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RICHMOND, VIRGINIA

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IN THE  
**Supreme Court of Virginia**

RECORD NO. 031053

253 VA 7

**DOGWOOD VALLEY CITIZENS  
ASSOCIATION, INC., et al.,**

*Appellants,*

**v.**

**WILLIAM A. WINKELMAN,**

*Appellee.*

**JOINT APPENDIX**

**George H. Dygert  
DYGERT, WRIGHT  
& HOBBS, PLC  
675 Peter Jefferson Parkway  
Suite 190  
Charlottesville, Virginia 22911  
(434) 979-5515**

*Counsel for Appellant*

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WOODS, ROGERS  
& HAZLEGROVE, PLC  
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*Counsel for Appellees*



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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF GREENE

WILLIAM A. WINKELMAN,

Plaintiff,

v.

DOGWOOD VALLEY CITIZEN'S  
ASSOCIATION, INC.

Serve: Registered Agent

Mark Hoover

Rt. 2 Box 134B

Stanardsville, Virginia 22973

(Greene County)

JASON ELLIOTT TINDER

5401 Carolton Lane

Barboursville, Virginia 22923

(Orange County)

GARY E. LOWE

979 Cedar Grove Road

Ruckersville, Virginia 22968

(Greene County)

and

KAREN H. LOWE,

979 Cedar Grove Road

Ruckersville, Virginia 22968

(Greene County)

Defendants.

Chancery No. CH01-3033

VALIDATE CASE PAPERS  
RCPT : 01000004260  
DATE : 07/26/01 TIME: 11:54  
CASE : 079CH01003033-00  
ACCT : WINKELMAN, WILLIAM A  
AMT. : \$112.00

*M. Jones*  
*Clerk*

**BILL OF COMPLAINT**

COMES THIS DAY, the Plaintiff William A. Winkelman ("Winkelman"), by counsel,

and respectfully states as follows:

1. Winkelman is a resident of Harper's Ferry, West Virginia, and the owner of Lots 1 and 2, Section 5E of the Dogwood Valley subdivision, Greene County, Virginia (the "Property"). The Property is more particularly described as:

All those certain tracts or parcels of land lying and situate in the Stanardsville Magisterial District of Greene County, Virginia, being Lots 1 and 2 in Section 5E of the Dogwood Valley Subdivision, as the same appears duly dedicated, platted and recorded in Deed Book 41 at Page 233 among the land records of Greene County, Virginia.

2. Defendant Dogwood Valley Citizen's Association, Inc. ("DVCA") is a Virginia corporation and is a property owners' association.

3. The Property is subject to an Amended Deed of Dedication ("Declaration") recorded in the Clerk's Office of the Circuit Court of Greene County in Deed Book 41, page 233. A copy of the Declaration is attached to the Bill of Complaint as Exhibit A.

4. DVCA is governed by the Articles of Incorporation of Dogwood Valley Citizen's Association, Inc., ("Articles"). A copy of the Articles is attached to the Bill of Complaint as Exhibit B.

5. DVCA is also governed by the By-Laws of the Dogwood Valley Citizen's Association, Inc. ("By-Laws"). A copy of the By-Laws effective as of June 14, 1997, is attached to the Bill of Complaint as Exhibit C.

6. According to a deed recorded in the Clerk's Office of the Circuit Court of Greene County in Book 452, page 207 which purports to convey Lot 2 of the Property, Defendant Jason Elliott Tinder ("Tinder") was the purchaser of Lot 2 of the Property at a purported sale of the Property on April 29, 1998. A copy of the Deed to Tinder is attached to the Bill of Complaint as Exhibit D.



7. According to a deed recorded in the Clerk's Office of the Circuit Court of Greene County in Book 449, page 196 which purports to convey Lot 1 of the Property, Defendant Gary E. Lowe and Karen H. Lowe (together "Lowes") were the purchasers of Lot 1 of the Property at a purported sale of the Property on April 29, 1998. A copy of the Deed to the Lowes is attached to the Bill of Complaint as Exhibit E.

8. Winkelman received a letter, dated April 4, 1997, from counsel for DVCA announcing that DVCA had filed a Memorandum of Lien against the Property for delinquent special assessments. A copy of the letter is attached to the Bill of Complaint as Exhibit F.

9. In April 1997, Winkelman made a payment to DVCA in the amount of \$200.00.

10. Winkelman received a letter, dated May 13, 1997, from counsel for DVCA stating that Winkelman still owed \$119.04 for attorneys' fees, filing fees, and interest. A copy of the letter is attached to the Bill of Complaint as Exhibit G.

11. On June 14, 1997, at the Annual Meeting of the DVCA, a special assessment of \$35.00 per lot was adopted and an amendment to Article XI of the By-Laws was adopted. A copy of the minutes of the June 14, 1997 Annual Meeting is attached to the Bill of Complaint as Exhibit H.

12. Winkelman received a Road Fee Notice, dated November 15, 1997, from DVCA which stated that Winkelman's prior balance was \$170.15 which included court costs of \$64.00, attorney's fees of \$100.00 and interest of \$6.15. The Road Fee Notice also included Road Fees of \$50.00 and a Special Assessment of \$70.00. According to the Road Fee Notice the total amount due was \$290.15. A copy of the Road Fee Notice is attached as Exhibit I.

13. On March 30, 1998, DVCA filed Memoranda of Lien against the Property in the Clerk's Office of the Circuit Court of Greene County. Copies of the Memoranda of Lien are attached to the Bill of Complaint as Exhibits J and K.

14. On April 29, 1998, a purported foreclosure sale of Lots 1 and 2 of the Property was conducted by Kelly A. Hobbs, counsel for DVCA.

15. According to a Closing Statement prepared by counsel for DVCA, dated May 28, 1998, Lot 1 of the Property was purchased by Gary Lowe for \$1,000.00. A copy of Lowe's Closing Statement is attached as Exhibit L.

16. According to a Closing Statement prepared by counsel for DVCA, dated May 28, 1998, Lot 2 of the Property was purchased by Tinder for \$2,100.00. A copy of Tinder's Closing Statement is attached as Exhibit M.

17. According to the records of the Commissioner of Revenue for Greene County, the tax assessment on Lot 1 of the Property is \$6,000.00.

18. According to the records of the Commissioner of Revenue for Greene County, the tax assessment on Lot 2 of the Property is \$7,000.00.

19. Winkelman received a letter, dated August 27, 1998, from counsel for DVCA stating that Winkelman's property was sold at a foreclosure sale. The letter included a check for \$1,831.05 for the balance of the proceeds of the sale of Lots 1 and 2, the disbursement statement for the foreclosure sale and the Closing Statements for the foreclosure sale discussed above in Paragraphs 15 and 16. The check was returned to DVCA. A copy of the letter is attached as Exhibit N and a copy of the disbursement statement is attached as Exhibit O.

**COUNT I**  
**FAILURE TO COMPLY WITH VIRGINIA PROPERTY**  
**OWNERS' ASSOCIATION ACT**

20. Winkelman restates and realleges the allegations contained in Paragraphs 1 through 19.

21. Pursuant to § 55-514(A) of the Code of Virginia, "the board of directors of an association shall have the power to levy a special assessment against its members if the purpose in so doing is found by the board to be in the best interest of the association and the proceeds of the assessment are used primarily for the maintenance and upkeep of the common area and such other areas of association responsibility expressly provided for in the declaration, including capital expenditures."

22. There are no minutes of the Board of Directors which discuss or authorize the 1997 special assessments.

23. The special assessment pursuant to which the Memoranda of Lien was filed and foreclosure sale occurred was not authorized by the Board of Directors.

24. There was no determination by the Board of Directors or the members of DVCA that the assessments were "in the best interests of the association."

25. The failure of DVCA to enact the special assessment in accordance with § 55-514(A) renders these assessments void and the sale of the Property under these assessments is also void.

WHEREFORE Winkelman respectfully prays that the Chancellor void the sale of Lots 1 and 2 of the Property, require Tinder and the Lowes to convey Lots 1 and 2 of the Property to Winkelman, award Winkelman his costs expended and his attorneys' fees and for such other



relief, both general and special, as to equity may seem meet and the nature of the case may require.

**COUNT II**  
**FAILURE TO COMPLY WITH DECLARATION**

26. Winkelman restates and realleges the allegations contained in Paragraphs 1 through 25.

27. According to Paragraph 3 of the Declaration, DVCA "may assess each lot owner a sum not to exceed Fifteen (\$15.00) per year, per lot, for the use upkeep and maintenance of the roads within all sections of said subdivision and such other common facilities as [DVCA] may provide therein."

28. The Declaration does not provide for any other assessments.

29. Pursuant to Article XIII, § 2 of the By-Laws, the Declaration controls over the By-Laws and the Articles.

30. The special assessments and regular assessments are void because they exceed the maximum allowable fee of \$15.00.

31. The Declaration does not provide for any additional penalties, interest, late fees, or attorneys' fees on assessments.

32. The interest, penalties, and attorneys' fees claimed against Winkelman are prohibited by the Declaration and void.

WHEREFORE Winkelman respectfully prays that the Chancellor void the sale of Lots 1 and 2 of the Property, require Tinder and the Lowes to convey Lots 1 and 2 of the Property to Winkelman, award Winkelman his costs expended and his attorneys' fees and for such other

relief, both general and special, as to equity may seem meet and the nature of the case may require.

**COUNT III  
FAILURE TO COMPLY WITH BY-LAWS**

33. Winkelman restates and realleges the allegations contained in Paragraphs 1 through 32.

34. Pursuant to Article XI of the By-Laws, "After an account has been delinquent for ninety (90) days, the Association may bring an action at law against the owner personally obligated to pay the same or record a lien on the property and thereafter foreclose the same against the property."

35. The Memoranda of Lien recorded against the Property state the amount past due is \$35.00 on each lot.

36. The Memoranda of Lien recorded against the Property state the date on which the special assessments are due is February 1, 1998.

37. The recording of the Memoranda of Lien and the foreclosure sale occurred before the expiration of the 90 day delinquency period and, consequently, was in violation of the By-Laws.

38. The sale of the Property is void as it took place in violation of the By-Laws.

WHEREFORE Winkelman respectfully prays that the Chancellor void the sale of Lots 1 and 2 of the Property, require Tinder and the Lowes to convey Lots 1 and 2 of the Property to Winkelman, award Winkelman his costs expended and his attorneys' fees and for such other

relief, both general and special, as to equity may seem meet and the nature of the case may require.

**COUNT IV  
FAILURE TO LEGALLY AUTHORIZE FORECLOSURE**

39. Winkelman restates and realleges the allegations contained in Paragraphs 1 through 38.

40. Pursuant to § 55-516(I), "the property owners' association may sell the unit [on which it has recorded a lien] at public sale, subject to prior liens, . . ."

41. Pursuant to § 55-510(E) of the Code of Virginia, the minutes of the Board of Directors shall be recorded.

42. Pursuant to Article VII § 2(a), the Board of Directors shall keep " a complete record of all of its acts and corporation affairs."

43. There are no minutes of the Board of Directors which discuss or authorize the recording of Memoranda of Lien or the foreclosure sale of the Property.

44. There is no record of the Board of Directors or the members of DVCA authorizing the recording of the Memoranda of Lien against the Property or authorizing the foreclosure sale of the Property.

45. The failure of DVCA to properly authorize the recording of the Memoranda of Lien and the foreclosure sale render those actions void.

WHEREFORE Winkelman respectfully prays that the Chancellor void the sale of Lots 1 and 2 of the Property, require Tinder and the Lowes to convey Lots 1 and 2 of the Property to Winkelman, award Winkelman his costs expended and his attorneys' fees and for such other



relief, both general and special, as to equity may seem meet and the nature of the case may require.

**COUNT V  
UNCONSCIONABILITY OF SALE**

46. Winkelman restates and realleges the allegations contained in Paragraphs 1 through 45.

47. The sale of each lot of the Property was for less than one-third of the tax assessed value of the Property.

48. The amounts paid by Tinder and the Lowes for Lots 1 and 2 of the Property are so low as to shock the conscience of the Court.

WHEREFORE Winkelman respectfully prays that the Chancellor void the sale of Lots 1 and 2 of the Property, require Tinder and the Lowes to convey Lots 1 and 2 of the Property to Winkelman, award Winkelman his costs expended and his attorneys' fees and for such other relief, both general and special, as to equity may seem meet and the nature of the case may require.

**COUNT VI  
VIOLATION OF DUE PROCESS**

49. Winkelman restates and realleges the allegations contained in Paragraphs 1 through 48.

50. Article I, § 11 of the Virginia Constitution provides that "no person shall be deprived of his life, liberty, or property without due process of law; . . ."

51. The Declaration subject to which Winkelman purchased the Property on May 9, 1980, did not, and does not, provide for a foreclosure sale of property for delinquent assessments.

52. The provisions of § 55-516(I) of the Virginia Code, under which the foreclosure sale was conducted, were enacted after the purchase of the Property by Winkelman.

53. The provisions of § 55-516(I) of the Virginia Code, under which the foreclosure sale was conducted, do not satisfy the due process standard of fairness.

WHEREFORE Winkelman respectfully prays that the Chancellor void the sale of Lots 1 and 2 of the Property, require Tinder and the Lowes to convey Lots 1 and 2 of the Property to Winkelman, award Winkelman his costs expended and his attorneys' fees and for such other relief, both general and special, as to equity may seem meet and the nature of the case may require.

#### **COUNT VII EXCESSIVE FEES AND COSTS FOR SALE**

54. Winkelman restates and realleges the allegations contained in Paragraphs 1 through 53.

55. According to § 55-516(I)(5)(c), the proceeds of the sale shall be applied "first to the reasonable expenses of sale; . . ."

56. According the Disbursement Statement for the sale of the Property, Exhibit O, a disbursement of \$344.79 was made to Dogwood Valley Citizen's Association and a \$775.00 disbursement was made to George A. Dygert, counsel for DVCA.

57. Pursuant to the Declaration, the maximum allowable assessment is \$15.00 a year.

58. The amount disbursed to DVCA is far in excess of the amount that can be assessed pursuant to the Declaration.

59. Section 55-516(I)(5)(c), does not provide for attorneys' fees, but only reasonable expenses.

60. Section 55-59.4(3) of the Code of Virginia, which describes the disbursement of sale proceeds for a sale under a Deed of Trust, specifically provides for payment of the trustee's commission and that commission is limited to 5% of the gross proceeds of the sale.

61. The disbursement to George A. Dygert is approximately 25% of the gross proceeds of the sale of the property.

62. At the same time the Property was sold, DCVA conducted sales of 40 other lots in the Dogwood Valley subdivision.

63. The attorneys' fees charged against the sale of the Property were not reasonable expenses.

WHEREFORE, Winkelman respectfully prays that, should the Chancellor not void the sale of the Property, the Chancellor will reduce the attorneys' fees and costs charged against the proceeds of the sale to a reasonable amount, award Winkelman his costs expended and his attorneys' fees and for such other relief, both general and special, as to equity may seem meet and the nature of the case may require.

#### **COUNT VIII**

#### **DVCA DOES NOT QUALIFY UNDER PROPERTY OWNERS' ASSOCIATION ACT**



64. Winkelman restates and realleges the allegations contained in Paragraphs 1 through 19.

65. According to Paragraph 3 of the Declaration, DVCA "may assess each lot owner a sum not to exceed Fifteen (\$15.00) per year, per lot, for the use upkeep and maintenance of the roads within all sections of said subdivision and such other common facilities as [DVCA] may provide therein."

66. The Declaration does not contain an express duty for the DVCA to maintain the roads or such other common facilities.

67. The Declaration does not provide for any other assessments.

68. The Declaration does not provide for the sale of lots to satisfy liens for delinquent assessments.

69. Pursuant to Article XIII, § 2 of the By-Laws, the Declaration controls over the By-Laws and the Articles.

70. The special assessments and regular assessments are void or voidable because they exceed the maximum allowable fee of \$15.00.

71. The Declaration does not provide for any additional penalties, interest, late fees, or attorneys' fees on assessments.

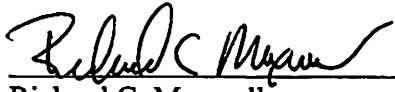
72. DVCA does not meet the definition of a "property owners' association" under the Virginia Property Owners' Association Act ("VPOAA"), §55-508 et seq. Accordingly, DVCA is not able to avail itself of the provisions of the VPOAA and, therefore, DVCA ability to make assessments and collect those assessments is limited to the provisions of the Declaration.

WHEREFORE Winkelman respectfully prays that the Chancellor void the sale of Lots 1 and 2 of the Property, require Tinder and the Lowes to convey Lots 1 and 2 of the Property to Winkelman, award Winkelman his costs expended and his attorneys' fees and for such other relief, both general and special, as to equity may seem meet and the nature of the case may require.

Respectfully submitted,

WILLIAM A. WINKELMAN

By Counsel



Richard C. Maxwell  
Woods, Rogers & Hazlegrove, P.L.C.  
P.O. Box 2964  
Charlottesville, VA 22902-2964  
(804) 295-8300

Counsel for William A. Winkelman

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WITNESS the following signatures and seals.

Winifred S. Haney (SEAL)  
Winifred S. Haney

Sallie M. Haney (SEAL)  
Sallie M. Haney

STATE OF VIRGINIA

COUNTY OF ALBEMARLE: to-wit:

I, Robert F. Rutschow, a Notary Public in and for the County aforesaid, in the State of Virginia, do certify that <sup>S.</sup>Winifred S. Haney and Sallie M. Haney, whose names are signed to the foregoing writing bearing date on the 12th day of November, 1968, have each acknowledged the same before me in my County aforesaid.

My Commission expires August 6, 1972

Given under my hand this 22nd day of November, 1968.

Robert F. Rutschow  
Notary Public

VIRGINIA: In the Clerk's Office of the Circuit Court of Greene County, Dec. 7, 1968. This deed was this day received in said office, and, upon the certificate... of acknowledgment... thereto annexed, admitted to record, at 9:00 o'clock A.M., after payment of \$ 11.00, tax imposed by Sec. 58-54 (b).

Teste: [Signature], Clerk.

Tax \$ 11.50 Transfer Fee \$ 1.00

THIS AMENDED DEED OF DEDICATION, made and entered into this 1st day of November, 1968, by Kermit R. Gallihugh, individually, and as Agent and Attorney in Fact for Barbara A. Gallihugh, his wife, Bradley K. Haynes and Betty G. Haynes, his wife,

WHEREAS, by Deed of Dedication dated the 11th day of October, 1968, recorded in the Clerk's Office of the Circuit Court of Greene County, Virginia, in Deed Book 41, at Page 150, the said Bradley K. Haynes and Betty G. Haynes, his wife, and Kermit R. Gallihugh and Barbara A. Gallihugh, his wife, imposed certain restrictions and covenants on a certain tract of land described therein, containing 371 acres, more or less, in the Stanardsville Magisterial District of Greene County, Virginia, on South River known as the Deane property; and

Filed: 7-26-01

mlw  
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WHEREAS, there is incorporated by reference in said deed a plat and survey made by William S. Roudabush, Jr., C.L.S., dated September 1968, dividing said land, or a portion thereof, into lots and designated in said deed and on said plat as a subdivision to be known as "Dogwood Valley"; and

WHEREAS, the aforesaid plat made by William S. Roudabush, Jr., covers only a portion of the 371 acre <sup>tract</sup> known as Deane property, referred to in said Deed of Dedication, the portion covered by the Roudabush plat being designated as "Section One of Dogwood Valley" and recorded in the Clerk's Office aforesaid in Plat Book 1 at Page 218; and

WHEREAS, additional surveys and plats have been made by W.T. Whitmore, C.L.S., covering other portions of the aforesaid Deane property, dated October 26, 1968, designated as "Section #2, Dogwood Valley", hereunto attached and made a part of this Amended Deed of Dedication, and incorporated herein by reference ; and

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WHEREAS, additional surveys and plats have been and will be made of other lands than the aforesaid Deane property, but which will also be known as "Dogwood Valley" and which will be designated as Section 3, 4, and so forth, references to the source of title to such land appearing and to appear on said plats; and

WHEREAS, the undersigned owners of the aforesaid Deane property, and such other property as may be hereinafter, from time to time, surveyed, platted, subdivided and designated by the undersigned owners of "Dogwood Valley" or any portion or section thereof, do hereby announce their intentions to hereafter make deeds to said real estate or subdivision thereof, and in said deeds to refer to the aforesaid plat or plats, survey or surveys, of "Dogwood Valley"; or portions or sections thereof, whether already recorded or hereafter to be recorded, for the purpose of identifying the said real estate intended by said deeds to be granted and conveyed.

NOW, THEREFORE, THIS AMENDED DEED OF DEDICATION

WITNESSETH:

That for and in consideration of the premises, the said parties hereto do hereby subdivide the aforesaid tract of land containing 371 acres, more or less, known as the Deane property into lots, streets and public ways as shown on the plat or plats, survey or surveys of "Dogwood Valley", or portions or sections thereof, whether already recorded or hereafter to be recorded, and in addition thereof such other property as may be hereafter from time to time, surveyed, platted, subdivided and designated by the undersigned owners as "Dogwood Valley" or any portion or sections thereof, whether now owned or hereafter to be acquired, in addition to the said Deane property, and do hereby dedicate said subdivision, to be known as "Dogwood Valley" subject to the belowmentioned restrictions, covenants and conditions which are hereby imposed upon said subdivision, known as "Dogwood Valley".

And further, for the purpose of increasing the value of the subdivision known as "Dogwood Valley", and any portion or section thereof, whether already surveyed, platted, and recorded, or hereafter to be surveyed, platted and recorded, the following restrictions, covenants and conditions are hereby imposed on said lots and shall run with the land, and shall be binding upon the purchasers of all of said lots in "Dogwood Valley", their successors and assigns to-wit:

1. The grantors hereby dedicate to the public, for public use forever, all the streets and right of ways shown on the attached plat and plan, and title to the land in said streets and rights of way is hereby transferred to the County of Greene as provided by Section 15-1-478, Code of Virginia, 1950, as amended.

2. Neither the proprietors and owners of the subdivision, nor the purchasers of said lots, will request the Board of Supervisors of Greene County, Virginia, or the Virginia Department of Highways, that the said Streets in said subdivision be taken into the highway system unless and until said lot owners and proprietors have brought said streets up to the specifications of the Virginia Department of Highways.

3. The grantors may assess each lot owner a sum not to exceed Fifteen Dollars (\$15.00) per year, per lot, for the use, upkeep and maintenance of the roads within all sections of said subdivision, and such other common facilities as the said grantors may provide therein.

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The right and responsibilities as created by this paragraph may be delegated by the grantors to a Committee of lot owners within said subdivision, appointed by the grantors, and any assessment made pursuant to this paragraph shall constitute a lien on each and every lot within said subdivision until paid, and payment of said assessment and levy shall be payable on or before the 31st day of January next following the purchase of said lot, and on or before the 31st of each year thereafter.

Where more than one lot is owned by the party or parties, in the event of a resale by them or one or more of said lots, then the obligation to pay said road maintenance fee shall be binding on the purchaser or purchasers of said lots without any provisions therein specifically so provided.

4. The grantors reserve unto themselves, their heirs and assigns, the right to erect and maintain telephone and electric light poles, conduits, equipment, sewer, gas and water lines, or to grant easements or rights of way therefor, with the right of ingress and egress for the purpose of erection or maintenance on, over, or under a strip of land fifteen (15) feet wide at any point along the side, rear or front lines of any of said lots.

5. No building of a temporary nature shall be erected or placed on any of said lots except those customarily erected in connection with building operations, and in such cases, for a period not to exceed six months.

6. Not more than one residence shall be erected on any one lot, and it shall contain a minimum of 480 square feet of main floor. This shall not include basement, garage, porch or carport. No part of any lot sold by the grantors may be sold or used as a road or as a right of way to any property outside of said subdivision. This restriction shall not apply until said lots are sold by the grantors.

7. All of said lots shall be used for residential purposes only, and any garage or barn must conform generally in appearance and material with any dwelling on the said lot.

8. No signs, billboards, or advertising of any nature shall be erected, placed or maintained on any lots herein designated, nor upon any building erected thereon, except directional and information signs of grantors.

9. No buildings shall be erected closer than 10 feet to any street or road, nor closer than 15 feet to the side or rear of the lot line, with the exception that where two or more lots are used together for the construction of one dwelling, then said 10 foot set back shall apply only to outside lines.



STATE OF VIRGINIA

COUNTY OF GREENE, to-wit:

I, Mary F. Melone, a Notary Public in and for the County of Greene, in the State of Virginia, do hereby certify that Kermit R. Gallihugh, individually and as Agent and Attorney in Fact for Barbara A. Gallihugh, his wife, Bradley K. Haynes and Betty G. Haynes, his wife, whose names are signed to the foregoing writing, bearing date the 1st day of November, 1968, has this day acknowledged the same before me in my County and State aforesaid.

Given under my hand this first day of November, 1968.

MY COMMISSION EXPIRES :  
March 25, 1972

Mary F. Melone  
Notary Public

VIRGINIA: In the Clerk's Office of the Circuit Court of Greene County, Dec. 9, 1968. This deed was this day received in said office, and, upon the certificate... of acknowledgment... thereto annexed, admitted to record, at 2:45 o'clock P. M., after payment of \$....., tax imposed by Sec. 58-54 (b).

Teste: [Signature], Clerk.

Tax \$..... Transfer Fee \$.....

17



ARTICLES OF INCORPORATION  
OF  
DOGWOOD VALLEY CITIZEN'S ASSOCIATION, INC

In compliance with the requirements of Chapter II of Title 13.1, Code of Virginia, 1950, as amended, the undersigned, all of whom are of full age, have this day voluntarily associated themselves together for the purpose of forming a non-stock corporation, not for profit, and do hereby certify:

ARTICLE I

The name of the corporation is Dogwood Valley Citizen's Association, Inc., hereinafter called the "Association."

ARTICLE II

The Post Office address of the registered office of the Association is P.O. Box 127, Stanardsville, Virginia 22973, which is located in the County of Greene.

ARTICLE III

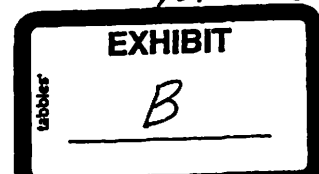
The name of its registered agent who is a resident of Virginia and a director of the corporation is Gerald C. Shinsky, and whose business office is the same as the registered office of the corporation.

ARTICLE IV

This Association does not contemplate pecuniary gain of profit to the members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of the subdivision roads, residence lots, and common facilities within those tracts of property described in deeds recorded among the land records of Greene County, Virginia, and to promote the health, safety and welfare of the residents within the above described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose:

(a) to exercise all of the powers and privileges and to perform all of the duties and obligations of the Association to the extent that the funds collected permit, and in the manner set forth in that certain Declaration of Covenants, Conditions and Restrictions, hereinafter called the "Covenants," applicable to the property and recorded or to be recorded in the Office of the Clerk of the Circuit Court of Greene County and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length:

*Filed 7-26-01  
Shinsky*



(b) to fix, levy, collect and enforce payment by any lawful means, all charges or assessments, pursuant to the terms of the Covenants; to pay all expenses in connection therewith and all office or other expenses incident to the conduct or business of the Association, including all licensees taxes or governmental charges levied or imposed against the property of the Association;

(c) to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) to borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) to dedicate, sell or transfer all or any part of the roads and common facilities to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by all of the members, agreeing to such dedication, sale or transfer;

(f) to the extent provided by law participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of more than two-thirds (2/3) of the members;

(g) to have and to exercise any and all powers, rights and privileges which a corporation organized under the non-profit Corporation Law of the State of Virginia by law may now or hereafter have or exercise;

(h) to annex additional residential property, roads and common facilities as provided in Covenants.

#### ARTICLE V MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject to covenant of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenance to and may not be separated from ownership of any lot which is subject to assessment by the Association.

J

ARTICLE VI  
VOTING RIGHTS

The Association shall have one class of voting membership:

Members shall be all Owners and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

ARTICLE VII  
BOARD OF DIRECTORS

The affairs of the association shall be initially managed by a Board of four (4) Directors, two Directors shall be elected for a term of one year, two for a term of two years; and at each annual meeting thereafter the members shall elect Directors for a term of two years.

Directors must be members of the Association. The numbers of Directors may be changed by amendment of the By-laws of the Association. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are:

<u>NAME</u>	<u>ADDRESS</u>
Gerald C. Shinsky	P. O. Box 186 Stanardsville, VA
Florence Alien Thumps	P. O. Box 186 Stanardsville, VA
Donald E. Wilkins	14472 Turin Lane Centreville, Virginia
Col. John L. Crawley, Jr.	7 Marvin Drive Hampton, VA

The Board of Directors may declare vacant office of a Director who shall have been absent from five consecutive regular meetings of the board.

## ARTICLE VIII

### DISSOLUTION

The Association may be dissolved by the vote of more than two-thirds (2/3) of the entire Association membership and by complying with the applicable laws of the Commonwealth of Virginia. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptances, such asset shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

## ARTICLE IX

### DURATION

The Corporation shall exist perpetually.

## ARTICLE X

### AMENDMENTS

Amendment to these Articles shall require the assent of twenty-five per cent (25%) of the entire membership.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the Commonwealth of Virginia, we, the undersigned, constituting the incorporators of this Association, have executed these Articles of Incorporation this \_\_\_\_\_ day of \_\_\_\_\_ 1978.

signed: Gerald C. Shinsky  
Florence Alien Thumps  
Donald E. Wilkins  
Name listed: Col. John L. Crawley, Jr.

BY-LAWS  
OF  
DOGWOOD VALLEY CITIZEN'S ASSOCIATION, INC

ARTICLE I

NAME AND LOCATION: The name of the Corporation is Dogwood Valley Citizen's Association, Inc., hereinafter referred to as the "Association". It is located in the County of Greene, State of Virginia, and the present mailing address is P.O. Box 127, Stanardsville, Virginia 22973.

ARTICLE II  
DEFINITIONS

Section 1. "Association" shall mean and refer to Dogwood Valley Citizen's Association, Inc., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real estate described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Roads and Facilities" shall mean all roads and real property owned or maintained by the Association for the common use and enjoyment of the owners.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the properties.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of the properties, including contract sellers.

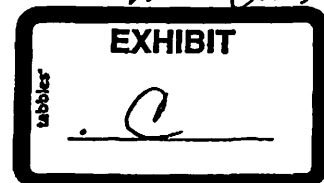
Section 6. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the properties recorded in the Office of the Clerk of the Circuit Court of Greene County.

Section 7. "Member" shall mean and refer to those persons entitled to membership as provided in the Articles of Incorporation (being the same as provided in the Declaration).

ARTICLE III  
MEETING OF MEMBERS

Section 1. Annual Meetings. A meeting shall be held annually in June within Greene County, State of Virginia; and at a place, date, and time after 9:00 A.M. and before 8:00 P.M. determined by the Board of Directors, except that annual meeting shall not be held on a Sunday or legal holiday.

*Filed 7-26-01  
Shivers*



Section 2. Special Meetings. Special meetings of the members may be called at any time by the president, or by the Board of Directors.

Section 3. Notice of Meetings. Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than seven (7) nor more than thirty (30) days before the date of the meetings, either personally or by mail, by or at the direction of the president, or the secretary or the officers calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

Notice of a members meeting to act on an amendment of the Articles of Incorporation or on a plan of merger or consolidation shall be delivered in the manner provided above, not less than twenty-one (21) nor more than thirty (30) days before the date of the meeting. Any such notice that is mailed shall be accompanied by a copy of the proposed amendment or plan of merger or consolidation or a summary thereof.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one tenth (1/10) of the votes of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, or these By-laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable, shall be invalid after eleven months from its date unless otherwise provided in the proxy and shall automatically cease upon conveyance by the member of his lot.

#### ARTICLE IV BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of five directors, who must be members of the Association.

Section 2. Term of Office. The term of the directors shall be for two years. Three directors shall be elected at annual meeting in even number years and two directors shall be elected during odd number years.

Section 3. Removal. Any director may be removed from the Board, with justifiable cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successors shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any Association duties he may render. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written consent of all the directors setting forth the action so taken or to be taken. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### ARTICLE V NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Nominations may be made from among members of the Association.

Section 2. Election. Election to the Board of Directors shall be by secret ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of The Articles of Incorporation. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

#### ARTICLE VI MEETING OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at least quarterly, at such place, date and time after 9:00 A. M. and before 8:00 P.M. as may be determined by the Board. However, meetings shall not be held on a Sunday or legal holiday.

Section 2. Special Meetings. Special Meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII  
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the roads and common facilities, and the personal conduct of the members and their guests there and to establish penalties for the infraction thereof.

(b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such right may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions in these By-Laws, the Articles of Incorporation, or the Declaration;

(d) employ a manager, an independent contractor, or such other employees as they deem necessary and to prescribe their duties.

(e) declare vacant the office of a Director who shall have been absent from five consecutive meetings of the Board.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members.

(b) supervise all officers, agents and employees of this association, and to see that their duties are properly performed.

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period;



(2) send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) cause a notice of lien to be recorded against any property for which assessments are not paid within ninety (90) days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) issue or to cause an appropriate officer to issue, upon payment, a certificate releasing any lien recorded among the land records; and, upon demand furnish a certificate setting forth whether the assessments on a specified lot have been paid. Such certificates shall be conclusive as to the associations claim for unpaid assessments.

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the roads and common facilities to be maintained according to the extent that the funds collected permit.

#### ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a president, vice-president, secretary and treasurer, who shall at all times be members of the Board of Directors, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office by the Board when, in its judgment, the best interest of the corporation will be served thereby. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignations shall take effect the date of receipt of

such notice or any any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to a vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

PRESIDENT

The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

VICE-PRESIDENT

The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act and shall exercise and discharge such other duties as may be required of him by the Board.

SECRETARY

The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporation seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

TREASURER

The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting and deliver a copy of each to the members.

ARTICLE IX  
COMMITTEES

The Association shall appoint an Architectural Control Committee, and a Nominating Committee, as provided by these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE X  
BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI  
ASSESSMENTS

As more fully provided in the Declaration of Covenants, Conditions and Restrictions, each owner is obligated to pay to the Association annual assessments. Failure to pay the annual assessments on or before February 1 will result in the owner having to pay a penalty of \$1.50 and interest at 10 percent per annum on the total assessments due against the property. Interest at the stated 10 percent per annum rate will be applied monthly toward any unpaid balances. After an account has been delinquent for 90 days, the Association may bring an action at law against the owner personally obligated to pay the same or record a lien and thereafter foreclose the same against the property. Interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the roads and common facilities or abandonment of his/her lot.

ARTICLE XII  
CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: Dogwood Valley Citizen's Association, Inc.

ARTICLE XIII  
AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control and in the case of any conflict between the Covenants and these By-Laws, the Covenants shall control.

ARTICLE XIV  
MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year. Notices of assessments shall be dispatched prior to December 1 of each year and shall be considered past due if not paid by February 1st of the following year.

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected president of the Dogwood Valley Citizen's Association, Inc., a Virginia Corporation; and,

THAT the foregoing By-Laws constitute the original By-Laws of said Association, as amended at annual meetings of the members in June 1982 and June 21, 1986.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Association this 4th day of July 1986.

Signed: John T. Chandler, President

NOTE: a. At the June 1982 meeting, Article IV, Section 1 was amended.

b. At the June 1986 meeting, Article I; Article III, Section I; Article IV, Section 2, Article VI, Section I; Article XI; and Article XIV were amended.

001976

THIS DEED made and entered into this 15<sup>th</sup> day of May, 1998, by and between DOGWOOD  
VALLEY CITIZENS ASSOCIATION, a Virginia corporation, First Grantor, WILLIAM A. WINKELMAN,  
Second Grantor, and JASON ELLIOTT TINDER, Grantee, whose address is: 7050 Mountainwood Road,  
5401 Carolan Lane, Barboursville Va 22923  
Charlottesville, Virginia 22903.

7/6/98  
Mare

WITNESSETH

WHEREAS, by deed dated May 9, 1980 and recorded in the Clerk's Office of the Circuit Court of  
Greene County, Virginia, in Deed Book 115, Page 160, Douglas W. G. Blair and Joan C. Blair, his wife,  
conveyed the hereinafter described property to William A. Winkelman, a single man;

WHEREAS, said property was conveyed subject to a declaration of restrictions and covenants, the  
provisions of which included an annual fee to be paid for maintenance of the roads and common areas within  
Dogwood Valley Subdivision; and

WHEREAS, Dogwood Valley Citizens Association approved a Special Assessment at its June 14,  
1997 annual meeting pursuant to the authority granted to the association under the provisions of Code  
Section 55-514 of the Code of Virginia, 1950, as amended, said annual meeting having been held in  
compliance with Dogwood Valley Citizens Association's Bylaws; and,

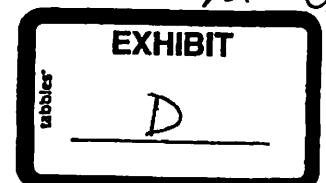
WHEREAS, the proceeds of the assessment are to be used primarily for the maintenance and upkeep,  
including capital expenditures, of the roads and common area; and,

WHEREAS, notice that the special assessment was due no later than February 1, 1998, was mailed  
to each lot owner at his or her address as it appears in the records of Dogwood Valley Citizens Association;  
and,

Prepared by: Kelly A. Hobbs, Esquire  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902

VOL 452-105 207

Filed  
7-26-01  
Shurey  
Clerk



WHEREAS, William A. Winkelman failed to pay said assessment prior to February 1, 1998; and,

WHEREAS, on February 20, 1998, a second notice of special assessment, together with notification required under the terms of Section 55-516(C), said second notice being sent at least 10 days before a memorandum of lien was filed in the Clerk's Office of the Circuit Court of Greene County, Virginia; and,

WHEREAS, on or about March 30, 1998, a Memorandum of Lien Claimed by the Property Owners Association for Delinquent Special Assessment was filed in the Office of the Clerk of the Circuit Court of Greene County, Virginia, at Deed Book 441, Page 223, pursuant to the terms of 55-516(B); and,

WHEREAS, on March 31, 1998, notice was sent to William A. Winkelman, via Certified Mail, Return Receipt Requested, pursuant to the terms of 55-516(I)(1), together with a copy of a Notice of Foreclosure and a copy of the memorandum of lien which had been filed in Deed Book 441, Page 223; and,

WHEREAS, pursuant to the provisions of Section 55-516(I)(2), Dogwood Valley Citizens Association advertised once a week for four successive weeks in a newspaper having a general circulation in the County of Greene, namely The Greene County Record, publishing notice of the time and place and terms of the sale; and

WHEREAS, Dogwood Valley Citizens Association proceeded to offer the property for sale at public auction on the premises as advertised on Wednesday, April 29, 1998 at noon, at which sale Jason Elliott Tinder, bid the sum of Two Thousand One Hundred and No/100 Dollars, that being the highest and last bid therefore; and,

WHEREAS, Dogwood Valley Citizens Association sold the property to Jason Elliott Tinder for the sum of \$2,100.00 and received a bidders deposit of \$210.00 and has now received the balance of the purchase price.

NOW, THEREFORE, in consideration of the premises and the sum of TWO THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$2,100.00), cash in hand paid, the receipt of which is hereby

.01 452-208

acknowledge by Dogwood Valley Citizens Association. First Grantor, said First Grantor hereby GRANTS, BARGAINS, SELLS AND CONVEYS with SPECIAL WARRANTY OF TITLE, unto the said Jason Elliott Tinder, the following described real estate to-wit:

All that certain tract or parcel of land lying and situate in the Stanardsville Magisterial District of Greene County, Virginia, being Lot 2 in Section 5E of the Dogwood Valley Subdivision, as the same appears duly dedicated, platted and recorded in Deed Book 41, at Page 233, among the land records of Greene County, Virginia.

BEING a portion of the property conveyed to William A. Winkelman, a single man, by deed from Douglas W. G. Blair and Joan C. Blair, his wife, dated May 9, 1980, and recorded in the Clerk's Office of the Circuit Court of Greene County, Virginia, in Deed Book 115, Page 160.

Reference is hereby made to the plat referred to above for a more complete description of the property hereby conveyed.

This conveyance is made subject to all liens of record, except those filed by Dogwood Valley Citizens Association, easements, restrictions, reservations and other matters contained in duly recorded deeds, plats and other instruments constituting constructive notice in the chain of title which have not expired by the time limitation therein contained or otherwise become ineffective.

WITNESS the following signature and seal:

DOGWOOD VALLEY CITIZENS ASSOCIATION

By:   
Matthew P. Brown, President

452-209

STATE OF VIRGINIA  
CITY/COUNTY OF Charlottesville to-wit:

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of June, 1998, by  
Matthew P. Brown, President of Dogwood Valley Citizens Association, on behalf of said corporation, in  
the City/County of Charlottesville.

My commission expires: October 31, 1998

Janet M. Caudle  
NOTARY PUBLIC

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INSTRUMENT #9801976  
RECORDED IN THE CLERK'S OFFICE OF  
GREENE DN  
JUNE 17, 1998 AT 12:37PM  
\$2.50 GRANTOR TAX WAS PAID AS  
REQUIRED BY SEC 55.1-802 OF THE VA. CODE  
STATE: \$1.25 LOCAL: \$1.25  
MARIE J. DUBRE, CLERK  
Chancery Clerk



001704

6/24/98  
maile

THIS DEED made and entered into this 15<sup>th</sup> day of May, 1998, by and between DOGWOOD VALLEY CITIZENS ASSOCIATION, a Virginia corporation, First Grantor, WILLIAM A. WINKELMAN, Second Grantor, and GARY E. LOWE and KAREN H. LOWE, husband and wife, Grantees, whose address is: 979 Cedar Grove Road, Ruckersville, Virginia 22968.

WITNESSETH

WHEREAS, by deed dated May 9, 1980, and recorded in the Clerk's Office of the Circuit Court of Greene County, Virginia, in Deed Book 115, Page 160, Douglas W. G. Blair and Joan C. Blair, his wife, conveyed the hereinafter described property to William A. Winkelman; and

WHEREAS, said property was conveyed subject to a declaration of restrictions and covenants; the provision of which included an annual fee to be paid for maintenance of the roads and common areas within Dogwood Valley Subdivision; and

WHEREAS, Dogwood Valley Citizens Association approved a Special Assessment at its June 14, 1997 annual meeting pursuant to the authority granted to the association under the provisions of Code Section 55-514 of the Code of Virginia, 1950, as amended, said annual meeting having been held in compliance with Dogwood Valley Citizens Association's Bylaws; and,

WHEREAS, the proceeds of the assessment are to be used primarily for the maintenance and upkeep, including capital expenditures, of the roads and common area; and,

WHEREAS, notice that the special assessment was due no later than February 1, 1998, was mailed to each lot owner at his or her address as it appears in the records of Dogwood Valley Citizens Association; and,

WHEREAS, William A. Winkelman failed to pay said assessment prior to February 1, 1998; and,

Prepared by Kelly A. Hobbs, Esquire  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902

Vol 449 p 196

Filed: 7-26-01  
Hobbs

EXHIBIT

E

WHEREAS, on February 20, 1998, a second notice of special assessment, together with notification required under the terms of Section 55-516(C), said second notice being sent at least 10 days before a memorandum of lien was filed in the Clerk's Office of the Circuit Court of Greene County, Virginia; and,

WHEREAS, on or about March 30, 1998, a Memorandum of Lien Claimed by the Property Owners Association for Delinquent Special Assessment was filed in the Office of the Clerk of the Circuit Court of Greene County, Virginia, at Deed Book 441, Page 221, pursuant to the terms of 55-516(B); and,

WHEREAS, on March 31, 1998, notice was sent to William A. Winkelman, via Certified Mail, Return Receipt Requested, pursuant to the terms of 55-516(I)(1), together with a copy of a Notice of Foreclosure and a copy of the memorandum of lien which had been filed in Deed Book 441, Page 221; and,

WHEREAS, pursuant to the provisions of Section 55-516(I)(2), Dogwood Valley Citizens Association advertised once a week for four successive weeks in a newspaper having a general circulation in the County of Greene, namely The Greene County Record, publishing notice of the time and place and terms of the sale; and

WHEREAS, Dogwood Valley Citizens Association proceeded to offer the property for sale at public auction on the premises as advertised on Wednesday, April 29, 1998 at noon, at which sale Gary E. Lowe and Karen H. Lowe, bid the sum of One Thousand and no/100 Dollars (\$1,000.00), that being the highest and last bid therefore; and,

WHEREAS, Dogwood Valley Citizens Association sold the property to Gary E. Lowe and Karen H. Lowe, for the sum of \$1,000.00 and received a bidders deposit of \$100.00 and has now received the balance of the purchase price.

NOW, THEREFORE, in consideration of the premises and the sum of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00), cash in hand paid, the receipt of which is hereby acknowledge by Dogwood Valley Citizens Association, First Grantor, said First Grantor hereby GRANTS, BARGAINS, SELLS AND

VOL 449:pg 197

CONVEYS with SPECIAL WARRANTY OF TITLE, unto the said Gary E. Lowe and Karen H. Lowe, husband and wife, the following described real estate to-wit:

All that certain tract or parcel of land lying and situate in the Stanardsville Magisterial District of Greene County, Virginia, being Lot 1 in Section 5E of the Dogwood Valley Subdivision, as the same appears duly dedicated, platted and recorded in Deed Book 41, at Page 233, among the land records of Greene County, Virginia.

BEING a portion of the property conveyed to William A. Winkelman, a single man, by deed from Douglas W. G. Blair and Joan C. Blair, his wife, dated May 9, 1980, and recorded in the Clerk's Office of the Circuit Court of Greene County, Virginia, in Deed Book 115, Page 160.

Reference is hereby made to the plat referred to above for a more complete description of the property hereby conveyed.

This conveyance is made subject to all liens of record, except those filed by Dogwood Valley Citizens Association, easements, restrictions, reservations and other matters contained in duly recorded deeds, plats and other instruments constituting constructive notice in the chain of title which have not expired by the time limitation therein contained or otherwise become ineffective.

WITNESS the following signature and seal:

DOGWOOD VALLEY CITIZENS ASSOCIATION

By: Matthew P. Brown (Seal)  
Matthew P. Brown, President

STATE OF VIRGINIA  
CITY/COUNTY OF Charlottesville, to-wit:

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of May, 1998, by Matthew P. Brown, President of Dogwood Valley Citizens Association, on behalf of said corporation, in the City/County of Charlottesville, VA.

My commission expires: Oct 31, 1998

James M. Caudle  
NOTARY PUBLIC

Vol 449-16: 198

449-199

INSTRUMENT #380170-  
RECORDED IN THE CLERK'S OFFICE OF  
GREENE CO.

MAY 29, 1998 AT 38:07AM

\$6.00 GRANTOR TAX WAS PAID AS  
REQUIRED BY SEC 58.1-302 OF THE VA. CODE  
STATE: \$2.00 LOCAL: \$3.00  
MARIE C. DURRER, CLERK

BY: Marie C. Durrier, Clerk (DC)

Dygart & Hemenway

Telephone (804) 979-5515

Telefax (804) 295-7785

*Attorneys at Law*

1112 East High Street, Suite B  
Charlottesville, Virginia 22902

April 4, 1997

Mr. William Winkleman  
Route 1, Box 1143  
Harpers Ferry, WV 25425

Re: Dogwood Valley special assessment

Dear Mr. Winkleman:

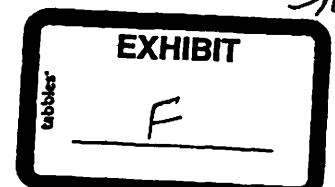
As you know, Dogwood Valley Citizens Association (DVCA) has filed a Memorandum of Lien against your property for delinquent special assessment fees. It is my intention to foreclose on this lien in the near future. However, because many of the lot owners who have contacted me seem to be confused about what is owed, I wanted to clarify the matter before proceeding with foreclosure. In addition, many of the delinquent lot owners paid their Annual Road Maintenance Fee, but still have not paid the special assessment fee. Therefore, I am concerned that there may be some confusion over the significance of the liens filed against your property.

Firstly, the special assessment levied was \$100.00 per lot, not \$100.00 per owner. Therefore, those who own more than one lot, owe \$100.00 for each lot owned.

Secondly, the special assessment in the amount of \$100.00 per lot is a separate fee from the Annual Road Maintenance Fees. The Annual Road Fee Notice mailed to you in November 1996, did not address the delinquent special assessments due. Therefore, your account with DVCA is still in arrears. In addition, because DVCA had to file Memoranda of Lien in the Greene County Circuit Court Clerk's Office, the amount you owe now consists of \$100.00 per lot, plus attorney's fees, interest and costs.

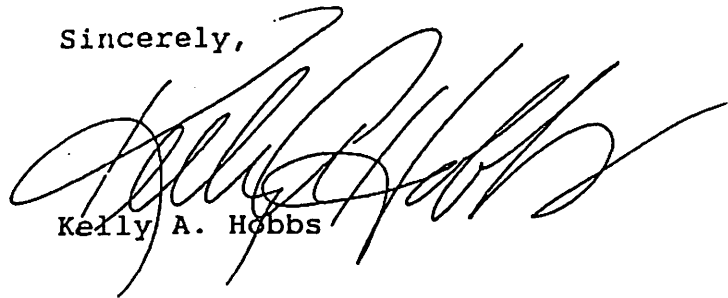
In the event that your account with DVCA is not paid in full by April 20, 1997, I will proceed with the foreclosure action pursuant to §55-516 of the Code of Virginia, 1950, as amended. Foreclosure will result in the public sale of your property and the application of a portion of the proceeds to your account with DVCA. Should you wish to bring your account current, please contact my office no later than April 20, 1997.

*filed 7-26-01*  
*mlm*  
*cc*



Thank you for your attention to this matter.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Kelly A. Hobbs', is written over the typed name.

Kelly A. Hobbs

kh

cc: Matthew P. Brown, President  
Dogwood Valley Citizens Association

Dygert & Hemenway

Telephone (804) 979-5515

Telefax (804) 295-7785

Attorneys at Law

1112 East High Street, Suite B  
Charlottesville, Virginia 22902

May 13, 1997

Mr. and Mrs. William A. Winkelman  
Route 1, Box 1143  
Harpers Ferry, WV 25425

Re: Dogwood Valley Citizen's Association

Dear Mr. and Mrs. Winkelman:

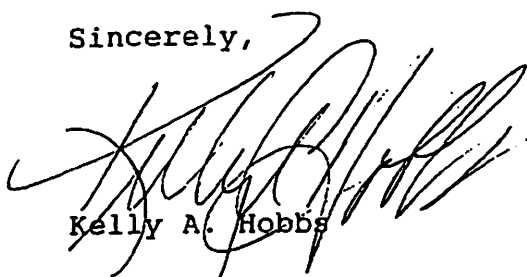
Thank you for your payment in the amount of \$200.00.

Please be advised, that, because DVCA had to begin collection activities on your account with DVCA, you now owe filing fees, interest and attorneys fees. The following is a breakdown of your account with DVCA:

Special Assessment	\$200.00
Attorney's fees	50.00
Filing fees	64.00
Interest from 1/9/97- 5/13/97	5.04
Total due DCVA	<u>\$319.04</u>
Payment by check	200.00
Remaining balance owed	<u>\$119.04</u>

Thank you for your attention to this matter.

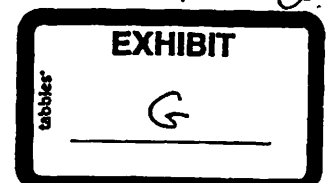
Sincerely,

  
Kelly A. Hobbs

kh

cc: Matthew P. Brown, President  
Dogwood Valley Citizen's Association

*Filed 7-26-01  
Hobbs*



DOGWOOD VALLEY CITIZENS' ASSOCIATION

P.O. Box 127

Stanardsville, VA 22973

ANNUAL MEETING - JUNE 14, 1997

The Dogwood Valley Citizens' Association held its annual meeting at the Greene County Courthouse in Stanardsville, VA on June 14, 1997.

The meeting was called to order by President Matthew Brown at 9:35 a.m. President Brown declared a legal quorum existed and welcomed all attending members. Board members Linda Allen, Keith Wynn, Tom Altemere, Dean Musser and 53 association members were in attendance. Also in attendance were association attorneys George Dygert and Kelly Hobbs.

Former Secretary Matthew Brown read the minutes to the last annual meeting. They were accepted as read.

Treasurer Linda Allen read the treasurer's report, and it was approved.

Old business discussed included the number of people who still owe back road fees and the profitability of having the lawyers pursue this matter. In addition, it was noted that the gypsy moth problem appears to have disappeared.

New business discussed included the legal definition of "junk cars." Attorney George Dygert defined them as any automobile that is not running for more than 60 days.

The board asked for people to volunteer for advisory committees that are defined in the bylaws. These include: a road committee, a nominating committee, and a bylaw review committee.

Tom Altemere presented attending association members with copies of the road report, which was read individually and then discussed. Questions were answered on the ongoing road work.

With 34 voters and 21 proxies, votes were held on the budget options that were sent out with the invitations. A \$35 special assessment was passed with 31 votes.

A proposal to amend Article XI of the bylaws was voted on and approved. This amendment will impose a \$50 penalty for late payment of annual assessments and will impose a 24% per annum fee on any unpaid balance.

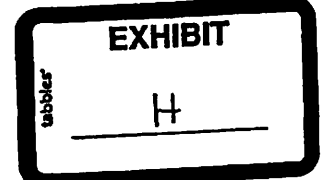
Board members Keith Wynn and Dean Musser were reelected. After years of dedicated service, Treasurer Linda Allen stepped down. Association member Judy Coughlin was elected to the board.

President Brown adjourned the meeting at 12:34 a.m.

Respectfully submitted,

Dean Musser  
Secretary

*Filed: 7-26-01  
Musser*





Dogwood Valley Citizens Ass.      on  
P.O. Box 127  
Stanardsville, VA 22973



William Winkleman  
Route 1, Box 1143  
Harpers Ferry, WV 25425

**Road Fee Notice**

Invoice Date 11/15/97

**Charges By Lot**

05e -01	\$25.00
05e -02	\$25.00

**Amounts by Category**

Prior Balance	\$170.15
Penalties	\$00.00
Interest	\$00.00
Road Fees	\$50.00
Special Assessment	\$70.00 ( \$35.00 per lot )

---

Amount Due in full by 12/31/97 **\$290.15**

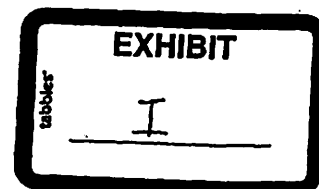
---

At its annual meeting, the Association members voted to increase the penalty amount for late payment from \$1.50 to \$50.00. The interest rate was raised from 10% to 24%. The new rates go into effect with this invoice. The penalty and interest amounts (if any) included on this invoice were calculated using the old rates.

Included in your prior balance are court costs (\$64), attorney fees (\$100), and interest (\$6.15), calculated at the court-specified rate.

Filed: 7-26-01  
Mhuir  
Clerk

Failure to pay on or before  
Saturday, January 31, 1998  
will result in penalties & interest!



000927

MEMORANDUM OF LIEN CLAIMED BY PROPERTY OWNER'S ASSOCIATION FOR  
DELINQUENT SPECIAL ASSESSMENT

NAME OF LOT OWNER: WILLIAM WINKLEMAN

ADDRESS OF OWNER: Route 1, Box 1143  
Harpers Ferry, West Virginia 25425

NAME OF CLAIMANT: DOGWOOD VALLEY CITIZENS ASSOCIATION

ADDRESS OF CLAIMANT'S  
REPRESENTATIVE: Kelly A. Hobbs, Esq.  
Dygert & Associates  
1112 E. High Street, Suite B  
Charlottesville, Virginia 22902

NAME OF SUBDIVISION: Dogwood Valley Subdivision

LOT NUMBER: Lot 2, Section 5e, Dogwood Valley Subdivision,  
Greene County, Virginia

SPECIAL ASSESSMENT  
AMOUNT CLAIMED PAST DUE: \$ 35.00

DATE ON WHICH SPECIAL  
ASSESSMENT DUE: February 1, 1998

This lien is obtained by Dogwood Valley Citizen's Association, Inc., in accordance with the provisions of the Virginia Property Owner's Association Act as set forth in Chapter 26 (§55-508, et. Seq.) Of Title 55 of the Code of Virginia, 1950, as amended.

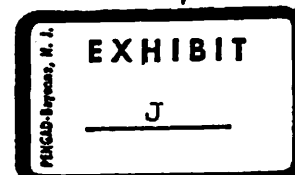
Issued this 24 day of March, 1998.

DOGWOOD VALLEY CITIZEN'S ASSOCIATION, INC.

By: Matthew P. Brown  
Matthew P. Brown, President

AFFIDAVIT

VOL 441, pg. 223



STATE OF VIRGINIA  
CITY OF CHARLOTTESVILLS, to-wit:

I, Janet M. Caudle, a notary public for the City of Charlottesville, do certify that Claimant, Dogwood Valley Citizen's Association, Inc. by Matthew P. Brown its President, this day made oath before me in the city aforesaid that the facts set forth in the foregoing Memorandum are true and correct to the best of his knowledge and belief and that prior to filing this Memorandum of Lien, a written notice was sent to the property owner that a Memorandum of Lien will be filed in the Office of the Clerk of the Circuit Court for Greene County, at least ten (10) before the date this Memorandum is filed, and that said lot owner is justly indebted to the Claimant in the sum of \$35.00 for delinquent special assessment stated in the foregoing memorandum, and the same is payable as therein stated.

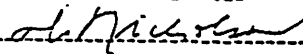
Given under my hand this 24<sup>th</sup> day of March, 1998.

  
Notary Public

My commission expires: Oct. 31, 1998

Vol 441, pg 224

INSTRUMENT #3680927  
RECORDED IN THE CLERK'S OFFICE OF  
GREENE CO  
MARCH 30, 1998 AT 29:04AM  
MARIE C. DUFFER, CLERK

BY:  (cc)

002236

RELEASE OF LIEN CLAIMED BY PROPERTY OWNERS' ASSOCIATION  
FOR DELINQUENT SPECIAL ASSESSMENT FEE

Return to: George H. Dygert & Assoc.  
1112 East High Street, Suite B  
Charlottesville, VA 22902

8/4/98

NAME OF LOT OWNER: WILLIAM WINKLEMAN  
ADDRESS OF OWNER: Route 1, Box 1143  
Harpers Ferry, West Virginia 25425  
NAME OF CLAIMANT: DOGWOOD VALLEY CITIZENS ASSOCIATION  
ADDRESS OF CLAIMANT'S REPRESENTATIVE: Kelly A. Hobbs, Esq.  
George H. Dygert & Associates  
1112 E. High Street, Suite B  
Charlottesville, Virginia 22902  
NAME OF SUBDIVISION: Dogwood Valley Subdivision  
LOT NUMBER: Lot 1, Section 5c, Dogwood Valley Subdivision,  
Greene County, Virginia  
SPECIAL ASSESSMENT  
AMOUNT CLAIMED PAST DUE: \$ 35.00  
DATE ON WHICH SPECIAL  
ASSESSMENT DUE: February 1, 1998

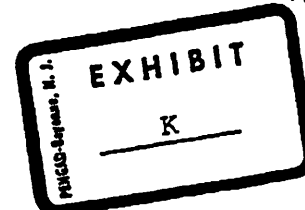
The above-described lien for special assessments due, which lien was obtained in accordance with the provisions of the Virginia Property Owners' Association act as set forth in Chapter 26 (Sec. 55-508, et seq.) Of Title 55 of the Code of Virginia, 1950, as amended, is hereby released this 1 day of July, 1998.

DOGWOOD VALLEY CITIZENS' ASSOCIATION, INC.

BY: Matthew P. Brown  
Matthew P. Brown, President

Prepared by: Kelly A. Hobbs, Esquire  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902

BOOK 455 PAGE 21



STATE OF VIRGINIA AT LARGE, to-wit:

The foregoing instrument was acknowledged, subscribed and sworn before me by Matthew P. Brown, President of Dogwood Valley Citizens' Association, Inc., a Virginia corporation, on behalf of said corporation, this 1<sup>st</sup> day of July, 1998, in the City of Charlottesville, Virginia.

My commission expires: 10/31/98

Janet M. Caudle  
Notary Public

BOOK 455 PAGE 22

INSTRUMENT #9882236  
RECORDED IN THE CLERK'S OFFICE OF  
GREENE ON  
JULY 6, 1998 AT 11:43AM  
MAKIE C. DURRER, CLERK

BY: M. Durser Clerk (DC)

# CLOSING STATEMENT

SELLER: Dogwood Valley Citizens Association

PURCHASER: Gary E. Lowe

PROPERTY: Lot 1, Section 5E, Dogwood Valley  
Greene County, Virginia

DATE: May 28, 1998

---

Contract Price \$1,000.00

Deposit \$ 100.00

Grantor's Tax 1.00

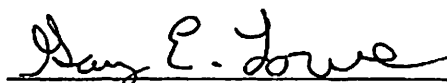
1<sup>st</sup> half 1998 Prorated real estate taxes 20.37  
(\$25.08 x 177/181)

Cash due Seller at closing \$ 878.63

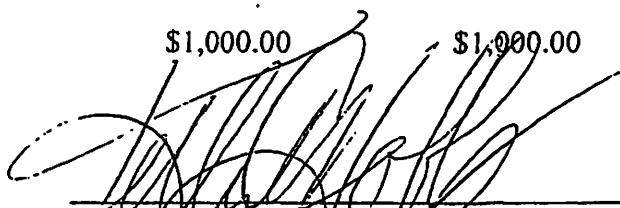
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\$1,000.00

\$1,000.00

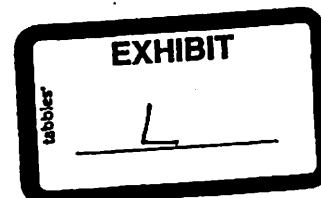


Gary E. Lowe  
979 Cedar Grove Road  
Ruckersville, Virginia 22968  
Purchaser

  
Kelly A. Hobbs  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902  
Seller's Attorney

## NOTES:

1. Seller's attorney shall be responsible for compliance with the reporting requirements of Section 6045(E) of the Internal Revenue Code of 1986 and shall provide Seller with a copy of the forms as prescribed by the Internal Revenue Service. This closing statement shall constitute a Designation Agreement. Seller's attorney shall be responsible for complying with the reporting requirements of Section 58.1-317 of the Code of Virginia, 1950, as amended, if applicable.



2. Purchaser shall be responsible for payment of all real estate taxes currently due and payable and all real estate taxes which subsequently become due and payable.

3. Purchaser shall be responsible for payment of the 1998 annual road fees and all subsequent fees and/or assessments levied by Dogwood Valley Citizens Association. Notice of said 1998 annual road fees and/or assessments shall be mailed to purchaser in November, 1998 and shall be due no later than February 1, 1999.

4. As part of the payment of the purchase price, Seller's Attorney will see to the release of said Property from the lien of the Memorandum of Lien recorded in the County of Greene in Deed Book 441 Page 221.

5. By his or her signature affixed hereto, Purchaser acknowledges that Dogwood Valley Citizens Association makes no warranty as to the title to Lot 1, Section 5-E, Dogwood Valley Subdivision, Greene County, Virginia, and this conveyance is made subject to all liens of record, except those filed by Dogwood Valley Citizens Association.

## CLOSING STATEMENT

SELLER: Dogwood Valley Citizens Association

PURCHASER: Jason Elliott Tinder

PROPERTY: Lot 2, Section 5E, Dogwood Valley  
Greene County, Virginia

DATE: May 28, 1998

---

Contract Price		\$2,100.00
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Deposit	\$ 210.00	
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Grantor's Tax	2.50	
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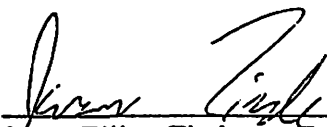
1 <sup>st</sup> half 1998 Prorated real estate taxes (\$26.22 x 147/181)	21.29	
---	-------	--

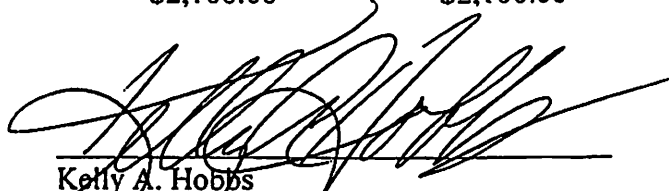
Cash due Seller at closing	\$1,866.21	
----------------------------	------------	--

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	\$2,100.00	
--	------------	--

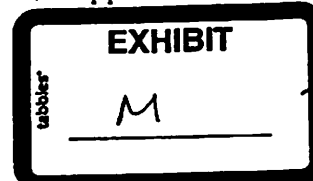
		\$2,100.00
--	--	------------

  
\_\_\_\_\_  
Jason Elliott Tinder  
705C Mountainwood Road  
Charlottesville, Virginia 22903  
Purchaser

  
\_\_\_\_\_  
Kelly A. Hobbs  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902  
Seller's Attorney

### NOTES:

1. Seller's attorney shall be responsible for compliance with the reporting requirements of Section 6045(E) of the Internal Revenue Code of 1986 and shall provide Seller with a copy of the forms as prescribed by the Internal Revenue Service. This closing statement shall constitute a Designation Agreement. Seller's attorney shall be responsible for complying with the reporting requirements of Section 58.1-317 of the Code of Virginia, 1950, as amended, if applicable.





2. Purchaser shall be responsible for payment of all real estate taxes currently due and payable and all real estate taxes which subsequently become due and payable.
3. Purchaser shall be responsible for payment of the 1998 annual road fees and all subsequent fees and/or assessments levied by Dogwood Valley Citizens Association. Notice of said 1998 annual road fees and/or assessments shall be mailed to purchaser in November, 1998 and shall be due no later than February 1, 1999.
4. As part of the payment of the purchase price, Seller's Attorney will see to the release of said Property from the lien of the Memorandum of Lien recorded in the County of Greene in Deed Book 441 Page 223.
5. By his or her signature affixed hereto, Purchaser acknowledges that Dogwood Valley Citizens Association makes no warranty as to the title to Lot 2, Section 5E, Dogwood Valley Subdivision, Greene County, Virginia, and this conveyance is made subject to all liens of record, except those filed by Dogwood Valley Citizens Association.

George H. Dygert & Associates

Telephone (804) 979-5515  
Telefax (804) 295-7785  
E-mail ghdygert@aol.com

*Attorneys at Law*

1112 East High Street, Suite B  
Charlottesville, Virginia 22902

August 27, 1998

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mr. William Winkelman  
Route 1, Box 1143  
Harpers Ferry, WV 25425

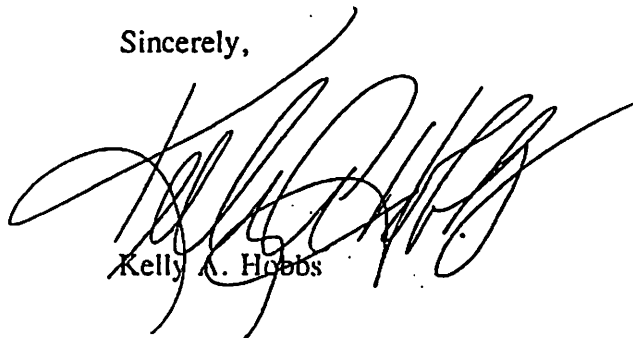
Re: Lots 1 and 2, Section 5E, Dogwood Valley Subdivision  
Greene County, Virginia

Dear Mr. Winkelman:

Enclosed is my trust account check in the amount of \$1,831.05 which represents the excess funds collected at foreclosure on your property. I have enclosed a copy of the closing and disbursement statements for your information.

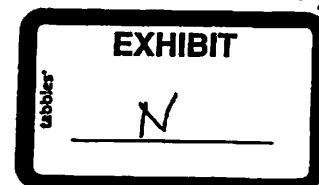
Thank you for your attention to this matter.

Sincerely,



Kelly A. Hobbs

KAH/jmc  
encl.



Filed  
7-26-01  
In Pursuit of  
EXHIBIT  
0

**GEORGE H. DYGERT**  
TRUST ACCOUNT - GENERAL  
1112 EAST HIGH STREET, SUITE B  
CHARLOTTESVILLE, VA 22902

**CRESTAR BANK**  
RICHMOND, VIRGINIA  
68-186/514

1127

8/27/1998

PAY TO THE ORDER OF William A. Winkelman \$ \*\*1,831.05

One Thousand Eight Hundred Thirty-One and 05/100\*\*\*\*\*

William A. Winkelman  
Route 1, Box 1143  
Harpers Ferry, WV 25425

MEMO Proceeds of Sale to Tinder & Lowe (1&2, 5E)

DOLLARS  
Security features  
indicated  
Outside on back.

MP

⑈001127⑈ ⑈051401865⑈ 201688042⑈

631084 1025 101011 1127 1-880-000-0010

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GREENE

WILLIAM A. WINKELMAN,

Plaintiff.

v.

DOGWOOD VALLEY CITIZENS' ASSOCIATION, INC., et al.

Defendants.

**ANSWER TO BILL OF COMPLAINT**

Come now the Defendants, Dogwood Valley Citizens' Association, Inc. , Jason Elliott Tinder, Gary E. Lowe and Karen H. Lowe, by counsel, and for their Answer to the Bill of Complaint, respectfully represent as follows:

1. Defendants deny the allegations contained in paragraph 1 of the Bill of Complaint.
2. Defendants admit the allegations contained in paragraph 2 of the Bill of Complaint.
3. Defendants admit the allegations contained in paragraph 3 of the Bill of Complaint.
4. Defendants admit the allegations contained in paragraph 4 of the Bill of Complaint.
5. Defendants admit that Exhibit C is a copy of the Bylaws of the Association in effect until changed at the annual meeting on June 14, 1997.
6. Defendants admit that Lot 2 was purchased by Defendant Jason Elliott Tinder at a sale on April 29, 1998, and that Exhibit D is an accurate copy of the deed conveying that property to Defendant Tinder. Defendants deny all other allegations contained in paragraph 6 of the Bill of Complaint.
7. Defendants admit that Defendants Gary E. Lowe and Karen H. Lowe purchased Lot 1 at a sale on April 29, 1998, and that Exhibit E is an accurate copy of the deed conveying the property to Defendants Lowe. Defendants deny all other allegations contained in paragraph 7 of

Chancery No.

FILED  
GREENE COUNTY CIRCUIT CT

2001 AUG -9 PH 1:19

Bunde M. Corbin  
Dr

the Bill of Complaint.

8. Defendants admit the allegations contained in paragraph 8 of the Bill of Complaint.

9. Defendants admit the allegations contained in paragraph 9 of the Bill of Complaint.

10. Defendants admit the allegations contained in paragraph 10 of the Bill of Complaint.

11. Defendants admit the allegations contained in paragraph 11 of the Bill of Complaint.

12. Defendants admit the allegations contained in paragraph 12 of the Bill of Complaint.

13. Defendants admit that DVCA filed Memoranda of Lien against the property in the Clerk's Office of the Circuit Court of Greene County on March 30, 1998, and that a copy of the Memorandum of Lien against Lot 2 is at Exhibit J. Defendants deny that the document at Exhibit K is a copy of the Memorandum of Lien filed against the property.

14. Defendants admit that on April 29, 1998, Kelly A. Hobbs, counsel for the Dogwood Valley Citizens= Association, conducted a sale at public auction of certain property, including Lots 1 and 2, pursuant to the provisions of §55-516 of the Code of Virginia, 1950, as amended. Defendants deny all other allegations contained in paragraph 14 of the Bill of Complaint.

15. Defendants admit the allegations contained in paragraph 15 of the Bill of Complaint.

16. Defendants admit the allegations contained in paragraph 16 of the Bill of Complaint.

17. Defendants deny the allegations contained in paragraph 17 of the Bill of Complaint and assert that according to the records of the Commissioner of Revenue of Greene County, Virginia, the tax assessed value of Lot 1 was \$6,600.00 for tax year 1998-1999.

18. Defendants admit that according to the records of the Commissioner of Revenue for Greene County, Virginia, the tax assessed value of Lot 2 was \$7,000.00 for tax year 1999-2000.

19. Defendants admit the allegations contained in paragraph 19 of the Bill of Complaint,

except that Defendants deny that the attached Exhibit O is a copy of the disbursement statement.

### **COUNT I**

20. No response is required to paragraph 20 of the Bill of Complaint, since all of the allegations in paragraph 1 through 19 have been responded to above. To the extent that a response is required, Defendants deny the allegations contained in this paragraph.

21. Defendants assert that the text of 55-514(A) of the Code of Virginia speaks for itself, but admit that the language quoted in paragraph 21 of the Bill of Complaint is an accurate quotation from that Statute.

22. Defendants deny the allegations contained in paragraph 22 of the Bill of Complaint.

23. Defendants deny the allegations contained in paragraph 23 of the Bill of Complaint.

24. Defendants deny the allegations contained in paragraph 24 of the Bill of Complaint.

25. Defendants deny the allegations contained in paragraph 25 of the Bill of Complaint.

### **COUNT II**

26. No response is required to paragraph 26 of the Bill of Complaint, since all of the allegations in paragraph 1 through 25 have been responded to above. To the extent that a response is required, Defendants deny the allegations contained in this paragraph.

27. Defendants assert that the text of the Declaration speaks for itself; however, Defendants admit that the quotation contained in paragraph 27 of the Bill of Complaint is an accurate quotation of a portion of the text of the Declaration.

28. Defendants assert that the text of the Declaration speaks for itself, but admit that the Declaration does not contain any provision expressly authorizing other assessments.

29. Defendants assert that the text of the Bylaws speaks for itself, but deny the allegations

contained in paragraph 29 of the Bill of Complaint.

30. Defendants deny the allegations contained in paragraph 30 of the Bill of Complaint.

31. Defendants assert that the text of the Declaration speaks for itself, but acknowledge that there is no provision specifically authorizing additional penalties, interest, late fees, or attorneys fees on assessments.

32. Defendants deny the allegations contained in paragraph 32 of the Bill of Complaint.

### **COUNT III**

33. No response is required to paragraph 33 of the Bill of Complaint, since all of the allegations in paragraph 1 through 32 have been responded to above. To the extent that a response is required, Defendants deny the allegations contained in this paragraph.

34. Defendants assert that the text of the Bylaws speaks for itself, but admit that the quotation contained in paragraph 34 of the Bill of Complaint is an accurate quotation of a portion of the text of the Bylaws.

35. Defendants admit the allegations contained in paragraph 35 of the Bill of Complaint.

36. Defendants admit the allegations contained in paragraph 36 of the Bill of Complaint.

37. Defendants deny the allegations contained in paragraph 37 of the Bill of Complaint.

38. Defendants deny the allegations contained in paragraph 38 of the Bill of Complaint.

### **COUNT IV**

39. No response is required to paragraph 39 of the Bill of Complaint, since all of the allegations in paragraph 1 through 38 have been responded to above. To the extent that a response is required, Defendants deny the allegations contained in this paragraph.

40. Defendants assert that the text of §55-516(I) of the Code of Virginia speaks for itself,

but admit that the quotation contained in paragraph 40 of the Bill of Complaint is an accurate quotation of a portion of that Statute.

41. Defendants assert that the text of §55-510 of the Code of Virginia speaks for itself, but deny that all Minutes of the Board of Directors meetings are required to be recorded.

42. Defendants assert that the text of the Bylaws speaks for itself, but deny the allegations contained in paragraph 42 of the Bill of Complaint.

43. Defendants deny the allegations contained in paragraph 43 of the Bill of Complaint.

44. Defendants deny the allegations contained in paragraph 44 of the Bill of Complaint.

45. Defendants deny the allegations contained in paragraph 45 of the Bill of Complaint.

#### **COUNT V**

46. No response is required to paragraph 46 of the Bill of Complaint, since all of the allegations in paragraph 1 through 45 have been responded to above. To the extent that a response is required, Defendants deny the allegations contained in this paragraph.

47. Defendants admit the allegations contained in paragraph 47 of the Bill of Complaint.

48. Defendants deny the allegations contained in paragraph 48 of the Bill of Complaint.

#### **COUNT VI**

49. No response is required to paragraph 49 of the Bill of Complaint, since all of the allegations in paragraph 1 through 48 have been responded to above. To the extent that a response is required, Defendants deny the allegations contained in this paragraph.

50. Defendants assert that the text of the Virginia Constitution speaks for itself, but admit that the quotation contained in paragraph 50 of the Bill of Complaint is an accurate quotation of a portion of the Virginia Constitution.



51. Defendants assert that the text of the Declarations speaks for itself, but admit the allegations contained in paragraph 51 of the Bill of Complaint.

52. Defendants admit the allegations contained in paragraph 52 of the Bill of Complaint.

53. Defendants deny the allegations contained in paragraph 53 of the Bill of Complaint.

## COUNT VII

54. No response is required to paragraph 54 of the Bill of Complaint, since all of the allegations in paragraph 1 through 53 have been responded to above. To the extent that a response is required, Defendants deny the allegations contained in this paragraph.

55. Defendants assert that the text of  $\S$ 55-516 of the Code of Virginia speaks for itself, but admit that the quotation contained in paragraph 55 of the Bill of Complaint is an accurate quotation of a portion of that Statute.

56. Defendants deny that the disbursement statement of sale of property is attached to the Bill of Complaint as Exhibit O, but admit that the disbursement statement for the sale of these lots shows a disbursement to Dogwood Valley Citizens' Association in the amount of \$344.79, and to George H. Dygert for \$775.00.

57. Defendants deny the allegations contained in paragraph 57 of the Bill of Complaint.

58. Defendants deny the allegations contained in paragraph 58 of the Bill of Complaint.

59. Defendants assert that the text of  $\S$ 55-516 of the Code of Virginia speaks for itself, but deny the allegations contained in paragraph 59 of the Bill of Complaint.

60. Defendants assert that the text of  $\S$ 55-59.4(3) of the Code of Virginia speaks for itself, but deny the allegations contained in paragraph 60 of the Bill of Complaint.

61. Defendants admit that the disbursement to George H. Dygert is approximately 25% of

the gross proceeds of sale of Lots 1 and 2.

62. Defendants deny the allegations contained in paragraph 62 of the Bill of Complaint.

63. Defendants deny the allegations contained in paragraph 63 of the Bill of Complaint.

### **COUNT VIII**

64. No response is required to paragraph 64 of the Bill of Complaint, since all of the allegations in paragraph 1 through 19 have been responded to above. To the extent that a response is required, Defendants deny the allegations contained in this paragraph.

65. Defendants assert that the Declaration speaks for itself, but admit that the quotation contained in paragraph 65 of the Bill of Complaint is an accurate quotation from a portion of the Declaration.

66. Defendants deny the allegations contained in paragraph 66 of the Bill of Complaint.

67. Defendants admit the allegations contained in paragraph 67 of the Bill of Complaint.

68. Defendants admit the allegations contained in paragraph 68 of the Bill of Complaint.

69. Defendants assert that the text of Bylaws speaks for itself, but admit that it provides that the Declaration controls over the Bylaws in the event of conflict between them and the Articles control over the Bylaws in the event of conflict between them, but deny all other allegations in paragraph 69 of the Bill of Complaint.

70. Defendants deny the allegations contained in paragraph 70 of the Bill of Complaint.

71. Defendants admit the allegations contained in paragraph 71 of the Bill of Complaint.

72. Defendants deny the allegations contained in paragraph 72 of the Bill of Complaint.

73. Defendants deny all allegations contained in paragraphs 1-72 of the Bill of Complaint not specifically admitted above.

## **AFFIRMATIVE DEFENSES**

Defendants for their further and affirmative defense, assert the following:

74. Enactment of §55-516(I) of the Code of Virginia is a valid and constitutional exercise of the legislative authority of Virginia, and provides adequate due process of law.

75. DVCA is a property owners association subject to the Virginia Property Owners Association Act. Section 55-508, *et seq.*

76. The special assessment was imposed upon lots 1 and 2 in accordance with the terms of §55-514 of the Code of Virginia, as amended.

77. The sale of Lots 1 and 2, formerly owned by Plaintiff, to Defendants Lowe and Tinder were conducted in accordance with the terms of §55-516 of the Code of Virginia, as amended.

78. The causes of action set forth in Counts I and II are barred by the applicable Statute of Limitations.

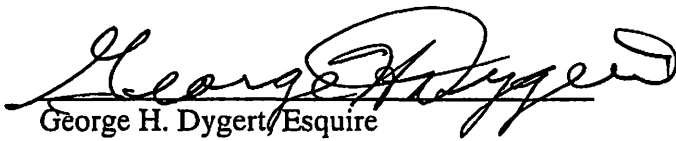
79. Defendants reserve the right to assert such other defenses as may be discovered prior to trial.

Wherefore, Defendants, by counsel, pray that the Bill of Complaint be dismissed with prejudice, and they be awarded their costs and attorneys fees in this behalf expended.

Respectfully submitted,

DOGWOOD VALLEY CITIZENS' ASSOCIATION, INC.  
JASON ELLIOTT TINDER,  
GARY E. LOWE and KAREN H. LOWE

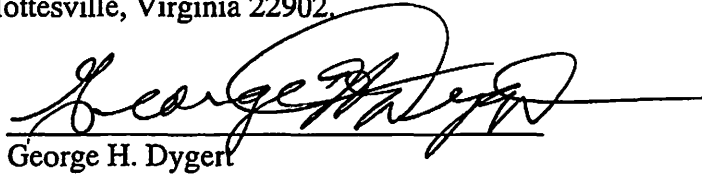
By Counsel



George H. Dykert, Esquire  
675 Peter Jefferson Parkway, Suite 190  
Charlottesville, Virginia 22911  
Telephone: (804)979-5515  
VSB: 16378  
Counsel for Plaintiffs

### CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Answer to Bill of Complaint was mailed this 8 day of August, 2001, to Richard C. Maxwell, Esquire Woods, Rogers & Hazlegrove, P.O. Box 2964, Charlottesville, Virginia 22902.

  
George H. Dykert

031053

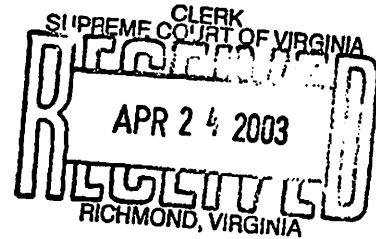
ORIGINAL

1

VIRGINIA: IN THE CIRCUIT COURT FOR GREENE COUNTY

WILLIAM A. WINKLEMAN,

Plaintiff



v.

Chancery No. 01-3033

DOGWOOD VALLEY CITIZENS' ASSOCIATION, INC., et al,

Defendants

TRIAL

Taken on

August 13, 2002

FILED  
GREENE COUNTY CIRCUIT CT  
2003 MAR 28 PM 12:19  
M. Dwyer

#172

## 1 APPEARANCES:

2 Richard C. Maxwell, Esq.                      George H. Dygert, Esq.  
 3 Woods, Rogers & Hazlegrove              675 Peter Jefferson Parkway  
 P. O. Box 2964                      Suite 190  
 Charlottesville, VA 22902              Charlottesville, VA 22911  
 4 Attorney for Plaintiff              Attorney for Defendant

5  
 6 BEFORE: The Honorable Daniel R. Bouton

8 LIST OF WITNESSES

9  
 10 WITNESS---Plaintiff                      DIRECT    CROSS    REDIRECT    RECROSS  
 11 Kelly Hobbs                                      3              4  
 12 Gary Lowe                                      7  
 13 Jason Tinder                                      10              12              12  
 14 Matthew Brown                                      14  
 15  
 16 WITNESS---Defense                      DIRECT    CROSS    REDIRECT    RECROSS  
 17 Matthew Brown                                      20              40  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 August 13, 2002

2  
3 (NOTE FOR RECORD: Court reporter arrived after  
4 case had commenced.)  
5

6 THE COURT: All right, let me state that we are in  
7 the midst of conducting the direct examination of a witness  
8 for the plaintiff in the case of William A. Winkleman versus  
9 Dogwood Valley Citizens' Association, et al. From this  
10 point forward, all matters will now be on the record. The  
11 court reporter who was to transcribe the proceedings has now  
12 arrived, and we will pick it up from this point forward with  
13 procedures that will now be on the record. You can go  
14 ahead, Mr. Maxwell.  
15  
16

17 KELLY HOBBS, having been so duly sworn, testified  
18 as follows:  
19

20 DIRECT EXAMINATION (CONTINUED)

21 By: Mr. Maxwell

22 Q Ms. Hobbs, referring you to paragraph---I mean  
23 to Tab 41, please.

24 A I'm sorry, 41?  
25

1 Q 41.

2 Q Have you seen this letter before?

3 A Yes. It's been a while, but I have seen it  
4 before.

5 Q Okay. And did you receive the voided check?

6 A I did.

7 Q Do you know what happened to the proceeds of  
8 that sale?

9 A They're in the trust account at Dygert &  
10 Associates.

11 Q Did you take any other action---did you take  
12 any action when you received this letter?

13 A I don't recall if I sent him a follow-up letter  
14 or not. I just don't remember. I would think that I would  
15 have, but I cannot say for sure.

16 Q That's all the questions I have for this  
17 witness, Your Honor.

18 THE COURT: All right. Any cross-examination?

19

20 CROSS-EXAMINATION

21 By: Mr. Dygert

22 Q Ms. Hobbs, if you would look at 55,516-I which  
23 is on page #239, which is the third page from the back of  
24 the group of documents that Mr. Maxwell handed you, and ask  
25 that you read down through paragraphs 1, 2, subparagraphs



1 and so forth. Now do you see references to Property Owners'  
2 Association there?

3 A Yes.

4 Q Does it appear---does that language appear  
5 several times?

6 A It does.

7 Q Do you see any reference to a condominium?

8 A I do not.

9 Q And did you at the time of---that you conducted  
10 this sale, feel that this section of the Code gave you  
11 proper authority to proceed so long as you complied with the  
12 procedures to sell this property?

13 A I did.

14 Q Did you discuss proceeding under this procedure  
15 rather than proceeding with a court action to collect the  
16 delinquent special assessments with a repre---did you  
17 discuss this with a representative of the Association?

18 A It was discussed.

19 Q And is it your understanding---your  
20 recollection that the representative of the Association  
21 approved proceeding under this section?

22 A It is my recollection.

23 Q And who was that representative?

24 A Matthew Brown.

25

1 Q Do you know the position he held at the  
2 Association at that time?

3 A At that time he was president, I believe.

4 Q Was he---the person that repre---was he the  
5 representative of the Association who routinely contacted  
6 you with regard to legal matters?

7 A Yes.

8 Q I have no further questions.

9 THE COURT: Any redirect?

10 MR. MAXWELL: No redirect. No redirect.

11 THE COURT: May we excuse Ms. Hobbs?

12 MR. MAXWELL: You may, Your Honor.

13 THE COURT: Any objection?

14 MR. GREEN: Yes, and I think she should go back to  
15 the office and get to work.

16 THE COURT: Well, Ms. Hobbs, in light of those  
17 instructions, you've been excused. That means that if you  
18 wish---

19 MS. HOBBS: Thank you.

20 THE COURT: ---to remain in the courtroom, from  
21 the Court's perspective, you have that option.

22 MS. HOBBS: It doesn't sound like it would be  
23 advisable.

24 THE COURT: On the other hand if you wish to  
25 depart and attend to other matters, why, you also have that

1 option, and in light of Mr. Dygert's remarks, you may choose  
2 which avenue you wish to pursue.

3 MS. HOBBS: Thank you.

4 MR. DYGERT: Your Honor, that---

5 THE COURT: Thank you for your attendance.

6 MR. DYGERT: ---comment was offered in levity,  
7 not---not an instruction.

8 THE COURT: No, sir. The Court understands that.

9 MS. HOBBS: Thank you.

10 MR. MAXWELL: Your Honor, we call Gary Lowe.

11 THE COURT: All right. Mr. Lowe, if you'll come  
12 forward please, sir. Give your attention first to the  
13 Clerk. She will administer the oath to you. Mr. Lowe, do  
14 your best also to speak up so we can all hear you and  
15 understand you.

16 MR. LOWE: Yes, sir.

17

18

19 GARY LOWE, having been so duly sworn, testified as  
20 follows:

21

22

DIRECT EXAMINATION

23 By: Mr. Maxwell

24 Q Mr. Lowe, would you state your name, please?

25 A Gary Lowe.

1 Q And your address, please?

2 A 979 Cedar Grove Road in Ruckersville.

3 Q Okay, and what's your occupation, sir?

4 A I'm a project manager.

5 Q Okay. And Mr. Lowe, you purchased lot 1,  
6 section 5-E that had been owned by Mr. Winkleman at a sale  
7 conducted by Dogwood Valley that you've heard about so far?

8 A Yes.

9 Q And paid \$1,000 for it?

10 A Yes.

11 Q And is---is that lot a waterfront lot as Mr.  
12 Winkleman testified? Lakefront?

13 A The dam part of it is, yes.

14 Q Okay.

15 A Little ten-foot strip at the top.

16 Q Okay. And have you been paying real estate  
17 taxes on that property---

18 A Yes.

19 Q ---since 1998? And do you know what the  
20 assessed value of that property is?

21 A When I bought it, it was \$5,000.

22 Q Are you sure you're not referring to another  
23 piece of property that you bought?

24 A I think it was five---

25 Q Okay.

1 A ---to the best of my recollection, yeah.

2 Q Okay, and you're president of Dogwood Valley  
3 Citizens' Association now.

4 A That's correct.

5 Q And for the Court, you were not at the time you  
6 bought this, a member of the Dogwood Valley Citizens'  
7 Association.

8 A That's correct.

9 Q Okay. And in 1998 did you buy another lot at  
10 Dogwood Valley?

11 A I'm not sure of the date, but---

12 Q Would August of 1998 be about right?

13 A Probably, yes.

14 Q And did you pay 5,000 for that?

15 A Yes, I bought that one for five.

16 Q And who did you buy that from?

17 A A gentleman named George Lowe.

18 Q Any relation?

19 A None whatsoever, just---

20 Q Okay. What---is that lot a waterfront lot?

21 A No.

22 Q What I presented to you is---is labeled Real  
23 Estate Tax History Inquiry and it says on the---this is as  
24 to lot 1, and it shows land valued at 7,000. And if you'll  
25

1 turn back---and I'll represent that that's 1999; 1998,  
2 you'll see it's still in Mr. Winkleman's name and it's 6600?

3 A Okay.

4 Q Is that the value that you've been paying taxes  
5 on this lot?

6 A I assume if that's what the county has assessed  
7 it at.

8 Q Have you contested that taxed assessed value?

9 A No.

10 Q That's all the questions I have for this  
11 witness, Your Honor.

12 THE COURT: All right. Any cross-examination?

13 MR. DYGERT: No.

14 THE COURT: All right, thank you very much for  
15 that testimony, Mr. Lowe. You can rejoin Mr. Brown and Mr.  
16 Dygert at counsel's table.

17 MR. MAXWELL: Jason Tinder, Your Honor.

18 THE COURT: Sir?

19 MR. MAXWELL: Jason Tinder.

20 THE COURT: All right, Mr. Tinder, Jason Tinder,  
21 if you'll come forward, sir. Give your attention first to  
22 the Clerk. Mr. Tinder, do your best also to speak up as  
23 I've been saying to the other witnesses. Do the best you  
24 can to project your voice so we can hear you and understand  
25 you. All right.

1  
2  
3 JASON TINDER, having been so duly sworn, testified  
4 as follows:

5  
6 DIRECT EXAMINATION

7 By: Mr. Maxwell

8 Q Mr. Tinder, would you state your name, please?

9 A Jason Tinder.

10 Q And your address, please?

11 A 5401 Carolton Lane, Barboursville, Virginia.

12 Q Okay. And are you employed, sir?

13 A Yes.

14 Q Where?

15 A I'm a carpenter.

16 Q All right. And do you recall purchasing lot 2,  
17 (unintelligible), Mr. Winkleman's lot, at a foreclosure sale  
18 on April 29<sup>th</sup>, 1998?

19 A Yes.

20 Q Okay. And you purchased that for \$2100?

21 A Yes.

22 Q How did you find out about the sale?

23 A I heard from my mother, I think, at first and I  
24 saw it in The Greene County Record.

1 Q Okay. Do you know what the value of that lot  
2 that you've been paying taxes on is?

3 A The county assessment is 7,000, I believe.

4 Q Okay. And you bought it for \$2100?

5 A Yes.

6 Q What would you sell it for today?

7 A I haven't gotten it appraised at all, sir. I  
8 haven't thought about selling it yet.

9 Q So you don't have any price in mind?

10 A No.

11 Q Okay. No further questions, Your Honor.

12 THE COURT: Any cross?

13

14 CROSS-EXAMINATION

15 By: Mr. Dygert

16 Q Mr. Tinder, you said believe the appraised---or  
17 the assessed value was about \$7,000 now. Do you know what  
18 it was at the time you bought it?

19 A No, I do not.

20 Q I have no further questions, Your Honor.

21 THE COURT: Any redirect in light of that  
22 question?

23 MR. MAXWELL: Yes, yes, just briefly, Your Honor.

24

25



1 REDIRECT EXAMINATION

2 By: Mr. Maxwell

3 Q Let me show you a tax assessment that has your  
4 name on it for this lot and this---and I'll represent to you  
5 that this is 1999. It's on there.

6 A Uh-huh.

7 Q ---and that's \$6,600---I'm sorry, what is the  
8 amount on there?

9 A 7,000.

10 Q Okay. Flip over to the first page, please.  
11 And that's 1998?

12 A Uh-huh (indicating yes).

13 Q And what's the value there?

14 A Six thousand, nine hundred (6,900).

15 Q Okay. Is that your---does that refresh your  
16 recollection of what the value of that tax assessment was in  
17 1998?

18 A No.

19 Q Okay.

20 THE COURT: Any re-cross in light of those  
21 questions?

22 MR. DYGERT: No re-cross, Your Honor.

23 THE COURT: All right, thank you very much for  
24 being here, Mr. Tinder. You may stand aside. You may  
25 resume a seat in the courtroom if you'd like.

1 MR. MAXWELL: Matthew Brown.

2 THE COURT: That's fine. Mr. Brown, if you'll  
3 come forward, please, and receive the oath from the Clerk.  
4 Mr. Brown, as you've heard me say with the other witnesses,  
5 do your best to speak up and project that voice so we can  
6 hear you and understand you.

7

8 MATTHEW BROWN, having been so duly sworn,  
9 testified as follows:

10

11 DIRECT EXAMINATION

12 By: Mr. Maxwell

13 Q Would you state your name, please?

14 A Matthew Brown.

15 Q And, Mr. Brown, what's your address?

16 A 1320 Dogwood Drive.

17 Q Okay. Is that here in Greene County?

18 A Yeah.

19 Q And are you employed?

20 A Yes.

21 Q And where do you work?

22 A I'm an owner of a construction company; I'm  
23 self-employed.

24 Q Okay. How long have you been a director of  
25 Dogwood---in the Dogwood Valley Citizens' Association?

1 A I believe since 1992.

2 Q And what offices have you held?

3 A I have been the secretary, I was president and  
4 now I'm the treasurer.

5 Q Okay, and what was your term during which you  
6 were secretary?

7 A I think from '92 to '96.

8 Q Okay. Mr. Musser was---succeeded you as  
9 secretary?

10 A Correct.

11 Q Okay, and you were president from when?

12 A I think '96 to the year 2000.

13 Q Okay. And you were president at the time that  
14 Mr. Winkleman's lots were sold?

15 A Correct.

16 Q And those lots were sold to---because of the  
17 unpaid \$35 assessment?

18 A And I believe there were some other fee---I  
19 don't think it was just for 35 bucks, but I don't remember  
20 the exact amount.

21 Q Well, let me---

22 A I know what the memorandum says; it says 35  
23 bucks.

24

25

1 Q Right. Let me show you---if you'll look under  
2 Tab 38, please. Okay. This is---this is a deed from---to  
3 Mr. Lowe signed by you?

4 A The foreclosure auction contract?

5 Q Yes. No, no, no, back a couple, F---go back a  
6 couple pages. You'll see a deed.

7 THE COURT: Which tab? I think he's at Tab 38.

8 Q I am---

9 A Thirty-eight (38).

10 Q ---I'm at 38 as well, Your Honor, 38.

11 THE COURT: I see, so you're asking him to---

12 A Okay. Foreclosure, a closing statement, okay,  
13 I've got a deed.

14 Q Okay, second page and it talks about a  
15 memorandum of lien having been sent, recorded in Deed Book  
16 441, page 221?

17 A (Reading.) Yeah, correct.

18 Q Okay. Now---now I've got to find where the  
19 memorandum (unintelligible) is. Go to Tab 34, please. I'm  
20 sorry, Your Honor, I've got to find---

21 THE COURT: That's all right.

22 Q ---I've got to find the tab that has the  
23 recording receipts for the---here we are. Tab 32.

24 A Thirty-two (32)?  
25

1 Q And you'll see the first memorandum of lien,  
2 the second page is---is that reference of 441, 221.

3 A What---

4 Q If you look in the lower left-hand corner of  
5 that---

6 A You're looking at the memorandum of lien, yeah,  
7 441, 221?

8 Q Right. Okay? Now, the date on which this  
9 assessment was due is stated in the memorandum of lien as  
10 what?

11 A February 1, 1998.

12 Q Okay. Let me refer you to Tab 3, please, which  
13 are the bylaws of the Association. And page---turning to  
14 page 5. Okay? And then look back to page 4 because we're  
15 under Section 2, duties of the directors.

16 A Uh-huh (indicating yes).

17 Q Then going to page 5---

18 A Right.

19 Q ---read paragraph 3, would you read that,  
20 please?

21 A Quasi-notice of lien to be recorded against any  
22 property for which assessments are not paid within 90 days  
23 after due date or to bring an action at law against the  
24 owner personally obligated to pay the same. But we didn't  
25 use the bylaws---

1 Q Okay. Excuse me---

2 A ---to file the lien.

3 Q ---excuse me. Just answer the question,  
4 please, Mr. Brown. Well, no, no---now, let's look at  
5 Article 11.

6 A We're still in the bylaws?

7 Q Still in the bylaws. The fifth line---fifth  
8 line down in Article 11 starting, after---

9 A After an account has been delinquent for 90  
10 days, the Association may bring an action at law against the  
11 owner personally obligated to pay the same, or record a lien  
12 on the property and therefore foreclose the same against the  
13 property. Interest, costs, reasonable attorney fees of any  
14 such action shall be added to the amount of such assessment.

15 Q Okay, now, turn back to Tab 32, please, first  
16 page. Memorandum of lien was recorded on what date?

17 A Now, are you on the first page?

18 Q The first page---

19 A With---with the official receipt?

20 Q ---correct.

21 A On 3/30/98 at 9:23.

22 Q Okay. And that's not---that's sooner than 90  
23 days after the---this \$35 assessment was due, isn't it?

24 A By the bylaws, that's correct.  
25

1 Q And the property was sold on April 29, 1998  
2 which is sooner than 90 days after the special assessment  
3 was due.

4 A By the bylaws, that's correct.

5 Q Okay. That's all the questions that I have,  
6 Your Honor.

7 THE COURT: All right, any cross-examination?

8 MR. DYGERT: No, I think not, Your Honor.

9 THE COURT: All right, that's fine. All right,  
10 Mr. Brown, thank you for your testimony, sir. You can  
11 rejoin Mr. Dygert at counsel table.

12 MR. MAXWELL: Your Honor, that's our---the  
13 evidentiary portion of our case.

14 THE COURT: All right, that's fine. All right,  
15 Mr. Dygert, do you expect to introduce evidence?

16 MR. DYGERT: Yes, Your Honor, I do.

17 THE COURT: That's fine.

18 MR. DYGERT: I would ask the Court for a five-  
19 minute break.

20 THE COURT: That's exactly what the Court was  
21 contemplating. I'm going to take about a ten to fifteen  
22 (15) minute recess. We've been in session for a while. I'm  
23 mindful of the hour. I do intend to keep going after our  
24 recess, but generally do you have any idea as to how much  
25

1 evidence you might have? I'm not trying to hold you to any  
2 particular time frame; I'm just trying to get some estimate.

3 MR. DYGERT: Your Honor, I wouldn't think more  
4 than an hour and a half---

5 THE COURT: All right, that's fine. In all  
6 likelihood then we probably will break for lunch before you  
7 complete your evidence, but let's take a recess and then  
8 we'll start your evidence and see how far we can go. All  
9 right, we'll be in recess then for about ten, fifteen (15)  
10 minutes.

11  
12 (OFF THE RECORD)

13  
14 THE COURT: All right, we're back in session then  
15 after a brief recess. The plaintiff has rested its case in  
16 terms of the evidence it wishes the Court to consider. Mr.  
17 Dygert, you represent the defendant. You may proceed with  
18 any evidence you want the Court to consider at this time.

19 MR. DYGERT: Call Mr. Matthew Brown.

20 THE COURT: All right. Mr. Brown, if you'll come  
21 back to the witness stand, sir. The Court will simply  
22 remind you that you remain under oath and as you've done  
23 before, continue to do your best to speak up---

24 MR. BROWN: Right.  
25



1 THE COURT: ---so we can hear you. All right, you  
2 may proceed, Mr. Dygert.

3

4

5 MATTHEW BROWN, having been previously sworn,  
6 testified as follows:

7

8

DIRECT EXAMINATION

9

By: Mr. Dygert

10

Q Mr. Brown, state your full name.

11

A Matthew Brown.

12

13

Q How long have you lived in Dogwood Valley  
subdivision?

14

15

A Lived there since 1992. I've owned property  
since 1988.

16

17

Q And I believe you testified earlier that you  
first went on the board of directors in 1992.

18

A Correct.

19

20

21

22

Q I direct your attention to Tab 4 of the book  
before you. That is the minutes, June 13, 1992, General  
Membership Meeting of the Dogwood Valley Citizens'  
Association.

23

A Uh-huh.

24

25

1 Q Did the question of special assessments as  
2 authorized by the Property Owners' Association Act come  
3 before---before that board or before that meeting?

4 A Yeah, there was a general discussion of it.

5 Q And what do the minutes say about that?

6 A Ken Jacobs noted that the state legislature now  
7 allows special assessments up to \$1,000 a lot for road  
8 maintenance. The board can make that decision but it can be  
9 rescinded by a 51% of the membership, including proxies, he  
10 added. On a motion by Glassner, who was the secretary at  
11 the time, it was decided that if a special assessment should  
12 be needed, a special membership meeting would be called by  
13 the board.

14 Q All right. Now I would ask you to turn to Tab  
15 5.

16 What is Tab 5?

17 A It's a---a regular board meeting on 9/23/92.

18 Q And who took those minutes?

19 A I did.

20 Q Did the question of a special assessment come  
21 before that meeting?

22 A On page 2, special assessments power granted by  
23 Virginia General Assembly, board is unanimous, 51% of the  
24 members of DVCA must approve special assessment before the  
25 assessment is passed.

1 Q Now, you've been on the board since that time,  
2 is that correct?

3 A Yes.

4 Q Has that decision ever been rescinded by the  
5 Board of Directors of the Association?

6 A We---in---let's see, a board meeting, two or  
7 three board meetings ago it was, but up until that time it  
8 was not.

9 Q Okay, and when would that board meeting have  
10 occurred?

11 A Two or three months ago, I---

12 Q Two or three months ago.

13 A ---yeah, ago. I don't remember the exact date.

14 Q Would you tell the Court what procedure has  
15 been followed with regard to special assessments since that  
16 time by the Board of Directors?

17 A Basically, the first special assessment that  
18 was attempted was in relationship to the flood of '95. And  
19 in the special meeting in November of that year, it was put  
20 up to the membership certain amounts, and the membership  
21 chose a \$100 special assessment. Since then the Board has  
22 delineated four levels of amounts to be paid and the level  
23 of service that could be expected with each amount: the  
24 first one was nothing, just go along with regular road fees,  
25

1 \$35 a year; 65, and I think 95, and the 35 has been passed  
2 by the general membership at the annual meeting.

3 Q Did the Board make recommend---include this in-  
4 --did the Board send this information that you've just  
5 described to the general membership prior to the meetings?

6 A Yes, we did, because people that would vote by  
7 proxy had to have an awareness of what we were voting on at  
8 the meeting.

9 Q And that has been the regular practice of the  
10 Board since---

11 A Yes, it has been.

12 Q ---'95?

13 A Yes, it has been.

14 Q I'd ask you to look at Tab 6. And what is that  
15 document?

16 A It's a regular board meeting on 9/24/94.

17 Q And was there any discussion about  
18 delinquencies on assessments during that meeting?

19 A Page 2, due to lien law change, work will begin  
20 to prepare a list of delinquencies. Delinquents will then  
21 have liens placed, if no result---foreclosure.

22 Q Was that a decision made by the Board of  
23 Directors at that meeting?

24 A Correct.

25

1 Q I direct your attention to #7. Is there any  
2 reference on page---on---in that---in those minutes---well,  
3 first off, what are they?

4 A Regular Board meeting 1/23/95.

5 Q Is there any reference to delinquent  
6 assessments in that?

7 A It says, Mark reports funds are arriving,  
8 because we would have sent out the---the notice for the---  
9 the annual notice. Delinquencies looking to be reduced  
10 again. I don't know if there's any---

11 Q You can look at the bottom of page 3.

12 A Okay. It says, George Dygert, Attorney at Law,  
13 will be---will handle for a percentage, and that was 25%, of  
14 the proceeds, the lien list was being updated. The subject  
15 was the lien update.

16 Q Was that a decision of the Board of Directors  
17 at that time?

18 A Yes, it was.

19 Q And what was the fee that was going to be paid  
20 for that?

21 A Twenty-five percent (25%) of the amount  
22 collected.

23 Q If you'd look at Tab 8. Where---what is that  
24 document?

25

1           A   This was the DVC annual meeting on July 22<sup>nd</sup>,  
2 1995.

3           Q   Was there---what was going on with regard to  
4 the need for funds at that time?

5           A   On July 22, 1995, we had had---let's see, we  
6 had had the flood. That was in June---that was in June of  
7 '95. I also reported on the continuing effort to complete a  
8 list of delinquencies and submit it to Mr. Dygert. We were  
9 investigating the possibility, because of the flood damage,  
10 FEMA was going around offering low-interest business loans  
11 to associations that didn't have the funding to repair  
12 damages that their---one of the things that FEMA told us was  
13 a requirement was that we would have to---we would have to  
14 go out and we would have to collect all our past delinquent  
15 accounts, and we would have to pass a special assessment  
16 before they would ever consider even doing it. That was  
17 taken up in a later board meeting when it was decided that  
18 rather than subject to the Association to a 30-year long  
19 term debt, since we had to collect delinquencies anyway, and  
20 we had to pass a special assessment anyway to even qualify,  
21 that we would do that.

22           Q   All right. At the---attached to that, at the  
23 second page of that tab, there's something that purports to  
24 be a treasurer's report. Was that part of the record of  
25 that meeting?

1           A   Correct.  This treasurer's report was handed  
2 out at the annual meeting.

3           Q   And does it show how much delinquent---or---  
4 delinquent fees there were at that time?

5           A   Yeah, 95 delinquent fees were 2184; fees  
6 delinquent more than one year were 6502.19.

7

8           Q   Now was a decision made at that meeting to  
9 pursue collection of those?

10          A   At the annual meeting, I reported on a  
11 continuing effort to complete a delinquency list and submit  
12 it to local Charlottesville attorney, George Dygert.

13          Q   If you'd look at Tab 9.  Was the special  
14 assessment considered at the October meeting?

15          A   Yes, and this was a regular board meeting on  
16 10/22/95.  The subject was FEMA.  The results were, after  
17 reviewing procedures for receiving FEMA money, the Board  
18 decided to seek a special assessment.  Since a special  
19 assessment would have to be enacted as a first step for  
20 receiving FEMA money, special assessment meeting November  
21 18<sup>th</sup>, 9 a.m. Greene County Courthouse.  Then on the second  
22 page, there's delinquencies, further progress in compiling  
23 list, Board decided to wait until February '96 deadline for  
24 '95 road fees.

25

1           Q   What action was taken by the Board to implement  
2   its decision to hold a special meeting?

3           A   We sent a notice out to the effect to the  
4   membership in compliance with the rules for special  
5   meetings.

6           Q   Is that the document at Tab 10?

7           A   Yes, it is.

8           Q   And to whom was that sent?

9           A   The---everybody on the membership list.

10          Q   When was that meeting---special meeting held?

11          A   On November 18<sup>th</sup>, 1995.

12          Q   Is the document at page---at Tab 11 minutes of  
13   that special meeting?

14          A   Special Assessment meeting, 11/18/95, Greene  
15   County Courthouse. Yes.

16          Q   And was the special assessment considered at  
17   that meeting?

18          A   Yes, it was. Let's see.

19          Q   What---what occurred?

20          A   Since FEMA would require a special assessment  
21   to be passed, the Board decided to seek it and not continue  
22   on the road to federal government interference and long-term  
23   indebtedness. Then passing of the---and that was under the  
24   reasons behind calling it a special-assessment meeting.  
25   Then the subject, passing of special assessment results



1 after a lively discussion representing many points of view.  
2 A one-time special assessment of \$100 per lot was passed,  
3 and I think we got 70 yes, 27 no. The assessment passed.

4 Q Was the membership notified of that?

5 A Yes, they were.

6 Q As the---

7 MR. MAXWELL: Objection, Your Honor. No  
8 foundation.

9 THE COURT: I'll overrule it. That would go to  
10 the weight. You can cross-examine him on it if you wish.

11 Q What is Tab 12?

12 A It's a letter from Dogwood Valley Citizens'  
13 Association. It was written November 28<sup>th</sup>, 1995 to DVCA  
14 membership from the Board of Directors. The subject was a  
15 special assessment. Special meeting of the general  
16 membership of the DVCA was called by Board of Directors on  
17 November 18<sup>th</sup>, 1995. The purpose of the meeting was to  
18 consider levying a special assessment---

19 THE COURT: You---you don't need to read the  
20 document, Mr. Brown.

21 A Okay.

22 THE COURT: It's already been admitted into  
23 evidence.

24 A All right.

25 THE COURT: It speaks for itself.

1 Q To whom was this sent?

2 MR. MAXWELL: Objection again, Your Honor.

3 THE COURT: I'll overrule it. If he knows, he can  
4 answer.

5 A To the DVCA membership.

6 Q Was a meeting of the Board of Directors held on  
7 February 10, 1996?

8 A Yes, it was.

9 Q Did you take minutes at that meeting?

10 A Yes, I did.

11 Q Are those at Tab 13?

12 A They are.

13 Q Was there any men---mention of delinquencies at  
14 that point?

15 A Let's see, road fees, plus special assessment,  
16 minutes, delinquency over three years to go to attorney,  
17 special assessment minutes accepted as read. On page 2,  
18 there's delinquencies over three years will be foreclosed on  
19 within 90 days.

20 Q What is Tab 14?

21 A It's a Citizens---the Dogwood Valley Citizens'  
22 Association annual meeting, June 29<sup>th</sup>, 1996.

23 Q What---did you take those minutes?

24 A Yes, I did.

25

1 Q Was a special assessment considered by that  
2 meeting?

3 A Yes.

4 Q Was it passed?

5 A Let's see. It says, motion to pass \$25 per lot  
6 special assessment for '96 was made, seconded, and voted  
7 down, 51 proxies and members voted no, 26 properties and  
8 members voted yes, and we reported delinquencies were being  
9 collected, liens were being enforced and an aggressive  
10 policy of collections would go forward.

11 Q What procedure had the Board followed with  
12 regard to special assessments that year? Had a packet been  
13 sent out prior to the meeting to the membership?

14 A I believe that, yes, and---no, let's see. I  
15 don't recall it that year or if it came up on the floor. I  
16 think the vice president at the time, Tom Altamere (sic),  
17 raised the subject at the Board---at the annual meeting  
18 itself, so no, we did not do the packet until the following  
19 year.

20 Q And in any event, there was---

21 A It was voted down.

22 Q ---no special assessment---

23 A Yeah.

24 Q ---that year. Turn to Tab 15. What is that  
25 document?

1 A Regular board meeting, 7/13/96.

2 Q Did you prepare those minutes?

3 A Yes, I did.

4 Q Was there any consideration reflected in this  
5 concerning the assessment?

6 A It's on page 3, subject, \$100 special  
7 assessment, unpaid results, Linda, who was the treasurer at  
8 the time, to get names to the attorney.

9 Q And the attorney was?

10 A George Dygert.

11 Q What is the document at page---at Tab 16?

12 A November the 9<sup>th</sup>, 1996, it's a board meeting.

13 Q Are these the minutes?

14 A Correct.

15 Q Is there mention in there of delinquencies and  
16 collections?

17 A Under the treasurer's report, we're still owed  
18 a little over \$3,000 and we're in the process of obtaining  
19 it.

20 Q Now had there been discussion by the Board  
21 about proceeding on the special assessments if they became  
22 delinquent?

23 A Yes.

24 Q And what was the Board's decision with regard  
25 to that?

1           A   The Board's decision was to move forward under  
2   the Property Owners' Association Act.

3           Q   Would you look at Tab 17? Was there any  
4   discussion for the need for a special assessment during that  
5   meeting?

6           A   Yes, on April 12<sup>th</sup>, 1997, discussion on the  
7   budget proposal for the annual meeting, and a budget meeting  
8   was scheduled for May 3<sup>rd</sup>, 1997 at 9:30.

9           Q   And what was the budget proposal to be?

10          A   Again, the same, the---no road, nothing but  
11   road fees, no special assessment, \$35 special assessment, 65  
12   or 95.

13          Q   Would you look at Tab 18. Under new business,  
14   #2 says budget vote. What does that represent?

15          A   That's where we voted to send the notice out to  
16   the members with the packet that went out announcing the  
17   annual meeting delineating the option sheet once again for  
18   the special assessments.

19          Q   Please refer to Tab 20.

20          A   Twenty (20)?

21          Q   What are these documents?

22          A   This is a packet of information that went out  
23   with the---

24          MR. MAXWELL: Objection---

25          A   ---annual meeting notice.

1 THE COURT: What's the basis of the objection?

2 MR. MAXWELL: No foundation, Your Honor.

3 THE COURT: You can ask him how he knows.

4 Q Were you a member of the Board of Directors at  
5 the time?

6 A Yes, I was.

7 Q In that capacity, did you either prepare or  
8 review this---these documents?

9 A I prepared---let's see, of these pages, I got  
10 your office to prepare the proposals for the changes to the  
11 bylaws. The Board authorized the sending of the option  
12 sheet, and we discussed and went ahead and photocopied out  
13 of the bylaws the powers and duties for the Board of  
14 Directors, and then I believe I participated and I may have  
15 written the whole thing, I'm not sure, the legal and  
16 financial responsibilities of lot owners in Dogwood Valley  
17 included, but are not limited to---

18 Q Are you familiar with whether or not these  
19 documents were sent to members of the Association?

20 A Yes, I am.

21 Q And were they sent to members of the  
22 Association?

23 A Yes, they were.

24 Q Approximately, when?  
25

1           A It would have been at the---it would have been  
2 at least two weeks before the annual meeting, and I think  
3 not more than 21 days or it could be 30 days. It's whatever  
4 is in the bylaws. I don't remember the exact.

5           Q Is this the entire packet, to the best of your  
6 recollection, that went to the Association at that time?

7           A I believe there was one other thing in the  
8 packet, but I'm not sure if that went or if that was handed  
9 out, and that was a color sheet that had color pictures of  
10 roads before they had been worked on and then after they had  
11 been worked on, but I don't remember if we shipped that with  
12 this or if we handed it out at the annual meeting.

13           Q Were you present at the June 14, 1997 annual  
14 meeting?

15           A Yes, I was.

16           Q Have you seen the document at page 21  
17 previously?

18           A Yes.

19           Q In what capacity did you see that previously?

20           A Well, I would have seen this document the  
21 following year when it was read to the membership and either  
22 accepted or read---or accepted as read or amended, and I've  
23 seen it since.

24

25

1 Q Does it accurately reflect---strike that. I  
2 won't ask that question. Does it contain information  
3 concerning the voting on the special assessment?

4 A Yes. With 34 votes and 21 proxies were held on  
5 a budget option that was sent out with the invitation to \$35  
6 special assessment was passed with 31 votes.

7 Q Would you look at Tab 22? Do you recognize  
8 this document?

9 A Uh-huh (indicating yes).

10 Q What is it?

11 A Board meeting October 25<sup>th</sup>, 1997.

12 Q Would this have been presented to the---to the  
13 Board of Directors at the following meeting for approval?

14 A The minutes are, yeah.

15 Q These minutes.

16 A That's correct.

17 Q And were they approved?

18 A Yes.

19 Q Does this have any indication that foreclosures  
20 were considered at that meeting?

21 A It says, foreclosures will soon begin, read and  
22 accepted.

23 Q That was part of the treasurer's report.

24 A Treasurer's report, correct.  
25



1 Q Do you recall any discussion about what the  
2 foreclosures---what foreclosures means?

3 A We had discussed rather extensively the  
4 Property Owners' Association Act and what it meant and  
5 exactly what it allowed us to do.

6 Q And was it the Board's decision to proceed  
7 under the authority of the Homeowners' Association Act to  
8 file liens and foreclose, if necessary, to collect special  
9 assessments?

10 A Yes.

11 MR. MAXWELL: Objection, Your Honor, leading.

12 THE COURT: I'll overrule it. That's all right.  
13 You can answer.

14 A Yes. The Board had been under considerable  
15 pressure from the membership to collect delinquencies.

16 Q What capacity were you serving in with the  
17 Association in 1997 and 1998, what office?

18 A President.

19 Q Were you---and you were a member of the Board  
20 of Directors?

21 A Yes.

22 Q Who, for the Association, was responsible for  
23 implementing the collection procedures?

24 A I was.

25 Q What did you do in that regard?

1           A Well, we had, as you well know, many  
2 discussions with your office. We compiled the list of the  
3 delinquencies. We delivered them to you. I had to sign the  
4 documents that needed to be signed in order to make all of  
5 that stuff occur.

6           Q Did you sign the memoranda of lien that were  
7 recorded in the Clerk's office?

8           A Yes, I believe I did. I remember I signed a  
9 pile of them.

10          Q Would you turn to Tab 32? Did you authorize  
11 the filing of---of the two memoranda of lien that are shown  
12 there?

13          A Yes, I signed them.

14          Q With the---

15          A With the knowledge and consent of the Board of  
16 Directors.

17          Q And did you instruct Ms. Hobbs to record those  
18 in the---

19          A Yes, I did.

20          Q ---records in the Circuit Court of Greene  
21 County?

22 Now there are some other letters that---here---in the  
23 interest of the time, that you---have you reviewed these---  
24 all of these documents?

25          A I reviewed---

1 Q Well, in particular, did you review the letters  
2 from Kelly Hobbs to Mr. Winkleman?

3 A Yes, I have.

4 Q Did you authorize Ms. Hobbs to write those  
5 letters?

6 A Yes, we did pursuant to the rules that are in  
7 the Property Owners' Association Act, which you have to do  
8 to fulfill the steps.

9 Q And did you have the authority of the Board of  
10 Directors to do that?

11 A Yes, I did.

12 Q Turn to Tab 34. You recognize this document?

13 A The newspaper clipping?

14 Q Yes, Tab 34.

15 A Yes, uh-huh (indicating yes).

16 Q Did you authorize the placement of that notice  
17 in the Greene County Record, I think it was?

18 A Yes, I did.

19 MR. MAXWELL: Excuse me, Your Honor, we're at---  
20 are we at Tab 34?

21 THE COURT: We are. It's the last---

22 Q I'm sorry---

23 THE COURT: ---document at the end of Tab 34.

24 MR. MAXWELL: Oh, I'm sorry, Your Honor.

25 Q I misread it. It's Tab 35.

1 THE COURT: Thirty-five (35), rather, I apologize.  
2 I said the last document and actually it's---

3 Q Tab thirty-five (35).

4 THE COURT: ---it's the first one in 35.

5 MR. MAXWELL: My apologies.

6 THE COURT: That's fine, Mr. Maxwell.

7 Q Did you authorize this notice to be placed in  
8 the newspaper?

9 A Yes, I did, again, with the advice and consent  
10 of the Board of Directors.

11 Q The Board was aware that it was going to be  
12 published.

13 A That is correct.

14 Q And they had authorized the sale under this---  
15 this notice.

16 A Uh-huh (indicating yes).

17 Q Were you present at the sale?

18 A Yes, I was.

19 Q When was it held?

20 A I'll have to look at the date, I don't  
21 remember, April sometime.

22 THE COURT: It's conceded when it was held, April  
23 30<sup>th</sup> is the date.

24 MR. MAXWELL: We'll stipulate that one.

25 THE COURT: April 30<sup>th</sup> is the date of the sale.

1 A 29<sup>th</sup>

2 Q 29<sup>th</sup>.

3 THE COURT: 29<sup>th</sup>, April 29.

4 Q Were you present?

5 A Yes, I was.

6 Q Were you present when Mr. Winkleman's lots were  
7 sold?

8 A Yes, I was.

9 Q There were 11 lots sold that day.

10 A To the best of my recollection.

11 Q Okay. You---do you recall if there was active  
12 bidding on these lots?

13 A There was active bidding on all the lots.

14 Q Do you have any recollection of how many people  
15 were bidding on the lots that day?

16 A We had at least three or four bid on each lot  
17 that came up.

18 Q And were all of the lots that were offered for  
19 sale that day sold?

20 A No, we withdrew some of them before the sale  
21 that were on the list for various reasons.

22 Q There were some---there were some---were there  
23 some of the lots listed in the public notice in the  
24 newspaper that were not sold that day?

25

1           A Yes, some were withdrawn on the day of the sale  
2 for various reasons.

3           Q Primarily, because the dues had been paid.

4           A We had a problem with a mortgage on one, and  
5 yeah, some people had paid their dues, that's correct.

6           Q All right. Now were the ones that were  
7 offered---

8           A Uh-huh.

9           Q ---by Ms. Hobbs that day, all sold?

10          A Yes.

11          Q I believe you've already testified to this, but  
12 was the authorization for filing of this lien and for the  
13 sale based upon the authority of the Property Owners'  
14 Association Act?

15          A Yes, it was.

16          Q It was not based upon any authorities contained  
17 in the---

18          A No, not in the bylaws, no.

19          Q ---corporate document, bylaws in particular?

20 I have no further questions for Mr. Brown.

21          THE COURT: Cross-examination, Mr. Maxwell?

22          MR. MAXWELL: Yes.

23

24                                   CROSS-EXAMINATION

25 By: Mr. Maxwell

1           Q   So, Mr. Brown, it's your position that you were  
2 free to ignore the bylaw provisions regarding the 90-day  
3 waiting period on assessments?

4           A   After---the short answer to your question is,  
5 yes.

6           Q   Now, going back to Tab 6, second page, did you  
7 take these minutes? Is that---

8           A   Yeah, that's why they're in the condition that  
9 they're in.

10          Q   And page 2---

11          A   Yes.

12          Q   ---you've already read this, due to lien  
13 change, if no result, foreclosure. What does that phrase,  
14 foreclosure, mean to you?

15          A   It's under the Property Owners' Association Act  
16 we would foreclosure by selling the properties at public  
17 auction.

18          Q   Okay, and this was on September 24 of 1994?

19          A   Uh-huh (indicating yes).

20          Q   And that was your understanding of the Virginia  
21 Property Owners' Association Act at that time?

22          A   That's correct.

23          Q   Okay, and Tab 13, page 2 at the bottom, talking  
24 about delinquencies over three years will be foreclosed,  
25 same meaning as---

1 A Uh-huh (indicating yes).

2 Q ---as foreclosure and same interpretation of  
3 the Virginia Property Owners' Association, okay. You---you  
4 said in response to Mr. Dygert's question that the Board had  
5 authorized the sale of the property subject to the notice in  
6 the---in the paper?

7 A Yes.

8 Q Show me the minutes where that was authorized.

9 A What---what was the date of the---April 29<sup>th</sup>,  
10 was it?

11 Q April 29<sup>th</sup> was the sale.

12 A Which is on what tab?

13 Q And for your convenience, 52 has---has the---  
14 has the minutes from 197---1997 and 1998.

15 A Okay, 52 does?

16 Q Yes.

17 A Again, we would have discussed it on March 8<sup>th</sup>,  
18 '97 with discussion on proposed budget for June homeowners'  
19 meeting.

20 Q Well, let's---let's look at March. Now you're  
21 saying that what---what in the minutes talks about the  
22 authorization of the sale of these lots in '98?

23 A That's where we would have talked about it. It  
24 does not specifically say the Association authorizes this to  
25 happen.



1 Q Okay.

2 A And then it's after April---April of '97 was  
3 the sale or was it April of '98?

4 Q No, April of '98 was the sale.

5 A Okay. Again, on May 10<sup>th</sup> where we reported on  
6 lot owners who don't pay their dues claiming they don't have  
7 to and then on the budget with the vote, we would have  
8 talked about all of that.

9 Q I---I'm sorry, is this May 10, 1997?

10 A 1997.

11 Q And you're referring to where it says new  
12 business budget---

13 A And old business---

14 Q ---old business---

15 A ---where it says Matt reported on lot owners  
16 who don't pay their dues claiming that they don't have to  
17 and what action is being taken.

18 Q Okay, that's a report, right? You reported on  
19 that.

20 A And we would have discussed everything going  
21 on. We---we discussed almost---at every single meeting, I  
22 gave an update of where we were on the various items---

23 Q Okay.

24 A ---that I was responsible for, one of which was  
25 collecting the delinquencies.

1 Q Show me where else.

2 A On May 24<sup>th</sup> under new business, number 1,  
3 discussion on raising interest rates on nonpayment of road  
4 dues. We would have discussed it there. On October 25<sup>th</sup>,  
5 1997 under treasurer's report, foreclosures will soon begin,  
6 read and accepted.

7 Q Treasurer's report was read and accepted.

8 A Well, that was part of the treasurer's report.

9 Q Okay. What else?

10 A January 27, 1998, treasurer's report, 28 have  
11 not paid. We would have---that would have been the update  
12 again on who owed and what was going on.

13 Q Treasurer's---

14 A Under new business, Board voted to not send  
15 second notice of road dues, one-week grace period and then  
16 the penalty. That would have all been discussions about  
17 that. Okay. We---let's see, on April 25<sup>th</sup>, 1998---let's  
18 see---(reading. We had a debate on the length of time  
19 before foreclosure, voted on taking four months before  
20 foreclosure, after 90 days lien, one month later  
21 foreclosure, motion---motion withdrawn, no vote.

22 Q The April 25 meeting, of course, was after you  
23 had already advertised the sale.

24 A That's correct.

25

1 Q Okay. You said you were at the sale of the  
2 lots?

3 A Yes, I was.

4 Q And---and are you aware that Jason Tinder  
5 bought lot 2?

6 A Yes, I am.

7 Q Do you know Mr. Tinder?

8 A I, at that time, knew of him. He is Dean and  
9 Debbie's son.

10 Q Dean---

11 A We were not acquainted as we are now.

12 Q ---son or son-in-law?

13 A He's Debbie's son.

14 Q Okay. And---and this is Dean Musser who  
15 testified who was a Board member?

16 A Yes.

17 Q Okay. That's all the questions I have, Your  
18 Honor.

19 THE COURT: Any redirect?

20 MR. DYGERT: No redirect.

21 THE COURT: All right, Mr. Brown, thank you for  
22 that testimony. You can rejoin Mr. Dygert over at counsel  
23 table.

24 MR. DYGERT: Your Honor, I have no further  
25 evidence.

1 THE COURT: No further evidence. All right.  
2 Let's let Mr. Brown get situated. Take your time, Mr.  
3 Brown. Is there any rebuttal evidence?

4 MR. MAXWELL: No, Your Honor.

5 THE COURT: All right. I'll give counsel the  
6 chance to have some input. We've got a number of matters  
7 that need to be argued. Do counsel wish a lunch recess  
8 before argument or are you prepared to argue the case now?  
9 Mr. Winkleman, I'll let you comment first. I'll make the  
10 decision, but I'll---Mr. Maxwell, rather, I apologize, I'll  
11 let you---

12 MR. MAXWELL: No, Your Honor, I'd---I'd rather  
13 take a short break. If Mr. Dygert---let me---let me first  
14 say---

15 THE COURT: All right.

16 MR. MAXWELL: ---if Mr. Dygert wants to proceed,  
17 I'll defer to his, but I would---I would prefer a short  
18 break to maybe get something to eat---

19 THE COURT: All right.

20 MR. MAXWELL: ---review my notes and go forward.

21 THE COURT: Mr. Dygert, any comment on that?

22 MR. DYGERT: Your Honor, I have no objection.

23 THE COURT: I'd be inclined to do that unless  
24 there was some reason not to, if either side requested it.  
25 All right, Mr. Maxwell, that's what we'll do. Let's see,

1 before I do that, let me give you some indication as to some  
2 areas that we're going to need argument on. I've listened  
3 very carefully to the evidence and I've reviewed this file  
4 extensively and I've done my best to review most of the  
5 authorities and all of the detailed memoranda that have been  
6 filed up to this point, and obviously there's an extensive  
7 record that the Court is still going to have to go through,  
8 but in any event, having made those observations, you can  
9 certainly make any argument that you wish when we get to  
10 that point, but regardless of any argument that you might  
11 wish, address the following points that occurred to the  
12 Court that might be significant. First of all, obviously  
13 the Court's ruling on whether or not the homeowners'  
14 association comes under the statutory authority in question  
15 is critical. You need not address that any further. That  
16 has been well argued, well---well briefed, well-researched  
17 and thoroughly presented to the Court from both points of  
18 view, so that doesn't need to be addressed in any further  
19 detail. However, if the Court rules that the homeowners'  
20 association has the authority pursuant to the statute, and  
21 the Court hasn't made that ruling, but if that ruling is  
22 made, obviously that does not end the inquiry. A number of  
23 other points have been raised by Mr. Maxwell that need to be  
24 addressed and should be addressed in argument. Number one,  
25 obviously this is a court of equity and the Court recognizes

1 that some equitable arguments might be coming, that, from  
2 what the Court has heard thus far, cuts both ways. I won't  
3 make any comment beyond that, and you can certainly address  
4 it if you wish.

5 One of the issues, obviously, that's going to come  
6 up is going to be the impact of the records that have been  
7 introduced into evidence, specifically, with reference to  
8 the minutes and the statutory requirement that Mr. Maxwell  
9 asserts needs to be followed. That, of course, needs to be  
10 taken up in argument. And then, of course, the issue there,  
11 or one of the issues there might be or could be if, in fact,  
12 the Court finds that the homeowners' association did not  
13 actually comply with the statutory requirement of  
14 maintaining records, is the evidence regarding the actual  
15 actions that were taken consistent with the statute  
16 sufficient. That would be an issue that would need to be  
17 addressed. Certainly, Mr. Dygert, we're not precluding you  
18 from making any argument you want regarding how these  
19 minutes and various records should be constructed in terms  
20 of what they mean, but obviously the potential dispute that  
21 exists between what the minutes actually say and what the  
22 statute requires and then what the homeowners' association  
23 actually did pose questions that need to be addressed.

24 All right, the next question, of course, or one  
25 that would come up would be the dispute in the evidence

regarding the---what I'll call the 90-day dispute or the 90-day argument. Once again, if the Court finds that the homeowners' association has the authority granted by the statute under the Virginia Property Owners' Association Act, the next question is, if in fact the 90-day requirements have not been complied with in accordance with the bylaws and the other documents, does that make any difference under the statute, and counsel should be prepared to argue that. In other words, if the homeowners' association comes under the statute, do they not have the option or the discretion simply to follow the statute regardless of what the bylaws might say? Again, Mr. Dygert, you can make any argument as to whether the 90-day requirement has, in fact, been complied with.

The next question, of course, and this is something of first impression for the Court, and it's been raised for the first time. Frankly, until I saw it this morning, it had not occurred to me in preparation that it was an issue, but it's what I'll call the---the definitional question that's been raised by Mr. Maxwell; that is, lot versus unit and whether the operative authority, if the Court rules that the association has the authority, whether the authority would extend to the lot in question because of the statutory definition that's been raised. That would have to be argued.

1           And a final issue, and again counsel can argue any  
2 issues they want, would be this question of  
3 unconscionability that's raised by the pleadings and that's  
4 been raised by the evidence. There a number of questions  
5 should be addressed. The Court's generally familiar with  
6 those cases and with that line of authority. The Court has  
7 not specifically reviewed them yet. It will do so before it  
8 issues any formal ruling. Generally speaking, my  
9 understanding of those cases is that they do apply to  
10 foreclosure sales that are conducted by trustees under the  
11 terms of deeds of trust. The Court's inquiry or some of the  
12 questions that should be address would be whether the  
13 argument of unconscionability applies to both the procedures  
14 that were followed in conducting the sale and to the sale  
15 price itself, or is the question of unconscionability, to  
16 the extent that it exists, does that pertain only to the  
17 actual price that was obtained for the property in question.

18           Once again, having made those remarks, the Court  
19 is not at all trying to suggest that there are not other  
20 issues in the case, and that counsel may wish to frame their  
21 arguments on these issues as well as on those others in  
22 different ways. What I'm coming to is feel---feel free not  
23 to limit your arguments to those inquiries that have been  
24 raised by the Court, and furthermore, feel free to suggest  
25 to the Court that it should look at the issue another way or



1 perhaps hasn't framed it the way that you feel it should be  
2 framed. I simply make these observations having listened  
3 carefully to the evidence and having reviewed the file up to  
4 this point.

5 All right, that should give you some framework for  
6 your arguments. All right, I'm looking at the clock of the  
7 court right now and that clock says about ten to one. Why  
8 don't you synchronize your watches and we'll take a break  
9 until 1:30. That will give us 40 minutes to perhaps get a  
10 snack or a little bit of lunch and also some time to get  
11 your notes together for argument. If, in fact, Mr.---Mr.  
12 Maxwell and Mr. Dygert, we get close to 1:30 and you do need  
13 a few more minutes, why, that's fine. Simply let me know  
14 through the bailiff and I'll give either one of your or both  
15 of you a bit more time if you need to, to organize your  
16 arguments. All right, on that note then, the Court will  
17 simply stand in recess until 1:30.

18

19 (OFF THE RECORD)

20

21 THE COURT: All right, we are back in session then  
22 after a brief luncheon recess. I think the Court had  
23 indicated that it would now consider argument in connection  
24 with the case. Mr. Maxwell, you represent the plaintiff,  
25 and obviously I realize that the Court's ruling on the

1 Virginia Property Owners' Association Act is going to be  
2 critical, but nevertheless, simply address all of the  
3 various points that the Court had mentioned before, as well  
4 as any other arguments that you wish to make. You represent  
5 the plaintiff, I'll let you argue.

6 MR. MAXWELL: I will. Your Honor, may I do that  
7 seated?

8 THE COURT: You may, uh-huh (indicating yes). You  
9 may remain seated, uh-huh (indicating yes).

10 MR. MAXWELL: Your Honor, not speaking about the  
11 POAA and that argument, but I will advise the Court that  
12 document 2, or Exhibit 2 and Exhibits 42 through 51  
13 constitute the universe of documents that Mr. Dygert asserts  
14 contains the expressed duty,  
15 so we've limited the world. All right. Your Honor, let me  
16 move first to equity. As you said, equity cuts both ways,  
17 and as you can tell from our direct examination, we tried to  
18 explain what happened, not make an excuse for it.  
19 Admittedly, Mr. Winkleman could have done more, should have  
20 done more, but he didn't. On the other hand, we have  
21 someone who has owned property since 1980 that that was  
22 taken from him without judicial procedure for an unpaid \$35  
23 assessment. There's undisputed evidence that the value of  
24 lot 1 at the time of the sale was \$8,000 and that the value  
25 of lot 2 was \$12,000. Lot 1 was sold for \$1,000, 12.5% of

1 the value of the property. Lot 2 was sold for \$2,100, 16%  
2 of the property. We also had testimony from Mr. Lowe that  
3 in that same year he bought another lot that was not a  
4 waterfront lot for \$5,000. In---I've cited in my brief a  
5 quotation from Linny v. Normoyle. It says actual fraud  
6 isn't required. It says the court will seize on any  
7 inequitable conduct to do that. I believe here we have a  
8 host of inequitable conduct. We have---we first have the  
9 sale, and I believe the cases talk about, that if the price  
10 is so low as to shock the conscience of the Court, that's---

11 THE COURT: I'm familiar with that doctrine.

12 MR. MAXWELL: Now admittedly, Your Honor, I  
13 believe both and Moore and Linny were situations where a  
14 single bidder at the sale. Testimony here was that there  
15 were several bidders but I think the equities, when you add  
16 them up and the prices paid show that equity favors Mr.  
17 Winkleman.

18 Let's see here---let me then talk about the  
19 ability of this property owners' association to follow its  
20 own procedures. The Court raised the question of whether  
21 somehow the POAA creates a new standard.

22 THE COURT: And again, that was a question and it  
23 wasn't a conclusion, simply a question, so---

24 MR. MAXWELL: And I'm prepared to give you the  
25 answer to it.

1 THE COURT: That's fine, all right.

2 MR. MAXWELL: And the answer to that is that the  
3 POAA deals only with the decision of---deals only with the  
4 process after the decision is made by the entity to file a  
5 memorandum of lien to sell. It sets forth the procedure of  
6 doing that. The DVCA can't disavow themselves of the  
7 provisions of the bylaws. They're the underpinnings that  
8 support this whole thing, and as the Court is aware, any  
9 action in contravention of the bylaws is ultra vires and is  
10 void, ab initio.

11 THE COURT: All right, so your argument then is  
12 that the failure to follow the specific and explicit  
13 procedures set forth in the bylaws is a prerequisite to any  
14 subsequent action under the VPOAA, if that act applies.

15 MR. MAXWELL: Absolutely. And, Your Honor, the  
16 most glaring evidence of that is Article 11 of the bylaws  
17 which say that, after an account has been delinquent for 90  
18 days, the Association may bring an action or record a lien  
19 and thereafter foreclose the same. Undisputed evidence is  
20 that was due February 1, lien recorded March 30<sup>th</sup>, 59 days,  
21 58 days, not the 90. It was even sold before the 90 days.  
22 And---and they say, oh, but you look to the POA, but look at  
23 the---if we look at the first two sentences of that, well  
24 actually the---yeah, the first two sentences, it says, that  
25 they're obligated to pay assessments, and failure to pay

1 annual assessments on or before February 1 will result in a  
2 penalty of 24% and interest per annum on the unpaid balance.  
3 Well, they charged the penalty, they charged the interest  
4 and now they want to say, well, we can do that portion, but  
5 the next sentence, which says you've got to wait 90 days, we  
6 don't have to follow that. They can't have it both ways.  
7 In fact, they can't it have either way. They've got to wait  
8 90 days.

9           Also, Your Honor, we---there was great talking and  
10 a lot of time spent looking through the minutes of the board  
11 on this, and the Court's familiar as---as I am that board  
12 records don't show every word that everybody said during  
13 that, and I'm not claiming that they do; however, board  
14 records have to show action that was taken. A review of the  
15 board records that the witnesses testify shows that with  
16 regard to sending those properties, including Mr. Winkleman,  
17 there was no specific action taken to approve the recording  
18 of a memorandum of lien nor was there any specific action  
19 taken to approve the sale. Now, the only evidence that we  
20 have of an action taken was in one set of minutes where they  
21 had budget, quote, ``vote''. There's nothing like that  
22 regarding that, and so the---and Mr. Brown's testimony is,  
23 well, we had discussions about it. It was a trustee's  
24 report. That's a far cry from taking an action, and those  
25 actions have to be reflected in the minutes.

1           THE COURT: All right, assuming without deciding  
2 that the minutes don't reflect the actual actions that were  
3 taken, what is the legal result of that? Now I've got 55-  
4 510.1 in front of me and that statute appears to mandate  
5 that minutes be recorded and be available. Assuming that  
6 the minutes don't contain the information that you say they  
7 should, what is the legal consequence of that and what is  
8 the authority for any ruling?

9           MR. MAXWELL: The legal consequence is that they  
10 were never authorized. And as---again, as not being  
11 authorized and the corporation can only act through its  
12 directors, and as---as was testified to, none of the  
13 provisions in the bylaws gives any of the officers the power  
14 to do any of those things. So if it's not in the minutes,  
15 the inference is that it didn't happen or the conclusion is  
16 that it didn't happen.

17           THE COURT: All right.

18           MR. MAXWELL: And---and while a person can---can  
19 in the face of minutes, don't have her come in and testify  
20 as to what actually happened there during that, there was no  
21 testimony that said we took a vote and this was it. That  
22 just wasn't---didn't come out of any of the witnesses saying  
23 that. They said we had a discussion, we did this, we  
24 constantly talked about it, and they particularly never said  
25 that as---in---in my response to my question about whether

1 this sale was authorized or this memorandum of lien was  
2 authorized, they could not point to any portion in the  
3 bylaws, nor could they point to any testimony to show that  
4 that happened, so---

5 THE COURT: So your argument then would be that  
6 the ore tenus testimony of Mr. Brown in which there was a  
7 general description of actions that were authorized is not  
8 sufficient to establish that the particular action taken  
9 with respect to this particular lot was justified because  
10 there was no specific evidence of it.

11 MR. MAXWELL: That's correct.

12 THE COURT: All right. Again, I'm not trying to  
13 pre-empt any argument you want to make, I just want to  
14 understand. Mr. Dygert, I will in all likelihood ask you  
15 questions also, so go ahead.

16 MR. MAXWELL: Okay. So, Your Honor, I talked  
17 about the minutes and we talked about the---the 90 day---the  
18 critical one, of course, is---in all of this is the 90-day  
19 argument that---that you can't do that.

20 THE COURT: I understand that.

21 MR. MAXWELL: Dealing with the question of the  
22 definition of a unit, or the---in 55.516.I, and I would  
23 refer the Court to the last page of this where the editor's  
24 notes are in 1997, and it will confirm that it says---that  
25 in 19---the 1997 amendments added subsection I.

1 THE COURT: All right.

2 MR. MAXWELL: Up until that time---up until July  
3 1, 1997, there was not a provision in 55.516 permitting a  
4 sale, a lien, but no sale. Of course, as---as Ms. Hobbs  
5 said, they could have brought a judicial suit to enforce the  
6 lien, but chose not to.

7 Now, we get to the language, and---and the  
8 language is clear on its face. At any time after perfecting  
9 the lien pursuant to the section, the property owners may  
10 sell the unit at public sale. And the definitional section  
11 describes a lot and it describes a lot as a parcel of land  
12 or a unit in a condominium. The legislature chose to use  
13 the word, unit, to describe what was sold. Now in my trial  
14 memorandum I've cited the---the Court to the decision of  
15 Judge Wetzel in Warren County, Matlack v. Property Owners in  
16 which he specifically says that the POAA is in derogation of  
17 the common law in that it imposes on property owners which  
18 do not---and I must have missed it. It poses obligation on  
19 property owners which do not otherwise exist, and then  
20 quotes from the Supreme Court in C&O Railroad v. Kinser,  
21 statutes in derogation of the common law are to be strictly  
22 construed and to not to be enlarged beyond their express  
23 terms. The express terms of this is that they could sell  
24 the unit, they couldn't sell the lot. Mr. Winkleman had a  
25 lot; he had a parcel of land; therefore, the section by



1   itself does not provide for the sale of a parcel of land.  
2   And because it's in derogation of common law, it's got to be  
3   strictly constructed.                   And strictly construing it  
4   means that you look at the words on the paper, and I've  
5   cited the---also the Supreme Court case in Supinger v.  
6   Stakes. It says we assume that the legislature chose with  
7   care the words that it enacted and we are bound by those  
8   words as we interpret the statute. That wasn't dealing with  
9   the POAA. But what it shows is that we've got to strictly  
10   interpret it and there's no reason not to interpret it  
11   otherwise. And it goes back to the concept of, not only is  
12   it in derogation of common law, it's in derogation of the  
13   rights of an individual to hold property and to not have  
14   that property taken from him except by the actions of a  
15   court of this Commonwealth. Now, that point is clearly set  
16   forth in the Virginia Constitution, Article I, Section 11.  
17   And that says that no person shall be deprived of life,  
18   liberty or property without due process of law, that in  
19   controversies respecting property, trial by jury is  
20   preferable to any other and ought to be held sacred. I've  
21   also in my brief talked about how courts construe under due  
22   process. And where we're talking about a fundamental right,  
23   the courts acknowledge that they use a strict scrutiny test.  
24   And this is from the case of Etheridge v. Medical Center---  
25   Medical Center Hospitals. That was a case dealing with med-

1 mal-cap. And the Court in that case said we're not dealing  
2 with a fundamental right. You've got your right to jury  
3 trial; it's just how much you can recover. Here we're  
4 talking about the right to a trial if someone is going to  
5 take your property.

6 Now, under a strict scrutiny test, if there is an  
7 over---compelling and overriding government interest, then  
8 it will pass the requirements of due process. But I refer  
9 the Court to the fact that there are numerous instances in  
10 the Virginia Code where apparently there isn't a controlling  
11 interest. If a local taxing authority wants to sell the  
12 property for taxes, they bring a suit in chancery. If a  
13 judgment lien creditor wants to realize upon its mechanics  
14 lien, which he first has to file as a memoranda---I'm sorry,  
15 a judgment lien creditor wants to protect his judgment and  
16 enforce that, he has to proceed in court through equity.  
17 And most impressively if a mechanics lien claimant, who has  
18 to file a memorandum of lien, wants to enforce that, he has  
19 to come to court to do that. And---and I dare say that the-  
20 --the rights or needs of property homeowners' association  
21 are not any greater than those of taxing authorities,  
22 mechanics lien home---mechanics lien holders or judgment  
23 creditors. In addition, I point the Court to the case of  
24 Connecticut v. Doebr, a Supreme Court case. This was a case  
25 where a Connecticut statute which permitted prejudgment

1 attachment without a showing of exigent circumstances fell  
2 short of the demands of due process. This was a situation  
3 where the Supreme Court said, even though all the  
4 prejudgment attachment does is put a cloud on the title,  
5 even that's enough to require a showing that there are  
6 exigent circumstances requiring it. Here we have a  
7 situation where we're not just putting a cloud on the title,  
8 this property was being sold and the Court didn't have a  
9 chance to review that. It was a publication in a paper. I  
10 submit to you that that does not satisfy the demands of due  
11 process. So, Your Honor, we come back to equity where we're  
12 sitting in this Court. It's clear that the statute strictly  
13 construed does not provide for the sale of this lot. It  
14 says unit. It appears to me that the Dogwood Valley  
15 Association did not follow its own bylaws. They followed  
16 them in assessing penalties and interest but not in waiting  
17 the 90 days. Actions taken in violation of the bylaws are  
18 ultra vires, void. And---and due---Mr. Winkleman was denied  
19 his due process rights, and---and I believe that Section 55-  
20 516.I. is unconstitutional. And I---I also point out to the  
21 Court that there are other provisions in this---in 55-516  
22 that specifically say that the lien holder can go to state  
23 court to realize upon their lien. So it's not like they  
24 have no recourse. They do have a recourse. It's just that  
25 it was required through the Court. So, Your Honor, for all

1 those reasons and because this DVCA does not qualify under  
2 the POAA---

3 THE COURT: That's your threshold point, I  
4 understand that.

5 MR. MAXWELL: Have I hit it enough times?

6 THE COURT: That's all right.

7 MR. MAXWELL: Okay.

8 THE COURT: I think you've emphasized it and I  
9 think Mr. Dygert has made his position pretty clear on that  
10 also. But I'm sure I'll hear it again, and I'm prepared to,  
11 that's fine.

12 MR. DYGERT: Certainly not, Your Honor.

13 MR. MAXWELL: Your Honor, because of that we  
14 believe that the Court should require that lots 1 and 2 be  
15 re-conveyed to Mr. Winkleman. Now this is a court of  
16 equity and we understand that the individuals that have  
17 bought that have paid real estate taxes on those properties  
18 for some years and that as a condition Mr. Winkleman should  
19 be required to reimburse them for their real estate taxes  
20 that they have paid. In addition, I believe the Court  
21 should set aside the sale, and I also believe that the Court  
22 should hold that the statute---that DVCA does not qualify  
23 under POAA, so for those reasons, I thank the Court.

24 THE COURT: All right, thank you, Mr. Maxwell.  
25 All right, Mr. Dygert, you may respond.

1 MR. DYGERT: Your Honor, first I'd like to renew  
2 my motion for summary judgment that was filed earlier in the  
3 same brief that---that I filed before. I'd ask the Court to  
4 consider it at this time and in view of the Court's  
5 comments, I won't refer further to that except to say that--  
6 -

7 THE COURT: That's fine.

8 MR. DYGERT: ---we believe that Dogwood Valley  
9 Citizens' Association is a homeowners' association within  
10 the purview of that---of the Virginia Property Owners'  
11 Association Act and that it does apply in this circumstance.

12 THE COURT: All right.

13 MR. DYGERT: We acknowledge that the authority  
14 under which the memorandum of lien was filed in this case  
15 and the foreclosure notice was issued and the sale was held  
16 is solely under the authority of the Property Owners'  
17 Association Act.

18 THE COURT: All right.

19 MR. DYGERT: It is not under the---under the  
20 bylaws as such, or any other authority that---that may  
21 exist. Your Honor, I'd like to recite a little history for  
22 the Court in this case. Plaintiff filed this action first  
23 on December 17, 1998 asking the Court to set aside the sale  
24 of the plaintiff's property because the plaintiff did not  
25 receive notice of the Dogwood Valley Citizens' Association

1 or from the Dogwood Valley Citizens' Association prior to  
2 the filing of the memorandum of lien for unpaid assessments  
3 as required by the Code of Virginia. The plaintiff did not  
4 receive the notice of the date, time, and place of sale  
5 required by 55-516.I(1) and that the sale price of the  
6 property was so low as to shock the conscience of the Court.  
7 There was certain discovery conducted as Mr. Maxwell  
8 indicated, a portion of which was served at the same as the  
9 initial complaint was filed in December of 199---or was  
10 served in December of 1998.

11 An amendment or an amended bill of complaint was filed on  
12 September 3rd, 1999 alleging that the DVCA had failed to  
13 comply with the requirements of Section 55-516.C. by failing  
14 to send a written notice to Winkleman that a memorandum of  
15 lien was to be filed on the property. The plaintiff never  
16 received that notice, that, DVCA failed to comply with  
17 provisions of 5---55-516.I.(1) requiring the giving of  
18 written notice of the time, date and place of sale in  
19 execution of the lien for assessment, that the plaintiff  
20 never received such notice and that the sale price of the  
21 property was so low as to shock the conscience of the Court.  
22 This was filed pursuant to a consent order and entered on  
23 September 14, 1999 between the defendant's counsel and the  
24 plaintiff's counsel. On or about January 7, 2000, plaintiff  
25 moved for leave to file his second amended bill of

1 complaint, which---and on or about February 14, the Court  
2 granted plaintiff leave to file its second amended bill of  
3 complaint. That alleges substantially the same causes of  
4 action as are alleged in the present action except for count  
5 eight which is the applicability of the Property Owners'  
6 Association Act in this case.

7           Plaintiff nonsuited the second amended bill of  
8 complaint. Shortly thereafter, they filed this bill of  
9 complaint, which alleges that DVCA adopted a special  
10 assessment of \$35 per lot at its annual meeting on July 14,  
11 1997, and that this was not properly adopted according to  
12 law and is therefore void. Now there's no question that it  
13 was adopted by the general membership meeting. One of the  
14 points that's raised in the bill of complaint is that the  
15 board of directors of the association had an obligation to  
16 make a determination that a special assessment should be  
17 imposed. Now as the Court is aware, this was raised in the--  
18 --in the minutes of the general membership meeting, annual  
19 meeting in 1992, according to the evidence, and was  
20 subsequently discussed in the board of directors' meeting--  
21 I think it was in September of that year, and the decision  
22 was made apparently at both places, but clearly by the board  
23 of directors, that any special assessment would not be  
24 imposed without the---it being adopted by the general  
25 membership. It's clear that in each case where there was a

1 special assessment, based on the evidence that we have  
2 admitted this morning and in particular with regard to the  
3 1997 special assessment which is the one we're here on  
4 specifically, that a---that a need for the special  
5 assessment was discussed by the board. They presented a  
6 proposal for special assessments giving the membership the  
7 alternatives and discussing what could be done in each case  
8 with the amount of money that would be realized and at the  
9 annual meeting in 1997, the board elected or adopted---I'm  
10 sorry, not the board, the general membership adopted the \$35  
11 assessment. I think this meets the requirements of the  
12 statute. The Court will note, the statute provides for a  
13 recall, if the board determines that a special assessment is  
14 in the best interest of the association and imposes it.  
15 The general membership has 60 days within which to hold a  
16 meeting, and by a majority vote of people present at the  
17 meeting, can rescind that special assessment. That's  
18 specifically provided for in 55-514. Recognizing this, the  
19 board and the association decided that---to do it different  
20 way, and that's the way they have done it. Now it would  
21 certainly be recognizing form over substance if---to require  
22 the board to make a decision which would be subject to  
23 recall by the membership, and---rather than presenting it to  
24 the membership. Membership was aware of this, it was  
25 discussed, and it was decided according to the minutes on



1 the---on the 1992 meeting that a special assessment would be  
2 handled in this manner. The board again reiterated that  
3 its---at its September 23<sup>rd</sup> meeting. This is precisely what  
4 was done with regard to the 1997 special assessment.

5           There's evidence in this case that as early as  
6 1994, the board of directors was pursuing collection of  
7 assessments that were due. At that time, it would not have  
8 been a special assessment because there was not one adopted  
9 until 1995, by referring cases for collections to an  
10 attorney. I note that the standard of conduct set forth in  
11 the Virginia Non-Stock Corporation Act requires that  
12 directors act in accordance with their best judgment for the  
13 best interest, or with their judgment of the best interest  
14 to the corporation. There's been no evidence that has been  
15 presented to the Court here today that the board did not,  
16 throughout all of the transactions that are before the  
17 Court, act in a manner which it believed to be in the best  
18 interest of the association.

19           THE COURT: But I don't think, as I understand Mr.  
20 Maxwell's argument, he really even addresses or challenges  
21 that. His---his point has to do with the authorization to  
22 impose this special assessment in a way that arguably  
23 violated the recorded bylaws, and the next logical extension  
24 of his argument is that there's nothing that's in the  
25 Property Owners' Association Act that gives the board the

1 independent authority to go ahead and assess it without  
2 adhering to that 90-day requirement, regardless of whether  
3 they exercised sound judgment---

4 MR. DYGERT: Your Honor, that's what I heard his  
5 argument to be today. I believe that---that what I was  
6 addressing was raised in the pleadings and that's why I  
7 addressed it.

8 THE COURT: That's fine. No, it's certainly  
9 appropriate that you bring it up. Mr. Maxwell, I didn't  
10 mean to speak for you. Did I characterize your argument  
11 correctly?

12 MR. MAXWELL: You did, Your Honor.

13 THE COURT: All right, that's fine.

14 MR. DYGERT: Now as the evidence indicates, the  
15 delinquencies were referred to my office for collection, and  
16 Kelly Hobbs was the attorney who was in charge of the  
17 collections and she proceeded as is shown by all of the---  
18 all of the documents that have been admitted in evidence  
19 today to pursue those. Now let me address the question  
20 about the bylaws.

21 THE COURT: All right.

22 MR. DYGERT: First, the bylaws provide in Article  
23 11, Assessments, and I---let me read them to Your Honor, if  
24 I may.

25 THE COURT: Tell me which tab you're at.

1 MR. DYGERT: I'm at Tab 3.

2 THE COURT: All right.

3 MR. DYGERT: And it's on page 7, Article 11,  
4 Assessments. As more fully provided in the declaration of  
5 covenants, conditions and restrictions, the owner of every  
6 lot in Dogwood Valley is obligated to pay to the association  
7 annual assessments. Failure to pay the annual assessment on  
8 or before February 1, will result in a penalty of \$50.  
9 Interest will accrue at 24% per annum on the total unpaid  
10 balance, and interest and penalties will compound month---be  
11 compounded monthly. After an account has been delinquent  
12 for 90 days, the association may bring an action at law  
13 against the owner personally obligated to pay the same, or  
14 record a lien on the property and thereafter foreclose the  
15 same against the property. Interest and costs and  
16 reasonable attorney's fees of any such action shall be added  
17 to the amount of such assessment. Now, it's clear from this  
18 language that what this refers to is the annual assessments  
19 which are provided for in the declarations that are  
20 applicable in this case, and---and going back to those  
21 documents, as the Court I'm sure is aware, there---although  
22 it hasn't been discussed this morning, there are a number of  
23 different annual assessments which are provided for in those  
24 declarations. There are several declarations. They apply  
25 to different areas of the---of the subdivision. Now, there

would be no authority under that declaration or under these bylaws to impose a special assessment, and this paragraph doesn't talk about special assessments. It talks about annual assessments as provided for in the declaration of covenants, conditions, and restrictions. And if the Court were to look at, and I just mention this at the moment, Mr. Maxwell said that we had---that the Dogwood Valley Citizens' Association had adopted a portion of this, the penalty and interest in Mr. Winkleman's case, applicable to the special assessment, but not had---but had not followed the remainder of that language. That is an inaccurate statement. If you look at the tab that has in it the Winkleman and Tinder closing documents which are Tabs 37 and 38, you will see that they do, in fact, call for the imposition of a penalty and interest. But there are two different interests there. The penalty was imposed on Mr. Winkleman not because of his failure to appear---or to pay the special assessment, but because of his failure to pay the annual assessments which he had not paid as well and are which---and which are set forth there. The two areas of interest, one is on the balance of the account and the---which is figured at 24% and I think it's \$2.88. The other is at 9% in accordance with the Homeowners' Association Act which applies to the special assessment that was not paid on time. So they didn't elect to treat these---or to treat both the special assessments

1 and the annual assessments under that paragraph and they  
2 wouldn't have been allowed to and---according to the  
3 documents and that---according to this language and that is  
4 correct.

5           Now if you go to Section 55-514, which is---  
6 provides the authority to levy special assessments,  
7 subparagraph A reads; in addition to all other assessments  
8 which are authorized in the declaration, the board of  
9 directors of an association shall have the power to levy a  
10 special assessment against its members if the purpose of so  
11 doing, etcetera, etcetera, best interest of the association  
12 and properly applied. There's been no evidence that it  
13 wasn't properly applied. There's been no evidence that it  
14 wasn't in the best interest of the association. Now, this  
15 90-day provision that is in Article 11 doesn't apply here.  
16 We have a statute which says, you've got---there is the  
17 authority to impose a special assessment, and then it goes  
18 on to say, failure of a member to pay---and this is Section  
19 B. The failure of a member to pay the special assessment  
20 allowed by subsection A shall entitle the association to the  
21 lien provided by 55-516 as well as any other rights afforded  
22 a creditor under law. It doesn't say here that it has to go  
23 back and adopt this. You can't adopt a portion of---of the  
24 bylaws because if the bylaws were in conflict with this  
25 statute, the statute would govern. If you're going to have

1 this kind of a lien and enforce it, it says you go to---to  
2 516 and you enforce it that way.

3 THE COURT: So the real disagreement or the rub of  
4 it, at least to a certain extent, is that you differ  
5 completely with Mr. Maxwell when he argues that the bylaws  
6 have to be followed before you can actually get to the  
7 remedy that is authorized by the statute. Your position is  
8 that the bylaws are to a certain extent almost irrelevant to  
9 this inquiry because 55-514 gives the homeowners'  
10 association the independent authority to levy the special  
11 assessment and as long as they do it properly under the  
12 statute, it's immaterial whether or not this 90--day  
13 provision is involved. Am I---

14 MR. DYGERT: That's exactly correct.

15 THE COURT: All right, well I'm trying to  
16 understand these arguments. All right.

17 MR. DYGERT: Now, I think that it would be  
18 possible for the homeowners' association to enact a bylaw  
19 that, so long as it did not conflict with this, had certain  
20 requirements in it. But this---this statute---or this bylaw  
21 doesn't do that. It talks about annual assessments; it  
22 doesn't talk about special assessments. Now, there's a  
23 procedure, of course, as the Court is aware, for proceeding  
24 with the annual assessments. You can bring an action, you  
25 can get a judgment, you can get a lien, you can foreclose

1 the lien and you can take the property that way, and this  
2 is---is one of the ways that the annual assessment can be  
3 foreclosed, and 516 provides two means of---of foreclosing  
4 the statute---or foreclosing the lien. But where you've got  
5 a comprehensive procedure which is set forth in---in the  
6 statute, the homeowners' association could not override that  
7 because if we come to a question of precedence, the statute  
8 is going to take preference---precedence over any provision  
9 of the bylaws, so if we put something in here that says, we  
10 don't have to do it this way, you can do it a different way,  
11 rather than following 516, that wouldn't be permissible.

12 THE COURT: Well, is it not permissible or would  
13 it just be an alternative; for example, if your argument is  
14 correct, the homeowners' association wouldn't have to follow  
15 the options available under the statute. Could they not  
16 simply pursue the remedies that are available under their  
17 bylaws if they chose to do that, under your argument? In  
18 other words, they're not necessarily mutually exclusive, are  
19 they?

20 MR. DYGERT: Your Honor, I think under the  
21 language of---of 514, they are.

22 THE COURT: Well, doesn't it say, in addition to  
23 other assessments which are authorized, in the declaration?

24 MR. DYGERT: It says it---  
25

1 THE COURT: And they shall have the---the director  
2 shall also have the power to levy a special assessment  
3 against its members if the purpose in so doing, etcetera.  
4 In other words, if the declaration provided for a special  
5 assessment for other purposes or for other means different  
6 from what's in the statute, why, under your argument---

7 MR. DYGERT: Oh---

8 THE COURT: ---couldn't they do both?

9 MR. DYGERT: ---if it were for other means.

10 THE COURT: Right.

11 MR. DYGERT: Yes.

12 THE COURT: All right.

13 MR. DYGERT: But---but if you're proceeding under  
14 this statute, I think that you have to follow the statute.

15 THE COURT: All right, I understand your point  
16 there, right, I understand that.

17 MR. DYGERT: And that---the evidence in this case  
18 is that's where---that is the manner in which and the basis  
19 upon which the homeowners' association was proceeding.  
20 Therefore, because of that and all of that argument, I don't  
21 believe that the 90-day provision applies in any way to the  
22 circumstances here. We have a procedure in the Homeowners'  
23 Association Act and we follow---and they followed it.

24 THE COURT: All right, I understand that argument.  
25 Let me ask you this question. Is there any serious argument



1 that---notwithstanding whether it applies or not, the Court  
2 will make that determination, but I take it there's no  
3 argument that, in fact, the 90-day time periods under the  
4 bylaws have been complied with. I take it that the evidence  
5 on that point is relatively clear, is it not, but if there's  
6 a dispute, I want to know.

7 MR. DYGERT: Your Honor, the evidence I believe  
8 was that the homeowners---or that the special assessment was  
9 due on the 1<sup>st</sup> of February and the lien was filed on the 30<sup>th</sup>  
10 of March and that's clearly within the 90 days, so it had  
11 not---this special assessment had not been delinquent for 90  
12 days.

13 THE COURT: Again, I understand you disagree  
14 strongly that that has any significance. I just want to see  
15 if there's any factual dispute though. All right. I'm  
16 going to let you respond, Mr. Maxwell. I know you're  
17 listening to the Court's questions, so we'll---

18 MR. DYGERT: Your Honor, 516.I uses the word unit,  
19 as Mr. Maxwell has pointed out to us this morning. Now if  
20 you look at all of the subparagraphs under subparagraph I,  
21 it talks about the property owners' association, I---in  
22 nearly every paragraph, establishing requirements that the  
23 property owners' association must comply with in order to  
24 proceed with this sale. Now, if we look back at Section 55-  
25 509, property owners' association is defined as an

1 unincorporated or incorporated entity which---upon which  
2 responsibilities are imposed and to which authority is  
3 granted in the declaration. And then if we go back further,  
4 and I realize the Court's attention has been directed to  
5 this---

6 THE COURT: No, no, no.

7 MR. DYGERT: ---on several occasions, but going  
8 back further---

9 THE COURT: That's fine.

10 MR. DYGERT: ---in that same statute, it gives the  
11 meaning---it defines declaration for purposes of the  
12 Property  
13 Owners' Association Act. Declaration means any instrument,  
14 however denominated, recorded among the land records of the  
15 county or city in which the development or any part thereof  
16 is located. If you go to the end of that sentence or that  
17 paragraph, which is---well, it's paragraph---doesn't have a  
18 number, defining declarations. It says, declaration  
19 includes any amendment or supplement to the instruments  
20 described in this definition; however, declaration shall not  
21 include a declaration of a condominium, real estate  
22 cooperative, timeshares, project or campground. Now, the--  
23 -I believe that this makes it clear that the word---the use  
24 of the word, unit, there is probably an error. It's my  
25 understanding that much of the Homeowners' Association Act

1 was taken from the Condominium Act. I acknowledge what Mr.  
2 Maxwell has pointed out; however, there is no discussion in  
3 the Homeowners' Association Act about units. That is the  
4 term used in the Condominium Act. And if you look at I, and  
5 all the subparagraphs, as I said before, it talks about the  
6 property owners' association. Under the definition of a  
7 property owners' association, they wouldn't have any units  
8 to sell.

9 THE COURT: Maybe that's what the legislature  
10 meant.

11 MR. DYGERT: Your Honor, I---I think you have to  
12 construe the statute to mean what was intended, and one of  
13 the---one of the prerogatives of the Court, I think, in any  
14 case is to look at a statute and try to glean from it what  
15 the intent of the legislature was when they enacted it, and  
16 in this case, I submit that I think it is quite clear on  
17 the face of this---of the Homeowners' Association Act in  
18 that paragraph, I in particular, that what is meant here is  
19 a---that the Homeowners' Association Act has some---or the  
20 homeowners' association has the authority under this  
21 paragraph to sell a lot within that subdivision over which  
22 it has some jurisdiction.

23 THE COURT: Well, if that's what they intended, do  
24 you concede that's not what they said, or do you wish not to  
25 make that concession? I'm reading, may sell the unit.

1           MR. DYGERT: The distinction that Mr. Maxwell drew  
2 is certainly there. It talks about a unit and it talks  
3 about a lot. And I believe that since the homeowners'  
4 association can get a lien only on a lot within that  
5 development, that that is what is meant because the statute  
6 would have no meaning otherwise.

7           With regard to the equities involved here, Your  
8 Honor, we have a situation where Mr. Winkleman ignored the  
9 notices that he received from the homeowners' association,  
10 that his dues were delinquent, his special assessment was  
11 delinquent. He took no action whatsoever over the extended  
12 period of time described in these documents to contact the  
13 homeowners' association, to contact Ms. Hobbs, who was  
14 writing to him telling him he was delinquent, telling him  
15 that a lien was being filed, telling him that he was going  
16 to---or his property was going to be sold. It seems that  
17 he---although he has testified today that he was short of  
18 funds at the time, did not have any reason not to contact  
19 the association or to contact Ms. Hobbs, so he sat on his  
20 hands. His first objection, his first communication---he  
21 sent in a check for less than the full amount of the account  
22 that was due as a result of things prior to the special---  
23 the \$35 special assessment, which was not sufficient to pay  
24 it off. He didn't offer any excuses, he just sent the  
25 check, according to the evidence.                   I believe that

1 one statement made by Mr. Maxwell is---is somewhat in error  
2 in that he said there's un rebutted evidence to the value of  
3 this---of these lots. The assessed value according to the  
4 evidence I believe, is \$13,500 or \$600, and we don't contest  
5 that that is not the value because we didn't put any  
6 evidence on to the contrary. Under the law of Virginia, the  
7 Greene County assessor is required to assess this property  
8 at the fullest market value of the property, so I think the  
9 Court has to take that into consideration. Now, the  
10 procedures that are set forth in the Act were followed. The  
11 only deficiency is the price---or---yeah, deficiency. The  
12 only issue is the price. There's no evidence of misconduct,  
13 collusion, inequitable conduct or anything else. A number  
14 of notices were sent to Mr. Winkleman, which he ignored. He  
15 didn't bother to contact Ms. Hobbs or the association. He  
16 didn't go to the sale. He was told that there was---or that  
17 there was a letter that was sent telling him there was going  
18 to be a sale, including a copy of the advertisement. He  
19 didn't pick up his mail. He didn't offer any excuse for not  
20 picking it up. He just said he didn't get it. Your Honor,  
21 55-156 establishes the procedure to be followed and  
22 according to all of the evidence which was admitted by  
23 stipulation, the procedure under 5---55-516 was followed.  
24 The statute doesn't say anything about whether the price has  
25 to meet a certain standard. It just says you follow these

1 procedures, you can sell the property. I can find no cases  
2 reflecting a decision by a court of record in Virginia  
3 relating to this particular issue. Similar issues  
4 have arisen in reported cases concerning the insufficiency  
5 of price when property is sold through foreclosure of a deed  
6 of trust.

7 THE COURT: A number of cases on that. I'm  
8 generally familiar with those.

9 MR. DYGERT: However, the cases that---that I have  
10 found or that I looked at and I would cite to the Court,  
11 indicate that there's no ba---that inadequacy of price  
12 itself is not sufficient, that unless the circumstances are  
13 such to raise a presumption of fraud, and the Cromer---the  
14 cases I would cite to the Court are Cromer v. DeJarnette,  
15 1949 case, 188 VA, 680; Hopkins v. Givens, 119 VA, 1916; and  
16 Perdue v. Davis, 176 VA, 102, 1940. Mr. Maxwell argues that  
17 the statute itself is unconstitutional. The statute  
18 contains provisions which are substantially similar---the  
19 section of the statute that was followed by Dogwood Valley  
20 Citizens' Association in this case, contains provisions for  
21 notice and sale substantially similar to those which are  
22 included in the deed of trust, real estate foreclosure  
23 statutes. The question is whether or not notice reasonably  
24 intended to give---or actions reasonably intended to give  
25 notice satisfy the due process requirement. In the case of

1 a deed of trust lien and the foreclosure thereof, you've got  
2 a contract between the homeowner and the creditor. There's  
3 no judicial intervention that is provided for in those  
4 statutes. The trustee is allowed to proceed to foreclose in  
5 accordance with the Virginia statutes that provide for  
6 notice to the individual, advertisement, public sale. The  
7 same kinds of provisions are included in Section 5----55-  
8 516.I and they were followed in this case. That  
9 arrangement, while it is statutory, grows out of a  
10 contractual arrangement between the homeowner and the  
11 homeowners' association, i.e., the developer. Because where  
12 you've got a---a homeowners' association, you've got a---a  
13 contractual arrangement to a degree between the homeowner  
14 and the homeowners' association. Now had the legislature  
15 intended that there be only the use of a court action, a  
16 judicial action to foreclose those liens, it could have left  
17 the statute as it chose. It did not do so. The question  
18 then becomes, has---is there substantial proof before the  
19 Court today to determine that by the required level or  
20 standard of evidence, that the statute is unconstitutional.  
21 And we believe that there is not.

22 In the bill of complaint, there is an allegation  
23 that the statute applies retroactively. Now that was not  
24 argued by Mr. Maxwell today, although he brought out the  
25 dates of the purchase of the property. Only that portion of

1 the statute which doesn't conflict with other recorded  
2 documents is applicable. The Fairfax County Circuit Court  
3 has held that the provisions of the Virginia Property  
4 Owners' Association Act were intended to and do apply  
5 retroactively to the extent that they do not conflict with  
6 the provisions of the declaration and gave full force and  
7 effect in a case there, Maplefield Homeowners' Association  
8 v. Basham---Basham. It's 194 W.L.1031470, and this is a  
9 1994 case, 35 VA Cir. Ct., 311.

10 Section 55-508 is the section of the Property  
11 Owners' Association Act that the Court was applying in that  
12 case and it provides that the Property Owners' Association  
13 Act shall not be  
14 construed to collect---to affect the validity of any  
15 provision of any prior declarations. However, to the extent  
16 the declaration is silent, the provisions of the chapter  
17 shall apply. Now, there's no provision in any of the  
18 declarations that affect Dogwood Valley for special  
19 assessments, so we have a situation where the special  
20 assessment legislation is applying in an area that was  
21 silent with regard to that issue. I don't think that it---  
22 although it does appear to apply retroactively in the sense  
23 that it applies to property that was owned prior to the---  
24 and in a development prior to the enactment of the statute.  
25



1 It appears that it does not contravene the---any provision  
2 of the statute.

3 The Homeowners' Association Act in that regard, I  
4 could not find any other case that has discussed the uncon-  
5 -or the constitutionality of the Act. Anderson v. Lake  
6 Arrowhead, which has been cited repeatedly to the Court,  
7 Lake Monticello Owners' Association v. Jared L. Lake, which  
8 has also been cited in the applicability of the statute,  
9 both considered the statute and applied it. It did not  
10 appear from those discussions that there was any question  
11 raised specifically about constitutionality, but the Court  
12 in both of those cases applied the Act as though it were a  
13 constitutional Act. All actions of the General Assembly---I  
14 think I've already said this, are presumed to be  
15 constitutional. Courts will declare an enactment  
16 unconstitutional only when it is clearly repugnant to some  
17 provision of the state or federal constitutions. The party  
18 challenging the enactment has the burden of proving its  
19 unconscionability beyond a reasonable doubt and for this  
20 proposition I would cite Hess v. Snyder Hunt Company at 240  
21 VA, 49, a 1999 case, and a case cited by Mr. Maxwell,  
22 Etheridge v. Medical Center Hospitals, 237 VA, 87, a 1989  
23 case.

24 The---I think it's clear here that we have a  
25 legitimate public interest. The public interest is the

1 maintenance of the value of the property, the maintenance of  
2 the common areas within the subdivision, and I believe that  
3 providing a means of raising funds to do that is  
4 legitimately and rationally connected.

5           Now we have a number---we have Mr. Brown's  
6 testimony with regard to the authority that was---of the  
7 board and the actions taken by the board. We have a number  
8 of minutes of the board of directors which talk about  
9 various things. And I won't go over each of them in detail.  
10 One of the things talked about and decided by the board was,  
11 and I think this is clear that they ---in order to do a  
12 special assessment, it would be referred to the general  
13 membership for a decision. There's clear discussion of the  
14 board, report by the treasurer in some cases, of pursuing  
15 the collection of delinquent assessments and delinquent road  
16 fees, annual assessments and the special assessments. I  
17 know of no requirement that would require a lay board to  
18 have made detailed records in its minutes of the decisions  
19 that it makes with regard to these things. If you take as a  
20 whole all of these references in the various minutes, I  
21 think it is clear that the association board of directors  
22 had made the decision to pursue and collect by whatever  
23 means were necessary. They had hired an attorney. They had  
24 turned the---the delinquent accounts over to him for  
25 collection. The president of the association acting in his

1 words, under the authority of the board, made the direct  
2 arrangements. He arranged and signed the memoranda of lien.  
3 He authorized the advertisement. He was present at the  
4 sale. I recognize that it is to the disadvantage of Mr.  
5 Winkleman that this sale occurred, but again I say, he sat  
6 on his hands. He took no action when he ought to have been  
7 taking action and when a reasonable person, I believe, would  
8 have taken action. In looking at one of the letters which I  
9 read to the Court when Mr. Winkleman was testifying, he was  
10 specifically told that if he didn't pay the special  
11 assessment, that his property would be sold. So I think the  
12 equities all fall on the side of the association here. The-  
13 --the minutes aren't all that they could be now in  
14 retrospect in looking at them from the point of view of  
15 proving this case. On the other hand, if you look at them  
16 and consider the fact that you've got a group of homeowners  
17 who are all volunteers, who are acting as the board of  
18 directors, who are attempting to collect the money from the  
19 special assessments that were imposed by the membership for  
20 the purpose of maintaining the association roads and common  
21 areas for the benefit of all the members. And look at what  
22 is recorded in those minutes. It's clear that the topic of  
23 financing, the topic of assessments came up. It's clear  
24 that---that a decision was made to move forward with  
25 collections. Now there's no mention of Mr. Winkleman's

1 name, but as the Court will note from the advertisement,  
2 there were substantially more people who had liens filed  
3 against them, their property was scheduled for sale, many of  
4 whom came in and paid or made excuses. We don't know  
5 exactly what happened, but their lots were taken off the  
6 list and the property wasn't sold. Eleven were sold  
7 according to the evidence. Again, I find no circumstances  
8 here which would indicate any type of inequitable conduct on  
9 the part of the board in pursuing the collection of the  
10 delinquent special assessments in this case nor does it  
11 appear, since there were---was active bidding on these lots  
12 as well as the others, that there was any reason to believe  
13 that they didn't bring what would be expected at a  
14 foreclosure sale of this nature. Now, I don't have an  
15 expert here to testify to it, but I suspect the Court is  
16 aware that forced sales almost never result in realizing the  
17 full value of property. Thank you.

18 THE COURT: All right, Mr. Maxwell, I'll let you  
19 respond.

20 MR. MAXWELL: Thank you, Your Honor. Mr. Dygert's  
21 and my research match up. I found no cases in Virginia  
22 which have reported on the issue of the constitutionality of  
23 55-516.I, and I'll stress that is---

24 THE COURT: I'm not aware of any.

25

1 MR. MAXWELL: ---that's the section, not the whole  
2 (unintelligible), just that. Also, Judge, just to flesh in  
3 a little bit, the Maplefield case, it deals with the issue  
4 in a somewhat strangely worded section that says that it's  
5 retroactive---well, first, let's start the---

6 THE COURT: There's are a number of strangely  
7 worded sections of this one, but go ahead and refer to that  
8 one.

9 MR. MAXWELL: The---the POAA says it doesn't apply  
10 to homeowners' associations with dues of less than \$150;  
11 however, it does say that it does apply to homeowners'  
12 associations created before July 1, 1991 whose assessments  
13 are less than a \$150, and that's what Maplefield says.

14 And then he---Mr. Dygert is correct, I put the  
15 issue in my pleadings, I did not raise it because the  
16 question becomes, is ---where a section is adopted for sale  
17 on July 1 of 1997, against a property owner who acquired  
18 their property in 1980, on an assessment that was set---that  
19 was approved in June 14 of 1997, what effect is that, and I  
20 chose to drop that issue. It was too much of a conundrum to  
21 get into. Then dropping back again, Mr.---Mr. Dygert would  
22 have you construe the statute. I've given you case law that  
23 says you have to strictly construe it. Mr. Dygert talks  
24 about 514 and somehow there's a conflict between that  
25

1 provision and the bylaws; 514 talks about levying the  
2 assessment.

3 THE COURT: Well, that's the issue. Does that  
4 section give the board here the independent authority to  
5 levy the special assessments, irrespective or beyond what  
6 might be in the bylaws that exist?

7 MR. MAXWELL: Well, I think they can levy the  
8 assessment. We're not talking about that, Your Honor.  
9 We're talking about the enforcement of the lien which is in  
10 516, which---

11 THE COURT: Right.

12 MR. MAXWELL: ---requires the filing of the  
13 memorandum and the proceeding to sale. And Mr.---Mr. Dygert  
14 made a very clever argument. We look in---we look on page 7  
15 of the bylaws to---to this language about the annual  
16 assessment.

17 THE COURT: Annual assessment, all right, I've got  
18 that. Go ahead.

19 MR. MAXWELL: Yeah. Well, but---but I want---but,  
20 Judge, I'd like you, though, to turn to page 5.

21 THE COURT: I will, that's fine. You mean Tab 5?

22 MR. MAXWELL: No.

23 THE COURT: Page 5.

24 MR. MAXWELL: Page 5 of Tab 3.

25

1 THE COURT: We'll go back to that then. I want to  
2 have this in front of me so I can understand your argument.

3 MR. MAXWELL: And this is actually on page 4. It  
4 says, it shall be the duty of the board of directors to---

5 THE COURT: Just a moment, let me get to that.

6 MR. MAXWELL: Yes, sir.

7 THE COURT: Page 4 of Tab 3?

8 MR. MAXWELL: Yes, under Section 2.

9 THE COURT: All right, it shall be---I'm there,  
10 all right.

11 MR. MAXWELL: And then it says, #3, cause a notice  
12 of the lien to be recorded against any property for which  
13 assessments are not paid within 90 days after the due date  
14 or to bring an action against, etcetera. Doesn't make any  
15 distinction in here between regular---even if there was a  
16 distinction, which I disagree with, there's no distinction  
17 in here about it.

18 THE COURT: Tell me again your argument, though,  
19 just so I understand it, and forgive me for continuing to  
20 return to it, but I'm trying to understand it. Tell me  
21 again why the---if it applies, and the Court has not made  
22 that ruling at this point, but if the Property Owners'  
23 Association Act applies, why is it that by not following the  
24 90-day requirement the Act itself doesn't give the

25

1 independent authority to both assess the lien and---and then  
2 enforce it under the statute?

3 MR. MAXWELL: I'm---I'm not saying that---assuming  
4 that the POAA does apply, they have the---they have the  
5 abil---the board has ability to levy an assessment.

6 THE COURT: I understand. All right.

7 MR. MAXWELL: Now, levying assessment as the board  
8 meets and says, we're levying a \$100 assessment.

9 THE COURT: Understand that.

10 MR. MAXWELL: Okay. So then the question is  
11 enforcement, and---and what are they going to do and when  
12 are they going to do it? 55-516 says---

13 THE COURT: Once perfected, the association shall  
14 have a lien.

15 MR. MAXWELL: Yeah, and---and how do you perfect  
16 it?

17 THE COURT: So that's the issue then, that's---

18 MR. MAXWELL: You perfect by filing a memorandum  
19 of lien, and who---

20 THE COURT: In other words---

21 MR. MAXWELL: ---decides to do that? The  
22 corporation doesn't have to follow its own rules when it  
23 talks about perfecting a lien?

24 THE COURT: That's what I'm trying to understand.

25 MR. MAXWELL: Yeah---



1 THE COURT: In other words, it's the perfection  
2 process then is what you're really getting down to.

3 MR. MAXWELL: Yes, sir.

4 THE COURT: All right. Under 55-516.

5 MR. MAXWELL: Right.

6 THE COURT: And the argument then is that there's  
7 no issue that the authority to levy the special assessment  
8 independent of the bylaws is there. You concede that 55-514  
9 grants that, but once the assessment itself is levied,  
10 before the lien is perfected for purposes of enforcement,  
11 the bylaws have to be followed.

12 MR. MAXWELL: Yes, sir.

13 THE COURT: All right. I just want to make sure I  
14 understand. Not making any rulings, I just want to  
15 understand the arguments. All right.

16 MR. MAXWELL: That's the conclusion of my  
17 argument, Your Honor, my rebuttal.

18 THE COURT: On that point, that's fine. All  
19 right. No other rebuttal on any of the other points? What  
20 about his argument about this unit problem that surfaced,  
21 his argument being that if you---if you read 55-516.I, the  
22 only way to make any sense of what they mean when they say  
23 may sell the unit, is to read that particular paragraph and  
24 then you also have to look at the numbered paragraphs after  
25 that, which is---he then points out refers you back to the

1 definition of property owners' association declaration, the  
2 long and short of it being that, if it's a property owners'  
3 association, it really doesn't have any meaning as far as  
4 condominiums are concerned, and if they're referring to  
5 property owners' associations, that somehow what they really  
6 meant when they said unit was lot, and a plot, a parcel of  
7 land. Do you any response to that?

8 MR. MAXWELL: Well, Your Honor, to repeat myself,  
9 referring to Judge Wetzel's decision in Matlack ---

10 THE COURT: Derogation of common law and---

11 MR. MAXWELL: Yeah, I mean it says what it says,  
12 and---and the legislature, where it's in derogation of  
13 common law, as the POAA is---is strictly construed. Going--  
14 -going beyond that, though, a property owners' association,  
15 I believe, is---is defined---let me---

16 THE COURT: That's defined in the---that's the  
17 last definition I think in 55-509, isn't it?

18 MR. MAXWELL: Yeah. I guess he has a point. I  
19 mean I---I haven't looked at that, but it says---it says, is  
20 granted in the declaration, if we get technical, small d  
21 instead of capital D for the---for the term, but---and---and  
22 then you'll---well that's---that's the first part in the  
23 sentence. And quite candidly, Your Honor, without---I  
24 haven't really looked at that.

25 THE COURT: That's all right.

1 MR. MAXWELL: And I---I can't---I honestly can't  
2 address that---that leap that says that since a declaration  
3 doesn't include a declaration for a condominium, what that--  
4 -what effect that has. There may be other provisions in the  
5 POAA that make an effect of that which I haven't looked at.

6 THE COURT: Well, that's---that's fine. It would  
7 be unfair to expect you to pursue it further. I know you've  
8 heard of it for the first time and I'm not trying to put you  
9 on the spot. All right. All right, any other rebuttal to  
10 his arguments?

11 MR. MAXWELL: None, Your Honor.

12 THE COURT: All right.

13 MR. DYGERT: Your Honor, I know I'm out of turn,  
14 but I'd like to address the Court.

15 THE COURT: No, I'll let you---I will let you do  
16 that and I'll let you respond if you want, Mr. Maxwell  
17 (sic), since you have the burden of (unintelligible).

18 MR. DYGERT: What I was talking about or was  
19 raising the question about the perfection of the lien in  
20 this case---

21 THE COURT: All right. I'll let you address that.

22 MR. DYGERT: ---under the statute. And if you  
23 look at 55-516.B, it says, the association in order to  
24 perfect the lien given by this section, shall file before  
25 the expiration of 12 months from the time such assessment

1 became due and payable, in the Clerk's office of the county  
2 or city in which such development is situated, a memorandum  
3 verified by the oath of the principal officer of the  
4 association, or other officers, which contains the  
5 following. And then it specifies exactly what is to be in  
6 that memorandum, so that tells us within this statute how  
7 one perfects the lien. And it---and it refers to a period  
8 of time that says you have to do it---within a year. It  
9 doesn't say go to your bylaws and look at them. So I---I  
10 think you've got a complete procedure here.

11 THE COURT: All right. All right, Mr. Maxwell,  
12 you may respond to that if you wish. What about that  
13 argument, that the statute actually tells you how a lien for  
14 a special assessment is perfected here and that it makes no  
15 reference at all to the bylaws, and since the statute  
16 authorizes the levy itself and sets forth how the lien  
17 should be perfected, why, that's what controls and governs  
18 here?

19 MR. MAXWELL: Well, of course, if I was going to  
20 argue the---what the legislature's intent was, which I don't  
21 believe we do, but of course, they would say that of course  
22 the corporation has to follow some bylaws. But that being  
23 said, Your Honor, it---it's just a statute of the  
24 limitations saying when they can do it. You know, if---if  
25 we had a situation here where they had to wait 18 months

1 before---after it was due to do it and they couldn't do it,  
2 then---then maybe that would be an argument, but that's not  
3 the case here.

4 THE COURT: All right. Anything further?

5 MR. DYGERT: Nothing further, Your Honor.

6 THE COURT: All right. All right, counsel, the  
7 Court is mindful that both counsel and the parties are  
8 anxious to have this case concluded and are expectant that  
9 the Court will rule on what potentially consists of a number  
10 of issues, that it may only consist of one or two depending  
11 on the Court's resolution of the application of the Virginia  
12 Property Owners' Association Act. The fact of the matter  
13 is, though, in order to be fair to both parties, why, we  
14 have had a rather lengthy trial, perhaps consisting of more  
15 legal argument than ore tenus evidence. Nevertheless, the  
16 Court has a notebook of multiple documents that have been  
17 quite skillfully referred to throughout the course of the  
18 day by counsel. It's going to require the Court to review  
19 carefully. The Court has studied but needs to stay again  
20 the Virginia Property Owners' Association Act in particular.  
21 Both sides have done an excellent job of articulating with  
22 some degree of precision some of the issues that need to be  
23 addressed if the Court determines that this Act applies, so  
24 that has to be studied. If it gets to that point, this  
25 issue about the meaning of the word, unit, has got to be

1 addressed by the Court, so what the Court is coming to, is  
2 that it is going to take at least a couple of hours to get  
3 through these materials and think them through and make a  
4 determination as to how the Court is going to handle the  
5 matter, and rather than try to do that off-the-cuff or  
6 without giving it proper reflection, the Court is going to  
7 take the matter under advisement. However, having said  
8 that, let me assure counsel and the parties the Court is not  
9 going to wait months before it determines how to proceed.  
10 The Court has a very strong handle on these issues and will  
11 in the very near future be prepared to resolve all aspects  
12 of the litigation regardless of what ruling the Court might  
13 make on the Virginia Property Owners' Association Act, so  
14 what the Court is going to do is take the matter under  
15 advisement. Counsel, what the Court also will do is rule  
16 from the bench. I would simply at this point ask you if you  
17 have your calendars with you. Let's simply pick a date  
18 sometime in the near future and the Court will simply  
19 announce its decision or decisions, depending on the  
20 resolution of the seminal issue.

21 MR. DYGERT: Your Honor, I do not have---

22 THE COURT: All right.

23 MR. DYGERT: ---but I can call my office.

24 THE COURT: That---that's fine. Mr. Maxwell?

1 MR. MAXWELL: Your Honor, I---I don't have it and  
2 could Mr. Dygert and I just get with your office---

3 THE COURT: Sure.

4 MR. MAXWELL: ---and arrange a time---

5 THE COURT: Certainly, uh-huh (indicating yes).

6 MR. MAXWELL: ---to do that.

7 THE COURT: Certainly. You may do that. I'll  
8 allow counsel to do that. What we can do is, we'll handle  
9 it on this basis. I will ask counsel to confer with one  
10 another and submit to my office all of their available dates  
11 for the next 30 to 60 days. It won't take more than that, I  
12 may even be able to resolve it sooner than that, but give me  
13 all of your available dates in all jurisdictions for the  
14 next 30 to 60 days, because if it's convenient and I've  
15 resolved it, rather than make counsel and the parties wait,  
16 I'll simply have you come to another jurisdiction and I'll  
17 make my ruling there. So I would suggest that you confer  
18 with one another and simply submit those dates to my office,  
19 and then I'll schedule a brief hearing simply to rule. Mr.  
20 Dygert?

21 MR. DYGERT: Your Honor, in order to get this done  
22 expeditiously because I'm sure everyone would like it to be  
23 done expeditiously, one of the problems with submitting  
24 dates is, if we don't what time during the day, we have to  
25 block a half day---

1 THE COURT: Well, what I intend to do is once I  
2 get all of your dates, simply let me know if you're  
3 available on this day during the entire day or this day just  
4 during the morning or this day in the afternoon, and I will  
5 simply give you a date and a time---

6 MR. DYGERT: How long do you---does the Court  
7 anticipate this hearing will be?

8 THE COURT: Twenty to 30 minutes at the most. It's  
9 simply a matter of---going to take me a number of hours to  
10 get to that 20 or 30 minutes, but once I've organized my  
11 thoughts and made my decisions, why, it won't take a great  
12 deal of time to enunciate it, perhaps 30 minutes at the most  
13 would be my best estimate. We're not going to hear any  
14 further argument. I've heard argument up to this point.  
15 I'm simply going to take on my responsibilities now and  
16 resolve the case. In any event, does that address your  
17 inquiry?

18 MR. DYGERT: Yes.

19 THE COURT: And I'll certainly give you a time  
20 that's reasonably close. I'm certainly mindful that counsel  
21 are busy. For example, what I typically do and I think both  
22 of you are aware of it, is I use a morning slot and an  
23 afternoon slot and I usually set cases at either 9:30 or  
24 1:30, and I try to get to them as quickly as I can, but if I  
25 set it---for example, at the 1:30 slot, why, certainly at



1 about that time or at some point before the afternoon  
2 concludes, I'll take care of the matter and have it handled,  
3 so I'll ask counsel to do that. Now in that regard, I'll  
4 let you know that the best thing to do would be to simply  
5 fax those dates to my Orange office. That would be the best  
6 way to get the information to me. Confer with one another  
7 on that, and I will then schedule a hearing promptly and  
8 notify both of your offices. I will keep in my possession,  
9 with the cooperation of the Clerk, the file itself as well  
10 as all of the other exhibits. I'm also mindful that there  
11 is a related case. I will resolve that case at the same  
12 time and on the same day. I'll make a ruling in that  
13 particular case. That one is also pending and I have the  
14 file on that case also. Does either side have any questions  
15 about how the Court intends to proceed? Mr. Maxwell, Mr.  
16 Dygert?

17 MR. DYGERT: No, Your Honor.

18 MR. MAXWELL: No, Your Honor.

19 THE COURT: Let me make this observation. This  
20 Court through the years, of course, has been involved in  
21 various aspects of litigation and this Court has tried and  
22 seen tried many different cases of various, different types.  
23 I will state now before I announce any ruling that I find  
24 that this particular case has been a case that has been  
25 among the most well-organized, well-researched and well-

1 presented cases that I have seen, and I'd like to compliment  
2 equally both Mr. Maxwell and Mr. Dygert for that. In  
3 addition, the cooperation that they have shown with one  
4 another in bringing before the Court what actually is in  
5 dispute while at the same time preserving vigorously the  
6 disagreement they have on behalf of their respective  
7 clients, has been very admirable. The Court doesn't always  
8 make that observation, but it should be said here. This  
9 case has been very well put together and I commend both  
10 sides for that. All right, is there anything else then, Mr.  
11 Maxwell, you'd like addressed?

12 MR. MAXWELL: No, Your Honor.

13 THE COURT: Mr. Dygert, anything else you'd like  
14 addressed?

15 MR. DYGERT: No, Your Honor.

16 THE COURT: All right, I will leave the file and  
17 the exhibits on the bench. I'll retrieve them later. This  
18 being the last case on the Court's docket then, Court will  
19 stand adjourned for the day. I'm going to begin my work  
20 this afternoon on this matter.

21 HEARING CONCLUDED.  
22  
23  
24  
25

WITNESS the following signatures and seals.

Winifred S. Haney (SEAL)  
Winifred S. Haney

Sallie M. Haney (SEAL)  
Sallie M. Haney

STATE OF VIRGINIA

COUNTY OF ALBEMARLE: to-wit:

I, Robert F. Rutschow, a Notary Public in and for the County aforesaid, in the State of Virginia, do certify that Winifred S. Haney and Sallie M. Haney, whose names are signed to the foregoing writing bearing date on the 12th day of November, 1968, have each acknowledged the same before me in my County aforesaid.

My Commission expires August 6, 1972

Given under my hand this 22nd day of November, 1968.

Robert F. Rutschow  
Notary Public

VIRGINIA: At the Clerk's Office of the Circuit Court of Greene County, Dec 7 1968 This deed was this day received in said office, and, upon the certificate of acknowledgment thereto annexed, admitted to record, at 2:00 o'clock PM, after payment of \$ 11.00 tax imposed by Sec. 58-54 (b).

Tax: \$16.50 Transfer Fee \$ 1.00

THIS AMENDED DEED OF DEDICATION, made and entered into this 1st day of November, 1968, by Kermit R. Gallihugh, individually, and as Agent and Attorney in Fact for Barbara A. Gallihugh, his wife, Bradley K. Haynes and Betty G. Haynes, his wife,

WHEREAS, by Deed of Dedication dated the 11th day of October, 1968, recorded in the Clerk's Office of the Circuit Court of Greene County, Virginia, in Deed Book 41, at Page 150, the said Bradley K. Haynes and Betty G. Haynes, his wife, and Kermit R. Gallihugh and Barbara A. Gallihugh, his wife, imposed certain restrictions and covenants on a certain tract of land described therein, containing 371 acres, more or less in the Stanardsville Magisterial District of Greene County, Virginia, on South River known as the Deane property; and

WHEREAS, there is incorporated by reference in said deed a plat and survey made by William S. Roudabush, Jr., C.L.S., dated September 1968, dividing said land, or a portion thereof, into lots and designated in said deed and on said plat as a subdivision to be known as "Dogwood Valley"; and

WHEREAS, the aforesaid plat made by William S. Roudabush, Jr., covers only a tract portion of the 371 acre/known as Deane property, referred to in said Deed of Dedication, the portion covered by the Roudabush plat being designated as "Section One of Dogwood Valley" and recorded in the Clerk's Office aforesaid in Plat Book 1 at Page 218; and

WHEREAS, additional surveys and plats have been made by W.T. Whitmore, C.L.S., covering other portions of the aforesaid Deane property, dated October 26, 1968, designated as "Section #2, Dogwood Valley", hereunto attached and made a part of this Amended Deed of Dedication, and incorporated herein by reference :  
and

*Es. Rutschow & Assoc. Perry, Clerk, 12/16/68*

WHEREAS, additional surveys and plats have been and will be made of other lands than the aforesaid ~~Deane~~ property, but which will also be known as "Dogwood Valley" and which will be designated as Section 3, 4, and so forth, references to the source of title to such land appearing and to appear on said plats; and

WHEREAS, the undersigned owners of the aforesaid Deane property, and such other property as may be hereinafter, from time to time, surveyed, platted, subdivided and designated by the undersigned owners of "Dogwood Valley" or any portion or section thereof, do hereby announce their intentions to hereafter make deeds to said real estate or subdivision thereof, and in said deeds to refer to the aforesaid plat or plats, survey or surveys, of "Dogwood Valley"; or portions or sections thereof, whether already recorded or hereafter to be recorded, for the purpose of identifying the said real estate intended by said deeds to be granted and conveyed.

NOW, THEREFORE, THIS AMENDED DEED OF DEDICATION

WITNESSETH:

That for and in consideration of the premises, the said parties hereto do hereby subdivide the aforesaid tract of land containing 371 acres, more or less, known as the Deane property into lots, streets and public ways as shown on the plat or plats, survey or surveys of "Dogwood Valley", or portions or sections thereof, whether already recorded or hereafter to be recorded, and in addition thereof such other property as may be hereafter from time to time, surveyed, platted, subdivided and designated by the undersigned owners as "Dogwood Valley" or any portion or sections thereof, whether now owned or hereafter to be acquired, in addition to the said Deane property, and do hereby dedicate said subdivision, to be known as "Dogwood Valley" subject to the belowmentioned restrictions, covenants and conditions: which are hereby imposed upon said subdivision, known as "Dogwood Valley".

And further, for the purpose of increasing the value of the subdivision known as "Dogwood Valley", and any portion or section thereof, whether already surveyed, platted, and recorded, or hereafter to be surveyed, platted and recorded, the following restrictions, covenants and conditions are hereby imposed on said lots and shall run with the land, and shall be binding upon the purchasers of all of said lots in "Dogwood Valley", their successors and assigns to-wit:

1. The grantors hereby dedicate to the public, for public use forever, all the streets and right of ways shown on the attached plat and plan, and title to the land in said streets and rights of way is hereby transferred to the County of Greene as provided by Section 15-1-478, Code of Virginia, 1950, as amended.

2. Neither the proprietors and owners of the subdivision, nor the purchasers of said lots, will request the Board of Supervisors of Greene County, Virginia, or the Virginia Department of Highways, that the said Streets in said subdivision be taken into the highway system unless and until said lot owners and proprietors have brought said streets up to the specifications of the Virginia Department of Highways.

3. The grantors may assess each lot owner a sum not to exceed Fifteen Dollars (\$15.00) per year, per lot, for the use, upkeep and maintenance of the roads within all sections of said subdivision, and such other common facilities as

The right and responsibilities as created by this paragraph may be delegated by the grantors to a Committee of lot owners within said subdivision, appointed by the grantors, and any assessment made pursuant to this paragraph shall constitute a lien on each and every lot within said subdivision until paid, and payment of said assessment and levy shall be payable on or before the 31st day of January next following the purchase of said lot, and on or before the 31st of each year thereafter.

Where more than one lot is owned by the party or parties, in the event of a resale by them or one or more of said lots, then the obligation to pay said road maintenance fee shall be binding on the purchaser or purchasers of said lots without any provisions therein specifically so provided.

4. The grantors reserve unto themselves, their heirs and assigns, the right to erect and maintain telephone and electric light poles, conduits, equipment, sewer, gas and water lines, or to grant easements or rights of way therefor, with the right of ingress and egress for the purpose of erection or maintenance on, over, or under a strip of land fifteen (15) feet wide at any point along the side, rear or front lines of any of said lots.

5. No building of a temporary nature shall be erected or placed on any of said lots except those customarily erected in connection with building operations, and in such cases, for a period not to exceed six months.

6. Not more than one residence shall be erected on any one lot, and it shall contain a minimum of 480 square feet of main floor. This shall not include basement, garage, porch or carport. No part of any lot sold by the grantors may be sold or used as a road or as a right of way to any property outside of said subdivision. This restriction shall not apply until said lots are sold by the grantors.

7. All of said lots shall be used for residential purposes only, and any garage or barn must conform generally in appearance and material with any dwelling on the said lot.

8. No signs, billboards, or advertising of any nature shall be erected, placed or maintained on any lots herein designated, nor upon any building erected thereon, except directional and information signs of grantors.

9. No buildings shall be erected closer than 10 feet to any street or road, nor closer than 15 feet to the side or rear of the lot line, with the exception that where two or more lots are used together for the construction of one dwelling, then said 10 foot set back shall apply only to outside lines.

10. All toilets constructed on said lots shall conform to the regulations of the Virginia State Health Department, and of the County of Greene, Virginia.

11. No lot in said subdivision may be re-subdivided.

12. The use of trailers within said subdivision are prohibited, except for the use of temporary camping trailers.

13. No trucks, buses, old cars or unsightly vehicles of any type or description may be left or abandoned on said lots.

14. Nothing herein is to be construed to prevent the grantors from placing further restrictions or easements or amending those in existence on any lot in said subdivision which shall not have already been conveyed by them.

15.If the parties hereto,or any of them,or any of them ,or their heirs or assigns,shall violate or attempt to violate any of the covenants herein,it shall be lawful for any other person or persons owing any real estate situate in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant,either to prevent him or them from so doing or to recover damages or dues for such violation.

16.Invalidatation of any one of these covenants by judgement or Court Order,shall in no wise affect any of the other provisions which shall remain in full force and effect.

This Amended Deed of Dedication is executed by Kermit R.Gallihugh in his individual capacity and as agent and attorney in fact for Barbara A.Gallihugh, his wife, and Bradley K.Haynes and Betty G.Haynes,his wife,pursuant to a Power of Attorney dated October 11,1968, and recorded in the Clerk's Office in Deed Book 41 at Page 149,and as such the said Kermit R.Gallihugh certifies that the subdivision known as "Dogwood Valley" as the same appears on plats heretofore made and recorded,herewith recorded and hereafter to be made and recorded,is with the free consent and in accordance with the desire of the undersigned owners.

WITNESS the following signature and seal.

Kermit R.Gallihugh SEAL  
Kermit R.Gallihugh,individually and as  
Agent and Attorney in Fact for Barbara  
A.Gallihugh,his wife,Bradley K.Haynes  
and Betty G.Haynes,his wife

STATE OF VIRGINIA

COUNTY OF GREENE, to-wit:

I, Mary F.Melone, a Notary Public in and for the County of Greene,in the State of Virginia,do hereby certify that Kermit R.Gallihugh,individually and as Agent and Attorney in Fact for Barbara A.Gallihugh,his wife, Bradley K.Haynes and Betty G.Haynes,his wife, whose names are signed to the foregoing writing,bearing date the 1st day of November,1968,has this day acknowledged the same before me in my County and State aforesaid.

Given under my hand this first day of November,1968.

MY COMMISSION EXPIRES :  
March 25,1972

Mary F.Melone  
Notary Public

VIRGINIA: In the Clerk's Office of the Circuit Court of Greene County, Dec. 9, 1968. This deed was this day received in said office, and, upon the certificate of acknowledgment thereto annexed, admitted to record, at 2:45 o'clock P. M., after payment of \$            tax imposed by Sec. 58-54 (b).  
Taxes: [Signature], Clerk.  
Tax \$            Transfer Fee \$

ARTICLES OF INCORPORATION  
OF  
DOGWOOD VALLEY CITIZEN'S ASSOCIATION, INC.

In Compliance with the requirements of Chapter 11 of Title 13.1, Code of Virginia, 1950, as amended, the undersigned, all of whom are of full age, have this day voluntarily associated themselves together for the purpose of forming a non-stock corporation, not for profit, and do hereby certify:

ARTICLE I

The name of the corporation is Dogwood Valley Citizen's Association, Inc., hereinafter called the "Association."

ARTICLE II

The Post Office address of the registered office of the Association is P. O. Box 127, Stanardsville, Virginia 22973, which is located in the County of Greene.

ARTICLE III

The name of its registered agent who is a resident of Virginia and a director of the corporation is Gerald C. Shinsky, and whose business office is the same as the registered office of the corporation.

ARTICLE IV

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of the subdivision roads, residence lots, and common facilities within those tracts of property described in deeds recorded among the land records of Greene County, Virginia, and to promote the health, safety and welfare of the residents within the above described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose:

BOOK 2 PAGE 37

(a) to exercise all of the powers and privileges and to perform all of the duties and obligations of the Association to the extent that the funds collected permit, and in the manner set forth in that certain Declaration of Covenants, Conditions and Restrictions, hereinafter called the "Covenants", applicable to the property and recorded or to be recorded in the Office of the Clerk of the Circuit Court of Greene County and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length:

(b) to fix, levy, collect and enforce payment by any lawful means, all charges or assessments, pursuant to the terms of the Covenants; to pay all expenses in connection therewith and all office or other expenses incident to the conduct or business of the Association, including all licenses taxes or governmental charges levied or imposed against the property of the Association;

(c) to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) to borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) to dedicate, sell or transfer all or any part of the roads and common facilities to any public agency, authority, or utility for such purposes and subject to such



conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by all of the members, agreeing to such dedication, sale or transfer;

(f) to the extent provided by law participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of more than two-thirds (2/3) of the members;

(g) to have and to exercise any and all powers, rights and privileges which a corporation organized under the non-profit Corporation Law of the State of Virginia by law may now or hereafter have or exercise;

(h) to annex additional residential property, roads and common facilities as provided in Covenants.

#### ARTICLE V

##### MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject to covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association.

#### ARTICLE VI

##### VOTING RIGHTS

The Association shall have one class of voting membership:

Members shall be all Owners and shall be entitled to

one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

#### ARTICLE VII

##### BOARD OF DIRECTORS

The affairs of this Association shall be initially managed by a Board of four (4) Directors, two Directors shall be elected for a term of one year, two for a term of two years; and at each annual meeting thereafter the members shall elect Directors for a term of two years.

Directors must be members of the Association. The number of Directors may be changed by amendment of the By-Laws of the Association. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are:

<u>NAME</u>	<u>ADDRESS</u>
Gerald C. Shinsky	P. O. Box 186 Stanardsville, Virginia
Florence Elaine Thompson	P. O. Box 186 Stanardsville, Virginia
Donald E. Wilkins	14472 Turin Lane Centreville, Virginia
Col. John L. Crawley, Jr.	7 Marvin Drive Hampton, Virginia

The Board of Directors may declare vacant office of a Director who shall have been absent from five consecutive regular meetings of the Board.

#### ARTICLE VIII

##### DISSOLUTION

The Association may be dissolved by the vote of more than two-thirds (2/3) of the entire Association membership and by complying with the applicable laws of the Commonwealth of

Virginia. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such asset shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

ARTICLE IX

DURATION

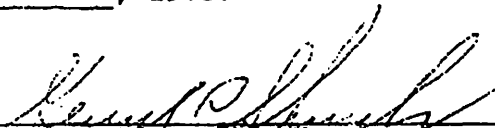
The Corporation shall exist perpetually.

ARTICLE X

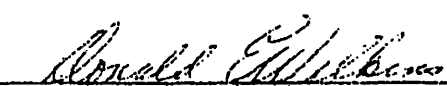
AMENDMENTS

Amendment to these Articles shall be made as provided in Sec. 13.1-237 of the Code of Virginia.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the Commonwealth of Virginia, we, the undersigned, constituting the incorporators of this Association, have executed these Articles of Incorporation this 2nd day of November, 1978.

  
Gerald C. Shinsky

  
Florence Elaine Thompson

  
Donald E. Wilkins

  
Col. John L. Crawley, Jr.

3 0 3 5 6 0 4 2 5

**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION**

**AT RICHMOND,  
November 9, 1978**

The accompanying articles having been delivered to the State Corporation Commission on behalf of

**Dogwood Valley Citizen's Association, Inc.**

and the Commission having found that the articles comply with the requirements of law and that all required fees have been paid, it is

**ORDERED** that this **CERTIFICATE OF INCORPORATION** be issued, and that this order, together with the articles, be admitted to record in the office of the Commission; and that the corporation have the authority conferred on it by law in accordance with the articles, subject to the conditions and restrictions imposed by law.

Upon the completion of such recordation, this order and the articles shall be forwarded for recordation in the office of the clerk of the **Circuit Court of Greene County**

**STATE CORPORATION COMMISSION**

By

Thomas P. Hammond, Jr.  
Commissioner

**VIRGINIA:**

In the Clerk's Office of the **Circuit Court of Greene County**

The foregoing certificate (including the accompanying articles) has been duly recorded in my office this 21st day of November 1978 and is now returned to the State Corporation Commission by certified mail.

William D. Bickles  
Clerk

# Commonwealth of Virginia



## State Corporation Commission

*I Certify the Following from the Records of the Commission:*

The foregoing is a true copy of all documents constituting the charter of DOGWOOD VALLEY CITIZEN'S ASSOCIATION, INC..

Nothing more is hereby certified.



*Signed and Sealed at Richmond on this Date:  
March 23, 2001*

*Joel H. Peck*  
Joel H. Peck, Clerk of the Commission

BY-LAWS  
OF  
DOGWOOD VALLEY CITIZEN'S ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION: The name of the Corporation is Dogwood Valley Citizen's Association, Inc., hereinafter referred to as the "Association". It is located in the County of Greene, State of Virginia, and the present mailing address is P.O. Box 127, Stanardsville, Virginia 22973.

ARTICLE II  
DEFINITIONS

Section 1. "Association" shall mean and refer to Dogwood Valley Citizen's Association, Inc., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real estate described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Roads and Facilities" shall mean all roads and real property owned or maintained by the Association for the common use and enjoyment of the owners.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the properties.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of the properties, including contract sellers.

Section 6. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the properties recorded in the Office of the Clerk of the Circuit Court of Greene County.

Section 7. "Member" shall mean and refer to those persons entitled to membership as provided in the Articles of Incorporation (being the same as provided in the Declaration).

ARTICLE III  
MEETING OF MEMBERS

Section 1. Annual Meetings. A meeting shall be held annually in June within Greene County, State of Virginia; and at a place, date, and time after 9:00 A.M. and

before 8:00 P.M. determined by the Board of Directors, except that annual meeting shall not be held on a Sunday or legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president, or by the Board of Directors.

Section 3. Notice of Meetings. Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered not less than seven (7) nor more than thirty (30) days before the date of the meetings, either personally or by mail, by or at the direction of the president, or the secretary or the officers calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

Notice of a members meeting to act on an amendment of the Articles of Incorporation or on a plan of merger or consolidation shall be delivered in the manner provided above, not less than twenty-one (21) nor more than thirty (30) days before the date of the meeting. Any such notice that is mailed shall be accompanied by a copy of the proposed amendment or plan of merger or consolidation or a summary thereof.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one tenth (1/10) of the votes of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable, shall be invalid after eleven months from its date unless otherwise provided in the proxy and shall automatically cease upon conveyance by the member of his lot.

#### ARTICLE IV BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of five directors, who must be members of the Association.

Section 2. Term of Office. The term of the directors shall be for two years. Three directors shall be elected at annual meeting in even number years and two directors shall be elected during odd number years.

Section 3. Removal. Any director may be removed from the Board, with justifiable cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successors shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any Association duties he may render. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of the meeting which they could take at a meeting by obtaining the written consent of all the directors setting forth the action so taken or to be taken. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## ARTICLE V NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Nominations may be made from among members of the Association.

Section 2. Election. Election to the Board of Directors shall be by secret ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of The Articles of Incorporation. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE VI MEETING OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at least quarterly, at such place, date and time after 9:00 A.M. and before 8:00 P.M. as may be determined by the Board. However, meetings shall not be held on a Sunday or legal holiday.



Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days' notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the roads and common facilities, and the personal conduct of the members and their guests there and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such right may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions in these By-Laws, the Articles of Incorporation, or the Declaration;

(d) employ a manager, an independent contractor, or such other employees as they deem necessary and to prescribe their duties;

(e) declare vacant the office of a Director who shall have been absent from five consecutive meetings of the Board.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporation affairs and to present a statement thereof to the members at the annual meeting of the members;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) cause a notice of lien to be recorded against any property for which assessments are not paid within ninety (90) days after due date or to bring an action at law against the owner personally obligated to pay the same;

(d) issue or to cause an appropriate officer to issue, upon payment, a certificate releasing any lien recorded among the land records; and, upon demand furnish a certificate setting forth whether the assessments on a specified lot have been paid. Such certificates shall be conclusive as to the Association's claim for unpaid assessments;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the roads and common facilities to be maintained according to the extent that the funds collected permit.

## ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a president, vice-president, secretary and treasurer, who shall at all times be members of the Board of Directors, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office by the Board when, in its judgment, the best interest of the corporation will be served thereby. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignations shall take effect the date of receipt of such

notice or any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 6. Vacancies.** A vacancy in any office may be filled by appointment by the Board. The officer appointed to a vacancy shall serve for the remainder of the term of the officer he replaces.

**Section 7. Multiple Offices.** The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

**Section 8. Duties.** The duties of the officers are as follows:

#### **President**

The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

#### **Vice-President**

The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act and shall exercise and discharge such other duties as may be required of him by the Board.

#### **Secretary**

The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporation seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as required by the Board.

#### **Treasurer**

The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notices of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting and deliver a copy of each to the members.

## ARTICLE IX COMMITTEES

The Association shall appoint an Architectural Control Committee, and a Nominating Committee, as provided by these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

## ARTICLE X BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

## ARTICLE XI ASSESSMENTS

As more fully provided in the Declaration of Covenants, Conditions and Restrictions, the owner of every lot in Dogwood Valley is obligated to pay to the Association annual assessments. Failure to pay the annual assessments on or before February 1 will result in a penalty of \$50. Interest will accrue at 24 percent per annum on the total unpaid balance and interest and penalties will be compounded monthly. After an account has been delinquent for ninety (90) days, the Association may bring an action at law against the owner personally obligated to pay the same or record a lien on the property and thereafter foreclose the same against the property. Interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment.

## ARTICLE XII CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: Dogwood Valley Citizen's Association, Inc.

## ARTICLE XIII AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control and in the case of any conflict between the Covenants and these By-Laws, the Covenants shall control.

ARTICLE XIV  
MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end of the 31st day of December of every year. Notices of assessments shall be dispatched prior to December 1 of each year and shall be considered past due if not paid by February 1st of the following year.

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected president of the Dogwood Valley Citizen's Association, Inc., a Virginia Corporation; and,

THAT the foregoing By-Laws constitute the original By-Laws of said Association, as amended at annual meetings of the members in June 1982, June 1986, and June 1997.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Association this 14th day of July 1997.

Signed:   
Matthew Brown, President

NOTE:

- a. At the June 1982 meeting, Article IV, Section 1 was amended.
- b. At the June 1986 meeting, Article I; Article III, Section 1; Article IV, Section 2; Article VI, Section 1; Article XI; and Article XIV were amended.
- c. At the June 1997 meeting, Article XI was amended.

**Dogwood Valley Citizens Association Inc.**

Post Office Box 127

Stanardsville, Virginia 22973

Minutes - June 13, 1992 General Membership Meeting

1. The General Membership Meeting was held at 11 a.m. Saturday, June 13, 1992, at the Greene County Court-house in Stanardsville. Board Members present were President Mark Hoover, Executive Vice President Bob Law, Secretary Greg Glassner and Treasurer Tim McLaughlin. (Vice President Hylton Ridge had to work and arrived after the meeting had begun.)

2. Minutes. The minutes of the previous General Membership Meeting were read and approved without change.

3. Financial Report. The Treasurer gave the financial report, which is attached, noting that we owed the accountant for two years, because he had failed to bill us last year. Delinquencies of \$5,308.46 are low, but still a big chunk, he added. The report was approved as read.

Old Business

4. Road Maintenance. Mr. McLaughlin reported that the Association is able to spend about \$1,000 per mile on annual road maintenance, compared to the \$20,000 spent on state roads. About \$5,000 had recently been spent on Section VII, he stated. Several members stated that they wished to see a detailed breakdown on road expenditures.

5. Lake Maintenance It was reported that the picnic shelter at Hidden Lake was built for a total of \$450. Several members expressed concern over the control of water in Walnut Pond. Mrs. Shank said she lost soil when the pond was drained. She sought assurances that it would be fixed so it would not flood in the future. Pres. Hoover explained that this was the whole point of the exercise, to build up the dam and replace the pipe. It should be a model pond when completed, McLaughlin added.

6. Gypsy Moths Member Ken Jacob urged the Association and individual members to write their congressman asking why the Shenandoah National Park does not spray for gypsy moths. Informed that the tax-supported spraying program was in its last year, the membership voted to spend up to \$2,000 of general fund to have spraying done next year, if deemed necessary.

New Business

7. The board noted that the vacancy created by the resignation of Harry F. Putnam had been filled by appointment of Bob Law, who will fill the unexpired term. (Putnam, McLaughlin and Ridge had been elected for two years in 1991. The terms of Hoover and Glassner expired this year.)

8. Beth Putnam noted that there was a drainage problem on Dogwood Drive because of the way the culverts had been engineered. McLaughlin agreed that new ditching was needed there. A backhoe with operator would cost \$45-\$50 an hour, he noted.

9. Ken Jacob noted that the state legislature now allowed special assessments up to \$1,000 a lot for road maintenance. The board can make that decision, but it can be rescinded by 51% of the membership, including proxies, he added. On a motion by Glassner, it was decided that if a special assessment should be needed, a special membership meeting would be called by the board.

10. The board asked that it be inserted in these minutes that property owners can be charged for cleaning out culverts and ditches in front of their property if they do not keep them cleaned.

11. Beth Putnam urged that the newsletter be continued and suggested that some fund raising events such as bake sales could help raise money for the association.

12. It was noted that an area such as Dogwood Valley is susceptible to periodic break-ins. He suggested residents have handy a pad and pen to jot down license numbers of strange vehicles.


- Hidden Lake: brushy not a problem

3 volunteers for board

13. *Election* There were three nominations for the two vacancies: Mark Hoover, Matt Brown and Greg Glassner. Glassner declined, saying he would be happy to assist the board in any way he could. Hoover and Brown were elected.

14. *Adjournment* The meeting was adjourned at 12:30 p.m.

Respectfully submitted

  
Greg Glassner  
Secretary

**TREASURERS REPORT ANNUAL MEETING  
DOGWOOD VALLEY CITIZENS ASSOCIATION, INC**

June 13, 1992

(Report covers period June 1, 1991-June 13, 1992)

CARRYOVER.....	11,177.49
INCOME.....	11,310.98
EXPENSES.....	
ROAD MAINTENANCE.....	14,812.83
IMPROVEMENTS TO COMMON GROUND.....	1,225.00
INSURANCE.....	837.00
ACCOUNTANT.....	1,100.00
TAXES.....	1,243.52
BANK CHARGES.....	150.57
ADMINISTRATION.....	606.79
BALANCE AVAILABLE.....	2,512.76
1992 FEES DELINQUENT.....	259.23
FEES DELINQUENT MORE THAN 1 YEAR.....	5,308.46

**Dogwood Valley Citizens Association**  
**P.O. Box 127**  
**Stanardsville, Virginia 22973**

Regular Board Meeting

Date 9/23/92

Time 10 AM

Location MARK Howers House

Board Members Attending

MARK Howel Hilton RIDGE TIM McLaughlin  
MATT Brown

Citizens Attending

NONE

Subject

NEW TITLES for board members

Results

MARK - president RIDGE - V.P. ROAD  
operations TIM - Treasurer BOB LAW -  
(NOT ATTENDING) V.P. MATT - SECRETARY



~~SPECIAL ASSE~~ <sup>Subject</sup> TREASURERS REPORT

1800 <sup>CD</sup> left <sup>Results</sup> IN DVCA Account

Annual Billing <sup>Subject</sup>

Billing To Be <sup>Results</sup> Mailed OCT 1 1992  
Due by Feb 1 1993

SPECIAL ASSESSMENT <sup>Subject</sup> POWER GRANTED  
by VAGeneral Assembly

BOARD is <sup>Results</sup> UNANIMOUS — 51% of  
members of DVCA must approve  
Special Assessment before Assessment  
is PASSED

Subject

WALNUT POND / EN LAFFLIN CONTROLS  
 FLOW VIA CULVERT ON HIS PROPERTY  
 WANTS DISCLAIMER FROM BOARD PROTECTING  
 HIM FROM MAOILIN SHANK PROSECUTION IF PROPERTY  
 IS DAMAGED BY RUN OFF FROM POND

Results

VA DEPT OF HIGHWAY WILL BE ASKED  
 TO INSTALL SUITABLE CULVERTS TO INSURE  
 RUN OFF WILL NOT BACK UP ON MAOILIN'S PROPERTY

Subject

NEW C.P.A.

Results

THE SEARCH WILL BEGIN FOR A NEW  
 C.P.A.

Subject

POSSIBLE BACK HOME RENTAL

Results

TIM WILL INVESTIGATE LIABILITY  
 IF BOARD RENTS & RUN BACK HOME  
 TO CASE ROAD MAINTENANCE COSTS

GATE on <sup>Subject</sup> WALKUT POND

TIM & MARK <sup>Results</sup> WILL ERECT GATE & POST SAME AS PRIVATE PROPERTY TO KEEP GENERAL PUBLIC OUT OF WALKUT POND COMMON AREA - TENTATIVE COMPLETION BY XMAS

GAME <sup>Subject</sup> COMMISSION

MATT TO CHECK <sup>Results</sup> ON LEGALITY OF GAME COMMISSIONS CLAIM TO RIGHT OF WAY ON DVCA ROADS

INVENTORY <sup>Subject</sup> OF ITEMS OWNED BY DVCA

① STILT CHAIN SAW <sup>Results</sup> / ① WOOD EATER / ① WICH FORK / ① DIRT TAMPER / ① GRASS SEED HOPPER / ④ SHOVELS

Page 5

Date 9/23/92 Time 10 AM

Subject

News letter

GREG GLASSNER <sup>Results</sup> Will be INLISTED,  
per his INSTRUCTIONS, TO compile  
A bi ANNUAL NEWS LETTER

Subject

meeting ATORNER

Results

proceedings closed @ 1145 AM

Subject

Results

**Dogwood Valley Citizens Association -**  
**P.O. Box 127**  
**Stanardsville, Virginia 22973**

Regular Board Meeting

Date 9/24/94

Time 10<sup>55</sup> AM

Location MARKS house

Board Members Attending

Hilton ROGGE / MARK HOOVER TIM McLAUGHLIN  
MATT BROWN

Citizens Attending

None

Subject

TREASURERS Report / ROAD MAINT  
DUES MAILING.

Results

2800<sup>00</sup> Left / MAILINGS OUT by  
NOV. 1. MAN TO HANDLE

ROADS / Culverts <sup>Subject</sup>

MICA & Pine hill <sup>Results</sup> TO RECEIVE ATTENTION/  
CULVERTS NOT MAINTAINED WILL BE  
TAKEN OUT BY DUKA, OWNERS TO BE  
BILLED FOR DAMAGE TO ROAD / COSTS IN REMOVING

LIENS ON DELINQUENCIES <sup>Subject</sup>

DUE TO LIEN LAW <sup>Results</sup> CHANGE / WORK WILL  
BEGIN TO PREPARE LIST OF DELINQUENCIES  
DELINQUENCIES WILL THEN HAVE LIENS PLACED  
IF NO RESULT — FORECLOSURE

Gypsy moth <sup>Subject</sup> SURVEYS

PIGGE WILL COORDINATE WITH APPROPRIATE  
AGENCIES <sup>Results</sup>

Page 3

Date 9/24/94

Time 10<sup>55</sup>

Gravel piles <sup>Subject</sup>

Several depleted <sup>Results</sup> piles to be replenished

Vegetation in <sup>Subject</sup> Hidden Lake

Copper sulfate <sup>Results</sup> & lime added to Hidden Lake to control vegetation Mark/Tim to handle

Anticement of <sup>Subject</sup> meeting

Proceedings class <sup>Results</sup> @ 1150

**Dogwood Valley Citizens Association**  
**P.O. Box 127**  
**Stanardsville, Virginia 22973**

REGULAR Board Meeting

Date 1-23-95

Time 7:10 PM

Location MARK HODGES HOUSE

Board Members Attending

HILTON RIGGE / MATT BROWN / TIM McLAUGHLIN /  
MARK HODGES

Citizens Attending

NONE / SANDRA KORTFANTY  
GYPSY MOYH ADMINISTRATOR ATTENDING

Subject

TREASURERS REPORT / MINUTES of Last Meeting

Results

MARK Reports Funds Are Arriving  
Delinquencies Look To Be Reduced Again /  
Minutes Accepted As Read



Subject  
GAME COMMISSION RIGHT OF WAY

After checking w/ <sup>Results</sup> Julius Morris / County Administration  
Dan Bouton / County Attorney / Kirk Hughes Certified  
Land Surveyor / George Dybert / Private Attorney  
Court House for Deeds Right of Ways /

~~Subject~~ Results  
Covenants / Deeds / Dedications for Dogwood  
Valley. It is believed Dogwood Valley  
Roads Assn. (1) Private (2) were never  
Accepted into the Public / State / County system

<sup>Results</sup>  
(3) GAME COMMISSION HAS NO RIGHT TO SEND  
Hunter Through to Game Commission lands  
Findings to be presented at Annual  
Meeting / MATV

Subject  
THE ROAD GRATOR Rental

<sup>Results</sup>  
Mark will Arrange to Rent / Wayne  
Hill Sec. 7 will operate for \$1200 HR.

Page 3

Date 1/23/95

Time 7<sup>10</sup> PM

Subject  
START ROAD WORK

Results  
WORK TO BEGIN ON OR AROUND FEB 25

Subject  
MAILING COSTS

Results  
MATT CONTACTED POST OFFICE TO CHECK  
ON REDUCED RATE FOR BULK MAILING  
NOT POSSIBLE / CUT OFF POINT IS 500 PCS  
OF MAIL WE HAVE IN 250

Subject  
LEIN UPDATE

Results  
GEORGE DYGRET ATTORNEY AT LAW WILL  
HANDLE FOR A % LIST BEING UPDATED

Subject

SPRAYING For Gypsy Moths

Results

As Reported By SANDRA / 240 Acres of DOC  
WOOD VALLEY @ 10<sup>00</sup> per = 2400<sup>00</sup> Denolene  
For payment MARCH 15<sup>TH</sup> / SINCE  
PARK & ADJOINING PROPERTIES HAVE  
STATED They will ~~NOT~~ <sup>Subject</sup> RESULTS SPRAYING THE  
BOARD FEELS MONEY WOULD BE WASTED SINCE  
REINFESTATION WOULD SURELY OCCUR

Results

ADJOURNMENT of MEETING.

Subject

PROCEEDINGS CLOSED @ 8<sup>30</sup> PM

Results

## DCVA ANNUAL MEETING

The Dogwood Valley Citizens Association held it's annual meeting at the Greene County Court House in Stanardsville, Virginia on July 22, 1995 at 9:05 a.m.

The meeting was called to order by President Mark Hoover who declared a legal quorum existed.

In addition to President Hoover board members; Secretary Matthew Brown, Vice President of Road, Hilton Ridge, Vice President Tim McLaughlin, Treasurer Linda Allen and 22 Dogwood Valley Association members were in attendance.

Secretary Matthew Brown presented the minutes of the July 30, 1994 annual meeting. The minutes were accepted as presented.

Treasurer Linda Allan presented the treasurers report as of July 22, 1995. The report was accepted as presented. Member Sonny Putnam inquired about the filling of IRS form 5031C for nonprofit corporations the board agreed to check on the matter.

Member Sonny Putnam inquired into the possible existence of 2 conflicting sets of by-laws—After Mr. Putnam and Vice President Tim McLaughlin entered into a spirited discussion of the matter. Including a public reading by association member Judy Coughlin of the disputed section and the mention of the actual existence of 2 sets of by laws by association member Dean Mussuer the board agreed to look into the matter and determine the validity of Mr. Putnams inquiry.

Vice President for Roads Hilton Ridge reported on the Gypsy Moth program stating it would have cost the association upwards of \$4,000.00 to achive questionable results. The damage to section 4 on buddy's mountain was noted. The possibility of the renewal of state funding next year was noted. Interested parties were directed to contact the local extension agent.

A partition to be presented to the extension agent will be coordinated by Beth Jackson and Judy Coughlin. Secretary Matthew Brown agreed to provide the association mailing list.

The location and replenishment of gravel piles on Cardinal Dr. and Mica Drive was discussed.

Secretary Matthew Brown reported on the continuing effort to complete a delinquency list and submit it to local Charlottesville attorney George Dygert.

The flood of late June 1995 and the subsequent damage to Cardinal Dr., Rock Island Dr., Dogwood Dr., and Ghost lane were discussed. President Mark Hoover reported on coordinating FEMA, and the possibility of obtaining a low interest long term loan. Mark stated he would meet FEMA in several weeks and explore the possibilities of obtaining the loan. Thelma Johnson of section 4a expressed concerns about Ghost lane and the damage the flood caused preventing access to her property. Board member Matthew Brown agreed to meet Ms. Johnson immediately following the adjournment of the annual meeting at Ghost lane to ascertain the damage.

The board reported that as an interim measure the road grader would be sent around August 5 to dress up any damaged areas it could.

The members of the association agreed to allow the board to accept or reject any FEMA offer.

In the election of board members, Hilton Ridge and Linda Allan were reelected. Association members Keith Winn and Dean Mussuer were elected to their first terms

President Hoover adjourned the meeting at 11:15 a.m.

Respectfully Submitted

Matthew Brown

Matthew Brown Secretary

Dogwood Valley Citizens Association

CHANGED AT 9/6 ANNUAL MEETING  
LINDA WAS NOT THERE  
MARK READ TREAS. REPORT

# *Dogwood Valley Citizen Association Inc.*

P. O. BOX 127 · STANARDSVILLE, VIRGINIA 22973

Treasurer's Report Annual Meeting: July 22, 1995

(Report covers 7-1-94 to 6-30-95)

Carryover.....\$3,071.23

Income.....\$9,033.64  
                            \$98.65 interest  
                            \$9,132.29

## Expenses

Gravel	1510.54
Grading	896.00
Insurance	1051.25
Equipment	1661.39 (chain saw, rental, fuel, maint.)
Bank fees	157.48
Mailings	157.41
Payments	
CPA '93 tax	379.00
SCC	25.00
Real Est. Tax	8.58
rel. of lien	<u>26.00</u>
	5,872.65

Balance available \$6,330.87

1995 Fees Delinquent   \$2100.84   (59 owners)

Fees Delinquent More than one year   \$6502.19

**Dogwood Valley Citizens Association**  
**P.O. Box 127**  
**Stanardsville, Virginia 22973**

Regular Board Meeting

Date 10/22/95

Time 1:15 PM

Location MARK HOOVER'S HOUSE

Board Members Attending

MARK HOOVER DEAN MUSSEK HILTON RIDGE

MATT BROWN

Citizens Attending

Ø

Subject

FEMA

Results

AFTER REVIEWING PROCEDURES FOR RECEIVING  
FEMA MONEY THE BOARD DECIDED TO  
SEEK A SPECIAL ASSESSMENT SINCE A  
SPECIAL ASSESSMENT WOULD HAVE TO BE  
INACTED AS A 1ST STEP TO RECEIVING  
FEMA MONEY / SPECIAL ASSESSMENT MEETING  
NOW 18TH JAN IN COURT HOUSE

GRADING SECT <sup>Subject</sup>

Spent ~~\$~~ \$900<sup>00</sup> <sup>Results</sup> (Jones x 45<sup>00</sup> hr)  
By Larry Lamb

Delinquencies <sup>Subject</sup>

FURTHER PROGRESS <sup>Results</sup> IN COMPILING LIST. BOARD  
DECIDED TO WAIT UNTILL FEB 1996 DEADLINE FOR  
95 ROAD FEES PASSES TO COMPLETE LIST

DOGWOOD DRIVE <sup>Subject</sup> ROAD REPAIRS

KEN WILLIAM OF <sup>Results</sup> WILLIAM LOADER SERVICE  
TO CONTACTED TO REPAIR ROAD HIT HARDEST  
BY FLOOD OF JUNE 1995. MATT TO  
COORDINATE

Tim McLaughlin

Subject

PRESIDENT MARK HOOVER <sup>Results</sup> Reported Vice Pres  
Tim McLaughlin HAS RESIGNED FROM THE BOARD  
EFFECTIVE 10/22/95

PRESIDENT MARK HOOVER <sup>Subject</sup> Reports on IRS  
Form 5031C

Form HAS ~~been~~ <sup>Results</sup> been FILED AS  
REQUIRED by THE IRS

DISPUTED by LAWS <sup>Subject</sup>

SECRETARY MATTHEW <sup>Results</sup> BROWN WILL HAVE  
COPIES of CORRECT by LAW AVAILABLE AT  
THE NEXT ANNUAL MEETING: only print meeting.  
MUST BE IN JUNE / NOT WITHIN 53 WEEKS  
of LAST ANNUAL M...



Page 4

Date 10/22/95

Time 1:15 PM

Subject  
Attachment of meeting

Results  
Meeting Attachment @ 2:30 PM

Subject

Results

Subject

Results

**Dogwood Valley Citizens Association**  
**P.O. Box 127**  
**Standardsville, Virginia 22973**

Special  
Assessment

Board Meeting

Date 11-18-95

Time 9 AM

Location GREENE CO COURT HOUSE

Board Members Attending

HITTON RIDGE / MARK HOOVER / KEITH WINNY / DEAN MUSSE  
MATTHEW BROWN / LINA ALLEN

Citizens Attending

~~26~~ 68 Members ATTENDING 29 PROXIES  
2 TO Thelma Johnson 2 TO TIM McLAUGHLIN  
25 TO PRESIDENT MARK HOOVER

Subject

LEGAL Quorum

Results

PRESIDENT MARK HOOVER Declared A legal  
Quorum EXISTED and BREETED All  
Members TO The Special ASSESSMENT  
MEETING of The DOGWOOD VALLEY CITIZENS  
ASSOCIATION

Page 2

Date 11-18-95

Time 9 AM

REASONS behind <sup>Subject</sup> calling of special  
ASSESSMENT meeting.

SINCE FEMA would <sup>Results</sup> require A special  
ASSESSMENT TO BE PASSED / Board HAS DECIDED  
TO SEEK IT AND NOT CONTINUE en THE ROAD  
TO FEDERAL GOVT / INTERFERENCE AND LONG TERM  
INDEBTEDNESS

<sup>Subject</sup> PASSING of special Assessment

AFTER A lively <sup>Results</sup> Discussion, Representing  
many points of view A 1 TIME special  
Assessment of \$100<sup>00</sup> per lot WAS PASSED  
By 43 present yes 25 present NO  
27 proxies yes 2 proxies NO  
<sup>Subject</sup> Results

TOTAL present plus Proxies 70 yes  
27 NO. THE ASSESSMENT PASSED

Results

Page 3 Date 11-18-98 Time 9:40 AM

Meeting <sup>Subject</sup> ADJOURNED

Meeting <sup>Results</sup> ADJOURNED @ 10:30 AM

Subject

Results

Subject

Results

**Dogwood Valley Citizens Association**  
**P.O. Box 127**  
**Stanardsville, Virginia 22973**

REGULAR Board Meeting

Date 2/10/96

Time 10 AM

Location MARK HOOVERS HOUSE

Board Members Attending

MARK HOOPER, LINNA, KEITH, DEAN, MATT

Citizens Attending

DR KOHLER, FRANK PIAZZA, TOM ALONZO

Subject

20.254.50 / ROAD FEES plus special  
ASSESSMENT minutes

Results

Delinquencies over 3 yrs to go to  
ATTORNEY / Special Assessment minutes  
ACCEPTED AS READ

Information <sup>Subject</sup> REQUESTS

<sup>Results</sup> Copies of bylaws & Special Assessment  
Legislation will be available for no  
charge / Request by mail will be \$5.00  
for postage & handling

<sup>Subject</sup> People who live on state roads

<sup>Results</sup> Article VI PG-7- of Dogwood  
Valley Association by laws

<sup>Subject</sup> Delinquencies over 3 yrs

<sup>Results</sup> Will be foreclosed on within 90 days

Fixing pond

Subject

Tom will contact Construction  
Services / MATI will contact Williams  
WA/WNT TO BE LOOKED AT

STEVE CRAIG

Subject

Work Done on Road @ 3800 HR  
TO BE BILLED

Results

LOW @ Special Assessment Unpaid's

Subject

LINDA TO GET NAMES TO Attorney

Results

Page

4

Date

2/10/96

Time

Ydilton Ridge

Subject

RESIGNED FROM BOARD

Results

Subject

Results

Subject

Results



**DOGWOOD VALLEY CITIZENS' ASSOCIATION**

**P.O. BOX 127  
STANARDSVILLE, VA 22973**

**ANNUAL MEETING - JUNE 29, 1996**

The Dogwood Valley Citizens Association held its' annual meeting at the Greene County Court House in Stanardsville, Virginia on June 29, 1996.

The meeting was called to order by president Mark Hoover at 9:30 A.M. President Hoover declared a legal quorum existed and welcomed all attending members. Board members Matthew Brown, Linda Allen, Keith Wynn, Dean Musser and 37 association members were in attendance.

Secretary Matthew Brown read the minutes to the last annual meeting. They were accepted as read with one change being noted and the amended minutes were approved.

Treasurer Linda Allen read the treasurers report. It was approved.

Old business discussed included Mark reporting on FEMA, the origin and acceptance of the \$100.00 per lot special assessment, Walnut Pond and the lack of maintenance to said pond and the progress being made on the Hidden Lake Dam project.

New business discussed included the ever present gypsy moths. None were noted and for the first time in many years, no damage was reported. Some lot owners reported having their lots privately sprayed.

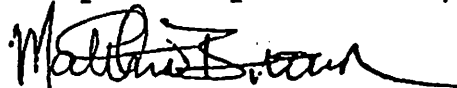
Several members asked about roads, work schedules and the money being spent in each section. The board stated that road work was ongoing and would continue through out the year rather than being compressed into a few weeks as had previously been done.

The board reported delinquencies were being collected, liens were being enforced, and the aggressive policy of collections would go forward. A motion to pass a \$25.00 per lot special assessment for 1996 was made, seconded and voted down: 51 proxies and members voted no, 26 proxies and members voted yes.

After eight years of dedicated service, President Mark Hoover stepped down. Board member Matthew Brown was re-elected. Association member Tom Altemere was elected.

President Hoover, in his last official duty, adjourned the meeting at 11:15 A.M.

Respectfully submitted,



Matthew Brown

**Dogwood Valley Citizens Association**  
**P.O. Box 127**  
**Stanardsville, Virginia 22973**

Regular Board Meeting

Date 7-13-96

Time 9:30

Location MATT'S HOUSE

Board Members Attending

MATT BROWN / LINDA ALLEN / DEAN MUSSEY /  
KEITH WYNN / TOM ALTOMERE

Citizens Attending

0

Subject

~~AN~~ elections

Results

MATT PRESIDENT Tom VICE  
PRESIDENT LINDA TREASURER DEAN SECRETARY

Loss of Insurance <sup>Subject</sup> of common Areas

Keith Will Try <sup>Results</sup> TO procure A new  
Policy Matt Will CONTACT Mark  
TO GET PAST RECORDS

~~Tom~~ <sup>Subject</sup> oversee for roads

Tom POC for <sup>Results</sup> All Roads

Regular board <sup>Subject</sup> meetings TO be  
Doubled

NEXT ONE <sup>Results</sup> Sept 14TH 9:30 at  
MATT'S HOUSE

Page 3

Date 7/13/96

Time 9:50

Fixing Pond

Subject

Tom will <sup>Results</sup> contact Construction Services / MATT will contact Williams WA/MNT TO BE LOOKED AT

STEVE CRAIG

Subject

Work Done <sup>Results</sup> on Road @ 3800 hr TO be billed

Len<sup>ee</sup> Special <sup>Subject</sup> Assessment Unpaid

LINDA TO GET <sup>Results</sup> NAMES TO Attorney

Accessibility of <sup>Subject</sup> Records to members

MATT will check <sup>Results</sup> w/ Attorney

Disclose p/KT: <sup>Subject</sup> charge

\$50 <sup>Results</sup> FEE to be charged

Meeting Adjourned <sup>Subject</sup> @ 11:45

Results

November 9, 1996

Meeting opened at 9:27 a.m. at Matt's house, with Matt, Keith, Tom and Dean in attendance.

Treasurer's report: About \$12,500. We are still owed a little over \$3,000 and we are in the process of obtaining it.

Minutes of last meeting: The minutes were read by Dean and corrected on one quote by Sheriff Willie Morris, then accepted.

Old Business: None.

New Business:

- (1) Board thanked Dean and Debi for the State Code book on Road Laws.
- 2) When we print up the rules for Dogwood Valley roads, we'll require that residents are to inform their guests that state laws apply to our roads.
- (3) Tom will acquire the Covenant of Lake Monticello.
- (4) Discussion regarding the fact that some residents have asked what will be done with the culvert pipes lying in a pile at the end of Dogwood Drive. We decided to have them hauled away, but will do it when someone is up here doing something else and would haul them out cheaply.
- (5) The Board decided to define what could be called a junk car and what to do about them.
- (6) Tom discussed an old apparently abandoned grader near him. Matt suggested since it doesn't run, may to contact a scrap dealer.
- (7) The Sheriff has delivered two lawsuits on Dogwood Valley:
  - (A) Madeline Shank, \$7487. This one has been moved to District Court for the purpose of making her detail the amount of suit.
  - (B) Mattie Coates, \$500. Court dismissed this one. They had no attorney, it was against Matt personally, and written in pencil.

Matt read to the Board all the letters he had received and reviewed the situation until now.

Nov. 9, 1996, cont'd

- (8) We've put into place the policy of requiring individuals to pay for the repair of damage to roads caused by their clogged culvert pipes, uncleaned ditches, etc.
- (9) Road work in progress:
  - (A) Steve Craig will work on Cardinal and Pine Hill this month.
  - (B) Grading still needs to be done on Oak Hill. Steve Craig will do that also.
  - (C) Gates have been installed on Skylight and Rock Island. The combination is 4-1-2-3.
  - (D) Tom and Matt will survey roads for limbs overhanging and gravel needed, etc.

Next meeting set at Dec. 7, 1996, at 9:30 at Matt's house.

Tom made a motion and the meeting was adjourned at 10:46 a.m.

---

**THE BOARD OF DIRECTORS  
AND ALL OTHER MEMBERS OF THE  
DOGWOOD VALLEY CITIZENS ASSOCIATION, INC.**

**CORDIALLY INVITE YOU TO ATTEND THE  
DVCA ANNUAL MEETING**

**9:30 AM EDT  
SATURDAY - JUNE 14, 1997**

**AT THE  
GREENE COUNTY COURT HOUSE  
STANDARDSVILLE, VIRGINIA**

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The following proposed Amendment to the Bylaws of the Dogwood Valley Citizens Association will be on the agenda of the annual meeting to be voted on by those members present in person or by proxy. The Board of Directors recommends that the membership approve this amendment. Members who intend to vote by proxy should be sure to include their vote with regard to this proposal.

PROPOSAL

ARTICLE XI: ASSESSMENTS of the Bylaws of the Dogwood Valley Citizens Association is hereby amended to read:

As more fully provided in the Declaration of Covenants, Conditions and Restrictions, the owner of every lot in Dogwood Valley is obligated to pay to the Association annual assessments. Failure to pay the annual assessments on or before February 1 will result in a penalty of \$50. Interest will accrue at 24 percent per annum on the total unpaid balance, and interest and penalties will be compounded monthly. After an account has been delinquent for 90 days, the Association may bring an action at law against the owner personally obligated to pay the same or record a lien on the property and thereafter foreclose the same against the property. Interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment.

AN EXAMPLE OF AN ACTUAL LOT OWNER IN DOGWOOD VALLEY:

Road fees for 1996, due 12/31/95.....	\$65.23
Past due balance.....	\$902.93
Penalty & interest.....	\$91.79
Total amount due.....	\$1059.95

**OPTION 1**

Continue on, i.e., road fees only; no special assessment--\$7100.

**OPTION 2**

Road fees plus \$35 per lot special assessment:

1 grading all roads  
1 cutting all rows  
Gravel as directed by the Road Committee\*

**OPTION 3**

Road fees plus \$65 per lot special assessment:

2 gradings all roads  
2 cuttings all rows  
Gravel as directed by the Road Committee\*

**OPTION 4**

Road fees plus \$95 per lot special assessment:

3 gradings all roads  
2 cuttings all rows  
Gravel as directed by the Road Committee\*

**\*Road Facts:**

- 2" deep x 100' of road takes approximately 15 tons of gravel  
or 1 truck load @ \$200 per truck load

- Cost to gravel 1 mile = \$10,400 x 13.1 miles of road in the  
system = \$136,240

The powers and duties of the Board of Directors as stated in Article VII in the Bylaws:

ARTICLE VII  
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the roads and common facilities, and the personal conduct of the members and their guests there and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such right may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions in these By-Laws, the Articles of Incorporation, or the Declaration;

(d) employ a manager, an independent contractor, or such other employees as they deem necessary and to prescribe their duties;

(e) declare vacant the office of a Director who shall have been absent from five consecutive meetings of the Board.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members;

(b) supervise all officers, agents and employees of this association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) cause a notice of lien to be recorded against any property for which assessments are not paid within ninety (90) days

after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) issue or to cause an appropriate officer to issue, upon payment, a certificate releasing any lien recorded among the land records; and, upon demand furnish a certificate setting forth whether the assessments on a specified lot have been paid. Such certificates shall be conclusive as to the association's claim for unpaid assessments;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the roads and common facilities to be maintained according to the extent that the funds collected permit.

The legal and financial responsibilities of the lot owners in Dogwood Valley include, but are not limited to:

- (1) All ditches and culvert pipes are to be kept clear and in no way impeding the flow of water at all times. This applies to everyone whether a full-time resident or not.
- (2) All rights-of-way are to be clear of trash, brush, limbs, etc.
- (3) Any lot owner is financially responsible for damage caused to roads or common areas, whether this is caused by themselves or guests or emanating from their property.
- (4) All state laws apply on Dogwood Valley Roads. Please note that the speed limit on Dogwood Valley Roads is 20 mph.
- (5) Any and all legal and financial damages incurred by the under-age operation of a vehicle or device, whether motorized or self-propelled, operated on Dogwood Valley roads or common areas.
- (6) Any and all legal and financial damages incurred by the operation of a vehicle, whether motorized or self-propelled, operated on Dogwood Valley roads or common areas by lot owners or their guests of legal age.
- (7) Lot owners are responsible for informing their guests of these rules.

The following proposed Amendment to the Bylaws of the Dogwood Valley Citizens Association will be on the agenda of the annual meeting to be voted on by those members present in person or by proxy. The Board of Directors recommends that the membership approve this amendment. Members who intend to vote by proxy should be sure to include their vote with regard to this proposal.

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Road fees for 1996, due 12/31/95.....	\$65.23
Past due balance.....	\$902.93
Penalty & interest.....	\$91.79
Total amount due.....	\$1059.95

**DOGWOOD VALLEY CITIZENS' ASSOCIATION**  
**P.O. Box 127**  
**Stanardsville, VA 22973**

**ANNUAL MEETING - JUNE 14, 1997**

The Dogwood Valley Citizens' Association held its annual meeting at the Greene County Courthouse in Stanardsville, VA on June 14, 1997.

The meeting was called to order by President Matthew Brown at 9:35 a.m. President Brown declared a legal quorum existed and welcomed all attending members. Board members Linda Allen, Keith Wynn, Tom Altemere, Dean Musser and 53 association members were in attendance. Also in attendance were association attorneys George Dygert and Kelly Hobbs.

Former Secretary Matthew Brown read the minutes to the last annual meeting. They were accepted as read.

Treasurer Linda Allen read the treasurer's report, and it was approved.

Old business discussed included the number of people who still owe back road fees and the profitability of having the lawyers pursue this matter. In addition, it was noted that the gypsy moth problem appears to have disappeared.

New business discussed included the legal definition of "junk cars." Attorney George Dygert defined them as any automobile that is not running for more than 60 days.

The board asked for people to volunteer for advisory committees that are defined in the bylaws. These include: a road committee, a nominating committee, and a bylaw review committee.

Tom Altemere presented attending association members with copies of the road report, which was read individually and then discussed. Questions were answered on the ongoing road work.

With 34 voters and 21 proxies, votes were held on the budget options that were sent out with the invitations. A \$35 special assessment was passed with 31 votes.

A proposal to amend Article XI of the bylaws was voted on and approved. This amendment will impose a \$50 penalty for late payment of annual assessments and will impose a 24% per annum fee on any unpaid balance.

Board members Keith Wynn and Dean Musser were reelected. After years of dedicated service, Treasurer Linda Allen stepped down. Association member Judy Coughlin was elected to the board.

President Brown adjourned the meeting at 12:34 a.m.

Respectfully submitted,

Dean Musser  
Secretary

October 25, 1997

The meeting was called to order at 9:30 a.m. at Matt's house, with Keith, Matt, Dean, and Tom in attendance.

Treasurer's report: Judy phoned in the report--\$3,500. We owe no one. Foreclosures will soon begin. Read and accepted.

The minutes were read and accepted.

Old Business:

- (1) We are not allowed to print "private" on road name signs according to county law.
- (2) Gravel was delivered to Section 7.
- (3) Keith is looking into other questions on road signs.

New Business:

- (1) Red Bird Road has a bad spot, but a backhoe is needed. It will be repaired in the future.
- (2) Matt recommends getting new people for spring road work. Steve hasn't been very reliable. The work is not getting done. Matt has offers that are good.
- (3) Ponds need to be cut and Matt is contacting someone in that regard.
- (4) Discussion on what to do with excess money: savings, trust, etc.
- (5) Discussion on incident which occurred on Rock Island. Gate was left open, and the head game warden for this district came in and was asked to leave. He became angry and refused to leave, and demands right-of-way to land.

Next meeting Nov. 15, 1997, at 9:30 a.m.

The meeting was adjourned at 10:27 a.m.



Dygert & Hemenway

Telephone (804) 979-5515

Telcfax (804) 295-7785

*Attorneys at Law*

1112 East High Street, Suite B  
Charlottesville, Virginia 22902

September 17, 1996

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

William Winkleman  
Route 1, Box 1143  
Harpers Ferry, WV 25425

Re: Dogwood Valley Citizens Association

Dear Mr. Winkleman:

I represent Dogwood Valley Citizens Association.

The Dogwood Valley Citizen's Association voted at its meeting on November 18, 1995, to approve a special assessment of \$100.00 per lot for all of the lots in Dogwood Valley to repair flood damage to the Dogwood Valley common area, including the roads. The special assessment was due to be paid by February 1, 1996, and a notice of the assessment was mailed to you prior to that deadline. To date, no payment has been received.

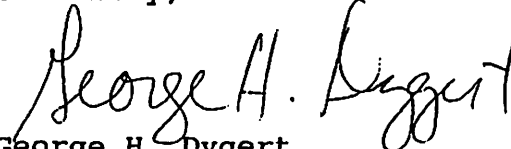
Please send a check or money order in the amount of \$200.00 immediately, either to me at the above address or directly to the Association at P.O. Box 127, Stanardsville, Virginia 22973.

If payment is not received by September 30, 1996, a Memorandum will be prepared and filed in the office of the clerk of the Circuit Court for Greene County in accordance with Virginia Code §55-516. The filing of this Memorandum will create a lien on your property and will result in your being assessed with the costs of filing the lien, interest from February 1, 1996, at 24% and attorney's fees incurred for collection.

I encourage you to pay this assessment as soon as possible in order to avoid the inconvenience and added expense associated with the creation and enforcement of the lien provided for in Code of Virginia §55-516.

Thank you for your prompt attention to this matter.

Sincerely,

  
George H. Dygert

GHD/llm

cc: Matt Brown, Dogwood Valley Citizens' Association

COMMONWEALTH OF VIRGINIA



OFFICIAL RECEIPT  
GREENE CIRCUIT COURT  
DEED RECEIPT

DATE: 01/09/97 TIME: 14:23:55 ACCOUNT: 079CLR9700107 RECEIPT: 97000000164  
CASHIER: MCD REG: GH01 TYPE: MEML PAYMENT: FULL PAYMENT  
INSTRUMENT : 9700107 BOOK: 398 PAGE: 330 RECORDED: 01/09/97 AT 14:23  
GRANTOR NAME : WINKLEMAN, WILLIAM EX: N LOCALITY: CO  
GRANTEE NAME : DOBWOOD VALLEY CITIZENS ASSOC EX: N PERCENT: 100%

AND ADDRESS :  
RECEIVED OF : DYGERT, G  
CHECK : \$16.00  
DESCRIPTION 1: LOT 1 SEC 5E

2:				
CONSIDERATION:	.00	ASSUME/VAL:	.00	HAP:
CODE DESCRIPTION		PAID	CODE DESCRIPTION	PAID
301 DEEDS		12.00	145 VSLF	1.00
106 TECHNOLOGY FUND FEE		3.00		
		TENDERED :		16.00
		AMOUNT PAID:		16.00
		CHANGE AMT :		.00

CLERK OF COURT: MARIE C. DURRER

**MEMORANDUM OF LIEN CLAIMED BY PROPERTY OWNERS' ASSOCIATION  
FOR DELINQUENT SPECIAL ASSESSMENT FEE**

00010

LOT OWNER: WILLIAM WINKLEMAN

ADDRESS OF OWNER: Route 1, Box 1143  
Silver Spring, MD 20902

NAME OF CLAIMANT: DOGWOOD VALLEY CITIZEN'S ASSOCIATION,  
INC.

ADDRESS OF CLAIMANT'S  
REPRESENTATIVE: George H. Dygert, Esquire  
Dygert & Hemenway  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902

NAME OF SUBDIVISION: Dogwood Valley Subdivision

LOT NUMBER: Lot 1, Section 5E, Dogwood Valley  
Subdivision, Greene County, Virginia

SPECIAL ASSESSMENT  
AMOUNT CLAIMED AND  
PAST DUE: \$100.00

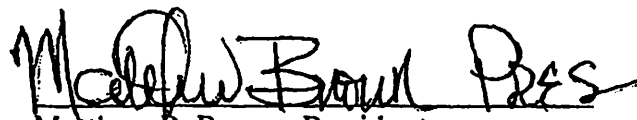
DATE ON WHICH SPECIAL  
ASSESSMENT DUE: February 2, 1996

This lien is obtained by Dogwood Valley Citizen's Association, Inc., in accordance with the provisions of the Virginia Property Owners' Association Act as set forth in Chapter 26 (Sec. 55-508, et seq.) of Title 55 of the Code of Virginia, 1950, as amended.

Issued this 8th day of January, 1997.

DOGWOOD VALLEY CITIZEN'S ASSOCIATION, INC.

By:

  
Matthew P. Brown, President

# AFFIDAVIT

STATE OF VIRGINIA  
CITY OF CHARLOTTESVILLE, to wit:

I, Kelly A. Hobbs, a notary public for the City aforesaid do certify that Claimant, Dogwood Valley Citizen's Association, Inc., by Matthew P. Brown its President, this day made oath before me in the city aforesaid that the facts set forth in the foregoing Memorandum are true and correct to the best of his knowledge and belief and that prior to filing this Memorandum of Lien, a written notice was sent to the property owner by certified mail at the property owner's last known address, informing the property owner that a Memorandum of Lien will be filed in the office of the Clerk of the Circuit Court for Greene County, at least ten (10) days before the date this Memorandum is filed, and that said lot owner is justly indebted to the Claimant in the sum of One Hundred and no/100 Dollars (\$100.00) for the delinquent special assessment stated in the foregoing memorandum, and the same is payable as therein stated.

Given under my hand this 8<sup>th</sup> day of January, 1997.

  
Notary Public

My Commission expires: 2/28/99

INSTRUMENT #9700187  
RECORDED IN THE CLERK'S OFFICE OF  
GREENE ON  
JANUARY 9, 1997 AT 02:23PM  
MARIE C. DURRER, CLERK

BY:  DEPUTY CLERK

VOL 398 PAGE 331

COMMONWEALTH OF VIRGINIA



(11-13-028 (8/96))

OFFICIAL RECEIPT  
GREENE CIRCUIT COURT  
DEED RECEIPT

DATE: 01/09/97 TIME: 14:24:52 ACCOUNT: 079CLR9700108 RECEIPT: 97000000165  
CASHIER: MCD REG: 6N01 TYPE: NEML PAYMENT: FULL PAYMENT  
INSTRUMENT : 9700108 BOOK: 398 PAGE: 332 RECORDED: 01/09/97 AT 14:24  
GRANTOR NAME : WINKLEMAN, WILLIAM EX: N LOCALITY: CO  
GRANTEE NAME : DOGWOOD VALLEY CITIZENS EX: N PERCENT: 100%

AND ADDRESS :  
RECEIVED OF : DYBERT, G  
CHECK : \$16.00  
DESCRIPTION 1: LOT 2 SEC 5E  
2:

CONSIDERATION:	.00	ASSUME/VAL:	.00	NAP:	
CODE DESCRIPTION		PAID	CODE DESCRIPTION		PAID
301 DEEDS		12.00	145 VSLF		1.00
106 TECHNOLOGY FUND FEE		3.00			
			TENDERED :		16.00
			AMOUNT PAID:		16.00
			CHANGE AMT :		.00

CLERK OF COURT: MARIE C. DURRER

90252

DC-18 (8/96)

**MEMORANDUM OF LIEN CLAIMED BY PROPERTY OWNERS' ASSOCIATION  
FOR DELINQUENT SPECIAL ASSESSMENT FEE**

000108

LOT OWNER: WILLIAM WINKLEMAN

ADDRESS OF OWNER: Route 1, Box 1143  
Silver Spring, MD 20902

NAME OF CLAIMANT: DOGWOOD VALLEY CITIZEN'S ASSOCIATION,  
INC.

ADDRESS OF CLAIMANT'S  
REPRESENTATIVE: George H. Dygert, Esquire  
Dygert & Hemenway  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902

NAME OF SUBDIVISION: Dogwood Valley Subdivision

LOT NUMBER: Lot 2, Section 5E, Dogwood Valley  
Subdivision, Greene County, Virginia

SPECIAL ASSESSMENT  
AMOUNT CLAIMED AND  
PAST DUE: \$100.00

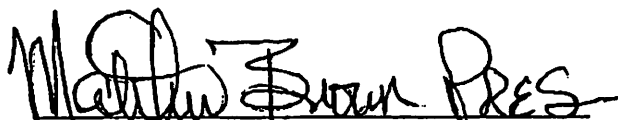
DATE ON WHICH SPECIAL  
ASSESSMENT DUE: February 2, 1996

This lien is obtained by Dogwood Valley Citizen's Association, Inc., in  
accordance with the provisions of the Virginia Property Owners' Association Act as set forth  
in Chapter 26 (Sec. 55-508, et seq.) of Title 55 of the Code of Virginia, 1950, as amended.

Issued this 8<sup>th</sup> day of January, 1997.

DOGWOOD VALLEY CITIZEN'S ASSOCIATION, INC.

By:

  
Matthew P. Brown, President

**AFFIDAVIT**

STATE OF VIRGINIA  
CITY OF CHARLOTTESVILLE, to wit:

I, Kelly A. Hobbs, a notary public for the City aforesaid do certify that Claimant, Dogwood Valley Citizen's Association, Inc., by Matthew P. Brown its President, this day made oath before me in the city aforesaid that the facts set forth in the foregoing Memorandum are true and correct to the best of his knowledge and belief and that prior to filing this Memorandum of Lien, a written notice was sent to the property owner by certified mail at the property owner's last known address, informing the property owner that a Memorandum of Lien will be filed in the office of the Clerk of the Circuit Court for Greene County, at least ten (10) days before the date this Memorandum is filed, and that said lot owner is justly indebted to the Claimant in the sum of One Hundred and no/ 100 Dollars (\$100.00) for the delinquent special assessment stated in the foregoing memorandum, and the same is payable as therein stated.

Given under my hand this 8<sup>th</sup> day of January, 1997.

  
Notary Public

My Commission expires: 2/28/99

INSTRUMENT #9700108  
RECORDED IN THE CLERK'S OFFICE OF  
GREENE ON  
JANUARY 9, 1997 AT 02:24PM  
MARIE C. DURRER, CLERK

BY:  DEPUTY CLERK

Ex 398 P. 332A

Dygert & Hemenway

Telephone (804) 979-5515  
Telefax (804) 295-7785

---

*Attorneys at Law*

---

1112 East High Street, Suite B  
Charlottesville, Virginia 22902

April 4, 1997

Mr. William Winkleman  
Route 1, Box 1143  
Harpers Ferry, WV 25425

Re: Dogwood Valley special assessment

Dear Mr. Winkleman:

As you know, Dogwood Valley Citizens Association (DVCA) has filed a Memorandum of Lien against your property for delinquent special assessment fees. It is my intention to foreclose on this lien in the near future. However, because many of the lot owners who have contacted me seem to be confused about what is owed, I wanted to clarify the matter before proceeding with foreclosure. In addition, many of the delinquent lot owners paid their Annual Road Maintenance Fee, but still have not paid the special assessment fee. Therefore, I am concerned that there may be some confusion over the significance of the liens filed against your property.

Firstly, the special assessment levied was \$100.00 per lot, not \$100.00 per owner. Therefore, those who own more than one lot, owe \$100.00 for each lot owned.

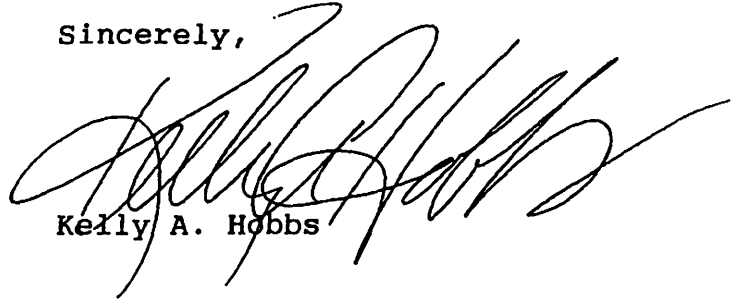
Secondly, the special assessment in the amount of \$100.00 per lot is a separate fee from the Annual Road Maintenance Fees. The Annual Road Fee Notice mailed to you in November 1996, did not address the delinquent special assessments due. Therefore, your account with DVCA is still in arrears. In addition, because DVCA had to file Memoranda of Lien in the Greene County Circuit Court Clerk's Office, the amount you owe now consists of \$100.00 per lot, plus attorney's fees, interest and costs.

In the event that your account with DVCA is not paid in full by April 20, 1997, I will proceed with the foreclosure action pursuant to §55-516 of the Code of Virginia, 1950, as amended. Foreclosure will result in the public sale of your property and the application of a portion of the proceeds to your account with DVCA. Should you wish to bring your account current, please contact my office no later than April 20, 1997.



Thank you for your attention to this matter.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Kelly A. Hobbs'.

Kelly A. Hobbs

kh

cc: Matthew P. Brown, President  
Dogwood Valley Citizens Association

Valerie M. Winkelman 7-88  
William A. Winkelman  
Ph. 304-725-3402  
Rt. 1, Box 1143  
Harpers Ferry, W.Va. 25425

88-1115  
560  
32319266

3470

5/6/97  
Date

Pay to the order of DVCA \$200 <sup>no</sup>/<sub>100</sub>  
Two hundred & no/100 Dollars



FIRST VIRGINIA BANK  
SERVING NORTHERN VIRGINIA  
FALLS CHURCH, VIRGINIA 22042

memo Special Assessment Valerie M. Winkelman

⑆056001118⑆ 3231 9266⑈ 3470

BULL, BERRY AND FINE, INC.

Dygart & Hemenway

Telephone (804) 979-5515  
Telefax (804) 295-7785

*Attorneys at Law*

1112 East High Street, Suite B  
Charlottesville, Virginia 22902

May 13, 1997

Mr. and Mrs. William A. Winkelman  
Route 1, Box 1143  
Harpers Ferry, WV 25425

Re: Dogwood Valley Citizen's Association

Dear Mr. and Mrs. Winkelman:

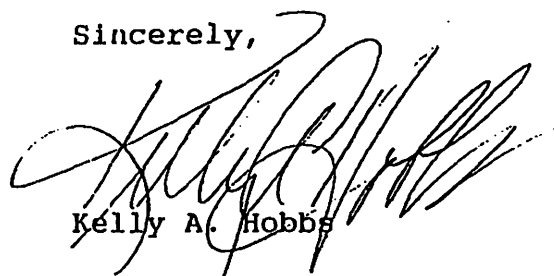
Thank you for your payment in the amount of \$200.00.

Please be advised, that, because DVCA had to begin collection activities on your account with DVCA, you now owe filing fees, interest and attorneys fees. The following is a breakdown of your account with DVCA:

Special Assessment	\$200.00
Attorney's fees	50.00
Filing fees	64.00
Interest from 1/9/97- 5/13/97	5.04
Total due DCVA	<u>\$319.04</u>
Payment by check	200.00
Remaining balance owed	<u>\$119.04</u>

Thank you for your attention to this matter.

Sincerely,



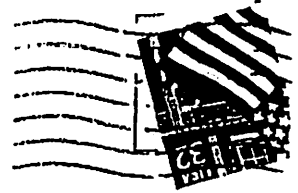
Kelly A. Hobbs

kh

cc: Matthew P. Brown, President  
Dogwood Valley Citizen's Association

Wood Valley Citizens Association

Box 127  
Charlottesville, VA 22973



William Winkleman  
Route 1, Box 1143  
Harpers Ferry, WV 25425

Road Fee Notice

Invoice Date 11/15/97

Charges By Lot

05e -01	\$25.00
05e -02	\$25.00

Amounts by Category

Prior Balance	\$170.15
Penalties	\$00.00
Interest	\$00.00
Road Fees	\$50.00
Special Assessment	\$70.00 ( \$35.00 per lot )

---

Amount Due in full by 12/31/97 **\$290.15**

---

At its annual meeting, the Association members voted to increase the penalty amount for late payment from \$1.50 to \$50.00. The interest rate was raised from 10% to 24%. The new rates go into effect with this invoice. The penalty and interest amounts (if any) included on this invoice were calculated using the old rates.

Included in your prior balance are court costs (\$64), attorney fees (\$100), and interest (\$6.15), calculated at the court-specified rate.

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete Items 1 and/or 2 for additional services.
- Complete Items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- ☐ Addressee's Address
- ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

William Winkleman  
Rt. 1 Box 1143  
Harpers Ferry, WV 25425

4a. Article Number

P 186 856 568

4b. Service Type

- ☐ Registered ☒ Certified  
☐ Express Mail ☐ Insured  
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

2/28/98

5. Received By: (Print Name)

VALORIE WINKELMAN

6. Signature: (Addressee or Agent)

x Valerie Winkelman

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

P 186 856 568

US Postal Service

**Receipt for Certified Mail**

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	Wm Winkleman
Street & Number	Rt. 1 Box 1143
Post Office, State, & ZIP Code	Harpers Ferry, WV 25425
Postage	\$ .32
Certified Fee	1.35
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.10
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$ 2.77
Postmark or Date	

PS Form 3800, April 1995

**Dygert & Hemenway**

*Attorneys at Law*

Telephone (804) 979-5515  
Telefax (804) 295-7785

1112 East High Street, Suite B  
Charlottesville, Virginia 22902

February 20, 1998

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mr. William Winkleman  
Route 1, Box 1143  
Harpers Ferry, WV 25425

Re: Dogwood Valley Citizens' Association

Dear Mr. Winkleman:

I represent Dogwood Valley Citizens Association.

The Dogwood Valley Citizen's Association voted at its meeting on June 14, 1997, to approve a special assessment of \$35.00 per lot for all of the lots in Dogwood Valley to repair road damage. Payment of the special assessment was due no later than February 1, 1998, and a notice of the assessment was mailed to you on or about November 15, 1997. To date, no payment has been received from you.

In addition, your account with Dogwood Valley Citizens' Association for the annual road fee has an unpaid balance of \$50.00. Because this amount was not paid by February 1, 1998, a penalty of \$50.00 was incurred and interest on the outstanding amount is accruing at 24% per annum.

The total amount you owe on your account is \$366.55, which consists of outstanding road fees, 1997 special assessment, interest, penalties and \$25.00 in attorney fees accrued to date for collection on this account. Please send a check or money order in the amount of \$366.55 to me at the above address upon receipt of this letter.

If payment of the special assessment is not received within 10 days of the date of this letter, a Memorandum will be prepared and filed in the Office of the Clerk of the Circuit Court for Greene County in accordance with Virginia Code §55-516. The filing of this Memorandum will create a lien on your property and will result in your being assessed with the costs of filing the lien, interest from February 1, 1998, at 9% and attorney's fees incurred for collection.

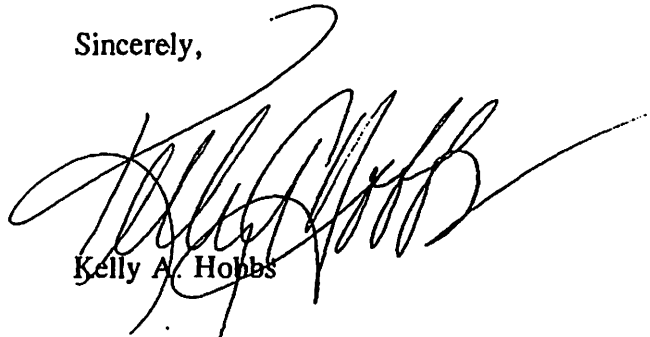
February 11, 1998

Page 2

I encourage you to pay these fees as soon as possible in order to avoid the inconvenience and added expense associated with the creation and enforcement of the lien provided for in Code of Virginia §55-516 and further action to collect the annual road fees, together with interest and penalties thereon.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kelly A. Hobbs', with a large, sweeping flourish extending to the right.

Kelly A. Hobbs

KAH/jmc

encl.

cc: Matthew Brown, President  
Dogwood Valley Citizens' Association

COMMONWEALTH OF VIRGINIA



(114-3-028 5/97)

OFFICIAL RECEIPT  
GREENE CIRCUIT COURT  
DEED RECEIPT

DATE: 03/30/98 TIME: 09:23:09 ACCOUNT: 079CLR9800926 RECEIPT: 98000001602  
CASHIER: MCD REG: 6N01 TYPE: LIEN PAYMENT: FULL PAYMENT  
INSTRUMENT : 9800926 BOOK: 441 PAGE: 221 RECORDED: 03/30/98 AT 09:23  
GRANTOR: WINKLEMAN, WILLIAM EX: N LOC: CD  
GRANTEE: DOGWOOD VALLEY CITIZENS ASSOC EX: N PCT: 100%

AND ADDRESS :

RECEIVED OF : DYGERT, GEORGE

CHECK : \$16.00

DESCRIPTION 1: LOT1 SEC 5E DOGWOOD VALLEY SUB

2:

CONSIDERATION:	.00	ASSUME/VAL:	.00	MAP:	
CODE DESCRIPTION		PAID CODE DESCRIPTION			PAID
301 DEEDS		12.00 145 VSLF			1.00
106 TECHNOLOGY FUND FEE		3.00			

TENDERED :	16.00
AMOUNT PAID:	16.00
CHANGE AMT :	.00

CLERK OF COURT: MARIE C. DURRER

976797-335

DC-18 (5/97)



MEMORANDUM OF LIEN CLAIMED BY PROPERTY OWNER'S ASSOCIATION FOR  
DELINQUENT SPECIAL ASSESSMENT

NAME OF LOT OWNER: WILLIAM WINKLEMAN

ADDRESS OF OWNER: Route 1, Box 1143  
Harpers Ferry, West Virginia 25425

NAME OF CLAIMANT: DOGWOOD VALLEY CITIZENS ASSOCIATION

ADDRESS OF CLAIMANT'S

REPRESENTATIVE: Kelly A. Hobbs, Esq.  
Dygert & Associates  
1112 E. High Street, Suite B  
Charlottesville, Virginia 22902

NAME OF SUBDIVISION: Dogwood Valley Subdivision

LOT NUMBER: Lot 1, Section 5e, Dogwood Valley Subdivision,  
Greene County, Virginia

SPECIAL ASSESSMENT

AMOUNT CLAIMED PAST DUE: \$ 35.00

DATE ON WHICH SPECIAL

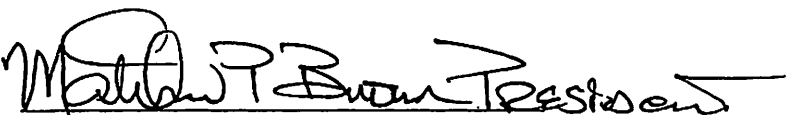
ASSESSMENT DUE: February 1, 1998

This lien is obtained by Dogwood Valley Citizen's Association, Inc., in accordance with the provisions of the Virginia Property Owner's Association Act as set forth in Chapter 26 (§55-508, et. Seq.) Of Title 55 of the Code of Virginia, 1950, as amended.

Issued this 24 day of March, 1998.

DOGWOOD VALLEY CITIZEN'S ASSOCIATION, INC.

By:

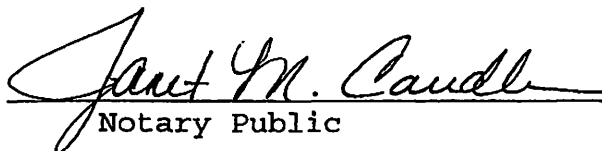
  
Matthew P. Brown, President

AFFIDAVIT

STATE OF VIRGINIA  
CITY OF CHARLOTTESVILLE, to-wit:

I, Janet M. Caudle, a notary public for the City of Charlottesville, do certify that Claimant, Dogwood Valley Citizen's Association, Inc. by Matthew P. Brown its President, this day made oath before me in the city aforesaid that the facts set forth in the foregoing Memorandum are true and correct to the best of his knowledge and belief and that prior to filing this Memorandum of Lien, a written notice was sent to the property owner that a Memorandum of Lien will be filed in the Office of the Clerk of the Circuit Court for Greene County, at least ten (10) before the date this Memorandum is filed, and that said lot owner is justly indebted to the Claimant in the sum of \$35.00 for delinquent special assessment stated in the foregoing memorandum, and the same is payable as therein stated.

Given under my hand this 24<sup>th</sup> day of March, 1998.

  
Notary Public

My commission expires: Oct. 31, 1998

VOL 441 PAGE 222

245

INSTRUMENT #9800926  
RECORDED IN THE CLERK'S OFFICE OF  
GREENE ON  
MARCH 30, 1998 AT 09:23AM  
MARIE C. DURRER, CLERK

BY: H. Nicholson (DC)

COMMONWEALTH OF VIRGINIA



(114:3-028 597)

OFFICIAL RECEIPT  
GREENE CIRCUIT COURT  
DEED RECEIPT

DATE: 03/30/98 TIME: 09:24:19 ACCOUNT: 079CLR9800927 RECEIPT: 98000001603  
CASHIER: MCD REG: 6N01 TYPE: LIEN PAYMENT: FULL PAYMENT  
INSTRUMENT : 9800927 BOOK: 441 PAGE: 223 RECORDED: 03/30/98 AT 09:24  
GRANTOR: WINKLEMAN, WILLIAM EX: N LOC: CO  
GRANTEE: DOWHOOD VALLEY CITIZENS ASSOC EX: N PCT: 100%  
AND ADDRESS :

RECEIVED OF : DYERT, GEORGE  
CHECK : \$16.00

DESCRIPTION 1: LOT 2 SEC 5E DOWHOOD VALLEY SUB  
2:

CONSIDERATION:	.00	ASSUME/VAL:	.00	MAP:	
CODE DESCRIPTION		PAID	CODE DESCRIPTION		PAID
301 DEEDS	12.00	145	VSLF		1.00
106 TECHNOLOGY FUND FEE	3.00				
		TENDERED :			16.00
		AMOUNT PAID:			16.00
		CHANGE AMT :			.00

CLERK OF COURT: MARIE C. DURRER

97679/7335

DC-18 (5/97)

000927

MEMORANDUM OF LIEN CLAIMED BY PROPERTY OWNER'S ASSOCIATION FOR  
DELINQUENT SPECIAL ASSESSMENT

NAME OF LOT OWNER: WILLIAM WINKLEMAN

ADDRESS OF OWNER: Route 1, Box 1143  
Harpers Ferry, West Virginia 25425

NAME OF CLAIMANT: DOGWOOD VALLEY CITIZENS ASSOCIATION

ADDRESS OF CLAIMANT'S

REPRESENTATIVE: Kelly A. Hobbs, Esq.  
Dygert & Associates  
1112 E. High Street, Suite B  
Charlottesville, Virginia 22902

NAME OF SUBDIVISION: Dogwood Valley Subdivision

LOT NUMBER: Lot 2, Section 5e, Dogwood Valley Subdivision,  
Greene County, Virginia

SPECIAL ASSESSMENT

AMOUNT CLAIMED PAST DUE: \$ 35.00

DATE ON WHICH SPECIAL

ASSESSMENT DUE: February 1, 1998

This lien is obtained by Dogwood Valley Citizen's Association, Inc., in accordance with the provisions of the Virginia Property Owner's Association Act as set forth in Chapter 26 (§55-508, et. Seq.) Of Title 55 of the Code of Virginia, 1950, as amended.

Issued this 24 day of March, 1998.

DOGWOOD VALLEY CITIZEN'S ASSOCIATION, INC.

By: Matthew P. Brown President  
Matthew P. Brown, President

AFFIDAVIT

STATE OF VIRGINIA  
CITY OF CHARLOTTESVILLE, to-wit:

I, Janet M. Caudle, a notary public for the City of Charlottesville, do certify that Claimant, Dogwood Valley Citizen's Association, Inc. by Matthew P. Brown its President, this day made oath before me in the city aforesaid that the facts set forth in the foregoing Memorandum are true and correct to the best of his knowledge and belief and that prior to filing this Memorandum of Lien, a written notice was sent to the property owner that a Memorandum of Lien will be filed in the Office of the Clerk of the Circuit Court for Greene County, at least ten (10) before the date this Memorandum is filed, and that said lot owner is justly indebted to the Claimant in the sum of \$35.00 for delinquent special assessment stated in the foregoing memorandum, and the same is payable as therein stated.

Given under my hand this 24<sup>th</sup> day of March, 1998.

  
Notary Public

My commission expires: Oct. 31, 1998

VOL 441 PAGE 224

INSTRUMENT #9800927  
RECORDED IN THE CLERK'S OFFICE OF  
GREENE ON  
MARCH 30, 1998 AT 09:24AM  
MARIE C. DURRER, CLERK

P 186 856 595

US Postal Service

**Receipt for Certified Mail**

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	
Wm. Winkler	
Street & Number	
Post Office, State, & ZIP Code	
Postage	\$ .55
Certified Fee	1.35
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.10
Return Receipt Showing to Whom, Date, & Addressee's Address	
<b>TOTAL Postage &amp; Fees</b>	<b>\$ 3.00</b>
Postmark or Date	

PS Form 3800, April 1995

George H. Dyged & Associates  
Attorneys at Law  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902

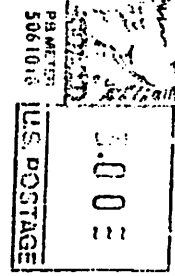
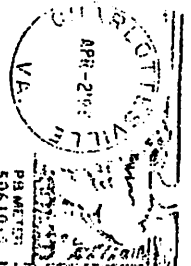
P 186 856 595

**CERTIFIED**

**MAIL**

REFUSED  
UNCLAIMED

William Winkler  
Route Box 1148  
Harpers Lake, VA 22902



4-18

**George H. Dygert & Associates**

Telephone (804) 979-5515  
Telefax (804) 295-7785  
E-mail ghdygert@aol.com

*Attorneys at Law*

1112 East High Street, Suite B  
Charlottesville, Virginia 22902

April 2, 1998

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

William Winkleman  
Route 1 Box 1143  
Harpers Ferry, West Virginia 25425

Re: Dogwood Valley Subdivision

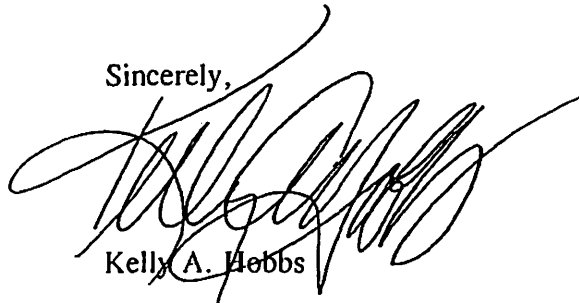
Dear Mr. Winkleman:

Enclosed is a copy of the Memorandum which I have filed in the Greene County Circuit Court Clerk's Office creating a lien on your property in favor of the Dogwood Valley Citizens' Association (DVCA).

Pursuant to the provisions of Virginia Code §55-516, DVCA has submitted a Notice of Foreclosure which will appear in the local newspaper advertising the public sale of all lots in the subdivision whose special assessment accounts are in arrears. I have attached a copy of that advertisement for your information.

If you wish to bring your account current prior to the public auction and retain your property, please contact my office to get a payoff amount, since unpaid accounts have incurred interest, penalties, advertising costs and attorneys fees, in addition to the original special assessment. Unless payment is received prior to the time of the sale, your property will be sold as scheduled.

Sincerely,



Kelly A. Hobbs

KAH/mm  
Enclosure

MEMORANDUM OF LIEN CLAIMED BY PROPERTY OWNER'S ASSOCIATION FOR  
DELINQUENT SPECIAL ASSESSMENT

NAME OF LOT OWNER: WILLIAM WINKLEMAN

ADDRESS OF OWNER: Route 1, Box 1143  
Harpers Ferry, West Virginia 25425

NAME OF CLAIMANT: DOGWOOD VALLEY CITIZENS ASSOCIATION

ADDRESS OF CLAIMANT'S

REPRESENTATIVE: Kelly A. Hobbs, Esq.  
Dygert & Associates  
1112 E. High Street, Suite B  
Charlottesville, Virginia 22902

NAME OF SUBDIVISION: Dogwood Valley Subdivision

LOT NUMBER: Lot 1, Section 5e, Dogwood Valley Subdivision,  
Greene County, Virginia

SPECIAL ASSESSMENT

AMOUNT CLAIMED PAST DUE: \$ 35.00

DATE ON WHICH SPECIAL

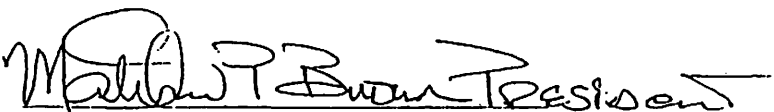
ASSESSMENT DUE: February 1, 1998

This lien is obtained by Dogwood Valley Citizen's Association, Inc., in accordance with the provisions of the Virginia Property Owner's Association Act as set forth in Chapter 26 (§55-508, et. Seq.) Of Title 55 of the Code of Virginia, 1950, as amended.

Issued this 24 day of March, 1998.

DOGWOOD VALLEY CITIZEN'S ASSOCIATION, INC.

By:

  
Matthew P. Brown, President

AFFIDAVIT



STATE OF VIRGINIA

CITY OF CHARLOTTESVILLE, to-wit:

I, Janet M. Caudle, a notary public for the City of Charlottesville, do certify that Claimant, Dogwood Valley Citizen's Association, Inc. by Matthew P. Brown its President, this day made oath before me in the city aforesaid that the facts set forth in the foregoing Memorandum are true and correct to the best of his knowledge and belief and that prior to filing this Memorandum of Lien, a written notice was sent to the property owner that a Memorandum of Lien will be filed in the Office of the Clerk of the Circuit Court for Greene County, at least ten (10) before the date this Memorandum is filed, and that said lot owner is justly indebted to the Claimant in the sum of \$35.00 for delinquent special assessment stated in the foregoing memorandum, and the same is payable as therein stated.

Given under my hand this 24<sup>th</sup> day of March, 1998.

  
Notary Public

My commission expires: Oct. 31, 1998

COMMONWEALTH OF VIRGINIA



(11-3-923 597)

OFFICIAL RECEIPT  
GREENE CIRCUIT COURT  
DEED RECEIPT

DATE: 03/30/98 TIME: 09:23:09 ACCOUNT: 079CLR9800926 RECEIPT: 98000001602  
CASHIER: MCD REG: GM01 TYPE: LIEN PAYMENT: FULL PAYMENT  
INSTRUMENT : 9800926 BOOK: 441 PAGE: 221 RECORDED: 03/30/98 AT 09:23  
GRANTOR: WINKLEMAN, WILLIAM EX: N LOC: CO  
GRANTEE: DOGWOOD VALLEY CITIZENS ASSOC EX: N PCT: 100%

AND ADDRESS :  
RECEIVED OF : DYBERT, GEORGE  
CHECK : \$16.00  
DESCRIPTION 1: LOT1 SEC 5E DOGWOOD VALLEY SUB  
2:

CONSIDERATION:	.00	ASSUME/VAL:	.00	NAP:	
CODE DESCRIPTION		PAID CODE DESCRIPTION		PAID	
301 DEEDS	12.00	145 VSLF		1.00	
106 TECHNOLOGY FUND FEE	3.00				
		TENDERED :		16.00	
		AMOUNT PAID:		16.00	
		CHANGE AMT :		.00	

CLERK OF COURT: MARIE C. DURRER

9767377335

DC-18 (5/97)

MEMORANDUM OF LIEN CLAIMED BY PROPERTY OWNER'S ASSOCIATION FOR  
DELINQUENT SPECIAL ASSESSMENT

NAME OF LOT OWNER: WILLIAM WINKLEMAN

ADDRESS OF OWNER: Route 1, Box 1143  
Harpers Ferry, West Virginia 25425

NAME OF CLAIMANT: DOGWOOD VALLEY CITIZENS ASSOCIATION

ADDRESS OF CLAIMANT'S

REPRESENTATIVE: Kelly A. Hobbs, Esq.  
Dygert & Associates  
1112 E. High Street, Suite B  
Charlottesville, Virginia 22902

NAME OF SUBDIVISION: Dogwood Valley Subdivision

LOT NUMBER: Lot 2, Section 5e, Dogwood Valley Subdivision,  
Greene County, Virginia

SPECIAL ASSESSMENT

AMOUNT CLAIMED PAST DUE: \$ 35.00

DATE ON WHICH SPECIAL

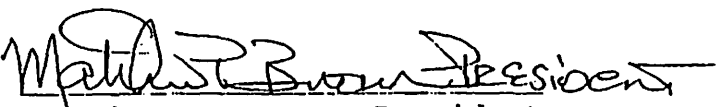
ASSESSMENT DUE: February 1, 1998

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Issued this 24 day of March, 1998.

DOGWOOD VALLEY CITIZEN'S ASSOCIATION, INC.

By:

  
Matthew P. Brown, President

AFFIDAVIT

STATE OF VIRGINIA

CITY OF CHARLOTTESVILLE, to-wit:

I, Janet M. Caudle, a notary public for the City of Charlottesville, do certify that Claimant, Dogwood Valley Citizen's Association, Inc. by Matthew P. Brown its President, this day made oath before me in the city aforesaid that the facts set forth in the foregoing Memorandum are true and correct to the best of his knowledge and belief and that prior to filing this Memorandum of Lien, a written notice was sent to the property owner that a Memorandum of Lien will be filed in the Office of the Clerk of the Circuit Court for Greene County, at least ten (10) before the date this Memorandum is filed, and that said lot owner is justly indebted to the Claimant in the sum of \$35.00 for delinquent special assessment stated in the foregoing memorandum, and the same is payable as therein stated.

Given under my hand this 24<sup>th</sup> day of March, 1998.

  
Notary Public

My commission expires: Oct. 31, 1998

COMMONWEALTH OF VIRGINIA



OFFICIAL RECEIPT  
GREENE CIRCUIT COURT  
DEED RECEIPT

(1143-023 5/97)

DATE: 03/30/98 TIME: 09:24:19 ACCOUNT: 079CLR9800927 RECEIPT: 98000001603  
CASHIER: MCD REG: GH01 TYPE: LIEN PAYMENT: FULL PAYMENT  
INSTRUMENT : 9800927 BOOK: 441 PAGE: 223 RECORDED: 03/30/98 AT 09:24  
GRANTOR: WINKLEMAN, WILLIAM EX: N LOC: CO  
GRANTEE: DOGWOOD VALLEY CITIZENS ASSOC EX: N PCT: 100%  
AND ADDRESS :  
RECEIVED OF : DYERT, GEORGE  
CHECK : \$16.00  
DESCRIPTION 1: LOT 2 SEC 5E DOGWOOD VALLEY SUB  
2:  
CONSIDERATION: .00 ASSUME/VAL: .00 MAP: PAID  
CODE DESCRIPTION PAID CODE DESCRIPTION PAID  
301 DEEDS 12.00 145 VSLF 1.00  
106 TECHNOLOGY FUND FEE 3.00  
TENDERED : 16.00  
AMOUNT PAID: 16.00  
CHANGE AMT : .00

CLERK OF COURT: MARIE C. DURRER

97879.7335

DC-18 (5/97)

BEDROOM duplex  
wyman's Mill area.  
ountry setting, garden  
175. 540-948-5118.  
cc



10 am  
STIAN

oad  
if raining)

Beanie Babies;  
well plate; Gund  
cat; A Cake A  
: 1 night/couple;  
s Surplus: Gift  
: 8x10 Studio  
Corral: 2 sirloin  
tent; 2nd Bank:  
:00 certificate;  
: Culpeper Pet  
Systems: Pure  
t. Yeaman, III:  
tied patchwork  
wall hangings;  
Set of Modern  
in Comforter;  
ite w/t : 3; 2  
cake : ate;  
: canning jars;  
g pans; Green  
urines; Silver &  
al old baskets;  
cassette); Sofa  
fryer, popcorn  
; Record player  
love, kerosene  
le, large desk;  
ble (seats 6-8)  
coffee tables,  
o stool; Child's  
tendo set w/17  
Kitchen items,  
table; Antique  
Antique sewing  
Wooden plant  
id brass wash-  
an foot locker;  
gallon crock;  
abinet; 2 new  
tools, Box of  
ols, gas grill;  
Painted mirror  
table top (blue

ulpeper  
ing Fund

J  
Y RIDES  
ed B

ESE

0031  
/A

Decks, Sidewalks & More!  
Owner Robert Yowell, Jr.

(540) 948-3211

540-672-2811  
804-746-4693

## NOTICE OF PUBLIC SALE BY DOGWOOD VALLEY CITIZENS ASSOCIATION

Pursuant to the provision of §55-516 of the Code of Virginia, 1950 as amended, the under- signed will offer for sale at public auction, prop- erty described as follows, with each lot to be offered for sale separately:

All of the following lots located in Dogwood Valley Subdivision in Greene County, Virginia, which subdivision is located off State Route 637, in the said county.

Owner	Parcel
Harry A. Austin III	Lot 14, Section 5A
Estate of Dennis W. Berg	Lot 30, Section 7B
George & Mattie Coates	Lot 10, Section 2
Kenneth Colby	Lot 19, Section 7B
Ernst DeGroot	Lot 34, Section 7C
Douglas Dye, Sr.	Lots 9A, 10, 10A, 10B, Section 3
Douglas Dye, Jr.	Lot 8, Section 3
William A. Fletcher	Lot 11, Section 5A
Dr. & Mrs. David J. Harter	Lots 1, 2 and 3, Section 2D
Kenneth T. Jacob	Lot 12, Section 3A
Thelma Gilkeson Johnson	Lots 2 and 3, Section 4A
Edward & Patricia Kallok	Lot 13, Section 7A
Danny M. Kulick & Janice Kulick	Lot 55, Section 7C
Frederick A. Lanson	Lot 22, Section 6
Eric Martel and Karen Martel	Lot 41, Section 7D
Jack W. McAllister	Lot 1, Section 2F
Shirley Moore	Lots 5, 6, 7, 8, 9, 10, 11, 13, 14, 15 & 16, Section 5C
William & Theresa Nichols	Lot 6, Section 2M
James L. Pollitt	Lot 1, Section 7A
John D. Ryan	Lot 23, Section 6
Michael & Cynthia Sabatino	Lot 6, Section 3
Virginia Salisbury	Lot 17, Section 5A
George & Lila Wiltshire	Lots 8 & 8A, Section 4A
William Winkleman	Lots 1 & 2, Section 5E

Said public auction to be held in front of the building housing the Circuit Court for the County of Greene, Virginia, located at Court Square in Stanardsville, Virginia, on April 29, 1998, at 12:00 noon. TERMS: CASH. Bidders deposit of 10% of the bid price in cash or certi- fied check will be required at the time and place of sale. Settlement shall take place within fif- teen days of sale, otherwise the Association may forfeit deposit. Additional terms to be announced at sale.

C/O Kelly A. Hobbs, Esquire  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902  
(804) 979-5515

Display cabinet with beveled mirrors, shelves, Hepple White style strip- ing  
Three sectional wood/glass display cabinet with shelves  
Small oak and glass display case  
Embroidered footstool  
Antique liquor cabinet  
Antique bench with cush- ioned bottom  
Frosted pink glass lamp  
Spindle leg table  
Walnut rocking chair, Cana bottom rocking chair  
Round walnut table  
Round table, oak, large  
Square table with ball/claw feet  
Several wooden magazine racks  
Half moon table with bench  
Burled walnut corner dresser  
Three over two dresser with mirror

### RUGS

Oriental rug, 3'x4'6"  
Belouch  
Oriental runner, cream colored  
Two Oriental rugs, 6'x4', Burnt orange  
8'x12' Oriental rug  
3'x2' Oriental rug  
3'6"x5'10" Rug  
5'9"x11'2" Oriental rug  
9'1"x11'9" Oriental rug  
12'x15' Karistan rug  
Several more asst. Oriental throw rugs

### COMICS

500 Comic books, 12 cent & 15 cent issues  
Over 200 Archie and Sad Sack  
One Batman Hard Copy Book  
50 Batman comics

### COINS

60 Silver Dollars, Morgan & Peace  
Two \$1 Gold pieces  
Three \$2.50 Indian Gold pieces

16mm Merry-Toons, 16mm Paul Terry Toons, Little Lost Sheep, Christmas Dream

Gullible Canary  
Keystone Moviegraph 16mm L942  
Marlboro Advertising Posters

### CHINA & GLASSWARE & SILVER

Asst. of Carnival glass  
Asst. crystal  
Cranberry glass  
Wedgewood Jasperware  
Cobalt blue glassware  
Three different sets French Haviland Limoge China  
Two sets Wedgewood Sterling Candelabra  
Lenox, asst. pieces, Noritake  
Leonard Silver footed tray  
Rogers & Bros. triple plated coffee service  
Gorham sterling aperill cups, 6  
Sterling short candlesticks

### ART

Approximately one dozen oil paintings, old  
Dozens of old prints, framed  
Garden statues, Coffee table statues

### OUTDOOR, TOOLS & APPLIANCES & MISC.

Craftsman 12" band saw and sander, Table saw and bench grinder, Craftsman drill press, B&D electric miter saw, Ariens self-propelled mower, Hand tools, Small appliances  
Contemporary furniture, Household knick knacks, Patio and lawn furniture, Office furniture - wood and metal desks, stuffed office chairs, adjustable secretary chairs, 2 & 4 drawer filing cabinets, asst. wood & metal cabi- nets, adjustable pole lamps, office dividers w/electric hook ups.

**\*\*\*ANNOUNCEMENT!!** Real Estate being sold and items moved on 55 ft. trailer and trucks BEFORE being sorted. We are currently unpack- ing china and glassware galore! For security reasons, items will be available for viewing beginning with Friday's sale. Not unpacking fully until week of auction.

**APPROXIMATE ORDER OF SALE:** Friday - Outdoor furniture, tools, small appliances, contem- porary furniture, office furniture, misc.

Saturday - Antique furniture, Oriental rugs, Glassware, Comics, Art & Collectibles, Jewelry and Coins, Automobiles

Sunday - If necessary

Some quality items are from two other Culpeper estates.

**TERMS AND CONDITIONS:** Cash, Certified Funds or check with proper I.D.

**BENNETT REALTY & AUCTION CO.**

14434 Germanna Highway  
Culpeper, VA 22701 • (540) 825-4554  
Lawrence K. Bennett, CAI (540) 825-2541  
Lic. #551





P.O. BOX 66  
STANDARDSVILLE, VA 22973  
Phone: (804) 985-2315

# Advertising Statement and Invoice

Billing Date: 04/30/98  
Customer No: 00523772  
Page: 1

DYGERT, GEORGE H & ASSOC.  
1112 E. HIGH STREET  
CHARLOTTESVILLE VA 22902

05

Enclosed Amount:

Please detach and return this top portion with your payment. To insure proper credit to your account, please write your customer number on your check. If you have any questions about your account, please contact (804) 985-2315.

Date	Description	Inch/Line	Rate	Charges	Credits	Balance
4/2/98	Class Display PUBLIC NOTICE 4/2/98	20.00 I	5.56	111.20		
4/9/98	Class Display NOTICE OF PUBLIC SA 4/9/98	20.00 I	5.56	111.20		
4/16/98	Class Display NOTICE OF PUBLIC SA 4/16/98	20.00 I	5.56	111.20		
4/23/98	Class Display NOTICE OF PUBLIC SA 4/23/98	20.00 I	5.56	111.20		

GEORGE H. DYBERT  
TRUST ACCOUNT - GENERAL  
1112 EAST HIGH STREET, SUITE B  
CHARLOTTESVILLE, VA 22902

CRESTAR BANK  
RICHMOND, VIRGINIA  
68-186/514

1092

5/20/1998

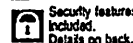
PAY TO THE  
ORDER OF

The Greene County Record

\$ \*\*444.80

Four Hundred Forty-Four and 80/100\*\*\*\*\*

DOLLARS



MEMO Public Notice

⑈001092⑈ ⑆051401865⑆ 201688042⑈

Total Inches:	80.00	TOTAL AMOUNT DUE:	\$ 444.80
---------------	-------	-------------------	-----------

Accounts Receivable Aging:

Current  
444.80

31-60  
.00

61-90  
.00

91-120  
.00

120+  
.00

GREENE COUNTY RECORD

George H. Dygert & Associates

Telephone (804) 979-5515  
Telefax (804) 295-7785  
E-mail ghdygert@aol.com

Attorneys at Law

1112 East High Street, Suite B  
Charlottesville, Virginia 22902

FORECLOSURE AUCTION CONTRACT

Date: 4-29-98

Property: LOT 2 Sec. 5E

Amount of Winning Bid: \$ 2100 -

Amount of Down Payment: \$ 210 -

Name, Address, and Phone Number of Winning Bidder: JASON TINDER  
705 C MT WOOD ROAD CHARLOTTEVILLE VA 22903  
984-4710

Attorney for Winning Bidder (Name, Address & Telephone Number): \_\_\_\_\_

Closing Date: \_\_\_\_\_

As the winning bidder, I understand that I have obligated myself to pay the amount set forth above for this property, with the balance due at the date of closing in the office of Kelly A. Hobbs, Attorney for Dogwood Valley Citizens Association (hereinafter "DVCA's Attorney") in Charlottesville, Virginia. I further understand that if for any reason I am unable to close on that date, the down payment I have given DVCA's Attorney will be forfeited. Finally, I have read the notice of sale for this property (copy attached) and understand that I am bound by the terms set forth in that notice, that this sale is pursuant to §§55-516 of the code of Virginia, 1950, as amended, and that the property herein conveyed is made subject to prior liens on the property.

As DVCA's Attorney, I promise to convey at closing, by Special Warranty deed, the property auctioned today if the winning bidder has complied with the terms of this Agreement and the other terms set forth in the notice of sale.

Winning Bidder(s): [Signature]

DVCA's Attorney: [Signature]



## CLOSING STATEMENT

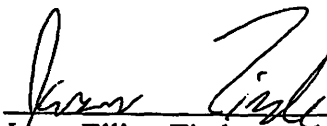
SELLER: Dogwood Valley Citizens Association

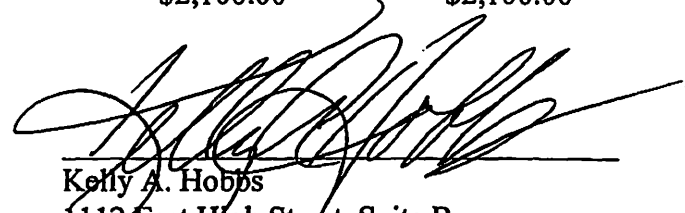
PURCHASER: Jason Elliott Tinder

PROPERTY: Lot 2, Section 5E, Dogwood Valley  
Greene County, Virginia

DATE: May 28, 1998

Contract Price		\$2,100.00
Deposit	\$ 210.00	
Grantor's Tax	2.50	
1 <sup>st</sup> half 1998 Prorated real estate taxes (\$26.22 x 147/181)	21.29	
Cash due Seller at closing	\$1,866.21	
	<u>          </u>	<u>          </u>
	\$2,100.00	\$2,100.00

  
\_\_\_\_\_  
Jason Elliott Tinder  
705C Mountainwood Road  
Charlottesville, Virginia 22903  
Purchaser

  
\_\_\_\_\_  
Kelly A. Hobbs  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902  
Seller's Attorney

### NOTES:

1. Seller's attorney shall be responsible for compliance with the reporting requirements of Section 6045(E) of the Internal Revenue Code of 1986 and shall provide Seller with a copy of the forms as prescribed by the Internal Revenue Service. This closing statement shall constitute a Designation Agreement. Seller's attorney shall be responsible for complying with the reporting requirements of Section 58.1-317 of the Code of Virginia, 1950, as amended, if applicable.

2. Purchaser shall be responsible for payment of all real estate taxes currently due and payable and all real estate taxes which subsequently become due and payable.
3. Purchaser shall be responsible for payment of the 1998 annual road fees and all subsequent fees and/or assessments levied by Dogwood Valley Citizens Association. Notice of said 1998 annual road fees and/or assessments shall be mailed to purchaser in November, 1998 and shall be due no later than February 1, 1999.
4. As part of the payment of the purchase price, Seller's Attorney will see to the release of said Property from the lien of the Memorandum of Lien recorded in the County of Greene in Deed Book 441 Page 223.
5. By his or her signature affixed hereto, Purchaser acknowledges that Dogwood Valley Citizens Association makes no warranty as to the title to Lot 2, Section 5E, Dogwood Valley Subdivision, Greene County, Virginia, and this conveyance is made subject to all liens of record, except those filed by Dogwood Valley Citizens Association.

THIS DEED made and entered into this 15<sup>th</sup> day of May, 1998, by and between DOGWOOD VALLEY CITIZENS ASSOCIATION, a Virginia corporation, First Grantor, WILLIAM A. WINKELMAN, Second Grantor, and JASON ELLIOTT TINDER, Grantee, whose address is: 705C Mountainwood Road, Charlottesville, Virginia 22903.

W I T N E S S E T H

WHEREAS, by deed dated May 9, 1980 and recorded in the Clerk's Office of the Circuit Court of Greene County, Virginia, in Deed Book 115, Page 160, Douglas W. G. Blair and Joan C. Blair, his wife, conveyed the hereinafter described property to William A. Winkelman, a single man:

WHEREAS, said property was conveyed subject to a declaration of restrictions and covenants, the provisions of which included an annual fee to be paid for maintenance of the roads and common areas within Dogwood Valley Subdivision; and

WHEREAS, Dogwood Valley Citizens Association approved a Special Assessment at its June 14, 1997 annual meeting pursuant to the authority granted to the association under the provisions of Code Section 55-514 of the Code of Virginia, 1950, as amended, said annual meeting having been held in compliance with Dogwood Valley Citizens Association's Bylaws; and,

WHEREAS, the proceeds of the assessment are to be used primarily for the maintenance and upkeep, including capital expenditures, of the roads and common area; and,

WHEREAS, notice that the special assessment was due no later than February 1, 1998, was mailed to each lot owner at his or her address as it appears in the records of Dogwood Valley Citizens Association; and,

Prepared by: Kelly A. Hobbs, Esquire  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902

WHEREAS, William A. Winkelman failed to pay said assessment prior to February 1, 1998; and,

WHEREAS, on February 20, 1998, a second notice of special assessment, together with notification required under the terms of Section 55-516(C), said second notice being sent at least 10 days before a memorandum of lien was filed in the Clerk's Office of the Circuit Court of Greene County, Virginia; and,

WHEREAS, on or about March 30, 1998, a Memorandum of Lien Claimed by the Property Owners Association for Delinquent Special Assessment was filed in the Office of the Clerk of the Circuit Court of Greene County, Virginia, at Deed Book 441, Page 223, pursuant to the terms of 55-516(B); and,

WHEREAS, on March 31, 1998, notice was sent to William A. Winkelman, via Certified Mail, Return Receipt Requested, pursuant to the terms of 55-516(I)(1), together with a copy of a Notice of Foreclosure and a copy of the memorandum of lien which had been filed in Deed Book 441, Page 223; and,

WHEREAS, pursuant to the provisions of Section 55-516(I)(2), Dogwood Valley Citizens Association advertised once a week for four successive weeks in a newspaper having a general circulation in the County of Greene, namely The Greene County Record, publishing notice of the time and place and terms of the sale; and

WHEREAS, Dogwood Valley Citizens Association proceeded to offer the property for sale at public auction on the premises as advertised on Wednesday, April 29, 1998 at noon, at which sale Jason Elliott Tinder, bid the sum of Two Thousand One Hundred and No/100 Dollars, that being the highest and last bid therefore; and,

WHEREAS, Dogwood Valley Citizens Association sold the property to Jason Elliott Tinder for the sum of \$2,100.00 and received a bidders deposit of \$210.00 and has now received the balance of the purchase price.

NOW, THEREFORE, in consideration of the premises and the sum of TWO THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$2,100.00), cash in hand paid, the receipt of which is hereby

acknowledge by Dogwood Valley Citizens Association, First Grantor, said First Grantor hereby GRANTS, BARGAINS, SELLS AND CONVEYS with SPECIAL WARRANTY OF TITLE, unto the said Jason Elliott Tinder, the following described real estate to-wit:

All that certain tract or parcel of land lying and situate in the Stanardsville Magisterial District of Greene County, Virginia, being Lot 2 in Section 5E of the Dogwood Valley Subdivision, as the same appears duly dedicated, platted and recorded in Deed Book 41, at Page 233, among the land records of Greene County, Virginia.


BEING a portion of the property conveyed to William A. Winkelman, a single man, by deed from Douglas W. G. Blair and Joan C. Blair, his wife, dated May 9, 1980, and recorded in the Clerk's Office of the Circuit Court of Greene County, Virginia, in Deed Book 115, Page 160.

Reference is hereby made to the plat referred to above for a more complete description of the property hereby conveyed.

This conveyance is made subject to all liens of record, except those filed by Dogwood Valley Citizens Association, easements, restrictions, reservations and other matters contained in duly recorded deeds, plats and other instruments constituting constructive notice in the chain of title which have not expired by the time limitation therein contained or otherwise become ineffective.

WITNESS the following signature and seal:

DOGWOOD VALLEY CITIZENS ASSOCIATION

By:  (Seal)  
Matthew P. Brown, President

STATE OF VIRGINIA

CITY/COUNTY OF Charlottesville to-wit:

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of June, 1998, by Matthew P. Brown, President of Dogwood Valley Citizens Association, on behalf of said corporation, in the City/County of Charlottesville.

My commission expires:

October 31, 1998

Janet M. Caudle  
NOTARY PUBLIC

## DISBURSEMENT STATEMENT

SELLER: Dogwood Valley Citizens Association / William A. Winkelman

PURCHASER: Jason E. Tinder Gary E. Lowe

PROPERTY: Lot 2, Section 5E Lot 1, Section 5E  
Dogwood Valley, Greene County, Virginia

DATE: August 27, 1998

---

Proceeds of Sale, Lot 1	\$ 878.63
Proceeds of Sale, Lot 2	1,866.21

Deposit	310.00
---------	--------

Disbursements:

Dogwood Valley Citizens Association	\$ 344.79
Prior Balance	\$170.15
Penalties	50.00
Road Fees	50.00
Interest on Road Fees	2.88
Special Assessment	70.00
Interest on Special Assessment	1.76

Advertising	40.00
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George H. Dygert	775.00
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Lien filing & release fees	64.00
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Cash due to Owner	\$1,831.05
-------------------	------------

	\$3,054.84	\$3,054.84
--	------------	------------

George H. Dygert & Associates

Telephone (804) 979-5515  
Telefax (804) 295-7785  
E-mail ghdygert@aol.com

Attorneys at Law

1112 East High Street, Suite B  
Charlottesville, Virginia 22902

FORECLOSURE AUCTION CONTRACT

Date: 4-29-98  
Property: LOT 1 Sec 5E

Amount of Winning Bid: \$ 1000

Amount of Down Payment: \$ 100 -

Name, Address, and Phone Number of Winning Bidder: GARY LOWE  
979 CEDAR GROVE ROAD RUCKERSVILLE VA  
22968 985-8615

Attorney for Winning Bidder (Name, Address & Telephone Number): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Closing Date: \_\_\_\_\_

As the winning bidder, I understand that I have obligated myself to pay the amount set forth above for this property, with the balance due at the date of closing in the office of Kelly A. Hobbs, Attorney for Dogwood Valley Citizens Association (hereinafter "DVCA's Attorney") in Charlottesville, Virginia. I further understand that if for any reason I am unable to close on that date, the down payment I have given DVCA's Attorney will be forfeited. Finally, I have read the notice of sale for this property (copy attached) and understand that I am bound by the terms set forth in that notice, that this sale is pursuant to §§55-516 of the code of Virginia, 1950, as amended, and that the property herein conveyed is made subject to prior liens on the property.

As DVCA's Attorney, I promise to convey at closing, by Special Warranty deed, the property auctioned today if the winning bidder has complied with the terms of this Agreement and the other terms set forth in the notice of sale.

Winning Bidder(s): Gary Lowe

DVCA's Attorney:

[Signature]  
\_\_\_\_\_  
\_\_\_\_\_

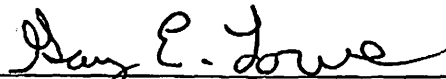


CLOSING STATEMENT

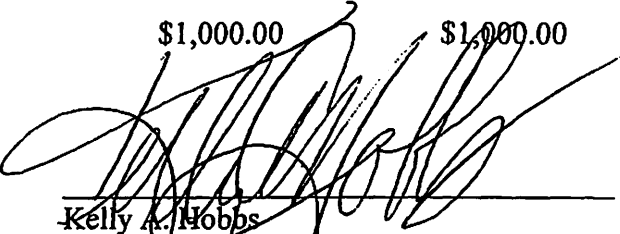
SELLER: Dogwood Valley Citizens Association  
PURCHASER: Gary E. Lowe  
PROPERTY: Lot 1, Section 5E, Dogwood Valley  
Greene County, Virginia  
DATE: May 28, 1998

---

Contract Price	\$1,000.00
Deposit	\$ 100.00
Grantor's Tax	1.00
1 <sup>st</sup> half 1998 Prorated real estate taxes (\$25.08 x 177/181)	20.37
Cash due Seller at closing	\$ 878.63

  
\_\_\_\_\_  
Gary E. Lowe  
979 Cedar Grove Road  
Ruckersville, Virginia 22968  
Purchaser

\$1,000.00      \$1,000.00

  
\_\_\_\_\_  
Kelly A. Hobbs  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902  
Seller's Attorney

**NOTES:**

1. Seller's attorney shall be responsible for compliance with the reporting requirements of Section 6045(E) of the Internal Revenue Code of 1986 and shall provide Seller with a copy of the forms as prescribed by the Internal Revenue Service. This closing statement shall constitute a Designation Agreement. Seller's attorney shall be responsible for complying with the reporting requirements of Section 58.1-317 of the Code of Virginia, 1950, as amended, if applicable.

2. Purchaser shall be responsible for payment of all real estate taxes currently due and payable and all real estate taxes which subsequently become due and payable.
3. Purchaser shall be responsible for payment of the 1998 annual road fees and all subsequent fees and/or assessments levied by Dogwood Valley Citizens Association. Notice of said 1998 annual road fees and/or assessments shall be mailed to purchaser in November, 1998 and shall be due no later than February 1, 1999.
4. As part of the payment of the purchase price, Seller's Attorney will see to the release of said Property from the lien of the Memorandum of Lien recorded in the County of Greene in Deed Book 441 Page 221.
5. By his or her signature affixed hereto, Purchaser acknowledges that Dogwood Valley Citizens Association makes no warranty as to the title to Lot 1, Section 5-E, Dogwood Valley Subdivision, Greene County, Virginia, and this conveyance is made subject to all liens of record, except those filed by Dogwood Valley Citizens Association.

THIS DEED made and entered into this 15<sup>th</sup> day of May, 1998, by and between DOGWOOD VALLEY CITIZENS ASSOCIATION, a Virginia corporation, First Grantor, WILLIAM A. WINKELMAN, Second Grantor, and GARY E. LOWE and KAREN H. LOWE, husband and wife, Grantees, whose address is: 979 Cedar Grove Road, Ruckersville, Virginia 22968.

W I T N E S S E T H

WHEREAS, by deed dated May 9, 1980, and recorded in the Clerk's Office of the Circuit Court of Greene County, Virginia, in Deed Book 115, Page 160, Douglas W. G. Blair and Joan C. Blair, his wife, conveyed the hereinafter described property to William A. Winkelman; and

WHEREAS, said property was conveyed subject to a declaration of restrictions and covenants, the provision of which included an annual fee to be paid for maintenance of the roads and common areas within Dogwood Valley Subdivision; and

WHEREAS, Dogwood Valley Citizens Association approved a Special Assessment at its June 14, 1997 annual meeting pursuant to the authority granted to the association under the provisions of Code Section 55-514 of the Code of Virginia, 1950, as amended, said annual meeting having been held in compliance with Dogwood Valley Citizens Association's Bylaws; and,

WHEREAS, the proceeds of the assessment are to be used primarily for the maintenance and upkeep, including capital expenditures, of the roads and common area; and,

WHEREAS, notice that the special assessment was due no later than February 1, 1998, was mailed to each lot owner at his or her address as it appears in the records of Dogwood Valley Citizens Association; and,

WHEREAS, William A. Winkelman failed to pay said assessment prior to February 1, 1998; and,

Prepared by: Kelly A. Hobbs, Esquire  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902

WHEREAS, on February 20, 1998, a second notice of special assessment, together with notification required under the terms of Section 55-516(C), said second notice being sent at least 10 days before a memorandum of lien was filed in the Clerk's Office of the Circuit Court of Greene County, Virginia; and,

WHEREAS, on or about March 30, 1998, a Memorandum of Lien Claimed by the Property Owners Association for Delinquent Special Assessment was filed in the Office of the Clerk of the Circuit Court of Greene County, Virginia, at Deed Book 441, Page 221, pursuant to the terms of 55-516(B); and,

WHEREAS, on March 31, 1998, notice was sent to William A. Winkelman, via Certified Mail, Return Receipt Requested, pursuant to the terms of 55-516(I)(1), together with a copy of a Notice of Foreclosure and a copy of the memorandum of lien which had been filed in Deed Book 441, Page 221; and,

WHEREAS, pursuant to the provisions of Section 55-516(I)(2), Dogwood Valley Citizens Association advertised once a week for four successive weeks in a newspaper having a general circulation in the County of Greene, namely The Greene County Record, publishing notice of the time and place and terms of the sale; and

WHEREAS, Dogwood Valley Citizens Association proceeded to offer the property for sale at public auction on the premises as advertised on Wednesday, April 29, 1998 at noon, at which sale Gary E. Lowe and Karen H. Lowe, bid the sum of One Thousand and no/100 Dollars (\$1,000.00), that being the highest and last bid therefore; and,

WHEREAS, Dogwood Valley Citizens Association sold the property to Gary E. Lowe and Karen H. Lowe, for the sum of \$1,000.00 and received a bidders deposit of \$100.00 and has now received the balance of the purchase price.

NOW, THEREFORE, in consideration of the premises and the sum of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00), cash in hand paid, the receipt of which is hereby acknowledge by Dogwood Valley Citizens Association, First Grantor, said First Grantor hereby GRANTS, BARGAINS, SELLS AND

CONVEYS with SPECIAL WARRANTY OF TITLE, unto the said Gary E. Lowe and Karen H. Lowe, husband and wife, the following described real estate to-wit:

All that certain tract or parcel of land lying and situate in the Stanardsville Magisterial District of Greene County, Virginia, being Lot 1 in Section 5E of the Dogwood Valley Subdivision, as the same appears duly dedicated, platted and recorded in Deed Book 41, at Page 233, among the land records of Greene County, Virginia.

BEING a portion of the property conveyed to William A. Winkelman, a single man, by deed from Douglas W. G. Blair and Joan C. Blair, his wife, dated May 9, 1980, and recorded in the Clerk's Office of the Circuit Court of Greene County, Virginia, in Deed Book 115, Page 160.

Reference is hereby made to the plat referred to above for a more complete description of the property hereby conveyed.

This conveyance is made subject to all liens of record, except those filed by Dogwood Valley Citizens Association, easements, restrictions, reservations and other matters contained in duly recorded deeds, plats and other instruments constituting constructive notice in the chain of title which have not expired by the time limitation therein contained or otherwise become ineffective.

WITNESS the following signature and seal:

DOGWOOD VALLEY CITIZENS ASSOCIATION

By: Matthew P. Brown, President (Seal)  
Matthew P. Brown, President

STATE OF VIRGINIA  
CITY/COUNTY OF Charlottesville, to-wit:

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of May, 1998, by Matthew P. Brown, President of Dogwood Valley Citizens Association, on behalf of said corporation, in the City/County of Charlottesville, VA.

My commission expires: Oct. 31, 1998

Janet M. Caudle  
NOTARY PUBLIC

THIS MULTI-TONE AREA OF THE DOCUMENT CHANGES COLOR GRADUALLY AND EVENLY FROM DARK TO LIGHT WITH DARKER AREAS BOTH TOP AND BOTTOM.

**CRESSTAR**  
Crestar Financial Corporation  
Richmond, Virginia  
60454321

**Cashier's Check**  
VOID OVER \$24.50

0604500510  
68-186/514  
MAY 28 1998

**\$924.50**  
DOLLAR NINE - TWO / FOUR FIFTY FIVE CENTS

NINE HUNDRED TWENTY FOUR DOLLARS AND 50 CENTS

Pay To The  
Order Of George Dygert Trust Account

Purchaser Gary E. & Karen A. Lowe

Memo Hidden Lake Property

*William M. Lintner*

CST-0200 EF6 14/98Y

⑈0604500510⑈ ⑆051401865⑆201645947⑈

DISBURSEMENT STATEMENT

SELLER: Dogwood Valley Citizens Association / William A. Winkelman

PURCHASER: Jason E. Tinder Gary E. Lowe

PROPERTY: Lot 2, Section 5E Lot 1, Section 5E  
Dogwood Valley, Greene County, Virginia

DATE: August 27, 1998

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Proceeds of Sale, Lot 1	\$ 878.63
Proceeds of Sale, Lot 2	1,866.21

Deposit	310.00
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Disbursements:

Dogwood Valley Citizens Association	\$ 344.79
Prior Balance	\$170.15
Penalties	50.00
Road Fees	50.00
Interest on Road Fees	2.88
Special Assessment	70.00
Interest on Special Assessment	<u>1.76</u>

Advertising	40.00
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George H. Dygert	775.00
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Lien filing & release fees	64.00
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Cash due to Owner	\$1,831.05
-------------------	------------

<u>\$3,054.84</u>	<u>\$3,054.84</u>
-------------------	-------------------

P 186 856 630

US Postal Service  
**Receipt for Certified Mail**  
 No Insurance Coverage Provided.  
 Do not use for International Mail (See reverse)

Sent to	Mr. William Winkelman	
Street & Number	Route 1 Box 1143	
Post Office, State, & ZIP Code	Harpers Ferry, WV 25425	
Postage	\$	.55
Certified Fee	\$	1.35
Special Delivery Fee	\$	
Restricted Delivery Fee	\$	1.10
Return Receipt Showing to Whom & Date Delivered		
Return Receipt Showing to Whom, Date, & Addressee's Address		
<b>TOTAL Postage &amp; Fees</b>	<b>\$</b>	<b>3.00</b>
Postmark or Date		

PS Form 3800, April 1995

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete Items 1 and/or 2 for additional services.
- Complete Items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- ☐ Addressee's Address
- ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:	4a. Article Number
Mr. William Winkelman Route 1, Box 1143 Harpers Ferry, WV 25425	P 186 856 630
5. Received By: (Print Name)	4b. Service Type
	<input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD
6. Signature: (Addressee or Agent)	7. Date of Delivery
<i>[Signature]</i>	9-12
	8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

Domestic Return Receipt



George H. Dygert & Associates

Telephone (804) 979-5515

Telefax (804) 295-7785

E-mail ghdygert@aol.com

*Attorneys at Law*

1112 East High Street, Suite B  
Charlottesville, Virginia 22902

August 27, 1998

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mr. William Winkelman  
Route 1, Box 1143  
Harpers Ferry, WV 25425

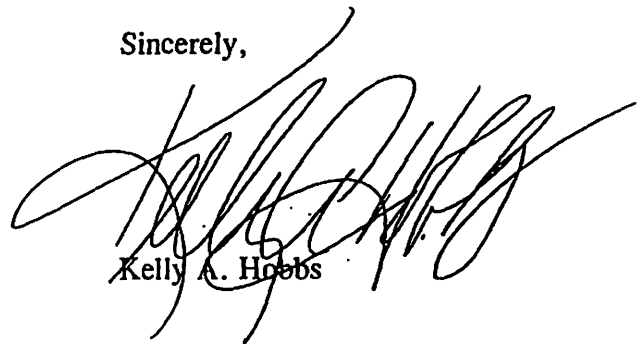
Re: Lots 1 and 2, Section 5E, Dogwood Valley Subdivision  
Greene County, Virginia

Dear Mr. Winkelman:

Enclosed is my trust account check in the amount of \$1,831.05 which represents the excess funds collected at foreclosure on your property. I have enclosed a copy of the closing and disbursement statements for your information.

Thank you for your attention to this matter.

Sincerely,



Kelly A. Hoops

KAH/jmc  
encl.

GEORGE H. DYGERT  
TRUST ACCOUNT - GENERAL  
1112 EAST HIGH STREET, SUITE B  
CHARLOTTESVILLE, VA 22902

CRESTAR BANK  
RICHMOND, VIRGINIA  
68-188/514

1127

8/27/1998

PAY TO THE ORDER OF William A. Winkelman

\$ 1,831.05

One Thousand Eight Hundred Thirty-One and 05/100\*\*\*\*\*

William A. Winkelman  
Route 1, Box 1143  
Harpers Ferry, WV 25425

DOLLARS  
Security features  
included.  
Details on back.

MEMO Proceeds of Sale to Tinder & Lowe (1&2, 5E)

⑈001127⑈ ⑆051401865⑆ 201688042⑈

received  
9/15/98

~~William~~ A. Winkelman  
Route 1, Box 1143  
Harpers Ferry, WV 25425

September 13, 1998

Ms. Kelly A. Hobbs  
George H. Dygert & Associates  
1112 East High Street, Suite B  
Charlottesville, VA 22902

Dear Ms. Hobbs:

I have received your letter dated August 27, 1998. I received a letter April 4, 1997 from you notifying me that the \$200 special assessment by Dogwood Valley was past due and that a lien would be filed on my property, Lots 1 and 2, Section 5E. I remitted the \$200 and then I received a letter dated May 13, 1997 acknowledging the receipt of that payment and the statement that collection activities would continue. I then received an invoice from Dogwood Valley for the 1998 road fees. I had surgery on my back the beginning of this year, and have had major medical bills which needed to be taken care of. The \$170.15 would have been paid once my medical bills were satisfied. I never received a "NOTICE OF SALE" of my property, or any further correspondence from your office until this most recent letter. Notification of the sale of my property would have escalated my payment. Since I paid the \$200 I felt this matter could wait. By paying the \$200, I was obviously trying to pay amounts owed to Dogwood Valley. Why would you need to sell BOTH lots if you were only trying to collect \$170.15?

I am returning your check #1127 for \$1,831.05, as the sale of my property must certainly be illegal. The property is paid for in full, and except for the \$170.15 and the current years road fees, no further monies were owed. I was aware that a lien was being placed upon my property, which would have to be paid in full at such time as I would sell the property.

I am requesting that you send me a detailed invoice for the amount owed and reverse the illegal sale of my property by whatever means you need to do. I cannot begin to express my displeasure on the way your office has handled this matter. I have owned this property for twenty years and cannot believe your office has sold it off for the \$170.15 which was owed.

I will expect to hear from you before month end.

Sincerely,

  
William A. Winkelman

41127

GEORGE H. DYGEFF  
TRUST ACCOUNT, GENERAL  
1112 EAST HIGH STREET, SUITE B  
CHARLOTTEVILLE, VA 25902

COFFEE STAR BANK  
RICHMOND, VIRGINIA  
200-1-8900

8/27/98  
\$182.50

PAY TO THE ORDER OF William A. Winkelman

One Thousand Eight Hundred Thirty-One and 05/100

William A. Winkelman  
Route 1, Box 1143  
Harpers Ferry, WV 25425

DOLLARS  
Eighty-two and 50/100

MEMO Proceeds of Sale to Under & Lowe (182.50)

001127 0514018650 201688042

*[Signature]*

WITNESS the following signatures and seals.

Winifred S. Haney (SEAL)  
Winifred S. Haney

Sallie M. Haney (SEAL)  
Sallie M. Haney

STATE OF VIRGINIA

COUNTY OF ALBEMARLE: to-wit:

I, Robert F. Rutschow, a Notary Public in and for the County aforesaid, in the State of Virginia, do certify that Winifred S. Haney and Sallie M. Haney, whose names are signed to the foregoing writing bearing date on the 12th day of November, 1968, have each acknowledged the same before me in my County aforesaid.

By Commission expires August 6, 1972

Given under my hand this 22nd day of November, 1968.

Robert F. Rutschow  
Notary Public

VIRGINIA: To the Clerk's Office of the Circuit Court of Greene County, Shes 7, 1968. This deed was this day received in said office, and, upon the certificate of acknowledgment thereon annexed, admitted to record, at 9:00 o'clock AM, after payment of \$ 11.00 tax imposed by Sec. 58-54 (b).

Tax: 11.00 Clerk: Ben Richardson

Tax \$ 16.50

Transfer Fee \$ 1.00

THIS AMENDED DEED OF DEDICATION, made and entered into this 1st day of November, 1968, by Kermit R. Gallihugh, individually, and as Agent and Attorney in Fact for Barbara A. Gallihugh, his wife, Bradley K. Haynes and Betty G. Haynes, his wife,

WHEREAS, by Deed of Dedication dated the 11th day of October, 1968, recorded in the Clerk's Office of the Circuit Court of Greene County, Virginia, in Deed Book 41, at Page 150, the said Bradley K. Haynes and Betty G. Haynes, his wife, and Kermit R. Gallihugh and Barbara A. Gallihugh, his wife, imposed certain restrictions and covenants on a certain tract of land described therein, containing 371 acres, more or less, in the Stanardsville Magisterial District of Greene County, Virginia, on South River known as the Deane property; and

WHEREAS, there is incorporated by reference in said deed a plat and survey made by William S. Roudabush, Jr., C.L.S., dated September 1968, dividing said land, or a portion thereof, into lots and designated in said deed and on said plat as a subdivision to be known as "Dogwood Valley"; and

WHEREAS, the aforesaid plat made by William S. Roudabush, Jr., covers only a portion of the 371 acre <sup>tract</sup> known as Deane property, referred to in said Deed of Dedication, the portion covered by the Roudabush plat being designated as "Section One of Dogwood Valley" and recorded in the Clerk's Office aforesaid in Plat Book 1 at Page 218; and

WHEREAS, additional surveys and plats have been made by W.T. Whitmore, C.L.S., covering other portions of the aforesaid Deane property, dated October 26, 1968, designated as "Section #2, Dogwood Valley", hereunto attached and made a part of this Amended Deed of Dedication, and incorporated herein by reference; and

Ed  
Richardson  
Clerk  
12/16/68

EXHIBIT B

22 111-222

WHEREAS, additional surveys and plats have been and will be made of other lands than the aforesaid Deane property, but which will also be known as "Dogwood Valley" and which will be designated as Section 3, 4, and so forth, references to the source of title to such land appearing and to appear on said plats; and

WHEREAS, the undersigned owners of the aforesaid Deane property, and such other property as may be hereinafter, from time to time, surveyed, platted, subdivided and designated by the undersigned owners of "Dogwood Valley" or any portion or section thereof, do hereby announce their intentions to hereafter make deeds to said real estate or subdivision thereof, and in said deeds to refer to the aforesaid plat or plats, survey or surveys, of "Dogwood Valley"; or portions or sections thereof, whether already recorded or hereafter to be recorded, for the purpose of identifying the said real estate intended by said deeds to be granted and conveyed.

NOW, THEREFORE, THIS AMENDED DEED OF DEDICATION

WITNESSETH:

That for and in consideration of the premises, the said parties hereto do hereby subdivide the aforesaid tract of land containing 371 acres, more or less, known as the Deane property into lots, streets and public ways as shown on the plat or plats, survey or surveys of "Dogwood Valley", or portions or sections thereof, whether already recorded or hereafter to be recorded, and in addition thereof such other property as may be hereafter from time to time, surveyed, platted, subdivided and designated by the undersigned owners as "Dogwood Valley" or any portion or sections thereof, whether now owned or hereafter to be acquired, in addition to the said Deane property, and do hereby dedicate said subdivision, to be known as "Dogwood Valley" subject to the belowmentioned restrictions, covenants and conditions: which are hereby imposed upon said subdivision, known as "Dogwood Valley".

And further, for the purpose of increasing the value of the subdivision known as "Dogwood Valley", and any portion or section thereof, whether already surveyed, platted, and recorded, or hereafter to be surveyed, platted and recorded, the following restrictions, covenants and conditions are hereby imposed on said lots and shall run with the land, and shall be binding upon the purchasers of all of said lots in "Dogwood Valley", their successors and assigns to-wit:

1. The grantors hereby dedicate to the public, for public use forever, all the streets and right of ways shown on the attached plat and plan, and title to the land in said streets and rights of way is hereby transferred to the County of Greene as provided by Section 15-1-478, Code of Virginia, 1950, as amended.
2. Neither the proprietors and owners of the subdivision, nor the purchasers of said lots, will request the Board of Supervisors of Greene County, Virginia, or the Virginia Department of Highways, that the said Streets in said subdivision be taken into the highway system unless and until said lot owners and proprietors have brought said streets up to the specifications of the Virginia Department of Highways.
3. The grantors may assess each lot owner a sum not to exceed Fifteen Dollars (\$15.00) per year, per lot, for the use, upkeep and maintenance of the roads within all sections of said subdivision, and such other common facilities as

The right and responsibilities as created by this paragraph may be delegated by the grantors to a Committee of lot owners within said subdivision, appointed by the grantors, and any assessment made pursuant to this paragraph shall constitute a lien on each and every lot within said subdivision until paid, and payment of said assessment and levy shall be payable on or before the 31st day of January next following the purchase of said lot, and on or before the 31st of each year thereafter.

Where more than one lot is owned by the party or parties, in the event of a resale by them or one or more of said lots, then the obligation to pay said road maintenance fee shall be binding on the purchaser or purchasers of said lots without any provisions therein specifically so provided.

4. The grantors reserve unto themselves, their heirs and assigns, the right to erect and maintain telephone and electric light poles, conduits, equipment, sewer, gas and water lines, or to grant easements or rights of way therefor, with the right of ingress and egress for the purpose of erection or maintenance on, over, or under a strip of land fifteen (15) feet wide at any point along the side, rear or front lines of any of said lots.

5. No building of a temporary nature shall be erected or placed on any of said lots except those customarily erected in connection with building operations, and in such cases, for a period not to exceed six months.

6. Not more than one residence shall be erected on any one lot, and it shall contain a minimum of 480 square feet of main floor. This shall not include basement, garage, porch or carport. No part of any lot sold by the grantors may be sold or used as a road or as a right of way to any property outside of said subdivision. This restriction shall not apply until said lots are sold by the grantors.

7. All of said lots shall be used for residential purposes only, and any garage or barn must conform generally in appearance and material with any dwelling on the said lot.

8. No signs, billboards, or advertising of any nature shall be erected, placed or maintained on any lots herein designated, nor upon any building erected thereon, except directional and information signs of grantors.

9. No buildings shall be erected closer than 10 feet to any street or road, nor closer than 15 feet to the side or rear of the lot line, with the exception that where two or more lots are used together for the construction of one dwelling, then said 10 foot set back shall apply only to outside lines.

10. All toilets constructed on said lots shall conform to the regulations of the Virginia State Health Department, and of the County of Greene, Virginia.

11. No lot in said subdivision may be re-subdivided.

12. The use of trailers within said subdivision are prohibited, except for the use of temporary camping trailers.

13. No trucks, buses, old cars or unsightly vehicles of any type or description may be left or abandoned on said lots.

14. Nothing herein is to be construed to prevent the grantors from placing further restrictions or easements or amending those in existence on any lot in said subdivision which shall not have already been conveyed by them.

15.If the parties hereto,or any of them,or any of them ,or their heirs or assigns,shall violate or attempt to violate any of the covenants herein,it shall be lawful for any other person or persons owing any real estate situate in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant,either to prevent him or them from so doing or to recover damages or dues for such violation.

16.Invalidatation of any one of these covenants by judgement or Court Order,shall in no wise affect any of the other provisions which shall remain in full force and effect.

This Amended Deed of Dedication is executed by Kermit R.Gallihugh in his individual capacity and as agent and attorney in fact for Barbara A.Gallihugh, his wife, and Bradley K.Haynes and Betty G.Haynes,his wife,pursuant to a Power of Attorney dated October 11,1968, and recorded in the Clerk's Office in Deed Book 41 at Page 149,and as such the said Kermit R.Gallihugh certifies that the subdivision known as "Dogwood Valley" as the same appears on plats heretofore made and recorded,herewith recorded and hereafter to be made and recorded,is with the free consent and in accordance with the desire of the undersigned owners.

WITNESS the following signature and seal.

Kermit R.Gallihugh SEAL  
Kermit R.Gallihugh,individually and as  
Agent and Attorney in Fact for Barbara  
A.Gallihugh,his wife,Bradley K.Haynes  
and Betty G.Haynes,his wife

STATE OF VIRGINIA

COUNTY OF GREENE, to-wit:

I, Mary F.Melone, a Notary Public in and for the County of Greene,in the State of Virginia,do hereby certify that Kermit R.Gallihugh,individually and as Agent and Attorney in Fact for Barbara A.Gallihugh,his wife, Bradley K.Haynes and Betty G.Haynes,his wife, whose names are signed to the foregoing writing,bearing date the 1st day of November,1968,has this day acknowledged the same before me in my County and State aforesaid.

Given under my hand this first day of November,1968.

MY COMMISSION EXPIRES :  
March 25,1972

Mary F.Melone  
Notary Public

VIRGINIA: In the Clerk's Office of the Circuit Court of Greene County, Dec. 9 1968. This deed was this day received in said office, and, upon the certificate of acknowledgment, thereto annexed, admitted to record, at 2:45 o'clock P. M., after payment of \$        tax imposed by Sec. 58-54 (b).  
Teste: [Signature] Clerk.  
Tax \$        Transfer Fee \$



*Handed to  
John W. McQuinn  
att'y at law  
1 South Street  
Front Royal, Va.  
4/14/71*

DEED OF DEDICATION  
OF

DOGWOOD VALLEY, SECTION VI

KNOW ALL MEN BY THESE PRESENTS, that the undersigned does hereby dedicate the above and foregoing subdivision, to be known as DOGWOOD VALLEY, SECTION VI, located in Stanardsville Magisterial District of Greene County, Virginia, and more particularly bounded and described on the plat and survey made thereof by Louis J. Matacia, C. L. S., dated the 20th day of November, 1970, and of record in the Clerk's Office of Greene County in Plat Book No. 2, at Page 84; as follows:

"Beginning at a point on a new line across the property of Ivy M. Collier, in the center of a 50' access right-of-way leading from Route 647 across the land to be retained by the beforesaid Collier, to the land herein described; thence, with the said new line, S 40° 54' 52" W, 609.04 feet, to a point in the line of L. B. Taylor, in the center of a small stream; thence, with the said Taylor line, up the stream, the following 12 courses N 51° 59' 10" W, 160.63 feet, to a 36" Poplar; thence, S 82° 14' 49" W, 380.43 feet, to a 8" Maple; thence, N 73° 03' 10" W, 182.54 feet, to a 6" Maple; thence, N 77° 28' 29" W, 224.76 feet, to a 12" Poplar; thence, S 75° 02' 04" W, 152.37 feet, to a 24" Poplar; thence, S 72° 01' 47" W, 134.09 feet, to a 10" Maple; thence, N 85° 53' 30" W, 169.15 feet, to a 14" Maple; thence, N 62° 54' 20" W, 216.27 feet, to a 14" Hickory; thence, N 42° 01' 25" W, 218.83 feet, to a 4" Maple; thence, N 55° 31' 09" W, 190.07 feet, to a dead snag; thence, N 73° 47' 34" W, 294.28 feet, to a 6" Poplar; thence, N 40° 04' 31" W, 131.83 feet, to a found, blazed 36" Chestnut Oak, a corner in the line of Randall R. Deane with the beforesaid Taylor; thence, leaving Taylor and the small stream, with Deane, N 10° 20' 20" E, 382.43 feet, to a point in a fence; thence, continuing with Deane, N 4° 03' 45" E, 794.37 feet, to a 7" Cedar at a corner of the fence; thence, with Deane, N 32° 35' 44" W, 336.48 feet, and N 23° 20' 42" W, 384.22 feet, to a concrete monument in a hollow, corner to Dean and to Dogwood Valley Subdivision, Section 5-C; thence, with Section 5-C of Dogwood Valley, down the hollow and a small stream,

1.79-§VI

IN N. McQUINN  
ATTORNEY AT LAW  
FRONT ROYAL, VIRGINIA

BOOK 52 PAGE 125

GD 52-125

EXHIBIT C

10 courses, S 50° 56' 43" E, 164.46 feet, to an iron pipe; thence, S 25° 30' 16" E, 206.55 feet, to an iron pipe; thence, S 41° 19' 55" E, 186.55 feet, to an iron pipe; thence S 51° 13' 42" E, 251.25 feet, to an iron pipe; thence, S 53° 35' 20" E, 245.97 feet, to an iron pipe; thence, S 75° 19' 38" E, 211.96 feet, to an iron pipe; thence, N 73° 17' 58" E, 220.66 feet, to an iron pipe; thence, S 84° 18' 52" E, 181.10 feet, to an iron pipe; thence, N 88° 40' 31" E, 248.70 feet, to an iron pipe; thence, S 71° 49' 19" E, 287.11 feet, to an iron pipe, (the previous course passes the corner between Section 5 -C and Section 5-A of Dogwood Valley at a distance of 172.00 feet); thence, with Section 5-A of Dogwood Valley, continuing down the small stream, 8 courses, S 42° 41' 04" E, 145.26 feet; thence, S 76° 07' 08" E, 207.62 feet; to an iron pipe; thence, S 34° 11' 20" E, 220.16 feet, to an iron pipe; thence, S 4° 02' 29" W, 126.99 feet, to an iron pipe; thence, S 38° 03' 28" E, 261.80 feet, to an iron pipe; thence, S 84° 05' 49" E, 255.43 feet, to an iron pipe; thence, S 85° 12' 27" E, 326.05 feet, to an iron pipe; thence, S 10° 15' 06" E, 179.48 feet, to an iron pipe, a corner of Dogwood Valley, Section 5-A; thence, leaving Dogwood Valley and the small stream, with the beforementioned new line across the land of Ivy M. Collier, S 40° 54' 52" W, 345.35 feet, to the beginning lying and being near McMullen, in Stanardsville Magisterial District, Greene County, Virginia, and containing 80.00 (eighty and no-100) acres more or less."

There is further granted and conveyed as an appurtenance to said property a perpetual easement and right of way 50 feet wide, as shown on said plat, leading from the land conveyed hereby to the public road, and

BEING the same tract or parcel of land conveyed to B. K. Haynes Corporation by deed from Ivy M. Collier and Erna B. Collier, bearing date on the 20th day of November, 1970, and of record in the Clerk's Office of Greene County in Deed Book No. 51, at Page 68.

The platting and dedication of the land herein described is with the full consent and in accordance with the desire of the undersigned owner.

1.79-§ VI  
N N. McCUNE  
ATTORNEY AT LAW  
ROYAL, VIRGINIA

This subdivision shall be subject to the following protective covenants, which covenants are to run with the land:

1. The grantors hereby dedicate to the public, for public use forever, all the streets and right of ways shown on the attached plat or plan, and title to the land in said streets and rights of way is hereby transferred to the County of Greene as provided by Section 15.1-478, Code of Virginia, 1950, as amended.

2. Neither the proprietors and owners of the subdivision, nor the purchasers of said lots, will request the Board of Supervisors of Greene County, Virginia, or the Virginia Department of Highways, that the said streets in said subdivision be taken into the highway system unless and until the said lot owners and proprietors have brought said streets up to the specifications of the Virginia Department of Highways.

3. The grantors may assess each lot owner a sum not to exceed Twenty-Five Dollars (\$25.00) per year, per lot, for the use, upkeep and maintenance of the roads within all sections of said subdivision, and such other common facilities as the said grantors may provide therein. The rights and responsibilities as created by this paragraph may be delegated by the grantors to a committee of lot owners within the entire subdivision, known as Dogwood Valley, appointed by the grantors, and any assessment made pursuant to this paragraph shall constitute a lien on each and every lot within said subdivision until paid, and payment of said assessment and levy shall be payable on or before the 31st day of January next following the purchase of said lot, and on or before the 31st of each year thereafter. Where more than one lot is owned by a party or parties, and in the event of a resale by them of one or more of said lots, then the obligation to pay said road maintenance fee goes with the lot or lots, under the same terms and conditions set forth herein.

4. The grantors reserve unto themselves, their heirs and assigns, the right to erect and maintain telephone and electric light poles, conduits, equipment, sewer, gas and water lines, or to grant easements or rights of way therefor, with the right of ingress and egress for the purpose of erection or maintenance on, over, or under a strip of land fifteen (15) feet wide at any point

1.79-§ VI

W. N. McCUNE  
ATTORNEY AT LAW  
\* ROYAL, VIRGINIA

along the side, rear, or front lines of any of said lots, or fifteen (15) feet from the right of way line or any street or right of way.

5. No building of a temporary nature shall be erected or placed on any of said lots except those customarily erected in connection with building operations, and in such cases, for a period not to exceed six months.

6. Not more than one residence shall be erected on any one lot, and it shall contain a minimum of 480 square feet of main floor. This shall not include basement, garage, porch or carport. No part of any lot sold by the grantors may be sold or used as a road or as a right of way to any property outside of said subdivision. This restriction shall not apply until said lots are sold by the grantors.

7. All of said lots shall be used for residential purposes only, and any garage or barn must conform generally in appearance and material with any dwelling on the said lot.

8. No signs, billboards, or advertising of any nature shall be erected, placed or maintained on any lots herein designated nor upon any building erected thereon, except directional and information signs of grantors.

9. No building shall be erected closer than 10 feet to any street or road, nor closer than 15 feet to the side or rear of the lot line, with the exception that where two or more lots are used together for the construction of one dwelling, then said 10 foot set back shall apply only to outside lines.

10. All toilets constructed on said lots shall conform to the regulations of the Virginia State Health Department, and of the County of Greene, Virginia.

11. No lot in said subdivision may be re-subdivided.

12. The use of trailers within said subdivision are prohibited, except for the use of temporary camping trailers.

13. No trucks, buses, old cars or unsightly vehicles of any type or description may be left or abandoned on said lots.

14. Nothing herein is to be construed to prevent the grantors from placing further restrictions or easements or amending those in existence on any lot in said subdivision which shall not have already been conveyed by them.

15. If the parties hereto, or any of them, or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or person owning any real estate situated in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, either to prevent him or them from so doing or to recover damages or other dues for such violation.

16. Invalidation of any one of these covenants by judgment or Court order, shall in no wise affect any of the other provisions which shall remain in full force and effect.

This instrument executed by Kermit R. Gallihugh, as Attorney in Fact for B. K. Haynes Corporation, a Virginia Corporation, pursuant to a Power of Attorney dated the 9th day of December, 1970, and of record in the Clerk's Office of Greene County in Deed Book No. 51, at Page 72.

WITNESS the following signature and seal, this 1st day of March, 1971.

B. K. HAYNES CORPORATION

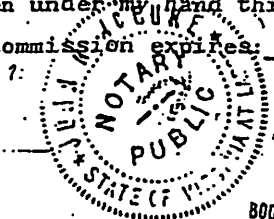
By: Kermit R. Gallihugh (SEAL)  
Kermit R. Gallihugh, Attorney  
in Fact

STATE OF VIRGINIA AT LARGE  
COUNTY OF WARREN

I, JOHN N. McCUNE, a Notary Public in and for the County of WARREN, in the State of Virginia, do hereby certify that KERMIT R. GALLIHUGH, whose name as Attorney in Fact for B. K. Haynes Corporation, a Virginia Corporation, is signed to the foregoing instrument bearing date on the 1st day of March, 1971, has this day acknowledged the same before me in my County and State aforesaid and made oath that the signature was thereto affixed pursuant to due authority.

Given under my hand and this 7 day of March, 1971.

My commission expires: 6 NOVEMBER 1972



John N. McCune  
Notary Public

79-5 VI  
J. N. McCUNE  
CLERK AT LAW  
ROYAL, VIRGINIA

BOOK 52 PAGE 129

VIRGINIA In the Clerk's Office of the Circuit Court of Greene County, this 7 day of March, 1971. This deed was this day received in said office, and, upon the certificate of acknowledgement thereto annexed, admitted to record, at 10:30 o'clock A.M., after payment of \$        tax imposed by Sec. 58-24.1.

Co. Tax \$         
State Tax \$       

Teste: B. W. Perkins, Clerk,  
By: B. W. Perkins, Deputy Clerk

100  
Section VI  
7/10/72

DEED OF DEDICATION  
DOGWOOD VALLEY, SECTION VI, PART A

KNOW ALL MEN BY THESE PRESENTS that the undersigned do hereby dedicate PART A of a subdivision known as Dogwood Valley, Section VI, located in Stanardsville Magisterial District of Greene County, Virginia, and more particularly bounded and described on the attached plat and survey made thereof by J. R. Nicely, C. L. S., as follows:

Beginning at a point in the center of a right of way, a corner of Lot 1 and Lot 26, Dogwood Valley Subdivision, Section 6; thence along the center of said right of way 6 courses, S 50°10'52" E, 23.36 feet, S 2°38'32" E, 273.42 feet, S 30°14'02" E, 276.11 feet, S 52°51'52" E, 467.46 feet, S 49°29'22" E, 168.71 feet, S 36°36'42" E, 354.84 feet, to a point in the center of the said right of way; thence S 24°02'22" W, 11.72 feet to an iron pin corner with the lands of L.B. Taylor; thence N 63°02'11" W, 530.00 feet to a point in the center of a stream; thence, along the center of said stream 6 courses, N 50°43'26" W, 143.12 feet, N 86°21'57" W, 158.66 feet; N 56°01'21" W 400.22 feet, N 32°11'39" W, 73.40 feet, N 52°27'23" W 96.39 feet, N 51°59'10" W, 110.80 feet to a point in the center of said stream, thence N 40°54'52" E, to the point of beginning, containing 9.30 acres, being the same real estate conveyed to the party of the first part by deed from Ivy M. Collier and Erna B. Collier, husband and wife, bearing date on the 30th day of May, 1972, and of record in said Clerk's Office in Deed Book No. , at Page .

The platting of Part A of Dogwood Valley, Section VI, is done with the free consent and desire of B. K. Haynes Corporation a Virginia Corporation, owner, and John N. McCune, Trustee.

Part A of Dogwood Valley, Section VI, shall be subject to the same protective covenants as Section VI, said covenants being of record in the Clerk's Office of Greene County in Deed Book No. 52, at Page 125, to which reference is made and said covenants are incorporated by reference in to this instrument.

WITNESS the following signatures and seal:

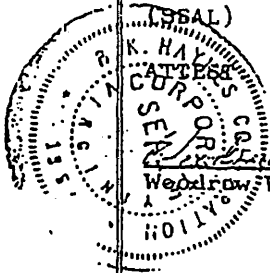
B. K. HAYNES CORPORATION

BY: 

Bradley K. Haynes  
President

JOHN N. McCUNE  
ATTORNEY AT LAW  
FRONT ROYAL, VIRGINIA

EXHIBIT D



W. W. Gallihugh, Secretary

John N. McCune, Trustee

STATE OF VIRGINIA

COUNTY OF Warren

I, Brandon Britton, a Notary Public in and for the State and County aforesaid do hereby certify that Bradley K. Haynes, whose name as President, and W. W. Gallihugh, whose name as Secretary, of B. K. Haynes Corporation, are signed to the foregoing deed of dedication bearing date on the 6th day of June, 1972, have this day acknowledged the same before me in my State and County aforesaid and made oath that their signautres and Corporate Seal were thereto affixed pursuant to due authority.

Given under my hand this 23rd day of June, 1972.

My commission expires: August 3 1975.

Brandon Britton  
Notary Public

STATE OF VIRGINIA

COUNTY OF Warren

I, Brandon Britton, a Notary Public in and for the State and County aforesaid do hereby certify that John N. McCune, Trustee, whose name is signed to the foregoing deed of dedication bearing date on the 6th day of June, 1972, has acknowledged the same before me in my State and County aforesaid.

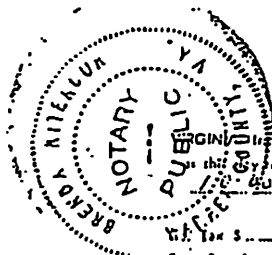
Given under my hand this 23rd day of June, 1972.

My commission expires: August 3 1975.

Brandon Britton  
Notary Public

A copy test  
ad. 23 1978  
John N. McCune  
McCune & Co.

JOHN N. McCUNE  
ATTORNEY AT LAW  
FRONT ROYAL, VIRGINIA



In the Clerk's Office of the Circuit Court of Greene County, June 27, 1972 This  
is the day received in said office, and, upon the certificate of acknowledgement, thereto annexed, admitted to  
at o'clock P. M., after payment of \$           tax imposed by Sec. 50-5-1,  
Y.F. Tax \$            
State Tax \$            
Taxes: John N. McCune  
By: Brandon Britton  
Transfer Fee \$





11/23/72

DOGWOOD VALLEY, SECTION VII  
STATEMENT OF PROTECTIVE COVENANTS  
AND DEDICATION OF PLAT FOR PART A

WHEREAS, B. K. Haynes Corporation, a Virginia Corporation, is the owner of approximately 329.260 acres of real estate lying and being situate in Stanardsville Magisterial District of Greene County, Virginia, being the same real estate conveyed to B. K. Haynes Corporation, a Virginia Corporation, by deed from Randall R. Dean and Marguerite Dean, husband and wife, bearing date on the 8th day of August, 1972, and of record in said Clerk's Office in Deed Book No. 60, at Page 388, and.

WHEREAS, B. K. Haynes Corporation desires to subdivide the said real estate and desires to place certain protective covenant on the lots, but does not wish to record the plat of all the subdivided lots at this time, now therefore this instrument:

KNOW ALL MEN BY THESE PRESENTS, that the undersigned does hereby dedicate Part A of a subdivision known as Dogwood Valley, Section VII, located in Stanardsville Magisterial District of Greene County, Virginia, and more particularly Bounded and described on the attached plat and survey made thereof by J. R. Nicely, C. L. S., dated November 2, 1972, as follows:

"BEGINNING at a point, a 36" Chestnut Oak, the corner between Dogwood Valley, Section 6 and L. B. Taylor land; thence, with Taylor, S 31°35'03" W, 205.93 feet, to an iron, the corner between Taylor and Robert L. Yowell; thence, with Yowell, seven courses, S 38°42'13" W, 456.51 feet, to an iron; thence, S 77°08'52" W, 86.04 feet, to a 12" Chestnut Oak; thence, S 76°12'58" W, 162.33 feet, to a 10" Chestnut Oak; thence, S 76°37'31" W, 190.45 feet, to a 10" Hickory; thence, N 61°41'28" W, 195.51 feet, to an iron; thence, S 72°59'01" W, 216.73 feet, to a 20" dead Pine; thence, S 51°05'00" W, 163.77 feet, to an iron, a corner between Yowell and Reuben Snow; thence, with Snow, N 45°48'12" W, 942.62 feet; thence, by thirteen new courses through the B. K. Haynes Corp. lands, N 53°34'28" E, 690.47 feet, to a point in the center of a 50' wide Right-of-way; thence, with the R/W centerline, eleven courses, S 42°55'35" E, 205.00 feet; thence, S 32°25'35" E, 244.61 feet; thence, N 78°22'25" E, 157.30 feet; thence, N 48°37'13" E, 127.26 feet; thence, N 26°07'36" E, 258.19 feet; thence, N 65°37'59" E, 228.95 feet; thence, N 12°23'04" W, 221.76 feet; thence, S 86°14'27" E, 157.11 feet; thence, N 53°37'43" E, 156.25 feet; thence, N 30°18'35" E, 158.72 feet; thence, N 12°08'35" E, 290.00 feet; thence, leaving the 50' R/W

JOHN N. McCUNE  
ATTORNEY AT LAW  
MONT ROYAL, VIRGINIA

EXHIBIT E

N 31°00'05" E, 334.15 feet; to a corner in the line of Dogwood Valley, Section 6; thence, with Section 6, three courses, S 32°35'44" E, 336.48 feet; thence, S 4°03'45" W, 794.37 feet; thence, S 10°20'20" W, 382.43 feet, to the beginning, containing 42.98 acres,"

The platting of this portion of the aforementioned real estate is done with the free consent of B. K. Haynes Corporation, and Roby G. Janney and John N. McCune, Trustees, under that certain Deed of Trust of record in said Clerk's Office in Deed Book No. 60, at Page 391. The joining of the Trustees in this instrument in no way is intended to release the lien of said Deed of Trust.

This part of Dogwood Valley Subdivision, Section VII, along with all future parts of said subdivision shall be subject to the following protective covenants, which said covenants are to run with the land:

1. The grantor hereby dedicates to the use of the property owners, and public utility and service companies, all the rights of ways shown on the attached plat. It is intended that these rights of ways not to be for the use of the general public.

2. The grantor herein or its assigns may assess each lot owner the sum of TWENTY-FIVE (\$25.00) DOLLARS per lot per year, for the use, upkeep, and maintenance of the roads within all sections of Dogwood Valley, Section VII Subdivision, and the maintenance and upkeep of such other common facilities as the grantor may provide. The grantor or its assigns may increase the maintenance fee by not more than 10% per year to cover the increase in maintenance costs.

3. If a lot is re-subdivided under the terms of covenant No. 4, below, the new lot or lots and the remaining part of the original lot will be assessed according to covenant No. 2 above as if they are separate lots, and the deed conveying any re-subdivided lot must reflect the maintenance fee.

4. Lots within Dogwood Valley, Section VII, may be re-subdivided so long as the new lot or the remainder of the original lot contains at least 1.01 acres by survey and the re-subdivision meets minimum County health, zoning and subdivision requirements.

5. The grantors reserve unto themselves, their heirs, or assigns, the right to erect and maintain telephone and electric power poles, conduits, equipment, sewer, gas, and water lines, or to grant easements or rights of way for the purpose of erection or maintenance of same on, over, or under a strip of land

JOHN N. McCUNE  
ATTORNEY AT LAW  
FRONT ROYAL, VIRGINIA

fifteen (15) feet wide at any point along the side, rear, or front lines of any said lots, and fifteen (15) feet wide at any point along the roads, streets or rights of way within the subdivision.

6. No building of a temporary nature shall be erected or placed on any of said lots except those erected in connection with building operations; and in such cases, for a period not to exceed four months.

7. All lots shall be used for residential purposes only, any garage, barn or other out building must conform generally in appearance and material with any dwelling on the lot.

8. There shall be no more than one detached single family dwelling on each lot, and each dwelling must contain at least 480 square feet of living area on the main floor. In computing the living area the basement, garage, porch, deck or carport shall not be included. The term lot shall also mean the re-subdivided portion of the original lot. All exterior construction must be completed within eight (8) months of the commencement of construction.

9. All buildings shall be constructed of natural wood or a painted substitute wood product, brick or stone; no building may have an exterior surface, either painted or unpainted of what is commonly known as "cinder block."

10. No building shall be erected closer than 35 feet to any street or road right of way, no closer than 20 feet to the side or rear of the lot line, with the exception that where two or more lots are used together for the construction of one dwelling, then the said 20 foot set back shall apply only to outside lines.

11. The use of trailers, mobile homes, or house trailers within this subdivision is unauthorized, but this covenant shall not prevent the use of temporary camping trailers. No trucks, buses, old cars or unsightly vehicles of any type or description may be left or abandoned on said lot.

12. Except for clearing of building or camping sites, or clearing to improve the value of the property, cutting of living trees in excess of 6" diameter is unauthorized.

13. All toilets constructed on said lots must conform to the regulations of the County and State Health Departments. Privies should be placed in a secluded area whenever possible.

14. No signs, billboards or advertising of any nature shall be erected, placed or maintained on any lots herein dedicated nor upon any building thereon, except directional and information signs of the grantor.

15. No part of any lot sold by the grantor may be sold or used as a road or right of way to any property outside of the subdivision. This restriction shall not apply until the lot is sold by the grantor.

16. 12" diameter culverts must be used on all driveways leading to subdivision roads.

17. Nothing herein is to be construed to prevent the grantor from placing further covenants or easements on any lots in said subdivision which has not been conveyed by them.

18. If the parties hereto, or any of them or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real estate situated in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant either to prevent him or them from so doing or to recover damages, or other due for such violation.

19. Invalidation of any one of these covenants by judgment or Court order, shall in nowise affect any of the other provisions which shall remain in full force and affect.

The undersigned further grants to the use of all lot owners within Dogwood Valley Section VII, public utility and service companies, the use of that certain right of way from Felix T. Bryant and Virginia G. Bryant which is recorded just prior to the recording of this instrument and fully described the said right of way therein.

WITNESS the following signatures and seals:

B. K. HAYNES CORPORATION

BY: Bradley K. Haynes  
Bradley K. Haynes, President

ATTEST:

Woodrow W. Gallihugh  
Woodrow W. Gallihugh, Secretary

Roby G. Janney (SEAL)  
Roby Janney, Trustee

John N. McCune (SEAL)  
John N. McCune, Trustee

STATE OF VIRGINIA

COUNTY OF Madison

I, John N. McCune, a Notary Public in and for the State and County aforesaid do hereby certify that Bradley K. Haynes, whose named as President, and Woodrow W. Gallihugh,

JOHN N. McCUNE  
ATTORNEY AT LAW  
PORT ROYAL, VIRGINIA

whose named as Secretary of B. K. Haynes Corporation, are signed to the foregoing instrument bearing date on the 3rd day of November, 1972, have acknowledged the same before me in my State and County aforesaid and made oath that their signatures and Corporate Seal were thereto affixed pursuant to due authority.

Given under my hand this 17th day of November, 1972.

My commission expires: April 20 1974.

Howell W. Halliburton  
Notary Public.

STATE OF VIRGINIA

COUNTY OF Page

I, Dianna Ramey, a Notary Public in and for the State and County aforesaid do hereby certify that Roby Janney, Trustee, whose name is signed to the foregoing instrument bearing date on the 3rd day of November, 1972, has acknowledged the same before me in my State and County aforesaid.

Given under my hand this 17th day of November, 1972.

My commission expires: July 7 1974.

Dianna Ramey  
Notary Public

STATE OF VIRGINIA

COUNTY OF Danvers

I, Howell W. Halliburton, a Notary Public in and for the State and County aforesaid do hereby certify that John N. McCune, Trustee, whose name is signed to the foregoing instrument bearing date on the 3rd day of November, 1972, has acknowledged the same before me in my State and County aforesaid.

Given under my hand this 17th day of November, 1972.

My commission expires: April 20 1974.

Howell W. Halliburton  
Notary Public

*Accepted  
Oct. 26, 1972  
Lelia B. Bitten  
Clerk  
McCune, J.*

JOHN N. McCUNE  
ATTORNEY AT LAW  
ROANT ROYAL VIRGINIA

VIRGINIA: In the Clerk's Office of the Circuit Court of Greene County, Nov 18, 1972 this day was this day received in said office, and, upon the certificate of acknowledgement thereto annexed, admitted to record.

By Lelia B. Bitten Clerk.  
By Howell W. Halliburton Deputy Clerk.  
Transfer Fee \$  
Co. Tax \$  
State Tax \$

11/28/72

DOGWOOD VALLEY, SECTION VII  
DEDICATION OF PLAT FOR PART B

KNOW ALL MEN BY THESE PRESENTS, that the undersigned do hereby dedicate PART B of a subdivision known as DOGWOOD VALLEY, SECTION VII, located in Stanardsville Magisterial District of Greene County, Virginia, and more particularly bounded and described on the attached plat and survey made thereof by J. R. Nicely, C. L. S., dated November 16, 1972, as follows:

"BEGINNING at a common corner to Dogwood Valley, Section 5, Dogwood Valley, Section 6, and Dogwood Valley, Section 7, Part A; thence, with Part A lines, twelve courses, S 31°00'05" W, 334.15 feet, to a point in the centerline of the 50' wide Right-of-way; thence, with the centerline thereof, sixteen courses, S 12°83'35" W, 290.00 feet; thence, S 30°18'35" W, 158.72 feet; thence, S 53°37'43" W, 156.25 feet; thence, N 86°14'27" W, 157.11 feet; thence, S 12°23'04" E, 221.76 feet; thence, S 65°37'59" W, 228.95 feet; thence, S 26°07'36" W, 258.19 feet; thence, S 48°37'13" W, 127.26 feet; thence, S 78°22'25" W, 157.30 feet; thence, N 32°25'35" W, 244.61 feet; thence, N 42°55'35" W, 155.00 feet, to a point in the line of Lot 14, Part A, in the centerline of the R/W; thence, continuing with the R/W, and by seven new courses through the lands of B. K. Haynes Corp. N 2°32'05" E, 163.22 feet; thence, N 6°35'50" W, 292.73 feet; thence, N 9°49'30" E, 173.46 feet; thence, N 22°48'15" W, 156.28 feet; thence, N 82°28'10" E, 169.87 feet; thence, leaving the R/W N 33°11'30" W, 590.30 feet; thence, N 31°33'22" W, 694.15 feet, to a point in the line of the Shenandoah National Park; thence, with the Park line, two courses, N 72°45'28" E, 1150.00 feet; thence, N 57°30'30" E, 229.63 feet; thence, leaving the Park and with the lines of Dogwood Valley, Section 5, five courses, S 28°35'28" E, 256.02; thence, S 24°22'24" E, 203.45 feet; thence, S 26°10'45" E, 202.53 feet; thence, S 35°38'02" E, 329.52 feet; thence, S 23°20'42" E, 384.22 feet, to the beginning; containing 63.23 acres,"

The platting of Part B of Dogwood Valley, Section VII, is done with the free consent of B. K. Haynes Corporation; and Roby G. Janney and John N. McCune, Trustees, under that certain Deed of Trust of record in said Clerk's Office in Deed Book No. 60, at Page 391. The joining of the Trustees in no way is intended to release the lien of said Deed of Trust.

Part B of Dogwood Valley, Section VII shall be subject to the same protective covenants as Part A, the said covenants being of record in the Clerk's Office of Greene County, just

JOHN N. McCUNE  
ATTORNEY AT LAW  
MOUNT ROYAL, VIRGINIA

EXHIBIT F

prior to the recording of this instrument, to which reference is made and the said covenants are incorporated by reference into this instrument.

The undersigned further grants to the use of all lot owner, within Dogwood Valley, Section VII, public utility and service companies, the use of that certain right of way from Felix T. Bryant and Virginia G. Bryant which is recorded just prior to the recording of this instrument and fully described the said right of way therein.

WITNESS the following signatures and seals:

B. K. HAYNES CORPORATION

BY: Bradley K. Haynes  
Bradley K. Haynes,  
President

Woodrow W. Gallihugh  
Woodrow W. Gallihugh, Secretary

John N. McCune (SEAL)  
John N. McCune, Trustee  
Roby G. Janney (SEAL)  
Roby G. Janney, Trustee

STATE OF VIRGINIA

COUNTY OF Albemarle

I, Woodrow W. Gallihugh, a Notary Public in and for the State and County aforesaid do hereby certify that Bradley K. Haynes, whose named as President, and Woodrow W. Gallihugh, whose named as Secretary of B. K. Haynes Corporation, and John N. McCune, Trustee, are signed to the foregoing instrument bearing date on the 16th day of November, 1972, have acknowledged the same before me in my State and County aforesaid and made oath that their signatures and Corporate Seal were thereto affixed pursuant to due authority.

Given under my hand this 17th day of December, 1972.

My commission expires: April 20, 1974.

Woodrow W. Gallihugh  
Notary Public

STATE OF VIRGINIA

COUNTY OF Albemarle

I, Woodrow W. Gallihugh, a Notary Public in and for the State and County aforesaid do hereby certify that Roby G.

JOHN N. McCUNE  
ATTORNEY AT LAW  
MONT ROYAL, VIRGINIA

Janney, Trustee, whose name is signed to the foregoing instrument bearing date on the 16th day of November, 1972, have acknowledged the same before me in my State and County aforesaid.

Given under my hand this 17th day of November, 1972

My commission expires: October 20, 1974

Shirley M. Hunsicker  
Notary Public

VIRGINIA: In the Clerk's Office of the Circuit Court of Greene County, Nov 18, 1972 This deed was this day received in said office, and, upon the certificate of acknowledgement thereto annexed, admitted to record at 2:20 o'clock A.M., after payment of \$ \_\_\_\_\_, tax imposed by Sec. 58-54.

Co. Tax \$ \_\_\_\_\_  
State Tax \$ \_\_\_\_\_

Teste: Shirley M. Hunsicker, Clerk.  
By W. Davis, Deputy Clerk  
Transfer Fee \$ \_\_\_\_\_

DEN N. McCUNE  
ATTORNEY AT LAW  
MONT ROYAL, VIRGINIA



ATTACHED AT AND  
7 SOUTH STREET  
FARM ROYAL, VA.

3/13/73

DOGWOOD VALLEY, SECTION VII  
STATEMENT OF PROTECTIVE COVENANTS  
AND DEDICATION OF PLAT FOR PART C

KNOW ALL MEN BY THESE PRESENTS: That the undersigned do hereby dedicate Part C of a subdivision known as DOGWOOD VALLEY, SECTION VII, located in Stanardsville Magisterial District of Greene County, Virginia, and more particularly bounded and described on the attached plat and survey made thereof by J. R. Nicely, C. L. S., dated February 19, 1973, as follows:

"BEGINNING at a point on the line of the Shenandoah National Park and a corner to Dogwood Valley, Section 7, Part B; thence with 7 lines of said Dogwood Valley, Section 7, Part B, S 31°33'22" E 694.15' to a point, S 33°11'30" E 590.30' to a point, S 82°28'10" W, 169.87 to a point, S 22°48'15" E 156.28' to a point, S 9°49'30" W 173.46' to a point, S 6°36'50" E 292.73' to a point, S 2°32'05" W 163.22' to a point, a corner to Dogwood Valley, Section 7, Part A; thence, with 2 lines of said Dogwood Valley, Section 7, Part A, N 42°55'35" W 50.00' to a point, S 53°34'28" W 690.47' to a point, a corner to Snow; thence leaving said Dogwood Valley, Section 7, Part A with 7 lines of said Snow, S 67°49'58" W 237.38' to a point, S 44°09'56" W 100.85' to a point, S 23°56'46" W 580.65' to a point, S 11°24'37" W 773.95' to a point, N 76°14'51" W 46.28' to a point, S 80°34'56" W 355.34' to a point, S 48°18'48" W 162.78' to a point, a corner to Eager; thence, leaving said Snow with 2 lines of said Eager, N 2°33'33" W 202.47' to a point, S 85°36'50" W 1657.49' to a point, a corner to Soloe; thence leaving said Eager with 4 lines of said Soloe, N 16°14'26" W 478.27' to a point, N 26°52'19" W 293.72' to a point, N 15°08'49" W 485.78' to a point, N 21°19'29" W, 332.84' to a point, a corner to Shenandoah National Park; thence, leaving said Soloe with said Park, N 12°05'28" E, 362.70' to a point, N 68°52'28" E 902.00' to a point, N 52°27'28" E 350.00' to a point, N 21°22'28" E 261.00' to a point, N 67°32'32" W 739.00' to a point, N 72°45'28" E 2910.00' to the beginning," being part of the same real estate conveyed to B. K. Haynes Corporation by deed from Randall R. Dean and Marguerite Dean, husband and wife, bearing date on the 8th day of August, 1972, and of record in the Clerk's Office of Greene County, Virginia, in Deed Book No. 60, at Page 388.

The platting of Part C of Dogwood Valley, Section VII is done with the free consent of B. K. Haynes Corporation, owner; and Roby G. Janney and John N. McCune, Trustees, under that certain Deed of Trust of record in said Clerk's Office in

JOHN N. McCUNE  
ATTORNEY AT LAW  
FARM ROYAL, VIRGINIA

EXHIBIT G

in full  
9-25-75  
②

Deed Book No. 60, at Page 391. The joining of the trustees in this instrument in no way is intended to release the lien of said Deed of Trust.

Part C of Dogwood Valley, Section VII, shall be subject to the following protective covenants, which said covenants are to run with the land:

1) The grantor hereby dedicates to the use of the property owners, and public utility and service companies, all the rights of ways shown on the attached plat. It is intended that these rights of ways not to be for the use of the general public.

\* 2) The grantor herein or its assigns may assess each lot owner the sum of THIRTY-FIVE (\$35.00) DOLLAR per lot per year, for the use, upkeep and maintenance of the roads within all sections of Dogwood Valley, Section VII Subdivision, and the maintenance and upkeep of such other common facilities as the grantor may provide. The grantor or its assigns may increase the maintenance fee by not more than 10% per year to cover the increase in maintenance costs.

3) If a lot is re-subdivided under the terms of covenant No. 4, below, the new lot or lots and the remaining part of the original lot will be assessed according to covenant No. 2 above as if they are separate lots, and the deed conveying any re-subdivided lot must reflect the maintenance fee.

4) Lots within Dogwood Valley, Section VII, Part C, may be re-subdivided so long as the new lot or the remainder of the original lot contains at least 1.01 acres by survey and the re-subdivision meets minimum County health, zoning and subdivision requirements.

\* 5) The grantors reserve unto themselves, their heirs, or assigns, the right to erect and maintain telephone and electric power poles, conduits, equipment, sewer, gas, and water lines, or to grant easements or rights of way for the purpose of erection or maintenance of same on, over or under a strip of land fifteen (15) feet wide at any point along the side, rear, or front lines of any said lots, and fifteen (15) feet wide at any point along the roads, streets or rights of way within the subdivision.

6) No building of a temporary nature shall be erected or placed on any of said lots except those erected in connection with building operations; and in such cases, for a period not to exceed four months.

JOHN N. McCUNE  
ATTORNEY AT LAW  
FROST ROYAL, VIRGINIA

7) All lots shall be used for residential purposes only, any garage, barn or other out building must conform generally in appearance and material with any dwelling on the lot.

8) There shall be no more than one detached single family dwelling on each lot, and each dwelling must contain at least 480 square feet of living area on the main floor. In computing the living area the basement, garage, porch, deck or carport shall not be included. The term lot shall also mean the re-subdivided portion of the original lot. All exterior construction must be completed within eight (8) months of the commencement of construction.

9) All buildings shall be constructed of natural wood or a painted substitute wood product, brick or stone; no building may have an exterior surface, either painted or unpainted of what is commonly known as "cinder block"

X 10) No building shall be erected closer than 35 feet to any street or road right of way, no closer than 20 feet to the side or rear of the lot line, with the exception that where two or more lots are used together for the construction of one dwelling, then the said 20 foot set back shall apply only to outside lines.

11) The use of trailers, mobile homes, or house trailers within this subdivision is unauthorized, but this covenant shall not prevent the use of temporary camping trailers. No trucks, buses, old cars or unsightly vehicles of any type or description may be left or abandoned on said lot.

12) Except for clearing of building or camping sites, or clearing to improve the value of the property, cutting of living trees in excess of 6" diameter is unauthorized.

13) All toilets constructed on said lots must conform to the regulations of the County and State Health Departments. Privies should be placed in a secluded area whenever possible.

14) No signs, billboards or advertising of any nature shall be erected, placed or maintained on any lots herein dedicated nor upon any building thereon, except directional and information signs of the grantor.

15) No part of any lot sold by the grantor may be sold or used as a road or right of way to any property outside of the subdivision. This restriction shall not apply until the lot is sold by the grantor.

16) 12" diameter culverts must be used on all driveways leading to subdivision roads.

17) Nothing herein is to be construed to prevent the grantor from placing further covenants or easements on any lots in said subdivision which has not been conveyed by them.

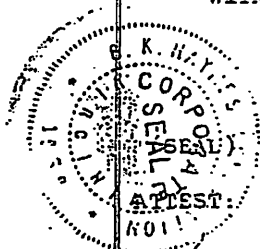
18) If the parties hereto, or any of them or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real estate situated in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant either to prevent him or them from so doing or to recover damages, or other due for such violation.

19) Invalidation of any one of these covenants by judgment or Court order, shall in nowise affect any of the other provisions which shall remain in full force and effect.

The undersigned further grants to the use of all lot owners within Dogwood Valley, Section VII, Part C, public utility and service companies, the use of that certain right of way from Felix T. Bryant and Virginia G. Bryant, recorded in Deed Book No. 62, at Page 394.

The owners reserve unto themselves, and their assigns, the right to remove dirt, or rock from a portion of Lot No. 46; Dogwood Valley, Section VII, Part C, as shown on the attached plat, for use in the maintenance of the roads within Dogwood Valley Subdivision.

WITNESS the following signatures and seals:



B. K. HAYNES CORPORATION

BY: Bradley K. Haynes  
Bradley K. Haynes,  
President

Woodrow W. Gallihugh  
Woodrow W. Gallihugh, Secretary

Roby G. Janney (SEAL)  
Roby G. Janney, Trustee

John N. McCune (SEAL)  
John N. McCune, Trustee

STATE OF VIRGINIA  
COUNTY OF Warren

JOHN N. McCUNE  
ATTORNEY AT LAW  
FRONT ROYAL, VIRGINIA

I, Buranda Pullen, a Notary Public in and  
for the State and County aforesaid do hereby certify that

DOGWOOD VALLEY, SECTION VII  
STATEMENT OF PROTECTIVE COVENANTS  
AND DEDICATION OF PLAT FOR PART D

KNOW ALL MEN BY THESE PRESENTS: That the undersigned hereby dedicate Part D of a subdivision known as DOGWOOD VALLEY, SECTION VII, located in Stanardsville Magisterial District of Greene County, Virginia, and more particularly do bounded and described on the attached plat and survey made thereof by J. R. Nicely, C.L.S., dated March 12, 1973, as follows:

"BEGINNING at a point in the line of Eager, a corner to Soloe; Thence, with 4 lines of Soloe, N 16°14'26" W, 478.27 feet; N 26°52'19" W, 293.72 feet; N 15°08'49" W, 485.78 feet; N 21°19'29" W, 332.84 feet to a corner to the Shenandoah National Park; Thence, with 6 lines of said Park, N 12°05'28" E, 362.70 feet; N 68°52'28" E, 902.00 feet; N 52°27'28" E, 350.00 feet; N 21°22'28" E, 261.00 feet; N 67°32'32" W, 739.00 feet; N 72°45'28" E, 2140.67 feet to a point on the line of the said Park; Thence, leaving said Park, S 31°33'22" E, 1057.83 feet to a point in the center of a 50' R/W; Thence, with 3 lines of said R/W, N 88°21'59" W, 100.31 feet; S 40°53'53" W, 236.28 feet; S 84°06'08" W, 83.59 feet; Thence, S 29°18'03" W, 647.76 feet to the Radius Point of a Cul-De-Sac at the end of a 50' R/W; Thence, with 12 lines of said R/W, S 10°38'31" E, 131.80 feet; S 23°41'49" W, 163.63 feet; S 15°47'04" W, 105.40 feet; S 38°16'42" W, 203.67 feet; S 48°14'15" W, 187.22 feet; S 17°14'05" W, 208.19 feet; S 50°15'15" W, 240.97 feet; S 42°01'25" W, 165.11 feet; S 3°46'13" W, 105.85 feet; S 25°55'26" W, 172.28 feet; S 36°54'56" W, 170.47 feet; S 29°05'11" W, 234.85 feet to a point; Thence S 29°05'11" W, 94.86 feet to a point in the property line of Eager; Thence, with Eager, S 85°36'50" W, 1000.07 feet to the beginning; Containing 142.32 Acres being the same tract or parcel of land shown as Lot 36, on that certain plat of Dogwood Valley, Section 7, Part C, of record in the Clerk's Office of Greene County in Plat Book 3, at Pages 86 and 87, and being part of the same real estate conveyed to B. K. Haynes Corporation, by deed from Randall R. Dean and Marguerite Dean, husband and wife, bearing date on the 8th day of August, 1972, and of record in said Clerk's Office in Deed Book No. 60, at Page 388.

The platting of Part D of Dogwood Valley, Section VII, is done with the free consent of B. K. Haynes Corporation, owners; and Roby G. Janney and John N. McCune, Trustees, in that certain Deed of Trust of record in said Clerk's Office in Deed Book No. 60, at Page 391. The joining of the trustees into this instrument in no way is intended to release the lien of said Deed of

JOHN N. McCUNE  
ATTORNEY AT LAW  
FRONT ROYAL, VIRGINIA

1.107-A

EXHIBIT H

Trust.

In addition to the following, Part D, Dogwood Valley, Section VII, shall be subject to the same protective covenants as Part C, said covenants being of record in the Clerk's Office of Greene County in Deed Book No. 64, at Page 287, of which references hereby made and said covenants are incorporated by reference into this instrument.

Part D of Dogwood Valley, Section VII, shall be further subject to the following covenants which said covenants shall run with the land:

1) The following shall be added to Covenant No. 2, "Any assessment made pursuant to this covenant shall constitute a lien on the lot until paid."

2) The following shall be an additional covenant "Each lot owner shall be responsible for damages to subdivision roads and other common facilities by his agents. It is the intent of this covenant to limit the liability of the road maintenance fund for the cost of repair of roads and other common facilities, when the damage to the roads and common facilities was caused by the act or acts of an individual lot owner or his agent.

The undersigned further grants to all lot owners within Dogwood Valley, Section VII, Part C, public utility and service companies, the use of that certain right of way from Felix T. Bryant and Virginia G. Bryant, recorded in Deed Book No. 62, at Page 394.

WITNESS the following signatures and seals, this 16th day of March, 1973.

B. K. HAYNES CORPORATION

BY: Bradley K. Haynes  
Bradley K. Haynes, President



Woodrow W. Gallihugh  
Woodrow W. Gallihugh, Secretary

Roby G. Janney (SEAL)  
Roby G. Janney, Trustee

John N. McCune (SEAL)  
John N. McCune, Trustee

STATE OF VIRGINIA

COUNTY OF Warren

I, Margaret L. L. Joseph, a Notary Public in and for the State and County aforesaid do hereby certify that Bradley K. Haynes, whose named as President, and Woodrow W. Gallihugh, whose named as Secretary of B. K. Haynes Corporation

JOHN N. McCUNE  
ATTORNEY AT LAW  
FRONT ROYAL, VIRGINIA

are signed to the foregoing Deed of Dedication bearing date on the 16th day of March, 1973, have acknowledged the same before me in my State and County aforesaid and made oath that their signatures and Corporate Seal were thereto affixed pursuant to due authority.

Given under my hand this 16th day of March, 1973.

My commission expires: 3rd day of March, 1975.

Margaret L. Jorgel  
Notary Public

STATE OF VIRGINIA

COUNTY OF Page

I, Brenda K. Bradley, a Notary Public in and for the State and County aforesaid do hereby certify that Roby G. Janney, Trustee, whose name is signed to the foregoing Deed of Dedication bearing date on the 16th day of March, 1973, has acknowledged the same before me in my State and County aforesaid.

Given under my hand this 1st day of April, 1973.

My commission expires: January 12, 1976.

Brenda K. Bradley  
Notary Public

STATE OF VIRGINIA

COUNTY OF Warren

I, Margaret L. Jorgel, a Notary Public in and for the State and County aforesaid do hereby certify that John N. McCune, Trustee, whose name is signed to the foregoing Deed of Dedication bearing date on the 16th day of March, 1973, has acknowledged the same before me in my State and County aforesaid.

Given under my hand this 16th day of March, 1973.

My commission expires: 3rd day of March, 1975.

Margaret L. Jorgel  
Notary Public

I WAS COMMISSIONED

VIRGINIA: In the Clerk's Office of the Circuit Court of Greene County, April 4, 1973. This deed was this day received in said office, and, upon the certificate of acknowledgment thereto annexed, admitted to record at 2:00 o'clock P.M., after payment of \$          , tax imposed by Sec. 58-54.1.

Co. Tax \$            
State Tax \$          

Teller: Margaret L. Jorgel  
By:                      Deputy Clerk  
Transfer Fee \$          

JOHN N. McCUNE  
ATTORNEY AT LAW  
FRONT ROYAL, VIRGINIA

DOGWOOD VALLEY, SECTION VII  
RESTATEMENT OF RESERVATION FOR PART C

WHEREAS, by instrument bearing date on the 21st day of February, 1973, and of record in the Clerk's Office of Greene County in Deed Book No. 64, at Page 287, B. K. Haynes Corporation set out certain protective covenants and reservations for a Subdivision known as Dogwood Valley, Section VII, Part C, and

WHEREAS, the said B. K. Haynes Corporation desires to amend the reservation to remove dirt and rock from a portion of Lot No. 46, Dogwood Valley, Section VII, Part C, and make a reservation to remove the said dirt and rock from Lot No. 64, Dogwood Valley, Section VII, Part C,

NOW THEREFORE, THIS INSTRUMENT:

Know all men by these presents that the undersigned does hereby reserve unto themselves and their assigns the right to remove dirt and rock from a portion of Lot No. 64, Dogwood Valley, Section VII, Part C, as shown on the plat of said subdivision of record in the Clerk's Office in Greene County in Plat Book No. 3, at Page 86, for the use and maintenance of roads within Dogwood Valley Subdivision.

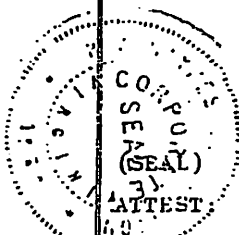
The undersigned does hereby void and withdraw the reservation to remove dirt and rock from Lot No. 46, Dogwood Valley, Section VII, Part C.

WITNESS the following signatures and seals this 27<sup>th</sup> day of March, 1973.

B. K. HAYNES CORPORATION

BY: 

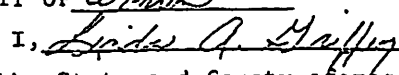
Bradley K. Haynes,  
President



  
Woodrow W. Gallihugh, Secretary

STATE OF VIRGINIA

COUNTY OF Warren

I, , a Notary Public in and for the State and County aforesaid do hereby certify that Bradley K. Haynes, whose named as President and Woodrow W. Gallihugh, whose named as Secretary signed the foregoing Restatement of

JOHN N. McCUNE  
ATTORNEY AT LAW  
FLORENCE, VIRGINIA

1.107-A

EXHIBIT I



Reservation bearing date on the 27<sup>th</sup> day of March, 1973, before me in my State and County aforesaid.

Given under my hand this 27<sup>th</sup> day of March, 1973.

My commission expires: February 8, 1977.

Linda P. Bradley  
Notary Public

VIRGINIA: In the Clerk's Office of the Circuit Court of Greene County, April 6, 1973. This deed was this day received in said office, and, upon the certificate of acknowledgment, thereto annexed, admitted to record, at 10:20 o'clock A.M., after payment of \$..... tax imposed by Sec. 53-54.1.

Co. Tax \$.....  
State Tax \$.....

Taxa. Linda P. Bradley, Clerk.  
By Linda P. Bradley, Deputy Clerk  
Transfer Fee \$.....

JOHN N. McCUNE  
ATTORNEY AT LAW  
PORT HURON, VIRGINIA

Dogwood Valley  
PO Box 124  
Stanardsville VA  
1-25-79

THIS DEED, made and entered into this 5th day of December, 1970, by and between H. K. HAYNES CORPORATION, hereinafter referred to as Grantor, and DOGWOOD VALLEY CITIZENS ASSOCIATION, INC., a Virginia corporation, hereinafter referred to as Grantee;

W I T N E S S E T H :

WHEREAS, the Grantor is the owner of a certain subdivision in Greene County, Virginia, known as Dogwood Valley, by virtue of a deed made by George L. Donn and others, dated April 30th, 1968, of record in the Clerk's Office of the Circuit Court of Greene County, Virginia, in Deed Book 41, at Page 50, said property comprising all those two adjoining tracts or parcels of land lying and being in the Stanardsville Magisterial District of Greene County, Virginia on South River and Saddleback Mountain, containing in the aggregate three hundred and seventy one (371) acres, more or less; and

WHEREAS, the Grantor by its predecessors put to record a Deed of Dedication dated October 11, 1968 of record in the aforesaid Clerk's Office in Deed Book 41, at Page 150, as amended by an amended Deed of Dedication, dated November 1, 1968, of record in the aforesaid Clerk's Office in Deed Book 41, at Page 233, and by a Statement of Restrictive Covenants of Dogwood Valley, Section VII, dated February 21, 1971, of record in the aforesaid Clerk's Office in Deed Book 64, at Page 287; and

WHEREAS, in the aforesaid Deeds of Dedication and Protective Covenants, the Grantor has reserved the right to use, keep and maintain all of the roads and common facilities in the aforesaid subdivision; and

WHEREAS, the aforesaid Deeds of Dedication and Protective Covenants provide that the rights, duties and responsibilities as are created therein may be delegated by the Grantor to a

PURYEAR, CHANDLER  
EARLY & DORRIS  
ATTORNEYS AT LAW  
224 COURT SQUARE  
CHARLOTTESVILLE, VA.

22801

MADISON, VA.

22727

STANARDSVILLE, VA.  
22873

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EXHIBIT J

committee of lot owners approved by the Grantor; and

WHEREAS, a great majority of the aforesaid lots in Dogwood Valley Subdivision have heretofore been sold; and

WHEREAS, the property owners of Dogwood Valley have united and formed a corporation referred to herein as the Grantee, whose purpose is to see that the roads, public facilities and other common areas of Dogwood Valley Subdivision are properly maintained; and

WHEREAS, it is the desire of the Grantor herein, B. K. Haynes Corporation, now to convey to the Grantee, Dogwood Valley Citizens Association, Inc., all of the rights, duties and responsibilities which were created or may have been created by the aforesaid Deeds of Dedication and Protective Covenants; and

WHEREAS, it is the desire and intent of the Grantee to receive from the Grantor and accepts herein by the recordation of this deed all of the rights, duties and obligations which the Grantor has pursuant to the aforesaid Deeds of Dedication and Statement of Protective Covenants.

NOW, THEREFORE, and in consideration of the sum of ONE DOLLAR (\$1.00), cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby GRANT, CONVEY and ASSIGN WITH GENERAL WARRANTY OF TITLE, unto the Grantee, Dogwood Valley Citizens Association, Inc., the following public and common areas:

1. The public area bordering Lots 8, 9, 10 and 11, as shown on Section II of a plat of Dogwood Valley Subdivision, made by W. P. Whitmore, dated October 26, 1968 of record in the aforesaid Clerk's Office in Plat Book 1, at Page 233.

2. That body of land known as Rook Island, bordering Lots 1, 2, 3, 4, 5, and 6 as depicted on Section IV of a plat of survey of Dogwood Valley made by W. P. Whitmore, dated December 4, 1968 of record in the aforesaid Clerk's Office in Plat Book 1, at Page 233.

RUTHERFORD, CHANDLER  
EARLY & DORRIS  
ATTORNEYS AT LAW  
334 COURT SQUARE  
CHARLOTTESVILLE, VA.  
22901  
MADISON, VA.  
22727  
STANARDSVILLE, VA.  
22673

BOOK 108 PAGE 241

3. Hidden Lake and public lot as is depicted on a plat of Section V-A of Dogwood Valley Subdivision, made by W. P. Whitmore, dated May 30, 1969 of record in the aforesaid Clerk's Office in Plat Book 2, at Page 30.

4. Hidden Lake and public lot as is depicted on a plat of Section V of Dogwood Valley Subdivision, made by W. P. Whitmore, dated May 30, 1969 of record in the aforesaid Clerk's Office in Plat Book 2, at Page 30.

5. Hidden Lake and public lot as is depicted on a plat of W. P. Whitmore, dated May 13, 1969 of record in the aforesaid Clerk's Office in Plat Book 2, at Page 39.

The Grantor hereby further QUITCLAIMS, ASSIGNS, RELEASES and REMITS unto the Grantee, Dogwood Valley Citizens Association, Inc. any and all rights which it may have, both legal and equitable in all of the roads within the aforesaid subdivision, together with any other common areas or public areas not specifically set forth in this deed.

All of the aforesaid conveyances are subject to any liens, easements, restrictions or covenants of record as they may affect the property herein conveyed.

WITNESS the following signatures and seals.

H. K. HAYNES CORPORATION

By Bradley G. Haynes (SEAL)  
Bradley G. Haynes, President

ATTEST:

Betty G. Haynes  
Betty G. Haynes, Secretary-Treasurer

STATE OF VIRGINIA

COUNTY OF WAKKEN, to-wit:

I, BARBARA A. ALZEATH, a Notary Public in and for the State and County aforesaid, do hereby certify that Bradley K. Haynes, President and Betty G. Haynes, Secretary-Treasurer of

PURYEAR, CHANDLER  
EARLY & DORRIS  
ATTORNEYS AT LAW  
224 COURT SQUARE  
CHARLOTTEVILLE, VA.  
22001  
MADISON, VA.  
22727  
STANARDSVILLE, VA.  
22872

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Given under my hand this 2<sup>nd</sup> day of JANUARY, 1979.

Richard A. Wingate  
Notary Public

November 10, 1981

VERMONT In the Clerk's Office of the Circuit Court of Green County, Green 1892. This deed was this day recorded in the office of the Clerk of said Court, in the presence of the following witnesses, who are duly sworn, and admitted to record, 2192, which at the time of recording of the same was the only one on file in the office of the Clerk of said Court.

Witness my hand and the seal of said Court, this \_\_\_\_\_ day of \_\_\_\_\_, 1892.

Clerk, \_\_\_\_\_ Deputy Clerk \_\_\_\_\_

Co. Tax \_\_\_\_\_  
Dist. Tax \_\_\_\_\_

Transfer fee 1.00

January 11, 1997

Meeting opened at 9:25 a.m. at Matt's house, with Matt, Tom, Linda, Keith, and Dean in attendance.

Old Business: Discussion, but nothing new. Minutes from last meeting were read and accepted.

Treasurer's report: \$13,532.48.

New Business:

- (1) More discussion on talking to B.K. Hanes.
- (2) \$80 in donations for homeowners' association sent in with dues.
- (3) We took a vote on raising Section 7 road fees 10%. The vote was no.
- (4) We discussed and decided to draw up a written budget to put before the homeowners at the annual meeting.
- (5) Voted and passed to established an official road report, like the treasurer's report, to be kept on all roads, their condition, and the work being done on them. This has to be read and approved at each meeting. All work that is to be contracted on the roads in the future will be done with a 30-day billing agreement so that the paying of this bills can be brought before the Board and approved in the road report.

The meeting was adjourned at 11:09 a.m.

Next meeting February 7, 1997 at 9:30 a.m.

February 2, 1997

Meeting opened at 9:27 a.m. at Matt's house, with Tom, Keith, Matt, Linda, and Dean in attendance.

Minutes of the January meeting were read and accepted.

Treasurer's report: Read and accepted. Balance in treasury is \$14,418.54.

Old Business:

- (1) Further discussion on road committee and road report. Keith and Tom will inspect roads before next meeting.
- (2) Further discussion on a budget committee. Linda, Matt and Dean will meet and begin to draw up 3 plans to put before the annual meeting.

New Business:

- (1) Need definition of retail business and how this applies to weekly rentals.
- (2) We need to pull the dock at Hidden Lake this spring because the boards are rotten.
- (3) Keith will get correct road names for signs. The names have been changed by the 911 system.

The meeting was adjourned at 11:07 a.m.

Next meeting March 8, 1997 at 9:30 a.m.

March 8, 1997

Meeting opened at 9:40 a.m. at Matt's house. Tom, Keith, Matt, Dean, and Linda were in attendance.

Steve Craig was also in attendance, as requested by Matt, to discuss the cost of road work.

The minutes of the February meeting were read and accepted.

Treasurer's report: Read and accepted. Balance in treasury is \$10,052.64.

Road report: Read and accepted.

Old Business: Greene County will make and install road signs for new road names in 911 system.

New Business:

- (1) Discussion with Steve as to the cost of various road work.
- (2) Discussion on proposed budget for June homeowners' meeting.

The meeting was adjourned at 10:40 a.m.

Next meeting April 11, 1997 at 9:30 a.m.



April 12, 1997

Meeting opened at 9:50 a.m. at Matt's house, with Linda, Keith, Tom, Matt, and Dean in attendance.

The minutes were read and accepted.

Treasurer's report was read and accepted--\$12,191.29 in treasury.

Road report was not read. It was noted by Dean that we passed a motion in January for a monthly road report.

Old Business: None.

New Business:

(1) Tom cut fallen trees off of Ibis Road. Steve Craig will soon work on that road even though no one lives on it.

(2) Mr. Overslaw has put a gate on Jay Drive. The question is if the gate blocks our road or if it is his driveway. We'll have to check to see who owns this section of road.

(3) Tom brought up the subject of trash, junk, etc., on people's lots. Matt says that county has an ordinance of no open garbage containers, but that it is very limited. It's a "health law".

(4) Discussion on whether some lots have substandard or no septic systems.

(5) Discussion on the budget proposal for annual meeting.

(6) If at any time we have an excess of money, what should we do with it? Should we let it sit, or invest it? Matt suggested we have a citizens committee (not the board) decide if that ever happens.

Next meeting scheduled for May 10, 1997, at 9:30 a.m.

Budget meeting scheduled for May 3, 1997 at 9:30 a.m.

Meeting adjourned at 10:46 at Tom's motion.

May 10, 1997

Meeting held at Matt's house, with Matt, Linda, Keith, Dean, and Tom in attendance.

Minutes were read and accepted.

Treasurer's report--\$10,248.29.

The road report was not read, but is being put into a good format for the annual meeting. This will be a big job to get it into a good format, with graphics, etc.

Old Business: Matt reported on lot owners who don't pay their dues, claiming that they don't have to, and what action is being taken.

New Business: Discussion of agenda at annual meeting:

(1) Old minutes - old and new business.

(2) New business:

Budget (vote)

Amend bylaws on interest on unpaid fees

Legal definition of junk car

"Manufactured home" vs. "mobile home"

Architectural review committee

Nominating committee

Bylaws committee

Gates

Next meeting will be May 24, 1997, at 9:30 a.m., at Matt's house.

The meeting was adjourned.

May 24, 1997

The meeting opened at 9:50 a.m. at Matt's house, with Tom, Keith, Matt, and Dean in attendance.

The minutes were read and accepted.

The treasurer was not in attendance, but it was estimated the treasury contained around \$10,000.

Old Business: None

New Business:

(1) Discussion on raising interest rates on non-payment of road dues. Approval of letter on this to go with mailing for annual meeting.

(2) Matt showed pictures of work that had been done on roads. Discussion on how to keep this work in good shape.

Next meeting June 19, 1997, at 9:30 a.m.

The meeting was adjourned at 10:51 a.m.

June 19, 1997

Meeting opened at 9:30 a.m., at Matt's house, with Linda, Judy Coughlin, Matt, and Dean in attendance.

Minutes were read and accepted.

Treasurer's report -- \$6,253.09

Old Business: None.

New Business: Linda transferred the treasurer's records to Judy Coughlin, the new treasurer. The board thanked Linda for 4 years of dedicated self-sacrificing service to DVCA, and gave our thanks to Judy for accepting the position.

Next meeting August 16, 1997, at 9:30 a.m.

The meeting was adjourned at 10:03 a.m.

August 16, 1997

The meeting was called to order at 9:30 a.m., with Matt, Keith, Dean, Judy, and Tom in attendance.

The minutes were read and accepted.

Old Business:

(1) The accountant has reviewed the treasurer's books, and will soon return them to Judy. Matt and Judy will install new recording system.

(2) Discussion about county signs on DVCA roads. They don't indicate that these are private roads.

Road Report: Tom discussed the road committee meeting on August 9, 1997. Three people attended the meeting. Tom thinks some progress was made, and he is continuing this work.

New Business: Much discussion on work that needs to be done on roads, and who should do it.

Next meeting scheduled for Sept. 27, 1997, and 9:30 a.m.

The meeting was adjourned at 10:50 a.m.

September 27, 1997

The meeting was called to order at 9:30 a.m.

The minutes were read and accepted.

Treasurer's report: \$6,348.35. The accountant has the book. Judy will get it back on Monday. Report accepted.

Old Business: DVCA attorney, Kelly Hobbs, is looking into the fact that the road signs don't indicate that the roads are private.

The road report was read by Tom, and accepted.

New Business:

(1) Discussion on getting gravel (approximately 5 loads) for Section 7.

(2) Fred Lanzon worked pitching rocks for 3 hours and the board thanks him.

Next meeting Oct. 25, 1997, at 9:30 a.m.

The meeting was adjourned at 10:07 a.m.

October 25, 1997

The meeting was called to order at 9:30 a.m. at Matt's house, with Keith, Matt, Dean, and Tom in attendance.

Treasurer's report: Judy phoned in the report--\$3,500. We owe no one. Foreclosures will soon begin. Read and accepted.

The minutes were read and accepted.

Old Business:

- (1) We are not allowed to print "private" on road name signs according to county law.
- (2) Gravel was delivered to Section 7.
- (3) Keith is looking into other questions on road signs.

New Business:

- (1) Red Bird Road has a bad spot, but a backhoe is needed. It will be repaired in the future.
- (2) Matt recommends getting new people for spring road work. Steve hasn't been very reliable. The work is not getting done. Matt has offers that are good.
- (3) Ponds need to be cut and Matt is contacting someone in that regard.
- (4) Discussion on what to do with excess money: savings, trust, etc.
- (5) Discussion on incident which occurred on Rock Island. Gate was left open, and the head game warden for this district came in and was asked to leave. He became angry and refused to leave, and demands right-of-way to land.

Next meeting Nov. 15, 1997, at 9:30 a.m.

The meeting was adjourned at 10:27 a.m.

November 15, 1997

Meeting was called to order at 9:26 a.m.

Minutes were read and accepted.

Treasurer's report: Judy has gotten all records from accountant, and is reviewing them. The road dues bills are here. Treasurer's balance not available right now. Accepted.

Road report:

(1) Unauthorized individual worked on Red Bird Road and did some damage. Gravel had to be delivered. This person will be billed for the gravel.

(2) Steve is still dragging his feet on doing work.

Old Business:

(1) We cannot post our own "private" signs on county posts.

(2) We haven't heard from the game warden. They don't have "prescriptive right-of-way."

New Business:

(1) Tom brought up the issue of blocking right-of-way, cars parked on road in front of his house, cars parked in 50-ft. right-of-way can be towed. Tom's neighbor will be written to and told his cars will be towed if he doesn't move them. Pictures will be taken, the right-of-way will be measured, and letters sent.

(2) Judy will deliver a check to Dean for stamps.

Next meeting Dec. 20, 1997, at 9:30 a.m.

Meeting was adjourned.



January 17, 1998

Meeting opened at 9:31 a.m. at Matt's house, with Keith, Matt, Judy, and Dean in attendance.

Treasurer's report: 28 have not paid  
\$11,267.83

Minutes of last meeting read and accepted as amended.

Road report: Dogwood, Mica, Elwood, Red Bird have been graded (5 loads of stone each). Pine Hill has been graded (2 loads of stone).

Old business: Letters on parked cars were refused and sheriff will deliver.

New business:

- (1) Dean will type and copy minutes.
- (2) Board voted to not send second notice of road dues. One week grace period and then the penalty.

The meeting was adjourned.

Next meeting February 28, 1998 at 9:30 a.m.

February 28, 1998

Meeting opened at 9:30 a.m. at Matt's house, with Tom, Keith, Judy, Matt, and Dean in attendance.

Treasurer's report: \$13,697.85

Minutes of the January meeting were read and accepted.

Old Business:

(1) Letter was delivered on February 7, 1998 about parked cars. In response, a letter was sent to our attorney from an association member saying he had the right to park on the road. Our attorney will respond.

(2) Board received letter from Beth Putnam on behalf of Eleanor Layne. Dean will respond.

New Business: Road grader lined up for 3rd week of March.

The meeting was adjourned.

Next meeting March 21, 1998 at 9:30 a.m.

April 25, 1998

Meeting opened at 9:30 a.m. at Matt's house, with Keith, Matt, Judy, Dean, and Tom in attendance.

Treasurer's Report: \$3,566.

The minutes were read and accepted.

Old Business:

(1) When road grader went up, parked cars had been moved, so no trial date was set. Now the cars are back, so a court date will now be scheduled.

(2) Road grader completed work. Hawk Drive was opened for the first time since the early 1980's.

New Business:

(1) Summary of June members' meeting and the proposed special assessment sheet will be included in the December mailing of bills.

(2) Debate on length of time before foreclosure. Vote on taking 4 months before foreclosure. After 90 days, lien. One month later, foreclosure. Motion withdrawn--no vote.

(3) Vote on making special assessment action the same time frame as road fees. Passed 4 to 1. Proposed by Judy.

(4) Road report will be prepared. Minutes will be prepared.

(5) The annual meeting will be June 20, 1998, at 9:30. Keith will reserve the courthouse.

Next meeting scheduled for May 23, 1998, at 9:30 a.m.

Meeting adjourned at 10:27.

May 23, 1998

Meeting opened at 9:33 a.m. at Matt's house, with Keith, Judy, Matt, and Dean in attendance.

Treasurer's report--\$3037.53

Minutes were read and accepted.

Old Business:

- (1) The courthouse was reserved for the annual meeting on June 20, 1998.
- (2) No scheduled court date on the parked cars issue.

New Business:

- (1) There was a break-in at the Hollinger's residence.
- (2) Steve Craig will cut the roadsides in June.
- (3) We had a complaint from Mr. Miller about rain washing out of the ditches on his road. Matt visited this road during the last rain-- 2 sticks and a small amount of leaves had formed a dam. Matt moved the sticks and the ditch was fine. The process took approximately 10 seconds.
- (4) Discussion on the annual meeting.

Next meeting will be June 13, 1998, at 9:30 a.m., at Matt's house.

The meeting was adjourned at 10:00 a.m.

June 13, 1998

The meeting opened at 9:21 a.m. at Matt's house, with Matt, Judy, Keith, and Dean in attendance.

Treasurer's report: \$1798.01

Old Business:

- (1) Steve Craig has cut the roadsides.
- (2) Nothing more on parked cars until after the annual meeting.
- (3) Nothing new on the break-in at the Hollinger's, and there have been no additional break-ins.

New Business: Letter from VA Game Comm'n (Mr. Simms). He has requested a meeting to discuss the fact that he wants access to DVCA roads.

Next meeting August 29, 1998, at 9:30 a.m.

The meeting was adjourned at 10:12 a.m.

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GREENE

WILLIAM A. WINKELMAN,

Plaintiff.

v.

Chancery No. 01-3033

DOGWOOD VALLEY CITIZENS' ASSOCIATION, INC., et al.

Defendants.

### STIPULATION

For purposes of the trial of this case, the parties, by counsel, stipulate as follows:

1. The documents contained in the Defendants' notebook at tabs 1 through 51 are authentic, and shall be admitted in evidence without further identification or authentication as Defendants' exhibits 1 through 51.
2. The Bylaws that are at Tab 3 (Exhibit 3) of Defendants' notebook are not recorded in the land records of Greene County.
3. Plaintiff's response to Requests for Admissions by Defendants in the previous case in this Court, *William A. Winkelman, et al. v. Dogwood Valley Citizens Association, Inc., et al.*, Chancery No. 98-2703, dated October 18, 1999, December 21, 1999, and undated, which are attached hereto, shall be considered filed with the Court in the present case and shall be treated for all purposes as though the Requests for Admissions and Responses thereto had been served and responded to in the present case.
4. The Defendants' responses to Plaintiff's Interrogatories, served in the previous case styled *William A. Winkelman, et al. v. Dogwood Valley Citizens Association, Inc., et al.*, Chancery No. 98-2703, which are attached hereto, are true and correct copies of the Interrogatories and Responses thereto filed in the previous case, and

#152

8/13/02

DRB

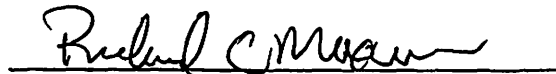
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shall be admitted as evidence as served and responded to in the present case and, further,  
Defendants stipulate that those responses are true and accurate as of the date of this  
Stipulation.

Respectfully submitted,



George H. Dygert, Esquire VSE# 16378  
George H. Dygert & Associates  
675 Peter Jefferson Parkway, Suite 190  
Charlottesville, Virginia 22911  
Telephone: (434) 979-5515  
Facsimile: (434) 295-7785  
Counsel for Defendants



Richard C. Maxwell, Esquire  
Woods, Rogers & Hazlegrove  
P.O. Box 2964  
Charlottesville, Virginia 22902  
Telephone: (434) 295-8300  
Facsimile: (434) 295-3390  
Counsel for Plaintiffs

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GREENE

WILLIAM A. WINKELMAN,

Plaintiff.

v.

DOGWOOD VALLEY CITIZENS' ASSOCIATION, et al.

Defendants.

### REQUEST FOR ADMISSIONS

COME NOW the Defendants, by counsel, pursuant to Rule 4:11 of the Supreme Court of Virginia, and requests that Plaintiff admit the truth of the following matters within twenty-one days after receipt of this pleading.

1. Plaintiff's address was, at all times relevant, Route 1 Box 1143, Harpers Ferry, West Virginia 25425.
2. Plaintiff received prior to February 1, 1998, the Road Fee Notice dated February 1, 1998, attached hereto as Exhibit A.
3. Plaintiff received on February 28, 1998, a letter from Dogwood Valley Citizen' Association's counsel, dated February 20, 1998, a copy of which is attached hereto as Exhibit B.
4. Domestic return receipt, article number P186856568, a copy of which is attached hereto as Exhibit C, was signed on February 28, 1998 by Valorie Winkleman.
5. Valorie Winkleman was a household member of Plaintiff's family on February 28, 1998.
6. Valorie Winkleman was related to Plaintiff on February 28, 1998.
7. Valorie Winkleman had authorization to sign for Plaintiff's mail.



8. The document attached hereto as Exhibit D is a copy of an official receipt from the Clerk of the Greene County Circuit Court evidencing recordation of a lien against Lot 1, Section 5-E, Dogwood Valley Subdivision on March 30, 1998.
9. The document attached as Exhibit E is an official receipt from the Clerk of the Greene County Circuit Court evidencing recordation of a lien on March 30, 1998 against Lot 2, Section 5-E, Dogwood Valley Subdivision.
10. February 20, 1998, was at least 10 days prior to March 30, 1998.
11. The copy of the envelope attached hereto as Exhibit F was addressed to Plaintiff's correct address as of April 2, 1998.
12. Exhibit F contains a U.S. Postal Department notation evidencing a "First Notice" on April 3, 1998, and a "Second Notice" on April 8, 1998.
13. The document attached at Exhibit F contains a U.S. Postal Department notation evidencing that the envelope was returned to sender, marked "unclaimed".
14. The document attached hereto as Exhibit G was addressed to Plaintiff's correct address as of April 2, 1998.
15. The document attached hereto as Exhibit H is a copy of page 10 of the Thursday, April 2, 1998, issue of Greene County Record.
16. Exhibit H contains a Notice of Public Sale by Dogwood Valley Citizens Association.
17. The advertisement depicted at Exhibit H was published in the Greene County Record on April 2, 1998; April 9, 1998; April 16, 1998 and April 23, 1998.
18. April 2, 1998 is more than 14 days prior to April 29, 1998.
19. The Greene County Record has a general circulation in Greene County, Virginia.
20. The Notice of Public Sale by Dogwood Valley Citizens Association at Exhibit H

contains the date, time, place and terms of the sale and contains the name of the property owners association.

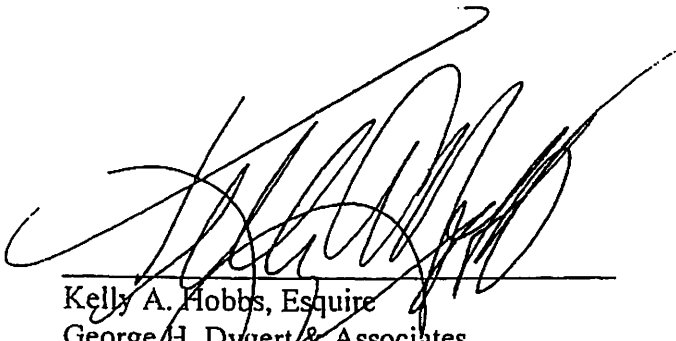
21. The Notice of Public Sale by Dogwood Valley Citizens Association at Exhibit H contains the name, address and telephone of Kelly A. Hobbs, counsel for Dogwood Valley Citizens Association.

22. Dogwood Valley Citizens Association held a public sale on April 29, 1998 at 12:00 noon and included in that sale were Lot 1, Section 5-E and Lot 2, Section 5-E, Dogwood Valley Subdivision.

Respectfully submitted,

DOGWOOD VALLEY CITIZENS ASSOCIATION,  
INC., et al.,

By Counsel



Kelly A. Hobbs, Esquire  
George H. Dygert & Associates  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902  
Telephone: (804)979-5515  
VSB: 40166  
Counsel for Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Request for Admission was mailed first-class, postage prepaid this 27th day of September, 1999 to Donald D. Long, Esquire Woods, Rogers & Hazelgrove, P.O. Box 2964, Charlottesville, Virginia 22902.



Kelly A. Hobbs

Harpers Ferry Citizens Association  
P.O. Box 127  
Standardsville, VA 22973

Place  
Stamp  
Here

William Winkleman  
Route 1, Box 1143  
Harpers Ferry, WV 25425

Road Fee Notice

Invoice Date 2/1/98

Charges By Lot

05e -01	\$25.00
05e -02	\$25.00

Amounts by Category

Prior Balance	\$170.15
Penalties	\$50.00
Interest	\$00.00
Road Fees	\$50.00 + .92
Special Assessments	\$70.00 ( \$35.00 per lot ) + .49

Amount Due in full by 2/1/98 \$340.15

366.55

EXHIBIT A

Failure to pay on or before  
Sunday, February 01, 1998  
will result in penalties & interest!

Dygert & Hemenway

*Attorneys at Law*

Telephone (804) 979-5515  
Telefax (804) 295-7785

1112 East High Street, Suite B  
Charlottesville, Virginia 22902

February 20, 1998

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mr. William Winkleman  
Route 1, Box 1143  
Harpers Ferry, WV 25425

Re: Dogwood Valley Citizens' Association

Dear Mr. Winkleman:

I represent Dogwood Valley Citizens Association.

The Dogwood Valley Citizen's Association voted at its meeting on June 14, 1997, to approve a special assessment of \$35.00 per lot for all of the lots in Dogwood Valley to repair road damage. Payment of the special assessment was due no later than February 1, 1998, and a notice of the assessment was mailed to you on or about November 15, 1997. To date, no payment has been received from you.

In addition, your account with Dogwood Valley Citizens' Association for the annual road fee has an unpaid balance of \$50.00. Because this amount was not paid by February 1, 1998, a penalty of \$50.00 was incurred and interest on the outstanding amount is accruing at 24% per annum.

The total amount you owe on your account is \$366.55, which consists of outstanding road fees, 1997 special assessment, interest, penalties and \$25.00 in attorney fees accrued to date for collection on this account. Please send a check or money order in the amount of \$366.55 to me at the above address upon receipt of this letter.

If payment of the special assessment is not received within 10 days of the date of this letter, a Memorandum will be prepared and filed in the Office of the Clerk of the Circuit Court for Greene County in accordance with Virginia Code §55-516. The filing of this Memorandum will create a lien on your property and will result in your being assessed with the costs of filing the lien, interest from February 1, 1998, at 9% and attorney's fees incurred for collection.

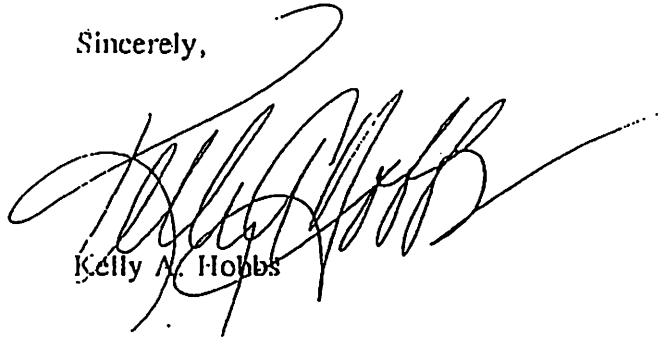
February 11, 1998

Page 2

I encourage you to pay these fees as soon as possible in order to avoid the inconvenience and added expense associated with the creation and enforcement of the lien provided for in Code of Virginia §55-516 and further action to collect the annual road fees, together with interest and penalties thereon.

Thank you for your prompt attention to this matter.

Sincerely,



Kelly A. Hobbs

KAH/jmc

encl.

cc: Matthew Brown, President  
Dogwood Valley Citizens' Association

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

**3. Article Addressed to:**

William Winkelman  
Rt. 1 Box 1143  
Harpers Ferry, WV 25425

**4a. Article Number**

P186 856 568

**4b. Service Type**

- |   |   |
|---|---|
| <input type="checkbox"/> Registered                     | <input checked="" type="checkbox"/> Certified |
| <input type="checkbox"/> Express Mail                   | <input type="checkbox"/> Insured              |
| <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> COD                  |

**7. Date of Delivery**

2/28/98

**5. Received By: (Print Name)**

VALORIE WINKELMAN

**6. Signature: (Addressee or Agent)**

x Valerie Winkelman

**8. Addressee's Address (Only if requested and fee is paid)**

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

EXHIBIT C

COMMONWEALTH OF VIRGINIA



OFFICIAL RECEIPT  
GREENE CIRCUIT COURT  
DEED RECEIPT

(1143-028 597)

DATE: 03/30/98 TIME: 09:23:09 ACCOUNT: 079CLR9800926 RECEIPT: 98000001602  
CASHIER: MCD REG: GN01 TYPE: LIEN PAYMENT: FULL PAYMENT  
INSTRUMENT : 9800926 BOOK: 441 PAGE: 221 RECORDED: 03/30/98 AT 09:23  
GRANTOR: HINKLEMAN, WILLIAM EX: N LOC: CO  
GRANTEE: DOGWOOD VALLEY CITIZENS ASSOC EX: H PCT: 100%

AND ADDRESS :  
RECEIVED OF : DYGERT, GEORGE  
CHECK : \$16.00  
DESCRIPTION 1: LOT1 SEC 5E DOGWOOD VALLEY SUB

CONSIDERATION:	.00	ASSUME/VAL:	.00	HAP:	
CODE DESCRIPTION		PAID	CODE DESCRIPTION		PAID
301 DEEDS	12.00	145	VSLF		1.00
196 TECHNOLOGY FUND FEE	3.00				

TENDERED : 16.00  
AMOUNT PAID: 16.00  
CHANGE AMT : .00

CLERK OF COURT: MARIE C. DURRER

97573 7135

DC-18 (5/97)

EXHIBIT D.



COMMONWEALTH OF VIRGINIA



OFFICIAL RECEIPT  
GREENE CIRCUIT COURT  
DEED RECEIPT

DATE: 03/30/98 TIME: 09:24:19 ACCOUNT: 079CLR9800927 RECEIPT: 98000001603  
CASHIER: MCD REG: GN01 TYPE: LIEN PAYMENT: FULL PAYMENT  
INSTRUMENT : 9800927 BOOK: 441 PAGE: 223 RECORDED: 03/30/98 AT 09:24  
GRANTOR: HINKLEMAN, WILLIAM EX: N LOC: CO  
GRANTEE: DOGHOOD VALLEY CITIZENS ASSOC EX: N PCT: 100%

AND ADDRESS :

RECEIVED OF : DYERT, GEORGE

CHECK : \$16.00

DESCRIPTION 1: LOT 2 SEC 5E DOGHOOD VALLEY SUB  
2:

CONSIDERATION:	.00	ASSUNE/VAL:	.00	HAP:	
CODE DESCRIPTION		PAID	CODE DESCRIPTION		PAID
301 DEEDS	12.00	145 VSLF			1.00
106 TECHNOLOGY FUND FEE	3.00				

TENDERED : 16.00  
AMOUNT PAID: 16.00  
CHANGE AMT : .00

CLERK OF COURT: MARIE C. DURRER

DC-18 (5/97)

EXHIBIT E

**CERTIFIED**

George H. Dygert & Associates  
Attorneys at Law  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902

P 186 856 595

**MAIL**




3.00

U.S. POSTAGE

PM METER  
5061018

NAME	Winkelman
1st Notice	4/3
2nd Notice	4/8
Return	

William Winkelman  
Route Box 114  
Harpers Ferry, West Virginia 25425

 REFUSED  
UNCLAIMED

4-18

George H. Dygert & Associates

Telephone (804) 979-5515

Telefax (804) 295-7785

E-mail ghdygert@aol.com

*Attorneys at Law*

1112 East High Street, Suite B  
Charlottesville, Virginia 22902

April 2, 1998

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

William Winkleman  
Route 1 Box 1143  
Harpers Ferry, West Virginia 25425

Re: Dogwood Valley Subdivision

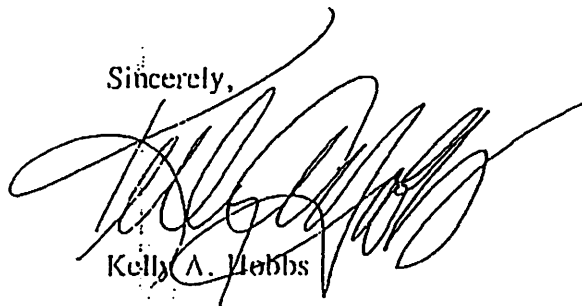
Dear Mr. Winkleman:

Enclosed is a copy of the Memorandum which I have filed in the Greene County Circuit Court Clerk's Office creating a lien on your property in favor of the Dogwood Valley Citizens' Association (DVCA).

Pursuant to the provisions of Virginia Code §55-516, DVCA has submitted a Notice of Foreclosure which will appear in the local newspaper advertising the public sale of all lots in the subdivision whose special assessment accounts are in arrears. I have attached a copy of that advertisement for your information.

If you wish to bring your account current prior to the public auction and retain your property, please contact my office to get a payoff amount, since unpaid accounts have incurred interest, penalties, advertising costs and attorneys fees, in addition to the original special assessment. Unless payment is received prior to the time of the sale, your property will be sold as scheduled.

Sincerely,



Kelly A. Webb

KAH/mm  
Enclosure

EXHIBIT G

**Call**  
**804-985-2315**

**Advertising Deadlines**  
1 pm Tuesday

- Card of thanks**  
12. Happy Ads  
13. Help Wanted  
14. Situations Wanted  
15. Child Care Services  
16. Special Services  
17. Opportunities  
18. Pets  
19. Livestock  
20. Farm Items  
21. Farm Equipment  
22. Real Estate

**CLASSIFIED ADVERTISING RATES**

1. In-line ad (single line)  
2. In-line ad (double line)  
3. In-line ad (triple line)  
4. In-line ad (quadruple line)  
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**Legals**

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**Lost and Found**

1. In-line ad (single line)  
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**For Rent**

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**Yard Sales**

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**Public Notice**

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**Miscellaneous**

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**Old Tractors & Gging Equipment**

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EXHIBIT H

**THREE DAY AUCTION!**

**ANTIQUES, COLLECTIBLES & PERSONAL PROPERTY**

From the Estate of Nancy Hotz (the old Swan building) off of Main St, Lake East Culpeper St, one block

**Antiques & Collectibles:**  
- 19th Century Chippendale  
- 18th Century Chippendale  
- 17th Century Chippendale  
- 16th Century Chippendale  
- 15th Century Chippendale  
- 14th Century Chippendale  
- 13th Century Chippendale  
- 12th Century Chippendale  
- 11th Century Chippendale  
- 10th Century Chippendale  
- 9th Century Chippendale  
- 8th Century Chippendale  
- 7th Century Chippendale  
- 6th Century Chippendale  
- 5th Century Chippendale  
- 4th Century Chippendale  
- 3rd Century Chippendale  
- 2nd Century Chippendale  
- 1st Century Chippendale

**Personal Property:**  
- 19th Century Chippendale  
- 18th Century Chippendale  
- 17th Century Chippendale  
- 16th Century Chippendale  
- 15th Century Chippendale  
- 14th Century Chippendale  
- 13th Century Chippendale  
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- 9th Century Chippendale  
- 8th Century Chippendale  
- 7th Century Chippendale  
- 6th Century Chippendale  
- 5th Century Chippendale  
- 4th Century Chippendale  
- 3rd Century Chippendale  
- 2nd Century Chippendale  
- 1st Century Chippendale

**ABSOLUTE AUCTION**

**Sat April 4, 1998 10 am**

**CULPEPER CHRISTIAN SCHOOL**

**610 Old-Riverside Road**

**Phone: (540) 825-2205**

**Notice of Public Sale by Dogwood Valley Citizens Association**

Notice is hereby given that the Dogwood Valley Citizens Association, a non-profit corporation organized under the laws of the State of Virginia, will offer for sale at public auction, property owned by the Association, located in the County of Culpeper, Virginia, on the 4th day of April, 1998, at 10:00 a.m. The property to be sold is located in the County of Culpeper, Virginia, and is described as follows:

**Lot 1:** 1.00 acre, Section 1A, Lot 1, 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I, 1J, 1K, 1L, 1M, 1N, 1O, 1P, 1Q, 1R, 1S, 1T, 1U, 1V, 1W, 1X, 1Y, 1Z, 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, 2K, 2L, 2M, 2N, 2O, 2P, 2Q, 2R, 2S, 2T, 2U, 2V, 2W, 2X, 2Y, 2Z, 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3I, 3J, 3K, 3L, 3M, 3N, 3O, 3P, 3Q, 3R, 3S, 3T, 3U, 3V, 3W, 3X, 3Y, 3Z, 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I, 4J, 4K, 4L, 4M, 4N, 4O, 4P, 4Q, 4R, 4S, 4T, 4U, 4V, 4W, 4X, 4Y, 4Z, 5A, 5B, 5C, 5D, 5E, 5F, 5G, 5H, 5I, 5J, 5K, 5L, 5M, 5N, 5O, 5P, 5Q, 5R, 5S, 5T, 5U, 5V, 5W, 5X, 5Y, 5Z, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 6I, 6J, 6K, 6L, 6M, 6N, 6O, 6P, 6Q, 6R, 6S, 6T, 6U, 6V, 6W, 6X, 6Y, 6Z, 7A, 7B, 7C, 7D, 7E, 7F, 7G, 7H, 7I, 7J, 7K, 7L, 7M, 7N, 7O, 7P, 7Q, 7R, 7S, 7T, 7U, 7V, 7W, 7X, 7Y, 7Z, 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H, 8I, 8J, 8K, 8L, 8M, 8N, 8O, 8P, 8Q, 8R, 8S, 8T, 8U, 8V, 8W, 8X, 8Y, 8Z, 9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H, 9I, 9J, 9K, 9L, 9M, 9N, 9O, 9P, 9Q, 9R, 9S, 9T, 9U, 9V, 9W, 9X, 9Y, 9Z, 10A, 10B, 10C, 10D, 10E, 10F, 10G, 10H, 10I, 10J, 10K, 10L, 10M, 10N, 10O, 10P, 10Q, 10R, 10S, 10T, 10U, 10V, 10W, 10X, 10Y, 10Z, 11A, 11B, 11C, 11D, 11E, 11F, 11G, 11H, 11I, 11J, 11K, 11L, 11M, 11N, 11O, 11P, 11Q, 11R, 11S, 11T, 11U, 11V, 11W, 11X, 11Y, 11Z, 12A, 12B, 12C, 12D, 12E, 12F, 12G, 12H, 12I, 12J, 12K, 12L, 12M, 12N, 12O, 12P, 12Q, 12R, 12S, 12T, 12U, 12V, 12W, 12X, 12Y, 12Z, 13A, 13B, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, 13K, 13L, 13M, 13N, 13O, 13P, 13Q, 13R, 13S, 13T, 13U, 13V, 13W, 13X, 13Y, 13Z, 14A, 14B, 14C, 14D, 14E, 14F, 14G, 14H, 14I, 14J, 14K, 14L, 14M, 14N, 14O, 14P, 14Q, 14R, 14S, 14T, 14U, 14V, 14W, 14X, 14Y, 14Z, 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15I, 15J, 15K, 15L, 15M, 15N, 15O, 15P, 15Q, 15R, 15S, 15T, 15U, 15V, 15W, 15X, 15Y, 15Z, 16A, 16B, 16C, 16D, 16E, 16F, 16G, 16H, 16I, 16J, 16K, 16L, 16M, 16N, 16O, 16P, 16Q, 16R, 16S, 16T, 16U, 16V, 16W, 16X, 16Y, 16Z, 17A, 17B, 17C, 17D, 17E, 17F, 17G, 17H, 17I, 17J, 17K, 17L, 17M, 17N, 17O, 17P, 17Q, 17R, 17S, 17T, 17U, 17V, 17W, 17X, 17Y, 17Z, 18A, 18B, 18C, 18D, 18E, 18F, 18G, 18H, 18I, 18J, 18K, 18L, 18M, 18N, 18O, 18P, 18Q, 18R, 18S, 18T, 18U, 18V, 18W, 18X, 18Y, 18Z, 19A, 19B, 19C, 19D, 19E, 19F, 19G, 19H, 19I, 19J, 19K, 19L, 19M, 19N, 19O, 19P, 19Q, 19R, 19S, 19T, 19U, 19V, 19W, 19X, 19Y, 19Z, 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K, 20L, 20M, 20N, 20O, 20P, 20Q, 20R, 20S, 20T, 20U, 20V, 20W, 20X, 20Y, 20Z, 21A, 21B, 21C, 21D, 21E, 21F, 21G, 21H, 21I, 21J, 21K, 21L, 21M, 21N, 21O, 21P, 21Q, 21R, 21S, 21T, 21U, 21V, 21W, 21X, 21Y, 21Z, 22A, 22B, 22C, 22D, 22E, 22F, 22G, 22H, 22I, 22J, 22K, 22L, 22M, 22N, 22O, 22P, 22Q, 22R, 22S, 22T, 22U, 22V, 22W, 22X, 22Y, 22Z, 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23H, 23I, 23J, 23K, 23L, 23M, 23N, 23O, 23P, 23Q, 23R, 23S, 23T, 23U, 23V, 23W, 23X, 23Y, 23Z, 24A, 24B, 24C, 24D, 24E, 24F, 24G, 24H, 24I, 24J, 24K, 24L, 24M, 24N, 24O, 24P, 24Q, 24R, 24S, 24T, 24U, 24V, 24W, 24X, 24Y, 24Z, 25A, 25B, 25C, 25D, 25E, 25F, 25G, 25H, 25I, 25J, 25K, 25L, 25M, 25N, 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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GREENE

WILLIAM A. WINKELMAN,

Plaintiff.

v.

DOGWOOD VALLEY CITIZENS' ASSOCIATION, et al.

Defendants.

Ch. No. 98-2703

**RESPONSE TO REQUEST FOR ADMISSIONS**

COMES NOW the Plaintiff, William A. Winkelman, by counsel, pursuant to Rule 4:11 of the Supreme Court of Virginia, and responds to the Requests for Admissions served by Defendants.

1. Plaintiff's address was, at all times relevant, Route 1 Box 1143, Harpers Ferry, West Virginia 25425.

**RESPONSE:** Admit.

2. Plaintiff received prior to February 1, 1998, the Road Fee Notice dated February 1, 1998, attached hereto as Exhibit A.

**RESPONSE:** Admit.

3. Plaintiff received on February 28, 1998, a letter from Dogwood Valley Citizens' Association's counsel, dated February 20, 1998, a copy of which is attached hereto as Exhibit B.

**RESPONSE:** Denied. Plaintiff does not recall receiving the letter attached as Exhibit B.

4. Domestic return receipt, article number P186856568, a copy of which is attached hereto as Exhibit C, was signed on February 28, 1998 by Valorie Winkleman.

**RESPONSE:** Admit.

5. Valorie Winkelman was a household member of Plaintiff's family on February 28, 1998.

**RESPONSE:** Admit.

6. Valorie Winkelman was related to Plaintiff on February 28, 1998.

**RESPONSE:** Admit.

7. Valorie Winkelman had authorization to sign for Plaintiff's mail.

**RESPONSE:** Admit that Valorie Winkelman has signed for Plaintiff's mail. Deny that Plaintiff ever explicitly authorized Valorie Winkelman to sign for his mail.

8. The document attached hereto as Exhibit D is a copy of an official receipt from the Clerk of the Greene County Circuit Court evidencing recordation of a lien against Lot 1, Section 5-E, Dogwood Valley Subdivision on March 30, 1998.

**RESPONSE:** Admit.

9. The document attached as Exhibit E is an official receipt from the Clerk of the Greene County Circuit Court evidencing recordation of a lien on March 30, 1998 against Lot 2, Section 5-E, Dogwood Valley Subdivision.

**RESPONSE:** Admit.

10. February 20, 1998, was at least 10 days prior to March 30, 1998.

**RESPONSE:** Admit.

11. The copy of the envelope attached hereto as Exhibit F was addressed to Plaintiff's correct address as of April 2, 1998.

**RESPONSE:** Admit.

12. Exhibit F contains a U.S. Postal Department notation evidencing a "First Notice" on April 3, 1998, and a "Second Notice" on April 8, 1998.

**RESPONSE:** Admit that there is a notation on Exhibit F indicating "1<sup>st</sup> Notice" on "4/3" and "2<sup>nd</sup> Notice" on "4/8". Plaintiff has not been able to confirm that those notations were placed on the envelope by the U.S. Postal Service and therefore the remaining statements are denied.

13. The document attached at Exhibit F contains a U.S. Postal Department notation evidencing that the envelope was returned to sender, marked "unclaimed".

**RESPONSE:** Admit that there is a notation on Exhibit F indicating that the envelope was returned to sender and the envelope was unclaimed. Plaintiff has not been able to confirm that those notations were placed on the envelope by the U.S. Postal Service and therefore the remaining statements are denied.



14. The document attached hereto as Exhibit G was addressed to Plaintiff's correct address as of April 2, 1998.

**RESPONSE:** Admit.

15. The document attached hereto as Exhibit H is a copy of page 10 of the Thursday, April 2, 1998, issue of Greene County Record.

**RESPONSE:** Admit.

16. Exhibit H contains a Notice of Public Sale by Dogwood Valley Citizens' Association.

**RESPONSE:** Admit.

17. The advertisement depicted at Exhibit H was published in the Greene County Record on April 2, 1998; April 9, 1998; April 16, 1998 and April 23, 1998.

**RESPONSE:** Admit that Exhibit H was published in the Greene County Record on April 2, 1998. Plaintiff has not been able to confirm that the advertisement depicted in Exhibit H was published in the Greene County Record on April 9, 16 and 23, 1998.

18. April 2, 1998 is more than 14 days prior to April 29, 1998.

**RESPONSE:** Admit.

19. The Greene County Record has a general circulation in Greene County, Virginia.

**RESPONSE:** Admit.

20. The Notice of Public Sale by Dogwood Valley Citizens Association at Exhibit H contains the date, time, place and terms of the sale and contains the name of the property owners association.

**RESPONSE:** Admit.

21. The Notice of Public Sale by Dogwood Valley Citizens' Association at Exhibit H contains the name, address and telephone of Kelly A. Hobbs, counsel for Dogwood Valley Citizens' Association.

**RESPONSE:** Admit that the Notice of Public Sale contains the name, address and telephone number of Kelly A. Hobbs. Denied that the Notice of Public Sale indicates that Kelly A. Hobbs is counsel for Dogwood Valley Citizens' Association.

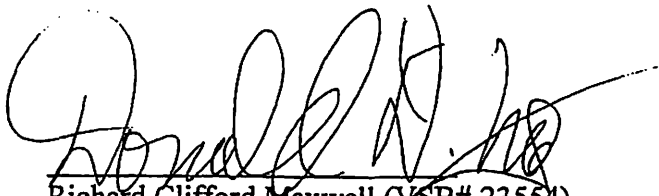
22. Dogwood Valley Citizens' Association held a public sale on April 29, 1998 at 12:00 noon and included in that sale were Lot 1, Section 5-E and Lot 2, Section 5-E, Dogwood Valley Subdivision.

**RESPONSE:** Admit except to the extent that such admission indicates that the sale was valid. Plaintiff denies that the sale was valid.

Respectfully submitted,

WILLIAM A. WINKELMAN

By Counsel



Richard Clifford Maxwell (VSB# 23554)

Donald D. Long (VSB#39982)

WOODS, ROGERS & HAZLEGROVE, P.L.C.

250 West Main Street, Suite 300

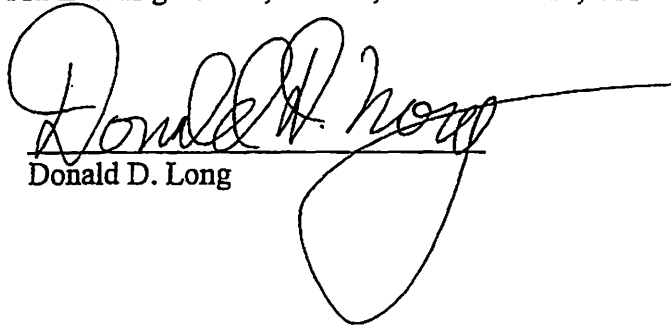
Charlottesville, Virginia 22902

(804) 295-8300

Counsel for William A. Winkelman

**CERTIFICATE OF SERVICE**

I hereby certify that a true and copy of the foregoing Response to Request for Admission was mailed first-class, postage prepaid this 18<sup>th</sup> day of October, 1999 to Kelly A. Hobbs, Esquire, George H. Dygert & Associates, 1112 East High Street, Suite B, Charlottesville, VA 22902.

  
Donald D. Long

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GREENE

WILLIAM A. WINKELMAN,

Plaintiff.

v.

DOGWOOD VALLEY CITIZENS' ASSOCIATION, et al.

Defendants.

**SUPPLEMENTAL  
REQUEST FOR ADMISSIONS**

COME NOW the Defendants, by counsel, pursuant to Rule 4:11 of the Supreme Court of Virginia, and request that Plaintiff admit the truth of the following matters within twenty-one days after receipt of this pleading.

1. Admit that the document attached hereto as Exhibit 1 is a copy of page 13 of the Thursday, April 9, 1998 issue of *The Greene County Record*.

2. Admit that the document attached hereto as Exhibit 2 is a copy of page 13 of the Thursday, April 16, 1998 issue of *The Greene County Record*.

3. Admit that the document attached hereto as Exhibit 3 is a copy of page 11 of the Thursday, April 23, 1998 issue of *The Greene County Record*.

4. Admit that Exhibits 1, 2, and 3 attached hereto contain a notice of public sale by Dogwood Valley Citizens Association.

5. Admit that the public notice depicted at Exhibit 1 was published in *The Greene County Record* on April 9, 1998.

6. Admit that the public notice depicted at Exhibit 2 was published in *The Greene County Record* on April 16, 1998.

7. Admit that the public notice depicted at Exhibit 3 was published in *The Greene County Record* on April 23, 1998.

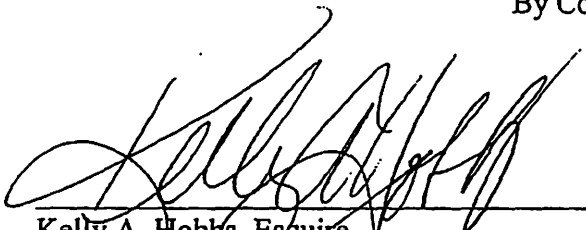
8. Admit that the notices of public sale by Dogwood Valley Citizens Association at Exhibits 1, 2, and 3 contain the date, time, place and terms of the sale, and contain the name of the property owners association.

9. Admit that the notices of public sale by Dogwood Valley Citizens Association at Exhibits 1, 2, and 3 contain the name, address and telephone number of Kelly A. Hobbs, Esquire.

Respectfully submitted,

DOGWOOD VALLEY CITIZENS ASSOCIATION, INC.

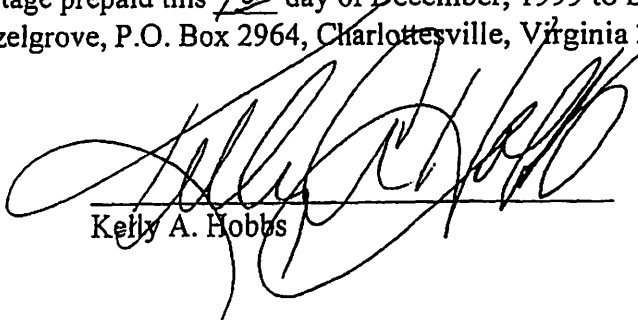
By Counsel



Kelly A. Hobbs, Esquire  
George H. Dygert & Associates  
675 Peter Jefferson Parkway, Suite 190  
Charlottesville, Virginia 22911  
Telephone: (804)979-5515  
VSB: 40166  
Counsel for Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Supplemental Request for Admission was mailed first-class, postage prepaid this 19 day of December, 1999 to Donald D. Long, Esquire, Woods, Rogers & Hazelgrove, P.O. Box 2964, Charlottesville, Virginia 22902.



Kelly A. Hobbs

es, pansies, dianthus.  
Nursery,  
3-26-4k orec

CIAL TYPE walk be-  
propelled 5-spd. lawn  
mowers Bobcat, 14  
orsepower, used 5  
aid \$2,400, asking  
40-854-4136. 4-9-2p

ESTATES, house-  
hold items, furniture, valu-  
ables 540-825-9081.

ACCOUNTS PAYABLE  
CLERK, etc. Pay negotiable.  
Mon. through Fri. and every  
other Sat. Write to Box 509-C,  
c/o Orange County Review,  
Orange, VA 22960. 4-9-ilk  
orec

ASST. COACH for Greene  
Hills swim team, evening  
hours. Call Chris Taylor,  
804-985-6920 or e-mail  
CT3A@hscmail.mcc.virginia.  
edu. 4-9-k reoc

Must have 1 year exp. In  
long-term care, dedication in  
the care of the elderly, exc. re-  
ferences. Must like working 3  
on/4 off. PTO and Bonus pro-  
gram. Apply Evergreen Manor  
or call Ellen at  
804-985-4411. 4-2-2k reoc

CUSTOMER SERVICE. Large  
company seeks 5 high energy  
people to work in Fun Fun Of-  
fice. No experience needed,  
complete training. Call today,  
540-891-9730. 4-9-p reoc

ment, FT, PT and weekends  
available. Requirements: CDL  
Class B, clean driving record,  
and current medical card. If  
you would like to earn \$\$\$  
Pay\$\$ and excellent benefits,  
call 540-825-3264 or fax:  
540-829-6821. 4-9-k orec

EQUIPMENT OPERATORS -  
General Excavation, Inc., EOE.  
Is currently accepting applica-  
tions for pan operators in the  
Culpeper area. Apply at 9745  
James Madison Hwy., Warren-  
ton or call 540-439-2202 or fax  
540-439-3795. Office hours 7  
a.m. - 5:30 p.m. 4-9-k orec

## NOTICE OF PUBLIC SALE BY DOGWOOD VALLEY CITIZENS ASSOCIATION

Pursuant to the provision of §55-516 of the  
Code of Virginia, 1950 as amended, the under-  
signed will offer for sale at public auction, prop-  
erty described as follows, with each lot to be  
offered for sale separately:

All of the following lots located in Dogwood  
Valley Subdivision in Greene County, Virginia,  
which subdivision is located off State Route  
637, in the said county.

Owner	Parcel
Harry A. Austin III	Lot 14, Section 5A
Estate of Dennis W. Berg	Lot 30, Section 7B
George & Mattie Coates	Lot 10, Section 2
Kenneth Colby	Lot 19, Section 7B
Ernst DeGroot	Lot 34, Section 7C
Douglas Dye, Sr.	Lots 9A, 10, 10B, Section 3
Douglas Dye, Jr.	Lot 8, Section 3
William A. Fletcher	Lot 11, Section 5A
Dr. & Mrs. David J. Harter	Lots 1, 2 and Section 2D
Kenneth T. Jacob	Lot 12, Section 3A
Thelma Gilkeson Johnson	Lots 2 and 3, Section 4A
Edward & Patricia Kallok	Lot 13, Section 7A
Danny M. Kulick & Janice Kulick	Lot 55, Section 7C
Frederick A. Lanzon	Lot 22, Section 6
Eric Martel and Karen Martel	Lot 41, Section 7D
Jack W. McAllister	Lot 1, Section 2F
Shirley Moore	Lots 5, 6, 7, 8, 9, 11, 13, 14, 15 & Section 5C
William & Theresa Nichols	Lot 6, Section 2M
James L. Pollitt	Lot 1, Section 7A
John D. Ryan	Lot 23, Section 6
Michael & Cynthia Sabatino	Lot 6, Section 3
Virginia Salisbury	Lot 17, Section 5F
George & Lila Wiltshire	Lots 8 & 8A, Section 4A
William Winkleman	Lots 1 & 2, Section 4A

Said public auction to be held in front of  
building housing the Circuit Court for  
County of Greene, Virginia, located at  
Square in Stanardsville, Virginia, on April  
1998, at 12:00 noon. TERMS: CASH. Bid  
deposit of 10% of the bid price in cash or  
certified check will be required at the time and  
place of sale. Settlement shall take place with-  
in ten days of sale, otherwise the Assoc-  
iation may forfeit deposit. Additional terms  
announced at sale.

C/O Kelly A. Hobbs, Esquire  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902  
(804) 979-5515



### Grounds Worker (Security Guard) - #H7012

(Hourly Position)

Perform security-related duties at the  
Super District Complex in the evenings,  
weekends, and holidays, including inspecting  
parking stations, completing log sheets,  
working on nighttime lighting, and  
unlocking entrances. After normal  
working hours, ensures that visitors complete  
a log sheet, receives courier packages,  
assists with vehicle refueling. May also  
act as local authorities in case of emergen-  
cy situations, or inclement  
weather. Required to work rotating shifts,  
including midnight-8:00 a.m.; 8:00 a.m.-4:00  
p.m.; and 4:00 p.m.-midnight. Requires gen-  
eral knowledge of safety and security proce-  
dures and demonstrated ability to under-  
stand and follow oral and written instructions; react  
appropriately in emergency situations; com-  
plete various administrative logs; and perform  
manual labor. Must have valid Virginia  
operator's license. NOTE: This position is  
scheduled to working 1,500 maximum hours dur-  
ing a 365-day period and is not entitled to  
vacation benefits. SALARY: \$6.27-\$9.79 per  
hour.

Retirement, leave, health and life insur-  
ance are provided. If qualified, send or fax a  
completed Virginia State application to:  
Human Resources, VDOT, 1601 Orange  
Avenue, Culpeper, VA 22701; Fax Number  
(804) 829-7448. Incomplete or late applica-  
tions, (originals or faxed) will not be consid-  
ered. Virginia Relay Center toll-free number:  
800-3-1140. Please indicate the position title  
and position number on application. All  
applications must be received by the  
Culpeper District Human Resources Office  
no later than 5:00 p.m. on Friday, April 17,  
1998. Reasonable accommodation will be  
provided pursuant to the provisions of the  
Americans with Disabilities Act.

DEFENDANT'S  
EXHIBIT

MOVING  
OPPORTUNITY

## FARM EQUIPMENT and PERSONAL PROPERTY AUCTION APRIL 11 • 10 AM-'TIL

Location: From Madison lake 231 North to Ellen.  
From Ellen lake 643 West 1/4 mile then right on 644.  
Watch for signs

**FARM EQUIPMENT**  
John Deere 4430 Tractor  
with power shift and  
148 Loader (5736  
hrs.)  
John Deere 327 Baler  
(like new)  
John Deere 1219  
Haybine (like new)  
John Deere 1018 - 10 ft.  
bushhog  
John Deere 3 pt. new  
bale stacker  
John Deere 84 Big Bale  
unroller  
John Deere 2800 semi-  
mounted plow (12-22  
inch.)  
John Deere 3-16 inch  
plow  
John Deere 19 & 18  
spout grain drills  
John Deere 7 pt. type  
disk  
New Holland PTO driven  
manure spreader  
Dunham 102, cult. pack-  
er  
Frame only for Ford rake  
Old wooden tank sprayer  
unit  
Gayle silage feeder on  
Chev. truck  
Lots of JD & IH side bars  
for haybines  
HP Wizard riding mower  
Lazy Boy 5 hp tiller  
Pioneer chain saw, B&D  
Workmate (new)  
Miller box saw, Smith  
bench grinder  
2 wood plane & leather  
vise  
Tradesman drill press  
(new)

**PERSONAL PROPERTY**  
Classical design antique  
settee - green velvet  
w/carved walnut back  
frame  
Antique glass bread safe  
Lots of wood & iron beds  
Maple twin beds  
2 walnut veneer servers  
Antique pegged farm  
table  
Oak cabinet  
Several old dressers and  
chests of drawers  
3 antique wooden  
churns (1 up & down)  
Milk cans, cream cans &  
galvanized buckets  
Dinetta table and chairs  
2 small oak rockers,  
Keller & other chairs  
Sleep sofa & occasional  
chairs  
Lots of small tables  
(2 40x40)  
Lots of cast iron ham  
boilers, etc.  
Lots of crocks, lanterns,  
new bug light  
2 double metal  
wardrobes  
Old Victrola, old flower  
barrel  
3 metal lawn chairs,  
porch glider & chair  
Child's desk, metal doll  
bed  
Old pitcher pump, win-  
dow fan  
2 picnic tables & bench-  
es  
Lots of cookware &  
glassware  
2 new outside doors  
Lots of new metal railing  
(18-6 ft. sections, 6-4  
ft. sections)

Many other items too numerous to mention. Not  
responsible for accidents. All items sold as is  
with no guarantee.

LUNCH SERVED BY ETLAN METHODIST CHURCH

**HENRY D. AYLOR, AUCTIONEER**

VAAR00184

540-923-431

353

Aylor, Owner



King is hiring for all positions starting at minimum wage. varies with experience.

in person at:

**BURGER KING**

Ruckersville, VA.

EOE



## MUNICATIONS

Communications, a progressive telecommunications company providing a full range of products and services including cable and internet, has immediate openings in Harrisonburg and Charlottesville.

### SERVICE SUPERVISOR

Service Supervisor (position #6189) will be responsible for direct supervision of the technical staff and coordination of subcontracted installation technicians. Qualified applicants will possess demonstrated supervisory skills, computer proficiency, and the ability to effectively schedule and manage. Position requires significant on-call responsibilities and excellent customer service skills. Candidates must be able to lift up to 50 pounds and climb comfortably on ladders and in elevated environments. Valid drivers license required. Prior cable, phone, or electronics experience a plus. Immediate consideration call Dan at 800/564-1395 ext. 502

### TECHNICIAN - Wireless Cable

Technician (position #6197) will be responsible for service to existing customers, installation of new services, construction duties, and quality control. Responsibilities include: self-motivation, excellent service skills, the physical ability to lift/transport 50 pounds for a distance of 50 feet, the ability to climb and work aloft using hand/power tools, and a drivers license. Position requires shift work and all responsibilities. Prior tree climbing, cable, phone, or electronics experience a plus. Immediate consideration call Russell at 800/564-1395 ext. 508

Resumes with a cover letter specifying the position of interest may be submitted to:

CFW Communications  
Human Resources Department

**DEFENDANT'S  
EXHIBIT**

2

22980

portunity

# AUTOMOTIVE SALES PEOPLE

## Immediate Openings for a Team Player

SALES PEOPLE —(3) Openings 42Hr work week. Salary + Bonus.

Ladies encouraged to apply.

### MUST HAVE:

- Positive Attitude
- Enthusiasm
- Willingness To Achieve Dealership Goals
- Good Work Ethics
- Genuine Appreciation for our customers business.

### WE OFFER:

- Hospitalization
- 401 K Plan
- Paid Vacation
- Dental Plan
- Management Support

Contact Susan Palmer  
for personal interview

Haynes Ford-Mercury is a drug free workplace and equal opportunity employer.

**Haynes** **FORD**  
**MERCURY**  
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Ford-Mercury Dealer  
**FORD-MERCURY**

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MERROW & TURNBOW HORSE TRAILERS  
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(Rt. 15 South) • Orange, VA

1-800-252-3612 • 540-672-2444

FAX 540-672-2100

## NOTICE OF PUBLIC SALE BY DOGWOOD VALLEY CITIZENS ASSOCIATION

Pursuant to the provision of 555-516 of the Code of Virginia, 1950 as amended, the undersigned will offer for sale at public auction, property described as follows, with each lot to be offered for sale separately:

All of the following lots located in Dogwood Valley Subdivision in Greene County, Virginia, which subdivision is located off State Route 637, in the said county.

Owner	Parcel
Harry A. Austin III	Lot 14, Section 5A
Estate of Dennis W. Berg	Lot 30, Section 7B
George & Mattie Coates	Lot 10, Section 2
Kenneth Colby	Lot 19, Section 7B
Ernst DeGroot	Lot 34, Section 7C
Douglas Dye, Sr.	Lots 9A, 10, 10A, 10B, Section 3
Douglas Dye, Jr.	Lot 8, Section 3
William A. Fletcher	Lot 11, Section 5A
Dr. & Mrs. David J. Harter	Lots 1, 2 and 3, Section 2D
Kenneth T. Jacob	Lot 12, Section 3A
Thelma Gilkeson Johnson	Lots 2 and 3, Section 4A
Edward & Patricia Kallak	Lot 13, Section 7A
Danny M. Kulick & Janice Kulick	Lot 55, Section 7C
Frederick A. Lanson	Lot 22, Section 6
Eric Martel and Karen Martel	Lot 41, Section 7D
Jack W. McAllister	Lot 1, Section 2F
Shirley Moore	Lots 5, 6, 7, 8, 9, 10, 11, 13, 14, 15 & 16, Section 5C
William & Theresa Nichols	Lot 6, Section 2M
James L. Pollitt	Lot 1, Section 7A
John D. Ryan	Lot 23, Section 6
Michael & Cynthia Sabatino	Lot 6, Section 3
Virginia Salisbury	Lot 17, Section 5A
George & Lila Wiltshire	Lots 8 & 8A, Section 4A
William Winkleman	Lots 1 & 2, Section 5

Said public auction to be held in front of the building housing the Circuit Court for the County of Greene, Virginia, located at Court Square in Stanardsville, Virginia, on April 2, 1998, at 12:00 noon. TERMS: CASH. Bidder deposit of 10% of the bid price in cash or certified check will be required at the time and place of sale. Settlement shall take place within fifteen days of sale, otherwise the Association may forfeit deposit. Additional terms to be announced at sale.

C/O Kelly A. Hobbs, Esquire  
1112 East High Street, Suite B  
Charlottesville, Virginia 22902  
(804) 979-5515

or appl.  
rec

S. new,  
14 was  
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16 was  
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500, sell  
406-5126.

Specials  
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4-16-11k

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American

Barboursville, VA  
VA.A.R. #1253  
(540) 832-3296

**BOAR'S HEAD INN**  
A Country Resort  
At The University of Virginia

## SERVICE ADVISOR/ WARRANTY ADMINISTRATOR

Ford background & certification  
given top priority.

### MUST HAVE:

- Positive Attitude
- Enthusiasm
- Willingness To Achieve Dealership Goals
- Good Work Ethics
- Genuine Appreciation for our customers business.

### WE OFFER:

- Hospitalization
- 401 K Plan
- Paid Vacation
- Dental Plan
- Management Support

Contact Susan Palmer  
for personal interview

Haynes Ford-Mercury is a drug  
free workplace and equal  
opportunity employer.

**Haynes** **FORD**  
**MERCURY**  
Your Newest  
Ford-Mercury Dealer  
**FORD-MERCURY**

DISTRIBUTOR FOR  
MERHOW, TURNBOW LIBERTY/SOFT TOUCH,  
TRAVALONG HORSE TRAILERS  
12555 James Madison Hwy.  
(Rt. 15 South) • Orange, VA

1-800-252-3612 • 540-672

### NOTICE OF PUBLIC SALE BY DOGWOOD VALLEY CITIZENS ASSOCIATION

Pursuant to the provision of §55-516 of the  
Code of Virginia, 1950 as amended, the under-  
signed will offer for sale at public auction, prop-  
erty described as follows, with each lot to be  
offered for sale separately:

All of the following lots located in Dogwood  
Valley Subdivision in Greene County, Virginia,  
which subdivision is located off State Route  
637, in the said county.

Owner	Parcel
Harry A. Austin III	Lot 14, Section 5A
Estate of Dennis W. Berg	Lot 30, Section 7B
George & Mattie Coates	Lot 10, Section 2
Kenneth Colby	Lot 19, Section 7B
Ernst DeGroot	Lot 34, Section 7C
Douglas Dye, Sr.	Lots 9A, 10, 10A, 10B, Section 3
Douglas Dye, Jr.	Lot 8, Section 3
William A. Fletcher	Lot 11, Section 5A
Dr. & Mrs. David J. Harter	Lots 1, 2 and 3, Section 2D
Kenneth T. Jacob	Lot 12, Section 3A
Thelma Gilkeson Johnson	Lots 2 and 3, Section 4A
Edward & Patricia Kallok	Lot 13, Section 7A
Danny M. Kulick & Janice Kulick	Lot 55, Section 7C
Frederick A. Lanson	Lot 22, Section 6
Eric Martel and Karen Martel	Lot 41, Section 7D
Jack W. McAllister	Lot 1, Section 2F
Shirley Moore	Lots 5, 6, 7, 8, 9, 10, 11, 13, 14, 15 & 16, Section 5C
William & Theresa Nichols	Lot 6, Section 2M
James L. Pollitt	Lot 1, Section 7A
John D. Ryan	Lot 23, Section 6
Michael & Cynthia Sabatino	Lot 6, Section 3
Virginia Salisbury	Lot 17, Section 5A
George & Lila Wiltshire	Lots 8 & 8A, Section 4A
William Winkleman	Lots 1 & 2, Section 5E

Said public auction to be held in front of the  
building housing the Circuit Court for the  
County of Greene, Virginia, located at Court  
Square in Stanardsville, Virginia, on April 29,  
1998, at 12:00 noon. TERMS: CASH. Bidders  
deposit of 10% of the bid price in cash or certi-  
fied check will be required at the time and place  
of sale. Settlement shall take place within fif-  
teen days of sale, otherwise the Association  
may forfeit deposit. Additional terms to be  
announced at sale.

C/O Kelly A. Hobbs, Esquire  
12 East High Street, Suite B  
Stanardsville, Virginia 22902

**DEFENDANT'S  
EXHIBIT**

3



12/21/98

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GREENE

WILLIAM A. WINKELMAN,

Plaintiff.

v.

DOGWOOD VALLEY CITIZENS' ASSOCIATION, et al.

Defendants.

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Ch. No. 98-2703

**RESPONSE TO DOGWOOD VALLEY CITIZENS ASSOCIATION'S  
SUPPLEMENTAL REQUEST FOR ADMISSIONS**

COMES NOW the Plaintiff, William A. Winkelman, by counsel, pursuant to Rule 4:11 of the Supreme Court of Virginia, and responds to the Supplemental Requests for Admissions served by Defendants.

1. Admit that the document attached hereto as Exhibit 1 is a copy of page 13 of the Thursday, April 9, 1998 issue of *The Greene County Record*.

**RESPONSE:** Admit.

2. Admit that the document attached hereto as Exhibit 2 is a copy of page 13 of the Thursday, April 16, 1998 issue of *The Greene County Record*.

**RESPONSE:** Admit.

3. Admit that the document attached hereto as Exhibit 3 is a copy of page 13 of the Thursday, April 23, 1998 issue of *The Greene County Record*.

**RESPONSE:** Admit.

4. Admit that Exhibits 1, 2, and 3 attached hereto contain a notice of public sale by Dogwood Valley Citizens Association.

**RESPONSE:** Admit.

5. Admit that the public notice depicted at Exhibit 1 was published in *The Greene County Record* on April 9, 1998.

**RESPONSE:** Admit.

6. Admit that the public notice depicted at Exhibit 2 was published in *The Greene County Record* on April 16, 1998.

**RESPONSE:** Admit.

7. Admit that the public notice depicted at Exhibit 3 was published in *The Greene County Record* on April 23, 1998.

**RESPONSE:** Admit.

8. Admit that the notices of public sale by Dogwood Valley Citizens Association at Exhibits 1, 2, and 3 contain the date, time, place and terms of the sale, and contain the names of the property owners association.

**RESPONSE:** Admit.

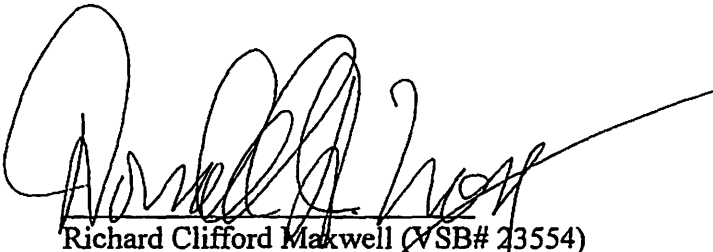
9. Admit that the notice of public sale by Dogwood Valley Citizens Association at Exhibits 1, 2, and 3 contain the name address and telephone number of Kelly A. Hobbs, Esquire.

**RESPONSE:** Admit.

Respectfully submitted,

WILLIAM A. WINKELMAN

By Counsel

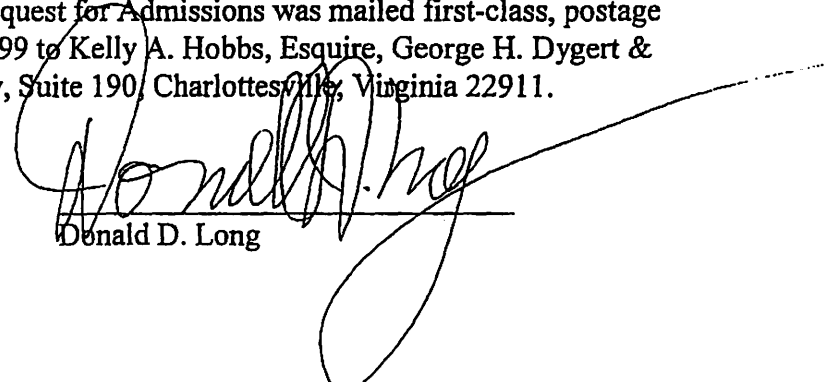


Richard Clifford Maxwell (VSB# 23554)  
Donald D. Long (VSB#30982)  
WOODS, ROGERS & HAZLEGROVE, P.L.C.  
250 West Main Street, Suite 300  
Charlottesville, Virginia 22902  
(804) 295-8300

Counsel for William A. Winkelman

**CERTIFICATE OF SERVICE**

I hereby certify that a true and copy of the foregoing Response to Dogwood Valley Citizens Association's Supplemental Request for Admissions was mailed first-class, postage prepaid this 21<sup>st</sup> day of December, 1999 to Kelly A. Hobbs, Esquire, George H. Dygert & Associates, 675 Peter Jefferson Parkway, Suite 190, Charlottesville, Virginia 22911.



Donald D. Long

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GREENE

WILLIAM A. WINKELMAN,

Plaintiff,

v.

Chancery No. 98-2703

DOGWOOD VALLEY CITIZENS' ASSOCIATION, INC., et al.

Defendants.

### REQUEST FOR ADMISSIONS

Come now the Defendants, Dogwood Valley Citizens' Association, Inc., Jason Elliott Tinder, Gary E. Lowe and Karen H. Lowe, by counsel, and request that Defendant admit the truth of the following matters within twenty-one days after receipt of this pleading.

1. The Second Amended Bill of Complaint filed in this case was filed in the Office of the Clerk of the Circuit Court for Greene County on February 14, 2000.
2. The members of the Dogwood Valley Citizens Association, Inc. adopted a special assessment of \$35.00 per lot at its meeting on June 14, 1997.
3. The Second Amended Bill of Complaint is the first action filed in any Court by Plaintiff against any of the Defendants challenging the assessment adopted at the Annual Meeting of the Dogwood Valley Citizens Association, Inc., held June 14, 1997.
4. Counts I and II of the Second Amended Bill of Complaint filed in this matter are the only actions Plaintiff has filed in any court challenging the action of the Membership of the Dogwood Valley Citizens Association, Inc., at its Annual Meeting held June 14, 1997, adopting the special assessment of \$35.00 per lot.

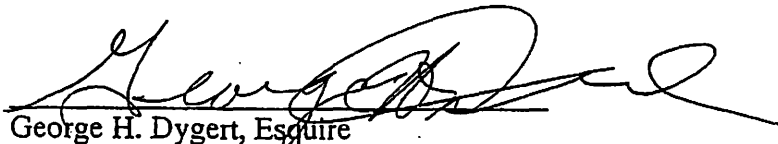
5. Plaintiff's Lot 1 described in paragraph 1 of the Second Amended Bill of Complaint was sold to Gary E. Lowe and Karen H. Lowe to satisfy a lien for payment of the special assessment adopted by the Membership of the Dogwood Valley Citizens Association, Inc. at its annual meeting on June 14, 1997.

6. Plaintiff's Lot 2 described in paragraph 1 of the Second Amended Bill of Complaint was sold to Jason Elliott Tinder to satisfy a lien for payment of the special assessment adopted by the Membership of the Dogwood Valley Citizens Association, Inc. at its annual meeting on June 14, 1997.

Respectfully submitted,

DOGWOOD VALLEY CITIZENS'  
ASSOCIATION, INC.  
JASON ELLIOTT TINDER,  
GARY E. LOWE and  
KAREN H. LOWE


By Counsel



George H. Dygert, Esquire  
675 Peter Jefferson Parkway, Suite 190  
Charlottesville, Virginia 22911  
Telephone: (804) 979-5515  
VSB: 16378  
Counsel for Defendants

#### CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Request for Admissions was mailed this 29 day of November, 2000, to Richard C. Maxwell, Esquire, Woods, Rogers & Hazlegrove, P.O. Box 2964, Charlottesville, Virginia 22902.

  
George H. Dygert

IN THE CIRCUIT COURT OF THE COUNTY OF GREENE

**Defendants.**

Chancery No.98-2703

to the foreclosure of his property which foreclosure was an attempt to satisfy a Memorandum of Lien in the amount of \$35 recorded against each Lot 1 and Lot 2.

4. It is admitted that Count I seeks to have the \$35 special assessment declared void because the Board of Directors did not authorize the special assessment as required by Virginia law. It is admitted that Count II seeks to have the \$35 special assessment and the regular assessment declared void because the Declaration of the Dogwood Valley Citizens' Association limits assessment to \$15.00 per lot. It is admitted that the Bill of Complaint was the first action filed by the Plaintiff with regard to the foreclosure of his property which foreclosure was an attempt to satisfy a Memorandum of Lien in the amount of \$35 recorded against each Lot 1 and Lot 2.

5. It is admitted that a deed recorded in the Clerk's Office of the Circuit Court of Greene County in Book 449, page 196 purports to convey Lot 1 to Gary E. Lowe and Karen H. Lowe. It is admitted that Lot 1 was sold to in an attempt to satisfy a Memoranda of Lien in the amount of \$35.00 recorded against Lot 1.

6. It is admitted that a deed recorded in the Clerk's Office of the Circuit Court of Greene County in Book 452, page 207 purports to convey Lot 2 to Jason Elliott Tinder. It is admitted that Lot 2 was sold to in an attempt to satisfy a Memoranda of Lien in the amount of \$35.00 recorded against Lot 2.

WILLIAM A. WINKELMAN

By Counsel



Richard Clifford Maxwell, Esquire (VSB# 23554)

Woods, Rogers & Hazlegrove

250 West Main Street, Suite 300

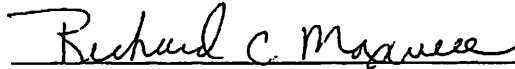
Charlottesville, Virginia 22902

(804) 295-8300

Counsel for William A. Winkelman

### CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Plaintiff's Response to Request for Admissions was mailed to George H. Dygert, Esq., 675 Peter Jefferson Parkway, Suite 190, Charlottesville, VA 22911, counsel for the Defendants.





VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GREENE

WILLIAM A. WINKELMAN,

Plaintiff.

v.

DOGWOOD VALLEY CITIZENS' ASSOCIATION, et al.

Defendants.

**ANSWER TO PLAINTIFF'S INTERROGATORIES**

COMES NOW the Defendant, Dogwood Valley Citizens' Association, Inc., by counsel, and responds to Plaintiff's Interrogatories as follows:

1. Identify each and every person who possesses, or who may possess, discoverable information relevant to the facts alleged in Winkelman's Bill of Complaint.

**ANSWER:** Matthew Brown, President, Dogwood Valley Citizens Assoc., P.O. Box 127, Stanardsville, Virginia 22973, (804) 981-3096.

Judy Coughlin, Treasurer, Dogwood Valley Citizens' Assoc., P.O. Box 127, Stanardsville, Virginia 22973.

Cecil R. Floyd, Jr., CPA, 691 Berkmar Circle, Charlottesville, Virginia 22901, (804) 975-3330.

Kelly A. Hobbs, Esquire, Dygert & Associates, 1112 East High Street Suite B, Charlottesville, Virginia 22902, (804) 979-5515. Ms. Hobbs also possesses information which is attorney/client privileged. All non-privileged relevant information has been provided to Plaintiff's counsel, or will be forwarded with supplemental discovery.

2. State any defenses, affirmative or otherwise, and the basis for any defenses which DVCA can assert against Winkelman's Bill of Complaint.

**ANSWER:** DVCA complied with §55-514 of the Code of Virginia 1950, as amended, when it

assessed the special assessments against Plaintiff and other lot owners.

DVCA then, after not receiving full payment from Defendant, sent the notices required to Plaintiff by §55-516 and proceeded with foreclosure pursuant to the terms of that statute.

3. Identify each and every person, by position held, who has served as an officer or director of DVCA during the years 1996, 1997, and 1998.

**ANSWER:** DVCA holds its annual meeting in June of each year when officers and Directors are elected.

January 1996 to June 1996: Mark Hoover, President; Linda Allen, Treasurer; Matthew Brown, Secretary; Keith Wynn, Member; Dean Musser, Member. P.O. Box 127, Stanardsville, Virginia 22973. All of the aforementioned were Directors.

June 1996 to June 1997: Matthew Brown, President; Tom Altemere, Vice President (has now moved to Florida); Linda Allen, Treasurer; Dean Musser, Secretary; Keith Wynn, Member, P.O. Box 127, Stanardsville, Virginia 22973. All of the aforementioned were Directors.

June 1997 to June 1998: Matthew Brown, President; Tom Altemere, Vice President; Judy Coughlin, Treasurer; Dean Musser, Secretary; Keith Wynn, Member, P.O. Box 127, Stanardsville, Virginia 22973. All of the aforementioned were Directors.

June 1998 to December 1998: Matthew Brown, President; Gary Lowe, Vice President; Judy Coughlin, Treasurer; Dean Musser, Secretary, Keith Wynn, Member, P.O. Box 127, Stanardsville, Virginia 22973. All of the aforementioned were Directors.

4. For the years of 1997 and 1998, identify each and every person whose property DVCA sold to enforce a lien for assessments, identify each lot which was sold to enforce a lien for assessments, the date of sale, the name of purchaser, the purchase price, and the date of filing of the lien for assessment.

**ANSWER:** 1. Lots 1, 2 and 3, Section D  
Date of sale: 4/29/98

- Date of settlement: 5/28/98  
Jeffrey Howard Green  
Lot 1: \$300.00  
Lot 2: \$400.00  
Lot 3: \$400.00  
Lien filed on 3/30/98
2. Lot 13, Section 7A  
Date of sale: 4/29/98  
Date of settlement: 5/28/98  
Jeffrey A. Ferguson  
\$600.00  
Lien filed on 3/30/98
3. Lot 41, Section 7D  
Date of sale: 4/29/98  
Date of settlement: 5/28/98  
Larry E. Eppard and Carolyn S. Eppard, husband and wife  
Clyde E. Eppard  
Teresa L. Hensley  
\$3,000.00  
Lien filed on 3/30/98
4. Lot 1, Section 7A  
Date of sale: 4/29/98  
Date of settlement: 5/28/98  
Angela Shifflett and Ernest Todd Shifflett  
\$550.00  
Lien filed on 3/30/98
5. Lot 17, Section 5A  
Date of sale: 4/29/98  
Date of settlement: 5/28/98  
Jeffrey A. Ferguson  
\$500.00  
Lien filed on 3/30/98
6. Lot 1, Section 5E  
Date of sale: 4/29/98  
Date of settlement: 5/28/98  
Gary E. Lowe and Karen Lowe  
\$1,000.00  
Lien filed on 3/30/98

Lot 2, Section 5E  
Date of sale: 4/29/98  
Date of settlement: 5/28/98  
Jason Elliott Tinder  
\$2,100.00  
Lien filed on 3/30/98

7. Lot 55, Section 7C  
Date of sale: 4/29/98  
Date of settlement: 5/28/98  
Tammy McMillan  
\$600.00  
Lien filed on 3/30/98

8. Lot 34, Section 7C  
Date of sale: 4/29/98  
Date of settlement: 5/28/98  
Tammy McMillan  
\$500.00  
Lien filed on 3/30/98

5. State DVCA's specific purpose for funds raised by the special assessments in 1997 and 1998.

**ANSWER:** The road fees provided for in the Declaration of Restrictive Covenants for the phases of the subdivision vary from \$25.00 to \$65.00 per lot per year. The subdivision has over 13 miles of mountainous roads to maintain on these meager amounts. In the 1990's, the roads, which DVCA had not been able to maintain, given the low road fees, were catastrophically damaged by two severe floods. The Board of Directors then, under the authority of §55-514, asked the members to pass a special assessment to collect enough money to do proper repairs.

The 1996 and 1997 special assessment money was used for the following:

- a. Purchase loads of gravel for spreading on the roads.
- b. To hire a road grader to cut and define the drainage gullies and clear them out.

- c. Replacement of culverts which were too small to carry the water off the mountain, or which had deteriorated with age.

6. State the dates and the newspaper in which the notice of sale of the Property was published.

**ANSWER:** The *Greene County Record* published the notice on April 2, 1998, April 9, 1998, April 16, 1998, and April 23, 1998.

7. Identify any lawsuits in which DVCA has been a participant during the years 1996, 1997, and 1998. Give the style of the case, the case number, the jurisdiction and court, and the type of suit or action.

**ANSWER:**

1996: **DVCA v. Frank Eng**, Charlottesville General District Court, Failure to pay annual road fees; contract action.  
**DVCA v. Erick & Karen Martel**, Charlottesville General District Court, Failure to pay annual road fees; contract action.  
**DVCA v. Miller**, Charlottesville General District Court, Failure to pay annual road fees, contract action.  
**DVCA v. George & Lilas Wiltshire**, Greene County General District Court, Failure to pay annual road fees.  
**DVCA adv. Madelaine Shank**, Greene County General District Court, action against DVCA for removal of a culvert.  
**DVCA v. Mattie Coates**, Charlottesville General District Court, Failure to pay annual road fees.  
**DVCA v. Pollitt**, Charlottesville General District Court, Failure to pay annual road fees.  
**DVCA v. Henry Zimmerman**, Charlottesville General District Court, Failure to pay annual road fees.  
**DVCA v. DeSantis**, Charlottesville General District Court, Failure to pay annual road fees.  
**DVCA v. Dussault**, Charlottesville General District Court, Failure to pay annual road fees.  
**DVCA v. William & Gail Jones**, Charlottesville General District Court, Failure to pay

annual road fees.

DVCA v. Kallock, Charlottesville General District Court, Failure to pay annual road fees.

8. State the address of William A. Winkelman as reflected in the records of DVCA.

ANSWER: William A. Winkleman, Route 1 Box 1143, Harpers Ferry, West Virginia 25425.

9. Identify all communications between any officer, director, attorney for DVCA and either Tinder or the Lowes.

ANSWER: Tinder's communication with officers and directors consists only of those connected with the purchase of Lot 2 Section 5E of Dogwood Valley Subdivision. See attachments to Response to Request for Production. Dogwood Valley Citizens' Association's attorney, Kelly A. Hobbs, spoke with Mr. Tinder at the foreclosure sale and subsequent to the sale to set up a time for closing.

Dogwood Valley Citizens' Association's attorney, Kelly A. Hobbs, spoke with Mr. Lowe at the foreclosure sale and subsequent to the sale to set up a time for closing. See documents submitted with Response to Request for Production for communications in connection with his purchase of Lot 1 Section 5E.

Lowe's communications with the Dogwood Valley Citizens' Association since his election to the Board of Directors are too numerous to list.

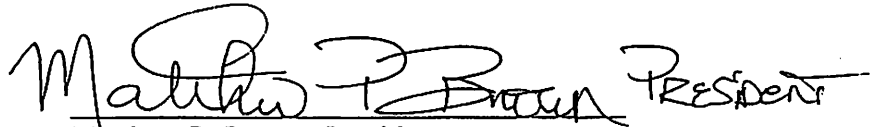
10. State whether Tinder or the Lowes have ever owned lots in the Dogwood Valley subdivision and identify the lots owned by Tinder or the Lowes.

**ANSWER:** Neither Tinder nor the Lowes ever owned lots in the Dogwood Valley Subdivision prior to their purchases of Plaintiff's lots. Defendants Lowe purchased an adjoining lot subsequent to the foreclosure sale.

11. State whether Tinder or the Lowes are or have ever been officers or directors of DVCA.

**ANSWER:** Jason Tinder is not and has never been an officer or director of DVCA. Gary Lowe was elected to the Board of Directors and Vice President in June of 1998, after he became a lot owner in Dogwood Valley.

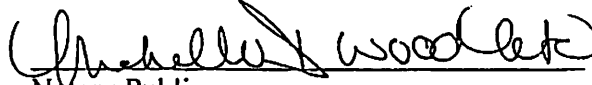
Respectfully submitted,

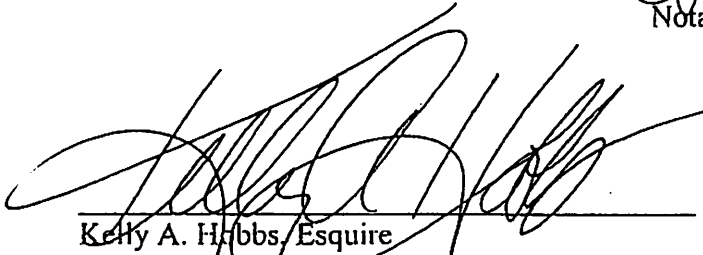
  
Matthew P. Brown, President  
Dogwood Valley Citizens' Association

STATE OF VIRGINIA, at large, to-wit:

I, Michelle D. Wood, Notary Public in the City of Charlottesville, Virginia, do hereby certify that Matthew P. Brown, as President of Dogwood Valley Citizens' Association subscribed his name to the foregoing Answer to Interrogatories and made oath that said response is true and correct to the best of his knowledge this 24<sup>th</sup> day of March, 1999.

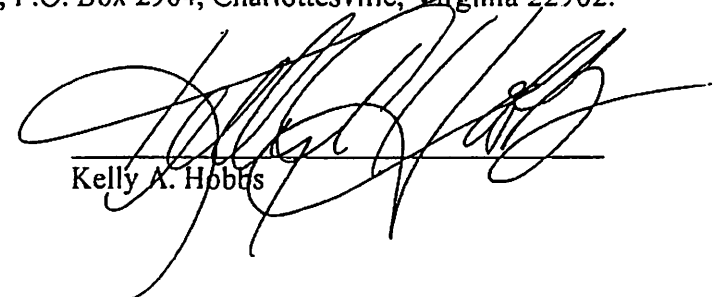
My commission expires: 12/31/01

  
Notary Public

  
Kelly A. Hobbs, Esquire  
Dygert & Associates  
1112 East High Street Suite B  
Charlottesville, Virginia 22902  
Telephone (804) 979-5515  
VSB #40166  
Counsel for Defendant

**CERTIFICATE**

I hereby certify that a true and correct copy of the foregoing Answers to Interrogatories was mailed this 2<sup>nd</sup> day of March, 1998, to Richard C. Maxwell, Esquire and Donald D. Long, Esquire, Woods, Rogers & Hazlegrove, P.O. Box 2964, Charlottesville, Virginia 22902.

  
Kelly A. Hobbs



VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GREENE

WILLIAM A. WINKELMAN,

Plaintiff.

v.

Chancery No. 98-2703

DOGWOOD VALLEY CITIZENS' ASSOCIATION, et al.

Defendants.

**RESPONSE TO PLAINTIFF'S SECOND INTERROGATORIES  
TO DEFENDANT DOGWOOD VALLEY CITIZENS' ASSOCIATION**

COMES NOW the Defendant, Dogwood Valley Citizens' Association, Inc., by counsel,  
and responds to Plaintiff's Second Interrogatories as follows:

1. State the facts, the application of law to facts, and the statute which support DVCA's contention that Count I of the Second Amended Bill of Complaint is barred by the applicable Statute of Limitations.

**ANSWER:** Defendants object to Interrogatory 1 on the basis that it calls for the disclosure of attorney work product, including mental impressions, conclusions, opinions, and legal theories of the Defendants' attorney in this action.

2. State the facts, the application of law to facts, and the statute which support DVCA's contention that Count II of the Second Amended Bill of Complaint is barred by the applicable Statute of Limitations.

**ANSWER:** Defendants object to Interrogatory 2 on the basis that it calls for the disclosure of attorney work product, including mental impressions, conclusions, opinions, and legal theories of

the Defendants' attorney in this action.

3. State the facts or the application of law to facts which support your denial of Paragraph 22 of the Second Amended Bill of Complaint and identify any Board of Directors minutes which support this denial.

**ANSWER:** Defendants object to Interrogatory 3 to the extent that it calls for the disclosure of attorney work product, including mental impressions, conclusions, opinions, and legal theories of the Defendants' attorney in this action. Notwithstanding and without waiving Defendants' objection, the Board of Directors minutes are submitted in the response to the Request for Production.

4. State the facts or the application of law to facts which support your denial of Paragraph 24 of the Second Amended Bill of Complaint and identify any documents which support this denial.

**ANSWER:** Defendants object to Interrogatory 4 to the extent that it calls for the disclosure of attorney work product, including mental impressions, conclusions, opinions, and legal theories of the Defendants' attorney in this action. Notwithstanding and without waiving Defendants' objection, the Board of Directors minutes are submitted in the response to the Request for Production.

5. State the facts or the application of law to facts which support your denial of Paragraph 37 of the Second Amended Bill of Complaint and identify any documents which support this denial.

**ANSWER:** Defendants object to Interrogatory 5 on the basis that it calls for the disclosure of attorney work product, including mental impressions, conclusions, opinions, and legal theories of the Defendants' attorney in this action. Notwithstanding and without waiving Defendants' objection, the Defendant DVCA identifies the Virginia Property Owners Association Act and the Bylaws of the Dogwood Valley Citizens' Association .

6. State the facts or the application of law to facts which support your denial that all minutes of the Board of Directors are required to be recorded and identify any documents which support this denial.

**ANSWER:** Defendants object to Interrogatory 6 on the basis that it calls for the disclosure of attorney work product, including mental impressions, conclusions, opinions, and legal theories of the Defendants' attorney in this action.

7. State the facts or the application of law to facts which support your denial of Paragraph 42 of the Second Amended Bill of Complaint an identify any documents which support this denial.

**ANSWER:** Defendants object to Interrogatory 7 to the extent that it calls for the disclosure of attorney work product, including mental impressions, conclusions, opinions, and legal theories of the Defendants' attorney in this action. Notwithstanding and without waiving Defendants'

objection, the quotation in Paragraph 42 of the Second Amended Bill of Complaint is an incomplete quotation which does not convey accurately the context of Article 7 Section 2(a) of the Bylaws. In addition, from the language contained in Paragraph 42, it cannot be determined for certain that the Article referred to is a part of the Bylaws.

8. State the facts or the application of law to facts which support your denial of Paragraph 43 of the Second Amended Bill of Complaint and identify any documents which support this denial

**ANSWER:** Defendants object to Interrogatory 8 to the extent that it calls for the disclosure of attorney work product, including mental impressions, conclusions, opinions, and legal theories of the Defendants' attorney in this action. Notwithstanding and without waiving Defendants' objection, the Board of Directors minutes are submitted in the response to the Request for Production.

9. State the facts or the application of law to facts which support your denial of Paragraph 44 of the Second Amended Bill of Complaint and identify any documents which support this denial.

**ANSWER:** Defendants object to Interrogatory 9 to the extent that it calls for the disclosure of attorney work product, including mental impressions, conclusions, opinions, and legal theories of the Defendants' attorney in this action. Notwithstanding and without waiving Defendants' objection, the Board of Directors minutes are submitted in the response to the Request for Production.

10. State the facts or the application of law to facts which support your denial of Paragraph 62 of the Second Amended Bill of Complaint and identify any documents which support this denial.

**ANSWER:** DVCA conducted sales of a total of 11 lots in the Dogwood Valley Subdivision on April 29, 1998, including the sale of Plaintiff's two lots.

11. State the due date for the assessment whose delinquency was the basis upon which the sale of Property was conducted.

**ANSWER:** February 1, 1998.

Respectfully submitted,

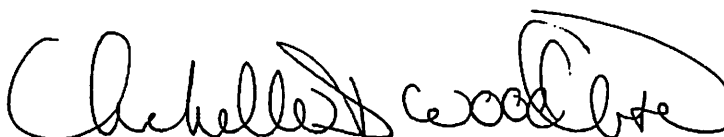


Matthew P. Brown, President  
Dogwood Valley Citizens' Association

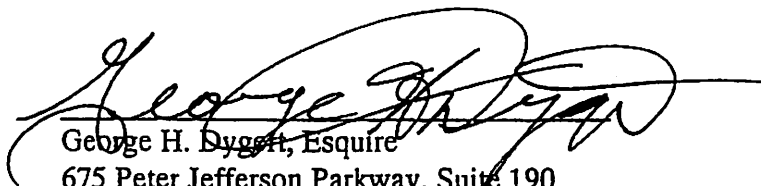
STATE OF VIRGINIA, at large, to-wit:

I, ~~Michelle D. Wood~~ <sup>Michelle D. Wood</sup> Notary Public in the City of Charlottesville, Virginia, do hereby certify that Matthew P. Brown, as President of Dogwood Valley Citizens' Association subscribed his name to the foregoing Answer to Interrogatories and made oath that said response is true and correct to the best of his knowledge this 16<sup>th</sup> day of April, 2000.

My commission expires: 12/31/01



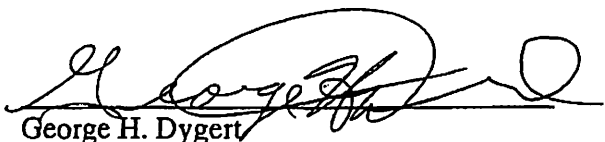
Notary Public



George H. Dygert, Esquire  
675 Peter Jefferson Parkway, Suite 190  
Charlottesville, Virginia 22911  
Telephone: (804)979-5515  
VSB: 16378  
Counsel for Plaintiffs

#### CERTIFICATE

I hereby certify that a <sup>YHD</sup> true and correct copy of the foregoing Answers to Second Interrogatories was mailed this 16<sup>th</sup> day of April, 2000, to Richard C. Maxwell, Esquire and Donald D. Long, Esquire, Woods, Rogers & Hazlegrove, P.O. Box 2964, Charlottesville, Virginia 22902.



George H. Dygert

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COPY

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1 VIRGINIA: IN THE CIRCUIT COURT FOR GREENE COUNTY

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4 WILLIAM A. WINKLEMAN,

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Plaintiff

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v.

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DOGWOOD VALLEY CITIZENS' ASSOCIATION,

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Defendant

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COURT'S RULING

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Taken on

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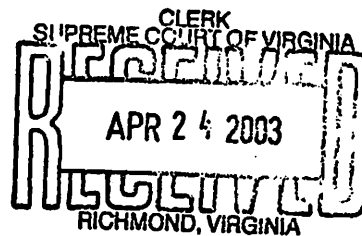
October 7, 2002

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FILED  
GREENE COUNTY CIRCUIT CT

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LANE'S COURT REPORTERS, INC.  
407 8<sup>th</sup> STREET, N. E.  
CHARLOTTESVILLE, VIRGINIA 22902

## 1 APPEARANCES:

2 Richard C. Maxwell, Esq.  
3 250 West Main Street  
4 Suite 300  
5 Charlottesville, VA 22902  
6 Attorney for Plaintiff

George H. Dygert, Esq.  
675 Peter Jefferson Pkwy  
Suite 190  
Charlottesville, VA 22911  
Attorney for Defense

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BEFORE: The Honorable Daniel R. Bouton



1  
2 October 7, 2002  
3

4 THE COURT: Good afternoon everyone.

5 MR. DYGERT: Good afternoon, Your Honor.

6 THE COURT: Regularly scheduled session of the  
7 Greene County Circuit Court. All right, we have a number of  
8 matters on our docket for consideration in terms of the  
9 balance of our docket, specifically, both of the cases  
10 involve the Dogwood Valley Citizens' Association. The other  
11 one involves Jerome and Sarah Hatcher and the other one  
12 involves William A. Winkleman. Mr. Maxwell, you're here in  
13 connection with both of the cases, I know, and on behalf of  
14 Mr. Hatcher and Mr. Winkleman. Mr. Dygert, of course you  
15 appear on behalf of the Dogwood Valley Citizens'  
16 Association, as well as some of the other named defendants  
17 in connection with the Winkleman matter. All right, we are  
18 now at the point where the Court is prepared to rule in  
19 connection with the various cases so the Court will do that.  
20 What I'm going to do, and I'll try to state my rulings with  
21 some degree of clarity so that counsel can follow, is  
22 attempt to follow some logical sequence. In this regard, I  
23 have determined that it would be appropriate to address the  
24 Hatcher case first. There are not as many issues in that  
25 case and it's, to a certain extent, less complex from a

1 legal standpoint so that is the case the Court will first  
2 address. Let me begin by complementing both attorneys in  
3 connection with both of these cases. The legal work that  
4 was presented was extremely well researched and well  
5 organized. All of the arguments were also thought out and  
6 articulated very clearly and presented to the Court in very  
7 precise fashion. The Court will also say this. Both of  
8 these cases present a number of extremely difficult legal  
9 issues and, furthermore, there is not a great deal of  
10 appellate authority that exists at this time to guide the  
11 Court so, consequently, the Court has done it's best to give  
12 a full and fair consideration to the competing arguments  
13 from both sides. In addition, the Court has fully gone  
14 through all of the authority that has been cited and, again,  
15 it appears that in terms of the authority that exists,  
16 counsel from both sides have exhaustively reviewed it and  
17 quite appropriately argued it in a number of ways. All  
18 right, so let me now first address the Hatcher case and the  
19 Court will first rule on perhaps what is the most hotly  
20 contested question that pervades both of these cases and  
21 that is whether or not the Virginia Property Owners'  
22 Association Act actually applies to the homeowners'  
23 association here in Dogwood Valley. In order to rule on  
24 that question, the Court has got to resolve how Anderson v.  
25 Lake Arrowhead Civic Association applies to this case and,

1 of course, for the record, the site is 253 Virginia, Page  
2 264. It's a 1997 case. The Anderson case is perhaps the  
3 only one on point in terms of what's directly before the  
4 Court. Anderson addressed the statutory scheme in question  
5 and articulated what needs to be established before the  
6 Virginia Property Owners' Association Act applies and there  
7 the Court held that, first, the homeowners' association must  
8 have the power to collect assessments. That is not an issue  
9 in the case. Mr. Maxwell's clients concede, in effect, that  
10 particular power. The hotly contested issue is the second  
11 element that has to be established and that is whether there  
12 is a duty to maintain the common area and the key there is  
13 the source of these two elements and that is the source of  
14 the duty, and on page 272 of the Anderson case the Supreme  
15 Court stated on that point, and I'm quoting from the opinion  
16 with regard to the duty to maintain the common area, this  
17 condition ``must be expressly stated in a recorded  
18 instrument in the land records of the jurisdiction'' and  
19 that, in effect, is the contested question before the Court.  
20 Now, Mr. Dygert argues quite eloquently that the Anderson  
21 case can be distinguished and his principal point or one of  
22 his main points is that Anderson involved a simple single  
23 covenant and the covenant in question required the payment  
24 of an assessment in exchange for which or in conjunction  
25 with which the assessment was ``to be used for general

1 maintenance'' and he argues that since it's a simple single  
2 covenant, the Court has to look at all of the covenants  
3 here, all of the restrictions that apply, read them as a  
4 whole in order to make a determination as to whether there's  
5 an expressed duty. Mr. Maxwell on the other hand argues  
6 just as eloquently is that even though Anderson involved a  
7 single covenant, the point is it's got to be an expressed  
8 duty and even if one takes a comprehensive look at all of  
9 these documents, why it's not sufficient to establish the  
10 expressed duty, so that's the point the Court has to rule  
11 on. Now, here the Court does find that the Dogwood Valley  
12 Citizens, Association and the Dogwood Valley Subdivision is  
13 the subject of a comprehensive set of recorded covenants  
14 and, furthermore, a number of the covenants address the  
15 assessments and the use to which the assessment funds have  
16 to be put and the Court is not going to repeat everything  
17 that Mr. Dygert sets forth in his memorandum. He, in his  
18 memorandum, argues quite well that a fair and comprehensive  
19 reading of these recorded covenants establishes that the  
20 Property Owners' Association Act would apply, and the  
21 argument is that a comprehensive reading of the covenants  
22 does reveal the express duty that's required by the statute.  
23 What the Court takes particular note of in this context is  
24 the document that is referred to as Exhibit J in his  
25 memorandum and here, I think it's significant for the Court

1 to highlight this. This was the deed of November 5<sup>th</sup> of  
2 1978 and it was the deed of conveyance to the DVCA and the  
3 document itself contains a number of provisions that the  
4 Court finds appropriate, and in particular, after the  
5 various clauses are recited, talking about what the  
6 responsibilities of the DVCA consist of. There's a  
7 statement in there indicating that the grantee, in this case  
8 the DVCA, receives and wishes to receive all of the duties  
9 and all of the obligations in connection with the  
10 subdivision and it's assessments. What the Court is coming  
11 to is that on this issue, the Court has determined that  
12 applying the sense of fairness and common sense to the  
13 question, the Court will conclude that a reading of all of  
14 the documents in question cited by Mr. Dygert is sufficient  
15 for the Court to find that there is an expressed duty to  
16 maintain common areas of the subdivision so therefore the  
17 Court on that issue is going to rule that the Property  
18 Owners' Association Act does apply to the Dogwood Valley  
19 Subdivision. That, by no means, ends the inquiry because  
20 the second issue which again is hotly contested is what  
21 standard of review applies to the evidence that has actually  
22 been introduced at the trial and even if the Court is  
23 correct about its conclusion that the Property Owners'  
24 Association Act applies, the next question that has to be  
25 addressed is what actually transpired and what is the



1 Lake Monticello case and consequently the Court is going to  
2 rule in favor of the defendant in connection with that case.  
3 That will be the judgment of the Court. All right, let me  
4 next address the second case which is the Winkleman case.  
5 That matter's more complex. There are a number of issues in  
6 that case. All right, let's see. The first thing the Court  
7 will do is, in effect, incorporate its ruling on the  
8 Virginia Property Owners' Association Act into its ruling in  
9 connection with this case. We are on the record. The Court  
10 won't repeat all of its observations and, Mr. Maxwell, I  
11 know you've argued quite extensively your disagreement and  
12 the Court recognizes that, but the Court is going to rule  
13 that the Virginia Property Owners' Association Act does  
14 apply to the Dogwood Valley Subdivision so, consequently,  
15 the same ruling made in the previous case will apply here on  
16 that issue. All right, what the Court will do now is  
17 attempt to address the remaining disputed issues in the case  
18 and make its rulings. In this regard, there are quite a  
19 number of questions that the Court has got to address. All  
20 right, let me first address the question of the equities to  
21 the extent it has any bearing on the case. The Court has  
22 listened very carefully to what both sides have had to say  
23 about this. To begin with, Mr. Maxwell argues that the  
24 matter started with the nonpayment of a thirty-five dollar  
25 (\$35) fee and the end result is that the property owner, in

1 effect, lost a valuable piece of real estate. He argues  
2 that there, perhaps, were some medical problems that may or  
3 may not have had some bearing why the fee wasn't paid.  
4 There might have been some cash flow problems. There might  
5 have been some question as to whether his client got notice,  
6 and he argues that the equities are such that it would be a  
7 harsh result if the Court were to rule in favor of the  
8 homeowners' association. The other side of the coin is the  
9 homeowners' association has every right to take legal action  
10 to collect its assessment. The respondent was involved with  
11 the lots while this one particular case might seem to create  
12 an injustice while there were a number of other lots. There  
13 was evidence of action taken by the homeowners' association.  
14 There was evidence of notice being given. There was an  
15 opportunity to redeem, so to speak, if one wants to call it  
16 that based on some of the correspondence that was  
17 introduced. The evidence showed that nothing but two  
18 hundred dollars (\$200) was produced, and it wasn't  
19 sufficient and, furthermore, there was no evidence of the  
20 homeowners' association knew about these medical problems or  
21 personal financial problems so what the Court is coming to,  
22 the Court doesn't find that the equities cut either way in  
23 terms of the impact on the Court's ruling. The Court sees  
24 both sides to the equity issue and to the extent that this  
25 is a Court of equity while the Court simply makes those

1 observations for this case. All right, the Court is next  
2 going to address the constitutionality of this statute. The  
3 Court finds the arguments of Mr. Dygert persuasive on this  
4 issue. The Court is not going to repeat the arguments that  
5 he made in his written submissions to the Court. The Court  
6 is simply going to deny any relief to the defendants based  
7 on the constitutionality of the statute. The Court finds  
8 there is no violation of Article 1, Section 11 of the  
9 Virginia Constitution, that is the due process argument.  
10 The Court finds that the statute contains adequate notice  
11 provisions, adequate redemption provisions, adequate  
12 protections from a constitutional standpoint. The Court  
13 finds a number of similarities to the foreclosure statute  
14 which has been found to pass constitutional muster so,  
15 therefore, the Court will rule in favor of the homeowners'  
16 association on that issue. All right, the next question the  
17 Court will address is the question about whether the  
18 association itself authorized the special assessment, the  
19 filing of the statutory memo and the sale of the property  
20 itself. Now, here, Mr. Maxwell argues that the minutes that  
21 are part of the evidence in the case do not contain proper  
22 authorization. He points out that the statute requires a  
23 board such as the homeowners' association to keep minutes of  
24 its meetings, of its activities and of its actions and  
25 Section 55-510.1 does state that minutes shall be recorded



1 and shall be available. Here, the Court finds that the  
2 evidence in the record establishes that the minutes were  
3 properly kept by the homeowners' association. The argument  
4 really raises the sufficiency of the minutes for purposes of  
5 the sale itself. Now on this point, the Court finds that  
6 one has to consider all of the evidence in the record and  
7 all of the reasonable inferences that can be drawn from that  
8 evidence based on a full consideration of the minutes from  
9 the meetings, the testimony that was given by Ms. Hobbs, the  
10 testimony given by Mr. Brown, the documents that pertain to  
11 the sales. The Court finds that there is adequate proof in  
12 the record on the question of authorization so the Court  
13 rules in favor of the homeowners' association on that issue.  
14 All right, the next question that the Court will address is  
15 the question of whether the relief should be granted because  
16 the association failed to follow its own bylaws. In other  
17 words, Mr. Maxwell makes an argument here with specific  
18 reference to what I'll call the ninety (90) day provisions  
19 that he has described and that he has referred to throughout  
20 the case. The homeowners' association here acted prior to  
21 the expiration of the required ninety (90) days under the  
22 association bylaws, consequently, they failed to follow  
23 their own procedures, consequently, there was no proper  
24 authorization for the sale. All right, the starting point  
25 on that one is that Mr. Dygert, in effect, concedes or

1 certainly does not argue against the assertion that the  
2 action itself did not occur within the or with the ninety  
3 (90) day window required by the bylaws; however, that really  
4 doesn't end the inquiry and the Court doesn't find that to  
5 be dispositive. We really have to look at the statutory  
6 scheme on this issue, and Mr. Maxwell concedes that if the  
7 Property Owners' Association Act applies, the homeowner, the  
8 homeowners' association does have the power to levy the  
9 special assessment under Section 55-514(A) and if you look  
10 at the statute, 514(B) says that the failure of the member  
11 to pay the assessment and I'm quoting now, ``shall entitle  
12 the association to the lien provided by Section 55-516.''   
13 Now here, there's no dispute that the assessment was not  
14 paid in full, notwithstanding some of the evidence as to  
15 why, so therefore since the Property Owners' Association Act  
16 applies and since the lien, at least in the Court's view,  
17 was assessed under the statute, the next question is we go  
18 to Section 55-516. Here, this particular section and with  
19 specific reference to subsection A says that once the lien  
20 is perfected and the association has it's lien, why, then it  
21 can proceed, and if you look at subparagraph B, it says that  
22 the association in order to perfect the lien shall file  
23 before the expiration of twelve (12) months the required  
24 memorandum, and there's no argument here that the memorandum  
25 fails to contain the information required by the statute or

1 that it wasn't properly filed in the Clerk's office so the  
2 real question, at least in the Court's judgment, is whether  
3 the association is required to follow the bylaws in addition  
4 to following the requirements under the statute in order to  
5 take action, and here, the Court rules in favor of the  
6 homeowners' association. In this Court's judgment, the  
7 language of the statute is clear. It tells the homeowners'  
8 association what it must do in order to perfect the lien and  
9 the provisions of the statute make no reference to the  
10 bylaws or to any requirement that the homeowners'  
11 association also follow any specific provisions of the  
12 bylaws in order for the lien to be perfected in order for  
13 action to be taken. I've looked at this statute  
14 exhaustively and there doesn't appear to be any provision in  
15 the entire scheme that makes reference to any additional  
16 requirement that the bylaws have to be followed in order for  
17 the homeowners' association to be able to take action and in  
18 the Court's judgment, the statutory scheme is a separate  
19 mechanism that was created by the legislature and if it  
20 applies to the Dogwood Valley Citizens' Association or to  
21 the subdivision, it provides the homeowners' association  
22 with certain rights and remedies and those rights and  
23 remedies are premised on the statutory language and on  
24 complying with the statutory requirements and here the Court  
25 finds that there's no reason why the statute, at least up to

1 that point, hasn't been complied with so with what I'll call  
2 reference to the ninety (90) day argument, the Court is  
3 going to reject the position of the defendant and rule in  
4 favor of the homeowners' association on that issue. All  
5 right, the next question the Court is going to address is  
6 going to be the issue about the unconscionability of the  
7 sale itself. The Court finds that in this particular case  
8 there's no evidence that the conduct of the sale was  
9 unconscionable. This particular lot was sold with a number  
10 of others. There's no evidence that this particular lot or  
11 that this particular property owner was singled out for  
12 treatment that would result in a less than adequate price.  
13 There was evidence that there was several bidders, that  
14 other lots were sold. There's no evidence before the Court  
15 of fraud, collusion or improper conduct so the Court doesn't  
16 find anything unconscionable about the sale. The Court is  
17 aware that in a suit in equity, a Court can set aside a  
18 foreclosure sale where the price is so low as to shock the  
19 conscience of the Court. Again, there's no decided  
20 appellate case that says that that principle applies to this  
21 particular type of sale since it's under a different  
22 statutory scheme; however, assuming this principle and this  
23 doctrine apply to foreclosure, excuse me, to this type of  
24 sale, why the Court will find that there is nothing to shock  
25 the conscience of the Court regarding the price. Certainly,

1 it was less than the assessed value and it was, perhaps, no  
2 real testimony on the fair market value but the question of  
3 whether the unconscionability or shock-the-conscience  
4 standard has been violated is answered by the Court in the  
5 negative so that would be the ruling of the Court on that.  
6 That's going to bring the Court to the final and, perhaps,  
7 the most difficult issue in the case for the Court to  
8 resolve and that is the authority of the homeowners'  
9 association to sell the property in question based on  
10 Section 55-516(I), and this is the statutory provision that  
11 Mr. Maxwell made reference to as an additional basis for his  
12 motion for summary judgment after the matter in effect was  
13 under way. It certainly was appropriate for him to do that.  
14 He can bring to the Court's attention any type of legal  
15 argument at any time. To begin with, it should be noted  
16 that this particular section of the statute was first  
17 included by the legislature in 1997 and that's important  
18 because the statutory scheme was already in place at the  
19 time, including the definitions that the legislature has  
20 come up with and in addition, it shows that the legislature  
21 made a specific decision to include this particular  
22 provision after the scheme was already in full force and  
23 effect. At the time the authority to sell was added, the  
24 definition of a lot contained in Section 55-509 was already  
25 in place. Now that particular statutory provision defines a

1 lot as any plot or parcel of land designated for separate  
2 ownership or occupancy shown on a recorded subdivision plat.  
3 In addition, the legislature had already included a separate  
4 statutory provision that says a lot includes a unit in a  
5 condominium association or a unit in a real estate  
6 cooperative if the condominium or cooperative is part of a  
7 development; therefore, the definitions devised by the  
8 legislature clearly provide a distinction between a plot or  
9 a parcel of real property and a unit in a condominium or a  
10 unit in a real estate cooperative. Both apply in a parcel  
11 of land and a unit in a condominium association or in a real  
12 estate cooperative are considered a lot for purposes of the  
13 act; however, the key point is that based on the definitions  
14 provided by the legislature, the items are identified as  
15 separate and distinct from one another. Now the legal  
16 principles that apply to this question are not in dispute.  
17 There is no serious argument about Mr. Maxwell's assertion  
18 that the Virginia Property Owners' Association Act is in  
19 derogation of the common law; therefore, it must be strictly  
20 construed and as set forth in the case of C&O Railway v.  
21 Kinser which is 206 Virginia, page 175, the quote about that  
22 is as follows, ``statutes and derogation of the common law  
23 are to be strictly construed and not to be enlarged in their  
24 operation by construction in their expressed terms''. That  
25 principle was also confirmed in an earlier case, that is the

1 case of Pump and Well Company v. Taylor which is 201  
2 Virginia, page 311. It's a 1959 case. There the Supreme  
3 Court of Virginia was talking about a remedial statute. It  
4 wasn't the Virginia Property Owners' Association Act,  
5 obviously, but it was a scheme that certainly had remedies  
6 to it which has, at least, been an analogy of this case and  
7 the quote is as follows, ``the statute is remedial and at  
8 the same time in derogation of the common law and,  
9 therefore, must be strictly construed''. That quote comes  
10 from page 316 of the opinion. Furthermore, in strictly  
11 construing the statute under these principles, the Court  
12 must, to the extent that it can, ascertain or address the  
13 question about the intent of the legislature and the  
14 principles that apply on this point were addressed in the  
15 case of Supinger v. Stakes. That's 255 Virginia, page 198.  
16 It's a 1998 case and there the Court said and I'm quoting  
17 when ``language is ambiguous, when it may be understood in  
18 more than one way or simultaneously refers to two or more  
19 things, if the language is difficult to comprehend as a  
20 doubtful import or lacks clearness and definiteness, then  
21 ambiguity exists''. That's on page 205. The other side of  
22 the coin is, the language is clear as it's written on its  
23 face and the Court doesn't look any further to the plain  
24 meaning of the word in the statute and applying what's  
25 called the plain meaning rule, the Supinger Court stated and

1 I'm quoting again, ``we must assume that the legislature  
2 chose with care the words it used when it enacted the  
3 relevant statute. We are bound by those words as we  
4 interpret the statute. In some, courts are not permitted to  
5 rewrite statutes. This is a legislative function, manifest  
6 intention of the legislature clearly disclosed by its  
7 language must be applied. There can be no departure from  
8 the words used where the intention is clear.'' That quote  
9 comes from page 206. All right, so having addressed those  
10 legal principles as being the background principles that  
11 must apply, the Court will first analyze the statute and  
12 construe it strictly in derogation of the common law. The  
13 first point that will be observed is that the only authority  
14 of the homeowners' association to conduct the sale of any  
15 type under this statutory scheme comes from Section 55-  
16 516(I). The only authority that's granted to the  
17 association is to conduct the sale after the lien has been  
18 perfected in accordance with the statute. Perhaps most  
19 important, the Court has read this statute many times, the  
20 authority to conduct the sale of property, not to conduct  
21 the sale of a lot, but to conduct a sale of property, is  
22 limited to a sale of ``the unit'' at public sale. Now as  
23 noted previously, the only unit that is identified in the  
24 definitions that have been crafted by the legislature and  
25 that apply to this act consists of a unit in a condominium



1 association or a unit in a real estate cooperative and as  
2 noted previously, the legislature when it came up with its  
3 definitions, made it very clear that there be a distinction  
4 between a unit as defined in the statute and a plot or a  
5 parcel of real property. Prior to providing the homeowners'  
6 association with any power to sell, the legislature had  
7 already taken the time to define what a unit consisted of  
8 and what a parcel of real property consisted of and how they  
9 both were to be considered a lot. Well, therefore, since  
10 the legislature has defined a unit and since Section I  
11 limits the authority to sell to a unit, the Court must  
12 address the question of what power exists to sell a parcel  
13 of real property under the Virginia Property Owners'  
14 Association Act, and here, the Court must conclude that only  
15 a unit as defined by the statute, that is a unit in a  
16 condominium association or a unit in a real estate  
17 cooperative, can be sold unless there's some other language  
18 in the statute that suggests multiple interpretations or  
19 some sort of ambiguity. Well, the Court has read on and has  
20 read the balance of Section 55-516 and to begin with,  
21 Section A clearly provides how the association can have a  
22 lien on every lot and they use the word, lot, when they talk  
23 about a lien and as noted before, a lot includes a parcel of  
24 real property and a unit. The statute then goes on to  
25 describe the procedure for perfecting a lien against the lot

1 which would include parcels of real property or a unit, but  
2 in Section I, the language of sale is strictly confined to a  
3 unit and if you look at all the multiple clauses and  
4 paragraphs contained after the authority to sell a unit is  
5 granted, there's not a single reference to the word, lot,  
6 which would perhaps reincorporate the real property  
7 definition. Furthermore, there's not a single reference to  
8 real estate, to a sale of land, to a sale of a parcel of  
9 real property or a parcel of land. The definition of a lot  
10 in the statute that refers to real property uses the  
11 language, plot or parcel of land, and from Section I  
12 forward, never does the language, does this language ever  
13 appear in connection with the power to sell. There are  
14 multiple clauses in numerous paragraphs that follow the  
15 grant of the authority to sell; however, they all refer to  
16 the property. They don't refer to real estate and they  
17 don't refer to a lot or a parcel of real property. They  
18 simply refer to property. No cross reference to lot,  
19 nothing to suggest that the legislature has done anything  
20 except indicated that the only thing that can be sold under  
21 this scheme is a unit, and the Court finds there's nothing  
22 ambiguous about this and it's critical to note that the  
23 question before the Court is not the wisdom of the  
24 legislature in granting the authority to sell and it's not  
25 whether it's a statutory scheme that makes sense. It's a

1 question of what they did by the terms of the language in  
2 the statute and in general terms, the Court is aware of no  
3 case statute, constitutional provision or legal doctrine  
4 that anywhere defines or refers to real property or a parcel  
5 of real property, a parcel of land so to speak, as a unit.  
6 The Court has not come across any such authority so,  
7 therefore, the Court concludes that under this particular  
8 statutory scheme, the Court is persuaded that Mr. Maxwell's  
9 argument that the language regarding the authority to sell  
10 is strictly confined to a unit and based on the Court's  
11 analysis, that would not give rise to any authority to sell  
12 the real property in question, so that will be the ruling of  
13 the Court on that final, hotly contested issue. All right,  
14 Mr. Maxwell, you've prevailed, perhaps, on the critical  
15 issues here. I realize you're going to note your exception  
16 to a number of rulings of the Court. Mr. Dygert, I know  
17 you'll note your exceptions to a number of the Court's  
18 rulings, but Mr. Maxwell, I'm going to ask you to prepare  
19 orders in connection with both of these cases and that  
20 would, in effect, conclude these matters, at least at this  
21 level. Again, the Court recognizes these are difficult  
22 legal issues and the Court has exhaustively reviewed these  
23 authorities and made its rulings and made its findings. Mr.  
24 Maxwell, is there anything else you would like addressed?  
25

1           MR. MAXWELL: Two matters, Your Honor, both  
2 procedural in nature. With regard to the Hatcher matter,  
3 Mr. Hatcher had posted bond on this matter and the order  
4 that I prepare will provide for a release of that bond back  
5 to Mr. Hatcher.

6           THE COURT: Yes.

7           MR. MAXWELL: Your Honor, with the Court's finding  
8 that the sale could not be accomplished, it then requires an  
9 order of the Court directing the title to those lots be  
10 reconveyed to the Winklemans.

11          THE COURT: That is correct.

12          MR. MAXWELL: And, Your Honor, as I noted to the  
13 Court at the trial, I think equity requires Mr. Winkleman to  
14 reimburse those individuals for the real estate taxes that  
15 they have paid on those parcels during their term of  
16 ownership.

17          THE COURT: Well, the Court would agree with that.  
18 I think by law he, in effect, would be liable for it. You  
19 quite correctly point out, it certainly is an equitable  
20 issue also. I think in light of the Court's ruling which  
21 would, in effect, void the sale, he would be legally  
22 responsible for the taxes in any event and there would be a  
23 legal claim for them above and beyond equity. I think  
24 general legal principles would support that, but you're  
25

1 entirely correct, Mr. Maxwell. Those two matters should be  
2 included in the Court's orders.

3 MR. MAXWELL: And finally, Your Honor, I know, I  
4 can tell from the Court's ruling that this was a well argued  
5 case on both sides; however, I did ask for attorney's fees.  
6 I understand under the American Rule that usually both sides  
7 are responsible for their own attorney's fees but I would  
8 just ask the Court if it would consider a motion for award  
9 of attorney's fees to Mr. Winkleman?

10 THE COURT: No, sir, the Court's going to deny  
11 that motion.

12 MR. MAXWELL: Okay.

13 THE COURT: Your exception to that ruling is noted  
14 and you can make a note of it in your order, but this case  
15 is a difficult one. These issues are such that there's not  
16 a great deal of appellate guidance and Mr. Dygert has argued  
17 his points extremely well and stated them and preserved them  
18 and may or may not wish to pursue them. That would be his  
19 judgment but, in any event, the Court will deny your motion  
20 for an award of attorney's fees.

21 MR. MAXWELL: Thank you, Your Honor.

22 THE COURT: All right. Anything else you'd like  
23 addressed?

24 MR. MAXWELL: That's all, Your Honor.  
25

1 THE COURT: All right. Mr. Dygert, anything from  
2 your standpoint?

3 MR. DYGERT: No, Your Honor. We will note our---

4 THE COURT: Certainly.

5 MR. DYGERT: ---exceptions to the Court's ruling--

6 -

7 THE COURT: Certainly.

8 MR. DYGERT: ---on the points that were ruled  
9 against the homeowners' association.

10 THE COURT: Yes, sir. Well, they're well-stated  
11 and well-preserved as are Mr. Maxwell's exceptions to the  
12 issues that he did not prevail upon in connection with the  
13 matter. All right? All right, that will conclude both of  
14 these cases then, and I believe these are the last matters  
15 on our docket today so on that note then, court will stand  
16 adjourned. I again thank counsel.

17 HEARING ADJOURNED.

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VIRGINIA:

## IN THE CIRCUIT COURT OF THE COUNTY OF GREENE

WILLIAM A. WINKELMAN,

Plaintiff,

v.

DOGWOOD VALLEY CITIZENS'  
ASSOCIATION, INC., et al.

Defendants.

Chancery No. 01-3033

## FINAL DECREE

Upon the trial of this matter and in consideration of the evidence and argument presented and pursuant to the decision of this Court announced in open Court on October 7, 2002, the Court

FINDS and DETERMINES that Dogwood Valley Citizens Association, Inc. qualifies as a property owners association under the Virginia Property Owners Association Act; and the Court further

FINDS and DETERMINES that §55-516 satisfies the demands of due process established by the Virginia Constitution; and the Court further

FINDS and DETERMINES that the sale of lots owned by Winkelman was properly authorized by the Dogwood Valley Citizens Association, Inc.; and the Court further

FINDS and DETERMINES that the failure of the Dogwood Valley Citizens Association, Inc. to follow its By-Laws regarding a 90 day notice period would not in and of itself cause such sale to be void; and the Court further

AT THE COPY TESTE:  
RKE# 071055.WPD

by: [Signature] Deputy Clerk  
2-11-03

BOOK 709 PAGE 285

*Return: 7/1e*

FINDS and DETERMINES that the aspects of the sale were not unconscionable; and the Court further

FINDS and DETERMINES that under Virginia Code §55-516 (I) only a "unit" can be sold and that the statute does not provide Dogwood Valley Citizens Association, Inc. with authority to sell the lots owned by Winkelman. Based on the foregoing findings and determinations, it is hereby

ADJUDGED, ORDERED, and DECREED that the sale of Lot 1 Section 5E of Dogwood Valley purchased by Gary E. Lowe and Karen H. Lowe is void and that the sale of Lot 2 Section 5E of Dogwood Valley to Jason Elliott Tinder is void; and it is further

ORDERED that such sales having determined to be void, the Clerk is directed to record a copy of this Order in the Greene County land records, reflecting William A. Winkelman as the Grantee and Gary E. Lowe and Karen H. Lowe as the Grantors as to Lot 1 Section 5E of Dogwood Valley and Jason Elliott Tinder as Grantor and William A. Winkelman as Grantee as to Lot 2 Section 5E of Dogwood Valley; and that recordation of this Order shall transfer record title to Lot 1 Section 5E of Dogwood Valley from Gary E. Lowe and Karen H. Lowe to William A. Winkelman, and Lot 2 Section 5E of Dogwood Valley from Jason Elliott Tinder to William A. Winkelman; and it is further

ORDERED that the recordation of such Order and the transfer accomplished thereby shall not be subject to Clerk's fee or recordation tax or any other fees; and it is further

ORDERED that William A. Winkelman shall pay to Gary E. Lowe and Karen H. Lowe the amount of any real estate taxes on Lot 1 Section 5E of Dogwood Valley paid by Gary E. Lowe and Karen H. Lowe; and it is further



ORDERED that William A. Winkelman shall pay Jason Elliott Tinder the amount of any real estate taxes on Lot 2 Section 5E of Dogwood Valley paid by Jason Elliott Tinder; and it is further

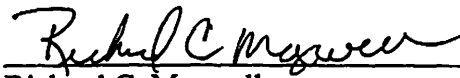
ORDERED that William A. Winkelman shall be responsible for current real estate taxes on Lot 1 Section 5E and Lot 2 Section 5E of Dogwood Valley.

The Clerk is directed to mail copies of this Order to counsel of record.

ENTERED this 10<sup>th</sup> day of February, 2003.

  
Circuit Court Judge

Seen and Objected to for the reasons stated in the pleadings, argument, and authorities presented to the Court as to the Court's finding and determination as to the qualification of the Dogwood Valley Citizens Association as a property owners association qualifying under the Virginia Property Owners Association Act; the Court's finding and determination that §55-516 satisfies the due process requirements of the Virginia Constitution; the Court's finding and determination that the sale of Winkelman's lots was authorized by the Dogwood Valley Citizens Association and the finding and determination that the failure of the Dogwood Valley Citizens Association to follow its By-Laws did not render the sale void.

  
Richard C. Maxwell  
Woods, Rogers & Hazlegrove, P.L.C.  
Post Office Box 2964  
Charlottesville, VA 22902-2964  
(434) 295-8300  
Counsel for William A. Winkelman

Seen and Objected to for the reasons stated in the pleadings, argument, and authorities presented as to the finding and determination of the Court that §55-516 (I) does not provide authority for the sale of a lot.

*Endorsement Dispensed With  
Notice of Entry Given*

*RDZ*

George H. Dygert, Esq.

George H. Dygert & Associates

675 Peter Jefferson Parkway, Suite 190

Charlottesville, VA 22911

Telephone: 434-979-5515

Counsel for Dogwood Valley Citizens Association,  
Jason Tinder, Gary Lowe, and Karen Lowe

INSTRUMENT #0300605  
RECORDED IN THE CLERK'S OFFICE OF  
GREENE ON  
FEBRUARY 11, 2003 AT 08:40AM  
MARIE C. DURRER, CLERK

BY:

*Chabale Burgess*

(DC)

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GREENE

WILLIAM A. WINKELMAN,

Plaintiff.

v.

Chancery No. 01-3033

DOGWOOD VALLEY CITIZENS' ASSOCIATION, INC., et al.

Defendants.

**DEFENDANTS'  
STATEMENT OF FACT  
AND OTHER INCIDENTS OF TRIAL**

COME NOW the Defendants, Dogwood Valley Citizens Association, Inc., Jason Elliott Tinder, Gary E. Lowe and Karen H. Lowe, by counsel, and for their Statement of Facts and Other Incidents of Trial of this case respectfully represent as follows:

1. The trial of this case was held on August 13, 2002, and Judge Bouton announced his opinion from the bench on October 7, 2002.
2. William A. Winkelman, Kelly A. Hobbs, Gary E. Lowe, Jason E. Tinder, and Matthew P. Brown were called as witnesses by the Plaintiff and testified. Matthew P. Brown was called as a witness by the Defendants and testified.
3. The court reporter who was hired by Defendants to take the proceedings at trial was late arriving and, after some delay, the parties elected to proceed with the trial prior to the arrival of the court reporter.
4. The court reporter arrived after the testimony of William A. Winkelman was completed, and near the end of testimony by Kelly A. Hobbs. Therefore, only a small portion of the testimony of Kelly A. Hobbs, together with the complete testimony of Gary E. Lowe, Jason Elliott Tinder, and Matthew P. Brown are included in the partial

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*Marie C. Dune*  
Clerk

transcript filed with this Statement of Fact and Other Incidents of Trial. All of the argument of counsel is included in the partial transcript.

5. William A. Winkelman testified that he had owned two lots in Dogwood Valley Subdivision, which he purchased in 1980 for \$9,250.00; that he had paid the road maintenance fees and taxes over the years, but did not pay the 1995 special assessment adopted by the Association because he was between jobs. He testified that he received the letters dated September 17, 1996 at Tab 24 of the stipulated documents; dated April 4, 1997 at Tab 26 of the stipulated documents; and paid \$200.00, which he sent by check, but did not realize that the property would be sold. He also testified that he received the letter dated May 13, 1997 at Tab 28 of the stipulated documents, and made no payment thereafter because he had medical problems and was out of work. He also testified that he received the road fee notice dated November 15, 1997 at Tab 29 of the stipulated documents, but did not make a payment, and that he received the letter dated February 20, 1998 at Tab 31 of the stipulated documents, but did not make a payment. He also testified that he did not receive the letter dated April 2, 1998 at Tab 34 of the stipulated documents, but did receive the letter dated August 27, 1998 at Tab 40 of the stipulated documents. He testified that the tax assessment of the two lots by Greene County in 1998 was \$13,500.00.

6. Kelly A. Hobbs testified that she is an attorney admitted to practice of law in the Commonwealth of Virginia and was, at all times from October 15, 1996 until the date of trial, an attorney for the firm of George H. Dygert & Associates; that, in that capacity, she had dealt with Matthew P. Brown, known to her to be President of and a member of the Board of Directors of Dogwood Valley Citizens Association, Inc.; that she had

primarily communicated with Mr. Brown in his capacity as President of the Board of Directors regarding any legal matters, including the collection of unpaid assessments for the Association; that she had been requested by Mr. Brown on behalf of the Board of Directors, to foreclose on the owners of those lots within Dogwood Valley Subdivision which had outstanding special assessments; and that she had never served as a Trustee in the foreclosure sale under a Deed of Trust.

7. Ms. Hobbs also testified that she had prepared at the request of Matthew P. Brown, President of Dogwood Valley Citizens Association, Inc. the Memorandums of Lien claimed by Property Owners Association for Delinquent Special Assessment Fee at Tabs 25 and 34 of the stipulated documents, and recorded the same in the records of the Clerk of the Circuit Court for Greene County.

8. Ms. Hobbs testified that Mr. Winkelman's lots, Lot 1 and 2, Section 5E were sold at a public auction, which she conducted on April 29, 1998, pursuant to Code of Virginia §55-516, and that the documents at Tabs 37 and 38 of the stipulated documents were prepared by her and reflect the results of this sale. She also testified that there were a total of eleven lots sold as a part of this sale held on April 29, 1998.

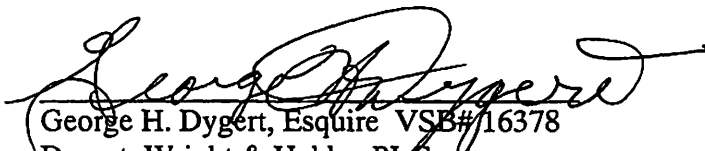
9. The remainder of Ms. Hobbs' testimony is included in the transcription filed as a part of this Statement of Fact and Other Incidents of Trial.

10. The original transcription of a portion of the trial taken on August 13, 2002 and a complete transcription of the Court's ruling from the bench on October 7, 2002, which also includes the Court's ruling in the case of *Dogwood Valley Citizens Association, Inc. v. Jerome Hatcher, et al.* is attached hereto and incorporated herein as a part of Defendants' Statement of Fact and other Incidents of Trial.

Respectfully submitted,

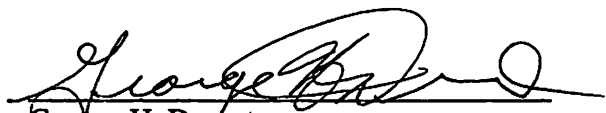
DOGWOOD VALLEY CITIZENS'  
ASSOCIATION, INC.  
JASON ELLIOTT TINDER,  
GARY E. LOWE and  
KAREN H. LOWE

By Counsel

  
George H. Dygert, Esquire VSB#16378  
Dygert, Wright & Hobbs, PLC  
675 Peter Jefferson Parkway, Suite 190  
Charlottesville, Virginia 22911  
Telephone: (434) 979-5515  
Facsimile: (434) 295-7785  
Counsel for Defendants

#### CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing Statement of Fact was sent via first class mail this 28 day of March 2003, to Richard C. Maxwell, Esquire, Woods, Rogers & Hazlegrove, P.O. Box 2964, Charlottesville, Virginia 22902-2964.

  
George H. Dygert

The court has reviewed the above Statement of Facts and Other Incidents of Trial. Pursuant to Rule 5:11 (d) (5) the court certifies the accuracy of the Statement. The court further certifies that the procedural requirements of Rule 5:11 have been satisfied.

mailed copy to George H. Dygert, Esq and  
Richard C. Maxwell, Esq. 4-16-03

4

  
Judges 4-15-03

### **ASSIGNMENT OF ERROR**

The Final Decree entered in this case in the Circuit Court for the County of Greene on February 10, 2003 is in error because the Trial Court erroneously determined that Code of Virginia §55-516 I. does not provide authority for non-judicial sale of a lot located in a subdivision subject to the Virginia Property Owners Association Act by a Property Owners Association to enforce a lien for unpaid assessments.