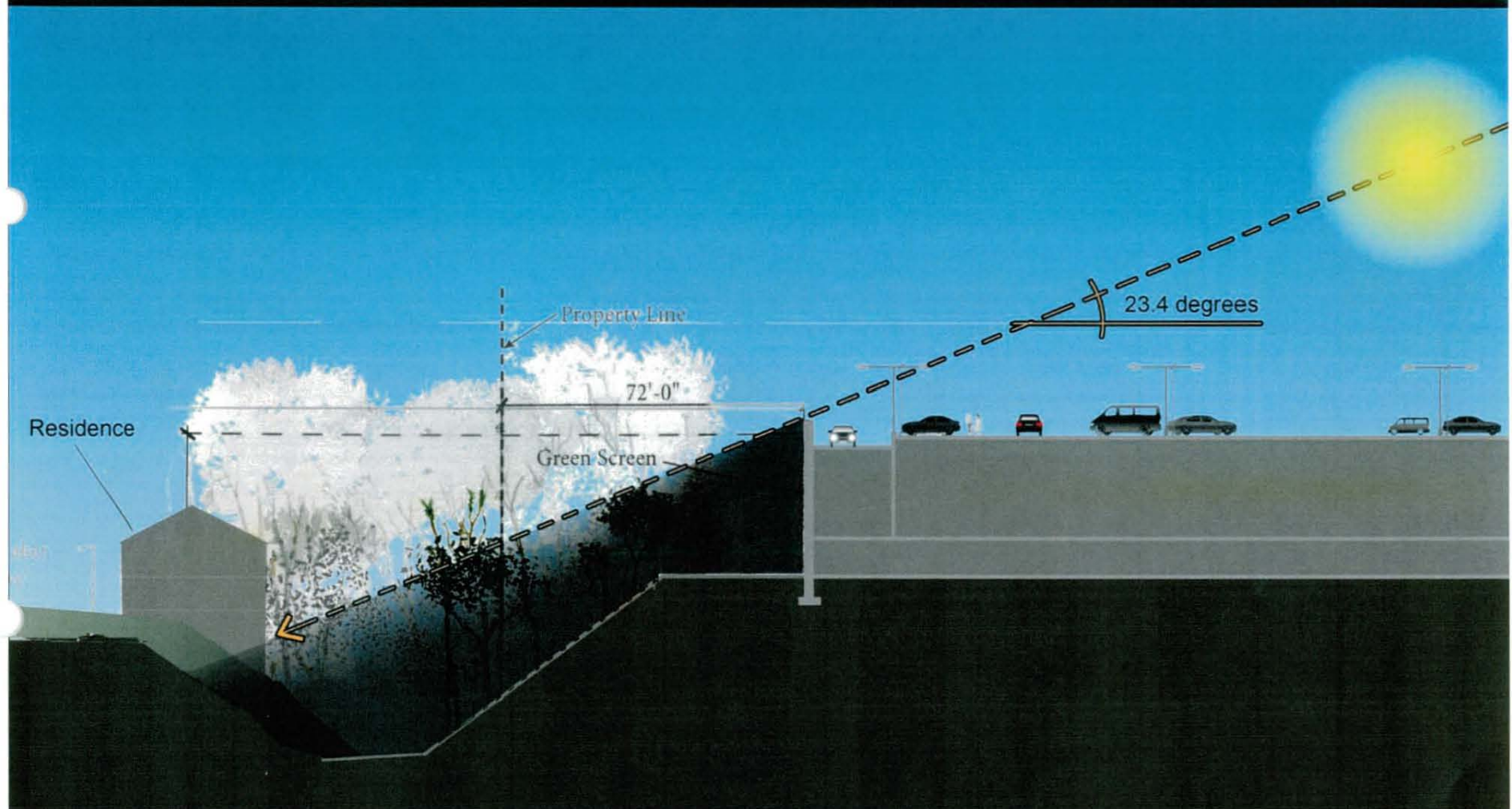
Night time impacts...



Block 1's rooftop parking deck, with 15ft light poles, shown at night.

Cross section based on developers Exhibit B Block 1

Visualization of Shadows



Sun shown on Dec. 21st at 3pm 1.45 hours before sunset.

Source: Exhibit E – PUD Project Shadow Studies—Torti Gallas and Partners. And Exhibit B Block 1 PUD Design.

Evaluation of Skyland Renderings:

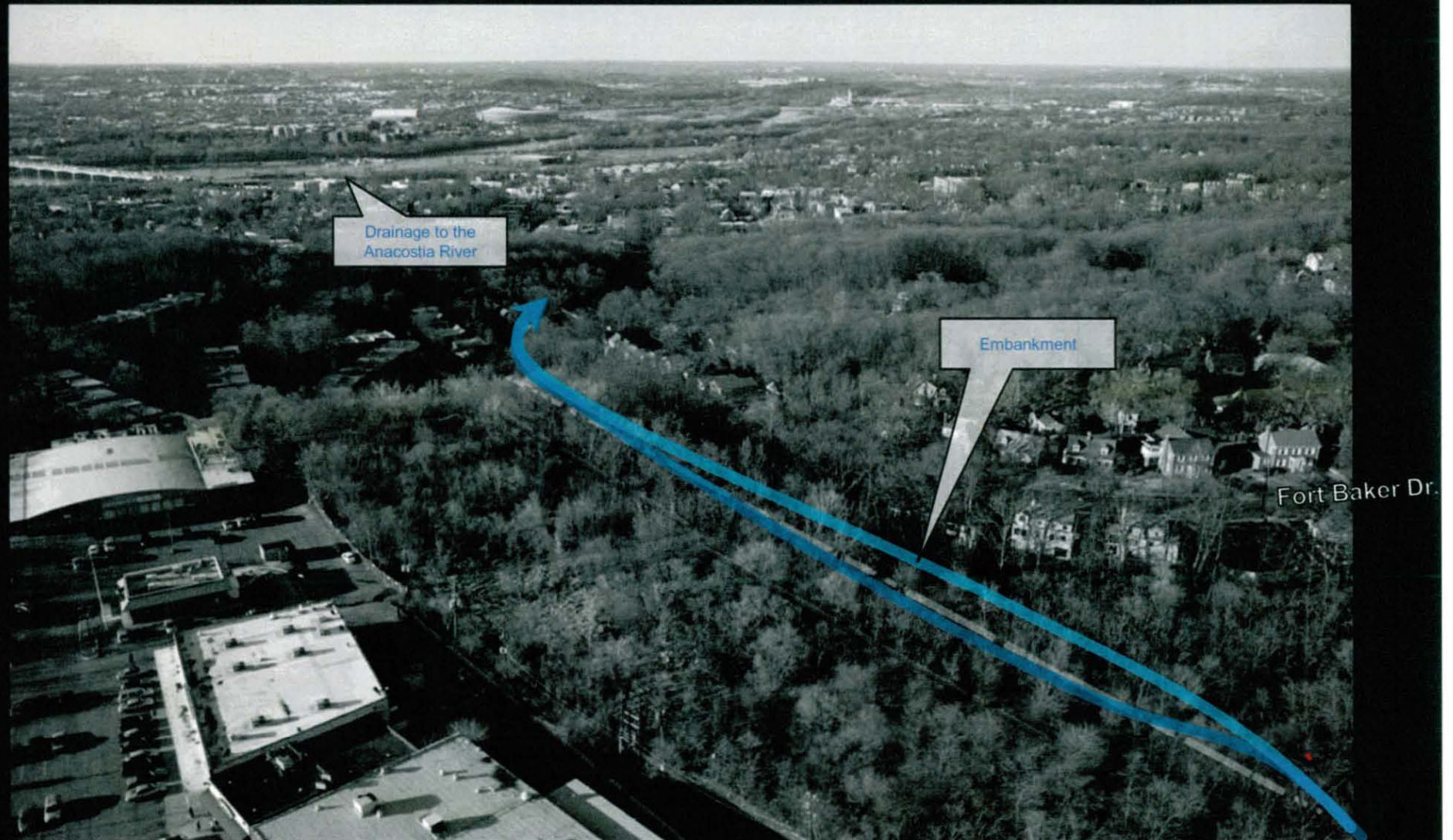
Based on the **National Park Service**, and the **Bureau of Land Management** criteria for accurate, replicable and defensible visual simulations, there were several concerns about the simulations in the submittal package received March 29th. 2010. Specifically:

- Photographs taken with a wide angle lens are not reliable representations of human perception. They make objects look smaller than their actual size. Their excessive cone of vision shows more than what a normal human eye would see. The generally accepted cone of vision, while variable, is captured by a 50 mm lens on a full frame digital camera sensor.
- The simulation submitted to the zoning authorities and the community appears to have used an unusually wide field of vision. The full panoramic view represents a 112 degree view. This 'stitched' panorama, with a wide angle lens has the immediate effect of making the developers' building appear considerably smaller.



Circles indicate considerable photographic alignment errors. (Source: detail from developers simulation)

Changes in the Stream's channel...



Light blue indicates the general shift in the stream's bed because of the historic landfill/dump.

Exhibit B

DANIEL S. ROM, P.E.
Vice President
Piedmont Geotechnical, Inc.
Waterford, Virginia

Education: B.C.E., Georgia Institute of Technology, 1973
M.S.C.E., Georgia Institute of Technology, 1975
Continuing Education

Registration: Professional Engineer in Alabama, Arkansas, Delaware,
Maryland, New Jersey, North Carolina, Pennsylvania, Tennessee,
Virginia, Vermont, Washington, DC, and West Virginia

Professional Affiliations:

Member, American Society of Civil Engineers; Chi Epsilon Civil Engineering
Honorary Fraternity; International Society for Soil Mechanics and
Foundation Engineers; Fairfax County Geotechnical Review Board; Past
President of Washington Area Council of Engineering Laboratories (WACEL);
American Arbitration Association

Publication:

"SPT? A Better Approach to Site Characterization of Residual Soils Using
Other In Situ Tests", Geotechnical Special Publication No. 92, October,
1999, American Society of Civil Engineers.

Experience/Qualifications:

1990-Present:

Vice President of Piedmont Geotechnical, Inc., Waterford, Virginia

The Company performs geotechnical and environmental engineering
services, foundation monitoring, and forensic engineering services.
Piedmont Geotechnical, Inc., a Virginia Corporation, is a Woman-
Owned Business Enterprise.

Mr. Rom is responsible for the general management of company
operations and engineering evaluations. Mr. Rom has consulted on
over a thousand geotechnical engineering projects in Virginia,
Maryland, and the District of Columbia, including municipal works,
critical structures, and peer review. In addition to geotechnical
consultation, Mr. Rom has performed pre- and post-construction
condition surveys for Dynamic Compaction projects in the eastern
United States. He also helped Clarke County (Virginia) prepare its
current Blasting Ordinance. Mr. Rom has consulted for the Prince
William County Public Schools on construction vibration issues, and
recently reviewed claims related to vibration for a regional
shopping mall in Martinsburg, West Virginia.

Mr. Rom managed the Dam Safety Inspection Program for the U.S. Nuclear Regulatory Commission, and reviewed geotechnical engineering matter prepared by DOE for the proposed High-Level Nuclear Waste Repository at Yucca Mountain, Nevada. He is currently involved with dynamic compaction reviews, deep foundation design, and retaining wall design services.

1983-1990:

Manager, Froehling & Robertson, Inc. in Sterling, Virginia

Mr. Rom was responsible for the direction and overview of all projects and client development, and for the scheduling of engineering work and cost control for the Washington Metropolitan area. He also was responsible for the planning of engineering investigations, preparation of cost and scope proposals, evaluation of field and laboratory data, report preparation, and senior author review of reports prepared by other engineers. Mr. Rom was the engineer-of-record for major expansion projects at Washington National (Reagan) and Dulles International Airports. He negotiated the contract and managed the subsurface exploration for the Dulles Greenway Toll Road. As President of WACEL, he helped revise the Fairfax County Critical Structures Manual. Mr. Rom also managed a major county-wide exploration project for the Fairfax County Water Authority.

1974-1983:

Staff Geotechnical Engineer; Manager, Geotechnical Services

Mr. Rom was a geotechnical engineer for Law Engineering and ATEC Associates, Inc. With these firms, Mr. Rom performed hundreds of geotechnical studies in the eastern and southeastern United States for civil works including municipal, commercial, industrial, residential, institutional, and transportation. Specialty projects included coffer dam design, walls, pavements, landslide evaluation, geophysics, tunnels, underpinning, and deep foundations.

Piedmont Geotechnical, Inc.

14735 Wrights Lane * Waterford, Virginia 20197-1601
540-882-9350 * FAX 540-882-3629

April 12, 2010

Law Firm of Martin P. Sullivan
Attn: Mr. Martin P. Sullivan, Esq.
1725 I Street, NW, Suite 300
Washington, DC 20006

Re: Skyland Town Center
Washington, DC

Dear Mr. Sullivan:

In accordance with your request we have reviewed available documents pertaining to the proposed Skyland Town Center development. The purpose of the review was to identify geotechnical engineering concerns for the Fort Baker Drive residences which are adjacent to the Skyland property.

Missing from the available documents are a subsurface exploration report and geotechnical engineering evaluation for the proposed development. For this reason our comments are limited. Additional comments may be generated when the geotechnical engineering evaluation is available for review.

Based on the review of the limited number of documents made available to date, it is our opinion that many of the potential development concerns relate to site (civil) engineering; however, there are also a number of geotechnical engineering concerns:

Geotechnical and Geo-Environmental Consulting

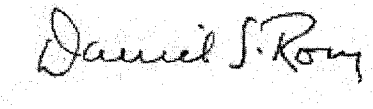
Virginia, Maryland, District of Columbia, West Virginia, New Jersey,
North Carolina, Pennsylvania, Delaware, Vermont, Arkansas, Alabama, Tennessee

1. The record indicates that building foundation distress occurred in the Fort Baker Drive residences when the adjacent property (God's Landfill) was created. Due to the foundation distress, it is our understanding that the residences were underpinned with helical piers. If the adjacent property is to be altered by grading, surcharging, dynamic compaction, or other operations which will affect the subsurface conditions or subsurface drainage, then renewed foundation stress may result at the Fort Baker Drive residences.
2. Photographs of the Skyland property taken from the Fort Baker Drive residences show apparent slope instability based on the appearance of large trees at rakish angles. Such tree growth patterns are well documented in DC-area "marine clay" slope failures. One adjacent municipality which has experienced "marine clay" slope failures (Fairfax County) requires developers to assure that the slopes on adjacent properties are stable both before and after new construction is approved.
3. The loss of vegetation on the Fort Baker Drive slopes would be a destabilizing factor which could affect the residences. Vegetation loss could result from changes in the groundwater regime or changes in exposure to sunlight.
4. Available pedalogic mapping identifies the soils behind the Fort Baker Drive residences as belonging to the Muirkirk Variant Complex (MvD) and Beltsville-Urban Land Complex (BeB) groups. Nearby properties are underlain with Christiana-Urban Land Complex soils which are essentially "marine clay." Given the degree of error in the soil survey records there is a possibility that the Fort Baker Drive residential slopes are actually underlain with Christiana soils, and that the slopes may be unstable or marginally stable, particularly if the Skyland site is altered. Christiana soil slope failures in Southeast DC are responsible for a number of costly and long-term stabilization efforts. A comprehensive re-mapping of the soils by a registered soil scientist is advised.
5. Erosion complications will be discussed by the site engineer. However, soil erosion potential is also a geotechnical engineering consideration. Lacking a geotechnical engineering report it is not possible to fully classify the soil erosion potential. In general it can be stated that poorly-consolidated landfill material would be expected to have significant erosion potential.
6. Hillis-Carnes Engineering Associates, Inc., has rejected the potential use of driven piles for the proposed development due to expected "undue vibrations." However, Hillis-Carnes is apparently considering the use of Dynamic Compaction ground improvement techniques. It is unclear how the undue vibrations which pile driving would generate would not occur in dynamic compaction applications also.
7. It is unclear whether environmental concerns including soil and groundwater contamination from the landfill have been evaluated. If contaminants are present, how will the new construction protect the environment from the spread of the contaminants?

If you have any questions regarding the above, please call.

Sincerely,

Piedmont Geotechnical, Inc.

A handwritten signature in black ink that reads "Daniel S. Rom". The signature is written in a cursive style with a large, stylized 'D' and 'R'.

Daniel S. Rom, P.E.

Vice President

DSR/jbp

Exhibit C

Gregory J. Budnik, P.E.

College Education: 1983, Bachelor of Science, Civil Engineering, Pennsylvania State University

Work Experience: 1982-current; worked for notable civil engineering firms such as Dewberry & Davis, Greenhorne & O'Mara and Michael Baker, Jr. Since 1991, President and CEO of GJB Engineering, Inc. and Principal of the Community Association Engineering division of the firm.

Continuing Education: 1991-2007; in local land development civil and drainage design through the Engineers & Surveyors Institute of Northern Virginia

Licensure & Work Experience:

- 20 years Licensed Professional Engineer, Commonwealth of Virginia, #20119 - certified June, 1989
- 16 years Designated Plans Examiner Certification (1991-2007), Fairfax County, #008 - certified April, 1991. Highest level of jurisdictionally-conferred credentials an engineer can carry in Fairfax County for land development related engineering.
- 25 years experience as a design engineer and project manager for Dewberry & Davis, Greenhorne & O'Mara and GJB Engineering, Inc., during which I have designed or supervised the design of the grading and utilities for thousands of residential homes and commercial sites in the Northern Virginia area as well as associated feasibility studies on properties subject to potential purchase by clients.
- Over 25 years progressive experience in land development site civil engineering in the Northern Virginia area, with an emphasis on the development process and commercial/residential design.

Affiliations: I am also experienced with residential property and the development thereof by merit of my affiliations and experiences below:

- Co-Managing Member, Crook Branch LLC - a real estate investment company
- Managing Member, Megalex I, LLC - a real estate investment company
- President, Newington Civic Association (1998-2004)
- President, Springfield Oaks HOA (1991-1993)
- Association Engineer, PELUOA condominium association (2007-present)
- Original member, CAI (Community Association Institute) Committee for Designation of Reserve Study Professionals, 1996-1998
- Consultant and Civil Engineer for over 300 homeowner, condo and community associations in the Northern Virginia area.

GREGORY J. BUDNIK, P.E.
CIVIL ENGINEERING AND LAND PLANNING

P.O. Box 1214
Newington, Virginia 22122
703-401-8855
greg.budnik@gjbinc.com

BY FIRST CLASS MAIL & E-MAIL TRANSMISSION

April 12, 2010

Law Firm of Martin P. Sullivan
Attn: Mr. Martin P. Sullivan, Esq.
1725 I Street, NW, Suite 300
Washington, DC 20006

Re: Civil engineer's professional opinion on the anticipated impacts of the construction of the Skyland Town Center on the residential dwellings and properties of Fort Baker Drive

Dear Mr. Sullivan,

As requested by your firm, I have reviewed the records described herein and visited the above referenced properties in attempt to gauge the impacts, from a civil engineer's perspective, that construction of the Skyland Town Center, as currently proposed and planned, would have on the residential dwellings and their associated property on the south side of Fort Baker Drive between W Street, S.E. and 30th Street, S.E. (the "FBD properties").

Information made available to me consisted of documents supplied by your firm related to the jurisdictional zoning review, the testimony of your client, developer's representatives and Zoning Commission officials at various stages of the zoning review process, information on the Skyland project publicly available on the internet as well as the professional opinion of engineers in THE related field of geotechnical engineering. Where it is possible that additional information may be currently exist beyond that which I used to base my preliminary professional opinion on, it is my belief that I have reviewed sufficient information to reach the conclusions of engineering concern stated herein. I stand available to perform review of additional documents that are or may become available and speak with the applicant's engineer(s) as requested to review further levels of detail as they may develop in this matter.

Background

The FBD properties were developed approximately 50 to 70 years ago and form a portion of a stable residential neighborhood within the Southeast portion of the District of Columbia. The existing commercial businesses existent on the portion of the proposed development site were initially developed approximately 60 years ago and have been redeveloped and expanded over this time period.

A reported illegal landfill performed on the undeveloped portion of Skyland Town Center site and was reportedly the subject of litigation and a court order approximately 35 years ago relative to the uncontrolled nature of the fill and the existence of debris within the landfill materials. It is unclear to this engineer, at this time, what the exact horizontal and vertical limits of the landfill are or whether it exists within the FBD properties.

The Skyland Town Center (STC) project has been proposed, in various forms (according to publicly available documents and media information) over the past twenty years, the most recent of which is under consideration by the District of Columbia Zoning Commission (www.skylandtowncenter.com).

Erosion Concerns

During my visit to the site, I noted erosion occurring in moderate to severe conditions on the FBD properties. These areas of erosion were due, in my opinion, to:

- Steep slopes, appearing to be, in some areas, in excess of the critical angle for soils composing them and in other areas unnaturally steep, indicating potential uncontrolled man-made fills;
- Proximity of the aforementioned steep slopes to a natural drainage course which drains not only the FBD properties but parts of the undeveloped portion of the STC site;
- Accumulations of topsoil, in the form of alluvium (sediment - both man-made and natural) within the overbank areas of the main drainage channel through the FBD properties, which are, by nature, unstable when subjected to varying levels of stormwater flow over their surface;
- Lack of stabilizing vegetation and trees in various portions of the slopes of the FBD properties on both sides of the drainage channel between the FBD properties and the proposed STC.

This erosion is ongoing at present and, in my professional opinion, can be exacerbated by the changes in stormwater runoff that the STC site will create. Please refer to our comments related to stormwater management below for further information and opinion.

Stormwater Management Concerns

The Skyland Town Center site consists of a previously developed, near fully-impervious area (existing businesses which currently appears to drain to an outfall point below the FBD properties) and an undeveloped portion of land which drains directly to the FBD properties. Modifications to the landform for both of these portions of the STC site will increase runoff to most of the drainage outfall points for this project and will create a much larger impervious area.

It is anticipated that the stormwater management system will utilize a diversionary approach to managing runoff which is naturally (currently) entering the FBD properties, as well as the increases for same. Further, storage methods, to manage runoff rates, are anticipated to be employed by STC engineers. Where the storage methods can address runoff rate, these methods

GREGORY J. BUDNIK, P.E.

do not address runoff volume increases and the impacts that the longer timeframes that these detained volumes flow through natural channels will have on such natural channels.

You have indicated that the STC engineers have stated, in general, that these increases in stormwater runoff will be addressed with future detailed engineering design of the stormwater drainage and management systems on the site, however I remain concerned that a stormwater management system of this magnitude generally approaches management of drainage on a large scale, rather than addressing each individual outfall point. Failure to fully address the unique conditions of the FBD properties and dwelling foundations and the drainage channel through same, along with the increase in stormwater volume as well as rate, could very well result in increased erosion of the slopes adjacent to the structures (refer to Erosion Concerns section for further discussion) as well as downstream of the FBD properties.

Additionally, I reserve a concern that major changes in the pattern of overland drainage and the sizable amount of impervious areas proposed for the STC project will create a change in the groundwater levels in and adjacent to the FBD properties. Please refer to the appropriate section of my opinion letter below for further information and opinion.

Where I understand the attorney for Skyland Town Center has stated that these increases in stormwater runoff will be addressed with future detailed engineering design of the stormwater drainage and management systems on the site, I am unaware, to date, of any detailed design that demonstrates the system will address the concerns stated in the Erosion Concerns and Groundwater sections herein.

Concerns over the Effects on Groundwater due to Landform Changes

Based on the expectations regarding typical handling and management of stormwater on the site, it is reasonable to assume and expect that stormwater outfalls will need to be diverted from their current directions and locations. Further, the amount of rainfall which can be expected to be absorbed into the soil profile is anticipated to be significantly decreased for all currently pervious areas of the STC site.

Thus, the groundwater aquifer, both permanent and perched, can be expected to change. Without further geotechnical/hydrogeologic study on the matter, the concern that a change in groundwater will have a potentially negative effect on the stability of slopes and on the vegetation and trees which currently assist in what stabilization exists is, in my opinion, clearly present.

Please also refer to the geotechnical engineer's opinion for more information related to the effects which changing groundwater levels can have on the stability of certain types of clay soils typically present in this area of the District of Columbia.

GREGORY J. BUDNIK, P.E.

Technical Challenges in Adaptive Reuse of a Landfill

Where adaptive reuse of former landfill sites (containing either organic, soil and/or construction materials) are approved and performed in many jurisdictions and states throughout the country, it is very common that, due to the unique engineering challenges which face redevelopment over landfills or portions thereof, it is my experience that detailed engineering assessments are required to be made before the Zoning-stage permissions for development are granted by a public jurisdiction.

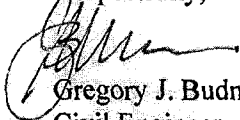
My personal experience with adaptive reuse of landfills is that one of the issues that is typically explored by such levels of detailed engineering is the level of surcharge which soils and landfill materials can accept. Given the expansive, proximate and massive nature of the structures being proposed for the portion of STC adjacent to the FBD properties, I reserve a significant engineering concern that the layout of the site has not fully considered the engineering challenges that face locating large parking garages and other major, large bearing structures adjacent to the steep slopes of the undeveloped and possibly landfill portions of the Skyland site.

At present, we are unaware of what level of engineering, from a geotechnical, environmental and civil engineering perspective, have been performed by the applicant's engineer(s) to justify the way the site is, at present, configured and the total mass placed on the site relative to slope stability and the location of the reported landfill and other uncontrolled fills on or adjacent to the site or slope toes.

Professional Opinion

It is my professional opinion, based on the information I have reviewed to date, my field observations and the lack of conclusive engineering science supplied to date by applicant which would refute my opinion, that the magnitude, scope and proximity of the mass, scale and type of construction required to build the Skyland Town Center, as currently proposed, has a high likelihood of adverse impacts to the FBD properties and dwellings. These adverse impacts to FBD properties are anticipated to include, but are not limited to: erosion of the landform within private ownership and adjacent to the critical slope forming the plane of influence of the dwelling foundations, loss of stabilizing vegetation and tree canopy, changes in the groundwater elevations within the soil profile of the subject FBD properties and significant changes in stormwater runoff rate and volume through FBD properties. These impacts are anticipated to have a higher-than-average potential for adverse impact on the dwelling structures themselves due to the fact that these slopes, which range from moderately to very steep, form the foundational support for the subject dwellings.

Respectfully,



Gregory J. Budnik, P.E.
Civil Engineer

GREGORY J. BUDNIK, P.E.

CERTIFICATE OF SERVICE

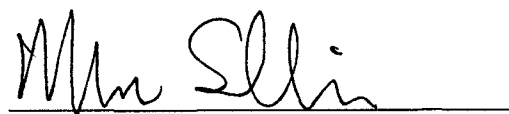
I hereby certify that on April 12, 2010, a copy of this submission was mailed by U.S. Mail, or hand-delivered, to the following:

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A handwritten signature in black ink, appearing to read "M. Sullivan", is written over a horizontal line.

Martin P. Sullivan