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November 17, 2014

Mayor and Councilmembers
211 W. Aspen Avenue
Flagstaff, Arizona 86001

Re: Aspen Heights Proposed Development, Woody Mountain Road and W. Route 66

Dear Mayor and Councilmembers:

The owner of the 36.94 acre parcel that Aspen Heights seeks to develop is Landmarc Capital & Investment Company ("Landmarc"), which is not related to the Landmark entity developing The Standard student housing property. In June 2009, the Maricopa County Superior Court appointed the Superintendent (the "Receiver") for the Arizona Department of Financial Institutions (the "Department"), the Receiver of Landmarc with exclusive authority over the assets, the business, and the affairs of Landmarc. The duties of the Department with regard to Landmarc are supervised by Thomas J. Giallanza, Deputy Receiver, who addressed you at the public hearing on November 3, 2014 as part of his responsibilities on behalf of the State of Arizona to liquidate the assets of Landmarc.

The Department has been working on this matter for over five years and seeks to sell this property for the highest value it can obtain in order to satisfy, in part, claims of creditors. As such, the Department is interested in the rezoning of the property in conformity with the 2001 regional plan so that higher density development will be permitted, which will result in a higher land value. Actions which decrease the value of the land will have an unfavorable effect upon the Receivership' assets which are under the exclusive jurisdiction and possession of the Maricopa County Superior Court. (State of Arizona, ex rel. Felecia Rotellini, Superintendent of the Arizona Department of Financial Institutions v. Landmarc Capital & Investment Company, CV2009-020595.)

1. Lighting Reduced to 6,281 Lumens Per Acre for Residential Development Area

On behalf of the proposed Aspen Heights development (the "37-Acre Parcel" or "Property"), we would like to register concerns we have regarding the manner in which the proposed annexation and rezoning of the Property is being approached by the Naval Observatory. We feel that the arbitrary position interposed by the Observatory will have serious consequences not only for this Property, but also for that of the City (future public works yard), the adjacent "197 Parcel," and

property which Gore is apparently seeking to have annexed into the boundaries of the City and rezoned. It also has the potential to affect property at the Flagstaff Ranch Business Park in the County of approximately 37 acres only partially developed and already zoned commercial and industrial, which is approximately 1.5 miles from the Naval Observatory.

We understand that the Navy's representatives will seek a delay of action on this matter of 30 to 45 days from November 18, 2014 because they want more information from Aspen Heights with regard to its proposed lighting plan. They have Aspen Heights' lighting plan committing to a lumen output of less than 10,000 per acre, with the use of motion sensors on the pole lights that could reduce that lumen output by up to an additional 40%, or to 6,281 lumens per acre for the residential development. However, they are requiring information via the City's planners from Aspen Heights with regard to a number of matters not covered by the lighting ordinance, such as car headlights, the reflectivity of water which might collect on a temporary basis in a detention basin, et cetera. We understand that they will also tell you that they want more time in order to hire Chris Luginbuhl as an independent contractor and lighting consultant.

Chris Luginbuhl has already taken the position with the City's planners and Aspen Heights that the property may not emit more than 20,000 lumens for the entire parcel of nearly 37 acres, or 540 lumens per acre. Under the outdoor lighting ordinance which he helped to craft, this represents an arbitrary 94.6% reduction to 5.4 % of lumens permitted under the present Rural Residential zoning, and an arbitrary 97.9% reduction to 2.1% of lumens permitted for multi-family residential and commercial zoning. Because Chris has already made his position on this issue clear, we do not see a reason for further delay. The lumen output urged by Chris would make the property undevelopable for any purpose. A developer of single family homes on one-acre lots would be legally entitled to develop and use the 10,000 lumen per lot allowance provided by City Code for a total of approximately 370,000 lumens, and the City could not lawfully prohibit such use or output.

The Department of the Navy has no authority to intervene in the zoning decisions of a city which do not involve the federal property itself. Even more so in this case where the Naval Observatory is in the County. If the federal government did have any authority in this matter, the first contact with the City would have been from a representative of the U. S. Attorney General's Office or the Solicitor's Office for the relevant federal authority because this involves federal property; it would not have come from Navy officers. The Navy is hoping to accomplish through actions it urges upon the City of Flagstaff and Coconino County that which it is not presently authorized to do: essentially prohibit development in the general area of the Observatory, other than Rural Residential (in the City) or General (in the County), both of which zones provide for the least efficient use of land in terms of density. It should also be noted that the Naval Observatory is not a secure facility. We visited it for a meeting with Chris Luginbuhl in September and there were no security gates, no guards, no fences, nothing which protects this facility, although it has been presented as critical to the defense mission of the Navy.

The Naval Observatory has a significant installation on Anderson Mesa, the Navy Precision Optical Interferometer, adjacent to Lowell Observatory's research facilities. Lowell moved all its critical research facilities out to Anderson Mesa by 1980 to ensure that its work would not be affected by light pollution from the city which surrounded it.¹ The Naval Observatory, on the other hand, has apparently not taken steps to move all of its mission critical functions out of the inevitable path of development in Flagstaff and Coconino County. It has, instead, taken the position that no development other than the least dense type of residential construction may take place within City and County Lighting Zones 1 because lumen output or sky glow from such development will have a negative effect upon it. In addition, that development may not use the lumens allocated for such uses under the outdoor lighting codes of 10,000 lumens per acres but must, instead, use an arbitrarily small fraction of the amount earlier specified by Observatory personnel when the lighting codes were developed with their participation. The federal government has not taken any steps to acquire the land or conservation easements in the land, and through the Navy is seeking to acquire certain property rights without paying for them.

The Navy's position, however, has clearly not been consistent in this regard for all Zone I property. The property owned by A.L. Gore and Associates, Inc. on Kiltie Lane, also in Lighting Zone 1, is comprised of approximately 73 developed acres within the City, zoned for research and development. The lighting plans and lumen output figures for all of the buildings at the Gore facility reveal that the outputs are somewhat lower than the 25,000 lumens allowed per acre for their uses, but substantially exceed the 6,281 lumens per acre that Aspen Heights proposes for its residential development. Our understanding is that out of a total lumen budget of 1,831,750 lumens for 73.27 acres at 25,000 lumens per acre, Gore is using 1,251,577 lumens, or 17,081 lumens per acre. Aspen Heights' project, which is half the size of the Gore project, proposes to use 6,281 lumens per acre for the multi-family residential development with amber LEDs for all fixtures, or only 36% of the amount of lumens emitted by the Gore property.

Given the fact that the Navy has not sought to prohibit the development of Gore's facilities, nor has it apparently argued to the City that Gore has made it impossible for the Naval Observatory to carry out its mission critical functions, we see this as a demonstration of the lack of evenhandedness and credibility of the Navy's position with regard to its opposition to the Aspen Heights development proposal. We wonder what the Navy's position, and the City's response, will be with regard to the City's future public works yard in Lighting Zone 1 and that facility's need for its lighting operations at night. Additionally, we question whether the Navy will also oppose future annexation and rezoning requests from Gore, involving approximately 134 acres, in the same arbitrary manner as they have the Aspen Heights proposal. If Aspen Heights' annexation and rezoning applications are rejected by the City, and if the City and Gore are beneficiaries of more favorable treatment by the Navy and the City, we believe there will be

¹ "By 1980, most of Lowell's research work and telescopes had moved to the dark skies of Anderson Mesa."
<http://www.flagstaffdarkskies.org/international-dark-sky-city/flagstaffs-battle-for-dark-skies/>

significant legal issues for the Arizona Department of Financial Institutions to explore regarding actions taken by the City to devalue the Property.

2. Security and Management

During public comment at the hearing regarding the annexation and rezoning ordinances, you heard on both October 21 and November 3 from Judge Ted Reed, as well as other residents of Equestrian Estates, about concerns regarding their property values and the proposed development, which is at least one-half mile from the Estates. Many of their colorful and spirited comments focused on student behavior and management concerns.

Last July, the developer consulted with Deputy Chief Miller of the Police Department regarding the best way to address student behavior issues and was told that the Crime Free Multi-Housing Program (the "Program") has been highly effective in dealing with those concerns. As an example, Chief Treadway, in his presentation to the community symposium on student housing issues discussed the effectiveness of the Program in the context of dealing with The Commons, a 500-bed student housing development at 901 S. O'Leary. Prior to management of The Commons committing to participation in the Program, there was a high call volume of 225 calls over a 2-year period (2008-2010), but after management at The Commons worked with the Police Department to implement the Program at the site, there were only 22 calls in 2013.

No one from Equestrian Estates or anywhere else has contacted the developer, or the Police Department to our knowledge, to ask what the elements of the Program are and how that would affect student behavior or continued residency at Aspen Heights. Neither has anyone contacted the developer with suggestions for how their concerns could be addressed. When presented with suggestions, such as having a member of the management staff reside on the Property, the developer has incorporated the suggestions in the draft development agreement, and has agreed to stipulations in the zoning ordinance in that regard. If representatives of the Equestrian Estates homeowners' association wish to participate in the "socials" that every resident of Aspen Heights will be required to attend as part of the CFMH Program, to speak with students regarding concerns about the use of public lands adjacent to Equestrian Estates, they would be welcome to do so. Perhaps, instead of demonizing all students as drunken or drug-crazed, bonfire-setting ravers, they could try to find common ground with these young adults in their mutual interest in preserving public lands for all users to enjoy responsibly.

You heard from Charlie Vatterott that Aspen Heights has had some issues with regard to student conduct that resulted from inexperienced managers in the past. Charlie said that Aspen Heights acknowledges those mistakes and has learned from them. In Harrisonburg, Virginia, there has been no recurrence of problems with large gatherings of students, and a check with Joe Paxton, County Administrator of Rockingham County will confirm that. His telephone number is (504) 564-3011. You may also check with Mandi Cody, Director of Planning and Development for the City of Statesboro, Georgia, at (912) 764-0630, regarding her experience with the Aspen Heights

development in that city. With regard to one of its most recent developments, in the City of Fort Collins, I called that city to check on the Aspen Heights project there. I spoke with Chief Planner Ted Shepard who told me that he had not heard any complaints from the neighbors and would have, if there had been any. The neighboring subdivision had opposed the project and appealed its approval, which was not upheld. I also spoke with Neighborhood Services in Fort Collins and they told me they had no records of code enforcement matters (public nuisance) involving the Aspen Heights development.

3. Transportation

At the public hearing on both October 21 and November 3, you heard from Jeff Meilbeck, Chief Executive Officer of NAIPTA, that NAIPTA and the developer were in negotiations for the extension of service by NAIPTA to the Property in exchange for a 10-year commitment from the development for an annual payment of \$137,802 adjusted annually, or a total financial commitment of more than \$1,378,020. On November 14, we received a draft agreement from NAIPTA's legal counsel. We have not had a chance to provide our comments, but we have reviewed it and do not believe there are issues which will present an impediment to reaching an agreement soon that can be presented to the NAIPTA Board for action.

4. Supply Gap in Housing for NAU Students

As we mentioned at the public hearing sessions regarding this matter, according to the 2030 Regional Plan, NAU students make up 25% of the population of Flagstaff. Less than half of those students, approximately 9,000, are housed on campus with more than 10,000 students living off campus. Attached to this letter is a chart of occupancy rates at student housing developments and in conventional multi-family apartment complexes. As you will see, in the former the average occupancy rate is 100%, and in the latter the average occupancy rate is 99%. The need for additional housing for students in Flagstaff is undeniable. As we also noted, purpose-built student housing had the ability to draw students out of single-family residential neighborhoods where parking is often inadequate for the number of students renting a home. Additionally, attractive student housing has the potential to attract students that would otherwise rent housing in competition with families in the moderate- to low-income ranges.

5. Financial Impact

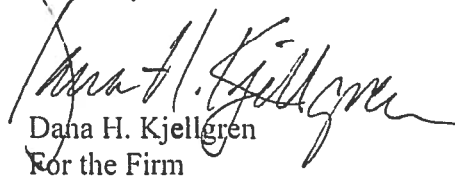
Contrary to what Lance Diskan of the Flagstaff Dark Skies Coalition said, there is no observatory "industry" involving the Naval Observatory or Lowell Observatory that provides a monetary benefit to the City. While they are prestigious institutions in the County and the City, they do not provide much, if any, financial support to the citizens of either jurisdiction through tax revenues.

The Naval Observatory apparently has a payroll of 23 people. It does not manufacture anything or sell anything, and even if it did, the County would be the recipient of any tax revenues from the Naval Observatory's taxable activities, which are probably nonexistent since it is a governmental entity. All of the Naval Observatory's facilities are in the County (on Anderson Mesa and at the actual site of the Observatory off Route 66), and its real property is tax exempt. Lowell Observatory, as a nonprofit, is not likely to remit much, if anything to the City, on its ticket and merchandise sales, and its real property is also tax exempt. Some people may travel to Flagstaff to visit Lowell, but the majority of visitors are already here to visit the Grand Canyon, Sedona and other points of interest in the area.

Aspen Heights, on the other hand, will bring approximately \$400,000 in property tax revenues annually, and will also generate transaction privilege taxes on contracting activity and from the purchase of materials which will result from the substantial amount of construction on the parcel. Additionally, the financial impact of NAU students is huge. They spend money on food, clothing, household items, and entertainment, which supports businesses in the community and produces significant tax revenues for the City. It was astonishing to hear a group of people who make up 25% of the population of Flagstaff and who provide significant financial benefits to the community maligned as they were at the public hearing session on November 3.

Thank you for your consideration of these matters. Please let us know if there is additional information that would be helpful for you or City staff to have.

Sincerely,



Dana H. Kjellgren
For the Firm

Michelle D'Andrea, City Attorney
Charles Vatterott, Aspen Heights
Thomas J. Giallanza, Esq., Deputy Receiver
for the Superintendent of the Arizona Department of Financial Institutions

Flagstaff, AZ - Student Housing Occupancy

Property	Occupancy (2014)
Hilltop Townhomes	100%
The Suites Phase I	100%
The Suites Phase II	100%
The Grove at Flagstaff Phase I	100%
The Grove at Flagstaff Phase II	100%
Pine View Village	100%
Highland Village	97%
<i>Average</i>	<i>100%</i>

Flagstaff, AZ - Conventional Multi-family Occupancy

Property	Occupancy (2014)
University West	98%
Flagstaff Village	100%
Sterling Pointe	100%
University Square	100%
Commons at SawMill	99%
Woodlands Village	100%
Aspen Leaf	100%
Clear Creek Village	100%
Sterling Pointe - Market Units	100%
Verde Vista	100%
Woodcrest Apartments	97%
Ridge at Clear Creek	97%
Forest Meadows Apartment Homes	100%
Hillside Court	100%
Millpond Village	98%
The Arbors	98%
Kinlani Apartments	100%
Park Terrace	100%
Santa Fe West	100%
Village at Lake Mary Crossing	99%
Church Apartments	100%
Forest Ridge	98%
Canyon Springs	100%
Ponderosa Park Apartments	100%
Peak View	100%
Peak View North	100%
Canyon Trail	100%
<i>Average</i>	<i>99%</i>

**Data provided by Axiometrics- Commercial Apartment Research*