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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

Volume I (Printed In Two Volumes)

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 750854

BENNETT T. MATTHEWS,

Appellant,

v.

BOARD OF ZONING APPEALS OF GREENE COUNTY,

Appellee.

GENERAL APPENDIX TO APPELLANT'S BRIEF

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

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VIRGINIA: IN THE CIRCUIT COURT OF GREENE COUNTY

BENNETT T. MATTHEWS

v. PETITION FOR CERTIORARI

BOARD OF ZONING APPEALS OF GREENE COUNTY

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

Your petitioner, Bennett T. Matthews, respectfully shows unto the Court that:

1. On or after 25 September 1974 the defendant Board of Zoning Appeals of Greene County filed its decision refusing to your petitioner Bennett T. Matthews a zoning permit based upon special uses and exceptions theretofore applied for under the provisions of the Greene County Interim Zoning Ordinance.

2. The refusal to grant such uses and exceptions, and hence such permit, was arbitrary and capridous.

3. Such refusal was contrary to the weight of the evidence before such Board.

4. Such refusal incorporates an erroneous view of the law.

5. In making its decision such Board took into account evidence not legally pertinent to the question before it and failed to account for other pertinent evidence before it.

6. In particular, but without limiting the generality of the foregoing, such decision was improperly based upon a "proposed master plan" which in law did not exist.

7. In particular, also, but without limiting the generality of the foregoing, the decision of the Board that the said ordinance did not work a "hardship" upon your petitioner was, under all the facts and circumstances, clearly contrary to the evidence presented.

WHEREFORE your petitioner prays leave to file this his peti-

tion, presented this 25 October 1974; demands that as provided for in section 15.1-497 of the Code of Virginia a writ of certiorari be issued for the review of such decision; asks that additional evidence be taken, with the exclusion of such evidence as was improperly received to be considered by such Board; and prays that the decision of the Board be reversed or modified so as to be in accordance with the law and evidence and so as to allow to your petitioner the uses, exceptions and permit previously applied for.

BENNETT T. MATTHEWS

By: _____
Counsel

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

Filed in the Clerk's Office the 25th day of October, 1974

Writ Tax $5.00
Fee 5.00
Deposit
Total Paid $10.00

Teste: Julia D. Biskus, Clerk
D. C.

VIRGINIA: IN THE CIRCUIT COURT OF GREENE COUNTY

BENNETT T. MATTHEWS

v. WRIT OF CERTIORARI

BOARD OF ZONING APPEALS OF GREENE COUNTY,
consisting of Ellis Durrer, Hugo
Scott, Ronnie Lamm, B.G. Snow and
Thomas S. Lawson

Bennett T. Matthews having as permitted by section 15.1-497 of the Code of Virginia presented to this Court his timely petition for writ of certiorari to review the decision of the Board of Zoning Appeals of Greene County wherein on or after 25 September 1974 such Board refused his application for a zoning permit based upon special uses and exceptions theretofore by him applied for under the terms of the Greene County Interim Zoning Ordinance -

Now, then, such writ is hereby allowed, wherefore such Board shall within ten days after service of this writ make up and serve upon C. Waverly Parker, attorney for Bennett T. Matthews, relator, the return in such section 15.1-497 required with respect to such decision.

For notice hereof let a copy of this writ be served upon the secretary of such Board, Virginia Eddins, as well as its Chairman, Ronnie Lamm, and as well as the attorney for the Commonwealth, David C. Dickey.

Asked for:

C. Waverly Parker
Stanardsville, Va. 22973

ENTER: David T. Harris
JUDGE

DATE: November 13, 1974

Filed: Nov. 11, 1974
Lisa O. Fisher
Clerk

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BOOK 16 PAGE 457

VIRGINIA:

IN THE CIRCUIT COURT OF GREENE COUNTY

BENNETT T. MATTHEWS,

Petitioner

v.

BOARD OF ZONING APPEALS OF
GREENE COUNTY, consisting of
ELLIS DURRER, HUGO SCOTT,
RONNIE LAMM, B. G. SNOW, and
THOMAS S. LAWSON,

Respondent

RETURN TO COURT PURSUANT TO WRIT OF CERTIORARI

To the Honorable David F. Berry, Judge of the Circuit Court of Greene County:

The Board of Zoning Appeals of Greene County, pursuant to the ORDER of this Honorable Court dated November 13, 1974, and within the time allowed by the Court's extension of time granted November 18, 1974, hereby returns certified copies of the following papers on which it acted in unanimously denying petitioner on September 25, 1974, a zoning permit based upon special uses and exceptions, for which petitioner had theretofore applied under the terms of the Greene County Interim Zoning Ordinance:

1. Application of petitioner to the Zoning Administrator of Greene County together with petitioner's plan and breakdown of expenses.

2. Application of petitioner to the Secretary of the Board of Zoning Appeals of Greene County.

3. The Interim Zoning Ordinance of Greene County, Virginia adopted March 2, 1974.

4. Letter with enclosure dated September 16, 1974, to Julius Morris, Greene County Administrator from George V. Evans, Jr.,

Senior Planner with The Thomas Jefferson Planning District Commission.

5. Proposed Greene County Comprehensive Plan.

6. Notice to the petitioner that his petition to the Board of Zoning Appeals of Greene County would be heard on September 25, 1974.

7. Memorandum to the Board of Zoning Appeals of Greene County from David C. Dickey, Commonwealth's Attorney of Greene County concerning the status of petitioner's application.

8. Minutes of the Greene County Planning Commission meeting of September 18, 1974.

9. Minutes of the Board of Zoning Appeals of Greene County of September 25, 1974.

In response to the allegations contained in the petition for certiorari heretofore filed with the Court, defendant admits the allegations contained in paragraph 1, but denies each and every allegation contained in paragraphs 2,3,4,5,6, and 7.

Defendant avers that its action in denying the petition in question was a proper exercise of the discretionary powers granted it under the Interim Zoning Ordinance of Greene County and §15.1-495,496 of the Code of Virginia (1950) as amended.

Respectfully submitted,

BOARD OF ZONING APPEALS OF GREENE COUNTY

BY: Ronnie Lamm
RONNIE LAMM, Chairman

Counsel for respondent:

David C. Dickey
David C. Dickey
Commonwealth Attorney of
Greene County
Stanardsville, Virginia

Edward R. Slaughter, Jr.
MCGUIRE, WOODS & BATTLE
Court Square Building
Charlottesville, Virginia

STATE OF VIRGINIA
COUNTY OF GREENE, to-wit:

This day personally appeared before me, Julia D. Dickey, a Notary Public in and for the County and State aforesaid, Ronnie Lamm, known to me to be the Chairman of the Board of Zoning Appeals of Greene County, Virginia, and made oath to me that the statements contained in the foregoing Return to Court Pursuant to Writ of Certiorari are true to the best of my knowledge, information and belief and that the attached exhibits are in the case of all but exhibit 5, true copies of exhibits filed before the Board of Zoning Appeals in the case of Bennett T. Matthews (case number 74-044) and that the said exhibit 5 is the original filed with the Board of Zoning Appeals.

Ronnie Lamm

Sworn and subscribed before me this 2nd day of December, 1974.

Julia D. Dickey
Notary Public
My Commission expires May 31, 1976.

I, David C. Dickey, Attorney for the Commonwealth, Greene County, Virginia, do certify that I personally delivered a true copy of the foregoing together with all annexed exhibits to C. Waverly Parker, Attorney for Bennett T. Matthews, this 3rd day of December, 1974, with the single exception that, by agreement of counsel, no copy of the plans of Greene Town Subdivision was delivered to Mr. Parker due to technical problems in duplication.

David C. Dickey

Filed
12-3-74
Lane C. Turner, Clerk

Bennett T. Matthews, Inc.
T/A Heritage Homes
P. O. Box 822
CULPEPER, VIRGINIA 22701

Phone 825-2098

[RETURN—ITEM 1(A)]

February 4, 1974

County of Greene
C/O Sub-division Agent
Standardsville, Virginia

Gentlemen:

Attached for your review are the required number of copies for perliminary plats pursuant to Section 5-3 of the sub-division ordinance for Greene County.

The subject property will be refered to as Greene Town Village. The proposed development will consist of ~~196~~ 192 single family lots, 48 townhouse units, 168 garden apartment units, and a small neighborhood commercial center with four or five free standing commercial sites.

The above mentioned development will be a long term construction project probably between five and ten years.

All roads in the subject development will be built to the current state standards for the Virginia Department of Highways and county standards to be accepted and to the State Road Systems for perpetual maintenance.

All water lines will be designed and constructed in accordance to the current standards of the Rapidan Service Authority.

We intend to build a sewage treatment plant or participate in any sewage program that the county may suggest, and that is economically feasible for both regardless of whether we participate with the county or construct our own. We intend to do this in accordance with the current Health Department standards. We feel that this development will be an asset to Greene County by broadening

Item #

the tax base, and providing a quality house for the families of Greene.

The project is a permanent home development through deed restrictions and restrictive covedance and will not take the image of a second home or weekend resort.

We sincerely hope that you will look favorably upon this request and if additional information is needed please contact me at once.

Respectfully yours,

Bennett T. Matthews

Bennett T. Matthews,
President

[RETURN—ITEM 1(B)]

Petitioner's Plan for Greenetown Village

[This item is unsuitable for printing. Please refer to the original record.]

Filed
12-3-74
Marie Clerk

CHRONOLOGICAL EVENTS RELATIVE TO THE DEVELOPMENT OF RUCKERSVILL
TRACT HEREINAFTER REFERED TO AS THE LAMB TRACT

[RETURN—ITEM 1(C)]

DATE	DESCRIPTION	COST
September 15, 1971	Purchase of property	
October 30, 1973	Completed Topo-Graphic survey	$ 3500.00
November 1, 1973	Appraisal fees and legal expense	393.25
November 10, 1973	Dwight L. Kaster; Conducting soils analysis and preparing soil's map	1265.30
December 19, 1973	Preparation of Preliminary Plat; Ross & France, LTD.	1500.00
June 13, 1974	Baldwin & Gregg - Sanitary Sewage Treatment Facility; consultant fee	1013.36
August 10, 1974	Ross & France, LTD. - Preparation of final plat	10000.00
August 10, 1974	Tayloe Murphey Institute - Conducting feasibility analysis	1850.00
August 10, 1974	Misc. legal, advisory, consulting fees, and travel expense related to above	985.00
October 1, 1974	Estimated Engineering expense for completion of Sewage Treatment Facility; Bladwin & Gregg (estimated construction cost of sewage facility - $468,000.00)	*25000.00

****

October 23, 1973	Preliminary plat completed	
February 4, 1974	Preliminary plat sub-mitted to Greene County Adm. & fees paid	274.00
August 26, 1974	Zoning Board of Appeals	20.00
		$45,800.91

I CERTIFY THAT THE ABOVE IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE.

Bennett T. Matthews
Bennett T. Matthews

STATE OF VIRGINIA
COUNTY OF CULPEPER, to-wit:

I, Jane C. Burgess (NOTARY) do hereby certify that the above information is true & correct to the best of my knowledge.

GIVEN UNDER my hand this 18th day of September, 1974.

My commission expires October 13 1976

Filed 12-3-74

To: Secretary
Board of Zoning Appeals
County of Greene
Stanardsville, Virginia 22973

PETITION FOR APPEAL

[RETURN—ITEM 2]

Gentlemen:

Your petitioner is the owner of the following described property situated in this County: (Give legal description and street name and number)

This tract of land containing 111.3850 Acres lying on the north side of U.S. Route 33, ½ mile west of Ruckersville, Va., owned by Bennett T. Matthews and recorded in the clerk's office of Greene County.

The County Building Official has denied the application of the undersigned for a (Building Permit) (Certificate of Occupancy) (Zoning Permit / Other)

for the reason that the proposed use of the property violates the Zoning Ordinance of this County in the following particulars:

Lot size less than two (2) acres and requiring special use permits for two (2) lots to be used for apartments and two (2) lots designated for commercial uses.

Your petitioner believes that the enforcement of this ordinance with regard to the above described property creates an unnecessary hardship on its owner for the following reasons:

That to conform to the present ordinance would make this project totally not feasible and that adjustments at this time would completely disrupt the overall developmental plan in respect to projected costs vs. returns; maximum and best land use; indicated need for such a development; facility placement, maintenance and opperational costs; anticipated completion schedule of project and the procurement of financing.

Your petitioner therefore, requests that the action of the Building Official be reviewed, and, if necessary that a variance from the terms of the Zoning Ordinance or a Special Use Permit be granted which will allow said property to be used in the manner set out in said application, which is enclosed herewith. Also enclosed is a sketch of the property showing the location of the (existing) (proposed) improvements and a check in the amount of $20.00 payable to the County as required by law.

Respectfully submitted,

Bennett T. Matthews
Petitioner

Filed 12-3-74 Clerk Circuit Ct.

Item # 2

[RETURN—ITEM 3]

INTERIM ZONING ORDINANCE

OF

GREENE COUNTY, VIRGINIA

WHEREAS, The County Planning Commission of the County of Greene is engaged in the preparation of a long-range general plan to guide and facilitate orderly and beneficial growth in this county, and is engaged in the preparation of a comprehensive zoning ordinance to serve as a primary means for achieveing such orderly and beneficial community; and,

WHEREAS, an interim ordinance is necessary in order to protect this county during the preparation of said general county plan and comprehensive zoning ordinance 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.

NOW THEREFORE, be it ordained by the Board of Supervisors of Greene County, Virginia, pursuant to Sections 15.1-486 to 15.1-498 of the Code of Virginia (1950 as amended), for the purpose of promoting health, safety, order and prosperity, the conservation of natural and historic resources, and the general welfare requiring it, that the following be adopted as the Interim Zoning Ordinance of Greene County, Virginia. Its effective date of adoption shall be the 2nd day of March 1974, and it shall remain in force and effect until the adoption of a comprehensive zoning ordinance, but not for longer than one (1) year.

Item 3

Article 1 - Districts

1.1 For the purposes of this ordinance, the unincorporated areas of Greene County, Virginia shall be treated as one (1) District as follows:

Rural - Residential (R-R)

1.2 Zoning Map: The location and boundary of the aforementioned District is hereby established as shown on the map entitled "Zoning Map of Greene County, Virginia" dated March 2nd, 1974, bearing the legend "approved and adopted by the Board of Supervisors of Greene County on March 2, 1974," and signed by the Chairman of the Board of Supervisors, and the same may be amended subsequent to the adoption thereof. This map shall be as much a part of this ordinance as if the same were fully described herein.

Article 2 - Rural - Residential District (R-R)

1 Dwelling Unit per 2 Acres

2.1 The following uses only shall be permitted:

2.1-1 Accessory uses and structures

.1-2 Agriculture

.1-3 Churches

.1-4 Conservation and preservation areas

.1-5 Forestry

.1-6 Public Facilities

.1-7 Public utilities: Poles, lines, transformers, pipes, meters and related or similar facilities; water and sewerage distribution lines.

.1-8 Single family dwellings

2.2 The following uses shall be permitted only by special use permit:

2.2-1 Mobile homes except in previously established and approved mobile home parks.

.2-2 Travel trailers

.2-3 All other uses

2.3 Area regulations: The minimum lot area shall be two (2) acres.

2.4 Set-back regulations: All structures shall be located thirty- five (35) feet or more from any street right of way. This shall be known as the setback line.

2.5 Frontage regulations: The minimum lot width at the building setback line and at all points between the setback line and the public road shall be one hundred fifty (150) feet.

2.6 Yard regulations:

.6-1 Front - the minimum front yard for each main structure shall be as required in Sections 2.4 and 2.5.

.6-2 Side - the minimum side yard for each main structure shall be fifteen (15) feet.

.6-3 Rear - the minimum rear yard for each main structure shall be twenty-five (25) feet.

2.7 Height regulations: The maximum building height shall be thirty-five (35) feet.

Article 3 - Non-Conforming Uses

3.1 Continuation: If at the time of enactment of this ordinance, any legal activity which is being pursued, or any lot or structure legally utilized in a manner or for a purpose which does not conform to this ordinance, such manner or use or purpose may be continued as herein provided.

3.2 Non-Conforming lots:

3.2-1 Any lot of record in the Clerk's Office of the Circuit Court of Greene County among the land records thereof at the time of this ordinance which is less in area or width than the minimum required by this ordinance may be used only when the requirements of the ordinance regarding set backs, side and rear yards are met.

3.2-2 Any sub-division lot approved and recorded in the Clerk's Office of the Circuit Court of Greene County prior to the adoption of the Interim Zoning Ordinance, shall be required to comply with the Sub-Division Ordinance only.

3.3 Expansion and enlargement:

3.3-1 A non-conforming structure to be extended or enlarged more than fifty per cent (50%) of floor area existing at the time of enactment of this ordinance shall conform to the provisions of this ordinance as set forth in Section 3.2-1.

.3-2 A non-conforming use or activity to be extended or enlarged more than fifty per cent (50%) in area shall conform to the provisions of this ordinance as set forth in Section 3.2-1

Article 4 - General Regulations

4.1 Compliance:

4.1-1 No land or structure shall be used except in compliance with this ordinance, and no structure shall be started, altered, reconstructed, or enlarged except as in such manner that the resulting structure shall be in compliance with this ordinance.

4.1-2 No parcel of land shall hereafter be reduced or divided so as to provide less than the minimum lot size required in the district in which such land is situated.

4.2 Zoning permits:

4.2-1 No land or structure shall be changed in use and no building or structure shall be started, altered, reconstructed or enlarged until after a zoning permit has been obtained from the Zoning Administrator.

.2-2 The procedure governing the application for and granting of zoning permits as required by this ordinance shall be as follows:

The applicant who shall be a record owner, or contract owner with written approval of owner, of land involved (if a contract owner, copy of said contract shall be filed with and made a part of application), shall make application for the zoning permit to the Zoning Administrator on the form provided for the purpose, giving all information required by such form, including such other information which the Zoning Administrator may deem necessary. If the proposed building or use is in conformity with the provisions of this ordinance a zoning permit shall be issued to the applicant by the Zoning Administrator.

4.3 Special use permits: Some uses require a special use permit, reviewed by the Planning Commission and authorized by the Board of Zoning Appeals, in addition to a zoning permit and a certificate of occupancy.

4.4 Certificates of occupancy:

4.4-1 Land may be used or occupied and buildings structurally altered or erected may be used or changed in use only after a certificate of occupancy has been issued by the Zoning Administrator. Such a permit shall state that the building or the proposed use, or the use of the land, complies with the provisions of the ordinance. A similar certificate shall be issued for the purpose of changing or extending a non-conforming use.

.4-2 Written application for a certificate of occupancy shall be made at the same time as the application for the zoning permit. Such certificate shall be issued within ten (10) days after the erection or structural alteration of such building or part has conformed with the provision of this ordinance.

4.5 Conflicting ordinances, statutes and regulations: Whenever any section or provision of this ordinance or of any regulation adopted under the

authority of this ordinance requires a larger lot area or a greater width or size of yards, or a lower height of building than are required in any Virginia statute or other Greene County ordinance or regulation, the provision of this ordinance or of the regulation adopted under the authority of this ordinance shall govern. Whenever any section or provision of any Virginia statute or other Greene County ordinance or regulation requires a larger lot area or a greater width or size of yards or a lower height of building or imposes other higher standards than are required by any section or provision of this ordinance or of any regulation adopted under the authority of this ordinance, the provisions of such Virginia statute or other Greene County ordinance shall govern.

4.6 Severability: Should any section or provision of this ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof other than the part so held to be unconstitutional or invalid.

Article 5

Powers and Duties of the Board of Zoning Appeals

5.1 Board of Zoning Appeals:

5.1-1 A Board consisting of five (5) members shall be appointed by the Greene County Circuit Court. The Board shall serve without pay other than for traveling expenses, and members shall be removable for cause upon written charges and after public hearing. Appointments for vacancies occuring otherwise than by expiration of term shall in all cases be for the unexpired term.

.1-2 The term of office shall be for five (5) years, except that of the first five (5) members appointed, one (1) shall serve for five (5) years, one (1) for four (4) years, one (1) for three (3) years, one

(1) for two (2) years, and one (1) for one (1) year. One (1) of the five (5) appointed members shall be an active member of the Planning Commission.

.1-3 Members may be removed for cause by the appointing authority upon written charges and after a public hearing.

.1-4 Any member of the Board shall be disqualified to act upon a matter before the Board with respect to property in which the member has an interest.

.1-5 The Board shall choose annually its own chairman and vice-chairman, who shall act in the absence of the chairman, and shall choose annually a secretary who need not be a member of the board.

5.2 Provision for appeal:

5.2-1 The Board of Zoning Appeals shall have the following powers and duties:

a. To hear and decide appeals from an order, requirement, decision or determination made by an administrative officer in administration or enforcement of this article or of any ordinance adopted pursuant thereto:

b. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows: When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such ~~piece of property,~~ or

of the use or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

.2-2 No such variance shall be authorized by the Board unless it finds:

a. That the strict application of the ordinance would produce undue hardship.

b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

.2-3 No such variance shall be authorized except after notice and hearing as required by Section 15.1-431.

.2-4 No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

.2-5 In authorizing a variance the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.

.2-6 An appeal to the Board may be taken by any person aggrieved or by any officer, department, board or bureau of the county or municipality affected by any decision of the Zoning Administrator. Such appeal shall be taken within thirty (30) days after the decision appealed from by filing with the Zoning Administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. During the pendency of an appeal pursuant to the provisions of this Section no improvements or structural alterations of any sort may be erected or performed upon the property which is subject to the appeal.

5.3 Special use permits:

5.3-1 After review by the Planning Commission the Board of Zoning Appeals shall hear and decide applications for special use permits. The Board, in its decision to grant, to grant conditionally or to deny shall consider the following:

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. Any subdividor as defined in the subdivision ordinance of Greene County who, in good faith, and prior to the passage of this ordinance, has secured

preliminary approval for a subdivision under the provisions of the aforesaid subdivision ordinance, and who has complied at the time of application for a special use permit, and continues to comply in the future with all relevant time limits prescribed by the Greene County Subdivision Ordinance, shall be entitled, if the passage of this ordinance has worked a financial hardship on him, to a rebuttable presumption in favor of the granting of such a special use permit for the said subdivision as preliminarily approved under the provisions of the subdivision ordinance. Evidence necessary to rebut this presumption shall be based upon the standards set forth in § 5.2-1 b. and § 5.2-2 (a, b, c).

.3-2 The Board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including but not limited to parking and open space requirements, and including a limitation of the time for which a permit may be valid, and may require a guarantee or bond to insure that the conditions are being and will continue to be complied with.

.3-3 No special use permit shall be authorized except after notice and hearings as required by Section 15.1-431 of the Virginia Code.

.3-4 Applications for special use permits may be made by any property owner or record owner. Such application for the special use permit shall be made to the Zoning Administrator on the form provided for that purpose, including such other information as the Zoning Administrator may deem necessary for consideration of the application.

.3-5 The application shall be accompanied by three copies of drawings showing the following information:

a. The size, shape, and dimensions of the parcel of land for which the use is proposed.

b. The nature of the proposed use of the land or building.

c. The location of such building or use with respect to the right of way of any street or highway adjoining said parcel of land.

.3-6 The application and accompanying maps, plans or other information shall be transmitted promptly to the Secretary of the Board who shall place the matter on the docket. The Zoning Administrator shall also transmit a copy of the application to the Planning Commission which shall review the application and send a recommendation to the Board or appear as a party at the hearing.

.3-7 Upon the granting of a special use permit, one copy of the dimensioned drawing, upon which has been indicated the modifications, if any, required by the Board and certified by the Zoning Administrator, shall be returned to the applicant, who may thereafter conduct only the specific use for which the permit has been granted and only in such manner and in such location and for such a time as the certified drawing shall specify.

5.4 Proceedings: The Board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and decide the same within sixty days. In exercising its powers the Board may reverse or affirm, wholly or partly, or may modify, the order, requirement, decision or determination appealed from. The concurring vote of three members shall be 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 or to effect any variance from the ordinance. The Board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the Board and shall be public records. The Chairman of the Board, or in his absence the acting Chairman, may administer oaths

and compel the attendance of witnesses.

5.5 Fees: Applications for special use permits and appeals requiring advertised public hearings shall be accompanied by a certified check for twenty dollars ($20.00) payable to the County Treasurer for deposit in the general fund.

5.6 Where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, by suit filed within fifteen (15) days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the Board of Zoning Appeals.

Article 6 - Violation and Penalty

6.1 Violation: All departments, officials, and public employees of the jurisdiction which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this ordinance. Any permit, if issued in conflict with the provisions of this ordinance, shall be null and void.

6.2 Penalty:

6.2-1 Any person, firm or corporation, whether as principal, agent employee or otherwise, violating, causing, or permitting violation of any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction, thereof, may be confined in jail not more than thirty days or shall be fined not less than fifty not more than two hundred dollars, or, in the discretion of the jury or the court trying the case without a jury punished by both such fine and imprisonment. Such person, firm or corporation shall be deemed to be guilty of a separate offense for each and every day during which any portion of any

of this ordinance is committed, continued, or permitted by such person, firm or corporation and shall be punishable as herein provided.

.2-2 The County Administrator, Zoning Administrator, or other proper officer of the County of Greene may institute any appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, repair or conversion of any building or structure, or the unlawful use of land, to restrain, correct or abate such violation, to prevent any illegal act, conduct, business or use in or about such premises; in the event that any such action or other named agents shall prevail in any such action, the court may assess against the defendent the costs expended by the plaintiff together with a reasonable attorney's fee.

Article 7 - Amendments

7.1 The regulations, restrictions and boundaries established in this ordinance May, from time to time, be amended, supplemented, changed, modified, or repealed by the governing body pursuant to Section 15.1-493 of the Code of Virginia as follows:

7.1-1 Amendments may be initiated by resolution of the governing body by motion of the planning commission or by application of any property owner or contract owner filed with the Zoning Administrator and accompanied by a fee of twenty dollars ($20.00) payable to the County Treasurer for deposit in the general fund.

.1-2 The Planning Commission shall hold at least one public hearing on such proposed amendment after notice as required by Section 15.1-431 of the Code of Virginia, and may make appropriate changes in the proposed amendment as a result of such hearing. Upon completion of its work, the Commission shall present the proposed amendment with its recommendations and appropriate explanatory materials.

.1-3 Before approving and adopting any amendment, the governing body shall hold at least one public hearing thereon, pursuant to public notice as required by Section 15.1-431 of the Code of Virginia, after which the governing body may make appropriate changes or corrections in the proposed amendment; provided, that no additional land may be zoned to a different classification than was contained in the public notice without an additional public hearing after notice required by Section 15.1-431 of the Code of Virginia. An affirmative vote of at least a majority of the members of the governing body shall be required to amend the Zoning Ordinance.

7.2 In the event that the governing body shall deny the petition of any property owner or other petitioner to amend this ordinance, substantially the same petition shall not be reconsidered for a period of six (6) months from the denial by the governing body.

Article 8 - Definitions

8.1 Accessory use or structure: A subordinate use or structure customarily incidental to and located upon the same lot occupied by the main use or building.

8.2 Agriculture: The tilling of the soil, the raising of crops, horticulture, forestry, and gardening, including the keeping of animals and fowl.

8.3 Board, the: When used herein the "Board" shall refer to the Board of Zoning Appeals unless the context clearly indicates otherwise.

8.4 Building: Any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals, or chattels.

8.5 Building, Accessory: A subordinate building, customarily incidental to and located upon the same lot occupied by the main building. No such accessory building shall be used for housekeeping purposes.

8.6 Building, Height of: The height shall be measured from the average elevation of the ground surface along the front of the building.

8.7 Building, Main: The principal building or one of the principal buildings on a lot, or the building or one of the principal buildings housing the principal use on the lot.

8.8 Dwelling, Single-Family: A structure arranged or designed to be occupied by one (1) family, the structure having rooms arranged or designed as a single housekeeping unit with cooking, living, sanitary and sleeping facilities.

8.9 Family: One or more persons occupying a premises and living in a single dwelling unit, as distinguished from an unrelated group occupying a boarding house, lodging house, tourist home, hotel, or fraternity house.

8.10 Frontage: The minimum width of a lot measured from one side line to the other along a straight line on which no point shall be farther away from the street upon which the lot fronts than the building setback line as defined and required herein.

8.11 Lot: A parcel of land occupied or to be occupied by a main structure or a group of main structures and accessory structures, together with such yards, open spaces, lot width and lot areas as are required by this ordinance, either shown on the plat of record or considered as a unit of property and described by metes and bounds.

8.12 Mobile Home: A one-family dwelling unit of vehicular, portable design built on a chassis and designed to be moved from one site to another and to be used with or without a permanent foundation.

8.13 Nonconforming Lot: An otherwise legally platted lot that does not conform to the minimum area or frontage requirements of the ordinance for the district in which it is located.

8.14 Nonconforming Activity: The otherwise legal use of a building or structure or of a tract of land that does not conform to the use regulations of this ordinance for the district in which it is located.

8.15 Nonconforming Structure: An otherwise legal building or structure that does not conform with the lot area, yard, height, lot coverage, or other area regulations of this ordinance, or is designed or intended for a use that does not conform to the use regulations of this ordinance for the district in which it is located.

8.16 Public Facilities: Shall be considered for the purpose of this ordinance to be any public works supplied generally by a governmental organization. Such public works shall include, but not be limited to: public roads, schools, water supply and sewer facilities, and police and fire protection facilities.

8.17 Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground.

8.18 Travel Trailer: A vehicular, portable structure built on a chassis and designed to be used for temporary occupancy for travel, recreational or vacation use.

8.19 Yard: An open space on a lot other than a court, unoccupied and unobstructed from the ground upward, except as otherwise provided herein.

8.19-1 Front. An open space on the same lot as a building between the front line of the building (exclusive of steps) and the front lot or street line, and extending across the full width of the lot.

8.19-2 Rear. An open, unoccupied space on the same lot as a building between the rear line of the building (exclusive of steps) and the rear line of the lot, and extending the full width of the lot.

8.19-3 Side. An open, unoccupied space on the same lot as a building between the side line of the building (exclusive of steps) and the side line of the lot, and extending from the front yard line to the rear yard line.

8.20 Zoning Administrator, the: The official charged with the enforcement of the zoning ordinance. He may be any appointed or elected official who is by formal resolution designated to the position by the governing body. He may serve with or without compensation as determined by the governing body.

Filed
12-3-74
Marie C Durrer
Clerk

Thomas Jefferson Planning District Commission
701 East High Street
Charlottesville, Virginia 22903
Telephone 804/ 977-2870

[RETURN—ITEM 4(A)]

September 16, 1974

Mr. Julius Morris
Greene County Administrator
Court Square
Stanardsville, Virginia 22973

Dear Mr. Morris:

Review by the T.J.P.D.C. staff of the proposed Greenetown Village subdivision on Route 33 near Midway indicates the following:

(1) Complete development of Greenetown Village as proposed will contribute approximately 1,100 new residents to the area.

(2) Based on established standards, the 348 proposed dwelling units will add about 260 students to the County school system.

This development, located as it will be on Route 33 near Midway, will be of such magnitude as to require a thorough review of the entire cluster concept as set forth in the proposed Comprehensive Plan. Since the Plan has not been adopted, it of course has no legal bearing on the Planning Commission's recommendation to the Board of Zoning Appeals.

On the other hand, rebuttle to the developer's presumption in favor of the special use permit can be based upon Sections 5.2-2c and 5.2-1b of the Interim Zoning Ordinance. The latter Section requires that a variance, to be granted, must not be contrary to the public interest.

The attached Annual Revenue-Expenditure Summary indicates that the proposed development will cost the County over $39,000 more <u>each</u> <u>year</u> than the development will contribute

Item #4

in revenue. This summary is based upon a similar one done for the Hollymead development in Albemarle County and no doubt includes some assumptions and errors which, when corrected, will change the deficit figure somewhat. In any event it seems unlikely that revenues from Greenetown Village as planned could ever exceed expenditures. Supporting data for the Summary Sheet will be available for Wednesday night's meeting.

Sincerely,

George V. Evans, Jr.
Senior Planner

GVE:crl
Enclosure

Filed 12-3-74
Marie Alvarez, Rep.

[RETURN—ITEM 4(B)]

A Fiscal Impact Analysis of the Proposed Greenetown Village Subdivision Greene County, Virginia

Based upon a case study of the Hollymead Subdivision entitled The Fiscal Impact of Residential and Commercial Development by Thomas Muller and Grace Dawson; the Urban Institute, Washington, D.C. December, 1972. 140 pp.

Assumptions - Greenetown Village Subdivision

1. Number dwelling units proposed: 348 total; 180 single family d.u.'s and 168 apartment d.u.'s.

2. Population capacity: 1103 persons - 666 in s.f.d.u.'s (180 x 3.7 persons per d.u.) and 168 in apartments (168 x 2.6 persons per d.u.).

3. Number of students at capacity: 261 total; 189 in s.f.d.u.'s (1.05 students per d.u. x 180 d.u.) and 72 in apartment d.u.'s (.43 students per d.u. x 168).

4. Average price per dwelling unit = $25,000 for single family d.u. and $15,000 for each apartment d.u.

5. Estimated annual household income: Single family = $12,500.00 (½ x $25,000.000); Apartment - $7,500.00 (½ x $15,000.00).

6. Total commercial development = 9 acres.

7. Population capacity of 1,103 persons would require about 25 acres in parks and open space based on standards from the Comprehensive Plan.

REVENUE ESTIMATES FROM HOUSEHOLDS

1. Annual Real Property Tax

Greene County effective true real estate tax per $100.00 = .61

Real Property Tax Per Dwelling Unit
Single Family = $152.50 ($25,000.00 x .61)
Apartment = $ 91.50 ($15,000.00 x .61)

2. Personal Property Tax

Greene County tangible personal property tax per $100.00 = $5.50

Personal Property Tax Per Dwelling Unit
Single Family = $82.50 = $950.00 (avg. car loan value) x 1.5 (avg. no. cars per unit) + $75.00 (other pers. prop.) = $1,500.00 (total pers. prop. taxable) x pers. prop. assessment.

Apartment = $45.65 - $650.00 x 1.2 + $50.00 = $830.00 x pers. prop. assessment.

3. Redistribution of State Sales Tax Revenue

State sales tax per school age population = $102.45
$157,676 (sales tax return 1974) ÷ 1,539 (school age population 1970)

Annual State Sales Tax Per Dwelling Unit
Single Family = $107.57 = 1.05 (no. of students) x 102.45
Apartment = $ 44.05 = .43 (no. of students) x 102.45

4. Local Sales Tax Revenue

Annual Local Sales Tax Per Dwelling Unit
Single Family = $25.63 = $12,500 (inc. per unit) x 0.41 (income taxable) = 51.25 (annual sales tax) x ½ (sales in Greene County).

Apartment = $18.00 = $7,500 x .048 = $36.00 x ½.

5. Utility Taxes

Annual Tax Per Household
Single Family = $27.00 = $2.25 (max. rate) x 12 (months)
Apartment = $27.00

6. Distribution of ABC Tax Revenue

Annual Revenue Per Unit
Single Family = $11.73 = 3.7 (persons per household) x $3.17 (avg. per capita refund 1973)

Apartment = $8.24 = 2.6 x $3.17

TOTAL ANNUAL COUNTY REVENUES
FROM HOUSEHOLDS IN GREENETOWN VILLAGE

Revenue Source	Single Family	Apartment
Real Property Tax	$152.50	$91.50
Personal Property Tax	82.50	45.65
Local Sales Tax (1%)	25.63	18.00
State Sales Tax Redist.	107.57	44.05
Utilities Tax	27.00	27.00
Motor Vehicles Regis.	15.00	12.00
ABC Redistribution	11.73	8.24
Other Revenues(a)	12.60	8.80
TOTAL PER UNIT	$434.53	$255.24
No. of Units	180	168
Total Revenue	78,215	42,880
GRAND TOTAL REVENUE	$121,095	

(a) Includes fees, fines, etc., estimated at $3.40 per capita.

OPERATING EXPENDITURES FOR SERVICES USED BY HOUSEHOLDS IN GREENETOWN VILLAGE

Local Operating Expenditures Per Average Daily Membership (ADM) (1,462 students) = $324.08 = $1,356,264 (total school operations costs) - $882,459 (State-Fed. school operation funds) = $473,805 ÷ 1,462.

1. Operating Expenditures Per Student for Education

Annual Operating Expenditures Per Dwelling Unit
Single Family = $348.42 = 1.05 (students per d.u.) x $324.08 (ADM value) = 340.28 + $8.14 (add. ed. costs).

Apartment = $145.07 = .43 x $324.08 = $139.35 + $5.72

2. Non-Education Operating Expenditures on Basis of Household Income

a. Library - annual oper. exp. per d.u.
Single Family = $8.40 = $12.53 (Hollymead) x .67 (% of Hollymead income)

Apartment = $7.10 = $8.76 x .81

b. Landfill - annual oper. exp. per d.u.
Single Family = $4.00 = $5.98 (Hollymead) x .67
Apartment = $3.39 = $5.98 x .81

c. Recreation - annual oper. exp. per d.u.
Single Family = .88 = 1.32 (Hollymead) x .67
Apartment = .75 = .92 (Hollymead) x .81

3. Non-Education Operating Expenditures on a Per Capita Basis

a. Law Enforcement - annual oper. exp. per d.u.
Single Family = $14.02 = $3.79 (Greene Co. per capita exp.) x 3.7 (persons per household).

Apartment = $9.85 = $3.79 x 2.6

b. Fire Prevention - annual oper. exp. per d.u.
Single Family = .30 = .08 (Greene Co. per capita exp.) x 3.7

Apartment = .21 = .08 x 2.6

c. Health - annual oper. exp. per d.u.
Single Family = $3.26 = .88 (50% Greene Co. per capita exp.) x 3.7

Apartment = $2.29 - .88 x 2.6

d. General Government - annual oper. exp. per d.u.
Single Family = $76.41 = 20.65 (Greene Co. per capita exp.*) x 3.7

Apartment = $53.69 = 20.65 x 2.6

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* County Adm.	$26,190.00
Assess. Tax Prop.	24,220.00
Collection & Disb. of Taxes	10,238.00
Recording Documents	10,950.00
Adm. of Justice	11,489.00
Elections	7,256.00
Bldg. & Grd. Maint.	16,890.00
Misc. Oper.	17,300.00
Other Misc.	5,535.00
TOTAL	$130,068.00

ALLOCATION OF OPERATING EXPENDITURES
TO GREENETOWN VILLAGE

Service	Single Family	Apartment
Education	$348.42	$145.07
Library	8.40	7.10
Landfill	4.00	3.39
Recreation	1.32	.92
Law Enforcement	14.02	9.85
Fire Prevention	.30	.21
Health	3.26	2.29
General Government	76.41	53.69
TOTAL PER UNIT	$456.13	$222.52
No. of Units	180	168
Total Expenditure	82,103	37,383
Grand Total Expenditure	$119,486	

CAPITAL EXPENDITURES ALLOCATED TO HOUSEHOLDS IN GREENETOWN VILLAGE

1. Capital Expenditures for Schools

Annual Student Cost Per Dwelling Unit - 30 Year Bond
Single Family = $182.27 = $2,669 (capital exp. per student) x 1.05 (students per d.u.) ÷ ammortized 30 year bond.

Apartment = $74.68 = 2.669 x .43 ÷ bond.

2. Capital Expenditures for Recreation
25 acres at $2000.00 per acre

Annual Cost Per Dwelling Unit
Single Family = $12.77 = 143.68 (per unit cost) + $38.79 (per unit cost ADJ for income) ÷ ammortzied 30 year bond.

Apartment = $7.34 = 143.68 - 3879 ÷ bond.

3. Capital Expenditures for Governmental Facilities

Annual Cost Per Dwelling Unit
Single Family = $6.25 = $96.20 (Hollymead) ÷ ammortized 30 year bond.

Apartment = $4.40 = $67.60 ÷ 30 year bond.

4. Capital Expenditures for Landfill

Annual Cost Per Dwelling Unit
Single Family = .19 = .05 (per capita landfill site rent) x 3.7 persons per d.u.)

Apartment = .13 = .05 x 2.6.

CAPITAL EXPENDITURES
HOUSEHOLDS IN GREENETOWN VILLAGE

	Single Family		Apartment	
Facility	20 Year Bond	30 Year Bond	20 Year Bond	30 Year Bond
Schools (primary and secondary)	$224.72	$182.27	$92.07	$74.68
Recreation	14.59	12.77	8.39	7.34
Government	7.72	6.25	4.11	4.40
Subtotal	247.03	201.29	104.57	86.42
Landfill	.19	.19	.13	.13
TOTAL	$247.22	$201.48	$104.70	$86.55

The total net annual local revenue generated by the commercial area on the proposed plat for Greenetown Village is estimated to be $22,950, computed as follows:

1. Total Proposed Commercial Acreage = 9 acres
   (Area west of entrance approx. 650' x 480' = 7.16
   Area east of entrance approx. 398' x 200' = 1.83
   8.99)

2. Total Estimated Local Net Revenue from Proposed Commercial Acreage = $23,193

(a. Real property tax/acre	$1,668.00*
less real property tax revenue from unimproved land appraised at $900/acre and taxed at .61/$100 true tax	- 5.49
	$1,662.51
b. Personal property tax/acre	671.00*
c. Utility tax/acre	1.38*
d. Estimated fees, license/acre	1.05*
Total local revenue/acre	$2,577.00
Number of acres	9
Total local revenues for 9 acres	$23,193.00)

3. Estimated Total General Government Annual Expenses generated by proposed commercial acreage = $603.00. Based on an estimate that Greene County's costs will be 1/7 of the $470/acre estimated costs for Hollymead in Albemarle County. The estimated cost/acre for the proposed commercial development in Greene County would be $67/acre x 9 acres = $603.00.

4. Therefore, the total net revenue (annual) generated by the proposed commercial development = $23,193
   - 603
   $22,590

* Revenue figures are those used in the Hollymead study and are generous for Greene County, considering that family incomes will be lower than for Hollymead.

Greenetown Village: Total Annual Revenue-Expenditure Summary

		(1)		(2)		Capital Expenditures[a] (3) Greenetown Village-Linked			
						Cost Per Unit		Total Cost	
	No. Units	Revenue Per Unit	Total Revenue	Operating Expenditures Per Unit	Total Operating Expenditures	20-Year	30-Year	20-Year	30-Year
gle Family	180	$434.53	$78,215	$ 456.13	$ 82,103	$247.22	$201.48	$45,000	$36,266
rtment	168	255.24	42,880	222.52	37,383	104.70	86.55	17,590	14,540
iness Enterprises	9 acres	2,577.00	23,193	67.00	603				(c)
total			144,288		120,090			62,590	50,806
sting Land Use	N.A.	N.A.	609	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
/ PER ANNUM			144,288		120,090			62,590	50,806
						Add Share General Capital Expenditures			21,000

TOTAL ANNUAL REVENUES = $ 144,288.00
TOTAL ANNUAL EXPENDITURES[b] = $120,090.00 + 50,806.00 + 21,000.00 = 191,896.00
ANNUAL DEFICIT = $191,896.00 - 144,288.00 = 47,608.00

a. 5 percent bonds
b. 30-year bonds
c. water supply, landfill, capital cost not computed.

Filed 12-3-74 Marie C. Duffy

[RETURN—ITEM NO. 8]

Filed December 3, 1974

The Greene County Planning Commission met on Wednesday. September 18, 1974 with following present: Thomas Lawson, Eugene Baker, S. C. Trimmer, Frank Lamb, Sterling Gibson, Harold Estes, Ronald Morris. Also Julius Morris, George Evans, and other interested citizens.

The minutes of the previous meeting were approved as read. However, Mr. Lawson announced that due to the fact the printer could not have the Comprehensive Plan ready for the public hearing September 28, 1974, it will now be held on October 12, 1974, beginning at 9:00 a.m. in the County Courthouse.

A motion was made by Eugene Baker that in the future a copy of the minutes be mailed to each member of the Planning Commission prior to the meeting, and dispense with the reading of minutes at the regular meetings. Seconded by Ronald Morris and carried by unanimous vote.

The following requests for special use permits and variances were reviewed:

Case No. 74-41

Elsie M. Morris: Two proposed lots containing 1.001 acres, located off Rt. 33 on the old Thomas Gilbert Road, Near Orange County line. Special exception on lot size.

Motion by Eugene Baker that application be approved since it presents a hardship case. Seconded by Sterling Gibson and carried by unanimous vote.

Case No. 74-42

S. A. Reynolds: 3.734 acres adjoining U.S. Rt. 29 directly across road from Louin Collier. Request special use permit for mobile home sales office and service.

According to the Comprehensive Plan this area is not in the cluster development area. Also the plan specified that no commercial business be established on Rt. 29 between Ruckersville and the Corner Store.

Motion by Sterling Gibson that the application be denied since it is not compatible with the Comprehensive Plan for Greene County. Seconded by Eugene Baker and carried by unanimous vote.

Case No. 74-43

Ilia L. Brock Bullock: 1.85 acres near Stanardsville, off Rt. 230. Request for special use permit for mobile home.

Mr. Thornton states that there is adequate space for a septic system on this property.

Motion by Ronald Morris that the application be approved on the basis that its denial would cause a hardship as outlined in article 5.3-1-D of the Interim Zoning Ordinance. The trailer shall be placed on a permanent foundation, shall meet the county health and building codes, and off-street parking shall be provided. Seconded by Frank Lamb and carried by unanimous vote.

Case No. 74-44

Bennett T. Matthews: Proposed subdivision containing 11.3850 acres (180 res. lots) including rental and commercial lots, located on north side of U.S. 33, approx. 0.50 mile west of Ruckersville. Request special exception on lot size and special use permits for apartment complexes and commercial uses.

Mr. Parker, attorney for Mr. Matthews, stated that Mr. Matthews had spent approximately $46,000 to date in getting this property developed and unless he were allowed to continue an undue hardship would occur as specified in the Interim Zoning Ordinance article 5.3-1-D. Water will be supplied to the subdivision by the Rapidan Water Authority. The subdivision will have its own sewage treatment plant, for which the Water Control Board has given preliminary approval. The roads that will be constructed will come up to state specifications. There is an area that is in the flood plain on which no construction will be done, and the developer will have his own pumping system. A recreation area will be provided with a lake, and picnic area. The lot sizes comply with the limitations of the Interim Zoning Ordinance. Mr. Matthews stated that the land and development lends itself to Greene County in that it will provide jobs and housing, and will help the economy of the county. The homes will range in cost from $25,000 to $45,000. The subdivision, when completed will accommodate approximately 2600 people.

Mr. Harold Lacey spoke in opposition to the subdivision, stating that the schools would be severely affected, the added sewage would most likely spill over into existing streams. Also the Land Use Map for

Greene County discourages the conversion of farm land into land for commercial use.

Mr. Bean spoke in opposition to the plan, stating that the schools already are extremely overcrowded. According to the Comprehensive Plan the subdivision would not be in one of the proposed cluster developments.

Mr. Thornton, Sanitarian, gave an unbiased opinion stating that no legal inspection or approval of the sewage system has been made. Inspection and maintenance would be made by the central office in Richmond.

Mr. Sterling Gibson, an adjoining landowner, states that the map prepared by the engineer does not include enough land in the flood plain. Mr. Gibson is very familiar with the territory and is positive more land is subject to flooding than has been mapped in.

Mr. Travenor Harlow requested the Planning Commission to keep in mind the extra load this subdivision would require of the Rapidan Water Authority.

It is estimated that approximately 2800 cars would use Rt. 33 from this subdivision per day, and approximately 1400 cars per day would patronize the shopping center.

Mr. Eugene Baker stated that he felt Mr. Matthews and his staff had done a very efficient job in presenting their request. Mr. Baker made a motion that the application be denied for the following reasons:

1. The hardship case had not been proven.
2. The plan is not compatible with the Land Use Plan for Greene County.
3. According to section 5.2-1-b of the Interim Zoning Ordinance this plan is not in the public interest of the citizens of Greene County.

Seconded by Ronald Morris, and carried by a vote of six in favor and one abstention.

There still seems to be some disunity regarding the acreage for lot sizes in the mountain area. A workshop is planned for Wednesday, October 9, 1974 at 7:30 p.m. for discussing some of the problems that need to be resolved before the public hearing.

With no further business the meeting adjourned.

* * *

[RETURN—ITEM NO. 9]

Filed December 3, 1974

The Board of Zoning Appeals of Greene County met on Wednesday, September 25, 1974, 8:00 p.m. with following present: Ronald Lamm, Thomas Lawson, B. G. Snow, Ellis Durrer, and Hugo Scott. Also Commonwealth Attorney, David C. Dickey, and County Administrator, Julius Morris.

The following cases were presented and acted upon:

Case No. 74-40

Charles J. Walter (Proposed subdivision containing 18.5 acres (14 lots) on Rt. 637) Request special exception on lot size.

This case was continued from the August meeting.

Mr. Walter appeared before the board and stated that he wished to cancel his application. He was advised by the Commonwealth Attorney that should he re-apply at a later date, he would not come under the grandfather clause of the Zoning Ordinance.

Case No. 74-41

Elsie M. Morris (Two proposed lots containing 1.001 acres located off Rt. 33 on old Thomas Gilbert Road near Orange Co. Line) Request special exception on lot size.

Sworn in were Mrs. Elsie Morris, Shirley Knight, Alver Knight, Stuart Knight, and Betty Knight.

Mrs. Morris stated her two daughters had owned the land since 1969 but had not had it recorded. Her husband died suddenly without a will.

Motion by Thomas Lawson that the application be approved since it presents a hardship on these two families. Seconded by Ellis Durrer and carried by unanimous vote.

Case No. 74-42

S. A. Reynolds: 3.734 acres adjoining U.S. Rt. 29 directly across the road from Louin Collier. Request special use permit for mobile home sales office and service.

Since no persons were present to speak on behalf of this case, the following motion was made.

Motion by G. B. Snow that the recommendation of the Planning Commission be accepted, which stated that the application should be denied since it is not compatible with the proposed Comprehensive Plan for Greene County. Seconded by Hugo Scott and carried by unanimous vote.

* * *

Case No. 74-44

Bennett T. Matthews—Proposed subdivision containing 111.3850 acres (180 residential lots) including rental and commercial lots, located on north side of U.S. 33 approximately 0.50 mile west of Ruckersville, requests special exception on lot size and special use permits for apartment complexes and commercial uses.

The following were sworn in in order to make statements regarding the case:

Bennett T. Matthews, Mr. Lowe, James Harris, Larry Tate, Ronald Morris, Mr. George Evans, Ernest Williams, Charles Shifflett, Donald Bean, Claude Herring, Harold Lacey, Mr. Waverly Parker, Mr. Vivier.

Mr. David Dickey, Commonwealth Attorney, stated that preliminary approval had been obtained prior to the passage of the Interim Zoning Ordinance. Mr. Dickey also noted that Mr. Matthews had two applications pending before the Board. First, for a special exception on lot size to which the provisions of sections 5.3-1-d applied, and the second a special use permit for apartment houses to which the provisions of that section did not apply since apartment houses are not regulated by the subdivision ordinance in any way. Mr. Dickey also said it would be inappropriate to apply the strict time limits generally applicable under the procedures of the Board of Zoning Appeals, to which statement the chairman agreed.

Mr. Parker, attorney for Mr. Matthews, stated that this is a case that comes under article 5.3-1-d of the Interim Zoning Ordinance under hardship clause. It is requested that this application be approved by the Board for the following reasons. There is a document from Mr. Matthews stating that from December 1973 to October 1, 1974 he expended approximately $6700.00. The land was purchased, surveyed, legal fees paid, plats made prior to the passage of the Interim Zoning Ordinance. There will be a great loss of money unless Mr. Matthews is allowed to proceed with his plans. Mr. Matthews is entitled to a

permit and his staff will seed a rebuttal from any surrounding land owners.

Mr. Claude Herring, surrounding landowner, spoke in opposition to the application for the following reasons:

The lots are too small, and would approve the lots only if sold in 2 acre parcels. He feels that he will not be allowed any privacy with a subdivision so close. The schools are over crowded now. This subdivision would cause a great tax burden on the citizens of the county.

Mr. Ronald Bean, surrounding landowner, opposes the subdivision on the grounds that Mr. Matthews has not proven a hardship on his expenditures. This subdivision conflicts with the master comprehensive plan for Greene County. The land across the road from this proposed subdivision has been sold and will no doubt be subdivided also. The proposed comprehensive plan is not designed for this kind of growth. The schools are in sad condition now, with 168 pupils in the fifth grade. It will cost the county considerably more money than it will bring in when consideration is given to the added cost for education, highways, health service, and police and fire protection.

Mr. Ernest Williams, surrounding landowner, objects to the subdivision because of the serious trouble it would cause with the water supply. He doesn't feel that the present water supply would be adequate to supply this large number of people. The schools can in no way keep ahead of the fast increase in enrollment.

Mr. Larry Tate is opposed to the subdivision mainly for what it would do to the school system. A new school is being proposed, but it would be filled to capacity by the time it is opened. The population for the area would be tripled in view of the projection that has been made. Mr. Matthews previously stated that the project would be worth 17 million dollars. According to what he has spent up to this time ($6700) no hardship has been exhibited. Mr. Tate also endorses the 2 acre lots. He also feels that the proposed new highway could in no way handle the traffic that would be going in and out of the subdivision each day.

Mr. Charles Shifflett is opposed to the subdivision because of the seriousness of the school system. The water supply would also be in a dangerous situation. At the Planning Commission meeting Mr. Sterling Gibson, an adjoining landowner, reviewed the plat and said that some of the area that should be in the flood plain had not been shown. This gave Mr. Shifflett some concern. The homes in this subdivision, according to Mr. Matthews, will cost from $25,000 to $45,000 and will sit on ¼ acre lots. They should be at least two acres.

Mr. Ronald Morris is opposed to the subdivision mainly for the effect it would have on the schools. We should be planning for better schools, but with this many new citizens our schools would be made worse. He also doubts that the present water supply would be adequate. With the added traffic this subdivision would cause on the highways, there could be a 25 mile speed limit to Charlottesville. Neither is the subdivision in compliance with the proposed Comprehensive Plan.

Mr. Vivier, representative from the Rapidan Water Supply, stated that he had had no contact from the developers and there was no concrete studies on file. He said that they could take care of Greenmarle subdivision and possibly could accommodate this subdivision. The low flow of the Rapidan River is a million gallons per day. The Water Authority is now servicing about ⅓ of its ability. He thinks they could take care of twice the number of hook-ons they now have.

Mr. George Evans opposes the subdivision because it is contrary to the Comprehensive Plan. Mr. Evans noted that the Comprehensive Plan was based on an intensive study of existing land use and growth patterns in Greene County, taking many hours of work. There would have to be an entirely new evaluation of the plan itself. In the area of public interest Mr. Evans has made a study that reveals that the subdivision would cost the county a deficit of approximately $47,000 per year, mainly because of the heavy burden on the educational system, the highway department, public health, police and fire protection. It can in no way pay for itself.

Mr. Harold Lacey objects to the subdivision because there is a question about the adequacy of the sewage system. He questioned what would happen to the sludge. He was told that it would be burned, or disposed of in whatever way the state directed. He was also advised that the landowners would maintain the plant. The Comprehensive Plan proposes Rt. 33 as a main arterial highway from Ruckersville to Swift Run Gap. This subdivision would cause it to become a collector. Mr. Lacey also objects to what this subdivision would do to the schools in the county.

Mr. Thornton, county sanitarian, who had been sworn in on another case, stated that since this subdivision would accommodate more than 100 persons the inspection of the sewage treatment plant would be made by the state health department.

In Mr. Parker's rebuttal remarks he stated that with respect to the Comprehensive Plan for Greene County, this plan has not been passed

and is not in effect at this time, so therefore, it is not an issue in this case. As for a hardship, he feels that if Mr. Matthews makes less money without the approval of the plan than he would with the approval of the plan, a hardship has been established. The subdivision across the road from the property in question is not relevant to the case at this time. Mr. Vivier's remarks seemed favorable to the application. It was revealed that the developer had made application with the proper individual from Orange, Virginia and it was on file. Mr. Parker further stated that there was no hard proof this subdivision would cost the county any money. Furthermore, if the county is to grow it must have people and it is the obligation of the county to provide schools, highways, and utilities for its citizens.

Mr. James Harris, surveyor for Mr. Matthews, stated that there would be approximately 2800 cars per day in and out of the subdivision from the apartments and homes. There would be approximately 4000 cars per day from the entire development. The project is designed for five to seven years in completion. He feels that the new proposed route 33 would be adequate to take care of the traffic.

Mr. Hugo Scott questioned the maintenance of the sewage system. He was advised that it would be a public utility and would be supervised by the state. Under current law any problem with the system, makes it the problem of the landowners.

Mr. Harold Lacey pointed out that only the preliminary plan on the sewage system had been approved by the state.

Mr. Lee Estes was sworn in, and reminded the Board that their main question to answer was whether or not this case is a hardship case.

Preliminary approval for the subdivision was granted by Mr. Julius Morris on February 26, 1974.

Mr. Lowe, Zoning Administrator of Culpeper County was on Mr. Matthews' staff, and stated that he feels this is a well designed subdivision that allows for recreation, green areas, trees, etc. The one entrance road into the subdivision is sufficient for the traffic it will entail.

With no further comments to be made, the chairman called for a motion.

Motion by Ellis Durrer that the application be denied on the grounds that no hardship financially has been proven, and the plan is not compatible with the proposed Comprehensive Plan for Greene County. Seconded by Thomas Lawson.

Mr. Ronald Lamm referred to a statement by Judge Berry at the

time the Board was installed, which advised them that if the citizens of the county wanted an application approved, it should be approved, but if the citizens of the county objected to an application it should be denied. He felt the citizens had expressed a strong objection.

The vote on the above motion was unanimous.

The chairman then informed Mr. Parker that he could ask the Commonwealth Attorney to inform him concerning his future legal remedies on this matter, at which point the Commonwealth Attorney stated that he thought Mr. Parker knew his remedies, and Mr. Parker said that he did indeed know all of his remedies in this matter.

In further business the minutes of the August meeting were approved.

Mr. Thornton stated that he had received complaints from some of the residents on South River that the water in South River was contaminated. He had taken several samples and the report revealed that all samples were in the normal range of bacterial count. No evidence of contamination.

Mr. Vivier emphasized that the Water Authority desperately needs new customers if it is to stay in business. It's true they have had problems, but they are being corrected.

With no further business to come before the Board the meeting adjourned.

/s/ Virginia Eddins
Virginia Eddins, Secretary

* * *

1 * * *

2 Now, Mr. Parker,

3 I believe you were the moving party for the appeal from the

4 Board of Zoning Appeals, and a writ of certiorari was granted,

5 Now, I've indicated to you all in the other conference or the

6 preliminary hearing that we had, that I would not limit you

7 by any specific degree to the evidence that you might present,

8 but where ever evidence can be substantiated by bringing the

9 record up from the previous hearing or proceedings, that would be

10 done and anything that would be pertinent that might be added to

11 that would be considered by the Court as being valid evidence.

12 So long as it doesn't go into an undue delay or burdening of

13 the record.

14 PARKER: May I suggest at this point. . .

15 COURT: All right.

16 PARKER: . . .that the record - much of the record comes

17 up in this context, that there is of course - there is one item

18 in the return . . . many items in return, which we might like

19 to record what is said. There is one item in the return we

20 believe does not belong in the return in any way shape or form

21 and we would like at this time move to exclude that item from

22 the return.

23 COURT: Which item are you referring to?

24 PARKER: The item 5, I believe it is, sir. . . this is

25 included as item 5. . . . it's too big to actually fit in the file.

The grounds for that Your Honor are very simple. That plan was not enacted until after this permit had been applied for. It was not enacted until after the hearing before the Planning Commission and it was not enacted until after the hearing before the Board of Zoning Appeals. So there's no way that plan as a plan could have been before the Board of Zoning Appeals. It was returned as a comprehensive plan proposal for Greene County, but it had no reasonable effect as a plan at that time. It seems to me that anything that was in there will have to come in through .....I think it can - a lot of things in there can come in and it could be otherwise pertinent, through the testimony of various and sundry .....I don't feel like that plan as a plan should properly come before this Court.

COURT: All right, we'll take that up then if it's offered - you object to it being brought up as a part of the record, since it was not officially as an adopted plan before either of the administrative bodies. All right we'll keep that in mind now as far as the evidence, I take it that that would be offered by the Board of Zoning Appeals or the County?

SLAUGHTER: If it please the Court, perhaps this is a good time to get into the question of procedure. As we understand it although the statutes in the cases aren't entirely clear, the certification by the chairman, Mr. Lamm, of the record, pursuant to your order of certiorari, effectively establishes everything in the record - as a record, not unlike a record on

1 appeal - in other words, what I'm saying is I think all of that
2 is in the record subject to motion by Mr. Parker to strike.
3 COURT: Now let me see what the order bringing it up
4 does recite, I haven't been that familiar with the terminology
5 of it. It was entered up some time back.
6 PARKER: I take it Your Honor with my objection, it
7 doesn't make too much difference whether the plan is sitting
8 up there on the desk or not. The force of my objection is that
9 it may not be considered as a plan for purposes of this hearing
10 in this Court. In fact one of my objections is that the Board
11 made a decision based on that plan as proposed down below,
12 in that sense it certainly is part of the record down below....
13 dealing with Mr. Slaughter's argument, it certainly was something
14 that they made their decision on down below and it's something
15 which we take grave exception - that they did so. But our
16 objection is that it must not come before this Court with
17 any force other than just something that was considered below.
18 COURT: Well, the question is whether its already in
19 the record, or whether you wish to have it deleted. Now Mr.
20 Slaughter says pursuant to the order of November 13, which directed
21 that the Board make up within 10 days and serve upon you as
22 attorney for Mr. Matthews, the return set forth in 15.1-497
23 which I take it establishes items that become part of the record.
24 You have been served with a notice that this was going to be
25 sent up as part of this.....you are now objecting to that being

1 an official part of the record?

2 PARKER: Yes sir, I don't think - and yet on the

3 other hand, the more I think of it, the more I think it was

4 part of the record, but never should have been - it shouldn't

5 be here. So that the objection is not so much that it is a

6 part of the record, but that it must not be considered...

7 COURT: You're saying it's irrelevant?

8 PARKER: Yes sir. It's irrelevant in its present

9 form. It may well be something that ...

10 COURT: Was it before the Board of Zoning Appeals?

11 PARKER: I think it was.

12 COURT: Was it objected to there?

13 PARKER: Yes sir, I believe we did object to it before

14 the Board of Zoning Appeals as.....well, we objected very

15 strenuously - we made a point before the Board of Zoning Appeals

16 that there was no comprehensive plan for Greene County at that

17 time.....

18 DICKEY: I think as a technical matter, no objection

19 was made to its being there by Mr. Parker and by Mr. Matthews,

20 that instead they objected to its being given great weight.

21 PARKER: Object to its being given any weight at all.

22 We objected to it being considered.

23 DICKEY: They didn't object to its being in the record

24 before the Board is my ....

25 COURT: Since this is now the first instance which we

have an official transcript, it may be well for you all to state your position more forcibly on this point because if it is officially a part of the record, then it's not up to this Court to rule on its admissibility. If it's going to be entered as new evidence it would be up to this Court.

PARKER: But it's going to be up to this Court, Your Honor, to determine - let me see if I can put it this way, there are two things that I understand - administrative procedure, which come before courts of law. One is - and this is where administrative proceeding is presumptive - based on proper law, is this within the realm of what a reasonable man might do...if he finds the proper standards in other words. If he's heard the right evidence and made - and understood the law, it gets about the same weight that a jury verdict would get - on the fact, but the Court cannot advocate even in any proceeding, which a judicial review is provided for, the Court cannot aggrogate - aggrogate its responsibility to rule on issues of law. And the question which arises in this Court as a matter of law, can that comprehensive plan be given any weight, as a comprehensive plan? And the answer it seems to me is this Court has to make, is no, this plan was not enacted at that time. It was not a comprehensive plan. It cannot be given any weight as a comprehensive plan.

COURT: All right, as I understand it, now you're not complaining because the Board of Zoning Appeals was tainted with improper evidence, merely that it had something before it whic h

1 it gave undue weight to or gave weight when it shouldn't have
2 had any.
3 PARKER: It shouldn't have had any weight, therefore
4 it should not have any weight, shouldn't have been considered,
5 shouldn't even have been admitted.
6 COURT: Well, that's what I'm getting at.
7 PARKER: Shouldn't have been admitted.
8 COURT: Is that your position?
9 PARKER: That's my position.
10 COURT: Was that your position when it was tendered in
11 the Board of Zoning Appeals, that's the question?
12 PARKER: I don't think it was ever formally tendered.
13 People kept referring to it as the proposed plan. It was
14 well known to the Board at that time, it was well known to every-
15 one there. I made the statement which was before the Board at
16 that time, that this plan was not a plan at all from the stand-
17 point of what that Board should consider at that time.
18 COURT: You say it has since then been adopted?
19 PARKER: Yes sir, but I think we have to consider the
20 law as of the time the decision was - probably as of the time the
21 allegation was filed, but in any event at the time the first
22 decision was made, and which was taken at the time the last
23 decision was made, that is with respect to the Board of Zoning
24 Appeals.
25 COURT: All right, now, let's try to resolve this and

1 move on with the substance of this case. The Court will ...

2 SLAUGHTER: May it please the Court...

3 COURT: Yes sir.

4 SLAUGHTER: It occurs to me we might keep the

5 procedure sort of in 1, 2,3 fashion by asking if the Court would

6 be willing to make a decision first...Mr. Parker may have no

7 objection to this, as to whether the items in the record as

8 certified to you, must be resubmitted as evidence or whether they

9 are automatically the record and automatically before the

10 Court subject to an objection of Mr. Parker. This is just

11 a technical question from my standpoint.

12 COURT: Is there any other point other than this -

13 the comprehensive plan that would be the subject of the same

14 question?

15 PARKER: No sir...the...

16 COURT: This is the only issue?

17 PARKER: The only issue as to record.

18 COURT: Well, now I was about to make this ruling,

19 which I think will resolve it. That the Court will consider that

20 as part of the record with this stipulation. That any objection

21 to the weight to be given that item would be reconsidered in

22 this hearing, but it is properly designated and properly identi-

23 fied, so that it would not require any further formal identifica-

24 tion or proof. The question is as to its weight and whether or

25 not it is to be properly considered either by the Board of Zoning

1 Appeals or this Court with regard to the issue in this case.

2 PARKER: Yes sir, I made an objection before the Board

3 of Zoning Appeals, I have in the minutes...

4 COURT: Are they in the...

5 PARKER: Yes sir..... I have in the minutes. . . .

6 Mr. Parker has stated . . . . with respect to the comprehensive

7 plan for Greene County this plan has not been passed and is not

8 in effect at this time, so therefore it is not an issue in this

9 case. The force of my objection is not so much to the

10 fact that it was returned, but it goes along the line of what

11 Mr. Slaughter suggested - the force of the objection is it

12 ought to no way be considered in this case as a - as evidence.

13 It is improper it would seem to me indeed for the Board of Appeals

14 to consider it at that ...

15 COURT: You all can rehash that at the conclusion of

16 all the evidence as to whether that is to be part of the

17 determination or whether it should be excluded. But now what we

18 have here at this point is a part of the record in this case

19 as it's sent up would include the comprehensive plan for whatever

20 purpose it might be properly admitted, or rejected in its

21 entirety.

22 PARKER: All sir, in that case I take it that technically

23 the Court is saying that for purposes of trying to figure how

24 we are going to go forward with this case -

25 COURT: Well, you don't need to introduce anything that's

1 already part of the record. It doesn't require any proof, you
2 can get on with other evidence and save this for the matter of
3 argument.
4 PARKER: It would seem to me, sir, that all of these
5 items ought to be supported by the .....placed into evidence at
6 this time..
7 COURT: That's not the way I view the record, they
8 don't have to be readmitted Mr. Parker, but they may be
9 attacked of course, subject to this Court's ruling as to their
10 weight or relevancy as you've already indicated.
11 PARKER: All right.
12 COURT: It seems that the comprehensive plan is the
13 only item that's subject to that objection.
14 PARKER: It's the only matter that's subject to the
15 objection that is wholly irrelevant. There are other things
16 here that we will attack the weight of.
17 COURT: Well, what I'm going to caution you all about
18 now, you all are going to run out of time if you've got any
19 substantial evidence to add to this - we'd better get on with
20 it.
21 PARKER: I'm about to sit down, Judge.
22 COURT: All right. Now, let's move on.
23 SLAUGHTER: May it please the Court...
24 COURT: All right, Mr. Slaughter.
25 SLAUGHTER: I hope I'm able to sit down in just a

1 moment, but what I mentioned Your Honor - I will shorten things
2 down. We...
3 PARKER: This will be on Mr. Slaughter's time, Judge...
4 SLAUGHTER: If it please the Court, we of course have
5 Mr. Evans here, who drafted the plan and it was our thought
6 that the plan and I think Your Honor's ruling covers this - it
7 would be well to have the plan there for purposes of review.
8 It's obviously much less time consuming to have the plan there
9 before the Court than to have to ask Mr. Evans to go forward and
10 try to rehash the plan. Also, it was really the best evidence
11 and we're not taking the position of course that at the time
12 the plan was an official plan. We're trying to simply indicate
13 the plan in that form, which had already been formulated, and
14 as the records show it was in that form later adopted. And it's
15 not the plan itself that we are introducing it for, it's really
16 the best evidence of the planning that was in the minds of the
17 Court.
18 COURT: Now from that standpoint it may be that
19 it should be further identified as an adopted plan rather than
20 a proposed plan because that took place after the administrative
21 body dealt with. For that purpose you probably ought to introduce
22 some evidence as to when it was adopted and whether it was adopted
23 in the same form as the Board of Zoning Appeals then had it.
24 SLAUGHTER: Yes sir, we'll...
25 COURT: There could have been some modifications theoret

1 cally.

2 SLAUGHTER: We'll do that too - Mr. Morris....

3 COURT: Yes sir.

4 SLAUGHTER: We have a certified copy...

5 COURT: All right. That's understood.

6 PARKER: All I want to do is note my exceptions - if
7 the Court is ruling on that, note my exceptions to the Court's
8 considering the comprehensive plan in any form, as a plan. I
9 want to make it clear.

10 COURT: I understand that. All right, now, as you
11 all know this is a combination appeal and trial denovo, so
12 it would be appropriate at this time that the petitioner introduce
13 such additional evidence that is not already included in the
14 notice that has been presented to counsel and which indicates
15 the record which has already come up. So anything that's already
16 in the record can be presented to the Court and considered in
17 final argument. Mr. Parker, do you propose to make any opening
18 statement?

19 PARKER: Yes sir.

20 COURT: All right.

21 PARKER: Your Honor, I'm going to be as brief as I
22 can. This case comes on the ordinance the County itself passed.
23 The validity of that ordinance is not in question here. It's
24 just not in question before this Court at this time. In their
25 oath - the County just like the developer is bound by that ordinance.

1 . .as is the developer. And in that ordinance itself, there
2 was provided a presumption which I take it favors this developer
3 with respect to special use or special assessment. . .any sub-
4 divider as defined in the - on page 9 of the ordinance, which
5 is paragraph. . .
6 COURT: I don't know that it's numbered, but if you
7 will refer to the article and section number. .
8 PARKER: 5.3-1-d. . .
9 COURT: All right, I have it.
10 PARKER: . . any subdivider as defined in the sub-
11 division ordinance of Greene County who, in good faith, and
12 prior to the passage of this ordinance, has secured preliminary
13 approval for a subdivision under the provisions of the aforesaid
14 subdivision ordinance, and who has complied at the time of the
15 application for a special use permit, and continues to comply
16 in the future with all relevant time limits prescribed by the
17 Greene County Subdivision Ordinance, shall be entitled, if the
18 passage of this ordinance has worked a financial hardship on
19 him, to a rebuttable presumption in favor of the granting of
20 such a special use permit for the said subdivision as prelimin-
21 arily approved under the provisions of the subdivision ordinance.
22 Evidence necessary to rebut this presumption shall be based upon
23 the standards set forth in §5.2-1 b. and §5.2-2 (a,b,c). Your
24 Honor, as I understand that, that put this case entirely impossible
25 before the Board of Zoning. We are planning to show that such/ hardship. . .we

1 have complied in that respect with the sub-division ordinance
2 and that such hardship had thus been created, that there was
3 financial hardship, and once we've proved that we were ahead
4 . . . . . as a matter of law. And then
5 there would have to be evidence which would come on to rebut
6 that presumption. The County did present evidence to rebut
7 that zoning below and some of the things that came up in the
8 record and the minutes are very interesting in that regard.
9 If I can come back to the minutes that I had here.....You note
10 that in this certiorari proceeding, we take the position that
11 evidence was considered below which ought not to have been con-
12 sidered. One of those things was that plan, as a plan. Another
13 thing that was considered below was a considerable amount of
14 public opinion - a certain amount of public opinion with respect
15 to what would happen in the County. And it is very interesting
16 that we find this statement made by the Chairman of the Board
17 at the time - I'm using this opening statement to get some things
18 in, I hope the Court will bear with me - things which are in
19 the record already, to draw them to the Court's attention.
20 The Chairman of the Board, Mr. Ronald Lamm, referred to a state-
21 ment by Judge Berry at the time the Board was installed, which
22 advised them that if the citizens of the County wanted an applica-
23 tion approved it should be approved, but if the citizens of the
24 County wanted - objected to an application it should be denied.
25 He felt the citizens had expressed a strong objection. The next

1 paragraph says, the Board on the above motion - which will be
2 the one I'll come to in a minute, was unanimous. The motion was
3 this, motion by Ellis Durrer, that the application be denied
4 on the grounds that no hardship financially has been proven.
5 and the plan is not comparative with the proposed comprehensive
6 plan of Greene County. Now, to try to make it clear what I'm
7 driving at here, it seems to me that we showed hardship in this
8 case and the burden was on the other side to show by proper
9 evidence that we are not entitled to this permit. Now the proper
10 evidence would not include the comprehensive plan because
11 it wasn't a comprehensive plan at the time. And of course the
12 question whether it was financial hardship, we take the position
13 that the Board below ruled improperly and simply their decision
14 was not based on the evidence that had been heard. One of the
15 things for instance which came up in the Board below was something
16 like this.....Mr. Matthews, how much did you pay for this
17 property? Don't you think its improved in value since that
18 time? Oh yes, I think it's worth more than that now. Well, if
19 that's the case, then you could more than recover on your property,
20 could you not, the money you've expended pursuant to getting
21 this preliminary plat and a plat after that - the sub-division
22 ordinance? Well, yes, perhaps he could cover that as to the cost.
23 But the answer is I think it is a legal matter if he makes a loss,
24 it doesn't have to be net loss on this point. It doesn't
25 make any difference if money comes out of his pocket it is still a lo

1 that's the question before this Court, whether it is a loss
2 or not... ..... Basically we propose
3 to proceed in the following manner. We propose to show the
4 Court that Mr. Matthews did comply with the sub-division ordinance.
5 That he did expend money on that point, that he had to expend
6 money in order to comply with the sub-division ordinance. That
7 by the time he got through complying with the sub-division ordinance
8 the County came along - before ....and passed this ordinance.
9 They recognize in that ordinance that people in Mr. Matthews'
10 position were subject to hardship, and indeed Mr. Matthews
11 suffered a hardship, and the fact that he might be able to recoup
12 his loss in terms of sheer dollars does not change that effect.
13 He recoups less dollars than he otherwise would, that's what's
14 important - my point. So that he comes along this afternoon
15 and says, Your Honor, we've got a hardship in this situation and
16 the burden .....because of that presumption.....
17 the County is bound by its own law, because of that presumption
18 that they put in there, we can sit down after we prove that we
19 have a hardship and the burden is on the County to come back at
20 us with enough evidence to show that that was not the case.
21 COURT: As I understand it, Mr. Parker, this was
22 a preliminary sub-division plat?
23 PARKER: Yes, which was approved by the County, and
24 this is precisely what this ordinance relates to. It says that
25 that is precisely - among other things - gives us the presumption.

1 Any sub-divider, who in good faith and prior to the passage
2 of this ordinance, has secured preliminary approval for a
3 sub-division under the provisions of the aforesaid sub-division
4 ordinance, and who has ....and so forth and so on....shall be
5 entitled to a rebuttable presumption in favor of the granting
6 of such special use permit.....that's the way they proceeded
7 below...that's the way we propose to proceed here.
8 COURT: But you are talking about a special use
9 permit for an entire sub-division?
10 PARKER: Yes sir, because under the terms of the
11 zoning ordinance actually that is correct, but-in terms of the
12 entire sub-division - but what I'm ...what we've asked for
13 is a special use permit as follows - I think this is under
14 the petition for appeal - lot size, less than 2 acres, and
15 requires special use permits for two lots to be used for
16 apartments and two lots designated for commercial use. Two lots
17 for commercial use and two lots for apartments and allowing
18 lot size of less than two acres for dwellings, one family dwellings
19 Now, there's no way under the ordinance - as the ordinance is
20 framed, none of these uses can be done any place in Greene County -
21 without having a special use permit. There must be a special
22 use permit for each one of those. On all of these because he had
23 preliminary approval of his plat, he was entitled to rebuttable
24 presumption, a procedure known as rebuttable presumption. The
25 same presumption he has in this Court. The reason I point this out

1 is this - that the presumption of regularity affecting the
2 administrative proceedings of the law, that presumption of
3 regularity is really in two parts. The regularity as to the
4 adjudication of facts and regularity as to the law, and with
5 respect to the law, this Court must make the decision which
6 should have been made at law, and if evidence was considered -
7 which we say it was - which should not have been considered below,
8 and decision made on the basis of either that comprehensive
9 plan or what the citizens of this county wanted with respect
10 to judicial - in a judicial proceeding - then it's clear to
11 this Court that the Board below did not approve proper, did not
12 use proper legal standards. That's item number 1. Item number
13 2 on the facts is that although there was a presumption that the
14 Board below properly resolved the evidence, the facts, there is
15 in this case another presumption which the law itself gives to
16 us - Greene County itself has given to us, and applies only to
17 this one realm, which allows us to get presumption on those
18 facts. It seems to me that the presumption is going to kind of
19 balance one another - there is going to be very much the question
20 of what the Court hears this afternoon with respect to the
21 evidence. I think when the Court has heard that evidence it will
22 conclude that Mr. Matthews is entitled to the presumption and
23 that the County has not fulfilled its burden when weighed in the
24 light of what it can properly consider.....the facts that it can
25 properly consider. The County has not fulfilled its burden, showing

1 that this special use permit ought not to be issued.

2 COURT: All right, Mr. Slaughter.

3 SLAUGHTER: If it please the Court, as we've already

4 stated and as we reviewed with the Court, this matter comes as

5 an appeal but with a right in the Court - in the sole discretion

6 of the Court to admit additional evidence. Now as I understand

7 it, first, Mr. Parker has conceded and it is the law without

8 question, that there is presumption in favor of the propriety

9 of the city - the administrative body below, in this case the

10 Board of Zoning Appeals. However, Mr. Parker is interested in

11 introducing evidence which would at this time be - at least in

12 his mind, raise the presumption that's mentioned in 5.3-1D of the

13 Greene County Zoning Ordinance. But the reason - the critical

14 part of that - it's hard to know exactly where to start, because

15 it is all in one sentence. If the Court will look then on the

16 page where 5.3-1D starts .....any subdividor as defined in the

17 subdivision ordinance of Greene County, who in good faith, and prior

18 to the passage of this ordinance, has secured preliminary

19 approval for a subdivision under the provisions of the aforesaid

20 subdivision ordinance, and .....I'll stop right there and say

21 that we will concede and it may save a little time, that that

22 was done by Mr. Matthews. Actually Mr. Michie made that statement

23 as reflected in the minutes. ....and who has complied at the time

24 of application for a special use permit, and continues to comply

25 in the future with all relevant time limits prescribed by the

1 Greene County Subdivision Ordinance.....and we are willing to
2 concede that that has taken place. ....shall be entitled, if the
3 passage of this ordinance has worked a financial hardship
4 on him, to a rebuttable presumption in favor of the granting of
5 such a special use permit for the said subdivision as preliminarily
6 approved under the provisions of the subdivision ordinance.
7 And then it gives the ground for evidence necessary to rebut the
8 presumption. It seems to me that Mr. Parker is overlooking a
9 very crucial thing here, and that is that this presumption
10 was specifically rejected by the Board of Zoning Appeals. In
11 other words a portion of the motion, the motion was in two
12 parts, or at least the grounds for the motion were recited in
13 two parts. One, that no virtue had been shown. Now there's
14 a presumption in favor of that finding by the Board of Zoning
15 Appeals, and now Mr. Parker is coming in and apparently presumes
16 or intends to introduce evidence to try to convince the Court,
17 as he was unsuccessful before the Board, that the presumption
18 has been raised. It would be our position if the Court please,
19 that that matter has already been determined. I realize it's
20 difficult for the Court to decide in proceedings such as this,
21 as to what is evidence that it should admit and what is evidence
22 that it should not, but we would object to any evidence on that
23 point. Because the finding has been made by the Board of Zoning
24 Appeals. Now we therefore would certainly take the position
25 that even assuming Mr. Parker's permitted to introduce evidence on

1 hardship, that once he has introduced it that we have the burden
2 of going forward. There is no hardship found in the law books,
3 there is no burden on the Board of Zoning Appeals to go forward.
4 And actually this particular burden or this particular presump-
5 tion only comes into play if there was a financial hardship.
6 COURT: Are you saying that that point never having
7 been brought into play did not trigger the rest of the...
8 SLAUGHTER: Presumption...
9 COURT: ..presumption.
10 SLAUGHTER: That's correct.
11 COURT: Well, did the Board in effect deal with it
12 at that level or did it go past that point and hear evidence
13 with regard to the ...
14 SLAUGHTER: The Board heard evidence generally, sir.
15 It did not take up the evidence in a 1, 2,3 order. All the
16 evidence came in - I think the minutes will reflect, but when
17 it got to the ...
18 COURT: Well, did it enter up as part of its findings
19 it did not find financial hardship proven?
20 SLAUGHTER: Yes sir, that's correct.
21 COURT: I see...
22 PARKER: On the conclusion, Your Honor....
23 COURT: Where is that, is that in the record?
24 SLAUGHTER: It's in the minutes, sir, and it's a
25 motion made by Mr. Durrer, that the application be denied on the

1 grounds that no hardship financial case has been proven.

2 COURT: Which page are you referring ...

3 SLAUGHTER: This is the last page of the minutes of

4 the Board of Zoning Appeals.....

5 COURT: Let me see if I can find it.....All right,

6 I have it, go ahead. All right,...go ahead, Mr. Slaughter.

7 SLAUGHTER: All right, sir. We are in response to

8 the Court's question, taking the position that that has been

9 dealt with below. Now the Court will notice that even if

10 hardship was shown and raised the rebuttal of presumption,

11 after which evidence may be presented to overcome the presumption.

12 There was considerable evidence - the Court will note - in the

13 minutes, indicating why or the various other grounds this permit -

14 special use permit should be issued. I think it's clear that

15 even if - on the record before the Court, the record already

16 here, that even if the Court should find that there were a hard-

17 ship and that would go into the definition of hardship, which

18 I'll take up at the end - even if there were no - were hardship

19 proven, there was more than ample evidence for the Board's finding.

20 The record is here as the Court sees, and with the exception of

21 the question of definition of hardship, we find it difficult to

22 see what additional evidence there can be introduced that would

23 not unfairly turn this into a hearing based on evidence that the

24 Board never had before them. Of Course Mr. Parker and Mr.

25 Matthews had their hearing before the Board and had their right to

1 introduce whatever evidence they saw fit. Mr. Parker apparently
2 takes the position of hardship, that any expenditure constitutes
3 a hardship. We submit that that is not the law, that hardship
4 going back to the section of the ordinance which basically
5 repeats the section of the statute....5.2-1.....it says that
6 evidence to rebut the presumption should be in accordance with
7 these provisions....to authorize ....and this particular section
8 is dealing with variances, but it applies by that reference.
9 ....That the Board of Zoning Appeals has a right to authorize
10 upon appeal in specific cases such variance from the terms
11 of the ordinances as will not be contrary to the public interest,
12 when, owing to special conditions, a literal enforcement of the
13 provisions will result in unnecessary hardship; provided that the
14 spirit of the ordinance shall be observed and substantial justice
15 done, as follows:.....and then it goes in really to the forces
16 that apply to zoning with variance. But unfortunately again I
17 shall have to read most of that in order to give sense to what
18 comes at the end. Provided that the spirit of the ordinance
19 shall be observed and substantial justice done, as follows:
20 When a property owner can show that his property was acquired in
21 good faith and where by reason of the exceptional narrowness,
22 shallowness, size, or shape of a specific piece of property at
23 the time of the effective date of the ordinance, or where by reason
24 of exceptional topographic conditions or other extraordinary situa-
25 tion or condition of such piece of property, or of the use or

1 development of property immediately adjacent thereto,
2 the strict application of the terms of the ordinance would
3 effectively prohibit or unreasonably restrict the use of the
4 property or where the Board is satisfied, upon the evidence
5 heard by it, that the granting of such variance will alleviate
6 a clearly demonstrable hardship approaching confiscation as
7 distinguished from a special privilege or convenience sought by
8 the applicant, provided that all variances shall be in harmony
9 with the intended spirit and purpose of the ordinance.....then
10 the last portion upon which the Court or Board can decide the
11 hardship question, is the section 5.2-2, just below. No
12 such variance shall be authorized by the Board unless it finds:
13 a. That the strict application of the ordinance would produce
14 undue hardship. b. That such hardship is not shared generally
15 by other properties in the same zoning district and the same
16 vicinity...and c. That the authorization of such variance will
17 not be of substantial detriment to adjacent property and that the
18 character of the district will not be changed by the granting
19 of the variance. And so as the Court can see, hardship is - to
20 show hardship means to show far, far more than some expenditure,
21 even perhaps a considerable expenditure, which I think the Court
22 will see was not in relation to the size of the overall sub-
23 division. Then the very heavy burden of showing hardship - the Board
24 clearly found that there was no hardship, and all of that has
25 resulted completely in the record of the Board. And thus the only

1 presumption that we see if the Court please, is that the Board
2 of Zoning Appeals made proper findings, acted properly, consider-
3 ed the evidence before it. And it's our position that we really
4 find it difficult to see where additional evidence would be of
5 value other than simply to repeat that before the Board.
6 COURT: Now Mr. Slaughter what occurred between the
7 preliminary plat and the action taken by the Board of Zoning
8 Appeals, why was the final plat not approved? What occurred to
9 change the criteria, anything?
10 SLAUGHTER: Well, may it please the Court, Mr. Dickey
11 can perhaps speak to this better than I or either correct what I
12 say if I don't state it exactly correctly, but the preliminary
13 plat was filed right at the end of February of 1974. The interim
14 zoning ordinance was passed on March 2 after a good deal of
15 preliminary publicity, and at that time - with the preliminary
16 zoning ordinance in effect, Mr. Morris, who is the subdivision
17 administrator as well as the zoning administrator, could not
18 properly, under the zoning ordinance approve the subdivision,
19 because the ordinance provides for two acre residential lots...
20 COURT: What you are saying - at the time the preliminary
21 plat was approved, there was no zoning ordinance?
22 SLAUGHTER: No zoning ordinance.
23 COURT: But when the final plat was tendered, there
24 had been adopted a zoning ordinance?
25 SLAUGHTER: Yes...

1 COURT: That answers the question....I'm trying to
2 get the sequence here.
3 SLAUGHTER: All right, Mr. Dickey may have additional
4 points...
5 COURT: All right, sir.
6 DICKEY: Very briefly, Your Honor, one point Mr.
7 Parker stated inadvertently is incorrect in his opening statement.
8 In fact Mr. Bennett Matthews is not the only person who came
9 under this provision of the ordinance. There were four others,
10 some made it, some didn't. I just wanted to add that. I'm
11 sure that Mr. Parker didn't mean to misstate it.
12 COURT: All right. Now, I have copies of those minutes,
13 maybe the minutes are comprehensive and complete and maybe there
14 are areas in which they are silent - Mr. Parker?
15 PARKER: I would suggest that there are some areas
16 that the minutes are more complete than others and we would take
17 the position that they are a little more complete on the other
18 side than they are on our side.
19 COURT: Well, if you feel that there's something there
20 that should have been in the minutes and was introduced, it would
21 seem to me to be appropriate to get it back into evidence.
22 PARKER: Thank you sir, for that purpose I would call
23 Mr. Matthews.
24 COURT: All right, sir. Mr. Slaughter?
25 SLAUGHTER: May it please the Court, Your Honor, may I

1 mention two things that again - it might save time. If the
2 Court hasn't had an opportunity to read the minutes, and it
3 would like to take an opportunity to do so, that might give you
4 a somewhat clearer picture of what they entail...
5 COURT: Well, I'd rather not delay too long, let me
6 take just a moment to find those and mark them in the file, be-
7 cause there are a number of other exhibits. How many pages of
8 minutes are there?
9 SLAUGHTER: Well, one thing I will call to the Court's
10 attention, because it can be confusing. Next to the last docu-
11 ment, the next to the last document, minutes of the planning
12 commission, which also has to pass under this - under the
13 zoning ordinance.....the last is the minutes of the zoning
14 appeals ...
15 COURT: All right. Let me take just a few moments to
16 review this briefly, Mr. Parker, before you proceed with your
17 questioning - it might save some time in my ruling, as to what
18 should be covered and what's already been covered.
19 SLAUGHTER: As a further matter, as we have indicated
20 in our opening statement, we object generally to the further
21 introduction of evidence in the areas dealt with before the Board
22 of Zoning Appeals. And thus while I admit it's a little unorthodox
23 to make objection before even the first question, it might save
24 time if we could have it understood that we would have a continued
25 objection to evidence related to matters presented before the Board.

COURT: I understand - the objection is noted and for the time being the Court will overrule it, but subject to the Court's own restrictions on anything that is repetitive, and of course anything that would be inappropriate to be considered at this time that was or was not considered by the Board of Zoning Appeals. It's understood Mr. Parker that you propose to get into areas in which the minutes are somewhat silent or at least less than complete?

PARKER: Yes sir. I think we have the transcript and it will only be matters which the Court in its discretion...

COURT: All right....go ahead, sir.

BENNETT T. MATTHEWS, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Parker

Q May I refer the Court to the page .....like this... Would you give us your name and address please sir?

A My name is Bennett Matthews and my address is Culpeper, Virginia.

Q And you own 111 acres near Ruckersville that you propose to develop?

A Yes sir, that's correct.

Q And you are the gentleman who has applied for the

1 special use permit in this case?
2 A Yes.
3 Q You are, okay. Now, Mr. Matthews, I show you
4 a copy of what I just referred to before the Court which is
5 in the record in this case, do you recognize that sir?
6 A Yes sir.
7 Q Do you have another copy of that?
8 A I have a copy.
9 Q What is that?
10 A That is a listing of chronological events relative
11 to the expenses and development that took place on this particular
12 tract of land.
13 Q Have I asked you to go back over the various and
14 sundry events in the County here in a rather terse form and tell
15 us- and to recount in your own mind the question of the chronology
16 of these events and precisely what led up to each event and
17 when expenditures occurred and things of this matter; in your
18 own mind, sir, did I ask you to do that? Have I asked you to
19 check into the precise detail....
20 A Yes you have.
21 Q And the facts appearing on this sheet?
22 A Yes sir.
23 Q Would you please tell us how it was that you came to
24 acquire this property and what it was that you did to prepare
25 it for the development that you propose?

1 A All right, this property was purchased on September
2 15, 1971. And after much consideration of the potential
3 development features, and characteristics of the property and
4 its location...
5 Q What were some of those characteristics that you
6 considered?
7 A It was located on the Rapidan Service Water line
8 or at the time the water line was being constructed. It's
9 located on Route 33, which is a traffic corridor going into
10 Route 29, which is a major north-south traffic corridor. And
11 Ruckersville being a business district, certainly it seemed that
12 this piece of property had potential of being a residential
13 development.
14 Q How far is it from Ruckersville?
15 A Approximately maybe a quarter of a mile.
16 Q All right, sir.
17 A Not over a half a mile.
18 Q Were there any other - were there any other reasons
19 that you concluded that this would be an appropriate site for
20 development?
21 A Well, there was an existing subdivision along the
22 northern - or northwestern boundary of this particular tract of
23 land that had residential units already being constructed and
24 under construction and ...
25 Q Which side is that - you say north-west, was that on

.....I think you are going to object - was that on the Stanardsville side of the subdivision that you proposed?

A Yes it is.

Q Is it directly adjacent to the subdivision?

A Yes it is, it borders along one entire border of my property.

Q Well, after you put these things in mind, you decided I take it to develop this property, what did you do along those lines?

A Well, nothing was done in the way of development until October 30, 1973. At that time I employed Ross and France to conduct a - complete a topographic survey of the property and to prepare the topographic map.

Q Let me ask you, when this property was originally purchased did you get - who had title to it?

A It was purchased by Daniel Farms Inc. and on March 6, - excuse me, on March 6, 1973, I acquired all the stock of Daniel Farms, Inc..

Q And you subsequently did what with that corporation?

A All right, that corporation was liquidated.

Q You mean dissolved?

A Dissolved and-on January 22, 1974 and the transfer of this particular piece of property came to me, since I was the sole stockholder in that corporation at that time.

Q All right, sir, now would you please tell us about

1 these expenditures that you incurred, what you did along the
2 lines of developing this property, what you incurred and so on?
3 A All right. I believe the next expenditure was on
4 November 1, 1973, appraisal fees and legal expense of $393.25
5 were paid relative to the transfer from Daniel Farms Corporation
6 to myself. Then on November ...
7 Q Did you already mention another one for October 30,
8 1973?
9 COURT: He's mentioned that...topographic survey.
10 Q Yes sir.
11 A Yes, I did mention that before.
12 Q How much money was involved - were you obligated
13 in that connection?
14 A $3,500.00.
15 Q All right, sir. Now then you've told us about
16 November 1, what did you continue to obligate?
17 A All right, on November 10, 1973, Dwight L. Kaster,
18 completed conducting a soils analysis and preparation of soils
19 map, for the proposed subdivision and was paid $1,265.30.
20 Q All right, sir, go ahead.
21 A All right, then October 23, 1973, preparation of
22 a preliminary subdivision plat was completed and dated by Ross
23 and France Limited, at a cost of $1,500.00, which was paid on
24 December 19, 1973. And I believe Ross and France were contacted -
25 contracted, excuse me, to prepare this preliminary plat some time

1 around September of 1973.

2 Q All right, go ahead.

3 A On February 4, 1974, the preliminary plat was sub-

4 mitted to the Greene County Administrator and fees of $274.00

5 were paid.

6 Q Okay, now how much had you spent up to that point?

7 COURT: You don't need to add them up, Mr. Parker,

8 unless he's got some new item...

9 A I have them right here.

10 COURT: No use to go into any arithmetic....go ahead

11 with the evidence. You all can cover that in summation.

12 Q All right. All right, subsequent to that time

13 let me ask you this, were you aware - when did you receive

14 preliminary approval of this plat?

15 A I'm not exactly certain, I have here February 28,

16 it may have been February 26.

17 Q All right, sir.

18 A That Julius Morris approved the preliminary plat.

19 Q February 26 or 28, 1974?

20 A Give or take a day or two.

21 Q Were you aware of the fact that the subdivision or-

22 dinance as amended in section 5-6, said that you had not more than

23 six months after getting the preliminary approval of the plat, to

24 file with the agency a final subdivision plat in accordance with

25 the ordinance?

A Yes sir, I am familiar with that.

Q Now what was the effect if you did not do that?

A Then your preliminary plat would revert, it would be of no benefit.

Q All right, sir, and so what did you do, based on the fact that you had already spent - I counted up $6,932.00 by this point, what did you do after the time the...after the 28th of February with respect to getting - heading on to a final plat?

A Acting in good faith on the approval of the preliminary plat, I employed Ross and France to produce a final plat within the prescribed six months time. I was told by Jim Harris that the estimated cost of this final plat would run from 10 to 25 thousand dollars.

Q All right, sir, what else did you do?

A I contacted Baldwin and Gregg Engineers to conduct a feasibility analysis and design a sanitary treatment sewage facility, and I was told that the estimated engineering cost for this treatment facility would be approximately 25 thousand dollars.

Q All right, sir.

A And I also employed Taylor Murphy Institute to conduct an impact, growth, feasibility analysis related to this development and the surrounding community. The estimated cost for that was $1,850.00.

1 Q All right, sir.

2 COURT: Let me interrupt right there now. Mr. Matthews

3 what was the necessity for that, as far as any requirement of

4 the subdivision ordinance? To have a feasibility study?

5 A Well, it has been our experience in a subdivision

6 of this size that we should know the potential impact of

7 not only this county but surrounding communities as well as

8 far as development build-out time, as far as the potential

9 growth pattern and population growth pattern.

10 COURT: What I was getting at, that wasn't any of

11 the prerequisites that would be needed to get your final plat

12 through?

13 A It's not a requirement of the county as far as the

14 plat is concerned, no sir.

15 COURT: Go ahead, sir.

16 Q Is there anything else that you did do in connec-

17 tion with the plat? Getting the final plat approved?

18 A On June 13, 1974, Baldwin and Gregg was

19 paid $1,013. 36 for consultant fees for consultations with the

20 Virginia Bureau of Sanitary Engineering, related to the design of

21 the sewage treatment facility. And I was told that the total

22 cost of this sewage treatment facility would be $468,000.00, all

23 of which I intended to share the responsibility for....at no

24 cost to the county or whatever.

25 Q All right, go ahead.

1 A Then on August 10, 1974, Ross and France was paid
2 $10,000.00 for the preparation of a final subdivision plat .
3 And on the same date, miscellaneous expense, legal expense,
4 advisor and consultant fees and travel expenses relevant to the
5 above items, that I have just been through in the amount of
6 $985.00 was paid.
7 Q Now were any of those legal expenses with respect
8 to the getting of this permit, any litigation involved in this
9 permit, that you are talking about - that we are here today...
10 A No sir.
11 Q All right.
12 A On October 28, 1974 a bill was received from
13 Baldwin and Gregg for engineering services rendered through
14 September 18, 1974, in the amount of $2,800.00. That has not
15 been paid as of this date.
16 Q You owe the money?
17 A I owe the money.
18 Q What was that for?
19 A That was further design work and consultations with
20 the Virginia Bureau of Engineering. I'm not thoroughly familiar
21 with all of the aspects - this is one reason why the bill has not
22 been paid. Mr. Jim Harris can probably help me on that.....
23 Q All right.
24 A ...particular point.
25 Q Did it have to do with the sewer?

1 A Had to do with the sewer, right.
2 Q Is the sewage system or at least an indication
3 of the type of sewage proposed shown on the final plat?
4 A I'm not sure.
5 Q Is there on the final plat a reference to a sewage
6 system?
7 A I think in as much as it states that the subdivision
8 will be serviced by a central sewage treatment facility.
9 Q And is there a placement, general placement for
10 that...
11 A Yes, there is an area designated for that particular...
12 Q Thank you sir.
13 COURT: Now Mr. Matthews, let me just interrupt
14 briefly. With regard to the preliminary plat and then the final
15 plat, what information was given you that you had to conduct any
16 of these surveys in order to get your final plat or was this
17 something you did because of your desire to plan ahead?
18 A No sir. As far as the moneys spent to the Virginia
19 Bureau of ...or in regards to the Virginia Bureau of Sanitary
20 Engineering, this is a requirement by the State, that these
21 systems be designed and...
22 COURT: I realize that would be the case....
23 A This was just a step in the phase of design work,
24 so that once the final plat in its final form is ready for appro-
25 val, all of these procedures and steps have to be taken into con-

1 sideration.

2 COURT: I'm asking you why couldn't you have done

3 this after you got your final plat approved by the Greene

4 County Zoning Administrator. Was it a prerequisite to getting

5 your final plat, anything other than the plat itself?

6 A Well, I think the requirements of the subdivision

7 ordinance itself requires certain procedures as far as availability

8 of water, approved street designs, approved sewage treatment

9 designs, or approved septic tanks, or whatever the situation

10 may be.

11 COURT: You felt then that you needed this informa-

12 tion to present at the time you sought the final approval of

13 the plat?

14 A Yes sir.

15 COURT: Go ahead then, Mr. Parker.

16 Q In this regard, Your Honor, I think it would be

17 helpful to refer to the ordinance, section 4.4-4 on sewage

18 facilities and section 5.8 on conditions. It says conditions -

19 the plat shall not be approved until the subdividor has complied

20 with the general requirements of the minimum standard of design,

21 in accordance with this ordinance.....among other things.

22 COURT: Well, that's what I was getting at if he was

23 referring to the ordinance?

24 Q Yes sir, he is. I'm trying to get the law now,

25 I hope I'm not....

1 COURT: You can get that in later, that's all right -
2 I have enough here not to cut him off, that's what I was getting
3 at. To let him go ahead and put these figures in.
4 Q Yes sir.
5 COURT: We can consider anew as to whether it was
6 necessary or not.
7 Q And then the ordinance itself in 4.4-4 provides
8 that there has to be a satisfactory system. Well, did you then
9 submit - did the last bill you mentioned, was that for $20,800...
10 involved in the.....
11 A Yes that was the last item.
12 Q Did you then submit your plat for approval to the-
13 I guess the administrator - County Administrator, under the sub-
14 division ordinance?
15 A Yes sir we did.
16 Q When was that done?
17 A I believe that was in August, I'm not certain as
18 to what date.
19 Q Maybe the other side will stipulate it was on August
20 26, 1974. In any event you think it was in August 1974 that you
21 presented that?
22 A Yes sir.
23 Q Now, Your Honor, somewhere here.....
24 A I am certain of one thing it was filed within the
25 six months.

1 DICKEY: We'll stipulate the August 26 date.

2 Q These are the plans you filed in the final.....

3 this came with the return....

4 A Yes sir.

5 COURT: I take it they are part of the transcript of

6 the record?

7 A Yes sir.

8 COURT: All right, sir.

9 Q Maybe the Court would want to take a look at it....

10 COURT: If it's a matter of evidence, it's already

11 in, Mr. Parker, without any disagreement on that.

12 Q Do you have an estimate of the total expenditures

13 other than the planning and working up of this development,

14 in that final plat - the things that were necessary to file the

15 final plat other than the initial investment in the land?

16 A Other than?

17 Q Other than the initial investment in the land?

18 A Well, I have spent to date $20,800.91, plus there are

19 further obligations that I am obligated to pay.

20 Q Do you know how much of that you will be obligated

21 to pay at this time?

22 A Well, not really because I'm not in touch with these

23 people. I don't know how much they've done at this point, you

24 know, I'm sure it could be stopped and could be a shut-off and

25 we could say okay, we'll pay you for services rendered to this

1 point, which could well amount to five or six thousand
2 additional dollars.
3 Q Answer Mr. Slaughter's questions.
4
5 CROSS EXAMINATION
6 BY: Mr. Dickey
7 Q I have very few questions, Mr. Matthews. On these
8 expenditures you actually acquired title to this land October
9 22, '73 is that correct? At the date on the deed?
10 A October...
11 Q 22, 1973?
12 A It could have been.
13 Q And since that date you've incurred the expenses
14 of the topographic survey, appraisal fees, that was just -
15 appraisal fees and legal expense was simply the transfer tax
16 and the matters going along with that, am I mistaken on that?
17 You said that was the cost of acquiring the land, getting it in
18 your own name? And you would have had this expense whether you....
19 Mr. Slaughter called my attention to you just nodded to that....
20 A Did you finish your question?
21 Q Right, I just ask you was the $3,933.25 anything
22 other than the cost of getting the property in your name?
23 A No, that's all it was.
24 Q All right, would this expenditure have been incurred
25 whether you were planning to develop this property or not?

A That particular three hundred dollars was a matter of transfer.

Q And you would have been transferring it into your name would you not whether you intended to develop it or not?

A Right.

Q All right, the expenditure of $3,500.00 on topographic survey, I believe you stated before the Planning Commission and before the Board of Zoning Appeals - before the Board of Zoning Appeals that you would have expended this in any event, if you were going to develop with the two acre standard in the zoning ordinance, is that correct?

A No sir.

Q This would not be an expenditure, you would otherwise have come up with?

A It's - on a subdivision of lot sizes of this size and nature, you have to do a topographic survey, with small lots. A site plan and drainage plan can later be drafted from those plans.

Q Would you have had a topographic survey if you were going to develop in two acre lots? Would you have had such an expenditure and could you use this topographic survey for that use?

A I think you'd have to do it - yes.

Q It could be used for two acres also?

A Yes.

1 Q Okay. Now, your approval is in the record as
2 February 26, 1973, 1974, is it not the case that Mr. Julius
3 Morris called you up and reminded you of the pending passage of
4 the ordinance, and that's why you got the amended preliminary
5 plat in at that time?
6 A Mr. Morris called me and said that the time was
7 fast approaching the six months time.
8 Q No, I'm talking about the February 26 original-
9 is it not the case that you applied twice - and the first plan
10 did not comply with the provisions of the subdivision ordinance?
11 You then modified your plan and applied again on February 26 for
12 its approval?
13 COURT: You are talking about the preliminary plans?
14 Q The preliminary plans?
15 A Well, in any event it was approved on ...
16 Q I'm just asking is it not the case that Mr. Julius
17 Morris, a subdivision ordinance agent, called you up and reminded
18 you of the fact that the ordinance was being advertised and was
19 up for consideration on March 2?
20 A I don't recall that Mr. Morris said that particular
21 thing to me.
22 Q Do you recall that on or before August 26, Mr.
23 Morris called you up and reminded you that on August 26, that one
24 day later you would overstep your six month time limit?
25 A Yes sir.

1 COURT: Mr. Matthews, speak up - don't nod your head
2 because the recording device won't pick that up.
3 A I'm sorry.
4 Q All right, now is it not also the case that you
5 could have applied and were so advised, you could have applied
6 for your special assessments and special use permit without
7 having gone to the expense of preparing the final plat for
8 sanitary sewage treatment facility consultant fee, or any of these
9 other items listed here as having been incurred after March 2,
10 of 1974?
11 A I don't see how you could prepare a preliminary
12 plan unless you proceed through all the channels.
13 Q I am simply asking you is it not the case and were
14 you not advised that you could apply for your special exception
15 and special use permit without....
16 PARKER: Pardon me, the problem with the question it
17 says is it not the case and were you not advised. The advice
18 might have been given and might have been wrong, we just don't
19 know. I think he will have to ask one question at a time.
20 COURT: Mr. Dickey....
21 Q I just ask him if he was advised.....
22 COURT: Yes sir, you may split your question up into
23 two separate parts if you'd like.
24 Q All right, were you so advised?
25 A No sir, I was not advised.

1 COURT: By whom Mr. Dickey are you referring?

2 Q By Mr. Julius Morris?

3 A No sir.

4 Q All right, when did you first become aware of the

5 fact that Greene County was considering a zoning ordinance?

6 A As far as the specific date I can't really say.

7 I'm sure it was some time before the date that our final plat

8 was submitted, but I'll have to say in most counties where a

9 county administrator has accepted a preliminary plat and approved

10 it....

11 Q I particularly asked....

12 COURT: Go ahead and answer the question. You may answer

13 it in your way, and it may not be responsive.

14 A It is an accepted document and really the - any change

15 of ordinance or anything else didn't bother me in the least.

16 Q I would move to strike the answer as being non-

17 responsive.

18 COURT: I'm not sure it is non-responsive, but it doesn't

19 answer entirely the question. You may proceed to inquire further

20 on that point, Mr. Dickey.

21 Q Well, then let me ask you this.

22 COURT: I take it that we can stipulate or at least

23 maybe you all can that Mr. Matthews does operate as a builder in

24 other areas, is that the case? I gather that's what his answer

25 implies....

A Yes.

COURT: And if that is the case....

A Yes sir.

COURT: Maybe that would be a better foundation to lay for his answer.

Q I had a couple of other more specific points, I'd like to get at. Do you employ R. S. Parrott as an employee of yours?

A Yes.

Q For how long a time have you employed him?

A Since February last year...one year.

Q February 1973?

A Soon will be one year....

Q February '74 and he is a resident of Greene County, and did he inform you of the impending ordinance?

A Yes he did.

Q And were you aware of that before the time you hired him?

A I can't say that I was.

Q What I'm trying to do is just get the date as close as we can - I realize your memory isn't perfect....mine wouldn't be either.

A No, its - too many things have taken place.

COURT: Mr. Matthews as I understand your response, because of your experience in other areas, you really weren't concerned

about the effective date of the zoning ordinance?

A That's correct, Your Honor, in most counties and most localities and we work - or have worked in probably 14 or 15 counties throughout the State, where these changes have come about in zoning and so forth, when a county had accepted our preliminary plat as being an accepted document it was submitted to the county administrator or the zoning administrator as whatever the case may be.

COURT: Well, how many of those were you involved in in which there was no zoning ordinance in effect, or can you make a distinction such as that?

A No zoning ordinance?

COURT: Yes. Were you aware that there was no zoning ordinance on the books in Greene County when you had the preliminary plan approved?

A Yes sir.

COURT: Now how do you relate that to the other areas where you've had experience, can you say whether or not those other areas has a similar circumstance?

A I can't recall a similar circumstance, no sir.

COURT: Now, on the other hand you say it didn't concern you because of your experience in other areas that there was a change impending? So that even if you had heard about it you would likely have ignored it, the effect of it?

A Not ignored it, but assuming that we had worked in

other areas, and where say - well, we'll say for example lot size had been changed from one acre to two acres, the result being that if that preliminary plat was filed with the administrator it was an accepted document in its present form. You could proceed.

COURT: Well, let me stop you just a moment there, and go back and review your past experience. How long have you been a builder?

A 19 years.

COURT: 19 years?

A Yes sir.

COURT: And what area generally have you operated in?

A Appomattox County, Campbell County, Buckingham, Cumberland, Prince Edward, Charlotte...

COURT: Have you operated in any county adjacent to Greene County prior to this ...

A Culpeper, Fauquier, Madison, Orange, and Greene County.

COURT: All right. Now, did you have anyone in Greene County advising you on the status of the ordinance as it progressed?

A No sir.

COURT: And you say you learned about it some time prior to August, but you don't know exactly when?

A I don't recall the exact time, no sir.

1 COURT: All right, go ahead, Mr. Dickey.

2 Q I have only a couple more questions. What was

3 the purchase of this 111 acres?

4 A Do I have to answer that?

5 COURT: Do you object to it as being irrelevant?

6 PARKER: No, I can't say that it's irrelevant.

7 COURT: You must answer the question then, Mr.

8 Matthews, if your attorney doesn't object to it as being

9 irrelevant.

10 PARKER: I don't think it's fully irrelevant.....

11 I wish I could say it was.....I think the deed actually tells

12 any way....

13 A I'm sure it was.....there's been a mix up on it

14 any way. I think it was $48,500.00 plus or except I might

15 say, we would give them a one thousand dollar allowance for a

16 boundary survey. Now, I think that's correct. It's either

17 $48,500.00 or $47,500.00.

18 Q All right.

19 A I did not...it was bought as I say through the

20 corporation and ...

21 Q Now of this topographic survey fee how much of

22 that was for the boundary survey?

23 A None of that.

24 Q So the boundary survey was what brought it up to

25 $48,500.00?

A Right, okay, you can use $43,500.00 as being the property plus the boundary survey.

Q Including boundary...

A Including boundary survey.

Q All right, thank you very much. Now, one other question when did you first retain counsel or seek legal advice on - at what stage in this development of expenses, specifically relating to your application and its status with the Greene County Board of Zoning Appeals?

A I'm not sure I follow your question, Mr. Dickey.

Q When did you first consult an attorney with relationship to your application and other - your application for special use and special assessment with the Greene County Board of Zoning Appeal and similar problems relating to this zoning ordinance?

A When did I seek legal counsel?

Q First?

A First. Mr. Parker was employed in - when the final plat went before the planning and zoning...

Q So that was after all of the expenditures of August 10, 1974 and after the October 1, 1974?

A That's right.

Q All right, and you had already incurred in sum all of these expenses before you retained legal - before you sought legal advice?

1 A Yes.

2 Q Thank you very much.

3 SLAUGHTER: Could we just ....would you indulge us

4 just a moment, Your Honor?

5 COURT: Yes sir, you all may confer.

6 DICKEY: Mr. Slaughter will continue from this point,

7 it's probably lots easier than us whispering....

8 COURT: I don't think that can be permitted on cross

9 examination, Mr. Dickey.

10 DICKEY: All right.

11 COURT: However you all arrange it, you can confer

12 but one or the other will have to continue with the cross

13 examination.

14 DICKEY: All right.....very good.

15 COURT: It's not fair to the witness.

16 DICKEY: All right. What is the magnitude of this

17 project as you proposed it? This is in the minutes already

18 Your Honor, but he stated 17 million dollars there, but I'm

19 asking if this is correct is all I want to do.

20 A 17 million dollars, which is an estimate.

21 Q All right.

22 A It could well increase by 12 percent a year with

23 this delay.

24 Q I would also like to know ...what do you think...

25 COURT: Does that figure represent the final retail

value or are you talking about total development costs, make it a wholesale cost?

A That's the total retail value.

Q Now, I would also like to ask you what is your best estimate of the price that you could get for this land if it were divided up into two acre lots, what price could you get for those two acre lots?

PARKER: Your Honor, unless there's some foundation laid to the fact that he can divide it up into two acre lots, I don't think the question ...

Q Your Honor, the zoning ordinance that's before the Court shows that two acre lots are allowed. It's in evidence already.

PARKER: It doesn't show some of these other uses, Your Honor. It doesn't...

COURT: I don't know that you've got any particular foundation for it, Mr. Dickey. What does the proposed layout call for, lots of what size?

Q 10,000 square feet Your Honor.

COURT: And you are asking him why they couldn't be quadrupled?

Q I'm asking him - in order to establish a hardship question - or get ...

COURT: Two acres you are saying?

Q Two acres is allowed under the zoning ordinance for

1 residential purposes. I'm asking if he can give us his estimate
2 of how much those lots would sell for apiece today in that
3 location.
4 COURT: Let's attack it a little bit more specifically,
5 how many lots are there in the present proposed subdivision?
6 Q 180 residential lots.
7 PARKER: And 120 apartments.
8 Q 120 some odd apartments.
9 COURT: Now you are talking about units, but now
10 how about lots, how many apartment lots are there?
11 Q No apartment - one apartment lot, Your Honor.
12 COURT: What size?
13 Q I don't know, it doesn't specify in the plat.
14 COURT: All right.
15 Q I'm simply asking him...
16 PARKER: About 21 acres for the apartment, Your Honor.
17 COURT: All right, now, I think the question would be
18 whether or not - are you talking about the entire subdivision
19 or only that which has been previously designated in the 180
20 residential lots?
21 Q I'm asking him if he were to take the entire 111.385
22 acres divide it up in to 2 acre lots, what price he would expect
23 to be able to sell those two acre lots for on today's market?
24 If he knows, we may be wasting a lot of time....
25 COURT: I'm making an assumption to say it's feasible,

1 but it seems to me the Court ought to take judicial notice of
2 the fact that a two acre lot is saleable, unless there's some
3 other physical or topographic aspect of this that would prevent
4 it. Now if Mr. Matthews want to qualify his answer he certainly
5 may do it, but the objection to the question is overruled and
6 if you can answer it, go ahead, Mr. Matthews. You may qualify
7 your answer in such way as you wish.
8 A I can't answer Mr. Dickey's question because all
9 of the cost figures would have to be considered, as to whether
10 the cost of a central sewage treatment facility and then
11 divided by the number of lots. And really I couldn't see the
12 point...
13 COURT: Well, would it lessen the cost of the sewage
14 facility if the size of the development were restricted to fewer
15 people? Or is the size that you've already been dealing with
16 the minimum size? Could a smaller plant be feasibly and
17 economically constructed?
18 A It would have to be completed re-engineered, yes
19 sir.
20 Q Your Honor, the...
21 COURT: Go ahead with any questions...
22 Q ...the subdivision ordinance gives a 10,000 square
23 foot minimum in the case where there is a central sewage treatment
24 plant. We can present evidence by Mr. Morris at the proper time,
25 but I might save time to mention here that I don't think in that

1 area of the County, a two acre lot has ever been disapproved
2 for a septic system.
3 COURT: Well, you may ask Mr. Matthews what his
4 knowledge is of development, if you have two acre lots and
5 no central septic tank system.
6 DICKEY: All right.
7 COURT: Sewage disposal system.
8 Q Presuming for the sake of argument that it were
9 possible to get two acre lots there, approved by the health
10 department, for well and septic tank, what would be - you believe,
11 the price of the two acre lots sold for in that location?
12 Fair market value, as near as you can guess?
13 A To recover my costs I can't answer that question.
14 The cost would be ridiculous, I'm sure with expenditures I've
15 already spent. And it would not be - I could not compare with
16 another builder as far as - or be compatible in price...
17 COURT: How many acres is it, Mr. Matthews?
18 A It's 112 acres.
19 COURT: Well, let me ask you this now - move this
20 along - you've got approximately $73,000.00 in this property by
21 the figures you've already given and 112 acres of land. Are you
22 saying that it's not economically feasible to develop this 112
23 acres with a now estimated cost of $73,000.00 in two acre lots,
24 or dividing it up in two acre lots?
25 A It could be divided, but at the same - again, you,

1 I don't know what the figures ...$70,some thousand...

2 COURT: Well, I'm taking the $48,000.00 as your

3 construction cost, your $20,800.00 that you've already spent,

4 and $5,000.00 more estimated, that you've got incurred.

5 A Okay.

6 COURT: Adding that to your $48,000.00 original

7 cost gives about $73,000.00, what I'm asking you is in response

8 to Mr. Dickey's question, would that be financial hardship if

9 you were required to change your development to two acre lots

10 instead of these previously designed smaller lots? Could you

11 get a fair return out of it?

12 PARKER: If the Court please, I hesitate to object to

13 any question ...

14 COURT: You may note your objections and I'll consider

15 it, Mr. Parker.

16 PARKER: Yes sir, the problem I have with that question

17 and indeed with the line of questioning is that it comes back

18 to the same error.....it seems to me the Board of Zoning Appeals

19 made. And that is that if it should appear to the Court that

20 the money that he has spent on this - this $20,000.00 he has

21 spent - approximately $20,000.00, which he has expended toward

22 this present plan - is lost. That is $20,000.00 which is lost,

23 this is in other words the same question that you would have -

24 whether it's profit or out of the man's pocket.....it is the

25 question, in other words, the same question that comes up with

on public utilities- can you get a fair return. The question is, have you not lost $20,000.00....

COURT: We're not talking about $20,000.00. He hasn't said that - anything like all of this was involved with the present development. His topographic survey and his boundary plat certainly would be useable.

PARKER: His boundary plat, of course he gave additional figures, that is not in the $20,000.00.....there would be some things about it that would be recoverable.....

COURT: It may be that a somewhat high percentage of his total cost thus far....but the question whether it would be prohibited and whether it would be a dead loss to him.....we are talking about good faith planning and the matter of financial hardship - it seems to me that this Court and any other body could consider alternatives. And if you take the position that what he has already planned is the only alternative, then of course, then you'll have to stand on that. If that's not the only alternative it seems to me the question is very relevant.

PARKER: There's another zoning ordinance coming up, which may get involved in there too. The Court may or may not know about it, it's in the planning stages.

COURT: I see.....but I think....

PARKER: I'm not sure in other words that it would be feasible .....it's not going to be feasible for this gentleman to divide it up in two acre lots either.

1 COURT: I'll note your exception.

2 PARKER: Yes sir.

3 COURT: And overrule the objection and if Mr. Matthews

4 can give a horseback opinion as to what financial gain or loss

5 by changing the design of the subdivision, it seems to me he

6 ought to do it. In other words how much of a hardship would be

7 involved, Mr. Matthews, by way of loss of expected income or

8 profits or recovery of costs, if you changed from your present

9 plan to a two acre lot subdivision?

10 PARKER: Judge, I believe it's beyond Mr. Matthew's competency....

11 COURT: He may well be.

12 PARKER: He has relied on other people for estimates.

13 He has some experts present.

14 COURT: If You'd rather defer that to another witness,

15 I'll grant that, if he's not prepared to answer.

16 A I'm not avoiding the question, I - it's simply a

17 matter of not knowing engineering costs and simply how much of

18 this material the engineer can reprogram and start over. That's

19 my position.

20 COURT: Let me ask this, Mr. Matthews. Is there any

21 particular type of development that you've committed yourself

22 to that couldn't be carried forward on a two acre lot that is

23 now planned for the smaller lot?

24 A Well, Your Honor, I don't think a two acre subdivision

25 lot size with central water and sewer is feasible under ...in any

1 development...

2 COURT: We are not talking about central water and

3 sewage. Now taking it as Mr. Dickey's question pointed out to

4 you, that each lot would be expected to obtain its own water

5 supply and sewage disposal, which the two acre size would allow,

6 as I understood the question. Now can you answer it that way?

7 A Yes sir.

8 COURT: All right.

9 A There are some areas on this property and this is

10 the reason for this soil analysis, that septic tanks absolutely

11 won't work.

12 COURT: How much of it percentage-wise, are you in

13 a position to say?

14 A I can't say, Mr. Harris, my engineer is here...and

15 might can answer that question.

16 COURT: You're saying in effect that the lots would

17 not economically develop without central water and sewage?

18 A That's correct.

19 COURT: And once that's done you're saying that you have

20 to cut it up into smaller lots, otherwise you don't get your

21 return of investment?

22 A Well, when you consider the costs of water, sewer

23 and streets, that's what you need to make a feasible project.

24 COURT: All right, go ahead, Mr. Dickey. Mr. Matthews,

25 while we are waiting for Mr. Dickey, what is the particular problem

1 with regard to some of this area, that you say it could not
2 be developed with its own water and sewage? Is it in a flood
3 plain or low elevation or what?
4 A The type of soil.
5 COURT: The type of soil?
6 A Yes sir.
7 COURT: In other words it won't percolate for septic
8 tanks?
9 A Right, it's not the good or the best type of soil
10 for perking and this type of thing. There are no buildings in
11 the flood plain area, we do have flood plain, but it has been
12 provided for.
13 COURT: I take it this land when you acquired it
14 was what would be considered raw agricultural land?
15 A Yes.
16 Q Just basically, very few more questions. In other
17 words, is it not the case then sir, that this soil analysis
18 also would be useful for any other form of development? Basically
19 Mr. Matthews, what I'm saying is this, of the $6,932.00 which you
20 spent prior to March 2, is it not the case that the topographic
21 survey will be useful even for two acre development and also
22 did you not just testify that the soil analysis would also be
23 useful in either event?
24 A Yes.
25 Q And the transfer cost would be incurred in any event,

1 the cost of acquiring the property?

2 A Yes.

3 Q All right. And the other question I'd like to know is

4 is the preparation of the preliminary plat figure, the $1,500.00,

5 is that included in the final $10,000.00 bill?

6 A No it is not included.

7 Q In other words, the total cost on those from

8 Ross and France was $11,500.00?

9 A Yes sir.

10 Q And once again you stated you did not consult an

11 attorney until some time after August 10?

12 A That's right.

13 Q Thank you that's all I have.

14 COURT: All right, Mr. Parker, any further direct?

15 PARKER: Yes sir.

16

17 REDIRECT EXAMINATION

18 BY: Mr. Parker

19 Q Mr. Matthews, how long would you estimate that if

20 you were to take the tactic that you were going to try to divide

21 this thing up into two acre lots now, how long would you estimate

22 that it would take to do the necessary work that would still have

23 to be done to try - if it could be done, I'm not saying it could

24 be done, to re-engineer this property for two acre lots? So

25 that you could file the final plat?

A I may need some help from Jim Harris on this, but I would say five months.

Q All right; Mr. Dickey.

RECROSS EXAMINATION

BY: Mr. Dickey

Q Just one point for clarification, you did say you found out about the ordinance in February of '74, before you - I believe you misspoke when you said before your final plat, you meant before the preliminary plat is that correct?

COURT: He never was clear on that, Mr. Dickey, as I recall. He couldn't fix the time when he first learned of it.

Q I know he couldn't fix the time, it was some time around the early part of February, I believe.

COURT: He may have, I missed that point if he did.

Q Is that correct? Before the passage of the ordinance?

A Are you saying before the preliminary plat?

Q Your answer was somewhat confusing to me, and ...

COURT: Just go ahead and ask the question now.

Q When did you first discover as nearly as you can tell - I believe I confused you on this before. When did you first discover as nearly as you can tell that Greene County was considering a zoning ordinance?

1 A I can't say when I first heard it. Are you saying
2 when it was considered, when Greene County was considering or
3 when Greene County adopted it?
4 Q That Greene County was considering it?
5 A I don't know.
6 Q Was it before you filed your preliminary plat?
7 On February 4?
8 A To my knowledge I had no knowledge of it prior to
9 that.
10 Q It was before you filed the preliminary plat the
11 second time on February 26, though was it not?
12 A That I had knowledge of it?
13 Q Yes.
14 PARKER: Well, I thought Your Honor the previous
15 question was directed to February.
16 COURT: Mr. Dickey has indicated at least thus far that
17 there were two filings for the preliminary plat.
18 Q Yes sir.
19 COURT: That hasn't been disputed and I'm not sure that
20 its been admitted either, but his position is that the first
21 preliminary plat filed was rejected and he later filed one which
22 was approved.
23 PARKER: If I understood Mr. Dickey's question correctly,
24 the first preliminary plat filing that he was talking about he just
25 referred to and this man has answered that question or did the best

he could with it and gave him a February date. And my understanding of the evidence is that the first preliminary plat filing was somewhere back in the fall.

Q No, February 4, Mr. Parker.

COURT: All right.

PARKER: That was the preliminary plat that was filed for approval by...

Q No, that was the first preliminary plat, Mr. Parker.

COURT: Well, let me ask the question this way. Mr. Matthews, I think the gist of what Mr. Dickey is getting at and it is certainly concern to the Court in its consideration of whether you were caught off base with good faith planning, and that is did you have any reason to rush your submission of this preliminary plat to get it approved to get under the wire before this ordinance was adopted? Did you have any knowledge that would have caused you to move it along faster? In other words were you forewarned?

A I don't think we rushed into anything. The first plat was dated October 23 if my memory serves me right.

PARKER: That's what my understanding was.

COURT: When did you submit it to the zoning administrator or the county administrator?

A I can't say ...

Q Your Honor...

A The first time - I can't say.....

1 COURT: Well, if it's already in the evidence....it
2 doesn't have to be answered by the witness if it's already....
3 PARKER: By various and sundry signals, I see Mr.
4 Harris knows the answer to this question...
5 COURT: Well, did you submit your plat or did your
6 engineer submit it for you?
7 A My engineer submitted it.
8 COURT: I see, you did not personally submit it?
9 A No sir.
10 COURT: Now the question is as the owner of the
11 property though, and one who under the ordinance would have to
12 be operating in good faith, did you have reason to know that
13 the ordinance was going to change your prospects of getting such
14 a subdivision approved?
15 A Well, again, I'll have to say in my experience with
16 other areas it has always been the ...
17 COURT: Well, the preliminary...
18 A .....my experience that if submitted prior to
19 these things and it was accepted and approved that it didn't
20 concern you, what...in other words, this type thing can't be
21 made retroactive to something that's already happened or approved
22 or disapproved.
23 COURT: You are talking now though about the inter-
24 vening time between the first preliminary plat or the approval
25 of your preliminary plat and final plat; what I'm getting at - did

1 the submission of your preliminary plat in any way involve
2 knowledge that you had about the insuing zoning ordinance,
3 which would have in effect prevented you from getting such a
4 subdivision approved? Had you submitted it say March 10,
5 1974?
6 A Well, I can readily see if I had submitted it
7 after the fact, or after this law or ordinance or whatever it's
8 called came into effect, that it would certainly have affected
9 me.
10 COURT: All right, go ahead, Mr. Dickey, any more
11 questions?
12 Q This is already in the file, but I think this
13 will clarify things and maybe the Court's understanding....I
14 show an exhibit to you that's in the file. It's a letter
15 bearing your signature, dated February 4, 1974, and receiving
16 a notation that it was received by E. D. Jarman, Treasurer of
17 Greene County on February 4, 1974, is that the original submission
18 to the....Mr. Julius Morris?
19 A Yes sir.
20 Q All right, now, this letter of February 4 is in the
21 file. Now I show you an object returned, which is your plat,
22 and ask you if this is different from the plan submitted on
23 February 4, and if so in what regard, and when did you submit
24 this?
25 PARKER: Mr. Harris is.....the problem we are having....

1 COURT: Mr. Matthews doesn't have to answer it if
2 he doesn't know. It's as simple as that. If he knows he can
3 answer it.
4 A I don't recall the exact date....what you are
5 showing me is the preliminary?
6 Q The second preliminary.
7 A Right.
8 Q That was submitted later - what change was
9 made - just in close terms, what change was made?
10 A I believe some townhouse units were taken off of
11 the first plat - it was 48 townhouse units.
12 Q And what I have in my hand...
13 COURT: How does that have to do with the subdivision
14 plat, Mr. Matthews? You've lost me there. What has the use of
15 it got to do with the size of the lot?
16 A I don't know Your Honor other than the fact that
17 we were told by the county administrator that the present ordinance
18 did not provide for side-yards or you had to have a certain dis-
19 tance from side-yard to the building line.
20 Q Your Honor a townhouse lot...
21 COURT: Were townhouses covered under the subdivision
22 ordinance?
23 Q They were not allowed under the subdivision
24 ordinance, because the lots for townhouses was only 2,000 square
25 feet, and that's below the 10,000 square foot minimum.

1 PARKER: Well, for one thing and another thing, Your
2 Honor, the subdivision ordinance undertook probably, improperly,
3 to regulate side-yards, that is to regulate use as well as the
4 division of property. And by regulating use in that fashion and
5 of course, this gentleman took the position that the ordinance -
6 if it meant what it said, he couldn't get any townhouses in there
7 because of the fact that the ordinance had this provision in
8 there. It may or may not have been valid, but I think he was
9 advised that it was invalid.
10 COURT: All right, go ahead Mr. Dickey.
11 PARKER: He certainly had the right to presume it
12 was.
13 Q Now, do you now remember being called by Mr. Julius
14 Morris and reminded to get this amended thing in quickly because
15 of the March 2 meeting to approve the interim zoning ordinance?
16 A I can't recall that he called me, Mr. Dickey. He
17 may have called Mr. Harris, my engineer - I'm just uncertain.
18 Q I hate to return to this one other subject, but
19 you are not able to give us any more assistance as to figuring
20 out when you first learned about the impending zoning ordinance?
21 PARKER: Your Honor, that question has been asked
22 four times. . .
23 COURT: There's no use to go over that again.
24 Q I never got the answer, that's why I'm just wonder-
25 ing.

1 PARKER: He gave you an answer, he said he didn't
2 know.
3 Q All right, thank you very much.
4 COURT: Objection sustained.
5 Q That's all.
6 COURT: Any redirect, Mr. Parker?
7 PARKER: No sir. I call Mr. Harris.
8 COURT: All right, you may stand aside, Mr. Matthews.
9 SLAUGHTER: Your Honor, we'd like to note that our
10 objection continues as previously stated.....to ...
11 COURT: Yes sir, it's understood that the objections
12 will be continuing and the same rulings would apply, Mr. Slaughter.
13 SLAUGHTER: Thank you.
14
15 JAMES H. HARRIS, having been duly sworn, testified as
16 follows:
17
18 DIRECT EXAMINATION
19 BY: Mr. Parker
20 Q Mr. Harris, state your name, address and occupation?
21 A My name is James H. Harris. My address is in
22 Warrenton, Virginia, and I am a land surveyor, authorized by the
23 State of Virginia.
24 Q Did you have a hand in drawing this plat - the same
25 one that's up there, I take it?

1 A Yes sir.

2 Q When were you engaged in that connection, and

3 then what did you do about it?

4 A I was employed to do a topo back in early - well

5 in mid-'73. I completed this then in September '73, I was

6 employed to do a preliminary subdivision plat. I did so and it

7 was completed in October.

8 Q Did that have townhouses on it?

9 A It did sir.

10 Q All right, what did you do with it - with the plan?

11 A Then we filed a subdivision plat - preliminary

12 plat February 4.

13 Q All right, sir.

14 A Mr. Morris' office.

15 COURT: 1974?

16 A 1974. During the interim....

17 Q Did it still have townhouses on the plat?

18 A It still had townhouses on it. In that interim

19 Mr. Morris and I had conversation that it would be prohibited to

20 have them on there, so I took them off and resubmitted...brought

21 new plats, not resubmission, but brought new plats to the

22 zoning office.

23 Q And what interim were you talking about?

24 A Between the time of the preliminary submission to

25 the county and the planning or ever who - what authority passes

1 the preliminary plat.

2 Q So...

3 A During the month of February.

4 Q In the ordinary course of things this plat had

5 been filed on February 4?

6 A Yes sir, and it is not unusual to make minor

7 changes on a preliminary plan in other places.

8 Q And you proceeded with respect to the townhouses?

9 A Yes sir.

10 Q And why did you say you did that?

11 A Because of the subdivision ordinance which has a

12 side restriction that is 10 feet and on a townhouse it is

13 a rowhouse and the property line is the wall....it's a common

14 wall house.

15 Q Well, let me show you something.....

16 COURT: Apparently they've never heard of a townhouse

17 in Greene County have they, Mr. Harris?

18 A Apparently not, sir.

19 COURT: Didn't allow for them to be built?

20 A The ordinance doesn't cover it.

21 Q There is no point in my witness reading the law -

22 it's four or five pages - it is simply the setback-no building/ shall be constructed on a lot

23 any closer than 25 feet from the street or right of way line,

24 and as you pointed out - the side-yard.....

25 A Yes, this is the only .....

1 Q Had you seen this before?

2 A Yes sir.

3 Q Well, in what connection did you see it?

4 A When I started the preliminary - to conform as

5 near to that as I could, to the county ordinance.

6 Q Now I note Your Honor that this was enacted on

7 the 2nd day of August, 1969, the subdivision ordinance, and

8 there was an amendment, February 24, 1973, that's 1973 so there'll

9 be no confusion.

10 A Both of those documents were...

11 Q Made available to you?

12 A Yes sir.

13 Q Did you rely on these in...

14 A Yes sir.

15 COURT: Excuse me just a minute, Mr. Parker, I have

16 a message that I've got to respond to.....

17

18 (Recess.)

19

20 COURT: You all may proceed.

21 Q Did you ever have a conversation with Mr. Morris

22 concerning you'd better hurry up because something is coming?

23 A I heard rumors of the fact that during - about the

24 time we submitted our preliminary plat to the county...

25 Q That was in February?

1 A Right, but when I started the preliminary plan
2 I had no knowledge of it whatsoever.
3 Q Now your office is where?
4 A In Warrenton, Virginia.
5 Q I have no further questions.
6 COURT: All right.....Mr. Slaughter.
7
8 CROSS EXAMINATION
9 BY: Mr. Slaughter
10 Q I would ask the Court's indulgence just a moment
11 please.
12 COURT: Just as a preliminary, I take it as a surveyor
13 and possibly land developer, it is customary for the surveyor
14 to check the local ordinance in the county in which the surveyor's
15 plat is being prepared?
16 A Yes sir.
17 COURT: And you did that in this case?
18 A Yes, I came and purchased ordinances in October.
19 COURT: All right.
20 A September and October.
21 COURT: Go ahead then, Mr. Slaughter.
22 Q Mr. Harris, in his testimony Mr. Matthews indicated
23 that you would be more knowledgeable on topographical matters
24 than he. Are you in a position to give us any enlightment on
25 whether or not the lots there in that area of the county can be used

1 with septic tanks?

2 PARKER: I don't object to this approach, Your Honor,
3 at this time, but Mr. Slaughter is making this gentleman his
4 witness at this point.

5 COURT: I don't think he would be, Mr. Parker, for
6 this reason because your first witness deferred to him.

7 PARKER: All right.

8 COURT: And I think he's invited this, because he
9 should have been able to answer it, and he's deferred to this
10 witness. So it would be considered in the nature of cross
11 examination. Go ahead, Mr. Slaughter.

12 Q Can you tell us what the percolating characteristics
13 of that area are?

14 A According to the soil scientist, Mr. Dwight
15 Kaster, who did a soil survey on the land, it is poor - I would
16 rate very poor for 1 acre or 2 acre, for the simple reason the
17 terrain is hilly, not undevelopable but according to the drain-
18 field standards and so forth by the State, that it would be
19 a very poor yield on drainfield development.

20 Q Certainly for 2 acre lots, it's not undevelopable?

21 A Well, then you've got another cost factor that might
22 interfere with that, and that would be road construction. It would
23 mean it might be too high or .....to justify a 2 acre lot for
24 sale on the current market.

25 Q Two acre lots you wouldn't have the roads that you

1 would have for the density of subdivision that you proposed?

2 A You would still have to go the entire length of

3 the property, which basically, that's what we've done with the

4 10,000. It's the numbers of the road frontage that make up

5 the difference.

6 Q On another point I believe that it was shown in

7 the evidence already before the Court that for this subdivision

8 you have approximately 2,000 cars a day from the homes alone and

9 some 4,000 from the entire development?

10 A There's 2,800 car count based on the living units.

11 And after the commercial area is done, then I would estimate it

12 would be approximately 4,000 if that high.

13 Q Of course it wouldn't be nearly that high with

14 two acre lots?

15 A No.....7 cars per unit.

16 Q All of this traffic would then be on 33, would it

17 not?

18 A Yes sir.

19 Q From one single entrance?

20 A Yes sir.

21 Q No further questions Your Honor.

22

23 Questions by the Court

24 Q Let me ask a question or two here. Mr. Harris,

25 what unique characteristics, if any, does this 116 acre parcel

1 have?

2 A 111 plus, sir.

3 COURT: 112 acres or so.

4 A It planning wise, as far as I - what little know-

5 ledge I know about it, we're within a half a mile radius

6 of an existing village. The way I've designed the steps, we have

7 a commercial in the front, a high density in the middle, and

8 our single family towards the last two-thirds of the property.

9 COURT: Well, does it have any drawbacks as far as the

10 way it would have to be developed as opposed to the way it could

11 be developed? Or might - or might be laid differently?

12 A Well, may I make this statement? I think I have

13 felt that it is near the ultimate as you can develop it, sir.

14 To make it economical, and for a large lot development, you're

15 going to have to build roads, regardless and they're going to cost

16 extra amount of dollars regardless, per foot - regardless of

17 how many lots you've got facing on those, sir. What I'm saying

18 you're going to have...

19 COURT: What makes this 112 acres different from any

20 other 112 acres in Greene County? Are you saying that no develop-

21 ment could be had in Greene County unless you did it the way you

22 are doing this one?

23 A No - this is my opinion on how it should be

24 developed, sir. Another man's opinion might be differently.

25 COURT: What would be the reason why this particular

1 land wouldn't lend itself to the same type development say
2 any other 112 acres in Greene County?
3 A It would depend on where it would be located, sir.
4 COURT: Is it the type of soil or the topographic
5 outlay...
6 A A combination of all of them, sir, I would think.
7 Positive soils and...
8 COURT: What is the adjoining subdivision served by,
9 public or private sewage?
10 A It's served by septic tanks, which we cannot do....
11 on that small a lot.
12 COURT: Well, I'm not talking about that, I'm talking
13 about your 112 acres - why couldn't you do this on 12 acre
14 lots?
15 A Well, we are downhill and we've got other drainage
16 coming off of that and the topography is different.
17 COURT: All right, that's what...
18 A Slightly different.
19 COURT: That's what I'm getting at, what peculiar
20 characteristics?
21 A I don't know what the soils are of that subdivision
22 since I did not have anything to do with it. The area that we -
23 the only part that we've got soils suitable for drainfields, accord-
24 ing to the soil scientist, who is an expert at it - is about
25 40 to 50 percent in the rear, and that is all, for drainfields.

1 COURT: All right, 40 to 50 percent of the total
2 acreage which is in the rear would lend itself to the... two
3 acres subdivision...
4 A For drainfields.
5 COURT: Drainfields?
6 A Yes.
7 COURT: And what use if any could then be made of
8 the front portion of the development?
9 A Without sewer none, sir....there might be some
10 spot that would pass perk but I mean it wouldn't be enough to
11 justify the cost.
12 COURT: Is that because of its topographic location or
13 the soil structure? Or Both?
14 A The combination of both.
15 COURT: Now is this information that has been furnished
16 by the soil scientist?
17 A Yes sir.
18 COURT: Did you make your layout based on what his
19 information gave you or did you have a preconceived notion of
20 just making as many lots as you could in this?
21 A No, I did not do the preliminary until after I had
22 a topo and after I had a soil report. I do not start any
23 subdivision before then.....just mere cutting out lots, you have
24 to have a reason for them.
25 COURT: Is a large part of the development costs to do

with access roads?

A Yes sir.

COURT: The major cost other than the central sewage disposal plant, probably would be with roads?

A Is your roads, sir.

COURT: And you couldn't recover those then economically you are saying with the number of saleable two acre lots?

A Right, sir.....to justify cutting the road through.

COURT: All right, go ahead, Mr. Parker.

REDIRECT EXAMINATION

BY: Mr. Parker

Q You don't have any guarantee - you said you checked on ordinances in this county before?

A Yes.

Q You don't have any guarantee at the present time, sir, that there's not going to be a subsequent ordinance which would keep you from using it - cutting this into two acre lots, do you?

A No sir.

Q I point out, Your Honor, that the zoning ordinance expires unless something else is adopted on March 4.....

COURT: Is that what's called interim zoning?

Q Yes sir.

COURT: I see.

1 DICKEY: March 2.

2 PARKER: March 2.

3 COURT: I believe I've heard it mentioned before in

4 the other motions that were heard - it was interim zoning.

5 Q What kind of water hook-up, I might ask you, is

6 out there?

7 A The Rapidan Water Authority has their water

8 lines in front of this property.

9 Q That's all.

10 COURT: Any further cross?

11 SLAUGHTER: We have nothing further.

12 COURT: All right, you may stand aside.

13 PARKER: Call Mr. Evans.

14

15 GEORGE V. EVANS, having been duly sworn, testified as

16 follows:

17

18 DIRECT EXAMINATION

19 BY: Mr. Parker

20 SLAUGHTER: May it please the Court, Mr. Parker

21 called Mr. Evans as an adverse witness. There's certainly been

22 nothing shown so far that he is adverse. I suggest ...

23 COURT: I hadn't had any indication that he was being

24 called....

25 PARKER: I think , Your Honor, I can cross for the

1 very reason of the fact that the county has taken the position
2 that what's in evidence already is to be read in evidence by
3 the Court, merely because - for what it would be worth....merely
4 because it is in the record. This is Mr. Slaughter's own point.
5 If indeed it is in the record, a great deal of the record that
6 is before the Court ....
7 COURT: Why are you calling him again then if it's
8 in the record?
9 PARKER: Because he was not cross examined. I want
10 to cross examine him on what he has put in the record.
11 SLAUGHTER: But you were present at that hearing.
12 COURT: Did you have the right to cross examine him?
13 PARKER: No sir, at that hearing I did not have an
14 opportunity to cross examine. That hearing was not conducted in
15 accordance with the standards. The gentleman was present,
16 everybody spoke when they had an opportunity to speak.
17 COURT: What position does Mr. Evans occupy.....
18 PARKER: Mr.Evans at that time made one statement ...
19 made about a paragraph statement....
20 COURT: What reference are you calling attention to -
21 now let's see what it is?
22 PARKER: Mr. Evans placed into the record a letter
23 from the Thomas Jefferson Planning District, a fiscal impact
24 statement...
25 COURT: Where is that?

1 PARKER: I don't know where it is in that file, but
2 it's one of the matters in the return. It's some approximately
3 10 pages long.
4 SLAUGHTER: Numbered if the Court please as number 4...
5 the letter is supposedly dated September 16, 1973, Julius
6 Morris from George Evans, Jr.
7 COURT: All right, I have item 4.
8 PARKER: This all follows that. This is a fiscal
9 impact study....
10 COURT: Was this submitted in writing to the Board
11 or the zoning administrator?
12 PARKER: That's a good question, Your Honor. I never
13 saw this report at that meeting. It may have been on the table,
14 but I never saw it. All I got heard at the meeting was this
15 gentleman's conclusions based on that report.....as I said about
16 a one paragraph statement. All this came up on the return,
17 later on, and I think - I don't know whether it is or isn't
18 but I want to check that point.
19 COURT: Well, let's see what his conclusions were.
20 Are you saying that his conclusions make it obvious that he's
21 adverse to you?
22 PARKER: Well, I think his conclusions do indicate
23 that he's adverse, sir, to me, but if this is permitted in
24 behalf of the council down below,....it's not information that I've
25 put in the record....

1 COURT: All right, I'll allow you to cross examine
2 him on the assumption now that this information which is in
3 there is adverse to you. I haven't had a chance to study it,
4 but that's the only basis on which you could call him as an
5 adverse witness.
6 PARKER: Let me briefly go over what this says.
7 The conclusion that he reaches in his letter is that - this
8 project will cause a net loss in revenue to the county, that's
9 the conclusion.
10 COURT: You really don't propose to show any different
11 to you?
12 PARKER: Yes sir.
13 COURT: But with this same witness?
14 PARKER: With this witness and part with another.
15 COURT: What I'm getting at - you are undertaking by
16 this same witness to refute what he's already said?
17 PARKER: Yes sir, because . . .
18 COURT: Well, why don't you get on with other evidence,
19 now, that's what I'm.....do you have other evidence here which
20 would refute it?
21 PARKER: Yes, but I can lay a better foundation for
22 that evidence if I proceed in this manner.
23 COURT: All right, I'm going to limit you then very
24 strictly then to how much territory you can cover with this
25 witness, Mr. Parker.

1 PARKER: All right, sir.

2 COURT: Unless you can get him to admit that his
3 conclusions are full of holes, I'm not going to give you unlimited
4 opportunity to shoot at him. Go ahead.

5 PARKER: I understand the Court won't give me unlimited..

6 SLAUGHTER: May it please the Court, to have my
7 objection in the record. Mr. Parker has indicated that he
8 could not cross examine, but there's nothing in the minutes to
9 indicate that he was prevented from cross examining Mr. Evans
10 before the Board of Zoning Appeals. And I don't see why having -
11 the matter having gotten here, he should be given the right to
12 begin his cross examination some four months after direct, and
13 take the position.

14 COURT: I understand. The ruling has already been
15 made, he is merely stating his grounds, Mr. Parker. The fact
16 is that the report is in the record in writing and will be considered
17 as part of the evidence as having been sent up. And the idea is
18 to permit you to cross examine him on the report, not what was
19 said in the meeting...

20 PARKER: Yes sir.

21 COURT: Unless it is borne out in the minutes. Go
22 ahead.

23 Q Mr. Evans, would you tell me, sir, so the Judge will
24 know, what your position is?

25 A My position is a land use planner for the Thomas

1 Jefferson Planning District Commission. I am professional
2 staff to the Greene County Planning Commission through Julius
3 Morris, the county administrator.
4 Q You are also professional staff to the Planning
5 Commission locally?
6 A To the local planning commission.
7 Q I notice that your letterhead - this letter of
8 September 16, 1974, was written by you to - in your capacity
9 as senior planner of the Thomas Jefferson Planning District
10 Commission?
11 A That's right.
12 Q Now, I wonder do you have in front of you a copy of
13 your..
14 A I do have.
15 Q And your name is?
16 A George Evans.
17 Q And your address is?
18 A Charlottesville.
19 Q Now, I want to bring you to page 2 of this report.
20 It says annual real property tax. Greene County effective true
21 real estate tax per $100.00 = .61. Can you tell me where you
22 got that figure, sir?
23 A Yes, that's the amount of money which would be
24 taxed on the market value - on $100.00 of market value of a
25 structure.

1 Q Where ...

2 A That's determined by the assessment ratio - in
3 other words what percent of the market value assessed that,
4 and the tax rate that you apply.

5 Q And ...

6 A The effective true tax rate would also....

7 COURT: Mr. Evans, just respond to the question -
8 where you abstracted that information or did you develop it
9 yourself?

10 A No sir, let me make a clarifying point here. Every-
11 thing contained in this fiscal impact statement - I utilized as
12 a guide a similar impact statement entitled the fiscal impact
13 statement of residential and commercial development, a case study,
14 done by the Urban Land Institute of Washington, D. C., which is
15 a non-profit, non-partisan organization. Now I followed - I do
16 not have the expertise or time to develop an independent
17 impact study per se, but the only written one that I could find
18 that would serve as a guide was the one I've just cited and I
19 followed that as closely as possible. So where ever - for every
20 single entry under revenue and under expenditures - it was taken
21 from the U.L.I. Study which deals with a subdivision in Albemarle
22 County - Hollymeade. The characteristics are very similar. I
23 made adjustments only in the - from what I could gather was
24 proposed for Greenetown Village, I made adjustments for the price
25 of the housing and the family characteristics - family characteris-

1 tics which might have a bearing on entries that were made here.
2 COURT: Now the question though has to do with the
3 effective true real estate tax rate.
4 A This I figured from what is currently levied in
5 Greene County, which as I said...
6 COURT: Well, how do you know what the true value
7 is, that's Mr. Parker's...
8 A The true value - it was - the true value of real
9 estate in the County was published by a State study, and I can't
10 recall but it was put out by...
11 COURT: You went to a State study to get that
12 information?
13 A Yes.
14 COURT: All right.
15 Q Now sir is this that study?
16 A I can't recall at this time - when I did this
17 I had a number of studies, and they listed each county in the
18 State and they gave the effective true tax rate, and I took what
19 was given in that study for Greene County.
20 COURT: Was the figure .61 actually calculated?
21 A Yes sir.
22 COURT: You used the calculation someone else had made?
23 A Yes sir.
24 COURT: All right, go ahead.
25 Q What was the methodology by which that .61 figure was

1 arrived at?

2 COURT: He doesn't have to answer that, Mr. Parker,

3 unless he knows. Now...

4 Q If he doesn't know, I'm sure he can tell me

5 that.

6 A Well, I just told you. I told you it was the

7 assessment ratio times the tax rate, considering when the last

8 assessment was made on property. And I might add here too,

9 that I think - if I might add this....

10 Q If I may continue Your Honor?

11 COURT: Go ahead, just answer the questions as directly

12 as you can, Mr. Evans.

13 Q Was that .61 based on rural or urban assessment

14 ratios?

15 COURT: What are you talking about with respect to

16 Greene County?

17 A As based on the entire county, unincorporated

18 area of Greene County.

19 Q The entire unincorporated area of Greene County?

20 A Yes sir.

21 Q Is that mostly rural?

22 A Yes.

23 Q Does that then apply to sub-divisions?

24 A It's an average - yes, it would apply to all parts

25 of the County.

1 Q But it's an average of all property in the
2 county - it doesn't apply to sub-divisions in particular, does
3 it?
4 A Yes.
5 Q Oh it does?
6 A Yes. In other words, it's - what you are going
7 to be charged for $100 marketable value in your property, regard-
8 less of whether it's in a sub-division or the country.
9 Q So if I bought a piece of property in a sub-
10 division this year and next year I suspect this to be my true
11 tax rate in Greene County?
12 A Yes, if there's not a reassessment, and if there's
13 not any change in your assessment ratio or your...
14 Q If there's not a reassessment - you mean by that
15 a general reassessment ?
16 A Yes.
17 Q Now, the revenue that you reflect in this paper,
18 the revenue that you reflect in this statement is in direct
19 proportion is it not, to that ratio .61?
20 A In the real property tax, yes.
21 Q Yes sir, so part of that revenue comes from the
22 real property tax. Now, what adjustment, over what period of
23 time did you attempt to reflect the net per annum loss which
24 would, according to your report here would result from this
25 sub-division?

1 A I don't quite understand the question.
2 Q Over what period of time ...
3 A This is an annual loss.
4 Q This is an annual loss, and over what period of
5 time did you expect that loss to continue? What period of
6 years, did you...
7 A Well, it would continue at least until the expira-
8 tion of the 30 year bonds, at which time there would be some
9 adjustment.
10 Q Did you by any chance in this fiscal impact
11 analysis, include anything in here about reassessment?
12 A No.
13 Q Did you - you didn't ever upgrade the .61
14 result?
15 A No.
16 Q Did you include in this fiscal impact analysis
17 any money whatsoever coming in from revenue sharing or
18 Federal Income Tax?
19 A Oh yes, yes sir. In other words, what I did I
20 took - I had a copy of the - from the commissioner of revenue,
21 a copy of all the moneys coming into the county and all expendi-
22 tures, and utilizing the figures published I then utilized the
23 various standards of the Hollymeade Study and borrowed from the
24 county's revenue statement.
25 Q I believe you said on your direct that you considered

1 this sub-division similar to Doctor Hurt's Hollymeade sub-
2 division...
3 A In some respects.
4 Q Oh.
5 COURT: Where does it say that in the report - in the
6 minutes, Mr. Parker?
7 Q That was a statement that he did make, Your Honor,
8 at the meeting.
9 COURT: Well, now that's...
10 Q Did you make that statement down below? At the
11 meeting before the Board of Zoning Appeals, that you considered
12 it similar in some respects to the Hollymeade Sub-division?
13 A Yes.
14 Q Based on the Hollymeade Study?
15 A Yes.
16 Q Where in here - getting back to what I had before,
17 since you have a copy I'll let you use that, where in here did
18 you point out - did you work in an input from revenue sharing?
19 A I can't make specific reference with that amount of
20 material, but ...just...
21 Q I'll give you exactly what the Court has in front
22 of it.
23 A I've got it also.
24 Q Well, can you tell me where in there that you....
25 you can be pointing to a figure, it seems to me.....

A Revenue sharing comes into the county and they specify for what particular use it shall be used. And ....

Q Well, did you project in this statement revenue from revenue sharing, that would be generated by people who have their residence in this sub-division?

A I'm sure I have it, but I don't remember exactly.

Q Would you please show me where in there...

A I believe - I can't be sure - I'd have to have my material. I think it comes under schools. In other words you get a lump sum and the county assigns this sum to whatever it so desires.

COURT: Is that assignment of money based on population, Mr. Evans, that the revenue sharing would generate?

A Yes to the best of my knowledge.

Q Now sir, I believe you used the figure a moment ago in your testimony of 30 years, what was that 30 years?

A That was the time it would take to amortize the bonds for the construction of the capital facilities necessitated by the development.....schools.

Q Primarily schools, right?

A Primarily...

Q Well, now let me inquire concerning that. What is the life of the school in question?

A I can't tell you.

COURT: What is he what?

Q I ask him what the average life of the school was that he gave a value for? You do have a value in this report for schools?

A It's not particularly a value for a school...well, it's....what it is is a value ...a fiscal facility value per pupil per year, to educate that pupil; it's not the school. In other words you more or less assign the total costs of classroom space and supplies and what-not ...to the student, in other words...

Q The capital...

A In other words the total cost is broken down per pupil.

Q Per pupil, and you multiply that back times the number of pupils that the sub-division should generate and then you get back...

A Right.

Q .....and that's a capital cost?

A Right.

Q And what is - I'm asking you what the life of that school capital cost is? I take it you've amortized it over 30 years?

A Right....right. The life of the school would exceed the 30 year bond, as I said, at which time that expenditure would probably - assuming no major repairs or anything, would probably be deducted from the annual deficit.

1 Q So, but you didn't give any credit in here, the
2 life of the school might be 50 years - and you didn't give any
3 credit in here for the life of the school, didn't give any credit
4 beyond the period that the bond would extend did you?
5 A No.
6 Q Now, over on page 7.....capital expenditures for
7 recreation, let's see now you show a figure here of 25 acres
8 at $2,000.00 per acre - that's what you put in there?
9 A Right.
10 Q Is that $2,000.00 per acre - where did you get the
11 figure $2,000.00 per acre?
12 A I can't recall at the moment.
13 Q Well, did you - is this referring to land in Greene
14 County?
15 A It's land in Greene County. I did make a specific
16 effort to find - in other words I was basing it somewhat on
17 the plan and assuming that land for parks - as the plan calls
18 for - would be valued at a certain value, I tried to determine
19 what that value was - the best determination I could come to
20 was $2,000.00. I think you must also bear in mind here that
21 none of these figures are hard and fast. It says so right in
22 that letter.
23 COURT: Mr. Evans, let me ask you this as a general
24 statement and maybe it will clarify the gist of your position
25 that you have taken in this report. Are you saying that because

1 the existing costs to the county of maintaining public facilities
2 exceeds the tax revenue that the expected development of this
3 sub-division would create a greater loss, or is it....is the
4 county now operating in the black with regard to its facilities
5 and the services required?
6 A That I don't know, but..
7 COURT: You don't?
8 A The purpose for submitting this and I might elaborate
9 once more upon my role. It is my responsibility to notify the
10 planning commission - whenever he makes a decision on all of
11 those things which I feel will be pertinent in the decision.
12 COURT: Well, these...
13 A So in doing this I felt that the public interest
14 was at stake in the fact that I had considerable doubt as to
15 whether or not - why I felt that this sub-division would create
16 a significant adverse/financial impact upon the county. So in order to
17 arrive at some general figure as to what this might be, I did this
18 report and I admit I did it hastily. I admitted to the planning
19 commission and the Board of Zoning Appeals, that it contained
20 many possible errors which were open for dispute and that it in
21 no way represented a definitive study, but it was simply submitted
22 to indicate to the planning commission that the - potential
23 for an annual deficit to the county was great.
24 COURT: Well, is that based upon present experience
25 or mere future projections without regard to present experience,

1 that's what I'm getting at?

2 A It's based upon the projections that will come about

3 once this development is complete - in other words you have

4 all these ...

5 COURT: Let's suppose we've got three hundred house-

6 holds in the county ...

7 A In other words the school system is already crowded,

8 they are going to contribute more in the way of - they are going

9 to demand more from the county in the way of expenditures for

10 capital facilities and services than this property will pay

11 in the various taxes. This was the point I was trying to ...

12 COURT: What I'm asking you now is do you have any

13 present basis of asserting this or is this speculation?

14 A This is speculation, assuming this development is

15 developed as proposed.

16 COURT: Well, if the present set-up is not operating

17 in the red, why do you speculate in the future it will operate

18 in the red, that's what I'm getting at?

19 A Are you speaking of the county?

20 COURT: The services required by an increase in

21 population?

22 A I'm not assuming that the county will be operating

23 in the red. I'm assuming that it will - once again based upon

24 my experience as a planner in the county, that the county's

25 economic base is very weak and that any development that comes

1 in which creates a considerable deficit, financially speaking,
2 is going to cause problems, financially speaking, in the county.
3 COURT: What's the basis of the deficit, what - is
4 it a combination of all services or particularly the schools?
5 A It's a combination of all those services which
6 would apply to the people that would live in this development.
7 And since it is so similar to Hollymeade, in its demographic
8 characteristics and its size and the price of its homes - then
9 I could come to some - I feel, fairly correct conclusion - and
10 in the Hollymeade Study they also came up with a very large
11 deficit in that sub-division to the county. And using these
12 statistics, I based this study .
13 COURT: Well, is there any present analysis of what
14 the situation is in Greene County without regard to this sub-
15 division?
16 A Not - are you speaking in the way of ...
17 COURT: What the total cost of services in the county
18 would be without regard to this sub-division that we have under
19 consideration here? Is the revenue generated by the present
20 residents of the county less than or more than what the services
21 that are presently required amount to?
22 A I don't know. I would assume that they equal or
23 exceed it. The commissioner of revenue I would assume...
24 COURT: Well do you know what the annual cost per
25 capita is for school pupils in Greene County? Is that listed

in your report?

A Yes.

COURT: Where is that?

A On page 4, I believe - operating expenditures - If you will turn to the allocation of operating expenditures, which is a summary sheet - services: education, library, landfill - have you found that? In other words the operating expenditures, the money to pay a teacher to educate the 1.05 students estimated in a single family dwelling unit, would be $348.42, that's to operate that school. In other words to provide services. To provide the actual facilities.....

COURT: You're not saying that Greene County can operate its schools for $348.42 a year per pupil are you? Maybe they do?

A Yes, about that.....

COURT: That's the lowest I've ever heard of if that's the case.

A And then...

COURT: Where did you get that figure?

A Well, it goes back to the - you have to go back to operating expenditures for services used by households in the particular sub-division. In other words the total school operation, costs as near as I could get it was one million, 356 thousand dollars, minus state and federal school operation funds, of 882 thousand dollars.

1 COURT: Now is this net costs to the county or is
2 this the total cost to the pupil? That $348.?
3 A This is the net cost to the county.
4 COURT: All right, well, that doesn't necessarily
5 mean that per capita cost of education...
6 A Well, it's the household cost....for a single
7 family dwelling unit, that we forsaw going in Greenetown Village.
8 COURT: Well, that ought to take into account then
9 the revenue sharing you are saying?
10 A I believe so, I don't have all the records..
11 COURT: All right.
12 A You might also be interested in the apartment
13 is considerably less - they carry .....it's only $145.00.
14 So this isn't per capita, it's per household.
15 COURT: I'm talking about the cost per student.
16 A Well, I did it by household not by student.
17 COURT: What is the $324.03; maybe I'm not following
18 you here.
19 A I'm sorry that is annual per pupil, but the ....
20 would up it to $348....
21 COURT: What's ADM?
22 A Average daily membership.
23 COURT: Uh-huh. And you are saying that's not the
24 gross cost for pupil, but the net cost to the county?
25 A That's right.

1 COURT: All right, go ahead, Mr. Parker.

2 Q With respect to parks, I was going to ask you this

3 question. You have included in there I notice from the com-

4 prehensive, the so-called comprehensive plan - standard for

5 regional park, district park and community park and neighborhood

6 park, is that right?

7 A To the best of my memory, yes.

8 Q 15 acres per thousand for recreation on the

9 regional park, 3½ acres per thousand of population for district

10 park, and 1½ acres per thousand for community park and 2 acres per

11 thousand population on the neighborhood park, is that right?

12 A To the best of my recollection.

13 Q What if any account has been taken in this connec-

14 tion of the fact that we have one-third of the county already

15 taken by national forests?

16 A Well, that's beside the point.

17 Q Well, wouldn't the national park serve the

18 function of at least a regional park?

19 A No. No, if you read the comprehensive plan you

20 will see that it wouldn't.

21 Q Is one sub-division to bear the expense of all

22 the...

23 A No, no, if you will look at number 7 on the first

24 page, Greenetown Village is only assigned the requirements to

25 meet the number of acres, according to standards set forth in

the plan, which will be 25 acres. Regardless of what the sub-division, if a similar sub-division came in and located - it had the same number of homes it would require the same number of standards. The standards are similar for every sub-division regardless.

Q It's got to be able to support - in the county for a national park - it's got to be able to support 25 acres for various and sundry parks?

A According to accepted planning standards, yes.

Q All right, sir. I refer you to page 10, a chart, your pages are not numbered. How many units do you show on here for the.....for the apartments?

A 168.

Q Is that consistent with the plan that's submitted by this developer?

A To the best of my knowledge it was....at the time I did this.

Q Well, I notice there was a date on here of...this is the revised ...this is revised, isn't it? It's marked revised...

A I believe it was revised but it was revised a very short time after it was originally completed.

Q Actually you revised it after the hearing didn't you?

A No sir.

1 Q Oh you revised it before the hearing?

2 A No, I submitted this to the planning commission

3 as is.

4 Q As it is revised?

5 A Where do you get the revised from?

6 Q It's marked revised on the return...

7 COURT: What are you referring to, Mr. Parker?

8 Let's see what you're referring to...

9 Q The sheets, I think, Your Honor, say the same

10 thing - one of them is marked revised.

11 COURT: Well, we're talking about the one in the

12 record.

13 Q They're both in the record. If the Court please, I

14 show...

15 A Yes, you're right, there was a revision because I

16 remember the total - the net annual deficit was greater at the

17 second revision than at the first.

18 Q You didn't miss the opportunity to reflect that by

19 a revision of these figures?

20 A There was a revision, I don't remember when the

21 revision took place. I don't remember what in the revision

22 created the excess in the annual deficit.

23 Q How much time did you put into this particular study?

24 A In actual development of it, I spent three days and

25 another staff member of the planning commission....

1 Q What's your background, sir?

2 A I have a bachelor's degree in geography from

3 Arizona State University, and a master's degree in urban

4 planning from Virginia Tech and four years of active planning

5 experience.

6 Q All right, sir. Now, on no place at all did you

7 notice that the actual figures submitted with respect to

8 apartments was not 168 but 120 units?

9 A I could find it no place.

10 Q Did...

11 A I might also add that these - the copy of this

12 was given to you at the time of the meeting and no objection

13 was ever raised about the number of units incorporated. I never

14 heard from you subsequent to that time. So I had no informa-

15 tion. I did the best I could to determine it.

16 Q You had these plans.....

17 A I did. I also had - I believe the figures I got

18 were from a letter that Mr. Matthews sent to Mr. Morris, stating

19 that he proposed 168 apartments.

20 Q Do you know whether that was before or after

21 the townhouses were taken out?

22 A I don't know.

23 Q Well, it does show on this plat on the last page,

24 it says total number of units 120 - where it says apartments,

25 doesn't it, sir?

1 A Where?

2 Q If you will hold the side of this.....

3 A That doesn't necessarily tell me what units they

4 are referring to or whether you are referring to one block or

5 the entire apartment complex.

6 Q It says total number of units, right near the word

7 apartments? 120? That's all..... On page 10, the

8 same one you were looking at, the figure of twenty-one

9 thousand dollars, near the right hand lower corner, what does

10 that figure represent, sir...

11 COURT: What page, Mr. Parker?

12 Q Sir?

13 COURT: Which page are you referring to?

14 Q Page 10.....there's a figure of twenty-one thousand

15 dollars - down in the right hand corner. It says add share general

16 capital expenditures.

17 A Yes I see it.

18 Q What does that represent?

19 A This was the one point in the urban land use study

20 which was unclear to me. Apparently when a sub-division reaches

21 a certain size, there is necessitated some form of community

22 center. And since it was difficult for me to determine whether

23 or not that would be necessitated by this development, I felt that

24 with the projected population of anywhere between 11 hundred and

25 15 hundred people, that it might possibly be so, so I prorated

1 -the section in there was very brief, it did not go into any
2 definite explanation. I didn't fully understand it myself.
3 So I simply prorated what they established for a figure for
4 the number of units in the Greenetown Village sub-division.
5 Q You didn't fully understand but you didn't mind
6 putting it in this so-called analysis...
7 A I understood - no, I understood what they were...
8 they were talking about some type of a community center of some
9 sort, which would incorporate branches of the various services
10 that can be provided. Now they didn't go into any detail or
11 break this down or explain this to any great extent, but I
12 did add it.
13 Q Is there a community center now in the vicinity
14 of Ruckersville?
15 A No. Now what do you mean - when you say community
16 center what do you mean - what are you referring to?
17 Q What do you mean when you say community center?
18 A I mean a branch library, I mean a rescue squad,
19 perhaps a fire station - all of those things which a high density
20 development might require. Ruckersville being considerably
21 smaller than the proposed Greenetown Village, and never proposed
22 to grow a third of what Greenetown Village is proposed to grow
23 there is no community center and there was never projected any
24 community center for Ruckersville. And there would be none..if
25 Greenetown Village does not go in.

Q Your Honor, I don't want to burden the Court any longer by questioning this gentleman - he can answer Mr. Dickey or...

COURT: All right, Mr. Dickey or Mr. Slaughter, any questions?

SLAUGHTER: We might as well call him in our presentation, Your Honor. We won't...

COURT: All right.

SLAUGHTER: We won't cross examine him - he's been cross examined.

COURT: All right, you may be recalled then, Mr. Evans and I'll ask you to stand by. You are excused for now. All right, Mr. Parker.

PARKER: Mr. Garth.

SHERMAN W. GARTH, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Parker

Q Mr. Garth, I won't keep you long. You are Sherman Garth and you are Commissioner of Revenue in this County?

A Yes sir.

Q Mr. Garth, how often are general reassessments made in this County?

A Every six years.

Q Prior to general assessment do you have the authority to assess any property in the County?

A Yes sir.

Q What kind of property do you assess?

A Well, if it's a sub-division, or if a person sells off four acres of land off a hundred acre tract or any improvements that's made on it for a driveway or...

Q So if it's a sub-division you assess it?

A Yes sir.

Q And heretofore what rate have you assessed - what's the ratio of assessed value to the true value of the property?

A Twenty percent of the sale value.

Q Beg your pardon?

A Twenty percent of the sale value.

Q And what has been the limit up until now?

A 450.

Q Per...

A Hundred...

Q All right. That's all.

CROSS EXAMINATION

BY: Mr. Dickey

Q Mr. Garth, Mr. Parker asked you how often these general reassessments are - when do you expect the next one to occur?

A We have - it's in effect right now.

Q It's going on right now, and any sub-division that was created in the year 1974, would you be assessing that or would it be reassessed..

A It would be reassessed by the reassessor's board.

Q So you would have nothing to do with it, would you?

A Not for '74.

Q For this specific year 1974. However, in your capacity as commissioner of revenue are you familiar with the price of land in Greene County?

A Well, I would say so.

Q Is it your professional business to be so?

A Yes sir, I think so.

Q Have you had occasion to check on the fair market - the sale price, I'm sorry, of lots - single lots, which sewer and water, septic system and - septic system and well have to be installed?

PARKER: Your Honor, he's making Mr. Garth his own witness...

COURT: Yes sir, he's...you're going outside the ...yes sir, you may continue...

Q I've no intention of doing that.

COURT: You are making him your witness, but you may continue on that basis, Mr. Dickey.

Q No objections to ...

COURT: Go ahead.

Q Have you occasion to investigate this?

A The...

Q The sale price of lots?

A Yes sir.

Q Do you have any informed opinion as to the value of a two acre lot in the location where Greenetown Village is?

A Two acre lots...

PARKER: Does this presume proper sewer and water?

Q I'm asking him to - just a blank lot with the owner-the purchaser provides septic system and well.

COURT: You are talking about streets being there though?

Q Yes, but streets being there?

A Two acre lot....well, just take across the board, I'd say between five and six thousand dollars.....per lot.

COURT: Per lot?

A Yes sir....on a two acre lot.

COURT: Assuming....

A That's just basing it across the board, Your Honor, on this other sub-division, you know, in that vicinity. We don't have any right in that vicinity with exactly two acres in them. The smaller the lots are on the average per acre, the more value they have on them to bring a little better price. ....per acre.

1 COURT: All right, any other questions?

2 DICKEY: I have no further questions.

3 COURT: Any cross on that, Mr. Parker?

4 PARKER: Yes sir.

5

6 REDIRECT EXAMINATION

7 BY: Mr. Parker

8 Q What was the approximate value of the lots at

9 Greene Mountain Lake?

10 A Greene Mountain Lake, on an average ...

11 COURT: Talking about per acre now or lot?

12 Q Per acre?

13 COURT: Per acre....I don't...

14 A Per acre...

15 Q Per lot will be all right.

16 A Okay, per lot. About 3 thousand.

17 Q All right, and how about the water front lots?

18 A Well....

19 Q In fact the water front lots were going for about

20 10 thousand dollars per acre or 5 thousand dollars per half

21 acre?

22 A Right.

23 DICKEY: Your Honor, Mr. Parker's testimony....

24 Q But that in fact is on an 80 acre lake isn't it?

25 A But what?

1 Q That in fact is on an 80 acre lake isn't it?

2 A I don't know the amount of acreage that's in it,

3 it's a nice lake.

4 Q Approximately 100 acres you'd say?

5 A Somewhere close..

6 Q And that is land that as you said a minute ago would

7 be higher priced land than this land down there would be?

8 A With the size lots they have, yes sir.

9 Q And the lake?

10 A Right.

11 COURT: What's the size of the lots that you've just

12 referred to as having a value ...

13 A Over at Greene Mountain Lake?

14 COURT: Yes - average size?

15 A From - they would probably average .61 to the lot.

16 I'm just - that's a guess.

17 COURT: Then the per acre value would be much higher

18 than what you've given for the area at Ruckersville?

19 A Right, those small lots like that on a lake sell

20 higher than ...

21 PARKER: Let me ask you this question - when do you

22 make the assessment on sub-divisions when it's laid to record or

23 when it's - when the lot is sold?

24 A Well, when the lot is sold - say it's 20 lots put

25 on in one section - on a plat. And five of those lots are sold, say

1 in 1973 and I average it out on what - for the 20 lots what those
2 five would bring, maybe they would have 15 to sell in '74.
3 And that's the way I realize my value.
4 PARKER: So the only lots which would be affected by
5 general reassessment would be those which were in the works
6 at the time of - those which had been plated at the time of
7 general reassessment?
8 A For that year, yes sir.
9 PARKER: And after that you pick up untilthe next
10 general assessment...
11 A Right, yes sir.
12 PARKER: Each year?
13 A Yes sir.
14 COURT: Suppose a man builds a 25 thousand dollar
15 on that and applies for a building permit, what do you do with
16 it, Mr. Garth?
17 A I assess it at whatever he gets his building
18 permit for, 20 percent of that value.
19 COURT: So you immediately pick that up when he applies
20 for his building permit?
21 A Yes sir, and then I have to contact him at the end
22 of the year, Your Honor, to see what percentage of that building
23 is complete for the next taxable year.
24 COURT: You don't wait for a general reassessment to
25 catch an improvement?

1 A Oh no sir.

2 PARKER: That's all.

3 COURT: Any other questions?

4 SLAUGHTER: Just a second.....

5 COURT: Mr. Garth, I take it that if a man put up

6 a 25 thousand dollar dwelling or whatever figure he gave in

7 his building permit, that's the basis you would use for valuation

8 once it's completed?

9 A Yes sir.

10 COURT: And you apply 20 percent factor against that?

11 A Yes sir, if he got a 30 thousand dollar building

12 permit I would assess it at 6 thousand.

13 COURT: I see. All right, any other questions?

14 SLAUGHTER: I would ask the Court's indulgence....

15 COURT: Mr. Garth as I understand it, a general

16 reassessment wouldn't have a great deal of effect on a new

17 construction project would it?

18 A No sir, I don't think so....not if the applicant

19 gave an honest estimate on his building ....no sir, I don't

20 think...

21 COURT: Unless there's a marked increase in the value

22 generally, the construction costs would be as high as any reassess-

23 ment costs?

24 A Yes sir. I think - we are having that reassessment

25 now and I don't know if Mr. Barbour is here or not.....he could

maybe compare or tell you a little better than I could because I really don't know what value he's putting on.

COURT: Do you know whether he checks the building permits in his reassessment?

A No sir, he doesn't.

COURT: He doesn't. In other words he makes an independent appraisal on the general reassessment?

A Yes sir.

COURT: All right, gentlemen any other questions? Thank you, Mr. Garth, you may stand aside.

CHARLES VIVIER, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Parker

Q You are Charles Vivier and you live in Greene County, I take it and you have a position with the water authority do you not - Greene County Water Authority?

A Service Authority.

Q Service Authority...yes sir.

A Rapidan Service Authority, I'm administrator, the Authority has a five member board of members and I administrate the policy of that board of members.

Q All right, you also in part operate this plant down

here that provides water out of the Rapidan River?

A That's correct, I have complete day to day management of the system.

Q All right.

A And I do partially operate it.....the plant.

Q Is there a water main which - I'll be real quick about it if I can...is there a water main that comes up Route 29 and then comes down Route 33 until it gets to the water tower down here, about Jake Harlow's....

A ...used car lot?

Q Car lot?

A That's correct. It's an eight inch line, an eight inch water main.

COURT: What size?

A Eight inch.

Q An eight inch main?

A That's correct.

Q Eight inch, is that the size which it leaves the plant?

A That's correct.

Q It's eight inch all the way?

A All the way to the storage tank, yes sir.

Q That will go right by the proposed Greenetown Village?

A That's correct.

1 Q What is - at what percent of the capacity of
2 your plant are you now operating?
3 A I will refer to the summer months which were a
4 little bit heavier than they are right now - which are the demand
5 months and we made the calculations and at that time we were
6 operating at approximately 30 percent capacity...of treated
7 water capacity.....producing approximately 70 thousand gallons
8 a day. And that was serving approximately 400 connections.
9 Q All right, sir, and about how much, are you
10 making up daily the amount of water that is taken out on any
11 given day?
12 A That's the way we operate, that's correct.
13 Q Now except on the week-ends?
14 A Well, for our convenience we can put more water into
15 storage to carry us through the week-ends.
16 Q You've got 400 accounts...
17 A Approximately 400 homes, equivalent, that includes
18 trailers - I count each one as a unit.
19 Q Isn't that tax free?
20 A Yes sir, there's an availability charge. It varies.
21 Q What would it be for something like Greenetown
22 Village?
23 A For the first year it would be one hundred dollars
24 per residence and the second year it would go to 200 dollars per
25 residential unit.....as we apply the policy now.

1 Q And there are 300 units - Your Honor, the Court
2 will take note that there are some - some three hundred units...
3 COURT: Yes sir, that's been referred to.
4 Q So it would be 60 thousand dollars, if it were
5 all 200 dollars?
6 A If they average 200 but of course they can't, but
7 I assume you - as I said the maximum would be 200.
8 Q Is your authority in the financial position that
9 you'd like to see them in?
10 A Well, certainly. . .
11 SLAUGHTER: If the Court please. . .
12 Q In dealing with the impact on the community, Your
13 Honor, and as much as these people might need these monies -
14 the 60 thousand dollars and other monies that might be generated
15 by. . .
16 COURT: Well, it's a question of whether this would
17 be beneficial...what's the objection, Mr. Slaughter?
18 SLAUGHTER: I was going to say - perhaps state my
19 objection, I'm not sure that Mr. Parker's rebuttal was exactly
20 timely - now Your Honor, if the Court please, Mr. Vivier testi-
21 fied before the Board of Zoning Appeals. Of course my objection
22 is continuing, but effectively this is just simply a representa-
23 tion of what was before the Board.
24 Q I'm through with my questioning of this witness,
25 Your Honor.

1 COURT: Well, I knew Mr. Vivier's remarks were
2 abstracted in the minutes, but necessarily along the lines
3 that he has just testified, and I'm not sure whether you've
4 gotten some new material that's relevant, or whether you've
5 rehashed some of the old. Now, I gather from what he said
6 that the water or the sewer authority could accommodate this
7 proposed sub-division within the limits of its present capacity?
8 A That's correct. At this time, now I say the
9 plant has a design capacity and today if we had 400 more
10 or 300 more homes today, we could accommodate them. Now how
11 the rest of the system will grow I don't know, but at that time
12 we will have to make other adjustments.
13 Q But actually you couldn't expect the whole 300
14 to go on at one time?
15 A No. I can safely say we expect the system to
16 grow normally, if it doesn't we are hurting. We will make the
17 necessary adjustments as the growth continues. Well.....I
18 won't venture anything on that.
19 Q That's all the questions I have.
20 COURT: All right, Mr. Slaughter, you or Mr. Dickey
21 may cross examine.
22
23 CROSS EXAMINATION
24 BY: Mr. Dickey
25 Q One or two brief questions. This 100 dollar connection

fee, how much does it cost you to earn that 100 dollar connection fee? In other words how much is it possible for the authority to make in connection with the sub-division?

A In a sub-division where that 100 dollar applies it costs the authority nothing, that is free and clear.

Q One hundred dollars plus the costs?

A That's right. So is the 200 dollars after the first year. In other words, that simply gives them the availability of water, the developer then has to put in the connection at his cost.

Q You are speaking here only with regard to Rapidan Service Authority as a water authority not as regards anything to do with sewage, is that correct?

A That's correct. We have no sewage program at this time.

Q You have no knowledge on that subject?

A I...

Q You have no expertise in that?

A That's correct.

Q You have no expertise on the subject of a central sewage system that might or might not be ....

PARKER: Mr. Dickey is making him his own witness...

COURT: He's commented on the sewage system before.

Q I'm just trying to...

COURT: Well, don't go past cross examination though, Mr.

Dickey. He hasn't testified on sewage, I don't see what his expertise...where the issue arises on it.

Q That's all I wanted to get was the answer I got and I'm finished with him.

COURT: Well, you don't have to go past what's been testified to, though you're going into a new area, that's properly objected to. Mr. Vivier I'm not sure that its been placed in the record - it should be- I'm aware of it, and Have heard testimony before, but the Rapidan Service Authority is not based any way on tax revenue but on revenue generated by fees charged to the users?

A That's correct.

COURT: So the financial condition of the service authority is not in any way involved with the tax structure of Greene County?

A That's correct.

COURT: Anything else from counsel? You may stand aside, thank you sir.

PARKER: Mr. Vivier may be excused, Your Honor...

COURT: Any objection? You may be excused Mr. Vivier.

VIVIER: Thank you, sir.

COURT: All right, call your next witness, Mr. Parker

1 ROSSER H. PAYNE, JR., having been duly sworn,
2 testified as follows:
3
4 DIRECT EXAMINATION
5 BY: Mr. Parker
6 Q Would you please state your name for me sir?
7 A Rosser H. Payne, Jr.
8 Q What is your occupation?
9 A I am a professional planner and visiting professor
10 of planning at the University of Virginia. My professional
11 offices are located at 59 Culpeper Street in Warrenton,
12 Virginia.
13 Q How long have you been a professional planner?
14 A Twenty-four years.
15 Q I beg your pardon?
16 A For twenty-four years.
17 Q What kind of courses do you teach at the
18 University of Virginia?
19 A I teach the planning courses both in designing
20 and planning implementation and its theory.
21 SLAUGHTER: If it please the Court, first, my objection
22 continues, but I think it might be appropriate to inquire right
23 now and save time. I don't know what the purpose of this witness'
24 testimony is. He did not testify before the Planning Commission.
25 Certainly no gaps in the minutes can be contributed to any recordin

of what he said or did not say. I really don't understand what the purpose of his being contacted for this hearing is for.

COURT: I may be jumpiug the gun on Mr. Parker but I have got an idea that Mr. Payne is about to take some pot shots at Mr. Evans but unless that is what it is I think Mr. Slaughter's objections are well taken. Now, if Mr. Payne is involved with counteracting Mr. Evans testimony or report it's relevant. If he is not, Mr. Parker, I think Mr. Slaughter's objection is well taken.

PARKER: That is what we propose to do, sir. He has also come on the question of the standards that Mr. Slaughter has said we have to meet.

COURT: Yes sir.

PARKER: In the event we don't have luck we have some questions we would like to cover.

COURT: All right. The objection is noted and overruled on the assumption that Mr. Payne's testimony will be in opposition with that given by Mr. Evans and Mr. Evans' report.

SLAUGHTER: Yes, and I would note my exceptions to the Court's ruling because as the Court has stated that effectively, what is happening is that Mr. Parker has had four months to examine material that is there and now, in bringing in his rebuttal that should have been in before the Board of Zoning Appeals. This is the difficulty of this type of hearing, sir, where part of it is

before an administrative body and part of it is here. Grant it, the Court may, as it has chosen to do, this of course is in the Court's discretion to hear evidence but it is also the reasons why there is such a strong presumption in favor of the acts of the Board of Zoning Appeals. If acted on what was there before it.....

COURT: All right, now, Mr. Parker, the point has been made. This is something that could or should have been presented before the Board of Zoning Appeals. The question is why this was not presented in opposition to Mr. Evans' report then. I believe Mr. Evans indicated that a copy of what he had rendered was available at the time he testified.

PARKER: At that time and not before, sir, so there was no way for us to know that the County at that time was going to present an immensely long fiscal impact study and there was no way, there was no witness right there, no expert, and it was impossible for us to have gone into the question of these particular figures. Mr. Evans himself has put a tremendous number of holes in these reports himself.

COURT: If that's the case then Mr. Payne's testimony should be limited to counteracting Mr. Evans' report.

PARKER: I think it will probably be, sir.

COURT: I think it would have to be.

PARKER: I think Your Honor the Court has discretion to hear Mr. Payne and in that I'd like to supply an area down there

with an aerial map which I think will be a great help to the Court and I hope the Court will look at that. The purpose in doing that is that under this ordinance and again I say the County's ordinance, they say in the area section that they come back to, one of the hurdles that we have to meet is that we don't push presumption. For any reason we don't contribute presumption. At the use of adjoining property immediately adjacent thereto but by that use strict application or whereby reason of the use of development of property adjacent thereto strict application of certain ordinances would effect the unreasonable restricted use of the property. Now, to that I would expect to show that because I think it should be determined under the ordinance what ought to be expected., what to do with the issue I may add. What Mr. Matthews had the right to expect....what Mr. Matthews had the right to expect when he went in behind and along side an existing subdivision as it will be shown from the air. I think this will be most helpful information to the Court.

COURT: What you are saying though is that I have got to judge the Board of Zoning Appeals with better information then they had.

PARKER: Your Honor, if the Board of Zoning Appeals had maintained transcripts and had decided the case based on applicable standards, applicable law then it seems to me the Court might well take the position that it didn't want to hear a lot of evidence which would be contrary to what the Board of Zoning

1 Appeals or which was not heard before the Board of Zoning
2 Appeals but that was not the case. At that time we were not
3 permitted an adversary hearing. We were there and we gave
4 testimony where we could along with many other people who
5 testified in many other irrelevant matters and filled up the
6 record, as the Court can see the notes, and matters totally
7 irrelevant before that Board.
8 COURT: I would certainly agree with you if you had
9 Mr. Payne there and he was ready to testify but unless he is going
10 to counteract something that you were caught by surprise with,
11 where does it leave the County? I'll have to give them a con-
12 tinuance and let them search out additional evidence to meet
13 what Mr. Payne may open up here.
14 PARKER: If it is that question, Your Honor, and it
15 may be a question of continuance...
16 COURT: It's a question of each side being prepared.
17 PARKER: Let me see if I can develop it, Your Honor,
18 from the standpoint that we will hear it on the merits. They had
19 me at the same disadvantage down below, Judge, and I have them now,
20 and it seems to me...
21 COURT: I think it is discretionary on the Court as
22 to whether I permit a disadvantage and that's why I am saying I
23 am willing to allow you the right to meet Mr. Evans and go no
24 further.
25 PARKER: I'll try to go in that direction, sir.

1 COURT: Now, if you go further than that I am going
2 to have to consider a motion for a continuance to allow the
3 County to rebutt what additional evidence Mr. Payne has.
4 PARKER: I see, Your Honor, that they have an expert
5 here.
6 COURT: They may or may not. Certainly the Court
7 will allow you to counteract the evidence that the Board of
8 Zoning Appeals had before it or to attack it...to undertake
9 to show error in it.
10 DICKEY: Your Honor, Mr. Parker has consistently
11 stated that they had advised the Board of Zoning Appeals and
12 yet all of the uncontroverted testimony is that Mr. Matthews
13 had in his hand the Planning Commission Hearing the week before
14 this very report...
15 COURT: You made....
16 DICKEY: That's the testimony of Mr. Evans, and un-
17 controverted in the record. It also appeared uncontroverted in a
18 letter in the records that it was in the hands of the Zoning
19 Administrator and the Planning Commission the week before and
20 that Mr. Matthews was present at that meeting and he saw that
21 he had a week to get Rosser Payne.
22 COURT: You all may refute that with other evidence
23 but for the time being your objection will be overruled. It
24 may be reasserted Mr. Dickey because if that's the case the
25 Court may re-examine its ruling. For now, the Court will allow

1 Mr. Payne's testimony on the same points that Mr. Evans has
2 touched on in his testimony before the Board or in that report.
3 I believe he was about to complete his qualifications.
4 Q Yes sir, that's where I was.
5 COURT: I might, for the benefit of counsel, I can
6 save both sides a lot of time...Mr. Payne is qualified in this
7 field as an expert in this Circuit and before this Court so unless
8 somebody has some desire to have him expand upon it at length,
9 I don't know of any reason to. The Court is satisfied with his
10 qualifications.
11 PARKER: Rather than going on at length maybe I
12 could just introduce his resume which is about five pages long.
13 SLAUGHTER: I don't see introducing a resume if the
14 Court has already ruled.
15 COURT: He has been admitted as an expert on these
16 points in the Circuit Court of Orange County, the Circuit Court
17 of Albemarle County, and maybe several others in this Circuit so
18 I don't think there is any need for the Court's enlightment unless
19 you all want to put something in the record.
20 PARKER: It is purely a matter of record. If I could
21 get this in the record I think I would quit but otherwise it
22 seems to me...
23 COURT: You may vouch the record with that but it is
24 not necessary that the Court consider it, Mr. Parker. You may
25 file it and have it vouched in the record.

1 PARKER: Thank you, sir.

2 COURT: Yes sir.

3 Q Mr. Payne, have you taken a look at the study which
4 was done by Mr. Evans?

5 A Yes, I looked at the study that was done. I was
6 very interested in Mr. Evans'comments to the Court and have
7 drawn certain conclusions therefrom.

8 Q Are your conclusions and his conclusions the
9 same?

10 A No sir, they are not.

11 Q To give us an idea of the magnitude of the difference,
12 can you tell me what your ultimate conclusion was? Mr. Evans'
13 ultimate conclusion was that he disagreed with certain in depths.
14 Would you please give me your ultimate figure as compared to his?
15 Then I will take you through it step by step.

16 SLAUGHTER: If it please the Court, I certainly don't
17 want to drag this out any longer than necessary but in the first
18 place, while the Court has ruled and we have not objected, although
19 we have not conceded Mr. Payne's qualifications in the area of
20 urban planning or planning along this line, he hasn't qualified
21 as far as I know as a critic of Mr. Evans. Granted, he can
22 respond to points but what Mr. Parker is doing clearly is taking
23 him right on through Mr. Evans out the other side. Mr. Parker
24 has made...

25 COURT: I'll note your objections but they will be over-

ruled and I'll allow Mr. Parker to develop it or you may take it on cross examination, Mr. Slaughter. I think your point will be well made except for the pressure of time and we have got to shorten it somewhat so I'll allow the questioning to start from a conclusion and work back. You may go ahead with it.

Q I want to see to what extent the degrees of disagreement as a ball park figure. Can you tell me to what extent your ultimate conclusion differs from his?

A Yes sir. If I may refer the Court to the revised sheet which is known as page ten, the summary sheet, Mr. Evans report showed a total revenue in the first column of $145,129. and I show a revenue of $166,220.82, the total operating expenditures in column two at the bottom, Mr. Evans shows $113,104., my expenditures came to $102,604.59. Then the next area under capital expenditures, these differences in operating expenditures are not significant except for revenue. In capital expenditures which is a separate exercise, under the thirty year bond of figures given by Mr. Evans, the total cost for a single family is given at $26,266., I came up with $28,951.46 for the apartments. This was significant because I used 179 single family units, which is the number on the plats, I used a 120 apartment units, Mr. Evans used 168. I got my figures from the plat, Mr. Evans figures came to $14,540. on the multiple family, I came up with $7,948.80. This totals the figures in that column at $50,806.. I came up with $36,926.. Now, to put all that together down at the bottom of

1 the sheet I did not deal with the add-share general capital
2 expenditures because I, like Mr. Evans, don't know where it came
3 from or what it's for. He explained on the stand that he was
4 talking about a community center. I would only note that Stanards-
5 ville not only has a community center, it has a community park
6 building and fire station right across the street. What value
7 that would have I do not know.
8 Q You mean Ruckersville?
9 A Ruckersville, excuse me. The total annual revenues
10 that I have then adding these up, total revenue from the units
11 is $166,220.82, and I subtracted from that $102,604.59 which
12 is operating expenditures. I added to that $36,900.26 for the
13 capital expenditures, that came to $139,504.85. So, subtracting
14 the total expenditures, which include capital investments and
15 includes the operating expenditures from revenue I come up with a
16 $26,715.97 surplus and then if I add in, I have a question mark
17 on my study because I can't explain it, if I add in the $21,000.
18 general figure which has no apparent source I still come up with
19 a $57,115.00 surplus and in this figure I have not given credit
20 for general revenue sharing which I could not find nor have I given
21 credit for four, six year reassessments. I don't know what those
22 figures would be. My experience has told me in the past those
23 figures go up each time. Those two factors were not added into
24 my figures and I still come up with a surplus.
25 Q Let me ask you, what is your opinion as to the

1 realistic nature of Mr. Evans figures of .61 as a true rate?

2 A I think the Court has heard this from the assessor.

3 The study from which Mr. Evans found his figure is the statewide

4 average study of practice and reassessments throughout the State.

5 In particular, it is presented by the Department of Taxation and

6 it is prepared for them under the research division and this is

7 a February 12, 1974 issue which is what they did use.

8 COURT: You are going to that .61 figure?

9 A The .61 figure is the correct annual average figure

10 but it is not the correct assessment figure for this reason,

11 Your Honor. Your assessor has testified that he assesses a

12 building on a sale value in the year in which he takes control

13 of it which is twenty percent of market. As you pointed out, if

14 it is a sixty thousand dollar building it will get assessed

15 twenty percent of that or twelve thousand pays fifty on that

16 straight out. There is no relationship between that assessment

17 and the .61. The .61 is the historical average of the rural

18 land assessed and the lots which are assessed and there is an

19 example. I refer to it here in this sheet which comes from the

20 State. This is called Table A-31, 1971, ratios of assessed valua-

21 tions to selling prices and its purpose is to produce an average

22 picture and I emphasize the word average. Where Greene County, as

23 a resulting factor here, Greene County is listed in 1971 as having

24 for its total concurrency seventy-nine sales, residential and

25 sixteen agricultural and on that basis they determined that the

1 ratio was .61. I submit to the Court that that is a very,
2 very minimal method of determining true assessments giving
3 a subdivision occurring in Greene County. It might be adequate
4 in terms of the historical assessment picture but certainly not
5 for any unit going up. I take small issue with the .61 as applied
6 to a new unit and I completely agree with your assessment officer
7 in which he assesses the full value at twenty percent of market
8 and then applies the 4.50 ratio. That's where I get my major
9 difference in terms of the initial figure and I think it's an
10 important figure to consider in taking it through to the value
11 for this purpose.
12 Q That would be twenty percent of 4.50 or .9 as
13 compared?
14 A That's correct.
15 COURT: It's his testimony then that .61 would be
16 adjusted up to as high as .90?
17 A Basically that is true, sir, but the figure that
18 he has used here I take strong issue with it. I don't know...
19 COURT: The question though, the figure he used has
20 been published?
21 A It's a published figure.
22 COURT: Go ahead, Mr. Parker.
23 Q It's a published figure which is an average?
24 A That's correct.
25 Q It averages land in with subdivision land that is not

1 subdivision land?

2 A That's right and a number of sales which I quoted

3 in my opinion do not give the correct figure because if the land

4 is subdivided and when a house is put on that land it is assessed

5 at its market value as testified to. It is important to recognize

6 that these figures change these totals measurably because using

7 the .61 average on page 2 of Mr. Evans report he credits

8 $152.50 per unit, which is .61 times 25,000. Basically, that

9 should be at least $225.00 per unit and that's giving a basic

10 4.50 value at a twenty percent assessment straight out on

11 $25,000. The other point that I disagree with Mr. Evans has

12 chosen to use the lowest figure for the sale price of the house

13 wherein the examination of the minutes of the meeting, it was

14 repeatedly quoted that the average price of the homes in this

15 development would range between a minimum of $25,000. and a

16 maximum of $45,000.00. So, I felt in fairness to the applicant

17 certainly they should have used an average higher than the

18 minimum quoted. When you combine the minimum with a .61, which

19 is a historical average, you come up with a very, very much

20 reduced figure, which I contend is not correct. I do not

21 believe seventy-nine sales in the entire county would give you

22 the actual ratio.

23 Q With respect to Mr. Evans conclusion, did you find

24 any other areas in his hypothesis with which you disagreed?

25 A I think the basic point in stepping into this is that

there is very little philosophical credit given to the fact that this is a long termed project. The developer testified that this would be a development from seven to ten years duration at least and with three hundred units this would take approximately ten years. There is no credit given for that since there would be two reassessments in that area and the fact that thirty units coming on line per year is not giving credit for presenting a lesser impact. This study is presented as if the entire three hundred units are going to occur the day after the plat was approved.

Q Is that also the case in connection with the capital improvement figure that was used?

A That is exactly correct. That is, this study is an academic exercise and that's all it is. Mr. Evans himself stated that these are general figures. In his letter he stated they were general figures, it's an exercise to attempt to show something. It is not specific, it does not apply to Greene County and most certainly doesn't apply to the specifics of this subdivision.

Q What other hypothesis would you take issue with?

A The tangible personal property tax rate is $5.50 in 1974. The presumption is that that will remain steady for the next thirty years. As a value judgment I would have to disagree with it. This is a value judgment here and I would submit

that my value judgment is that the tax rate will not remain the same.

Q How much change, if any, in computing your figures did you allow for that?

A I went up to 5.75.

Q That's all?

A That's all.

Q What other hypothesis do you take issue with?

A In the noneducation-operating expenditures, I take strong issue with utilizing the operating expenditures on the basis of household income because this is straight from the Hollymeade Study and is a factor attempting to use this for Greene County but there are no expenses that I can find where libraries, landfills and recreation programs exist in Greene County by which a fair comparison should have been made. Now, this kind of exercise is fair enough to say that Greene County should make some kind of an attempt to compare this but I could find that they have no evidence to compare with this so this is simply a statement of what Mr. Evans thinks Greene County should do. It is not factual. In the law enforcement expenses I was unable to determine, perhaps you can determine this from a further discussion with Mr. Evans, whether or not the state contributions to the salaries of deputies was taken into account. I have no way of knowing that unless stated. The end result of these factors shows me that cost for capital expenditures for school

1 did not reflect either the assessment reassessments or the
2 revenue sharings or the number of classrooms needed.
3 Q Did not reflect any of that?
4 A No, it did not.
5 Q Why do you say it did not reflect the number of
6 classrooms needed?
7 A It simply reflected a thirty year bond on a figure
8 that Mr. Evans utilized to develop a cost per single family unit.
9 We were able to utilize the school study published by the
10 State of Virginia. This is dated October 1, 1974, Commonwealth
11 of Virginia, State Department of Education, Richmond, Virginia,
12 Superintendents Memo Number 7254 which gives average public
13 school cost in 1973 and 1974 in areas of Virginia and defines
14 the square footage cost per school and the average pupil capacity
15 and so forth. In dealing with that, I again come to the problem
16 which I think is very important and a complete disagreement between
17 Mr. Evans and myself, when we talk about capital expenditures
18 for schools this is a very important matter and Mr. Evans has
19 chosen to factor his capital expenditures out on a thirty year
20 bond frame. In other words, the total cost of these units
21 have been thrown into a thirty year bond. There has been no credit
22 whatsoever given to the unit which is producing revenues and pro-
23 ducing costs after the bonds have been paid. Now, according to
24 the school board histories and according to the school construc-
25 tion programs which I have analysed, in areas where new schools

1 have been built, the average life of a school be it elementary,
2 intermediate or high, is a fifty year life. It is my contention
3 that the bond figures given should have been pro-rated out for
4 the entire fifty years, Naturally if you take a unit and assume
5 that at the end of thirty years you no longer have a product
6 then you inflate that cost. As an example, using Mr. Evans'
7 figures of $182.27 per capita for capital improvements this is
8 figuring approximately 2.31 generations of students. You have got
9 to remember that in 12 year school life, a fifty year life or
10 a thirty year life there is a considerable amount of difference
11 in the number of students that go through these schools so the
12 figures that reflect $182.00 is simply taking the entire cost of
13 the school back in thirty years and leaving the remaining
14 twenty years of its life at no consideration. I contend that
15 Mr. Evans' figures of $182.27 for thirty years provides one third
16 less capacity than school designed life. I contend that it
17 should have been used for the life of the school over a fifty year
18 period which would give you 3.85 student generations going through
19 the school and obviously would remain two thirds more capacity than
20 the bond schedule. Then, the cost would be considerably different.
21 Now, let's convert that, you have to convert these things from
22 the per student cost into the cost per dwelling unit. Now,
23 using Mr. Evans' figures right straight across the board, now, a
24 single family development the students per dwelling units are
25 computed at 1.05. His space cost per student is $2,669.00. Now,

1 that equals the space cost per dwelling unit or 2,802.45. You
2 have to advertise this as assuming a bond for thirty years.
3 SLAUGHTER: Excuse me, what page are you reading from?
4 A This is capital expenditures allocated for house-
5 holds in Greene County. Capital Expenditures for Schools, number
6 one. Now taking that with five percent for thirty years,
7 using the standard amorization tables this cost comes out to be
8 a 182.27, which is the annual cost. Now, that's as he gives it.
9 For the apartments you take the .43 which is the next step down
10 and that comes out to be, using the same process, 74.68. That is
11 on the thirty year bond life. Now, here is what I contend
12 would have to be done in order to be honest to the Court, and by
13 honest I mean that simply presenting the life of a school only.
14 A single family, using the same students, 105 times the space
15 cost per student, which I found to be higher. The published factor
16 that I gave, the report that I quoted was 2,812.00, it
17 leaves a space cost per dwelling unit to 2,952. but I contend
18 that in order to work this out fairly that the five percent for
19 fifty years should be used even though the bonds will be paid
20 for in thirty years I have given a five percent cushion to take
21 it out on equipment.
22 Q Now, if anything that would be an advantage to the...
23 A That would be an advantage to the County. Therefore,
24 my cost comes out to be $161.74 per unit for a single family
25 and the apartments, using the same factor it comes out to $66.24,

1 therefore when you convert this to the students cost per
2 dwelling unit you can see here that this is the second major
3 difference in adding up these figures. These two figures of
4 course were worked up in my report and gave me the differences
5 which I read in summary. The final area in which I completely
6 disagreed with the application given in this report, the recrea-
7 tion. The twenty-five acres at $2,000.00 per acre simply has to
8 be with regard to land in this area an assumption. I don't know
9 that the land that I am concerned with actually cost $500.00 an
10 acre. It might get up to around a thousand in certain portions,
11 depending on its basic use but my basic disagreement here is that
12 twenty-five acres at two thousand an acre presents an inflated
13 figure of fifty thousand dollars. That's a lot of money in
14 terms of this. Now, here is the actual fact with regard to this
15 subdivision. The standards used in most planning circles and used
16 in the comprehensive plan, report, I imagine they were the
17 basis for this since the report was being prepared at that time,
18 this subdivision has been assessed standards at fifteen acres per
19 thousand for regional parks, it has been assessed three and a
20 half acres per thousand for district parks, it has been assessed
21 at an acre and a half per thousand for community parks, two
22 acres per thousand for neighborhood parks and an acre and a half
23 per thousand for playgrounds which comes to twenty-three acres
24 by their own standards. Now, there are two points, they used
25 twenty-five acres here, which is way too high and secondly, in my

1 judgment this subdivision, one hundred and eleven acres at
2 Ruckersville, with a twenty-one acre community park across the
3 road, with a community building across the road should have
4 assessed against it, the community, neighborhood and playground
5 parks for this subdivision and from the plat this means a four
6 and a half acre parcel of ground, which if subdivided, would
7 dedicate. It would cost the County absolutely nothing. The idea
8 of using a fifty thousand dollar figure over thirty years to assess
9 against parts of this subdivision I fully disagree with. I think
10 it is entirely heavy loaded. I have never seen one done just like
11 this before and I disagree with it completely. I believe, again
12 some credit should be given for the recreational facilities
13 which exist in Ruckersville. Ruckersville is very definitely
14 a community and has community facilities which are recognized on
15 the plan and should have been given credit in this report as should
16 the National Parks Service Areas. Those are my basic disagree-
17 ments with the report and those are the reasons I concluded that we
18 would have a surplus and not a deficit.
19 Q You mentioned community facilities a while ago.
20 I have here a map I guess, what is this?
21 A That is an aerial photographic mosaic which I had
22 made over the Christmas Holidays.
23 Q Is that showing you the community facilities that
24 you are talking about?
25 A Yes it does, sir.

1 Q Would you point those out on there for us?

2 SLAUGHTER: I wish to note my objections. This was
3 prepared during the holidays and this was not before the Board
4 of Zoning Appeals. I might say also, if the Court pleases,
5 that if I understood Mr. Parker's opening statement, his
6 testimony was to relate to hardship. Certainly, nothing in the
7 testimony of the last two witnesses concerns, and certainly
8 Mr. Payne, relates to hardship.

9 PARKER: Everybody's plans are subject to change.
10 I would like to have run it the way I originally intended but
11 Mr. Slaughter did such a fine job, that the issue of hardship
12 seems to be, I don't know that he succeeded at all, I think we
13 have shown hardship but I was unwilling to relegate all of this
14 evidence to rebuttal where otherwise I wouldn't have had it.
15 We are trying to prove a case based on the standards and not
16 just...

17 COURT: I understand that both grounds were being
18 asserted. I am not saying whether you get to it or not but
19 the fact is we have got to have the evidence in the record and I
20 am going to allow that to be presented. Now, again with respect
21 to offsetting the testimony of Mr. Evans with regard to community
22 facilities. He did cover...he touched on that and of course,
23 the Court is aware that the Planning Commission, the Board of
24 Zoning Appeals, all have certain knowledge which is not necessarily
25 in the report, and Mr. Payne is testifying or will be testifying

as to what these gentlemen had in their own minds and could use and this would be evidence bearing on that same question therefore the objection is overruled.

A Your Honor, this is an aerial photograph which was drawn this past week at an altitude of 5,000 feet. One inch equalls 400 scale. The purpose was to identify the center of Ruckersville, the proposed subdivision here, the location of the water authority's lines, the location of the business uses and the locations of existing residential development or subdivisions and the general area of influence around Ruckersville as I was to find it from this aerial photograph. The first thing that I did was to identify Ruckersville at the location of Route 29 North and south and Route 33 Northwest-southeast in this direction. The little community of Midway is here, Quinque is here and Stanardsville is to the north. The center of Ruckersville is identified by the black tape boundary, the dash line, hopefully the Court can see it.

COURT: I can follow you.

A It's the area of influence of the commercial areas. This covers both sides of Route 29, North and South and to a more limited degree with more intensive uses east and west approximately a thousand feet from the intersection. I also found in this area, outlying a junkyard, sitting on the top of the hill approximately a quarter of a mile west of the intersection and to firm that, a store building fronting on Route 33.

1 The existing residential developments are outlined in the solid
2 yellow tape. I could not find the plat for this development
3 but this is a subdivision either by metes and bounds or by some
4 means. There are approximately twelve single family residences
5 here, which is about a thousand feet west of the intersection.
6 This is the area I believe that is known as Hodge Subdivision
7 which appears to be being built on half acre or less lots in this
8 area next to the Ruckersville Community Center which is a twenty-
9 one acre site, semi-public and locates a ball diamond and
10 recreation field here. In front of that, outlined in green,
11 is the community hall and fire station known as the Ruckersville
12 Fire Station. Over here in the dashed yellow line is the subject
13 of this Court case, the preliminary plat as was filed and
14 approved. The interesting thing is that to the west of this, if
15 the Court will notice the recorded solid yellow line, is the
16 recorded subdivision known as Locust Lane and the small box are
17 the extent of single family houses built on a cul-de-sac street abou
18 two thirds dveloped. These houses range on seven to eight thousand
19 foot lots with an urban density and the white dots show them in plac
20 to the west of this subdivision, this being the subject property.
21 I then looked at the character of the area and found that there
22 were, besides these community facilities, I found that there
23 were, the Ruckersville Church and the Ruckersville Primary School
24 in this location. The cemetery is here. I found that almost all
25 of the facilities, with the exception of a library, were referred

1 to as community facilities are located within this general area.
2 I then drew, what I considered to be, an influence land use service
3 area, taking into account I anchored one corner on the cemetery,
4 another corner on the junkyard and the drive-in theatre, the
5 back boundary of the park and the Hodge Subdivision. I then
6 came right straight to Midway and came around the boundary of the
7 existing subdivision and the proposed subdivision and drew the
8 line straight back to the corner of the truck stop and came back
9 to the point of the beginning. I then measured that area and found it
10 to contain 1.09 square miles or roughly seven hundred acres,
11 so it is really by comparison a small area and it appeared that
12 there wasn't any doubt that this is one of the communities in
13 Greene County.
14 Q Let me ask you this question. Have you studied
15 the Comprehensive Plan which the Court has in the record?
16 A Yes, I read it. At least I have read the newspaper
17 version of it.
18 Q That was what was returned to me, Mr. Dickey, and
19 I take it that's a copy of this.
20 A I read this document.
21 COURT: All right, that's understood. That's in
22 the file. That's one of the items that has been sent up.
23 Q Was this subdivision, the existing subdivision
24 along this line here...
25 A Locust Lane.

Q Locust lane. Was that subdivision included in the Comprehensive Plan?

A No, it was not.

Q You mean that if the County has adopted a Comprehensive Plan it totally ignored that subdivision?

A It has.

Q Elected as a total nonconforming use?

A That's right. It's about two thirds developed, so it has a third to go.

Q Does that subdivision effect the fair use of land?

A Well certainly. It establishes one of the principles of land use planning is to take into account when you are doing this work the existing character of an area, the existing character of development, you can't just ignore it.

Q But the Comprehensive Plan ignores it?

A For reasons unknown to me it is ignored.

Q In your opinion is the use proposed here, for which this special use permit is requested, consistent with the development of the land within the red lines there?

A Yes, I certainly believe so with regard to the business areas, the community facilities and the existing residential area.

Q That's all, answer Mr. Slaughter's questions.

COURT: All right, Mr. Slaughter.

1 PARKER: May I inquire, I have a question I forgot to
2 bring up.
3 COURT: All right.
4 Q I notice that the shape of this particular piece
5 of property here that Mr. Matthews owns, is there anything about
6 that shape that would have anything to prevent cutting this property
7 up into two acre lots?
8 A The property, as the Court can see, is about 1,200
9 feet wide. The ordinance, the interim ordinance which the
10 County has adopted does not specify depth but it provides a
11 minimum lot width of 150 feet at the set back line. In order to
12 produce some eighty four thousand to ninety thousand square feet,
13 you'd have to have a lot, if you ignored the street and not 600
14 feet in depth, if you can't of course, ignore the street you'd
15 have to cut a street back through here to serve the property.
16 Q Indicating down the middle of the lot?
17 A Roughly, down the middle of the property and a
18 50 foot minimum width you'd have to increase your lot frontage
19 from 150 to at least 250 feet per lot in order to get enough
20 frontage to justify the layout of the lots and then, of course,
21 beyond that point I could not go because it would take an
22 engineering analysist to fit the lot lines to the use of the
23 soil. It would take a complete re-analysis of that property with
24 a planning engineer to determine whether it could be used for
25 two acre lots or not with 1,200 foot width.

* * *

COURT: We'll continue this matter then until 10 o'clock on Saturday, January 11. Now before we do that I have several questions that I wanted to ask Mr. Payne, but I wanted to get-at this time while they are fresh in my mind and then I'll leave it to counsel to continue with the cross examination on the 11th. Mr. Payne then would be allowed to leave the witness without further cross examination today.

* * *

* * *

COURT: Now I just wanted to ask Mr. Payne several general questions in order that we might proceed from that standpoint when we next convene. One of the questions that I wanted to get your comments on, Mr. Payne, would be how you would characterize Greene County as to rural, urban or transitional stage or combination of all three? What would you characterize this county?

A It's primarily rural in nature, sir, but it's beginning its transition to a surburban situation.

COURT: Surburban?

A Beginning...

COURT: It's rural in transition to surburban?

A That's right, sir.

COURT: Not at all urban in any respects?

A Not at all, sir.

COURT: Now, are you familiar with the size of the population of the county?

A Approximately so, sir, the 1970 census was 5,268. I think they estimate the current population in 1974 at about 6,300, plus or minus.

COURT: How much?

A About 6,300 plus or minus.

1 COURT: Now can you say generally how much population
2 this subdivision when it's fully developed would add to the
3 county?
4 A Yes sir, I have the figures right here. The ...
5 COURT: That is assuming a full occupancy.
6 A Give me a moment to fumble here, Your Honor - I'll
7 come up with it. I have the figure for the subdivision taken
8 from the plat, I have 179 single family units, and 120 apartments
9 units, and I used the county wide average which of course is
10 a bit low for single family and a bit high for apartments, of
11 3.23 persons per unit in 1970 census, would produce 957 population.
12 Now if I try to break that down and use current apartment
13 and single family figures, I would get a little bit lower than
14 that. If I use single family at 3.4, which is more nearly the
15 correct average than 3.7, I get 608 in single family. If I
16 use 120 apartment units at 2.6 I get 312, that total is 920.
17 So I used the county wide average of 5,248 people divided by
18 1,624 dwelling units per the '70 census, and I got 3.23 persons
19 per d.u., that times the total number of units gives me 957 total
20 people, that would eminate from this subdivision.
21 COURT: All right, now, starting from that general
22 analysis of population and size, would you say that this subdivisi
23 alone would have a major impact on Greene County?
24 A I don't think so, sir. Again, to remember the
25 difference between Mr. Evans and myself, is that the impact is

- assumed in his report is that these people will occur in one year.

COURT: Yes sir.

A These people will occur over a period of ten years.

COURT: What's the basis of that?

A The building rate - he has to sell these units. He has to finance them and we would assume that from the feasibility study that he cannot sell more than about thirty units a year, assuming that there is some other subdivision activity elsewhere in the county. You can capture about thirty units each year.

COURT: I see. Now, would you say that assuming the full development of the subdivision, that's going to require a major capital expansion of school facilities and other facilities in the county or would it be limited to one particular area?

A The expansion of the school facilities based on - again on the planning effort, the current capacity of the schools in '73 apparently was 1,462. According to the year 2,000 population prepared by the Comprehensive Plan document, talking roughly 9,000 people and a capacity for 3,300 students. So if you subtract 1,462 from 3,300 you will need 1,800 new - 1,838 new capacity but there is a new elementary school now programed at 600. I don't - I think it's to be on line in 1976. That would leave a required capacity of the total county now of 1,238, which is two- 600 capacity schools. Now here's what you have. They've

1 got three primary schools, K through 3, kindergarten through
2 the third grade at 250 each, approximately, that would take
3 care of 750 in that .....the elementary to intermediate is
4 grade 4 through 7, and at roughly 500 capacity each. This
5 would take care of 1,560, but you need additional capacity
6 since the new school is being built at this level for another
7 thousand.
8 COURT: Do you know whether the present school carries
9 any reserve capacity? That's being contemplated right now?
10 A I do not know sir. Then there is a high school
11 with 700 capacity, grades 8 to 12 and this would have to be
12 expanded but not a new school built. So, according to the analysis
13 that I have, there would be - and for the total county population
14 to raise the population from 6,300 plus or minus to a little
15 over 9,000, would require two more elementary schools. This
16 subdivision when you get that down to what this subdivision does,
17 if you want to talk about the classrooms that are required,
18 normally - and I used the State figures for this.....you have
19 thirty students in a classroom with 100 square feet per student,
20 which is a bit higher than the State average. 3,000 square feet
21 per classroom at $28.12 which is the 1973 State per square foot
22 cost, that means a classroom would cost $84,360.00 in 1974 to con-
23 struct. This project will have 240 students and it will - dividing
24 that by 30 you need eight classrooms total for this project,
25 multiplying that times 84,360. per classroom, means that this proje

will require an expenditure for capital investments for schools of $674,884.00.

COURT: Do you know what the present debt structure of the county is?

A No sir, I do not.

COURT: You wouldn't know then what impact this increase in capital expenditures or increase in indebtedness would have?

A No sir, I would have to make that comparison directly from the budget.

COURT: All right, now, they are some questions that I wanted to touch on generally. Mr. Payne then it's understood that you will be available to testify for further cross examination and redirect on January ....what was it.....11th..... at 10 o'clock. Is that understood?

A Yes sir.

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16 (Court is adjourned.)

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1 January 11, 1975

2 Court convened at 10:00 A.M.

3 COURT: All right, gentlemen, we'll take up on the
4 case of Bennett T. Matthews against the Board of Zoning Appeals
5 of Greene County, where we last left off and that was with Mr.
6 Rosser Payne. I believe having completed his testimony in
7 chief and after some questions by the Court, the matter of
8 cross examination was left to be taken up today. All right,
9 Mr. Payne is on the stand and has already been sworn. Mr.
10 Slaughter you may proceed with cross examination.

11 SLAUGHTER: May it please the Court, I hope that our
12 appearance time between the time Mr. Payne testified before
13 and now would at least save some time, because having reviewed
14 the testimony, we don't believe cross examination is necessary.

15 COURT: All right, sir if you wish to proceed by moving
16 on to other witnesses....Mr. Parker...

17 PARKER: Your Honor, in that case it seems to me that
18 it would be appropriate since our case has terminated, to place
19 in evidence ....no sir, I changed my mind.

20 COURT: Could we have aerial photograph admitted, I
21 know Mr. Payne testified from it.

22 PARKER: I think that should be admitted certainly, if
23 it has not been.

24 COURT: If it has not been admitted, I think it probably
25 should be as Plaintiff's exhibit, whatever number that would be, if

1 it has been identified before. Any objection to it?

2 SLAUGHTER: We object to it on the grounds that

3 we objected to all of Mr. Payne's testimony.

4 COURT: Yes, I understand.

5 SLAUGHTER: Although not specifically to the introduc-

6 tion of that since he's been permitted to testify, we'd like to

7 have it available.

8 COURT: All right it would be admitted and the defendant's

9 objections noted, but I'll ask the Court Reporter to mark that

10 for identification then in the sequence. Do you know whether

11 there were other exhibits, Mr. Parker? I believe we had the

12 plat.....that's probably exhibit number 2....

13 DICKEY: Your Honor, I believe technically the plat

14 was already in the Board's return.

15 COURT: All right. It may be number 1 then as far as

16 this hearing.

17 PARKER: It may be number 1 - everything else I believe

18 of a documentary nature was in the return.

19 COURT: All right, we'll designate that then, Plaintiff's

20 Number 1, with today's date on it.

21

22 The aerial photograph was marked and received into

23 evidence as Plaintiff's Exhibit Number 1.

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* * *

COURT: All right, Mr. Parker any other evidence for the Plaintiff?

PARKER: No.

COURT: All right, Mr. Slaughter, the plaintiff rests.

SLAUGHTER: May it please the Court, I did perhaps take more time than I would like to during Mr. Parker's presentation making our objections heard. We finally agreed that my objections would be preserved so that we could get on with the hearing. Those objections as you remember were to the introduction of any testimony at all - in addition to what may have been introduced before the Board of Zoning Appeals. The Court initially ruled that only evidence would be admitted, which essentially filled out the minutes, but I think as time went on it became clear that Mr. Parker was perhaps going further than that..... finally first suggested that a continuance might be appropriate and then ultimately granted.....in order that we might assemble evidence to rebut, since the hearing had in a sense become a factual hearing as well as a hearing to flesh out the record that is before the Court. Even with the objections preserved and even with the evidence introduced, I would move the Court to strike the evidence of the petitioner at this time. If this is the appropriate word in such a proceeding, which is not a common proceeding. On the ground that, I would remind the Court of the standard that it has to apply. The Court may not disturb the

1 Board's decision unless it has applied the principles of law,
2 or where the Board's discretion is involved, where the decision
3 is ..."plainly wrong and violative of the purpose and intent of
4 the zoning ordinance." Virginia law is unanimous on that,
5 the primary cases are the Board of Zoning Appeals v. Coles,
6 and Tidewater Utilities v. City of Norfolk. Now if it please
7 the Court, essentially the evidence has simply been that Mr.
8 Matthews made application, secured preliminary approval of this
9 plat, the zoning ordinance was passed, he submitted his final
10 plat, went before the Board of Zoning Appeals, and after con-
11 sidering a number of matters, as the minutes of the Board reflects,
12 the petition was denied. The petitioner, Mr. Matthews, then
13 petitioned this Court for a writ of certiorari to be granted
14 and we are having that hearing today. Mr. Parker initially
15 indicated that hardship would be shown and that their presumption
16 would be established whereby this petitioner barring rebuttal
17 by the Board or by counsel for the Board, would then have a right
18 to a presumption in his favor. But Mr. Parker didn't succeed
19 with the point, of course - I think at one point during the previous
20 hearing, he effectively said, that he felt he should go forward
21 because he was really not convinced that he had made proper showing
22 of hardship. We would submit that that's absolutely true.
23 Mr. Matthews did testify of approximately twenty thousand dollars
24 in expenditures, but only 57 hundred dollars before the zoning
25 ordinance was passed.....these expenditures are commitments that he

1 had made. He testified also that the total value of this
2 sub-division or this development would be 17 million dollars.
3 Clearly he has done nothing more than obtain a topographic
4 survey and his basic preliminary plat work, that would be
5 necessary if there were no construction, no beginning of work,
6 anything of that sort. Clearly there is no hardship. Looking
7 on that, if the Court please, the record is simply full of good
8 and valid reasons why this petition should have been denied. As
9 the records of the Board of Zoning Appeals state, it does not
10 go in accordance with the Master Plan of Greene County,
11 which has now been adopted, which was not at that time, but
12 as the records show, the Board did not consider the master
13 plan that is involved and finally considered, it simply
14 considered it as one of the factors in planning. Whether
15 the factors in considering the proper planning within the
16 county. . . Mr. Evans wrote a letter dated September 16, 1974,
17 to Mr. Morris, before the meeting of the Planning Commission,
18 and this was understood was within the folder at the time of
19 the hearing. He said, since the plan has not been adopted, it
20 of course has no legal bearing on the planning commission's
21 recommendation to the Board of Zoning Appeals. But there is
22 certainly no law and it can not be contended that the Board which
23 was aware of the zoning ordinance - one of its members was the
24 chairman of the planning commission - had to proceed blindly
25 without any regard for the comprehensive plan at all. It had an

1 obligation to Greene County to consider the plans to the extent
2 that it had gone, along with many other things as stated in
3 the ordinance. That it had evidence before it on the highways
4 and the schools - - potential sewer problems. . . .in fact,
5 except for the testimony of Mr. Vivier, that he needed more
6 hook-ups for his water authority, there was really no evidence
7 other than Mr. Matthews' own witnesses in favor of locating
8 a high density sub-division in this location. Thus I would
9 submit if the Court please, it not be contended that the Board
10 was wrong and the petitioner hasn't presented its case and
11 all that's being resolved in his favor. The Court should
12 affirm the Board and dismiss the petition for writ of cert-
13 iorari.

14 COURT: All right, Mr. Parker, do you have any
15 response to the motion?

16 PARKER: Only in so far as I was misquoted, Your Honor.
17 I feel that I was misquoted by Mr. Slaughter - I have simply
18 never told this Court that I was not convinced and would concede
19 that hardship has not been made out. I simply told the Court
20 that - sheer tactics, that I did not wish to rely on that.
21 I think the record will bear that out. Beyond that sir, the
22 problem with Mr. Slaughter's argument.....he has pointed
23 out himself. The Board itself stated effectively, I can use
24 Mr. Slaughter's words in the record itself, it was making up
25 its mind upon the basis that the county plan - - -that the compre-

1 hensive plan did not provide for this kind of development.
2 It was not planned - Mr. Slaughter has also conceded. That is
3 error, that's a matter of law. When the Board considers
4 a ....it can be fairly deduced from the record, that the Board
5 has applied the wrong standards, that was an error and a matter
6 of law. In addition to that, the Board stated that, the chairman
7 of the board stated the people of Greene County had spoken.
8 The hearing was conducted in a quasi-legislative fashion, the
9 Board considered evidence therefore which was - would have been
10 appropriate in a legislative but not a judicial procedure.
11 That is error as a matter of law. Your Honor, this Court cannot
12 advocate its responsibility to the law. In any case in which
13 jurisdiction is given to this Court like every other court,
14 it must decide the questions of law. There is no presumption
15 in favor of an erroneous decision of law before the Board of
16 Zoning Appeals. None whatsoever. Presumption that they are
17 given is one which is based only on their analysis of the facts,
18 if they use the proper standards, and analyze the facts. It may
19 well be that . . . . . were the record silent . . . .
20 as to their criteria for analyzing facts, and were there no
21 hardship in this case, and the Court will note the sub-
22 junctive move. . . . that they would have been able to succeed
23 in covering up what amounted to arbitrary decision - that is not
24 the case here. In view of that fact and that we believe presumption
25 of hardship is made up - the burden is on the county it seems to

1 go forward in this proceeding - true enough there is an over-
2 riding function, but the facts - they would have been had they
3 used the proper standard in presumption with the proper facts,
4 they are in the records. That cannot be the case here.....
5 If they don't do it right in other words, they are not entitled
6 to that presumption....that's where we are, thank you.
7 COURT: As I understand the proceedings when we started
8 the validity of the ordinance was not at issue in this case,
9 the question is whether or not hardship existed on the part of
10 the petitioner, and having gotten over that hurdle - one way or
11 the other - if hardship did exist, whether the proper standards
12 were applied by the Board of Zoning Appeals in considering this
13 petition. And in that connection, as I understand the Board of
14 Zoning Appeals based its decision on the fact that the proposed
15 sub-division was not compatible with the proposed comprehensive
16 plan. Now I take it that that is the area that the contention
17 exists as to whether or not the Board of Zoning Appeals improperly
18 considered certain evidence. It certainly is a point of
19 statutory law that a member of the Planning Commission is encouraged
20 and in some cases even required to be a member of the Board of
21 Zoning Appeals. Now if that is the case, it seems to me that
22 you cannot blanket out all the information which may come into
23 one of these cases not by way of formal presentation but by what
24 exists in the minds of the people who serve on the Board. And
25 in other words they are not necessarily disinterested persons who

1 make the decisions - they are not intended to be. Apparently
2 with that one member, who is encouraged to be members of both
3 boards. Now the question is whether or not this Court has to
4 rule on this motion to strike or whether it must consider the
5 whole case anew. Now you know this proceeding is not exactly
6 a true appeal, because the hearing of the appeal is non-discre-
7 tionary with the Court. It must grant the writ as I understand
8 it, and it seems to me that that inherently carries with it
9 the idea that the Court must weigh the whole case. And whether
10 or not it would even be appropriate at this point to make a
11 ruling on this sort of motion or merely take it under advisement
12 and continue with the building of the record at this level - if
13 counsel wish to do so. It seems to me that the Court ought to have
14 all the evidence which the parties desire to submit or which
15 is appropriate to admit into this hearing, in addition to what
16 has been sent up with the record. Mr. Slaughter for that reason
17 the Court is not going to rule finally on this motion. It doesn't
18 seem to me to be an appropriate motion in an appeal. It's a
19 question of whether or not the record will be ended with the
20 evidence that we already have or whether you desire to present
21 additional evidence. It may be that in further study of the legal
22 principles the Court would - will come to the conclusion that it
23 should have dealt with it at this level, but I'm not disposed
24 toward that as a matter of principal in these certiorari cases,
25 and there'll be many of them, I'm sure. For that reason the motion

1 to strike is overruled as being inappropriate at this stage of
2 these proceedings - not necessarily inappropriate from the
3 standpoint of the burden of the petitioner as to his duty to
4 overcome the presumption in favor of the ruling of the other
5 body. But rather with the question of whether or not the evidence
6 is sufficiently complete at this point to the Court to make
7 a final ruling. Now your exceptions to the Court's ruling
8 are noted and if you wish to proceed on with the evidence then
9 that you would want to place in this record, to refute what's
10 been introduced here or to fill in the blank spaces with regard
11 to the record that was sent up by the Board of Zoning Appeals,
12 you may do so at this time.
13 SLAUGHTER: Thank you, Your Honor, we note your noting
14 of our exceptions. I would also mention in order to perhaps
15 clarify the situation somewhat, that of course we take the
16 position even reserving our objections on testimony on behalf of
17 Mr. Matthews, that we should also introduce evidence in opposition
18 to the evidence that he may have introduced. I think the Court
19 understands that at least in our view the matter has been opened
20 up somewhat. And with that - just as that preliminary statement,
21 I will call my first witness.
22 COURT: All right, now let me review that briefly.
23 The matter has been opened up in this regard it seems to me
24 as to whether or not certain evidence that the Board of Zoning
25 Appeals had before it was correct as to its factual basis, that

1 was the evidence that the planning district, I believe submitted
2 to it, which Mr. Payne has factually undertaken to refute. Now
3 that puts the issue before this Court as to whether or not
4 that evidence is entitled to a certain amount of weight or
5 not. As you know the evidence was not attacked as to its validity
6 at the Board of Zoning Appeals hearing. I believe Mr. Parker
7 made a point in this hearing that he was not prepared to refute
8 it, he was caught by surprise. And he undertook to refute it
9 at this hearing, which means that you may now go back and try
10 to re-establish the validity of it. The other point, I think was,
11 whether or not this was in fact a hardship case. One of the
12 things that I wish you all would consider in filling in this
13 record it seems to me is of concern and that is whether or not
14 the petitioner in this case by virtue of his approval of the
15 preliminary plat was in a position where the burden shifted.
16 It seems to me that may be crucial in this determination. Whether
17 or not by virtue of having accomplished that, then he's in a
18 position of saying, well, I'm all set, now somebody's got to
19 prove that this was wrong in the first place. And I believe
20 that's the basis upon which Mr. Matthews asserted his disregard
21 of the zoning ordinance. In a sense he says, I've got my pre-
22 liminary plat approved, so it doesn't concern me. Now that may
23 or may not be the case and I think that's a point of law.
24 SLAUGHTER: I believe that's taken care of in the
25 ordinance, Your Honor. Granted, once the preliminary plat was

1 approved he had a presumption if hardship was shown that final
2 approval should be given. We take the position that hardship
3 has not been shown. We take the position also that there is
4 more than sufficient rebuttal evidence already in the record...
5 even with what we would put in today - to rebut the presumption
6 even if it arose. Of course as Mr. Parker has pointed out ...
7 there is presumption...not any presumption that the Board acted
8 correctly.

9 COURT: You've got two presumptions here really.

10 SLAUGHTER: We have. . .we take. . .

11 COURT: As long as you all are aware and address your-
12 self to it in the evidence and your argument, I think it's going
13 to be very important in the determination in this case. All
14 right, you may call your first witness.

15 SLAUGHTER: Mr. Morris, please.

16

17 JULIUS MORRIS, Having been duly sworn, testified as
18 follows:

19 DIRECT EXAMINATION

20

21 By: Mr. Slaughter

22 Q Mr. Morris, would you state your full name and
23 address please?

24 A Julius Morris, Quinque, Virginia.

25 Q What is your position, Mr. Morris?

A I'm the County Administrator for the County and also zoning - Zoning Administrator and Building Inspector for the County.

Q For Greene County?

A Greene County, yes.

Q And when did you begin your employment with Greene County?

A November of '73....November 1, '73.

Q And what position did you assume when you came to the County at that time?

A County Administrator and the sub-division agent.

Q At that time were you the Zoning Administrator?

A No, I was not.

Q And I realize-we're trying to save time - you didn't become Zoning Administrator until after the zoning ordinance was passed?

A Yes sir.

Q All right, now Mr. Morris, could you tell us briefly in order to orient the Court, what the history of the development of the land use plan was for Greene County? The Court has asked and I think it's proper that we put into the record the adoption of the land use plan. Could you give the Court a brief synopsis of the steps that led up to that?

PARKER: If the Court, please, I would like to note my objections on this. It seems to me that the plan is not in

1 issue here. It was subsequently adopted, it was not adopted at
2 the time this evidence was considered below - the proposed
3 comprehensive plan. It is not proper evidence now to go into
4 the question of its adoption or what ....and in particular since
5 subsequent adoption, it's not in issue. There is no point of
6 going on with questioning the witness whether it was validly
7 adopted or invalidly, or how it was adopted or what went on
8 with respect to its adoption.

9 COURT: Objection is overruled, Mr. Parker. It seems
10 to me that the very point that the Court spoke about before, that
11 one member of the Board of Zoning Appeals - at the same time of
12 the Planning Commission would indicate whatever activities were
13 going on cannot be separated from this determination, whether
14 or not it should be - the fact is that whatever was done would be
15 a matter which was in the minds of the parties dealing with it.
16 And to the extent that it has some bearing on this case, it seems
17 to me that it ought to be stated specifically in the record.

18 PARKER: I know of nothing in the record - I did not
19 want to interrupt the Court before, but I know of nothing in the
20 record - I know of nothing in the law, I beg your pardon, which
21 takes the position that it is appropriate for a member of the
22 planning commission to be a member of the board of zoning appeals.

23 COURT: Well, now, this Court takes judicial notice of
24 that - this Court appointed the Board.

25 PARKER: Yes sir.

1 COURT: The fact is that this Court was aware that
2 the Greene County ordinance indicated such.
3 DICKEY: It required it.
4 COURT: Yes sir. I don't think the State law required
5 it. I differed with the ordinance to that extent, but at the
6 same time the Court followed the local ordinance. The State
7 law indicates that one may be a member of the board.
8 PARKER: The problem is that this is a judicial
9 procedure...
10 COURT: I see.
11 PARKER: We are entitled to defend - in other words
12 what evidence is considered by a Board of zoning appeals. If
13 a member of the planning commission is going to sit on the board
14 of zoning appeals and inject into the record evidence in silent
15 sections, in other words inject into the record in their executive
16 sessions, matters which - inject into the thinking of the board,
17 matters which are not before the board at its public hearing,
18 there's no way whatsoever that those - that we are given a
19 way to refute those matters. That it seems to me cannot be done.
20 COURT: Well, now the objection you make is recognized,
21 Mr. Parker, and it seems to me that it would be more appropriately
22 addressed to the General Assembly. The fact that they permitted
23 it would indicate that its encouraged. Now I don't say that it's
24 right, from the strictly judicial standpoint, but I differ with
25 you that the board of zoning appeals is strictly a judicial body.

1 It's apparently a quasi-judicial body and never intended to be
2 a purely judicial body. Now to that extent knowledge that the
3 members have outside of the records cannot be divorced from their
4 consideration.

5 PARKER: The knowledge in the way of expertise, Your
6 Honor, might well be correct, but knowledge-in the way of general
7 expertise - knowledge in the way of specific facts and circumstances
8 is entirely another matter.....in order to complete my objection.

9 COURT: Yes sir, that's noted and of course, I'm not
10 saying that the Court will open up the record for all the thinking
11 that might have gone into this, but merely the question of what
12 the objective development of the comprehensive plan or the land
13 use plan might be - the chronology of the thing. I think that might
14 be appropriate. And I'm not necessarily opening up the record
15 for the introduction of all of the various planning that went on
16 in this case.

17 PARKER: My position - to be crystal clear, is the
18 chronology of the record - of the planning is not material to
19 this hearing. Based on the Court's ruling on our standing, it
20 may be that some of the facts which went into that planning would
21 be material in the Court's ruling, but that would only-be material
22 to the Court's decision - that would only be the case if those
23 facts came from the - whether that's the case in Mr. Morris' case
24 I don't know. I'm thinking in terms of hearsay when I say that.

25 COURT: All right, your objections are noted and over-

1 ruled, and your exceptions are noted. Proceed, Mr. Slaughter.

2 Q As I said, Mr. Morris, could you simply give the

3 Court a brief synopsis of the history of the land use plan?

4 A Well, when I was appointed County Administrator,

5 the first of November of '73, the planning commission and the

6 T.J. Staff had already been working on the land use plan.

7 Q I think just so the record will be clear, the

8 planning commission and who?

9 A Thomas Jefferson District Planning Commission Staff

10 of that commission had been working with the Greene County

11 Planning Commission correcting data, making a survey to determine

12 the overall picture of the County. Later on the first part of

13 '74, they formed a citizen's ad hoc committee to determine the

14 goals, the objectives and the policies for the land use plan.

15 After many, many workshop meetings with them, they finally drafted

16 a land use plan, which they held a public hearing on October

17 12. At that public hearing...

18 COURT: Just a moment, Mr. Morris, what is the objection,

19 Mr. Parker?

20 PARKER: The objection, Your Honor, is that this testi-

21 mony goes,as far as I can see, is an effort upon Mr. Slaughter's

22 part to enhance the weight of the record. It seems to me that

23 the weight of the plan - it seems to me has nothing to do - is

24 not a matter for this Court to determine. It does not make a

25 determination on that plan. It's a question of what is in the

1 plan and whether the facts in the plan themselves are well
2 considered. In other words they must stand on their own bottom
3 in this Court, not based on how many people got together and
4 fought in that direction. That's my objection.
5 COURT: Objection is overruled. Again the question
6 is a matter of public policy, if such a policy were developed
7 and made known its planning agency, and I don't think the Court
8 can ignore public policy in a case like this. Whether or not
9 you can actually sift through it and determine what that policy
10 is remains to be seen, but if the evidence can develop to the
11 extent that a public policy becomes clear and that was in fact
12 exercised, it seems to me it's got to be taken into account in
13 these zoning matters. And in so far as the land use plan and
14 a comprehensive plan for the county is concerned, as I understand
15 it the law requires that they be developed before zoning can
16 be applied. Isn't that a fact?
17 PARKER: It may require it and it may not. The considera-
18 tion must certainly be there before zoning is valid - it mustbe
19 taken into account....in order for zoning to be valid. Your
20 Honor, the Court has put its finger on - in its statement to -
21 that it just made - the precise problem, the precise point that
22 my objection is in this area. And that is the thinking in terms
23 of public policy - with respect sir, there is no public policy
24 until that plan is adopted.....that is the force of the adoption
25 of it. If We are dealing with an adopted plan, that would be correct.

1 That is the precise problem that is involved - is my position.
2 The ....
3 COURT: All right, sir, your objections are again
4 noted and overruled, Mr. Parker, and Mr. Slaughter may continue.
5 Q I believe you had just said, Mr. Morris, that
6 there was a public hearing on October 12, could you continue?
7 A Yes sir. At the public hearing on October 12,
8 it was no opposition from the public or the citizens of the County,
9 I think we did have someone that would have liked to have seen
10 the plan a little more restricted in industry in the County - a
11 control on this. Other than that it was no opposition to the
12 plan on October 12.
13 Q Now, I will show you these documents in just a
14 moment, but so the record will be clear. Was it in fact October
15 12 or November 12 that the hearing was held?
16 A October 12 is when the public hearing by the planning
17 commission was held.
18 Q I see.
19 PARKER: Your Honor, just on this one point - it seems
20 to me that Mr. Morris is not entitled to testify as to anything
21 that happened after the date of the application - certainly not
22 after the dates of the hearings before the boards below. I
23 understand both of those were held in September in this case, but
24 maybe I'm wrong. I think that's correct. One held in October
25 and if so.....

1 A No both was held in September.

2 PARKER: Both in September?

3 A 18th and 25th.

4 PARKER: That's what I thought. I very strongly object

5 to any testimony by Mr. Morris as to anything that was not the

6 case at the time the hearing below was held.

7 COURT: Objection is again overruled and noted for

8 the record. You may continue Mr. Slaughter.

9 PARKER: My exceptions noted.

10 COURT: Yes sir.

11 Q Mr. Morris, following the public hearing before

12 the planning commission what was the progress of the plan?

13 A Okay at the conclusion of that public hearing the

14 planning commission recommended the Board of Supervisors adopt

15 the comprehensive land use plan. The public hearing by the

16 Board of Supervisors was held November 16, at which time the

17 plan did not receive any opposition at all. At the conclusion of

18 that hearing the Board of Supervisors adopted the plan as recommend-

19 ed by the Greene County Planning Commission.

20 Q Was the plan circulated in the county at that time?

21 A Yes it was. Tabloid copies were distributed to

22 each boxholder in the county.

23 Q And how many were made, do you know?

24 A Approximately 15 hundred of them.

25 Q Along with the other capacities you mentioned, I belie

1 Mr. Morris, you are secretary of the Board of Supervisors?

2 A Yes sir, I'm clerk to the Board.

3 Q I show you minutes - a document purporting to be the

4 minutes of the Board, dated October 21 and November 16, 1974,

5 and I'll ask you to identify them and I would show them to the

6 Court?

7 A Yes sir.

8 Q Are these in fact certified copies of the minutes

9 of the Board of Supervisors of Greene County?

10 A Yes they are.

11 Q Dated respectively October 21 and November 16, 1974.

12 Could we mark them for identification.....

13 PARKER: May I see them.....Your Honor, we very much

14 continue our objections .....

15 COURT: Yes sir, I think the same ruling would apply

16 Mr. Parker. Your objection is again noted and overruled, and

17 your exceptions noted. The matters may be identified and marked

18 for identification and will be admitted into evidence as

19 Defendant's exhibits 1 and 2, I believe they would be.

20

21 The minutes of the October 21st Board of Supervisors

22 Meeting were marked and received into evidence as Defendant's

23 Exhibit Number 1.

24

25 The minutes of the November 16th Board of Supervisors

1 were marked and received into evidence as Defendant's Exhibit
2 Number 2.
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DEFENDANT'S EXHIBIT NO. 1

Filed January 11, 1975

October 21, 1974

Greene County, Virginia

The Continued Meeting Of The Greene County Board Of Supervisors Was Held Monday, October 21, 1974, At 7:30 P.M. In The County Meeting Room.

Present were: R. N. Gilbert, Chairman; E. Z. Morris, Vice-Chairman; James A. Henshaw, Regular Member; David C. Dickey, Commonwealth's Attorney; J. L. Morris, County Administrator.

The meeting was opened by the Chairman.

Re: Emergency Three Digit Telephone System

Mr. Terry Ricks of Emergency Medical Services from the University of Virginia Hospital met with the Board to explain the three digit (911) Emergency Telephone System. He said by consolidating the present seven digit emergency phone numbers in the Sheriff's Office into one easy-to-remember three digit 911 number would reduce the emergency response time.

Mr. Ricks said the first step in planning a 911 system would be for the County government to request the telephone company to make a cost study analysis. Upon request, he said the Central Telephone Company of Virginia has agreed to conduct this study with no financial obligation to the County.

Upon motion by James A. Henshaw and unanimous vote, the Board agreed to request the Central Telephone Company of Virginia to conduct a cost study analysis for the 911 Emergency Telephone System with no financial obligation to the County.

Re: Executive Session

Upon motion by James A. Henshaw and unanimous vote, the Board entered into executive session to discuss a legal matter with Mr. David C. Dickey, Commonwealth's Attorney, and Mr. E. R. Slaughter, attorney of the law firm, McGuire, Woods & Battle.

Upon motion by E. Z. Morris and unanimous vote, the Board returned to regular session.

Re: Interim Zoning Ordinance

After being advised by Mr. David C. Dickey, Commonwealth's Attorney, of pending court action on behalf of Bennett T. Matthews regarding the County's Interim Zoning Ordinance, the Board upon motion by E. Z. Morris and unanimous vote, approved to retain the law firm of McGuire, Woods & Battle to assist the Commonwealth's Attorney in the litigation if suit is filed.

Re: Permits Granted For Raffle And Bingo Games

Upon motion by James A. Henshaw and unanimous vote, the Board granted organizations of William Monroe High School, Dyke Elementary School, and the School Personnel Association of Greene County permits for raffles and bingo games to expire July 1, 1975.

Re: Resolution On Rte. 676

Upon motion by E. Z. Morris and unanimous vote, the Board adopted the following resolution:

Resolution

Whereas, Sometime about 1950 the Board of Supervisors of Greene County, Virginia, requested the State of Virginia to discontinue maintenance of State Route 676 for a distance of 1.9 miles; and,

Whereas, the said road has lately again become useful to the road system of Greene County; and

Whereas, B. K. Haynes, Inc., a private development company has contracted and agreed to bring the said road up to the standards required by the Virginia Department of Highways; and,

Whereas, the Board of Supervisors of Greene County is informed that this road shortly will be of sufficient quality to be accepted again into the State Secondary Road System for State maintenance;

Now Therefore Be It Resolved By The Board Of Supervisors Of Greene County that the said former State Route 676 be and the same is recommended to the State Department of Public Highways to be accepted again for maintenance into the State Secondary

Road System, Provided However That, all things necessary at law to be done to improve the said road have been and will be done at the time of acceptance of this road into the State Secondary Highway system.

Re: Roads In Woodridge Subdivision

Upon motion by James A. Henshaw and unanimous vote, the Board directed the Commonwealth's Attorney to draft a resolution recommending the Virginia Department of Highways to accept Fairlane Drive of Woodridge Subdivision into the State Road System subject to the Highway Department's final inspection and approval.

Re: Standards Of Quality For Virginia Public Schools

Upon motion by E. Z. Morris and unanimous vote, the Board directed the County Administrator to draft a resolution supporting Campbell County Board of Supervisors' position in that performance standards should replace the current principle that dollars spent equal quality education.

Re: Date Of Public Hearing For The Proposed Comprehensive Land Use Plan

Upon motion by James A. Henshaw and unanimous vote, the Board approved to hold a public hearing Saturday, November 16, 1974, at 9:00 A.M. in the County Court House on the proposed Comprehensive Land Use Plan recommended and certified by the Greene County Planning Commission.

Re: Adjourn Meeting

Upon motion by E. Z. Morris and unanimous vote, the Board meeting was adjourned.

/s/ R. N. Gilbert
R. N. Gilbert, Chairman
Greene County Board of Supervisors

* * *

DEFENDANT'S EXHIBIT NO. 2

Filed January 11, 1975

November 16, 1974

Public Hearing

A Public Hearing For The Proposed Comprehensive Land Use Plan Was Held Saturday, November 16, 1974, At 9:00 A.M. In The County Court House

Present were: R. N. Gilbert, Chairman; James A. Henshaw, Regular Member; David C. Dickey, Commonwealth's Attorney; J. L. Morris, County Administrator.

Re: Introduction

The meeting which was advertised for the purpose of considering the adoption of the Comprehensive Land Use Plan as recommended by the Greene County Planning Commission was opened by the Chairman. He explained that the Greene County Planning Commission with the staff assistance of Thomas Jefferson Planning District Commission formed an ad hoc Citizens Goals Committee composed of about twenty-five citizens representing a cross section of the County population. From this committee, goals, objectives and policies were established for the future planning of Greene County. After many work shop meetings, a comprehensive plan was finally drafted. Prior to the public hearing held October 12, 1974, by the Greene County Planning Commission, tabloid copies of the Comprehensive Plan were distributed to each County box holder.

The Chairman informed the public that E. Z. Morris, Board representative from Monroe district, was unable to attend the meeting due to illness. The County Administrator reported that he received a telephone message from Mr. Morris preceding the meeting stating he was in favor of the Comprehensive Plan.

Re: Presentation

Mr. Robert Abbott and Mr. George Evans of the Thomas Jefferson Planning District Commission gave a thirty minute slide presentation on the Comprehensive Plan. The slides included maps of soil types, land

use suitability, existing land use, public utilities and various scenes throughout the County of existing developments, housing and public facilities.

Mr. Evans said that a reduction of out migration has contributed to the County's increasing population growth. The increases include mostly the young working age group. Due to its location and accessability, Greene County is becoming a bedroom community for its inhabitants who commute to Albemarle, Charlottesville, Orange and Madison to their jobs.

If the County is to maintain agriculture as the main economic base, development must be confined to cluster areas. Mr. Abbott said to allow the continuing proliferation of subdivisions in the County would make the task of providing public utility services very difficult or financially unfeasible.

Mr. Evans pointed out that the proposed Comprehensive Plan represents the input by the professional staff and the ad hoc Goals and Objectives Committee comprising of 25 citizens who have tried to evaluate where we are now, where we want to go, and how to get there.

In concluding the presentation, Mr. Evans said that one dwelling unit per three acres in the agriculture areas and one dwelling unit per seven acres in the mountain and conservation areas as recommended in the plan would help to protect the environment and scenic beauty, direct growth into orderly patterns, and maintain the agricultural economic base. Mr. Evans added that the economic base could be broadened with some light, clean industry and tourist centers.

Re: Discussion

On behalf of the Board, the Chairman thanked the staff of the Thomas Jefferson Planning District Commission and the Greene County Planning Commission for their efforts in presenting the Comprehensive Plan.

At this time the floor was opened by the Chairman for questions and discussion from the public.

Thomas Lawson

Mr. Lawson informed the Board that he had heard rumors that the proposed interchange of Rte. 622 to the Stanardsville bypass might be eliminated by the Highway Department. Mr. Lawson said the pro-

posed interchange would alleviate the early morning school traffic in Stanardsville. The Board and Mr. Abbott of the Thomas Jefferson Planning District Commission agreed to discuss this matter with the Highway Department.

J. B. Korfanty

Mr. Korfanty said that he considered this plan to be the best that could be devised at this time and urged that the plan be adopted.

Eugene Baker

Mr. Baker stated that the County was in great need of a Comprehensive Land Use Plan and the Planning Commission had worked hard in its effort to formulate a plan that will meet the outstanding needs of the County. He urged favorable action by the Board so the Planning Commission can continue their work.

Jake Harlowe

Mr. Harlowe asked if the lot size recommended in the plan was compatible with lot size requirements in other areas?

Mr. Evans said it was, and that localities with less than three acres were in the process of updating their plans. He said history has proven that two acre lot sizes are not sufficient to control development.

Gene Walter

Mr. Walter asked if land that was not really suited for farming would be required to be farmed if it happened to be in an area zoned agriculture.

Mr. Evans said no one can be required to farm if he does not want to. Mr. Evans explained that the County does not have a soil survey map at the present time, but once the study has been made, it is possible that some land will fall into a different zone than agriculture.

Lee Estes

Mr. Estes said that planning and development controls were needed five or ten years ago, and this plan was the first step in the right direction. He strongly urged the Board to adopt the plan as recommended by the Planning Commission.

Re: Adoption

With no further discussion from the public the Board upon motion by James A. Henshaw and unanimous vote, adopted the Comprehensive Land Use Plan as proposed and advertised.

Re: Adjourn Meeting

There being no further business, the meeting was adjourned.

/s/ R. N. Gilbert

R. N. Gilbert, Chairman
Greene County Board of Supervisors

DEFENDANT'S EXHIBIT 3

Filed January 11, 1975

VIRGINIA:

In The Board of Zoning Appeals of Greene County

Pursuant to the provisions of § 15.1-495 of the Code of Virginia, the Board of Zoning Appeals in open meeting on the 25th day of March, 1974, doth establish and decree the following and procedures for its meeting.

1. Each land owner who has perfected an appeal to the Board of Zoning Appeals will present his case in the following order:

a) The Zoning Administrator will give a brief statement (no more than two minutes) of the reasons for the decision below and a summation of the recommendations of the Planning Commission if any.

b) At the completion of this summation the Chairman will swear all parties who are to give evidence in the matter.

c) The land owner who has appealed will then be given ten minutes to present his case. If he has an attorney present that attorney may use as much of the land owner's ten minutes as the land owner shall see fit, but in no event may the attorney speak more than the ten minutes allotted the land owner.

d) At the end of the land owner's presentation the Chairman will ask the general membership of the Board if they wish to hear evidence from those opposed to the granting of such special use permit or variance. If at least three members of the Board are opposed to hearing further argument then the appeal will be rejected.

e) In the event that further evidence is to be heard, adjoining land owners may be heard and will have up to ten minutes to present their case each in the same manner as for the land owner himself.

f) At the close of the presentation of the adjoining land owners such members of the general public as wish to be heard may have three minutes each to present their statement.

g) If any attorney is present, representing members of the general public or other land owners, he may have three minutes for each of his clients present but in no event more than fifteen minutes to make his presentation.

h) At the close of the taking of any testimony the Board may examine the witness, which examination time shall not be included within his time limit.

i) At the close of the taking of all evidence the members of the Board of Zoning Appeals will discuss the matter and they will vote and decide the issue.

j) Should the Board feel that a view of the premises is necessary they will so advise the land owner who is appealing and ask him to waive his right to a decision within sixty days to allow them to take up the matter at the next general meeting.

2. The secretary of the Board is directed to provide all members of the Board of Zoning Appeals an agenda at least one week prior to a meeting at which a matter is to be decided.

3. The Zoning Administrator is directed to prepare an appropriate form for the waiver of the sixty day decision period, and is to see to it that each applicant specifies upon his appended sketch the names and locations of each adjoining land owner including the owner of the land across the road from the property affected.

* * *

* * *

Q Would you like to see them, Your Honor?

COURT: All right, sir. Now they'll speak for themselves if you want to move onto other areas.

Q Yes sir...I shall. Mr. Morris, the interim zoning ordinance of Greene County is of course before the Court in our return, could you testify as to when that ordinance was adopted, and generally the proceedings leading up to its adoption?

A Well, January 16 of 1974, the planning commission recommended that the Board of Supervisors - that they adopt an interim zoning ordinance. On February 5 of '74, the Board of Supervisors agreed to advertise for public hearing on March 2, to consider the ordinance, which was a joint public hearing with the planning commission. Of course, at the conclusion of that public hearing the ordinance with some changes made at the public hearing was adopted as we have it today.

Q Turning to Mr. Matthews' situation, Mr. Morris, could you tell us what you call of your contact with Mr. Matthews and his employees in connection with this - the petition of the approval of the GreeneTown Sub-division, the application I should say?

A Well, on February 4, a preliminary plan was submitted by Mr. Harris, an agent for Mr. Matthews.....

1 Q Was that February 4, 1974?

2 A '74, yes. At which time we discussed regulations
3 of the sub-division ordinance, and on that plat it included -
4 I believe it was 40 townhouse units, which I advised Mr. Harris
5 that due to our sub-division ordinance, relating to side yard
6 requirements, he would have to eliminate these units. I believe -
7 at that same time I briefly mentioned that an interim zoning
8 ordinance was being proposed.

9 Q What was your next contact with Mr. Matthews or his
10 employees?

11 A Well, when he submitted his revised copy of the
12 preliminary sub-division plat, which was February 26 of '74.
13 At this time I granted him preliminary approval of that plat.
14 I advised him at this time that he had within six months to submit
15 his final plat otherwise his current plat would become nul.
16 At the same time knowing that the Board of Supervisors had already
17 approved to advertise for a public hearing to consider the interim
18 zoning ordinance, I did tell him that this sub-division plat
19 may possibly be affected by this ordinance. If he had not received
20 final approval before the adoption of this ordinance. I think we
21 maybe talked a little more about the regulations at that time
22 of the sub-division ordinance, but that was about the extent of
23 it, to my best recollection.

24 Q Were those two contacts, as far as you recall, with
25 Mr. Harris, a surveyor for Mr. Matthews?

A Yes, to the best of my recollection it was Mr. Harris.

Q When did you first meet Mr. Matthews?

A To the best of my recollection it was some time after March 2, after the ordinance was adopted. Mr. Harris brought Mr. Matthews in and introduced him to me. I was at the office and we discussed in general the zoning ordinance, pertaining to the hardship clause. At that time I did advise him that it would be necessary for him to file a petition with the zoning board of appeals for a special use permit.

Q Approximately how long after the March 2 adoption of that ordinance, did this conference take place?

A To-the best I can remember it was several weeks after the - it could have been four weeks, six, seven, somewhere in there....April or May. I don't recall really the exact date.

Q But can you just tell us this was it in the first say three months after the adoption of the zoning ordinance or in the last six months?

A Oh, definitely within the first three months.

Q What was your next contact if you recall with Mr. Matthews or his employees?

A Well, February 26, is when he received his preliminary approval on his preliminary plat. And keeping in mind the six months, I contacted - if my memory hasn't failed me, Mr. Harris, somewhere during July or August, to remind him about

1 the six months limitation in submitting his final plat.
2 Some time a few weeks or a week or so later, I talked to Mr.
3 Parrott on the street, to remind him also.
4 COURT: What connection did Mr. Parrott have, if you
5 knew at that time?
6 A He was an agent also of Mr. Matthews.
7 Q For the record, could you identify Mr. Parrott?
8 A Mr. Robert Parrott.
9 Q And then what occurred next?
10 A On August 26, the final plat was submitted with the
11 petition to the zoning board of appeals. I was out of the office
12 the day that he submitted the plan. After I reviewed the
13 petition I noted we needed some more names and addresses of the
14 adjoining landowners, which I contacted Mr. Matthews' office and
15 informed them of this. A few days later he did give me the
16 other names and addresses of the adjoining landowners and ...in
17 the sub-division of Locust Lane.
18 Q Now you called him and alerted him of that problem
19 even though his six months had already expired, did you not?
20 A Yes I did.
21 Q And you permitted him to correct it without objec-
22 tion?
23 A Right.
24 Q Just two or three more questions, Mr. Morris.
25 Are you familiar with Locust Lane Sub-division, west of Ruckers-

1 ville on Route 33?

2 A Yes I am.

3 Q Could you tell us whether or not the sewage system

4 in that area is individual septic tanks of the individual home-

5 owners?

6 A Yes it is.

7 Q Could you give us the approximate lot size of the

8 Locust Lane Sub-division?

9 A Average size is about a half an acre, 2100 square

10 feet.

11 Q 2,100 feet?

12 A Yes.

13 Q Does Greene County have a county operated landfill?

14 A Yes we do.

15 Q And how long has Greene County been operating the

16 landfill?

17 A Since September or October of '73, I believe.

18 Q Did it operate any form of county waste disposal,

19 system before that time?

20 A Yes sir, it did, they had an open county dump

21 before that time, before this.....before the State - new regula-

22 tions on landfills.

23 Q Do you know how long that dump has been in opera-

24 tion?

25 A I would say several years at least.

Q Did Greene County operate a library?

A Yes sir, it does.

Q How long has it operated a library?

A Since October of '73.....I mean '74, I'm sorry.

Q October 1974....where is it located?

A On the Main Street in Stanardsville, Route 33.

Q Is that library part of a larger regional system?

A Yes it is, it's a branch office of the Jefferson-Madison Regional Library District.

Q Is the County also served by a bookmobile?

A Yes sir, they are...since July of '74, I believe.

Q One final question, Mr. Morris, unless Mr. Dickey has something. Under your practice was it necessary to obtain approval of the final plat before petitioning the Board of zoning appeals for a special use permit?

A No, it wasn't necessary.

Q In fact were applications - petitions for special use permits filed by other sub-dividors based on their preliminary plats?

A I believe so, yes. We did have some.

Q Okay. I have no further questions, Your Honor.

COURT: All right, Mr. Parker.

CROSS EXAMINATION

BY: Mr. Parker

Q Mr. Morris, you deal with the sub-division ordinance more than I do, can you tell me please sir, where there is a requirement in the sub-division ordinance that along with the final plat, Mr. Matthews submit names of people who may be adjoining landowners?

DICKEY: I object to the question, I think he means something about the zoning ordinance perhaps.

Q I mean the sub-division ordinance.

COURT: The objection is overruled, if he can answer the question.

A There's nothing in the sub-division ordinance. This is in the zoning ordinance.

Q That's all the questions I have.

COURT: All right.

SLAUGHTER: You may stand down, Mr. Morris.

COURT: All right, you may stand down sir.

SLAUGHTER: Ronnie Lamm.

RONALD W. LAMM, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Slaughter

Q Would you state your full name and address please sir?

1 A Ronald Wayne Lamm, Barboursville.

2 Q And what is your profession, Mr. Lamm, your

3 occupation?

4 A I work for Sears in Charlottesville as an installa-

5 tion manager.

6 Q Do you have a position with the county government,

7 volunteer position I might add? Here in Greene County?

8 A Yes, I do.

9 Q What is that position, sir?

10 A Member of the Greene County Board of Zoning

11 Appeals.

12 Q You are in fact chairman of the Greene County

13 Board of Zoning Appeals are you not, sir?

14 A Yes sir.

15 Q Mr. Lamm do you recall the hearing when Mr. Bennett

16 Matthews applied for a special use permit, that took place before

17 the Board of Zoning Appeals on September 25, 1974?

18 A Yes sir, I do.

19 Q Do you recall the testimony from Mr. Matthews and of

20 his employees before the Board of Zoning Appeals?

21 A Yes sir.

22 Q Could you tell us first what you recall of the

23 testimony as to the amount of moneys expended before the adeption

24 of the zoning ordinance by Mr. Matthews in connection with the

25 Greenetown Sub-division?

1 A Yes sir, as I recall Mr.Matthews stated to the
2 Board that he had expenditures of or obligations to pay approximate-
3 ly 67 hundred dollars, I believe.....of different fees and so
4 forth, at that time.
5 Q Was there any computation as to what of those
6 expenditures might have been required only for this sub-division
7 and what might have been required for any sub-division?
8 A It was my opinion that after Mr. Matthews....
9 PARKER: Your Honor, this is the precise area ....
10 Q That's true, we request.....we ask for recollection
11 and not opinion. I think we probably are misstating it...
12 A Yes, the statement - my recollection I'm sorry...
13 COURT: Recollection you may testify to, but not
14 an opinion.
15 A Right, my recollection was that of the expenditures
16 that Mr. Matthews stated to us that evening, that approximately
17 four thousand...
18 PARKER: I think we ought to state with respect....we
19 object. I think he is still giving his opinion and calls it his
20 recollection...
21 COURT: No sir, he is saying this is his recollection,
22 Mr. Parker....your objection is overruled.
23 PARKER: He brought the statement - Mr. Matthews stated,
24 Your Honor, as opposed to stating what was happening....he's
25 not saying that Mr. Matthews stated, he's stating his recollection

1 of what he believes is the case. It's in there, it shouldn't
2 be in there.
3 COURT: Mr. Lamm it's a question now of what evidence
4 was presented to the Board of Zoning Appeals by Mr. Matthews or
5 anyone else as to this - these figures.
6 A All right - Mr. Matthews stated that of this
7 67 hundred dollars, that approximately 25 hundred of it had
8 actually been spent and that the remaining 4 thousand plus
9 was obligated.
10 COURT: All right, you may continue, Mr. Slaughter.
11 Q Now Mr. Lamm, in connection with the procedure of
12 the Board of Zoning Appeals, and the response really to Mr.
13 Parker's objection. Has the Board ever gone in executive session?
14 A Only once.
15 Q When was that, what was the occasion?
16 A At our last meeting, which was if I recall correctly
17 December 18 - we changed that meeting day is the reason I'm not
18 clear on it, because of Christmas, but it was in our December
19 meeting we went into executive session at the end of that meeting
20 for five minutes.
21 Q It was as you stated December and after the September
22 25....
23 A Yes sir.
24 Q Before that time you had never been in executive
25 session?

1 A No sir.

2 Q Before the hearing- Matthews hearing, in earlier
3 times - excuse me Your Honor, may I withdraw that .....
4 Just generally, Mr. Lamm, and not at this particular hearing,
5 has the Board called Mr. Kenneth Coleman, the assistant secretary,
6 the assistant superintendent of schools, and Mr. Thornton, the
7 sanitarian in for explanations of the situations regarding the
8 schools and the septic problems in Greene County?

9 A Yes sir, we have.

10 PARKER: Your Honor, that follows my objection before.
11 We're entitled to a decision based on the record as it stands.
12 It may well be that we would wish to follow this matter up and
13 establish from this gentleman, if this line of questioning is
14 open - that they considered matters - divulged the record in this
15 case.

16 Q May it please the Court...

17 COURT: They are talking about prior to...

18 Q Yes sir.

19 COURT: ...the hearing.....either at that meeting or
20 prior to it, the knowledge that the Board of Zoning Appeals
21 has by virtue of their position, it seems to me can't be wiped out
22 of their mind. They don't necessarily constitute themselves as
23 a separate board every time there's a case. They are continued
24 as representatives of the county's public policy I suppose, and
25 I don't see how they can say for one case they know it and for

1 the rest of the cases it has to be reintroduced. You are saying
2 that prior to this consideration in this case there was other -
3 there were other occasions on which this information had been
4 elicited...
5 Q That's correct, Your Honor.
6 COURT: Well, I think you ought to be specific as
7 to when, whether it was as part of this case or in a separate
8 case, Mr. Slaughter, but the Court will permit it and it seems
9 to me it effects the point of law as to whether it would be something
10 that would have to be reintroduced, as Mr. Parker claims. And
11 that point of course can be saved on his objection for the
12 record, and apparently it was not in this case that this informa-
13 tion was elicited.
14 Q That's as I understand it, Your Honor. Mr. Lamm,
15 can you tell us first whether the appearance of these two gentlemen
16 was in connection with this case?
17 A No, it was not.
18 Q And can you tell us approximately when and under
19 what circumstances each came before the Board of Zoning Appeals?
20 A Yes, it was another case, but exactly when I don't
21 know. Probably two months prior to this.
22 Q Did the Board of its own motion have occasion to
23 issue subpoenaes for the gentlemen?
24 A Whether subpoenaes were written I'm not sure, but
25 they were contacted and asked to be there. Actual subpoenaes I'm

1 not sure.

2 Q I see. Mr. Lamm, are you familiar with the

3 volunteer fire company in Ruckersville?

4 A I'm a member, yes sir.

5 Q And could you tell us what the structure of that

6 company is and what the situation is with regard to the availability

7 if its building there?

8 A Yes, the structure is purely volunteer and the

9 policy of the building - you mean as renting it or using the

10 building?

11 Q Specifically, could you describe for the record -

12 of course Judge Berry is familiar with it, it should be clear

13 what building is located there in Ruckersville?

14 A The firehouse....the firehouse is located there.

15 Q What's - what does the firehouse contain?

16 A It has a room for the firetrucks, a kitchen, and

17 a meeting room, and facilities that you know go along with that.

18 Q Is it open to the general public?

19 A No sir, not as such. It is available to be rented,

20 if a fee is paid by individuals or organizations.

21 Q And only on that basis?

22 A Only on that basis, yes sir.

23 Q Otherwise it's available to the members of the fire

24 company for their use?

25 A For meeting purposes only, not even - we cannot use it

without paying.

Q No further questions Your Honor.

COURT: All right, Mr. Parker, you may cross examine.

CROSS EXAMINATION

BY: Mr. Parker

Q Mr. Lamm, how is your volunteer company supported?

A Out of the contributions of the citizens of the county and surrounding area.

Q The public then supports it?

A The citizens of surrounding area and Greene County, yes sir.

Q Mr. Lamm, you stated that you recollected Mr. Matthews' testimony at the Board of Zoning Appeals, is that correct?

A I stated that - I believe the question was did Mr. Matthews or some of his representatives or his people, yes... the testimony at the meeting, yes sir.

Q Well, who made the testimony that you referred to?

A Mr. Matthews made part of it and as I recall it was all made by him.

Q All right, sir, and you recollect that for the testimony of Mr. Matthews at the meeting?

A Yes.

1 Q I'm - with respect to your recollection, do you
2 recollect other testimony at the meeting of others as well as
3 Mr. Matthews?
4 A I think so, yes sir.
5 Q Do you recollect your own statements at that
6 meeting?
7 A Some of them, yes sir.
8 Q Do you recollect this statement.....is this an
9 accurate reflection of your statement at the meeting? Ronald
10 Lamm referred to a statement by Judge Berry at the time the
11 Board was installed,which advised them that if the citizens
12 of the county wanted an application approved, it should be
13 approved, but if the citizens of the county objected to an
14 application it should be denied. He felt ...and I take it you
15 said you felt - the citizens had expressed a strong objection.
16 A Yes I made that statement.
17 Q Now you made that statement, I believe, right after
18 the motion was made to deny this application and just before the
19 vote was taken on denying the application?
20 A I'm not sure when it was made, no sir. I'm not
21 sure of that, but it was made.
22 Q Well, do you deny that that is the case?
23 A What is the case?
24 Q Well, that it was made in the order that I suggested
25 to you?

1 A No, I don't deny that, I just don't recall.

2 Q If the record reflects it that way you assume

3 that would be correct?

4 A I don't have any reason to deny the record.

5 Q That's all.

6 COURT: All right, any other questions?

7 SLAUGHTER: No questions....

8 Q Your Honor, I beg your pardon, I did fail to ask

9 some questions....

10 COURT: All right, go ahead, Mr. Parker.

11 Q You testified with respect to the procedures used

12 at the meetings, I believe earlier. Mr. Slaughter asked you

13 a question concerning the procedure of the meetings. The question

14 I have to ask you now is this. How were people seated at the

15 meeting?

16 A You mean in respect to the board or the public?

17 Q The board and the general public?

18 DICKEY: Your Honor, I think we might be easier if

19 Mr. Parker used the blackboard and drew.....

20 COURT: I don't know that...

21 Q I don't mean it in that connotation, Your Honor.

22 COURT: I don't know that this was opened up at all.

23 I don't recall any questions about the seating...

24 Q He asked about the procedure.....to proceed in a

25 little different way than to ask about the procedure, Your Honor,

1 but I'm trying to get the question of the matter of who was
2 sworn, who testified, where they were when they testified,
3 the degree of opportunity thatMr. Matthews had to present his
4 case and to rebut and refute the case of others. And also the
5 nature of some of the other testimony with respect to the public
6 opinion which was admitted into evidence.
7 COURT: That goes beyond cross examination. If you
8 want to go into it you can do it, but you are making him your
9 witness when you do it.
10 Q I think he's clearly adverse. He's a defendant.
11 COURT: I don't know that he's necessarily adverse.
12 Q He is chairman of the Board of Zoning Appeals and
13 they are the nominal defendant in the case.
14 COURT: As an individual? Or as a board?
15 Q As an individual and as a board.
16 COURT: What position has he got in the case individual-
17 ly? All right, go ahead, maybe you're - you have a valid point
18 there, that you have to consider him adverse - he ruled against
19 you, but now not from the standpoint of what the reasons were...
20 the mechanics of how the meeting was conducted, who had an
21 opportunity ...
22 Q Oh no, I shan't get into reasons.
23 COURT: All right, go ahead, sir.
24 Q The question, Mr. Lamm, that I was asking you about...
25 how were the people seated and how was their testimony taken?

1 A We have a table that's an L I guess and we have
2 three members that sit here in the L, the secretary, myself and
3 the vice chairman. In front of us...
4 Q Let me see if I can't.....if I'm entitled to lead
5 you maybe we can speed matters up. And sitting in front of you
6 in much the same manner, the - say, in the center section of
7 this courtroom here, were all - was everybody else?
8 A That's correct.
9 Q And the room was full?
10 A As I recall, yes sir.
11 Q And was there any given chance - was there any given
12 place for witnesses to speak or did people speak from where ever
13 they were?
14 A No, I believe when your case was called, that I
15 asked anyone that had anything to say in this case either for or
16 against, to please come forward and be sworn in. At that time
17 everyone came forward and your ....
18 Q And your...
19 COURT: Let him answer it, Mr. Parker.
20 A The petitioner, Mr. Matthews, and his associates
21 were given the front row of seats; if I recall we went and got some
22 more so you could have some. And then the - anyone else was seated
23 behind you or where they could find the first chair.
24 Q Where was Mr. Evans seated?
25 A Mr. Evans was back, I would say approximately three

1 to four rows in the group.

2 Q How long did Mr. Evans testify at this meeting?

3 A At some length, I would say 10 minutes...15 minutes.

4 Q That long - you think it would take...

5 A I don't know, I'm just guessing.

6 Q Everybody testified from place, people interrupted

7 each other...

8 A Everyone testified from place, but no - people

9 didn't interrupt anyone. If I recall correctly the only

10 interruptions that we had, that I had to note was on your part.

11 Q Yes sir, because I was not given - was I any parti-

12 cular...

13 COURT: Now don't argue with him, Mr. Parker.

14 Q I'm not arguing with him, Your Honor. If the

15 Court closes my examination before it hears my question, I think

16 I will have to object.

17 COURT: You're making a statement to him, ask a

18 question, if you want to.

19 Q I'm just trying to lead him, Your Honor, I believe

20 that...

21 COURT: All right, but don't argue with him, Mr.

22 Parker. Don't engage in another argument with him. Now you've

23 opened this up and I warn you I'm not going to permit you to

24 argue with the witness.

25 Q I don't propose to argue with the witness, Your Honor.

1 COURT: Go ahead.

2 Q I....

3 COURT: All right, go ahead.....go ahead and ask

4 the question.

5 Q May I except to the ...

6 COURT: State your exceptions.

7 Q My exceptions, Your Honor, are that the question

8 does not indicate that I was arguing with the witness.

9 COURT: I have ruled that it does, Mr.Parker.

10 Q All right. I understood that.

11 COURT: Go ahead, you may note your exceptions and ask

12 the questions, but don't make statements to the witness.

13 Q Did you permit the examination of witnesses by

14 - of people who spoke, by me?

15 A State that again, I...

16 Q Did you permit the examination of people that spoke

17 by me?

18 A I don't recall that I did, no sir.

19 Q In fact you did not?

20 A No, I don't say that I did not, because there were

21 questions asked by you and I'm not sure whether anyone answered

22 them or not. No, I'm not saying I didn't, but I didn't say

23 Mr. Parker you can cross examine, if that's what you are saying.

24 No, I did not.....do that.

25 Q In fact you treated me at the hearing as if I were

1 another witness and called me to be sworn?
2 A That's right.
3 Q That's all.
4 COURT: All right, any other questions? Mr. Lamm
5 did the board havelegal counsel at the meeting?
6 A Yes sir.
7 COURT: Who was legal counsel?
8 A Mr. Dickey.
9 COURT: Mr. Dickey. Did Mr. Parker ask for a
10 conference or did Mr. Dickey in any way undertake to advise
11 the board or-with Mr. Parker at the meeting?
12 A To my knowledge, no.
13 COURT: Left the matter entirely in your hands?
14 A I believe that's correct, yes sir.
15 COURT: All right, any other questions?
16 SLAUGHTER: Would you indulge me just a minute, Your
17 Honor?
18 COURT: Let me ask this question for the record, does
19 the board have any formal rules of procedure that have been adopted?
20 A Only to the effect, sir, that we allowed the
21 petitioner to present his case and then any adjoining property
22 owners to speak in the nature of it, and then the general public
23 last.
24 COURT: Was that announced at the meeting or are they
25 written rules?

1 A They are written rules and I believe but I'm not
2 positive of this, that I did state that we would do this at
3 this case and that the time limits that we had would be in
4 effect. And at that time Mr. Dickey advised us that we would
5 have to probably not go by the time limits since it would not
6 allow time enough for Mr. Parker and Mr. Matthews to present their
7 case. And we suspended the rules for that hearing.
8 COURT: You were aware that Mr. Parker was the
9 attorney for Mr. Matthews, were you?
10 A Yes sir.
11 COURT: All right, any other questions by counsel?
12 PARKER: For the purpose of making that statement to
13 the board, you did not cause Mr. Dickey to be sworn, did you?
14 A No, Mr. Dickey - you ask me that, and I told you
15 that he was our legal advisor and therefore he didn't have to
16 be.
17 PARKER: I see.
18 COURT: Any other questions?
19
20 REDIRECT EXAMINATION
21 BY: Mr. Slaughter
22 Q Did Mr. Parker testify before you?
23 A Yes he did.
24 Q Did he request the right to cross examine?
25 A To my knowledge he did not.

1 Q No further questions.

2

3 RECROSS EXAMINATION

4 BY: Mr. Parker

5 Q What do you mean by testify?

6 A I ...

7 Q Because you swore me that meant that everything

8 I said was going to be testimony wasn't it?

9 A That's right - I consider at these hearings if

10 anyone has anything to say they should be sworn and then in

11 that sense they testify.

12 Q All right.

13 COURT: All right, Mr. Lamm, thank you, you may

14 stand aside.

15 SLAUGHTER: Excuse me, Your Honor, I'm sorry to delay

16 this, but we would - we do have one more matter to put into

17 the record through Mr. Lamm...

18 COURT: All right, Mr. Lamm.

19 SLAUGHTER: I think it would probably be appropriate

20 ...

21 COURT: Come on back to the witness stand, please

22 sir.

23

24 REDIRECT EXAMINATION

25 BY: Mr. Slaughter

1 Q Would you tell us if these are the rules of
2 procedure before the Board of Zoning Appeals? Greene County -
3 and were they in fact on September 25, 1974, at this hearing?
4 A Yes sir.
5 Q We'd like to introduce these as Defendant's exhibit
6 number 3....
7 COURT: Has Mr. Parker had an oppertunity to examine
8 them and do you have any objection, Mr. Parker?
9 PARKER: No Objection to the introduction of these.
10 COURT: All right, they'll be .... you say no objections?
11 PARKER: No objections to these.....
12 COURT: They will be admitted and I think they should
13 be put in the record, since the point of procedure has been
14 put in issue here. And it seems to me that it's appropriate
15 that the record reveal the rules and procedures that have been
16 adopted by the Board.
17
18 The rules of procedure were marked and received into
19 evidence as Defendant's Exhibit Number 3.
20
21 Q Mr. Lamm, as I understand this on Mr. Dickey's
22 advice or suggestion the time limitations normally placed upon
23 applicants were waived in order to give Mr. Matthews more than
24 the normal amount of time to present his case, is that correct?
25 A Yes sir, that's correct.

1 COURT: Was anyone denied an opportunity to speak or
2 were they cut off, as far as running out of time, Mr. Lamm?
3 A No sir, noone was denied and noone was cut off .
4 Q Did Mr. Dickey cross examine anyone?
5 A To my knowledge he did not.
6 Q We have no further questions.
7 COURT: Any further questions, Mr. Parker?
8
9 RECROSS EXAMINATION
10 BY: Mr. Parker
11 Q Yes sir - just a moment please.....did I state
12 to you that I wanted - that I personally wanted to present any
13 evidence at that meeting?
14 A Whether you made that statement I don't know, but
15 you did - but you did present evidence.
16 Q I didn't - I objected to being sworn at the time?
17 A Yes, you did.
18 Q Now, you said you gave everyone ample time to
19 speak, is that correct?
20 A I didn't cut anyone off.
21 Q All right, so among others - and you say also your
22 rules in fact apply for members of the public to speak is that
23 right?
24 A That's correct.
25 Q And how many members would you say - how many people

1 at that meeting,whom you described as members of the public?
2 A I would say that - you mean - you mean other than
3 landowners or adjoining landowners?
4 Q Yes, I suppose.
5 A Then the majority of them were not landowners
6 or adjoining landowners.
7 Q How many people were there there?
8 A Oh, I don't know - 50.
9 Q So maybe there were as many as 25 - 20 people who
10 were not members of the public?
11 A That's correct.
12 Q I mean who were members of the public?
13 A That's correct, who were members of the public, yes.
14 Q And then there were some more people who were members
15 of the public and adjoining landowners?
16 A That's correct.
17 Q And they all had a full chance to say their say ?
18 A I believe so.
19 Q And you gave full weight or consideration to what
20 they had to say?
21 A Yes sir.
22 Q That's all.
23 COURT: All right, any further questions of Mr. Lamm?
24 SLAUGHTER: We have no further questions, Your Honor.
25 COURT: All right, Mr. Lamm, you may stand aside, Thank

you.

SLAUGHTER: We call Mr. Thomas Lawson, please.

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 Transmission.

Q And do you have volunteer - or voluntary positions for the government of Greene County?

A Yes sir. I guess I have two - I'm a member of the planning commission and a member of the zoning board of appeals.

Q Are you in fact chairman of theplanning commission?

A Yes sir.

Q Now you are the member required by the ordinance for Greene County to be a member of the board of zoning appeals who is - must by ordinance also be a member of the planning commission?

A Yes sir.

Q Mr. Lawson as a member of the planning commission, could

you tell us what your background had been with regard to the - your contact with the comprehensive plan prior to the meeting of September 25, 1974, at which Mr. Matthews' application was considered?

PARKER: Note my objections, continuing....

COURT: Objection will be noted - they are continuing objections, Mr. Parker, as if they were made and the Court's ruling will apply.

PARKER: I would rather not have to keep making...

COURT: Yes sir. It is noted that every objection you asserted before would be reasserted as to this witness.

PARKER: As to every other witness, it would save my having to...

COURT: Yes sir.

PARKER: ...restate it.

COURT: That goes into the same category of questions. Yes sir. All right, you may continue, Mr. Slaughter.

A Do you mean at the time we started to work on the comprehensive plan?

Q Yes sir, and obviously I don't need for you to go into everything that happened in every meeting, but simply summarize your contact with it, so the Court will understand what ...

A Well, Mr. Evans of the Thomas Jefferson Planning District started making a - I guess you would call it a visual

survey of Greene County - this taken I don't know a couple of months. He went up every road, he noted the dwellings, the trailers and...

Q Approximately when was that?

A Oh, he must have started somewhere around September of '73, I would say in that area.....not right on the day, it could have been August, it could have been October, I'm not sure - right to the minute or day. After this was done he had several meetings with the planning commission, then - while he was working on this he kept coming back each month and bringing us information and talking about different aspects of the plan.

Q Let me go back and be sure it's clear. Had the planning commission in fact asked the - through the Board of Supervisers, asked the Thomas Jefferson Planning District commission to undertake a comprehensive plan for Greene County?

A Yes sir, they had.

Q And approximately when was that? Do you recall?

A No, I don't. I couldn't say.

Q That can be put in the record later. Go ahead, sir.

A Then it was decided that we only have seven members of the planning commission that we need more input from the citizens of Greene County. So we decided we should have a citizens ad hoc committee to help advise the board. And as the chairman or at that time acting chairman of the board, I was appointed to

1 meet with the citizens ad hoc committee - Mr. Evans, and members
2 of the Thomas Jefferson Planning District to bring back the
3 information that I could - what these people were putting out.
4 Mr. Evans also taken notes and he brought back and - to the
5 planning members, so he could guide them on the drawing up of
6 the plan. And then after this was so we had one or two meetings
7 a month with the citizens ad hoc committee, on up about I'd
8 say it was maybe June, July, that disbanded, and then we continued
9 to draw up this plan, and presented it at the public hearing
10 on October 12.
11 Q At the time of the hearing on September 25, 1974
12 was the plan in the form in which it was ultimately adopted?
13 A Yes sir.
14 Q And at that time did you know in some detail
15 the provisions of the plan as it had been proposed?
16 A Yes sir, I had worked through the whole - I guess
17 I knew as much as most any average citizen - or more ...
18 Q You had in fact sat in on all the planning committee
19 meetings and I gather were a member of the ad hoc committee?
20 A All the planning meetings and I think all the citizens
21 ad hoc committee, there may have been one I wasn't there.
22 Q Turning to the meeting at which - the public hearing,
23 at which the interim zoning ordinance was announced, was Mr.
24 Robert Parrott there?
25 A Yes sir.

1 Q I misstated the question, I said the ordinance
2 was announced and then adopted - the meeting of March 2 was
3 Mr. Robert Parrott...
4 A At the public hearing when it was adopted, Mr.
5 Robert Parrott was present, and spoke.
6 Q Mr. Lawson, could - with regard to the testimony
7 before the board of zoning appeals on September 25, could you
8 recall what the testimony of Mr. Harris was with regard to
9 cars - traffic that would be generated by the sub-division?
10 A Yes sir, he said the sub-division itself would create
11 approximately 2,800 cars per day, a 24 hour period. And that
12 if the additional commercial center was adopted, it could possibly
13 go as high as 4,000.
14 Q Did he make any statement with regard to what
15 would alleviate the congestion as a result of these cars?
16 A Well, he said that 33 was in the process of being
17 4 laned and it wouldn't make - wouldn't create any hardship.
18 Because the 4 lanes would more than take care of the additional
19 traffic.
20 Q Has 4 lane construction in fact started yet?
21 A No sir, not in that area.
22 Q With regard to the sewer situation, what was the
23 testimony as you recall of Mr. Harris as to the sewer situation
24 as applied to the new Greenstown Sub-division?
25 A Well, after everybody had testified, I guess, just

about, I asked Mr. Matthews who would take - he stated that the sewer plant would cost approximately half a million dollars, and I says, who takes care of the sewer plant, after you have finished your ten year construction; say the water control board comes up and takes samples downstream and it's not doing the job it was designed to do, who takes care of this? And he said the homeowners.

Q And was he challenged on that?

A Well, no, I don't believe so. There may have been some statements made - would the homeowners be financially able to do that.

Q Are you familiar with landowners in Ruckersville Youth Center?

A Yes sir.

Q Could you tell the Court, what the Ruckersville Youth Center is, and where it's located?

A Ruckersville Youth Center is donated for the purpose of youths, supervised youth, and it's governed by a board of directors of nine, and it is incorporated. In order to use it you have to get permission from the board of directors and it has to be voted on.

Q Are you on the board of directors?

A Not at this time, I have served many years but not right now.

Q What is the size of the lot of land that constitutes

1 the Ruckersville Youth Center?

2 A Six and a half acres approximately. I think it's

3 a shade over that, just a little bit.

4 Q To what use is that land put primarily for recrea-

5 tional purposes?

6 A Mostly for adult softball, little league baseball,

7 and Babe Ruth baseball, pony league.....13,14,15, 16 year

8 old boys.

9 Q How many baseball diamonds are there?

10 A There's only one.

11 Q Is there any other improvement on the facility?

12 A Well, it has bathrooms and has concession stands.

13 It is lighted for softball and little league ball. It has a

14 basement that was built on the property through a mistake....

15 and. . ..

16 Q The basement I gather has no roof?

17 A It has no roof, it just has the walls. Cinder-

18 block walls.

19 Q Is there any protection to keep you from falling

20 into it?

21 A Nothing other than the bushes that's grown up around

22 it.

23 Q Are you familiar with a drive-in theater in Ruckers-

24 ville?

25 A Yes sir.

1 Q Could you state how long - approximately how
2 long its been since that's been used?
3 A Its been quite a while now , I couldn't say for
4 sure, but possibly as much as ten years.
5 Q Could you describe its condition?
6 A Very rundown.
7 Q Is it used for any other purpose, recreational
8 or otherwise?
9 A Not that I know of.
10 Q No further questions, Your Honor.
11 COURT: All right, Mr. Parker.
12
13 CROSS EXAMINATION
14 BY: Mr. Parker
15 Q You said you weren't on the board of that organiza-
16 tion now, when were you last on the board? I'm talking about
17 the youth center?
18 A Greene County Youth Center - I went off the board -
19 it must have been about four to five years ago. I am now the
20 general manager.
21 Q You are the general manager?
22 A Yes.
23 Q Oh, so then you are familiar with the policies of
24 that organization?
25 A Fairly, yes.

1 Q What organizations, what other organizations have
2 you permitted to use the facilities?
3 A Well, last year only little league, men's softball; in
4 past years girl's softball has used it. For all types of
5 baseball programs, and supervised - the way it's run, the Youth
6 Center runs the baseball program, that is - the little league
7 baseball they finance the whole works.
8 Q How is the youth center financed?
9 A By passing the hat and selling concessions at the
10 games sir.
11 Q Now you mean passing the hat to.....are members of
12 the public invited to those games?
13 A Well, there's ads run in the Greene County Record
14 that they are playing ball and what the standings of the league
15 are and so forth. Otherwise not on a regular basis.
16 Q When the ads are run and stated - are schedules for
17 those people playing ball posted in the county?
18 A As I say once in a while I'll see a softball team
19 will write their schedule - once in a while you'll see a little
20 league schedule, but not on a regular basis.
21 Q People in fact do come to watch these games?
22 A Quite a few.
23 Q And these are the people to whom, among others,
24 you pass the hat?
25 A Uh-huh.

1 Q Have you ever discriminated, based on race, color
2 or creed with respect to...
3 SLAUGHTER: If the Court please, I ...
4 Q This is an area that they opened up, Your Honor.
5 They asked who could use it.
6 COURT: What's discrimination got to do with it,
7 Mr. Parker?
8 Q We are going to ask and try to establish, Your Honor,
9 how widespread the use of this facility is by the public.
10 And if they discriminate of course....
11 COURT: I think you are injecting something here
12 that has no bearing on the case. You may ask him who has ever
13 been denied the use of it or who actually uses it, but I'm not
14 going to permit you to go into an area here, that obviously
15 carries with it certain connotations which have no bearing on
16 this case. Now, as to the use of this property you may go into
17 it any way you want to. But you are injecting something that
18 has not been raised so far.
19 Q It was the breadth of use - whether this would be
20 a restriction on the use that I was asking about./ If The Court's
21 ruling that I can't ask that, I would respectfully except.
22 COURT: You can ask him as to anybody that's ever
23 been denied the right to use it, and if they have a policy as
24 to who can use it.
25 Q Is the Court ruling that I may not ask the question

1 that I asked?

2 COURT: Not in the form you asked it, because I don't
3 consider it appropriate to this proceeding, whether or not some-
4 body is practicing race discrimination. This is not a discrimina-
5 tion case. It's not a civil rights case as far as I'm ....

6 Q I've already stated to the Court the purpose -
7 I respectfully except...

8 COURT: Yes sir, your exceptions are noted. I'm not
9 denying you the right though to inquire into what use has actually
10 been made of the property.

11 Q Who is permitted to use this property?

12 A Anyone that makes application formally with the
13 board of directors and gets their approval.

14 Q What is the criteria for approval?

15 A You meet with them and tell them what you're going
16 to use it for . If you are going to keep good police protection,
17 and this type of thing.

18 Q Have many people been denied?

19 SLAUGHTER: If the Court please, I have an objection...
20 hereto...except on that one particularly immaterial question, but
21 as I see it all this line of questioning is well beyond the
22 scope of why the question was asked Mr. Lawson to begin with.
23 It was obviously asked of course because Mr. Payne held this out
24 as a public facility. Its been established it is not a public
25 facility. It is a private facility and as such I would say that

1 all of...

2 COURT: I think its been opened up as to who can use

3 and who is using it, Mr.Slaughter. The objection is overruled,

4 as long as - if the witness can recall any particular occasion

5 when any group or persons were denied an opportunity or right to

6 use it.

7 A Yes...

8 Q If the Court please that was not my question to

9 the witness...

10 COURT: I may have misstated the question, Mr. Parker.

11 You restate your question. I don't want to take your question

12 out of order, because I may have misunderstood.

13 Q Do you remember my question?

14 A I believe you asked me if anybody had denied - been

15 denied the use of Greene County Youth Center.

16 Q No sir, I asked you if very many people had been

17 denied the use of the Greene County Youth Center?

18 A Not a whole lot.

19 Q Thank you. Have such denials as there have been

20 been based on as you suggested the fact that people - you didn't

21 think they could keep order?

22 A Well, that would be the biggest problem right

23 there.

24 Q Yes sir. How much fees are charged - I want to see

25 if they are going to be prohibitive - how much fees....

1 COURT: Go ahead.

2 Q How much fee is charged in connection with the

3 use of the grounds? By other organizations?

4 A Well, we have been heretofore for softball requiring

5 about four to five dollars for the light bill per game. Last

6 fall they let the little league football players here in the

7 county use it for their schedule and their thing was that they

8 pay the electric bill and that would be it.

9 Q In your opinion sir, does the youth center serve

10 a valid need in the Ruckersville community?

11 A It serves a need for Greene County.

12 Q As well as the Ruckersville community?

13 A Yes sir.

14 Q Now, another point - Can you recollect the proceedings,

15 I believe Mr. Slaughter asked you the question along these lines.

16 Do you recollect - I take it, some of the proceedings at the

17 meeting of the board of zoning appeals, on which you sat as a

18 member?

19 A Yes sir.

20 Q And I believe Mr. Lamm has stated that members of

21 the public were allowed to state their opinions in full sway?

22 A Uh-huh.

23 Q And is that also your theory?

24 A Yes, they were all sworn - all that were sworn in

25 were allowed to say what they.....

Q Yes, and the general gist of the opinions of those people at that meeting was that they did not want to see Mr. Matthews build in the Ruckersville area?

A They were opposed to the sub-division.

Q And for the most part the members of the public - I withdraw that.....Now, how many people - a number of people spoke didn't they in that connection?

A Yes sir.

Q Can you give us an estimate of how many people spoke in that connection?

A Well, it was the whole front row across in back of you people, as well as several more from the audience. I would say about eight was seated across the front, possibly 14 - 15.

Q Well, do you know whether or not Mr. Larry Tate was a surrounding landowner or not?

A I don't recall if he said he was a landowner or not. He said he was in that community, but I'm not sure whether he said he was one or not.

Q Among those people who would not be considered members of the general public by you in answering my previous question, would have been all the people that were there with or on behalf of Mr. Matthews.....stop me, if I'm wrong - Mr. Claude Herring who was a surrounding landowner, Mr. Ronald Beame, who was a surrounding landowner, Mr. Ernest Williams, who was a surrounding landowner; you don't know about Mr. Tate.....

1 Mr. Vivier, who was there representing the water authority,
2 Mr. Evans, who was an expert on the point, Mr. Certon, who is
3 the county sanitarian, ...those people were not there as members
4 of the general public? They were there for the reasons that I
5 indicated, in - at least in addition to being members of the
6 general public?
7 A Uh-huh.
8 Q Now sir, Mr. Evans - you indicated had given you
9 certain assistance, had given the planning commission certain
10 assistance, what was the nature of that assistance?
11 A He was a professional planner and we had no experience,
12 he led us in the lines of what he thought would be proper...
13 Q And looking at the comprehensive plan now, these -
14 this was prepared with his assistance from beginning to end?
15 A Yes sir.
16 Q And ...
17 A There was other members of the Thomas Jefferson
18 Planning Commission also....involved.
19 Q Yes sir. Who actually drew up this draft, this
20 particular draft? For the planning commission?
21 A Thomas Jefferson Planning District, they would come
22 in, they would make changes - if we didn't like it, they would
23 scratch - they would go back and rework.
24 Q They would bring you proposed drafts of the compre-
25 hensive plan and you would make input to that and finally they came

1 up with the proposed comprehensive plan which met your approval?
2 A Based on the citizens ad hoc committee and the
3 planning commission yes sir.
4 Q Okay. They in fact, after all the inputs they
5 in fact did the draft of this plan which was ultimately adopted
6 with the exception of - such changes if any the Board of
7 Supervisors made?
8 A Yes, they did...the Board approved it.
9 Q In this comprehensive plan over on page 12,
10 I note that it says ....widening of Route 33, from the by-pass
11 east of Ruckersville should be complete by 1979.....thus
12 concluding for the near future, programs to upgrade Greene
13 County's primary highways.....that's in the plan, isn't it?
14 And you were aware of that at the time of the meeting of the
15 board of zoning appeals, were you not?
16 A Yes sir.
17 Q That's all.
18 COURT: Any other questions, Mr. Slaughter?
19
20 REDIRECT EXAMINATION
21 BY: Mr. Slaughter
22 Q Mr. Lawson, in rebuttal to Mr. Parker's question as
23 to whether or not the facility at Ruckersville Youth Center
24 serves the County - serves the area - it serves the county, is
25 there any other facility of that type in the county?

A Not that I know of.

Q But it is a privately owned organization?

A Yes.

Q And is incorporated, as I understand it?

A Incorporated, yes sir.

Q The land is owned by that corporation?

A Yes sir.

Q Would you say that for the needs of Greene County it is an adequate facility of that type?

A No sir. No sir, we have an awful problem making schedules, because sometimes we have as many as four games a night, and this is too much to have to stay too late. And we start way before dark.

Q No further questions.

COURT: Any further questions?

RECROSS EXAMINATION

BY: Mr. Parker

Q Yes sir, just one. This facility is located at Ruckersville, this youth center?

A Yes sir, it's...

Q Where else in the county is there any other facility like that?

A There is none as far as I know.

Q Thank you.

1 COURT: All right.

2

3 REDIRECT EXAMINATION

4 BY: Mr. Slaughter

5 Q One other question although I think it was clear

6 from Mr. Payne's testimony, is where with reference to this

7 sub-division is the - is that youth center located?

8 A It's a very short distance west of the entrance to

9 the sub-division. I don't think it would be as much as a tenth

10 of a mile. It may.

11 Q West or east?

12 A The sub-division is west of the entrance of the

13 youth center.

14 Q West of the youth center - between the sub-division

15 and Ruckersville?

16 A Yes sir.

17 Q And it would be what - about - not quite half

18 a mile from the center of Ruckersville?

19 A No, it's not a half a mile, no.

20 Q No further questions.

21 COURT: All right, Mr. Lawson, you may stand aside.

22 DICKEY: I'd like to call Mr. Harold Lacy.

23 COURT: Mr. Lacy.

24

25

1 HAROLD LACY, having been duly sworn, testified as
2 follows:
3
4 DIRECT EXAMINATION
5 BY: Mr. Dickey
6 Q Mr. Lacy would you give us your name and your
7 address please?
8 A My name is Harold Lacy and I reside just outside
9 of Stanardsville.
10 Q Reside outside South River?
11 A Yes.
12 Q All right, Mr. Lacy did you recently have occasion
13 to have a public position in the county of Greene?
14 A I was involved with the ad hoc committee which was
15 appointed by the planning commission to feed to them citizen
16 input .
17 Q What was your particular - your committee's particular
18 task?
19 A To come together as a group and get the ideas of
20 which way we would prefer the county to go in the coming years, to
21 give the commission and Mr. Evans the information.
22 Q All right, now, in that regard did you have meetings?
23 A We had a meeting with the planning commission which
24 I believe was their regular February meeting. At which time we
25 were appointed. Then we had a meeting on the 27th of February with

1 Mr. Evans and Mr. Lawson and I believe there were 28 members
2 of the committee there. May I use this? On the 21st of
3 March, we had a meeting here in the courthouse with various
4 members of the committee, Mr. Evans, Mr. Thomas Lawson, and
5 Mr. Peter Daily were sitting in. This was a meeting of the
6 goals committee at which time - during the interim we had
7 written letters as individuals to Mr. Evans, and he brought to
8 us a copy of a rough draft of the goals and objectives for the
9 county. At which time we sat down to discuss it - myself and
10 two or three other people - it appeared that there wasn't too much
11 discussion and we thought may be that it was because of the presence
12 of Mr. Evans. So we took it on our own initiative to have
13 two other meetings. On the 28th of March there were 8 people...
14 COURT: What year, Mr. Lacy?
15 A This is 1974, Your Honor. On the 28th of
16 March there were 8 people and Mr. Lawson was also invited to be
17 there, and he attended. At which time we went through approximate-
18 ly half of the rough draft that Mr. Evans had given us. On
19 April 4 we had another meeting, there were 11 members there and
20 also Mr. Lawson was there, and we covered the final half of this
21 rough draft. At the next - the following day after each of
22 these two meetings, I took the notes from the meetings and went
23 with Mr. Evans - at which time he had some following questions,
24 which we came back to the next meetings on. On the 2nd of May,
25 after the final rough draft of our notes had been turned over to

1 Mr. Evans, we came back with another rough draft at which time
2 Mr. Evans and Mr. Lawson and I believe Mr. Abbott was there, also.
3 At this meeting we went over this final rough draft....to present
4 to the planning commission.
5 Q All right, now could you state who Mr. Abbott is?
6 A Mr. Bob Abbott, I believe he's also associated with
7 the Thomas Jefferson Planning Commission.
8 Q Now when you finally arrived with your goals and
9 objectives, could you tell the Court how many of those were
10 suggested to you by Mr. Evans, and how many came from your
11 committee?
12 A To my knowledge only one of these goals came directly
13 from Mr. Evans.
14 Q And which one was that?
15 A That was the goal pertaining to the strip develop-
16 ment of rural roads.
17 Q All right, then of the goals that your committee
18 came up how many worked their way into the comprehensive plan?
19 A It's hard to speak for...
20 Q Roughly....
21 A ...other committee members...
22 Q Of the ones your committee came up with?
23 A Well, it would be other than the one Mr. Evans
24 presented - the rest would have been ours.
25 Q All right, were there sub-committees in your committee?

A I don't believe there were any exact appointed sub-committees. We may have conversed as individuals about something during the time.

Q Did you receive a formal report from any other committee?

A As probably individuals we may have sought information on our own to assist us, I did but I cannot speak for the other members of the committee whether they did.

Q All right. That's all I have.

COURT: All right, Mr. Parker.

CROSS EXAMINATION

BY: Mr. Parker

Q Mr. Lacy, what member of your committee studied Ruckersville the most?

A At the time of appointment, Mr. Parker, each member of the planning commission appointed five members from their own district. This group came together and some felt that they did not have time to serve. To my knowledge Mr. Lee Estes was on that committee from the Ruckersville district, Mrs. Blanche Parrott was a representative of the Ruckersville district, and ....

Q Mr. Lee Estes was at the meeting with you on the ...before the board of zoning appeals? And you were there?

A Excuse me, sir.

1 Q You and Mr. Estes were at the meeting with the
2 board of zoning appeals? And spoke there?
3 A I do not recall whether Mr. Estes was ...
4 DICKEY: Your Honor, this is exceeding the scope of
5 direct...
6 COURT: I understand, but I think it's pertinent, the
7 record will speak for itself, but ...
8 Q I'm really trying to establish the capacity these
9 people....
10 COURT: Yes sir, go ahead.
11 Q You were the ...at the meeting?
12 A The board of zoning appeals meeting, yes sir.
13 Q Well, tell me something how were the sub-divisions
14 lines where you would permit sub-divisions in Greene County
15 arrived at, for the Ruckersville area?
16 A That I have no idea, Mr. Parker, that would be
17 under the sub-division ordinance itself.
18 Q Well, didn't you have anything like that in the
19 comprehensive plan, something about clusters?
20 A Cluster development....I believe that was spoken of
21 by one of the members. For various reasons of ease of transport,
22 ease of public facilities, I believe it was mentioned the cluster
23 developments to take place in certain areas. Ruckersville....
24 Q How were the cluster developments located in the
25 Ruckersville area, what did you do to figure out where the clusters

1 were going to go?

2 A The corner store area was picked because of its

3 already area of development.

4 Q Well...

5 DICKEY: Your Honor, I'm going to object to this.

6 Mr. Lacy only served on the goals and directives committee as

7 he stated, he did not do the comprehensive plan.

8 Q He said he received a rough draft, Your Honor, and

9 this area is...

10 COURT: What's the relevancy? I realize Mr. Lacy was

11 at the meeting.

12 Q I believe I can connect it up.

13 COURT: All right. I'll allow you to do it, Mr.

14 Parker. Objection is overruled. Now I note that Mr. Lacy spoke

15 in opposition to the proposed sub-division, so I'll allow you to

16 exceed cross examination by way of an adverse witness. I think

17 he's adverse.

18 PARKER: I don't think I'm going to need to treat

19 Mr. Lacy as too adverse, Your Honor. On this - this is an

20 aerial photograph taken recently, Mr. Lacy, you weren't here the

21 other - and presented to - when it was first testified from.....

22 of the Ruckersville area. Would you be able to tell us what

23 this is? How long have you been a resident of the county?

24 A Around approximately seven years.

25 Q Would you be able to tell me if this is the corner

here - maybe I should turn it around. If this is the corner at Ruckersville, would you be able to tell me what this is over here?

A I believe it's what is known as Locust Lane Sub-division.

Q Yes sir, and now what consideration, if any, was given to that sub-division in determining where clusters were going to go in the Ruckersville district?

DICKEY: Again I will have to object, the ....goals and directives....

COURT: If he had a part in it - assuming that he had some part in the formulation of the plan and is aware of it.

Q You are aware of the fact that when one goes to establish a cluster development - one of them was going to be down at the Corner Store....

A Yes.

Q That was put down there because there was already some development there - down there?

A Right.

Q What consideration was given to the fact - what consideration, if any, was given to the fact that there was already a development in existence at Midway?

A I believe it would be because of lack of ease of transportation as compared to the - at the Corner Store....would be my consideration.

1 Q And for that reason the development at Midway,
2 Locust Dale development - Locust Lawn, whatever it is, the
3 development at Midway was left out of the cluster system in
4 Greene County altogether - the cluster system as shown in the
5 comprehensive plan?
6 A I must assume also, Mr. Parker, that this was not
7 the only sub-division not considered as in a cluster, if I may
8 add that.
9 Q But this sub-division was simply not allowed - not
10 put in a cluster and not even given any comments in the compre-
11 hensive plan in the county?
12 DICKEY: Your Honor, he's trying to go into the
13 mental process of....
14 COURT: Well, if Mr. Lacy was involved with it, Mr.
15 Lacy you don't have to answer what somebody else did but so far
16 as your personal contact with the planning is involved - if you
17 recall, you should answer the question. If you don't, merely
18 say that you are not aware.
19 A Well, Your Honor, I do not recall if Locust Lawn
20 Sub-division at that particular time was considered as a cluster.
21 Q That's the answer....
22 COURT: All right, go ahead, Mr. Parker.
23 Q It says here in the comprehensive plan under 4,
24 Ruckersville - there's very little new housing in or near Ruckers-
25 ville, and encouraging growth in this immediate area would tend

1 to congest Route 33 - Route 29 intersection, while at the same
2 time promoting commercial strip development.....that's what you
3 referred to before, when you said something about -the Corner.....
4 A Yes...
5 Q The corner...
6 A Residential.....
7 Q Cluster will be limited to around 500 people
8 and that only the minimal amount of commercial businesses
9 necessary to serve the motoring public be provided. Where did
10 you get the figure 500 people?
11 A I believe this is a definition of a particular type
12 of cluster that we wanted at Ruckersville not to exceed this
13 particular limit.
14 Q Was it your feeling that in the Ruckersville area
15 development as it shows on this aerial 500 people clusters was
16 all that this area could absolutely hold?
17 DICKEY: Your Honor, this is again asking for Mr.
18 Lacy's opinion ...
19 COURT: Yes, I understand. Mr. Parker you are running
20 into a problem here with an individual participant as opposed to
21 the ...
22 Q I'm about to conclude the examination...
23 COURT: All right, not Mr. Lacy personally, but with
24 regard to his contact through the committee with the whole plan.
25 Q Well, he's apparently made some recommendations to the

1 committee - he did make a recommendation to the planning...

2 COURT: All right,....

3 Q Did you...

4 A Yes Mr. Parker. Mr. Parker, I cannot assume - cannot

5 speak for the rest of the members of the committee to say exactly

6 what the people who were closer to Ruckersville felt, why we

7 wanted this particular size in the Ruckersville area. The only

8 thing that I can see in their mind was that the development

9 had already started at the Corner Store area, and there seemed

10 to be no logical reason to have two developments going in the same

11 area. When Ruckersville was much more suited for commercial

12 establishments.

13 Q And there were people on the committee then to whom

14 you deferred with respect to their knowledge of the Ruckersville

15 area?

16 A Yes.

17 Q That's all.

18 COURT: Do you have any more redirect, Mr. Dickey?

19 DICKEY: No.

20 COURT: Mr. Lacy, for the record could you give us

21 some background on your contacts and your educational background

22 and your business activities?

23 A As far as my business Your Honor, I'm a farm foreman.

24 At the time the planning commission was going on, I was employed

25 here inGreene County, Cool Springs Farm, Greene County, but...

1 COURT: I see.

2 A I'm not employed by Hamstead Farms, Somerset as
3 farm foreman. I was born and raised in Pennsylvania and moved
4 to Virginia approximately seven years ago.

5 COURT: And you participated I take it throughout
6 this planning and development of the comprehensive plan?

7 A Yes sir.

8 COURT: All right, any other questions for Mr. Lacy?

9 PARKER: Excuse me just a moment, Your Honor. Do
10 you know how many people are in the Ruckersville area?

11 COURT: What do you mean by the Ruckersville area, Mr.
12 Parker, can you define that a little bit more specifically?

13 PARKER: I think it's defined in the plan, sir.
14 Your Honor, referring to the plan, page 10, I have a drawing
15 on that. It gives the area and the circle of influence around
16 Ruckersville - drawn on the map. This is what I'm referring to,
17 sir.

18 A Right - at the intersection.

19 PARKER: You will probably know better than I do
20 precisely what this refers to. How many people are in that area
21 there, how many people are there approximately within that area
22 there?

23 A Mr. Parker, I wouldn't know how to answer that
24 question as to exactly how many people are there.,

25 COURT: If you don't know, you don't answer the question

Mr. Lacy - just state that you don't know and that's sufficient answer.

A I don't know.

COURT: If you do know approximately - you may do so.

PARKER: Do you have any way of knowing - again so I won't get you to answer it if you don't know. Do you have any way of knowing whether 500 people would be a sufficient amount for that community, say for 25 year period?

A For a 25 year period, Mr. Parker, there would be a lot of outside pressures that we could not consider ..as for right now 500 people, yes, but we have economic standards to think about.

PARKER: I don't believe you answered my question. Are you able to answer my question?

A No,I wouldn't answer your question, Mr. Parker.

PARKER: Thank you.

COURT: Any other questions? Thank you, Mr. Lacy you may stand aside, sir.

SLAUGHTER: Mr. Colmer.

KENNETH R. COLMER, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Slaughter

Q Would you state your full name and address please, sir?

A Kenneth R. Colmer, Stanardsville, Virginia.

Q What is your position, Mr. Colmer?

A I'm assistant superintendent of the schools of Greene County.

Q And in order that the record will be clear on this point, Greene and Madison have adjoining school systems as I understand it - the superintendent resides in Madison County, and you as assistant superintendent have charge of the schools in Greene, is that correct?

A Yes sir, under supervision.

Q Mr. Colmer, there has been testimony by Mr. Payne about the school at Ruckersville and its situation with regard to the Greenetown Village Sub-division, could you describe for us briefly the situation with regard to the capacity of the county schools at this time, and the relative number of students composing that capacity?

A Yes sir. The facility at Ruckersville is part of the primary annex. Greene County primary school is the center school. The building at Ruckersville was constructed in 1934. It's a frame building, we have recently done some renovations as far as aluminum siding;within the last four years we have remodeled the restrooms to the point where there are inside facilities

at this time.

Q Did it have outside facilities up until that time?

A They were connected to the building, but the students had to go outside to get to them. It's four classrooms and presently in order for a child to come from one room to go to the restroom he has to go through another classroom. It is an old building. The capacity of that school now is - I mean the number of students enrolled is 106, and that's in kindergarten, first and second grades.

Q What is the capacity of the school?

A The capacity based on 30 students per room would be 120, but kindergartner's and we have kindergarten there - enrollment capacity in kindergarten is 20....25 if you have a teacher aide. And we would like to have our classes at the primary level at approximately 25 students per classroom. Between 25 and 30, no more than 30.

Q You have how many there?

A 106.

Q Now, Mr. Colmer, with regard to the Greene County system as a whole, could you tell us something about its operation and capacity?

A At the present time the primary and the intermediate grades, grades 3 through 7 are definitely on the increase. In fact just in the last week, the Board of Supervisors has appropriated funds to us to buy a mobile classroom, to relieve crowded conditions

1 at the fifth and sixth grade level.

2 Q Is it fair to say that the system with the present

3 buildings is operated at capacity?

4 A Yes sir.

5 Q And is there any provision for a new school?

6 A Also at the last Board of Supervisors meeting,

7 they gave us additional appropriation or permission to borrow

8 extra moneys to build a primary school. The plans are in the

9 process, hopefully this building will be put out for bid in

10 the spring, late spring. And if that's done it will be at least

11 a year before we can get in it, which would be in the fall of

12 '76.

13 Q Where will that be located?

14 A That will be located on property that we just pur-

15 chased next to the present William Monroe Elementary School here

16 in Stanardsville.

17 Q Will that serve the children of the entire county?

18 A That would serve the children of the entire county

19 and kindergarten through 3rd grade.

20 Q Mr. Colmer once that school is constructed, will there

21 be any excess capacity in the Greene County school system?

22 A No sir. According to the standards of quality

23 adopted by the General Assembly, we are required to have voca-

24 tional training for our students, just as we were required to have

25 a kindergarten program. The school at Dyke, the school at Greene

1 County Elementary - it's in the proposal or vocational plan - five
2 year plan to convert these to vocational schools. The school
3 at Ruckersville, although I feel like we would like tc abandon
4 that building because of the age of it, would be probably used
5 for adult education and special education for transient students -
6 special programs, that we could have in a separate school away
7 from the rest of the schools.
8 Q Of the three present existing elementary schools
9 is that the oldest?
10 A That is the oldest. Dyke is 1939 and the next
11 one is 1954.
12 Q Is it the only one that's frame?
13 A It's the only one that's frame.
14 Q Mr. Colmer, could you tell us how long the
15 amortization period of school funds is?
16 A The bonds that we have is 30 years - 3 percent.
17 Q What about loans for the new school?
18 A That would be - $750,000.00 loan would be 30 years
19 at 3 percent, and then the $850,000.00 would - that we would be
20 asking from from the public authority assistance would be I
21 think - and I'm not certain on this - around 5 percent, this
22 would be flexible.
23 Q What about length of time?
24 A I think it's about the same as a literary loan,
25 between 20 and 30 years.

1 Q Any as long as 50 years?

2 A We don't have any that long, whether it's legal I'm
3 not sure.

4 Q Mr. Colmer, can you tell us the debt structure of
5 the Greene County public school system now?

6 A At the present time our debt service is approximate-
7 ly $775,000.00.

8 Q And what is the - how much is that per child?

9 A Well, in 1973-74 the cost per - to educate a child
10 in Greene County based on the average daily attendance was
11 $806.00. This was taken from the superintendent's annual
12 report, which is sent into the State Department, and published
13 there.

14 PARKER: Your Honor, I don't have any objection to
15 the figure - but I'm sure Mr. Slaughter will clarify it and deter-
16 mine what portion of it is county...

17 COURT: Yes sir, I understood that he will get into
18 that additional breakdown.

19 Q All right, sir. Can you tell us what the breakdown
20 is between the county and state contributions?

21 A The county part of that is approximately $343.00.
22 That's all the funds.

23 Q And the balance coming from the state?

24 A Yes sir - state and federal.

25 Q Can you tell us what the growth patterns have been

1 with regard to the school system over the past two years?

2 A The enrollment - the membership which is the number

3 of students in the school at the end of 1973 - 74 was

4 1,486, approximately that figure. Presently the enrollment

5 as of the December 31st reports, was 1,553. This is an increase

6 of approximately 70 students. And this is from K to 12.

7 Q And this is what period of time?

8 A This is over six months.

9 Q Is that a greater rate or a lesser rate than the

10 school had produced previously?

11 A It's greater rate - the last couple of years its

12 been greater. ....than it was. In 1967 when I first came to

13 Greene County the enrollment was a thousand and approximately 30

14 some students. Of course we have added kindergarten which

15 adds about 100, so its been close to 500 increase in that length

16 of time.

17 Q What year was that again sir?

18 A 1967, July 1st.

19 Q Can you tell us what the average number of students

20 you have in the classrooms of Greene County now and what standard -

21 what the standard number required is under the qualify of educa-

22 tion provision of the constitution?

23 A The state requirement for elementary is no more than

24 30. That should be maximum, of course a number of our classes

25 are over that. The high school it's 25 - 23. As far as...

Q Are some of your classes over that or are they within that ...

A The high school, we're hitting pretty close to the 23 mark. At the elementary level we are over this - this is why we are having to add a classroom and an additional teacher.... immediately.

Q No further questions.

COURT: All right, Mr. Parker.

CROSS EXAMINATION

BY: Mr. Parker

Q Mr. Colmer, in connection with the school ground that was purchased out here, as referred to in your testimony, how was the revenue for the purchase of the land generated? What moneys did that come from?

A It was appropriated to us from the Board of Supervisors. Where they got it from...

Q Were you...

A ...I don't know.

Q Did you ever hear that it had come in by - from revenue, federal revenue sharing?

A I'm not sure where it came from.

Q It might well be then that that is not in your figure of $343.00 per student - the county part?

A That was this year, I quoted last year's figure, the

1 end of '73 - '74. I'm sure it will be up this year.

2 Q But the revenue sharing - the money that's coming

3 from revenue sharing might well not have been in there. Your

4 figure might have been higher - the figure that came - any money

5 that came from revenue sharing, and then came.....was the

6 43 thousand dollar figure figured into your $343.00?

7 A As I stated before that was in '74 - '75 session.

8 Q I see...I see -

9 A And the figure I told you was in '73 - '74.

10 Q So the figure into what you've...

11 A At the end of this year....the figure would come

12 into that.

13 Q Well...

14 COURT: Let me ask this for clarification, Mr. Colmer,

15 the school board itself does not share directly in revenue sharing

16 that goes to the Board of Supervisors does it not?

17 A Yes sir.

18 COURT: So your budget would not reflect anything

19 about federal revenue sharing as such?

20 A No sir.

21 COURT: Go ahead, Mr. Parker.

22 Q Now, how - you mentioned the school that was built

23 in '39, which school was that?

24 A That was Dyke.

25 Q When was the one at Ruckersville built?

1 A 1934.

2 Q '34, so these schools themselves are nearly 40
3 years old?

4 A Yes sir.

5 Q How long do you intend to use the Dyke school in
6 your present plan?

7 A That would be closed as far as primary education
8 as soon as the new primary school is completed, along with the
9 Greene County primary and the Ruckersville school.

10 Q Would you...

11 A And then would be renovated as I said before for
12 vocational education.

13 Q Both areas?

14 A Dyke and Greene County.

15 Q Okay.

16 A And those two schools would be operated under the
17 jurisdiction of the high school - they would be high school
18 programs.

19 Q So would the Greene County elementary which would
20 remain open?

21 A That is - as I said before the Greene County primary
22 school would be used for vocational education along with the
23 Dyke school.

24 Q Well, the one that is up here...

25 A That's Greene County primary.

1 Q I beg your pardon?

2 A That's Greene County primary.

3 Q Will that continue to be used in the school system?

4 A As a vocational school.

5 Q All three, oh, I see, that's the vocational

6 school and these two are adult education - are going to be

7 adult education.

8 A That's not what I said. I said the Dyke school, the

9 Greene County primary school would be used for vocational

10 education. I said that the Ruckersville school would probably

11 be used for special education, certain types of classes and

12 adult education.

13 Q I see.

14 A We are talking about three buildings.

15 Q Is Ruckersville area an appropriate place for

16 an elementary school - for an elementary school?

17 A You mean - any place in the county would be an

18 appropriate place if the number of students were there.

19 We have no qualms with that.

20 Q That's all.

21 COURT: Mr. Colmer, generally speaking what is the expect-

22 ed use as far as years of a school building? Is there any such

23 criteria that you could have access to?

24 A I don't know of any certain figure. I guess it depends

25 on how well they are maintained and so on. I don't know of a

1 certain length of time.

2 COURT: You don't use any standard life expectancy

3 for a building as to how long you would expect to amortize its

4 use?

5 A No sir.

6 COURT: If you are going to put out a capital outlay

7 program?

8 A No sir, not to my knowledge.

9 COURT: All right, any other questions?

10 PARKER: Mr. Colmer, do you mean to tell me that

11 in planning schools for this county that you all don't plan

12 based on the useful life of the school?

13 A What I said was as far as the length of the time

14 that the school building would be used - we are talking about

15 the Dyke school.....

16 PARKER: Actual use - but don't you have for planning

17 purposes an idea of how long a building - if you build is going

18 to last?

19 A It's going to be used as long possible, before we

20 have to build something else because of the increase in our

21 growth.

22 PARKER: But don't you have a figure in mind for build-

23 ings that you build - you expect this particular building or

24 this particular class to last a particular period of time?

25 DICKEY: He already answered this question.....

1 COURT: I think he has now. Mr. Parker, I'm not
2 allowing you to argue with him. Now if you ask him again to
3 state what he's stated-or are you asking him a new question here?
4 PARKER: I was trying to state - ask him if his answer
5 is I don't know to that point.
6 COURT: All right, let's be clear on what the question
7 is.
8 PARKER: If you don't know - in the planning of schools
9 for this county, you don't know how long you can expect that
10 school to last.....
11 A Any time limit that I would set would be a personal
12 opinion as to the length of time.
13 PARKER: But you do have available to you information...
14 A I'm sure that when the Ruckersville school was built
15 in 1934...
16 PARKER: Let me ask you...
17 A It was not anticipated that it be used for forty
18 years....
19 COURT: Let him answer, Mr. Parker.
20 PARKER: I'm not asking Your Honor how long schools
21 are going to last. I'm asking whether he has - trying to ask him
22 whether he has available to him information which would - that he
23 could use to estimate the life of a particular school that he
24 was going to build?
25 COURT: All right, Mr. Colmer if you can answer the

1 question please do so?

2 A The information that we would have would be

3 proposed or estimated enrollments, enrollment figures that we

4 have anticipated the increase in the enrollment would be.

5 Based on this we would need so many extra classrooms - we have

6 this information and do this in the planning. This is why

7 we purchased 20 acres of land, with the possibilities that

8 the extra land could be used for future construction.

9 PARKER: Who approves, if you know sir, the architect's

10 plans for schools in the county?

11 A The school board.

12 PARKER: Do you see those plans before they are given

13 to the school board?

14 A Yes sir.

15 PARKER: Do they indicate on them how long or in the

16 specifications how long you could expect the building to be

17 useful to you?

18 A The building...

19 PARKER: From the standpoint of the building itself?

20 A It's my understanding that a building is construct-

21 ed for the number of students that you have - that you need to

22 go into it.

23 PARKER: We are talking about the length of time, not

24 the number of students. My question is, I'm trying to get you

25 to answer, do those plans and specifications that you get with

1 them indicate to you the length of time that a building could
2 expect to be used?
3 A I'm not certain.
4 COURT: Mr. Colmer, is there any criteria about
5 what you might judge as to what period of time or how many
6 years a building might be used before it becomes obsolescent
7 or obsolete in its design and in function? Not from the stand-
8 point of material breakdown but just obsolescence as far as
9 use?
10 A I don't know of a certain length as far as number
11 of years, no sir. I do know that many times you have to renovate
12 a building to make it useful for new programs. This is being
13 done all the time....in Greene County and other counties.
14 COURT: Let me ask you this question now, if a building
15 were built 25 years ago, would it still be functional in its
16 then constructed state or would it be necessary to remodel it
17 to make it presently functional?
18 A It would be functional - there again, depending on
19 the type of programs that were in it.
20 COURT: So it's more a matter of use than it is con -
21 struction of the building?
22 A That's true.
23 COURT: ...in the building?
24 A It's the type program, the type curriculum that you
25 have.

1 COURT: Well, is the Ruckersville considered obsolete
2 as far as structure and materials?
3 A I would certainly say that it was because of the
4 structure and materials. But we have adapted it as far as the
5 curriculum is concerned and are using it.
6 COURT: I see. You are thinking in terms of the use
7 of it rather than the material structure of the building?
8 A Right.
9 COURT: All right, Mr. Parker any other questions?
10 PARKER: But you were figuring any way on bringing
11 the children from Ruckersville to the Stanardsville area to
12 the school you are going to build here?
13 A Yes sir.
14 PARKER: That's all.
15 COURT: Any other questions of Mr. Colmer?
16 SLAUGHTER: Could you indulge us just a second?
17 No further questions, Your Honor.
18 COURT: All right, Mr. Colmer, you may stand aside.
19 Thank you, sir. We've reached a very opportune time for lunch
20 break, if you have another witness that you can take up in
21 10 minutes - we could go ahead, Mr. Slaughter or if you ...
22 SLAUGHTER: I hope I have two in that time frame...
23 COURT: All right, go ahead.
24 SLAUGHTER: Mr. Barb.
25

1 CALE BARB, having been duly sworn, testified as
2 follows:
3
4 DIRECT EXAMINATION
5 BY: Mr. Slaughter
6 Q Would you state your name, address and position,
7 sir?
8 A Cale Barb, Harrisonburg, Virginia. I'm presently
9 lending assistance to the board of assessors of Greene County
10 and I'm sponsored by the State Department of Taxation.
11 Q And are you doing general reassessment of Greene
12 County?
13 A I am.
14 Q How far have you gotten with your reassessment,
15 Mr. Barb?
16 A Approximately - I have a small section of Ruckers-
17 ville district incomplete...
18 Q I see.
19 A Which I'm also making a tax map of everybody's
20 boundaries.
21 Q And when you finish the small section of Ruckers-
22 ville district you will be finished with the entire project?
23 A Except for the town.
24 Q In doing that reassessment, of course, you've had
25 occasion to observe the sales in this county - the most recent

sales - I guess all of the land, have you not?

A Yes sir, I have seen the transfers of - the prices of the land.

Q In reference particularly to the land in this area around the Ruckersville.....could you tell us what the going price for two acre lots is?

A Depending on location and the average I would say would run between 5 and 7 thousand dollars per two acre tract.

Q No further questions, Your Honor.

COURT: That's in the Ruckersville vicinity of the county?

A Yes sir.

COURT: All right, Mr. Parker?

PARKER: I don't have any questions.

COURT: All right, I take it that would be a lot suitable for residential use?

A Yes sir.

COURT: All right, any other questions?

SLAUGHTER: No further questions. * * *

* * *

JOHN THORNTON, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Slaughter

Q Would you state your name and address please sir?

A My name is John Thornton. I am living in Ruckersville.

Q What is your position Mr. Thornton?

A I'm the county sanitarian.

Q For Greene County?

A That's correct.

1 Q In your position as county sanitarian, do you
2 determine whether or not if land is suitable for septic tanks?

3 A That is correct. It's part of my job - for private
4 sewage systems, yes.

5 Q Could you tell us whether you have recently with
6 permission gone over the land which is the subject of this
7 action and the land on which the Greentown Village Sub-division
8 will be located in order to make a determination of whether or
9 not that land would be suitable for septic systems? For septic
10 tanks?

11 A Yes, I did. I - to clarify your wording, septic
12 tank systems, as - there's a significant difference, because
13 there are drainfields and perculation rates - where septic
14 tanks are something in themselves.

15 PARKER: If Your Honor please, I don't think this
16 gentleman's position with the county would necessarily qualify
17 him as an expert on this point. I think Mr. Slaughter should
18 delve into that somewhat more.

19 COURT: It may be that you haven't covered it sufficient-
20 ly. I assume that he is the person charged with that determination
21 but maybe you'd best vouch that for the record, Mr. Slaughter.

22 PARKER: My question is whether .....what his own exper-
23 tise is with respect to systems - he may well be acting on the
24 advise of others in making those decisions.

25 COURT: Well, if that's the case then - I would ask that

1 you lay a foundation, Mr. Slaughter.

2 Q Could you tell us, what your educational background

3 is, sir?

4 A I have a B.S. in Biology from The University of

5 Richmond. I had three years experience with the health depart-

6 ment, one - well, a year and a half full-time doing soil analysis

7 work, issuing permits in a rural setting here - I came here

8 in October of 1973. And 90 percent of my work has been

9 making soil studies, issuing septic tank permits, and inspecting

10 the same once they are constructed.

11 Q And what did you get your degree in?

12 A Biology. This is a prerequisite required for the

13 job.

14 Q And from there you say you went with the health

15 department, where was that?

16 A Well, initially it was up in Fairfax, and I did

17 some soil work there - primarily it was not related to soil.

18 Q And what then was your next position?

19 A When I came here in October of 1973, might I add

20 that I was required to pass a merit test for this job. Specifically

21 for the job itself. So it's not based on just my degree...

22 PARKER: If the Court please, the question of his

23 merit on this particular point - where he got his expertise, not

24 it seems to me whether he passed a test or not.

25 COURT: It's a question of whether he is the person in

1 Greene County who determines whether a piece of land will meet
2 the soil perculation requirements. Now, I take you are leading
3 to that. He's already said that he has made that determination
4 himself before this, that he's in fact charged with it and does
5 make it in Greene County. Now I think that will suffice,
6 Mr. Slaughter, but let's make it clear that that is his function
7 and he does not rely on other person's advice to make this
8 decision.
9 Q Yes Your Honor...Mr. Thornton, are you in fact
10 the person inGreene County charged with the duty of determining
11 whether or not septic systems - certain soils are proper for
12 septic systems?
13 A Yes, I am.
14 Q Any...
15 PARKER: I think that qualifies it legally.....
16 COURT: The question of the weight of it of course
17 might have to do with another function, but he is certainly
18 qualified and I take it, Mr. Thornton, that you don't rely on
19 somebody else's advice but you personally conduct the sampling
20 and the determinations for perculation?
21 A Yes sir, and I can say that in this case, that as
22 we anticipated this question....
23 PARKER: Your Honor, the witness ought not to volunteer
24 information.
25 COURT: All right, now, Mr. Parker, the objectionis

well taken there as to the witness going past the question. Now, Mr. Thornton please pay strict attention to the question, and don't volunteer any information. Go ahead, Mr. Slaughter.

Q Have you recently - if I may - this was my question before Mr. Parker's initial objection, had occasion to go with permission on the land which is the subject of this action, the land on which it is proposed that the Greenstown Village Sub-division will be built, and take soil samples to determine whether or not the land will perculate for septic systems?

A Yes, I have.

Q And what was the result of that determination, tell us what you did and what you found?

A Okay. On Friday, the 10th, yesterday, myself and two other sanitarians went over the site and basing it on 15 test holes, we found a uniform soil; we would have made more holes if we had found a mixture of soils, but based on the uniform soil we found,...we found that approximately 45 - 50 percent of the soils appeared to generally be suited for drainfields, 10 - 15 percent of the soils are in the questionable range, and that approximately 30 - 35 percent would appear to be not desireble for drainfields. This - these were figures based on not the soil type, but on the topography, the lay of the land. The areas which are in question are half between the top of scope and the bottom. The areas which are given to be not - probably not suitable are in the bottoms and these would be down

1 to the natural field, which we call colluvial soil, and
2 water tables.
3 Q Now, from your observation Mr. Thornton how much
4 land would not be suitable - not be land that could be tied
5 in to higher land to constitute a two acre lot?
6 A This would determine - decide how you draw this...
7 two acre...
8 PARKER: I don't know that he's qualified to answer
9 that question.
10 A This would...
11 COURT: Your objection may be well taken. He may not
12 be familiar with the question of sub-dividing it, and the
13 question of the layout.
14 Q Well, can you tell us, Mr. Thornton, roughly
15 what areas are right in the bottoms, which would not lend them-
16 selves to lots?
17 A Why there are several streams that cross this area.
18 There are two major areas. One is about 2/3rds of the way back
19 where they plan to put a lake. There is an active stream going
20 across this area. There's quite a wide basin there. And
21 this is where we found the colluvial dirt and water table.
22 Also, there is an area on the right as you enter the property -
23 a fairly large area on the right, where it is flat and low and
24 there is evidence of what we would call grass which only grows
25 in swampy plains. And I can point it out on the map, if you would

1 wish.

2 COURT: I can see it - go ahead and point it out

3 from there, Mr. Thornton.

4 A This plain here in the Y low area, this is -

5 this is one area where you would - there - it would not be

6 suitable. Also here. The other area of the lake, approximately

7 following the contour here to here.

8 COURT: You are now pointing to the front portion of

9 the tract?

10 A That's correct.

11 COURT: The previous area of the stream was in the

12 back area of the tract?

13 A That's correct.

14 COURT: All right.

15 Q But you're not saying that 30 percent...

16 PARKER: Your Honor I believe Mr. Slaughter - maybe I

17 should wait a little longer, I think the damage will be done if

18 I do. I believe he's about to lead the witness.

19 COURT: I think you are Mr. Slaughter and I'm not

20 sure that he's answered what the percentages apply to, the number

21 of test holes, the number of acres or the general lay of the land

22 as to percentage. What they are, I think he should be asked and

23 not lead him into it.

24 Q Yes sir. Could you tell us and perhaps I don't

25 fully understand Your Honor and if I don't - the....

1 COURT: What do your percentages apply to, Mr.
2 Thornton?
3 A They apply to the total acreage.
4 COURT: To the total acreage, that is each of the
5 categories - the 45 to 50, the 10 - 15 and the 30-35 percent....
6 all apply to acreage?
7 A That's correct.
8 COURT: Of the total?
9 A Right, these are all estimates.
10 COURT: All right, Mr. Slaughter, go ahead.
11 Q But if I understand it you can't say whether or
12 not the - all of the 30 percent of land would be unuseable or
13 whether it could be tied in to other land to be used as lots?
14 A I can answer your question by saying normally
15 developers tie in...
16 PARKER: Your Honor, this is the same area the Court
17 has sustained the objection to...
18 COURT: I don't know what it is. He knows enough about
19 soil to know whether the whole lot has to comply with perculation
20 tests. Now ....or does not.....and the question is whether it
21 can be used in some other way with a lot.
22 PARKER: I ...
23 COURT: In other words the question is does the entire
24 lot have to meet your perk test?
25 A The answer to that is no.

1 COURT: All right. Go ahead, Mr. Slaughter, if you
2 can further inquire into that area within the pervue of what
3 he works on.
4 Q And could you tell us then what part of this
5 property could not be tied in?
6 A Those low areas would be - have to be worked in
7 some way. The layout .....at the buyer's discretion...
8 Q And you work with sub-dividers constantly, do you
9 not?
10 A Yes sir.
11 Q And thus could you tell us - I realize that this has
12 to be based on...
13 PARKER : He's going to have to establish what kind
14 of work that is he does with sub-dividers, Your Honor, if he's
15 going to answer the question...I think Mr. Slaughter is leading
16 to.
17 Q I think if he is...
18 COURT: All right - what area are you proposing to go
19 into, Mr. Slaughter, let's see if we can't get this ....
20 we don't want to put Mr. Thornton through the mill on what his
21 qualifications are again, but the question is does he generally
22 assist in the layout of a sub-division. Now you are assuming that
23 he does and maybe he's indicated that he does, but that's not
24 clear.
25 Q Well, I actually wasn't looking to ask if he assisted

in the layout. I was asking really if he was familiar with the manner in which land is suitable for perculation or perculates properly and land that is not tied in, in such a way as to make maximum use of the land.

COURT: I don't know that he has indicated general qualifications in that area. It may be that he has, but as Mr. Parker says the qualifications have not been properly founded as of yet....to testify on how a piece of land might be utilized for development.

Q Well, of course, I'm not asking how it might be utilized for development overall, sir. I'm simply asking the point of view of his specialty of ....

COURT: Residential lots?

Q Residential lots, and septic system - septic tank systems. Perhaps I could put it this way, Mr. Thornton. In your work inGreene County as you test for perculation, do you observe the manner in which sub-dividers tie in lots?

PARKER: That's the problem, precisely the problem.

COURT: What's wrong with it - if he works with sub-dividers, Mr. Parker?

PARKER: He doesn't work with sub-dividers, Your Honor. He works with the county. He simply sees what comes to him and that's clear hearsay, not within his area of expertise.

COURT: I'm not sure that its been indicated which he works with. Obviously a sub-divider has to do the same thing, does

he?

PARKER: A sub-divider might have expertise in this area, but this gentleman has already stated from the stand that he did not do that.....in answer to one of Mr. Slaughter's earlier questions. That he did not have anything to do with laying out of lots, that he - what he was concerned with was whether the lot as laid out will perk in sufficient - in a sufficient amount on that lot.

COURT: All right, the objection sustained. He hasn't established that expertise and I think he ought to stay out of that field, Mr. Slaughter.

Q Well, he hasn't established that nor as an employee of the county would he establish that he actually does the sub-dividing. The question I've asked and I think this gets to the expertise which is required, is whether in the daily work-which of course I can go into all of this - the numbers of these things that he does daily. He observes the manner in which lots are laid out, so as to - if the Court will pardon the expression, waste the minimum amount of land.

COURT: He's not indicated that he assisted or has any control in the way a piece of property was laid out. He merely came in after the property had been laid out, as I understand it.

Q I'm not asking if he assisted, I'm simply asking if he has observed.

PARKER: Your Honor, that's not.....

1 COURT: I don't think that makes him an expert, just
2 by what he's observed. I think that would be something outside
3 of his field of....the objection sustained. I won't permit the
4 question now unless he can qualify that he has actually assisted
5 in the planning of the sub-division or has assisted some sub-
6 divider in the way he laid out his lots, as part of his job or
7 some other experience that he has had.
8 Q Have you assisted a sub-divider or given them advice
9 and counsel to sub-dividers on the point that I was asking you
10 about? I can repeat it, but it takes a long time....
11 PARKER: I wish Mr. Slaughter would phrase the question
12 Your Honor so that we'll know precisely what his question is
13 of this gentleman.
14 Q All right. The precise question was this.....have
15 you assisted sub-dividers or given counsel to sub-dividers with
16 regard to the manner in which they can use the maximum amount of
17 their land from the point of view of obtaining an adequate drain-
18 field for septic system on each lot?
19 A Since I have been with this county, I have not
20 in this position.
21 Q Have you in your previous jobs?
22 A No.
23 Q Well, you specifically said since you have been
24 with this county, was it part of your training in school?
25 A Not specifically.

1 Q What was the basis of your qualification?

2 COURT: Mr. Slaughter I think he has answered the

3 question. He's eliminated himself from answering more questions.

4 Q All right.

5 COURT: The Court sustains Mr. Parker's objection.

6 Q Mr. Thornton, you are familiar with the - or are

7 you, I'd better ask you that way, are you familiar with the

8 Locust Lane Sub-division next door?

9 A I am familiar with that, yes.

10 Q And is that - are the sewer systems to those homes

11 septic tank systems?

12 A Individual septic tank systems, that's correct.

13 Q No further questions.

14 COURT: All right, Mr. Parker.

15

16 CROSS EXAMINATION

17 BY: Mr. Parker

18 Q Locust Lane is in a better position isn't it, it

19 lies on a crest - it runs just like that road runs?

20 A It is on fairly high ground, yes.

21 Q Yes sir. And .....

22 DICKEY: Your Honor, this may be out of order but several

23 of the witnesses that were earlier called, asked me if they could

24 be excused. I was wondering if the Court would excuse all the

25 other witnesses aside from Mr. Barb?

1 COURT: All right, name though who you propose to
2 have excused and we'll consider it, Mr. Dickey.
3 DICKEY: I would like to excuse if they would like
4 to leave, Julius Morris, Ronnie Lamm, Thomas Lawson, Mr. Barb -
5 we've already had a ruling on - and Kenneth Colmer, and Harold
6 Lacy. I'm not sure whether they wish to leave, but I'd like
7 to have them be given a chance, sir.
8 COURT: Mr. Parker, do you have any...
9 PARKER: I would appreciate Mr. Lamm remaining, sir.
10 COURT: Mr. Lamm and Mr. Barb?
11 PARKER: Yes sir.
12 COURT: All right, the others may be excused if they
13 wish to leave, except for Mr. Ronnie Lamm and Mr. Cale Barb.
14 PARKER: Considering the nature of the case, Your Honor,
15 I must also ask for Mr. Morris ...
16 COURT: Mr. Julius Morris, you are asking - all right,
17 all those except Mr. Julius Morris, Mr. Ronnie Lamm and Mr. Cale
18 Barb, then who were here as witnesses and have not - and who have
19 already testified, would be excused. All those who have not
20 testified of course are not released. All right, go ahead, Mr.
21 Parker.
22 Q Mr. Thornton - I'm sorry .....this is a soil study
23 that was made for Mr. Matthews that was referred to earlier in
24 the evidence that you weren't here to hear the other day. You
25 can see the - can you give us an idea from that whether your study

would have been - of the property would have been more or less detailed than this study?

A It would have been less detailed. It was a general soil study.

Q And did you generally - I think you said your findings were approximate, were your approximate findings consistent with the findings you see on here?

DICKEY: Your Honor, I'm not sure that...

A I'm not qualified to answer that, because I'm not even sure what the numbers stand for....

Q Just a moment - I'll get something that goes along with the map. I think the question is.....

COURT: If he hasn't had an opportunity examine it before and - maybe he doesn't...

DICKEY: Your Honor, this is purely just a bunch of numbers on a map. There's no idea what they may mean.

COURT: Well, Mr. Thornton, do you use soil study maps and are they generally drawn according to established criteria?

A No sir. This is not....there is no soil map and I'm not a soil scientist....

Q The areas herein ...

COURT: Now if you are going to introduce something, Mr. Parker, do it separately and if its not been introduced,he's not familiar with it, I don't know what the purpose of going any further

1 with this map would do.

2 Q I propose to connect it up in later testimony.

3 I propose to lay the foundation - Your Honor, I understand that

4 this map has not been admitted into evidence at the present time.

5 COURT: But he says he doesn't understand the

6 designation of the area...

7 Q I understand that, sir. I have here the legend

8 that goes along with it, that's why I said I concede to the Court

9 that my question was premature and I'll present this to the

10 gentleman to go along with the map.

11 COURT: All right if you want to let him examine that,

12 but now you're going into a lot of time that somebody else would

13 just as easily testify to, Mr. Parker. Obviously you are taking

14 time to inform this witness when somebody else could just as

15 easily testify to it.

16 Q May the Court please, I will try to get away from --

17 are you able - let me put it a different way -

18 COURT: Yes.

19 Q Are you able to state sir that this map prepared by

20 a soil scientist is in any way incorrect?

21 SLAUGHTER: If the Court please, I have been reluctant

22 to do this, because I know it's cross examination, but I really

23 don't see any basis whatever for cross examining on the basis of

24 this....there's been no introduction of it, no preliminary....

25 COURT: Objection sustained. It's not because it's

1 necessarily inappropriate at a later time but at the present
2 state of the evidence, Mr. Parker, I think it throws an entirely
3 new light onto it, and you may recall him if you would like.
4 Q I'd like to ask the witness to remain in the
5 courtroom...
6 COURT: Yes sir, you may do that.
7 Q And I would try to save the court some time.
8 COURT: Yes sir, you may do that.
9 Q If you will familiarize yourself with that in
10 the interim I would appreciate it.
11 COURT: Yes sir, you may recall him.
12 Q One thing I was going to ask you sir, you gave
13 some statements I believe before - and I'm not quite certain
14 on some of the percentages. You said, as I recall, 30 percent
15 of the property in your view would not be suitable for septic
16 tanks, and 20 percent was doubtful and the balance you felt was
17 ...
18 A That is correct.....to restate the figures roughly,
19 45 - 50 percent appeared to be generally suitable, 10 - 15 percent
20 appeared to be questionable, and roughly 30-35 percent appeared
21 to be unsatisfactory.
22 Q Your figure was roughly 45 percent to 50 percent...
23 COURT: Mr. Parker, don't keep repeating....
24 Q I'll...
25 COURT: You don't need it for my benefit and if you

1 haven't listened, you ought to. Now that's the whole thing.
2 I've got it - he didn't need to repeat it for my benefit.
3 You ought to listen to what he says.
4 Q I apologize to the Court, Your Honor, I was trying
5 to get evidence in the record.
6 COURT: All right, it's obviously in the record.
7 Now for clarification, I'll permit you to do it, but there's
8 certainly no use to repeat.
9 Q Your Honor, I will have to ask some questions of
10 other witnesses later based on this - I want to get the testimony
11 correct in order to have those questions correct...
12 COURT: All right, now he's repeated it for the
13 second time and I don't see any need for it to go further.
14 Q Yes sir. The only other question I was going to
15 ask - you stated a while ago that you are not a soil scientist?
16 A That is correct.
17 Q Would you concede that your qualifications were
18 less than those of a soil scientist?
19 A That's correct.
20 Q That's all.
21 COURT: All right, any other questions of Mr. Thornton?
22 SLAUGHTER: No, Your Honor.
23 COURT: Mr. Thornton, you will be asked to remain
24 available. You may be recalled for further cross examination.
25 PARKER: When you are concluded with that, Mr. Thornton,

1 would you pass it back up to the ...

2 A Yes sir.

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20 KENNETH COLMER, having been previously sworn, was recall-

21 ed and testified as follows:

22 DIRECT EXAMINATION

23 BY: Mr. Slaughter

24 Q Mr. Colmer, you've been previously sworn and previous-

25 ly testified?

A Yes sir.

Q As I understand it you testified that you had been able to obtain certain loans for the proposed new elementary school of which I believe the initial $750,000.00 was to come from the state literary fund?

A Yes sir.

Q And the interest for that was 3 percent?

A Yes sir.

Q Now, are the loans available for the asking or does one have to get on the waiting list or ...

A You have to make application and you get on a waiting list and then wait your turn. You are in competition with other school divisions.

Q I see. So it's not money that you can obtain as a matter of right, just simply ask for it?

A No sir.

Q Now you mentioned that - is $750,000.00 the most you can get from that point for any school?

A For one school building, yes sir.

Q Now, you mentioned that there was another source of loan money for that school, what was that?

A That was the Virginia Public Authority fund. I'm not exactly sure of the title, but it's a certain fund that you can borrow money from, and I don't know - I don't think there's a limit on what you can borrow from that. We've asked for $850,000.00

1 Q You mentioned you hoped you were going to get
2 5 percent interest rate, do you have any guarantee of that?
3 A No sir. We were hoping between 5 and 5½ but we
4 have no guarantee of that.
5 Q Does that fund tend to follow the market - the
6 money market?
7 PARKER: I object to the form of the question, Your
8 Honor.
9 Q Can you say whether or not that fund follows
10 the ...
11 PARKER: Well, it doesn't remove the.....I guess
12 there's no help for it now.
13 COURT: Well, the question is Mr. Colmer in what way
14 is the interest rate set? Is it by the market or by some form
15 that the state or the agency itself might prescribe?
16 PARKER: If he knows.
17 COURT: Yes sir.
18 A I'm not certain - so I'll say I don't know.
19 COURT: You're not sure?
20 A No.
21 COURT: All right.
22 Q I have no further questions.
23 COURT: Anything further from Mr. Colmer, Mr. Parker?
24 PARKER: I don't think so, sir.
25 COURT: Mr. Colmer, Greene County has never raised capital

1 funds by bond issue I take it - to your knowledge?

2 A To my knowledge we have not.

3 COURT: And that has not been contemplated as part of

4 the school plan?

5 A No sir.

6 COURT: That the entire capital improvement program

7 would be supported by the loans that you've just described as

8 far as the planning of the county?

9 A Yes sir.

10

11 CROSS EXAMINATION

12 BY: Mr. Parker

13 Q So that if you needed it sir, the bond issue would

14 be available as something that you haven't used before - the

15 taxpayers of the county are not servicing the bond issue right

16 now?

17 A Yes sir.

18 COURT: Any other questions of Mr. Colmer?

19 SLAUGHTER: No sir.

20 COURT: Thank you, Mr. Colmer, you may stand aside.

21 Now Mr. Parker any objection to Mr. Colmer being excused?

22 PARKER: No sir.

23 COURT: You are excused Mr. Colmer, thank you sir.

24 All right, you may call your next witness,Mr. Slaughter.

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21 RICHARD OLINGER, having been duly sworn, testifie d

22 as follows:

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24 DIRECT EXAMINATION

25

BY: Mr. Slaughter

Q Would you state your full name and address please?

A Richard Olinger.

Q Where do you live, Mr. Olinger?

A Ruckersville.

Q Excuse me?

A Ruckersville.

Q Mr. Olinger, in order to simply try to save time, you operate a farm adjacent to or near the proposed Greenetown Village Sub-division?

A Yes.

Q Now could you tell the Court how the ownership of that property works out, what is adjacent to the property of Greenetown Village and what is not?

A The farm I own does not join, but the farm I rent it does.

Q Now, where is your home place and how much acreage is in that?

A My home place is North 29.

Q How much acreage is there?

A 640....acres.

Q How much acreage is there on - in the farm that abuts the Greenetown Village Sub-division?

A It's close to 300 acres.

Q Now, you operate this as - close to a thousand acres

1 as one farm? In other words the land you rent and the land you
2 own?
3 A Right....
4 PARKER: At this point, I think I'm going to have to
5 object to Mr. Slaughter's leading the witness.
6 COURT: I don't know that it's material, though - just
7 to establish his location. It is leading, but the Court will allow
8 it just to save time, Mr. Parker. I don't think it prejudices
9 you in any way.
10 PARKER: I don't think it has to this point -
11 COURT: No sir...
12 PARKER: I'm trying to put Mr. Slaughter on notice
13 to the fact that he is getting close...
14 COURT: Yes sir. I think he's aware of that.
15 Q One more leading question and that is. Does the
16 property that you rent abutt Locust Lane or is it adjacent to
17 ....excuse me, not Locust Lane, Greenetown Village Sub-division?
18 A I'll have to ask you to repeat it?
19 Q Does the land that you rent - 300 acres that you
20 rent, actually touch or abutt the Greenetown Village Sub-division?
21 Proposed Greenetown Village Sub-division?
22 A Not exactly I don't believe, no sir.
23 Q In what way doesn't it?
24 A I believe that Jesse Hall's land is - it's a little
25 place there dividing it. I don't remember....

1 Q It doesn't - it's not contiguous at all?
2 A No, water-wise.
3 Q How do you mean water-wise?
4 A Creek-wise.
5 COURT: You mean downstream from the...
6 A Yes sir - the way they all start above me there.
7 Yes sir.
8 Q But as far as you know that property doesn't
9 connect?
10 A No, landwise it wouldn't, no sir.
11 Q Your Honor, I understand from the conversation this
12 morning that the property was adjacent...
13 COURT: His only point of substantial interest it would
14 seem to me other than general interest then would be his being
15 downstream, where there is activity-below proposed area of the
16 sub-division. Now if that constitutes an interested party,
17 is sufficient to constitute him an interested party you may con-
18 tinue and if there's an objection to his continued - continuing
19 by virtue of that,.....interest in it, Mr. Parker, I think the
20 time...
21 PARKER: I have not made any objection.
22 COURT: All right, go ahead, Mr. Slaughter, you may
23 continue.
24 PARKER: I reserved the right to say something...
25 COURT: All right.

1 Q What is your - could you testify to the Court
2 what your position is with regard to this proposed sub-division,
3 Mr. Olinger?
4 A Well, I don't want to see the streams contaminated
5 on account of my dairy farm. And the other reason is I'd like
6 to see more or less the county stay as it is - farm land instead
7 of a city.
8 Q And you do operate a thousand acre farm, is there
9 any land other than farm land between you and this Greenetown
10 Village Sub-division?
11 A No sir, I don't believe so.
12 COURT: What use is made of the Hall tract you've
13 testified is between you and this tract?
14 A He has a few cows - he's a constructor, but ....
15 COURT: All right.
16 A ...building constructor.
17 Q What use is presently made of the Greenetown Village
18 Sub-division property?
19 A I don't understand the question.
20 Q Is that farm land - open land?
21 COURT: Maybe he's not familiar with terminology used
22 in describing the land.
23 PARKER: I think it's a question, Your Honor .....it's
24 vacant land - the ....really it has not been used as farm land,
25 it's just vacant land.

1 COURT: I think probably that can be stipulated
2 Mr. Slaughter, as to what the use is. Are you familiar with
3 the acreage that Mr. Matthews owns?
4 A Yes, I've cleaned it up.
5 COURT: What has been its history, what's the use of
6 it at the present time?
7 A At the present time just a few cows are running over
8 there. I don't know what they are doing with it.
9 COURT: It's not being actively farmed and it's just
10 being partially grazed?
11 A Yes.
12 COURT: All right. Anything else, Mr. Slaughter?
13 Q And thus the creation of a sub-division there would
14 change its character?
15 PARKER: Objection.
16 COURT: I think that question would be argumentive,
17 Mr. Slaughter. You may certainly make that point to the Court,
18 but I don't think the witness.....
19 Q I think it's perfectly obvious if the Court please.
20 COURT: Yes sir, I think it is and doesn't require the
21 witness to answer it, but even if it were - it gets to the final
22 conclusion of the thing, rather than his opinion of it.
23 Q I have no further questions.
24 COURT: Mr. Olinger, were you aware of the fact that
25 the proposed sewage disposal plant would be in the upper portion

of the stream which goes to your property? In what way do you oppose this, because of the sewage disposal plant?

A Yes.

COURT: What position would you take as far as the pollution of the stream or your understanding of it if the sewage disposal plant were not in the plans?

A I don't know - I'd like to just see farm land, that's all.

COURT: I see. It would be a question of changing it from farm land that you would then object to? All right, Mr. Parker.

CROSS EXAMINATION

BY: Mr. Parker

Q You have no particular expertise , Mr. Olinger, in the area of knowing what kind of water will come out of the sewage disposal plant, do you? You just want - you don't know anything about what kind of water will come out of the sewage disposal plant do you?

A No, I don't have any idea, but I'm...

Q But you're assuming - you're assuming for the purposes of your testimony that water that came out of the sewage plant would some how be detrimental to your farming?

A Yes sir, pollute it, yes sir.

Q And if that was not the case, then your testimony

1 might be different? Is that correct sir?

2 A For one part of it, yes.

3 Q And the other part of it relates to the fact that

4 you would like to see land in Greene County kind of maintain

5 the...

6 A As agricultural, yes sir.

7 Q That's all.

8 COURT: All right, Mr. Olinger, thank you may stand

9 aside.

10 SLAUGHTER: Mr. Rebich.

11

12 NEIL REBICH, having been duly sworn, testified as

13 follows:

14

15 DIRECT EXAMINATION

16 BY: Mr. Slaughter

17 Q Would you state your name and address sir?

18 A Neil Rebich, I live on Locust Lane.

19 COURT: WOULD you spell the last name please?

20 A R-E-B-I-C-H.

21 Q Were you able to get to the planning commission -

22 hearing before the board of zoning appeals when this came up?

23 A No, I didn't.

24 Q Why not do you recall?

25 A I have a class on Wednesday night.

1 COURT: I didn't hear you sir.

2 A I have a class on Wednesday nights.

3 COURT: Speak a little louder please.

4 Q Mr. Rebich, in brief as an adjoining property -
5 does your property abutt the proposed Greenetown Village Sub-
6 division?

7 A Yes sir.

8 Q And that is a lot in the Locust Lane Sub-division?

9 A Right.

10 Q Could you tell us what your position is with regard
11 to the proposed development that has been presented by Mr.
12 Matthews?

13 A Well, I basically go along with all the neighbors
14 in the - on the street. I don't particularly like - the way I
15 understand it, the sewage processing plant would be up in our
16 general vicinity. I don't - I just don't relish the thoughts
17 of being that close to it.

18 Q Do you have other matters of concern with regard
19 to the impact that this sub-division would have on the community
20 or on property?

21 A Well, we moved out here a year and a half ago,
22 and one of the reasons was to get away from the hustle and bustle
23 of Charlottesville. And the way it looks, it's going to go right
24 back to what we left. Basically that's it.....I just don't
25 want - I like it the way it is - it's nice and quiet.

1 Q Are your children in the school system?
2 A No sir.
3 Q No further questions.
4 COURT: Mr. Parker.
5
6 CROSS EXAMINATION
7 BY: Mr. Parker
8 Q Do you reside there, Mr. Rebich?
9 A Locust Lane?
10 Q Well, somewhere near - on the property that you
11 were discussing with Mr. Slaughter?
12 A Yes.
13 Q How big a tract of land do you have?
14 A It's about a half an acre.
15 Q Are you living in a sub-division?
16 A Yes sir.
17 Q So actually you moved to the area, knowing that
18 the sub-division was there, because you moved into it?
19 A No, I moved in a year and a half ago.
20 Q Yes sir - I don't mean this sub-division but you
21 moved to the area knowing that the Locust Lane Sub-division was
22 ....
23 A Oh sure, yes.
24 Q You knew that that was a use that property in that
25 area was put to at that time?

1 A You mean the street itself?

2 Q Street and the people on it...

3 A Sure.

4 Q And the houses?

5 A Yes.

6 Q Just like shown on that aerial photograph - I've
7 shown several times today. When you moved into Locust Lane
8 the use of this land wasn't too different than what is shown on
9 here right now?

10 A Well..

11 Q My statement is correct?

12 A Right.

13 Q Would you point out for me on here please sir,
14 where the sewer system, the sewage plant that is proposed here
15 would go on this aerial photograph?

16 DICKEY: Your Honor, we object.....

17 Q He testified Your Honor that he thought it was going
18 to be near him.

19 COURT: If he has any idea as to where he understood
20 it to be, he may point it out on that map; whether it's accurate
21 or not is another question, now. His understanding of it.

22 A This I assume .....this is Locust sub-division -
23 I can't tell where...

24 Q Well, you can probably locate your own house on
25 here pretty well?

1 A No, I can't really.

2 Q Do you know how many houses down the road you

3 are? That was about two weeks ago.....

4 A This is my house right there.

5 Q All right, sir, where - your house - we'll circle

6 it...

7 SLAUGHTER: Excuse me, Your Honor.....

8 Q I'll try to circle this with something if I can

9 find a .....put a mark right on the house that you are

10 pointing out.....little red mark right on the house.....

11 this is it, that's your house?

12 A Can I verify it?

13 Q Yes sir - give or take a .....house, that's your

14 house?

15 A Right.

16 Q Now where do you understand that the sewage plant

17 is going to be?

18 A I understand it's going to be in this general

19 vicinity.

20 Q Let me mark that again please. Would you take this,

21 I'll let you do it this time, and mark ...

22 COURT: Put an X there if you will, Mr. Rebich....

23 where you understand the sewage plant to be....

24 Q Use sort of small mark - Your Honor, to sort of

25 keep the....

1 COURT: All right, just put a small x there. . .
2 A I didn't say I knew exactly where it was going. .
3 COURT: That's all right - where you understood it
4 to be, if you can do it.
5 Q All right, sir. Are you aware of the fact that
6 or has anyone told you that the plant might be used even in the
7 area - the plant might be used as sort of a park . . .people
8 might. . .recreation. . .
9 A I've heard 3 to 7 acres for that. Nobody has
10 discussed it. . .
11 Q All right. That's all.
12 COURT: All right, any further direct of Mr. Rebich?
13 SLAUGHTER: No sir.
14 COURT: You may stand aside, sir.
15 SLAUGHTER: Again Your Honor as time is passing so
16 quickly, Mr. Paul Herring, Larry Tate and Charles Shifflett,
17 who did testify are here and you can recall that they had some
18 points to add to the minutes, but they thought the minutes were
19 essentially accurate, and I'm not going to recall them.
20 COURT: All right, sir.
21 SLAUGHTER: I don't want to take up time unnecessarily.
22 PARKER: If the Court please, I understand that
23 Mr. Slaughter has taken the position that they are not going
24 to be called . . . .and whether they are called or not
25 in the first instance is up to him and I hope we won't have

anything - any evidence of what Mr. Slaughter is saying, but rather just what those gentlemen are going to say if he calls them.

SLAUGHTER: I haven't said...

COURT: I don't think he proposes to have anything other than what the record now reflects.

SLAUGHTER: That's correct, sir.

COURT: All right, sir.

SLAUGHTER: All right, sir. I will call Mr. Beam.

COURT: Mr. Beam.

DONALD BEAM, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Slaughter

Q Your name is Donald Beam?

A Yes, it is.

Q And what is your address, Mr. Beam?

A Locust Lane Sub-division.

Q That's in ...

A That's in the Ruckersville District.

Q Right, and that the - that sub-division abutts the proposed Greenetown Village Sub-division?

A Yes it does.

1 Q Now Mr. Beam, you testified I believe at the
2 planning - at the board of zoning appeals hearing on October
3 25, is that correct?
4 A That is correct.
5 Q And you have reviewed the minutes and they are
6 essentially accurate?
7 A Yes.
8 Q Have you gone around to a number of your property
9 owners with a petition to be signed for the Court, and obtained
10 signatures on that petition?
11 A Yes, I have.
12 Q Is this the petition?
13 A Yes it is sir.
14 PARKER: Your Honor, I must object. This is not
15 a legislative proceeding.....and Mr. Beam may state his own
16 reasons, but the other people are going to have to be here subject
17 to cross examination if they are going to ...
18 COURT: To that extent gentlemen, I think theCourt
19 should lay down some rulings and guidelines, generally, not
20 only for this case but generally. It seems to me that once the
21 case reaches the Court, that the public hearing aspect of it
22 has to drop out. So that whatever opposition there may be has
23 to be based on facts as testified to and not feelings that might
24 be expressed at a public hearing. The Court does not consider
25 it appropriate to hear from anybody other than on a factual basis,

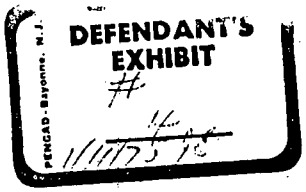
1 and of course this sort of testimony is not properly part of
2 the record in this case, and while it might have been presented
3 and received in the board of zoning appeals, I doubt that there
4 were any guidelines laid down there. But certainly it has the
5 nature of a public hearing which this hearing is not.
6 PARKER: I have no objection to Mr. Beam testifying
7 as to something upon which he is competent...
8 COURT: Yes sir.
9 PARKER: But I object to this being presented....
10 COURT: Having already considered this in a much more
11 public case in Orange - one of considerably more notoriety than
12 this - I might point to counsel that it was proposed that 250
13 witnesses be called to express their feelings on the proposed
14 development. Now the Court ruled in that case and I still hold
15 that people who might express opposition or express themselves of
16 it are not properly in a court of record, as to giving that
17 testimony. For that reason the Court does not feel it is appro-
18 priate to hear from anybody as to how he feels. Now putting
19 matters into the record is a different thing. In this case I
20 don't see where this adds to the record. If 500 people are for
21 it and 500 people are against it, or however it might shape up -
22 in public opinion. I don't think that has any effect on the hearing
23 at this stage.
24 PARKER: The thing I was going to mention sir is that
25 I object - not primarily along the lines that the Court has

1 suggested but, although it doesn't matter it seems to me,
2 what the body - you can rule as you wish.....our primary
3 objection is going to Mr. Slaughter' s exception that
4 (inaudible - radio.) .....our primary objection is
5 that ....
6 COURT: Well, my ruling would be that even if they
7 were here in person I wouldn't allow the testimony, for the
8 simple reason that it has no purpose here other than to express
9 the person's position. Now adjoining landowners possibly
10 could be asked to be allowed to intervene, but even there I
11 think it's a question of whether or not their interest would be
12 such that they are not being already represented. Now, Mr.
13 Slaughter, the Court will deny the admissibility or refuse to
14 admit the petition that you proposed. You may have it marked
15 for identification and may have it vouched in the record, but it's
16 ruled inadmissible.
17 Q We preserve our exceptions if the Court please,
18 on the ground that this is such an unusual procedure here -
19 certiorari proceeding permitting evidence, and that the evidence
20 has become so broad we take the position that such a petition
21 might be admissible.
22 COURT: I think for purposes of dealing with these
23 cases the Court will have to eliminate that aspect from the
24 appeal, because you can see how long it takes and how many
25 people would be brought in - you'd have a contest as between who

could round up the most people to either support or oppose it probably. While that may be very appropriate at a public hearing, I don't think it's appropriate in a trial. I say for the general guidance of people who deal with these cases. And it may be that some of these problems will be clarified when cases are decided on these points. There aren't too many cases in Virginia on zoning, compared to other jurisdictions. And we are probably making a little law as we go along, but I feel that that's one area that the Court will have to make its own law until the Supreme Court reverses it - out of necessity, a matter of saving time and I can't permit it. All right you may proceed sir.

The petition was marked for identification and received as Defendant's Exhibit Number 4.

* * *



January 10, 1975

We, the undersigned homeowners of the Locust Lane Subdivision, which is adjacent to the proposed Bennett Mathews subdivision, are strictly opposed to the Bennett Mathews subdivision being approved as it is now proposed.

We feel that the approval of this subdivision will depreciate our property values and is not beneficial in the long term interests of Greene County.

This subdivision does not fit into the overall growth pattern being planned for Greene County nor does it meet the standards of the Interim Zoning Ordinance, which was passed on March 1, 1974.

For these reasons, we are strictly opposed to the approval of the Bennett Mathews subdivision.

1. Mrs Donald E. Bean
2. Donald E. Bean
3. Brenda M. Richardson
4. Dwight M. Richardson
5. Nancy E. Butler
6. Kinney Butler
7. Mary H. Martin
8. Patricia M. Martin
9. Wayne J. Morris
10. Mrs. Wayne J. Morris
11. Fred Roach
12. Peachie R. Roach
13. Mrs. Jane Tomaine
14. Mrs Dorothy A. Hellett
15. Larry Tate
16. Ron Lee C. Tate
17. [illegible]
18. Linda Williams
19. Charles W. Shifflett
20. Carol Shifflett

January 10, 1975
Page 2

21. Thomas M Chick
22. Myrtle L. Chick
23. Rodney S. Shifflett
24. [illegible]
25. D.D. Pebich
26. R L Mellott
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* * *

RICHARD M. YEARWOOD, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Slaughter

Q Would you state your name and address please sir?

A Yes sir, my name is Richard Yearwood, I live at 1204 Gladewood, Blacksburg, Virginia.

Q What is your profession, Mr. Yearwood?

A I am a professor of Urban and Regional Planning at Virginia Polytechnic Institute, State University. I have been

there - in my eighth year now.

Q Could you tell us your educational background please sir?

A Yes sir, I have a bachelors degree in political science, English and American civilization from the University of Tennessee, 1958. Masters degree, 1959, from the University of Florida. Doctorate in public law and public administration in 1965, I believe. I believe that's the correct date - if you'd bear with me just a moment, I'll check.

Q That's all right...

A Yes, I'm sorry...

Q Now could you tell us what your career has been since you have received your education?

A Yes sir, if I may I have some professional experience before I completed the doctorate. I left the University of Florida after having done all the work except the preparation of the dissertation - the completion of the dissertation and the dissertation was on sub-division law and policy. The dissertation, which in basically the same form was published in 1971 by Praeger. That has received fairly wide distribution. And from the University of Florida I taught one year at Milliken University, a small school in Illinois. From that position I went to the University of Tennessee and was on the staff for about a year and a half, teaching political science, constitutional law, administrative law. Following my tenure there I went to the

1 Tennessee Planning Commission, where I served as senior planner
2 in the Knoxville office for several months. From that position
3 I went to Asheville, North Carolina, for six months - I was
4 research director for the Western North Carolina Regional
5 Planning Commission. An agency which provided primarily local
6 planning assistance services to the 17 western most counties
7 in North Carolina. Basically small, fairly, sparsely populated
8 counties and small municipalities. After six months I was
9 named executive director - a capacity in which I served for
10 about three years, and after that particular tour came to
11 Virginia Tech as professor of planning.
12 Q Now have you done any consulting work or service
13 work in addition to your teaching?
14 A Yes sir, I have. It has been a great pleasure to
15 me to provide consultation and assistance in the preparation of
16 various kinds of planning studies and documents and reports to
17 a number of counties in Virginia, a number of municipalities.
18 I have also served as a consultant to several larger consulting
19 firms in my special area of interest. I've been a consultant
20 to the Trust Territory of the Pacific in conjunction with land
21 use planning and land use regulation in the trust territory of
22 Micronesia, doing consulting in some other localities in other
23 states. I have been fairly active as a consultant during my
24 tenure at Tech.
25 Q Have you published any books?

1 A Yes, the Land Sub-division Regulations, which was
2 published in 1971. In addition to that there are numerous
3 articles that I have published in a variety of professional
4 journals, including some law reviews.
5 Q I have the book.....here with his
6 curriculum vitae - since they are only four pages if the
7 Court please, a set of five that Mr. Payne had....we are really
8 not even asking for equal opportunity here, but ....
9 COURT: Any objection to his qualifications, Mr.
10 Parker?
11 PARKER: There haven't been any- no sir. And I would
12 suggest that rather than proceeding with that that Mr. Slaughter
13 go ahead and put that in the record as we did Mr. Payne's.
14 COURT: It will be admitted into the record as
15 evidence of Mr. Yearwood's qualifications.
16 PARKER: Your Honor, I take it that Mr. Payne's
17 qualifications are in the record as well?
18 COURT: I'm sure they are - they are certainly not
19 in issue. If I recall correctly, Mr. Yearwood, testified in the
20 Orange County case, did you not Mr. Yearwood?
21 A Yes sir, Downen vs. the Board. I remember it quite
22 well.
23 PARKER: I didn't .....coming off the resume - I
24 just didn't want to...
25 COURT: The Court certainly recognizes Mr. Yearwood's

1 qualifications, and for the record the summary or brochure
2 will be admitted into the record. Go ahead, Mr. Slaughter.
3
4 The curriculum vitae of Mr. Yearwood was marked
5 and received into evidence as Defendant's Exhibit Number 5.
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Richard M. YEARWOOD

104 Glade Drive
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) 552-6356

DEFENDANT'S EXHIBIT
PENGAD-Bayonne, N.J.

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

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; Pulaski, Virginia; Roanoke Valley Regional Planning Commission; Fifth District Planning Commission; Martinsville and Henry County, Virginia. Orange County, Virginia; Patrick County, Virginia; Community Development Consultants, Inc; Jacksonville, Florida.

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 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 and Planning Reports

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.

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

* * *

Q Mr. Yearwood, have you reviewed various items in this case, including the comprehensive plan of Greene County?

A Yes sir, I have.

Q Have you been to Greene County, and looked at the area and studied the comprehensive plan?

A Yes I have.

Q Have you conferred with Mr. Evans and others at the Thomas Jefferson Regional Planning Commission concerning the study that had been done in Greene County leading to the interim zoning ordinance?

A Yes sir, I have - in fact Mr. Abbott called me .... I expect a year ago now, and we conversed at some length concerning the direction which they intended to take in the preparation of the plan. We discussed some aspects of the interim ordinance so I have been in contact with him over a period of time.

Q Now, could you as an expert in planning give the Court your conclusions as to the plan as you have observed it?

A Yes sir, I would be most happy to do that.

PARKER: Your Honor, the plan is not in issue as such.

1 I think he has to get to the point of this particular land and
2 the area surrounding that land - the plan in particular as far
3 as I can see ....this is deifying that plan, that's what we
4 can't do.
5 COURT: I think the question of course has to do
6 with whether or not the board of zoning appeals properly gave
7 standing to the plan at the stage it was then in. And I take
8 it that there's no issue with regard to the validity of the plan
9 or the constitutionality or the correctness of it. Now it may
10 or may not be, but it seems to me that in view of the fact that
11 the - at least one member of the board of zoning appeals was
12 consciously pursuing the comprehensive plan as it developed, and
13 also acted on this case - it may well be that the question of
14 whether it acted pursuant to that plan will be in issue. I don't
15 know that its been raised, but it certainly could be questioned
16 that at some stage. Mr. Parker do you take issue with the fact
17 that the...
18 PARKER: I take issue with the breadth of the question,
19 Your Honor. I think it relates to the plan as a whole and we
20 are not here to debate the plan as a whole.
21 COURT: Would you concede that if the board properly
22 considered the plan, that they acted pursuant to the plan?
23 That is that they had a right to consider it or have they
24 deviated from what the plan would call for?
25 PARKER: I don't concede that they had the right to

1 consider the plan, but this Court has ruled previously, that
2 the plan or the facts of the plan may come in . . . .but I
3 think they have to be relevant to what's happening down
4 in Ruckersville, not what's happening all over the county. . .
5 COURT: The objection is overruled. Mr. Yearwood
6 may go. . .I think it's a matter of touching briefly on
7 the plan and then applying it to this particular problem, if
8 you are going in that direction, Mr. Slaughter.
9 Q I think that's absolutely true, sir, and the whole
10 thrust and perhaps I was simply slow to start at the beginning -
11 but the whole thrust relates to the exhibit - aerial photograph,
12 that Mr. Payne put in. . .right here. . .I'm just looking for
13 the number. . . Exhibit 1, that was put in by the petitioner.
14 And I did not ask Mr. Yearwood and will now, have you examined
15 this aerial photograph that was introduced as petitioner's
16 Exhibit No. 1, Mr. Yearwood?
17 A Yes sir, I have.
18 Q Mr. Yearwood, going back to my question - you now
19 know from your discussion - of course you knew previously where
20 we were going, but could you discuss the plan without of course
21 going into too much detail? Giving the gist of it in order that
22 we can see this in the context of it?
23 A Yes sir. My judgment would be that it would be
24 necessary to look at the plan to some degree in order to be able
25 to reach a determination about the validity of certain comments and

1 opinions that have been rendered about the nature of the
2 Ruckersville area. So I'll just touch briefly on aspects of the
3 plan. I have looked at - with particular interest - the popula-
4 tion and economic figures. We've seen that this is a county -
5 it's one of the smallest in the state, in terms of its jurisdic-
6 tion, its area. It's small in terms of its population. It's
7 one which does not have high income levels. It is one which does
8 not have high employment in terms of professional management
9 jobs. In fact the figures for the county in those areas are
10 about half what they are in the state. There are a high level
11 of people - a high percentage of persons employed in the county
12 in jobs that don't pay as well.....at the craftsman operative
13 level, that kind of thing. Now this is important. We've also
14 seen from looking at the plan that there is a wide belt of land
15 that is extremely good, highly desirable agricultural land,
16 reaching basically from the Route 29 to an area here in Stanards-
17 ville, running north - south, throughout the county. I also see
18 from the plan-there has been a considerable level of sub-division
19 activity, especially in this area and I believe the figures in
20 the plan indicate that since 1970 or thereabouts, there have been
21 over 5,000 acres sub-divided in this county. Over 3,000 lots, and
22 I believe less than 400 of these lots have either permanent
23 dwellings or mobile homes on them. Now it is important that in
24 order to be able to reach a reasonable decision about a plan
25 in the planning process, it is necessary to look at certain fixed

1 features. It's necessary to look at the terrain to see what
2 the slope is.
3 COURT: State your objection, Mr. Parker...
4 PARKER: If the Court please, the problem is that the
5 gentleman is not just touching on this area, but he's proceeding
6 on in general about planning. I think this is coming in the
7 back door. It's not in accordance with the Court's ruling.
8 COURT: Well, now, the question has to.....as I gather
9 Mr. Yearwood is going up to the point of what the effect of
10 this proposed sub-division would be on the general plan and
11 the status of the county as he now finds it.
12 PARKER: If I may say so, sir, in the ordinance is the
13 effect of this sub-division on the surrounding use and in connec-
14 tion with the surrounding use....as I understand.....it.....
15 I may have to look at the ordinance again. It is not the effect
16 on the plan.
17 COURT: Well, what is the plan if it isn't the county
18 as a whole, Mr. Parker, and the area that's involved? Everything
19 has to be taken in the context of the plan that then exists, does
20 it not? The Court has already ruled on that - now for the purposes
21 of this witness and some of the others, the plan does have
22 bearing on this case. And whether or not that's going to be the
23 final ruling, remains to be seen, but assuming that that does have
24 bearing - of course the objection.....
25 PARKER: But the effect of this sub-division on the

1 plan on the other hand is not within the standards as I under-
2 stand them, that are before the Court.
3 COURT: No, the Court is going to allow the comment
4 on the effect of the county in its growth and development and
5 the general impact that it might have with regard to government
6 services or anything else that would be included in the compre-
7 hensive land use plan - it seems to me. Otherwise the board of
8 zoning appeals is acting completely without any foundation. Its
9 got to have something to go on.
10 PARKER: We respectfully submit that in a certiorari
11 case, not trying a zoning case, that that is too broad a standard.
12 The standard of those that are found in .2-2 .....5.2-2...and 1....
13 COURT: Are you saying that ....
14 PARKER: .3 - 1....and that relates to the community
15 and which this is being .....not the county as a whole.....
16 it relates to some services that would come about, such as a
17 school....
18 COURT: Yes sir....
19 PARKER: But not as the county as a whole, not ....
20 every effect on the county, that's too broad a standard to apply
21 in this case.
22 COURT: Well, I'm not going to limit Mr. Yearwood.
23 I realize that there may be some areas that he's unnecessarily
24 testifying on, but I think the impact has to be analyzed in many
25 areas from a county-wide basis rather than the Ruckersville area.

1 That's the point that you object to?

2 PARKER: Yes sir, that's the point that I object to,

3 and I would like to have my exceptions noted.

4 COURT: Yes sir, your exceptions are noted and the

5 Court is well aware of the fact that Mr. Colmer has testified

6 that schools are not related to one particular area. Schools

7 being a principal issue that's been indicated in this whole

8 problem...

9 PARKER: I have not taken an objection to that.

10 COURT: Yes sir.

11 PARKER: But just to general approach ....many other

12 things. I think schools are an exception to what I have to

13 say...

14 COURT: All right objection is overruled and you may

15 proceed Mr. Yearwood.

16 A I would say, Your Honor, that it would be impossible

17 to render a reasonable decision about the definition of a parti-

18 cular area such as Ruckersville without putting it in the context

19 of the entire county. I simply don't believe that that can be

20 done.

21 COURT: That's the basis upon which the Court has

22 allowed you to continue.

23 A Yes sir. I'll summarize my comments about the

24 plan briefly. Given the nature of the county in terms of its

25 topography, its drainage pattern, its slopes, its development to

this point, its transportation network - the decision as I understand it has been made by those elected and appointed by the people to make those decisions, that there would be a cluster plan of development. Now, there are numerous - perhaps not numerous, there are several alternative forms of development. We can have strip development, we can have cluster development or nodes or various nuclei - given a particular situation we can have some kind of finger type of development - there are a number of these. I think really there is the correct one for all situations. It would seem clear to me that some forms of development, some patterns are better in some situations than others. The determination has been made here to go with the cluster development based to a large degree on transportation network and on the availability or proposed availability of public services and facilities. And if I may with just that brief preface, I would like to then address this particular area.

Q All right, sir. Having been familiar as you've just related with the Greene County comprehensive plan - I might state to the Court that this is the official plat of the plan as its been adopted, which we may want to refer to - I suppose it...

COURT: Is that in the record?

DICKEY: Yes, Your Honor, this is in ....a duplicate of this is already in the record.

COURT: All right, it's part of the papers then - it

1 does not have to be readmitted, unless there's something about
2 this one that's ...
3 DICKEY: This is just the original of which the Court
4 has a copy and ....
5 COURT: All right.
6 Q All right, Mr. Yearwood, I show you plaintiff's
7 exhibit 1.....petitioner's exhibit 1, but I think maybe that's
8 the way we can do it best....now, would you tell us - perhaps
9 designate for the Court, as the Court has already seen, where
10 the sub-division is and ....the proposed sub-division is, and
11 how it ties into other landmarks that - just orient us?
12 A This is the proposed Greenetown Development here,
13 the larger tract, outlined in the dashed yellow line. Of course
14 adjacent to that is Mr. Sterling Gibson's development, the
15 Locust Lane - I might also if it's appropriate point out certain
16 other landmarks. We have here the school and the church...we
17 have Mr. Hort's development here, and the youth center and other
18 landmarks I'm sure are familiar to all in the court.
19 Q Now if I understand correctly, Mr. Yearwood, this
20 area is designated as a small cluster on the plan?
21 A Yes sir - designated as a secondary cluster, with
22 a projected population of about 500 people. It currently has
23 about - approximately 200 people in the area.
24 COURT: What area are you referring to now?
25 A This is not the entire area - that's the area which

1 initially was designated - well, designated period in the master
2 plan for the county. This is not the entire area which has
3 been defined by Mr. Payne as constituting the Ruckersville
4 Cluster.
5 PARKER: Your Honor, I don't believe that's in evidence.
6 I don't think Mr. Payne ever stated anything about the Ruckers-
7 ville cluster.
8 A Excuse me, excuse me, he said on page 25 of the
9 transcripts that - on page 24 he described and I would like to
10 point these marks out to you.....beginning at the Truck Stop
11 here, coming to this point , down to the junkyard here....
12 PARKER: Your Honor...
13 COURT: Don't interrupt him - now, he's saying what
14 the testimony .....Mr. Parker, do you wish to dispute his
15 wording of it? Just a moment, Mr. Yearwood.....do you have
16 a copy of the transcript of his testimony? Mr. Parker may
17 examine it if he wishes to note an objection.
18 PARKER: He stated what I recollected he stated that
19 it was an area of influence, but he never called it - said it
20 was the Ruckersville cluster.
21 A Excuse me on page 25, he said and I quote...this
22 is a community in Greene County - this presumably referring to
23 his preceding description of this area....
24 PARKER: He said it was one of the communities....
25 A Yes...

1 PARKER: He used the word cluster Your Honor - it has
2 a technical meaning there...
3 COURT: I don't know that it does. I'm not sure whether
4 that's a technical term. Mr. Yearwood, what's the connotation of
5 the word, cluster, in urban planning?
6 A Cluster would mean the clustering or fairly high
7 density of development within a fairly, narrowly defined area.
8 PARKER: Your Honor, the word cluster is otherwise
9 defined in the plan. That's my position. Mr. Payne's language
10 contained in the title to the plats, is ....major, industrial or
11 commercial use areas at Ruckersville...it's a use area that
12 Mr. Payne is referring to.
13 A Excuse me, counsellor, his use areas defined there
14 in the dashed black lines, which.....which runs along...
15 COURT: Now, Mr. Yearwood, just respond to the questions.
16 Mr. Parker's objection is overruled and his exceptions are
17 noted. Go ahead, Mr. Slaughter. Now we don't want to get side-
18 tracked with another issue....
19 Q I think in order to clarify, if the Court please, I
20 will go back to that plan just briefly - the comprehensive plan.
21 And ask Mr. Yearwood to point out the clusters as they are in-
22 visioned, invisaged by the plan?
23 A The two primary clusters - this one on the south-
24 eastern area here, the corner store cluster, as it's called. Also
25 the second primary cluster is in the Stanardsville area. Here we

have a secondary cluster at Dyke, a secondary cluster at Lydia, a secondary cluster here at Quinque, and then finally a cluster - secondary cluster which would seem to cover basically the area that's already developed - around the intersection at 29 and 33.

Q Mr. Yearwood, as invisaged in the minor cluster on the master plan, where would that - the development in that cluster be?

A The development in the cluster would be primarily east of Route 29. It would come across it, basically to take in some of the development that already exists along the - across Route 29 on the western side of that.

Q All right, as you view plaintiff's exhibit 1, and the proposed Greenetown Village Sub-division would that in your opinion be in a logical development of a cluster, as the master plan of Greene County has been prepared and now adopted?

PARKER: Your Honor, it's this misuse of the word, cluster. I'm going to object to the question...it obviously isn't in the cluster as the plan says it is. And on the other hand..... a logical use area of - around...land use area around Ruckersville, I think he can ask that question.

COURT: I'm not going to get tangled up over the use of the word, cluster. It may have a different meaning in professional planning than what it has in law, and it may be that there is no established meaning - it may not be a word in law, is

1 it?

2 PARKER: In the plan .....a cluster is defined

3 by a line.

4 COURT: Where is defined in the plan itself? Is

5 there such a definition?

6 PARKER: Yes, it's in the....

7 COURT: Let's see what that is. If it has been

8 defined then we should use it. Can you direct me to the point

9 where its been defined?

10 PARKER: I cannot sir....there's a map in there....

11 COURT: But the question is is that word defined?

12 PARKER: Yes sir, the word cluster appears all in the

13 plan.

14 COURT: But is it by definition in the ordinance or

15 anywhere else - a word that has special application?

16 PARKER: No sir, the word does not. What has a special

17 application is the fact that there is a line drawn around Ruckers-

18 ville, which is called Ruckersville Cluster. I'm trying to dis-

19 tinguish between the Ruckersville Cluster as it appears in

20 the plan and an appropriate land use area for the Ruckersville

21 community. There is a distinction, and I don't want Mr. Slaughter's

22 question to muddy the water as to the distinction.

23 Q Well, my question refers to the cluster within the -

24 as defined on - shown on that plan.

25 PARKER: Your Honor....

1 COURT: What's the problem with the use of the word
2 cluster, Mr. Parker?
3 PARKER: It seems that this sub-division is outside
4 the cluster as shown on the plan ....
5 Q Maybe with that concession it would speed things
6 along, Your Honor, by letting me simply ask, why is it proper
7 that it's outside the cluster and therefore is not a sub-division
8 in accordance with the comprehensive plan?
9 COURT: Well, I'm frank to say that I'm unaware of
10 any reason why the words cluster and neighborhood should have
11 any special legal meaning. Now they may have special meaning
12 to the planners that should be testified to and placed in this
13 record. Let me ask Mr. Yearwood, if there is any special signi-
14 ficance to the use of the word cluster or is it a general term,
15 Mr. Yearwood?
16 A I believe, sir, that it's a general term. I think
17 when you say cluster to planners, we tend to - it evokes certain
18 things in our mind. We tend to think of fairly dense development
19 in a fairly limited area, along with the preservation or reserva-
20 tions of certain open space.
21 COURT: Has it become a word of art thus far? In the
22 urban field?
23 A A word of art?
24 COURT: Yes, has it become a word of art? That it has
25 a standard meaning?

1 A I believe that it does, yes sir.

2 COURT: Would you say that there's a difference

3 between what you understand the word to be and the way it's

4 applied in the ordinance, if you are that familiar with it?

5 That is the comprehensive plan?

6 A No sir, I don't believe there's any difference

7 in my understanding of it and the way it is used in the plan.

8 COURT: I don't want to prejudge an essential issue

9 in this case. I can't quite follow what Mr. Parker's objection

10 is and I'm trying to move this along. I don't want to prejudice

11 his objection to your calling this part of or not part of the

12 Ruckersville cluster. But to the extent that you may answer

13 the question without prejudicing that point, I'll permit it.

14 Go ahead, Mr. Slaughter.

15 Q I think I can perhaps speed it along and clarify

16 at the same time. As I understand in the master plan, Mr.

17 Yearwood, there are two major clusters?

18 A Yes.

19 Q One at Stanardsville and one down in the southeast

20 corner of the county, known as corner store?

21 COURT: Is that part of the Ruckersville area?

22 Is that separated from it?

23 A The southeast area...

24 COURT: The corner store area?

25 A No sir, that is separate from the Ruckersville cluster

1 Q Now what is the reason that the two major clusters
2 in the county are located there? Stanardsville and corner
3 store?
4 A Because there exists in those areas a considerable
5 level of development at this time. And it would not be possible
6 to because of the scale of development, to ignore them. They
7 are there, they will not go away.
8 Q Now you testified that Ruckersville is one of four
9 minor clusters in the county, and that most of the development
10 is directed to the east side of U.S. 29?
11 A Yes sir.
12 Q Could you tell us why?
13 A May I refer to this?
14 Q Certainly.
15 A I would say that there are a number of considera-
16 tions here in my view which would make it unreasonable to
17 consider that the proposed development or Locust Lane should be
18 included in either what might be termed the Ruckersville Cluster
19 or the influence land use service area, or whatever term we are
20 going to use to describe some area or other here. I would
21 point these reasons out as follows....first off, if one looks
22 at this intersection superficially, you have here a crossroads
23 of two major arteries. One would say off- hand that is a normal
24 and logical place for the development of a cluster. For the
25 development of a community at least for some level of urban

1 development. I would submit that my considered professional
2 judgment, if you take that view, you are espousing a view that
3 is probably 50 to 100 years old. Because we are no longer in the
4 latter part of the 20th century utilizing the same criteria
5 to establish communities and cores of development, that we used
6 in the horse and buggy days and the streetcar days and so on.
7 My strenuous objection to having a major cluster in the Ruckers-
8 ville area would be that a major development here would be cut
9 basically into four quadrants. It would not be possible to have
10 free movement across these quadrants, given the nature of these
11 roads. It has been indicated here that in the works is a major
12 improvement on a four-lane of 33 from the point of intersection
13 here, onto the west. What this also will effectively do is
14 rather decisively divide the area to the north of 33, and the
15 area to the south of 33. And ....my point is it would be extreme-
16 ly difficult to cross through these quadrants, so that you wouldn't
17 really have a cluster. You would have basically four separate
18 areas of development. I would also make the point that if major
19 development occurred here, obviously there would be increased
20 traffic, congestion, hazards and so forth. Also, Your Honor
21 raised the point of whether the Ruckersville cluster is the
22 same as the corner store, it is not, but I submit that if major
23 levels of development occurred here, that in very short order the
24 Ruckersville cluster and the corner store cluster would join, and
25 then following on that - and certainly with improvement of 33

to the west on into Stanardsville, we would have what the plan does not call for, and that is strip development from the county line here up to this intersection and then westward here. And my view is that this would be extremely harmful and deleterious to the development of the county as a whole, because the development would tend to occur - as I've said, along these major arteries. And the possibility of proper utilization of the land and orderly development of the land in these areas away from the major traffic arteries certainly would be shortcut. I would also .....

Q May I interrupt you just a second....what is the objection ..primary objection to strip development?

A There are a number - there are a number. And I think it is generally accepted by planners and indeed by many who are not planners that strip development is undesirable. We see now the great tendency is away from strip, commercial, where there is an effort to have orderly development in a community and a county. It's hazardous. It - when you have places of business and residences and mixed uses all along a major artery, major arteries by definition are defined to carry high volumes of traffic at a fairly rapid pace. When You have this with curb- cuts ever so often or points of access - very close to each other, you have increased levels of hazard. The mixed uses that tend to occur along here, the high density of uses, all these tend to be harmful to the overall development of the community.

Q Does this have any effect on development of the rest of the county?

A Oh yes...yes.

Q What effect is that?

A Well, it's going to tend to limit development to the arteries and the remainder of the county or community will be basically neglected.

COURT: Basically what?

A Neglected. It will be difficult to have or to promote development in the rest of the county. In a sense it's quite natural, you want to develop along the major arteries and to locate there simply for ease of access. But at the same time given some level of development, as we ordinarily have in strip development, for example 29 coming out of Charlottesville; it - just before the Greene-Albemarle line. It's not that convenient because the level of congestion, the volume of traffic, the difficulty with negotiating in traffic and so on. But we do....

COURT: I understand, Mr. Yearwood, with reference to some of the areas that are already classified as clusters, they are so designated because they already are there, not because they are considered desirable?

A Yes sir, that is correct. In fact in terms of the corner store cluster, I think that is not a desirable area for cluster. It is simply there. It would clearly appear to be a

1 spillover from Albemarle County, Charlottesville and . . .
2 COURT: Why would it not be desirable?
3 A Because this is a . . .this is in effect a gateway
4 into Greene County. This is the major artery. The greater
5 the level, the higher the level of development in this
6 southeastern area, the more difficulty there will be in
7 getting through that area. And I'm not talking about people
8 from out of state or somewhere, I'm talking about for Greene
9 County to move around in their own county.
10 COURT: Are you saying that because it's too many
11 in one place, or that they should not be there at all? This
12 type of development, is the size of the development one of the
13 problems?
14 A In the case of the corner store area?
15 COURT: Yes sir.
16 A The size can be a problem. It's a matter of the
17 size of the development, the location of the development, and
18 the transportation network which serves it.
19
20
21 (Reporter changes tapes)
22
23
24
25

1 Q Do you know off hand, Mr. Yearwood or your
2 intentions to determine how many lots are already plated in the
3 Corner Store Subdivision?
4 A I have read the figure and I am sorry I do not
5 recall it, no.
6 Q Let me ask while you have got that up there.
7 Are there subdivisions in Greene County other than say, Locust
8 Lane, which are not in a cluster?
9 A Oh, yes sir, yes. This point was made, made
10 in Mr. Payne's testimony that Locust Lane had been left out of
11 the plan or had been ignored, that is not correct in my view.
12 It has not been left out of the plan. It is shown in this map
13 or a similar map which shows the subdivisions, which is included
14 in the plan, the Locust Lane is not shown as a cluster or as a
15 part of a cluster but at the same time there are numerous other
16 subdivisions in the county which also are not shown as a cluster
17 part of the plan. As I said before, there was five thousand
18 acres in the county, between here and including here, four or
19 five thousand acres have been subdivided since about 1970, over
20 three thousand lots plated and I believe this is a correct
21 figure, there are fewer than four hundred of these which have
22 been built upon, the short answer is yes indeed, plats of record,
23 many subdivisions of record which are not shown in any cluster.
24 COURT: Are there any existing occupied subdivisions
25 which are not shown as parts of clusters?

A Yes sir.

COURT: Go ahead Mr. Slaughter.

Q Now, does the map of the subdivisions in an area that is unplanned such as Greene County has been up until now necessarily establish the character of an area sufficient to warrant in all cases further development of the same type?

A In all cases, no sir. In my judgment that would depend upon the....primarily upon the size of the subdivision, if it were a major development, several hundred lots or several thousand lots as the case might be. It then would be of a magnitude similar to the Corner Store area which would simply have to be recognized because it's there, it's an accomplished fact but a relatively small subdivision, such as we have in the case of Mr. Gibson's development, to me does not offer conclusive proof that it will dominate and determine the development of the area around it. To me that is absolutely the antithesis of planning and to me, this subdivision here, Locust Lane, given its size, given its shape, given its distance from the center of Ruckersville, given the really vast amounts of open space in this area simply cannot be taken to say that this means the whole area then must be developed. This to me is a relatively small subdivision at some distance from a recognized community and should not be allowed to determine the future pattern of development in the area. I would say this, if that principal was to be adopted then, for whatever it's worth, the whole cluster concept,

1 which the Board of Supervisors of this County has accepted and
2 adopted, would literally be shot because it is absolutely no
3 justification for saying all right, this red line here which
4 has been offered to us is the outer extent, the westward limit
5 of the influence land use service area or whatever. They have
6 no reason whatever not to proceed to subdivide on to Midway,
7 Quinque, to the south and so on.
8 Q I believe you said, but can you tell us what
9 the master plan or the study shows about the fertility of the
10 land there for agricultural purposes.
11 A Yes, it showed this to be a very desirable
12 agricultural property.
13 Q Is that true of the area, not just that
14 particular piece of property, but the area around it?
15 A Yes it did. Yes, in a wide belt here.
16 Q Mr. Yearwood, have you been told of the testimony
17 of Mr. Matthews witnessing relating to the increase of traffic
18 flow on this property?
19 A Yes sir, I have been.
20 Q Results from the developing of this property?
21 A Yes sir.
22 Q Do you recall what that was?
23 A I believe the figures indicated there would be
24 over two thousand vehicles a day, I don't recall the exact
25 figure, in a twenty-four hour day without the proposed commercial

1 development here closer to Route 33. If that commercial develop-
2 ment were permitted it would be approximately four thousand
3 vehicles per day. I would also point out that according to the
4 proposed subdivision plat, the preliminary subdivision plat,
5 there is only one form of ingress and egress for this develop-
6 ment. Given that and given within a short time, the mere term,
7 the additional two lanes here I think this would create con-
8 siderable difficulty and considerable hazards.
9 Q Is that the kind of highway traffic engineering
10 that would require a light?
11 A Yes it could.
12 COURT: Mr. Yearwood, is there any way that access
13 could be obtained into that tract at more than one point?
14 A Your Honor, I believe it is wide enough. I
15 do not have a figure before me on the frontage but I believe it
16 is wide enough to permit two points.
17 COURT: Let me ask this question now. Assuming
18 that could be resolved, I gather from your testimony that you
19 would consider this an undesirable location for the proposed
20 subdivision.
21 A Yes sir, I would.
22 COURT: Is that because it is undesirable anywhere
23 in the county or undesirable only in this location?
24 A It's because, in my judgment, this is not the
25 desirable location for this development. I would take the position

that the kind of development, I don't know that my position on this would be in agreement with anybody else's here but my position is, that this kind of planned development, with a mixture of uses. . . . .certainly is to be accommodated, should be accommodated in the county.

COURT: Well, knowing the size of the county and the relative size of the subdivision, as I understand it, would add some nine hundred persons to a county of some five thousand. What is the nature of that sort of impact as to one subdivision on a county of that size?

A Your Honor, may I back up and clarify my statement or add to it. I do not mean to be understood to say that I think this ought to be in Greene County this year. It has been offered here, the comments have been offered that this would be phased over ten years. I don't think the county would have any guarantee of that but I would say that there are a number of observations in the terms of the size of it, the cost of the dwelling units, there is some very serious question in my mind as to whether Greene County Citizens, given what we know from the census data about income levels from Greene County, would in fact be able to afford houses and would be able to purchase houses and live in this kind of development here or any place else.

COURT: Knowing what you know about it, isn't it a fact that to sell that many houses would have to be based on

1 attracting people from outside Greene County?

2 A Yes sir, clearly, absolutely, it would be.

3 COURT: What I am asking, what in your judgment

4 would be the impact of adding nine hundred residents to a county

5 of five thousand?

6 PARKER: The evidence, I think, was over a period

7 of ten years.

8 COURT: Yes sir, over a period of ten years or

9 however long it might take in view of the market situation to

10 market the number of houses contemplated by Mr. Matthews.

11 A Well, as I said, we had no guarantee of how

12 this would be phased. If we assumed there would be a hundred

13 units a year for ten years, or rather a hundred individuals a

14 year, how this might work out in terms of dwelling units, then

15 the impact would not be as great obviously as if it came in a

16 shorter term but looking at the population rates for the county,

17 which declined until very recently, there was a modest increase

18 in population in the county primarily because of the spill over

19 from Albemarle, I expect. I think a development of this kind

20 even over ten years is going to have a tremendous impact on the

21 county, no question about it. This....what you are really

22 talking about here is putting about a thousand people, which is

23 about twenty percent of the present population, give or take a

24 point or two, in a hundred and eleven acres and in a location

25 here very close to this intersection. What it would effectively

do, I believe, is to completely remove Stanardsville as the central place of the county and you would have a shifting of the center of the county in to this area and what obviously would happen is there would be further development all around this.

COURT: Now, in order to preserve the agricultural texture of the community, if that is the present texture, and you knew a thousand people had to be added, would it not, in fact, be desirable to concentrate them in a smaller area rather than spread them out?

A I would agree with that proposition because this would be less wasteful of land, it would tend to preserve agricultural lands and it would be much more efficient. The question then would be, what is the proper location? Do we have the transportation network, do we have the public facilities, services and so on. I might also point out, it is my understanding that water and sewer facilities and the plans for those are geared to the cluster concept and will be aimed at providing services to the primary clusters and then to the secondary clusters as proposed in the plan.

COURT: All right Mr. Slaughter, you may continue.

Q Going back to the subdivision and the intent to which they establish themselves, the neighborhood characteristics, I read this up to a point but I wanted to simply say that the basis for/ going further as I understand it one subdivision doesn't in your opinion establish character for a neighborhood?

1 A Yes sir, that's correct.

2 Q If it did, how would that relate to the entire

3 concept as to the question of planning?

4 A Well, if one took the position that a single

5 development such as Locust Lane, which was established prior to

6 the adoption of, let's say the initiation of the planning

7 process in the county and the development of the comprehensive

8 plan and so on, if one took the position that that could determine

9 the future land uses then it would be absolutely no planning

10 whatever because that's the very antithesis of planning. You

11 are simply then projecting on the basis of what exist.

12 COURT: You are saying then that the tail would be

13 wagging the dog?

14 A Yes sir, yes sir. I would say there would be

15 no orderly development of the county possible. It would not

16 then be possible, given that basic assumption, it would not be

17 possible for the people in the county, through their elected

18 representatives to determine how they want their county to

19 develop.

20 Q Are you familiar with any recreation facilities

21 there might be in the Ruckersville Community?

22 A Yes sir, I am familiar with the youth center

23 here which is in conjunction with Mr. Hoard's subdivision, have

24 the fire station here and the youth center here.

25 Q The evidence has been, which you have heard,

1 that these are not publicly owned?

2 A Yes sir, that's right.

3 Q In your judgment, with a subdivision of this

4 income, this size and density, would public recreation facilities

5 be required?

6 A Yes sir, absolutely, they would be.

7 Q Could you tell us generally what types of

8 recreation facilities, where and if you can some idea of the

9 cost involved as to the land value or generally?

10 A Well, I believe according to the plan some

11 twenty three acres were called for for several categories of

12 recreational facilities. I think I would generally subscribe

13 to those. I would also say that these figures may seem high

14 except that when we talk about planning we are not talking about

15 planning for now exclusively, we are talking about planning for

16 the future. The essence of planning is to anticipate future

17 leads and future problems and clearly the establishment of this

18 kind of development here will require considerable recreational

19 facilities. I would also submit that the youth center here,

20 which at the time....if this development were in fact staged

21 over ten years, at the time the development of it this would be

22 a four lane artery carrying out a considerable level of traffic,

23 this youth center, at some distance here to the east and across

24 this major traffic artery, which would constitute clearly a

25 boundary, a divider, it would be extremely difficult and

1 hazardous to think in terms of crossing this for recreational
2 space. The recreational space would have to be provided either
3 in this development or certainly very close to it.
4 Q There has been some testimony that the National
5 Park could be considered for a recreational facility for Greene County.
6 Do you have any thoughts on that?
7 A Yes I do. I have worked in other counties and
8 on this particular point I have had some experience. This
9 allegation is often raised that state parks, national parks or
10 forests or preserves and so on are available and constitute a
11 considerable area for recreational purposes which can be used
12 by the citizens of the county. I think of one particular case
13 in Powhatan for example where we encountered this contingent. I
14 do not feel that's a reasonable contingent. Now, there are
15 people clearly who will utilize these facilities, we don't know
16 how many there are but we do know there are a number of people
17 who have recreational needs that go beyond that and people who
18 will not utilize either the state owned or the federally owned
19 recreation areas. They are looking for a different kind of
20 recreation activities. I would tend to discount that as a major
21 source of recreation.
22 COURT: Let me stop you right there Mr. Yearwood.
23 In that connection is it considered among planners that it is
24 the obligation of the local governing body to provide that at
25 public expense or whose duty is it to provide these recreational

1 facilities for increased population?

2 A Yes sir, there are two fields ofthought on

3 this, the traditional view is that, stated by men in several

4 courts in several states, that it is the obligation of the local

5 governing body to provide all the services and facilities in-

6 cluding recreation that the community needs. Now, the newer

7 view, going back some fifteen or twenty years, and that may not

8 seem real new, but in terms of development of these points it

9 is new, is the view that the local government can require

10 developers, as a conditional precedent to plat approval to

11 dedicate to public use certain areas in their development either

12 for park sites or various forms of recreation and in many

13 instances school sites, this is being done throughout the

14 country on a broad scale. There are those two views and my

15 judgment is that, particularly because of increased costs and

16 financial burden on the local governments that the more recent

17 view is in the ascendency. We see more and more evidence every

18 day that local governments are requiring developers to dedicate

19 this land and the rationale for that is this, the developer is

20 a broker and he isn't paying his cost, he is passing his cost

21 on to the alternate purchasers of the houses and the lots. These

22 are the people who, we hope, are buying a complete product. A

23 house and a lot which have everything they need, streets,

24 facilities, lights, utilities and so on and then my next point

25 would be that the provision of these recreational areas, either

1 dedicated to the local government or dedicated to the home
2 owner's association which then is responsible for the operation
3 and maintenance of it. It makes the developers development
4 much more marketable because it is more desirable and we have
5 evidence, for example, from the Urban Lane Institute that
6 indicates that this is the case.
7 COURT: All right, go ahead Mr. Slaughter.
8 Q Going back to a question his Honor asked as to
9 the place to put a large influx of people into the county, I
10 believe you testified that there were a fairly sizable number of
11 lots unbuilt on in Greene County at this time.
12 A Yes sir, a substantial number.
13 Q Are a substantial number of those located in
14 clusters that are shown on this comprehensive plan?
15 A Yes.
16 Q In terms of disruption to matters already
17 existing wouldn't it, in fact, be ideal, if any such program
18 is ideal. . .
19 PARKER: I think Your Honor, Mr. Slaughter. . .
20 COURT: You are getting pretty far into leading
21 the witness Mr. Slaughter. I am not sure that's the basis of
22 Mr. Parker's objection.
23 PARKER: I don't know that this witness needs to
24 be led at all but that's the basis, the fact that it is a leading
25 question.

1 COURT: He has testified and you can argue that
2 point. Although he is certainly in a position of being an
3 expert and entitled to give his opinion although that should be the case
4 I think he ought to state it and not have you phrase the
5 question that way.
6 SLAUGHTER: I plan to figure how to get it
7 across without having to go through a long background. Now
8 that I have I'll try to state the question in the proper form.
9 Could you give your opinion as to whether or not the develop-
10 ment of lots which are already plated within clusters would be
11 preferably to the development of new subdivisions rather than
12 out of clusters?
13 A In my judgment it would be preferable. To
14 mention only one substantial reason, the point that the water
15 and sewer facilities are planned to serve these clusters and
16 that's the basis for the planning, for the improvment extension
17 of these facilities and this would result in certain economies
18 and savings and efficiencies to the local authorities. It would
19 make the operation much more efficient and in my judgment it's
20 highly desirable within these clusters which have been outlined
21 to go ahead and develop there rather than continue to proliferate
22 throughout the county or to have the institution of a develop-
23 ment such as this which would be a cluster and a major cluster
24 within itself certainly.
25 COURT: If developed, would this be the major

1 cluster in Greene County if developed as planned?

2 A The Greene Towne Subdivision. Yes sir, I'd

3 say that it would, clearly would be.

4 COURT: In otherwords, unless something caught up

5 with it in the meantime, if you look to the final conclusion of

6 it, it would be the major population center in the county I

7 presume?

8 A Yes it would be. In my judgment, if it were

9 developed according to the plat, which I have seen, it would be

10 the major population center and it would also be the major

11 commercial center and as I said earlier, would result in a

12 real shift in the centers of population in the county.

13 COURT: What's your judgment of the rest of the

14 county as far as its activity during the same period. Would

15 it, in a sense, keep the same level of development or would it

16 be outstripped or out distanced by this development rate of this

17 area?

18 A Are you asking me generally or in terms of the

19 commercial perhaps?

20 COURT: The general residential demand?

21 A Oh, well, it's my judgment that the county, the

22 remainder of the county would stabilize to deteriorate because I

23 think the demand would be in this area because it would be

24 considerable shopping facilities here. For example, this is

25 much closer to Albemarle Line than areas farther to the west on

33 and I think additional development, I am satisfied in my own mind that if Greene Towne is established here that you will have a very large cluster in the southeast corner of Greene County which will go from the Albemarle County Line up 29 and spread out, mushroom and include this area that is shown here, come on to some degree western, perhaps Quinque and that'll be the growing and live area of the county. The remainder of the county, I think, will be very quiet and not very much will be happening.

COURT: Mr. Yearwood, from the standpoint of that type of development would that have to come from the influx of people from outside the county into the county or from development from within?

A No sir, it will come from without.

COURT: Without the county?

A Yes sir, absolutely.

COURT: All right, go ahead Mr. Slaughter.

Q I have no further questions Your Honor.

COURT: All right Mr. Parker.

CROSS EXAMINATION

By: Mr. Parker

Q Given the county as chosen, a cluster pattern why not this particular area within the cluster? This particular area within the cluster. You stated, I take it, some objections?

1 A Yes I did.

2 Q Let me ask this question. Suppose someone asked
3 you to find the good points for having a subdivision right here
4 within a cluster that, let's say it looks something like that,
5 not a zoning case but, that's the question I am asking. Are
6 there any good points in having a subdivision here?

7 A Let me see if I understand your question. It
8 is, what are the good points that might be induced from having
9 this development here within this cluster or whatever as defined
10 by this red line?

11 Q Within a land use area as defined by the red
12 line but in any event having a cluster right here. One of the
13 good points, anything that would eliminate favor of having one
14 there?

15 A Well, I would have to say first of all I don't
16 agree with this influence land use service area or whatever it
17 is. I think the area is much to broadly drawn.

18 Q You haven't answered my question.

19 A All right sir. Are there any good points? Yes
20 it would not be wasteful of land and I believe that's probably
21 the only positive point I would make about it,

22 Q That's the only positive point you can make
23 about it?

24 A I believe so.

25 Q This is not on the water.

1 A I beg your pardon.

2 Q This is not where it could be served by present

3 utilities?

4 A Yes, I believe it is.

5 Q Well, is that a positive point or a negative

6 point?

7 A That is clearly a positive point.

8 Q You didn't mention it until I mentioned it to

9 you sir.

10 A That's correct, you asked me how many I could

11 mention.

12 Q I beg your pardon sir.

13 COURT: That's immaterial argument. It's obvious

14 that he didn't mention it. You don't need to tell him that.

15 You can mention that to the court in the summation.

16 Q I beg your pardon. I appreciate that that is

17 argumentative. Well, let me ask you this, in land use planning

18 is it appropriate to take into account existing patches of

19 development?

20 A Would you define for me please so that I may

21 respond to the question accurately, what quote, take into

22 account means?

23 Q Well, reading from the code section 15.1-447

24 with which I know you are familiar with this book as well as

25 some others, it says, investigations to be made in preparation

of plan, implementation of plan, the preparation of comprehensive plan, the local commissioner shall investigate such matters as the following: existing development, use of land, trend of growth or changes of natural site characteristics, history and it goes on to some other things. Now, that's the context in which I mean existing development and use of land.

A Yes and no. I submit that what the code says there is in the nature of a general charge. It is not specific and my view would be that when you say, and when the code says the legislature said, take into account that means give consideration to. In my mind it does not mean, let that be determinative. I do agree with your statement generally that all development must be taken into account.

Q In any appropriate plan, my question is, must reasonable consideration be given to existing use and character proper?

A Yes, clearly.

Q Now, is it a proper facet of planning to leave, is it desirable to leave a subdivision as a totally non-conforming use in attempting to zone and attempting to pull yourself up by loose straps to where land use is regulated, going from an unregulated state. Is it desirable to pass, to leave a subdivision in an entirely non-conforming use status?

A I suggest to you, as I understand the term non-conforming use, it relates only to specific uses that exists

1 prior to the adoption of ...or subsequent amendment of a zoning
2 ordinance, It covers uses which are not permitted as permitted
3 uses in that district. And I do not comprehend how a sub-
4 division or anything else can be a non-conforming use. It is
5 there, it has no legal onus on it in terms of it being a non-
6 conforming use.
7 COURT: Now Mr. Yearwood in which stage would you
8 say it's there from the planners standpoint, when it's plated
9 or when it's developed or at some stage in between?
10 A From a legal point of view, there is a sub-division
11 when it's plated, and whether it's built upon does not alter
12 the status of the sub-division. The plats there, it's recorded,
13 it's a matter of record. Now, in terms of taking into account
14 or giving due consideration to it, I think that is a matter
15 that hinges solely on the level of development.
16 COURT: In other words....
17 A That would be....
18 COURT: You are more interested in what's been done
19 on the land than you are the plating of it?
20 A Yes sir....yes sir.
21 COURT: Go ahead, Mr. Parker.
22 Q And that sub-division, Locust Lane, is on the ground
23 right now?
24 A I believe I counted some 30 odd houses which are
25 there, yes.

Q But of the sub-divisions that you were talking about in the county, which so many acres - I think it was 3,000?

A No, I believe there were 5,000 acres.

Q No, I believe there were 5,000 acres....

A Yes.

Q What percent of that is built?

A Very, very small, fewer than 400 houses...I've testified....

Q So, there is considerable difference between something like Locust Lane - a sub-division like that for planning purposes and a sub-division such as - which is built out to the average that the county sub-divisions are built out?

A Your question was what - a considerable difference...

Q A considerable difference in the consideration which had to be given to the sub-division is largely built out and one which is not largely built out - one which is only infinitesimally built out?

A It depends on the number of lots in the sub-division, size of it, and how many dwellings are there. And also in my mind it depends on what is the area around the development like. To me you cannot....

Q There are factors which make a difference...

A Yes sir.

Q But in order to get you to answer my question, there is a considerable difference just on the fact that a sub-division

is to a large extent built out as opposed to one which is not?

A Oh yes, certainly.

Q All right.

COURT: Mr. Yearwood, I'll try to keep you all from being at odds with each other. Be very careful about answering only the questions that Mr. Parker asks.

A Yes sir.

COURT: Don't volunteer information. He has a right to demand that, so if there's an objection to his question then counsel interpose, but you stick strictly to the questions.

A Yes sir.

Q Now, with regard to the direction of the present land use you stated this dash line, I suppose is a cluster as it is invisioned?

A No sir, you see that's.....well, no...no.

Q Well, I beg your pardon.....I withdraw that question, because I know myself that it is not. This area, you say you hoped that the growth in the Ruckersville community will go to the east or that you planned for the ....or that this plan provides for the growth in the Ruckersville community to go to the east?

A Yes sir.

Q Of Route 29?

A Yes sir.

Q What account does that take, sir, of the fact that the

1 water is provided on the west side of Route 29 and continues
2 along the west side of the road - Route 29 down Route 33?
3 A Your question is what now? What consideration does -
4 to what extent does that take into account the existing water
5 mains?
6 Q Yes I think my question is exactly that.
7 A I don't wish to be difficult, could you let me have
8 it again? I'm not sure I understand it.
9 Q Could the reporter read ...
10 COURT: Go ahead and rephrase the question, Mr. Parker.
11 We're going to run into too much time. You can recall the
12 question and ask it again a lot quicker.
13 Q The question is what account does - you have stated -
14 I'll restate it again....you have stated that this plan calls for
15 growth to go on the east side ...
16 A Uh-huh.
17 Q ...of Route 29, and to go in this direction, which
18 I take it is - what account does that take if any of the fact
19 that the water mains and the water is on the west side of Route
20 29 and also then turns, so far as a person going this way - east
21 or west is concerned - turns west and goes down Route 29?
22 A Well, are you asking me how the...
23 Q I beg your pardon down Route 33, turns west and goes
24 down Route 33.
25 A All right. I don't know whether you are asking me

1 what was invisioned in the plan or my own personal response?
2 Is it my response to this?
3 COURT: I think we need to clarify this. The question
4 is why wouldn't this sub-division be more consistent with existing
5 utilities than where you propose to say it should be - east
6 of 29?
7 A It could easily be, based solely on that factor.
8 COURT: It would be more consistent as far as existing
9 utilities to have it where it's proposed?
10 A Yes, based solely on that...yes sir.
11 COURT: All right, Mr. Parker, go ahead.
12 Q How much expansion of population is proposed in
13 this comprehensive plan, sir?
14 A I'm not sure I trust my judgment. I believe that
15 over the next several decades, the population is projected to
16 reach approximately 8,000, possibly by the end of the century.
17 I wouldn't want to have to stand on that figure.
18 Q But your conclusions that you have given to the
19 Court previously are based in part on the amount of population,
20 which the plan proposes for the county? The increase in popula-
21 tion, isn't that correct? For instance you answered the Judge's
22 question and stated that this would have a certain impact on
23 Greene County and that this would have a large impact on popula-
24 tion centers in the county. That conclusion is based is it not
25 sir, on what population that you would expect based on this plan,

1 to come about over the next couple of decades?

2 A Yes.

3 Q Well, what is that population ?

4 A As I said, I believe it is projected to be about

5 8,000 people.

6 Q It wouldn't surprise you if I said yielding a ...

7 the year 2,000 figure of 9,600....1990....2,000...8,159....

8 A That may indeed be the figure - I recall with the

9 larger figure with the year 2,000....yes.

10 Q Well, now the increase then would be something on

11 the order of 4,000 people over the decade I guess.....Is that

12 true?

13 COURT: He said over two decades, Mr. Parker. I think

14 that puts .....

15 Q Over the next....

16 COURT: Well, use years then, don't use.....

17 Q Over the next two 20 years?

18 A Twenty - yes, twenty years...

19 Q So that would be 2,000, over the next 10 years?

20 A Well, yes it could be. Yes, it would depend on

21 the population rate of increase...yes.

22 Q In 10 years, I believe you stated that this and

23 the evidence appears to be that this is going to produce about

24 950 people, 900 - 950 people?

25 A Yes.

1 Q What's wrong with that as a percentage of the -
2 over the same 10 years of 2,000?
3 A If you are asking me solely about the figure, I
4 have no objection to the figure. My comments have been directed
5 primarily at this location of this development.
6 Q That's all.
7 COURT: Any other questions, Mr. Slaughter?
8 SLAUGHTER: No further questions, Your Honor.
9 COURT: All right, Mr. Yearwood, thank you sir.
10 A Thank you sir.
11 SLAUGHTER: Could we have a very brief recess?
12 COURT: All right, we'll take a five minute recess.
13
14 (Recess.)
15
16 COURT: Mr. Slaughter.
17 SLAUGHTER: The defendant rests Your Honor.
18 COURT: All right, Mr. Parker, do you have any rebuttal?
19 PARKER: Yes sir. I call Mr. Payne, Your Honor.
20
21 ROSSER PAYNE, having been previously sworn, was recalled
22 and testified as follows:
23
24 DIRECT EXAMINATION
25

By; Mr. Parker

Q You have previously testified in this hearing and been sworn. You have heard the testimony of Mr. Yearwood, with respect to the comprehensive plan?

A Yes.

Q With respect to the sub-division which is applying for approval for special use permits and special exceptions in this case. With respect to the latter, that is this sub-division, and its effect on the established use plans in the Ruckersville area, do you agree with the opinions that Mr. Yearwood gave the Court?

A No, I do not sir, as a matter of degree. I would say that as far as Mr. Yearwood and I are concerned, we do agree on the theory of planning - I don't think there's any need to discuss that, but I do not agree with the application....of the theory to this area. I'd like to use two points for that, if the Court please.

Q Would you please tell us sir, why you do not agree with the application of that theory, reaching the same conclusions that he reached?

A Well, the two policies of objective 2-B on page 7 of the general development of the comprehensive plan. The policy is quite clearly stated that new land use development in Greene County should be planned and structured so as to reflect a cluster pattern. Such clustering would provide a proper balance between

1 low density, agricultural, conservation activity, and more
2 intensive urban recreational type development. Now, that's a statement
3 in the plan. And if the Court will look at the photograph,
4 if you can see it Your Honor. Its been described that the Locust
5 Lane Sub-division , which is approximately two-thirds developed,
6 does not provide an area of transition as such. It's there be-
7 cause it's there. It is a surburban sub-division. And under the
8 statutes of Virginia, and doing land use planning it must be
9 recognized as such and dealt with one way or the other. And
10 reading the second policy...as the county's known farm population
11 grows, development should be encouraged to locate a few pre-
12 determined communities along major transportation arteries. These
13 communities would offer a wide range of residential densities
14 and urban services. Then policy 2-B of 2, existing villages
15 not designated as growth clusters should be serviced and maintained
16 to the greatest possible extent. In so far as they are able,
17 villages would service mountain hollows, etc. This area of
18 Ruckersville as we identified both in testimony last week and
19 this week, is a cluster - by their definition. The boundary which
20 I structured on this cluster is called a service area. And by
21 virtue of what I am required to do as a professional planner, the
22 Court will notice that there are three distinct recorded developed
23 sub-divisions in the areas which I studied. Mr. Yearwood stated
24 that he would prefer to see the growth to the east side of Route
25 29. This is perfectly all right with me, except that I would

1 qualify my opinion further by saying that to structure a cluster
2 which ignores the existence of these sub-divisions as is drawn
3 on the county plan - is simply to be unrealistic. There is
4 no question that Ruckersville is a cluster on that plan. If
5 the Court will recall the comprehensive plan as adopted is a
6 general guide. Its boundary lines are general, and it must be
7 reviewed every five years. My testimony is simply that I cannot
8 believe that a sub-division of this nature, such as Locust Lane
9 or the Horton sub-division or the 12 lot sub-division adjacent
10 to the junkyard which lies in the middle - and I would again point
11 out to the Court, that this junkyard is an influence on the
12 land use which lies just to the east of the subject property.
13 Perhaps an influence of the sub-division might help to clean up
14 that situation. That's a fairly sound planning statement, I
15 would suggest. The point to be made is simply that Ruckersville
16 as such is a cluster. It will grow, and that the impact of popula-
17 tion from the present level to something 96 hundred of this total
18 sub-division at full development is less than 10 percent of that
19 total. I submit as a planner that the location in this area at
20 Ruckersville - the fire station, the full service area, the
21 improvement to the road, the existing water line and the inclusion
22 of this area in a sewer service plan is a reasonable basis for
23 someone to come into this county and ask for approval of a sub-
24 division. The public sector in doing its planning, I believe
25 should lay out areas in which developments like this could occur.

1 I do not attempt for a moment to say that the adoption of the
2 comprehensive plan in Greene County is not the correct step.
3 I am simply saying that its adoption is a general thing and unless
4 they face the issues for what they are, they will continually -
5 and I think properly so have applications by developers from now
6 on in areas where these utilities and services are going to be
7 provided. In conclusion I would simply say that I find nothing
8 in the comprehensive plan that would refute what I would say
9 with regard to Ruckersville. And I would say further as a
10 professional planner that I would much rather encourage the
11 growth, where these transportation corridors and utilities are being
12 paid for than to see this growth scattered all over the mountains
13 of Greene County, that's one of the purposes for doing a plan
14 here.
15 Q Mr. Payne, how about the question of utilities
16 as they effect the direction of growth around Ruckersville?
17 A Well, they will have a material effect by the very
18 nature of the plan - their being there, and being financed.
19 The current utility system as far as water is concerned is used
20 a little less than 30 percent as testified to here by the water
21 authority people. I'm sure that the intent of the county is
22 to utilize that service to its fullest extent.
23 Q Is that utilized best by going to the east or by
24 going to the west, with respect to development at Ruckersville?
25 A There isn't any question that the water line comes

from the Rapidan River south on 29 to the intersection of 33 and turns west and comes west to Midway and Quinque and into Stanardsville. So therefore the use is bound to where the water line is.

Q And yet on no account does it turn east and go - to correct myself, the mistake I made before, go down Route 33?

A It does not go east for any measurable distance beyond the businesses.

Q With respect to the population aspect again, the figure that you mentioned was some 10 percent, how did you arrive at that figure?

A The planned population - I'll give the Court, the page and paragraph, the 1970 population was 5,248 people, according to the adopted plan, the year 2,000 population will be 9,600 or thereabouts. That's an increase over the next 25 years of 4,252 roughly speaking. This development, that full development under a 10 year build out period which is the builder's choice in terms of his market capability - at its full development, assuming full development in 1984, would provide a little less than 10 percent of that. I don't consider that to be any major impact on the...

Q Full population?

A Full population, that's correct.

Q Not 10 percent of the addition, but 10 percent of the full population of the county?

1 A That's correct. And the fact of the matter is
2 with the populations located in the clusters as they plan them
3 in the county, there is certainly going to be more economical
4 reserve. And I am unable to say how a sub-division which is
5 adjacent to this one, which is two-thirds developed, and can
6 reach its full potential, is going to have apparently less services
7 than this sub-division would require. There isn't any question
8 that this situation will repeat itself and repeat itself, be-
9 cause the location is proper for a developer to ask for a sub-
10 division.
11 Q All right, sir. One more thing that may be
12 repetitious, and I apologize if it is. But you have had even
13 more time since we last adjourned to look through Mr. Evans'
14 statement, I believe, regarding the impact of - regarding the
15 question that would seem to be in issue between the two of you,
16 and that is whether there was any money coming in from federal
17 tax grant.....tax...
18 A Yes, revenue sharing...
19 Q Revenue sharing, yes sir, I beg your pardon.
20 A I investigated that and have a figure.
21 Q You have actually investigated and have a figure
22 since that time? Were you able to find in any of Mr. Evans'
23 figures, having looked any further, any allowance for revenue
24 sharing?
25 A None whatsoever.

1 Q All right, sir. What figures did you find for
2 revenue sharing coming into Greene County last year?
3 A 1974, the total figure was $94,861.78. Six thousand
4 of that was spent for a library,.....$14,822.83 went for
5 the landfill. $21,575. for public safety. $804.78 for environ-
6 mental protection. $800. for child care. Capital outlay to
7 purchase land adjoining the school $40,000..
8 Q $40,000.00 that went into the school system?
9 A That's right, and I can tell you in my testimony
10 that this figure was not given an account and should have been.
11 Q All right, sir. And these figures one has to them
12 on the basis of present circumstances and look forward into other
13 years?
14 A That's correct.
15 Q You did not agree with - to make something clear
16 that came up before, you did not agree with Mr. Evans' method
17 of analysis?
18 A No, if you will recall sir....
19 Q I will not pursue the area, Your Honor...
20 COURT: What is that now ....what analysis?
21 Q Mr. Evans' method of analysis.
22 COURT: You've already covered that.....yes sir, now
23 that has not been touched on in the other evidence. I don't
24 think anybody commented on that portion of it.
25 Q I was trying to come this.....if there should be a

1 surplus from this sub-division...

2 COURT: If there should be what - I didn't...

3 Q If there should be a surplus of economic impact -
4 revenue impact from this sub-division, is there any reason
5 that that surplus could not be returned, over and above what
6 it requires? Over and above what it requires for itself, is
7 there any reason that that surplus could not be turned to the
8 benefit of the county in other areas?

9 A No sir. The surplus that we find that comes from
10 this area, using the same methodology has not been cranked back
11 into the report, and it could be utilized in any way the Board
12 of Supervisors chose to redistribute the funds.

13 Q All right, sir. With respect to the testimony of
14 Mr. Colmer, why do you think - how relative do you think the
15 figure of 30 years with respect to a bond is?

16 A Well, the figure we discussed just the other day,
17 to refresh your memory, the figure of 30 years is a financial
18 figure for the retirement of a debt, which would be voted on by
19 the population of the county, if it were incurred. The life of
20 a school is not even relevant to that. The life of a school is
21 at a minimum of 50 years. And most of the plans that are approved
22 for school sites which I have worked with were - will have the
23 average life of the structure and the average life of the elements
24 that go in the structure, and of course the expenditure of funds
25 on that, depending on the programs as Mr. Colmer said. But the life

of the plant, the physical plant, is an average of 50 years.

Q All right. I think we may get into an area...

COURT: I think it's repeating now....I recall that, he's already testified to that.

Q I...

COURT: It hasn't been refuted really.

Q No sir.

COURT: Mr. Colmer didn't undertake to give any evidence on that.

Q No sir, only the 30 years - the question of the relevance of the 30 years....

COURT: Yes sir.

Q Mr. Colmer didn't undertake to give any evidence as to the relevance of the 30 years...

COURT: I don't think anybody has refuted Mr. Payne's statement that 50 years is the life expectancy of a school in ordinary construction.

Q Answer Mr. Slaughter's questions, please.

CROSS EXAMINATION

BY: Mr. Slaughter

Q Mr. Payne, just a few. You have of course commented on the cluster as foreseen by the master plan - simply said you disagree with the application. Of course in this particular instance, not generally, but in the particular instance, Mr.

1 Matthews is your client, is he not?

2 A That's correct, sir.

3 Q Right. And you have made a judgment that a

4 sub-division such as this would - could go near but outside

5 the cluster at Ruckersville and the Master Plan of course says

6 it should not, is that correct?

7 A I think my position is sir that the line that the

8 board has drawn is their line. It is certainly not mine.

9 They must live with it, but it is general and it isn't binding.

10 And I'm simply saying as a matter of realistic planning that

11 we cannot ignore the fact that there are at least, possibly

12 three developments, in that area which lie outside of that

13 line. The county will haveto deal with it.

14 Q But it's also true of course that there are many

15 places that will not lie in clusters - in other words you have

16 to draw the line somewhere, do you not?

17 A I think that's true, and if you will notice on

18 cluster, this is a 400 foot scale. To the photograph there is

19 1 square mile in the area of influence, and I do not attempt to

20 place my judgment to that of the board to where theydraw the

21 line.

22 Q So it's really a question of judgment in the final

23 analysis?

24 A That's correct.

25 Q Now, doesn't the water line that comes down from the

1 Rapidan Service Authority, to Ruckersville, turn east as well
2 as west?
3 A It goes for a short distance to those businesses
4 and possibly the school, but it has no context in terms of
5 its use in the area of growth, as it does to the west. The line
6 is in the ground to the west.
7 Q If you allow that to be the criteria of growth
8 wouldn't you automatically say that there should be strip develop-
9 ment all the way from Ruckersville to the...
10 A That's only one of the considerations, sir. I
11 didn't say it would be the criteria. What I did say was that
12 water lines and public water are one of the key considerations
13 in the location of residential sub-divisions. And the...
14 Q The pipe line turns east and goes to the school,
15 makesit an ideal provider of water for the proposed cluster-
16 the cluster that is already recognized on the east side of 29,
17 isn't that correct?
18 A It could be extended, but there's no need to extend
19 the line in front of this development it's already there.
20 Q But as far as the Ruckersville cluster is concerned,
21 that water line now services it effectively by going to ....
22 does it not?
23 A Well, I wouldn't say that it serves it effectively.
24 I would say it's available to be extended, let's put it that
25 way.

1 Q But doesn't the cluster on the east side go just
2 about to the school?
3 A Just about that far sir....correct.
4 Q And the pipe line goes that far down?
5 A I believe so.
6 Q Now you mentioned and I think Mr.Parker has clarified
7 this, that the population of the sub-division would be approxi-
8 mately 10 percent of the population of the county as projected
9 in the year 2,000 - 25 years from now. And yet that 900 people
10 if Mr. Matthews projections are fulfilled would come into the
11 county ...
12 A About a 10 year period that's correct.
13 Q And they would in fact if you use something like the
14 lines on a graph, be 50 percent of the growth of the county ...
15 A That could be possible.....
16 Q On the point that you have testified to, the bond,
17 Mr. Payne, you have taken the position that since the school
18 should last more than 30 years, the cost of the school should be
19 amortized more than 30 years. Of course the population is not
20 static, it changes does it not with...
21 A Well, that's correct - see you can put three or
22 four generations of children through a school.
23 Q Right, but in fact it - the population has to pay
24 for schools even though they may get the benefit of the schools
25 for 20 years beyond the paying off the bonds? The population for

1 the next 30 years has to bear that full cost, does it not?

2 A Let's put it this way sir, the figures that I was

3 asked to rebutt and the way they were applied were on a per capita

4 basis - right straight across the board. With no consideration

5 for timing or phasing. I'm simply saying that if you are

6 going to pick a cost and put a per capita value on a cost and

7 assign it as a cost against the county, you've got to take the

8 life of the project purchased into account. Because the same

9 people are going to be paying taxes for the last 20 years and

10 the developer or whoever develops land has the right to presume

11 that those taxes are going to be paid and will go back into the

12 school system, as the next generations of children go through.

13 Q Well, I can understand your position that taxes

14 will go on and be paid, but they are not necessarily the same

15 people are they not?

16 A Well, they may or may not be, it depends on whether

17 or not they stay in the county or just who they are. I of course

18 couldn't answer the question as to precisely who they are. What

19 I am saying is that this sub-division certainly will pay its

20 own way and when the bonds are retired, the tax moneys from it

21 can go back into the system. One of the points that I made the

22 other day was that in my findings, this sub-division would produce

23 a surplus not a deficit from its first year development right on

24 through. And on that basis, when the surplus is completed at the

25 end of the thirty year period, that money can be cranked back into

the school system for either operating expenditures or other capital investments.

Q But that is of course assuming a standard ongoing system? And where there were simply a turnover of school buildings - let's assume for a moment that you are correct.....the fact remains does it not that the bonds must be paid for 30 years and that if the population that's in the county for 30 years - those 30 years has got to pay off the bonds?

A That's two generations of children, that's correct. Two generations.

Q Now - none of us can see into the future clearly at this point - has there not been considerable discussion of doing away with revenue sharing - as something the federal government can simply not afford?

A Well, there's been discussion of it, but as a matter of fact, the most recent discussion is the intent to introduce a bill to extend it as of this last week to 1986.

Q Has it been introduced?

A Not yet sir.

COURT:When does the present plan expire, Mr. Payne?

A 1976, sir.

COURT: 1976 would be the end of the present plan?

A Present plan, yes.

COURT: All right, Mr. Slaughter.

Q I have no further questions.

1 COURT: Mr. Payne, I have a couple of questions. It's
2 certainly not often that the Court has the benefit of such
3 distinguished professionals in this field, and I can't allow you
4 to escape without getting some more information from you, which
5 I think will help the court. It certainly is an unusual situa-
6 tion that the expertise which is available here today is available.
7 I think we should take maximum advantage of it, if you will pardon
8 me for going into some of these areas. Now I have some general
9 questions, which I would like for you to comment on if you
10 can answer them, and if they are speculative please say so.
11 A Yes sir.
12 COURT: Knowing the present population and the
13 characteristics of Greene County, can you say what or how much
14 of an increase in population would be desirable over the next
15 20 years?
16 A Well, sir, that answer would be pure speculation....
17 on my part.
18 COURT: As a planner you wouldn't have any opinion on
19 it as to how much population or percentage-wise would be desirable
20 to absorb ...
21 A I would say on an annual basis probably in the neigh-
22 borhood of 2 to 4 percent. The reason it's a speculative
23 answer, Your Honor, is because the county has the responsibility
24 of effectuating this plan through a capital improvements program.
25 And only the county knows what it wants to do. It should not have

speaking purely theoretically, it should not have any material growth of any kind if it weren't going to do anything.

COURT: Assuming that the county would be in favor of accommodating as much growth as it could bear. In other words the public policy would be in favor of accommodating growth, how much could it physically accommodate within realistic figures financially and otherwise?

A Well, again it's speculation, Your Honor, without knowing the details of the current county budget. I would think between 2 and 3 percent per year.

COURT: Is that because of the normal range that planners deal with?

A Yes sir, not only that because of the experience here and the fact that the work patterns are changing. As Mr. Yearwood said in a demand here for surburban homes from the Charlottesville work market - it is increasing. So, the normal figure that we would use would be based on employment sources, in migration, and natural birth and death rates - ratio factors. I think in your case here its averaged between 1½ and 2½.

COURT: All right.

A Historically.

COURT: Now, is it a general proposition that an increase in population through a sub-division such as this works out to a financial gain to the taxing body or financial loss, or is this an unusual situation? Or is it something that again is speculative?

A No sir, it's not necessarily speculative....at least in my experience - I can say this, I think with a degree of candor, that in the 24 years its been my responsibility to work with sub-divisions of this nature, counties which have planned to receive sub-divisions and know what to expect, generally realize a benefit from them. Counties which do no planning or do not realize what sub-divisions can cause in terms of services usually have trouble with them. Now in the case - this situation as I see it, comes at it from two points of view.....from a planning point of view. The county has declared Ruckersville as a growth area. There is a disagreement as to where the line should be. It's my position that if the county is going to choose to control its sub-divisions, it ought to begin to allow them under strict controls in these cluster areas and do more to inhibit the hap-hazard sub-dividing of all of its mountain land, which is what's been occurring in the past.

COURT: Now, from the standpoint of this area, let's suppose these two adjoining tracts of either side of this - well, not immediately adjoining, but to the west at Locust Lane, appears to be open agricultural land, and to a certain extent to the east of the proposed sub-division, there's some open land. Let's suppose both of those areas were proposed as an additional sub-division of equal or greater size. Now, what position would that leave the county in as far as accommodating that much more of an increase?

A I think in most cases, sir, what would be best to do - at least what I would do, is to determine the actual facts with regard to the county's cost structure, what it could accommodate in public facilities and what the developer would work with the county in providing, and then a decision be made as to whether those sub-divisions being in the right location could be tolerated in terms of the degree of growth. I'd like to make this clear to you sir, I don't belive we can flatly say no, and say nothing can happen. I think what can be said by Greene County to a developer is that we can accept some growth and we can do it in this degree. And let's proceed on that basis.

COURT: Well, how valid would it be to say that while we can accept some growth, we don't want it all in one place?

A I think that's perfectly valid, and I think they have selected their areas of growth. And as I understand it they are really in four places. Stanardsville, Corner Store, Ruckersville and Quinque. And that's a very small portion of the county's total land area. What I'm saying is that once that decision is made, then there should be no further argument over growth going in those places.

COURT: Now is it a fact that generally in jurisdictions throughout Virginia and the United States, that growth is becoming the subject of considerable controversy as to whether or not it's

1 beneficial?

2 A Oh yes sir, that's a current going rage in the

3 country.

4 COURT: In other words a lot of areas are deliberately

5 planning against growth or at least undertaking to restrict it

6 severely are they not?

7 A That's correct.

8 COURT: Is that consistent with planning or is that

9 adverse to the general thoughts of planners?

10 A Well, sir, I think that - I take this position

11 if Your Honor please. As far as growth is concerned my definition

12 of the term means a change in conditions with more people moving to

13 an area.

14 COURT: Yes.

15 A My position as a planner is that we can't plan

16 against that. I don't - as a planner I don't put myself in a

17 position of saying I've had the privilege of being here, now no-

18 body else will have that privilege. I don't subscribe to that.

19 What I do say is that I think localities should have and could

20 have done a lot more in accommodating guided and controlled growth

21 than they have. I don't think we can say no growth at all. I

22 don't think that will ever be successful.

23 COURT: Well, would it be valid for a community to

24 encourage growth in view of the present economic and environmen-

25 tal conditions in Virginia or Greene County?

1 A If it had the employment and economic base to
2 encourage a certain amount of growth, certainly sir, for two
3 reasons. Housing is a continuing need in Virginia... and in...
4 COURT: Yes.
5 A Greene County....and a broader employment base is
6 also a continuing need. And Greene County has certain areas of
7 advantage and it has areas of disadvantage because it's in the
8 Charlottesville workshed, so most of your higher salaried employees
9 will go out of the county.
10 COURT: Would this be your statement, that Greene
11 County in its planning would be shirking its responsibilities
12 if it didn't allow for growth from the Charlottesville area
13 as a overflow?
14 A Yes sir, I think that's - as far as I'm concerned
15 sir, it would be totally unrealistic to say otherwise, because
16 that's exactly what will happen. In my opinion sir, I don't
17 believe the police power as I know it, can stop anybody at the
18 county line.
19 COURT: Well, isn't there a wide variation in restrictions,
20 between...
21 A Oh yes sir.
22 COURT: ...one area and another, which creates artificial
23 initiatives for people to move?
24 A Yes sir, and this is why I'm an advocate of having
25 good standard ordinances.

1 COURT: Why should one community be less restrictive
2 than another - if they are moving out of Albemarle, isn't it
3 because it's too restrictive and they move to Greene because
4 it's not as restrictive?
5 A Well, it may or may not be according to the
6 individuals case Your Honor, but in many cases it is the dollar
7 or the amount of dollars that an individual has to spend for a
8 home.
9 COURT: Yes.
10 A That triggers where he will move.
11 COURT: Well, is that based on the development costs
12 of the land or the building costs of the improvements?
13 A It's usually the costs of the improvements and the
14 finished lot, which may or may not be a result of ordinances.
15 COURT: I wouldn't think that the costs of a building
16 in Greene County would be any different than the costs of a
17 building in Albemarle as far as the number of square feet, would
18 it?
19 A Well, in square footage no, but I think depending
20 on the builders and what market they are going for, this will have
21 a great deal to do with the type and cost range of a house.
22 COURT: What I'm getting at isn't there danger here
23 that Greene County is going to have to absorb the cast off
24 of the other communities, who won't be accommodated there because
25 of increased restrictions in Albemarle County?

A I would say a very slight danger of that, sir, but only in the sense - only in the sense that the quality of the controls and the administration of those controls would lapse. I think that if Greene County has good ordinances, and sound administration, which it's working towards and probably has right now, there's no reason why it couldn't accept this growth.

COURT: I see.

A In its preselected areas. I do think that without any doubt Greene County has the responsibility of preselecting areas for growth and now in 1974, they have done this. What I'm saying is that this is a far more realistic and honest approach to the future than it is to say no.

COURT: Well, you I take it are fairly familiar with the total area around Greene County?

A Yes sir.

COURT: Is it not a fact that there wouldn't be this demand for development inGreene if Albemarle and some of the other areas were not getting increasingly restrictive?

A Well, not entirely Your Honor. There are several things that get into it. First and foremost, is employment.

COURT: I see.

A That is the first and foremost thing. The job, the location of the job is all controlling. And then there are tangential elements that control it. The cost of the unit with

1 restrictions placed on a developer place a different market
2 range on the unit provided. For example, up until last year
3 it was impossible to get a mobile home development of any kind
4 in Albemarle, where you could locate them all over Greene
5 County.
6 COURT: Yes sir.
7 A Well, that's a result of no restriction versus
8 heavy restrictions. There's no medium to deal with that kind
9 of thing. The other thing is that this area because of its
10 beauty is attracting people who want to live here permanently.
11 They want to come here for the park, they want to come here
12 because of the amenities offered, they want to come here because
13 of the many, many miles - and I disagree with Doctor Yearwood
14 on this, a lot of people come here to live because of the hundreds
15 of square miles of that National Park up there, that they can
16 get to very easily. Some of my friends live here for that
17 reason, but I'm saying that the influence of homes here is going
18 to continue on that basis and Greene County because of the
19 economic structure, I believe Your Honor, should look toward
20 broading its employment base so all of its people in the lower or
21 middle income groups do not have to leave the county for work.
22 And I think that's what they are trying to do by establishing
23 these clusters. And of course my final point would be that when
24 they establish a cluster for growth, I think they mean that this
25 is a place to work, it's a place to play and it's a place to live.

1 And how well they succeed depends upon how well they administer
2 their code.
3 COURT: I take it that your proposition as already
4 advanced is that you differ with the other planners or those
5 who are in the Thomas Jefferson District have indicated that
6 there would be a financial deficit to the county administration -
7 you say that it would be a financial gain to the county, such
8 a development?
9 A Your Honor, let's put it this way, I must go back
10 to your instructions to me. The Thomas Jefferson District
11 took an academic study prepared by a Washington Research firm,
12 on a situation that existed in Albemarle County - Hollymeade.
13 That is a situation which is not yet factual. Hollymeade is
14 less than 4 percent developed, therefore the exercise - I stated
15 to the Court, that it was academic for that reason. It's not
16 based on fact.
17 COURT: You're saying that there's no ....no basis on
18 which anyone could make an educated estimate either way?
19 A That's...
20 COURT: That you couldn't say it would be a profit or
21 it would be a deficit?
22 A That's right, sir. I'm saying that my study by
23 your instructions was narrowed exactly to the methodology that
24 was used by Mr. Evans. I did not go beyond that. But I do not
25 agree with the methodology and the only one that I would agree with

1 if the Court please, would be one that would be based on the
2 financial analysis of Greene County's posture within the State
3 of Virginia and the federal budget structure. And only that
4 way would I begin to approach it.
5 COURT: Well, is it because of environmental impacts
6 then that growth is becoming so restricted in many areas, which
7 previously had incurred growth, such as this?
8 A That's correct sir. And the jurisdiction in which
9 I have the honor to be director of planning for so many years
10 the problem that came to pass, unbeknownst to those of us
11 who started in the planning situation down there - we never realiz-
12 ed that the cost of storm drainage for example was going to exceed
13 the cost of schools, but that was because the ..in the days of
14 the formation of planning in Virginia we did not have control
15 through site plan ordinances. We hadn't the ability to control
16 off site drainage from development. The environmental impacts
17 of these things certainly were a budgetary consideration. The
18 difference is now, if the Court please, is that Greene County has
19 the opportunity to benefit from those experiences and can - it
20 obviously is working on ordinances to alleviate them to a certain
21 degree. I think the position that I'm taking sir is that the
22 county government is not organized to provide development, it's
23 organized to regulate it in some form. And the purpose of a
24 developer is to bring the houses to the people that need them.
25 And that's....

1 COURT: Suppose we analyze this point, as I understand
2 it....now, at the last judicial conference we had a professor
3 from the University of Missouri on environmental law, who indicat-
4 ed that there's a considerable growth of opinion among planners
5 now which is somewhat indicative of the thinking of the State of
6 Oregon, to this extent. That Oregon has abolished its State
7 Chamber of Commerce and its State slogan is now - walk into
8 Oregon but please don't stay...
9 A Yes sir.
10 COURT: Is this generally recognized to known planners
11 as the way the wind is blowing?
12 A Yes sir, there's a lot of discussion about this
13 among planners. I don't think that there is any broad spectrum
14 of agreement among planners, that any area can plan so that
15 nothing will change.
16 COURT: You're saying that if Greene County says welcome
17 to Greene County but please don't stay, it would be invalid?
18 A This is my opinion sir because my feeling is based
19 entirely upon the individual rights in terms of that individual
20 who comes here and buys either a farm, a recreational lot, a
21 sub-division lot or a parcel of ground....he has that right. And
22 if he does it, then there isn't anything that this county or this
23 state or this country can/do to keep him off of it.
24 COURT: What about the farm though that is proposed to
25 become a sub-division, now that's the point that we have here?

1 As it now stands although the preliminary plat was approved,
2 it was a transition from agricultural to sub-division property...
3 it brings us back to this question. Does the public policy of
4 this county have a valid objective in saying to this man, leave
5 this as a farm and don't make a sub-division? Is the county
6 forced to acknowledge it and say that if its got to be done,
7 this is as good a place as any?
8 A In my humble opinion sir, again representing
9 the fact that I am on Mr. Matthews' side in this thing, I think
10 that they have two things to consider. As a planner, Ruckers-
11 ville has been selected as an area of growth, that being so
12 the construction of sub-divisions ought to be allowed in that
13 area, as well as industrial, commercial developments along with
14 the other things. Second, this county had an ordinance on its
15 books which Mr. Matthews, I think to the best of his ability,
16 abided by - the sub-division ordinance. And I do not believe
17 it is a valid thing, given the location of the sub-division to
18 bring him forward to an approved preliminary plat, and the ordinance
19 itself quite clearly states that you have six months in which
20 to prepare your final plat. And as a matter of experience these
21 things do cost a great deal of money, there are engineers who
22 can testify as to what they cost - and Mr. Matthews has his bills,
23 but that would be true of any development. The point is I don't
24 think that you can say now you go out and spend all this money,
25 do your plat, we'll give you six months to bring the final in.

And if the final is brought in and it isn't approved then you have lost it or if you don't make it in six months you've lost it - that's a valid thing, but he did that. He brought his plat in in good faith, he worked with the county, as far as I know there was no major disagreement; the plat was brought in for approval. It was approved. He went ahead with the six months and got the final done. I believe the county is obligated to consider that fact.

COURT: Because of the steps that he had taken?

A Yes sir under the ordinance that he considered, I believe that's true. I would not have that same feeling if this were just something, a speculative venture. Where Mr. Matthews or myself or anyone else had gone out here and bought a farm somewhere and then came in and hollered like the dickens when they adopted the plan - said, no I want to sub-divide the land. No sir, that's nothing.....but this is a bonafide sub-division ...

COURT: Isn't it typical when zoning is about to be enacted that there's a great rush to the gate to get through before the gates close?

A I thought about that sir, but I read that interim ordinance very carefully. And somebody gave this a lot of thought before I saw it. Because in it is quite clearly stated, quite clearly stated, that anyone who has a preliminary approved plat, and hasit begun.....that indicates to me that there was

1 ...the county was concerned about being fair with these people.

2 COURT: In other words you consider the way the

3 ordinance was drafted to be consistent with good practice and

4 planning, to allow for such a situation as this?

5 A Yes sir, they wanted to be fair with people.

6 And I think that they did that. And of course that's the

7 difficulty with me in this case, because I think this plat was

8 presented in that light and with that intent. I have difficulty

9 in understanding why it was not approved.

10 COURT: Thank you very much, Mr. Payne. Counsel may

11 have some questions in connection with what the Court has

12 raised in this discussion with Mr. Payne. Thank you very much.

13 You may stand aside.

14 A Thank you, Your Honor.

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JAMES HARRIS, having been previously sworn, was recalled and testified as follows:

DIRECT EXAMINATION

BY: Mr. Parker

Q You did testify before and your name is?

A James Harris.

Q Yes sir. Mr. Harris,.....

COURT: Mr. Harris is being recalled I take it and I think he should be resworn.

(Mr. Harris sworn.)

Q This is your plat and I asked you that same question before?

A Yes sir.

Q I apologize. In making up this design for land - for this land use, did you take into account the factors which would effect the ultimate payout on the land, that is did you take into account - for instance, you could have had 1 acre lot sizes, 2 acre lot sizes, 10,000 square feet lot sizes, 5 acre lot sizes, did you take that into account when drawing up this plan?

A Yes sir.

Q Did this particular piece of paper have anything to do with what you decided was a feasible development on the ground for this development?

A Yes sir.

Q What is this particular piece of paper?

A This is a soil map prepared by a soil scientist that we hired, Mr. Kaster, from Prince William.

Q Did you...

SLAUGHTER: If the Court please, I ..... of course this is not a jury trial. . .but Mr. Harris cannot. . . I don't really think Mr. Harris can testify on that - only Mr. Thornton can.....

Q Well...

COURT: Only to the extent that he used it. He doesn't

1 vouch for its validity, but the fact that he used it.

2 A No sir.

3 Q I propose to have Mr. Thornton testify about this

4 in a general way, Your Honor, and I will interrupt the testimony....

5 it's a question of what came first...

6 COURT: The only question is whether he used it, it

7 seems to me, and whether or not it was valid - he may state who

8 did it.

9 Q Yes.

10 COURT: I think that should be done for the record,

11 but I'll consider whether it will be admitted into evidence, but

12 he certainly can state what he used, whether it's admissible in

13 evidence as an item - as an exhibit or not.

14 Q Did you - you did use this - can you tell us

15 what it shows in general terms, shows to you?

16 A It was prepared by....

17 Q What did it mean to you?

18 A Well, I engaged a soil scientist to give me the

19 qualities of the soil that we were preparing to develop.

20 Q And if you will please, tell me what it meant to

21 you - what these marks mean on there?

22 A Along with this we have a report, which you have in

23 your hand over there.

24 Q Yes sir. I'll be glad to give it to you, because

25 it looks like I've been remiss in that connection twice, Your Honor.

A This report was prepared by a soil scientist...

COURT: What was the name, Mr. Harris?

A His name was Dwight Kaster, excuse me...

COURT: Kaster?

A Kaster...

COURT: Dwight Kaster?

A K-a-s-t-e-r....Kaster.

COURT: All right.

A From this report and this soils map is where I based my design of my sub-division on.

Q Well...

A Why we elected to use this in lieu of another.

Q What do these hash marks mean on this plat? What do they mean to you?

A These hash marks are the soils that are definitely, according to the report unsuitable for drainfields.

Q All right.

COURT: What's the coloring of those which are unsuitable now, Mr. Harris, as far as...

Q The hash marks, Your Honor...

A They are hash...

COURT: Oh...

A The hashed area.

COURT: All right.

Q Mr. Harris, now I'm going to ask you. You previously

1 indicated your qualifications to the Court?

2 A Yes sir.

3 Q Suppose you were to have to go back and taking this
4 property - the report like this.....suppose you were to have
5 to go back and divide it up into 2 acre parcels.....you were to
6 divide it up into 2 acre parcels,approximately.....I know this
7 will take more study than you are able to detail.....to give a
8 detailed answer....

9 A Yes.

10 Q But approximately how many lots could you get in
11 there on the ground in this development?

12 A If the ground were - you know, completely good
13 all the way across....

14 Q Which is not the case?

15 A No. We could expect approximately 80 percent.
16 This is normal output of lots on ideal conditions.

17 Q What would be the other 20 percent?

18 A Roads, drainfield areas, you know, the different
19 traffic patterns that may come up. The configuration of the
20 ground, the topography - all of this.....considering that in
21 the ideal conditions you are going to lose about 20 percent.

22 Q In other words if this were all perkable land, if
23 I can put it that way, you could utilize 80 percent of the land
24 area - Mr. Matthews' land area in lots?

25 A Right.

Q In 2 acre lots?

A Right, sir.

Q And in those - how many acres does he have, refresh our memory?

A He has 111 acres plus.

Q If all the land were perkable, how much - how many lots could you put in there....now, allowing 20 percent - allowing what you think is proper?

A All right. The maximum he could use if every acre was available - you have 111 acres which will produce 55 lots.

Q All right, sir.

A But you take 20 percent of that off, or 80 percent times that and it will give you the amount that you would normally expect to get.

Q That would be 40 - that's matter of calculation...

COURT: You don't need to go through the calculation. He's given the percentage and number there's no sense in spending time going through the exercise of arithmetic....

Q I have a reason, because I'm going....

COURT: Well, figure it yourself then. Don't ask the witness, you can apply the arithmetic....

Q That would then be 44 lots.....the question is now about how many, with this study that you applied, about how many lots of those 44 could you in effect in this sub-division,

1 shifting them around as best you could?

2 A May I state it this way, sir. We are losing

3 approximately 40 percent of ground when definitely - according

4 to the report it is not suitable for drainfields.

5 Q All right, sir.

6 A There is certain areas that - another possible 10

7 percent that is questionable. And so therefore you are leaving

8 about 50 percent. So we are using some of the bad land...

9 Q In the...

10 A In the lots,with the lots - we are probably talking

11 in the neighborhood of producing around 30 lots.

12 Q Around 30 lots?

13 A Yes sir. This is providing those lots will pass

14 the health,perk test...

15 Q How much money have you had to charge to Mr. Matthews

16 to date with respect to these plans?

17 A The boring, the soils report, and the boundary check

18 and the topo, starting with the preliminary to the final, I have

19 billed Mr. Bennett Matthews, for the preliminary plan - $1,500.00,

20 and $10,000.00 for the final.

21 Q All right.

22 A As it stands right now.

23 COURT: Was that billed at the time of the zoning

24 appeals hearing, of the board of zoning appeals hearing of this

25 matter?

A I billed the - Mr. Matthews, I think in the end of August. I had already been paid for the preliminary.

Q But you had ....

A I'm not sure the date I billed him.

COURT: Were you at the hearing of the board of zoning appeals?

A Yes sir. I'm sure that that - the bill was submitted by that time, yes sir.

Q When -were you aware of the fact that having submitted a preliminary you were limited to submitting a final within six months?

A Yes sir...and we did sir.

Q Answer Mr. Slaughter's questions.....or Mr. Dickey. Your Honor, I have neglected something before they cross examine.

COURT: Go ahead. Go ahead with it.

Q With respect to the roads, what - if this were plated out in two acre lots, what sort of a road would you have to put in there then as opposed to the sort of road that you've got planned right now?

A We would put in a state minimum road, and we would have to go all the way to the rear of it.

Q Is that...

A Approximately through the center of it.

Q Is that effected by the shape of the plat...I mean of the tract?

A Yes sir.

Q By the way while I have you here, I notice this little red mark up here, where is the sewer area - the sewer plant going?

A In this area right here - with a raise of 300 feet.

Q Would you put a little blue mark with that pen on the plat there please sir?

A Well, it's approximately here. It has to be 300 feet from the boundary property line.

Q Here, not here?

SLAUGHTER: What's that the sewer?

Q Sewer.

A Sewer treatment plant.

Q All the way across the tract, from where the gentleman testified..... what is a good planning cost for the kind of road that you would have to put in, if you went to two acres, from this point to this point?

A All right, there's approximately 4,100 feet across the tract in entirety. I would say you would roughly have 4,000 feet and these circumstances we would probably be running between 20 and 22 dollars a running foot.....road construction.

Q Now, have you computed that figure?

A That figure would be approximately 80 thousand dollars.

Q 80 thousand dollars?

A Yes sir. Now this is limited to whatever the contractor will charge at the time of the construction.

Q That's what you would expect?

A Yes sir.

Q Now I beg your pardon Your Honor I'm finished with the witness.

COURT: All right, Mr. Slaughter.

SLAUGHTER: Mr. Dickey will take it Your Honor.

CROSS EXAMINATION

BY: Mr. Dickey

Q I have very few questions. You testified that you could get about 30 two acre lots out of this land, I take it?

A This is an expected.....I have not redesigned it...

Q And the extra land you've got, you would add to the lots, to the two acre lots?

A Yes.

Q So you would actually get 30 - 3 acre lots after 20 percent ...

A It would probably average that, sir.

Q All right. You did - you were told by Julius Morris weren't you that the county had passed an ordinance, and you actually bought a copy of the zoning ordinance from him on March 4, did you not?

A March 4? No sir.

Q March 5?

A I had previously bought one during the fall of '73.

Q I say a copy of the zoning ordinance right after they printed it, the next day after it was printed off, is that right sir?

A I personally did not.

Q Mr. Morris did tell you did he not, before - when you brought in your plans for the sub-division they were considering a zoning ordinance?

A Yes.

Q And he kept you apprised of the zoning deadline did he not?

PARKER: That has not been refuted, Your Honor.

COURT: I don't believe it has either. He hasn't undertaken to refute what Mr. Morris said....

Q With that question, Your Honor, I rest.....

COURT: Any other redirect?

PARKER: Not at this time.

COURT: All right, Mr. Harris, you may stand aside. Thank you.

PARKER: Now sir, Mr. Thornton.

COURT: All right, Mr. Thornton.

JOHN THORNTON, having been previously sworn, was recalled and testified as follows:

DIRECT EXAMINATION

BY: Mr. Parker

Q I believe you stated earlier in your testimony you went out there and you looked at this - have you had occasion now to look over this soil survey?

A Yes, I have.

Q Is it consistent with your findings?

A I can make a limited statement, based on 15 holes on the upper areas, near the top of the ridges, using the topography lines on this map...

COURT: Well, wait .....just answer the question. Can you or can you not say that it's consistent? If it's not, say so and if it is...

A I cannot....

SLAUGHTER: May it please the Court.....

A ....vouch for the whole area....

Q He cannot vouch for the whole area, the only question.....

COURT: Well, answer .....his answer then would be no...

Q No sir, that would not be his answer.

COURT: What is it then, Mr. Parker?

1 Q His answer would be sir, that he - that it
2 is consistent I think with what he has done, based on so much
3 study as he has done.....and that's.....
4 COURT: Now, Mr. Thornton, you are saying that you
5 cannot answer the question in its entirety...
6 Q Your Honor, I must object to the Court's question.
7 A I....
8 Q I believe....
9 COURT: This witness has not responded to the question,
10 Mr. Parker, and an objection was undertaken to be made. Now
11 I'll hear the objection before the Court admits the answer.
12 SLAUGHTER: May it please the Court, I object on the
13 ground that this plat and Mr. Thornton are unrelated totally.
14 Mr. Thornton has gone out and made certain drillings and come in
15 with a certain conclusion. Mr. Harris at least used this as a
16 basis for the preparation of the sub-division and for that limited
17 purpose - while I didn't agree with the Court, I can understand
18 the Court's ruling to let it in. I see no grounds for admission...
19 COURT: That's not admitted into evidence. The whole
20 question is whether Mr. Thornton would disagree with Mr. Harris
21 or what Mr. Harris has used as a basis for his dividing of the
22 lots. Now if he'll answer the question, fine - I'm not sustaining
23 the objection that way,but he has not responded to the question.
24 Q I can understand that.....
25 COURT: It leaves the question unanswered in the way you

1 proposed....

2 Q Let me try to get at it a different way....did you

3 go - I may have to repeat just a little bit in order to get

4 there...

5 COURT: All right.

6 Q That's what I was trying to avoid doing. Did you

7 go on the property and make 15 holes?

8 A Yes, I did.

9 Q And where did you make those holes - show us on

10 the plat?

11 COURT: Mr. Parker he's going over previous testimony...

12 Q I tried to lay a foundation for the question proper-

13 ly...

14 COURT: Well...

15 Q So the witness will understand it....

16 COURT: The question is whether he's examined the

17 plat and can identify on there where he was when.....

18 A I cannot pick out exactly where ...looking at this

19 plat right now.

20 Q Can you just pick out approximately where you were

21 when you made these holes?

22 A I can make a general statement.

23 Q All right, sir, would you make the general statement

24 with respect to where you-did your findings conform with this

25 plat, so far as the findings you made? So far as you did make

1 findings?

2 A So far as I did make findings, to use your words,

3 on the ridges as located on these plats - you can see the

4 ridges here, here, top here, etc.....where I did make findings

5 near the top of the ridges, based on the definitions of these

6 number codes, as .....as provided to me. It did generally agree....

7 in these areas. I will say that much.

8 Q All right, sir. And you also examined lower areas,

9 some lower areas, because you were able to state that certain

10 portions of the land would be unsuitable?

11 A I examined it by looking at them without digging

12 any holes.

13 Q I see. All right....

14 A You can see the water there.

15 Q You can see it there?

16 A Yes. It's not necessary to dig the holes. ....to

17 see the water.

18 Q And those lower areas were - were those water areas

19 the general areas of the hash marks on this plat?

20 A In general, yes.

21 Q That's all. Thank you. Answer Mr. Slaughter.

22 COURT: Go ahead, Mr. Slaughter.

23 SLAUGHTER: We have no questions.

24 DICKEY: We would ask that he be excused.

25 PARKER: Now, Your Honor, I think he can.

COURT: All right, Mr. Thornton, you are excused, thank you very much.

A Thank you.

PARKER: Mr. Matthews.

BENNETT T. MATTHEWS, having been previously sworn, was recalled and testified as follows:

DIRECT EXAMINATION

BY: Mr. Parker

Q All right, Mr. Matthews, if you were to start now....if you were to take the position right now.....you were going to abandon this project as you had - as you had submitted it to the county, how much money would you have invested, providing you did abandon it?

COURT: Now Mr. Parker in what way are you rebutting the testimony that this defendant has presented today? You are covering the same ground you covered when you put your evidence on in chief.

Q Your Honor, no sir, in the defendant's case today he established - he made an effort to establish that by the use of two acre lots, Mr. Matthews could avoid a hardship because if he had two acre lots, it would pay out. The question of hardship was very much in this case. I propose that you take Mr. Matthews testimony and other testimony elicited here .....take their

1 figures -their 5 to 7 thousand dollar figures on these lots
2 and show that if this sub-division were...
3 COURT: That has nothing to do with the cost he's
4 incurred up to date, now, Mr. Parker. That has to do with the
5 value of the three acre lot or three .....now, you are talking
6 about what he's already testified to as his cost. Nobody has
7 refuted that today.
8 Q I understand that but ...
9 COURT: Now, I'm ruling that you are not going to be
10 permitted to reiterate what he's already testified to.
11 Q May I.....
12 COURT: Unless his cost has changed since last week.
13 Q No sir, I only want to get in for my purposes ...
14 COURT: No sir, Mr. Parker, that's not the purpose of
15 testimony....it's for the purpose of the record and the Court,
16 not counsel.
17 Q I ...
18 COURT: If you don't recall it, that's your hard luck.
19 Q I recall his testimony....
20 COURT: I'm not going to allow you to go over the
21 same thing.
22 Q I recall that it was $18,000.00...
23 COURT: Now, it's obviously in the record.
24 Q All right, sir. Now, Mr. Matthews, you have already
25 stated that your purchase price was $48,500.00 for the land, is

1 that correct sir?

2 A That is correct.

3 Q If you were to build a road in ...considering your

4 profession and your qualifications, is it true that the road

5 would cost in the neighborhood - well, what is the figure, so

6 we won't have a problem? What is the amount...

7 SLAUGHTER: Judge, I object - we had that in the...

8 from Mr. Harris, who was qualified as an expert.. I really...

9 COURT: Well, it's repetitive but he hasn't covered

10 that area. I don't see why you would need to add to it, Mr.

11 Parker. But as the owner, I think Mr. Matthews is entitled to

12 testify to it, if he's got any different figure. He's not bound

13 by the other witness. The objection is overruled.

14 Q Please answer the question? Do you remember the

15 question, Mr. Matthews?

16 COURT: What's the cost of the road?

17 A The cost of the street?

18 COURT: Yes sir.

19 A The estimated cost would be between 80 and 100

20 thousand dollars.

21 Q All right, sir.

22 A Conservatively.....for two acre lots.

23 Q If you had to put a septic system on one of these

24 two acre lots, what would it cost on the average?

25 A Based on a 30 to 35 lot sub-division, the estimated

1 cost of septic tanks and septic systems would be 52 thousand
2 dollars.
3 Q What figure do you -- are you using per lot?
4 A 15 hundred dollars per lot.
5 COURT: Cost to who, now, Mr. Matthews?
6 A The cost of putting in....
7 COURT: Now would you put in a septic tank in a
8 development lot before the owner bought it? You are talking
9 about your cost now or somebody else's cost now?
10 A I think the intent is to - we have sewage - central
11 sewage on the other, Your Honor...
12 COURT: You are talking about individual septic
13 tanks, now, you are saying that that you would put those in
14 before you sold the lots?
15 Q If he sold them with them in there.
16 COURT: What ...in what building trade would you put a
17 septic tank in a lot before you sold it?
18 A Well, I never have sold a lot.
19 COURT: All right, now, Mr. Parker, that question is
20 speculative. He hasn't indicated that he proposes to put septic
21 tanks in these lots, if they are individual systems.
22 Q The figures that the county, Your Honor, gave
23 based on the lots - the gentleman they had testified - was it
24 based on lots that - with or without a septic system?
25 COURT: He didn't say anything about it either way.

You didn't ask him. The question is considered immaterial here, and speculative.

Q All right, sir.

COURT: Now as to what it would cost an owner, that's another thing, but it hasn't been indicated that it cost Mr. Matthews anything.

Q All right, sir. What then would be ....that's all right, sir, I'll rely on the figure as stated....no point in my asking Mr. Matthews .....Mr. Matthews answer Mr. Slaughter's questions.

SLAUGHTER: No questions, Your Honor.

COURT: All right, Mr. Matthews, you may stand aside.

PARKER: We rest.

COURT: Any rebuttal?

DICKEY: Could we....

COURT: All right, you may consider whether you will call any further witnesses, go ahead, sir.

DICKEY: We rest.....

JAMES HARRIS, having been previously sworn, was recalled and testified as follows:

DIRECT EXAMINATION

BY: Mr. Parker

Q Just one question, Mr. Harris. What would it cost

to redesign this plat in order to submit it to the county in two acre lot sizes?

A It would be normally two hundred - two hundred-fifty dollars per lot.

Q Which would come to - all right, sir, we'll calculate that. I see it's getting late in the day. Thank you sir.

CROSS EXAMINATION

BY: Mr. Dickey

Q The same figure with three acre lots?

A Yes sir.

Q Thank you.

PARKER: That's all I have.

COURT: All right, Mr. Harris, you may stand aside. Now,....

PARKER: I appreciate the Court's indulgence.

COURT: Yes sir. Anything to refute that, Mr. Dickey? Any evidence to refute Mr. Harris' testimony?

DICKEY: No.

COURT: All right, I take it both sides rest.

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21 PARKER: If the Court please, I can hit only the high

22 spots. The problem here, we have gone into a lot of testimony

23 today about what would be essentially a zoning case. How can

24 Ruckersville be zoned? That is respectfully not the issue before

25 the Court. We are not dealing with the entire aspect of Greene

1 County, although it is possible to think in terms - that has some
2 bearing on the question. But we are not dealing with the entire
3 development of Greene County. We are dealing with the question of
4 whether this one development and the peculiar circumstances appli-
5 cable to it is entitled to the special use permit. The Court
6 please, the case of Fairfax County v. Medical Structures, 213 Va.
7 355, is not precisely in point as a factual matter or as a legal
8 matter because it involved a site plan and a subsequent request
9 for a use permit. That was involved in that case and that is
10 not the precise situation in this case. The Court please, that
11 is a case which factually comes into the precise problem that we
12 have here. The Supreme Court said in that case, we hold that
13 whereas here a special use permit has been granted under zoning
14 classification - they granted a use permit and then they wouldn't
15 allow the site plan.. a bonafide site plan has thereafter been filed
16 and diligently pursued and substantial expense has been incurred
17 in this case to avoid change of zoning. Permittee has vested
18 right to land use and cannot be deprived of such by subsequent
19 legislation. That in essence is what the situation is here.
20 We have a man who came to the county, and fulfilled his re-
21 quirements of then existing ordinances. And he then proceeded -
22 and he expended money on the basis of that, a fair amount of
23 money, before the hearing. And in order to protect that invest-
24 ment because of the ordinances then in effect in this county, he
had to expend more money in order to perfect that plat to file
25 it under the sub-division ordinance. Now those are his circumstances.

They don't relate to anybody else. They don't relate ...as far as I know, they may be related to somebody else, but they don't - as far as this Court is concerned right now, they don't relate to anyone else. They are not a general zoning problem of this county - they relate to this man. He is asking for a special exception, and I think because of the policy laid down in that case - not precise case - the policy laid down in that case, he's entitled to that special exception. Now the ordinance in this case based - the ordinance seems to recognize the same problem. It gives a presumption in his favor in the event there has been a hardship. Your Honor, I have tried to add up the county's figures, the Court can do this later, I don't have but so much time. The figures and the Court has them all.....they come to 100 thousand dollars, 80 to 100 thousand dollars for a road, 18 thousand dollars that he has invested along the lines of - right up to now, in order to keep that plat current, in order to do what he had to do under this ordinance. Because under this ordinance in order to have this presumption he had to continue to comply in the future with all relevant time limits prescribed by the Greene County sub-division ordinance, that is the words of the ordinance. He did that and he got this presumption on that basis. 100 thousand dollars, 18 thousand dollars, 48½ thousand dollars for the property, 166,500 dollars Your Honor has been committed to this idea.....166,500 dollars plus 7,000 dollars for redesign - that's

1 the figure I compute - you all may refute that. 250 dollars
2 for three acre.....I can't remember the exact figures, the
3 Court will remember.....30 lots.....comes to a total of
4 173,500 dollars. Now, if he went to two acre lots, which is
5 what the alternative is as suggested to us, at 6,000 dollars a
6 lot for the 30 lots would be $180,000.00. Your Honor, you cannot
7 expect a developer to go into a proposition to make 7,000 dollars
8 proper on the land on $180,000.00 investment - that will not
9 wash. He cannot turn around at this point in the game. This
10 is peculiar to this case, this is peculiar to this case, and
11 is bolstered by the fact that that land won't perk. I'm sure
12 Mr. Dickey had Mr. Thornton go down there to find that the land
13 would perk just fine - the fact that it wouldn't perk just fine,
14 the distinction between Mr. Thornton's testimony and the informa-
15 tion this gentleman relies upon is 5 percent - 5 percent. He
16 said 45 to 50 percent would definitely perk, our estimate was
17 that 40 percent would definitely perk. That is - there's no
18 leeway there, that's not a disagreement - that's an agreement
19 of evidence. Now Your Honor I come back to what I said in
20 the motion to strike.....when does the county get a presumption
21 of - that the proceedings, that the conclusion of the proceedings
22 were correct,with respect that the facts as judged by the county
23 were correct, They get that presumption when they apply the
24 right law. And if they apply the wrong law sir, they do not
25 get that presumption. They don't get it there and they don't get

1 it here. Because when they apply the wrong law this Court
2 must tell them that they are wrong. The Court has no choice
3 as to doing that. There are in reality two - there are in
4 reality two sub-divisions - there are in reality two requirements.
5 One is the Court judged from the evidence that should have been
6 viewed by the board, most favorable to the law; if the board
7 used below the right law - because if it didn't use the right law
8 this Court can't - cannot give them the benefit of a doubt.
9 Now sir, they did not use the right law, not only because of
10 the question of the proposed plan, not only because they took
11 it into account in a way that it ought not to have been taken into
12 account, but also because they took things into account they
13 ought not to . It is obvious from the testimony of Mr. Lamm,
14 that they took things into account there which should not have
15 been taken into account. They took into account public opinion
16 and so far as that public opinion - there were 20 people who showed
17 up there on the issue of public opinion, and didn't get in the
18 minutes, but Mr. Lamm said they testified with full sway and they
19 gave full sway to what they had to say. Mr. Lamm's statement
20 before the BZA, the board of zoning appeals - his statement that
21 is in the record, shows that they did give it full sway...full
22 sway to public opinion at that time. Public opinion sir is not
23 involved. It is a non-legislative hearing. It was conducted
24 as a legislative hearing essentially. It resulted in that kind of
25 a determination but that was not the kind of determination that

1 the board was entitled to make.That being the case, sir,
2 it seems to me that the Court must in this case come back to
3 the proposition of what it has heard here today. I respectfully
4 suggest that what it has heard here today - this is an appropriate
5 method of development.....an appropriate method of development.
6 It might not be allowed as Mr. Payne stated, it might not be
7 allowed if it weren't this case....this case of thisman coming
8 in here, who tried to live up to the law as it was, and got
9 caught...got caught by a change in the law as time went on.
10 Your Honor, he is bound by the law, as it exists, but he does
11 gain property rights and substantial rights when he undertakes
12 to do what he did in this case. The ordinance provided for it -
13 all we are asking for the Court to do is hold the county to its
14 own ordinance.
15 COURT: All right, Mr. Slaughter.
16 SLAUGHTER: May it please the Court, I just want to
17 talk for 10 minutes at the most, and perhaps not even that long...
18 to leave some for Mr. Dickey.....Mr. Parker of course has attempted
19 as is his duty to put this man in the best light at this time,
20 and of course we can't criticize him for that. But I think you
21 really have to come back to the proceedings that we had here,
22 Your Honor, which I think Mr. Parker tends to forget. This is
23 a certiorari hearing as a result of a petition by Mr. Parker's
24 client, having had an adverse ruling by the board of zoning appeals,
25 of Greene County. That board had a right to pass on this - Mr.

1 Matthews' petition for a special use permit. Let me review
2 briefly, because I think it's important. What the situation
3 was .....Mr. Harris said in response to Mr. Dickey's question
4 that he had bought a copy of the zoning ordinance back in
5 the fall of 1973. Now that was not the zoning ordinance as
6 ultimately passed, but it was clear that he was aware that a
7 zoning ordinance was in the process of being considered by
8 Greene County. On February 4, Mr. Matthews through Mr. Harris,
9 made a letter application, which is in the file, for a sub-
10 division. Mr. Morris in the best of faith told him right away
11 that the ...that it was not permitted in Greene County and
12 that there was a revision by February 26. At this time Mr.
13 Morris stated that he did discuss the zoning, impending zoning
14 ordinance. Thereafter the ordinance was passed - Mr. Parrott
15 an employee of Mr. Matthews, was there. Mr. Matthews and Mr.
16 Harris then came in subsequently to talk to Mr. Morris about
17 a-hardship, if I recall Mr. Morris' testimony correctly, and
18 b, the requirements of the zoning ordinance. Nothing else was
19 heard - nothing certainly within the three months after passage
20 of the zoning ordinance which was only five days after Mr.
21 Matthews had filed the preliminary plat. As August 26 approached,
22 which was the six month period, six months within which Mr.
23 Matthews had to get his final plat in, Mr. Morris called him to
24 alert him to it, and Mr. Matthews did on the last day get his
25 plat in. He did not turn in a list of landowners and their addresses.

1 Mr. Morris called him again and they allowed a correction in
2 that. During all of this period it was anticipated, no one
3 had been questioned about the fact, no one has ever challenged
4 the fact that Mr. Morris had to have a special use permit
5 from the board of zoning. And Mr. Matthews made one mistake
6 which is unfortunate and which may have cost him more money
7 than he had to put out. He did not consult counsel in Greene
8 County at that time. And the problem is that he waited until
9 after he put in his final plat before going to the board of
10 zoning appeals. Mr. Morris has testified that under the practice
11 he could have gone to the board of zoning appeals, based on
12 the preliminary plat, which means he could have done it within
13 a month after passage of the board of zoning - of the zoning
14 legislation. And had he done that, all this additional cost
15 to which he testifies now would not have been necessary and would
16 not have been incurred. On the question of hardship, there
17 are a number of ways of looking at it as the Court knows, but
18 the ordinance is quite clear in its definition of hardship.
19 Under the special use permit section, which is 5-3....5.3-1.
20 The sub-division is ....the presumption is permitted where land-
21 owners show hardship to rebutt the presumption in favor of
22 the granting of such special use permit ....on said sub-division
23 is preliminarily improved and in such provisions of the sub-
24 division ordinance. What is hardship? The ordinance clearly
25 tells us - goes back and refers to the standard of hardship

under the variance section, which is 5.2.....and there hardship is defined as such.....the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended care and purposes of the ordinance,

COURT: Which line are you reading from?

SLAUGHTER: I'm reading if the Court please from 5.2-1 which is the section...

COURT: I have that.

SLAUGHTER: Applicants for variances.....incorporated by reference in the last sentence of section 5.3-1, after the language .....presumption of approval, once hardship is shown that he has obtained preliminary approval under the zoning ordinance...

COURT: I've found it now, that the granting of such variance will alleviate a clearly demonstrable hardship..... approaching confiscation. Are you saying that that standard would be the same where a man has a preliminary plat approved, as it would be in other cases?

SLAUGHTER: Yes sir. I don't think there's any question about it.

COURT: Well, I wanted to ask you all in your argument under which paragraph is this appeal coming up? Now there are two paragraphs under the powers and duties of the board of zoning

appeals, paragraph A and paragraph B, which is it that's being followed in this case? Can you say?

SLAUGHTER: As we understand it, Your Honor, it is - the board of course has the powers of A, B and of course C. And then there is that section on hardship, where hardship - if hardship is show, there is presumption. . .

COURT: Now the definition does not appear in the first paragraph, that you've just quoted, and if the appeal should be brought up under 5.2-1,a, then that sub-paragraph b, wouldn't have any application, would it? And it would have to be a new definition of hardship when you get over into another section. Isn't that the only place that hardship is defined?

SLAUGHTER: May it please the Court, as I understand it, the planning commission and the board of zoning appeals may follow the standards A, B, and C.

COURT: I see.

SLAUGHTER: And without question, this sub-division takes the character of the community it is not in harmony as certified because of the uses permitted by right under a zoning permit and the location and height of buildings would be such to hinder and discourage the appropriate development and use of adjacent land and building or impair the value thereof. Now it's clearly from our, certainly from our standpoint, Your Honor, there has really been no rebuttal to the fact that the evidence before the planning commission and the board of zoning appeals was that this sub-division would do all these things.

COURT: Well, now Mr. Slaughter, the point that I have is, let's suppose you assume that Mr. Parker would concede that the granting of this special use would be against public interest, but doesn't he have a right to be heard any how under another section of the ordinance? Let's suppose you have shown that the granting of it is against public interest. He says because he has a preliminary plat that that overrides the adverse public interest.

SLAUGHTER: Under D, if the Court please, the ordinance says that he would be entitled if the passage of this ordinance has worked a financial hardship on him. So rebuttal of presumption in favor of the granting of special use permit for said sub-division as preliminarily approved under the provisions of the sub-division ordinance ...

COURT: It seems to me the crucial point is here, assuming that he's in direct violation of the intent of the comprehensive plan, isn't he entitled to consideration that would override that?

SLAUGHTER: No sir, I think if the Court will read that paragraph D, it's clear that he's not entitled to any presumption unless he can show financial hardship, approaching confiscation.

COURT: All right then if he does that, does he have to be concerned with public interest?

SLAUGHTER: We would certainly submit that he does, because all he gets is a rebuttal of presumption, which we can cer-

1 tainly rebut not only by 5.2-1,B, 5.2-2, A, B, and C, but
2 5.3-1, A, B, and C, as well.
3 COURT: I see, you are certain then that once he
4 reaches that level you can still come at him with all these
5 other criteria? I see...
6 SLAUGHTER: Yes sir. And since that concludes my
7 10 minutes, I do want to give Mr. Dickey some time.....
8 COURT: All right, Mr. Dickey.
9 DICKEY: Your Honor, I don't really plan to take my
10 full 5 minutes....I would like simply to address myself to
11 a couple of points here. One is this matter of hardship. The
12 board found there was no hardship. The question is - easily
13 posed on the basis of the evidence we have heard - Rosser
14 Payne, who has very honestly testified on behalf of Mr. Matthews,
15 that the money spent preparing the preliminary plan,....that
16 this is money, it's ....it's speculated and don't worry about
17 it.....once the ordinance has passed, he had to pick up a copy
18 of that ordinance, which Mr. Morris testified that he did...and
19 get him off to see himself an attorney. He didn't do it - he
20 testified he did it August 26....or some time thereafter.....
21 So the only time when he had any financial hardship coming to
22 him was between February 26 and March 2. And his testimony ....
23 COURT: What should he have done, Mr. Dickey, abandoned
24 it? Or...
25 DICKEY: No, he should have gone to an attorney who

1 would have advised him to go directly to the board and found out.
2 Made his appeal right then.
3 COURT: Take his appeal then.
4 DICKEY: Right before he spent one other penny. And
5 his own expert testified to the money he spent before February
6 25th - it was not a hardship.
7 COURT: You're saying he spent anything after that
8 at his own risk?
9 DICKEY: Exactly.
10 COURT: What evidence was there that he had an
11 avenue open to him for an immediate appeal to the Board of
12 Zoning Appeals before his six months were up or even before
13 he had gotten into that stage of his planning?
14 DICKEY: It was the practice of the board and Mr.
15 Morris testified in every other case which Mr. Matthews could
16 have found out, I would respectfully suggest although it would
17 be testifying, what other people did was come and saw Mr.
18 Morris and asked us and we gave them that answer.
19 COURT: Was it generally known?
20 DICKEY: It was generally known in our office and up
21 there sir.
22 COURT: Well. . .
23 PARKER: I don't think Mr. Dickey should testify,
24 Your Honor.
25 COURT: All right. . .he's talking about Mr. Morris,

1 Mr. Julius Morris, indicated as much, Mr.Parker. But how
2 general it was known may be a point that you all want to touch
3 on.
4 PARKER: Yes....
5 COURT: The question is then that you take the position
6 that even though he spent money, and you would acknowledge he
7 may have incurred hardship, that he did it after he had notice?
8 DICKEY: That's correct, and he could have spent
9 50 dollars in any attorney's office to find out what to do about
10 it. And the answer would have been spend 20 dollars on an
11 appeal to the board of zoning appeals.
12 COURT: Well, that's not in evidence I don't believe -
13 it would have to come from the reading of the ordinance itself...
14 DICKEY: The testimony of Mr. Morris was he had a
15 meeting with the board of zoning appeals in early April - I
16 believe that was the testimony to the Court.....the actual
17 amount of money spent before the passage of the bill was $6,700.00
18 but the Court will remember that Mr. Matthews, I felt quite
19 honestly, on cross examination, admitted that the appraisal fees
20 and the legal expense and the soil survey and the topographic
21 survey were expenses he would have spent any way. His own
22 witness testified the total amount of that $6,700.00 wasn't a
23 hardship in any nature. And in any event the amount of money
24 he paid for the land $47,500.00 was hardly excessive, that
25 doesn't qualify him for hardship. The County is unfortunately

1 not prepared to get estimates on the value of these three acre
2 lots that Mr. Matthews' expert testified that this land is
3 suitable to be divided into - thirty, three acre lots. . .that is
4 his testimony on cross examination that he couldn't get it until
5 we had added an acre to make them thirty - three acre lots.
6 The Court will remember the testimony. So we only assume that
7 something more than five to seven thousand dollars value that
8 Mr. Barb put on the two acre lots. Thank you, Your Honor.
9 COURT: All right, Mr. Parker.
10 PARKER: I have about five minutes left, sir. First
11 of all, sometimes it's hard not for people to exceed the bounds
12 of the evidence. I suggest to the Court that counsel for the
13 other side has on a couple of occasions in argument exceeded
14 the bounds of the evidence. What this gentleman said was that
15 it could be divided into three acre lots for the same price
16 and he would charge $7,000.00 to divide it into three acre
17 lots as well as two. . .
18 COURT: Well, it's a matter of inference. . .what
19 would you do with the other. . .
20 PARKER: Well, he didn't say it could be divided
21 into just as many three acre lots as it could be divided into
22 two. . .
23 COURT: The inference would be that there would be
24 thirty acres to spare, if you didn't add it to the thirty lots. . .
25 PARKER: Yes, thirty acres to spare - some to spare. Now,

1 Your Honor, with respect to Mr. Slaughter and the law, which the
2 Court seemed to be somewhat. . .
3 COURT: Maybe you have a comment on which avenue you
4 are coming up on, under 5.2-1, A or B? Which did you pursue
5 or can you say?
6 PARKER: Well, Your Honor, A has a colon and B comes
7 right after it. . .A is followed by a colon. . .
8 COURT: You say you are not necessarily. . .
9 PARKER: Under both. . .
10 COURT: Under both, all right. . .
11 PARKER: Also 15.1-497. . .
12 COURT: All right, all right. . .I've got it. . .
13 PARKER: Now with respect to this definition of hard-
14 ship - Mr. Slaughter attempted to look for a definition of
15 hardship in the ordinance - he can look from now to kingdom come
16 and it's not in there. I notice he was turning the pages and
17 turning the pages. It's just not in there. Hardship as used
18 over in section . . it gives presumption, 5.3-1,D. . .it says
19 any sub-dividor in good faith and prior to the passage of this
20 ordinance, has secured preliminary approval for a plat and
21 complied with the. . .I'll get to that in a minute. . . .
22 shall be entitled, if the passage of this ordinance has worked
23 a financial hardship on him. Now Your Honor those words are not
24 defined in there, not any place. It just says financial hardship.
25 I think the words mean what they say - in common parlance

1 financial hardship, rebuttal of presumption. . .if he has got
2 that you don't have to look any place else for that then he gets
3 into rebuttal presumption and the only reason you go over to
4 5.2-1, B and 5.2-2, A, B and C is the question of rebutting that
5 presumption. And even if you do go over to those sections and
6 you certainly have got to consider them on the question of whether
7 the county has rebutted the presumption or not. . .when you get
8 over there into 5.2-1 B, the Court will note that that section
9 is - that that section is framed in the disjunctive that is to
10 authorize an appeal. It talks about a necessary hardship, it
11 talks about the standards that have to be met when a property
12 owner can show that his property was acquired in good faith
13 and where by reason of the exceptional narrowness, shallowness,
14 size, or shape of a specific piece of property at the time of
15 the effective date of the ordinance, or where by reason of ex-
16 ceptional topographic conditions or other extraordinary situation
17 or condition of such piece of property and then it says or of the
18 use or development of property immediately adjacent thereto. . .with
19 strict application of the terms of this ordinance, would prohibit
20 all unreasonably restricted use of the property. . .then it says
21 or where the board is satisfied and so forth then if it is in
22 harmony with the intended spirit and purpose of the ordinance.
23 He's home free, that's all he has to satisfy, just that one thing.
24 That thing is in the disjunctive. . .
25 COURT: Are you saying - well, what about this matter

1 of the overriding public interest? Are you free of that burden?
2 PARKER: Free. . .but the burden is now on the
3 county because we now have the presumption.
4 COURT: I see.
5 PARKER: Because we have the presumption. . .we
6 don't read financial hardship from what it says over here, look
7 at this first to see what financial hardship means - it doesn't
8 tell us anything in particular. We find out that financial
9 hardship means that it means in common parlance. We conclude
10 that there is some. . .and I'll get to that in just a second
11 then I'm through . . .and then if there is any - it doesn't say
12 how much. . .if there is any - if there is a financial hardship
13 on him, then the burden shifts to them and they have to rebut. . .
14 the presumption. And they must rebut by disproving essentially
15 all these things over there, because we only have to get by on
16 one...one of these things over here...under 5.2-1B. Now sir,
17 this question of...that he's consulted an attorney. I suggest -
18 this matter has now been pending either down below or up here,
19 since the beginning - he filed this thing somewhere around the
20 beginning of September or the end of August...the special use
21 permit. It is still pending right now in January, so there has
22 been from August until January - 5 months since this special
23 use permit was applied for and we still don't have a decision.
24 Now, suppose then in April he had gone in, suppose in April Mr.
25 Matthews had gone in and filed for thisspecial use permit. . .

1 and the six months is up. ..September. . .so he had. . .this
2 thing could well have still been in litigation. . .he had to
3 continue with that plat. . .it was just tacked on. He invested
4 his money in that preliminary plat, he wanted the advantage of
5 the law as it stood. He had to continue with that preliminary
6 plat at that time. I come back to this case. . .why Mr. Matthews
7 is in a different position than somebody else would be. The
8 Court said. . .the Board of Supervisors had unlawfully amended
9 the zoning requirements having the effect of prohibiting petit-
10 ioner's nursing home. This was done, it was alleged, arbitrarily
11 and capriciously in disregard of Medical Structures' vested
12 rights. . . . .The Board of Supervisors argues that for rights
13 to vest from reliance upon a special use permit or building per-
14 mit, one must go beyond mere expense in preparation, and con-
15 struction must have actually and substantially begun. In support
16 of its position, the Board of Supervisors relies on McClung v.
17 County of Henrico, 200 Va. 870. On the other hand, Medical
18 Structures argues that once a diligently pursued site plan is
19 filed in reliance upon existing zoning or the issuance of a
20 special use permit, fairness dictates that a vested right is
21 acquired in the land use. We hold that where, as here, a special
22 use permit has been granted under a zoning classification, a bona
23 fide site plan has thereafter been filed and diligently pursued,
24 and substantial expense has been incurred in good faith before
25 a change in zoning. . .and I think there is enough expense here

to do that. . .the permittee then has a vested right to the land use described in the use permit and he cannot be deprived of such use by subsequent legislation. Therefore they said the trial court did not err in this case in the issuance of a building permit. Your Honor that's our case. It's not the same kind of permit but. . .he was complying, he was in a position of complying, he filed the preliminary plat. He got a preliminary approval. He was obliged to go forward. He could just as well have selected to go forward with just about as much hazard as he had if he had waited until August because it is a problem even on that issue because of the problems of litigation on special use permit itself. He went forward. He protected himself as he could...that money tacked on, he had substantial expense. He's entitled to the presumption of hardship. He asked for a special exception and a special use permit in good faith. It is a specialty in this case and that's why this case should properly be decided I hope sir in his favor in the certiorari proceedings.

COURT: Now gentlemen you all have cited several cases, which I'm going to read, particularly the two that Mr. Parker has cited. I'm frank to say that I think this case boils down to an analysis of what added stature Mr. Matthews achieved by having gotten his preliminary plat approved. Whether he can in a sense be headed off in his final plat by the zoning ordinance, which was adopted while that intervening period came about. That is some month or so after the preliminary plat approval - I believe the evidence shows that March 4 or thereabouts the zoning ordinance was adopted. Now the indication is here that there is

a vested right. That seems to me to be one of the first things to determine. And of course, this question of whether or not the expenditure of funds amounts to hardship. I think it's fairly evident that funds were expended, but there's some inconsistency in the evidence as to just how much was spent. My recollection is that the figure of $6,700.00 was reported out of the board of zoning appeals hearing, as being the amount. The evidence today indicates different figure or since this matter has been heard. The Court will examine that to determine first/of all whether this threshhold question of a hardship has been met and then if the finding is made that the hardship is here, then the question of whether overriding interests would rebutt the presumption in favor of Mr.Matthews getting his final plat approved. Now one of the things that I'm just commenting on, that I'm not inviting counsel to respond to, but I'm going to examine it....supposing the court finds that the special use permit should have been granted. What does the Court do with it, does it send it back to the board of zoning appeals, with instructions or does it grant it at this stage, and if it sends it back, doesn't the board of zoning appeals have a right to attach conditions to it? I think the ordinance speaks to that point. Those are things that the Court will address itself to in rendering a final decision. That's frequently one of the most troublesome points. As to whether or not the Court's ruling is the final disposition with the case or whether it is

1 merely remanded back to the board from which it was appealed
2 for further action. The latter procedure seems to be the
3 most appropriate, and if the Court should find in favor of the
4 petitioner the likelihood is that it would be remanded back.
5 On the other hand, this ordinance - I suppose is being construed
6 for the first time in Greene County, and I'm not that familiar
7 with it and I intend to read it carefully and review the argument -
8 the arguments of counsel and the facts, and I will let counsel
9 know as quickly as possible by letters - the Court's decision.
10 I know that's a matter of some considerable importance to Mr.
11 Parker and I certainly won't delay it any more than it's necessary
12 to review this question fairly. All right, gentlemen.
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14 (Court is adjourned.)
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OPINION

Filed January 22, 1975

This case is before the Court on a Writ of Certiorari to the Board of Zoning Appeals of Greene County. In addition to the items which constitute the record from the Board of Zoning Appeals, the Court has heard evidence bearing upon those matters which were before the Board of Zoning Appeals.

The Petitioner, Bennett T. Matthews, is the owner of a tract of some 111 acres which has been platted as a proposed high density residential development. Except for certain surveying and soil testing, there has been no change in the use of the property which, at the time of purchase, was agricultural land. The property abuts on the north side of U.S. Highway 33, less than a mile west of Ruckersville, and is generally surrounded by agricultural land except for a residential subdivision which has been substantially developed and occupied, and adjoins the subject property on the west.

At the time the property was purchased by the petitioner, Greene County had no zoning ordinance but was operating under a subdivision ordinance. Pursuant to the subdivision ordinance the petitioner presented to Julius L. Morris, County Administrator, as agent of the Board of Supervisors for the administration of the subdivision ordinance, a preliminary plat. On February 4, 1974, certain suggested changes were made and on February 26, 1974, the revised preliminary plat of the subject property, designated as Greenetown Village, was approved, and the petitioner was advised of the six month deadline governing submission of the final plat. At the same time, the petitioner was advised by the County Administrator of the proposed zoning ordinance then being considered by the Board of Supervisors and of the fact that final plat approval might be affected thereby.

Prior to the approval of the preliminary plat, the Greene County Board of Supervisors had taken certain steps toward the preparation of a Comprehensive Land Use Plan and Zoning Ordinance for Greene County. On January 6, 1974, a proposed Interim Zoning Ordinance was presented to the Board of Supervisors by a previously appointed committee and its adoption was recommended. On March 2, 1974, the Interim Zoning Ordinance, with very little modification, was adopted by the Board of Supervisors. In the meantime a Comprehensive Land Use Plan was being studied and prepared for submission to the Board

of Supervisors. The adoption of the Comprehensive Land Use Plan, however, did not take place until November 16, 1974, after the petitioner presented his final plat and after his case had been heard by the Board of Zoning Appeals. One of the objections raised by the petitioner is that the Board of Zoning Appeals improperly considered the proposed Comprehensive Land Use Plan in its determination of the petitioner's application for a zoning permit.

At the time the preliminary plat was submitted and approved there were no restrictions which would have prohibited the proposed use of the petitioner's property; however, as a result of the Interim Zoning Ordinance the property in question was zoned rural residential and the proposed final plat, when submitted, was in violation of the then existing zoning. For this reason, the Zoning Administrator, Julius L. Morris, rejected the final plat which was submitted on August 26, 1974. On the same date, the petitioner filed his application before the Board of Zoning Appeals for a zoning permit and requested that a Special Use Permit be granted which would allow the subject property to be used in accordance with the proposed final plat. From a denial by the Board of Zoning Appeals of his application, the petitioner has appealed.

The petitioner asserts that he has a vested right in the proposed use of the subject property by virtue of the approval of the preliminary plat, and that the Interim Zoning Ordinance adopted thereafter should not be allowed to defeat that right.

The Interim Zoning Ordinance was apparently designed in contemplation of a situation such as exists in this case. Under § 5.3-1 (d) the following provisions appear:

> "Any subdivider as defined in the subdivision ordinance of Greene County, who, in good faith, and prior to the passage of this ordinance, has secured preliminary approval for a subdivision under the provisions of the aforesaid subdivision ordinance, and who has complied at the time of application for a special use permit, and continues to comply in the future with all relevant time limits prescribed by the Greene County Subdivision Ordinance, shall be entitled, if the passage of this ordinance has worked a financial hardship on him, to a rebuttable presumption in favor of the granting of such special use permit for the said subdivision as preliminarily approved under the provisions of the subdivision or-

dinance. Evidence necessary to rebut this presumption shall be based upon the standards set forth in § 5.2-1 b. and § 5.2-2 (a, b and c)."

The preliminary question to be determined is whether or not the passage of the Interim Zoning Ordinance worked a financial hardship on the petitioner. If the question is answered in the affirmative the ordinance creates a rebuttable presumption in favor of the granting of a special use permit for the subdivision as preliminarily approved.

The petitioner, Bennett T. Matthews, who is a real estate developer and who has substantial activities in several counties surrounding or not far removed from Greene County, presented evidence before the Board of Zoning Appeals as to the amounts expended by him in preparing the preliminary plat and in additional studies, surveys and other activities designed to obtain final approval of his proposed plat. Evidence was also presented on these same points before the Court, and there is a conflict as to what amounts are attributable to the preliminary and final plat approvals. The transcript of the hearing before the Board of Zoning Appeals, as well as testimony heard in Court, indicates that the petitioner had spent as of the time of the hearing before the Board an amount of $6700. Apparently an item of $10,000 for the preparation of the final plat had not been paid as of that time but had become an obligation. It is not clear, however, that this was presented to the Board of Zoning Appeals as such and the Board of Zoning Appeals denied the application for the following reasons:

"1. A hardship case had not been proven.

2. The plan is not compatible with the proposed Comprehensive Plan for Greene County."

The question of whether a financial hardship existed, having been answered in the negative by the Board of Zoning Appeals, the question for the Court to determine is whether or not, according to all of the evidence, this decision is plainly wrong. "Financial hardship" is a relative term and the determination of this question does not depend upon a specific sum of money. What might be a financial hardship in one case might not be a financial hardship in another, even though the dollar amount may be approximately the same. It is apparent from the

evidence that Mr. Matthews, the petitioner, engaged in substantial real estate development and while the sum of $6700, and certainly the sum of $16,700, is a substantial sum of money, there has been no showing of financial hardship as such. The Court therefore, cannot find as a matter of law that the decision of the Board of Zoning Appeals on this issue was wrong.

The Board of Zoning Appeals having denied the application for the additional reason that the proposed plan of development is not compatible with the proposed Comprehensive Plan for Greene County, the question arises as to whether or not certain evidence was improperly considered by that Board. The petitioner objected to the Board's consideration, and also to the Court's consideration, of the Comprehensive Land Use Plan which was then under preparation but which had not yet been officially adopted. In its decision, the Board of Zoning Appeals found that the granting of the petitioner's application and the proposed use of the property in question was not compatible with the Comprehensive Plan. Assuming for the purpose of argument, that financial hardship on the part of the petitioner was shown, by the passage of the ordinance, a rebuttable presumption in favor of the granting of the petitioner's application arose, and evidence necessary to rebut that presumption must be based upon the standards set forth in § 5.2-1 b and § 5.2-2(a.b.c). Thus, satisfactory evidence that the granting of the application and the proposed use of the petitioner's property will be contrary to the public interest would require that the application be denied. In making this determination it would appear inconsistent to prohibit the consideration by the Board of Zoning Appeals and this Court of the proposed Comprehensive Land Use Plan, particularly when the Interim Zoning Ordinance and the State statute contemplate at least one member of the Planning Commission sitting on the Board of Zoning Appeals. The Planning Commission, of course, was directly involved in the development and presentation to the governing body of the proposed Comprehensive Plan. It is the opinion of this Court that the introduction into evidence of the proposed Comprehensive Plan and the consideration thereof by the Board of Zoning Appeals, and this Court, in making its determination as to whether or not the proposed use of the petitioner's property was contrary to the public interest, was appropriate and necessary.

Even though the decision of the Board of Zoning Appeals and of this Court on the preliminary question of financial hardship disposes

of the case, evidence on other questions was presented to the Board of Zoning Appeals and to the Court and should be taken into account in this opinion to the extent that they would have been taken into account if the preliminary question of financial hardship had been answered in the affirmative.

The evidence clearly demonstrates that the magnitude of the petitioner's plan of development is such that a substantial impact will be made upon existing and proposed public services and facilities in Greene County. In a county with a population of approximately 5000 the final development of the petitioner's plan, of itself, over a ten year period would increase the population by almost twenty percent. Testimony indicates that the public school system would be the most significantly affected. Present facilities are inadequate and proposed construction would not be sufficient for meeting the increase in school population generated by this project. Other areas, as well, would be seriously affected, particularly such matters as traffic density and public recreation. The only area in which there is clear evidence of an advantage being created by the proposed use would be the present public water agency, known as the Rapidan Service Authority, which is in no way supported by tax funds, and which has adequate facilities to supply the petitioner's proposed subdivision. The Court heard evidence from several professional planners, who disagreed in part, as to whether or not the granting of the petitioner's application would be in the public interest. There was testimony, as well, that erroneous information and conclusions had been presented to the Board of Zoning Appeals by the staff of the Thomas Jefferson Planning District, of which Greene County is a member. Suffice it to say, the experts disagree and the Court cannot find from the evidence that the proposed development by the petitioner would serve the public interest. It is the opinion of this Court that there is sufficient positive evidence upon which a finding can and should be made that the granting of the petitioner's application would be contrary to the public interest, and thereby the rebuttable presumption has been overcome.

The petitioner has asserted that the approval of the preliminary plat created a vested right which could not be divested by the Board of Supervisors in adopting the zoning ordinance and in support thereof cites the case of *Fairfax County* v. *Medical Structure*, 213 Va. 355, which involved rezoning after the issuance of a special use permit. If

the present case is considered in the same light, the Interim Zoning Ordinance would be ineffectual as to the petitioner in this case, and he would not be bound in any way by the provisions thereof which limited his use beyond the limits imposed by the subdivision ordinance under which approval of the preliminary plat was obtained. On the other hand, if no vested right was created by the approval of the preliminary plat, the petitioner would be limited to the presumption created in his favor under the provisions of the Interim Zoning Ordinance, provided he could show financial hardship. In other words, if this case is decided on the basis of the creation of a vested right in the petitioner the provisions of the zoning ordinance would be immaterial. By his own actions, the petitioner has pursued his remedy under the Zoning Ordinance and to this extent is bound by the provisions thereof. It is doubtful that a vested right was created by an approval of a preliminary plat. The very word itself, by its ordinary use, indicates that nothing has been done in final form and that the final version must be submitted for approval.

The decision of the Board of Zoning Appeals, for the foregoing reasons, is hereby affirmed and counsel for the Board is directed to prepare an order to that effect.

/s/ David F. Berry
David F. Berry, Judge

January 22, 1975

MOTION

Filed March 10, 1975

Comes now Bennett T. Matthews, by counsel, and moves the Court not to enter judgment in accordance with its opinion hereinbefore, and for grounds therefor doth say that such opinion contains errors of law, among them this:

> That such opinion mistakenly indulges a presumption in favor of defendant's findings of fact when in truth the evidence is undisputed that defendant made no findings of fact other than ultimate conclusions in this matter.

It is your petitioner's position that the failure of the defendant to render non-conclusory findings of fact was of itself grounds to reverse its decision, and that such failure amounts to denial of administrative due process. For this Court to presume in these circumstances the correctness of the administrative decision is to compound the error below and carry forward the lack of due process complained of.

* * *

April 4, 1975

COURT convened at 2:00 P.M.

COURT: Now which is the certiorari case, the thick file or the thin one?

DICKEY: The big one, Your Honor.

COURT: All right, sir.

PARKER: This is the order I would tender - and I am tendering the order, if it please the Court, but there are some things in this order that I am assuming, because we have some matters to argue yet. . .

COURT: What matters are there still open in this certiorari case?

1 PARKER: The motion that I filed sir, and Mr....

2 COURT: Let's take the motion up first then....before

3 we get to the order, it might affect it.

4 PARKER: Yes sir. And I think both counsel have

5 had some difficulty in preparing this order, because we just

6 didn't know precisely how the Court was going to rule. I had

7 anticipated and the other side doesn't have anything in their

8 order about it at all.

9 SLAUGHTER: If the Court please, we had no trouble in

10 preparing it at all. It's a very nice, short order that's

11 been there since February 14.

12 COURT: Let's see.

13 PARKER: Since before the motion was filed, I take

14 it.

15 DICKEY: Perhaps Your Honor before we proceed on

16 the matter of the motion, there are certain minor corrections

17 I believe we would want to take up in the Court's opinion....

18 COURT: I don't know that I have a copy of it in

19 there. I don't think I sent a copy to the Clerk and I kept it

20 in a different file, if you've got one copy - let me look at it.

21 All right.

22 PARKER: I take it one will be filed, Your Honor.

23 COURT: Yes it is, I'm sorry. It's not a letter, it's

24 a written opinion.

25 DICKEY: Written opinion....

1 COURT: Yes.....it was a letter opinion.

2 DICKEY: The first matter is the caption - it says
3 Matthew T. Bennett and I believe that should be Bennett T.
4 Matthews.

5 PARKER: No objection, if the Court would like to
6 correct that.

7 DICKEY: The second would be at the top of page 3
8 where the court's opinion says was zoned agricultural - the
9 technical name of the zone there is rural residential.

10 PARKER: Well, I don't think I can object if the
11 Court wants to change it, but I would appreciate the change being
12 made in such a manner as to...

13 COURT: Where is that now?

14 DICKEY: On page 3 in the top...

15 PARKER: The third word - was zoned agricultural....
16 it seems to me that Mr. Dickey is probably correct but we would
17 appreciate the correction being made in such form as to indicate
18 that it was corrected.

19 COURT: I suppose I was making a certain assumption from
20 the evidence itself and that was that it was farm land. But it
21 was zoned rural residential?

22 DICKEY: That's the title of the zone. It happens
23 to be identical with the new zones, agricultural zoning restric-
24 tions. That's why the Court, I believe, used the phrase agricul-
25 tural. Today it is under the new zoning ordinance zoned agricultural.

1 It was exactly the same zoning restrictions of what they call
2 rural residential. It's - the description of it is identical
3 with what the Court is familiar with as an agricultural zone.
4 COURT: Now what's the position then of counsel
5 to correct that?
6 PARKER: I have no objection to its being corrected if
7 the Court wishes to do so, provided sir that when it's corrected
8 it's done by striking out in a manner that we are still permitted
9 to read the word agricultural...
10 COURT: Yes sir, I'll just write it above it. I'll
11 draw a line through it so you can still see it, and put rural
12 residential. And the record will show that I'm making that
13 correction as of today.
14 PARKER: Yes sir.
15 COURT: All right, anything else?
16 DICKEY: On the next page - extremely minor, on that
17 same page, top of the coded portion a typographical error ...
18 subdividor has an E in it, rather than O.
19 COURT: It probably was taken from the ordinance.
20 DICKEY: That may have been mistyped in the ordinance.
21 I should check that before I....
22 COURT: Yes sir, I'm sure - I'm not sure either, but
23 that may be the basis upon which it was quoted. Let's see....is
24 that part of the record?
25 DICKEY: Yes...

1 PARKER: Mr. Dickey, I'd be willing to waive any
2 exception on that, if...
3 DICKEY: Okay.
4 PARKER: If we can pass on to another....
5 COURT: It could have been the fact that the stenographer
6 was typing from my handwritten notes too. That very likely is
7 what accounts for it if it wasn't recopied from the ordinance
8 itself.
9 DICKEY: I would expect it might be the latter, Your
10 Honor.
11 COURT: All right, I'll make that spelling correction.
12 All right.
13 DICKEY: I think the spelling corrections might be...
14 COURT: I made the correction no matter what the
15 ordinance says.
16 DICKEY: All right now.....the - on page 5, on the
17 third line from the bottom, we have the word rebuttal - that's
18 a typographical error which should read rebuttable.
19 PARKER: I'm sorry, Mr. Dickey, I didn't get the reference.
20 Page?
21 DICKEY: Page 5, three lines from the bottom.
22 COURT: That's rebuttable?
23 PARKER: Rebuttable?
24 COURT: I didn't read this that closely....
25 DICKEY: And on page 8.....the Court states that the

1 petitioner cited a case of Fairfax County v. City Service.
2 Now, the petitioner could in fact have cited that case since it
3 stands for that principle - there are two of them right next to
4 each other in the recorder. The case that the plaintiff cited
5 was actually - I discover by looking at the transcript on page
6 413, Fairfax County v. Medical Structures, 213 Virginia, 355.
7 The two cases decided the same day and stand for the same
8 principle.
9 COURT: I don't know how I got that one. I had my
10 notes that I was going by. Let's see.
11 DICKEY: The Court was probably - Mr. Parker did
12 in fact mention the City Service case. What he stated in July
13 was the Medical Structures...
14 COURT: I don't know whether I've got all my notes in
15 here or not.
16 PARKER: Again Your Honor if the change is made so
17 it's apparent in the evidence no objection is made.
18 COURT: I've got my notes here, I'll take a look at
19 it. I may have just written down only one of the cases then ....
20 did he cite both of them or are you saying I'm using one that he
21 didn't cite?
22 DICKEY: He mentioned both cases, Your Honor.
23 COURT: I see.
24 DICKEY: In his closing statement, but he stated he
25 was relying on Fairfax v. Medical Structures. The Court will

1 remember that those two cases were decided on the same day;
2 the Supreme Court construing the same set of facts. Both
3 stated the same proposition on vested rights.
4 PARKER: That's the Fairfax - but the City Service
5 case cites the Medical Structures case...
6 DICKEY: Right.
7 COURT: That's probably why - I may have just taken
8 the latter case.
9 DICKEY: It would be very -- in researching the law,
10 I'm sure the Court read them both together.
11 COURT: Well, is the citation correct?
12 DICKEY: No, 213 Virginia, 355 is the Medical Structures
13 case.
14 COURT: No I mean the case that I cited?
15 DICKEY: Yes, that's correct for Fairfax - City Services.
16 They are four pages apart.
17 COURT: Yes.
18 PARKER: Your Honor, it says comma, which involves
19 rezoning after the issuance of a special use permit.
20 COURT: Was that the one that did?
21 PARKER: I don't remember which did which....to tell you
22 the truth at this point.
23 COURT: We'd better get that case out and look at it.
24 SLAUGHTER: We have Xeroxes of both cases....
25 COURT: All right let me see it. I think I recall it

1 rather quickly. I don't see my references - I took that down I
2 think in my notes rather than - it wasn't a written memorandum sub-
3 mitted in this case, was it?
4 DICKEY: No.
5 PARKER: No.
6 COURT: The first case does cite the proposition and
7 it's merely reiterated in their second one, so it would be
8 appropriate....unless both cases were cited, which may be
9 what I intended to do.
10 DICKEY: He mentioned both on page 413....it was
11 cited...
12 COURT: I see. That's the one that I remember reading
13 and getting the.....it probably was a question of both of them
14 being in my notes. I don't see either one of them in my notes,
15 but I think that probably should be corrected then to reflect
16 that. Because there's where the proposition is first enunciated,
17 it seems to me in the Medical Structures case.
18 PARKER: What page is that, Mr. Dickey?
19 DICKEY: 413.
20 COURT: All right, we'll make that - and again I'll
21 just mark through the other one so it's visible.
22 DICKEY: And now I will just tell the Court that I was
23 wrong - in fact the ordinance does misspell subdivider and that's
24 where it got quoted from.
25 COURT: I thought that's probably what it was. In quoting

1 I probably should have noted that but I wasn't going to quarrel
2 with their spelling.
3 PARKER: Again Your Honor I don't propose to except
4 to that.
5 COURT: I'm sure Mr. Parker won't make his case on
6 that basis.
7 DICKEY: Your Honor I think very few cases are won
8 on that basis.
9 COURT: All right, anything else now before we get into
10 the motion?
11 DICKEY: I have nothing else.
12 COURT: All right, let's take a look at the motion.
13 Is there just one Mr. Parker?
14 PARKER: Yes sir, just one motion.
15 COURT: All right, filed on March 10. Mistakenly
16 indulges that a presumption in favor of the defendants find in
17 fact.....you say then that what the opinion states I suppose
18 on the bottom of page 4 is not a fair presumption?
19 PARKER: May I look at page 4?
20 COURT: All right. And the question of whether a
21 financial hardship existed having been answered in the negative
22 by the Board of Zoning Appeals, the question for the Court to
23 determine is whether or not according to all the evidence, this
24 decision is plainly wrong?
25 PARKER: Yes sir - plainly wrong....is the problem.

1 COURT: What's the criteria then on an appeal?

2 PARKER: Your Honor, that may well be the criteria,
3 as I understand it on appeal, but the problem is if where there
4 are no findings of fact or improper findings of fact - you are
5 talking about something other than in conclusory terms to apply
6 that standard in this court results in error and deprivation of
7 due process. Now if - essentially what we are saying is that
8 because the decision of the Board of Zoning Appeals did not have
9 proper findings of fact that this Court should have remanded
10 this case to - the proper disposition of this case would have
11 been the remand of it to the Board of Zoning Appeals, at which
12 time that Board could have made proper findings of fact. And
13 then based on those findings of fact the Court would have been in
14 a position to apply the plainly wrong standard, but when findings
15 of fact are not made by an administrative body it is almost the
16 universal rule that the case must be remanded for proper findings
17 of fact. If the Court please, I have some authority that I
18 would like to cite in that connection.

19 COURT: What is the first finding that's not a finding
20 of fact that a hardship case did not exist?

21 PARKER: That is a conclusion Your Honor. That is the...

22 COURT: What's the difference? Isn't a finding of
23 fact a conclusion?

24 PARKER: No sir, not in the sense of the law. A finding
25 of fact is a fact but not of the ultimate fact in issue. The ques-

1 tion of whether it did or did not constitute a hardship was the
2 ultimate fact - one of the ultimate facts in issue. They didn't
3 say for instance that Bennett T. Matthews has expended so much
4 money, that Bennett T. Matthews has not expended so much money,
5 that Bennett .....depending upon what the standard of financial
6 hardship is, I think the Court in its opinion was concerned about
7 what the standard for financial hardship was. But it picked
8 a standard for what it thought financial hardship meant under
9 the ordinance.
10 COURT: Yes sir.
11 PARKER: Now the Board of Zoning Appeals is supposed
12 to state the facts that they find, based upon which they conclude
13 that there is not a financial hardship. They did not do that.
14 They only stated - you notice I state in the motion - they only
15 stated in findings which were conclusary in nature. I think there
16 were two. That it was no financial hardship, and that he was
17 not entitled to - had not met his burden and was not entitled to
18 the special use permits and special exceptions. That's the
19 decision in the case, it isn't finding of fact. Now, they are
20 necessary - findings of fact are necessary - we would like to
21 cite Reinauer Realty Corporation v. Burrough of Paramus. It's
22 a New Jersey case, 169 Atlantic 2nd, 814. And along the same
23 line I would suggest to the Court a case called Application
24 of American Seminary of the Bible, 104, New York State Reporter,
25 2nd, page 660. Now that last decision stands for the proposition

1 that a board granting a variance based on its own special know-
2 ledge of the facts must state these facts in its return.
3 Now, here we have the analagous situation in dealing with the
4 special knowledge of facts - we are allowing a special presumption
5 in favor of the facts as found by that board, but that board
6 must find facts and it must find non-conclusary facts so this
7 Court can render a proper review of that decision. If this
8 Court's decision is to be a reviewing decision - I'm reminded of
9 what the Court said in the hearing it heard earlier - a hearing
10 it had in a case earlier today....
11 COURT: Why would you take any evidence then if it
12 has to be based entirely on that, wouldn't it be a complete
13 waste of time to hear evidence?
14 PARKER: Your Honor, there are cases in which I
15 believe Virginia is one of them, evidence is allowed and our
16 statutes expressly allow them - I guess I can say that's why we
17 take it.
18 COURT: Why do we do it at all then if it's binding
19 on this Court to find from the record what the basis of that
20 decision was?
21 PARKER: Well, Your Honor, of course the opinion of
22 this Court is that it is - that it must find from the record and
23 the other evidence that the matter that the - that the decision
24 below was plainly wrong and if that is the decision then this
25 Court is in an appellate kind of position as opposed to a denovo

1 kind of position.

2 COURT: Well, that's a combination of the two, isn't

3 it?

4 PARKER: It seems....

5 COURT: Or does anyone know?

6 PARKER: It - nobody knows, Your Honor, but it seems

7 to be this....that the Court is entitled to consider the record

8 and such other evidence as it desires to hear. But that the

9 standard is - it is denovo if the Court wants it to be with

10 respect to the evidence that it can hear, but that the standard

11 doesn't change. The standard still remains the plainly wrong

12 standard. But my point is simply this, that if it's going to be

13 a plainly wrong standard there's got to be something to be -

14 from which the Court can judge, that the decision below was

15 plainly right or plainly wrong, and there must be facts found down

16 below. Now I can cite other cases. Another one it seems to me

17 that arrives at the same point - findings of fact are set forth

18 as among the requisites of a proper hearing before the board.

19 Now the case standing for that proposition is Morris v. Catletts-

20 burg, 437 Southwest, 2nd, 756. It's a Kentucky case, 1969.

21 DICKEY: Morris v. what, Mr. Parker?

22 PARKER: Catlettsburg.

23 DICKEY: Spell that?

24 PARKER: Catlettsburg.

25 COURT: Now Kentucky's judicial system is almost identical

1 if not identical to Virginia. We do have that similarity.

2 PARKER: Yes. Now...

3 COURT: Now they are one of the few states that have

4 appeal denovo in the county as opposed to circuit court.

5 PARKER: Yes sir.

6 COURT: As to criminal cases and the relationship of

7 the levels of court are the same.

8 PARKER: Yes sir, although I don't know whether that

9 will do us any good ...

10 COURT: It may not be true in a board of zoning

11 appeals case.

12 PARKER: And the rule in Virginia, Your Honor - you

13 were asking me what the standard was - the rule in Virginia was

14 cited. There's a Virginia case on that, I guess we don't have

15 too much problem with it. Board of Zoning Appeals of Arlington,

16 v. Combs - I think that's C-o-m-b-s, but it may not be.

17 SLAUGHTER: It is.

18 PARKER: 106, Southeast 2nd, 755. It says the Court

19 must not substitute its judgement for that of the board. So

20 you see the judgement of the board becomes all important and if

21 the board does not use the proper fact finding process, the

22 court is not - we don't get due process and besides that we get

23 error. Now, lack of findings of fact then are the-real findings

24 of fact are our complaint. The cases are legion Your Honor without

25 my attempting to cite them. In federal administrative practice

1 most recently - from which, I might say in dealing with federal
2 administrative practice - from which most of our ideas concerning
3 state administrative practice come - the cases are legion there.
4 Social Security cases, draft board cases, but the tryer of
5 fact must make findings of fact. And the failure to do so.....
6 COURT: They are administrative tribunals
7 though aren't they?
8 PARKER: The administrative tribunal must make findings
9 of fact.
10 COURT: Administrative tribunal?
11 PARKER: Yes sir. The administrative tribunal, board
12 of the - the draft boards, the secretary of Health, Education
13 and Welfare - they must make findings of fact. Their failure to
14 do so invariably results in a remand for proper findings of
15 fact.
16 COURT: But is a board of zoning appeals a true
17 administrative agency or is it a quasi-judicial body?
18 PARKER: Well, they both are - Judge, it's an
19 administrative agency of the county of the executive department
20 of the county, exercising judicial authority and that's why they
21 call it a quasi-judicial body. But to say quasi-judicial body
22 simply to say that it is in the executive department but it
23 is exercising judicial power.
24 COURT: Is there anything in our Virginia statutes
25 which clarifies the identification of that board as to what position

1 it occupies?

2 PARKER: Well, Your Honor, if you were to look in

3 the cases involving exhaustion of administrative remedies,

4 which seems to be a handle to put on it, you will find that

5 some of the administrative remedies you have to exhaust are

6 your remedies before the board of zoning appeals. So apparently

7 it is considered to be an administrative body. But it is not

8 a court.

9 COURT: Well, it may be different in some counties.

10 Now, zoning administrator is of course an administrative

11 agency, which is an arm of the board of supervisors, but I don't

12 consider the board of zoning appeals at all an arm of the board

13 of supervisors.

14 PARKER: It seems to ...

15 COURT: It's an arm of the court, isn't it?

16 PARKER: It's an arm of the county, sir.

17 COURT: Not of the board of supervisors.

18 PARKER: Not of the board, no sir.

19 COURT: Not under control of the board of supervisors.

20 PARKER: Oh no, but it is an arm of the county as

21 the body politic. But it is not a court and it must make findings

22 of fact, even I guess courts have to make findings of fact when

23 the court considers it. But in particular these people - I don't

24 want to belabor the point, but I think it's - the Court will

25 understand, I think it's a strong point.

1 COURT: Well, if that's true, and I'm giving it
2 serious consideration here - the question is why I shouldn't
3 send it back in very beginning?
4 PARKER: Send it back in the beginning sir or send
5 it back after you've considered it with other evidence?
6 COURT: I can't see that - I've wasted a lot of time
7 if I heard other evidence. If I was satisfied from the evidence
8 that they were right, if their record doesn't disclose the facts
9 upon which their decision was based, you said I should have
10 sent it back.
11 PARKER: It depends your Honor on which standard the
12 court is going to apply, and of course we didn't know that until
13 we had your opinion.
14 COURT: But does the law clearly state what the
15 standard is?
16 PARKER: Your opinion - the law clearly states what
17 the standard is, and I stated what it was, but I don't think
18 that's the standard where the board doesn't make proper fact
19 findings. It can't be the standard. That's my point, that's
20 why I raise it at this stage in the proceedings. If they didn't
21 make proper finding of fact, the Court must not apply a presumption
22 in favor of their regularity, that's what I'm saying. And that
23 is my objection to that portion of the opinion. Your Honor,
24 item number 2, our motion states for that and other grounds. It
25 says for those grounds among others, on page 5 of the Court's opinion,

1 the Court has stated its definition of financial hardship. I
2 don't want to belabor the point, but I think that is a subjective
3 definition of financial hardship, which is not appropriate. I
4 think the appropriate definition would be an objective definition
5 of financial hardship, just as mentioned - just as - in other
6 words, it's a question of whether he lost money, it isn't a
7 question of whether to put him in the poor house or not.
8 COURT: What does the word mean, is it a matter of
9 interpretation or is there a definition given anywhere that the
10 Court is bound by?
11 PARKER: It's a matter for the Court to determine,
12 but I simply want to make clear at this stage, that we do not
13 agree with the determination - with the definition which the
14 Court has placed on the words financial hardship as found in
15 the ordinance. And I understand the Court's problem because
16 it was not defined in the ordinance.
17 COURT: Well, don't you have the burden of proving
18 financial hardship, though?
19 PARKER: Yes sir.
20 COURT: Are you saying that you proved it? Do you
21 take the position that you've proved financial hardship?
22 PARKER: Yes sir, we take the position that we have
23 proved it and that the standard the Court applied as to what
24 financial hardship is, is the wrong standard. The Court stated
25 financial hardship is a relative term and the determination of

1 this question does not depend upon a specific sum of money.
2 What might be financial hardship in one case might not be in
3 another. Even though the dollar amount might be approximately
4 the same. It is apparent from the evidence that Mr. Matthews,
5 the petitioner, engaged in substantial real estate development,
6 and while the sum of 67 hundred dollars and certainly the sum
7 of 16, 700 dollars is a substantial sum of money, there has been
8 no showing of financial hardship as such. I take it that what
9 the Court was referring to there - the Court doesn't say what it
10 was he didn't show, but I take it from that what the Court was
11 referring is that we didn't show that Mr. Matthews was going to
12 go in bankruptcy or have any financial problem with his creditors
13 or what-not based on this law and what has happened under it.
14 What we did show I think from the evidence was that he was going
15 to lose money. I think the Court found that in fact, there seemed
16 to be some difference about how much. But I think in ...
17 COURT: No, it doesn't say he was going to lose money,
18 he wasn't going to make as much profit as he contemplated.
19 PARKER: Yes sir...I think it's the same thing.
20 COURT: You're saying loss of profit then but not
21 losing money in the sense that he would come up with a deficit...
22 but he would be curtailed in his expectation of profits? Maybe
23 that is losing money, but there again losing money may be....
24 PARKER: I don't see whether it matters, Your Honor,
25 whether it comes out - as long as the loss is attributable to what

1 the county has done, whether it comes out of his profits or
2 comes out of his losses. It comes out of his gross is what's
3 important.
4 COURT: But would financial hardship necessarily
5 depend on losing profit or going in the hole?
6 PARKER: Well, that's - Your Honor, that is where
7 I disagree with the Court's definition of financial hardship.
8 I don't think it's necessary to go in the hole. I think it's
9 enough to lose money....lose a substantial amount of money. The
10 Court found it was a substantial amount of money. If you
11 lose a substantial amount of money based on that, it seems to
12 me that you have within the meaning of what those words ought
13 to mean a financial hardship. It has hurt you in the finances.
14 Now....it hasn't....now, subjectively, the question is does it
15 make any difference - this is the question - does it make any
16 difference whether the defendant is a rich man, whether the
17 plaintiff is a rich man or a poor man, that's about what it
18 comes down to. And I say it doesn't make a bit of difference.
19 COURT: Well, now what's the purpose of the rule then?
20 If you are saying - if a rich man is going to lose profit, then
21 he's got a financial hardship...
22 PARKER: I say if a rich man is going to lose money
23 based on this ordinance, that he has a financial hardship, yes
24 sir.
25 COURT: And you are saying that I should construe it

1 the same if this was J. Paul Getty instead of Bennett T.
2 Matthews?
3 PARKER: Yes sir.
4 COURT: All right, I don't think you are going to
5 find any such construction of the words financial hardship.
6 It would be awfully hard to find that losing 16,700 dollars would
7 be a hardship on J. Paul Getty.
8 PARKER: I am proceeding, Your Honor, on the assumption
9 that ...with respect to this problem of financial hardship -
10 I'm proceeding on the presumption that financial hardship in
11 the ordinance means something like vested right in the other
12 series of cases, which is found that under certain circumstances
13 people have a vested right after an expenditure of money. In
14 those cases there was no showing,as far as I know there was no
15 showing that the plaintiffs - the petitioners involved were not
16 responsible people with plenty of money. And there was no showing
17 that they were going to go into bankruptcy if they didn't get
18 their permit. Some of them, indeed - and I'm saying that financial
19 hardship means something less than vested right if anything.
20 Not something more than vested right.
21 COURT: Well, do you quarrel with the dollar amounts?
22 Now, it was apparent in my opinion that cites that that there was
23 a showing before the Board of Zoning Appeals that the loss would
24 be 67 hundred and it was apparent in the hearing before this court
25 that there was an additional ten thousand dollar item. So it could

1 16,700 - now is there a factual misstatement there as far as
2 what the record should reflect?
3 PARKER: Well, our position was that it was 16,700
4 dollars, the Court didn't agree with me.
5 COURT: Well, it may not in so many words say so,
6 but I think I could certify that there was evidence that it
7 was as much as 16,700 dollars before this Court. Although that
8 is not apparent from the transcript of the Board of Zoning
9 Appeals.
10 PARKER: Because there weren't any findings of fact
11 on that point.
12 COURT: Well, apparently there was, there was a
13 transcript of it which says that - you stipulated it was 67
14 hundred dollars.
15 PARKER: Well, Your Honor, if there was 16,700 dollars,
16 there was 6,700....I would have to look back and see what I
17 am supposed to have said. But ....
18 COURT: I think I found that 67 hundred not from the
19 proceedings before me, but from the record of the proceedings
20 before the Board of Zoning Appeals.
21 PARKER: I'm sure that's where you found that
22 particular figure. But there was 67 hundred dollars that had
23 been expended up to a point is what's involved, and I think our
24 position in this Court was that there was some additional expen-
25 ditures which had been obligated or were essentially obligated or

1 you might just as well figure they are obligated because when
2 you spent the first money, you had to spend the rest to protect
3 it. I'm thinking particularly about the fact that he had to
4 get that final plat in within six months or else.
5 COURT: That's what I allowed for and I don't
6 have these pages.....before the Court....
7 PARKER: I think.....
8 DICKEY: If it please the Court, the Court says
9 exactly what Mr. Parker wishes the Court had said...
10 COURT: I think that is brought out - apparently an
11 item of 10 thousand for the preparation of the final plat had
12 not been paid but had become an obligation.
13 PARKER: Yes.
14 COURT: It's not clear however that this was presented
15 to the Board of Zoning Appeals as such, but I think it would be
16 fair to say that in evidence before this Court that was presented
17 as an obligation and I took account of it.
18 PARKER: Yes sir. I thank you in that connection sir.
19 The Court will understand then my position that it wouldn't
20 matter whether J. Paul Getty had a vested right or whether it
21 was J. Paul Getty or myself and it wouldn't matter whether it was -
22 and if it doesn't matter as to a vested right, it ought not to matter
23 with respect to a financial hardship, which ought to be something
24 less than a vested right - less than or equal to a vested right
25 because if it's a vested right you win any way.

1 COURT: Yes, that's an entirely separate issue,
2 which wouldn't depend on financial hardship. A vested right
3 wouldn't depend on hardship being shown. You would have a
4 right to concede whether it hurt or not. I took that up as
5 a separate issue.
6 PARKER: Now Your Honor, that's the third issue that
7 I come to. This is going to have some significance perhaps in
8 the declaratory judgement case that we have filed.
9 SLAUGHTER: May it please the Court, I don't want to
10 interrupt Mr. Parker, but the Court does understand of course
11 he only cited the first grounds in the motion - these would come
12 under the heading of other reasons or other grounds therein...
13 COURT: What is that now, are you still referring to
14 the motion filed on March 10?
15 PARKER: Yes sir.
16 SLAUGHTER: He cited one ground and then he said,
17 among others, and these are the others.
18 PARKER: Well, they all go to the Court's opinion,
19 Your Honor. We are not trying to get outside of the Court's
20 opinion at all.
21 SLAUGHTER: There was no statement prior to today that
22 these were the grounds on which he was relying...
23 COURT: I see. All right, sir.
24 PARKER: Well, counsel for the other side if they are
25 adequately surprised may need some time, but as learned as counsel

are, I shouldn't think that they would need a great deal of time. I'm sure they thought over these matters at great length.

SLAUGHTER: If I may digress a moment, Your Honor, Mr. Parker has become adept at the fine art of surprising us and then expresses surprise at surprise...

COURT: Yes sir, I understand. Go ahead, Mr. Parker.

PARKER: Your Honor, the thing that I was looking for was some type of excerpt which I had from a case in 209 Virginia. It is probably nice to refer to a Virginia case on occasion. Here it is sir. The case in question is the Board of Zoning Appeals v. Blue Ridge, 209 Virginia, 594. In which the Supreme Court said, this Court has not previously dealt with the specific question of the power of a court on an appeal from the Board of Zoning Appeals to make such an adjudication. . . . .it means - I didn't bring both - well it says down in the second paragraph - we do not find it necessary to decide whether the trial court had jurisdiction to declare paragraph 926 of the Zoning Ordinance void for uncertainty. The problem being of course was what they are discussing in this previous paragraph when they say "such an adjudication". What they are discussing is the adjudication of the validity of the Ordinance in a certiorari proceeding. This Court has not previously dealt with the specific question of the power of the court on an appeal from the Board of Zoning Appeals to make such an adjudication and other courts have disagreed about it. And it says see Fundamentals of Zoning Law,

46 Va. Law Review, 362, 58 Am. Jur. Zoning, Section 232, page 1063 - well it's all on this page Your Honor, 209, Va., 594 at page 600. There is a long line citation. Now the Court ruled subsequently in that case - in the present case we do not find it necessary to decide whether the trial court had jurisdiction to declare paragraph 926 of the Zoning Ordinance void for uncertainty. The problem is we don't have a decision in Virginia as to whether the Court could have considered the validity of the Ordinance in the Certiorari case. Now the only thing that was raised in the Certiorari case I suppose or got very close to that - one of the things that was raised was this problem of vested right. And the Court in its opinion on page 8 says "Petitioner has asserted that the approval of the preliminary plat created a vested right which could not be divested by the Board of Supervisors in adopting the Zoning Ordinance." We said it but I don't know whether we were asserting it in this case or not. But at any rate we certainly said so at one point or other in the proceedings because that's our position. "And in support thereof cites"- then the case the Court has placed in there today, "If the case is considered in the same light the interim Zoning Ordinance will be ineffectual as to the Petitioner in this case and he would not be bound in any way by the provisions thereof which limited his use beyond the limits imposed by the subdivision ordinance under which approval of the preliminary plat was obtained. On

the other hand if no vested right was created by the approval of the preliminary plat, the petitioner would be limited to the presumption created in his favor under the provisions of the interim Zoning Ordinance provided he could show financial hardship. In other words if this case is decided on the basis of the creation of a vested right in the petitioner the provisions of the Zoning Ordinance would be immaterial. By his own actions the petitioner has pursued this remedy - his remedy under the Zoning Ordinance and to this extent he is bound by the provisions thereof. It is doubtful that a vested right was created by the approval of the preliminary plat." And then the Court says nothing more about that. Your Honor my point is this and I hope I am not digressing - I am trying to ascertain from the opinion whether the Court did or did not rule on the issue of vested right and whether the Court did or did not rule in this case on the issue of whether we had by our own actions waived all other remedies because that is going to be important in the declaratory judgment case or in any other later case. I think the answer is and I think what the Court meant in its opinion was this by stating this "by his own actions the petitioner has pursued his remedy under the Zoning Ordinance and to this extent is bound by the provisions thereof." I think what the Court meant was for the purposes of this action, by his own actions the petitioner has pursued his remedy under the Zoning Ordinance and to this extent is bound by the provisions thereof

1 for the purposes of this action. In that case the Court would
2 be saying that Virginia has followed the rule of the majority
3 of jurisdictions which says that the validity of the Zoning
4 Ordinance may not be contested in a certiorari proceeding.
5 Now I have considerable amount of authority which I have ex-
6 tracted here on this point. I don't know exactly and counsel
7 I suppose is going to jump up immediately when I say this
8 but I don't know exactly where to argue this case - whether
9 it's in this case or in the case for declaratory judgment but
10 the problem is precisely that - that I don't know exactly
11 where to argue it, whether in this case or in the case for
12 declaratory judgment. And I want to be certain to save the
13 point in one case or the other.
14 COURT: Well the question is whether you have
15 had your day in Court isn't it?
16 PARKER: On the question of the validity of
17 the Ordinance Your Honor as opposed to whether we were going
18 to get a special use permit under the Ordinance.
19 COURT: You undertook to test the validity of
20 the Ordinance on your Mandamus action. . .
21 PARKER: Well but then the Court refused to
22 allow. . .
23 COURT: I suggested that it would be more
24 appropriate to test it in a suit for declaratory judgment.
25 PARKER: Yes sir. .

1 COURT: So that the validity of the Zoning
2 Ordinance has not been tested. . .
3 PARKER: Well I would have thought not because
4 we were trying our best to contest it in the Mandamus action
5 right along with - which we had filed first - right along and
6 then we filed the certiorari action and then we have filed
7 now as the Court knows a declaratory judgment case. . .
8 COURT: Now I am not sure what you took the
9 opinion to mean but I don't think—I don't think the Ordinance
10 itself was attacked in your petition. . .
11 PARKER: For certiorari?
12 COURT: Yes sir.
13 PARKER: I am not at all certain that it was but
14 it was attacked I suppose. . .
15 COURT: Attacking the action of the Board under
16 the Ordinance.
17 PARKER: Well I take it the Court seemed to think
18 in the opinion that we had perhaps attacked the Ordinance
19 because. . .
20 COURT: Let me pick you up there - maybe. . .
21 PARKER: At the foot of page 7 it says "The
22 petitioner has asserted that the approval of the preliminary
23 plat created a vested right which could not be divested by the
24 Board of Supervisors in adopting the Zoning Ordinance" and in
25 support thereof cites such and such case. "If the present case

is considered in the same light the interim Zoning Ordinance would be ineffectual as to the petitioner in this case." The problem is I am having difficulty with the opinion in ascertaining the precise ramifications of what the Court has decided on that point. And it may be important because in the declaratory judgment case we have been saddled with a plea of res adjudicata.

COURT: I see, you all are trying several different cases together here and I am not. . .

PARKER: Well. . .

DICKEY: Your Honor I think we had rather just stick to the certiorari. . .

PARKER: Well I am trying to stick to the certiorari too, but my point is this, I want to make certain that I don't. . .

COURT: You want to keep your options open don't you. . .

PARKER: I don't want to pass Judge into a situation where we go to declaratory judgment where this Court has suggested to us as an appropriate remedy and have had option in that and have that proceeding essentially foreclosed to us because we didn't bring something up in the certiorari proceeding - if that's the case we want to bring it up, it's as simple as that. If I could understand the Court's order in the certiorari case - relates to. . .

COURT: What's the form of the order? Does that say anything about. . .

PARKER: Mine does, the other side doesn't.

COURT: I see.

PARKER: But the order incorporates the opinion, is based on the opinion and at subsequent times I might be put to the test of what was decided in fact in the certiorari case.

COURT: Now the opinion couldn't go any further than the issues, even though I might on it, unless the issue was framed and brought before the Court, even though I said in effect you are out, it would not be because res adjudicata would depend on whether you had your day in Court on that point. And even though the opinion may indicate to you that I am ruling on it, it wasn't placed in issue and I don't recall any question being raised about the validity of the Zoning Ordinance in your certiorari action at all.

PARKER: Well is it the Court's feeling that the law in Virginia - this is an interesting point but is it the Court's feeling - I can't enlighten the Court on Virginia law because I just read the best case on Virginia law on point, in 209, Va. at that but is it the Court's feeling that Virginia would follow the majority in taking the position that . . .

DICKEY: Your Honor, I think I am going to object to counsel requesting the Court to render an advisory opinion

about issues not raised in this case. . .

COURT: Well insofar as I may explain this opinion here. I am not undertaking to incorporate the other case but for now Mr. Parker has raised a point about the form of the order and what effect the ruling would be as to whether he should except to it, I take it.

PARKER: Yes sir. . .

DICKEY: He is still arguing his motion on the quote "other grounds" that I was going to mention later. . .

COURT: Well I will try to deal with that at an appropriate time but now in viewing his petition for certiorari I find nothing which indicates that the statute or the Ordinance has been attacked and I recall nothing in the case directed toward the validity of the Ordinance having been presented to the Court. So that whatever expression may have come about in the opinion it could not be considered in any way a ruling on the validity of this Zoning Ordinance in Greene County.

PARKER: All right, sir.

COURT: That may satisfy you and put some. . .

PARKER: I think that's as far as the Court can lay the matter to rest in the certiorari case. I would also take the position that the Court cannot in the certiorari case rule - and that's what I was going to mention a moment ago - that the Court cannot in a certiorari case rule on the validity

of the Ordinance. My position is that the Court cannot do that in the certiorari case because its jurisdiction is derivative from the - has the same jurisdiction that the Board of Zoning Appeals did have before the matter came up. I know it has different evidence - can hear different evidence but I don't - the majority rule is that - what I just stated that the Court has no jurisdiction to rule on the validity of the Ordinance in the certiorari case. I might say on that point that one State - Connecticut - has taken the position where additional evidence can be heard that the Court could do that. Another state, the state which would seem to allow the greatest latitude in hearing additional evidence, Pennsylvania, in making such decisions under certiorari cases, as the Court may feel appropriate. . .

COURT: Now it doesn't seem to me that there is anything in Virginia law that indicates that the question could be broadened in anyway by the appeal. This Court would have to decide the same question that was presented to the Board of Zoning Appeals.

PARKER: I think that's the law sir, and I think further that the Board of Zoning Appeals obviously can't decide whether - a question which would have to do with whether it was sitting or not. It was sitting and that's that under the terms of the Ordinance. And it can't go and decide the validity of its own organic act.

1 COURT: I think it is somewhat adherent in this
2 opinion and this may be of some help in my comment about your
3 not having raised your right of a vested interest. You are
4 in a sense asserting that as an act that you are entitled
5 to perform even in face of the Zoning Ordinance. You are saying
6 inefffect that the Zoning Ordinance couldn't actually conclude
7 that.
8 PARKER: Yes and I am saying that - furthermore
9 that we have not elected a remedy, we have been trying through
10 the mandamus proceeding and otherwise - and I don't want to
11 press this point unduly in this case but in a few minutes
12 this afternoon I am going to have to take it up anyway I
13 suspect. But we have at all times taken the position that we
14 had both the invested right and a financial hardship.
15 COURT: But your vested right was brought about
16 as an argument of law. . .
17 PARKER: The vested right would go to - in the
18 face of the ordinance, lie in the face of the ordinance and
19 the financial hardship if there were one, if there is one
20 comes under. . .
21 COURT: Yes sir, that's the difference.
22 PARKER: And my position is that I don't think
23 we can raise as a vested right anything in the certiorari
24 proceedings and the Court's position is I take it that we
25 didn't. And I. .

1 COURT: Well it's irrelevant really because
2 if you have a vested right, you are not under the ordinance.
3 PARKER: Right, and the Board doesn't have
4 any jurisdiction.
5 COURT: Right.
6 PARKER: Your Honor, that concludes my argument
7 on the point and I hope - in this case and when this question
8 comes up again in the other case, I may have some more to
9 say about it. I appreciate the Court's patience. I under-
10 stand this has been a lengthy argument.
11 COURT: Let me see if I can comment on some
12 of these to shorten this, with regard to the points you have
13 raised here in the opinion itself. It seems to me that this
14 much ought to be said for clarification. In hearing this case
15 on the evidence, there was testimony adduced anew in this
16 Court and some of it repetitive, of course, and then the record
17 that was sent up from the Board of Zoning Appeals. But, however,
18 that may be the Court gave a full review of the facts and I
19 think it might be well to recite that this Court in a sense
20 made its own factual findings to the extent that the opinion
21 addresses itself to it. It may not be that clear but at
22 least it was intended to be. There was evidence before this
23 Court of expenditures of $16,700 by Mr. Matthews, whereas the
24 evidence before the Board of Zoning Appeals appeared to be
25 $6700 - the additional $10,000 having been an obligation and

1 not yet expended at the time the matter was before the Board of
2 Zoning Appeals. But this Court considered $16,700 and finds
3 from the evidence that while there is no proof from Mr. Matthews
4 either in the Board of Zoning Appeals or in this Court that
5 he was under any financial hardship by reason of being out of
6 pocket of $16,700. And I construe the term financial hardship
7 to be more than just a loss of money but relative to that person's
8 position, it must show that the - the amount of the loss works
9 a hardship on that individual or the person involved be it the
10 Corporation or an individual. For that reason the Court in
11 a sense made an independent finding in this Court that there
12 was no hardship proven. Then of course the order does or the
13 opinion does say that the finding by the Board of Zoning Appeals
14 is not shown to be wrong but in the sense that evidence was
15 taken on that same point all over again, it seems to me to be
16 unfair for the Court to send it back to the Board of Zoning
17 Appeals for a factual finding when this Court had the same
18 evidence and did in fact make a factual finding. I think the
19 record should show that, that I did find as a matter of fact
20 that Mr. Matthews showed in his evidence that he was out of
21 pocket $16,700 but there was no evidence that this amount of
22 out of pocket loss would be a hardship on Mr. Matthews. Now
23 I think I commented on this question of the vested right but
24 that seems to me to be a matter which will be asserted in the
25 fact of the statute and not under the statute. All right, Mr.

1 Dickey, either you or Mr. Slaughter, you all may have some
2 further comments you wish to make in argument of Mr. Parker.
3 SLAUGHTER: May it please the Court I will
4 try to be very brief because I think as the Court has stated
5 substantially the only ground on which, the only specific
6 ground on which Mr. Parker's motion was predicated, namely
7 whether or not there was an obligation on the Board of Zoning
8 Appeals to find facts as such. We found nothing in Virginia
9 law to indicate that there must be a finding of fact or
10 findings of fact by the Board of Zoning Appeals in Virginia
11 cases. The language in the Combs case to which Mr. Parker
12 referred, Board of Zoning Appeals v. Combs, 200, Va., 471
13 at page 476, a statement was made "On an appeal to the Court
14 under Section 15-850 absence the counties, we have held that
15 there is a prima facie presumption that the power and discretion
16 of the Board of Zoning Appeals have been properly exercised
17 and its decision may not be disturbed unless it "appear from
18 the record had it been to the Court, together with any additional
19 evidence taken and procedure had under the statute that the
20 decision of the Board is plainly wrong." No reference to
21 finding of the fact at all. Then it goes on - and that is
22 a quote from the Hopkins v. O'Meara 197, Va., 202. Going
23 on in the Combs case, the Court said at that same page "However,
24 in the Hopkins case in citing and referring to decision in
25 Anderson v. Jester, 206, Iowa 452"and then it gives the

1 Northwest citation, it says "the statute involved provided that
2 upon the filing of a petition specifying grounds of illegality
3 the trial court could allow a writ of certiorari and the
4 hearing should be de novo, whereupon the method of procedure
5 and decision was the same as provided in the Virginia statute.
6 The Court said that any arbitrary or unreasonable action, contrary
7 to the terms or spirit of the zoning law, or contrary to or
8 unsupported by facts, was an illegal action; but if on the facts
9 the reasonableness of the board's action was open to fair difference
10 of opinion, then there would be as to that no illegality." Then
11 it goes on to cite Burkhardt v. Board of Zoning Appeals, 192,
12 Va. 606. In the Hopkins case which was the golf range driving
13 case up here in Loudoun County the court said - that's at page
14 - that's in 197, page 202, and the Court said at page 205 "We
15 hold that on an appeal to the circuit court under §15-850" -
16 this of course is a predecessor statute "as amended, there is
17 a prima facie presumption that the power and discretion of the
18 Board of Zoning Appeals have been properly exercised, and it
19 must appear from the record transmitted to the court, together
20 with any additional evidence taken and procedure had under the
21 statute, that the decision of the Board is plainly wrong before
22 it may be disturbed by the court." And that cites Cherrydale,
23 etc., Co. v. County Board, 180 Va. 443. I don't have the specific
24 citation but my recollection is there is plenty of authority
25 simply to the fact or referring to the various statements in the

1 minutes and refers to those as the proper basis for the decision
2 of the Board of Zoning Appeals. But in any event Mr. Parker
3 has cited cases in different jurisdictions where the principal
4 apparently in administrative law that there must be specific findings
5 of fact strictly carried out. This is in Federal courts, of
6 course, trying a case without a jury, must write down specific
7 findings of fact but such is not the case in Virginia. The
8 Court said in this case that there were minutes of the Board
9 of Zoning Appeals - in the opinion of the court, the evidence
10 taken before the court - all of these constitute the fact or
11 basis upon which this court made its decision, and of course the
12 Supreme Court ultimately made the decision. So I think it's
13 clear if the Court please that while it could be true in other
14 jurisdictions, there is no requirement on the Board of Zoning
15 Appeals in Virginia to set out specific findings of fact. Now
16 going into the other grounds I will touch on one and then let
17 Mr. Dickey touch on the other. On the question of the definition
18 of financial hardship, I think the Court has already remarked
19 on that sufficiently but I will simply add that $6700 as I
20 recall was admitted to be money that had to be spent regardless
21 of the type of subdivision. In other words as I recall the
22 first $2700 or thereabouts was for topographic survey and the
23 next was for some type of land use survey or whatever it was
24 called. But Mr. Matthews if my recollection serves me correctly
25 stated that that could be used - I believe in cross examination

1 by Mr. Dickey on the first day - that that work could be used
2 for a different type of subdivision. Now the $10,000 was obligated
3 for the final plat of this subdivision. Very possibly that
4 couldn't be used again. At least in the hearing here it was
5 brought out that it might have been obligated at the time of the
6 initial hearing before the Board of Zoning Appeals. But, of
7 course, the evidence was clear that Mr. Matthews had paid as
8 I recall somewhere in the $70,000 range for this land. Re-
9 gardless of how he subdivided it he was going to make a pretty
10 substantial profit even though his profit under that two or
11 three acre lots as the case might be, would have been substan-
12 tially less of course than in the high density subdivision that
13 he proposed. In the cases - these are the vested rights cases
14 which Mr. Parker referred but in the vested rights cases the
15 Court was impressed by the fact that there had been special use
16 permits granted which had made it a value of the property in those
17 two Fairfax County cases in the hundreds of thousands of dollars.
18 And once there was ex post facto rezoning and the cancelling of
19 those special use permits arbitrarily, the value of the property
20 over what the people had paid for it because of rezoning
21 but there is no such evidence of that in this case. In any event
22 the Court has obviously reached the correct conclusion that there
23 was not financial hardship here relative to the size of the sub-
24 division and cost of the property and use of the property. I will
25 refer to Mr. Dickey in bringing up and responding to Mr. Parker's third

ground. As Mr. Parker himself has mentioned in our initial pleading - in our plea which has been filed in the declaratory judgment case, we have alleged in various ways that Mr. Parker has had his day in Court. We have, of course said and I want to be of course as correct as I can in trying to cite exactly what happened. In the mandamus action we, of course argued and the Court agreed with us that Mr. Parker had as an alternative a declaratory judgment action. Mr. Parker after the court made its ruling in that went forward with the certiorari action. It's clear from the record that Mr. Parker did not assert any attack on the zoning statute in the certiorari action and the Court at one point stated that he was considering the validity of the statute. So it's clear there is no - the issue was not tested in the certiorari action. Now everybody I think agrees on that. The question will be in the next - and the initial matter to be presented to the Court - and we do not anticipate that it will be this afternoon - whether Mr. Parker could have brought it up and as such whether or not he is barred either by res adjudicata or by election of revenues or by one or three or four other matters to be raised in our pleadings, not because it was raised but because it might have been raised. . .

COURT: You mean might have been raised in this court or before the Board of Zoning Appeals. . .

SLAUGHTER: In this court. . .

COURT: For the first time?

1 SLAUGHTER: Yes sir.

2 COURT: Do you take the position that new issues

3 could be inserted in the case on appeal?

4 SLAUGHTER: Yes sir, we take that position based

5 on-interestingly enough on the authority that Mr. - on the

6 Connecticut and Pennsylvania authority that Mr. Parker cited.

7 COURT: That's a new wrinkle in certiorari

8 isn't it?

9 SLAUGHTER: Well it's. . .

10 PARKER: Not Pennsylvania - the Connecticut

11 case . ..

12 SLAUGHTER: As I say we didn't anticipate that

13 that would be argued today. . .

14 COURT: You are saying that because he could

15 have done it, he might be barred?

16 SLAUGHTER: Yes sir. In any event we do all

17 agree for the purpose of this situation that it was not raised

18 . . .

19 COURT: Yes sir. . .

20 SLAUGHTER: . . .in the certiorari. . .

21 COURT: Yes sir.

22 SLAUGHTER: Thank you Your Honor.

23 DICKEY: My distinguished co-counsel left the

24 thing for me to argue and then argued it. But I would. . .

25 COURT: Well perhaps we can shorten this all

1 the more.

2 DICKEY: I would respectfully urge the Court, one

3 that as Mr. Slaughter has pointed out, we would take the position

4 that the amount spent by Mr. Matthews in reliance on this project

5 was considerable less at the time the Board of Zoning Appeals

6 than $6700. He says - he admitted on cross examination $355 -

7 $393 - I think there is a misprint in the transcript, it says

8 $3,933 but the $393 was cost of acquisition was not in reliance

9 on this former subdivision. Then he stated that he would have

10 spent $3500 on topographic survey in any event on the three

11 acre lots. That included the money. . .

12 COURT: The final plat or the preliminary plat?

13 DICKEY: This was for the topographic survey and

14 soil study. He stated that on page 49. My question "Q Would

15 you have had the topographic survey if you were going to develop

16 the 2 acre lots? Would you have had such an expenditure and

17 could you use this topographic survey for that use?" The answer

18 by the plaintiff "I think you would have to do it, yes." "Q It

19 could be used for 2 acre lots also?" Answer "Yes." So I don't

20 wish to ask the Court to change its letter of opinion but if

21 it does go up, it will go up with this, and I think this is

22 correct. Of course, somewhat surprisingly Mr. Parker's two

23 additional motions today but we are willing to argue them today,

24 I would strongly urge the Court that the issue of whether or not

25 this validity of the ordinance could have been attacked in the

1 certiorari matter cannot be reached in any final order in this
2 case as Mr. Parker quotes because there was none in that. That
3 argument will be made another day when we argue our plea. So
4 I would urge the Court that of the two forms of orders proposed
5 that Mr. Parker's form be marked filed and Mr. Parker's request
6 for it be noted in the record but that our considerably simpler
7 order be. . .
8 COURT: I haven't read either one of them. . .
9 DICKEY: I suggest that we don't need an order
10 to say that his motion is overruled. We have a transcript and
11 we don't have an order for every single objection. I might
12 also point out that we had originally represented to the Court
13 that we wished to go through the transcript and determine
14 what objections the court had continued until later for ruling
15 but I was quite pleasantly surprised in reading the transcript
16 with great care that the Court in the long run ruled on every
17 single continued objection before the close of the hearing and
18 that will not be necessary.
19 COURT: Was that in the summation of the case
20 itself that that was done?
21 DICKEY: Different stages during the transcript,
22 yes sir. I might point out that at one point the Court ruled
23 on it by stating that it had already ruled on it and then stated its
24 ruling but I didn't find any place where the Court had already
25 ruled. . .

1 COURT: I probably did it to counsel at a side
2 discussion - what point was that?
3 DICKEY: Well that particular one was page 308
4 - it was on the issue of whether or not the comprehensive plan
5 was properly before the Board as the best evidence of the planning
6 process. As the Court stated at that point "I have already
7 ruled on that" and stated its ruling - so this other thing will
8 not be necessary. I don't think it is necessary to include in
9 the order the fact that the motion was overruled and strongly
10 urge the Court to overrule the motion on all grounds. . .
11 COURT: All right, Mr. Parker, anything further.
12 PARKER: I wasn't aware that we were going
13 specifically on the order and I know that it's impossible to
14 stay away from it because you are arguing the motion in part
15 that you have recounted and try - or at least I try to anticipate
16 the Court's ruling on it in the order that I drafted - may I
17 digress for just a moment from that.
18
19 (Discussion was had between court and counsel
20 on record as to the transcript in the proceedings which were
21 held on January 2, 1975 and how it was to be filed)
22
23 PARKER: Now Your Honor coming back to these
24 two orders. Let me see where I differ with my adversaries.
25 I don't think there is any substantial difference in - fact of

1 the matter I think it is word for word, the first paragraph
2 is word for word the same. The second paragraph was designed
3 to account for the fact that the Court had essentially made its
4 findingsof fact and rulings of law on point but had not in-
5 corporated them in his - in an order giving an effect of those
6 rulings yet. The third paragraph - that of course was not in
7 my adversaries order. And the third paragraph was designed to
8 account for the motion that was made here today. I take it that
9 it accounts for so much of that motion as was expressly stated
10 in the motion. I might differ by saying I don't think I filed
11 three motions. I think I filed one with - expressly stating
12 the grounds and two that I didn't state until today. With
13 respect to the other two grounds the order is as I have suggested
14 it to the Court, does not contain the Court's findings on the
15 question of the definition of financial hardship. I think it
16 might be helpful if that were framed in the order because that
17 is a necessity in order to deny that motion. With respect to
18 the third item, the Court has stated its position that the question
19 of whether or not there was validity of the proceedings that
20 could have been brought up in the certiorari proceedings, the
21 Court has stated that the validity of the zoning ordinance was
22 not brought up in the certiorari proceeding. I can't too much
23 differ with that either. It was not our intention to frame it
24 in the pleadings because it was our feeling that it didn't
25 belong in there.

1 COURT: We would have digressed from our normal
2 proceedings had we done that and no such digression occurred
3 here. . .
4 PARKER: There is for instance a different
5 standard of proof that would apply to the facts on the one
6 case and then the other and we would have had considerable
7 problems so. . .
8 COURT: Do you wish to preserve this point that
9 the Court should have considered it on its own motion?
10 PARKER: Well Your Honor it is really a con-
11 stitutional question or it is in part a constitutional question,
12 a question of whether the ordinance is invalid, can be raised
13 on constitutional grounds. I take it that the Court ought if
14 it sees something is unconstitutional and is having to deal and
15 so something which would be unconstitutional in its decision,
16 it ought to raise the matter on its own motion, yes sir. If
17 what the Court was doing was going to result in a denial of
18 due process - so in part I would like to take the position
19 in this proceeding that the Court ought to have determined in
20 part the validity of the ordinance. Mostly what I am trying to
21 do, is to protect myself in the other proceeding. . .
22 COURT: Well if you are saying on this case that
23 I should have considered it, then you certainly wouldn't have
24 a right to bring it up anywhere else - that I made my error here
25 in not considering it.

1 PARKER: Right, you made your error here and
2 not considered it then Your Honor, then if you made that error
3 because you ought to have considered it in the other case, I
4 take it the Court will consider it in the other case.
5 COURT: Well that's a matter to be taken up but
6 certainly - we probably will address ourselves to it before the
7 finality of. . .
8 PARKER: Yes sir. The Court sees my problem
9 with respect to making sure that I get - this is a matter which
10 has not been decided definitively in Virginia law. . .
11 COURT: All right, let's see if I can state your
12 position this way Mr. Parker. You are saying in effect that should
13 I rule in an argument that yet may be made that the constitutionality
14 of the ordinance should have been tested in the certiorari action,
15 that the failure of the Court to pick it up on its own constitutes
16 error by the Court in the certiorari action, denied due process.
17 PARKER: I am driven to that by the argument of
18 other counsel. But I - my position is this. I think - the position
19 I would like to take in this case first of all is this, that
20 nothing with respect to the validity of the ordinance belonged to
21 the certiorari proceeding but that if it did, those questions
22 which were constitutional ought to have been considered by the
23 Court on its own motion in this proceeding.
24 COURT: All right, at least we can agree then
25 if there was error it was not in refusing to consider it but in

1 failing on its own motion to consider the constitutional questions
2 then?
3 PARKER: Yes sir. . .
4 COURT: Because they certainly were not raised.
5 PARKER: Well we raised the question of vested
6 right and indicated our position on the point. It was not
7 raised in the pleadings. It was not raised as the Court says
8 in the pleadings.
9 COURT: Well you certainly did raise the point
10 in argument on vested rights and I considered it and commented
11 on it. Whether or not it has been fully adjudicated, I am not
12 sure.
13 PARKER: The Court understands my dilemma. I
14 want to make certain that I am not placed in the position of
15 going to the Supreme Court of Virginia - as certainly as I can
16 at least - and having them say was the old common law solved -
17 yes you have got a remedy but it is not this. Yes, you have got
18 a remedy but it is not this and went up on about three times
19 and they finally tried three different remedies and none of the
20 remedies fitted the right - everybody said you had a right but
21 there was never any proper remedy. I don't want to get put in
22 that position. I don't want to get put in the position where we ought
23 to have tried it over here and in fact we tried it over - and
24 so we can't try it over here, when the Court told me in the
25 mandamus proceeding at all times we ought to be trying it over

1 there in a declaratory judgment proceeding, on the question of
2 the validity of the statute.
3 COURT: Let Matthew fully litigate it and inquired
4 into and researched, that's the problem. It may be that there is
5 some aspect of it. I believe you commented in your arguments
6 on the mandamus that there was some error in the advertisement
7 of the statute.
8 PARKER: But I did not raise that in the. . .
9 COURT: It was injected into the evidence - I
10 have not heard evidence on that point but merely an indication
11 that it could be presented. I made no evidentary findings what-
12 soever on that.
13 PARKER: No sir, the Court did not meet the issues
14 in that case. . .
15 COURT: No sir.
16 PARKER: Well Your Honor, I don't know exactly what
17 to do with this position here - this second part of this paragraph
18 but some sort of ruling it seems to me ought to be made on the
19 extent if any to which the Court has adjudicated or feels like
20 it should have adjudicated this question of the validity of the
21 ordinance in the certiorari proceeding. The fourth paragraph of
22 my order I am - I would like to be as insistent on as I can be
23 in whatever draft comes out of this of the order as I have suggested
24 it. It's most important if there is to be any question of
25 at a later time. If we see what it is that the Court has ruled

1 in this case - now what it is that the Court has ruled is that
2 we do not get a special use permit and we do not get a special
3 exception as to lot size. Now that language is not used in my
4 adversaries suggested order. It is not that we don't get a
5 subdivision - that's not what the Court has ruled but the ruling
6 is that we don't get a special use permit and we don't get a
7 special exception. If that means we don't get a subdivision
8 then so be it. So for purposes of clarity I have added that in -
9 essentially added that in over and above what they would have
10 proposed. The next paragraph relates to my exceptions and
11 objections and the next paragraph to the transcript. Those are
12 the distinctions. Now if I may Your Honor, I think that it would
13 be well in view of what the Court has stated today with respect
14 to the motion that was made and heard only this day to give counsel
15 another shot at another order which would state as best could be
16 the question of - the rulings on that motion. And in that event
17 I should like to suggest to the Court that the form of the order
18 would be as I have suggested - paragraph 1 and paragraph 2 that
19 there would be changes in paragraph 3 to include the defintion
20 of financial hardship and to get to what it is the Court feels
21 that it can say precisely in this action on the question of
22 deciding the validity of the zoning ordinance. And then let
23 paragraph 4 be virtually as I have suggested and paragraphs 5
24 and 6 as well virtually as I have suggested. It seems to me in
25 other words that the order that I have suggested with the exception

1 of paragraph 3 would be in order but that paragraph 3 will take
2 some revision and I think it would be helpful for us to try and
3 sit down and get that language in the best possible shape
4 without trying to do it right here at this hearing.
5 DICKEY: May it please the Court we have spent
6 a tremendous length of time on this, if Mr. Parker wants any-
7 thing reserved in the transcript, the order be tendered -
8 reserve whatever objections are in the transcript - can't
9 possibly be anything else - we want to have this case finished
10 before we go ahead with the third case that Mr. Parker filed
11 against us and we would ask the Court to enter this order today
12 in the form we tendered it. I can't see how Mr. Parker can
13 be prejudiced.
14 COURT: The only point that he has brought up
15 here that has not been covered is this question of whether the
16 Court should have brought up this constitutional question on
17 its own motion and I am toying with an amendment of his order
18 which I don't know that it would do any violence to your position.
19 Thereafter the petitioner filed a motion asking the Court to
20 set aside and revise its opinion for errors of law, grounds of
21 such motion were as expressly stated therein. And furthermore that
22 the Court errored in failing to consider an insert on its own
23 motion in this certiorari proceeding, the validity of the zoning
24 ordinance under which the Board of Zoning Appeals acted. This
25 motion the Court doth hereby deny being of the opinion that the

1 grounds for error expressly stated in the motion is not well
2 taken. And being further of the opinion that no question of the
3 validity of the zoning ordinance should be raised in this
4 certiorari proceeding by the Court on its own motion. Now that
5 preserves it. It certainly is clear that there was no question
6 raised and if there was error committed it was by the Court
7 in failing to raise it on its own motion. Now what problem do
8 you all have with the order of Mr. Parker's with that amendment?
9 DICKEY: May we have a moment?
10 COURT: Yes sir, I would be glad for you to consider
11 my revisions if you would like to.
12 DICKEY: I think we can probably cut this short
13 again. We don't want to see seen and ask for this as is formed,
14 I think - both are present and the Court could enter this without
15 endorsement.
16 COURT: Well let me make this suggestion. . .
17 SLAUGHTER: Your Honor could you indulge me a
18 moment?
19 COURT: Yes sir.
20 DICKEY: There is one problem here. I would ask
21 the Court to change - Mr. Parker has asserted here in petitioner's
22 application for a special use permit, special exceptions to
23 lot size - I think the petitioner's application is quite sufficient
24 and for other reasons not here relevant and I think it would
25 be better to state that. . .

1 COURT: Let me see that - you are talking about
2 what is actually being addressed in the decision as to whether
3 or not it's one item or the other, that is the application for
4 a special use permit?
5 DICKEY: Yes, Your Honor, the reason I say that
6 is the evidence was very far ranging. Mr. Parker's evidence
7 took the better part - well over a day and he applied for
8 a whole lot and I don't want to limit the order to say that
9 it's just those items. Again the transcript will speak. . .
10 COURT: Is there anything needed other than to say
11 that the Board of Zoning Appeals decision is affirmed?
12 DICKEY: That's all we would need.
13 PARKER: Your Honor, that's all it related to
14 though and it seems to me that the Court in its order ought to
15 be clear about what is being decided, the ultimate issue in
16 question. That is all that was being decided because if you
17 look at the application that is in the record you will find
18 that the only thing that there was was an application for a
19 special use permit and special exception as to lot size.
20 COURT: Well if it's in the record why reiterate
21 it? Is there any magic in that other than saying it's affirmed?
22 PARKER: Yes sir, it seems to me that it's magic
23 when you go looking back at it later from the standpoint of
24 res adjudicata in another proceeding. Somebody ought to be able
25 to take a look at the order and figure out what the Court decided

without having to go into the record of the case in order to made that decision. I don't want to have a jury sitting here in an issue out of chancery in a declaratory judgment proceeding or in a plea trying to figure out what it was that the Court decided in another case because the language in the order wasn't sufficiently definitive. But I think that's all that was decided in that case and I think that's all it could be unless the Court takes the position at a later time that there could be a question about this matter of deciding the validity of the . . .

COURT. Well can you all alert the Court on whether there were any other issues before the Board of Zoning Appeals on the technical point of the special use permit and the special exception as to lot size?

DICKEY: There were no other before the Board of Zoning Appeals. On the other hand in this court questions were raised and essentially was asked to rezone the one square mile around Ruckersville and many other areas were brought into this court.

COURT: The question of rezoning?

DICKEY: Essentially because of the expert testimony of Rosser Payne, was that the one square mile around Ruckersville constituted a Ruckersville use influence area which ought to be zoned for high density. . .

PARKER: That was not on the question of

1 rezoning. . .

2 COURT: Don't answer him there Mr. Parker. . .

3 DICKEY: So essentially that was probably - let

4 the record speak for itself and use the language we have and

5 say petitioner's application be and hereby is denied or just

6 simply say affirm the action of the Board of Zoning Appeals of

7 Greene County and leave it at that. If Mr. Parker is correct

8 in his statement and in full reading of the transcript, we find

9 no more then he is not harmed by that.

10 COURT: Well I am going to do this, I am not

11 going to prolong it, I am going to enter it up in this form

12 and if counsel can show me that this fails to state the-exactly

13 what the issues were then I will consider revising this order.

14 It won't be final for 21 days anyhow. So I am going to enter

15 it without endorsement of counsel and let it be open to either

16 side to show me that the issues which were laid to rest are

17 either less than that or not identical to what is listed in

18 this order. And I think that is the only way we can get at it.

19 I am not that familiar with the exact issues that were presented.

20 I think I could review the transcript and find it again just

21 as you all can.

22 PARKER: Your Honor, perhaps counsel should endorse

23 the order seen and solve some problem in that connection. . .

24 COURT: Want to mark it seen and objected to?

25 PARKER: Both sides can say seen and objected to

1 if they wish.

2 COURT: All right, let's do that then.

3 PARKER: Your Honor with respect to only one thing

4 - I won't prolong this - one sentence long. We would like to

5 make certain there since that order does not specifically mention

6 that there are exceptions to the Court's definition of financial

7 hardship.

8 COURT: Well this is your form of order Mr.

9 Parker.

10 PARKER: I am objecting to that form in that

11 connection, that's why I say. . .

12 COURT: Well do you want to redraw the order?

13 PARKER: No sir, the only thing that I would want

14 to put in there with respect to that sir, would be something with

15 respect to our defintion of financial hardship, grounds of such

16 motion as expressly stated therein and furthermore that the Court

17 errored in its definition of the term of financial hardship and

18 in failing.

19 COURT: Well that's obviously before - -

20 PARKER: I have it in the record, sir, and I am

21 satisfied if the Court will enter that order that way as long as

22 the Court will note for the record my exception in that connection.

23 COURT: You are objecting to the Court's opinion

24 but that is part of the order, so you are objecting to the order

25 and you are objecting to the opinion. . .

PARKER: Yes sir.

COURT: All right, go ahead and endorse it objected to and I will let both sides address itself to that particular issue of what was decided. I won't try to review that thoroughly this afternoon.....I am marking the order that counsel proposed to have entered on the other side as filed today. All right, that order is entered with modifications and I will mark the other one filed and refused.

DICKEY: The Court is marking our order filed and refused without objection on the mandamus.

COURT: All right.

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FINAL ORDER

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

Date: April 4, 1975

* * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Filed May 5, 1975

NOTICE OF APPEAL

Pursuant to Rule 5:6 of the Supreme Court of Virginia comes now the petitioner, Bennett T. Matthews, by his counsel, C. Waverly Parker, and hereby gives notice of an appeal from the final order entered by the Circuit Court of Greene County in the above styled case on 4 April 1975. A further portion of the transcript is to be hereafter filed.

ASSIGNMENTS OF ERROR

Also pursuant to Rule 5:6 of the Supreme Court of Virginia further comes the said petitioner, Bennett T. Matthews, by his counsel aforesaid, and hereby assigns the following errors of the trial court in such case:

I. The trial court erred, in the final order appealed from, in entering judgment affirming the decision of the respondent Board after:

A. Erroneously ruling that an individual's general financial standing is material upon the question of whether he has suffered a "financial hardship" as the latter such term is used in the Greene County Interim Zoning Ordinance.

B. Erroneously ruling that a substantial financial loss, unless it have a consequential *effect* upon an individual's financial standing, is not a "financial hardship" as that term is used in such ordinance, thus erroneously creating with respect to property rights a privileged class of poor persons.

C. Erroneously finding that loss by petitioner of $6,700.00 to $16,700.00 was not a "financial hardship" within the meaning of such zoning ordinance.

D. Erroneously considering, and erroneously ruling that the respondent Board had the right to consider, a Comprehensive Land-Use Plan enacted after the respondent Board had heard petitioner's case and before the Court had heard the issues raised on *certiorari* thereto.

E. Erroneously considering such plan to have the same weight that it would have had if it had been enacted prior to petitioner's application for the special uses and exceptions in question.

F. Erroneously indulgingly a presumption in favor of the respondent Board's findings of fact when in truth such respondent Board made no findings of fact other than ultimate conclusions.

G. Having found that "petitioner asserts that he has a vested right in the proposed use of the subject property," erroneously ruling that "By his own action, the petitioner has pursued his remedy under the zoning ordinance and to this extent is bound by the provisions thereof."

H. Failing to consider on its own motion the constitutionality of the ordinance in question and of such ordinance as applied in this case.

I. Rendering its own findings of fact contrary to the evidence

WHENCE the foregoing Notice of Appeal and Assignments of Error:

* * *