VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

KATHERINE PARRY, *et als,*	)	
	)	
Plaintiffs / Counter-Defendants,	)	
	)	
v.	)	**CASE NO. CL 00087179-00**
	)	
GC PROPERTY, LLC,	)	
	)	
Defendant / Counter-Plaintiff.	)	

REPORT OF COMMISSIONER IN CHANCERY

TO: THE HONORABLE JUDGES OF SAID COURT:

Your undersigned Commissioner in Chancery reports as follows:

NATURE OF THE CASE

This is a dispute over partition of land. The plaintiffs, Katherine Parry and Judith Knoop, seek to have the property sold in lieu of partition and the proceeds divided amongst the owners; whereas the defendant, GC Property, LLC, seeks to have this land partitioned in kind with a specific portion allotted to it. Partition in kind is always the default procedure. The central issue of this case is whether the plaintiffs have established that partition in kind cannot be conveniently made and whether the interest of those who are entitled to the subject, or its proceeds, will be promoted by a sale of the Property.

This cause was referred to your Commissioner who was "directed to hear the evidence of the parties and to report his findings for determination in compliance with Article 9 [Partition] of Title 8.01 of the CODE OF VIRGINIA (1950) as amended." A hearing was held on August 12 and

13, 2015. During the hearing, it came to light that the defendant's discovery responses did not disclose the fact of an offer by Capretti Land, Inc. to purchase the property.[1] Consequently the record was kept open and the plaintiffs conducted additional post-hearing discovery which resulted in them submitting additional exhibits into evidence on September 18, 2015. A deposition was scheduled for September 28, 2015, however no transcript was proffered to your Commissioner.[2]

THE PROPERTY IN QUESTION

This partition action concerns two contiguous parcels of real property totaling 22.82414 acres ("the Property") which are located on the south side of Sycolin Road (Route 643) in Loudoun County, Virginia, between Goose Creek, to the west, and the Dulles Greenway (Route 267), to the east (see DX 3 & PX 4). These parcels are shown on the Boundary Survey of the Land of G.C. Property, Katherine K. Parry & Judith Alice Knoop, dated July 17, 2015 ("the Survey") (PX 4), and are outlined in red and depicted on the 2014 Loudoun County Aerial Imagery Map (DX 3). The smaller of the two parcels (referred to herein as "Parcel 5"), is identified as PIN 154-35-7289 and contains 11.26734 acres. The larger parcel (referred to herein as "Parcel 6"), is identified as PIN 154-35-8154 and contains 11.55680 acres.

DERIVATION OF TITLE AND INTERESTS OF THE PARTIES

The Property was acquired by the plaintiffs' parents— Victor H. and Alice Buell Knoop— as tenants by the entireties in 1948. The Knoops transferred title to Mrs Knoop in 1990 and Alice subsequently conveyed the Property to Victor as trustee of her living trust (PX 1). [3]

---

[1] T. 8.12.15, pp. 100-105, 200-01.
[2] Plaintiffs' Exhibits 50-52. Hereafter, all references to Plaintiffs' Exhibits will be cited as "PX" and references to Defendant's Exhibits will be cited as "DX."
[3] See copies of these instruments in DX 22.

Following the death of Alice Buell Knoop on January 28, 2012, title to the Property was conveyed to the plaintiffs, Katherine Parry and Judith Knoop, and their sister, Nancy K. Webster, as tenants in common, by a Special Warranty Deed dated December 12, 2012 and executed by Victor's and Alice's three daughters as the surviving co-trustees of their mother's living trust (PX 2). By a deed dated January 9, 2013 (PX 3), Nancy K. Webster conveyed her one-third (1/3) interest in the Property to GC Property, LLC, a limited liability company owned by Nancy K. Webster's son, Timothy T. Webster, and his wife, Kathy K. Webster.[4] Consequently, Katherine Parry, Judith Knoop and GC Property, LLC each claim a 1/3 undivided interest in the Property.

CHARACTERISTICS OF THE PROPERTY

Goose Creek Frontage

The Property has 1,084.14' of frontage along Goose Creek which is subject to the Scenic Buffer and Environmental Quality Corridor ("EQC") requirements. T. 8.12.15 pp. 36-41; DX 25. Ordinarily, a 200' corridor may not be disturbed unless storm water management is used or a tree buffer is maintained, in which case the off limits corridor is reduced to 100'. T. 8.13.16 p. 43. It appears that the portion of Goose Creek adjacent to the Property is an impoundment area for the Goose Creek reservoir and, consequently, there is a 300' development restriction as well. T. 8.13.15, pp. 189-92.

Steep Slopes

The Property slopes steeply downward from Sycolin Road to Goose Creek. T. 8.12.15 p. 39; DX 25. For purposes of county regulation, steep slopes are placed in two categories: "Moderately Steep" and "Very Steep." The Moderately Steep slopes are not heavily regulated while the "Very Steep" slopes are off limits for most uses. T. 8.13.15 p. 36. (See §§ 3-1500 (F)

[4] Nancy K. Webster was paid $250,000 for her 1/3 interest in the Property. T. 8.12.15, p. 85.

& (G) LCZO). A significant portion of the Property adjacent to Goose Creek has "Very Steep" slopes. DX 25.

The Property drains, of course, towards Goose Creek, and mapping reveals several water sheds which could be intermittent streams. If this is true, it could further inhibit development. See DX 25; T. 8.13.15 pp. 89-91.

Zoning

The Property is zoned "R-1 Single Family Residential… which was established to provide for low density single family detached residences on lots of 40,000 square feet or more…" § 3-101 LCZO; T. 8.12.15, p. 4. Under this zoning category, lots can be clustered and reduced in size, as long as permanent common open space is "provided in a sufficient amount such that a gross density of one lot per 40,000 square feet is maintained…" See §§ 3-105 (E) & 3-106 (E) LCZO.

Water & Sewer

- There is a 16" water main running across the front of the Property, however a direct connection to serve it cannot be made. To develop the Property, fire hydrants would need to be installed with 6" taps from which water connections could be made.[5] Another possibility is drilling private wells. T. 8.13.15, p. 71-73; DX 27.
- Public sewer is available, however the cost of obtaining access would be difficult to determine without preparing a design. In any case, it is likely to be quite expensive. T. 8.12.15, p. 37, 77-78; T. 8.13.15, pp. 71, 73-75, 93-94 & 113; DX 27. Septic tanks with drainfields could possibly serve the Property, however a soil scientist would need to conduct tests to determine their suitability. T. 8.13.15, p. 73. None of the parties has

[5] See the Agreement with plat between Victor H. Knoop and the Loudoun County Sanitation Authority dated July 24, 1995, recorded at Deed Book 1387, Page 1725 which is a part of DX 22. It should be noted that this agreement is dated and recorded AFTER title was vested in Victor as Alice's trustee, and therefore is not in the chain of title.

commissioned a design for accessing public sewer nor have they had drainfield percolation tests performed.

Public Road Frontage

Parcel 5 is bordered on the north by Sycolin Road (Route 643) for a distance of 212.47 feet and by "Sycolin Road (Abandoned)" for a distance of 524.05 feet. Parcel 6 is also bordered on the northeast by the area described as "Sycolin Road (Abandoned)" for a distance of 288.56 feet (PX 4). This area described as "Sycolin Road (Abandoned)" on the survey is described as "Old Sycolin Road" on the concept plan entitled "GC Property Concept Development Plan Concept #4" dated July 28, 2015 (the "Concept Plan") (DX 25). This portion of Sycolin Road variously described as "Sycolin Road (Abandoned)" and "Old Sycolin Road" is no longer state maintained.[6] There is, however, a 100' setback from the road in which building construction is prohibited. T. 8.13.15 p. 43.

Improvements

In 1948, when the Property was acquired by the Knoop family, there were three structures: a house, a sleeping cabin and a small living space. Over time they all burned down, probably due to arson. T. 8.12.15, p. 137-41. Consequently, the Property is completely undeveloped. There are no fences, walls, or other structures visually dividing the two parcels from one another. The only manmade structures or improvements located on the Property are the following:

[6] In a July 18,2006 Resolution (DX 28), the Board of Supervisors "discontinued" as part of the secondary system of Route 643 identified as portions to be discontinued on an attached sketch. Attached to the Resolution was a Virginia Department of Transportation Form AM-4.3, Report of Changes in the Secondary System of State Highways (the "Form AM-4.3"), which listed on Page 5 the actual portions of the secondary system of state highways to be discontinued. Included on this list was a portion described as "Old Shellhorne Road (sec. 2a, P. 3 Of 6), State Route Number 643," running from "1.05 miles east of new C/L [centerline] of Route 648" to "1.32 miles east of new C/L of Route 648," a total "distance of .27 miles." On page 3 of the sketch that follows the Form AM-4.3, this section of road is depicted as running from Route 643, .27 miles east toward route 65. When Page 3 of the Sketch is compared to the Aerial Imagery Map (DX 3), it is clear that the area described as "Sycolin Road (Abandoned)" on the Survey (PX 4) corresponds to the westernmost portion of Section 2a on the sketch.

- A gravel driveway running from Sycolin Road, across a triangular parcel owned by Toll Road Investors Partnership II, LP (PIN 234-37-8457), then across the area described as "Sycolin Road (Abandoned)" on the Survey, and onto Parcel 5, where it runs in a southwesterly direction until it ends in a loop near a clearing on Parcel 5 (DXs 3, 4, 6 & 7)
- An old chimney and cabin foundations located near the end of the gravel driveway, which constitute the only remains of a family cabin that was destroyed by fire several decades ago; (DX 8)
- Several family headstones (but no graves) located in the clearing on Parcel 5; (DX 9 & 10)
- Two stone walls, one located along the northwestern boundary of Parcel 5 and one located to the west of the headstones and building remains near the clearing (PX 4 & 11); and
- Three concrete pads, one located along the gravel driveway and two located in the clearing between the headstones.

THE TESTIMONY

At the outset, it should be noted that the plaintiff's evidence of the defendant's unreasonableness in its dealings with prospective purchasers of the Property raises a red herring. See T. 8.12.15, pp. 29-30, 45-46, 119-20, 154-56. Timothy and Kathy Webster, the owners of GC Property, have been consistent in their desire for partition in kind and request to be granted that portion of the Property which was the site of a cabin and picnic area. The plaintiffs, Katherine Parry and Judith Knoop, do not live in Virginia and want the Property sold for the highest possible price. The challenge in dealing with prospective purchasers was to structure a deal which would yield the highest price and yet allow GC Property to retain that portion of the Property desired by the Websters.

Prior to this suit being filed, there was an extended course of dealings with prospective

purchasers who were interested in buying the Property for residential subdivision development. The evidence tended to show that Websters were mercurial and, at times, unreasonable in their expectations. When the negotiations with prospective purchasers did not result in a letter of intent or contract acceptable to all three owners, the instant case was filed. Whether or not the Websters were mercurial or unreasonable in their negotiations with developer purchasers is irrelevant, and the evidence of such dealings should not be, and was not, considered in making my findings.

Peter Gulick

Mr. Gulick is the owner of the Gulick Group which is a residential building and development company. He has been doing such work for 35 years in both Loudoun and Fairfax Counties. He was interested in developing the both parcels of the Property as a whole, but not separately. "The larger a piece is, the better economies of scale are, the more aesthetic continuity you can bring to a community. A smaller piece would not have interested me." T. 8.12.15, pp. 23-26, 45, 47-48, 81. After an initial investigation and analysis of the Property's development potential, he began negotiations for purchase of the Property which are evidenced by a series of draft letters of intent. T. 8.12.15, pp. 30-32; PX 11, 16, 32, 34, 41 & 43. In his provisional plans for the Property, he did not consider the cluster option under the R-1 zoning category because it takes an additional year to obtain the necessary county approvals. He noted that there are "a lot of things that make the value of the site questionable..." and that the Property would be a "difficult site to develop for a lot of reasons..." including its frontage along Goose Creek, the "very, very steep" slopes, "problematic" access from Sycolin Road, and the difficulty and expense of providing sewer. T. 8.12.15, pp. 36-37, 41, 46.

If Gulick had been able to place the Property under a fully signed (but not legally binding) letter of intent, his company would have conducted a serious study which included engineering

layouts that showed lot shapes and sizes to determine whether a house design currently used by the Gulick Group would work both as to fit and as to cost to build. T. 8.12.15, p. 42, 62. Under the various proposed letters of intent-- PX 11, 16, 32, 34, 41 & 43— no binding obligation was created and Gulick could have terminated the relationship with the sellers should he have decided that he did not want to purchase and develop the Property for any reason. T. 8.12.15, pp. 62-63.

Kathy Webster

Mrs. Webster was called as an adverse witness by plaintiffs' counsel. She is the daughter-in-law of Nancy (nee' Knoop) Webster and is a principal of GC Property. She believes that the Property was worth $700-800,000 as of September 4, 2014. T. 8.12.15, p. 89.

She acknowledged that Lennar Homes had tendered a letter of intent dated August 4, 2014 offering to purchase the Property for $4,000,000, adjusted by $66,666 per market rate home site above or below a 60 lot yield, and subject to a 75-day study period. T. 8.12.15, p. 96; PX 44. She further testified that she had received another offer from NV Homes which GC Property, LLC had not disclosed or produced in discovery. The plaintiffs submitted draft contracts that were obtained through discovery after the hearing. [7]

Mrs. Webster testified to the Webster family's sentimental attachment to the portion of the Property which included the log cabins and headstones.[8] She acknowledged that the plaintiffs also had an attachment to the portion of the Property. T. 8.12.15, pp. 107-08, 115-16. The Websters have used the Property for fishing, canoeing, picnicking, camping and hiking. She and her husband, Tim, "have always loved going [t]here" and would like to build a home there. T. 8.12.16 pp. 192-93, 200. Their preferred site is adjacent to the cabin ruins so that they could possibly be

[7] T. 8.12.15, pp. 98-106. When the draft contracts were subsequently submitted, it revealed that the offering buyer was actually an entity known as Capretti Land, Inc., not NV Homes. See PX 50, 51 & 52.
[8] This portion of the Property was laid out as Lot 5-A on the Concept Plan (DX 25) produced by Eric Zicht, GC Property's engineer.

incorporated into a new house. See DXs 7-11. The Websters retained Eric Zicht, PE, to prepare a pro forma plan of partition in kind into three parcels—one for each owner. (DX 25.) Of the three parcels shown, the Websters (GC Property, LLC) would like to have Parcel 5-A allotted to them. T. 8.12.16 pp. 198-200.

William Andrew Lauer

Mr. Lauer is a licensed real estate broker working in the commercial area for 20 years. When Bob Bunch joined Lauer's firm, he brought the listing for the Property with him. T. 8.12.15, p. 118. Their goal was to get a letter of intent for sale of the Property to the Gulick Group signed by all parties, but were unsuccessful because Tim Webster's insistence that GC Property be allotted a portion of the Property reduced its value to Gulick. T. 8.12.15, pp. 119-127.

Plaintiff Katherine Parry

Dr. Parry is a retired college professor, living in Florida. She testified that during her childhood the Property was used for summer outings and barbecues, and her sister Judy's wedding was held there. In 1948, when the Property was acquired by the Knoop family, there were three structures: a house, a sleeping cabin and a small living space. T. 8.12.15, p. 138-40.

After their mother's death in 2012, plaintiffs Katherine Parry and Judith Knoop believed they had an agreement with their sister, Nancy Webster (mother of Timothy), to sell the Property, however the plaintiff sisters learned that Nancy had transferred her interest in the Property to defendant GC Property, LLC. (PX 3.)

Based on the advice of their real estate agent, Bob Bunch, to ask Gulick for $2.2 million as well as the letter of intent tendered by Lennar for $4 million (PX 44), Katherine believed that the Property was worth between those two figures. T. 8.12.15, pp. 153-54. She confirmed that she wants the Property sold, however if it is partitioned in kind, she wants to share in the allotment of

the most buildable piece. T. 8.12.15, pp.165-66. She acknowledged that Lauer was tasked to sell the Property as a whole, and not the constituent parcels separately. T. 8.12.15, p. 171.

Plaintiff Judith Knoop

Ms. Knoop is a clinical social worker living in Philadelphia. She testified that the three Knoop sisters, Katherine, Judith and Nancy, agreed to sell the Property when their mother died. She also agrees with Katherine that the Property is worth between $2.2 and $4 million. She prefers to have the entire Property sold. T. 8.12.15, pp.172-78.

Eric Zicht, PE

Mr Zicht is an experienced professional civil engineer, practicing in Loudoun County who was hired by GC Property to prepare a plan for the equitable division of the Property amongst the parties, and to place the area around the building ruins in a single parcel. Mr. Zicht prepared "a concept plan for how the [P]roperty might be developed into three parcels… [which] follows the general format of a preliminary platted subdivision [in] Loudoun County in that it shows the environmental features and all the information that is generally required for a preliminary platted subdivision to get approved… the goal was to try to create three fairly equitable parcels in terms of area, frontage on the creek, usable development area." T. 8.13.15, pp. 11-26; T. 8.12.15, p. 198; This concept plan (DX 25, herein the "Concept Plan") shows three parcels described as Parcel 5-A with 6.0234 acres, Parcel 5-B with 8.4948 acres, and 6 BLA with 8.3059 acres. In settling on the boundary lines between these proposed parcels, Zicht consulted with Norman Myers, the appraiser retained by GC Property, to assist him in making the comparative value of each "more equitable." T. 8.13.15 p. 76.

Mr Zicht, as well as the plaintiffs' engineer, Gerald Hish, shared the mistaken belief that

judicial partition in kind requires that the Court comply with the subdivision ordinance.[9] Not so. In *Leake v. Casati*, 234 Va. 646 (1988) the Supreme Court was posed the question of "whether a chancellor, in deciding whether the land may be conveniently be partitioned in kind, is controlled by the provisions of local ordinances regulating the subdivision of land." In answering "no," the Court said "the power of a court of equity to effect partition in kind is unaffected by statutes and ordinances regulating the subdivision of land." 234 Va. at 647 & 651.

Believing that compliance with the subdivision ordinance was necessary, Zicht proposed a two-step process to create the three lots shown on his Concept Plan: 1) a boundary line adjustment between the existing two parcels; and then 2) a subdivision waiver so as to divide one of the existing parcels, as adjusted, into two parcels.

Zicht testified that he located a house building site on each of the three parcels shown on his Concept Plan. T. 8.13.15, pp. 46, 71.

Zicht noted that the Property is in a R-1 Single-Family Residential zone where the density is 40,000 square feet per lot. With the Property containing 22.82414 acres, he testified that it has a potential density of 24 lots. Using the same approach, his proposed parcels have the following potential densities: 5-A has 6, 5-B has 9 and 6 BLA has 9. T. 8.13.15, pp. 46-49. Zicht described the challenges of a more intense development being avoidance of the steep slopes, building a public road, and complying with the setback and length-width ratio requirements of the zoning regulations.

Norman I. Myers

Mr. Myers is a licensed real estate appraiser from Leesburg who has been working as such for 20 years. He was retained by GC Property to advise Zicht in the preparation of the Concept

[9] See T. 8.13.15 pp. 25-26, 40, 177-86, 200-06.

Plan for division of the Property into three parcels. He was of the opinion that Parcel 5-A shown on the Concept Plan (DX 25) is worth 25% of the total value of the Property, and that Parcels 5-B and 6 BLA, if valued jointly, are worth 75% of the value of the Property. (He did not determine the comparative values of 5-B and 6 BLA separately.) Arriving only at relative valuations, Mr. Myers did not establish a fair market value for each of the proposed parcels 5-A, 5-B and 6 BLA. His opinion of comparative values was based on the parcels' potential zoning densities, terrain, the stream buffer set-back area, their respective buildable areas and availability of utilities. T. 12.13.15 pp.123-25, 135.

Gerald A. Hish, Sr., PE

Mr Hish is an experienced professional civil engineer, practicing in Northern Virginia who was hired by the plaintiffs to "analyze to determine whether or not… [the Concept Plan prepared by Zicht] can, in fact, be approved as a viable concept plan according to the facilities and zoning requirements of Loudoun County." T. 8.13.15, p.176. In carrying out this assignment, he concluded that the proposed boundary line adjustment would not be approved by Loudoun County because it would not comply with §1-404 (C) LCZO which permits boundary line adjustments

> between nonconforming lots or conforming and nonconforming lots, provided… the degree of nonconformity for any lot resulting from such boundary line adjustment is not increased due to such adjustment. In addition …a boundary line adjustment does not increase nonconformity and is permitted where the boundary line adjustment satisfies one of the following conditions…

Noting that existing parcel 6 of the Property is a non-conforming lot because it has no frontage on a state-maintained road,[10] Hish opined that although the Concept Plan did not increase the road frontage nonconformity, it did not meet any of the specified conditions of §1-404 (C), thereby

[10] §1-200 (A) LCZO provides that "No structure requiring a building permit shall be erected upon any lot which does not have frontage on a Class I, Class II, Class II road, or private access easement as specified in the individual district regulations, except as specifically provided for herein and the Land Subdivision and Development Ordinance…"

preventing partition in accordance with it. T. 8.13.15, pp. 178-81, 200-06.

In commenting on the second procedural step in implementing the Concept Plan—subdivision waiver which would divide one of the two parcels created by boundary line adjustment— Hish noted that a property owner is barred from further division for one year after division using the subdivision waiver process. This would, in his opinion, "give pause to a developer..." T. 8.13.15 pp. 183-84.

Hish further opined that the Concept Plan did not show a 300' development restriction which is mandated by §5.230 (B) 4.a. of the Facility Standards Manual in order to protect Goose Creek as being an impoundment area of a public drinking water reservoir. Application of this restriction would not prevent partition in accordance with the Concept Plan but would require relocation of the proposed house location shown on Lot 5-A. Moreover, this restriction would make development of the Property under any plan more difficult. T. 8.13.15, pp. 189-92.

Hish was of the opinion that separation of proposed Lot 5-A from the Property would reduce the lot yield on Lots 5-B and 6 BLA below the number indicated by the 40,000 square feet zoning density, due to other constraints on development. While he did not elaborate what those constraints were, they were implied from his testimony as being the topography and various zoning requirements. Moreover, he said, that the infrastructure costs would be generally the same and that with fewer houses on which to allocate such costs, the pro rata infrastructure costs would increase, thereby creating economic disadvantage. T. 8.13.15, pp. 193-95. He had prepared a *pro forma* division of the Property which yielded 10 lots. The removal of Lot 5-A from his plan would reduce the lot yield on Lots 5-B and 6 BLA to 8 with the infrastructure costs being about the same whether the yield was 8 or 10. This would obviously increase the *pro rata* infrastructure costs for developing Lots 5-B and 6 BLA separately. T. 8.13.15, pp. 217-18.

Significantly, Hish stated that the three-lot partition in kind proposed in the Concept Plan would not violate the zoning ordinance in anyway except its violation of §1-404 (C) LCZO and Lot 6 BLA's lack of road frontage which is a pre-existing nonconformity created by government action—the discontinuance of state maintenance of that portion of old Sycolin Road. T. 8.13.15, p. 216; see DX 28.

DISCUSSION

The Law of Partition

The governing statutes are as follows:

Section 8.01-81 VA. CODE states in pertinent part as follows:

> Tenants in common … shall be compellable to make partition and may compel partition… Any court having general equity jurisdiction shall have jurisdiction in cases of partition; and in the exercise of such jurisdiction may take cognizance of all questions of law affecting the legal title that may arise in any proceedings…

Section 8.01-83 provides that:

> When partition cannot be conveniently made, the entire subject may be allotted to any one or more of the parties who will accept it and pay therefor to the other parties such sums of money as their interest therein may entitle them to; or **in any case in which partition cannot be conveniently made, if the interest of those who are entitled to the subject, or its proceeds, will be promoted by a sale of the entire subject, or allotment of part and sale of the residue, the court… may order such sale**, or an allotment of a part thereof to any one or more of the parties who will accept it and pay therefor to the other parties such sums of money as their interest therein may entitle them to, and a sale of the residue, and make distribution of the proceeds of sale, according to the respective rights of those entitled… (Emphasis added.)

"The partition of real property *in kind* was an ancient heritage of equity jurisdiction, existing at common law independently of statute. To such extent the statutes are only declaratory of the common law. The Virginia statutes… materially enlarge equity jurisdiction in suits for partition; new powers are conferred which were theretofore non-existent. Thus, the right of a

cotenant to an *enforced sale* where partition in kind is impracticable, is a right created by statute." (Citation omitted.) *Leonard v. Boswell*, 197 Va. 713, 718 (1956).

The court noted in *Cauthorn v. Cauthorn*, 196 Va. 614, 619 (1955) that:

> [w]e have held in numerous cases that these statutes create and confer special statutory jurisdiction upon courts of equity for the partition and sale of land. Failure to substantially comply with the provisions of the statutes is fatal to the proceedings. Equity has no inherent jurisdiction to order a sale of land for the purpose of partition. "'*Prima facie* each party is entitled to actual partition. . . . A sale cannot be decreed in a partition suit unless it appears by report of commissioner or otherwise by the record that partition cannot be conveniently made and also that the interest of those interested in the land or its proceeds will be promoted by sale.'" (Citation omitted.)

The Supreme Court continued, quoting *Croston v. Male, et al.*, 56 W. Va. 205, 49 S.E. 136, 137 (1904) as follows:

> "'. . . But the court has no right to decree a sale . . . unless it finds, first, that partition in kind cannot be conveniently made; and, second, that the interest of the parties owning the land will be promoted by a sale. These two requisites are conditions imposed by the statute which alone confers upon a court of equity the power to make a sale at all. They are important and indispensable conditions. The statute is an innovation upon the common law, taking away from the owner the right to keep his freehold, and converting his home into money. That must not be done except in cases of imperious necessity. . . . Therefore it would be at variance with fundamental and basic principles to say the Legislature intended to authorize a sale, instead of a division, for any light or trivial cause. So sacred is the right of property, that to take it from one man and give it to another for private use is beyond the power of the state itself, even upon payment of full compensation. The *jus publicum* alone authorizes the conversion of the citizen's property into money without his consent.'" (Citation omitted.)

And in *Nickels v. Nickels*, 197 Va., 498, 502 (1955) the Court said "If the property is found to be divisible in kind, any co-owner has the right to insist that partition be so made, and therefore the primary question in every suit for partition is whether a division in kind may be conveniently made."

In the case of *Sensabaugh v. Sensabaugh*, 232 Va. 250, 254 (1986) the circuit court confirmed a commissioner's report which said that:

> [The] subject real estate could not be divided in kind without a material decrease in the value of the share of each, particularly the two smaller interests. The crux of what appears to be the principal dispute in this suit is the contention of one of the respondents... that the subject real estate can be partitioned in kind... However, this approach does not take into consideration the equitable considerations due the other owners who have the right to insist that the entire tract be utilized in the realization of full value.

In reversing, the trial court the Supreme Court said

> In this case, there was no evidence that partition could not be conveniently made... What the commissioner said was that the property could not be divided in kind without a material decrease in the value of the share of each. **To say that property will bring less money if not sold as a whole is a far cry from saying that it cannot be laid off in kind.** Interestingly, there was no testimony concerning the difference in value of the land if sold as a whole compared to a partial sale. There was simply the conclusion of Mays that the land would bring more if sold together. Such evidence is insufficient to deprive a co-owner of his "sacred right" to property.
>
> 232 Va. at 258 (emphasis added.)

A reduction in value does not render Partition "Inconvenient"

The Supreme Court of Virginia has never attempted to define what constitutes a "conveniently-made" partition. A premise of the plaintiffs' case is that partition in kind of the Property cannot be conveniently made because sale of the Property and division of the proceeds amongst the three owners would be more financially advantageous than dividing the Property in thirds and allotting a parcel to each owner. Because the defendant seeks to be allotted a portion of the Property in kind, this case presents the issue of whether maximizing the financial yield for all owners trumps the desire of one to retain a portion of the land.

Based on these cited cases, your Commissioner finds that a decrease the value of lands by virtue of partition in kind does not establish that "partition cannot be conveniently made."[11] The other condition for ordering a sale is evidence establishing that "the interest of those who are

[11] In an exceedingly well-written and persuasive opinion, Judge Woltz cautions against a "commissioner being led astray by the siren call of a very large prospective sale price." *Gooden v. Dick*, 27 Va. Cir. 446, 452 (Frederick Co. 1982)

entitled to the subject, or its proceeds, will be promoted by a sale of the entire subject..." Property. GC Property asserts that its interests will NOT be promoted by a sale of the entire Property. Assuming that each party is the best judge of what will promote their own interests, your Commissioner will defer to GC Property in that respect.

Plaintiffs did not establish how much, if any, the value of the lands would be reduced by Partition in Kind

Even if a decrease in the value of lands by virtue of partition in kind establishes that "partition cannot be conveniently made," the plaintiffs did not establish that partitioning the Property amongst the three owners would result in decreased land values. None of the parties offered sufficient valuation evidence so that your Commissioner could make a finding as to the Property's value in either its current configuration of two parcels, or if it were partitioned into three parcels according to Zicht's Concept Plan.

The plaintiffs offered proposed letters of intent from the Gulick Group, Inc. (PX 11, 16, 32, 34, 41 & 43) and Lennar Homes (T. 8.12.15, p. 96; PX 44). Gulick's offers to purchase the Property were at prices of $1,000,000 plus $40,000 to $50,000 per "market rate" lot, subject to varying adjustments for lot(s) to be retained by GC Property, LLC. Lennar's offer was for $4,000,000, adjusted by $66,666 per market rate home site above or below a 60 lot yield, subject to a 75-day study period. The plaintiffs also introduced contracts of Capretti Land, Inc. offering to buy the Property for $1,400,000.[12] However, all these letters of intent and the Capretti contract offers provided for study periods in which the buyers could determine the feasibility of purchasing the Property at the offered price and developing it.

These Gulick letters of intent also provided that "the provisions hereof are subject to the negotiations [sic], execution and delivery by the parties of a mutually satisfactory Purchase

[12] PX 50 & 52.

Agreement." The Lennar letter of intent stated that it "is not, and shall not be deemed to be, an... agreement, contract, or any other legally binding obligation." The Capretti contracts provide that if the "Buyer determines, in its sole discretion, that the Property is not suitable for Buyer's intended use thereof, then Buyer may terminate this Contract..."

Thus, assuming the parties had accepted and signed any of these letters of intent or contracts, no binding obligations would have been created and, given the difficulty and complexity of an intensive development of the Property, it is unknowable if Gulick, Lennar or Capretti would have remained willing to pay the stated prices after completing their studies. As developers/builders, it can be reasonably assumed that Gulick, Lennar and Capretti would want to put the Property to its highest and best use. "The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility and maximum profitability."[13] These would have to be thoroughly investigated before one could determine the Property's fair market value.

The starting points are the zoning and land-use regulations which govern density, steep slopes, creekside protection, street layout and frontage, etc. The second stage would be to learn if the soils perc so that drainfields could be used and what would be involved for connection to public sewer. Finally, a financial analysis would need to be performed to determine the cost of creating finished lots (water, sewer and roads) with various densities, layouts and means of furnishing sewer. Once various the costs of converting raw land into finished lots was determined, and it was added to the cost of building attractive houses which could be sold on the open market at a competitive price, these potential buyers could what would be a justifiable price to pay for the raw land.

[13] REAL ESTATE VALUATION IN LITIGATION, J.D. Eaton (The Appraisal Institute 1995), p.103.

As previously noted, Peter Gulick testified that there are "a lot of things that make the value of the site questionable..." and that the Property would be a "difficult site to develop for a lot of reasons..." including its frontage along Goose Creek, the "very, very steep" slopes, "problematic" access from Sycolin Road, and the difficulty and expense of providing sewer. T. 8.12.15, pp. 36-37, 41, 46. It could end up, as Mr Zicht suggested, that "the three lot subdivision might be the easiest and the best plan in the long term in any case" and "may be the highest and best use" due to the time and expense of pursuing approvals of a more intense development and "the other limitations of the property..." T. 8.13.15 pp. 97-98.

As a result, your Commissioner finds that these offers do not establish the fair market value of the Property. Moreover, the opinions of value expressed by Kathy Webster, Katherine Parry and Judith Knoop[14] are unpersuasive. T. 8.12.15, p. 89, 172-78. Your Commissioner is, therefore unable to make a finding as to the value of the Property in any configuration. Appropriate appraisals would need to be made

The Two Parcels Comprising the Property Need Not and Should Not be Partitioned in Kind Separately

GC Property, LLC seeks to have the Property, comprised of two parcels, partitioned into three parcels—one for each owner. The plaintiffs desire to have the Property sold as a whole and the proceeds split three ways. In an effort to defeat a partition in kind, the plaintiffs argue that, a partition in kind must divide each constituent parcel, separately, into three parts, so that each owner gets a part of each parcel. This, the plaintiffs argue, cannot be conveniently done, thereby establishing their entitlement to a sale.

[14] Ms. Knoop based her opinion in part of the letter of intent from Lennar (PX 44) which was not admitted into evidence. However it contemplated a rezoning and provided that the $4,000,000 sales price would be adjusted by $66,666 per market rate home site above or below a 60 lot yield. This letter of intent also provided that it "is not, and shall not be deemed to be... [a] legally binding obligation."

Although the Property is comprised of two parcels, it makes sense to view it as a whole for the purposes of partition in kind. There is no visible boundary, natural or man-made, between the two parcels. It was an accident of history that the 22+ acres purchased by the Knoops in 1948 was comprised of two separate parcels, and there is no evidence that the family treated the parcels as being separate properties. The plaintiffs seek to sell the Property as a whole, and the developers were interested in buying the Property as a whole. The plaintiffs have offered no evidence that the parties' interests will be promoted by a separate partition of each parcel.

The plaintiffs' argument demanding the separate partition of each existing parcel has two parts. The first is that the GC Property's counterclaim seeks to have each parcel partitioned separately and they should not be permitted to now seek partition of the whole. The second is that the law requires that each parcel should be partitioned separately.

The prayer for relief in the counterclaim of GC property, LLC asks:

> (a) That the First Parcel and the Second Parcel be allotted, laid off, subdivided, and/or partitioned among the cotenants in kind…
> (c) Granting such other and further relief as this Court deems proper and which equity and the nature of this case may require.

Admittedly, paragraph (a) is somewhat ambiguous and can be read either way. Your Commissioner would be sympathetic if the plaintiffs had shown surprise and claimed prejudice at the hearing when the Concept Plan (PX 5) was offered into evidence. Clearly, they were not surprised because they did not claim to be. Moreover, the plaintiffs' expert, Gerald Hish, had reviewed the Concept Plan in advance of the hearing and testified with respect to it. In evaluating the Property's development potential, Hish evaluated it as a whole and not as separate parcels. Moreover, partitioning of the whole can be granted under the general prayer for relief contained in paragraph (c) because it is supported by the allegations of material facts contained in the

counterclaim. See *Jenkins v. Bay House Assocs. L.P.*, 266 Va. 39 (2003). In light of this, I am unwilling to find that GC Property, LLC may not ask for partition of the Property, treating it as a whole.

The plaintiffs cite *Willson v. Heirs of Wood*, 2006 Va. Cir. LEXIS 183 (Nelson Co.) in support of their argument that the law requires each parcel to be partitioned separately. The court in *Willson* found that partition could not be conveniently made because of

> the extreme typography of the land, and the limited road frontage... compounded by the fact that the 18 acres parcel is located on both sides of the state road and the ownership of this parcel is in different fractional interest than the 135 acres parcel. I thought it might be possible to award Ms. Puryear the 9 acres parcel, or award Ms. Puryear and Mr. Kenney the 18 acres parcel. The problem is that this is a separate parcel from the 135 acres parcel. Therefore, it would be improper to allot an ownership in one parcel to compensate for the fractional ownership in another parcel. I can find no authority in the law for this procedure. Further, even though this is an obvious solution for the parties if an agreement was reached, it is not a solution that can legally be imposed by the court.

This brief opinion is not very helpful authority because it does not contain a full statement of the facts of the case. One can glean that at least three tracts were involved— a 135-acres tract, a 18-acre tract and a 9-acre tract— in which the parties had different fractional shares depending on the tract. It is not stated if they were contiguous and whether they had been treated as a single unit. What Judge Gamble seems to be saying is that he cannot give a party more of one tract to compensate for their being given a deficient share of another. If that is the principle to be extracted from *Willson*— which is uncertain— it would not control in the case at bar because the ownership interests of the parties in both parcels are identical.

The case of *Lucy v. Kelly*, 177 Va. 318 (1915) concerned the partition of two separate tracts owned by Kelly's widow and his other heirs. The circuit court had allotted one of the tracts solely to the widow to which the heirs excepted because "it does not satisfactorily appear that both tracts may not be partitioned as a whole and divided in kind...: 177 Va, at 321. This exception was

rejected by the Supreme Court which held that "[t]he report of the commissioners was, in all substantial respects, a compliance with the decree, and its findings, especially in the absence of evidence to the contrary, must be sustained... [The Court will not] 'presume that partition of the respective tracts could have been made separately...'" 177 Va. at 322-23, citing *McClanahan v. Hockman*, 96 Va. 392 (1898). In *McClanahan* the Supreme Court upheld at pp. 395-96 the report of "commissioners [who] found that partition in kind of each of the two tracts could not be made conveniently without great injury to the entire estate. They therefore determined to treat the two tracts as a whole, and then proceeded to divide it as equally as possible between those entitled..."

Although these cases were decided over a century ago, they have not been reversed explicitly or implicitly, and are therefore provide good authority. From these two decisions, the following principles can be distilled: *i.*The preferred approach with multiple parcels is to partition them in kind separately *ii.* If these multiple parcels cannot conveniently be partitioned in kind separately, they should be partitioned in kind as a whole. *iii.* Finally, if these multiple parcels cannot conveniently be partitioned in kind as a whole, they may be sold if the interests of the owners will be promoted by the sale. In appropriate cases for partition of multiple tracts, these tracts may be partitioned as a whole and divided in kind.

Your Commissioner accepts the plaintiffs' evidence and argument that the Property's two parcels cannot conveniently be partitioned in kind separately, but finds that they have not proved these two parcels cannot conveniently be partitioned in kind as a whole.

Principles Applicable to Allocation of Parcels

Lowry v. Noell, 177 Va. 238, 241 (1941) held that equitable principles apply to partition, and that in such cases "'a court of equity does not act merely in a ministerial character, and in obedience to the call of the parties, who have a right to the partition; but it founds itself upon its

general jurisdiction as a court of equity, and administers its relief *ex aequo et bono*[15] according to its own notions of general justice and equity between the parties.'"

Martin v. Martin, 95 Va. 26, 30 (1897) enunciated these principles applicable to partitions in kind:

- "'In making partition a court of equity is clothed with ample power to resort to the most advantageous devices which the nature of the case may admit.'"
- "'Where lands are incapable of exact or fair division, the court has power to compensate by a charge upon the land by way of rent, servitude, or easement.'"
- "'[I]n assigning a portion of the premises held in common to one of the parties, [the court] may charge it with an easement or servitude for the benefit of another party to whom a distinct portion of the premises is assigned in severalty.'"

(Citations omitted.)

In effecting a partition in kind "it is not only the condition of the subject, i.e., the land to be divided, but the situation and interest of the parties involved in the particular suit which should also be considered." *Bridge v. Snead*, 151 Va. 383, 394 (1928) (citation omitted).

"The law of partition of real estate requires that each part owner shall have in severalty a part equal to his interest in the whole subject, if practicable, having a due regard to the interest of all concerned. Yet it frequently occurs, that because of the limited extent or the nature of the property, it is impossible to make partition as above indicated, without impairing the value of all the portions, or of some of them. In such cases the law affords other means for doing exact justice to each and all: instead of dividing the property into shares of equal values, it may be divided into shares of unequal values; and when so divided the law... will correct the inequality by means of a

[15] According to what is just and good.

charge of money on the more valuable in favor of the less valuable portion [termed an *owelty*],[16] or by other means recognized in the law of partition." *Cox v. McMullin*, 55 Va. (14 Gratt.) 82, 90 (1857).

"While two cotenants may, *by agreement*, have their joint interests allotted in kind to them jointly, they cannot be compelled to do so against their wishes, or the wishes of either." *White v. Pleasants*, 227 Va. 508 (1984) (citing *Phillips v. Dulaney*, 114 Va. 681, 686-87 (1913)).

FINDINGS

1. The plaintiffs proved that separate partition in kind of the two parcels comprising the Property cannot be conveniently made.
2. The plaintiffs did not prove that partition in kind of the Property as a whole cannot be conveniently made.
3. The plaintiffs did not prove that the interests of defendant GC Property, LLC, who is entitled to a portion of the subject, or its proceeds, will be promoted by a sale of the Property.
4. The Property should be partitioned in kind.
5. Although the Property is composed of two adjacent parcels, it should be partitioned in kind as a single unit.
6. The Concept Plan (DX 25) prepared by Eric Zicht is a reasonable plan for partition in kind.
7. Parcel 6 BLA shown on the Concept Plan does not have road frontage, however existing parcel 6 does not have road frontage either, due to the relocation of Sycolin Road by

[16] "A lien for owelty of partition partakes of the nature of the vendor's lien, and constitutes a prior encumbrance upon the land on which it is charged, and follows the land into whosoever hands it may come. The lien is not released by taking the personal obligation of another, or other security for its payment, nor is it merged by a judgment or decree therefor, but subsists until it is clearly shown to have been waived, or released, or has been satisfied." *Jameson v. Rixey*, 94 Va. 342, 344 (1897).

government action (See p. 5, above, n.6), and is therefore an existing nonconformity which would not be created by partition in kind.

8. Access to 6 BLA can be afforded by an easement across 5-B as suggested at ¶ 13 below.
9. In partitioning the Property in kind, the Court need only enter a decree to that effect. The Court does not have to engage in the two-step process—boundary line adjustment and subdivision waiver—contemplated by Eric Zicht. Consequently, it is not necessary to comply with §1-404 (C) LCZO.
10. Parcel 5-A as shown on the Concept Plan should be allotted to GC Property, LLC.
11. Parcel 5-B and Parcel 6 BLA should be allotted to Katherine Parry and Judith Knoop as either separate parcels or a single parcel, depending on their preference. If each plaintiff is to have a separate parcel, they can agree on who takes which parcel or, failing to agree, the parcels can be allotted by the drawing of lots.
12. A survey plat (to be attached to the decree of partition) should be prepared showing the parcels.
13. Appropriate easements should be established for each parcel to insure that they have access to Sycolin road and utilities. These easements should be shown on the plat.
14. Fair market value appraisals should be prepared for Parcels 5-A, 5-B and 6 BLA, taking into account the access and utility easements, whether a burden or a appurtenance. If it is determined that these parcels are of unequal value, any inequalities may rectified by means of a charge of money ("an owelty") on the more valuable Parcel(s) in favor of the less valuable Parcel(s). GC Property, LLC stated that, if Parcel 5-A is found to be a less valuable Parcel, it waives any claim to an owelty.

A Commissioner's Fee of $22,262.50 (based on 68.5 hours) has not been paid.

14 March 2016

Stephen C. Price
Commissioner in Chancery
McCANDLISH & LILLARD, P.C.
201 Loudoun Street, SE, Suite 201
Leesburg, Virginia 20175
Facsimile: 703.737.0165
Telephone/Email: 703.934.1134
sprice@mccandlishlawyers.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Commissioner's Report was sent by e-mail and U.S. first-class mail, postage prepaid, this 14th day of March, 2016 to the following:

James T. Bacon, Esquire
ALLRED BACON HALFHILL & YOUNG, P.C.
11350 Random Hills Road, Suite 700
Fairfax, Virginia 22030

Micheal J. Overson, Esq
MOYES & ASSOCIATES, PLLC
21 North King Street
Leesburg, Virginia 20176

Stephen C. Price
Commissioner in Chancery

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF LOUDOUN

KATHERINE PARRY *et al.*,	)	
	)	
Plaintiffs/Counter Defendants	)	
	)	
v.	)	**Case No. CL00087179-00**
	)	
GC PROPERTY, LLC,	)	
	)	
Defendant/Counter Plaintiff	)	

ORDER

THIS MATTER came before the Court on the Plaintiffs' Exceptions to Report of Commissioner in Chancery and Defendant's Motion to Apportion Commissioner's Fee Equally among Property Owners.

IT APPEARING TO THE COURT THAT:

(1) In his Report of Commissioner in Chancery dated March 14, 2016 (the "Report"), Stephen C. Price, the Commissioner in Chancery appointed to hear evidence and report his findings in this matter (the "Commissioner"), made certain findings;

(2) The Plaintiffs have taken exception to some or all of the above-referenced findings;

(3) Based on the written and oral arguments of counsel, and based on the Court's review of the Report, the Plaintiffs' Exceptions should be overruled and the Report should be provisionally confirmed; and

(4) The Commissioner's Fee of $22,262.50 should be apportioned equally among the three parties to this action in proportion to their respective one-third (1/3) ownership interests in the Property;

IT IS THEREFORE ORDERED AND DECLARED THAT:

(1) Plaintiffs' Exceptions to the Commissioner's Report are overruled, and the Commissioner's Report is provisionally confirmed.

(2) The Commissioner's Fee of $22,262.50 shall be apportioned equally among the three parties to this action in proportion to their respective one-third (1/3) ownership interests in the Property, so that each party is responsible for payment of one-third (1/3) of the total fee, or $7,420.84.

(3) The Plaintiffs shall have fifteen (15) days to decide whether to have their interests in Parcels 5-B and 6 BLA laid off together as one combined lot, or allotted to them separately, and to report their decision to the Court and to Defendant's counsel.

(4) If the Plaintiffs elect to have their interests laid off together:

(a) The Property shall be partitioned by means of a boundary line adjustment between Parcels 5 and 6, whereby Parcel 5 shall be reconfigured so that its boundaries correspond to the boundaries of Parcel 5-A as shown on the Concept Plan, and Parcel 6 shall be similarly reconfigured so that it contains the same acreage that is contained in Parcels 5-B and 6-BLA on the Concept Plan.

(b) Parcel 5, so reconfigured, shall be allotted to Defendant in full satisfaction of its interest in the Property, and Parcel 6, so reconfigured, shall be

allotted jointly to the Plaintiffs.

(c) Appropriate easements shall be established for each parcel, as necessary, to ensure that each parcel has access to Sycolin Road and utilities, and fair market value appraisals shall be obtained for each parcel, taking into account such easements, to determine if the parcels are unequal in terms of the value received by each of the parties.

(d) Any inequalities in value between the shares of any of the parties shall be rectified by means of a charge of money (an owelty) on the more valuable parcel in favor of the less valuable parcel; provided, however, that Defendant shall not be entitled to an owelty lien in the event that Parcel 5, as adjusted, is found to be the less valuable parcel, since Defendant has voluntarily waived any claim for owelty.

(e) If the parties cannot reach an agreement regarding the locations of any necessary easements, and the amounts of any necessary owelty lien adjustments based on the relative values of the proposed parcels, any party may file a motion with the Court requesting that this matter be remanded to the Commissioner for a hearing to present evidence regarding the location of any proposed easements, and after such determination is made, then another hearing to determine the values of the proposed parcels.

(f) Following the conclusion of the hearings, the Court shall review any report of the Commissioner, together with any exceptions, and after a hearing shall render a final decision on the easement and owelty lien

issues.

(5) If the Plaintiffs elect to have their interests allotted separately:

(a) The Subject Parcels shall be partitioned into three parcels, Parcels 5-A, 5-B, and 6 BLA, as shown on the Concept Plan.

(b) Parcel 5-A shall be allotted to the Defendant in full satisfaction of its interest in the Property.

(c) Parcel 5-B shall be allotted to one of the Plaintiffs and Parcel 6 BLA shall be allotted to the other Plaintiff; provided, however, that if the Plaintiffs are not able to agree on which Plaintiff shall receive which parcel within fifteen (15) days, Parcels 5-B and 6 BLA will be allotted to each Plaintiff by the drawing of lots.

(d) Appropriate easements shall be established for each parcel, as necessary, to ensure that each parcel has access to Sycolin Road and utilities, and fair market value appraisals shall be obtained, taking into account such easements, to determine if the parcels are of unequal value in terms of the value received by each of the parties.

(e) Any inequalities in value shall be rectified by means of a charge of money (an owelty) on the more valuable parcel(s) in favor of the less valuable parcel(s); provided, however, that Defendant shall not be entitled to an owelty lien in the event that Parcel 5-A is found to be a less valuable parcel, since Defendant has voluntarily waived any claim for owelty.

(f) If the parties cannot reach an agreement regarding the locations of any necessary easements, and the amounts of any owelty lien adjustments

based on the relative values of the proposed parcels, any party may file a motion requesting that this matter be remanded to the Commissioner for a hearing to present evidence regarding the location of any proposed easements, and after such determination is made, then another hearing to determine the values of the proposed parcels.

(g) Following the conclusion of the hearings, the Court shall review any report of the Commissioner, together with any exceptions, and after a hearing shall render a final decision on the easement and owelty lien issues.

(6) Any capitalized terms not otherwise defined herein shall have the meanings given to them in the Report.

ENTERED ON THIS 5th DAY OF August, 2016.

Judge, Loudoun Circuit Court

We ask for this:

David H. Moyes (VSB #13447)
Jack C. Hanssen (VSB #48359)
Michael J. Overson (VSB #83526)
Moyes & Associates, PLLC
21 N. King Street
Leesburg, VA 20176
Tel: (703) 777-6800
Fax: (703) 777-9886
Email: moverson@moyeslaw.com
Counsel for Defendant/Counter Plaintiff

Seen and AGREED TO:

James T. Bacon (VSB# 22146)
John P. Forest, II (VSB# 33089)
Allred, Bacon, Halfhill & Young
11350 Random Hills Road, Suite 700
Fairfax, Virginia 22030
Tel: (703) 352-1300
Fax: (703) 352-1301
Counsel for Plaintiffs/Counter Defendants