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March 14, 2014

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Louisville Metro Government
Planning Commission Members
Mayor's Gallery Metro Hall
527 West Jefferson Street
Louisville, Kentucky 40202

Julia Williams, AICP, Planner
444 S. Fifth Street, Ste., 300
Louisville, Kentucky 40202

Matthew R. Doyle, Planner
444 S. Fifth Street, Ste., 300
Louisville, Kentucky 40202

Re: File Nos. 13SUBDIV1000; 19173; 19174 and 19219

Members of the Louisville Metro Government Planning Commission, Ms. Williams and Mr. Doyle;

As the Planning Commission is aware, this office represents the Glenmary Homeowner's Association, Inc. ("**Glenmary HOA**") located at 4906 Bardstown Road, Suite 101, Louisville, Kentucky 40291. Prior to the upcoming hearing on March 20, 2014, I wanted to address an issue raised during the last hearing regarding the above-referenced files. Specially, there was some discussion that approval of a subdivision plat is a "ministerial act" of the Planning Commission thereby depriving the Planning Commission of its ability to exercise *any* discretion. Under that analysis, the Planning Commission and the applicant, Par Golf, LLC ("**Par Golf**") indicated that as long as Par Golf had complied with the subdivision regulations checked the appropriate boxes, then, according to Mr. Bardenwerper, the Planning Commission had no choice but to approve the proposed subdivision of Par Golf.

While the Glenmary HOA does not take issue with the general proposition that approval of a subdivision plat has been held to be a "ministerial act" on several occasions by the Kentucky Courts beginning with the case of Snyder v. Owensboro, 528 S.W.2d 663, 664 (Ky. 1975), this general proposition of law has no application to the present scenario. A review of the decision in Snyder and all subsequent cases and the language of KRS 100.281, indicates that the Planning Commission only acts in a "ministerial" fashion when considering *preliminary and final* plats for

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approval. As the Planning Commission is aware, it is only **after** a plat has been approved that it can be filed of record pursuant to KRS 100.283. The Kentucky Court of Appeals has recognized, “[o]nly when the plat becomes final are the parties’ rights and expectations fixed. Until a plat becomes final, it cannot be recorded and lots cannot be sold. KRS 100.277. Until a plat becomes final by having received final plat approval by the planning commission, it cannot be accepted by the legislative body for maintenance. KRS 100.277(4).” Henry Fischer Builder, Inc. v. Magee, 957 S.W.2d 303, 305 (Ky. App. 1997).

In this situation, the Planning Commission is not being asked to approve preliminary and/or final plats concerning a new subdivision. On the contrary, Par Golf is asking the Planning Commission to amend plats for a subdivision which has already been approved by the Planning Commission and which have been filed of record in accordance with KRS 100.283 since March 14, 1990. (**Exhibits A, B and C**). Clearly the rights and expectations and rights of the property owners within the Glenmary Subdivision have already become fixed as a matter of law. As indicated on these recorded, final plats, the rights and expectations of these property owners are that the real property which Par Golf now seeks to develop into home construction areas were previously dedicated as recreation areas and are subject to the filed deeds of restrictions previously submitted to the Planning Commission by the Glenmary HOA. Accordingly, the application of Par Golf actually seeks to revoke the previous dedication of these recreation areas and obtain a rededication of these areas for others uses, specifically development. Any such revocation should be evaluated under the requirements of KRS 100.285 which would requires an application by *all persons owning land comprising the Glenmary Subdivision* **before** any such revocation could take place and that Par Golf would have to submit, under oath, that no person has purchased a lot as shown on the plats attached here as **Exhibits A, B, and C**, which Par Golf cannot do.

Moreover, the concept that the Planning Commission does not have the ability to exercise discretion when evaluating the proposed amendments to these recorded plats, is inconsistent with the specific language of the Louisville and Jefferson County, Land Development Code (“**LDC**”), Chapter 7.1.91 pursuant to which Par Golf’s applications have been submitted.¹ Pursuant to Chapter 7.1.91, while the Planning Commission has the power to amend any recorded plat at the request of any lot owner, it can do so only after all owners whose property is subject to the recorded plats have been given reasonable notice and a reasonable opportunity to express their objections or concerns. Unlike the cases that hold that the Planning Commission’s ability to approve a subdivision plat is a ministerial act, there are no regulations which outline what the Planning Commission must evaluate when determining whether to approve an amendment to a previously recorded plat. **IF**, all Par Golf has to do to obtain approval is check the “appropriate boxes” and the Planning Commission has been deprived of all discretion, then the obligation to provide all owners whose property is subject to the recorded plat reasonable notice and a reasonable opportunity to be heard is illusory. It would be untenable for the LDC to require that property owners be given notice and an opportunity to express their objections or concerns if the

¹ Glenmary HOA’s reference to Chapter 7.1.91 of the LDC should not be viewed as a waiver of its position that the LDC does not apply to the current applications.

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Planning Commission was powerless to consider these objections and concerns in its decision making process. Therefore, whether to allow such an amendment is clearly a discretionary function of the Planning Commission.

CONCLUSION

Accordingly, Glenmary HOA respectfully submits that IF the Planning Commission feels it has the authority to amend these plats without regard to the contractual obligations contained within the Deeds of Restrictions, then any such review and approval of the applications of Par Golf to amend previously filed subdivision plats do not constitute “ministerial acts”, but rather require the Planning Commission to exercise its discretionary authority. As such, the Planning Commission cannot approve the applications of Par Golf without taking into consideration all of the interests of the affected Parties, including but not limited to the Glenmary HOA, and must also recognize the contractual obligations that exist between the landowners, including Par Golf, as a result of the recorded Deeds of Restrictions.

Very truly yours,

Lynch, Cox, Gilman & Goodman, PSC.

A handwritten signature in black ink, appearing to read 'D. Cox', with a stylized flourish extending to the right.

Donald L. Cox

DLC

cc: Board Members

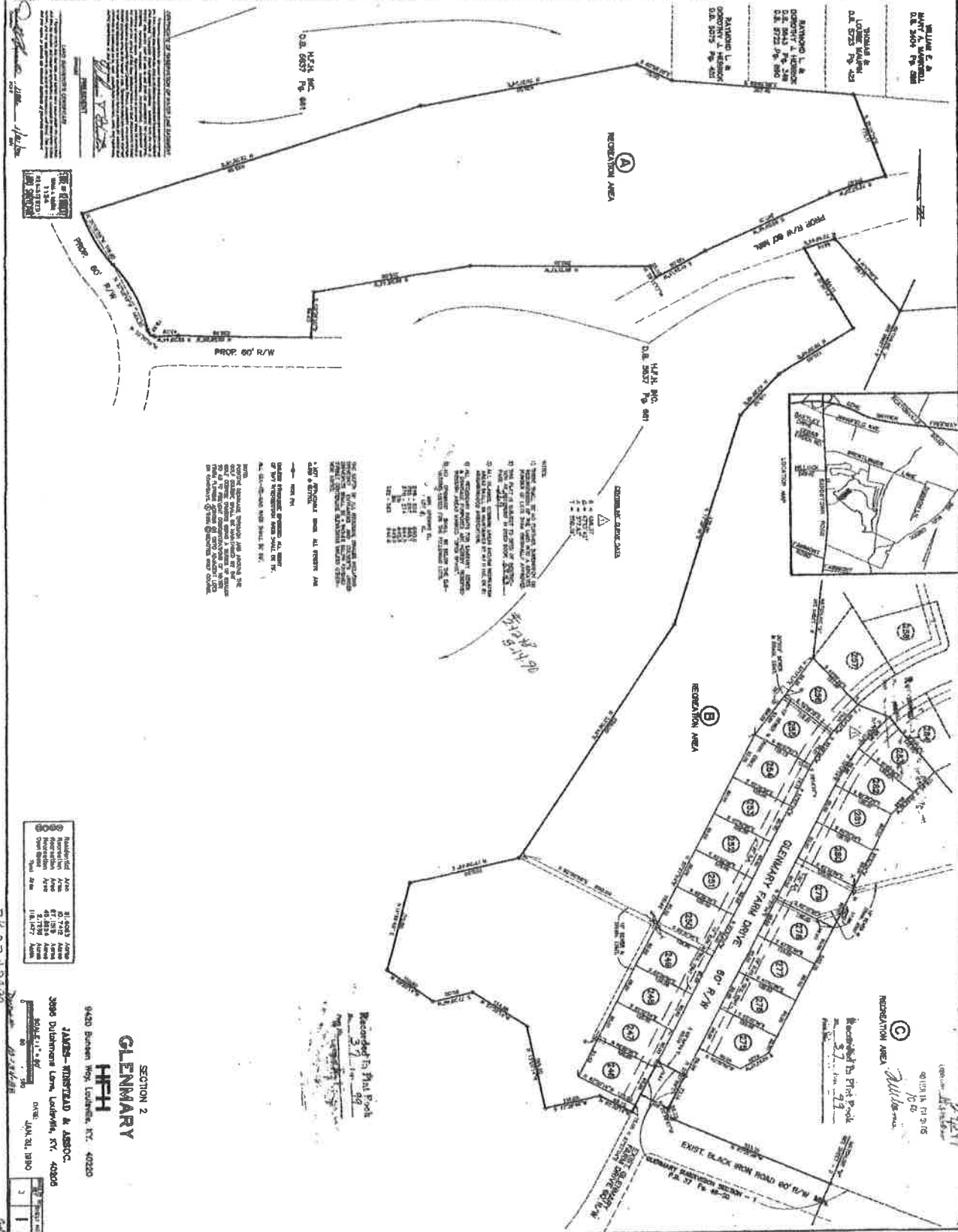
EXHIBIT

A

STATEMENT
 I, the undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original as the same appears in the files of the County Clerk of the County of Lincoln, Kentucky, and that the same is a true and correct copy of the original as the same appears in the files of the County Clerk of the County of Lincoln, Kentucky, and that the same is a true and correct copy of the original as the same appears in the files of the County Clerk of the County of Lincoln, Kentucky.

TESTIMONY OF WITNESSES
 I, the undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original as the same appears in the files of the County Clerk of the County of Lincoln, Kentucky, and that the same is a true and correct copy of the original as the same appears in the files of the County Clerk of the County of Lincoln, Kentucky, and that the same is a true and correct copy of the original as the same appears in the files of the County Clerk of the County of Lincoln, Kentucky.

TESTIMONY OF NOTARY PUBLIC
 I, the undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original as the same appears in the files of the County Clerk of the County of Lincoln, Kentucky, and that the same is a true and correct copy of the original as the same appears in the files of the County Clerk of the County of Lincoln, Kentucky, and that the same is a true and correct copy of the original as the same appears in the files of the County Clerk of the County of Lincoln, Kentucky.



SECTION 2
GLENMARY
HHH
 9420 Burden Way, Louisville, KY, 40220

JAMES WINSTEAD & ASSOC.
 3986 Dulannan Lane, Louisville, KY, 40208

Recorded in Plat Book
 37
 99

DATE: JUN 21, 1990

BR 37 X PD 99

EXHIBIT

B

STATEMENT OF WORK AND SPECIFICATIONS

PROJECT: GLENMARRY HIGH RISE APARTMENTS

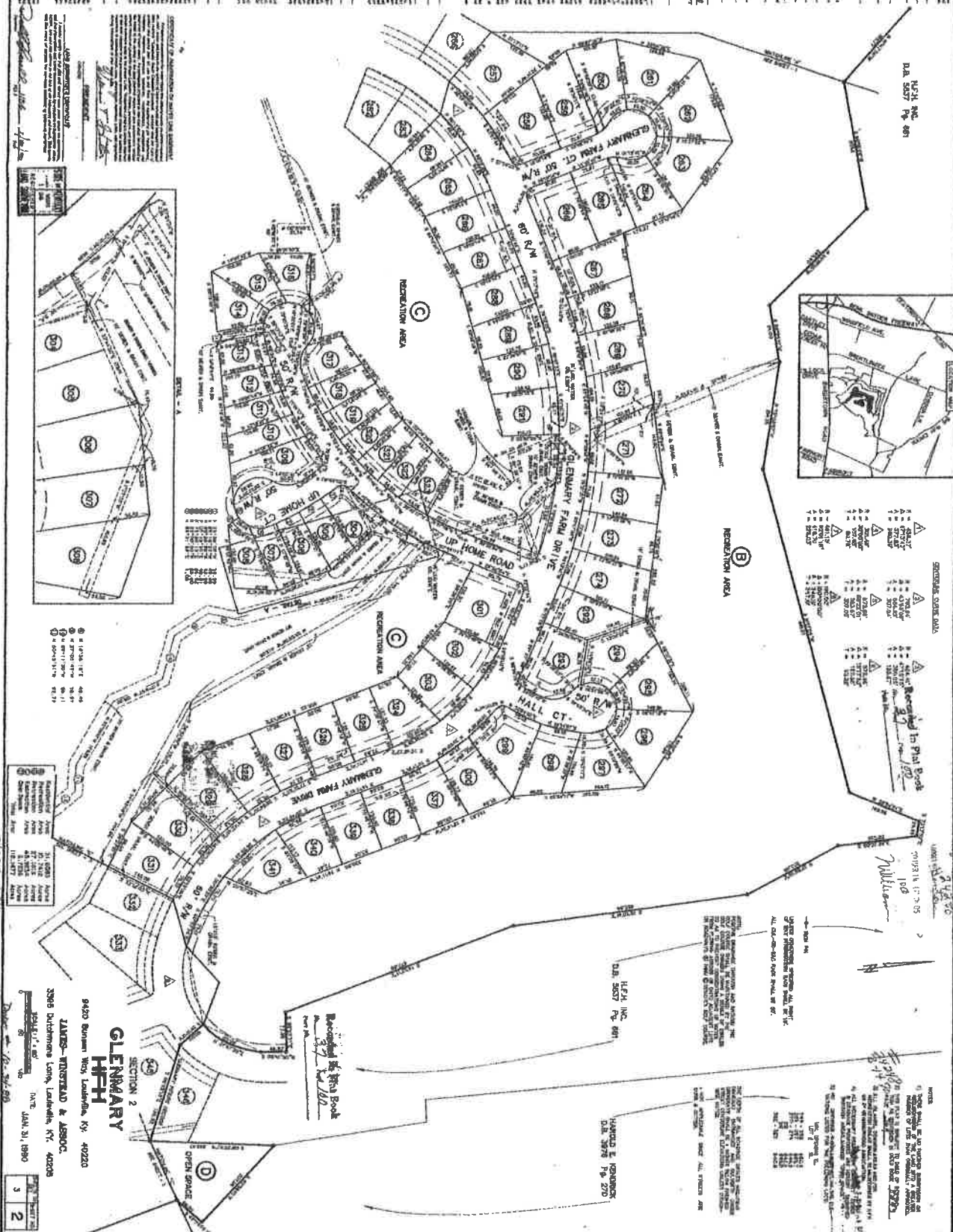
CLIENT: HFCB INC. D.B. 5827 P.C. 681

DESIGNER: HAROLD & HENDRICKS D.B. 3878 P.C. 270

DATE: JAN 31, 1990

SCALE: 1" = 100'

PROJECT LOCATION: 3988 Dutchmans Lane, Louisville, KY 40208



LEGEND:

- RECREATION AREA
- OPEN SPACE
- APARTMENT UNIT
- ...

NOTES:

- ...
- ...

DESIGNED BY: HAROLD & HENDRICKS

DATE: JAN 31, 1990

SCALE: 1" = 100'

EXHIBIT

C

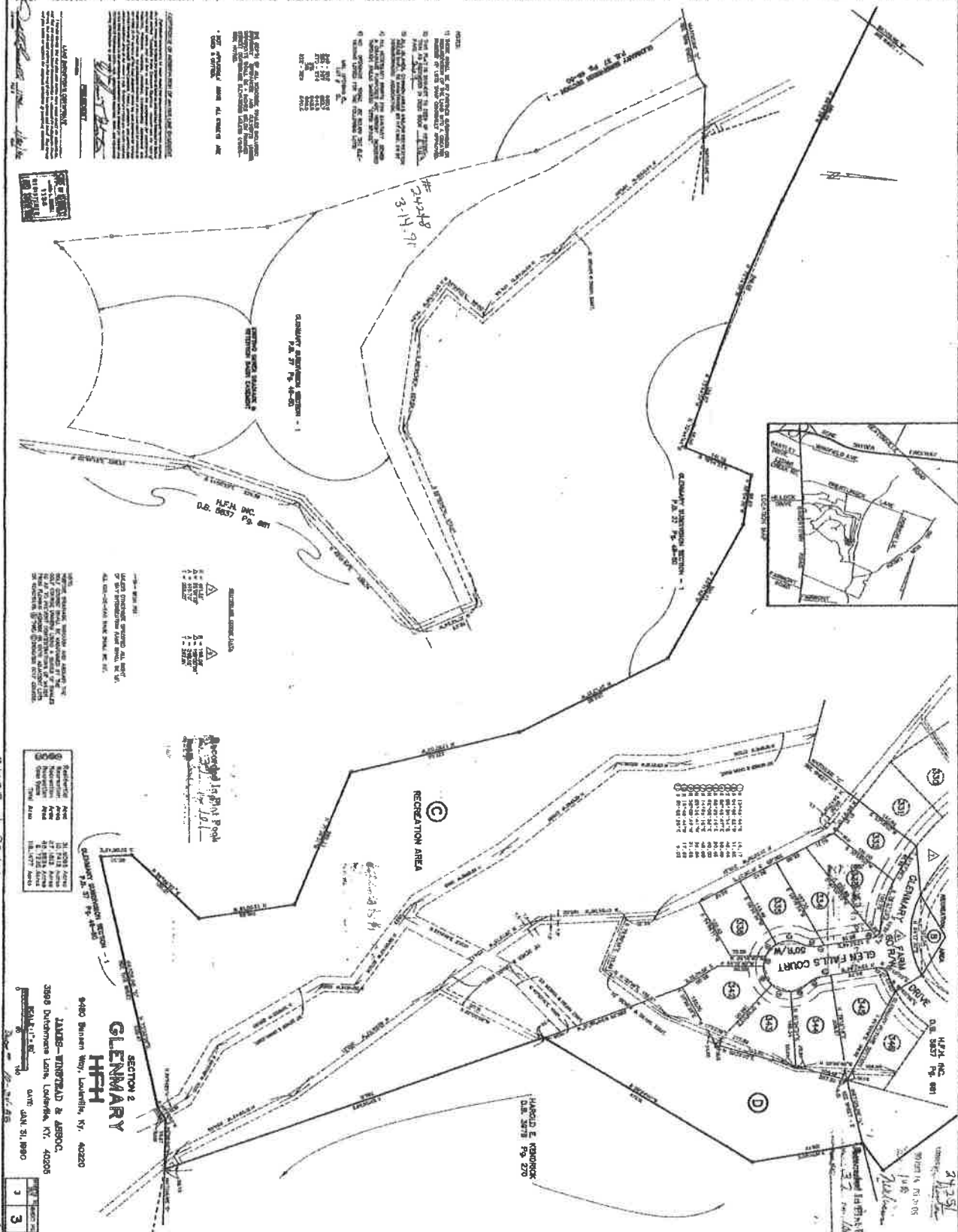
STATE OF CONNECTICUT
DEPARTMENT OF CONSTRUCTION
PLANNING & DESIGN DIVISION

PROJECT: GLENMARRY HIGHWAY
OWNER: HVAL INC. P.O. BOX 801
DESIGNER: HAROLD E. RABOROK, D.B. 3878 P.O. 270

DATE: JAN 31, 1980

SCALE: AS SHOWN

PROJECT NO.: BK37 X P2 101



BK37 X P2 101

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