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**FRANTZ, MCCONNELL & SEYMOUR, LLP**  
**MEMORANDUM**

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**TO:** Knoxville/Knox County Metropolitan Planning Commission

**FROM:** Arthur G. Seymour, Jr.

**SUBJECT:** Joshua's Landing

**FILE NUMBER:** 6-F-09-UR

**AGENDA ITEM:** 51

**AGENDA DATE:** June 11, 2009

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At your meeting on June 11, 2009, you will have before you an application from Duncan Construction/Sentinel Builders and the Joshua's Landing Homeowners Association for the approval of a development plan for 71 attached dwellings on an 18.5 acre site on the Southeast side of Tazewell Pike southwest of Anderson Road. This application is unique in that the applicant, in reliance on previous County zoning and county approved development plans, has completed 55% of the total project, including 100% of the infrastructure. There are presently 25 families living in homes constructed in Joshua's Landing. To date, the applicant has spent approximately \$10,700,000.00 in acquisition, development and building costs.

The history of this development is set forth in Gary Duncan's June 4, 2009 to the Commission. The purpose of the memorandum is to set forth our legal position that the applicant is entitled to the approval of this development plan so that it can acquire the necessary building permits through the city. As stated below, the applicant has acquired a vested right to this development plan as it was legally approved by Knox County prior to being annexed and re-zoned into the City of Knoxville.

The question of whether a development can claim its rights to certain pre-existing zoning, platting, planning or permitting status as vested is an increasingly prevalent area of land use law. As late as May, 2007, the Tennessee Supreme Court has addressed the issue of vested rights as it pertained to the competing interests of on-going developments versus a municipality's authority to amend its zoning or planning designations to property within (or recently made of) its jurisdiction. In order for one to obtain a vested right in the existing zoning, permit or development plan, one must incur substantial expenses in reliance upon the pre-existing zone, plan or permit.

In the applicant's case, more than incidental expenses have been incurred. The applicant has spent over 10 million dollars in the development of this property. It is, essentially, a completed development. There are approximately forty homes remaining to be built. The applicant client has been obtaining the permits and is building on these lots as they are sold so that they can meet the individual needs of each purchaser and they can recoup their remaining expenses as they go. As such, the applicant has clearly incurred substantial liabilities in the pre-existing plan; therefore, it has obtained a vested interest in proceeding under the development as approved by Knox County and Knox County Engineering.

It is our position that Tennessee law is clear and the applicant is entitled to continue to obtain building permits for the remaining lots without additional approval (with the exception of the remaining building permits); however, we have submitted the development plan to the Commission for approval at the request of the City of Knoxville. We do not intend to waive any legal arguments it may have if its application is denied.

The applicant is in the business of developing quality projects and homes which are an asset to Fountain City Community. There are pending contracts for lots that cannot be closed or constructed until this matter is resolved. We would urge you to approve this application so that the applicant can proceed with its development plans without further or unjustified delay.



10700 Murdock Road  
Knoxville, TN 37932  
865.671.9196  
fax 865.671.9198

June 4, 2009

Dear Commissioner,

I am Gary Duncan, president of Sentinel Builders Inc and Joshua's Landing HOA at 10700 Murdock Road, Knoxville, TN 37932. I am writing to request support for the Joshua's Landing subdivision located on Tazewell Pike in Fountain City.

As you are aware, this project was annexed into the City of Knoxville in December of 2007. Prior to annexation, we were promised by MPC staff and in a letter on December 17, 2007 from Mayor Bill Haslam that stated "Your property will receive the same or a comparable zone as to what you currently enjoy in the county" which implied that Joshua's Landing would continue as planned. Much to our surprise, in November of 2008 (eight months after annexation) we were told that Joshua's Landing was not in compliance with the City of Knoxville's zoning ordinance based upon a lack of an approved Use on Review plat which the now new RP-1 zone required. In short, Joshua's Landing was annexed and then we were told that we could not continue our project as previously promised.

At the time of annexation, Joshua's Landing's infrastructure was 100% complete. All roads, sewer, water, storm system, detention basins, underground electrical, underground natural gas, telephone, and cable were complete. All building sites were on grade and ready to build. Joshua's Landing had met and been approved of all local and state requirements. Joshua's Landing had met and been approved by TDEC prior to annexation. There are a total of sixty-nine (69) units. There are currently twenty-five (25) families living in Joshua's Landing and an additional six (6) units either complete or almost complete. The \$19,000,000 project is already 55% completed. The units range in price from \$220,000 to \$445,000.

We understood that Joshua's Landing would be "grandfathered" in as it was originally designed when the City of Knoxville annexed it no matter what zoning that assigned to it. However, for some reason beyond our comprehension we have landed in this situation.

I am asking for your support in approving our plat. This project is a tremendous asset to the Fountain City Community. We have outstanding citizens which include local doctors and dentists. The homeowners obviously chose Joshua's Landing for one of their largest life investments because of the integrity of the area and the beauty of the project as a whole. We have been in compliance with all local and state codes from the development to the construction. Furthermore, we currently have contracts pending on the outcome of this approval. Please support this project so that we may all put this in the past.

Thank you,

  
Gary Duncan



CITY OF KNOXVILLE  
BILL HASLAM, MAYOR

December 17, 2007

Don W. & Rosa Lee Duncan  
4929 Brown Gap Road  
Knoxville, Tennessee 37918

**RE: Parcel No.: 049 028**

**Property Address: Dovewood Way**

Dear Don & Rosa Lee Duncan:

I would like to take this opportunity to welcome you to the City of Knoxville.

On December 16, 2007, your property located on Dovewood Way became a part of the corporate limits of the City of Knoxville, Tennessee. Because of this you are entitled to the benefits and privileges available to existing city residents. These include, but are not limited to:

- fire and police protection
- weekly trash collection
- regular brush and leaf pickup
- street paving services
- Intense neighborhood crime prevention programs
- ability to vote for the Mayor, all City Council members and City Judge
- your city taxes are deductible on your federal income tax return if you itemize

Because you will now be receiving these services from the city, you will need to cancel your Rural/Metro subscription for fire service and your garbage collection service should you subscribe.

Included in this packet you will find a diskette containing information concerning city services. This information and more is also available at the city's web site – [www.cityofknoxville.org](http://www.cityofknoxville.org). If you don't have access to a computer, please contact the Engineering Division at 215-2027 for a paperback copy of the information contained on the diskette.

Finally, as a result of the annexation of your property into the city, your property will be rezoned into a City of Knoxville zoning classification in the near future. Please do not be surprised that a Metropolitan Planning Commission sign will appear on your property concerning this rezoning. Your property will receive the same or a comparable zone as to what you currently enjoy in the county.

If you have any further questions regarding your new services, please do not hesitate to call me at the office at 215-2040. You can also contact Rick Emmett in the Engineering Division at 215-2027. Once again, we are glad you are part of the City of Knoxville.

Sincerely yours,



Bill Haslam

BH:bjm

Enclosure

C: Rick Emmett, Engineering Division



December 17, 2007

Don W. & Rosa Lee Duncan  
4929 Brown Gap Road  
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The City of Knoxville Engineering Division provides comprehensive engineering services to the residents and businesses of the city including:

- Inspection services for roadway and stormwater-related problems and complaints
- Emergency maintenance of traffic signals and traffic signs
- Routine maintenance of traffic signs, pavement markings, and other traffic control devices
- Street name signs where needed
- Detailed evaluations of street conditions
- Evaluation of traffic operation problems

Please feel free to contact Rick Emmett if you have any questions regarding engineering services at 215-2027.

Sincerely yours,

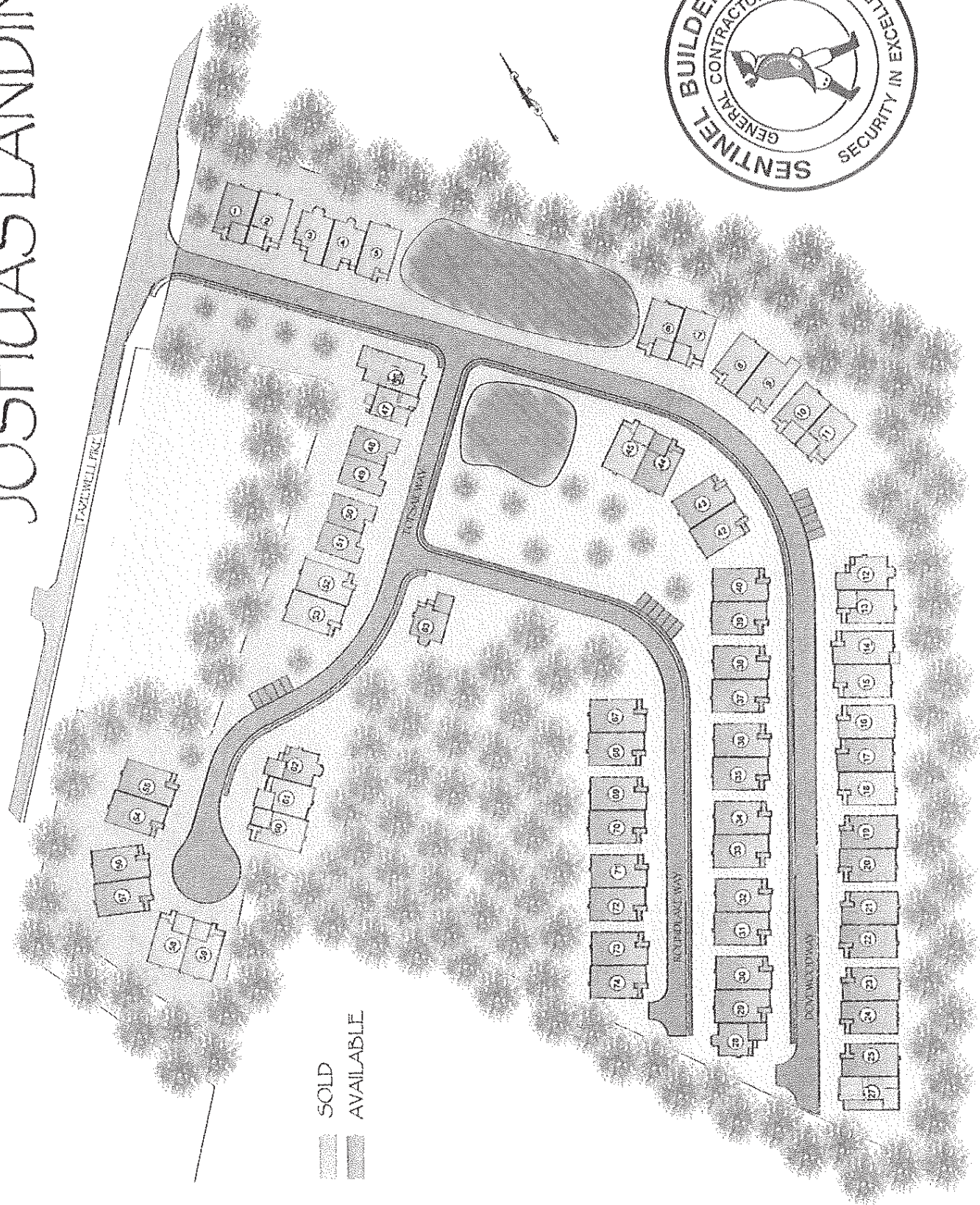
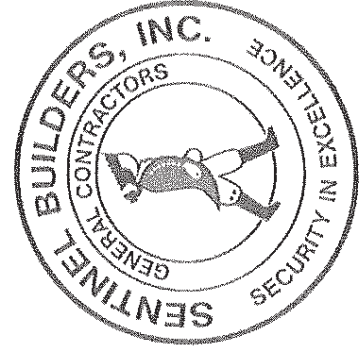
A handwritten signature in black ink, appearing to read "Stephen J. King".

Stephen J. King, P.E.  
Director of Engineering

SJK/bjm



# JOSHUA'S LANDING



■ SOLD  
■ AVAILABLE