216 Va. 587
CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
MAR 28 1975
RICHMOND, VIRGINIA

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO. 750159

CITY OF NEWPORT NEWS, and HARRY E. ATKINSON, O. J. BRITTINGHAM, JR., W. F. HASKINS, JR., MARY SHERWOOD HOLT, A. H. FITZGERALD, JESSIE M. RATTLEY and WILLIAM F. PEACH, All as Members of City Council,

Appellants

versus

DAVID HERTZLER, FAITH HERTZLER, PATRICIA M. SHENK, LESTER SHENK, JR., EARL C. STANFILL, MARY RUTH STANFILL, R. R. CARPER, EVA W. CARPER, RUTH LANTZ, LILLIAN MILLER, ZANE K. PUCKETT, CAROL M. PUCKETT, TERESA E. OBERLE, VERNON S. BRIGGS, RUTH H. BRIGGS, CHARLES W. DUDLEY, MARY A. DUDLEY, B. H. KORNHAUS, JR., JACKIE R. KORNHAUS, NORMA B. MCCARTNEY, S. R. MCCARTNEY, JEAN S. WILLIS, C. K. WILLIS, BERT L. HAMILTON, LONA P. HAMILTON, EUGENE P. HENSLEY, NINA P. HENSLEY, BOBBY L. HENSLEY, JACK D. SMITH, EMMA C. SMITH, OSCAR L. WALLACE and MARY O. WALLACE,

Appellees

JOINT APPENDIX

Lawrence Mark Spigel
First Assistant City Attorney
2400 Washington Avenue
Newport News, Virginia
23607

Counsel for Appellants

Richard Hudgins
10352 Warwick Blvd.
Newport News, Virginia
23601

Counsel for Appellees

TABLE OF CONTENTS

	Page
Complaint in Chancery	A. 1
Special Plea of Respondents, Harry E. Atkinson, et als, All as Members of City Council	A. 7
Answer and Grounds of Defense of Respondent, City of Newport News	A. 8
Answer and Grounds of Defense of Respondents, Harry E. Atkinson, et als, All as Members of City Council	A. 10
Order: Honorable Henry D. Garnett, Judge	A. 12
Written Statement of the Case	A. 14
Exhibits	A. 57b
Excerpts from Transcript - September 24, 1974	A. 58
Excerpts from Transcript - October 3, 1974	A. 82
Final Decree: Honorable Henry D. Garnett, Judge	A. 105
Notice of Appeal and Assignments of Error	A. 108

(CAPTION OMITTED)

COMPLAINT

To the Honorable Judge of the Aforesaid Court:

1. David and Faith Hertzler and the other parties mentioned above, are owners of certain real property at or near the 13 acre parcel of land owned by the City, located at the foot of Denbigh Boulevard, Newport News, Virginia.

2. That the Respondent City of Newport News is a municipal corporation and is the owner of a 13 acre parcel of land known as the Denbigh Boulevard Park, and in the fall of 1973, the City began to develop the park and installed a boat ramp at the foot of Denbigh Boulevard, immediately fronting on the narrow Warwick River, which is, at that point, approximately 200 yards in width. A boathouse existed on the property prior to the City developing the property, and it was by-and-large a swamp. The City is in the process of constructing a new road to the property and establishing a parking lot and has constructed nature trails through the swamp.

3. Since the erection of the boat ramp, and the leveling of the property for the establishment of the parking lot, the entire area has been inundated on weekends and holidays by many cars and people. The park does not have any regulation or supervision, and is in the state of incompletion. Notwithstanding, the City has seen fit to open the park, leaving it unregulated and unsupervised, and has removed no parking signs from the streets. There is absolutely no regulation of speeds on the river used by the great influx of boats created by the boat ramp, causing massive wakes and erosion of the shore.

4. Without any supervision or sanitary facilities, the

grounds of the park are used for defecation, urination, and the disposal of all types of debris. There are no trash cans or any place for the disposal of waste materials. The condition mentioned creates a clear and present health danger to the park, as well as to the citizens who live immediately adjacent thereto. A stench is created and the debris blows onto adjacent areas, as well as waste material from humans and disposal of debris is deposited into the river. The width of the river does not permit massive traffic by small boats, and presents a boat-traffic problem, as well as wake damage to the shore.

5. Since there are no signs regulating parking or hours for use of the park, the park is utilized 24 hours a day, and has attracted a substantial number of nocturnal parties, necessitating the police being called on numerous occasions during the past three months. The drunks leave a mess and present a constant security problem for the immediate residents. The City has failed, on numerous occasions, to clean up the mess left by parties who have utilized the park, and the residents should not be put in a position where they must make constant and recurring phone calls to request police assistance. Beer cans and debris have been a constant problem.

6. The park does not contain any lights, toilet facilities, telephones, or any other type facilities that are conducive to the utilization of public facilities in a manner compatible with modern standards.

7. Persons needing the benefit of these facilities are constantly expecting the rendition of these services by the adjacent landowners, and thereby present a nuisance, the source of which is the City-maintained park.

present the clear and present danger in its unsafe condition, for children and others, and constitutes an outrageous nuisance. Children play in the swamp grass with firecrackers and matches and, in dry periods, present a fire hazard. One fire occurred in the swamp immediately after the City began developing the property.

9. That the overflow from the park of persons, debris, noise, stench, and other nuisances too numerous to enumerate, have presented a clear and present danger to the health, welfare of the adjacent landowners, and if it is permitted to continue, will further result in irreparable damages to the adjacent landowners who are especially damaged by the maintenance by the City of the nuisance. Due to the total absence of rules and regulations, the City police are without any authority to supervise the operation of the park in an orderly manner. The police take the position, through their various officers, that the supervision of the park is the responsibility of the Parks and Recreation Department of the City, who are willfully failing to perform their duties, and who are not equipped to supervise the park. That the Court should enjoin the City from operating the park until such time as the park is completed, regulations posted, and the park is properly supervised.

10. The City, by its agents, represented there would be no picnic areas in the proposed park and that a buffer zone would be established. The City has failed to abide by these promises.

11. The Complainants have suffered and are suffering irreparable damages by the operation by the City of the nuisance at the Denbigh Boulevard Park.

12. After an appropriate hearing, the Court should

and the park should be closed and barred to the public until such time as the park is in a completed state, regulations for utilization by the public are posted, proper sanitary facilities, and lights are installed, and a buffer zone created to inhibit and restrict the acts mentioned above, and the park is properly supervised and policed by the City, and the Complainants will request such other and proper relief as may be necessary within the premises and as may be required by the evidence.

Respectfully submitted,

David L. Hertzler
DAVID HERTZLER

Faith Hertzler
FAITH HERTZLER

Patricia M. Shenk

Foster Shenk Jr

Earl G. Hanfill

Mary Ruth Hanfill

R R Carper

Eva W. Carper

Ruth Lantz

Lillian McEllis

Jane K. Fralick

Carol M. Hackett

Lewis E. Hyde

Lucian L. Riggs

Ruth H. Riggs

Charles A. Dudley

Mary A. Dudley

B. H. Kornburn Jr.

Jackie R. Kornburn

Raymond B. McCartney

L. R. McCartney

Joan S. Willis

C. H. Willis

Beth L. Hamitt

Tom P. Hamitt

Eugene P. Hensley

Nina P. Hensley

Bobby L. Hensley

Jack D. Smith

Emma C. Smith

Owen L. Wallace

Mary O. Wallace

STATE OF VIRGINIA

City of Newport News, to-wit:

I, Linda L. Evert, a Notary Public in and for the jurisdiction aforesaid, whose commission expires on the 22nd day of June, 1975, and who was commissioned Notary as Linda L. Gibson, do hereby certify that David L. Hertzler and Faith Hertzler, whose names are signed to the foregoing writing, have each acknowledged the same before me in my City & State aforesaid, on the 8th day of July, 1974.

Given under my hand this 9th day of July, 1974.

Linda L. Evert
Notary Public

Filed in the Clerk's Office the 9 day of July, 1974
Writ Tax $ 5.00 Teste:
Fee 25.00 George D. DeShazor, Clerk
Lib. Fee 1.00
Total Paid $ 31.00 D. C.

NS AND NEALE
RNEYS AT LAW

A COPY.
BY

(CAPTION OMITTED)

SPECIAL PLEA

The Respondents, Harry E. Atkinson, O. J. Brittingham, William F. Haskins, Mary S. Holt, William F. Peach, Jessie M. Rattley, and Aubrey Fitzgerald, all as members of the Council of the City of Newport News, by Counsel, come and say that this Honorable Court should dismiss them as Respondents in the Complaint filed herein by the Complainants for the reason that they are not proper parties to this suit as a matter of law.

Harry E. Atkinson, et als,
all as members of the Council
of the City of Newport News,
Virginia

By Lawrence M. Spigel
Lawrence M. Spigel
Acting City Attorney

Lawrence M. Spigel
Acting City Attorney
2400 Washington Avenue
Newport News, Virginia 23607

I certify that a true copy of this pleading was mailed, ~~delivered~~ to ~~each~~ counsel of record on the 29th day of July, 1974.

Lawrence M. Spigel
of counsel

FILED

(CAPTION OMITTED)

ANSWER AND GROUNDS OF DEFENSE OF THE CITY OF NEWPORT NEWS

Now comes the Respondent, City of Newport News, by its Acting City Attorney, and files this, its Answer to the Complaint filed herein by the Complainants, and says:

1. This Respondent neither admits nor denies the allegations contained in paragraphs numbered 1, 3, 5, and 6 of the said Complaint, but calls for strict proof thereof.

2. This Respondent admits the allegations contained in paragraph numbered 2 pertaining to its ownership of said park; however, it denies that it is in the process of constructing a new road to the property, and further says that the Virginia State Highway Department is responsible for the construction of said road.

3. This Respondent denies the allegations contained in paragraphs numbered 4, 7, 8, 9, 11, and 12 of the said Complaint, and calls for strict proof thereof.

4. This Respondent admits the allegation contained in paragraph numbered 10 in that it represented that there would be no picnic areas in the proposed park and that a buffer zone would be established; however, this Respondent denies that it has failed to abide by its representations.

5. In addition, this Respondent says that it will rely upon any and all other defenses which may develop in the case and any and all defenses which may be assigned at or before trial or be justified upon the evidence upon trial, and such other defenses as may be available at bar.

WHEREFORE, having fully answered, this Respondent prays that the Complaint be dismissed and that it be allowed to recover costs herein expended.

CITY OF NEWPORT NEWS, VIRGINIA

By Lawrence M. Spigel
Lawrence M. Spigel
Acting City Attorney

Lawrence M. Spigel
Acting City Attorney
2400 Washington Avenue
Newport News, Virginia 23607

I certify that a true copy of this pleading was mailed, ~~delivered~~ to ~~each~~ counsel of record on the 29th day of July, 1974.

Lawrence M. Spigel
of counsel

(CAPTION OMITTED)

ANSWER AND GROUNDS OF DEFENSE OF HARRY E. ATKINSON, ET ALS, all as Members of the Council of the City of Newport News, Virginia

Now come the Respondents, Harry E. Atkinson, O. J. Brittingham, William F. Haskins, Mary S. Holt, William F. Peach, Jessie M. Rattley, and Aubrey Fitzgerald, all as Members of the Council of the City of Newport News, Virginia, by Counsel, and file this, their Answer to the Complaint filed herein by the Complainants, and say:

1. The Respondents neither admit nor deny the allegations contained in paragraphs numbered 1, 2, 3, 5, 6, and 10 of the said Complaint, but call for strict proof thereof.

2. The Respondents deny the allegations contained in paragraphs numbered 4, 7, 8, 9, 11, and 12 of the said Complaint, and call for strict proof thereof.

3. In addition, the Respondents say that they will rely upon any and all other defenses which may develop in the case and any and all defenses which may be assigned at or before trial or be justified upon the evidence upon trial, and such other defenses as may be available at bar.

WHEREFORE, having fully answered, the Respondents pray that the Complaint be dismissed and that they be allowed to recover costs herein expended.

HARRY E. ATKINSON,
O. J. BRITTINGHAM,
WILLIAM F. HASKINS,
MARY S. HOLT,
WILLIAM F. PEACH,
JESSIE M. RATTLEY,
AUBREY FITZGERALD, all
as Members of the Council
of the City of Newport
News, Virginia

BY Lawrence M. Spigel
Lawrence M. Spigel,
Acting City Attorney

Lawrence M. Spigel
Acting City Attorney
2400 Washington Avenue
Newport News, Virginia 23607

I certify that a true copy of this pleading was mailed, ~~delivered~~ to each counsel of record on the 8th day of August, 1974.

Lawrence M. Spigel
of counsel

A COPY. TESTE: GEORGE D. DeSHAZOR, Clerk
BY Adele Burgess D. C.

(CAPTION OMITTED)

ORDER

This matter came on to be considered upon the Petition of David L. Hertzler, et als, and the Notice of Hearing requesting the entry of a Temporary Restraining Order based upon the allegations contained in the Complaint filed herein, and was heard on July 10, 1974, at which time the Court deferred action and indicated that a hearing would be held on August 1, 1974, in the form of a show cause why the Denbigh Boulevard Park operated by the City of Newport News should not be closed, and also upon the Answer and Grounds of Defense of the City of Newport News, and the Special Plea of Harry E. Atkinson, et als, all as Members of City Council, requesting that they be dismissed as Respondents, it being alleged that they are not proper parties, and upon the view of the Denbigh Boulevard Park made by the Court on August 4, 1974, the case being argued by counsel on August 5, 1974, and the Court having issued an oral ruling from the bench and instructed counsel for the Complainants to draft a decree, and after considering all the evidence, and the law applicable thereto, the Court doth hereby

ADJUDGE, ORDER and DECREE that the Special Plea of Harry E. Atkinson, et als, all as Members of City Council, be, and it is hereby, overruled, the Court being of the opinion that Harry E. Atkinson, et als, all as Members of City Council, the Respondents except, and

The Court being of the opinion that it has jurisdiction to issue an Order enjoining the City of Newport News from conducting a nuisance and that it has jurisdiction to direct

that the Denbigh Boulevard Park be closed, but the Court declining to issue such an Order at this time; nevertheless, it appearing from the evidence presented, that the City of Newport News has established two portable toliets on the property and that the City has not properly supervised and policed the park, to which ruling the Respondents except, it is

ORDERED and DECREED that the City of Newport News, on or before September 1, 1974, file with the Court its letter of intent as to the establishment of proper sanitary facilities at the Denbigh Boulevard Park, together with a plan for the proper policing and supervising of the park, to which ruling the Respondents except.

ENTER: 9/3/74

Henry D. Garnett, Judge

Have Seen:

Richard W. Hudgins, Esq.
HUDGINS AND NEALE
10352 Warwick Boulevard
Newport News, Virginia 23601

Have Seen and Objected To:

A COPY. TESTE: GEORGE D. DeSHAZOR, Clerk
BY Addie Burgess D. C.

Lawrence M. Spigel,
Acting City Attorney

(CAPTION OMITTED)

1. WRITTEN STATEMENT OF THE CASE

2.

3. On July 9, 1974, thirty-two Complainants filed a
4. Complaint in chancery against the City of Newport News and the
5. members of the City Council of the City of Newport News,
6. requesting that an injunction be issued against said parties
7. from operating a park on a 13-acre parcel of land known as the
8. Denbigh Boulevard Park, located at the foot of Denbigh Boulevard
9. and fronting on the Warwick River, alleging, inter alia, that
10. the unsupervised park was being operated in such a manner as to
11. constitute a nuisance. On July 10, 1974, after notice to the
12. city, et als, was given, a hearing was held upon the request
13. for a Temporary Restraining Order. The Complainants presented
14. evidence as disclosed below:

15.

16. TESTIMONY OF DAVID L. HERTZLER

17.

18. David L. Hertzler testified that he resided at 3
19. Denbigh Boulevard, City of Newport News, Virginia, and had
20. resided at this location for approximately eight years and
21. that he owned two residences immediately adjacent to the park,
22. and being located across the dirt road that separated the City
23. Park property from his residences. Mr. Hertzler testified that
24. the operation of the Denbigh Boulevard Park was interfering with
25. the use and enjoyment of his own property.

26. Mr. Hertzler testified that the preparatory work for
27. the creation of the Denbigh Boulevard Park at the end of Denbigh
28. Boulevard began in the fall of 1973. As the work progressed on

29. the park, Denbigh Boulevard, from the point where it intersects
30. with Moyer Road down to the boat ramp, located within the park,
31. was in an incomplete state, and, at times, impassable. Under
32. these conditions, the city permitted the public to begin using
33. the park in December of 1973, and as the weather warmed, the
34. use by the public increased.
2. Denbigh Boulevard Park, leading into the boat ramp/park facility
3. had not been completed and that the dust created by the
4. vehicular traffic on the unfinished portion of Denbigh Boulevard
5. Park was a problem. He also stated that there were ruts in the
6. road which had been caused by vehicles hauling materials to the
7. parking lot and by the large amount of traffic consisting of
8. boats and trailers coming to use the park. Mr. Hertzler
9. testified that he observed trash and debris in the parking lot
10. and that the park lacked proper supervision and that the Newport
11. News Park Rangers and Newport News Police Department made only
12. brief visits to the area. However, Mr. Hertzler testified that
13. the police responded whenever he had made a complaint, but by
14. the time the police arrived, the parties who had created the
15. disturbance frequently had left. Mr. Hertzler testified that
16. during the state of incompletion and construction, and that
17. prior to the hearing, he had observed trash and debris in the
18. general area of the park and that such materials overflowed onto
19. the property of the property owners adjacent to the park. That
20. there had been a large increase in traffic particularly on week-
21. ends. That notwithstanding these conditions the public was
22. allowed to use the park. He testified further that an article

23. appeared in the Daily Press on June 1, 1974, which indicated
24. that the park had been "...discovered by hundreds..." and gave
25. the impression that the park was now considered open by the
26. city.

27. Following the Memorial Day weekend, Mr. Hertzler
28. testified over the objection of the city that he came to the
29. conclusion that the city had no plans to finish the park prior
30. to permitting the use by the general public. During the
31. Memorial Day weekend, the park was inundated with a large number
32. of people, vehicles and boats. The access road to the park and
33. the parking lot remained unfinished and there existed no lights,
34. water, toilet facilities or telephones in the park. There
1. existed no buffer zone between the park and the private
2. homeowners. Numerous users of the park made requests of the
3. Hertzlers for the use of water and telephone. These requests
4. continued as the park was used as the summer progressed. Mr.
5. Hertzler testified that he had observed persons drinking
6. alcoholic beverages in the parking lot area and in other
7. locations in the park on numerous occasions. There were no
8. trash containers in the park during the Memorial Day period,
9. and subsequently, the refuse littered the ground. There was
10. no supervision of the park and no posted closing time, and the
11. use of the park went on into the night and morning hours with
12. frequent and recurring nocturnal parties, consisting of persons

13. drinking alcoholic beverages and making loud noises, racing
14. of car motors, constituting an annoyance and an intolerable
15. situation for Mr. Hertzler and his family.
16. All prior existing signs controlling parking on
17. Denbigh Boulevard had been removed, and there was absolutely
18. no restriction on the use of the park or Denbigh Boulevard in
19. its incomplete state.
20. In addition, Mr. Hertzler made the following inquiries
21. and complaints:
22. June 4, 1974 - Mr. Hertzler called the City Attorney
23. to see if the park could be closed.
24. June 4, 1974 - Mr. Hertzler called Mrs. Becker of the
25. Wetlands Board inquiring if this organization could stop the
26. filling in of wetlands at the park, and he was advised that
27. the city did not have to comply with the Wetlands Board
28. regulation. This latter statement was objected to.
29. June 4, 1974 - Mr. Hertzler called the Corps of Army
30. Engineers in regard to the wetlands filling problem. Subsequent
31. to his call, the contractor stopped filling in the swamp.
32. June 4, 1974 - Mr. Hertzler called Mr. Rogers of the
33. Recreation and Parks Department to complain about the lack of
34. facilities in the park and was advised the city had no plans for
1. toilets or water, as the water line was inadequate and that
2. there would be no lighting presently that the city was still
3. negotiating with VEPCO. There were no plans to close the park
4. at sundown and the budget did not allow for park attendants.
5. June 5, 1974 - Mr. Hertzler called Mr. Bowen of the

City Health Department to report the unsanitary conditions at the park. Since there were no trash containers and garbage and bottles were littering the ground, and due to the fact that no toilets were available, people were using the woods as toilets.

June 5, 1974 - Mr. Hertzler called Mr. Ronald Burroughs, Director of the Recreation and Parks Department, and repeated his complaint mentioned above.

June 7, 1974 - Mr. Hertzler addressed a letter to the city concerning the problems.

June 10, 1974 - Mr. Hertzler called the City Manager and repeated his complaint.

June 12, 1974 - The attorney for Mr. Hertzler addressed a letter to Mr. Burroughs concerning the complaints and requesting the closing of the park.

June 21, 1974 - The attorney for the Complainants addressed a letter to the city requesting the closure of the park, indicating that an injunction would be requested unless the park was closed.

Mr. Hertzler testified that the drinking of alcoholic beverages persisted in both the daytime and nighttime and he stated that on one occasion he observed a man on a lookout area back in the trail urinating. With this man, there was a group of other men drinking beer. A photograph was introduced into evidence of the person urinating. Mr. Hertzler testified that on occasions he observed human feces in the park area. He stated that it was human waste because he observed toilet paper in the area. He testified further that the entire area smelled of human waste. This observation was made following the

1. Memorial Day weekend. Mr. Hertzler also testified that there
2. were no public telephones, drinking fountains, or lighting in
3. the area of the park, and that the river traffic was causing
4. erosion to his property. He further stated that on July 9,
5. 1974, he was disturbed by the sound of a radio in the parking
6. lot area. He testified that he observed children setting off
7. firecrackers in the marsh area, which meanders through the
8. park. He testified that the park and the boat ramp facilities
9. were in need of a full-time attendant for many reasons. He had
10. observed young people climbing on top of a boat house located
11. within the park and indicated that the absence of life rings or
12. life lines on the pier in the case of emergency presented a
13. problem. He testified that the city had not lived up to a
14. prior promise to plant a buffer zone of trees around the
15. perimeter of the parking lot area so as to separate the park
16. from his property.
17. On cross-examination, Mr. Hertzler admitted that he
18. had been advised by the Director of Recreation and Parks that
19. the westerly end of Denbigh Boulevard had not been completed by
20. the State Highway Department because the city had not completed
21. the parking lot due to a gravel shortage. In addition, he
22. stated that there were no trash cans in the park and that trash
23. and debris existed in the park area, since it was not being
24. cleaned up. He testified that the park rangers and Newport
25. News Police Department may have patrolled the Denbigh Boulevard
26. boat ramp/park without his knowledge of their having been at
27. the park. The City Attorney requested that Mr. Hertzler itemize

28. when the patrols were made and Mr. Hertzler had records that he
29. had kept of the vehicular traffic on June 14, 1974, and June 15,
30. 1974. On June 14, 1974, the car traffic was 99 cars, 279 boats
31. in the river. On June 15, 1974, it was 112 cars, 149 boats in
32. the river. Mr. Hertzler was asked how many times he had
33. observed people drinking alcohol in the park area. He testified
34. the drinking was a continuous problem, although it may not exist
1. every day of the week. Mr. Hertzler was asked how many times he
2. had observed people urinating in the park. He responded that
3. he observed human waste and toilet paper in the area and that
4. he observed a teenager standing on the top of the boat house
5. relieving himself into the Warwick River. Mr. Hertzler was
6. asked how many times he had observed human waste on the
7. ground in the park/boat ramp area. He responded that he had
8. observed human waste in the area on several occasions. He was
9. asked how he had concluded that the entire boat ramp/park area
10. smelled of human feces and urine, and he responded that the area
11. smelled like this to him. At this point, he was asked whether
12. or not the odors he smelled were coming from the marshlands
13. which surrounded the area along with the odors which accompanied
14. low tides. He responded that the area smelled from the presence
15. of human feces and urine. Mr. Hertzler was asked how the lack
16. of water fountains and the lack of public telephones interfered
17. with his use of his own property. He responded that numerous
18. users of the park had come to his home on numerous occasions
19. and requested water and use of the telephone. He testified

20. there was a need for public telephones in case of emergencies.
21. He was asked how the river traffic interfered with his use of
22. his own property. He responded that there should be "no wake"
23. signs posted to reduce the speed of the water traffic which
24. was causing erosion to his property and damaging his rope lines
25. on his boats. However, he admitted that all the river traffic
26. does not originate from the Denbigh Boulevard boat ramp
27. facility. He was asked how teenagers sitting on the top of
28. the boat house interfered with his use of his own property. He
29. responded by saying the park needed full time supervision in
30. the interest of safety and public order.
31.
32. TESTIMONY OF VERNON S. BRIGGS
33.
34. The second witness to testify was another Complainant,
1. namely, Mr. Vernon S. Briggs, who resides at 66 Denbigh
2. Boulevard, Newport News, Virginia. On direct examination,
3. Mr. Briggs testified that he was concerned about the fact that
4. the westerly end of Denbigh Boulevard had not been completed.
5. He further stated that he very seldom went to the park and
6. that he had never gone down to the park area on the weekends.
7. He testified that there had been a tremendous increase in
8. vehicular traffic since people started using the boat ramp. He
9. testified that the area was unsupervised.
10. On cross-examination, Mr. Briggs admitted that he did
11. not live within view of the park/boat ramp area. In addition,
12. he admitted that his home was located completely outside of

13. the area where the park is located. He further testif... that
14. he had never seen human feces in the park area nor had he
15. smelled the odor of human feces or urine in the park area. He
16. admitted that he had not observed any fighting or disorderly
17. activity, in the park/boat ramp area. In addition, he admitted
18. that he had not observed anyone drinking alcoholic beverages
19. in the park/boat ramp area. At this point, counsel for the
20. Complainants advised the Court that the Complainants had no
21. further evidence.
22.
23. TESTIMONY OF RONALD BURROUGHS
24.
25. The first witness to testify on behalf of the City of
26. Newport News was Mr. Ronald Burroughs, Director of Parks and
27. Recreation for the City of Newport News. Mr. Burroughs
28. testified that the park was open to the public. It was operatin
29. as a park although it was not complete. He testified further
30. that the problem was how to close the park and how to finish it
31. because of material shortage. He testified that the closing of
32. the park would create a great reaction from the general public
33. and create a great problem for him and his department. Under
34. direct examination, Mr. Burroughs testified that he had spoken
1. to Mr. Hertzler on numerous occasions regarding Mr. Hertzler's
2. complaints about the Denbigh Boulevard park/boat ramp facility.
3. Mr. Burroughs testified that the westerly end of Denbigh
4. Boulevard Park would be completed by the State Highway Depart-
5. ment after the city completed the parking lot in the boat ramp
6. area. He explained that there had been a delay in the

7. completion of the parking lot due to a gravel shortage. He
8. testified that trash cans would be installed immediately. He
9. testified that signs had been posted on the pier indicating
10. that swimming and diving from the pier or boat ramp was
11. prohibited.

12. Mr. Burroughs testified that there were no
13. regulations requiring the establishment of sanitary facilities
14. at the park. He testified that there were sanitary facilities
15. at Newport News City Park, which contained a golf course
16. and other facilities. He testified there were sanitary
17. facilities at Deer Park and also at Newport News Huntington
18. Park.

19. Mr. Burroughs testified that the Newport News Park
20. Rangers and police officers along with juvenile officers patrol
21. the area. He testified that he would try to comply with all of
22. the requests made by the Complainants. Trash cans were on order
23. and they would be placed in the park as soon as they arrived.
24. He stated that he had only enough ranger vehicles to patrol the
25. park at spot intervals and that he was afraid that any sanitary
26. facilities would be vandalized. He testified that the buffer
27. zone of trees would be planted in an area to camouflage the
28. parking lot area from Mr. Hertzler's view. He testified that
29. "no parking" signs would be installed along the westerly end
30. of Denbigh Boulevard Park where the park area was located.
31. In addition, he testified that the 13-acre tract had been
32. acquired with the use of Federal, State and City funding. Mr.
33. Burroughs testified that the city established liason with the
34. Virginia Commission of Outdoor Recreation for the purpose of

1. providing a free public boating launch facility on a 13-acre
2. tract of land located at the westerly end of Denbigh Boulevard

in the northern end of the city. He testified that the city actually acquired the 13-acre tract in September, 1972. In addition, he testified that the project had been approved by the Virginia Institute of Marine Sciences as the environmental study conducted by said agency was favorable. He stated that the total investment in the park/boat ramp area amounted to approximately $139,000.00. He pointed out that the boat house had existed prior to the purchase of the thirteen acre tract; however, he stated that the State Game and Inland Fisheries Department had paid for the boat ramp and parking lot. He further explained that the cost of completing the westerly end of Denbigh Boulevard would be paid by the State Highway Department. In addition, Mr. Burroughs testified that the Denbigh Boulevard Boat/Ramp Park area would not tolerate toilet facilitie served by septic tanks since the land is low and marshy. Mr Burroughs also testified no sanitary sewer was available along the tract where the park is located. He explained that the closest sanitary sewer line is a forced main which runs to the rear line of the lot lines of the property owners on the northside of Denbigh Boulevard. He explained that the cost would be prohibitive in that a pump installation and a feeder line would have to be installed. He emphasized that based on his regular observations of the area that the area was not in need of permanent toilet facilities. He further stated that past experience with public toilet facilities in parks and playgrounds has caused greater problems then they have solved.

After the close of the evidence and after hearing the arguments of counsel, the Court deferred the request for the entry of a Temporary Restraining Order, but advised the parties that a further hearing would be held in the form of a show cause why the city should not close the park. A hearing was scheduled

for August 1, 1974.

HEARING OF AUGUST 1, 1974

The Court heard arguments on the Special Plea filed on behalf of Harry E. Atkinson, et als, all as members of the City Council of the City of Newport News, requesting that they be dismissed as parties defendant. The Court overruled the Special Plea, to which ruling the Respondents objected and the exception was duly noted. David L. Hertzler was offered as a witness by the Complainants and following below is his testimony:

TESTIMONY OF DAVID L. HERTZLER

Mr. Hertzler testified that noisy parties at night, yelling and other activities at the park continued to be a problem and disturbed him and his family. The city had not placed "no wake" signs, and the river traffic continued to be a serious problem. The parking lot remained incomplete and he had observed a van stuck in the parking lot. Mr. Hertzler testified that the city had placed trash receptacles in the park area, but that the receptacles had not been located in areas which would be convenient to parties using the park, and therefore, reduce the debris and litter problem. He testified that the city had placed two temporary privies in the park, which were known as "porta-toilets", such as is used on construction sites. The privies were located in the parking lot

29. in the plain view of his home, with the doors opening in the
30. direction of his home, and that vandals had written words and
31. thrown paint on these facilities. The privies were unsightly.
32. No lights had been installed in the park area. Mr. Hertzler
33. introduced a large number of photographs that were taken by him
34. into evidence and testified concerning each and every photograph
1. and the problems raised thereby. The City Attorney objected to
2. the entry of each and every photograph and exceptions were
3. duly noted. The list of photographs as exhibits is stated
4. below:
5.
6. Plaintiff's Exhibit #1: Mr. Hertzler testified that
7. this photo was taken on June 7, 1974 and that it showed some
8. bottles on the ground in the park area. Counsel for the
9. Respondents objected to the admissibility of the photo on the
10. ground that Mr. Hertzler had not established where the bottles
11. were in the park nor had he established that the presence of
12. the bottles interfered with Mr. Hertzler's use of his own
13. property. The photograph was admitted into evidence and marked
14. Plaintiff's Exhibit #1. Exception noted. On cross-examination
15. Mr. Hertzler stated that the park area was not covered with
16. bottles. He was asked how the presence of the bottles shown
17. in the photo interfered with the use of his property. He stated
18. that it annoyed him and there were no trash cans at that time.
19. Plaintiff's Exhibit #2: Mr. Hertzler testified that
20. this photo was taken on June 25, 1974 and that it showed a
21. youngster on top of the boat house. He stated that there should

22. be supervision at the boat ramp. Counsel for the Respondents
23. objected to the admissibility of the photo on the grounds that
24. Mr. Hertzler had not established how the presence of a youngster
25. on top of the boat house interfered with the use of his own
26. property. The photo was admitted and marked Plaintiff's
27. Exhibit #2. Exception noted. On cross-examination Mr. Hertzler
28. stated people did not climb on the boat house every day; however,
29. he stated he was concerned about their safety.

30. Plaintiff's Exhibit #3: Mr. Hertzler testified that
31. this photo was taken on June 28, 1974 and that it showed a boat
32. trailer blocking a driveway. Counsel for the Respondents
33. objected to the admissibility of the photo on the grounds
34. that it had not been established how the presence of a trailer
2. [illegible] of his own property. In
addition he had failed to show how long the trailer had been
3. parked on the road in front of the driveway. The photo was
4. admitted and marked Plaintiff's Exhibit #3. Exception noted.
5. On cross-examination Mr. Hertzler stated that this did not
6. occur all of the time. He stated that the picture showed a
7. need for "no parking" signs on Denbigh Boulevard.

8. Plaintiff's Exhibits #4 & #5: Mr. Hertzler testified
9. that these photos were taken on June 27, 1974 and showed three
10. people on top of the boat house. Counsel for the Respondents
11. objected to the admissibility of the photo on the grounds
12. that it had not been established that the presence of the
13. three people on top of the boat house interfered with Mr.
14. Hertzler's use of his own property. The photo was admitted
15. and marked Plaintiff's Exhibits #4 & #5 respectively. Exception
16. noted.

17. Plaintiff's Exhibit #6: Mr. Hertzler testified that
18. this photo was taken on June 27, 1974 and showed horses at the
19. boat ramp launch area. He testified that this situation
20. annoyed him because horses should not be permitted in the boat
21. ramp/park area. Counsel for the Respondents objected to the
22. admissibility of the photo on the grounds that Mr. Hertzler
23. had failed to establish that the presence of the horses in any
24. way interfered with the use of his own property. The photo
25. was admitted and marked Plaintiff's Exhibit #6. Exception
26. noted. On cross-examination Mr. Hertzler stated that the
27. presence of horses at the park area was not an everyday
28. occurrence; however, he said that the photograph showed a need
29. for supervision.
30. Plaintiff's Exhibit #7: Mr. Hertzler testified that
31. this photo was taken on June 7, 1974 and showed what he
32. categorized as debris in the marshland area. Counsel for the
33. Respondents objected to the admissibility of the photo on the
34. grounds that it had not been established how the presence of
1. this so called debris interfered with the use of Mr. Hertzler's
2. property. The photo was admitted and marked Plaintiff's Exhibit
3. #7. Exception noted.
4. Plaintiff's Exhibit #8: Mr. Hertzler testified that
5. this photo was taken on June 7, 1974 and showed four budweiser
6. cans and two bottles on the ground. He testified that there
7. were no trash receptacles at this time. Counsel for the
8. Respondents objected on the grounds that it had not been shown
9. that four budweiser cans and two bottles on the ground inter-
10. fered with the use of Mr. Hertzler's own property. The photo
11. was admitted and marked Plaintiff's Exhibit #8. Exception
12. noted.

13. Plaintiff's Exhibit #9: Mr. Hertzler testified
14. this photo was taken on June 7, 1974 and that it showed some
15. wood piled up in the marshland area. Counsel for the Responde
16. objected to the admissibility of this photo on the grounds that
17. it had not been established that this picture showed a condition
18. which interfered with Mr. Hertzler's use of his own property.
19. The photo was admitted and marked Plaintiff's Exhibit #9.
20. Exception noted.
21. Plaintiff's Exhibit #10: Mr. Hertzler testified that
22. this photo was taken on June 30, 1974 and that it showed two
23. people on top of the boat house. Counsel for the Respondents
24. objected to the admissibility of this photo on the grounds that
25. Mr. Hertzler had failed to show how the presence of two people
26. on top of the boat house interfered with the use of his own
27. property. The photo was admitted and marked Plaintiff's Exhibit
28. #10. Exception noted.
29. On August 1, 1974, Mr. Hertzler testified on direct
30. examination that he had taken the following photographs of the
31. Denbigh Boulevard Boat Ramp/Park:
32. Plaintiff's Exhibit #11: Mr. Hertzler testified
33. that this photo was taken on July 23, 1974 and that it showed
34. the two porta-toilets which the city had placed in the park area
1. since the hearing was held on July 10, 1974. Mr. Hertzler
2. testified that this condition annoyed him and that permanent
3. sanitary facilities should be installed. Counsel for the
4. Respondents objected to the admissibility of this photo on
5. the grounds that Mr. Hertzler failed to show that the presence
6. of the two porta-toilets interfered with the use of his

7. property. The photo was admitted and marked Plaintiff's Exhibit
8. #11. Exception noted. On cross-examination Mr. Hertzler agreed
9. that the two porta-toilets had been painted by vandals sub-
10. sequent to their installation and contended that this is one
11. of the reasons supervision is necessary; however, he stated
12. that the presence of the two porta-toilets was obnoxious to
13. his view.

14. Plaintiff's Exhibit #12: Mr. Hertzler testified
15. that this photo was taken on July 30, 1974 and that it showed
16. the two porta-toilets in the rear of the parking lot along
17. with what he categorized as insufficient planting of trees
18. and shrubbery as a buffer by the city on the fringe entrance
19. to the parking lot. Counsel for the Respondents objected to
20. the admissibility of the photo on the grounds that the con-
21. ditions in the photo in no way established that Mr. Hertzler
22. was being deprived the use of his own property. The photo
23. was admitted and marked Plaintiff's Exhibit #12. Exception
24. noted. On cross-examination Mr. Hertzler agreed that the
25. picture showed that the cars were parked in an orderly manner.

26. Plaintiff's Exhibit #13: Mr. Hertzler testified that
27. this picture was taken on July 30, 1974 and that it showed water
28. in the ditch along the fringe of the parking lot entrance. He
29. complained that the ditch should be covered. Counsel for
30. Respondents objected to the admissibility of the photo on the
31. grounds that the conditions in the picture in no way established
32. an interference with Mr. Hertzler's use of his own property.
33. The photo was admitted and marked Plaintiff's Exhibit #13.
34. Exception noted.

1. Plaintiff's Exhibit #14: Mr. Hertzler testified
2. that this photo was taken on July 30, 1974 and that it showed
3. two cars and two boat trailers parked in the parking lot. He
4. testified that it also showed his home in the background.
5. Counsel for the Respondents objected to the admissibility of
6. this photo on the grounds that the conditions in the picture
7. in no way established an interference with Mr. Hertzler's use
8. of his own property. The photo was admitted and marked
9. Plaintiff's Exhibit #14. Exception noted.
10. Plaintiff's Exhibit #15: Mr. Hertzler testified
11. that this photo was taken on July 18, 1974 and that it showed
12. a van stuck in the parking lot. Counsel for the Respondents
13. objected to the admissibility of this photo on the grounds
14. that the condition shown in the picture in no way established
15. an interference with Mr. Hertzler's use of his own property.
16. The photo was admitted and marked Plaintiff's Exhibit #15.
17. Exception noted.
18. Plaintiff's Exhibit #16: Mr. Hertzler testified that
19. this photo was taken on July 11, 1974 and that it showed the
20. incompleteness of the parking lot. Counsel for the Respondents
21. objected to the admissibility of the photo on the grounds that
22. the condition in no way showed an interference use of his own
23. property. The photo was admitted and marked Plaintiff's
24. Exhibit #16. Exception noted. On cross-examination Mr.
25. Hertzler admitted that the presence of the tractor in the
26. picture showed that the City was making an effort to complete
27. the parking lot.

28. Plaintiff's Exhibit #17: Mr. Hertzler testified
29. that this photo was taken on June 28, 1974 and that it showed
30. a boat traveling at a high rate of speed on the Warwick River
31. in proximity to the park. Counsel for the Respondents objected
32. to the admissibility of this photo on the grounds that the
33. river traffic bore no relation to the operation of the park are
34. and in no way showed an interference with Mr. Hertzler's use
1. of his own property. The photo was admitted and marked
2. Plaintiff's Exhibit #17. Exception noted.
3. Plaintiff's Exhibit #18: Mr. Hertzler testified
4. that this photo was taken on June 7, 1974 and that it showed
5. trash in the underbrush in the park area. Counsel for the
6. Respondents objected to the admissibility of the photo on the
7. grounds that the condition in the picture in no way established
8. an interference with Mr. Hertzler's use of his own property.
9. The photo was admitted and marked Plaintiff's Exhibit #18.
10. Exception noted.
11. Plaintiff's Exhibit #19: Mr. Hertzler testified that
12. this photo was taken on June 5, 1974 and that it showed three
13. people on the pier. He stated that one of them was urinating
14. into the water and another drinking beer. Counsel for the
15. Respondents objected to the admissibility of this photo on
16. the grounds that the condition in the picture in no way establi
17. shed an interference with Mr. Hertzler's use of his own propert
18. The photo was admitted and marked Plaintiff's Exhibit #19.
19. Exception noted. On cross-examination Mr. Hertzler was asked
20. how he concluded that the young man was urinating into the

21. water. He responded that the photo clearly showed that the
22. young man was urinating and that this condition showed the
23. need for permanent sanitary facilities. Then Mr. Hertzler
24. was asked that assuming that the young man was urinating in
25. the water, how could we assume that he would use a sanitary
26. facility even if one was present. Mr. Hertzler responded
27. by saying that the picture clearly showed that permanent
28. sanitary facilities were needed.
29. Plaintiff's Exhibit #20: Mr. Hertzler testified that
30. this was a copy of a letter which he had sent to Mr. Ronald
31. Burroughs, Director of Parks and Recreation for the City of
32. Newport News. He testified that the letter contained a list
33. of his complaints and suggestions as to how to rectify the
34. described conditions. His testimony on direct and cross
1. examination regarding this letter is set forth in the written
2. statement of the case.
3. Plaintiff's Exhibit #21: Mr. Hertzler testified that
4. he had drawn this map showing the Denbigh Boulevard Boat Ramp/
5. Park area along with locations of some of the abutting property
6. owners. He admitted that the map was not drawn to scale.
7. Counsel for the Respondents objected to the admissibility of
8. the map on the grounds that it had not been drawn to scale
9. and on the grounds that values had been placed on certain
10. properties without being substantiated. The Court admitted
11. the map into evidence solely for the purpose of showing the
12. design of the area.

13. Mr. Hertzler testified that Denbigh Boulevard
14. was now passable, that speed limits were posted and that "no
15. parking" signs had been posted along the streets. A "no
16. swimming" sign was posted on the boat house and that signs
17. in two locations announced the park trails were closed at
18. sundown. However, the remainder of the park remained open
19. 24 hours a day, and this consisted of the boat ramp and parking
20. lot.

21. Mr. Hertzler also testified that some debris had
22. been removed. Mr. Hertzler kept records of the traffic problems
23. and presented them. The buffer strip was completely inadequate
24. and merely was one shrub deep. There were no telephones or
25. water facilities in the park. He continued to have requests
26. for the use of telephones and water at his home.

27. Mr. Hertzler testified that water and sewer were
28. available and that disturbances at night had not decreased.
29. Loud parties and particularly noisy comings and goings of
30. cars could be heard into the early morning hours. Mr. Hertzler
31. testified that the park was built in an R1 subdivision and that
32. it was a regional park. He requested that the park be closed
33. until adequate supervision and facilities, insuring health and
34. safety standards for the public and the surrounding private
1. homeowners, was established.

2. He testified to a recent arrest made by the police
3. adjacent to his home at the park. The arrest followed a noisy
4. party that was being conducted at the park. Mr. Hertzler also
5. testified to operators of motor vehicles performing "doo-lollies"

in the soft area of the parking lot. The automobiles were driven in circles on the parking lot and were creating a disturbance. Mr. Hertzler testified to making a request for police assistance, but, by the time the police arrived, the alleged offenders had left.

TESTIMONY OF OFFICER MARK MUZA

The second witness called to the stand by the Complainants was Officer Mark Muza, who serves as a police officer on the Newport News Police Boat. He testified that the city has only 2 police boats to patrol a very large area.

Muza estimated that 80% of those persons who previously used the Deep Creek Harbor had switched to the Denbigh Boulevard Park ramp. He testified that "no wake" signs were not present to control boats or posted regulations concerning the use of the river. He testified that the road and the parking lot were incomplete and that the combination of large numbers of vehicles and boats, the unsupervised fishing pier, and building, created considerable congestion and problems. Muza indicated that there should be personnel on hand at the boat ramp to discipline and regulate boat operators. He indicated that due to the large usage by the public, that it was necessary to keep one boat in the area on such days. It was his opinion that a hazardous condition existed at the park due to the conditions that he observed. Muza's boat patrolled the area of the James River extending from C & O piers to the northern end of the city and contained the area where the Denbigh Boulevard Park ramp was located, as well as the Warwick River.

On cross-examination Officer Muza admitted that the unsafe boating incidents he observed were not severe enough to warrant writing the operators a summons. He admitted that he had not observed any human feces nor had he smelled any human feces or urine in the Denbigh Boat Ramp/Park area.

TESTIMONY OF RONALD BURROUGHS

The city called to the stand Mr. Ronald Burroughs, Director of Parks and Recreation for the City of Newport News. Mr. Burroughs testified that the parking lot had been gravelled on July 19, 1974 but had not fully been completed and that the State Highway Department had completed the westerly end of Denbigh Boulevard leading into the park/boat ramp area on July 26, 1974. In addition Mr. Burroughs testified that prior to the completion of the westerly end of Denbigh Boulevard city crews watered the road in an effort to alleviate the dust problem Mr. Hertzler complained about. His testimony regarding the installation of permanent sanitary facilities was repetitive of the testimony he gave on July 10, 1974. He stated that trash receptacles had been placed in the boat ramp/park area on July 31, 1974. His testimony revealed that "no parking" signs had been placed along Denbigh Boulevard where the park area is located. In addition, he stated that since the first hearing on July 10, 1974, the following improvements had been made: That a 25 mile per hour speed limit sign

27. had been posted near the entrance to the park; that Vepco
28. been contacted and that he had contacted each resident who
29. on Denbigh Boulevard in the area where the park is located to
30. find out whether or not they had any objection to the lighting
31. plan. He stated there were no objections. That signs had been
32. posted at the entrance to the nature trails indicating the trails
33. close at sundown; that ranger patrols through the area had
34. been increased and the Newport News Police Department had
1. continued its regular patrols. He stated that he visited
2. the area on a regular basis and that he at no time observed
3. any human waste on the ground nor had he smelled the odor
4. of human waste or urine in the area. Mr. Burroughs stated
5. that he had purchased a life ring and life line which he
6. placed on the boat house; however, the next day the devices
7. had been stolen. In addition he testified that the rules
8. and regulations contained in Chapter 26 of the Newport News City
9. Code govern conduct and activity in a park and that no signs
10. governing conduct would be posted as requested by Mr. Hertzler.
11. He emphasized that the criminal laws were being enforced by
12. the rangers and the Newport News Police Department. That it
13. was impossible to close the park at sundown because people
14. would be out in their boats.
15.
16. TESTIMONY OF JOHN TEKINDER
17.
18. The second witness for the city was Mr. John
19. Tekinder, Park Supervisor for the Recreation and Parks
20. Department of the City of Newport News. His testimony
21. revealed the following:

He testified that he had instructed the rangers to keep a log of their patrols through the Denbigh Boulevard Park area for purposes of showing the Court that the area was being properly patrolled. His testimony revealed that the following patrols were made and the following conditions existed at the time these patrols were made:

PATROLS MADE BY JULIUS M. GRIFFITH, PARK RANGER

DATE	TIME ARRIVED	TIME DEPARTED
July 12, 1974	2:30 P.M.	3:10 P.M.
July 13, 1974	11:00 A.M.	11:30 A.M.
July 13, 1974	2:40 P.M.	3:05 P.M.
July 14, 1974	11:12 A.M.	11:24 A.M.
July 14, 1974	2:15 P.M.	2:45 P.M.
July 15, 1974	1:50 P.M.	2:05 P.M.
July 16, 1974	3:15 P.M.	3:30 P.M.
July 17, 1974	2:45 P.M.	3:00 P.M.
July 18, 1974	3:41 P.M.	4:02 P.M.
July 19, 1974	2:45 P.M.	3:10 P.M.
July 20, 1974	12:00 Noon	12:10 P.M.
July 21, 1974	11:15 A.M.	11:29 A.M.
July 22, 1974	11:35 A.M.	11:50 A.M.
July 23, 1974	1:55 P.M.	2:15 P.M.
July 24, 1974	3:33 P.M.	3:40 P.M.
July 25, 1974	11:40 A.M.	11:53 A.M.
July 26, 1974	1:55 P.M.	2:15 P.M.
July 27, 1974	9:40 A.M.	9:45 A.M.
July 28, 1974	10:00 A.M.	10:35 A.M.
July 28, 1974	3:15 P.M.	3:35 P.M.

RANGER	DATE	TIME ARRIVED	CONDITION
Stanley Purvis	July 30, 1974	12:50 A.M. 3:25 A.M.	Area was found to be clean and free of all traffic.
Terry Bochek	July 29, 1974	1:15 P.M.	Four vehicles were in parking lot, one with boat trailer. Eight people were fishing from pier and a few smashed cans could be seen in the parking lot.
L. Timbs and G. Keppard	July 29, 1974	6:25 P.M.	Three cars, one boat trailer and three persons fishing from the pier. Two beer cans and an assortment of trash was picked up in parking lot and deposited in cans.
L. Timbs and G. Keppard	July 29, 1974	10:45 P.M.	Three cars in parking lot, all driven by teenagers who were sitting around and talking. Two more beer cans were picked up and put in trash cans. Two teenagers were fishing from pier. Area was relatively clean.
Terry Bochek	July 28, 1974	10:30 A.M.	Seven cars in parking lot, one with a boat trailer. Eight people fishing from pier and only small amount of litter in park.
. W. Taylor	July 28, 1974	5:30 P.M.	Thirty cars and seventeen boat trailers in parking lot. Eight fishermen fishing from pier.
. W. Taylor	July 28, 1974	11:00 P.M.	Two cars in parking lot, one couple in car and other couple fishing on pier. Found trails and parking free of litter.

[illegible]	DATE	TIME ARRIVED	CONDITION
. A. Hornsby	July 28, 1974	3:05 A.M.	One car in parking lot and two fishing from pier.
. R. Hornsby	July 28, 1974	5:45 A.M.	Park vacant and free of litter.
ichael Hovan, Jr.	July 28, 1974	10:40 A.M.	Nine cars and three boat trailers in parking lot. Four fishermen fishing on pier.
ichael Hovan, Jr.	July 28, 1974	2:00 P.M.	Forty-eight cars and twenty-eight boat trailers in parking lot. Ten fishermen fishing from pier. Park was clean.
R. Hornsby	July 27, 1974	2:07 A.M.	Park was vacant.
R. Hornsby	July 27, 1974	4:47 A.M.	Park vacant and free of litter.
ichael Hovan, Jr.	July 27, 1974	1:35 P.M.	Eleven cars and nine boat trailers in parking lot. Three fishermen fishing from pier. Park was very clean.
C. Keppard, Jr.	July 26, 1974	10:35 A.M.	One car in parking lot. One adult and three children.
C. Keppard, Jr.	July 26, 1974	2:10 P.M.	Park deserted. Park was clean.
W. Taylor	July 26, 1974	7:30 P.M.	Six fishermen fishing from pier. Three cars in parking lot and area was clean.
W. Taylor	July 26, 1974	11:15 P.M.	One car in parking lot; subjects fishing from pier. Parking lot was clean but someone had made circles in parking lot with car spinning up gravel.

RANGER	DATE	TIME ARRIVED	CONDITION
Jerry Bochek	July 26, 1974	12:45 P.M.	Eleven cars in parking lot, six had boat trailers. Ten people fishing from pier and park was free of litter.
C. W. Taylor	July 26, 1974	6:30 P.M.	Eight cars in parking lot, eleven cars with boat trailers. Five people fishing from pier.
C. W. Taylor	July 26, 1974	11:30 P.M.	Three cars in parking lot. One boat trailer. Two people fishing from pier. Parking lot was clean.
D. R. Hornsby	July 26, 1974	3:05 A.M.	Park was vacant.
D. R. Hornsby	July 26, 1974	5:30 A.M.	Park was vacant and free of litter.
C. W. Taylor	July 25, 1974	11:15 P.M.	Two cars in parking lot; one couple in one car. On fishing pier six young people drinking beer. After checking I.D. I made them get rid of beer and leave park.
Michael Hovan, Jr.	July 25, 1974	1:30 P.M.	Ten cars and three trailers in parking lot and eight fishermen fishing from pier. Very little litter in park.
D. R. Hornsby	July 25, 1974	2:50 A.M.	Parking lot vacant.
D. R. Hornsby	July 25, 1974	5:10 A.M.	Parking lot vacant and free of litter.
L. C. Timbs	July 25, 1974	7:25 P.M.	Seven cars, six boat trailers, eleven fishermen, eight bike riders and five persons walking trail. Area was clean. Main road leading into area is in process of being paved.

RANGER	DATE	TIME ARRIVED	CONDITION
Jerry Dochek	July 26, 1974	12:45 P.M.	Eleven cars in parking lot, six had boat trailers. Ten people fishing from pier and park was free of litter.
C. W. Taylor	July 26, 1974	6:30 P.M.	Eight cars in parking lot, eleven cars with boat trailers. Five people fishing from pier.
C. W. Taylor	July 26, 1974	11:30 P.M.	Three cars in parking lot. One boat trailer. Two people fishing from pier. Parking lot was clean.
D. R. Hornsby	July 26, 1974	3:05 A.M.	Park was vacant.
D. R. Hornsby	July 26, 1974	5:30 A.M.	Park was vacant and free of litter.
C. W. Taylor	July 25, 1974	11:15 P.M.	Two cars in parking lot; one couple in one car. On fishing pier six young people drinking beer. After checking I.D. I made them get rid of beer and leave park.
Michael Hovan, Jr.	July 25, 1974	1:30 P.M.	Ten cars and three trailers in parking lot and eight fishermen fishing from pier. Very little litter in park.
D. R. Hornsby	July 25, 1974	2:50 A.M.	Parking lot vacant.
D. R. Hornsby	July 25, 1974	5:10 A.M.	Parking lot vacant and free of litter.
L. C. Timbs	July 25, 1974	7:25 P.M.	Seven cars, six boat trailers, eleven fishermen, eight bike riders and five persons walking trail. Area was clean. Main road leading into area is in process of being paved.

RANGER	DATE	TIME ARRIVED	CONDITION
Jerry Bochek	July 24, 1974	8:30 P.M.	Five cars in parking lot, one had boat trailer. One person was at pier fishing and two people were on nature trail. Very little litter.
Jerry Bochek	July 24, 1974	11:15 P.M.	Three cars in parking lot and two people fishing from pier. Park was free of litter.
D. R. Hornsby	July 24, 1974	2:45 A.M.	Park was vacant.
D. R. Hornsby	July 24, 1974	5:10 A.M.	Park vacant and free of litter.
Stanley Purvis	July 24, 1974	9:05 A.M.	Four fishermen.
Stanley Purvis	July 24, 1974	3:15 P.M.	Six fishermen, one truck and boat trailer and two spectators.
D. R. Hornsby	July 23, 1974	1:00 A.M.	No traffic in park area.
D. R. Hornsby	July 23, 1974	5:00 A.M.	No traffic in park area. Park was clean.
Jerry L. Bochek	July 23, 1974	7:45 P.M.	Five cars in parking lot, four of the cars had boat trailers. Seven people fishing from pier. Park was free of litter.
Jerry L. Bochek	July 23, 1974	10:55 P.M.	Park empty of people and vehicles. Several soda bottles were found in parking lot.
Stanley Purvis	July 23, 1974	11:30 A.M.	Eight boat trailers, ten fishermen, and four people walking nature trail.
Stanley Purvis	July 22, 1974	9:10 A.M.	Trails were checked and found to be clean and in order. No people in area.

RANGER	DATE	TIME ARRIVED	CONDITION
Stanley Purvis	July 22, 1974	11:40 P.M.	One car in parking lot and eight fishermen.
C. W. Taylor	July 22, 1974	6:00 P.M.	Ten cars and four boat trailers. Twelve fishermen and two people on nature trail. Area was clean.
C. W. Taylor	July 22, 1974	10:45 P.M.	No sign of any traffic.
Stanley Purvis	July 21, 1974	9:30 A.M.	Four cars, one boat trailer and eight fishermen.
Stanley Purvis	July 21, 1974	12:15 P.M.	Fifty five cars, thirty five boat trailers, and fifteen fishermen.
C. W. Taylor	July 21, 1974	7:30 P.M.	Twenty cars, five boat trailers, ten fishermen and two hikers. Three boats were being loaded on trailers. Parking lot and nature trail were clean.
C. W. Taylor	July 21, 1974	10:30 P.M.	No traffic in the area.
Gordon Koppard, Jr.	July 21, 1974	1:20 A.M. 4:00 A.M.	Park was deserted and clean.
L. C. Timbs	July 20, 1974	5:00 P.M.	Twenty three cars, eighteen boat trailers, six fishermen, four bicycles, and five hikers on the trail.
L. C. Timbs	July 20, 1974	10:30 P.M.	Two cars in parking lot containing two young couples.
Stanley Purvis	July 20, 1974	9:00 A.M.	Four cars and one boat trailer in the parking lot. Seven people fishing from pier. Area was clean.

RANGER	DATE	TIME ARRIVED	CONDITION
G. C. Keppard, Jr.	July 19, 1974	12:50 A.M. 4:00 A.M.	Park unoccupied and clean.
Stanley Purvis	July 19, 1974	10:30 A.M. 2:30 P.M.	Public Works people grading parking lot. Someone had painted obscene slogans on two portable rest rooms with black spray paint.
L. C. Timbs	July 19, 1974	8:25 P.M.	Four boat trailers, thirteen cars, five hikers and three fishermen.
L. C. Timbs	July 19, 1974	11:30 P.M.	Deserted.
Gordon Keppard, Jr.	July 18, 1974	12:40 A.M.	Park unoccupied and some minor litter which I disposed of.
Gordon Keppard, Jr.	July 18, 1974	4:00 A.M.	One car in park which left as I arrived. Park in good condition.
S. J. Purvis	July 18, 1974	10:30 A.M. 2:45 P.M.	Eight cars in parking lot. People fishing, boating and on the nature trail. Trail and parking lot were clean and free of litter.
L. C. Timbs	July 18, 1974	4:50 P.M.	Four cars and three boat trailers in parking lot. Four people fishing from pier. Trail was free of litter. Some litter in parking lot which was picked up and deposited in can.
L. C. Timbs	July 18, 1974	11:30 P.M.	Deserted.
Jerry Bochek	July 18, 1974	7:45 P.M.	Seven cars were in parking lot, four had boat trailers and four people were fishing from pier. Very little trash.
Jerry Bochek	July 18, 1974	10:30 P.M.	Park was vacant of cars and people

	DATE	TIME ARRIVED	CONDITION
Gordon Keppard	July 17, 1974	1:15 A.M. 4:30 A.M.	Park unoccupied and in clean condition.
D. R. Hornsby	July 17, 1974	11:20 A.M.	Three cars and two trailers in parking lot.
D. R. Hornsby	July 17, 1974	2:30 P.M.	Five cars and three trailers in parking lot. Parking lot free of litter.
D. R. Hornsby	July 16, 1974	11:05 A.M.	Five cars and two trailers in parking lot. Seven people fishing from pier. Nature trail and parking lot were clear of litter.
D. R. Hornsby	July 16, 1974	2:10 P.M.	Six cars and three trailers in parking lot. Parking lot had small amount of paper. Rain had made soil under gravel soft and easy to get stuck.
Jerry Bochek	July 16, 1974	6:00 P.M.	Two vehicles in parking lot. One vehicle was stuck in mud of parking lot. Nine people were fishing from pier. Very little trash.
Jerry Bochek	July 16, 1974	10:00 P.M.	Vacant of cars and people.
G. C. Keppard, Jr.	July 16, 1974	2:00 A.M. 5:00 A.M.	Park deserted. Area free of litter and trash with exception of two beer cans.
C. W. Taylor	July 15, 1974	2:15 A.M. 4:45 A.M.	Deserted.
Wesley Purvis	July 15, 1974	1:00 P.M. 2:15 P.M.	Trails and parking lot were clean. One beer can was found on trail and one soft drink can was in parking lot.

	DATE	TIME ARRIVED	CONDITION
L. C. Timbs	July 15, 1974	6:45 P.M.	Fourteen automobiles and eight boat trailers in parking lot. Six people were fishing from pier and four were walking the trail. Area clean.
C. W. Taylor	July 14, 1974	2:30 A.M.	No cars or people at park. No trash in parking lot.
Jerry Bochek	July 14, 1974	5:30 A.M. 8:00 P.M.	Twelve automobiles in the parking lot, eight of which had boat trailers. Four people were fishing from dock and very little trash could be found.
Jerry Bochek	July 14, 1974	11:30 P.M.	One car in parking lot which belonged to three men on dock.
Stanley Purvis	July 14, 1974	9:30 A.M. 3:30 P.M.	Traffic consisted mostly of boaters, water skiers and spectators. Trails and parking lot were neat and free of litter. Three cars and trailers were parked beside road near boat ramp.
L. C. Timbs	July 13, 1974	7:10 P.M.	Thirteen boat trailers, nineteen cars, four fishermen, four bike riders, and four hikers on the nature trail. Area was clean.
C. W. Taylor	July 13, 1974	2:45 A.M.	No traffic.
C. W. Taylor	July 13, 1974	5:15 A.M.	Parking lot had a lot of circles made by automobiles spinning up gravel, no sign of anybody.
Jerry Bochek and L. C. Timbs	July 13, 1974	11:00 P.M.	One car containing one young male and one female talking - no other activity.

RANGER	DATE	TIME ARRIVED	CONDITION
D. E. Hornsby	July 13, 1974	9:15 A.M.	Seven cars and three boat trailers in parking lot. Nature trail was clean.
D. E. Hornsby	July 13, 1974	12:23 P.M.	Fourteen cars and nine boat trailers in parking lot. Seven people fishing from pier and three people were riding bicycles on the nature trail.
Terry Bochek	July 12, 1974	8:00 P.M.	Eight people fishing from dock and nine cars in parking lot, four of which had boat trailers.
Terry Bochek	July 12, 1974	11:00 P.M.	Two people fishing from dock and two other people were walking the nature trail.

Mr. Takinder was asked if any of his rangers had made arrests on drunk charges at the park and he responded that the rangers did not make such arrests if they could prevent doing so. It was only blatant and obvious situations that they attempted to control. He did not arrest people for drinking in public.

RESPONDENTS EXHIBITS

At the August 1, 1974 hearing, Mr. Fred Mirick, Superintendent of Public Relations for the City of Newport News, testified that he had been instructed by Ronald Burroughs, Director of Parks and Recreation for the City of Newport News, to take photographs of the Denbigh Boulevard Boat Ramp/Park area. The following photographs were taken and duly admitted into evidence:

Respondents Exhibit #1: Mr. Mirick testified that this photo was taken on July 25, 1974 and that it showed the boat house and nature trail. He testified that the conditions shown in the picture were the same as the conditions he observed when the photograph was taken.

Respondents Exhibit #2: Mr. Mirick testified that this photo was taken on July 25, 1974 and that it showed a pier and the presence of trash receptacles.

Respondents Exhibit #3: Mr. Mirick testified that

26. this photo was taken on July 25, 1974 and that it showed
27. cars parked in the parking lot and that no parking signs had
28. been posted on Denbigh Boulevard.

29. Respondents Exhibit #4: Mr. Mirick testified that
30. this photo was taken on July 25, 1974 and that it showed people
31. sitting on the pier at the boat house.

32. Respondents Exhibit #5: Mr. Mirick testified that
33. this photo was taken on July 25, 1974 and that it showed two
34. new porta-toilets that the City had placed in the park.

1. Respondents Exhibit #6: Mr. Mirick testified that
2. this photo was taken on July 25, 1974 and that it showed some
3. children on the pier and the presence of a trash receptacle
4. in front of the pier leading to the boat house.

5. Respondents Exhibit #7: Mr. Mirick testified that
6. this photo was taken on July 25, 1974 and that it showed the
7. boat house and some people along with trash receptacles.

8. Respondents Exhibit #8: Mr. Mirick testified that
9. this photo was taken on July 25, 1974 and showed a nature trail
10. and bridge in the park area.

11. Respondents Exhibit #9: Mr. Mirick testified that
12. this photo was taken on July 25, 1974 and showed the pier and
13. boat house in the Denbigh Boulevard Park.

14. Respondents Exhibit #10: Mr. Mirick testified that
15. this photo was taken on July 25, 1974 and that it showed the
16. parking lot with vehicles parked in an orderly manner.

17. Respondents Exhibit #11: Mr. Ronald Burroughs,
18. Director of Parks and Recreation for the City of Newport New
19. testified that he took this photo on July 18, 1974. He
20. testified that this picture clearly shows that the presence
21. of sanitary facilities causes greater problems than they solve.
22. He further testified that the city had placed these two porta-
23. toilets in the park on a trial basis; however, he advised that
24. the facilities would be removed immediately.* (See page 36)
25. Respondents Exhibit #12: Mr. Burroughs testified
26. that he took this photo on July 31, 1974 and that it showed
27. people on the pier and a trail in the park. He testified
28. that the picture showed what the conditions at the park area
29. were like on the occasions when he visited the area. He
30. testified that he, in his capacity as Director of Parks and
31. Recreation, visited the area on a regular basis.
32. Respondents Exhibit #13: Mr. Burroughs testified that
33. he took this photo on July 31, 1974 and that it showed a view
34. of the Denbigh Boulevard Road along with shrubs and the parking
1. lot with cars parked in an orderly manner.
2. Respondents Exhibit #14: Mr. Burroughs testified
3. that this photo was taken on July 31, 1974 and that it showed
4. a picture of one of the overlooks.
5. Respondents Exhibit #15: Mr. Burroughs testified
6. that this picture was taken on July 31, 1974 and that it
7. showed that the city had posted signs showing that the nature
8. trails close at sunset. He testified that this closing was
9. being enforced.

10. Respondents Exhibit #16: Mr. Burroughs testified
11. that this photo was taken on July 31, 1974 and that it showed
12. the parking lot area with cars parked therein in an orderly
13. manner.
14. Respondents Exhibit #17: Mr. Burroughs testified
15. that this was a copy of a letter from Mr. Mickey McNamara, Assis-
16. tant Director of Public Works, directed to Mr. Ames of Vepco
17. requesting a lighting layout plan and a cost break down. Mr.
18. Burroughs testified that this clearly showed that the city
19. was making an effort to provide lighting for the area. The
20. letter was admitted into evidence.
21. Respondents Exhibit #18: Mr. Burroughs testified
22. that Major Austin of the Newport News Police Department had
23. advised in this letter that police patrols were being con-
24. ducted through the area on all shifts and that two complaints
25. of misconduct had been received. Mr. Burroughs testified
26. that this letter clearly showed that the area was being
27. properly patrolled and that the misconduct at the park
28. involved only isolated incidents of the type that occur
29. throughout the city. The letter was admitted into evidence.
30. Respondents Exhibit #19: Mr. Burroughs testified
31. that he recieved this letter from Major Williams of the
32. Newport News Police Department wherein he advised that water
33. patrols had been conducted through the Denbigh Boulevard
34. Boat Ramp/Park area and that there was no record of any

1. disorders. Mr. Burroughs further testified that Major Willia...
2. advised in the letter that more intensive patrols would be
3. conducted on the week-ends. The letter was admitted into
4. evidence.
5. The city moved that the Court view the Denbigh
6. Boulevard Park.
7. The hearing was reconvened on August 5, 1974, and
8. the Court announced that it had viewed the park on two occasions.
9. The Court indicated that it was unfortunate the city had
10. opened the park prior to it being completed and that such
11. condition was an imposition on the adjacent landowners and
12. that there were no safeguards to protect the adjacent land-
13. owners, and that the activities in the park spilled over
14. and affected the neighborhood in an unreasonable and un-
15. necessary manner. The Court indicated that although the
16. city has the authority to establish a park, it may not
17. operate the park so as to constitute a nuisance, although
18. there may be an increased usage of the boat ramp and vehicular
19. traffic and an increase in noise resulting from same, such
20. increase must, in order to constitute a nuisance, exceed the
21. ordinary consequences prior to being a nuisance. The number
22. of property owners affected by the nuisance is not the
23. measure to determine the case, and the problem essentially
24. is it a nuisance? The Court indicated that safety in the

25. operation of the park is not a factor, since it does not go
26. with the issue affecting the use and enjoyment of the propert
27. by the adjacent landowners; that the lack of water fountains
28. and telephones were problems for the city. The Court indicated
29. that one of the key issues was the disorderly manner in which
30. the park was being conducted and that the city must take
31. every reasonable precaution to see that no injury and inter-
32. ference in the use and enjoyment of property owned by the
33. surrounding landowners is permitted. The Court made reference
34. to the absence of sanitary facilities and indicated that the
1. two "porta-toilets" stood out like icebergs and were flagrantly
2. unsightly and there must be some plan for the restriction of
3. cars churning around in the parking lot. The fact that the
4. toilets were present indicated a need and a necessity for the
5. existence of toilets and indeed toilets appeared to be a must
6. for the park; otherwise, the city would not have established
7. the porta-toilets in the park. The Court indicated that
8. drinking in public was a problem and the city must bear the
9. cost of supervising the park in order to maintain it and
10. police it in a proper manner so as to restrict the disorderly
11. conduct. The Court stated that the city had not taken every
12. reasonable and proper precaution to properly police the park
13. and that they must have proper sanitary facilities present in
14. the park. The Court indicated that the park must be operated
15. in a proper, orderly manner and if the city was not going to
16. provide for sanitary facilities and properly supervise the
17. park, that it would have to forego the use of the park. The
18. Court indicated to the City Attorney that the Court was re-
19. questing a letter of intent setting forth the city's intent

20. regarding the installation of permanent toilet facilities
21. and a plan for law enforcement of the Denbigh Boulevard Park.
22. The Court advised counsel that the letter of intent would not
23. be considered as evidence in the proceeding. A letter of
24. intent was filed with the Court within the prescribed time.
25. On September 24, 1974, the Court rendered its decision.

Submitted by Lawrence M. Spigel,
Counsel for Harry E. Atkinson, et als,
all as members of the Council of the
City of Newport News and the City of
Newport News and Richard Hudgins, Counsel
for Complainants

_____
Lawrence M. Spigel

_____
Richard Hudgins

I hereby certify that a true copy of this Statement of Facts was delivered to Richard Hudgins, 10352 Warwick Boulevard, Newport News, Virginia on the _____ day of _____ 1975.

_____

Approved:

Judge

I hereby certify that the parties have fully complied with the Rules of Court regarding this Written Statement.

Judge

* Mr. Hertzler and his Attorney contend that Mr. Burroughs did not make the statements set forth on page 32 - lines 22, 23, and 24.

Mr. Burroughs and the Acting City Attorney contend that the statements contained on page 32 - lines 22, 23, and 24 were made.

The Circuit Court Judge does not recall whether or the statements were made.

- E X H I B I T S -

APPELLANT'S EXHIBITS numbered one (1) - nineteen (19), both inclusive are contained in the record.

APPELLEE'S EXHIBITS numbered one (1) - twenty-one (21), both inclusive, are contained in the record.

Court, T- 13: 9-24-74

COURT: All right. Now, this matter comes on today for a decision in this case. The evidence has all been taken, I've heard enlightening and excessive arguments of Counsel regarding the law and facts of this case. I've already indicated to Counsel the feeling of this Court in regard to its decision.

First, I would like to say that there was a general misunderstanding concerning the status of this case.

When this matter was heard in the early part of August, the evidence was completed, the City had not put on any evidence regarding the -- its intention to establish permanent toilet facilities on the premises of what constituted this Park.

Now, I asked the question of the City Attorney on the day we took the evidence, or the last day we took the evidence, as to that particular bit of evidence, because I felt it was important to me, important to the Court. It sort of completed the circle. It was, I thought, very important -- a very important piece of

evidence in looking at the whole picture. The City Attorney was unable to furnish me that information. He had not had the official stand on the City as to their intent in the overall planning of this Park.

Whereupon I suggested to the City Attorney that he should notify me in writing by September the first, as to the City's intent along the line of the -- establishing the permanent toilet facilities. Of course, the lawyers and the Court, I'm sure, were in complete understanding.

Somewhere along the line it developed that in some quarters it was taken that this Court had ordered the City to build permanent facilities on the Park premises, and then that the City had refused to do it. Well, nothing could be farther from the truth.

This Court has never ordered the City to -- undertakento order the City to build anything on that Park area. And the City has never, in so

far as I know, since it was incorporated in 1896, ever refused to obey a Court order. So I was shocked when I heard that this was the situation. And, of course -- we all understood it. I was just sorry that that impression got out to other people who may have an interest in the outcome of this case.

Now, I did get the letter of intent that came from the Mayor, rather than from the City Attorney's office. And it was quite voluminous and informative and evidentiary I might say, in nature, which was a little unusual.

All I wanted him to tell me is what they were going to do or not going to do. That's all I wanted to know. But I received that, and having received it, then, of course, I wrote to the City Attorney and to Mr. Hudgins, who represents the petitioners, and expressed my dismay at the overall publicity given to this suit, and

1 telling them that inasmuch as we
2 had received such a voluminous letter
3 from the Mayor, that I would give Mr.
4 Hudgins an opportunity to further
5 comment if he desired. But that I
6 had considered that the evidence of
7 the case had been completed.
8 All I wanted to know was
9 whether or not they intended to
10 establish the public facilities.
11 Well, I think the record should dis-
12 close that we had -- it was decided that
13 no further evidence would be taken by
14 either side and that we would come in
15 this morning to -- for a final decision.
16 Now, I think we conferred,
17 I believe it was Friday, about this,
18 at which time I indicated to Counsel
19 after we had completed our discussion
20 of that particular phase of the case,
21 I indicated to Counsel how I felt,
22 inasmuch as no further evidence
23 was going to be presented and no further
24 arguments were going to be presented,
25 that I was in a position to divulge my ***

1 So if the operation in itself
2 is legal, then the surrounding neighborhood
3 has to put up with the -- with this
4 reasonable overflow and encroachment
5 onto the enjoyment of their property.
6 But in establishing a ball-
7 park, the City or the Municipality or
8 the State could not establish it and
9 run it in such a manner that the over-
10 flow and encroachment on the property
11 of the surrounding neighborhood would
12 be unreasonable.
13 And if they do, they create
14 a nuisance. And so this is the situation
15 we find ourselves in, in this case. The
16 City had the right to establish this
17 Park. These people cannot be heard
18 to complain that the traffic on the
19 road was increased. The noise from the
20 motors on the boats, where it will be
21 disturbing to the neighborhood, perhaps,
22 is of no moment. The increased wash
23 upon the beach by the skiers, in my
24 opinion, is of no moment because these
25 people would have no right -- where it

1 might be unpleasant, they would
2 have no legal complaint about such
3 a thing as that. Nor would this Court
4 have a right to step in and undertake
5 to tell the City what regulations
6 it should put on -- speed regulations
7 it should put on its river and so forth.
8 I do not believe -- I have
9 not studied that, but I do not believe
10 this Court would have the authority to
11 undertake to enter into such a realm
12 of legislation as would be necessary
13 to regulate the traffic on the river.
14 But the evidence that I heard
15 in regard to the operation of this Park
16 established certain things. First of
17 all, it established that the City
18 opened the Park before it was completed.
19 And that's probably what really created
20 the ill feeling among some of the
21 neighbors -- between the neighbors and
22 the City, because the Park was not
23 ready for operation.
24 And I think conceded by every-
25 body at the time they opened it and

1 started the operation, and I think
2 these people -- the Petitioners were
3 rather shocked at what went on to
4 start with. And they feel that this
5 was going to be a matter of a permanent
6 nature, they got their dander up and
7 their fur stood up straight, and they
8 went to the City in no uncertain terms
9 and I think, perhaps, there was a clash
10 of interest and maybe things weren't
11 negotiated quite as smoothly as they
12 could have been.
13 But be that as it may, the
14 evidence that I heard discloses that
15 there overflows from this Park an un-
16 reasonable encroachment upon the use
17 and enjoyment of the people in the sur-
18 rounding area. Now, this particularly
19 with regard to Mr. Hertzler and his
20 family and the right to enjoy his
21 property which is just across the narrow
22 street from this Park.
23 The evidence discloses further
24 in the opinion of this Court, that this
25 is not a neighborhood park as was

1 contended by the City. I don't
2 see how we could construe the going
3 up and acquiring of property, building
4 a boat ramp for the launching of
5 boats and the nature trails and bridges
6 and so forth that they built back
7 through the marshy area could be con-
8 strued in anywise as a neighborhood
9 park.
10 I don't think it stretches
11 the imagination to believe that this
12 Park was built for the use and benefit
13 of the citizens in the northern part
14 of the City, who, until that boat ramp
15 was built, had to drive a good distance
16 to have access to the river, as far as
17 a public boat ramp was concerned, and
18 that was one of the prime reasons,
19 I'm certain, that was disclosed to me,
20 that this Park was built. And so it
21 was not built as a little neighborhood
22 park.
23 But it is a park designed
24 for city-wide use. And particularly
25 the northern end of the City, and it

1 was anticipated that many people
2 would use that Park. Otherwise, I'm
3 sure the City wouldn't have expended
4 the money to acquire the land and
5 undertake to build a Park and so forth
6 as they did down there if they just
7 thought a handful of people were going
8 to use it.
9 Now, it being a City Park,
10 then it would seem to me that the City
11 is going to have to operate it as a
12 City Park. I don't think it could
13 be said that it would not create a
14 nuisance to come in right across the
15 street from the Hertzlers and build a
16 unsightly parking lot there and not
17 patrol it and allow the cars to come
18 in and skid and slide and race up and
19 down at all hours of the day and night
20 as the evidence disclosed.
21 People sitting in the parked
22 cars over there and participating in
23 beverages of one type or another,
24 throwing tin cans and bottles in the
25 parking lot. People urinating where

1 it can be viewed from the premises
2 of Mr. Hertzler by himself and his
3 family and his guests, if any he
4 should have.
5 He shouldn't have to wonder
6 if such is going to happen if he has
7 his guests out on his lawn, that
8 they're going to be embarrassed by
9 this conduct.
10 The evidence was undenied
11 that there was defecating by human-
12 beings on the premises because there
13 were no toilet facilities there.
14 Without trying to recant the
15 evidence, the evidence was replete as
16 I viewed it, with obnoxious conduct
17 on the premises which would be obnoxious
18 and offensive to the people in the
19 adjoining area.
20 Now, the City said that they
21 put up a screen, a buffer, between these
22 people and the parking lot. Well, they
23 must have thought it was necessary or
24 desirable to put it up to protect these
25 people across the street. And the

1 screen that I saw up there was a
2 little old bunch of scraggly bushes
3 that a good size hog could have run
4 through without being scratched on either
5 side, and that acted as no screen at
6 all.
7 And during the progress of
8 the trial, the City, evidently feeling
9 that toilet facilities were necessary
10 or highly desirable, they went up
11 there and put up two of the most
12 unsightly toilets that you'd want to
13 peruse with your eyes. These things
14 they put out on a construction site.
15 And not only that, but they put the
16 door facing right toward the Hertzler's
17 so if anybody opened the door, if
18 anybody was in there, well there it is.
19 They at least had one for male and one
20 for females. I think maybe that was
21 a step in the right direction. But to
22 me that was a very unsightly situation,
23 and I think these people certainly had
24 a right to complain.
25 So without recounting the whole

1 evidence, without regard to the
2 increase in traffic, it went down
3 without regard to the increase of
4 traffic on the river, it is the opinion
5 of this Court that the City has created
6 a nuisance.
7 Now it is true, of course,
8 and there are going to be those who
9 will say, "Well, the public interest
10 is involved," and I agree with that.
11 The public interest is involved.
12 But the right to own and control
13 property and enjoy your property is
14 the fundamental basis on which this
15 country of ours is founded. And
16 Virginia was a leader in that and I
17 never hesitate to point out if I have
18 an opportunity. And this right to
19 control and enjoy your property is
20 inherent in our system. And this means
21 the individuals' right to own and
22 control and enjoy his individual property.
23 Now, the City cannot, because
24 it happens to be a governing body or
25 municipality, create a nuisance as

1 against one person for the benefit
2 of the whole. We can't do that.
3 Now, I recognize the right
4 of eminent domain and so forth, where
5 the City can under certain circumstances
6 acquire property for public use by
7 condemnation proceedings, and this is
8 well recognized in our law, although
9 dangerously used at times, I think.
10 But it's well recognized.
11 But they cannot under the
12 guise of enjoyment by the masses,
13 create a nuisance as against a few.
14 And once this nuisance has been created
15 as this Court feels it has been done,
16 then the answer -- the defense of the
17 City on the cost they're going to have
18 to entail to eliminate this -- to
19 eliminate to the satisfaction of the
20 Court, perhaps, or to the satisfaction
21 of the people, that the cost is pro-
22 hibitive. Well, the cost is of no
23 moment. If a nuisance has been
24 created by the City, the fact that
25 it's going to cost them a half a million

1 dollars or three hundred thousand
2 dollars or a hundred thousand dollars
3 or whatever it is to correct it,
4 doesn't mean anything.
5 If they're going to run
6 the Park, they're going to run it
7 right. And if they can't afford it
8 to start with, then they shouldn't
9 have built it up there in the beginning.
10 Now, of course, this is not
11 in evidence, but I would have to
12 recognize that Newport News is no
13 one horse town. That Newport News
14 is a fine and progressive City. And
15 just by way of passing, I would say
16 to the City and this has no legal
17 significance, but just by way of passing,
18 it would seem to me that the City wouldn't
19 want to operate any public facility
20 within its territorial limits, unless
21 it was "A Number One".
22 We're an "A Number One" City
23 and we ought to conduct our affairs in
24 an "A Number One" manner. And I don't
25 think we ought to undertake to construct

1 a park that our citizens wouldn't
2 be really proud of. As I say, that
3 has nothing to do with the legal --
4 that has no legal significance, that's
5 just a personal observation I might
6 make.
7 The City will have to --
8 now the City also recognizes that
9 this does create a problem up there
10 with patrolling and whatnot, which
11 has been far from satisfactory, because
12 on yesterday they decided to close it
13 at nine o'clock. Well, it looks like
14 to me that somebody decided that
15 perhaps things weren't right up there
16 at night, because now they're coming
17 in here today and telling me, well,
18 yesterday they closed at nine o'clock
19 and now they want to see if that's
20 going to help.
21 So evidently the City thinks
22 and still thinks that the Park is not
23 properly patrolled and that behavior
24 up there at nighttime is not what it
25 ought to be. And is most undesirable

1 to the surrounding area.
2 So, now, having summed
3 that up, I would say that it is the
4 opinion of this Court that the City did
5 create a nuisance. It is now operating
6 a nuisance in the construction and
7 operation of the Park, and that they'll
8 have to either right it or abate it.
9 MR. SPIGEL: Your Honor,
10 do I understand the Court has just
11 stated that the City will either have
12 to rectify the situation or stop the
13 operation?
14 COURT: Well, to break it
15 down into simple language so there will
16 be no mistake on anybody's part, if the
17 City is going to continue the operation
18 of the Park, then they're going to have
19 to do it in such a manner as will not
20 be considered a nuisance in law.
21 The City doesn't have a right
22 to create a nuisance any more than
23 individuals have a right to create a
24 nuisance.
25 MR. SPIGEL: Well, if your

Honor please, it is -- is the Court granting the injunction to restrain the City from operating the Park? The Court has found that a nuisance has been created, however, the Court has not said whether or not the injunction is to grant --

COURT: I'm going to grant the injunction. Now, Mr. Spigel, there's been a great tendency in these times, I think, for the Court to undertake to supervise certain operations.

As I understand the law of injunctive relief, a Court of equity never will order any specific actions be taken in the affirmative because they were unable to supervise.

For instance, if there was an injunction relative -- injunctive relief relative to the building of a chimney or something of that nature, I couldn't enter any affirmative injunction, because I couldn't go out there and supervise the building of it.

1 I have no way of doing that.
2 Somewhere along the line,
3 I feel that we have lost sight of that
4 proposition and the Courts have under-
5 taken to supervise the operation of
6 Parks. They're undertaking to super-
7 vise the operation of swimming pools,
8 they're undertaking to supplant the
9 school boards of various localities,
10 and supervise the operations of the
11 schools, themselves.
12 Now this Court has no
13 intention of falling into that quagmire.
14 I am not park superintendent. This
15 Court has no authority along that line
16 that I know of. I'm just saying to
17 the -- to this -- to the litigants here,
18 that I try a law suit. I heard the
19 evidence and I heard the argument of
20 Counsel. I think the Complainants
21 are correct that the City has created
22 a nuisance and they're entitled to
23 injunctive relief.
24 If the City wants to correct
25 it, then they can do that. But I'm ****

1 I'm not criticizing
2 the system, I'm just saying that's
3 the way it works. In Virginia, at
4 least, that's the way it works. You
5 just can't hop up there tomorrow
6 like you can in other jurisdictions
7 across the Potomac, and get decisions
8 from seven Justices. Probably while
9 they're drinking coffee. You can't
10 do that.
11 So I'll be glad to hear you
12 all on that point. Of course, some-
13 body's got to prepare a decree anyway,
14 and I assume you're going to prepare the
15 decree?
16 MR. HUDGINS: Yes sir, I'll
17 prepare the decree.
18 COURT: I assume we'll have
19 some further discussion about that,
20 entering the decree. I'm not telling
21 you you have to go up there today and
22 put a chain across the place. That's
23 not what I'm saying. I think we've
24 got to have time to get the order
25 entered.

1 MR. SPIGEL: Your Honor,
2 there's one other matter I would
3 like the Court to clarify for the
4 record, if possible, and that is the
5 Court has, in rendering its decision,
6 has referred to the parking lot as
7 an unsightly parking lot, which
8 according to the Court's interpretation
9 of the evidence, this has been shown.
10 In addition, the Court has
11 referred to people throwing bottles
12 in the parking lot and I submit, if
13 your Honor please, that there has been
14 no evidence whatsoever of people throwing
15 bottles in the parking lot.
16 COURT: Well, when I say
17 throwing bottles, I didn't mean at
18 each other.
19 MR. SPIGEL: Well, I took
20 it to mean not at each other, but just
21 throwing them on the ground or just
22 throwing them, period. But what I'm
23 trying to say is, in order to clarify
24 this record, in addition, the Court
25 has referred to people urinating in

the Park. Now, if your Honor please, you will recall there was one picture presented by Mr. --- offered into evidence by Mr. Hertzler that showed one young man relieving himself in the river from on top of the boathouse.

Now, this, of course, is one isolated incident.

COURT: Well, it doesn't make much difference whether he was standing on top of the boathouse relieving himself or whether he was standing down on the ground. As a matter of fact, it probably would be more of a spectacle if he were standing on the boathouse.

MR. SPIGEL: I was referring to the evidence as disclosed by the picture. I didn't mean to --

COURT: Well, I'm satisfied that the evidence showed the debris and the scattering of it by the participants in the Park and the unsightlyness of the parking lot which in itself may not be a nuisance, taken

1 by itself. But taken as a whole,
2 I think it is part of it.
3 MR. SPIGEL: The point is,
4 your Honor, in regard to the sanitary
5 condition, when the Court says that
6 people were urinating in the Park, it
7 implies that this happens continuously
8 and that there's more than one incident
9 involving this type of activity and so
10 forth.
11 And that's not what the
12 evidence disclosed, if your Honor
13 please. And furthermore, in regard
14 to the unsightly privies that the Court
15 has referred to, installed by the City,
16 in regard to the location of these
17 privies in relation to where Mr.
18 Hertzler lives, if your Honor please,
19 there is not evidence to show Mr.
20 Hertzler could see inside the privy from
21 his house.
22 That his house is located,
23 as the Court clearly observed when
24 the Court viewed the area, several
25 hundred feet away from where these were

1 positioned. So I think just for
2 purposes of clarifying the record --
3 COURT: Well, I think what
4 you're trying to do, Mr. Spigel, is
5 build a record we don't have, that
6 we didn't have to start with. Now,
7 I don't think we ought to reargue this
8 evidence because then both sides are
9 going to have to reargue it, and then
10 we'll be here for a protracted length
11 of time.
12 We've heard all the evidence
13 and I don't think we ought to try to
14 build a record for an Appellate Court
15 by your recanting and arguing what
16 you felt the evidence was. But on
17 that particular point, I don't want
18 you to overlook the fact that the Court
19 went up there with the knowledge and
20 consent of Counsel on both sides.
21 And I know what he can see
22 from his premises and what he can't
23 see, because I was there and I saw it
24 with my own eyes.
25 Now, the doors were closed

when I was there, I'm not indicating that the doors were open. I'm just saying what would have happened if the doors had been opened.

All right, now, I would expect a decree in here pretty shortly.

MR. HUDGINS: Yes sir, I'll prepare it promptly and get a copy to Mr. Spigel and ask for an appointment with the Court.

COURT: Then we can have further discussion on the starting date for this injunction.

MR. HUDGINS: Yes sir, I'll do it promptly.

COURT: I recognize there are problems on both sides.

MR. HUDGINS: Yes sir.

COURT: All right, gentlemen, it's been nice having you.

MR. HUDGINS: Thank you, your Honor.

(At this time the case was concluded.)

- - - oOo - - -

MR. SPIGEL: Yes. And there are additional reasons why I don't agree with the order. But don't let me interrupt you now.

MR. HUDGINS: My remarks were only to the wording or -- you're citing deficiencies --

MR. SPIGEL: The contents.

MR. HUDGINS: Yes. I understand fully that you object to the entry of the order and the contents, but this was only a mechanical difficulty that you confronted me with. And, of course, I did not think it appropriate until we came back here to insert a date.

MR. SPIGEL: Well, one of the strongest objections that we have to the contents of this order is that the order does not set forth the reasons for the issuance of the injunction. In a proceeding of this nature, certainly we have to -- have to include, in reasonable detail, what conditions constituted

1 the nuisance which interfered with
2 the complainants' use of their
3 properties, which, in turn, warranted
4 the granting of the relief that they
5 prayed for. I mean, to just say
6 that the Court having found, in fact,
7 that the City's operating a park in a
8 disorderly manner, and further, in
9 such a manner as to unreasonably interfere
10 with the use and enjoyment of property
11 owned by the complainants. That
12 doesn't say anything.
13 COURT: I think that language
14 is a little far out anyway, about
15 the City operating in a disorderly
16 manner. I don't believe that we
17 went quite that far.
18 MR. HUDGINS: Well, I felt
19 that at the end of the hearing, that
20 was immediately prior to the issuance
21 of the letter of intent, I felt that
22 -- or rather my inference from the
23 observation of the Court, to wit:
24 the outdoor privies and the other
25 factors, I was drawing the inference

from that, that that was disorderly. That that was the Court's conclusion, that it was disorderly. Perhaps I'm incorrect.

COURT: Well, maybe you're not really incorrect, but the language that the City is operating in a disorderly manner is sort of like -- sound like disorderly conduct on the part of the City. And this is not what I had reference to. No, I think -- I don't know that you have to outline the specifics. I think that the order should read, however, that the Court, having considered all the evidence and the arguments of Counsel, that it is of the opinion that the manner in which the park is being operated, constitutes a nuisance.

MR. SPIGEL: Well, if your Honor please, that's been the problem throughout the whole case --

COURT: I think my statement in the record pretty well sums up

what I thought was wrong out there.

MR. HUDGINS: Well, I feel it impractical and it's not feasible to draft in one order to pull through into that one order, all of the factual base which would be the bottom for the Court's conclusion that the City was operating a nuisance.

Now, I just don't think that can be feasibly done.

MR. SPIGEL: Well, what I'm saying is, the Court has divorced certain complaints from the action. The Court has specifically stated that the increase in the river traffic, the increase in the traffic on Denbigh Boulevard, the lack of a water fountain or the lack of a public telephone and so forth, is not complainable. And that this in no way is related to the conditions which are supposed to be the nuisance. But the Court has stated that there -- that there's some type of sanitary condition which

constitutes a nuisance. I assume, based on the -- on the evidence relating to the young man relieving himself in the river and based on the incident where Mr. Hertzler saw human feces on the ground on one occasion. But how is this -- what we're trying to determine is, are these the conditions which constitute the nuisance? I think this needs to be spelled out in the order, what the Court found. The Court very easily divorced other complaints from the action.

COURT: No, I didn't very easily do any such thing. What I said was -- what I said, in essence, was, first, we made a finding that the City had a right to operate the park. Then having the right to operate the park to acquire the land and construct the park, operate it as such; having a right to do this, if -- even though it created an inconvenience and met with disfavor and was --

1 MR. SPIGEL: I think you said
2 annoying.
3 COURT: Annoying is the word
4 I'm trying to think of, to the
5 neighbors, that does not constitute
6 a nuisance, a legal nuisance; if
7 the annoyances fall within the -- I
8 put, overflow, for want of a better
9 word, that could reasonably and
10 normally be expected from the op-
11 eration of a park. And I gave as
12 my illustration, the ball diamond.
13 For instance, I can sit in my house,
14 for instance, far away as Todd
15 Stadium is from my house, on Friday
16 and Saturday night, I can hear the
17 bands playing and the drums beating
18 and the crowds hollering. Now, I
19 can't say I'm close enough that that
20 would make any difference to me.
21 But if I were, I don't think I
22 could complain that that constitutes
23 a nuisance, because the City, having
24 the right to establish the stadium,
25 the overflow of the noise and the

increase in the traffic and maybe dust and so forth, is what is normal -- is a normal overflow from the stadium. And even though I wouldn't be very happy about it, I don't think I could -- could do anything about it. Now, therefore, I said, the increased traffic in the river and the noise from the outboard motors and inboard motors, too, I suppose, and the increased wash up on the beach, and the failure to regulate the traffic in the manner which the neighbors think it ought to be regulated, the speed limits and whatnot, this is purely a legislative matter for the City, the neighbors could not be heard to complain about that. Because if you're going to have a park on the seashore and a boat ramp, you've got to, naturally, expect an increase in boat traffic. That's why you put the ramp there.

**** annoyances. So I didn't undertake to rule that this was not a nuisance. I just said that that's a normal thing to be expected from a park of this nature. And therefore, I didn't think these people could be heard to complain about that. But I stated that the unsightliness of the parking lot, the --

MR. SPIGEL: But this is where we don't -- we're lost. We don't understand what unsightliness of the parking lot means. If there were a few beer bottles on the ground or --

COURT: Well, in the first place, I think we -- I don't think it would take an expert -- now, I went up there and looked at the park, see, at the suggestion of everybody, with the concurrence of everybody. I don't know whether you all suggested it or I suggested it, but anyway, I went up and looked

1 at the park. And having looked
2 at it, I have a right now to
3 rely on what I saw. I don't
4 think anyone could say, without
5 fear of contradiction, that
6 that parking lot was built with
7 any idea of -- of beautifying
8 that neighborhood. It is a
9 very -- well, I was about to
10 use the word cheaply, it's
11 very inadequately constructed
12 in my opinion. There were ruts
13 in it. It was -- it was just
14 an old, unsightly, graveled piece
15 of property, with no attempt
16 to conform it with the surrounding
17 neighborhood. There was just no
18 attempt to do that on the part
19 of the City. That's a right
20 pretty section up there, you
21 know, they're surrounded by
22 woods and people's homes, they
23 take great pride in their homes.
24 They just came in and cleared
25 out a place, apparently, and

spread some gravel out there. And it was rutty and whatnot. That's from an aesthetic standpoint. They said they had set up a buffer, which indicates that they felt that the neighborhood should be protected from the view. They had these few little old scraggly bushes up there, didn't amount to a hill of beans. Then they -- for instance, they'd gone in and they hadn't even provided any trash receptacles when we first started this hearing. And said they couldn't do it, Mr. Burroughs said they weren't able to provide them. So when I got down behind and questioned him, come to find out that he could provide them the next day, and, I believe, did. The -- the lack of sanitary facilities in a place such as that, where people go out and stay for three

and four hours and five hours as you do boating, and come in, you're going to have to -- you're going to have to provide them with some sort of sanitary facilities. And if you don't do it -- these people have a right to sit on their porch without -- and entertain their guests and look out their windows without seeing people relieving themselves out there, without even the fear that somebody's going to do it, because there's no other facilities available. They -- and then the City recognized the necessity for sanitary facilities and did undertake to establish them. And what did they establish? They established these sanitary facilities that you use on a temporary basis at a construction site. Well, certainly, the neighborhood is entitled to better than temporary sanitation facilities. And they

put them right out in the park, they didn't undertake to hide them or to cover them with any shrubbery or foilage or anything. Set them right out in the park, facing these people's houses. And I felt that that -- all of that was a nuisance in itself.

Then the -- the people come in, the evidence was that these automobiles come in and they race up and down the parking lot, slide their tires and skid around, and they're very noisy all hours of the day and night. That they come in there and they sit in those cars and drink their drinks and throw their cans and their bottles around, and it's very unsightly.

And they're noisy and that there's no effort or very little effort made to police the place. It was open 24 hours a day. And the evidence was, when I questioned, they stayed open like that, that that type of operation necessitated

the long hours. And I went along with that, I kind of agreed that was probably true. And then the night before we entered the final order, the City announces -- or decides that they're going to close the place at nine o'clock.

But the evidence, as I heard it, indicated to me that there was insufficient police patrols, ranger patrol, whatever you want to call it. The City wasn't using the proper precautions to keep order, to protect the neighborhood down there from the crowds that gathered. And that all in all, this constituted a nuisance. And I don't know what more I could say on the subject.

MR. SPIGEL: Well, if your Honor please, I'd like to --

MR. HUDGINS: Well -- excuse me, whose turn is it?

COURT: Well, that's just an-- excuse me, Richard, one minute.

**** point, your Honor. You have, in a way, but again, we get back to -- as I say, make notes of everything you said; and in effect, there are four items.

You're talking about the unsightliness, and then the buffer zone, and the lack of sanitary facilities, and the parking lot racing. These are the four items that really are uncondition --

COURT: I'm talking about the lack -- I'm not talking about the parking lot racing as such, as being an item. I'm talking about that as being brought up -- one of the things being brought about is the lack of police patrol in the area of this park. They are not down there keeping order in this park like they should be, and allowing this type of thing to go on.

You see, the Mayor answered my letter -- I mean, answered to

1 my request for a letter of intent,
2 which I certainly didn't intend for
3 him to do. And I didn't intend for
4 him -- to receive any further argu-
5 ment on it, but I don't mean to be
6 critical that he did this. But he
7 talks about how much it's going to
8 cost the City to do these things.
9 Well, I'm not -- I have nothing to
10 do with what it costs. And if,
11 in fact, I'm right about it creating
12 a nuisance, that they've created a
13 nuisance, they cannot continue the
14 nuisance on the basis that the cost
15 -- that the cost to abate it is
16 prohibitive, they can't do that.
17 And I say that the City --
18 that we're a first-class City. And
19 if we're going to operate, we're
20 going to operate a first-class park.
21 Of course, I've got nothing
22 to do with whether it's first-class
23 or not, but we ought not to under-
24 take to put anything down there
25 that we're not proud of. And the

1 City ought to know what is proper
2 police patrol down there and what
3 isn't.
4 MR. THOMAS: Yes sir, but
5 what I'm saying is for the purposes
6 of this order that's to be entered,
7 now, Mr. Hudgins has suggested that
8 it's going -- we're going to have
9 to go on and on in detail, but we're
10 down, really, as I see it, to four
11 and possibly three points, because
12 of -- if these are the nuisances
13 that must be -- we've got to know
14 what to abate, because that's what
15 the language says in the order,
16 that having failed to abate the
17 nuisance --
18 MR. SPIGEL: In regard to
19 the -- let me say something.
20 MR. THOMAS: Sure, go ahead.
21 MR. SPIGEL: I've been
22 sitting back like a good guy. Your
23 Honor, in regard to the evidence
24 that you referred to regarding the
25 insufficient police patrol, I fail

1 to understand how the Court con-
2 cluded that the patrols were in-
3 sufficient --
4 COURT: Well, let's don't
5 argue the evidence now. I've
6 already made my rulings on the
7 evidence.
8 Now, let's just get down
9 to the form of the order.
10 MR. SPIGEL: I know, but
11 we're going to have to get together
12 for a record. So if the Court --
13 COURT: We're not getting
14 together for a record now. I'm
15 just getting ready to ask you if
16 you want this order in shape to
17 be able to abate the nuisance,
18 or are you trying to get something
19 to go to the Supreme Court on?
20 I was just getting ready to ask
21 you what you want.
22 MR. SPIGEL: Well, I certainly
23 would like to avoid going to Rich-
24 mond. And I was --
25 COURT: I was getting ready

1 to say I think I've made myself very
2 clear on what I feel ought to be
3 done in order to run that park with
4 the -- with the reasonable -- I was
5 going to say least possible, but I
6 don't reckon that's exactly right.
7 But anyway, taking it in proper
8 context, with the least possible
9 interference with the neighbors or
10 annoyance with the neighbors. They
11 don't have to have the least possible,
12 I admit that's not right, but I
13 think they ought to go in there -- if
14 you want to know my personal opinion --
15 they ought to go in there and they
16 ought to build some sanitary facilities
17 and they ought to keep them sanitary.
18 They ought to keep them clean. They
19 ought to improve and beautify that
20 parking lot so that it is not an eye-
21 sore to those people with those nice
22 homes down there. However they do it,
23 they ought to have sufficient police
24 patrols down there so that people can
25 feel safe at night from annoyances and

1 from hooting and hollering and shout-
2 ing, and people sitting over in the
3 cars and carrying on in these days
4 and times. I know people don't feel
5 safe with that sort of thing going
6 on. And that's what's got to be
7 done. You see, what really happened,
8 and this isn't -- the Supreme Court
9 doesn't have anything to do with this
10 and neither do I. But what really
11 happened, and is so indicated through-
12 out this whole record, that the City
13 -- these bureaucrats rode in on their
14 white chargers and they just sliced
15 down every peasant that got in their
16 way and they didn't give two hoots
17 in Hades what -- about the people and
18 their objections. They opened that
19 park up before the street was paved.
20 They opened it up before they were
21 anywhere near ready to operate that
22 park. They were in such a hurry to
23 launch those boats down there. When
24 a little bit of PR with these people,
25 Avery, going in and explaining to them

1 what they're going to do and as-
2 suring them that they're going to
3 give them every protection, that
4 they're not going to operate the
5 park until it's ready. And then
6 going down there and having the
7 gall to sit up those temporary, ob-
8 noxious facilities -- I started to
9 say sanitary facilities; they're
10 anything but sanitary facilities --
11 it was like rubbing salt in those
12 people's wounds up there. If they'd
13 gone in and -- the people wouldn't
14 have agreed to put the park there,
15 I agree with that. But they could
16 have salved -- put a lot of salve
17 on the sores. And they didn't do
18 it and the people got their dander
19 up and they brought it into Court
20 where they had a right to come. And
21 I think the City can go up there
22 with a minimum of money and they can
23 patrol that place and beautify it
24 to conform with the general sur-
25 rounding area, and without my

1 telling them how to do it. Now they've
2 got a beautiful place. They've got
3 those bridges and those paths back
4 in there. It could be made a gorgeous
5 place, it really could. And a place
6 we could all be proud of. And if they
7 would just straighten up its entrance,
8 which is in spitting distance -- if
9 you'll pardon the expression, Mr. Record
10 -- within spitting distance of Hertzler's
11 house. If they'd fix that entrance
12 up and -- I don't think he'd care --
13 I wouldn't care if they kept it open
14 24 hours a day. I sort of agree, I
15 don't see how you can run a boating
16 place like that if you're not going
17 to have it open late for people who
18 go out and come back -- people go
19 boating, they don't want to be back
20 by nine o'clock. I agree that that's
21 probably unreasonable to expect that.
22 But I think the City can do
23 it and I don't think they've got to
24 spend all that money the Mayor's
25 talking about spending. Now, they've

1 said, well, they had sanitary fa-
2 cilities down at Hilton Beach and
3 they closed them up because they
4 couldn't keep them sanitary. And
5 it was dirty and -- well, that's
6 the City's fault. They ought to
7 keep them clean. You see, people
8 -- blank this out.
9 (At this time,
10 there was an off the
11 record discussion.)
12 COURT: What carries this
13 world through and carries the com-
14 munity through are the relatively
15 small percentage of the people who
16 really care about things. Now, if
17 you just leave sanitary facilities to
18 the public, well, you're going to
19 have the worst mess on your hands you
20 ever dreamed of. You take this City
21 Hall down here, it's a beautiful
22 building, you walk in and it's all
23 spit and polished. And it's beauti-
24 ful. But if that weren't patrolled,
25 you know, and just left open to the

1 understand that. But what we're
2 really -- we're getting a feel for
3 this as to how the Court -- looks at
4 this whole picture. But when we talk
5 about police protection or police
6 and park rangers visiting or coming
7 onto the property and I think there
8 has been some evidence that they
9 have been coming -- what was it,
10 four times a day, plus -- that's
11 park rangers, plus the police were
12 making periodic stops. Now, we're
13 getting into an area, you know,
14 what's -- what's going to -- what's
15 going to do the job to -- either
16 satisfy Mr. Hertzler or the Court or,
17 you know, how much is enough, is
18 what we're -- I know we're not asking
19 the Court to tell us --
20 COURT: That's right. I'm
21 not saying you've got to put a bat-
22 talion of police down there 24 hours
23 a day.
24 MR. THOMAS: Right. I don't
25 think you're asking us that. And yet ****

(CAPTION OMITTED)

INJUNCTIVE ORDER

This matter came on to be considered upon the Petition of David L. Hertzler, et als, and the Notice of Hearing requesting the entry of a Temporary Restraining Order based upon the allegations contained in the Complaint filed herein, and was heard on July 10, 1974, at which time the Court deferred action and indicated that a hearing would be held on August 1, 1974, in the form of a show cause why the Denbigh Boulevard Park operated by the City of Newport News should not be closed, and also upon the Answer and Grounds of Defense of the City of Newport News, and the Special Plea of Harry E. Atkinson, et als, requesting that they be dismissed as Respondents, it being alleged that they are not proper parties, and upon the view of the Denbigh Boulevard Park made by the Court on August 4, 1974, the case being argued by counsel on August 5, 1974, and the Court having issued an oral ruling from the bench and instructed counsel for the Complainants to draft a decree, and, after considering all the evidence, and the law applicable thereto, and the Court having heard extensive evidence and numerous witnesses and considered the extensive arguments of counsel, and for the reasons revealed by the record herein and for cause shown, and the Court having made a finding in fact that the City is operating the Denbigh Boulevard Park in such a manner as to constitute a nuisance, and further in such a manner as to unreasonably interfere in the use and enjoyment of property owned by the Complainants, therefore, it is

ORDERED and DECREED that the City of Newport News and the Respondents herein, their agents, employees and any and all

parties acting in concert therewith, cease and desist from the operation of the Denbigh Boulevard Park, and it is further

ORDERED and DECREED that said park be closed to the public by the aforesaid parties, but the Court does hereby stay the effect of the decree until such time as the Defendants have perfected their appeal; and it is further

ORDERED and DECREED that the Complainant post a bond in the amount of $2,000.00 with corporate surety; and it is further

ORDERED and DECREED that the two partial transcripts taken herein and exhibits introduced be, and they are hereby, made a part of the record pursuant to Rule 5:9 of the rules of Court.

ENTER: 12/11/74

Henry D. Garnett, Judge

Have Seen:

Richard W. Hudgins, Esq.
HUDGINS AND NEALE
10352 Warwick Boulevard
Newport News, Virginia 23601

Have Seen and Object to: except

Lawrence M. Spigel,
Assistant City Attorney

A COPY, TESTE: GEORGE D. DeSHAZOR, Clerk

BY Addie Burgess D. C.

TO: THE CLERK OF THE CIRCUIT COURT FOR THE CITY OF NEWPORT NEWS, VIRGINIA:

Counsel for the City of Newport News, Virginia, and Harry E. Atkinson, O. J. Brittingham, William F. Haskins, Mary S. Holt, William F. Peach, Jessie M. Rattley, and Aubrey Fitzgerald, all as members of the Council of the City of Newport News, Respondents in the above styled cause in the Circuit Court for the City of Newport News, Virginia, hereby give notice of appeal from the judgment of this Court as set forth in the order entered in this cause on the 11th day of December, 1974, and set forth the following assignments of error:

1. The trial court erred in the entry of the final decree in that said decree was clearly contrary to the law and evidence of the cause.

2. The trial court erred in overruling the Special Plea of Harry E. Atkinson, O. J. Brittingham, William F. Haskins, Mary S. Holt, William F. Peach, Jessie M. Rattley, and Aubrey Fitzgerald, all as members of the Council of the City of Newport News, Virginia thereby refusing to dismiss them from the suit.

3. A statement of the facts, testimony and other incidents of the case will be hereafter filed. Two transcripts in this cause and the exhibits introduced at trial have been made a part of the record pursuant to Rule 5:9 of the Rules of Court

City of Newport News,
Harry E. Atkinson, et als,
all as members of the Council
of the City of Newport News

By: Lawrence M. Spigel
Lawrence M. Spigel
Assistant City Attorney

Lawrence M. Spigel
Assistant City Attorney
2400 Washington Avenue
Newport News, Virginia 23607

CERTIFICATE

I hereby certify that a true copy of the foregoing NOTICE OF APPEAL AND ASSIGNMENT OF ERROR has been ~~mailed~~ delivered to Richard W. Hudgins, Counsel for the Complainants on the 19th day of December, 1974.

Lawrence M. Spigel
Lawrence M. Spigel

Filed: 12-19-74