216 Va. 474
SUPREME COURT OF VIRGINIA
RECEIVED
MAR 7 1975
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 74-0892

OCEAN ISLAND INN, INC.,

Appellant,

v.

CITY OF VIRGINIA BEACH,

Appellee.

JOINT APPENDIX

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FILED
9/26/72

BILL OF COMPLAINT AND MOTION FOR TEMPORARY AND PERMANENT INJUNCTION

Your plaintiff, Ocean Island Inn, Inc., respectfully shows as follows:

1. By deed dated November 20, 1970, duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, in Deed Book 1184, at page 588, a copy of which is attached hereto, marked Exhibit A, and made a part hereof, Lake George Corporation conveyed to your plaintiff, Ocean Island Inn, Inc., certain real property described therein and to which reference is specifically made.

2. Your plaintiff owns and maintains said described property in fee simple and subsequent to its acquisition applied for and was granted a building permit by the defendant, dated October 6, 1971, to construct a storage shed upon said real property.

3. Thereafter, E. M. Williams, an agent of the defendant, issued a "stop work" order upon said storage shed at which time your plaintiff had expended approximately $ 7,000.00 .

4. In addition to said storage shed your plaintiff constructed and maintained certain fences upon said real property.

5. Under dates of June 22 and July 19, 1972, the defendant, acting through its Building Codes Superintendent, advised your plaintiff that it was required to remove said structures for the reason that they were located upon a dedicated street right-of-way.

6. Your plaintiff has asserted and continues to assert that said structures are upon its own property and not upon a

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dedicated street right-of-way and has refused to remove them.

7. Under date of August 23, 1972, the defendant acting through its Building Codes Superintendent, advised your plaintiff that if said structures were not removed within stated times they would be removed by City forces.

8. Your plaintiff believes and, therefore, alleges that the defendant's wrongful interference and threatened trespass upon its said property will continue; that if it attempts in the future to use and enjoy its property and to develop it the defendant will further wrongfully interfere and trespass upon it.

9. That your plaintiff has no adequate remedy at law and will suffer irreparable damage if the defendant removes its structures or continues to threaten to remove them.

WHEREFORE, your plaintiff prays that the defendant be temporarily and permanently enjoined from wrongfully interfering or trespassing upon its real property and that it be granted whatever further relief as in equity may be needed.

11583

EXH. A

LAKE GEORGE CORPORATION	X	DEED NO. _____
TO	X	STATE TAX $ 26 35
OCEAN ISLAND INN, INC.	X	LOCAL TAX $ _____

THIS DEED, made this 20th day of November, 1970, between LAKE GEORGE CORPORATION, party of the first part, and OCEAN ISLAND INN, INC., party of the second part;

W I T N E S S E T H : That for and in consideration of the sum of

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Ten Dollars ($10.00), cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, the said party of the first part does hereby grant and convey, with General Warranty, unto the said party of the second part, the following described property, to-wit:

ALL that certain lot, piece or parcel of land situate, lying and being in the City of Virginia Beach, State of Virginia, being comprised of a portion of Jordan Street (now Jade Street) as shown on the plat of Lynnhaven Shores which plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia, in Map Book 7 at page 167 and a closed portion of Ocean Avenue as shown on said plat together with a certain parcel of property lying to the north of said closed portion of Ocean Avenue and extending to the Mean Low Water mark of Chesapeake Bay said property being more particularly described as follows, to-wit:

BEGINNING at a point where the northern line of Page Avenue intersects with the western line of Jade Street; thence from said point of beginning running North 27 Degrees 08 Minutes 10 Seconds West 525 Feet to the Mean Low Water mark of Chesapeake Bay; thence continuing in a northeasterly direction along the meanderings of Chesapeake Bay 60 Feet more or less to a point which is in an extension of the eastern line of said Jade Street; thence running along said extention line and the eastern line of Jade Street South 27 Degrees 08 Minutes 10 Seconds East to a point in the northern line of Page Avenue; thence running along the northern line of Page Avenue in a westerly direction along a curve to the left having a radius of 1872.07 feet, an arc distance of 60 Feet to the point of beginning.

It being a portion of the same property which was conveyed to Lake George Corporation as Peachtree Corporation by deed of James Luster, et ux, dated September 26, 1966, and duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 979 at Page 456, the said Peachtree Corporation having subsequent to said conveyance changed its name to Lake George Corporation as indicated by certificate recorded in the last mentioned Clerk's Office in Charter Book 17 at Page 166.

The closed portion of Ocean Avenue conveyed hereby is a portion of said Ocean Avenue which was closed by Resolution of the Board of Supervisors of the County of Princess Anne, Virginia, adopted on September 27, 1954, reference being hereby made to the minutes of the Board of Supervisors meeting held on the aforesaid date for a more particular description of the portion of Ocean Avenue closed thereby.

It is expressly understood that the portion of Jordan Street (now Jade Street) conveyed hereby is conveyed expressly subject to the rights of the public, if any, and the rights of other owners of lots on the various plats of Lynnhaven Shores, if any, in and

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to the use of said Jordan Street (now Jade Street).

This conveyance is made expressly subject to the easements, conditions and restrictions of records, in the chain of title applicable to the above described property, but nothing contained herein shall be construed as reimposing or extending any restrictions.

Except as set forth herein, the party of the first part covenants that it is seised in fee simple of said land; that it has the right to convey the said land to the grantee; that the grantee shall have quiet possession of the said land, free of all encumbrances; that it, the said party of the first part, will execute such further assurances of said land as may be requisite; and that it has done no act to encumber the said land.

IN WITNESS WHEREOF, the said party of the first part has caused its signature to be made and this deed to be executed by its President and its seal affixed hereto and attested by its Secretary, both being duly authorized therefor.

LAKE GEORGE CORPORATION

By Elvin B. Lindsley
President

SEAL

ATTEST:

Virginia J. Lindsley
Secretary

STATE OF VIRGINIA

City OF Virginia Beach, to-wit:

I, June M. Lindsley, a Notary Public in and for the City of Virginia Beach, State of Virginia, do certify that Elvin B. Lindsley Jr. and Virginia J. Lindsley, President and Secre-

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tary, respectively, of Lake George Corporation whose names are signed to the writing above, bearing date on the 20th day of November, 1970, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 24th day of November, 1970.

My commission expires: June 30, 1973 June M. Lindsley

FILED
8/ /73

ANSWER

Pursuant to the rules of the Supreme Court of Virginia the defendant, City of Virginia Beach, files herein its answer to the Bill of Complaint and Motion for Permanent Injunction and states as follows:

1. Paragraph 1 of the allegations set forth in the Plaintiff's Bill of Complaint and Motion for Permanent Injunction is admitted.

2. Paragraph 2 of the Plaintiff's Bill of Complaint and Motion for Permanent Injunction is denied.

3. Paragraphs 3 and 4 of the Bill of Complaint and Motion for Permanent Injunction the Defendant is not advised as to the allegations as contained therein and calls for strict proof thereof.

4. Paragraph 5 of the Bill of Complaint and Motion for Permanent Injunction is admitted.

5. Paragraph 6 of the Bill of Complaint and Motion for Permanent Injunction is denied.

6. Paragraph 7 of the Bill of Complaint and Motion for Permanent Injunction is admitted.

7. Paragraph 8 and 9 of the Bill of Complaint and Motion for Permanent Injunction is denied.

Therefore, having duly answered the defendant, City of Virginia Beach, prays that the Bill of Complaint and Motion for Permanent

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Injunction be dismissed.

ENTERED 5/15/74

DECREE

This cause came before the Court upon the bill of complaint of the plaintiff Ocean Island Inn, Inc. praying for a temporary and permanent injunction against the defendant City of Virginia Beach from wrongfully interfering or trespassing upon the real property of the plaintiff, the answer filed by the defendant, the testimony ore tenus and the exhibits presented on April 4 and 5, 1974, and the arguments of counsel;

And it appearing to the Court that the controversy between the parties involves a determination of the rights [redacted] and interest in certain parcels of real property known for purposes of this action as Jade Street and Ocean Avenue lying north of Page Avenue as shown on a certain plat entitled "Plat of Lynnhaven Shores", recorded in Map Book 7, at page 167, in the Clerk's Office of this Court, a copy of which plat was introduced herein as Exhibit 1;

And it further appearing to the Court from the evidence and exhibits that all of Jade Street and Ocean Avenue as shown on said plat, [redacted] were dedicated as streets for the benefit of the public in general and for the owners of the lots shown on the plat; [redacted] and the sale of lots by reference to the original plat created a dedication to [redacted] all of Jade Street and that portion of Ocean Avenue north of Jade Street by Princess Anne County, Virginia for the benefit of

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the general public; and the use by the general public and the owners of lots on said plat of Jade Street and that portion of Ocean Avenue north of Jade Street was an acceptance on behalf of Princess Anne County of the parcels in controversy; and the actions of the governing authorities in refusing to close Jade Street in 1958, 1971 and 1972; and the actions of the Board of Supervisors of Princess Anne County in 1954 in leaving open Ocean Avenue between Block 2 and Block 3 as shown on said plat; and the actions of the governing authorities in installing water and sewer facilities, granting electrical, gas and telephone franchises and in opening and developing various other streets on said plat; and that each of said actions shows a dedication and acceptance before withdrawal of all of Jade Street, [redacted] and of that portion of Ocean Avenue north of Jade Street.

Therefore, it is ADJUDGED, ORDERED and DECREED that the offer to dedicate that portion of Jade Street in controversy, as shown on the aforementioned plat and more particularly described as follows:

> BEGINNING at a point where the northern line of Page Avenue intersects with the western line of Jordan Street (now Jade Street) as shown on the plat of Lynnhaven Shores recorded in Map Book 7, at page 167, in the Clerk's Office of this Court; thence from said point of beginning North 27 Degrees 08 Minutes 10 Seconds West 175.08 feet to a point; thence running along a line perpendicular to that just described a distance of 60 feet to a point; thence running South 27 Degrees 08 Minutes 10 Seconds East 175.08 feet to a point in the northern line of Page Avenue; thence running along the northern line of Page Avenue in a westerly direction

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> along a curve to the left having a radius of 1872.07 feet, an arc distance of 60 feet more or less to the point of beginning;

and the offer to dedicate that portion of Ocean Avenue in controversy, as shown on said plat and more particularly described as follows:

> BEGINNING at the northwestern corner of the property particularly described above; thence from said point of beginning North 27 Degrees 08 Minutes 10 Seconds West 100 feet to a point; thence running along a line perpendicular to that just described a distance of 60 feet to a point; thence running South 27 Degrees 08 Minutes 10 Seconds East 100 feet to a point at the northeastern corner of the property particularly described above; thence running in a southwesterly direction 60 feet to the point of beginning;

were accepted by the governing authority before withdrawal of the offers by plaintiff's predecessors in title; and the right of the public to the use of said parcels is vested in the City of Virginia Beach;

It is further ADJUDGED, ORDERED and DECREED that the plaintiff's bill for a permanent injunction against the defendant be and the same hereby is DENIED; to all of which the plaintiff objects and excepts on the ground that such findings, conclusions and decree of the Chancellor are contrary to the law and the evidence.

And the plaintiff, having indicated its intention to petition the Supreme Court of Virginia for an appeal and supercedeas from the decree to be entered herein, this day moved the Court to suspend execution of said decree;

Whereupon it is accordingly ADJUDGED, ORDERED and DECREED that execution of such decree be, and it hereby is,

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suspended for a period of 120 days from the entry of said decree, and thereafter until such petition, if filed within the prescribed time, is acted upon by the Supreme Court of Virginia, provided that within 10 days the plaintiff, or someone for it, shall file or give bond with surety approved by the Clerk of this Court, containing the provisions and conditions of §§ 8-465 or 8-477 of the Code of Virginia in the penal sum of $ 1,000.00 .

It is further ADJUDGED, ORDERED and DECREED that pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia the transcript of the hearing of this cause is made a part of the record herein.

OPINION

THE COURT: Well, I think we first must look at the whole area and then the development of that whole area. No question the development in that area has been very slow, plat being put to record in 1926 and testimony throughout the trial of very slow -- the pictures indicate very slow development in this area. [305]

Generally this was a plat of Lynnhaven Shores indicating how the owners of the property wanted the development at the time the plat was put to record, and apparently the plat was approved by the engineering department at least of the City of Norfolk. I think in those days it was no requirement other than the Board of Supervisors accepted and the adjoining

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1 city accept the plats.

2 So we look at first the fact that in

3 1926 it was a plat put to record for the

4 development of a tract of land in the County

5 of Princess Anne. The law in Virginia as

6 I recall it -- and I took the liberty while

7 you gentlemen were preparing your argument

8 to go down and pick up the volume 126 of

9 Virginia Reports -- and in the case ofVirginia

10 Hot Springs versus Lowman, which apparently is

11 still law -- at least it was cited in the

12 Greenco case -- I'll read just a little portion

13 of it because this generally is the Court's

14 thinking in this case.

15 Starting at page 434, 126 Virginia,

16 "Some nice distinctions have been drawn by the

17 courts about acceptance of an implied dedication

18 by long continued use of the right by the public,

19 but that the acceptance may be so made seems to be

20 sustained by the weight of prevailing current

21 opinion." I don't know where they picked up

22 implied dedication because in this case I

23 believe there was a plat. In reading on,

24 "The effect of this acceptance is to

25 create an irrevocable dedication as between

1 the owner and his alienees and the public" --
2 and this cites several cases, West Virginia
3 cases, both of them. "But the acceptance need
4 not follow the offer of dedication at once.
5 It is sufficient if made within a reasonable
6 time and before the withdrawal of the
7 offer." Citing People versus Johnson,
8 Illinois case. "Where the acts of dedication
9 show a continuing offer of dedication, it is
10 not necessary that the acceptance should be
11 evidenced by an immediate use and occupation of
12 the whole of the land dedicated, but if a part
13 of it is so used and occupied, with no indication
14 of an intention to refuse or to abandon the
15 residue, the use and occupation of such residue
16 may be posponed until" -- and I emphasize
17 these words --"the public necessity or
18 convenience required its use." Citing a
19 Mississippi case Meridian versus Poole. I'll
20 read the next two paragraphs because I think
21 they are pertinent also.
22 In the language of Lee versus Harris
23 206 Illinois 428 it was held that, "acceptance
24 by a city or village of some of the streets
25 and alleys appearing on a plat is an acceptance

1 of the entire system of streets and alleys so
2 appearing, unless an intention to limit the
3 acceptance is shown. It was further said: 'The
4 immediate opening and use, by the public,
5 of all the streets in ground laid out and
6 platted into lots, for their entire length or
7 an immediate formal acceptance by some competent
8 authority, is not necessary to give
9 effect to the dedication of land to the public
10 use, of a street, by the making of a town plat
11 and the selling of lots with reference to the
12 plat. Thepublic authorities must be allowed
13 a reasonable time for opening and improving
14 public streets, as their resources and the
15 public necessity may allow and require.'
16 And the last paragraph is not -- that's
17 you know, is direct from our court. "What
18 we have said on this subject is intended to
19 be limited to dedication and acceptance as between
20 the adjacent owner and his alienees, on the one side,
21 and the public on the other."
22 This falls right into the teeth of the
23 case we have here in front of us. We have
24 evidence here that going back into the
25 early 50's, no later than the mid-fifties, portions

1 of this street -- requests were made for
2 abandonment of portions of this street either
3 through the planning commission or the old
4 Board of Supervisors or the City Council; that
5 obviously because it never was closed up until
6 in 1970 when there was an official active
7 action by our City Council not to close it.
8 Obviously it was not closed prior to 1970
9 and the City Council of Virginia Beach in 1970
10 refused to close that portion of Jade Street.
11 So for a number of years apparently the City
12 and the old Board of Supervisors recognized
13 that sooner or later this street would be
14 needed. There is evidence that gradually
15 the streets, according to this plat, have
16 been filled in by the City or by other persons
17 and the public has started to use it,
18 specifically Jordan Street which has been
19 changed to Jade Street, the street we are
20 concerned with.
21 Apparently only sometime in the fifties
22 and even possibly -- I don't recall the
23 evidence -- but was that even opened?
24 So we have absolutely no acts on the part of
25 the City to abandon this and yet we have an

1 official act of action by denials of closure
2 and by continuing to develop the area as the
3 Cape Henry -- Lynnhaven Shores had envisioned
4 when they put this plat to record.
5 There is no question as it's taken
6 a long time to do it, but that doesn't mean
7 that the City in any way had intented to
8 abandon the dedication. As I stated earlier
9 to counsel, and I still believe it at this point,
10 that by refusing to close this street in 1970
11 it was tantamount to the Council accepting
12 this street. I can't imagine any other thing
13 they must be stating. There must be some,
14 at least some, future use of this street by
15 stating that we refuse to close it and as
16 such turn it back to the owners of the
17 adjacent property. But here we have more than
18 that. As I stated we have acts by the old
19 Board of Supervisors and the County planning
20 commission refusing to close it prior to that
21 time.
22 MR. PRINCE: Your Honor, may I inquire
23 as what evidence there is of the refusal to
24 close in 1950.
25 THE COURT: Mrs. Caton.

1 MR. PRINCE: Her testimony?

2 THE COURT: Yes, sir.

3 All right. You must keep in mind that

4 he who alleges nonacceptance has the burden

5 of proving it. Now, as to that portion of

6 Ocean Avenue at the end of Jade Street, I

7 think my feeling on it is rather clear. The

8 Board of Supervisors in 1954 obviously from

9 the record had an application pending in the

10 matter of them making a motion on their own.

11 There was an application pending that was

12 filed in August of '54 and they acted upon

13 that application in September of '54; and

14 they refer specifically to the application.

15 In general terms the motion by Mr. Duiring

16 seconded by Mr. Whitehurst to abandon

17 Ocean Avenue stated between Cherry Boulevard

18 and Davis Street extended. But they also

19 provided in there, "see petition on page 230."

20 And the only reason for that would be

21 specification of what they were abandoning

22 and they were abandoning Ocean Avenue in

23 front of block 2 and one lot, one through

24 twelve inclusive in block 3.

25 It is the opinion of this Court they did

1 not abandon that portion that extends across
2 Jade Avenue. All of the matters that the
3 complainant alleges were acts of abandonment
4 by the City of Virginia Beach with the
5 exception of nonuse by the City that he alleges
6 although there is evidence to the contrary
7 of acts that occurred after the City refused
8 to close this street. That is the tax
9 assessment, the building of the buildings,
10 the parking lot whether there was and was
11 not a permit granted. We don't know at this
12 time, but all of these. I believe the testimony
13 was that the parking lot was constructed in
14 the spring of 1971 for the '71 season. If
15 you will recall the City refused to close
16 Jade Street on April 26th, 1971. So even
17 that at best was going on or was started after
18 the refusal to close.
19 So I don't believe that there is anything
20 here that would indicate to the Court that
21 the plaintiff was led to act to his detriment
22 by any acts of the City. He knew exactly
23 what he was doing. There cannot be any
24 abandonment in the Court's mind by way of
25 the deed that the complainant received because

especially as to that one hundred seventy-five feet, because he received that with notice that the public might have an interest in that piece of property. And he received it subject to that. I gather from the evidence, and I guess I am entitled to some since I am trier of the fact in this matter to draw some conclusions from the evidence that over the years Jade Street or portions of it could have been used and possibly were used by the public, that portion didn't have the burrs, sand burrs and what not in its way. And it's probably according to Mr. Fanney even some of his guests used this property, but all of us being as we are human beings we naturally want to try to find the easiest course to get to our particular objective, and I would assume the public used both private and public property for a number of years where there was no objection on the part of the public -- I mean on the part of the private owners -- to get to that beach.

Evidence is from Mr. Absalom and Mrs. Caton that the public did use the beach and use the property out front. They used an

1 access across, according to their evidence,
2 Jade Avenue as well as private property.
3 But as I stated as this property developes
4 quite naturally the public's access is going
5 to be more and more limited as private property
6 is developed. And there is no question in
7 this Court's mind that's the reason that
8 street was put there. And to now say that it's
9 been abandoned because property is now being
10 developed would be to contravene into rules
11 contrary to the obvious intent of the people
12 who put this plat to record in 1926 and quite
13 obviously the intent of many of the people
14 who purchased in that area. I think to some
15 extent it does fall in the same category as
16 the Greenco case, but as Mr. Bimson says
17 probably not on all fours. As a matter of
18 fact I think this case is a little easier
19 for the Court than the Greenco case was because
20 we have affirmative acts denying closures of
21 this street.
22 As such this Court would deny the
23 motion for permanent injunction in this
24 case and dismiss the bill of complaint. You
25 gentlemen may prepare an order embodying this

1 Court's decision and present it for entry.

2 MR. BIMSON: Yes, sir.

3

4 -----oOo-----

NOTICE OF APPEAL
AND
ASSIGNMENTS OF ERROR

TAKE NOTICE that the plaintiff, Ocean Island Inn, Inc., intends to file a petition for appeal of the final decree entered herein on May 15, 1974. The transcript of the hearing having been already made a part of the record, no other transcript, statement of facts, testimony or other incidents of the case is to be hereafter filed.

The plaintiff assigns as error the action of the court in the following particulars:

1. Admitting into evidence defendant's Exhibit 3.

2. Admitting into evidence defendant's Exhibit 4.

3. Admitting into evidence hearsay testimony of Mary Caton.

4. Admitting into evidence defendant's Exhibit 5.

5. Admitting into evidence defendant's Exhibit 6.

6. Admitting into evidence defendant's Exhibit 8.

7. Admitting into evidence defendant's Exhibit 9.

8. Admitting into evidence defendant's Exhibit 10.

9. Refusing to allow plaintiff to preserve for the

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record the testimony of Ralph D. Katherman, which the court had ruled was inadmissible.

10. Finding that the sale of lots by reference to the original plat created a dedication for the benefit of the general public.

11. Finding that the general public and owners of lots on the plat had used Jade Street and Ocean Avenue and that such use was an acceptance of the dedication on behalf of Princess Anne County.

12. Finding that the governing authorities had refused to close Jade Street in 1958, 1971 and 1972 and that such action showed a dedication and acceptance.

13. Finding that the Board of Supervisors of Princess Anne County left open Ocean Avenue between Block 2 and Block 3 in 1954 and that such action showed a dedication and acceptance.

14. Finding that the governing authorities had installed water and sewer facilities and granted electrical, gas and telephone franchises and that such action showed a dedication and acceptance.

15. Finding that opening and developing various other streets on the plat showed a dedication and acceptance.

16. Decreeing that the governing authorities had accepted the dedication of the property and that the right of the public to use the property is vested in the defendant.

17. Denying the plaintiff's prayer for a permanent injunction.

18. Entering its final decree of May 15, 1974.

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[3] THE COURT: All right.

Plaintiff ready in this matter?

MR. PRINCE: Yes, Your Honor.

THE COURT: Defendant ready?

MR. BIMSON: Yes, sir, the City is ready.

I would like the record to show Mr. Pickrell is here sitting in with the City representing one of the affected property owners.

THE COURT: All right.

[12] MR. PRINCE: I might point out, to dissuade any problem that the Court or Mr. Bimson may have, that this controversy is between the City of Virginia Beach and Ocean Island Inn. The controversy is not between Ocean Island Inn and the owners of these other lots here. Any rights which the owners of these lots might have to Jade Street, the part that Ocean Island Inn claims title to, is not effected by this controversy. Although the owners of these are members of the public, they have rights which are different from the rights of the public. Any rights that they have would be rights that they hold as a result of owners of property described on a plat. Those rights are different from the general public. So we are not litigating those rights. We are

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24 only litigating the rights of the City and
25 Ocean Island Inn. As a matter of fact that
1 [13] particular point of law came up earlier in
2 this case in a demurrer where the City's
3 position was that the owners of all these lots
4 should be included in the suit and the Court
5 overruled the demurrer on the grounds that
6 their rights are not being affected by the
7 outcome of this case.
8 THE COURT: I don't think I made that
9 statement -- their rights were not affected.
10 I think I merely overruled the demurrer and
11 my thought was that was not the proper way to
12 attack it.
13 MR. PRINCE: Not what?
14 THE COURT: That was not the proper way
15 to attack it. They are parties. They are not
16 parties to this action. If we find they should
17 be during a later time or sometime during the
18 trial of this matter --
19 MR. PRINCE: No right that they have is
20 affected by the outcome of this case. I mean
21 the plaintiff concedes that point.
22 THE COURT: But does the defendant?
23 Obviously, he doesn't. The defendant obviously
24 doesn't. I don't know fully what the argument
25 is.

***

16 [14] MR. BIMSON: Yes, sir, Your Honor.

17 I believe Mr. Prince has basically put

18 the issue before the Court. I think there is

19 some instance of Jade originally called

20 Jordan Street, but it's now known as Jade Street

21 and I believe we can stipulate to that.

22 Basically I think the primary question

23 here is the act of acceptance of Jade Street

24 from Page Street north by the City. And the

25 City will contend there are acts of acceptance that

1 [15] will be presented to the Court to show

2 acceptance on the part of the City and it's a

3 dedicated and accepted street.

4 Another issue will be whether Ocean Avenue

5 was properly closed at the intersection of

6 Ocean Avenue and Jade Street. I think that will

7 be an issue involved here today. Basically the

8 City's position will be, and we will be able to

9 establish by evidence that there has been acts

10 of acceptance on the part of the City concerning

11 the streets on the entire plat and that the

12 public has used the strip in question as a

13 means of access to get to the beach. And by

14 these acts it is a part of the City's system

15 of streets although it has not been paved. It

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16 is our contention and that by accepting some of
17 the street, and in particular Jade Street and
18 practically the entire length of the street,
19 that we have accepted the entire length of Jade
20 Street down to the water edge.
21 And I believe that will be the point in
22 question here today.

1 RALPH D. KATHERMAN, called as a witness on
2 behalf of the plaintiff, having been first duly sworn,
3 was examined and testified as follows:

[34] 12 BY MR. PRINCE:
13 Q Mr. Katherman, the plat that you just
14 looked at was a plat of Lynnhaven Shores. Is that
15 correct?
16 A That's correct, sir.
17 Q Who had title to the property before
18 Lynnhaven Shores acquired title -- the predecessor?
19 A The immediate predecessor to
20 Lynnhaven Shores, Incorporated was Cape Henry Syndicate.
21 Q Do your records reflect when Cape Henry
22 Syndicate acquired the property?
23 A Cape Henry Syndicate originally acquired
24 title to the property in 1903.
25 Q From the examination of the records and

1 based upon your expertise, can you tell us what the
2 records reflect as to how far the ownership of the
3 property of Cape Henry Syndicate went in a northerly
4 direction?
5 A The records would indicate that the
6 property went to the mean low water line of the
7 Chesapeake Bay.
8 Q All right. Now, to whom did Cape
9 Henry Syndicate convey the property?
10 A Cape Henry Syndicate conveyed the
11 property to Lynnhaven Shores, Incorporated.
12 Q All right. And would you tell us
13 please the chain of title from there to Ocean Island
14 Inn?
15 A Well, Cape Henry Syndicate conveyed
16 the property to Lynnhaven Shores, Incorporated by deed
17 dated April 26th, 1926, and recorded in Deed Book 140 at
18 page one hundred ninety-five of this court's clerk's
19 office. Lynnhaven Shores, Incorporated conveyed the
20 property to H. B. Goodrich, trustee to secure part payment
21 of a debt, the purchase money, and that deed of trust
22 was dated April 26th, 1926, and was recorded in the
23 same clerk's office in Deed Book 140 at page ninety-eight.
24 Subsequent to that there was a foreclosure of that deed
25 of trust to Goodrich trustee and Goodrich trustee by a deed

1 dated July 2, 1935, conveyed the property to Cape Henry
2 Syndicate again.
3 Q Now, when was the plat put to record
4 you just examined?
5 A The plat that was just exhibited to me
6 was recorded in connection with the conveyance from
7 Cape Henry Syndicate to Lynnhaven Shores, Incorporated
8 in 1926.
9 Q All right, sir. Continue.
10 A Cape Henry Syndicate having reacquired
11 the property in by the deed from Goodrich, trustee,
12 in 1935 retained property until 1966 when there was a
13 conveyance from Joseph J. Lawler, who was receiver for
14 Cape Henry Syndicate, and that conveyance was to a party
15 named James Luster.
16 Q What was that a conveyance of,
17 Mr. Katherman?
18 A That was conveyance of all of the
19 property located in Virginia Beach which Cape Henry
20 Syndicate might still have any interest in. I can read
21 you the verbatim language if you would like.
22 Q Please.
23 A That deed purported to convey all of the
24 property which the Cape Henry Syndicate owned,situate,lying
25 and being in the City of Virginia Beach, Virginia or any

1 interest, reservation of title, right of reverter and any
2 and all other rights or interests that Cape Henry
3 Syndicate had in any real property situate in the City of
4 Virginia Beach.
5 Q Based upon your examination of the
6 title did that conveyance include the property which
7 is the subject of this controversy?
8 A Yes, in my opinion it did.
9 Q All right. Tell us what happened
10 after that.
11 A Well subsequent to the deed from
12 Lawler receiver to James Luster there was a correction
13 deed to the same person, James Luster, which corrected
14 a defect in the granting clause where the name of the
15 grantee -- I think it has been admitted Subsequent to
16 that James Luster and his wife conveyed to a corporation,
17 Peachtree Corporation. Subsequently Peachtree Corporation's
18 name was changed to Lake George Corporation and Lake
19 George Corporation then was the corporation which conveyed
20 to Ocean Island Inn Corporation.
21 Q All right, sir. And the conveyance,
22 the last conveyance, from Cape George Corporation to
23 Ocean Island Inn -- Lake George Corporation to Ocean
24 Island Inn -- contained, did it not, a reservation in it
25 as to the street?

1 Do you have the deed?

2 Exhibit A. What does that paragraph

3 single spaced up there say?

4 A Well, that paragraph says: "It is

5 expressly understood that the portion of Jordan Street

6 (now Jade Street) conveyed hereby is conveyed expressly

7 subject to the rights of the public, if any, and the rights

8 of other owners of lots on the various plats of

9 Lynnhaven Shores, if any, in and to the use of said

10 Jordan Street (now Jade Street)."

10 WILFRED P. LARGE, called as a witness on behalf

11 of the plaintiff, having been first duly sworn, was

12 examined and testified as follows:

6 BY MR. PRINCE: [43]

7 Q This is Exhibit 19-7 and Exhibit P19-6.

8 19-6 is looking north across Page Avenue down Jade.

9 Now, in this exhibit, Mr. Large, can you point out that

10 macadam part that is shown on your plat? Do you have a

11 felt pen with you?

12 A No. Maybe a red pencil.

13 Q That's all right. Would you roughly

14 show on Exhibit 19-6 the macadam portion?

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15 A Let me see. That's not marking very
16 well.
17 THE COURT: Mr. Large, is it the darker
16 shade right here? Is that it?
19 THE WITNESS: Yes, sir. This darker
20 shade, yes, sir.
21 THE COURT: We can all see it.
22
23 BY MR. PRINCE:
24 Q All right, sir. Then, of course, this
25 is the fence.

1 [44] A Yes, sir.
2 Q Based upon your survey can you tell us
3 is this fence within the sixty-feet right of way?
4 A It's within the sixty-foot right of way,
5 yes, sir.
6 Q Now, looking at Exhibit P19-7 this is
7 looking south across Page Avenue. How much of what is
8 shown in that photograph, Mr. Large, is within the
9 right of way of Jade Street?
10 A Do you want to know where the right of way
11 is?
12 Q Yes, if you can indicate on that
13 picture.
14 A Turn the picture this way just for
15 identification, but the end of the fence is shown as the
16 end of the fence right here. And where the fence goes in

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17 here is this portion that goes back and you can see the
18 indication of the fence runs in the picture according
19 to the plat. The right of way line is shown through this
20 portion that goes through that portion right here.
21 (Indicating.)
22 Q How about taking this and just punch a
23 hole roughly right through the picture where the portion
24 is where the right of way line is.
25 A I know that it is not to the minute, but

1 it's close enough. [45]
2 THE COURT: It can't be to the minute.
3
4 BY MR. PRINCE:
5 Q Just run a circle around that on the
6 back. And that's a hole punched through Exhibit P19-7,
7 drawn a circle and that represents the right of way line
8 of Jade Street as is shown on this plat.
9 A On the west side of Jade Street.
10 Q On the west side. All right. Now,
11 referring again to the plat, what does this mark indicate?
12 A Now, looking at a twelve inch high block
13 container wall that's built there.
14 Q Now, is that block container wall within
15 or without the right of way?
16 A It's within the right of way.
17 THE COURT: That's not the property in
18 question. That's across the street. You

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are showing the City having encroachments on the right of way. I don't think it's worth much since it's not the property in question.

BY MR. PRINCE:

Q Now, looking north of Page Avenue, Mr. Large, can you identify these marks that you have put within the sixty-foot area? This is the property in question, is it not?

[46]

A Yes, sir.

Q All right. Now, this is identified -- would you relate what this is?

A The area just pointed to is the area where there are sand hills, small trees and bushes.

Q Looking again at these photographs can you show us which of these photographs show that sand hill, small trees and bushes?

A You can see it through the building in the background on that picture.

Q All right. That's P19-3.

THE COURT: It's behind that shed.

THE WITNESS: Yes, sir. It's very prominent here behind the shed.

BY MR. PRINCE:

Q This is P19-2. And it's very prominent there. Now, this is P19-1. Mr. Large, looking at P19-1

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which is obviously a picture of shrubbery, can you tell us whether or not this is within or without the area marked sixty feet on your plat, that is what we will call Jade Street north of Page.

A This picture from where I can see the [47] photograph standing looking south when the picture was taken south towards Shore Drive, this you can see in the background the opening for the roadway through Jade Street.

Q All right, sir. Now, this is P19-5.

A Yes, sir. This picture was taken looking north standing somewheres in Page Street.

Q And where are the shrubberies and sand hill which are shown in this picture shown on this plat? Where is this shown on the plat?

A These shrubberies is this area right here.

Q All right. This is 19-4. Is it shown in there?

A Yes, sir.

Q Where is it?

A Right in this area right here, sir. It's Jade Street pavement, which is this pavement shown on my plat and the shed is shown right here on my plat. This is in front between Page, between Page Avenue south of the shed and north of Page Avenue.

Q This is a photograph looking southerly and the clump of trees and sand dune is south of the

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23 shed.

24 A Yes, sir.

25 Q All right. And this is 19-6. Does this

[48] 1 show it also?

2 A Same clump of trees, yes, sir.

3 Q All right. Mr. Large, we can go back

4 down now.

5 MR. PRINCE: Your Honor, my opening

6 statement was not evidence, but I see from that

7 plat that this section that I referred to is

8 one hundred seventy-five feet. So I must have

9 gotten something switched around here.

10

11 BY MR. PRINCE:

12 Q Mr. Large, how long have you lived in

13 this area?

14 A I've lived in Virginia Beach area all

15 my life.

16 Q Are you familiar with the area where this

17 property is?

18 A Yes, sir.

19 Q Can you tell us -- well, you say all

20 your life. We got to get in the record how much is all

21 your life.

22 A I'll be forty-nine th 16th of April

23 this year.

24 Q All right. When you say you have lived

25 in the Virginia Beach area all your life I would like to

1 ask you the extent of your familiarity with that
2 particular part of Virginia Beach.
3 A I am familiar with the Chesapeake Bay
4 area, yes, sir.
5 Q All right. From your own knowledge of
6 living in this area forty-nine years, Mr. Large, can you
7 tell us whether this area which we will call Jade Street
8 as shown on your plat from Page Avenue northward to the
9 bay has ever been laid out or maintained or used as a
10 street or a public highway from anything that you have
11 observed?
12 MR. PICKRELL: Excuse me. I think he
13 can testify to what he has observed.
14
15 BY MR. PRINCE:
16 Q Tell us what you have observed at that
17 area.
18 THE COURT: Leading question to start
19 with.
20 MR. PICKRELL: I think we limit him to
21 what he has seen and the familiarity he has had
22 with the particular area.
23
24 BY MR. PRINCE:
25 Q Tell us what you observed.

[50] A I know for the last twenty years that I have known that particular area to be in a similar condition as it is today with shrubs. There has been some clearings of shrubbery in that area, but it's always been -- it's always been growth in that particular area between Page Street and what is known as Ocean Avenue.

Q All right, sir. Can you tell us whether or not you have ever observed any street laid out there?

A No, sir.

***

[52] CROSS-EXAMINATION

BY MR. PICKRELL:

Q Mr. Large, the area of Jade Street in which, which is north of Page Avenue and lies between Page Avenue and the bay. Right?

A Yes, sir.

Q That is also shown on the plats from which you took your distances as sixty feet.

A Yes, sir. The area between Page Avenue and Ocean Avenue is shown on that first old whole plat that was presented just a while ago.

Q Did you find any other plats that would indicate that Jade went all the way down to the ocean?

A The only plat -- no, the riparian rights was

1 introduced as evidence here.

2 Q All right. The plat of the riparian

3 rights which is Exhibit Number 7, you were familiar with

4 that at the time that you prepared your -- prepared this

5 exhibit, which is Exhibit Number 14?

6 A Yes, sir. I had worked with that plat

7 before, yes.

8 Q All right, sir. And who prepared that

9 plat?

10 A I think Mueller did. Right here P. F.

11 Mueller, C. E.

12 Q Now, when that plat was prepared that

13 shows Jade Street as being extended down to the bay,

14 did it not?

15 MR. PRINCE: I'll object to that because

16 that calls for a conclusion too.

17 THE COURT: What does it show?

18

19 BY MR. PICKRELL:

20 Q Let me ask you this:

21 THE COURT: Let's cross-examine. He's

22 asking.

23

24 BY MR. PICKRELL:

25 Q Does it show an extension? Would you say

[54] that plat showed an extension of Jade Street down to
2 the bay?
3 A It showed an extension of sixty feet
4 of a sixty foot parallel of land going down to the bay.
5 Q And that is an extension of Jade Street
6 that you show on your 14?
7 A Yes, sir. This area from this line
8 one hundred seventy feet back is where, is where the
9 extension line starts on this plat.

***

13 [59] Q Now, was there any reason you didn't
14 carry this down to the water or were you instructed not to?
15 That's all I am asking you.
16 A I was asked to show the particular
17 improvements within that particular area that I showed
18 on my plat.
19 Q And so you stopped where you were told
20 to stop. You were told not to go. You were told not to
21 go past Ocean Avenue.
22 MR. PRINCE: Well, if he did, he
23 violated those instructions because the plat
24 shows he went beyond it.
25 THE WITNESS: I must have been instructed to

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1 do that because I would have shown more, yes,
2 sir.
3
4 BY MR. PICKRELL:
5 Q And why would you have shown more?
6 MR. PRINCE: Your Honor --
7 MR. PICKRELL: Wait a minute. He's
8 on cross-examination. Judge, he shouldn't be
9 allowed --
10 MR. PRINCE: You mean I may not object.
11 MR. PICKRELL: Can't I ask him why he
12 didn't show more? What's to object?
13 MR. PRINCE: The question was what were
14 you instructed and now he's asking the
15 witness where did he get those instructions.
16 MR. PICKRELL: No, I didn't. He said
17 he would have shown more and I asked him what
18 he would have shown.
19 THE COURT: Allow the question.
20 MR. PRINCE: Go ahead.
21 THE WITNESS: I would have shown the
22 rest of the improvements on that particular
23 strip of property.
24
25

BY MR. PICKRELL:

Q And you would have shown the extenuation down to the bay, wouldn't you?

A If I was so instructed, yes, sir.

MR. PICKRELL: No further questions. Wait a minute -- excuse me.

That's all we have.

MR. PRINCE: That's all I have.

THE COURT: Mr. Large, do you know whether from your own knowledge the public has used either this strip of land or the adjoining strip of land as access?

THE WITNESS: I have never seen anyone walk across the property, sir.

THE COURT: How about the property next to it on either side?

THE WITNESS: While I was surveying, yes, sir, to the west -- while I was surveying, I have seen people walk across it, but that particular area that sand hill was steep. It was uneven. It was so many thickly grown briers and shrubbery through there that it was impossible for people to walk through there.

THE COURT: But they could walk along the

[62] edge of that fence, couldn't they?

THE WITNESS: Well, at the present time. Now, this was just taken you know before these stages when I first started surveying the property out there. It wasn't in the present stage that it is right now. There has been clearing out and there's evidence of clearing out there.

***

[63] J. N. MCCLANAN, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PRINCE:

Q What is your name, sir?

A J. N. McClanan.

Q And Mr. McClanan by whom are you employed?

A City of Virginia Beach.

Q What is your present job?

A Consumer protection officer.

Q And in 19 -- say 1970 what was your job?

A I was in the real estate office.

Q Can you tell us what work you did when

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18 you were in the real estate office?

19 A It varied. Appraising property for the

20 City, making various recommendations to various

21 department heads and street closures -- that type of

22 thing.

23 Q All right. Did you have a title at

24 that time?

25 A Real estate agent, yes, sir.

1 [64] Q Mr. McClanan, did you have occasion

2 in the capacity you just described to study the status

3 or the condition of what is known as Jade Street?

4 A Yes, sir, I did.

5 MR. BIMSON: Your Honor, I am going to

6 object to any testimony he has on Jade Street.

7 I think the question is whether it was closed

8 or not closed, and support material I don't

9 think is relevant to this particular issue.

10 THE COURT: I don't know what he

11 studied really at this point.

12 MR. PRINCE: I was going to develop that.

13 THE COURT: All right.

14

15 BY MR. PRINCE:

16 Q Mr. McClanan, what was the occasion

17 for your doing that?

18 A It was in reference to an application

19 for a street closing.

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20 Q All right. Closure of --

21 A Jade Street.

22 Q Of Jade Street?

23 A Yes, sir.

24 Q And who did you receive the request

25 from to make that study?

1 [65] A From the Assistant City Manager and

2 Director of Community Services.

3 Q And did you in fact make that study?

4 A Yes, sir.

5 Q Did you do it by yourself or with

6 anyone else?

7 A With the help of the employees within

8 my office.

9 Q And did you later report on your

10 findings?

11 A Yes, sir.

12 Q And to whom did you report?

13 A To Mr. Hanbury and to Mr. Fleming.

14 Q Who's Mr. Hanbury?

15 A He's Assistant City Manager.

16 Q And Mr. Fleming?

17 A Director of Community Services.

18 Q Could you tell us what it was that you

19 were in fact studying?

20 A Well, it was general review which we

21 do on all applications for street closure. We searched

22 the records and made our recommendations to them or

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23 memo to them to guide them in their recommendations to
24 council.
25 Q All right.
1 [66] THE COURT: Who made this application?
2 THE WITNESS: The plaintiff.
3 THE COURT: The plaintiff, Ocean Island
4 Inn.
5
6 BY MR. PRINCE:
7 Q Mr. McClanan, I would like to show you
8 some photographs which have been marked Plaintiff's
9 Exhibit 17-1, 17-2 and 17-3. And ignoring the red marks
10 which are on them, could you tell me if this is the area
11 that you looked at?
12 (Documents shown to witness for
13 examination.)
14 THE WITNESS: Yes, sir, it is.
15
16 BY MR. PRINCE:
17 Q When did you make your study or your
18 view?
19 A If I remember my memo was dated
20 March 13, 1972.
21 Q November 13th?
22 A March 13th, 1972.

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***

[68] Q Was your report based upon your first-hand observation?

A I physically reviewed the application, yes, sir.

Q That's what I am asking you. What did your observations disclose and anything that you were able to see disclosed as to the use of that area by the public?

A It's in the condition as outlined in these pictures -- never been open as a public street or improved as a public street.

Q All right. Did you, Mr. McClanan, make any report to the City concerning the benefit to the public of that area as of the time that you made your study?

A Yes, I did.

***

[69] Q And are you familiar with the character of the neighborhood?

A Yes, sir.

Q And were you familiar with the neighborhood at the time that you made your report?

A Yes, sir.

Q And did you make a report based upon your own familiarity with the area to those gentlemen that you referred to concerning the practical use of this property for the benefit of the public?

1 A Yes, sir.
2 Q And what was your --
3 MR. BIMSON: I object to that, Your
4 Honor.
5 THE COURT: Overrule the objection.
6 MR. BIMSON: Note my exception for the
7 record, please.
8 THE WITNESS: As I stated previously
9 I made the recommendations. This recommendation
10 is to the viewers that were appointed by
11 Council and then they take my recommendation
12 and then they would make the final decision
13 as what would go to Council. And they didn't
14 necessarily have to follow my recommendation.
15
16 BY MR. PRINCE:
17 Q I understand.
18 A I make that very clear. But my
19 recommendations on this -- Judge, if you want this in
20 the record I can read what I did state. I said, "Through this
21 investigation and the enclosed documents, it is determined
22 that the beach in this particular area is under private
23 ownership and that the applicant owns the fee simple title
24 to that area known as Jade Street, and that Jade Street is
25 merely a paper platted street and from all indications has

not served the public in the past nor could it serve any practical purpose now. It is further determined that no convenience to the public would result from discontinuing, closing and vacating this street area.

MR. PRINCE: All right, Mr. McClanan. And that's all I have to ask you. Thank you.

CROSS-EXAMINATION

BY MR. BIMSON:

Q Mr. McClanan, were you familiar with the area prior to March 13th, 1972?

A Yes, sir.

Q How far back have you been familiar with that area?

A Mr. Bimson, I am also a native of this area. I have lived in this area all my life so I am very familiar with the whole county or area of Virginia Beach as it now stands.

Q But you can't tell this Court that this area in question here today was not used as a means to get to the beach, can you -- by pedestrians?

A Well, Mr. Bimson, I can't say that they couldn't do it, but from the evidence as of record here and my opinion it would be very impractical or very hard to

[72] obtain access to the beach by this area.

Q But you don't know from your knowledge that this area was not used by persons in the city to gain access to the beach?

A I have never seen anyone use it.

***

[75] Q So this was your impression at the time that you made your report to the viewers?

A Well, if I may state my opinion, Mr. Bimson, on something the records indicate here the applicant applied for a closure two blocks, but in the resolution that was adopted by the Board of Supervisors it says from point A to point B. I mean it doesn't say A and B, but it says from one point to one point and it didn't state.

Q Can you be responsive to my questions? Did you rely on this plat and this information on this plat when you made your view?

A Not entirely, Mr. Bimson, because there was a deed of record indicating this area is under private ownership as well as deeds of record of the adjacent area that's under private ownership was conveyed out by the receiver of the old corporation.

Q Well, when you made your view your purpose was to determine whether to close this section here, was it not?

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21 A That's right.

22 Q And are you saying that you didn't

23 take cognizance of that information at the time?

24 A Mr. Bimson, on the plat of the old

25 subdivision Jade Street is platted to this point and it has

[76] a pen mark there. And that is far as Jade Street has

2 ever extended as far as platting.

3 Q That was your immediate concern?

4 A Yes, sir.

5 Q All right. But you relied on this

6 information here?

7 A That plus the other information which

8 is in the file.

9 Q But you did rely on this?

10 A Plus the other information that's in

11 my file.

12 Q And I believe you stated you relied on

13 this plat?

14 A Not entirely, Mr. Bimson. Along with

15 the file.

16 Q Then if you relied on this then you

17 would be assuming --

18 A In fact, that was not the sole basis

19 of my recommendation.

20 Q If you relied on this partially and it

21 was part of the viewers following did you not assume

22 that you could not get to the water since this legend

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23 on here indicates that this section of Ocean Avenue,
24 the hundred foot strip, was closed?
25 A Mr. Bimson, also in my file there is a deed—
1 [77] Q Would you be responsive to my questions,
2 please?
3 A Well, I am trying to explain to you you
4 could not have access to the water if the other areas
5 under private ownership anyway whether that portion is
6 closed or not. I mean this is something for the Court
7 to decide.
8 Q Let me ask you this: If that legend
9 wasn't on there indicating that section of the street
10 was closed, Ocean Avenue, one hundred foot, would your
11 recommendation have been the same if you thought you could
12 reach the water by going through Jade Street?
13 A Not with all of the records in the
14 Court's office which indicates it is not.
15 Q Without the records? If you just
16 relied on this?
17 A I didn't rely on that.
18 Q If the people in this area could have
19 gotten through to the water from Page Avenue out to
20 Chesapeake Bay as indicated on here, would you have still
21 recommended the street be closed -- yes or no -- then
22 just explain it if you like.
23 A Mr. Bimson, let me explain it this way.
24 The plat which conveyed out to here, the beach area to

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25 private individuals, I think it is established the fact the
[78] beach in that area is under private ownership.

***

1 [79] THE COURT: Let me ask counsel a
2 question. Was there -- I assume there was no
3 formal -- beg your pardon -- there has been no
4 formal acceptance by the City Council or the
5 old Board of Supervisors of this street. Is
6 that correct?
7 MR. BIMSON: There has now.
8 THE COURT: By resolution and so forth.
9 MR. BIMSON: There has now.
10 THE COURT: Well, was that as of the time
11 of filing of this suit?
12 MR. BIMSON: No, sir.
13 MR. PRINCE: I don't even concede that
14 last statement because I don't know that to be
15 true.
16 THE COURT: That may change the
17 completion of things. When was that done?
18 MR. BIMSON: Approximately two weeks
19 ago.

***

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***

15 [80] ROBERT M. FANNEY, called as a witness on behalf
16 of the plaintiff, having been first duly sworn, was
17 examined and testified as follows:
18
19 DIRECT EXAMINATION
20
21 BY MR. PRINCE:
22 Q Would you state your name?
23 A Robert M. Fanney.
24 Q And Mr. Fanney, what is your relationship
25 to Ocean Island Inn, Incorporated?

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1 A With two brothers I own it.
2 Q And are you an officer of the company?
3 A President.
4 Q Mr. Fanney, can you tell us the history
5 of your ownership whether in your individual name or
6 any other corporate name of property in the area of
7 Jade Street? I just want to know how long have you had
8 any property interest down there?
9 A I began looking at this property in
10 1965 and bought it in 1967.
11 Q All right. Do you own any other
12 property? Of course, there has been reference to a motel
13 which is situated to the west of this area. Do you own
14 that motel?
15 A Yes, I own lots 1, 2, 3, 4, 5, 6, 7 and 8,
16 I own on the water side. In addition I own I think it's
17 nine lots between Page Avenue and the Shore Drive side.
18 Q When did you first acquire any
19 ownership down there?
20 A Signed a contract in August, 1967.
21 Q And when was your motel constructed?
22 A I think we got our first -- well, we
23 began renovating the older units that were on a portion
24 of the property in 1968. And we obtained a building
25 permit in 1969 for the five-story that is on lots 1 and 2

1 and across Ocean Avenue.

2 Q All right. Mr. Fanney, aside from

3 owning any property, how long have you been familiar

4 with the area?

5 A Well, I knew it as a child.

6 Q How old are you?

7 A Fifty-six.

8 Q And how long have you lived in this

9 area?

10 A Well, I moved to the Beach in 1939,

11 Princess Anne County.

12 Q Where did you live before moving to

13 Princess Anne County?

14 A In Norfolk.

15 Q All right. Now, zeroing in your

16 attention to the Chesapeake Bay area, the Lesner Bridge

17 area and on east and across Shore Drive, if you like

18 can you tell us generally how long you have been familiar --

19 and I mean by familiar to the point of knowing the

20 ground -- of walking the area? How many years?

21 A Well, it would be close to forty years.

22 In the early '40's, I was -- my parents -- we picnicked

23 in the area and then in the '34's, '35's were friends

24 we dated a little girl that lived at the very end of

25 Page Avenue. So I am very familiar with it. I know I've

1 known it more in detail since the type of business I am
2 in which is the mortgage business in looking at
3 properties up and down Shore Drive.
4 Q Mr. Fanney, going back into the '30's
5 and now I am asking you to direct your attention to
6 the area north of Shore Drive and from the Lesner Bridge
7 down a mile you might say. What was the area like in
8 the '30's?
9 A Well, between Page Avenue and what is
10 shown on that map as Davis Street working from the
11 Lesner Bridge it was sparsely settled if at all by
12 beach-type cottages between what would be Page Avenue
13 and the bay. There was no Ocean Avenue. They were
14 all sand dunes. Between Page Avenue and the old two-lane
15 Shore Drive, it was pine thickets. It was some type of
16 summer shacks between the Lesner Bridge on down to
17 where even the fishing pier is now.
18 Q All right. Are you able to give us
19 any reasonable estimate of when Page Avenue was used,
20 first used, as a public passageway?
21 A I drove down it I guess in 1934 when
22 it was in the same condition as it is now, very narrow
23 street. There were no other streets branching off of it
24 except right there at the Lesner Bridge as you go toward
25 Duck-In. That's how you would approach it.

1 Q Is Duck-In at Lesner Bridge?
2 A Yes, right at the point.
3 Q On the east side of the bridge?
4 A Yes.
5 Q So back in the '30's, let's say, did
6 you say that Page Avenue was now pretty much like
7 it was then?
8 A Yes, I don't think it's any different.
9 Q All right. Now, keep in your mind
10 still in the '30's north of Page Avenue were any of the
11 streets open as shown on these plats?
12 A No.
13 Q Okay. From that time until the time
14 that you acquired title to the property in question,
15 was that area ever opened up as a street?
16 A No, sir.
17 Q Was Davis Avenue from Page to the ocean
18 ever opened up?
19 A No.
20 Q Were there any other streets from the
21 bridge other than that at Duck-In down to Davis that
22 were ever opened up?
23 A No, sir.
24 Q All right. Now, from Page Avenue down
25 to Shore Drive, Jade Street is now open; is it not?

1 A Yes.

2 Q Do you know when that area first began

3 being used?

4 A It was new to me and I understood

5 from a neighbor whose name is Bohlander who lives at the

6 corner or owns property on the corner of Jade and Page --

7 and it would be the southeast corner right there -- he

8 tells me that when he moved down there, which I think was

9 in the late '50's, that he cut the path through that

10 ultimately became Jade Street between the Shore Drive and

11 Page Avenue. And I think to some degree describes the

12 irregularity of Jade Street from the Shore Drive -- the

13 Page Avenue, that's why it was all pine thickets. What

14 is Jade Street now between Shore Drive and Page Avenue

15 was just pine thickets.

16 Q Mr. Fanney, in 1970 when you acquired

17 title to this property in dispute --

18 A Yes.

19 Q Could you describe to the Court the

20 way that that area looked from Page down to the border?

21 A It looked basically like it's reflected

22 in these pictures particularly as it approached Page

23 Avenue between the water and the bayberry, water oaks

24 and the other shrub was going towards Page Avenue. It

25 was a sea of sticker burrs. If you are not familiar with

1 that, it's native to the beach. It is a weed that gets
2 burrs like a thorn and they permeated it completely.
3 After we acquired the property, which is lots 1 through 6,
4 we use to send some of the help over to try to pick
5 some of those sticker burrs out because they would
6 flow over on our property and people would stick stuff
7 in their feet. So it was a sea of sticker burrs I
8 can assure you.
9 Q Mr. Fanney, on the west of the disputed
10 area, the property which is now owned by what is it?
11 A Lynnhaven Development.
12 Q Anderson's property?
13 A Right.
14 Q When you bought this disputed area
15 what was the nature of that area over there?
16 A It was undeveloped but it had a path
17 that led from Page Avenue to the beach. It had an
18 obvious path, a winding path on Jarvis' property.
19 Jarvis was the owner prior to Anderson.
20 Q All right. And how far was that path
21 from the sixty-foot strip of land that you bought?
22 A Well, it started more on the west end
23 and went a zigzag fashion. It was at an angle and it
24 came out more to the east of where the present Jade
25 Street we are talking about runs into the Ocean Avenue and

1 down to the bay. It was an angular path and started
2 basically at the western edge of Jarvis' lot. He had
3 a hundred foot, two lots.
4 Q Let's get that straight. Jarvis' lots
5 bounded on the west of the disputed property.
6 A Yes, two lots.
7 Q And his frontage was one hundred feet?
8 A I say one hundred feet. It might be
9 ninety-eight, something like that.
10 Q The path that you are talking about
11 began on what end?
12 A The west end. It was closer to the
13 bridge.
14 Q Well, just say about here?
15 A And it meandered around like that.
16 It had to fit in between the little dune and all the
17 other brush growing on that lot.
18 Q Where did it exit?
19 A No, it didn't go over to there because
20 it was -- I am trying to tell you, it was not a
21 straight line. It was a meander line, but it was closer
22 to the Lee property, which is next to the Jarvis'.
23 In fact, the Lee's used to use it and told me that
24 after Anderson bought Jarvis' property, which he took
25 all --

1 MR. BIMSON: I am going to object to
2 what someone else told you.
3 MR. PRINCE: You can't tell us what
4 somebody else told you.
5 THE WITNESS: He created a new path
6 because that path was cleared by the Jarvis'.
7
8 BY MR. PRINCE:
9 Q Now, when you bought the disputed
10 property --
11 A Yes.
12 Q Were there any sand dunes or brush or
13 shrubbery or anything on Jarvis' property or did Jarvis
14 have any structures on his property?
15 A No. Jarvis didn't have anything on
16 his piece. He never had anything. It was just a
17 continuation of brush, but the brush was not as heavy
18 on his property as it is because the sand had made, and
19 wind, had made a big sand dune on what is now that
20 controversial piece and particularly as it abuts to
21 Page Avenue.
22 Q All right. There is something I would
23 like to know. Go ahead.
24 A Right on the corner of that piece of
25 property that we are calling Jade Street running from

1 Page Avenue to the water there was this great big water oak.
2 Q Yes, I'll get to that in a minute.
3 A Okay.
4 Q I didn't know whether this was something
5 else right here. Now, after you acquired the property,
6 Mr. Fanney, did your company receive any tax notices?
7 A Yes, sir.
8 Q And I show you Exhibit 15. Do these
9 tax notices, real estate tax notices, cover any property
10 other than the property that we have here in controversy?
11 A Part of Jade Street and part of Ocean
12 Avenue.
13 Q All right. Now, in 1971 --
14 MR. BIMSON: I would object to the use
15 of the tax records.
16 THE COURT: Why?
17 MR. BIMSON: Well, I don't think it's
18 relevant to this particular issue since 1971,
19 and I think this dispute arose --
20 THE COURT: It's a fee in the property
21 to the developer?
22 MR. PRINCE: Sir?
23 THE COURT: Even the plat leaves a
24 fee in the property to the developer, doesn't it?
25 MR. BIMSON: That's true.

1 BY MR. PRINCE:

2 Q And what was the property assessed at

3 in 1971?

4 A In 1971 it was assessed for thirty-six

5 hundred dollars, land value of thirty-six hundred dollars.

6 Q What was the assessed value in 1972?

7 A '72, it was thirty-six hundred dollars.

8 Q And what was the assessed value in 1973?

9 A In 1973 it was ten thousand eight

10 hundred dollars.

11 Q All right. Mr. Fanney, has your company

12 paid the taxes on the property?

13 A Yes, sir.

14 Q Now, after acquiring title to the

15 property can you tell us please what you did with the

16 property?

17 A Well, initially we cleared the portion

18 that was close to our bulkhead in the front of it.

19 Q Now, where was the bulkhead?

20 A The bulkhead is off of the beach front

21 and it actually begins fifty feet from the front of

22 my building, and I maintain that line. And then we

23 cleared the back basically the length of the building

24 and we surfaced it. We fenced it. We curved it. We

25 put outdoor lighting on it.

Q When was that done?

A Well, I would have to go by the record. I don't --

Q Would you remember the year?

A Well, you tell me when I took title to it.

Q You took title November 12, 1970.

A Well, we did it shortly thereafter.

Q Did you do it?

A I know we had it ready by the summer season which would be for '71.

Q All right. Now, I would like to show you first of all looking at Plaintiff's Exhibit Number 18-2 -- this is a photograph taken February 12, 1971. At the time that this photograph was taken, which was about three months after you bought the property, had you done anything to the disputed property itself as of the time that picture was taken?

A I think we put this restraining fence down. I think we had put that down to keep the sand from flowing over on our property, and I think that was the initial thing we did.

Q All right. Now, I would show you photographs 19-3 and 19-4 and ask you if these photographs show any of the improvements that you are talking about

1 were made in preparations for the summer 1971 season?
2 A Yes, the initial was the area that
3 is surfaced, but it was not the building. We didn't --
4 the building was not the initial part of the construction.
5 Q Now, the building is what we call the
6 shed.
7 A The shed.
8 Q All right. Now, you say the surface,
9 what is the surface used for?
10 A Parking.
11 Q All right. Now, there is shown in
12 Exhibit 19-3 a fence. Can you tell us when that fence
13 was put up there?
14 A After we bought the property.
15 Q What I mean is was that --
16 A That would have been put up at the same
17 time within reason as that we surfaced.
18 Q All right. And how far, how close to
19 the water does your surfacing go?
20 A Back about fifty foot from our front,
21 I mean from the bulkhead which is fifty foot from our
22 building roughly. We have a little curved end of it.
23 It's shown on one of those surveys.
24 Q When you say fifty feet from the
25 building, you are talking about --

1 A The bulkhead is fifty foot in front of
2 my building, and we maintain so that the customers
3 won't be parking in the front of the building. We did
4 not surface out in front of the building.
5 Q Here is Exhibit 14a which is the drawing
6 of the plat of your motel property.
7 A Right.
8 Q Now, does that plat show your bulkhead
9 line?
10 (Document shown to witness for
11 examination.)
12 THE WITNESS: Yes, right there.
13
14 BY MR. PRINCE:
15 Q And it's marked wooden bulkhead.
16 A Right.
17 Q Now, what I want to ask you now is
18 the concrete surfacing of the macadam surfacing the
19 disputed property?
20 A Yes, right.
21 Q You mentioned was fifty feet from
22 the bulkhead in which direction?
23 A Back.
24 Q South?
25 A Right.

1 Q All right. So your surfacing went to
2 within fifty feet of the bulkhead by stopping south of
3 it.
4 A Yes.
5 Q And that was done in early '71?
6 A Yes.
7 Q All right, sir. Now, when did you
8 subsequently make any other improvements or what other
9 improvements did you make?
10 A Well, we needed what we call a storage
11 shed or a recreational building and a utility building
12 and we obtained a permit.
13 Q All right. I'll show you Exhibit 16.
14 Is this the permit?
15 (Document shown to witness for
16 examination.)
17 THE WITNESS: Yes.
18
19 BY MR. PRINCE:
20 Q Now, whose name is that permit issued
21 in?
22 A Ocean Island Inn. Shipview Point,
23 excuse me.
24 Q All right. Now, could you explain who
25 Shipview Point is?

1 A Yes. When we first signed the
2 agreement to buy the property we created a corporation
3 and this is a name that came out of a hat, Shipview Point,
4 Incorporated. After we decided to operate a motel a
5 more attractive name we thought had to be arrived at.
6 So we came up with Ocean Island Inn. To protect that
7 name we were advised by counsel that we would have to
8 incorporate. So Ocean Island Inn ultimately succeeded
9 Shipview Point.
10 Q All right. Now, after getting this --
11 well, before I get to that -- you obtained this building
12 permit and now I would like to show you Exhibit 20.
13 What is this a drawing of?
14 (Document shown to witness for
15 examination.)
16 THE WITNESS: That's the proposed
17 utility storage shed.
18
19 BY MR. PRINCE:
20 Q All right. Can you tell me is this an
21 open -- would have been an open or an enclosed shed?
22 A Would have been enclosed, glass enclosed
23 just as it is described there.
24 Q Now, how much of this did you actually
25 get done before you stopped?

1 A Well, we got in all of the footings
2 which were extensive. We got up all the steel. We got
3 up all the trusses. We roughed it in and just before
4 I think we were flashing when the City asked us to stop
5 work on it.
6 Q All right. Did you receive a stop
7 work order?
8 A Yes, sir.
9 Q And when you received that stop work order
10 what did you do?
11 A Called the attorney.
12 Q Did you stop working?
13 A Yes, sir.
14 Q Have you made any additions to that
15 property since then?
16 A No, sir.
17 Q Do these photographs -- let's say
18 photograph 19-4, does this show that shed?
19 A Yes, sir.
20 Q Is that the way it is now?
21 A Yes, sir.
22 Q And this is only partially completed?
23 A Yes, sir.
24 Q Mr. Fanney, can you tell us about how
25 much money your company had invested at the time in those

1 improvements, at the time the work order stoppage came
2 which would be the street and the fence?
3 A Well, we had approximately fifteen hundred
4 dollars in fencing, we had twenty-eight hundred in our
5 parking, we had in the building seven thousand dollars,
6 not quite six sixty-eight and some dollars in our
7 building, and we had curbing. I don't know what figure
8 the curbing went in, but we had had curbing, the parking
9 curbing. So we ended up with eleven thousand dollars
10 in the site and this included --
11 Q I won't bother showing you the letters,
12 but did you then receive letters from the City instructing
13 you to remove those?
14 A Yes, sir.
15 Q All right. And I believe one letter
16 indicated that you had to move it within a certain time
17 or the City would come in and take it down.
18 A Yes, sir.
19 Q Now, I would like to get to these
20 photographs, Mr. Fanney. We have three color photographs
21 which were taken February of 1971, and we have three
22 black and white duplicates of those. And then we have
23 seven photographs taken in 1973. I would ask you first
24 to look at the three color photographs taken in 1971 and
25 then look at these photographs taken in December of 1973 and

1 tell us if there has been any change in the area relative
2 to the sand dunes, the growth of bushes and the trees
3 or anything of that nature between the time those pictures
4 were taken?
5 A Well, first ones which were taken in
6 1971 reflected a very large water oak that was growing
7 basically in the middle of the area now called Jade
8 Street.
9 Q All right.
10 A And that's been removed.
11 Q Would you take this fountain pen and
12 starting up in the sky part of the picture just draw an
13 arrow.
14 A It shows right here.
15 Q All right. Well do it on all of them.
16 You can't do it so easily.
17 A Yes, I can.
18 Q All right. And do it so you are
19 drawing an arrow on 17-2, 17-1. Can you do it on 17-3?
20 A All right.
21 Q Now, what kind of tree is that?
22 A Water oak.
23 Q Now, in the pictures that were taken
24 in 1973 or in 1973, December, was that water oak there?
25 A No.

1 Q What happened to that water oak?
2 A Well, when Joe Anderson started clearing
3 Jarvis' lot his dozer got over there and this piece and
4 the water oak -- if you are familiar with them, they
5 grow close to the ground -- the sand covered up a limb
6 and in order to get the water oak according to Joe, to
7 get the limb, they didn't cut the limb. They went over
8 there and pulled the tree actually out of the street.
9 Q Can you tell me whether or not that was
10 done with your permission?
11 A No, it was not.
12 Q Looking at Defendant's Exhibit, excuse me,
13 Plaintiff's Exhibit 19-5, does this picture show the
14 general area or not where the water oak was?
15 A Yes, right here.
16 Q Taking again and drawing an arrow
17 from the street going upwards just point generally.
18 A It's like this.
19 Q All right. You have drawn three arrows
20 locating things.
21 A Yes, it's -- that's what it looked like.
22 Q Is that where that water oak was?
23 A (Witness nodding head affirmatively.)
24 Q All right. Again looking at these
25 color photographs, 17-3 and 17-1, Mr. Fanney, were there

1 when you bought the property pathways through this
2 area?
3 S No, sir.
4 Q Did you ever observe the general public
5 using this area?
6 A No. They either went through my
7 property, which they were welcome to do, or they went
8 through that path at Jarvis'.
9 Q When you say "My property" you mean what?
10 A The motel.
11 Q And people did use that.
12 A We invited them to use it.
13 Q All right. I would like to now direct
14 your attention to these aerial photographs, perhaps a
15 little difficult to handle. This is the aerial taken
16 March 29, 1949. Can you identify this picture? Can you
17 identify the property? Do you recognize the area?
18 A This is Lesner Bridge.
19 Q All right.
20 A Right there. (Indicating.)
21 Q This is the bridge?
22 A Uh-huh.
23 Q And can you pick out Shore Drive?
24 A Yes, this is the Shore Drive.
25 Q All right. Can you pick out Page Avenue?

A Yep.

Q Do you have a pencil. I would rather use pencil than mark that up. I would like to use something I can erase.

THE COURT: Is there evidence it was ever in any state other than the way it was shown in the 1971 pictures?

MR. PRINCE: If that would be conceded I could stop on that.

THE COURT: Do you have any evidence to the contrary?

MR. PICKRELL: Right here. These pictures. Those pictures go back to '49. We think they show what they show.

THE COURT: A path -- used for the public. All right. I am not sure it's material.

BY MR. PRINCE:

Q When did you --

A This would be Page Avenue right here.

Q I'll just put a little pencil mark. Is that it?

A Yes.

Q Now, are you able -- if you're not, just say so -- but are you able to pick out Jade on this plat?

1 A No, but I can show Kleen right there.
2 Q This is Kleen?
3 A Yes, that's Kleen Street. I think that's
4 called Kleen.
5 Q These plats, do they show Kleen Street?
6 A I know that's what it's called. This
7 is where Charlie's old restaurant used to be right there.
8 Q What about Davis?
9 A Davis and I think Kleen -- maybe Kleen
10 are the same thing.
11 Q Could you look at this old plat the
12 Court is now looking at?
13 A Shows Davis Street and 9th Street, no
14 Kleen Street.
15 Q I think Kleen is the present name of
16 Davis.
17 A This is Charlie's Restaurant right here,
18 old restaurant.
19 Q All right. This is Charlie's Restaurant.
20 A The old one. Of course, since then he
21 built over here.
22 Q I'll put a pencil circle around it.
23 Which geographic corner is that?
24 A Okay. That would be the northwest
25 corner.

1 Q Of what street?
2 A Shore Drive and Kleen or Davis Street.
3 Q All right. Now, I am going to put a
4 two-way arrow on that line which shows Page Avenue. Is
5 that Page?
6 A Yes.
7 Q Okay. All right, sir. This one is
8 taken October 16, 1954, Mr. Fanney, and it appears to
9 have some buildings there now.
10 A All right. Let's go back. That would
11 be Charlie's.
12 Q Restaurant?
13 A Yep.
14 Q All right. I'll circle it again. Is
15 it in the same location?
16 A Yes. And there's the new one. This
17 is the old one that we used as a reference point. This
18 is Page Avenue.
19 Q All right. I'll draw a pencil line
20 on it with two arrows on Page. Can you pick out Jade now
21 on this one?
22 A No Jade, but that represents the older
23 buildings that were on the site when I bought it. These
24 two columns look like this was a part of the old
25 Oceanaire Motel. They were the improvements on it.

1 Q I am going to draw an arrow starting at
2 the water line and pointing in the general direction of
3 these buildings, two columnar looking buildings with a
4 little one in between.
5 A They are located on lots like 5 and 6 and
6 6a because right next to it was Jake Lowry's property
7 which was 728 and these were the lots that were undeveloped,
8 1 through 5.
9 Q All right. Now --
10 A If there would have been a Jade Street
11 it would be in this vicinity right here.
12 Q What is this street here?
13 A That must be the Jade Street that
14 Bohlander said he put in.
15 Q All right.
16 A I can't tell you for sure, but that
17 gives you an idea. See how they cut through pine thickets
18 right here.
19 Q How far was it from Charlie's Restaurant
20 down through Jade?
21 A Well, let me see. Let me count the
22 lots and I can tell you if that's necessary.
23 Q Count them on there.
24 A We bought the two lots from Ed Kellam
25 and we owned two. That's four. Joe Anderson was eight --

I guess it would be about three hundred foot.

Q All right. Can you pick out on this 1954 aerial the trees and shrubbery which you have pointed out in the photographs?

A Well, it would appear to me -- I may be wrong -- this is the private road, this is the private road that Derring and Nicholson put in to get to the motel.

Q This is on lots 15 and 16 and 3 and 4?

A That was the private road. They were part of the lots that I bought between Page Avenue. There's no Jade Street on this.

Q What year is this?

A '54. That would be right because Bohlander said that I think it was around '64.

Q What does --

A I can't guess, but it must be right in here where it would appear. Right, this would be --

Q The shrubbery?

A Yes, because this is just north of the point where I have the arrows.

Q All right, sir. And I'll just put a square around a clump of trees which you say are the trees part of which is showing in these photographs.

A All right.

Q All right. Let's move that.

1 That is the aerial taken in 1958.
2 What can you identify?
3 A There's Kleen Street and that's
4 Charlie's.
5 Q I'll again circle Charlie's.
6 A All right.
7 Q Is it in the same location?
8 A Yep. And there's the old motel right
9 there those two little fingers right here.
10 Q The ones that --
11 A Yes, that I bought right there.
12 Q I'll again draw an arrow down to it.
13 A That's right because they added that
14 little addition. That's right.
15 Q There has been some additions?
16 A Derring and Nicholson added that little
17 wing and that's right.
18 Q Okay. Now, can you tell us --
19 A And I'll tell you something else in
20 there the two houses that are presently on my property
21 that were bought -- and if there was a Jade Street it
22 would have been a clump of trees right here as it was
23 going down like that. They are mine.
24 Q Are they still there?
25 A Yes.

1 Q So I'll draw a square around a clump
2 of trees and the two buildings which you say still exist.
3 A Yes, because Derring and Nicholson bought
4 those before I bought it.
5 Q What are those two buildings used for
6 now?
7 A I have got a maintenance man living
8 in one and one of the clerks that works for us lives in
9 this one.
10 Q They are residences or rooms of some
11 sort?
12 A Yes.
13 Q All right, sir. Okay. Now, let's
14 look at the next one. This is taken in 1964, November, 1964.
15 Let's pick out Charlie's again if you can.
16 A Here's Charlie's right there.
17 Q I'll again circle it. Can those two
18 houses --
19 A Yes, they are right there.
20 Q And these are the same trees?
21 A Yep, and there's the old motel building.
22 Q Put the square around the same areas.
23 These are on Page Street?
24 A Yes, this is beginning to show you a
25 little better perspective of the type of sand dune and

shrub, sticker burrs that were growing all in there.

Q That's what I wanted to ask you.

A That looks like that path I was telling you. See how it sort of bends like that. I think that's what that is.

Q All right. Now, this light shaded area which is much lighter than the obvious trees, describe that and I'll draw an arrow down to that area.

A Few sea oaks and basically stickerburrs which grow in a little clump and they are grassy looking at times and then they make the stickerburrs. And that's what was over there all through there.

Q Let me draw -- would you take the pencil as best you can and outline the path that you said that you were describing earlier?

A This looks like it exactly right here.

Q All right.

A It's just like I said. It was almost on this west end and it bent a little bit like that.

Q All right. I am just going to put a path above that. I'll write the word path above that arrow you have just drawn there.

And finally of these aerials done April 25, 1971, what again -- what about Charlie's?

A Charlie's would be right there.

1 Q All right. I'll circle it. Is this
2 your motel?
3 A Yes.
4 Q Is this the kidney shaped pool?
5 A Yep.
6 Q All right. I'll just draw an arrow
7 pointing to it and I'll write the word pool to tie it in.
8 Now, what about the clump of trees?
9 A There they are right in there.
10 Q Right in there?
11 A Uh-huh.
12 Q Where are the two houses?
13 A The two houses are right in here right
14 in that section.
15 Q I'll again put a pencil square around
16 the trees and the houses.
17 A Uh-huh.
18 Q And I understand your testimony that
19 some of these trees have now been removed by Joe Anderson?
20 A Yes, uh-huh.
21 Q All right.
22 MR. PICKRELL: Are you going to get him
23 to identify Jade Street on this?
24 THE COURT: Well, he has by the clump
25 of trees.

1 MR. PICKRELL: Well, I mean coming in.
2
3 BY MR. PRINCE:
4 Q Okay. This is Jade here? Okay?
5 Is that correct?
6 A I can't see that clearly, but it
7 probably could be. This is mine right here. I think
8 it's right there.
9 Q Okay.
10 A I think it's right in here.
11 Q I'll draw an arrow starting out in the
12 water right on through the clump of trees.
13 A Yes, I think that is it.
14 Q Pointing there to Jade and I will
15 write Jade. It's difficult to be found. All right.
16 Mr. Fanney, after you built it, after
17 you hard surfaced the part of the property for your
18 use with your motel, that is hard surfaced part of the
19 property that's in controversy, can you tell us whether
20 or not you ever received any directions from the City
21 concerning that? Were you ever told to do anything about
22 that?
23 A About what now?
24 Q The hard surface. You said that in
25 1971, early '71, you surfaced part of this area.

A Yes.

Q Were you ever asked to remove that?

A No.

Q Okay. Now, there has been mention of a street closing. Can you tell us about it? What did you do about street closing?

A On the advise of counsel we took title to the property.

Q May I ask who that counsel was?

A Ralph Katherman and Billy Worthington.

Q All right.

A The title policy that we received when we received title to the property when we took title to the property we got an owner's policy and it said a possible right in the first one hundred seventy-five feet from Page Avenue leading north toward the water for Ocean Avenue and it had the possible right of the public in that sixty by one hundred seventy-five piece. So we wanted to remove that particular item from the title, and we made an application.

MR. PICKRELL: Your Honor, I would object to anything he did to remove it. The fact that he had notice of a possible title defect is admissible, but what he did to remove it is -- I mean to this point --

1 MR. PRINCE: That's all right. I'll
2 leave it to them on cross-examination.
3 THE COURT: I assume that's why he is
4 here today.
5 MR. PICKRELL: I mean other than bringing
6 the suit.
7 THE COURT: I think it might be.
8
9 BY MR. PRINCE:
10 Q Go ahead then.
11 A We went to -- we made an application and
12 went through the normal procedures where it has to go
13 before the Planning Commission and then subsequently to
14 the Council for the Council to either approve it or
15 deny it. And Council actually denied it.
16 Q Now, what did you do after that?
17 A Well, after that -- well, on the advice
18 of counsel, not the City Council but of our attorneys,
19 we were assured that we had good title to the property
20 from Page Avenue to the water irrespective of the
21 indication in the title policy of the possible right in
22 this first one hundred seventy-five feet. So we were
23 told we could use it which we intended to do.
24 Q What I meant was about any other street
25 applications. Did you, after the City Council you say would

1 not pass upon your application, did you do anything else
2 in regard to closing the street?
3 A Yes. We were advised, and I don't know
4 exactly in what manner, that we possibly had errorred
5 in the way that the application had been made in that
6 we should have incorporated in our closure application
7 not only the one hundred seventy-five feet but also
8 the one hundred feet of Ocean Avenue that Jade Street
9 abutted to. So we made an application in that manner
10 and --
11 Q How far did that go?
12 A I think that went through the Planning
13 Commission which approved it and, but it did not -- we
14 did not send it to Council, did not go to Council.
15 Q That would be withdrawn?
16 A Yes.
17 Q And finally, Mr. Fanney, I'll ask you
18 can you tell us the character of the neighborhood at
19 the present time? I don't mean the character of the
20 people, the character of the neighborhood.
21 A It's some very nice people down there.
22 The neighborhood is obviously becoming commercialized
23 in the sense that it's being developed with high rises.
24 The original improvements, a great deal of them, remain,
25 which are in some degree beach type homes. The land, a

1 great deal of the land, remains undeveloped.

2 Q All right. From the beginning down

3 to Davis, how many motels or lots or cabins or anything

4 open to the public are there now or under construction?

5 A Okay. You got Harbour Gate, which is

6 under construction which is close to Duck-In. Then you

7 got Cape Henry.

8 Q What is Harbour Gate?

9 A It is a high-rise condominium type of

10 structure. That's right at Cherry Place. I think that's

11 actually west of Cherry Place. You got Cape Henry Towers,

12 which is east of Cherry Place and most of these are on

13 triangular, several acres of land. Then you have, I

14 think Sam Riggs owns a couple of cottages. And then

15 Mr. Cheshire and then about along in there is the Beacon,

16 which was relatively new say several years ago. And

17 the Beacon owns the next hundred feet I think it is.

18 It's a party. I don't know. This is all on the water

19 side and then it's Mr. and Mrs. Lee's property. And

20 Joe Anderson's property and then mine. Then it's a

21 Dr. Owens and then it's Bailey Parker's. That ends on

22 that side.

23 Q I really asked you how many commercial

24 places on the water side. You mentioned Harbour Gate.

25 A With the Beacon I am the only other one as

1 of the hour operating.

2 Q And the Beacon.

3 A The Beacon.

4 Q Operating, and there are how many under

5 construction?

6 A Two.

7 Q Okay. All right. Just give us a rough

8 idea, Mr. Fanney, of the character of the improvements

9 between Cherry and Davis on the west and east and Page

10 and Shore Drive on the north and south.

11 A There are a few houses, the two houses

12 in the block between Davis and Jade Street -- now, no

13 wait a minute -- two houses. All right, there are two

14 houses and then there's a little complex of three, so

15 that would be four, five, six between Davis, Kleen and

16 Jade Street. Two of them are little cottages and one

17 is a little complex like a garage apartment and the

18 beach type of house. Then across the street which would

19 be across Jade Street or the north side would be Mrs. Riley.

20 Then Mrs. Caton's home and then it's vacant and then it's

21 a gentlemen who used to be a part owner of the Beacon

22 who has a two-story house. And then it's about three

23 more little houses and then you end up in the property

24 owned by Cape Henry Towers.

25 On the Shore Drive section it's all

commercial. We own the only residence on the Shore Drive and that's on the corner of Shore Drive and Jade Street. And on the west side of Jade Street is a little block house we own on the corner there. And that's the only residence on Shore Drive. There are three or four, several on Page Avenue on the north side of Page Avenue.

Q But the only residence on Shore Drive on the north side of Shore Drive is owned by you.

A Yes.

MR. PRINCE: All right. Mr. Fanney, I think that's all I have to ask.

THE COURT: Okay. Let's take a five-minute recess.

(Whereupon the trial recessed at 3:02 p.m. and at 3:09 p.m. the trial resumed as follows:)

THE COURT: All right, sir.

CROSS-EXAMINATION

BY MR. PICKRELL:

Q Mr. Fanney --

A Yes, sir.

Q As I understand it when you bought the property the title policy that you received at that time

1 gave you notice of a, from your standpoint, a possible
2 claim in the public with reference to the area that
3 we are now talking about, about Jade Street.
4 A Yes, sir, sixty-eight by one hundred
5 seventy-five.
6 Q All right, sir. Now, at that time
7 that was prior to 1970 or about 1970?
8 A Yes, sir. About 1970.
9 Q All right. And then after that you
10 had it drawn up for your original site plan that you have
11 introduced here, I believe Exhibit --
12 THE COURT: Are you talking about the
13 plans for the shed?
14 MR. PICKRELL: No, the plans that show
15 his motel with the swimming pool.
16 THE COURT: I don't think we have that.
17 MR. PRINCE: What was that, Your Honor?
18 THE COURT: Site plan for the motel.
19 MR. PRINCE: Now, not the site plan.
20 It is a physical survey showing the motel.
21 It's Exhibit 14, I believe.
22
23 BY MR. PICKRELL:
24 Q Now, this was originally prepared
25 in 1970.

1 A The date, yes.
2 Q Originally prepared in 1970 and I am
3 referring to Exhibit 14a. Now, after 1970 you started
4 to construct the property that you have talked about
5 as the shed.
6 A Yes.
7 Q Now, when was that constructed?
8 A Approximately?
9 Q Yes.
10 A If I could get that building permit
11 again I could tell you.
12 (Document shown to witness for
13 examination.)
14 THE WITNESS: We got the building
15 permit in October. That would be right
16 October, 1971, and we probably started within
17 a week or two right after that.
18
19 BY MR. PICKRELL:
20 Q All right, sir. Then when this plat
21 was originally prepared -- and I am talking about 14,
22 the area over here which says building -- would not have
23 been on the original 1970 plat?
24 A No, sir, but I tell you -- this is not
25 a real good way. I asked Wilfred Large to put all of my

1 property in one.
2 Q I understand.
3 MR. PICKRELL: Your Honor, he's
4 testifying that this building was not on the
5 original 1970 plat.
6 MR. PRINCE: I concede that and it
7 was never intended to.
8 MR. PICKRELL: I understand. I am
9 just trying to make a point not that point,
10 but another point.
11
12 BY MR. PICKRELL:
13 Q Now, your plat shows that it was
14 revised in June, 1970, and revised November, '71.
15 So the last revision, what was shown -- this building?
16 A Yes, sir.
17 Q All right. Now, when the plat was
18 drawn originally in 1970 this area here which you all
19 show on here sixty feet that runs out to the bay is
20 the Jade Street area that is in question today; is it
21 not?
22 A Yes, I got a regular -- Wilfred gave
23 me a regular survey of this piece.
24 Q I understand, but on the site plan
25 that you all prepared originally you showed this as a

1 sixty foot area designated in lines in which you did not
2 have any construction at that time. Is that correct?
3 A I got an original survey from him that
4 that's right didn't show anything there when I bought
5 the property.
6 Q I understand, and in the plan shown
7 on this 1970 site when you were showing things that
8 you were going to build on there, you didn't show any
9 construction in the sixty foot area, did you?
10 A No, sir. I wouldn't have shown anything
11 till I got the permit. That was in 1971.
12 Q '71. Now, when did you make your first
13 application to close a portion of Jade Street -- the
14 first one?
15 A Don't I have that here some place.
16 I think it was about 1970. 1971
17 Q All right. Now, in 1970 when you asked
18 to close Jade Street the first time --
19 A Yes, sir.
20 Q -- you were under the impression, were
21 you not, sir, that that portion of Jade Street which
22 intersects Ocean Avenue had previously been closed by
23 the Board of Supervisors of the City of Princess Anne
24 County and would be shown -- and would be shown on this
25 survey of Wilfred Large originally dated November 10, 1971,

1 and the latest revision January 5, '71; is that right?
2 A Now, may I ask you what you asked me?
3 Q Let me ask you again. Let me ask you
4 this: This plat that you have just identified is a plat
5 that you originally filed with your first application
6 to close a portion of Jade Street as shown in red; right?
7 A Yes.
8 Q All right.
9 MR. PICKRELL: We would like to offer
10 it as an exhibit.
11 THE COURT: You have seen it?
12 MR. PRINCE: Yes, Your Honor.
13 THE COURT: Defendant's 1.
14 (Marked and received in evidence by
15 the Court as Defendant's Exhibit Number 1.)
16
17 BY MR. PICKRELL:
18 Q When you made your first application
19 in 1970, you were under the impression and under the
20 opinion and for the purpose of the record without
21 admitting you still take the position that this portion
22 of Jade Street where it intersects Ocean Avenue had
23 been previously closed by the Board of Supervisors of
24 Princess Anne County.
25 A Yes, my counsel told me that.

1 Q I see. If that had been closed --
2 of course, if that had been closed then you couldn't use
3 Jade Street to get to the ocean, could you -- other
4 people?
5 A No, sir.
6 Q All right. Now, when you went to
7 Council with the first application you then -- and it
8 was advertised -- you then ran into the objections
9 being made that this area designated as having been
10 closed had not been closed; isn't that correct?
11 A Well, no. I didn't get that information
12 direct. It came from our attorney and our attorney
13 told me that just because they were making the request
14 that we include Ocean Avenue in a new application had
15 no effect whatsoever on the previous decision that it
16 had been closed.
17 Q I understand, but at that time then
18 you came back in and made a reapplication in which you
19 asked for your initial portion shown in red and the
20 additional portion which purportedly had previously been
21 closed by Princess Anne County.
22 A Yes, sir. It was amended to that.
23 Q All right, sir. And then the matter
24 came on to be heard and to get right down to the nuts
25 and bolts of it before you had City Council determine the

1 matter as to whether or not they were going to close
2 that street you withdrew it.
3 A Yes, sir.
4 Q And then this suit resulted out of
5 that withdrawal.
6 A Yes, sir.
7 MR. PRINCE: I am going to object to
8 that because the suit, the nature of the suit
9 was to counteract the move by the City to
10 tear down the building.
11
12 BY MR. PICKRELL:
13 Q All right. Let me put it this way:
14 Do I understand then that after making one attempt
15 to have the part of it closed and refused and then making
16 another attempt to have it reclosed and withdrawing it
17 you then resorted without going through City Council
18 or the Court, you resorted to self-help to use it, and
19 if the City wanted to make any claim would make a claim;
20 is that right?
21 A Yes, sir. We had been told all along
22 from the time that we bought this property and we
23 received evidence of the title that we had good and
24 valid title to the property and to use it in any manner
25 that we wanted to.

1 Q But you knew when you started your
2 building that there could be a possible claim against
3 your right to build on that, didn't you?
4 A Only because I am in the type of business
5 which is mortgage financing that it makes it difficult
6 to borrow money if there is something that somebody
7 can attack. And this was the problem. It could possibly
8 be attacked so we wanted it removed.
9 Q All right, sir. But you started your
10 building with the knowledge that you could be stopped
11 or there might be an attempt to stop you?
12 A Yes, sir.
13 MR. PRINCE: Excuse me, I object to
14 that, Your Honor. The City gave him a
15 building permit. I don't think he's really
16 getting very subjective now, but what --
17 THE COURT: I can tell you right now
18 that the Court is not putting any weight to
19 the fact the City gave him a building permit.
20 The City has given building permits for
21 somebody to build on the wrong lots. The
22 burden is not on the City that he build on the
23 right lot but up to the owner of the property.
24 I don't think that's a proper question.
25 I think he was talking about the City, were you not?

MR. PICKRELL: Yes, sir. In this type of case you get into the question of hardship and we take the position he proceeded with the knowledge.

THE COURT: Now, let me ask you this with reference to the taxes for 1971, '72 and '73. Isn't it true that this property was not on the tax books prior to '71?

THE WITNESS: I could not tell you that, sir.

MR. PICKRELL: We will put on evidence at a proper time with reference to that unless they will stipulate it.

THE COURT: All right. Let me ask you this: Did you ever receive a tax bill prior to your getting this deed from Lake George Corporation?

THE WITNESS: No, sir, I did not.

BY MR. PICKRELL:

Q All right, sir. Now, let me ask you this: The tax bill itself with reference to the legal description in the tax bill refers to it as part of Jade Street and part of Ocean Avenue; is that correct?

A Yes, sir, I think that's it.

THE COURT: I read it before.

MR. PICKRELL: Yes, sir.

THE WITNESS: Yep, part of Jade Street and part of Ocean Avenue.

BY MR. PICKRELL:

Q All right. Now, with reference to your observation down in the area, am I correct from what you have said on direct examination that this property is now under substantial development pressure?

A Are you speaking of the entire area?

Q The whole area as shown on the -- let's say the whole area shown on the plat of Lynnhaven which would be Plaintiff's Exhibit Number 1 -- in other words, this whole area north of Shore Drive to the water is now under extensive development pressure.

A Between the Lesner Bridge and the Old Great Neck Road, Seaview Beach property.

Q That's right.

A Right.

Q And this by development pressure we are talking about the use of the area by people.

MR. PRINCE: I don't object to it. I object to only to the word "pressure." I don't know what that means.

MR. PICKRELL: Construction development, increase in population, increase in use.

THE WITNESS: Yes, sir.

BY MR. PICKRELL:

Q All right. So over the last how many years has this been building up?

A Well, the first permit was issued to Cape Henry Towers and that was about July of last year. So that's when it started beyond mine.

Q Well, actually when did the Beacon Motel go in?

A The Beacon went in sometime in the '60's.

Q '60's?

A Yes, sir.

Q And they had some expansion project and that's just down the street from you.

A They didn't have any expansion project.

Q All right, sir, and you all started construction in the '70's.

A '69.

Q '69. All right, sir. And then there has been development across Shore Drive on the other side by the marina down there and residential development over there in the what's known as Lynnhaven Colony. Is that

1 the name of it?

2 A Nice section.

3 Q Yes, sir, and between Cherry and

4 Davis Street the only other access to the water except

5 by across private property would be Jade Street.

6 A Now, I don't know that.

7 Q Well, as shown on the plat.

8 A Mr. Wyatt at the Beacon had told me

9 there was.

10 MR. PICKRELL: I object to what

11 Mr. Wyatt told him.

12 THE COURT: Of your knowledge, if you

13 know.

14 THE WITNESS: I don't know.

15

16 BY MR. PICKRELL:

17 Q You don't know of any other public

18 way to the beach.

19 THE COURT: I think he said he doesn't

20 know where this is or is not --

21 MR. PICKRELL: Well, at the present time.

22 THE COURT: I think we can probably

23 all agree that the plat shows that.

24 MR. PICKRELL: Okay. All right.

25

1 BY MR. PICKRELL:

2 Q Now, let me ask you this: East of
3 Davis Street there's a large block of land owned by the
4 Beach Park Company.

5 A That's the YWCA.

6 Q How far down the beach does their
7 property go?

8 A I do not know.

9 Q I show you Plaintiff's Exhibit --
10 this is Plaintiff's Exhibit 13, aerial photograph
11 dated April 25, '71.

12 A Yes, sir.

13 Q At this end by the Lesner Bridge would
14 be Cherry Avenue; is that correct?

15 A Yes, sir.

16 Q All right, sir. Now, where is Davis
17 Street? Is this Davis Street at this point?

18 A Yep, uh-huh.

19 Q And --

20 A Yep, right there.

21 Q And, all right now, this next street
22 running through, do you know what street that is?

23 A No, but it goes down to the pier,
24 fishing pier.

25 Q Is that a public street?

1 A Yes, sir.
2 Q From basically west from the fishing
3 pier?
4 A Uh-huh.
5 Q To Cherry -- the only street shown on
6 any plat running to the ocean if it's open and that's
7 what the problem is would be Jade Street.
8 MR. PRINCE: I object. What plat is it?
9 MR. PICKRELL: The plats here. Plats
10 you have here, there and as shown on the
11 photograph -- if he knows of any other street
12 that's in between.
13 THE COURT: Well, the photograph shows
14 no open access.
15 MR. PICKRELL: Except Jade Street if
16 it's a street. I qualified that, Judge.
17 MR. PRINCE: What about don't the
18 plats speak for themselves as to what they
19 show.
20 MR. PICKRELL: What I want to know is
21 there anything north of Davis, west of Davis
22 Street.
23 THE COURT: That's what I mentioned
24 just a moment ago. The plat shows no access
25 to a street except Jade Street, Davis to Cherry.

1 It doesn't even show one at Davis.
2 MR. PICKRELL: What I am trying to say --
3 THE COURT: Had to go east of Davis
4 Street to show that you went through the
5 property which was the Beach Land property
6 all the way down to the pier before you had
7 any other access. Is that correct?
8 MR. PRINCE: My objection is you are
9 asking whether or not there are any plats
10 referring to plats other than in here.
11 MR. PICKRELL: I am asking does he know
12 of any other access other than this street,
13 Jade Street, if it's opened and Cherry Street
14 between this point and this point.
15 THE WITNESS: I don't know.
16
17 BY MR. PICKRELL:
18 Q Okay. You don't know of any.
19 A No.
20 Q All right. You testified on direct
21 examination that while you were down there that members
22 of the public have used the area of Jade, the area of
23 Jade Street to reach the beach. But it was your opinion
24 that they were crossing on your property and on Jarvis'
25 property.

1 A No, I did not say they used Jade Street.
2 I said possible use what is designated as Jade Street.
3 Q I understand. That's what I say.
4 I said in the area of Jade Street, but members of the
5 public -- Jarvis is on one side of Jade Street, you are
6 on the other side of Jade Street.
7 A That's right.
8 Q And members of the public were passing
9 in that particular area to reach the beach.
10 A Yes, we invited them to go over our
11 property and then there had been a path on Jarvis'
12 property which people had used.
13 Q Now, with reference to the path at
14 Jarvis' property, you have never had the path surveyed
15 to determine whether or not the path was on Jarvis'
16 property or whether it was on Jade Street; have you?
17 A Well, I know this that when we cleared
18 the land which is now Jade Street it did not effect
19 the path. It was still on what Jarvis' property was
20 because we had had survey points.
21 Q All right. Now, you have paved a
22 portion of what is known as Jade Street.
23 A Yes, sir.
24 Q And you did not request a permit from
25 the City to pave on this area nor did you show it on your

1 building plans, did you?
2 A No, sir, because that would have been
3 handled by Ames and Webb, the pavement contractor.
4 Q I understand, but your plans don't
5 show it.
6 A Now, what plans?
7 Q You didn't show a paving of Jade Street
8 on your plans when you got your building permit.
9 MR. PRINCE: What building permit?
10 MR. PICKRELL: Any building permit when
11 he paved it. When he paved it he never got
12 permission from the City showing that he was
13 going to pave a portion of Jade Street.
14 MR. PRINCE: He testified that Ames
15 and Webb would have handled that.
16 MR. PICKRELL: I know, but I asked him
17 if they had.
18 THE COURT: Do you know of your own
19 knowledge whether or not any permits were
20 obtained from the City?
21 THE WITNESS: No, sir. It was a
22 regular contract. No, sir. We got a regular
23 contract with Ames and Webb.
24 THE COURT: Do you know if Ames and
25 Webb obtained a permit on behalf of Ocean Island

1 Inn?

2 THE WITNESS: No, sir, I don't.

3 THE COURT: Does that answer your

4 question, Mr. Pickrell?

5 MR. PICKRELL: Yes, sir.

6

7 BY MR. PICKRELL:

8 Q All right. Now, let me ask you this:

9 When you did your building you all had to do some

10 excavation. You put piling down.

11 A Yes, we piled them.

12 Q You pushed a little sand around.

13 You didn't haul any sand out of there.

14 A No, I tell you what we did. We

15 established there was no bulkhead line or no bulkhead

16 line requirement, and the beach had a rather irregular

17 contour. We put the bulkhead down for the entire length

18 of the site and then when the grades were set and a

19 topo would show you that the excavation ran from about

20 eighteen foot to about six foot as a typical sand dune

21 type of thing. We took what was the surplus. We

22 established a grade for the motel of 13.5. That's the

23 first floor. I think we established a paving grade of

24 12.5 for the parking area abutting to the property on

25 the Page Avenue side, and we established a bulkhead line of

1 twelve foot. So the surplus sand what we scraped off to
2 concrete the area that our present five-story building
3 is on was put behind the wooden bulkhead.
4 Q Was your paving on Jade Street, the
5 portion that you paved on Jade Street, was that your
6 original construction and or was that after?
7 A That was after we acquired the property.
8 Q I am talking about your -- the buildings
9 that you just talked about your excavation.
10 A That's a five-story and that was the one
11 we started in 1969.
12 Q Did you have to do any moving of land
13 to pave Jade Street? It's apparently flat now.
14 A You mean --
15 Q Sand.
16 A Didn't I just say yes, we did. Yes,
17 we did. Ames and Webb --
18 Q Didn't they push it over on the portion
19 that you didn't pave?
20 A No, sir. We put it still on the beach.
21 Q Okay.
22 A You might be interested in why that
23 sand hill is still there, and I'll be happy to explain
24 to you.
25 Q Did you say that Page Street has been paved?

[136] I believe you said somewhere since your earliest recollection would be sometime about 1935.

A Yes, it was a street there at that time, same narrow concrete pavement.

Q All right. At what point did they pave Jade Street or Jordan Street from Shore Drive back to where it is now?

A It was not there when I bought the property in 1969 -- '67.

***

[142] DAVID M. GROCHMAL, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BIMSON:

Q State your full name and occupation, please.

A David M. Grochmal. I am the real estate agent with the City of Virginia Beach.

Q Mr. Grochmal, concerning the plat of Lynnhaven Shores which has been introduced in evidence, did you at the request of the City review and find out what

1 improvements -- I beg your pardon, not improvements --
2 but what water line, sewer mains and public utilities
3 exist in this particular area?
4 A Yes, sir, I did.
5 Q Shown on the plat of Lynnhaven Shores.
6 A Yes, sir, I did.
7 Q Would you tell the Court what properties
8 have been paved or do you have an exhibit with you that
9 sets this forward as far as the improved streets, what
10 has been paved, the water lines that exist in there at
11 the present time and the sewer lines that exist in there?
12 A Yes, sir, I do.
13 Q Is this the exhibit that you prepared
14 showing the water, sewer and improved streets?
15 (Document shown to witness for
16 examination.)
17 THE WITNESS: Yes, sir, it is.
18
19 BY MR. BIMSON:
20 Q All right, sir.
21 MR. BIMSON: I would like to introduce
22 this into evidence at this time.
23 THE COURT: Defendant's 3.
24 (Marked and received in evidence by
25 the Court as Defendant's Exhibit Number 3.)

1 BY MR. BIMSON:

2 Q Mr. Grochmal, did you also check and
3 find out where VEPCO and the C and P had placed their
4 telephone lines?

5 A Yes, sir, I did.

6 Q Is this representative of what you
7 found out from the company?

8 A Yes, sir, that is.

9 Q All right, sir.

10 THE COURT: Defendant's 4.

11 (Marked and received in evidence by
12 the Court as Defendant's Exhibit Number 4.)

13

14 BY MR. BIMSON:

15 Q Mr. Grochmal, concerning one street
16 there that has been testified to previously, here
17 Cherry Place, what is the reflection of your records
18 concerning Cherry Place?

19 A According to the City highway division
20 Cherry Place is an improved street. It's paved
21 approximately two hundred sixty feet in length.

22 Q I see. Do you know -- do your records
23 reflect when it was paved originally?

24 A I don't have that information
25 available at the moment, no, sir.

1 Q Your records reflect that these trees
2 on this plat have been maintained by the City?
3 A Yes, sir, they do.
4 Q From what date? How far do your
5 records go back?
6 A Our records would begin at the time
7 of the City's merger with Princess Anne County in 1963.
8 But I would have to check with the highway division to
9 verify it.
10 Q Verify it. I see.
11 MR. BIMSON: Answer Mr. Prince's
12 questions.
13
14 CROSS-EXAMINATION
15
16 BY MR. PRINCE:
17 Q Mr. Grochmal, the exhibit showing
18 improved streets, water lines and sewer mains, there are
19 the -- this plat shows existence of these various
20 utilities as of what time?
21 A As of two days ago.
22 Q All right. And the gas, electricity
23 and C and P lines show as of the same time?
24 A As of yesterday.
25 Q As of yesterday. Now, I know the answer to

1 this but I want to get it straight. These lines that
2 you have put on here, did you put them on here?
3 A No, sir. I did not put them on there
4 myself.
5 Q Oh. Well, the lines are somewhat
6 erratic and look to be applied freehand. Is this just
7 an approximation of where these lines are?
8 A Yes, sir. I made it and the purpose
9 was to indicate which streets had these improvements,
10 not the exact location within the streets.
11 Q I see. Now, that's all right. You
12 also indicated that records showed that Cherry Street
13 had been improved for a distance of two hundred and
14 sixty feet.
15 A Approximately two hundred and sixty-four
16 feet, yes, sir.
17 Q The exhibit which has been introduced
18 shows the improved area in red, does it not?
19 A Yes, sir.
20 Q Now, does the two hundred and sixty feet
21 that is referred to begin at the northern line of
22 Page Avenue or at some other point?
23 A As I know it, it begins at the northern
24 line of Page Avenue, yes, sir.
25 Q Now, the exhibit which has been introduced,

1 shaded area which is roughly contemporaneous with the
2 length of lot 1, block 2, I suppose, and that lot appears
3 to be one hundred seventy-three feet long. Can you
4 explain the discrepancy or the difference in that length
5 and the two hundred and sixty feet you referred to?
6 A I'll try to. The highway division
7 has a map book of the entire City of Virginia Beach and
8 each street is shaded freehand to indicate in red to
9 indicate which streets are improved. The book is not
10 accurate to the foot as far as the distance of the
11 improvements. However, the highway division does keep
12 accurate records on file with information on individual
13 index cards showing the exact distance of pavement
14 upon a given street. The exhibit shows what was shaded
15 in freehand in the highway's planimetric book, but I
16 have verified with the highway division that they have
17 in their records approximately two hundred sixty-four
18 feet of paving on Cherry Place.
19 Q These are not records that you keep
20 yourself.
21 A No, sir.
22 Q All right. Are any of these records
23 which you have introduced prepared from records which
24 are kept by you or in your office or under your
25 supervision?

1 A No, sir.

2 MR. PRINCE: All right. I may change

3 my motion later, but I am going to object

4 to any exhibit that this witness introduced

5 concerning what records may show that he has

6 no control or supervision over.

7 THE COURT: Mr. Grochmal, you were also

8 asked if the City -- I think you were asked --

9 if the City has maintained the streets as

10 shown on this plat, and I believe your answer

11 was yes. Is it not true that the City has

12 maintained only those streets as are shown

13 shaded here in red?

14 THE WITNESS: That's correct, yes, sir.

15 THE COURT: And there's nothing in the

16 City's records which reflect any improvements

17 of Jade Avenue on the north side of Page.

18 THE WITNESS: Not to my knowledge, no,

19 sir.

20 THE COURT: Thank you, sir. That's

21 all I have.

22 Any questions, gentlemen.

23 MR. BIMSON: Just one, Mr. Grochmal.

24

25

REDIRECT EXAMINATION

BY MR. BIMSON:

Q Jade Street or formerly Jordan Street, does your records indicate the entire length of the street?

A I don't quite understand.

Q What area, what's the length of pavement on Jade Street, the entire length?

A I don't have that information available at the moment. Now, the highway division does have that on record, but I don't have it personally.

Q I see.

MR. BIMSON: Nothing further.

THE COURT: You may step down.

MR. BIMSON: You can be excused.

THE WITNESS: Well, I'll just hang around for a while.

MR. BIMSON: Your Honor, there are two things I don't know if it is necessary to introduce, but the street closure on Ocean Avenue was done pursuant to33-76.16, which has been repealed, and I was just going to provide a copy of it to the Court.

THE COURT: Do you have a copy of that,

1 Mr. Prince?

2 MR. PRINCE: I think I do. If I don't
3 have it here, I've got it. The Court can
4 take notice of it anyway.

5 MR. BIMSON: And the next exhibit will
6 be a resolution of City Council which passed
7 on March 25th whereby it formally accepted all
8 streets offered for dedication formally that
9 had not been previously accepted by a formal
10 acceptance or by acts of acceptance.

11 I am not quite sure whether it is
12 necessary, but we think it's actual acceptance
13 involved.

14 MR. PRINCE: I object only to its
15 relevance, Your Honor. Of course, I know the
16 Court needs to get it in the record. It has
17 no relevance to the case.

18 THE COURT: That will be Defendant's 5.

19 (Marked and received in evidence by
20 the Court as Defendant's Exhibit Number 5.)

21 MR. PRINCE: I might also say in case
22 we need to get it in the record a little more
23 accurate that I don't think the City or any
24 party of the litigation can take any steps
25 during the course of litigation which would in

[151] effect prejudice a position which existed prior to that time.

THE COURT: Well, I don't know if this is material or not at this point, but if the City had a right to do it prior to the litigation I would assume they have a right to do it during litigation.

MR. BIMSON: City would call to the stand Mrs. Caton.

-----oOo-----

MRS. MARY CATON, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BIMSON:

Q State your name and address for the Court, if you will, Mrs. Caton.

A Mrs. Mary Caton. 3209 Page Avenue.

Q Mrs. Caton, do you own property on the plat of Lynnhaven Shores?

A Yes, I do.

1 Q Can you tell the Court or can you
2 identify on this plat what lots you do own?
3 A Lots 16, 17 and 18, block 4.
4 Q Block 4. When did you purchase these
5 lots, Mrs. Caton?
6 A 1952.
7 Q 1952?
8 A Yes, sir.
9 Q And have you been familiar with this
10 area prior to your purchase of these lots?
11 A Since 1932.
12 Q I see. Would you describe for the
13 Court concerning the use, if any, of the public in getting
14 to the beach during this period from 1932 across Jade
15 Street, the area in dispute here today.
16 A Well, after buying the property --
17 it's been rental property up until 1970 most of the time.
18 So the tenants that I rented to used -- it was the only
19 public way of getting to the beach through Jade Street
20 and as Mr. Fanney said it was only a path over the
21 sand dune. And to my knowledge the sand dune has been
22 there maybe since 1932. It's been there a long, long
23 time, and of course, the trees are grown up and there
24 was some shaded path that went over. I won't deny that
25 it wasn't partly on Mr. Jarvis' property. Of course, I

1 don't think anybody really does know who owns the lot.
2 Back in those times the property down there, some of it,
3 was still owned by the Land Company and it was used
4 just most any way you wanted to go over it was all right.
5 But, of course, when I bought the property I was very
6 much interested to know that I had access to the beach
7 and rights you know to go. So the land company gave
8 me a map and showed me that this Jade Street was there
9 for me to exercise my rights to go to the beach. In case
10 that I had no other way, then I knew that.
11 Q What land company was this you are
12 making reference to?
13 A Well, it was the B. F. Goodrich.
14 I didn't buy the property directly from them, but I
15 went and talked with them when I bought the property
16 from the individual and they gave me a map.
17 Q So they held that to you this was a
18 means for you to get to the beach?
19 A Right.
20 Q To your knowledge was this means of
21 getting to the beach across Jade Street exercised by
22 you, your tenants and your neighbors and the public in
23 general?
24 A Yes, sir.
25 Q From 1932 on -- well, what is your

1 recollection?

2 A Well, I couldn't verify from 1932

3 because I was living where Cape Henry Towers is being

4 built now. My mother-in-law built the first home I

5 think in that area there.

6 Q Right.

7 A And I, of course, went down in there

8 and like Mr. Fanney said he did. I was up and down the

9 street but I didn't pay any special attention at that

10 time to Jade Street.

11 Q Uh-huh.

12 A I knew it was there, but I had no

13 reason at that time to use it because I lived over on the

14 bay.

15 Q All right. But you returned to the

16 area in 1952 when you actually lived on the site; is

17 that correct?

18 A Right.

19 Q Do you have actual knowledge yourself

20 of the public, your neighbors, your tenants?

21 A Yes, everytime I rented the property

22 to people I would tell them and show them that street

23 was there for them to go to the beach. Otherwise they

24 had to get permission from private owners.

25 Q Did they in fact use it?

[155] A I beg your pardon.

Q Did they in fact use it to get to the beach?

A Yes.

Q I know you testified that you yourself have used it.

A I have. Of course, not since 1970 because it's been fenced off and nobody has been able to use it.

Q And you reached the beach or walked your dog or took strolls through.

A Not my dog; just a stroll.

***

BY MR. PICKRELL: [158]

Q In 1970 did you become concerned about Jade Street and if so why?

A I had been concerned about Jade Street since 19 --the 1950's. I got up a petition when it was Princess Anne County and presented it to the planning

[159] commission after this Ocean Avenue was deeded off to the property owners on the water side. There was a petition then by Mr. Daring and Mr. Brown to close the street and I by the direction of the land company -- Mrs. Green and I got up a petition, went down and had it signed, carried it down before the planning commission Princess Anne County and the planning commission then

8 denied the petition and said that my rights would be
9 exercised. I kept in touch with Mr. Darden who was
10 supervisor.
11 THE COURT: When was this now?
12 THE WITNESS: This is since the late
13 '59's.
14 THE COURT: Is this when they closed
15 Ocean Avenue?
16 THE WITNESS: Yes, when they deeded it
17 off, the portions of Ocean Avenue in front
18 of the property owners from Jade Street --
19 I think it was all the way down to Cherry Place.
20 THE COURT: Did you attend the board
21 meeting, the Board of Supervisors?
22 THE WITNESS: Well, I didn't know
23 anything about it. This took place -- the
24 planning commission, the petition that I got
25 up for presenting was at the planning commission
1 [160] after I had been told there was a notice or
2 petition to close the street by the -- well,
3 what you're saying Mr. Fanney has now or
4 Mr. Deming had a motel there and the lot on
5 the other side of Jade Street a Mr. Brown
6 was contemplating buying and they were both
7 petitioning. To my knowledge that's the way
8 it was, petitioning the County to have the
9 street --

10 THE COURT: To close the street.

11 THE WITNESS: -- close the street.

12 THE COURT: Jade Street.

13 THE WITNESS: Right.

14 THE COURT: This was when?

15 THE WITNESS: Back in the late '50's.

16 This should be on record. I have a duplicate

17 of the petition with me. It's not a copy.

18 It isn't a signed copy, but I have a duplicate

19 of it which showed the map and exactly what

20 the petition consisted of.

21

22 BY MR. PICKRELL:

23 Q Are these the papers you handed us

24 this morning?

25 A That's right.

1 [161] Q If you will, refer to what you are

2 telling the Judge about.

3 A I don't know if it means anything in

4 Court or not. It's a duplicate that was made up by

5 myself and Braithwaite by the direction of Miss Green

6 who was with Goodrich Company.

7 THE COURT: Is it dated?

8 THE WITNESS: No, but it's on record.

9 It should be I would think. I was told that

10 it was.

11 THE COURT: This was back in the

12 mid-fifties?

13 THE WITNESS: Late fifties.

14 THE COURT: It was after '54?

15 THE WITNESS: I couldn't say because

16 I did a lot of research to be able to --

17 THE COURT: Do you know if it ever went

18 to the Board of Supervisors in the County?

19 THE WITNESS: Well, I spoke with

20 Mr. Darden. He was supervisor at that time,

21 and I spoke to him about every month after

22 that.

23 MR. PRINCE: Excuse me, Mrs. Caton.

24 I believe the Court will hear this and get

25 it all on the record, but I want to note my

1 [162] objection that Mrs. Caton is testifying a

2 great deal of what various people told her and

3 what she understands, and so I would object

4 to any of that kind of testimony. And also

5 the introduction of copies of things which there

6 are no signatures and no dates.

7 THE COURT: I don't know if Mr. Pickrell

8 is going through it.

9

10 BY MR. PICKRELL:

11 Q Well, I ask you is this a copy of the

12 petition that was originally prepared back in the '50's?

13 A Right, it is.

14 Q And did you prepare it?

15 A No, myself and Braithwaite.

16 Q Well, did you see the original and

17 sign it and help get it?

18 A Why, yes. I was the one that took

19 them and had them signed.

20 Q Is this a carbon copy except for the

21 signature?

22 A I can't say carbon copy because

23 Miss Braithwaite --

24 Q Is that the same petition?

25 A It's exactly the same.

1 [163] Q And does this copy exist from that

2 time?

3 A Yes.

4 MR. PICKRELL: All right. Well, then

5 we would ask that it be admitted.

6 MR. PRINCE: I would object.

7 THE COURT: I will allow it. It's

8 admissible. Defendant's 6.

9 (Marked and received in evidence by

10 the Court as Defendant's Exhibit Number 6.)

24 BY MR. PICKRELL:

25 [165] Q All right. Well now, you covered -- I asked

1 you about 1970 and you gave some information about 1950.
2 Did you become concerned again in 1970?
3 A Sir, I have been concerned since 1952.
4 Q All right, but did you have any reason
5 to take any action in 1970?
6 A Yes, because I had of course been doing
7 it off and on getting in touch with Mr. Dewey Simmons
8 while he was councilman for the district on the same
9 subject because I lived in Norfolk at the time. These
10 notices had been put up. I had to depend on somebody
11 else seeing them and telling me about them. So knowing
12 about the street I became so nervous about it that I
13 figured the only way I could do would be to keep in
14 touch with a councilman, and I am sure they will say I
15 worried them to death because I know I did.
16 Q Well now, at any time in the '70's
17 did you have any contact with anybody in the administration
18 of the City of Virginia Beach with reference to Jade
19 Street?
20 A Oh, yes.
21 Q Did you receive a letter from an
22 administrator official in the City of Virginia Beach
23 in that time with reference to Jade Street?
24 A Oh, yes.
25 Q And I show you this.

(Document shown to witness for examination.)

THE WITNESS: I have other letters.

BY MR. PICKRELL:

Q I understand, but I show you this and ask you can you identify this?

A Yes, sir. That was sent to me by Mr. Norman.

Q And the date of that is what?

A August 13, 1970.

Q And was that in response to Jade Street?

A Yes, sir.

Q And would you read what the references to Jade Street and who it's signed by?

MR. PRINCE: Your Honor, I object to the reference to a letter written by someone else in response to this witness' inquiry which expresses an opinion by someone else and which is only the last paragraph of a longer letter. And to begin with I think that it's reasonable enough to object to it to offer into evidence an excerpt from somebody's letter without the Court or anyone else knowing what the letter states.

1 THE COURT: I assume they have access
2 to City files. The best evidence would be
3 at least someone from the City who can testify
4 as to the whole letter. You can testify if
5 she --
6 MR. PICKRELL: Can you give us a
7 second? Maybe we can find it.
8 I looked in these files and I didn't
9 find it.
10 THE WITNESS: This part of the letter
11 is reference to Jade Street. The other part
12 of the letter was in reference to flooding
13 which I have had to work on too because I have
14 had flooding.
15 MR. PICKRELL: We have no record in
16 our files that we can put our hands on at this
17 time with reference to the letter that the
18 lady had. At this point it would the best
19 evidence that we have. She testified she
20 communicated with the City and I think we
21 can establish evidence that the gentleman was
22 in an official capacity at that time. The
23 paragraph itself is complete in and of itself
24 and it deals particularly with the subject
25 we have in mind. And the purpose of the letter is

1 that it refutes what they brought out in
2 their direct examination with Mr. McClanan
3 for what Mr. McClanan testified was brought.
4 We say it's not binding on it and by the same
5 token it does show at least a difference of
6 opinion as to the people in 1970.
7 THE COURT: That dealt with the second
8 application.
9 MR. PICKRELL: Yes, sir.
10 THE COURT: When was the first application?
11 MR. PICKRELL: No, this deals --
12 THE COURT: Obviously we found out
13 there has been three applications now. This
14 lady has informed us in Princess Anne County
15 in the '50's there was a first application.
16 This letter is dated. This letter is dated
17 August 13, 1970, and I think the record would
18 show that it was at the time of the original
19 application I believe. Is that right?
20 MR. PICKRELL: The notice on the second
21 which refers to Jade Street and Ocean Avenue
22 was in 1970 so this letter would have been
23 either before or at the time of the first
24 application.
25 THE COURT: Mr. McClanan's testimony only

1 dealt with the second letter.
2 MR. PICKRELL: I understand. We will
3 offer it for what probative value.
4 THE COURT: Mr. Norman available?
5 MR. PICKRELL: Never heard of him,
6 Judge.
7 MR. PRINCE: How can I cross-examine
8 this letter for one thing.
9 THE COURT: That's why I am asking.
10 MR. PICKRELL: We offer it, Judge.
11 THE COURT: I think the City Manager is
12 Lynchburg at this time. I don't think it
13 would be proper at this point. You can't
14 cross-examine on that.
15 MR. PICKRELL: All right, sir. Note
16 our exception.
17
18 BY MR. PICKRELL:
19 Q Then, of course, let me ask you this:
20 In addition to contacting the City with reference to
21 Jade Street, did you appear at the public hearings that
22 were held in 1970 and thereafter with reference to the
23 closing of this portion of the street?
24 A In the council?
25 Q Yes.

1 A Yes, sir.
2 Q Did you -- all right, and of course
3 you were in opposition.
4 A I beg your pardon.
5 Q You were in opposition to the closing.
6 A Oh, yes, uh-huh.
7 Q I see.
8 A I didn't speak before the Council.
9 My husband did before he died.
10
11 CROSS-EXAMINATION
12
13 BY MR. PRINCE:
14 Q Mrs. Caton, your familiarity with this
15 area goes back to 1932.
16 A Yes, sir.
17 Q And you first acquired ownership of
18 any property in 1952.
19 A That's right.
20 Q Now, you said that you do know that
21 when you bought the property this plat was exhibited to
22 you and you knew that there was a paper street there.
23 A Well, I knew it was a street that none
24 of the streets were paved or anything like that. There
25 was a street there or the land company told me for my

1 rights to go to the beach which would not be needed to
2 be paved.
3 Q There was in fact no opened street for
4 pavement, no improvement, no maintenance by the City of
5 this area, was there?
6 A Well, at that time the whole area was
7 with sand hills, sand dunes and the people wanted it
8 that way.
9 Q So the answer is there was no street
10 opened or maintained in this area then or now?
11 A Well, no, but you could get through it
12 before Mr. Fanney put a fence up.
13 Q All right. Now, you mentioned that
14 in 1952 when you bought your property you then used it
15 for rental property.
16 A Well, except for when I was down there
17 I rented it most of the time.
18 Q And you used this pathway that you are
19 talking about.
20 A Yes, sir.
21 Q And you advised your tenants to use
22 it.
23 A That's right.
24 Q And you said that you could not deny or
25 contradict Mr. Fanney's testimony as to the location of

1 that path.

2 A Well, I knew since Mr. Fanney has taken

3 the property over Mr. Jarvis has sold his property and

4 the Lynnhaven Motel Corporation has gone there and has

5 flattened down the sand dune there. I know the path was

6 crooked as Mr. Fanney explained, but it didn't go to the

7 west end of Mr. Jarvis' property. I would say it went

8 to the east side of Mr. Jarvis' property on over to

9 Jade Street. In other words, it went over at an angle,

10 a very sharp angle.

11 Q Now, how do you make that judgment? What

12 are you judging? How are you making the judgment that the

13 path began on the east end of Mr. Jarvis' property rather

14 than the west end?

15 A Well, because Mrs. Riley owns the lot

16 in front of Mr. Jarvis and the path went up right in

17 front of her property.

18 Q She owns --

19 A To the side of it.

20 Q Mrs. Riley owned property?

21 A Corner Jade Street and Page Avenue.

22 Q Corner of Jade and Page.

23 A South side.

24 Q Is that the lot with the fence around it?

25 A That's right.

1 Q And Mr. Jarvis' property you say was
2 directly in front.
3 A Well, he had two lots. One of his
4 lots were in front of her lot.
5 Q And the path you say began in front of
6 Mrs. Riley's house?
7 A Yes, and it was to the side of Mr. Jarvis'
8 property as it went up from Page Avenue on over. As I
9 say it was a sharp angle and went over on Jade Street.
10 It was just a winding in between the trees.
11 Q And you were asked by the public the
12 actual -- your knowledge of the use of this property is
13 confined to your use, the use of your tenants and the use
14 of people who might have lived in the area; is that
15 correct?
16 A Well, they had no other way.
17 Q I know it, Mrs. Caton. That's not the
18 question.
19 A Yes, I had knowledge of myself, my
20 tenants and my neighbors.
21 Q All right.
22 A I had seen them.
23 Q Okay. That's what I am asking you.
24 You also said that the land in that
25 area was undeveloped and that anyone really walked anywhere

1 they wanted to walk.
2 A Well, it wasn't known like it is today
3 who owned the property and it wasn't developed as much.
4 For instance, when I first bought my property there wasn't
5 a house across the street from me. The property was
6 there, and I don't remember ever going across there.
7 But I don't think anyone would have said anything if I
8 did. But it's people that built up and then of course
9 you don't just cross over the property.
10 Q All right. Now, I'll ask you the
11 question again since you haven't answered. Did you not
12 say that through the years people walked on the north
13 side of Page Avenue anywhere they wanted to walk without
14 regard to where they were walking?
15 A No, I wouldn't say that, no.
16 Q You did not say that earlier today?
17 A I said there were spots on Page Avenue
18 that were undeveloped that no one objected to I know of
19 if you crossed over.
20 Q And you don't know who owned that
21 property?
22 A Well, I know who owns it now; I didn't
23 at that time.
24 Q And it's privately owned property now.
25 A To my knowledge it is.

1 Q And to whom was this petition presented?
2 First of all, did you present this petition to anyone?
3 A To the Princess Anne Planning Commission.
4 Q All right. Now, I am talking about you
5 personally, yourself.
6 A After it was signed by the neighbors,
7 yes.
8 Q And what was the forum for doing this?
9 Did you go to someone's office? Was there a public
10 hearing?
11 A I came down here. I couldn't this moment
12 tell you the building, but it was where the planning
13 commission formed. I am not familiar with the year it
14 started, but --
15 Q Did you walk to someone's office and
16 hand them this?
17 A Why, no. It was a meeting just like
18 Council there. This was a public hearing. That's right.
19 Q Now, what was it that the planning
20 commission was considering?
21 A They had been petitioned just like the
22 City was petitioned to close Jade Street.
23 Q And who petitioned it?
24 A Mr. Derring and Mr. Brown I was told.
25 Q You were told.

1 A How do I know these things, I mean --
2 Q That's what I am trying to find out
3 how you know these things.
4 THE COURT: Hearsay. What somebody
5 else tells us is not admissible. It's what
6 you know of your own knowledge, what you saw,
7 what you observed, this type of thing.
8 THE WITNESS: I thought all of this
9 was on record.
10 THE COURT: Well, it may be. I don't
11 know.
12 MR. PICKRELL: Your Honor, I would think
13 she could testify to what she heard at a
14 public hearing, what she observed there.
15 THE COURT: If they used those names
16 and said it was their application, I think
17 she's admissible to testify to that.
18 MR. PRINCE: I better respond to that,
19 Your Honor. I think that hearsay relates to
20 whether something is said by an individual or
21 at a public hearing. The best evidence of
22 what happened at a public hearing would be the
23 minutes of that public hearing such as we have
24 had introduced here. I would object, of course,
25 because I don't know and I don't see how the

1 Court could know what the planning commission
2 considered in 1952 because we have here
3 essentially an unsigned copy of a citizen's
4 petition.
5 THE COURT: The Court accepted this on
6 the basis that this was a petition that this
7 lady, Mrs. Caton, carried around in 1952 and
8 that she subsequently presented to Council.
9 That's as far as I have accepted it and for
10 that purpose only. I assumed the City would
11 follow up with additional evidence if they
12 so desire in this matter.
13
14 BY MR. PRINCE:
15 Q I believe that you said you did not
16 present this to Council.
17 A I presented it to the planning commission.
18 THE COURT: Planning commission.
19 Excuse me.
20 THE WITNESS: Or I was told it was a
21 planning commission.
22
23 BY MR. PRINCE:
24 Q You don't know whether you presented
25 it to Council or planning commission?

THE COURT: Wouldn't be Council; would have been Board of Supervisors.

BY MR. PRINCE:

Q You don't know whether you presented it to the Board of Supervisors or to planning commission.

A I was told it was a planning commission.

Q By whom?

A It was done through Mr. Darden who was a supervisor there. I don't know whether the planning commission and the supervisory were combined or whether it was --

THE COURT: If he was supervisor he wouldn't have been on the planning commission. He would be on the Board of Supervisors.

BY MR. PRINCE:

Q Mrs. Caton, I would like to ask you about your use of the property itself. First of all, when you would use this property to go to the beach and when you would advise your tenants to use it you are really talking about that path that has been referred to, are you not?

A Well, I used the path to get over the sand dune. When you get over the sand dune, it was all

[182]

1 beach.

2 Q And you just walked anywhere you wanted

3 to walk. Once you get over the sand dune, you went in

4 any direction you wanted to go.

5 A Well, sir, it was sixty foot of street

6 there. So now I don't know, I might have walked over

7 the edge of somebody's property going over there. I didn't

8 walk a straight line. Sixty feet is a right good space.

9 Q That's what I am trying to ask. When

10 you used this area you were not concerned with whose

11 property line went where, were you?

12 A Not too much, no.

13 Q And once you got over the sand dune

14 if you wanted to go east you would walk east, and if

15 you wanted to go west, you would walk west. If you wanted

16 to go to the water you would walk to the water, wouldn't

17 you?

18 A Back in 1952 I might have, but I

19 wouldn't do it today.

***

12 [184] Q All right. Now, I'll ask you is it

13 your testimony that the path was in this area shown by

14 this picture but has been covered up in some way?

15 A Well, it was covered up several times

16 and I removed covering.

17 Q In an area shown?

Keep all typed matter within this margin. This will maintain proper margins and allow for binding.

18 A I don't know when that picture was
19 taken. I didn't see a picture taken.
20 Q I know you didn't see the picture
21 taken, but you know the area, don't you?
22 A Yes, sir.
23 Q Is the path that you are referring to --
24 does this picture show the area where the path was?
25 THE COURT: What year?

1 [185] MR. PRINCE: This is 1971.
2 THE WITNESS: 1971.
3
4 BY MR. PRINCE:
5 Q Was the path there in 1971?
6 A Yes, it was.
7 Q All right. Now, although you say you
8 cannot see the path here can you tell us from your
9 recollection of the area if --
10 A Started up from the left of this.
11 Q Out of the picture?
12 A Yes.
13 Q All right.
14 A Left and went over to very diagonal
15 line.
16 Q So you are saying that the path which
17 you are referring to started in an area which would
18 have been to the left of this photograph.
19 A I would say so, yes.

20 Q And went in a diagonal line towards
21 the east and towards the bay.
22 A That's right.
23 Q Now, certainly, Mrs. Caton, you yourself
24 and not speaking of anyone else, you yourself never
25 cut your way through these trees and bushes to get to the
1 beach, did you? [186]
2 A The path was there. I used that. I
3 have been around this side here.
4 Q Excuse me, Mrs. Caton. I am asking
5 the question.
6 MR. PICKRELL: Your Honor, she has
7 got a right to answer. You don't have to wait
8 for his cross-examination.
9 THE COURT: She doesn't have to come
10 out with an absolute yes. She said yes, I
11 went around the side.
12 MR. PRINCE: She doesn't do that.
13 THE COURT: Let her finish the response.
14 Do so and stick to it.
15
16 BY MR. PRINCE:
17 Q I will ask you have you yourself been
18 through that growth of trees and shrubbery that you see
19 here?
20 A No.

***

[188] THE COURT: Mrs. Caton, has there always been some access either public or private to that beach out there? To your knowledge is there any other public access between Cherry Street and what is the YMCA Beach?

THE WITNESS: No, to my knowledge.

THE COURT: Except what?

THE WITNESS: Except Jade Street.

THE COURT: Jade Street. And you attended to your knowledge at least two hearings of some type regarding street closures or closures of Jade Street.

THE WITNESS: More than that.

THE COURT: More than that. Has there ever been any action to your knowledge by any Board of Supervisors, City Council closing any portion of Jade Street?

THE WITNESS: Of them closing it?

THE COURT: Yes.

THE WITNESS: I haven't been told it was closed.

THE COURT: You have no way of knowing that has closed it.

THE WITNESS: That's right. City Council

[189] said it was open.

THE COURT: And when was the first hearing of some type that you would have

Keep all copy within these margins and allow for binding.

4 attended concerning closure of Jade Street?

5 THE WITNESS: It was the late '50's.

6 I couldn't give you the exact year. It was

7 after the Board of Supervisors deeded the

8 Ocean Avenue to the property owners on the

9 opposite side of Jade Street. That was 1954,

10 I believe.

11 THE COURT: Did you attend that meeting?

12 THE WITNESS: No. As I far as I know --

13 well, I guess possibly the property owners

14 that were deeded the property did.

***

10 [191] CLYDE C. ABSALOM, called as a witness on behalf

11 of the defendant, having been first duly sworn, was

12 examined and testified as follows:

13

14 DIRECT EXAMINATION

15

16 BY MR. BIMSON:

17 Q State your full name and address for

18 the Court, would you please, Mr. Absalom?

19 A My name is Clyde C. Absalom. I live

20 at 2627 Broad Bay Road, Virginia Beach.

21 Q Mr. Absalom, do you own property on

22 the plat of Lynnhaven Shores?

23 A Yes, sir.

24 Q Can you tell us the numbers of the

25 lots that you own or can you indicate it on this plat?

binding.

1 A Well, I own quite a few out there,
2 but whatever you are talking about I own the whole
3 entire block that faces on Jade Street. Of those flat-top
4 buildings, it is seven homes that I rented there and
5 the rest of them are vacant at the present time.
6 MR. PRINCE: You own what property now?
7 THE WITNESS: It used to be named
8 Jordan, Kleen Street. This is Jade Street
9 right here and I own this whole entire block
10 number.
11
12 BY MR. BIMSON:
13 Q Block 8?
14 A Block 8 and four or five over on this
15 side.
16 Q Over there block 7.
17 A One or two along here.
18 Q So you own some parts in block 4,
19 some in block 7 and all of block 8.
20 A That's exactly right.
21 Q All right, sir. Mr. Absalom, how long
22 have you been familiar with this area?
23 A All my life.
24 Q And how old are you, sir?
25 A I am seventy-nine.

1 Q All right, sir.

2 A Been in Princess Anne County now the

3 City of Virginia Beach sixty-four years.

4 Q Mr. Absalom, in reference to the property

5 in question here today the extension of Jade Street

6 north from Page Avenue out to the beach area, would you

7 tell the Court what uses have been made of that to your

8 knowledge?

9 A To my knowledge I have seen people

10 walking back and forward through that Jade Street ever

11 since I went there down on the Shore Drive and went in

12 business in the early thirties, 1931 or 2.

13 Q You say walking back and forth across --

14 A Through Jade Street there.

15 Q I see.

16 A And when I would rent those cottages --

17 there are seven of them which I rented there, I would

18 tell the people this Jade Street goes over to the water

19 for your bathing purposes.

20 Q And these were your tenants, people

21 that rented from you?

22 A Yes, sir.

23 Q When you bought the property,

24 Mr. Absalom, did you at the time see this plat or view

25 the plat yourself of Lynnhaven Shores?

A Yes, sir, very familiar with it. See when I bought the rest of Cape Henry Syndicate lots I took the plat and went over all of it. It consists of about one hundred thirty-eight, which was 1900 and around 54.

MR. BIMSON: Answer Mr. Prince, if you would, sir.

CROSS-EXAMINATION

BY MR. PRINCE:

Q Mr. Absalom, you say since 1931 you have seen people walking back and forth across Jade.

A I didn't say since 1931. I said I went down on Shore Drive and went in business at that time, and I was very familiar with the stuff after 1954 because that's when I bought the rest of Cape Henry Syndicate plotted lots and this block had seven homes on there, these flat-top buildings and I purchased them and been renting them ever since.

Q And so since 1954 you have seen people walking.

A Oh, yes. I would tell my people when I rented the place that this street goes through to the

[195] water for your bathing purpose.

Q Now, the actual part of Jade Street north of Page Avenue was at that time and has continued to be a sand dune.

A Well, it wasn't too high then. Sand drew up awful quick. I am very familiar with the way that sand builds up on that bay front and those cherry trees will grow up from one year to another very fast. Once you get a little bit of shrubbery it forms a sand hill but way back many years ago was the worst sand hill there.

[196] MRS. HITCHLER, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

BY MR. PICKRELL: [197]

Q And in your position do you have access and charge of the files with reference to the actions of the planning commission?

A Yes, I do.

Q And is that file one of the planning commission files? [198]

A Yes, it is.

Q Made in the regular course of its business and its records kept in the applications for

5 planning matters to be before the planning commission
6 and then City Council.
7 A That's correct.
8 Q Would you give us the style or the name
9 of the file?
10 A All right. The name of the file is
11 Ocean Island Inn, Incorporated, and it was for the
12 discontinuance, closure and abandonment of a portion of
13 Jade Street formerly Jordan Street.
14 Q And what date was the file opened?
15 On what date was the application made?
16 A On January 8th, 1971.

23 [199] Q All right. Mrs. Hitchler, does the
24 file disclose that number of residents or persons filed
25 in addition to appearing filed objections to the closing
[200] 1 of this portion of the street at that time, written
2 letters?
3 A Yes, there are some letters in the file.
4 Q All right. Is this one of the letters?
5 MR. PRINCE: Your Honor, I don't think
6 that's material. Of course, I know again
7 without jury the Court is going to take in all
8 kind of evidence, but I would object to letters
9 written by citizens to the planning commission.
10 THE COURT: Well, if it's part of the
11 records kept in the normal course of their

12 business I think it's proper.

13 MR. PRINCE: I just want to note

14 objection. Of course, I want to look at that

15 whole file.

16 MR. PICKRELL: Well, we'll make the

17 whole file an exhibit.

18 MR. PRINCE: Why don't we look at the

19 file before we continue with the examination.

20 THE COURT: Sure.

21 MR. PRINCE: It might take me about

22 ten minutes, a lot of material here.

23 THE COURT: While you gents are doing

24 that, how about does anyone have copies of

25 the law as it existed at the time this plat was

1 [201] put in the record?

2 MR. BIMSON: The copy of the law is

3 1919.

4 MR. PRINCE: Code of 1932.

5 THE COURT: It was not amended from 1919

6 to 1926 because I have a copy of that.

7 52.19-69 of the old code. Is that correct?

8 MR. BIMSON: Yes, sir.

9 THE COURT: And it was not amended.

10 MR. PRINCE: No. It has been amended

11 since.

12 THE COURT: But not prior to 1926.

13 MR. BIMSON: No, sir.

14 MR. PICKRELL: Mrs. Hitchler, are you
15 ready?
16 MR. PRINCE: I am ready, Your Honor.
17
18 BY MR. PICKRELL:
19 Q Mrs. Hitchler, maybe we can save a little
20 bit of time. You identified this Ocean Island Inn
21 file as April 26th, 1971. At this time we would offer
22 it and the paper in here are your initial records?
23 A Yes, that's right.
24 MR. PICKRELL: We would offer it as
25 one exhibit.
1 [202] MR. PRINCE: Your Honor, I would object
2 to the introduction of this whole file for
3 a number of reasons. First of all, it contains
4 letters of citizens unless I am getting the
5 files mixed up expressing opinions of law
6 stating their opinions of certain other matters,
7 and I think while I assume the Court would not
8 be influenced by --
9 THE COURT: Well, my understanding of
10 the exception of the hearsay rule is it doesn't
11 go to the truth of what's in it and only the
12 fact that the file exists and that these letters
13 were written, but not as truth in what they
14 say.
15 MR. PRINCE: I'll stipulate the file

16 exists.

17 THE COURT: The letters were written.

18 MR. PRINCE: That the letters were

19 written, but they are not relevant to this

20 controversy.

21 MR. PICKRELL: And that the position

22 was taken before the City Council, disposition

23 was taken before the City Council at that

24 time. That's all.

25 MR. PRINCE: Certainly.

1 BY MR. PICKRELL: [203]

2 Q Then I show you the Ocean Island Inn

3 file dated March 14th, 1972 for the discontinuance, closure

4 and abandonment of a portion of Jade Street and a portion of

5 Ocean Avenue located on the north side of Page Avenue,

6 indicated withdraw 1972. Is that an official file?

7 A Yes, it is.

8 Q And the papers therein were in the

9 regular course of the application?

10 A That's correct.

10 [205] Q In the course of the planning commission's

11 preparation for the hearing which would then be held

12 with reference to the new applications what if anything

13 is done with reference to the old applications?

14 A We have a location map by which we

check any previous applications that had been heard on a particular location and we do check back as a matter of reference.

Q Now, can you state whether or not the information you have in your old files is made available in the new application?

A Yes, it is.

MR. PICKRELL: All right. Thank you.

THE COURT: That will be marked Defendant's 9.

(Marked and received in evidence by the [206] Court as Defendant's Exhibit Number 9.)

MR. PRINCE: I have seen it. I guess I wait until the questions are asked.

BY MR. PICKRELL:

Q Mrs. Hitchler, can you identify this as a file of the planning commission?

A Yes, I can.

Q And what is the date of the file? What date was it filed?

A It was filed on September 3, 1959.

Q All right. Now, the application deals with a rezoning. Is that correct?

A That's correct.

Q And does the application with reference to the rezoning have a plat filed with it?

17 A Has a City plat.

18 Q City plat filed with it and does the

19 description refer to Jade Street as the property bordering

20 on Jade Street?

21 A It refers to Jordan Street.

22 Q Jordan Street.

23 MR. PICKRELL: We would like to

24 introduce this at this time for the purpose

25 of showing that in '59.

1 [207] THE COURT: You have seen this?

2 MR. PRINCE: I have glanced through.

3 I object. Again it's not relevant to the

4 controversy.

5 THE COURT: Is it an application for

6 rezoning of the property adjoining?

7 MR. PICKRELL: Yes, sir.

8 THE COURT: Ocean Island Inn?

9 MR. PICKRELL: It's on the other side

10 of Ocean Island and the description and the

11 public notice that went out and the thing

12 filed refers to the area in dispute as being

13 the street and running to the ocean.

14 THE COURT: In dispute.

15 MR. PICKRELL: It shows Jade Street

16 that's in dispute today on that plat as running

17 to the ocean.

18 THE COURT: Oh, I see.

19 MR. PRINCE: All right. I again --

20 MR. PICKRELL: Which is after 1954

21 foreclosure.

22 THE COURT: I would allow it to be

23 introduced. Kept in the normal course of

24 business.

25 MR. PRINCE: I object to its relevancy.

1 [208] THE COURT: I don't know how relevant

2 it is.

3 MR. PICKRELL: Thank you, Mrs. Hitchler.

4 THE COURT: Any questions, Mr. Prince?

5 MR. PRINCE: No, sir.

6 THE COURT: You may step down.

7 MR. BIMSON: That will be the City's

8 case.

24 [212] RALPH D. KATHERMAN, recalled as a witness on

25 behalf of the plaintiff, having been first duly sworn, was

1 examined and testified as follows: [213]

2

3 DIRECT EXAMINATION (Rec.)

4

5 BY MR. PRINCE:

6 Q Mr. Katherman, you testified yesterday

7 about your examination of the title to the property.

8 Now, I would like to ask you did you play any part in

9 the handling of the petition for the closing of Jade

10 Street?

11 A Yes, sir.

12 Q After Ocean Island Inn acquired title?

13 A Yes, I did.

14 Q All right. Can you tell us what you

15 first did in that regard?

16 A Well, I first advised the owner that

17 the platting of the street constituted a cloud of title

18 and that would have to be removed in some fashion. And

19 I recommended that a petition be filed to close the

20 street.

21 Q All right. Now, in your petition can

22 you tell us what part of it or property was described in

23 the petition?

24 A The property that was described in the

25 petition was the property which in my opinion constituted

[214] 1 Jade Street as shown on that plat and that was the

2 property running back 175.08 feet from Page Avenue.

3 Q And a width of how many feet?

4 A Sixty feet.

5 Q And where did that 175 feet run to in

6 relation to Ocean Avenue?

7 A To the southern line of Ocean Avenue.

***

20 [215] Q Mr. Katherman, can you tell us why

21 Ocean Island Inn proceeded by petition to close this

22 particular portion of the street?

23 A Yes, sir.

24 MR. PICKRELL: Your Honor, that's a

25 self-serving declaration. He has already said

1 [216] there was a cloud on the title. I think

2 everybody understands that they want to say

3 the street isn't there and they want to get

4 clear and free title.

5 THE COURT: It's not Ocean Island

6 Inn's purpose. Do you know of your own

7 knowledge why?

8 THE WITNESS: Well, I recommended that

9 the petition be filed before Council as the

10 most convenient and practical method of

11 eliminating the cloud on the title rather

12 than becoming involved in litigation which

13 I thought would be more lengthy and more

14 expensive.

15

16 BY MR. PRINCE:

17 Q All right. Now, Mr. Katherman, how

18 long following the first application was the second

19 application filed as best you can recall?

20 A It was approximately a year.

21 Q All right. Now, when the second

22 application was filed what property was petitioned to

23 be closed?

24 A The property petitioned at that time

25 was the 175.08 feet which it had originally been in the

1 original petition plus the property which was in the
2 intersection of Ocean Avenue, the part they have enclosed,
3 the additional one hundred feet.
4 Q All right. Now, can you tell us why
5 you added that additional one hundred feet to your
6 application?
7 A Yes. At the time that the stop work
8 order had been placed on the building that was being
9 constructed I conferred with George Hanbury who's
10 Assistant City Manager or assistant in the City Manager's
11 office, relative to having a stop work order removed.
12 The result of that meeting was set up and I met with
13 Mr. Hanbury and Mr. Bimson. As a result of that meeting
14 it was recommended that by including this property that
15 the petition might be allowed but there was some
16 question in the City Attorney's mind as to whether the
17 hundred feet in that intersection was properly closed
18 by the previous proceeding.
19 Q Now, how far did that second petition
20 go? Was it presented to planning commission?
21 A Yes, it was presented to the planning
22 commission.
23 Q And what did the planning commission
24 do?
25 A Planning commission deferred it.

1 Q Then what did you all do?
2 A As I recall it was deferred by City
3 Council and then ultimately it was withdrawn.
4 MR. PRINCE: Thank you, Mr. Katherman.
5 That's all I have to ask.
6
7 CROSS-EXAMINATION (Rec.)
8
9 BY MR. PICKRELL:
10 Q Mr. Katherman, your original examination
11 in examining the record you realized immediately there
12 was obviously a cloud on the title as to whether or
13 not Jade Street was a public street; didn't you?
14 A I recognized it as a cloud on the title,
15 yes, sir.
16 Q Now, when you brought your original
17 suit, your original rezoning in 1970, you were taking
18 the position that the intersection of Jade and Ocean
19 Avenue had already been closed.
20 A That's correct.
21 Q And at that time when the matter came
22 up for hearing by the public and it was the question of
23 and for the City Council the contention was made that
24 that area of Ocean Avenue and Jade Street hadn't been
25 closed; isn't that right? In other words, when you had your

1 first zoning the position was of the people in opposition
2 in the matter representation made to the City that the
3 closing in 1954 never closed the area of Ocean and Jade;
4 isn't that right?
5 A Yes, some people asserted that position,
6 yes.
7 Q That's right, and when you withdrew
8 in 1972 you withdrew before Council; didn't you?
9 A Yes, I did.
10 Q And at that time weren't you advised
11 by the Council to take the question to Court as to
12 whether or not Ocean and Jade had been closed and then
13 come back to them?
14 A I believe some of the Councilmen may
15 have suggested that.
16 Q That's right, but did you advise your
17 client then not to come back to Court to do that but to
18 go and start building and use self-help? Did you
19 advise him that or was that their own idea?
20 A I did not advise them not to go to
21 Court, no, sir.
22 Q But did you advise them to go out there
23 and build and use self-help so to speak?
24 A I advised them if the building permit
25 were issued properly that it would be proper for them to

1 continue with construction, yes, sir.
2 Q And you realized that if the building
3 permit was issued wrongfully it could be enjoined?
4 A I realized that there was a possibility
5 it could be enjoined, yes, sir.
6 Q And your client accepted that possibility
7 then.
8 A Yes, sir.
9 MR. PICKRELL: All right. Thank you
10 very much.
11 MR. PRINCE: Nothing else.
12 THE COURT: You searched the title and
13 records concerning this property; did you not?
14 THE WITNESS: Yes, sir.
15 THE COURT: Including this portion from
16 the southern line of Jade Street to the bay
17 on that plat?
18 THE WITNESS: Yes, sir.
19 THE COURT: Did you also review the
20 Board of Supervisors' minutes?
21 THE WITNESS: Yes, sir.
22 THE COURT: And the application opposing
23 Ocean Avenue?
24 THE WITNESS: Yes, sir.
25 THE COURT: And doesn't it specify in

1 the application certain lots?

2 THE WITNESS: It specifies, yes, sir.

3 The application as I recall was to close the

4 Ocean Avenue, that portion of Ocean Avenue

5 lying beyond block 2 and block 3.

6 THE COURT: But it does not mention the

7 street, does it?

8 THE WITNESS: No, sir, it doesn't.

9 THE COURT: And the supervisors in

10 closing referred back to the application,

11 did they not?

12 THE WITNESS: If was my recollection that

13 the resolution that stated that it would be

14 closed, the resolution would close it from

15 Cherry Place to Davis Street.

16 THE COURT: But they refer to the

17 application. See petition page 230.

18 THE WITNESS: May I see it?

19 THE COURT: Yes.

20 THE WITNESS: Yes, sir.

21 THE COURT: Is it your opinion that

22 in closing by that resolution, closing Ocean

23 Avenue, the Board of Supervisors closed more

24 than the application called for?

25 THE WITNESS: Yes, sir. It was my

[222] position that it closed the amount of the road which was stated in the resolution itself.

THE COURT: Which exceeds the portion requested in the application?

THE WITNESS: Yes, sir.

[224] MR. PRINCE: That we will vouch that this would be the testimony of M. D. Riley in substance as we have paraphrased it.

I live at 3201 Page Avenue and have lived there approximately fifteen years. I am familiar with the property in controversy as I live directly in front of said property. To the question during my residence in the area have I ever seen people use the Jade Street property as access to the beach, the property is overgrown with honeysuckle and so forth and is for all practical purposes impassable. I live at my present address. I lived at my present address for five years before I was aware that the property in question was a paper street. The property has never been paved or maintained in any way by either Princess Anne County or the City of Virginia Beach. The paths to which Mrs. Caton and others have referred were located

21 primarily on the adjacent property. My son,
22 M. D., worked for Mr. Fanney for several weeks
23 during one summer. That's just to --

STATE OF VIRGINIA
City of Norfolk, to-wit:

I. B.M. Mills, a Notar
State of Virginia whose commiss
certify that W.M. Jones and Wm.
and Secretary respectively, of
writing, entitled "Plat of Lynnha
have acknowledged the same be

Given under my ha

This is to certify that the tract of land now named and designated as Lynn haven Shores situate in Princess Anne County, Va. as shown on this plat and owned by Lynnhaven Shores Inc, has been only partly subdivided into lots, blocks, streets and ways, as shown described and set forth on said plat with the free consent and in accordance with the desire of the undersigned said owner and proprietor. But the fee in all the streets avenues alleys and ways shown on said plat is hereby expressly reserved by said owner unto itself with the right to use or permit the use of same for erecting and maintaining railroad tracks, telegraph, telephone, gas, water, and electric works, pipes, poles, wires, conduits, fixtures and systems and for such other purposes as said owner may deem proper.

IN TESTIMONY WHEREOF, the said Lynnhaven Shores, Inc. has caused this certificate to be executed in its name by W.M. Jones its President, and its corporate seal to be hereto affixed and attested by Wm. T. Shannonhouse, its Secretary.

LYNNHAVEN SHORES, INC.
BY W.M. Jones President.

Attest: Wm. T. Shannonhouse
Secretary

designated LYNNHAVEN SHORES
of said tract of land is hereby

Virginia:
In the Clerk's Office
Circuit Court of the
1926. This plat was
recorded in D.B. 14
Tes

W. H. Taylor
DIRECTOR OF PUBLIC WORKS
(CITY ENGINEER) CITY OF NORFOLK, VA.

164

Note:
This plat made and Lot 6A inserted to correct mathematical error in computing the original Block 3

CORRECTED PLAT
of
BLOCK 3
LYNNHAVEN SHORES
PRINCESS ANNE CO. VA.

Scale: 1" = 100'
Nov 6, 1951

S.W. Armistead C.E.
Norfolk, Virginia

Bal
Fol
297

6

Motion by Mr. Deary and seconded by Mr. Herrick to refrain from rescinding the action of the Board at the regular meeting in September on vacating the Plat described as "Park", of the Syer-Robbins Corporation.

All voting yes:

Motion by Mr. Deary and seconded by Mr. Whitehurst to abandon Ocean Avenue, between Cherry Boulevard and Davis Street Extended, North of Lynnhaven Inlet, as shown on the plat of Lynnhaven Shores. (See petition on page 230).

All voting yes:

Motion by Mr. Deary and seconded by Mr. Herrick to send V. Alfred Etheridge as Representative to the Board, to the Highway Conference in Lexington, Virginia, and to pay such expenses for such a trip.

All voting yes:

PLTF. DEFD. EXHIBIT 3

Ocean Island Inc. v. City.

DATE 4/4/74

Certified to be a true excerpt of the Minutes of the Board of Supervisors September 27, 1954.

Richard J. Webbon, City Clerk

CAPE HENRY SYNDICATE
TO B & S
HERMAN O. SPENCER, ET UX Tax $.15 984

THIS DEED, made this 14th day of January, 1955, by and between the CAPE HENRY SYNDICATE, a corporation, party of the first part, and Herman O. Spencer and Louise O. Spencer, husband and wife, of the City of Norfolk, Virginia, parties of the second part:

WHEREAS, the Cape Henry Syndicate, a corporation, by its deed dated September 4, 1952, and duly recorded in the Clerk's Office of the Circuit Court of Princess Anne County, Virginia, in Deed Book 308, at page 441, did convey unto the said Herman O. Spencer and Louise O. Spencer, husband and wife, parties of the second part, certain property located in Lynnhaven Magisterial District, Princess Anne County, Virginia, being known as Lot No. One (1), in Block No. Three (3), on the plat of Lynnhaven Shores, duly recorded in the aforesaid Clerk's Office in Map Book 7, at page 167, said lot taken as a whole front 54.13 feet, more or less, on the southern side of Ocean Avenue, as shown on said plat, and

WHEREAS, the Board of Supervisors of Princess Anne County have, by a resolution duly adopted at a regular meeting of said board of Supervisors on the 27th day of September, 1954, closed said Ocean Avenue from the west side of Cherry Place to the eastern line of Davis Street, as shown on said plat above referred to; and

WHEREAS, the said Cape Henry Syndicate has, by a resolution of its Board of Directors at a meeting of said Board on the 14th day of December, in the year 1954, has agreed to sell all of its right, title and interest to the portion of land lying north of Ocean Avenue and extending northwardly to the low-water mark of Chesapeake Bay.

NOW, THEREFORE, THIS DEED WITNESSETH, that in consideration of the sum of One Hundred ($100.00) Dollars cash in hand paid, the receipt of which is hereby acknowledged, the Cape Henry Syndicate does grant and convey, with special warranty, unto the said Herman O. Spencer and Louise O. Spencer, husband and wife, all of its right, title and interest in that property north of said lot One (1), in Block Three (3), owned by Herman O. Spencer and Louise O. Spencer, husband and wife, and lying between the easternline of Lot 1, lying between the western line of lot 2 and eastern line of Jordan Street, extended out to low-water mark of Chesapeake Bay.

IN WITNESS WHEREOF, the said Cape Henry Syndicate has caused these presents to be signed in its name by its President and it corporate seal to be hereunto affixed and attested by its Secretary.

CAPE HENRY SYNDICATE

By /s/ J. T. Moreland
President

Attest: /s/ Isabelle R. Grinnan
Secretary

STATE OF VIRGINIA,

City of Norfolk, to-wit:

I, Mary L. Butler, a Notary Public in and for the City and State aforesaid, whose commission expires 7-19-55, do hereby certify that J. T. Moreland and Isabelle R. Grinnan, President and Secretary, respectively, of the Cape Henry Syndicate, whose names as such are signed to the foregoing writing bearing date on the 8th day of January, 1955, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 20th day of January, 1955.

/s/ Mary L. Butler
Notary Public

VIRGINIA:

In the Clerk's Office of the Circuit Court of Princess Anne County, on the 25 day of Jan., 1955, at 10:17 P.M. [sic], this Deed was received and upon the certificate of acknowledgment thereto annexed, admitted to record.

TESTE: JOHN V. FENTRESS,
Clerk

By /s/ Mary E. Cooper, D.C.

CAPE HENRY SYNDICATE BOOK 611 PAGE 443
TO (B. & S.
JOHN A. STOWELL, ET UX TAX $.30 10094

THIS DEED, made this 10th day of October, 1955, by and between the CAPE HENRY SYNDICATE, a corporation, party of the first part, and JOHN A. STOWELL and DORIS CULPEPPER STOWELL, husband and wife, of Princess Anne County, Virginia, parties of the second part;

WHEREAS, the Cape Henry Syndicate, a corporation, by its deed dated the 13th day of October, 1954, and duly recorded in the Clerk's Office of the Circuit Court of Princess Anne County, Virginia, in Deed Book 419 at page 241, did convey unto the said John A. Stowell and Doris Culpepper Stowell, husband and wife, parties of the second part, certain property located in Lynnhaven Magisterial District, Princess Anne County, Virginia, being known as Lots Twenty-two (22) and Twenty-three (23) in Block Two (2) as shown on the Corrected Plat of Block Two (2), Lynnhaven Shores, Princess Anne County, Virginia, duly recorded in the aforesaid Clerk's Office; said lots taken as a whole front 109.07 feet, more or less, on the Southern side of Ocean Avenue as shown on said plat; and

For Correction See Deed Book 625-Page 418

WHEREAS, the Board of Supervisors of Princess Anne County, Virginia, have, by a resolution duly adopted at a regular meeting of said Board of Supervisors on the 27th day of September, 1954, closed said Ocean Avenue from the west side of Cherry Place to the eastern line of Davis Street, as shown on said plat above referred to, and

WHEREAS, the said Cape Henry Syndicate has, by a resolution of its Board of Directors at a meeting of said Board on the 14th day of December in the year 1954, agreed to sell all of its right, title and interest to the portion of land lying North of Ocean Avenue and extending Northwardly to the low-water mark of Chesapeake Bay.

NOW, THEREFORE, THIS DEED WITNESSETH, that in consideration of the sum of Two Hundred Dollars ($200.00) cash in hand paid, the receipt of which is hereby acknowledged, the Cape Henry Syndicate does grant and convey, with special warranty, unto the said John A. Stowell and Doris Culpepper Stowell, husband and wife, all of its right, title and interest in that portion of Ocean Avenue as lies North of Lots Twenty-two (22) and Twenty-three (23) in Block Two (2) between the Eastern line of Lot Twenty-one (21) and the Western line of Jordan Street, extending out to the low-water mark of Chesapeake Bay.

IN WITNESS WHEREOF, the said Cape Henry Syndicate has caused these presents to be signed in its name by its President and its corporate seal to be hereunto affixed and attested by its Secretary.

CAPE HENRY SYNDICATE

By /s/ J. T. Moreland
President

Attest: /s/ Isabelle R. Grinnan
Secretary

STATE OF VIRGINIA,

City of Norfolk, to-wit:

I, Mary L. Butler, a Notary Public in and for the City and State aforesaid, whose commission expires July 17, 1959, do hereby certify that J. T. Moreland and Isabelle R. Grinnan, President and Secretary, respectively, of the Cape Henry Syndicate, whose name as such are signed to the foregoing writing bearing date on the 10th day of October, 1955, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this 12 day of October, 1955.

/s/ Mary L. Butler
Notary Public

VIRGINIA:

In the Clerk's Office of the Circuit Court of Princess Anne County, on the 20 day of Nov., 1959 at 2:00 P.M., this Deed was received and upon the certificate of acknowledgment thereto annexed, admitted to record.

TESTE: JOHN V. FENTRESS, Clerk

By/s/ Margaret M. Hood D.C.

BOOK 625 PAGE 418

JOSEPH J. LAWLER, RECEIVER OF CAPE HENRY SYNDICATE	)	
TO	)	DEED OF CORRECTION
EUGENE W. JARVIS	)	2235

THIS DEED, Made this 18th day of March, 1960, between Joseph J. Lawler, Receiver of Cape Henry Syndicate, a Virginia corporation, party of the first part, and Eugene W. Jarvis, party of the second part.

WHEREAS, By a decree entered in the Circuit Court of Princess Anne County on the 18th day of March, 1960, in the matter of the appointment of a Receiver for Cape Henry Syndicate, Joseph J. Lawler, who was appointed Receiver in order to correct certain errors in a deed from Cape Henry Syndicate to John A. Stowell and Doris Culpepper Stowell, dated October 10, 1955, and duly recorded in the Clerk's Office of the Circuit Court of Princess Anne County, Virginia, in Deed Book 611, page 443, was directed to convey the property hereinafter set forth and described to the party of the second part.

NOW, THEREFORE, THIS DEED WITNESSETH: That in consideration of the premises, the party of the first part doth grant, with Special Warranty, unto the said party of the second part, the following property, to-wit:

All that certain piece or parcel of land, situate in the Lynnhaven Magisterial District of Princess Anne County, Virginia, bounded on the south by the northern lines

of Lots Twenty-two (22) and Twenty-three (23) in Block Two (2) on the plat of Lynnhaven Shores, recorded in the said Clerk's Office in Map Book 7, page 167; on the east by the eastern line of said Lot Twenty-three (23) in Block Two (2) on said plat of Lynnhaven Shores extended northward to the mean low water mark of Chesapeake Bay; on the west by the western line of said Lot Twenty-two (22) in Block Two (2) on said plat of Lynnhaven Shores extended northward to the mean low water mark of Chesapeake Bay; and on the north by the mean low water mark of Chesapeake Bay.

WITNESS the following signature and seal:

/s/ Joseph J. Lawler (SEAL)
Receiver of Cape Henry Syndicate.

STATE OF VIRGINIA

COUNTY OF PRINCESS ANNE, to-wit:

I, Floyd Eaton Kellam, Jr., a Notary Public for the County aforesaid in the State of Virginia, do certify that Joseph J. Lawler, Receiver of Cape Henry Syndicate, whose name is signed to the writing above, bearing date on the 18th day of March, 1960, has acknowledged the same before me in my County aforesaid.

Given under my hand this 18th day of March, 1960.

My commission expires January 25, ~~1960~~ 1963.

/s/ Floyd Eaton Kellam, Jr.
Notary Public

VIRGINIA:

In the Clerk's Office of the Circuit Court of Princess Anne County, on the 18th day of March, 1960 at 10:33 A.M., this Deed was received and upon the certificate of acknowledgment thereto annexed, admitted to record.

TESTE: JOHN V. FENTRESS, Clerk

By /s/ Mary E. Cooper D.C.

ATLANTIC
ROUTE OF
HARBOR
PLACE
CATON
ELIZABETH
C. PATERSON JR.
LORA
MC. GOODMAN

VIRGINIA: IN THE CIRCUIT COURT OF PRINCESS ANNE COUNTY
ON THE 18th DAY OF MARCH, 1960

#5814

In the matter of the appointment of a Receiver
for Cape Henry Syndicate, a Virginia corporation.

This matter came on this day to be heard upon the matters set forth in the petition of Eugene W. Jarvis, filed herein on February 23, 1960, and upon evidence taken in open court, and was argued by counsel.

It appearing to the Court that Cape Henry Syndicate, a corporation organized and existing under the laws of the State of Virginia, was voluntarily dissolved and its charter surrendered on September 14, 1959; that by deed dated October 10, 1955, and duly recorded in the Clerk's Office of the Circuit Court of Princess Anne County, Virginia, in Deed Book 611, page 443, said corporation attempted to convey to John A. Stowell and Doris Culpepper Stowell a parcel of land situate in the Lynnhaven Magisterial District of Princess Anne County, Virginia, bounded on the south by the northern lines of Lots Twenty-two (22) and Twenty-three (23) in Block Two (2) on the plat of Lynnhaven Shores, recorded in the said Clerk's Office in Map Book 7, page 167; on the east by the eastern line of said Lot Twenty-three (23) in Block Two (2) on said plat of Lynnhaven Shores extended northward to the mean low water mark of Chesapeake Bay; on the west by the western line of said Lot Twenty-two (22) in Block Two (2) on said plat of Lynnhaven Shores extended northward to the mean low water mark of Chesapeake Bay; and on the north by the mean low water mark of Chesapeake Bay; that it is obvious from the recitals of said deed that Cape Henry Syndicate intended to convey all of said property, but probably in fact only actually conveyed the portion which lay between the boundaries of a street known as Ocean Avenue, and said corporation still has legal title to or an interest in the part

of the property above set forth and described lying north of Ocean Avenue; that by deed dated January 22, 1960, the Stowells conveyed the property set forth and described above to Eugene W. Jarvis; and that Eugene W. Jarvis is entitled to a conveyance from Cape Henry

PLTF. DEFD. EXHIBIT 8
Ocean Island Inn v City
DATE 4/4/74

Syndicate of the property above set forth and described by a deed of correction giving an accurate description of the same; and that on the 20th day of November, 1959, Joseph J. Lawler was appointed as Receiver for Cape Henry Syndicate for the purpose of conveying the fee in certain streets; and it further appearing that notice of this hearing was given to the officers, directors and stockholders of this corporation and other interested parties by publication once a week for two successive weeks in the Virginia Beach Sun-News of the copy of the order entered in this matter on February 23, 1960, and by service of a copy of said order on J. T. Moreland, President of Cape Henry Syndicate; upon consideration whereof, the Court doth adjudge, order and decree that in order to liquidate the assets and business of said corporation that Joseph J. Lawler be appointed Receiver for Cape Henry Syndicate for the purpose of executing and delivering to Eugene W. Jarvis a deed of correction conveying the property hereinafter described, with authority to execute other deeds of correction as may from time to time be required in order to correct mistakes in deeds executed and delivered by Cape Henry Syndicate, and the said Receiver is directed to execute and deliver to Eugene W. Jarvis a deed of correction conveying to him the following property, to-wit:

to wind up any remaining assets of the said Corporation as directed by the further order of this Court

All that certain piece or parcel of land, situate in the Lynnhaven Magisterial District of Princess Anne County, Virginia, bounded on the south by the northern lines of Lots Twenty-two (22) and Twenty-three (23) in Block Two (2) on the plat of Lynnhaven Shores, recorded in the said Clerk's Office in Map Book 7, page 167; on the east by the eastern line of said Lot Twenty-three (23) in Block Two (2) on said plat of Lynnhaven Shores extended northward to the mean low water mark of Chesapeake Bay; on the west by the western line of said Lot Twenty-two (22) in Block Two (2) on said plat of Lynnhaven Shores extended northward to the mean low water mark of Chesapeake Bay; and on the north by the mean low water mark of Chesapeake Bay.

Said Receiver before proceeding to act under this decree is directed to execute before the Clerk of the Court a bond in the penalty of One Hundred Dollars ($100.00), with Robert C. Barclay, III, as surety, conditioned upon the faithful performance of his duties under this decree and any future decrees which may be entered in this matter.

It is ordered that the filed in the matter of the appointment of Joseph S. Rowlen, as Receiver of said corporation on Nov. 20, 1959 be consolidated with this case.

Entr 3/18/60
VHN

A Copy Teste: John V. Fentress, Clerk
By Sandra Hargrove D. C.

City of Virginia Beach

DEPARTMENT OF COMMUNITY SERVICES
INSPECTION SERVICES DIVISION

MUNICIPAL CENTER
VIRGINIA BEACH, VIRGINIA 23456

June 22, 1972

Shipview Point Motel
c/o Residential Commercial Mortagage
6219 Virginia Beach Blvd.
Norfolk, Virginia
Attention: Mr. Ben Fanney

Re: Permit # D-2192
3174 Page Avenue
Virginia Beach, Va.

Dear Mr. Fanney:

This is written notice that the storage shed, as noted above on Permit # D-2192, and the wooden fence that are currently located on Jade Avenue in Lynnhaven Shores Subdivision of the City of Virginia Beach are in violation of the City Zoning Ordinance since they are located on a dedicated street right-of-way.

These structures in violation shall be removed within (30) thirty days of your receipt of this letter. Failure for you to correct the violations will result in legal action as provided by code.

If there are any questions regarding the above, please call.

Very truly yours,

Edward M. Williams
Building Codes Superintendent

EMW/ljm

cc: Inspections Engineer
City Attorney

PLTF. DEFD. EXHIBIT 9
Ocean Island Inc v City
DATE 4/4/74

City of Virginia Beach

DEPARTMENT OF COMMUNITY SERVICES
INSPECTION SERVICES DIVISION

MUNICIPAL CENTER
VIRGINIA BEACH, VIRGINIA 23456

August 23, 1972

Shipview Point Motel
c/o Residential Commercial Mortgage
Attention: Mr. Fanney
6219 Virginia Beach Boulevard
Norfolk, Virginia

Re: Permit D 2192 and letters of June 22 and July 19,1972

Dear Mr. Fanney:

Inspections of the property referred to in the letters noted above indicates that there has been no corrections of the violation as required. My letters of June 22, 1972, and July 19, 1972, required that correction of the violations be made within thirty (30) days of the date of each letter. The time period as allowed has since expired with no apparent effort to correct the noted violations.

In view of the above this is written notice that the violation shall be corrected within ten (10) days of your receipt of this letter, or the structures will be removed by City forces at the owner's expense.

If there are any questions, please call.

Very truly yours,

Edward M. Williams

Edward M. Williams
Building Codes Superintendent

EMW/mc
cc: George Hanbury
Dale Bimson
Robert Loher

PLTF. DEFD. EXHIBIT 10
Ocean Island Inc v City
DATE 4/4/74

City of Virginia Beach

DEPARTMENT OF COMMUNITY SERVICES
INSPECTION SERVICES DIVISION

MUNICIPAL CENTER
VIRGINIA BEACH, VIRGINIA 23456

September 25, 1972

Williams, Worrell, Kelly & Worthington
1700 Virginia National Bank Building
P.O. Box 3416
Norfolk, Virginia 23514

Attention: Mr. William T. Prince

Re: Permit D 2192 and letter of August 23, 1972

Dear Mr. Prince:

Inspection of the property referred to in the letter noted above indicates that there has been no correction of the violation as required. My letter of August 23, 1972, was received by Shipview Point Motel Corporation on August 28, 1972, and the time allowed for correction expired on September 8, 1972.

This is written notice that on the 2nd of October or as soon thereafter as possible the City of Virginia Beach will remove the violation as noted above at the owner's expense.

If there are any questions concerning the above, please call.

Very truly yours,

Edward M. Williams

Edward M. Williams
Building Codes Superintendent

EMW/mc
cc: George Hanbury, Assistant City Manager
Dale Bimson, City Attorney
Robert Loher, Inspections Engineer

PLTF DEFD EXHIBIT 11
Dean Blandford v City
DATE 4/4/74

PHYSICAL SURVEY

JADE STREET

BETWEEN SHORE DRIVE AND CLOSED PORTION OF OCEAN AVE.

AS SHOWN ON THE PLAT OF LYNNHAVEN SHORES

RECORDED IN MB 5, PG 147, IN THE CLERK'S OFFICE OF THE CIRCUIT COURT, VIRGINIA BEACH, VA.

LYNNHAVEN BOROUGH — VIRGINIA BEACH, VIRGINIA

FOR

OCEAN ISLAND INN, INC.

SCALE: 1" = 20' DEC. 27TH, 1973

WILFRED P. LADGE AND ASSOCIATES
SURVEYORS AND ENGINEERS
NORFOLK, VIRGINIA

PLAT BOOK 14 PAGE 1 City
DATE 4/4/74

CR 5-24, Pg. 11
CR 25-1, Pg. 39,40
CR 15-1, Pg. 68

183 PS-9772

THIS IS TO CERTIFY THAT I, ON APRIL 21, 1970, SURVEYED THE PROPERTY SHOWN ON THIS PLAT, AND THAT THE TITLE LINES AND THE WALLS OF THE BUILDINGS ARE SHOWN ON THIS PLAT.
THE BUILDINGS STAND STRICTLY WITHIN THE TITLE LINES AND THERE ARE NO ENCROACHMENTS OF OTHER BUILDINGS ON THE PROPERTY, EXCEPT AS SHOWN.

SIGNED: Wilfred P. Large

PHYSICAL SURVEY

OF

LOTS 1,2,3,4,5,6 & 6A, BLK 3 - CORRECTED PLAT OF BLK. - 3

LYNNHAVEN SHORES

...ED IN M.B. 29 AT PG. 32 CLERK'S OFFICE OF THE CIRCUIT COURT VA BEACH, VA.
...THAT PORTION OF OCEAN AVE. AS LIES NORTH OF LOTS 1,2,3,4,5,6 & ...
...WEEN THE EASTERN LINE OF LOT 6A IN BLK 3 AND THE WESTERN LINE ...
...1 IN BLK 3 EXTENDING OUT TO MEAN LOW WATER MARK OF CHESAPEAKE ...
...SHOWN ON CORRECTED PLAT OF BLK 3 LYNNHAVEN - SHORES ...
...O IN M.B. 29 AT PG. 32 CLERK'S OFFICE OF THE CIRCUIT COURT VA BEACH, VA.
...PARCEL OF LAND ALSO SHOWN ON A PLAT ENTITLED PLAT OF ...
...TIAN PROPERTY ADJOINING SAID LOTS AS ARE INDICATED BY ...
...E OF OWNERSHIP IN BLOCKS 2 & 3 OF PLAT OF

LYNNHAVEN SHORES

IN M.B. 7 AT PG. 167 CLERK'S OFFICE OF THE CIRCUIT COURT OF VA BEACH, VA.

AND

ALL OF LOTS 5 & 16; PART LOTS 4 & 15 - BLOCK 6; PLAT

OF

LYNNHAVEN SHORES

IN M.B. 7 AT PG. 167, CLERK'S OFFICE OF THE CIRCUIT COURT OF VA. BEACH, VA.

VIRGINIA BEACH, VIRGINIA

FOR

SHIPVIEW POINT, INC.

SCALE: 1" = 40 APRIL 21, 1970, Rev. June 11, 1970 Rev. 11-17-71.

WILFRED P. LARGE
CERTIFIED LAND SURVEYOR
NORFOLK, VIRGINIA

FLT. DEPTH FOLIOS 14A
Ocean Island Inc. / City
DATE 4/4/74

184 P.S. 6735

D 2192

PERMIT TO BUILD

CITY OF VIRGINIA BEACH, VIRGINIA

Date 10/6 1971

This Permit is granted only for the work shown on plans and application forms filed for this job.

TO ERECT, ALTER, ADD TO, MOVE, REPLACE DAMAGES, OR DEMOLISH A BUILDING OR STRUCTURE

Read carefully and write plainly or print all necessary information. Permit may be issued only when sufficient information is given to show that the proposed work will comply with all Building and Zoning Laws. Consult this office for additional information.

OWNER

Name Shipview Pl. Motel

Residence Same

City V.B. 23451 Phone

AFTER COMPLETION OF WORK BUILDING WILL BE:

FOR SALE ____, FOR RENT ____, OCCUPIED BY OWNER ✓

FOR USE AS A Storage Shed For Motel

PERMIT TO BE ISSUED TO

Builder Same

ADDRESS

CITY TEL. No.

Total value of buildings will be $ 2500.00

Model

Electrical Plumbing

Size of Lot Width Depth

Property Zoned RD-2 T-2

Setback 30' from front property line

6' Side Yard

15' Side corner lot

10' Rear yard

Approved

Building Inspector

Application for Variance

Section

Date Filed

Granted Denied

Chairman Board of Zoning Appeals.

Building Plans Approved Denied

Building Inspector

Building Fee $30.00 Building Size x

Septic Fee Total Square Feet 924 sq ft

Sewer & Water Fee

Penalties

Total Fees $30.00 Receipt No. C-46827

Initial

DESCRIPTION AND LOCATION OF LOT

House No. 3174 Pine Ave. Street

Lot No. Lot of Block 57 Sec.

Subdivision Lynnhaven Shores

Borough Lynn.

TYPE OF WORK TO BE DONE — (Check one or more)

New, Alteration, ✓ Addition, Repair, Move, Demolish

DESCRIPTION OF BUILDING

No. of Floors 1, No of Rooms ____, No. of Bedrooms ____

PLUMBING FACILITIES

No. of 3 pc. Baths ____ No. of Kitchen Sinks ____

No. of 2 pc. Baths ____ No. of Other Fixtures ____

Sewer Connection ____ or Septic Tank ____

Water Supply ____ Total No. Fixtures ____

TYPE CONST.	HEATING	ROOF
Wood Frame	Hot Air	Gable
Block	Hot Water	Hip
Brick Veneer	Electric	Flat
Other	Air Cond.	
FOUNDATIONS	**FLOORS**	**ROOFING**
Concrete	Wood	Composition
Block	Concrete	Asbestos
	Tile	Build-up
PRIVATE GARAGE	**PORCHES**	**SASH**
No. Cars		Wood
		Steel
		Aluminum

REMARKS:

I hereby certify that I have the authority to make the foregoing application, that the application is correct, and that the construction will conform to the regulations in the Building Code, Zoning Ordinance, other City Ordinances, or private Building restrictions, if any, which may be imposed on the property by deed.

CERTIFICATE OF USE AND OCCUPANCY is required under Section 16-3 (b) in The Code of the City of Virginia Beach, Va.

(Signature of owner or authorized agent.)

TELEPHONE NO.

(Use Reverse Side For Additional Information)

Oct 61
D 2192
46127

NOTICE!

STOP WORK ORDER

Further Work on this Building is ordered STOPPED until Regulations are COMPLIED with and Permission to Resume Work Obtained.

Persons NOT Complying with this Order Subject to ARREST and PROSECUTION.

E. M. Williams

Reason for Order Bldg being constructed on R/W of Jade Ave - no bldg permit.

THIS CARD MUST NOT BE REMOVED BY ANY PERSON OTHER THAN THE INSPECTOR

FORM B-10 GATLING BUSINESS FORMS CO., INC., NORFOLK, VA.

PLTF. DEFD. EXHIBIT 161

Alexander Leland Jr. v City

DATE 4/4/74

Govt.

187

YDER

THIS IS TO CERTIFY THAT I, ON _____ SURVEYED THE PROPERTY SHOWN ON THIS PLAT, AND THAT THE TITLE LINES AND THE WALLS OF THE BUILDINGS ARE SHOWN ON THIS PLAT.

THE BUILDINGS STAND STRICTLY WITHIN THE TITLE LINES AND THERE ARE NO ENCROACHMENTS OF OTHER BUILDINGS ON THE PROPERTY, EXCEPT AS SHOWN.

SIGNED

PLAT

OF

THAT CERTAIN CLOSED PORTION OF OCEAN AVE. LYING NORTH OF AND ADJACENT TO THE NORTHERN TERMINUS OF JADE ST.; AND THAT PORTION OF PROPERTY THAT LIES NORTH OF OCEAN AVE. TO THE MEAN LOW WATER MARK OF CHESAPEAKE BAY. ALSO THAT CERTAIN UNIMPROVED PORTION OF JADE STREET THAT LIES NORTH OF PAGE AVE. TO THE CLOSED PORTION OF OCEAN AVE. AS SHOWN ON PLAT OF THE CORRECTED PLAT OF BLOCK-B, LYNNHAVEN SHORES, RECORDED IN P.B. 29 AT Pg. 32 IN THE CLERK'S OFFICE OF THE CIRCUIT COURT VA. BEACH, VIRGINIA.

VIRGINIA BEACH, VIRGINIA

FOR

OCEAN ISLAND INN, INC.

SCALE: 1" = 100' — WILFRED P. LARGE — NOV. 10TH, 1970.
REV. NOV. 19TH, 1970.
REV. JAN. 5TH, 1971.

Certified Land Surveyor
Norfolk, Virginia

L-318
L-204
R-118
P.B. 6735 8412

F.B. 147 P. 25

P-7064

201

August 30, 1954.

Motion by Mr. Deary and seconded by Mr. Whitehurst, that the following petition be filed:

PETITION FOR CLOSING AND ABANDONING ROAD

TO THE HONORABLE BOARD OF SUPERVISORS OF PRINCESS ANNE COUNTY, VIRGINIA.

Your petitioner, Ernie R. Ayers, who lives at Route 1, London Bridge, Virgin and who owns property on Ocean Avenue, on the plat of Lynnhaven Shores, petitions the Board of County Supervisors of Princess Anne County pursuant to Section 33-76.16 of the Code of Virginia (1950) to close and abandon Ocean Avenue in front of Block 2 and Lots One (1) through twelve (12) inclusive in Block Three (3).

Your petitioner, in order to inform the Board of County Supervisors presents the following facts, to-wit:

1. The section of road shown on the plat has never been improved or paved.
2. The section of the road is not being used by the public as a road,
3. No public necessity exists for this section to be used as a public road.

It is requested that the Board of County Supervisors proceed to have such section of this road abandoned as provided in Section 33-76.15, etseq. of the Code of Virginia (1950).

Respectfully submitted,

Ernie R. Ayers.

All voting yes:

Motion by Mr. Deary and seconded by Mr. Whitehurst, that the following petition be filed:

PETITION FOR CLOSING AND ABANDONING ROAD.

TO THE HONORABLE BOARD OF SUPERVISORS OF PRINCESS ANNE COUNTY, VIRGINIA:

Your petitioner, LUCY F. TRAFTON, who lives at 401 53rd Street, Princess Anne County, (Virginia Beach Post Office) Virginia, petitions the Board of County Supervisors of Princess Anne County pursuant to Section 33-76.16 of the Code of Virginia (1950) to close and abandon Holly Boulevard between 53rd and 54th Streets, Lynnhaven District, Princess Anne County, Virginia. A plat description of the section to be abandoned is attached to this petition.

Your petitioner, in order to inform the Board of County Supervisors presents the following facts, to-wit:

1. The section of road shown on the plat has never been improved or paved.
2. The section of road is not being used by the public.
3. No public necessity exists for this section to be used as a public road.

It is requested that the Board of County Supervisors proceed to have such section ot this road abandoned as provided in Section 33-76.15 etseq. of the Code of Virginia (1950).

Respectfully submitted,

Lucy F. Trafton.
Lucy F. Trafton

All voting yes:

Certified to be a true excerpt of the Minutes of the Board of Supervisors of the County of Princess Anne, Virginia, approved August 30, 1954.

Richard J. Webbon 3/8/72
Richard J. Webbon, City Clerk

PLTF. DEED EXHIBIT 2.
Ocean Island Inn v City
DATE 4/4/74

VIRGINIA:

The regular meeting of the Board of Supervisors of Princess Anne County, was held in the Supervisor's Room, of the Clerk's Office, on Monday, September 27th, 1954, at ten o'clock A. M.

Present: Messrs. S. Paul Brown, Chairman, Floyd T. Deary, E. I. Herrick, Kenneth N. Whitehurst and J. Louis Parsons.

Also Present: Messrs. P. W. Ackiss, Commonwealth's Attorney, D. J. Vaughan, Treasurer, Ivan D. Mapp, Commissioner of Revenue, and C. Roger Malbon, Sheriff.

Motion by Mr. Deary and seconded by Mr. Whitehurst to abandon a section of Holly Boulevard, described as follows:

Beginning at a point on 53rd Street (North Virginia Beach), which point is a distance of 123.79 feet West from the intersection of Holly Boulevard and 53rd Street; thence in a Northerly direction along the eastern side of Holly Boulevard, a distance of 145.6 feet to a point; thence in a Westerly direction across Holly Boulevard, a distance of 60 feet, to a point in the dividing line between Sites A and B, and also in the western boundary line of Holly Boulevard; thence southward along the western boundary line of Holly Boulevard 145.6 feet to the northern boundary line of 53rd Street; thence in an easterly direction along the northern boundary line of 53rd Street, a distance of 60 feet, to the point of beginning.

(For correction of dimensions See Page 288.)

All voting yes:

Motion by Mr. Deary and seconded by Mr. Herrick to refrain from rescinding the action of the Board at the regular meeting in September on vacating the Plat described as "Park", of the Syer-Robbins Corporation.

All voting yes:

Motion by Mr. Deary and seconded by Mr. Whitehurst to abandon Ocean Avenue, between Cherry Boulevard and Davis Street Extended, North of Lynnhaven Inlet, as shown on the plat of Lynnhaven Shores. (See petition on page 230).

All voting yes:

Motion by Mr. Deary and seconded by Mr. Herrick to send W. Alfred Etheridge as Representative to the Board, to the Highway Conference in Lexington, Virginia, and to pay such expenses for such a trip.

All voting yes:

Certified to be a true excerpt of the Minutes of the Board of Supervisors of the County of Princess Anne, Virginia, approved September 27, 1954.

Richard J. Webbon 3/8/72

Richard J. Webbon, City Clerk

= IMPROVED STREETS
= WATER LINE
= SEWER FORCE MAIN
CHESAPEAKE
OCEAN
FAGE
AVE.
100' wide
BEACH
PARK CO.
LYNNHAVEN
AVE
HOLLY
JETTY
STATE OF V
City of Norfo
State of Virgin
certify that W.
and Secretary
writing, entitle
have acknowleg
EXHIBIT 3
4/4/74

E S A P E A K E
= GAS
= ELECTRIC
= C & P
OCEAN
PARADE
AVE.
100' wide
Proposed
Cul de sac
JOHN
CHERRY PL.
ATLANTIC
JETTY ST.
HOLLY
AVE.
10TH ST.
9TH ST.
LYNNHAVEN
AND
BEACH
PARK CO.
KLEEN
ST.
STATE OF
City of Norfo
State of Virgin
certify that W
and Secretary
writing, entitle
have acknowleg
PLTF.
Ocean Island Inv Corp
DATE 4/4/24
205

On motion by Vice Mayor Ervin, seconded by Councilman Gardner, and by recorded vote as follows:

Ayes: Councilmen John A. Baum, Robert H. Callis, Jr., Mayor Robert B. Cromwell, Jr., Vice Mayor F. Reid Ervin, George R. Ferrell, Charles W. Gardner, Clarence A. Holland, Garland L. Isdell, D. Murray Malbon, J. Curtis Payne, and Floyd E. Waterfield, Jr.

Nays: None

Absent: None

City Council adopted the following resolution pertaining to streets:

A meeting of the Council of the City of Virginia Beach, Virginia was held in the Council Chambers on the 25th day of March, 1974.

On motion by Mr. Ervin and seconded by Mr. Gardner the following resolution was adopted.

RESOLUTION

WHEREAS, certain subdivision plats have been put to record in the former County of Princess Anne, Virginia and former second class City of Virginia Beach dedicating or offered for dedication for public use certain streets, alleys and public ways as indicated on such subdivision plats; and

WHEREAS, the City of Virginia Beach, pursuant to Section 2.02 of the Charter of the City of Virginia Beach, may exercise all powers possessed by constituent former political subdivisions.

WHEREAS, it is the desire and intention of the Council of the City of Virginia Beach, Virginia to accept for public use all those certain streets, alleys and public ways that have been put to record in the Clerk's office of the City of Virginia Beach, Virginia (formerly Princess Anne County, Virginia.)

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF VIRGINIA BEACH, VIRGINIA.

1. That all streets, alleys and public ways dedicated to public

use as indicated on certain subdivision plats recorded in the Clerk's office of the City of Virginia Beach, Virginia (formerly Princess Anne County, Virginia) not heretofore accepted by formal action of the two former political subdivisions or the City of Virginia Beach or by acts of acceptance such as improvement and repair by public authorities or by inference from general use of the public are hereby formally accepted for public use.

Certified to be a true excerpt from the Minutes of the City Council of the City of Virginia Beach, Virginia, adopted March 25, 1974

Diane M. Davis

Diane M. Davis, Deputy City Clerk

PLTF. DEFT. EXHIBIT 5

Ocean Island Inc v City

DATE 4/4/74

WE, the undersigned property owners on the south side of Paige Avenue, Lynnhaven Beach, strenuously object to the proposed sale or closing of Jordan Avenue, which said street runs to the beach. This objection is made for the reason that the property owners located on the north side of Paige Avenue fronting the beach area now own to the low water mark of their said properties. If said Jordan Avenue is allowed to be closed or sold to an individual or adjacent property owner it would prohibit the people owning property on the south side of said Paige Avenue from having access to the beach. Since this street is the only access which is now available to the property owners on the south side of Paige Avenue, it is earnestly requested that due consideration be granted this request. It would place the South side property owners in the position of being trespassers on the north side property owners lands.

by Councilman Ervin, seconded by Councilman Dusch, and by recorded
te as follows:

es: Councilmen Robert H. Callis, Jr., Robert B. Cromwell, Jr., Frank A.
sch, F. Reid Ervin, George R. Ferrell, Clarence A. Holland, D. Murray
lbon, J. Curtis Payne, Vice Mayor Earl M. Tebault, Floyd E. Waterfield,
, and Mayor Donald H. Rhodes.

s: None

sent: None

ty Council approved the withdrawal of the street closure matter of Lauderdale
enue (Bayside Borough). Applicants--Mary Jane Hall and James W. Hall

ITEM #3134

motion by Councilman Ervin, seconded by Councilman Dusch, and by recorded
te as follows:

es: Councilmen Robert H. Callis, Jr., Robert B. Cromwell, Jr., Frank A.
sch, F. Reid Ervin, George R. Ferrell, Clarence A. Holland, D. Murray
lbon, J. Curtis Payne, Vice Mayor Earl M. Tebault, Floyd E. Waterfield,
, and Mayor Donald H. Rhodes.

s: None

sent: None

ty Council approved the withdrawal of the street closure matter of 29th
eet (Virginia Beach Borough). Applicants--William F. Fulford and Hazel
Fulford

ITEM #3135

following appeared on behalf of the applicant petitioning for closure of
ortion of Jade Street:

Mr. Ralph Katherman, Attorney for the applicant

following appeared in opposition to the closure of a portion of Jade Street

Mr. James Roebuck, president of Lynnhaven Inlet Civic League

Mr. Robert C. Barker, III, representing Mr. and Mrs. Jarvis, property owners on the opposite side of the subject street

Mr. E. L. Caton, property owner in the area

Mr. J. C. Bohlander, property owner in the area

motion by Councilman Ervin, seconded by Councilman Malbon, and by recorded
te as follows:

s: Councilmen Robert H. Callis, Jr., Robert B. Cromwell, Jr., Frank A.
sch, F. Reid Ervin, George R. Ferrell, Clarence A. Holland, D. Murray

Malbon, J. Curtis Payne, Vice Mayor Earl M. Tebault, Floyd E. Waterfield, Jr., and Mayor Donald H. Rhodes.

ays: None

Absent: None

City Council denied the street closure matter relative to closing a portion of Jade Street in Lynnhaven Borough.

Certified to be a true excerpt of the Minutes of the City Council of the City of Virginia Beach, Virginia approved April 26, 1971.

Richard J. Webbon, City Clerk

PLTF. DEPD. EXHIBIT 7

Ocean Lakes vs City

DATE 4/5/94