SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

THE BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA, et al.,

Appellants,

v.

MILLER AND SMITH, INC.,

Appellee.

RECORD NO. 790677

APPENDIX TO THE BRIEF

FROM THE CIRCUIT COURT OF

FAIRFAX COUNTY

VOLUME II

VOLUME II

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1 Does counsel wish to make an opening statement
2 for the record?
3 MR. LAWRENCE: Yes, Your Honor.
4 There are several exhibits which we could, if
5 the Court desired to, have them marked at this time. That
6 might expedite the process later on as they're introduced
7 into evidence.
8 THE COURT: All right. These are ones counsel
9 have agreed on?
10 MR. FINNEGAN: For the most part, why don't we
11 just then --
12 MR. LAWRENCE: We'll use this one exhibit,
13 Your Honor. Exhibit reflects the notes of an employee
14 of Miller and Smith concerning verification of no buildings
15 were put on the lots that are at issue here today, and
16 Mr. Finnegan has a copy of that. If we could have that
17 marked.
18 THE COURT: This will be Complainant's No. 1,
19 then.
20 (The document heretofore referred to
21 was marked Complainant's Exhibit No. 1
22 for identification.)
23 MR. LAWRENCE: All right, Your Honor.

1 THE COURT: And this is what -- a list of --

2 MR. LAWRENCE: Your Honor, that contains a list

3 of building permits that are at issue, but it contains

4 notations from an employee of Miller and Smith that went

5 out in the field and inspected and verified that the

6 building permits that were originally issued were not

7 built in accordance with those permits.

8 THE COURT: Do I understand you agree? In other

9 words, you have no objection?

10 MR. FINNEGAN: I agree that it is a list and if

11 that's what it purports to be, that's what it purports to

12 be. My only comment to that is this is going to involve

13 us going in to verify that, which we have not had the

14 opportunity to do.

15 MR. LAWRENCE: Your Honor, I think we can agree

16 to stipulate on the basis of our discussion in chambers,

17 that these numbers and the lots and everything would be

18 subject to later verification in the event there are any

19 discrepancies.

20 THE COURT: All right, fine.

21 (The document heretofore marked for

22 identification as Complainant's Exhibit

23 No. 1 was received in evidence.)

(WITNESS: Mr. Proctor)

1 THE COURT: All right, do you have any other
2 exhibits then?
3 MR. FINNEGAN: Yes, Your Honor.
4 MR. LAWRENCE: Your Honor, this is the same
5 list as the list previously submitted, only this one has
6 the County's notations as to the dates of issuance of the
7 permits and the amounts of the permits.
8 In other words, the County, in response to our
9 Request for Admissions, went through the list in their
10 records and admitted that this is what their records
11 reflect with regard to the amounts of the fees paid for
12 the permits and the dates of issuance.
13 THE COURT: I assume there's no objection to the
14 admission of that one?
15 MR. FINNEGAN: No, Your Honor. I have a list
16 coming myself.
17 THE COURT: All right, let that list be marked
18 as Complainant's Exhibit No. 2, and this will be designated
19 with County notations on it; in other words, just
20 identified.
21 (The document heretofore referred to
22 was marked Complainant's Exhibit No. 2
23 for identification and received in
evidence.) * * *

* * *

1 AFTERNOON SESSION

2 THE COURT: Call your next witness, Mr.
3 Finnegan, please.
4 MR. FINNEGAN: Yes, my next witness will be
5 Mr. Proctor.
6 Thereupon,
7 JACK ALLEN PROCTOR,
8 a witness, was called for examination by counsel for
9 the defendants, and, having been duly sworn, was examined
10 and testified as follows:
11 DIRECT EXAMINATION
12 BY MR. FINNEGAN:
13 Q State your name please.
14 A Jack Allen Proctor.
15 Q Whom are you employed by?
16 A The Virginia Office of Housing of the State of
17 Virginia.
18 Q How long have you been employed by them?
19 A Three years.
20 Q What was your employment prior to that?
21 A I was a building official for Shenandoah County,
22 Virginia.
23 Q What is your -- do you have a title with that

1 Office of Housing?

2 A Title is State Building Code Director.

3 THE COURT: Is what -- Director of the State

4 Building Code?

5 THE WITNESS: Yes, sir.

6 BY MR. FINNEGAN:

7 Q And what are your duties, sir?

8 A My duties -- I'm the Director of the Division

9 of Building Codes. We staff the Office of Housing. We

10 also staff the Technical Review Board and our duties

11 include promulgation of the Building Code, doing research

12 and leg work on the bills as they're processed through

13 the Technical Review Board, advising localities as to their

14 duties under the Statewide Building Code and assisting

15 localities when we're requested to do so, and enforcement

16 of the Code.

17 Q What is the Uniform Statewide Building Code?

18 A The Uniform Statewide Building Code is a

19 document that sets forth the standards for the construction

20 of building within the State of Virginia.

21 Q Who adopted the Uniform Statewide Building

22 Code?

23 A The Virginia State Board of Housing.

* * *

* * *

1 The issue here is did the State Board of Housing have the
2 authority to adopt Article One of the 1970 BOCA Basic
3 Building Code.
4 THE COURT: In other words, you're going to ask
5 him in his opinion -- in other words. Is that what you're
6 going to ask him, in his opinion?
7 MR. FINNEGAN: Yes.
8 MR. LAWRENCE: Your Honor, I'd object to that.
9 Clearly --
10 THE COURT: I think that's something I'm going
11 to have to ultimately decide and not the witness on the
12 witness stand.
13 MR. FINNEGAN: But what is probative to that
14 effect is how the administrative agency handles it. I'm
15 going to ask him whether or not --
16 THE COURT: I'll let him testify as to how they
17 handle it, but I mean as to whether or not it would be
18 applicable, I mean, in other words -- I'll let him testify
19 as to how they handle it, but as to whether or not it
20 would be applicable, I'm not going to --certainly not
21 be bound by what he says as a witness here on the witness
22 stand.
23 MR. FINNEGAN: No, Your Honor, it was just a

* * *

* * *

1 THE COURT: I'll sustain that objection.

2 MR. FINNEGAN: It may -- Your Honor, I would

3 suggest that he had already not quite -- was not responsive

4 to the question.

5 THE COURT: No, but he was testifying as to what

6 the Attorney General's office had advised him of. I would

7 sustain him as to that.

8 MR. FINNEGAN: As to that alone?

9 THE COURT: That's right.

10 BY MR. FINNEGAN:

11 Q Why was Article One of the '70 BOCA Basic

12 Building Code adopted?

13 A Well, the main reason why Article One was

14 included in the supplement was to give guidelines to

15 all those jurisdictions that never had a building code

16 in Virginia. There was -- right now we have 147

17 jurisdictions and I think in the beginning we only had

18 19. A lot of jurisdictions just didn't know how to even

19 administer a Code.

20 Q Has the State Board of Housing ever required

21 a local governing body to follow the procedures in

22 Section 118?

23 A No, sir; no, sir.

1 Q Why haven't they? Have they ever been requested?

2 A We've been requested. We are without authority

3 to require it.

4 Q I show you Defendant's Exhibit No. 2; can you

5 identify this document?

6 A Yes, sir. It's a letter that I sent to Mr.

7 Cooper, at their request; it's an official interpretation.

8 Q Okay. What is the subject of the interpretation?

9 MR. LAWRENCE: Your Honor, I'd like to add a

10 second aspect to my motion -- objection to this and that

11 is that we've already been through this argument. We

12 were before Your Honor sometime ago about the interpreta-

13 tions of the Building Review Board -- the Statewide

14 Building Review Board. Your Honor has already considered

15 this same issue.

16 It's a situation where the exhibit which I am

17 objecting to relates what the Review Board found in a matter

18 in which under the State law the Review Board doesn't have

19 any right interpreting. And that interpretation is not

20 binding. And it's the same question essentially that we

21 went through when we talked about the administrative

22 process act and when we had to go through the administra-

23 tive procedures.

* * *

* * *

1 not this one individual.

2 THE COURT: I'll overrule your objection.

3 MR. LAWRENCE: And to the extent he relates what

4 the Review Board has decided in the past and made decisions,

5 that's clearly hearsay.

6 THE COURT: All right, sir; I'll overrule your

7 objection, Mr. Lawrence, and note your exception.

8 MR. LAWRENCE: Thank you, Your Honor.

9 BY MR. FINNEGAN:

10 Q Does the Office of Housing, or has the Office

11 of Housing ever required the local governing body to

12 follow the procedures in 118?

13 A No, sir.

14 Q Are there other sections of Article One which

15 the State Board does not require local governing bodies

16 to follow ?

17 A Yes, sir.

18 Q Would you name one?

19 A Section 124.

20 Q What does that deal with?

21 A Condemnations of buildings.

22 Q Why doesn't -- is that in the -- strike that

23 question. Excuse me.

(WITNESS: Mr. Proctor)

1 Why doesn't the State Board of Housing require
2 people to follow that?
3 A The State Board of Housing is without authority
4 to require that.
5 Q Are there any other provisions?
6 A Provisions on maintenance in Article One on
7 buildings; we're without authority to promulgate that.
8 Q What about Section --
9 A Section 107.
10 Q What is Section 109?
11 A Volume computations -- speaking of Section 119?
12 Q That's correct.
13 Does the State Board of Housing --
14 THE COURT: You said 109 -- which is it, 109 or
15 119?
16 MR. FINNEGAN: Well, we've moved -- we went from --
17 THE COURT: He went from 107.
18 BY MR. FINNEGAN:
19 Q Would you just briefly go through Article One
20 and point out the sections the State Board of Housing does
21 not require local governing bodies --
22 A Okay.
23 Starting at the beginning of the book, Section 104,

1 maintenance -- we have no authority.

2 Section 107, which speaks to the building

3 official appointments -- we have no authority in the

4 organization of the local building departments.

5 Section 107.7 which is restriction of employees.

6 THE COURT: Which section was that?

7 THE WITNESS: Section 107.7.

8 Section 107.8, relief from personal responsibility.

9 Section 118, fees.

10 Section 119, computations of volumes of buildings,

11 how to arrive at a fee, as to the amount of fee.

12 BY MR. FINNEGAN:

13 Q Why aren't you required?

14 A Well, first of all, we're without authority

15 to promulgate such regulations and Virginia being as it

16 is, it would be impossible to impose that type of regula-

17 tion throughout Virginia. Various counties do things

18 various ways.

19 Section 124, unsafe buildings, condemnations, et

20 cetera. We have no authority under that section, or

21 Section 125.

22 In 1973 we did not have the authority to

23 promulgate Section 127, the local Board of Appeals --

1 however, the State statute was amended, I believe, in
2 '70 -- 1976 to require a local Board of Appeals. Up
3 until that point it was not a requirement.
4 Section 128. We do not have the authority to
5 mandate that. This was an area that local building
6 officials could use, when they came up with -- when they
7 agreed with the builder or the architect in charge.
8 Now there are various other portions in this
9 document that we do not have the authority to promulgate.
10 As an example, air pollution control methods back in
11 Article Eleven. We didn't have the authority because
12 they have an Air Pollution Control Board. And several
13 other articles, such as the boiler, maintenance of
14 boilers and construction of boilers come under the boiler
15 law and OSHA superseded on several safety items, and
16 construction workers and things like that.
17 Q If you had no authority in these various areas,
18 in your opinion how did they get into the Uniform Statewide
19 Building Code?
20 MR. LAWRENCE: I have a continuing objection,
21 Your Honor.
22 THE COURT: Yes, sir; sure.
23 MR. LAWRENCE: Your Honor, I think this might be

1 proper in the form of a proffer, but I don't believe
2 it's evidence that should even be coming in even if it --
3 I don't think it goes to the weight, I think it goes to
4 the admissibility and all of this should really be in
5 the form of a proffer rather than in terms of actually
6 going into evidence.
7 MR. FINNEGAN: No comment, Your Honor, this is
8 evidence. This is evidence as to how the administrative
9 agency operates, and how it runs its own regulations.
10 THE COURT: Overrule your objection. I'll note
11 an exception, Mr. Lawrence.
12 THE WITNESS: Would you restate the question,
13 please?
14 BY MR. FINNEGAN:
15 Q If the State Board of Housing had no authority
16 in these areas, how did these areas get into the Uniform
17 Statewide Building Code?
18 A The State Board of Housing erred when it adopted
19 the BOCA Code. They just didn't go through and purge the
20 sections they didn't have the authority to promulgate.
21 You know they promulgated portions of Article One as
22 advisory in nature for these areas that never had a building
23 code before.

1 Q Is that the reason why you have a 118.3, 118.4,
2 118.5 in the '75 supplement?
3 A It's my understanding, and this is based on
4 previous -- been based on the fact that I called the
5 Board of Housing when I was a building offical and asked
6 it how to handle it.
7 MR. LAWRENCE: Objection, Your Honor, this is
8 clearly hearsay.
9 THE COURT: Objection sustained.
10 BY MR. FINNEGAN:
11 Q Just answer yes or no.
12 A Okay, yes.
13 MR. FINNEGAN: I have no further questions,
14 Your Honor.
15 THE COURT: All right, cross examine.
16 CROSS EXAMINATION
17 BY MR. LAWRENCE:
18 Q Mr. Proctor, this is the cumulative supplement
19 for 1973; is it not?
20 A Yes, sir.
21 THE COURT: Let's mark this. What exhibit,
22 Mr. Lawrence?
23 MR. LAWRENCE: Exhibit No. 13.

* * *

* * *

1 You've got a copy there.

2 MR. LAWRENCE: Your Honor, we're referring to

3 this page marked 3-G.

4 THE COURT: All right, good.

5 BY MR. LAWRENCE:

6 Q All right, what does line 17, for example, tell

7 about this particular accounting sheet?

8 A Okay, line 17 says that on permit numbers

9 103 -- it looks like 408, through 103999, Miller and Smith

10 was the person that took out the permit -- the party that

11 took out the permit. It was in the Hunter's Creek

12 Subdivision; involves 82 permits. For those 82 permits

13 there was an aggregate total fee paid of $1,558.00; that

14 we -- for the administration and processing of those

15 permits, we held back -- "we," when I say "we," Fairfax

16 County held back $820.00 and $738.00 was sent to the

17 Town of Herndon.

18 Q That's the item in column ten? That's the

19 difference after taking out the administrative fee, --

20 the difference transferred to the Town of Herndon?

21 A That was the difference in the fee, that was

22 what money we sent to the Town of Herndon; this was the

23 difference in the fee and the processing costs.

(WITNESS: Mr. Cooper)

1 Q All right, now, the fee of $820.00 was based
2 on what -- you said that was for administrative expenses
3 on each permit. Is that based on $10.00 per permit? It
4 shows 82 permits there.
5 A Okay. It was based on a rate of $10.00 per
6 permit.
7 Q Okay, now, line 18, you see a total of 105
8 permits; is that correct?
9 A On line 18, Hunter's Creek, 105 permits.
10 Q This again was Miller and Smith?
11 A Miller and Smith again was the owner.
12 Q And the total fees paid into the County was?
13 A $1,195.00.
14 Q Under column two, Administration Expenses?
15 A $1,050.00.
16 Q This was again based on 105 permits?
17 A This is based on the rate of $10.00 per permit.
18 Q And then the difference again, column ten,
19 was transferred to Herndon?
20 A To Herndon.
21 Q Now, is this the procedure you followed with
22 regard to each of the Miller and Smith permits set forth
23 there?

* * *

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1 THE WITNESS: The permits were issued by Fairfax
2 County. Those were valid permits. We had gone through
3 and done the work of issuing the permits.
4 BY MR. LAWRENCE:
5 Q So in other words, the administrative expenses
6 were the expenses incurred by the County necessitated by
7 the application and the work that was necessary before
8 you could issue the permit?
9 A I don't --
10 Q Let me break it down.
11 The administrative expenses that you're
12 referring to are the expenses for the processing of
13 the application for the permit up to the point of
14 issuing the permit? In other words, the clerical work
15 that's involved, or whatever work is involved in checking
16 out the application before issuing the permit?
17 A We decided that we would hold back $10.00 for
18 the administrative work in processing the permit before
19 the field work started.
20 Q All right, so then that is the office work prior
21 to the actual field inspection work; that's the administra-
22 tive expense?
23 A We felt as though this was a reasonable and

1 exceedingly fair amount for the work involved.

2 Q My question, Mr. Cooper, is whether or not

3 that charge was for all of the work that the County had

4 to incur except for the field inspections?

5 A What we did in that situation, Mr. Lawrence, was

6 that we sat down; we tried to be exceedingly fair with

7 Herndon. We had to arrive at some figure to hold back

8 that -- for the processing involved in the permit. We

9 had to recognize that Herndon was going to be involved

10 in the clerical work of administering those permits. Once

11 they got into the field, Herndon was going to be responsible

12 for the field inspection of those permits. And Herndon

13 was going to be responsible for the retention of the

14 record after the permits were complete.

15 We had to arrive at -- using that as a basis,

16 we tried to arrive at some fair amount to transfer to

17 Herndon, and some fair amount to hold back to compensate

18 Fairfax County. Ten dollars happened to be the fair

19 amount that we agreed to.

20 THE COURT: I think he wants to know what break-

21 up point. In other words, what did you feel the $10.00

22 covered up to?

23 THE WITNESS: Okay, we felt that if we had done

1 the office work, and hadn't done the field work, Your
2 Honor, that it was certainly fair to hold back $10.00
3 as compensation, if you will, for the office work that
4 we had done.
5 THE COURT: I think that answers your question,
6 doesn't it, or does it?
7 MR. LAWRENCE: Your Honor, I think it almost
8 answered it.
9 BY MR. LAWRENCE:
10 Q The question was, the office work -- we're talking
11 about all of the office work short of actually going out
12 in the field inspecting it. This is the work for
13 processing the application, clearing it through the
14 various departments?
15 A We -- you know, we did not sit down and do a
16 cost study at that time, but we felt we arrived at this
17 as being a fair figure for the work that we had done;
18 that we felt as though it was a little bit -- it may
19 have been exceedingly fair to Herndon.
20 Q Well, you wanted to be fair; didn't you? You
21 wanted to be fair, I think, but what I'm asking you is
22 didn't this reflect the administrative costs short of
23 actual field inspections for the issuance of these permits?

1 A Exceedingly conservative administrative costs,
2 we felt.
3 Q So your answer is it did?
4 A My answer is we felt it involved exceedingly
5 conservative estimates of the costs involved.
6 Q Now, with respect to all the other permits that
7 are listed here, did the County perform the same administra-
8 tive services as to these other permits?
9 A We routed them through the same agency. There
10 were some different services provided by some of the other
11 agencies, assessments provided at different -- service
12 design review was a little bit different service.
13 Q You mean different than the Herndon permits?
14 A Uh-huh.
15 Q Don't you have a standard procedure for
16 clearing permits?
17 A We have a standard procedure for clearing
18 permits, but the subdivision and site plan controls were
19 a little bit different in the Town of Herndon on the
20 assessments part of the permit on the permits in question.
21 They made a simple notation that said Town of Herndon,
22 whereas in Fairfax County they went further and identified
23 the parcel and lot number.

1 Q As a matter of fact, Mr. Cooper, didn't you
2 have actually more administrative overhead in the
3 Herndon permits because you had to prepare the transfer
4 arrangement?
5 A We prepared the transfer permits after the
6 permits were -- after the permits were valid out -- after
7 they had been issued.
8 Q So you still had administrative costs after
9 they were issued because you had to transfer them; isn't
10 that right?
11 A We had administrative expenses involved in
12 transferring.
13 Q But that's included in the $10.00?
14 A That was included in the $10.00.
15 Q Now, when these fees were paid into the County,
16 these permit fees, weren't these fees credited to the
17 general fund at that time -- at the time of paying in?
18 A The fees at the time they were paid in were
19 credited into the general fund.
20 Q And there was no separate account kept --
21 separate bank account for these fees pending the period
22 that the permits were valid?
23 A Not that I'm aware of.

1 Q So that any refund of these fees would have to
2 come out of the general fund; isn't that right?
3 A You'd have to talk with finance on that.
4 Q Well, it was put into the general fund, and there
5 was no fund for refunds?
6 A There's a pseudo code which we charge to, so
7 I would say that we charged to a certain pseudo code;
8 now that would have to come out of the general fund.
9 It's accounting procedures is what you're-- what it is.
10 Q But you did testify earlier at the deposition
11 that these permit fees were paid into the general fund
12 upon receipt of payment?
13 A Right, and I presume that they would, you know,
14 come out of the general fund, but I'm not familiar.
15 Q There's no intermediate fund?
16 A No, not that I'm aware of.
17 Q And there's been no accounting kept as to the
18 work efforts expended by the County as to any specific
19 permit?
20 A No, we do not keep a separate accounting of the
21 work effort on these -- on the permits.
22 Q And your records reflect under your builder and
23 permit cards for these permits that are in issue--as far

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* * *

1 Q Would you explain the building permit issuance
2 process prior to the Statewide Building Code, briefly
3 explain it?
4 A Prior to the Statewide Building Code, we were
5 located on the Sixth Floor in the Massey Building. A
6 person came to the counter, applied for a permit; we
7 reviewed his plans to assure that they met the technical
8 requirements of the local ordinance that we were operating
9 under at that time. We also routed the applicant to carry
10 the permits around to the other agencies for review to see
11 whether the application conformed with the laws. And, if
12 the permit was processed -- was found to conform to the
13 laws under both County and State, and the technical require-
14 ments of the local ordinances had been met, we issued the
15 permit.
16 Q Okay, did the building permit issuance process
17 change subsequent to the September 1, 1973, when the Uniform
18 Statewide Building Code came into effect?
19 A It didn't change as a result of the Uniform
20 Statewide Building Code.
21 Q Did Fairfax County have a -- an ordinance which --
22 a building code prior to the Uniform Statewide Building Code?
23 A Yes, we did.

1 Q And would you describe what that building code
2 was at that time?
3 A Okay, the building code consisted of the BOCA
4 Basic Building Code, and various and local amendments,
5 as needed, to administer and enforce the building code.
6 Q I show you Defendant's Exhibit No. 5. Can
7 you identify this document?
8 A Yes, this document is the document that was the
9 building code ordinance of the County along with the BOCA
10 Basic Building Code prior to September of 1973.
11 Q Did this ordinance include provisions regarding
12 the life of a permit?
13 A Yes, it did.
14 THE COURT: Provisions concerning what?
15 MR. FINNEGAN: The life of a permit.
16 THE COURT: Oh.
17 BY MR. FINNEGAN:
18 Q And what was the life of the permit?
19 A The life of the permit was, if work was being
20 done, the life of the permit was indefinite; but if there
21 was no work done, the life of the permit was six months.
22 Q Were the fees connected with the application and
23 issuance of a building permit?

1 A There were fees that were charged at the time a
2 building permit was issued.
3 Q Okay. Were those fees set forth in the Fairfax
4 County Ordinance?
5 A These were set forth in the Fairfax County
6 Ordinance. I happen to be looking at it right here now,
7 and 6, Section 6-5, advance fees.
8 MR. FINNEGAN: Your Honor, I believe that's
9 attachment one to the Trial Memorandum.
10 BY MR. FINNEGAN:
11 Q Were there provisions in there concerning the
12 extension of a permit?
13 A Yes, there were extension provisions, for
14 extensions in Section 6-6.
15 Q Were there provisions regarding the reissuance
16 or renewal of permits?
17 A There were provisions regarding the extension of
18 a permit section on page nine here.
19 Q Okay, were there provisions in there regarding the
20 refund of permit fees?
21 A Yes, there were provisions regarding the refund
22 of permit fees. Again, on page nine.
23 Q To your knowledge, were refunds requested by

1 builders during the year 1972, '73 and '74, pursuant
2 to that provision?
3 A Yes, there were.
4 MR. LAWRENCE: Your Honor, I object to the
5 relevancy of that.
6 THE COURT: I'll sustain the objection. What
7 would be the relevancy of that, Ed?
8 MR. FINNEGAN: Just a question. I asked him if
9 the refund procedure was followed.
10 THE COURT: I'll sustain the objection.
11 BY MR. FINNEGAN:
12 Q Did anyone in 1972 request a refund pursuant to
13 the 1970 BOCA Basic Building Code?
14 MR. LAWRENCE: Objection, Your Honor.
15 THE COURT: What would be the relevance? I
16 sustained the objection.
17 BY MR. FINNEGAN:
18 Q With regard to the Statewide Building Code, at
19 the time of its adoption, were there any requirements
20 place upon the local governing bodies in order to -- was
21 there a requirement for a local implementing ordinance?
22 A We had to have a local implementing ordinance
23 to do several things. We -- first of all, we had to

1 spell out who the building official was; that was not
2 defined in the Uniform Statewide Building Code.
3 We had to establish where the fire limits in the
4 County were so that we didn't have a conflagration like the
5 Chicago fire. We had to establish where the frostline was.
6 We had to establish several things in order to administer
7 and enforce the Uniform Statewide Building Code.
8 Q Did you have to establish a fee schedule?
9 A Yes, sir, we had to establish a fee schedule.
10 Q Did Fairfax County do these things?
11 A Yes, Fairfax County di them.
12 MR. FINNEGAN: Your Honor, here's an attachment
13 to the --
14 THE COURT: Let Mr. Lawrence see what he's
15 talking about.
16 MR. FINNEGAN: This is a provision of the Fairfax
17 County Ordinance which adopted the new Fairfax County
18 Building Ordinance to take effect -- what I'm showing the
19 witness now is Amendment 25-73-6 to the 1961 Fairfax County
20 Code which is the adoption of the Fairfax County Building
21 Ordinance which is supplementary to the Uniform Statewide
22 Building Code.
23 Do you--was this as an exhibit or will you just

1 take judicial notice?

2 THE COURT: I think it probably should be. We

3 have these other things as exhibits -- let's have them

4 all as exhibits there. In other words, if that's just

5 the --

6 MR. FINNEGAN: That's just the law; I just wanted

7 to bring it to your attention -- the appropriate section.

8 THE COURT: That would be No. 6 -- Defendant's

9 No. 6. And what is the -- what's the Section there?

10 MR. FINNEGAN: Amendment 25-73-6; it's a new

11 Chapter 6 Building Code, 1961, Fairfax County Code. Do

12 you have any objections to it?

13 THE COURT: Is there any objection?

14 MR. LAWRENCE: I do have an objection, Your

15 Honor, with regard to provisions that relate to the

16 refunding; that's the very issue of this case. I believe

17 Your Honor can take judicial notice of the -- in fact,

18 this is a County Ordinance, I believe, under the new

19 statute. you can take judicial notice. Anyhow, I'm

20 just preserving an objection as to the content, with

21 regard to its legal validity.

22 THE COURT: In application to this particular

23 case, in other words?

1 MR. LAWRENCE: Yes, and the validity of the
2 Section as it pertains to the refund.
3 THE COURT: I'll admit it, and then I'll note
4 an exception to that.
5 Let that be marked and received then as
6 Defendant's Exhibit No. 6.
7 (The document heretofore referred
8 to was marked Defendant's Exhibit
9 No. 6 for identification and
10 received in evidence.)
11 BY MR. FINNEGAN:
12 Q I show you Defendant's No. 6; can you identify
13 this document?
14 A Yes, this is the document that was our local
15 ordinance to administer and enforce the Uniform Statewide
16 Building Code.
17 Q Does this local ordinance have a provision
18 regarding fees?
19 A Section 6-5 covers fees.
20 Q Does it also have a provision regarding the
21 extension of permits?
22 A Yes, it does; in Section 6-6.
23 Q And does it also have a provision regarding the

1 refund of permit fees?

2 A Yes, it does; in Section 6-6.

3 Q And what is that provision in 6-6 dealing with

4 refunds?

5 A It says any permit issued by the building

6 official pursuant to the provisions of this Code, under

7 which no work is commenced, may be cancelled upon the

8 application of the owner at any time within six months

9 from the day of issuance, and the Board of Supervisors

10 shall refund 50 percent of the fee paid for such permit.

11 Any permit issued pursuant to this Code shall

12 expire and become null and void after the expiration of

13 six months if no work is commenced thereunder provided

14 during a six month period, provided however that any

15 permit so voided may be reinstated upon the application

16 of the original applicant within one year from the original

17 date of issuance with no additional fee.

18 Q I show you Defendant's Exhibits No. 3 and 4; can

19 you identify these documents?

20 A Okay. These documents are the current forms for

21 the building permit and the application for building

22 permit that we are using with the Division of Inspection

23 Services.

1 Q Are they representative of the forms that were
2 used by the Division in 1973 and 1974?
3 A Yes, they are.
4 Q With regard to the application form, who was
5 required to come in and make application for a permit?
6 A Either the owner or his authorized agent.
7 Q With regard to the issuance for the building
8 permit itself, does the permit on its face state what
9 the life of the permit is?
10 A It says permit expires six months from date
11 of issue if no work has commenced.
12 Q Does the permit on its face limit the transfer
13 of the building permit?
14 A Yes, the permit says permit not transferable.
15 Q Were these forms similar to the forms filled
16 out by Miller and Smith with regard to the building
17 permits that are at issue in this case?
18 A Yes, they are, uh-huh.
19 Q Would you describe to the Court the services
20 provided by the -- by Fairfax County upon receipt of an
21 application for a building permit?
22 A Upon an application for the building permit,
23 a person would come to the County; he would either have

1 the permit application filled out, or fill it out at
2 the counter. It would be -- the permit would go to the
3 Assessments to have a check of the ownership -- excuse
4 me, it would go to the Land Office to have a check of the
5 ownership. It would go to Assessments to see whether the
6 applicable business licenses had been secured. It would
7 go to Design Review to see whether the document conformed
8 to the subdivision and site plan ordinances. It would go
9 to the Public Works to see whether the sanitary facilities
10 had been taken care of.
11 It would go to Zoning to see whether the
12 application conformed to the set-back requirements, and
13 the zoning of the area. The plans would be reviewed within
14 the Division of Inspection Services to see whether they
15 met the technical standards of the BOCA Basic Code, and
16 they would be routed to Finance in 1973 and 1974 to pay
17 the fee. And I believe that covers all of it.
18 Q Now, all this was done prior to the issuance of
19 a permit?
20 A All of this was done prior to the time that the
21 building permit was issued. There are various State and
22 local laws that the permit has to conform to.
23 Q Now, at the time the applicant comes in for an

1 application, was he required to pay a fee for these
2 services performed?
3 A At that time we did not charge a filing fee.
4 Q With regard to the permits in issue, were these
5 services performed for these permits?
6 A Yes, they were. The permits were issued and
7 various agencies got their signatures on them.
8 Q All right. If an application came in in
9 September, or if an application came in in March and if
10 it were not issued -- if it were not issued until
11 September, and if the building standards were changed
12 in September, which standards would the permit be
13 processed under?
14 A If he had come in in March, he would have given
15 us his drawings; we would have reviewed his drawings. The
16 permit would have been issued in September under the Code
17 that existed in March -- the Code standards that existed in
18 March.
19 Q I show you Defendant's Exhibit No. 1; can you
20 identify this document?
21 A This appears to be the document identified --
22 the same document identified this morning that has the --
23 that's the list of permits that Miller and Smith is

1 requesting a refund on.

2 Q There are certain columns on that first sheet,a

3 Column A, a Column B, and a Column C, would you describe

4 what is contained under Column A:

5 A Column A shows notations as to when these

6 particular permits were applied for.

7 Q What does Column B show?

8 A Column B shows, again, a similar notation that

9 says the issue date on the permit -- the date the permit

10 was issued. Column C shows the fee that was paid for --

11 for the permit in question.

12 MR. FINNEGAN: Could you mark that please.

13 (The document heretofore referred

14 to was marked Defendant's Exhibit

15 No. 7 for identification.)

16 BY MR. FINNEGAN:

17 Q I'll show you Defendant's Exhibit No. 7; can you

18 identify this document?

19 A Yes, this is a listing that was of the permits

20 that were applied for, the fees paid, shows the number of

21 permits that were issued during various months. It also

22 shows the number of permits that were applied for during

23 various months.

(WITNESS: Mr. Cooper)

1 Q Does it show anything with regard to permits
2 located within corporate limits of Herndon?
3 A Yes -- Note Number Two, it says 323 permits
4 and $6396.00 were transferred to the Town of Herndon.
5 Q Does it say anything with regard to applications
6 that were applied for by the Ryland Group?
7 A Yes -- Note One says 102 of the March 1973
8 permits were applied for by the Ryland Group ($5301.00.)
9 Q The various compilations of figures, did you
10 supervise the -- this compilation of figures?
11 A Yes, I did.
12 Q And how are these figures arrived at?
13 A These figures were arrived at by taking the
14 refund permits that were requested refunds on, going
15 back through the applications and making physical notations
16 of the dates -- of the dates and the information from the
17 applications and the permit.
18 Q Did this require the pulling of each application?
19 A Yes, it did.
20 Q Did this require the pulling of each permit
21 card?
22 A Yes, it did.
23 Q Are these figures accurate?

(WITNESS: Mr. Cooper)

1 A As far as I can tell, they're accurate. We
2 spent half of yesterday and the day before working on
3 them.
4 MR. FINNEGAN: Your Honor, at this time, I'd
5 like to move into evidence Defendant's Exhibits -- I
6 believe that's Exhibits No. 1 through 7.
7 THE COURT: Well, 1, 5 and 6 are already in. I
8 don't think there's any objection raised for 1, 5 and 6.
9 No. 2, Mr. Lawrence objected to the testimony
10 of Mr. Proctor, so I'm sure he objects to the entrance
11 of that.
12 MR. LAWRENCE: Well, I certainly do, Your Honor.
13 THE COURT: I'm going to admit it based on my
14 reasoning for letting him testify so I'll note an exception
15 for you, so No. 2 will be in.
16 (The document heretofore marked
17 for identification as Defendant's
18 Exhibit No. 2 was received in
19 evidence.)
20 THE COURT: So, No. 3 and No. 4, he's testified
21 those were exact copies of the things. Do you have any
22 question about those?
23 MR. LAWRENCE: Your Honor, I think there's just a

* * *

* * *

1 Q In other words, your answer is, that Ordinance
2 does not say that the permits are not transferable?
3 A The Ordinance does not say it exactly.
4 Q It doesn't say it; does it?
5 A There's no language in there about that.
6 Q Now, with regard to the routing that you testified
7 to earlier, to the various offices, what happens when a
8 person seeks a renewal? Is it just automatically renewed,
9 or is it required to be rerouted through all these agencies?
10 A Okay, on the permits in question, they were
11 extended; the first six months' extension was granted at
12 no fee -- that was handled by a simple form of paper that
13 was between the building inspector and the zoning inspector.
14 The renewals that took place after a year, they went back
15 through these agencies.
16 Q Well, then you're talking about an entirely new
17 permit; aren't you?
18 A I'm talking about we reissued -- we issued a new
19 permit on the same -- on the same thing -- on what we had
20 issued before.
21 Q Well, you have in here certain charges for
22 renewals. Now, what does your office do, or what does
23 the County do when there's a renewal of that?

(WITNESS: Mr. Cooper)

1 A Okay, at that time we went through -- on
2 renewals it was routed around to the various agencies
3 that approved it originally. They were the ones that --
4 they were the ones that had reviewed the initial applica-
5 tion.
6 Q So it goes back to the same agencies for review
7 that originally reviewed it when it was first issued?
8 A Right.
9 Q And this is what you charged the renewal fee
10 for?
11 A We charged $10.00 on that.
12 MR. LAWRENCE: That's all the questions I have.
13 THE COURT: Further redirect?
14 MR. FINNEGAN: Just one question, Your Honor.
15 REDIRECT EXAMINATION
16 BY MR. FINNEGAN:
17 Q Why are permits non-transferable?
18 A Permits are not transferable because in order to
19 prosecute violators, we feel as though our hand in
20 prosecuting violators --
21 MR. LAWRENCE: I'm going to have to object to
22 this. You know it's either transferable by law, or it
23 isn't.

* * *

* * *

1 accordance with the Code. I'm in charge of architectural
2 engineering, and also obtaining permits and plan approval
3 of Fairfax County or any of the counties that we are
4 building in.
5 Q Does your job with Miller and Smith require you
6 to be familiar with the Fairfax County Ordinances?
7 A With the Building Codes and Ordinances.
8 Q Building Codes are Ordinances, resolutions?
9 A Yes, they do.
10 Q Would you say that you're very familiar with
11 this?
12 A I would not call myself an expert. I think I
13 know enough to know violations are -- know how to build
14 a house in the County, and what covers each lot.
15 Q That includes the technical codes, such as
16 stress standards, the fire standards?
17 A If you ask a question verbatim, and wanted me
18 to answer it, maybe the answer would be no, but to know
19 enough to help design a house and to build.
20 Q Do you know where to find those standards?
21 A That's correct.
22 Q All right, what about the permit issuance
23 process. How familiar are you with that?

1 A Well, I've been doing it in Fairfax County since
2 1966, and I don't know of any published list that says this is
3 the way you obtain a building permit or plan approval in the
4 County. You obtain it by knowledge and when we first move
5 into a County, we usually go to the agency and find out
6 their procedure; pick up their forms; pick up Codes, all
7 their requirements; and you try to read as many of them
8 as possible.
9 Q And you familiarize yourself with that?
10 A As much as possible. We'redealing with four or
11 five or six jurisdictions sometimes, and they are all
12 different so when a problem in that particular --
13 Q But one of your duties is to know, for example,
14 how long a permit may be kept valid without doing any work
15 on it --
16 A That is correct.
17 Q -- and, for example, what is the procedure for
18 renewing a permit or extending a permit?
19 A That is correct.
20 Q And what is the procedure for refunding a permit?
21 MR. LAWRENCE: Your Honor, I'm going to have to
22 object again. I don't see where it makes any difference
23 whether he knows or not. The law is the law.

1 MR. FINNEGAN: Well, Your Honor, if it goes to
2 the Statute of Limitations question he knew he had a
3 right and he has to come in and ask for it, and he's got
4 to file suit with the Court within a certain period of
5 time. If he obviously --
6 THE COURT: Well, whether or not he knows, --
7 well, I don't know whether or not his knowledge of it
8 would have any bearing upon it. I don't know whether
9 it would have any bearing or not. In other words, there
10 comes a time when he would be entitled to a refund, and
11 if he doesn't exercise his rights -- in other words, he
12 didn't get the refund. If he exercises his rights, he gets
13 the refund. I think that's what we're here for, is whether
14 or not these people are entitled to a refund here. And
15 what bearing -- what probative value does that fact of
16 whether or not he knew or did not know, I don't follow
17 you, Mr. Finnegan.
18 MR. FINNEGAN: Well, Your Honor, it's --
19 THE COURT: He can testify as to what he did or
20 what he didn't do, and then I'll tell you whether or not
21 I think -- I'm the one that's going to have to make up
22 my mind, and decide whether he's entitled to anything.
23 I think he can testify as to anything he did, but

1 MR. FINNEGAN: I just want to know if part of
2 his duties were to familiarize himself with the procedures.
3 He says yes they were.
4 THE COURT: Well, he said he was familiarized.
5 That's right, but whether or not he knew or had the
6 knowledge I don't think it would be -- have any bearing
7 upon this. I'll sustain his objection as to that aspect
8 of it.
9 MR. FINNEGAN: Yes, Your Honor.
10 BY MR. FINNEGAN:
11 Q With regard to the permits in the Fox Mill
12 Estates, Section Four, these permits were applied for
13 in March of 1973; yet the permits themselves were not
14 issued until February of 1974. Do you know why it took
15 so long for these permits to be issued?
16 A I don't remember. It could have been plan
17 approval. I don't remember the sequence in what happened
18 at that time. It does not normally take that long if --
19 we may have had a section not completely bonded and we
20 had filed for the permits.
21 Q Perhaps your site plan hadn't been approved?
22 A It could have been a thousand different things.
23 Q When you apply for a permit in Fairfax County,

1 what did you have to bring to the County?

2 A The first permit?

3 Q Yes.

4 A There's a difference.

5 Q Let's say the first permit.

6 A The first permit you're talking about to the

7 Building Department itself?

8 Q Yes.

9 A Okay, you have to bring a copy of the site

10 plan. You have to bring a copy of your building plans,

11 and you have to bring a copy of the application filled out.

12 Q Now, would the site plan have had to have been

13 approved before you could apply for a permit-- for these

14 permits?

15 A It would not be approved prior to application; it

16 would have to be approved prior to them granting the

17 permit. But they had no way of knowing that the site

18 plan has or has not been approved until the permit goes

19 to the Site Plan Division which is one of the functions

20 in the Permit.

21 Q Do you know what Fairfax County does with your

22 permits or your application forms?

23 A Do I know all the various steps that they go

1 through?

2 Q Right. What are they?

3 A I think I do.

4 Q Okay. Go ahead with what you've got.

5 A You mean you want me to tell you what happens

6 to it?

7 Q Right -- as you understand happens with it.

8 A Okay. I don't know what they do to it. I know

9 the different departments that it goes through when you

10 apply on the -- I'd say right now you apply on the fourth

11 floor, and there's a clerk who takes the application and

12 assigns a number to it; then they put it back into an

13 envelope and you go back to the back counter and you

14 submit it and it goes through a routine -- or routine

15 process which I guess back in '72, '73, there were times

16 that you could walk the permits through, so you were more

17 familiar with what happened with them than what happens

18 today.

19 But they still have the same routing process.

20 They go to Design and Review. They go to Zoning. They

21 go to Assessments, and then they come back to the fourth

22 floor -- I don't know whether anybody else--

23 Q Does somebody in Fairfax, some engineer in

1 Fairfax County basically review the building plan; is
2 that part of their process?
3 A That is a part of the process of getting a
4 building permit. Once we submit the plans, somebody has
5 to review those plans.
6 Q Right.
7 A And if there are any questions, or they do not
8 meet the Codes, then they will call you up ~~and you can~~
9 sit down and meet with them, and you'd have to change
10 them or agree to what the new standard's going to be.
11 And they do not meet the Code --
12 Q And after all that work is done, it's at that
13 point that you -- the permit is issued, and you, of course,
14 pay for the permit at that time?
15 A That's correct.
16 Q That was the procedure in '73 and '74?
17 A That's correct.
18 Q If you had a house -- well -- strike that.
19 Did you request extension of a permit --
20 A Yes, we have.
21 Q --for some of the permits that are involved in
22 this case?
23 A I -- let's see -- yes, we did.

1 Q Okay. Where did you find the procedure concerning
2 the extension for permits? Was that found in the 1970 BOCA
3 Basic Building Code there, or was it found in the County
4 Ordinances?
5 A I got that from the County staff at that time.
6 I talked to someone and found out the procedure and filled
7 out the application that had to be filled in; found out the
8 fee that was desired in order to renew it.
9 Q Did you ever notify the County with regard to
10 the Fox Mill Subdivision that you did not intend to
11 build under these permits?
12 A Not to my knowledge we didn't; no.
13 Q The working drawings, the building plans them-
14 selves were -- was that basically the last step, or where
15 was that with regard to -- when did you complete that
16 prior to coming in and asking for a building permit?
17 A I don't think I know exactly --
18 MR. LAWRENCE: On which subdivision?
19 BY MR. FINNEGAN:
20 Q Okay, with regard --
21 A With regard to what?
22 Q With regard to Fox Mill Estates, Section Four,
23 did you have all your building plans ready to go, and then

1 wait, and that day when the last building plan was ready
2 to go, was it the next day that you came in and applied
3 for a permit; or was there perhaps a week or two weeks
4 inbetween?
5 A I have no way of remembering that. We do things
6 in certain sequence, and I couldn't tell you what day I
7 actually went in, and what -- there's a long process of
8 plan approval, and we may have not been bonded, or we may
9 have had a bonding problem at that time, and the Section
10 could have been designed by somebody else. In that case
11 it was.
12 Q Okay, so the Section could have been designed,
13 let's say, three months before you actually came in and
14 applied for the permit; is that correct?
15 A It could have been designed longer than that.
16 I believe we acquired the property already designed, and
17 how long prior to Miller and Smith purchasing the property,
18 I wouldn't have the slightest idea.
19 Q Okay, with regard to Hunter's Creek -- I'm
20 sorry, Hiddenbrook, Section Four, could those building
21 plans have been designed two months before you actually
22 came and applied for a permit?
23 MR. LAWRENCE: Your Honor, I just don't see where

* * *

* * *

1 Q How many months did you have to work with in
2 order to commence construction before your building
3 permit lapsed?
4 MR. LAWRENCE: Your Honor, that's the same thing
5 if we're talking about a legal provision, Your Honor. I
6 don't think this --
7 MR. FINNEGAN: Well, Your Honor, I think this
8 goes right to the heart of the matter. We've got to find
9 out how much our plaintiffs know about the Code, if they
10 know something about it.
11 THE COURT: If the rights are there in the Code,
12 I mean, I think they have a right to exercise them, whether
13 they're aware of them or not, Mr. Finnegan.
14 I'll sustain his objection. I don't see where
15 it would be relevant, and I'll sustain the objection.
16 MR. FINNEGAN: I except to Your Honor's ruling.
17 THE COURT: Sure; yes, sir.
18 BY MR. FINNEGAN:
19 Q At the time these permits lapsed, did you
20 request a refund from Fairfax County?
21 A No. I believe Mr. Hall, from time to time, had
22 had some conversation with, you know, people just at the
23 counter.

(WITNESS: Mr. Miller)

1 Q Did you --

2 MR. LAWRENCE: He didn't answer the question.

3 THE COURT: I don't believe it was responsive

4 to the question.

5 MR. FINNEGAN: He has responded to the question.

6 Now, he's just getting into --

7 THE COURT: He said the time. In other words,

8 he said no, and then he went on to say but Mr. Hall

9 had some conversation with the people over at the Board --

10 I mean over in the County.

11 MR. FINNEGAN: I asked him did you, and he

12 said no.

13 MR. LAWRENCE: I thought he was referring to the

14 Corporation.

15 THE COURT: No, he said he didn't.

16 MR. FINNEGAN: That's all I was interested in.

17 BY MR. FINNEGAN:

18 Q At the time -- well, when did you decide, for

19 example, the Hunter's Creek Section Two permits -- they

20 were issued on September -- well, September 13th of

21 1973. When did you decide to, not to build under that

22 permit?

23 A Well, you know, as the market got bad and we saw

1 that that particular house type was not selling, we
2 built -- gee, not many houses at Hunter's Creek before
3 we stopped the construction of any more until they were
4 sold. And it was during that time that most of the
5 permits expired and we did renew some of them for some
6 period of time.
7 Q All right, you knew the ones that you wanted to
8 build on -- you knew enough to extend?
9 A I don't recall whether it was related to the ones
10 we were going to build on, or not, it was just --
11 Q But it would be some time, some time during the
12 six month period life of that permit you would decide that
13 you were not going to build on it; is that a fair statement?
14 A Yes, that's a fair statement.
15 Q Did you ever notify Fairfax County that you
16 weren't going to build?
17 A No, we did not.
18 MR. FINNEGAN: No further questions, Your Honor.
19 THE COURT: All right, sir, cross examine?
20 MR. LAWRENCE: I have no questions, Your Honor.
21 THE COURT: All right, sir. You may step down
22 then, Mr. Miller.
23 MR. FINNEGAN: He can be released. I have no

* * *

FAIRFAX COUNTY, VIRGINIA

MEMORANDUM

TO: F. Lee Ruck
County Attorney

DATE: November 22, 1978

FROM: RFG for Mary Elizabeth Holbein, Director
Office of Research and Statistics

FILE NO: 3130.0203/8112274

SUBJECT: Administrative Cost of Issuing Building Permits

REFERENCE: Memorandum to Larry R. Coons from Mary Elizabeth Holbein; subject as above, dated April 25, 1978.

PURPOSE

This is in response to a request from Edward Finnegan of your office for the Office of Research and Statistics (ORS) to perform a study that would determine to the extent possible the administrative cost that the County incurred in FY1974 in the process of issuing building permits authorizing the construction of new single-family structures.

CONCLUSION

The results of the study indicate that the direct administrative cost of issuing a building permit for a new single-family structure was approximately $21.16 during FY1974. This figure includes the cost to the County for processing the applications for permits and for the issuance of the permit itself. In comparison, according to a similar study performed by this office during April 1978, the administrative cost of issuing building permits was about 25 percent or $7.01 less than the cost during FY1978 ($28.17). This change in processing cost is primarily due to changes in pay scales and salaries and the number of individuals involved in the processing of applications and permits.

It is important to note that the administrative cost of issuing building permits cannot be directly compared to building permit fees. As noted in the referenced April 1978 Study, the permit fee includes both the administrative cost to the Division of Inspection Services, Department of Environmental Management (known as the Department of County Development in FY1974) for the issuance of permits and the costs of providing inspection

services. The administrative cost, on the other hand, reflects the direct administrative cost to the County for the issuance of a permit and not the cost for providing inspection services. It also does not include the indirect costs that are incurred in the process of issuing building permits. These indirect costs have not been included since it is extremely difficult to determine the proportionate costs of equipment and services that contribute towards the total cost of issuing individual permits. Some examples of these indirect costs that have not been accounted for include:

- Costs incurred by the County to staff telephones to answer citizen inquiries concerning building permits.

- Costs incurred by the County in continually researching federal and state regulations so that the County's ordinances concerning permits can be kept up-to-date. This is important in terms of assuring proper safety standards for both the construction industry and the home buyers.

- Costs incurred by the County in utilizing the courier system for transporting copies of documents related to building permits between County agencies. (The courier service was not operational when the permits were issued to Miller and Smith Corporation.)

- Costs incurred by the County in the development and maintenance of computer capabilities that presently assist the Office of Assessments in processing permit applications.

In addition to the above examples, there are several other permit-related activities for which the cost figures were not derived. For instance, it is the present policy to renew permits for builders, at no extra charge, provided that the builder requests the renewal prior to its expiration which is six months from the date of issue. It is extremely difficult to account for these costs on a per-permit basis and, therefore, they have not been included in the figure stated above.

DISCUSSION

The Office of Research and Statistics had performed an analysis in April 1978 to determine the administrative cost to the County for processing building permit applications and for issuing building permits. This study was used as the basis for evaluating the similar costs that were incurred by the County during FY1974.

In order to determine the administrative costs that the County incurred in issuing building permits during FY1974, the Office of Research and Statistics initiated discussions with the Department of Environmental Management staff concerning the procedures that were in effect at that time. These discussions included identifying the various agencies that were involved in processing the building permit applications and issuing the permits during FY1974. Following these discussions, each of the agencies involved was interviewed to determine if any changes had taken place since April 1978 with respect to the specific functions they performed, the level of the staff involved, the equipment (if any) utilized in the process, and the amount of time spent for processing individual permits for new single family dwellings. Finally, the statistics included in the FY1978 study were adjusted to take into consideration those changes that had occurred during the past four-year period.

The various tasks in processing a building permit and the time required for each during FY1974 have been outlined in Attachment 1.

Having identified the various tasks in processing permit applications, the time required for each, and the agencies involved during FY1974, the estimated total cost per minute for processing by each of the agencies was developed by reviewing the approved operating budget documents for that period. The total cost per minute which includes personnel costs, administrative support costs, operating costs and capital equipment costs is included in Appendices 1 through 7.

The final phase of the study included applying the total cost per minute to each of the elements outlined in Attachment 1. This resulted in providing the direct cost of processing a building permit for a single-family structure during FY1974. As can be seen, on the average it requires approximately 245 minutes to process a permit, at an approximate cost of $0.09 per minute, resulting in a total cost of $21.16 per permit.

MEH/NA:dgd

Attachments

cc: Larry R. Coons, Director
Department of Environmental Management

Claude Cooper, Director
Division of Inspection Services,
Department of Environmental Management

BUILDING PERMIT PROCESSING PROCEDURES 1973 - 1974

Step Number	Agency	Process	Average Processing Time in Minutes	Average Processing Cost Per Minute	Total Processing Cost	Notes
1.	Division of Inspection Services, DEM	The owner of property who desires to obtain a building permit for some proposed construction must personally, or through his agent, deliver two (2) complete sets of construction plans to the permit counter.	2.50	.12	.30	The average processing time includes items 1, 2 and 3.
2.		The County staff provides response to inquiries about the building permit process, inspection procedures, and inquiries about the building code. The Clerk provides building permit applications to the applicant along with instruction for filling out the form.				
3.		The owner or agent fills out an application, and submits one for each lot he wishes to build on.				
4.		The Permit Clerk assigns an application number from a log book, and puts it on each application.	3.00	.12	.36	
5.		The applicant is directed to the Division of Design Review, DEM, to certify that the design plan review fees have been paid. This step is waived if applicant has receipt in hand. Applicant is also directed to the Division of Zoning Enforcement, DEM, to ascertain whether the set-back requirements comply with the County ordinances. The applicant then returns to the building permit counter.	0.50	.12	.06	
6.		The Permit Clerk evaluates the application to determine which other agencies must approve the application. The Permit Clerk directs the owner or agent to the various agencies for thier approval, and notes route on application. As each agency approves the application, they sign off in the appropriate space provided. New	1.50	.12	.18	

BUILDING PERMIT PROCESSING PROCEDURES 1973 - 1974

Step Number	Agency	Process	Average Processing Time in Minutes	Average Processing Cost Per Minute	Total Processing Cost	Notes
		construction on public water and sewer go to the Assessments Office, Land Office, Zoning Enforcement Office, Design Review Office, Sanitation Office and then back to the building permit counter.				
7.		The Permit Clerk stamps the outside sheet of the construction plans and puts the application number on it, and takes it back to the plans examiner for his approval.	5.00	.12	.60	
8.		Fees are calculated when plans are examined.	5.50	.20	1.10	
9.		The plans examiner inspects the plans for compliance with the existing codes and ordinances. If the plans are sufficient, the plans examiner dates and initials the stamp on each set of plans as "Approved".	60.00	.20	12.00	
10.		If the builders plans are on file with the County, the Permit Clerk checks the plans rack to be certain plans are for identical type of house stated on application are on file for identical subdivision. Permit Clerk then requests plans examiner to fill in necessary information on application (fee, square foot area, etc.) or Permit Clerk puts information on application if plans examiner is busy.	7.00	.12	.84	The average processing time includes items 10, 11, 12, 13, 14, 15, 16, 17, and 18.
11.		The owner or agent returns to the building permit counter with application. The Permit Clerk examines the application to make sure it is approved by all agencies. If the plans are approved, the Permit Clerk puts the fee on each application from the plans examiner's notes.				
					$14.54	

BUILDING PERMIT PROCESSING PROCEDURES 1973 - 1974

Step Number	Agency	Process	Average Processing Time in Minutes	Average Processing Cost Per Minute	Total Processing Cost	Notes
12.		The building permit forms are numbered sequentially and this is used for the building permit number. The Permit Clerk notes this on the plans and application.				
13.		The Permit Clerk types out one six (6) part building permit for each application submitted.				
14.		The Permit Clerk separates copies of the building permit, and owner or agent goes to the cashier and pays the fees. The cashier validates copies of the permit and retains one copy.				
15.		Meanwhile, the Permit Clerk collates and distributes copies of the application to other agencies, and prepares a file jacket and a red building permit card.				
16.		The owner or agent returns to the building permit counter with the validated building permit				
17.		The Permit Clerk returns one copy of the building permit application, red card, building permit, and a set of the approved plans to the owner or agent and advises him when to call for inspections.				
18.		If the builders plans are on file with the County, the same procedures are followed as in step number 16, except he did not receive a copy of the approved plans once the original permit was issued on that particular subdivision.				

BUILDING PERMIT PROCESSING PROCEDURES 1973 - 1974

Step Number	Agency	Process	Average Processing Time in Minutes	Average Processing Cost Per Minute	Total Processing Cost	Notes
19.		The Permit Clerk sends the file jacket and the plans to the file room. These records are kept for one year following completion of the project, at that time the file jacket and plans are put into storage. At a later date the file jacket and plans are sent to the Division of Administrative Services, DEM, for microfilming.	1.50	.12	.18	
20.		Building permits may be renewed for a period of six (6) months, if work has not commenced within 6 months from the issuance of the original building permit. The applicant fills out another building permit application.	3.00	.12	.36	The average processing time includes items 20, 21 and 22.
21.		The applicant is then directed to the Assessments Office, Land Office, Zoning Enforcement Office, Design Review Office, Sanitation Office and then back to the building permit counter.				
22.		Upon completion of the renewed building permit the Division of Inspection Services authorizes the extension following the approval by the agencies involved. The Permit Clerk then issues another building permit following the same procedures as listed for a regular building permit.				
23.		The Division is responsible for preparing daily, weekly, and monthly reports. These reports, used by agency officials, and the U.S. Bureau of Census, and the Washington Metropolitan Council of Governments (COG), reflect the building permit activity.	.50	.12	.06	
24.	Division of Design Review, DEM	Upon receiving a building permit application, the Division staff checks to see that: 1. the subdivision/site plans for the project have been approved and recorded. 2. The appropriate plan review fees have been paid. 3. The type of house to be constructed as indicated on the building permit application matches that reflected in the approved plans. 4. The	3.50	.21	.74	
					$1.34	

BUILDING PERMIT PROCESSING PROCEDURES 1973 - 1974

Step Number	Agency	Process	Average Processing Time in Minutes	Average Processing Cost Per Minute	Total Processing Cost	Notes
		applicant has satisfied the County's bond and agreement requirements. 5. That the building permit application is logged into the Division's records for future reference.				
		In instances where a building permit is being renewed the staff reviews the subdivision/site plans to assure that they satisfy the current code requirements.	1.00	.21	.21	
26.	Division of Zoning Enforcement, DEM	The Division of Zoning Enforcement reviews the building permit application and the associated house location plats for set-back requirements. The Division also reviews the application for zoning compliance. Furthermore, the Division examines the microfilm of the subdivision plat to determine if there are easement restrictions that need to be satisified. Following approval, the building permit application is logged in for future reference.	3.00	.18	.54	
27.		In instances where a building permit is being renewed, the staff reviews the building permit application to assure compliance with the current zoning codes.	1.00	.18	.18	
28.	Office of Waste Management, Department of Public Works	Since this office is the last agency outside DEM to review the building permit application prior to the issuance of the building permit, this agency reviews the building permit application for completeness.	3.00	.17	.51	This processing time includes processing discussed in item 29.
					$1.44	

BUILDING PERMIT PROCESSING PROCEDURES 1973 - 1974

Step Number	Agency	Process	Average Processing Time in Minutes	Average Processing Cost Per Minute	Total Processing Cost	Notes
		The agency checks to see that all other appropriate agencies have signed off, that the map reference number on the building permit application is correct, and that the lot has been recorded.				
9.		The Office requires applicants to fill out an application form for Sewerage Service, accepts payment for sewer availability fees when sewer taps are available, checks to see if sewer tap fees were paid at a time prior to the review of the building permit application, and assigns a sewer shed code to the building permit application. When the fees have been collected and the building permit application has been approved by the Office of Waste Management, the staff logs in the building permit application authorization for future reference. Funds collected for availability fees are transferred to the Division of Finance.				The reason for checking to see if sewer fees have already been paid is because the County, at the applicant's option, will accept sewerage availability fees at the time of site/subdivision plan approval. The staff, therefore, has to verify the fact that fees were already paid and where applicable, provide the applicant with credit

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BUILDING PERMIT PROCESSING PROCEDURES 1973 - 1974

Step Number	Agency	Process	Average Processing Time in Minutes	Average Processing Cost Per Minute	Total Processing Cost	Notes
	Office of Assessments					
30.		Upon receiving the building permit application, the staff researches the County documents and adds the map reference number, the supervisor district, the deed book number, the legal address, the lot number, the subdivision name, and the deed book page number to the application. The staff also certifies the name of the owner of the lot as indicated on the building permit application. The certification frequently requires working with staff of the Division of Mapping and the Clerk of the Circuit Court where the lots are recorded.	4.00	.15	.60	
31.		The Office of Assessments reviews the building permit application to determine if the builders, developers, contractors and/or sub-contractors are properly licensed and registered with the State and County. This is accomplished by checking against appropriate directories. As necessary, the staff issues a Business, Professional and Occupational License (BPOL), and directs the contractors to register with the State Registration Board so that they can issue the State Revenue License.	6.50	.12	.78	
					1.38	

BUILDING PERMIT PROCESSING PROCEDURES 1973 - 1974

Step Number	Agency	Process	Average Processing Time in Minutes	Average Processing Cost Per Minute	Total Processing Cost	Notes
	Department of Health					
32.		The Division of Environmental Health review preliminary plats and site plan in conjunction with building permit application that are for construction of residential units utilizing well water supply. The review takes into consideration location of the well in relation to the adjacent lot, the site sewage disposal systems, and the house itself.	20.00	.09	.22	Documents published by the U.S. Bureau of the Census indicates that approximately 12% of the single family and townhouse units utilize well water system. The costs have been adjusted accordingly for items 31, 32, 33, and 34.
33.		The division requires each applicant for a well permit to fill out a permit application for the construction of wells. The clerks review the application form for completeness and accuracy.	3.00	.06	.02	
34.		In order to process the well permit application, a County sanitarian makes a field trip to the site to verify location of proposed well as indicated on the plans.	80.00	.10	.96	
35.		Well permits are issued only after the Supervisor in the Division has had the opportunity to carefully review the field inspector's report and the application itself.	30.00	.10	.36 1.56	
		TOTAL	245.00	.09	21.16	

BUILDING PERMIT PROCESSING PROCEDURES 1973 - 1974

Step Number	Agency	Process	Average Processing Time in Minutes	Average Processing Cost Per Minute	Total Processing Cost	Notes
36.	Division of Inspection Services, DEM	Upon the issuance of a renewed building permit the Permit Clerk cancels the original buildng permit by typing a "Notice of Cancellation", and distributing copies to the Assessments Office, Design Review Office, Zoning Enforcement Office, and Sanitation Office. The Permit Clerk also, pulls the address card and file jacket, and cancels the Divisions copy of the original building permit.	10	.12	1.20	
		TOTAL	255.00	.09	22.36	

$1.20

Appendix 1A

Processing Costs
Division of Inspection Services, Department of Environmental Management
(Building Permit Issuance Costs)

	Salary Per Hours	No. of Persons Supervised	Cost/Hour
1. Base Personnel Cost			
Title			
Clerk	$ 3.84	0	$ 3.84
2. Supervisory Staff Cost			
Title			
Asst. Branch Chief	$ 8.04	25	$ .32
Branch Chief	$ 9.75	26	$ .38
Division Dept. Director	$10.66	200	$ .05
Division Director	$11.73	202	$ .06
Secretary	$ 6.13	202	$ .03
Average Salary Cost/Hour/Employee			$ .84
3. Total Clerical and Supervisory Cost			
Base Cost/Hour			$ 3.84
Supervisory Cost/Hour			$ .84
Director Personnel Cost/Hour			$ 4.68
*Fringe Benefits ($4.68 x 0.28)			$ 1.31
Total Personnel Cost/Hour			$ 5.99

4. Administration Support Cost

Budget Division of Administrative Services, DEM = $451,482
Total Number of Employees in DEM = 338
Administrative Support Cost/Year/Emp. = ($451,482 ÷ 338) = $1,336
Administrative Support Cost/Hour/Emp. = ($1,336 ÷ 2,080) = $ .64

5. Operating Costs

Supplies Budgetted/FY1973 = $250,851
Supply Cost/Year/Employee = $250,851 ÷ 203 = $1,236
Operating Cost/Hour/Employee = ($1,236 ÷ 26 ÷ 80)= $ .59

*See Appendix 7 for explanation of Fringe Benefits

	Cost/Hour
6. Capital Equipment Costs	
Cost of desk, amortized over 10 years ($260 ÷ 10) = $26.00	
Cost of chair, amortized over 10 years ($27 ÷ 10) = $ 2.70	
Cost of typewriter, amortized over 5 years ($460 ÷ 5) = $92.00	
Cost of calculator, amortized over 5 years ($150 ÷ 5) = $30.00	
Total Capital Cost/Year/Employee = $150.70	
Total Capital Cost/Hour/Employee ($150.70 ÷ 2,080)=	$ .07
7. Total Cost/Hour/Employee	
Personnel Cost	$ 5.99
Administrative Support Cost	$ .64
Operating Cost	$ .59
Capital Costs	$ .07
Total Cost/Hour/Employee	$ 7.29
8. Total Cost/Minute/Employee	
Total Cost/Minute ($7.29 ÷ 60)=	$ .12

Appendix 1B

Processing Costs
Division of Inspection Services, Department of Environmental Management
(Engineering Plan Review Costs)

	Salary Per Hour	No. of Person Supervised	Cost/Hour
1. Base Personnel Cost			
Title			
Engineer	$47.32	0	$ 7.32
2. Supervisory Staff Cost			
Title			
Asst. Branch Chief	$ 8.04	25	$ .32
Branch Chief	$ 9.75	26	$ .38
Division Dept. Director	$10.66	200	$ .05
Division Director	$11.73	202	$ .06
Secretary	$ 6.13	202	$ .03
Average Salary Cost/Hour/Employee			$ .84
3. Total Engineer and Supervisory Cost			
Base Cost/Hour			$ 7.32
Supervisory Cost/Hour			$ .84
Direct Personnel Cost/Hour			$ 8.16
*Fringe Benefits ($8.16 x .28)			$ 2.28
Total Personnel Cost/Hour			$10.44

4. Administrative Support Cost

Budget Division of Administrative Services, DEM = $451,482
Total Number of Employees in DEM = 338
Administrative Support Cost/Year/Emp. =($451,482 ÷ 338) = $1,336
Administrative Support Cost/Hour/Emp. = ($1,336 ÷ 2,080) = $ .64

5. Operating Costs

Supplies Budgetted/FY1973 = $250,851
Supply Cost/Year/Employee = $250,851 ÷ 203 = $1,236
Operating Cost/Hour/Employee = ($1,236 ÷ 26÷ 80) $ .59

*See Appendix 7 for explanation of Fringe Benefits.

	Cost/Hour
6. Capital Equipment Cost	
Cost of desk, amortized over 10 years ($260 ÷ 10) = $26.00	
Cost of chair, amortized over 10 years ($27 ÷ 10) = $ 2.70	
Cost of calculator, amortized over 5 years ($150 ÷ 5) = $30.00	
Total Cost/Year/Employee = $58.70	
Total Cost/Hour/Employee = ($58.70 ÷ 2,080) =	$ .03
7. Total Cost/Hour/Employee	
Personnel Cost	$10.44
Administrative Support Cost	$ .64
Operating Cost	$ .59
Capital Cost	$ .03
Total Cost/Hour/Employee	$11.70
8. Total Cost/Minute/Employee	
Total Cost/Minute ($11.70 ÷ 60) =	$ .20

Appendix 2A

Processing Costs
Division of Environmental Health, Department of Health
(Plan Review Costs)

	Salary Per Hour	No. of Persons Supervised	Cost/Hour
1. Base Personnel Cost			
Title			
Plan Reviewer (Sanitarian III)	$ 6.64	0	$ 6.64
2. Supervisory Staff Cost			
Title			
Supervisor (San. IV)	$ 7.69	15	$ .51
Asst. Div. Dir.	$ 9.35	47	$ .20
Div. Dir.	$10.26	48	$ .21
Secretary (Dir.)	$ 3.35	48	$ .07
Dept. Dir.	$18.12	237	$ .08
Secretary (Dept.)	$ 4.82	237	$ .02
Average Salary Cost/Hour/Employee			$ 1.09
3. Total Clerical and Supervisory Costs			
Base Cost/Hour			$ 6.64
Supervisory Cost/Hour			$ 1.09
Direct Personnel Cost/Hour			$ 7.73
* Fringe Benefits ($7.73 x .28)			$ 2.16
Total Personnel Cost/Hour			$ 9.89

4. Administrative Support Cost

Budgetted FY 1973 for Department = $273,485
Est. for FY 1973 for Department ($273,485 ÷ 0.695) = $190,110
Total Number of Employees in Health Department = 238
Administrative Support Cost/Hour/Emp. = ($190,110 ÷ 238 ÷ 26 ÷ 80) = $ .38

5. Operating Cost

Not Available.

*See Appendix 7 for explanation of Fringe Benefits.

	Cost/Hour
6. Capital Equipment Cost	
Cost of desk, amortized over 10 years (260 ÷ 10) = $26.00	
Cost of chair, amortized over 10 years (27 ÷ 10) = $ 2.70	
Cost of calculator, amortized over 5 years (150 ÷ 5) = $30.00	
Total Cost/Year/Employee = $58.70	
Total Cost/Hour/Employee = ($58.70 ÷ 2,080) =	$ .03
7. Total Cost/Hour/Employee	
Personnel Cost	$ 9.89
Administrative Support Cost	$ .38
Operating Cost	--
Capital Cost	$ .03
Total Cost/Hour/Employe	$10.30
Cost to County (less 46 percent State Support) =	$ 5.56
8. Total Cost/Minute/Employee	
Total Cost/Minute ($5.56 ÷ 60) =	$ .09

Appendix 2B

Processing Costs
Division of Environmental Health, Department of Health
(Supervisory Review Costs)

	Salary Per Hour	No. of Persons Supervised	Cost/Hour
1. Base Personnel Cost			
Title			
Sanitarian IV	$ 7.69		$ 7.69
2. Supervisory Staff Cost			
Title			
Supervisor (San. IV)	$ 7.69	15	$ .51
Asst. Div. Dir.	$ 9.35	47	$ .20
Div. Dir.	$10.26	48	$ .21
Secretary (Dir.)	$ 3.35	48	$ .07
Dept. Dir.	$18.12	237	$ .08
Secretary (Dept.)	$ 4.82	237	$ .02
Average Salary Cost/Hour/Employee			$ 1.09
3. Total Supervisory and Base Personnel Cost			
Base Cost/Hour			$ 7.69
Supervisory Cost/Hour			$ 1.09
Direct Personnel Cost/Hour			$ 8.78
* Fringe Benefits ($8.78 x .28)			$ 2.46
Total Personnel Cost/Hour			$11.24

4. Administrative Support Cost

Budgetted FY 1973 for Department = $273,485
Est. for FY 1973 for Department ($273,485 ÷ 0.695) = $190,110
Total Number of Employees in Health Department = 238
Administrative Support Cost/Hour/Emp. = ($190,110 ÷ 238 ÷ 26 ÷ 80) = $ .38

5. Operating Cost

Not Available.

*See Appendix 7 for explanation of Fringe Benefits.

	Cost/Hour
6. Capital Equipment Cost	
Cost of desk, amortized over 10 years (260 ÷ 10) = $26.00	
Cost of chair, amortized over 10 years (27 ÷ 10) = $ 2.70	
Cost of calculator, amortized over 5 years (150 ÷ 5) = $30.00	
Total Cost/Year/Employee = $58.70	
Total Cost/Hour/Employee = ($58.70 ÷ 2,080) =	$ .03
7. Total Cost/Hour/Employee	
Personnel Cost	$11.24
Administrative Support Cost	$ .38
Operating Cost	--
Capital Cost	$ .03
Total Cost/Hour/Employe	$11.65
Cost to County (less 46 percent State Support) =	$ 6.29
8. Total Cost/Minute/Employee	
Total Cost/Minute ($6.29 ÷ 60)	$ .10

Appendix 2C

Processing Costs
Division of Environmental Health, Department of Health
(Well Permit Issuance Costs)

	Salary Per Hour	No. of Persons Supervised	Cost/Hour
1. Base Personnel Cost			
Title			
Clerk	$ 3.77	0	$ 3.77
2. Supervisory Staff Costs			
Title			
Supervisor (San. IV)	$ 7.69	15	$ .51
Asst. Div. Dir.	$ 9.35	47	$ .20
Div. Dir.	$10.26	48	$ .21
Secretary (Dir.)	$ 3.35	48	$ .07
Dept. Dir.	$18.12	237	$ .08
Secretary (Dept.)	$ 4.82	237	$ .02
Average Salary Cost/Hour/Employee			$ 1.09
3. Total Supervisory and Clerical Costs			
Base Cost/Hour			$ 3.77
Supervisory Cost/Hour			$ 1.09
Total Cost/Hour			$ 4.86
*Fringe Benefits ($4.86 x .28)			$ 1.36
Total Personnel Cost/Hour			$ 6.22

4. Administrative Support Cost

Budgetted FY 1973 for Department = $273,485
Est. for FY 1973 for Department ($273,485 ÷ 0.695) = $190,110
Total Number of Employees in Health Department = 238
Administrative Support Cost/Hour/Emp. = ($190,110 ÷ 238 ÷ 26 ÷ 80) = $ .38

5. Operating Cost

Not Available.

*See Appendix 7 for explanation of Fringe Benefits.

	Cost/Hour
6. Capital Equipment Cost	
Cost of desk, amortized over 10 years ($260 ÷ 10) = $26.00	
Cost of chair, amortized over 10 years ($27 ÷ 10) = $ 2.70	
Cost of calculator, amortized over 5 years ($150 ÷ 5) = $30.00	
Cost of typewriter, amortized over 5 years ($460 - 5) = $92.00	
Total Capital Costs/Year/Employee = $150.70	
Total Capital Costs/Hour/Employee ($150.70 - 2,080) =	$ .07

7. Total Cost/Hour/Employee	
Personnel Cost	$ 6.22
Administrative Support Cost	$ .38
Operating Cost	--
Capital Cost	$ .07
Total Cost/Hour/Employee	$ 6.67
Cost to County (less 46 percent State Support) =	$ 3.60

8. Total Cost/Minute/Employee	
Total Cost/Minute ($3.60 ÷ 60) =	$ .06

Appendix 2D

Processing Costs
Division of Environmental Health, Department of Health
(Field Inspections Costs)

	Salary Per Hour	No. of Persons Supervised	Cost/Hour
1. Base Personnel Cost			
Title			
Sanitarian II	$ 6.51	0	$ 6.51
2. Supervisory Staff Costs			
Title			
Supervisor (San. IV)	$ 7.69	15	$ .51
Asst. Div. Dir.	$ 9.35	47	$ .20
Div. Dir.	$10.26	48	$ .21
Secretary (Dir.)	$ 3.35	48	$ .07
Dept. Dir.	$18.12	237	$ .08
Secretary (Dept.)	$ 4.82	237	$ .02
Average Salary Cost/Hour/Employee			$ 1.09
3. Total Supervisory and Clerical Costs			
Base Cost/Hour			$ 6.51
Supervisory Cost/Hour			$ 1.09
Direct personnel Cost/Hour			$ 7.60
*Fringe Benefits ($7.60 x .28)			$ 2.13
Total Personnel Cost/Hour			$ 9.73

4. Administrative Support Cost

Budgetted FY 1973 for Department = $273,485
Est. for FY 1973 for Department ($273,485 ÷ 0.695) = $190,110
Total Number of Employees in Health Department = 238
Administrative Support Cost/Hour/Emp. = ($190,110 ÷ 238 ÷ 26 ÷ 80) = $ .38

5. Operating Cost

Not Available.

*See Appendix 7 for explanation of Fringe Benefits.

	Cost/Hour
6. Capital Equipment Cost	
Cost of desk, amortized over 10 years ($260 ÷ 10) = $26.00	
Cost of chair, amortized over 10 years ($27 ÷ 10) = $ 2.70	
Cost of calculator, amortized over 5 years ($150 ÷ 5) = $30.00	
Total Cost/Year/Employee = $58.70	
Total Cost/Hour/Employee = ($58.70 ÷ 2,080) = $.03	
Cost of automobile, less redemption value ($5,800 - 800) = $5,000	
Cost of automobile, amortized over 5 years = $1,000/Yr. = $ .48/Hr.	
Total Cost/Hour/Employee ($ .03 + $ .48) =	$ .51
7. Total Cost/Hour/Employee	
Personnel Cost	$ 9.73
Administrative Support Cost	$ .38
Operating Cost	--
Capital Cost	$ .51
Total Cost/Hour/Employee	$10.62
Cost to County (less 46 percent State Support) =	$ 5.73
8. Total Cost/Minute/Employee	
Total Cost/Minute ($5.73 ÷ 60)	$ .10

Appendix 3A

Processing Costs
Division of Personal Property, Office of Assessments
(Contract Registration Certification Costs)

	Salary Per Hour	No. of Persons Supervised	Cost/Hour
1. Base Personnel Costs			
Title			
Clerk	$ 4.13		$ 4.13
2. Supervisory Staff Cost			
Title			
Supervisor	$ 6.18	10	$ .62
Division Director	$11.53	64	$ .18
Secretary	$ 4.24	64	$ .06
Department Director	$14.95	149	$ .10
Secretary	$ 6.16	149	$ .04
Average Supervisory Cost/Hour/Employee			$ 1.00
3. Total Clerical and Supervisory Cost			
Base Cost/Hour			$ 4.13
Supervisory Cost/Hour			$ 1.00
Total Personnel Cost/Hour			$ 5.13
* Fringe Benefits			$ 1.44
Total Personnel Cost/Hour			$ 6.57
4. Administrative Support Cost			
Budgetted FY 1974 for Department $214,655			
Admin. Support Cost/Hour/Employee ($214,544 ÷ 150 ÷ 2,080) =			$ .69
5. Operating Cost			
Not Available			

*See Appendix 7 for explanation of Fringe Benefits

	Cost/Hour
6. Capital Equipment Cost	
Cost of desk, amortized over 10 years ($260 ÷ 10) = $26.00	
Cost of chair, amortized over 10 years ($27.00 ÷ 10) = $ 2.70	
Cost of typewriter, amortized over 5 years ($460 ÷ 5) = $92.00	
Total Capital Cost/Year/Employee = $120.70	
Total Captital Cost/Hour/Employee ($120.70 ÷ 2,080) =	$ .06
7. Total Cost/Hour/Employee	
Personnel Cost	$ 6.57
Administrative Support Cost	$ .69
Operating Cost	--
Capital Cost	$ .06
Total Cost/Hour/Employee	$ 7.32
8. Total Cost/Minute/Employee	
Total Cost/Minute ($7.32 ÷ 60) =	$ .12

Appendix 3B

Processing Costs
Division of Real Estate Assessments, Office of Assessments
(Ownership Certification Costs)

	Salary Per Hour	No. of Persons Supervised	Cost/Hour
1. Base Personnel Cost			
Title			
Clerk	$ 3.30		$ 3.30
2. Supervisory Staff Cost			
Title			
Supervisor	$ 5.37	5	$ 1.07
Senior Appraiser	$ 8.54	54	$ .16
Div. Director	$13.90	55	$ .25
Div. Secretary	$ 4.67	55	$ .08
Dept. Director	$14.95	149	$ .10
Secretary	$ 6.16	149	$ .04
Average Supervisory Cost/Hour/Employee			$ 1.70
3. Total Clerical and Supervisory Cost			
Base Cost/Hour			$ 3.30
Supervisory Cost/Hour			$ 1.70
Total Personnel Cost/Hour			$ 5.00
*Fringe Benefits ($5.00 x .28)			$ 1.40
Total Personnel Cost/Hour			$ 6.40
4. Administrative Support Cost			
Budgetted FY 1974 for Department = $214,655			
Admin. Support Cost/Hour/Employee ($214,655 ÷ 150 ÷ 2,080) =			$ .69
5. Operating Cost			
Cost of Computer/Hour (average) =			$ 3.44
Cost of Maps/Hour ($40 ÷ 2,080) =			$ .02
Total Operating Cost/Hour/Employee =			$ 3.46

*See Appendix 7 for explanation of Fringe Benefits

	Cost/Hour
6. Capital Equipment Cost	
Cost of desk, amortized over 10 years ($260 ÷ 10) = $26.00	
Cost of chair, amortized over 10 years ($27 ÷ 10) = $ 2.70	
Total Cost/Year/Employee = $28.70	
Total Cost/Hour/Employee = ($28.70 ÷ 2,080) =	$ .01
7. Total Cost/Hour/Employee	
Personnel Cost	$ 5.12
Administrative Support Cost	$ .69
Operating Cost	$ 3.46
Capital Cost	$ .01
Total Cost/Hour/Employee	$ 9.28
8. Total Cost/Minute/Employee	
Total Cost/Minute ($9.28 ÷ 60) =	$ .15

Appendix 4

Processing Costs
Division of Zoning Enforcement, Department of Environmental Management
(Zoning Code Enforcement Costs)

	Salary Per Hour	No. of Persons Supervised	Cost/Hour
1. Base Personnel Cost			
Title			
Clerk	$ 5.02		$ 5.02
2. Supervisory Staff Cost			
Title			
Supervisor	$ 7.04	4	$ 1.76
Dept. Secretary	$ 3.98	37	$ .11
Director	$13.01	37	$ .35
Average Salary Cost/Hour/Employee			$ 2.22
3. Total Clerical and Supervisory Cost			
Base Cost/Hour			$ 5.02
Supervisory Cost/Hour			$ 2.22
Director Personnel Cost/Hour			$ 7.24
*Fringe Benefits ($7.64 x .28)			$ 2.03
Total Personnel Cost/Hour			$ 9.27

4. Administrative Support Cost

Budget Division of Administrative Services, DEM = $451,482
Total Number of Employees in DEM = 338
Administrative Support Cost/Year/Employee = ($451,482 ÷ 338) = $1,336
Administrative Support Cost/Hour/Employee = ($1,336 ÷ 2,080) = $ .64

5. Operating Cost

Supplies Budgetted for FY 174 = $57,605
Supply Cost/Year/Employee ($57,606 ÷ 38) = $1,15.92
Supply Cost/Hour/Employee ($1,515.92 ÷ 2,080) = $ .75

*See Appendix 7 for explanation of Fringe Benefits

	Cost/Hour
6. Capital Equipment Costs	
Cost of desk, amortized over 10 years ($206 ÷ 10) = $26.00	
Cost of chair, amortized over 10 years ($27 ÷ 10) = $ 2.70	
Cost of typewriter, amortized over 5 years ($460 ÷ 5) = $92.00	
Cost of calculator, amortized over 5 years ($150 ÷ 5) = $30.00	
Total Capital Cost/Year/Employee = $150.70	
Total Capital Cost/Hour/Employee ($150.70 ÷ 2,080) =	$ .07
7. Total Cost/Hour/Employee	
Personnel Cost	$ 9.27
Administrative Support Cost	$ .64
Operating Cost	$ .73
Capital Cost	$ .07
Total Cost/Hour/Employee	$10.71
8. Total Cost/Minute/Employee	
Total Cost/Minute ($10.71 ÷ 60) =	$ .18

Appendix 5

Processing Costs
Division of Design Review, Department of Environmental Management
(Plan Review Costs)

	Salary Per Hour	No. of Persons Supervised	Cost/Hour
1. Base Personnel Cost			
Title			
Engineer	$ 7.70		$ 7.70
2. Supervisory Staff Cost			
Title			
Div. Director	$12.07	55	$ .22
Dept. Director	$12.68	54	$ .23
Dept. Secretary	$ 4.09	55	$ .07
Branch Sup.	$ 9.06	17	$ .53
Branch Secretary	$ 3.81	17	$ .22
Average Salary Cost/Hour/Employee			$ 1.27
3. Total Supervisory and Clerical Cost			
Base Cost/Hour			$ 7.70
Supervisory Cost/Hour			$ 1.27
Director Personnel Cost/Hour			$ 8.97
*Fringe Benefits ($8.97 x .28) =			$ 2.51
Total Personnel Cost/Hour			$11.48

4. Administrative Support Cost

Budget Division of Administrative Services, DEM = $451,482
Total Number of Employees in DEM = 338
Administrative Support Cost/Year/Emp. =($451,482 ÷ 338)= $1,336
Administrative Support Cost/Hour/Emp. =($1336 ÷ 2,080) = $ .64

5. Operating Cost

Supplied Budgetted for FY 1974 = $22,961
Supply Cost/Year/Employee = $22,961 ÷ 56 = $410.02
Supply Cost/Hour/Employee = ($410.02 ÷ 26 - 80) = $ .20

* See Appendix 7 for explanation of Fringe Benefits

	Cost/Hour
6. Capital Equipment Cost	
Cost of desk, amortized over 10 years ($260 ÷ 10) =$26.00	
Cost of chair, amortized over 10 years ($27 ÷ 10) =$ 2.70	
Cost of typewriter, amortized over 5 years ($460 ÷ 5) =$92.00	
Cost of calculator, amortized over 5 years ($150 ÷ 5) =$30.00	
Total Capital Cost/Year/Employee = $150.70	
Total Captial Cost/Hour/Employee = ($150.70 ÷ 2,080) =	$ .07
7. Total Cost/Hour/Employee	
Personnel Cost	$11.48
Administrative Support Cost	$ .64
Operating Cost	$ .20
Capital Cost	$ .07
Total Cost/Hour/Employee	$12.39
8. Total Cost/Minute/Employee	
Total Cost/Minute ($12.39 ÷ 60)=	$ .21

Appendix 6

Processing Costs
Office of Waste Management, Department of Public Works
(Sewer Availability Reivew Costs)

	Salary Per Hour	No. of Persons Supervised	Cost/Hour
1. Base Personnel Cost			
Title			
Engineering Technician	$ 4.81		$ 4.81
2. Supervisory Staff Cost			
Title			
Supervisor	$ 6.94	5	$ 1.38
Branch Chief	$11.29	14	$ .80
Division Director	$10.28	39	$ .26
Division Secretary	$ 3.91	39	$ .10
Office Director	$15.00	216	$ .07
Office Secretary	$ 4.61	215	$ .02
Dept. Director	$16.50	750	$ .02
Dept. Secretary	$ 6.18	750	$ .01
Average Salary Cost/Hour/Employee			$ 2.66
3. Total Supervisory and Clerical Cost			
Clerical Cost/Hour			$ 4.81
Supervisory Cost/Hour			$ 2.66
Direct Perconnel Cost/Hour			$ 7.47
*Fringe Benefits ($7.47 x .28) =			$ 2.09
Total Personnel Cost/Hour			$ 9.56
4. Administrative Support Cost			
Not Available			
5. Operating Cost			
Supplied Budgetted FY 1974 = $36,509			
Supply Cost/Year/Employee $36,509 ÷ 44 = $829.75			
Suuply Cost/Hour/Employee = $928.75 ÷ 2,080 =			$ .39

*See Appendix 7 for explanation of Fringe Benefits

	Cost/Hour
6. Capital Equipment Cost	
Cost of desk, amortized over 10 years ($260 ÷ 10) = $26.00	
Cost of chair, amortized over 10 years ($27 ÷ 10) = $ 2.70	
Cost of calculator, amortized over 5 years ($150 - 5) = $30.00	
Total Capital Cost/Year/Employee = $58.70	
Total Capital Cost/Hour/Employee = ($58.70 ÷ 2,080) =	$ .03
7. Total Cost/Hour/Employee	
Personnel Cost	$ 9.56
Administrative Support Cost	--
Operating Cost	$ .39
Capital Cost	$ .03
Total Cost/Hour/Employee	$ 9.98
8. Total Cost/Minute/Employee	
Total Cost/Minute ($9.98 ÷ 60) =	$ .17

Appendix 7

Fringe Benefits FY 1974	Percent of Salary
Social Security	5.84%
Group Health Insurance	2.57%
Group Life Insurance	.43%
Employee Leave	13.78%
Workmans Compensation	.40%
Retirement Fund	5.42%
	28.44%

(WITNESS: Mr. Hall)

* * *

1 BY MR. LAWRENCE:

2 Q. Mr. Hall, to date, has Ryland ever reimbursed
3 you for the payment of this check?

4 A. No, they have not.

5 Q. Now, in each instance, with regard to the
6 purchasing of these permits that are on the master list,
7 what procedure did Miller and Smith follow?

8 A. Normal procedure that was applicable in
9 Fairfax County at that time, which was submitting site
10 plans, submitting an application, submitting a set of
11 building plans for approval, obtaining the permit, and
12 paying the fee.

13 Q. Well, let me ask you more specifically, when
14 was the fee paid for the permit?

15 A. The fee was paid at the time of the issuance
16 of the permit.

17 Q. Did you ever pay for the permits at the time
18 of initial submission of your site plans and building
19 plans?

20 A. No, the only time, to my recollection, that we
21 did that would be if it were a new set of plans for
22 approval, we would submit one application, one building
23 set of plans, and one fee at that time.

1 Q. All subsequent fees for the same plans,
2 would it be tendered at the time the permit was issued?
3 A. That is correct.
4 Q. How many different house-types were there
5 in the subdivisions that were included in this master
6 list?
7 A. Are you talking about the total?
8 Q. Yes, for all of the subdivisions that are
9 included in this master list?
10 A. To my recollection, there were 11, with
11 variations; but, 11 basic house-types.
12 Q. What do you mean by variations?
13 A. An optional garage, or a fireplace, or a
14 elevation change.
15 Q. Now, were any of the houses that are on
16 this master list under septic or well systems?
17 A. No, they were all on sewer and water.
18 Q. Public sewer and water?
19 A. That is correct.
20 Q. Were any penalties assessed against Miller
21 and Smith with regard to any of these permits?
22 A. Not to my knowledge, no.
23 Q. Would you have known if they were assessed?

* * *

* * *

1 program for everything within the town limits?

2 A. That is correct.

3 Q. You have known that since April, 1974?

4 A. That is correct.

5 MR. FINNEGAN: I'll just leave this for

6 identification. I'll have it introduced through

7 Mr. James' examining.

8 BY MR. FINNEGAN:

9 Q. Turning your attention to Hiddenbrook,

10 Section 4, do you recall what house models were used

11 in Hiddenbrook, Section 4?

12 A. To obtain the permits on the list you are

13 talking about?

14 Q. Yes.

15 A. The model name is what you want to know?

16 Q. Yes.

17 A. When we first started Hiddenbrook, we would

18 have had four types. It would have been the -- it would

19 have been the Forestbrook, the Hillbrook, the Meadowbrook,

20 and the Glenbrook, if I'm not mistaken.

21 Q. Aren't those the same type of models used in

22 the Hiddenbrook, Section 3 ?

23 A. That is correct.

1 Q. And the working drawings would be very
2 similar, if not the same?
3 A. To obtain the permits?
4 Q. Yes.
5 A. Yes, correct; they would have been the same
6 plan to obtain all the permits, if my recollection serves
7 me right.
8 Q. So, those permits -- those plans for Section 4 would have
9 been prepared the same time that the plans for Section 3
10 would have been prepared, because they were the same plans?
11 A. That is correct, that is the building plan,
12 the site plan is different.
13 Q. Now, turning your attention to page Delta A, 18,
14 of Defendants Number 1, and to lot number 565 of Fox
15 Mill, I notice that you have two permit numbers next to
16 lot number 565, could you explain why you have two permit
17 numbers there and two fees?
18 A. Okay, 565, would have been the lot number.
19 The permit number that is first listed would have been
20 the permit number. The second number in the same column
21 would be the renewal number. Further right, there would
22 have been a fee for the first permit and then a renewal
23 fee.

1 Q. And that renewal fee was paid in July of 1974;
2 isn't that correct?
3 A. Correct; that's what the date says -- is
4 July 10th, 1974.
5 Q. Now, at the time of the renewal, were the
6 plans for that lot number 565 any different than the
7 plans for the original permit issued on -- which was
8 applied for on April 10th, 1973?
9 A. To my knowledge, it wouldn't have been, no.
10 Q. It would have been the same, exact same,
11 working drawings?
12 A. Or they would not have reissued a renewal.
13 It would have been a new permit if anything had changed.
14 Q. Right. Now, would that be true with regard to
15 not only lot number 565, but 566 through 584?
16 A. In accordance with this list, yes. The same
17 information pertains.
18 Q. Okay. Now, drawing your attention to Fox Mill,
19 Section 4, lots 405 through 407, that would be -- page
20 Delta A, 22, starting with lot 405 through lot 471, the
21 amounts for these permits were $10; isn't this because all
22 these permits were actually renewals?
23 A. It does not say renewal. I do not -- I would

(WITNESS: Mr. Hall)

1 assume the fee is a renewal fee, but I could not tell
2 you they are renewals from this list, no.
3 Q. Can you recall submitting new permits at
4 that time?
5 A. New plans?
6 Q. New plans for those permits that I've just
7 mentioned?
8 A. No, I do not recall.
9 Q. Now, I'd like you to take a look at lot
10 numbers 543 through 553, of page Delta A, 26, these were
11 also $10 fees. They also reflect an issuance date of
12 July, '74; aren't these also renewals?
13 A. The same information would pertain. I do not
14 see renewal here and I couldn't tell you, offhand --
15 Q. Do you know if you submitted a new plan at
16 the time you requested those permits?
17 A. I do not recall.
18 Q. Would it have been possible that you might have
19 or is it highly unlikely that you would have?
20 A. It's highly unlikely that we would have.
21 Q. You would have just been in there to renew
22 the old permits. Now, isn't that true also of lot
23 numbers 826 through 829, page Delta A, 34?

(WITNESS: Mr. Hall)

1 A. Which lot numbers, again?

2 Q. 826 through 829.

3 A. The same information.

4 Q. Same information -- highly unlikely that

5 you would have submitted a plan. Those plans would have

6 been the plans in effect at the time of the original

7 permit; is that correct?

8 MR. LAWRENCE: Your Honor, I object. This is

9 just speculative. What does highly unlikely mean? It's

10 just speculation, Your Honor.

11 THE COURT: You're going to have to be a

12 little more specific there; in other words, if he

13 knows what they are --

14 MR. LAWRENCE: He says he doesn't recall,

15 Your Honor.

16 MR. FINNEGAN: Obviously, he doesn't know

17 and I want him to say that all these permit numbers I

18 have given -- I will put on testimony in my case as to

19 what they were for.

20 THE COURT: In other words, if he knows.

21 If he doesn't know, I don't know how he can testify to

22 it. Mr. Finnegan, if he knows that this was the $10 --

23 what the $10 fee was, then, I think he can testify to it,

1 But, if he doesn't know what it means, then, I think,
2 somebody else will have to testify.
3 BY MR. FINNEGAN:
4 Q. Would anybody at Miller and Smith know what
5 these $10 fees were for now, 1978?
6 A. I don't think any one person you could go
7 and ask, no. But, we could probably go back and research
8 the file and find out what that permit number is, if we
9 have a copy of it, which I'm sure we do. Then, we'd
10 definitely see on it what it is.
11 Q. Wouldn't that be true, now, for all the
12 permits that were applied for in June and July of 1974 --
13 the 136 permits that are included in this Exhibit? They
14 were applied for in June and July of 1974?
15 A. I don't understand the question.
16 Q. Let me rephrase it. Do you know if any of
17 the permits at issue, applied for in June of 1974, or
18 July of 1974, were for new construction or were they for
19 renewals of working drawings that had been previously
20 submitted to Fairfax County --
21 MR. LAWRENCE: Your Honor, he already says
22 he doesn't recall that.
23 THE COURT: Well, let him answer it. See if he

1 does know.

2 THE WITNESS: No, I do not know.

3 BY MR. FINNEGAN:

4 Q. On your direct examination, you testified

5 that there were 11 different models, with variations?

6 A. If I would remember correctly, yeah.

7 Q. How did you come up with the number, 11?

8 A. Well, I know we have -- Hiddenbrook had

9 four models. I knew that Fox Mill Estates, if I recollect

10 the permits we had obtained, had three models, and the

11 ones in the Town of Herndon, if I remember correctly,

12 had four.

13 Q. Let me call off some names of house models

14 and tell me whether or not, if you recall, if they were

15 in Fox Mill: Meadowbrook?

16 A. Yes.

17 Q. Knollwood?

18 A. I don't remember.

19 Q. Glenbrook?

20 A. Yes.

21 Q. Madison?

22 A. No, I don't remember.

23 Q. Could that have been a Ryland home?

* * *

* * *

1 Mr. Lawrence a few minutes to read it. It's only a page
2 and a half.
3 THE COURT: Why don't you just go ahead and
4 state it and let him answer. I think it would be quicker
5 than recess again and give him a chance to read it.
6 MR. FINNEGAN: Yes, Your Honor.
7 The evidence brought before the Court by
8 complainant in this case is that working drawings for
9 these houses were submitted with the application at the
10 time the application for building permits was submitted.
11 We have, in evidence, the application dates for these
12 permits. These application dates are all prior to
13 September 1, 1973, with the exception of Hiddenbrook,
14 Section 4, and June and July, 1974, permits.
15 The Hiddenbrook, if I might address myself
16 to the Hiddenbrook, Section 4 -- they were applied for
17 on September 5th and September 7th of 1973; that's the
18 Wednesday and Friday of the Labor Day week of that year.
19 The testimony presented by witnesses for complainant
20 indicates that the Hiddenbrook, Section 4, working
21 drawings had been prepared at the same time as the Hidden-
22 brook, Section 3, drawings. If the Court wishes to refer
23 to the application dates, those dates for Hiddenbrook,

1 Section 3, were prior to September 1, 1973.

2 With regard to the June and July, 1974,

3 permits, those 136 permits that are at issue, the

4 testimony by complainants' witness was that it was

5 highly unlikely that any new working drawings were sub-

6 mitted at that time. That, most likely, they were

7 the exact same working drawings as for the original

8 permit.

9 What is the applicable building regulation?

10 I would draw Your Honor's attention to Virginia Code

11 36-103, of the Code: "Buildings, etcetera, existing or

12 projected before the effective date of the Code. Any

13 building for which working drawings have been prepared

14 prior to the effective date shall remain subject to the

15 building regulations in effect at that time."

16 Your Honor, we submit to the Court that the

17 applicable building regulation -- or the applicable --

18 was Section 6-5 of the 1969 Fairfax County Code, which

19 provided that refunds would be allowed within the first

20 six months and then no refund would be allowed there-

21 after.

22 Now, complainant has had the opportunity to

23 address this argument in its trial memorandum and refers

1 to Section 36-103 as a grandfather clause. In many
2 ways it is. It's -- it's the General Assembly's
3 recognition of the builder's right to rely on building
4 standards in effect at the time he submits his applica-
5 tion -- his working drawings, his application. It all
6 makes sense. The builder has expended monies in good
7 faith reliance upon the Codes in effect at that time.
8 It's -- we can draw a parallel with the vested rights
9 cases, medical structures, city service. He has that
10 good faith reliance. When he puts in that application,
11 he's done everything he possibly can and that is the
12 regulation that is applied to that building permit applica-
13 tion.
14 Now, the complainant can't have it both ways.
15 If that's the one that applies to the construction standard,
16 it certainly applies to the refunds.
17 I would draw Your Honor's attention to the
18 second paragraph of 36-103: Subsequent reconstruction,
19 etcetera, shall be subject to pertinent provisions of
20 the building code; meaning, subsequently, whatever is
21 applied for has to be subject to the building code in effect
22 at the time of that subsequent application. It doesn't
23 say that subsequent refunds or subsequent request for

1 refunds will be -- will apply to -- excuse me, let me
2 start that sentence again -- that subsequent refunds will
3 be determined by the Code in effect at the time the refund
4 is requested. It's only common sense that if the building
5 regulation in effect for construction standards is the one
6 in effect at the time of the application, then it must
7 also be the applicable building regulation with regard to
8 refunds.
9 Your Honor, I would submit to you that the
10 vast majority, if not all, of the working drawings for the
11 building permits that are at issue in this case, were
12 prepared in that year prior to the issuance of the building
13 permits. If that's the case, then the building regulations
14 in effect at that time is the effective building regulation.
15 And, that is the one that should be applied.
16 And, therefore, we request the Court to strike
17 the complainants' evidence with regard to any building
18 permit which was -- which was applied for by September 1,
19 1973, as to whether or not Section 118.7 is applicable to it.
20 Thank you, Your Honor.
21 THE COURT: Aren't you going to address to all
22 of them? Let's go ahead and address all your grounds.
23 MR. FINNEGAN: Oh, excuse me, Your Honor, I was

* * *

* * *

1 prepared in the year prior thereto gives the developer
2 an opportunity to argue, look at what I did back here
3 and I have done this within the six months, why don't
4 you give me a break and put it in there. But, clearly,
5 it's got to be the effective building regulation in effect
6 at the time of application is the building regulation
7 which has to be applied.
8 THE COURT: And not the date of issuance of
9 the permit?
10 MR. FINNEGAN: No, Your Honor. Because it's --
11 during that period between application and issuance, you
12 might have four, five months, six months -- you might
13 have a year. The -- how can the builder be responsible
14 for changes that have been -- occurred by action of the
15 State Board of Housing, which he had no knowledge of.
16 He is assumed to have knowledge of everything that
17 he's done. He brings an application in because he thinks
18 it's in compliance with the Code. That's why they have
19 expended money; to put it in with compliance with the
20 Code that day that he brings it in. That's the Code that
21 you're going to be applying.
22 THE COURT: All right. I'm going to take these
23 Motions under advisement, Mr. Finnegan. I'm not going

1 to make a ruling on them, now, at this time. I just
2 want to complete a record on the case, now. So, I'll
3 take all three of them under advisement at this time --
4 all three of these grounds that you've asserted here.
5 At this time, it's about ten minutes of one. Would you
6 have a witness that you could put on in ten minutes?
7 MR. FINNEGAN: No, I don't believe so. I just
8 have two, perhaps, three witnesses remaining and they
9 would take --
10 THE COURT: Why don't we do this; rather
11 than start on one right now, in other words, you couldn't
12 get your direct examination in ten minutes of these witnesses
13 here. If not, we just go ahead and recess at this time
14 and come back at ten minutes of two; in other words --
15 MR. FINNEGAN: I don't believe it would be
16 possible. I'm sure that Mr. Lawrence will immediately
17 object to my first witness.
18 THE COURT: Why don't we take a recess. We'll
19 take a recess until ten minutes of two rather than start
20 a witness, have five minutes, and then quit.
21 MR. FINNEGAN: Yes, Your Honor.
22 THE COURT: Let's do this, I'll recess at this
23 time until ten minutes of two.

* * *

* * *

1 requirements are, and we would hopefully put them
2 on there at the time, and that would be four months
3 in advance of the application. But, there are things
4 that are done as of the last date, up until the approval
5 time.
6 BY MR. FINNEGAN:
7 Q. Do you know if any of the working drawings,
8 with respect to the permits at issue, if they were --
9 when they were prepared? Can you give me a time frame?
10 A. No.
11 Q. Absolutely none?
12 A. Not all from memory, no.
13 Q. Some might have been -- working drawings
14 might have been changed before the day of application?
15 A. Could have been. Some happen after the
16 application has been made, if Fairfax County so notes,
17 or they say this particular sheet, number 308, does not
18 meet County standards, and you're going to have to get
19 an engineer to do such and such, and so and so. Then,
20 we have to do that prior to approval.
21 Q. Okay.
22 A. That's the notations that are on the front,
23 in accordance with the window sizes, fire stops.

* * *

(Court's denial of Defendants' right to introduce evidence of costs incurred by Fairfax County) [146]

* * *

1 THE COURT: What statements do you want to
2 correct?
3 MR. FINNEGAN: Your Honor can take judicial
4 notice of the fact that the County has established a
5 fee schedule. It's in our ordinances and it was passed
6 by a resolution, 801-County 6. 801-386 in the Code
7 provides for this judicial notice. It is certainly
8 relevant. It is certainly in evidence.
9 THE COURT: Well, unfortunately, Mr. Finnegan,
10 it is my position all along, I think the County just
11 stuck with 118.8. In other words, I can't see any way
12 around it. I think it's unfortunate they didn't, at
13 the time they took this action. Somebody, apparently,
14 overlooked it. I understand, at the present time, it's
15 been corrected. I think the particular situation has
16 been corrected, as of '78, from what I understand; but,
17 anyway, there is no doubt in my mind that when they are
18 talking about work here in 118.8, they're talking about
19 work in the project, not work that the County's done in
20 processing these applications. I don't think there is
21 any way in the world you can read that in 118.8. And,
22 of course, it's been my position all along that the County is
23 bound by 18.8 because that was the law at the time that

1 these particular funds were accepted. And, I think
2 that has been in my memorandum. I think I've stated
3 it clearly in the memorandum that this is the position
4 of the Court and I think the objection is well taken.
5 But, I'm going to let you proffer this for the record;
6 in other words, we've gone this far, you might as well
7 proffer this evidence and then if it's appealed, the
8 Supreme Court can see what his testimony would be, and
9 so forth. So, I'm going to sustain his objection and
10 let you proffer, at this time, put in the record the
11 testimony of the witness here for the purpose of the
12 Court being -- I don't think -- there's no doubt in my
13 mind that the County is bound by 118.8 and there is
14 nothing in that and no way in the world that you can read
15 that what they're talking about insofar as computing the
16 volume of work, that it is the volume of work that the
17 County has done. They're talking about work that was done
18 on the project and here it is quite obvious that no work
19 was ever done.
20 MR. FINNEGAN: Your Honor, it's your ruling
21 then that the cost for processing, reviewing, and approving
22 the contract --
23 THE COURT: That's right. In other words,

1 the County is not entitled to any offset or any credit
2 for the amount of work done on this.
3 But, I'm going to let you --
4 MR. FINNEGAN: Yes, Your Honor.
5 THE COURT: --put his testimony in the
6 record. The Supreme Court may feel a little different.
7 I don't profess to be infallible. But, at the same
8 time, I think I'm right or I wouldn't make the ruling
9 if I didn't think I wasn't.
10 MR. FINNEGAN: Yes, Your Honor, if you will --
11 THE COURT: I'll note your exception to the
12 Court's ruling but I'll let you proffer and put into evidence
13 the testimony of the witness so it will be in the
14 record and if the case happens to come back here for
15 a retrial, I'll know where we stand on this point.
16 MR. LAWRENCE: Excuse me. Is that Exhibit
17 Number 13, Your Honor?
18 THE COURT: 13 is the '73-'74 -- so that
19 will be --
20 MR. FINNEGAN: So that will be marked for
21 identification only.
22 THE COURT: In other words, I've already
23 ruled on 12, the cost study of '78. 13 will be for

1 identification only and this is what your testimony will
2 be with reference to. But, I'm going to let you proffer
3 his testimony so we will have the record and if it ever
4 comes back again, we won't have to re-hash this part
5 of it again.
6 MR. FINNEGAN: Yes, Your Honor. I'll try to
7 do this in as most expeditiously manner as possible.
8 THE COURT: Go ahead and do it any way you
9 want to, Mr. Finnegan. I'd just as soon be sitting here
10 as working back in Chambers.
11 BY MR. FINNEGAN:
12 Q. Were you able to come to an opinion with
13 regard to the average cost of processing building permits
14 in fiscal year, 1974?
15 A. Yes, I was. The estimated price of the cost
16 was, approximately, $21.16 for the issuance of the building
17 permit.
18 MR. LAWRENCE: Excuse me. As Your Honor
19 is proceeding with the proffer, am I going to have to
20 go through with cross examination and everything on that
21 proffer?
22 THE COURT: I think you should.
23 MR. LAWRENCE: Your Honor, then I would have

1 to object at the outset of his forming an opinion because
2 I don't think the facts have been established on which
3 he can render an opinion as an expert.
4 THE COURT: In other words, he's going to lay
5 a foundation, I assume, on how he arrived at this $21.16.
6 MR. LAWRENCE: He's already given the opinion
7 without laying the foundation first.
8 THE COURT: With the understanding he's going
9 to tie it in; in other words, establish the basis for the
10 $21.16.
11 BY MR. FINNEGAN:
12 Q How did you come to that result?
13 A Well, in that case, I'll have to explain to you
14 the methodology that was used for deriving the 1978 cost
15 for processing applications and then I will go into how
16 I derived the 1973, '74 figures.
17 At the onset I interviewed people from the
18 Division of Inspection Services to see what the basic
19 procedure was for processing building applications so
20 that the applicant could get a permit in his hand when
21 he left. And then I documented all the various steps
22 that were involved and the various people that were
23 involved and I talked to each one of those individuals

1 that were involved in the building permit processing.
2 And I sat down with them and talked with them as to what
3 they did and approximately how long it took to do them.
4 And I also asked them to perform a survey for a period of
5 one week to note how long it took approximately on the
6 average to process building permit applications for new
7 single family construction.
8 At the same time the numbers were derived on
9 certain assumptions. One, that none of the processing
10 that had a separate fee would be included in this analysis;
11 for example, if a house was built on a -- on a septic tank,
12 there's a separate perc test fee that is involved and,
13 for that reason, that was not included in here. Also,
14 for those processees which did not occur on a consistent
15 basis, some adjustments were made; for example, according
16 to the Bureau of Census, about approximately 12 per cent
17 of the homes constructed in Fairfax County were built on
18 well water. For that reason, I took the total cost --
19 was accounted for by deducting 84 per cent. I only
20 accounted for 12 per cent of the total cost because there
21 is no fee involved with it and the cost for processing
22 that particular permit for a well has to be distributed
23 among all the permits.

1 MR. LAWRENCE: Your Honor, I would object to
2 that. I don't see how that would be relevant if he's
3 talking about an offset, which is his position, and our
4 evidence has been and it hasn't been refuted that there
5 are no wells and there are no septic tanks. How would
6 that evidence be at all relevant?
7 It's an average cost for processing every type
8 of building permit in the County, regardless of whether
9 or not there's wells, septic tanks, or what have you.
10 They're talking about an offset; they have to show what
11 was done in these particular permits.
12 MR. FINNEGAN: Your Honor, what we are attempting
13 to do is find the average cost of processing residential
14 building permits. We cannot go back, pull out building
15 permits, individual building permits, P-number, P1532,
16 and find out exactly how much time that permit took.
17 Records were not kept along that line. The only way
18 we can come up with an average cost is to go across the
19 board, find out the number of permits each -- the average
20 amount of time, and come up with an average amount of time.
21 THE COURT: I don't say -- I'll overrule your
22 objection, Mr. Lawrence.
23 MR. LAWRENCE: Note my exception.

(WITNESS: Mr. Ahuja)

1 THE COURT: Yes.

2 BY MR. FINNEGAN:

3 Q. Please continue.

4 A. And the -- Mr. Lawrence just answered a
5 question. One of the reasons I was telling was to
6 derive the average cost for a permit since the County
7 has a flat rate for building permits; in other words,
8 regardless of how long it takes to process an application,
9 the fee is still the same. It's based on the volume of
10 work. It's discussed at some length. The other fees
11 that were not included in here were then direct costs
12 to the County simply because they could not be determined
13 with any degree of accuracy. These costs include for the
14 cost, for example, for staffing the telephones to answer
15 inquiries from citizens concerning codes and regulations
16 for building permits. The County uses a computer system
17 to ascertain that the person who is taking out the
18 building permit is, indeed, the property owner. The cost
19 of developing the computer system is never included in
20 here simply because we could never determine accurately
21 what portion of the computer cost should go to all the
22 building permits.

23 If the County uses a courier system for

(WITNESS: Mr. Ahuja)

1 transferring documents back and forth between various
2 County agencies, since the couriers carry other mail,
3 too, we could not determine as to what proportionate cost
4 should be included in here so we just completely left it
5 out.
6 Well, anyway, after all these steps were
7 determined, we tried to estimate the approximate time it
8 takes to -- for processing individual applications and
9 those times were noted, and you will find that in these
10 long forms over here. This is for 1978.
11 In order to derive the fiscal '74 statistics,
12 what I did was, I reinterviewed those people and with
13 the help of the Director of Inspection Services, we sat
14 down to see if any changes had been taken in the procedures
15 since 1978. And, also, the various individuals that were
16 involved or to the best of our ability, we reconstructed.
17 And if you go back to the appendices, what we did was --
18 MR. LAWRENCE: Your Honor, I'd just like to pose
19 an objection at this time. I think the statements as to
20 how much the time -- the processing time took would require
21 conversations between this expert and other witnesses who
22 have not testified. Their facts are not in evidence.
23 So, Your Honor, I think he's going to be forming conclusions

(WITNESS: Mr. Ahuja)

1 on facts that are not in evidence. For that reason, I'd
2 like to pose an additional objection to this line of
3 testimony.
4 THE COURT: I'll let the record so state.
5 I'll overrule your objection.
6 MR. LAWRENCE: Note my exception, sir.
7 MR. FINNEGAN: No need for argument on that?
8 THE COURT: No need.
9 THE WITNESS: Well, if I may address myself to
10 that particular issue, what I did was instruct the
11 various people that were involved in the process
12 specifically how to do it -- as to note the number of
13 applications that came through, how to record the times,
14 and the sheets were given to me. From there, we deducted --
15 deduced the average processing time per application.
16 MR. LAWRENCE: Your Honor, my point was that
17 this is rank hearsay because those people are not here for
18 cross examination to determine the time spent in processing.
19 THE COURT: I understand. I think that he's
20 all right and I'll overrule your objection. Go right
21 ahead, sir.
22 MR. LAWRENCE: I just want to keep the record
23 clear, Your Honor, in case we ever come back here.

(WITNESS: Mr. Ahuja)

1 THE COURT: I think you have a standing
2 objection to anything he's saying right now as far as
3 that goes.
4 THE WITNESS: And, after that, what we decided
5 to do was try to develop the unit cost for processing
6 various aspects of the application, itself; for example,
7 the building permit application is processed through
8 various County agencies and to various staffing levels.
9 So, let me work through one example here and then the
10 rest are very, very similarly derived.
11 THE COURT: For each department you're talking
12 about? You mean it would be similar for each --
13 THE WITNESS: Yes, I did it for each department
14 and I'll just go through one sample here for the under-
15 standing of the Court.
16 THE COURT: That'll be sufficient.
17 THE WITNESS: For example, the building permit
18 application, itself, when it's first processed in the
19 Division of Inspection Services, you have the average
20 salary of the clerk to do the processing of the counter.
21 What I did was I took the number of clerks that worked
22 there, their salaries and divided by the number of clerks,
23 and came out with an average salary per hour. This salary

* * *

* * *

1 Similarly, we derived the cost for equipment.
2 Equipment basically included typewriters, desks, chair,
3 and I only did this for one person since I concluded
4 no more than one person was working with a citizen at
5 any one time. And I averaged that over the lifespan of
6 the equipment; for example, a typewriter was ten years;
7 we did the cost of the one typewriter, divided by ten,
8 to put it on a per hour basis.
9 Taking all this together in the cost per hour for
10 certain type of processing -- for each different type of
11 processing I have a unit cost developed what we included.
12 Taking these costs and went back to the processing time,
13 multiplied it by the unit costs, and the total came out
14 to approximately $21.16.
15 BY MR. FINNEGAN:
16 Q. Did you attempt to verify this figure of $21.16
17 in any manner?
18 A. Yes, sir. Just to make sure that I was within
19 the ball park figure, what I did was, I looked up the
20 Board of Supervisors' authorizations and cost of living
21 index over the last four-year period and I found out the
22 Board has authorized 20 per cent increase in salary over
23 the years.

(WITNESS: Mr. Ahuja)

1 MR. LAWRENCE: Same objection, Your Honor.
2 I don't see where that's at all pertinent.
3 THE COURT: I understood.
4 THE WITNESS: Then, I took the 1978 figure,
5 which I derived earlier this year, of $28.17, reduced it
6 by 20 per cent and I found out it was within 5 per cent
7 of the 1973 figures. I can estimate that the 5 per cent
8 difference is due to the number of people that were
9 involved in the processing at the time and, also, the
10 salaries of the individuals involved at that time.
11 THE COURT: Anything further, Mr. Finnegan?
12 MR. FINNEGAN: Nothing further, Your Honor.
13 THE COURT: Do you want to cross examine him,
14 Mr. Lawrence?
15 CROSS EXAMINATION
16 BY MR. LAWRENCE:
17 Q. Mr. Ahuja, the document that I received showed
18 a total permit fee of $22.36?
19 A. Yes, sir.
20 Q. And you're talking about $21.16?
21 A. I preferenced it by saying, issuance costs.
22 That includes a cancellation cost, also, which is $1.10.
23 Q. Where is that located on the chart?

* * *

(WITNESS: Mr. Ahuja)

* * *

1 volunteered to explain the methodology used at arriving
2 at 1978 statistics. In comparison, I'll try to show you
3 how I derived the 1973 statistics.
4 The '78 statistics did not include the cancella-
5 tion costs. So I tried to keep it --
6 Q. In other words, based on your 1978 analysis,
7 referring back to '73-'74, would compute out to $21.16?
8 A. If you exclude the cost of cancellation; that
9 is correct.
10 THE COURT: $22.36?
11 MR. LAWRENCE: $21.16, Your Honor, if you
12 exclude the cost which is item 36 --
13 THE COURT: It's $1.20 if you exclude --
14 MR. LAWRENCE: Right.
15 BY MR. LAWRENCE:
16 Q. Okay, Mr. Ahuja, the average processing time
17 was derived at by asking the various persons who processed
18 how much time they spent on these applications?
19 A. No, sir. We took a sample over a period of
20 a week. And, during the period of the week, it was actually
21 monitored to see what the average time was.
22 Q. You actually monitored each clerk?
23 A. I personally did not do it, no, sir, it was --

1 Q. That was my question. Now you indicated that
2 you did not charge for some of the indirect costs, such
3 as responding to inquiries, and so forth?
4 A. That is correct.
5 Q. Now, you point out in the first notation on
6 the right-hand column, that the average processing time
7 includes items 1, 2, 3, and doesn't item 2 talk about
8 the County staff providing response to inquiries about
9 the building permit process?
10 A. Yes, sir.
11 Q. Inspection procedures and inquiries?
12 A. That is correct. The difference being, we --
13 the indirect cost I was referring to are the citizens
14 that call up and say, I want to build a house; what do
15 I have to do? It requires staffing the phones to answer
16 those questions. This is the individual who comes up
17 saying, here's my plan, I want to build a house.
18 Q. Mr. Ahuja, you couldn't possibly break it down
19 between the difference in those inquiries; could you?
20 A. Yes, sir, I can.
21 Q. Are you going to tell me that every inquiry is
22 recorded by the --
23 MR. FINNEGAN: Your Honor, he is arguing with

1 the witness. I'm going to object.

2 MR. LAWRENCE: Your Honor, this is cross

3 examination.

4 THE COURT: I think he's examining -- I'll

5 overrule your objection. I think he's just cross

6 examining.

7 THE WITNESS: The distinction I'm making here,

8 Mr. Lawrence, is that --

9 BY MR. LAWRENCE:

10 Q. I understand the distinction you're making.

11 I can't understand how you can make the distinction.

12 MR. FINNEGAN: Now, Your Honor, I'll object

13 to that. Is that a statement or is that a question?

14 Now he is arguing --

15 MR. LAWRENCE: I'm going to ask him a question.

16 THE COURT: Let's ask him a question,

17 Mr. Lawrence; let's don't get into a dialogue.

18 BY MR. LAWRENCE:

19 Q. How could you monitor the quantum number of

20 inquiries and differentiate between the random inquiries

21 and the inquiries specifically related to building permits?

22 A. Mr. Lawrence, when an individual walks up to a

23 building permit counter and said, here are my plans;

1 I want to build a certain type of a house; what do I
2 do next? That's a time that I've tried to account for --
3 I have made an attempt to account for in my analysis
4 over here.
5 Q. Well you don't have any specific time accounted
6 for. You just included it in a lump-sum two and a half
7 minutes?
8 A. Yes, sir.
9 Q. 2.5 minutes.
10 A. Well, the way this was done, you take the
11 number of building permits authorized during a day,
12 a given day, and the number of eight hours in a day,
13 and you divide one by the other, and you account for
14 the rest. You have some time left over and that was
15 given to providing information. Also, the attempts
16 were made through the survey to see approximately how
17 long it took an individual clerk to hand an individual
18 an application form, saying, this is what you do, and
19 send them on their way.
20 The other is where the County gets consistent
21 telephone calls --.
22 Q. How could you determine an average time for
23 that? How could you possibly determine an average time

1 for that? Can't that vary with every question that
2 comes before the clerk?
3 A. Well they come before the clerk with a building
4 permit or with their plan in their hand; that's a time
5 that I took account for over here. The distinction I'm
6 trying to make for you is that when individuals would
7 call in with some very, very general questions, like
8 what are the codes in Fairfax County for construction;
9 those are the type of calls I could not account for at
10 all. There is no way I could define how long it took,
11 because there are so many individual who answered those
12 telephone calls, and I don't know how long it takes.
13 Q. And it's the same way with the inquiries that
14 are made in the office; isn't that so?
15 A. That is true but these inquiries are to specific
16 projects. I'm telling you that these are not exact numbers;
17 to the best of my knowledge, this is what I could come up
18 with. I am not saying it takes exactly 2.49 minutes;
19 I'm saying it takes approximately two and a half minutes
20 per application that comes into the County.
21 Q. You know I think it's even less than approximately;
22 isn't it within the ball park, as your words said? You're
23 looking for ball park figures?

1 A. No, sir. I did not say I was looking for ball
2 park figures here. I wanted to make sure that my '73
3 estimates were within the ball park of reality when
4 compared to 1978 statistics.
5 Q. Well you've got two and a half minutes here
6 and the first three items on this Exhibit, Mr. Ahuja --
7 two and a half minutes. The first item is the owner
8 of the property who desires to obtain a building permit
9 delivers two sets to the -- of construction plans to the
10 permit counter. That's the owner or applicant doing
11 something. The second one is a response to inquiries,
12 for which there is no time allotted to it. It's lumped
13 in the two and a half. And the third one is, the owner
14 or agent fills out the application and submits one. So
15 the owner is doing the two things that are done here that
16 you might be able to quantify. The thing that you haven't
17 been able to quantify is the response to inquiries and
18 the whole thing is lumped into two and a half minutes.
19 How can you do that?
20 A. When an individual walks up to the counter with
21 an application and he's filling out an application form,
22 the clerks just don't walk away. They are standing there
23 waiting for him to be finished with that. They have to

1 stand there and pick up the form. That takes time.

2 Q. They can't wait on anybody else while he's

3 filling out the forms? They can't answer the phone while

4 he's filling out forms?

5 A. Generally, no, sir, because the other clerks

6 take over.

7 Q. They have to watch him fill out the form?

8 A. They don't have to watch him fill out the

9 form.

10 Q. You're saying it takes three minutes for the

11 permit clerk to assign an application number from the log

12 book and put it on each application?

13 A. Approximately.

14 Q. You must have some very slow writers in that

15 clerk's office.

16 MR. FINNEGAN: Excuse me, Your Honor, if this

17 is the line of questioning, I request an instruction from

18 the Court.

19 THE COURT: I'll sustain your objection.

20 MR. LAWRENCE: Your Honor, I know that this is

21 a proffer. I don't know how much extent to go into this,

22 but I --

23 THE COURT: You can ask him questions,

1 Mr. Lawrence; let's not argue with him or get into
2 dialogue here with him.
3 BY MR. LAWRENCE:
4 Q In item 5, Mr. Ahuja, you have the requirement
5 of the Director -- the Division is designed for you to
6 certify design plan review fees have been paid. This
7 step is waived if the applicant has receipt in hand.
8 How did you determine the average in which the step
9 is waived and when it is not waived?
10 A Well the actual time -- no, not the actual
11 time, the approximate time that that took to tell people
12 to go upstairs to the Division of Design Review to make
13 sure that the plan review fees had been paid worked out
14 to approximately about a minute and a half to two minutes.
15 I don't recall the exact numbers right now. Then from
16 experience of the County staff and I have no statistics
17 to back this up, but we found out that 75 per cent of the
18 time that they actually had the receipt in hand, and,
19 therefore, for that purpose, I took 25 per cent of the
20 total time that it took. I gave credit to the fact that
21 it did not take all of the two minutes.
22 Q You're saying that you had no statistics to back
23 this up?

(WITNESS: Mr. Ahuja)

1 A. That is correct.

2 Q. Okay. I'll ask the last question. Now you

3 have in item 8, the fees were calculated when the plans

4 were examined and this takes 5.5 minutes, almost 6 minutes?

5 A. Yes, sir.

6 Q. Now you did not take into consideration that

7 in many instances the plans are identical because the

8 houses are identical that are going to be constructed;

9 did you?

10 A. No, sir, for the following reason, if you

11 would like for me to explain it.

12 Q. Go right ahead.

13 A. The fact is that -- irrespective of the fact

14 whether they -- the plans take two days or three days,

15 between 24 to 30 hours to review and approve or whether

16 it takes 10 minutes, the County charges a flat fee. And

17 for that purpose I felt that it was appropriate to put

18 on the five and a half minutes across the board. Because

19 during the period that I did perform the survey, that is

20 how long it took.

21 Q. This is a flat fee then. It's not based on

22 the time on each case?

23 A. No, the fee is calculated -- it's a flat rate

(WITNESS: Mr. Ahuja)

1 irrespective of how long it takes the County to review
2 plans. Sometimes a family or an individual owner will
3 come in and he has not gone to a professional, the County
4 had to spend days helping that individual get their
5 plans straight and we cannot -- we do not charge that
6 individual proportionate fees. We just still charge a
7 flat rate.
8 Q Which is spread out over all the other applica-
9 tions?
10 A. Exactly.
11 Q. Which means that the average here includes
12 inquiries by citizens or for processing by citizens as
13 opposed to these particular applications over here for
14 today?
15 A. Are you talking about plan reviews? Yes, they
16 are -- well, no, these fees are based where the plan
17 reviewer takes it to the back room, puts it on his desk
18 and reviews it and then calculates the fee by the
19 measuring of the floor area.
20 Q. Right. You have that as item 9; it takes one
21 hour?
22 A. No, that's for the review of the plan itself.
23 Q. Right. That's what you're talking about, going

(WITNESS: Mr. Ahuja)

1 back -- or you're talking about --

2 A. Yes, exactly, and the fees are calculated by

3 the plan reviewer also.

4 Q. Okay. So it's your testimony that your analysis

5 determined that each plan takes one hour to review?

6 A. On the average.

7 Q. Even when those plans are repetitious of

8 previous houses, previously approved in the same sub-

9 division?

10 A. No. The next plan may take three minutes, or

11 less, and the following plan may take three days, or more.

12 I have no way of accounting for it. I tried to give it

13 the best shot that I could by taking a sample of work

14 during the week.

15 Q. So then, I take it, your testimony that if there

16 are repetitive plans for similar houses, that this 60

17 minute per plan review period would not be applicable?

18 A. That is correct. As I said, it is on the

19 average across the board that it takes.

20 Q. Now you also have a half minute here in item 23

21 for preparing reports to the U. S. Bureau of Census, the

22 Washington Metropolitan Council of Governments reflecting

23 the building permit activity?

(WITNESS: Mr. Ahuja)

1 A. That is correct.

2 Q. And you're saying that this is part of the

3 review process for the approval of these permits?

4 A. Unless I am wrong, I understand this is a

5 State requirement that the County keep statistics on

6 the number of building permits authorized and, as such,

7 I included that as part of the processing and it has

8 to be accounted for.

9 Q. Well the County keeping statistics and furnishing

10 them to the other agencies are two different things;

11 aren't they?

12 A. Not necessarily. I believe it's a mandate

13 by the Court or by the State, or by the Federal authority,

14 or whatever it is, I feel that it should be included as

15 part of the process. If it's a voluntary program, then

16 perhaps it's open for dispute.

17 Q. All right. That is something that someone has

18 told you that is a mandate; is that right?

19 A. That's right.

20 MR. LAWRENCE: Your Honor, I object to that

21 on the basis of hearsay.

22 THE COURT: All right.

23 MR. FINNEGAN: Your Honor, for argument -- do you

(WITNESS: Mr. Ahuja)

1 want argument?

2 THE COURT: I don't see any point. This is an

3 objection he's noted on the record.

4 BY MR. LAWRENCE:

5 Q. You have an average processing time of four

6 minutes under item 30 for receiving, for the staff

7 researching the tax map number, Deed Book number, legal

8 address and lot number, subdivision name, Deed Book and

9 page number of the application. Was that four minutes

10 actually determined by field investigation?

11 A. By sample survey over a period of a week.

12 Q. Sample survey. How many samples were included

13 in this survey?

14 A. I do not recall the statistics at this time.

15 Q. Do you do it or did someone else do it?

16 A. The person in charge of this particular task.

17 MR. LAWRENCE: Your Honor, same objection.

18 THE COURT: Sure. I'll note your exception.

19 MR. LAWRENCE: Your Honor, I have a continuing

20 objection to items that are not of his own personal

21 knowledge.

22 THE COURT: Sure.

23

(WITNESS: Mr. Ahuja)

1 BY MR. LAWRENCE:

2 Q. Now you have a 6.5 minute average processing
3 time in item 31 for determining whether or not the
4 contractor is properly licensed in the State and the
5 County; is that correct?

6 A. That is correct.

7 Q. That doesn't take into consideration the fact
8 the all of these permits, with the exception of the
9 Ryland permits, were Miller and Smith permits; does it?

10 A. No, this does not address any particular
11 permit.

12 Q. Wouldn't it be true, Mr. Ahuja, that because
13 of the volume of the Miller and Smith permits, the
14 person reviewing this would not have to go and up look
15 the validity of the licensing of Miller and Smith on
16 every application?

17 A. I'm not aware of the qualifications of the Miller
18 and Smith outfit and I am not qualified to answer that
19 question.

20 Q. You have an item which is marked out here;
21 I guess it's item 32, a 20 minute average processing
22 time for the review with regard to well water supply.

23 A. That's correct.

1 Q. This 20 minute processing time would not be
2 applicable because there was no well water in question;
3 would it?
4 A. That is correct.
5 Q. And if the testimony in this particular case
6 was that all of these units that are in issue are on
7 public water, public sewer, then that particular processing
8 time would not be applicable.
9 A. Would you repeat that, please?
10 Q. If the testimony was unrefuted that all of
11 these permits were issued on lots that had public water;
12 that is, no well, and public sewer; that is, a sanitary
13 sewer system as opposed to a septic system, then this
14 20 minute average processing time would not be applicable?
15 A. If it was so stipulated, yes, that would
16 be correct.
17 Q. The next item is requiring each applicant for
18 a well permit to fill out a permit and that's three minutes.
19 That would not be applicable either; would it?
20 A. That is correct.
21 Q. Next item, 34, in order to process the well
22 permit applications, the County sanitarian makes a field
23 trip to the site to verify location for this well. If

1 there is no well and there is no septic field, that 80
2 minutes that you have in your report would not be
3 applicable; would it?
4 A. Well, Mr. Lawrence, I'll save you the trouble
5 of having to repeat the same questions. As I said,
6 these statistics refer to the average time taken for
7 processing building permit applications. Those steps
8 in here that do not apply to the case in discussion here,
9 I cannot discuss them here. I think you would have to
10 refer them to the attorney simply because I do not have
11 knowledge of the background. I can attest to only what's
12 here.
13 THE COURT: You just respond to his question;
14 in other words, just answer his question.
15 THE WITNESS: Yes, sir.
16 BY MR. LAWRENCE:
17 Q. Mr. Ahuja, item 35 is the well permits are
18 issued only after the supervising division had the opportun-
19 ity to carefully review the field inspector's report.
20 That's 30 minutes. There, again, that would not be
21 applicable if there's no well water system involved?
22 A. That is correct.
23 MR. LAWRENCE: Your Honor, I believe that's all

* * *

(Court's ruling that building permits applied for prior to effective date of U.S.B.C. subject to BOCA § 118.8)

* * *

1 THE COURT: Well, I mean, in other words, as
2 far as I'm concerned, he has indicated -- 118 is the
3 applicable provision here.
4 MR. FINNEGAN: Is it the applicable provision
5 for these 1,168 permits?
6 THE COURT: It certainly is and I thought that
7 I had made myself clear, maybe, I hadn't.
8 MR. FINNEGAN: I did not understand. I took --
9 I understood that you were taking the Motion to Strike,
10 with regard to that, under advisement. I didn't realize
11 that you had formulated a ruling.
12 THE COURT: But -- no, this is my position in
13 the thing and I think I've -- at least I thought I made
14 it clear. Maybe I didn't; maybe, I didn't make it clear
15 to you, but this is my position on that that we are talking
16 those applications at the time, this particular section
17 was in force, the 118.8, and I don't know where we go from
18 here, what this is going to add to it. In other words, as
19 far as the issue involved here.
20 MR. FINNEGAN: Your Honor, I don't believe it
21 will under that ruling. Again, I believe that we still
22 have the issue before the Court as to whether or not
23 applications which were received by the County prior to

1 September 1, 1973, should be processed under the Fairfax
2 County Building Regulation or under Boca 118.7.
3 THE COURT: As I said, maybe I didn't make
4 myself clear with respect to the ruling I had -- you
5 had on this lengthy argument concerning 118.8. It seems
6 to me that would govern the ruling that I made; that
7 would govern this ruling here.
8 MR. FINNEGAN: Well, I had addressed myself
9 in that argument only to if 188 applied to these building
10 permits, we are entitled to a refund for our costs.
11 That was a secondary issue. The primary issue, which I
12 am arguing at this point, which I didn't realize Your
13 Honor had also ruled on, was whether or not 118.7 applied
14 in the first place. It's the County's contention that
15 118.7 does not apply where the application was issued
16 prior to September 1, 1973.
17 MR. LAWRENCE: Your Honor, that argument was
18 presented to the Court in prior days; that was one of the
19 issues whether 118 applies, and the argument then was that
20 36.103 somehow saved the County from their problem with the
21 way the Code is defined, but the Court, at that time,
22 determined 118 applies. Now we're going back into that
23 again.

1 THE COURT: Let me just read my letter here.
2 This was my understanding; maybe, I may just not have
3 made myself clear here for some reason or another.
4 Now in my letter of October the 3rd, going
5 down into the latter part of the paragraph -- paragraph
6 1 -- well I'll have to go back up to the first sentence;
7 otherwise, if I take it, I'll be taking something out of
8 context.
9 But I said in this letter that "Pursuant to
10 the provisions of 36.1-100, Code of Virginia, as amended,
11 the Board of Housing adopted a Uniform Statewide Building
12 Code as of January 29, '73(See Complainant's Exhibit No. 13).
13 The Board of Housing at that time adopted quote The Boca
14 Basic Building Code, Fifth Edition, 1970, with accumula-
15 tive supplement, 1972, close quotes, as the Uniform State-
16 wide Building Code of the State of Virginia with certain
17 amendments as shown in Complainant's Exhibit 13 entitled
18 Administrative Amendments. Section 118.0 of the Boca
19 Basic Building Code, as adopted, provided for building
20 permit fees for various categories of construction in
21 Sections 118.1 through 118.8. Section 118.1 deals with
22 the fees in general. Section 118.8 deals with refunds.
23 In adopting the Boca Basic Building Code of January 29, '73,

1 the only amendments as to fees to that Code were made by
2 the Board of Housing concerning fees were Sections 118.2,
3 118.3, and 118.4. None of these amendments deal with the
4 matter of refunds provided in Section 118.8, and this is
5 where I think they slipped up.
6 The amendment to Section 118.2 provided that the
7 fee for a building permit shall be prescribed in local
8 ordinances, and there's no mention of refunds provided in
9 Section 118.8.
10 The amendments adopted by the Board of Housing
11 in 1974 (See Complainant's Exhibit Number 12) do not
12 amend these provisions of the Boca Basic Building Code
13 in Section 118.8, which provides for refunds.
14 The same situation applies to the amendments
15 adopted by the Board of Housing in 1975 (See Complainant's
16 Exhibit 11); therefore, in the opinion of the Court, the
17 provision of Section 118.8 of the Boca Basic Building Code
18 have been adopted by the Board of Housing as part of the
19 Uniform Statewide Code of Virginia. This was apparently
20 changed in 1978.
21 So it would seem to me that, at least, that
22 would make it clear here that we're talking about 118.8
23 as being the governing provision there and not what took

1 place prior.

2 MR. FINNEGAN: Your Honor, I apologize. I

3 did not read into -- all right; I understood that para-

4 graph 1 of the Court's ruling to indicate that as of

5 September 1, 1973, that Section, 118.8, applied to

6 refunds. My argument is that any application received

7 prior to that would necessarily be governed by the Fairfax

8 County Building Regulations with regard to refunds, which

9 is different from 118.8.

10 THE COURT: Well I think you and I -- my

11 interpretation, what I've said, and your interpretation

12 seem to be two different ones there. No, I think that

13 we're governed by 118 and I think that that's the Section

14 118.8. They're dealing with refunds and I think that's

15 it. That's the point that governs and not anything prior,

16 necessarily prior to September 1st, 1973. So I would

17 think that his objection would be well taken at this

18 point.

19 Now if you feel like you want to proffer this

20 for the record, I'd be glad to do that; in other words,

21 so the record would be complete.

22 MR. FINNEGAN: Yes, Your Honor, I would like to

23 proffer some testimony at this time.

1 THE COURT: That's right, because the
2 Court of Appeals always likes -- if they have a complete
3 record; in other words, they can see what was there so
4 I'll permit him to -- I'll sustain the objection and permit
5 him to proffer this for the record, but I think that --
6 I thought that that was what we were here for today, to
7 make that determination and when he made his argument
8 there, the only thing I was concerned with today was
9 based on the question of whether or not the County was
10 entitled to a credit for time in processing these things.
11 Let's proffer his testimony for the record, so it
12 may be that we can eliminate an awful lot of time if the
13 case ever comes back here for a retrial.
14 BY MR. FINNEGAN:
15 Q. Does Defendant's Exhibit Number 13 reflect the
16 building permit issuing process the County followed in
17 1973-74?
18 MR. LAWRENCE: Your Honor, I'm going to object
19 to this because I don't think there's been a foundation
20 laid as to how he would have investigated each of those
21 line items in processing.
22 MR. FINNEGAN: Your Honor, I have already asked
23 if we are in the business of proffering at this time,

(WITNESS: Mr. Cooper)

1 I'm trying to get to the salient facts as soon as possible.
2 I first had asked him what his position was in '73-74.
3 We ran into objections on that. He had already testified
4 that he was the Director at that time. I'm asking him to
5 look at that and just say was that the process that was
6 used.
7 THE COURT: And you are referring to which
8 Exhibit now?
9 MR. FINNEGAN: This would be Defendant's Exhibit
10 No. 13, and we'll try and get through this proffering as
11 quickly as possible.
12 THE COURT: Let him go ahead and proffer and
13 then you raise any objection; in other words, your objection
14 is him testifying along these lines all together; isn't it,
15 Mr. Lawrence?
16 MR. LAWRENCE: It's that, Your Honor, which the
17 Court has already sustained. I feel like if he's going
18 to proffer, I have to somehow put on the record my
19 objections on an individual basis to the questions.
20 THE COURT: I'm going to let him do this and
21 I'll note your exception as he testifies.
22 MR. LAWRENCE: That's fine, Your Honor, just
23 as long as I can preserve these objections.

1 THE COURT: You raise your objections; she'll
2 note it and he'll continue to testify; in other words,
3 then we'll have a complete record.
4 MR. LAWRENCE: Shall I just say, objection
5 and the exception noted?
6 THE COURT: Right; exactly. Because I'm going
7 to let him testify as to how he arrived at these, in
8 other words. Go right ahead, Mr. Finnegan.
9 BY MR. FINNEGAN:
10 Q Does Defendant's Exhibit Number 13 accurately
11 reflect the building permit issuance process followed
12 by Fairfax County for fiscal year, 1974?
13 A Yes, it does.
14 Q Was this changed after September 1, 1973?
15 A It was changed not as a direct result of the
16 Uniform Statewide Building Code and has changed between
17 '73 and '78.
18 Q You have heard testimony, and the Court's
19 ruling with regard to discrepancies between this pro-
20 cedure and the provisions of the Virginia Uniform State-
21 wide Building Code. Can you render an opinion as to why
22 there are these discrepancies?
23 MR. LAWRENCE: Your Honor, I would object to

1 an opinion. Your Honor, I don't believe he's laid a
2 foundation as an expert witness. I don't think the
3 particular question -- calls for an expert's response
4 and therefore the opinion would be irrelevant and inadmissible.
5 I'd just like to preserve my exception on that basis.
6 THE COURT: I think he should go ahead and
7 note the discrepancies, in other words, Mr. Finnegan.
8 I think he can certainly testify the discrepancies but
9 how would he know as to why they exist there?
10 MR. FINNEGAN: Well, Your Honor, he was in
11 charge of this process and I'm asking him why they
12 followed this process rather --
13 THE COURT: Well, you mean, what the Office of
14 Inspections?
15 MR. FINNEGAN: Right.
16 THE COURT: Oh, I see.
17 MR. LAWRENCE: Your Honor, I have no objection
18 as to why he followed them, but his preface with opinion
19 is something --
20 THE COURT: That was my understanding. I'll
21 let him testify as to why his office followed the particu-
22 lar procedure.
23 THE WITNESS: I'm confused as to the question.

1 THE COURT: In other words, you had mentioned
2 the discrepancies; in other words, and you asked him why
3 they existed. In other words, but your question is why
4 did his office follow.
5 BY MR. FINNEGAN:
6 Q. Why did the Office of Inspection Service follow
7 the procedures set forth in the County Code as opposed to
8 the procedures set forth in Article 1 of the Uniform
9 Statewide Building Code, Boca Basic Building Code of 1970?
10 A. The reason we followed those procedures is
11 because the exact guidance we got, including a letter
12 from Governor Holton, guidance from the State Board of
13 Housing, and all the guidance we got from the State was --
14 MR. LAWRENCE: Objection, Your Honor. This was
15 hearsay.
16 THE COURT: I think he's testifying the reason
17 why he's done it. Let him go ahead for the record.
18 MR. LAWRENCE: I just want to note my exception.
19 THE COURT: All right.
20 THE WITNESS: Fees, and the refunding of fees,
21 were the matter of the local jurisdiction. The local
22 jurisdiction was required to have an ordinance to administer
23 the Uniform Statewide Building Code and, in order to defray

1 the cost of our expenses, we established the ordinance.
2 Included in the ordinance was the collection of fees.
3 We also had to include in the ordinance some essential
4 figures, or some essential information, in order to enforce
5 the Uniform Statewide Building Code. For instance, the
6 Uniform Statewide Building Code had requirements to put
7 footings below the frost line. No where was the frost
8 line defined. We had to have a local ordinance to define
9 the frost line.
10 We had to have a local ordinance to spell out
11 who the building official was and, for this reason, we
12 established a local ordinance to enforce the Uniform
13 Statewide Building Code.
14 BY MR. FINNEGAN:
15 Q. With respect to the years, '73 and '74, were
16 building permit fees charged by Fairfax County?
17 A. Building permit fees were charged during 1973.
18 Q. How were these fees determined?
19 A. These fees were determined by square foot.
20 Q. Are these fees set forth in any Board of
21 Resolution or ordinance in Fairfax County?
22 A. These fees are set forth in ordinances of
23 the Fairfax County Board of Supervisors.

(WITNESS: Mr. Cooper)

1 Q. What were these fees -- how were these fees
2 determined?
3 A. In 1973, we just brought forward the old fees.
4 We did not change any the basis for collecting fees. We
5 just brought forward the old fees.
6 Q. Do the revenues produced by the fees cover the
7 costs incurred by the County?
8 A. No, they do not cover the costs incurred by the
9 County.
10 MR. LAWRENCE: Objection, Your Honor. I don't
11 think there's been any foundation laid for that statement.
12 THE COURT: All right. I'll note your exception.
13 MR. LAWRENCE: Yes, sir.
14 BY MR. FINNEGAN:
15 Q. Were the fees based upon the actual time it
16 takes to process an individual permit?
17 A. These fees are not based upon the time to process
18 an individual permit.
19 Q. Why not?
20 A. Because there are many variables with each
21 individual permit. Some permits can take a matter of
22 minutes to process and other permits can take a matter of
23 days and weeks to process.

(WITNESS: Mr. Cooper)

1 Q. Have any studies been undertaken to determine
2 the cost of processing permits in the last five years?
3 A. There have been three studies. There was an
4 initial study back in 1974. The Board of Supervisors,
5 when they approved the budget, recognized that fees,
6 revenues received from permits, did not cover the expenses
7 of the Division.
8 MR. LAWRENCE: Objection, Your Honor. I believe
9 that's hearsay, Your Honor. I'd like to note that.
10 THE COURT: All right. I'll note that. Go
11 right ahead.
12 THE WITNESS: They directed that the staff
13 come back with a fee schedule that more accurately
14 reflected the cost involved. The staff developed a fee
15 schedule and that fee schedule was based upon the amount
16 of time it took to process the permit and to inspect the
17 permit. It was not a flat fee as it is for each permit.
18 That fee study really never got off the ground. If you
19 want to be truthful, it existed in draft form and never
20 passed the first element of review.
21 BY MR. FINNEGAN:
22 Q. Was it ever given to the Department of Office
23 of Research and Statistics for their reviewing comments?

1 A. No, it was not.

2 Q. Was it ever given to budget for their comments?

3 A. Budget, we had a meeting with the people of

4 Management and Budget and they could not endorse it or

5 agree with it. So it was just disregarded.

6 There was another study that was taken forward

7 in the spring of this year that was to determine what our

8 accurate -- what our costs were.

9 Recently, the fee schedule was amended, again,

10 and this study was both done in pursuant to Miller and

11 Smith case and also pursuant to a need to readjust the

12 fee schedule for this coming --

13 Most recently, we have worked on developing a

14 study that reflects the costs of processing procedures

15 in 1973, 1974.

16 Q. Were you involved in determining the average

17 cost of permits for 1973-74?

18 A. Yes, I was.

19 Q. What did you do in connection with this to

20 make this determination?

21 A. What I did was to -- I have two people who were --

22 work directly under me and we sat down and both of those

23 people had worked on the permit counter. We came up with

1 a narrative description of what the procedures were.
2 We checked those narrative descriptions with another
3 person, who was outside our Division, but who also
4 worked on the permit counter, issuing building permits,
5 at that point in time.
6 Once we had a final agreement on what the
7 narrative procedure was, we went through a Boca study,
8 which was done in that time frame and described the
9 narrative -- described the permit procedures.
10 Q. I show you what's been marked as Defendant's
11 Exhibit Number 14. Can you identify that document?
12 A. This is a schematic chart of the permit procedure
13 as diagramed by Boca in their study on the permit issuance
14 process.
15 (The document heretofore
16 referred to was marked as
17 Defendant's Exhibit No. 14
18 for identification.)
19 BY MR. FINNEGAN:
20 Q. And when was that undertaken?
21 A. This study was undertaken -- it was undertaken
22 in the spring of 1973. It was undertaken right after the
23 Skyline collapse and it was turned in to the County

(WITNESS: Mr. Cooper)

1 in November of '73.

2 MR. FINNEGAN: Your Honor, I would at this

3 time present for admission into evidence Defendant's

4 Exhibit Number 14, which is marked for identification,

5 but understanding the previous rulings of the Court.

6 THE COURT: It'll remain for identification

7 at this point. I'll mark it Defendant's Exhibit 14.

8 MR. LAWRENCE: Your Honor, I believe I have

9 a continuing objection which the Court has already

10 sustained.

11 THE COURT: Have you marked it for identification?

12 THE CLERK: Yes.

13 BY MR. FINNEGAN:

14 Q. One of the steps in the '73-'74 study indicates

15 that there was an average time allocated of one hour for

16 the review of the plan for the building. In 1973, how

17 many plan reviewers reviewed building plans in 1973?

18 A. We had seven people in that time frame to

19 review building permit plans.

20 Q. And how many -- roughly, how many hours did

21 each individual spend on reviewing plans?

22 MR. LAWRENCE: Your Honor, I'll object to

23 "roughly." I think we're talking about something -- it

1 has to be precise.

2 THE COURT: You mean on an average?

3 MR. FINNEGAN: On an average.

4 BY MR. FINNEGAN:

5 Q How many hours did each plan reviewer spend?

6 A Well if you take, say, that they worked a 40-

7 hour week in a 50-week year, giving -- allowing two weeks

8 off, that means that they had approximately 2,000 productive

9 hours in there.

10 Q How many building plans were reviewed that year?

11 A There were 14,900 permits -- building permits

12 issued.

13 Q If you divide the number of plan reviewer hours

14 available into the number of plans reviewed, what is the

15 average amount of time spent on an individual plan?

16 A It would come up that there is approximately an

17 hour for each permit, the plans associated with each

18 permit.

19 MR. LAWRENCE: Same objection.

20 BY MR. FINNEGAN:

21 Q Turning your attention to Defendant's Exhibit

22 Number 1, there are a number of annotations in pencil on

23 this Exhibit. Would you explain to the Court what those

1 annotations are under the columns marked A, B, and C?

2 A. A is the application date on the permit;

3 B is the issue date on the permit, and C is the amount of

4 fee paid for that permit.

5 Q. There are located in Delta A 1 through Delta

6 A 135 certain permits which were applied for in June and

7 July of 1974. Have you determined whether or not those

8 permits, which were applied for in June and July of 1974,

9 were permits for new construction or requests for renewals

10 of permits that had been applied prior to September of

11 1973?

12 A. These were requests for renewals of previously

13 issued permits.

14 Q. With respect to the Hunter's Creek Subdivision,

15 is that located within the Town of Herndon?

16 A. Yes, Hunter's Creek was in the Town of Herndon.

17 Q. Was there a time when the Fairfax County

18 Division of Inspection Services processed permits for

19 Hunter's Creek?

20 A. Yes, permits were processed for the Hunter's

21 Creek Subdivision.

22 Q. And did Fairfax County accept fees for those?

23 A. Yes, we did.

* * *

* * *

1 argument.

2 THE COURT: I certainly don't want to go through

3 323 permits. We'd be another week here on this thing.

4 MR. FINNEGAN: Your Honor, I have no further

5 questions.

6 THE COURT: So, in your opinion, Mr. Cooper,

7 those 323 permits are included in this figure?

8 THE WITNESS: Yes, there are.

9 THE COURT: Just out of curiosity, how many

10 others were there over and above the 323?

11 MR. LAWRENCE: How many permits were there?

12 THE COURT: You said you were only claiming 323.

13 MR. LAWRENCE: I don't know, Your Honor.

14 We just have our list from our records.

15 THE COURT: That's 323.

16 Anything further, Mr. Finnegan?

17 MR. FINNEGAN: No, Your Honor. That completes

18 the defendant's case.

19 THE COURT: Do you want to cross examine him?

20 MR. LAWRENCE: Yes, sir.

21 CROSS EXAMINATION

22 BY MR. LAWRENCE:

23 Q Mr. Cooper, you indicated that you estimated

(WITNESS: Mr. Cooper)

1 there were 14,900 building permits issued during that
2 year, which is how you arrived at your one hour per plan
3 review time?
4 A. That is correct.
5 Q. Now isn't it a fact based on the very evidence
6 that we have in here that many of the plans for which
7 building permits were issued may well have been reviewed
8 in the prior year.
9 A. It is possible that some were reviewed in the
10 prior year. It is also possible that some were reviewed
11 in -- during this period, that were actually reflected in
12 the later year.
13 Q. Right, sir. So what we're saying is the 14,900
14 building permits issued does not necessarily reflect the
15 number of plans that were reviewed that year; isn't that
16 right? It only reflects the number of permits that were
17 issued.
18 A. It reflects the number of permits -- those
19 permits -- each one of those permits has got to have
20 some sort of approved plan with them so the number
21 corresponds. When you issue a lot of permits, you are
22 issuing -- you are also reviewing quite a few plans,
23 a correspondingly high number of plans.

1 Q. Mr. Cooper, I don't think my question is that
2 complicated. You said that there were 14,900 building
3 permits issued during that year and you divide that by
4 the number of hours to come up with the hour per plan
5 review. And my question was, isn't that a fact that
6 very many of those plans may well have been reviewed in
7 the prior year, as is shown on our Exhibit list, which
8 is introduced into evidence?
9 A. Some of those may have been in the prior year.
10 Q. Now when you have a request for renewal
11 in July or June of '74, you have no factual basis on which
12 to determine when the plans were originally approved; do
13 you? The testimony you gave as to certain permits,
14 request for renewals, you are assuming that the plans
15 were reviewed an earlier time, and this is renewal, but
16 you had no factual knowledge -- you couldn't testify
17 when those plans were reviewed; could you?
18 A. They were reviewed prior to the renewal but
19 whether or not it was a month prior to the renewal, or
20 three months prior to the renewal, or nine months prior
21 to the renewal, I couldn't tell.
22 Q. Okay. Now you said there were 27 different
23 plans that you reviewed during this period. Isn't it a

FINAL DECREE

THIS CAUSE came on to be heard on the 5th day of July, 1978 and on the 27th day of November, 1978, upon Complainant's Motion for Declaratory Judgment, Defendants' Answer and Grounds of Defense and Plea of the Statute of Limitations, and such other pleadings and authorities as were filed and read herein, upon the numerous exhibits and ore tenus evidence introduced herein by the respective parties, and upon argument of counsel; and

THIS COURT having set forth its capsulization of Findings of Fact and Conclusions of Law in Memorandum Opinion Letters of October 3, 1978 and January 9, 1979, copies of which are attached hereto and made a part hereof; and

IT APPEARING TO THE COURT that the Defendants are entitled to the relief prayed for; now, therefore, it is

ADJUDGED and DECREED as follows:

1. That Defendants' Plea of the Statute of Limitations is hereby denied.

2. That the voluntary payment rule relied upon by Defendants is inapplicable to this case.

3. That the provisions of Section 118.8 of the BOCA Basic Building Code have been adopted by the State Board of Housing as part of the Uniform Statewide Building Code of Virginia pursuant to the provisions of Section 36-100, et. seq., 1950 Code of Virginia, as amended.

4. That the State Board of Housing, having adopted the provisions of the BOCA Basic Building Code concerning refunds, the action of the Board of Supervisors in adopting Section 6-6(1)

of the Code of the County of Fairfax, Virginia dealing with building permit refunds was invalid and that portion of the Ordinance is superseded by the Building Code adopted by the State Board of Housing.

5. That Defendants' Motion to Strike should be denied.

6. That Complainant is entitled to recover the total stipulated amount paid for the building permits issued to the Complainant and The Ryland Group, Inc., less the stipulated amount transferred by the County to the Town of Herndon.

7. That Complainant is entitled to judgment in the amount of $36,325.00, plus Court costs in the amount $47.45 and interest from ~~[illegible]~~ DATE OF THIS ORDER.

AND THIS CAUSE IS FINAL.

ENTERED this 30 day of January, 1979.

/s/ Lewis D. Morris, Judge

NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA
COUNTY OF FAIRFAX CITY OF FAIRFAX
CITY OF FALLS CHURCH

BARNARD F. JENNINGS
JAMES KEITH
WILLIAM G. PLUMMER
LEWIS D. MORRIS
BURCH MILLSAP
JAMES C. CACHERIS
THOMAS J. MIDDLETON
RICHARD J. JAMBORSKY
JUDGES

FAIRFAX COUNTY COURTHOUSE
4000 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030

October 3, 1978

RECEIVED
OCT 04 1978
Office of County Attorney Fairfax County, Va.

Robert A. Lawrence, Esq.
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Edward J. Finnegan, Esq.
Assistant County Attorney
4100 Chain Bridge Road
Fairfax, Virginia 22030

Re: Miller and Smith, Inc. v.
Board of Supervisors of
Fairfax County, Virginia, et al;
In Chancery No. 54996

Gentlemen:

After consideration of the evidence heard ore tenus on July 5, 1978, argument of counsel, memoranda of counsel and authorities cited, I have reached the following conclusions:

1. That pursuant to the provisions of Sec. 36-100, Code of Virginia, as amended, the Board of Housing adopted a Uniform Statewide Building Code, on January 29, 1973. (See Complainant's Exhibit 13). The Board of Housing at that time adopted "The BOCA Basic Building Code, Fifth Edition, 1970, with Accumulative Supplement 1972" as the Uniform Statewide Building Code of the State of Virginia, with certain amendments as shown in Complainant's Exhibit 13, entitled "Administrative Amendments." Section 118.0 of the BOCA Basic Building Code, as adopted, provided for building permit fees for various categories of construction in Sections 118.1 through 118.8. Section 118.1 deals with fees in general and Section 118.8 deals with refunds. In adopting the BOCA Basic Building Code on January 29, 1973, the

only amendments (as to fees) to that Code made by the Board of Housing concerning fees were Sections 118.2, 118.3 and 118.4. None of these amendments deal with matter of refunds provided in Section 118.8. The amendment to Section 118.2 provided that the fee for a building permit shall be prescribed in local ordinances and there is no mention of refunds as provided in Section 118.8.

The amendments adopted by the Board of Housing in 1974 (see Complainant's Exhibit 12) do not amend the provisions of the BOCA Basic Building Code (Sec. 118.8) which provides for refunds.

The same situation applies to the amendments adopted by the Board of Housing in 1975. (See Complainant's Exhibit 11).

Therefore, in the opinion of the court the provisions of Section 118.8 of the BOCA Basic Building Code have been adopted by the Board of Housing as part of the Uniform Statewide Building Code of Virginia. This was apparently changed in the 1978 amendments according to the testimony of Mr. Proctor.

2. Section 36-98 of the Code of Virginia directed and empowered the Board of Housing to adopt and promulgate a Uniform Statewide Building Code and such code shall (emphasis added) supersede the building codes and regulations of the counties, municipalities and state agencies. The Board of Housing having adopted the provisions of the BOCA Basic Building Code concerning refunds, the action of the Board of Supervisors in adopting Section 6-6(1) dealing with building permit refunds was invalid and that portion of the ordinance is superseded by the building code adopted by the Board of Housing. The above-mentioned exhibits do not support the opinion of Mr. Jack A. Proctor, State Building Code Director, that the Board of Housing did not adopt Sections 118.1 through 118.8 as they appear in the 1970 and 1975 BOCA Basic Building Code as part of the administrative procedures for the Virginia Uniform Statewide Building Code as expressed in his testimony and Defendant's Exhibit 2.

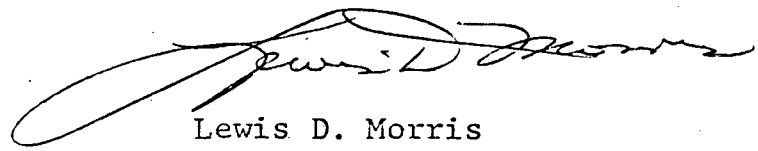
3. The plea of statute of limitations by Defendant is denied. The court is of the opinion that the five year statute of limitations would apply in this case.

4. The voluntary payment rule is not applicable to this case.

Based upon the above conclusions, the court is of the opinion that the Complainant is entitled to a refund. If counsel can agree, or stipulate, as to the amount of such refund, I would enter an order accordingly. By such agreement, Mr. Finnegan would not have to admit there is liability on the part of the County to make such refund and would be free to appeal the decision of the court. Should counsel be unable to resolve that issue, I suggest that you contact me for the purpose of setting a hearing date.

With kindest personal regards, I remain,

Very truly yours,



Lewis D. Morris

LDM:elc

NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

COUNTY OF FAIRFAX CITY OF FAIRFAX

CITY OF FALLS CHURCH

BARNARD F. JENNINGS
JAMES KEITH
WILLIAM G. PLUMMER
LEWIS D. MORRIS
BURCH MILLSAP
JAMES C. CACHERIS
THOMAS J. MIDDLETON
RICHARD J. JAMBORSKY
JUDGES

FAIRFAX COUNTY COURTHOUSE
4000 CHAIN BRIDGE ROAD
FAIRFAX, VIRGINIA 22030

January 9, 1979

RECEIVED
JAN 10 1979
Office of County Attorney Fairfax County, Va.

Robert A. Lawrence, Esq.
P. O. Box 547
Fairfax, Virginia 22030

Edward J. Finnegan, Esq.
Assistant County Attorney
4100 Chain Bridge Road
Fairfax, Virginia 22030

Re: Miller and Smith, Inc. v. Board of Supervisors of Fairfax County, Virginia, et al. - Chancery No. 54996

Gentlemen:

After consideration of the evidence heard ore tenus on November 27, 1978, argument of counsel, memoranda of counsel and authorities submitted, I have reached the following conclusions:

1. That Defendants' Motion to Strike should be denied.

2. That Complainant is entitled to recover the total amount paid for the building permits issued to the complainant and The Ryland Group, Inc., less the amount transferred by the County to the Town of Herndon. The Court is of the opinion that such transferred sum, if recoverable, would be the obligation of the Town. The assignment by The Ryland Group, Inc. was not a transfer of the building permits to complainant, but was an assignment of a chose in action, their right to recover the refund of the fees paid. Complainants could prosecute such claim in this cause.

3. That the Complainant is entitled to judgment in the amount of $36,325.00. This figure was determined by

subtracting the stipulated amount paid for the Town of Herndon permits, $9,626.00, from the stipulated total of fees paid, $42,721.00, and adding the $10 fee withheld for each of the 323 permits, or a total of $3,230.00.

I suggest that Mr. Lawrence prepare an order in accord with the above ruling.

With kindest personal regards, I remain

Very truly yours,

Lewis D. Morris

LDM:jah

ASSIGNMENTS OF ERROR

1. The trial court erred in assuming jurisdiction by ruling that Miller and Smith's claim did not come within the purview of Va. Code §§ 15.1-547 et seq. (Repl. Vol. 1973).

2. The trial court erred in assuming jurisdiction by ruling that Miller and Smith was not required to follow the administrative remedies provided for in the Virginia Uniform Statewide Building Code.

3. The trial court erred by declaring that the refund provisions of § 118.7 of the 1970 BOCA Basic Building Code supersede the provisions of § 6-6(1) of the 1961 Fairfax County Code.

4. The trial court erred by ruling that the refund provisions of § 118.7 of the 1970 BOCA Basic Building Code applied to permits for which working drawings had been submitted prior to the effective date of the Virginia Uniform Statewide Building Code.

5. The trial court erred by ruling that Fairfax County was not entitled to present evidence of its costs in processing, reviewing and issuing the abandoned building permits.

CERTIFICATE OF SERVICE

I hereby certify that twenty (20) copies of the foregoing Appendix to the Brief from the Circuit Court of Fairfax County were delivered to the Supreme Court of Virginia, Supreme Court Building, 1101 East Broad Street, Richmond, Virginia, and three (3) copies of the foregoing Appendix to the Brief were delivered to Robert A. Lawrence, Esquire, HAZEL, BECKHORN & HANES, 4084 University Drive, Fairfax, Virginia 22030, Counsel for Appellee, and mailed, postage prepaid to C.F. Hicks, Esquire, MARTIN, HICKS & INGLES, LTD., Attorneys At Law, P.O. Box 708, Gloucester, Virginia 23061, Counsel for Virginia Association of Counties, this _____ day of October, 1979.

_____
Edward J. Finnegan