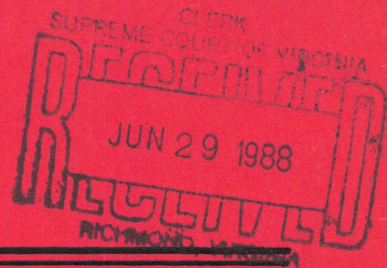


238 Va 162



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 870626

WILLIAM B. WEST, JR., ET AL.,

Appellants,

v.

ROBERT L. MILLS, ET AL.,

Appellees.

JOINT APPENDIX

Richard B. Kaufman, Esquire
Town Attorney
Town of Blacksburg
300 South Main Street
Blacksburg, Virginia 24060

William G. Broaddus, Esquire
Daniel K., Slone, Esquire
McGUIRE, WOODS, BATTLE &
BOOTHE
One James Center
Richmond, Virginia 23219

Counsel for Appellants

William B. Poff, Esquire
Daniel F. Layman, Jr., Esquire
Deborah A. Oehlschlaeger, Esquire
WOODS, ROGERS AND HAZLEGROVE
105 Franklin Road, S.W.
Post Office Box 720
Roanoke, Virginia 24004-0720

Counsel for Appellees

Mandamus Case

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VIRGINIA:

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

Robert L. Mills, Thomas E. Heavener)
and Ernestine Foresman)

Petitioners)

v.)

William B. West, Jr.)
Director of Planning)
Town of Blacksburg)
300 S. Main Street)
Blacksburg, VA 24060)
and)
the following individuals as mem-)
bers of the Planning Commission of)
the Town of Blacksburg:)

Frances Parsons)
716 Gracelyn Court)
Blacksburg, VA 24060)

J. D. Oliver)
303 Marlinton Street)
Blacksburg, VA 24060)

Robert Litschert)
302 Murphy Street)
Blacksburg, VA 24060)

Anne W. Holberton)
1000 South Main Street)
Blacksburg, VA 24060)

Theresa Humphreyville)
601 Newman Lane)
Blacksburg, VA 24060)

Georgia Anne Snyder-Falkinham)
501 Rucker Road)
Blacksburg, VA 24060)

Waldon Kerns)
5005 Tall Oaks Drive)
Blacksburg, VA 24060)

Margie D. Carson)
3009 Lancaster Dr.)
Blacksburg, VA 24060)

PETITION FOR WRIT
OF MANDAMUS

LAW OFFICES
WOODS, ROGERS
& HAZLEGROVE
ROANOKE, VA

(3) Following meetings with Planning Department personnel and the Town Attorney concerning the changes necessary in order to gain approval of the plat, petitioners on October 24, 1986 resubmitted the preliminary plat, revised in accordance with the September 3 letter. Again the Department of Planning recommended approval of the plat, but again the Planning Commission, by action taken December 2, 1986, disapproved the revised plat. By letter to petitioners dated December 29, 1986, the Director of Planning set forth the reasons for disapproval of the revised plat by the Planning Commission.

(4) After this second disapproval of the plat of Deer Run, and pursuant to the provisions of Section 4-1-1 of Appendix B of the Code of the Town of Blacksburg, the petitioners appealed the disapproval to the Council of the Town of Blacksburg, requesting that said Council override the action of the Planning Commission and approve the plat. However, by resolution adopted January 27, 1987, the Council declined to override the decision of the Planning Commission for the reasons set forth in the December 29, 1986 letter.

(5) The petitioners then on February 11, 1987, resubmitted the preliminary plat of subdivision of Deer Run to the Town Planning Department, having made changes in the plat intended to comply with the requirements of the Planning Commission and Town Council set forth in the December 29, 1986 letter.

(6) Subsequent to submission of said second revised plat, on March 3, 1987, the Town Planning Commission refused to

review that plat any further. Petitioners accordingly allege that the defendants have improperly refused to consider the preliminary plat of subdivision of Deer Run in accordance with the applicable ordinance of the Town of Blacksburg and have thereby denied petitioners the opportunity to comply with the instructions set forth in the Planning Department's letter of December 29, 1986 as to the changes necessary to obtain approval of the plat.

WHEREFORE the petitioners, being without other adequate remedy, ask that a writ of mandamus be issued by this Court directed to the defendant Director of Planning of the Town of Blacksburg as administrator of the Subdivision Ordinance of the Town of Blacksburg, and to the defendant members of the Planning Commission of the Town of Blacksburg, requiring them to accept, review, consider and approve or disapprove the preliminary subdivision plat of Deer Run dated October 23, 1986, as revised February 11, 1987, in accordance with the Subdivision Ordinance of the Town of Blacksburg, and for such other and further relief as to this Court shall seem appropriate, including the expenses incurred by petitioners as a result of the wrongful refusal of defendants to perform their duties in accordance with the applicable ordinances.

Respectfully,

ROBERT L. MILLS, THOMAS E.
HEAVENER AND ERNESTINE FORESMAN

By


Of Counsel

Subscribed and sworn to before me, the undersigned Notary Public, this 5 day of March, 1987.

Jan M. Greenman
Notary Public

My commission expires:

July 19, 1988

State of Virginia)
County of Montgomery) To-wit:

I, Ernestine Foresman, petitioner herein, being first duly sworn, say that I have read the foregoing Petition for Writ of Mandamus and know the contents thereof, and that the same is true to the best of my knowledge, information and belief.

Ernestine J. Foresman

Subscribed and sworn to before me, the undersigned Notary Public, this 5 day of March, 1987.

Jan M. Greenman
Notary Public

My commission expires:

July 19, 1988

VIRGINIA: IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

ROBERT L. MILLS, THOMAS E. :
HEAVENER, and ERNESTINE :
FORESMAN, :

Petitioners, :

v. :

GROUNDS OF DEFENSE

WILLIAM B. WEST, JR., Director :
of Planning, Town of Blacksburg, :
and others, :

Defendants. :
_____ :

Defendants, for their grounds of defense in this action,
and in response to the petition for a writ of mandamus, state as
follows:

1. Defendants admit the allegations contained in paragraphs 1, 2 and 4 of the petition for a writ of mandamus.
2. Defendants deny the allegations contained in paragraphs 3, 5, and 6 of the petition for a writ of mandamus.
3. Defendants deny any allegation in the petition for a writ of mandamus, not here specifically admitted.
4. By way of affirmative defense, the Defendants allege that Petitioners have an adequate legal remedy to address the allegations set forth in the petition for a writ of mandamus, and therefore, this extraordinary writ is inappropriate and should be dismissed.

THEREFORE, Defendants demand that the petition for a writ of mandamus be dismissed and that the Defendants recover of Petitioners, their costs in this behalf expended.

Respectfully submitted,

WILLIAM B. WEST, JR.,
Director of Planning, Town of
Blacksburg, Virginia, and the
following individuals as
members of the Planning
Commission of the Town of
Blacksburg: FRANCES PARSONS,
J. D. OLIVER, ROBERT LITSCHERT,
ANNE W. HOLBERTON, THERESA
HUMPHREYVILLE, GEORGIA ANNE
SNYDER-FALKINHAM, WALDON
KERNS, MARGIE D. CARSON,
JOSEPH T. JONES, CURTIS W.
SUMNER, Defendants

By:


Of Counsel

Richard B. Kaufman
Town Attorney
300 South Main Street
Blacksburg, VA 24060
Counsel for Defendants

AFFIDAVIT

COMMONWEALTH OF VIRGINIA

COUNTY OF MONTGOMERY

THIS DAY appeared before me, a notary public in and for the jurisdiction aforesaid, RICHARD B. KAUFMAN, Town Attorney, who after being duly sworn, made oath that the foregoing statements contained in this pleading are true and correct to the best of his knowledge, information and belief, and acknowledged the same before me.

DATE: 24 March 1987

Richard B. Kaufman
Richard B. Kaufman,
Town Attorney

Linda L. Buzzard
Notary Public

My Commission Expires:

June 3 1988

CERTIFICATE

I certify that a copy of the foregoing Grounds of Defense was mailed to Daniel F. Layman, Jr., counsel for Petitioners, Woods, Rogers & Hazlegrove, 105 Franklin Road, S.W., P.O. Box 720, Roanoke, VA 24004, this 24th day of March, 1987.

Richard B. Kaufman
Richard B. Kaufman

VIRGINIA:

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

Robert L. Mills, Thomas E. Heavener)
and Ernestine Foresman)

Petitioners)

v.)

William B. West, Jr., et al.,)

Defendants)

AFFIDAVIT
OF
ROBERT L. MILLS

STATE OF VIRGINIA)

COUNTY OF MONTGOMERY)

) To-wit:

This day appeared before me, the undersigned notary public, Robert L. Mills, who after first being duly sworn deposed and said the following:

(1) He is the owner of a one-third undivided interest, as tenant in common with Ernestine J. Foresman and Thomas E. Heavener, each of whom also owns a one-third undivided interest, in a certain tract of land located at Grove Avenue and North Drive in the Town of Blacksburg, Montgomery County, Virginia, containing 16.7751 acres. That tract of land is the subject of this litigation.

(2) He, Mrs. Foresman and Mr. Heavener have sought the approval by the Town of Blacksburg of a cluster subdivision of said tract of land, to be known as "Deer Run." In the two applications for approval of the subdivision plats they have incorrectly referred to the developer of the subdivision as "Deer Run Partnership." Further, in the first of the two

applications they incorrectly referred to the owner of the land as "Deer Run Partnership," while in the second of the two applications they correctly identified the owner as the three individuals.

(3) The references to "Deer Run Partnership" in the applications for subdivision plat approval were erroneous and inadvertent. There has never been any agreement, either oral or written, among the three property owners to form a partnership called "Deer Run Partnership," and they have not done or intended to do business as such. They contracted for and acquired the subject property jointly in their individual capacities, as reflected by the copies of the contract, deed, purchase money note and deed of trust attached hereto. Their intent is to continue to own and develop the property as joint owners and not as members of a partnership. The term "Deer Run Partnership" was derived from the name of the project proposed for the land and was used only as a label, without consideration or understanding of its legal implications.

(4) The only agreement among the landowners with regard to the property involved the conditions under which a previous development planned for the land, called "Timberwood," would be handled. They agreed that Mrs. Foresman, who is a realtor, would list the Timberwood lots for sale and receive the usual broker's commission on each sale, and that the sale contracts would require the purchasers to have Mr. Mills, who is an architect, (or his architectural firm) design the residences

and Mr. Heavener, who is a builder, construct them, with each to be paid for his work by each lot purchaser. There was to be no sharing of profits from any common fund, but rather an arrangement by which each of the owners would be able to practice his or her individual profession in the course of marketing of the property and receive payment on an individual basis for the services so rendered. The Timberwood project has now been abandoned, and no similar agreement has yet been made among the property owners as to Deer Run.

Robert L. Mills (SEAL)
Robert L. Mills

Subscribed, sworn to and acknowledged before me, the undersigned notary public, this 20 day of April, 1987.

Jan M. Greenman
Notary Public

My commission expires: July 19, 1988

VIRGINIA: IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

Robert L., Mills, Thomas E. Heavener)
and Ernestine Foresman)

Petitioners)

v.)

WILLIAM B. WEST, JR., Director of)
Planning, Town of Blacksburg, and)
other,)

Defendants)

MODIFIED WRIT
OF
MANDAMUS

This day came the parties to the action, on the verified Petition for Writ of Mandamus filed by the petitioners, and on the Plea in Bar and Grounds of Defense filed by the defendants, and the Court having heard evidence and the arguments of counsel finds as follows:

(1) That the petitioners are the joint owners as tenants in common of the real property which is the subject of this petition, that they have not intended to and are not doing business as a partnership, and that the Plea in Bar filed by defendants is accordingly OVERRULED, to which defendants object as being contrary to the holding in the case of Woodson v. Gilmer, 205 Va. 487 (1964).

(2) That the defendants, the Director of Planning and the members of the Planning Commission of the Town of Blacksburg, Virginia, have a legal duty under the ordinances of the Town of Blacksburg and the laws of Virginia to review and approve or disapprove the amended plat of subdivision of Deer Run submitted by petitioners on February 11, 1987; that the defendants have

V I R G I N I A:

IN THE CIRCUIT COURT
OF MONTGOMERY COUNTY

ROBERT L. MILLS,
THOMAS E. HEAVENER and
ERNESTINE FORESMAN,

Petitioners

-vs-

WILLIAM B. WEST, JR.,
et al,

Respondents

April 21, 1987
1:00 P.M.

HEARD BEFORE:

THE HONORABLE KENNETH I. DEVORE

NOTARIES PUBLIC
MEMBERS
NATIONAL SHORTHAND
REPORTERS ASSOCIATION
VIRGINIA SHORTHAND
REPORTERS ASSOCIATION

CENTRAL VIRGINIA REPORTERS
P. O. BOX 2738
ROANOKE, VIRGINIA 24001

TELEPHONE
387-3831
AREA CODE 703

1 The following cause came on to be heard
2 before the Honorable Kenneth I. DeVore, Judge of the
3 Circuit Court of Montgomery County, sitting at
4 Christiansburg, Virginia, on this, the 21st day of April,
5 1987, and the following took place:

6
7 THE COURT: Are you gentlemen ready?

8 MR. POFF: We are ready, Your Honor.

9 MR. KAUFMAN: Yes, Your Honor.

10 THE COURT: This matter before the Court,
11 first, your Plea in Bar.

12 MR. KAUFMAN: Yes, sir; thank you, Your
13 Honor.

14 THE COURT: The Court has read it, and
15 the first motion that you have is under the
16 Partnership Fictitious Name Statute that
17 there is no registration in the Clerk's
18 Office to trace under the partnership name;
19 is that correct?

20 MR. KAUFMAN: That is the Town's
21 contention, Your Honor.

22 THE COURT: I have had that come up
23 several times, and what I have done in the
24 past, and what happened to me one time in Roanoke

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1 these cases can not be filed and dismiss them.

2 I am talking both of them now.

3 THE COURT: There have been two suits
4 filed?

5 MR. KAUFMAN: Yes, sir, one is a suit for
6 an action for petition for Writ of Mandamus, and
7 the other is a an appeal of a denial of a
8 subdivision plat, and we are here on both of them
9 with respect to this question on the partnership
10 before you now.

11 THE COURT: As far as the case has gone so
12 far, and I gather from reading the memorandum,
13 plus the affidavit that was filed yesterday, that
14 it was a conveyance of property in the names of
15 three parties, tenants in common, but that the
16 plats and so forth were filed as a Deer Run
17 Partnership.

18 I would further take the position that I
19 will allow them to do that, and we can then get
20 to the meat of it, because if I didn't, they
21 could go down right now. I could dismiss it
22 under that, and they could file again, which
23 would be to me costly and would take up more
24 time, having the pleadings to be matured if they

1 sold it if they filed again, so I think that is
2 what I will allow them to do is just to register.

3 I don't know whether the Commissioner of
4 Revenue granted them a license as a partnership
5 or whatever has to be done on that.

6 MR. POFF: Your Honor, I think that our
7 clients did not think they were doing business as
8 a partnership, though there is language in some
9 of these filings.

10 THE COURT: Well, I gather that from
11 reading the pleadings.

12 MR. POFF: So they have never regarded
13 themselves formally as a partnership. They are
14 certainly prepared, if that is deemed to be
15 proper in the case, certainly to make an
16 appropriate filing.

17 THE COURT: It seems to me like it would
18 be the fair or equitable thing to do, and then we
19 can get down to the meat of it if you are going
20 to argue this Writ of Mandamus at this time.

21 MR. POFF: The mere fact that it might
22 today be dismissed on some technicality would not
23 bar this particular kind of action as the Court
24 points out.

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1 Your Honor? Do you want them to proceed on that
2 part of it; is that the way?

3 THE COURT: Evidently that is what they
4 want to do, so that is what I will do is listen
5 to that first.

6 MR. KAUFMAN: Your Honor, the Town would
7 basically agree with the objective facts set
8 forth in the Petitioner's affidavit and in the
9 memorandum of law; however, there are some facts
10 that the Town would need to present testimony on,
11 and for that purpose, the Town would call
12 Mr. William B. West, Jr.

13 MR. POFF: Your Honor, may I inquire?
14 Does this evidence go to the issue of
15 partnership.

16 MR. KAUFMAN: Yes, it does, Mr. Poff.

17
18
19 WILLIAM B. WEST, JR.

20 was called as a Witness, and after having first been duly
21 sworn to tell the truth, the whole truth, and nothing but
22 the truth, was examined and testified as follows:

23
24
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DIRECT EXAMINATION

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BY MR. KAUFMAN:

Q Tell the Court your name and your occupation.

A I am William B. West, Jr., Director of planning for the Town of Blacksburg, Virginia.

Q How long have you held this position?

A A little over three years; since March, 1984.

Q Mr. West, you are going to probably testify later in the other action, so I am not going to go through your qualifications here, and I am not going to qualify you as an expert witness, but I want you to tell the Court what the development called Timberwood is and what the development called Deer Run Development is, and explain to the Court the relationship between the two and the difference between the two?

A The Timberwood proposal, which was submitted in January of 1986, was a proposal for a common wall town home type community under the Cluster Housing Ordinance of the Town of Blacksburg.

The Deer Run proposal submitted later in the year was a single family, detached subdivision under

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1 the Cluster Subdivision Ordinance, utilizing smaller lots
2 and set backs, and so forth, under the Town's Cluster
3 Housing Ordinance.

4 The differences were basically the
5 Timberwood project being a common wall, town home type
6 community with groups of various numbers, five to seven
7 town homes in a group. The other Deer Run project being
8 a grouping of single family detached units.

9 Q Thank you. Was the same land involved in
10 each development?

11 A The same land was involved in both
12 developments.

13 Q Where does that land lie, generally, in
14 Montgomery County?

15 A The land lies just north of Blacksburg
16 high school, east of Grove and Price Streets.

17 Q Were the same developers involved?

18 A The same developers were involved with
19 both projects.

20 Q Were both projects for purposes of
21 residential development?

22 A Both projects were for purposes of
23 residential development.

24 Q Were both projects filed under the Town's

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1 Cluster Housing Ordinance?

2 A Yes, sir, both projects were filed under
3 the Town's Cluster Housing Ordinance.

4 Q Was the Timberwood project a not-by-right
5 project; in other words, did it have to have Council
6 approval before it could go forward?

7 A That is correct.

8 Q Was the Deer Run project a by-right
9 project?

10 A Yes, it was.

11 Q So that is one difference between the two,
12 isn't it?

13 A That is correct.

14 Q What was the name by which the developers
15 were known to the public in the first project, the
16 Timberwood project and the Deer Run Partnership, the
17 first project?

18 A Excuse me, the first project was
19 Timberwood Associates, I believe.

20 Q What was the name by which the developers
21 of the second project were known to the public?

22 A Deer Run Partnership.

23 Q Who were the developers in both projects?

24 A Ernestine Foresman, Bob Mills, and

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1 Tom Heavener.

2 Q Are they the Petitioners in the Mandamus
3 action and the other legal action on the subdivision
4 plat?

5 A Yes, they are.

6 Q I want to show you an agreement which was
7 produced under a request for Production of Documents
8 dated January 10, 1986, outlining an arrangement between
9 the Timberwood developers for the development of the
10 Timberwood project; are you familiar with that agreement?

11 A Yes, I am.

12 Q Have you read it?

13 A I have read it.

14 MR. KAUFMAN: Do you need to see a copy of
15 this?

16 MR. POFF: Let's see if it is the same
17 thing. Why don't we just let the Judge see what
18 we are talking about.

19 MR. KAUFMAN: I would like to introduce
20 this document as Defendant's Exhibit Number One.

21

22 (An agreement dated January 10, 1986, was
23 introduced into the Record as Defendant's Exhibit
24 Number One.)

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1 newspapers may have reported, I want to lodge an
2 objection, and I think we are in a lot of
3 trouble, because I personally, even though my
4 wife works for the newspaper, I am not going to
5 vouch for the veracity of everything that appears
6 in the newspaper, and certainly that is not
7 appropriate evidence in this case.

8 THE COURT: From my experience, I wouldn't
9 vouch for its veracity, either, to be frank with
10 you, but Mr. Kaufman, if you want to put it in, I
11 am not like old Will Rogers. I know a lot more
12 than what I read in the newspapers. That poor
13 fellow said that is all he ever knew is what he
14 read in the newspapers, and he must have been
15 really ignorant.

16
17 BY MR. KAUFMAN:

18 Q Mr. West, I am going to show you four
19 articles from a prominent local newspaper here called the
20 News Messenger, it is published in Montgomery County.

21 I don't want you to read the articles; I
22 don't want you to summarize the articles. I want you to
23 tell the dates of the articles and what the subject of
24 the articles was, and whether or not the developers were

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1 referred to as any particular name, and then read the
2 sentence in which the name appears?

3 A The first article is not dated, but the
4 lead paragraph, lead sentence, says, "In addition to
5 dismissing Deer Run Partnership's petition for a writ,
6 the Court should dismiss the District's petition."

7 Second sentence, "The partnership,
8 consisting of Ernestine Foresman, Robert Mills and
9 Tom Heavener, petitions the Court to order the Planning
10 Commission to approve the preliminary plat proposal." Is
11 that enough?

12 Q That is enough.

13 A On January 14, 1987, "Ernest Foresman,
14 Tom Heavener and Robert Mills, making up Deer Run
15 Partnership, will take their case to the Town Council on
16 January 27." On December 17, 1986, "This is the second
17 time the Commission has turned down a proposal submitted
18 by the developer group Deer Run Partnership,
19 (Ernest Foresman, Tom Heavener and Robert Mills)."

20 The fourth article is dated March 6, 1987,
21 "Layman represents members of the Deer Run Partnership,
22 Robert Mills, Ernest Foresman and Tom Heavener."

23 Q Thank you. Does your office correspond,
24 or has your office corresponded with Messrs. Heavener,

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1 Mills and Foresman?

2 A Yes, it has.

3 Q Did your office use the designation of
4 "Deer Run Partnership" when referring to them?

5 A Yes, we did write to Mr. Mills, Deer Run
6 Partnership.

7 Q Did you ever find any objection on their
8 part from your using that particular application? /

9 A No, we did not.

10 Q Mr. West, finally I am going to show you a
11 copy of the application for the Deer Run Cluster
12 Subdivision Plat, and I want you to tell me who was
13 listed as the applicants and who signed the application?

14 A The name of the property owner is Ernest
15 Foresman, Tom Heavener, Robert Mills. The name of the
16 developer is Deer Run Partnership. The application is
17 signed by Robert L. Mills, Property Owner and
18 Robert L. Mills, Agent.

19 Q Was an earlier application filed on the
20 same subdivision?

21 A Yes, it was.

22 Q Who was listed as the owner and developer
23 of the property in that case?

24 A The same three parties were listed as

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1 owners, and the developer was the partnership.

2 MR. KAUFMAN: Those are all the questions
3 I have on Direct, Your Honor. Please answer any
4 questions the Court or Messrs. Layman or Poff may
5 have.

6 MR. POFF: I have just a couple, Your
7 Honor.

8
9 CROSS EXAMINATION

10
11 BY MR. POFF:

12 Q Mr. West, you have never seen any
13 partnership agreement between these parties or among
14 these parties, have you?

15 A No, sir, I have not.

16 Q And in point of fact, Mr. Mills, in
17 signing the application that you just referred to, it was
18 signed by Robert L. Mills as Agent?

19 A That is correct.

20 MR. POFF: I don't have anything else.

21
22 (The Witness was excused from
23 the Witness stand.)
24

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1 quoting newspaper articles that may have called
2 them a partnership does not make them a
3 partnership any more than any other character
4 saying that any newspaper might choose to make of
5 someone or some entity, so I would submit, Your
6 Honor, that the case is right.

7 Although we have Mr. Mills here, we would
8 be happy to present him for any clarification,
9 but the fact of the matter is that this is
10 relevant to the relationship of our client as set
11 forth in the affidavit that is filed in the case,
12 and we would, absent the Court's desire for
13 clarification, stand on that.

14 THE COURT: Well, I have read the
15 affidavit, and Mr. Kaufman, would you like to
16 Cross Examine Mr. Mills on anything in the
17 affidavit?

18 MR. KAUFMAN: No, sir.

19 THE COURT: I would say as a legal matter,
20 that what is before me now, Mr. West's testimony
21 and from the Exhibit, that the parties certainly
22 did not intend a partnership; although they, by
23 error, evidently were labeled as such, and I
24 would overrule your Plea in Bar as to the

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1 partnership. Mr. Kaufman, now where do we go
2 from here? Are we still on the Mandamus?

3 MR. KAUFMAN: Yes, sir, we are only here
4 on the Mandamus, because we are not going to try
5 the other action today. We are simply trying the
6 Plea in Bar motion today on that one. Now we go
7 directly into the Mandamus action.

8 MR. POFF: Your Honor, all right. I
9 don't often get to appear on this side of the
10 Courtroom. Your Honor, let me recount a little
11 history here.

12 We are, as everyone has agreed, here on
13 our petition for Mandamus. This all arises from
14 what I guess is now clear from what has been said
15 to the Court; a petition for application of
16 approval of subdivision plat that was filed by
17 our clients before the Planning Commission of the
18 Town of Blacksburg.

19 Let me give you a little background with
20 specific dates. Timberwood was a project that
21 apparently did require some approval of Town
22 Council, which was ultimately rejected; it was
23 prior to Mr. Layman's entry and my entry into the
24 case. The Deer Run project was filed under what

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adopted, or has passed a statute which Mr. Poff pointed out, 15-475, that provides a perfect remedy for the developer in this case, and to say that that remedy is not available, is not appropriate, is to impinge the efficacy of the Court.

~~This statute was adopted for the sole purpose of granting a developer like the Dear Run people, I won't call them the Deer Run Partnership, who are aggrieved, or allegedly aggrieved by the action of a Planning Commission for a summary right to go to the Court and have the matter heard.~~

The Town then will respectfully move, after the conclusion of the evidence, that the Mandamus petition be dismissed.

THE COURT: All right.

MR. KAUFMAN: I would like to call the
Town's first Witness.

MR. POFF: Your Honor, I don't know whether it will save any time, it probably won't, but I think we have admitted in our Pleadings, and certainly stipulate that we appealed the ruling of the Planning Commission on the second

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1 plat to Town Council and that it was rejected,
2 and as I have heard Mr. Kaufman, that is the
3 thrust of his position; that his legal position
4 is that that is binding, and we did indeed appeal
5 the ruling of Town Council on the second plat to
6 the Court, and if that is the thrust of his
7 position, and it appears to be as he stated, I
8 don't see how any evidence in the world can
9 change those facts, and they present purely legal
10 issues.

11 THE COURT: How could it, Mr. Kaufman.

12 MR. KAUFMAN: Your Honor, the evidence we
13 will present will show the policy of the Planning
14 Commission, which I am not capable of testifying
15 about. It will show the reasoning of the
16 Planning Commission and the role of the
17 interrelationship between the Planning Commission
18 and the Town Council, which is important for my
19 legal argument later, and it will also review the
20 action of the Planning Commission with respect to
21 the Deer Run Subdivision Plat, and the effort
22 that they went through to try to get this plat
23 approved.

24 THE COURT: Don't the minutes, or doesn't

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1 the file show that?

2 MR. KAUFMAN: They show only one meeting,
3 Your Honor; there were seven meetings.

4 THE COURT: Ms. Humphreyville moved the
5 client to consider the Dear Run revised cluster
6 subdivision plat on the basis of the action taken
7 by Town Council was final. Ms. Holberton
8 seconded the motion, and then evidently they were
9 withdrawn, motion passed, client has considered
10 Deer Run revised cluster subdivision plat on the
11 basis that the action taken by Town Council was
12 final, so what to you expect to prove? I
13 understood the reason that the last time it was
14 from the minutes that is was turned down, it was
15 the action of the Town Council; is that correct?

16 MR. KAUFMAN: That is what the minutes
17 say.

18 THE COURT: So what would the other six
19 meetings have to do with that?

20 MR. KAUFMAN: The Town wants to show that
21 the policy of the Planning Commission is to work
22 with the developer, or the subdivider, until the
23 plat reaches conformance with the Subdivision
24 Ordinance, and we wanted to show the effect of

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1 the appeal from the Planning Commission to the
2 Town Council, and then from the Council to this
3 Court on the actions of the Planning Commission,
4 and we want to show the relationship between the
5 Planning Commission and its work on subdivision
6 plats and the role of the Town Council.

7 THE COURT: In a Mandamus Hearing?

8 MR. KAUFMAN: Yes, sir.

9 THE COURT: All right, go ahead.

10 MR. KAUFMAN: I would like to call
11 Mr. Oliver as our first witness.

12
13
14 DALE OLIVER

15 was called as a Witness, and after having first been duly
16 sworn to tell the truth, the whole truth, and nothing but
17 the truth, was examined and testified as follows:

18
19 DIRECT EXAMINATION

20
21 BY MR. KAUFMAN:

22 Q Mr. Oliver, please state your name and
23 occupation for the court?

24 A Dale Oliver, faculty member at Virginia

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1 Tech.

2 Q Are you a citizen sitting on the
3 Blacksburg Planning Commission?

4 A Yes.

5 Q What is your position with the Blacksburg
6 Planning Commission?

7 A I am currently serving as Chairman of the
8 Commission.

9 Q How long has your tenure been on the
10 Planning Commission?

11 A About 14 years.

12 Q Describe the role briefly of the Planning
13 Commission in reviewing subdivision plats.

14 A We review the larger subdivision plats
15 that have more than five lots, and our purpose is to
16 review them, recommend changes with the ultimate goal
17 that they might be approved.

18 Q Would the Planning Commission perform this
19 function as many times as it is necessary in order to
20 achieve compliance of the plat with the Town's
21 Subdivision Ordinance?

22 A Yes, we would.

23 Q Describe the role of the Town Council in
24 the subdivision plat approval process?

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1 A The ultimate approval is by the Town
2 Council, but they have delegated this approval, in terms
3 of small subdivisions, to the staff, and in terms of the
4 larger subdivisions to the Planning Commission.

5 Q Can't Town Council approve or disapprove a
6 subdivision plat in the event the decision of the
7 Planning Commission should be appealed to by the
8 developer?

9 A Yes, they may do so.

10 Q Now, relating to the Deer Run plat,
11 specifically, how many times did the Planning Commission
12 meet and go over the Deer Run subdivision plat from the
13 time it was filed in May of 1986 through March of 1987?

14 A There were a total of seven meetings
15 regarding this subdivision.

16 Q Describe the formal documents generated by
17 those meetings and transmitted to the developer and the
18 subdivision plat reviewed?

19 A After each of the Commission meetings,
20 the first one which was disapproved, the letter was sent
21 dated September 3, outlining the reasons for disapproval
22 and the suggestions which might make the plat approvable,
23 and then after the disapproval in December, there was a
24 letter dated December 29, which also outlined the reasons

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1 for the action and the suggestions for making it so that
2 we could consider it for approval.

3 Q What called this process to a halt.

4 A After the second disapproval, the
5 developers appealed this to Town Council, and it was our
6 understanding that this removed it from our jurisdiction,
7 because the jurisdiction is delegated to us by the
8 Council, and the authority for approval or disapproval is
9 ultimately the Council's, and therefore, that took it out
10 of our hands and into the hands of the Council.

11 Q After the Council declined to overturn the
12 decision of the Planning Commission, was the decision on
13 this subdivision plat then appealed to this Court?

14 A Yes, it was.

15 Q Is that matter now pending before the
16 Court?

17 A Yes, it is; it is my understanding it is
18 now pending.

19 Q After this appeal to the Court, did the
20 Planning Commission have occasion to consider the third
21 version of the plat?

22 A It was presented to us at our March
23 meeting. It was our decision that we no longer had
24 jurisdiction, because this was taken out of our hands and

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1 appealed to the Council.

2 THE COURT: Excuse me, Mr. Oliver, wasn't
3 that third one based upon the instructions from
4 Mr. West as to what to do?

5 THE WITNESS: We did not review it to see
6 if it met the stipulations.

7 THE COURT: That is what I understand, but
8 Mr. West did write that letter?

9 THE WITNESS: Yes, he did.

10 THE COURT: I have that in the file, and he
11 suggested certain changes?

12 THE WITNESS: Correct.

13 THE COURT: And that action by you people
14 was appealed to the Town Council; isn't that
15 right?

16 THE WITNESS: It is the action; we turned
17 down the second plat, right, and the third one
18 would have been another one.

19 THE COURT: And the Town Council, in its
20 motion, as I read, if I can find it, it is
21 adopted January 27, Resolution, of this year, it
22 resolved that the Council declines to override
23 the decision of your Commission, as such decision
24 is set forth in the letter dated

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1 December 29, 1986, from William P West, Jr.,
2 Director of Planning, to Mr. Mills, for the
3 reasons set forth in that letter. The third one
4 that came back to your Commission, Mr. Oliver,
5 was that supposed to be in compliance with Mr.
6 West's letter of December 29, or did you all
7 consider that?

8 THE WITNESS: We did not review it.

9 THE COURT: You just felt --

10 THE WITNESS: It had been removed from our
11 jurisdiction. We did not review it, so I can't
12 comment on it.

13 THE COURT: But it was removed from your
14 jurisdiction pursuant to this resolution of
15 January 27, which resolution stated the reasons
16 set forth in Mr. West's letter of
17 December 29, 1986, and in that letter, he
18 requested certain things, or suggested to the
19 developers that they do certain things; did he
20 not?

21 THE WITNESS: He did, correct.

22 THE COURT: I am just trying to get it
23 clear in my mind, Mr. Kaufman.

24 MR. KAUFMAN: We will explain it later,

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1 Judge, in our closing arguments.

2 THE COURT: I was going to say I don't
3 have all day, but I will take all day. I know
4 the purpose of what the gentleman is talking
5 about. Mr. Oliver, I know the purpose of the
6 Planning Commission and what they are to do and
7 all, but go ahead.

8 MR. KAUFMAN: Those are all the questions
9 I have on Direct of this Witness.

10 MR. POFF: I just have one question, Your
11 Honor.

12

13 CROSS EXAMINATION

14

15 BY MR. POFF:

16 Q Mr. Oliver, I show you what has been filed
17 as Exhibit F to our Brief, and have you previously seen
18 that letter, sir?

19 A No, sir, I don't think so; I don't recall
20 it.

21 Q You do not recognize that as the letter by
22 which the third plat was considered for consideration by
23 the Director of Planning?

24 A I don't; I am not sure if I received it or

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1 not.

2 Q You folks turned it down without even
3 seeing the letter of transmittal?

4 He can't tell you how to answer that.

5 A Yes, we did, if we didn't see it. I don't
6 remember seeing it; I am not sure. We had a lot of
7 letters.

8 Q You do see that it says in response to the
9 letter of December 29, 1986?

10 A Yes.

11 Q And outlines the areas of change?

12 A Yes.

13 Q But you never saw that, nor did the
14 Planning Commission, to your mind, see it before they
15 ruled on it?

16 A I don't recall that we did.

17 MR. POFF: That is all I have, thank you.

18 THE COURT: Thank you, sir.

19

20 (The Witness was excused from the
21 Witness stand.)

22

23 MR. KAUFMAN: The Town calls

24 Mr. William B. West, Jr.

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WILLIAM B. WEST, JR.

Was recalled as a Witness and testified further on his
oath:

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. West, you have already been introduced
to the Court. Are you a professional planner?

A Yes, I am.

Q Describe your professional designation to
the Court?

A I am a member of the Virginia Chapter of
the American Planning Association. I am on the Board of
Directors of the Virginia Chapter, Director of Planning
for the Town of Blacksburg. I have a Master's Degree in
Urban and Regional Planning from the University of
Mississippi.

Q How long have you been in the planning
field, Mr. West?

A I have been in the planning field for
about 14, 15 years.

MR. KAUFMAN: I would like to have this

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1 Witness qualified as an Expert Witness in
2 planning.

3 THE COURT: Any objection.

4 MR. POFF: I have no objection, Your
5 Honor.

6
7 BY MR. KAUFMAN:

8 Q Mr. West, picking up on the last question
9 that Mr. Poff asked to Mr. Oliver. The letter of
10 February 11, 1987, on the third plat, did you send that
11 to the Planning Commission?

12 A I believe we sent all the submitted
13 materials to the Planning Commission, the plats and
14 documents that were resubmitted to us.

15 Q Now the Cluster Housing Ordinance, state
16 the date that it was adopted and state the date it was
17 repealed by the Town Council.

18 A The Cluster Housing Ordinance was first
19 adopted in January of 1985; it was repealed on
20 December 9, I believe, 1986.

21 Q Looking at this one question in
22 particular, we have heard testimony that the subdividers
23 appealed the denial of the second plat to the Court on
24 February 26, 1987, and that that case is now pending,

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1 and that the authority for this is contained in the State
2 Law of 15,1475. Are you familiar with that statute?

3 A Yes, I am familiar with that statute.

4 Q What is the purpose of the statute?

5 A The purpose of that statute is to provide
6 a remedy for failure of action, or disapproval for
7 whatever reason by local governing bodies of subdivision
8 plats.

9 MR. POFF: Your Honor, my stipulation that
10 he is an expert planner did not go to his being
11 also a lawyer, but - -

12 THE COURT: I understand, and I understand
13 why you filed the other suit. Go ahead.

14 MR. KAUFMAN: Those are all the questions
15 I have, Your Honor. Please answer any questions
16 Mr. Poff or the Judge might have.

17

18 CROSS EXAMINATION

19

20 BY MR. POFF:

21 Q When this project was first submitted to
22 the Planning Commission, it went there at the
23 recommendation of you and your staff; did it not?

24 A That is correct.

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1 Q And then after the Planning Commission
2 sent it back, you met with Mr. Mills and his associates?

3 A Yes, sir, we did.

4 Q And he made changes, and I believe did you
5 send it back this time with no recommendation?

6 A That is correct.

7 Q That was the second plat?

8 A Yes, sir.

9 Q You didn't recommend it again, did you?

10 A No, sir, we did not.

11 Q Despite your fourteen years in the
12 planning business, you didn't find any reason to reject
13 it?

14 A Our recommendation had already been made;
15 it was on the record.

16 Q And that was to approve it?

17 A That is correct.

18 MR. POFF: I have nothing further; thank
19 you.

20 (The Witness was excused from the
21 Witness stand.)

22
23 MR. KAUFMAN: The Town rests, Your Honor.

24 THE COURT: Anything further?

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1 and specific legal duty on the part of the
2 Planning Commission to continue to review this
3 after the matter has been removed from the hands
4 of the Planning Commission.

5 The Hilton case is not controlling,
6 because that case dealt with another fact
7 situation where the Planning Commission did not
8 act at all, and there is an ^{admirable} ~~act of~~ legal remedy
9 which was specifically and uniquely designed to
10 cover this case, and that is contained in 15.1475
11 and therefore the Court, if it dismisses the
12 Commission of a Mandamus Writ, would not be
13 leaving the subdivider remediless. Therefore, I
14 respectfully request to move that the Court
15 dismiss the petition for Writ of Mandamus. Thank
16 you.

17 THE COURT: Gentlemen, I think we all know
18 that Mandamus is an extraordinary writ, directed
19 that the administerial act be done. From the
20 evidence that I have heard, and the Exhibit and
21 the memoranda that I have considered, and after
22 studying the Prince William County case, it
23 appears to me that Mandamus should issue.

24 I have the minutes of the Planning

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1 by the Planning Commission, and they should
2 review these plans.

3 What action they take is, of course, no
4 concern to mine, but I think they should review
5 them, and I am going to so order and request that
6 there actions be reported to this Court on or
7 before the 20th day of May, 1987, at five o'clock
8 P.M.

9 MR. KAUFMAN: Your Honor, may you give the
10 Planning Commission another month, because that
11 will not allow the Planning Commission to go
12 through their normal review cycle.

13 THE COURT: All right, that would be
14 perfectly all right. It seems to me, though,
15 that this action has been pending along time, but
16 I will certainly give 60 days. It will be
17 June 20. I hope that doesn't fall on a Saturday.
18 June 19, is that sufficient, Mr. Kaufman?

19 MR. KAUFMAN: Yes, sir.

20 THE COURT: I would request you gentlemen
21 endorse this Order for the Court. Is there
22 anything further in this case?

23 MR. POFF: No, Your Honor, not from us.

24 THE COURT: Mr. Kaufman, do you have

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EXHIBIT A

APPENDIX B—SUBDIVISIONS

§ 6-2

delayed until two-thirds of the newly developed lots in the approved final plat of the subdivision are sold and title conveyed, provided that a performance bond in the amount of the fee is posted with the administrator; within fourteen (14) days of the sale of two-thirds of the lots, the subdivider shall post the ten (10) percent in cash and the bond shall be returned to the subdivider with failure to post such cash resulting in forfeiture of the bond. Resubdivision of land on which a ten (10) percent fee has already been paid to the municipality, shall not require any further fee.

5-32-4. The commission shall make certain that lands so reserved are suitable for the purpose for which they are being reserved.

5-32-5. Nothing herein shall be construed to mean that land may be set aside for commercial purposes in a residential district, without the land so required for commercial use being zoned appropriately in accordance with the zoning ordinance.

(Amend. No. 7, 9-28-76; Amend. No. 21, 11-8-77)

SECTION 6. APPROVAL OF PLATS

6-1. Approval required before sale.

Whenever any subdivision of land is proposed, and before any permit for the erection of a structure shall be granted, the subdivider or his agent shall apply in writing to the agent for the approval of the subdivision plat and submit three (3) copies of the preliminary plat including the lot, street, and utilities layout. No lot shall be sold until a final plat for the subdivision shall have been approved and recorded in the following manner [as required by section 6.]

6-2. Preliminary sketch.

The subdivider shall submit to the agent a preliminary sketch of the proposed subdivision prior to his preparing an engineered preliminary and final plat. The purpose of such preliminary sketch is to permit the agent to advise the

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subdivider whether his plans, in general, are in accordance with the requirements of this ordinance. The commission or its delegated subgroup or delegated agent, upon submission of any such preliminary sketch, shall study it and advise the subdivider wherein it appears that changes would be necessary. The agent may mark the preliminary sketch indicating necessary changes and any such marked sketch shall be returned to the commission with the preliminary plat. The preliminary sketch shall be as follows:

6-2-1. It shall be drawn on white paper, or on a print of a topographic map of the property. It shall be drawn to a scale of not less than two hundred (200) feet to the inch. It shall show the name, location and dimensions of all streets entering the property, adjacent to the property, or terminating at the boundary of the property to be subdivided. It shall show the location of natural features such as slopes with approximate gradients, watercourses, wooded areas, preservable trees and of all proposed streets, lots, parks, playgrounds and other proposed uses of the land to be subdivided and shall include the approximate dimensions.

(Amend. No. 15, 6-8-76)

6-3. Preliminary plat.

Preliminary plats resulting in more than five (5) new parcels must be approved by the planning commission as well as the administrator. However, if the subdivision results in five (5) or fewer new parcels, the administrator may approve the plat. The preliminary plat shall include the following information:

6-3-1. The name of subdivision, owner, subdivider, surveyor or engineer, date of drawing, number of sheets, true north point and scale.

6-3-2. Location of proposed subdivision by an insert map at a scale of not less than two (2) inches equal one mile showing adjoining roads, their name and number, towns, subdivisions and other landmarks.

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6-3-3. The boundary survey or existing survey of record provided such survey shows a closure with an accuracy of not less than one in twenty-five hundred (2,500); total acreage, acreage of subdivided area, number and approximate area and frontage of all building sites, existing buildings within the boundaries of the tract, names of owners and their property lines within the boundaries of the tract and adjoining such boundaries.

6-3-4. All existing, platted and proposed streets, their names, number and width; existing utility or other easements, public areas and parking spaces; culverts, drains and water courses, their names and other pertinent data.

6-3-5. All parcels of land to be dedicated for public use and the conditions of such dedication.

6-3-6. Topography at intervals satisfactory to the municipal engineer if required.

6-3-7. Elevations of existing and proposed ground surface at all street intersections and at points of major grade change along the center line of streets together with proposed grade lines connecting therewith.

6-3-8. Proposed connections with existing sanitary sewers and existing water supply or alternate means of sewage disposal and water supply.

6-3-9. Provisions for collecting and discharging surface drainage and preliminary designs of any structures that may be required. (Amend. No. 30, 3-10-81)

6-4. Procedure.

The agent or his appointed representative shall discuss the preliminary plat with the subdivider in order to determine whether or not his preliminary plat generally conforms to the requirements of the subdivision ordinance and of the zoning ordinance. The subdivider shall then be advised in writing within forty-five (45) days, which may be by formal letter or by legible markings on his copy of the Supp. No. 2

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preliminary plat, concerning any additional data that may be required, the character and extent of public improvements that will have to be made, and an estimate of the cost of construction or improvements that will have to be made, and an estimate of the cost of construction or improvements and the amount of the performance bond which will be required as a prerequisite to approval of the final subdivision plat. In determining the cost of required improvements and the amount of the performance bond, the agent may consult with a duly licensed engineer who shall prepare this data for the agent, or preferably may require a bona fide estimate of the cost of improvements to be furnished him by the subdivider.

6-5. No guarantee.

Approval by the agent of the preliminary plat does not constitute a guarantee of approval of the final plat.

6-6. Six months' limit.

The subdivider shall have not more than six (6) months after receiving official notification concerning the preliminary plat to file with the agent a final subdivision plat in accordance with this ordinance. Failure to do so shall make preliminary approval null and void. The agent may, on written request by the subdivider, grant an extension of this time limit.

6-7. Final plat.

The subdivision plats submitted for final approval and subsequent recording shall be clearly and legibly drawn in ink upon tracing cloth at a scale of not more than one hundred (100) feet to the inch on sheets having a size acceptable to the administrator. It should show the following information:

- 6-7-1. Name of subdivision, magisterial district, county, state, owner, true north point, scale of drawing and number of sheets. If shown on more than one sheet, matched lines shall clearly indicate where the several

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sheets join. A blank oblong space three (3) inches by five (5) inches shall be reserved for the use of the approving authority.

6-7-2. Location of proposed subdivision by an insert map at a scale of not less than two (2) inches equal one mile indicating adjoining roads, their names and numbers, towns, subdivisions and other landmarks.

6-7-3. A boundary survey with an error or closure within the limits of one in ten thousand (10,000) related to the true meridian and showing the location of all monuments and their type of material. The survey may be related to the U.S.C.G.S. state grid north if the coordinate of two (2) adjacent corners of the subdivision are shown.

6-7-4. Certificate signed by the surveyor or engineer setting forth the source of title of the owners of the land subdivided and the place of record of the last instrument in the chain of title.

6-7-5. A statement to the effect that the subdivision as it appears on this plat is with the free consent and in accordance with the desires of the owners, proprietors and trustees, if any, which shall be signed by the owners, proprietors and trustees, if any, and shall be duly acknowledged before some officer authorized to take acknowledgments of deeds.

6-7-6. When the subdivision consists of land acquired from more than one source of title, the outlines of the various tracts shall be indicated by dashlines, and identification of the respective tracts shall be placed on the plat.

6-7-7. The accurate location and dimensions by bearings and distances with all curve data on all lots and street lines and center lines of streets, boundaries of all proposed or existing easements, parks, school sites or other public areas, the number and area of all building sites, all existing public and private streets, their names, numbers and widths, existing utilities,

and those to be provided such as sanitary sewers, storm drains, water mains, manholes and underground conduits including their size and type, water courses and their names, names of owners and their property lines, both within the boundary of the subdivision and adjoining said boundaries.

6-7-8. All dimensions shown in feet and decimals of a foot to the closest one-hundredth of a foot, all bearings in degrees, minutes and seconds to the nearest ten (10) seconds or the decimal equivalents.

6-7-9. The data of all curves along the street frontages shall be shown in detail at the curve or in a curve data table containing the following: delta, radius, arc, tangent, chord and chord bearings.

(Amend. No. 22, 6-13-78)

6-8. Conditions.

The plat shall not be approved until the subdivider has complied with the general requirements and minimum standards of design in accordance with this ordinance, and has made satisfactory arrangements for performance bonds, cash or cash bond to cover the cost of necessary improvements to the satisfaction of the agent. Approval of final plat shall be written on the face of plat by the agent.

6-9. Time limit on recordation.

The approval of the final plat by the administrator shall become null and void unless the plat is recorded within one year of the date of approval. (Amend. No. 20, 7-12-77)

SECTION 6.1. CLUSTER SUBDIVISIONS

Sec. 6.1-1. Definitions.

(a) *Cluster development*: An arrangement of residential structures on adjoining lots in groupings allowing smaller lots and closer spacing than would be generally permitted under this chapter, with the reduction in lot size compensated by setting

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EXHIBIT B

TOWN OF

BLACKSBURG

300 South Main Street, Blacksburg, Virginia 24060

September 3, 1986

Mr. Robert Mills
Deer Run Partnership
P.O. Box 213
Blacksburg, VA 24060

Re: Planning Commission Action on the Deer Run
Cluster Subdivision Preliminary Plat

Dear Mr. Mills:

Please be advised that at its meeting held on August 5, 1986, the Blacksburg Planning Commission disapproved the Deer Run Cluster Subdivision Preliminary Plat submitted by the Deer Run Partnership on May 8, 1986. The Planning Commission cited the following reasons for its action.

1. The location and nature of the proposed open space is not accessible, functional, or usable. The Commission suggests that the developer of the Deer Run Subdivision should redesign the open space to render it accessible to and usable by the residents of the proposed subdivision and to demonstrate the function or functions that this open space would serve. The open space should also provide a greater transitional buffer between the existing, adjacent low density development, and the more intensive development proposed by this subdivision.

2. The Commission was concerned that the preliminary subdivision plat simply presented a conventional subdivision with smaller lots. The developer made no attempt to "cluster" or group the lots in one part of the parcel with the goal of lessening the impact of the higher densities which this plat would render possible. The Commission suggests that the developer redesign the subdivision to achieve a clustering of lots on the parcel, with open space intermingled to lessen the impact of the greater density on adjacent, existing uses. Alternatively, to achieve this effect, the developer could provide more open space on the perimeter of the subdivision. Such redesign should incorporate an arrangement of lots and structures on the perimeter of the development in a more

Mr. Robert Mills
September 3, 1986
Page Two.

conventional manner allowing a transition to smaller lots and more intensive design within the property.

3. The Commission also found that the typical house placement plans propose a typical lot size and lot coverage that render the lots unusable under §5-2, Subdivision Ordinance, for the development proposed, in that such lots could not comply with §5-4(c), Zoning Ordinance, providing a maximum lot coverage of twenty percent.

4. A sidewalk should be installed on the south side of Grove Avenue extended.

The cluster housing ordinance contemplates a dual, companion review of the subdivision plat, and proposed site development under the Zoning Ordinance. Here the review concerned itself with the subdivision elements of the Deer Run project. By separate letter, the Town intends to address the review under the Zoning Ordinance. Yet, the dual review must enable the Planning Commission to consider the goals of the overall cluster housing ordinance when performing its administrative review under the Subdivision Ordinance. In sum, the Commission disapproved the Deer Run subdivision plat in its current form because, for the reasons set out above, it did not meet the high standards imposed by the cluster housing ordinance, despite its technical compliance with the numerical requirements of the cluster housing ordinance.

The Planning Commission and staff shall be happy to work with the developers of the Deer Run project to address the Planning Commission's concerns, as expressed above.

You may reconsider your proposed design and resubmit a revised preliminary plat for the Planning Commission's consideration.

Please call me if you have any questions.

Sincerely,

William B. West, Jr.

William B. West, Jr.
Director of Planning

WBW/RBK:lb

c: Ernestine Foresman
Thomas E. Heavener
William B. Poff

TOWN OF

BLACKSBURG

300 South Main Street, Blacksburg, Virginia 24060

December 29, 1986

Mr. Robert Mills
Deer Run Partnership
P. O. Box 213
Blacksburg, VA 24060

RE: Planning Commission Action on the Proposed Deer Run Cluster
Subdivision Preliminary Plat; Plan No. P-4362, Dated 10/23/86;
Prepared by Draper-Aden Associates, Inc., Blacksburg, Virginia

Dear Mr. Mills:

Please be advised that on December 2, 1986, the Planning Commission disapproved the revisions of the proposed Deer Run Cluster Subdivision preliminary plat. The Planning Commission reviewed the revised plat in light of its comments to you in the prior disapproval which were detailed in a letter to you on September 3, 1986.

The Planning Commission continues to find that:

1. The location and nature of the proposed open space is not accessible, functional or usable.
2. This revised preliminary plat still presents only a conventional subdivision of smaller lots than are allowed by the Town Code and that the developer has still made an unsatisfactory attempt to "cluster" or group the lots in parts of the property with the goal of lessening the impact of the higher densities which this plat would render possible.

In order to overcome these deficiencies of the preliminary plat, the Planning Commission offers the following design suggestions for your consideration:

1. The preliminary plat should be revised to reflect a traditional R-12 lot in terms of area, lot widths, etc., in the areas occupied by lots 1-17. The balance of the lots (18-52) should be grouped in cluster of 2-6 lots with a minimum of 25 feet of landscaped area between groupings. The proposed trail and its buffer strip along the western boundary should be retained by a public or homeowner's easement over the lots and protected by appropriate restrictions.

Mr. Robert Mills
December 29, 1986
Page 2

2. As an alternative to #1, the developer may consider the grouping of lots as described in #1 for the entire development. In this case, the existing proposed open space parcel could remain as shown.

3. In any case, the peripheral buffer strips and trail system, as well as the interior trail system and large open space to the northeast, should continue to be shown as either easement of common area depending upon which of Alternatives 1 or 2 is chosen.

4. In redesign of either alternative, minimum lots should not be less than the average indicated on Plan No. P-4362, dated October 23, 1986.

5. The Commission also discussed the need to expand the covenants and restrictions to include a minimum structure size which approximates the median structure size of the neighboring community including Grove Avenue, North Drive, Price Street, and Murphy Street. Appropriate documentation of this should accompany information you submit in response to my letter regarding zoning requirements that must be addressed.

The Planning Commission would also remind you that the dual review of a proposed cluster subdivision plat does require your attention at some time to the items outlined in my separate letter to you of September 3, 1986, concerning conformance to the Zoning Ordinance. These items must be addressed prior to any permits being issued for construction at the site.

The Planning Commission and staff continue to be happy to work with the developers of the Deer Run project to address the Planning Commission's concerns.

Again, you may reconsider your proposed design and resubmit a revised preliminary plat for the Planning Commission's consideration. Please call me if you have any questions.

Sincerely,

William B. West, Jr./v

William B. West, Jr.
Director of Planning

WBW:rkv

cc: Town Council
Planning Commission
Ernestine Foresmen
Thomas Heavener
William Poff
C. Robert Stripling
Richard Kaufman

EXHIBIT D

§ 3

BLACKSBURG CODE

SECTION 3. ADMINISTRATION

3-1. Administrator.

The director of planning and the manager of engineering and inspections, or their designated representatives, are hereby appointed by the town council to be the agents, jointly, delegated to administer this ordinance. In so acting, the agent shall be considered the agent of the governing body, and approval or disapproval shall be considered as though it were given by the governing body. (Amend. No. 13, 8-10-76)

3-2. Duties.

The agent shall perform his duties as regards subdivision and subdividing in accordance with this ordinance and the Virginia Land Subdivision Act.

3-3. To consult.

In the performance of his duties, the agent may call for opinions or decisions, either verbal [oral] or written, from other departments in considering details of any submitted plat. This authority by the agent shall have particular reference to the resident highway engineer and health officer.

3-4. Additional authority.

In addition to the regulations herein contained for the platting of any subdivisions, the agent may, from time to time, establish any reasonable additional administrative procedures deemed necessary for the proper administration of this ordinance.

SECTION 4. PROCEDURE FOR MAKING AND RECORDING PLATS

4-1. Platting required.

Any owner or developer of any tract of land situated within the jurisdiction of the Town of Blacksburg who
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subdivides the same shall cause plat of such subdivision, with reference to known or permanent monument, to be made and recorded in the office of the clerk of the appropriate court. No such plat of a subdivision shall be recorded unless and until it shall have been submitted, approved and certified by the agent in accordance with the regulations set forth in this ordinance. No lot shall be sold in any such subdivision before the plat shall have been recorded.

4-1-1. In the event a plan for subdivision is disapproved by the agent, the subdivider may appeal to the governing body which may then override the recommendation of the agent and approve said plat.

4-1-2. The boundary lines of any lot or parcel of land located in the Town of Blacksburg may be relocated or otherwise altered as a part of an otherwise valid and properly recorded plat of subdivision or resubdivision, provided such action does not involve the relocation or alteration of streets, alleys, easements for public passage or other public areas. No easements or utility rights-of-way shall be relocated or altered without the express consent of all persons holding any interest therein.

(Amend. No. 34, § 1, 1-11-83)

State law reference—Authority for enactment of 4-1-2, Code of Virginia, § 15.1-483.1.

4-2. Draw and certify.

Every such plat shall be prepared by a surveyor or civil engineer duly licensed by the State of Virginia, who shall endorse upon each plat a certificate signed by him setting forth the source of the title of the land subdivided, and the place of record of the last instrument in the chain of title. When the plat is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon such plat, within an insert block, or by means of a dotted boundary line upon the plat.

EXHIBIT E

TOWN OF

BLACKSBURG

300 South Main Street, Blacksburg, Virginia 24060

RESOLUTION 1-I-87

A RESOLUTION UPHOLDING THE PLANNING COMMISSION IN ITS DECISION ON THE DEER RUN SUBDIVISION PLAT

WHEREAS, on appeal by Deer Run Partnership on the question of whether or not the Deer Run subdivision plat should be approved, this Council has heard from Town Staff, the Planning Commission, and interested parties, and has considered the criteria, standards, and regulations set forth in the Cluster Subdivision Ordinance §6.1-1 through 6.1-6, the Subdivision Ordinance, and in §2-88, Zoning Ordinance, Blacksburg Town Code (1981), as amended;

WHEREAS, in light of the above evidence, this Council finds that: (i) the open space set forth on the plat is not accessible, functional, or usable; and (ii) the plat presents only a conventional subdivision with smaller lots than allowed under regulations for conventional subdivisions and lacks the clustering of units on the site with the goal of lessening the impact of the proposal on adjacent properties, as is contemplated by the Cluster Housing Ordinance; (iii) the plat does not comply with goals of the Cluster Housing Ordinance as stated; and (iv) the plat therefore does not comply with the ordinances cited above.

THEREFORE, BE IT RESOLVED by the Council of the Town of Blacksburg that the Council declines to override the decision of the Planning Commission on the Preliminary Subdivision Plat of Deer Run, dated October 23, 1986, Plan No. P-4362, by Draper-Aden Associates, Inc., Blacksburg, Virginia, as such decision is set forth in a letter dated December 29, 1986 from William B. West, Jr., Director of Planning, to Robert Mills, for the reasons set forth in that letter.

Roger E. Hedgepeth
Mayor

ATTEST:

Linda L. Burnsed
Deputy Clerk of Council

Date of Adoption: January 27, 1987

EXHIBIT F

MILLS, OLIVER & WEBB, INC.
ARCHITECTS ENGINEERS
BLACKSBURG, VIRGINIA 24060
703/552-2151

February 11, 1987

ROBERT L. MILLS, A.I.A.
ROBERT B. OLIVER, P.E.
AMBLER W. WEBB, JR., P.E.
PHILIP PAPPAS, A.I.A.
DAN G. RHODY, P.E.

Mr. William B. West, Jr.
Director of Planning
300 South Main Street
Blacksburg, VA 24060

Re: Deer Run Cluster Subdivision

Dear Mr. West:

In response to your letter of December 29, 1986, we are resubmitting the preliminary plat for the above project.

The following design suggestion changes have been made:

Item 2: Lots have been grouped in clusters of 2-6 with 25' landscaped areas between lots. Open space remains as originally shown.

Item 3: Peripheral buffer strips, trail system and open space will be common space.

Item 4: Lots will remain an average of 6500 sq. ft. Lots were reduced from 52 to 48.

Item 5: Covenants and restrictions will be expanded in the zoning requirements which will be addressed after the subdivision preliminary plat is approved.

It is my understanding that the zoning items in your letter of September 3, 1986 can be addressed as part of the final subdivision plat approval. We are aware that building permits can't be issued for consideration until these comments are addressed.

We would appreciate being placed on the March Planning Commission agenda.

Thank you for your help.

Very truly yours

Robert L. Mills, AIA

RLM/jmg

cc: Ernestine Foresman
Thomas Heavener
William Poff ✓

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DRAFT EXHIBIT G

BLACKSBURG PLANNING COMMISSION
Municipal Building Council Chambers

MARCH 3, 1987
7:30 p.m.

MINUTES

- I. CALL TO ORDER
Chairman Oliver called the meeting to order at 7:30 p.m.
- II. ANNOUNCEMENTS
Ms. Snyder-Falkinham announced that Agendas were available to the public and called attention to Items VI Public Hearings and VII Public Addresses.
- III. ROLL CALL
Present: M. D. Carson; A. W. Holberton;
T. Humphreyville; J. Jones; W. Kerns;
R. Litschert; J. D. Oliver;
F. M. Parsons; G. A. Snyder-Falkinham;
C. Sumner

Absent: None
- IV. CONSENT AGENDA
 - A. Approval of Agenda.
ACTION: Approved.
 - B. Approval of Minutes - February 3, 1987.
ACTION: Approved.
 - C. Special Use Permit - Upland Associates' request for Professional Offices at 901 South Main Street.
ACTION: Refer to Environmental Quality & Land Use Committee and schedule public hearing for April 7, 1987.
 - D. Ordinance #752 - Leonard Arthur, Meadowbrook Drive, rezoning from PMR to A-10.
ACTION: Refer to Development Study Committee and schedule public hearing for April 7, 1987.
 - E. Ordinance #753 - J. D. Nicewonder, South Main & Hubbard Streets, rezoning from UNIV (University) to PC (Planned Commercial).
ACTION: Refer to Development Study Committee and schedule public hearing for April 7, 1987.
 - F. Stonecrest Subdivision Plat.
ACTION: Refer to Environmental Quality & Land Use Committee.
 - G. New Kent Townhomes Plat.
ACTION: Refer To Development Study Committee.

- H. Agricultural & Forestal District Applications.
ACTION: Refer all applications to Agricultural and Forestal District Advisory Committee.
- I. Ordinance #756 - Warmbronn Associates, Commission Initiated Rezoning from A-10 to R-12, Sunrise Drive.
ACTION: Adopt Resolution 3-A-87; refer to Environmental Quality & Land Use Committee and schedule public hearing for April 7, 1987.
- J. Montgomery County Referral - Rezoning of former Virginia tech Horticultural Farm from A-1 (Agricultural) to GB (General Business).
ACTION: Refer to Environmental Quality & Land Use Committee.
- K. Ordinance #754 - Ordinance Amending the Off-Street Parking Requirements for Multiple Unit Dwellings.
ACTION: Refer to Development Study Committee and schedule public hearing for April 7, 1987.

Chairman Oliver requested that Items A, B and F be removed from the Consent Agenda.

Ms. Holberton moved to approve the Consent Agenda, as amended.

Mr. Kerns seconded; motion passed. Carson, Holberton, Humphreyville, Jones, Kerns, Litschert, Oliver, Parsons, Snyder-Falkinham and Sumner voted yes. None voted no.

Item B. - Minutes

Chairman Oliver reported that the February 3, 1987 Commission minutes would be considered at the next Commission meeting.

Item F. - Stonecrest Subdivision Plat

Ms. Carson moved to refer consideration of the Stonecrest Subdivision Plat to the Environmental Quality & Land Use Committee.

Mr. Kerns seconded; motion passed. Carson, Holberton, Humphreyville, Kerns, Litschert, Oliver, Parsons, Snyder-Falkinham and Sumner voted yes. None voted no. Jones abstained.

Item A. - Approval of Agenda

Chairman Oliver requested that the Agenda include a public hearing on Ordinance #750 (Unlimited Reappointment of Planning Commissioners) as Item VI.E.

Mr. Kerns moved to amend the order of the Planning Commission Agenda to consider immediately the Deer Run Revised Cluster Subdivision Plat. Included in this motion is approval to permit the Public Address portion of this agenda item prior to consideration by the Planning Commission.

Ms. Holberton seconded; motion passed. Carson, Holberton, Humphreyville, Kerns, Oliver, Parsons, Snyder-Falkinham and Sumner voted yes. None voted no. Jones and Litschert abstained.

Ms. Carson moved to approve the Agenda, as amended. Mr. Kerns seconded; motion passed. Carson, Holberton, Humphreyville, Kerns, Oliver, Parsons, Snyder-Falkinham and Sumner voted yes. None voted no. Jones and Litschert abstained.

V. DEER RUN REVISED CLUSTER SUBDIVISION PLAT

Mr. West presented a brief report on the Deer Run Revised Subdivision Plat submitted by the developers of the proposed project.

- A. Mr. George Flick, 303 Murphy Street, reminded the Commission of his neighborhood's strong opposition to the Deer Run proposal and emphasized that he did not believe the newly submitted proposal satisfied the concerns that resulted with the Commission's denial of the previous Deer Run project.
- B. Ms. Barbara McDonald, 1506 Hoyt Street, stressed the unfairness of the area residents to have to continue to defend the integrity of their neighborhood. Ms. McDonald urged the Commission to not let developers' money and the claim that too much has been invested to give up the proposal result in approval of an undesirable development.
- C. Mr. Luke Mo, 219 Price Street, pleaded with the Commission to not consider the new Deer Run proposal. Mr. Mo restated the concerns that he had with the previously submitted project and urged the Commissioners to deny the Deer Run Revised Cluster Subdivision.

Ms. Humphreyville moved to decline to consider the Deer Run Revised Cluster Subdivision Plat on the basis that the action taken by Town Council was final.

Ms. Holberton seconded the motion.

Mr. Kerns stated that he would hesitate reconsidering the proposal without instructions from Town Council.

Ms. Sumner agreed with Mr. Kerns' concerns and added that he did not understand the developers' actions with the revised subdivision plat and the motion filed with the Court.

Mr. Kerns moved to amend the motion for the Planning Commission to only consider the Deer Run Revised Cluster Subdivision Plat if specifically requested by Town Council.

Ms. Snyder-Falkinham seconded the amendment.

In response to a request from Mrs. Parsons, Mr. Richard Kaufman, Town Attorney, stated that he felt the action taken by Town Council to be final and advised the Commissioners not to consider the legal action referred to in the local newspaper.

Mr. Kerns and Ms. Snyder-Falkinham withdrew their respective motion and second.

The motion passed to decline to consider the Deer Run

Revised Cluster Subdivision Plat on the basis that the action taken by Town Council was final. Carson, Holberton, Humphreyville, Kerns, Oliver, Parsons, Snyder-Falkinham and Sumner voted yes. None voted no. Jones and Litschert abstained.

Mr. Kerns left the meeting at this time.

VI. PUBLIC HEARINGS

A. Ordinance #746 - Roanoke General Electric Employees Federal Credit Union and Montgomery Farms, Inc., rezoning from R-12 to PC, Price's Fork Road. (Continued from February)

1. Staff Report

Ms. Alderman reported that the applicants had submitted six proffers concerning the proposed development of a credit union, restaurant and motel on 9.281 acres on Price's Fork Road. The Commission was informed that the Planning staff, in coordination with other departments, was compiling a corridor study of Price's Fork Road and that the Public Works Department had analyzed the traffic impacts of the request and suggested the necessary improvements for safe development. Ms. Alderman noted that the proposed ordinance reflected that the maximum lot coverage for each use would be eighty percent and added that while the staff believed the subject request did not demonstrate adverse stresses, concern existed that the culmulative effect of multiple rezonings could result in poor land use along the Price's Fork corridor.

2. Development Study Committee Report

Mr. Litschert reported that following considerable discussion between the staff, committee members and Mr. Sumner (acting as agent for the applicants), the committee voted to recommend that the Commission accept the proffers presented if a letter was received from the developers stating that Montgomery Farms and the Credit Union were both responsible for the project and that the coverage would not exceed eighty percent for each use as well as the entire site.

3. Public Comment

A. Mr. Charles Perkins, General Manager of the Roanoke General Electric Federal Credit Union, acknowledged responsibility to comply with the submitted proffers and offered to answer any questions from the Commission.

4. Action

Mr. Litschert moved to recommend approval to Town Council of Ordinance #746 with the proffers submitted by the developers.

Ms. Snyder-Falkinham seconded the motion.

Mrs. Parsons suggested that the third proffer be reworded for better clarification and requested that the developers be encouraged to preserve as many of the mature trees on the site as possible. The motion to recommend approval of Ordinance #746 passed 7-0-2 on a roll call vote. Carson, Holberton, Jones, Litschert, Oliver, Parsons and Snyder-Falkinham voted yes. None voted no. Humphreyville and Sumner abstained.

B. Ordinance #748 - Thavan Corporation rezoning from A-10 to R-12a on property east of Rainbow Ridge, Carlson Drive, and Landsdowne Street, north of Nellies Cave Road.

1. Staff Report

Ms. Carol Bousquet reported that Thavan Corporation requested that 67.3 acres located east of the Rainbow Ridge, Carlson Drive area, with frontage on Nellies Cave Road, Carlson Drive, Palmer Drive and Sunrise Drive be rezoned from Agricultural to Intermediate Residential zoning. Ms. Bousquet reviewed the zoning history of the site, along with the environmental and topographic features, and described the surrounding zoning and land uses including 75.97 acres of adjoining property located in Montgomery County. Ms. Bousquet informed the Commission that the petitioner proposed to subdivide the property into minimum one-half acre lots to enable development of single-family homes. The 1985 Comprehensive Plan designates the area as agricultural which is consistent with the adjoining County property. Ms. Bousquet pointed out that the County Agricultural District includes half-acre residential uses and that the R-12a rezoning for the purpose of half acre residential development would remain consistent with the County designation. In conclusion, Ms. Bousquet stated that the Planning staff supported the rezoning proposal and recommended the initiation of a simultaneous rezoning of the remaining 10± acres from agricultural to R-12a zoning as well. Ms. Bousquet added that action on this proposal appeared on the Consent Agenda with the adoption of Resolution 3-A-87 and the referral of Ordinance #756 to the Environmental Quality & Land Use Committee with a public hearing scheduled for April 7, 1987.

2. Environmental Quality & Land Use Committee

Ms. Carson reported that, following the staff report, considerable discussion took place among

the developer, committee members and residents of the subject area. The committee voted to recommend approval of the rezoning request and to recommend that action be initiated to rezone the remaining 10+ acre parcel not included in the original rezoning request.

3. Public Comment

- a. Mr. Dave Thacker, 2704 Mt. Vernon Lane, President of Thavan Corporation, described the development proposal for the subject property and informed the Commissioners that procedures were underway to buy back the timber rights of the property in order to save as many of the existing trees as possible. Mr. Thacker emphasized the desire to maintain much of the wooded nature of the site.
- b. Mr. Tom Gilmer, 611 Landsdowne Drive, expressed his concern that the proposed lot sizes for the development be in line with the adjacent lot sizes.
- c. A resident of 1603 Carlson Drive stated concern over road access to the residential development and the amount of street grading that would be necessary for the road construction.

Mr. West clarified that road access and street grading would be addressed at the site plan approval stage.

- d. Mr. Larry Cowley, 1419 Crestview Drive, discussed his apprehension over potential traffic congestion that might occur in the area with the additional residential development. Mr. Cowley emphasized the need to preserve the environmental beauty of the area and stressed that there is no guarantee that the tree rights will be recovered by the developer.
- e. Mr. Woody Leach, 1416 Crestview Drive, stated that he believed development of the subject area would be counter-productive of the Town's in-fill policy. Mr. Leach referred to the cost for providing water and sewer service to the area and pointed out how police and fire services would be affected by the development. In conclusion, Mr. Leach encouraged the Commission and Town Council to determine whether Blacksburg's goal is infill or development around the outskirts of town.
- f. Ms. Patricia Cowley, 1419 Crestview Drive, expressed her concern over possible traffic

congestion and future development in and around the subject area.

- g. Ms. Betty Rose McGhee commented on her concern over the proposed lot sizes and urged for consideration to be given to larger lots with larger houses.
- h. Mr. Ed Buntz, 1416 Highland Circle, asked what would happen to the property if the timber rights cannot be recovered.

Mr. West responded that the property could be cleared if the timber rights remained.

- i. Another resident of the area discussed his traffic concerns and urged the Commission to devote further study to the proposal with strong emphasis on larger lot sizes.
- j. A resident of Highland Circle encouraged the Commission to maintain the environmental quality of the area.
- k. Ms. Muriel Sawyer, 1501 Carlson Drive, commented that a residential development without the property owner's recovery of the timber rights would be aesthetically displeasing and an environmental mess.

Mr. Thacker clarified that Thavan Corporation had a contract from the timber company for the timber rights.

4. Action

Ms. Carson moved to recommend approval to Town Council of Ordinance #748.

Ms. Holberton seconded the motion.

Mrs. Parsons stated that she did not believe the property was suitable for development.

Mr. Litschert stressed the importance of trees on the site. He added that the trees would more likely be preserved if the property were developed rather than not developed since the timber company has the right to clear the land at any time.

Discussion followed between Mrs. Parsons and Mr. West regarding access to the proposed development. Mrs. Parsons moved to table consideration of Ordinance #748 and send it back to the Environmental Quality & Land Use Committee for further study.

Ms. Holberton seconded; motion passed 8-0-1 on a roll call vote. Carson, Holberton, Humphreyville, Litschert, Oliver, Parsons, Snyder-Falkinham and Sumner voted yes. None voted no. Jones abstained.

C. Ordinance #749 - L & P Development, rezoning from PC (Amended Land Use Plan) to PC (Revised Plan) on South Main Street and Ramble Road.

1. Staff Report

Ms. Alderman reported that L & P Development applied for and received Planned Commercial status for fifty-three acres on Ramble Road and South Main Street in 1986. The developers named the project South Park and requested two changes from the original plan. Ms. Alderman stated that the developers requested elimination of the road which would have connected Ramble Road to a road parallel and adjacent to South Main Street. This change was suggested because of the vast amount of cut and fill which would be required. Ms. Alderman added that the second requested change was to the configuration of the residential/commercial mix at Ramble Road next to the New River Office Supply building. This change was warranted because of the required relocation of the driveway entrance. Mr. Alderman informed the Commission that the developers proffered to place evergreen screening between the townhouse development and the existing New River Office Supply commercial use and also proffered to place an environmental corridor on the steeper part of the property, thus keeping it stable and offering better separation of uses.

2. Development Study Committee Report

Mr. Litschert reported that the committee discussed the proposed changes with the staff and voted to recommend approval if proffers were offered concerning evergreen screening between the townhouses and the property line and if the area proposed by the developers as an additional environmental corridor was marked on the conceptual plan and land use plan.

3. Public Comment

There were no comments from the public.

4. Action

Mr. Litschert moved to recommend approval to Town Council of Ordinance #749 with the proffers presented by the developers..

Ms. Snyder-Falkinham seconded; motion passed 8-0-1 on a roll call vote. Carson, Holberton, Humphreyville, Jones, Litschert, Oliver, Parsons and Snyder-Falkinham voted yes. None voted no. Sumner abstained.

- D. Ordinance #732 - An Ordinance Amending The Zoning Ordinance To Revise The Time Limit Within Which The Board Of Zoning Appeals Must Act On Variances And Appeals.
1. Staff Report
Ms. Bousquet reported that the proposed ordinance would change the time limit from sixty days to ninety days within which the Board of Zoning Appeals must decide appeals and variance requests. Ms. Bousquet added that the ordinance would bring the Town Code provisions into conformance with State Law.
 2. Development Study Committee Report
Mr. Litschert reported that the committee voted to recommend approval of Ordinance #732.
 3. Public Comment

There were no comments from the public.
 4. Action
Mr. Litschert moved to recommend approval to Town Council of Ordinance #732.
Mr. Sumner seconded; motion passed 9-0 on a roll call vote. Carson, Holberton, Humphreyville, Jones, Litschert, Oliver, Parsons, Snyder-Falkinham and Sumner voted yes. None voted no.
- E. Ordinance #750 - An Ordinance Amending The Town Code To Allow Unlimited Reappointment Of Planning Commissioners.
1. Staff Report
Mr. West reported that Ordinance #750 was the result of the Commission's request to amend the Town Code to provide for successive terms of Planning Commission members.
 2. Committee Report - None
 3. Public Comment

There were no comments from the public.
 4. Action
Ms. Carson moved to recommend approval to Town Council of Ordinance #750.
Ms. Snyder-Falkinham seconded; motion passed 8-1 on a roll call vote. Carson, Holberton, Jones, Litschert, Oliver, Parsons, Snyder-Falkinham and Sumner voted yes. Humphreyville voted no.

VII. PUBLIC ADDRESSES

There were no addresses from the public.

VIII. OLD BUSINESS

A. Development Study Committee

1. Sub Area Planning

Mr. Harrington informed the Commissioners of the dates selected for the Sub Area Planning meetings.

2. Central Residential District

Mr. Litschert reported that the committee voted to separate the parking regulations from the CRD text amendment package in order to encourage the speedy approval of the proposed one space/one bedroom rule. Mr. Litschert added that the committee suggested that a neighborhood work session be held on the CRD with residents, property owners and the full Commission.

The consensus of the Commission was to schedule a work session on the CRD for April 2, 1987.

Ms. Humphreyville left the meeting at this time.

B. Environmental Quality & Land Use Committee

1. Removal of Trees at Price's Fork Office Building

Mr. Harrington referred to a revised landscaping plan for the Pack Office Building on Price's Fork Road and informed the Commissioners that several large trees had been removed during construction and grading of the site for stormwater control. Mr. Harrington explained that Mr. Pack had been very cooperative in submitting a revised plan and that it was likely that the plantings would be done before occupancy of the building.

Mr. Litschert expressed his disturbance that the developer did not advise the Town of the situation before removing the trees and proceeded to violate the proffers attached to the rezoning of the property.

In response to the staff's request, Mr. Kaufman informed the Commission of the Town's legal remedies in proffer violations.

Following further discussion, it was the consensus of the Commission for the staff to work with the developer on the landscaping plan.

Additional discussion took place regarding zoning violations at two locations which were granted Special Use Permits for use of the property.

C. Agricultural and Forestal District Report

Ms. Alderman briefly reported on the six properties covering 243.26 acres that were requested for

consideration for the Agricultural and Forestal District.

- D. Off-Site Road Improvements
Mr. West informed the Commission that the proposal for off-site road improvements was still under legislative consideration.
- E. Long Range Planning Committee
This committee did not meet during the month of February.
- F. Executive Committee
This committee did not meet during the month of February.

IX. NEW BUSINESS

- A. Chairman's Report
Chairman Oliver did not have a report to present.
- B. Board of Zoning Appeals
Ms. Holberton reported on the February meeting of the Board of Zoning Appeals.
- C. Planning Director's Report
 - 1. Monthly Report
Mr. West briefly reviewed the monthly report of the Planning Department for February, 1987.

X. REPORT ON TOWN COUNCIL ACTIONS

Mr. West reviewed the actions taken by Town Council on the following items:

Ordinance #746
Special Use Permit - Pick-Your-Own Produce & Farm Vegetable Stand

XI. ANNOUNCEMENTS AND ADJOURNMENT

The meeting was adjourned at 9:45 p.m.

Georgia Anne Snyder-Falkinham
Secretary

APR 13 REC'D

TOWN OF

BLACKSBURG

300 South Main Street, Blacksburg, Virginia 24060

April 10, 1987

Deer Run Partnership
c/o Mr. Robert Mills
Mills, Oliver & Webb
200 Country Club Drive
Blacksburg, VA 24060

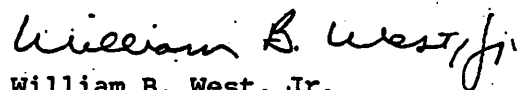
RE: Deer Run Revised Cluster Subdivision Plat

Dear Bob:

This is to advise you that on March 3, 1987, the Town of Blacksburg's Planning Commission passed a motion declining to consider the Deer Run Revised Cluster Subdivision Plat on the basis that the action taken by Town Council on January 27, 1987, was final.

Should you have any questions on this matter, please feel free to contact me.

Sincerely,



William B. West, Jr.
Director of Planning

rv

c: Ernestine Foresman
Thomas Heavener
Daniel F. Layman, Jr.
Richard B. Kaufman