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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

Volume I (Printed In Three Volumes)

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 761116

BENNETT T. MATTHEWS,

Appellant,

v.

COUNTY OF GREENE
AND
BOARD OF SUPERVISORS OF GREENE COUNTY,

Appellees.

GENERAL APPENDIX TO APPELLANT'S BRIEF

C. WAVERLY PARKER
Attorney at Law
314 Madison Road
Stanardsville, Virginia 22973

Attorney for Appellant

TABLE OF CONTENTS

	App. Page
Bill Of Complaint (Filed 2-21-75)	1
Order (Filed 3-9-76)	9
Plea In Bar (Filed 3-21-75)	10
Final Order in Bennett T. Matthews v. Board of Zoning Appeals of Greene County et als., now before this Court on Appeal (Record No. 750854) (Filed 7-6-76)	13
Court's Oral Opinion of 5-19-75 (Filed 6-25-76)	19
Excerpts from Transcript of Hearing of May 19, 1975 (Filed 7-6-76)	19
Excerpt from Transcript of Hearing on June 26, 1975 (Filed 7-6-76)	21
Decree of 6-26-75 (Filed 6-26-75)	24
Answer (Filed 7-3-75)	27
Written Statement of Facts, Testimony and Other Incidents of this case	33
Interrogatories (Filed 9-22-75)	38
Response to Interrogatories (Filed 10-10-75)	39
Motion (Filed 10-15-75)	41
Transcript of Hearing on 10-20-75 (Filed 6-25-76)	42
Order (Filed 12-3-75)	51
Interrogatories (Filed 10-22-75)	53
Objection to Interrogatories (Filed 11-10-75)	55
Motion (Filed 11-13-75)	56
Memorandum (Filed 10-31-75)	57
Memorandum (Filed 11-10-75)	69
Transcript of Hearing of 11-17-75 (Filed 6-25-76)	90
Order (Filed 3-9-76)	129
Supplementary Responses to Interrogatories (Filed 12-4-75)	131
Defendant's Exhibit E (Filed 3-8-76)	135
Transcript of Trial on 12-3,4,5-75 (Filed 6-25-76)	139
Plaintiff's Exhibit 1: Subdivision Ordinance (Filed 12-3-75)	637
Plaintiff's Exhibit 36: Plat of Greenetown Village (Filed 12-5-75)	*

App. Page

Plaintiff's Exhibit 2: Plat of Greenetown Village (Filed 12-3-75) ..... *

Plaintiff's Exhibit 25: Aerial Map of Greenetown Village site (Filed 12-3-75) .. *

Plaintiff's Exhibits 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 7 and 24: Topographic quad map of Greene County, with index and road map (Filed 12-3-75) ..... *

Plaintiff's Exhibit 19: Existing Land Use Map (Filed 12-3-75) ..... *

Plaintiff's Exhibit 3: Interim Zoning Ordinance (except map adopted as part thereof) (Filed 12-3-75) 660

Plaintiff's Exhibit 3A: such map (Filed 12-3-75) ..... *

Plaintiff's Exhibit 4: Comprehensive Plan Adopted *after* Interim Zoning Ordinance (Filed 12-3-75) ..... **

Plaintiff's Exhibit 20: Subdivision Map (Filed 12-3-75) ..... *

Plaintiff's Exhibit 21: Utility Map (Filed 12-3-75) ..... *

Plaintiff's Exhibit 22: Future Land Use Map (Filed 12-3-75) ..... *

Plaintiff's Exhibit 23: Sewer Map (Filed 12-3-75) ..... *

Plaintiff's Exhibit 26: Existing Subdivision data (Filed 12-3-75) 677

Plaintiff's Exhibits 28 and 29: Critical Environmental Areas (Filed 12-3-75) 681

Plaintiff's Exhibit 30: Rapidan Service Authority Water System as originally proposed (Filed 12-3-75) ..... *

Plaintiff's Exhibit 31: Rapidan Service Authority Water System as in operation (Filed 12-4-75) ..... *

Plaintiff's Exhibit 37: Rapidan Service Authority Operating Policy (Filed 12-5-75) 683

Plaintiff's Exhibit 32: Projections & Economic Base Analysis: Greene County (Filed 12-4-75) 701

Plaintiff's Exhibit 33: Data Summary: Greene County (Filed 12-4-75) 718

Plaintiff's Exhs. 35 and 34: Geology & Mineral Resources of Greene & Madison Counties; and associated geological map (Filed 12-4-75) ..... *

Defendants' Exhibit C: Calendar of Events Leading to Adoption of Greene County Comprehensive Plan (Filed 12-4-75) 751

Plaintiff's Exhibit 5: Permanent Zoning Ordinance (except map made a part thereof) (Filed 12-3-75) 753

Plaintiff's Exhibit 27: Such map ..... *

App. Page

Plaintiff's Exhibit 6: Amendments to Permanent Zoning Ordinance and to Its Map (Filed 12-3-75) 852

Transcript of Trial on 3-8,9-76 (Filed 6-25-76) 864

Final Order (Filed 4-26-76) 1099

Notice of Appeal (Filed 5-26-76) 1105

Assignments of Error (Filed 5-26-76) 1105

Assignment of Cross Error (Filed 6-8-76) 1111

The items with respect to which a single asterisk appears are to be considered by the Court, but will not be printed, because of their bulk (see Rule 5:37); and the item with respect to which two asterisks appear will be printed as a separate volume of the appendix suitably indexed (see Rule 5:37).

VIRGINIA: IN THE CIRCUIT COURT OF GREENE COUNTY

BENNETT T. MATTHEWS
Culpeper, Virginia

v. BILL OF COMPLAINT

COUNTY OF GREENE
c/o David C. Dickey, her Commonwealth's Attorney
Stanardsville, Virginia

and

THE BOARD OF SUPERVISORS OF GREENE COUNTY
c/o David C. Dickey, Commonwealth's Attorney for Greene County
Stanardsville, Virginia

To the Honorable David F. Berry, Judge of said Court:

Your complainant, Bennett T. Matthews, shows unto the Court the following case:

1. On 6 March 1973 your complainant acquired all the stock of Daniel Farm, Inc., which at that time owned a tract of real estate comprising approximately 109 5/8 acres of the Ruckersville Magisterial District of Greene County, Virginia. On 29 September 1973, at the instance of your complainant, such corporation filed with the State Corporation Commission a notice of intent to dissolve. In accordance with the plan of dissolution, all the property of such corporation was conveyed to your complainant in redemption of such stock, the legal title (subject to a deed of trust, the obligation of which your complainant assumed) of the tract mentioned above being as a part of such plan passed to your complainant by deed recorded in the office of the Clerk of this Court in Deed Book 71 at Page 53, in which deed such tract is more particularly described. The intended dissolution in fact occurred on 22 January 1974.

2. In the summer of 1973, in consideration of the impending corporate dissolution and your complainant's plan for the subdivision of such tract, your complainant arranged for a topographic survey thereof. This was completed 30 October 1973 at a cost of $3500.00. In September of 1973, upon the same considerations,

your complainant engaged Ross and France, Ltd. to produce a preliminary subdivision plat of the tract. This was completed 23 October 1973 at a cost of $1,500.00. In the preparation of this plat data from the topographic survey, as well as from a soils analysis commissioned by your complainant at a cost of $1,265.30 and finalized on 10 November 1973, were necessarily used.

3. Prior to any obligation of the foregoing expenditures Greene County had enacted a subdivision ordinance. On 4 February 1974 the preliminary plat above mentioned was submitted to the agent who under the terms of that ordinance was to act in behalf of the Greene County Board of Supervisors. The agent advised your complainant that the preliminary plat could not be approved, because it contained provision for townhouses, something which the subdivision ordinance had not contemplated. Accordingly, the preliminary plat was temporarily withdrawn and the planned townhouses stricken from it. As thus amended your complainant resubmitted it to the agent on 28 February 1974, together with the required $274 fee. On that date the agent, in behalf of such Supervisors and Greene County, approved the preliminary plat as provided for in such Subdivision Ordinance.

4. By the further terms of such ordinance your complainant had only a six-month period in which to complete and file a final plat of his planned subdivision. He therefore continued without interruption his employment of Ross and France, Ltd., at a fee to be between $10,000 and $25,000, for the purpose of producing the requisite final plat within the allotted time. In addition, your complainant thereupon engaged others to provide services necessary to completing the plans for his subdivision: Baldwin & Gregg, Ltd., Engineers, to conduct a sewage treatment feasability analysis and design a sewage treatment facility, at a fee of $25,000 for the entire work thus to be done; and Taylor Murphy Institute, to conduct an impact and growth feasibility analysis, at an estimated cost of $1,850.00. On 13 June 1974 Baldwin and

Gregg was paid $1,013.36 toward the design of the sewage treatment facility, and by 18 September 1974 an additional $2,800 was owed for this purpose. On 10 August 1974 Ross and France, Ltd. was paid $10,000 for its services in preparing the final plat. On 26 August 1974 your complainant submitted this final plat to the subdivision agent of Greene County, for his approval.

5. In the meantime, on 2 March 1974, the Board of Supervisors adopted after advertisement is accordance with section 15.1-431 of the Code of Virginia what was entitled an "Interim Zoning Ordinance of Greene County". Prior to that time Greene County had had no land use regulation except, in addition to the statewide health regulations, what was contained in the aforementioned subdivision ordinance.

6. By the terms of the Interim Zoning Ordinance Greene County, which runs from the Blue Ridge on the west to Orange County at its east, which contains mountainous terrain and flat terrain, which has expansive "wild" areas in its western part and considerable residential, farming and commercial areas in other parts, was all placed in a single zone. Except for existing lawful uses, which were continued on a nonconformity basis, no commercial use and no residential use other than as a single family dwelling were permitted unless by special use permit. The minimum lot area for all uses was set at two acres, except where an existing lot held an existing non-conforming use or could meet the new setback requirements or was in an existing subdivision. The ordinance by its express terms forbade the subsequent division of any land so as to make a lot of less than two acres. A Board of Zoning Appeals was created and authorized to issue variances and special use permits in accordance with allegedly appropriate standards set forth in article 5 of the ordinance.

7. Under the further terms of the interim zoning ordinance the same person who was and is the subdivision agent of Greene County was appointed zoning administrator. Therefore, when on

26 August 1974 your complainant as hereinbefore alleged submitted his final plat to such subdivision agent, that agent refused to approve such plat under the subdivision ordinance, upon the grounds that the plat showed upon its face proposed violations of such zoning ordinance. In refusing to approve the plat the county cited as the supposed violations the fact that the subdivision as shown on the plat consisted in part of lots less than two acres in size and called for two lots to be used for apartments (non-single family dwellings) and two lots to be used for commercial purposes. These violations were cited even though the uses and lot sizes shown on the final plat had been shown on the previously approved plat and were fully permissible under the terms of the subdivision ordinance.

8. Faced with this situation, and on the advice of such agent, your complainant on such 26 August 1974 made application to the agent in his capacity as zoning administrator for a zoning permit allowing the uses and proposed lot sizes in question. In as much as under the terms of the zoning ordinance the agent had no authority to allow what was requested of him the zoning permit applied for was perfunctorily and immediately denied. Accordingly, and still upon the advice of such agent, your complainant petitioned the Board of Zoning Appeals under such ordinance created to grant a special permit for the lot sizes and uses in question. On 25 September 1974 that Board refused the relief requested, whereupon your complainant sued out from this Court a writ of certiorari to review the adverse decision of such Board. That proceeding has been tried in this Court, but judgment therein has not yet been rendered. In that proceeding your complainant was not entitled or permitted to attack the operativeness of the interim zoning ordinance, either in general or with respect to him. For the purposes of that proceeding the operativeness of such ordinance was conclusively presumed. On 18 November 1974 your complainant had instituted in this Court after due notice a mandamus proceeding

the purpose of which was to test the operativeness of such ordinance, but no judgment has been entered in that proceeding and the Court has indicated its intention to refuse the mandamus without reaching the merits of the questions there raised.

9. The interim zoning ordinance is wholly invalid and inoperative, inter alia because:

A. It was not enacted with or after the comprehensive plan required by section 15.1-446 of the Code of Virginia.

B. It was not enacted after any of the investigations required by section 15.1-447 of the Code of Virginia. Such "investigations", if any, as had been conducted prior to the enactment of such ordinance were perfunctory and so lacking in depth and objective scrutiny as not to be, in fact, what the law views as investigations.

C. It was not enacted after reasonable consideration of any of the factors set forth in section 15.1-490 of such Code.

D. Regardless of what investigations and considerations were had prior to the enactment of such ordinance it did not, as enacted, reflect reasonable consideration of any of the factors set forth in such section 15.1-490.

E. It is arbitrary and capricious in zoning the entirety of Greene County in one district without accounting for the variety of divergent existing land uses found in that county.

F. It is arbitrary and capricious because it is not based upon a comprehensive plan.

G. It is arbitrary and capricious because it does not account for any of the factors mentioned in section 15.1-490 of the Code of Virginia.

H. It is arbitrary and capricious in that it does not allow for any commercial development in Greene County as a matter of right. This generally capricious scheme is continued by subjecting any proposed commercial use to proceedings before a Board of Zoning Appeals exercising arbitrary and inappropriate

powers as hereinafter delineated.

I. It is arbitrary and capricious in that the standards by which the Board of Zoning Appeals may grant the privilege of commercial use are conclusory and indefinite.

J. It improperly confers upon such Board, the power to legislate.

K. It improperly confers upon such Board what amounts to original jurisdiction of all applications for commercial use, even though the jurisdiction of such Board can be only appellate in nature.

L. It arbitrarily establishes single-family dwellings and minimum two acre lot sizes as the only permissible residential uses of land, unless by resort to subjecting any other proposed residential use to proceedings before a Board of Zoning Appeals exercising arbitrary and inappropriate powers as hereinbefore delineated.

M. It arbitrarily discriminates against large segments of the population by effectively requiring that all residences be of single-family type and on lots of at least two acres in size.

N. It is arbitrary and capricious by classifying property at variance with surrounding uses.

O. It does not contain adequate provision for future development.

P. It unlawfully regulates all subdivision of land in the guise of regulating its use.

Q. Under all the circumstances, such ordinance is an unreasonable exercise of the police power.

10. The interim zoning ordinance is invalid and inoperative as to your complainant's land described above, not only for the reasons set forth in the preceding paragraph but also because, inter alia:

A. Under the facts and circumstances as alleged in paragraphs 1-8 above your complainant acquired, prior to the

enactment of such ordinance, a vested right to subdivide and develop his said land in a manner consistent with the regulations existing prior to the enactment of such ordinance.

B. The ordinance arbitrarily classifies your complainant's said land at variance with surrounding uses and capriciously discriminates against him in favor of such uses.

C. The ordinance as applied to your complainant's land deprives him of his property therein without due process of law and without proper compensation in violation of section 11 of Article I of the constitution of Virginia.

11. By the express terms of the preamble and enacting clause of the interim zoning ordinance that ordinance contemplates a subsequent comprehensive zoning ordinance to be enacted, if the interim zoning ordinance is not sooner to expire, within the period of one year from 2 March 1974. A purportedly comprehensive zoning ordinance is now under consideration by the Greene County Board of Supervisors. That proposed ordinance threatens your complainant with yet another set of regulations with which he allegedly must comply in the use of his land hereinbefore described. Your complainant believes, and hereby avers, that the provisions of the proposed ordinance will prohibit the uses in which, as aforesaid, he has a vested right, and will prohibit the uses that prior to the enactment of the interim zoning ordinance he had intended for his land as set forth on his approved plat, which was his memorial to these uses. Under these circumstances, the allegedly comprehensive proposed zoning ordinance will if enacted be invalid as to your complainant's proposed subdivision and use of his land, because such subsequent ordinance, although it may be otherwise valid, will be as to your complainant's land the intended fruit and fruition of the invalid interim ordinance that since its enactment has in fact prevented your complainant from proceeding with the subdivision and uses shown on his approved plat.

12. As can be seen from the foregoing there is an actual

controversy between your complainant and the defendants named herein, which controversy involves first the validity of the aforementioned interim zoning ordinance and second, if that be invalid, then the harm which is threatened to your complainant by the allegedly comprehensive proposed zoning ordinance. Your complainant ought not to have to place himself at the peril of the criminal sanctions in such ordinances contained in order to expose their invalidity as to him.

WHEREFORE your complainant prays that the interim zoning ordinance aforesaid be declared invalid and, in particular, invalid as to your claimant's land; that the defendants herein named and their agents and successors be enjoined, both pendente lite and forever, from enforcing the said interim zoning ordinance, the said proposed zoning ordinance, and any other such ordinance, against the subdivision and uses which your complainant outlined upon his approved plat; and that your complainant have his costs and reasonable counsel fees about this matter expended.

BENNETT T. MATTHEWS

By: _____
of counsel

C. Waverly Parker, p.q.
Stanardsville, Virginia 22973

Filed in the Clerk's Office the 21 day of February, 1975.

Writ tax $ 5.00
25.00
3.50
Total Paid $ 33.50

Teste: _____, Clerk
_____ D. C.

* * *

ORDER

On the 17th day of November 1975 came complainant and defendants, all by counsel, and complainant moved to amend his bill of complaint by adding thereto, after subparagraph 9-A and prior to subparagraph 9-B, a new subparagraph to be denominated subparagraph 9-A-1 and to read as follows:

> "A-1. The Board of Supervisors of Greene County had no power to enact the interim ordinance in question."

And the Court having such day granted such motion, without objection by defendants, now be it hereby ORDERED and ADJUDGED, nunc pro tunc as of 17 November 1975, that the bill of complaint in this cause be, and the same hereby is, amended by the addition, where indicated, of such language; and defendants are deemed to have denied the assertion in such amendment contained.

ENTER: David F. Berry
JUDGE

DATE: March 9, 1976

I ask for this:

_____, p.q.

Seen:

_____, p.d.

* * *

PLEA IN BAR

The plea of the defendants to a Bill of Complaint filed against them in the Circuit Court of Greene County by Bennett T. Matthews.

For plea to such bill, and to the whole and every part thereof, and to all and every the relief therein prayed, defendants say as follows:

1. Plaintiff previously sought and obtained a writ of certiorari from the Circuit Court of Greene County for the purpose of being allowed to proceed with a certain project of development on a certain tract of land in the Ruckersville Magisterial District of Greene County, Virginia; this cause is for the identical purpose of being allowed to proceed with such project of development on such tract of land; plaintiff previously sought and obtained leave in the aforementioned suit to introduce additional evidence, and then and there did present to the Court a more elaborate and detailed case than was presented to the

Board of Zoning Appeals.

2. By virtue of the facts alleged in paragraph 1 above the plaintiff had, as a matter of law,

a. Elected his remedy;

b. Has waived his right to bring this suit; and,

c. Is estopped from bringing suit;

and is thus barred from proceeding in this suit under the laws of Virginia.

3. Under the facts set out in paragraph 1, this suit is barred under the doctrines of res judicata, collateral estoppel, and estoppel by judgment.

4. On February 22, 1975, the County of Greene passed a permanent comprehensive zoning ordinance with the effective date of March 1, 1975. Plaintiff has not exhausted his administrative remedies under such ordinance.

WHEREFORE, defendants pray judgment of this Court whether they shall be compelled to make answer to such bill, and pray to be hence dismissed with their reasonable costs and charges in this behalf expended.

Respectfully submitted,

COUNTY OF GREENE
and
THE BOARD OF SUPERVISORS OF GREENE COUNTY
BY: David C. Parks

CERTIFICATE

I hereby certify that a true copy of the foregoing plea was mailed to C. Waverly Parker, Esq., Stanardsville, Virginia, 22973, counsel for plaintiff, on this 21st day of March, 1975.

Edward R. Slaughter, Jr.
Of Counsel

COUNSEL:

DAVID C. DICKEY
Commonwealth's Attorney of Greene County
Stanardsville, Virginia 22973

McGUIRE, WOODS & BATTLE
Court Square Building
P. O. Box 1191
Charlottesville, Virginia 22902

FILED THIS 21st DAY OF March 1975

Sadie M. Burkett CLERK
GREENE COUNTY, VIRGINIA

FINAL ORDER (in another case)

Filed April 4, 1975

This matter came on for hearing on the 2nd and 11th days of January, 1975, upon the petition for *certiorari,* the writ of *certiorari* entered herein on the 13th day of November, 1974, the return with enclosures filed by respondent on the 3rd day of December, 1974, further evidence introduced on behalf of petitioner and on behalf of respondent, and was argued by counsel.

And the Court, having maturely considered the law and the evidence, has rendered of record its opinion that the decision of the Board of Zoning Appeals of Greene County ought to be affirmed.

Thereafter the petitioner filed a motion asking the Court to set aside and revise its opinion for errors of law. The grounds of such motion were as expressly stated therein and were furthermore that the Court erred in failing to consider on its own motion in this *certiorari* proceeding the validity of the Zoning Ordinance under which the Board of Zoning Appeals acted. This motion the Court doth hereby deny, being of the opinion that the ground for error expressly stated in the motion is not well taken and being further of the opinion that no question of the validity of the Zoning Ordinance should be raised in this *certiorari* proceedings by the Court on its own motion.

Upon further consideration of the foregoing it is Adjudged and Ordered that the decision of the Board of Zoning Appeals of Greene County is affirmed and that petitioner's application for a special use permit and special exception as to lot size be, and the same hereby is, denied; and that respondent recover of petitioner its taxable costs herein.

And to the denial of such motion and the decision rendered herein the petitioner objects and excepts on his grounds as stated herein and as preserved in the record and transcript of these proceedings.

The transcript of the arguments and proceedings in this case shall become a part of the record in accordance with Rule 5:9 (a).

Enter: David F. Berry
David F. Berry, Judge

(Filed 7-6-76)

Date: April 4, 1975

* * *

1 May 19, 1975

2

3 (Decision of the Court in the case of Bennett

4 T. Matthews v. County of Greene and the Board of Supervisors

5 of Greene County, which was heard before the Court on May 19,

6 1975)

7

8

9

10 COURT: Gentlemen, I was somewhat disappointed

11 in reading the one case which seemed to be involved with this

12 question in finding that our Supreme Court found ways to dispose

13 of it without answering the question. I suppose that still

14 leaves it as a tossup in Virginia reading the authorities,

15 certainly no indication as to how our Supreme Court would

16 hold. It cited authority on both sides of the question. As

17 I review this, the simple issue in this case is whether or not

18 in Virginia under our statutory proceedings and under our case

19 holdings the constitutionality or validity of the Zoning

20 Ordinance, itself, can be attacked in a certiorari proceeding

21 where the review of a decision of the Zoning Appeals is under

22 consideration. Now in that regard our cases have held

23 that the Board of Zoning Appeals itself is without power to

24 consider or determine the validity of the Ordinance under

25 which it was created or was acting. Now that means that if

1 the Court should decide that Mr. Parker should have asserted the
2 invalidity or unconstitutionality of this Ordinance at the time
3 the certiorari was granted or move to amend, it raises the
4 possibility that the Court would reverse or modify or overturn
5 the decision of the Board of Zoning Appeals on a ground which
6 was not available to that body. And that raises all sorts of
7 problems, at least it would in my judgment as far as the Board
8 of Zoning Appeals is concerned. Here they would come back
9 with a decision which had been overturned or would be sent back
10 and the Court would had to have said well this statute is invalid.
11 I suppose that would have abolished the Board. Wouldn't have
12 been any basis upon which any further consideration would have
13 been granted. But on some portion of the statute itself, which
14 might have been attacked the Board might have found itself
15 still in business and as to that case having been reversed
16 on a ground not possible or not within the jurisdiction of that
17 Board to even consider. That seems to me to be the most trouble-
18 some point for this Court to consider. Whether the Supreme
19 Court of Virginia would be troubled by that under the modern
20 interpretation of this statute, I am not sure. Certainly the
21 modern interpretation under the Pennsylvania case and some of
22 the others would indicate that you can broaden the certiorari
23 to include all of these other questions. Now our Supreme
24 Court cited certain cases and articles, one of which was this
25 Virginia Law Review which this Court commented upon in its

1 previous decision. And that law review article has become
2 rather prominent in these zoning cases. Michie's Juris Prudence
3 takes the position that the certiorari cannot be broaden to
4 cover the questions of validity or constitutionality of the
5 Ordinance. And I think it is based on the Carter against
6 Bluefield case. I suppose that consistency would at least re-
7 quire that the Court not act in any broader fashion than the
8 Board of Zoning Appeals could have acted in order that that
9 Board might be at least governed by the decision of this Court.
10 It's obvious that they could not have decided this question in
11 their own forum. It would had to have been asserted as new
12 matter. Now our cases do already hold and I think without any
13 debate as far as the Virginia case law in view of this statute,
14 the matter of the appeals from the Board of Zoning Appeals and
15 that is this that on an appeal to the Circuit Court there is
16 a prima facie presumption that the power and discretion of the
17 Board of Zoning Appeals have been properly exercised and it
18 must appear from the record transmitted to the Court, together
19 with any evidence allowed and introduced in the trial court
20 that the decision of the Board is plainly wrong before it may
21 be disturbed by the Court. The Court may not disturb the Board's
22 decision unless it has applied erroneous principles of law or
23 where discretion is involved unless the evidence discloses that
24 the Board's decision is plainly wrong and violative of the
25 purposes and intent of the Zoning Ordinance. Now that's an

1 inconsistent rule if there is another ground upon which the
2 Board of Zoning Appeals might be reversed because that's what
3 would be the effect of it. It is my judgment that in order
4 to be consistent, and I don't say that the Supreme Court will
5 agree with that, but certainly at this level in order to be
6 consistent, the Court should hold that in spite of the defective-
7 ness of the plea, I am going to the substantive matters that
8 are adherent in it and that is that while I might say the plea
9 in its form is defective, even if it were properly asserted
10 and all the factual allegations made, which does not appear
11 to have been done, the Court nevertheless finds that even were
12 they asserted - and I am taking into account the factual in-
13 formation which is available to the Court, then the plea should
14 be denied for the simple reason that as the cases now hold and
15 this Court's interpretation of the jurisdiction of the Board
16 of Zoning Appeals, it wouldn't seem appropriate that they be
17 reversed on the ground that was not available for them to consider
18 before that body. And that is the basis I think upon which we
19 should undertake to be consistent and if there is ever a place
20 that we have to be consistent and try to do things decently and
21 in order, it seems to me that we will have to do it in these
22 zoning cases. If we don't, I don't see how anybody can follow
23 the rules or the law. We don't have a lot of cases in Virginia
24 yet but I'm sure we will. This may be the one that will determine
25 what the rule of the Supreme Court is. Therefore, the plea is

1 denied and even though it were properly asserted, I would still
2 deny it gentlemen. I think Mr. Parker's point may be well taken
3 on the face of it but as we all know I could allow you to correct
4 it and still make the same ruling which I would do but I don't
5 see any sense in going through that useless effort. So even
6 if the Court were disposed to allowing the plea to be correctly
7 stated, I would still follow the same rule and overrule the
8 plea.
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* * *

MR. DICKEY: Will the Court set a date for presentation of orders in this case, before we go on to the next stage, because we got in trouble before in these many Matthews cases by proceeding before the order in the last set was made up.

COURT: Well, I don't know of any reason why you all couldn't get something to me within 10 days. Is that all right with you? All right, the counsel will be bound by the limitation of a 10-day period in which to submit an order overruling the plea in bar for the reasons stated by the Court.

MR. SLAUGHTER: May it please the Court, may I ask this question which is really for Mr. Parker's guidance, since I assume it's fair to say that he substantially prevailed.

COURT: Yes sir, he will be required to prepare the order.

MR. SLAUGHTER: It comes to you, of course, on a motion to strike the plea, which I assume would be sustained, if Mr. Parker could put it, on the ground of the Court's ruling. I think that would solve any problems of whether we had or had not properly made our plea. Otherwise I---and I think it would simply be dilatory, would ask the Court leave to amend the plea in order to get it at least in the right form so that issue wouldn't be before the Supreme Court.

COURT: You may want to do that, because I'm not sure the Supreme Court would take it the way I viewed it, but certainly I see no need to put you to the burden of filling in the factual details. It seems to me that it's lacking in the sense that it fails to allege the final conclusion of the matter. Now it may be that the plea could be entertained and should be entertained with the 2 cases pending. But I would prefer to see the order show that the Court considered it on the basis that it had before it information that the other case had been completed and an order entered. And I would treat this ruling the same as if you'd pled that.

MR. SLAUGHTER: All right sir, fine.

COURT: I think that puts the question correctly.

MR. PARKER: If the Court please, is there any reason that we could not supplement the record in this case with the orders in the other case?

COURT: I see no reason why that couldn't be done.

MR. PARKER: I'd like to impose that burden on Mr. Slaughter's side, but I have no objection---

COURT: That would at least make the Supreme Court decide this question if it goes up to it. Because it may well avoid this issue, it could easily do it.

EXHIBIT P
To Written Statements of Facts, Testimony
And Other Incidents of This Case,
At the Hearing on 26 June 1975
Counsel and the Court Stated:

COURT: I have reviewed both forms of this order which have been presented by the County on the one hand and by Mr. Matthews on the other. And looking at the order which has been presented by the County, on page 2 I want to ask counsel for the County if in fact the Court did cite as one of its grounds for overruling the plea that the plaintiff was not required to exhaust his administrative remedies. I may have done it, but I don't recall it.

MR. SLAUGHTER: May it please the Court I'm glad that we could have had at least some period---because as I understood the effect of the Court's ruling by sustaining the motion to strike the Court effectively said that none of our grounds were proper. And that's the reason I put it in there. I don't recall---and Mr. Dickey may correct me---I don't recall the Judge---the Court making any reference--

COURT: I don't think I really got to it, because I found sufficient reasons under 1 and 2, which I do recall specifically---that he had not elected or that he was not required to elect and he was not estopped from bringing this suit. And since the matter could not have been presented to the Board of Zoning Appeals then it would not be res judicata, and that's covered under your items 1 and 2.

MR. SLAUGHTER: Yes sir.

COURT: Now then but you would object to the Court's striking that paragraph because you asserted it as one of your grounds.

MR. SLAUGHTER: That was our feeling, that since it wasn't clear your Honor on---in the position of a motion to strike our plea that

effectively the Court said on its demurrer: nothing you've said keeps you in Court.

COURT: It would seem to me to be more accurate to say that having ruled thus on the 1st 2 grounds the Court found it unnecessary to get to the 3rd one, wouldn't that be---

MR. SLAUGHTER: If that's the Court's ruling that of course would be --

COURT: In other words I didn't really ~~tough~~ touch upon it, I don't know---

MR. SLAUGHTER: You certainly didn't touch upon it, there's no question. It's just that, as I concede, that in order for the Court to strike the pleadings at the point the Court has to say that nothing, effectively, of what we've said was proper.

COURT: Now, Mr. Parker, what's wrong with their form of order? Now you tell me why the Court shouldn't enter this one. It seems to me---

MR. PARKER: Their form for order?

COURT: Yes sir.

MR. PARKER: Yes sir. May I have the record? Your Honor, I had the Court's decision typed up.

COURT: Yes, I've read it.

MR. PARKER: Because I couldn't do any---as you know counsel are directed to try to put the Court's decision down, and that's all I had to go by. Now I had it typed up after I drew this but I find that I drew it up from my recollection and apparently---I think my recollection was pretty accurate. If the Court please, addressing first the point that the Court has just made, or just mentioned, our objection of course was ---on that point there were several. The fact that it was conjoined in a plea with other things was our objection to this question of the---of not exhausting administrative remedies. And our second objection of course was that what they were saying in that paragraph was that we had to exhaust our administra-

tive remedies under the new ordinance in connection with a suit that was filed while the new ordinance was not law and the old law was law. So at the time the suit was filed, which is I think the time with which we had to have that determined as of, there were no administrative remedies to exhaust. That I thought would have been the Court's ground for getting---that and the fact that it was misjoined with other things in the plea at bar, I thought would have been the Court's ground for striking that other paragraph in that plea. But the Court did not---the Court did not mention that at all as---

COURT: But what I wanted to clear up for you all is that I was not ruling on technicalities, and I held both sides to that. I'm not interested in throwing a lot of technical points in this order. Because if I had I could have tied both sides up on that. Now I wanted to get to the substance of it and the fact is that I felt that you had not in substance been put to an election, and no matter what the technical problems might have been I shouldn't hold you to it because some of their plea had some technical problems with it and I think his proposed order more nearly reflects that. In effect, I said I'm allowing you to amend your objections or your plea right now and in effect took it as if he had done it.

* * *

* * *

DECREE

This cause came on for hearing on plaintiff's bill of complaint, defendants' plea in bar, and plaintiff's motion to strike such plea in bar, and was argued by counsel on May 19, 1975, the Court having read and considered a memorandum filed on behalf of plaintiff and a brief and brief in response filed on behalf of defendants.

And the Court, having first maturely considered whether the plea in bar was in proper form, having noted that defendants had not alleged therein a final judgment in the matter heard pursuant to the writ of certiorari to the Board of Zoning Appeals of Greene County, and having recalled that a final judgment order had not been entered at that time because counsel for plaintiff had asked for additional time to review the proposed order, although the Court had sent out its opinion in the case almost two months before, doth grant defendants leave to amend their plea to reflect that a final judgment order in that action was entered on April 4, 1975, and the Court further ORDERS that such amendment be, and it hereby is, effected, the Court having ruled that the plea was otherwise free of defect in form, ~~and that defendants are not estopped to raise such plea.~~ to which ruling the plaintiff objects and excepts.

Hab.

17

The Court having then considered the substantive legal issues raised by the motion to strike the plea in bar, and being of the opinion that plaintiff could not, and thus was not required to, raise in the certiorari proceeding hereinabove noted any issue concerning the validity or the constitutionality of the Interim Zoning Ordinance of Greene County, doth sustain such motion to strike on the following grounds:

1. Plaintiff has not elected his remedy or waived his right to bring this suit, nor is he estopped from bringing this suit as alleged in the plea in bar aforesaid; and

2. The action is not barred under the doctrines of res judicata, collateral estoppel and estoppel by judgment as alleged in Paragraph 3 of the plea in bar.

And the Court doth further sustain plaintiff's motion to strike on the ground that, this litigation having been instituted on February 21, 1975, one day prior to passage of the permanent comprehensive zoning ordinance which was to become effective March 1, 1975, plaintiff is not required to exhaust his administrative remedies under such ordinance.

Counsel for defendants object and except to the Court's action in sustaining the motion to strike defendants' plea in bar on the grounds stated in the plea in bar itself and in their briefs and oral argument and defendants are hereby granted 10 days from date of this order to file further responsive pleadings.

ENTER: [signature]
Judge

DATE: June 26, 1975

Seen and objected to:

~~We ask for this:~~

[signature]
C. Waverly Parker
Counsel for plaintiff

Seen and objected to on the grounds hereinabove stated:

[signature]

[illegible] 1975

McGUIRE, WOODS & BATTLE

By Edward R. Slaughter, Jr.
Edward R. Slaughter, Jr.
Of Counsel

* * *

A N S W E R

The answer of County of Greene and the Board of Supervisors of Greene County to a bill of complaint filed against them in the Circuit Court of Greene County by Bennett T. Matthews, such answer being filed by leave of Court granted in its decree entered June 26, 1975. Defendants (reserving to themselves the benefit of all just exceptions which may be had or taken to such bill by reason of any errors and imperfections which may exist therein, both as to form and to substance and not waiving any matters previously raised in their plea in bar) for answer to such bill, or so much thereof as they are advised that it is material that they should answer, answering say:

1. They are without knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 1, 2, and 4 of the bill, and such allegations are therefore denied.

2. The allegations of paragraphs 3 and 5 of the bill are substantially true.

3. In response to the allegations contained in paragraph 6 of the bill, defendants aver that the interim zoning ordinance speaks for itself and append a certified copy of this answer as Exhibit A. Defendants aver that the description of the character of Greene County is subjective, avers that a more accurate and objective

description may be presented in testimony if such testimony is relevant and thus denies such descriptive allegations. Defendants further move the court to strike the allegations of such paragraph 6 on the grounds hereinabove set out. Insofar as any allegations exist in paragraph 6 to which response is not hereinbefore made, such allegations are denied.

4. In response to the allegations of paragraph 7 of the bill, defendants admit that the first sentence thereof is substantially true. As to the second sentence of such paragraph, the agent in question refused to approve the plat under the zoning ordinance, not the subdivision ordinance, and thus the allegations thereof are denied. The allegations contained in the third and fourth sentences of such paragraph are substantially true.

5. In response to the allegations contained in the first sentence of paragraph 8 of the bill, defendants aver that plaintiff knew before August 26, 1974, that the agent in question was zoning administrator and further aver that plaintiff arrived in the agent's office on that date prepared to make application to the agent in his capacity as zoning administrator. Defendants further deny that such agent gave plaintiff advice except insofar as such agent gave plaintiff information in the same manner as he would give it to all citizens. The allegations of such sentence one are therefore denied. The allegations contained in the second sentence of such paragraph are substantially true. As to the allegations contained in the third sentence of such paragraph, it is denied for the reasons cited in the response to the first sentence of such paragraph 8 that defendant's agent gave advice to plaintiff, and the allegations of such sentence are therefore denied. It is not denied that plaintiff petitioned the Board of Zoning Appeals under the interim zoning ordinance for a special use permit. The allegations contained in the fourth sentence

of such paragraph are substantially true. In response to the fifth sentence of such paragraph, defendants admit that the certiorari proceedings have been tried in this Court but deny that no judgment has been rendered and aver affirmatively that even at the time the bill of complaint was filed, the judgment had been rendered by the Court's opinion forwarded to all counsel under cover of a letter dated January 22, 1975. Defendants tendered an order to the Court on the 14th day of February, 1975, but objection was registered by counsel for plaintiff and the Court granted him additional time to prepare an order which in his opinion fairly implemented the Court's opinion and properly preserved plaintiff's objections. No such order had been tendered when the bill of complaint was filed, but a final judgment order was later entered on April 4, 1975. The allegations in the sixth and seventh sentences of such paragraph are hereby denied. In response to the allegations contained in the eighth sentence of such paragraph, defendants admit that plaintiff instituted a mandamus proceeding as alleged but deny that it was based on the facts alleged herein. They admit that a judgment had not been entered at the time the bill of complaint herein was filed, but aver that judgment was rendered by the Court's letter to all counsel dated December 20, 1974. When counsel could not agree on an order, the defendant in that case tendered an order to the Court on the 14th day of February 1975, but objection was registered by counsel for plaintiff and the Court granted him additional time to prepare an order which in his opinion fairly implemented the terms of the Court's letter and properly preserved plaintiff's objections. No such order had been tendered when the bill of complaint herein was filed. However, a final judgment order was later entered on April 4, 1975. Defendants admit that the Court refused to issue the writ of mandamus in its discretion and without reaching the merits thereon.

6. In response to the allegations contained in paragraph 9 of the bill, the allegations contained in paragraph 9A are admitted insofar as they allege that the interim zoning ordinance was not enacted with or after the comprehensive plan required by Section 15.1-446 of the Code of Virginia, but defendants deny that the adoption of such plan was required before or at the time of the adoption of such interim zoning ordinance. All other allegations contained in paragraph 9 including the allegations contained in each remaining subparagraph thereof are hereby denied.

7. The allegations contained in paragraph 10 of the bill including the allegations contained in each subparagraph thereof are hereby denied.

8. In response to the allegations contained in paragraph 11 of the bill, defendants aver that the first two sentences of such paragraph were substantially true at the time the bill of complaint was filed, but aver affirmatively that a comprehensive zoning ordinance was enacted by the Board of Supervisors of Greene County on February 22, 1975, to be effective March 1, 1975. In response to the allegations contained in the third sentence of such paragraph, defendants deny the allegations of such sentence in those terms, but aver that under the new ordinance an administrative procedure is provided for plaintiff to seek a further remedy. In response to the allegations contained in the fourth sentence of such paragraph, defendants admit that the ordinance as adopted prohibits the use of the land proposed by plaintiff, but denies that plaintiff had a vested right in such use and again aver that plaintiff has an administrative remedy under the new ordinance. The allegations contained in the fifth sentence of such paragraph are hereby denied.

9. In response to the allegations contained in paragraph 12 of the bill, these defendants admit that a controversy between plaintiff and defendants existed as to the validity of the interim zoning ordinance, but aver that such controversy has been litigated in the proceedings tried pursuant to the Court's writ of certiorari and thus as to such ordinance deny the allegations contained in such paragraph and aver affirmatively that plaintiff has elected his remedy, has waived his right to proceed by declaratory judgment action and is estopped to proceed further. Defendants further aver that this suit is barred as to such ordinance under the doctrines or res judicata, collateral estoppel, and estoppel by judgment, as the certiorari proceeding considered or could have considered all issues which have been or might be raised in this proceeding. As to the allegations involving the comprehensive zoning ordinance, a certified copy of which is submitted herewith as Exhibit B, defendants aver that plaintiff has not exhausted his administrative remedies under such ordinance and the allegations contained in such paragraph as to such ordinance are hereby denied. Insofar as the foregoing does not respond to the allegations of such paragraph, such allegations are hereby denied.

WHEREFORE, defendants move the Court that this suit be henceforth dismissed, that all relief sought by plaintiff be denied, and that they be awarded their reasonable costs in this behalf expended.

Respectfully submitted.

COUNTY OF GREENE
and
THE BOARD OF SUPERVISORS OF
GREENE COUNTY

By Counsel

* * *

Filed:
July 3, 1975
Lelia D. Dickens, Clerk
by: Marie C. Sumner, Deputy Clerk

* * *

WRITTEN STATEMENT OF FACTS, TESTIMONY AND OTHER INCIDENTS OF THIS CASE

To the Honorable Judges of said Court:

Your complainant Bennett T. Matthews, having in this cause heretofore filed Notice of Appeal and Assignments of Error, comes and presents unto your Honors in accordance with Rule 5:9 (c) the following written statement of facts, testimony and other incidents of the case above-styled:

In a letter from complainant's counsel to one of defendants' counsel, duplicate original of which was filed 25 March 1975, it was noted that three matters, among them this case, would be argued on 4 April 1975. The two other matters were argued that date, but because the hour was late the third matter, relating to this case, was put over for argument on 19 May 1975, during which interim complainant and defendants were to file memoranda in support of, and in opposition to, complainant's motion to strike defendant's plea in bar. Accordingly, the following was filed in the Clerk's Office of the Circuit Court of Greene County and placed with the other papers of this suit:

On 4/28/75	Complainant's memorandum in support of his motion to strike defendant's plea in bar

In reaching its decision on such motion to strike, which was

contained in the Court's order of 26 June 1975, the Court also considered the following, which were filed with the Judge and not put with such papers:

4/28/75	Brief on behalf of defendants
5/6/ 75	Brief in response on behalf of defendants

True copies of all three such memoranda (briefs) are annexed hereto as Exhibits L, M and N, respectively, and form a part of this statement as fully as if set out at large at this point.

On 19 May 1975 the Court heard the arguments of counsel on complainant's motion to strike defendant's plea in bar. The incidents of such hearing, except the major portion of the remarks of the Court, are set out in Exhibit O annexed hereto. Such Exhibit O forms a part of this statement as fully as if set out at large at this point. The portion of the remarks of the Court which are not set out in such Exhibit O are set forth in a "Portion of Transcript" made a part of the record on appeal under Rule 5:9 (b).

On 26 June 1975 the Court heard the arguments of counsel on the form of the order which the Court subsequently was to enter that day, sustaining complainant's motion to strike defendants' plea. The incidents of such hearing are set out in Exhibit P annexed hereto. Such Exhibit P forms a part of this statement as fully as if set out at this point at large.

On 26 June 1975 complainant tendered to the Court a

proposed order which would have been entered in lieu of the order actually entered that day. The Judge marked such proposed order "Offered and refused. Refusal excepted to." He initialed and dated the same, after which it was placed with the other papers in this cause. A copy of such refused proposed order is annexed hereto as Exhibit Q and forms a part of this statement as fully as if set out at large at this point.

The material proceedings of 15 September 1975 are set forth in this Court's order of 25 September 1975.

There is a transcript of the proceedings of 20 October 1975 made a part of the record on appeal under Rule 5:9 (b).

On 31 October 1975 complainant submitted to the Court a memorandum of law concerning whether the Interim Zoning Ordinance of Greene County was invalid or unconstitutional as a matter of law and on its face. This memorandum was such date filed with the other papers in this cause.

Defendants' memorandum in response to plaintiff's memorandum was filed with such papers on 10 November 1975.

True copies of both of the two memoranda last herein mentioned are annexed hereto as Exhibits R and S, respectively, and form a part of this statement as fully as if set out at large at this point.

There is a transcript of the proceedings of 17 November 1975 made a part of the record on appeal under Rule 5:9 (b).

There is a transcript of the trial proceedings of 3, 4

and 5 December 1975 made a part of the record on appeal under Rule 5:9 (b).

There is a transcript of the trial proceedings of 8 and 9 March 1976 made a part of the record on appeal under Rule 5:9 (b).

On 26 April 1976 the Court heard the arguments of counsel on the form of the final order which was subsequently entered that day. The incidents of such hearing are set out in Exhibit T annexed hereto. Such Exhibit T forms a part of this statement as fully as if set out at large at this point.

On 26 April 1976 complainant tendered to the Court a proposed order which would have been entered in lieu of the final order that day actually entered. The Judge marked such proposed order "Seen and refused" and initialed and dated the same, after which it was placed with the other papers in this cause. A copy of such refused proposed order is attached hereto as Exhibit U and forms a part of this statement as fully as if set out at large at this point.

Tendered: BENNETT T. MATTHEWS

By: _____
Counsel

C. Waverly Parker
Attorney at Law
Stanardsville, Virginia 22973

I hereby authenticate the foregoing statement of facts, testimony and other incidents of this case, including the exhi-

bits annexed thereto as aforesaid. Over plaintiffs objection there is appended hereto as a part of the record the final order in Mathews v. Board of Zoning Appeals as "Exhibit N"

JUDGE

7-6-76

* * *

* * *

INTERROGATORIES

Comes now plaintiff, by counsel, and pursuant to Rule 4:8 of the Rules of Court, propounds to defendants the following interrogatories, to be answered under oath in accordance with law:

1. State specifically the full name, home address, business address, telephone number and occupation or profession of each and every witness who at trial of this case or otherwise therein will testify, has been requested to testify, will be requested to testify, or is likely to testify.

2. Identify each person named in your answer to interrogatory number 1 whom you or anyone for you has solicited, hired, employed or engaged, or whom you believe will likely be solicited, hired, employed or engaged, to testify in your behalf as an expert witness at the trial of this case.

3. For each person identified in your answer to interrogatory number 2 state:

(a) The subject matter upon which such expert is expected to testify;

(b) The substance of the facts and opinions to which such expert is expected to testify; and

(c) A summary of the grounds for each opinion.

* * *

* * *

RESPONSES TO INTERROGATORIES

Defendants, County of Greene and The Board of Supervisors of Greene County, respond to the interrogatories served on them by the plaintiff, Bennett T. Matthews, on September 22, 1975, as follows: (Note - The number of each response given below corresponds to the number of the interrogatory to which it responds.)

1. The only persons whom defendants intend to call at this time are:

   Richard M. Yearwood, 1204 Gladewood, Blacksburg, Virginia; Blacksburg, Virginia; 703 471-4602; Professor of Urban and Regional Planning at Virginia Polytechnic Institute & State University; Robert E. Abbott, Jr., 316 Camellia Drive, Charlottesville, Virginia; 701 E. High Street, Charlottesville, Virginia; 804 977-2870; Executive Director of the Thomas Jefferson Planning District Commission.

2. The same persons as those listed in Number 1 above.

3. Richard M. Yearwood.

   (a) Land use and zoning in Greene County;

   (b) Presently unknown, except insofar as is a matter of record in his testimony given in the previous certiorari proceeding;

   (c) His professional experience and personal knowledge concerning the Greene County Interim Zoning Ordinance

and comprehensive plan.

Robert E. Abbott, Jr.

(a) Land use and zoning in Greene County;

(b) He will testify that the Greene County Interim Zoning Ordinance was lawful and constitutional and in accordance with good planning practices.

(c) His professional experience and personal knowledge concerning the Greene County Interim Zoning Ordinance and comprehensive plan.

* * *

VIRGINIA: IN THE CIRCUIT COURT OF GREENE COUNTY

BENNETT T. MATTHEWS

v.

COUNTY OF GREENE, et als.

MOTION

Comes now plaintiff Bennett T. Matthews, by his counsel, and says that:

1. On 22 September 1975 he served upon defendants a set of interrogatories and a set of requests for admissions.

2. Defendants' purported responses thereto were received on 14 October 1975.

3. Defendants' response to the requests for admissions is satisfactory.

4. Defendants' answers to interrogatory Number 3(c) is incomplete with respect to both of Richard M. Yearwood and Robert E. Abbott, Jr.

* * *

WHEREFORE in accordance with Rule 4:12(a) of the ~~Code~~ Supreme Court of Virginia the said plaintiff hereby moves the Court for an order compelling the discovery which was incomplete or wrongly objected to as set forth above; and that the defendants and their counsel be required to pay plaintiff's reasonable expenses incurred in obtaining such order, including attorney's fees.

BENNETT T. MATTHEWS

BY: _____
Counsel

* * *

COURT: I take it the defendant has already objected to answering 9, 10 and 11 and that will be taken up separately. Your first item is incomplete response to 3C...

PARKER: Yes sir.

COURT: That's where we pick it up.

PARKER: All right, sir.

COURT: And also in number 6, 12 and 13 incomplete... So your incomplete ones are the ones that you apparently need to go forward on and then I'll hear from the defendant as to why they object to 9, 10 and 11.

PARKER: All right, sir. As to 3C. Each witness identified in your answer to interrogatory number 2 and two were identified, state and A is the subject matter upon which

1 the expert is expected to testify and B the substance of the
2 facts and opinions on which he is expected to testify....and
3 C was a summary of the grounds for each opinion. Now, the
4 answer to number B, the subject matter, A, was given, and
5 the answer to number B was that they didn't know at the
6 present time - the same answer that we gave and I hardly
7 can object to it. But the problem was number C, and if C
8 has been answered in like manner - obviously if they don't
9 have the answer to B, they don't have the answer to C at the
10 present time. And if that had been the answer I wouldn't
11 have objected, but the answer I got was one which would not
12 leave upon them the burden to give me that information at a
13 later time. The answer I got was, his professional experience
14 and personal knowledge concerning the Greene County interim
15 zoning ordinance and comprehensive plan. And that I would
16 respectfully suggest is not a ground for any opinion. And
17 both - I got that answer both with respect to the witness -
18 the proposed witness, Yearwood and the proposed witness, Abbott.
19 So I suggest to the Court that had the answer to C been the
20 same as B, I would not have - at least the same as B
21 with respect to Yearwood I would not have objected. The problem
22 is that we are not going to get - according to this we are not
23 going to get Mr. Yearwood's grounds when they do give us
24 * * *
25

1 answer is clearly incomplete sir.

2 COURT: Do you feel that he has to give grounds

3 for it or that he would be precluded from giving grounds

4 if he chose to later on?

5 PARKER: Yes sir, that's the effect of the - if he

6 doesn't give any grounds - this is one of those interrogatories

7 which are expressly made to be continued. We've been through

8 that before. And if he had said he didn't know the answer

9 to 3C, then it seems to me I couldn't complain and I would

10 just have to wait until he did know the answer. And he would

11 have to know the answer before he came to trial or have some

12 good reason to the contrary and let me know what that answer

13 is going to be. All they did was avoid the force of the

14 question. The question was, give summary grounds for each

15 opinion, and he says his professional experience and personal

16 knowledge concerning the Greene County interim zoning ordinance.

17 Now that's not the grounds for the opinion, Judge, that's the -

18 that's what he would draw upon to give the opinion, but it's

19 not his grounds for opinion in any way, shape or form.

20 I don't think - I think the large smiles from the defendant's

21 bench here - I don't think the matter is really seriously

22 contested.....

23 COURT: Well, who is to argue with an expert witness

24 as to the grounds for his opinion? If he qualifies as an

25 expert, it may affect the weight of it, but is he required to

1 give his grounds? Are you saying that he must give it or
2 he's precluded from giving it if he doesn't go any further
3 than this now?
4 PARKER: I'm saying sir that if he gives an answer
5 such as this and I accept it as being complete he wouldn't
6 be precluded from giving it at a later time. But if the Court
7 makes him answer the question fairly, which is that he doesn't
8 know the answer at the present time, then he will be obliged
9 to give it to me at a later time or be precluded from giving
10 it at trial. The point to me is that the answer to 3C isn't -
11 it isn't responsive to the question that was asked. Had it
12 been responsive to the question that was asked, it would
13 have - in view of the answer to 3B it almost certainly would
14 have had to have been.....
15 COURT: I'm not sure that I ....
16 PARKER: ....the same as 3B.
17 COURT: What is the substance of what you are - this
18 particular witness is expected to testify upon?
19 PARKER: He is the witness who testified in the cer-
20 tiorari proceeding for the County, Your Honor, Mr. Yearwood.
21 The Court may recall him.
22 COURT: Yes sir.
23 PARKER: Very erudite witness, very good witness.
24 And I should like to know what his opinions - what the reasons
25 for his opinions are. Actually he has - there is an indication

in answer 3B that he does have some opinions in there, that he has given in the certiorari proceeding, and it seems to me we would be entitled to those reasons, except in so far as given earlier. That's what we asked for. We are entitled to it in some stage of the game...but the answer is not responsive to the question.

COURT: Let's see if I can find what they've already responded to, the subject matter upon which such expert is expected to testify. Then the substance of the facts and opinions to which he is expected ....what opinion has he said he expected to testify upon?

SLAUGHTER: That's the part I recall ..... object Your Honor.

PARKER: He says - B, presently unknown.

COURT: I see.

PARKER: And yet he answered that for C. I can certainly understand it. The position the County is trying to put me in with respect to that answer sir is this. That subsequently they will have to answer B but they won't have to answer C. And when they do answer B I want them to answer C too.

COURT: All right, what other point now do you wish to make?

DICKEY: Your Honor, as to that point, we answered this attempting to give the best answers we could. If in any

way our answer puts him in a trap, we would be happy to have the Court ....

COURT: It's understood that you are to stipulate that any bind that he's in is unintentional and it may be well taken, but we can get to that later.

DICKEY: We're willing to go along with his objection in other words, to save the Court any trouble.

PARKER: I appreciate.....

DICKEY: The answer says I don't know...

SLAUGHTER: I would inject this if the Court please. I guess one of the reasons why we were smiling at this as Mr. Parker pointed out so that it's now therefore on the record, is that he has had approximately two days of testimony from Mr. Yearwood and from his expert who testified before. We each had questions, interrogatories, and had gotten approximately the same answers - in other words we've sort of been going back and forth on this for over two months. The testimony that was given at the previous hearing probably gives far more than we will ever be able to give in answer to interrogatories.... of what the basis is for his opinions. And I would take the position, although it's not really before the Court now that we would not be bound only to what was given in answer to interrogatories as to the substance of Mr. Yearwood's opinion a disposition that we could never tell ahead of time, if two experts are going to testify...all of the bases of their

1 opinions was brought out on the record on direct and on
2 cross examination. That issue is really not before the
3 Court now and I don't know if he is untimately bound to
4 produce every scintilla of opinion or basis of opinion that
5 our - or Mr. Parker's - might ultimately come up with.
6 PARKER: I think the requirement there is one of
7 good faith, Your Honor, and . . .
8 COURT: Why couldn't you all agree substantially
9 that there are two experts who testify in substance the
10 same - to the same things they testified to previously and
11 in regard in which that changes you would expect to give
12 each other notice.
13 PARKER: That's essentially what we are doing
14 . . .
15 COURT: You expect the two experts to testify the
16 same. . .
17 SLAUGHTER: I think that will be fine...with that
18 sort of understanding I was hoping we could reach today,
19 it might save time....then virtually trying to go through
20 each of these items.
21 PARKER: I thought that was what we had done sir,
22 because my answer to his question 3B, if I can put it that
23 way. . .
24 COURT: Well, for both sides - that insofar as the
25 expert testimony is concerned of Mr. Payne and Mr. Yearwood that

1 it would be substantially the same and in so far as you
2 know at the present time, the record of the previous case
3 would disclose the extent or nature of that testimony.....
4 should it change you would expect to notify each other.
5 PARKER: That's fine sir.
6 SLAUGHTER: I think that's fine sir.
7 PARKER: Now that does not solve the problem however
8 with respect to the County's other witness, who did not
9 testify before.
10 COURT: Yes sir, I realize that, and in that regard
11 it may well be a different area.
12 DICKEY: I believe he did testify before.
13 PARKER: No we swore him in, Mr. Dickey and he didn't
14 testify...
15 COURT: Who?
16 PARKER: Mr. Abbott.
17 DICKEY: Mr. Abbott testified, you are thinking about
18 Mr.
19 PARKER: Oh I'm sorry - what did Mr. Abbott - which
20 was....
21 DICKEY: A big gentleman, bald, with a moustache.
22 PARKER: What did he testify about Mr. Dickey?
23 It doesn't make any sense to me. I don't recall that.
24 COURT: I recall him taking the stand, and I think he
25 was the expert who was provided by the Regional Planning Office,

1 was he not?

2 DICKEY: He's the chief....

3 SLAUGHTER: Well, it was Mr. Abbott who testified

4 at some length and I don't recall right now exactly what

5 Mr. Abbott testified to.

6 DICKEY: I ...

7 COURT: I don't recall it though. Was it transcribed?

8 DICKEY: Yes, it's in the record.

9 COURT: So it's available for counsel to inquire

10 into.....

11 PARKER: I've got the transcript and I'll just

12 ascertain whether Mr. Abbott is listed sir.

13 COURT: You had more experts than I realized in

14 the case then...

15 PARKER: No sir, Mr. Abbott is not listed as a witness.

16 DICKEY: It may well have been, Your Honor, that he

17 was in the other case.

18 COURT: It could have been stipulated that his

19 testimony was the - in the summary from the hearing before

20 this Board of Zoning Appeals.

21 PARKER: He didn't testify before the Board of

22 Zoning Appeals. I see no testimony from an Abbott any place.

23 DICKEY: My memory may be pulling tricks on me, Judge.

24 I was certain he had testified before.

25 COURT: And you propose to call him in this next

1 case?

2 DICKEY: Yes.

3 COURT: All right, we'll consider the objections then

4 still alive as to that witness and any others of like expert

5 nature.

6 PARKER: Yes sir. If the County is in fact going to

7 answer that that they will give me that information when they

8 have it - is that my understanding gentlemen of your answer?

9 SLAUGHTER: On Mr. Abbott, sir, while it is true

10 that we might ultimately want him to testify of other things

11 in this case, we would give the substance of his testimony

12 of course - as far as we know now that really summarizes

13 what we expect him to testify to. How we are going to go

14 beyond that is kind of hard to say.

15 DICKEY: Your Honor, the reason for having Mr. Abbott

16 in here, to make this thing very brief. One of the big issues

17 here is establishing for the record what Greene County is like,

18 I mean we are well aware the Court knows, Mr. Abbott is in

19 charge of doing all these studies to determine what Greene

20 County is like. And we have to get that in the record some

21 how if this goes up to the Supreme Court.

22 COURT: Well, is he going to give an opinion or is

23 he merely going to state the factual summary of what the studies

24 indicate, or is that a combination of facts and opinions?

25 DICKEY: Our intention at this time and Mr. Slaughter

1 may correct me - is to put him on to say in fact what he
2 found to be the situation in Greene County....
3 COURT: Was that reduced to a written report of
4 any kind?
5 DICKEY: Not at this time.
6 COURT: Well, how does anyone know what his
7 previous position has been, if it's not in writing? Are you
8 calling him for the first time?
9 DICKEY: Mr. Abbott as a matter of fact is the person
10 who did a lot of the work in the making, Your Honor...
11 COURT: And he merely appeared and gave personal
12 guidance I take it, rather than a written summary of some
13 type?
14 DICKEY: That's correct.
15 COURT: So there's nothing that's intended in the
16 written memorandum which would be incorporated or his position
17 with regard to these issues now?
18 DICKEY: Before Mr. Matthews appeared on the scene
19 we weren't making verbatim transcripts of a lot of things.
20 COURT: Well, then Mr. Parker would be completely in
21 the dark as to what he would say and you all need to give him
22 a summary of exactly what his area of expertise and testimony
23 would be, wouldn't you?
24 SLAUGHTER: Well, what we've answered, Your Honor is...
25 Mr. Dickey has pointed out an area in which he could be used,

1 and assuming we do use him, I think we have to amend our
2 answer. The answer we gave was that in accordance with
3 this line of practice - in other words he oversaw the
4 studies that went into the County - into the Master Plan, into
5 the ordinance itself. It was drafted really under his supervision.
6 And he will testify as to the various elements that make it
7 in his opinion a proper ordinance....it is of course a proper
8 plan. And this is essentially what we said.
9 PARKER: But I need the grounds for that Judge; I
10 think that's what they've said - the answer I get is to B, he
11 will testify - I let this one pass. He will testify that
12 Greene County interim zoning ordinance was lawful and consti-
13 tutional. I don't think that adds much coming from an expert.
14 But then they say in accordance with good planning practices.
15 Now I would like to know why he thinks the Greene County
16 interim zoning ordinance is in accordance with good planning
17 practices. And C doesn't - C tells me something about his
18 professional experience and doesn't tell me a thing about why
19 he thinks the Greene County interim zoning ordinance was in
20 accordance with good planning practice. It seems to me I'm
21 entitled to that.
22 SLAUGHTER: If the Court please, as we've indicated
23 earlier when the Court made suggestions, we well understand -
24 I think once we get the issues more clearly defined, which
25 of course would come either today or as soon as we can do it,

1 at a pre-trial conference. It's very hard to state what it is
2 we are going to ask our witnesses or what the subject of
3 their testimony is and what is the basis for their opinions
4 as the rules require - when we can get that pretty well
5 delineated and fixed in our own mind, then of course we will
6 provide whatever is required by the Court or under the rules.
7 PARKER: Well, I....
8 COURT: The question here is just what the expert
9 should be permitted to testify to. Now as a general practice
10 you know that when there is an expert he is not allowed to
11 testify on the very point which is in issue. And here the
12 point in issue is the legality and constitutionality of the
13 zoning ordinance. And I don't believe any of the experts
14 should be permitted to give an opinion on that.
15 PARKER: I think that's...
16 COURT: The ultimate issue is what the Court must
17 decide.
18 PARKER: I think that's correct.
19 SLAUGHTER: You're correct. This is a summary ...
20 COURT: Now the next question is where are they
21 going to be permitted to testify.
22 SLAUGHTER: Right.
23 PARKER: He wants to testify as - I take it Your
24 Honor, looking at the rest of his answers that it's in
25 accordance with good planning practices. Judge, I don't have

1 any objection to Mr. Slaughter's taking the position that
2 he doesn't know the answer at the present time. And will let
3 me have the answer when he gets it.
4 COURT: What other answer can any planning expert
5 give, that in his judgement the plan is in accordance with
6 good practice?
7 PARKER: He has done - he has answered that. I have
8 no objection to that answer. I have objected to the next
9 answer, in that in the next answer he has not given me his
10 grounds for saying that it is in accordance with - a summary
11 of his grounds for saying that the interim zoning ordinance
12 is in accordance with good planning practices. If Mr. Slaughter
13 says I don't know what his grounds are going to be now for what-
14 ever the reason, I'll accept that answer because the rules will
15 oblige Mr. Slaughter under those circumstances to give me
16 an answer to the question that he does know it.
17 COURT: Would it oblige him to give you an answer
18 before the trial?
19 PARKER: Yes sir, if he is going to use the informa-
20 tion, when he does know it, yes sir. In a timely manner.
21 You've cut off discovery on November 15 and I take it
22 we've got to try to get our answers in by that time and get
23 our cases prepared.
24 COURT: Well, now let's put it this way. Let's suppose
25 he qualifies an expert, then on examination in chief, Mr. Slaughter

1 merely asks him what his opinion is and he doesn't go any
2 further, but you on cross examination ask him the grounds.
3 PARKER: I'm entitled to have his grounds, Your
4 Honor, ahead of time so I can use it to cross examine with.
5 I may want to tear his opinion apart as we did Mr. Evans'
6 by asking him to answer as to what his grounds are.
7 COURT: Well, does an expert have to have anything
8 other than proof of his expertise, if he's - either by the
9 hypothetical question or mere statement that he's familiarized
10 himself with this case and then give an opinion?
11 PARKER: No sir, he doesn't have to have grounds.
12 Mr. Slaughter may answer the question that the man has no
13 grounds and I'll accept that answer.
14 COURT: I see. You would turn that around and say
15 it was groundless, I take it?
16 PARKER: Yes sir.
17 SLAUGHTER: In any event Your Honor to cut this short
18 as we learn more about what the issues of the case are, and
19 what exactly Mr. abbott will have to answer fairly - when we
20 know what Mr. Parker is going to put on, we will provide Mr.
21 Parker with what additional grounds we are able to give him.
22 Maybe that's a short answer to the question.
23 COURT: Well, what he's proposing though is that if
24 you plan to use him at all, between now and the actual date of
25 trial with a reasonable amount of advance notice to him, you will

1 have a basis of what this expert's opinion would be. And the
2 question is whether you can do any better five days before
3 the trial than you could now. I take it that he is putting
4 you to the burden of getting this expert to put it down for
5 you, because you certainly couldn't give it without his
6 summarizing it for you.
7 SLAUGHTER: That's quite true. I think on both sides
8 to the extent that we can we will have to provide those.
9 As I recall our question didn't contain that, did it Mr.
10 Parker?
11 PARKER: You left off 3C...you left off 3C, but you
12 had B there and I gave you the answer to B that you gave to me.
13 But - Your Honor, it seems to me that's - if what Mr. Slaughter
14 is saying - and I think I understand it correctly, what the
15 Court is saying is that...
16 COURT: I'm not sure I understand it, but if you all
17 do that's fine.
18 PARKER: Well, I want to be definitive enough about
19 it so we can draw an order. It seems to me that what is being
20 said is that the answer is that he is changing his answer to
21 say we don't know at the present time. And if that's his
22 answer then I leave the rest of it to the rules.
23 SLAUGHTER: Well, we know what we've said, but if in
24 fact Mr. Parker wants - he is asking for a more specific answer,
25 I'm saying we're perfectly willing to give him a more specific

1 answer when it becomes available.

2 COURT: All right, is that...

3 PARKER: Isn't the effect of that just as if you say

4 we don't know?

5 SLAUGHTER: No, not really. Certainly what we've

6 said here is - as I take it a perfectly proper, responsive

7 answer. And I think to quibble with it, to go any further with

8 it, we would....

9 PARKER: Well, the only question that I have with

10 respect to that Your Honor is does Mr. Slaughter have any

11 information at the present time - why couldn't he answer we

12 don't know? If he has some information at the present time it

13 seems to me that we are entitled to have it now.

14 COURT: He's vouching for the fact though that he

15 is going to say he is personally familiar with the ordinance

16 and the study that was made in Greene County. Now that's

17 about what he's said under sub-paragraph C.

18 PARKER: If that's all that Mr. Slaughter has at the

19 present time then I think that's all we are entitled to at

20 the present time.

21 DICKEY: May it please the Court, one of the problems

22 with this - the County as defendant is going to obviously

23 be using its experts to elicit testimony to contradict Mr.

24 Parker's expert witnesses. Now as it happens we have not yet

25 been informed by the interrogatory process what Mr. Parker's

1 witnesses are going to say; so we are not in a position to get
2 the grounds for what ...
3 COURT: Who has the burden of presenting the evidence
4 of going forward. . .
5 DICKEY: Mr. Parker.
6 PARKER: I don't have any objection, Your Honor,
7 again among - for that among other reasons. If the County
8 says we don't know what to say, if that had been their answer
9 I would not have objected. The Court will note I did not
10 object to that portion of answer 3B, and I would not have
11 objected had that been their answer. If they say essentially
12 we don't know because you haven't told us enough so that we
13 can know, I can live with that.
14 COURT: Their answer then would depend on the type
15 of expert opinion that your experts will get into and I take
16 it that theirs would be designed to meet with a different
17 opinion whatever you bring.
18 PARKER: Yes sir and I can understand that the County
19 would have said we don't know yet. But they didn't say that,
20 they tried to say something that would permit them to keep me
21 in the dark for now until the day of trial. That's my
22 objection. If they say we don't know yet, I know they can't
23 keep me in the dark until the date of trial and I'm happy with
24 that.
25 SLAUGHTER: Well, we've said - I think twice, Your

1 Honor, that we would be willing to come up with anything more
2 specific ...it seems effectively all it does is hike back to
3 Mr. Abbott. It's clear with respect to Yearwood we say
4 presently unknown and then gave general grounds. Mr. Parker
5 is perfectly correct that's what we said, it's hard to say
6 what the grounds are for the testimony - for - the subject of
7 which we don't know. But once - why don't we just leave it
8 this way, this is again the sort of thing I hope we will get
9 to today. Once he provides us with - well, first, once I think
10 we know the issues, we know the evidence that's going to be
11 introduced by the plaintiff on the issues, we can then tell
12 what evidence we are going to introduce. And we in turn will
13 give it to Mr. Parker, and that I think is fair treatment.
14 Because you can say it in that way rather than jockeying back
15 and forth on interrogatories.
16 COURT: Well, the only question in my mind is whether
17 there is a positive duty on your part to make a determination
18 from your expert, or whether you can let it ride. It seems to
19 me that's what has got to be decided here. Can you merely
20 wait or do you need to pursue this further, well in advance of
21 the trial in order to either come up with an answer which says
22 you don't expect to go into any more detail or you will go
23 into detail in this regard.
24 SLAUGHTER: Oh, I'm willing to - I'm willing to -
25 have to make the decision of the expert before the trial - what

1 that testimony is going to be and what the basis for it is
2 going to be and tell Mr. Parker that in accordance with the
3 rules.
4 COURT: All right, sir. Within the time limit that
5 he could make use of it.....all right.
6 PARKER: I now take it that the effect of the Court's
7 ruling is to say that that point is well taken because we
8 are getting something. I'm trying to draw an order, that's
9 my problem.
10 SLAUGHTER: Well, if the Court please, among other
11 things Mr. Parker - and I specifically left this out of our
12 motion when we came to ask for more specific information.
13 His answer for attorney's fees for this hearing here...
14 COURT: Well, I haven't gotten to that part, where
15 is that?
16 SLAUGHTER: That's down at the bottom, and he
17 keeps injecting we are getting somewhere so he may justify this hearing and
18 I might say for the record that notice was given five days
19 ahead of time without consulting either the Court or me, about
20 this date and we have sat here since 9:30 this morning - it's
21 certainly not the fault of the Court, but you had a very busy
22 docket. Now, I am simply not going to allow or not going to
23 stand by without comment and say anything to give Mr. Parker
24 any grounds whereby he thinks he can come up with that at the
25 end...

1 COURT: All right, I understand - you're not waiving
2 objection to that and he's not laying the ground work at this
3 point certainly.
4 SLAUGHTER: The only reason I'm making any stipulation
5 as to what we are doing if the Court please is not because
6 I think in any way we didn't give proper answers to his interro-
7 gatories. It's simply to try to save time and see if we can't
8 get to issues. We've been on this case for now nearly a year,
9 actually a little over a year in various guises, and in my
10 judgement if the Court please, we've spent too much time
11 joggling back and forth, we're within two months of the second
12 date for trial and I'd like to get down to the issues.
13 We were sitting over there in the Clerk's office a few minutes
14 ago working on the issues and I think it's really the first
15 time we've gotten down close to what it is we're going to be
16 negotiating about. And that's what I would like to see us
17 get to.
18 PARKER: If the Court please, my only - the only
19 thing I have to say with respect to that, of course counsel's
20 fees aspect of it - it's not - Mr. Slaughter's counsel's
21 fees in any event that are in issue, but rather mine and I'll
22 certainly concede to Mr. Slaughter that I've been able to do
23 other things today until the Court could hear this matter,
24 so that seems to me will not be harmed in that respect. I have
25 been trying to get a ruling from the Court, as to whether the

1 answer to 3C is or is not complete.

2 COURT: Well, now we've operated on the basis

3 that-on agreed stipulation up to now - but Mr. Slaughter

4 has now said he is not about to stipulate your right to

5 attorney's fees for the wrongful answers thus far given.

6 Now while we jumped ahead of it, we may have to back up and

7 consider whether or not there are grounds for the Court to

8 permit him to change his answers.

9 PARKER: That's really another question which the

10 Court will have to get to at the end, because that will depend

11 on this and other answers and whether things were justified

12 and so forth and so on, but ...

13 COURT: What he has agreed to do without waiving

14 his right to contest your right to counsel's fees, I take it..

15 SLAUGHTER: My point if the Court please is that

16 again and I hope I'm not going beyond the bounds that I should

17 be, but we are just jockeying here. And I must say at some

18 point, I just think that it's disrespect of the Court to

19 continue it. In my judgement every answer that we have given

20 as far as we knew it was given in good faith, it was under

21 oath and it certainly is complete in so far as we knew.

22 Now in order to hasten things along I'm willing to say that we

23 will give Mr. Parker more - I think he's entitled to it by the

24 rules, when we know what the issues are and we know what his

25 testimony is going to be and when we are able to figure out

what our testimony will be and we will give it to him ahead of time. Now to the extent that we are going to jockey back and forth over whether this was specifically right so he can put it in an order so he can use it in the future, as I said to the Court I'm not going to agree to anything along that line; unless we can get beyond that attitude in this case I think we are just going to be talking from now until December.

COURT: All right, go ahead Mr. Parker now you can take your choice either way....with that knowledge and if it's going to be by stipulation then that's one thing and if not then they've got technical rights upon which they can defend your position. Or at least they assert it at this point.

PARKER: Well, I've only asked the Court to rule on whether my position with respect to 3C was well founded or not. My position is that the answer to 3C with respect to both witnesses is incomplete.

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13 COURT: Well, I think I said this before and I say

14 it again, because I'm more convinced of it every day. In

15 abolishing the old common law form of practice and substituting

16 therefore the modern rules of discovery, we have safely arrived

17 out of the thicket into the jungle. And how anybody could say

18 that we have improved it, I don't know, because when I was in

19 law school there was a great cry over how we would lift the

20 burden imposed by the old practitioners on us young lawyers,

21 by abolishing the common law form. Substituting therefore the

22 modern untechnical rules of federal practice. And now we

23 have gotten the modern untechnical rules of federal practice

24 and we are spending 10 times the amount of time arguing those

25 rules than we ever spent knocking our heads out over the common

1 law form and we are no closer to getting to trial. But that's
2 of course just a passing comment. It's not intended as any
3 ruling. But I do find it difficult to deal with these interroga-
4 tories except on a more technical basis than we ever dealt
5 with the old common law form. Now in order to do that, I think
6 I have to make some rulings here with regard to the motion that
7 Mr. Parker has filed and I'll try to do that specifically.
8 We have covered to a large extent Item 4 which pertains to
9 number 3C, with the understanding that further answers will be forth-
10 coming with regard to any witness who has not previously testified.
11 Any expert witness - or whose testimony has not been reduced
12 to writing. Now, getting on down to item 6, answers to
13 interrogatories numbers 12 and 13...
14 PARKER: I concede.....
15 COURT: ...are incomplete - that's been conceded...
16 Getting back up again then to the objections. Items 9, 10 and
17 11. Now I have this comment, I hope it will resolve it.
18 At least I have to have some basic guide from which to construe
19 all of these rules or I'll lose myself in this uncharted jungle.
20 It seems to me inherent in filing answers that you put an
21 issue - that you meet an issue in a case whether in effect you
22 could stipulate it or not. It's not unheard of to deny some-
23 thing that you know you may have to admit later in your evidence.
24 But you deny it in order not to plead yourself out of court,
25 because you want to put the other party to the burden of his

1 proof. And that's the purpose of pleadings, to establish the
2 ground work upon which the case must proceed to trial with
3 the proof. Now, that means that the plaintiff must prove
4 everything that's not admitted. The answer deals with it in
5 part and may leave some of it somewhat in doubt. Then that
6 leaves the question of what the plaintiff can do to further
7 clarify the answer unless he asks for more particular grounds
8 of defense, and I don't know that he's required to do that.
9 That's one avenue open to him, but he has certain avenues,
10 one of which would be an interrogatory, another of which would
11 be a request for admissions. Now I am inclined to think that
12 having answered and having denied it and everything that's
13 not denied is considered to be admitted under our rules, the
14 only thing remaining for the plaintiff to do is to require
15 by filing a proper request for admissions, the defendant to either
16 admit what he would not otherwise admit in his answer or suffer
17 the added expense of whatever the plaintiff might be required
18 to incur in the way of costs because of the defendant's
19 obstinacy....rather than legal expertise. Because this is
20 what - as I understand it the request for admissions - it says
21 in effect well, you can be technically correct in denying it
22 but you'd better not be so obstinate as to force me to prove
23 this when I've requested you to admit it. And of course if
24 that is the case it seems to me the request for admission gives
25 the plaintiff an adequate remedy under which to seek these

1 answers. And I can't see that the interrogatories ought to
2 be substituted for that, which I think is what it would be
3 if I sustained the interrogatory or required the defendant to
4 answer it. In other words the indication to me is that I
5 should sustain the objection to the interrogatories and leave
6 the plaintiff to his request for admissions. And if I do that
7 then I will pass over as Mr. Parker has indicated in the pre-
8 trial area and say now we don't care what the rules require
9 and we don't care what form of pleadings require of counsel -
10 now we are talking about saving some time and overcoming
11 objections. By-passing and avoiding technical objections and
12 delays. In that area the Court should say well, now I don't
13 care what the rules and what the objections might be to evidence,
14 if you know something is going to be easily proven why not go
15 on and stipulate it. Such is the proof of medical bills in
16 personal injury cases. Frequently parties might refuse to
17 agree to it but yet the Judge might say in a pre-trial
18 conference well, why argue over it; it just takes a lot of
19 time to prove that which should be admitted in the first place.
20 But I don't think the Court can push the parties any further
21 than a pre-trial conference by way of stipulation and if they
22 refuse to stipulate I don't think that the Court can twist their
23 arm any further. That being the case, I overrule the plaintiff's
24 motion, in so far as it pertains to allowance of counsel fees,
25 or any other action by the Court to redress the failure of the

1 defendant to respond. It may be appropriate to take it up
2 further in some other hearing, but as of now, my feeling is
3 that the proper response and the proper action by the
4 plaintiff to get a response would be to file a request for
5 admissions. And where ever that of course is presented even
6 though it may be inconsistent with what the answer already has
7 been, I think that's one of the requirements that the defendant
8 must admit what he is requested to admit or possibly suffer
9 some consequences of having to pay for the plaintiff's proof.
10 And I do sustain the objection to interrogatories 9, 10 and
11 11 for that reason. And since both of you are here, it seems
12 to me somewhat in response to highly technical matter I see no
13 basis for requiring anybody to pay attorney's fees, but if I
14 were taking that up I would find probable cause to require it
15 from both sides if at all. And that being the case I leave
16 the parties right where they are. I hope they don't have to
17 spend any more time arguing over interrogatories. Mr. Parker
18 you may note your exceptions to one and all of the Court's
19 rulings in so far as they are unfavorable to your motion.
20 PARKER: Your Honor, I object to the Court's ruling
21 with respect to interrogatory - point 4 of my motion. Because
22 he does not seem to answer the question - hasn't specifically
23 answered the question that we propounded which was whether
24 interrogatory number 3C was incomplete or not. As I understand
25 the law, we are entitled to ask the Court for rulings on the law,

with respect to discovery and I don't feel that the Court's ruling specifically answers the question. With respect to point 5 of - in our motion, which relates to interrogatories numbers 9, 10 and 11, I have no objection or brook whatsoever with so much of the Court's ruling as goes to say that whether the statement is true or not ought to be answered in requests for admissions, but my objections to the Court's ruling - my objection to the Court's ruling is this, that it does not answer the - or it apparently does answer that question, adverse to us. This question, adverse to us, that the plaintiff cannot be required - the defendant in this case cannot be required to state why it is that they have denied a particular statement of fact. That cannot be required by interrogatories, and I respectfully suggest that in view of rule 4:8 B, the second paragraph, that that is error.

COURT: All right, I will respond - I think it does need a specific ruling with regard to paragraph 4 - my ruling is that the answer thus far given is not incomplete because I think the matter is still open and at the time given was apparently complete - that's the ruling that the Court makes as to item number 4 - Mr. Parker's exceptions to that ruling of course are noted.

PARKER: Yes sir, thank you sir.

* * *

* * *

ORDER

On the 20th day of October, 1975, came the parties by their counsel, whereupon plaintiff called up his motion served upon defendants on the 14th day of October, 1975; and these matters were argued by counsel.

Upon consideration of these and other matters be it hereby ORDERED and ADJUDGED, nunc pro tunc as of October 20, 1975, that:

Plaintiff's first motion is overruled on the following grounds: (a) as to that portion of the motion labeled 4, defendants' answer to interrogatory #3 is not at this time incomplete with respect to Richard M. Yearwood and Robert E. Abbott,Jr.; (b) as to that portion of the motion labeled 5, defendants' objections to interrogatories #9, #10, and #11 are well taken and are sustained; and (c) as to that portion of the motion labeled 6, counsel for plaintiff conceded in open court that defendants' answers to interrogatories #12 and #13 as they are framed are complete. Counsel for plaintiff objects and excepts to the rulings of the Court set out in ~~(b)~~ (a) and ~~(c)~~ (d) above on the grounds stated in his motions and argument if needed. As to plaintiff's second motion, counsel for plaintiff and counsel for defendants agree that as to certain issues in the case, plaintiff will file his brief on the law as to such issues on or before October 31, 1975, and defendants will respond on or before November 10, 1975. These issues will be argued orally before

the court at 9AM on November 17, 1975. The Court made no ruling as to which issues could be determined as a matter of law, but it was agreed that defendants would respond to whatever issues plaintiff should raise and would make known to the Court whether in their opinion evidence would be necessary for the Court to determine such issues.

As to plaintiff's third motion, by agreement of counsel, the hearing on October 20, 1975, proceeded as a pre-trial conference without objection, but no binding rulings were made other than those hereinabove set out.

ENTER: David F. Berry
Judge

DATE: 3 December 1975

Seen:
~~We ask for this:~~

C. Waverly Parker
Counsel for plaintiff

~~We ask for this:~~
McGUIRE, WOODS & BATTLE

By
Edward R. Slaughter, Jr.
Counsel for defendants

David C. Dickey
Counsel for defendants

* * *

INTERROGATORIES

Comes now plaintiff, by counsel, and pursuant to Rule 4:8 of the Rules of Court, propounds to defendants the following interrogatories, to be answered under oath in accordance with law:

1. What, if any, of the subjects of investigation mentioned in section 15.1-447 of the Code of Virginia (as in effect immediately prior to 1 January 1975) do you claim to have been conducted prior to the enactment of the interim ordinance in issue in this case?

2. As to each such investigation, state:

(a) The names and addresses of all persons who conducted the same.

(b) Upon what authority of law such investigation was conducted.

(c) How that authority was delegated, step by step, from the legislation upon which you rely to the person or persons conducting the investigation.

(d) The identity and location of every writing by which any such delegation was made, and the name and address of the custodian of such writing.

(e) The specific question or questions which the investigation covered.

(f) The names and addresses of all witnesses appearing before the investigating body.

(g) The identity, location and general subject matter of every document or writing received and considered by such investigatory body, and the name and address of the custodian of that document or writing.

(h) The name and address of every person who prepared

any such document or writing and a resumé of his expertise, if any.

(i) The identity and location of all records kept by such investigatory body, and the name(s) and address(es) of the custodian(s) of such records.

BENNETT T. MATTHEWS

BY: _____
Counsel

* * *

Filed:
Sept. 22, 1975
Julia O. Bickers, Clerk
[illegible], Deputy Clerk

* * *

OBJECTION TO INTERROGATORIES

Defendants object to the interrogatories served on them by plaintiff on October 22, 1975, on the ground that the information sought is not relevant to the subject matter involved in this action.

COUNTY OF GREENE

and

THE BOARD OF SUPERVISORS OF GREENE COUNTY

By Counsel

(Filed 11-10-75)

* * *

* * *

MOTION

Comes now your complainant Bennett T. Matthews and moves the Court for an order compelling defendants to answer the interrogatories served on them on 22 October 1975, whereof they objected by notice delivered to complainant on 10 November 1975.

* * *

Filed: 12/19/75 2:00 A.M.

Exhibit R to Written Statement of Facts, Testimony and Incidents of this Case

MEMORANDUM

STATEMENT OF THE CASE

In an informal conference the Court noted that it felt that the questions raised by subparagraphs A, F, I, J, K, P and Q of the Bill of Complaint in this cause are susceptible of being decided as a matter of law. These items present issues which resolve themselves into one issue, as follows.

QUESTION PRESENTED

Was the Interim Zoning Ordinance of Greene County invalid and unconstitutional on its face?

DISCUSSION

The Interim Zoning Ordinance adopted by the Greene County Board of Supervisors is invalid as an improper exercise of authority not granted by the Virginia zoning enabling statutes. Even had that authority been vested in the Board, the ordinance would be invalid as enacted without adherence to the proper statutory procedures.

It is well established in Virginia that the powers of county boards of supervisors are strictly fixed by statute and are only such as are conferred expressly or by necessary implication from the enabling statutes. Gordon v. Fairfax County, 207 Va. 827, 153 S.E.2d 270 (1967); Johnson v. Goochland County, 206 Va. 235, 142 S.E.2d 501 (1965). A recent Virginia case, Board of Supervisors of Fairfax County v. Horne, et al., No. 740916 (Va. Supreme Court, 6/13/75), citing this principle, calls into question the power of

Virginia boards of supervisors to enact interim zoning ordinances such as the one involved in the present case.

In Horne, as in the present case, a claim of invalidity was raised against an ordinance which was adopted as an interim measure during consideration of a proposed comprehensive plan. The ordinance in that case was essentially a subdivision ordinance which temporarily suspended the filing of site plans and preliminary plats. Citing the principle of strict construction of delegated zoning authority, the court exhaustively surveyed the statutory enabling acts for both subdivision and zoning ordinances and found no statutory provision which would authorize the adoption of an interim subdivision or zoning ordinance. Consequently, the interim ordinance was held invalid as beyond the scope of the board's authority. The same result has been reached in a number of cases invalidating interim zoning ordinances.

In Downey v. Sioux City, 208 Iowa 1273, 277 N.W. 125 (1929), the city adopted an interim zoning ordinance in anticipation of a comprehensive plan then under consideration. The court pointed out, as did Horne, that all right to exercise the police power rests in the state and that delegations of that authority are strictly construed. Finding no statutory grant of authority to support the city's action, the court struck down the ordinance which had prohibited the construction of specific types of multiple dwellings in a certain district.

In Kline v. Harrisburg, 362 Pa. 438, 68 A.2d 182 (1949), the court invalidated an interim zoning ordinance prohibiting the construction in residential areas of any buildings other than single-family detached dwellings and held that such an ordinance was not authorized by state enabling statutes. Similar results have been reached in Lancaster Development, Ltd. v. River Forest, 84 Ill. App. 2d 395, 228 N.E.2d 526 (1967); Sgro v. Howarth, 54 Ill. App. 2d 1, 203 N.E.2d 173 (1964); Phillips Petroleum Co. v. Park Ridge, 16 Ill. App. 2d 555, 14 N.E.2d 344 (1958) and Alexander v. Minneapolis, 267 Minn. 155, 125 N.W.2d 583 (1963). The court in Alexander, in parti-

cular, noted the doubtful validity of any attempt to give retroactive effective to a pending zoning ordinance by enacting an interim provision.

All of these cases establish that the powers of boards of supervisors are strictly delimited by statute and that, absent a specific enabling act, such boards have no power to enact interim zoning ordinances. Horne establishes that no such statutory grant of authority exists in Virginia. Consequently, it was beyond the power of the Greene County Board of Supervisors to enact the Interim Zoning Ordinance which was applied to deprive the petitioner of the use of his land and therefore the ordinance was invalid.

Even had the Board of Supervisors possessed the authority to enact the interim zoning ordinance, the ordinance would be invalid as a result of the board's failure to observe the statutory requirements for the enactment of zoning ordinances. It is well established that interim zoning ordinances must meet the same statutory requirements for valid enactment which are applied to other zoning ordinances. Annot., "Interim Zoning Ordinances," 30 A.L.R.3d 1196 (1970).

Interim zoning ordinances have frequently been invalidated for failure to comply with the procedural requirements of state enabling statutes. In State ex. rel. Kling v. Nielsen, 103 Ohio App. 60, 144 N.E.2d 278 (1957), an interim zoning ordinance was held invalid for lack of compliance with statutory notice and hearing requirements. In LoConti v. Utica, 52 Misc. 2d 815, 276 N.Y.S.2d 720 (1966), an interim zoning ordinance was invalidated for lack of compliance with a 10-day newspaper notice requirements. Ordinances were similarly invalidated for procedural defects in Miami Beach v. State, 108 So. 2d 614 (Fla. App. 1959), cert. denied, 111 So.2d 437 (Fla. 1960) and State ex. rel. Fairmount Center Co. v. Arnold, 138 Ohio St. 259, 34 N.E.2d 777 (1941).

Va. Code Ann. 15.1-490 (1974) requires that zoning ordinances be drawn with reasonable consideration of various factors including the existing uses of property, the trends of growth and change, the current and future requirements of the community, etc. It must

precisely locate boundaries between zoning districts, and in making a zoning judgment the governing body must consider not only the general boundary guidelines of a comprehensive plan but also location of property lines, physical characteristics of the land, and other factors affecting optimum geographical alignment. Bd. of Supervisors v. Snell Constr. Corp., 214 Va. 655, 202 S.E.2d 889 (1974). The Interim Zoning Ordinance in question here obviously does not reflect proper consideration of these factors. It zoned the entire county, with the exception of areas not ordinarily under the police power and jurisdiction of the Board of Supervisors, in one single district. Without reference to a comprehensive plan it assumed that every portion of the county was the suitable subject for the same regulations. It did not account for trends of growth but rather attempted to maintain the rural status quo in Greene County. Except for allowing non-conforming uses to continue it took little, if any, account of the existing use of land. Consequently, the ordinance was enacted without compliance with the statutory requirements and is invalid.

The interim zoning ordinance, then, is invalid as an unwarrante exercise of power and as procedurally defective. It is also defective from the standpoint of constitutional analysis.

Zoning ordinances, like any other form of law, must satisfy the requirements of due process and equal protection of the laws established by the United States and Virginia Constitutions. Ordinances will generally meet the requirements of due process if they bear a substantial relationship to the public health, safety, morals, or welfare and are not arbitrary and unreasonable. Conversely, such ordinances are unconstitutional violations of due process if they bear no substantial relationship to the public health, safety, morals or welfare. 101 C.J.S. "Zoning" § 27 (1958). The due process requirement is established by statute in Virginia by Va. Code Ann. § 15.1-489 (1975) which provides that "[z]oning ordinances shall be for the general welfare of the public . . . ."

In order to meet the requirements of equal protection, classifications made by zoning ordinances must rest on a rational basis

and must not arbitrarily discriminate between persons or property similarly circumstanced. 101 C.J.S., supra., § 28. Like the due process requirement, the equal protection standard is recognized by statute in Va. Code Ann. 15.1-488 (1962) which provides that "[a]ll such regulations shall be uniform for each class or kind of buildings and uses throughout each district . . . ." Various aspects of the Interim Zoning Ordinance violate both due process and equal protection guarantees.

It is well established law in Virginia, and elsewhere, that, where zoning authority is delegated to local officers and boards, clear standards for the exercise of that authority must be promulgated in order to preclude arbitrary action. In Andrews v. Board of Supervisors of Loudoun County, 200 Va. 637, 107 S.E.2d 445 (1959), the court struck down a statute allowing a board of Zoning Appeals to grant or deny use permits as the board saw fit. The proposed standard, i.e., whether the board felt that a use would be "desirable or advantageous" to a neighborhood, was held to be too general to prevent an arbitrary exercise of authority.

The Andrews court held that local boards must proceed under standards and rules of action which operate generally and impartially so that enforcement of an ordinance is not left to the unbridled discretion of the board. An ordinance which fails to provide such impartial standards is invalid as a violation of the principle of equal protection of the law since it encourages arbitrary and discriminatory action. The court went on to note that "public welfare" alone is not a sufficient standard.

This principle is equally well recognized in other jurisdictions:

> The power to grant or withhold special permits must be limited by standards sufficient to contain the discretion of the board of adjustment and provide the courts with a reasonable basis for review of board decisions. Where such power is vested in a board without suitable standards, the ordinance is invalid and the board is without authority to grant a permit.

Anderson, American Law of Zoning, § 15.09 (1968). Thus, in Osius v. St. Clair Shores, 344 Mich. 693, 75 N.W.2d 25 (1956), a zoning ordi-

nance which empowered a board of zoning appeals to grant or refuse building permits for gasoline stations was held invalid as lacking sufficient standards where the only standard in the ordinance was that of "public health, safety and welfare." In Powers v. Common Council of Danbury, 154 Conn. 156, 222 A.2d 337 (1967), it was held that standards are a fundamental requirement of constitutionality and that an ordinance which established no standards was void. See also In Re Clements Appeal, 2 Ohio App. 2d 201, 207 N.E.2d 573 (1965).

In the present case, § 5.3-1 of the Interim Zoning Ordinance provides that subdividors who suffer "financial hardship" from the passage of the ordinance are entitled to a rebuttable presumption in favor of the issuance of a special use permit. Nowhere does the ordinance define "financial hardship" or establish any standard by which such hardship may be determined. Consequently, determinations of "financial hardships" and therefore of who shall and shall not be granted special use permits, are left to the unfettered discretion of the Board of Zoning Appeals. Such broad discretion invites arbitrary and capricious action. Under the Andrews decision, an ordinance which allows such discretion must be held invalid as a denial of equal protection of the laws. Moreover, the standards employed to rebut the presumption in favor of granting a special use permit (§ 5.3-1) once financial hardship has been found, are the same general standards condemned by Andrews, e.g., public interest, "intended spirit and purpose of the ordinance."

The failure to define "financial hardship" also renders the ordinance void for vagueness. "Certainty and definiteness are prime requisites of an ordinance and the courts may hold a particular zoning ordinance or a provision thereof to be invalid and void for uncertainty, vagueness or indefiniteness." Ciaffone v. Community Shopping Corp., 195 Va. 41, 77 S.E.2d 817 (1953). Under the Interim Zoning Ordinance, the subdividors affected by the "financial hardship" provision have no clearer a guide in determining the scope of the provision than does the Board of Zoning Appeals in applying it. Consequently, the ordinance should be declared void for vagueness.

In attempting to enact an ordinance without reference to a comprehensive plan, and thus without sufficient consideration of existing land use, it must have been obvious to the Board of Supervisors that they could not satisfactorily divide the county into zones to be distinguished from each other by such land use. And so the Board opted for a single zone. But because no such single zone arrangement could possibly account for the diverse use of land in the county, it was not likely that the citizenry and institutions of the county could even for a short time tolerate the ordinance. And so some sort of escape mechanism had to be provided. It was. The ordinance called the escape mechanism by the names "special use permit" and "special exception".

In seizing upon the special use permit and special exception route as a means of alleviating the failure of the Interim Zoning Ordinance to meet the standards required of it by the enabling legislation contained in the Code of Virginia the county fathers jumped from the frying pan into the fire; for in order to accomodate the single zone concept to the entire jurisdiction of the Board of Supervisors it was necessary to draw standards for the so-called special exceptions and special uses which must of necessity be unconstitutionally and illegally broad, since the exceptions and uses which could be approved under the ordinance were practically unlimited. Accordingly, the ordinance adopted as the standard for special uses and special exceptions the standards which the Code of Virginia undertakes to permit (whether or not properly) with respect to variances. Va. Code Ann. § 15.1-495(b). At no point in the Code are these particular standards permitted with respect to special exceptions. See Code § 15.1-491(c). Nor did section 15.1-495(c) as then in effect, in speaking of "such special exceptions as may be authorized in the ordinance" [emphasis supplied], appear to contemplate special exceptions for all the unlisted purposes and uses to which these terms could under the provisions of the Interim Zoning Ordinance be applied. Under the ordinance the standards by which the exceptions were to be judged were far too broad. And the exceptions which could be granted

were so great in quality and quantity that they effectively granted to the Board of Zoning Appeals the right to re-zone in violation of section 15.1-495(e) of the Code.

The breadth of exceptions which could be allowed was illegal. The standards by which such exceptions were to be judged were illegally broad. In the presence of these (or even without them) the single zone concept was itself illegal. Any one of these three concepts was fatal to the entire ordinance, as its scheme would have been utterly frustrated had any of these three provisions been stricken therefrom. Taken together, these provisions were more than fatal. They were calamitous. In practical effect it meant that all new development in Greene County, except some residential development, was to cease immediately until such time as the county had the time to pass a truely valid ordinance; and in the meantime the public inconvenience would be held to a minimum by setting up a Board of Zoning Appeals which could in most instances effectively re-write the ordinance and do what it pleased. And this runs directly counter to the Rule enunciated in Powers, supra.

A corollary of the "standards" argument, as noted in the Anderson quotation, supra, is that boards of zoning appeals must present findings of fact which will allow judicial review and assure that the standards are properly applied. Such review insures procedural due process and prevents arbitrary and discriminatory action by local boards. The court's reasoning in Andrews, supra, supports such a requirement. Courts in other jurisdictions have refused to sustain zoning decisions until findings of fact and explanations were produced. Gougeon v. Board of Adjustment of Sonne Harbor, 52 N.J. 212, 245 A.2d 7 (1968); Schimmel v.Kempner, 13 App. Div. 2d 781, 214 N.Y.S.2d 961 (1961); Gilbert v. Stevens, 284 App. Div. 1016, 135 N.Y.S.2d 357 (1957). The failure of the Interim Zoning ordinance to require findings of fact like the lack of discernible standards, invites arbitrary and discriminatory action and, therefore renders the ordinance invalid.

Perhaps the most telling argument against the facial validity of the Interim Zoning Ordinance derives from the exclusionary character of the ordinance itself. The ordinance, which zones all of Greene County into a single district, excludes all commercial uses and prohibits any residential uses except single-family dwellings. It further establishes a minimum lot requirement of two acres which will be exclusionary in effect. Similar exclusionary ordinances have been held invalid in a number of cases in Virginia and other jurisdictions as arbitrary and as having no reasonable relation to public health, safety, and welfare and, therefore, violating due process and equal protection guarantees.

In National Land and Investment Co. v. Kohn, 419 Pa. 504, 215 A.2d 597 (1966), the Supreme Court of Pennsylvania struck down as unconstitutional a four-acre minimum lot requirement. As against the claim that such exclusion was necessary to the public welfare, the court noted:

> Zoning is a tool in the hands of governmental bodies which enables them to more effectively meet the demands of evolving and growing communities. It must not and cannot be used by those officials as an instrument by which they may shirk their responsibilities. Zoning is a means by which a governmental body can plan for the future---it may not be used as a means to deny the future . . . . Zoning provisions may not be used . . . to avoid the increased responsibilities and economic burdens which time and natural growth invariably bring.

215 A.2d 610. The court then held that:

> A zoning ordinance whose primary purpose is to prevent the entrance of newcomers in order to avoid future burdens, economic and otherwise, upon the administration of public services and facilities cannot be held valid . . . the general welfare is not fostered or promoted by a zoning ordinance designed to be exclusive and exclusionary.

215 A.2d 612. This case establishes that exclusionary zoning, such as that created by the Interim Zoning Ordinance, bears no relation to the public welfare. Two and three-acre minimum requirements were similarly invalidated in Appeal of Kit-mar Builders, Inc., 439 Pa. 466, 268 A.2d 765 (1970), noting, at 768-9, that "It is not for any given township to say who may or may not live within its confines, while disregarding the interests of the entire area."

In Oakwood at Madison, Inc. v. Township of Madison, 117 N.J. Super. 11, 283 A.2d 353 (1971), an ordinance enacted by a township in which 30% of the land area was vacant, restricted the permissible number of multi-family dwellings and subjected most of the remaining land to one and two-acre minimum lot requirements. The ordinance was held invalid for failure to promote a reasonably balanced community in accordance with the general welfare. The court noted that a municipality has an obligation to help meet the housing needs of the region as a whole and that such housing needs are encompassed within the general welfare.

The same reasoning has been applied in two Virginia cases, Board of Supervisors of Fairfax County v. Carper, 200 Va. 653, 107 S.E.2d 390 (1959), and Board of Supervisors of Fairfax County v. Williams, No. 730996 (Va. Supreme Court, 6/13/75). In Carper, the court struck down a minimum two-acre lot requirement applied to the western two-thirds of Fairfax County as being unreasonable, arbitrary and invalid because it bore no relationship to the health, safety, morals or welfare of residents of that area.

The court noted that the mere power to enact zoning ordinances does not include the right to deprive a landowner of the legitimate use of his property unless that deprivation is required by the public welfare. The court found that the practical effect of the ordinance was to exclude lower-income families from moving into the western area, thereby reserving that area for the well-to-do who could afford to build houses on two acres of land or more. Thus, the ordinance served private, not public, interests and bore no relation to public welfare. Moreover, since the ordinance served to exclude lower-income persons it denied equal protection of the laws.

In Williams, the court found that a zoning ordinance forbidding high-density development on certain property was exclusionary and invalid since it raised the cost of buildings sites and housing, thereby excluding lower-income people.

The reasoning of all these cases can readily be applied to the Interim Zoning Ordinance and clearly indicates that the ordi-

nance was, from its inception, discriminatory and unrelated to public welfare. The two-acre minimum lot requirement is patently exclusionary as it was in Carper, supra. It serves to keep lower-income persons from moving into the county, thereby depriving them of the equal protection of the laws. By excluding all commercial uses from the entire county, the ordinance clearly fails to encourage the well-balanced development of the community which is required by the general welfare. Moreover, the ordinance represents an attempt by the Board of Supervisors to shirk its responsibilities in providing housing and governmental services to the residents of both Greene County and the surrounding region. Such a regressive policy is forbidden by the reasoning of the cases cited above, including Carper which should control the disposition of this issue.

The zoning ordinance is, then, at variance with the general welfare of the region. It represents the private interests of a few residents of Greene County to the exclusion of the interests of the public as a whole. Consequently, it violates the due process guarantees of the fourteenth amendment to the United States Constitution and article I, section 2 of the Virginia Constitution. Furthermore, the ordinance discriminates between well-to-do persons who can afford to build homes on two-acre lots and the less wealthy who cannot. Consequently, it violates equal protection guarantees of the fourteenth amendment and article I, sections 1 and 2 of the Virginia Constitution. Conclusion: the Interim Zoning Ordinance of Greene County is therefore unconstitutional and invalid on its face.

BENNETT T. MATTHEWS

BY: _____
Counsel

Filed
October 31, 1975
Lelia D Dicken, Clerk
by Maria C Gunn, Dep Clerk

Exhibit S 8 Written Statement of Facts, Testimony and Incidents of this Case

DEFENDANT'S
MEMORANDUM

STATEMENT OF THE CASE

By a bill of complaint filed in the Clerk's Office of the Circuit Court of Greene County on February 21, 1975, the complainant seeks to have an interim zoning ordinance of Greene County declared invalid and to enjoin the defendants from enforcing that ordinance or any subsequent ordinance against a proposed subdivision and uses which the complainant outlined in his bill.

The Court has overruled defendants' plea in bar and defendants thereafter answered. All parties have undertaken discovery and the Court with the consent of all parties conducted an informal pre-trial conference on October 20, 1975. At that time, in an effort to determine what issues might be decided as a matter of law, the Court suggested, with the consent of all counsel, that the parties submit memoranda of law concerning the questions raised by subparagraphs A, F, I, J, K, P, and Q of paragraph 9 of the bill of complaint. Counsel for plaintiff filed his memorandum on October 31 and defendants hereby submit their memorandum.

QUESTIONS PRESENTED

I. Did the Board of Supervisors of Greene County have the legislative power to enact the interim zoning ordinance?

II. Was the interim zoning ordinance adopted in accordance with the statutory requirements for the enactment of such a law?

III. Does the interim zoning ordinance have sufficient standards to guide the Board of Zoning Appeals in approving or denying special use permits?

IV. Was the interim zoning ordinance clearly arbitrary and capricious, bearing no reasonable or substantial relation to the public health, safety, morals, or general welfare?

AUTHORITIES AND ARGUMENT

I. THE BOARD OF SUPERVISORS OF GREENE COUNTY CLEARLY HAD THE LEGISLATIVE AUTHORITY TO ENACT THE INTERIM ZONING ORDINANCE.

Initially, the defendants must assert that this issue was not raised by the pleadings and therefore is not properly before this Court. Buchner v. Kenyon L. Edwards Co., 210 Va. 502, 505, 171 S.E.2d 676 (1970). The Bill of Complaint makes no allegations concerning the legislative authority of the Board of Supervisors to promulgate such a law.

Without waiving this objection, the defendants assert that the zoning enabling statute contained in Va. Code Ann. §§15.1-486 to 15.1-498 (1973 Repl. Vol.) supplied ample authority for this interim ordinance.

It is well settled in Virginia that the powers of county boards of supervisors are strictly fixed by statute and are only such as are conferred expressly or by necessary implication from

the enabling statutes. Gordon v. Fairfax County, 207 Va. 827, 153 S.E.2d 270 (1967); Johnson v. Goochland County, 206 Va. 235, 142 S.E. 2d 501 (1965).

Va. Code Ann. §§15.1-486 to 15.1-498 give the governing body of any county the power to enact zoning ordinances involving the typical restrictions as to the uses and dimensions of land, and describe the required procedures for enacting such regulations.

The complainant cited only one Virginia case, Board of Supervisors of Fairfax County v. Horne, No. 740916 (Va. S.C., 6/13/75), as authority for the proposition that Virginia boards of supervisors have no power to enact interim zoning ordinances such as the one involved in the present case. In Horne, the Board of Supervisors of Fairfax County passed an emergency ordinance which flatly prohibited the approval of subdivision plats and site plans until the date established for the adoption of the complete official zoning map. After examining the enabling provisions applicable to subdivisions and those governing zoning, the Court held that there was no statutory authority for an interim development ordinance which totally suspended the submission of plats and site plans for a specified period of time. In addition, the Court noted that there was a significant distinction between local regulations governing subdivisions and those involving zoning. The Court made absolutely no finding as to the authorization for the adoption of an interim zoning ordinance.

Unlike Horne, the ordinance under consideration here is limited entirely to matters permitted under zoning ordinances, and more importantly there is no suspension for any period of the applications for zoning permits, occupancy certificates, special use permits or variances. Rather, the ordinance scrupulously complies with the requirements of the enabling legislation. There was in no sense

a moratorium on all development in the county. It is true that commercial uses and certain residential uses were prohibited, as of right, during the one-year period. But, Section 15.1-486 expressly gives the county the power to prohibit the use of land for commercial and residential uses. Va. Code Ann. §15.1-486 (1973 Repl. Vol.). Whether that proscription was "reasonable" does not affect the issue of the organic power of the board to make a regulation of that sort.

This distinction was in fact noted by the Court in Horne when it stated that the interim ordinance involved in Downham v. City Council of Alexandria, 58 F.2d 784 (E.D. Va. 1932), "did not prohibit construction." Deciding the case on another point in Downham, the federal district court in dictum approved the temporary measure which merely provided that applications for building permits had to be referred to the zoning and planning commission for consideration and recommendation to the city council.

The cases cited by the complainant from other jurisdictions offer no support for his position and are completely distinguishable on their facts and issues. In four of the cases, Kline v. Harrisburg, 362 Pa. 438, 68 A.2d 182 (1949), Lancaster Development, Ltd. v. River Forest, 84 Ill. App. 2d 395, 228 N.E.2d 526 (1967), Sgro v. Howarth, 54 Ill. App. 2d 1, 203 N.E. 2d 173 (1964), Phillips Petroleum Co. v. Park Ridge, 16 Ill. App. 2d 555, 149 N.E. 2d 344 (1958), the courts actually invalidated the involved statutes because they were not enacted according to the procedural requirements of the enabling legislation. The power to enact was never discussed as the bases for the decisions. In Alexander v. Minneapolis, 267 Minn. 155, 125 N.W. 2d 583 (1963), the disputed regulation, as in Horne, actually prohibited the issuance of any building permit for a given period.

Finally, in the case of Downey v. Sioux City, 208 Iowa 1273, 227 N.W. 125 (1929), cited by the complainant, the court struck down an ordinance prohibiting the erection of certain multiple dwellings in restricted residential districts without first securing a permit therefor, because under the building code enabling statute there was no authority to prohibit dwellings. But, the court pointed out that

> It is probably true that, under Chapter 324 [zoning enabling statute] the city would have the power, under the general zoning plan therein provided, to prohibit the erection of this apartment house; but the trouble with the situation is that, at the time in question herein, the city of Sioux City had not passed a general zoning ordinance... and the powers conferred in that chapter... are not available to be taken from Chapter 324 and made the basis for the ordinance in question.

208 Iowa at 1278.

In fact, most states have affirmatively declared that interim zoning is constitutionally permissible and that it is permissible for a locality to enact such legislation under the standard enabling act. Freilich, "Interim Development Controls: Essential Tools for Implementing Flexible Planning and Zoning," 49 J. Urban L. 65, 83 (1971). The cases holding to the contrary have involved procedural defects under the enabling statutes with regard to matters such as preliminary investigations, proper notice, time limits, or public hearings, or they have involved total suspensions in the granting of permits for construction. See, Annotation, "Zoning-Interim Ordinance-Validity," 30 A.L.R. 3d 1196, 1210-1214 (1970).

The Greene County interim zoning ordinance did not prohibit all development during the temporary period, but rather, in strict

accordance with Section 15.1-486 of the Code of Virginia it permitted certain uses in the zoning district, while allowing other uses to be made only if a special use permit or variance were granted, in order to protect the essentially rural, agricultural character of the county. No moratorium was declared. No complete suspension of pre-existing rights occurred. Instead, the Board of Supervisors passed a zoning ordinance by exercising only those powers specifically delegated to it. It was a very restrictive plan, when compared to the typical zoning provisions, but it was only temporary because of the on-going planning for a longer range ordinance. There was no statutory requirement as to a minimum duration of a zoning ordinance.

In light of the fact that the ordinance here is sharply contrasted with the Fairfax County act in Horne and that it did not exceed the permissible regulations under the enabling legislation, there is no doubt that the board of supervisors had the authority to enact it.

II. THE INTERIM ZONING ORDINANCE WAS ADOPTED IN ACCORDANCE WITH THE STATUTORY REQUIREMENTS FOR THE ENACTMENT OF ZONING LEGISLATION.

A. THE ORDINANCE WAS ENACTED AFTER REASONABLE CONSIDERATION OF THE FACTORS LISTED IN SECTION 15.1-490 OF THE CODE OF VIRGINIA.

Va. Code Ann. §15.1-490 (1973 Repl. Vol.) requires that zoning ordinances be drawn with reasonable consideration of various factors including the existing uses of property, the trends of growth and change, the current and future requirements of the community, etc. On the face of the ordinance, the Court can reasonably conclude that these factors were considered. Out

of a concern for these very factors the Board of Supervisors passed this temporary act in order to protect the county "from any building construction and new uses of land that may do irreparable harm to the character of existing neighborhoods and which may defeat the purposes of the long range general plan and comprehensive ordinance." The Preamble recites that the ordinance was adopted for the "purpose of promoting health, safety, order and prosperty, the conservation of natural and historic resources, and the general welfare..." It is clear that this ordinance on its face considered the Section 15.1-490 factors. The evidence at trial will also show that the Board of Supervisors in fact gave reasonable consideration to these factors.

In addition, the complainant alleges that the act was invalid for its failure to be based on a "comprehensive plan." However, there is no such statutory requirement. In fact, in 1974 under Chapter 11 of Title 15.1, there was no mandatory requirement for any locality to establish a local planning commission, which body was responsible for preparing and recommending a comprehensive plan. Va. Code Ann. §15.1-427 (1973 Repl. Vol.). Nor was the local governing body bound to approve the recommended plan from an existing planning commission. Va. Code Ann. §15.1-450 (1973 Repl. Vol.). And, if the governing body desired, the comprehensive plan could be adopted piecemeal. Va. Code Ann. §15.1-452 (1973 Repl. Vol.). However, the governing body could enact zoning regulations even without the existence of a planning commission. Va. Code Ann. §15.1-486 (1973 Repl. Vol.). The only requirement was that the zoning ordinance be drawn with consideration for the factors listed in Section 15.1-490, among which is not included the comprehensive plan. While complainant has sought to intimate that Va. Code Ann. §15.1-447 applies to zoning ordinances, it applies by its own terms solely to a comprehensive plan. It may well be that once a comprehensive plan has been prepared and approved,

it must be considered in drafting an original zoning ordinance or an amendment thereto. Cf. Board of Supervisors v. Snell Construction Corp., 214 Va. 655, 202 S.E.2d 889 (1974). But such was not the case in Greene County. A comprehensive plan had not been adopted at the date of the enactment of the interim ordinance. However, evidence at trial will prove that the proposed comprehensive plan was in fact utilized in drafting the zoning ordinance.

B. THE INTERIM ZONING ORDINANCE DID NOT GRANT THE BOARD OF ZONING APPEALS THE POWER TO REZONE PROPERTY IN VIOLATION OF VA. CODE ANN. §15.1-495(e).

Va. Code Ann. §15.1-495(e) (1973 Repl. Vol.) provides that the powers delegated to a board of zoning appeals shall not be construed as granting any board the power to rezone property. The complainant contends that the special use permits were so great in quality and quantity that they effectively granted to the Board of Zoning Appeals the right to re-zone.

Quite to the contrary, the Board was required to observe the standards for issuing such permits, which guaranteed that any building construction and new uses of land would not do irreparable harm to the existing character of the county, i.e. agricultural and low-density residential. The standards in Section 5.3-1 of the ordinance mandated that the Board be guided with the objective of preventing any special use that would change the established pattern of development or not be in harmony with the uses permitted by right. Therefore the Board of Zoning Appeals did not have the power to rezone property.

C. THE INTERIM ZONING ORDINANCE PROPERLY CONFERRED ON THE BOARD OF ZONING APPEALS THE RIGHT TO MAKE THE ORIGINAL DETERMINATION ON APPLICATIONS FOR SPECIAL USE PERMITS.

The interim zoning ordinance in Section 5.3-1 gives the Board of Zoning Appeals the duty to make the original determination

on applications for special use permits. The procedure involves applying to the zoning administrator on a form provided for the purpose, whereupon he promptly transmits the application to the Secretary of the Board and a copy to the Planning Commission. After review by the Planning Commission the Board of Zoning Appeals hears and decides the applications.

The complainant alleges that this original jurisdiction in the hands of the Board is improper. However, unlike applications for variances, which can be entertained by the Board only on appeal, Va. Code Ann. §15.1-495(b) (1973 Repl. Vol.), Lake George Corp. v. Standing, 211 Va. 733, 180 S.E.2d 522 (1971), the Board is permitted to make the initial decision on special use permits. Va. Code Ann. §15.1-495(c) provides that a board of zoning appeals shall have the power "to hear and decide appeals from the decision of the zoning administrator or applications for such special exceptions as may be authorized in the ordinance." (Emphasis added). Since the sentence is worded disjunctively the board can hear and decide appeals or hear and decide applications for the special exceptions.

This construction of the statute is reinforced by the provisions of Va. Code Ann. §15.1-496 (1973 Repl. Vol.) dealing with the application procedure for special exceptions. There, the statute requires the board to "fix a reasonable time for the hearing of an application or appeal." (Emphasis added). Also the concurring vote of three members is necessary to "reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance...." (Emphasis added). Thus, the interim ordinance complied with the enabling legislation on this matter.

D. THE USE OF STANDARDS FOR SPECIAL USE PERMITS, WHICH PARALLEL THOSE FOR GRANTING VARIANCES, ONLY IN THE CIRCUMSTANCE OF WEIGHING REBUTTING EVIDENCE TO A SUBDIVIDER'S PRESUMPTION UNDER SECTION 5.3-1(d), IS PROPER UNDER THE ENABLING STATUTE.

Section 5.3-1(d) of the interim zoning ordinance provides that a subdivider under certain prescribed circumstances shall be entitled to a rebuttable presumption in favor of the granting of a special use permit. Evidence necessary to rebut this presumption is based on the standards set forth in Section 5.2-1 b and 5.2-2(a, b, c), which are used to decide variance applications. The complainant asserts that the Code does not permit the utilization of such standards with respect to special exceptions.

Va. Code Ann. §15.1-491 (1973 Repl. Vol.) simply states that a zoning ordinance may provide for the granting of special exceptions "under suitable regulations and safeguards." Therefore, the use of the same standards as those for variance applications in this limited situation is permissible since the guidelines need only be "suitable," that is, otherwise providing a sufficiently precise rule for decision making.

III. THE BOARD OF SUPERVISORS OF GREENE COUNTY LAWFULLY DELEGATED LEGISLATIVE POWERS TO THE BOARD OF ZONING APPEALS IN THE DETERMINATION OF APPLICATIONS FOR SPECIAL USE PERMITS, SINCE IT PROVIDED REASONABLY PRECISE STANDARDS TO GUIDE THE AGENCY.

It is well settled in Virginia that zoning is a legislative power residing in the State, which may be delegated to cities, towns, and counties. When a local legislative body delegates power to make discretionary decisions to an administrative agency, such as the Board of Zoning Appeals, or if it reserves power to itself to make such discretionary decisions, it must establish standards for the exercise of the administrative power. Andrews v. Board of Supervisors, 200 Va. 637, 107 S.E.2d 445 (1959); Thompson v. Smith, 155 Va. 367, 154 S.E. 579 (1930). This rule is founded

on the principle that there must be a uniform application of the regulations, in order that the discretion vested by the ordinance will not be used arbitrarily, and in order to ensure that the benefits of the discretion will not be bestowed on some and denied to others under like circumstances. Maritime Union v. City of Norfolk, 202 Va. 672, 119 S.E.2d 307 (1961).

Such a standard may be general and at the same time be valid if it is capable of reasonable application. 2 Yokley, Zoning Law & Practice §15-6 at 146 (1965). The growing, modern tendency of the courts is to sustain delegations of zoning authority guided only by general policy standards, since attempts to limit the administrative decisions to matters of detail results only in creating an inflexible and unworkable zoning plan. Ours Properties, Inc. v. Ley, 198 Va. 848, 851, 96 S.E.2d 754 (1957); Annotation, "Zoning-Delegation of Authority," 58 A.L.R.2d 1083, 1087 (1958).

In Virginia the specificity required for standards under the general rule has been lessened under particular circumstances. This exception to the general rule was stated in the case of Gorieb v. Fox, 145 Va. 554, 134 S.E. 914 (1926), aff'd 274 U.S. 603 (1927), as follows:

> While the Courts have held that, generally speaking, statutes and ordinances which vest arbitrary discretion in public officials, without prescribing a uniform rule of action by which they shall be guided, are unconstitutional and void, this rule is subject to a qualification, where it is difficult or impractical to lay down a definite rule, or where the discretion relates to the administration of a police regulation and is necessary to protect the public morals, health, safety and general welfare.

145 Va. at 563-64. In Gorieb, the City Council of Roanoke had adopted an ordinance providing for the establishment of building setback lines. The ordinance gave the council authority to grant or refuse permits for the erection of buildings closer to

the street than was generally provided, "accordingly as their judgment will dictate whether the proposed buildings will subserve the general welfare of the neighborhood and city." 145 Va. at 558. And furthermore, the ordinance mandated the granting of a license "whenever in their judgment the block to contain the proposed building has a greater value for business or mercantile than for residential purposes." Ibid. The Court held that such a standard was not arbitrary or whimsical and if the discretion was used in an arbitrary manner, the aggrieved party would be entitled to relief through the courts. 145 Va. at 566.

In other cases, this qualification on the general rule has been specifically applied to the administration of zoning laws, Maritime Union v. City of Norfolk 202 Va. 672, 119 S.E.2d 307 (1961); Ours Properties, Inc. v. Ley, 198 Va. 848, 96 S.E.2d 754 (1957), without regard to whether the discretionary power was exercised by the legislative body or delegated to an official or agency. Ours Properties, Inc., supra, Taylor v. Smith, 140 Va. 217, 124 S.E. 259 (1924).

In Maritime Union v. City of Norfolk, an ordinance was upheld which contained standards very similar to the Greene County rules. The disputed section of the City of Norfolk ordinance read,

> If the City Council shall find that the use for which a Use Permit is sought will not (1) adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use, (2) will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood, and (3) will be in accord with the purposes of the ordinance and the City Plan of the City of Norfolk, it shall issue the Use Permit, provided that all other provisions of law and ordinance have been complied with.

202 Va. at 679. Fifty-five separate uses were listed as requiring use permits, and the Court noted that the promulgated standards would include an inquiry into differences in the size of the use, the scope

of operation, the location in relation to other use areas, the effect on value of adjoining or surrounding property and the effect on the future growth of the area. They were matters that could not have been dealt with in advance in the formulation of the city plan. 202 Va. at 682.

In Ours Properties v. Ley, supra, an administrative official, the building inspector, made the zoning decision. There, the City of Falls Church passed an ordinance which provided for specified uses in a particular zoning district as well as

> [A]ny other industrial establishment for which satisfactory evidence is presented that such establishment will not adversely affect any contiguous district through the dissemination of smoke, fumes, dust, odor, or noise or by reason of vibration and that such establishment will not result in any unusual danger of fire or explosion.

198 Va. at 849. Finding that the words of the standard had a well understood meaning which would furnish a pattern of conduct to guide the official, the Court explained,

> [T]he ordinance merely conferred administrative functions upon the agent charged with the duty of carrying out the will and direction of the legislative body; the legislative purpose was disclosed by the enactment of the ordinance; and, as far as was reasonably practical, the ordinance left to the official charged to act under it merely the discretion of determining whether a given status came within the provisions thereof.

198 Va. at 853.

In contrast to the above-described enactments, the Court invalidated in Andrews v. Board of Supervisors, 200 Va. 637, 107 S.E.2d 445 (1959), a Loudoun County zoning ordinance which stated,

> The Board of Zoning Appeals may grant or deny the application as the Board sees fit, being guided in its decision by its opinion as to whether or not the proposed use would

> be desirable or advantageous to the neighborhood or the community or the county at large.

200 Va. at 638. As a standard to determine who should be granted special use permits, this section was inadequate by its failure to describe what considerations should be weighed in arriving at a conclusion that a use would be advantageous, which meant that the Board could even change the fundamental character of the zoning districts.

It is surprising that an examination of the Court's opinion in Andrews and of the briefs filed on behalf of the County reveals no reference whatsoever to the established doctrine of Gorieb v. Fox, supra, or that there was no evidence introduced or facts found which indicated the propriety of the consideration of that doctrine in connection with the case. Apparently the issue was never raised by either party.

It is submitted that the present case is a proper one for the application of the doctrine of Gorieb v. Fox, since the administration of the special use exceptions under the interim zoning ordinance was a recognized subject matter for its application and it was impracticable to lay down more definite rules in the context of the temporary duration of the law.

Even if the qualification on the general rule is not allowed here, it is clear that the interim ordinance provided standards more precise than those in the Andrews and Maritime Union cases and sufficient to meet any required level of specificity for standards.

There is a long line of cases from other jurisdictions with ordinances containing provisions for special exceptions in which the courts have not found an improper delegation of power where the administrative agency was required to act with a view to such particular factors involved as fire protection, congestion, health,

traffic, or property values. For example, see Tustin Heights Ass'n. v. Board of Supervisors, 339 P.2d 914 (Cal. App. 1959); Jeffrey v. Planning & Zoning Board of Appeals, 155 Conn. 451, 232 A.2d 497 (1967); Lucky Stores Inc. v. Board of Appeals, 270 Md. 513, 312 A.2d 758 (1973); Sun Oil Co. v. Zoning Board of Adjustment, 403 Pa. 409, 169 A.2d 294 (1961); Application of Good Fellowship Ambulance Club, 406 Pa. 465, 178 A. 7d 578 (1962); Barbara Realty Co. v. Zoning Board of Review, 87 R.I. 100, 138 A.2d 818 (1958).

A statute similar to Greene County's in Mobil Oil Corp. v. Clawson, 36 Mich. App. 46, 193 N.W.2d 346 (1971), was upheld where special exception were granted upon the following considerations:

> (a) All requirements set forth in this Zoning Ordinance will be complied with;
> (b) The use and any proposed structures to be utilized in connection therewith will not create any threat to the public health, safety and welfare and will not unduly aggravate any traffic problem in the area.
> (c) The proposed use will not be injurious to the surrounding neighborhood, and
> (d) The proposed use will not be contrary to the spirit and purpose of the Zoning Ordinance.

193 N.W.2d at 348.

In the present case, the standards for granting special use permits in the Greene County Interim Zoning Ordinance provide sufficient criteria beyond a mere declaration of "public interest" by which the Board of Zoning Appeals was guided in making its decision. The ordinance provided that the Board "shall" consider the following factors:

> (a) The use shall not tend to change the character and established pattern of development of the area of community in which it wishes to locate.
> (b) The use shall be in harmony with the uses permitted by right under a zoning permit in the zoning district and shall not affect adversely the use of neighboring property.
> (c) The location and height of buildings shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.
> (d) Hardship caused by passage of this ordinance.

Interim Zoning Ordinance of Greene County, Va. §5.3-1(a)-(d) (1974).

Unlike the Maritime Union situation, the Board of Supervisors did not simply require the administrators to act on notions of what they believed to be in the public interest. The Board had to examine whether a use would change the pattern of development in an area and whether it would harmonize with uses permitted by right. The aim was to stabilize temporarily the type of uses in existing neighborhoods. The exact height, location and scope of proposed uses were all very relevant. Also, the ordinance necessitated an examination of the economic impact, both in terms of the effect on the value of adjoining land and the hardship caused to the applicant by this law.

Special consideration was given to certain real estate developers, who were entitled to a rebuttable presumption in favor of the granting of a permit, where the subdivider had (1) acted in good faith by (2) securing preliminary approval for subdivision plats prior to passage of the zoning ordinance, had (3) complied with all the relevant time limits under the subdivision ordinance, and (4) would suffer a financial hardship. Though the degree of hardship was not specifically defined, the general meaning of such terms was known and the administrators could use their discretion to compare the relative burdens under varying circumsstances.

In addition, the Board was required to consider rebutting evidence to be judged by specific standards which included: (1) That the special use not be contrary to the public interest; (2) that literal enforcement of the zoning ordinance would result in unnecessary hardship; (3) that the spirit of the zoning ordinance be observed and substantial justice done; (4) that enforcement of the ordinance would effectively prohibit or unreasonably restrict the use of the property; (5) that setting aside the ordinance would

alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience for the applicant; (6) that hardship inflicted upon applicant is not shared generally by other properties in the vicinity and zoning district; (7) that the use proposed will not be of substantial detriment to adjacent property and the character of the district will not be changed. Interim Zoning Ordinance of Greene County, Va. §5.2-1(d), 5.2-2(a, b, c).

These standards are similar to the factors to be considered in the normal applicant's situation, except that they focus to a greater extent on the hardship factor while the latter focuses more on the impact on surrounding properties. For example, the qualified subdivider's use should not be of "substantial detriment" to adjacent property, while the normal applicant's use shall not "affect adversely," "hinder," or "discourage" the use of adjacent land.

In summary, the standards listed in the Greene County Ordinance go far beyond those in the Andrews case and are even more detailed than the Maritime Union ordinance. They provided suitable guidelines for the Board of Zoning Appeals to make uniform decisions in granting special use permits so as to achieve the goal of protecting the county for a one year period from any building construction and new uses of land that would do irreparable harm to the character of existing neighborhoods. Interim Zoning Ordinance of Greene County, Va., Preamble (1974).

In addition there are certain factors present in this situation which have been recognized as favoring a conclusion that the standards are adequate. First, zoning administration has benn an area where the delegation of broad discretionary powers is supported by long tradition, because of the need for more flexibility by reason of the subject matter involved. Cf. Ours Properties, 198

Va. at 851; Cooper, 1 State Administrative Law 78 (1965).

Next, broader discretionary powers may be delegated where there is adequate judicial review available, including a re-examination of the facts. Cf. Gorieb v. Fox, 145 Va. at 566. Under Va. Code Ann. §15.1-497 (1973 Repl. Vol.) any aggrieved person may use a writ of certiorari to review the decision of the board of zoning appeals, and the court may take evidence itself or appoint a commissioner to do so. Finally, broader delegations are sustained where the ordinance requires notice, hearings, and generally fair administrative procedure. Downey v. Grimshaw, 410 Ill. 21, 101 N.E.2d 275 (1951). The Greene County interim ordinance carefully guaranteed the right to notice and hearings as set out by Section 15.1-431 of the Virginia Code. Interim Ordinance, §5.3-3 (1974).

In view of all of these considerations, it appears clear that the rules of conduct for the issuance of special use permits were sufficiently definite to provide for uniform application of the law.

IV. THE INTERIM ZONING ORDINANCE BEARS A REASONABLE AND SUBSTANTIAL RELATIONSHIP TO THE PUBLIC HEALTH, SAFETY, MORALS, AND GENERAL WELFARE.

In determining whether the substantive content of a zoning ordinance complies with the due process guarantees of the state and federal constitutions, the general principles for judicial review are well-established as follows:

> The legislative branch of a local government in the exercise of its police power has wide discretion in the enactment and amendment of zoning ordinances. Its action is presumed to be valid so long as it is not unreasonable and arbitrary. The burden of proof is on him who assails it to prove that it is clearly unreasonable, arbitrary or capricious, and that it bears no reasonable or substantial relation to the public health, safety, morals, or general welfare. The court will not substitute its judgment for that of a legislative body, and if the reasonableness of a zoning ordinance is fairly debatable it must be sustained.

Board of Supervisors v. Allman, 215 Va. 434, 444, 211 S.E. 2d 48 (1975).

The evidence to be brought forth at trial as to the actual purposes of the interim ordinance and the developmental state of Greene County will be very relevant in determining the validity of the ordinance, Board of Supervisors v. Carper, 200 Va. 653, 107 S.E.2d 390 (1959), but without such testimony the reasonable assumptions from the words used in the act must control.

The complainant relies on the cases of Board of Supervisors v. Carper, 200 Va. 653, 107 S.E.2d 390 (1959) and Board of Supervisors of Fairfax County v. Williams, No. 730996 (Va. S.C., 6/13/75), in contending that the exclusionary character of the ordinance violated due process and equal protection guarantees.

In Carper the Court invalidated a minimum two-acre lot requirement applied to the western two-thirds of Fairfax County on two grounds. The practical effect of the ordinance was to prevent people in low income brackets from living in the western area, which was reserved for those who could afford to build houses on two acres or more, thereby serving private interests. In addition, the county allowed certain land owners to record plats, providing for lots of a minimum size, for a period of two years after the passage, which discriminated against other land owners similarly situated. 200 Va. at 653. However, as a caveat, the court noted that a two-acre minimum restriction was not per se invalid, since it might have been permissible within a reasonable area.

In Williams, the Court cited the exclusionary effect of an ordinance forbidding high-density developments on designated property as only one minor factor in reaching the conclusion that under all the circumstances the reasonableness in denying a higher-density zoning was not fairly debatable.

The proper focus is on all the circumstances in a given case, since the mere presence of an exclusionary feature in a zoning

ordinance is never enough by itself to reverse the presumption of validity. For example, a number of cases have sustained the validity of ordinances by which all or substantially all the territory in a municipality was zoned for residential use. Cadoux v. Planning & Zoning Com., 162 Conn. 425, 294 A.2d 582 (1972), cert den. 408 U.S. 924; Gautier v. Jupiter Island, 142 So. 2d 321 (Fla. App. 1962); Richlawn v. McMakin, 313 Ky. 265, 230 S.W.2d 902 (1950), cert. dismd 340 U.S. 945; Conner v. Chanhassen, 249 Minn. 205, 81 N.W.2d 789 (1957); Annot., "Zoning-Residential Use - Entire Town," 54 A.L.R. 3d 1282 (1973). Similarly many cases have upheld zoning ordinances with exclusionary features such as minimum lot-area requirements or the exclusion of multifamily dwellings. Annot., "Exclusionary Zoning," 48 A.L.R. 3d 1210 (1973).

By virtue of the circumstances surrounding the interim zoning ordinance of Greene County it is clear that the reasonableness of the regulations was fairly debatable and must be sustained. Unlike Carper, where the decision was made to require two-acre minimum lots indefinitely in order to concentrate growth in another area, here the ordinance was in essence a very temporary act, specifically limited to no longer than one year. The restrictive zoning, which did not halt all development, but only allowed particular uses, was intended for the benefit of all the citizens by protecting the county during the preparation of a more comprehensive developmental plan from "any building construction and new uses of land that may do irreparable harm to the character of existing neighborhoods and which may defeat the purposes of the long range general plan." The County utilized only the best of planning techniques. The court should not so narrowly define the public welfare as to exclude reasonable, temporary restrictions placed upon the use of property in order to aid the development in the future of the entire county.

CONCLUSION

From the foregoing, it is apparent that the Greene County Interim Zoning Ordinance was valid on its face and that all issues determinable as a matter of law must be resolved in favor of defendants.

Respectfully submitted,

COUNTY OF GREENE

and

BOARD OF SUPERVISORS
OF GREENE COUNTY

By Counsel

Filed:
Nov. 10, 1975
Lilia D. Baker
Clerk

(Transcript of Hearing on)

1 November 17, 1975

2 Court convened at 9:00 a.m.

3

4 COURT: All right, gentlemen, I take it that you all

5 are ready to proceed on the argument on the questions presented

6 in the case of Matthews against the County of Greene, on the

7 interim zoning ordinance.

8 PARKER: If the Court please Your Honor in view of

9 what is stated on Page 2 of the County's brief, I have a

10 motion. I move to amend the bill of complaint in this case

11 by adding a paragraph 9-A-1 as follows: The Board of Super-

12 visors of Greene County had no power to enact the interim

13 zoning ordinance in question. It seems to me that the complaint,

14 that the amendment is probably unnecessary. Paragraph 9 begins

15 by saying the interim zoning ordinance is wholly invalid and

16 inoperative, inter alia, because - - -that is among other

17 things because and goes on and cites particular qualities

18 which we thought among other things made the ordinance invalid.

19 My feeling on that point is that though facts have to be

20 alleged such as unreasonableness, that might be a fact, that

21 law does not have to be alleged. It merely means particularly

22 in a motion for summary judgment that we are now involved in,

23 it merely means to be brought to the Court's attention at every

24 stage, so that every- the fact of the matters, as I understand

25 the law, it was improper to plead law. It was enough to say

1 that the ordinance was invalid. However, I don't want to get
2 caught on the horns in this case of not preserving proper
3 error. There isn't any question of the fact that that does
4 not lie in paragraph 9 somewhere and I want to make it clear
5 that that does lie. And the matter has been briefed by both
6 counsel, and it seems to me that no one is surprised by this...
7 DICKEY: We have no objection....
8 COURT: All right, if it's not objected to it will
9 be permitted. Now I will leave it for Mr. Parker to form the
10 amendment in writing, what he stated orally before the Court.
11 I take it there won't be any trouble to do so, that the
12 basic amendment is that the assertion would be included under
13 paragraph 9 that the Board of Supervisors had no legislative
14 power to enact the interim zoning ordinance.
15 PARKER: Yes sir. That's precisely it.
16 COURT: The enabling statute did not permit such
17 an interim ordinance.
18 PARKER: Yes sir.
19 COURT: All right, that's the extent of the amendment,
20 then.
21 PARKER: Yes sir.
22 COURT: All right and it's not objected to - it will
23 be permitted.
24 PARKER: Thank you sir.
25 COURT: I think you all have addressed that point in

1 the research, in your citations.

2 SLAUGHTER: Yes Your Honor we have. We have addressed

3 that point, although of course we had it at that time in

4 briefs and Mr. Parker hadn't raised it in the bill of complaint,

5 noted that it had not been raised in the bill of complaint.

6 We did not receive notice of his motion previous to the hearing,

7 although our brief was in a week ago, according to the Court's

8 deadline. But in the interest of saving time we will - we

9 to accede to the amendment.

10 COURT: Now what is it that's pending? You say a

11 motion for summary judgment, Mr. Parker?

12 PARKER: Your Honor, a motion this morning to determine

13 as many of the issues of law as can be determined prior to

14 trial.

15 COURT: Well, that's not a motion for summary

16 judgment though is it? If it is...

17 PARKER: That is the affect of the motion for summary

18 judgment...

19 COURT: Has such a motion been made though?

20 PARKER: Yes sir.

21 COURT: Where is it that it's contained?

22 PARKER: I will have to see the file sir. There is

23 such a motion.

24 COURT: Maybe there is, let's take a look just a

25 minute and see. That's what the question and the research is

1 directed to.....

2 PARKER: When we were last before the Court we took

3 the matter up.

4 COURT: As I recall it all that was directed to the

5 request for admission in interrogatories....there was a

6 motion for summary judgment.....

7 SLAUGHTER: May it please the Court maybe at the same

8 time, in Mr. Parker's motion made on the 14th of October, Mr.

9 Parker moved to bring on .....the interrogatories,

10 he also moved for a determination of the question as well as

11 the - on page 2, whether the ordinance was unconstitutional

12 on the face, and he moved for pre-trial conference. Well, the

13 Court made its ruling on that case on October 20th, and then

14 thereafter, about 10 days thereafter permitted an order which

15 incorporated the Court's ruling.....

16 PARKER: Excuse me.....I have not received any such

17 order. You indicated to me that you were going to prepare

18 an order, but I have not received anything.

19 SLAUGHTER: In any event if the Court please there

20 was no motion for summary judgment, unless it is something we have missed.

21 There was a motion that the Court determine whether or not

22 the ordinance was invalid on its face, that is what we are

23 here.....not a motion for summary judgment...

24 COURT: Maybe it has the same affect.

25 SLAUGHTER: It has the same affect, but .....

1 PARKER: I did not call it a motion for summary
2 judgment and I don't know that there's any procedure
3 in chancery, but .....it's on the second page Your Honor
4 of the latest of the interrogatories but there's more to it.
5 It was filed on the 14th of October, 1975.
6 COURT: All right, let's see now.
7 PARKER: The second page of that, sir, and the first
8 portion, I believe, on the second page.
9 COURT: All right, now it's a motion included with
10 the motion with regard to the interrogatories and separate motion
11 for determination in advance of trial such issues as are solely
12 matters at law. That's where we are today then I take it?
13 PARKER: Yes sir.
14 SLAUGHTER: Yes sir.
15 COURT: It's in the nature of a pre-trial conference
16 and a motions hearing which goes to the issues of law, and I
17 think you all have addressed those in your memoranda which has
18 been filed. Now who can enlighten the Court on who's got the
19 first shot at it?
20 PARKER: I think I have the first shot at it, Your
21 Honor, but I will reply to Mr. Slaughter if he cares to proceed.
22 COURT: All right, Mr. Slaughter.
23 SLAUGHTER: If it please the Court, I'm not asking
24 to speak but merely to say - certainly the ordinance is valid,
25 is presumed to be valid until successfully challenged. Mr. Parker

1 opened with his brief, we of course replied - certainly as
2 far as our date was concerned in accordance with the Court's verbal
3 instructions, although apparently no order had been tendered
4 to the Court. And I would think since Mr. Parker clearly has
5 the burden that he would open.
6 PARKER: I have....
7 COURT: He's indicated he will reply to you, so you
8 may proceed and then I will hear from him.
9 SLAUGHTER: May it please the Court, I don't wish
10 to take up the Court's time unnecessarily; obviously our brief
11 was the most recently filed and I think dealt clearly and
12 successfully with the issues that Mr. Parker had raised. Mr.
13 Parker apparently takes the position, if I may summarize it in
14 a nutshell, that the Horn case, the most recently decided
15 case, gives him a certain right to say that the Greene County
16 Interim Zoning Ordinance is not a proper ordinance. That
17 case dealt with interim development ordinance - it was called
18 which put an absolute moratorium on issuing any building
19 permits, which of course as we explained in some detail
20 in our brief this interim ordinance did not do. We went on to
21 point out of course that interim ordinances are now common
22 in most states. They've been ruled constitutional. They are
23 considered very essential for proper planning process. And the
24 Greene County ordinance certainly on its face was adopted
25 with all the attention to detail required in the adoption of any

1 zoning ordinance at that time in Virginia. Now, I realize
2 it's hard to deal with these things orally, I think it's well
3 that briefs were requested and that they were supplied
4 for the Court to consider. I think perhaps the best thing I
5 can do here is simply go through the points which each of us
6 agreed - although unfortunately no orders have been entered,
7 we were going to deal with, and explain the situation briefly
8 to the Court. The Court may be able to follow more easily if
9 he refers to that paragraph 9 in Parker's bill of complaint,
10 with various other paragraphs - we've agreed on that we've
11 dealt with. The first is paragraph 8 and it alleges that the
12 zoning ordinance was invalid because it was not enacted
13 with or after the comprehensive plan required by 15.1-446
14 of the Code of Virginia. 15.1-446 of the Code of Virginia deals
15 with comprehensive plan not a zoning ordinance. At the time
16 it was not required that the plan be adopted before a zoning
17 ordinance, so clearly the zoning ordinance is not invalid on
18 that ground. The next paragraph letter was - well, I might
19 mention parenthetically to the Court, that B notes that there
20 was no investigation as far as 15.1-447....again 15.1-447 dealt
21 with the adoption of comprehensive plan not a zoning ordinance.
22 So clearly on its face that section, that sub-paragraph is
23 not valid. Now as to number F that is really the same as A,
24 and again the answer is the same, that the zoning ordinance
25 does not have to be based on a comprehensive plan - certainly

at that time. Now going to I - that just gets more to the heart of the matter - Mr. Parker simply argues but without any real foundation that the Stanardsville Board of Zoning Appeals may grant the privilege of commercial use are conclusory and indefinite, but it's been pointed out in my brief if the Court please, the stanards are similar to standards adopted in a variety of other cases. There is one thing I think should be pointed out here, that standards in zoning ordinances by their nature have to be general. It's really impossible even where you are talking about special use permits to have absolutely precise standards. There is no way an ordinance could possibly foresee all the problems that can arise. The standards have to be standards but they can be and must be general, and of course Mr. Parker is saying - using the words conclusory and indefinite, because in his opinion it of course involves his side of the case, these standards are not officially precise for his client as he sees them, who has received a special use permit from the zoning people. Nowagain paragraph J is similar. Mr. Parker is essentially saying in effect that the Board of Supervisors conferred on the Board of Zoning Appeals the power to legislate. As we point out in briefs they clearly did not. It simply gave the Board of Zoning Appeals certain powers within specific guidelines. It was not a general type of standard such as I think one of the earlier cases, I believe it was the Day case had said, which simply said that the Board had a right to decide

1 special use permits because of its - on the basis of whether
2 or not such and such decision for special use permit was good
3 for the county. Our standards are much more definite than that.
4 And again there has been no proper analysis there. As to K,
5 Mr. Parker takes the position, the Board of Zoning Appeals
6 only has the power to decide appellate cases, but section
7 15.1-495C, revised, unlike variances, special use permits
8 may be decided originally by the Board of Zoning Appeals.
9 So K really has no merit. S and P, Mr. Parker indicates that
10 the interim zoning ordinance unlawfully regulates the sub-
11 dividing of land and regulating its use. Well again that's
12 simply not true. The ordinance does limit development in
13 Greene County for one year period as of right, the two acre
14 lots for single family residential use, but it's talking about
15 zoning, not just use. It's unlike the Horne case which was,
16 as the Court pointed out, a case involving really sub-divisions
17 not zoning. Here any sub-division could pass as a matter of
18 right, provided it involved two acre lots for single family
19 residential use. So it's not a sub-division ordinance. It
20 was clearly a zoning ordinance. And finally generally Mr.
21 Parker says that the interim zoning ordinance was not reasonable
22 exercise of police power but as again here it tends to point
23 out in our brief , the Board of Supervisors of Greene County
24 surely within the police power have the right to pass a zoning
25 ordinance. There would be no question of that. Now we are

1 unclear - and this we shall take up when our argument as to
2 this point is finished, we are unclear as to whether Mr. Parker
3 is going to raise any question about the adoption or not. He
4 has indicated at times he thought perhaps not, and then he has
5 indicated that perhaps he would. But this is a point that
6 really should be resolved today for us to know how much time
7 is going to be involved in the trial of the case. Now the
8 interim zoning ordinance even assuming Mr. Parker feels that
9 he wants to challenge the method of adoption was adopted with
10 all the requirements - this of course is a matter of evidence.
11 I think Mr. Parker has unsuccessfully challenged it...with all
12 the requirements of a zoning ordinance, and did provide by its
13 terms a one year limitation. It is a very stringent ordinance,
14 because it is an interim ordinance, because they wanted to
15 preserve the character and integrity of Greene County at least
16 for a year until the master plan could be adopted, and a final
17 comprehensive zoning ordinance adopted. As the Court knows
18 and of course this all will be a matter of evidence....the
19 Board of Supervisors and Planning Commission and other subjects
20 that the final comprehensive plan was adopted and the final
21 comprehensive zoning ordinance was adopted, all within one
22 year. And by experience of course the interim zoning ordinance
23 after one year was no longer in effect. As to the question
24 of whether or not the Board of Supervisors, the Board of
25 Zoning Appeals were within their rights of police power, clearly

as our brief points out they were. There can be no question if the Court please that as a method of law, this is a valid, proper, well drawn, well executed, ordinance. Now as to whether or not factually there is some technicality that Mr. Parker could raise in a factual hearing to which the Court might conclude that there were some flaw in it, that of course is not a matter for today. Today the Court is only deciding issues which can be decided from the ordinance itself.....

COURT: He's put it on that basis whether it was invalid and unconstitutional on its face, so any technical defects as to its adoption would require behind the elements and I take it that it not to be considered today. But what can be gleaned from the face of the ordinance itself insofar as its exercise or over-exercise of the police power.

SLAUGHTER: Thank you, Your Honor.

COURT: All right, Mr. Parker.

PARKER: Our reply Your Honor will be very brief. The matter has been briefed by counsel and I agree with Mr. Slaughter that it is an inappropriate - that oral argument is largely an inappropriate vehicle for the elucidation of these issues. I would point out to the Court that I know the difficulty Mr. Slaughter suffered in that connection. I point out to the Court that Mr. Slaughter went through the points and he said the County was right, he said the County was clearly right, and

1 didn't have much to say about why....the brief said why from
2 his point of view, the brief said why from our point of view.
3 But if the matter will stand or fall based on oral argument
4 on either side so far as that is concerned, I should think
5 that neither side would prove very convincing. If the Court
6 please, I'd like to refer to page 3 of the county's brief.
7 The county says that - in the second indented paragraph,
8 the complainant cited only one Virginia case, Board of
9 Supervisors of Fairfax County versus Horne, and cites it, as
10 authority for the proposition that Virginia Boards of Supervisors
11 have no power to enact interim zoning ordinances such as the
12 one involved in the present case. The brief goes on to say,
13 in Horne the Board of Supervisors of Fairfax County passed
14 an emergency ordinance which flatly prohibited the approval
15 of sub-division plats and sight plans until the date established
16 for the date of the complete official zoning map. If the Court
17 please I don't think that's consistent with the facts in Horne
18 Or at least I don't think it's fully lucid with respect to those
19 facts or candid. On page 2 of the opinion by Mr. Justice
20 George M. Cochran as to which there was no dissent in the case
21 of Board of Supervisors of Fairfax County versus M. S. Horne,
22 in giving this pagination, Your Honor, I'm obliged to refer
23 to the case as it was typed up, the opinion as it was typed up
24 in the Supreme Court and not - if its found its way into the
25 Virginia Reports as I believe it has, the pagination I'm giving

1 is not necessarily the pagination in the Virginia Reports.
2 The emergency ordinance was adopted it says without compliance
3 with the statutory requirements for the enactment of either
4 zoning ordinances or sub-division ordinances. So to that
5 extent the County's brief is correct, but over on page 3 -
6 after complying with all statutory requirements for the enact-
7 ment of the zoning ordinance, after requiring - complying
8 with all statutory requirements for enactment of a zoning
9 ordinance, the board reenacted the IZO on March 4, 1974. The
10 reenacting ordinance differing in no material respect from
11 the emergency ordinance and confirming the affective period of
12 the moratorium from January 7, 1974, when the emergency ordinance
13 has been affected through June 30, 1975. The ordinance - there
14 were cases here, the Court can see that was a consolidated
15 case - there were many cases. There were cases which arose
16 that go on to state other parts of the opinion, before and
17 after March 4, 1974. So it's perfectly apparent that the - from
18 the Horn case that the Supreme Court there was dealing with an
19 ordinance which was not an emergency ordinance. It started
20 off as an emergency ordinance, but that matter was quickly
21 rectified, it didn't make any difference as far as the Supreme
22 Court was concerned. They were dealing with the kind of
23 ordinance as far as that is concerned that we are dealing with.
24 The County makes a considerable effort to show that what they
25 were really dealing with there was some sort of sub-division

1 ordinance and not some sort of zoning ordinance. That may
2 be, that's - I believe the Court in essence so characterized
3 it although we do not concede that point. It may well be
4 that that is the case. Nonetheless, the Court scoured the
5 Code to find either under zoning or under sub-division ordinances
6 enactment,enabling provisions, anything which would permit
7 local boards to pass an ordinance of this - an ordinance of
8 this character. And they said we can't find it under anything.
9 It's in that 15.1 essentially - title 15.1, that's by and large
10 what they had to say. Now on page 6 of that opinion the
11 Court says, the Court refers to Dillon's rules. The commission
12 on constitutional revision recommended the inclusion of a
13 provision to reverse Dillon's rule as to cities and certain
14 counties - I don't even suppose that would have to do with
15 Greene County - in order to relax the constraints on local
16 government. Dillon's rule, of course, Your Honor, was the
17 rule that said that local boards have only such powers as
18 I've expressly granted to them and those which come by necessary
19 implication. This recommendation to reverse Dillon's rules
20 was rejected by the General Assembly and was not incorporated
21 in the revised constitution when it became affective July 1,
22 1971. We must conclude therefore that regardless of its fate
23 in other jurisdictions Dillon's rule remains in effect in this
24 state. Accordingly the board could not enact the IZO under
25 its general police power. And they don't say there - well, then

1 they go and they look at the sub-division and the zoning
2 requirements. And they say in another place in the opinion
3 that they looked at all that, and they don't find any authority
4 in Virginia for such legislation. The board has cited numerous
5 cases in support of its contention that it had necessarily
6 implied authority to enact the IZO. Most of the cases on
7 which the board relies are distinguishable from the present
8 case. Now the interesting thing about that is that they started -
9 they picked up the cases in the treatises and then - our
10 Supreme Court has picked up the cases in the treatises, to show
11 that they considered them, where interim zoning ordinances
12 were validated in other states. Some states have reversed
13 Dillon's rule and so forth. On pages 12 and 13 of the opinion
14 beginning with a paragraph which reads as I just read, the
15 board has cited numerous cases and so forth. Our Supreme
16 Court first distinguishes four cases, then distinguishes
17 four more cases, then distinguishes three cases, then distinguishes
18 another case, then distinguishes three cases, then distinguishes
19 another case, then distinguishes another case, and got them
20 all cited there....footnotes in the opinion - footnotes 5
21 through 11. It goes on on page 14 if I don't miss my guess to
22 distinguish two more cases. It's plain from that that the Supreme
23 Court is saying no we won't buy the argument in Virginia that
24 our boards of supervisors have the power to pass such ordinances
25 as this.

1 COURT: Such ordinances as what kind are you referring
2 to now?
3 PARKER: Such ordinances as....
4 COURT: What is the inference to be gained from
5 the words such ordinances as they are talking about, ones
6 which completely prohibit construction or ones which restrict
7 it?
8 PARKER: This was an ordinance which restricted the
9 filing of site plans, which simply said that with some
10 exceptions, there were some exceptions left, but they were
11 might miniscule.
12 COURT: I notice that both sides refer to that as
13 no power to enact such zoning ordinances as involved in the
14 present case. Well, that's a case by case determination, now
15 what such elements are we dealing with in general terms?
16 The one which undertakes to restrict for a temporary period or
17 one which blocks all construction in a certain area of the
18 county? Is that what Horn was about or is it another case
19 involved?
20 PARKER: Your Honor, Horn did not block everything.
21 Horn amended the county zoning ordinance - the interesting thing
22 is the county has amended its zoning ordinance and not something
23 else, page 2, the interim - section 30-19, the interim develop-
24 ment ordinance...30-19.1 - 30-19.2....during the period while
25 this article is in full force and affect for all real property

1 in Fairfax County, (a) no application shall be accepted
2 for, nor any approval granted for a special permit, special
3 exceptions, site plan under the Fairfax County zoning ordinance
4 of 1959, as amended or revised, or preliminary sub-division
5 plat, except as provided in sub-section C of this article.
6 COURT: In other words that stops everything dead
7 in its tracks, didn't it?
8 PARKER: No sir, because sub-section 2 said no
9 proposal for a public facility shall be subject to the provisions
10 of section A above, but it stopped most everything in its
11 tracks....if the Court wishes to look at it that way. It
12 didn't stop it all, it stopped most everything. We have an
13 ordinance here that stops most everything as a matter of right.
14 I was going to come to that question. Talking about for a
15 moment the standards that were given to the Board of Zoning
16 Appeals in this ordinance. The standards which were adopted,
17 the ordinace provided for two things, special use permits and
18 special exceptions. One of those is mentioned, it seems to me
19 somewhere else one is tangentially mentioned in the enabling
20 act. The standards which were adopted were not the standards
21 which were given for those in the - that is no standards really
22 are given in the act. It says - for one of them it says
23 something like that - such regulations as the Board may state,
24 or as the ordinance may state, or something on that order.
25 My point is essentially this, this ordinance adopted the standards

1 for a variance with respect to special use permits and special
2 exceptions. I think the Supreme Court, I may be wrong on this,
3 but I certainly take this position, I believe it's correct,
4 I think a variance is a legislative act, typically granted by a
5 Board of Supervisors, it is a little amendment to the ordinance.
6 Certain notice provisions are required because of the fact
7 that it's sort of a hybrid really - the fact - but our Supreme
8 Court has characterized variances as - if I'm not mistaken
9 as a legislative act. Because they say that where a variance
10 is appealed they say, no if this is a legislative act and unless
11 it's clearly wrong we can't overturn it, this is legislative
12 right of the boards of supervisors and it's clearly beyond
13 their power. If it's arguable we can't do anything about it.
14 And that's the way they approach it. Now in some states
15 such things as arguments over variances might be considered
16 judicial but in Virginia we consider it legislative acts. And
17 I think that means that by adopting those standards, legislative
18 standards are precisely what we are adopting for a Board of
19 Zoning Appeals, and yet our boards of zoning appeals are
20 judicial bodies. That is they are administrative bodies if
21 the Court wishes to look at it that way, but they exercise
22 judicial authority. They make judicial decisions. It may well
23 be that the breadth of these decisions - I beg your pardon
24 that the breadth of these standards is appropriate for
25 variances, for a legislative body exercising legislative authority.

1 It is not appropriate for an administrative body exercising
2 judicial authority, judicial - making judicial decisions.
3 And I think right there that puts the quietus on the argument
4 that the standards involved are not too broad. I do not
5 mean Your Honor to abandon any arguments that we have raised
6 in this case by not mentioning it this morning. I have
7 mentioned a few in response to what the County had to say
8 by way of indicating to the Court that - by way of indicating
9 to the Court that we were - things that I think highlights
10 the argument....perhaps some of our best arguments. I think
11 these are very difficult issues for the Court, but based on
12 these issues in as much as the County tried to pass a valid
13 ordinance - I think it failed to do so, and I respectfully
14 suggest to the Court that we - the Court might just as well
15 so declare. Thank you sir.
16 SLAUGHTER: May it please the Court I know Mr. Parker
17 elected to waive his opening - let us open and then affectively
18 close, and I don't really want to prolong this, but I think
19 I can give the Court some citations that might shorten the
20 time it would take to...
21 COURT: I wanted to look at that Horne case briefly
22 if either of you all have that?
23 SLAUGHTER: Yes sir.....
24 COURT: I have another one.....I get these regularly
25 and I read it some time back and referred to it on at least one

1 occasion in Albemarle, but we've also had a number of other
2 opinions, which I may have some of the court's statements
3 confused with. Now let's see if I can find the one I'm thinking
4 of in this case.
5 PARKER: I have a copy of the interim zoning ordinance
6 of the Greene County.....
7 COURT: I think I have that in the file, but if
8 you want to.....
9 PARKER: If you'd like another one.....
10 COURT: All right, I'll take a minute for you Mr.
11 Parker.....I must say that the Supreme Court has undertaken
12 to deal with two separate areas of regulation in this opinion
13 in the Horn case. One having to do with sub-division ordinances
14 and the other having to do with zoning. Apparently when you've
15 got a hybrid, it's a question of which one you have the most
16 of, and they must have concluded in the Horn case that the
17 ordinance in question was essentially more of a sub-division
18 ordinance than it was a zoning ordinance. Fairfax already
19 had a rather comprehensive and complex zoning plan. This apparent-
20 ly was tacked on as an amendment,an emergency provision -
21 provided, which in effect stopped the filing of sub-division
22 plats. And the Supreme Court said in that case that's directly
23 contrary to the statute which says-there is a mandatory provision,
24 which says that plats must be filed when they are presented,
25 if they are to meet certain requirements. And when you say

1 such an ordinance, you must - I suppose determine whether you've
2 got a sub-division ordinance or whether you've got a zoning
3 ordinance. Now in so far as it pertains to a sub-division
4 ordinance, the Supreme Court says in effect you can't stop the
5 filing of them if they meet the criteria. In so far as the
6 ordinance pertains to zoning, it seems to me that we are
7 not bound by the Horn decision at all. Now the question is
8 is this a zoning case or sub-division case. I notice from
9 the pleadings that the allegations are made with regard to the
10 denial of the application for zoning permit allowing the uses
11 and the proposed lot sizes. Now we have a combination of use
12 and lot sizes that are involved in this case. The plat and
13 plan showed the construction of townhouses. It seems to me
14 that it removes this from the category of a bare sub-division
15 ordinance case and puts it in an area of zoning. I don't
16 consider the Horn case as a zoning case. It's a sub-division
17 ordinance case. And in effect the Supreme Court says you can't
18 stop sub-division ordinance on its face because it has a man-
19 datory provision. I suppose you have a certain amount of
20 zoning inherently involved in sub-division ordinances, but they
21 are basically one to regulate the manner in which plats are
22 presented and laid out and recorded. Whereas zoning has to do
23 more with your use of the property. As I construe the pleadings
24 and the facts which are not in dispute in this case, it seems
25 to me that the Court could treat this as a zoning case rather than

1 a sub-division case. And the only authority that I can see
2 for the proposition that interim zoning ordinances improperly
3 classify it as such, or properly classify it as such, being
4 an unlawful exercise of the police power, is this Hornecase.
5 And there is certainly a clear distinction drawn in that
6 case. I notice that the opinion affirms the decision of the
7 trial court which concluded that the presumption of validity
8 which attached to the emergency ordinance was rebutted by the
9 evidence. This is the case in which the Supreme Court upholds
10 the decision of the trial court. Apparently based on evidence,
11 which the court found sufficient to rebut the presumption of
12 validity on the grounds that it was arbitrary and capricious,
13 and that the board had no express or implied authority to enact
14 the emergency ordinance. I think that certainly points up a
15 lot of difficulty that is involved maybe in this case, too, but
16 I'm inclined to think that the ordinance should be upheld
17 on its face, not falling within the category of that type of
18 ordinance which is struck down in the Hornecase. And as I under-
19 stand it the reasons for that being struck down are certainly
20 not apparent to the court at this time. It may be that an
21 evidentiary hearing would bring such a decision and while I
22 have heard this case on another basis, I don't think it's appro-
23 priate in this present case to make any factual finding except
24 that which is already disclosed by the pleadings. For that
25 reason the Court overrules the - in a sense the motion for summary

1 judgment or whatever it may be styled and finds that there is
2 nothing constitutionally invalid on the face of the ordinance
3 or that it exceeds the authority under the enabling statute....
4 for its adoption on the grounds that I find that it has all
5 the appearances of a zoning ordinance. And those provisions
6 which relate to sub-divisions are merely auxillary....to the
7 zoning provision. It seems to me that here we have a bottle-
8 neck whereas in the Horne case you had an absolute bar and I
9 suppose that's mostly the distinction in plain terms - whether
10 you've got a complete bar or mere bottle-neck. Certainly from
11 the standpoint of the desirability of an interim zoning ordinance
12 the record should disclose that Greene County was without any
13 ordinance until the zoning ordinance, the interim zoning
14 ordinance, except I suppose a type of sub-division ordinance,
15 although that may not be clear in the pleadings and I have no
16 right to make such a finding. But certainly it should be noted
17 that the interim zoning ordinance was the first zoning ordinance
18 in Greene County. Now whereas the Horne case indicated that
19 Fairfax was merely undertaking to deal within the context of
20 an existing zoning ordinance. All right, now Mr. Parker for
21 the record you may wish to note certain exceptions to the Court's
22 findings with regard to the validity or invalidity of the
23 ordinance on its face.
24 PARKER: If the Court please I wonder if I could make
25 it clear - the Court would make it clear, I think it is, the

1 rulings on issues - all the issues of law that counsel have
2 raised - those would be the ones, we didn't argue them orally,
3 they are in the briefs....they are certainly all in the plead-
4 ings.....9A, F, I, J, K, P and Q. Were there any - I might
5 inquire of Mr. Slaughter if there was any disagreement between
6 counsel to these points being argued?
7 COURT: I had a different note in my review of it.
8 PARKER: I checked them.
9 COURT: I had H as a matter of law too, but I'm not
10 sure that ...
11 PARKER: I think H so far as it is a matter of law
12 that we concluded was in I and J, but....
13 COURT: All right, I see - well, if it's included in
14 that...I notice you all skipped over that in your references,
15 but I think you've covered all the points, whether you designated
16 in accordance with the sub-paragraphs of item 9 in your motion
17 for judgment or not, I'm not sure....bill of complaint.
18 PARKER: Again I might inquire of Mr. Slaughter - I
19 have my brief here and .....
20 SLAUGHTER: We listed the same paragraphs as Mr. Parker
21 did,...
22 COURT: Yes I notice you did.
23 SLAUGHTER: I had also thought that perhaps B, but
24 it's the type of thing .....the Court's ruling - it seems to
25 me it's a matter of.....

1 PARKER: Well, B is a matter of .....

2 SLAUGHTER: As the matter of course continues then

3 these matters will have to be dealt with finally by the Court.

4 COURT: Yes sir, they ....

5 PARKER: B raises a question of whether section 15.1-

6 447 - Mr. Slaughter argued it, actually requires any investiga-

7 tions before the enactment of the zoning ordinance and I

8 take it to that extent we had concluded that it should be

9 treated as a matter of law.

10 COURT: Yes sir.

11 PARKER: It's my understanding Your Honor that the

12 Court has found against Mr. Matthews on each one of these points

13 that is raised?

14 COURT: On the law, yes sir. There may be certain

15 items which will be reserved for further consideration based

16 on evidence being presented, Mr. Parker.

17 PARKER: Yes sir. I'm thinking about A - B in so far

18 as it raises the question of whether those investigations are

19 necessary...F, I, J, K, P and Q....

20 COURT: Yes sir, that's the ones I listed, as you

21 all...

22 PARKER: All right, we respectfully note our exceptions

23 on - our grounds are of record with respect to each and every

24 one of these findings of law by the Court.

25 COURT: All right, sir.

PARKER: If the Court please sir we have another motion to be heard today. It was ....

SLAUGHTER: There are two or three other matters that ....if the Court please - I understand the Court has to be in Louisa at 2.....

COURT: Yes sir.

SLAUGHTER: I'm prepared to stay as much as necessary and the if the Court wants to .....

COURT: Suppose we do that.....we'll take up the regular Grand Jury proceedings and I'll try to get back to you all .....you may want to review your situation just a bit between now and then.

(Recess.)

PARKER: If the Court will turn to interrogatories in that file, the last one - the very small set of interrogatories. That's a motion compelling answer....

COURT: Yes sir.

PARKER: I'm asking Your Honor to back up in the file a little bit.....somewhere after that.

COURT: I think that's the one.

PARKER: Yes sir, that's the one.....two interrogatories, I've rephrased those.....I miscited the second number..... and the defendant objects and I believe that throws the burden

on him to present objections.

COURT: All right, I'll hear from the County on that point.

SLAUGHTER: May it please the Court, the point is a very simple point, we brought it up briefly this morning. The interrogatories basically simply I ask what - I first ask what investigation was done under Section 447, I believe , and then went into more detail, asking what investigation... but as we pointed out in our objection, if the Court please, the Section 446 and 447 deal only with the development of the master plan, not with - or comprehensive plan, not with a zoning ordinance....certainly as of that time. And therefore we concede that not only would the interrogatories...not only would the subject matter not be relevant but it wouldn't be admissible in evidence and therefore we object to - it puts the burden of answering interrogatories which would have no bearing on the case whatever.

COURT: Well, that follows sub-paragraph B of paragraph 9 of the motion for the Bill of Complaint, alleging that it would enact - was not enacted after any investigation required. Now do you consider then that the factual inquiry there is irrelevant, is that the basis?

SLAUGHTER: Yes sir.

COURT: All right, what other objections?

SLAUGHTER: That's the only objection, if the Court please. Do you have our written objection there?

COURT: I don't believe I do - there they are..... Oh yes I do. Yes sir.

SLAUGHTER: The reason we stated that, under the rules which I did not bring with me, under the rules, it's required that response be made to matters that are relevant. Then it goes on to say relevant not only as evidence which would be admissible but matters which would lead to admissible... to the discovery of admissible evidence. Neither theory - section 446 and 447 would have any bearing.

COURT: Do you have that code section handy?

PARKER: I believe it's....

COURT: Title 15.....if you'll get it for me, I'd like to look at it.

PARKER: Your Honor would you note the careful phraseology of the question - question number 1. We talk about the subjects and investigation mentioned in that section, we don't say.....

COURT: I see.....all right.....

DICKEY: Here is 446..... Its been subsequently amended but I think that would be relevant.....

COURT: Let me ask this question of counsel for the County, do you take the position that the interim zoning ordinance does not require as a pre-requisite or that any zoning ordinance

1 does not require as a pre-requisite the preparation of the
2 comprehensive plan?
3 SLAUGHTER: That's correct, Your Honor.....neither
4 an interim or permanent zoning...
5 COURT: That's your position that it does not require
6 the comprehensive plan?
7 PARKER: I think that's what you ruled this morning.
8 COURT: Now the question here is whether it should be
9 done for another reason or is it merely a follow-up on your
10 previous position?
11 PARKER: Yes, that's.....
12 COURT: All right, why should the investigation
13 called for in 447 be carried out then if you don't have to
14 have a comprehensive plan, Mr. Parker?
15 PARKER: I think Mr. Slaughter has put his finger on
16 the problem. The question of relevancy....first it is dis-
17 covery not the same as the question of relevancy at trial.
18 Based on the Court's ruling this morning, the question of
19 whether - the Court says it doesn't know that such investigations
20 have to be conducted. Now if that's the case, then of course
21 it is not relevant pursuant to that, there's no question
22 about at trial, but the nature of the information which we've
23 asked be admissible may be relevant on another matter and
24 we certainly can produce information that is relevant on another
25 matter. The second test of relevancy for purposes of discovery

1 is it likely to produce something that is relevant on another
2 matter, and we can reasonably presume that it might produce
3 matters which are relevant in another matter. The Court - we
4 didn't take it up this morning, but in the Bill of Complaint...
5 just a moment here....in paragraph 10, we alleged in B, the
6 ordinance arbitrarily classifies your complainant's said
7 land at variance with surrounding uses and capriciously
8 discriminates against him in favor of such uses. 10B, Your
9 Honor, it was going to involve some evidence as to what's
10 up there and the nature of how and why people zoned this
11 thing the way they did. This is all background information
12 for that. All background information and relevant. Now,
13 with respect to this section, the Court will note as I indicated
14 a moment ago in the interrogatories I did not ask - if I can
15 find them again. I did not ask what if any of the subject
16 of the investigations required by Section 15.1-447 can you
17 claim have been conducted. I asked what, if any, of the sub-
18 ject of the investigations mentioned in 15.1-447 of the code
19 do you claim to have been conducted prior to the enactment of
20 the ordinance. Now, those investigations that are alleged,
21 I say that section of the code is convenient to this. It
22 didn't say what investigations - I say what subjects of the
23 investigations - what are the following subjects of the in-
24 vestigations do you claim to have conducted prior to the enact-
25 ment of the interim zoning ordinance, then I could have listed

1 them, but this is the shorthand way to do it. So the question,
2 the way it is phrased has nothing whatsoever to do with any
3 of the requirements, nothing necessarily to do with any re-
4 quirements which the Court has ruled out, that these investi-
5 gations be in fact conducted. We simply want to know about
6 those investigations, these are background for the enactment
7 of that ordinance. The enactment of that ordinance was supposed
8 to take into account by virtue of land use in the county and
9 so forth and we want to see if it did, that's what they were
10 supposed to do if they were going to enact this ordinance.
11 This is all discoverable matters on that point. It does not
12 go any more to what the Court has ruled out in paragraph 9B,
13 or 9A or 9B of the bill of complaint. It is asking for informa-
14 tion which is discoverable as arguable relevancy at trial or
15 leading to the discovery of information which may be eligibly
16 relevant at trial and it can be and under those circumstances
17 it seems to me.....
18 SLAUGHTER: May it please the Court, one of the
19 techanical points in paragraph 9B, Mr. Parker has alleged that
20 the interim zoning ordinance was not enacted after any of the
21 investigations required by Section 15.1-447, while the Court
22 didn't actually rule on these - now he is apparently backing
23 off on that position and saying that he is only using 447 as
24 a convenient list of some of them purposely and which I frankly
25 confess perhaps the Court has a clearer idea of what he is

1 asking, but I don't. We were - are required to consider
2 such things as are found in Section 490 - it is alleged that we
3 did. The zoning ordinance itself says that we did and that's
4 what we are limited to, as to what purpose this would serve,
5 I can't conceive, except that it would require the County to
6 go to a great deal of trouble - it is a subject which is
7 clearly irrelevant to this case.
8 COURT: The question - one, suppose I allow it, could
9 you supply it within the time limits that we've got?
10 SLAUGHTER: Well, that's a good questions sir.
11 PARKER: Your Honor, if not it's because the County
12 did not answer - they answered before the deadline but they
13 objected before the deadline. They have a right of course
14 to object but the hearing was called strictly after the objections
15 were to be. So it's not - the County was permitted surely had
16 they not objected to answer prior to the deadline with respect
17 to that matter. They didn't want to do so. The objection was
18 overruled and that's another matter. If the County takes the
19 position that it can't answer before trial and wishes to move for
20 a continuance on the ground, it's a matter the Court can consider
21 at that time. And perhaps it will be put to an election, but
22 that's a matter to be considered on another motion but here
23 are these interrogatories relevant - probably relevant to some-
24
25

1 thing, it seems to me the County has not shown - carried its
2 burden and is not relevant to 10B.
3 COURT: I sustain the objection to the interrogatories
4 and the plaintiff's exceptions are noted. It seems to me
5 that we've got to face this case from a practical standpoint
6 and get it tried. Otherwise I think I would have to reopen
7 it....I set aside three days for its trial and I don't see how
8 you are going to be in any way deterred in presenting your
9 case, Mr. Parker. I think anything that goes to the ability
10 of the plaintiff to present his case on a substantive basis,
11 I would be happy to hear from you - as to getting your evidence
12 together and a list of witnesses - anything that seems to be
13 too involved though with the preparation of documents and
14 information prior to trial now have to be considered in the
15 light of the December 3rd trial date. I'm very frank to say
16 that if it has to be continued over for another three days
17 allowance for trial, I'm afraid it would be many months before
18 it can be set on the docket. And as a very realistic problem
19 I think it's as important to you to get it before the Court as
20 it is to get this information.
21 PARKER: I'm aware of that sir, but I take the position
22 that before the Court could justify not requiring response to
23 the interrogatories on the grounds of time involved - so you
24 see that's not the objection - the objection is relevance...
25 COURT: Yes sir.

1 PARKER: And before the Court could justify that,
2 there would have to be a showing by the County and there has
3 been no such showing, that they cannot furnish the information
4 within the time prescribed, because the County chose to
5 object rather than to answer prior to the time. I take the
6 position we are very much prejudiced by the ruling of this
7 Court in this connection because this is very very important
8 information to us in order to get the necessary background and
9 see what witnesses, for instance, we might want to call - people
10 who participated in the enactment of this ordinance. What
11 the attitude was at that time. The extent to which the County
12 did in fact undertake to take into account divergent land use
13 in the County.
14 COURT: All right, sir, those reasons are noted as
15 part of the record of your exceptions in the case. All right
16 gentlemen....
17 SLAUGHTER: May it please the Court, we'll tender
18 an order - there was an order prepared at the Court's last
19 hearing which was sent to Mr. Dickey and mislaid....
20 COURT: You all...
21 PARKER: I don't think there's likely to be a problem
22 with that.....
23 COURT: You acted as if it had been entered I take
24 it?
25 PARKER: Yes sir, we have. So I don't think we have

1 any problem with it. Your Honor I have two matters that I'd
2 like to take up with the Court....
3 COURT: What matters are they Mr. Parker?
4 PARKER: Your Honor, one matter relates to the .....
5 SLAUGHTER: I'm sorry to interrupt, but I note Mrs.
6 Easton is turning off her machine. And I wanted to mention
7 that during our conference this morning after the Court
8 suspended hearing on this case, Mr. Parker did mention that
9 because of the Court's ruling this morning we could now get
10 together with a list of witnesses which would supply us with
11 information as to what the testimony would contain....as soon
12 as possible. I point out that the case is now only a little
13 over two weeks away. I have no desire to have the case con-
14 tinued.....this is one of the points that I mentioned back
15 I think at an earlier hearing and that is if we came down to
16 this date and if all preliminary matters in reference to trial
17 had not been brought up it - the possibility of a surprise to
18 me-that we've been working on this case for a year and I think
19 it unlikely that there will be any surprises - the fact remains
20 that there is a time which is not specified before the trial -
21 apparently I will get a certain amount of supplementary informa-
22 tion, the contents of whichneither I or Mr. Parker knows at
23 this point...
24 COURT: Do you know the name of the witness or do...
25 SLAUGHTER: Yes I know the name of the witness.

1 PARKER: He has been privileged to take the
2 witness' deposition within the period of time involved and
3 did not do so. Now I'm going to furnish him with a statement
4 and he owes me a statement too, and I think we will just have
5 to swap them and do the best we can with it, Judge.
6 COURT: Well, that's all I can urge you all to do,
7 but the fact is that you are not to come up with a last minute
8 surprise and if you do then I'll have to hear you at that
9 point...
10 PARKER: Oh yes - yes sir, we understand that.
11 COURT: Keep that in mind.
12 SLAUGHTER: We do have Mr. Payne - we havethe
13 transcript of his testimony - so there is no surprise - - -
14 I would not anticipate ....
15 PARKER: I indicated to Mr. Slaughter earlier today
16 that I had no anticipation of any surprise either.
17 COURT: It's really pretty much of a rehash of what
18 we had before, isn't it? In greater detail?
19 PARKER: In large part, yes sir.
20 COURT: Maybe more inquiry in depth in this case
21 then there was before, but that's because of the limited questions
22 that were involved then. This time I'm sure we are approaching
23 it from a different direction.
24 SLAUGHTER: Well it may be actually a little easier
25 to follow because here we are not dealing with the actual

action of the Board of Zoning Appeals....simply the adoption of the ordinance...

COURT: Yes.

SLAUGHTER: The ordinance on its face, and conceivably we won't need the full three days, Your Honor.

PARKER: We won't need the ordinance on its face. The Judge has ruled on that and the only thing we'll have - one of the reasons we weren't able to deal before now - we need the rulings today to rule out certain things and we don't have to spend money unnecessarily. We - the only thing we are going to have on that is the ordinance as applied to the land and the question of the - well, the things that are in 10, primarily.

SLAUGHTER: Well the only thing that goes to the heart of the case so far.....

PARKER: I can't tell you that right now, Mr. Slaughter, but I'll give it to you as soon as I can. I have a call in since the last part of last week to Mr. ....

COURT: Does it have to do with the possible depositions that....

SLAUGHTER: Oh no, we don't anticipate depositions because of the fact that both our witnesses - all the witnesses that we both have - that we've listed so far, the only four witnesses are listed with this Court - testified at length in the previous trial. My only concern is whether Mr. Parker is

1 going to challenge the adoption of the ordinance....

2 PARKER: Mr....

3 SLAUGHTER: We get into an interesting question of

4 the burden of proof - we take the position he has the burden

5 of going forward to show whether or not the ordinance was

6 properly adopted. If he doesn't make any effort to prove

7 the invalidity.....of the ordinance then there's no need for

8 us to parade a whole group of Greene County employees and

9 officials in here.

10 PARKER: No facts have been alleged in the bill of

11 complaint, Your Honor, with respect - unlike the mandamus

12 case, no facts have been alleged in the bill of complaint

13 here concerning the procedure by which the ordinance ....

14 COURT: I notice that too, but I tried to find some

15 reference this morning - you all touched on that briefly

16 and left it but...

17 PARKER: Unless I find...

18 COURT: I take it that's not an issue?

19 PARKER: ....I looked it up, I didn't find anything

20 irregular. Mr. Slaughter begins to make me wonder. But unless

21 I find something in which case ...

22 COURT: Well, he wants to know in advance so he

23 can be prepared to meet it, that's his...

24 PARKER: I want to tell him if I know about it and

25 if I find any such thing as that, it will probably result in a

1 continuance.

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ORDER

Again on the 17th day of November 1975 came the parties by their counsel and argued orally the matters raised in their briefs filed in accordance with the schedule noted in the Court's order resulting from its hearing of October 20, 1975.

Upon consideration whereof it was then ORDERED and ADJUDGED, and is hereby, nunc pro tunc as of 17 November 1975, that: (1) the interim ordinance here in issue is a zoning ordinance not upon its face constitutionally invalid or in excess of the authority of the County of Greene under the applicable enabling statute; and (2) that subparagraphs 9-A, 9-A-1, 9-B, 9-F, 9-I, 9-J, 9-K, and are, whether taken singly or together with the remainder of the bill of complaint in this cause, insufficient in law, whence the same are hereby struck out. Plaintiff objects and excepts to these rulings on grounds as stated before the Court and in such briefs.

Counsel for plaintiff having brought on his motion filed with the Clerk on November 12, 1975, for an order compelling defendants to answer interrogatories served on them on October 22, 1975, to which they objected by notice delivered to plaintiff on November 10, 1975, and the Court having maturely considered such motion, the Court doth rule that defendants' objection is well taken and accordingly ORDERS that defendants not be required to answer such interrogatories on the ground that the information sought is not relevant to the subject matter involved in this action. Counsel for plaintiff objects and excepts to the ruling of the court on the grounds stated in the transcript of the proceedings.

ENTER: David F. Berry
JUDGE

DATE: March 9, 1976

63A

Seen:

_____, p.d.
David C. Dickey,
Counsel for Defendants

McGUIRE, WOODS & BATTLE

BY: _____, p.d.
Edward A. Slaughter, Jr.
Counsel for Defendants

Seen and objected to:

_____, p.q.
C. Waverly Parker
Counsel for Plaintiff

* * *

SUPPLEMENTARY RESPONSES TO INTERROGATORIES

Defendants hereby supplement their previous response to plaintiff's interrogatories served on them on September 22, 1975, as follows:

1a. George V. Evans, Jr.
2641 Barracks Road
Charlottesville, Virginia
977-0143
701 East High Street
Charlottesville, Virginia
977-2870

Senior Land Use Planner
Thomas Jefferson Planning District Commission

b. Sherman Garth
Geer, Virginia
985-7082
Stanardsville, Virginia
985-2433

Commissioner of the Revenue
of Greene County, Virginia

c. Robert N. Gilbert
Ruckersville, Virginia
985-7289
Route 743
Earlysville, Virginia
973-3311

Employee - Teledyne Avionics

d. Thomas S. Lawson
Stanardsville, Virginia
985-2448
Stanardsville, Virginia
985-2488
985-2052

Pipeline Maintenance - Columbia Gas Transmission

60 A

e. Dr. L. S. LeGarde
Orange, Virginia
672-1785
Culpeper, Virginia
825-1300

Director, Joint Health Department

f. Julius Morris
Quinque, Virginia
Stanardsville, Virginia
985-7803

County Administrator of Greene County

2a. & 3a. Robert E. Abbott, Jr. may testify as to the initial involvement of the staff of the Thomas Jefferson Planning District Commission in the planning process of Greene County; generally as to that process; and in particular about the discussion of the possible need for an Interim Zoning Ordinance. He may further testify as to why in his opinion an Interim Zoning Ordinance was needed in view of the rapid increase in the filing of residential subdivisions being experienced during the latter part of 1973 and early 1974.

b. George V. Evans,Jr. is being called as a witness for plaintiff. In addition to those matter on which he testifies for plaintiff, defendant may ask him to clarify or elaborate on his testimony.

c. Sherman Garth may testify as to the value of residential lots in Greene County. In essence it will be his testimony that five-acre lots at the location of plaintiff's proposed subdivision have a value in excess of $5,000 per lot. As Commission of the Revenue of Greene County he has occasion to know the value of real estate sales in Greene County. He also has general knowledge of land values in Greene County as a citizen interested in real estate values.

d. Robert N. Gilbert may testify to the effect that the Interim Zoning Ordinance was drawn in accordance with §15.1-490 of the Code of Virginia in existence at that time, information available to the Board of Supervisors, and other aspects of the process leading up to adoption of the Interim Zoning Ordinance and of the planning process.

e. Thomas S. Lawson may testify as to the considerations which led the Planning Commission to recommend that the Interim Zoning Ordinance be adopted, information available to the Planning Commission, and various aspects of the planning process.

f. Dr. L. S. LeGarde may testify as to the danger to public health which unplanned subdividing of Greene County would involve. He would further testify that continued unplanned development could have resulted in serious problems involving water supply and sewerage disposal for Greene County. His further testimony would be that uncontrolled use of wells both for individual homes and subdivisions can result in a serious and permanent lowering of the water table. The uncontrolled use of septic systems can result in unsanitary conditions at ground level if the soil becomes contaminated and pollution of the water table contaminating drinking water from wells.

g. Julius Morris may testify as to activity surrounding the planning process and subdividing from November, 1973 until the adoption of the Interim Zoning Ordinance on March 2, 1974.

h. Richard Yearwood, who testified in the previous action and whose qualifications are well-known to plaintiff, will testify as an expert in land use, planning, development and regulation. Generally he will testify that Greene County on March 2, 1974, was a rural county threatened with rapid residential development and that the passage of an Interim Zoning Ordinance at that time and under those circumstances was good planning practice in order for the county to have time to complete the full planning process. He will testify as to patterns of land usage in the county, extent of commercial and rural development, the nature of subdivision development in the county, and the existing and ideal infra-structure.

* * *

Filed:
Dec. 4, 1973
Julia D. Rickard
Clerk

Richard M. YEARWOOD

1204 Gladewood Drive, N.W.
Blacksburg, Virginia 24060
(703) 552-0866

Associate Professor of Urban and
Regional Planning
Graduate Division of Environmental and
Urban Systems
Virginia Polytechnic Institute and
State University
Blacksburg, Virginia 24061
(703) 951-5698

DEFENDANT'S EXHIBIT
3/8/76 95

Place of Birth: Knoxville, Tennessee
Date of Birth : March 28, 1934
Marital Status: Married
Three Children

Education:

A. A., Gardner-Webb College, 1954.
A. B., American Civilization, University of Tennessee, 1958.
M. A., Political Science, University of Tennessee, 1959.
Ph.D., Public Law and Administration, University of Florida, 1966.

Academic Appointments:

1958-59	Graduate Assistant, University of Tennessee
1959-60	Teaching Assistant, University of Florida
1960-61	University Fellow, University of Florida
1961-62	Assistant Professor, Millikin University
1962-64	Assistant Professor, University of Tennessee
1967-	Associate Professor, Virginia Polytechnic Institute

University Service Appointments:

1962-64	Director, Tennessee Citizens Planning Association
1962-64	Training Officer, Bureau of Public Administration, University of Tennessee
1962-63	Chairman, Local Arrangements Committee, Southern Political Science Association Conventions
1962-64	Assistant Campus Administrator, Tennessee-AID contract in Panama
1967-69	Chairman, Urban and Regional Planning Program, Virginia Polytechnic Institute

1968-69 Graduate Committee, Virginia Polytechnic Institute

1969-70 Associate Dean, The Graduate School, Virginia Polytechnic Institute

1972-73 University Council, Virginia Polytechnic Institute

Governmental Appointments:

1964 Senior Planner, Tennessee State Planning Commission

1964-67 Executive Director, Asheville Metropolitan Planning Board and the Western North Carolina Regional Planning Commission

1969- Chairman, Board of Zoning Appeals of Montgomery County, Virginia

Consulting Appointments:

Alachua County, Florida; Don Wolbrink and Associates; Hawaii Architects and Engineers; Town of Pulaski, Virginia; Roanoke Valley Regional Planning Commission; Fifth District Planning Commission; City of Martinsville, Virginia; Clement, Wheatley, Winston, and Ingram; Henry County, Virginia; Del E. Webb Corp.; Massanutten, Inc.; Conrad, Litten and Sipe; City of Salem; VPI&SU Extension Division; Orange County, Virginia; Powhatan County, Virginia; A.P.Beirne, Esquire; Community Development Consultants, Inc.; Greene County, Virginia; Region D Council of Governments, Boone, N.C.

Publications:

Books

Land Subdivision Regulation (New York: Praeger, Inc.) 1971

Articles

"Land Subdivision and Development: American Attitudes on Land Subdivision and its Control," American Journal of Economics and Sociology, Vol. 29, No. 2 (April, 1970).

"Performance Bonding for Subdivision Improvements," Current Municipal Problems (Summer, 1969).

"Subdivision Regulations and Performance Bonding," Tennessee Planner, Vol. 28, No. 2 (Winter, 1968).

"The Virginia Metropolitan Areas Study Commission," State Government, Vol. 61, No. 4 (Autumn, 1968).

"Performance Bonding for Subdivision Improvements," Journal of Urban Law, Vol. 46, No. 1 (Fall, 1968).

"Land: American Attitudes on Speculation, Development, and Control," Annals of Public and Cooperative Economy (April, 1968).

"Land, Speculation, and Development: American Attitudes: PLAN, Vol. 9, No. 1, 1968.

"Accepted Controls of Land Subdivision," Journal of Urban Law, Vol. 45, No. 2 (Winter, 1967).

Subdivision Regulations, Patrick County, Virginia 1974.

Mobile Home Regulations, Patrick County, Virginia 1974.

Erosion and Sediment Control, Patrick County, Virginia 1974.

"Subdivision Law: Timing and Location Control," Journal of Urban Law, Vol. 44, No. 4 (Summer, 1967).

"Training State Employees in Tennessee," State Government, Vol. 37, No. 2 (Spring, 1964), pp. 118-120.

"Lake City: A Case Study in Appalachia," Tennessee Planner, Vol. 23, No. 4 (June, 1964), pp. 121-128.

"Subdivision Regulations in America," Tennessee Planner, Vol. 23, No. 2 (December, 1963), p. 33-44.

Legislation, Ordinances, Monographs, Chapters, & Planning Reports

"Planning Education," in Environmental Design Perspectives, Orangeburg, N.Y., 1972.

Merger Feasibility: Martinsville and Henry County Virginia, February, 1971.

Existing Conditions in the Martinsville CBD (Data Report #1), October, 1971.

The Martinsville Residential Study Area, (Data Report #2), December, 1971.

The Martinsville CBD Market Analysis (Data Report #3), April, 1972.

Preliminary Plan Considerations for the Martinsville CBD (Report #4), August, 1972.

Pulaski Zoning Ordinance (Blacksburg: Center for Urban and Regional Studies) Summer, 1970.

Pulaski Subdivision Regulations (Blacksburg: Center for Urban and Regional Studies) Summer, 1970.

Land Use Controls in Urban Communities in Virginia(Blacksburg: Center for Urban and Regional Studies) Summer, 1970.

Goals for the Region (Roanoke: Roanoke Valley Regional Planning Commission) Fall, 1969.

A Law Enforcement Plan for the Roanoke Valley Region (Roanoke: Roanoke Valley Regional Planning Commission) April, 1969.

Planning Legislation for the Trust Territory of Micronesia, with Alan W. Steiss (Honolulu: Hawaii Architects and Engineers) Winter, 1968.

The Comprehensive Planning Process, with Alan W. Steiss, et.al. (Blacksburg: Center for Urban and Regional Studies) 1968.

Population and Economy of Bryson City (Asheville: WNC Regional Planning Commission) 1967.

Columbus Zoning Ordinance (Asheville: WNC Regional Planning Commission), 1966.

Population and Economy of Jackson County (Asheville: WNC Regional Planning Commission), 1966.

Zoining Ordinance, Powhatan County, Virginia 1973.

Subdivision Regulations, Powhatan County, Virginia 1973.

Route 60 Corridor Study, Powhatan County, Virginia 1973.

Rutherfordton Zoning Ordinance (Asheville: WNC Regional Planning Commission), 1966.

Sylva Zoning Ordinance (Asheville: WNC Regional Planning Commission), 1966.

Population and Economy of Sylva (Asheville: WNC Regional Planning Commission), 1965.

Public Improvements and Capital Budget for Clinton (Nashville: Tennessee State Planning Commission), 1964.

Anderson County Subdivision Regulations (Nashville: Tennessee State Planning Commission), 1964.

Population and Economy of Lake City (Nashville: Tennessee State Planning Commission), 1964.

Memberships:

American Institute of Planners
American Political Science Association
Southern Political Science Association
American Society of Planning Officials
American Association of University Professors

Honorary Societies and Fraternities:

Pi Sigma Alpha (Political Science)
Phi Alpha Theta (History)
Tau Sigma Delta (Architecture)
Sigma Pi Alpha (Dramatics)
Delta Psi Omega (Languages)

Travel:

1955-56 Europe (U.S. Army)
1968 Hawaii

Military Service:

1954-56 U.S. Army

Miscellaneous:

Member, AIP Board of Examiners; Lectures at Sweetbriar, Charlottesville, Reston,

(Transcript of Trial on 12-3,4,5-75)

INDEX

Witness	Direct	Cross	Redirect	Recross	Court
George B. Evans	24				
Ralph Murphy	106	110			
Charles Vivier	111				
George R. Haney, Jr.	119				
Rosser H. Payne, Jr.	121	139			
Bennett T. Matthews	342	376	399	405	402

Defendant's Witnesses	Direct	Cross	Redirect	Recross
Dr. R. S. LeGarde	294	296	297	299
Kenneth Colmer	443	455	470	
Thomas Lawson	472	489		

Witnesses Recalled	Direct	Cross	Redirect	Recross	Court
Charles Vivier	163	176	187		
George Evans	191 300	270	216 311 322	328 337	207
Charles Vivier	414	417	418	420	
George Evans	427	437			

E X H I B I T S

DESCRIPTION	WITNESS	EXHIBIT NO.	PAGE NO.
Subdivision Ordinance	Mr. Evans	1	11
Plat - Greenetown Village	"	2	11
Interim Zoning Ordinance	Mr. Evans	3	11
Zoning Map	Mr. Evans	3-A	100
Comprehensive Plan	Mr. Evans	4	11
Permanent Zoning Ord.	Mr. Evans	5	11
Amendment to Zoning Ordinance	Mr. Evans	6	11
Index	Mr. Evans	7	2
Quad	Mr. Evans	8	28
Quad	Mr. Evans	9	28
Quad	Mr. Evans	10	28
Quad	Mr. Evans	11	28
Quad	Mr. Evans	12	28
Quad	Mr. Evans	13	28
Quad	Mr. Evans	14	28
Quad	Mr. Evans	15	28
Quad	Mr. Evans	16	28
Quad	Mr. Evans	17	29
Quad	Mr. Evans	18	29
Existing Land Use Map	Mr. Evans	19	30
Subdivision Map	Mr. Evans	20	92

Id.

Utility Map	Mr. Evans	21	228
Future Land Use Map	Mr. Evans	22	227
Sewer Map	Mr. Evans	23	76
Highway Map	Mr. Evans	24	32
Aerial Map	Mr. Evans	25	96
Appendix I	Mr. Evans	26	99
Permanent Zoning Map	Mr. Evans	27	101
Page 39 - Critical Env. area	Mr. Payne	28	138
Page 41- Critical Env. area	Mr. Payne	29	138
Water STudy	Mr. Vivier	30	168
Rapidan Service Authority Plat	Mr. Evans	31	226
Projections and Economic Base Analysis	Mr. Evans	32	232
Data Summary	Mr. Evans	33	238
Geological Map	Mr. Evans	34	239
Geological & Mineral Resources	Mr. Evans	35	239
B. Matthews property Plat	Mr. Matthews	36	410
Rapidan Service Auth. Operating Policy		37	423

1

E X H I B I T S

2

DEFENDANT'S DESCRIPTION	WITNESS	EXHIBIT NO.	PAGE NO.
Citation to the Articles Appearing in the Greene County record		A (Identification only)	12
Public Hearing - 3-2-74		B	12
Calendar of Events Thomas Jefferson Planning District	Mr. Evans	C	286
Operating Policy	Mr. Vivier	D	421
Qualifications of Mr. Yearwood		E	

3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

* * *

PARKER: Yes sir, but there are two preliminary matters, which should be gone into by the Court, it seems to me sir.

COURT: All right, what are they?

PARKER: They involve entering orders in connection with prior rulings of the Court. If the Court will give me just a moment while I find the order.

COURT: All right.

PARKER: If the Court please this is an order concerning - this is a hearing on the 20th of October, that counsel have both endorsed seen. The form of which there is no objection.

COURT: That order is entered then as presented Mr. Parker.

PARKER: If the Court please, Mr. Slaughter presented me this morning with an order which I had been expecting a little earlier, concerning the proceedings of the 17th of November, 1975. To the form of that order I might - I may need some more time to consider the form of that order. I think it perhaps could be drawn a little more explicitly as to

1 what the Court did. However, one thing that Mr. Slaughter
2 suggested in his order, I wanted to bring to the attention
3 of the Court, to which Mr. Slaughter and I are agreed,
4 and that is that the amendment permitted by the Court at that
5 hearing is to be considered for the purposes of trial in
6 this case, May. I take it that we agree on that Mr. Slaughter.
7 The language would be, similar in paragraph 9 of the bill of
8 complaint. The Board of Supervisors of Greene County had no
9 power to pass the interim zoning ordinance of March 2, 1974.
10 That is the entirety of...
11 SLAUGHTER: Yes sir, that is effectively what the
12 order said, of course we didn't oppose the motion, and the
13 Court therefore granted it orally at the last hearing and
14 Mr. Parker went ahead with his argument. As I drafted the
15 motion I simply noted that you gave Mr. Parker leave to
16 amend.
17 COURT: Yes sir.
18 SLAUGHTER: And then proceeded. His concern is
19 that it doesn't actually say it is amended in such and such
20 fashion. I have no objection to...
21 COURT: All right, it's understood that that amendment
22 will be allowed in writing to conform with what was actually
23 taken up and disposed of in the Court hearing on November 17,
24 was it?
25 PARKER: Yes sir, and the trial will proceed as if it

had been made in writing then and I don't mind filing it in writing...

COURT: You can conform the record later then.

PARKER: Yes sir.

COURT: To meet that requirement - if you are ready to proceed on the other matters. Is there anything else?

PARKER: No sir.

COURT: Mr. Slaughter?

SLAUGHTER: No sir. Mr. Dickey I think has explained his situation to the Court.

COURT: Yes sir, I understand that. Mr. Dickey is involved in the District Court as Commonwealth's Attorney and if you are prepared to take the case along at this point then we'll go ahead with the introduction of evidence or hear from counsel as to opening statements...if you wish to...

PARKER: There is one matter sir that I neglected to bring to the attention of the Court and that is in connection with Mr. Payne's schedule. He can be here today and Friday which will more than - will be more than enough to cover his the length of the testimony he will have to give,however it is necessary it seems to me that he be - we try to get the record in proper order so far as we can as to laying the ground work for expert opinion.

COURT: When do you propose to have him testify as to the initial stage, today?

1 PARKER: It depends on how far we get today sir.

2 COURT: Well, now if he's got a problem Mr. Parker,

3 it's up to you to try to work it in. I don't have any

4 objection to a witness coming in out of order, no problem at

5 all on that.

6 PARKER: That's the only....

7 COURT: That's the way to handle it.

8 PARKER: That was what I was going to suggest,

9 Judge, but it might be difficult for me to take Mr. Payne

10 first. It might be necessary for me to take Mr. Payne on

11 Friday out of order, rather than on - rather than today.....

12 out of order. Mr. Payne has classes from 10 o'clock until

13 5 o'clock, with a break for lunch I think at the University of

14 Virginia on Thursday and there's just no way that he could be

15 here on that day. I mention this to the Court because it

16 might be necessary depending upon where we are tomorrow, it

17 might be necessary for me to reserve Mr. Payne's testimony

18 in my case.

19 COURT: I want to point out to you all this there

20 are three days set for this case and I expect you all to divide

21 the time in a fair basis. Now that means that if you expect

22 to use Friday, you may be running out of time. I don't know

23 how to tell you to...

24 PARKER: I don't think we will run out of time.

25 I don't know how long the case will take sir, but I do think

1 that I might have to use a piece of Friday and yet I might
2 have to allow Mr. Slaughter to proceed on Thursday.....
3 SLAUGHTER: If the Court please, I can't agree
4 certainly at this time to allow him to reserve testimony in
5 his case in chief, one he's rested. I'm - my own hope is
6 that the case is going to be a two day case. I can't really
7 see any excuse for its lasting any longer. I think since we
8 are getting started at a - reasonably promptly this morning
9 that I see no reason why Mr. Payne can't testify today. As
10 the Court pointed out, it's not a criminal case, of course,
11 and taking - it's also not a jury case - taking a witness out
12 of the ideal order shouldn't be any problem.
13 COURT: Let's see what we have in the way of
14 an order of witnesses proposed for today. Who do you propose
15 to call today, Mr. Parker?
16 PARKER: I propose to call Mr. Evans....
17 COURT: Mr. who?
18 PARKER: Mr. Evans, whose testimony I expect should
19 be rather extensive because of the fact that through him I propose
20 to put into the record a bird's eye view of the County, a
21 picture if you will, word picture of the County. And also to
22 supplement that Mr. Murphy's testimony, Mr. Haney's testimony,
23 and Mr. Haney I might add, Your Honor, works just down the
24 road - he can be back almost on a moment's notice - I wonder if
25 we could let him go?

1 COURT: I have no objection to that if you can have
2 him standing by.
3 PARKER: Yes sir.
4 COURT: The main thing being of course as Mr.
5 Slaughter says, when you rest you've rested, and if you run
6 out of witnesses, I think that's a problem that you'll have
7 to face and try to have him worked into suit your limitations.
8 Now, obviously if you rest on Friday that doesn't give the
9 defendant an opportunity to respond, and you're running out
10 of time.
11 PARKER: That's what I was trying to work out with
12 Mr. Slaughter and the Court, because we can't do much with
13 Mr. Payne's schedule on Thursday, as the Court can see.
14 COURT: Do you feel that Mr. Payne's testimony must
15 follow that of Mr. Evans and Mr. Haney and Mr. Murphy?
16 PARKER: Your Honor, Mr. Payne's testimony will be
17 based in large part on the facts which they relate and also
18 what he knows, but they have a considerable factual background
19 with the County and it seems to me that...
20 COURT: Now is Mr. Evans also the expert that you are
21 calling or is he the County's expert?
22 PARKER: Mr. Evans I am calling as our witness and
23 I propose to ask Mr. Evans certain questions in connection
24 with the baseline facts.
25 COURT: Now how was he involved in the comprehensive

1 plan if at all?

2 PARKER: He did a survey.

3 COURT: He did that for the County?

4 PARKER: ...upon which he could base findings....

5 for the County....

6 COURT: I see.

7 PARKER: And he was involved in the drafting of the

8 ordinance in question. And so all of those things of course

9 are matters within his ken.

10 COURT: I'd like for you all to try to set a little

11 bit of a schedule. It seems to me if you finish Mr. Evans'

12 testimony in a matter of a couple of hours it ought not to take

13 more than a half an hour for Mr. Haney and Mr. Murphy each,

14 then you can follow with Mr. Payne and get him on today.

15 It's up to...

16 PARKER: The Court will understand that I wish to

17 make as extensive a record as I can in the words of what the

18 County is like, since one of our contentions is the fact....

19 COURT: It wouldn't take anybody over a half an

20 hour to describe Greene County, Mr. Parker, if he gets on with

21 it. If he wants to stumble along then we're using time at

22 somebody else's expense. Now that's what I'm getting at. If

23 you've got things you want to ask Mr. Evans fine, but I'm not

24 going to sit here and listen to a lecture. I'm going to tell

25 all the witnesses that. I expect them to answer questions and

1 answer them frankly.

2 PARKER: I understand that sir. We also have

3 Mr. Vivier to testify today. I shouldn't....

4 COURT: Will he need to precede Mr. Payne?

5 PARKER: All these witnesses Your Honor will be

6 testifying as to facts upon which Mr. Payne will predicate

7 an opinion. We can ask hypothetical questions of Mr. Payne

8 of course and proceed in that manner but as the Court knows

9 that takes - that is a much more difficult course of proceeding

10 and it takes a considerable - considerably much longer to

11 phrase the questions without objection and get the evidence in

12 the record.

13 COURT: Well, you've got a problem here with reserving

14 Mr. Payne until all these other people have testified, all of

15 whom apparently you propose to have testify rather extensively.

16 That means that you are likely to use today and have to come

17 over to Friday before you rest, and obviously you are going

18 to be - you are going to face a problem. What are you going to

19 do tomorrow with your evidence?

20 PARKER: That's why I was hoping Mr. - if I could

21 get the rest of the case in, Mr. Slaughter would concede me

22 the right to put Mr. Payne on subject to his right to rebut

23 him of course later on Friday.

24 COURT: That's up to you all, I certainly am not

25 going to push you aside with regard to that.

1 SLAUGHTER: I can't agree to it - I was hoping
2 as I say - I think the Court's schedule is very realistic
3 and I see no reason why Mr. Parker couldn't substantially
4 complete his testimony today and...
5 PARKER: Well, what we will try to do Your Honor
6 if need be, is then we will interrupt the witness toward the
7 afternoon in order to get Mr. Payne's testimony in this
8 afternoon and it may have to be taken out of order and...
9 COURT: Yes sir, there's no problem with that at
10 all. If you want to go ahead with Mr. Evans first to get
11 the basic information then follow with another witness, then
12 obviously Mr. Payne is going to take the stand late in the
13 afternoon, you are expecting this Court to carry this case
14 into the late evening or have Mr. Payne's testimony cut short.
15 Now I expect the witnesses to adhere to the Court's schedule
16 and I don't intend to adhere to the witnesses schedule.
17 PARKER: I understand and I was going to ask the
18 Court what time he proposed to stop this evening?
19 COURT: Well, we'll go no longer than 5 o'clock.
20 PARKER: All right, sir.
21 COURT: I think that's a reasonable hour. And to go
22 any further is just encouraging you all to waste time. I don't
23 mind doing it where it's necessary but where three days has
24 been set aside for the trial of a case. I think it's ample time
25 and I don't want to inconvenience any of these witnesses.

PARKER: The Court will understand our problem with Mr. Payne because he does have this ....

COURT: Yes sir.

PARKER: ...class to teach and I can't pre-empt him in that connection.

COURT: But you can adjust your schedule and let's see if we can't move along. Now is there anything else. I'll do my best to remind you all from time to time, you are dragging it. I'm certainly going to watch it.....the time consumption here because obviously with this much evidence we can all fall behind. Is there anything else now to take up as a preliminary matter?

PARKER : Nothing I can think of sir.

SLAUGHTER: In order to save time one of the reasons why I was hoping we would try this case in two days, is that we have agreed to put in all the appropriate ordinances and basically the authenticity of documents have been stipulated, the admissibility may be another question, but ...

COURT: How about maps?

SLAUGHTER: I understood it - and of course a certain amount of this involved conversations of Mr. Dickey and Mr. Parker so I'm really talking third hand. It seems to me if we do that now and get Mrs. Bickers to mark them, we won't have to stop at each stage when we get to one....

COURT: All right, let's take about a ten minute

1 break, and you all try to get your maps together and I'm
2 going to review this file further. I'll be in my chambers
3 and you all see what you can do with these exhibits.
4 PARKER: Thank you sir.
5 COURT: All right.
6
7 (Recess.)
8
9 COURT: All right, gentlemen what exhibits do you
10 have already agreed to and stipulated to by number?
11 PARKER: Exhibits marked as Plaintiff's Exhibits,
12 I think these are joint for all practical purposes....Plaintiff's
13 Exhibit 1, which is the sub-division ordinance. Plaintiff's
14 Exhibit 2 which is the plat for the sub-division that he
15 proposes in Greene County. Plaintiff's Exhibit 3 which is
16 the interim zoning ordinance for Greene County. Plaintiff's
17 Exhibit 4 which is the comprehensive plan for Greene County.
18 Plaintiff's Exhibit 5 which is the zoning ordinance for Greene
19 County as it now stands with the exception of some amendments
20 that were made on October 30, 1975. Plaintiff's Exhibit 6
21 which are those amendments.
22 SLAUGHTER: You might want to make a note about page
23 26.....
24 PARKER: On Exhibit 5, just prior to item 8, item 2,
25 there seems to be some question about when, if ever I suppose,

1 right now, the paragraph headed up .16, public utilities,
2 was adopted.
3 SLAUGHTER: In other words if the Court please,
4 just so the record is straight, I don't think that has any
5 bearing on the case at all. The ordinance as initially adopted
6 as far as that page is concerned, contained only .....only
7 through sub-paragraph .15 - .16 was added later....public
8 utilities.
9 COURT: All right, what other exhibits are there now
10 for the Plaintiff? Any?
11 PARKER: There may be Your Honor, but I...
12 COURT: All right for the defendant, anything stipulated
13 for the defendant at this stage?
14 SLAUGHTER: May it please the Court, we only have one
15 at this stage to which there has been agreement, that's
16 Defendant's Exhibit B, which is the minutes - which is the
17 minutes of the Public Hearing of the Board of Supervisors and
18 Greene County Planning Commission on March 2, 1974. Appended
19 to those minutes are the interim zoning ordinance as advertised
20 and the recommended changes to it by the Planning Commission
21 which were adopted; then there were certain additional changes
22 even by the Board of Supervisors, which are of course reflected
23 in the ordinance's final adoption. We have also tendered if
24 the Court please Defendant's Exhibit A, to which Mr. Parker hasn't
25 agreed, but at this point is for identification only. The

1 citationshaving to do with the article carried in the Greene
2 County Record on the subject from March 8, 1973 to February
3 28, 1974. And appended to that are xeroxed copies of the
4 actual articles which we believe to be material and we plan
5 to introduce them at the proper time.
6 PARKER: If the Court please we have a number of
7 exhibits which have been marked for identification, which
8 also have not been agreed.
9 COURT: All right. We'll take those up as they are
10 offered then. What's the big map over here, that apparently
11 has a number on it?
12 PARKER: That is number 19.
13 COURT: 23 have been numbered so far. All right...
14 let's proceed with the case then as quickly as we can.
15 PARKER: If the Court please we propose to prove
16 primarily three things, as is indicated by the bill of
17 complaint. In view of the Court's rulings on the 17th of
18 November, at that time the Court told us that certain points
19 of law would be resolved in certain ways and that among those,
20 he told us that the interim zoning - among those things that
21 the Court told us was that the interim zoning ordinance of
22 Greene County was valid on its face. That is that in the
23 absence of evidence at least the Court could not ascertain
24 that the ordinance was invalid. We propose to show that the
25 ordinance - we excepted to that of course, nonetheless we propose

1 to show by evidence that the evidence was indeed invalid.
2 On the 17th of November, I should like to remind the Court
3 that we are - though counsel have been able to stipulate a
4 number of things we are considerably hampered by the Court's
5 ruling with respect to the objections to two of our interroga-
6 tories, which we had propounded to the County and which they
7 objected and of course the Court sustained the objections.
8 That would have involved the studies if any, information from
9 studies if any which the County conducted prior to enacting
10 the interim ordinance. We come in here today in the absence
11 of any information concerning those studies or at least the
12 studies that are mentioned in 15.1-447 of the Code of Virginia
13 and I mentioned at the time that I felt we would be considerab-
14 ly prejudiced by the ruling and should like to continue
15 that point in connection with the trial of the case today.
16 I carry that point forward. There are three things that we
17 propose to prove. One of them is that the ordinance is invalid.
18 One of the standards for an - a zoning ordinance is - that it
19 must - is that it must take account of divergent land uses
20 in the county, that is it must show commercial use, it must
21 take account of commercial use where it - where ever it is,
22 already, existing divergent - existing use. The fact of the
23 matter, let me correct myself, it must do two things. It must
24 take account of existing use and it must take account of
25 divergent use. The way you take account of existing use is to

1 grant a zoning classification which is in keeping with the
2 existing uses, The way you take into account divergent use
3 is by the use of zones, It has been our theory of this
4 case from the beginning until now that one of the mistakes
5 the County made in passing this ordinance was to place the
6 entire County in the same zone. We will show by evidence
7 that the County is considerably divergent from east to west
8 and yet the entire County was placed in one zone. We will
9 also...
10 COURT: I think that can be stipulated can't it,
11 Mr. Parker?
12 PARKER: That it was placed in one zone within the
13 ordinance, there's no question...
14 COURT: Yes - it's not a matter of fact ....
15 PARKER: No sir.
16 COURT: All right sir. .....not disputed fact....
17 PARKER: I should say - the zone - well, the entire
18 County - that the zone did not include the buffered area....
19 COURT: Yes.
20 PARKER: And as far as I'm aware while the planning
21 should have taken account of it, the zoning did not include
22 the National Park either, over which the State has ceded
23 police power to the Federal Government. We also propose to
24 show that the interim ordinance as applied to the particular
25 piece of ground in question is invalid, because it works a

1 usurpation of a vested right with respect to that piece of
2 property. We also propose to show that it is invalid as to
3 that particular piece of ground because whatever might have
4 been the divergent use that wasn't taken account in the rest
5 of the County, this piece of property was placed in a zone
6 in which it did not belong. Its previous use and the previous
7 use of land surrounding it, which was already committed to
8 sub-division use and committed to commercial use in the
9 vicinity of Ruckersville, was not taken into account by the
10 interim zoning ordinance. In looking to the question of
11 what the County did wrong, we will do our best to produce
12 evidence with - so far as we can in the blind, on the question
13 of what studies the County conducted prior to the enactment
14 of the interim ordinance. There will be evidence of what
15 studies were conducted after the interim ordinance was
16 enacted and there will be evidence - obviously that is
17 in evidence now - of what the County was able to enact and
18 did enact after it conducted the studies in question...as
19 an indicia of what it should have done we believe in any
20 first ordinance that it passed. The Court will recall our
21 argument of November 17 that Dillon's rule is such in Virginia
22 that it is our belief that the fact that the ordinance was of
23 an interim nature is not a matter to be considered by the
24 Court, that this ordinance must be governed by the same standards
25 that would govern any other ordinance in Virginia. And the

1 fact that it was temporary, the fact that it was interim
2 even the fact that it was emergency, although I don't know
3 that it was passed on that basis - it certainly wasn't passed
4 under that statute, or in that manner - it is our belief
5 that that would make no difference. So we also take the
6 position that the ordinance is - the interim ordinance was
7 not forward looking. It looked forward to another ordinance
8 it is true, but it itself made no provision for future
9 growth. And that we believe is the part of the standards
10 which are incorporated through section 15.1-489 of the Code....
11 one of the standards of zoning, it incorporates standards
12 from an earlier section of the code mentioned in 15.1-489...
13 with that as a background, I should like to proceed to
14 produce evidence after Mr. Slaughter is heard from - our
15 evidence will be, first of all what the county consists of
16 and consisted of at the time in question. Then there will be
17 expert opinion as to the planning process as to the validity
18 from a planning standpoint of the ordinance that was passed.
19 That I think is about all I can do to cover the broad outline
20 of the case and I hope what I've said will be of some help to
21 the Court.
22 COURT: All right, sir, Mr. Slaughter.
23 SLAUGHTER: If it please the Court, the Court has
24 been familiar with this case now, because of proceedings before
25 it for over a year. It's certainly not necessary to go into

1 great detail as to the situation here. Mr. Parker as is
2 of course necessary from his standpoint wants to put in
3 evidence of the County as it existed in 1974, in March, and
4 of course I think it's fair to say, wants to do that in order
5 to show in the record what the character of the County was.
6 Your Honor of course knows the character of the County well,
7 having been associated with Greene County for many years.
8 In essence as the Court knows Greene County became concarned
9 several years ago now, about the fact that residential
10 sub-divisions of different types and different lot sizes,
11 different characteristics were coming to the County and in
12 effect there was no control in the County. This trend con-
13 tinued and Greene took in turn various steps to attempt to
14 control the growth of the County in ways which would preserve
15 the fine aspects of the County but not detract from the
16 growth itself. They first of course passed a sub-division
17 ordinance and then strengthened it. The County then began
18 to look into various possibilities for zoning and finally con-
19 cluded as the evidence will show that a comprehensive plan
20 would probably be the best thing that could be done, preliminary
21 to adopting a permanent zoning ordinance. And thus it was
22 agreed and the evidence as shown in the previous case will be
23 shown in this case, that the Thomas Jefferson District Planning
24 Commission would undertake a comprehensive plan for Greene
25 County. And that effort was undertaken. As we believe Mr. Evans

1 will testify and Mr. Parker is going to put on, that particular
2 effort took considerably longer than he had at first foreseen.
3 In part because of the fact that certain roads in Greene
4 County, in fact the roads in certain sub-divisions which had
5 already been laid out were not in fact roads that could be
6 readily accommodated by a four door sedan. In fact I think
7 the evidence will show that at times he had to borrow
8 a four wheel drive vehicle to make - in order to make his
9 survey. During that period of time of course sub-dividing
10 was continuing and those in positions of responsibility in
11 Greene County, the Planning Commission and the Board of
12 Supervisors, became increasingly concerned that once they
13 had the comprehensive plan made and zoning ordinance affected
14 that the whole-the entire aim of the planning and zoning would
15 really be irrelevant because the whole county or a substantial
16 part thereof would be made up of sub-divisions which would be
17 non-conforming use. And therefore the Board of Supervisors
18 at the urging really - first recommendation and then the
19 urging of the Planning Commission, going through all the
20 proper procedures as Mr. Parker's complaint indicate, finally
21 decided that they must pass and did pass an interim zoning
22 ordinance in March of 1974. Mr. Matthews as you know had
23 filed a preliminary plat before the passage of that ordinance,
24 but did not file a final plat until some six months, almost
25 six months after passage of the ordinance, and thus he was not

1 granted a special use permit - of course the Court's already
2 heard that case. As - approximately a year after the interim
3 zoning ordinance was passed, a permanent zoning ordinance was
4 passed, and to date Mr. Matthews has not made any application
5 under the current zoning ordinance for authority to buildhis
6 sub-division as it was planned. Although the zone that
7 his land is now located in is a two acre residential zone,
8 really the same zone as it was located in under the interim
9 ordinance. Now Mr. Parker has mentioned that he intends to
10 prove really three things. The first that an interim zoning
11 ordinance should not have been passed. Clearly the interim
12 zoning ordinance is as we will show and we have already argued
13 in arguing the law of this case, a proper part of the overall
14 planning procedure of the County. In order for a plan to
15 have any meaning, one has to be assured that the character of
16 the County won't change to such an extent that the plan is
17 out of date by the time it's able to be published. Mr. Parker
18 has made the point that there was no provision for future
19 growth, but of course the Court must remember that the ordinance
20 was limited in time. It went out of existence by its own
21 terms within a year. So it was not a plan, it was not an or-
22 dinance that was going to permanently fix the County in that
23 position. Now the Court of course knows Greene County, the
24 evidence will show that Greene County was essentially a
25 rural, agricultural county with certain areas that probably are

1 best left for conservation purposes, very mountaineous areas,
2 but essentially a rural, agricultural county, with no major
3 industry, very little commercial development and most of
4 the housing either on farm or on - in single family units of
5 various types, sizes of course and conditions. Now, once the
6 evidence is in as to just what Greene County is there will,
7 I anticipate be conflicting testimony by the experts as to
8 whether Greene County was susceptible of a single zone interim
9 zoning ordinance. It was the thought of the Board of
10 Supervisors as it was suggested and recommended to them
11 that the interim zoning ordinance should not attempt to be
12 a preliminary zoning ordinance in which they simply eyeballed
13 and decided that they were going to have a zoning ordinance
14 based on simply their casual observations. They were going
15 to try to take the County as it existed at that time in its
16 overall aspect, zone it in such a way that people of right
17 had the right to put the County - to go forward with a develop-
18 ment that would be consistent with the County's overall
19 character. And then permit other development under variances
20 and special use permits. It's important for the Court to
21 realize, as I think the Court clearly understood November
22 17th, that this was not a moratorium. This was no shutting
23 down of development or progress during a year, but it was a
24 carefully considered interim ordinance for the terminal date,
25 simply to give the County a chance to plan its growth. Now

as to Mr. Matthews vested right, the Court will recall that the major issue before the certiorari case was whether Mr. Matthews had been subjected to a hardship in - under the terms of the interim zoning ordinance. And that issue I think and Mr. Parker apparently doesn't contend otherwise, that issue has been laid to rest in the certiorari case. Mr. Parker is now trying to say that because of the expenditures he has made on the day of the passage of the interim zoning ordinance that Mr. Matthews had a vested right, we submit that this is a position that the Court will not need to take seriously. There had been no start of construction at that time, only the preliminary survey work had been done and clearly Mr. Matthews did not have a vested right at that time. Now as to whether or not the land was properly zoned for two acres, of course, there is - the evidence will show the final zoning ordinance which was adopted also zoned that area for two acres after the comprehensive plan.

COURT: Is there a smaller zone than two acres in the new ordinance or can you indicate that?

SLAUGHTER: Yes sir.

COURT: There is a smaller area than two acres in the new ordinance, for single family?

SLAUGHTER: That's definitely my impression but I can't put my finger on it right now, sir.

COURT: But you say the final zone came out the same

1 on the particular tract as was the interim zone?

2 SLAUGHTER: Yes sir. The - as the Court will recall

3 from the previous hearing, there were testimony by different

4 experts at that time, and I think the same experts will be

5 back today, on whether the property should have been zoned

6 for smaller - for say smaller lot residential or at this

7 time or whether it should be zoned for larger lot residential.

8 Essentially it boils down to this, if the Court please - you

9 will remember the Locust Lane Sub-division, which has relatively

10 smaller lots than two acres, lots of approximately a quarter of

11 an acre, although I'm not certain of the exact size,abutt

12 the proposed sub-division on the west. But the rest of the

13 property on the other side is still in agricultural uses.

14 And of course it would be simply a matter for the Court to

15 determine whether this interim zoning ordinance with the

16 two acre zoning for that particular piece of property was

17 improperly zoned, but there again there can't be any question

18 but that the County was justified in believing that a two

19 acre zone certainly for this piece of property was correct as

20 we submit of course was for the entire County with the various

21 safety valves that had been built into the ordinance. That

22 perhaps is a longer exposition than is necessary but of course

23 I wanted the Court to be aware of what the County's position

24 would be because it will of course be easier to follow the

25 line of the testimony on both sides - perhaps in that way we can

go forward without having to get into extraneous matters. Thank you Your Honor.

COURT: All right, Mr. Parker you may call your first witness.

PARKER: Mr. Evans.

COURT: Gentlemen before we get under way, we'll try to run for about another hour and take our lunch break about 12:30, you all might want to evaluate your witness line-up in that regard and of course if we are right in the process of finishing up with a witness, we'll try to run past that time. But just as a guideline for you all, we'll proceed on that basis. We'll try to recess about 45 minutes, somewhere around 12:30. All right, sir, you may proceed, Mr. Parker.

GEORGE B. EVANS, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Parker

Q Mr. Evans, would you state for the record your name please, age and occupation and residence?

A George B. Evans, Jr., I'm 34 years old. My address is 26413 Barracks Road, Charlottesville. I am a senior planner for the Thomas Jefferson Planning District Commission.

COURT: Mr. Evans can you speak this way and speak a

1 little louder sir?

2 A Yes sir.

3 COURT: So I can hear you.

4 Q Mr. Evans, have you had any association with

5 the Greene County INterim Zoning Ordinance? Or any of the

6 subsequent zoning ordinances of Green e County?

7 A Yes sir.

8 Q Would you state the nature of that association

9 please?

10 A Well, I collaborated with another planner on our

11 staff in preparing a draft of the interim zoning ordinance.

12 And I also collaborated with the same planner in providing

13 a draft of the permanent zoning ordinance for the County.

14 Q In conjunction with the preparation of one or both

15 of these ordinances, did you conduct any investigations in

16 Greene County?

17 A For the permanent zoning ordinance, yes.

18 Q When did you conduct the investigations for the

19 permanent zoning ordinance?

20 A Well, the investigations were part of the land

21 use plan....the investigations for the plan began around the

22 15th of September, 1973, and were concluded around the 15th of

23 January, 1974 at which time the rest of the planning process

24 so to speak picked up and carried through until around the

25 middle of June, 1974, at which time the plan was complete or

let's say a rough draft was complete for submission to the Greene County Planning Commission.

Q And that first investigation that you said terminated in January 1974, involved only what?

A Primarily what a visual structure use and condition survey of Greene County.

Q All right. And let me show you some of the documents here - I ask you if in your occupation as a planner you have had occasion to use documents like these and if you know what these are?

A Well, this is ...

Q This is Plaintiff's Exhibit 7 for identification...

A This is a master sheet for the U. S. Parks ...index..

Q All right. And these Plaintiff's Exhibits 8 through 15 or 16.....can you tell me what these are?

A These - best I can see are the individual quads for the .... County of Greene.

COURT: Is that from a coast and geodetic survey map?

A Yes sir.

COURT: U. S. Geological Survey?

A Yes sir.... and very good if..... I might add.

Q All right, sir. Your Honor, I offer these - well,

you say these are from Greene County?

A Would you like me to look at.....

COURT: You may take some time and inspect them Mr. Evans.

A Yes sir.

COURT: Take your time and inspect them....

Q May he stand Your Honor and we'll set them on the table over here.....Your Honor, the exhibits for identification are the ones through number 18, I'm advised.

COURT: All right.

Q I beg your pardon through 16. Do these maps in your experience as a planner depict the topography of Greene County?

A Yes sir they do.

Q Your Honor I offer these in evidence as Plaintiff's Exhibits 8 through 16.

COURT: Any objection, Mr. Slaughter?

SLAUGHTER: May it please the Court, we don't object to the introduction of these items as evidence in so far as they go. We do make note that they are of different dates....

COURT: Yes sir, I understand.

SLAUGHTER: ....which Mr. Evans has pointed out.... if he would point those out on cross examination....

COURT: I take it though Mr. Evans that they are fre-

1 quently referred to by planners in dealing with rural areas
2 or even heavily populated areas, the geologic survey maps?
3 A Yes sir.
4 COURT: All right, sir, they will be admitted as
5 Plaintiff's Exhibits 8 through 16.
6
7 The Plaintiff's Exhibits 8 through 16 were marked
8 and received into evidence.
9
10 Q Mr. Evans, I show you Plaintiff's Exhibits for
11 identification 17 and 18 and ask if you will identify these
12 please?
13 A They appear to be the - a map of the Shenandoah
14 National Park as it extends through Greene County.
15 SLAUGHTER: Which exhibits are those?
16 Q 17 and 18 for identification. Do these depict
17 the topography of the park? In the same manner, not necessarily
18 the same scale, but the same manner that the other maps depict
19 the topography of the quads?
20 A In the same manner, yes.
21 Q Your Honor, we offer these in evidence as
22 Plaintiff's Exhibits 17 and 18.
23 COURT: They will be admitted with the same nota-
24 tions, that is that they may have different dates but in so
25 far as they are used, they are ordinarily referred to by planners

in dealing with property as Greene County contains I take it?

A Yes. ....Greene County U. S. G.S. Guads?

COURT: Yes sir.

The maps were marked and received into evidence as Plaintiff's Exhibits Numbers 17 and 18.

Q Your Honor -

SLAUGHTER: We have no objection.

Q ....to save time, I understand there's no objection by counsel - this is the key or the index which Mr. Evans mentioned a minute ago, which correlates the various maps....

COURT: What's the number of that one?

Q 17, sir...

SLAUGHTER: 7...

Q 7 - I beg your pardon.

COURT: That will be admitted then.

The key to maps or index was marked and received into evidence as Plaintiff's Exhibit Number 7.

Q On that map I have outlined in red as counsel earlier noted Greene County and in blue the quads which cover Greene County and some other areas, but each one of those quads has

some of Greene County in it....these 9 quads which we've just put topographic maps in evidence for. Mr. Evans, I show you exhibit 19, Plaintiff's Exhibit 19, Mr. Evans - would you tell me what this is?

A Yes, that is a dot map, which indicates the use of structures as determined in the windshield survey of the County which was undertaken between the middle of September, 1973 and the middle of January, 1974.

Q The one that you conducted?

A Yes sir.

COURT: Is that commonly referred to as the land use map?

A Existing land use, yes sir.

Q It bears the title existing land use. Is there any objection gentlemen to the introduction of that?

SLAUGHTER: No.

COURT: It will be admitted.

The Existing land use map was marked and received into evidence as Plaintiff's Exhibit Number 19.

Q Mr. Evans, can I ask you now sir to tell me how you proceeded about your study of the County?

A Are you speaking in terms of...

Q I'm speaking in terms of the survey that you con-

1 ducted - only?

2 A Right, the existing land use survey was under-
3 taken utilizing the quad sheets and since that was the only
4 basis we had upon which to survey the County we had to more
5 or less utilize those. We came up with a sheet, which we would
6 use for each structure in the County. We correlated the sheet-
7 in other words, each structure that appears on that map
8 also appears as a dot on this map, using an individual sheet
9 which describes the type, the condition and environment of
10 each structure. We keyed it to this map, following the roads.
11 And once identifying the use, translated that use on to this
12 existing land use map. And basically it was simply a matter of
13 travelling every road in Greene County for that period of
14 time until we completed this process.

15 Q Excuse me, let me interrupt you just a moment.

16 SLAUGHTER: What's the date on that?

17 Q January 1,1971...

18 DICKEY: There is a later one.....

19 Q This is about the best that I could do.....

20 COURT: What's the number of that?

21 Q This has not been marked sir.

22 COURT: All right, if you will get the Court Reporter
23 to identify it then, we can see....

24 Q I ask that it be admitted into evidence....

25 COURT: Is that a Highway Department Map of Greene

1 County for 1971?

2 Q 1971 year, yes sir.

3 COURT: What's the number on it, the identification

4 number now ...

5 Q 24.

6 COURT: All right, any objection?

7 SLAUGHTER: I think the change is very slight, Your

8 Honor. I would ask - I don't think Mr. Parker has any

9 objection that you use either a '73 or '74 map, if we can locate

10 one which would be closer to the time of this .....

11 COURT: All right, it's understood that a more

12 up to date map in accordance with this case will be substituted.

13 Q Yes sir.

14 COURT: But until that's done this will be admitted

15 in evidence....as exhibit 24.

16 Q I think the other map could just be added and

17 then they can show what...

18 COURT: All right.....we'll add it then as a more

19 up to date map.

20

21 The map was marked and received into evidence as

22 Plaintiff's Exhibit Number 24.

23

24 Q Plaintiff's Exhibit Number 24 shows the Highways

25 in the County?

A Yes sir.

Q And virtually what you had to deal with at that time?

A Well, it shows the secondary highway system, it doesn't show the highways and roads which were not brought into the State system.

Q That's right. That doesn't show any more than might appear on...

A This doesn't - this does not show all of the roads that appear on the U.S. G.S. quad.

Q It shows the secondary system and primary system?

A Yes sir.

Q Now - and where did you first go in conducting this survey, Mr. Evans?

A Well, I ....

Q So far as the survey is concerned now?

A Well, trying to follow a logical sequence, I went to farthermost north-eastern part of the county, and started- It would be easier if I went to the map, May I do that?

Q Yes - I wish you would.

COURT: Speak a little louder when you are over there, move the microphone with you....Now Mr. Parker would you repeat the instructions to the witness?

Q Yes sir - would you take the red pen that I gave you sir and mark where you started your survey?

1 A Yes sir. I started the survey here in the north-
2 eastern point of the County.
3 Q I hate to ask you to do it but would you put a mark
4 there known as number 1, please sir. Where did you go from there,
5 what direction and how did you come?
6 A Well, it's been over two years since I've done the
7 survey, I can tell you to the best of my recollection. I was
8 following the specific quad that dealt with this part of the
9 County. And from here as I recollect I simply went down....
10 Q From one...
11 A From one - well, one I had to - one is very isolated,
12 I had to go into Orange County back into Greene County. I picked
13 up Route 609, went down one side of 609, doing each structure
14 that I came across and simply when I reached 29 or whenever I
15 reached the end of that quad then I would turn around and come
16 back to the other side of the road and do that. And...
17 Q Just a moment - let's see the quad there?
18 DICKEY: Your Honor, with reference to this....I
19 think he is taking up an awful lot of time.....
20 Q I propose to lay a ground work of what he saw.
21 COURT: I gathered you were but you're going to take an
22 awful lot of time by going through quad by quad, Mr. Parker, and
23 of course if you want to do that, that's up to you, but it's going
24 to be...
25 Q That's why I may have to take Mr. Payne's testimony

1 out of order sir.

2 COURT: All right, go ahead.

3 Q Is this the quad map?

4 A Yes sir.

5 Q Is this the quad map that shows where you were...

6 would you mark one on there please and then mark your route,

7 go ahead and mark the map with a line indicating your route,

8 roughly - as best you recollect sir?

9 A Use this pen.

10 Q Yes sir.

11 A I don't recall going across the road here.

12 Q Route 29, you turned at ...

13 A I think I did.

14 Q Yes sir. Retrace your steps.....then you turned

15 down Tom's Road?

16 A As soon as I reached the quad....I didn't go

17 out and complete Tom's Road. . . .

18 Q Yes.

19 A . . .went on down this road.

20 Q Would that have been the first route you took?

21 A Yes.

22 Q All right, if the Court please that is marked on the

23 map - this part now in red. I'll show it to the Court.

24 COURT: All right.

25 Q Mr. Evans could you take this map and have your seat

1 You may have to refer to this testimony on Plaintiff's Exhibit
2 19 and if you need to get next to it to do it, it will be all
3 right. Can you tell us please sir what type of agriculture
4 you observed being conducted in that area?
5 A In that particular area to the best of my recollec-
6 tion the first structure seemed to be a - I don't know how else
7 to put it, common organic farm. It looked like a young man and
8 his wife had gone out and become isolated and they were
9 farming. I think it was primarily truck crops . I would say
10 the general nature of the area is beef cattle farming as far as
11 agriculture goes. There is one large dairy cattle farm as I recall
12 and there is another large beef cattle - I believe it's beef
13 cattle farm. And there is another large beef and poultry
14 farm.
15 Q There was not I take it from your testimony any
16 substantial amount of crop raising in that area, except grass
17 for cattle?
18 A It's difficult to say, but I was - I would assume
19 most of it was grazing land for the cattle, to the extent that I
20 could get in to the farms and look around. There was some vide culture
21 and some truck crops, but it wasn't predominant certainly.
22 Q When you turned at Scuffletown, and went north
23 did you go all the way to the river?
24 A I went as far as the road and my car could make it,
25 which was the first structure. That road goes through Orange

1 County and I had to go through Orange to get to it.

2 Q Excuse me may I see this just a moment?

3 A Uh-huh.

4 Q I see, the first structure in Greene County is what

5 you meant?

6 A Yes sir.

7 Q Which is down very close to the Rapidan River?

8 A Yes sir.

9 Q What is the topography of that area?

10 A It's relatively flat with a gentle slope to the

11 river, as best as I could recall.

12 Q Can you - and perhaps for the sake of the record

13 I will have to ask you this question now, do you know - the

14 legend of these quad maps, because they are not all on the

15 map - all the characteristics of the map?

16 A Well, you have your contour intervals which give

17 you some idea of the steepness of the slope.

18 Q They are at intervals of what?

19 A Well, in this particular instance intervals of

20 20 feet.

21 Q The red lines are highways and the broken red lines

22 are other highways and the - for road classification there is

23 a legend on the map?

24 A Yes sir.

25 Q Now, would you tell us in that area and I'm referring

1 to now the area which is between the Rapidan River on the
2 north, Route 29 on the east, and 609 on the south and Greene
3 County-Orange County line which runs to the Rapidan River on
4 the southwest - within that area what are the extremes of the
5 topography.
6 A Well, I can probably give it to you better from the
7 map than I can from my field survey, in...
8 Q Yes sir.
9 A In as much as I couldn't....
10 Q Yes sir.
11 A It's generally flat, as you get closer to the river,
12 it appears to be flood plain. As you recede back from the river
13 it tends to - small hills tend to rise to the south of White
14 Run, and they seem to be rather flat; in other words they aren't
15 rounded they seem to be rather flat plateau type hills.
16 Q Again what is the extreme - the nature of...
17 A Well, 500 feet.
18 Q Above the river?
19 A Well, it would be 500 feet above...
20 Q Sea level?
21 A Sea level.
22 Q Yes sir, and the highest point in that area appears
23 to be about ...
24 A The highest I can see is 550 - 600 feet.
25 Q Thank you sir. Is this - was this land wooded, clear

1 or what?

2 A Was it clear?

3 Q Yes sir, clear or wooded?

4 A It was a mixture. Woods, scrub, over-growth,

5 some cleared for pasture primarily.

6 Q Was there any forest marketable timber in this

7 area?

8 A That's difficult to say...whether it's marketable

9 or not. There appeared - to the best of my recollection there

10 appeared to be some good stands of cedar, much of it seemed to

11 be over-growth. I simply don't recall.

12 Q Were there any parks, playgrounds, schools or

13 churches in this area?

14 A Yes there was one church, Pleasant Grove Church.

15 Q Were there any commercial locations in this area?

16 A No sir, not that I could see.

17 Q Any industrial locations?

18 A No sir.

19 Q How many residential units were in this area?

20 A I'd have to count them.

21 Q Can you count them from the dot map?

22 A Well, the dot map doesn't show the boundary of the

23 quadrant, so I wouldn't know where to draw my line.

24 Q Didn't I define a boundary for the area that I was

25 talking about? I don't mean the quadrants, I'm not referring to

1 the quadrant in my questions, but I'm referring to the area
2 that I described just a few moments ago, north of the Scuffletown
3 Road...
4 A You're talking about the area that I drew the line
5 through - on?
6 Q The area that I was referring to in my questions was
7 Scuffletown, Route 609 to the south, the Greene County line - the
8 Greene County line to Rapidan River, the Rapidan River to Route
9 29 and Route 29 to 609?
10 A You went as far south as the edge of the map, is
11 that correct?
12 Q No sir, I went as far south as Route 609?
13 A But you didn't cross...
14 Q Didn't cross Route 609.
15 A So in other words you want all the structures north
16 of 609 to the river and between 29 and the County line?
17 Q Yes sir.
18 A Well, I can do that off of this map, yes.
19 Q Yes sir.
20 A There are 12 residential units, one of which was
21 vacant.
22 Q One of which was vacant?
23 A There were 12 ...
24 Q Excuse me I couldn't hear the answer?
25 A There were 12 residential units, one of which was

1 vacant.

2 Q What were the characteristics of houses generally

3 in that area, as you recall?

4 A In general they were - well, first of all at an

5 earlier time predominantly it was farm houses, but recently

6 there have been a number of rather nice brick, ranch homes

7 going up along the road, not too many. There are more now

8 than there were when I did the survey, but you - indications

9 of this type of growth were evident at the time of the field

10 survey.

11 Q Did you have - I won't ask you to repeat because I

12 think we can do this by reference at another time, but in this

13 area there were some highways, what was the character of the

14 highways in comparison to what's shown on the map? How did they

15 appear to the eye?

16 A Well, Route 609 is paved, hard, all weather surface,

17 rather narrow. Somewhat winding and hilly, as you got farther

18 east. Route 610 was in somewhat the same shape. The bridge

19 that crossed Rippin Run narrowed to one lane. Are you interested

20 in the other roads?

21 Q Yes sir.

22 A All right.

23 Q You might mention Route 29?

24 A Well, Route 29 is a divided multi-lane or primary

25 arterial. Route 645 to the best of my recollection is a narrow,

1 graveled paved road. Route 610 was a very, very poor road,
2 almost impossible for a sedan.
3 Q Do you recall the nature of the soil in this area
4 so far as you were able to determine, if you did determine?
5 A Well, if I might make reference to the soils
6 building suitability map that we did, if I may do that, I would
7 say that from that a large portion of this area was classified
8 as suitable for agriculture only in so far as it was primarily
9 alluvial soil laid down by the Rapidan in its flood plain.
10 Q And that's you say suitable for agricultural only,
11 do you mean the soil - in so far as what the soil would support?
12 A Right in so far as what it would support, building
13 foundations, perculation, things like this. Plus it's very
14 rich, bottom land soil which is good for farming.
15 Q Now sir, I take you to the area bounded by the
16 bottom of the quad and 609 on the north and Route 29 on the
17 east, I think that's right....
18 A You mean on the west.
19 Q Route 29 on the west. And the Greene County line
20 on the east.
21 A Yes sir.
22 Q And ask you again - what was the nature of agriculture
23 in this area?
24 A Well, there is a road over here which goes back to
25 a farm which I must say had some of the lucious looking grazing

1 lands I've ever seen, but it's not - it's just off of this
2 quad. This area which you mentioned is very isolated, in other
3 words there are no roads - the roads that go back in there are
4 impassable for a sedan. And I simply couldn't view those
5 lands. From a distance it seemed to me that there were cattle
6 grazing on the south slope of the ridge that sloped down to
7 White Run.
8 Q And the topography in that area was...
9 A It built up from the White Run flood plain to a
10 rather rounded or rounded to flat plateau.
11 Q You found the extremes of elevation there were what?
12 A I would say from around 400 feet to 5 to 600 feet.
13 Q Any commercial use in that area?
14 A No sir.
15 Q Any industrial use?
16 A No sir.
17 Q How much residential use?
18 A Approximately 26 single family dwelling units, two
19 mobile homes and a vacant commercial structure.
20 Q Is there in that area or in that area and the other
21 one that you just described, that is the one that lay north of
22 Route 609, in the little neighborhood - I think it's something
23 called Scuffletown ...
24 A Well, Scuffletown is indicated to be in Orange
25 County on this map. Just off of this map on Route 657, there is

1 a tiny cluster, which - well, it's certainly more dense than
2 anywhere else in this particular quad and I guess it might
3 lend itself to be considered a community. Although it doesn't
4 appear on this quad.
5 Q Now, in conducting your survey when you finished
6 that area where did you go from there? To best of your
7 recollection.
8 A To the best of my recollection I continued ....
9 continued west along Route 609.
10 Q Would you indicate on the - to be consistent on
11 exhibit 19,... where you started .....number 2....
12 A I would hesitate to say because I simply don't
13 remember. I really don't remember.
14 Q All right would you indicate on the corporate
15 quad map which - where you went, rather than where you started
16 from, what - the area that you surveyed?
17 A Well, I simply don't remember.
18 Q You don't remember where you surveyed next?
19 A No, I don't.
20 Q Pick an area that you went after that?
21 A Okay, this area here.
22 Q Showing Route 609 west of Route 29?
23 A That's right.
24 Q Would you find that on the corporate quad map?
25 All right, sir.....Now I give you both of those quad

maps and would you please delineate an area - the next area that is the area that you are talking about in some fashion?

A Mark these on the map?

Q Yes if you will please. Label that 3, label the area 3.....the witness is marking on exhibits 12 and 13....

A What I did was use the construction line that's out on the highway.....

Q Now, the witness has indicated he went down Route 609 as shown on the Rochelle quad and continued up Route 610.... and came back in on Dundee Road on the Rochelle quad and then went up and down the Dundee Road, which terminates at Brill's Shop on Route 230. Now, I wish now to refer to the properties- land lying between the Rapidan River and the - where the Conway River leaves it then, the Conway River to Route 230 and then back up - back to Brill's Shop on 230 and then up 619 to Dundee Road back to Route 29 and then from Route 29 to Rapidan River - do you understand that area that I've described?

A It's primarily following this road as I go up 230 north to the river?

Q Yes. Would you describe the agricultural uses you found in that area?

A To the best of my recollection just to the west of Route 29 there is - between Route 609 and the river a very large farm. I traveled into the farm, I noticed extensive corn fields. Further on down 609 I turned off on 619, just before

1 crossing the south river on 619 a very large and a very well
2 kept cattle farm - I forget whether it's dairy or beef. I
3 think it's dairy. Going up 619 as I recall the general charac-
4 teristics of the area went from farming to more or less scrub-
5 growth, over-growth, wood land, scattered housing. There were
6 some - my memory just fails me, I just can't remember exactly
7 what was on that road. It seems to me like there were a few -
8 there was another beef cattle farm further up there just before
9 you got to Route 230.
10 Q Was this vacant land or wooded or both?
11 A It was a mixture.
12 Q Was there marketable timber through there?
13 A Well, once again it would depend on what you mean by
14 marketable. I wouldn't say that these were healthy looking
15 stands by any means. They were rather scrawny.
16 Q All right, sir. Any parks, playgrounds, schools,
17 churches in that area?
18 A I'll have to check. There was one church.
19 Q And while you are over there, how many residential
20 units?
21 A 18 residential units, 5 of these were vacant.
22 The treatment plant of the Rapidan Service Authority. The
23 Greene Hills Country Club and that's it.
24 Q Commercial locations?
25 A No.

1 Q Except to the extent of the Greene Hills Country
2 Club might be?
3 A Well, it's considered a private recreation...
4 Q And the residential - any industries in there?
5 A No sir.
6 Q Is that road about the same as 609?
7 A No, 619 is - as I recall is somewhat narrower.
8 It's not in as good a shape.
9 Q All right.
10 A It's a light duty road, classified as light duty.
11 Q Any communities in that area?
12 A No sir.
13 Q What are the extremes of elevation in that
14 area? The nature of the topography?
15 A Oh, it appears to range from just less than 500
16 feet to just over 600. And there - the slopes in this area
17 are quite a bit more steep along the river, along the Rapidan
18 River than they are on the east of 29.
19 Q Can you describe the grades....
20 A Sir?
21 Q Is it possible from the map for you to describe
22 the grade?
23 A Well, it appears that there is a 25 percent slope
24 along the portion of the Rapidan River at the confluence of the
25 South River. At that point there appears to be a very steep slope,

which levels off to a plateau and then rises again into rolling hills, which continue to the east and to the west then to the south.

Q Would you now - we'll try to get the other side of this area as you observed it, if there is one.....on the other side, south of Dundee, I'm referring to the area south of 609 and the Dundee Road.....609 and 619.

A You mean 619?

Q Yes.

A Yes sir.

Q How far did you conveniently observe south of the road there?

A As far as I could get that car, and some of these roads it would mean this far. Maybe half a mile off the road.

Q Well...

A If I were on a hill and could look down into a valley, it depends on the topography. Generally I was restricted to the roads and any private drives that I felt that I could travel without ....

Q You didn't cross Henshaw Run?

A Well, yes, I must have crossed it....well, it crosses here at 619...I didn't cross it up here..

Q All right, can I get you to ...

A I may have crossed here .....I did cross.....

Q All right, there is a road which is shown on this map which begins following the South River...

A Yes sir.

Q On Route 230.

A Yes.

Q And goes eastward...

A Yes.

Q And subsequently becomes very untravelable...

A Right.

Q And would have - and comes out on Route 609.

A Yes sir.

Q Can you describe the area for us please between using the map and your studies, between Route 60....on the Stanardsville quad between Route 609 - I beg your pardon between Route 619 and 621 and 609 and 230?

A This area was primarily inaccessible, there were very few roads that went back into it. It's dominated by the valley of the Henshaw Run. As I recall there did appear to be some farming activity, grazing primarily. There were some sub-division activity on 619, I think, fairly nice homes, which overlooked the Country Club. There appears from this map to have been some poultry sheds, just off of 619. Along Route 621 I recall a horse rink, very nice older homes. The farther you got up the more rugged the terrain. The county landfill is just to the north of this. I would say about a mile west of 230,

on 621 the road becomes impassable. And at the time I was land using, a home was going up at that point - on that point, 621 was impassable - it must have been until it reached Route 609.

Q What is the - what are the extremes of elevation in this area?

A They appear to range from just less than 600 feet to just over 700 feet.

Q And the gradient?

A It's gently - it appears fairly moderate, except along the flood plain of Henshaw Run and except for a heavily wooded area where I told you the road was impassable and becomes quite rugged. It appears to become quite rugged in that area, fairly steep slopes.

Q What is the use of the land in that area?

A The area where the road is impassable and the...

Q Well...

A It's forested.

Q Forested?

A Uh-huh.

Q Is there any industry in this area?

A With the exception of the ....no, there's no industry. The landfill is there.

Q Any commercial use?

A I'd have to check.

3 educated guess on this count.....approximately 45 houses.
4 Six of which were vacant and four of which were older homes.
5 Q What - what was the average - well, let me ask you
6 this. Did you not mention a sub-division in the vicinity of
7 the Country Club?
8 A Yes sir.
9 Q Do you recall the name of that - Country Club
10 Overlook, I think?
11 A Yes.
12 Q How many lots are laid off in that if you know?
13 A I'd have to look into my records and see sir.
14 I can give you a fairly complete rundown of the nature of that
15 if you would like?
16 Q Just the number of lots?
17 A Just the number of lots.....the number of lots
18 platted was 21.
19 Q Now the average lot size?
20 A I don't have the average size, I have the range of
21 lot sizes, which appears to be 1 acre - the range of 1 to
22 1½ acres.
23 Q 1 to 1½ acres. And in the other area that you
24 observed, were there any other sub-divisions in that area,
25 that were called sub-divisions?

A Well, Country Club Estates is to the north of 230.

Q Is that in the area that I've described?

A No sir, well, it's to the north of 60....it's just off of 230 to the north of 619.

Q Is it then in the area that I've described?

A Yes sir, it was in the previous area.

Q Would you tell me what the same figures are for that sub-division?

A It's Country Club Estates, 16 lots were platted, and they range in size from 1 to 2 acres.

Q Now, there are no other sub-divisions in the area which you've described?

A Not to my recollection.....unless I can refer to the sub-division map.

Q You're welcome to do so.

A That's all.

Q Mr. Evans, have a seat here sir.....what was the - how many residences were there of the 45 approximately now, not in those sub-divisions?

A 44. There was only one house at that time.

Q And those 44 residences, what was the average lot size for those?

A Well, of course these were individual lots, I couldn't tell you.

1 Q Range?

2 A Well, range I guess from an acre, perhaps a bit

3 less, all the way up to several acres. Let's put it ...perhaps

4 30 thousand square feet. There is a small community - there's

5 a small clustering of houses at Route 621 and the road that

6 leads to the county landfill. And the lot sizes there are

7 probably smaller than anywhere else in the area.

8 Q What was the lot size of the lots for mobile homes?

9 A Again this varies according to...

10 Q Can you give me a range?

11 A Well, 30 thousand square feet up to several acres.

12 Q In that area?

13 A Yes.

14 Q All right, sir which you take the next area you

15 went to and describe - that you studied .....

16 A Would you rather stay to the east of Stanardsville?

17 Q Yes sir, we'll proceed in some fashion....

18 A Just go on up here and hit ....

19 Q You went up...

20 A I can't say where I went next.

21 Q All right, but where you went, but - we won't

22 worry about the word next.....

23 COURT: You pick a spot now, Mr. Parker. Let's not

24 stumble around, you pick the spot you want him to describe.

25 He said he doesn't know where he went next.

1 Q I'll do that sir. I would ask you to describe for
2 us please sir the area now bounded by the Conway River, Route
3 230, Route 621....
4 A Okay.
5 Q And Route 638 to its intersection with 667 and
6 thence Route 667 where it almost meets the Conway River?
7 A You want the area from the river down or just from
8 this road down here?
9 Q From the river...
10 A The river down.....
11 Q Yes sir that would be- again I repeat for the sake
12 of the record, beginning at ...
13 A 230.
14 Q 230 on Conway River, following the Conway River to
15 where it comes very close - about...near Shilo Church...Shilo
16 Cemetery then following Route 667 to Route 638, then following
17 Route 638 to Route 621, 621 back to Route 230 and 230 to the
18 river.
19 COURT: You're talking about north, northwest of 231
20 up the Conway River?
21 Q Yes sir, I'll show that area to the Court.
22 COURT: That's all, I understand where he is.
23 Q Now with respect to that area sir what were the
24 agricultural uses that you found?
25 A Okay, I'm having somedifficulty in recalling what the

uses were on 667. I'm just drawing a blank on that. According to this map there are some agricultural uses. It seems to me that this was an area of sage, sage type over-growth, cleared land which had grown up in sage , in broomstraw. I believe two fairly large sub-divisions are in there, Dogwood Valley - one of the sections of it. This is along 667 to the river. Along Route 638 the road tends to go over the neck so to speak of a mountain, that is a mountain that juts out from the main ridge, main spine of the Blue Ridge Mountains, Goodall Mountain. Route 638 tends to cut across that neck, winding and very steep. That area contains - primarily farm, very low density. Route 621 ...

Q Excuse me - go ahead.

A Route 621 as it parallels the South River is a fairly extensive flood plain and its - there is extensive, appears to be extensive agriculture uses in this area. The farm houses are situated far back to the north from the South River and as I recall this was all open and was all being farmed in one form or another. It appeared to be poultry sheds, also, near some of these farms.

Q What extremes of elevation?

A Oh, perhaps just less than 700 feet to over a thousand, just over a thousand feet. Maybe 11 hundred feet.

Q How many residential, commercial or industrial units?

1 A Industrial units?

2 Q Yes sir.

3 A And mobile homes?

4 Q Yes sir.

5 A You don't want me to count to the west of 638?

6 Q I think that's correct sir.

7 COURT: Mr. Dickey would you hand me that road map

8 that's been introduced as an exhibit.....

9 A There are 52 single family dwellings, two of

10 which are vacant, four of which are mobile homes....12 of

11 which are seasonal, and there's one church.

12 Q No commercial and no industrial use?

13 A No sir.

14 Q Is there a sub-division in that area?

15 A Yes sir, Greene Valley.

16 Q And would you give us the same data on that

17 sub-division as on the others, please?

18 A You want the number of units in that?

19 Q Yes sir. The range of lot sizes?

20 A The range of lot sizes is 1 to 3 acres. The

21 dwelling units is combined with another section of Greene

22 Valley which is farther up in the County. I would make a

23 guess at 12 seasonal units would be the number that are in

24 Greene Valley.

25 COURT: Twelve what kind of units?

1 A Seasonal.

2 COURT: What does that connote?

3 A A unit that's resided in...

4 COURT: Recreation type?

5 A Recreation type.

6 COURT: Not permanent residences?

7 A No sir - well, from our visual survey we would think

8 it would be that type of....

9 COURT: All right.

10 Q Actually you don't know whether people actually

11 were - how much they were residing there? Just the nature

12 of the home and the fact that it was an A frame...

13 A The fact that it was ....the fact that it was in a

14 sub-division which ....well, I can only - I could only draw

15 conclusions from what - you know, I sensed about the place.

16 It was built around a lake that was completely wooded, the

17 homes were built in such a manner as to take advantage of

18 this environment. They were A frame, I assumed that they were

19 seasonal....yes.

20 Q The elevations in that area, what was the highest

21 elevation of a habitation?

22 A I can only give that information from this map,

23 it appears to be about 800 feet.

24 Q Is that an occupied habitation?

25 A Yes sir.

1 Q It is or is not, I beg your pardon, I did not
2 understand...
3 A Yes sir.
4 Q All right, thank you. Your Honor, I notice the
5 hour you've set for lunch has arrived and I...
6 COURT: Yes sir, I think we could take our break at
7 this point for lunch. Let me make this comment Mr. Parker,
8 I recall it seems to me about 8 or 9 quadrants that Mr.
9 Evans has been referring to and we've covered three or four of
10 them. If you propose to go through every quadrant in Greene
11 County with as much detail, now of course you allocate the time
12 as you see fit. I don't consider it necessary to go into all
13 that detail unless you are proposing to show that Mr. Evans
14 didn't do his job. I don't know what the object is.
15 Q Quite frankly with respect to this survey Mr.Evans
16 did a very fine job.
17 COURT: Well, what purpose is there in going through
18 in such fine detail every particular quadrant?
19 Q I propose Your Honor to show the distinction between
20 these at the time being are much the same as some others.
21 COURT: Well, do you propose to go through all the
22 quadrants ?
23 Q Yes sir.
24 COURT: All right, well, I gathered that you were head-
25 ing in that direction and I merely caution you that it's going to

take a lot of time to do it. All right, we'll recess for 45 minutes gentlemen for lunch.

(Lunch recess.)

COURT: All right, Mr. Parker, you may continue with your examination of Mr. Evans.

Q Would the Reporter read back the last question Your Honor, I don't recall precisely what it was....

(Record played for last question.)

COURT: The area of Greene Valley on the quadrant....

Q I believe we had concluded that...

COURT: I believe you had... I'm not sure whether you had or not, anyway that's about where you left off.....talking about the elevations of that area.

Q Mr. Evans.....

DICKEY: Your Honor, I think that was Greene Valley section 7 ...

COURT: All right.

Q Mr. Evans, I'm going to try to move along a little more quickly so I can come to Mr. Payne's testimony and get in as much of your testimony before he testifies this afternoon. If you will now sir take the area generally - we had gotten up to right here I believe, had we not?

A Yes sir.

1 Q Right here?

2 A Yes sir.

3 Q We will now take the area beginning at the
4 cemetery going over to Route 667 and following it to Route 638
5 to Bull Yearling, and up Bull Yearling.....to 634 and
6 637 and then taking 637 up as far as it will go and cut
7 straight over to the Blue Ridge, in a roughly east-west
8 direction. And that is the northern boundary and western
9 boundary of the County - make one contiguous area. Now I'll
10 take it just as quickly as I can. I will ask you to tell me
11 about what kind of agricultural uses you find in that area?
12 If it varies....

13 A I need to have the quadrant....

14 Q Yes sir - please do and please identify the quadrants
15 that you are dealing with?

16 DICKEY: What exhibit number was that?

17 COURT: Will you read the exhibit number Mr. Evans?

18 A Exhibit number 9. We were following Route 637 did
19 you say?

20 Q Yes sir....following Route 667, 638 to 634, 637.....
21 up to the west- west end of 637 and then directly west to the
22 County line.....on the Blue Ridge...

23 A Yes....generally the area between 638 and 642,
24 between 637 and the County line is - well, it contains Barnett
25 Mountain which is uninhabited, forested. To the best of my re-

1 collection there are a few farms scattered along 637 and 642,
2 close to the road. Just following that general circle.
3 I really have difficulty in recalling exactly....
4 Q You have Exhibit 19 that shows - it is in evidence
5 I believe, and that shows on there - if the information is
6 correct that is where you were getting your other information
7 from is it not? This area right here?
8 A That's the area I was speaking to, yes.
9 Q Is there any commercial use there?
10 A Would you like me to finish the area you outlined?
11 Q Yes I was thinking ....yes sir, go right ahead...
12 the area that I've....
13 A Okay, to the north of 642 and to the - I suppose to
14 the east, northeast of 637 the terrain becomes rather rugged,
15 getting up into the mountains. Along 667 which parallels the
16 Conway River scattering of older homes, there is very little in
17 the way of new construction that I can recall. There is a
18 small community Kinderhook which is fairly much deteriorated.
19 Going up Route 667 ...
20 Q There is a commercial use in Kinderhook isn't
21 there?
22 A Well, I was going to check the uses.
23 Q I beg your pardon, go ahead.
24 A 667 as you get up close to Shilo Church it tends
25 to be flat as it goes to the west, that's into the mountains.

1 And I don't - can't recall that that was put to any productive
2 agricultural use. It was cut over, but I don't recall any
3 productive farms up there. The farther north you go the closer
4 the mountains come to the river, to the point where at Fletcher
5 for all intents and purposes development ends. At Fletcher
6 there is a small community which is also deteriorated. Let's
7 see, 637 as it continues into the mountains runs into and
8 circles the Pocosan Mission, up in the mountains it's fairly
9 steep. Generally that's the topography.
10 Q What are the minimum and maximum elevations in
11 that area? Speaking of elevations would you please - I'm sure -
12 there will be two maximums, one that's inside the park and one
13 that's outside the park, give me that?
14 A The minimum appears to be somewhat less than 800
15 feet. The maximum outside the park appears to be 24 hundred
16 feet. The maximum inside the park appears to be 35 hundred feet.
17 Q Do you see on the appropriate quadrant map something
18 called Devil's Ditch up in there?
19 A Yes I do.
20 Q What's the nature of that area?
21 A That was - I couldn't get to Devil's Ditch. The
22 road ended just about a mile north of Fletcher and I couldn't
23 get into Devil'sDitch.
24 Q Do you suppose that there could have been habitation
25 in that area?

1 A There are none on the U.S.G.S. Quad map...

2 Q From the map does it appear to you that Devil's
3 Ditch is in Greene County - maybe some of it in.....not in the
4 park...

5 A Part of it is in the park and some of it is
6 in the County.

7 Q Yes sir. Did you find any commercial uses in
8 this area?

9 A Would you like me to give you an account of the
10 uses in this area?

11 Q Yes sir.

12 A 94 dwelling units, six of which are vacant, three of
13 which are mobile homes, 33 of which are seasonal, and five
14 churches and there is one commercial use.

15 Q In Kinderhook?

16 A Yes sir.

17 Q Thank you sir. Do you notice this, directly below
18 Devil's Ditch - an inclusion as you can see into the Shenandoah
19 National Park, there's another inclusion .....would you mark
20 that on this map with an X, a blue X. Did you go into that
21 inclusion?

22 A No sir, as I said the road the ended there and
23 I did not go back in there.

24 Q There was no indication of habitation there?

25 A None on the U.S.G.S. sheet, no sir.

1 Q All right.

2 A There wasn't.....

3 Q Agriculturally speaking north of 642 was there
4 any tilling industry, tilling of the land?

5 A As best as I can recall there was some activity
6 of that nature along 642.

7 Q And that's where it quit, coming north?

8 A Primarily - yes, although the land would seem
9 favorable for that along 667 to the west. But as I said to
10 the best of my recollection it's fairly well over-grown.

11 Q All right. Is there a flood plain in that area?

12 A Well, any creek that runs through there would have
13 a minor flood plain, I would suppose the major flood plains
14 would be the South River and the Conway River.

15 Q All right, sir, let me ask you this, were there
16 any sub-divisions in that area? Communities?

17 A There was Kinderhook and ...Fletcher.....very old
18 and very deteriorated.....Greene Valley and Blue Ridge
19 Estates in there.

20 Q Greene Valley Section 7?

21 A Yes.

22 Q Do you know the number of lots and lot sizes in
23 Greene Valley and Blue Ridge Estates?

24 A Number of lots platted were 130.

25 Q Range?

1 A Range from 2 to 10 acres.

2 Q In which?

3 A In Greene Valley.

4 Q All right, and Blue Ridge Estates?

5 A 13 lots platted, a range in size from 2½ to 10 acres.

6 Q All right, sir. Let me take you if I may now

7 to the land coming down from - - following this line down to the

8 western edge of the County to the Blue Ridge, running south

9 of there with the eastern border of the area that I'm describing

10 to you Route 637, down to its junction with 634, then Route

11 634 to Route 639, then Route 639 to the back of the

12 park?

13 A 634....

14 Q 639 to the park?

15 A You are speaking of?

16 Q Yes sir. Would you give the same information with

17 respect to that district of the County?

18 A Yes sir.

19 Q There is no industrial use in there?

20 A No sir. Would you refresh - was that Route 634,

21 you mentioned?

22 Q Route 634...

23 A And 639.

24 Q And 639 to the park then ....

25 A Right.....that area is very steep, very mountainous

1 Route - well, along Route 637 it follows the flood plain of
2 the South River and there is some farming activity. Route 634
3 is a very narrow, winding road that goes - follows the flood
4 plain through the - not a flood plain but a stream valley
5 through the mountains and it's - it was almost impassable for a
6 sedan.
7 Q Bull Yearling?
8 A Yes....the road - Bull Yearling is the name of
9 the stream.
10 Q Yes sir.
11 A The road that parallels Bull Yearling Stream is
12 very steep and as I said almost impassable for a sedan. It
13 goes through very rugged terrain and there is very little in
14 the way of development in that area. It's mostly wooded.
15 Elevation in this area ranged from I would guess around 900
16 feet, let's see - did you want to take that line 639 all the
17 way to the park boundary?
18 Q Yes sir....right on to the County....
19 A County line -
20 Q Give us two figures please, one in the park and
21 one out of the park, elevation?
22 A Swift Run Gap quad, exhibit 11, 31 hundred feet
23 appears to be the ...let's correct that, close to 34 hundred feet
24 appears to be the maximum elevation inside of the County.
25 34 hundred feet appears to be the maximum inside the park.

1 Q Did you give me a minimum for that area?

2 A I did.....I think I said 800.

3 Q You did, all right.....Now are there any

4 commercial uses in that area? The other uses are on this map,

5 are they not? I thought it was introduced into evidence and

6 I don't propose to - in order to save time I'll try to bypass

7 that - were there any commercial uses in that area?

8 A In other words you don't want houses...

9 Q Not at that particular one, because I am going to

10 try to save time. The uses are indicated on the map....

11 A There appears to be only one commercial use on

12 there.

13 Q What is that sir? McMullen's....

14 A Yes....I'll have to check - yes, I think that's

15 correct - McMullen's Store.

16 Q All right, are there any sub-divisions in that

17 area?

18 A Yes sir, Dogwood Valley.

19 Q Would you give me the information on Dogwood

20 Valley?

21 A You want the lots platted? 335. The range of

22 lots - the approximate range is 1 to 7 acres.

23 Q All right. Now, did you in your survey conduct

24 a survey on Route 33?

25 A Yes sir.

1 Q Starting at the western end of the County tell
2 me any point that you found convenient - it doesn't have to
3 go into a detailed description of what you saw.....
4 would you describe the area along Route 33, the western
5 side of the County?
6 A You mean describe it in general terms, its
7 entire length or what?
8 Q No sir. It might be better to take the
9 portion with improvements on the right hand somewhere in
10 here wherever you think.....you may very well make the park...
11 the very west side of the County to the park line is all
12 in the park.....
13 A Well, we could start in the cluster.....
14 Q All right, sir.
15 A Outside the park and run as far as the 676
16 out there, to perhaps the intersection of 810.
17 Q That would be fine.
18 A You just want the area along that road?
19 Q Yes sir.
20 A You want the same information?
21 Q Yes sir. The same information along that road.
22 A Topographically the land to the northeast of
23 33 is very steep, wooded, at Lydia, at the Shenandoah National
24 Park line. Just to the south...
25 Q Excuse me just a minute.....I don't think that's Lydia.

1 A That cluster of structures up there just at the
2 park boundary.
3 Q Lydia is divided there.....
4 A Yes sir, right.
5 Q You might describe the area between the park
6 boundary and Lydia, the intersection of 634 and Route 33?
7 A Okay from the park boundary, 634, the terrain is
8 very steep to the northeast, wooded; to the south and just east
9 of the park line the land has been cleared and has been developed
10 somewhat. It lies in the flood plain of Swift Run. It is
11 relatively flat. Shall I continue down 33 to 810?
12 Q Yes sir, what sort of uses do you have from the
13 fork lines at Lydia?
14 A Excluding residential there are two vacant
15 commercial and 3 churches....public uses...
16 Q All right, now from there are there any communities
17 in that area?
18 A Yes sir, right here. This is the area at
19 Lydia ...right in here.
20 Q It's actually one .....
21 A I believe it's something to do with a church or
22 something like that.
23 Q Right there next to Swift Run, the Golden Horse-
24 shoe?
25 A It's referred to as Lydia Church on the U.S.G.S.

sheet.

Q All right, then if you come down from Lydia to 810.

A Okay the terrain - very steep until you reach Cecil Mission.

Q All right.

A And from that point to 810 the land tends to level off somewhat. In other words the sloping is less steep, the countryside was not covered with wood land as I recall, as I remember.....in that immediate vicinity from Cecil Mission to 810, primarily grazing and cattle farms.

Q Are there any commercial uses in there?

A Yes, there is one commercial use, at the intersection of 638 - I'm sorry, 634 and 33.

Q Country Store, general store?

A To the best of my recollection, yes.

Q As you come from - would you describe please from 810 to the town of Stanardsville?

A 810 to Stanardsville, to the north of 33 the land begins a gentle slope as it goes up the side of the Blue Ridge Mountains - the slope becomes steeper and it's largely cleared land. As I recall it's not in agricultural use. It seems to me there is some type of broomsage in that area. As you get into Stanardsville there is a sub-division adjacent to the corporate limits. On the south side you have a small stream, I

can't find the name of it here, parallel to Route 33, with a very gentle slope to the south...

Q Blue Run?

A Blue Run. And as you come into town of course the land becomes cleared .

Q All right. Is there commercial use in there or any commercial use?

A Yes sir. I think-there is one - I think it's a gas station.....gas station-country store.

Q On the west side of town?

A On the west and on the north of 33, the west side.

Q Yes sir.

A There's also a church. I'm sorry that church is on 418. There's your fire department just on the outskirts of town.

Q I will now ask you about the town. Is the town in the sense of a community contained within the town boundaries as they appear on the map?

A Well, it's difficult for me to define where the people of Stanardsville consider their community. I would say certainly the density exists for - sense of community exists and you do have a variety of uses within the town. The area just to the north of town known as the brush.....is fairly densely populated but I don't know if it would be considered as part of the community.

Q How about the sub-division to the west side of town,

which you mentioned?

A That's Forest Ridge Estates.

Q Could you give us the sub-division information that I asked for before on that?

A 55 lots, average size ½ acre.

Q How many houses on those lots?

A Approximately 16....at the time of survey.

Q What kind of housing in that?

A As I recall there were fairly substantial brick, ranchers.

Q Is that inside or outside the corporate limits of town?

A Outside.

Q How far outside?

A Well, it's almost adjacent to the town.

Q I realize that the town is not a part of what was zoned, but for planning purpose could you give me what rough figures you used for the population of the town, density of the town?

A The town's population in 1970, according to the United States Census, just slightly less than 300. So far as the density it varies according to where in the town you are at - along Route 1001, the lots appear to be as small as 10 thousand square feet. Along 230 they tend to be a little larger, between 230 and 1001, the land is primarily vacant. To

1 the south of 33, of course, you have the more or less center
2 of town, the court complex, and of course south of here
3 it opens up again.
4 Q As you proceed east of the town of Stanardsville,
5 the corporate limits, are there still business activities
6 and residential activities?
7 A Yes sir.
8 Q Let me ask you this, did you count the number
9 of commercial uses in the town?
10 A Yes sir.
11 Q How many were there?
12 A I haven't segregated them - the total, but I can
13 give you that.....16 commercial uses and 3 just parks....
14 Q How is water provided to the town of Stanardsville
15 and west?
16 A Water is provided by lines from the Rapidan Water
17 Authority, which extend into the town,to the west it is my
18 understanding that there were springs at Lydia with two inch
19 lines that ran into the town of Stanardsville, where the water
20 was stored in underground reservoir.
21 Q Is there water provided then all along from some-
22 where around Little Edge down to the town of Stanardsville?
23 A Now could you reference Little Edge for me?
24 Is that near Lydia, is that what you are...
25 Q Well, ...

A In other words from the town of Stanardsville west along 33 for some distance?

Q For some distance.

A It's my understanding, its been a while but I recall talking to Mr. Vivier about it and I could be wrong, but it seems that those lines were too small to provide much in the way of adequate water service for any sizeable development.

Q Right. It's provided for residences in that area?

A Yes.

Q And we - the town of Stanardsville on the south side is there in conjunction with the town of Stanardsville a suburb area or an urban area south of the town of Stanardsville?

A Well, it depends, some people might consider it - Greene Mountain Lake is - as a suburban area if you called a development to a town as small as Stanardsville suburban.

Q Well, coming up from there and thinking about older development, not in sub-divisions, is there any along the road?

A Well, there's a scattering of residential uses along Route 622.

Q Yes sir.

A But other than that there's nothing.

Q Do you know whether or not any water is provided

1 out that way?

2 A No sir, I don't believe it runs - we have a

3 utilities map over here, may I refer to it? Would you like

4 to refer to it as an exhibit? I can just describe it...

5 Q Yes, please describe it.

6 A According to that utilities map there is water -

7 a water line extending along Route 1001 just north of 33,

8 south...I suppose coming into Court Square.

9 Q Is there a school around there anywhere?

10 A School is right here.

11 Q Mark it...

12 A Mark it...

13 Q Yes sir, this will be introduced into evidence if

14 it hasn't been. Would you give us the history of that?

15 When was it done?

16 A This was done in 1974.

17 Q Does this exhibit depict the way the water - sewer

18 lines were at that...

19 A At that time.

20 Q At that time?

21 A Yes sir.

22 Q To your knowledge was there very much change from

23 that time from what it had been a year ago? A year prior to

24 that time?

25 A To my knowledge there wasn't much change, unless

1 some of those feeder lines running into some of these sub-
2 divisions had been added.
3 Q All right, any objection to it being an exhibit
4 in evidence? Your Honor, I ask that Plaintiff's Exhibit
5 23 for identification be entered into evidence.
6 COURT: Any objection?
7 DICKEY: None.
8 COURT: It will be admitted.
9
10 The utility map was marked and received into evidence
11 as Plaintiff's Exhibit Number 23.
12
13 Q Would you describe the school which we've just referred to
14 and is that in or outside the corporate limits of the town?
15 A The school is outside the corporate limits and
16 consists of Monroe High School and an intermediate school.
17 I believe at the time of the survey that was the extent of it.
18 Q Do you know how many students it has attending?
19 A I have records of it but I can't recall the exact
20 number.
21 Q All right, sir. If the Court please by agreement
22 we introduced into evidence Plaintiff's Exhibit 3, the interim
23 zoning ordinance of Greene County. The ordinance makes a part
24 of it a zoning map of Greene County, Virginia, dated March
25 2, 1974, which was apparently not submitted with this copy by

1 the County and...

2 DICKEY: There was only one copy, the official copy

3 in the Clerk's files.

4 COURT: Is that the one that is mounted on a piece of

5 plywood?

6 DICKEY: No Your Honor, that's the one for the

7 interim zoning ordinance, a different one.

8 Q I think it should be submitted with the rest of

9 the ordinance, sir, and ...

10 COURT: It's stipulated then that that map could be

11 part of the evidence and ...

12 PARKER: Withdrawn...

13 COURT: Be withdrawn for the official records of

14 course.

15 DICKEY: I wasn't here Your Honor, but I understood

16 the situation as to all these items such as this would be

17 withdrawn and Mr. Parker would substitute copies ...

18 COURT: Well, it wasn't discussed in that detail but

19 it certainly would appear appropriate that many of these items

20 should be substituted to by copies...

21 DICKEY: The County....

22 PARKER: We don't propose to rob the County for the

23 sake of the record.

24 COURT: Well, it will be stipulated then that the

25 zoning map will be part of the record. Do you need it right

now?

PARKER: No sir, but I will need it.

COURT: All right, we'll have it later. Go ahead with your examination of Mr. Evans. Did you have a number on that, did you say Mr. Parker? As to what you propose to put on the County zoning map?

Q No sir.

COURT: All right, we'll identify it later then by number.

Q We might identify it Your Honor as exhibit... Plaintiff's Exhibit 3-A, because it will go right with exhibit 3.

COURT: All right, it's understood if you'll make a note of that now for your record, we'll call that exhibit 3-A when we get to it. It will be the County zoning map.

Q It's the county zoning map for the interim ordinance.

COURT: For the interim ordinance, all right. Would there be any different map for the permanent ordinance?

Q Yes sir, I think....

COURT: All right.

Q And we will be needing that for the same reason. I might ask Mr. Slaughter if you would get ...try to make arrangements for that....How many uses are there around the town of....well, let me ask you this first of all. On the east side of the town of Stanardsville, is there a sub-division which is

1 split by the line of the corporate limits?

2 A Yes sir, Child's Sub-division.

3 Q And we have the road map here..... now, do you

4 have the information on the Child's Sub-division?

5 A Yes sir.

6 Q Would you give it to us please sir?

7 A There are 27 lots, 15 structures. Lot size ranging

8 just less than ½ and almost an acre.

9 Q Now are these lots that you referred to lots that

10 are both in the town limits and outside the town limits or are

11 they lots which are just outside the town limits?

12 A There is no distinction as far as that here which

13 ones are in and which ones are out.

14 Q I show you Plaintiff's Exhibit 24 which has not

15 been introduced into evidence....has been....all right.

16 And I ask you to take a look here in the Stanardsville insets,

17 do you notice a little highway, 1004...

18 A Yes sir.

19 Q I don't propose to lead you unduly but is that

20 the main route of the Child's Sub-division?

21 A No sir. I would say the main route is here...

22 since that is the access road into it.

23 Q 1004 east and - joining east and west is what

24 you are referring to?

25 A Right.

1 Q But it does make a turn does it not and...

2 A It turns and I don't know if you call it a cul

3 de sac at the end of not...

4 Q Deadends?

5 A Yes sir.

6 Q Now there are houses along both legs of that

7 in the Child's Sub-division, 1004?

8 A You are asking me are there houses?

9 Q Yes.

10 A Yes sir.

11 Q On the west side of - on the east side of

12 Stanardsville, do you know about where the town boundaries

13 are?

14 A You mean can I give you a ....physical feature

15 that would ...

16 Q Define it with respect to structures? Who owns

17 property and what-not there?

18 A Not without looking at the tax maps.

19 Q Can you describe for us how many residences are

20 closely adjacent to the town of Stanardsville, residences

21 and commercial uses there are closely adjacent to the town of

22 Stanardsville on the west side - on the east side?

23 A I can give you a count off of this map.....

24 Q Let me refer to the road maps.....to the gas

25 pipe lines.....

A Well, the gas pipe line doesn't appear on this map - so it's difficult for me.....

(Witness is at the map tracing the various residences and commercial uses, roads, etc.)

Q All right from the town of Stanardsville about half way up the map, the magisterial district line?

A Half way up...

Q The magisterial district line.

A I'm sorry did you say to the line or...

Q Half way to it from the boundary line of the town of Stanardsville?

A (Witness again is point out to Court and counsel the lines)

Q Not the Child's Sub-division, no. How about this yellow line.....

A About 35 single unit dwellings which - two of which are trailers, three commercial uses and two churches.

Q What's the average lot size in that area?

A It's fairly dense as you - just as you pass east out of the town, I would say it might run as small as 3/4 of an acre, and as you go farther out they tend to get a bit larger, perhaps an=acre or more. It could even go down to

1 20 or 30 thousand square feet. It is fairly dense along
2 33, east of town....for a short distance.
3 Q There are some red lines around...
4 A I'm sorry...
5 Q There are some red lines around Stanardsville
6 on Plaintiff's Exhibit 19, do you see them here?
7 A Yes sir.
8 Q Can you tell me what those indicate?
9 A I can't because this is off a photocopy map and
10 sometimes they put lines in here for one purpose or another...
11 Q Yes sir. All right, would you describe please
12 from that point on down to - did you give me - were there any
13 commercial uses?
14 A Yes, three.
15 Q Three. Would you describe from that point down
16 to Route 609....Route 33...
17 A You want the parks included in that too.
18 Q Yes sir.
19 A About the best generalization I can make of this
20 area is that it's a section which is in transition. There
21 is something of a strip pattern of development, residential
22 development running down 33, especially the southside of
23 33. To the north of 33 the land is still primarily open,
24 generally rolling. Portions of it cleared, portions - my
25 summation would be it's fairly nondescript, you've got a mixture

of uses just scattered along the highway.

Q What sort of uses?

A Well.....primarily residential, but there are three commercial...four commercial and a number of mobile homes...mobile home parks. I count 26 mobile homes, 18 of which are in a mobile home park. Two churches and at the magisterial line it gets very dense....trailers.... that is essentiallywhat is in there ..... there are a lot of trailers.

Q What are the lot sizes in there, or the range of lot sizes?

A I would say some of them go down - go on/to perhaps 30 thousand square feet, all the way up to several acres, depending on where you are at.

Q Let me digress for just a moment. Locate for me if you will please the industrial uses in the County ?

A Zone 1 industrial use. A very small cabinet making business right here on Route 630...furniture, cabinet making...

Q Near Route 631 and how do you classify the gas plant?

A As a utility.

Q Where is that located?

A That's located on 604 at the intersection of 624.

Q What is that?

A It is a - as best I can determine it's a compression station - I believe there are two gas lines which intersect at that station and I spoke to the people there and to the best of my recollection at that point the gas is compressed so it can be transported along the pipe line to the east and north.

Q So the town of Stanardsville from that pipe line would have access to gas utility?

A Yes sir, I would imagine so. There is a small shed on that line, that runs just east of town.

Q Continuing on down Route 33 from Route 609..... to Route - to where Route 608 is intersected by Route 633 and then directing - coming over to Route 33 by the shortest distance, can you tell me how Route ...what the - what it looks like along that area there?

A Now you want the area immediately astride 33 from 609 to where 633 intersects 33?

Q Where 633 would intersect 33 if it cut right straight across the old road?

A I'm sorry.....

Q You see 633 comes into 608 here.....

A I'm looking at 633 here and you're looking.....

Q I'm looking at this point right here.....

A And you say from this point here?

1 Q Right. You might as well mark that and put a
2 5 by that. That's which exhibit?
3 A Exhibit 13.....you say 5?
4 Q Yes sir. Would you describe the area that
5 you observed along Route 33 through there?
6 A It's very similar to 33, from 609 towards
7 Stanardsville, except that the density, housing density
8 decreases considerably. Of course this road runs along
9 the ridge dividing the watershed for the Rivanna and the
10 Rapidan River, so that you continue to be riding on a crest
11 and the land tends to slope either flat or gently away from
12 the road. It's a mixture of forest and cleared land.
13 I can't recall much in the way of rich agricultural farms.
14 There has been some tilling and there appears to be some
15 farming. There was a scatteration of uses, but I can make
16 better reference to on that map.
17 Q Yes....
18 A Okay there's two churches, one of which is brand
19 new. There is a (word inaudible) which I believe
20 is a rather unsightly garage as I recall.
21
22 Q All right, sir, how many residential uses in
23 there - - well just roughly if you don't know the exact
24 number.
25 A This part here.

Q Yes sir you might just .....that's 608....

A Approximately 52 dwelling units, 12 of which are mobile homes.

Q Does that include the sub-/ division known as Quinque Forest?

A Yes sir.

Q Does it also include the sub-division known as Woodridge?

A It does but at the time certainly it wasn't more than two dwellings....

Q Give us the sub-division information on Woodridge and Quinque Forest? And Mountain View, if you will? I think Mountain View may be in the next ...may be in the next area we'll talk about.

A Woodridge, 39 lots, three built upon, ranged in size from ½ acre to just less than an acre. Quinque Forest, 19 lots, platted, 13 built upon, range in size from ½ acre to just over an acre and a half.

Q All right. I will get you now sir please to describe the area generally next to Route 33 from that point at - follow Route 33 to....

A Right here...

Q Yes sir...Until Route 29....

A Earleysville quad, exhibit 15....Barboursville quad, exhibit 16.....

1 Q Let me interrupt you just a moment, several
2 times you've referred to a sub-division analysis report,
3 I take it, that you...
4 A Yes sir.
5 Q When was that started?
6 A Well, to the best of my recollection that was
7 done around May of 1974.
8 Q Thank you sir.
9 COURT: What is the sub-division analysis Mr. Evans,
10 does that pertain to the whole county or the...
11 A Yes sir.
12 COURT: Or piece by piece?
13 A One of the staff persons that worked with me
14 on the land, came to the county clerk's office and was granted
15 access to the plats of the various sub-divisions, and using
16 these sheets that I've been referring to, this listed all
17 pertinent information regarding the sub-divisions.
18 Q Was Plaintiff's Exhibit 30 for identification
19 used in conjunction with that analysis? Sub-division analysis?
20 A This is the original exhibit from the County's
21 Clerk's Office.
22 Q This was prepared from that document?
23 A Yes sir.
24 Q Your Honor, we...
25 COURT: What is that, number 30?

1 Q Yes sir.

2 COURT: Is that being offered or has it.....

3 Q It has not been offered but I would like to do

4 so, if there is no objection.

5 COURT: It is one that was prepared by Mr. Evans'

6 department?

7 DICKEY: Your Honor, I think we have to object to

8 this for this reason....because this shows both proposed

9 and intended subdivisions as of that time.

10 Q I'll ask him about that.

11 COURT: All right, sir, you may go ahead. We'll

12 have that for identification purposes as Exhibit 30

13 and then subject to the objection we'll hear from you

14 further then on the admissibility.....

15 PARKER: I beg your pardon - Number 20.....

16 COURT: Number 20 - all right sir.

17 DICKEY: We have no objection to the explanation

18 by the Court.

19 COURT: Go ahead then Mr. Parker.

20 Q Can you distinguish between the sub-divisions

21 existing at that time the data was taken and the sub-divisions

22 proposed at that time?

23 A Okay, I think there are two things here that

24 should be kept in mind. Some of the sub-divisions are proposed, but

25

they were not recorded at the time this map was done. And others - a portion of them were plated but not all of the sections, all the lots.....The ones that were proposed and not recorded included James River Estates, here..... And the James River Estates right here.

DICKEY: That hasn't been recorded yet?

A At the time this map was done.

COURT: When was the map done, Mr. Evans?

A To the best of my recollection in May of 1974.

COURT: Okay, I believe you already indicated that.

DICKEY: What was - Mr. Parker, do you mind if I ask a couple of questions to get this part in here?

PARKER: No sir.

DICKEY: Was Greene Marle recorded at that time?

A It shows here that it was.

COURT: Mr. Evans on that point how would you be able to obtain the information that there was a sub-division which wasn't recorded? Was there some other source that you went to?

A Yes sir. Any sub-divider who applies to the county administrator...

COURT: All right, you would check his office and even though it wasn't recorded you would use information out of the office of the county administrator?

A That's right.

1 COURT: All right, sir.

2 DICKEY: Was all of Greenview recorded at that

3 time?

4 A Well they give you those that are completely

5 recorded, Greenmeadows, Greenview, I just can't recall.

6 DICKEY: And the status of Green Marle as

7 far as recordation goes?

8 A As I say I can't recall for sure whether

9 it was or not - whether it was recorded.

10 DICKEY: Mr. Parker do you want to stipulate

11 as to these if.....

12 PARKER: I don't know, Mr. Dickey, but if

13 there is any information.....

14 COURT: Well, it appears to me that the information

15 that Mr. Evans has given on that plat, it would be admitted

16 with the understanding that many of them represented the

17 recorded plats for sub-divisions and many of them represented

18 unrecorded plats that were filed in the office of the county

19 administrator. Both are represented.....

20 DICKEY: It does not distinguish on the face

21 of it.

22 COURT: Not distinguished and will have to be further

23 distinguished in testimony to make that of any particular use

24 on any particular sub-division. It's understood that both kinds

25 are shown on that map, those proposed and those actually platted

1 and recorded.

2 Q I've carried him through a number that have

3 been....

4 DICKEY: Oh yes...

5 COURT: I will admit that in evidence subject to

6 further explanation from Mr. Evans then as to what counsel

7 wish to show by it.

8 DICKEY: I believe tomorrow we can provide the

9 Court with another amendment to this map to show the changes.

10 COURT: All right.

11 DICKEY: I think it's already in existence....

12 COURT: Do you wish for it to be held up for further

13 examination, Mr. Parker?

14 Q No sir.

15 DICKEY: All right, does your information showing

16 about GreeneMarle the information that we have here?

17 A Our appendix which lists the recordation of the

18 sub-division shows that Greene Marle at the time this map

19 had been done was not been...

20 COURT: How is that spelled, GreeneMarle?

21 A G-r-e-e-n M-A-R-L-E.

22 COURT: All right...,

23 A G-r-e-e-n-e M-a-r-l-e.

24 COURT: All right that map is admitted as exhibit

25 20 for the Plaintiff.

1
2 The map was marked and received into evidence as
3 Plaintiff's Exhibit Number 20.
4
5 Q This map has a legend looks like brownish red
6 residential, orange mixed and green seasonal. Would you
7 explain what is meant by residential, mixed and seasonal?
8 I think you've probably already explained some of it.
9 A Well, basically we found in land using these
10 sub-divisions that they fell in three very general categories.
11 Those that were primarily first home developments such as you
12 see around any large city, Charlottesville...primarily down
13 along Route 29. These were new homes people live in year-round.
14 Then you had sub-divisions especially south of Stanardsville
15 which tend to be mixed. In other words you had - well, you
16 have a mixture of permanent, year-round, dwelling units, and
17 seasonal units. You might have a brick bungalow next to a
18 Swiss chalet type A frame. There - well, the map would show
19 that and then the seasonal would be primarily in the
20 mountains or built around a lake and were predominantly A
21 frame, looked like....
22 Q Looked like they would be second homes?
23 A Looked like they would be second homes, right.
24 Q I'm sorry I interrupted you with respect to your
25 description of the area about at the intersection of 608 and

632 to Route 29.

A Once again that road follows the ridge separating the two water sheds, the land tends to be fairly level, sloping down away from the road a bit, mostly cleared with some forest. Pretty much the same as the rest of 33..... from Ruckersville to Stanardsville. Gently rolling...

Q All right, sir, could you give me the useage on that please sir? By the way what kind of highway is Route 33?

A Primary arterial.

Q All right, sir.

A 113 single family dwelling units, 1 of which is vacant, 10 of which are mobile homes. Three duplex units. One multi-family unit. Ten commercial uses. One - I believe it's a mortuary. And the other I believe is the Rescue Squad.

Q It's awfully hard to classify that one I imagine sir?

A Yes.

Q Would you describe the commercial uses, please?

A As best I can remember, the - at Quinque, the mortuary, feed store, post office, barber shop, and I think it's a general store. Going east on 33, a drive-in, grocery, carwash, I think there's also a pool hall, general store, and gas station, I suppose. And the clothing factory outlet at Ruckersville.

1 Q Based on what you've just described, are you
2 able to tell me what this depicts, I show you Plaintiff's -
3 it has not been marked, apparently, I'll have to ask that it
4 be marked.
5 A I think I know the area.
6 Q 25 for identification. Would you describe for
7 me please what this depicts?
8 A It appears to depict the area along Route 29
9 at the intersection of 33, about a half a mile out of
10 the scales..... It appears to depict a very general
11 vicinity of Ruckersville, and mid-way.
12 Q And mid-way, where would Quinque be?
13 A Quinque would be off the map.
14 Q Off the map, not far off the map...
15 A Well, once again...
16 Q I withdraw that....it would be off the map on
17 the northeast, north - on the upper left corner?
18 A Upper right corner - be on this side ....
19 Q But as the map goes, it would be on the upper
20 left corner of the map?
21 A Yes, right, yes.
22 Q The map border?
23 A Yes.
24 Q Can you tell me how this - what this is for the
25 sake of reference?

1 A I'm not sure I...

2 Q You say it depicts it, how does it depict it?

3 A Well, it's an aerial photograph of the area.

4 Q Yes sir. And this is the same area that you

5 were just describing in part?

6 A It's a portion of that area.

7 Q Yes sir. I ask, Your Honor, that this be

8 admitted into evidence as Plaintiff's Exhibit 25.

9 COURT: Any objection?

10 SLAUGHTER: If the Court please, there's been a

11 great deal of marking on the map, we object to the introduc-

12 tion of the map...

13 Q I ask that the Court disregard the marking until

14 it's explained. Since there's no jury here I see no reason

15 that that could not be done sir.

16 COURT: All right it will be admitted then subject

17 to the condition that the markings on it that have been placed

18 thereon are in no way relevant at this time.

19 Q Yes sir.

20 COURT: And would not be appropriate to the exhibit.

21 DICKEY: May it please the Court, later on if it

22 is determined that the marks are not appropriate we would ask that a proper one be substituted.

23 COURT: Well, it will be noted of course that those

24 markings as of now have no relevance. It may be more convenient

25 and appropriate to have another one, but I want to put that

1 condition on it, except to require that they either be
2 explained or disregarded.
3 Q Yes sir, thank you.
4
5 The photograph was marked and received into
6 evidence as Plaintiff's Exhibit Number 25.
7
8 COURT: And that's exhibit number 25?
9 Q 25, yes sir. Would you describe for me - how
10 many intersections or arterial highways are there in Greene
11 County?
12 A One.
13 Q Where?
14 A At Ruckersville.
15 Q And that was the terminus of - that was the
16 eastern terminus of ...
17 SLAUGHTER: Excuse me, I was checking on the....
18 REPORTER: 25.
19 SLAUGHTER: 25 are you sure of that?
20 DICKEY: 25 was the Rapidan Service Authority ...
21 COURT: Well, we may have to back up and re-identify
22 something, but .....
23 PARKER: 23....you're talking about sewer and water...
24 SLAUGHTER: Excuse me, Your Honor.....
25 Q I forget the question....

1 A You ask me where the only intersection of
2 primary routes in Greene County was and I answered Ruckers-
3 ville.
4 Q Thank you sir. Is Ruckersville the distal
5 end of the area that we were just describing?
6 A Yes sir.
7 Q The eastern most?
8 A Yes sir.
9 Q I notice a circle drawn on this map around
10 the Ruckersville area, It looks like it has been
11 on there one time and perhaps erased - it will serve as a
12 convenient guide to help us I think.
13 COURT: You are referring now to the land use map,
14 Mr...
15 Q Yes sir, land use map, plaintiff's Exhbit number
16 19. Would you come over here to this map please and please
17 count the uses within the circle and give me the approximate
18 radius of that circle?
19 A The radius of the circle is just less than half
20 a mile...from the intersection. It contains 56 single
21 family dwelling units, 22 of which are mobile homes...14
22 commercial uses....4 public uses.
23 Q Would you give me...
24 SLAUGHTER: Excuse me I didn't get that 4...
25 A Four public, semi-public, churches.....

1 Q A community house, community...

2 A That would be the rescue squad building, I

3 assume...

4 Q Fire house...

5 A Yes, the fire house.

6 Q Would you give me the sub-division information

7 please on Locust Lane?

8 A Locust Lane.....55 lots platted, 32 built upon,

9 the average half acre.

10 Q Is there a range?

11 A No sir, I think they were all 25 square feet.

12 Q May I see this.....information on sub-divisions?

13 DICKEY: Mr. Parker if you want to introduce that

14 into evidence we have no objection.

15 Q I'll have to think about it Mr. Dickey. This is

16 the information that we talked about earlier about the

17 sub-division....

18 A Yes sir, that and the map.

19 Q Yes sir. This goes with the map?

20 A Well, the map is a supplement to it.

21 Q Yes sir. Your Honor there are five sheets here

22 which maybe later we can staple them together, and I ask that

23 they be introduced as Plaintiff's next exhibit.

24 COURT: No objection to that?

25 DICKEY: No sir.

1 COURT: All right.

2 SLAUGHTER: I just note Your Honor that particular
3 list doesn't have the dates of recording, just as the map
4 itself doesn't have the dates of recording.

5 COURT: All right, it's noted...

6 Q It does...

7 A Yes it does have those that were recorded....
8 some that weren't recorded....

9 COURT: Where the recording information is not
10 shown it means that they are not recorded?

11 SLAUGHTER: Right.

12 A Yes sir.

13 COURT: All right that will be exhibit number 26
14 for the Plaintiff, I take it.

15 Q Yes sir.

16 DICKEY: I guess we ought to provide necessary supplements to the map...

17 COURT: Yes sir.

18 DICKEY: ...that would make pretty good sense.

19 Q Mr. Dickey, did we get the map yet to the
20 ordinance?

21 DICKEY: Yes, we got both of them.

22

23 The list was marked and received into evidence as
24 Plaintiff's Exhibit Number 26.

25

1 DICKEY: The interim zoning ordinance map - Your
2 Honor these are both official records, originals of the
3 County.....I think we would like to ask Mr. Parker to
4 allow us to substitute....
5 COURT: It will be allowed to be introduced then as
6 exhibits and reserve the right of the County to withdraw the
7 original and substitute .....
8 DICKEY: Your Honor, Mr. Parker....
9 Q We'll bear the expense of it, Your Honor...
10 COURT: All right.
11 Q We'll take care of it.
12 COURT: It's so understood that they are admitted as
13 exhibits number what?
14 REPORTER: 3-a is the first one we talked about, the
15 other one has not been admitted.
16 COURT: All right that's the county zoning map of
17 the interim ordinance....3-A is admitted.
18
19 The County zoning map of the interim ordinance
20 was marked and received into evidence as Plaintiff's Exhibit
21 Number 3-A.
22
23 Q This Your Honor will be exhibit 27, this is the
24 map which goes with the present zoning ordinance.....
25 COURT: That's designated as what?

1 Q It goes with 5 and 6 Your Honor.
2 COURT: What's it designated though?
3 A Zoning map of the County of Greene.
4 COURT: What exhibit?
5 REPORTER: 27.
6 COURT: 27, all right. All right, any objection to
7 that - if not it will be admitted.
8
9 The zoning map of the County of Greene was marked
10 and received into evidence as Plaintiff's Exhibit Number 27.
11
12 DICKEY: We would ask that Mr. Parker substitute...
13 COURT: It's understood the stipulation applies to
14 that as well.
15 Q Would you describe for us now please sir -
16 let me ask you this question. Did you include what I guess
17 would be the Hord Sub-division when you counted along Route
18 33?
19 A Yes sir.
20 Q So that nothing was left out?
21 A Well, I didn't go back too far off the highway,
22 but I did include that sub-division.
23 Q Yes sir.
24 A And the Locust Lane sub-division.
25 Q Let the record show that the Hord Sub-division is -

so-called - is ...

A It wasn't within that half mile radius, I don't believe.

Q No , it was not. It's just inside the half mile radius to the south of 33, to the west of Ruckersville.

DICKEY: Did I understand you to say that you had also included all the houses in Locust Lane Sub-division in the count?

Q Yes he did.

DICKEY: All right.

Q Is there sub-division information on the Hord Sub-division?

A Yes sir.

Q It's all in the record, but it would be helpful if we could enunciate it?

A 59 lots platted, 13 were built upon, and I don't have a lot size, although it appeared to run about half an acre.

Q Thank you sir. Did you - do you have the total of commercial, industrial, so forth uses in Greene County?

A Yes sir.

Q What are those totals?

A We counted 81 retail establishments, 22 of which were vacant. And we have that further broken down, do you want that?

1 Q Yes sir.

2 A 15 general stores, 6 grocery stores with gas,
3 6 auto sales and service, 4 motels, 3 restaurants, 10 miscellane-
4 ous retail, 14 miscellaneous services.

5 Q Mr. Evans, you indicated that you were involved
6 with the drawing of the interim zoning ordinance when it
7 began?

8 A I collaborated with another planner in coming
9 up with a draft, yes.

10 Q Yes sir. When did you do that, when did you
11 begin your collaboration?

12 A To the best of my recollection in July of 1973.
13 We came up with a rough draft.

14 Q And that was you and who sir?

15 A Myself, and Mrs. Wayne - Virginia Wayne Heubach,
16 who is the senior planner on our staff, and I believe Mr.
17 Dickey also came up with a rough draft. And then in January
18 of 1974 the three of us collaborated on what I assume to be
19 the final interim zoning ordinance, more or less as it
20 appears.

21 Q Just - was that just before it was presented to
22 the Planning Commission?

23 A Are you talking about the interim ordinance being
24 presented to the Planning Commission?

25 Q Yes sir.

1 A Well, I can't - my memory isn't clear on it, and
2 anything I say would be conjecture.
3 Q Did you in drafting that ordinance use as an
4 input the information on this map, plaintiff's Exhibit 16?
5 A Well, we didn't during the first collaboration,
6 of course, because it wasn't even begun. The January draft
7 I simply don't recall, all of the uses had been transferred
8 from the U.S.G.S. quads to this base map. So I don't believe
9 the base map in its entirety was completed. We may have
10 referred to it, I don't remember.
11 Q Was the draft of the ordinance which was subse-
12 quently adopted substantially the draft that came out of
13 your collaboration with the lady and Mr. Dickey, with the
14 exception of the amendments that were made on the day that it
15 was passed by the Board of Supervisors?
16 A The January...
17 Q Yes sir.
18 A To the best of my recollection.
19 Q Thank you. Your Honor, if the Court please, I
20 will have other questions of Mr. Evans but the hour is getting
21 late and I think I'm in a position if I may for some substantive
22 testimony - I have other witnesses here, who will complete
23 that - not complete it but add items of information about the
24 sub-divisions which would be a foundation for substantive
25 testimony and both to convenience them and also try to get my

1 Mr. Payne on this afternoon, I'd like at this point to
2 interrupt the testimony - to take the testimony of Mr. Evans -
3 and to take the testimony if possible of Mr. Vivier, Mr.
4 Murphy and Mr. Haney, whose testimony will not be long....
5 allow cross examination on that and then I should like to
6 go to Mr. Payne, most probably and then proceed with this
7 witness at a later time.
8 COURT: Well, now Mr. Parker, it's a quarter after
9 3 or close to it, and unless you are planning to make Mr.
10 Payne's testimony rather short and not allow any time for
11 cross examination, you're running dangerously close to limiting
12 what you are going to be able to cover with him. I point out
13 to you...
14 PARKER: Yes sir.
15 COURT: You use it as you see fit, but certainly
16 opposing counsel has the right to equal time on cross examina-
17 tion. And I'm not going past 5 o'clock, because of counsel's
18 inability to schedule the time.
19 PARKER: I understand. I don't intend to take very
20 long with...
21 COURT: All right, well, that's up to you.
22 PARKER: Unless the cross examination takes very long,
23 I don't think it should.
24 COURT: Well, you've got to allow for as much time
25 on cross examination as you take on direct....other than that

that's using their time...

PARKER: We'll try to give equal time...

COURT: All right, sir, go ahead. Mr. Evans will stand aside then subject to being recalled out of order, and he will be available.

DICKEY: I understand Mr. Parker has not completed direct examination.

COURT: Yes sir - that's obviously the situation so it will not be a matter of going back to cross examination immediately on his return to the stand.

PARKER: I can take Mr. Murphy first.

COURT: All right.

PARKER: It doesn't matter - Mr. Vivier may need some review of his records....

RALPH MURPHY, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Parker

Q Mr. Murphy would you state your name, age and residence, please sir?

A Well, Ralph Murphy, 67, my address is Ruckersville.

Q How long have you been a resident of Greene County Mr. Murphy?

1 A Since 1940, 35 years.

2 Q Did you ever operate a business here in Greene

3 County?

4 A Yes.

5 Q Where?

6 A Ruckersville.

7 Q Where at Ruckersville?

8 A Intersection of 29 and 33.

9 Q How long did you operate a business there and

10 what was its nature?

11 A Service station, 34 years.

12 Q Did you ever buy and sell land in the County of

13 Greene?

14 A I have.

15 Q Are you generally - have you ever hunted in the

16 County of Greene?

17 A Yes.

18 Q Are you generally familiar with the entire

19 County?

20 A I would say I am.

21 Q Thank you sir. I'd like to direct your attention

22 if you will, Mr. Murphy, to an area called Devil's Ditch...

23 A Yes.

24 Q Which is marked Plaintiff's Exhibit 16....would

25 you please describe for me what Devil's Ditch is like?

A Well, I reckon I can describe that in two words, wild and rough.

Q How would you compare it to the National Park?

A Well, that's practically the same part of that I would say.

Q All right sir. Do you see this intrusion of land into the park that's just directly south of Devil's Ditch?

A I see where you are on the map.

Q How would you describe that particular...

A What is that Middle River?

Q That is - all I can see here is branch off of Middle River.

A It's practically the same thing, it's not quite - that Devil's Ditch is probably the roughest country in the country...I don't think it's quite as rough as that.

Q Is there any habitation up there? Do any people live up there?

A At Devil's Ditch there isn't. There may be some people in there - scattered in there.

Q Certainly no commercial use up in there, no other use at all? Mr. Murphy do you recognize Plaintiff's Exhibit 25?

A Yes.

Q What is it sir?

1 A That's your intersection here, I don't know why
2 they didn't bring it on down here.....29...
3 Q Intersection of 29 and...
4 A 33.
5 Q 33.....Do you know what - let me show counsel
6 and the Court.....referring to this long line of buildings
7 here Your Honor, do you know what that is?
8 A No sir - which one is that? Right here?
9 Q Yes sir.
10 A That's - I don't know what the name of that
11 sub-division is, that's Sterling Gibson's sub-division isn't
12 it?
13 Q Let the record show Locust Lane. Just a
14 moment.....Would you please sir relate from your
15 experience as entreprenuer of Ruckersville for 35 years, would
16 you please characterize if you can the land within say a
17 mile or half a mile of the intersection of Ruckersville?
18 A Well, I'd say it's - it's rolling and it's ....
19 you found the best land down there....
20 Q Why?
21 A It's some of the best- well, it's not steep,
22 it seems to be fertile....don't have any problem with
23 rocks, pretty good part of the county.
24 Q What would the land be good for?
25 A I would say it would be good for most anything you

1 would want to use it for.

2 Q All right, sir, answer Mr. Dickey and Mr.

3 Slaughter's questions.

4

5 CROSS EXAMINATION

6 BY: Mr. Dickey

7 Q Mr. Murphy,that land is pretty good farming

8 land down there, isn't it?

9 A It has been farmed, yes.

10 Q And there are some parts of it that flood,

11 not too many is that about right?

12 A Well the only place I know that floods down there is

13 on North 29, in the bottom.

14 Q All right.

15 PARKER: Thank you Mr. Murphy.

16 COURT: Thank you Mr. Murphy, you may stand aside.

17 PARKER: Your Honor, Mr. Murphy, I may need to

18 recall, but it seems to me that it is so I could do it by ....

19 COURT: Yes sir.

20 PARKER: If he could do it - unless you want...

21 COURT: Mr. Murphy if you will be available to be

22 recalled by telephone, you're excused sir.

23 A All right.

24 COURT: Thank you sir.

25 PARKER: You may stay if you want.

COURT: All right, sir.

PARKER: Mr. Vivier.

CHARLES VIVIER, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Parker

Q Mr. Vivier, what is your name, age, residence and occupation?

A My Charles Vivier, I'm 31 years old. I'm the administrator or general manager of the Rapidan Service Authority and I live in Stanardsville, Virginia, Route 1, Box 212-3. I've been associated with the Rapidan Service Authority for about - almost two years, it will be two years in March of '76.

Q What is the Rapidan Service Authority?

A Rapidan Service Authority is a body politic incorporate, it's composed of three counties that join to form this authority, Greene County is one of them. And in Greene County the Rapidan Service Authority represents the public water system in the County.

Q Now, would you please in general terms describe that water system for me please sir?

A Yes sir. I have some graphic information if the

1 Court...

2 Q Yes sir. I'll be delighted to take a look at

3 it if you will show me what you have with you.

4 COURT: Note for the record that the Court is very

5 familiar with this from having had it come up a number of

6 times in condemnation cases, so that counsel may be guided

7 by that in testimony and exhibits, in so far as you want to

8 vouch the record, that's the main thing. But I'm very

9 familiar with that water line, the size of it, where the

10 reservoirs are located.

11 Q All right, sir. What I will try to do is

12 shorten Mr. Vivier's testimony as much as possible and

13 then release him under the same terms we did Mr. Murphy.

14 COURT: All right, sir.

15 Q Is this - are these graphs and charts the water

16 system?

17 A I have the sketch here that is somewhat to scale

18 of one inch equals one mile. It shows the system, the

19 original FHA project from the water filtration plant down to

20 the intersection of Ruckersville and over towards Stanards-

21 ville.

22 Q That's on Route 29 and on Route 33?

23 A That's correct.

24 Q Would you give us the size of the lines and

25 capacities?

A The size of the lines from the filtration plant to Ruckersville, along Route 29 and to the storage tank on Route 33 is an 8 inch line.

Q It must be near the delapidated place that Mr. ....

A It must be that body shop.

Q Yes sir.....Mr. Evans described.

A The rest of the project, that is any new lines that have gone in as indicated on this map and any others that were put in are generally 6 inch mains. But as far as capacity that's a relative question.

Q Well, ...

A I could say that the line has the capacity of moving two hundred thousand gallons a day between the filter plant and storage tank at no relative change in pressure. So obviously it's moved to the filter plant to the storage tank and comes back the same way with no relative change in pressure. We have the capacity to - that would come out to 150 gallons a minute. I have pumped approximately 300 gallons a minute in the same type system along the same line and so I would have to say it's capable of doing that also. But as far as the deliverability of the line I think you have to have more specific conditions.

Q How about the tank, how large is that?

A The service tank on Route 33, the new tank - the

1 elevated tank is 130 thousand gallons capacity. If you
2 are interested in the distance of this particular property
3 to that tank....
4 Q I will ask you that....I will ask you that
5 question at a later time.
6 A All right, sir. I have also included another
7 set of - another print here for the Court's recognition on...
8 Q Without objection, we'll introduce this as
9 Plaintiff's...
10 DICKEY: Does that include the dates - different
11 sub-lines were added?
12 Q I'll get him to testify to that, Mr. Dickey...
13 which ones were there in 1973, in operation in 1973...
14 A Okay sir, I'll have to give you some.....
15 Now, in - at May 1973 - May 1, 1973, it's a very easy date
16 to remember because that's when we went into operation.
17 And at that particular time of course we had reference of
18 what lines went into operation at that time. The FHA project,
19 the initial project of the authority which included lines from
20 the filter plant south along U.S. 29, and then west along
21 33, to Stanardsville and then a new line in Stanardsville for
22 the high school. Also lines in Locust Lane Sub-division,
23 Hord Sub-division, and a short distance south of Ruckersville,
24 along Route 29, not more than 2,000 feet. That was the
25 system that went into operation at the authority's initial

1 project. Also going into operation at that time was the
2 system's line south from Ruckersville, all the way down to
3 and including Enderly Acres Sub-division....at May 1, 1973.
4 Then on approximately June 24, 1973, Woodridge Sub-division
5 hooked onto the system or became in operation. On September
6 8, 1973, Mountain View Sub-division and on October 18, along
7 U.S. 29 South of Enderly Acres, south of the Corner Store,
8 down to Lake Sapone, in Lake Sapone, and also on that date
9 or near that date Route 607 from the Corner Store east
10 to Greene Meadows, including the Greene Meadows Sub-division
11 along Route 607. And then on November 23, approximately,
12 1973, Quinque Forest Sub-division....began using water.
13 Q How much are you pumping now? The range...
14 A All right...
15 Q Where do you get your water from, I think I
16 asked you?
17 A We get our water from the Rapidan River....for
18 purposes of treating it at the treatment plant, we also have
19 another source of supply - it culminates in chlorinator house
20 at Lydia Church. Then it is fed into the Stanardsville
21 system. The old Stanardsville system and the new system are
22 integrated and intermixed, although the system from Stanards-
23 ville has limitations in service area.
24 Q To the west?
25 A West from Stanardsville - no, I'm sorry, has limita-

1 tions west and also has limitations east too.

2 Q How far?

3 A Well, everything east of Lydia Church of course

4 can only come down the mountain to a certain point, and that

5 point being the - I'm sorry I don't know the hollow down there,

6 but it's before you get to Route 810. At that point the

7 only way we can feed those customers is by gravity down from

8 the mountain.

9 Q That's all however west of...

10 A Stanardsville.

11 Q Stanardsville?

12 A That's correct.

13 Q And then the limitations east of Stanardsville or

14 did you refer to any limitations east of Stanardsville?

15 A Practically speaking, without the authority but

16 with the additional pipeline the town system could feed no

17 farther east than Baugher's Service Station. I'm sorry I don't

18 remember what that route number is, at that intersection.

19 Q That's all right, but you do have - you do have...

20 A I think it's Route 633.....633 or 23, I wasn't

21 sure.

22 COURT: That's 623.....

23 Q Now can you give me - how much are you pumping

24 now?

25 A All right, the plant has a capacity of 200 thousand

1 gallons per day, approximately, that is the plant capacity.
2 On an average we are producing about 45 thousand gallons
3 a day.
4 Q All right, sir.
5 A Or one fifth of...
6 Q Now, Mr. Vivier - I want to get more information
7 but because I'm hurrying to get Mr. Payne on this afternoon,
8 at this point Your Honor I would ask that counsel would
9 cross examine and I reserve the right to recall him.
10 COURT: All right, sir, Mr. Slaughter.....
11 A Mr. Parker, I...
12 Q Do you have something that's related...
13 A I think perhaps it can be, you'll probably want
14 to introduce it at this time. This comes out of a study
15 by Ross & France, LTD .....and Associates, I think...
16 Q Is this a map of the line?
17 A That's correct, a map of their proposed lines
18 at the time, which indicates to some extent existing facilities
19 too. Of course this doesn't go any farther than Ruckers-
20 ville.
21 Q We'll put this in later...
22 COURT: All right....
23 DICKEY: There's no foundation whatsoever, Your Honor,
24 for this.
25 Q I'm not....

1 COURT: You just hold onto that Mr. Vivier...,it
2 may be asked for later. All right, Mr. Slaughter you may
3 cross examine.
4 SLAUGHTER: May it please the Court, of course we
5 are interested in saving time as much as anyone else. Mr.
6 Parker has not only pulled Mr. Evans off the stand subject to
7 recall, to accommodate Mr. Payne, now he's putting on others
8 and letting them off, subject to recall. We are not objecting
9 to the procedure, but we don't - we preserve our cross
10 examination of these witnesses until they have completed
11 their testimony.
12 COURT: All right, if you wish to do that you may
13 do so and it's understood then that you may cross examine
14 these witnesses and have them called for that purpose at
15 another time. And we'll go ahead then with Mr. Payne's
16 testimony or whoever else you...
17 PARKER: May I inquire one further question?
18 COURT: All right.
19 PARKER: How long - the information that you just
20 gave me, Mr. Vivier, how long has that information been avail-
21 able?
22 A Well, of course the last change...
23 PARKER: Apart from the changes but - in other words
24 I understand that the information, the changes were to come
25 along the dates of the change - but how long has the informa-

1 tion in general subject to the changes been available?

2 A Well, the information I guess has been available

3 since May 1973. It was incorporated in some of the exhibits

4 that are displayed here.

5 Q Yes sir. Thank you.

6 COURT: Were you contacted by the Thomas Jefferson

7 Planning District people about your capabilities?

8 A Yes.

9 COURT: All right. All right, sir, you may stand

10 aside.

11 PARKER: Mr. Haney.

12

13 GEORGE R. HANEY, JR., Having been duly sworn, testified

14 as follows:

15

16 DIRECT EXAMINATION

17 BY: Mr. Parker

18 Q Please state your name, age, residence and

19 occupation?

20 A George R. Haney, Jr.. I'm 44 years of age.

21 My occupation is automobile business and I also do some

22 developing and building.

23 Q Where is your place of business, Mr. Haney?

24 A My place of business if on the east end of

25 Stanardsville, the first building outside the corporation limits.

Q And what sort of business did you say it was?

A Automobile.

Q Dealership and repair?

A Yes sir.

Q What sort of dealership?

A I can sell new Fords or sell used cars.

Q Are you connected in any way with the Town of Stanardsville?

A Yes, I have been on the Town Council for approximately about 17 years and five years of that, I've been vice mayor.

Q As such are you familiar with the boundaries of the town?

A Yes I am.

Q Are you also as such familiar with the community of Stanardsville?

A Well, I think so, yes I do.

Q Can you tell me whether or not the community of Stanardsville is contained wholly within the boundaries of the town of Stanardsville?

A Well, the town itself consists of about 216 acres which is made up approximately of about 300 people and I'd say outside the corporation limits, going east, mostly it's quite a few houses or people lives in that section.

Q How about the Childs sub-division?

A About half of its in and half of its out,

Q Yes sir.

A So there's quite a few people live in the vicinity of Stanardsville, outside the corporation limits.

Q Are businesses as well, in addition to yours outside the corporate limits?

A There are some outside the corporation limits.

Q And do they draw their clientele from the town of Stanardsville or from Stanardsville community?

A I'm sure they do, some of them within the town.

Q That's all.

COURT: All right, Mr. Slaughter.

SLAUGHTER: We'll reserve our cross examination.

COURT: All right, sir.

PARKER: Thank you.

COURT: You may stand aside, Mr. Haney, thank you sir.

ROSSER H. PAYNE, JR., having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Parker

Q Would you state your name,age, occupation, residence, place of business for us?

A My name is Rosser H. Payne, Jr. I'm 50 years old. My place of business is at 69 Culpeper Street, Warrenton, Virginia. I reside in Fauquier County, Virginia, at Box 818, and I am a professor of planning at the University of Virginia in Charlottesville.

Q What do you do Mr. Payne?

A Well, I have a consulting business. It engages a public and private sector of work all through the State of Virginia and neighboring states but primarily in Virginia. Public sector work I do comprehensive planning, ordinance review and technical analysis. In the private sector I do design, planning design for sub-divisions, site plans, industrial parks, and so forth. I'm currently completing the comprehensive plan for Madison County just to the north of Greene.

Q How long have you been at this occupation, Mr. Payne?

A This is my 26th year.

Q In that length of time, Mr. Payne, have you served before as a witness, expert witness in court?

A In approximately 165 cases, sir.

Q Thank you. Any question concerning Mr. Payne's qualifications?

DICKEY: Did he answer 165 questions concerning zoning, I didn't hear the last question?

A 165 cases, sir, in 26 years.

DICKEY: I didn't know whether you said concerning zoning or ...

A Concerning zoning and planning sir.

Q Mr. Payne have you heard the testimony to this point in this case?

A Yes sir I have.

Q Would you relate for the Court please from a planning point of view what studies are usually performed during the preparation of a zoning ordinance and map?

A All right, sir. Studies are usually prepared in dealing with zoning ordinances and plans and most of those have been covered by Mr. Evans, but to list them quickly we have the 1970 census of housing, the projections and economic base analysis for Greene County prepared by the State Division of Planning and Community Affairs, Tayloe-Murphy Institute. The economic data summary for Greene County for 1972. The seven and a half minute map series, U.S. topographic quadrangles which have been introduced. The Greene County geological map , Virginia Division of Mineral Resources - I do not believe its been discussed, but it's probably been used in - and is certainly available. The surface waters of Greene County which is a geological survey publication, paper 1622. The critical.....environmental areas study in Virginia, prepared by the Division of State Planning, Community Affairs. The

1 water and sewer services for Greene County - there were two.
2 The original was 1963, the tri-county study by Martin Clifford
3 Associates, of Fredericksburg,Virginia, for Orange, Madison
4 and Greene Counties. And 1973, '74, the water quality
5 study prepared by Hayes, Sea and Mattern
6 for the Thomas Jefferson Planning District. The Shenandoah
7 National Park map in detail, and then of course getting into
8 the work that's been covered already today.
9 Q Excuse me just a moment, do you have the - the
10 comprehensive plan, that is in record, you've studied that
11 have you not?
12 A Yes, this is a document that I have used for
13 all of my research.
14 Q And the associatesyou've just mentioned, as
15 I think I asked Mr. Evans, are in the bibliography to that
16 comprehensive plan?
17 A Either that or the research paper, yes.
18 Q Do you have - let me come back to another.....
19 you don't know when those particular studies were conducted
20 except with respect to the comprehensive plan is that correct?
21 A That is correct, sir.
22 Q What is the purpose of using studies such as
23 that in planning?
24 A To establish the nature of the - the basis for
25 zoning and planning. In other words a particular jurisdiction

has to be analyzed from the point of view of its characteristics, physical, economic, and social, in order to determine the characteristics necessary to recognize in preparing zoning. I understand that there was no comprehensive plan prepared or available at the time the ordinance - the interim ordinance was discussed.

Q Mr. Payne, what sort of categories are studied in these studies?

A Well, in dealing - the first and foremost element in getting the physical characteristics is to do the existing land use map.

Q All right.

A And that means to categorize, tabulate, analyze and map the entire existing land use situation as it exists at the time of the study.

Q Why is that done Mr. Payne?

A Well, the purpose is to identify and give protection to the existing character of the land, to analyze the trends of growth and change, to locate trends of growth - the public facilities, private developments. terrain notations, natural resources, slopes, soils, geology, national parks, river basins, flood plains and those things which would have to be identified and mapped in the form of a zoning ordinance.

Q Would one be concerned in making such studies with the amount of the commercial or industrial as opposed to

1 residential use in the county?

2 A Yes. Quite obviously commercial uses, residential
3 uses and industrial uses are all existing land uses in one
4 form or another. It's imperative to know what they are and
5 where they are in order that they can be adequately provided
6 for in the zoning.

7 Q How about transportation, Mr. Payne?

8 A Transportation is a consideration with regard to
9 public facilities, utilities and location of developments
10 of all type.

11 Q And you just mentioned utilities?

12 A That's correct.

13 Q I show you - well it's another copy of the
14 interim zoning ordinance of Greene County, Virginia, which
15 is exhibit 3....exhibit 3.

16 COURT: I believe the map is 3-A.

17 Q The map is 3-A.....This is 3-A the map that
18 goes with the ordinance...

19 A Yes sir.

20 Q Mr. Payne, have you examined that ordinance?

21 A Yes I have.

22 Q Can you find in that ordinance indications that
23 it has taken into account the features of Greene County in the
24 categories you have just named, and testified to earlier by
25 Mr. Evans?

A No sir. The existing land use map so well described by Mr. Evans is located on page 4 of the Greene County research plan document, I found no relationship in the interim ordinance with that land useage identified in the land use map.

Q Can you explain your answer?

A Yes, the interim ordinance quite clearly established one zone for the entire 153 square miles of the County, and looking at the map, the entire map is classified as the same thing. But if a comparison was made between the adopted interim zoning map of March 2, 1974, with the existing land use map of January 15, 1974, it's quite obvious that the existing conditions as listed on the map, land use, were not considered with regard to the zoning map, with the exception of any lot in agricultural or conservation areas of two areas or more lot size. Everything else was either non-conforming or without a designation on the existing map, was subject of a special permit application.

Q In particular with respect to commercial uses, Mr. Payne, under the ordinance as you understand it, are any commercial uses permitted as a matter of right? Any new commercial uses?

A No sir, all commercial, industrial, detached - rather attached duplex homes, industrial, are not permitted as a matter of right.

1 Q Under what circumstances do you understand that
2 they are permitted under the ordinance?
3 A Well, they are not defined at all in the defini-
4 tion section under the article 2, rural residential district,
5 when they talk about special permit uses.
6 Q The words themselves are not defined?
7 A No, the only reference is under section 2.2-3,
8 it says all other uses. Then in looking for a definition
9 with regard to commercial, multi-family, industrial, etc.
10 or duplex housing or attached housing, you next have to go
11 to 5.3-2 for determining how that may be achieved. And that
12 comes under the special use permit section of the ordinance
13 in which the Board of Supervisors delegated the authority
14 for the administration of land use with the exception of
15 two acre lots to the Board of Zoning Appeals. And in section
16 5.3-2, it sets a standard by which conditions may be imposed
17 under a special use permit including anything that is decided
18 as being deemed necessary in the public interest in the opinion
19 of the Board of Zoning Appeals, as well as the limitation of
20 time for which a permit may be valid. In that case with
21 regard to financing or construction of a commercial or indus-
22 trial use it would be extremely difficult in my opinion to
23 plan for a permanent commercial or industrial development any-
24 where in the County.
25 Q Why sir is that your opinion?

A Well, simply because sir in the purchase of property the construction of a commercial facility, a duplex residential facility and attached residential facility and industrial facility, you would be risking a great amount of investment and time and then the time limit which may very affectively put you out of business. There's no protective clause in this ordinance for that kind of ...

Q In your experience as a planner is this a - how would you characterize the standards under which a - the special use permit would be granted?

A Well, it would be extremely difficult to do Mr. Parker, because the official zoning map of the County shows nothing except that everything is two acres in lot size - there is no location or relationship of the intent of the Board with regard to location of facilities to serve the population. The only possible relationship would be in the existing land use map which is not a matter - apparently not a matter of legislative requirement, it's simply a guide.

Q Thank you sir, just a moment. Have you had occasion to review the exhibit of the present Greene County zoning ordinance?

A Yes, I reviewed that this morning.

Q And that was - the map that....

A I believe it's under 5...

REPORTER: Exhibit 5.....

1 Q Exhibit 5.....this is the map...

2 A Yes sir.

3 Q Mr. Payne, how many different geographic districts

4 show on this map?

5 A There are six Greene County zoning categories.

6 There's one identification of incorporated areas and an

7 eighth identification which is the Shenandoah National Park.

8 Q And of those classifications how many - it's

9 a little difficult to tell in the western part of the County,

10 but how many separate color zones are there in the - shown

11 on the map?

12 A There appear to be four.....the Park area is

13 assigned a color, that's black and white.....the red indicates

14 the business areas in different catagories.....

15 the orange color indicates single family dwellings, the

16 red color is the conservation .... and the tree pattern in black

17 and white is the National Park area.

18 Q What is the cross pattern indicate?

19 A That indicates your flood plain areas within the

20 County.

21 Q What is the flood plain?

22 A The flood plain is an area

23 (inaudible because map is being rattled while talking)

24 and may be mapped by engineering methods or soils methods.

25 I do not know which they used in Greene County.

Q Would you excuse me, Your Honor..... Mr. Payne, does this ordinance, the present Greene County ordinance reflect input of planning data?

A Yes sir, it most certainly does.

Q In what way does it reflect input of planning data?

A It establishes eight different districts, it goes into much detail and properly so....establishes a conservation district, called C-1, with five acre limit. An agricultural district called A-1 with a two acre limit. It establishes two residential districts with cluster alternate standards. The R-1 district is single family residential, which permits units ranging between 10 thousand to 30 thousand square feet, depending on whether sewer and water is available. The R-2 category allows for single family detached development at 10 thousand square foot lots, with 8 thousand square feet available in cluster alternate. It allows single family attached units, either duplex or townhouses, presumably six dwelling units per acre, multi-family apartments eight units per acre. It then goes in and categorizes business zoning as general business, B-1, highway business B-2, industrial areas M-1, flood plain zoning abbreviated FP. This ordinance, the new ordinance does reflect - the new ordinance does reflect the detailed studies conducted by Mr. Evans and his staff as he described earlier today.

Q Mr. Payne does - to what extent does the interim

1 zoning ordinance make provision for future development in
2 the County?
3 A Graphically it makes no provisions for it. The
4 map shows nothing. The ordinance itself would presume to
5 allow somebody to do something somewhere if he could get a use
6 permit without a time limit. It simply acknowledges the fact
7 that there is development in the County and lists those lots
8 which are developed as being excluded. Anything else regardless
9 of use, type, location, character, slope, soil, flood plain,
10 location is simply two acres for the entire 153 square miles.
11 Q Mr. Payne is it appropriate from a planning point of
12 view ...I withdraw that.....what is the purpose of drawing lines
13 on a map in zoning?
14 A To identify the types of uses that are permissible
15 under the ordinance and the related standards thereto.
16 Q Does it have anything to do with segregation of
17 those uses?
18 A Generally in a transitional nature or identifying
19 uses, vis-a-vis industrial is separated from commercial
20 or apartments are separated from single family residential.
21 Q Mr. Payne from a planning point of view what is
22 the relationship of a two acre requisite lot size outside of
23 the Town of Stanardsville for residential purposes and a
24 two acre residential - or two acre lot size, if anybody should
25 possibly require it, in Devil's Ditch?

1 A Well, according to the descriptions of the terrain
2 its slope in the area, it would not be relevant at all and
3 of course the permanent zoning ordinance states that it isn't
4 relevant. They placed a much larger lot size in that area
5 because of the terrain and character of the area.
6 Q That's the permanent ordinance?
7 A That's correct sir.
8 Q Will the Court excuse me just a moment, please sir.
9 Does the present zoning ordinance make provision for future
10 development in Greene County?
11 A Yes sir it does.
12 Q Mr. Payne I show you Plaintiff's Exhibit Number
13 25, do you recognize that?
14 A Yes sir, that's a vertical aerial photograph taken
15 over the general area of Ruckersville with the intersection of
16 29 north and south and 33 east and west, located approximately
17 in the center of the photograph.
18 Q Mr. Payne are you also familiar with Plaintiff's
19 Exhibit 2, the plan for a development known as Greenetown Village
20 near Ruckersville, Virginia?
21 A Yes sir, in general, one prepared by James Harris,
22 certified land surveyor.
23 Q Can you describe from this aerial photograph please
24 sir the setting in which that plan was supposed to be set?
25 A Yes sir, this aerial photograph was taken to show

1 the location of existing sub-divisions and industrial and
2 commercial development in the Ruckersville area. The general
3 radius of that is 1 mile from the intersection. The westerly
4 limit along Route 33 was located at the west boundary of what
5 is known as Locust Lane Sub-division. That has been previously
6 testified to as a half acre sub-division. The property for
7 which that plan is prepared is located to the east of that
8 towards Ruckersville. It identifies the fire station and
9 community center, the location of the junkyard, 600 feet east
10 of the subject property. It locates the recreation center
11 and a second sub-division to the south of the fire station,
12 and then the various commercial and industrial enterprises
13 along Route 29 north and south. The northerly limit is the
14 truck stop and the southerly limit is the existing junkyard.
15 This photograph does not show the Herndon Chevrolet Agency
16 now under construction. The easterly limit is approximately
17 a thousand feet east of the intersection of 29 and 33, and
18 covers the school and the church in that area, and vacant land.
19 The residue property is either unused or in some form of
20 agriculture.
21 Q Mr. Payne do you know anything about the lines
22 that have been placed on this exhibit?
23 A Yes, the lines were put here by my firm.
24 Q What do the lines represent?
25 A They are the boundaries of the various service avail-

1 ability in that area. They are to show the location of the
2 8 inch water line coming down 29 from the north and going west
3 along Route 33 toward Stanardsville. The boundaries represent
4 the location of existing sub-divisions, industrial-business
5 areas, recreational and public areas and the Rapidan Service
6 Authority trunk line.
7 Q Mr. Payne could you identify any characteristics
8 of that area which would make it suitable for the plan
9 presented by the plaintiff in exhibit 2?
10 A Well, its been testified to in the existing land
11 use the land use map, which is illustrated as I stated before
12 on page 4 of the report, shows major growth areas and the
13 heaviest concentration for the existing housing units, commerce
14 and industry appear on that map, dated January 15, 1974, at
15 Ruckersville, Stanardsville and a place called Corner Store
16 on 29 South of this area. The examination of the land use
17 map would show that that's the greatest concentration of single
18 family residential units and commerce and industry in the
19 County.
20 Q Mr. Payne what facilities or factors are there
21 which would make - which would have led to that growth at the
22 time that picture was taken?
23 A Well, two things primarily - the fact that the land
24 use pattern in the commercial and residential areas has been
25 established for a number of years. Three sub-divisions were

1 built in the immediate area, public facilities have been built
2 including the fire station, school, a church and a cemetery.
3 Related to that there's been a commercial activity in commercial
4 area and what I think would stimulate further growth was two
5 major factors, and that is the fact that both Route 29 and
6 Route 33 are arterial State highways, major crossroads. And
7 that there is a county water service line there which is
8 part of their service facility to serve these areas. It's
9 not-those conditions are not conducive to maintaining agricul-
10 tural growth.
11 Q They are conducive to what kind of growth?
12 A Residential, commercial, industrial and community
13 growth of all types. The character of that area I believe
14 is well established.
15 Q As that?
16 A As that.
17 Q Mr. Payne in your opinion as a planner is it
18 appropriate to classify an area such as you've just described
19 in a zone with the same applicable regulations as Devil's
20 Ditch?
21 A No sir, they are not comparable at all.
22 Q Without going to such extremes is it appropriate
23 to classify an area such as you've just described appearing on
24 the plat there as of the same character as the areas to the -
25 along the northern boundary line of Greene County, the north-

1 eastern boundary line of Greene County that you heard testimony
2 about earlier?
3 A No sir, that's the Rapidan River basin, that's
4 classified as a critical environmental area of the State.
5 And the uses in that area are primarily open space and agri-
6 cultural nature. There's no relationship either to the
7 water and sewer system or the transportation network or sub-
8 divisions.
9 COURT: When was that done Mr. Payne?
10 A The...what is that?
11 COURT: Classification of the Rapidan basin by the
12 State?
13 A I have the book here sir. If I may have it please...
14 the critical environment areas.....this was prepared sir at
15 the direction of the Legislature, by the State Division of
16 Planning and Community Affairs. This is the book that - it's
17 called Critical Environmental Areas, and the applicable page
18 and paragraph number is planning district 10, the Thomas Jefferson
19 Planning District, and it's shown on the map on the preceding
20 page, 39. It's identified as the Rapidan River area...
21 COURT: What's the date of publication of that?
22 A December 1972.
23 COURT: All right. Go ahead, sir.
24 Q I'm sorry you gave me the page number, Mr. Payne....
25 DICKEY: Mr. Parker, that's one of the things you got

from Thomas Jefferson Planning, introduced into evidence....

Q Just the page.....we'll give it back..... under the same circumstances...

A The map is on page 38 and the textural description is on page 41.

Q Your Honor, is there an objection to introducing those two pages in evidence, gentlemen? Rather than the whole book. There may be- Mr. Payne is there discussion in the book generally relating to that, other than just those pages?

A Just on those pages.

DICKEY: Again, as long as we don't use the originals...

COURT: It will be admitted then for those two pages with the stipulation that Mr. Parker will reproduce them and the original will be withdrawn.

PARKER: That is the.....

The map was marked and received into evidence as Plaintiff's Exhibit Number ~~38~~ 38-42.

The descriptive page was marked and received into evidence as Plaintiff's Exhibit Number ~~41~~ 39-42.

Q That's all the questions I have sir.

COURT: All right, Mr. Slaughter.

1 PARKER: Your Honor, I would point out that I have
2 not quite used up.....
3 COURT: Yes, I'm keeping track of it.
4
5 CROSS EXAMINATION
6 By: Mr. Slaughter
7 Q If the Court please could we ask the Court
8 properly for a five minute recess with the understanding
9 that we will not go past five o'clock.....
10 COURT: All right sir, it sounds like a very fine
11 idea. We'll recess for five minutes. Mr. Payne you may
12 step aside and be available in five minutes.
13
14 (Recess)
15
16 COURT: All right Mr. Slaughter.
17 Q Mr. Payne, I'm certain we'll be able to complete
18 it all within the allotted time, but just a few questions.
19 It's certainly fair to say that Greene County has been
20 historically rural isn't that correct?
21 A I think that's correct.
22 Q I believe you testified before in a similar case...
23 I believe it is your understanding that while in some respects
24 transition into suburban has taken place it certainly
25 wouldn't be characterized for example as an indus -

1 trial county?

2 A Not at all sir.

3 Q Nor commercial county, as a matter of fact

4 it lacks may primary commercial type facilities does it not?

5 A That's correct.

6 Q The people have to go to Charlottesville ...

7 A It needs more commercial facilities, sir.

8 Q Isn't it also true that in addition to being a

9 rural county most of the habitation is single family is that

10 not correct?

11 A Well, sir, there are a lot of mobile homes if

12 you categorize those as single family.

13 Q Yes - most of them are single family, not more than

14 one family in them. Now Mr. Payne-if I can get what I think

15 ended up as Exhibit 25, the aerial photograph.... I show you

16 Plaintiff's Exhibit 25, which is the aerial photograph of the

17 Ruckersville area, just so the Court and the record might

18 reflect the photograph appears to have been cut into pieces,

19 so what is the reason for that?

20 A Those are 9 x 9 vertical aerial photographs,

21 Your Honor, that were taken as six thousand feet with a 6 inch

22 photoletic.....camera, with a mapping airplane. They

23 are standard frame size, 9 x 9 exposures. Those were cut and

24 mosiaced together because they had not been centered.

25 Those photographs overlap 55 percent forward and 20 percent

1 sideways.

2 COURT: It's really a composite map rather than

3 one single photograph, I take it?

4 A That's correct sir.

5 Q And it's really fair to say that it's more accurate

6 than - as a map as depicted, as clear depiction of the area

7 than a single photograph?

8 A Oh yes. The airplane was lower, the camera was

9 much clear at that altitude than a single photograph - the

10 plane would have had to have been at least 15 thousand feet.

11 Q Now Mr. Payne I notice the area toward the

12 lower center of the photograph shows the intersection of

13 two black lines. I believe it's your testimony that that

14 is - they were the main line of the Rivanna - Rapidan Service

15 Authority, main line that goes to the Rapidan River up to

16 Stanardsville, is that correct?

17 A That's correct.

18 Q Now, that shows - that intersection shows the inter-

19 section of Route 29 and Route 33 does it not?

20 A Yes sir.

21 Q And that is the area-that is the area that to the

22 rather casual traveler, travelling 33 and 29 would be considered

23 Ruckersville, is that not correct?

24 A That's the center of the area, sir.

25 Q I see. Now, I notice that you don't show - in listen-

1 ing to your testimony, the other line of the Rapidan Water
2 and Sewer Authority on this map?
3 A No sir. The lines that are shown on there, the
4 only line that we plated on that was the main line from the
5 intake at the Rapidan Bridge, coming to the center and west of
6 Stanardsville. The reason for that was that is the area
7 on which these westerly sub-divisions including the plaintiff's
8 property is located - here.
9 Q But in fact as you've heard the testimony there are
10 other lines, 6 inch lines, going east across Route 29,
11 south down 29 and servicing other sub-divisions? Is that
12 not correct?
13 A That's correct sir.
14 Q Now, you mentioned that the intersection of these
15 two black lines, which are used primarily for identification,
16 are - let's say the intersection of 33 and Route 29 is the
17 center of the Ruckersville area, is that correct?
18 A Generally speaking, yes sir.
19 Q And yet I noted that on this map there are
20 broken lines around an area, which describes
21 the perimeter which I understand from you was approximately a
22 mile in radius is that correct?
23 A Approximately that sir. We took into account,
24 when we drew that perimeter, we attempted to take in the limits of
25 the industrial and commercial expansion north and south, the exist-

1 ing facilities to the east, taking into account the distance
2 from water service - we didn't know how far east it would go.
3 Adding the existence of Locust Lane Sub-division, which is
4 a suburban type sub-division and is not a rural sub-division.
5 It's suburban in nature and it's located adjacent to the
6 property in question.
7 Q Now, as is demonstrated on this plat or on this
8 aerial map, your - in effect 29 and 33 is not the center of
9 the area that you've described, is it?
10 A It may be off center by as much as a thousand
11 feet.
12 Q But in fact isn't it closer - doesn't it - going
13 from approximately south to north, is it only approximately
14 a thousand or one third of the way across your area? I realize
15 your area is encircled and I guess area is the best way
16 to describe it - across the area that you've described in your
17 outermost perimeter?
18 A That's correct.
19 Q And in fact your photograph doesn't show the
20 area as far east, west and south on this map as it does north,
21 does it?
22 A It does not show an extended area to the east
23 as far as it does to the west, along Route 33, north-west.
24 Again I point out to you the existing sub-division there which
25 I could not ignore.

1 Q But isn't it true Mr. Payne that as this photo-
2 graph very accurately points out, there is a considerable
3 area of farm land between Route 29 and the eastern end of the
4 property in question, which for purposes of identification
5 we'll call Greenetown?
6 A Yes sir, there's also two stores and a junkyard
7 there.
8 Q All right, but those two stores and a junkyard
9 are on or adjacent to Route 33 are they not?
10 A That's correct.
11 Q And isn't it fair to say - let me be sure that
12 the record reflects it correctly - it's difficult to describe
13 for the record, but going northwest on 33, 33 is described
14 by the main line, that dark line which is the pipeline for
15 the Rapidan Service Authority, and where it joins a smaller
16 dotted line, I gather is an area which from the point of view
17 of your description encompasses both Locust Lane Sub-division
18 and Greenetown Sub-division, is that correct?
19 A That's correct, Mr. Slaughter. The reason we showed
20 that, if you'll recall, that this photograph is a result -
21 its been dealing with an existing sub-division which was platted
22 and partially constructed. And another sub-division which was
23 preliminarily approved and in the preliminary plat stage, It
24 was not approved in the final plat stage. The lines were drawn
25 to show the similarities between the two as they reached the

1 same stage.

2 Q Well, in other words you - what you were saying
3 then is that Locust Lane and Greenetown would have been in-
4 dividual cluster or individual neighborhoods, is that what..

5 A They would have been - it would have been a closing
6 in between an existing suburban sub-division and a commercial-
7 industrial part of Ruckersville. The natural progression
8 with water being available to the east and north would be
9 from Locust Lane east in terms of land development. What I'm
10 saying is the potential for, in my opinion as a planner, for
11 accurate and proper requirement of..... ....
12 operations to the east of this area would be much more diffi-
13 cult in terms of utilization of the land, given the land use
14 map, but anywhere outside of this area in the remaining
15 150 square miles of the county.....There are only three areas
16 similar to this, Stanardsville, Ruckersville, and Corner
17 Store, which is just south on 29. These are the only growth
18 areas that were identified.

19 Q We have one problem and it's purely a logistical
20 one and that is nothing in Southeast United States runs north,
21 runs north and south and east and west. We think and maybe
22 that's the best way to describe it,that Route 33 is east and
23 west here - it runs almost due north as it goes past the
24 Locust Lane Sub-division, and so as you are describing east
25 I'm sure it will be difficult for anyone reading the record

1 to understand what you are talking about...so perhaps we can
2 recapitulate.....perhaps I can recapitulate. As I understand
3 it you are saying that you marked in the smaller dotted
4 lines, Locust Lane and Greenetown Sub-divisions with the idea
5 that that would be a neighborhood unit in effect?
6 A A part of Ruckersville.
7 Q And then you are saying that because of the size
8 of that neighborhood that that would make it a part of
9 Ruckersville, despite the agricultural area lines still within
10 your described area, between there and Route 29?
11 A Certainly sir, that's within the water service
12 area and within the commercial service area and within the
13 school service area, within the fire station service area,
14 within the community service area. It's very, very close -
15 in proximity to all those services, which is much more demanded
16 by people than agricultural use.
17 Q Now you have described in that area a-two functions..
18 F is the fire station?
19 A The fire station and community center.
20 Q And then you've got a little - I guess maybe a
21 bowling pen type area, sort of half way in between 29 and Locust
22 Lane and that you've described as two stores and a junkyard?
23 A Yes, two stores on the front and a junkyard at
24 the rear.
25 Q Isn't it true Mr. Payne just going back that

1 Locust Lane is now completely surrounded by agricultural
2 uses?
3 A At the present time it's completely surrounded
4 by either agricultural uses or vacant land.
5 Q And isn't it true that it's approximately two-
6 thirds of a mile from there to Ruckersville?
7 A I'd say that's about right, sir.
8 Q And in between there and Ruckersville aside from
9 some residential development as you get into Ruckersville
10 along 33, there is a fire station, two stores and a junkyard
11 lying approximately half way, is that correct?
12 A Yes sir.
13 Q Now, in your planning of the Ruckersville, what
14 you described as the Ruckersville community, Mr. Payne, would
15 you go out as far on the other - in the other direction
16 as you have going northwest on 33?
17 A No sir, I would recognize the characteristics
18 of the existing growth and development as identified on the
19 land use map and I would encircle those areas within an area
20 of public utilities service and existing land uses and that
21 would be my growth area.
22 Q Your growth area would be from the north and west,
23 but not for the south, east - well, to the north-west along
24 33, but not in the other direction?
25 A Well, the only way that I would go in the other

1 direction from my own point of view as a planner, is that if
2 the County planned extensive growth patterns and if there
3 were existing sub-divisions to the south-east along 33.
4 I didn't find that. The findings that I have in the Corner
5 Store area, the Ruckersville area, and Locust Lane Sub-
6 division and two other sub-divisions were west of 29...as
7 well as the development - developability map which
8 shows this land use suitability clearly shows that
9 the best land in the county for agriculture or developement lies closely parallel on Route 29 North. Very
10 little of that goes east of 29, a very small amount. The
11 largest amount lies west of 29, all the way to Stanardsville.
12 Q Either agricultural or residential?
13 A That's correct.
14 Q You're saying that at least up to the Locust
15 Lane Sub-division which happens to encompass Bennett Matthews's
16 property , it should be residential rather than agricultural?
17 A That's my opinion.
18 Q But it is a question of opinion? Is that
19 correct?
20 A Yes, no doubt of that.
21 Q Right, and in looking at Ruckersville isn't it
22 true that additional and particularly the substantial additional
23 population which would be put in Ruckersville would have an
24 affect on increasing the size of the Ruckersville cluster over-
25 all? Compared with commercial uses and other uses?

1 A Well, generally speaking it should make it a
2 very active community if it's developed in the way it's
3 started - it can be consolidated and clusters in all
4 four quadrants, that's logical.
5 Q But in all four quadrants it would straddle
6 both 33, which as you've pointed out is a major arterial
7 highway, and 29, which is a major arterial highway, is that
8 not correct?
9 A That's correct, existing land use patterns have
10 already started that. I don't believe it's possible to
11 accept one side and
12 Q Isn't it true Mr. Payne that 33 west of Ruckers-
13 ville has been put on the State arterial system and has
14 been slated, if the State ever has the funds, to be four lane?
15 A That's correct. The original proposal was
16 1975, but I understand its been delayed.
17 Q But not east of 33? Not east of 29?
18 A That's correct.
19 Q And thus 33 east of 29 as a cluster would not be
20 separated by a four lane highway would it?
21 A No, it would not.
22 Q But it would be east to west, if the plans are
23 carried out?
24 A That's correct.
25 Q Mr. Payne, one question I didn't ask you and I won't

1 take the time to get it back but.....
2 as Mr. Parker pointed out the top of this map is very nearly
3 to Quinque is it not?
4 A Close, yes sir, that's right.
5 Q Mr. Payne wouldn't a substantial growth of
6 Ruckersville to the west - to the north-west of 29 as well as
7 the south-east result in significantly congestion to that
8 intersection?
9 A I think it might be fair to say, sir, without
10 having done any studies that the flow of movement - the timing
11 involved with any growth at all - number one, in Greene County
12 and number two, any increase in traffic on 29 or 33 as to
13 traffic is going to increase congestion - I guess the correct
14 answer is I don't know the amount, degree or what the highway
15 department would do about it.
16 Q But in fact with any increase in growth, the
17 pressure would become increasingly great to do something about
18 it wouldn't that be correct?
19 A At some point in time sir yes.
20 Q And isn't it true that the higher the density
21 around a sub-division the more concentrated congestion you
22 have?
23 A Well, that's controllable by traffic design and
24 street design. And you have an ordinance which can handle
25 that. The roads, the capacity of Route 29 and 33 have not been

at issue as far as I can remember in previous testimony - neither one of them have got capacity or near it. So off-site or interior streets are simply a function of sub-division design. If the streets are properly built it should be real simple - no circulation problem.

Q But without question unless overpasses or under-passes were built, there's no way for anyone to get to the south-east side of North 29 to the north-west side of 29 without going across it?

A Oh yes, that's true everywhere sir - you have to cross these highways, no matter what happens. I would again say, Mr. Slaughter, that the County has established a growth pattern at Ruckersville, If the roads are there some of the sub-divisions will use them. Now it's a design function you can't eliminate those uses, and you can't simply make a statement in my opinion now that they're there they might be a problem and nothing else should happen. That's not going to be the case. The design of the sub-divisions and the design of the cross-overs simply have to be well done. It's done everyday in this State and everywhere where there are four lane highways - it has to be done with care.

Q But those cross-overs of course involve considerable amount of planning and expense do they not?

A They certainly do sir.

Q And the need for them can certainly be minimized

1 if not done away with completely by planning at a stage before
2 congestion develops, is that not correct?
3 A Well, I'm trying to fathom that question in
4 terms of how the existing development pattern can be
5 equated with future growth.
6 Q Well, you are - I'm not trying to be mysterious
7 Mr. Payne.... you have seen the plan and the zoning ordinance
8 that was passed based on the plan, which provides for a
9 residential cluster to south-east of Ruckersville and
10 business use to the west - the idea of concentrated uses
11 on either side of the highway, but minimizing the amount of
12 necessity for crossing the highway. And of course you have
13 testified that there are plans - the current zoning ordinance
14 reflects the plan and the plan results a great deal of
15 study...
16 A That's right.
17 Q That's all I'm referring to.
18 A Yes, that's very true, but I am simply saying
19 that you can't ignore the existence of three sub-divisions
20 that are west or the community facilities that are there.
21 They must be looked at continually and they will change and
22 grow. I understand that Locust Lane is not fully developed;
23 if I heard the sub-division analysis correctly there are
24 55 lots platted, there are 32 built - it's a half acre sub-
25 division and it still has room to grow. So I find it difficult

1 to say that a half acre sub-division called Locust Lane
2 can develop adjacent to this property and this property
3 that's a much better agricultural use - when it is closer in
4 fact to the community services than Locust Lane. It's
5 a difficult thing for me to say that that is.....
6 Q Well, let me just explore Locust Lane - you
7 know of course that Locust Lane was developed before there
8 was any planning in Greene County at all?
9 A Yes I'm aware of it.
10 Q And that it's a one street sub-division, with
11 houses on either side, you are simply going up a narrow lane/ instead of a regular subdivision
12 A Yes sir, I'm aware of that, except that the owner
13 still has - has today and will have tomorrow the exclusive
14 privilege of building 32 more units.
15 Q But of course anyone who has plated a sub-division
16 before planning in Greene County and before this ordinance
17 still has the right to build on lots for his own use?
18 A That's true sir, but if you remember you and I
19 had a rather strong disagreement before - Mr. Matthews received
20 the normal expectations of an approved preliminary plat...
21 Q I would move that that be stricken. It is not
22 responsive to - and certainly not within the...
23 COURT: I think we're getting into an area which....
24 it is getting argumentative in the first place Mr. Slaughter.
25 I'm not sure whether you are getting into an area that the witness

1 is not going to be able to be more responsive. I will con-
2 sider the last question as answered really as being irrelevant
3 to the issues which have previously been discussed. It may
4 be very much apparent to counsel and the witness but for
5 this case we've got to exclude it. All right, sir you
6 all keep that in mind.
7 A I understand sir.
8 Q I think we can certainly agree on this, that
9 one of the major themes of planning is to avoid strip
10 development along major arterial routes, is that not
11 correct?
12 A I think that is a fair statement.....Generally
13 speaking with regard to all the roads in Greene County.
14 Q And based on your theory of the plan that
15 has been developed and the permanent zoning ordinance based
16 on it, has been.....there is a cluster plan is -
17 which is generally sound is that not correct?
18 A I believe that's correct.
19 Q And the difference between basically your
20 position and the position of the - of Mr. Evans and Mr.
21 Abbott, the Thomas Jefferson Planning District Commission -
22 the development plan, is that you see Ruckersville as a
23 larger and different type cluster from the way they see
24 it, is that not correct?
25 A I think that's correct.

Q Now I notice that Mr. Matthews has provided for business at the - on the front of his proposed sub-division, he's got an area there for business. Would you think of a business portion of Mr. Matthews' sub-division as strengthening the Ruckersville cluster or simply stringing out businesses along Route 33 from Ruckersville to Stanardsville?

A Had it not been for the location of the fire station and community hall and the 2 other uses down the road, I would say that it would further create a strip, but in view of what is there now and the proximity to it - if it stands the test of the zoning case on commercial uses I think it would have to stand or fall on its merits. I didn't study this from the point of view of commercial use.

Q But as you and Mr. Parker both pointed out, in actual fact the sub-division is approximately half way to Quinque which is another cluster, is that correct?

A Yes, that's a smaller one and this is - the westerly limit of Locust Dale at Midway is just probably a mile east of Quinque....a mile south-east.

Q Would you indulge me just a moment, Your Honor? Mr. Payne how long does it take to develop a comprehensive plan as a general rule, go through the entire planning process which has been described?

A Well, in my own experience in Virginia with regard

to the initial analysis, review of the analysis, preparation of the plan and its subsequent adoption - anywhere from 18 months to two years.

Q It can take longer than that, can it not?

A Oh yes...it can.

Q And it would be more difficult for it if you were working in a county that didn't have a tax map..... is this correct?

A Much more sir.

Q But it is really very difficult to - if not impossible to do one in less than two years isn't that right?

A Well, yes, relatively, given the budget, personnel and undivided time and attention of the local commission - board, it can be done in less time.

Q But I believe the one in Madison has taken what - roughly two years?

A Just about that - it will be two years in January.

Q But as a result of the planning which has been done, as I understand it, it's your judgment the permanent zoning ordinance is a well considered zoning ordinance for Greene County?

A Yes, it reflects definitely the very fine studies done by TJPD. And I think the permanent ordinance - I don't know

1 the details of it, obviously is from a critical analysis
2 based on their findings. My testimony is that the interim
3 ordinance should also have been based on more findings than
4 it was.
5 Q No further questions Your Honor.
6 COURT: All right, Mr. Parker.
7 PARKER: No questions, sir.
8 COURT: All right, we'll leave it there, Mr. Payne.
9 I take it that you will be recalled at the election of
10 counsel later but as far as testimony today that concludes
11 it.
12 PARKER: Yes sir, and if Mr. Payne could be excused
13 until Friday morning...
14 COURT: All right, sir.
15 PARKER: And then if the case does not conclude on
16 Friday, I will call Mr. Payne....it may be a question of
17 rebuttal.
18 COURT: I hope you will wind up your case before
19 that time and - of course that's up to you as to whether you
20 will rest without him. I see no reason why - we will be able
21 to stipulate or agree at this time that your case will remain
22 open - it seems to me you all have covered most of it - there
23 may be something that Mr. Payne can come back and add to
24 rebuttal...
25 PARKER: Yes sir.

1 COURT: That will be the appropriate place, if we
2 get that far..... .depending on how much evidence the
3 County has.
4 PARKER: Well, if we end up the day fairly late on
5 Thursday I would assume it would be no hardship on the Court
6 or anyone else to take a portion Friday.
7 COURT: All right, anything else before we adjourn
8 for the day?
9 DICKEY: Your Honor the testimony from the stand of
10 the three witnesses who have been not cross examined yet....
11 COURT: I understood they recognized to reappear
12 here tomorrow....the witnesses who were called whose testimony
13 was not completed ....Mr. Evans, Mr. Vivier, and Mr.....
14 Murphy...
15 DICKEY: Mr. Murphy sir was cross examined.
16 COURT: All right, Mr. Murphy is not required...
17 PARKER: But he - I think I may have - I can always
18 get him back.....Your Honor, the - we have all these documents
19 and so forth out in here - if the courthouse is going to be
20 locked tonight, I wonder if we could just .....
21 COURT: Is there any reason why it couldn't be locked
22 and.....all right sir with the understanding then that
23 everything may be left in its place. The Sheriff will secure
24 the courthouse and no other use will be made of it until we
25 open tomorrow morning. Can we start this case at 9:30 tomorrow

morning?

DICKEY: Yes sir.

PARKER: No reason why not.

REPORTER: Judge Berry, we have a felony at 9:30.

COURT: Oh that's right.....the court will be in session but we won't be able to start the case....10 o'clock will.....

SLAUGHTER: May it please the Court....

COURT: Mr. Payne, do you have a question?

PAYNE: Only sir to let Your Honor know that I don't want to appear to have inconvenienced the Court by my absence tomorrow...

COURT: I was putting pressure on counsel, not you Mr. Payne.

PAYNE: Thank you sir.

COURT: They are used to the Court putting pressure on them and they understand what is involved. Thank you very much and you are excused....

PAYNE: Yes sir.

COURT: We'll be ready to proceed with this case at 10 o'clock tomorrow morning. Court will be in session with a criminal case at 9:30.

SLAUGHTER: May it please the Court, one additional matter. The documents that Mr. Payne was using and most of

1 the documentation over there are - were obtained, if the
2 Court will recall, from the Thomas Jefferson Planning
3 District Commission. It's possible that some of our witnesses
4 might want to have access to that material tonight. I wonder
5 if that could remain in the custody of Mr. Abbott, Your Honor,
6 with the understanding that he will bring it to Court...
7 COURT: Of course, it's understood that any of
8 the exhibits are available to counsel tonight - Sheriff,
9 if counsel need to get into the courthouse they have the
10 authority to use any of these exhibits that have been
11 introduced.....
12 DICKEY: May it please the Court, some of these aren't
13 really exhibits - they are .....
14 PARKER: I think they may become exhibits....well,
15 Mr. Abbott - I see no objection as long as they....
16 COURT: Yes, they haven't been introduced into
17 evidence, I see no reason why counsel shouldn't have access
18 to them...
19 PARKER: No sir, none at all. The only thing I
20 was thinking is I would appreciate it if Mr. Abbott would put
21 them back in about the same place, so we can find them, and
22 ascertain which ones have been introduced into evidence and
23 which ones haven't.
24 COURT: All right, he'll try to put them back in
25 the general area - subject to that counsel may take them out

1 and use them between now and tomorrow. Court is adjourned
2 until 9:30 in the morning and this case at 10 o'clock.
3
4 (Court is adjourned.)
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1 December 4, 1975

2 Court convened at 10:50 A.M.

3

4 COURT: We'll pick up in the Matthews case....we'll
5 proceed, I think we were at the stage where Mr. Payne's
6 testimony had been concluded and you may want to go back
7 to another witness or to continue on, Mr. Parker...it's
8 up to you.

9 PARKER: I have another witness whose testimony
10 was interrupted that I would like to take the stand first.

11 COURT: All right.

12 PARKER: If the Court please I was just talking to
13 the Court Reporter and Mr. Payne is unable to be here today...
14 I was hoping to get some of the testimony down in an informal
15 way for purposes of phrasing questions on rebuttal. And it
16 occurred to me that I might ask the Reporter to try to get
17 some of the testimony, not all of it, that we had today,
18 taken down but she has indicated that that won't be convenient
19 for them and I certainly understand that. I wonder if the
20 Court will permit me to get my own tape recorder and she
21 says she can handle it so that I...

22 COURT: Yes sir. I think that's the appropriate
23 way to do it. That frequently comes up and my own theory
24 of court reporting is that it's for the purpose of appeal
25 and for the record and not for the purposes of use from day to

1 day. I think if you want to use it that way you should have
2 a separate recorder.
3 PARKER: It will take me about five minutes to have
4 it gotten....
5 COURT: All right sir, if you want to do that that
6 will be fine.
7 PARKER: Thank you sir.....we
8 are ready to proceed.
9 COURT: All right....if you will have your first
10 witness then come around.
11 PARKER: Yes sir. Call Mr. Vivier please.
12
13 CHARLES P. VIVIER, having been previously sworn
14 was recalled and testified as follows:
15
16 DIRECT EXAMINATION
17 BY: Mr. Parker
18 Q You are Mr. Vivier and were called as a witness
19 yesterday?
20 A That's correct sir.
21 Q Would you state for me what is your occupation,
22 Mr. Vivier? You told us yesterday I believe.
23 A I'm administrator of the Rapidan Service Authority
24 and I act in the capacity of general manager of that water
25 utility....operation in Greene County.

1 Q What is your background in utilities?

2 A I spent four years with the natural gas distribu-
3 tion company in Henry County, Virginia. Spent two years
4 in the Division Office of the Telephone Company in - centered
5 in Henry County and then I was with the outside plant engineering
6 department which was involved in burying cable - cable capacities.

7 Q How long have you been administrator of the
8 Rapidan Service Authority?

9 A Almost two years, I started in March 1974.

10 Q What is your education so far as it relates
11 to your present occupation?

12 A Well, I've gone as far as about two years at
13 the school of engineering, University of Virginia.

14 Q As the man in charge of public water utilities
15 for Greene County are you familiar with the functional opera-
16 tion and economic aspects of this.....

17 A Well, the functional operation of the system
18 would require analysis of the location and uses of the
19 facilities and to that extent I have - I am knowledgeable.
20 And as far as the economic aspects I handle or am aware of
21 the revenue and the expenses of the operation, so I have a
22 working knowledge to that extent.

23 Q Do you have available to you resources that
24 you used in your work?

25 A Yes, I have studies - preliminary studies of the

system, continuing studies that are made, and we also obtain consulting engineers and accountants to advise us.

Q And are you privy to that advice?

A Yes sir.

Q Did you state earlier that you assisted the Thomas Jefferson District - Thomas Jefferson Planning District Commission in the preparation of the comprehensive plan?

A Yes I did.

Q To what extent?

A Well, as far as utilities. The water system utilities in the county. Some time after I started work, which had to be in March of 1974, I was approached by the Planning Commission and verified that the information that they had prepared as far as the map of the utilities that went into this comprehensive plan.

Q At that time did you make any corrections on that map?

A Yes sir, as I recall they had omitted the location of the water system west of the town of Stanardsville and they had omitted the location of the facilities that were existing south of Ruckersville. They were given the plans of the project, the FHA project, and...

Q At that time?

A No, I think it was prior to my starting work. They were given the plans of the FHA project, but they did not

have a knowledge of what water systems existed that were not shown on those plans.

COURT: Well is the line south of Ruckersville one then that was added and not on the original plans, Mr. Vivier?

A That's correct.

Q Do you have with you a set of the plans ?

A Yes I do.

Q May I see that please sir? A map or folder there that would indicate the - where the location ....

A One from that area?

Q Yes sir.

DICKEY: I think part one has already been admitted into evidence, which we have....

Q This has some degree of detail ....

DICKEY: All right. My memory Your Honor is that all this he's testified to yesterday - he introduced maps showing the lines.

COURT: Well, it may be stipulated - the map, Mr. Parker, without showing the basis for it, if you wish to do so.

Q I was going to show the map.....do you have the original .....

A The copy of the project, number 6527 I believe, prepared by R. Stuart Royer and Associates, dated - the

date's on the cover. It's a preliminary study of the water system between Stanardsville and Ruckersville, it's called project number 6527, dated May 5, 1966, and was prepared by R. Stuart Royer and Associates and this shows a proposed water system between Ruckersville and Stanardsville.

Q Any objections?

DICKEY: No objections.

Q If you will mark this please.....

COURT: You are going to introduce the whole book or just the whole plat?

Q The plat...

COURT: Why don't you introduce the copy?

Q I notice that the copy is not.....I would ask that we substitute a true copy almost immediately because I notice that the copy is only a portion of it and I don't wish to be unfair to the other side....

COURT: All right, it's understood then that the copy may be substituted for the original...

Q Yes sir.

DICKEY: We reserve the right to object - the irrelevancy, unless this is tied in...

Q I'm going to tie it in.

DICKEY: ...at this point.

COURT: All right, we'll keep that in mind. All right, number 30 is admitted with the stipulation that a

copy will be substituted and its relevance may yet be questioned, although it's properly authenticated at this point.

The plat was marked and received into evidence as Plaintiff's Exhibit Number 30.

COURT: All right, that's admitted, number 30.

Q I would refer to the .....copy... rather than the original....the original ...any objection to that?

DICKEY: Only if this is the complete copy of the whole thing because this doesn't show . . .. .

COURT: As I recall his testimony yesterday the line going south on Route 29, is the Lake Sapone property which is the Albemarle County line, basically, is it not Mr. Vivier?

A I'm sorry, Your Honor....

COURT: The line running south of Ruckersville to the Lake Sapone property which is to the Albemarle County line?

A That's correct, Your Honor.

Q Mr. Vivier, does that map show the storage points for - proposed storage points at that time for the water in your system?

A At this time these show proposed storage points,

at the date of this study, yes sir.

Q Which of those points if any were selected?

A They show a storage point at the intersection of Route 623, which is west of Route 609, the final storage point was actually very close to the intersection of Route 609.

Q Would you put a mark on there - an X please... about where the present storage point is?

A I think that's approximately within three thousand feet from the proposed storage...

COURT: 623 is the Swift Run Route is it not?

A I believe that's correct, Your Honor. It's the road near the Greene County Elementary School.

Q 623 would have been the - yes sir...

A That is the closest proposed point to the actual location.

Q The actual location - I think the Court knows where it is...

COURT: These numbers don't ring that much bell with the Court and if you speak of the road by the local reference I can understand it. I have a map here though, I can figure it out.

Q Yes sir. Mr. Vivier, what portion of that is six inch and what portion is eight inch?

A Everything east of the storage tank to Ruckersville

1 and then north along Route 29, the treatment plant is
2 an eight inch line.
3 Q And the balance of it is six inch?
4 A For the most part, yes sir.
5 Q Or less?
6 A Or less.
7 Q Is - and that is the way it was in fact constructed-
8 the system was in fact constructed?
9 A Oh, I'm sorry you may ask me - I may have mis-
10 understood your question. They do not show a line from Ruckers-
11 ville to the treatment plant on this plat of plans. Now,
12 the line that was actually put in was an eight inch from
13 Ruckersville to the treatment plant.
14 Q And other than that - what I'm saying is that -
15 my last question, which you answered stating what was eight
16 inch line is the way in which it was in fact constructed,
17 not necessarily the way it was proposed?
18 A That's correct.
19 Q Now, you testified earlier that your sources
20 of supply from the mountain spring and the treatment plant
21 on U.S. 29 at the Rapidan River, how many additional connec-
22 tions do you anticipate being able to serve?
23 A I estimate that we can serve an additional
24 one thousand connections with our present plant. If the
25 source of supply in the mountain system, and here again these

connections are throughout the system as it exists. If the source of supply from the mountains was improved, made more reliable, we might gain an additional 700 connections - we would be able to serve an additional 700 connections. And if the treatment plant capacity were doubled, which I understand it is going to be done with some internal modifications, it's already designed to handle twice that load as far as pumps right now - if that treatment plant capacity were doubled, I would say - we considerably believe we could probably add an additional 1200.

Q That's over and above the other figures that you gave?

A Each one is in addition to the one before.

Q What is your estimate as to how many vacant lots in existing sub-divisions are adjacent to the water system for purposes of receiving water services?

A Are you talking about vacant lots on the water system.....that can be served and are not receiving service?

Q Yes sir.

A I'd estimate approximately 250.

Q Now from an economic standpoint is it in any way desirable for the authority to add new connections?

A Yes sir, the authority is dependent upon the continuing additional connections, revenues, and useage revenues that would be generated by those additional connec-

1 tions. All the engineering studies that I have to refer to
2 indicate that this is a point to be considered. In fact
3 that's the way the system is to be financed. If - the
4 alternative is to maintain the status quo and not add any
5 connections and if you did that you would have to make up
6 the difference financing the project - you would have to make
7 up the difference by raising the useage charges. Now such
8 would be undesirable from the standpoint of the customer
9 and I think the county - the development of the county.
10 We are very much dependent on additional connections.
11 Q Is there a fee for connecting?
12 A Yes sir, we call it an availability fee.
13 Q And it is the - is that a one time fee?
14 A That's correct.
15 Q But it is the availability fee which creates -
16 which is figured into your income scheme?
17 A That's correct. We use that revenue, that
18 availability revenue to make up the total revenue required to
19 meet the operation and debt service.
20 Q From an operational standpoint is there any portion
21 of the water system more suitable for growth by the addition
22 of connections?
23 A Well, with the exception of some areas, the eight
24 inch pipeline is more suitable for growth. Along that pipe-
25 line and in the vicinity of the pipeline.....

Q Why do you say that?

A Well, any chart which would show the relative discharge capacity of standard pipe would indicate that it would take two six inch pipes to equal the discharge capacity of one eight inch pipe. Now this is particularly important when you consider fiber flow. The ratio is two to one, eight inch over six inch. From the standpoint of service you would have less pressure fluctuations at the service connection to the main, because you wouldn't have a pressure problem, when you have high flows of demand either consumption or fire protection.

Q You mentioned an exception for some areas along the eight inch line that you did not think would be suitable for growth, would you tell us what you meant by that?

A Yes there are some portions of the eight inch line - well, particularly those near the water plant that are under higher pressure. I would consider high pressure something over a hundred pounds, actually the pressures down near the plant are close to about 160 pounds. And there are a few areas along Route 33 on the eight inch line that are low pressure areas. A couple of areas that come to mind is in the vicinity of the storage tank, the elevated storage tank and in the vicinity of - what I think has been designated as the Quinque Cluster....

1 Q All right, sir. Now where you have high
2 pressure areas you are able are you not to reduce the pressure?
3 With appropriate valves and so forth?
4 DICKEY: This is leading him just a bit.....
5 COURT: I think that if Mr. Vivier has any problem
6 with it....
7 A Yes you can put on a pressure reducing valve
8 and reduce the pressure.
9 Q Can you do that - is there any way to up the
10 pressure, there's no way to up the pressure is there?
11 A Yes sir you can supplement your service with
12 a pump.
13 Q Another pump?
14 A Yes sir.
15 Q But when you do that would it depend in any way
16 on the flow of water?
17 A Yes, the flow of water through the pipes affects
18 the pressure.
19 Q What would be, Mr. Vivier, you've heard enough
20 of this case to know where the location of Mr. Matthews'
21 proposed sub-division is?
22 A Yes sir, I think I have.
23 Q Is that in a desirable - let me ask you this,
24 what would be the elevation and relative pressures in the
25 area of the property under consideration - for that property, the

Matthews' Sub-division?

A Well, in relation to the storage tank, the elevated storage tank which the tank elevation is at 800, the ground elevation is at 700 feet, now this is relative to the exhibits that are here, the contour map. That - contour elevations of 700 feet would provide a static pressure of 23 pounds...

Q I think - where are you talking about now, Mr. Vivier?

A Well, at any contour elevation of 700 along the pipeline. In fact these occur at Quinque and at the base of the storage tank. Now in the vicinity of this particular property which is near Midway, I took a contour elevation of 670 feet off of the contour map and I believe that pressure comes out to be about 56 pounds. The difference between 800 and 670.

Q So at Quinque the static water pressure you are saying is 23 pounds per square inch and...

A In the areas where the contour elevation is 700 feet.

Q And at - the Matthews' level the static water pressure would be 56 times the weight?

A Approximately - or greater because the rest of the property falls away from that contour elevation.

Q Does that make - does that put the Matthews' area

in the undesirable portions of the eight inch area or in the desirable portions of the eight inch area?

A Well, I think - any time you can get a working pressure of 40 pounds/or greater it's desirable, and since that pressure would be 56 pounds it would be desirable from the standpoint of not only domestic use but especially commercial use. You can get by with lower domestic uses, in fact the minimum recommendation is about 20 pounds. But that kind of pressure is not sufficient to operate some commercial establishments.

Q Thank you sir, answer Mr. Dickey's questions.

CROSS EXAMINATION

BY: Mr. Dickey

Q Mr. Vivier, you're not an engineer I understand?

A That's correct sir.

Q And you are testifying not here as an expert but as someone who has read these reports - you don't know whether they are true or not?

A To what extent?

Q Well, you said that our engineers tell us this, did you check any of your engineers figures on any of these figures you gave us?

A Some correspond with my current studies and some are obvious - for example this - yes sir...

1 Q All right, are you a policy making official of
2 Rapidan Service Authority?
3 A To some extent.
4 Q I mean the authority to make policy or don't
5 make policy?
6 A Well, you are asking me if I was in a policy
7 making position - I recommend policy, and in some cases
8 as the administrator I can act for the authority and interpret
9 their policy.
10 Q Is it not the case that all matters of policy
11 are laid down by them and published?
12 A That which is published is laid by them....laid
13 down by them.
14 Q So, in other words all we have -when you gave
15 your opinion of which are more desirable and various ways
16 of expanding the system is your opinion? You do not speak
17 for the Rapidan Service Authority on that policy do you?
18 A Well, no sir, I didn't testify on the policy.
19 I testified on the operational functional standpoint....for
20 the system...
21 Q I'm only asking ...
22 COURT: Let him answer the question Mr. Dickey...
23 go ahead. Don't cut him off.
24 A Did you not ask me about the desirability of
25 a service area?

1 Q No I'm asking you if it is not the case that in
2 so far as your testimony is on policy, you do not speak
3 for the Rapidan Service Authority?
4 A I'm sorry, I think I can speak for the authority
5 on policy. I don't make it, but I am involved in making
6 that policy, and in policy determinations. I have a broad
7 input as the general manager for - such an affected position
8 I don't see how I couldn't.
9 Q So you state you do speak for their policy?
10 A Yes sir.
11 Q And you make the policy?
12 A I do not...
13 COURT: He didn't say he made it, Mr. Dickey. He
14 said he can tell you what it is.
15 Q All right, now on these developments is it the
16 Rapidan Service Authority's policy then to install things
17 for developers such as pumps, and reducer valves and interior
18 distribution systems or have the developer do that?
19 A The developer does that.
20 Q So whatever might be necessary in the way of
21 different items on a given site the developer would provide them,
22 that is your policy?
23 A On the site, that's correct.
24 Q So in fact if an area would be desirable and -
25 it would merely mean that it was desirable in so far as how

1 much the developer would have to pay? It wouldn't make any
2 difference to Rapidan Service Authority is that the case?
3 A No sir. From an economic standpoint which is I
4 think worthy of consideration, we have some areas where
5 development can occur which is not desirable for the authority.
6 For example anything south of Ruckersville is less desirable
7 from an economic standpoint for the authority because those
8 connections we do not get the full benefit of those connec-
9 tion fees. We are sharing them to the extent of 50 percent
10 with the developer that put in those lines south of Ruckers-
11 ville. So we - that would be...
12 Q That's not responsive...
13 COURT: Well, I think it may be, Mr. Dickey.
14 PARKER: I think it is Your Honor.
15 COURT: You asked him what was - what's desirable.
16 He's interpreting it under his interpretation - now if you
17 want to rephrase the question you may do that.
18 PARKER: I think he ought to allow him to finish
19 answering the question.
20 COURT: Yes sir, go ahead, Mr. Vivier and finish
21 your answer.
22 A It is not desirable then from the standpoint
23 of the authority to have connections south of Ruckersville,
24 where we are losing half of that income and at the same time
25 taking those connections away from the capacity ofthe plant.

1 COURT: Is that on a connection fee or...

2 A On the connection fee.

3 COURT: On a connection fee basis...they are

4 charged...

5 A I call them connection fees - the availability

6 fee. It has nothing to do with the useage. It's a one

7 time distribution to the developer. So those areas are

8 less desirable - we'd like to see the growth where we get

9 all the connection fees.

10 COURT: That's his response then, he prefers an

11 area where 100 percent of the connection fees will come

12 to the authority...

13 A That's correct.

14 COURT: Wherever that would fall.

15 A Well, that would fall in general - any connection

16 not made south of Ruckersville.

17 COURT: All right, go ahead, Mr. Dickey.

18 Q But that not getting 100 percent of the connection

19 fees is something that has a time limit and will end at a

20 certain sum of money, is that not correct?

21 A That's correct.

22 Q What is that time limit - what is that sum of

23 money?

24 A That time limit would end in 1983, approximately,

25 and that sum of money - I'm guessing now, I don't remember

1 the figures off-hand. I think it's approximately $70,000.00.

2 Q $70,000.00?

3 A Well, $80,000.00 and the equivalent of the -

4 at current charges, it's about 200 connections.

5 Q Are you certain of your answer sir ?

6 A No sir, I'm not certain.

7 COURT: He said he would be estimating.

8 A I'm not certain of the money. I can...

9 Q Could you get the information for me....all right,

10 I would like to ask - you testified that there are 200

11 lots, undeveloped lots currently served by the Rapidan Service

12 Authority lines?

13 A No sir, I testified that my estimate was about

14 250.

15 Q 250. Did you include the 55 lots of a sub-

16 division west of Stanardsville, you testified to earlier?

17 A If you are referring to Locust Lane...

18 Q I'm not.

19 A I'm sorry - You said west of Stanardsville?

20 Q Yes.

21 A Could you refresh me on what sub-division that

22 was?

23 Q You don't know about such sub-division?

24 A There are several sub-divisions, there's

25 Quinque Forest, Mountain View, Locust Lane, Hord's Sub-division,

55 lots - it corresponds exactly with Locust Lane.

PARKER: Did you say west of Stanardsville or West of Ruckersville, Mr. Dickey?

DICKEY: I said west of Stanardsville.

A West of Stanardsville, I'm sorry. I'm not familiar with any sub-division west of Stanardsville, that has more than 20 lots that can be served by a pipeline.... by our pipeline.

Q In your estimate did you include the undeveloped lots in Child's Sub-division?

A Yes.

Q Little Edge?

A Well, I didn't resolve sir how many lots were there.

Q Did you include the third section of Quinque Forest?

A Well, if you listened to my testimony I said, vacant lots which exist along the pipeline that is in existence now, that can be served, adjacent to or across the street from those. In other words if - I'll give you a very good example, you take Spotswood Estates, the pipeline I think adjoins about 20 lots ....or I say Quinque Forest....that section which is not even developed yet, and has no water system in it yet, was not taken into consideration.

Q Did you take into account all 102 lots in Greenelea

1 Sub-division?

2 A No sir, the pipeline does not serve 102 lots

3 right now.

4 Q How many did you take into account?

5 A I estimated about 20.

6 Q 20....is the number you took into account there

7 to get this figure?

8 A Right.

9 Q How many did you take into account in Warmar

10 Sub-division?

11 A Warmar Sub-division, I don't think adjoins

12 the pipeline. There may be - there may be as many as ten

13 lots, and these were taken into consideration.

14 Q Greene Meadows?

15 A Yes sir.

16 Q How many did you take into account there?

17 A There are approximately 15 to 20 lots adjoining

18 the road 607.....

19 Q In arriving at these figures you discounted

20 any other lots besides the ones you've just mentioned..

21 A Discounted all lots that cannot be hooked up

22 to the ...

23 Q Today?

24 A Today.

25 Q All right, now, did you take into account any

1 figure for the undeveloped land along Route 33 at the basis
2 of say one house every 500 feet, whatever, that could be
3 allowed by the zoning ordinance?
4 A No, I....I said sub-divisions.
5 Q Only?
6 A Only.
7 Q You did not take into account ....
8 A You've got about 10 - at least ten miles of
9 pipeline along state roads, you know, it's indeterminable
10 about how many lots there could be.
11 Q You did not take that into consideration?
12 A No sir, I did not.
13 Q Now you said that you can expand - that you can
14 allow for 1000 connections and additional 1200 if the plant
15 capacity is doubled, is it your opinion - are you of the
16 necessary expertise to know whether it can be doubled?
17 A Yes sir.
18 Q How can it be doubled?
19 A Well, in fact it has the capacity of pumping
20 out twice the daily designed ....let me just break it down
21 into some figures we can work with. The design capacity
22 is 150 gallons a minute. We have - which comes out to
23 approximately 200 thousand gallons per day. We have two
24 pumps leaving the plan t but we only use one to reach that
25 capacity, so we could double the capacity if we had the

water at the plant. We also have two pumps coming into it serving the same way. The difference of - limitation of design capacity right now is in the filter flow rate that we are licensed to operate at....filter flow rate and the clarifier flow rate. So with some internal modifications and I won't use any technical terms, but changing filter media would allow us to increase the plant capacity. Adding some hardware into the clarifier would allow us to increase the capacity. We are licensed to operate at 2 gallons per square minute surface area of our filters right now. And that comes out to approximately 150 gallons a minute.

COURT: Mr. Vivier with regard to the projections for the immediate future, after the installation was hooked up, how is it going, is it falling behind or ahead or staying even with the projected users?

A It appears to be on schedule to some extent Your Honor, based on the projection in this study and in the - a later study by Martin and Clifford. They projected for the year - they projected for near this year approximately 500 connections and we have approximately 500 connections.

COURT: All right, go ahead, Mr. Dickey.

Q Just one further question. You testified from the engineering report - this 1966 report is a plan totally different from the Rapidan Service Authority is it not?

1 In that it calls for a different source of water, different
2 quantities of water?
3 A Oh yes sir, it doesn't even indicate the
4 source. The source that was built.
5 Q This was for something called the Stanardsville-
6 Ruckersville Water Authority?
7 A No sir. It says just Stanardsville-Ruckersville
8 Water study, in other words they projected the need for
9 a study for water...here's the title right here. They
10 projected a need for the study of water between Stanardsville
11 and Ruckersville along Route 33 and in some areas in the
12 vicinity of Route 33 and 29. They show storage tanks
13 along Route 33 and one adjacent or very nearly so to the
14 property in question.
15 Q What does that say?
16 A I'm sorry, Stanardsville-Ruckersville Water
17 Authority distribution trunk.
18 Q Thank you. Now, in the course of your work
19 with the Rapidan Service Authority you have worked with
20 and have testified today engineering reports...have you
21 ever found any of these to be inaccurate?
22 A Well, revenue projections or operating expenses
23 were under-estimated .
24 Q Would it be fair to say from your position
25 as administrator that there were out and out omissions of a

very serious nature in at least one engineering report that you have worked with - that that has happened?

A Well, if you can refresh my memory I'd give you a judgment on that?

Q The omission of any administrative costs and inclusion in connection (inaudible)

with no mention whatsoever that it might cost money to make the connections?

A I can say that the administrative costs for the position of an administrator appeared to be not included, and as to the net profit from a connection the report didn't include whether or not it was a net figure or a gross connection fee.

Q All right, and these are the same reports that you have been using as the basis of your testimony today is that correct? These and other reports from the same firm?

A Well, I've used these reports and a lot of my own studies.

Q Thank you.

REDIRECT EXAMINATION

BY: Mr. Parker

Q Mr. Vivier, how long have these studies been available?

A Well, you take the date of the studies and deter-

1 mine how long its been available...

2 Q The date of that study you mentioned - how long

3 has that one - what's the date on that study?

4 A Well, I have another one here dated May 1969,

5 preliminary report for the Stanardsville-Ruckersville

6 area water project, prepared by Martin and Clifford Associates.

7 There's been several others but - to my knowledge no studies

8 have been made except by myself prior to - after-I would

9 say after 1972, because at that time all construction was

10 underway and there were no further studies made....except by

11 myself.

12 Q May I see the road map Your Honor? Was one

13 of the purposes of this pipeline to - as it was initially

14 envisioned and finally constructed to join a link, a water

15 link to the town of Stanardsville?

16 A The town of Stanardsville had a system.

17 The studies always pointed to a link to what they called the

18 town of Ruckersville, the Ruckersville area. That is what

19 was always shown in most studies, a link to the town of

20 Ruckersville.

21 Q In fact on that exhibit that was put in there,

22 it actually uses the word Town of Ruckersville, doesn't it?

23 A Right, rather highly inaccurately I guess.

24 Q Is the route that was taken to construct the

25 line between Ruckersville and Stanardsville or between the

1 source of water and Stanardsville the most direct route?
2 You might want to look at this map.
3 A No, the most direct route from the plant to
4 Stanardsville is along Route 609. 609 intersects Route 29
5 just south of the plant and then 609 intersects Route 33
6 east of the intersection of Route 623...
7 Q Where the storage area...
8 A Well, the storage area...
9 Q Proposed storage area was?
10 A That's correct.
11 Q That's the Old Fredericksburg Road, I take it?
12 A You know more about that than I do.
13 COURT: Yes sir...
14 A I've only lived here two years.
15 COURT: It's recognized by the Court as being
16 the Old Fredericksburg Road.
17 Q Could the Court refresh my memory Your Honor
18 as what question the Court asked last of this witness?
19 I've forgotten.
20 COURT: The question I had of him was whether the
21 projected revenues and number of users as the engineers pro-
22 jected it was above or below what the actual users....
23 Q I recall that question I think....
24 COURT: He said they were pretty much on schedule
25 with the projections.

1 Q Yes sir.

2 A I believe the Court asked me as far as the

3 number of customers, it did not mention revenue.

4 Q I was going to ask about the revenues. Are

5 the revenues on schedule with projections?

6 A Well, I really haven't given too much study to

7 that.

8 Q All right, let me ask you this. In the studies

9 that were made concerning the.....

10 A I could answer it in this way, the fees are

11 relative to what were proposed. So if we are collecting

12 the fees and we are getting the customers at the same fees

13 they proposed, I guess the revenues as far as fees go -

14 collection fees are on schedule.

15 Q But the availability fees - did the study propose

16 that you would have to give away part of your availability

17 fees in order to have anything to make it?

18 A No sir.

19 Q That's all.

20 COURT: All right, any other questions Mr. Dickey?

21 DICKEY: No, none, Your Honor.

22 COURT: All right, Mr. Vivier you may stand aside,

23 sir.

24

25

1 GEORGE EVANS, having been previously sworn, was recalled
2 and testified as follows:
3
4 DIRECT EXAMINATION
5 BY: Mr. Parker
6 Q As the Court remembers we got started a little later
7 this morning than anticipated, can the Court advise me what
8 time it proposed to take a...
9 COURT: We'll take our lunch break some time around
10 12:30 or 12:45, Mr. Parker, it's 10 minutes of 12 now.
11 Q Thank you, sir.
12 DICKEY: Your Honor, I would say that we didn't ask
13 to have Mr. Vivier excused, we may wish to recall him....as
14 part of our case.
15 COURT: Mr. Vivier I'll ask that you be available
16 on telephone call then.
17 VIVIER: All right....
18 COURT: All right, sir, fine.
19 Q Mr. Evans when we had your testimony yesterday
20 it wasn't desirable from my point of view to interrupt you but
21 there was no help for it. You were describing the county and is
22 what you found in your land use study that you did the resultant
23 map, plaintiff's exhibit 19?
24 A Yes.
25 Q And we had covered I believe most of the area north of

1 Route 33 in the county, particularly in the western part...
2 and coming back from west to east, the area along Route 33
3 up to Ruckersville, and the area centered around Ruckersville.
4 I would ask you if you would please sir to continue in the
5 manner that we were continuing yesterday with respect to
6 from Ruckersville in the area of Ruckersville to the Rapidan
7 River, and also to cover in that respect any areas west of
8 Route 33, north of Route 33 which we have not yet covered.
9 Will you do that for us in the same fashion? That's the area
10 that I'm talking about.
11 A All right.....
12 DICKEY: I have to leave, Your Honor....
13 COURT: All right, Mr. Slaughter will stand in for
14 you.
15 Q Did Mr. Dickey wish to wait?
16 COURT: No sir, he's just informed the Court where he
17 was going and Mr. Slaughter is going to be acting - so you needn't
18 interrupt,Mr. Parker.
19 A It's in four quads, shall I list them?
20 COURT: If you would by number....the area that he's
21 asked for, that is north of 29 or west of 29 and north of 33,
22 I guess.
23 A It will be the Rochelle quad exhibit number 12.
24 Barboursville quad exhibit number 16. Earleysville quad exhibit
25 number 15. Stanardsville quad exhibit number 13.

1 Q Please proceed for us if you will with some area
2 of that that you can identify one quad....
3 A All right.....starting with Ruckersville, going
4 on Route 33 east of the Orange County line and looking to the
5 north to the top of the map where into Rochelle. I believe
6 we described the Rochelle map totally yesterday - yes sir...
7 Q Yes sir we did - right in this...
8 A Right. Now, did you want to specify again exactly...
9 Q Let's see if we can - I can get you to describe
10 the area running down Route 29 on both sides there, from
11 Ruckersville to Route ...if I can find the name on here...some
12 Run.....it crosses...
13 A White Run?
14 Q I believe so, yes sir - White Run.
15 COURT: We're going north on 29 from Ruckersville?
16 Q Yes sir.
17 COURT: All right.
18 Q White Run to the - to where it crosses Route 609, and
19 609 I think you've already described - make a convenient boundary
20 to the Orange County line and from the Orange County line to
21 Route 33 and Route 33 to Ruckersville?
22 A Okay, Route 29 north of Ruckersville, topographically
23 speaking this whole area to the best of my knowledge, best of
24 my recollection is gently rolling terrain, and bisected with
25 numerous small streams. Quite a bit of clearing, some farming

1 activity to the northeast of Ruckersville, close to the Orange
2 County line - the area is rather heavily forested. As you
3 proceed north along Route 29 there is some commercial development
4 to the east for about a distance of about a half mile or so.
5 On the west it's rolling land, but partly cleared. As you get
6 beyond the - I believe it's an Exxon truck stop, you get beyond
7 that, the land becomes not steep, but there seems to be a
8 rather noticeable rise, verticle rise to the east of the highway,
9 but to the left is the flood plain of White Run. It's very flat
10 and appears very fertile. Very sparsely settled on either side
11 of the highway. That's basically the characteristics of
12 that particular area. It's more or less an extension of what
13 we described in the Rochelle quad.
14 Q All right. How many...
15 A Would you like me to go ahead and finish the other
16 sections? Of that area you....
17 Q What is the range of elevation in that particular
18 area?
19 A It appears anywhere from 540 feet to perhaps 600.
20 It's very uniform rolling type terrain with very intermittent
21 streams forming small valleys. There's not much of a distinction.
22 Q I already had you describe the commercial use did I
23 not yesterday in that particular area?
24 A Within a half mile radius of .....and that would
25 include the area north.

1 Q Is this map - it bears the date 1973, has this
2 been....
3 A I'm sorry, where does it bear the date?
4 Q Here.
5 A That is the year the base map itself was.....land
6 use was completed the middle of '74...
7 Q Right...that was your testimony yesterday?
8 A Yes sir.
9 Q And that's the land use that we see on here now?
10 A Yes sir.
11 Q All right, sir. Let me get you now to describe
12 the area bounded in the southeast part of the county by Routes
13 29 and 33? I'm asking you to describe the area as your study
14 showed it. It will be things that are there now that may not
15 have been there then.
16 A Yes sir. South of Ruckersville and to the east of
17 Route 29 it's - once again it's fairly - it's pretty much a
18 continuation of what I've just described for you in - north
19 of 33. This is all part of the piedmont province and it appears
20 to be gently rolling. There is a rather sharply defined flood
21 plain in the vicinity of Preddy's Creek, almost at the Orange
22 County line. In fact the creek itself tends to create more
23 contrast or more sharper definition of topography than any creek
24 north of 33. This area is heavily wooded, to the best of my
25 recollection there are few farms except along Route 33 going east.

1 There are a number of farms off of that highway. Along Route
2 616, some land has been cleared, but this appears mostly rural
3 residential, that is the people live in a rural type environment,
4 large lots, but they don't appear to farm to any extent.
5 There is a sizeable lake just off of Route 677. It is - it's -
6 I would say it's - the topography is more hilly than it is to
7 the north of Route 33.
8 Q What uses did you find in that area?
9 A Once again you want me to give you a count?
10 Q Yes - they might want you to break it down for
11 us.
12 A Should this include the residential...
13 Q Yes sir.
14 A Do you want the things that I have incorporated
15 together.....
16 Q Yes sir.
17 A I counted 175 dwelling units, 52 of which are
18 mobile homes, eight of which are duplexes, 10 of which are vacant.
19 One church, one utility, I believe it was an electric sub-
20 station - power sub-station, and five commercial uses.
21 Q Five uses are commercial uses of what?
22 A Those five commercial uses - I will have to give
23 you an educated guess.....commercially there's a store...
24 Q That's a plant in other words?
25 A Yes sir. There are two motor courts and.....

1 I think a garage.

2 Q That would be Powell Brothers Garage.....

3 A Yes.

4 Q There are two motels that you described - they are of

5 the Sheraton variety or the old Route 1 variety?

6 A The old Route 1 variety.

7 Q All right, sir. I would - I meant by the old Route

8 1 variety, I suppose I would say mama and papa....

9 A Mostly motor court.

10 Q Old motor courts?

11 A Yes.

12 Q You would concur that that's what we both mean?

13 A Yes sir.

14 Q Now sir the elevation in that area is very close

15 to the elevation you described ...

16 A Yes sir.....it's just a bit more marked.

17 Q Taking another area to describe, leaving out if

18 you will Route 33 that has been described, would it be convenient

19 for you to describe the area from Route 633, I think that's

20 Maupin's Store.....to ....633 following to Route 629, 629 to

21 Oil Creek and Oil Creek to the confluence of Quarter Creek, I

22 believe, and down to the county line and from the county line

23 to Route 20 and then to Route 29 and Route 29 to - again Route

24 29 to the half mile radius of Ruckersville, and around the half mile

25 radius and down Route 33 to Route 632, excluding what you've

1 mentioned on Route 632, and then the half mile radius of Ruckersville?
2 A couple of questions I didn't ask you about the two preceding
3 areas - while you are picking those up I'd appreciate it if
4 you would - I did not ask you about any sub-divisions in
5 the two preceding areas at that time?
6 A Okay. There are quite a few....
7 Q Are they listed in the documents that you...
8 A Yes sir.
9 Q ...filed.....in our records of the case?
10 A Yes sir.
11 Q I will not ask you the question - but there are
12 several?
13 A Yes sir.
14 Q Can you tell us which ones they were and then we
15 will go from there?
16 A Well, I can refer to the.....
17 Q Did you tell us earlier when that sub-division map
18 was prepared?
19 A I believe it was prepared in May of 1974.
20 Q Thank you sir.
21 A In the area north of 33 and east of 29 there was
22 a Monticello Homebuilders sub-division. In the area east of
23 29, north of the county line, to 33, Warmar, Greene Meadows,
24 Greenemarle - that's part of J and P Estates, that's not platted
25 and still isn't to my knowledge. I'll go ahead and give you the

1 sub-divisions in this section.....

2 Q Yes sir, while you are doing it why don't you give

3 us the names of the sub-divisions in the next section?

4 A Let's see we came down 629 was it?

5 Q Yes sir.

6 A Okay, the area that I refer to next is - the sub-

7 divisions include four...

8 Q Would you describe on Route 33?

9 A All right, Westwood, Enderly Acres, Greenelea,

10 Powell, and Swift Run Estates.

11 Q All right. I'm going to ask you to look atthe

12 data as to the preceding sub-divisions and give me the sub-

13 divisions which are in this area, going down to about the County

14 line to Route 29 and 33 on the southeast part of the county

15 and can you tell me the range of lot sizes?

16 A It goes from one half acre to just over an acre.

17 Warmar from one acre to almost one half acre. Greenemarle,

18 quarter of an acre. Lake Sapone one half to three tenths of an

19 acre.

20 Q And while you are at it would you go ahead and give

21 us the same information as to ones that are in the subsequent...

22 A Yes sir.....Westwood half acre. Enderly acres,

23 half acre. Greenelea half acre to three quarters of an acre.

24 Powell Sub-division, three quarters of an acre to an acre.

25 Swift Run, three acres.

1 Q Would you go ahead and describe for us please
2 then the uses that you found in the areas that I have described?
3 A You want the uses now?
4 Q Yes sir.
5 A I haven't given you any type of physiographic
6 description do you want....
7 Q Physiographic description is what I mean, I beg
8 your pardon.
9 A Well, this entire part of the county has very little
10 to differentiate this - the eastern part of the county. It's
11 rolling, there's less land in forest, than there is let's
12 say on the east side. There appeared to be a number of poultry
13 farms, in fact there was a very large poultry farm near 743
14 and on 617. The whole area is dissected by a number of valleys
15 with permanent creeks, permanent waterways. It's just generally
16 rolling land, there's really nothing to distinguish it from
17 what I've already told you.
18 Q What is the maximum and minimum or approximate
19 elevation?
20 A The maximum I would say would be slightly over
21 600 feet. Minimum 500, perhaps a bit less.
22 Q Now, I think you may have already testified to the
23 fact that Route 33 from Ruckersville to Stanardsville and even
24 thereafter almost, up to the top of the mountains, virtually
25 splits the watershed between - runs right on the crest of the

1 watershed, Between the James River watershed to the Rivanna
2 River and what is the Rappahannock River watershed to the
3 Rapidan River?
4 A Yes sir, right.
5 Q So the - going back to this....the natural drainage
6 in the districts that we are now describing south of Route
7 33 is to the James River basin?
8 A Right, and into the Rivanna and hence to the James.
9 Q And the water which is being taken or which
10 you heard described this morning...
11 A Yes.
12 Q From the Rapidan system so far as it goes south of
13 Ruckersville, the natural drainage away from that water that
14 was used would be into the James River basin?
15 A Hopefully yes.
16 Q I might digress at this point and ask you specifically
17 though certainly it is on the map, the Matthews' property,
18 you know where that...
19 A Yes.
20 Q Thatwould drain into which basin?
21 A Into the Rapidan-Rivanna.
22 Q All right, sir, go ahead now and continue your
23 description of that area?
24 A That area I counted 120 single family, 50 of which
25 are mobile homes, 11 of which are vacant. One multi-family unit.

1 Two churches, one wholesale establishment and one commercial.

2 Q What was the commercial establishment?

3 A I believe that was another motel. I think you

4 will see it red with a four.....and I believe that makes

5 reference to four separate structures in the motel, if I recall

6 correctly.

7 Q Again it is which variety of motels?

8 A It's the old tourist court variety.

9 Q You will note sir that the area that was just

10 described had an eastern boundary, taking that eastern boundary

11 to Route 33 - excluding again Route 33, and going down to the

12 Route 622.....this ....going up Route 33 but not including

13 it for the purposes I've stated, you've already given us.....

14 to Route 622, following Route 622 to Route 624, Route 624 to

15 Route 604 and 604 .....Route 604 to .....from the county line

16 on - Walnut Creek.... to Quarter Creek to the waters of Oil

17 Creek. Waters of Oil Creek to Route 629, Route 629 to Route

18 633, 633 to .....633 to Route 33.....and up Route 33 and

19 excluding Route 33 to Route 810.

20 A All right.

21 Q And Route 810 to Route 633 again, and Route 633 to

22 Route 603...

23 A Yes.

24 Q And Route 603 to Route .....to the county line?

25 A Yes sir, so you're going from Quarter Creek to Route

633?

Q No sir, with the - from Quarter Creek here to.... to the waters of Walnut Creek.....going up Route 629 to Route 633...

A I see..

Q To Priddy's Creek, to 810.....to 633 and to 603 and 603 to the county line and the county line back to where we began. Now if you can follow those routes. It's a very large area and I'll ask you to be as detailed as you can and explain that please?

A Stanardsville quad, exhibits 15, Free Union exhibit number 14.....for the sake of ease in handling these maps I will run along the southern border of the county if that's all right? The land tends to become more rugged topographically as you extend west from 629. Flood plains become - the streams Swift Run and Quarter Creek are sizeable, a fairly large flood plain. I do recall a number of cattle farms in these cleared areas near the valleys, the valley walls of these flood plains. It's - the area is fairly remote, most of the roads that go into it are private roads, many of which are closed. Going west across 604 the land becomes steeper and by the time you reach 810 you start getting outlays like the Blue Ridge Mountains. In particular Bingham's Mountain.

Q Thank you.

A To the north of that general vicinity the land tends

1 let's put it this way, to the north and to the east the
2 land tends to once again fall into the general category of
3 Piedmont, rolling with sizeable creeks, Stanardsville Run,
4 dissecting. A number of those creeks, Stanardsville Run and
5 I believe it's Blue Run have been dammed to form a lake and...
6 Q Greene Mountain Lake?
7 A Greene Mountain Lake, and further down Blue Run
8 has been dammed again to form I believe it's Mountain View
9 Lake. In other words the area immediately to the south of
10 Stanardsville is comparatively clear of forests;as I recall there's
11 quite a bit of land which is just open. I can't recall - just
12 really put it in any type of agricultural use. There it just
13 seems to be in broomstraw, that type of thing. The streams
14 have been channelized to some extent in this area. A number of
15 second home sub-divisions or recreation sub-divisions have been
16 built. I think Quarter Creek has been dammed for a lake at
17 one of the sub-divisions, I can't recall the name of it. Wildwood
18 Valley, something like that.....Wildwood Valley, and then south
19 of that the creek is proposed to be dammed again for Twin Lakes.
20 At the time of the survey this wasn't done. I would say that
21 this part of the county is probably the most noticeable as far
22 as development in that so much of the land has been cut through
23 for the purpose of running roads into these fairly large sub-
24 divisions.
25 Q Can you give me the same figures that you did before

on the sub-divisions?

A Yes sir. Okay in this - Little Edge Sub-division the number of lots, or just average size?

Q The range of lot size?

A Runs about a third of an acre. Holmes Run quarter of an acre.

Q Holmes Run is just outside of the town of Stanardsville?

A Yes sir. Greene Mountain Lake one half to one and two tenths of an acre. Wildwood Valley an acre to almost four acres. Twin Lakes seven tenths of an acre to just over one and a half acres. Mountain View Lake one to eight acres. Mountain View Farm half acre. Riverdale three to four acres.

Q Would you give me the maximum, minimum elevations in that area?

A Sir?

Q Would you give the maximum elevations?

A Minimum would be something less than 500 feet..... 400 to 500. Maximum would be just over 1300 feet.

Q The uses in that area?

A The uses.

Q Yes sir. Go ahead, the uses are on the map, maybe you can just tell us which ones are commercial and ....

A There are 3 commercial uses. Four public uses, four public or semi-public and - gas plant.....

Q You've already described the Columbia Gas Plant, would you describe the other commercial uses? Public uses and semi-public.

A I can't recall those, I believe they were general stores and gas pumps, that's the only thing that comes to my mind in that part of the county.

Q What would the public and semi-public uses be?

A They are mostly churches, well, three of them are churches. There's one that shows a public use.....

Q Put a Y there please sir? All right, at 633 and...

A Oh, I think that's the power tower.

Q Power tower.....

A There's also a strip mining operation in this area...

Q What is mined?

A Quartz....quartz crushed and used in building....

Q Was that there when you made your...

A That was there when I was doing my study, yes sir.

Q All right, sir. Thank you. Your Honor, it's that hour .....if the Court wishes to take lunch hour...

COURT: Yes, I'm going to ask Mr. Evans a couple of questions though for my own guidance as we go through the rest of this. Obviously a lot of detail is escaping me as far as the significance of it, and I don't want to miss practically the main point. I'll ask these questions and see if Mr. Evans can answer them generally and we'll take our lunch break. I made

1 note of some of them as we went along. See if we can tie
2 some of this detail work together.
3
4 Questions by the Court
5 Q Mr. Evans, how familiar are you with Piedmont,
6 Virginia generally?
7 A Well, like I haven't done land use surveys for
8 Piedmont County, but I am familiar with those counties that
9 lie generally within the province and I have traveled through
10 them.
11 Q Would you say there's any significant difference
12 in Greene County as opposed to Piedmont Virginia Counties in
13 this area? Albemarle, Madison, Culpeper?
14 PARKER: Your Honor I don't have any objection to this
15 line of questioning, but I take it Mr. Evans is becoming the
16 Court's witness on these points?
17 Q Yes sir. Obviously he's had a lot to do with
18 this zoning, otherwise I don't see what his testimony has to
19 do here and the question that has to be decided is whether some-
20 body has been arbitrary and capricious.....I take it that's
21 what direction you are headed in, if you are not I wish you would
22 tell me. Because this would be of more assistance to the
23 Supreme Court than it is to this Court in deciding this case.
24 PARKER: What I've been trying to get from Mr. Evans
25 Your Honor is his ....

1 Q Well, you tell me what the purpose is Mr. Parker,
2 please.
3 PARKER: Yes sir, what I've been trying to get
4 from Mr. Evans is his description of the county - his study
5 of the county as to get as perfect a description of record
6 as we can of the county. My purpose being to show that the
7 county is - my purpose being to show that the county contains
8 numerous uses which are not taken account of by the interim
9 zoning ordinance. And it contains considerably diverse
10 physiology, which is not taken into account - all of the county
11 was placed in one zone, that's my purpose.
12 Q I don't think anybody would disagree with you there.
13 What's the need for going into all this minute detail? Why
14 couldn't you do it generally without going up each stream and
15 tributary and each road and each segment of the county? Can
16 we approach this from a general standpoint that there's a
17 large variation in elevation, there's a large variation in
18 useage? This county is just like any other piedmont county it
19 goes from 3 to 5 hundred feet elevation to 2 thousand to 3
20 thousand foot elevation...
21 PARKER: I know that a lot of those matters are
22 matters which this judge and this court can...
23 Q You could ask this witness generally. He's prepared
24 to answer. Not pursue it in the worm's eye view, that's what I'm
25 asking - what's the worm's eye view got to do with this case?

1 It seems to me that the court has to decide on the basis
2 of whether the zoning authority in the exercise of its authority
3 acted arbitrarily.
4 PARKER: That's one of the questions in this case, sir.
5 I have no objection to the question that the Court asked. I -
6 my sole purpose in stating what I did state was to suggest that
7 this might be - that it might well be elicited from Mr. Evans
8 in his testimony for the county...
9 Q Well, I don't know what the purpose of his testimony
10 is at this stage, is it for the enlightenment of the Court or
11 to build the record, Mr. Parker?
12 PARKER: Both.
13 Q Because I certainly fail to see what the purpose
14 of it is here. Unless we can couch it in general terms.
15 I'll take that then as need to fill the record, but I want Mr.
16 Evans to answer this question if he can with regard to any
17 significant difference in this county than any other county?
18 Lying along the Blue Ridge Mountains in which 29 is involved,
19 U.S. Highway 29, from Albemarle to Culpeper?
20 A Basically most of the - well, the counties that
21 lie to the east of the Blue Ridge are generally included in
22 what's known as the Piedmont physiographic province, and Greene
23 County is more or less similar to Madison and Albemarle, to the
24 north and the south, in so far as its land forms. In others words,
25 along its western borders, it is in the Blue Ridge province and

1 it is - it's characterized with very steep slopes and very
2 high mountain peaks, with outlayers of - that tend to shoot
3 out into the Piedmont.
4 Q Now, what influence generally does elevation have
5 in zoning?
6 PARKER: This is the kind of question that I haven't
7 asked this gentleman, sir.
8 Q I am asking him, Mr. Parker.
9 PARKER: Yes sir....
10 Q We've got this witness on the stand I intend to
11 make some use of him....not waste him entirely.
12 PARKER: My objection is that it's beyond the scope
13 of my examination.
14 Q It doesn't have to be, I'm asking it....for this
15 Court's enlightenment.
16 PARKER: I will note my exceptions.
17 Q Yes sir.
18 PARKER: Thank you.
19 Q Exceptions are noted.
20 A As far as development elevation would have an impact...
21 Q I mean zoning, what influence would elevation - lines
22 of elevation have on zoning apart from development?
23 A Well, the elevation itself wouldn't necessarily
24 have an impact on zoning, but the steepness of the slopes to
25 reach that elevation would.

1 Q All right, what influence does soil type have
2 in zoning?
3 A It would determine those areas which are best
4 suited for agriculture, those areas which are best suited for
5 conservation, those areas which are best suited for building.
6 In other words they would provide a suitability analysis
7 for the various types of uses you would propose.
8 Q All right, would zoning districts tend to follow
9 either elevation lines and/or soil type districts?
10 A It depends - because of how much data you've got.
11 Usually you combine a number of factors in determining where
12 the particular line would go. In lieu of a lot of detailed
13 information for instance your line might follow as is the
14 case in the current zoning ordinance, a slope line.
15 Q It might follow an elevation or slope line?
16 A Slope line, yes sir.
17 PARKER: Your Honor, may I note objection to this line
18 of questioning as opposed to the particular one question that
19 I spoke on? At this time in the case....
20 Q Your objections are noted and overruled, Mr.
21 Parker. Your exceptions are noted. Now how do you generally
22 determine the line of a zoning district?
23 A Well, it would depend upon the district in which
24 it's - which is being zoned. Normally if you have your property
25 maps you would - if the property lines on your map are in generally,

1 are generally in accordance with your land use plan, you try
2 and stick to your property lines.
3 Q Land use meaning existing uses without regard to
4 soil type?
5 A Well, this would be land use - land use as proposed
6 in your land use plan, let's say for residential use. More
7 or less, if the land is flat and all things being equal you
8 designate an area for residential, then the normal procedure is
9 to follow the outline of property in so far as it coincides
10 with the area you've designated in your plan for that say
11 residential area.
12 Q Now how would you generally begin zoning in a
13 rural county? Would you start with a general category and
14 then separate and pick out specific areas of high density
15 use?
16 PARKER: Again I....
17 Q Or would you start with the smaller areas and
18 then work out to the larger areas?
19 PARKER: Again I...
20 Q Your objection is overruled Mr. Parker.
21 PARKER: May I state my grounds for the record?
22 Q State them then and don't repeat.
23 PARKER: I won't repeat....
24 Q Stand on your feet when you address the Court.
25 PARKER: I beg your pardon sir. The objection is that

1 the question is leading.

2 Q The objection is overruled.

3 PARKER: My exceptions noted...

4 Q Yes sir.

5 PARKER: Thank you.

6 A Well, if I may use Greene County as an example.

7 The - in general you have a county which is predominantly of

8 one use, you take a very general approach to your zoning.

9 Q You mean by saying that generally it's agricultural

10 and rural?

11 A Yes sir.

12 Q You start off with that general classification?

13 A Yes sir.

14 Q All right.

15 A And as the need arises in the future, as your

16 plan changes in response to pressure, growth pressures, assuming

17 you have these growth pressures, then your zoning becomes more

18 complex in response to these. In other words there's no need

19 for instance to zone high density in a county which obviously

20 has none and foresees none of it in the future. So you keep

21 the number of zones relatively few in number and relatively

22 simple to match the specific needs of the county.

23 Q Now how do you allow then for specific uses, do

24 you zone a small area or do you let the specific use be at

25 variance with the general category you are going to zone that

1 area? Suppose you've got a corner store out in an agricul-
2 tural zone, do you zone that corner store commercial or do
3 you zone the whole area agricultural, taking into account that
4 there is an existing violation of the use that you've designated?
5 PARKER: Excuse me sir, I hate to interrupt the
6 Court and of course I understand in connection with my objection,
7 but I'd like to make it known that my objection with respect
8 to the leading nature of these questions is continued.
9 COURT: You don't have to repeat it Mr. Parker, it's
10 noted that your objection continues....as to the leading
11 nature of the question.
12 A The answer to the question Your Honor as far as
13 individual isolated examples of let's say a commercial
14 use in an agricultural zone, as long as that particular use
15 is in general in harmony with what's known as a statement of
16 intent of a zoning ordinance it is usually allowed - well, if
17 I may use the Greene County zoning ordinance - in the case of
18 this zoning ordinance is allowed by special use permit.
19 As compatable with certain conditions to the uses of the agri-
20 cultural zone.
21 Q Well, why don't you zone every crossroads commer-
22 cial then?
23 A Well....the zoning is done in accordance with
24 your plan. If the plan, for instance indicates that you don't
25 want a crossroads to be a commercial center, but instead you

want your commercial center somewhere else, then where your plan indicates the commercial center to be that's where you zone it. In other words existing land use doesn't - isn't necessarily good land use, and as professional planner I don't usually recommend necessarily that zoning be based upon it.

Q Well, now what general relationship would these existence of motels,grocery stores or whatever you find out in the rural farming area have in making up your land use or your interim zoning ordinance? I'm not talking about the land use map, but how would that affect your interim zoning ordinance?

A Well, once again it depends on the jurisdiction within which you are working. if the county has large concentrations of specific type uses then perhaps you would need to recognize these in separate zones. Where you have a county which has very little of this, quanitatively it seems to me that you would defeat the purpose of interim ordinance to zone this as it is, because you haven't had a chance to study it and to plan it. As I said, existing land use...

Q What you are saying then is that even though it's there you ignore it?

A I know it's there but I may not know it's good land use but I have a chance to study .....and to zone it that way would give it a vested right to exist....in the future.

Q So for the practical purposes of getting the beginning zoning, if it's spotty and not highly concentrated,

you ignore it and zone to a general classification?

A Yes sir.

Q I take it.

A Yes sir.

Q That's what I'm getting at, I'm trying to get some relevance out of all this. I don't undertake to cut you all off in what you are trying to present, but if it's a question of whether or not this interim zoning ordinance was arbitrary and capricious, then I wish we would get on with that point. All right, we'll recess for 45 minutes for lunch.

(Recess.)

COURT: All right Mr. Parker you may continue with the examination of Mr. Evans...

PARKER: Thank you sir.

COURT: ...if you wish.

REDIRECT EXAMINATION

BY: Mr. Parker

Q I should like for you ...I was going to suggest that you divide this into two portions.....

COURT: You all will have to repeat that on the record, because obviously it didn't pick it up.

Q Yes sir.....I understand .....the area that I propose to take now - the area which Mr. Evans has not described .....the area from the Haneytown Road and Haneytown Creek south to the county line. The area that he is describing first will be from the - west of the area which he has just described bounded on the north by Route 33, which is excluding Route 33, bounded on the south by Haneytown Road and Haneytown Creek, which runs almost to - I imagine it runs to the Shenandoah National Park..... ... and then a line directly to the County boundary on the other side of the park/ or in the middle of the park and bounded by the county line of Rockingham County on the west. Does that describe the district as you understand it?

A Yes sir.

Q Would you please tell us what the physiographic data with respect to that - how it appeared to you when you made your survey? If there are roads that you used in that area in connection with your survey I would appreciate your giving us a general idea of how you would go in because in that territory if I don't miss my guess, those are the ways in?

A Yes sir. All right, well, let me preface by saying that the only area of Greene County that I did not personally view was the Mutton Hollow section, that is Route 634 running from 810 to Route 33.

Q Yes sir.

A An assistant planner did that.

Q Did you receive his information?

A Yes sir.

Q And that information as received by you appears on the...

A Yes sir.

Q ...map.....all right, sir go ahead.

A I went a ways up in there, to the best of my recollection - let's see, west of 810 you are getting - Route 810 parallels the mountain face of the Blue Ridge Mountains in Greene County more or less. They tend - the mountains tend to be in the form of fingers outlayers that shot off from the main ridge of the mountain chain itself. And from 810 a number of roads go up between these outlayers to service the hollows. So going south and...

Q Can you name the hollows?

A Yes sir.

Q From north to south?

A Yes sir - going from north to south, the first hollow, I believe it's known as Mutton's Hollow. Entrance is on 634 from Lydia and comes back through 634 to - Route 810. And that road on this U.S.G.S. map shows that it follows a stream valley, Swift Run, for its entire distance, and that there are steep slopes on either side of it. Well, I can verify it on the land use - very little in the way of land use.

1 Another road 635 goes off of 634 farther up into the mountain
2 and I guess this is really - the real Mutton Hollow, it
3 appears very isolated, very - there is a bit of cleared land
4 up in there, but primarily along the road and along the river.
5 All right, separating Mutton's Hollow from - the next major
6 hollow to the best of my recollection is Haneytown, between
7 Haneytown and Mutton's Hollow are Daniel's Mountain and
8 Hunt Mountain, both - Daniel's Mountain particularly, steep
9 slopes....Haneytown Hollow extends approximately two miles
10 into the mountains. There is some cleared land up in there.
11 The road is - to the best of my recollection was graveled.
12 It's not an excellent road, it's passable. As far as the
13 environment, of course, all these hollows tend to have very
14 poor housing - a lot of mobile homes, and junk cars, dumping
15 along the road. The next hollow would be Bacon Hollow, not
16 going all the way to it, so I can't describe it.....
17 well, the mountain separating Bacon Hollow from Haneytown
18 Hollow is Slater's Mountain and it extends almost all the way
19 to 810 - fairly steep slope. Taking a line about a half mile
20 parallel to Route 810, running it from Route 627 all the way
21 to - well, let's say Mutton's Hollow, the land is gently
22 sloping eastward away from the mountains. And most of the
23 land has been cleared, much is being used - appears to be used
24 as pasture land. The creeks that come through there are -
25 well, the slopes along the creeks that have gouged these hollows

1 out of the mountains are relatively small, very rapid, and
2 the valleys themselves except in areas where plateaus run
3 into it, they are very steep.
4 Q Are there flood plains in these areas?
5 A No, the flood - there are flood plains but they
6 are areas confined to the narrowness of the hollows through
7 which they run.
8 Q On the other hand how about the habitation?
9 They - they are also so confined?
10 A Yes sir, as I said there are various, fairly
11 level land up in these hollows where erosion has occurred
12 either through man's activities up there or through tributary
13 streams running into the main stream. As far as elevation,
14 Elevation would be lowest somewhere around 700 feet...the highest
15 in the county would be 2800 to 3000 feet, I suppose. I would
16 say 2800 to 3000 feet.
17 Q What is the use if any of these mountain properties,
18 sides of the mountains with the exception of the closely
19 confined areas where you said the habitations were?
20 A These mountain tops primarily are undeveloped and
21 uninhabited, although there has been some sub-division activity
22 in these mountains, and they have been - outside the sub-division
23 ordinance, that is I believe there's one on Daniel's
24 Mountain. All the lots of which are half acres. And there's
25 one on Hightop Mountain, which is the same category. There has

1 been an improved road into Hightop servicing these lots.
2 Q These were in existence at the time that you...
3 A Yes sir, I didn't....at the time the Daniel's
4 Mountain property wasn't developed so I could gain access,
5 although I did go up to Hightop as far as I could go.
6 Q Would you take the one remaining area in the
7 county, which is the balance of the county in the extreme
8 southwest corner.....
9 A I'll use these maps - is it necessary to introduce
10 these....
11 Q No, but it will be necessary to suggest the
12 number on them.....
13 A Exhibits 14, 11 and 13.....okay, it tended to
14 go south runs into the small community of Dyke. Route 627,
15 is the major access into what is known as Bacon's Hollow.
16 Bacon's Hollow is the largest and most densely populated
17 of the hollows in Greene County. There are areas - it is
18 parallel with Roach Run . The areas in general to the north
19 of Route 627 tend to level off a ways - I'd say about several
20 hundred feet before it starts hitting steep slopes, and as
21 a result there has been some clearing and some farming,
22 primarily truck farming - people who make a subsistence living,
23 and perhaps supplement their income.....the housing in
24 general is very poor, large concentration of poor housing there....
25 in the hollow. The road is all weather surface up to - around

1 Maple Grove Chapel, that's about half way up the hollow.
2 As I said the Roach River is larger than the other rivers
3 that have formed these other hollows and therefore the
4 amount of level land tends to be greater and there is a larger
5 area cleared. The Blue Ridge School is located-about I'd
6 say about a mile from Dyke up 627 going into the hollow.
7 Do you need a description of the school?
8 Q Yes, if you will, just a general description?
9 A Well, Blue Ridge School to the best of my knowledge
10 is a private, college preparatory men's school, with residences
11 for faculty, and dormitories for students. It's situated -
12 it's a very beautiful campus in a very beautiful area.
13 They have a large athletic field - in fact the areas around
14 Blue Ridge School and extending to the northeast is a large
15 cleared area and - large athletic areas associated with the
16 school there and there is considerable flood plain, that is as
17 the Roach River comes out of the mountain. Crossing out of -
18 well, the next hollow is the last hollow in Greene County,
19 the one I refer to is Mission Home Hollow, which is formed...
20 Q Referred to locally as Shifflett Hollow, I believe,
21 go ahead...
22 A On Route 628....
23 Q Yes.
24 A Shifflett Hollow.....this is similar to Bacon's
25 Hollow, in some aspects in that the amount of cleared and level

1 land is extensive and to some extent farming is a fairly wide-
2 spread activity. Where this has been accomplished - I
3 believe there is some grazing land, very steep grazing land,
4 for sheep. Access is provided off of this to the flat top
5 sub-division which is on Flat Top Mountain. The town of
6 Shady Grove is very picturesque. It appears to be a ghost-
7 town....at one time it appeared to be a small settlement.
8 628 curves south into Albemarle County and at that point
9 the - well it ends down there .....the it picks up.
10 As far as Route 810, Brokenback Mountain extends almost
11 to the town of Dyke. In other words the mouth so to speak of
12 Bacon's Hollow spreads out to the north not to the south be-
13 cause Brokenback tends to cut it off. From Dyke south to the
14 Albemarle County line, Route 810 runs between Bingham's
15 Mountain and Brokenback and this is generally an area of
16 small farms and rural area.
17 Q Transportation in this area is almost entirely
18 impeded by - almost entirely confined to in and out type
19 transportation?
20 A Yes sir, as far as access into the hollows with
21 the possible exception of Shifflett Hollow.
22 Q And to some extent you follow Mutton's .....
23 and that's it, to get out to Route 33 in other words?
24 A Yes, I understand there is a through road into
25 Mutton's Hollow.....well, no, I take that back...Mutton's

1 Hollow, that's correct.

2 Q There are small communities in the hollows are

3 there not?

4 A Route ...

5 Q Gatherings of houses?

6 A Actually the hollows I guess you would have to

7 consider them communities unto themselves. The density of

8 housing is fairly high. They tend to line the road all the

9 way up the hollow.

10 Q Yes sir, is there any commercial activity

11 in these - in either of these two zones? I don't want to use

12 the word zone, either of these two areas?

13 A Are you going back up Route 33?

14 Q Yes, the last two areas that you've described

15 is there any ...

16 A A count or just the general description?

17 Q Just a general description? The map will provide

18 us with the count.

19 A The commercial uses in Bacon Hollow, primarily

20 general store and gas stations spreading along 810 . There

21 are two commercial uses in Bacon's Hollow. And I can't

22 recall what they are. At Dyke there is a general store and

23 post office. The map shows a commercial use in Haneytown

24 Hollow, but I can't recall that. In Shifflett Hollow there

25 are no commercial uses.

1 Q All right, sir, now all the land between the
2 hollows which you've described as generally densely built,
3 all the land between the habitations with some exceptions -
4 there are some sub-divisions and some pasture land on a few
5 of the mountain tops, is this - is land that tends to be
6 steep and rugged and wild?
7 A These out rears that..... separate the
8 hollows tend to be steep and of course uninhabited.
9 Q Now sir, Your Honor, I would appreciate it if
10 we could have sort of an index of these exhibits. Now we
11 have almost 30 exhibits and some that I want to make sure
12 that I question the witness about and I may not have covered
13 them all.....
14 COURT: What do you propose as an index, do you
15 want to prepare one and file it or.....
16 Q I understood that...
17 COURT: You haven't offered them in order....that's
18 one of the problems - you numbered them, but have not offered
19 all of them....we've got over 30, but I think there are some
20 gaps in there.
21 Q That's what I was trying to cover.....
22 (Discussion of exhibits.)
23 COURT: I've got 1 through 6, 7, 8 through 16,
24 17 and 18, 19, 23, 24, 25, and 27.
25 REPORTER: 26.....

COURT: 26.....

REPORTER: 27, 28 and 29.....pages out of the book.....30 .....

(Discussion of exhibits.)

REPORTER: That was not admitted.....

PARKER: Do you have any objection to its being admitted? It's another drawing of the water system, it was discussed - in view of the fact that it was discussed maybe we ought to vouch the record somewhat more completely and counsel does not object.

COURT: All right, and which number is that now?

PARKER: 31, sir.

COURT: 31....31 admitted.

The drawing of the water system was marked and received into evidence as Plaintiff's Exhibit Number 31.

PARKER: Mr. Evans, what is this, I show you plaintiff's exhibit for identification number 22.

A This is the future land use map of Greene County.

PARKER: When was this map prepared?

A This map was prepared in June of 1974.

Q And the information put on it at that time?

A Yes sir.

Q This is reflected is it not and one of the things -

I think it's even actually shown in there...one of the things reflected in the comprehensive plan?

A It is the land use plan, the map of the comprehensive plan- it appears in the plan in a smaller edition.

Q Your Honor, I ask that Plaintiff's Exhibit 22 be admitted as Plaintiff's Exhibit 22.

COURT: Any objection Mr. Slaughter?

SLAUGHTER: No Your Honor.

COURT: It will be admitted.

The Land use map was marked and received into evidence as Plaintiff's Exhibit Number 22.

Q The land suitability map which is over here is Plaintiff's Exhibit 21. I don't believe that has been admitted into evidence. When was that prepared Mr. Evans?

A I believe that was completed in January of 1974.

Q That was the other - that and this map were the things that were completed in January of '74?

A Yes sir.

Q And the - Your Honor we have referred to the numbers on Plaintiff's Exhibit 20 for identification - we got out to.....to remind ourselves of the testimony in connection with the sub-divisions.....Mr. Evans when was this map prepared?

A To the best of my knowledge.....to the best of my knowledge about May of 1974.

Q Your Honor I ask that that be introduced as Plaintiff's Exhibit 20.

COURT: All right, any objection to 20?

DICKEY: No objection Your Honor. In fact these are already in record as a part of the comprehensive plan.

COURT: How about 21 is the same true there?

DICKEY: The same - no objection to that either.

COURT: All right.....21 is also admitted if you wish to offer it, Mr. Parker.

PARKER: I'm trying to figure out which one Number 21 was.....I believe that's just been admitted, has it not?

COURT: All right.

The map was marked and received into evidence as Plaintiff's Exhibit Number ~~20~~ 21-Pl.

Q That covers the numbers up to this point. Now Mr. Evans is there a bibliography in the comprehensive plan?

A No sir, it's...

Q Is there something that cites the sources in there?

A Sources of maps, and sources of the data...

Q Are cited?

1 A Are cited, perhaps not in this but in the
2 bound volume of the plan.
3 Q Can you find for me the statement of sources
4 that you just referred to?
5 A Shall I go...
6 Q Is each source stated separately?
7 A No.
8 Q Is a statement of sources ...
9 A No, there is not a statement of sources on -
10 but in some instances the source is the Thomas Jefferson District
11 Planning Commission. In other instances it is not and on
12 the maps that I am looking at those sources are not stated
13 on the maps.
14 Q Just a moment sir.....in preparing the
15 comprehensive plan did you use the census of housing?
16 A Not to any great extent.
17 Q I'm talking about the comprehensive plan.
18 A Yes sir.
19 Q Was the census - it was cited somewhere in the
20 comprehensive plan as one of the sources was it not?
21 A Yes sir.
22 Q When was that first available?
23 A Are you speaking of the information appearing in
24 the plan or the census of housing?
25 Q Census of housing, 1970 for Virginia?

A It was first available to the public to my knowledge in 1971 as a first count. It was a printout of a computer tape.

Q Thank you sir....the substantial information sir came out in that first count?

A An abbreviated amount of....in other words each successive count has been more detailed.

Q Did there come a time when there was a final issue of that?

A Yes sir.

Q When?

A I don't know exactly when, I would suppose sometime in late '71, '72.

Q Thank you sir. Did you use in conjunction with preparing the plan, a document called projections and economic base analysis for Greene County prepared by the Division of State Planning and Community Affairs, and the Tayloe-Murphy Institute?

A To the best of my recollection, we did.

Q Do you have any objection to this? It's background for the comprehensive plan.....

SLAUGHTER: Are you just going to identify this or are you offering it into evidence?

Q I should like to offer it with respect to what is in it with respect to the .....

1 EVANS: May I make a clarifying statement here?
2 Q Yes sir.
3 A This section, the section economy and population
4 of the plan was written by another senior planner on my
5 staff and to what extent she relied upon this, I don't know.
6 Q All right sir.
7 A So I can't say for sure that it was actually...
8 I assume that some aspects of it were, I'm sure.
9 Q Cited in the plan...
10 A It was.
11 Q All right. Now when was this first available?
12 This data.
13 A Well, what I think what they do every two years
14 is they re-issue - most of it probably appeared in 1970,
15 issuance May of 1972.
16 Q The data that was in here was available in 1970
17 in other publications, or is it in another publication like
18 this?
19 A I believe that they published these projections
20 every two years. It may have been available 1970 - the date
21 on this is May 1972, and that's the only copy we have.
22 Q It seems to me that there is some data in here
23 that's important to the comprehensive plan.....I would ask
24 this be admitted into evidence, Your Honor.....Plaintiff's
25 Exhibit.....

1 SLAUGHTER: I don't have any objection to its
2 being admitted into evidence except the physical problem
3 Your Honor, of having had virtually the entire planning
4 library of the Thomas Jefferson District Planning Commission
5 and not having to go.....
6 Q We have conceded to the gentlemen that we will
7 put copies in the record.
8 COURT: All right, it will be admitted with those
9 stipulations.
10 SLAUGHTER: Is there a copy available, that's
11 what.....
12 Q Well, if it has to be copied from the record,
13 we'll have to see to it.
14 SLAUGHTER: All right.
15 Q Is our experience, Mr. Slaughter.....substitute
16 a copy in the record.
17
18 The publication of May 1972 was marked and received
19 into evidence as Plaintiff's Exhibit Number 32.
20
21 DICKEY: Your Honor if Mr. Parker would give us
22 some time he thinks this might be done, I think it might ease...
23 the problem....
24 COURT: You have that with a number of items. We'll
25 take that up at the conclusion, let's keep that in mind when

1 we get to the conclusion of the case. Obviously this and
2 other items are subject to the same stipulation and we'll
3 try to summarize that and have a better idea when the case
4 is concluded.
5 Q I'll try to put my clerk on that, Monday, Judge.
6 COURT: All right, that's exhibit 32 of the
7 Plaintiff. You now have one through 32....I think in sequence,
8 although not admitted in that form. They now complete the
9 list of those numbers.
10 Q Do you know what these are, Mr. Evans?
11 A Yes sir. They are what are called the management
12 plan for the Thomas Jefferson Planning District Commission.
13 Q Vols.1, Volumes 2 and 3, including Albemarle and
14 Greene County.....including....
15 A It includes all of the Counties in our district,
16 plus the City of Charlottesville, which includes Greene
17 County. Volumes 1, 2 and 3.
18 Q When were these books compiled?
19 A I believe they were completed in the spring of
20 1973. They were being worked upon before I came to work with
21 the TJPDC.
22 Q Thank you sir. Do these contain data which is
23 related to the water management, water quality management,
24 that may have appeared in the comprehensive plan of Greene
25 County?

1 A Not to any great extent.

2 Q In any event the extent of these books providing
3 the data on Greene County...

4 A They do provide data yes.

5 Q I don't wish them introduced into evidence, but
6 I would like you to describe for us please sir the kind
7 of data with respect to Greene County which would be- is
8 contained in these books?

9 A Well, I'm not that familiar - we refer to it as
10 MR plan. To the best of my knowledge the book contains
11 a land use survey of existing land uses in the county.
12 I believe it contains some very general information on
13 water supply, surface water. An analysis of existing sewage
14 treatment plant at Stanardsville, proposals for alternative
15 means of serving Stanardsville and the vicinity in so far as
16 sewage is concerned.....data like this. We did not rely upon
17 it heavily in the plan because the sources-we felt that
18 for instance doing a land use map in the field was better than
19 doing one from an aerial photograph.

20 Q This did contain data - the land use map in here
21 was based on a aerial photograph?

22 A To the best of my knowledge - Mr. Abbott could
23 testify better to that than I.

24 Q Volume 1 of this, I now show you - I should have
25 picked it up with the rest - is it - does it contain the same

1 sort of information?

2 A Yes, the information I just spoke to you of are

3 in all three volumes - exactly where I don't know.

4 Q All right, sir.

5 COURT: You probably could walk the county over

6 faster than you could read it, couldn't you, Mr. Evans?

7 A I'm sorry...

8 COURT: You probably could walk the county over and

9 get it faster than you could read all that?

10 A Yes sir.

11 Q For the record, Your Honor, what I was

12 just referring to is described as Water Quality Management

13 Plan, phase 1, and....

14 COURT: Phase 1 or page 1?

15 Q Phase 1.

16 COURT: Phase 1...

17 Q And it's in three volumes, the first volume

18 entitled Background Studies and Land Use Plan, The second

19 volume entitled Existing Facilities and Water Quality. And

20 the third volume, Water Quality Management Plan. And it

21 relates as he said all the counties and cities within the

22 Thomas Jefferson Planning District Commission's jurisdiction.

23 Now is that correct, Mr. Evans?

24 A Yes sir.

25 Q I show you now another publication, Virginia's

1 Critical Environmental Areas, update. Excuse me just a
2 moment - I wonder if the County could tell me whether the
3 water quality management plan that I just cited is available
4 for purchase from ....it looks like to me it was made up
5 in a number of volumes. It may be that there are volumes
6 other than that one?
7 COURT: You all may confer about it if you want
8 to take the time, Mr. Parker?
9 Q We might be able to vouch the record in that
10 regard.....I showed you a booklet I believe entitled
11 Virginia Critical Environmental Analysis, an update, what
12 does that volume contain - did it have any - was it used
13 as data in connection with the comprehensive plan?
14 A This is an update to a volume entitled Virginia's
15 Critical Environmental Areas, which I believe you've
16 already introduced into evidence.
17 Q I don't know that I have.
18 A I believe Mr. Payne made reference to it yesterday.
19 Q All right, sir.
20 A This is more or less a review of that document.
21 Q I recollect that's what we introduced two pages
22 from yesterday.
23 A Yes sir.....review of it with the purpose of
24 strengthening the criteria utilized and proposed legislation
25 for the General Assembly....to the best of my knowledge.

Q Does it contain data ?

A No sir, not that I can see.

Q Was it used in any way in connection with the comprehensive plan?

A It's dated August 1, 1973, when we received it in the office I don't know. We wouldn't - I don't believe have used this, we would have used that volume; that volume was consulted in doing the comprehensive plan, yes.

Q That volume was the original...

A Yes sir.

Q Exhibit 29 and another number....

A Yes sir.

Q And this one would have been available to you at that time?

A It should have been, but there was nothing in there that would have specifically have applied to Greene County. We wouldn't necessarily have utilized it.

Q All right. Here is another volume, a data summary of Greene County, are you familiar with that?

A Yes sir.

Q What is that?

A It's basically a composite of available 1970 census data, and existing characteristics in Greene County. It's more or less an introduction to the county covering population characteristics, economics, services, facilities,

it's kind of a small handbook of the county.

Q Did you use this in conjunction with the comprehensive plan?

A Yes sir.

Q This is prepared by the Division of State Planning and Community Affairs, and carries the date of May 1972, would it have been available about that time?

A Yes sir.

Q Your Honor I ask that this be introduced as Plaintiff's Exhibit 33...

COURT: Any objection? It will be admitted.

SLAUGHTER: Along with the stipulation on it.

COURT: Subject to the same stipulation as item 32.

Q May we withdraw them now, I have a copy of that I'll be glad to put in the record.

COURT: All right, sir, use the copy then.....exhibit 33.

A data summary of Greene County was marked and received into evidence as Plaintiff's Exhibit Number 33.

Q In connection with soils analysis and otherwise was this geogologic map of Greene and Madison counties used in conjunction with the comprehensive plan? It is part of

bulletin 78 of Virginia Division of Mineral Resources?

A Yes sir, it was.

Q And is this the bulletin?

A Yes sir.

Q And that was used as well?

A Yes sir.

Q Your Honor, I ask that this bulletin and this map be introduced as the next two exhibits.

COURT: 35 and 36....any objection.

DICKEY: The same stipulation.....

COURT: 34 and 35.....the bulletin would be 35, the map would be 34.....34 and 35 then are admitted...

The map was marked and received into evidence as Plaintiff's Exhibit Number 34.

The bulletin was marked and received into evidence as Plaintiff's Exhibit Number 35.

Q The data on these maps are generally accepted are they as being accurate?

A The data on that map was utilized by our flood plain coordinator who wrote the section on physiographic conditions of Greene County in the comprehensive plan.

Q And these two are documents that have been available

since 1963?

A Yes sir.

Q And you were aware of were you not in preparing the comprehensive plan of the water and sewer studies of 1963 to which Mr. Vivier referred earlier today?

A Would you give me the title of that please?

Q That's the one that I wasn't certain of the title.....here it is.....this is the R. Stuart Royer and Associates Consulting Engineers Study, something called Stanardsville -Ruckersville Water Study, project number 6527.

A No sir, I'm not familiar with that.

Q All right, sir. We introduced a portion of that... Were you familiar with the water quality study by Hayes, Seay, Mattern and Mattern?

A That was the three volume study that you just introduced I believe.

Q Yes sir. I didn't introduce that. Your Honor with the County's permission I would like to vouch that into the record, if I could later get a copy from Mr. Abbott, if he can spare it?

DICKEY: No objection.

COURT: No objection - it may be vouched for the record then and you can submit the copies as you receive them and you have already identified them in the record, I

1 believe.

2 Q Yes sir. Basically ...

3 COURT: Volumes 1 through 3, I believe. All right.

4 Q Now of all this data - January 1973 the

5 general ordinance was drafted, the only data which was

6 immediately available to be utilized was the two things

7 which you mentioned earlier - the land use map that you

8 prepared, existing land use map, and the land suitability

9 map, which you prepared, is that correct?

10 A Yes.

11 COURT: You say January 1973, you mean '74, Mr.

12 Parker, when the interim ordinance - or....

13 A '74.

14 COURT: '74....I think I'm following you here.

15 I understood he started in September of '73 and completed

16 it in January of '74.

17 Q '74, yes sir.

18 COURT: I believe that's the year.

19 Q The interim ordinance was adopted in March of

20 1974.....one of these exhibits, Your Honor, - the County

21 has a run in the newspapers - we did not admit that one yet...

22 DICKEY: Are you going to make that a plaintiff's

23 exhibit Mr. Parker?

24 Q No sir, not all of it.....I think that informa-

25 tion can come into the case at a later time. Your Honor,

1 I ask leave to cross examine the witness now with respect to
2 the area which the Court examined the witness on.
3 COURT: All right, I believe Mr. Evans was the
4 one who was the prime drafter of the comprehensive plan
5 probably and the resulting interim ordinance, and it seems
6 to me that there wouldn't be any argument - is there any
7 issue on that fact, that he may be adverse to the plaintiff?
8 DICKEY: I don't believe the testimony was that he
9 drafted the interim ordinance - I believe the testimony
10 way back yesterday was that someone else did. He did
11 prepare the comprehensive plan, he put a lot.....
12 COURT: I think the interim ordinance was drafted
13 under his - at least subject to his consultation. I may be
14 recalling it.....but that's the basis upon which I think
15 the examination should be allowed.
16 SLAUGHTER: May it please the Court, I certainly
17 see nothing adverse so far in Mr. Evans' testimony to
18 Mr. Parker. Its been certainly nothing that is not cooperative
19 and extremely patient. Of course the Court asked certain ques-
20 tions, but in fact as I see it the Court was involved in the
21 same general subject matter as Mr. Parker and it seems to me
22 the purpose of legitimate cross examination. If the Court
23 rules that as to those specific questions Mr. Parker
24 has some right to cross examine, then of course that might
25 be a very little confusing.....but I see nothing.... .

1 adverse and I certainly don't see after Mr. Parker having
2 taken the witness for a day and a half, and now he has a
3 right to turn around and cross examine him.
4 COURT: Let's see what area you propose to cover
5 now.
6 PARKER: If the Court please, the County misconceives
7 what I was asking for....I was only asking to cross examine
8 as to the matters which I contend the Court made the witness
9 his own witness about.
10 SLAUGHTER: I don't at all what Mr. Parker
11 is.....
12 COURT: I'm going to allow you to go ahead and
13 cross examine him....the objection is overruled. See what
14 you can do now to get your summary if you can, Mr. Parker,
15 with regard to the affect of all this, and the participation
16 that Mr. Evans played in - the role he played in the drafting
17 of such ordinance as you complain of here. And the way the
18 information was applied and used.
19 PARKER: I think I've covered that back in the
20 testimony Your Honor. Basically what I'm concerned about
21 is the way it was applied and used - I think that gets into
22 the question of opinion. The Court will recall I asked
23 Mr. Evans for almost no opinions. I was asking Mr. Evans
24 for his viewpoint of the county and the Court inquired....
25 COURT: Well, let's see then - he's the one who is the

1 author of this ....

2 PARKER: Yes I think so.

3 COURT: ....plan that you are complaining of, if
4 he is then I would allow you the right, if he's not then I
5 think you are straying out of the area that would be appro-
6 priate for direct examination. If he's not the author of
7 it then he is still your witness. If he is I will allow you
8 to cross examine him. Let's see whether you can disclose
9 whether he is the author of it.

10 PARKER: It seems to me that the record would
11 disclose - are you talking about the plan, Your Honor, the
12 comprehensive plan or the ordinance?

13 COURT: The one that you are complaining of, I
14 take it it's the interim ordinance, basically....

15 PARKER: Yes sir.

16 COURT: The fact that it did not show the diversity
17 that you have undertaken to...

18 PARKER: Yes and the Court has correctly ascertained
19 from the evidence - I will put it in, but it seems to me
20 that at the beginning - at some time yesterday I asked Mr.
21 Evans if he had collaborated in the.....I recall
22 asking.....

23 COURT: I recall that the information was that he
24 did collaborate but I may be recalling it incorrectly.

25 PARKER: That is correct isn't it , Mr. Evans?

A Yes sir.

Q In fact you were - as you described it to me you were intimately connected with the drafting of the interim ordinance?

A Yes, but I was not the prime drafter.

Q You were consulted in drafting it initially in July of 1973?

A Let's put it this way another planner in the office asked me to consult with her.

Q In July of 1973?

A I believe that's when...

Q And you had at that time available to you the draft that you were working on or do you do a draft - or you had available to you the draft that she was working on?

A Well, we composed a draft.

Q Together?

A Yes.

Q That draft as I understood your testimony on another day was submitted by the two of you to Mr. Dickey and his office for his comments from a legal point of view at a later time, is that correct?

A At a point later in time, Mr. Dickey was consulted on it, yes.

Q And do you recall about when that was?

A I can't speak with absolute - I can't be absolutely

1 sure. I believe that we consulted with him sometime in
2 July of 1973.
3 Q And did there come a time when an interim ordinance
4 was - proposed interim ordinance came back out so to speak
5 from Mr. Dickey's office?
6 A Ultimately the three of us working on the
7 ordinance, one was issued in January.
8 Q In January of 1974?
9 A Yes sir.
10 Q And it was your testimony earlier that that was
11 the ordinance which was prepared in - that that was the
12 ordinance that was prepared in March with the exception of
13 the amendments which were made on the day of passage...by
14 the Board of Supervisors?
15 A To the best of my knowledge.
16 Q To the best of your knowledge yes?
17 A Yes.
18 Q Thank you. It is in the area of the gentleman's
19 opinion which I am about to ask for now, Your Honor, which I
20 thought I would have the right to cross examine...
21 COURT: Well, let's see if we can't separate it
22 this way though Mr. Parker. As I understand it, the interim
23 ordinance had attached to it the zoning map. In so far as the
24 legal draftsmanship of the ordinance is concerned, I'm not
25 sure that it's appropriate to ask his opinion. With regard

1 though to the application of these criteria to the zoning
2 maps, it certainly seems to be appropriate.
3 Q That was what-the map and the ordinance, the
4 application and criteria, that was the line of the Court's
5 questioning...
6 COURT: All right go ahead sir.
7 Q Let me get something from your previous testimony
8 that I think you said....you stated yesterday that the
9 planning which was done in January - one of the plans
10 which was available at that time, or which you had immediate-
11 ly available in January of 1974, were those two items, the
12 existing land use map and the land suitability map?
13 A I wouldn't say that's planning, I would say
14 that's accumulative data.
15 Q And that is the data which you had available
16 at the same time that this ordinance was ...
17 A Not necessarily, that dot map was not complete -
18 it was almost - I would say perhaps 85 percent complete on
19 the base map at the time that was written.
20 Q And so even all of that data would not have
21 been available to go into the draft of this ordinance, which
22 was published sometime - that was the date I was looking for
23 before, published a month before the passing on March 4?
24 A That was available, I believe around the second
25 week in January. The finished dot map was completed about

1 the same time, the field survey ran up until the 15th of
2 January. So it wasn't completely available at the time this
3 was written, but most of it was.
4 Q Did that - can you point to areas in this
5 ordinance in which that information and in the map, the zoning
6 map, plaintiff's Exhibits 3 and 3-A, that I'm referring to -
7 can you point to information in the ordinance and in the
8 map which was developed from those two exhibits?
9 SLAUGHTER: If it please the Court, effectively
10 what Mr. Parker is doing is asking that an ordinance, an
11 interim ordinance that was recommended by the Planning
12 Commission to Greene County and then submitted to and in
13 amended form passed by the Board, be used or be dissected
14 by this witness from the point of view of all the different
15 elements that led to its draftmanship. It simply is asking
16 him for a legal opinion, asking him to go back and a situa-
17 tion where he could not possibly be asked to testify
18 accurately and consequently or in any way that is proper.
19 Effectively he's asking for legislative history beyond
20 the ordinance..... ... by a person who was not at that
21 time certainly a legal advisor for the county or in
22 planning advisory capacity.....
23 Q I'm not asking him a legal question Your Honor
24 I'm asking him to point out the areas there which were -
25 which would show - which are the result of the planning data

1 that he had.

2 COURT: I think you are calling for the conclusion
3 now and you are straying off of some detail that we need.
4 The question is who decided what these classifications
5 would be, Mr. Parker. You have jumped over that . Now
6 obviously what you have then is the end result and you are
7 asking this man to back up and dissect....it. The question
8 that I would have is then whose responsibility was it
9 and who did prepare it. It hasn't been developed that he
10 did. As Mr. Slaughter says you are now asking him to justify
11 what the Board of Supervisors did.

12 Q He stated Your Honor that he prepared it in
13 conjunction with two other people, and that it was in that
14 form submitted to the Board of Supervisors and the Board of
15 Supervisors passed it with the amendment which we have tacked
16 to there separately in one of the exhibits. And that with
17 that exception it was in the same - it was in the same
18 circumstance - it was the same as he had last seen it.

19 COURT: Well, I'm going to sustain the objection
20 unless you can show that Mr. Evans is actually the one who
21 proposed this classification. That he was privy to it,
22 because what you now have developed is the final draft and
23 asking him to explain it. And it is not apparent at this
24 point that he is responsible for the final draft. He may be.

25 Q It seems to me Your Honor that these questions

are necessary for cross examination in the area the Court opened up in its examination of this witness.

COURT: It wasn't on the preparation of the ordinance but the manner in which the zoning map was prepared. Now in so far as he prepared the zoning map, you certainly have a right to pursue that, the preparation of it and how the classifications were arrived at, if he was party to it. I don't think I disclosed that either.

Q May I show the Court this particular....

COURT: Yes sir, let me take a look at it..... I think you all have had it in evidence..... but it has not been developed at this point that Mr. Evans is the one who prepared the zoning map.

Q The map?

COURT: Yes sir - it's obvious that he prepared the land use map or participated largely in its development.

Q He stated that he drafted the ordinance as submitted....and as published.

COURT: Well...

Q ...in the county and this is a part of the ordinance. Maybe I can do a little more....

COURT: I think you will have to.....

SLAUGHTER: I don't like to have to correct Mr. Parker, what he testified to was he and Mrs.Heubach worked on preliminary plans done before, which in turn were submitted

to Mr. Dickey, which in turn in some revised form were presented to the Planning Commission which in turn were submitted by the Supervisors.

Q He stated Your Honor that the - that he - in talking about the interim aspects of it, he stated that he and Mrs.Heubach and Mr. Dickey were responsible for the output, and whether the Planning Commission or not....

COURT: Well let's ask him who prepared this map, if he did it or someone else that he had no connection with, I think that's the question here.

Q Who prepared this map sir?

A Well, the map...

COURT: What exhibit number is it Mr. Parker?

Q 3-A.

COURT: 3-A.

A The map is in effect the text of the ordinance. In other words it says that the county is one district and that's what the map reflects. The question I was - I don't know if I'm allowed to say this but I assume the question is who decided that there would be one zone in the county?

Q No sir, that's not my question.

COURT: Well, what does the map purport to do? Does it purport to show the zoning classifications in Greene County as of the date of the ordinance?

A I'm sorry sir.....

COURT: What does that map purport to show if you know?

A It's a visual representation of what the county has been zoned through this ordinance.

COURT: All right can you answer the question as to who's determination it was as to how many and what types of zoning classifications there would be?

A No sir, I can't.

COURT: All right, Mr. Parker I think the objection should be sustained that Mr. Slaughter has made.

Q Let's see if I can ask him Your Honor with respect to - were the zoning classifications in the county set up through this ordinance in the same fashion as they appeared at the time the ordinance, in the planning stages, in its preparation stages, came out from Mr. Dickey's office where you and Mrs. Heubach and Mr. Dickey had been working on it?

SLAUGHTER: I don't understand the question Your Honor.

COURT: Let's see if we can't put it this way. Are you asking, Mr. Parker, what classifications he and the draftsman of the ordinance recommended?

Q Yes sir.

COURT: All right, let's see if we - can you answer that Mr. Evans?

Q I think he's already answered it.

1 A I can answer it to the best of my knowledge.
2 As I said in consultation with Mrs.Heubach, I believe we
3 recommended that one zone be proposed. I can't say that is
4 completely the truth. To the best of my recollection I think
5 that's right.
6 COURT: Go ahead, Mr. Parker, you've elicited that,
7 now what else do you want to ask him.
8 Q Thank you. And this is the one zone?
9 A Yes sir.
10 Q And this map is no more and no less than a map
11 of the physical characteristics of the entire county with the
12 political district of park shown and with the political district
13 of the town of Stanardsville shown, isn't that it?
14 A Well, I wouldn't say it's correct to say it's
15 a map of the physical characteristics of the county. It simply
16 shows the streams and the highways.
17 Q Yes sir.
18 A And political boundaries.
19 Q It is in effect...
20 A A base map.
21 Q A base map. It looks very much like that highway
22 map of the county that you have there - just all the numbers
23 are left off, almost all the numbers are left off....well, what
24 it looks like is a matter of record, I know.
25 COURT: Mr. Evans is that the type of base map that

you would normally start with to develop a zoning ordinance and a zoning map? Of Greene County?

A No sir.

COURT: What would you ordinarily use as a base map to start your zoning, the land use...

A Yes sir...

COURT: I see....all right.....

Q In other words a map like exhibit 16 would ordinarily be used as a base map for a zoning ordinance?

A It depends on the size of the county, I would say yes. Something of that size. And depending upon how many zones you had. If it's a large urbanized county in which you have a lot of zones, your map is going to be correspondingly larger.

Q But would it show - what I'm driving at would it - would such a map show the existing land uses?

A Are you speaking of a base map?

Q Zoning map, yes sir.

A No it wouldn't show existing land uses, it would show your zones.

Q It would show your zones...

A Yes. Well, it would show land use to the extent that your highways are on it, perhaps.

Q And streams.....physical characteristics of the county enough so you could identify where you were?

A Yes.....right.

Q Now that would be to start with?

A Yes.

Q In preparing an ordinance and...

A Preparing the map for the ordinance.

Q In preparing the map for the ordinance, I'm sorry. And the map for the ordinance when you get through ordinarily would look like this or something like this one? Plaintiff's Exhibit 27.

A Ordinarily but not necessarily.

Q From the standpoint of planning - this is very much a question I can see along the line of the Court's questions... Your Honor. From the standpoint of planning Mr. Evans would an ordinance such as the interim zoning ordinance of Greene County properly depict planning, if it did not have in it, sir, the first page? For the Court's information this is the preamble and the paragraph concerning its expiration date.

COURT: Aren't you getting into a legal conclusion now, Mr. Parker, from this witness.

Q It is very difficult, I asked....

COURT: It seems to me ...

Q I asked Mr. Evans this question from the standpoint of planning, Your Honor, that's the only way in which - some of these words are used in dual context and it's very difficult to avoid a question like this. I understand the Court will

have to take it in accordance with what it's worth.

SLAUGHTER: Are you asking for an expert opinion now Mr. Parker?

Q I'm asking - this is the same question the Court started with, along the lines the question of the Court of Mr. Evans....

COURT: I think Mr. Evans is certainly qualified in so far as Greene County and the work generally done to speak as a planner, but the question of his answering to the legal efficacy of the document itself is the thing that bothers me. I realize that the two areas may overlap, but you may be putting him in the position of having to give you a legal opinion now, which is not permissible.

Q Didn't the Court inquire Your Honor whether or not Mr. Evans thought it was - how you went about planning these kind of ordinances and...

COURT: No I didn't ask him about ordinances and to refresh you all, how would you generally begin with zoning in a rural county? Would you start with a general category as a catchall or reservoir of land and then designate smaller zones within or would you start first with high density zoning, leaving the reservoir of land or general categories until last? This had to do with the mapping - I think rather than the legal efficacy.

Q Let me try to approach it in that fashion. Thank

1 the Court for refreshing my memory.

2 COURT: I wrote my questions down before I asked

3 them.

4 Q Mr. Evans, would you start in a rural county

5 from a standpoint of a one zone - from the standpoint of

6 a one zone characterization of the county, where the

7 map that you were not using - was in the Court's question -

8 the map you are about to make was not going to be applied

9 temporarily but was going to be applied for an indefinite

10 period of time into the future?

11 A Would I?

12 Q Yes sir.

13 A Under certain circumstances I might.

14 Q Under what circumstances?

15 A If a county was homogenous, showed actually low

16 indications of growth, and the plan indicated that the county

17 was - did not wish to grow and would not grow and assuming

18 of course that it was very homogenous - I would zone it one

19 zone.

20 Q Was Greene County a county which showed absolutely

21 no growth? Or trend of growth?

22 A I can't say that, no, it was showing some growth.

23 Q Therefore the only way...

24 A I'm talking about a permanent ordinance.

25 Q I understand.

1 A Permanent map.

2 Q I'm talking about one too. Therefore,

3 a permanent - the one zone concept would not be used in a

4 permanent - would not have been used by you in drawing up an

5 ordinance or drafting an ordinance - would not have been proposed

6 by you in drafting an ordinance, zoning ordinance for Greene

7 County, but for the fact that it was an interim ordinance?

8 A What you are asking me in effect is did we consider

9 the diversity of the county in establishing a one zone map, is

10 that correct?

11 Q No sir, I'd rather you answer my question.

12 A Well, I'm not sure I know what you are talking

13 about.

14 COURT: Let's put it this way - as I gathered and I

15 think the important issue here is Mr. Evans what is the planning

16 justification for starting with a single classification? Is

17 it because it's interim, or is it because that's a good start

18 even for the permanent map? What's the justification?

19 A The interim ordinance - if you establish one

20 zone which in essence reflects the basic characteristics of

21 the county, then it serves to - it serves not to freeze the

22 growth in the county, but to allow new growth to be allowed in

23 harmony with what exists at the time the interim ordinance

24 was adopted, so that the plan could proceed and designate

25 areas of growth so the permanent ordinance could reflect this.

1 COURT: You are saying then that this initial
2 classification was more truly representative of the county as
3 a whole?
4 A Yes sir, I'm saying with the information we had
5 it was impossible to pinpoint any areas where specific zones
6 could be applied without perhaps doing damage to the county
7 in the future.
8 COURT: Now you obviously intended then by that to
9 have that as a beginning point for more comprehensive zoning
10 map which would reflect...
11 A Yes sir, once the plan had been completed, and
12 as I said this was the first step, doing the plan - the plan...
13 COURT: In planning why don't you go ahead and get
14 the completed product first - I think that's the question here.
15 Why do you use the interim plan at all, why is it necessary?
16 A Well, it's necessary in a county such as Greene
17 in my opinion, where you have a tremendous amount of develop-
18 ment activity taking place. And you want the opportunity to
19 exercise some control over these while the plan is being done,
20 so that the plan itself isn't compromised by interim growth
21 by the time the plan itself is completed.
22 COURT: All right, go ahead Mr. Parker, I think that
23 covers the area you are...
24 Q That concept is called "Pause for Planning", isn't
25 it?

1 A Well, I don't call it that.

2 Q Can it be called...

3 A I guess you could, yes.

4 Q And what you are telling us is that this

5 ordinance with the one zone concept would not have been

6 proposed for Greene County as a permanent ordinance?

7 SLAUGHTER: He didn't say that, Mr. Parker.

8 COURT: He's indicated that this concept...

9 A I can't...I'm sorry....

10 COURT: Go ahead....you may...

11 A I can't say that because the plan hadn't been

12 completed.

13 Q Well, in the absence of knowing would it have

14 been good planning Mr. Evans, in the absence of knowing that

15 such an ordinance - I withdraw that....in your previous

16 testimony you testified I believe that there were trends of

17 growth in Greene County, that Greene County was reacting

18 in some fashion or other to growth?

19 A Yes.

20 Q And that the only time that you would propose

21 a single - an ordinance for a single zone other than in the

22 interim situation was where a county's growth was static, is

23 that correct? As a matter of fact, growth was non-existent?

24 A I speak in terms of a permanent ordinance.

25 Q Yes sir I understand that.

1 A Okay.

2 Q The planning justification for this kind of
3 single zone ordinance in Greene County was the fact that
4 it had - was the fact that Greene County was feeling some
5 pressures for growth and that you wanted a pause for planning
6 to get the studies together to do the comprehensive plan
7 so that you could make a permanent zoning ordinance?

8 A Not a pause in growth, control of growth.

9 Q Control of growth in the interim?

10 A Yes.

11 Q And other than that that is correct what I said?

12 A Speaking for myself, yes.

13 Q And speaking for good planning practices, you
14 understand...

15 A Yes sir.

16 Q That's also so?

17 A Yes sir.

18 Q Isn't it true Mr. Evans - all this data was
19 available, every bit of it was available except what you
20 constructed, available somewhere in January, had it been used?
21 All this data was available for a considerable period of time
22 prior to the county's asking the Thomas Jefferson Planning
23 District Commission for its assistance in drawing this ordin-
24 ance?

25 A What do you mean by all of this data?

1 COURT: The dates speak for themselves, Mr. Parker.
2 I think that's a matter of argument...
3 Q Yes sir, I think....
4 COURT: ...the question here, because I've noted
5 the dates on the various studies and the information criteria
6 that was developed...
7 Q Thank you sir - I think they do speak for them-
8 selves.
9 COURT: Mr. Evans with regard to that aspect, we've
10 had Mr. Payne testify on it; let's see whether you agree
11 as a planner - how long it would take ordinarily to develop
12 such a plan, given the circumstances that we have here? You
13 say you were contacted in July and you got something together
14 by January. How long would it take - would it have taken
15 under those conditions to have developed the final permanent
16 zoning map? In so far as a zoning map ever becomes permanent.
17 A Do you mean from that date of completion of
18 the map or from the date of inception, Your Honor?
19 COURT: Well, I'm not sure - whatever - the date
20 you were initially started on this project? The question being
21 of course why didn't you get the final project rather than the
22 interim phase, why didn't you go right on with the final
23 zoning ordinance? And how much additional time would it have
24 taken?
25 A Well, ultimately that's what we were leading to.

1 We had to go to the planning phase first and then a zoning
2 ordinance, permanent zoning ordinance based upon the plan.
3 COURT: How long would you ordinarily have anticipated
4 it would take?
5 A Well, it's difficult to tell Your Honor, it varies
6 with the jurisdiction. I felt that it would - at first I
7 felt that it would have taken less time than it did, simply
8 because given the size of Greene County and given my unfamiliarity
9 with it I thought I could finish the land use portion much
10 sooner than I actually did.
11 COURT: Well, let me ask this now was it the Thomas
12 Jefferson Planning District's recommendation that an interim
13 ordinance be developed while you were working on the final?
14 A I can't answer that, Your Honor.
15 COURT: All right, go ahead, Mr. Parker.
16 Q Is there another way from a planning point of
17 view to approach this Mr. Evans, isn't there an alternative?
18 That alternative would be this, to do your studies, pass an
19 ordinance as closely as possible in alignment with what your
20 studies reflect...
21 A Excuse me, permanent zoning ordinance?
22 Q Yes sir - pass a permanent zoning ordinance as
23 closely in line with your studies as possible as they reflect
24 the jurisdiction that you are dealing with, and then proceed
25 consistently to work on that and get it closer and closer to

perfect?

A No sir - no sir.

Q That's impossible?

A It's not impossible, but it's not good planning practice.

Q Not good planning practice, at all? In other words in every instance if you could get a pause for planning, a delay for planning, you would take one?

SLAUGHTER: I'd like to note Your Honor for the record - I don't object to bring this out. Pause for planning that / Mr. Parker's trying to inject is his wording...

COURT: Yes sir.

SLAUGHTER: Mr. Evans ...

COURT: Mr. Evans has already noted that.

SLAUGHTER: All right, sir.

COURT: I'm aware of it and the record speaks for itself.

SLAUGHTER: My objection...

Q What was your word Mr. Evans, rather than pause, you gave me a better word?

A I didn't...

SLAUGHTER: Control....

A ...I just simply said I didn't call it that.

Q What - control during planning?

A Yes - yes.

1 Q In every instance you think it is good planning
2 practice to have control during planning?
3 A It depends on the jurisdiction. If the juris-
4 diction is being overwhelmed - well perhaps I shouldn't use
5 the word overwhelmed....if the county is experiencing exceptional
6 pressures for development, I would say yes.
7 Q What do you mean exceptional pressures for
8 development?
9 A Extensive and rapid sub-division of land for
10 the purpose of building around housing developments, sub-
11 division of mountain lands for the purpose of recreational
12 developments.
13 Q Whether or not that is controlled by other
14 existing ordinances or other controls in the county? Would it
15 depend to some extent on what other controls were...
16 A Yes - yes it would.
17 Q So you cannot say that in every given instance
18 that it would be appropriate to use a control during planning
19 ordinance? An ordinance designed for control during planning?
20 A Once again I have to qualify that with the indivi-
21 dual jurisdiction. If that jurisdiction has other controls
22 and these controls are adequate to handle the pressures, the
23 growth pressures, then that's my.....
24 Q It's difficult to identify Mr. Evans, but isn't
25 there always a time when your growth pressures in fact begin?

1 If they begin at all?

2 A Well, if they begin at all, then there is a time.

3 Q Yes sir.

4 A And of course the pressure aspect it varies.

5 Q Unless a tremendous amount comes on awfully sudden-

6 ly you can always get a zoning ordinance, a permanent zoning

7 ordinance by passing a permanent zoning ordinance initially,

8 provided you started early enough in the planning process?

9 A Ideally it's best to - for a county to realize

10 that perhaps in the future this growth pressure will rear

11 its head, so to speak, and that in order to cope with it

12 perhaps they should plan and zone in order to accommodate

13 this growth should it occur. This is the way it should be

14 done, I feel, but unfortunately it's seldom done that way.

15 COURT: Do you feel the momentum had gotten a decided

16 start in Greene County with regard to development? I notice

17 you've commented on a number of sub-divisions, just how much

18 momentum do you - did you feel at the time, Mr. Evans, had

19 been generated?

20 A I only can give you my impression at that time.

21 COURT: Yes sir, your impression...

22 A I felt it had gotten out of hand.

23 COURT: That what?

24 A That the development of sub-divisions had gotten

25 out of hand, considering Greene County - the size and its natural

1 resources...

2 Q Your Honor, I....the difficulty with the Court's
3 question is - as I see it is that the foundation for it
4 is not fully laid, perhaps - I expect the county to lay it....
5 or attempt to lay it...

6 COURT: Well, you've laid it with all the detail he's
7 gone through here in these two days, Mr. Parker, that's -
8 I want to get the best use of him as a witness. I've had to
9 suffer with all this minute detail, I certainly want to make
10 use of it. And it may be wrong and it may be contrary to
11 what you want, and I'm not aware of what he's going to say in
12 advance either but I think it's important. He's the man that
13 studied this. His impression is of tremendous value and
14 has to be analyzed by the Court. And of course that's - his
15 answer is that he felt that sub-divisions had gotten out of
16 control, whether that's proper or not, that's his impression
17 and that's his analysis of it. Now you may examine him further
18 on it if you wish.

19 Q Yes sir.....I will due to the fact that the
20 Court has permitted the question.

21 COURT: Yes sir.

22 Q Mr. Evans, what in your mind has - what in your
23 mind gave you that impression?

24 A Well, I had - before I ever became involved
25 with the-actually doing the plan in Greene County I had toured

1 the county and I had seen all of the sub-divisions. And
2 quite frankly I was shocked by the extent of the location of
3 the use to which they were being put and not being put,
4 all of this in relation to the county which is one of the
5 smallest in Virginia, not only in land area but in population
6 and in economic base.
7 Q What shocked you Mr. Evans about the use to which
8 they were being put?
9 A I find it very shocking to go up over these
10 beautiful mountains of Greene County and to see roads
11 ripped through very steep slopes and a huge portion of them
12 sub-divided for recreation homes without any planning going
13 into it.
14 Q So what shocked you and justifies the planning
15 is the fact that planning wasn't used in conjunction with the
16 recreational activities, sub-divisions?
17 COURT: He's already answered that Mr. Parker, I
18 think that's merely repetitious.
19 Q What shocked you - you suggested several categories,
20 use was one of them, what were the other things that you said
21 shocked you? I'm sorry...
22 A The facts that roads had been built across steep
23 slopes and...
24 Q I remember that, yes sir, go ahead.
25 A Do you want me to repeat what I said or do you want

1 me to add more to it?

2 Q I want you to add - repeat what you said, I beg

3 your pardon?

4 A Well, the fact that homes were built in an area

5 of, if I may be allowed to give my personal opinion, pristine

6 beauty, across - with roads across steep slopes with no

7 public services provided, garbage....that is left out for

8 dispersal with animals that might happen into it. Just the

9 overall....

10 COURT: Let him finish the question....

11 Q Did you see the garbage left out?

12 A I saw trash strewn up and down many of these

13 sub-division roads and the highway.

14 Q You also saw it strewn up and down.....

15 A I can recall garbage cans turned over and the

16 trash strewn along the highway. I can recall roads so bad

17 that it took a four wheel vehicle to get through it and even

18 that got stuck.

19 Q Yes sir.

20 A I recall erosion spilling down the mountainside

21 from these roads that weren't paved. I can recall streams

22 that were muddy by this siltation.

23 Q And all of these things from these recreational

24 developments primarily...

25 A I'm using this as an example. I was equally

1 shocked by some of the other sub-divisions...I saw up at
2 the south of Stanardsville and north of Stanardsville and
3 east of Stanardsville.
4 Q How long had it taken these conditions to - you've
5 described to develop, Mr. Evans?
6 A To the best of my knowledge they had developed
7 over a relatively short period of time, about five years,
8 between 1968 and 1973.
9 Q That's all.
10 COURT: Any other questions?
11 Q No sir.
12 COURT: All right, Mr. Slaughter, do you wish to
13 examine Mr. Evans or call him back later?
14 SLAUGHTER: I'd like to go ahead right now...
15 COURT: All right sir.
16
17 CROSS EXAMINATION
18 BY: Mr. Slaughter
19 Q Mr. Evans in order to save time and in order to
20 get the clearest picture that we can.....I'm going ahead and
21 use the exhibit 3 which is the Greene County comprehensive
22 plan. I'm going to read from the catalog version of it,
23 which was sent out to the county.....that has the entire
24 plan in it. Mr. Evans, you have testified of course that
25 Greene County was essentially a residential county have you not?

A Yes sir.

Q And essentially rural?

A Rural residential.

Q At the time you found that...I'm referring particularly to - would the Court like to follow on the copy that...

COURT: I don't have a copy of that exhibit. I take it that's the comprehensive plan in tabloid form that you are referring to?

PARKER: Mine is marked.....

COURT: All right, sir, thank you.....

Q As to the chart labeled existing land use reflects, how many residential units were there in Greene County at the time you did your survey from approximately September 1973 to January 1974?

A All units including vacant and seasonal mobile homes, 2,624.

Q How many commercial establishments were there?

A Including - once again vacant and deteriorating, 96....including the town of Stanardsville.

Q Now the 96 is all of the commercial including...

A All units including the town of Stanardsville.

Q Do you recall - I realize you've done it - you've broken down for us in Mr. Parker's questions but do you recall approximately how many were vacant of those 96?

A It's in the plan and I believe there were 22. Something on that order.

Q And how many industrial uses were there?

A One.

Q And could you tell the Court what the industrial use was?

A It's a family business, which was in the - its industry was the manufacture and sale of furnishings and cabinets - cabinetry.

Q How many people were employed there?

A Two - no more than three, and I have since heard two.

Q It's really fair to say that there - Greene County has no industry?

A That would be true.

Q Has no railroad?

A No sir.

Q It's largest - it has only one incorporated town is that not correct?

A Yes sir.

Q And the - and that is Stanardsville, the population is under 300?

A Yes sir.

Q That is within the corporate limits of the town. It has no railroads?

1 A No sir.

2 Q No airport?

3 A No sir.

4 Q So as you put it's essentially a homogenous

5 rural county, that has a number of residents - in fact a

6 very large number of - approximately 33 residential sub-

7 divions, plated in a relatively short period of time?

8 Most of them in a relatively short space of time?

9 PARKER: Your Honor, which question is Mr. Slaughter

10 asking the gentleman?

11 COURT: What do you mean - on the category of

12 cross examination or direct examination, Mr. Parker?

13 PARKER: I'm not entirely certain Your Honor that

14 this comes in cross examination...

15 COURT: We've got a divided area here. Mr. Slaughter

16 certainly has a right to cross examine on all the details

17 up to the time that I ruled that Mr. Evans could be treated

18 by you as an adverse witness or to allow you to cross examine

19 him. Now he's getting into somewhat of an overlapping of the

20 two areas. Mr. Slaughter...

21 PARKER: I didn't inquire - I said his opinions in

22 that particular area until I got into cross examination...

23 COURT: It may well be that you are leading your own

24 witness in that category. You certainly have a right to lead

25 him and cross examine him on all these other details. Now with

1 regard to the numbers and all the other activities I think
2 you are certainly in the proper area of cross examination,
3 but with regard to opinions I think we got over into the
4 area of cross examination from Mr. Parker, which would make it
5 direct examination to you. ....once you get into opinion area.
6 So you should not lead him with regard to opinions.
7 Q Well, may it please the Court, I was basically
8 asking him - well, I'll ask it this way. How many developments
9 and this is on a page in the plan..... ....
10 I'm reading here from the tabloid - how many developments
11 did you find as of June 1974, existed at that time in Greene
12 County?
13 A I believe the number is 31 that were recorded.
14 Q And two at that time that had been unrecorded?
15 A Yes sir.
16 Q Approximately how many acres did they comprise?
17 A Approximately 5,000 if I recall correctly.
18 Q Have you been able to comply to the whole plan?
19 COURT: You may refer him to the page if you'd
20 like to.
21 A On page 14 of the plan, as of June 1, 1974,
22 may I read from this?
23 Q Yes.
24 A As of June 1, 1974, Greene County land had been
25 sub-divided into no less than 33 developments comprising

5,000 acres containing 3,000 recorded lots yet to be built upon. That 5,000 acres could be - whether or not the two sub-divisions that were not recorded were included in that 5,000 acres I don't recall. I would think they were not. But the 3,000 recorded lots yet to be built upon ....

Q Mr. Evans and if the Court please I'll be happy to have him question Mr. Evans at any time during my examination, because I want to undertake to do here is in as brief a fashion as possible to simply ask Mr. Evans to explain the planning process that he went through.

COURT: All right.

Q In an orderly, step by step fashion.

COURT: You may do that. We've led him into a lot of it probably with a lot less detail than you would want, that's up to you. But you may do so so long as you consider the fact that in that category he's your witness, I believe, Mr. Slaughter.

Q What was your first contact with Greene County, Mr. Evans?

A My first contacts with the Greene County Planning Commission in March of 1973.

Q Was that shortly after you came to the Thomas Jefferson Planning...

A Yes sir.

Q ....Commission. Could you tell us what the subject

of this - of the contact was?

A The Greene County Planning Commission had forwarded to our staff a proposal to attach a townhouse ordinance to their existing sub-division ordinance. They asked for staff opinion, recommendation. Myself and Mr. Abbott, the executive director, appeared before the commission...

Q For identification is that Robert Abbott, Jr.?

A Yes sir. And to the best of my recollection suggested that rather than approach the - I believe the townhouse ordinance was in response to pressures for townhouses in Greene County - our response was rather than a piecemeal approach such as this that the county undertake a planning process which would incorporate the formulation of a county comprehensive plan and a zoning ordinance based upon that.

Q And when did your office give that recommendation to the Planning Commission?

A As far as an official recommendation I don't know. We did suggest that in March of 1973 as I recall.

Q And ultimately you were authorized to go forward by the Planning Commission under the authorization of the Board of Supervisors?

A Yes sir.

Q Now you have told the Court and of course you testified before that it was your recommendation that you go through the complete process including the comprehensive

1 plan and then a permanent zoning ordinance. Can you give
2 the Court again in synopsis what is involved in a comprehensive
3 plan? You have of course been describing the land use and
4 structural use survey, but could you just give us in synopsis
5 form...
6 A Yes.....very briefly it's a guide - a guide
7 for use by the county in so far as its future growth is
8 concerned. Something that they can refer to when issues of
9 growth confront them. And the process usually entails a
10 planning document with a planning map. And it normally
11 incorporates procedures which begin with an inventory of
12 existing conditions, not only existing land use but everything
13 that's available that gives some overview of the county as
14 it exists at the present time. Once this has been - once this
15 data, this information has been accumulated and analyzed
16 and some - well, I shouldn't say conclusions - some picture of
17 the county created as to what the problems are, what the
18 existing situation is, you have a foundation upon which to
19 work toward your plan. The next step is usually the formula-
20 tion of a citizen's committee, some type of a citizen's
21 input committee to advise the staff - given perhaps in synopsis
22 form existing conditions in the county. To advise the staff
23 as to how they feel the county should develop. And this is
24 usually set forth in a statement of goals and objectives for
25 a county. Once this is completed the staff then has the county

as it exists at the present time together with the citizen's ideas as to how the county should be in the future. And with these - it's almost like the county itself giving us directions. We have restraints within which to work, in other words the physical pattern has been established as part of the inventory phase. Given this and given the wishes and desires of the citizen's of the county, we come up with planned alternatives and from this the plan which most reflects the needs of the county as can best be foreseen at this time. It is then prepared for public hearing at which time citizen's attend, the plan is presented, they make their comments known to the commission. The commission makes changes if any are necessary, and the plan is then forwarded to the Board of Supervisors, another public hearing, more citizen's input. If any changes are necessary these are made. The county then adopts the plan and this serves as their guide for growth and development of their county.

Q Going back then Mr. Evans to the point where the study of land use instructions had been completed, you have mentioned that there are other elements of information which go into - which are developed in order to present it to the citizen's goals committee, what types of data are those?

A Well, you generally group them in major categories. For instance the - well, the land use, the spacial arrangement, spacial distribution of land uses - if you want to go into

1 housing the distribution of poor housing. An assessment of
2 existing natural resources, in other words most of the citizens
3 know this but you present them with a package that describes
4 the county as it is physiographically, that is the streams
5 and the mountains and the soils and the climate and things
6 like this....woodland and wildlife. An assessment of
7 existing community facilities, whether or not - what the
8 capacity of - if they are overcrowded, things like this.
9 An economic analysis to determine where the economic base
10 of the county is, whether or not the county is dependent
11 upon markets outside of its own boundaries for its services
12 and for its job supply. History of population growth, trends
13 in population. Projections that may have been made by other
14 agencies for the county. From this you generally draw some
15 conclusions as to where the county is today and where it's
16 headed for the future...given no action on the part of the
17 county.
18 Q I notice you are referring to a document there.
19 Is this a document that was presented to the citizen's
20 goals committee?
21 A No sir, this document was one presented to the
22 Greene County Planning Commission. It's a proposed work
23 program for the comprehensive plan and zoning ordinance, with
24 the various activities I outlined to you and the proposed
25 dates of completion.

1 Q Now you have referred to a citizen's goals
2 committee, could you tell the court just a little more
3 about who decides to have a citizen's goals committee? How
4 was it constructed and in fact how was it constructed here
5 in Greene?
6 A Yes sir. Well, first of all the recommendation
7 is made by the staff or in this case it was made by our
8 staff to the Greene County Planning Commission that before
9 we could proceed with planning we had to have input from
10 the citizens of Greene County. The plan is the county's
11 plan, it's for the people of Greene County, of course it
12 should reflect their wishes. And we simply requested of the
13 Commission that they appoint a committee which represented a
14 good cross section of the citizenry of Greene County and they
15 were familiar with the citizenry, and that it be of a sufficient
16 size that we could work with this committee. And so this
17 was requested and the Commission on the 20th of February,
18 1974 established an Ad Hoc Citizen's Goals Committee....to work
19 with us.
20 Q What in fact did you do then with the Citizen's
21 Goals Committee?
22 A Well, as I recall I prepared a very preliminary
23 statement - well, first we had a meeting before the Citizen's
24 Goals Committee was actually formed there was a rather large
25 meeting of the Planning Commission, which many, many people

1 attended. And the characteristics of the county and the need
2 for the plan were more or less discussed. And I ...
3 PARKER: Excuse me, Your Honor, for the sake of the
4 record I wonder if Mr. Slaughter would be kind enough to
5 establish the approximate date.
6 Q As a matter of fact do you have a document, Mr.
7 Evans, entitled Calendar of Events leading to adoption of
8 Greene County comprehensive plan?
9 A Yes sir.
10 Q Have you got an extra copy? I have two, I can
11 introduce one into evidence - you can read from that one.
12 PARKER: The thing is of course Your Honor that
13 there is no objection to the comprehensive plan here. Our
14 position is on the interim ordinance and we put it in because
15 we wanted to show that that information was available to the
16 county and should have been utilized in the formation of
17 an interim zoning ordinance, had they simply started earlier.
18 But ...
19 COURT: I suppose the issue is going to ultimately
20 be whether they waited too long or whether they moved too
21 fast. And I suppose you are saying that either or both of
22 them....now that may or may not be the case, and I should
23 allow both sides an equal opportunity to address themselves to
24 that point...
25 PARKER: The question - the thing is - he's suggesting

he get into the detailed calendar of events leading up to the adoption of the comprehensive plan. And frankly - except in so far as those events occurred prior to the interim zoning ordinance, I don't think that would make any difference. We are not here contesting the comprehensive plan.....

COURT: Well, let's see what he can relate to...

PARKER: ....at this time....

Q If the Court please as I indicated yesterday....

PARKER: Except in so far as I might....excuse me, except in so far as Mr. Matthews' particular property might have been left out of something which ultimately wound up in the zoning ordinance. The comprehensive plan and the zoning ordinance..... are not the same thing.

Q It is perfectly clear certainly from all of the evidence that Mr. Parker has introduced and from matters that have come out otherwise that this interim zoning ordinance was part of an overall planning process resulting in a zoning ordinance.

COURT: Well, I take it that that has been at least indicated and implied, I'm not sure that the evidence has been presented fully on that. Maybe Mr. Evans could address himself to that and I would certainly admit that schedule then in keeping with the development of the interim zoning ordinance. Mr. Evans was the comprehensive plan approached

1 independently or in conjunction with the interim ordinance?

2 A No sir, it was independent of it.

3 COURT: And in what sequence, behind it or ahead

4 of it?

5 A It preceded the concept and the initial prepara-

6 tion preceded the interim zoning ordinance...I mean I really

7 can't speak to this sir because the interim zoning ordinance

8 was a matter more between my - Mr. Abbott and the Greene

9 County Board of Supervisors. And I did...

10 COURT: I'll admit the schedule in so far as it

11 might be objected to as having no bearing on the interim

12 zoning ordinance, but obviously some of it is connected with

13 the other phases of it. Now exactly what point....

14 A I might be able to clarify it with this statement.

15 I had this calendar or this proposed work program that I

16 presented to the Greene County Planning Commission outlining

17 what we proposed to do also established deadlines at which

18 time these were supposedly to be completed. And we were -

19 I had it, as I presented it to them, I proposed work would

20 begin on the 31st of August, 1973, and that our plan would

21 be completed on the 15th of February, 1974. Well, the - and

22 also indicated that this map - this existing land use map

23 would be completed by the 15th of November, 1973. Well, by

24 the 15th of January I was just completing it so I was already

25 running two months behind. And I could see then that the pro-

1 posed work program was unrealistic in so far as the time-
2 table was concerned. And I really couldn't give them - I felt
3 like I couldn't give them a firm date as to when the plan
4 would actually be completed.
5 COURT: Then the schedule had to be in a sense
6 abandoned or at least updated - as you originally prepared
7 it was not the date by which you got the job done, I take it?
8 A Yes sir.
9 PARKER: If the Court please, Mr. Slaughter wishes
10 to introduce the ....I have no objection for the purposes
11 the Court indicated, except I should note that to some extent
12 it is leading upon Mr. Evans with respect to the January
13 14, 1974 entry - it says field survey analysis, preliminary
14 projections, and needs statement completed. Preliminary
15 goals and objectives statement begun. Mr. Evans has already
16 testified I think several times by now as to what was in fact
17 completed at that - on January 14, 1974. And I don't
18 wish this to show a statement here to lead him into something
19 else.
20 COURT: Well, let's see if we can relate it this
21 way. Did you give that tentative schedule and projections
22 of completion dates to the Planning Commission?
23 PARKER: This one sir?
24 Q We are talking about two different things Your
25 Honor....I think that is the only thing that concerns me...

A The proposed work program?

COURT: Yes.

A Yes sir, I gave that to them in the summer...

COURT: Now you are talking about a different date then Mr. Slaughter is that right? I didn't realize you all had two different....

Q This is the document that I wanted to have introduced - I was simply trying to ...

COURT: Let's see - calendar of events....

A This is the actual date that these occurred.

PARKER: I don't have any objection to any of that Your Honor except where it says January 14, 1974: and the statement following that I think Mr. Evans has already told us about it, and I don't think that Mr. Slaughter ought to ...

COURT: Well, do you object to this being admitted or do you feel it would help the...

PARKER: I feel it would help.

COURT: All right, what exhibit number shall we give it, Mr. Slaughter? Let's have it introduced in evidence.

SLAUGHTER: C...

COURT: That will be defendant's exhibit number....

REPORTER: C.

COURT: C.....

PARKER: I think those dates will be helpful, Your

1 Honor, in one place...

2 COURT: All right, now that will at least give
3 us an opportunity to refer to that and not have to go through
4 it in detail with the witness. Go ahead then Mr. Slaughter.
5
6 The Calendar of Events was marked and received
7 into evidence as Defendant's Exhibit Number C.
8
9 Q As your calendar of events leading to the
10 adoption of the Greene County comprehensive plan is now in
11 evidence, Mr. Evans, as exhibit C - defendant's exhibit C,...
12 The Court now has the original exhibit, I think we can follow
13 back and it won't be necessary to go into tremendous amount
14 of detail as to each of the items that you have listed on
15 there. But could you tell us really just in your own words
16 what the Citizen's Goals Committee that was appointed - you
17 did with the Citizen's Goals Committee, to try to bring along
18 the planning process?
19 A Okay, well...
20 Q And in doing so you can also bring in what
21 additional data and information became available as the process
22 went on?
23 A All right, well, it appeared from the onset that -
24 well, of course, with no planning activity ever having taken
25 place in Greene County so far as comprehensive plan many of

1 the citizens were - weren't quite sure what a goals and
2 objectives statement entailed, so it was recommended and
3 requested that our staff come up with a proposed preliminary
4 goals and objectives statement for this committee to review
5 and comment upon. And this we did and this we presented
6 to the goals committee. And at their first meeting on the
7 27th of February, '74, they proceeded - well, it was mailed
8 to them, they had a chance to review it - at this first
9 work session they proceeded then to change it as they
10 saw fit. And each succeeding citizen's goals committee
11 was more or less a repetition of this. The citizens would
12 review it, would discuss it, they would break off into
13 groups, they would meet during the week. They would send a
14 spokesman and inform me that they felt that certain goals
15 should be added, certain ones should be changed, certain ones
16 should be deleted.
17 Q Can you give us some idea what you mean by goals
18 Mr. Evans?
19 A Well, we had broken down.....
20 Q An example perhaps?
21 A Well, provide safe and sanitary housing for
22 all the citizens of Greene County, that would be- something
23 which is very general, something which unfortunately is not
24 always achieved, but nonetheless something that you could agree
25 is needed and something which you aim for. An objective is

more specific. It entails dealing with perhaps programs, housing programs, which might be utilized in achieving your goals. And policy is even more detailed, in that you might establish criteria for your housing. So basically that's the three areas within which we worked.

Q And how many different areas did you work in?

A I'd have to check the comprehensive plan, I think we covered a full spectrum of land use planning, community facilities, transportation, land use, - I mean, yes, land use concept, that is the spacial arrangement that the land use should take, ultimately a cluster pattern. Conservation of the environment, housing, agriculture, I could list them all for you if you want me to refer to the plan?

Q Yes, why don't you ....

A I'd rather have the tabloid if I could...

Q All right.

A We listed five general goals and under these objectives relating to fairly large sections of what would be considered on the comprehensive plan. The first objectives dealt with procedural, that is citizens input, citizens participation, in the planning process, on an ongoing basis. General development dealing primarily with the form of the - patterns of development of the county should direct itself. Agriculture, residential, which dealt with the housing.

1 Housing situation - location and housing shelter. Commer-
2 cial,economic, public utilities, community facilities - well,
3 community facilities, community facilities - public schools,
4 libraries, recreation, public safety, sanitary landfill,
5 and finally transportation.
6 Q And the information that you developed as you
7 put it and presented to the Ad Hoc Goals Committee was all
8 that available at one time or was that sort of given to them
9 as it became available?
10 A No, what we did, we had accumulated much data
11 - well, just - we had accumulated just about all existing
12 data on the county. And with the knowledge that I had
13 gotten firsthand by driving throughout the county plus
14 more or less the essence of the data that we had, we presented
15 the goals committee with an overview of the county as it
16 existed at that time. The detailed studies, the formalized
17 studies that were eventually published in the plan were
18 being done concurrently. In other words we knew for instance
19 what the median income was, but when you want to break that
20 down or - we knew for instance what the education was as
21 a percent of the State, but when you want to break that down
22 by age grouping and things like this, we felt this wasn't
23 really necessary for the goals committee to function.
24 And this was being done concurrently by another planner while
25 I conducted the citizen's goals committee meetings, or worked

1 with the citizen's goals committee.

2 Q And what was the ultimate fruition of the

3 citizen's goals committee meetings?

4 A The ultimate product was their statement of

5 goals, objectives and policies for guidance - for staff

6 guidance in producing a comprehensive plan. This was

7 presented to me and in turn presented to the Planning

8 Commission for their review and comment and returned to

9 staff for planning formulation.

10 Q And that was completed I believe on June 28,

11 1974?

12 A The statement of goals and objectives was

13 essentially completed the 15th of May, '74, presented to the

14 Planning Commission the 5th of June, '74, and a plan drawn

15 from this in a preliminary form presented to the Planning

16 Commission on - well, completed in rough draft the 20th of

17 June, 1974.

18 Q All right. Now you have mentioned in some

19 example form, but what additional - as best you can recall,

20 additional compilation of information was presented to the

21 Planning Commission along with the report of the citizen's

22 goals committee?

23 PARKER: What is that date?

24 Q The presentation - the preliminary goals statement

25 was May 15.

1 A Well, actually this - the data wasn't presented
2 separately - in other words it was presented along with the
3 - the data as I said was being done concurrently with the
4 citizen's goals committee. The data was - I can't recall
5 whether it was presented formally to the Commission or not.
6 I'm sure we reported it to them in some form as needed,
7 while the goal 's committee was working, but basically this
8 finished data in the form of charts and figures and things
9 like this data was presented as an integral part of the plan.
10 I mean it got into detail which was really of not that
11 much value in formulating the plan in any more detail than
12 we had already discussed it.
13 Q Well, it was brought together in final form
14 with - or in say, assembled form on June 28, 1974, when the
15 preliminary draft of the comprehensive plan was completed?
16 A Yes sir.
17 Q And the County Planning Commission was given a
18 copy at that time or did they wait until July 25?
19 A No sir they were given a copy of it at that time
20 and asked to review it and to meet at their pleasure with the
21 staff to confer on the plan for any necessary changes.
22 Q I notice on July 25, you had a work session
23 with the Planning Commission...
24 A Right, in essence they were given a month to
25 review the plan for comment.

Q Then can you just give us in synopsis the next steps that went into the final adoption of the plan in October of 1974?

A Okay, the presentation of the plan also entailed discussion of plan alternatives, although plan alternatives weren't formally presented in the form of proposed plans but they were discussed. I can't recall exactly what the Planning Commission discussed specifically about the plan, I do recall the fact that they felt the minimum lot acreage for instance was too big.....too large. And there were things like this. Basically familiarizing themselves with the overall concept, pursuing alternatives, and they decided that this was what they wanted to go along with. Amendments were made. It was approved by the Commission for publication - public hearing. A decision was made that they wanted to publish this plan in tabloid form for distribution to all boxholders in the county for public information. The Board of Supervisors authorized this publication, the plan was published on the first of October, 1974, and distributed. The Planning Commission held a public hearing on the plan on the 12th of October, 1974, and certified to the Board of Supervisors that the plan - or certified to the Board the plan with the recommendation that it be adopted. The Board advertised and held a public hearing on the 16th of November, 1974, and adopted the plan essentially as approved by the Planning Commission to them, with some modifications primarily in lot size,

1 I believe.

2 Q Now it's in the record already that the final

3 ordinance was passed .....it's in the record that the

4 final zoning ordinance was adopted on February 22, 1975, and

5 the effective date was March 1, 1975. Could you tell us

6 in summary what went on between the time the comprehensive plan

7 was adopted and the time the final zoning ordinance was adopted?

8 A Well, in brief there was crash effort on the part

9 of the entire staff of the Thomas Jefferson Planning District

10 Commission to give this county the best possible/permanent zoning ordinance.

11 And we began immediately upon adoption of the comprehensive

12 plan and we worked straight through with - working with the

13 Commission, with citizens, and finished I believe a rough

14 draft sometime the middle of January.

15 Q And of course it's also in evidence that the

16 interim zoning ordinance ended by its own terms on March 2?

17 A That's right.

18 Q Is that not correct?

19 A That's right.

20 Q Perhaps on March 1st.....the effective date of

21 the permanent zoning ordinance.....You have mentioned Mr. Evans

22 that this was a crash program, did in fact even with the year

23 the interim zoning ordinance gave you, you feel any sense of

24 pressure in developing and concluding your comprehensive plan

25 and developing and completing the final zoning ordinance?

1 A Yes sir, definitely.

2 Q And could you say really whether or not the planning
3 process of a small, rural,homogenous county such as Greene
4 turned out to be more of a major undertaking than you had
5 at first assumed it would?

6 PARKER: I think he's talking about Greene County not
7 a small rural, homogenous county such as Greene, Your Honor.

8 COURT: All right, I think it should be specifically
9 with regard to Greene County.

10 Q Yes sir, I am dealing with Greene County....

11 COURT: All right.

12 Q But I was simply summarizing the testimony that he
13 and Mr. Payne had already given.

14 COURT: All right, go ahead if you can answer it, Mr.
15 Evans.

16 A It took longer than I expected.

17 Q Since we have agreed to accommodate Doctor LeGarde
18 and I certainly want to sir, we might.....

19 COURT: All right, you may have Mr. Evans stand aside
20 for now and recall him later. And Doctor LeGarde may be called
21 at this time.

22

23 DR. R. S. LEGARDE, having been duly sworn, testified
24 as follows:

25

1 DIRECT EXAMINATION

2 BY: Mr. Dickey

3 Q Doctor LeGarde, would you give your name for

4 the record please?

5 A I am Doctor R. S. LeGarde, physician.

6 Q As a physician did you hold a position in April

7 of 1957 to August of 1973 that involved Greene County?

8 A Medical Director during that time.

9 Q During that time is it fair to say that you got

10 to know the county fairly well?

11 A Very well.

12 Q Did you become concerned over that period with

13 any sanitation problems in the county?

14 A Definitely.

15 Q What were the nature of the problems in particular

16 you were concerned with?

17 A In the middle 60's there was big pressure to

18 develop the county for domestic purposes. And we had no controls

19 of lot size and people density. The water control board, the

20 division of engineering of the State Health Department concurred

21 that we were building a potential health hazard, to not control

22 it. And I asked the Supervisors repeatedly to enact some

23 control that would give us authority to restrict this rapid

24 uncontrolled growth.

25 Q Did they do that? In 1968?

1 A In pieces we got a sanitation ordinance and we
2 did by State pressure, by administrative policy demand that
3 drainfields be replaceable, that enough areas should be
4 assigned in the beginning that a repair or replacement would
5 be available.
6 Q And when did the sub-division ordinance finally
7 from your pressure get amended to the point that it did do
8 that?
9 A I believe '73.
10 Q Now was even that in your judgment as a sanitation
11 expert enough to help the county with the sanitation problems?
12 A No, it was a good beginning, and was not as
13 restrictive as we thought it should be, but again it's a little
14 difficult to go rapidly enough to forsee these things.
15 Q When you left the county what was the next thing
16 that you had been advocating at public meetings in this county
17 and you felt was necessary from a sanitation standpoint?
18 A Zoning ordinances that would give us authority
19 to supervise sewage and water.
20 Q Thank you, that's all I have on direct. Mr. Parker.
21
22 CROSS EXAMINATION
23 BY: Mr. Parker
24 Q When did you leave the county?
25 A August of '73.

1 Q Were you happy to see the original sub-division
2 ordinance come along in 1969?
3 A Yes sir.
4 Q And you say there were some health regulations
5 before that that you were happy to see?
6 A We had a sanitation ordinance which did not
7 include size and potential use, but the original ordinance
8 was in essence that everywhere that people gathered, dwelt
9 or congregated must have some approved means of sewage disposal.
10 Q Was that passed prior to the sub-division ordinance?
11 A Yes.
12 Q This was a problem you said you had seen in Greene
13 County in the middle 60's?
14 A Right.
15 Q And you brought it to the attention of the county
16 fathers, even then?
17 A Repeatedly.
18 Q Thank you sir.
19 COURT: Any other questions Mr. Dickey?
20
21 REDIRECT EXAMINATION
22 BY: Mr. Dickey
23 Q Did you communicate these concerns to the Planning
24 Commission and the Board of Supervisors of Greene County?
25 A Yes.

1 Q Up until the day you left?

2 A Repeatedly again.

3 Q Now had it gotten to the point in your judgment

4 where ...

5 PARKER: Objection, leading...

6 COURT: You are leading Mr. Dickey, obviously.

7 The question is obviously leading, see what you can ...

8 Q What additional measures - you testified earlier

9 that we needed zoning with some controls, what sort of controls

10 and why?

11 A What I had hoped that we would ultimately have

12 would be the type of control that when sub-divisions got beyond

13 a certain number that we would not authorize them without

14 central water and sewage.

15 Q And why was it that you felt this was necessary?

16 A Because of the beginning pollution of the deep

17 waters, the ground waters and the density of people over them.

18 And we were beginning to use up the prime soils and people were

19 wanting to live on those that weren't acceptable, without central

20 sewage.

21 COURT: Was all this communicated to the governing

22 body?

23 A Yes sir. I am not sure intelligibly at each and

24 every confrontation.

25

1 PARKER: Was it intelligibly received Doctor LeGarde?
2 COURT: No, I'm merely asking whether he communicated
3 it - whether they received it is another matter, but you under-
4 took to inform them of the same thing you are telling the
5 Court?
6 A Right, yes sir.
7 COURT: All right.
8
9 RECROSS EXAMINATION
10 BY: Mr. Parker
11 Q You undertook to do that on numerous occasions?
12 A Yes sir, I think that can be documented.
13 Q And again not repeating but based on what Mr.
14 Dickey said - beginning in the 60-s when the problem began
15 to arise?
16 A The problem became more acute then because there
17 were efforts to develop the land repeatedly by large tracts
18 and small lots and the pressures were upon us to sign plats....
19 without any provision for sewage and water and many times when
20 we tried to explain this to people the so-called developer didn't
21 understand and I think mostly purposely. But he definitely
22 didn't.
23 Q He did have - by the time you were having to sign
24 plats you did have your sanitation ordinance?
25 A Right.

1 Q And your sub-division ordinance?
2 A Right.
3 Q And later your sub-division ordinance amendments
4 that you approved of?
5 A Right. We thought each one of them was a good
6 step. Now not perfection at all, but we're provincial enough
7 to know that you can't move in an area like this as rapidly
8 as you might like,
9 Q Thank you sir.
10 COURT: Any other questions of Doctor LeGarde?
11 DICKEY: No sir.
12 COURT: Thank you Doctor LeGarde and you are excused.
13 A Yes sir.
14 COURT: It's a pleasure to have you here sir.
15 SLAUGHTER: We recall Mr. Evans, sir.
16
17 MR. EVANS having been previously sworn was recalled
18 and testified as follows:
19
20 CROSS EXAMINATION
21 BY: Mr. Slaughter
22 Q Mr. Evans you testified yesterday that at the
23 beginning of your planning efforts here in Greene County, Greene
24 County didn't even have a tax map is that correct?
25 A That's true, yes sir.

1 Q And while there were certain relatively general
2 documents which were used by the District Commission in
3 evolving the plan that Mr. Parker has listed and in most cases
4 submitted into evidence, was there anything else specifically
5 related to Greene County that you can recall that you could
6 use that had been done for Greene?
7 A There may have been sources that some of the other
8 planners were still in the process of trying to obtain or
9 trying to see if they existed, that were not available. I
10 can't say specifically.
11 Q But would it be fair to say - in order to try to
12 summarize, did you have the same type of resources here in
13 Greene available to do studies such as you were undertaking
14 that you would have had say in...
15 A No sir - no sir.
16 Q While it is in evidence through the permanent
17 zoning ordinance could you tell us what the zoning under the
18 permanent zoning ordinance for the proposed Greenetown Sub-
19 division tract is at this time?
20 A It's in the agricultural A-1 zone.
21 Q And what would that - what type of sub-dividing
22 would that permit?
23 A It would limit it to two acre minimums.
24 Q And could you say how many families would live in
25 each unit? In other words....

1 A You mean how many persons could live in each
2 unit?
3 Q No, how many - in other words - it seems to me -
4 would it permit multi- ...
5 PARKER: It seems to me Your Honor if I may object -
6 Mr. Slaughter is making him his witness on this point...I
7 have no terrible objection to that, I want him to understand
8 it, but it seems like to me if that's the case Mr. Slaughter
9 ought to establish what type of residential development -
10 residences he's talking about, attached, disattached - the density
11 and so forth are different...
12 COURT: I think he's getting to that. I was getting
13 the impression that the two acre minimum may apply to single
14 family dwellings but I'm not sure. I gather that's the direction
15 he's going. Go ahead Mr. Slaughter.....as to what the two
16 acre minimum applies....
17 Q The questions - between you and Mr. Parker, I
18 think if Mr. Evans answered your two questions he could almost
19 take care of my question.
20 A It applied to all uses - all uses, that has since
21 been amended to exclude certain uses - only those that don't
22 require septic systems I believe or sewage disposal systems.
23 But at the time - the permanent ordinance, as first adopted,
24 the minimum lot size applied to all uses.
25 COURT: So the two acres would be rural, residential?

1 A Yes...

2 COURT: I take it under the A-1 zone category?

3 A Well, yes sir, this is the type....

4 COURT: It wouldn't allow commercial?

5 PARKER: Your Honor we are talking about two different

6 ordinances, if we refer to rural-residential.. I don't think

7 there....

8 A If I can refer to the ...

9 COURT: Well, what does A-1 indicate? If that's the

10 present zoning classification?

11 PARKER: The present classification is A-1.

12 COURT: That's what I understand - the question is

13 what that permits.

14 A Two categories, uses permitted by right in that

15 zone and uses permitted by special use in that zone. Shall

16 I real the uses?

17 COURT: Go ahead sir, I'm not that familiar with them.

18 A Okay. Permitted by right, single family attached

19 dwellings, conservation and preservation areas, agriculture,

20 schools, churches, parks and playgrounds (public) and public

21 buildings, church adjunctive cemeteries and family graveyards,

22 lodges, hunting clubs and boating clubs, fish hatcheries, and

23 public utilities, home occupations as defined, accessory uses and

24 structures as defined, dairying, plant nurseries-wholesale, way-

25 side stands selling commodities raised on premise, kennels,

1 veterinary clinics, and hospitals, volunteer fire house, and
2 rescue squads. Those by right. By special use permit - camp-
3 grounds and summer camps, recreation areas, private, sawmills
4 and planing mills, water and sewage treatment or distribution faci-
5 lities, general stores as defined, antique, antique craft and
6 gift shops, sanitary landfills, animal showgrounds, wayside stands-
7 temporary, tourist homes, natural resource extraction and pro-
8 cessing, mobile homes in conformance of Section 13.5 of this
9 ordinance. Hospitals, clinics, sanitoriums, nursing homes, re-
10 habilitation centers, dinner theaters, airports or helioports,
11 customary storage of dynamite as accessory use to agriculture
12 activity, seasonal shooting ranges, private schools, commercial
13 warehouses for bulk agricultural products, country clubs, com-
14 munity centers, swimming, tennis, fishing and gun clubs and
15 similar uses. Craft or cottage industries, carnivals, fairs,
16 temporary non-profit only, mobile homes in conformance with sec-
17 tion 13.5 of this ordinance.
18 COURT: All right go ahead sir.
19 Q Now a special use permit that would be a special
20 use permit that would be granted by the Board of Zoning Appeals?
21 A Yes sir.
22 Q Now in a sense that leads me into a question or
23 two on zoning under a permanent zoning ordinance - could you
24 tell us whether or not there is a tendency toward permissible
25 flexibility, that is discretionary flexibility in zoning at this tim

1 PARKER: Objection, I don't know whether that relates
2 to this ordinance or what - I don't understand the question.
3 COURT: From the standpoint of planning he may I
4 think answer it. Now in so far as the Greene County concept
5 or the policy in Greene County I'm not sure he can answer that
6 Mr. Slaughter. He certainly hasn't ...
7 SLAUGHTER: I think that is certainly fair observa-
8 tion, Your Honor. In fact perhaps I can ask the next question
9 and then in quite a different context come back to it and lay
10 the foundation. Yesterday when Mr. Payne went over the zones
11 on the present permanent zoning ordinance map, Mr. Evans -
12 he was asked to read off the different zones - excuse me, Your
13 Honor, can you see it?
14 COURT: I can see it, yes sir.
15 Q And he did, but as I understand it there are two
16 zones left out and the reason is that there are no zones on
17 the map, only zones in the ordinance...
18 A Yes sir.
19 Q Why is that?
20 A Well, we - the intent was to provide the county
21 option of allowing number one, higher density or cluster type
22 residential development within existing R-1 zones, should the
23 need arise in the future. Since detailed plans for each of
24 these clusters had not been done so as to designate exactly
25 where that kind of density should go within these clusters, it

1 was established as a floating zone until such time as someone
2 would come in with a proposal for review by the Commission
3 and possible rezoning. They could rezone within these
4 clusters for a higher density.
5 Q The Planning Commission ...
6 A I'm sorry the Board of Supervisors.
7 Q I see.
8 COURT: That is within the R-1 area?
9 A The M-1 zone since Ward's study we felt was necessary
10 to determine what type of industry would be compatible with
11 goals, policies and objectives of the plan, and since staff
12 needed further time to specify specific areas for this industry.
13 That was also classified as a floating zone to be applied
14 anywhere in the county should the proposed developer come in
15 and present his proposals or until such a time as the cluster,
16 individual cluster plans were completed and industrial areas
17 designated at which time the Board will be free to rezone the
18 map to apply say the M-1 zone to the area outlined in the
19 comprehensive plan as being suitable for industry.
20 Q And these zones that you've described are described
21 as floating zones?
22 A Yes, simply because - as you see they appear on
23 this map, they are fully described as all the other zones in
24 the text of the ordinance.
25 Q What is the purpose of floating zones to get back to

1 get back to my previous question?

2 A As I said the - it is-the basic concept of the

3 plan was to cluster development or to concentrate development

4 in certain areas of the county. Therefore it is necessary

5 that each cluster receive detailed attention to determine

6 where within these clusters such density should be allowed and

7 where in these clusters manufacturing if any should be allowed.

8 Q Could you say whether or not this is designed to

9 grant a certain flexibility...

10 A Yes - right.

11 Q And that of course with this foundation bring me

12 back to my previous question as to whether or not flexibility

13 in certain circumstances is considered desirable in formulating

14 a plan and subsequent zones?

15 A Definitely. Considering the nature of the county

16 its being primarily very low density with no industry. This

17 did provide the necessary flexibility.

18 COURT: Mr. Evans I notice from the latest map that

19 in the mountain area, apparently all of that has now been

20 zoned to a much lower density than that which you had apparently

21 observed in your tours through there, so that the type of

22 development that you indicated you thought undesirable is no

23 longer allowed under this type of present zoning?

24 A Well, the minimum acreage is 5 acres, and that's not

25 to say it's not allowed. I would say it would tend to discourage

it.

COURT: I see. Now what is the most significant area other than - is it conservation area in the mountains is that what it's called?

A Yes sir.

COURT: What's the next most significant area of the county in so far as its highest acreage, that is ...

A It would be agricultural sir.

COURT: Agricultural.

A Yes sir.

COURT: And I notice the business areas seem to be limited almost entirely to the Ruckersville ...

A Yes sir, the reasoning behind this once again is that we need - well, we - the ordinance was purposely designed to be tight so that the extra time that we would have to plan these clusters would allow the best possible placement of commercial uses within the county. In other words the commercial uses should and in fact must reinforce and compliment the cluster concept. And therefore its location is extremely important and one of the policies of the plan was not to allow strip....

COURT: I see.

A ...commercial to develop.

Q Mr. Evans you have referred to cluster plan, could you tell us and I realize you have in some - in very brief form, could you tell us what's involved in cluster plan?

1 A The basic ethic behind a cluster plan is to concentrate
2 surburban or urban type development in a relatively compact
3 area. So that the cluster can develop at a density wherein it
4 can support numerous activities, such as schools, libraries,
5 parks and can support some type of commercial, can support
6 industry; in other words it in effect encourages the creation
7 within Greene County of identifiable communities, wherein people
8 can let's say walk to their place of business or walk to the
9 store or walk to school, without having to get into an automobile
10 and drive halfway to Charlottesville. In other words you need
11 the density in order to attract the commercial and industrial
12 uses that Greene County needs to stabilize its economic base.
13 If - it's an attempt to prohibit or at least to discourage
14 the further proliferation of sub-divisions scattered throughout
15 the county, many of which sub-divisions are located in prime
16 agriculture land. So it serves two purposes, that is to save
17 your mountains, to save your agricultural land, and to encourage
18 the development of viable communities which will reinforce the
19 tax base of the county and prevent waste of natural resources.
20 Q Would sewer service be included in your plan for...
21 A Yes sir - yes sir.
22 Q Would that be true ultimately as the plan indicates
23 for all clusters?
24 A Not for all clusters, only the largest and the most
25 densely settled clusters would be served directly with sewer

1 lines. In other words the Dyke cluster and the Lydia cluster
2 are too far away from the proposed sewage treatment system
3 to be serviced by them and the densities proposed are too low
4 to necessitate it.
5 COURT: Given the shortcomings that you have indicated
6 that you found, what is the most significant natural resource
7 that you found to exist in Greene County, Mr. Evans?
8 A Well, without a detailed soil survey I couldn't
9 say it's the county's agricultural land, although I've seen
10 very many, many beautiful farms. I would say its natural
11 beauty. It doesn't...
12 COURT: In relation to the mountains or any particular
13 area or...
14 A It would be I would say the entire county, sir.
15 I mean each part of the county has its own particular visual
16 qualities. I think the mountains particularly have this, but
17 there are areas in the east in which you have some beautiful,
18 beautiful farms, clean streams - I just think the natural
19 features of the county really are its most valuable resource.
20 I mean there are no minerals really to speak of.
21 COURT: Yes sir.
22 A That have been mined and people come here, you can
23 see that by all the second homes that are going up, to enjoy
24 this natural beauty.
25 COURT: Go ahead, Mr. Slaughter.

Q Do I understand from what you've said about the cluster plans that planning is ongoing?

A Oh yes sir, yes sir.

Q You've also mentioned a soil plan what is that?

A This is a detailed soils map which will be undertaken, I believe by the Soil and Water Conservation Service, in which they - I don't know how they are conducted, I think it takes about three years. And they - it's a detailed inventory of the soil types in Greene County. And I assume a legend that goes with it describing the strengths and weaknesses of these soils in so far as their use is concerned.

Q Could you indulge me just a moment sir? ..... I have no further questions at this time, Your Honor may have some.....

COURT: I think we've covered everything that I had in mind - let's see.....Mr. Parker may have some cross examination at this point.

PARKER: Yes sir.

COURT: All right, go ahead, Mr. Parker.

REDIRECT EXAMINATION

BY: Mr. Parker

Q Mr. Evans, to follow up on the last question, of course planning is in its nature a continuous business or ought to be shouldn't it?

A Yes sir.

Q With regard to another question there is typically in completing any ordinance in a county - in counties, some pressure, deadlines have to be met in connection with them - in drawing an ordinance for a county you would expect to meet deadlines wouldn't you?

A Well, you would certainly want to establish and meet these deadlines, yes.

Q And that would produce pressure in completing your work in that connection?

A Under certain circumstances yes.

Q And another point, when you came to Greene County there were available to you here in addition to the data - I think what you stated earlier, if I understood your points on Mr. Slaughter's question, was that in addition to the data that has been produced here today, relatively little data was available to you on Greene County?

A That's true.

Q And the data that was produced here on the other hand you used almost all of it some place or other in producing that comprehensive plan?

A Most of it, yes.

Q And one thing I can think about that was here though the county did not have a tax map, it did have did it not, a set of aerial photographs available, the United States Conserva-

1 tion Service Office...

2 A Yes they are available.

3 Q I think maybe the Conservation Service Office ....

4 DICKEY: That should be A.S.C.S. I think Your

5 Honor.....

6 COURT: A. S. C. S. Office.

7 PARKER: A.S.C.S. not U.S.C.S., I beg your pardon.

8 Those photographs were .....available to you, aerial photographs..

9 A Aerial photographs were available, although we

10 didn't get them from that agency.

11 Q All right. They may be the same aerial photographs

12 for all I know from which these topographic maps are constructed

13 from time to time. Do you know the answer?

14 A Well, these are U.S.G.S. aerial photographs from

15 which the U.S.G.S. quads are produced. In other words U.S.G.S.

16 quads are a map of the....

17 Q You had these aerial photographs .... available...

18 A Yes sir.

19 Q How long have they been available to the public?

20 A Well, we had a hard time getting them because we

21 had to write to Arlington and given the nature of the bureaucracy

22 it took quite a while for us to get them back. I don't know

23 exactly how long we've had them, about a year perhaps.

24 Q When did you write?

25 A I don't recall. It was shortly after we discovered

1 that we could obtain them.I guess its been - its been over a
2 year, about a year.
3 Q Ago?
4 A Yes.
5 Q These are the same types of aerial photographs which
6 are available in the A.S.C.S. office in Greene County?
7 A I would assume so. They are very similar to the
8 map there.
9 Q Yes sir.....Plaintiff's aerial photo of the
10 area surrounding Ruckersville. Mr. Evans you have described
11 Greene County _ I think in response to some of Mr. Slaughter's
12 questions as a relatively homogenous county, is that your
13 description?
14 A In so far as its land use, yes.
15 Q With respect to - in a county such as that, how
16 would you determine where you were going to put a cluster?
17 A This would depend upon the policies and objectives
18 that your plan has established. In other words assuming that
19 you've accepted the concept - the citizens have accepted the
20 concept of cluster development, let's say in distinction to just
21 sprawl ...
22 Q Not necessarily - my question is not in distinction
23 to sprawl - cluster development, in the sense....
24 A What are the criteria that I would use to establish
25 a cluster?

1 Q Where you would put it?

2 A Well, you would have to consider just about all

3 the information we have presented before us today.

4 Q In the comprehensive plan?

5 A Yes.

6 Q And in doing that if the county were relatively

7 homogenous you might put a cluster most anywhere?

8 A No.

9 Q There would be better areas than others?

10 A Ch yes.

11 Q Based on that data that are involved...

12 A Now when I say homogenous I'm speaking in terms

13 of land use, the use to which man has put the land.

14 Q With the exception of the fact that it is in an

15 area that the county does - where the county does not wish

16 to encourage corridor development, is Mr. Matthews' proposed

17 sub-division in an area where a cluster might well have been

18 put?

19 A Well, a cluster, as you said - you can put a cluster

20 anywhere you want to, but what I'm saying is that the given -

21 the data that we had and given the citizens input that we had

22 the cluster was not appropriate for that area.

23 Q Why?

24 A Because it ran counter to the policies and the

25 objectives as set forth in the plan.

1 Q Which policies and objectives did it run counter
2 to?
3 A It ran counter to the wish that traffic congestion
4 be minimized. It ran counter to the policy that leapfrogging
5 or scatteration of sub-divisions be strictly discouraged.
6 It ran counter to the concept that new development be centered
7 close to an existing community, assuming - given the few
8 communities that exist in the county.
9 Q How close?
10 A Adjacent.
11 Q Directly adjacent?
12 A Yes.
13 Q But the clusters that were put in the county were
14 not - did not necessarily have to meet - they can be put in
15 the county under the present ordinance, do not have to meet
16 those criteria, do they?
17 A Well, if you follow the policies of your plan,
18 assuming that you want to locate new clusters in the county,
19 you will follow those policies, in determining where they should
20 be placed.
21 Q Well, the criteria that I'm talking about, disregard-
22 ing for the moment-all the clusters that have been put in the
23 county under the new ordinance have not been put around the
24 two established areas of growth that you identified just a moment
25 ago, have they?

A All of the clusters have been established or have been placed around established growth or settlement centers.

Q The established growth centers - how far from the centers....

A Some of them were - well, Dyke is a very small area.

Q Dyke is smaller than Locust Lane Sub-division isn't it?

A Population-wise yes. But it is not in the same classification as the Ruckersville cluster.

Q What factors if any could you identify which would be in favor of placing a cluster where he wanted to put his sub-division?

A Are you asking me how I could justify a cluster at that particular place in the county?

Q Yes sir. What factors would justify it?

A Well, its proximity to - its fairly extensive existing development. Its location in reference to soils. Its relation - its location in relation to filling out a cluster so to speak, that is being able to be incorporated into a cluster so as to fill it out and serve to create a community. In other words not something that is simply located by itself, unto itself, off of the highway. In other words it's an integral part of the community, planned as a part of it, streets going through it, shopping centers - not necessarily on it, but as part of a

1 community shopping center, shared by other sub-divisions.

2 Q Any other factors?

3 A The traffic that it would generate and the potential

4 conflicts that this might ...

5 Q Factors favoring putting it there?

6 A The only factors I can see in favor of putting it

7 there would be the access provided by dual lane highway,

8 running right in front of it....for the benefit of the people

9 that live there. But once again you are planning for the

10 county, for the public good.

11 Q How about availability of water, that's one isn't

12 it?

13 A Yes.

14 Q You didn't mention that earlier.

15 COURT: Mr. Evans a lot has been mentioned about

16 Locust Lane Sub-division, in evaluating that as a sub-division

17 did you find any particular problems with adding development

18 in that area? Why not attach another development adjacent to

19 Locust Lane- you just mentioned things like through streets,

20 what problems if any existed with regard to Locust Lane?

21 A Well, the problem with Locust Lane is that it's -

22 of course its access you say aside from the transportation

23 aspect of it?

24 COURT: On anything?

25 A Well, I mean it's located off of the major highway,

which does cause a certain amount of traffic conflict in so far as the density is concerned. It is a relatively good distance from community facilities. It has no commercial uses that service these people, so that if they want this type of service they have to get - the fact that they want anything at all, go to work, go to school, go shopping - they have to get in the car and drive. Also the fact that it's located with in the middle of an agricultural area with no residential, no dense residential development anywhere near it. In other words it's just a sub-division, that's stuck down in the middle of Greene County without any regard to an overall plan or an overall guide to growth.

COURT: Even though it's there apparently as planner you don't approve of it? In other words...

A It's my professional opinion that existing land use, as I said, isn't necessarily good land use. And I don't believe Locust Lane is good land use.

COURT: Did that have any bearing on the discouragement of additional development in that area under this plan? As residential development?

A Not necessarily. If the Ruckersville cluster could have been - let's say expanded far to the west in order to incorporate it and incorporate it so that it would become an integral part of the Ruckersville community - at that density I think it would be very difficult to - let's say draw that line

1 right up against Locust Lane, then say okay this is the end
2 of cluster. With that type of a density the chances are you
3 would probably have pressures on all sides of it at that point
4 to even extend it further. The point of it is that Ruckers-
5 ville if you establish Locust Lane as the western most
6 boundary of the cluster would expand it considerably and
7 create numerous problems in so far as traffic congestion and
8 service. In other words you would have very high density
9 from the periphery of the cluster. The cluster is in effect
10 centered at the intersection of 33 and 29. And with that type
11 of density that far from the center it means that those people
12 that reside there would have to commute either into Ruckersville
13 or into Quinque, into Stanardsville, in order to be adequately
14 serviced, unless you want to just strip the highway with
15 commercial and public uses.

16 COURT: Are you indicating that by adding this proposed
17 sub-division adjacent to Locust Lane you would be creating
18 too much pressure to fill in the entire distance back to
19 Ruckersville?

20 A Yes sir, what I believe would happen is that you
21 would create what is known as a situation of tension, in which
22 the vacant land between the proposed sub-division and the existing
23 town of Stanardsville would be such that ...

24 SLAUGHTER: Ruckersville.

25 A I'm sorry - between Ruckersville and the proposed

1 sub-division that a tension would be created to fill in
2 the vacant farm land between the two.
3 COURT: And you are saying then the traffic would be
4 a problem which would be .....
5 A It would run contrary to everything - the policies
6 that have been set forth. In other words it would be very
7 difficult to service development that densely settled without
8 locating some type of a shopping center near it or a school
9 near it or in essence almost a small town center near it.
10 Especially if the development that goes between your proposed
11 sub-division and Ruckersville develops at the same or higher
12 density.
13 COURT: I notice that on your updated zoning map there
14 is no residential area between Ruckersville and Locust Lane?
15 A No sir - no sir, following once again the objectives
16 of the plan to try and create a compact community at Ruckersville
17 to minimize traffic congestion, to keep development out of the -
18 what appears from preliminary surveys fairly good agricultural
19 land, to eliminate pedestrian, vehicular conflict, and to -
20 not to zone so much land for residential in the county that
21 the tax burden that might be generated would be too great...it
22 was felt that it was best to at the present time contain the
23 Ruckersville community on one side of the highway. Thereby
24 eliminating this conflict and allowing density high enough to
25 support a small commercial area.

1 COURT: All right, go ahead, Mr. Parker.

2 Q Mr. Evans, Your Honor in response to your questions
3 stated some policies - some of the underlying data from which
4 those policies might be founded, to form a legal foundation
5 for those opinions I don't think is before the Court.

6 COURT: May not be, from the standpoint of the
7 updated zoning map it may well be that we are jumping over into
8 an area which is not relevant in considering the interim ordinance.
9 I'm not sure either, but at least in so far as that updated
10 map is concerned there may be some underlying policies which
11 should be reviewed.

12 Q Mr. Evans, when you did this survey not the...
13 all the surveys put together, and collaborated in putting
14 together the comprehensive plan you have a section in it on
15 housing?

16 A Yes sir.

17 Q I want to call this to your attention sir and ask
18 you to - if it was at the time an adequate reflection....re-
19 gardless of which survey is utilized it seems that a hard core
20 of 600 standard dwelling units exist in the county. Significant
21 concentrations of poor housing and poor housing environments
22 occur in the following locations - you give a number of loca-
23 tions there, is that...

24 A Yes sir.

25 Q Is that correct data?

1 A Yes sir.

2 Q Was that poor housing-housing which was in sub-

3 divisions or primarily housing which was outside sub-divisions?

4 I direct your attention if you don't have it to the...

5 A Yes, I'm familiar with the map. Primarily outside

6 of sub-divisions.

7 Q So that was here and been here a long time,

8 wasn't it?

9 A Yes sir.

10 Q And you - down here further in the plan you state

11 this.....the greatest housing problem facing Greene County

12 indeed facing almost all of the rural counties of Virginia

13 is shortest of sound, sanitary housing, available at prices

14 people can afford to pay. Moderately low income families

15 who desire to live in or continue to live in Greene County do

16 not have a wide choice of housing types or prices and rents.

17 Was that statement correct?

18 A Yes sir.

19 Q And that - is that your present opinion?

20 A Yes sir.

21 Q Is that your present opinion as to present?

22 A Yes sir.

23 Q Mr. Evans, you say you wish to avoid congestion

24 on Route 33, near Ruckersville, if homes are established at

25 other places in the county west of Route 29, where are most of

1 those people going to work initially based on...
2 A West of...
3 Q West of Ruckersville?
4 A West of 29?
5 Q West of 29 in the county? Where are most of
6 those people going to work?
7 A Well, you have to make some assumptions.
8 Q What does your present data show about where most
9 of the people work?
10 A The present data shows that most of them work in
11 Charlottesville - well I can't say that these particular --
12 I would assume that some of them work in Stanardsville. I would
13 assume that most of them work in Charlottesville or Albemarle.
14 Q All right, sir, and how do they get there?
15 A I think that's fairly obvious. They take an
16 automobile down 33 to 29 and thence to Charlottesville.
17 Q All right. Where ever you put developments -
18 where ever you put residential developments in the county
19 if it's west of Route 29 and unless it's immediately adjacent
20 to Route 29 it's going to burden the - Route 33 and it's got
21 to go through Ruckersville?
22 A That will be a burden but that burden can be
23 lessened with proper planning.
24 Q Yes sir and that is also the case is it not -
25 it will be a burden and the burden can be lessened by proper

1 planning if Mr. Matthews' sub-division went in where it was
2 proposed? It will be a burden which can be lessened by
3 proper planning?
4 A I think it's an unnecessary burden.
5 Q You didn't answer my question.
6 A I don't - well, it would be a burden to what
7 extent, it could be lessened, to what extent it could be lessened
8 I don't know, I'm sure it could be lessened.
9 COURT: Let's put it this way what would be the
10 difference in having it there and two miles west of Stanards-
11 ville?
12 A Well, perhaps the better place for it would be
13 corner store. So that it would be that much closer to
14 Charlottesville, therefore not having...
15 COURT: The corner store is out on 29?
16 A I'm sorry the souteast corner of the county....
17 down near....
18 COURT: I see. So you are saying that you would
19 discourage any development which has to be channeling traffic
20 through Ruckersville off of 33?
21 A Yes sir, and any development which would tend
22 to strip that highway.
23 COURT: I see.
24 Q And the effect of that is going to be, I take it,
25 to encourage Greene to remain a satelite community to the

1 Charlottesville-Albemarle community, isn't it?

2 A No sir, the very concept of a cluster is to allow
3 densities which are high enough that they can support some
4 industry and a fairly large shopping center. And if you allow
5 your fairly high dense sub-divisions to scatter anywhere in
6 the county you are not going to get the necessary concentration
7 of population to support the services that Greene County
8 needs.

9 Q Well, I wasn't for the moment talking about any-
10 where in the county. I was talking about the southeast portion
11 of the county, that's the closest area in view of the means
12 of access to Charlottesville-Albemarle, is it not?

13 A Yes.

14 Q And in that sense it would indeed involve the
15 least possible burden on Greene County's roads?

16 A Yes.

17 Q You have never given us quantitative figures
18 have you Mr. Evans on the burden that would be placed on the
19 roads by Mr. Matthews' proposed sub-division?

20 A No sir, I believe it came out in earlier testimony.
21 I didn't testify to it.

22 Q Are you familiar, do you have knowledge of what
23 those figures would be?

24 A I.....

25 Q Of your own I mean?

A No, I did no research on it. I heard the figures mentioned. I don't remember them.

Q Do you know how many vehicles per hour or vehicles per day Route 33 can now handle?

A I have that data, but I would have to - it's in my office. I can give you the number that it is now currently - the utilization, the traffic count.

Q Well, we may as well have it, yes sir....what is that?

A Well, I don't have it, it's in my office.

Q Well, so in answering the Court's question concerning a burden on the highway you are at the present time unable to quantitate what that burden would be?

A That's right, yes sir.

Q Is it fair to say that anything that is put on the highway where ever you put it will increase the burden somewhat?

A Yes sir, Mr. Parker.

Q What's the total acreage of Greene County? It's in the plan I think 137,000 acres?

A 157,000....

Q 157,000....

A I'm not even sure of that....If you have the data summary I'll get it for you. It's 157,000 square miles, it's 98 thousand acres, something like that. 153,000 square miles

1 97,920 acres.

2 Q That's all I have of this witness.

3 COURT: Any further examination Mr. Slaughter?

4 SLAUGHTER: Briefly - I'll be very brief, Your Honor.

5

6 RECROSS EXAMINATION

7 BY: Mr. Slaughter

8 Q Mr. Evans, to be certain it is in the record

9 can you say whether or not Greene County had any zoning

10 before the interim zoning ordinance was passed?

11 A To my knowledge, no.

12 PARKER: We would concede that Mr. Slaughter with

13 the exception of whatever zoning might have been in the

14 sub-division ordinance or earlier ordinance.

15 Q And never has had any?

16 PARKER: Never has had, right.

17 Q Mr. Parker asked you whether in fact regardless

18 of interim zoning ordinance, regardless of the pressure to

19 complete the plan and set deadlines of some sort,.....could

20 you say whether or not its possible that a plan that has been

21 developed through all the steps, could be completed and then

22 be totally irrelevant - conditions would change while the

23 planning process had been going on?

24 A I think so if the change is granted.

25 Q And in fact it was just exactly that problem the

1 interim zoning ordinance had to deal with?

2 A I think so, yes.

3 Q By having an interim zoning ordinance at the

4 conclusion you at least have some assurance that the plan you

5 have deals with the situation as it exists at that time?

6 A Yes sir.

7 Q Now you have referred to stripping, Mr. Evans,

8 this of course is used in various ways, that word. Could you

9 define stripping as you have just testifying to that word?

10 COURT: I expect that's generally familiar to all

11 the Court's now. I don't even know that the Supreme Court

12 would even require it to be in the record.....

13 A I guess I could give Route 29 North as an example.

14 In general it's the utilization of road frontage for what is

15 usually primarily commercial uses, often times mixed uses...

16 for the purpose of servicing or convenience to the motoring

17 public.

18 Q Could you say whether or not in fact it refers to

19 the constant or the continuous development of commercial enter-

20 prises along major arterial routes?

21 A Right, yes, it's simply a filling in of the

22 road frontage with various commercial uses, one after the other.

23 Q Leaving no open space at all?

24 A Well, sometimes you have - tends to leapfrog...

25 but the basic concept of - behind it is that you get the maximum

1 exposure and you get as close to the highway as you can,
2 and you just follow the frontage as the frontage becomes
3 available - usually close to existing commercial development
4 as available.
5 Q That means that there are a number of places
6 where cars can go in and out?
7 A Yes, it usually means that if a person say wants
8 to go into a laundromat after he finished that he wants to go
9 to a grocery store, he has to pull back out in the highway,
10 back into the laundromat and back out of that, back in a grocery
11 store, back out of that, back in a gas station, in and out and
12 in and out and in and out.
13 Q As Mr. Payne said yesterday one of the few things
14 planners might be able to agree on is that this is undesirable?
15 A Yes sir.
16 Q Now I believe it was your answer that for those
17 areas, those residents of Greene County who would be traveling
18 to Charlottesville, it would be your opinion that the southeast
19 cluster would be the area that .....
20 that would impose the least burden on Greene County's roads
21 particularly on 33 and 29 intersection?
22 A Not only on - well, the road - the congestion
23 fact would be less, I think, especially at the intersection of
24 33 and 29.
25 Q Could you say whether or not it's your opinion

if development of - to minimize the pressure on Greene County and Charlottesville residents those other developments that are being located in Greene County would be oriented toward Greene County?

A I'm sorry I don't quite understand your question.

Q In other words as I understand it, under your concept of clusters, given the fact that there are going to be apparently certain pressures upon Greene to have residents from Charlottesville and Albemarle - these would be located in the country store; the other clusters would be oriented toward people who hopefully live and work in Greene County...

A Hopefully right. It appears that the clusters - the primary sub-divisions - the sub-divisions which contain year-round homes appear to be concentrating in the southeastern part of the county. There are some that are going up at Quinque. I have no data that would show that these - where these people are commuting to, but I would assume that those people that work in Charlottesville are going to want to locate as close to their place of work and their place of service as possible, assuming that they will live in Greene County of course.

Q Can you say whether or not it would be fair to say that anyone in say Mr. Matthews' sub-division in Greene County might be really too close to that intersection for

comfort in terms of commuting to Charlottesville?

A Well, I...

Q As it relates to the Greene County plan?

A I'm not sure what you mean by too close for comfort....for whom.

Q Well, from the point of view of preventing congestion at the 33 - 29 intersection?

A Yes, that's what I said - it's location there - I feel that it tends to create a situation of tension whereby the vacant land between the existing town of Ruckersville and that sub-division would tend to fill in, which would tend to aggravate the problem further.

Q Mr. Payne pointed out yesterday that at present there is only one store and I believe he described it as a junkyard or garage and junkyard between this proposed sub-division and Ruckersville?

A Yes sir.

Q No further questions Your Honor.

PARKER: We have one or two.

COURT: All right, sir.

REDIRECT EXAMINATION

BY: Mr. Parker

Q Two things I wanted to ask you. You were assuming in your answer to some of the question of Mr. Slaughter the

1 difficulties you were having with putting the development
2 here where this Matthews development is proposed..
3 COURT: Refer to your exhibit number when you ask
4 that Mr. Parker.
5 Q This is 25...
6 COURT: All right.
7 Q You said people would have to go outside you
8 felt for commercial ...
9 A To be serviced...
10 Q Yes.
11 A Employment, education and services.
12 Q To be serviced, but services include things like
13 getting a haircut, barber shop?
14 A Yes.
15 Q Drugstores?
16 A Uh-huh.
17 Q Doctors?
18 A That's right.
19 Q Lawyers?
20 A Right.
21 Q Shops?
22 A Right.
23 Q Goods - furniture?
24 A Right.
25 Q Groceries?

A Right.

Q Service stations?

A Right.

Q Are you aware of the fact that there is land reserved for such uses in the Matthews sub-division?

A Yes sir.

Q And yet you still say they would have to go - would that not reduce their requirements that they go elsewhere for services?

A It would reduce their requirements but at the same time it is my opinion that it would tend to weaken the potential of either Ruckersville or corner store to establish a regional type shopping center that would serve the greatest number of people. In other words that shopping center would service the people of Mr. Matthews' sub-division, but anyone else that wanted to use it would have to drive to it, right?

Q Yes...I suppose so. Now, you were talking about stripping. Referring again to Plaintiff's Exhibit Number 25, you indicated I take it that there would be a tension - you also indicated that if that development should go in - indeed you indicated that - this case is a very example isn't it, that there is a tension?

A Yes sir.

Q Between the Locust Lane Sub-division and Route 29?

A Yes sir.

Q And if the Matthews' Sub-division went in you say that there would be tension then?

A Yes sir.

Q Increased tension - don't I understand your testimony to say that the tensions in that potential then would be to fill in like this between these lines, toward Ruckersville and north, referring to these lines, Your Honor, the extreme northwestern - actually extreme northern line of where it includes Locust Lane and Route 29 and Route 33 boundaries and the extreme northern boundaries, extreme northern line on the aerial photograph. Wouldn't the tension be right across here like that?

A Yes, and there also would be- I agree that there would be tension peripherally around the area.

Q Both ways?

A Uh-huh.

Q Yes, and that tension would not necessarily tend toward stripping would it?

A If it's properly planned, not necessarily.

Q Yes sir. It might well - that tension might well cause this block to be drawn out in this aerial photograph just to fill in?

A Yes.

Q That wouldn't be stripping would it?

A It depends on how it's planned and what's planned along the road frontage along 33.

Q I see, you might consider it stripping even so, but if all this was filled in it would simply be the urbanizing or suburbanizing of the - the further suburbanizing of this little...

A It would have to be planned in conjunction with what already existed - Ruckersville, in order to make it a cohesive community.

Q Yes sir. And one more question, I think you said in response to Mr. Slaughter's questions, you said that it was undesirable but it was something of a consistent that what existed in Greene County prior to any zoning ordinance was stripping, strip development, along 29 and 33? That was the nature of the development in Greene County?

A Not all of the development.

Q No, but the nature of development, particularly development that was not in the mixed and recreational subdivisions?

A I wouldn't say - well, stripping of those two highways was a major characteristic. Scatteration of subdivisions throughout the county is also ...

Q A characteristic?

A Yes.

Q And stripping of those highways was a major charac-

1 teristic of this county? That was your answer to Mr. Slaughter's
2 question wasn't it?
3 A Yes, well, this was becoming a problem yes.
4 Q If you considered the problem it could obviously
5 get worse but it was there already?
6 A Yes. It's not a serious problem but it was
7 beginning to become so.
8 SLAUGHTER: Have you finished Mr. Parker?
9 Q Yes sir, I'm finished.....Mr. Slaughter is going
10 to proceed.
11
12 RECROSS EXAMINATION
13 BY: Mr. Slaughter
14 Q Just two questions - I didn't recall the question
15 nor the answer that the stripping was a problem. As I under-
16 stand given the relatively limited number of commercial
17 establishments in Greene County and certainly you pointed out
18 it was not a serious problem....
19 A Stripping is a problem in so far as a multitude
20 of uses are concerned. Stripping refers to residential as
21 well as commercial. So to the extent that most of 33 and
22 29 is valuable road frontage for use by residential-commercial,
23 I mean it tends to strip. I mean strip isn't solely synonomous
24 with commercial uses. It's also synonomous with residential
25 uses and if you get a mixture of the two I think it's even worse.

Q And stripping as it exists in Greene County have more residential than a commercial problem at that time?

A I would say so.

Q One more question, Mr. Evans. With regard to the congestion around major intersection of two highways, two arterial highways, is there a different degree of congestion produced by local traffic and through traffic?

A Well, that's one of the problems inherent in this whole issue is the fact that 29 and 33 are designed as through arterial highways, to carry people. They are not interstate highways but they are designed to carry people through Greene County primarily. And once these highways become congested with local traffic it makes the function of these highways, that is to allow people to go from the major centers of population, being primarily Washington, Charlottesville and cities to the south, the extent to which you build around these highways and the degree to which you do this is the degree to which you are going to have - you are going to impede or nullify the primary intent of these arterial highways, that is to move traffic swiftly and safely from one major area to another.

Q If you have a town say to grow up and have so many around a crossroads, is it then true that the congesting factor becomes so intense that it ultimately - one is looking at the possibility of a by-pass?

A In many cases this is true.

Q Whereas if you can plan to keep the congestion away that possibility will be forestalled, is that right?

A Yes sir.

Q No further questions, Your Honor.

PARKER: One or two Judge.

COURT: All right, I'll give you one inning and we are going to end it for today....now, Mr. Parker, if you all want to bring Mr. Evans back, I hate to put him to that burden, but he'll have to bear with us another day and we'll pick it up tomorrow.

PARKER: I think that it would be most unlikely that our questioning would continue very long tomorrow, but I would like to have him still on stand at that time, in view of the fact that Mr. Payne....

COURT: Well, why continue it any longer today then if you are going to bring him back tomorrow, let's end it here and you can put him back.....we'll recess until tomorrow and I believe we again have criminal cases do we not?

REPORTER: Yes sir.

(Court is adjourned.)

1 December 5, 1975

2 Court is convened at 10:00 A.M.

3

4 COURT: If you all are ready to proceed and unless

5 Mr. Dickey wishes to be present personally we can go ahead

6 with the evidence any time counsel are ready.

7 SLAUGHTER: May I check with Mr. Dickey - I think

8 he's...

9 COURT: Yes sir. All right, now, Mr. Parker, I

10 think we were somewhere near the conclusion of Mr. Evans'

11 testimony, if you wish to recall him and commence where you

12 left off or go ahead with the rest of your evidence.

13 PARKER: Your Honor, I was essentially at that time

14 as the Court knows cross examining Mr. Evans on evidence

15 that was introduced into - the direct part of which had been

16 introduced in the testimony by Mr. Evans on Mr. Slaughter's

17 questions and by the Court's questions, and I would prefer

18 at this time, if there is to be more cross examination of him

19 to defer that until a later time and take Mr. Matthews at

20 the present time, that will give Mr. Payne time to complete

21 his review of Mr. Evans...

22 COURT: All right, sir, let's go ahead with Mr.

23 Matthews.

24 PARKER: Thank you, sir.

25

1 SLAUGHTER: May it please the Court, so that we
2 don't have any misunderstanding, I fail to see on what rationale
3 Mr. Parker might defer cross examining Mr. Evans unless of
4 course we bring him back in our case in chief or unless he
5 wants to bring him back on rebuttal, but I really don't see
6 why/if he brought him back on rebuttal he would have a right
7 to cross examine him. It seems to me Mr. Evans has been on
8 the stand for two days and I don't see any reason why - except
9 for unusual circumstances Mr. Parker should break the cross
10 examination of Mr. Evans.
11 PARKER: It's merely a matter of taking it out of
12 order Your Honor so that Mr. Payne can finish his review of
13 that testimony, as you know he wasn't here yesterday.
14 COURT: Well, I don't see how there could be much
15 more that Mr. Evans could be asked, but there may be something
16 you all haven't covered. I don't want any backtracking on
17 what has already been covered certainly, and to the extent that
18 something else may have not been touched upon I will allow
19 Mr. Parker to recall him. The main object of course being
20 to get this case concluded today if it's at all possible.
21 And reminding you Mr. Parker that we are nigh into the third
22 day and that Mr. Evans has spent the better part of two of
23 those days on the witness stand, and I certainly would expect
24 that unless your case is involved in-almost entirely with his
25 evidence that you are fast running out of time to get anything

else in unless I cut the defendants off and just say to them arbitrarily you have no time to present your case.

PARKER: This is - Mr. Matthews is my last witness Your Honor.

COURT: All right, sir, go ahead with Mr. Matthews then and we'll consider the objection Mr. Slaughter had at a later time.

BENNETT T. MATTHEWS, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Parker

Q Will you state your name and your address please sir?

A My name is Bennett Matthews and my address is P. O. Box 822, Culpeper, Virginia.

Q Are you the developer who has submitted the plan in this case, Plaintiff's Exhibit 2?

A Yes sir, I am. Yes that is the plan.

Q Do you own the land that is the subject of that plan?

A Yes sir, I own the land personally in my personal name. It's not in a corporate name.

Q How many acres is it?

1 A It was purchased to be 109.58 acres, after the
2 boundary survey was completed we found it to be closer to
3 112 acres.
4 Q Mr. Matthews I direct your attention to the
5 sixth of March, 1973. At that time or prior to that time
6 and prior to that time did you own stock in a corporation
7 by the name of Daniel Farms, Inc.?
8 A Yes, Daniel Farms, Inc. was a Virginia corporation
9 which I owned 50 percent of....of the stock.
10 Q And at that time did Daniel Farms Inc. own the
11 piece of property that you have just described? Prior to
12 that time?
13 A You are speaking of prior to the March...
14 Q The sixth of March 1973?
15 A Yes, Daniel Farms purchased this property on
16 September 15, 1971.
17 Q How much did it pay for the property?
18 A It paid $48,500.00, one thousand dollars, I believe
19 it was in the purchase agreement, one thousand dollars was
20 to be retained until the boundary survey could be completed.
21 So at the - actually the time of purchase $47,500.00 was dis-
22 persed.
23 Q Were you an officer of that corporation?
24 A Yes sir, I was vice president.
25 Q What happened with respect to the stock in that

1 corporation on the sixth of March, 1973?

2 A I acquired all of the stock of Daniel Farms,

3 Inc., in a settlement of pending litigations which we

4 between myself and the ...

5 Q The other stockholders?

6 A Another stockholder.

7 Q Did there come a time subsequently when as the

8 sole stockholder of this corporation you undertook to

9 file with the State Corporation Commission a notice of

10 intent to dissolve?

11 A Yes sir, I was advised by my accounting firm

12 and corporate attorneys that it would have certain tax benefits

13 to dissolve the corporation. It had no purpose or meaning

14 as far as a vehicle to conduct any further business and that

15 there could possibly be some tax advantage in dissolving it.

16 Q When was this time that you filed a notice of

17 intent...

18 A The intent-statement of intent was filed on

19 September 29, 1973.

20 Q In accordance with that the plan of dissolution

21 which you filed with the notice of intent, did you - were you

22 in fact conveyed the property in question? In dissolution?

23 A Yes.

24 Q All right, sir. When did you take the deed to

25 that particular piece of property?

1 A The actual recording - transfer of title took
2 place on November 2, 1973. This was recorded in deed book
3 71, page 53.
4 Q Was the corporation in fact finally dissolved
5 at a subsequent time?
6 A The final dissolution of Daniel Farms, Inc., was
7 actually completed on January 22, 1974.
8 Q Now Mr. Matthews when had you conceived a
9 plan to develop and sub-divide this property?
10 A Well, I think it had been the intent ...
11 DICKEY: I think we would have to object to
12 what he conceived and ask him if he took some actual steps...
13 COURT: I think the objection is well taken, Mr.
14 Parker. It's what overt actions might have been taken...
15 Q I was just trying to get to the proper time,
16 Your Honor.
17 COURT: All right.
18 Q Did there come a time when you arranged for
19 a topographic survey of this property? Had there been a time?
20 A Yes, I do not remember the exact date that
21 Ross and France, were employed to do the topographic. It
22 was - they were paid for the work and the work was completed
23 on November 30, 1973. And at that time I paid Ross and
24 France $3,500.00.
25 Q Was that November or October ?

1 A October 30 was when it was actually paid...the
2 funds were dispersed.
3 Q And they concluded the work when?
4 A The work was completed prior to payment.
5 Q When did - do you remember an approximate time
6 that you commissioned the work?
7 A Well it would have had to have been certainly
8 six weeks in advance of this, in order for them to complete
9 this much ...
10 Q All right, sir.
11 A ...work on the topographic.
12 Q Why did you cause the topographic survey to
13 be commissioned?
14 A I'm sorry I didn't hear you.
15 Q Why did you cause the topographic survey to
16 be commissioned?
17 A The topographic survey was-generally is the
18 starting of - or first step that a developer will take in
19 determining suitability of a tract of land for development of
20 any type, whether it be single family or to determine its
21 best uses. And to determine the slopes and what physical
22 characteristics the property may have. It would be helpful
23 in reaching a final plat or plan...map plan.
24 Q Did you at some time or other engage Ross and
25 France to do anything else for you? Ross and France Ltd..

A Yes. On December 19, they had completed the preparation of a preliminary plat and at that time they were paid $1,500.00 for that service.

Q Do you recall when it was that you commissioned that work to be done? That you asked them to do that work? Approximately sir?

A Well, it would have had to have been - I do not recall the exact date they were commissioned to do the work but it was probably done about the time that the topographic survey was completed or shortly thereafter.

Q How much did the preliminary sub-division plat cost you? From Ross and France?

A The preliminary plat?

Q Yes sir.

A $1,500.00.

Q Have you paid that?

A Yes sir, that was paid on December 19. I believe that preliminary plat was completed on October 23, Mr. Parker.

Q In the preparation of the plat was the topographic survey used?

A Yes sir.

Q Or the data for it?

A Yes sir.

Q In connection with your causing the preliminary

1 plat to be made by Ross and France Ltd. did you commission
2 a soils analysis?
3 A Yes sir, we did. As soon as the topographic
4 map was completed a copy of this was given to Mr. Dwight
5 Kaster who was employed to conduct a soils analysis, and he
6 used the topographic map in conjunction with preparing the
7 soils analysis and preparing the maps to indicate the best
8 use of the soils in conjunction with our master plan.
9 Q And how much did you pay for the soils analysis?
10 A $1,265.30.
11 Q And that was completed when?
12 A Well, it would have had to have been completed
13 prior to November 10, '73. This is the date that Mr.
14 Kaster was paid for his services.
15 Q Were these personal obligations of yours?
16 A Yes they were.
17 Q What then did you do - excuse me just a moment
18 sir.....the allegation in paragraph 3 of the bill of
19 complaint admitted in the answer - stated to be substantially
20 true and I think under the rule anything other than a
21 denial would no longer be an admission.....
22 And that also holds in paragraph 5 when we get to that point.
23 For the sake of making a continuous record I should like to
24 read this allegation at this point.
25 COURT: Well, you can merely incorporate them if you'd

like to by referring to them, Mr. Parker. I see no reason to take the time to read them.

Q All right, sir.

COURT: They are certainly subject to being incorporated in your record if you wish to do so and merely by referring to them I think is sufficient at this point. That is paragraphs 2 and 5?

Q 3 and 5.

COURT: 3 and 5.

Q Admitted by virtue of paragraph 2 of the answer. Mr. Slaughter do you concur in that?

SLAUGHTER: Certainly we have to go with the pleadings Your Honor. The pleadings in fact say that as far as we know they are substantially true.

COURT: Let's see if I can find the answer.... 3 and 5 are substantially true, I take it that that indicates that there's no serious conflict unless there's some point that you wish to make particularly, Mr. Parker.

Q No sir, but I think there's more than not any serious conflict, I think it is actually admitted under the rules.

COURT: All right, we'll let that stand for whatever it is disclosed by the pleadings.

Q Wonder if I could - the Court would understand that I would wish to be clear on that fact for the sake of

1 the record. If there's any question about the fact that
2 it's admitted I would ask the Court to rule on that point.
3 I don't think there is any question.
4 COURT: I'm trying to recall myself what allegations
5 there were and what the testimony now has indicated. It
6 seems to me that there has been testimony that indicated
7 that the preliminary plat was not approved because it
8 contained provision for townhouses and for additional reasons
9 as well. That's mentioned in your paragraph 3, but I don't
10 recall that it was the sole reason, as has already been
11 testified here. It seems to me that it had something to do
12 with the fact that there were commercial ...
13 Q There was no provision for townhouses in the
14 sub-division, Your Honor, that was the reason the preliminary
15 plat was not initially approved. And then it was subsequently
16 approved under the terms of the sub-division ordinance
17 on the 28th of February, 1974. But in any event I think the
18 county has admitted these facts. I don't think the county
19 takes....
20 COURT: Well, go ahead, then. We'll take it as
21 admitted as to the substance of them. It's a difficult matter
22 to find out just what it is that's undertaken to be pleaded
23 in there. Whether you are saying in effect that that's the
24 only reason they turned it down or that's one of the reasons.
25 You don't say its the sole reason.

1 Q No sir, I don't....

2 COURT: They admit that that was one of the reasons
3 certainly, that's my ruling. I don't rule that that's
4 the sole reason it was turned down. If that's an issue
5 yet to be presented.

6 Q Mr. Matthews the general substance of paragraph
7 3 has to do with the filing of the preliminary plat, which
8 of course you did file in due course. Now, subsequent to
9 filing the preliminary plat on the 28th of February, 1974,..

10 COURT: You said on the 4th of February in your
11 pleadings.

12 Q An effort was made to file it on the 4th of
13 February 1974, in the pleadings, but the pleadings further
14 state that it was in fact...

15 COURT: All right.

16 Q ..filed and approved on the 28th of February,
17 1974.

18 COURT: Yes - all right.

19 Q On the 28th of February, 1974, when that was
20 approved the county has admitted that the agent advised you
21 at that time that the preliminary plat - I beg your pardon,
22 were you aware after - that under the terms of the sub-
23 division ordinance of Greene County you had only a period
24 of six months within which to file your subsequent final
25 plat of the plan for the community which you were prepared to

1 develop?

2 SLAUGHTER: Objection on grounds it's leading,
3 Your Honor.

4 COURT: I don't know the relevance either. What's
5 knowledge of the law got to do with it, Mr. Parker? Isn't
6 he bound by it whether he's aware of it or not? If that
7 is the rule.

8 Q Your Honor, I'm trying to lay a foundation for
9 the fact that Mr. Matthews in faith on the fact - with an
10 understanding of fact that that was in fact a law, that he
11 had only six months to do these things - was obliged to
12 go forward at that point and expend further monies...

13 COURT: All right, go ahead, then. I take it that
14 that's not substantially an issue - the question is leading
15 but that certainly answers the objection that has to do
16 with the materiality of it, that he was aware of it, I take
17 it.

18 Q Were you Mr. Matthews aware of that fact?

19 A Yes sir I was aware of it, and further at the
20 time the preliminary plat was approved, I was told and cau-
21 tioned again by Julius Morris that I had six months in which
22 to get a final plat made and approved and approved through
23 State Water Control Board, the Highway Department, and the
24 Bureau of Sanitary Engineering. All of these agencies had
25 to - we had to obtain their stamp of approval before the

1 six months time limit and again prior to the expiration of
2 the six months time...
3 Q That's what you were told?
4 A Yes, in fact approximately 10 - 12 days prior
5 to the expiration of this six months time limit I was
6 called on the telephone again by Julius Morris and cautioned
7 again that I had only these many days left and that I would
8 have to move along swiftly to comply with this time limit.
9 Q In order to attempt to comply did you make any
10 further expenditures during that six month period?
11 A Yes sir. I employed the services of Baldwin
12 and Gregg to design a sanitary sewage treatment facility.
13 And on June 13 they were paid $1,013.36. On August 10,
14 1974, I paid Ross and France for the preparation of the
15 final plat at a cost of $10,000.00. On August 10, or prior
16 to August 10, if I might correct that, I had employed Tayloe-
17 Murphy Institute to conduct a physical impact study on
18 Greene County - this - I had a conference with Charlie Miebury.
19 To this date I have never received this report and the work
20 was contracted or estimated to cost about $1,850.00. I have
21 not received a report nor have I received that bill as of
22 this time.
23 Q Do you expect to receive it?
24 A Well, after we found the difficulty with the -
25 later after we found the difficulty with the interim zoning

1 and were - the plan was not approved, I did not pursue
2 to have this study completed.
3 Q Do you know whether or not you will owe some
4 money?
5 A I do not know Mr. Parker.
6 Q I'm sorry my memory has failed me - how much
7 did you pay Baldwin and Gregg?
8 A $1,013.36.
9 Q Do you...
10 A That was for consultant fees that were - they
11 were consulting with the Virginia Bureau of Sanitary
12 Engineering in regards to the placement and the type of
13 sewage treatment facility that would be needed and one that
14 would adequately handle the needs of this development.
15 Q Did you - do you owe them any more money in
16 connection with the work that they did regarding this
17 property?
18 A Yes sir, just a moment, I'll have to refer to
19 my .....on October 1, 1974, I paid an additional $2,800.00.
20 This was for the design of the facility and for the -
21 again consultations with the Virginia Department of Health
22 and Bureau of Engineering for the final approval of the
23 system.
24 Q Mr. Matthews in your earlier testimony the
25 particular approval that you said had to be on the plat - was your

1 understanding, is that my understanding? Of what - of
2 the approval that had to be on the sub-division plat when
3 you got final approval?
4 A Well, they are part of the final plat in the
5 sense that these are necessary to have your final plat in
6 proper perspective for final approval.
7 Q I see. The precise approval that is required
8 to be written on the plat is the one that is simply required
9 by the law?
10 A Yes sir.
11 Q Did there come a time when you indeed did
12 submit your final plat to the county for approval?
13 A Yes sir. August 21, the final plat was submitted.
14 Q Was it the 21st or 26th? Your best recollection?
15 A I believe it was the 21st.
16 Q Of August 1974?
17 A Yes sir.
18 Q All right, sir. Of course what you paid to
19 Ross and France was for the preparation - the $10,000.00
20 was for the preparation of that plat?
21 A That's correct, yes sir.
22 Q And the - what you paid to Baldwin and Gregg
23 was for data...
24 SLAUGHTER: If the Court please, I'm not going to
25 extend it obviously but Mr. Parker is constantly leading.

1 Q No I don't think I'm constantly leading, Your
2 Honor....
3 COURT: I'm not sure whether Mr. Matthews has
4 got more data than he can keep up with or whether you all
5 have reviewed this, Mr. Parker.....if it's not that impor-
6 tant...
7 Q That was my point....that was why I was
8 trying to pass it quickly.
9 COURT: All right, let's get on with it because
10 obviously you getting into a lot of details again.
11 Q Were the expenses that you paid to Baldwin
12 and Gregg - what were those - were they in connection with
13 data that you used on the plat, preliminary plat?
14 SLAUGHTER: The question is leading, sir....
15 COURT: Objection sustained, it's obviously
16 leading.
17 Q Where did you get your data that you used for
18 the preliminary plat?
19 A The data that was used on the plat was obtained
20 from Baldwin and Gregg....for the design of a sewage treat-
21 ment facility.
22 Q All right.
23 A And it was further used in the layout and design
24 and overall pattern of how the master plan was to be
25 assembled.

1 Q In your business as a developer have you bought
2 and sold land in the Piedmont section of Virginia before?
3 A Yes I have.
4 Q On how many occasions approximately?
5 SLAUGHTER: If the Court please I fail to see the
6 relevance of this....
7 COURT: Well, it may be that he's qualifying him,
8 Mr. Slaughter, for additional questions and to that extent
9 I take it that that's what it's leading up to and the
10 objection is overruled....for now.
11 Q I'm uncertain for the question - I would
12 have to qualify Mr. Matthews, but I propose to do it.
13 COURT: Yes sir, go ahead. It's allowed for that
14 purpose, if you are going to ask an opinion...
15 SLAUGHTER: If the Court please, just in an effort
16 to save time, although I am willing to waive - I anticipate
17 that this one question could be what Mr. Matthews' experience
18 has been with regard to filing preliminary plats in other
19 counties...
20 Q That's not....
21 COURT: No, if it's that it certainly wouldn't...
22 with regard to his expertise in real estate I take it you
23 would stipulate that or will you?
24 SLAUGHTER: I don't think I can stipulate it.
25 COURT: All right, if you are going into his quali-

1 fications in real estate, go ahead, Mr. Parker.

2 SLAUGHTER: I really do fail to see even on that
3 basis, Your Honor, where his expertise in real estate
4 makes any difference except what he bought this property
5 for.

6 COURT: That may be, I'll consider that, but at
7 least for now we'll see what he has in mind. Go ahead,
8 Mr. Parker.

9 Q Mr. Matthews, would you answer the question
10 please sir?

11 A As to the number of properties that I have
12 bought and sold and developed, Mr. Parker, I have no way
13 of knowing the specific number. I have bought ...

14 SLAUGHTER: If the Court please....

15 A ....considerable number...

16 SLAUGHTER: ....he hasn't stated the number of properties
17 and he's now going into the numbers. I would ask that
18 the witness at least respond to the question, although I
19 object to the question as the Court knows.

20 COURT: Go ahead, I'll allow the answer. It may
21 be the best that Mr. Matthews can respond in his own...

22 Q He can only give me an estimate.....at least
23 a minimal figure if you will?

24 A Numbers of tracts, is this the question?

25 Q Yes sir.

1 A Again I'm having to estimate, but I would think
2 that in Culpeper County I have bought and sold about 7
3 development tracts. Madison County four tracts. Greene
4 County this particular tract, of course I own some other
5 property in Greene County, also.
6 Q In doing this have you made yourself familiar
7 with the values of land in Piedmont Virginia?
8 A Yes sir, I have.
9 Q In that connection Mr. Matthews, at the time
10 that you received the deed from Daniel Farms, Inc. to you,
11 of the tract in question here in Greene County...
12 A Yes sir.
13 Q What was the fair value of that particular
14 piece of property?
15 SLAUGHTER: If the Court please he's testified
16 that he was one of two stockholders in Daniel Farms. He's
17 not testified as to anyone else that put any money into
18 Daniel Farms. The value - the amount that Daniel Farms was
19 paid for this property is the value of that property to
20 Mr. Matthews.
21 COURT: Not necessarily - the question that I
22 have is what's the relevancy in this proceeding as to the
23 value of the subject property?
24 Q Yes sir. Mr. Matthews made a swap with his
25 corporation. He turned in all his stock which had a value...

1 COURT: Yes sir, I understand that.

2 Q He received from that all the assets of the
3 corporation and he obligated himself at the same time to pay
4 all the indebtedness of the corporation. So what went in
5 in that bargain was an amount of money equal to the indebted-
6 ness of the corporation plus the value of his stock. And
7 what came out were the assets of the corporation. And when
8 one then subtracts away the value of the other assets of
9 the corporation, one ascertains what it was that Mr. Matthews
10 paid his corporation for the land in question when it was
11 deeded from the corporation to him. Which is as the Court
12 can see at a time after he had begun his planning to develop
13 this corporation. Essentially he purchased it after-he
14 purchased it from his corporation after he had begun the -
15 his activities towards getting it developed, well knowing
16 that he could so purchase it. The value at that time
17 happens to work out mathematically to a value of the property
18 at that time - the fair appraisal value of the property
19 at the time of that purchase turns out to be the figure.

20 COURT: Well, what's that got to do with the issue
21 in this case?

22 Q That's how much he paid for the property,
23 Your Honor, is one of his expenses.

24 COURT: Well, what's his expense got to do with
25 this case?

1 Q Your Honor, we are contending as the Court
2 will recall that Mr. Matthews in expending money on faith
3 of developing this property obtained a vested right.
4 COURT: Didn't you contend that in the suit that's
5 already pending before the Supreme Court?
6 Q No sir, I contended at that time ...
7 COURT: Isn't that the issue that was presented
8 to the Board of Zoning Appeals?
9 PARKER: No sir, at that time what I stated was
10 that that in fact was so but that was not the issue in
11 that case. That the issue in the case...
12 COURT: Well, why did you present that evidence
13 in the case before this Court in the previous case?
14 PARKER: Because the same evidence Your Honor
15 is necessary in order to show - was necessary in that case
16 in order to show a hardship, which is another issue, but
17 the same evidence was necessary to it.
18 COURT: I don't see what value has to do with
19 vested right, unless you are getting in to the area of
20 hardship. Now if you ...
21 Q Not a question of hardship, but I only propose
22 to prove the figure that he paid at that time.
23 COURT: You may vouch the record, but my ruling is
24 that it's irrelevant in this case. All these expenses it
25 seems to me on this issue of what the value of the property was, and what

1 it cost to develop - he didn't present this to the Board
2 of Supervisors, the agency which dealt with this ordinance -
3 had no dealing with these figures.
4 Q If indeed he had a vested right Your Honor he
5 was not obliged to present this information to anyone.
6 He simply....
7 COURT: Well, it didn't come about because of
8 his expenses or because of its value. If he had a vested
9 right it was because he had started his proceedings, it
10 seems to me, with his preliminary plat. I can't see...
11 Q It is the starting - it is the filing of the
12 preliminary plat, giving him a vested right that way, and
13 another - other circumstances - the expenses that he under-
14 took in connection with the filing of that preliminary plat
15 and the purchase of the property which he was going to use
16 if he did on the face of the fact that he was going to
17 develop it. This is our evidence in this case, sir. If
18 the Court rules that is irrelevant I will take exception...
19 COURT: Yes sir, I think there may be part of it-
20 you may be right,with regard to what he did in pursuing the
21 preliminary plat to the final plat. To that extent maybe
22 the vested right has a place separate and apart from the
23 question of whether it was a hardship.
24 Q And also to develop this property, Your Honor,
25 he purchased the property essentially from his corporation

1 through the dissolution proceedings and there was a value
2 that he had to pay. And it was not necessarily the same
3 value as the value that the Daniel Farms Inc. paid for the
4 property at another time. I will vouch for the record
5 that the figure that Mr. Matthews will testify to that the
6 property was worth at that time was $67.....
7 COURT: You say that the question of vested right
8 was not presented in the other case as an issue and not
9 before the Supreme Court in Virginia?
10 Q No sir, not the question of vested right. The
11 question of hardship was before the Court in that case. And
12 the same evidence and I mentioned the fact in that case
13 that I thought he had a vested right but that it was not
14 a matter for the Court to adjudicate in that case.
15 COURT: All right, go ahead and put it in. I'm
16 going to examine the record in that case before the Supreme
17 Court and I caution you if you presented that in that
18 case and that's still before the Supreme Court it is certain-
19 ly going to be my ruling in this case, that it's irrelevant
20 for this case to be decided twice on the same grounds and
21 upon the same evidence along those lines.
22 Q The Court's opinion in this case, as the
23 Court will recall, in the Circuit Court before, which might -
24 which the Court might also want to examine, which controls
25 what issues are - as the Court knows are before the Supreme

1 Court- the Court's opinion in this case said that the
2 Court doubted that there was a vested right, but did not -
3 apparently did not think it was necessary to rule on it
4 at that time.
5 COURT: That may be - all right, well, go ahead
6 and put your evidence in the record and I will withhold
7 any ruling on it, Mr. Parker.
8 Q Yes sir.
9 COURT: Because it may well be that it ought to
10 be considered and I'll overrule Mr. Slaughter's objection
11 at this time. Go ahead, sir.
12 SLAUGHTER: My objection was not on that ground,
13 if the Court will recall - my objection was on the ground
14 that there has been no evidence that anyone put any money
15 into this sub-division other than Mr. Matthews. And Mr.
16 Parker is now trying to state a corporate reorganization of
17 some sort involving two stockholders, that Mr. Matthews
18 ...effected a step-up basis.....
19 COURT: Well, the question would be the market
20 value of the property, if that's what he's getting at...and
21 my finding is that Mr. Matthews is qualified to answer that
22 question with an opinion, whether it's based on the actual
23 cost or whether it's actual market value. Cost does not
24 necessarily determine market value, that's one of the factors.
25 It may affect the weight of it, but the objection is over-

1 ruled Mr. Slaughter and your exceptions are noted.

2 SLAUGHTER: If I may I will state Your Honor my

3 objection....Mr. Matthews of course is trying to say

4 now that the value of the property is not the value at the

5 time he purchased it but the time of this dissolution

6 of Daniel Farms.

7 COURT: What date are you referring to Mr. Parker

8 as to the valuation date?

9 Q The date he received the deed, Your Honor. I

10 believe he testified that that was in November, though I

11 had thought it was in January, but he stated that he received

12 it in November.

13 A November 2, 1973.

14 COURT: That's the date on which he is now pro-

15 posing to testify as to value?

16 Q Yes sir.

17 COURT: All right, I'll permit it as of that date

18 without affecting the weight of it, of course.

19 SLAUGHTER: I reserve my objections.

20 COURT: Yes.

21 Q In your opinion Mr. Matthews what was the

22 date - I beg your pardon, what was the value of the tract

23 that you took from Daniel Farms, the date in November, 1973,

24 at that time? The market value?

25 A The market value at that time was $67,500.00.

1 Q Thank you sir.

2 A And this was the figure that was transferred

3 out....

4 Q That was the figure that was transferred - and

5 did you in fact pay tax on that figure?

6 A Yes, I did.

7 Q And you did....

8 SLAUGHTER: Could you indulge us a second, please

9 sir?

10 COURT: Yes sir.

11 SLAUGHTER: May it please the Court, the reason

12 we wanted to interrupt, not wanting to interrupt Mr. Parker's

13 presentation more than necessary, but Mr. Dickey has examined

14 Mr. Parker's brief in the Supreme Court in which on page 11

15 of his petition for appeal, he refers to vested rights. He

16 puts it - the appellant's vested rights in his property were

17 argued below not to dispute the constitutionality to establish

18 the full extent of the appellant's loss. Then he goes on later

19 saying that the establishment of - states further vested rights

20 of certain use of property may be established prior to the

21 actual commencement of that use.

22 Q The purpose of citing the question of vested

23 right in that case, Your Honor, was to show that if indeed -that

24 the same facts - purely in argument, to state this.....that

25 if there was evidence which would support the argument of

1 vested right, though that was not before the Court - if that
2 same evidence ought and should have supported before this
3 Court in that proceeding a finding that there was hardship
4 upon Mr. Matthews. Now that's an arguable, that's an
5 arguable issue. That's the way the matter has been argued,
6 but there is no statement that vested right was the issue
7 in the other case.
8 COURT: Well, you will concede that hardship is
9 no issue in this case?
10 Q Yes sir.
11 COURT: And if he had a vested right it was by
12 virtue of the prior ...
13 Q The plat and the expenditures therefore..
14 purchase of the land, yes sir. Prior activities.
15 COURT: Not with regard to how much it cost or
16 what the ...well, there may be in one sense....but certainly
17 not so far as hardship is concerned.
18 Q No sir, not based on this Court's ruling in
19 any event because this Court took the position that Mr.
20 Matthews would have to be - show more than just financial
21 loss or loss of profit, but in fact some sort of economic
22 hardship - subjective economic hardship to himself in the
23 other case, that was the Court's ruling in the other case.
24 But that's certainly not before the Court in this case.
25 COURT: All right, I'm going to look at those fur-

1 ther, Mr. Slaughter, and I'll....

2 Q The point is Your Honor we cannot argue

3 and I didn't think it proper for the Court to consider in

4 this case what was stated in a brief in the Supreme Court.

5 COURT: Why not, Mr. Parker? You've had your

6 day in Court and you're still in Court, I'm certainly going

7 to examine it.....yes sir.

8 Q The question was what was decided in this

9 Court.

10 COURT: I'm not going to decide again that which

11 is now before the Supreme Court, I'll tell you that.

12 Q I understand sir, but what I'm trying to say is

13 the question that the Court is going to look at, the only

14 relevant question is what was decided by this Court before.

15 The Supreme Court has decided nothing....in those cases.

16 COURT: I understand it has, but I want to look at

17 the brief and I want to look at the grounds of appeal. In other

18 words whether you have appealed this point on this very issue

19 of hardship and vested right and how the two are interwoven.

20 You may be right that we can make a distinction in this

21 case, but I don't propose to reconsider the same matters

22 which have been already considered and are now on appeal.

23 Q The evidence in this case is not before the

24 Court to prove hardship. It was before - the issue in the

25 other case....

1 COURT: All right, sir...go ahead with your
2 evidence. You've got $67,500.00 as the fair market value
3 on November 1973.....
4 SLAUGHTER: On that point if the Court please,
5 the Court may not want to consider it at this time but
6 in the Court's final opinion in the case, which as you
7 recall was a very long and carefully constructed opinion...
8 you said "The petitioner has asserted that the approval of
9 the preliminary plat created a vested right which could not
10 be divested by the Board of Supervisors in adopting the zoning
11 ordinance"and in support thereof cites the case of Fairfax
12 County v. City Service, which involved rezoning after the
13 issuance of a special use permit. And not to go into it in a
14 greater length, you discussed it back and forth and say that
15 it is doubtful that a vested right was created by approval of
16 the preliminary plat, the petitioner would be limited to
17 the presumption created in his favor under the provisions of
18 the Interim Zoning Ordinance provided he could show financial
19 hardship.
20 Q He also added this statement - in other words
21 if this case is decided on the basis of the creation of
22 a vested right in the petitioner the provisions of the zoning
23 ordinance would be immaterial. The question of the zoning
24 ordinance was not raised and the Court's ruled that already
25 in this case when we came to the question of the county's

1 plea. The question of the zoning ordinance, the validity of
2 the zoning ordinance was not raised...
3 COURT: Well, you are raising it in the Supreme Court
4 though, as to how this Court dealt with the question of vested
5 right?
6 Q No sir, I'm talking the position = the same position
7 in the Supreme Court that I took in this Court in the other
8 action, that the evidence in this - that was before this
9 Court in the other action would have been sufficient had the
10 Court had jurisdiction in the matter to consider it, to create
11 a vested right; and if the evidence would have been sufficient
12 for that purpose, it also was sufficient to show hardship....
13 in that case, which was the issue in that case. The same evi-
14 dence is used for two different purposes, Your Honor. In view
15 of the fact that the Court ruled in that case that hardship
16 was not - that hardship involved a factor which vested right
17 might not even involve.
18 COURT: Have you all already argued the case before
19 the Supreme Court?
20 Q No sir, the only thing we've .....submitted
21 the briefs and asked for writs.
22 COURT: Submitted briefs...
23 Q The Court may in its opinion and counsel may
24 in his digressions may have gone further than the issues in the
25 case, but the issues in the case are framed by the pleadings and

1 the pleadings in that case make it clear that what we were
2 complaining of is hardship. And that was - the evidence was
3 before the Court in that case for that purpose, and it seems
4 to me if the man did have a vested right he probably also did
5 have a hardship, but the Court took the position he did not have
6 a hardship. And the Court did not rule on the question of
7 whether he - if he had a - whether ....whether he might or
8 might not have had a vested right...
9 COURT: I may have to reinterpret my own opinion in
10 the case.
11 Q The pleadings Your Honor are what frame the issues
12 of the case....that's the key to the whole thing. And the
13 arguments were that if there was a vested, that if there was
14 a vested - if there was evidence that would indicate a vested
15 right, that same evidence would indicate a hardship. That was
16 the argument, but that goes directly from the question of
17 evidence to the question of hardship. That's all the questions
18 I have at this time of Mr. Matthews...
19 COURT: All right, Mr. Slaughter, you may cross
20 examine Mr. Matthews.
21 SLAUGHTER: Would you indulge me just a moment sir?
22 PARKER: Oh Your Honor, would the Court permit me
23 to ask another question?
24 COURT: Yes sir, go ahead, sir.
25

1 Q Mr. Matthews, how was this dissolution affected,
2 what did you do when you dissolved the corporation?
3 A The Daniel Farms Corporation?
4 Q Yes sir. How did you go about it?
5 A Well, the first thing we did was file an intent
6 of dissolution with the State Corporation Commission.
7 Q When you actually affected the dissolution what
8 did you do? What did you give the corporation and what did
9 the corporation give you?
10 A I gave - redeemed my stock.
11 Q You gave all your stock?
12 A I gave all my stock for the property.
13 Q And you testified earlier that that was all of
14 the stock in the corporation?
15 A That was all.....right.
16 Q And you received from the corporation how many
17 properties?
18 A I received four properties, and a water system
19 and some cash.
20 Q And what did you - did the four properties include
21 the piece of property in question?
22 A Yes it did.
23 Q And what did you in addition to the stock did you
24 agree to do in consideration of dissolution? Did the corpora-
25 tion have any debts?

A Yes I assumed all of the debts...

Q Of the corporation?

A I'm sorry I didn't hear the...

Q You assumed all the debts of the corporation?

A Of Daniel Farms, Inc., yes.

Q Personally?

A Personally, yes.

Q May counsel confer for a moment, Your Honor?

COURT: Yes sir.

Q Were the other pieces of property in the Piedmont Virginia area, Mr. Matthews?

A Yes, they were. They - some of these properties were in Madison County, Culpeper County, Rappahannock County.

Q Could you give us the values of those other properties at the time of dissolution of the corporation please sir in your opinion - fair market value?

A Yes sir. The Reva tract which was in Culpeper County the appraised value was $12,000.00.

COURT: That's what the appraised....what's your opinion of the fair market value, Mr. Matthews?

A $12,000.00.

COURT: All right, sir.

Q The next tract?

A The next tract was identified as the White Shop tract - do you want the acreage?

Q No sir, just the amount?

A $55,000.00.

Q The next tract?

A The Rapahannock tract.....at $6,000.00.

Q And the water system?

A And the water system which was in Madison County was central water system with 29 connections, and it was valued at $14,000.00.

Q Mr. Matthews what indebtedness did the corporation have at that time?

A The corporation had a deed of trust on the White Shop tract of $15,000.00. A deed of trust on the Ruckersville tract of $32,500.00.

Q That's the present tract, one at issue in this case?

A Yes, it is.

Q And how much cash did the corporation have approximately at that time?

A Approximately $2,000.00.

Q Were these all the assets and liabilities of the corporation?

A Yes sir.

Q For the sake of the record the total assets of the corporation were how much?

A $156,500.00.

1 Q And total liabilities were the sum of $15,000.00
2 on White Shop, $32,500.00 or $47,500.00 on White Shop and
3 Ruckersville tracts?
4 A Yes sir.
5 Q And that left a net worth to the corporation of
6 how much?
7 A $109,000.00.
8 Q Mr. Matthews in your opinion was the stock that
9 you had in the corporation worth the net worth of the corpora-
10 tion?
11 A Yes sir.
12 Q Now ...
13 SLAUGHTER: What was that question, Mr. Parker, I
14 didn't hear.....
15 Q I asked him if the stock in the corporation was
16 worth the net worth of the corporation....if he owned it all?
17 Did you - and those are the assets I believe - did you in fact-
18 I may not have asked you this, did you receive the cash out
19 of the business as well?
20 A Some of the actual cash was used in transferring
21 these properties and recording...and so forth...
22 Q You got...
23 A The balance of it - I did not receive the total
24 $2,000.00 - it was somewhat less than that, considerably less.
25 Q Your Honor, that is the necessary data if Mr. Slaughter

1 wants to...

2 COURT: All right, Mr. Slaughter.

3 SLAUGHTER: If the Court will indulge us just a

4 second?

5 COURT: All right.

6

7 CROSS EXAMINATION

8 BY: Mr. Slaughter

9 Q Mr. Matthews when was Daniel Farms, incorporated?

10 A When was it incorporated? It was in the fall of

11 1971.

12 Q And who were the other stockholders of Daniel

13 Farms, Inc.?

14 A Joseph R. Daniel and myself.

15 Q Could you tell us what capital contribution each

16 of you made to the corporation at that time?

17 A At that time it was something between 5 and 7

18 thousand dollars each, that we used to capitalize the corpora-

19 tion.

20 Q And what contributions were made subsequent to

21 that time?

22 A I'm sorry I didn't hear your question.

23 Q Excuse me - and what contributions were made

24 subsequent to that time, and when - do you recall?

25 A I don't recall, Mr. Slaughter.

1 Q Can you approximate, give an estimate?

2 A I have the information but I don't have it with

3 me, I really couldn't answer it.

4 Q It's not your contention that this amount of

5 property was purchased for a total of between 10 and 14

6 thousand dollars is it?

7 A No sir, this money was used to capitalize the

8 corporation.

9 Q Subsequent contributions of capital were made,

10 is that right?

11 A I believe so.

12 Q And they were made equally?

13 A I believe so.

14 Q But you can't be sure?

15 A No sir.

16 Q You did not in fact put in larger amounts of

17 cash or capital than Mr. Joe Ray Daniel?

18 PARKER: I don't think its been established that Joe

19 Ray Daniel was the other stockholder.

20 COURT: Yes he has, he said he was the only - just

21 two of them, sole stockholders.

22 PARKER: I didn't know that the name was established,

23 Your Honor, but that certainly was what it was.

24 COURT: I thought he did say Mr. Daniel, did you not?

25 A Yes I did.

1 PARKER: I beg your pardon.

2 COURT: Yes he did.

3 A If my memory serves me right I believe that I
4 did put in more investment than Joseph Daniel.

5 Q Approximately how much more?

6 A Something under 300 dollars....difference.

7 Q Was the additional capital contributions as
8 large as your initial capital contributions in total?

9 A No sir.

10 Q And so the total capital raised for the corpora-
11 tion was certainly something under $28,000.00, is that correct?

12 A Yes sir.

13 Q Can you tell us approximately how much under?

14 A It would be an estimate.

15 Q All right, can you give us the estimate?

16 A I think the total capitalization was probably
17 in the $14,000.00 figure - from time to time we loaned the
18 corporation money personally.

19 Q Was that all repaid?

20 A Yes it was.

21 Q Mr. Matthews with that $14,000.00 capitalization
22 then raised you testified that the corporation purchased
23 five pieces of property including the property here and that
24 at some point some minor water system. Would you tell us
25 when you purchased each piece of property?

1 A I don't have the specific dates.

2 Q Can you give us approximations?

3 A I think so. The water system came as a result of
4 a completed sub-division that Daniel Farms, Inc. had built
5 and was completed. This was the first property that was
6 purchased and developed.

7 Q And what property does that water system belong
8 to?

9 A The Oak Park property.

10 Q I didn't list one as Oak Park which one is that?

11 A Madison County.

12 Q That's the White Shop property?

13 A No sir.

14 PARKER: I think Mr. Slaughter...

15 A I think we refer to it sometimes as the Leon
16 Water System, as well.

17 COURT: Is that what you previously indicated as the
18 water system?

19 A Yes it is Your Honor.

20 COURT: And you now say it's the Oak Park and also
21 known as the Leon ...

22 A That is the official name of the sub-division -
23 Oak Park Sub-division.

24 PARKER: If the Court please for purposes of clarity
25 it seems to me Mr. Matthews previously testified that the - he

1 received the water system at the time of dissolution . He
2 didn't say that the corporation still had that piece of
3 property. ....
4 COURT: I understand now.
5 PARKER: ....at that time. It was the water system.
6 COURT: Yes sir.
7 Q Well, then if I understand correctly and not trying
8 to lead too much but trying to save time, from what Mr. Parker said,
9 the Oak Park Sub-division had been sold?
10 A All of the lots had been sold at the time that
11 the dissolution of Daniel Farms took place.
12 Q And when was Oak Park sub-divided?
13 A It was during 1970.
14 Q It was sub-divided before the corporation was
15 formed?
16 A No, I'm mistaken about my date of incorporation.
17 It was - the Daniel Farms would have had to have been incorpora-
18 ted in 1970.
19 Q All right. I may have taken these down - I may
20 have misunderstood, were the figures that you gave, provided for
21 each of these sub-divisions the appraised values at the time
22 of the dissolution or the purchase prices?
23 A Would you...
24 Q For example, you testified I believe that the
25 Reva Tract in Culpeper County - a value of - purchased for

1 $12,000.00 and I was uncertain from my notes whether - which
2 was your testimony?
3 A I said the White Shop tract was purchased for
4 $55,000.00.....I mean the value at the time of the dissolution.
5 Q All right. I believe you said the Reva tract
6 then at a value of $12,000.00?
7 A $12,000.00.
8 Q Rappahannock tract at 6?
9 A Yes sir.
10 Q And the water system of 14? For what did you
11 purchase the Reva tract in Culpeper County? For what
12 amount?
13 A $5,500.00 I believe.
14 Q For what amount did you purchase the White Shop
15 tract - is that also in Culpeper County?
16 A Yes. I believe that was $15,000.00.
17 Q And for what amount did you purchase the Rappahannock
18 tract?
19 A $3,900.00.
20 Q And the Madison Oak Park tract?
21 A Now you want the land cost or you want the water
22 system cost?
23 Q The land cost first?
24 A The land cost.....I believe that was $16,000.00.
25 Q And the cost of the water system?

1 A The cost was about $13,700.00.

2 Q And you've already testified I believe that

3 you paid $27,500.00 for the Ruckersville tract which ...

4 A Yes sir.

5 Q Did you buy and sell any other tracts of land

6 during the life of Daniel Farms Inc.?

7 A Not that I recall. Yes we did.....we bought,

8 I believe it was 94 acres adjoining the town of Madison.

9 Q What did you buy that for? Excuse me, I want

10 to make the record clear for what price did you buy that?

11 A It was $60.....I believe $67,000.00.

12 Q And I gather that that was subsequently sold

13 before the dissolution of the corporation? Or was that

14 sub-divided and sold?

15 A No, this was one of the properties that Mr.

16 Daniel got as a part of the settlement of the litigation.

17 Q Was there any other property that was bought and

18 sold that went to Mr. Daniel as part of the settlement?

19 A Not that I recall, no sir.

20 Q Can you tell us approximately when the purchase

21 of these five projects took place?

22 A Well, as I testified earlier the Oak Park property

23 was purchased in 1970 and I believe it was probably around

24 September. The ...

25 Q Well, September 1970 will be sufficient.

1 A All right.

2 Q And when were the others purchased?

3 A The Ruckersville property, I believe, was purchased

4 next, being September of '71.

5 Q All right. What was next?

6 A I'm not sure as to the sequence but they were

7 all purchased in 1971 .

8 Q All right. If I understand Mr. Matthews in the

9 settlement that you made with Mr. Daniel you took or were

10 allocated all of the assets other than the 94 acres adjacent

11 to Madison?

12 PARKER: If the Court please - maybe the term alloca-

13 tion is correct, but I believe Mr. Matthews' testimony was

14 that he received all the stock, that is the ones that were

15 left in the corporation.

16 COURT: I gather that that's just a matter of inter-

17 preting terms - it's noted that the matter might be more

18 clearly stated, Mr. Slaughter.

19 Q Well, I accept that correction sir. And perhaps

20 to put it accurately Mr. Matthews, you've testified Mr. Daniel

21 sold you his stock in exchange for the 94 acres adjacent to the

22 town of Madison.....is that correct?.

23 A Not really....

24 Q How is that in error?

25 A Mr. Daniel had taken approximately $44,000.00 out

1 of the Daniel Farms, Corporation in the form of cash, and
2 this was the problem with the litigation. So he also had that.
3 Q So he had to close.....
4 for that amount of money?
5 A Right.
6 Q But the value of $67,500.00 for this property to
7 which you have testified was simply appraised value, once you
8 took the stock back and became the sole stockholder of
9 Daniel Farms?
10 A Are you asking if it was?
11 Q Yes, I'm asking if that's the case - the appraised
12 value - the property was never bought or sold for that
13 amount?
14 A I believe that's correct, yes sir.
15 Q Now going to the money that was spent on the
16 initial topographic survey, you of course testified, Mr.
17 Matthews, that you would need a topographic survey really for
18 any development. Is that correct?
19 A Yes, that is correct.
20 Q And in fact wouldn't you need a soil analysis
21 for any type of development?
22 A I didn't hear your entire question.
23 Q In fact wouldn't you need a soil analysis for
24 any type of development?
25 A You would need a soils analysis if you were planning

1 for septic tanks - certainly in building the roads you would
2 need to know and determine the types of soil that you were
3 dealing with, and to use for compaction and whether - how
4 much underlying rock might be in a particular piece of ground
5 in question. Or all of this information is necessary to
6 a developer.
7 Q Absolutely and that's really my question that
8 for any type of development of it, whether it be two acre
9 lots, five acre lots, any type of development a soils analysis
10 is required?
11 A Not necessarily.
12 Q Didn't you just say that...
13 COURT: Let him answer it, Mr. Slaughter.
14 Q Excuse me.
15 COURT: He can go ahead and explain.
16 A If you are dealing with a three or five acre
17 lot size, if you have a particular area on that five acre lot
18 or three acre lot that had an outcrop of rock or had poor
19 soil conditions there could be a possibility that you could
20 have a septic tank located in another location on that lot,
21 that might work. If you want to spend all of the time research-
22 ing and perking and on an individual lot basis.
23 Q But as a matter of fact it would be much more
24 efficient operation if you had the soils analysis initially
25 which would tell you where to locate the septic tank, the road,

1 and various other items - isn't that correct?

2 A Yes sir, most of your health departments will

3 ask you to prepare a soils analysis.

4 Q Now on the report of Tayloe-Murphy Institute

5 you stated that you never received a report, and have not

6 asked for it is that correct?

7 A That's correct.

8 Q And you've never received a bill?

9 A No sir.

10 Q Mr. Matthews you testified that the preliminary

11 plat was first submitted to Mr. Morris, who was the administra-

12 tor of the sub-division ordinance here in Greene County...I

13 believe on February 4, 1974?

14 A Yes sir.

15 Q Did you in fact do that yourself?

16 A I don't recall, Mr. Slaughter.

17 Q You don't recall whether you might have had ...

18 you don't recall how it was presented?

19 A I know there were several trips down but as to

20 the specific time whether it was on that submission or the

21 plan was later - changes were made and resubmitted, I don't

22 recall.

23 Q Do you recall whether you came personally on

24 February 26, when the final plat - when the preliminary plat

25 was again submitted? February 28, excuse me.

1 A No sir.

2 Q You don't recall. Was it your testimony that
3 you were warned by Mr. Morris about the six months limitation
4 on the sub-division ordinance?

5 A Yes sir.

6 Q But you don't recall whether you were here or
7 not?

8 A I don't remember which trip, I think that was
9 your question.

10 Q I'm just trying to ask if you remember coming
11 to Greene County on these two occasions to file the preliminary
12 plat?

13 A Yes it was one occasion, but I'm not positive
14 as to which.

15 Q But you came personally to Greene County on one
16 of those two occasions?

17 A I came with my engineer Jim Harris, yes sir...on
18 one occasion.

19 Q Was that one of the two occasions before the pre-
20 liminary plat was submitted or - and approved on February 26...
21 or was that one of the trips afterwards?

22 A After what?

23 Q After the approval of the preliminary plat?

24 A I don't recall what day I actually personally came.
25 I employed the services of an engineer and that was his specific

job and function and duty to comply with the zoning and comply with the time limit.

Q But you cannot say specifically when you were here at all in February, either when the preliminary plat was initially submitted and rejected on February 4, or when it was submitted and approved on February 26?

A I was here on one occasion and all of this...

COURT: Well, was it one of those two dates, Mr. Matthews, or could it have been a different time, other than one of those dates?

A It could have been a different time, because...

COURT: All right, let's let it ...go ahead with...

A All of this happened between February 4 and sometime early in March.

Q So it's your testimony then that you were here and that you personally conferred with Julius Morris some time between February 4 and some time early in March?

A I was with Jim Harris on one occasion. I don't remember whether it was the first, second or third visit, there were possibly three trips to Greene County.

Q But it would have been no later than early March?

A I don't believe so.

Q And during that time Julius Morris warned you about the six month ordinance is that correct - six month deadline for final submission?

A Well, he just said, you understand that you know that you are to prepare this final plat within six months time limit. And he said if you fail to do so there could be some difficulty.

Q And where did you meet with Julius Morris?

A In his office.

Q Where was that located at the time?

A It was in the furtherest building over to our right.

Q Was that in the office that he has now in the County Office Building or across the street?

A I believe it was in the basement of that building.

Q Of the County Office Building?

A I believe so.

Q Did you see Julius Morris at any other time before the submission of your final plat? In August?

A Yes sir, I was - I was traveling from Lexington and on business through Harrisonburg and I stopped here in Greene County, Stanardsville, I talked with Julius. Let's see if I have that.....it was some time prior to the expiration of the six months time limit. It could have been two weeks or ten days and again he cautioned me, now you understand that you have to get this plat in here before this time limit expires. I immediately called - went to Culpeper at my office and called Jim Harris again, and cautioned him about the time

1 limit that was fast approaching. And he assured me that he
2 would meet the time limit and his draftsman and all of his
3 people worked straight through the week-end, Saturdays and
4 Sundays, and were able to complete the plat on schedule.
5 Q Back to the period, February 4 to early March,
6 in which you state that you met with Julius Morris and it
7 could either have been on February 4, February 26 or at some
8 time - later time, I gather, but no later than early March.
9 Was there a discussion during that period about the zoning
10 ordinance?
11 PARKER: Excuse me, Mr. Slaughter, You stated a
12 period but I did not hear it...
13 Q February and early March?
14 A I can't say that I was told, I don't recall.
15 Q Mr. Harris apparently was here at least on one
16 of these occasions by himself?
17 A (Witness shakes head yes.)
18 Q Answer please, the recorder won't pick up your
19 head nodding.
20 A What was your question?
21 Q Mr. Harris was apparently here at least one of
22 the times by himself, either when the preliminary plat was
23 submitted initially or when it was submitted on February 26?
24 A Yes sir, Mr. Harris was here.
25 COURT: If you weren't here in connection with it, it

1 would have been Mr. Harris, is that the only way it would
2 have been presented?
3 A Yes sir.
4 Q Now you refer to Mr. Harris, is Mr. Harris an
5 employee of another company?
6 A Yes he is.
7 Q And what company?
8 A Ross and France, Ltd..
9 Q Is he in charge of their Culpeper office, is that..
10 A He's in charge - he is the manager and - of the
11 Warrenton office.
12 Q Warrenton office?
13 A Yes sir.
14 Q You referred to him as your engineer, how many
15 sub-divisions has he laid out for you?
16 A Jim Harris has done all of my work for the past
17 five or six years.
18 Q And has he not in fact when the work began
19 here in Ruckersville come to Greene County to check on the
20 various regulations of the county?
21 A Yes sir, he came and obtained a copy of the sub-
22 division ordinance, and all the required documents prior to
23 beginning anything.
24 Q And thus he was operating on your behalf in connec-
25 tion with the property here in Ruckersville?

1 A Yes sir.

2 Q When did you first become aware that an interim

3 zoning ordinance was being considered here in Greene County?

4 A I don't know the exact date.

5 Q Approximately?

6 A It was well after my preliminary plan had been

7 approved.

8 Q How far after?

9 A I don't know Mr. Slaughter. At the time it didn't

10 concerned, I assumed that I had position-that my preliminary

11 plat had been approved, I was to go forth, and not only that

12 prior to the six months time limit Mr. Morris called me and

13 again encouraged me to proceed to reach this final deadline.

14 And I did exactly that.

15 Q Did he in fact simply alert you to the time

16 limit?

17 A I beg your pardon?

18 Q Didn't he in fact simply alert you to the final

19 deadline? You say he encouraged you to...

20 A If my plan is no good, why does he call me and

21 tell me to proceed?

22 Q Can you recall what he said?

23 A Yes, he said, you understand that your time limit

24 is such and such a date, August 28, I believe. And he said

25 you know that you have only so long to do this.

1 Q I'll leave it to the Court to decide whether....
2 A And I was proceeding on the assumption that my
3 preliminary plan was approved and I continued to attempt to
4 meet the deadline.
5 Q I'll leave it to the Court to determine whether
6 the evidence was simply a warning or whether he encouraged
7 him...
8 A It seems to me that if there was any question he
9 would have said stop.
10 Q Do you know Robert Parrott?
11 A Yes sir.
12 Q Who is Robert Parrott?
13 A He's Robert S. Parrott, Jr.. He's been in my
14 employ now approximately two years and he is the sales manager
15 for the Culpeper office.
16 Q In fact isn't Mr. Parrott a resident of Greene
17 County?
18 A Yes he is.
19 Q You said approximately two years, do you recall
20 when he came to work for you?
21 A I believe he came in February.
22 Q February of 1974?
23 A I believe that's correct.
24 Q Where does Mr. Parrott live in Culpeper County -
25 I mean Greene County?

1 A I don't know the Route number, Mr. Slaughter. He
2 lives out beyond the gas plant.
3 Q How far from the property here in question?
4 A Oh, ten, eleven miles.
5 Q Was he at that time familiar with your purchase
6 of this property?
7 A Yes sir, he was.
8 Q Mr. Matthews, do you remember testifying at the
9 trial of the case here on January 2, 1975, when the Court heard
10 the proceedings in connection with the certiorari to the Board
11 of Zoning Appeals in Greene County?
12 A Do I remember testifying?
13 Q Yes sir.
14 A Yes sir.
15 Q Do you recall testifying in response to Mr.
16 Dickey's questions on page 56 of the transcript. What was
17 the purchase of this 111 acres? Answer, do I have to answer
18 that? Then there was a discussion between the Court and Mr.
19 Parker and your answer was - I'm sure it was, there had been
20 a mixup on it anyway. I think it was 48 thousand plus, except I
21 might say give them $1,000 for a boundary survey. I think that's
22 correct - either 48 five or 47-five. Is that your testimony at
23 that time?
24 A Yes, it was. Mr. Dickey's question was not
25 directed at which purchase, whether he was talking about the

1 Daniel Farms purchase or the time that-of the dissolution.

2 Q But at that time, of course your position

3 that the investment in the property was $47,500.00 - isn't

4 that right?

5 PARKER: Your Honor, that's a question of law.

6 COURT: Well, I don't know whether.....his question

7 was the purchase price, you say he testified something of

8 the same thing here today, about the actual.....$48,500.00...

9 when it was purchased less a thousand dollar reserve for

10 survey, and then of course we got over into the fair market

11 value. I don't think he testified although he may have in

12 the previous hearing as to fair market value.

13 PARKER: At the time of the dissolution....he did not.

14 COURT: It may be two different things...

15 Q He did not take the position in this matter

16 the value at dissolution had bearing on the previous case.

17 Today he is trying to say that it's the value at dissolution

18 not the purchase price ....

19 COURT: That would be a question of law, Mr.

20 Slaughter. I think that would be a matter you all could take

21 up in final argument.

22 Q Not my exceptions sir.

23 COURT: Yes sir.

24 Q What do you anticipate, Mr. Matthews, what did

25 you anticipate - if this sub-division had been approved at its

1 overall retail value on completion?

2 A I believe it was estimated to be at the time

3 about 17 millon dollars.

4 Q And did you include in your consideration the

5 fact that the increasing value was based on inflation at

6 the time?

7 A Well, I think that's true in any business.

8 Q At what rate did you anticipate that the value

9 would increase annually?

10 A It would be keyed to the consumer cost of living

11 index, as related to other things.

12 Q Would it increase by 12 percent a year?

13 A Possibly, yes. At the time I think the cost of

14 construction was advancing a little bit rapidly. It may not

15 be at the particular rate of increase at the moment.

16 Q Mr. Matthews you testified that you didn't learn

17 of the interim zoning ordinance until some time well after the

18 preliminary plat was filed. It was before the final plat

19 was submitted was it not?

20 A Yes sir.

21 Q In fact you knew when the final plat was submitted

22 that it had to be submitted to Mr. Morris, the zoning administra-

23 tor, as well as sub-division administrator at that time, did

24 you not?

25 A Yes sir.

1 Q And you knew as a matter of fact when you took it
2 down there that the Board of Zoning Appeals would have to
3 approve your plat, did you not? Under the zoning ordinance?
4 PARKER: Your Honor, I object - I'm not certain....
5 Q He keeps shaking his head.....
6 PARKER: I didn't quite understand the question.
7 What was the date you offered Mr. Slaughter?
8 Q When the plat was taken to Mr. Norris on the 26th.
9 PARKER: I don't think Your Honor , that what Mr.
10 Matthews knew or did not know at that time would make that
11 much difference. I suppose he's charged with the knowledge of
12 what the law was at that time, the zoning ordinance if it was
13 law at all, the zoning ordinance had been passed by the interim
14 zoning ordinance...
15 COURT: I overrule the objection, Mr. Parker. It may
16 not be relevant, but we've gotten into this area of several
17 different dates and I see no reason not to allow it to follow
18 on through to the final conclusion. He's indicated that he
19 did become aware of the ordinance prior to submitting it,
20 now the question is whether he knowingly ...
21 PARKER: Submitted the final...
22 COURT: ...continued to endeavor in a hopeless fashion
23 or whether he was aware that it was hopeless at that time.
24 Q Mr. Matthews, if I recall correctly you haven't
25 been able to give us any enlightenment as to when - before

1 August 26 and after early March you became aware that the
2 zoning ordinance was in effect? But you do admit that you
3 became aware of it at some time, is that correct?
4 A It was some time in early August, that I knew of
5 the interim ...
6 Q Before you came to see Julius Morris on that
7 trip back from V.P.I.?
8 A No it was at the same time.
9 Q How did you find it out?
10 A I believe he told me the same day that there was
11 an interim ordinance, and at the same time he told me again -
12 cautioned me about the time limit approaching.
13 Q Yet following that you went back to Culpeper
14 and you called Jim Harris and they worked night and day to
15 get that final plat submitted?
16 A Yes.
17 Q And all that work was done while you yourself
18 admittedly knew that the interim zoning ordinance was in
19 effect? Is that correct?
20 A Yes sir, but I assumed under the - my rights as
21 my preliminary plan had been approved, I could proceed and
22 comply with the time limit.
23 Q Did you consult anyone as to your rights?
24 A My rights had never been denied.
25 COURT: Well, the question was did you consult any-

1 body, Mr. Matthews? About the affect of the interim zoning
2 ordinance on your case?
3 A No sir.
4 COURT: All right, go ahead, Mr. Slaughter.
5 Q When you talked to Mr. Morris, did you at that
6 point discuss any possible recourse you would have under the
7 zoning ordinance?
8 A None was discussed. His conversation to me
9 was to proceed to the prescribed time limit. And I took the
10 position that my preliminary plat was approved and I proceeded
11 to meet that time limit.
12 Q No further questions, Your Honor.
13 COURT: All right, Mr. Parker.
14
15 REDIRECT EXAMINATION
16 BY: Mr. Parker
17 Q Mr. Matthews, I have just one question. When
18 you called Jim Harris - you came to town and called him and
19 relayed this information that Mr. Morris had given you, the
20 fact that the final plat had to be filed within six months?
21 A Yes sir.
22 Q Do you know how much of the work at that time
23 he had done on the final plat and how much he did after that
24 time?
25 A The preliminary work that was done as a result of

1 the preliminary, that was later used inthe final plat, Mr.
2 Harris had been working on that all along, but the difficulty
3 in getting to the final plat form or position or to get this...
4 one of the difficulties was getting approval from the State
5 Bureau of Sanitary Engineering, in the approval of the septic
6 or sewage treatment facility. And to - approving the location
7 and the discharge and the treatments that had to be met under
8 their requirements and also the approval of the road system
9 into...
10 Q And was all that in progress by the time you and
11 Mr. Morris had the conversation that you recounted?
12 A I beg your pardon?
13 Q Was all that in progress prior to the time that
14 Mr. Morris called you?
15 A Yes sir.
16 Q Or talked to you? Mr. Slaughter asked you
17 something like this - and all of that work was done after
18 Mr. Morris - or all of that work was done then?
19 COURT: Mr. Parker let's get ahead with the questioning
20 now....
21 Q Did you mean...
22 COURT: Ask your question now.
23 Q Did you mean by your answer that all of the work
24 that Ross and France did was done-on the final plat was done
25 after you went back and called them and told them to make sure

1 they met the deadline?

2 SLAUGHTER: If the Court please, I don't believe

3 I am being quoted correctly.

4 COURT: I don't know that it's appropriate to quote

5 counsellor's questions and that's the reason for not doing

6 it. Who knows whether you quoted correctly, he doesn't recall

7 it specifically - I don't recall it that well, and you

8 don't recall it that well, and we're not going to play the

9 tape back. Ask the questions that you want to ask.

10 Q Do you know how much work was done before or after

11 that particular date?

12 A The date that I called him?

13 Q Yes sir.

14 A Not specifically. I know that the individual lot

15 layout - a lot of that work was transferred from the preliminary

16 plat, but the difficulty was completing all of the street

17 designs and sewage treatment and all of this had to be plugged

18 in after that time.

19 Q After which time?

20 A After I called him.

21 Q Oh.

22 A And of course he was consulting with Baldwin

23 and Gregg in Newport News to - they were the agency that

24 was employed for the sewage treatment facility. And so all

25 this information had to be relayed back to Mr. Harris.

1 Q All right, sir, that's all.

2

3 Questions by the Court

4 Q Mr. Matthews, why didn't you just go ahead and
5 record your plat as the lapse in the road and let the
6 engineering details be filled in later ? You didn't have to
7 have that on the plat to get it recorded did you?

8 A Yes Your Honor, I think it would have had to have
9 been on the plat, because we later found that there had to
10 be some modifications in the residential areas...

11 Q I see.

12 A To comply with a distance regulation that the
13 State says that - in this particular case it was-the sewage
14 treatment facility had to be located 600 feet from any resi-
15 dence.

16 Q Was it because of the nature of the soil or the
17 size of the lots that you had to provide for a central sewage
18 disposal system in order to comply with the health require-
19 ments, or could you have recorded the plat, ignoring all
20 together the sewage facilities?

21 A No sir, I think based on the density that we were
22 dealing with and the other uses certainly in the apartment
23 areas, and commercial areas that we would have been dependent
24 on a sewage treatment facility.

25 Q So really the delay had to do with providing a lot

of engineering details on the very plat that you wanted to get recorded, I take it?

A Yes sir.

Q That included the design and location of sewer treatment facilities...

A And approval of the streets, because we found too that later, that the width of the main artery leading into this, had to be certain changes made and widths increased and a median strip added....to handle the traffic flow in and out of this particular development.

Q Had it not been for the density though you would have not been required to provide any information on the plat about sewage disposal would you?

A Well, I think there's another reason for the decision of using a central plant, and that is that a good portion of the land would not perk for individual septics.

Q Was it required that you prove that it would perk in order to get a plat approved? Did you have to certify that to the health department or did they make their independent tests?

A The county health department would make a lot by lot evaluation, but with six - knowing that sixty percent of the land would not perk for septic - individual septic tanks, we did not proceed to...

Q All right, then you knew that it had to be a central

1 sewage disposal system in order to give this any affective...

2 A Yes sir.

3 Q ...approval then as far as your plan. Now when

4 you submitted your preliminary plat, what was on that, just

5 the bare layout of the lots themselves?

6 A No sir...there was an area left along the rear

7 stream that was designated for the sewage treatment facility,

8 but the difficulty in that, we found later that we had not

9 provided enough space.

10 Q So you enlarged that?

11 A We had to increase the area. And thereby reducing

12 the number of residential lots, so in effect it was changed.

13 PARKER: If the Court please, may I invite his atten-

14 tion to section 445 of the sub-division ordinance.

15 Q All right sir. I take it that a large amount of

16 the cost and the time consumed had to do with the details

17 of preparation of plans and specifications and obtaining

18 approval thereof in the various departments in order to get

19 your sewage disposal system located, approved and certified

20 to fill the needs for the sub-division as a whole?

21 A Yes sir, I think you'll find it's very difficult

22 to get a sewage treatment facility approved in six months.

23 Q You are saying for all practical purposes you could

24 not have recorded your final plat without putting that on

25 there? That's the way you interpreted it, I take it?

A Yes sir, I think you would have been - there would have been a certain amount of risk involved in possibly going back later and abandoning that plat and making changes. If it had been prematurely recorded.

PARKER: Is the Court speaking of recording the plat or filing it?

Q I mean filing it and getting it approved with the zoning administrator...

PARKER: I think that section that I cited there is directly in point. Of course the Court may wish to test Mr. Matthews' particular knowledge on it.

Q His own time schedule is what I'm getting at. We can review the requirements later. All right, any other questions of Mr. Matthews?

RECROSS EXAMINATION

BY: Mr. Slaughter

Q Yes sir, two or three Your Honor. Mr. Matthews, you testified you simply don't know how much work was done before and how much was done after you returned from your visit to Greene on the final plat is that correct?

A I can show you on the drawings of the preliminary plat and the final plat....the difference in the two plats and I think that in itself will speak for what work had to be done as far as the engineering, but - after that time.

1 Q But you don't know whether that was in fact done
2 before you came back from Greene in August or after?
3 A A lot of it was done after I called Mr. Harris.
4 Q Mr. Matthews, do you recall why your final plat-
5 your preliminary plat was submitted specifically on February
6 26th?
7 A No sir, it was - the preliminary plat was
8 completed on October 23, I believe - the date on it.
9 Q But it was submitted on February 4, was it not?
10 A That's right.
11 Q And was rejected?
12 A How do you mean rejected?
13 Q It was rejected because of the townhouses?
14 A Yes sir, that change - the townhouses were taken
15 off of the plat and it was corrected and promptly returned.
16 Q And it was then brought back to Greene County
17 on February 26?
18 A I believe that's right.
19 Q Why February 26th?
20 A (Witness shrugs shoulders.)
21 Q Are you saying you don't know?
22 A No, your question was why February 26th, I don't
23 know why February 26.
24 Q You have to answer because the tape recorded
25 won't pick up your shrug.

1 A Maybe that's the date that Mr. Harris completed
2 it and was able to get it back.
3 Q It's your testimony that you had no knowledge
4 the interim zoning ordinance had been advertised for passage?
5 A No sir.
6 Q You testified you owned other property in
7 Greene County, did you not?
8 A I own some lots.
9 Q Where are they located?
10 A Wildwood Valley.
11 Q You own no other tracts of land here?
12 A No sir.
13 Q When you learned of the zoning ordinance did it
14 occur to you to ask what you might do at that time, with regard
15 to whether or not your sub-division would be approved by the
16 Zoning Board?
17 A When I learned of what?
18 Q Of the zoning ordinance.
19 A Mr. Slaughter, its been my experience for 19 years
20 when a preliminary plat is approved in a county by a county
21 administrator, this is the whole idea. Proceed.....I was never
22 told to stop.
23 Q And you never inquired as to what the regulation
24 was?
25 A If the idea was to stop me why wasn't I warned

in the...

COURT: The question now Mr. .....you've already covered whether you sought any advice, did you make any inquiries of any kind about the effect of the interim zoning ordinance on your activities? Did you make any inquiry of any one? Did you ask any questions?

A No, I think Bob Parrott talked with someone down here and he came back to Culpeper and said ...

Q That will be hearsay Your Honor...

COURT: All right, just as far as you know... that would have been the only inquiry that would have been made was through Mr. Parrott? If that's your answer?

A Yes.

COURT: You did not make any inquiries of your own. Go ahead, then, Mr. Slaughter.

Q Would you indulge us just a moment sir?

COURT: Yes sir.

Q No more questions, Your Honor.

COURT: All right, Mr. Parker, anything further?

PARKER: If the Court please, I see that I asked the county for Mr. Matthews - to provide Mr. Matthews' plan and it appears here as Plaintiff's Exhibit 2, does that include the preliminary plat, Mr. Dickey?

DICKEY: I believe not.

PARKER: Is the preliminary plat available?

1 DICKEY: Your Honor, my understanding is that Mr.
2 Morris, who brought it to me, when the preliminary plat was
3 rejected, it was taken back by Mr. Harris to Mr. Matthews.
4 The county retaining no copies, no copies provided to the
5 county, and therefore the only existing copy of the preliminary
6 plat is in the hands of Mr. Matthews and his agents.
7 COURT: You state then for the county that there is
8 no copy that you know of that could be...
9 DICKEY: The first preliminary plat.
10 COURT: Mr. Parker, you may....
11 DICKEY: The county has the second preliminary
12 plat.
13 COURT: You may want to introduce that...
14 PARKER: The county has the second....
15 DICKEY: That's what is found there...
16 PARKER: Is this the preliminary....
17 DICKEY: It's the second preliminary plat.
18 PARKER: I thought this was the final one.
19 DICKEY: It's the same thing.
20 COURT: Then it was accepted?
21 PARKER: I'm trying to figure out what this thing
22 here is.
23 COURT: Well, you all apparently can't communicate.
24 He is telling you that's the one that was accepted...there
25 apparently were two of them, one on February 4 and one on

1 February 4 and one on February 26.

2 DICKEY: The preliminary is appended to this....

3 here.....

4 PARKER: That's what I was trying to ascertain,

5 Your Honor, which one is the preliminary.....

6 COURT: That covers it then, you've got it in

7 evidence.

8 DICKEY: The second preliminary...

9 PARKER: Well, now we'll put the first preliminary

10 in evidence, unless you object Mr. Dickey?

11 DICKEY: I don't object.

12 COURT: All right, let's call that what - number

13 32?

14 REPORTER: The next exhibit will be 36.

15 COURT: 36....

16 DICKEY: There's certainly no objection.

17

18 The preliminary plat was marked and received into

19 evidence as Plaintiff's Exhibit Number 36.

20

21 COURT: All right, sir, exhibit 36 being the first

22 preliminary plat as that which was rejected and it's admitted

23 into evidence.

24 PARKER: Mr. Dickey is it conceded that the

25 record copies of the final plan were submitted in August, and

1 by the State Board of Health and necessary people under the
2 sub-division ordinance at that time?
3 A This apparently is not the record copy.
4 PARKER: Well, I'll ask Mr. Matthews.....
5 COURT: All right, go ahead, Mr. Parker.
6 PARKER: Mr. Matthews are the signatures of the
7 necessary people on the final plat - when you filed it in
8 August?
9 A I don't know exactly. Jim Harris always keeps
10 the records, plats. And he acquires the signatures and
11 he may have had letters of approval from these agencies
12 stating that they were willing to sign - you know whenever he
13 was ready with this, and along with the approvals that he
14 obtained...
15 PARKER: All right, sir. This has in fact been
16 submitted as the plan for Greenetown Village, pages up to
17 and including .....
18 COURT: Mr. Parker if that plat's been admitted into
19 evidence, it can speak for itself and no one has raised any
20 question on it. I don't think it needs to be testified to
21 that it is the one that was presented.
22 PARKER: Just trying to get - all I'm trying to do
23 is distinguish between the two - the submission of February 4,
24 I beg your pardon the submission of February 28 and the sub-
25 mission of August 1974. They are both here....one piece of

1 evidence, that's all I'm trying to do at the present time.

2 DICKEY: The county has already conceded that....

3 COURT: What's the problem with it then...what's

4 the delay here?

5 PARKER: If the distinction is clear in the record,

6 there's none, Your Honor. If the Court understands which is

7 which in here...

8 COURT: I understand that you all can agree as to

9 which is which, and it does not have to be completely decided

10 at this point. If counsel are agreed that they can be

11 distinguished, then they are in evidence so I'see no problem

12 with...

13 PARKER: All right, sir. I have no other questions

14 of Mr. Matthews.

15 COURT: All right, we'll take our lunch break for

16 45 minutes and pick up the evidence.....now how many other

17 witnesses do you have, Mr. Parker?

18 PARKER: Maybe none.

19 COURT: All right, it will be expected then that

20 the defendants will be prepared to go forward with their

21 evidence after the lunch break...

22 PARKER: We're not dead certain, Your Honor, but

23 that's...

24 COURT: All right, we'll hear from you further....

25

(Lunch Recess.)

DICKEY: Your Honor in order to save time we have a few stipulations to make here. Mr. Haney has never been cross examined, Mr. Parker is willing to stipulate for the record what his testimony would have been on cross examination...

COURT: All right.

DICKEY: Matters known by the Court but necessary for the record, and that is that the town of Stanardsville does contain a number of lots on Route 230 and on Route 33 that are not occupied by structures and would therefore be available for commercial development.

PARKER: At the time that....

DICKEY: At the time of the interim ordinance.

PARKER: Time of the interim ordinance, that there were some of such in the town.

DICKEY: And second that - the stipulation is that the - even though Mr. Matthews did not have the necessary signatures on his final plat placed in the office of Julius Morris, who was acting in the dual capacity of zoning administrator and sub-division ordinance administrator, that office practice did not commend..... ..... that those signatures be on it at that time.

PARKER: But merely that....

1 DICKEY: But merely that it be filed within six
2 months.....
3 PARKER: Which it was.
4 DICKEY: And that it was filed in six months.
5 COURT: So there's no problem with signatures...
6 DICKEY: That's correct.
7 COURT: In so far as the...
8 DICKEY: Right.
9 COURT: The compliance....
10 PARKER: In order to make the record clear on how
11 much of exhibit 2 is the second preliminary submission and
12 how much was the final submission Your Honor, I am able to
13 say I believe with Mr. Dickey's concurrence at this point,
14 that the last page of this is the second preliminary sub-
15 mission and the balance of this document is the final
16 submission.
17 DICKEY: That's what we were saying earlier Your
18 Honor...
19 COURT: All right, sir. Now Mr. Parker with that
20 stipulation do you have any further evidence?
21 PARKER: Yes sir, I would like to recall Mr.
22 Vivier.....
23
24 CHARLES VIVIER, having been previously sworn, was
25 recalled and testified as follows:

1

2 DIRECT EXAMINATION

3 BY: Mr. Parker

4 Q Mr. Vivier do you recall your testimony yester-
5 day?

6 A Yes sir.

7 Q And before in this case?

8 A Yes sir.

9 Q I asked you at that time if you were certain
10 what was the availability of water from your system and you
11 gave me certain figures?

12 A That's correct, sir.

13 Q Was that availability the ones that did not
14 require the modifications - and that availability - present
15 availability on February 28, 1974?

16 A Reasonably so, I mean within - you are talking
17 about the availability of ...

18 Q Connections?

19 A A thousand additional connections, that I
20 testified...

21 Q Yes sir.

22 A Reasonably so, I made a study on February - or
23 made a report on February 19, 1975, which was one year later
24 and other reports, and while there was some change in a year's
25 time, those are reasonably accurate.

1 Q Thank you sir. One more question, again referring
2 to your previous testimony. From the standpoint of the
3 water authority is development at the extremity of your
4 system desirable?
5 A Well, the county's - well, it is just that,
6 as you say, development at the extremity of the system
7 from the standpoint of the source of supply at the Rapidan
8 River which is the most dependable source of supply and ....
9 Q Which development is a development at the
10 extremity of your system?
11 A Well, the town of Stanardsville, or the
12 Stanardsville cluster, and the Corner Store cluster.
13 Q Are both at the extremities of the system?
14 A It would be at the extremities of the system.
15 Q And is that desirable from the point of view
16 of your authority?
17 A Well, I have already stated economically why the
18 development at the corner store cluster is not desirable,
19 but operationally .....
20 Q I meant...
21 A Operationally development at the extremities
22 of the system would be less desirable than anywhere else.
23 Q Thank you sir. Answer Mr. Slaughter's questions
24 and Mr. Dickey's please.
25

CROSS EXAMINATION

BY: Mr. Dickey

Q Very briefly, Mr. Vivier, any additional costs would be borne by the developer, from the operational standpoint would be borne by the developer would it not, under your policy?

A Well, the developer puts in his own - has to put in his own system serving the boundaries, serving inside the perimeter of the sub-division.

Q And everything necessary to make that system work is that not the case?

A In the opinion of the administrator, whatever is necessary to make those facilities feasible, he would have to put in.

Q And these new connections that would come out of the system that you were talking about were they governed on February 28, 1974 by this operating policy?

A Which new connections?

Q You were talking about the new connections that...

A Let me just answer your question this way. There was a policy effective February 19, 1974, and you are showing me that policy. And of course that policy states how connections would go, and it also states that the administrator makes a judgment on those connections.

1 Q Now, a new connection outside of a development
2 is charged how much for water availability?
3 A Outside...
4 Q At that time?
5 A Right, at that time, outside of a development
6 the availability charge, the connection charge was $350.00,
7 which included the costs of the meter installation. Now
8 that was at that time, that same policy provided for an
9 increase in the cost of those connections at - well, starting
10 at May 1, 1974.
11 Q All right, and what was the connection charge
12 inside a development?
13 A Inside a development that the developer had
14 developed at his own expense, with two exceptions Locust
15 Lane and Hord Sub-division were part of the original
16 project, the - all of the developments, the connection charge
17 at that date was $100.00.
18 Q Thank you.
19 COURT: Any other questions, Mr. Parker?
20
21 REDIRECT EXAMINATION
22 BY: Mr. Parker
23 Q You said that the policy at that time provided
24 for an increase at a later time?
25 A Right, the original policy ....

Q What was the connection charge going to be under the increases provided for in the policy at that time?

A I have already stated that on May 1, 1974, that policy provided an increase in sub-divisions such as Enderly Acres, that was not put in by the authority, an increase from $100.00 to $200.00, but that cost as opposed to the $350.00, that cost did not include meter installation. The profit is about the same.

DICKEY: I beg your pardon, didn't you state that on May 1st, the cost for all residential was going to go to $550.00.....earlier....

A That's...

Q I don't think he did, Mr. Dickey.

COURT: Have you finished cross examination or further redirect, Mr. Parker? I'll allow him to recross...

Q I...

COURT: You all complete it and not interrupt each other...you complete your examination. Have you completed yours?

Q No sir.

COURT: All right, go ahead.

Q Mr. Vivier, I have one more question. Was anything in the policy that would have kept the authority from increasing its tap fees as to taps which were not made in 1974, but which were made later in a sub-division?

A No sir, in fact that's what it did at the end of.....that's what it did on May 21, 1975. It did change policy and increase connections to $400.00. It was nothing stipulated in the original policy that guaranteed that those connections fees at that time would not change.

Q So if you weren't in one of the original sub-divisions and you came along later and started your sub-division you had to pay the rate as you did your building? You had to pay the current rate whatever that was as you did your building? As you did...

A After May....well, yes, you always had to pay the connection charge as you developed. The rates as I said up to May 1, 1975, the rates were governed by one policy and that policy was changed on May 1, 1975.

Q I understand sir, thank you.

COURT: All right, Mr. Dickey.

RECROSS EXAMINATION

BY: Mr. Dickey

Q Very briefly, since I'm somewhat confused by the answers, I would ask you to identify this so we can place it in the record. This is the operating policy in existence at that time? I will substitute a copy and give the original back.

A Please....that's all I have. To the best of my

knowledge that policy that you are showing me and the cover sheet of that policy - this was in effective until May 21, 1975. It went into effect at some time around May 1, when we went into operation May 1, 197 3.

Q You just marked the last page of that.....

PARKER: No objection.

COURT: All right, which number is that, Mr. Dickey?

Q Defendant's Exhibit D, I move its admission into evidence.

COURT: All right that will be admitted subject to stipulation that the original may be withdrawn and you'll have to substitute a copy.

Q The same thing we made for Mr. Parker....

COURT: Yes sir, all right.

The statement of policy was marked and received into evidence as Defendant's Exhibit Number D.

COURT: Any other questions of Mr. Vivier?

DICKEY: No sir.

PARKER: No sir. May I see that Mr. Dickey.....

DICKEY: Your Honor, I don't see how a 1975 policy is relevant to a Board of Supervisors in 1974?

COURT: I'm not sure that it would be either. It's

1 obvious that the policy was an open-ended one, it allowed
2 changes. Now what's the relevance in actual change, Mr...
3 PARKER: The fact that it was open-end and the fact
4 that there were actual changes which went upward, Your
5 Honor, which one might well have expected that Mr. Matthews
6 would have had to pay in his development later on.
7 DICKEY: That fact is already in evidence by
8 testimony that they reserved the right to change it and did
9 in fact change it.
10 COURT: Do you want - I'll allow that to be
11 presented in evidence if you wish to. Now what pages are
12 they....let's identify them.
13 PARKER: There are particular pages that identify
14 that, so we don't have to get it all in evidence...
15 COURT: Exhibit Number 37 of the Plaintiff...
16 PARKER: All right, sir.....does that state....
17 VIVIER: No sir.....
18 PARKER: Well, rather than take the time, Your
19 Honor, we'll put it all in...
20 COURT: What pages?
21 PARKER: Pages 1 through 17.
22 COURT: 1 through 17 and there again you'll have
23 to substitute ...
24 PARKER: Yes sir.
25 COURT: ...copies and the original will be allowed to

be removed....

VIVIER: Go ahead and just mark this as the exhibit. It's the same thing....

PARKER: Your Honor he has a pamphlet which is the same thing, and I think that would be best. May we mark this as an exhibit?

COURT: If counsel have reviewed it and can certify that it's the same thing, it will be admitted in place of the actual pages, representing pages 1 through 17.

DICKEY: I'm certainly willing to accept Mr. Vivier's word for it.

COURT: All right, sir, that will be marked exhibit 37.

VIVIER: Your Honor....

COURT: That's all right, Mr. Vivier, that stipulation is sufficient.

The pamphlet was marked and received into evidence as Plaintiff's Exhibit Number 37.

COURT: All right, Mr. Parker, anything else?

VIVIER: Your Honor, that's 1 through 16...

COURT: 1 through 16....all right, sir.

PARKER: No sir, not of this witness.

COURT: Mr. Dickey?

1 DICKEY: Nothing further.

2 COURT: All right, thank you.

3 PARKER: Your Honor, another thing I believe that
4 may be stipulated in our case is that the interim zoning
5 ordinance was first advertised on the 5th of February, 1974.
6 Officially advertised. Will the county stipulate to that?

7 SLAUGHTER: First advertised on when?

8 PARKER: On February 5, 1974.

9 DICKEY: Your Honor, it's in the exhibit we have
10 already the date that it was advertised....I...

11 COURT: In the exhibit? You say it would be
12 apparent from the evidence already in?

13 PARKER: Not already entered.

14 DICKEY: Well, we had it vouched for the record...

15 PARKER: If Mr. Dickey will guarantee me that-that
16 whatever those dates are will be entered in his case....

17 COURT: What dates now, the beginning advertisement?

18 PARKER: The beginning advertisement is the ..when
19 it first hit the newspapers....

20 COURT: All right. You can vouch the record later,
21 if it's not already in.

22 PARKER: Thank you sir.

23 COURT: Anything else?

24 PARKER: Yes sir, I'd like to finish my cross
25 examination of Mr. Evans. It will not be long.

1 COURT: Mr. Parker, now let me note to the record
2 that we are now in the third day and well past the middle
3 of the day and we still have the witness you started with.
4 And I don't know where that leaves counsel but you all have
5 to be mindful of the fact now that you are getting awfully
6 close to excluding the defendant all together from presenting
7 any evidence in chief.
8 PARKER: I don't think this evidence will take
9 longer than five minutes.
10 COURT: I realize that but how much are you allocat-
11 ing to the defendant at all?
12 PARKER: If the Court please, the Court will recall
13 I'm going to allocate whatever they need, whenever it has
14 to be. But with respect to this particular line of questioning
15 the Court will recall that my cross examination of Mr. Evans
16 was occasioned by the Court's questions yesterday. And the
17 reason that my cross examination of Mr. Evans appears in
18 my case is because those questions were asked over which I
19 had no control, and that was a matter that was done over
20 my objection, as the Court knows.
21 COURT: I realize that, but you had already had him
22 for two days, Mr. Parker, and we weren't getting very far.
23 That's the point that I was mindful of. Now you go ahead
24 but I'm pointing out that you are leaving the defense about
25 two hours to present their case in this case.

1 PARKER: I understand.

2 COURT: And you have had two days and a half.

3 PARKER: I understand.

4 COURT: I don't think it's at all likely but it may
5 be possible and I think we took probably a half an hour
6 to dispose of the criminal matters before we started yester-
7 day, which I intend to put back in maybe 45 minutes.....

8 PARKER: I think we started at 11 o'clock.

9 COURT: Yes sir, so to that extent I'm certainly
10 going to put it back in but I still don't feel duty bound
11 to do anything more than give you three reasonable working
12 days here and I think going to 5 o'clock everyday will more
13 than make up for that. Now that means that if this case
14 isn't finished you are the plaintiff and it's going to be
15 your problem to get it back on the docket. And I frankly
16 don't know how in the world you are going to do it, with
17 the present state of our docket any time soon. I'll do the
18 best I can, but you all go ahead...

19 PARKER: If the Court will do the best he can, I
20 wouldn't ask any more sir.....but I should like to point out ...

21 COURT: I'm not indicating to you that you can count
22 on the fact, Mr. Parker, that you can come in and ask for
23 special consideration to get this case finished.

24 PARKER: I understand.

25 COURT: Having given you three days....in my frank

1 opinion I think you have wasted a good part of it in dragging
2 this testimony. It seems to me that you are getting the
3 details in here so slow, if we had had a jury they would have
4 been asleep for two days. Now let's see if we can't move
5 it along.

6 PARKER: Mr. Evans.....

7

8 MR. GEORGE EVANS, having been previously sworn,
9 was recalled and testified as follows:

10

11 DIRECT EXAMINATION

12 BY: Mr. Parker

13 Q Was Locust Lane plat - was Locust Lane Sub-
14 division considered in the planning process for Greene
15 County?

16 A Yes sir.

17 Q That's in a non-conforming state, what status?

18 A It - yes it is non-conforming....use....

19 SLAUGHTER: Excuse me Your Honor, I want to be
20 certain the record is clear, although I did make the point
21 I believe yesterday or this morning rather, we object to the
22 further recall of Mr. Evans...

23 COURT: Yes sir, it's noted and your objection is
24 overruled, Mr. Slaughter. Go ahead, Mr. Parker.

25 Q With respect to Locust Lane at the time you did

your studies how much - have you already testified as to how much was filled out in the sub-division?

A I don't recall, I believe I gave you the lot size and the number of lots platted.

Q How many of those lots were occupied at that time?

A Well, I would have to count on the land use map...

Q Please do sir and tell me how many there are.... refresh my memory if you will as to how many lots there were platted?

A 55 lots, 32 of which were built upon.

Q Yes sir. Is Locust Lane presently a non-conforming sub-division in the present ordinance?

A Yes sir, but there is a clause wherein the restriction that is usually attached to non-conforming uses had been waived or..

Q Had been waived?

A Yes.

COURT: In what way is it non-conforming?

A Well, in so far as the lot size and the fact that the homes could be reconstructed regardless of the manner of destruction.

Q Isn't it true that as a general matter non-conforming uses are to continue but not to expand?

1 A As a general matter, yes sir.

2 Q And yet Locust Lane was allowed to expand?

3 A Well, you are to build upon the lots already

4 platted yes sir.

5 Q And of the - yes that's my point....

6 A Yes sir.

7 Q And between 32 and 55...

8 A Yes sir.

9 Q Continued to be allowed to....

10 A Yes sir.

11 Q What do you think of the plan for lack of

12 uses?

13 A Well, it depends on a number of things. It

14 depends on the location of the like use in relation to your

15 overall planning concept.

16 Q Do you mean to tell me that there are circum-

17 stances under which that strategem would be disregarded?

18 SLAUGHTER: I don't understand .....

19 COURT: Let's see whether we - is it a case where

20 they had any discretion with regard to Locust Lane, having

21 platted it was there any way anyone could prevent him from

22 building on the other lots from 32 to 55?

23 A No sir.

24 COURT: Now what's the relevancy of any strategem,

25 then, Mr. Parker....obviously having the plat recorded there

1 was no basis upon which he could be prevented, it's not
2 a strategem at all, is it? It's the law.
3 Q Your Honor, I believe that a zoning ordinance
4 could have stopped building in there - if a proper zoning
5 ordinance could stop or control the use and not the
6 plat.
7 COURT: All right.
8 Q Isn't that true, Mr. Evans?
9 A No sir.
10 Q Why not?
11 A Because a person who purchased that lot has
12 a vested right to construct on that lot as long as he
13 meets certain setback requirements.
14 DICKEY: Your Honor, I think he's asking the
15 witness for a legal conclusion.....
16 COURT: Yes sir, I think he is. From the
17 planning standpoint, let's see what we may have.
18 Q Did you take that sub-division into account
19 in.....
20 A Yes sir, we most certainly did.
21 Q ....your planning. But it was left in non-
22 conforming sdatus?
23 A Yes sir.
24 Q Did you take Mr. Matthews' plat into - that he
25

had filed, preliminary plat in the planning process, into account in the planning process?

A No sir.

Q How do you justify taking into account the Locust Lane Sub-division and what was not built out on it in the planning process and not taking into account Mr. Matthews' preliminary plat that he had filed?

A Mr. Matthews' preliminary plat wasn't a plat of record and therefore it wasn't an existing land use.

Q There were other sub-divisions that were taken into account although they were not plated of record, weren't they? In the planning process?

A Only tangentially in so far as they just happened to fall within what would have been designated a cluster in any event.

Q You stated earlier in your testimony that there were a couple of other sub-divisions?

A There was only one other that I can recall, that was J. and B. Estates.

Q How about Greenemarle?

A Well, it was my impression that that had been recorded.

Q Well, you distinguish between the ones that have been recorded and the ones not in your earlier testimony did you not?

1 A That's right, as my....

2 Q All right, sir, well, the record will show your
3 answer in that connection. Do you remember my reading
4 a portion of the comprehensive plan yesterday concerning
5 the need for housing...

6 A Yes sir.

7 Q ...in Greene County?

8 A Yes sir.

9 Q ....the housing was poor?

10 A Yes sir.

11 Q Why shouldn't Mr. Matthews' plan for providing
12 residential housing in Greene County have been taken into
13 account in the planning process? In view of the need for
14 housing that you stated in the comprehensive plan?

15 A In the first instance, I wasn't - I did not have
16 the details of Mr. Matthews' proposal in so far as housing
17 was - in other words the market for which he was aiming.
18 I don't dispute the fact that housing is needed - you are
19 getting into an area of housing needs, housing problems,
20 you are getting into a very specific area of housing for
21 the County of Greene, which the plan did not attempt to
22 explore in depth. The fact that housing was needed is given.

23 Q Weren't you aware of the fact that the plat had
24 been filed?

25 A Yes sir.

1 Q When were you first aware of that?

2 A I don't recall exactly. Mr. Morris informed

3 me that another plat had come - normally when a preliminary

4 plat comes in his office he informs me of it.

5 Q You had access to the plan did you not?

6 A Yes, I did.

7 Q Did you look at it?

8 A Yes.

9 Q But you did not correlate the data on the plan

10 in any way into your planning process?

11 A Well, I couldn't because it wasn't a plat of

12 record. I had no - I did not know whether or not it would

13 be finally recorded, whether those homes would be built or

14 not.

15 Q Didn't you consider - couldn't you have consider-

16 ed at that time the question of whether a cluster should

17 have gone there or ...

18 A I did consider that, yes.

19 Q But you say you concluded that that was not

20 appropriate?

21 A I concluded that the extension of a cluster to

22 a point to include Locust Lane and perhaps west and peripheral-

23 ly was not a proper place for the cluster.

24 Q And so you disregarded the Matthews' plan in

25 connection....

1 A Yes sir, it wasn't on record. I didn't know
2 whether it was going in - if it were there that would have
3 affected the overall plan, I'm sure.
4 COURT: Did you in any way consciously exclude
5 or reject anything on behalf of Mr. Matthews? In so far
6 as his plans?
7 A I'm not sure I understand Your Honor what you
8 mean?
9 COURT: Well, did you take any positive efforts
10 to reject what he had proposed or was it merely considered
11 in relation to the entire county?
12 A No, I simply didn't consider it because I just-
13 I didn't know the status of whether it would go in or whether
14 it would not. And at the stage of the - in other words at
15 this point in the plan the concept and the formulation of
16 the plan was beginning to emerge and the Greenetown Village
17 proposal wasn't at that time firm enough for me to give it
18 serious consideration, in so far as extending the cluster.
19 COURT: All right, Mr. Parker, any other questions?
20 Q Yes sir. Do you normally encourage agriculture
21 where there are available extensive or expensive public
22 utilities facilities?
23 A It depends on the situation. It depends upon
24 the land.
25 Q Well, under what circumstances would you encourage

1 agriculture at such a point?

2 A Well, the question is to what extent would

3 the county encourage agriculture and this is set forth in

4 the policies of the plan.

5 Q I see, so that is a policy matter from your

6 point of view to be determined by the county and not a

7 planning matter to be ...

8 A It is a policy matter that was determined by

9 the county in its plan.

10 Q And not a planning matter that you would

11 make recommendations on?

12 A Not unless it was specifically brought up.

13 In other words I would imagine it would be in terms of

14 since you've got these facilities should this go to agricul-

15 ture, should it go to development.

16 Q That's all.....just a moment, I might have one...

17 Oh yes sir, one more question....two more questions in

18 fact. Do you consider the installation of livestock

19 breeding operations next door to Locust Lane as compatible

20 with that sub-division? 55 lot sub-division?

21 A I consider Locust Lane sub-division incompatible

22 with that type of use, that farm use.

23 COURT: Compatible or incompatible?

24 A I consider it incompatible with that farm use.

25 Q Was Route 33 in February of 1974 overloaded?

1 Near Ruckersville?

2 A I can't say that it was overloaded, no sir.

3 Q Is it fair to say, Mr. Evans, that the future

4 land use plan for this county almost excludes consideration

5 of the county's utility system?

6 A No sir.

7 Q Why not?

8 A If you will notice the three primary clusters

9 on the plan are all served by the Rapidan Water Authority.

10 And it is my understanding that the forthcoming sewage

11 system will serve also these major clusters.

12 Q And is in the incipient stage isn't it?

13 It's - the forthcoming sewage system is just an idea

14 in somebody's head?

15 A It's more than that. It's the - engineering

16 firm is working on the sewer system and has consulted with

17 us and the plan and the sewer system were designed with

18 considerable communication between the...

19 Q Had the designs been completed?

20 A Some of them have, yes.

21 Q So the entire design for the sewer system has

22 not even been completed yet, is that correct?

23 A The basic concept as to where the lines will

24 run and where the treatment plant shall be placed, I would

25 say it's fairly firm - I can't testify - the Macke engineering

company would have to.

Q It has not been approved by any body in the county, for the county?

A I can't speak for that.

Q You don't know whether it has been or not?

A No sir, I don't know what the status of it is.

Q That's all.

COURT: All right, Mr. Slaughter.

CROSS EXAMINATION

BY: Mr. Slaughter

Q Mr. Evans, Mr. Parker asked you whether Greenemarle had been recorded, I - just in order to be sure the record is straight, I show you the - your list which is submitted as Plaintiff's Exhibit 26, and ask you to refer to Greenemarle and see if that had been recorded at the time of the preliminary - the interim zoning ordinance was adopted? That's on page four, I think.

A On the one I have here there is no date..... on this list.....

Q Do you recall whether or not Greenemarle was subsequently approved by the Board of Zoning Appeals?

A I don't recall, sir.

Q Did you receive notification when sub-divisions were approved by the Board of Zoning Appeals? Or did you

consult with Mr. Morris?

A Yes sir.

Q Were they taken into consideration?

A It was my understanding that Greenemarle Subdivision was recorded before they were in zoning ordinance. Now I could be wrong. I believe that was the case.

Q But that would be of course a matter of record?

A Yes sir.

Q All right. Now isn't it true that at the time you were doing the plan, Mr. Evans, Route 33 was and remains now a two lane highway?

A Yes sir.

Q And is it not true that it has been slated to be four lane?

A Yes sir.

Q Can you state whether or not that construction has begun?

A No sir. I am saying that it has not begun.

Q It has not begun. Do you know whether or not there have been any contracts let?

A No sir. To my knowledge there have been none.

Q All right. Now you - in response to Mr. Parker's question you discussed the proposed sewer system that will serve Greene County, is that sewer system designed to run into tributaries of the Rivanna River or Rapidan River?

A The latest communication I ....

PARKER: Your Honor, I....

Q I'm simply asking him for a fact, you asked....

PARKER: He gave this information and I did cross examine him to some extent on the earlier testimony, and perhaps I put my foot in the door...

COURT: The objection is overruled. I don't know wherein we could stop it and wherein we could open it up again....on anything that Mr. Evans hasn't covered..... in some fashion. I will allow you all an equal chance at it...go ahead, Mr. Slaughter.

Q Do you know whether in fact that system is designed to run in the tributaries of the Rivanna or Rapidan?

A It is my understanding that the system as now conceived - that there be main sewer lines running into the clusters of - the clusters in the plan, Quinque, Stanardsville, and the southeast corner with a spray irrigation type disposal system near southeast corner in the Rivanna watershed and a spray irrigation system to the north of Stanardsville in the Rapidan watershed. This is the latest sewage plan that I have heard and I can't testify that this is what ultimately will be done. But I think it's - there is a fairly clear understanding that the three primary clusters would be served by a sewage system.

1 Q No further questions.

2 COURT: Mr. Parker?

3 PARKER: We rest.

4 COURT: All right, you may stand aside, Mr. Evans.

5 Now, Mr. Slaughter, the plaintiff rests do you all wish

6 to have any time before you start your evidence?

7 SLAUGHTER: May it please the Court,.....

8 DICKEY: Your Honor, you know you have a case set

9 for 2 that's here....

10 COURT: Well, I may just have to put that off

11 and I'll take a few minutes to allow you all to gather your

12 evidence or make your plans and hear counsel briefly on

13 this other matter.

14 SLAUGHTER: Let me make the comments I was going

15 to make Your Honor, and that is I turn to Your Honor's

16 comments some time ago,..i.e., about a half an hour ago,

17 that Mr. Parker has taken over two and a half of the three

18 days - I don't see how there's any way in the world that

19 we are going to be able to complete this case this afternoon,

20 even with the Court staying until 5, as the Court has indicat-

21 ed it would. The result is that everyone is going to have

22 to come back. The county is again going to be put to that

23 expense, but we see no reason why having had to look at the

24 plaintiff's testimony for two days and over half of a third

25 day, that there should be any evidence and at this time

simply to begin the case where we can possibly complete it and really not get very far into it....since it's obviously going to have to go over, Your Honor.

COURT: Is there any one witness that you feel would be appropriate to hear at this time and reserving the major part of your testimony - any inconvenience with getting a witness back?

SLAUGHTER: I don't think there's really any one that has to come any distance. Mr. Yearwood would be our last witness.

COURT: Now let me get a brief idea from you then as to what witnesses and what area of testimony you would cover, and who the witnesses are and how many.

SLAUGHTER: All right, sir. We had anticipated originally as - nine witnesses, sir.....Mr. Garth would be- would testify, who is the commissioner of revenue. Mr. Abbott, who is the head of the planning district commission. Thomas Lawson, the chairman of the planning commission...at the time. Kenneth Colmer, the administrator for the Greene County School system, or I guess the assistant superintendent at this time. Robert Gilbert, who is presently the chairman of the Board of Supervisors. Mr. Julius Morris, the county administrator, and Mr. Richard Yearwood. I hope I'm not going too fast...

COURT: No, I'm getting them. Mr. Yearwood, now

1 would be in the category of expert testimony, I take it.

2 SLAUGHTER: Yes sir. Mr. Abbott would also be...

3 COURT: Mr. Abbott would be and Mr. Yearwood.

4 All right, that's seven, I believe.

5 SLAUGHTER: We had already - Mr. Evans was listed

6 as one of our witnesses.

7 COURT: All right, Mr. Evans.

8 PARKER: I can understand that, Your Honor.

9 SLAUGHTER: And Doctor LeGarde has already

10 testified.

11 COURT: That's right, so he was your ninth one,

12 then?

13 SLAUGHTER: Yes sir.

14 COURT: Well, I don't like to leave some of the time

15 unused, Mr. Slaughter, and I would ask you all to consider

16 that before we adjourn these hearings and I will take the

17 time now to hear counsel on this other matter while you and

18 Mr. Dickey consider that with your witnesses. I'm certainly

19 willing to use every bit of this time to the maximum extent.

20 And would urge it upon you all to do the same if you can...

21 try.

22 SLAUGHTER: All right, sir.

23 COURT: Now we'll recess though for your case for

24 20 minutes, while I consider the .....

25

(Recess.)

COURT: Go right ahead, Mr. Slaughter.

KENNETH R. COLMER, having been duly sworn, was called and testified as follows:

DIRECT EXAMINATION

BY: Mr. Slaughter

Q Could you state your name and address, please?

A Kenneth R. Colmer, P. O. Box 152, Stanardsville, Virginia.

Q And what is your position, Mr. Colmer?

A I'm assistant superintendent of schools in Greene County.

Q Now, could you explain to the Court for the record just briefly what your position is in practice?

A Well, I handle the - most of the administrative duties, as far as the operation of the school system, including personnel work, instructional programs, maintenance, just the general administration work of the schools.

Q Can you tell us whether or not you are the person in charge of Greene County school system when the superintendent is not here?

A Yes sir.

1 Q And has up until - well this time, has the
2 superintendent permanently been located here in Greene
3 County?
4 A No sir, Mr. Whetzel is the superintendent and
5 his permanent residence is in Madison County. He's in
6 Greene County two days a week, Tuesdays and Thursdays.
7 Q And again I think this is leading, simply be-
8 cause-to save time. Is it not true that Mr. Whetzel
9 is engaged or has been over the years engaged by both the
10 Greene County and Madison County school systems, joint
11 superintendent?
12 A Yes sir, since approximately 1955.
13 Q Now, Mr. Colmer, in your capacity are you aware
14 of the number of students in Greene County schools, the
15 physical plan of the Greene County school system ...
16 A Yes sir.
17 Q Could you tell us what the situation was with
18 regard to capacity of the Greene County schools, and the
19 number of students going to Greene County schools in 1973,
20 and 1974?
21 A I can give you the estimated figures.
22 Q All right.
23 A I have the actual figures in the office, but I
24 do not carry those type figures in my head.
25 Q All right.

A But at the end of '73-'74, say in the May-June report, there would be approximately 1,525 students enrolled. These are enrollment figures.

Q 1,525 students enrolled?

A Right....approximately.

Q And how many schools are located in the system - at that time?

A We have five school buildings. We have one high school and one intermediate school. We have three small primary schools, which are operated under one principal and one administrative staff.

Q And where are they located?

A The three small schools, one is located at Dyke, one at Ruckersville, and one about a mile east of Stanardsville. These three small schools are-house K to 3, kindergarten through 1st, second grade and some third grades. They operate under one principal. The intermediate school houses some third graders, all the fourth through seventh graders, and is located right here in the town of Stanardsville, along with the high school, which houses grades 8 through 12.

Q Mr. Colmer, what are the current plans - and I guess the plans are now partially in execution for school construction in Greene County?

A At the present time we have a primary center under

1 construction, scheduled to be completed in approximately
2 September of 1976. At that time the small school at
3 Ruckersville and Dyke and the small school at Greene County,
4 which is right outside Stanardsville, will be - those
5 students will be transferred into this new primary school.
6 This is the only new construction at this time.
7 Q Could you tell us whether at this time there exists
8 any additional capacity in the Greene County school system
9 or whether the school is now operating by itself.....
10 PARKER: Objection the question is leading.
11 COURT: Yes sir, I think it does have that
12 objection, Mr. Slaughter, as to what the capacity is and
13 what the present projected enrollment would be...if you
14 want to pursue it that way. It is a leading question,
15 objection sustained.
16 Q (Inaudible)
17
18 COURT: Yes sir.
19 Q What is the capacity of the system at this
20 time? Or the time we are discussing, 1973-'74?
21 A The - you mean the actual number of students
22 that we could house at that time?
23 Q Yes.
24 A The high school at that time was constructed -
25 the additions we've had to it, in 1970...could house approxi-

1 mately 450 students.

2 Q And how many were actually there?

3 A At that time there were approximately 420...21..

4 The intermediate school was constructed to house approxi-

5 mately...

6 PARKER: Excuse me, where is this school?

7 A The intermediate school is in Stanardsville,

8 it's the William Monroe Elementary School....approximately

9 and again these are estimated figures...right out of my

10 head...

11 Q Right...I understand.

12 A Around 475 to 500 students. And then the

13 primary schools, the Ruckersville school ...

14 Q Going back to the intermediate school, that

15 figure that you just gave, was the number of students there

16 at that time?

17 A Approximately, right.

18 Q And what was the designed capacity?

19 A About the same.

20 Q It was substantially full?

21 A Right.

22 Q All right, sir, now the elementary schools?

23 A The primary school which I am speaking of the

24 three schools there housed under one administrative staff,

25 the approximate - the Ruckersville school which is four class-

1 rooms, speaking of 30 students per class, 120 capacity.
2 The Dyke school, four classrooms, there again approximately
3 120 capacity. However, some of those classrooms are special
4 education classes and the enrollment is not 30 in those -
5 it has to be 16 - State mandate. The Greene County primary
6 school, 120 students, that's with four classrooms.
7 Q Was there any excess capacity in any of these
8 schools?
9 PARKER: Objection, the question is leading.
10 COURT: I don't think it's leading.
11 PARKER: There's no foundation, Your Honor.
12 COURT: Was there any excess capacity in the
13 schools - the question is whether your enrollment was
14 below or above those figures.
15 A The enrollment at the various schools, it
16 fluctuates. For instance at Dyke as I mentioned, I said
17 four classrooms, 120 students, there - at that time there were
18 approximately 70 students. However, two of those class-
19 rooms - half of the capacity were used in special education.
20 Therefore, there could only be 32 students in those two
21 classrooms. Normally they hold 60 students, but this is a
22 State mandate and have to have certain figures and can't
23 have over that.....in certain classes.
24 Q Could you tell us how many - again in round
25 figures, how many students if any additional could have been

1 accommodated at that time within the capacity of the
2 Greene County school system as it existed at that time?
3 A I would - we were working at capacity. I
4 mentioned the classes - what the school was constructed
5 for. For instance at Greene County primary school, the
6 school was - right close to Stanardsville, a small school -
7 the capacity is 120. The actual number of students using
8 the cafeteria area, the library, having to bring in mobile
9 units, these type things - the enrollment at that school
10 was over 200.
11 Q I see.
12 A Now this is what exists.....speak of the
13 capacity of the school, the school was constructed at a
14 certain capacity, but we are using every available space
15 in the school for instruction.
16 Q In bringing in mobile units, where had you
17 brought in mobile units?
18 A At that - we brought two mobile units into
19 the Greene County school, which is east of Stanardsville.
20 Those are the first two mobile units that we brought into
21 the county. This was to relieve overcrowded conditions.
22 Q Have you in fact brought in more since that time?
23 A We brought in three other units that are at
24 the William Monroe Elementary School here in Stanardsville.
25 Q Mr. Colmer, are you familiar with the property

on Route 33 which is the subject of this suit, owned by Bennett Matthews which he proposes to sub-divide into Greens Valley Sub-division?

A Yes sir I know just about the location. I know where the Locust Lane sub-division is.

Q Which elementary school district does that fall into?

A That piece of land falls in the Ruckersville district and it would be the Ruckersville school, the school in that area.

Q Would you tell us - first let me ask you, how - apparently I've been asking the questions in a - not exactly the correct way.....as I recall it was your testimony that the Ruckersville school had four classrooms is that correct?

A Yes sir. Four classrooms for the classes, 30 .....

Q This is all the State will mandate?

A Right, if you go over that then you are - have problems with the State.

Q And there were approximately 120 students in the school, is that correct?

A At that time, I think there were approximately 111 or 112.

Q How many are there now?

A That was - at that time it was grades 1, 2 and 3.Now we have kindergarten and first and second grades only at that school. Third graders are no longer at that school. There are approximately 108 or 110 students.

Q Is it anticipated - can you say whether or not it's anticipated that Ruckersville elementary school be used when the new elementary school is completed?

A I'm sure it will be used, for what purpose I cannot say at this time. Possibly special education classes dealing with trainable students, these type students that can be placed in a school away from the classroom. Possibly adult programs - even possibly having to use it as a regular classroom situation, because of the overcrowdedness we have in the schools right now. I would hope not to have to use it for regular classrooms becauseit is very much outdated.

Q When was it constructed?

A In 1934.

Q And what was its construction, what material?

A It's constructed of wood, I believe recently in the last couple of years they've put aluminum siding on it. In the last five years we have enclosed the restroom facilities, prior to that time they were outside.

Q Is it a one story or two story building?

A It's a one story building and basement.

Q Is it fire proof?

A Well, it's as fire proof as a wooden building can be. I mean as far as meeting the State Fire Marshall's inspection it did pass inspection last spring when the State Fire Marshall was here making inspection. It has the correct number of exits....

Q In so far as your projections are concerned was this school - I'm speaking of the new elementary school - will there be any excess capacity in the Greene County school system?

A No sir, and I say that on this reason, because at the present time, Greene County is not offering the vocational education subjects that they should, that we are mandated to do, and we are at the present time holding our vocational programs back because of the lack of facilities. It's a strong possibility that the Greene County primary school, the Dyke school will be converted into vocational schools, tying into the high school program. And then as I mentioned the Ruckersville school being used for possibly some special ed classes for trainable students as well as some adult programs.

Q Can you give us some idea, Mr. Colmer, of the rate of growth in the Greene County school system say since 1970?

A In 1970 the enrollment was approximately 1,300,

1,325, 1,333, along this time.The enrollment as of November, just recently past, November 30 last week, the enrollment was 1,681.

Q Can you give us a rough calculation as to what the percentage of increase per year would be?

A Well, I can give you - in the last - according to a publication by the State Department of Education, which is entitled "Facing UP", number 9, put out each year by the State Department - State of Virginia, the growth in Greene County in the last ten years in student population was 45 percent. This is the State - taken from the State Handbook.

COURT: Over a ten year period is that...

A Ten year period.

Q How does that compare for example with the county to the south and the county to the north?

A The figure in Albemarle County, and I'm - these are coming off the top of my head, this information was being circulated quite a bit in recent elections. The Albemarle school system I think declined about 5 percent, 5 and a half percent, according to this booklet. The Orange County figure enrollment I think increased approximately 13 percent. And I believe Madison was around 18 percent.

PARKER: Excuse me, is this testimony all as to

1 declines?

2 COURT: Albemarle only was decline.....

3 A Albemarle only was declined, the others were

4 increases.

5 COURT: Yes sir. They are probably moving

6 over into Greene County aren't they Mr. Colmer?

7 A I think they are.

8 Q Can you recall - again I realize that this

9 has to come from your recollection. Can you recall what

10 the figures were for the population of the Greene County

11 school system in 1971-'72 - '73 and '74?

12 A At the end of '71 - '72 and this again is -

13 I just recently worked on some of these figures, but

14 they are not - I have them in the office as I say - this

15 is off the top of my head. '71-'72 is approximately

16 around 1,350, and then its been increasing close to anywhere

17 from 75 to 100 students.

18 Q Each year?

19 A Each year. This year we were expecting -

20 we anticipated around 1,600 students, we got 1,681.

21 Q And 1,600 would have represented the - itself

22 would represent an increase over the year before?

23 A Yes it would.

24 Q Could you indulge me just a moment?

25 COURT: Yes sir.

1 Q We have no further questions....at this time.
2 COURT: All right, Mr. Parker.
3
4 CROSS EXAMINATION
5 BY: Mr. Parker
6 Q Mr. Colmer, I believe the figure that you gave
7 was about 70, 75, 72 per year - additional students?
8 A Right.
9 Q 75 per year. Have you been handling that
10 increase over the last five years satisfactorily?
11 A Well, at the present time for instance to lead
12 up to what you are asking....
13 Q Well, let me - I withdraw the question, Your
14 Honor, unless the witness is going to answer it in a
15 responsive way.
16 COURT: Well, what do you mean handle it? Now
17 that's what I'm getting at, Mr. Parker.
18 A Would you restate the question?
19 Q Let me approach a little differently...
20 COURT: Yes sir, because you may not give him a
21 reasonable opportunity as to how you mean....
22 Q Have you been able - you indicated - for this
23 last year you were able to anticipate almost on the button
24 the right number of students, is that correct?
25 A No sir, I said we anticipated around 1,600

1 students and we had 1,681. So that's approximately 81
2 more than we were anticipating.
3 Q And you were able to handle them even so that
4 additional 81?
5 A Well, if you call 40 - 45 students in class-
6 rooms handling them. This is what we have.
7 Q And...
8 A In four classrooms.....in our 7th grade for
9 instance we have an average of almost 41 - 42 students
10 per class and the reason for that we have no space to put
11 additional people. And this exists also on into some of
12 the other grades, the .....over crowdedness.
13 Q Weren't you anticipating an increase of about
14 72 students per year? You stated....
15 A Right, that's right....yes.
16 Q Yes sir, now if you were anticipating that,
17 would an increase of as much as - an increase in increase
18 if you understand me....
19 A Right.
20 Q From 72 up to 100 be more than you could
21 withstand?
22 COURT: Let's get our terms straight, anticipating
23 and preparing for, now which is it?
24 A In other words we can anticipate that we are
25 going to get 75 more students, which is approximately three

classrooms, but if we get 150, we've still got to provide something for them.

Q I understand that.

A I mean what it means is that we have more students in the classrooms; instead of having 25 students sitting in a classroom we have 35 or 40 sitting in there.

Q If your anticipation in this year and your plan would indicate that there would be an additional 25 students could you take them into your system satisfactorily?

A We would have had to have taken them in. Now we would have been overcrowded. We would have been lacking equipment, and funds and this type of thing. But if they are there we've got to do something with them, we've got to provide for them the best we can, that's what we've been doing.

Q Is the high school at capacity?

A The high school, as I mentioned earlier, I said it was approximately built for around 450, to 475 students- it's 581 now and anticipating 640 some next year.

Q In high school?

A Right, with no addition.

Q I'm sorry sir, I misunderstood your previous testimony...I had written down a figure of 421 does that....

I thought you said there were there now 421 students?

A At the high school?

Q Yes sir.

A No sir, I did not say that. If I did I misunderstood the question.

Q 521 there?

A There are 581 there now.

Q 581 there and capacity...

A An enrollment this year as of November 30, 1975, there's approximately 581 students.

Q And you have a capacity for what?

A Approximately 475...50-75...

Q What will this - what will be the capacity of the primary school under construction for September of 1976?

A Approximately 500 - 525.

Q If you had thirty additional units, thirty additional students in 1976 with the new school, could you accommodate them?

A Including the new - if we had the new school open?

Q Yes sir.

A Yes we'd have to.

Q Well, could you?

A Yes....because we would have to.

1 SLAUGHTER: I think he has answered the question
2 about three times.
3 COURT: He may explain it....the question is what
4 you mean by accommodate them. Of course that word itself
5 requires a lot of explanation, but in so far as he's answered
6 it stands.
7 Q Would you have the capacity to handle - to have
8 those additional 32 units after - in the year 1976 with
9 the construction of the new school that is now under
10 construction?
11 A Yes as I said before, yes.
12 Q All right. Do you run a bus or busses on Route 33
13 now?
14 A Sir?
15 Q Do you run a bus or busses on Route 33 now?
16 A Yes sir.
17 Q Where is the dividing zone between children
18 that go west to school and children - children that go
19 east to school and children that go west?
20 A It's approximately in the Quinque area.
21 Although Quinque area, some of that is in Ruckersville
22 district.
23 Q Would you have some flexibility then in
24 how that zone is constructed? Busing zoning?
25 A I am not certain on how that's set up. I know

we speak of magisterial districts, the school districts the lines are a little bit different, but I think that has to be set by the School Board.

Q Would there be any reason that the School Board could not change the lines as reasonable to take in - to take those 30 students either way?

A Well, they would all be coming this way any way, because the school is over here.

Q They wouldn't go to Ruckersville?

A The primary school will be over here in 1976.

Q I see.

A That's what we were speaking of, the new primary school, allthe primary students will be going here to a central school.

COURT: Is that all primary students in the county in one central school?

A Yes sir.

Q That will be true for the whole county then?

A Yes sir. K - 3...kindergarten through third grade.

Q How many - where - didn't you say you had three primary schools now?

A We have three buildings.

Q Yes.

1 A Under one primary administrative staff.
2 In other words we have a building at Dyke, a building at
3 Ruckersville, and a building right outside of town.
4 Q Well, when you bring all your primary schools
5 here, all of those buildings will be available for some-
6 thing?
7 A That's exactly right, I testified as to what
8 they most likely would be used for.
9 COURT: That was vocational, special ed and
10 adult education?
11 A Yes sir.
12 Q That question of what they are most likely to
13 be used for is of course a question of policy is it not?
14 A It's a question of policy and also need and
15 demands by the State Department of Education, which are
16 mandating that we have vocational educational training
17 for the students.
18 Q Does the vocational educational training
19 for students take up all three of those buildings?
20 A It would take up most likely Greene County
21 building which is east of Stanardsville and the Dyke
22 building, which is in the Dyke area, and as I mentioned
23 before the Ruckersville school possibly could be used for
24 trainable special educational classes, some adult classes,...
25 Q Where will those students that are in the voca-

1 tional education program come from?

2 A They come from the high school. The vocational

3 education program is a part of the high school program.

4 Q That will relieve your overcrowding in your

5 high school will it not?

6 A Not - some...very little.

7 Q Yes sir....well how many students would you

8 expect to go into your vocational education program?

9 A Approximately - well, I would certainly

10 hope 50 percent, but they are still at the high school.

11 They don't go to those schools and stay. They are - they

12 have their academic subjects - are taught in the high school,

13 the regular high school. They go to the other school, the

14 vocational school for the vocational training.

15 Q How is it that you were able to avoid

16 these requirements of the State now?

17 A The State has mandated certain time limits....

18 to do this. For instance, kindergarten has to be installed

19 in all - mandated in all schools by 1976. Vocational

20 education programs have to be developed or specific plans

21 therefor by a certain date.

22 Q What's the date?

23 A I think 1976-77, along in this period. They are

24 working towards this. This is the reason the push for the

25 primary school, to give these facilities.

1 Q Have you - do you have kindergarten systems
2 here now?
3 A Yes sir.
4 Q So you have already solved that?
5 A Right.
6 Q And that would have increased - whenever that
7 was, that would have increased your system one full grade,
8 what one-thirteenth or one-twelfth?
9 A Right, approximately 100 students in kinder-
10 garten.
11 Q And you absorbed those when the time came?
12 A Correct, by using the coalbins at Dyke and
13 the furnace rooms at Greene County primary and the
14 library ...
15 Q And if needed you pulled in mobile units?
16 A That was not for kindergarten, that was just
17 for the regular enrollment, grades 1 to 12 or - not kinder-
18 garten.
19 COURT: Richmond gets a little bit ahead of you
20 all don't they?
21 A That's exactly right.
22 Q When you say 45 percent over 10 years, was
23 that - you gave some percentages for other counties, were
24 those percentages on a comparable basis?
25 A Yes sir, that was taken from "Facing Up", number

9 put out by the State Department of Education.

Q Was the 45 percent increase that was involved is that figured by a numerator of the number of additional children at the end of the 10 years, divided by the...

A I'm not sure how it was figured, that was done by the State Department. All I did was read the book.

Q You don't know whether that's 45 percent of the children at the beginning of the 10 years or 45 percent of the children at the end of 10 years or what this figure represents?

A Well, I really cannot say....I do know this firsthand, that I came to this county in 1967 and we had 1,030 students approximately, and now we have 1,681.

Q And were the schools crowded when you came to the county?

A They were full, yes sir.

Q And they are full now?

A They are fuller now.

Q Are they - percentage wise as opposed to capacity, how much over capacity are they now? As opposed to then?

A Well, approximately 40-45 percent...that's the figure.

Q You mean more students?

1 A Right.

2 Q What percent over capacity was the county

3 when you came here, you said it was full or was it just

4 100 percent of capacity?

5 A Well, I would say approximately 100 percent.

6 Everything was being used, there weren't any vacant

7 classrooms.

8 Q And now you said you had 1,681 - I'll have to

9 ask that you refresh my memory, how many students do you

10 have in the county?

11 A The enrollment figures are 1,681, that's

12 taken from the enrollment reports sent in by the

13 schools.

14 Q And the capacity?

15 A Sir?

16 Q And the capacity now in the county?

17 A The capacity of all of the classrooms?

18 Q Yes sir - all classrooms and the schools

19 as operating?

20 A Here again this is an estimate figured, and it

21 might not be an exact figure as I said a while ago, because

22 I'm not exactly sure what figure I said, but the high

23 school right to the very point - I mean I don't have a

24 piece of paper to write it down. The high school enroll-

25 ment is approximately 450-475. The capacity. And the number

in the high school now is approximately 580.

Q Well, I'm trying to get total figures...

A I'm giving you that...

Q I see.

A The intermediate school - William Monroe Elementary, the approximate capacity of that building at the present time is approximately - I think around with the additions we've added, right around 500-525..... Around this figure. And the enrollment in that school now is 670 some. I had not given you that figure before, neither one of you hadn't asked for it. The primary enrollment or the capacity at Dyke, the building is a four room building, 30 - it's 120 - 120 at Ruckersville and 120 at Greene County. This is the construction of the building, approximately 360 - 80 students, approximately. The enrollment for the schools now is approximately 400 - a few over, and this is including uses mobile units and ...

Q Well, unfortunately I haven't been able to calculate the total - do you have the total at hand?

COURT: He's given you the figures, Mr. Parker. You do the calculating or do it in final argument.... witnesses don't have to make calculations, that's inappropriate use of the witness. Anybody can work arithmetic - let's go on with the evidence.

Q You said there were about a thousand children

1 in 1969 and 1,681 in 1975?

2 A I said there were around 1,030 students in

3 1967 and '68 and then I said that as of November 30, the

4 enrollment figure is around 1,681. But to compare those

5 figures you have to subtract approximately 100 students,

6 because we did not have a kindergarten in '67.

7 Q Well, that would be an increase of approximate-

8 ly 95 students per year?

9 A Approximately. I said 75 - 80...

10 Q Have you been able to absorb this addition?

11 SLAUGHTER: If the Court please...

12 COURT: That's repetitious...we've been over

13 that.

14 Q All right, sir.....Mr. Colmer, historically

15 in the last 15, maybe 20 years, has it been the case

16 that school children have exceeded school capacity? There's

17 always been...

18 SLAUGHTER: If the Court please...

19 Q There's always been pressure on them Mr.

20 Colmer so that...

21 COURT: He can answer the question generally if

22 he wants to.

23 A There's been a pressure, 20 years ago, we

24 weren't required to have kindergarten. We weren't required

25 to have vocational education. We weren't required to have

special ed classes for 16 students in them. We weren't required to have speech therapists, We weren't required to have all these other special programs that we are required to have now, that must have space....to use in the school.

Q And if the pressure hadn't come in other words from the post-war baby boom which is now slacking off it would have come from the educational world?

A Right, of course this post-war baby boom is going to be putting another pressure on us now. Because there's going to be more demand for adult programs, which are going to take up buildings, facilities and things.

Q This is something that is a policy decision, as you said, coming from the State?

A Well, that's true, plus a demand from the people.

Q If the Court would indulge me just a moment?

COURT: Yes sir.

Q Mr. Colmer, do you intend to or are you planning for your school system to absorb at least an additional 42 children per year?

A I didn't get the question, excuse me...

Q Do you intend or are you planning in the future for your school system to absorb at least an additional

42 children per year?

A We - of course we plan as far ahead as we possibly can, and even at that rate we are still way behind as far as planning, In other words we know that the new primary school that we are building within a matter of a couple of years will be filled to capacity.

Q Do you know whether those figures would jive with the comprehensive plan for the county or not?

A I'm not sure.

Q Well are you planning for at least 42 students per year in the school system in addition to at least that many in the future?

A We don't have a written plan. In other words for construction.....our plan is to complete the primary school and possibly develop our high school program.

Q Do you have a plan for the school system that projects ahead maybe as much as five or ten years?

A Not a written out plan, we certainly have anticipated our programs. We have a five year plan for instance, an instruction program, five year vocational program, five year special education program.

Q Are you planning to handle the children which come from the projected increase in the population of this county?

A Yes.

1 Q Is that more or less than 42 per year?

2 A Hopefully it's going to be less, but this

3 remains to be seen.

4 Q You...

5 A I can't tell you what the increase is going

6 to be next year.

7 Q I ...

8 A All you can do is estimate.

9 Q Can you tell me what you are planning for?

10 A Well, we are planning for approximately -

11 probably 75.

12 Q That's all.

13 COURT: All right, Mr. Slaughter.

14

15 REDIRECT EXAMINATION

16 BY: Mr. Slaughter

17 Q Mr. Colmer, when I was examining you I couldn't

18 copy down - I do have firmly in mind the figure 1,681

19 for this year, tell me approximately what the figure was

20 for last year?

21 A At the end of the year and ...

22 Q Well, let's take from year to year, let's

23 take a comparable figure for 1,681, if you recall?

24 A All right, All right, that would have been

25 November of 1974.....

1 Q Right.

2 A It would have been approximately 1,550 - 1,555,
3 1,575, along that line.

4 Q Just in rough computation you've had an increase
5 of approximately 130...

6 A Yes sir, but we did have a higher - we were
7 as I mentioned earlier anticipating 1,600 students and
8 we have 1,680.... the increase was much greater than we
9 expected this year.

10 Q Of course Mr. Parker kept coming back to
11 the question of could you accommodate them.....could you
12 say whether or not you are required by the State to educate
13 the children who live in Greene County?

14 A That's right - I mean if 500 - no matter how
15 many moved in, we've got to do something with them.
16 We do not have the facilities, but we have to do something.

17 Q Mr. Parker remarked that it wasn't the baby
18 boom that was affecting this, but it was educational re-
19 quirements. Of course the kindergarten requirement affects
20 the number of students, I understand, but kindergarten
21 was in effect -the kindergarten program was in effect
22 before the school year 1974, 1975, was it not?

23 A Yes sir, this is the third year for our kinder-
24 garten program.

25 Q And so this increase that you have mentioned

of 130 last year didn't result from any administrative change?

A No sir, not for the kindergarten or something like this, no sir.

Q But from people moving in or a baby boom, these were additional young people were they not?

A People moving in, right.

Q No further questions Your Honor.

COURT: Mr. Parker?

PARKER: No sir.

COURT: Thank you, Mr. Colmer, you may stand aside.

SLAUGHTER: I understand Your Honor does want to continue to go on....

COURT: Yes sir, I'd like to continue and get as many of your witnesses as you can, but not invading your province as to how you plan your case, Mr. Slaughter.

THOMAS LAWSON, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Slaughter

Q Could you state your full name and address

please sir?

A Thomas Lawson, Stanardsville, Virginia.

Q What is your occupation, Mr. Lawson?

A Pipeline maintenance, Columbia Gas Transmissions.

Q Where do you live?

A Stanardsville.

Q Now, do you have a position or positions with the County of Greene?

A Yes sir, I'm a member of the Planning Commission, and a member of the Zoning Board of Appeals.

Q How long have you been a member of the Planning Commission?

A Since 19....February of '71 I believe it was.

Q Could you tell us whether or not you have had any official position on the Planning Commission itself in 1973 and 1974?

A I was chairman of the commission.

Q When did you become chairman? Approximately?

A I believe it was that January of '73. I was acting chairman the year before because the chairman resigned or quit, and I was vice chairman I had to step up.

Q All right, effectively you have been the operating - the chief operating official of the Planning Commission since 1972 or were up until what date, sir?

1 Or have you continued up until this time?

2 A No, I am no longer the chairman. I would

3 say somewhere around April of May this past year.

4 COURT: '75 or...

5 A '75.

6 COURT: '75.

7 Q Perhaps you could tell us if you would, Mr.

8 Lawson, what the duties of the Planning Commission consisted

9 of generally when you went on it?

10 A Well, the duties that we were - well saddled

11 with, I guess - the first responsibility was the Health

12 Department, Doctor LeGarde, was asking for the sub-division

13 ordinance to be updated.

14 Q Let me ask you first in 1971, when you were

15 in office, was that the beginning of the Planning

16 Commission in Greene County?

17 A Oh no, no sir, no.

18 Q When was the Planning Commission first formed,

19 do you remember?

20 A I don't know.

21 Q Excuse me, go ahead.

22 A And at that time we started work on updating

23 the original sub-division ordinance. And of course it

24 was quite a while, but at that time we were working towards

25 State roads and sub-divisions. And enlarging the lot size

1 requirements.

2 Q Was there an administrator of the sub-division

3 ordinance at that time?

4 A I couldn't answer that.....

5 Q Do you recall whether or not the various

6 sub-divisions was .... to preliminary

7 screening of the various sub-divisions or whether members

8 of the planning commission had to do the whole thing?

9 A There was three members of the Planning

10 Commission that had to give the approval.

11 Q And what was your contact, did you have some-

12 body in the county government that came to you and presented

13 you the documents or did you have to work directly with

14 the developers?

15 A I wasn't a member of that. I think they worked

16 directly with ...

17 PARKER: Objection to what he thinks.

18 COURT: As the chairman of the board he's entitled

19 to answer the question in so far as he knows from the

20 policy how it was done....

21 A The policy I'm sure was that the developers

22 met with the three members of the Planning Commission and-

23 to get their approval.

24 Q Do you remember who the three members of the

25 Planning Commission were at that time?

1 A Mr. Frank Lamb, Mr. Sterling...

2 COURT: There were three members of a larger group,
3 the Planning Commission consisted of more than three, but three
4 of the membership worked on this particular aspect, is that
5 what you are saying?

6 A Yes sir.

7 COURT: As a committee?

8 A As a committee.

9 COURT: All right, go ahead, sir.

10 A And Mr. Sterling Gibson - I can't remember the
11 third one right now.

12 Q How many were on the Planning Commission all to-
13 gether?

14 A Seven members.

15 Q Were there other sub-committees of the Planning
16 Commission with other functions?

17 A Yes sir.

18 Q Do you recall what they were?

19 A Well we had a landfill committee, a junk car committee,
20 at that particular time I believe those three were the main
21 ones.

22 Q Now I take you..... Mr. Lawson, you had
23 said that you had been talking to Doctor LeGarde and you were
24 working - began work at that time on a sub-division ordinance,
25 mainly with regard to size of lots and State maintained roads?

1 A Yes sir.

2 Q What activities were undertaken in that connec-
3 tion and could you tell us whether or not any action was
4 taken with regard to the sub-division ordinance?

5 A We had many work sessions and finally at a
6 public hearing...

7 PARKER: Excuse me, Your Honor, I wonder if Mr.
8 Slaughter establish the date. I think he did, but I can't
9 recall it.

10 COURT: 1971, but I'm not sure that there's been
11 any further clarification on the actual date.

12 Q I believe he mentioned that he put it - perhaps
13 I....

14 COURT: All right, what date if you can recall
15 Mr. Lawson did this apply to?

16 A This would be in the '72 area.

17 COURT: All right.

18 A That this work was going on. It probably
19 started in '71 and then - these things are slow. They
20 don't move real fast, because we only meet once a month.

21 COURT: All right, go ahead sir.

22 Q What action did you take do you recall with
23 regard to the sub-division ordinance at that time?

24 A Well, after many work sessions and we finally
25 got to the point for a recommendation. And to a public

hearing.

Q And that - essentially what changes were proposed in the sub-division ordinance as a result of the public hearing?

A The lot size and the State roads, that was the major, and there were some other minor details - but that was the major changes.

Q We have here the sub-division ordinance with the '73 amendments...

COURT: That's already in evidence as Plaintiff's Exhibit Number 1, I believe.

Q Yes. And if you need it, of course, I can give you these pages to refresh your recollection, but what in particular was the problem with the roads, and what did you want to have solved through the sub-division ordinance?

A Well, heretofore the developers would come in and build recreation homes and just root out a road and maybe dump a narrow strip of gravel and that was all there was to it. And it was - we were having a lot of soil erosion and a lot of things that were not being taken care of.

Q And what in fact was the problem with lot size requirements in the previous sub-division ordinance?

A What was the previous lot size?

Q Yes, you mentioned that you wanted to have the sub-division ordinance do something to take care of the lot size problem.

A Well, the first lot size was - both water and sewer was 10 thousand square feet, there was no change. I believe the second one was 15 thousand,was increased to 20. The third size was increased from 20 to 30 thousand.

Q And thus, it was a mandatory sewer for the lot size ..... . which measured ten thousand feet?

A Yes sir.

Q And you mentioned that there was an increase for the next category could you tell us what the requirements were for this next lot size?

A It was increased from 15 to 20.

Q And these were lots with...

A Either had water or sewer - they had sewer, public sewer.

Q And the final size would be for a lot with neither water or sewer?

A Yes sir.

Q Now, could you tell us what generally was the primary problem that faced the Planning Commission once the sub-division ordinance was amended in 1973?

A Well, it became apparent very quickly that this was not the solution and every piece of property that was going up for sale was being bought by a developer. And that it also became apparent to me that something should be done to protect

1 the open spaces of Greene County and conservation zones. It
2 also became apparent to our secretary, which is the secretary
3 of the intermediate school, that our school system was having
4 a lot of transfer students into the school system. So she
5 and I made an inquiry with all the other secretaries of the
6 schools and we...
7 Q When was this, do you recall?
8 A This was along in the spring and fall of '73-'74.
9 And there had been an increase of quite a number of students,
10 I believe the figure was around 100.
11 Q Which period of time, sir?
12 A This was back - dating back from the - sometime
13 in the fall of '74, after school started, back into spring
14 of '73....I mean the same year, back to the same spring, but
15 a different school year, I'm sorry. And we counted up just
16 for one area, just for our own personal use we had 20 some
17 students alone that had transferred into the Greene County
18 school system from Albemarle and the City of Charlottesville.
19 Q And this was a matter of concern to you?
20 A Yes sir it was.
21 Q So what action was taken?
22 A Along about this time the Board of Supervisors
23 asked us and the Thomas Jefferson Planning District to start
24 work on an interim zoning ordinance - I mean not on an interim
25 zoning ordinance, but a comprehensive land use plan.

1 Q Now do you recall what the first - your first
2 contact with the - what first generated the idea of a land
3 use plan within the Planning Commission? Did this come through
4 the Board of Supervisors, from the Thomas Jefferson Planning
5 District Commission or from men who made up the Planning
6 Commission?
7 A They asked us to look into the study and the first
8 meeting was with Mr. Abbott and Mr. Evans.
9 Q Approximately when was that do you recall?
10 A It was in the spring of '73.
11 Q And what possibilities were discussed at that time?
12 A I believe Mr. Evans said that he was doing something
13 right at that time, I can't recall what it was, but he said that
14 he would probably be free to start on this plan sometime around
15 July.
16 Q And was anything else discussed with regard to the
17 planning process?
18 A Yes, he went on to explain that he had to have
19 an inspection of the county and that he had to have citizen's
20 input and a general outline of what all had to be considered in-
21 to getting into this comprehensive plan....at that meeting.
22 Q Do you recall whether or not the interim zoning
23 ordinance was discussed?
24 A Not at that meeting. The first time we heard of
25 interim zoning or discussed interim zoning ordinance was in June

of '73, the Board of Supervisors referred to us an interim zoning ordinance that had been written by Mr. Dickey. And in our June meeting we went over the interim zoning ordinance; we referred it back to the Board of Supervisors for approval with our recommendation with a view to minor changes in lot sizes.

Q What were those changes do you recall?

A I can't recall the lot sizes that we recommended at that time.

Q Did the question of an interim zoning ordinance come up subsequently - I believe you mentioned the last time at least you testified to was in June of 1973?

A Yes, and as we sent along our recommendation we also sent along a member to speak for us at the next Supervisors meeting, Mr. Gene Baker. And urged that it be adopted, but the Board at that time referred it to the Thomas Jefferson Planning District for further study....the July meeting, I believe it was.

Q Thus did the Planning Commission take any action at its July meeting?

A In the July meeting or August meeting, I can't recall which, we met and discussed this with Mr. Evans and he said that he would not be able to get started on the plan in July but he would be able to start it around the first of September of the latter part of August. It had taken a little longer to finish up what he was doing. We talked about an interim

1 zoning ordinance. We felt that it would not take all that
2 long to do a comprehensive plan for Greene County. And that
3 possibly we could go along and get this and get the permanent
4 ordinance, zoning ordinance after the plan was completed and
5 we would not be hurt too bad.
6 Q Did you at that time renew your recommendation
7 to the Board of Supervisors on the interim ordinance or did
8 you let it ride at that time?
9 A We let it ride.
10 Q What in fact took place then over the course of
11 the fall, September, October, and November as far as the
12 Planning Commission was concerned?
13 A Well, each meeting Mr. Evans would meet with us
14 and tell us how far he had gotten in the inspection of Greene
15 County , I guess you would call it, and he kept us abreast of
16 whatever - of what was going on, but in the meantime along about
17 November or so he said that things were not moving as fast as
18 he thought they would and it seemed like it was going to be
19 an awful long time. Maybe we would have to make other plans.
20 Q And what action then did the Board take? Did
21 your Commission take, excuse me?
22 A Well, we asked the Thomas Jefferson Planning
23 District to see if they could recommend and - an interim zoning
24 ordinance. They had already had one referred to them by Mr.
25 Dickey. I don't know if anything had been done at that time or

1 not. And they said they would go to work on it.

2 Q Was there in fact a joint meeting with the Board

3 in December of that year, the Board of Supervisors?

4 A I can't recall if there was a joint meeting or

5 not.

6 Q Were you involved at all or were the members of the

7 Planning Commission involved at all in the drafting of the

8 interim ordinance itself?

9 A After it was drafted we had a work session and

10 went over it.

11 Q All right.

12 COURT: After it was drafted the second time or the

13 first time now - what?

14 A The second time.

15 Q When was that work session, do you recall?

16 A It seems in my mind it was around the first week in

17 January.

18 COURT: That would have been January of '74, would it

19 not?

20 A Yes sir.

21 Q And did you subsequently recommend that that ordinance

22 be passed by the Board of Supervisors?

23 A Yes sir, we recommended that they take it a public

24 hearing, and be adopted.

25 Q I may not remember correctly, Mr. Lawson, but did I

1 understand that the Planning Commission at this time made
2 a further recommendation as to lot sizes for the interim zoning
3 ordinance?
4 A Well, this was one of the changes that was made
5 prior to going to public hearing in our work session. I believe
6 the ordinance was originally written, the lot size was much
7 more than 2 acres. And we lowered it to 3.
8 Q Of course the record speaks already, it was
9 lowered to 2 by the Board of Supervisors, is that correct?
10 A Yes sir.
11 COURT: That indicates it was lowered at least two
12 times then, from a higher figure than 3. Do you know what that
13 figure was, the original recommendation?
14 A I can't recall Your Honor.
15 COURT: But you all recommended 3 and then it was
16 obviously changed to 2 by the Board of Supervisors?
17 A Yes sir.
18 COURT: I see.
19 Q As a minimum that could positively preserve the
20 county in its condition at that time?
21 PARKER: Objection.
22 COURT: Well, that may be objected to and properly
23 so. Mr. Slaughter, the question still remains as to what the
24 lot size was relevant to and I think it's up to the witness to
25 explain it or however you want to do it without leading him.

1 Q All right, sir. What was your reason for recommend-
2 ing that the lot size be 3 acres, Mr. Lawson?
3 A The increase?
4 Q The increase - the minimum lot size in the preliminary
5 zoning ordinance?
6 A Well, we felt like you had to have safe roads and
7 you had to have 3 acres per lot - this would probably slow down
8 the people wanting to buy every piece of property and open
9 space that was up for sale.
10 Q Now, were you receiving information during this
11 time from any source as to the sub-division activity within
12 the County?
13 A In general terms.
14 Q Who was providing that information?
15 A Well, Mr. Evans mostly and his study of the county.
16 He would come up and go over, telling how many lots we had in
17 how many sub-divisions.....and how many lots were not built
18 upon but were already recorded. This type of information.
19 Q Could you tell us whether or not there had been
20 any change in the situation with regard to the staff working
21 with developers under the interim - under the sub-division or-
22 dinance? In other words, tell us whether or not a zoning
23 administrAtor had - was hired by the government of Greene County
24 by the fall of 1973?
25 PARKER: You mean a sub-division administrator, Mr....

1 Q Yes, excuse me.....I'm having trouble keeping them
2 straight.
3 A I don't recall what date that the county administra-
4 tor came, but I'm sure that we had one by the fall of '74.
5 But I can't recall what date he was hired on.
6 COURT: You referred to the County administrator was
7 his title?
8 A County administrator.
9 COURT: I see.
10 Q And do you know of your knowledge whether or not
11 he was also administrator of the sub-division ordinance?
12 A I believe he taken over that job after he came,
13 yes.
14 Q And you are referring to he, who now occupies that
15 post?
16 A Mr. Julius Morris is the gentleman.
17 Q Do you know whether or not anyone was hired before
18 Mr. Morris? For that job?
19 A Yes, we had - I can't recall his name.....
20 PARKER: Mr. Williams.
21 A Mr. Williams, yes.
22 Q And do you recall whether or not there was an
23 acting administrator between the time Williams resigned and the
24 time Mr. Morris was hired?
25 A I think we changed the form of government in there...

1 maybe there was just - I believe Mrs. Bickers was filling
2 in.
3 Q But once Mr. Morris came did he meet with you
4 when you were having Planning Commission meetings?
5 A Sometimes, not all the time.
6 Q And would he - do you ever recall him providing
7 information with regard to sub-dividing or sub-divisions?
8 A He discussed with the people that had been on
9 this committee before, Mr. Lamb, Mr. Gibson - I can't think
10 who the other one was...
11 Q That's all right.
12 A They discussed this. I seen him come in and the
13 meeting be over and they go in the back room and take the plats
14 and talk about them, something like that.
15 Q Now, Mr. Lawson when do you first recall hearing
16 the name Bennett Matthews?
17 A Well, after the interim zoning went into effect,
18 was adopted, I recall some time or other during the - maybe
19 before or right after that-it was I think after, Mr. Morris
20 says that we have three sub-divisions that will have to be
21 decided by the Zoning Board of Appeals. Maybe a week or so
22 later I was appointed by Your Honor as a member of the Zoning
23 Board of Appeals.
24 Q Do you recall the name Bennett Matthews being men-
25 tioned or do you recall - or is this just the first awareness

that you had that there was even a planned sub-division - Bennett Matthews had in mind?

A The name Bennett Matthews was not mentioned as I recall. I recall that we had three sub-divisions and he named them by name, as Greenemarle, Greene Lea and Greenetown - I believe that's what he said.....

Q Were you aware that there was a projected sub-division known as Greenetown, one planned by Bennett Matthews before the interim zoning ordinance went into effect?

A Yes, I heard talk about it. I heard about it, but I had not seen the plans. I didn't know really if he had any approval or what....until after this time when I found that it had not been approved.

Q I have no further questions at this time, sir.

COURT: All right, Mr. Parker.

CROSS EXAMINATION

BY: Mr. Parker

Q Mr. Lawson, when did you first become aware of Exhibit 19.....

A Mr. Evans started working in September of '73, I believe he completed this work and he would bring it in part - now in whole-it's entirety would be - I would say probably spring of '74.

Q Yes sir. You stated earlier didn't you sir that

near about every piece of property in the county that went up for sale was being bought by developers? Was that your statement?

A That was the way it seemed to me, that all the farm land and open space that was being put up for sale was...

Q How many pieces had gone up for sale?

A Well, in Greene County there are not too many but every farm or..

Q Well, how many pieces had gone up for sale?

A I don't...

Q I think I'll have to give you a period of time..... which ended..... last year, prior to the enactment of the interim zoning ordinance?

A That would be a right hard question to answer.... even with the material, but...

Q Then you wouldn't know how many of those pieces had been bought by developers?

A Every piece that I heard of that was sold was eventually developed.

Q You heard that it was sold, how?

A Well, you would see land transactions in the paper.

Q And gossip? Local gossip?

A Just like Twin Lakes, that was one.

Q How many - you don't know how many there were?

A No, I didn't count them - I didn't keep count of

1 them - no.

2 Q Would it be fair to say that in view of your

3 position on the Planning Commission you would be looking for

4 sub-divisions that were going in during that period of time?

5 A It became very apparent when I could see roads

6 being cut across the sides of the mountain, and I'm one of these

7 people that rides around over the county, but I don't count.

8 I ride through these sub-divisions.

9 Q Well, you haven't answered the question that I

10 just asked. Did - do you recall the question sir?

11 A Ask it again will you please?

12 Q You were taking a fair count as a member of the

13 Planning Commission of what was going - what kind of sub-

14 division activity was going on in the county because sub-

15 divisions were you alls business under the sub-division ordinance?

16 A Yes sir, I would aim to go out and ride through it

17 and see what kind of a sub-division was being put in.

18 Q And you would have been more interested in

19 sub-division sales than you would have been in the sale of

20 land for other purposes?

21 A Possibly as far as the county or I was concerned,

22 yes.

23 Q Actually Mr. Lawson you don't know how many

24 pieces of property were sold to developers in that year?

25 COURT: He's already said he couldn't count them, Mr.

1 Parker - you needn't belabor that point.

2 Q And you don't know Mr. Lawson how many pieces of

3 other property went up during that year that weren't sold

4 to developers?

5 A No, I don't know.

6 COURT: Mr. Lawson in your regular duties as part of

7 your job day to day what opportunities did you have if any

8 to go over the county?

9 A Well, in the pipeline maintenance, it runs through

10 the heart of Greene...

11 COURT: What company is that?

12 A Columbia Gas Transmissions.

13 COURT: How much familiarity with the county did you

14 have because of that?

15 A Well, we have - the pipeline goes through Riverdale

16 Sub-division, runs straight through it.

17 COURT: In what way do you keep track of it, do you

18 control it?

19 A Yes sir, we go out and we try to keep real good

20 track of it, around the sub-division and particularly highly

21 populated areas. We have to check it for leaks pretty regular,

22 according to the density. And we also have to be sure that

23 nobody gets into this with backhoes...

24 COURT: How do you make your control, do you do it

25 by vehicle or how?

A We do some by foot patrol, some by vehicle.

COURT: Go ahead, Mr. Parker.

Q When you - do you go by the county roads, do you go up and down the line or some of both?

A We got county roads, we go up and down the line and some - you know....

Q This interim zoning ordinance - you were asked by Mr. Slaughter to look at the sub-division ordinance, I ask you to look at the interim zoning ordinance, which as a member of the Board of Zoning Appeals you had some duties in connection with, is that right?

A Yes sir.

Q Do you remember the provision - 5.3-1-D, concerning hardship caused on a developer - do you know when that plan - when that language was drafted?

SLAUGHTER: If the Court please, I don't see the relevance unless he wants to retry the certiorari case.

COURT: I agree with you, Mr. Slaughter. I don't see what relevance that has in this case. It may have had some in the other one. Mr. Parker what possible basis would hardship now have in the case?

Q None as such, Your Honor, I'm trying to establish how it got into the ordinance. Mr. Slaughter.....Mr. Slaughter himself asked questions on how the ordinance was developed..

COURT: Yes sir.

1 Q It seems to me...

2 COURT: I don't see any - you may havesome other
3 relevant matter, but I don't see where that part of it, the
4 ordinance speaks for itself. He was talking about it generally,
5 you are now picking out a certain part of it, which has been
6 litigated in another case. I sustain the objection.

7 Q And we note our exceptions, Your Honor.

8 COURT: Yes sir.

9 Q For reasons again - to be clear for the record, we
10 think it appropriate is that Mr. Slaughter asked questions
11 about how the ordinance was developed. And the question that
12 I asked was when that went into the ordinance, not what he
13 thinks it means..

14 COURT: It went in when the ordinance was adopted,
15 apparently, but.....do you want to take time and take every
16 item in that ordinance and develop it as exactly when it was put
17 in?

18 Q No sir.

19 COURT: He hasn't done that. He talked about it
20 generally, and I rule that that exceeds the bounds of cross
21 examination, first. And then secondly it's irrelevant because
22 its been previously litigated. I don't consider any need to go
23 into the question of why hardship was in there, whether it's
24 appropriate to be in there, how they got it in there in the first
25 place...

1 Q I think it is of course and I note my exceptions.
2 COURT: Yes sir. Your exceptions are noted, sir.
3 Q Now - that's all the questions I have of Mr.
4 Lawson.
5 COURT: All right any further direct?
6 PARKER: Oh sir - Your Honor I do have one other
7 question.....I don't know if you'll allow me to ask this ques-
8 tion or not, but I would like to.
9 COURT: Well, let's see what it is.
10 Q I'd like to - if I can find exhibit 3-A, I would
11 like to inquire of Mr. Lawson about this map, the zoning map....
12 Mr. Evans's zoning map.
13 COURT: All right you may get that exhibit.....
14 I take it he had some familiarity with it and preparation of
15 it.
16 Q Yes....that ...
17 COURT: If he can develop that he did.
18 Q Did you have anything to do with the preparation
19 of this map, Mr. Lawson?
20 A No sir.
21 Q That's all.....did your Commission have anything
22 to do with it so far as you know? Do you recognize it?
23 A I recognize it, yes. It was brought to our meetings
24 but as far as the actual drawing and ....I had nothing to do with
25 it.

1 Q And your Commission didn't either?
2 A Not that I recall.
3 Q Thank you.
4 COURT: That's exhibit 3-A, is it?
5 PARKER: Yes sir.
6 COURT: All right any other questions?
7 PARKER: No sir.
8 COURT: Mr. Slaughter?
9 SLAUGHTER: Would you indulge me just a second
10 please?
11 COURT: Yes sir.
12 SLAUGHTER: No further questions, Your Honor.
13 COURT: All right, Mr. Lawson, you may stand aside.
14
15 (Court is adjourned.)
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