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Via Electronic Mail

Willowsford Conservancy Board of Trustees
c/o Charles W. Graybeal, Chair
CGraybeal@willowsfordconservancy.org

Re: Willowsford Conservancy

Dear Board of Trustees:

I have been asked to comment on the suggestion to change the way members of the Willowsford Conservancy Board of Trustees are selected. Specifically, the suggestion is that members of the Willowsford Homeowners Association, Inc. (the "Association") should also be members of Willowsford Conservancy (the "Conservancy"), and should have the power to elect the Conservancy's Board of Trustees. That, however, was not the intention when the Association and the Conservancy were established, and I do not recommend pursuing that course.

In reviewing the original Articles of Incorporation, filed with the Virginia State Corporation Commission on December 14, 2010, the Conservancy was established as a Virginia nonstock corporation with no members, just as is the case today. In 2016, there was an amendment to the Articles of Incorporation providing that the Founder was the sole member of the Conservancy, and that upon expiration of the Founder's control, the Conservancy would revert to having no members. Presumably this temporary single membership arrangement was done to provide the Founder with sufficient control and authority to be able to complete its development activities. The reversion to no members upon the expiration of Founder control confirms that it was never intended that members of the Association would be members of the Conservancy.

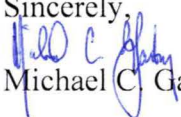
The 2016 Amended Articles of Incorporation also provided a mechanism by which the initial Board of Trustees would be established upon the conclusion of Founder control. The Founder had the authority to select some Trustees, and the Owners in the Association were given the one-time right to elect two Trustees. That process was only for the purpose of formulating the initial Board of Trustees after Founder control, and the Amended Articles provided that after that initial selection process, all successor Trustees would be appointed by the then-sitting Trustees. Thus, it was not contemplated that the members of the Association would have election authority after the formation of the first Board of Trustees.

The design and intent from the beginning were to establish the Association and the Conservancy as distinct entities, fulfilling different functions, yet complementing and supporting each other. The establishment of the Conservancy as a non-member corporation with a self-perpetuating Board is consistent with the purposes of the Conservancy, and is not unusual for a non-profit organization with a focus on long-term land and natural resources conservation. The Conservancy has a long-term mission, and must have the ability to set long-term policies, and a self-perpetuating Board provides stability for the Conservancy to carry out its functions. It is a logical and proper corporate structure for the Conservancy.

It is noteworthy that although the members of the Association do not directly vote for the Conservancy's Board of Trustees, they do actually control the Conservancy. The Conservancy's Bylaws allow for a Board of three to seven Trustees. A minimum of two Trustees must be Owners of Units in Willowsford, and a maximum of two Trustees may be individuals who are not residents of Willowsford. Accordingly, owners/residents of Willowsford will always hold a majority of the seats on the Conservancy's Board (unless the number of seats is set at four, which is impractical and unlikely). This structure recognizes that the Conservancy serves and supports all of Willowsford, and it gives the owners in the Association the majority of seats on the Conservancy's Board. The lack of direct elections, therefore, does not equate to control by "outsiders."

In addition, although the Conservancy Board is self-perpetuating, it does require regular turnover. Trustee terms are limited to three-years, and no individual may serve more than three terms. In this way, the Conservancy is structured to welcome new voices to the Board on a regular basis, while also maintaining the stability and institutional knowledge that is so critical to the effective operation of the Conservancy.

In short, establishing the Conservancy as a non-member corporation with a self-perpetuating Board strikes the proper balance between the need to keep the Association and the Conservancy as separate and distinct legal entities, which have separate and distinct functions, and the desire to have the Conservancy controlled by Willowsford homeowners. Altering the corporate structure of the Conservancy to make the members of the Association also members of the Conservancy and to have the members of the Association directly elect the Trustees of the Conservancy would be a fundamental change in the nature of the Conservancy that could blur the separation between the Conservancy and the Association and jeopardize the fundamental purposes for which both the Conservancy and the Association exist. The proposed change could also jeopardize the Conservancy's 501(c)(3) non-profit corporation status. I believe that the corporate structure of the Conservancy as set forth in the current Governing Documents is proper and well-suited to its purposes and should not be changed.

Sincerely,

Michael C. Gartner

cc: Sophie Lambert, Executive Director