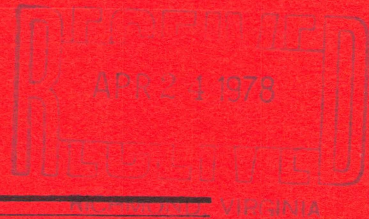


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CLERK  
SUPREME COURT OF VIRGINIA



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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

---

RECORD NO. 771300

---

WILLIAM H. DUVALL, ET AL.

v.

FORD LEASING DEVELOPMENT CORPORATION

---

JOINT APPENDIX

---

Henry C. Mackall, Esq.  
Douglass S. Mackall, Esq.  
Glenn H. Silver, Esq.  
4031 Chain Bridge Road  
Fairfax, Virginia 22030

*Counsel for Appellant*

W. Curtis Sewell, Esq.  
607 Prince Street  
P. O. Box 820  
Alexandria, Virginia 22313

*Counsel for Appellee*

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*True in open court*  
*U. S. 77*

AMENDED BILL OF COMPLAINT

TO THE HONORABLE JUDGES OF THE AFORESAID COURT:

COMES NOW the Complainants, by counsel, and file this their Amended Bill of Complaint and state as follows:

1. The Complainants are residents and owners of lots in the subdivision known as Belle Haven in Fairfax County, Virginia.

2. That upon information and belief at all times mentioned herein, Ford Leasing Development Corporation was a foreign Corporation licensed to do and doing business in Virginia.

3. The Defendant, Ford Leasing Development Corporation is the owner of 10.8378 acres of land in Fairfax County, Virginia, having acquired same by deed dated June 20, 1972, recorded June 20, 1972, in Deed Book 3643 at page 232 among the land records of Fairfax County, Virginia.

4. The 10.8378 acres now owned by the Defendant is a part of the same tract of land originally acquired by Belle Haven Realty Corporation by Deed dated January 29, 1925, and recorded in Deed Book K-9 at page 587 among the land records of Fairfax County, Virginia.

5. The Belle Haven Realty Corporation in accordance with a master plan for the residential development of said tract of land caused a number of portions thereof to be subdivided and recorded.

6. Some of the aforesaid dedications were recorded among the land records as follows:

Deed Book

N-9 at page 18

Z-9 at page 125

O-10 at page 103

O-12 at page 234

A-15 at page 359

7. All of the dedications contained restrictive covenants which among other things limited the use of the lots to residential purposes.

8. That a total of more than 200 residential lots were thus subdivided and were then sold by the Belle Haven Realty Corporation. All of the lots referred to in paragraph 6 are now used for residential purposes.

9. By deed dated August 15, 1952, recorded in Deed Book 1015, page 113, the Belle Haven Realty Corporation conveyed to Helen J. Olmi, a part of the land acquired in K-9-587 by the Belle Haven Realty Corporation. A copy of said deed marked Exhibit "A" is attached hereto and prayed to be read as a part hereof.

10. The land now owned by the Defendant, Ford Leasing Development Company, which is referred to in paragraph 3 is a portion of the land described in Exhibit "A".

11. The said Helen J. Olmi subsequently subdivided portions of the land described in Exhibit "A". Said subdivisions were recorded among the land records of said County.

12. Each of the lots in said subdivisions were subjected to restrictions limiting the use thereof to residential purposes.

13. That by reason of the recordations among the land records of Fairfax County, Virginia, of the documents referred to herein the Defendant had notice that the land it purchased was subject to a restrictive covenant limiting its use to residential purposes.



14. Your Complainants further allége that all or part of the 10.8378 acres now owned by the Defendant, Ford Leasing Development Corporation is subject to the same restriction limiting its use to residential purposes.

15. That the Belle Haven Realty Corporation and/or Helen J. Olmi had no right, power or authority to remove any of the restrictive covenants as aforementioned without the consent of some or all of the owners of the other subdivided parcels.

16. That upon information and belief the Defendant has submitted a site plan to the officials of Fairfax County and intends to start construction in the immediate future of an automobile sales and service center.

17. That the proposed automobile sales and service center about to be constructed by the Defendant will violate the restrictive covenant limiting the use of said land to residential purposes.

18. That your Complainants are without an adequate remedy at law.

WHEREFORE, your Complainants pray that the Defendant be enjoined from constructing the proposed building and from using the land owned by it for purposes other than residential and for such other and further relief as to the Court may seem just and proper in the premises.

WILLIAM H. DUVALL  
MILDRED DUVALL  
WILLIAM E. WEESNER  
IRENE S. WEESNER  
DANIEL M. ROCHE  
ERMA ROCHE  
FREDERICK A. BALLARD  
MARY ELIZABETH BALLARD  
HENRY W. ANDERSON  
ELIZA ANDERSON  
HOWARD L. KITZMILLER  
SHIRLEY P. KITZMILLER  
TIMOTHY E. ROWAN  
JOAN ROWAN  
WILLIAM F. GREGORY 003  
MILLIE GREGORY

By

C. Mackall  
Counsel

MACKALL, MACKALL & WALKER  
4031 Chain Bridge Road  
Fairfax, Virginia 22030

By

Douglass S. Mackall, III  
Counsel for Complainants

CERTIFICATE OF SERVICE

I hereby certify that on this 4 day of March, 1977, a copy of the foregoing Amended Bill of Complaint was mailed, postage prepaid, to W. Curtis Sewell, Esquire, Counsel for Defendant, 607 Prince Street, Alexandria, Virginia, 22314.

Douglass S. Mackall, III



FILED  
JUN 29 1976  
JAMES E. ROOFNAGLE  
Clerk of the Circuit Court  
of Fairfax County, Va.

A N S W E R .

COMES NOW FORD LEASING DEVELOPMENT CORPORATION, by counsel,  
and for its answer to the Bill of Complaint herein states as  
follows:

1. Upon information and belief, complainants are residents  
of one or more subdivisions but the allegations that the com-  
plainants are residents of a single subdivision known as Belle  
Haven in Fairfax County are denied.

2. Defendant FORD LEASING DEVELOPMENT CORPORATION admits  
that it is a foreign corporation properly licensed and transacting  
business at the present time in Virginia.

3. Defendant admits the allegations contained in paragraph  
3 of the Bill of Complaint.

4. Defendant is without sufficient knowledge to form a  
belief as to the allegations contained in paragraph 4 of the Bill  
of Complaint and the allegations are therefore denied.

5. Defendant admits that Belle Haven Realty Corporation  
has subdivided portions of a tract of land but denies that those  
parcels subdivided were a parcel of a Master Plan for residential  
development as alleged in paragraph 5 of the Bill of Complaint.

6. The allegations in paragraph 6 of the Bill of Complaint are admitted, except that upon information and belief, the instrument recorded among the Fairfax County Land Records, in Deed Book A-11 at page 462 is a Deed of Trust and not a Deed of Subdivision, and the instrument recorded among the Fairfax County Land Records, in Deed Book 458 at page 267 is a street dedication for the extension of Belfield Road and not a deed of subdivision.

7. Defendant admits that certain of the subdivisions set forth in paragraph 7 of the Bill of Complaint contain restrictive covenants relating to residential use but deny that the instrument contained in Deed Book A-11, at page 462 and Deed Book 458 at page 267 contain restrictive covenants of any nature.

8. Defendant has insufficient information to form a belief as to the allegations contained in paragraph 8 of the Bill of Complaint and they are denied.

9. Defendant admits that by Deed dated August 15, 1952, recorded as alleged, that Belle Haven Realty Corporation conveyed to Helen J. Olmi certain property purported in the instrument to be part of K-9-587 but has insufficient knowledge to form a belief as to the derivation of title as alleged in paragraph 9.

10. Defendant admits the allegations contained in paragraph 10 of the Bill of Complaint.

11. Defendant admits the allegations contained in paragraph 11 of the Bill of Complaint.

12. Defendant has insufficient information to form a belief as to the allegations contained in paragraph 12 of the Bill of Complaint and they are denied.

13. The allegations contained in paragraph 13 of the Bill of Complaint are denied.



14. The allegations contained in paragraph 14 of the Bill of Complaint are denied.

15. The allegations contained in paragraph 15 of the Bill of Complaint are denied.

16. Defendant admits the allegations contained in paragraph 16 of the Bill of Complaint.


17. The allegations contained in paragraph 17 of the Bill of Complaint are denied.

18. The allegations contained in paragraph 18 of the Bill of Complaint are denied.

19. Defendant denies each and every allegation contained in the Bill of Complaint not specifically admitted herein.

WHEREFORE, defendant having fully answered the Bill of Complaint respectfully requests that this action be dismissed and they be awarded costs and reasonable attorneys' fees and such other relief as to the Court may deem just.

FORD LEASING DEVELOPMENT CORPORATION.  
By Counsel

  
W. CURTIS SEWELL  
Counsel for Defendant  
607 Prince Street  
Alexandria, Virginia 22313  
Telephone: 836-8400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Answer has been mailed, postage prepaid, to DOUGLASS S. MACKALL, III, ESQUIRE, 4031 Chain Bridge Road, Fairfax, Virginia, 22030, Counsel for Complainants, this 29 day of June, 1976.

007   
W. CURTIS SEWELL

1 THE COURT: Any preliminary matters?

2 MR. SEWELL:: Just one other matter. I'd

3 like to introduce on this side of the bar, Mr. Frank Rou

4 Ford of Ford Motor Company, and Mr. Thomas Kolojeski

5 of the Ford Motor Company, Your Honor.

6 THE COURT: As counsel for Ford?

7 MR. SEWELL: No, sir. They represent the

8 defendants themselves. I just wanted to tell the

9 Court who was present in Court.

10 THE COURT: Let the record show that the

11 complainant in the case, Mr. Duvall, et al, is

12 represented by Mr. Mackall. The defendant is

13 represented by Mr. Sewell.

14 MR. MACKALL: Your Honor, there are a couple

15 of preliminary matters. The plaintiffs are all here.

16 Most of them are here. Some of them are not here,

17 but the plaintiffs are here.

18 We have just to clear up some -- an amended

19 Bill of Complaint which Mr. Sewell got last week, and

20 he has no objection to that being filed today.

21 THE COURT: It doesn't call for an answer?

22 MR. SEWELL: Your Honor, there's only one

23 matter on it that leaves some confusion, and that's





1 a reference to one Deed which, Mr. Mackall can point  
2 out to the Court; the defendants don't understand.  
3 Other than that, I don't think that it's --

4 MR. MACKALL: It's immaterial, Your Honor.  
5 It's surplus, so it's --

6 MR. SEWELL: I don't really think it calls  
7 for an answer. There's been a general denial filed.

8 THE COURT: You wish to adopt your previous  
9 answer as your answer to this amended Bill of  
10 Complaint?

11 MR. SEWELL: Yes, Your Honor.

12 THE COURT: All right. Any stipulations?

13 MR. MACKALL: Yes, Your Honor. I think we  
14 have -- I believe we have a lot of them. Your Honor,  
15 I have a list of 41 exhibits, which I'm going to  
16 introduce into evidence. I have given Mr. Sewell a  
17 copy, and I'd like to sort of -- I'd like to give  
18 Mrs. Testerman a copy of this so that we can sort  
19 of keep them in some order, and as I go through one,  
20 if he has an objection, then we'll --

21 THE COURT: On the list of exhibits, Mr.  
22 Sewell, can you stipulate to the admissibility of any  
23 of them, so he could go ahead and admit those?



1 MR. MACKALL: The next one is a preliminary  
2 report on title received by the defendant which, in my  
3 opinion, was admitted to in the Request for Admissions  
4 that are filed in the answer. Mr. Sewell may object to it.

5 MR. SEWELL: Your Honor, I do have an  
6 objection to this being admitted into evidence. In  
7 the Request for Admissions, Mr. Mackall requested  
8 that defendants admit to the fact of a preliminary  
9 title report and it is a fact and we admitted to it,  
10 but I don't believe that we admitted to it for admission.  
11 In other words, I was admitting the truth or veracity  
12 of the facts stated, and that was my understanding  
13 of the request from -- you can read the language of  
14 the specific request.

15 The item that we're referring to comes in  
16 a preliminary title report made by an attorney at the  
17 request of Lawyers Title Insurance Corporation and  
18 is nothing more than a perfect example of hearsay. It's  
19 obviously admitted to prove the truth of the statements  
20 stated in the preliminary report, and I don't know that  
21 the preliminary report --

22 MR. MACKALL: It's number 14, Your Honor,  
23 in the Request for Admissions.



1 MR. SEWELL: It's number 16.  
2 MR. MACKALL: Sixteen. I'm sorry.  
3 MR. SEWELL: Number 16 was denied also,  
4 Your Honor. Does the Court have the Request and  
5 the Denial?  
6 THE COURT: I haven't found it as yet.  
7 MR. SEWELL: I could read them if the Court  
8 would like if it would save time, Your Honor.  
9 THE COURT: Number 14?  
10 MR. SEWELL: Number 16.  
11 MR. MACKALL: Sixteen, Your Honor. That's  
12 my error.  
13 THE COURT: Do you know the date that they  
14 were filed?  
15 MR. SEWELL: The Request was served on me  
16 21 December, '76, Your Honor. I have my copy of that.  
17 I'll be glad to show the Court, if Mr. Mackall has no  
18 objection.  
19 MR. MACKALL: I have no objection, no. Go  
20 ahead.  
21 MR. SEWELL: Your Honor, the request number  
22 16 is there, and there's our response for number 16.  
23 THE COURT: Well, the Request is only being



1 that the Ford Motor Company was given notice of the  
2 restrictive covenants. Now, to the accuracy of it,  
3 I think it's yet to be proved. So --

4 MR. SEWELL: Yes, sir, there's no question  
5 that Ford Motor Company saw a copy of the preliminary  
6 title report, Your Honor, and I responded as best I  
7 knew how, but I don't believe that the report  
8 itself --

9 THE COURT: The Court would only accept that  
10 as to showing that Ford Motor Company was given a  
11 report that showed, in that examiner's opinion, that  
12 there was a restrictive covenant.

13 MR. SEWELL: A preliminary report.

14 THE COURT: Right.

15 MR. SEWELL: Yes, sir.

16 MR. MACKALL: That's the only reason. I  
17 agree.

18 THE COURT: That would be the only purpose  
19 it would be admitted, just to show --

20 MR. SEWELL: The preliminary report.

21 THE COURT: -- to that extent, of notice  
22 only.

23 MR. SEWELL: With the understanding that



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1 as to the rest of our response, that the final report did  
2 not contain any such restriction?

3 THE COURT: I haven't seen the final report.  
4 So you may offer the final report yourself to see what  
5 it contains.

6 (The document heretofore referred  
7 to was marked Complainant's  
8 Exhibit No. 29 for identification  
9 and was received in evidence.)

10 MR. MACKALL: The next exhibit is the Deed  
11 to the defendant, Deed Book 3643, page 232.

12 (The document heretofore referred  
13 to was marked Complainant's  
14 Exhibit No. 30 for identification  
15 and was received in evidence.)

16 MR. MACKALL: The next exhibit is the Deed  
17 for Mrs. Summer to Mr. and Mrs. Duvall in Deed Book  
18 3726/390, to two of the plaintiffs.

19 MR. SEWELL: No objection to those, Your  
20 Honor.

21 (The document heretofore referred  
22 was marked Complainant's Exhibit No.  
23 31 for identification and was  
received in evidence.)





1 Whereupon,

2 HOWARD L. KITZMILLER,

3 a complainant, was called for examination by counsel  
4 in his own behalf, and, having been duly sworn, was  
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MACKALL:

8 Q State your name, please, sir.

9 A Howard L. Kitzmiller.

10 Q Where do you live, sir?

11 A 2230 Windsor Road, Belle Haven.

12 Q Are you familiar with the other plaintiffs  
13 in the lawsuit, and I hand you here a copy of the  
14 amended Bill of Complaint.

15 A Yes, I am.

16 Q Are all those people presently owners in  
17 Belle Haven?

18 A Yes, they are.

19 Q Do all of them presently live in Belle Haven  
20 except for Mr. and Mrs. Roche who live in Benton  
21 Harbor, Michigan?

22 A Yes, they do.

23 Q Now, are you opposed -- have you seen the



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1 Ford Motor Company -- the defendant, Ford Leasing  
2 Development Company's plans to develop this site that  
3 we're talking about here?

4 A Yes, I've seen some drawings.

5 Q Are you opposed to their use of this land  
6 in the manner they're talking about?

7 A Yes, I am.

8 Q All right, sir. When did you purchase  
9 your home, Mr. Kitzmiller?

10 A We signed the contract in January, 1960 and  
11 actually settled in March of 1960.

12 Q Was Mr. Olmi involved in the sale to you  
13 of your home?

14 A Eugene Olmi, Jr., yes, sir.

15 Q In what way?

16 A Mr. Olmi -- we drove by the neighborhood in  
17 August of 1959. There was a sign indicating that  
18 there were five lots or homes to be built. Mr. Olmi  
19 was a real estate agent and broker, and his mother,  
20 Helen Olmi, was the owner of the land.

21 Q Now, when you bought the land, were any  
22 representations made to you concerning the land on  
23 the other side of Windsor Road?



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1 A Yes, there were.

2 Q And what were those representations?

3 MR. SEWELL: Your Honor, I object to what  
4 the representations were. I have no objection to  
5 saying representations were made, but I think it's  
6 hearsay as to -- I don't even know who stated it.

7 THE COURT: I take it you're asking for  
8 statements of Mr. Olmi, are you not?

9 MR. MACKALL: Yes, sir.

10 BY MR. MACKALL:

11 Q What did Mr. Olmi say to you concerning  
12 the land across Windsor Road?

13 THE COURT: You're offering it for the  
14 truth contained in the statements?

15 MR. MACKALL: I'm offering it to show a  
16 planned scheme, also.--

17 THE COURT: Well, what exception to the  
18 hearsay rule are you coming in under?

19 MR. MACKALL: Mr. Olmi was the seller to  
20 Ford. What he said about this land --

21 THE COURT: I think that would still be  
22 hearsay unless you can bring it in under one of the  
23 exceptions.



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1 MR. MACKALL: Your Honor, I just am showing  
2 that those statements were made, not whether they're  
3 true.

4 THE COURT: All right, if you're offering  
5 it for just the fact that the statements was made  
6 but not for the truth contained therein, then it can  
7 come in.

8 MR. SEWELL: All right. I have another  
9 ground of objection, Your Honor. They're oral state-  
10 ments that he just said he was attempting to show a  
11 plan of development which is something that effects  
12 the land. I think an oral statement comes under the  
13 statute of frauds, and I think an oral representation  
14 has absolutely no basis to show exactly what he says  
15 he wanted to show.

16 THE COURT: The Court overrules the objection.

17 BY MR. MACKALL:

18 Q Go ahead, sir, please, and answer the  
19 question.

20 A Mr. Olmi, in a conversation in front of the  
21 lots we later purchased which is directly across from  
22 the defendant's land, indicated that that land was  
23 too steep to build on and it had been deeded to Fairfax



1 County for park and flood control.

2 Q Being a plaintiff here, assuming the Court --  
3 is it your desire to enforce the restrictive covenants,  
4 if any, that apply to the Ford land?

5 A Yes, it is.

6 Q And is that the intent of the other  
7 plaintiffs involved in this lawsuit?

8 MR. SEWELL: I would object to any intent  
9 of the other plaintiffs.

10 THE COURT: Are you going to ask that each  
11 plaintiff be called?

12 MR. SEWELL: No, sir, but I don't think  
13 that this plaintiff can state what the intent --

14 THE COURT: I agree with you, but I thought  
15 you might bring it down and not have to call so many  
16 witnesses, but I'll sustain your objection. If we  
17 have to call all of them, then we'll call them all.

18 MR. SEWELL: Well, sir, I don't have any  
19 problem with stipulating with Mr. Mackall that they've  
20 all joined as plaintiffs, but I don't think that this  
21 witness can testify --

22 THE COURT: No, he can't, but as long as  
23 you made the objection, I'll sustain the objection





1 even though we may have to call each and every one.

2 MR. MACKALL: Will you stipulate they each  
3 want to enforce their rights, Mr. Sewell, that they  
4 have, if any?

5 THE COURT: Is that correct, Mr. Sewell?

6 MR. SEWELL: Yes, sir, I don't have any  
7 problem with that.

8 THE COURT: The Court would accept the  
9 stipulation.

10 MR. MACKALL: That's all I have for him.

11 THE COURT: Cross-examine.

12 MR. SEWELL: Just one second.

13 I have no questions.

14 THE COURT: You may step down. Thank you.

15 (Witness excused.)

16 THE COURT: Call your next witness.

17 MR. MACKALL: I'd like to call Mr. Weesner.

18 (Witness sworn.)  
19  
20  
21  
22  
23



1 the trial. There's no question as to the marking for  
2 identification at the time of the taking of the  
3 deposition. I think that it's incumbent now upon the  
4 party to show it's admissibility, standing on its  
5 own two feet, as to coming into evidence. The mere  
6 fact that it was marked at the time of taking of the  
7 deposition and not moved into evidence does not make  
8 it automatically admissible.

9 MR. MACKALL: All right, sir. I would  
10 except for the --

11 THE COURT: Surely.

12 Whereupon,

13 ORLO C. PACULLI,  
14 a witness, was called for examination by counsel on  
15 behalf of the complainants, and, having been duly  
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MACKALL:

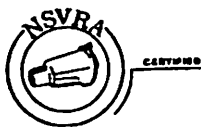
19 Q State your name, please, sir.

20 A Orlo C. Paculli.

21 Q What is your occupation?

22 A I am a civil engineer and land surveyor.

23 Q Now, Mr. Paculli, is this a copy of the



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1 Fairfax County tax map?

2 A Yes, sir.

3 Q And on this --

4 MR. MACKALL: I'd like to mark this in  
5 evidence.

6 THE COURT: Marking or introducing?

7 MR. MACKALL: Introducing.

8 THE COURT: Any objection?

9 MR. SEWELL: No objection.

10 THE COURT: And all the other exhibits have  
11 been admitted by stipulation without objection.

12 MR. SEWELL: With the exception of the  
13 title report, Your Honor.

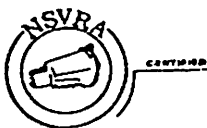
14 THE COURT: Only that part where there is  
15 a statement of fact as contained in the title report.

16 MR. SEWELL: I didn't mean to correct the  
17 Court, but I just --

18 (The document heretofore referred to  
19 was marked Complainant's Exhibit  
20 No. 36 for identification and was  
21 received in evidence.)

22 BY MR. MACKALL:

23 Q Now, Mr. Paculli, did I ask you to draw on



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1 there for me the description of the land that was --

2 THE COURT: Any question as to the witness  
3 being an expert, Mr. Sewell?

4 MR. SEWELL: No, Your Honor.

5 BY MR. MACKALL:

6 Q --the description contained in Deed Book 1015,  
7 page 113 where Belle Haven Realty Corporation conveyed  
8 certain land to Helen Olmi and Eugene J. Olmi; did you  
9 draw on there in red the 74.4685 acres described in this Deed

10 A I did.

11 Q And is this it?

12 A That is, the outline of it in red.

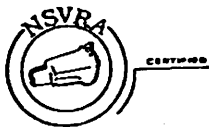
13 THE COURT: The description in 1015, page  
14 113, what exhibit is that?

15 MR. MACKALL: It's Number 2.

16 MR. SEWELL: That was his Number 2, Your  
17 Honor.

18 Just as a point of clarification, this is:  
19 the overall boundaries of the property that was deeded in  
20 the Deed that was conveyed.

21 MR. MACKALL: Yes, sir, the description  
22 conveyed to Mr. Olmi, what land was conveyed to Mr. Olmi  
23 in that Deed.



1 MR. SEWELL: But the description of the Deed  
2 also excepted certain property.

3 MR. MACKALL: It did not except any property.  
4 Mr. Olmi got his, 73 acres or 78 acres in that Deed.

5 MR. SEWELL: Okay.

6 THE COURT: In Exhibit Number 2 was there a  
7 "less and except" to the description?

8 MR. SEWELL: No, sir. There was -- a portion  
9 of the land was conveyed less and except certain  
10 restrictions.

11 Just as a point of clarification, I believe  
12 that the circle should be included in the property that  
13 is conveyed to Mr. Olmi too.

14 MR. MACKALL: If you want to cross-examine  
15 him on it, okay. I'm not --

16 MR. SEWELL: Okay.

17 THE COURT: All the Court was attempting to  
18 do was to tie the plat into a particular Deed by exhibit  
19 number to make it easier.

20 MR. SEWELL: Yes, sir.

21 MR. MACKALL: That's all I have for Mr.  
22 Paculli.

23 THE COURT: Cross-examine.





1 MR. MACKALL: Do you want this?

2 MR. SEWELL: Yes, please.

3 CROSS-EXAMINATION

4 BY MR. SEWELL:

5 Q Mr. Paculli, just for point of clarification,  
6 did you indicate on this tax map all of the property that  
7 was contained in the Deed that Mr. Mackall made reference  
8 to, 1015/113?

9 A Yes, sir, that they contained in the  
10 description of the seventy-whatever-four acres,  
11 approximately.

12 Q And didn't the Deed contain the conveyance of  
13 Fort Willard Circle?

14 A I'd have to re-read the description. It  
15 appeared to me that the description of the 74 acres  
16 itself was as delineated. To facilitate my looking at  
17 it, to save time, could you point out to me the area  
18 that you question, sir?

19 Q (Mr. Sewell indicating.)

20 A I can't tell you where that illusion comes  
21 from except the fact that the description of the  
22 seventy-some odd acres does not include it. Now, there may  
23 have been the other parcel -- for instance, the 6.8 acre



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1 parcel may have something to do with Fort Willard Circle.  
2 I did not examine it; only the basic description of the  
3 entire tract as delineated here. You can see the circle,  
4 it misses it quite some distance.

5 MR. SEWELL: I have no further questions.

6 THE COURT: Any further questions?

7 MR. MACKALL: Just one, quickly.

8 (Pause.)

9 That's all I have of him.

10 THE COURT: May he be excused?

11 MR. MACKALL: Yes, sir.

12 THE COURT: You may step down. You're free  
13 to go.

14 ~~(Witness excused.)~~

15 ~~MR. MACKALL: Admiral Duvall, please.~~

16 ~~(Witness sworn.)~~



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1 Whereupon,

2 WILLIAM H. DUVALL,

3 a complainant, was called for examination by counsel  
4 in his own behalf, and, having been duly sworn, was  
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MACKALL:

8 Q State your name, please, sir.

9 A William H. Duvall.

10 Q And what is your address?

11 A 2305 Windsor Road, Belle Haven, Fairfax  
12 County.

13 Q Would you describe for the Court a little  
14 bit about the subdivision known as Belle Haven,  
15 Admiral Duvall, what it's like?

16 A Well, not to be verbose, I am acquainted  
17 with Alexandria and with Fairfax County, having been  
18 born in Fairfax County and knowing Randall Caton,  
19 who, I believe, planned the original Belle Haven  
20 community. I was never fortunate enough to dwell in  
21 Belle Haven. When I retired from the Navy, after  
22 living in several places in and around this area, I  
23 bought this property in Belle Haven because I was



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1 acquainted with and became rather closely associated  
2 with the then owner, Nancy Sumner. I bought it from  
3 her.

4 MR. SEWELL: Your Honor, excuse me. I  
5 appreciate Admiral Duvall's comments, but I don't  
6 think thus far they've been responsive at all to the  
7 question.

8 THE COURT: I think it would be better to  
9 have questions and answers rather than a narration.  
10 It will probably save time.

11 BY MR. MACKALL:

12 Q Mr. Duvall, does the land of Belle Haven  
13 lie -- let's see, where is north area -- north of  
14 Fort Hunt -- northwest of Fort Hunt Road as shown on  
15 this plat? Here's your north area. Does the  
16 subdivision of Belle Haven lie -- and here is Fort  
17 Hunt Road -- lie northwest of -- northwest of  
18 Fort Hunt Road?

19 A Now, let me get this straight. Yes, it  
20 does.

21 Q And is Belle Haven, considering -- forgetting  
22 a minute the land involved in the lawsuit -- but is  
23 Belle Haven these lots shown on here that are north



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1 of the red line and along Fort Hunt Road going back  
2 to Windsor Road? North of the bottom red line, sir,  
3 and going on up.

4 A Yes, yes.

5 Q And that is -- now what type of residential  
6 area is Belle Haven, Admiral Duvall?

7 A It's a residential community of very good  
8 quality.

9 Q And what do you mean by good quality?

10 A Where one could enjoy a residential  
11 environment without outside interference from  
12 commercial and other types of land utilization.

13 MR. MACKALL: That's all I have.

14 THE COURT: Cross-examine.

15 MR. SEWELL: I have no questions, Your  
16 Honor.

17 THE COURT: You may step down. Thank you.

18 (Witness excused.)

19 THE COURT: Call your next witness.

20 MR. MACKALL: Your Honor, getting back to  
21 the plat here, referring you to the deposition, on  
22 page 13 of the deposition --

23 THE COURT: What page?



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1 testimony in terms of an appraiser to give the Court  
2 a basis should the Court find -- and we submit the  
3 Court would not find -- but should the Court find  
4 the presence of a restrictive covenant, we would  
5 submit a basis that that covenant should not be  
6 enforced in this particular case.

7 I'd like to call Mr. Whitten, if I may.

8 THE CLERK: Raise your right hand, please.

9 (Witness sworn.)

10 THE CLERK: Have a seat.

11 Whereupon,

12 ROBERT G. WHITTON

13 a witness, was called for examination by counsel on  
14 behalf of the defendant, and, having been duly sworn,  
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SEWELL:

18 Q Would you state your full name and your  
19 residence address, please, sir?

20 A Robert G. Whitten, 1130 Arcturus Lane,  
21 Alexandria.

22 Q And would you state what affiliation, if  
23 any, you had with Belle Haven Realty Corporation?



1           A       Yes. I was a shareholder and then vice-  
2 president and director.

3           Q       And during what period of time were you  
4 associated with Belle Haven Realty Corporation?

5           A       1944-1956.

6           Q       And what was your capacity of your association  
7 during those years?

8           A       As vice-president and director.

9           Q       And were you familiar with the day-to-day  
10 operations of Belle Haven Realty Corporation?

11          A       Yes.

12          Q       And were you engaged in the activities of  
13 Belle Haven Realty Corporation during this period of time?

14          A       Yes.

15          Q       Are you personally familiar with the develop-  
16 ment of Belle Haven during this period of time?

17          A       Yes.

18          Q       Would you state, just briefly, how Belle  
19 Haven developed according to your personal knowledge.

20               MR. MACKALL: Your Honor, if he's limited  
21 to 1944 to '56, fine. I think prior to that -- since he  
22 said he has been --

23               THE COURT: There's been no foundation laid



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1 for any testimony prior to that time.

2 MR. SEWELL: I understand, Your Honor. I  
3 think the witness will only testify what he has  
4 personal knowledge of, from 1944 to 1956.

5 THE WITNESS: Yes, sir. From that period  
6 of time, acting as the vice-president and director,  
7 any sales, any proposals for development, or anything  
8 related to Belle Haven Realty Corporation would come  
9 before the board and we met regularly.

10 BY MR. SEWELL:

11 Q And did you participate in decisions that  
12 effected the development of Belle Haven during this  
13 period of time?

14 A Yes. As a matter of fact, the direct  
15 responsibility for development at Fort Hunt Road and  
16 Route 1 and the erection of the Mobil station there,  
17 including the leasing of it.

18 Q And was that property once the property of  
19 Belle Haven Realty Corporation?

20 A Yes.

21 Q Mr. Whitten, I want to show you one of the  
22 complainant's exhibits.

23 THE COURT: That went in with the deposition,



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1 which is Number 14.

2 BY MR. SEWELL:

3 Q I want to show you a copy of a plat that  
4 was part of a deposition introduced earlier,  
5 identified, "Property of Belle Haven Realty Corporation",  
6 and ask you to examine the plat, and then I'd like  
7 to ask you a couple of brief questions about it.

8 A Yes, sir.

9 Q Mr. Whitten, does that plat represent to you  
10 the development of Belle Haven Realty Corporation  
11 during the period of time that you were associated  
12 with the corporation?

13 MR. MACKALL: This plat was prepared in  
14 1935. I think the question is --

15 THE COURT: Well, I think that would only  
16 go to the projection after 1944 to 1956. It would  
17 be related to that period of time with his activities  
18 with Belle Haven Realty Corporation.

19 THE WITNESS: Your question again?

20 BY MR. SEWELL:

21 Q Based on your knowledge of Belle Haven, does  
22 this plat represent to you the development of Belle  
23 Haven Realty Corporation during the period within



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1 which you had personal knowledge?

2 A I'd like to establish the south boundary  
3 and this -- whether or not this is the south boundary  
4 on this plat.

5 THE COURT: Is there a north arrow?

6 THE WITNESS: It's actually the west  
7 boundary. I'm sorry.

8 MR. SEWELL: Your Honor, I don't want to  
9 talk to the witness on the stand, but this is the  
10 only thing that is exhibited on the plat. I don't  
11 think there's any indication of what the name of  
12 that --

13 MR. MACKALL: I will agree that that's  
14 Quander Road he's pointing at there, Your Honor.

15 MR. SEWELL: All right. I think Mr.  
16 Mackall has indicated that this would be Quander Road,  
17 so Quander Road would be in this vicinity (indicating).

18 THE WITNESS: From my experience of '44  
19 through '56, it does not accurately represent the  
20 intention of Belle Haven Realty Corporation.

21 BY MR. SEWELL:

22 Q Are you familiar with the property that's  
23 at issue in this particular lawsuit?



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1 MR. MACKALL: Your Honor, the question, I  
2 move that it be stricken because it didn't answer  
3 the question.-- I mean the answer, I move that it be  
4 stricken because it didn't answer the question he  
5 asked.

6 THE COURT: Rephrase your question, would  
7 you.

8 MR. SEWELL: Let me ask just a couple of  
9 quick questions and I think I can do it easier.

10 BY MR. SEWELL:

11 Q Mr. Whitten, are you familiar with the  
12 particular property involved in this lawsuit?

13 A Yes.

14 Q And is the particular property involved in  
15 this lawsuit represented on this plat?

16 A Yes.

17 Q And does any drawing on the plat related to  
18 this property represent to you any intent of Belle  
19 Haven Realty Corporation to develop --

20 MR. MACKALL: Your Honor, I would object.  
21 He cannot testify as to the intent of the corporation  
22 at all, and I think that's --

23 THE COURT: As a member of the Board of



1 Directors, from the years '44 through '56, I think he  
2 can express --

3 MR. MACKALL: All right, but the map is in  
4 '35 he's talking about. This is '44.

5 THE COURT: The Court has asked that the  
6 witness only respond from 1944 to 1956.

7 MR. MACKALL: And there's a big difference  
8 between this '35 plat and what, you know -- '44.

9 MR. SEWELL: I think he can answer the  
10 question.

11 THE COURT: From 1944 to '56.

12 THE WITNESS: The intent of Belle Haven  
13 Realty Corporation --

14 THE COURT: Right.

15 THE WITNESS: -- was to hold it for  
16 commercial development.

17 BY MR. SEWELL:

18 Q During this same period of time, did Belle  
19 Haven have any intent, to your knowledge, to develop  
20 the property in question in this lawsuit for residential  
21 purposes?

22 A No. No.

23 Q Can you state, if you know, any reasons that



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1 that was formulated upon? Can you state any reasons,  
2 if you know, why Belle Haven did not intend to  
3 develop this property as residential?

4 A Yes, because of the commercial nature of  
5 Route 1 and the fact that we had developed the corner  
6 of Fort Hunt Road and Route 1 and then owning this  
7 property also at Quander Lane and Route 1. It was  
8 an obvious commercial development.

9 Q How did you develop the property at the  
10 intersection of Fort Hunt Road and Route 1?

11 A That was with the Mobil service station.

12 MR. SEWELL: I have no other questions,  
13 Your Honor.

14 THE COURT: Cross-examine.

15 CROSS-EXAMINATION

16 BY MR. MACKALL:

17 Q Mr. Whitten, I'm going to ask you a question  
18 that a lawyer should never ask a witness on the  
19 stand. That is, how old are you, sir?

20 A I'm 71.

21 Q You're 71. All right, sir. Now, you  
22 associated with Belle Haven Realty Corporation in  
23 1944?





1 A Prior to that, as a stockholder. '44 to '56  
2 I was vice-president and director.

3 Q All right. Now, who was Mr. Howell?

4 A Well, Aubrey J. Howell, he was the original  
5 engineer, one of the original shareholders of Belle  
6 Haven Realty Corporation.

7 Q And he was the engineer that did the work  
8 for -- all of the work for Belle Haven prior to his  
9 deaty, did he not, sir?

10 A That's correct.

11 Q Do you remember roughly when he died?

12 A No, sir.

13 Q Was he dead in 1944?

14 A I can't answer that.

15 A Was he still a member of the Board of  
16 Directors in 1944?

17 A I don't recall that he was. As a matter of  
18 fact, his wife, or widow, succeeded him.

19 Q His widow succeeded him?

20 A Yes.

21 Q Now, didn't some of the directors of Belle  
22 Haven Realty Corporation live in Belle Haven themselves?

23 A Yes.



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1 Q Were you all proud of the -- what had taken  
2 place and what was taking place of the Belle Haven  
3 Subdivision?.

4 A Yes.

5 Q Did you all pride yourselves on the type of  
6 homes that you had built there and this type of thing?

7 A Well, it was built in sections.

8 Q And the different sections, were you all  
9 proud--did you all think what you all were doing was  
10 an asset to the community and everything else?

11 A We didn't build, sir. We had land.

12 Q All right. When you sold; okay?

13 A Yes.

14 Q And each contract, I understand, you  
15 reviewed?

16 A Right.

17 Q And you wanted to make sure, did you not,  
18 that the houses that were built were in conformance  
19 with the rest of Belle Haven and to keep it as  
20 attractive as you could; wasn't that one of your  
21 duties as --

22 A That's correct.

23 Q And did you not place restrictions on the



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1 land you sold to -- as far as it being residential  
2 and no trade or business and other things, and  
3 were they part of your --

4 A Yes.,

5 Q And you all wanted to keep control of what  
6 was put on there; is that correct? That was the  
7 reason for that.

8 A Within the restrictions recited.

9 Q Within the restrictions recited. Now, was  
10 Mr. Olmi a member of the Board of Directors?

11 A No, he was not.

12 Q Was he a stockholder?

13 A No.

14 Q He never was?

15 A Never was.

16 Q Now, who was your engineer in 1944? Who  
17 was doing your layout work for you in 1944 when you  
18 first started?

19 A I have to think about it, but the -- whether  
20 or not David Jennings Howell firm, continued or  
21 not, I'm not quite sure. But the engineer was never  
22 present at the board meetings.

23 Q So do you remember who came to you all with



1 the subdivision layouts that you put on or who  
2 prepared them or this type of thing?

3 A Well, Randall Caton, his office would have  
4 prepared those, along with the developer, which, on  
5 most instances, was either J. K. Seidle, which was the  
6 original firm and then Olmi came later. Seidel was  
7 Olmi's partner, and then he died.

8 Q And so Sidel would, I take it, say to you  
9 all, I want this six acres, and I'd like to have it  
10 subdivided this way. All right, now, how would the  
11 subdivision take place then? You know, what I'm  
12 trying to get at is, let's say you had a section 11.  
13 Let's say you were doing a section here, a small  
14 section, okay, and --

15 THE COURT: First, would you sell land or  
16 lots to the developer?

17 THE WITNESS: We'd sell lots and only at  
18 the end of Belle Haven Realty Corporation, just before  
19 trusteeship and in closing it out, voluntarily, we  
20 then sold raw ground, but it was sold on the basis  
21 of lots.

22 BY MR. MACKALL:

23 Q Do you remember your contract with Mr. Olmi



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1 to sell him the land?

2 A I know what it was roughly.

3 Q And did not, while that contract was in  
4 existence, did you not record some subdivisions of  
5 that land?

6 A No.

7 Q Do you remember anything at a board meeting  
8 being said about a park for certain residents of  
9 Belle Haven?

10 A No.

11 Q You don't remember anything about a park,  
12 or do you remember anything about kids playing ball  
13 and they wanted a place for them to --

14 A No.

15 Q When you sold the remaining land to Olmi,  
16 did you have a subdivision layout of that land?

17 A No. We sold 90 acres, more or less, of  
18 raw ground plus all of the lots that we still owned;  
19 that is, we, Belle Haven Realty Corporation still  
20 owned at that time. I think you'll find that to be the  
21 basis of the contract.

22 Q And was there -- do you remember whether  
23 there was some time between the signing of the contract



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1 and your conveyance to Mr. Olmi?

2 A No. I don't know that there was any lapse  
3 of time.

4 MR. MACKALL: Excuse me a minute, Your  
5 Honor.

6 THE COURT: Mr. Whitten, as a member of the  
7 Board, prior to the sale of the 90 acres and remaining  
8 lots owned by Belle Haven Realty Corporation, did  
9 you, as a member of the Board of Directors, have  
10 preliminary discussions with reference to continuing  
11 the subdivision into this 90 acres, 90 plus acres  
12 that you sold?

13 THE WITNESS: No, because at that point,  
14 the Belle Haven Realty Corporation was developing a  
15 plan of liquidation and proceeded then to do so.

16 THE COURT: At what time did you start  
17 developing your plan of liquidation?

18 THE WITNESS: I would say only about two  
19 years from the final liquidation. That moved very  
20 rapidly.

21 THE COURT: And that would be around 1954,  
22 something like that?

23 THE WITNESS: In that area.



1 THE COURT: At that point did you have any  
2 preliminary sketches or engineering work done,  
3 discussions and so forth with reference to the  
4 development of further sections going into this 90  
5 acres?

6 THE WITNESS: None to my knowledge, sir.

7 THE COURT: Mr. Mackall, proceed.

8 BY MR. MACKALL:

9 Q Do you remember between '44 and -- do you  
10 remember when the contract with Olmi was signed?

11 A. No.

12 Q Do you remember when the Deed to Olmi was  
13 signed?

14 A. No. That was done by --

15 Q Randolph Caton?

16 A. Randall Caton, his office or his successor,  
17 because he also died.

18 Q Well, suppose I told you that your contract  
19 with Mr. Olmi was signed in 1947, and you didn't  
20 deed the land to Mr. Olmi until 1952.

21 A. Well, that would be hard to believe, and  
22 I don't believe that.

23 Q You do not believe that?



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1 A No, sir.

2 Q Well, let me show you an exhibit -- a copy  
3 of an exhibit. This is 1015, Deed Book 1015, page  
4 113, Exhibit 2, and ask you to read the first two  
5 paragraphs of that, sir.

6 A The metes and bounds are different.

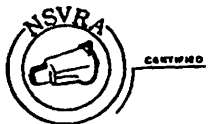
7 Q I'm not --

8 A The question there?

9 Q The question is, if you know, this states,  
10 there was an August 1st, '47 contract between Belle  
11 Haven and Olmi.

12 A Well, on this basis, Olmi was primarily  
13 our sole developer, our sole builder rather. We owned the  
14 land and we sold land to him from time to time. And  
15 I would say that this contract of 1947, I did not see, or  
16 was not aware of except that Olmi has exclusive rights  
17 in the way of development and we had sold land to him  
18 from time to time.

19 Q And in the '47, assuming for a minute that  
20 they had -- I'm not trying to put words in your mouth  
21 about this -- but assuming Mr. Olmi has a contract in  
22 1947, with exclusive right to that, all of the sections  
23 that you put on after that up until you put restrictive



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1 covenants on them and you were controlling how --  
2 what type of homes would be built on them, were you  
3 not, between'--

4 A Yes., Well, that's in that conveyance.

5 Q But I mean -- let's say there was between  
6 '47 and this conveyance in '52. This was conveyed  
7 in '52.

8 A Well, the restrictions would be the same.

9 Q But you did put restrictions on each section  
10 that you recorded to sell to Olmi; right?

11 A Yes.

12 Q You mentioned the land on --

13 A Route 1 and Fort Hunt.

14 Q No. I'm talking about on Quander Road and  
15 Route 1. And I take it at one time or sometime  
16 during the period that you were with Belle Haven,  
17 you all decided to -- thought about commercial on  
18 this land; is that correct?

19 A Yes.

20 Q Now, the land you were talking about at the  
21 intersection of Quander Road and Route 1, do you  
22 remember how much land you were talking about?

23 A Talking -- all of that part. If you recall,



1 Mr. Mackall -- I don't know whether you do -- the  
2 land has considerable ravine and did not lend itself  
3 to residential development, and so it was, in effect,  
4 saved for -- and certainly for my part -- and I, if  
5 I might make a statement, sir, my associates and I  
6 owned 43.6 percent of Belle Haven Realty Corporation,  
7 but we did not control it.

8 Q Your associates and you; now who were  
9 they?

10 A They were Whitton and Frye(sic), four people.

11 Q Well, when it was -- you don't remember  
12 the exact amount of land that you were going to use?  
13 Was it land at the intersection of Route 1 and  
14 Quander Road?

15 A That's correct. And there was a sizeable  
16 piece of unimproved land there.

17 Q Was -- when you sold it, was Windsor Road  
18 built?

19 A I can't answer that question. I don't  
20 know. I mean I don't recall that.

21 Q Well, referring you back to this '37 plat  
22 and forgetting about the lots that are shown on  
23 Quander Road here and here, was this a type of



1 residential development you had in mind, or did you  
2 ever see any --

3 A. No, no. The question where the then  
4 boundary, when I was a part of Belle Haven Realty  
5 Corporation, ended as far as the west boundary was  
6 concerned. And you asked about Windsor Road. I  
7 don't know where Windsor Road is, as a matter of fact.

8 Q. I show you here, outlined in red, which  
9 is on Exhibit Number 36. Now, outlined in red here  
10 is the land that was deeded to Olmi in '52 in that  
11 Deed you just saw; okay?

12 A. But this was in acreage.

13 Q. Yes, sir.

14 A. Ninty acres all together.

15 Q. The deed says 75 acres plus. Are you  
16 including the land in the circles.

17 A. Well, as I recall it, it was 90 acres plus  
18 all of the lots that had been platted that were unsold  
19 were also a part of the transaction.

20 Q. And you say you had no layout of the rest  
21 of this land at the time; is that correct?

22 A. Not to my knowledge.

23 Q. Not to your knowledge. Let me ask you



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1 another question. When you -- I assume you dealt with  
2 the development from '44 to '47. You testified these  
3 things came to you as vice-president.

4 A Well, to the Board, sir.

5 Q Did you not try to build streets so that  
6 you had lots on both sides of the streets, so that  
7 you wouldn't have to build a street, you know -- the  
8 cost -- I assume one of the things that you all were  
9 trying to keep your development costs down.

10 A Again, I cannot answer that. I mean, I  
11 have an answer for it but that doesn't --

12 Q Well, did you look at layouts to see if,  
13 you know, you were putting the street in?

14 A No, no. When a contract came to the Board,  
15 it came on the basis of the land and the price and  
16 the terms.

17 Q Of a lot?

18 A And other things; land. We sold land to  
19 Alexandria Water Company, and we sold land to other  
20 people; Belle Haven Realty -- I mean Belle Haven Country  
21 Club itself.

22 Q Now, you weren't involved when you sold  
23 land to Belle Haven Country Club?



1 A I didn't say that, but the corporation did.

2 Q Well, what I'm asking you is, between the  
3 period '44 through '56. And you testified that you  
4 were involved in the development and seeing what was,  
5 you know, going on there.

6 A Yes, I was a director and vice-president  
7 and went to the Board meetings.

8 Q I thought you also -- now, maybe I'm wrong  
9 -- mentioned something about you being involved, and  
10 they came to you as vice-president and you being  
11 involved in the overall development of Belle Haven  
12 during this time?

13 A Well, in the same way that Mr. Robinson  
14 was and same way that the other members of the Board  
15 were.

16 Q All right. Did you look at -- let's say  
17 you had a subdivision plat of a section, okay?

18 A I didn't.

19 Q You never looked at them? You all never  
20 reviewed those then?

21 A No. We did on the basis of the land that  
22 was -- had previously been put of record and was  
23 there for sale. Most of those came through a real



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1 estate firm or came directly occassionally from Olmi himself.

2 Q But to sell lots which you all had, I  
3 assume you had to get those lots recorded?

4 A Of course.

5 Q All right. In recording the lots -- okay,  
6 you were recording lots -- did you plan the layout of  
7 the lots?

8 A Well, it was done by an engineer, yes.

9 Q By an engineer?

10 A Yes.

11 Q And did you all look at the engineer's  
12 work and approve it and this type of thing as the  
13 Board of Directors, and say this is a good layout, or  
14 anything like this?

15 A I don't recall that any plat was submitted  
16 for further development from 1944 to 1956. That's a  
17 long time ago, sir.

18 Q I understand that, and these questions are  
19 a little unfair in that respect, Mr. Whitten.

20 Let me ask you, who were the stockholders  
21 of Belle Haven?

22 A I can't answer that. I know roughly who  
23 they were.



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1 Q All right, roughly who were they?

2 A They started out with four equal pieces of  
3 210 shares each: Clarence J. Robinson, J. Randall  
4 Caton, Snyder Kane Boothe, a corporation at  
5 that time, and the Howells.

6 Q And when you had your 46 percent --

7 A I had 43.6.

8 Q When you had your 43.6, who were the  
9 stockholders at that time?

10 A Well, we bought most of the -- we bought  
11 all of the Snyder Kane Boothe Corporation, we  
12 bought most of the Caton.

13 Q Did Mr. Caton -- was he still a stockholder  
14 when it was dissolved?

15 A No, he was dead.

16 Q He was dead then? When did Mr. Caton die;  
17 do you know, sir?

18 A I don't recall.

19 Q Now, Snyder Boothe Kane, was that the  
20 realty corporation?

21 A Yes.

22 Q And they had a -- one-fourth of the stock?

23 A That's correct. That goes to its inception in



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1 about 1924.

2 Q Then prior to 1944 you have no idea what  
3 the intent was, do you?

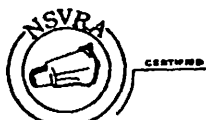
4 A No. \*

5 Q Why did you all dissolve Belle Haven Realty?

6 A Because it was -- do you want a sad story?  
7 First of all, Mr. Mackall, I was also otherwise fully  
8 employed and I held other jobs as director and  
9 officer of several firms. But Belle Haven Realty  
10 Corporation was organized for -- primarily for the  
11 development of Belle Haven and we had Mr. -- Mr.  
12 George Warfield was also involved. He was very much  
13 alive.

14 And at the time that Mr. Robinson, Mr.  
15 Warfield and Mrs. Caton, if I'm correct, and Mrs.  
16 Howell outvoted 43.6 to put Belle Haven Realty  
17 Corporation to bed, and it was at that time that the --  
18 all of the acreage and all of the unimproved lots  
19 were conveyed to Olmi. The only other thing was the  
20 filling station at the corner of Route 1 and Fort Hunt  
21 Road and the fill where Howard Johnson is now was sold  
22 to Clarence Robinson and Herbert Frye.(sic)

23 We had cash in the bank. We had notes and





1 that was a cash deal and then we dissolved it.

2 Q Now, in the Deed to Olmi when you all --  
3 when you dissolved it, do you remember when the  
4 corporation did actually dissolve itself?

5 A No, no.

6 Q In the Deed to Olmi in 1952, you all left  
7 it or supposedly, allegedly -- that's what we're here  
8 about today -- said that 6.5 acres shall not be  
9 subject to the restrictive covenant that the rest of  
10 the land was subject to?

11 A In 1952?

12 Q Yes, sir.

13 A Right.

14 Q Do you remember the corporation taking that  
15 action?

16 A Well, we conveyed it.

17 Q Right, and do you remember --

18 A I don't know -- I was out -- wasn't the  
19 Deed signed by Mr. Robinson as president? Yes, sir.

20 Q Yes, sir. But do you remember that action being  
21 taken by the Board of Directors?

22 A The action was to convey all of the un-  
23 improved land and, as I say, the lots that had not



1        been built. Now, beyond that, I don't have all the  
2        details that this conveyance apparently represents.

3            Q        So you can't remember the details of the  
4        conveyance in 1952 and what land the restrictions were  
5        put on, or --

6            A        No, sir. As far as I was concerned, it  
7        was all of the unimproved land by acreage and then all  
8        of the unimproved lots.

9            Q        And you can't remember then the details of  
10       how much was to be subject to the restrictions, how  
11       much was not to be subject to the restrictions?

12          A        No, no.

13                    MR. MACKALL: Excuse me a minute, Your  
14       Honor.

15                    BY MR. MACKALL:

16          Q        Do you personally remember anything about  
17       a Deed of Correction?

18          A        No.

19          Q        You do not?

20          A        No.

21                    MR. MACKALL: Excuse me a minute, Your  
22       Honor.



1 BY MR. MACKALL:

2 Q Did you talk to Mr. Sewell about this  
3 case before Being here today?

4 A I was advised that I would be subpoenaed.

5 Q Yes, sir, but had you gone over -- talked  
6 to Mr. Sewell prior to today concerning your testimony  
7 in this case?

8 A Yes. Would you like to see my notes? I  
9 doodle. I simply had to find out when I was Vice-  
10 president because I was also Vice-president and  
11 director of First & Herbert Bank and Trust Company  
12 at the same time, and Administrator of the Alexandria  
13 Hospital.

14 MR. MACKALL: That's all I have of him.

15 THE COURT: Redirect.

16 MR. SEWELL: No questions, Your Honor.

17 THE COURT: May the witness be excused?

18 MR. SEWELL: Yes, Your Honor.

19 THE COURT: You may step down. You're  
20 free to go.

21 ~~(Witness excused.)~~

22 ~~(Witness sworn.)~~

23



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1 Whereupon,

2 EDWARD S. HOLLAND,

3 a witness, was called for examination by counsel on  
4 behalf of the defendant, and, having been duly sworn,  
5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SEWELL:

8 Q Mr. Holland, would you state your name,  
9 address and occupation, please?

10 A Edward S. Holland, 210 West Walnut Street,  
11 Alexandria, Virginia. I'm licensed in the State of  
12 Virginia as a professional civil engineer and as a  
13 certified land surveyor.

14 Q And how long have you been so occupied?

15 A My surveyor's license was granted in June  
16 of 1936, and my engineer's licence was granted in  
17 March of 1947, and I've been in constant practice  
18 since.

19 Q And have you testified in this court and  
20 other courts as an expert?

21 A Yes, sir.

22 THE COURT: Do we have a stipulation?

23 MR.MACKALL: I'll stipulate Mr. Holland is



1 an expert, sir. I've known him for years, and I think  
2 he's a very capable engineer, escetera.

3 THE COURT: The Court will accept the  
4 stipulation.

5 BY MR. SEWELL:

6 Q Mr. Holland, in your profession, have you  
7 had any contact or association with the development of  
8 a subdivision south of Alexandria known as Belle  
9 Haven?

10 A Yes, I have.

11 Q And would you state to the Court what that  
12 involvement has been?

13 A In 1946 I resubdivided one of the larger  
14 lots, and then in 1949 I began a relatively constant  
15 series of studies, surveys, plats of subdivisions'  
16 construction surveys, and that extended on through  
17 the year 1957. And I have had occasional contacts  
18 with the subdivision even since including the study  
19 which is going on in my office at this time of a  
20 piece of land not concerned in this case.

21 Q Do you have knowledge or do you know about  
22 the particular piece of land that's involved in this  
23



1 lawsuit today?

2 A The 6.8 plus 5.5 acre pieces?

3 Q Yes, sir.

4 A Yes.

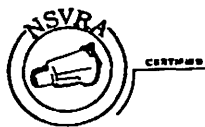
5 Q And could you state for the Court when you  
6 first became aware, first formed your knowledge or  
7 gained knowledge of this particular piece of land?

8 A I cannot give an exact date I can give  
9 it to persons but I had occasions in the late '50's,  
10 and that could be anywhere from '57 to '60. I was  
11 made aware by the fact that Mr. Olmi, Sr.,-- the attorney  
12 who was then involved with some of Mr. Olmi's affairs  
13 in Belle Haven, Mr. Glenn Richards, and Mr. Marshall  
14 worked for me, had an extended discussion in  
15 Mr. Olmi's home.

16 Q Have you personally examined the property  
17 or did you personally examine the property in that  
18 time?

19 A I have examined that property very fre-  
20 quently over the period that I first made, and since  
21 on numerous visits.

22 Q And can you briefly describe for the Court  
23 the physical characteristics of the property based upon



1 your examinations?

2 A Well, should I treat the land as a whole  
3 or the two separate parcels?

4 Q Whichever is easiest for you to describe.

5 A Well, it's bordered on the west by a  
6 line which used to be the old line of the school: by  
7 the present U. S. Number 1 Highway; and by the Old  
8 Mill Road, old Number 1 Highway. The land immediately  
9 adjacent to both old and new Number 1 Highway fell  
10 off very rapidly into a low area which I will term a  
11 flood plain containing, among other things, a large  
12 storm sewer which drained Fair Haven and other places,  
13 Fair Haven being a subdivision of some 70 to 80  
14 acres which I'd laid out earlier.

15 The banks were quite steep and, as they got  
16 to the bottom, it sloped flatly toward the bed of a  
17 stream, a stream which had about a 15 foot width, at  
18 low flow, normal flow.

19 The valley was variably from 100 to 300  
20 feet width and extended from Quander Road on the south  
21 to the corner of the -- right near the old bridge  
22 that the stream ran under, and down to a point about  
23 400 or 500 feet north of the intersection on the old



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1 right-of-way of Number 1 and the new right-of-way of  
2 Number 1.

3 The stream was -- had a slight declivity  
4 and only ranging from two to four feet in height on  
5 the west bank. On the east bank, it actually cut  
6 into the rather steep -- possibly ranging from two  
7 and a half on one, to one and a half on one. That is  
8 two and a half feet horizontally to one foot height,  
9 one and a half to one, a one-foot height which is  
10 very steep in places.

11 This bank rose, with that characteristic,  
12 15 to 20 feet in height variously along the eastern  
13 boundary of the area that we have here in question.  
14 That would be the east boundary of the five acre tract,  
15 which ran just along the edge of the steep bank with  
16 some more slope to the east of it, but it was a gentle  
17 slope still rising.

18 The bed of this little valley, flat place,  
19 as I previously referred to it, was marshy. It had  
20 rank growth in it and except in very dry weather,  
21 everytime I crossed it, I sank in and got wet feet.

22 It was almost -- not quite, but almost a  
23 marshy condition except in very dry weather. That was



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1 the case for probably two-fifths of the area, one-  
2 fifth of the area being the steep, easterly embankments,  
3 and the other two-thirds were in the westerly embankment  
4 and less flat land.

5 Q Mr. Holland, did you ever conduct an  
6 analysis of this property to determine its suitability  
7 or use as residential?

8 A I was asked repeatedly by Mr. Olmi, Sr.  
9 and later by Mr. Olmi, Jr. if there was any way they  
10 could put houses on it, and my analysis showed that  
11 the cost of handling this stream which has quite a  
12 wide flood plain area would be very, very expensive.  
13 In fact, we never could come up with any use of it  
14 until there came a time when the State and the County  
15 negotiated and the State was allowed to deposit a lot  
16 of excess material from the building of Number One  
17 Highway in a portion of the flood plain.

18 And it was then and only then that the--  
19 three-fifths of the land was moved out of the flood  
20 area.

21 Q Mr. Holland, based upon your contacts  
22 with the developer in this area, are you aware of any  
23 plan to use this property for single-family residential



1 dwellings?

2 A No, sir.

3 Q And based upon your knowledge and your  
4 contact, did any such plan exist, to your knowledge?

5 A There were various sketches made but none  
6 of them would work.

7 Q I'd like to show you a 1935 plat and ask  
8 you to look at it and state whether or not you have  
9 any familiarity or knowledge of that plat?

10 A Yes, sir. I have with me today the original  
11 drawings from which this print was made, and I can  
12 tell from that original what part of the lines on  
13 here were original lines and which part are added in  
14 many different handwritings and different colored  
15 pencils at some subsequent time.

16 Q Can you refer specifically on the plat to  
17 which portions you're speaking of?

18 A All of this up in here (indicating) is  
19 just -- somebody was trying to work something out.  
20 We see roads crossing over top of roads. We see lots  
21 running one way and then another. And on the original,  
22 some of these lines are in red, some of them are in  
23 lead pencil.



1 Q Do you have any knowledge as to who drew  
2 or worked on that portion of the drawing?

3 A The only thing that I can recollect was  
4 that when Mr. Olmi, Sr. gave me that print, together  
5 with another one accompanying it which has the survey  
6 facts on it which is a final and not a preliminary  
7 as this is -- this would be called a preliminary  
8 because it doesn't have any dimensions on it. It's  
9 just scaled distances.

10 The final one -- and this was given to me  
11 at the same time -- there were some scribblings on it.  
12 Many years later I found one of my men with that old  
13 print, and, as you see on this, it's been torn, it's  
14 been patched. And I took it away from him.

15 Having testified in many land cases, I am  
16 very conscious of the value of ancient drawings. I  
17 took it away from him, and whatever he may have put  
18 on there was of no consequence. I put the map away  
19 so well, in fact, that it took us a week to find it.

20 Q Now, as an engineer, Mr. Holland, does the  
21 upper portion of this plat have any significance to  
22 you as indicating to you a development plan?

23 THE COURT: What is your proportion with



1 references to streets or markets? Do you have old  
2 Highway One on it or Fort Hunt?

3 MR. SEWELL: I would ask the witness to  
4 determine if there's any distinguishing point of  
5 departure --

6 THE COURT: I'm trying to relate it to this  
7 Exhibit thirty --

8 MR. MACKALL: Your Honor, I think it would  
9 be roughly -- I'm not trying to -- I'm sure they're  
10 talking about from Berkley Road, Your Honor, if I  
11 may, west.

12 THE COURT: Berkley Road?

13 MR. MACKALL: Yes, sir.

14 THE WITNESS: West.

15 MR. MACKALL: Berkley Road west. Maybe I  
16 could point out Berkley Road to Your Honor.

17 THE COURT: Berkley Road west.

18 THE WITNESS: There is a heavy line about  
19 nine inches away from and parallel to Number One  
20 highway; new Number One or Washington-Richmond Highway.  
21 Right below those words, about ten inches over, you'll  
22 notice a heavy line, and that line jig-jags along the  
23 edge and crosses over Foxcroft, crosses over Berkley



1 Road and extends on into the end of Belle Haven Road,  
2 or across Belle Haven Road, and then points again  
3 westwardly across what was sometimes called Willard  
4 Road.

5 BY MR. SEWELL:

6 Q And taking the piece west of what you've  
7 just described, as an engineer, to you does it have  
8 any significance as a planned or proposed subdivision?

9 A No, sir. It's a very tentative study,  
10 having been done various different ways right here  
11 on this drawing, and then the original, some were red  
12 lines and some are black lines, but they were not on  
13 there as a part of the original printing that was on  
14 the original of this document which I have here.

15 THE COURT: Mr. Holland, in your experience  
16 as an engineer from several years back -- I think you've  
17 engineered since in the '40's -- and a surveyor prior  
18 to that time; with the construction trade back in  
19 that period of time, which you were licensed as a  
20 civil engineer and as a surveyor, and knowing the  
21 construction development at that time without all the  
22 controls that we have today on construction, flood  
23 plains, and so forth, were you familiar with costs of



1 construction and land development at that time?

2 A Yes, Your Honor, and there was an additional  
3 fact that intruded itself very distinctly into this  
4 problem. Quander Road was only 30 feet wide, and  
5 even in those early times, the County had sufficient  
6 regulations that the road would have had to have been  
7 50 feet wide. There was a bridge there, a wooden  
8 bridge and that was most inadequate and flooded almost  
9 every two years average, two years storm would flood  
10 the bridge. And all of that had to be rebuilt because  
11 if one was to regard this plan before me here as  
12 significant, it has a number of lots fronting on that  
13 road.

14 Even in the '40's, Your Honor, as I recall,  
15 having helped write the early ordinances here on  
16 subdivision control, those lots would have had to  
17 had, as is shown on this drawing, an expanded road  
18 and permission of the Highway Department, since that  
19 was a State road, to build a different bridge.

20 THE COURT: Looking specifically at the  
21 5.5, 6.9 area, that area in there and your familiarity  
22 with it and for this period of time, and knowing the  
23 economic conditions, construction costs and the manner



1 of construction back in the late '30's as a civil  
2 engineer and in the '40's -- in the '40's as a civil  
3 engineer and in the '30's as a surveyor, could you  
4 express an opinion as to the economic feasibility of  
5 considering that for single-family residence for an  
6 overall development plan?

7 THE WITNESS: Your Honor, there might have  
8 been a half a dozen home sites somewhere in that area  
9 that would not have flooded and would not have caused  
10 wash outs, distressing situations, in the five acres.

11 Your Honor, the bulk of the stream today  
12 as then, is in the five acres, not the six. Not all of  
13 it, but the bulk.

14 THE COURT: But for an overall development  
15 plan, do you think it had any economic feasibility to  
16 be considered overall for single-family residence for  
17 the development of Belle Haven?

18 THE WITNESS: Your Honor, no, and I  
19 repeatedly so stated to Mr. Olmi, who was anxious to  
20 use all of his land to the best advantage. And I  
21 told him that I did not see any way that we could get  
22 a road in and around and through that vast -- through  
23 that water condition and come out without a great



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1 expense. Now, this was a builder who, at that time,  
2 was building elsewhere in Belle Haven where ground  
3 water was a problem.

4 THE COURT: Mr. Sewell, I'm sorry for the  
5 interruption.

6 MR. SEWELL: Thank you, Your Honor. I  
7 don't have any other additional questions, Your Honor.

8 THE COURT: You may cross-examine, Mr.  
9 Mackall.

10 MR. MACKALL: Yes, sir.

11 MR. SEWELL: Well, before that -- I'm sorry,  
12 I've forgotten one thing. Excuse me. May I see that  
13 map that had the little vicinity drawing on it, the --  
14 there was a joint exhibit, a and b.

15  
16 BY MR. SEWELL:

17 Q Mr. Holland, I'd like to show you what's  
18 been introduced into evidence as Complainant's Exhibit  
19 15a, and I'd like to direct your attention to the  
20 right-hand portion where there is an inset or an insert  
21 that, I believe, is commonly referred to as a vicinity  
22 map or a vicinity drawing.

23 Have you examined a copy of that drawing,





1 is it familiar to you?

2 A Yes, I have one of the original printings  
3 of this drawing and have examined it many times.

4 Q And have you specifically examined the  
5 inset marked vicinity map?

6 A Yes, sir.

7 Q And based upon your examinations, have you  
8 made a determination as to whether it's drawn to scale  
9 or not?

10 A I carefully compared it with other accurate  
11 maps such as the Geological Survey Map of that area  
12 and find it inaccurate.

13 Q And, as an example, could you determine  
14 with accuracy the location of Quander Road on that  
15 drawing?

16 A Not from this drawing.

17 MR. SEWELL: I have no further questions.

18 THE COURT: Cross-examine.

19 CROSS-EXAMINATION

20 BY MR. MACKALL:

21 Q Mr. Holland, while you've got this, let's  
22 look at this vicinity map a minute. Here in the -- if  
23 you look on -- I assume this is Route 1, this black line



1 on the north side of it.

2 A That's my assumption.

3 Q All right. And there's a little white  
4 area that is -- I assume the vicinity map shows the  
5 shaded-in area is that -- what you've shaded in is  
6 the area of Belle Haven; correct, sir?

7 A Well, it's generally the area of Belle  
8 Haven, but it is not the shape of Belle Haven.

9 Q All right. And if you have a little white  
10 area that's not included there, would you not assume  
11 that that little white area would be -- well, let me  
12 just show you -- similar to this piece in here that was  
13 not included in the Belle Haven ownership?

14 A Not necessarily, because right beside it,  
15 immediately beside it is another little white area  
16 lying to the west of what I think we can agree is Fort  
17 Hunt Road. Now, the Hardbower Tract, which is this  
18 large piece here (indicating), is on this map not as  
19 long -- it's only a little wider than the piece that  
20 you referred to as being a white spot between old and  
21 new Number One Highway. So the map is again out of  
22 scale because the Hardbower Tract is much, much  
23 larger and longer than the --



1 Q Well, would that not be the second piece  
2 that --

3 A That is what I'm referring to. From Fort  
4 Hunt Road up to old Number One Highway, at its northerly,  
5 northeasterly intersection with new Number One Highway,  
6 you see a length that is much shorter, much shorter  
7 than the length portrayed on the same map of the  
8 distance between the two intersections of old U. S. 1  
9 with new U. S. 1.

10 The map is only a general picture. I  
11 compared this map carefully with the Geological Survey  
12 Map, which we, of course, find to be very, very  
13 accurate, and I also noticed that the place where the  
14 parkway bends is different than the way it bends on --  
15 the parkway -- okay? In other words the portrayal of  
16 the Mount Vernon Memorial Parkway is not accurate.

17 Q Why do you think there is that little white  
18 area in there that's not shaded, Mr. Holland?

19 A Well, I think that in a free hand drawing --  
20 those lines are free hand, they're not done by ruler --  
21 someone was making a picture map. This drawing here,  
22 as I see it, it bearing no certification nor signature  
23



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1 it. The other plan, the 14b is the equivalent and it  
2 does not have surveying data on it. This is the 14a,  
3 which has the vicinity map on it, which you showed me  
4 a reproduction of.

5 Q Now, this is my question. This one is  
6 entitled A Proposed Subdivision of the Unsubdivided  
7 Acreage; is that correct?

8 A Yes, sir.

9 Q And this is dated October 10, '35?

10 A Yes, sir.

11 Q And this was given to you by Mr. Olmi?

12 A Yes, sir.

13 Q Now, when this was given to you by Mr. Olmi,  
14 when you have a proposed subdivision, were these things  
15 on there as it's laid out now? Were the lots on there  
16 as it's layed out now when it was delivered to you?

17 A The only thing I can testify to on that  
18 fact were the lines which are printed into this paper  
19 representing certain lots and lines in a dashed form  
20 which are printed into this paper and lot lines  
21 struct off of it; only the lines which are a part of  
22 this original printing can I say truly represented the  
23 intent of the maker of this drawing in 1935. The



1 additional pencil lines, which I could take one line  
2 and, for example, rub out (indicating) -- I cannot do  
3 that with these other lines. You'll notice that this  
4 calls for Sections 1, 2, 3 --

5 Q Go ahead.

6 A Section 4 was also done and is also a  
7 part of --

8 Q The other thing Mr. Olmi brought you,  
9 but I'm talking about this one here, All right, does  
10 not -- then the dotted line: okay -- this cul de sac  
11 here, all right, isn't this part of -- and that has  
12 dotted lines, and we're talking about the cul de sac --  
13 doesn't that cul de sac -- wasn't that prepared and  
14 wasn't that a proposed subdivision? Wouldn't that  
15 have been on this plat when it was prepared?

16 A This cul de sac?

17 Q This cul de sac line.

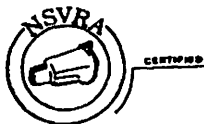
18 A No, sir, no. I again state the name of  
19 Howell appears on this drawing (indicating).

20 Q Yes, sir.

21 A The name of Howell appears on this drawing (indicating).

22 Q That would be right in --

23 A There sir.



1 Q Right.

2 A But we do not find any road leading to  
3 the cul de sac to which you refer portrayed on the  
4 after map. In fact, many of the dotted or future  
5 or proposed -- it doesn't use the word proposed, it  
6 uses the word -- yes, it does, I beg your pardon --  
7 and proposed subdivisions. Those are dotted things,  
8 but they don't appear on these maps.

9 Q I understand, but they are on this one  
10 which is dated in 1935 and that is the proposed cul  
11 de sac in 1935 that Mr. Howell prepared on this; is  
12 that not correct?

13 A It may have been Mr. Howell's idea.

14 Q All right. Okay. So the proposed -- is  
15 there a date on that one?

16 THE WITNESS: Pardon me, Your Honor, I just  
17 can't --

18 THE COURT: On the original Howell plat  
19 of 1935, your previous testimony there was some  
20 areas that were dotted over and so forth that, in your  
21 opinion, were not part of the original plat, now the  
22 cul de sac that's referred to by Mr. Mackall on cross-  
23



1 examination, was that part of the dotted area that  
2 would, in your opinion, be added later?

3 MR. MACKALL: This cul de sac here.

4 THE WITNESS: Your Honor, that cul de sac  
5 is imprinted in the paper so I can only assume that is  
6 an original fact, although it has been drawn over with  
7 other pencils. That is not down in the valley,  
8 however.

9 BY MR. MACKALL:

10 Q Okay, but that was, in essence -- when  
11 you talk about when Mr. Howell, in 1935, you know,  
12 came up with a proposed subdivision, was the word  
13 "park" written on there when you got that from Mr.  
14 Olmi?

15 A What was your question, sir?

16 Q Was the word "park" on there when you got  
17 it from Mr. Olmi?

18 A I do not recall. I do not believe so, but  
19 I --

20 Q Well, you didn't add the word "park" there  
21 after you got it, did you, Mr. Holland?

22 A It may have been added. It may have been  
23 added. I told you I found some of my men fooling with



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1 this instead of using an overlay or tracing paper to  
2 plan anything. And they were talking - because this  
3 was down in a ravine in the unbuildable conditions  
4 that I previously described, somebody said, green  
5 area, possible park".

6 Q All right, now, who was talking about a  
7 possible park there; Mr. Olmi? Did he ever mention  
8 a possible park there?

9 A No. No.

10 Q Now, one question. The lots that are  
11 shown at the end of this cul de sac, are they down  
12 in the--where you called the ten point, the 12 acres,  
13 are part of those acres in that park, Mr. Holland,  
14 any part of it?

15 A There is a part of four lots provided --  
16 there are two things on this plan. One is a circle  
17 with dots all around it and imprinted in the original  
18 paper, and there is a through street imprinted in  
19 exactly the same manner. Now, which was -- this  
20 indicates to me this was a very tentative, a very  
21 preliminary study and had no significance in fact  
22 because you had the alternative of either having the  
23 cul de sac street stopping here on the hillside or you





1 had a through road going to Quander Road. Both of  
2 those symbols are there.

3 Q And it was a proposal made in 1935,  
4 correct, by Mr. Howell of what could be done with this  
5 land?

6 A Well, I've had about 20 proposals of what  
7 could be done with this land, but they did not turn  
8 out economically sound. I don't know that his could  
9 have ever been proven to be economically sound because  
10 he would have hung too much of these down too far  
11 into that steep bank. You see, this drawing has no  
12 contours on it. You don't know whether this point is  
13 level with the back of the lot or from the center of  
14 the circle to the back of the lot is a difference of  
15 25 feet in elevation. This map tells you nothing as  
16 to the feasibility.

17 Q Well, it doesn't -- none of it tells you  
18 anything as to the feasibility of any lot, even Section  
19 1, does it, none of that plat?

20 A Section 1 is an accomplished fact at the  
21 time of this drawing. These were speculations. He  
22 even says he's going to go across -- from West Grove  
23



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1 Drive he's going to cross over the creek without any  
2 sign of a bridge and join with old Number One Highway.  
3 He says that Walton Way is going down a very steep  
4 embankment and by Berkley Drive join that same part  
5 of the stream. The stream is right there.

6 Q And this is a proposal he had? That's  
7 all it is, is that not correct, Mr. Holland, a proposal  
8 of the development of the rest of Belle Haven because  
9 this here in the red line was already developed in  
10 the record. So the other had to be, am I not correct  
11 on this, a proposal of what he was going to do with  
12 the rest of it?

13 A That's what it was. It was an extremely  
14 poor proposal and not feasible. That's my professional  
15 opinion.

16 Q But was it a proposal?

17 A It might have been a proposal but it was an  
18 extremely poor one.

19 Q Now, you say it was an extremely poor one.  
20 Now, Mr. Holland, didn't you put on some of the later  
21 sections? Weren't you the engineer for some of the  
22 later sections?

23 A Sections 5 through 16.



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1 Q Sections 5 through 16?

2 A Yes, sir.

3 Q Did you use block numbers?

4 A Yes, sir.

5 Q Where did you get your block numbers that  
6 you used on the later sections, Mr. Holland?

7 A Well, I started off with the ones that had  
8 been used on the green plan and extended them in an  
9 orderly manner in accordance with the county proposal,  
10 that you run your blocks in a clockwise direction.

11 Q Did you follow any of the block numbers?  
12 Did you use that plan there -- Mr. Howell's plan  
13 to follow your block numbers with?

14 A Well, I have the tracings of all of those  
15 plats. And here we have Section 5, and we have block  
16 numbers 21 and 22. On this drawing it's marked 29  
17 and 21 in my figures. They're in the original figures.

18 Q All right. You didn't use 22 or 20?

19 A I used 22. It was over there. There's  
20 the drawing. It's Section 7. Twenty-two is against  
21 the Bucknell line north of Windsor Road -- west of  
22 Windsor Road and Olmi-Landrith Drive which this  
23 opening or one very near it once became -- see, this



1 shows a street coming out into here but that never  
2 happened.

3 Q All right, you got 21 showing here. Isn't  
4 21 part of your blocks 21 and 22? Isn't 21 on here,  
5 there?

6 A Yes, but the one across the street is not.  
7 It's just by coincidence that that was the next  
8 number -- wait, wait. Block 21 had already been  
9 established for that group of lots in that area.

10 Q Well, now, were any of the -- was the  
11 block -- you know, you have part of this was not  
12 recorded.

13 A Sir?

14 Q Part -- a section of this -- in other  
15 words, if you read that, this says Section 4, Blocks  
16 17, 18, 19 and 20 here.

17 A Okay, yeah.

18 Q All right. Look at --

19 A Section 4 was recorded in this group.

20 Q In this group. But it wasn't in this  
21 group?

22 A No.

23 Q All right, see now what they did as far as



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1 Section 4 in following this original proposed sub-  
2 division, Mr. Holland.

3 A Inside of the heavy line, inside to the  
4 east of the heavy line that we pointed out to the  
5 Court earlier, which happens to be shown in red on  
6 my old original, that part of the Howell drawing, he  
7 still being the surveyor/engineer for the project at  
8 the time that Section 4 was recorded, he followed his  
9 own plan in there.

10 Q So that follows -- this one follows this  
11 one exactly; is that correct?

12 A Only inside, east of the line of demarca-  
13 tion.

14 Q Well, that's all -- there's nothing else  
15 shown on this plat other than what's inside the line  
16 of demarcation, Mr. Holland; is that correct?

17 A On this plan, that's right.

18 Q Well --

19 A But none of the land in question -- none  
20 of the land in question comes anywhere near it.

21 Q Well, that wasn't my question. That wasn't  
22 my question, Mr. Holland.

23 MR. MACKALL: Your Honor, what I'd like to



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1 do is maybe put the original of this in record because  
2 Your Honor may want to look at it. It's a little  
3 better. But I don't want to take it from Mr.  
4 Holland if --,

5 THE COURT: Well, the two that came in  
6 earlier, aren't they the copies of that?

7 MR. SEWELL: Your Honor, Mr. Mackall  
8 introduced a copy of this, and I don't think he  
9 can extract it from --

10 THE COURT: 15a and b isn't that a copy of  
11 this?

12 MR. MACKALL: No. This is the -- but  
13 I think the lines are on here a little -- drawn a  
14 little better. That's all. Maybe the Court would  
15 want to look at it.

16 THE COURT: I don't think that would be  
17 necessary. I think this would be sufficient as far  
18 as the Court is concerned.

19 BY MR. MACKALL:

20 Q Now, Mr. Holland, you said Mr. Olmi came  
21 to you and asked you -- wanted you to design some  
22 residences on this land, is that correct, the land  
23 in controversy today?



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1 A. He wanted me to see if I could find a way  
2 of subdividing the land in a manner that would be  
3 economically sound.

4 Q Okay. And he kept trying to do this, or  
5 something, as far as you know?

6 A. I made a number of studies for single-family  
7 residences that came to naught. I would have had to  
8 draw a plan that would have caused him to channelize this  
9 creek, to fill the bottom up so that the houses somewhat  
10 related to the highway nearby. I made a number of  
11 studies. This man was very insistent, and I was going against  
12 what he hoped would come to pass, in that I would be able  
13 to discover a plan that would be in the scope of my  
14 engineering ability, and I was not.

15 Later about -- oh, the early '60's whenever  
16 the Subdivision Ordinance for Fairfax County was changed  
17 to include townhouses, cluster-style, I was asked by  
18 Eugene Olmi, Jr., to study it and see if I could get  
19 townhouses in there. And, again, economics absolutely  
20 forbade. But, as the Court said, many things changed in  
21 the way of quality of construction and flood protection.  
22 It wouldn't work.

23 Q There was no time then, I take it, up until



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1 after maybe 1960 that Mr. Olmi asked you to do anything  
2 as far as the commercial part of the back half of  
3 this land was concerned, did he, to do anything  
4 commercially with it?

5 A (Pause.) I'm studying because using it for  
6 commercial purposes was mentioned to me, but I'm trying  
7 to pin the date down. I'd pin it down to the time  
8 when he had arranged to have the area filled through the  
9 development of Number One Highway. He asked me if I  
10 could work out some sort of a plan.

11 Q That's on the land that had been filled?

12 A It was about to be filled.

13 Q All right. The land that was going to be  
14 filled on Route 1, but none of the rest of it; is  
15 that correct?

16 A I believe that's correct.

17 MR. MACKALL: All right, sir. Excuse me a  
18 minute, Your Honor.

19 BY MR. MACKALL:

20 Q Mr. Holland, one other question, that piece  
21 that's shown in green on this thing is proposed park, okay.  
22 Wouldn't that make a nice park?

23 A No, sir.





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1 Q It would not?

2 A No, sir.

3 Q And are you familiar with Fairfax County's  
4 Stream Valley Program?

5 A Quite. I tried to get it started ten years  
6 before it started.

7 Q And where they put the parks in, is this  
8 not one of those that --

9 A I think it's most unsatisfactory. I have  
10 several reasons for saying that, and I don't mean to be  
11 trite about it.

12 Across the street on the west side of  
13 Number One Highway is a relatively large community known  
14 as Fair Haven, no play areas, a lot of children, small  
15 houses. This is across Number One Highway. It's down  
16 in a hole. It's unsafe for people to come in that  
17 direction to get on it. The homes, the atmosphere  
18 of Belle Haven, it's not particularly reasonable to  
19 expect them to come flooding into this area to play  
20 because there are larger homes, they're a different  
21 character of homes, and they would be sliding down a  
22 steep bank all the way along this east side of the  
23 five and a half acre piece because that's where



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1 the steep bank was that I went into such detail in  
2 describing. And when you get there, you've got the  
3 water coming out of Belle Haven. You've got the  
4 ground water that makes the place marshy, and there's  
5 rather an obstreperous little stream that gets very,  
6 very big. It drains all the Penn Daw area, all up  
7 Number 1 highway to the north for quite a long distance.  
8 It's not -- it's not a good place. I'm all for the  
9 parks, but this is one --

10 Q Well, not a playground park. There's  
11 different kinds of parks, Mr. Holland. I'm not  
12 talking about -- but isn't this one of the things  
13 where you preserved the marsh, you preserved the trees  
14 there. Isn't it -- aesthetically, isn't this a nice-  
15 looking area?

16 A Terribly bad, full of trash which was  
17 thrown out of cars going along Number 1 highway, the  
18 scraps pushed down over the hills from the old school-  
19 house. It was a mess.

20 Q It still is today?

21 A I can't tell you what it is today because  
22 I haven't been down there for six or eight months, but  
23 the last time I saw it, it was still pretty messy.



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1 But it had been filled up. And remember it had been  
2 filled way up.

3 Q But not all of it now, just that on Route 12

4 A Well, but that's the major part of it.  
5 And if you're talking about having the whole thing  
6 for a park at something like 12 acres and most of it's  
7 marshy or stream bed and the other is a steep hillside,  
8 what have you got for a beautiful park. This is not  
9 a place where all the ecologists would go into raptures  
10 about the Japanese snails and two or three other kinds  
11 of remote animal life. It got washed out so often  
12 that no good vegetation ever got a stand.

13 MR. MACKALL: That's all I have, Your  
14 Honor.

15 THE COURT: Redirect.

16 MR. SEWELL: I have no questions, Your Honor.

17 THE COURT: May the witness be excused?

18 MR. SEWELL: Please, Your Honor. And I  
19 would like to take a short recess, if it please the  
20 Court.

21 THE COURT: All right. You may step down,  
22 Mr. Holland. You're free to go. Thank you very much.

23 (Witness excused.)



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1 THE COURT: The Court will take a ten minute  
2 recess.

3 (Brief recess.)

4 MR. SEWELL: Call Charles Runyon, please.

5 (Witness sworn.)

6 Whereupon,

7 CHARLES RUNYON,

8 a witness, was called for examination by counsel on  
9 behalf of the defendant, and, having been duly sworn,  
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SEWELL:

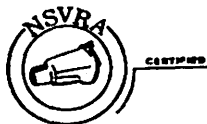
13 Q Would you state your name, address and  
14 occupation, please.

15 A Charles Runyon, 152 Hillwood Avenue, Falls  
16 Church, Virginia; civil engineer, land surveyor.

17 Q And how long have you been so engaged  
18 professionally?

19 MR. MACKALL: I will stipulate to Mr.  
20 Runyon as an expert as far as civil engineer, land  
21 surveyor is concerned. I've known him also for a  
22 few years.

23 THE COURT: The Court will accept the



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1 stipulation.

2 BY MR. SEWELL:

3 Q Mr. Runyon, do you have any financial  
4 interest in this particular case?

5 A No, sir.

6 Q And have you done work for Ford Motor  
7 Company in connection with this particular site?

8 A Yes, sir. Over the past couple of years,  
9 three years, our firm has been engaged in performing  
10 the required site plan development for the contractor  
11 who is going to build for Ford Leasing Development.

12 Q And do you have any professional interest  
13 in the outcome of this case one way or the other?

14 A No, sir. I -- as usual in these types of  
15 things, a civil engineer gets paid whether they  
16 develop it or don't develop it. We get the same fee  
17 whether they do or they don't.

18 Q All right. Mr. Runyon, first of all, are  
19 you familiar with the property involved in this  
20 particular lawsuit?

21 A Yes, sir.

22 Q Would you state briefly what your involve-  
23 ment with this property has been, to lay some basis for



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1 the Court as to your knowledge?

2 A Well, basically, in March of 1972 our firm  
3 was contacted by the H. L. Litton Company in Maryland,  
4 who was, at that time, the design-builder contractor  
5 for Ford Leasing Development.

6 We performed the boundary and topographic  
7 survey on these properties in connection with Ford  
8 Leasing Development and furnished this information to  
9 both Ford and the contractor from which the architect  
10 then built his basic plan. And they were turned back  
11 to us, and we did extensive hydraulic filling and  
12 grading studies, and the final site plan was ready  
13 for Ford in late 1972 or early '73 for construction, --  
14 pardon me, about mid '73.

15 At that time the cost of developing this  
16 property was extremely high because of the costs of  
17 storm sewer, earth movement that had to be involved, and  
18 so forth. Took a second look at the site and decided  
19 to hold off on it for awhile, and then recently we  
20 were contacted by a new firm, Pinkerton & Laws in  
21 Atlanta, Georgia. They were awarded a new contract.  
22 Ford had decided to scale down the project somewhat,  
23 make the area a little smaller and use up a little



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1 less of the property and come up with a different  
2 design concept that would allow them to move ahead.

3 'The site development costs, as I stated,  
4 were extremely high and because of that we needed  
5 some additional hydraulic studies and were able to  
6 reduce somewhat the costs of development of this  
7 project.

8 And, therefore, I've been personally  
9 involved in it. I was the one actually in our office  
10 who worked the project through most of the  
11 development stages so I still have a pretty good  
12 working knowledge of the property as well as the  
13 project.

14 Q So, to your knowledge, do you know whether  
15 or not Ford is in a position or ready to go forward  
16 with the development of this property?

17 A Yes, sir. Our site plan which is concerning  
18 the site work was approved in late December or early  
19 January, and the building permit for the building was  
20 actually issued about two weeks ago to the contractor,  
21 Pinkerton & Laws, Incorporated, Atlanta, Georgia.

22 Q Mr. Runyon, would you first describe the  
23 property, the physical characteristics of the property



1 in question which is involved in the lawsuit?

2 A Well, basically, the property -- I have  
3 some photos here. Would you like to --

4 Q They would be extremely helpful.

5 MR. SEWELL: I'd like to mark these for  
6 identification, Your Honor.

7 THE COURT: Has Mr. Mackall seen these?

8 MR. SEWELL: No. I was going to have them  
9 marked and then show them to him, Your Honor.  
10 They're marked 1 through 10 and they have markings  
11 on them, if we could agree they would be Complainant's  
12 -- I mean -- excuse me, I'm sorry, Your Honor,  
13 Defendant's.

14 THE CLERK: For identification only?

15 MR. SEWELL: Yes, at this juncture.

16 (The photographs heretofore referred  
17 to were marked Defendant's Exhibits  
18 Numbers 1, 1A, and 2 through 10  
19 for identification.)

20 BY MR. SEWELL:

21 Q Mr. Runyon, did you take those photographs  
22 yourself?

23 A Yes, sir. I took those pictures Thursday,





1 around 3:00 o'clock in the afternoon.

2 Q This past Thursday?

3 A The 31st of March.

4 Q And, do the photographs fairly and accurately  
5 represent to you the material which you photographed  
6 at the time?

7 A Yes, sir, they do.

8 MR. SEWELL: I would offer them as  
9 Defendant's Exhibits.

10 THE COURT: Any objection?

11 MR. MACKALL: No, sir. No, sir, of what  
12 they show, I want to cross-examine him on it.

13 THE COURT: They will be admitted.

14 (The photographs heretofore marked  
15 for identification as Defendant's  
16 Exhibits Numbers 1, 1A and 2 through  
17 10 were received in evidence.)

18 BY MR. SEWELL:

19 Q Mr. Runyon, you go ahead and describe the  
20 property, and, if you wish, you may refer to specific  
21 photographs and perhaps it would be easier if you did  
22 so by the number.

23 A Basically, the property consists of frontage



1 along U. S. Route 1, and I think perhaps you're  
2 familiar with that, and Quander Road kind of borders  
3 the western side of the site, northwestern. And  
4 then the property is transversed by a stream, a very  
5 large stream that carries over 4,000 cubic feet per  
6 second of water in a hundred year storm.

7 The picture Number 1 shows the property  
8 from -- looking east from across U. S. Route 1, and  
9 it shows a large area of fill that has been placed on  
10 this property subsequent to our topographic survey  
11 that we did in 1972.

12 I have a location map of where these  
13 photographs were taken which you can use as a guide  
14 to where these photos were taken.

15 The fill was placed there by the Highway  
16 Department during the construction of Richmond  
17 Highway, U. S. 1. Now, this fill would, during  
18 construction and part of the construction costs, will  
19 be borne because the fill has to be removed and  
20 replaced. It's not suitable for foundations even  
21 for single-family residences.

22 The material would have to be removed, will  
23 have to be removed for the construction of any building,



1 and, in particular, the Ford building as proposed  
2 there.

3 The photograph Numbers 5 and 6 show on-  
4 site conditions. Number 5 is down at the northern end  
5 of the site, the lower end of the site looking up  
6 stream and shows the stream and a part of the slope  
7 that has been filled in.

8 And Number 6 is up at the south end of  
9 the site looking downstream from the stream conditions  
10 of the bank up toward Windsor Road. You can see a  
11 house there on Windsor Road in that photograph.

12 Basically, I was just trying to take some  
13 pictures of the area that would depict the site, the  
14 conditions, the location. And then I went up on  
15 Windsor Road and took a couple of shots from Windsor  
16 Road looking toward the site. The cedar trees that  
17 have been planted there reasonably well obscure some  
18 of the area and, of course, during our site develop-  
19 ment, additional screening would be provided, but  
20 the site -- basically, the county soil maps indicate  
21 some presence of marine clay in some areas. In our  
22 plan, we have avoided those areas for new construction  
23 or tried to place no load structurally. We have placed



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1 no structural loads on marine clay areas. These areas  
2 exist along Windsor Road and at the south end of the  
3 property, some areas of the marine clay.

4 I think basically that describes the site.  
5 The site is very steep along the Windsor Road section  
6 and was very steep and still is along the rear of the  
7 fill that's been placed there. Ford's been asked to  
8 fill in the area and provide a culvert to drain this  
9 major stream in order to develop some kind of use  
10 for the property.

11 It's going to be rather difficult to use  
12 it in any fashion other than considerable amount of  
13 fill and culvert work that must be done.

14 MR. SEWELL: I'd like to mark the -- what's  
15 the basic drawing you've got?

16 THE WITNESS: This is entitled Photo  
17 Locations.

18 MR. SEWELL: I would like to mark the  
19 Boundary and Topographic Survey as Defendant's  
20 Exhibit 11 for identification.

21 THE COURT: Any objection to marking?

22 MR. MACKALL: I have no objection to  
23 marking, no.



1 THE COURT: Have you finished with the  
2 photographs?

3 MR. SEWELL: Yes, Your Honor. Would the  
4 Court like to see them?

5 THE COURT: (Nodding head.)

6 (The document heretofore referred to  
7 was marked Defendant's Exhibit No.  
8 11 for identification.)

9 BY MR. SEWELL:

10 Q I'd like to show you what's been marked as  
11 Defendant's Exhibit 11 and ask you to identify the  
12 document itself.

13 A Okay. This Exhibit 11 consists of the  
14 photo locations coordinated with the photos entered  
15 earlier and shows the approximate location from which  
16 the photos were taken.

17 Q And does it represent any other material  
18 itself?

19 A Well, the boundary and topographic survey  
20 is the certified survey that we provided for Ford and  
21 the contractor as of March 28, '72. It shows the lay  
22 of the land as of that time.

23 Q And was that provided from your office and



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1 under your supervision and control?

2 A Yes, sir.

3 Q And certified by you as a land surveyor  
4 and engineer?

5 A Yes, sir.

6 MR. SEWELL: I'd like to offer that as a  
7 Defendant's Exhibit, Your Honor.

8 MR. MACKALL: I might object to it, Your  
9 Honor. Could I see it?

10 MR. SEWELL: Yes, sir, I'm sorry.

11 THE COURT: Do you wish to voir dire the  
12 witness on it?

13 MR. MACKALL: Yes, sir. Your Honor, this  
14 is divided -- the reason it's divided into different  
15 parcels here and if I could ask him a few questions.

16 THE COURT: Sure.

17 VOIR DIRE EXAMINATION

18 BY MR. MACKALL:

19 Q Mr. Runyon, is -- why do you have parcel  
20 1B, parcel 1 and parcel 1A on that plat?

21 A Let's see, parcel 1 includes all of the  
22 site that Ford Leasing purchased. Parcel 1A is 8.2  
23 acres. It's the area that Ford intended to develop as



77-62 1 their site in 1972.

2 Q And that was which one?

3 A Parcel 1A.

4 Q 1A, the 8.2 acres?

5 A Right.

6 Q Which is 1A now?

7 A 1A is the -- I'd say the southern portion  
8 of the entire parcel.

9 Q And what was 1?

10 A One is the entire parcel that Ford  
11 purchased, the total of 1A and 1B.

12 Q Okay. Now, 1 -- parcel 1 is all of this, what  
13 this survey has shown?

14 A Yes, sir.

15 Q And all of the land on this survey is what  
16 Ford bought?

17 A That's correct.

18 Q From Mr. Olmi?

19 A Mr. Olmi; right. On this one now, to  
20 qualify that, I don't know whether Ford Leasing Development  
21 actually purchased parcel 2 or not, that's a little piece  
22 of road between old and new Quander Road.

23 Q Okay, on the other side of Quander Road



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1       though, you don't know whether Ford owns that or not?

2           A       I'm not sure whether Ford actually purchased  
3       that or not. . They did survey out there.

4           Q       Now, you have a line drawn here, down here,  
5       what is that line through the middle of this plat?

6           A       Apparently, this property before was divided  
7       into two parcels, six and five acres or some such.  
8       I'm not certain of the numbers, but this line depicts  
9       that approximate demarcation between the six and five  
10      acre parcels that we used to be involved in once.  
11      It was of no value for our surveying purposes, but  
12      it apparently was a line that was there.

13          Q       There was a line that was there through  
14      the land?

15          A       Yes, sir.

16          Q       Okay. Now, parcel 1B up here, you're  
17      telling me Ford does not include that in your present  
18      site plan?

19          A       That's correct. Well, the approved site  
20      plan even includes less of parcel 1A than is shown  
21      on here.

22                   MR. SEWELL: Your Honor, Mr. Mackall,  
23      excuse me. Aren't we going into the authenticity of





1 the document itself?

2 MR. MACKALL: I'm just trying to find out  
3 what's on the plat because it's a little --

4 THE COURT: Well, that doesn't go to  
5 admissibility, does it. I think your voir dire is  
6 limited as to the admissibility as an exhibit. He  
7 has offered it as an exhibit.

8 MR. SEWELL: You can cross-examine him  
9 on it, but --

10 MR. MACKALL: I understand it now though,  
11 to be honest with you, so I will cross-examine him  
12 later.

13 THE COURT: Okay. The Court will admit it  
14 subject to cross-examination.

15 (The document heretofore marked for  
16 identification as Defendant's Exhibit  
17 No. 11 was received in evidence.)

18 BY MR. SEWELL:

19 Q Mr. Runyon, at my request, did you conduct  
20 an analysis of the property in question in this law-  
21 suit for its suitability for use as residential  
22 single-family dwellings?

23 A Yes, sir. I --



1 MR. MACKALL: I would object, Your Honor,  
2 unless I know as to what date.

3 THE COURT: On the theory of the defendant  
4 it really doesn't matter as to date, because on an  
5 opening statement by counsel, they're approaching it  
6 on the theory, if the Court would rule that the 12  
7 or 13 acres, which is the 6. -- or 6 plus to 5 plus --  
8 would be subject to the servitude.

9 They're also approaching it because of the  
10 change of conditions along Route 1, it has lost its  
11 identity as a single-family residence and should not  
12 be subject to any servitude of single-family residents;  
13 is that not correct?

14 MR. SEWELL: Your Honor, the Court is  
15 partially correct. What I intended to say, if I  
16 didn't, was that even if the Court should find that an  
17 equitable servitude attaches to the property, that's  
18 not sufficient that there are good reasons why it  
19 should not be enforced. I did not specifically argue  
20 changed conditions or indicate that I would.

21 THE COURT: Would not this follow the same  
22 theory of law, if you had restrictive covenants on  
23 the property, that you could petition the Court to



1 get the restrictions removed because of the change  
2 in character of the neighborhood as it exists today  
3 as compared as to when the restrictions went on?

4 MR. MACKALL: Your Honor, if that was  
5 affirmatively alleged and asked for in this lawsuit,  
6 that there have been -- in other words, I don't think  
7 he can come in and say --

8 THE COURT: Is that an affirmative defense?

9 MR. MACKALL: Yes, sir, in my opinion. I  
10 haven't -- I mentioned this to Mr. Sewell. But it just  
11 seems to me to change, to lift restrictive covenants.

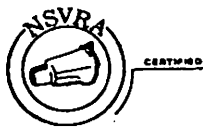
12 THE COURT: I'd first have to find that it  
13 was subject to the servitude.

14 MR. MACKALL: Right, and then to --

15 THE COURT: But I think that he would -- he  
16 has a duty, if that is his theory, to go ahead and  
17 put the evidence on now.

18 MR. MACKALL: I'm not -- I agree with the  
19 duty if he has alleged it and said that there is a  
20 change of circumstances in this case, but he has not.

21 MR. SEWELL: I'm not arguing change of  
22 circumstances, Your Honor. I'm arguing that before  
23 the Court can find servitude, it must conclude the



1 intent to create it and the fact that it was reasonable  
2 and then, having found it, the Court can determine  
3 whether or not it intends to enforce it, and then that  
4 becomes the balancing of the equities in the weighing.

5 But this witness can certainly testify that  
6 he's conducted a survey, and his testimony will be  
7 limited as to what he knows.

8 THE COURT: The Court is going to permit  
9 him to testify on it.

10 MR. MACKALL: I would except for the  
11 reasons stated, Your Honor.

12 THE COURT: Certainly.

13 BY MR. SEWELL:

14 Q Mr. Runyon, you can answer the question,  
15 if you remember what it is.

16 A Well, basically, I think what you're asking  
17 me is, you had asked me earlier last week to determine  
18 what the use of the property would be under the  
19 existing zoning, which is at this time under Fairfax  
20 County requirements is R-10, which is 10,000 square foot  
21 lots.

22 At that point, using the same basic boundary  
23 and topographic survey that I -- that we call a Number



1 11, I overlaid that with some potential layouts of  
2 lots on the parcels of property along Route 1 and  
3 along Windsor Road, being probably the only reasonable  
4 way to lay out the lots.

5 MR. MACKALL: Your Honor, I'd like to --  
6 let me see what he's talking about here.

7 Are you talking about the whole Ford site  
8 now, the whole Ford piece of land?

9 THE WITNESS: Yes, sir.

10 MR. SEWELL: I would like to request that  
11 the Clerk mark this as Defendant's Exhibit 12.

12 THE COURT: Any objection to marking?

13 (The document heretofore referred to  
14 was marked Defendant's Exhibit No.  
15 12 for identification.)

16 BY MR. SEWELL:

17 Q Referring to what's been marked as  
18 Defendant's Exhibit 12, would you go ahead and state  
19 what, if anything, you did at my request as far as  
20 analyzing this property for single-family residential  
21 dwellings?

22 A Okay. The property, as it exists without  
23 any changing of the major stream consists of considerable



1 amount of flood plain which would limit you along  
2 Route 1 to a total of approximately 10 lots. Now,  
3 that is without doing any major structural changing  
4 as far as earth work and adding earth work. Some  
5 earth work may be required along Lots 1, 2, 3, 4, 5,  
6 and 6 to bring the houses up to a reasonable grade and  
7 keep them out of any danger of flood plain flooding.

8 Along the frontage, based on the 10 lots,  
9 we came up with a cost of \$21,880 per lot, \$218,800  
10 total cost for the 10 lots along the front parcel.  
11 I used roughly this line that went down the middle  
12 as the parting point between the front and rear  
13 parcel. That's the line Mr. Mackall referred to  
14 earlier as far as down the middle of the tract.

15 Okay. That to me seemed to be the only  
16 reasonable and realistic way to develop the property  
17 and would be the total yield of the property.

18 However, at your request, I did look at  
19 the rear portion along Windsor Road. As you may or  
20 may not remember, I did not think it was a very good  
21 idea. Marine clay exists along some parts of that  
22 slope. In our development for the Ford site, we have  
23 tried to avoid that area with any structural additions



1 at all.

2 If you were to try to obtain lots along  
3 the rear, you would have to fill and pipe this major  
4 stream at a cost of approximately \$516,000. Now,  
5 that works out to be \$43,000 per lot, and I don't feel  
6 that's a reasonable figure to use or consider, so I  
7 stopped at that point. And I would specifically like  
8 to say in my opinion it's just not feasible to  
9 develop that rear portion of the property along  
10 Windsor Road. I mean as far as the actual cost of  
11 development and actual utilization of the property  
12 would not be reasonable or it wouldn't even be  
13 advisable.

14 Q Mr. Runyon, as an engineer, in your  
15 opinion, does the back five acre plus property have  
16 any use for residential purposes based upon your  
17 knowledge as an engineer and your knowledge of the  
18 property?

19 A Well, in the first instance, as we have  
20 discussed, I don't believe Fairfax County would allow  
21 you to build on that portion of the property that  
22 would be utilized, that is, five plus acres. The  
23 county would not, in all probability, allow you to develop



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1 the area because of the presence or possible presence of  
2 marine clay. And these costs added to that burden make  
3 it impossible; in my judgment, to develop that portion  
4 of the property under the R-10 or any other reasonable  
5 residential layout.

6 Q All right, directing your attention to the  
7 costs that you did compute, would you just briefly explain  
8 those items of cost that you had. I noticed you had a list  
9 of costs.

10 A Right. I've got a list here which gives the  
11 cost of \$516,000 to develop that portion of the property  
12 along Windsor Road, the present frontage, and the cost  
13 would be \$43,000 per lot.

14 Q All right, now, does the work in the drawings  
15 on what's been marked as Defendant's Exhibit 12 represent  
16 your personal work?

17 A Yes, sir, I did these.

18 Q And do the figures reflect it in your two  
19 sheets --

20 A Yes, sir.

21 Q -- in these two sheets represent your personal  
22 work and computations made by you?

23 A Yes, sir. I stamped them myself.





1 MR. SEWELL: I would submit Defendant's  
2 Exhibit 12 for introduction into evidence, and I'd  
3 like to mark these two sheets as Defendant's 13 and  
4 14 and offer their submission aslo.

5 THE COURT: Any objection to 12, Mr.  
6 Mackall?

7 MR. MACKALL: The plat, no, sir. I'd  
8 like to cross-examine him on it.

9 THE COURT: It will be admitted subject  
10 to cross-examination.

11 (The document heretofore marked for  
12 identification as Defendant's Exhibit  
13 No. 12 was received in evidence.)

14 THE COURT: Any objection to marking 13  
15 and 14, the cost figures?

16 MR. SEWELL: I'd like to submit them also.  
17 He testified that they were his own work and his own  
18 figures.

19 MR. MACKALL: Your Honor, he's testified --  
20 it seems to me he can testify to these, but putting  
21 in figures in evidence is a little different. I  
22 don't -- you know, it's like writing up the thing,  
23 although if this is what he -- all right, I have no



1 objection.

2 THE COURT: No objection. They're admitted  
3 as 13 and 14..

4 (The documents heretofore referred to  
5 were marked Defendant's Exhibits  
6 Nos. 13 and 14 for identification,  
7 and were received in evidence.)

8 BY MR. SEWELL:

9 Q Mr. Runyon, what type of structure would it  
10 require to handle the storm drainage to develop this  
11 particular piece of property?

12 A Well, it can be done in a variety of ways.  
13 A box culvert could be constructed, a concrete  
14 pipe or a 96 inch corrugated metal pipe. We feel  
15 that because of the quality of the storm drainage  
16 and the time required -- in other words, with the  
17 savings of time that can be exhibited by the use of  
18 corrugated metal pipe indicate that the 96 inch  
19 corrugated metal pipe would be the desirable way as  
20 far as the cost. It would save time and costs of  
21 construction.

22 Q At my request, did you provide your figures  
23 for development costs for Scott Humphrey, an appraiser?



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2 same that we now have marked 13 and 14.

3           MR. SEWELL: I have no further questions  
4 of him.

5           THE COURT: Cross-examine.

6                   CROSS - EXAMINATION

7           BY MR. MACKALL:

8           Q     Now, have you -- as I understand it,  
9 without this -- what is the difference between the  
10 corrugated pipes and the box culvert?

11           A.     Okay. The box culvert is formed in place,  
12 poured concrete for greater stability and quality as  
13 far as putting loads on it. Corrugated metal is just  
14 what it says; metal that's corrugated to give it  
15 strength of support for earth, structures and other things  
16 of that nature, and it's lighter, easier, quicker, comes  
17 already fabricated, you just put it --

18           Q     What is the difference in the cost of concrete  
19 and corrugated pipes? The difference in costs, forgetting  
20 about time a minute, sir.

21           A.     I'd say there's probably a twenty-five  
22 percent cost savings in concrete pipe as opposed to  
23 corrugated.



1 Q What is the cost of the corrugated pipe?

2 What is the cost of that in this?

3 A Installed, as I have listed on one of the  
4 exhibits there, it's \$150.00 per linear foot.

5 Q Per foot. Now, let me ask you this  
6 question. Without doing that, Ford could not develop  
7 this land, could it?

8 A Without piping the stream?

9 Q Without piping the stream.

10 A That's correct; yes, sir.

11 Q And we go to the economic feasibility.  
12 Now, that's in accordance with your site plan; correct?

13 A That's correct.

14 Q And you're not using really, in your site  
15 plan, the majority or roughly -- how much land on  
16 Route 1 and going down towards the beltway are you  
17 not using?

18 A Approximately three acres.

19 Q Three acres. How?

20 A Of the property, yes.

21 Q Now, will you be able to --

22 THE COURT: Is the beltway east?

23 THE WITNESS: Well, it's kind of north.



1 THE COURT: Northeast?

2 THE WITNESS: Northeast of the site.

3 BY MR. MACKALL:

4 Q Now, when you put your corrugated thing  
5 in, will you be able to use that piece of land?

6 A No, sir.

7 Q You will not?

8 A No, sir. We don't extend that pipe that  
9 far. We stop at the limit of our use.

10 Q Why did you not extend it further up  
11 towards the beltway, your site plan?

12 A I have no knowledge of the reason why  
13 except that we were directed by the contractor and  
14 Ford not to develop any additional property, I assume.

15 Q My question to you then, would it be --  
16 if you eliminated part of the land on the -- where  
17 Quander Road curves here, okay--if you eliminated the  
18 corrugated pipe up here and put it down here (indicating)  
19 could you not develop the land?

20 A In other words, kind of shift the use for  
21 the property?

22 Q Right, shift into usable property the  
23 other way.



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1           A.       Well, the property is somewhat restricted  
2       at that lower end. At one point, you'll notice here  
3       on the boundary, there is a jog down from Windsor Road.  
4       There is a piece of park property that jogs down into  
5       this site. If you shift the building much further  
6       from where we have it, the strength of the property,  
7       because of the service drive that's required along  
8       Route 1, probably would not permit enough room for  
9       the building.

10           Q.       The particular building you have designed, but  
11       you can put another building in there, could you not,  
12       Mr. Runyon, designed, you know, longer and narrower?

13           A.       Well, the functions of the dealership  
14       facilities that Herby's Ford requires, dictate pretty  
15       much the size, shape, and configurability that we have.  
16       It could be done under considerable amount of  
17       refunctioning.

18           Q.       But it could be designed and you could  
19       design a station, could you not, Mr. Runyon, now down  
20       here that would serve the same purpose and everything?  
21       Do you go into detail in the size of the building or  
22       does the architect give you that?

23           A.       Well, we work together with the architect



77-62 1 in the configuration and location of the buildings.  
2 So both of us -- it's kind of a systems approach. We  
3 both analyze it from independent view, then get together  
4 and come up with the best solution.

5 But with the setbacks required 50 feet  
6 from the service drive on Route 1, I don't feel that  
7 there would be room enough to put the building down  
8 here without making a very long and narrow building,  
9 which --

10 Q What would be the dimensions of the  
11 building then, just with your setback requirements,  
12 Mr. Runyon?

13 MR. SEWELL: Your Honor, I want Mr.  
14 Mackall to have a broad cross-examination, but there's  
15 no question that we intend to use the property as  
16 commercial. Is the location on the property to where  
17 the building is of any relevance here?

18 MR. MACKALL: Your Honor, it is.

19 THE COURT: It may go into his cost  
20 analysis and so forth.

21 MR. MACKALL: Let me say this to you, Your  
22 Honor. I'll tell you what else it goes into; whether  
23 they could use the 6.9 and not use the 5.5 and this



1 type of thing, Your Honor. It's very relevant. You  
2 know, what land are they using or are they not using.  
3 Apparently, they're not even using it all.

4 THE COURT: I think Mr. Runyon testified  
5 that he's trying to avoid the 5.5 as much as possible  
6 because of the marine clay. That was my understanding.

7 THE WITNESS: Structurally; yes, sir.

8 MR. MACKALL: Structurally; right.

9 THE COURT: I assume marine clay is that  
10 slipping clay that you can't stabilize?

11 THE WITNESS: Yes, sir. Basically, in my  
12 opinion of what I know of the site, we've tried --  
13 you know, we've tried several configurations for the  
14 building, and I would say that we have established  
15 the building pretty much as far northeast on the site  
16 as it can go because of the constraints of the con-  
17 figuration of the property.

18 BY MR. MACKALL:

19 Q All right. Now, how much of the building  
20 comes over into the -- what I call the -- across the  
21 line there? Do you know what I'm --

22 A Yes, sir.

23 Q Is this the actual site plan?





1           A       Yes, that is a copy of sheet number four of  
2 the set of eleven sheets that go with it, the one that  
3 is the most pertinent to what we're talking about.

4                   The building comes over into that rear  
5 parcel closest to Windsor Road. It comes over  
6 approximately 40 feet.

7           Q       Forty feet?

8           A       Yes, sir.

9           Q       Okay. Now, Mr. Runyon, assuming for a  
10 minute, okay, the -- you've got a lot of parking  
11 back here, do you not, in the -- I'm talking about  
12 the five -- I've forgotten the number of acres. But  
13 in the piece back here, there's a lot of parking in  
14 there, is there not?

15          A       Yes, sir, there's parking there.

16          Q       All right.

17                   THE COURT: Is that storage, parking?

18                   THE WITNESS: Employee and storage both;  
19 yes, sir.

20                   BY MR. MACKALL:

21          Q       Now, Mr. Runyon, could you not -- okay,  
22 now, you're an engineer and have been working for  
23 some time. Could you not take the 6.5 acres, okay --



1 I'm talking about -- and I want you to think about  
2 this answer some. Let's go back to this piece. Let's  
3 go back here, down here; okay?

4 A Yes,, sir.

5 Q Could you not design -- now maybe not  
6 exactly like they want -- but couldn't you design an  
7 automobile dealership there?

8 MR. SEWELL: Your Honor, again, it looks  
9 to me like the issue is whether or not the property  
10 is suitable for residential purposes, not what they  
11 could do on -- as far as their use of it as commercial.

12 If the Court determines what Mr. Mackall  
13 is asking the Court to determine, it makes no  
14 difference what they could or could not do about  
15 moving or shifting the building of Ford around.

16 MR. MACKALL: Your Honor, he's trying to  
17 show that the piece of land cannot economically, you  
18 know, be developed and done with this, and I think  
19 I'm entitled to show that it can be economically done  
20 and do what they are doing. And I think that's what  
21 his evidence is -- the purpose of it.

22 THE COURT: Well, I think the way it has  
23 been laid out, according to Mr. Runyon, is the most



1 economical way, not the only economical way, but the  
2 most economical way for the structure that's desired  
3 by Ford Motor Company because they tried it one other  
4 way one time and now they're trying to cut down on  
5 development costs.

6 MR. SEWELL: Your Honor, but, to the best  
7 of my knowledge, I never asked any questions intended  
8 to elicit the information as to what development costs  
9 for Ford were because I don't think it's material one  
10 way or the other.

11 THE COURT: I don't believe the development  
12 costs are material.

13 MR. SEWELL: Except as to residential, Your  
14 Honor. But as to Ford's development costs, I don't  
15 think that they're material at all.

16 MR. MACKALL: Your Honor, they are material  
17 if he's going into development costs on residential.  
18 Let me tell you one thing, in 1952, Your Honor, 1952,  
19 when this thing was deeded out, there was no idea of  
20 putting anything, even commercial there because of  
21 economics, I would assume.

22 MR. SEWELL: Well, I hope the Court  
23 recognizes --



1 THE COURT: From what I've heard, I think  
2 when this whole development started, there was nothing  
3 considered with reference to this property except  
4 wasteland. I don't think the developer had any idea  
5 if he'd ever develop it in single-family residence  
6 nor -- from the beginning -- nor commercial.

7 And I think as time changed and as develop-  
8 ment continued in Belle Haven, then -- and as Route 1  
9 started development, as Mr. Whitton said, then it  
10 started having some maybe possibilities of commercial  
11 at a later date.

12 Now, that's what I kind of gleaned from  
13 the testimony up until now.

14 MR. SEWELL: I think the reason I'm on my  
15 feet is, I was going to object to Mr. Mackall arguing  
16 the case at this point, and I would make that objection.

17 THE COURT: The Court would overrule the  
18 objection.

19 MR. SEWELL: Yes, sir.

20 BY MR. MACKALL:

21 Q Could you -- my question was, could you  
22 design on the -- in here, okay, as an engineer, an  
23 automobile dealership on the land in 6.9 acres?



1 A No, sir.

2 Q You could not?

3 A No, sir.

4 Q Why couldn't you?

5 A It leaves you 85 feet after setback. That's  
6 just not enough feet.

7 Q Eighty-five feet for your building?

8 A Yes, sir. That's parking and building, sir.  
9 That leaves you very --

10 Q All right, 85 feet of parking and building?

11 A Right, after setbacks.

12 Q All right, and you couldn't, on this whole  
13 thing here -- what setbacks are you talking about?  
14 Setbacks for parking?

15 A Well, 50 feet to the front of the building  
16 restriction line, then an additional 25 foot of  
17 restriction on the rear.

18 Q For parking?

19 A Well, for any --

20 Q What parking -- why -- what is your parking,  
21 25 feet parking from the rear? Why is that restriction  
22 there?

23 A I'm sorry. Twenty-five foot to the building



1 restriction. Parking could go up to as close as 12  
2 feet for the screening provision over here.

3 Q Well, you could go up all the way, could  
4 you not, for parking now, Mr. Runyon?

5 THE COURT: Within the screening area?

6 MR. MACKALL: Yes, sir, because it's --  
7 I assume you testified it's all zoned commercial.

8 THE WITNESS: I didn't testify to that.

9 BY MR. MACKALL:

10 Q Well, is it? I mean that's -- I assume  
11 your layout is for -- it's all commercial.

12 A Not to my knowledge.

13 Q So you could get the -- go all the way  
14 back, could you not?

15 A Okay, that's true if you had it zoned  
16 commercial. I felt like you were talking about this  
17 being residential and this being commercial.

18 Q Okay. All right, if --

19 A If this was zoned commercial to the rear,  
20 then that would give you an additional 25 feet, but  
21 you could possibly build the building up to the rear  
22 line.

23 Q All right. And you could get parking for



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1 that building and etcetera, right?

2 A Well, except that in the development of  
3 the dealership, they've got to have circulation around  
4 the building for vehicles and, number two, for fire  
5 protection. So you'd have to have approximately 20  
6 feet of setback.

7 THE COURT: Can the parties stipulate as  
8 to the zoning on the property? I don't think that  
9 we have any evidence.

10 MR. SEWELL: It's zoned commercial, Your  
11 Honor, CG, I believe.

12 THE WITNESS: CG; yes, sir.

13 THE COURT: Do you agree, Mr. Mackall?

14 MR. MACKALL: It is zoned CG, Your Honor.

15 THE WITNESS: Both parcels.

16 BY MR. MACKALL:

17 Q So you could then, could you not, get in --  
18 all right, forget about your parking for a minute.  
19 I'm talking about the front part. Couldn't you get  
20 in a building this size?

21 A No, sir.

22 Q You could not. Now, I'm not talking about  
23 the width. I'm talking about the size. In other words,



1 the dimensions of the building.

2 A Well, the building is 180 feet in width.  
3 That's what they require for their service bays and  
4 parking and storage area. You could get in volume as  
5 far as this --

6 Q Volume-wise.

7 A -- as far as the square footage, you could  
8 string the building across all the way up and down the  
9 road.

10 Q And Ford, you know, has said, this is what  
11 we want on this site.

12 A Well, they said they wanted something  
13 different, but this is what we had to talk them into;  
14 in other words, for it to fit.

15 Q And don't you know a lot of Ford agencies  
16 in this area -- Ford agencies that don't have anywhere  
17 near this size building or this type of thing, Mr.  
18 Runyon?

19 A As far as Ford dealerships are concerned --

20 Q Ford dealerships.

21 A -- this is an average size. It's not large  
22 or small. It's an average size. There are some  
23 smaller.





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Q There are some smaller?

2

A There would have to be some smaller. Herndon Ford, I know is smaller, it's a different location.

3

4

Q Now, do you know what the cost of developing it for commercial purposes would have been in 1952;

5

6

Mr. Runyon?

7

A No, sir.

8

Q Now, in your residential thing you've done, you're talking about economics, are you not?

9

10

A I'm talking about costs. I'm not really talking about --

11

12

Q Doesn't cost go into economics?

13

A Yes.

14

Q Okay. Now, assume these lots -- okay, just assume these lots were worth \$80,000 a piece; it might be economically feasible to do it, wouldn't it?

17

18

A If the individual lots were worth \$80,000?

19

Q \$80,000 a piece.

20

A Before or after development? In other words, you're talking about after development --

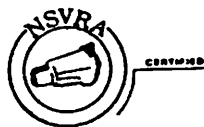
21

22

Q Right.

23

A -- if they were worth \$80,000 --



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1 Q Right.

2 A -- would it be feasible then to develop?

3 Q Would it be economically feasible?

4 A If, the land calls for it. The difference  
5 between whatever the value was and \$80,000. It would  
6 probably be a break-even proposition if they were.

7 Q And you could do the same -- could you do the  
8 same thing -- well, never mind. Strike that question.  
9 I know what the answer will be.

10 Aside from the economics, you could develop  
11 the lots you were talking about, is that correct,  
12 residential?

13 A Negative. As I stated, along Windsor Road,  
14 the County Building Authority, I don't believe, will  
15 allow us to put any structural units along the Windsor  
16 Road frontage because of the marine clay.

17 Q Where is the marine clay?

18 A Okay. Essentially, it's along this slope  
19 in various areas.

20 Q All right. In the areas it doesn't have the  
21 marine clay, you could build residences, could you not?

22 A I don't think so because the evidence is  
23 that it would not allow us in our development of this



1 site to use a strip of about 50 feet along Windsor  
2 Road for any type of development and no building  
3 could be any closer than where we've put it. In  
4 other words, essentially about 80 feet from Windsor  
5 Road.

6 Q But they were doing that to preserve some  
7 of the trees in here too, were they not? Wasn't that  
8 part of the --

9 A Well, basically, we could not utilize it  
10 whether we preserved the trees or not, without extensive  
11 structural modification.

12 Q What is your setback from this road now?

13 A The setback from that would be 50 feet.

14 Q Fifty feet.

15 A If we go commercial. That's for the  
16 building structure itself. That strip has a twofold  
17 purpose. The fact that it does -- it used to act  
18 as a buffer, saving the trees for obvious reasons.  
19 And, number two, the structural quality of the  
20 soil is not such that it should be used.

21 Q Now, as I understand marine clay -- and  
22 Mr. Holland who was just here is probably the biggest  
23 expert on marine clay, which I think correctly because



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1 he built the -- didn't he build the place down at  
2 Telegraph Road and the beltway that's built on marine  
3 clay, those apartments down there; are you familiar  
4 with that?

5 A I'm not familiar with what he built.

6 Q But if you've got marine clay over here and  
7 you've got marine clay over here, couldn't you build  
8 a house in-between the marine clay?

9 A After extensive soil analysis, possibly.

10 Q So to say whether you could or could not get  
11 any lots off Windsor Road, you would need an extensive  
12 soil study, would you not?

13 A Yes, sir, which we have had performed.

14 Q And what does that soil study show as to --  
15 you didn't do any as far as lots were -- along here, did  
16 you?

17 A No. We did it all the way along that slope  
18 in order to assure the County that we were not endangering  
19 the existing marine clay deposits that were there.  
20 And it was their opinion that we should not utilize that  
21 slope whatsoever.

22 Q Well, you wouldn't have come up here and  
23 come down with parking or something like that where it



1 was clear, would you, where there wasn't any marine  
2 clay?

3 A We might have, yes, sir, because they needed  
4 additional parking, but they adjusted their parking  
5 requirements downward to stay away from that, and  
6 also this is the buffer.

7 Q Well, couldn't you have gotten additional  
8 parking down to here on the piece you're not using?

9 A Well, each additional 100 feet that you  
10 go to the northeast toward the beltway costs a  
11 considerable amount of money for fill, additional  
12 work, material brought in and the piping of the major  
13 stream. So we like to keep the site as compact  
14 as possible and not --

15 Q But otherwise you could put -- you could  
16 not put residences there, is that correct, other than  
17 your question about some places with marine soil?

18 A Mr. Mackall, I don't think, in my opinion,  
19 you can put any structures there based on the soil  
20 input, the County input and the Building Inspection  
21 Department's requirements.

22 Q Not on Windsor Road?

23 A Windsor Road; yes, sir, that's the basis of



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1 the input that I have today. If you remember, I  
2 prefaced my cost figures by, "if you could utilize it".  
3 And I'd like to emphasize that I do not think you can  
4 use any of the frontage along Windsor Road.

5 Q But you could on Quander Road you said?

6 A Yes, sir; Quander. That's where the 10  
7 lots are on the cost analysis.

8 Q And if you did the same thing here, your  
9 building went?

10 A Yes, sir.

11 Q And you could put some lots where some of  
12 your parking is if you did the same thing Ford is  
13 doing?

14 A Well, I think the layout shows how that will  
15 be facilitated and indicates the number of lots and  
16 how the lots would be configured. I think if you use the  
17 Quander Road and Route 1 frontage, you're pretty well  
18 stuck with 10 lots, and that would be --

19 Q But you're not putting -- you're keeping it  
20 out of the flood plain. You're not doing the same thing  
21 Ford is doing by piping it, are you?

22 A That's correct.  
23



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Q. And if you did the same thing Ford is doing about piping it, you could get a lot more?

2

3

A. Not a lot more. You might get three more under the R-10 layout.

4

5

Q. Under the R-10.

6

A. The existing zoning.

7

Q. No, no. Now wait a minute, you're on CG zoning.

8

9

A. No residential use is permitted.

10

Q. In CG?

11

A. That's correct.

12

Q. When did they change that? It used to be --

13

A. I don't know if it used to be, but you can't residential use in CG now.

14

15

Q. At the time -- do you remember when CG zoning did allow you to put residential uses in?

16

17

A. I don't remember at any time that you could put residential uses in CG. There may have been a time, but I'm not familiar with it.

18

19

20

MR. MACKALL: Excuse me. That's all I have.

21

22

THE COURT: Redirect.

23

MR. SEWELL: I have no questions. May



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1

this witness be excused, Your Honor?

2

3

THE COURT: Yes. Do you have any exhibits, Mr. Runyon, that have been marked?

4

5

6

MR. SEWELL: I think he just has 12, Your Honor.

7

8

THE COURT: You're free to go. Thank you very much, Mr. Runyon.

9

10

(Witness excused.)

11

12

MR. SEWELL: Call Mr. Humphrey, please.

13

Whereupon,

14

15

SCOTT C. HUMPHREY,

16

17

18

a witness, was called for examination by counsel on behalf of the defendant, and, having been duly sworn, was examined and testified as follows:

19

DIRECT EXAMINATION

20

BY MR. SEWELL:

21

22

Q Mr. Humphrey, would you state your name, address and occupation, please?

23

A My name is Scott C. Humphrey. My address is





1 311 South Washington Street, Alexandria, Virginia. I'm  
2 real estate appraiser and broker, and my company is  
3 R. L. Kane, Incorporated in Alexandria.

4 Q Mr. Humphrey, have you testified as an  
5 appraiser and expert in matters of real estate  
6 within your expertise in this court and other courts?

7 MR. MACKALL: Again I would -- I view  
8 Mr. Humphrey as an expert myself, and I would again  
9 stipulate as to his qualifications.

10 THE COURT: The Court will accept the  
11 stipulation.

12 BY MR. SEWELL:

13 Q Mr. Humphrey, first of all, are you  
14 familiar with the property that's involved in this  
15 particular lawsuit today?

16 A Yes, sir, I am.

17 Q And, at my request, did you make an  
18 examination for purposes of appraisal relating to  
19 this property and its uses that it has?

20 A I made, at your request, a study of the  
21 potential values of residential lots if they were to  
22 be used on this commercially zoned property. I have  
23 not made an appraisal of the property as it is zoned



1 commercial.

2 Q Mr. Humphrey, would you state -- I think  
3 it would be helpful, first, to describe the property  
4 and its location; then I'd like for you to state  
5 what you did and what results and any opinions you  
6 came up with and state specifically the basis for  
7 those opinions, if you would.

8 A All right, sir. Of course, the first thing  
9 I did was to be sure that the property on the zoning  
10 map and the tax maps of the County were the property  
11 that I had known it to be for years. I had appraised  
12 this property for the original prior land owner back  
13 some years ago when Route 1 had been widened, when  
14 there was a condemnation case.

15 I went back and inspected this property  
16 again. It is, for description, located on the east  
17 side of U. S. Route 1. It's immediately north of  
18 Quander Road, which is a small road that extends  
19 eastward from U. S. Route 1 into the Bucknell Manor  
20 Subdivision and into Belle Haven Subdivision.

21 The property fronting on Route 1 is in an  
22 area that is predominantly commercial in every respect.  
23 There are a scattering of older motels on the east



1 side of U. S. Route 1 from this property on into the  
2 Capital Beltway Bridge. On -- immediately across  
3 Route 1 from this property is a Holiday Inn, and  
4 then there is diagonally across a large apartment  
5 development of high-rise apartments.

6 Immediately across the property where the  
7 Holiday Inn is, there are -- there is the site of the  
8 old Harry Smith Motel, which is no longer in operation.  
9 And immediately behind that and then extending on to  
10 King's Highway in a westerly direction is the Fair  
11 Haven Subdivision, which is a subdivision that was  
12 built in the war years or immediately after World  
13 War II. And there are asbestos shingle, one and a half  
14 story houses that are located on R-10 zoning. None  
15 of those houses, however, actually front on U. S.  
16 Route 1. At one time they did. The Seven-Eleven  
17 store that's on Fair Haven Avenue was formerly two  
18 single-family houses that were torn down and the land  
19 subsequently developed for Seven-Eleven.

20 And then the house right on the southwest  
21 corner of Fair Haven and Route 1, which would be  
22 directly across from Quander Road, that property is  
23 occupied by a palm reader, and I think that has to



1 be classified as commercial use. In fact, that house  
2 was rebuilt from its original residential type house  
3 as being the typical Fair Haven house.

4 Moving then south of the subject property  
5 on Route 1, you have what is formerly and for years  
6 was known as the Penn Daw Intersection and there are  
7 a number of commercial uses, including a small  
8 shopping center and the K-Mart Department Store is  
9 located on the old Spring Bank Trailer Court that  
10 was there for a number of years.

11 The property immediately to the east of  
12 the subject property is what is known as the new  
13 section of Belle Haven. The Windsor Road frontage  
14 actually touches this property on the property's  
15 most easterly boundary.

16 The property, in terms of its own charac-  
17 teristics, is a deep ravine that has --

18 MR. MACKALL: Your Honor, I don't think  
19 he's answering the question now. I think the question  
20 was where it was located. I'm not sure what he's --

21 MR. SEWELL: Your Honor, my question went  
22 beyond that. I'll ask specifics if the Court -- but  
23 I think we just save time to just let him state what



1 he did.

2 MR. MACKALL: Well, Mr. Humphrey is giving  
3 a speech up here and I don't mind him answering  
4 questions, but, --

5 BY MR. SEWELL:

6 Q Would you describe the property itself  
7 that you utilized as a basis for making any analysis  
8 or appraisals that you may have made?

9 A You mean comparable properties, or this  
10 property?

11 Q No, sir; this property.

12 A Yes, sir. This property -- and I think  
13 I've covered the fact that it had frontage on Route 1,  
14 and I was trying to say that the property has a  
15 ravine that goes through it that is a major storm  
16 water drainage area for this area of the county. And  
17 the land falls off very abruptly from Windsor Avenue  
18 into this drainage ditch.

19 For several years, prior to the widening  
20 of Route 1, there was an attempt to fill this land  
21 on the Route 1 frontage, and, until that road-  
22 widening occurred, that land did not have very much  
23 fill on it. It has been subsequently filled so that



1 in arriving at the use of this property, as if it were  
2 to be used residentially, I did determine, with the  
3 help of Charles Runyon, a certified surveyor-engineer,  
4 that it would be possible to obtain approximately  
5 10 lots on that Route 1 frontage and the Quander  
6 Road frontage.

7 The utilities are available to this  
8 property, including sewer and water, and I did consider  
9 that in making my valuation. I also considered the  
10 land development costs that would be necessary in  
11 order to utilize this land for single-family residential

12 Most of these costs -- or some of these  
13 costs in detail were furnished to me by Mr. Runyon  
14 in order to arrive at the development costs for this  
15 land.

16 Q Based on your analysis, did you form an  
17 opinion as to whether or not the land has a value as  
18 residential property for single-family dwellings?

19 A The land, based on the requirements, the  
20 cost of developing it, the land, under any kind of  
21 development plan that I could concede in single-family  
22 residential, would have a negative land value. There-  
23 fore, in my opinion, it is not usable for single-



1 family residential.

2 Q Now, is that based on your analysis of  
3 the market at the present time?

4 A That is correct.

5 Q And did you analyze and place your opinion  
6 for the foreseeable future as you understand it as an  
7 appraiser?

8 A Yes, sir.

9 Q Did you also reach an opinion as to that?

10 A Yes, sir.

11 Q What is your opinion?

12 A Well, my opinion regarding the foreseeable  
13 future would be that even though I could project that  
14 the land values would increase and finished building  
15 lots would increase in value, the cost of development --  
16 if it's not economically feasible to do it today, the  
17 actual development cost would increase at least as  
18 rapidly as the value of the property so that -- and I  
19 think, realistically, if what happened is what's  
20 happened in the past, the cost of development would  
21 increase more rapidly than the value of the land would  
22 increase, thereby widening the margin of the negative  
23 land values for the future.



1 MR. SEWELL: I have no further questions.

2 THE COURT: Cross-examine.

3 CROSS-EXAMINATION

4 BY MR. MACKALL:

5 Q Yes, sir. Mr. Humphrey, let's assume that  
6 this piece of land was divided into two pieces right  
7 down the middle, okay, for residential purposes,  
8 could you not build a house on Quander Road, you  
9 know, Quander Road side and say it's already -- and  
10 a house on the other side and you have two lots. So  
11 you just had two lots, two building lots. No  
12 development costs because they're both existing lots.  
13 The land has some value for that purpose, does it not?

14 A Well, Mr. Mackall, I don't believe that  
15 any of this land is now subdivided into lots. In  
16 order for you to get your two lots, you would have  
17 to submit a subdivision plan to the county, and, at  
18 that time, you would be required to meet certain  
19 conditions imposed upon you, including storm water,  
20 including widening of Quander Road, including curb,  
21 including sidewalks, including gutter and sanitary  
22 sewer and water. Now, those are among the things  
23 that I know you would have to meet.





1                   Now supposing that you could do those  
2 things --

3           Q       I said, assuming, Mr. Humphrey. I said  
4 assuming you had two different pieces of land here and  
5 you could get two building sites, one is five acres  
6 and one is six acres, located adjacent to Belle Haven;  
7 what would be the value of those building sites, five  
8 acres?

9           A       You mean if you had one site that would be  
10 facing Quander Road and one site that would be facing  
11 Windsor Road?

12          Q       Yes, sir.

13          A       So you're saying two lots of approximately  
14 five acres?

15          Q       Yes, sir.

16          A       Well, I think -- I don't know. I didn't  
17 appraise them as two lots and I didn't think about --  
18 I didn't think about the economic feasibility of  
19 putting in whatever improvements you'd have to put in  
20 for two lots. I can't imagine the County approving  
21 a two-lot subdivision without any improvements to it.

22          Q       Assume the lots are already approved, Mr.  
23 Humphrey. Assume for a minute that there is a dividing



1 line between the 12 acres, okay, and you had a building  
2 lot here and a building lot here. Okay, what would  
3 be the value of them?

4 A Well, I don't know exactly but they would  
5 certainly have value as building lots.

6 Q They would have value as building lots?

7 A Right.

8 Q All right, sir, now let me go to another  
9 question. You've appraised this on the single-family  
10 residential, did you not?

11 A Yes, sir. I did it actually based upon the  
12 maximum density obtainable in single-family, which  
13 would be R-10.

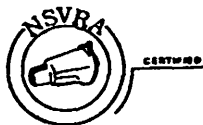
14 Q All right, suppose you had an apartment  
15 there, a residential apartment there, Mr. Humphrey.

16 A It would be very -- it would be very -- I  
17 think it would be very feasible to --

18 Q To build an apartment, a residential  
19 apartment on that piece of land.

20 A Right. The previous owners were turned  
21 down for trying to do that. They wanted to do that.  
22 They weren't able to do that. So --

23 Q The previous owners had planned to do that?



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1 A I think that they did; that's correct.

2 Q All right, and it would be economically  
3 feasible to say --

4 A Well, I don't know about the economic  
5 feasibility of that. I assume that it would have  
6 been economically feasible or the owners would not  
7 have attempted to have that plan approved.

8 MR. MACKALL: That's all I have for him.

9 THE COURT: Redirect.

10 MR. SEWELL: I have no redirect, Your Honor.

11 THE COURT: May the witness be excused?

12 MR. SEWELL: Yes, sir.

13 THE COURT: You're free to go. Thank you  
14 very much.

15 (Witness excused.)

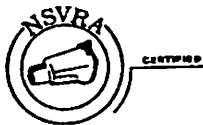
16 THE COURT: Call your next witness.

17 MR. SEWELL: Your Honor, I would like to  
18 submit the remaining portions of Mr. Robinson's  
19 deposition into evidence.

20 THE COURT: Any objection?

21 MR. MACKALL: No, sir. I was present and --

22 MR. SEWELL: And, Your Honor, I have some  
23 instruments from the land records. They are not nearly



1 (Witness sworn.)

2 Whereupon,

3 CLARENCE J. ROBINSON,

4 a witness was called for examination by counsel  
5 for the defendant, and, after having been duly sworn,  
6 was examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR THE DEFENDANT

8 BY MR. SEWELL:

9 Q Mr. Robinson, state your name and current  
10 address, if you will, please.

11 A My name is Clarence J. Robinson, and I live  
12 at 4800 Filmore Avenue, Godwin House, Alexandria,  
13 Virginia.

14 Q And how are you presently employed?

15 A I'm retired.

16 Q Directing your attention to the year of 1952,  
17 what was your association, if any, with the Belle  
18 Haven Realty Corporation?

19 A I was president of the Belle Haven Realty  
20 Corporation.

21 Q And how long had you been associated with  
22 the corporation?

23 A I became president about three years after



1 its incorporation. The former president was Nelson  
2 Snyder, the late Nelson Snyder. I succeeded him and  
3 I was the only president after that time until the  
4 corporation broke up.

5 Q Were you involved with the normal day to  
6 day affairs of the association?

7 A No.

8 Q Mr. Robinson, I have given you a plat, which  
9 I will, at a later time, ask the reporter to mark and  
10 attach to this deposition, showing generally the  
11 Belle Haven Subdivision as it exists today, and  
12 there's a parcel of property outlined in red on this  
13 plat. Are you generally familiar with the location  
14 of that piece of property?

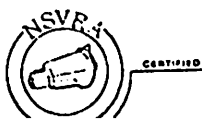
15 A Yes, I know it very well.

16 (The document referred to  
17 above was marked as Robinson  
18 Deposition Exhibit Number 1  
19 for identification.)

20 Q Was that formerly property of the Belle  
21 Haven Realty Corporation?

22 A That was in the original plat; yes, sir.

23 Q Did Belle Haven Realty Corporation have



1 any plan to use this particular piece of property?

2 A Well, I think that needs a little clarifica-  
3 tion. It's somewhat ambiguous. Our plan was to sell  
4 all the land we bought down there, but we didn't have  
5 that -- we didn't have it -- there was no plat of  
6 subdivision on that particular piece of property, as  
7 I remember it. It was left in that shape just as it  
8 is there. There were no improvements put in, in  
9 other words.

10 Q Did you plan to subdivide that piece of  
11 property?

12 A We did not plan to subdivide it.

13 Q During the period of construction and  
14 development at Belle Haven, how was this piece of  
15 property used?

16 A Only a portion of it down on the Quander  
17 Road and so designated on the plat with a circle with  
18 a part of a rectangle around it. That was originally  
19 a stable for a couple of mules that we had working on  
20 the property, and it was also used as a shop to take  
21 care of the mechanical equipment at Belle Haven, the  
22 contractors at Belle Haven.

23 Q Mr. Robinson, to your knowledge, was there



1 ever an intent of Belle Haven Realty Corporation to  
2 use that piece of property marked in red as residential  
3 property?

4 A. I don't think Belle Haven Realty Corporation  
5 is on record as to what its intent was. From my  
6 own knowledge, I felt that that piece of property --  
7 and I know Mr. Howell did -- the topography was so bad  
8 that we couldn't use it for residential property.

9 It was almost vertical inclines there coming  
10 down to the creek, and it didn't lend itself to a  
11 residential development. But whether we didn't have  
12 any -- we didn't have any plan at that time because  
13 this other property in Belle Haven, the improvements  
14 had not been put on and it was not a property that we  
15 had under active consideration.

16 Q. Mr. Robinson, in 1952 when you were  
17 president of Belle Haven Realty Corporation, are you  
18 familiar with the transfer of property of some 70  
19 acres, over 70 acres, from Belle Haven Realty to  
20 Eugene Olmi?

21 A. Yes, sir. I remember -- I know we  
22 transferred -- we sold the land to him.

23 Q. At the time of transfer, approximately 6.8



1 acres of that transfer was deeded to Olmi, free of  
2 all restrictions and covenants that the remaining  
3 portion of the property had. Do you know the purpose  
4 of deeding this property to Olmi without the  
5 restrictions?

6 A. No.

7 Q. I'm referring to the 6.8.

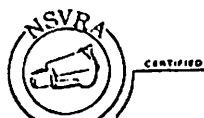
8 A. No, I don't know. That was done by Randall  
9 Caton, I'm sure, who was attorney for Belle Haven  
10 Realty Corporation. He handled that as a legal matter  
11 and I had -- knew nothing about it.

12 Q. Approximately two years later in 1954, there  
13 was a deed of correction relating to the 1952 transfer.  
14 Do you have any personal knowledge of that deed of  
15 correction?

16 A. No.

17 Q. To your knowledge, was there ever a master  
18 plan of development by Belle Haven that included this  
19 property marked in red?

20 A. There never was a master plan for the  
21 development of Belle Haven as we -- it was developed  
22 by sections; Section 1, Section 2, Section 3, and so  
23 on. Mr. Howell, one of the owners of Belle Haven, was





1 a civil engineer, and as we would determine the need  
2 for additional pieces of property, he would prepare  
3 a plat, and then that particular plat would go to  
4 Fairfax, be entered on the record, get the approval  
5 for it, and that's the way Belle Haven was developed.  
6 There was no master plan, as far as I know. As a  
7 matter of fact, we changed lot sizes from Section 1  
8 to Section 2. We changed the street widths from  
9 Section 1 to Section 2, corrected faults we had in  
10 Section 1, we tried to correct in the next section,  
11 and that sort of thing, but there never was a master  
12 plan as such.

13 MR. SEWELL: I have no other questions.

14 May we go off the record a minute.

15 (Discussion off the record.)

16 EXAMINATION BY COUNSEL FOR THE COMPLAINANTS

17 BY MR. MACKALL:

18 Q Mr. Robinson, let me ask you a couple of  
19 questions, if I may..

20 I'd like to show you here a copy of a 1925  
21 contract.

22 A '25?

23 Q 1925, yes, sir.



1 A. When, that's 51 years ago.

2 Q And ask you if this is a form contract that  
3 you all used back in 1925, if you can remember, when  
4 you were selling off the original lots. Do you  
5 remember that type of form contract at all?

6 A. I wasn't intimately associated with the  
7 form of contract, but I would say it looks familiar.  
8 That's about all I can say for it. I certainly  
9 couldn't identify it any further than that. I  
10 recognize the signatures, of course, and I know we  
11 used a form contract, and I assume that's it.

12 MR. MACKALL: I'd like this marked, if you  
13 would.

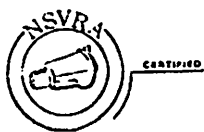
14 (The document referred to above  
15 was marked as Robinson Deposition  
16 Exhibit No. 2 for identification.)

17 BY MR. MACKALL:

18 Q Now, Mr. Robinson, you indicated that Mr.  
19 Howell was your engineer?

20 A. Right.

21 Q I show you here a copy of a -- this is a  
22 big one. I show you here a copy which shows Belle  
23 Haven Realty Corporation, west of the Fort Hunt Road,



1 Sections 1, 2, and 3 in proposed subdivision of  
2 unsubdivided acreage dated October 10, '35, and see  
3 if this -- do you remember any proposed subdivision  
4 plans that Mr. Howell prepared?

5 A. No, I do not.

6 Q. You do not, sir. Does this plat look at  
7 all familiar to you, sir?

8 A. I'd be willing to take an oath that that  
9 is Belle Haven, having lived there since I first  
10 built there before Belle Haven started.

11 Q. Well, let me ask you this question. When  
12 you all put on Section 1, you knew where your streets  
13 were going to go for Section 2, I would assume, in  
14 developing a piece of land so you wouldn't landlock  
15 anything that was left; is that correct, sir?

16 A. That's what our engineer -- I don't know  
17 how he did it, but I would assume -- I would assume  
18 that's a natural assumption, that when he put Section  
19 1 in, he came up to the circle here, you see, and then  
20 the next section, 2, was over here, more or less an  
21 extension of these streets.

22 Q. And then would Section 3 be an extension of  
23 those existing streets in this thing so it all tied in?



1 Was your thing to tie it in with the circle? What did  
2 the circle have to do --

3 A Fort Willard Circle was originally known  
4 as Fort Garibaldi in the Civil War. It was gun  
5 emplacement there for the protection of Washington. It  
6 was a natural circle, and Mr. Howell knew that, and  
7 he worked it into his plan of development. And I think  
8 the restrictions that are on it now -- they were at  
9 one time -- that Ford Willard Circle could not be used  
10 for any purpose unless it had the approval of all the  
11 contiguous property owners; public use.

12 But Mr. Howell liked circles. See, here's  
13 another one here. Belle Haven is quite a place to  
14 find your way around at night after a cocktail party  
15 if you're not familiar with it.

16 Q Then this proposed subdivision is not at  
17 all familiar to you, sir; is this correct?

18 MR. SEWELL: I would object to the question.  
19 I don't know that there's any testimony that all of  
20 this represents a proposed subdivision. I don't know  
21 what portion of it you're referring to.



1 BY MR. MACKALL:

2 Q Well, this total, what I would call a master  
3 plan for Belle Haven, is not familiar to you; is that  
4 correct, sir?

5 MR. SEWELL: All right, just for the record,  
6 let me object to the referral to this piece of paper  
7 as a master plan.

8 I think there was testimony that there was,  
9 in fact, no master plan, but go ahead, Mr. Robinson.

10 BY MR. MACKALL:

11 Q Well, this proposed subdivision of the  
12 unsubdivided acreage prepared by Mr. Howell in 1935 --

13 A 1935? I thought you were questioning me  
14 about 1925.

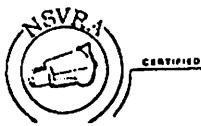
15 Q No, that was -- '25 was on that contract.  
16 This was proposed in October 10, '35 by D. J. Howell.

17 Is this plat at all familiar to you, sir?

18 A Well, we had -- Belle Haven Realty Corporation --  
19 we had to approve any plat that Mr. Howell prepared.

20 So at that time, it must have been -- I  
21 must have been familiar with it, but I didn't take  
22 any part in the making of it or the planning of it.

23 Q Well, this was done by Mr. Howell then for



1 the Belle Haven Realty?

2 A. Well, he had a dual capacity. He was the  
3 civil engineer and he was also the chief stockholder  
4 of Belle Haven, the major stockholder.

5 Q. Major stockholder.

6 I'd like for you to mark this.

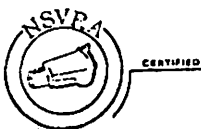
7 A. Would you like for me to look at that and  
8 see if I can identify it further?

9 Q. See if you can identify it at all, sir.

10 A. If Belle Haven is built there -- down at the  
11 end because Belle Haven started at the north end and worked  
12 to the south. I don't see some of the present streets  
13 in Belle Haven on this plat, for instance, the Olmi-Landrith  
14 Drive which comes up to Belle Haven.

15 There is no Rolling Road in Belle Haven that  
16 I know of. What is this called? I'm not familiar with  
17 that street name. This unquestionably was a plat  
18 submitted by Mr. Howell, but I don't think Belle Haven  
19 in the south part of it was -- complied completely with  
20 everything he has here. I think there were changes made

21 Belle Haven Road, Windson Road, now, this is  
22 familiar. I likve here. My home was there. Maybe this is  
23 it here, but those streets have changed. This present road



1 doesn't swing off quite that -- yes, it does. Belle Haven  
2 Road carries on. My property is there.

3 All right, sir, I'll accept that as the plat.

4 MR. MACKALL: Would you mark this, please?

5 (The document referred to above  
6 was marked as Robinson Deposition  
7 Exhibit No. 3 for identification.)

8 BY MR. MACKALL:

9 Q Mr. Robinson, a deed of -- in August of  
10 1952 --

11 A '52, uh-huh.

12 Q That's a copy --

13 A Is this the time -- this is when Olmi  
14 bought the property?

15 Q Yes, sir.

16 A The unsold property west of Fort Hunt Road?

17 Q Yes, sir. In that deed, referring to page  
18 117 of it, in the restrictions, Restriction Number 3 --

19 A Maybe you'd better find that for me.

20 Q All right, sir, if I could --

21 A These restrictions?

22 Q Yes, sir, Restriction Number 3.  
23



1 MR. SEWELL: All right, for purposes of the  
2 record, I'm going to object to the question. I think  
3 the instrument speaks for itself, but you can go ahead.

4 BY MR. MACKALL:

5 Q This restriction referred to residences  
6 located within 1,000 feet of Quander Road, U. S.  
7 Number One Highway or Old Richmond-Washington Road  
8 concerning the residences that were built. Do you  
9 have any recollection of why that language was put in  
10 there, sir?

11 A No.

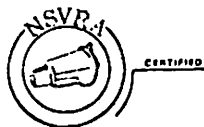
12 MR. MACKALL: I have no further questions.

13 THE WITNESS: You mean I'm home free?

14 FURTHER EXAMINATION BY COUNSEL FOR THE DEFENDANT

15 BY MR. SEWELL:

16 Q Let me ask you one question, Mr. Robinson.  
17 On this plat that we looked at, referring to the 1935  
18 plat, is there anything, to your knowledge, on this  
19 plat that would indicate that the property on what  
20 I believe to be west of what is now Windsor Road was  
21 to be used for residential purposes? In other words,  
22 is there anything on this that would indicate to you  
23 that Belle Haven intended to use this as residential?





1 I'm talking about the property off of Route 1 and  
2 Quander Road.

3 A. Yes, sir.

4 MR. MACKALL: I would object. I think the plat  
5 shows lots there. I think the plat speaks for itself. I  
6 think it shows that there -- I think I would object to the  
7 question.

8 Go ahead and answer the question, Mr. Robinson.  
9 That's just for the record.

10 BY MR. SEWELL:

11 Q. Do you understand my question, Mr. Robinson?

12 A. Yes, but you're asking for intent again and --

13 Q. Yes, sir.

14 A. -- and intent is an awfully hard thing for a  
15 president of a coproration to answer when intent is  
16 determined by board action, and the president's job is  
17 to hopefully see that the intent is carried out.

18 There was no policy determined as to what should  
19 happen to that property. It just laid dormant as far as we  
20 were concerned. We had -- therefore, we had no plan to use  
21 it ourselves, so we had no defined intent, as I would  
22 interpret intent.

23 I don't know if you're familiar with the topography



1 of that gound, whether you've ever tried to walk over  
2 it back in the years you're talking about, but it was  
3 a pretty rugged piece of waste property on what was then  
4 a back of a property. There was no commercial development  
5 down that road at that time, to speak of. We weren't  
6 thinking in terms of commercial development or any other  
7 kind of development except working our subdivision. That  
8 property was just so rough we couldn't use it.

9 MR. SEWELL: I have no further questions.

10 MR. MACKALL: One further question.

11 THE WITNESS: Maybe you don't want that on the  
12 record, but those are the facts as I remember them.

13 FURTHER EXAMINATION BY COUNSEL FOR THE COMPLAINANTS

14 BY MR. MACKALL:

15 Q One question. Was there ever anything of --  
16 any discussion of making part of that a park in there?  
17 Did you ever remember anything about a park for any of  
18 that -- where that stream is down there?

19 A There was never any formal movement to make  
20 a park down there. We had some boys playing baseball  
21 in other sections of the subdivision. We got some  
22 objections to that. Mr. Howell thought it might be  
23 well if some of the parents would take charge of the



1 Fair Store, the last paragraph in that case. It's 203  
2 Virginia 908 on Page 912, and the last paragraph in there,  
3 "All Courts proposed to give effect to the plain intention  
4 of the parties imposing such restrictions and should live  
5 up to their profession in good faith instead of seeking  
6 ingenious subtlety of interpretation by which to evade such  
7 restrictions". And this is what Ford is trying to convince  
8 this Court to do, to come up with some theory -- some theory  
9 where having made the business judgment after having notice  
0 to acquire this land, and then they say we'll figure out  
1 some way to get around it. And I submit the law is not that  
2 way, and I submit that we have proved beyond any shadow of a  
3 doubt that part of it is restricted. And it's my feeling  
4 that we have proved from these plats in evidence that all of  
5 that land that Ford bought is restricted.

6 I thank Your Honor.

7 THE COURT: The Court, in giving serious  
8 consideration to this matter, reviewing the briefs, both  
9 briefs, excellent briefs, a tremendous amount of work has  
0 gone into the briefs, and exhaustive research has been done  
1 on the problem that confronts the Court. Now, in trying to  
2 reach a decision in this Court, and the long period of time  
3 since the inception of the area of Belle Haven which is



generally known by everyone in the Alexandria area, the Court not only has to go on what is apparent from the record but also try and attempt to establish some chain of thought on the part of the original developers, current developers, property owners that have made purchases, and so forth.

One thing that hasn't changed is the physical characteristics of the property that is subject to this proceeding. And the Court, in reviewing the testimony of Mr. Holland who, of course, has been at this property and on this property since in the early '50's and probably one of the more thorough and has more experience in Fairfax County than any other engineer and surveyor as of today's date.

But you start off with the overall property acquired by the corporation, your subsequent dedications of subdivisions, sections of subdivision blocks, and so forth.

You have one exhibit which is your overall -- as Mr. Mackall refers to it as your overall scheme or plan. Now, Mr. Holland, being a professional in the trade of laying out subdivisions, developing, drawing your plans, specifications, and so forth, does not consider it as an overall plan or scheme from the original inception.

The plat was found someplace and evidently other markings and so forth have appeared on this plat.



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1 And the last case of which the Court has for  
2 guidance, and the Court fully realizing the property rights  
3 involved of not only the defendant in the case but also of  
4 the complainants in the case.

5 There is no evidence before the Court that any  
6 property owner ever saw this overall plat and relied upon  
7 it, and the Court gives great significance to that because  
8 in the Mid-City case you had a plat showing the overall  
9 property restrictions on that which were recorded and so  
10 forth.

11 Here this plat has never gone of record, does  
12 not contain any restrictions itself which would point a  
13 finger at an overall plan for development of the entire  
14 tract of which all property owners could rely.

15 So you have to take the next step then. By  
16 subdividing individual sections, does that create your  
17 servitude on the entire balance of the property. And what  
18 confronts the Court then is a serious question to the Court.  
19 And the Court bearing in mind the intent of the original  
20 Belle Haven Realty Corporation -- did they intend to develop  
all of it, did the complainants in this case rely upon an  
overall scheme or plan of development.

And, again, the Court has to look at the



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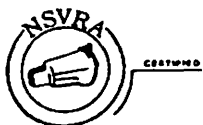
1 physical characteristics and what was intended with this  
2 property. And it would be the opinion of the Court that  
3 there was never an overall scheme for development of the  
4 entire tract that would include the subject property.

5 The Court could not rule that the servitude  
6 would attach to the property purchased by Ford Motor Company,  
7 and that raises the next question with reference to the  
8 Correction Deed of 1954.

9 The Court, if this was of a recent development  
10 when it was zoned commercial when Ford Motor Company started  
11 developing an interest in the property, a Correction Deed  
12 would go on at that time which would have very little value  
13 as far as the Court would be concerned vacating the  
14 restrictions and making a correction relating back to 1952.  
15 But this was done in 1954, two years subsequent to the  
16 original Deed of which this Correction Deed related.

17 There is no evidence before the Court that any  
18 activity had been suggested, started, and so forth on the  
19 subject property to indicate on the part of the grantee or  
20 the grantor to get together to defeat property rights of  
21 other individuals within the subdivision because they had a  
22 proposed scheme for development of commercial purposes.

23 That is not before the Court. There is nothing



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1 to indicate to the Court that's what occurred. Here 20  
2 years later the Court is looking back on what occurred in  
3 the early 1950's. And the Court, in giving weight to the  
4 Deed itself, to the language of the Deed, saying it was a  
5 Correction Deed, setting out the intent of the parties that  
6 the Court gives weight to it and would decree that that was  
7 a Correction Deed as such and would relate back to the date  
8 of the original Deed of 1952. There's law both ways on  
9 this, and there's not too much guidance with respect to this  
10 last issue to the Court.

11 And the Court fully realizes that you have  
12 property owners here that do not desire to have any  
13 commercial property near them. And the Court can't get  
14 into noise, lights, and so forth because there's not  
15 sufficient evidence before the Court to say it was a  
16 nuisance or would not be a nuisance.

17 But, looking strictly at the evidence, the  
18 Court cannot say from that one plan -- it's strong indi-  
19 cation. There's a strong indication. But the burden of  
20 proof necessary and the disfavor of restrictive covenants as  
21 being contrary to the common law and brought down from the  
22 common law, they are not favored in law but will be given  
23 effect if they do exist. But the Court cannot say that that



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1 overall plat as shown to the Court there was an overall  
2 scheme, plan for development of this of which these  
3 complainants relied upon.

4 The Correction Deed as such, being 20 years ago,  
5 there's nothing to indicate that this was done to defeat  
6 any rights of property owners that were done there -- or  
7 that had purchased their property there because if it had  
8 been done at the time Ford Motor Company got interested, the  
9 Court wouldn't find any reason to believe it wasn't done  
10 just to defeat the rights of the property owners. Here, the  
11 Court cannot say that it was done like that.

12 I think it was the intent of the parties that  
13 this property, being its location in this bad area, that it  
14 was not to be subject to the restrictive covenants because  
15 it, in the opinion of the Court, had no value for  
16 residential purposes, could not have been developed for  
17 residential purposes and was never intended for development  
18 as residential purposes.

19 The parties may note their objections and  
20 exceptions to the ruling of the Court and save it in the  
21 decree.

22 Anything else for the Court to rule on?

23 ~~MR. SEWELL. No, Your Honor.~~



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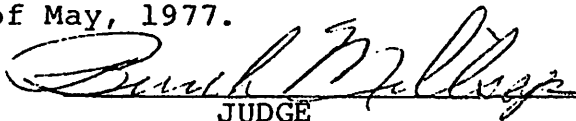


ORDER

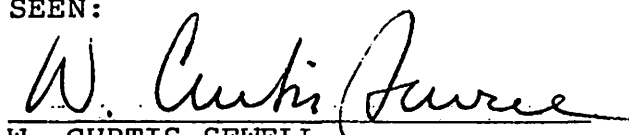
THIS CAUSE having duly matured came on this 4th day of April, 1977 upon the Bill of Complaint, Answer and all other pleadings and proceedings had herein and all parties having appeared personally and by counsel and all parties being prepared for trial and the Court having made an oral statement of its Findings of Facts, Statement of the Law and Decision of this cause a copy of the transcription of said oral opinion being annexed hereto and made a part hereof as if fully set out at length herein; and the Court having found that the complainants were not entitled to the relief they sought in the Bill of Complaint; it is, therefore,

ADJUDGED, ORDERED and DECREED that the Bill of Complaint is hereby dismissed with prejudice and the entire transcript of the trial herein is made a part of the record in compliance with rule 5:9 of the Supreme Court of Virginia.

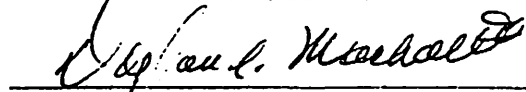
ENTER this 11<sup>th</sup> day of May, 1977.

  
JUDGE

SEEN:

  
W. CURTIS SEWELL  
Counsel for Defendant

SEEN AND OBJECTED TO:

  
DOUGLASS S. MACKALL, III  
Counsel for Complainants

FILED

JUN 7 1977

JAMES E. HOOFNAGLE  
Clerk of Circuit Court  
of Fairfax County, Va.

NOTICE OF APPEAL

TO: James E. Hoofnagle, Clerk of  
the Circuit Court of Fairfax County  
Fairfax, Virginia

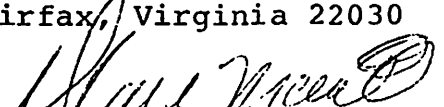
Notice is hereby given that the above named Complainants' appeal from a final order rendered by this Court on the 11th day of May, 1977, and announce their intention of applying for a Writ of Error to the Supreme Court of Virginia.

The transcript of the case is to be thereafter filed.

WILLIAM H. DUVALL  
MILDRED DUVALL  
WILLIAM E. WEESNER  
IRENE S. WEESNER  
DANIEL M. ROCHE  
ERMA ROCHE  
FREDERICK A. BALLARD  
MARY ELIZABETH BALLARD  
HENRY W. ANDERSON  
ELIZA ANDERSON  
HOWARD L. KITZMILLER  
SHIRLEY P. KITZMILLER  
TIMOTHY E. ROWAN  
JOAN ROWAN  
WILLIAM F. GREGORY  
MILLIE GREGORY

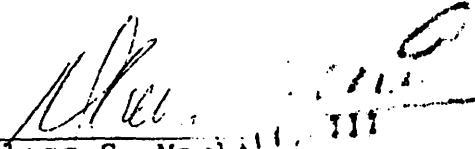
By   
Counsel

MACKALL, MACKALL & WALKER  
4031 Chain Bridge Road  
Fairfax, Virginia 22030

  
Douglass S. Mackall, III  
Counsel for Complainants

CERTIFICATE OF SERVICE

I hereby certify that on this 6<sup>th</sup> day of June, 1955, a copy of the foregoing Notice of Appeal was mailed, postage prepaid, to W. Curtis Sewell, Esquire, Counsel for Defendant, 603 Prince Street, Alexandria, Virginia 22314.

  
\_\_\_\_\_  
Douglass S. MacVane

## ASSIGNMENTS OF ERROR

I. THE COURT ERRED IN HOLDING THAT A VESTED PROPERTY RIGHT OF THE APPELLANTS COULD BE EXTINGUISHED BY THE SUBSEQUENT RECORDATION OF A DEED OF CORRECTION AND VACATION TO WHICH NEITHER THE APPELLANTS NOR THEIR PRE-DECESSORS IN TITLE WERE PARTIES AND IN WHICH THEY DID NOT JOIN.

II. THE COURT ERRED IN HOLDING THAT THERE WAS NO OVERALL SCHEME FOR DEVELOPMENT OF THE ENTIRE BELLE HAVEN TRACT THAT WOULD INCLUDE THE SUBJECT PROPERTY AND THAT THE COVENANTS RESTRICTING THE LAND TO RESIDENTIAL USE DID NOT APPLY TO ANY OF THE PARCEL PURCHASED BY APPELLEE.

The foregoing Assignments of Error present the questions involved in this Appeal.