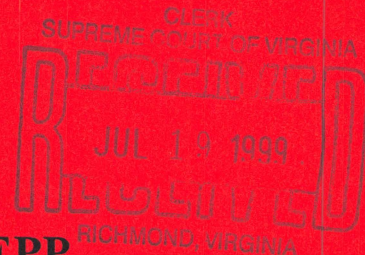


259 VA 210

IN THE
Supreme Court of Virginia

RECORD NO. 990404



GAIL STEPP and MARIE STEPP,

Appellants,

v.

JAMES A. FOSTER, et al.,

Appellees.

JOINT APPENDIX
Volume I

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Continuation of Counsel on Inside Cover

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VIRGINIA:

IN THE CIRCUIT COURT FAIRFAX COUNTY

GAIL STEPP, INDIVIDUALLY AND
AS TRUSTEE

and

MARIE STEPP

and

RALPH EDWARDS, INDIVIDUALLY
AND FOR THE USE AND BENEFIT OF
BELMONT BAY COMMUNITY
ASSOCIATES

and

PATRICIA EDWARDS

Plaintiffs,

v.

JAMES A. FOSTER, INDIVIDUALLY
AND AS TRUSTEE
7454 Belmont Landing Road
Mason Neck, Virginia 22079

and

MARVIN E. LEAR, INDIVIDUALLY
AND AS TRUSTEE
10905 Haislip Lane
Mason Neck, Virginia 22079

and

CAROL ANN WRIGHT
10904 Belmont Boulevard
Mason Neck, Virginia 22079

and

In Chancery No. 146295

MICHAEL POLIFKO)
(as a beneficiary of the Belmont Park)
Estates Trust Agreement))
7417 Old Spring Drive)
Lorton, Virginia 22079)
)
and)
)
BELMONT BAY COMMUNITY)
ASSOCIATION, INC.)
)
and)
)
WILLIAM B. FOULOIS)
(as a beneficiary of the Belmont Park)
Estates Trust Agreement))
10910 Belmont Boulevard)
Lorton, Virginia 22079)
)
and)
)
THOMAS G. GOELLER)
(as a beneficiary of the Belmont Park)
Estates Trust Agreement))
10909 Haislip Lane)
Mason Neck, Virginia 22079)
)
and)
)
GEORGE E. ARNOLD)
NANCY L. ARNOLD)
(as a beneficiary of the Belmont Park)
Estates Trust Agreement))
10913 Belmont Boulevard)
Lorton, Virginia 22079)
)
and)
)
FRITZ VANDENBERG)
(as a beneficiary of the Belmont Park)
Estates Trust Agreement))
10901 Haislip Lane)
Lorton, Virginia 22079)
and)

ADDITIONAL BENEFICIARIES OF)
THE BELMONT PARK ESTATES)
TRUST AGREEMENT AS LISTED)
IN EXHIBIT "E")
)
Defendants.)

**AMENDED BILL OF COMPLAINT FOR DECLARATORY
AND OTHER RELIEF**

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF FAIRFAX
COUNTY:

Your Complainants, by counsel, pursuant to the court's order requiring additional parties to be added herein renews its request that the Court issue declaratory, injunctive and other relief pursuant to Section 8.01-184, *et seq.* of the Code of Virginia, 1950, *as amended*, as well as the common law of the Commonwealth of Virginia and in support of their Amended Bill of Complaint states as follows:

PARTIES

1. Ralph and Patricia Edwards (the "Edwards") are owners of certain property in Belmont Park Estates Subdivision and are beneficiaries of a trust created pursuant to a Deed which transferred equitable ownership of certain property known as "Parcel A" in Belmont Park Estates Subdivision to all lot owners in the subdivision, which was recorded in Deed Book 3790 at page 114 of the land records of Fairfax County (the "Trust").

2. In May of 1994, Ralph Edwards was elected as an officer of an unincorporated association called Belmont Bay Community Associates and has not relinquished that position.

3. Gail and Marie Stepp (the "Stepps") are owners of property in Belmont Park Estates Subdivision located in Fairfax County, Virginia and are also beneficiaries of the Trust. Gail Stepp is also a trustee under a Deed of Appointment of Substitute Trustee which was recorded in Deed Book 6698 at page 1914 of the land records of Fairfax County which is applicable to the Trust.

4. The Stepps and Edwards are and were at all relevant times hereto members of the unincorporated association called Belmont Bay Community Associates. This action is filed with the consent and approval of all persons known to be present members of Belmont Bay Community Associates.

5. James A. Foster and Marvin E. Lear are owners of certain property in Belmont Park Estates Subdivision and were appointed to serve as trustees under the original Trust.

6. Carol Ann Wright in an individual and owner of a lot in Belmont Park Estates Subdivision who holds herself out as a trustee under the Trust.

7. Belmont Bay Community Association, Inc. is a Virginia corporation which was issued a Certificate of Incorporation by the Virginia State Corporation Commission in July of 1994.

8. Belmont Park Estates Subdivision consists of 140 lots which are owned by the persons listed in Exhibit D attached hereto. The members of the subdivision are beneficiaries of the trust created by the Deed recorded in Deed Book 3790 at page 114. At the request of the original Defendants and pursuant to the order of this court, all lot owners of Belmont Park Estates as beneficiaries of the Trust are necessary parties and are notified

of these proceedings so that they can appear and protect their interest, if they so desire. Attached hereto as Exhibit "E" is an affidavit of last known address for the beneficiaries of the Trust, which the court has authorized be added by Order of Publication.

FACTS APPLICABLE TO ALL COUNTS

9. By virtue of a Deed dated February 24, 1973, certain property in Belmont Park Estates Subdivision containing 6.8087 acres was transferred to James A. Foster, Marvin E. Lear and Marshall L. Ware as trustees for the use and benefit of all lot owners in Belmont Park Estates Subdivision. A true copy of the Deed is attached hereto as Exhibit "A" and incorporated herein by reference.

10. By virtue of a Deed of Appointment of successor trustee, Gail Stepp was appointed a trustee in the stead and place of Marshall L. Ware who had resigned as trustee. A true copy of the appointment of successor trustee recorded in Deed Book 6698 at page 1914 of the land records of Fairfax County is attached hereto as Exhibit "B" and incorporated herein by reference.

11. Pursuant to the Deed conveying the property in trust to the trustees for the use and benefit of all lot owners in Belmont Park Estates Subdivision, the trustees were appointed until such time of their death, removal from the state, incapacity to act, refusal to act or resignation.

12. Pursuant to the terms of the creation of the trust, the trustees had certain duties and obligations, including the right to deny access to or use or enjoyment of Parcel A to lot owners who neglect, refuse or fail to pay a uniform charge as determined by the

trustees and to apply funds collected from lot owners to pay expenses incurred in the ownership, maintenance and improvement of the property.

13. Pursuant to the Deed establishing the trust, the use to which the property was to be put, was to be governed by a board of not less than five (5) no more than nine (9) lot owners of the Subdivision which board was to be elected at a meeting called by the trustees of all lot owners in the subdivision.

14. After the formation of the Trust, the lot owners of Belmont Bay Community sought to establish an association for the purpose of governing the use of Parcel A. The community lot owners forming a part of this association became known as Belmont Bay Community Associates ("Associates") and this unassociated entity enacted a set of By-Laws governing its operation, a copy of which is attached hereto as Exhibit "C." The sole purpose of Associates was to govern the use of "Parcel A" and to advise the Trustees regarding the community's desire on how it wished to use the park property.

15. In late 1993 and early 1994, certain individuals in the group of homeowners forming Belmont Bay Community Associates began to investigate the possibility of incorporating Associates under the provisions of the Virginia Non-Stock Corporation Act. During the course of this process, Gail Stepp was advised that he would have to be nominated and elected by the general membership to serve in the position of Trustee. Being of the opinion that his appointment as Trustee was already in place and could not be revoked against his will, Mr. Stepp declined to be nominated or to go through the process of election.

16. Upon information and belief, the suggestion that Mr. Stepp needed to be nominated and elected to the position of Trustee was part of a plan by the remaining trustees to attempt to exclude Mr. Stepp from functioning in his role and capacity as Trustee so that certain personal objective of James A. Foster could be advanced without interference or objection from Mr. Stepp. These objectives included the development and enhancement of roads in the subdivision and the establishment of a formal homeowner's association to govern the subdivision, all of which would be to the primary use and advantage of James A. Foster and/or his partnerships who own at least 38 lots in the subdivision which he desired to develop and sell.

17. Gail Stepp refused to go through the process of nomination and election as trustee for the sole reason that he was already appointed. None of the conditions for his removal as Trustee as specified in the Deed of Trust have occurred.

18. Upon information and belief, James A. Foster and others, have sought to create the appearance of a resignation by Gail Stepp of his role as trustee so that a replacement for Mr. Stepp could be appointed, and thereafter continue with attempts to control the purposes and objectives of the governing bodies which they sought to establish to govern the subdivision. Gail Stepp was excluded from meetings and discussions concerning Parcel A and the formation of the new corporation, and lot owners in general were advised that the sole purpose of the new corporation was to assume the role that Associates played in the subdivision. In truth, Foster and others had a different agenda in mind for the new corporation which would expand the role of Associates and to effect improvements in the subdivision which would primarily benefit their property. The actions

of Foster in this regard were done in bad faith and were motivated by his own self-interest and self-dealing.

19. At various times since Mr. Stepp's refusal to go through the nomination and election process, Stepp has attempted to obtain from the other trustees an acknowledgment that he remains a trustee, but the co-trustees have failed and refused to acknowledge Stepp as trustee and have in fact taken the position that Carol Ann Wright had been appointed as a successor to Gail Stepp.

20. Following the refusal of Gail Stepp to be nominated and elected by the general membership as trustee, James A. Foster, Marvin E. Lear and Carol Ann Wright excluded Gail Stepp from the position of Trustee and acted in his place and stead to delegate certain duties and responsibilities which the Trustees in unity could only exercise, to the newly formed corporation, Belmont Bay Community Association, Inc.. Thereafter they directed and/or obtained possession of funds paid by all lot owners of Belmont Bay Community Associates to the use and benefit of Belmont Bay Community Association, Inc.

21. Belmont Bay Community Association, Inc. ("BBCAI") and the acting trustees have sought to enact by-laws and to expand the role and purpose of Belmont Bay Community Associates from that which was originally intended by the creator of the Deed vesting title to Parcel A to all lot owners in Belmont Park Estates Subdivision. This intent to change the purpose of Associates was not disclosed to lot owners before any vote was taken to form the corporation. Furthermore, BBCAI has received funds properly belonging to Associates and has assessed and collected charges under the false and/or mistaken pretense that it is acting in the place of Associates.

COUNT I
(Declaratory Relief)

22. The allegations of paragraphs 1 through 18 are incorporated herein by reference.

23. At all times relevant hereto, Gail Stepp has been ready, willing and able to exercise his duties and responsibilities as trustee but has been unable to do so by virtue of the actions specified hereinabove.

24. Pursuant to the Deed conveying the property known as Parcel A to the trustees as well as the Deed of Appointment of Successor Trustees, the trust powers are vested in Gail Stepp, Marvin E. Lear and James A. Foster who must jointly unite in the exercise and power specified in the trust.

25. There is an actual justiciable controversy right for adjudication existing between the parties as the Plaintiff asserts that Gail Stepp is a duly appointed and proper Trustee under the Trust Deed and that the power specified in the Trust Deed as being vested in the trustees cannot be delegated to any other entity. With the exception of the actual use to which the property is put, all other powers specified in the trust, including the power to deny access to or use of the enjoyment of the property, to determine the uniform charge to be assessed against lot owners having an interest in the property and to apply those funds and pay expenses incurred in the ownership maintenance and improvement of the property are all powers which only the trustees can exercise in unity.

WHEREFORE, the Plaintiffs pray that this Court enter a judgment declaring that:

A. Gail Stepp is a duly appointed Trustee pursuant to the Deed recorded in Deed Book 3790 at page 114, as amended by the Appointment of Substitute Trustee recorded in Deed Book 6698 at page 1914 of the land records of Fairfax County;

B. That all trustees under the Trust Deed must act in unity in order to exercise any power provided in the trust;

C. That the powers specified in the Trust instrument recorded in Deed Book 3790 at page 114 be construed and the Trustees directed as to the powers they possess, to wit: the power to elect or appoint a successor trustee; the power to deny access to or use enjoyment of the property to such lot owners who neglect, refuse or fail to pay a uniform charge as determined by the trustees; the power to apply the funds collected from lot owners to pay expenses incurred in the ownership maintenance and improvement of the property are all powers which the trustees must exercise and cannot delegate; and

D. That the Trust be interpreted and aid and direction be given to the Trustees as to whether only the use of the property is governed by a board of not less than five (5) nor more than nine (9) lot owners of the subdivision; and whether an election needs to be held at a meeting called by the trustees of all lot owners in the subdivision; to determine if Belmont Bay Community Associates continues to have and maintain any power or existence; and in all respects the identity of the persons who constitute the properly elected Board from whom the Trustees must take direction concerning the use of the property.

E. That Carol Ann Wright is not a duly appointed Trustee and has no right, power or authority to hold herself out as such.

F. To declare that Belmont Bay Community Association, Inc. has no power, jurisdiction or authority to govern or direct the Trustees concerning the use or operation of the Trust property, that it be required to pay over and account for all funds collected from Associates and/or while acting in the place or stead of Associates and that it be enjoined from holding itself out as the successor to Associates and/or the governing body of the Subdivision.

G. To declare that Belmont Bay Community Association, Inc. is a voluntary organization with no power to levy, collect, assess or charge lot owners who choose not to join the corporation, and with no jurisdiction over Parcel "A" of the Subdivision, or the Trustees, and to declare any bylaws, or other acts taken by it to be null and void and of no effect.

H. To award Plaintiffs their reasonable attorney's fees incurred in prosecuting this action.

I. To have such other and further relief as the Court may deem necessary and appropriate to provide full relief to the parties and to end all matters in controversy between them.

COUNT II
(Accounting)

26. The allegations of paragraphs 1 through 22 of the Bill of Complaint are incorporated herein by reference.

27. Pursuant to the Deed appointing them trustees, James A. Foster and Marvin E. Lear were charged with the duty and responsibility of establishing a uniform charge for the maintenance of Parcel A to be assessed against all lot owners who wish to enjoy the

benefits of the ownership, maintenance and improvement of the property. Foster and Lear also were responsible for seeing that the funds collected were applied to pay expenses incurred in the ownership maintenance and improvement of the property.

28. During the period 1994 through the present date, monies have been assessed and/or collected from lot owners by Lear and Foster and/or by persons at their direction. Upon information and belief, these funds have been used for purposes other than to pay expenses incurred in the ownership, maintenance and improvement of the Parcel A property.

29. Upon information and belief, some or all of these funds have been transferred from Belmont Bay Community Associates to Belmont Bay Community Association, Inc. and/or may have been used for purposes other than payment of expenses incurred in the ownership maintenance and improvement of the property.

30. The Plaintiffs are beneficiaries of the trust and are lot owners in the property and have an interest in seeing that the funds collected are properly used for the purposes intended. Lear and Foster owe a fiduciary duty to the Plaintiffs to account for the funds collected.

31. Upon information and belief, Foster, Lear and Belmont Bay Community Association, Inc. have acted in concert to impede, and hide from owners of lots in the subdivision, the status of the books, records and accounts of the collections which have been undertaken.

32. Foster, Lear and Belmont Bay Community Association, Inc. have a duty and an obligation to account for the funds which have been collected and the expenses which have been paid with those funds.

WHEREFORE, you Plaintiffs pray as follows:

A. For an accounting of all funds collected and expenses paid for or on behalf of lot owners of Belmont Bay Community during the period 1994 through the present date.

B. That the books and records of such receipts and expenditures be made available for inspection and copying and that the Defendants be held accountable for any funds which have been paid for unauthorized purposes and/or which are not properly accounted for.

COUNT III
(Removal of Trustees)

33. The allegations of paragraphs 1 through 30 are incorporated herein by reference.

34. Upon information and belief, James A. Foster and/or partnerships he has an interest in is the owner of a substantial number of lots in Belmont Park Estates Subdivision.

35. The trust instrument under which Foster purports to act as Trustee provides for a uniform assessment against all lots in Belmont Park Estates Subdivision.

36. Notwithstanding the ownership of numerous lots, Foster has failed to pay a uniform charge or assessment for each lot he owns in the subdivision; has used funds paid

by lot owners for purposes other than the ownership, maintenance and improvement of Parcel A; has improperly delegated duties and responsibilities he owes as Trustee, to Belmont Bay Community Association, Inc. and others; has allowed funds to be transferred to Belmont Bay Community Association, Inc. which are in fact funds belonging to Associates; all of which actions benefitted him personally because the ultimate aim or objective was to create an Association which could levy and assess dues which could be used for the ultimate development of certain roads and other improvements in the subdivision which were not completed by the original developer, thereby enhancing the market value of the properties on lots he owns in the subdivision.

37. In all of the above actions, Lear acquiesced and/or participated.

38. The aforesaid actions constitute a breach of the Trustees' fiduciary duties and/or negligence in the administration of their duties. Furthermore, given the current situation with the attempted exclusion of Gail Stepp as Trustee, it would be impossible for Gail Stepp to act as Trustee and for Foster and Lear to cooperate with Stepp as Trustee, in the administration of the trust.

WHEREFORE, your Plaintiffs pray as follows:

A. That Foster and Lear be removed as Trustees and Substitute Trustees be appointed in their place;

B. That if the court determines that they can remain as trustees, an injunction be issued preventing them from any future self-dealing with respect to the trust;

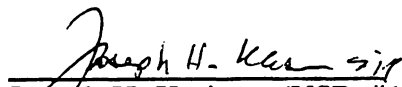
C. That such monetary relief as the Court may deem necessary or appropriate be awarded and assessed against the Trustees for breach of their fiduciary duties taking into

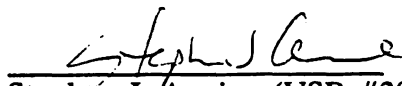
account any loss to or depression in the value of the Trust Estate resulting from any self-dealing, any profit made by the Defendant through self-dealing, or any property that would have accrued to the estate if there had been no self-dealing; and

D. The Court grant such other and further relief as the Court may deem necessary or appropriate.

GAIL STEPP
MARIE STEPP
RALPH EDWARDS
PATRICIA EDWARDS
By Counsel

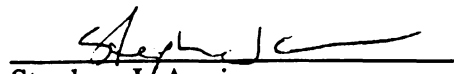
KASIMER & ITTIG, P.C.


Joseph H. Kasimer (VSB #15171)


Stephen J. Annino (VSB #20551)
7653 Leesburg Pike
Falls Church, VA 22043
(703) 893-3914

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, via first class mail, postage prepaid this 3rd day of ~~January~~^{February}, 1997 to Edward J. Tolchin, Esquire, Fettmann, Tolchin & Majors, P.C., 10615 Judicial Drive, Suite 502, Fairfax, Virginia 22030, Matthew A. Clary, III, Esquire, Clary & Moore, P.C., 10306 Eaton Place, Suite 240, Fairfax, Virginia 22030 and Katherine M. Fogarty, Esq., Miller, Miller, Kearny & Geschickter, LLP, 10400 Eaton Place, Suite 312, Fairfax, Virginia 22030.


Stephen J. Annino

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

GAIL STEPP, *ET AL.*,

Plaintiffs,

v.

JAMES A. FOSTER, *ET AL.*,

Defendants.

)
)
)
)
)
)
)
)

In Chancery No. 146295

DECREE

This cause came to be heard on December 20, 1996, upon the Demurrer of all Defendants, and was briefed and argued by counsel.

Upon consideration whereof, it appearing that, for the reasons stated from the bench, the Defendant's Demurrer is well taken as to the present Bill of Complaint because there is a need to join as necessary parties all the lot owners of the Belmont Park Estates Subdivision, and the Belmont Bay Community Associates, but that the Bill of Complaint does sufficiently allege a cause of action for an accounting;

It is, therefore, ADJUDGED and DECREED that Defendant's Demurrer shall be and hereby is, SUSTAINED, as to the Complainant's failure to join necessary parties to Counts I and III, and is OVERRULED as to Count II of the Bill of Complaint.

Accordingly, it is further ADJUDGED and DECREED that the Complainants are given leave to amend their Bill of Complaint for sixty (60) days from the date of entry of this order and it is further ordered that the present Defendants respond to the Bill of Complaint within twenty-one (21) days of receipt of the Amended Complaint and it is further

ORDERED that the Complainants request and Motion, pursuant to Virginia Code § 8.01-316, that to the extent there are in excess of ten parties ^{served} ~~named~~ in the Amended Bill of Complaint, the

Page 2

served in excess of ten
~~added~~ parties may be served by Order of Publication, is granted and the Order of Publication submitted contemporaneously herewith approved.

And this cause is continued.

ENTERED this 12th day of January, 19 97.

Michael P. McWeeny
 CIRCUIT COURT JUDGE

WE ASK FOR THIS AS TO THE RULING ON THE DEMURRER.
~~SEE HINDS OBJECTED TO AS TO ALL ISSUES. I EXPLAINING~~
~~TO GO TO SECTION 316 FOR REASONS STATED IN ORAL ARGUMENT.~~

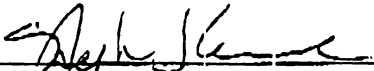
Richard G. Moore
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 Community Association, Inc.

Page 3

SEEN AND OBJECTED TO:



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Joseph H. Kasimer, Esquire
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s9 stepp.decreetbb

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

GAIL STEPP, et al.

Plaintiffs,

v.

In Chancery No. 146295

JAMES A. FOSTER, et al.

Defendants.

DECREE

This matter came on for hearing on April 11, 1997, upon the Motion For Partial Summary Judgment of Defendants Foster, Lear and Wright, and upon the Cross-Motion For Partial Summary Judgment of the Plaintiffs, and was briefed and argued by counsel;

And the Court being of the opinion that the Motion For Partial Summary Judgment by Defendants Foster, Lear and Wright is well taken, and that Plaintiffs' cross-motion for partial summary judgment is not well-taken, in that Plaintiffs' pleadings, requesting the Court to declare unanimity of action by the trustees in any exercise of the powers provided in the Deed of February

24, 1973, recorded at Book 3790, Page 114, among the land records of Fairfax County, Virginia, *may be applied retroactively to*
are ~~controlled by~~ governed by Code of Virginia (1950) §26-5.2(A), which authorized any power

vested in three or more trustees to be exercised by a majority of them, and which is applicable to the trust created by the aforesaid Deed, *and because the trust at issue is a charitable trust which at common law is governed by the majority of the trustees*

It is, therefore, ORDERED and DECREED that the said Defendants' motion for partial summary judgment shall be, and hereby is, GRANTED, *and does not require unanimity among the trustees* ~~and that portion of the Plaintiffs' claim~~

JMR ~~for declaratory relief under Count I of their Amended Bill of Complaint, which alleges that the~~

three trustees under the aforesaid Deed must jointly unite in the exercise of any power specified

~~therein, and which prays for a declaration that all the trustees under that Deed must act in unity in order to exercise any power provided therein, shall be, and hereby is, dismissed with prejudice,~~
and

It is further ORDERED and DECREED that Plaintiff's cross-motion for partial summary judgment shall be, and hereby is, DENIED; and

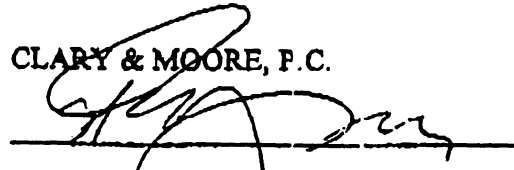
This cause is continued.

ENTERED this 11 day of April, 1997.


Circuit Court Judge


WE ASK FOR THIS:

CLARY & MOORE, P.C.


Matthew A. Clary, III, Esquire
Virginia State Bar No. 12041
10306 Eaton Place, Suite 240
Fairfax, Virginia 22030
(703) 359-9400
Counsel for Defendants
Foster, Lear and Wright

SEEN AND AGREED:

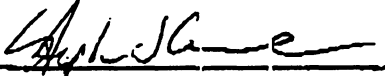
FETTMANN, TOLCHIN & MAJORS, P.C.


Edward J. Tolchin, Esquire
Virginia State Bar No. 32654
10615 Judicial Drive, Suite 502
Fairfax, Virginia 22030
(703) 385-9500
Counsel for Defendants
Belmont Bay Community Association, Inc.,
And Defendants Ploifko, George E. and Nancy

L. Arnold, Goeller and Vandenberg

SEEN AND OBJECTED TO FOR THE REASONS STATED IN ~~the~~ complainant's
memorandum ~~and~~ FOR THE REASON THAT A NECESSARY PRECEDENT TO COURTS
PRIOR RULING REQUIRING JOINER OF NECESSARY
PARTIES WAS A FINDING THAT TRUST WAS
A PRIVATE TRUST AND BECAUSE THE
STATUTE MAY NOT BE APPLIED RETRO-
actively IN THIS INSTANCE.

KASIMER & ITTIG, P.C.


Stephen J. Annino, Esquire
Virginia State Bar No. 20551
7653 Leesburg Pike
Falls Church, Virginia 22043
(703) 893-3914
Counsel for Plaintiffs

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

GAIL STEPP, INDIVIDUALLY AND
AS TRUSTEE, *ET AL.*,

Plaintiffs,

v.

JAMES A. FOSTER, INDIVIDUALLY
AND AS TRUSTEE, *ET AL.*,

Defendants.

Chancery No. 146295

ORDER

UPON CONSIDERATION of the plaintiff's Motion for Partial Summary Judgment as to the affirmative defenses of the failure to join necessary parties and failure to effect service, and it appearing to the court proper to do so for reasons stated from the bench, it is accordingly

ORDERED that the plaintiff's motion for partial summary judgment is ^{partially} granted as to ~~the~~ ^{these} defenses that the attorney general is a necessary party and denied as to the issue of the joinder of Belmont Bay Community Associates and further that the issue of proper service on all but Belmont Bay community Associates is stricken as having been previously ruled upon by the court

ENTERED this 30th day of January, 1998.

KJ JMR
Judge, Circuit Court of Fairfax County

I ASK FOR THIS:

Stephen J. Annino

Stephen J. Annino
Kasimer & Ittig, P.C.
7653 Leesburg Pike
Falls Church, Virginia 22043
(703) 893-3914

SEEN *NOT* *OBJECTIONS* *to* *For* *the* *Reasons* *stated* *in* *the* *Opposition* *to*
THE *Motion* *For* *Partial* *Summary* *Judgment* *and* *in* *or* *argued*

Richard
Moore
Matthew Clary, Esquire
Clary & Moore, P.C.
10306 Eaton Place, Suite 240
Fairfax, Virginia 22030

No Appearance
Edward J. Tolchin, Esquire
Fettmann, Tolchin & Majors, P.C.
10615 Judicial Drive, Suite 502
Fairfax, Virginia 22030-7501

s14\stepp\ORDER\BB

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

GAIL STEPP, INDIVIDUALLY AND)
AS TRUSTEE, *ET AL.*,)

Plaintiff's,)

v.)

JAMES A. FOSTER, INDIVIDUALLY)
AND AS TRUSTEE, *ET AL.*,)

Defendants.)

Chancery No. 146295

ORDER AMENDING BILL OF COMPLAINT


UPON CONSIDERATION of the Notice and Motion of the Complainants to Amend the Addendum clause of Count I and III of the Amended Bill of Complaint to seek a declaration that Michael Polifko is not a duly appointed Trustee and has no right, power or authority to hold himself out as such, and it appearing to the Court that counsel for the parties have consented to the entry of this Order, it is accordingly

ORDERED that the motion is GRANTED and the addendum clauses are amended as stated in the motion.

ENTERED this 23 day of February, 1998.

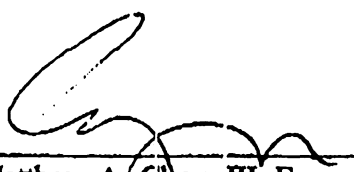
Judge, Circuit Court of Fairfax County

I ASK FOR THIS:



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Page 2



Matthew A. Clary, III, Esq.
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V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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:
GAIL STEPP, INDIVIDUALLY AND :
AS TRUSTEE, ET AL., :
:
Plaintiffs, :
:
-vs- :
:
JAMES A. FOSTER, INDIVIDUALLY :
AND AS TRUSTEE, ET AL., :
:
Defendants. :
:
----- X

In Chancery No. 146295

Courtroom No. 5F
Fairfax County Courthouse
Fairfax, Virginia

Monday, February 23, 1998

The above-entitled cause came on for trial before
THE HONORABLE KATHLEEN H. MacKAY, Judge, in and for the
Circuit Court of Fairfax County, Virginia, at 10:09 o'clock
a.m., the proceedings being recorded by stenotype by
GENEVIEVE R. BATA of DSC Reporting, Inc.

(February 23, 1998)

* * *

1 THE COURT: I will take notice of it. But I would
2 ask you at the break just to put in the record what the
3 misspellings are, because I don't think the record should
4 ever have misspellings in it if we can correct it.

5 MR. TOLCHIN: Mrs. Arnold here, who is president of
6 the association, has gone through that recently. And she can
7 point them out to us.

8 THE COURT: Okay.

9 BY MR. ANNINO: (Resuming)

10 Q. And did you have occasion to look specifically,
11 with respect to Lot 57, who the record owner was and how long
12 they had owned the property?

13 A. Lot 57 was owned by a couple named Burcher. And
14 they acquired it in 1964 in January.

15 THE COURT: How do you spell that name, sir?

16 THE WITNESS: B-u-r-c-h-e-r.

17 BY MR. ANNINO: (Resuming)

18 Q. Now, in the course of your examination of the title
19 to Parcel A, were you able to determine whether any streets
20 in the subdivision are a part of the parcel?

21 A. No, they are not. Parcel A is a separate map
22 number that sits on its own in the tax books and the tax
23 records.

(February 23, 1998)

1 Q. And is Rio Vista Drive or Bay View Drive a part of
2 Parcel A?

3 A. No.

4 Q. And did you also obtain a copy of the County's tax
5 map publications for Belmont Park Estates?

6 A. Yes.

7 Q. With respect to the streets known as Rio Vista
8 Drive and Bell View Drive (sic), was there any indication in
9 the title records of those areas being owned in common by lot
10 owners in the subdivision?

11 MR. CLARY: Just to clarify, Bay View Drive, not
12 Bell View.

13 THE WITNESS: There is nothing to indicate that
14 they're owned by the homeowners, no.

15 BY MR. ANNINO: (Resuming)

16 Q. Now, did you also -- can you turn to --

17 THE COURT: Where do they fall then? Where do they
18 fall? They're just like --

19 THE WITNESS: Well, those two, I believe, have
20 route numbers on them, do they not?

21 I can't see that far away. I'm sorry. But several
22 of the streets in the subdivision have Fairfax County route
23 numbers on them, according to the tax record book.

(February 23, 1998)

*

*

*

1 A. Or one individually.

2 Q. Right, right.

3 But in fact, this particular deed --

4 A. Deed or appointment?

5 Q. No. 2.

6 Exhibit No. 2 is in fact signed by not only all
7 three trustees but also the successor?

8 A. Yes.

9 Q. So really that issue doesn't arise as a consequence
10 of this deed, does it?

11 A. It arose as a consequence in my mind of the second
12 successor trustee.

13 MR. ANNINO: Okay. But that, I don't think, has
14 been admitted in evidence yet, has it?

15 MR. ANNINO: No.

16 BY MR. CLARY: (Resuming)

17 Q. So really that opinion doesn't apply to this?

18 A. Yes. I would agree to that.

19 Q. And you're not offering any testimony with respect
20 to the second trust deed -- this successor deed -- are you?

21 A. No.

22 Q. Okay. Would it be fair to say that the tax records
23 are a governmental record of who owns the property?

(February 23, 1998)

1 A. Yes.

2 MR. CLARY: I have nothing further.

3 CROSS-EXAMINATION

4 BY MR. TOLCHIN:

5 Q. Just a few other follow-up questions.

6 You haven't been out to the site to actually see
7 which lots are improved and which are not?

8 A. No, sir, I have not.

9 Q. So the coloring on the map that you provided, which
10 is Exhibit No. 6, I believe --

11 THE COURT: No. 7.

12 BY MR. TOLCHIN: (Resuming)

13 Q. -- may or may not show reality, as far as you know?

14 A. That would be fair. I couldn't argue with that.

15 Q. Just one other question to follow up.

16 I think you were giving testimony about these
17 various roads throughout the system. Could you look at the
18 map on Exhibit 7.

19 All these roads are county roads, is that correct,
20 based upon what you saw in your title search?

21 A. Bay View Drive does not have a designation in the
22 county, the one above Parcel A. It does not have a
23 designation.

(February 23, 1998)

* * *

1 Q. And what did you do for them?

2 A. I recruited officers for the -- I worked with
3 joint and staff activities for the high-level positions in
4 Washington.

5 Q. And how long did that last?

6 A. I worked there for -- I was with the Department of
7 the Army all together for 15 years. I had a little break in
8 service and they merged it. So I was there, I guess, from
9 '79 through '87.

10 Q. When you say "there," you mean the Department of
11 the Army?

12 A. In the Hoffman Building in Alexandria.

13 Q. And what did you do after '87?

14 A. I went to work for my -- my husband started the
15 company. And I came to work for them.

16 I had a handicapped son at home that enabled me to
17 do that and be at home also.

18 Q. And what did you do for the company?

19 A. I started out just as, I guess you would say, a
20 jack-of-all-trades and gradually started taking over the
21 finances of the company and handling all the billing and
22 invoicing and all that kind of stuff.

23 Q. And where do you live, Mrs. Stepp?

(February 23, 1998)

1 A. I live in Belmont Park Estates in Mason Neck in
2 Virginia.

3 Q. And the address there?

4 A. 10914 Belmont Boulevard.

5 Q. And what lot number is that; do you know?

6 A. 74.

7 Q. And how long have you lived at that property?

8 A. 40 years.

9 Q. Describe for the Court the subdivision of Belmont
10 Park Estates.

11 A. It's a subdivision of about 140 lots. Some of them
12 developed, some of them undeveloped. It's centered around a
13 six- or almost a seven-acre park. And it fronts on Belmont
14 Bay.

15 Q. And when did you -- what area in the subdivision is
16 owned in common with other lot owners?

17 A. Parcel A.

18 Q. And when did you first become advised that that
19 area had been set aside for lot owners?

20 A. Well, when we bought our home, there was only two
21 homes there. And we bought from the original developers,
22 Mr. Von Herbliss and Mr. Ahalt.

23 And it was always given to us to understand that we

(February 23, 1998)

1 had a share in the park. The name of the subdivision,
2 Belmont Park Estates, revolved around the park.

3 Q. And was there a time when you became advised that
4 there had been a formal transfer to lot owners -- for the
5 benefit of lot owners?

6 A. Yes.

7 Q. And when was that?

8 A. That was in 1973, I believe.

9 Q. And would you describe Parcel A as it existed in
10 the mid to late seventies.

11 A. Well, it was -- there is, as I said, about two
12 acres of cleared ground. And you know, it went from being
13 cut to not being cut, to growing up, to just not maintained
14 at all times.

15 Q. What amenities did it have back then?

16 A. They had at that time a floating dock. And they
17 had attempted to build a boat ramp.

18 Q. And were there any restrictions placed on the
19 public use of the parcel?

20 A. Yes. It was designated private for homeowners and
21 guests. And they had No Trespassing signs posted. And at
22 one point they had a gate across the --

23 MR. TOLCHIN: I object at this point unless we find
(February 23, 1998)

1 out who the "they" is. We're hearing "they" had this and
2 "they" had that.

3 THE WITNESS: Well, I mean the association.

4 THE COURT: She's answered it. The association.

5 BY MR. ANNINO: (Resuming)

6 Q. Would you describe the dock area and the beach area
7 as it existed back then.

8 A. Well, the floating dock they put in, I would say it
9 was about 40 feet long and five feet wide. I am not great at
10 measurements.

11 And I think the beach was about, say, a 200-foot
12 frontage of sandy beach about six feet wide.

13 Q. And what involvement did the homeowners have in the
14 maintenance of that property in the earlier years?

15 A. Well, in the early years everybody -- it was all
16 volunteer. Everybody went down there and cut the grass or
17 cleaned up or, you know, did whatever they could just to have
18 a little place to go down to.

19 Q. And what were you advised at that time about the
20 assessments or dues that were payable to the association?

21 A. Well, at that time, when I guess it was transferred
22 to the trustees, they came out with the bylaws.

23 THE COURT: Ma'am, I'm going to ask you now to

(February 23, 1998)

1 The explanation was that the tractor was there at
2 Mr. Goeller's. They were getting a good deal, and they had
3 to take the deal while they could.

4 Q. What involvement did Mr. Foster have in connection
5 with the roadwork, to your knowledge?

6 A. To my knowledge, he was very instrumental in it.

7 Q. Why do you say that?

8 A. Well, there was one set of minutes that reflected
9 he came before the board to discuss road improvements to
10 Belmont Bay.

11 MR. TOLCHIN: I'm going to object at this point.

12 If these minutes are in the record already, then
13 they're in there. And if they're not, then she's testifying
14 on someting she read outside of -- it's hearsay.

15 THE COURT: Do you know that firsthand, ma'am?

16 THE WITNESS: I know it -- I can't say that I saw
17 him. But I know it from other people who did.

18 THE COURT: That's hearsay. That objection is
19 sustained.

20 That's not meant to be a slam on you, ma'am.

21 THE WITNESS: I know. I understand.

22 BY MR. ANNINO: (Resuming)

23 Q. Did you participate in any discussions with members

(February 23, 1998)

* * *

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

----- X
:
GAIL STEPP, INDIVIDUALLY AND :
AS TRUSTEE, ET AL., :
:
Plaintiffs, :
:
-vs- :
:
JAMES A. FOSTER, INDIVIDUALLY :
AND AS TRUSTEE, ET AL., :
:
Defendants. :
:
----- X

In Chancery No. 146295

Courtroom No. 5F
Fairfax County Courthouse
Fairfax, Virginia

Tuesday, February 24, 1998

The above-entitled cause came on for trial before
THE HONORABLE KATHLEEN H. MacKAY, Judge, in and for the
Circuit Court of Fairfax County, Virginia, at 10:02 o'clock
a.m., the proceedings being recorded by stenotype by
GENEVIEVE R. BATA of DSC Reporting, Inc.

(February 24, 1998)

1 why only one lot was paid for.

2 Q. We also talked yesterday about a letter that was
3 written by Mr. Foster, which is Exhibit No. 77. And I don't
4 believe that's in your witness book. It is a loose exhibit.

5 Mr. Foster's letter had a letter attached from you
6 and your husband written in September of 1993?

7 A. Right.

8 MR. CLARY: I'm sorry?

9 MR. TOLCHIN: What exhibit is this?

10 MR. ANNINO: No. 77.

11 MR. CLARY: You're referring to the September 29th,
12 '93, letter?

13 MR. ANNINO: Yes.

14 BY MR. ANNINO: (Resuming)

15 Q. Can you just tell the Court why that letter was
16 written.

17 A. It was written after all the work was done on the
18 road and the fact that the community was being included in
19 nothing. We were not allowed to make any decisions. They
20 had all been transferred to the board to make the decisions.

21 And my husband and I just got very disgusted at the
22 time. And we resigned from the association.

23 Q. And what response did you get from that letter?

(February 24, 1998)

1 A. I got no response. It was never acknowledged. It
2 was never replied to. Nothing was done about it.

3 THE COURT: Is that a letter from her to --

4 THE WITNESS: Yes.

5 THE COURT: I thought 77 was a letter from --

6 MR. ANNINO: It had an attachment.

7 BY MR. ANNINO: (Resuming)

8 Q. Notwithstanding that letter, what happened after
9 the letter concerning your attendance at membership meetings?

10 A. Well, after we had time to think about it -- I
11 don't know how many months went by -- we decided leaving and
12 not participating was not solving the problem. So we went
13 back and started going to the meetings again.

14 Q. And did the association recognize you as a member
15 at that time?

16 A. Yes, they did.

17 THE COURT: How did they do that, ma'am?

18 THE WITNESS: I was in the position of treasurer.
19 I was elected as treasurer.

20 THE COURT: Oh, that was when you were elected as
21 treasurer. Okay.

22 BY MR. ANNINO: (Resuming)

23 Q. Now, after that September of 1993 letter did you

(February 24, 1998)

1 also participate in discussions with Mr. Arnold about the
2 election of a trustee?

3 A. Yes. He came to our home.

4 Q. And would you relate your recollection of that
5 discussion.

6 A. He sat down with us at the table, and he told Gail
7 that he had nominated him for this position, that he had
8 developed a set of criteria that would fit him perfectly. He
9 assured him he would be elected by the majority, and he
10 wanted him to accept the nomination.

11 Q. And what was your husband's response?

12 A. His response was that he did not need to be
13 nominated and elected by the association, that he was a
14 trustee already.

15 THE COURT: What was the time frame for this,
16 ma'am?

17 THE WITNESS: It was -- I cannot give you the exact
18 time frame.

19 THE COURT: Just the year.

20 THE WITNESS: It was in that -- I would have to say
21 it could be '93 or '94.

22 BY MR. ANNINO: (Resuming)

23 Q. Now, with respect to the expenditures of the

(February 24, 1998)

* * *

1 park, would you agree with me that that is an expense that
2 would be normally connected with the park?

3 A. If I'm to interpret the bylaws, I would say no.

4 Q. Okay. And at any time -- sorry.

5 As you review these minutes from 1974 to 1976,
6 actually you find many, many references to work being done on
7 the access road to the park -- Rio Vista Drive -- don't you?

8 A. I didn't particularly study it. But I'll take your
9 word for it.

10 Q. Let me just direct your -- let me just direct your
11 attention to one in particular. And that would be September
12 28, 1975.

13 And unfortunately, these Xerox copies are virtually
14 illegible, unless you can read yours, Your Honor.

15 THE COURT: I'm not even sure I have the right one.

16 I do have that one. It is not readable.

17 MR. CLARY: Okay. May I borrow that for just a
18 minute? Because the mimeograph copy is actually more legible
19 than the Xeroxes.

20 THE COURT: I'm sure it is.

21 BY MR. CLARY: (Resuming)

22 Q. And this says "The storm did much" -- I'm sorry.
23 This is Belmont Bay Community Association minutes of meeting,

(February 24, 1998)

1 September 28th, 1975.

2 "The storm did not much damage to the road and park
3 area. The ditches are overgrown and overflowed down and
4 washed out much of the road. There was much discussion
5 regarding the park area and the association as to whether to
6 keep it or sell it or give it to Fairfax County for a park.
7 The burden of taxes and dues are being taken care of by only
8 so many of the families who live here.

9 "Peter Wright is going to draft a letter for the
10 association to all property owners to let them know what the
11 monies are due for each -- for each for the taxes and
12 insurance.

13 "Mr. Payne made a motion that he contact
14 Sammy Hopkins to fix the road and ditches. Peter Wright
15 seconded the motion. The motion passed. Mr. Payne will get
16 a bid from Mr. Hopkins.

17 "A motion was made by Mr. Payne to have someone cut
18 some of the trees in the park area and to pay them \$60 a
19 month between now and May to do the job. Motion not
20 seconded. Some families wanted to cut trees for firewood.

21 "Mr. Foster made a motion that the beautification
22 committee go down to the park and tag what trees that they
23 wanted to be kept before the cutting started. Gene Lear

(February 24, 1998)

1 seconded motion. Motion carried."

2 Now, this would in fact reflect that clearly as of
3 September 28th, 1975, while you were living in the community,
4 that there was great concern with the road that accessed the
5 park. And in fact, subsequent to that, the minutes in fact
6 reveal that Mr. Hopkins was hired and that the association
7 paid funds for him to grade that road.

8 Isn't that correct?

9 A. That's what you're reading to me, yes.

10 Q. Are you saying that you did not -- you are not
11 aware of that?

12 A. No. What I'm saying is that the trustee's deed
13 makes the park the first responsibility.

14 You also mention things that had to be done to the
15 park. And the first order of business should have been to
16 take care of the park before the road.

17 Q. Just so I understand, you're saying that the
18 trustee's deed imposes an obligation on the association?

19 A. All funds are to be used for Parcel A. The road
20 was not part of Parcel A. And if Parcel A even at that time
21 needed things done to it, that had the priority.

22 Q. And the funds that you're talking about though that
23 are referred to in the trust deed -- or deed actually -- is

(February 24, 1998)

1 funds that were assessed and collected by the trustees,
2 wasn't it?

3 A. The trustees never assessed and collected any
4 funds.

5 Q. Well, you're right.

6 And in fact, the monies that we're talking about
7 are dues of the association, aren't they?

8 A. Yes, they are.

9 Q. And you've agreed with me earlier that the
10 association was simply a voluntary association?

11 A. Yes.

12 Q. And the trust deed in fact provides absolutely no
13 control by the trustees over the association, does it?

14 MR. ANNINO: Objection. That's parol evidence.
15 The document speaks for itself.

16 THE COURT: He's just -- she -- you're not asking
17 her to make a legal opinion?

18 MR. CLARY: I'm asking her her understanding.

19 THE COURT: He's just trying to determine her
20 recollection of the history as it went forward. I am going
21 to ask her to answer the question.

22 Ma'am, you don't have to -- just do the best you
23 can on it. You're not a lawyer. And what you say is not

(February 24, 1998)

1 going to bind me to any particular conclusion. So you can
2 answer the question.

3 THE WITNESS: I'll have to ask you to repeat it
4 please.

5 BY MR. CLARY: (Resuming)

6 Q. The trust deed in fact doesn't provide the trustees
7 any power whatsoever over the association, does it?

8 A. I would say that they have the power to assure that
9 the association is governing properly. The association is
10 put in place to do that governing of Parcel A. And if they
11 are not governing properly, I think the trustees have a duty.

12 Q. Is it not your recollection that the trust deed
13 provides that the trustees shall be governed by the
14 association with respect to all matters pertaining to -- all
15 matters pertaining to the use of the park and everything
16 connected with it?

17 A. Parcel A.

18 MR. ANNINO: Objection. That's a mischaracteriza-
19 tion of the trustee's deed. It assumes facts not in
20 evidence.

21 THE COURT: I think -- I don't know that Mrs. Stepp
22 can answer that.

23 MR. CLARY: Yes, ma'am. I'll move on.

(February 24, 1998)

1 BY MR. CLARY: (Resuming)

2 Q. During the 1974-76 time frame while you lived in
3 the community, did you ever voice -- you or your husband ever
4 go to any of these association meetings and say "I object.
5 You shouldn't be using the dues of the association for the
6 lots on Rio Vista Drive or for grading Rio Vista Drive or for
7 putting the sign out front"?

8 A. All decisions from '92 practically through have
9 been made by the board. We had no chance for very much input
10 at all.

11 And from '93 until we took our tenure in '94, we
12 got no copies of board meetings. There were very few
13 community general meetings. So we really didn't know for a
14 long time what was even going on.

15 Q. I am sorry, ma'am. I am addressing the time frame
16 1974 to 1976, while you lived there.

17 A. You said '94 and '96.

18 Q. My mistake.

19 From 1974 to 1976, did you or your husband ever go
20 to any of these general association meetings and voice your
21 objection and say it's wrong for the association to spend its
22 money to put a lock at the top of Rio Vista Drive or to pay
23 Sammy Hopkins to grade the road or to put the sign out front?

(February 24, 1998)

1 A. Well, as we previously stated, I am not recorded as
2 being at any of these meetings. And if my husband made any
3 objections, I don't know about that.

4 Q. Would it be fair to say that you don't recall ever
5 having -- either you or your husband ever having done that?

6 A. No.

7 THE COURT: Yes, it would be fair? Or, no, it
8 would not be fair?

9 THE WITNESS: Yes, it would be fair.

10 MR. CLARY: Thank you, Your Honor.

11 BY MR. CLARY: (Resuming)

12 Q. Mrs. Stepp, during this period 1974 through 1976,
13 the association directed its attention actually to a number
14 of things outside the boundaries of Parcel A, didn't it?

15 A. Yes.

16 Q. For instance, we've already talked about the fact
17 that they graded the access road, Rio Vista Drive, correct?

18 A. Correct.

19 Q. And they built the entrance way and sign out front,
20 correct?

21 A. I testified that the sign was already in existence.

22 Q. They repaired it?

23 A. Right.

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1 Q. They spent money on it?

2 A. Right.

3 Q. They removed trash and abandoned appliances in the
4 ditch on the wooded side of the road to the park, correct?

5 A. Yes.

6 Q. They built a gate at the top of the hill on
7 Rio Vista Drive where the access road was, didn't they?

8 A. Yes.

9 Q. And in fact, it wasn't just one gate. They had to
10 refurbish that gate on another occasion, didn't they?

11 A. Right.

12 Q. And they put a lock on it?

13 A. Yes.

14 Q. And the combination was disseminated among the
15 membership?

16 A. Right.

17 Q. And in addition, various members of the association
18 acted as a representative of the community to Fairfax County
19 in an effort to get the rest of the roads paved, didn't they?

20 A. Yes.

21 Q. And you did other -- the association had bake sales
22 to raise money?

23 A. One, that I remember.

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1 Q. And we're still in this time period, '74 to '76.

2 And the association disseminated information about
3 events of civic interest in the Mason Neck area, didn't it?

4 A. I don't recall that.

5 Q. You remember about the gas line?

6 A. I just glanced at that.

7 Q. Do you remember that in fact the association
8 disseminated information about the gas line in the Mason Neck
9 area?

10 A. Yes.

11 Q. And in fact, the association lobbied to get a
12 street light installed at the intersection of Haislip Lane
13 and Rio Vista Drive, didn't they?

14 A. During that time frame?

15 Q. Yes.

16 A. I don't remember it then. I remember it recently.

17 Q. Okay. And was that an inappropriate function of
18 the association?

19 A. But that was no expense to the association.

20 Q. I understand.

21 But the general -- but just that focus, taking that
22 as a part of the association's business and devoting efforts
23 of those members, don't you agree that that was an appropri-

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1 ate function of the association?

2 A. Yes.

3 Q. Okay. And during the 1974-1976 time frame, neither
4 you nor your husband ever went to these various meetings and
5 said, "You shouldn't be doing any of those things," did you?

6 A. What was the time frame?

7 Q. '74 to '76.

8 A. My husband wasn't here then.

9 Q. He was when the bylaws were adopted, correct?

10 A. Right.

11 Q. And you were here then?

12 A. I was here from '74 to '76.

13 Q. Mrs. Stepp, your husband has been the president of
14 the association; is that correct?

15 A. Yes.

16 Q. Okay. And I believe you said you didn't recall the
17 fact that he was the first president of the association?

18 A. Correct.

19 Q. But you do recall that he at some later point in
20 time was the president?

21 A. Right.

22 MR. CLARY: May I ask the clerk to mark this as the
23 next defendants' exhibit in order.

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1 occurred in 1994 or earlier?

2 A. I'm not sure what date.

3 Q. I may have been mistaken. I thought you said 1992.
4 But I wanted to make sure today that -- whatever date it is,
5 I just wanted to understand when it is that you think that
6 began.

7 A. It was -- it would be more to '94. It was after
8 the roadwork was completed.

9 Q. Actually, I guess the best way of ascertaining that
10 would actually be to see the listing agreement, wouldn't it?

11 A. Yes.

12 Q. So that if the listing agreement were in fact not
13 signed until 1994, then in fact the Hurvitz-Foster Joint
14 Venture would not have been marketing lots until sometime
15 after that listing agreement in 1994?

16 A. Right.

17 Q. Okay. And you're not aware of any effort to market
18 through Long & Foster these lots prior to that date?

19 A. No, not that I am aware of.

20 Q. All right. You indicated yesterday that there had
21 been no dissemination of information to the members of the
22 community regarding any work that was intended or thought
23 about on the access road -- Rio Vista Drive -- going down to

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1 the park prior to its commencement sometime in the summer of
2 1993; is that correct?

3 MR. ANNINO: Objection.

4 I think that mischaracterizes the testimony. I
5 believe she testified to approval.

6 MR. CLARY: I don't want to mischaracterize.

7 I see. So I'll withdraw the question.

8 BY MR. CLARY: (Resuming)

9 Q. Am I to understand that yesterday when you
10 testified you were attempting to make a distinction about
11 approval versus the fact that you knew what was going on?

12 A. I'm not following you.

13 Q. Isn't it a fact that --

14 THE COURT: I think the way you said it the first
15 time was more helpful to her.

16 I'll overrule on the objection.

17 He is just trying to understand from you what your
18 recollection was again with regard to improvements on Rio
19 Vista.

20 Would you ask the question again please.

21 MR. CLARY: Yes, ma'am, if I can remember it.

22 BY MR. CLARY: (Resuming)

23 Q. Was your testimony yesterday that there was no

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1 dissemination of information to the community about work that
2 was going to be done to try and clear the access road --
3 Rio Vista Drive -- before it was actually done in the summer
4 of 1993?

5 A. That's right. We did not know anything about it.

6 Q. Okay. I would like to ask you, if you would, to
7 use the record book there for a minute and turn to the
8 March 12th, 1992, general membership meeting.

9 A. I don't see -- you're saying March of '92?

10 Q. March 12th, 1992, ma'am.

11 A. I have November and -- I have November. I don't
12 see any March.

13 MR. CLARY: Can I help her find that?

14 THE COURT: Yes. Go ahead.

15 BY MR. CLARY: (Resuming)

16 Q. Do you find that now, ma'am?

17 A. Yes.

18 Q. And your husband attended this meeting, didn't he?

19 A. Yes.

20 Q. And at this meeting Mr. Polifko and Mr. Vandenberg
21 were elected to co-chair the BBCA park and community planning
22 committee -- this is on the second page, ma'am -- and Ralph
23 Edwards and Darrell Michels were recommended to assist with

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1 community planning and maintenance; do you recall that?

2 A. No, I don't.

3 Q. Your husband didn't tell you about that?

4 A. I don't remember.

5 Q. And did your husband tell you anything about what
6 they discussed at that meeting their plans were?

7 A. No.

8 Q. Okay. If you would turn for just a minute to the
9 next page after that, which I believe is one or two pages, it
10 is the treasurer's report for --

11 THE COURT: Where is that on that page?

12 Oh, it's 2.

13 MR. CLARY: It is the second page, ma'am. It's the
14 ninth paragraph beginning with the words "Mike Polifko."

15 THE COURT: Do you see that, ma'am?

16 THE WITNESS: Yes, I do.

17 BY MR. CLARY: (Resuming)

18 Q. And, ma'am, if you would continue turning, there is
19 in fact a March 12th, 1992, treasurer's report that is part
20 of these minutes as well, isn't there? Do you find that?

21 A. Yes.

22 Q. Okay. And the expenditures reported to the general
23 membership at this meeting in March of 1992 included repair-

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1 ing and repainting the sign at Belmont Bay Estates.

2 A. Okay. I'm sorry. I was just looking at where it
3 says the treasurer's report.

4 Q. Oh, I'm sorry. You haven't found that page?

5 THE COURT: I haven't either. This is the most
6 confusing thing.

7 Is that attached to the March 12th minutes?

8 MR. CLARY: It should be, Your Honor.

9 THE COURT: It doesn't appear to be.

10 Okay. It goes the other way.

11 BY MR. CLARY: (Resuming)

12 Q. This treasurer's report for the membership meeting
13 on March 12th does in fact include expenses for repairing and
14 repainting the sign up front and maintaining the signs at the
15 Rio Vista road gate, correct?

16 A. Yes.

17 Q. Indicating that there is a gate at the top of
18 Rio Vista Drive, the access road to the park, correct?

19 A. Yes.

20 Q. Were these signs the signs that said Private
21 Property or something to that effect?

22 A. I haven't been around there in a long time. So I
23 couldn't tell you what they say or what kind of signs they

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1 are.

2 Q. And also, I notice it has membership in the Mount
3 Vernon Council. And this is in 1992.

4 A. Correct.

5 Q. Then if I could turn your attention to the general
6 membership meeting on November 30th, 1992 -- and again, I
7 will be happy to help you find that.

8 A. Is that the one with the treasurer's report?

9 Q. Yes, ma'am.

10 Actually, let me go back one document before that,
11 which is actually the notice of that meeting. And that is
12 dated November 27th, 1992.

13 Do you find that notice?

14 A. Yes.

15 Q. Okay.

16 A. November 27?

17 Q. Yes, ma'am.

18 Do you see down in the third paragraph here that
19 this cover letter, a notice to the community, announces that
20 Mr. Vandenberg and Mr. Polifko have been asked to provide an
21 update on the park area and to provide -- to develop a five-
22 year improvement plan and that this will be discussed in fact
23 at the meeting? Do you see that?

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1 I'm sorry. It's the third paragraph.

2 A. Yes.

3 Q. And it also says that additional ideas and help
4 regarding developing the plan for the community approval
5 would be solicited.

6 A. Yes.

7 Q. And that they would discuss how they could fund the
8 park maintenance and these improvements.

9 A. Right.

10 Q. And all of this was going to take place at the
11 November 1992 meeting, correct?

12 A. Yes.

13 Q. And in fact, if we turn to the November 1992
14 meeting minutes, beginning with the committee reports and
15 continuing on down through the vote to approve changes in
16 dues, what -- let me back up for a minute.

17 Did you attend this meeting?

18 A. I can't say that I did. I am not sure.

19 Q. All right. Did your husband attend this meeting?

20 A. I don't know.

21 Q. Okay. Do you recall whether or not you and he
22 discussed what had happened at this meeting?

23 A. I don't think so.

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1 Q. So I take it then that you don't recall that the
2 discussion and presentation by Dr. Polifko and Mr. Vandenberg
3 described what the situation was with the park and what the
4 plans were in order to try and make it more accessible and
5 usable by the community?

6 MR. ANNINO: Objection. Assumes facts not in
7 evidence.

8 THE WITNESS: All I'm reading here is they're
9 talking about the park property.

10 MR. ANNINO: Mrs. Stepp, if you could wait for the
11 objection.

12 THE COURT: We're not going to go beyond what the
13 document says.

14 Can I ask a quick question? This is something that
15 comes to mind when I read this.

16 It says -- there is someone stating here --
17 Mr. Arnold stated that the covenants are current and enforce-
18 able.

19 Have the covenants been admitted?

20 MR. ANNINO: Yes, Your Honor.

21 THE COURT: They're already in evidence?

22 MR. ANNINO: Yes.

23 THE COURT: Which one is that?

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1 MR. ANNINO: It's Exhibit 4.

2 MR. CLARY: As Your Honor will see, unfortunately,
3 however, they don't mention the association, which wasn't in
4 existence when the covenants were recorded.

5 THE COURT: I mean, usually the covenants is what
6 you look for to establish what you can do and cannot do in a
7 community.

8 It doesn't say anything about the association, huh?

9 MR. CLARY: Well, unfortunately, Your Honor, the
10 covenants were done back with the original developers in the
11 early sixties. And of course, this group wasn't even formed
12 until '73-'74. And in the interim you have a hiatus of
13 abandonment.

14 THE COURT: You would have to amend your covenants.
15 That's a big deal too.

16 MR. CLARY: Yes, ma'am, it certainly is.

17 THE COURT: Well, it's not so big a deal when you
18 have so few homeowners. I mean, it could have been done.

19 MR. CLARY: I suppose that's true.

20 THE COURT: They needed good legal advice early on.
21 I mean, there's nothing we can do about it now.

22 MR. CLARY: Well, that's true. And I think perhaps
23 Your Honor observed that they actually did seek that -- began

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1 to seek that legal advice with Mr. Knowles.

2 THE COURT: All right.

3 BY MR. CLARY: (Resuming)

4 Q. Mrs. Stepp, let me draw your attention then next to
5 the February 24th letter from the president of the associa-
6 tion, Mr. -- well, actually, it's from the entire board of
7 the association. It's entitled "Dear Resident/Landowner."

8 THE COURT: Where are we?

9 MR. CLARY: February 24th, 1993.

10 BY MR. CLARY: (Resuming)

11 Q. Ma'am, I would like to direct your attention to the
12 paragraph that says -- the third paragraph. It says "At the
13 November 1992 general membership meeting the association
14 approved a modest plan, which included road improvements to
15 the park area, the clearing of a walking nature trail, park
16 area repairs, as well as contracting for periodic mowing of
17 grass-covered park areas."

18 Do you see that?

19 A. Yes, I do.

20 Q. And you received this letter, didn't you?

21 A. Yes.

22 Q. And when that was -- and then it goes on in the
23 very next sentence and says "To finance these improvements

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1 and repairs, the association approved an annual assessment
2 fee of \$80 for each household and \$40 for each nonresident
3 lot owner."

4 Do you see that?

5 A. Yes.

6 Q. And in fact, if we indeed go back to the general
7 membership minutes of November 30th, 1992, indeed, following
8 the discussion in the committee reports about the park, there
9 was a discussion and motion made to adopt a resident dues
10 structure.

11 A. Okay. I'm still not there.

12 Q. I'm sorry. Let me let you catch up.

13 A. You said November '92, right?

14 Q. Yes, ma'am. 30 November '92.

15 Did you find it?

16 A. Right.

17 Q. Okay. Right after the committee reports, ma'am,
18 there is a motion made to set the residents' annual dues at
19 \$80 and to set the absentee lot owners' at \$40, isn't there?

20 A. Are you talking now in the February 24th letter or
21 the November?

22 Q. No, ma'am. I'm talking about the minutes of the
23 general membership meeting of November 30th, 1992.

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1 A. Yes.

2 Q. And in fact, although you don't remember whether
3 you were there or not, you have no basis for disagreeing that
4 that increase in dues was in fact for the purpose of paying
5 for the improvements that were outlined at that meeting for
6 the park and road, do you?

7 A. Well, the \$80 for the property owners was the
8 amount always set forth in the original bylaws.

9 Q. Yes, ma'am. But before this we have seen the
10 minutes where all they were collecting was \$20 contributions.

11 Do you remember Mr. Wilcox's letter?

12 A. Yes, they did. But they were contrary to the
13 bylaws.

14 That was just what the association declared. It
15 was not what the bylaws said.

16 Q. I understand.

17 You remember Mr. Wilcox's letter in 1986?

18 A. Yes, I do.

19 Q. And that was \$20, voluntary donations?

20 A. Right.

21 Q. And your husband then took over until Mr. Arnold
22 came in.

23 And during his period of time it was just whatever
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1 he could get from the neighbors, wasn't it?

2 A. Well, as I said, the treasurer would have been the
3 one going around and the secretary collecting the dues.

4 Q. Okay. Prior to --

5 A. It was whatever was set up, I guess.

6 Q. To the best of your recollection though, ma'am,
7 prior to November 30th, 1992, you all weren't paying \$80 a
8 year, were you, for dues?

9 A. No.

10 Q. So this was a change, wasn't it?

11 A. Well, when they're saying to reduce the amount to
12 \$80, they had made a suggestion, as I recall, of \$100.

13 But that was never approved.

14 Q. Yes, ma'am. I think you're right.

15 Were you at the meeting where they suggested \$100?

16 A. No. I think I read the minutes.

17 Q. You did. Okay.

18 Well, in fact, the \$100 is discussed in the very
19 first paragraph under Committee Reports, isn't it?

20 A. Yes.

21 Q. Okay. And then you received Mr. Arnold's letter of
22 February 24th, 1993.

23 And that letter, after describing the road

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1 improvements to the park, et cetera, et cetera, this modest
2 plan which he recites was adopted at the November 1992
3 general membership meeting? In fact, it says that to finance
4 these improvements and repairs the association adopted this
5 80/40 dues structure, didn't it?

6 A. All right. But what I'm not understanding here is
7 they're discussing what they're going to do with the park.
8 But I don't see in these minutes of November where any vote
9 was taken by the membership to approve funds for the road.

10 Q. But, ma'am, isn't it -- when you saw this February
11 24th, 1993, letter, didn't it occur to you, since at this
12 November '92 meeting they had raised the dues, that there
13 were some plans in place?

14 A. No. I wouldn't make that assumption.

15 Q. You wouldn't have --

16 A. I figured they were talking about the park. I
17 would assume that this money was going to the park.

18 Q. But the letter does talk about the road to the
19 park, doesn't it?

20 MR. ANNINO: Objection. Mischaracterization of the
21 letter.

22 THE COURT: It's not a mischaracterization.
23 Overruled.

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1 The letter states "At the November 1992 general
2 membership meeting the association approved a modest plan to
3 make improvements to the park area," et cetera. That's what
4 the February 24, 1993, letter states happened at the November
5 1992 membership meeting.

6 Do you have a question, Mr. Clary?

7 MR. CLARY: Yeah. Let me move on.

8 BY MR. CLARY: (Resuming)

9 Q. Ma'am, when you got this letter in February of 1993
10 and it says they have increased the dues at this membership
11 meeting in '92 to finance the improvements and repairs that
12 are discussed in the prior paragraph, did you or your husband
13 say anything, go to the board of directors and say "You
14 shouldn't do this"?

15 A. We were in the mind-set then that there was so much
16 going on and so much not being done properly that there was
17 no use doing anything. I think that was before we turned in
18 our resignation. There were just so many things going on
19 that very many people were unhappy with.

20 Q. But this is before the roadwork was ever done,
21 wasn't it?

22 A. But there were other things too.

23 There was nothing being followed. It was the
 (February 24, 1998)

1 board, the board, the board, the board. And our bylaws are
2 written that the power comes to the community for the vote,
3 not the board.

4 Q. But you knew that these repairs were going to
5 happen before they were done, didn't you?

6 A. The only thing I remember about the road is that
7 they illustrated a meeting where they said approval was
8 given. And there were only two homeowners at the meeting
9 other than the board. And the two homeowners involved said
10 they had discussed it but they had not voted on it.

11 And what date that was, I don't know.

12 Q. Let me draw your attention now to the general
13 membership meeting minutes of March 8th, 1993.

14 Do you find those, ma'am?

15 A. Yes.

16 Q. Okay. If you notice, the fifth paragraph, which is
17 a cryptic entry that says "Park Committee: The committee
18 reported on repairing the road and clearing the right-of-way.
19 Some improvements have been made."

20 Did you attend this meeting, ma'am?

21 A. I can't recall if I did or not.

22 Q. Okay. Did your husband attend the meeting?

23 A. I don't know.

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1 Q. Okay. But this was a general membership meeting.
2 And you were aware that it was going to happen, were you not?

3 A. If we had been -- if we received a notice, yes, we
4 would be.

5 Q. And this meeting actually occurred before
6 Mr. Walker ever began doing work on the road, didn't it?

7 A. Okay. This is the meeting I was referring to when
8 they said only two families other than the members of the
9 board of directors attended the meeting.

10 Q. And this meeting occurred before Mr. Walker ever
11 began working on the road, didn't it?

12 A. I have to see his bills to know what that date was.

13 Q. All right. I think actually you identified his
14 bills before.

15 A. I did, but I don't remember the date.

16 MR. TOLCHIN: Exhibit 31.

17 MR. ANNINO: Perhaps it was Mrs. Arnold that
18 identified them.

19 BY MR. CLARY: (Resuming)

20 Q. Let me show you Exhibit No. 31, ma'am. This is the
21 invoice to Mr. Walker.

22 A. Yes.

23 Q. If you note there, it appears to have dates on the
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1 left-hand side which appear to be the dates when the work was
2 done.

3 A. Well, his total bill was more than this. So I
4 don't know if this reflects all the dates or not.

5 Q. But is it your understanding that June of '93 is
6 actually when his work commenced?

7 A. No. I don't -- I see it here on the bill. But for
8 me to personally know it, I don't. I don't know if this date
9 is the commencement date, because it's not the full bill.

10 Q. Do you have any recollection at all that he did any
11 work before June of 1993?

12 A. No.

13 Q. And so this meeting in March of 1993 would have
14 been before that, wouldn't it?

15 A. Yes.

16 Q. And I believe in your early testimony actually you
17 described when Mr. Walker did the work on the road as being
18 the summer of 1993; isn't that correct?

19 A. Yes.

20 Q. After remembering that testimony then, beginning in
21 June of 1993 would actually be consistent with your memory of
22 when it began.

23 A. Right.

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1 sent out? I am a little confused about the time frame.

2 THE WITNESS: It was done at the time of the
3 Amended Complaint where they specified that this had to be
4 done, so whatever that date was.

5 THE COURT: And you sent this to everybody, right?

6 THE WITNESS: Yes, we did.

7 THE COURT: Everybody?

8 THE WITNESS: Yes.

9 BY MR. TOLCHIN: (Resuming)

10 Q. You say you elected Mr. Edwards at the time of the
11 Amended Complaint?

12 A. I said after that -- whatever time after that
13 directive that that association be set aside.

14 Q. But as of December 3rd, 1997, when you gave your
15 deposition, you said Mr. Polifko was still the president.

16 A. I explained why I did that.

17 Q. And you said Ralph Edwards was the secretary.

18 A. Again, that was the board of '94-'95. And I just
19 completely misinterpreted it.

20 I'm sorry. That was my first deposition.

21 Q. Now, you understand, don't you, that Belmont Bay
22 Community Association, Inc., still uses the same bylaws that
23 are attached as Exhibit No. 8?

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1 A. No. They don't use them. That's the problem.

2 Q. Well, they use them the same way that they've
3 always been used since 1974.

4 You do understand that; is that correct?

5 A. Yes.

6 Q. Since the time that this organization incorporated
7 in July of 1994, you understand that they at least purport to
8 follow the bylaws of Belmont Bay Community Associates; is
9 that correct?

10 A. I don't know that.

11 Q. Can I ask you to look at the May 1995 minutes of
12 the meetings.

13 A. Do you have that?

14 THE COURT: Mr. Tolchin, has that book been moved
15 in -- that August 21st, 1996, letter?

16 I don't care if you move it in. Just please don't
17 forget it.

18 MR. TOLCHIN: We'll move it in when we put on our
19 case. We don't need to move it in now.

20 THE COURT: As long as you all remember.

21 THE WITNESS: What date was that again please?

22 MR. TOLCHIN: May 15th, 1995.

23 THE WITNESS: Okay.

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1 actually be given the details and the paperwork concerned
2 with the incorporation.

3 Q. Now, we'll get into that actually right now,
4 Mrs. Stepp.

5 You saw a letter earlier that Mr. Clary showed you
6 that indicated that you were provided a draft copy of the
7 Articles of Incorporation before the articles were submitted;
8 is that correct? And you said you didn't recall getting
9 them, but you saw the letter?

10 A. Right.

11 Q. But ultimately you did get a copy of the Articles
12 of Incorporation, didn't you?

13 A. After the association was incorporated.

14 Q. Right.

15 And you got it a couple of months later? You admit
16 you got it then, two or three months after the incorporation?

17 A. Right.

18 Q. And at the time that you received those Articles of
19 Incorporation you still remained a member of BBCAI at that
20 time, didn't you, and in fact became an officer? Isn't that
21 right?

22 A. Yes.

23 I became an officer in May.

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1 Q. Well, you were an officer before incorporation and
2 you remained an officer after incorporation -- after you got
3 a copy of the Articles of Incorporation, correct?

4 A. We were never told that during our tenure.

5 We got that letter. But it was still listed as
6 Belmont Bay Community Associates. There was no request for
7 me to get new bank cards reflecting an incorporation. The
8 president directed me -- didn't direct me to get new checks,
9 anything else.

10 As far as I was concerned, we were still the
11 Associates.

12 Q. But you knew that it was incorporated. You just
13 thought it was called Belmont Bay Community Associates.

14 Is that right?

15 A. We thought it was Associates, Incorporated, yes.

16 We didn't see the name Association, Incorporated,
17 until much after the fact.

18 Q. And once you saw the name Belmont Bay Community
19 Association, Incorporated, instead of Belmont Bay Community
20 Associates, Incorporation, you objected?

21 A. Yes, we did. Several people objected.

22 All we wanted to know was information. Why were
23 there two associations? Why were they not -- if it wasn't a

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1 (Whereupon,

2 NICHOLAS FELICIONE

3 was called as a witness by and on behalf of the plaintiffs
4 and, having been first duly sworn, was examined and testified
5 as follows:)

6 DIRECT EXAMINATION

7 BY MR. ANNINO:

8 Q. Would you state your name please.

9 A. My name is Nicholas Felicione -- F-e-l-i-c-i-o-n-e.

10 Q. Mr. Felicione, with whom are you employed?

11 A. I am employed at Long & Foster Realtors.

12 Q. And what's your position there?

13 A. I am a vice president/branch manager of the
14 Woodbridge, Virginia, office.

15 Q. Directing your attention to October of 1993, did
16 you have occasion to speak with Mr. Jim Foster about listing
17 his property for sale in the Mason Neck area?

18 A. Yes.

19 Q. And you subsequently listed 30 lots he owned in
20 Belmont Park Estates with the Hurvitz-Foster Joint Venture?

21 A. Yes.

22 THE COURT: What was the date of that, sir?

23 THE WITNESS: That would have been January 1994, is
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1 when we listed the lots for sale.

2 BY MR. ANNINO: (Resuming)

3 Q. And your first contact with Mr. Foster was in
4 October of 1993, as best you can recall?

5 A. As best I can recall, October.

6 Q. I am going to show you a document we'll have marked
7 the next plaintiffs' in order.

8 (The following document
9 referred to was marked as
10 Plaintiffs' Exhibit No. 78 for
11 identification.)

12 BY MR. ANNINO: (Resuming)

13 Q. Do you recognize what's been marked as Exhibit
14 No. 78?

15 A. Yes.

16 Q. What is that?

17 A. This is a listing agreement, exclusive right to
18 sell, the 30 lots that were described in an attachment to
19 this listing agreement, which is not present.

20 Q. And with respect to paragraph 9 of that listing
21 agreement --

22 A. Yes.

23 Q. Well, let me ask you this: With respect to the

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1 exhibit in general, the information listed was derived from
2 Mr. Foster?

3 A. Yes, with some qualification, as you're aware.

4 Q. All right. And with respect to paragraph 9 there
5 that's checked, the property was listed as being in a
6 development subject to the Virginia Property Owners'
7 Association Act; is that correct?

8 A. Yes and no.

9 As you're aware, in my deposition I explained to
10 you that that block was selected simply because there was no
11 in-between situation. If there is anybody responsible for
12 marking this, yes, it's me; because I influenced him to do it
13 in that fashion.

14 Q. Now, in connection with the listing, you also made
15 a point to contact other lot owners in Belmont Park Estates?

16 A. Yes.

17 Q. To see if they would join together with Mr. Foster
18 in listing their properties?

19 A. Yes.

20 Q. And these owners would have been owners adjacent to
21 Mr. Foster's lots?

22 A. Correct.

23 Q. You did that for economy of scale so that you could

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1 put into place a lower cost of development?

2 A. Yes.

3 MR. CLARY: Objection.

4 If I've ever heard a leading question, I think
5 that's it.

6 THE COURT: I think that was a leading question,
7 Mr. Annino.

8 MR. ANNINO: I was trying to move it along,
9 Your Honor.

10 BY MR. ANNINO: (Resuming)

11 Q. For what reason did you contact adjacent owners to
12 Mr. Foster's lots?

13 A. I would have contacted them in order to create an
14 assemblage of more lots, which would have been more appealing
15 to a developer.

16 Q. And what's that called in your trade?

17 A. Well, it would have created an economy of scale if
18 in fact we could have got cooperation. In other words, the
19 utility costs, the storm sewers, et cetera, would have
20 reduced the overall cost on a per-lot basis because you would
21 have more lots available.

22 Q. Now, how long have you listed lots in the Mason
23 Neck area?

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1 A. I've been working in the Mason Neck area since
2 1977.

3 Q. And to the best of your -- in the course of doing
4 that work, would you become aware of other properties listed
5 for sale?

6 A. Yes.

7 Q. And are you aware of the lots that the Hurvitz-
8 Foster Joint Venture owned ever being listed for sale prior
9 to his contacting you in October of 1993?

10 A. I was never aware of them ever being formally
11 listed.

12 Q. What impact does the lack of paved roads in the
13 subdivision have on listing the property?

14 A. It is significant in that the -- of course, access
15 to the properties is limited by whatever happens to be
16 available. Financing is a problem as far as obtaining
17 permanent financing on any particular property. And of
18 course, the County would have problems also as far as road
19 maintenance agreement, et cetera, yes.

20 There is a number of problems.

21 THE COURT: What kind of problems would the County
22 have?

23 THE WITNESS: The County generally, unless you can

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1 demonstrate that you have accessibility to a lot, won't sign
2 off on your site plan, that type of problems.

3 THE COURT: But were these county roads? Some of
4 them were, weren't they?

5 THE WITNESS: While they were platted and dedicated
6 roads, they had never been accepted into the county system,
7 because the original builder had not performed on his bond.
8 He had -- I am not really sure of the circumstances when he
9 abandoned the project.

10 But the roads were never completed; therefore, they
11 could never have been, you know, accepted into the state
12 system until they were brought up to state standards.

13 THE COURT: That's real interesting.

14 So the typical scenario is that you plat it and
15 dedicate it and the builder completes the thing?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: So that they're all nice and paved and
18 things? And then the County accepts it and takes over
19 responsibility from that day forward for maintaining them?

20 THE WITNESS: And once the County does it -- I am
21 not sure of the exact process, so I may be over simplifying
22 this.

23 But once the County accepts it into their system,

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1 then there is a process where they go to the State. And then
2 the State accepts it into their system. But the State will
3 not accept it into the system until it's brought up to
4 standards.

5 THE COURT: So this area is kind of a wilderness,
6 isn't it?

7 THE WITNESS: In some regards it is, ma'am.

8 THE COURT: Go ahead.

9 BY MR. ANNINO: (Resuming)

10 Q. You had discussions with Mr. Foster about how to
11 get the roads up to state standards?

12 A. Only to the extent that there -- if we were to
13 obtain financing, they would have to be brought up to state
14 standards.

15 Q. And what contacts with developers did you have
16 where there were discussions concerning how to bring the
17 roads up to state standards?

18 A. It was pretty much the developers who were telling
19 us, you know, what they would do and what the cost would be
20 as far as development.

21 Q. And to whom were they looking to pay for the cost
22 of that development?

23 A. In almost all the offers that were proffered to

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* * *

1 BY MR. ANNINO: (Resuming)

2 Q. And when you originally listed the property for
3 \$1 million, it's true that that was contemplating a finished
4 lot?

5 A. When we listed the property at \$1 million, we knew
6 full well that we were looking at expenses for the develop-
7 ment of those particular lots, yes.

8 Q. When you say "looking at expenses for the develop-
9 ment" of the lots, you mean expenses coming out of the
10 seller's proceeds?

11 A. Yes.

12 MR. ANNINO: I don't have any other questions.

13 THE COURT: Cross-examination please, Mr. Clary?

14 CROSS-EXAMINATION

15 BY MR. CLARY:

16 Q. Mr. Felicione, prior to Mr. Foster contacting you
17 in October or November of 1993 on behalf of the Hurvitz-
18 Foster Joint Venture, had you ever been contacted before by
19 him to list his property?

20 A. No.

21 Q. And when he contacted you, did you in fact under-
22 stand that he alone did not control the joint venture?

23 A. Yes.

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1 Q. And in fact, the other person who controlled it and
2 whose consent was required was Mrs. Ruth Hurvitz, who lived
3 in Oakland, California, correct?

4 A. That is correct.

5 Q. And in fact, the original listing agreement --
6 Exhibit 78 -- you had to send it to her and get her signature
7 on it as well?

8 A. Correct.

9 Q. And in fact, all decisions with respect to the
10 joint venture, it was your understanding that they had to be
11 approved by her, as well as consented to you by Mr. Foster?

12 A. Absolutely.

13 Q. When the parties came to you to begin with and you
14 looked at what they were confronted with, was it your
15 suggestion that they try to market the lots altogether?

16 A. Yes.

17 Q. So this was not Mrs. Hurvitz's or Mr. Foster's idea
18 to do this and to assemble lots and sell to a developer?

19 A. That's correct.

20 It was my idea. They came to me seeking advice on
21 how they should best -- how they could best dispose of the
22 property and how they could get the highest dollar on their
23 investment.

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1 We looked at several proposals. This was the one
2 that I felt was most advantageous to them. I recommended it
3 to them. And that's what they went with.

4 Q. So it would be accurate to say that Mr. Foster is
5 certainly not the origin of this idea?

6 A. That's absolutely correct.

7 Q. With respect to the listing agreement that was
8 executed, Mr. Annino made a big deal out of the checking of
9 the block on the second page 9, which suggests that the
10 property is located in a development which is subject to the
11 Virginia Property Owners' Association Act. And I believe you
12 said you're the one who made the decision to do that.

13 Why did you do that?

14 A. We had an unusual development. And what we were
15 talking about, while -- you know, of course I am not an
16 attorney. And only an attorney can determine whether or not
17 a property or an association is subject to the act.

18 I felt that the requirements of that particular
19 association were such that we needed to make some sort of
20 disclosure. And in the interest of full disclosure and since
21 there was no in-between -- you either are or you're not -- I
22 suggested -- and actually, I guess I advised him to check
23 that block.

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1 And on any subsequent offerings I had with any MLS
2 system I disclosed that it was an HOA.

3 We did not indicate any monthly homeowners' fee.
4 And in any discussions we had with anyone we released the
5 covenants and bylaws to the people when we discussed it with
6 them, so they were fully apprised of what the community
7 consisted of and what requirements existed for development of
8 lots within the community.

9 Q. And in putting together the initial listing,
10 Mr. Foster in fact provided you with copies of the home-
11 owners' bylaws, which were the February 11th, 1974, bylaws of
12 Belmont Bay Community Associates; is that correct?

13 A. I --

14 Q. You don't remember the date?

15 A. I do not remember the dates that were on there.

16 He provided me with a set of the covenants. And
17 appended thereto were the bylaws, which I've gone through
18 several times and identified the ones that I had and had
19 actually disseminated to people.

20 Q. Does the fact that Mr. Foster was a trustee for
21 holding title to Parcel A make any difference to you in how
22 you list or market the property?

23 A. Had I known, it would have probably had no impact

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V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

- - - - - X

GAIL STEPP, individually
and as trustee, et al.,

Plaintiffs,

v.

In Chancery No. 146295

JAMES A. FOSTER, individually
and as trustee, et al.,

Defendants.

- - - - - X

Courtroom 5-F
Fairfax County Courthouse
Fairfax, Virginia

Wednesday, February 25, 1998

The above-entitled cause came on for trial before
THE HONORABLE KATHLEEN H. MACKAY, Judge, in and for the
Circuit Court of Fairfax County, Virginia, commencing at ten
o'clock a.m., the proceedings being recorded by stenotype by
DEBORAH S. CUBBAGE of DSC Reporting, Inc.

(February 25, 1998)

* * *

6

1 testified as follows:)

2 DIRECT EXAMINATION

3 BY MR. ANNINO:

4 Q. Would you state your name and address for the
5 record, please.

6 A. Gail Stepp; 10914 Belmont Boulevard, Lorton,
7 Virginia.

8 Q. Where are you employed, Mr. Stepp?

9 A. I am self-employed.

10 Q. And what do you do?

11 A. Run a mechanical company.

12 Q. Could you describe what the nature of the business
13 is of the company.

14 A. We do air conditioning and heating for large
15 buildings and also swimming pools; and we are presently doing
16 a sewer system at Quantico, Virginia; and we are doing a water
17 treatment plant at Quantico.

18 Q. And are you still working --

19 A. Yes.

20 Q. -- Mr. Stepp?

21 Could you tell the Court briefly what your
22 educational background is.

23 A. High school education; and after I joined the Navy

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1 in 1943 -- in 1943, and I spent over three years in the Navy.
2 After the war was over, I came out and I joined the Army for
3 two years. And the only time I was attaining education within
4 the service. And once I had completed my two years in the
5 Army, which I was instructor -- when I was in the Army, I was
6 instructor at Fort Belvoir, Virginia, on water purification
7 and well drilling. And then I went to work for the Army, U.S.
8 Army; and I worked on the main base for about five years and I
9 moved into MARADCOM (Phonetic), which is a research and
10 development organization. And I worked with the engineers for
11 a period of approximately 10 years.

12 Q. With the Corps of Engineers?

13 A. No. That's army engineers.

14 Q. Okay.

15 A. And at that time, I went into private industry into
16 a company that manufactured car generation, no break. I
17 travelled worldwide for installations of this equipment, and I
18 was very instrumental in design and building of this
19 equipment.

20 And after -- that was a period of approximately four
21 years I was in that.

22 I came back with the federal government as a tech
23 rep, and I went to Vietnam for over three years; and I started

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1 that in 1964.

2 Q. And what years were you in Vietnam?

3 A. I am not sure of the exact years. I could give you
4 when I went in. And I was back and forth so many times, that
5 I am not sure the last year that I come out. Maybe it was
6 '71. Maybe it was '72.

7 Q. Okay. And after that period of time, what did you
8 do?

9 A. I went to Europe for five years and worked at the
10 7th Army Headquarters as an adviser, and I came back to the
11 States and retired.

12 Q. And what year was that?

13 A. That was in '79.

14 Q. I want to direct your attention now to the time
15 period 1987.

16 Is there -- did there come a time when you were
17 approached by Mr. Foster about serving as trustee for Parcel A
18 of Belmont Park Estates?

19 A. Yes.

20 Q. Would you describe what happened.

21 A. Mr. Foster approached me and asked me if I would be
22 the trustee on the park area. And, in turn, I asked him what
23 was the duties involved. And he stated that all we had to do

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1 was take care of the park.

2 And there was no information given to me as far as
3 the deed of trust or anything like that. It was just a verbal
4 situation.

5 And my understanding that all we had to do was take
6 care of the park.

7 Q. And what condition was the park when you signed on
8 as a trustee?

9 THE COURT: What was the year again, sir, the year
10 you became trustee again?

11 THE WITNESS: '86.

12 Would you repeat that, please.

13 BY MR. ANNINO: (Resuming)

14 Q. What was the condition of Parcel A when you signed
15 on as trustee?

16 A. Well, Parcel A, which is 6.8 acres of land, and
17 there was approximately two acres that's cleared. And the
18 portion that has the vegetation on it, meaning the small
19 trees -- of course, as you can see from the pictures, it was
20 grown up. But the two acres that was cleared, it needed grass
21 cut, ruts filled in the road going to the boat ramp.

22 And the boat ramp was very bad because people would
23 come down there to launch a boat. They would back into the

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1 bay, get stuck, and they would have to call a wrecker.

2 So -- and the ditch on the west side of the park was
3 stopped up with leaves -- limbs and leaves, which, when it was
4 open, prevented water from coming down over the park.

5 Q. Now, what attempts did you make to keep the park
6 area at least in the condition it was in when you became
7 involved?

8 A. Well, my efforts were, before I become a trustee, I
9 would go down there and cut the grass at least three and
10 possibly four times a year and keep those ditches open.

11 Now, when I speak of ditches, I speak of the ditch
12 west of the park, Parcel A; and I am not sure about the lot
13 that we're talking about is in between the lot and the
14 Parcel A.

15 Q. Did there come a time when you became aware of
16 roadwork on Rio Vista Drive in the summer of 1993?

17 A. Yes.

18 Q. And how did you become aware of that?

19 A. Well, I -- through the neighbors, because I was
20 working long hours at that time and I would get home late.
21 And, of course, sometimes I would hear equipment, especially
22 in the morning when I would leave. If I left late, I could
23 hear equipment running up on the Haislip Lane approximately

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1 where Haislip and Rio Vista join.

2 And I found out through the neighbors that
3 Mr. Goeller was building a house, and he was digging his
4 basement and grading his yard and such as this. But later --
5 I would say a week or two later -- I was told by the
6 neighbors, again -- I'm not sure who it was -- that they had
7 done the road, graded the road.

8 THE COURT: Who, sir? Who? Who?

9 You said "they."

10 Who?

11 THE WITNESS: That would be Jim Foster and the
12 board.

13 THE COURT: Um-hmm.

14 MR. TOLCHIN: Could I ask a clarification.

15 Now we know who "they" were but we don't know who
16 they were that told him this.

17 THE COURT: You can ask that question.

18 MR. CLARY: Excuse me, Your Honor.

19 This is -- what has happened is that hearsay has
20 come in through a circuitous route here.

21 I would object to any admission for the purpose of
22 the truth of what was said, that Mr. Foster and the board did
23 the road.

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1 If it's admitted solely for the purpose of whatever
2 other purpose, notice or his -- Mr. Stepp's state of mind, I
3 can understand that; but as to --

4 THE COURT: It's admitted for notice, not for the
5 truth of the matter.

6 MR. CLARY: Okay.

7 THE WITNESS: And the second notice I got on this is
8 I got a call from Senator Gartlan's wife wanting to know what
9 was going on in the subdivision.

10 THE COURT: Senator Gartlan doesn't live in this
11 subdivision, does he?

12 THE WITNESS: No. He should be in Richmond.

13 THE COURT: Well, he is in Richmond. That's for
14 sure. But he represents Mason Neck.

15 THE WITNESS: He represents Mason Neck.

16 THE COURT: Um-hmm.

17 BY MR. ANNINO: (Resuming)

18 Q. And what did you do upon getting that call?

19 A. I went to George Arnold and I told him that
20 Mrs. Gartlan called, thinking I was the president of the
21 association, and wanted to know what was going on on Rio Vista
22 Drive.

23 THE COURT: So you gave who a call?

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1 evidently Mr. Arnold did something. Obviously this is
2 speculation on the part of the witness.

3 BY MR. ANNINO: (Resuming)

4 Q. Upon speaking with Mr. Arnold --

5 THE COURT: You know, people have these
6 conversations. And it always puzzles me. They seem to have
7 just truncated, half conversations. Now, I mean -- and this
8 is no one's particular fault.

9 But I presume you had some kind of a full discussion
10 with Mr. Arnold about this. You didn't just say, "I got a
11 call from Senator Gartlan's wife. She wants to know what's
12 going on." And George Arnold said, "I'll take care of it."

13 Is that the extent of your conversation?

14 THE WITNESS: The extent of the conversation because
15 I had approached -- I talked to George Arnold about the
16 roadwork that had been done prior to Mrs. Gartlan calling. So
17 I knew somewhat the situation, that there was roadwork going
18 on; but I knew nothing about the VDOT trucks.

19 BY MR. ANNINO: (Resuming)

20 Q. And what next happened after you spoke with
21 Mr. Arnold?

22 A. I was in my front yard, as usual; and Jim Foster
23 approached and said, "Go over here and tell George what

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1 happened."

2 And I said, "I have told George what happened."

3 And he --

4 THE COURT: Is this the same time? Is this the same
5 day?

6 THE WITNESS: Same day, within an hour.

7 THE COURT: Um-hmm.

8 So both men approached you at this point.

9 THE WITNESS: No, they didn't, not at that time.

10 I told Jim Foster that I told George everything that
11 I knew about the situation of Mrs. Gartlan calling; and at
12 that time, George -- Jim Foster walked away.

13 BY MR. ANNINO: (Resuming)

14 Q. And did there come a point in time when you went
15 down to Rio Vista Drive to see what was going on?

16 A. Yes.

17 Q. And when was that, approximately?

18 A. The next day.

19 Q. And what did you observe?

20 THE COURT: Before you tell me that, where is your
21 lot? Which one is your lot again?

22 THE WITNESS: Seventy-four.

23 THE COURT: Okay. Go ahead and answer Mr. Annino's
(February 25, 1998)

1 question.

2 BY MR. ANNINO: (Resuming)

3 Q. What did you observe on Rio Vista Drive had been
4 done?

5 A. I observed the road had been graded and crowned and
6 there had been some blacktop grindings -- you know, like you
7 grind the blacktop off the roads -- and had been spread on the
8 road, which is very fine.

9 The ditches had been opened up; and the brush that
10 had been put in the ditch by some of the neighbors -- meaning
11 Billy Payne -- had been pushed over against the bank on the
12 left -- on Mrs. Wright's lot, which they tore out the culvert
13 leading from Rio Vista Drive onto her lot. And they pushed
14 the head wall and the drain pipe up on her lot and left it.

15 And they had torn out some of Mr. Edwards' riprap,
16 which he had put in to stop the erosion in the ditch.

17 And then I went on down closer to Bay View Drive;
18 and I noticed that there was an opening in Bay View Drive had
19 been opened up, you know, the trees had been removed and had
20 been graded.

21 Q. Did you -- what observations did you make at that
22 time about work in Parcel A itself?

23 A. I didn't see anything going on in Parcel A.

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1 Q. Now, you had been living in Belmont Park Estates
2 since 1979 at this point.

3 A. No. 1957.

4 Q. Okay.

5 A. We had a break of six years, five years. Marie --
6 three years she was gone, and I was gone five years.

7 THE COURT: 1957?

8 THE WITNESS: Yes. That's when we first -- when we
9 bought the house from the original developer.

10 THE COURT: Sir, would you be insulted if I asked
11 you how old you were?

12 THE WITNESS: Not at all. I am very proud of it.
13 I am 73 years old.

14 THE COURT: You were in World War II, you say?

15 THE WITNESS: Yes.

16 BY MR. ANNINO: (Resuming)

17 Q. And during that period of time, did you become
18 involved in an organization of a collection of homeowners?

19 A. In what time frame?

20 Q. Between '79 and '87.

21 A. Well, I become trustee and I was president.

22 Q. What year do you recall being president?

23 A. If I remember right, it was '89 to '90. I could be
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1 wrong. I could have served two years. I want to be exact on
2 this thing if possible.

3 Q. And during the period of time you were involved in
4 the organization, how was work in the community handled in the
5 organization?

6 THE COURT: He asked you '79 to '87, sir. That's
7 just the period before you became a trustee.

8 Can you limit your remarks to that so we can get
9 some sense of history.

10 Do you remember '79 to '87?

11 THE WITNESS: '79 to --

12 THE COURT: Before you were trustee or just before
13 you were trustee.

14 THE WITNESS: Okay. '79 to '87 did you say?

15 (The Court indicated in the affirmative.)

16 THE WITNESS: I'm not sure what you want me to say.

17 THE COURT: He said, "How was business conducted in
18 the community?"

19 THE WITNESS: Oh.

20 Business was conducted on a volunteer business, and
21 the dues were on a volunteer basis. Everything was very
22 loosely run. As long as we kept the insurance paid on the
23 property on the Parcel A, that's all we were really concerned

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1 about because there wasn't enough homeowners in the
2 subdivision that we could collect enough money that we could
3 do anything down at the Parcel A.

4 BY MR. ANNINO: (Resuming)

5 Q. And between '87 and 1990, did that situation change
6 at all?

7 A. No, it didn't.

8 Q. And how did the community handle efforts to maintain
9 the park from -- between '79 and 1990?

10 A. Strictly on a volunteer basis.

11 Q. And how -- who actually did the work?

12 A. Well, I wasn't the only one that contributed.

13 But Jim Foster did some mowing there. I think his
14 son was paid to mow the Parcel A. That was in the early
15 years.

16 When I say "early years," meaning in the '74 time
17 frame, '75 time frame.

18 And it was strictly on a volunteer basis, as far as
19 I was concerned.

20 Q. Was the work force limited to the members in the
21 community?

22 A. Whoever could be available to do the job.

23 Q. And how did the circumstances for doing the work on
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1 Rio Vista Drive differ from what had been done in the past?

2 MR. TOLCHIN: Can I ask for a clarification of that
3 question.

4 I have no idea what comparison he is asking for.

5 THE COURT: Please reference your questions whenever
6 you can to a time period you are concerned about.

7 BY MR. ANNINO: (Resuming)

8 Q. With respect to the work done on Rio Vista Drive in
9 the summer of 1993, what awareness did you have of that work
10 being done prior to it actually being performed?

11 MR. TOLCHIN: Objection. Asked and answered.

12 I think that's how he started his testimony.

13 THE COURT: I think that is how he started today.

14 BY MR. ANNINO: (Resuming)

15 Q. What community approval are you aware of having been
16 given for that work prior to it being done?

17 A. None.

18 Q. And who was performing the work? Was there an
19 individual?

20 A. In '93?

21 Q. In '93.

22 A. An outfit by the name of Walker. Walker Trucking.

23 Q. And how did the circumstances for hiring Walker

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1 Trucking differ from what had been done in the past in the
2 community?

3 MR. CLARY: Again, I think we are lacking a time
4 reference as to what the past is.

5 Is he talking about the very early years when
6 Sammy Hawkins was hired?

7 BY MR. ANNINO: (Resuming)

8 Q. To the best of your knowledge, Mr. Stepp, prior to
9 1993 when Walker Trucking was doing this work, was there any
10 community approval that you know of of other contractors doing
11 work in the community?

12 A. No.

13 Q. Now, what impact did the work that you observed
14 being done by Walker Trucking in the summer of 1993 have on
15 Parcel A?

16 A. Well, across Rio Vista Drive, you have a drain pipe.
17 I think it's either an 18- or 24-inch drain pipe that runs
18 underneath Rio Vista Drive and extends out approximately 40
19 feet into Parcel A. At that point, if we took a measurement
20 from where the drain pipe ends to the edge of the bay, we
21 would probably measure off 150 feet.

22 Now, with disturbing the soil within those ditches,
23 the rain would come, bring the silt down the ditch in Rio

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1 Vista Drive to the culvert across Bay View Drive, and drop it
2 at that location in the park.

3 Now, as you know, when you do this, the water has a
4 tendency to go straight ahead; and the silt has a tendency to
5 go out and the sand. So we did get a deposit of sand and
6 gravel on Parcel A.

7 Q. And what did you do about that?

8 A. Did nothing about that.

9 Q. Are you aware of anybody else doing anything about
10 that?

11 A. Nothing.

12 Q. What opinion did you express to anybody about the
13 work that had been done by Walker Trucking?

14 A. I expressed my feelings to the board that was in
15 session in 1994 and told them that the things that they did
16 there was illegal from the standpoint of there was no silt
17 control put in place. There was no silt fence. There was no
18 silt pond. With a job that big, you would have to have a silt
19 pond to where the water would run into it and the silt would
20 drop out and the water wouldn't run off.

21 Now, I expressed to them that by not doing this,
22 they opened us up to liability, problem with the Corps of
23 Engineers, the Chesapeake Bay Clean Water Act, and Fairfax

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1 County authorities as well.

2 Q. And what permits for the construction work are you
3 aware of having been obtained by the board or anybody else
4 prior to that construction?

5 MR. CLARY: Objection. Leading.

6 THE COURT: Pardon.

7 Oh, that's all right, Mr. Clary.

8 MR. CLARY: Okay.

9 THE WITNESS: I know of no permits being obtained.

10 THE COURT: Before we go on, what's the correct
11 title of the Chesapeake legislation that you're concerned
12 about?

13 Perhaps the lawyers can just proffer it to me.

14 What's the correct title, do you know?

15 MR. TOLCHIN: We don't know.

16 There isn't.

17 MR. CLARY: The Chesapeake Bay Protection Act, that
18 did come into existence at some point in time. Whether it
19 was -- I am not familiar with exactly what year it came in.

20 THE COURT: Okay. Thank you.

21 Go ahead.

22 THE WITNESS: It was approximately 15 years ago that
23 the Chesapeake Bay Clean Water Act come into being; and the

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1 reason being, that the Chesapeake Bay was naturally losing its
2 marine life. And they found out, with research, it was due to
3 silt coming from the tributaries to the Chesapeake Bay; and
4 also now they are coming up with -- at the same time, they
5 came up with poultry farms where the manure and all of this
6 was leaching into it. Also fertilizers.

7 So you're not -- within the Chesapeake Bay Act,
8 you're not supposed to cut trees within a certain distance of
9 the water. In other words, you want to keep a barrier between
10 the open land and the water for silt purposes, control of the
11 silt.

12 THE COURT: I realize you are not a lawyer, sir; but
13 is it your understanding that Fairfax County falls within the
14 parameters of that act?

15 THE WITNESS: They have their own act.

16 THE COURT: Fairfax County has legislation to --

17 THE WITNESS: Control silt --

18 THE COURT: That controls silt.

19 All right. Go ahead, Mr. Annino.

20 BY MR. ANNINO: (Resuming)

21 Q. What consultation are you aware of or did you
22 participate in with other trustees before the work was done?

23 A. None.

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1 Q. I want to direct your attention now to a little
2 later in time, to the 1994 -- spring of 1994 time frame, and
3 ask what you recall about a visit from Frits Vandenberg to
4 collect dues.

5 A. I was in my driveway, and Frits and Mrs. Medlin came
6 up the road. I saw them. Mrs. Medlin stood at the mailbox at
7 my side of the road. Frits walked up. And I was about
8 two-thirds of the way down the driveway, which my driveway
9 runs approximately 60 feet. My house sits 50 feet from the
10 road.

11 And Frits asked me if I would be willing to pay my
12 next year's dues.

13 And I told him I would not be willing to pay the
14 next month's dues because you people -- meaning the board --
15 did not inform me or the trustees that you were going to do
16 that roadwork and now you are asking me to contribute money to
17 pay for the overrun of the budget.

18 Q. And what did Mr. Vandenberg respond to you?

19 A. He responded to me -- he said, "You are not a
20 trustee."

21 Q. Do you recall anything else he said?

22 A. He said that they had done a research in Fairfax
23 County and I am not registered in Fairfax County as a trustee.

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1 Q. And what's the next time you recall the subject of
2 being trustee brought up?

3 A. I think it was May of '95, I believe it was. It was
4 a board meeting at George Arnold's house. I am not sure of
5 the date.

6 Q. All right.

7 A. Not a board meeting; a general membership meeting.

8 MR. ANNINO: I would like to approach the witness
9 and direct his attention to Exhibit Number 65.

10 THE WITNESS: Okay.

11 MR. ANNINO: Specifically, the first documented
12 exhibit, which is Deposition Exhibit 3 to Exhibit 65.

13 BY MR. ANNINO: (Resuming)

14 Q. And I want to ask if that refreshes your
15 recollection about the date.

16 A. Yes, it does.

17 May the 3rd, 1994.

18 THE COURT: Let me ask you: Are these -- was 62 --
19 63 and 64, were not admitted, were they?

20 Sixty-two, 63, and 64 are still in limbo, are they
21 not?

22 MR. ANNINO: Yes.

23 THE COURT: Okay. He is on 65.

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1 And you asked him to look at which exhibit?

2 MR. ANNINO: The Deposition Exhibit 3, which is the
3 first request for admission attached.

4 THE COURT: Okay.

5 BY MR. ANNINO: (Resuming)

6 Q. What happened at that general membership meeting,
7 Mr. Stepp?

8 A. Well, it was a general membership meeting; and they
9 were electing new officers to the association.

10 And early in the meeting -- I won't go into the
11 nitty-gritty reading of the minutes and all of this -- but
12 they held election. My wife was elected treasurer of the
13 board that would serve for the next year.

14 And after that, George Arnold approached me. And he
15 says, "I would like to nominate you for a trustee." He said,
16 "I have written the requirements around you and it fits you
17 completely. Will you take the nomination?"

18 I said, "No. I decline the nomination."

19 Q. And what was your understanding of what Mr. Arnold
20 was asking you at that time?

21 A. He was asking me to be elected by the board to be a
22 trustee for Parcel A.

23 Q. And why did you say that you decline the nomination?

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1 A. Because I was already a trustee.

2 Q. Now, what conversations did you have with other
3 board members after the meeting in May of 1994?

4 A. Well, I'd like to add one other thing here with the
5 May 4th meeting -- May 3rd meeting of '94.

6 Jim Foster was in that meeting; and he turned to me
7 and said, "Gail, won't you reconsider."

8 I said, "No." And I did state that I was trustee.

9 MR. CLARY: I'm sorry.

10 Who did he state asked him?

11 THE COURT: Mr. Foster.

12 BY MR. ANNINO: (Resuming)

13 Q. And what was your understanding of what Mr. Foster
14 was asking you to do?

15 A. He was asking me to be nominated to be elected.

16 Q. Now, prior to that time, are you aware of any
17 requirement of a trustee to be on the board?

18 A. No. No, I was not aware of any requirement for a
19 trustee to be on the board.

20 Q. After that May of 1994 meeting, when is the next
21 time you recall the issue of your being a trustee coming up?

22 A. Here again, I am losing the date; but I know the
23 place. I know the person that asked me.

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1 Now, is it going to be permissible for me to state
2 it without a date?

3 Q. If that's your best recollection, you can indicate.

4 A. Yes. A meeting at the Gunston Hall School.

5 Gene Lear, after the meeting, we were walking out of
6 the school; and he approached me. He said, "Gail, will you
7 take the nomination for me, please?"

8 And I said, "Gene, I am a trustee. I don't have to
9 take the nomination."

10 THE COURT: Is Mr. Lear an old friend of yours?

11 THE WITNESS: A neighbor.

12 THE COURT: You have been together for a long time,
13 though; right?

14 THE WITNESS: Yes.

15 THE COURT: So he was asking you as a personal
16 favor.

17 Why was he making such a big to-do?

18 THE WITNESS: I have no idea.

19 THE COURT: There was a lot of community dissension,
20 wasn't there?

21 THE WITNESS: I don't think Mr. Lear -- there was
22 dissension between Mr. Lear and myself, because I used to go
23 up there and advise him on his electrical problems, help him

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1 out such as it is.

2 And when his wife was very sick, my wife used to go
3 up there and assist, you know, and try to take care of it.
4 I'm not saying she was there a hundred percent of the time.

5 But there was no dissension between Mr. Lear and
6 myself or Mr. Lear and my wife.

7 Yes.

8 I will answer the question.

9 There was dissension in the neighborhood because
10 after we had learned -- now, this is after the '92 time frame.
11 There was a lot of dissension in the subdivision, in the
12 association, because after we saw what we had here and
13 Mr. Arnold had started to tie this association together, we
14 saw that we needed structure.

15 And this is what we were trying to do.

16 Now, when I read the deed of trust, I see there is
17 nothing being followed for as a deed of trust. I see nothing
18 being followed as a bylaws.

19 So everything was loosely run. And what we were
20 trying to do was bring things together and say, "Look, we are
21 not doing these things right because we have rules and
22 regulations here that we should be following."

23 THE COURT: Well, wasn't Mr. Lear/Mr. Foster when
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1 they asked you to do those things, weren't they trying to
2 bridge the gap kind of?

3 Weren't they trying to pull it together so the
4 community would be -- you could kind of get over all of these
5 problems and work together?

6 Weren't they kind of extending the olive branch to
7 you?

8 Do I have the context wrong?

9 THE WITNESS: The way I looked at it was this: I am
10 a trustee. Jim Foster knew I was the trustee. Marvin Lear
11 knew I was a trustee. Jim Foster said in his deposition, "I
12 always knew Gail was the trustee."

13 THE COURT: Right.

14 THE WITNESS: So therefore I had run against a brick
15 wall in saying, "Hey, I am a trustee and recognize me as a
16 trustee."

17 But this didn't happen.

18 So I think if anybody extended the olive branch, it
19 was me.

20 THE COURT: Okay. Go ahead.

21 BY MR. ANNINO: (Resuming)

22 Q. What was your objection to being elected to the
23 board?

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1 A. My objection to being elected to the board was
2 that -- which I don't think was the situation at the time.
3 But I would have objected to that because my wife was just --
4 had been elected to the board.

5 Q. And was there any other concern you had about being
6 elected to the board at that time?

7 A. I have to give that some thought.

8 Yes. They had done the roadwork without the proper
9 permission from the association members; and really I didn't
10 want to be a part of that association, meaning not the
11 association but that board.

12 Q. And what letters or correspondence had you been
13 receiving up until -- leading up to that point in time
14 concerning the mandatory nature of assessments?

15 A. I think my wife testified to that, and I can't give
16 you a date on that because we did -- I know we did receive
17 those letters.

18 THE COURT: Which letters?

19 THE WITNESS: That was asking -- telling us that was
20 mandatory to pay our dues.

21 THE COURT: Would you identify that, Mr. Annino, for
22 him.

23 BY MR. ANNINO: (Resuming)

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1 Q. If you'd turn to Exhibit Number 15, Mr. Stepp, in
2 the exhibit book.

3 A. All right.

4 Q. Do you recall receiving that letter?

5 A. Could I read this letter so I can identify it?

6 THE COURT: Sure.

7 THE WITNESS: Yes, I identify with the letter and
8 remember reading it before.

9 BY MR. ANNINO: (Resuming)

10 Q. And would you also look at Exhibit Number 34.

11 A. All right.

12 Q. Had you seen that letter before as well?

13 A. Yes, I have.

14 Q. And what objections did you have to the mandatory
15 nature of the assessments being requested?

16 MR. TOLCHIN: Objection.

17 There is nothing in these letters to say that these
18 are mandatory, that these or anything of that is going to be
19 imposed.

20 The letters speak for themselves.

21 THE COURT: Mr. Annino, it doesn't make any
22 difference whether you use the word "mandatory" or not.

23 Would you answer the question, please, as to what

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1 problem you had with the dues.

2 THE WITNESS: What they do reflect -- they do
3 reflect -- that it's a mandatory dues that we should pay; and
4 the problem is that it's a voluntary organization. And
5 "volunteer" to me means you can or you can't.

6 THE COURT: Would you have objected to all of
7 this -- let's pretend there wasn't a big dispute about the
8 road, and let's just say that they were to make the
9 association and they were to switch it from the previously
10 organized voluntary group of homeowners to a formal, legally
11 organized association that had the power to collect dues.

12 Are you objecting in principle to that issue
13 regardless of the road?

14 THE WITNESS: No.

15 THE COURT: Can you enlighten me as to what your
16 thinking is.

17 THE WITNESS: My thinking is that we have a deed of
18 trust. There is a set of bylaws. And both of those documents
19 says we are a volunteer organization.

20 THE COURT: Well, you could change that, sir.

21 THE WITNESS: I know we can change it.

22 THE COURT: Did you object to that change no matter
23 what?

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1 THE WITNESS: No, I didn't object to any changes.

2 This is what I was fighting for, these changes.

3 I just wish I could turn loose and say what I want
4 to say and put it on the record as truth, which I am trying to
5 get in right now.

6 MR. TOLCHIN: We have no objection, Judge.

7 THE COURT: I don't think anyone has any objection
8 to you saying whatever you want to say. This is your day in
9 court.

10 THE WITNESS: Okay.

11 THE COURT: You have spent an enormous amount of
12 money to get here today.

13 THE WITNESS: All right.

14 THE COURT: I don't have any problem with you
15 saying, unless Mr. Annino does, whatever it is you want to get
16 off your chest.

17 THE WITNESS: Well, you asked me did I have a
18 problem with changes of the bylaws.

19 I had no problem with the changes of bylaws.

20 When we met, the general membership meeting down at
21 Gunston Hall, and they had the bylaws there and said, "We will
22 pass these bylaws tonight."

23 Now, I was there not as a member of the Association,

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1 Inc. I was there as a homeowner in Belmont Park Estates to
2 represent my own self.

3 And I told them at that time -- they had gone for a
4 period I think it was five months with their new association
5 without having bylaws. Now, I said -- I took the floor and --
6 whether they wanted me to or not, and I told them. I said,
7 "Look, if you want bylaws, throw away these generated bylaws
8 that you have done, go back to the old bylaws, and we will
9 amend those bylaws as necessary."

10 Two months later, they adopted the old bylaws with
11 minor changes. I'm not sure of all of the changes, but one of
12 the changes was changing the name of the association.

13 So I do not object to changes.

14 What I am saying is: If we have rules and
15 regulations and we are going to run an organization that
16 Mr. George Arnold was trying to set up, we have to go back and
17 we have to use those bylaws and that deed of trust as written
18 until we see need to change them.

19 I am not opposed to any changes in any bylaws as
20 long as it's passed by the general membership as specified in
21 the bylaws. It says two-thirds vote; and in this situation, I
22 think I would go for legal counsel on whether this is a legal
23 ratio that we should be working on to amend the bylaws.

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1 That's my feelings.

2 BY MR. ANNINO: (Resuming)

3 Q. The meeting you referred to where the association
4 finally did adopt bylaws was after you had instituted this
5 action; is that right, Mr. Stepp?

6 A. Yes.

7 THE COURT: When was that?

8 What meeting are you talking about?

9 After -- this was was filed in October of '96.

10 MR. ANNINO: That's right.

11 THE COURT: When was the meeting that adopted the
12 bylaws that you are referring to?

13 THE WITNESS: I don't know.

14 THE COURT: But it was after that time.

15 THE WITNESS: Yes.

16 I suggest you might ask Ralph Edwards when he gets
17 on the stand.

18 THE COURT: Okay.

19 MR. TOLCHIN: Your Honor, if you want to know the
20 date, it was June 1997.

21 THE COURT: Thank you.

22 BY MR. ANNINO: (Resuming)

23 Q. During the period of time you served as trustee,
 (February 25, 1998)

1 Mr. Stepp, and continued to serve, did Mr. Foster or Mr. Lear
2 ever call a meeting of trustees, to your knowledge?

3 A. No, they didn't, except I think it was the 22nd of
4 the last month they called a meeting. That was the first
5 meeting.

6 Q. And that was the first meeting that you were
7 informed of?

8 A. Yes.

9 Q. That was January 22nd of 1998, this year?

10 A. Say that again, please.

11 Q. This year you are referring to?

12 A. Yes.

13 THE COURT: Were you invited?

14 THE WITNESS: I was invited by Mrs. Wright, which
15 was not a legal trustee at that time.

16 BY MR. ANNINO: (Resuming)

17 Q. And what recognition did Mr. Foster make to your
18 being a trustee at that time?

19 A. He said that -- well, they really had me confused.

20 And I said to Jim -- I said, "Jim, in your
21 deposition you said I was a trustee. Now you are saying I am
22 not a trustee because I refused to serve." I said, "Now,
23 something is wrong here somewhere."

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1 So at that time, Jim proceeded with the meeting and
2 said that Gene Lear was getting to the point where he wanted
3 to get this burden off his shoulders and he wanted to resign.

4 And I turned to Gene; and I said, "Gene, do you have
5 a letter of resignation?"

6 He said -- Jim spoke up and said, "I do not need a
7 letter -- he doesn't need a letter of recommendation. We go
8 whatever our attorneys tell us to do."

9 Now, they nominated Mike Polifko as a trustee. And
10 I declined to vote because the meeting was called on a short
11 order, which I found the letter stuck in my door that night
12 approximately 5:00, maybe six o'clock when I got home,
13 inviting me to this meeting at Carol Ann's house at eleven
14 o'clock the next day.

15 And like I said, Carol Ann signed the invitation;
16 and at that time, she wasn't a legal trustee.

17 And my feeling is trustees deal with trustees.

18 But I attended the meeting.

19 And they took a vote. Gene said he would resign.
20 Carol Ann voted for Mike Polifko, which I felt was an illegal
21 vote. Jim Foster voted for Mike Polifko. And Gene Lear,
22 which had, I said, just had recently resigned, he voted for
23 Mike Polifko.

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1 Now, after the meeting adjourned, I went on my way.
2 And I asked Carol Ann -- I said, "Can I have a set of the
3 minutes of the meeting?"

4 And she said, "In a couple of days."

5 So, anyway --

6 Q. Did you eventually receive those minutes?

7 A. Yes, I did.

8 Q. And did you respond to the minutes?

9 A. Yes, I did.

10 Q. Did you --

11 A. I offered some corrections.

12 (Pleitiffs' Exhibit No. 72
13 was marked for identification.)

14 BY MR. ANNINO: (Resuming)

15 Q. Would you look at Exhibit Number 72 in the witness
16 book.

17 A. Um-hmm.

18 Q. Did you write that letter?

19 A. Yes, I did.

20 Q. And you sent it to Carol Ann?

21 A. Mrs. Wright.

22 Q. I believe there is an attachment to that letter.

23 A. There is two or three of them.

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1 MR. CLARY: Your Honor, it appears that these are
2 actually three different documents dated different dates. I
3 mean, I don't have a problem with --

4 THE COURT: These are supposed to be Carol Wright's
5 minutes.

6 MR. CLARY: Well, the minutes are not offered as
7 part of the exhibit.

8 THE COURT: This is in response to the minutes.

9 Are Ms. Wright's minutes in here, Mr. Annino?

10 MR. ANNINO: No, Your Honor.

11 MR. CLARY: I can offer those, if Your Honor would
12 like them.

13 THE COURT: Are they in somebody else's exhibits?

14 MR. CLARY: He was given a copy of the minutes.
15 That's why he was responding.

16 THE COURT: But I would like to read them.

17 Are they in your exhibits?

18 MR. CLARY: No.

19 THE COURT: Keep the judge in the dark whenever
20 possible.

21 MR. TOLCHIN: But they are the trustees'. They are
22 not the association's.

23 MR. CLARY: That's why he wouldn't have them.

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1 MR. TOLCHIN: I have seen them, but I don't have
2 them.

3 THE COURT: You don't have to worry about it if it's
4 not important.

5 THE WITNESS: Well, there is a couple of things in
6 my response to her minutes that she made the statement that
7 I -- she said in her minutes that I made the statement that I
8 wanted nothing to do with you guys or something to that
9 effect.

10 I think when she wrote the minutes, she used the
11 wrong date. And it was -- she used the 24th instead of the
12 23rd, and I corrected her on that.

13 THE COURT: Mr. Annino, am I supposed to make
14 something of this?

15 MR. ANNINO: I was going to offer the response,
16 Your Honor, because I anticipated they would have the minutes
17 available; but I can attach --

18 MR. CLARY: You have the minutes. I mean, I am
19 still looking for them, but -- he has the minutes and --

20 MR. ANNINO: I am going to offer that, Judge.
21 That's my exhibit.

22 MR. CLARY: I will object as incomplete because what
23 this exhibit consists of is the original notice of the

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1 meeting, January 22nd, the January 22nd notice from Ms. Wright
2 acting on behalf of the trustees; then a statement that
3 Mr. Stepp asked to be included in the minutes, which is, in
4 fact, part of the minutes; and then finally a February 11th,
5 1998, response.

6 In order to get the whole picture, you need the
7 minutes, Your Honor.

8 THE COURT: I agree. I think you do.

9 I didn't mean whether you introduce them as part of
10 your case or Mr. Annino supplements his exhibit.

11 Is there any problem with my admission of these
12 documents if the minutes themselves are admitted?

13 MR. CLARY: So long as the minutes come in as well.

14 THE COURT: All right. I am going to admit these,
15 and I am going to assume that Mr. Annino is going to provide
16 me with the actual minutes.

17 MR. ANNINO: Your Honor, I can provide you what I
18 have.

19 MR. CLARY: That's fine.

20 THE COURT: We will label those 72-A and admit both
21 72 and 72-A.

22 (Plaintiffs' Exhibit Nos. 72 and
23 72-A were marked for

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1 identification and were received
2 into evidence.)

3 BY MR. ANNINO: (Resuming)

4 Q. Mr. Stepp, after that meeting, were you ever asked
5 to sign any document resigning as trustee?

6 A. No.

7 Q. In fact, since May of 1994, have you ever been asked
8 to sign a document resigning as trustee?

9 A. No.

10 Q. Did you participate in any meetings in which
11 Carol Ann Wright was elected trustee?

12 A. No.

13 Q. Were you invited to any meetings in which she was
14 appointed?

15 A. No.

16 Q. And what caused you to consult an attorney about the
17 situation?

18 A. Well, with me being a trustee, Jim Foster being a
19 trustee, Marvin Lear being a trustee, then want to bring
20 another trustee aboard to fill a position that Marvin Lear
21 vacated, there are only supposed to be three trustees.

22 Q. Sometime after December of 1995, did you receive
23 correspondence from Mr. Polifko about the trustee position?

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1 A. '95?

2 Q. Sometime after December of '95.

3 A. You are going to have to refresh my memory.

4 Q. If you look at Exhibit Number 52.

5 A. Yes, I remember this.

6 Q. What did you do in response to that letter?

7 A. I didn't do anything.

8 Q. You see paragraph six there?

9 A. Yes.

10 Q. What concern did that have for you?

11 A. Let me read it first, please.

12 Well, she's replacing Marshall Ware, which resigned
13 when I become a trustee.

14 Q. And what concern did that have for you?

15 A. Well, if she replaced Marshall Ware, then we would
16 have four trustees aboard. That's one concern.

17 THE COURT: Go through the numbers on that, would
18 you, please, sir.

19 The three of you who you thought were there were
20 trustees were Foster, yourself, and Lear --

21 THE WITNESS: Right.

22 THE COURT: -- right?

23 Okay. Then Polifko replaced Lear.

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1 THE WITNESS: Right.

2 THE COURT: Who is Marshall Ware then?

3 THE WITNESS: He is one of the original trustees,
4 which I replaced.

5 THE COURT: Oh, I see. I'm sorry.

6 They are saying that Carol Ann Wright is replacing
7 Marshall Ware, and they are completely ignoring that you ever
8 even served as trustee.

9 THE WITNESS: Right.

10 THE COURT: They are obliterating you from the
11 history books of the association, basically. Okay.

12 BY MR. ANNINO: (Resuming)

13 Q. What happened after you received that letter?

14 A. Carol Ann Wright was appointed, but I don't think
15 she was ever registered.

16 Q. Are you aware of any -- until January of 1998, were
17 you aware of any document registering Carol Ann Wright as
18 trustee?

19 A. No.

20 Q. Did you make any effort to advise Mr. Foster, after
21 receiving Mr. Polifko's letter there, that you still were a
22 trustee?

23 MR. CLARY: I'll object to the question.

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1 He asked what he did in response to the letter, and
2 the answer was nothing.

3 Now he is leading him into another answer.

4 THE COURT: What was your next question?

5 MR. ANNINO: I asked him what efforts he made to
6 advise Mr. Foster that he was still trustee.

7 MR. CLARY: In response to the letter, which he
8 already answered that he did nothing.

9 MR. ANNINO: To respond to Mr. Polifko.

10 I didn't ask him about Mr. Foster.

11 MR. CLARY: He asked him about responding to the
12 Polifko letter.

13 THE COURT: He did say nothing.

14 You know, do you want to ask him another question?

15 BY MR. ANNINO: (Resuming)

16 Q. Did there come a point in time when you did do
17 something about the situation mentioned in Mr. Polifko's
18 letter?

19 A. Yes. It was mentioned to Jim Foster.

20 Q. And what did Mr. Foster do in response?

21 A. Nothing.

22 Q. Did Mr. Foster ever ask you to resign as trustee?

23 A. No, he didn't.

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1 Q. And was there ever any attempt to present you with a
2 substitute trustees' deed like they had done when you were
3 appointed?

4 A. No.

5 MR. ANNINO: I don't have any other questions,
6 Your Honor.

7 MR. CLARY: Mr. Stepp, I am going to set these up
8 here so you have them handy.

9 (Documents were handed to the witness.)

10 CROSS-EXAMINATION

11 BY MR. CLARY:

12 Q. Mr. Stepp, you just testified that Mr. Foster asked
13 you to serve as a trustee; is that correct?

14 A. Yes.

15 Q. Yet it is a fact in your deposition that you said
16 that Mr. Lear asked you to be a trustee; isn't that correct?

17 A. I don't know if that's true or not.

18 Q. Would you turn to -- start with the earliest one.

19 THE COURT: If we could short circuit this. I don't
20 mean to cut you off, but he just testified that both men asked
21 him to be a trustee in his testimony today. He clearly said
22 both men did.

23 MR. CLARY: Yes, ma'am. After -- I was referring to
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1 his original appointment.

2 THE COURT: Okay. You might want to couch that then
3 because --

4 BY MR. CLARY: (Resuming)

5 Q. When you were originally appointed a trustee --
6 which is what he testified to today -- he said that Mr. Foster
7 asked him to be a trustee.

8 But that wasn't correct, was it?

9 Mr. Lear asked you to be the trustee.

10 A. I didn't say that.

11 MR. ANNINO: I am going to object, Your Honor,
12 unless he is referring to some part in the transcript.

13 THE WITNESS: Would you advise me, please, where in
14 the transcript I can find this --

15 MR. CLARY: Yes, sir.

16 THE WITNESS: -- or do you want me to read --

17 MR. CLARY: If you will turn to page 125, line 15,
18 through 126, line three.

19 THE WITNESS: 125?

20 MR. CLARY: I'm sorry. Let me do a different thing.
21 Let me withdraw that question.

22 BY MR. CLARY: (Resuming)

23 Q. You stated that when you were appointed a trustee,
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1 no information was given to you regarding what your duties
2 were.

3 A. Right.

4 Q. That's what you testified to today.

5 Isn't it a fact that when you first became a
6 trustee, you had a copy of the trust deed?

7 A. No, I didn't.

8 Q. Mr. Stepp, isn't it a fact that in your deposition
9 on December 2nd, you, in fact, testified that when you became
10 a trustee, you had a copy of the trust deed?

11 A. At what time frame are we talking about?

12 Are we talking the day that I would become a trustee
13 or on down the road?

14 Q. When you first became a trustee, did you understand
15 what your duties were?

16 A. No, I didn't.

17 Q. Okay. And when you first became a trustee, are you
18 saying that you did not have the deed of trust?

19 A. I am saying I didn't have the deed of trust.

20 Q. Let me direct your attention to page 55 of your
21 December 2nd, 1997, deposition.

22 A. Fifty-five?

23 Q. Um-hmm.

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1 A. Yes.

2 Q. And I am going to direct your attention to line 12.

3 And the question is: "Okay. When you first became
4 a trustee, what did you understand your duties were?"

5 And would you read the first line of your answer.

6 A. "Well, I had the deed of trust."

7 Q. Thank you, sir.

8 So what you testified to today was not true, was it?

9 A. Let me say one thing, Mr. Clary.

10 Q. Just answer the question, sir, "yes" or "no."

11 MR. ANNINO: Your Honor, I don't think that's
12 proper.

13 MR. CLARY: I think that's what cross-examination is
14 about, Your Honor.

15 THE WITNESS: What's the question?

16 BY MR. CLARY: (Resuming)

17 Q. What you have testified to today was not true, was
18 it?

19 A. No, I am not saying that.

20 I have a statement to make, and I would like the
21 judge and you to hear it.

22 THE COURT: Well, right now you really have to
23 respond to his questions. Okay.

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1 Your attorney was questioning you before --

2 THE WITNESS: Right.

3 THE COURT: -- which is a friendlier exercise.

4 THE WITNESS: I understand.

5 THE COURT: Okay. So you really need to answer

6 Mr. Clary's questions.

7 THE WITNESS: Well, I will answer your questions
8 like this: What you have in this book isn't what I testified
9 to today.

10 MR. CLARY: All right, sir.

11 THE COURT: What you have in which book?

12 THE WITNESS: The deposition, number one deposition.

13 THE COURT: Okay.

14 BY MR. CLARY: (Resuming)

15 Q. And you understood you were under oath then.

16 A. Yes.

17 Q. Okay.

18 A. And let me say one thing.

19 Q. I'm sorry. There is no question, sir.

20 A. All right.

21 Q. It has always been your understanding that the deed
22 of trust -- that the trust deed governs the trustees and that
23 the bylaws govern the board of directors; isn't it?

(February 25, 1998)

1 A. Yes.

2 THE COURT: Well, that was nicely, succinctly said.
3 That's true.

4 THE WITNESS: Yes.

5 THE COURT: That's your position --

6 THE WITNESS: Yes.

7 THE COURT: -- in a nutshell.

8 BY MR. CLARY: (Resuming)

9 Q. Mr. Stepp, you were, in fact, present and voting in
10 favor of the adoption of the original bylaws of the
11 association on February 11th, 1974, weren't you?

12 A. Could you show me a document proving that?

13 THE COURT: Do you not remember, sir?

14 THE WITNESS: No, I don't.

15 THE COURT: Okay.

16 (A document was handed to the witness.)

17 THE WITNESS: It has my name on the list, but I'm
18 not sure I was there.

19 BY MR. CLARY: (Resuming)

20 Q. So you don't know whether or not you were there.

21 A. That's right. I don't know.

22 Q. Okay. Is it your understanding that a Mr. Jacobson
23 and a woman by the name of Mildred Wright in the neighborhood

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1 wrote the bylaws that were passed on February 11th, 1974, and
2 passed them on to Gene Lear, who made no changes?

3 A. I am not aware of that.

4 Q. Did you, in fact, so testify in your deposition on
5 December 2nd, 1997?

6 A. If I remember right, I said Mr. Jacobson and another
7 lady, which I wasn't sure; and how Mrs. Wright's name got in
8 there, I don't know. But what it is is Mrs. Jamison.

9 Q. Other than the reference to Mrs. Jamison, is the
10 statement correct, that it was your understanding that
11 Mr. Jacobson and a lady in the neighborhood, who you now
12 understand to be Mrs. Jamison, wrote the bylaws and passed
13 them to Mr. Gene Lear, who made no changes?

14 A. I don't know if he made any changes or not.

15 Q. Do you recall testifying that, as far as you know,
16 Mr. Lear made no changes?

17 A. I'll stick with that.

18 Q. All right.

19 A. As far as I know.

20 Q. Okay. Is it accurate to say that during your entire
21 tenure as a trustee, you did nothing to administer the trust?

22 A. I was working in unity with Mr. Foster and
23 Marvin Lear.

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1 Q. Is it accurate to say that during your entire tenure
2 as trustee, you did nothing to administer the trust?

3 A. Personally, no.

4 Q. Is it accurate to say during your entire tenure as
5 trustee, you did nothing to administer the trust?

6 A. I just said no.

7 Q. Okay. You referenced a concern for the Chesapeake
8 Bay Protection Act; is that correct?

9 A. Right.

10 Q. Yet you will recall in your depositions you and I
11 discussed the fact that you had been down through Parcel A
12 clearing out a ditch line.

13 It was a drainage ditch line, wasn't it?

14 A. Right. Right.

15 Q. And you, in fact, did not have any concern that that
16 violated the Chesapeake Bay Protection Act because it was
17 simply maintaining an existing structure; isn't that correct?

18 A. Would you like for me to tell you exactly what I
19 said?

20 Q. Sure.

21 A. It was the existing ditch. I cleaned it out, and I
22 made sure that I had the sediment pond at the end of the ditch
23 where the water actually started running through there would

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1 pick up the sediments and water would sink down through the
2 sand and into the bay.

3 Q. So your feeling was you were doing it right?

4 A. Right.

5 Q. And because of that, you didn't need a permit?

6 A. I didn't need a permit because it was maintenance.

7 Only -- the only --

8 Q. And it was because it was the simply maintaining an
9 existing structure; isn't that correct?

10 A. Right.

11 Q. And isn't it true that it was your belief that if
12 you were merely maintaining an existing structure, it would
13 not be a violation of the Chesapeake Bay Protection Act?

14 A. It depends on the extent of maintenance.

15 Q. Mr. Stepp, I am going to ask you to answer "yes" or
16 "no."

17 A. Repeat that question, please.

18 Q. Wasn't it your belief that since you were
19 maintaining this existing ditch line, that it -- and all you
20 were doing is maintaining an existing structure, that it
21 didn't violate the Chesapeake Bay Protection Act?

22 A. Yes.

23 Q. Isn't it your understanding also that with respect

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1 to structures that were built or constructed prior to the
2 passage of the act, that they were grandfathered?

3 A. No, they're not.

4 Q. Okay. That's your understanding.

5 A. I know it's so. It's true.

6 Q. Isn't it a fact that while you were a trustee you
7 never collected monies from lot owners as a trustee?

8 A. No.

9 Q. That is true.

10 A. That's true.

11 Q. Okay. And it is true that while you were a trustee,
12 you never discussed requiring lot owners to pay money with the
13 other trustees.

14 A. I don't follow that.

15 Q. While you were a trustee, you never discussed with
16 Mr. Foster and Mr. Lear the idea of requiring lot owners to
17 pay money, the three of you, as trustees. You never had --

18 A. No, I didn't.

19 THE COURT: Lot owners or homeowners?

20 THE WITNESS: It doesn't matter.

21 MR. CLARY: Any of them.

22 THE COURT: Okay. So then the response and the
23 question is this: As a trustee, you never did anything to

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1 make the collection of dues or fees mandatory; right?

2 Is that what you are getting at?

3 MR. CLARY: Yes, ma'am.

4 THE COURT: It was just a voluntary contribution.

5 THE WITNESS: Within a certain time frame.

6 THE COURT: Okay.

7 THE WITNESS: Prior to 1990 or 1992.

8 BY MR. CLARY: (Resuming)

9 Q. I am asking him: During the entire period of time
10 that you were a trustee, you never discussed with Mr. Lear and
11 Mr. Foster requiring as trustees any lot owners or homeowners
12 to pay assessments to the trustees; isn't that correct?

13 A. We discussed it at meetings, general meetings; and,
14 of course, I was never on the board so therefore I wouldn't
15 have been discussing it at the board meeting.

16 Q. Well, Mr. --

17 THE COURT: He is just asking you as a trustee, sir.

18 THE WITNESS: Okay.

19 BY MR. CLARY: (Resuming)

20 Q. So trustees never discussed it.

21 A. Okay. We didn't.

22 Q. The meetings you're talking about are general
23 membership meetings of the association; isn't that correct?

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1 A. Right.

2 Q. And, in fact, Mr. Foster was never on -- was never
3 an officer or a director of Belmont Bay Community Associates
4 until you refused to be a trustee at the general membership
5 meeting on May 3rd of 1994; isn't that correct?

6 A. I don't know. I don't know.

7 Q. Do you have --

8 A. I was out of the neighborhood for a period of
9 five -- hell -- eight years.

10 Q. Are you aware --

11 A. No, I'm not aware.

12 Q. -- of anything that indicates that he was?

13 A. No, I'm not.

14 Q. So it would be accurate to say that your belief is
15 that he was not ever an officer or director of the
16 association.

17 A. I believe -- I can't say "yea" or "nay."

18 Q. All right, sir.

19 MR. ANNINO: Your Honor, could I ask for a
20 five-minute recess?

21 THE COURT: Of course.

22 A five-minute recess, please. Make it 10 minutes.
23 That will be our morning break.

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1 (A recess was taken.)

2 BY MR. CLARY: (Resuming)

3 Q. Mr. Stepp, let me change gears just a little bit. I
4 am going to ask you a couple questions about when you were
5 acting as a president.

6 When you were president of the association -- and I
7 am referring now actually to I think the only time that you
8 remember being president, which was in the '80 -- as you have
9 testified the '89 to '90 time frame; is that correct?

10 A. Correct.

11 Q. Okay. While you were president, it is a fact that
12 you did nothing as the president of the association to get
13 dues from lot owners who lived outside of the subdivision.

14 Mr. Stepp, this is a "yes" or "no" question.

15 A. Okay. Just give me time to think.

16 Q. All right.

17 A. You know I am old and slow.

18 Q. I'm sorry. I don't mean to intrude in your thinking
19 process.

20 THE COURT: You are not slow because you are old,
21 Mr. Stepp. I would never admit that.

22 That was tongue in cheek, wasn't it?

23 I wouldn't admit that.

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1 THE WITNESS: You are too sharp.

2 THE COURT: I would never concede age to anything.

3 We are all getting up there.

4 THE WITNESS: That's for sure.

5 No, I did not do anything.

6 BY MR. CLARY: (Resuming)

7 Q. Okay. And you understood before you filed this
8 lawsuit that Belmont Bay Community Association was a voluntary
9 organization that couldn't force people to pay dues; isn't
10 that correct?

11 A. I can't answer that because you haven't broke down
12 between the two associations; in other words, is it Associates
13 or is it Association, Inc.

14 Q. All right. So that at the time -- what point in
15 time do you believe that it changed?

16 A. I think it changed when they incorporated and went
17 to another name.

18 Q. And so your impression is that at the date of
19 incorporation, which would have been July of 1994, that the
20 association changed to a mandatory dues association?

21 A. According to Mr. Polifko's letters.

22 Q. I want to make sure I understand your belief.

23 A. I said -- I am trying to give you my belief.

(February 25, 1998)

1 Q. Okay.

2 A. I am not sure it was the day that the corporation
3 come into being but --

4 Q. Mr. Stepp, you succeeded Mr. Wilcox as the president
5 of Belmont Bay Community Associates, didn't you?

6 A. Right.

7 Q. And it is true that the factual basis of your belief
8 that the association's authority is limited to Parcel A -- and
9 that is what you believe, don't you, that the association's
10 authority is limited to the borders of Parcel A?

11 A. Right.

12 Q. That's your belief.

13 A. It's not only my belief. I know it.

14 Q. All right. And the entire factual basis for that
15 belief is the trust deed.

16 A. The trustee what?

17 Q. The trust deed.

18 A. Oh.

19 Right, the trust deed.

20 Q. Let me move on to some questions regarding your
21 trusteeship.

22 Your objection to the roads -- your objection to the
23 roads and the objection that you stated to Mr. Vandenberg was

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1 that you should have been consulted as a trustee about the
2 roads before it had been done; correct?

3 A. No, that's not correct.

4 You are going to have to give me another question.

5 Q. Didn't you feel that, as a trustee, you should have
6 been consulted about the road before it was done?

7 A. I can't answer you directly on your question.

8 Q. Is it --

9 A. Are you asking me my concern about the roadwork that
10 was done, what my concern was?

11 Q. Didn't you feel that you should have been consulted
12 about the road before it was done, as a trustee?

13 A. No.

14 I was concerned about the money that was used that
15 was paid for the dues in the fund.

16 Q. Mr. Stepp, let me direct your attention to page 105
17 of your deposition of December 2nd, 1997; and I would ask you
18 to look at the question beginning on line 16.

19 A. Is that 95 or 105?

20 Q. 105, sir.

21 A. As you see, I am not a paper man.

22 Q. That's all right, sir. I understand.

23 Unfortunately, this is part of the process we have
(February 25, 1998)

1 to go through.

2 THE COURT: Lawyers love paper.

3 THE WITNESS: What line?

4 BY MR. CLARY: (Resuming)

5 Q. The question on line 16 begins: "Okay. So you felt
6 as a member of the association you should have been consulted
7 about the road before it was done."

8 And your response, sir, at the last line, 21 --

9 A. "As a trustee, yes."

10 Q. Okay.

11 THE COURT: Let me see.

12 Yes. Okay.

13 BY MR. CLARY: (Resuming)

14 Q. Mr. Stepp, you just testified, however, that the
15 trustees have no power outside of Parcel A; isn't that
16 correct?

17 A. That's right.

18 Q. And the road that you were objecting to was outside
19 of Parcel A, wasn't it?

20 A. I didn't object to the road.

21 Q. I'm sorry, sir. You'll have to answer my question.

22 The road is outside of Parcel A, isn't it?

23 A. Right, it is.

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1 Q. Okay. And your objection, however, was the fact
2 that association funds had been spent on the road; isn't that
3 correct?

4 A. Right.

5 Q. Okay. And these association funds were monies that
6 belonged to Belmont Bay Community Associates; wasn't that
7 true?

8 A. Right.

9 Q. And they were actually dues that the association had
10 raised, wasn't it?

11 A. Right.

12 Q. And these were not monies that the trustees had any
13 connection with, were they?

14 A. Well, I was always under the impression that it was
15 one -- it was the same thing, in other words. Trustees --
16 whether trustees collected or the board collected, same thing.

17 Q. When Mr. Vandenberg told you that you were not a
18 trustee, you did not respond to him at all, did you?

19 A. Yes, I did respond to him.

20 Q. You, in fact, did not ask him the basis of his
21 statement, did you?

22 A. He told me.

23 Q. And you did nothing to investigate at that time, did

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1 you?

2 A. It was brought before the board at a later date.

3 Q. You mean the general association meeting in May 3rd,
4 1994?

5 A. Right.

6 Q. You mean the mistake was talked about at that
7 meeting?

8 A. That's when they approached me to elect me as a
9 trustee.

10 Q. I am going to come back to that.

11 THE COURT: There should be a midpoint in the trial
12 of this line where the lawyers go through their legal theories
13 of the case again. That's just an aside.

14 It's a very interesting case in terms of what the
15 documents provide.

16 MR. CLARY: I agree.

17 THE COURT: Anyway, I said that as an aside because
18 it's very interesting the way it's coming out.

19 MR. CLARY: Yes, ma'am.

20 THE COURT: I mean, there are legal issues involved
21 in this case. It's not just community bickering.

22 And at some point, the lawyers -- and I am giving
23 you fair warning -- are going to have to really pinpoint what

(February 25, 1998)

1 they think the legal theory of this case is, given this
2 collection of documents that were so old.

3 MR. CLARY: Well, from the trustees' standpoint, we
4 are prepared to do that, when the opportunity presents itself.

5 MR. TOLCHIN: As is the association,

6 MR. ANNINO: As we are, too, Your Honor.

7 MR. TOLCHIN: We have been waiting to see these
8 theories for many, many months.

9 THE COURT: It's a very interesting case.

10 BY MR. CLARY: (Resuming)

11 Q. Mr. Stepp, I would like to turn your attention to
12 page 109 of your deposition of December 2nd, 1997.

13 A. 109?

14 Q. Yes.

15 Have you found that page, sir?

16 A. I am working on it.

17 Q. Okay.

18 A. Yes, I have the page.

19 Q. Do you see the question that begins on line 19?

20 And the question is: "When Mr. Vandenberg said" --
21 and then I parenthetically say "And I now understand then in
22 response to your statement" -- he "said, 'You're not a
23 trustee,' what did you do when you heard that?"

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1 And your answer then was: "I felt that the
2 conversation was ended."

3 "All right. Did you agree with him or did you
4 disagree with him?"

5 "No, I didn't say anything."

6 "So you didn't voice one way or the other."

7 Answer: "No."

8 That, in fact, is what occurred with your
9 conversation with Mr. Vandenberg, isn't it, not the story you
10 have told today?

11 A. Well, let me tell you this. I am telling you today
12 what I remember. I was sick that day, whether you realize it
13 or not.

14 Q. All right, sir. So that's your explanation of the
15 difference.

16 A. Right.

17 Q. Okay.

18 THE COURT: During the deposition or during when you
19 spoke to Mr. Vandenberg?

20 I got confused.

21 You mean you were sick during the deposition.

22 THE WITNESS: No. During the deposition.

23 And there was other interferences as well.

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1 BY MR. CLARY: (Resuming)

2 Q. Other interferences?

3 A. Yes.

4 Q. Okay. Do you recall stating on the record that you
5 were sick that day?

6 A. No. I didn't think it was necessary. I figured I
7 would -- the type of person I am, I could tough it through.

8 Q. You do recall Mr. Lear's deposition, his mentioning
9 the fact that he was ailing.

10 A. Right.

11 Q. And you agree with me that after Mr. Vandenberg made
12 this statement, you did nothing to investigate why he made the
13 statement.

14 A. No. I felt I was the trustee.

15 Q. All right.

16 A. And Jim Foster knew I was a trustee, which he made
17 the statement.

18 Q. All right. So there is no question pending.

19 Okay. Is it your position that from the date that
20 you were appointed trustee, that until at least the meeting of
21 May 3rd, 1994, there was, in fact, nothing for you to do as a
22 trustee?

23 A. Repeat that, please.

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1 Q. Was it your belief that from the day that you were
2 appointed a trustee, all the way up to the meeting, at least
3 the meeting in May of 1994, that there was any reason for you
4 to be concerned about anything as a trustee?

5 A. I wasn't approached to do anything within that time
6 frame.

7 Q. And so from the day that you were appointed a
8 trustee, all the way up until the meeting in May of 1994, you
9 didn't feel there was any reason to contact Mr. Foster or
10 Mr. Lear; isn't that correct?

11 A. No, I don't feel that way.

12 Mr. Lear or Mr. Foster sat on the board at their
13 choice; and I felt if something came up that needed trustees,
14 they would contact me.

15 Q. Let me direct your attention to page 113 of your
16 deposition, sir.

17 Did you find that page, sir?

18 I'm sorry. I'm not -- I wasn't sure if you had
19 already found it.

20 A. All right.

21 Q. Let me direct your attention to the question
22 beginning on line 17.

23 "So from the time that you were first appointed a
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1 trustee, which you believe was in 1986" -- and you answer
2 "Right" -- "all the way up to this meeting in May of 1994 when
3 they had this meeting about you being nominated, you didn't
4 feel that there was any reason to contact Mr. Foster or
5 Mr. Lear because there wasn't anything of interest to do as a
6 trustee; is that correct?"

7 A. That's correct.

8 Q. And what was your answer?

9 Your answer was "Right" --

10 A. Right.

11 Q. -- is that correct?

12 A. Right.

13 Q. And that's different than what you are saying here
14 today, isn't it?

15 A. No, it's not different.

16 Q. Is it your position that you learned of the
17 controversy about whether you were a trustee before that
18 meeting?

19 A. My previous -- my statement here today I said I
20 wasn't contacted for any reason. So therefore, if you want to
21 put it that I didn't contact anybody because there wasn't
22 anything to do, I said, no, there wasn't anything to do.
23 Okay.

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1 Q. Mr. Stepp, as I understand it, you felt when
2 Mr. Vandenberg talked to you -- and that was before the May
3 1994 meeting -- you thought that there was -- that at least he
4 was saying that you weren't a trustee; right?

5 A. Right.

6 Q. All right. And yet you did not feel it was
7 necessary or appropriate to talk to Mr. Foster or Mr. Lear;
8 isn't that correct?

9 A. Mr. Foster/Mr. Lear both knew I was a trustee.

10 Q. So the answer is "Correct".

11 A. Right.

12 Q. You agree.

13 A. Right.

14 Q. Okay. Mr. Stepp, at or before the May 1994 meeting,
15 did you ever have conversations with or discussions about or
16 be present when -- about the subject of filing replacement
17 documents out at Fairfax County?

18 A. Would you repeat that, please.

19 Q. Let me make sure -- did you ever have any
20 conversation -- you understand now, at least, that this issue
21 about -- quote -- whether or not you were registered as a
22 trustee came up because Mrs. Medlin and Mrs. Foster, while
23 attempting to find names of absentee lot owners, somehow

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1 believed that there was not a record of your being appointed
2 among the records of Fairfax County; isn't that correct?

3 A. Right.

4 MR. ANNINO: Objection. Assumes facts not in
5 evidence.

6 MR. CLARY: This is cross-examination.

7 THE COURT: To tell you the truth, that was one of
8 the most helpful questions I have heard in the last two hours
9 because I frankly did not know exactly -- maybe I have missed
10 it completely -- upon what basis everyone was saying that he
11 was not a trustee.

12 So that question was appropriate, and now I know.

13 Okay. Good.

14 I forgot what the question was, though.

15 What was the question?

16 MR. CLARY: I may have to remember.

17 THE COURT: It has that long preamble, but --

18 MR. ANNINO: Do you want the court reporter to read
19 it back?

20 MR. CLARY: Yes. That's a good idea.

21 (The following question was read:

22 "Q. Let me make sure -- did you ever have any
23 conversation -- you understand now, at least, that this issue

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1 about -- quote -- whether or not you were registered as a
2 trustee came up because Mrs. Medlin and Mrs. Foster, while
3 attempting to find names of absentee lot owners, somehow
4 believed that there was not a record of your being appointed
5 among the records of Fairfax County; isn't that correct?")

6 THE WITNESS: Yes.

7 BY MR. CLARY: (Resuming)

8 Q. And, in fact, didn't you understand that when they
9 had discovered this, they had also determined from the clerk's
10 office or from someone at Fairfax County how to correct this
11 problem; that is, by filing replacement documents?

12 A. I don't know about that.

13 Q. You never knew about that?

14 A. No.

15 Q. No one ever talked to you about that?

16 A. No.

17 Q. Okay. And when was the first that you learned about
18 this mistake or alleged mistake?

19 A. When Vandenberg approached me.

20 Q. That's the Vandenberg conversation that you recited
21 today that's different than what you testified to in your
22 deposition; correct?

23 A. Right.

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1 MR. ANNINO: Objection. Argumentative.

2 THE COURT: I think he is just trying to clarify.

3 Overrule.

4 BY MR. CLARY: (Resuming)

5 Q. In fact, Mr. Stepp, is it your position that you
6 never had any conversations with anyone regarding filing
7 replacement documents?

8 A. I don't remember.

9 Q. Do you recall your deposition, sir, on page 115?

10 A. All right.

11 Q. You see the question on line 10 that begins: "Did
12 you ever have any conversation with anyone about filing
13 replacement documents."

14 And what was your answer, sir?

15 A. "No."

16 Q. And is that, in fact, your testimony today?

17 A. Right.

18 Q. After you were told by Mr. -- well, after you were
19 told by Mr. Vandenberg that you were a trustee, did you, in
20 fact, go out to the County and look yourself?

21 A. Yes.

22 Q. And what did you find?

23 A. I found a trustee deed.

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1 Q. And did you --

2 A. A replacement trustee deed.

3 Q. I'm sorry.

4 Okay. The one naming you.

5 A. Right.

6 Now, could you back up.

7 You said when Mr. Vandenberg -- would you repeat
8 that first.

9 Q. After Mr. Vandenberg told you that you weren't a
10 trustee, did you go out to the County -- did you ever go out
11 to the County?

12 A. Yes.

13 Q. All right. And you found the deed.

14 A. Right.

15 Q. And did you make a copy of it?

16 A. No, I didn't.

17 Q. Okay.

18 A. I didn't --

19 Q. And did you ever tell Mr. Foster or Mr. Lear that
20 you had found the document?

21 A. I kept repeating that I was a trustee.

22 Q. So you felt no need to inform them that you had
23 found this document?

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1 A. I didn't say that.

2 Q. Mr. Lear [sic], in fact, after you found this
3 document, you didn't tell either Mr. Lear or Mr. Foster that
4 you found it, did you?

5 A. I think that was after the suit was filed.

6 When the time frame, sent the letter, went to
7 Jim Foster and the suit was actually filed.

8 Q. All right. So you are saying that you didn't find
9 this --

10 A. Right.

11 Q. -- until after June of '96, after you had hired a
12 lawyer.

13 A. Whenever.

14 Q. Okay. Is that what you testified to earlier?

15 A. When?

16 Q. When you had your deposition.

17 A. Give me a page number.

18 Q. I am just asking you the question first.

19 A. Yes, I am quite sure that's what I said.

20 Q. Isn't it a fact that you testified that when you
21 went out there, you didn't know when it was?

22 A. Well, maybe I recall.

23 Q. After Mr. Vandenberg told you you weren't a trustee,
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1 you never talked to Mr. Foster or Mr. Lear about that, did
2 you, except as you have described in the May 1994 and the May
3 1995 general membership meetings?

4 A. Right.

5 THE COURT: Can I ask -- I hate to interrupt.

6 But when you did discuss it with them in 5/94 or
7 5/95, were you clear with them about what you were discussing?

8 I mean, did you ever say -- did you ever -- I mean,
9 were people clear with each other here?

10 Did you ever say, "Listen, I am a trustee"?

11 THE WITNESS: Yes.

12 THE COURT: "I looked in the land records, and I am
13 there; and so all of this stuff you are worried about is not
14 worth worrying about." Did you ever say that?

15 THE WITNESS: Your Honor, I'm not sure I said I
16 looked in the land records; but I made the statement --

17 THE COURT: I guess you already testified you didn't
18 look in the land records until June of '96, I guess; so there
19 really probably --

20 THE WITNESS: I made the statement that I was a
21 trustee each and every time they approached me.

22 THE COURT: Okay. I'm sorry.

23 I thought you looked in the land records, but I

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1 guess you didn't before then.

2 BY MR. CLARY: (Resuming)

3 Q. And just so we are clear: You really didn't have
4 discussions with them. The occasions that you're referring to
5 are the -- in the context of the general meeting of 1994, the
6 events during that meeting with Mr. Foster where he asked you
7 to reconsider.

8 Correct?

9 A. Yes.

10 Q. And at the end of the 1995 meeting when Mr. Lear
11 approached you and asked you to reconsider.

12 Correct?

13 A. Say that again, please.

14 Q. The only two discussions that you are talking about
15 with Mr. Lear and -- that you had with Mr. Lear and
16 Mr. Foster --

17 A. Right.

18 Q. -- are that meeting in '94 with Mr. Foster that you
19 described --

20 A. Um-hmm.

21 Q. -- at the general membership meeting --

22 A. Right.

23 Q. -- and with Mr. Lear after the end of the 1995

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1 meeting. These were the only two discussions --

2 A. Right.

3 Q. -- that you had with them.

4 A. Right.

5 Q. Just so we're not confusing the judge that there was
6 some big conversation about it.

7 There wasn't any big conversations about it with
8 them, was it?

9 A. No.

10 Q. Okay.

11 A. I thought I was making myself clear.

12 Q. All right. When you learned about this error -- and
13 now you are testifying today that you learned about it from
14 Mr. Vandenberg, although that's different -- did you go to
15 Mr. Foster and ask -- did you ever talk to Mr. Lear or --
16 before the May 1994 meeting -- after you learned about it, did
17 you ever talk to Mr. Lear or Mr. Foster about not being a
18 trustee or about this record issue?

19 MR. ANNINO: Objection. Asked and answered.

20 He testified he talked to Mr. Foster at the May '94
21 meeting --

22 MR. CLARY: I directed my question --

23 MR. ANNINO: -- the May '95 meeting; and that was
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1 the only time he talked about it.

2 THE COURT: Well, I am going to ask him -- I don't
3 think it's going to hurt him to answer the question again,
4 given how confusing this is.

5 I am not even sure I have a date as to the
6 conversation with Mr. Vandenberg.

7 I have 1994, but I -- it was before the May 1994
8 meeting?

9 THE WITNESS: Yes.

10 THE COURT: Okay. Thank you.

11 Okay. Go ahead and ask the question.

12 BY MR. CLARY: (Resuming)

13 Q. Did you ever talk to Mr. Lear -- prior to the
14 May 3rd, 1994, meeting, did you ever talk to Mr. Lear or
15 Mr. Foster about not being a trustee or about this record
16 issue?

17 A. I am not sure that I knew about the record issue.

18 For is this -- can I expand on this a little?

19 I can't answer your question.

20 Q. No. I'm sorry, sir. If you don't recall -- I'm
21 sorry.

22 A. I said I can't answer your question without
23 expanding on it.

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1 Q. All right. Go ahead and explain.

2 A. From the time Mr. Vandenberg told me that I wasn't a
3 trustee, it was several months. I can't really pinpoint it to
4 a number of months, but it was over three months went by.

5 And from the time they -- wait a minute.

6 When Mrs. Medlin/Mrs. Foster, I think it was, went
7 to Fairfax, found these records, they brought it back; and
8 they had a meeting the next day that this was reported. I
9 think it was on -- I can't come up with a date.

10 Q. You're talking about the board of directors of the
11 association?

12 A. Yes.

13 Q. Okay.

14 A. That was the 7th or something. I don't know.

15 But anyway, and they had a general membership
16 meeting the next day. They reported -- Mrs. Medlin reported
17 that they had found this; but there was no discussion in that
18 meeting. So therefore, the first time I found out about it
19 was when Frits told me, like, three-four months down the road.

20 Now, if they knew this in that time frame, shouldn't
21 one of the trustees come to me, since I wasn't knowledgeable
22 of this happening, and say, "Gail, the thing is not -- you're
23 not being shown as a trustee registered in Fairfax County"?

(February 25, 1998)

1 Q. Didn't you believe, sir, that both Mr. Foster and
2 Mr. Lear knew and believed, regardless of what the records
3 were, that you were a trustee then?

4 A. Sure. They believed I was a trustee. They stated
5 it in their --

6 Q. Let me come back to my question.

7 After you learned about the record problem but
8 before the 1994 meeting -- the May 3rd, 1994, meeting -- did
9 you ever talk with Mr. Foster or Mr. Lear about not being a
10 trustee or about this record issue?

11 A. Before Vandenberg got there?

12 Q. After Vandenberg, sir.

13 A. No.

14 Q. All right. Did you ever talk to Mrs. Foster?

15 A. No.

16 Q. Did you ever talk to Mrs. Medlin?

17 A. No, because it wasn't -- it was a trustee function.

18 Q. But you understood that these were the ladies who
19 discovered it.

20 A. I assumed that they reported it to the trustees.

21 Q. But you -- never mind.

22 Isn't it a fact all the way up to May 3rd, 1994,
23 that the only person you ever heard say you weren't a trustee

(February 25, 1998)

1 was Mr. Vandenberg?

2 A. Correct.

3 And I didn't believe him.

4 Q. Mr. Stepp, isn't it a fact that the first time that
5 you learned about the record problem was at the May 3rd, 1994,
6 meeting?

7 A. I don't know. I don't remember.

8 Q. Isn't it a fact that --

9 THE COURT: What did you say, sir; you didn't know?

10 THE WITNESS: I don't remember.

11 BY MR. CLARY: (Resuming)

12 Q. Isn't it a fact, sir, that at that May 3rd, 1994,
13 meeting, it wasn't simply George Arnold coming up and asking
14 to nominate you as a trustee?

15 The fact of the matter is that there was an entire
16 explanation to the general membership that Mrs. Medlin and
17 Mrs. Foster had gone out to the County; discovered an apparent
18 error in the recordation of the document naming -- identifying
19 that you were a trustee; and that the solution to it was
20 simply to file replacement documents; and that what Mr. Arnold
21 was asking you was if you would agree to execute those
22 replacement documents to continue to be a trustee.

23 MR. ANNINO: Objection. Compound.

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1 I don't know how the witness could follow that
2 question.

3 THE COURT: Well, do you want to break it down,
4 Mr. Clary. I understand your point, but break it down into
5 separate questions and then the witness can answer them
6 simply.

7 MR. CLARY: Okay.

8 BY MR. CLARY: (Resuming)

9 Q. Isn't the fact -- did not the -- at the general
10 membership meeting in May 3rd, 1994, isn't -- did not the
11 membership and Mr. Arnold discuss the fact that Mrs. Foster
12 and Mrs. Medlin went to Fairfax County and checked the records
13 and it reflected an error?

14 A. I don't remember that.

15 Q. Let me ask you to turn your attention to page 110 of
16 your deposition, sir.

17 A. I have it.

18 Q. And let me direct your attention to the question --
19 and I guess we are going to have to go up a little bit.

20 The discussion prior to this is about your
21 conversation with Mr. Vandenberg that I have previously asked
22 you about where you [sic] said, "So you didn't voice one way
23 or the other" and then you said, "No."

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1 And you'll recall that was the conclusion -- that
2 you testified in your deposition, that was the conclusion of
3 your testimony with Mr. Vandenberg.

4 And the questions then continue on line seven: "And
5 did you ask him why he felt that way?"

6 And you answered: "I don't know whether I did or
7 not."

8 "Did you ask any questions of him to explain his
9 statement that you weren't a trustee?"

10 "At a later meeting -- at the later meeting that
11 when they nominated me for trustee, I learned then that
12 Mrs. Foster and Mrs. Medlin went to Fairfax and checked the
13 records; and it reflected that Mr. Lear was the trustee. Of
14 course, this is where they got the information that I wasn't a
15 trustee."

16 Do you recall testifying to that?

17 A. Now, your question is number seven?

18 Q. I am asking you if, in fact, at the meeting on
19 May 3rd, 1994, the subject and the explanation of the error in
20 the Fairfax County records was, in fact, the subject of
21 discussion at that meeting?

22 A. I don't remember it.

23 Q. All right. But, in fact, you testified in
 (February 25, 1998)

1 December 2nd, 1997, that that's where you learned of that;
2 isn't it?

3 MR. ANNINO: Objection. That's a
4 mischaracterization.

5 It doesn't say he learned of it --

6 MR. CLARY: I'm sorry.

7 It says, "At a later meeting, that when they
8 nominated me for trustee, I learned then that Mrs. Foster and
9 Mrs. Medlin went to Fairfax," et cetera.

10 THE COURT: Overrule the objection.

11 MR. CLARY: I'm not sure there is a response.

12 BY MR. CLARY: (Resuming)

13 Q. Mr. Stepp, let me also direct your attention to page
14 145 of your deposition.

15 A. All right.

16 Q. And let me direct your attention to the question
17 that begins on line four, which says: "In 1994, when all of
18 this came up, weren't you aware that, whether right or wrong,
19 it was the impression of Mr. Foster and other members of the
20 community that an error had been made in the recordation of
21 the document establishing you as trustee?"

22 And what did you respond?

23 A. I lost it here.

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1 Q. Well, let me help you.

2 Your answer was: "But they generated that."

3 And then I had a follow-up question, which was: "I
4 am only asking you: Weren't you aware in this meeting in 1994
5 that it was the belief of the people at the meeting, including
6 Mr. Foster, that an error had been made by the County in terms
7 of the recordation of the document that recorded your
8 appointment as trustee?"

9 And your answer, sir, on line 17 is: "I know that
10 statement was made at a meeting. Now, whether the people
11 believed it or not, I don't know."

12 That was your answer, wasn't it?

13 A. Right.

14 Q. And, in fact, it was at this May 3rd, 1994, meeting
15 that this was all discussed, wasn't it?

16 A. Like I said, I don't know.

17 Q. And the point --

18 A. Show me --

19 Q. The point of all of those discussions was to
20 persuade you to continue to be a trustee and agree and consent
21 to file replacement documents, wasn't it?

22 A. And I kept telling them that I --

23 Q. "Yes" or "no," sir.

(February 25, 1998)

1 A. I didn't know what their intentions were.

2 Q. But you have made up this story now that says you
3 were intending to refuse to be nominated; isn't that true?

4 A. I did not make up a story.

5 Q. Mr. Stepp, you gave a recitation today of the events
6 that occurred at the meeting with respect to your nomination,
7 didn't you?

8 A. Yes.

9 Q. And you recited exactly what you claim Mr. Arnold
10 said to you and what you said in response and what Mr. Foster
11 then said and what you said in response.

12 A. Right.

13 Q. Isn't it a fact that you don't have any recollection
14 of what actually occurred at that meeting?

15 A. Oh, yes, I do.

16 Q. All right, sir.

17 A. I remember --

18 Q. Do you recall testifying on December 2nd, 1997 --
19 and I'm going to direct your attention to page 120 of your
20 deposition.

21 A. I have it.

22 Q. And we are talking about -- and it actually begins
23 on the preceding page where the question is on line 22:

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1 "We're talking about the first one" -- meaning meeting --
2 "which is May 3rd, 1994."

3 You answer: "May 3rd, 1994."

4 And then we get to line five: "How did the subject
5 come up at the meeting," meaning the subject of trustee.

6 And your response was: "I don't know."

7 Question: "You don't recall?"

8 Answer: "No."

9 "What was said by anyone at the meeting about being
10 a trustee?"

11 Answer: "The only thing I can go on is what's in
12 the minutes."

13 "Are you saying that you have no present
14 recollection of the events that occurred at that meeting?"

15 "No."

16 "Then what is your recollection presently?"

17 "Only what's in the minutes."

18 "I'm sorry. I'm not asking you verbatim. Just tell
19 me the story, what happened."

20 "I can't tell you anything other than what's in the
21 minutes, so let's look at the minutes and see what the minutes
22 say."

23 And that's what you testified to in December of --
(February 25, 1998)

1 three months ago; correct?

2 A. I would have to see the minutes.

3 Q. All right, sir. You agree that was your testimony
4 then.

5 A. Yes.

6 Q. Under oath.

7 A. Right.

8 Q. And now today you have a different story.

9 A. If I have a different story, it's not because I am
10 trying to sway anybody. I am trying to get the truth across.

11 Q. The questioning goes on beginning at -- after you
12 have said "and let's see what the minutes say."

13 And on page 121, line seven -- if you want to follow
14 me with this -- the question is: "All right."

15 And the answer is: "It says I was nominated for
16 trustee and I declined the nomination."

17 "Is that the total extent of your memory on this
18 subject?"

19 Answer: "Right."

20 "So you don't recall who said anything?"

21 Answer: "No."

22 "Okay. Do you recall who nominated you?"

23 Answer: "I am assuming -- I hate to use the word
(February 25, 1998)

1 'assume' --"

2 Question: "Just tell me what you remember to the
3 best of your recollection."

4 Answer: "Since George Arnold wrote the criteria for
5 a trustee, I assumed that he nominated me."

6 Question: "What led you to believe that Mr. Arnold
7 wrote the criteria for becoming a trustee?"

8 Answer: "Because he presented it."

9 Question: "Where?"

10 "It's in some of the minutes within the
11 organization."

12 Question: "When?"

13 Answer: "I don't remember."

14 "When was it; before or after the meeting?"

15 Answer: "I would say before."

16 "Was the criteria for being a trustee discussed at
17 the meeting?"

18 "I don't know."

19 MR. ANNINO: Your Honor, I'm going to object at this
20 point.

21 Is this leading to a question?

22 MR. CLARY: I'll stop at this point.

23 BY MR. CLARY: (Resuming)

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1 Q. That, in fact, is your testimony in December of
2 1997; correct?

3 A. I would have to read it.

4 What page do I start on?

5 Q. It begins on page 121, line 15, and ends at page
6 122, line 15.

7 A. Did you say goes to 123, what line?

8 Q. Actually, 122, line 15.

9 A. All right.

10 Q. And that was your testimony; correct, sir?

11 A. Yes.

12 Q. And that's different than what you are testifying to
13 today.

14 A. As I said in the deposition to I assumed this is
15 correct.

16 Q. In fact, the only thing that you said according --
17 contrary to what you have stated today -- in fact, when you
18 testified earlier, the only thing that you responded to -- the
19 only statements that you made at all at that 1994 meeting
20 were, "I decline the nomination"; and in response to
21 Mr. Foster's beseeching you to reconsider, you said, "No."

22 Isn't that correct?

23 A. I think one word you add in there is I declined the
(February 25, 1998)

1 nomination because I am -- well, three words -- "I am a
2 trustee."

3 Q. Mr. Stepp, let me direct your attention to page 123
4 of your deposition.

5 A. All right.

6 Q. And I want you to look at the question beginning on
7 line 20.

8 MR. ANNINO: Your Honor, I think I am going to
9 object at this point because we have gone over this meeting
10 for the last half-hour with various questions; and I think all
11 that can be said about it has been said about it.

12 THE COURT: I don't have any basis for not allowing
13 him to go forward.

14 I will allow it.

15 It's been very confusing.

16 If I can recap what I've heard.

17 He testified to some things that happened at the
18 meeting, and you asked him about some things that happened at
19 the meeting; and he said he didn't recall things happening at
20 the meeting and then he said he didn't remember what happened
21 at the meeting.

22 And then apparently at his deposition he was very
23 clear about not remembering what happened at the meeting.

(February 25, 1998)

1 Right?

2 That's where we are, isn't it?

3 MR. CLARY: Except for the fact that he remembers at
4 the meeting that that was where he learned about the record
5 error that Mrs. Medlin and Mrs. Foster discovered.

6 THE COURT: Well, he testified that he -- at some
7 meeting he learned about that but he wasn't quite sure.

8 I don't know if he was sure it was the May meeting.
9 He said it was some meeting he learned about it.

10 Wasn't that --

11 MR. CLARY: I will go back and cover that again; but
12 it was very clear, Your Honor. It's that meeting.

13 THE COURT: Oh, it's clear because you have pointed
14 to other circumstances around it.

15 MR. CLARY: He said, "It was the meeting at which I
16 was nominated trustee that I learned."

17 THE COURT: Right.

18 MR. CLARY: That was his deposition testimony.

19 THE COURT: Right.

20 MR. CLARY: So that's why it is clear that it was
21 the May 3rd --

22 THE COURT: One could reasonably conclude it was the
23 May 3rd meeting, but then he doesn't remember a lot of stuff

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1 about the May 3rd meeting.

2 MR. CLARY: That's true.

3 THE COURT: I mean, it's clearly stated. It's kind
4 of past recollection recorded. He doesn't remember anything
5 about it except then he does remember that he said "I am a
6 trustee" in response to one question.

7 MR. CLARY: Yes.

8 And what I am directing his attention to now is
9 testimony that he gave earlier that contradicts that.

10 THE COURT: All right.

11 BY MR. CLARY: (Resuming)

12 Q. Mr. Stepp, directing your attention to page 123,
13 line 20. And the question is: "So it is your testimony that
14 your statements in their entirety on this subject at that
15 meeting -- referring to the May 3rd, 1994, meeting -- were 'I
16 decline the nomination' and 'No'; is that correct?"

17 Answer: "Right."

18 And that's what you testified to earlier, isn't it,
19 sir?

20 A. According to your minutes, yes, that's what I
21 testified.

22 Q. And the fact of the matter is you didn't add any
23 words to those statements.

(February 25, 1998)

1 In fact, you didn't even make the statement, "I
2 decline the nomination," did you?

3 You just said, "No."

4 A. I know I said it.

5 Q. And, in fact, what you said was, "I don't want
6 anything to do with you people."

7 A. No, I didn't.

8 Q. All right, sir. Mr. Stepp, you testified today that
9 between your conversation with Mr. Vandenberg and your -- the
10 May 3rd, 1994, meeting, there was -- the next -- that is, the
11 next time after Mr. Vandenberg's statement, the next time that
12 the subject of your status as trusteeship came up was at the
13 general membership meeting; is that correct?

14 A. What month?

15 Q. I don't -- you will have to tell me when it was that
16 you talked to Mr. Vandenberg. I'm sorry.

17 A. I'm not sure of what date it was. It was after the
18 roadwork. That's all I can tell you.

19 Q. I think you have testified today that there was a
20 gap of three months or over three months, maybe, between when
21 you learned from -- when Mr. Vandenberg made the statement to
22 you and the general membership meeting; is that correct?

23 THE COURT: Which event came first?

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1 We've agreed on that, haven't we, that
2 Mr. Vandenberg's conversation with you came first?

3 THE WITNESS: Yes.

4 THE COURT: Okay.

5 BY MR. CLARY: (Resuming)

6 Q. And do you recall that -- I think you have testified
7 just a few minutes ago that there was about, at least, you
8 think, a three-month period between those statements and the
9 1994 general membership meeting in May.

10 A. Are you looking for a "yes" or "no"?

11 Q. Yes.

12 A. I can't answer it.

13 Q. Okay. So you -- now, you don't recall what --

14 A. No, I'm not saying that. That's not what I have
15 said.

16 Q. Okay. What did you say?

17 A. I said from the time Vandenberg approached me, it
18 was three months or so before -- wait a minute.

19 When Mrs. Medlin went to Fairfax, what I said when
20 she came back and reported to the board by letter that she had
21 noticed this as you refer to as a clerical error, it was three
22 months before it was brought out.

23 Q. Okay. All right.

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1 Other than the conversation with Mr. Vandenberg, is
2 it your testimony that you never had any conversations with
3 anyone before the May 1994 meeting on the subject of the
4 status of your trustee?

5 A. I think I answered that.

6 Q. What's the answer?

7 A. No.

8 Q. So you did not.

9 Maybe I am confusing people.

10 It is correct that your testimony is "I did not have
11 any conversations with anyone prior to the May 1994 meeting
12 about the subject of my being a trustee."

13 A. I am not going to say I didn't have any
14 conversations with no one.

15 I am going to say I didn't have any conversations
16 with trustees.

17 Q. Well, other than your wife.

18 A. Not that I know of.

19 Q. Okay. And in -- so it is correct that prior to the
20 1994 meeting and after Mr. Vandenberg's statement, you had no
21 conversations with anyone about your status as trustee.

22 A. I don't recall any conversations that I had with
23 anybody.

(February 25, 1998)

1 Q. Okay. And that is, in fact, how you testified in
2 your deposition, isn't it?

3 A. That's right.

4 Q. Okay. But you are aware, are you not, from sitting
5 here in the courtroom, that your wife testified that after
6 Frits -- Mr. Vandenberg -- had made the statement, that you
7 and she met with George Arnold?

8 And George Arnold -- I'm sorry. I'll stop right
9 there.

10 A. That was after the May 3rd meeting of '94.

11 Q. That was after the meeting, not before.

12 A. Yeah, after. Yes. After.

13 Q. Aren't you aware from attending the deposition that
14 your wife placed this before the meeting?

15 A. I don't follow you.

16 Q. Didn't this event, in fact, occur before the May
17 1994 meeting?

18 A. No.

19 Q. Isn't that what your wife testified to here in
20 court?

21 A. I don't know. I strictly -- I don't know.

22 Q. All right. So it may be a fact that you met with
23 Mr. Arnold prior to the May 1994 meeting to talk about your

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1 status as trustee.

2 A. I could have. I could have.

3 Q. Okay.

4 A. Because -- I want to say one thing. My wife has a
5 hell of a lot better memory than I do.

6 Q. All right, sir. So -- mine does too.

7 And, in fact, at that meeting -- actually, there
8 were two meetings, weren't there?

9 A. No.

10 Q. You don't recall two meetings?

11 A. Two meetings with who?

12 Q. Mr. Arnold.

13 A. No.

14 I only remember the one.

15 Q. So now you remember the one meeting before the May
16 meeting.

17 A. After you brought it up, yes.

18 Q. All right, sir. And at that meeting, Mr. Arnold was
19 trying to get you -- was explaining to you, in fact, how the
20 whole problem arose with respect to the county records of your
21 being a trustee, didn't he?

22 A. I don't know. I don't remember the total
23 conversation.

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1 Q. Wasn't the point of his conversation that he was
2 trying to explain to you what the problem was and how to solve
3 it?

4 A. I don't recall what he said.

5 Q. Wasn't it a fact that Mr. Arnold not only explained
6 to you -- that Mr. Arnold was trying to get you to agree to
7 execute the documents, replacement documents, so that of
8 record you would continue as a trustee?

9 A. All I remember about Mr. Arnold coming over there is
10 he was telling me that he was going to write a cry -- I don't
11 know how to say it --

12 Q. Criteria?

13 A. -- criteria for a trustee.

14 Q. And these criteria that he was going to write
15 uniquely suited you, didn't they?

16 A. Right. That's what he said.

17 Q. And it was because the criteria were things like had
18 lived in the neighborhood for an extensive period of time, had
19 participated actively in volunteer work for the community;
20 things like that, wasn't it?

21 A. That sounds similar to it.

22 Q. And, in fact, when you met the first time with
23 Mr. Arnold, you asked him, "Well, what do I have to do as a

(February 25, 1998)

1 trustee? What are the duties?"

2 Didn't you?

3 A. I could have.

4 Q. And, in fact, Mr. Arnold then had to go get the
5 trustees' deed. And when he visited you the second time, he
6 brought the trustees' deed so that you could see it and read
7 it, didn't he?

8 A. I don't remember that.

9 Q. Okay. And Mr. Arnold, in fact -- you had a great
10 discussion with Mr. Arnold about whether or not you wanted to
11 be a trustee, didn't you?

12 A. I don't remember that either.

13 Q. And isn't it a fact that you told Mr. Arnold that
14 you had a lot of things going on in your business, that you
15 really didn't have time for it?

16 A. I am drawing a blank again.

17 Q. It may have happened?

18 A. I don't know.

19 Q. Okay. And isn't it a fact that you also told
20 Mr. Arnold that people in the community didn't like you?

21 A. I did not tell Arnold that.

22 Q. Mr. Stepp, wasn't it because of your reluctance to
23 resume your duties or sign the paperwork, to just have the

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1 record corrected out at Fairfax County, your reluctance about
2 the attitude of the people in the neighborhood, that
3 Mr. Arnold offered to give a show of support for you by
4 basically ratifying and having the community express their
5 support for you in the form of a nomination at the general
6 membership meeting?

7 A. All the way through this thing, I kept telling him I
8 am a trustee, I am a trustee, I am a trustee.

9 Q. There wasn't any debate about that, was there, sir?

10 A. Yes, there was.

11 Q. Isn't the only debate there was is that apparently
12 there was a mistake out at the Fairfax County records?

13 A. I didn't find that mistake.

14 Q. Do you --

15 A. This is reported --

16 Q. But you had no reason to believe that these
17 people -- all of these people who were telling you that
18 apparently there had been an error in recordation and this is
19 what was needed to do it, you had no reason to believe that
20 they weren't being sincere and honest, did you?

21 A. I was sincere when I was telling them I was the
22 trustee.

23 Q. And so was Mr. Foster saying you were a trustee,

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1 wasn't he?

2 A. Yes.

3 Q. And so was Mr. Lear saying you were a trustee,
4 weren't they?

5 A. Right.

6 Q. The only issue was, hey, there is a mistake out at
7 the County.

8 A. I didn't believe that.

9 Q. And so you declined to sign the paperwork necessary
10 to correct the record, didn't you?

11 A. There was nothing wrong with the record.

12 Q. Mr. Stepp, from the date of your appointment
13 sometime either 1986 or 1987 as a trustee, all the way up
14 until you filed your lawsuit or until you consulted a lawyer,
15 all of that period of time, you never had any concerns about
16 whether the trustees were acting properly, did you?

17 A. I was very stupid about the whole thing. That's
18 why.

19 Q. From the date of your appointment until you went to
20 see a lawyer in May of 1996, you never had any concerns about
21 that the trustees were acting properly, did you?

22 A. Like I said, I was very stupid about the whole
23 situation.

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1 Q. Mr. Stepp, from 1986 when you were appointed trustee
2 all the way up until you went to see a lawyer 10 years later,
3 you never had any concerns about the fact that the trustees
4 were acting properly, did you?

5 This is a "yes" or "no" answer, sir.

6 A. Let me give it some thought here.

7 I had no questions due to my stupidity.

8 Q. Do you recall your deposition, sir; page 129?

9 A. All right.

10 Q. The question beginning on line 12: "Did there ever
11 come a time from 1986 to the present date" -- which the date
12 of the deposition was December 1997 -- "prior to the filing of
13 your lawsuit that you ever became concerned that the trustees
14 were not acting properly?"

15 And your answer then, sir, was: "Not until -- I am
16 trying to -- until we sought counsel. That's when we realized
17 things were right -- weren't right."

18 And that's what you've testified to earlier, isn't
19 it?

20 A. Yes.

21 Q. So as far as you knew, until you went to see a
22 lawyer, you thought the trustees were doing everything they
23 were supposed to be doing.

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1 A. Yes.

2 Q. At any time after you learned about this clerical
3 error out at Fairfax County but before you in May of 1996 went
4 to your lawyer, did you ever ask the trustees to meet?

5 A. No.

6 Q. Did you ever go to the board of the association and
7 ask them to do anything?

8 A. No.

9 Q. You are aware, sir, that Mr. Foster -- forgive me.
10 I hope I haven't asked this before.

11 I am getting down to the end.

12 You are aware, sir, that Mr. Foster has never
13 written a check on the association bank account.

14 A. No, I am not aware of that.

15 Q. Are you aware of any instance in which he has?

16 A. No.

17 Q. And that was true when you filed this lawsuit?

18 A. Yes.

19 Q. And you were aware when you filed this lawsuit that
20 Mr. Foster had never collected any money from the residents or
21 any lot owners, weren't you?

22 A. Right.

23 Q. And you were aware, were you not, when you filed

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1 this lawsuit, that it wasn't Mr. Foster who hired Mr. Knowles,
2 it was George Arnold, weren't you?

3 A. I can't say who hired Mr. Knowles. I wasn't privy
4 to the meeting.

5 Q. Mr. Stepp, let me direct your attention to page 158
6 of your deposition.

7 MR. ANNINO: Your Honor, I'm going to object to
8 this. This is beyond the scope of direct.

9 I didn't ask him any questions about Mr. Knowles or
10 who hired Mr. Knowles or anything of that sort.

11 MR. CLARY: Your Honor, credibility is the lynch pin
12 of whether you believe this witness or you don't.

13 And it seems to me I have asked him a question. He
14 has denied it.

15 I am entitled to impeach him.

16 THE COURT: Overruled.

17 BY MR. CLARY: (Resuming)

18 Q. I direct your attention, sir, to page 158 of your
19 deposition.

20 A. All right.

21 Q. If you'll look at the question beginning on line 22,
22 which begins: "Who is it your understanding engaged
23 Mr. Knowles?"

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1 Answer: "George Arnold."

2 A. Okay.

3 Q. That was your belief at the time you filed the
4 lawsuit, wasn't it?

5 A. Well, since the correspondence come back to
6 George Arnold, yes.

7 Q. Okay.

8 A. But --

9 Q. That's the end of the question, sir.

10 A. Okay. Okay.

11 Q. Your counsel may give you an opportunity to explain.

12 With respect to -- during your entire tenure or
13 however many years, beginning in 1986, as a trustee, you never
14 yourself individually or with the other trustees ever
15 participated in setting assessments on lot owners as a
16 trustee, did you?

17 A. No, we didn't, because --

18 Q. Okay. And the reason is because it wasn't necessary
19 because the association was raising enough money in dues to
20 take care of the property; isn't that correct?

21 A. That statement isn't right. Not to take care of the
22 property.

23 We were paying the insurance and that was it.

(February 25, 1998)

1 Q. The point I am trying to get at here is: The reason
2 the trustees never made any assessments is because it simply
3 wasn't necessary; isn't that correct?

4 A. No, it's not correct.

5 THE COURT: Then explain why it's not correct, sir.

6 THE WITNESS: Well, as I explained earlier, what we
7 were trying to do here after George Arnold took over as
8 president, we were trying to get this thing lined out to where
9 the trustees were governed by the trustees' deed and the board
10 was governed by the bylaws.

11 THE COURT: Um-hmm.

12 THE WITNESS: So therefore --

13 THE COURT: But I think Mr. Clary was referring to
14 the history before all of this, when all the time that --
15 before the nineties.

16 MR. CLARY: Well, actually, it goes through the
17 nineties, Your Honor. It goes from 1986, when he was
18 appointed a trustee, at least up until the May 3rd, 1994,
19 meeting; and according to Mr. Stepp, still being a trustee,
20 then beyond that.

21 THE WITNESS: Until when?

22 BY MR. CLARY: (Resuming)

23 Q. Your position is you're a trustee today, sir, isn't
(February 25, 1998)

1 it?

2 A. I have been told differently.

3 Q. Your position today is that you are a trustee
4 currently; correct?

5 A. I have been told different.

6 THE COURT: Well, let's not get -- answer the
7 original question, sir. I'm sorry.

8 THE WITNESS: Repeat it, please.

9 THE COURT: You never really collected dues because
10 you didn't really think that you needed to, from the lot
11 owners.

12 MR. CLARY: Actually, the question is a little
13 different, Your Honor.

14 THE COURT: Okay.

15 BY MR. CLARY: (Resuming)

16 Q. In fact, you never participated with the trustees in
17 setting assessments on lot owners, did you?

18 A. No, we didn't.

19 Q. And the reason that you didn't do that is because it
20 wasn't necessary; isn't that correct?

21 A. I can't say that it wasn't necessary.

22 Q. Isn't that what you testified to in your deposition,
23 sir?

(February 25, 1998)

1 A. Well, we're talking about a different time frame
2 now.

3 See, the -- prior to '90, we did not participate --
4 we didn't have a need for it; but after George Arnold took
5 over and things started happening, there were paying for
6 meetings here and meetings there and the roadwork and all of
7 this, we needed structure.

8 And this is what we were trying to get.

9 After 1990, the trustees needed to step in and say
10 here is my position and direct the board as necessary.

11 Q. What you are saying is that the trustees had a duty
12 to control the association and to veto its actions.

13 A. No.

14 Within a certain boundary, yes.

15 Q. That's your position --

16 A. Yes.

17 Q. -- that they had the power to do that and they had
18 the duty to do that?

19 A. Trustees had the power to levy assessments on the
20 lot owners.

21 Q. But you agree with me that the trustees have never
22 done that; isn't that true?

23 A. Right. Right.

(February 25, 1998)

1 Q. And the reason for that is because the association
2 was raising enough money in dues to cover the expenses of
3 taking care of the property.

4 A. No, that's not right.

5 Q. Let me direct your attention, sir, to page 65 of the
6 January 26th, 1998, volume of your deposition.

7 A. Page what?

8 Q. Page 65.

9 A. All right.

10 Q. The question beginning on line 17 is -- I'm sorry.
11 Make sure I have got the right one.

12 "That's fine. So you didn't participate in setting
13 any assessments."

14 Answer: "No."

15 "Ever as a trustee?"

16 Answer: "Right."

17 "Why was that?"

18 Answer: "I guess at the time we didn't think it was
19 necessary."

20 Question: "Is that because the association was
21 raising enough dues to cover expenses of taking care of the
22 property?"

23 Answer: "Right."

(February 25, 1998)

1 And that, in fact, is the truth, is it not, sir?

2 A. It's the truth prior to 1990.

3 Q. It's the truth prior to your being here in court,
4 isn't it, sir?

5 MR. ANNINO: Objection. That's argumentative.

6 MR. CLARY: I'll withdraw it.

7 BY MR. CLARY: (Resuming)

8 Q. Mr. Stepp, if, as you stated, Mr. Arnold came in in
9 1990 and did all these projects and you felt it was the duty
10 of the trustees then to come in and do something, you were
11 clearly a trustee during the period 1990 at least until
12 May 4th of 1994, weren't you?

13 A. That's right.

14 Q. And you did absolutely nothing as a trustee about
15 that, did you; "yes" or "no," sir?

16 A. No, I didn't.

17 Q. And you never called any meetings of the trustees
18 about that, did you, sir?

19 A. It was always assumed that Jim Foster was the lead
20 trustee.

21 Q. Sir, this is a "yes" or "no" question.

22 A. Ask your question again.

23 Q. You never called a meeting of the trustees.

(February 25, 1998)

1 A. No, I didn't.

2 Q. You never talked to them and said, "Well, Mr. Arnold
3 is doing all these projects. We need to step in and control
4 the association's use of funds."

5 You never said that, did you?

6 A. No.

7 Q. You never said that until your lawsuit, did you?

8 A. That's right. We were trying to set certain things
9 straight.

10 MR. ANNINO: Your Honor, I think Mr. Stepp is tired.

11 I would like to ask for a lunch recess.

12 THE COURT: All right. That's a good idea.

13 Good.

14 We will reconvene at two o'clock.

15 (Whereupon, at 12:50 o'clock p.m., a luncheon recess
16 was taken, the proceedings to be reconvened at two o'clock
17 p.m.)

18 AFTERNOON SESSION

19 (2:02 p.m.)

20 THE COURT: Mrs. Michels gave me this.

21 Is this something we wanted to -- she should have
22 shown that to you, Mr. Annino. She gave it to my clerk.

23 MR. TOLCHIN: Is that the front page of the
(February 25, 1998)

1 document --

2 THE COURT: I have forgotten which exhibit was that,
3 though.

4 MR. TOLCHIN: That we had offered an exhibit,
5 offered exhibit for identification purposes, which was
6 three --

7 THE COURT: The treasury notes. Right. It was
8 Defendants' Exhibit Number 5, but it wasn't admitted.

9 Do you want it admitted now?

10 MR. TOLCHIN: No. We will move it in our case.

11 But there is three pages here, and let me look at
12 the first pages.

13 THE COURT: All right. You look at it.

14 Go ahead, Mr. Clary.

15 RESUMING CROSS-EXAMINATION

16 BY MR. CLARY:

17 Q. Mr. Stepp, you indicated that when the trustees met
18 in December of 1997, which is just this recent meeting -- I'm
19 sorry -- December of -- yeah, 1997, you indicated that Gene --
20 let me see if I can remember this -- Gene Lear wanted a rest
21 and wanted to resign.

22 Is that what you testified to?

23 A. Could I correct you, please?

(February 25, 1998)

1 Q. Sure.

2 A. It wasn't in December. It was in January 23rd.

3 Q. I'm sorry. January of 1998.

4 A. Right.

5 Q. I stand corrected. You're absolutely right.

6 But the reason, I understood you testified, is
7 because he simply wanted -- he wanted a rest from being a
8 trustee.

9 A. Well, he didn't put it that way.

10 He said he wanted to get this off his mind.

11 Q. Isn't it true that the reason that Mr. Lear asked
12 that a meeting be called to find a replacement for him is
13 because he is dying of cancer?

14 A. I have no problems with that.

15 See, what I am saying --

16 Q. You know that's true, don't you?

17 A. Yes, I know the man is dying.

18 Q. And the cancer has spread --

19 A. It's reported to me the man is dying from cancer.

20 Q. And the cancer has spread to his brain.

21 You know that, don't you?

22 A. I have no doubt about that.

23 Q. And you knew that he was afraid that if he died and
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1 left it in limbo, that it would be unresolved and he needed to
2 have it done right then and there, didn't he?

3 A. I don't want to say anything about Mr. Lear because
4 of his condition; but he indicated he wanted to get this off
5 his mind, and I have no problems with that.

6 Q. And you understood that the urgency for the meeting
7 was at his insistence?

8 A. I don't know that either.

9 Q. Okay. When -- in May 3rd of 1994, wasn't the
10 reason -- let me just back up.

11 I'll withdraw that question.

12 THE COURT: I had January 1997 before but that was
13 actually January 1998.

14 MR. CLARY: Yes, ma'am.

15 THE COURT: I made a mismatch.

16 MR. CLARY: No, it was me.

17 BY MR. CLARY: (Resuming)

18 Q. Mr. Stepp, while you were a trustee, as a trustee,
19 you never called any meetings of lot owners, did you, for the
20 purpose of electing a group of lot owners?

21 A. The last two words were -- the last thing I heard
22 was "lot."

23 Q. The entire time from 1986 until the present date, as
(February 25, 1998)

1 a trustee, you never called a meeting of lot owners to elect a
2 board, did you?

3 A. No, I didn't.

4 Q. Did, in fact, however, meetings of lot owners occur
5 to elect a governing body?

6 A. Yes, but that wasn't right.

7 Q. Mr. Stepp, when you filed this lawsuit, you knew and
8 understood that Mr. Foster had only two votes in the
9 association, didn't you --

10 A. Yeah.

11 Q. -- one as the resident owner and one as the
12 Hurvitz-Foster Joint Venture?

13 A. Right.

14 Q. And so you knew when you filed this lawsuit there
15 was no way that Mr. Foster could control the association,
16 didn't you?

17 A. That's right.

18 Q. Mr. Stepp, you don't like Mr. Foster, do you?

19 A. Like or dislike, I -- that is not true.

20 Q. Mr. Stepp, isn't it true that you don't like
21 Mr. Foster because you have always been unsuccessful in buying
22 the lot immediately behind your house, lot 88?

23 A. This is ridiculous. This is down right ridiculous.

(February 25, 1998)

1 Q. This lot right here (Indicating), sir.

2 A. I know what lot you are talking about; 88.

3 Q. Lot 88 is owned by the Hurvitz-Foster Joint Venture,
4 isn't it, sir?

5 A. Right.

6 Q. And your house is 74.

7 A. Right.

8 Q. And you have made a number of attempts to purchase
9 that lot, haven't you?

10 A. Two attempts.

11 Q. All right. In fact, in the 1971-1972 time frame
12 era, after Mr. Foster had discovered that Mr. Hurvitz owned
13 all of these or owned all of the remnant lots that hadn't been
14 sold off in the development, the fact is that Mr. Hurvitz,
15 when he owned it, offered all of these lots, including lot
16 number 88, to all of the members of the community for \$2,000 a
17 piece; isn't that correct?

18 A. Twenty-five hundred.

19 Q. Twenty-five hundred.

20 You didn't take him up on the offer, did you?

21 A. I don't remember even being offered a lot at the
22 time, now. I could have been in Germany.

23 Q. Well, 1971 and '72, you weren't in Germany, were

(February 25, 1998)

1 you?

2 A. I could have been in Vietnam.

3 Q. Okay. In 1973, the Hurvitz-Foster Joint Venture
4 offers all of its lots to all of the members of the community
5 for \$2,000 and they offer to finance it; isn't that true?

6 A. I don't know.

7 THE COURT: They offered all of the lots?

8 MR. CLARY: Each of the lots.

9 I'm sorry.

10 Each of the lots that they owned for 2,000 and they
11 offered to finance it; and he said he didn't know.

12 THE COURT: Oh, yeah. I knew you meant each of the
13 lots. It's still an extraordinary offer.

14 THE WITNESS: You have to realize, these lots are
15 not worth anything. This lot in back of my house has been
16 useless because it has springs and has marine clay on it. It
17 would be almost impossible to build a building on it

18 THE COURT: Well, \$2,000 is almost nothing, I think.

19 THE WITNESS: It is.

20 The thing of it is, when Mr. Foster approached me or
21 whichever now -- I'm not getting into this thing who
22 approached who -- maybe I approached him. And he said, "I
23 will have to check with the Hurvitz and see if they want to

(February 25, 1998)

1 sell it for this price." And that was \$10,000.

2 And we agreed on a price, and Jim Foster didn't show
3 up. And we asked him about it. He said the Hurvitz didn't
4 want to sell it at that price.

5 BY MR. CLARY: (Resuming)

6 Q. And you were angry about that, weren't you?

7 A. No.

8 Q. And, in fact, in 19 -- whenever it was -- after
9 Long & Foster listed the property, you contacted Long &
10 Foster. You talked to Mr. Felicione about lot 88.

11 Didn't you?

12 A. Sure.

13 Q. And at that time, he wouldn't give you a price on
14 that individual lot, would he?

15 A. No. He said they were pricing the lots up.

16 Q. The fact of the matter is that Mr. Foster -- you
17 have not succeeded in buying lot 88, the lot behind your
18 house, and that's why you harbor a personal animosity towards
19 Mr. Foster, isn't it?

20 A. I don't agree, and I don't see how you come up with
21 these decisions. Evidently, Jim Foster is telling you this.

22 MR. CLARY: Nothing further, Your Honor.

23 THE COURT: Mr. Tolchin.

(February 25, 1998)

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1 to do this?

2 I am just curious.

3 THE WITNESS: I believe he was hired.

4 THE COURT: I mean just to clean it all up, just
5 clean it all up, just write new covenants, write new bylaws,
6 make sure you are incorporated, just clean it all up.

7 THE WITNESS: Yes, we did ask him to bring out some
8 bylaws; and he did bring us some bylaws. And maybe this
9 second -- he wrote some for our association. He looked at our
10 old bylaws, and he did write some up for the association; but
11 we didn't particularly care for the way that he had written
12 them, and we sort of started back over again.

13 BY MR. CLARY: (Resuming)

14 Q. In fact, at the conclusion of your board term, had
15 the association -- had the board decided to reject the idea of
16 mandatory dues?

17 A. They had decided to reject the idea of mandatory
18 dues as well as homeowners' association.

19 Q. Okay.

20 THE COURT: When was that? When did they reject the
21 mandatory dues?

22 MR. CLARY: The end of her term was May 3rd, 1994.

23 THE WITNESS: I think we had a board meeting
(February 25, 1998)

1 sometime in April, and it was in that discussion.

2 THE COURT: Okay.

3 BY MR. CLARY: (Resuming)

4 Q. When you were doing all of these drafts, did you
5 review these drafts with your husband?

6 A. No, sir. He wasn't at any of the meetings that we
7 had.

8 Q. Did he participate at all in formulating ideas for
9 the bylaws?

10 A. He wasn't even asked.

11 Q. You identified Exhibit 58 as being notes that you
12 made to help keep Ruth Hurvitz aware of what was going on with
13 respect to the joint venture.

14 A. That's correct. She lives in California.

15 Q. Right.

16 Now, the joint venture, Hurvitz-Foster Joint
17 Venture, actually existed since 1973, didn't it?

18 A. That's correct.

19 Q. And it was after Hyman and Ruth Hurvitz died, then
20 Ruth and her sister Judy inherited that interest from their
21 parents, didn't they?

22 A. Yes.

23 Q. And there was, in fact, a disagreement with them
 (February 25, 1998)

1 that you all weren't entitled to continue to participate in
2 the joint venture, wasn't there?

3 A. That's right.

4 Q. And the document that Mr. Annino had introduced as
5 the Hurvitz-Foster Joint Venture, Exhibit Number 13, that was
6 the ultimate product in agreement that was finally reached
7 with Judy and Ruth Hurvitz, wasn't it?

8 A. Yes, it is.

9 Q. And there is actually another document that relates
10 to that that was executed simultaneously, wasn't there?

11 A. That's correct.

12 Q. And that -- what was the name of that document?

13 A. It's a declaration of trust, I believe.

14 Q. And that document was then recorded in the land
15 records of Fairfax County.

16 A. That's right.

17 Q. Mr. Annino drew your attention to one of the entries
18 on this log, Exhibit Number 58. And I would like to draw your
19 attention to an entry as well; and that is the entry of
20 October 18th, 19 -- I'm sorry -- October 18, 1992.

21 And I am going to read it and then ask you to
22 explain it.

23 "Jim called Ruth and left a message with her friend
(February 25, 1998)

1 that the agreement was not finalized as far as he knew and
2 that a spring meeting was fine. Call if she needs to talk to
3 him."

4 What are we talking about?

5 What agreement wasn't finalized?

6 A. The Hurvitz-Foster Joint Venture.

7 Q. Okay. And is it your recollection that it, in fact,
8 had not been signed as of that time?

9 A. Yes.

10 MR. CLARY: Okay. I would ask the reporter to mark
11 this document as the next Defendants' exhibit in order.

12 THE COURT: Six?

13 THE CLERK: Yes.

14 (Defendant's Exhibit No. 6
15 was marked for identification.)

16 BY MR. CLARY: (Resuming)

17 Q. Mrs. Foster, can you identify Defense Exhibit 6 --
18 I'm sorry. Let me show it to Mr. Annino.

19 I'm sorry. I didn't realize it's already in
20 evidence.

21 Can you tell me what Defendants' Exhibit 6 is?

22 A. This is the declaration of trust that went along
23 with -- supposedly with this agreement.

(February 25, 1998)

1 Q. Okay. And if you turn to the back of that document,
2 the signatures are notarized, are they not?

3 A. Yes, they are.

4 Q. And when was the document executed by Judy and Ruth
5 Hurvitz?

6 A. Let's see. I believe Judy -- Judith signed it on
7 May 3rd of 1993.

8 Q. 1993.

9 A. Ruth signed it April 16th, 1993.

10 Q. And when did your husband sign it?

11 A. And my husband signed it April 6th of 1993.

12 Q. Okay. And the beginning of the document, what is
13 the date that the document says it is made as of?

14 A. Made as of the 12th day of June of 1992.

15 Q. Thank you, ma'am.

16 Is it your recollection that both this document and
17 the Hurvitz-Foster agreement were signed at approximately the
18 same time?

19 A. Yes.

20 THE COURT: Do you want it introduced?

21 MR. CLARY: Oh, I guess I don't.

22 THE COURT: Which exhibit is it?

23 MR. ANNINO: It's 5.

(February 25, 1998)

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V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

----- x
:
GAIL STEPP, INDIVIDUALLY AND :
AS TRUSTEE, ET AL., :
:
Plaintiffs, :
:
-vs- :
:
JAMES A. FOSTER, INDIVIDUALLY :
AND AS TRUSTEE, ET AL., :
:
Defendants. :
:
----- x

In Chancery No. 146295

Courtroom No. 5F
Fairfax County Courthouse
Fairfax, Virginia

Thursday, February 26, 1998

The above-entitled cause came on for trial before
THE HONORABLE KATHLEEN H. MacKAY, Judge, in and for the
Circuit Court of Fairfax County, Virginia, at 10:02 o'clock
a.m., the proceedings being recorded by stenotype by
GENEVIEVE R. BATA of DSC Reporting, Inc.

(February 26, 1998)

* * *

1 you're going to have to do the storm water detention bonds
2 that Gail Stepp was talking about and all the drainage. And
3 that probably is as expensive, if not more expensive, than
4 the cost of the road.

5 THE COURT: How does Mr. Foster get to his house?

6 THE WITNESS: Mr. Foster, you might say, lives at
7 the end of Belmont Boulevard.

8 THE COURT: Is Belmont Boulevard in better shape
9 than Belmont Landing?

10 THE WITNESS: Belmont Boulevard is paved.

11 THE COURT: Go ahead, Mr. Annino.

12 BY MR. ANNINO: (Resuming)

13 Q. Now, what involvement did you have with George
14 Arnold in 1992?

15 A. For a period of about two years I became a member
16 of the Mason Neck Citizens' Association and served there as
17 an officer. I became a member of the Mount Vernon Council
18 and served there on the planning and zoning committee. And
19 George and I attended a lot of meetings together.

20 Q. What discussions did you have with him about estab-
21 lishing criteria for trustees?

22 A. Around the 1993 period we had had what we
23 considered a mandate from the November 1992 meeting where we

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1 felt that -- we found that the community wanted to again
2 improve the community area.

3 THE COURT: November 1992? What number was that
4 exhibit again please?

5 MR. ANNINO: Exhibit 14, Your Honor.

6 THE COURT: You've got one there, sir, in case you
7 need it.

8 THE WITNESS: I'm going to go without it.

9 THE COURT: That's all right.

10 BY MR. ANNINO: (Resuming)

11 Q. And during that time period, what discussion did
12 you have with Mr. Arnold about establishing criteria?

13 A. I believe the date that this transpired was -- they
14 had done the excavation for Tom Goeller's basement. And we
15 were going over -- I don't remember whether George came to my
16 house or whether I went to his house. One way or the other,
17 we got together on that Saturday morning.

18 And we were going over and we were looking at the
19 Goellers' basement. And George had stated that -- and I
20 believe Frits Vandenberg was included that day in the
21 conversation, but not this particular conversation -- we
22 could get a real good deal on getting the road graded;
23 because the equipment was already there and Dave Walker would

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1 give us a real good deal per hour for the use of the rental
2 on his bulldozer.

3 But we had had a conversation. And a lot of this
4 is hindsight, it's 20/20. Because it didn't -- I didn't have
5 a problem with it at the time, because I didn't understand
6 the difference between the covenants, the bylaws, and the
7 deed of trust.

8 And the conversation had to do with Gail Stepp and
9 serving as a trustee. And he was defining roles that he had
10 wanted Gail Stepp to serve in to be a trustee.

11 And the reason why I say the hindsight is 20/20 is:
12 What business does the president of the association have
13 telling an existing trustee what hoops he would have to jump
14 through to be a trustee?

15 I now believe that what transpired at that point
16 was we had a guy in the community that had been there since
17 the beginning. And if there was anybody that should have
18 been involved in the construction of that road, it should
19 have been somebody that had done that as an occupation.

20 Gail Stepp was opposed to spending money on the
21 road and not doing it properly, because they had spent money
22 on it in the past and it never lasted very long because of
23 the grade of that road.

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1 That road is -- let's just say it's in excess of
2 15% grade in a lot of areas. And what happens is, when it
3 rains and it rains hard, the water develops sufficient volume
4 and sufficient velocity that it just erodes. It becomes an
5 abrasive and takes the road with it.

6 So they knew that they were going to face
7 opposition from Gail Stepp in improvement of that road. So
8 it is my belief that he was marked at that point and labeled
9 a troublemaker.

10 And at that point what they were trying to do was
11 find a way around him. How do you eliminate him?

12 The community wants to improve this road. The
13 community wants to use Parcel A. Gail Stepp is in opposition
14 to the way that you want to do it.

15 THE COURT: Do you want to pose a question at this
16 point?

17 BY MR. ANNINO: (Resuming)

18 Q. What hoops was he talking about having Mr. Stepp
19 jump through?

20 A. They were talking about the requirements for a
21 trustee, the number of years you had to live in the
22 community. They were defining a role for him.

23 Q. Would those requirements also suit other

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1 individuals in the community?

2 A. No. These were tailored for Gail Stepp.

3 Q. What sort of requirements are you speaking of?

4 THE COURT: Wouldn't that show that they didn't
5 want to get him out of the process?

6 THE WITNESS: Excuse me?

7 THE COURT: If they were defining a role for a
8 trustee and they were defining it to pertain only to a
9 particular person with particular expertise and the only
10 person who would fit within that definition was Mr. Stepp,
11 weren't they in fact including him into the process rather
12 than excluding him from the process? Or what am I missing
13 here?

14 THE WITNESS: Your Honor, I believe what you're
15 missing in this process is the heart of the problem in this
16 community.

17 THE COURT: No. I am assuming there is a problem
18 and everything. I am just concerned with the mechanics.

19 THE WITNESS: Hear me through a couple of more
20 statements.

21 My whole time serving on the board the year --
22 I'm going to jump forward here, because I think that it's
23 pertinent.

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1 THE COURT: You said -- when did you meet at the
2 Goellers' home?

3 MR. CLARY: Excuse me, Your Honor. I think you're
4 confused a bit.

5 The reference to November '92 was the general
6 membership meeting at which there was a community mandate to
7 go forward.

8 THE COURT: Right. I've got it.

9 MR. CLARY: I think his conversation is somewhere
10 in the summer of '93.

11 THE COURT: Okay. What happened from that point,
12 sir?

13 THE WITNESS: From that point?

14 THE COURT: No.

15 What happened at the Goellers' house? What did you
16 conclude or what did you decide?

17 THE WITNESS: We concluded -- actually, at that
18 point I gave Frits, I believe it was, \$200 towards a
19 contribution towards the bulldozer work for the road. And we
20 kind of agreed that we would proceed with the improvement of
21 the road and the community area and see how far the money
22 would take us.

23 THE COURT: Go ahead, Mr. Annino, please.

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* * *

1 back together.

2 BY MR. ANNINO: (Resuming)

3 Q. And as a result of that meeting, your slate or your
4 suggestions were not followed?

5 A. That's right.

6 What we had done at the April 1995 board meeting is
7 I had said, "You know, I am aware of how the community is
8 supposed to run now. The trustees are the ones that are
9 supposed to appoint a slate. Let's let them appoint a
10 slate."

11 THE COURT: You mean in April '96?

12 THE WITNESS: Excuse me. That's right, Your Honor.

13 I said, "Let's let the trustees appoint a slate of
14 officers."

15 BY MR. ANNINO: (Resuming)

16 Q. Now --

17 A. I was trying to let them do the honorable thing.

18 Q. At that point in time what was your understanding
19 about who the trustees were?

20 A. I guess at that time, during the year that I served
21 on the board, we knew that Gail Stepp was declining to serve.

22 THE COURT: Tell me what you really knew about
23 that. Did you still think that he wasn't a proper trustee?

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* * *

1 Q. He had bought it actually several years before that
2 from the Hurvitz-Foster Joint Venture, hadn't he?

3 A. Okay. I know that he bought a number of lots in
4 there.

5 Q. Now, the area that was the subject of the request
6 to vacate the road was the very end of Belmont Landing Road
7 here (Indicating) down to the border of the subdivision?

8 A. Yes.

9 Q. And the request was made by the people who own this
10 parcel (Indicating) that has a "6" on it that's outside --

11 A. The two acres that Mike Markle -- the Markles own,
12 I believe.

13 Q. And they aren't part of the subdivision?

14 A. No, they're not.

15 Q. And Mr. Foster had no part in that request, did he?

16 A. Probably not.

17 THE COURT: If you don't know, sir, you don't know.

18 THE WITNESS: I don't know.

19 THE COURT: You don't have to manufacture answers.
20 Just say you don't know.

21 THE WITNESS: I understand. And I don't know.

22 BY MR. CLARY: (Resuming)

23 Q. You described a -- and I wouldn't really call it a

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1 meeting. But you and apparently Mr. Vandenberg met at
2 Mr. Goeller's. And I'm not sure who else.

3 It was Mr. Vandenberg and --

4 A. George Arnold.

5 Q. And Mr. Arnold and you.

6 Was Mr. Goeller there too?

7 A. No. His house was a hole.

8 Q. Well, that's right. There wasn't anything to live
9 in there.

10 And I believe this is the -- this is the event when
11 in -- this is in the summer of 1993, right?

12 A. Okay.

13 Q. And the three of you discussed that it was -- that
14 you could get a good deal on getting Dave Walker there?

15 A. We did.

16 Q. You did get a good deal?

17 A. We sure did.

18 Q. Is part of that because you didn't pay for the cost
19 of moving the equipment to the job site and away from the job
20 site?

21 A. That was the initial attraction.

22 But in the end we got a real good deal for a number
23 of -- and that was one drop in the bucket in comparison to

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1 the whole package in the end.

2 Q. Okay. So there were a variety of reasons that in
3 essence resulted in you all getting one heck of a deal?

4 A. That's correct.

5 Q. And you felt so enthusiastic about it that you put
6 up an additional -- you gave Frits an additional 200 right
7 there?

8 A. Sure did.

9 Q. I believe you testified that Jim Foster played
10 absolutely no part in that.

11 A. I believe. I could be mistaken here. But I
12 believe during that period of time Jim --

13 Q. I'm asking about when you and George Arnold and
14 Frits --

15 A. No, he did not. That's right.

16 Q. And that was when the decision was made to go out
17 and get Mr. Walker?

18 A. That's right.

19 Q. I mean, you gave the money to Frits to go hire him?

20 A. That's right. I was party to it.

21 Q. Okay. And as I recall, the work that you were
22 going to have Mr. -- that you were getting Mr. Walker to do
23 was the work that, as you described it, was the mandate of

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1 the community at the November 30th, 1992, general membership
2 meeting?

3 A. Yes. That's correct.

4 Q. And in fact, sir, actually at that meeting you'll
5 recall that Dr. Polifko and Mr. Vandenberg were the chair --
6 the co-chair of the park committee?

7 A. Okay.

8 Q. And actually that appointment went back to February
9 of 1992, didn't it?

10 A. One of the problems with --

11 Q. Sir, I'm sorry. You'll have to answer my
12 questions.

13 A. Okay.

14 Q. And generally they're yes or no.

15 A. Okay.

16 Q. In fact, that appointment to the park committee
17 went back to February of 1992, didn't it?

18 A. I don't know.

19 Q. All right. Are you aware that in fact there was a
20 discussion and minutes of an April 1992 board meeting at
21 which Dr. Polifko described the idea of opening up the access
22 to the park and doing a walking trail?

23 A. I remember that.

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1 Q. Okay. And in fact -- at the November 1992 meeting,
2 in fact Mr. Vandenberg and Mr. Polifko laid out the whole
3 plan of what -- it was kind of a two-year plan, wasn't it?

4 A. Yes.

5 Q. Okay. And the plan included clearing Rio Vista
6 Drive, which was the access road to the park, so people could
7 get down there with vehicles and boats and things like that;
8 isn't that correct?

9 A. Yes.

10 Q. It included a walking trail; isn't that correct?

11 A. Yes.

12 Q. Okay. And in fact, at that very meeting -- the
13 November 1992 general membership meeting -- because of the
14 plan and to pay for the plan, there were motions made and
15 approved by the general membership to increase the dues to
16 residents to \$80 per year as opposed to the \$35 that they had
17 been prior to that and \$40 a year for nonresidents; isn't
18 that correct?

19 A. Yes.

20 Q. And that -- the purpose of that was to finance
21 these improvements, wasn't it?

22 A. Yes.

23 Q. And those motions -- those were motions made at the

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1 meeting and approved by the general membership, weren't they?

2 A. I agree.

3 Q. Mr. Drye, you discussed a little bit a meeting at
4 your house prior to the general membership meeting in 1995;
5 do you recall that?

6 A. Yes.

7 Q. And in fact, you called the meeting, didn't you?

8 THE COURT: Which meeting was that, sir?

9 THE WITNESS: I would not characterize it that way.

10 BY MR. CLARY: (Resuming)

11 Q. You were one of the promoters who wanted to have
12 the meeting, weren't you?

13 A. Yes.

14 Q. And in fact, you hosted it at your house?

15 A. Yes.

16 Q. And the meeting was not a meeting of any board but
17 rather was a meeting of, I think you would probably agree
18 with me, what was concerned citizens of the community?

19 A. That's true.

20 Q. So it wasn't an official association meeting?

21 A. No, it was not.

22 Q. And the reason, I understand, that you felt it was
23 appropriate -- you don't think there was anything wrong with

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* * *

1 A. I was not at the May of 1995 meeting.

2 | Q. I am looking at the May of 1994 meeting.

3 A. I served from '95 to '96. So I was elected in '95,
4 so I had to have been at that meeting.

5 That was the one that I said my wife and I got to
6 very late, just when there was a vote.

7 So this is the one the year before.

8 Q. So you were not at that meeting?

9 A. I don't think I was at this meeting.

10 Q. So your testimony earlier referred to discussions
11 at the May 1995 meeting?

12 A. My testimony regarding what?

13 Q. Regarding Mr. Stepp's trusteeship.

14 A. The meeting that I remember that I was at when Gail
15 declined to serve as a trustee --

16 Q. Trustee of what?

17 A. Well, that's what becomes ambiguous.

18 And I'm trying to remember whether it was the
19 November -- I don't believe they were at the November '92
20 meeting. So it had to have been a later meeting.

21 Q. Would it help you to look at the minutes of the May
22 1994 meeting, which is Exhibit No. 65?

23 That's the first document after the admissions,
(February 26, 1998)

1 Your Honor.

2 Does that refresh your recollection at all,
3 Mr. Drye?

4 A. Not yet.

5 Okay. Yes.

6 Because I counted votes at this meeting. And this
7 was also the meeting where, in an effort to promote harmony
8 in the community, that I suggested that we let people that
9 had not paid their dues vote. So I was at that meeting.

10 Q. And if you look back at the agenda I referred to --
11 Exhibit 17, I believe.

12 A. Okay. We're going back to --

13 Q. No. 37. I'm sorry.

14 A. Okay. Go ahead.

15 Q. To the best of your knowledge, would the board
16 resolutions there be the resolutions that you believe were
17 made at the meeting?

18 A. I don't have any problems with that.

19 Q. Okay. Now, with respect to the mandate from the
20 community that you testified to --

21 THE COURT: Was there a point to that?

22 MR. ANNINO: Pardon?

23 THE COURT: What was the point of that question?

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1 MR. ANNINO: The resolutions, Your Honor --

2 THE COURT: I am just concerned I missed it.

3 MR. ANNINO: The ratification of the board's
4 nomination of Gail Stepp as trustee of the community
5 association and the amendment to the bylaws establishing the
6 criteria.

7 THE COURT: Okay.

8 BY MR. ANNINO: (Resuming)

9 Q. The mandate from the community that you talked
10 about earlier --

11 A. Right.

12 Q. -- did that include doing the roadwork without a
13 permit?

14 A. No.

15 Q. Did it include contracting for the work without a
16 specific scope?

17 A. No.

18 Q. And did it include expenditures in excess of the
19 budget?

20 A. I don't think dollars were discussed there other
21 than raising the dues.

22 Q. Are you aware of any time prior to that where the
23 association had spent that kind of money to do work?

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1 I believe that she had --

2 BY MR. ANNINO: (Resuming)

3 Q. Let me direct you to a specific time period.

4 Were you at the May 1996 meeting when Mrs. Benson
5 was told she couldn't vote because she hadn't paid her dues?

6 A. I don't have a memory of that.

7 MR. ANNINO: I don't have anything further,
8 Your Honor.

9 MR. CLARY: Your Honor, may I -- I have just a
10 short -- one little element of redirect.

11 RECROSS-EXAMINATION

12 BY MR. CLARY:

13 Q. This May 3rd, 1994, membership meeting, sir, where
14 you counted the votes and Gail refused to serve as trustee --

15 A. Yes.

16 THE COURT: You know, are we -- I am concerned that
17 we're terribly involved in the issue of semantics with regard
18 to the issue of Mr. Stepp.

19 MR. CLARY: And I am going to move past that. I
20 just want to -- it is --

21 THE COURT: Well, he said that he said, "I refuse
22 to serve as a trustee because I already am a trustee."

23 MR. CLARY: This witness didn't say that.

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1 THE COURT: No. Mr. Stepp says that.

2 MR. CLARY: Yes, ma'am, he did. He did say that.

3 But the subject of the semantics is not the subject
4 of my recross.

5 THE COURT: You can ask the question again please.

6 BY MR. CLARY: (Resuming)

7 Q. After whatever it was that Mr. Stepp said -- and
8 the minutes say he declined; that's all it says -- the fact
9 of the matter is that after he declined there weren't any
10 other nominations of a trustee, were there?

11 A. No.

12 Q. There wasn't any election of a trustee, was there?

13 A. You would have to state a period of time there.

14 Q. At this May 3rd, 1994, meeting.

15 A. No.

16 Q. So that would sort of suggest that the nomination
17 wasn't for the purpose of holding an election, would it?

18 A. That's correct.

19 Q. And in fact, Mr. Lear at this point in time is
20 70-some odd years old, isn't he?

21 A. I don't have any -- he is an older gentleman.

22 Q. Would it be a reasonable explanation that he got
23 the word "nominated" from the agenda?

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1 A. Sure.

2 MR. CLARY: Nothing further.

3 MR. TOLCHIN: I just have one or two follow-up,
4 Judge.

5 THE COURT: I'll give you two questions. That's
6 it, Mr. Tolchin.

7 RECROSS-EXAMINATION

8 BY MR. TOLCHIN:

9 Q. If you'll turn to Exhibit 43, which is the May 1995
10 minutes.

11 A. Okay.

12 Q. And you say that you attended at least part of this
13 meeting; is that correct?

14 A. That's right.

15 Q. At which you were elected treasurer, I guess,
16 against Marie Stepp?

17 A. That's correct.

18 Q. Now, do you recall Marie Stepp declining to give
19 the treasurer's report because of the failure of the board to
20 follow a certain point of the bylaws and having a meeting
21 before -- a board meeting before?

22 A. We got there just before the vote. I mean, we just
23 made it in the nick of time. And I remember the vote was --

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1 such things as the grass cut, what improvements that the
2 community might or might not want, just the general condition
3 of the park and how to improve it.

4 Q. And was there any formal proposal made or adopted,
5 to the best of your recollection, at that meeting?

6 A. There was no proposal or motion made that I am
7 aware of or can recollect, to the best of my recollection.

8 Q. Did there come a time when you learned of some
9 roadwork on Rio Vista Drive?

10 A. Yes, sir. That's correct.

11 Q. And when was that?

12 A. It was sometime, I would say, in the spring of '93,
13 I believe.

14 Q. How did you learn about it?

15 A. Well, as in previous testimony by numerous
16 witnesses, Mr. Goeller was building a house at that time.
17 And there was construction activity in the community.

18 And I observed a loader going up and down Rio Vista
19 Drive.

20 Q. What did you do in response?

21 A. Well, at one time it prompted my curiosity so much
22 that I went down and talked with the loader operator, who was
23 Mr. Walker.

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1 Q. And what did he tell you he was doing?

2 A. I asked him, "What's going on here?" I said, "I
3 understand you've been working up at Mr. Goeller's house.
4 But what's going on here?"

5 MR. CLARY: I'm going to object to any statements
6 about what Mr. Walker said.

7 THE COURT: Overruled.

8 I think it's of no real importance.

9 MR. CLARY: Mr. Walker is a tractor operator.

10 THE COURT: But he is just telling me he's doing
11 roadwork. This is not a big deal.

12 BY MR. ANNINO: (Resuming)

13 Q. Would you relate that conversation to the Court.

14 THE COURT: You can go ahead.

15 You already said that. I think you already
16 answered the question.

17 BY MR. ANNINO: (Resuming)

18 Q. What did Mr. Walker tell you he was doing?

19 A. He had told me that --

20 MR. CLARY: Just again for the record, we have a
21 standing objection to hearsay on this.

22 THE COURT: Isn't there a general stipulation that
23 Mr. Walker was engaged to and was in fact working on the

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1 road? Isn't that something we can all agree to?

2 MR. CLARY: Yes.

3 I just don't know what he's going to say Mr. Walker
4 said.

5 THE COURT: Did Mr. Walker say something other than
6 that?

7 THE WITNESS: That he was working on the road?

8 Yes, ma'am, he did.

9 THE COURT: What did he -- I don't know -- what
10 other matter did he discuss with you?

11 THE WITNESS: Well, we discussed the nature of the
12 work on the road.

13 THE COURT: Oh, he can answer that.

14 Go ahead. Answer that.

15 THE WITNESS: Okay. I asked Mr. Walker, you know,
16 who had hired him or contracted him or, you know, where did
17 he get the authorization to work on this road.

18 And he told me Frits Vandenberg and Jim Foster were
19 in charge of it.

20 MR. CLARY: Your Honor, this is why I didn't want
21 this --

22 THE COURT: That's why you objected.

23 MR. CLARY: That's right.

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1 THE COURT: I'm going to honor your objection to
2 that latter portion of his testimony.

3 BY MR. ANNINO: (Resuming)

4 Q. What's your understanding of Mr. Walker's condition
5 today?

6 A. He is incapacitated, as the best of my knowledge.

7 I believe at one board meeting Mr. Foster asked us
8 to solicit funds from the board members to contribute to a
9 fund for --

10 MR. CLARY: Your Honor, before he makes this
11 statement, I would ask -- there has to be a foundation laid
12 for this testimony.

13 And I think Your Honor will discover that this
14 gentleman wasn't at that meeting, so he has no foundation for
15 it.

16 THE COURT: The only question for you, sir, was:
17 Mr. Walker is incapacitated, is he not?

18 THE WITNESS: Yes, he is.

19 THE COURT: You only need answer that question.
20 And I think you answered affirmatively.

21 THE WITNESS: Yes.

22 THE COURT: All right. Next question. And,
23 Mr. Annino, direct his answers so that he is not in the dark

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* * *

1 MR. TOLCHIN: And therefore, we would object to
2 the admission of any document that he can't even recognize
3 signatures on.

4 THE COURT: Mr. Annino, under what theory could I
5 admit this document? There are definitely people who can
6 testify as to their signatures on this document. But how can
7 I admit the whole document?

8 MR. ANNINO: Let me ask a few more questions.

9 THE COURT: But give me what the theory would be,
10 no matter how many questions you ask.

11 MR. ANNINO: If he is the president of the
12 organization and there was a record that the organization
13 kept under the ordinary course of its business.

14 THE COURT: Go ahead.

15 BY MR. ANNINO: (Resuming)

16 Q. Mr. Edwards, as a result of the filing of the
17 Amended Bill of Complaint, what action did you take to
18 re-establish Belmont Bay Community Associates?

19 A. Well, there was -- I'm going to say it was an
20 informal meeting. And this testimony has already been
21 acknowledged by Mrs. Stepp. There was an informal meeting.

22 Mrs. Stepp -- I mean -- that's correct.
23 Mrs. Stepp, Michels, and myself was there.

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1 Due to the court order, there had to be a
2 representative of who the old association was, who was their
3 representative. And I stepped forward and said I would be
4 the one.

5 Q. And what action did you take after that meeting to
6 obtain other members' signatures?

7 A. We made attempts to send these out to, you know,
8 obtain signatures and went through the community as well.

9 We knew certain people felt strongly about this and
10 that they would sign this. We also knew that other people
11 thought the other way. It was clear-cut at this time.

12 Q. And as a result of those contacts, what happened?

13 A. The members that signed these, acknowledging that
14 they are a part of the original Belmont Bay Community
15 Associates, that that's the way they felt. They felt that we
16 weren't incorporated correctly, that we were incorporated
17 under false pretenses. I hope I'm saying that correctly.

18 What was -- we was under the impression that
19 Belmont Bay Community Associates was going to be incorporated
20 and it had the same duties as the old association --
21 Associates -- did. And in turn, Belmont Bay Community
22 Association, which is now Belmont Bay Community Association,
23 Incorporated, is a different organization. It's not

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1 Belmont -- see, there is a distinction.

2 If you look up "associates" and you look up
3 "association" in the dictionary, there is two completely
4 different meanings.

5 THE COURT: He is just trying to get this document
6 in.

7 BY MR. ANNINO: (Resuming)

8 Q. You're a representative of the organization and
9 would keep the records of the organization?

10 A. Yes.

11 Q. And is that a record that you would keep in the
12 ordinary course of your business?

13 A. Yes.

14 MR. ANNINO: I would offer that exhibit,
15 Your Honor.

16 MR. TOLCHIN: May I voir dire him on that?

17 THE COURT: Yes, but limited. It's now 2:30. And
18 I -- do I --

19 MR. ANNINO: That's all the questions I have.

20 THE COURT: All right. Voir dire him on it.

21 VOIR DIRE

22 BY MR. TOLCHIN:

23 Q. Now, you say this is kept in the regular course of
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1 your business?

2 A. As me being the newly duly appointed -- per the
3 Bill of Complaint, the Second Amended Bill of Complaint, it
4 says that we needed a representative.

5 Q. And who appointed you the representative?

6 A. I answered that the same way Marie answered it in
7 her testimony; that me and Marie and the Michelses, we were
8 all former board members of the original Belmont -- we are
9 the last existing remnants of Belmont Bay Community
10 Associates.

11 Do you agree or disagree?

12 Q. I can't answer questions.

13 A. Okay. I'm sorry.

14 Q. But if you want my answer, I'll give it later.

15 A. Okay. That's fine.

16 On that basis, does that answer your question?

17 Q. Well, did Mrs. Payne, who signed the first sheet
18 apparently or her signature appears there -- did she appoint
19 you president or vote for you for president?

20 A. When she signed the acknowledgement and consent
21 form, I'm sure she agreed to it.

22 Q. Does it say anything on there about you being
23 president and the custodian of records?

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1 A. Somebody had to be.

2 Q. But Mrs. Payne doesn't know it's you, does she?

3 She has no idea to this idea, as far as you know?

4 A. It would only be hearsay. I know she does. But it
5 would be hearsay.

6 Q. I can't read some of these names here.

7 But there was no disclosure, no election, no
8 meeting, nothing that made you the president, isn't that
9 right, other than you, Mrs. Michels, and Mrs. Stepp got
10 together?

11 A. Excuse me, Mr. Tolchin. But the Second Amended
12 Bill of Complaint directed us to do this.

13 We were asking for the court's legal help. We was
14 asking the court to guide us. Because we was in litigation,
15 we didn't want to do anything until the court decided what we
16 should do and what direction we should have went.

17 Q. Let me just clarify.

18 You didn't send out any notices of meetings for
19 this meeting that you were elected, did you?

20 A. No, sir.

21 Q. You didn't ask anybody else to vote for you, did
22 you?

23 A. It didn't ask -- that's not what the Bill of

(February 26, 1998)

1 Complaint said. It said we had to have a representative.

2 You're twisting things.

3 MR. TOLCHIN: Your Honor, we would object to the
4 admission of these documents. There is no business there
5 that these can be a record of.

6 THE COURT: Mr. Annino, can you tell me please what
7 the order is that he's referring to. I am trying to find it
8 in the file. Was it Judge Roush's order?

9 MR. ANNINO: It was the order after the demurrer to
10 the original Complaint that hadn't joined all the lot owners
11 as necessary parties.

12 THE COURT: What was the import of the order?

13 MR. ANNINO: The import of the order directed all
14 parties in the subdivision to be joined at the insistence of
15 the trustees -- Belmont Bay Community Associates.

16 It put us in a position of quandary, because the
17 corporation was taking the position that it was the successor
18 to Belmont Bay Community Associates. And the court order in
19 effect ordered the original reorganization be reconstituted.
20 And that's what we had to do in order to comply with the
21 requirement that Belmont Bay Community Associates be joined
22 in the proceeding.

23 MR. TOLCHIN: Your Honor, I am looking at the

(February 26, 1998)

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V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

- - - - - x

GAIL STEPP, INDIVIDUALLY AND :
AS TRUSTEE, ET AL., :

Plaintiffs, :

-vs- :

JAMES A. FOSTER, INDIVIDUALLY :
AND AS TRUSTEE, ET AL., :

Defendants. :

- - - - - x

In Chancery No. 146295

Courtroom No. 5F
Fairfax County Courthouse
Fairfax, Virginia

Monday, March 2, 1998

The above-entitled cause came on for trial before
THE HONORABLE KATHLEEN H. MacKAY, Judge, in and for the
Circuit Court of Fairfax County, Virginia, at 10:03 o'clock
a.m., the proceedings being recorded by stenotype by
GENEVIEVE R. BATA of DSC Reporting, Inc.

(March 2, 1998)

* * *

1 A. Yes.

2 Q. And you did that in 1992?

3 A. Yes.

4 Q. And there is no budget for 1993 that was submitted
5 to the general membership, to your knowledge?

6 A. To my knowledge, it's not found. I do not know.

7 Q. Was the information, to your knowledge, about the
8 alleged problem at the courthouse reported to Mr. Foster or
9 Mr. Lear?

10 A. I reported it to the board.

11 Q. And Mr. Lear was on the board?

12 A. Yes, he was.

13 Q. And Mrs. Foster was on the board?

14 A. Yes, she was.

15 Q. Do you know whether or not Mr. Foster was aware of
16 it?

17 A. I do not know.

18 Q. Now, there came a time when you submitted a letter
19 of resignation as treasurer?

20 A. I did that.

21 Q. And would you tell the Court why that was.

22 A. Okay. We had our money with Crestar Bank. They
23 were either going to charge us a service charge per month or

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1 they were going to not send statements or something. So I
2 went to four different banks -- Signet, Crestar, Ameribanc,
3 and Nations -- to see where we could put our money for the
4 best possible rate -- interest rate or something, so that we
5 wouldn't be losing money.

6 And I withdrew the money from Crestar in April.
7 And I thought I was just going to take it right down to
8 Ameribanc and deposit it.

9 Then I found out, because I told them that we were
10 going to be incorporated -- and they said, "Well, you have to
11 have an SS-4 form."

12 So then I had to call. And they said they would
13 mail me one, that it would take two to three weeks.

14 Instead of waiting for that, Mrs. Foster and I
15 located a bank in the area in Manassas. And we went out
16 there and got an SS-4 form. And I turned that in to
17 Mr. Arnold.

18 Well, one thing led to another. And it wasn't
19 progressing in a timely manner. And I had had this money out
20 for about a month. And my husband was working overseas at
21 the time, and I was taking a trip to Cairo and Jiddah. And I
22 thought that maybe something would be done when I came back.
23 And it still wasn't.

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1 I had checks to deposit. And we still didn't have
2 an account.

3 And they wanted to know the account number. And I
4 just -- a new taxpayer ID. They had a taxpayer ID number
5 that belonged to one of the former members out there.

6 And I didn't want my Social Security number on it.
7 So it just got delayed and delayed. And I said, "If I can't
8 resign this -- because I am responsible for these people's
9 money. And if I can't get it in a bank, I'm out of it."

10 And I said I would be happy to resume my duties as
11 soon as it got resolved. And it was resolved. And I again
12 resumed as treasurer.

13 Q. Did Mr. Arnold tell you to deposit it as a
14 corporation?

15 A. We were going to be incorporated.

16 I don't recall what he said. But the bank was
17 saying "Well, if you're a corporation, you have to have one
18 number."

19 But we weren't incorporated as of that time in
20 April of '93. So I didn't have that number. And I was in a
21 dilemma. It was frustrating.

22 THE COURT: That would drive me nuts.

23 THE WITNESS: Yes.

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1 BY MR. ANNINO: (Resuming)

2 Q. And you didn't want to fill out the SS-4 form?

3 A. Not with my Social Security number, no.

4 THE COURT: That would be insane to do that.

5 BY MR. ANNINO: (Resuming)

6 Q. So what did you do with the form?

7 A. I gave it to Mr. Arnold.

8 Q. And then you subsequently submitted a letter of
9 resignation, correct?

10 A. Well, that was done first, yes. And then I resumed
11 my duties after that was resolved.

12 THE COURT: Was that in the middle of 1993?

13 THE WITNESS: It was in '93. It was during May of
14 '93.

15 THE COURT: That's when you first started as
16 treasurer, wasn't it?

17 THE WITNESS: May of '90.

18 1990 to 1994, I was treasurer.

19 THE COURT: Oh, I'm sorry. I missed that.

20 You were treasurer for a long time then, huh?

21 THE WITNESS: Yes.

22 THE COURT: Okay, Mr. Annino.

23 MR. ANNINO: I don't have any other questions,

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1 Your Honor.

2 THE COURT: Thank you.

3 Mr. Clary or Tolchin, who wants to go first?

4 I expect you to be very brief, Mr. Clary.

5 MR. CLARY: Yes, ma'am.

6 THE COURT: I mean, Mr. Annino has been brief. I
7 don't really see the point in going very long.

8 CROSS-EXAMINATION

9 BY MR. CLARY:

10 Q. Mrs. Medlin, you were the treasurer from '90 to
11 '94?

12 A. Yes.

13 Q. You were not the secretary?

14 A. No.

15 Q. You were not in charge of sending out notices, were
16 you?

17 A. No.

18 Q. So in fact, notices could have been sent out by
19 somebody else?

20 A. Yes.

21 MR. ANNINO: Objection. Speculative.

22 THE COURT: Overruled.

23 Go ahead.

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1 BY MR. CLARY: (Resuming)

2 Q. In fact, before your list, you are aware that
3 Mr. Drye had provided a list to Mr. Arnold, aren't you?

4 A. I heard that in testimony, yes.

5 Q. And it's quite possible that that list could have
6 been used before your list to send out notices to lot owners?

7 A. Yes.

8 Q. With respect to the discovery of the apparent
9 recordation error out at the County, no one believed that
10 Mr. Stepp wasn't the trustee, did they?

11 MR. ANNINO: Objection to what no one believed.

12 THE COURT: Sustained.

13 BY MR. CLARY: (Resuming)

14 Q. To your knowledge, was there anyone who believed
15 that Mr. Stepp wasn't a trustee?

16 A. No.

17 MR. ANNINO: Objection. Same objection.

18 It calls for this witness --

19 MR. CLARY: I'm sorry. This is a different
20 question.

21 THE COURT: It's a different question.

22 I think she can testify as to what she thought the
23 overall consensus of the governing body was.

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1 Go ahead.

2 BY MR. CLARY: (Resuming)

3 Q. What did you understand the overall consensus of
4 the governing body to be with respect to Mr. Stepp's status?

5 A. When we found the clerical error at the County,
6 everyone had thought that Mr. Stepp was the real trustee.

7 Q. And Mr. Annino asked about who you had reported
8 this error to.

9 In fact, you reported the error and how to fix it
10 at the general membership meeting May 3rd, 1994, didn't you?

11 A. Yes.

12 Q. Okay. And that was a part of the explanation that
13 was the --

14 MR. ANNINO: Objection.

15 BY MR. CLARY: (Resuming)

16 Q. -- that was what happened before Mr. Arnold asked
17 Mr. Stepp if he would agree to do that, wasn't it?

18 A. That is correct.

19 THE COURT: Overruled.

20 Was that May '93?

21 MR. CLARY: May 3rd, 1994, Your Honor.

22 BY MR. CLARY: (Resuming)

23 Q. And in response to the offer from Mr. Arnold to
(March 2, 1998)

1 correct the record out at the County, what did Mr. Stepp say?

2 MR. ANNINO: This is beyond the scope of direct,
3 Your Honor.

4 THE COURT: Overruled.

5 Did she hear him?

6 Were you in the presence of Mr. Stepp when this
7 conversation was going on?

8 THE WITNESS: Yes, I was.

9 BY MR. CLARY: (Resuming)

10 Q. Do you recall what he said?

11 A. Yes. He declined to serve.

12 THE COURT: Well, ma'am, that isn't what he said.
13 That's your take on it.

14 THE WITNESS: He said no.

15 THE COURT: I want you to say exactly what you
16 heard him say. I want you to tell me what you heard
17 Mr. Foster say and then Mr. Stepp, if you can recall.

18 If you can't recall, you can't recall.

19 THE WITNESS: Mr. Arnold was talking to Mr. Stepp
20 to serve as our trustee.

21 And Mr. Stepp sat there for a while. And he
22 thought about it. He said, "No. I don't want to.

23 And then he asked him again -- Mr. Arnold did.

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1 He said, "No. I'm just not interested. In fact,
2 I am not even interested in belonging to the whole associa-
3 tion."

4 And then Mr. Foster spoke up and he said, "Gail, I
5 really wish you would reconsider."

6 And he shook his head and said, "No. I'm not
7 interested."

8 BY MR. CLARY: (Resuming)

9 Q. And -- I'm sorry. I didn't mean to interrupt you.

10 A. No. That's okay.

11 In fact, I thought they had even resigned from the
12 association.

13 Q. Mr. Annino asked you if when you were collecting
14 dues you told people that it was a voluntary association.
15 And you said no.

16 Was that because it was your understanding that
17 everyone realized that it was a volunteer organization?

18 A. Yes.

19 Q. So the statement really wasn't necessary, was it?

20 A. No, it was not.

21 MR. CLARY: Nothing further.

22 THE COURT: Thank you.

23 Mr. Tolchin?

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1 attorney and things of this nature?" these are regular
2 people, Your Honor. It doesn't always occur to them to go to
3 a lawyer.

4 Moreover, as Mr. Hipp, I think, testified, the tax
5 records are governmental records of ownership. Why on earth
6 wouldn't she think that they're right?

7 But the main thing is --

8 THE COURT: The community's organization, no matter
9 what I do, is completely botched up. I mean, I know it
10 doesn't have anything to do with the motion to strike. But
11 everyone is going to walk out of here today, tomorrow, or the
12 next day. And everyone will have spent about \$100,000, as I
13 calculate, for this lawsuit. And they are going to be in as
14 bad a position when they walk out of this courtroom as they
15 were when they walked in. Because their governing documents
16 don't govern them.

17 Am I wrong on that?

18 MR. CLARY: I don't -- I agree with Your Honor that
19 the Articles of Incorporation and bylaws are those of a
20 voluntary association.

21 But, Your Honor, I am not here representing the
22 community.

23 THE COURT: I know you're not.

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* * *

1 BY MR. TOLCHIN: (Resuming)

2 Q. Are there any minutes of meetings between 1987,
3 '88, '89, until Mr. Arnold became president in 1990?

4 A. There are no minutes of any meetings that
5 Gail Stepp had when he was president.

6 Q. Who was president during those years?

7 A. Gail Stepp.

8 MR. ANNINO: Objection, unless this witness is
9 speaking from personal knowledge.

10 BY MR. TOLCHIN: (Resuming)

11 Q. Do you have personal knowledge of who was president
12 during those years?

13 A. We moved into our house --

14 THE COURT: I think she can testify as the
15 custodian of the records that she has been unable to find, if
16 that's in fact what she is saying, any record in her files
17 since she's taken over as president of what has --

18 MR. TOLCHIN: The minutes of any meetings during
19 '87 to '90.

20 THE COURT: From what time period?

21 MR. TOLCHIN: From sometime in 1986-87 through
22 1990, when Mr. Arnold was elected president.

23 THE COURT: Okay. I think she can say that.

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1 BY MR. TOLCHIN: (Resuming)

2 Q. And do you know who was president back then?

3 A. Yes, I do.

4 Q. And who was president?

5 A. Gail Stepp.

6 Q. And when did you move into the community?

7 A. Probably two weeks after he was elected president
8 in 1986.

9 Q. And you've been living there since?

10 A. Yes, I have.

11 Q. And from 1986 through 1990, did you get any notices
12 of any meetings that Mr. Stepp was holding?

13 A. None whatsoever.

14 Q. And who was elected in 1990 as president?

15 A. George Arnold.

16 Q. And when Mr. Arnold was elected, was there any
17 change in the way business was being done at BBCAI?

18 A. Yes, there was.

19 Q. What was that change?

20 MR. ANNINO: I'm going to object to her testifying
21 to what Mr. Arnold did.

22 MR. TOLCHIN: She is testifying as to what she saw
23 in the organization, not what Mr. Arnold did.

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1 A. It's their choice whether they want to be a member
2 of BBCAI or not.

3 Q. And have they chosen to be a member or not to be a
4 member?

5 A. Not be a member.

6 MR. TOLCHIN: No further questions of this witness.

7 MR. CLARY: I just have a couple to supplement.

8 CROSS-EXAMINATION

9 BY MR. CLARY:

10 Q. Mrs. Arnold, I gather the road project then, at
11 least with respect to clearing the access road and doing the
12 work down at the park, initially originated in 1988?

13 A. Say again please.

14 Q. Do I understand your testimony correct that the
15 first thoughts about opening up the road access-way to the
16 park and doing the trail down there began in 1988?

17 A. The road was always open. It was -- the
18 discussions in 1988 were to improve the road to make the
19 access better.

20 Q. Okay. And ultimately a plan was evolved by
21 Mr. Vandenberg and Mr. Polifko in roughly April of 1992?

22 MR. ANNINO: Objection. Leading.

23 MR. CLARY: I'm sorry. This is cross-examination.

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1 THE COURT: It's cross-examination.

2 MR. ANNINO: The parties are aligned together.

3 THE COURT: I don't know how else to do these
4 proceedings so they make sense.

5 THE WITNESS: Correct.

6 BY MR. CLARY: (Resuming)

7 Q. And in fact, this whole plan was approved at the
8 general membership meeting of November of 1992, that I think
9 you heard Mr. Drye testify to, that was the community's
10 mandate to do this?

11 A. Correct.

12 Q. So it would be accurate to say that Mr. Foster had
13 nothing to do with originating this project?

14 A. Correct.

15 Q. Would it also -- I note that in the minutes of the
16 directors' meeting January 14th, 1991, which are handwritten,
17 there is a notation that in fact says "Questions about
18 incorporation."

19 Do you recall that?

20 A. It's in my handwriting. But I don't remember it
21 per se.

22 Q. Okay. All right.

23 To the extent of your recollection, was the subject

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1 being considered even in January of 1991?

2 A. Yes, it was.

3 Q. And in fact, as the custodian of records in the
4 1975-1976 time frame, there are in fact minutes of the board
5 meetings even back then about exploring the idea of
6 incorporating, are there not?

7 A. Yes, there are.

8 Q. With respect to the concept of a homeowners'
9 association and the ability to have mandatory dues, would it
10 be accurate to say that Mr. Foster had absolutely no
11 participation or origination in those ideas?

12 A. He did not.

13 MR. CLARY: Nothing further.

14 CROSS-EXAMINATION

15 BY MR. ANNINO:

16 Q. Mrs. Arnold, when did you move into the community?

17 A. February 1986.

18 Q. So you don't know what happened in the community
19 prior to that time; is that true?

20 A. Yes, I do.

21 Q. From your own personal knowledge?

22 A. My own personal knowledge, no.

23 Q. With respect to the assembling of this exhibit that

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1 MR. CLARY: So while it may seem slightly out of
2 sequence, unfortunately I have to call him today in order to
3 get him in. And I think the next witness after him may
4 finish the afternoon.

5 Mr. Tom Goeller please.

6 THE COURT: Mr. Annino, do you have any objection
7 to having this out of turn?

8 MR. ANNINO: No, Your Honor.

9 (Whereupon,

10 TOM GOELLER

11 was called as a witness by and on behalf of the defendants
12 and, having been first duly sworn, was examined and testified
13 as follows:)

14 DIRECT EXAMINATION

15 BY MR. CLARY:

16 Q. Mr. Goeller, would you please state your name for
17 the record?

18 A. Tom Goeller.

19 Q. And how do you spell the last name?

20 A. G-o-e-l-l-e-r.

21 Q. Just to clarify things, you are Mr. Marvin Lear's
22 son-in-law; is that correct?

23 A. Correct.

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1 THE COURT: Is that how you knew about the
2 community then?

3 THE WITNESS: Well, we live there now.

4 THE COURT: No. I mean --

5 THE WITNESS: I was dating his daughter in 1974.

6 MR. CLARY: And Your Honor may recall actually
7 Mr. Drye testifying it was the Goellers' foundation that was
8 being poured at the time Mr. Arnold and Mr. Drye and
9 Mr. Vandenberg met and decided that Mr. Walker was a good
10 deal to do the grading.

11 THE COURT: I'll never forget that testimony,
12 Mr. Clary.

13 MR. CLARY: Well, it was his basement.

14 THE COURT: The Goellers' basement is indelibly
15 imprinted in my mind.

16 BY MR. CLARY: (Resuming)

17 Q. Mr. Goeller, I would like to direct your attention
18 to the period of time after the May 15th, 1995, general
19 membership meeting of the community.

20 And my question is: Did you have an occasion after
21 that date to speak with Mr. and Mrs. Stepp on the subject of
22 his being a trustee?

23 A. Yes, I did.

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1 Q. Do you recall approximately when that was?

2 A. I was elected secretary in May. And I was deliver-
3 ing minutes sometime June or July.

4 Q. Of 1995?

5 A. 1995.

6 One of the times when I was delivering minutes, I
7 asked if I could come in and speak with Mr. Stepp.

8 Q. Was this at their home?

9 A. Yes, it was.

10 Q. Would you describe the conversation for the Court.

11 A. We talked about the roadwork and the fact that he
12 really didn't think it ought to be done because it would cost
13 a whole lot more. And I asked him why he wouldn't serve as
14 trustee. And he said he didn't want anything to do with that
15 group of people.

16 Q. In response to that statement, did you have any
17 other -- did the conversation go on about being a trustee?

18 A. Well, basically I tried to get an understanding of
19 what people it was. And he really didn't want to say
20 specifically who he didn't want to get along with. But it
21 was obvious he didn't want to be a trustee.

22 So at that point I asked Mrs. Stepp if she would be
23 willing to be a trustee. And she said to go ahead and

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1 present it at a board meeting if I wanted to.

2 Q. Okay. What, if anything, did either Mr. Stepp or
3 Mrs. Stepp say about the subject of declining to accept a
4 nomination, as distinguished from being a trustee?

5 A. There was absolutely no discussion of the
6 nomination issue.

7 MR. CLARY: No further direct.

8 MR. TOLCHIN: No questions.

9 CROSS-EXAMINATION

10 BY MR. ANNINO:

11 Q. Mr. Goeller, you were secretary of the organiza-
12 tion, I believe you said, from May 15th, 1995, until May of
13 '96?

14 A. Correct.

15 Q. And when you were elected secretary, you began
16 taking minutes of meetings, I presume?

17 A. I started taking minutes after the May meeting.

18 At the May meeting Mr. Edwards was still the
19 secretary. In other words, Mr. Edwards made the minutes for
20 the 1995 May meeting.

21 Q. And when you took your minutes, you accurately set
22 forth what happened at the meetings?

23 A. Basically I wrote what had been concluded at the

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1 meeting, yes. I did not necessarily write all the discus-
2 sions or whatever else might be considered that area.

3 Q. And when did you -- when did you have this meeting
4 with Mr. and Mrs. Stepp?

5 A. Like I said, sometime in the summer of 1995,
6 probably June or July. Because it would have been after I
7 had written some minutes and was out delivering them.

8 Q. And did you take back the suggestion that
9 Mrs. Stepp be the trustee to the board?

10 A. Yes, I did.

11 Mr. Lear was on the board at that time. And I
12 mentioned it to him. And he said that Mr. Foster and he were
13 already discussing who they might pick as a new trustee.

14 Q. Isn't it a fact that the reason the question was
15 being presented was the board wanted a trustee representative
16 on it?

17 MR. CLARY: I am going to object to the question.

18 I am not sure how this relates to the direct
19 testimony, which I think was pretty limited to the
20 conversation with Mr. and Mrs. Stepp, unless the question
21 relates to that conversation.

22 THE COURT: Well, you have to lay some kind of
23 foundation for how he would know that.

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1 My impression is he just kind of had a bright idea
2 when he was delivering these minutes. But if that's not the
3 case, he can answer the question.

4 BY MR. ANNINO: (Resuming)

5 Q. Did you go to the Stepps at the behest of
6 Mr. Foster or Mr. Lear?

7 A. Because the meetings included in Mr. Foster and
8 Mr. Lear because they were sort of rotating as board members,
9 it was my understanding one of the reasons that they wanted
10 me on the board was I was considered a moderate at the time
11 and I might be able to talk to the Stepps and the Edwardses
12 since there apparently was sort of a rift at the time.

13 So one of the things I made a point of was, when I
14 was delivering the minutes and I had the chance to talk to
15 them, to go and talk to them. Because I knew that the board
16 had sort of asked -- you get into this thing of the
17 nomination committee being made in 1995.

18 The idea was that, you know, they came and said,
19 "You're sort of new to the community. Maybe you can talk to
20 them."

21 And so I made a point of going to talk to the
22 Stepps after the May meeting.

23 Q. And the purpose was to have somebody from the

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1 trustee position serve on the board, correct?

2 MR. CLARY: I'm sorry. Again, is he asking a
3 question about the conversation with the Stepps?

4 If he's not asking a question about the conversa-
5 tion with the Stepps, then it's beyond the scope of direct.

6 THE COURT: Sustained, sustained.

7 BY MR. ANNINO: (Resuming)

8 Q. What caused you to go to the Stepps to have this
9 conversation, Mr. Goeller?

10 A. Basically I was delivering the minutes.

11 Q. And when did you take the information that the
12 Stepps had given you back to the board?

13 A. At some board meeting after that.

14 At the time I didn't know it was that critical of
15 an issue or I would have written up the times and dates. But
16 basically I went and asked because I knew there was supposed
17 to be three trustees at the time. I knew there was only two
18 because Mr. Stepp had said he didn't want to be. So I went
19 and asked him again. And he said he still didn't want to be.

20 So it was some meeting -- I don't know -- in July,
21 August, September, somewhere in there, when we had a meeting.

22 And it was -- it was at Mike Polifko's house. So
23 if there is minutes that show Mike Polifko's house, it was

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1 probably that meeting.

2 Q. Would you turn to Exhibit No. 45 in the exhibit
3 book.

4 THE COURT: What's the date?

5 MR. ANNINO: August 6, 1995.

6 THE WITNESS: Okay. I'm here.

7 BY MR. ANNINO: (Resuming)

8 Q. You took these minutes?

9 MR. CLARY: Objection. Beyond the scope of direct.

10 THE COURT: I am going to allow him to answer.

11 Go ahead.

12 THE WITNESS: I've looked at these minutes.

13 BY MR. ANNINO: (Resuming)

14 Q. Are these your minutes, sir?

15 A. It's not my signature. But they basically look as
16 to what I took as the minutes at the time.

17 Q. Who signed your name?

18 A. It's been a while. I am not sure if it was -- I
19 was at military duty or something and they were being
20 circulated to the president for review before they got sent
21 out. And I may have authorized somebody to sign it for me at
22 that time. I don't know at this point.

23 Q. But you prepared the minutes?

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1 A. The minutes look like things that I had typed up.

2 THE COURT: Okay.

3 BY MR. ANNINO: (Resuming)

4 Q. And this set of minutes under New Business reports
5 Marshall Ware resigning as trustee and Frits Vandenberg voted
6 in as the new trustee.

7 Do you see that?

8 A. Yes.

9 Q. Turn in the exhibit book to Exhibit No. 54.

10 A. Okay.

11 MR. CLARY: Is Mr. Annino making this witness his
12 own for these purposes?

13 THE COURT: I think we are moving beyond --

14 MR. ANNINO: I'm contesting partly credibility,
15 Your Honor, concerning the time frame and --

16 THE COURT: I want you to move real fast,
17 Mr. Annino. We go five minutes before each question. And
18 it's getting very, very slow.

19 If you want to complete this line of questioning
20 with regard to his good faith attempts to respond to
21 Marie Stepp, if that's what you're trying to do, let's do it.
22 Let's do it.

23 What exhibit are you on now?

(March 2, 1998)

1 MR. ANNINO: Exhibit 54 -- Plaintiffs' Exhibit 54.

2 MR. CLARY: Date?

3 MR. ANNINO: September 17th, 1995.

4 BY MR. ANNINO: (Resuming)

5 Q. Are these minutes that you took, Mr. Goeller?

6 A. I believe so.

7 Q. And was this a meeting at Mike Polifko's house?

8 A. I don't know. It says -- if it says it is, it was.

9 But I can't be sure.

10 Q. Under Old Business do you see that paragraph 1?

11 A. Yes.

12 Q. You recorded that as having happened at the
13 meeting?

14 A. Yes.

15 Q. And you don't mention in here anything about
16 Marie Stepp, do you?

17 A. No.

18 It may have been at this meeting that I had done it
19 or the previous meeting. I am not sure.

20 THE COURT: Anything else, Mr. Annino?

21 MR. ANNINO: No, Your Honor.

22 THE COURT: Is this witness excused?

23 MR. CLARY: Yes, ma'am.

(March 2, 1998)

* * *

1 Q. -- the parks beautification committee?

2 A. Yes.

3 Q. Can you tell the Court what you recall as being the
4 plans that the committee came up with -- no.

5 Your Honor, you've heard this before from
6 Mr. Arnold. Maybe we don't need to put this on through
7 Dr. Polifko too. He was going to discuss exactly what
8 Mr. Arnold has already discussed.

9 Do you want to hear it from the horse's mouth, so
10 to speak? Or are you satisfied with Mr. Arnold?

11 THE COURT: Well, Mr. Edwards testified a whole lot
12 about Mr. Polifko's -- he testified a lot about Mr. Polifko's
13 property. So maybe it would be appropriate for him to talk
14 about that, because a lot of the discussion was with
15 reference to his property.

16 BY MR. TOLCHIN: (Resuming)

17 Q. Directing your attention to the period in 1992, did
18 you serve on the park committee?

19 A. Yes, I did.

20 Q. And what was the job of the park committee at the
21 time?

22 A. Well, it was mainly in the planning phase.

23 We had the park that was overgrown. And we wanted

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1 to -- we wanted to fix it up. We wanted to cut the grass.
2 We wanted to clean it up. There was, you know, debris and a
3 lot of high grass. We just couldn't use it and couldn't get
4 down to it either.

5 And Frits and I got together on many occasions and
6 just worked out a plan. And we came -- we came to the
7 conclusion that we needed to fix the road up before we could
8 do anything with the park.

9 I even hired someone to cut the grass. And they
10 told me they couldn't even get down there with their equip-
11 ment because the road was so bad.

12 MR. ANNINO: Objection to hearsay.

13 THE COURT: He is just talking about it. There's
14 no problem with that.

15 Overruled.

16 THE WITNESS: So we developed basically a two-year
17 plan for the park. Because we realized that -- we thought
18 that our budget, which was around about \$3,000 -- we
19 couldn't -- we couldn't do this all in one year. So we
20 planned it around two years.

21 THE COURT: When you say "we," sir, who are you
22 talking about?

23 THE WITNESS: Frits Vandenberg and myself.

(March 2, 1998)

1 BY MR. TOLCHIN: (Resuming)

2 Q. You are the two chairs of the committee?

3 A. Yes.

4 Q. Did you report all your findings and conclusions
5 and your plans to the general membership meeting in November
6 of 1992?

7 A. Yes, we did.

8 And we also gave a report at every board meeting,
9 kind of an update on what we were thinking and what we were
10 planning on doing.

11 Q. Now, was the information that you're describing,
12 this two-year plan, anything that was objected to by the
13 Edwardses or the Stepps when it was being discussed?

14 A. Not that I know of, no.

15 Everyone was -- in fact, everyone was excited
16 about, you know, pitching in. There was a lot of help. We
17 had help, you know, from almost everyone in the community
18 down there that I thought could help.

19 Q. And ultimately was that work done? Was it
20 completed? Were the roads completed and the park area
21 completed?

22 A. Yes, it was. Yeah.

23 It was finished and it was beautiful. We all were

(March 2, 1998)

1 enjoying it for a number of years.

2 Q. Who is "we all"?

3 A. The whole community.

4 Q. Were the Stepps and Edwardses excluded from any-
5 thing?

6 A. Oh, absolutely not. They were down there too.

7 We had picnics. And we had just -- we just used
8 it to go down there and sit and have a fire and watch the
9 sunset.

10 Q. And the Edwardses and Stepps used it as well?

11 A. Absolutely. Yeah, I remember they were there.

12 We were enjoying it together.

13 Q. And do you recall looking at the pictures that
14 Mr. Edwards showed to the Court the other day?

15 A. Yes.

16 Q. Can you put in front of you the exhibits -- I think
17 it is Exhibit 73 -- which are these pictures.

18 Do you have it there?

19 A. Yes.

20 Q. Actually, the pictures are -- here they are.

21 Now, looking -- if you turn to page 3 of the
22 pictures, which shows -- I'll show you what it shows. It's
23 easier than trying to describe it.

(March 2, 1998)

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1 them for you."

2 Q. And what happened?

3 A. I did exactly that.

4 I think I called the attorney. And he said, "Well,
5 I've already gotten a phone call. But I'm just going to deal
6 through you basically."

7 And I said, "Well, just" -- I think there were a
8 few documents that were specific. And I mentioned those.

9 And one was a deed of gift that was not in there at
10 all. And that's really the only document that I know that
11 wasn't there. And I asked him for that specifically. I
12 might have even wrote him a letter, you know, asking for
13 these documents -- wrote Mr. Knowles a letter. But I know I
14 called him on the phone to expedite matters.

15 Q. Ultimately did you give every document that you
16 could get your hands on to Mr. Edwards?

17 A. Absolutely, yes, I did.

18 Q. Did you withhold anything?

19 A. Absolutely not.

20 MR. TOLCHIN: No further questions of this witness.

21 CROSS-EXAMINATION

22 BY MR. CLARY:

23 Q. Dr. Polifko, were you present at the May 3rd, 1994,

(March 2, 1998)

1 general membership meeting?

2 A. Yes, I was.

3 Q. Do you recall that there was an explanation offered
4 by Mr. Arnold and Mrs. Medlin, confirmed by Mrs. Medlin, that
5 in fact it appeared there had been an error made at the
6 County in the recordation of the document which recorded the
7 appointment of Gail Stepp as a trustee?

8 A. Yes, I do.

9 Q. And do you recall also that at the conclusion of
10 that discussion Mr. Stepp was asked by Mr. Arnold whether he
11 wished to continue as the trustee?

12 A. Yes.

13 Q. Is it your recollection that Mr. Stepp declined?

14 A. Yes, it is.

15 Q. And did you understand that Mr. Stepp, in so doing,
16 was also declining to fill out whatever paperwork was
17 necessary in order to correct the record?

18 MR. ANNINO: Objection.

19 MR. CLARY: This is cross.

20 MR. ANNINO: Your Honor, this is not truly cross.
21 I mean, this is parties aligned. They have a commonality of
22 interest.

23 And he's putting words in the witness's mouth.

(March 2, 1998)

1 THE COURT: I would prefer if the witness could
2 just testify as to what he heard rather than just to respond
3 yes or no.

4 BY MR. CLARY: (Resuming)

5 Q. Do you recall what it was that you heard Mr. Stepp
6 -- what it was that Mr. Stepp responded to and what he said?

7 A. Well, Mr. Arnold, you know, gave a reason. And
8 that was basically that the paperwork was not -- was wrong,
9 you know, at the County.

10 And it was -- it was decided that the easiest way
11 to fix that would just be to replace the paperwork or do the
12 paperwork over again. That was my impression, that it was
13 just a simple task of just redoing the paperwork.

14 But you know, Mr. Stepp didn't say anything like "I
15 don't want to do the paperwork." He just said, "I just don't
16 want to serve."

17 Q. Did anyone -- after he had declined did anyone say
18 anything else to him about him being a trustee?

19 A. I remember, you know, someone -- I think it was
20 Mr. Foster -- spoke up and asked him if he, you know, would
21 please reconsider.

22 And he said no again.

23 Q. Going now to the May 15th, 1995, general membership

(March 2, 1998)

1 meeting, you were the president at that meeting, were you
2 not?

3 A. Yes.

4 Q. And did the subject of Mr. Stepp's service as a
5 trustee come up at that meeting?

6 A. Yes, it did.

7 Q. Would you describe for the Judge the events and how
8 that came out.

9 A. Well, we had it on the agenda, you know, to talk
10 about, you know, replacing the trustee that was missing on
11 the board. And I asked Gail again if he would reconsider and
12 be the trustee. And he said, "No. I don't want to do it."

13 And I think at that meeting I said, "Well, then,
14 we'll have to find someone to take your place."

15 Q. And did these events occur during the meeting?

16 A. Yes.

17 Q. And subsequent to the meeting, did you have an
18 occasion to overhear another conversation with Mr. Stepp
19 regarding his status as trustee?

20 A. You know, during the meeting?

21 Q. No. After the meeting.

22 A. After the meeting, being it was more of a final
23 thing this time, I remember in the hall Mr. Lear went up to

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1 Mr. Stepp and asked him if he would please reconsider.

2 And I walked in on the conversation. And I asked
3 him myself if he would reconsider.

4 And the answer was "No. I don't want to do it."

5 Q. Is there any question in your mind that Mr. Stepp
6 could have been making a distinction between serving on the
7 board as opposed to being a trustee?

8 A. Not at all.

9 MR. CLARY: Nothing further.

10 CROSS-EXAMINATION

11 BY MR. ANNINO:

12 Q. Mr. Polifko, isn't it a fact that the November
13 30th, 1992, meeting minutes don't reflect the approval by the
14 general membership of any plan for the park area?

15 A. I don't know.

16 I know I gave a report.

17 Q. Would you turn to Exhibit No. 14, the second page
18 of the exhibit.

19 A. Yes.

20 Q. There is no reference in there of the approval of
21 the membership of a plan for the park area, is there?

22 A. Well, we were talking about, you know, what we were
23 going to do.

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* * *

1 was elected president at this meeting.

2 It was George Arnold who was president.

3 THE COURT: He isn't the right person to hammer on
4 these minutes.

5 BY MR. ANNINO: (Resuming)

6 Q. With respect to the May 15th, 1995, general member-
7 ship meeting, there is no indication there that Mr. Stepp was
8 asked to serve as trustee, is there?

9 Turn to Exhibit No. 43.

10 A. "Darrell Michels acknowledged Mr. Stepp as being
11 prior president."

12 No. But it was on my agenda to, you know, fill
13 that position that was still left vacant.

14 Q. Well, isn't it a fact that Mr. Foster was in that
15 position at the time?

16 A. Well, he was one of the -- there is three people to
17 fill that position. And he was filling it at that time, yes.

18 But we were short one person. We were still trying
19 to get -- hoping that Mr. Stepp would, you know, change his
20 mind and say yes. And we would be finished with that. You
21 know, that's --

22 Q. Is there any indication in the trust deed that
23 you're aware of that would require Mr. Stepp to serve on the

(March 2, 1998)

1 board?

2 A. No.

3 But it was -- it was the policy that we had set up,
4 you know, since I was on the board. You know, we had a
5 position for that. And that was the way we conducted
6 business at the time.

7 Q. And that's what you were doing -- looking to do,
8 was fill that position, correct?

9 A. Well, no. We were looking to fill the position as
10 a trustee just -- we were missing one trustee. There was,
11 according to the bylaws or the trust document, there were
12 three trustees. And there was only two, you know, because of
13 Mr. Stepp's, what I thought, was his refusal to serve. So we
14 felt we had to replace that -- fill that missing spot.

15 Q. Did it ever occur to you or any member of the board
16 to go down to the land records and see if a trust deed could
17 be found appointing Mr. Stepp?

18 A. We researched it. I didn't do it myself
19 personally. But I believe we made a very good effort.

20 And we made a valiant effort to ask Mr. Stepp many
21 times too. It was my feeling that he just didn't want to
22 serve.

23 Q. You never searched it, correct?

(March 2, 1998)

1 A. I never searched it, no.

2 Q. Mr. Foster, to your knowledge, never searched it,
3 did he?

4 A. No.

5 But the attorney searched it when we incorporated.

6 Q. Did Mr. Knowles indicate that he had done a title
7 search on Parcel A?

8 A. Yes, he did.

9 Q. Did you ever pay for a title search on Parcel A?

10 A. I saw a title search, you know, on that parcel. It
11 was a -- it went back to the first people that bought the
12 property. I remember reading a document that said
13 Cates B. Cox or something like that owned the property.

14 Q. Can you indicate to me in any of the letters from
15 Mr. Knowles where he expressed an opinion about who the title
16 on the property -- do you know of any letter from Mr. Knowles
17 indicating how the title on the property existed?

18 A. Well, I believe he searched that. And there were
19 no problems with it other than the fact that -- he reported
20 that, you know, the three trustees were Marshall Ware and
21 Jim Foster and Gene Lear.

22 Q. He reported what he was told to report, didn't he?

23 A. No, no. These were documents that he gave us.

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1 And we noticed that at that time -- that there was
2 a mistake there.

3 Q. Did you ever present Mr. Stepp with anything to
4 sign?

5 A. Me personally, no.

6 Q. Did Mr. Foster, to your knowledge, ever present him
7 with anything to sign?

8 A. Just to sign -- what type of thing are you talking
9 about?

10 Q. To resign as trustee. To be reappointed as
11 trustee.

12 A. It was, I believe --

13 Q. Did he or --

14 A. To have him sign anything?

15 No.

16 Q. You never presented him with anything to sign, did
17 you?

18 A. Well, I didn't feel it was necessary, you know. We
19 spoke to him personally.

20 Q. Well, during your tenure, didn't you get a letter
21 of resignation from Marshall Ware?

22 A. Yes, I did.

23 Q. You felt that was necessary, didn't you?

(March 2, 1998)

1 A. That was part of the process of redoing the paper-
2 work. So we started right from the beginning and got a
3 second letter of resignation from Mr. Ware. We have two of
4 those in the files.

5 We were trying to do everything all over again.

6 Q. Did you take those documents to Mr. Stepp and ask
7 him to sign a new trustee's deed?

8 A. Well, I didn't. But I believe Mr. Arnold reported
9 that he several times tried to talk Mr. Stepp into redoing
10 the paperwork, which would include, I'm sure, filling out new
11 documents.

12 Q. Well, you never drafted any paperwork, did you?

13 A. Well, you can't draft them when people don't want
14 to participate.

15 MR. ANNINO: Your Honor, I would like to take a few
16 minutes and look at these checks.

17 THE COURT: Is that your last line of questioning
18 for this witness?

19 MR. ANNINO: I am going to confer with my client,
20 if I could.

21 THE COURT: Okay. Five minutes.

22 MR. TOLCHIN: Your Honor, while he's doing that,
23 may we offer that we could put Mrs. Arnold back on the stand

(March 2, 1998)

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V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

- - - - - X

GAIL STEPP, INDIVIDUALLY AND :
AS TRUSTEE, ET AL., :

Plaintiffs, :

-vs- :

In Chancery No. 146295

JAMES A. FOSTER, INDIVIDUALLY :
AND AS TRUSTEE, ET AL., :

Defendants. :

- - - - - X

Courtroom No. 5F
Fairfax County Courthouse
Fairfax, Virginia

Tuesday, March 3, 1998

The above-entitled cause came on for trial before
THE HONORABLE KATHLEEN H. MacKAY, Judge, in and for the
Circuit Court of Fairfax County, Virginia, at 10:04 o'clock
a.m., the proceedings being recorded by stenotype by
GENEVIEVE R. BATA of DSC Reporting, Inc.

(March 3, 1998)

* * *

1 thing. It was a matter of getting the title vested in some
2 people at the time and then putting in some language here
3 that would sort of establish the beginnings of a rudimentary
4 community association.

5 There was nothing to enforce it. It wasn't like a
6 homeowners' association nowadays where you've got a townhouse
7 association or something there where they've got some actual
8 governing power and the ability to make assessments.

9 Q. So was it your impression that whatever it was you
10 were creating didn't create any powers?

11 MR. ANNINO: Objection. Leading. It also calls
12 for a legal conclusion, which is one of the ultimate issues
13 that the Court has to determine.

14 THE COURT: Sustained.

15 BY MR. CLARY: (Resuming)

16 Q. Would it be accurate to say that the provisions,
17 other than the conveyance of title in this document, were all
18 items that are your ideas and are not something you got from
19 somebody else?

20 MR. ANNINO: Objection. Leading.

21 THE COURT: That's a fair question. That's a fair
22 question.

23 THE WITNESS: Yeah. Nobody else came in to me and
(March 3, 1998)

1 said, "These are some of the things we want in that deed."

2 Absolutely not.

3 BY MR. CLARY: (Resuming)

4 Q. What organization or what entity was it your intent
5 would in fact collect monies and maintain the park area?

6 A. That letter I have on March 8th probably spells out
7 whatever was on my mind at the time.

8 Q. And you're referring, I think, now to -- if I may
9 direct your attention to the last paragraph of this letter.

10 And for the interest of those, I think Your Honor
11 may be the only person who doesn't have a copy of it in front
12 of you.

13 You're referring to the paragraph that says "Your
14 citizens' group is now on its own. And the trustees should
15 take steps to organize the governing association. A Xerox
16 copy of your deed is enclosed to give you some basic
17 information on getting started. If you want to be very
18 technical, write up a set of bylaws and have a secretary
19 elected at your meeting to keep minutes."

20 Is that a fair statement of the entirety of your
21 advice to the trustees?

22 A. Pretty much so, yeah.

23 The purpose of what I was doing was getting title

(March 3, 1998)

1 out of Hurvitz and into somebody who supposedly could act for
2 the benefit of the community.

3 Q. Okay.

4 A. I went on to tell him after that about liability
5 insurance.

6 They needed a little money to get this thing going
7 to get people to pay the taxes. And I suggested that as long
8 as they had this little piece of land down there, they might
9 as well get some liability insurance in case some kid drowns
10 or gets hurt.

11 Q. Once the association had been begun, what
12 functions, if any, did you envision the trustees would serve?

13 MR. ANNINO: Objection. Calls for a legal
14 conclusion. Relevance.

15 MR. CLARY: Well, I don't think it's legal. I
16 think it's --

17 THE COURT: We're trying to get at what he intended
18 when he drafted this document. And he doesn't have to make
19 things up either.

20 THE WITNESS: I am not going to make anything up.

21 I am not sure exactly what was on my mind. I can
22 look back at this deed obviously and say "Geez, I don't think
23 I'm real proud of that."

(March 3, 1998)

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1 would move them into evidence, Your Honor.

2 MR. ANNINO: I have no objection.

3 THE COURT: Okay. Those are moved in.

4 (Defendants' Exhibit No. 24 was
5 received into evidence.)

6 BY MR. TOLCHIN: (Resuming)

7 Q. Now, you were involved with the association -- with
8 the community association in the early nineties when it
9 determined to incorporate; is that true?

10 A. That is correct.

11 Q. Can you tell the Court the history of this concept
12 of incorporating the association, how it first arose.

13 A. In the very beginning, I think I indicated yester-
14 day, the association really was not holding regular meetings.
15 The community would --

16 Q. When Mr. Stepp was president?

17 A. That is correct.

18 And there was generally a lack of knowledge of the
19 bylaws, the way we were structured, what the organization was
20 to consist of. And not many people had immediate recollec-
21 tion of how the -- of any board or group within the community
22 operating consistent with those bylaws, since its really --
23 its early inception.

(March 3, 1998)

1 As a result, the board at my request started
2 reviewing the bylaws and talking about the way we were
3 operating and trying to either be consistent with that or
4 bring things to the community to discuss what we would
5 propose as changes.

6 Q. And is that how the issue of incorporation arose
7 during your tenure as president?

8 A. It was one of the issues that arose. Incorporation
9 -- the board discussed it. I don't remember where it was
10 discussed first.

11 Actually, at one of our general meetings where we
12 started talking about the possibility of incorporating,
13 members of the community supported it.

14 Our board minutes were always read at our general
15 meetings, and so they were incorporated as part of our
16 general meetings. And our general meeting notes were in fact
17 distributed to the community. The board minutes were not
18 being distributed.

19 But at any rate, we were discussing the board
20 meeting activities at each one of the general meetings. And
21 as we were giving those reports, members of the community
22 offered suggestions, comments, criticisms, if nothing more
23 than questions as to why we were doing things.

(March 3, 1998)

1 And at one of those meetings Patty Edwards, among
2 others, brought up the issue of incorporating. And Patty,
3 who at the time was serving on the PTA board, offered to
4 provide us copies of the PTA's bylaws and incorporation
5 paperwork as a sample.

6 Q. And that was at a general membership meeting at
7 which Mrs. Patty Edwards participated?

8 A. That's correct.

9 Q. What was the consensus in that meeting as to
10 whether the community should incorporate this association?

11 A. I think there was, to my knowledge, not one single
12 person who objected.

13 THE COURT: Which meeting was this -- the general
14 meeting? Which one?

15 Or do you mean over time? Do you mean over time
16 you don't remember any objecting?

17 THE WITNESS: That's correct.

18 There was specifically a vote to incorporate taken.
19 But prior to that the discussion of the bylaws was being
20 taken meeting by meeting with the community.

21 As the -- we formalized a bylaw committee, I think,
22 early in '92. And their job was to review the bylaws, pull
23 sample material, which we would then bring to the general

(March 3, 1998)

* * *

1 A. Yes.

2 Q. And in fact, Mrs. Stepp was the treasurer the next
3 year; isn't that right?

4 A. That is correct.

5 Q. So their resignation somehow got withdrawn?

6 A. Yes.

7 Q. Now, directing your attention to the minutes on
8 September 27th, 1993, in the eighth paragraph down, there is
9 a notation there. "A discussion regarding incorporation of
10 BBKA with an expectation of the benefits of such a move."
11 Then it says "A motion was presented to proceed with the
12 incorporation. Motion carried."

13 Do you see that there?

14 A. Yes.

15 Q. Do you recall what explanation was given as to the
16 benefits of incorporation?

17 A. Actually, I gave a fairly long presentation. There
18 were a couple of issues that I discussed.

19 And to answer your question, I had talked to the
20 Stepps earlier in relation to his status as a trustee.

21 They had entered some concerns about the community,
22 specifically that it was their feeling that one person was
23 running the show.

(March 3, 1998)

1 THE COURT: Who was that?

2 THE WITNESS: Jim Foster.

3 And at that particular meeting what I had discussed
4 as the president was that we really had a democratic process,
5 that we had a board which is a representative -- made up of
6 representatives of the entire community, that every member of
7 the board has got one vote, that every single person in the
8 community has got one vote, no one has any more power than
9 one vote, that it had been my feeling within the community
10 that no one wanted it any other way.

11 There was -- I brought up an issue about the work
12 that we had done at the park and that it was decided by the
13 community to do that. It was for the benefit of the
14 community; that if people didn't like the way we were
15 organized that they should participate in helping us write
16 new bylaws, which we had been trying to do for two years.
17 And certainly they should make sure that representatives
18 consistent with their point of view were in fact elected to
19 the association.

20 BY MR. TOLCHIN: (Resuming)

21 Q. My question though was focusing on this: What did
22 you tell them about the benefits of incorporation?

23 A. We talked about the -- the issue of liability came

(March 3, 1998)

1 up. And specifically that was the reason why most people
2 were concerned about incorporating.

3 Q. And the motion was carried and passed; is that
4 correct?

5 A. It was.

6 Q. That's reflected in the minutes?

7 A. That's correct.

8 Q. Now, did there come a time that you had Articles of
9 Incorporation drafted?

10 A. Yes.

11 Q. Who drafted those Articles of Incorporation?

12 A. We hired an attorney, Jack Knowles.

13 Q. When you hired Mr. Knowles -- let me withdraw that.
14 Who hired Mr. Knowles?

15 A. I contacted Mr. Knowles.

16 He is someone that I have contact with frequently
17 at the Mount Vernon Council and Citizens' Association. And
18 he is active with a number of associations.

19 Q. So you contacted him to discuss the issue of
20 incorporation; is that correct?

21 A. That's correct.

22 Q. Relate to the Court what your conversations were
23 with Mr. Knowles when you were retaining him.

(March 3, 1998)

1 A. We asked -- actually, we asked him to come before
2 our board and meet with us. And we had at this time
3 completed the draft set of bylaws that are marked preliminary
4 bylaws.

5 Q. Those are the ones that have been marked as Exhibit
6 No. 12, I believe?

7 A. That is correct.

8 MR. TOLCHIN: May I confirm that exhibit?

9 THE COURT: Is this your last witness?

10 MR. TOLCHIN: Yes.

11 BY MR. TOLCHIN: (Resuming)

12 Q. Referring you to Exhibit No. 9, are these the
13 bylaws that were proposed -- the preliminary bylaws?

14 A. Yes.

15 Q. Were they sent out to the entire community?

16 A. Yes. And all lot owners.

17 Q. Lot owners and residents?

18 A. That's correct.

19 Q. And in fact, you got comments back on these bylaws
20 from Mr. Edwards, among others?

21 A. That's right.

22 What we asked --

23 Q. Now, you had already drafted these bylaws?

(March 3, 1998)

1 A. That's correct.

2 Q. And you then spoke with Mr. Knowles?

3 A. Yes.

4 Q. What did you ask Mr. Knowles?

5 A. What we wanted to -- we basically told him the way
6 we were organized. We described the trustees. We described
7 the association. We described our bylaws. We described some
8 of the problems that we were having collecting dues.

9 Q. And in fact, that issue of collecting dues was one
10 of the issues raised at the September 1993 meeting; is that
11 correct?

12 A. My guess is you will not find a set of minutes of
13 any board meeting or community meeting starting 1990 until
14 this time where we weren't talking about collecting dues.

15 Q. Go ahead.

16 So you spoke with him about collecting dues?

17 A. Yes.

18 Q. Go on.

19 A. What we were trying to do was to determine what is
20 the best way to do it to make assurance that we have the kind
21 of money that we need to maintain the park.

22 And I cited to him specifically that when I took
23 over the association we had no money and that I personally

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1 didn't think that it was the responsibility of the president
2 or the treasurer to go knocking door to door to ask people to
3 pay whatever they might want to pay in order to maintain this
4 property for the community and that we were trying to find a
5 way that we could in fact collect money.

6 I stated my own personal preference or feeling;
7 that we had the property and we had an obligation to maintain
8 it; and that I felt fairly strongly that under the law there
9 must be some way that we could mandate those dues.

10 Q. And among other things, he looked into all these
11 issues?

12 A. That is correct.

13 We did not ask him to incorporate the association.

14 Q. At that time?

15 A. That's correct.

16 Q. What happened next with your discussions with
17 Mr. Knowles and the end result of those discussions?

18 A. Jack Knowles went to -- he basically took the
19 documents that we gave him.

20 MR. ANNINO: I'm going to object to what
21 Mr. Knowles did from this witness.

22 MR. TOLCHIN: You can only testify as to what you
23 personally know, if you know what Mr. Knowles did.

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1 THE COURT: Who is going to be able to testify as
2 to what Knowles did?

3 He was the contact with Mr. Knowles.

4 MR. ANNINO: Correct. But Mr. Knowles would be the
5 only one competent to testify as to what he did.

6 THE COURT: Well, I don't think that's true. I
7 think he can testify as to what contacts he made with Knowles
8 and what Knowles did in return. I think you introduced all
9 the exhibits.

10 Can we short circuit some of this? I mean, is
11 the sum total of your contact with Mr. Knowles already
12 represented in the exhibits that have been already presented
13 by Mr. Annino? Is there something you want to add to what he
14 actually wrote you?

15 MR. TOLCHIN: There actually is one additional
16 letter from Mr. Knowles which Mr. Annino did not include,
17 which we would ask to be included.

18 THE COURT: Is there anything you want to add to
19 that collection of letters?

20 THE WITNESS: In summary, I would say that
21 Mr. Knowles -- two things: Mr. Knowles indicated to us that
22 he in fact had gone to the County and looked at all the
23 records.

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1 MR. ANNINO: I'm going to object to what
2 Mr. Knowles indicated to him. That's hearsay.

3 MR. TOLCHIN: He's an agent. If he is an attorney,
4 he was hired as an agent of the association. Therefore, it's
5 the association addressing what happened.

6 THE COURT: Mr. Annino has already -- isn't that in
7 the letters that he wrote?

8 MR. ANNINO: The letters reflect what --

9 THE COURT: We're just going to go over the letters
10 as far as attorney Knowles is concerned.

11 MR. CLARY: Your Honor, I would suggest that the
12 purpose for admitting that is not for the purpose of the
13 truth of what he's saying, but rather what was told these
14 people and why they acted the way they did.

15 So it's not being offered for the purpose of
16 proving the truth of what Mr. Knowles said. It's just the
17 fact that he did in fact say this and they acted upon that.
18 And so I think that it is not hearsay for that reason.

19 THE COURT: Mr. Annino?

20 MR. ANNINO: If it's not offered for the truth of
21 what he said, then it's irrelevant.

22 MR. TOLCHIN: It's offered to show the context of
23 what was occurring during this period.

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1 THE COURT: I think if you want to accuse the
2 association and everyone of acting in bad faith, then you
3 have to -- if they were told something by an attorney, that
4 would excuse them from that charge. But I guess I have to
5 hear it.

6 I mean, it doesn't -- it is not admitted for the
7 truth of the matter. I have no idea whether he searched the
8 title competently or not.

9 Go ahead.

10 THE WITNESS: Mr. Knowles indicated that he could
11 not find a record of Mr. Stepp being a trustee.

12 BY MR. TOLCHIN: (Resuming)

13 Q. And therefore what happened?

14 A. He suggested that we contact him, ask him to
15 refile.

16 As a part of our bylaw process, we were trying to
17 pull together all these organizations and get things done
18 right.

19 Q. We'll come back to Mr. Stepp -- to the issue of
20 Mr. Stepp later.

21 With respect to the question of whether you should
22 incorporate or whether you could incorporate or whether you
23 could have mandatory dues or should have mandatory dues, did

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1 you have those discussions with Mr. Knowles?

2 A. Yes.

3 Q. What was the result of those discussions?

4 A. We met with him on September 1st.

5 Q. Who is "we"?

6 A. The board.

7 Q. Who was on the board at the time?

8 A. Cathy Foster. Gene Lear. Myself. Frits
9 Vandenberg. Mike Polifko was on the board, but he did not
10 attend any of our meetings.

11 Q. Okay. And you met as the duly elected board of
12 directors of Belmont Bay Community Associates?

13 A. That's correct.

14 Q. And what did you discuss at that meeting?

15 A. Basically his recommendations, which I think you'll
16 see in the letter.

17 THE COURT: Then we don't have to go through it
18 again.

19 THE WITNESS: His final recommendation was that, if
20 we wanted to proceed, we should formalize being a homeowners'
21 association.

22 BY MR. TOLCHIN: (Resuming)

23 Q. Did you debate that issue -- whether you should

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1 formalize being a homeowners' association?

2 A. Yes, we did.

3 Q. Did you understand what being a formal homeowners'
4 association meant?

5 A. Yes, I did.

6 Q. What was the board's understanding of what being a
7 homeowners' association meant?

8 A. Filing with the State. Reincorporating. Mandating
9 dues. Having the ability to put on liens. Filing reports
10 with the State.

11 Q. Okay. Now, the issue of mandatory dues, et cetera,
12 these kinds of issues were all discussed in community
13 meetings; is that accurate?

14 A. That is correct.

15 Q. And they were contained in the preliminary bylaws
16 that were drafted in March of 1993 and sent out to the
17 community, upon which Mr. Edwards and the others commented;
18 is that correct?

19 A. That is correct.

20 Q. And as a result of the communications that you got
21 from Mr. Knowles and as a result of the communications from
22 the members of the community, what did the board decide with
23 respect to becoming a formal homeowners' association and

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1 mandating dues?

2 A. We decided not to pursue being a homeowners
3 association.

4 Q. With respect to your discussions with Mr. Knowles
5 and your discussions with the members in the community, what
6 did the board finally decide to do with respect to whether to
7 mandate dues or whether not to mandate dues, whether to
8 become a formal property owners' or homeowners' association
9 or whether not to become a formal property owners' or home-
10 owners' association?

11 A. I personally spoke with the majority of the members
12 of the community regarding the bylaws on a one-to-one.

13 The two members of the community who were outspoken
14 about the issue were Mr. Wilcox and Mrs. Spangler. They're
15 the only two people who cited notable objections to the
16 mandatory dues and provisions to put on liens, both citing --
17 I think Mr. Wilcox had had some previous experience with a
18 lien situation which was unpleasant. Mrs. Spangler said that
19 she did not want to pay taxes to King George under any
20 circumstances.

21 For your reference, King George was me.

22 Q. Yeah. I figured that.

23 THE COURT: I probably wouldn't have gotten it if

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1 you hadn't said it. I was thinking historically of King
2 George and the Stamp Act.

3 MR. TOLCHIN: This goes back to 1956 or '73. It
4 doesn't go back that far, Judge.

5 THE COURT: I thought she was making a historical
6 allusion to the fact that she did not want to be taxed based
7 on the American Revolution.

8 THE WITNESS: As a result of those two people, we
9 talked about it.

10 Frankly, we had collected enough money from our
11 efforts to involve the community in maintaining the park that
12 we decided that this wasn't an issue that we had to tackle
13 right then. And we didn't want to do anything that was
14 divisive to the community. And the board's recommendation to
15 the community was that we not pursue this.

16 BY MR. TOLCHIN: (Resuming)

17 Q. It was decided not to pursue the mandatory dues?

18 A. That is correct. And the homeowners' association.

19 Q. Now, you did however decide to incorporate; is that
20 accurate?

21 A. That is correct.

22 Q. Who drafted the Articles of Incorporation that
23 ultimately you filed?

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1 A. Jack Knowles.

2 Q. And was that draft handed out to the membership at
3 a meeting?

4 A. Yes, it was.

5 Q. Okay. Do you recall when it was handed out?

6 A. It would have been the March meeting.

7 Q. March of 1993?

8 A. I'm sorry. It would have been the September 27th
9 meeting. I'm sorry.

10 Q. September 27th or March of 1994?

11 If you could take a look at the minutes, maybe you
12 could refresh your recollection.

13 THE COURT: Which draft?

14 MR. TOLCHIN: The draft of the Articles of
15 Incorporation, Your Honor.

16 THE COURT: Oh, I thought you said bylaws. I'm
17 sorry.

18 BY MR. TOLCHIN: (Resuming)

19 Q. I'm sorry. Let me rephrase the question.

20 When was the draft of the Articles of Incorporation
21 passed out to the members of the community?

22 A. I believe it was the September 27th meeting.

23 Q. Now, that specific item is not noted in the

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1 minutes; is that accurate?

2 A. That is correct.

3 Q. But do you recall handing out a draft article -- a
4 set of draft articles?

5 A. Yes.

6 Q. Did anybody comment on the draft in a negative
7 fashion?

8 A. No.

9 There was comment about -- we also passed out
10 bylaws -- some sample bylaws that Jack Knowles had prepared
11 for us as a community. He gave us a stack of things.

12 The bylaws that he had given us were referencing
13 some other association, which was in fact a homeowners'
14 association. People saw that at the meeting and objected to
15 it and wanted to know why we -- why he had not in fact used
16 the bylaws that we had distributed and worked with the
17 community to write.

18 Q. Just to bring this to a close, you passed out the
19 draft Articles of Incorporation?

20 A. Yes.

21 Q. You then -- Mr. Knowles then incorporated you in
22 July of 1994; is that accurate?

23 A. That is correct.

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1 Q. What happened between September 1993 and July 1994?
2 Why didn't it happen any quicker? Or why did it
3 happen in that time period, I should ask, if you know?

4 A. One of the things that we were trying to do was to
5 make a decision about what our bylaws were and whether or not
6 we had those bylaws.

7 In addition, I don't think we had all of our final
8 discussions with Knowles. There were still a few things up
9 in the air, as I recall.

10 Q. So ultimately you did incorporate in July?

11 A. That's correct.

12 Q. Now, who sent in the actual documentation for the
13 incorporation? You or Mr. Knowles?

14 A. I was the incorporator. I sent those to Jack
15 Knowles.

16 Q. And then Jack Knowles sent them to the State to do
17 whatever lawyers do with them; is that correct?

18 A. That's correct.

19 Q. So after Mr. Knowles sent them to the State, how
20 long after that did you get a copy back from Mr. Knowles -- a
21 copy back of these documents as he sent them to the State, if
22 you recall?

23 Perhaps to refresh your recollection, if you can

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1 turn to Exhibit No. 23. Perhaps that will refresh your
2 recollection as to the precise dates -- Exhibit 23.

3 A. As I recall, I contacted him in the beginning of
4 July, I think -- June or July. It says here that he sent us
5 a letter on the 19th saying that we were incorporated on the
6 13th.

7 Q. So sometime after July 19th, when you got this
8 letter, you knew that you actually had been incorporated?

9 A. That's correct.

10 Q. When was the -- if you can track through the notes
11 so we have the chronology, when was the next board meeting of
12 the board of BBCAI at this point?

13 A. There would have been a meeting in September.

14 But I was not able to attend it.

15 Q. If you can look back, actually, I think it was
16 August 8th, 1994.

17 A. August. I'm sorry.

18 Q. Is that it? Is that the August 8th meeting there?

19 A. Yes, it is.

20 Q. Did you attend this meeting at which Mr. Edwards
21 and Mrs. Stepp and Mrs. Michels attended?

22 A. No.

23 Q. Why not, if you recall?

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1 A. I think I had a -- I probably was at a Mount Vernon
2 Council meeting.

3 Q. You just weren't there? You weren't available?

4 A. That's correct.

5 Q. Now, between the end of July, when you received the
6 letter from Mr. Knowles, and August 8th, 1994, had you had an
7 opportunity to provide the copies of information that
8 Mr. Knowles had provided to Mr. Edwards or anybody else?

9 A. Yes. At the following board meeting.

10 Q. So the next board meeting was in September of 1994?

11 A. Yes.

12 Q. What did you pass out to Mr. Edwards at that time?

13 A. The package that Mr. Knowles had provided us, which
14 was the Articles of Incorporation, the Certificate of
15 Incorporation, and some other material.

16 Q. You gave all that out at the next board meeting?

17 A. That's correct.

18 Q. And is that reflected in the minutes of the next
19 board meeting?

20 A. I believe it is.

21 THE COURT: It is.

22 Go ahead. Move along.

23

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1 BY MR. TOLCHIN: (Resuming)

2 Q. Now, did there come a time when Mr. Edwards began
3 complaining that he hadn't received certain information
4 relating to Mr. Knowles?

5 A. Yes.

6 The context of the complaint was -- at least
7 initially was different than that. Actually, he was
8 complaining that -- he was concerned that we had been over-
9 charged by Mr. Knowles.

10 Q. Okay. And what was his -- what was the nature of
11 his complaint about the overcharge?

12 A. Just that we had paid the guy too much.

13 Q. And did he ultimately change that complaint into
14 something else, into a lack of documentation?

15 MR. ANNINO: Objection. Leading.

16 THE COURT: Overruled.

17 MR. TOLCHIN: I am trying to hurry this along.

18 THE WITNESS: I think later I came to understand
19 that he wanted to see the documentation. He was going to
20 take it -- I think it's in the minutes somewhere that he was
21 going to take it to another attorney to have him estimate how
22 much time it would have taken Jack Knowles to have done the
23 work.

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1 BY MR. TOLCHIN: (Resuming)

2 Q. Now, did you give more documentation to -- or
3 another -- did Mr. Polifko ask you for additional documenta-
4 tion relating to Mr. Knowles?

5 A. He talked to me about the problem.

6 When Mr. Polifko was elected president, I had given
7 him all of our records related to all of the above.

8 Q. And did there come a time -- withdraw that.

9 Turn, if you would, to the May 15th, 1995, letter
10 written by Ralph Edwards -- a secretary's report written by
11 Ralph Edwards.

12 Do you have it there?

13 A. Yes, I've got it.

14 Q. Now, the first item noted there was that he was
15 complaining he did not receive billing from Mr. Diamond.

16 Did you have any billing from Mr. Diamond to
17 provide to him?

18 A. No, I didn't.

19 Q. The next item is the draft of trustee's deed of
20 gift of Parcel A to the association.

21 Was that provided in your package?

22 A. I believe it was.

23 Q. Do you have any copies of this document that you

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1 withheld from Mr. Edwards?

2 A. No.

3 I got a set of copies later. Mike asked me -- I
4 think he was asking for another set from Mr. Knowles. He
5 knew I saw him. So he asked me also if I could get another
6 set for -- Mike asked me if I would get a set for the
7 association to in fact give Ralph Edwards.

8 Q. Did you do anything with that request?

9 A. Yes, I did.

10 Q. Okay. What did you do?

11 A. I asked Mr. Knowles if he could give us another
12 copy of all of the information that he had provided us.

13 Q. And what happened with that request?

14 A. He sent us a letter with the attachments.

15 And we turned it over to him.

16 Q. To Mr. Edwards?

17 A. I gave it to Mike Polifko.

18 Q. You gave it to Mike Polifko. Okay.

19 Now, the next issue is an August 10th letter from
20 Mr. Knowles to Mr. Diamond. Do you see that?

21 And he complains he was unable to locate any
22 written response from Mr. Diamond.

23 A. I'm sorry? What are you referencing?

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1 Q. The May 15th, 1995, secretary' report where he made
2 his demands.

3 Do you see that?

4 A. Yes.

5 Q. He is complaining he was unable to locate any
6 written response from Mr. Diamond.

7 Was there anything written that you had ever seen?

8 A. No.

9 In fact, I asked Jack later about this. I didn't
10 understand that this document was the one in question.

11 And Knowles told me that he did not send it to us
12 because it was communications of his billing to Jack Knowles.

13 Q. So you just never had it?

14 A. It had nothing to do with us.

15 Q. Now, the next item here is draft bylaws done by
16 Mr. Knowles.

17 Was that handed out to Mr. Edwards?

18 A. There were three sets of draft bylaws done by
19 Mr. Knowles. We handed those out at a meeting as samples.

20 I don't know that we ever got them back.

21 Q. You handed them out to the people? You mean
22 Mr. Edwards, et cetera?

23 A. Yes.

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1 In fact, there were comments made about them. In
2 fact, the community wanted to know why we were using those
3 bylaws as opposed to the ones that we had in fact drafted and
4 circulated to the community.

5 They didn't like the tone of the bylaws. They
6 weren't warm and friendly.

7 Q. So to the extent that you had any bylaws,
8 Mr. Edwards had them too; is that correct?

9 A. Yes.

10 Q. Now, the next thing he complains about is that he
11 wasn't given the Certificate of Incorporation.

12 Do you see that there in the next-to-the-last
13 paragraph?

14 A. Yes.

15 Q. Do you know -- do you even know what a Certificate
16 of Incorporation is?

17 A. Now that you ask the question, perhaps not.

18 I thought it was the actual certificate that they
19 give you when you incorporate.

20 Q. The fancy little diploma type thing?

21 A. Right.

22 Q. Was that in the package that was given to
23 Mr. Edwards earlier?

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1 A. A copy of it was, yes.

2 Q. It just doesn't say "certificate" on it.

3 But as far as you know, that's what it is; is that
4 right?

5 A. Yes.

6 Q. The next issue here is this July 19th, 1994,
7 letter, which we've already dealt with with Mr. Edwards.
8 We'll skip that one.

9 He asked for the receipt for fees for filing the
10 Articles of Incorporation.

11 Who had that receipt, to the extent it existed?

12 A. I assume Mike did.

13 Q. Did you have a copy of it?

14 A. No.

15 Q. Did Mr. Knowles ever send you a copy of any receipt
16 that he received?

17 A. No, not that I'm aware of.

18 Q. The next item here is a -- let's see -- annual
19 corporation requirements notice to all employers.

20 Have you ever gotten anything of that nature that
21 you've withheld from Mr. Edwards?

22 A. That was in the original paperwork. And it was
23 also what we -- what I provided Mike Polifko.

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1 1997, when the new bylaws with the changes changing the name,
2 et cetera, were adopted, did the entity BBCAI -- or BBCA --
3 did that entity employ bylaws?

4 A. Yes.

5 Q. What bylaws did it use?

6 A. The 1974 bylaws.

7 Q. Was that issue of using these currently existing
8 bylaws discussed at meetings?

9 A. Yes, it was.

10 Q. Do you know whether the complainants understood
11 that those bylaws were being used?

12 A. Yes.

13 Q. And how do you know that they understood that?

14 A. General discussion.

15 In our March 4th meeting where in fact the
16 community, you know, again asked for what was the status of
17 the incorporation, we went through a discussion of our
18 efforts to update the bylaws.

19 Recognizing that we were at an impasse on any new
20 document, we agreed that we would incorporate using the old
21 bylaws. And that's exactly what I did. And that's what I
22 represented to the attorney, Jack Knowles.

23 Q. And is that what -- do you know -- withdraw that.

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* * *

1 MR. ANNINO: No, Your Honor. That's the way we've
2 been doing it.

3 THE COURT: I think that people probably need a
4 quick break. So I'm just going to give everybody a real
5 quick five-minute break to be able to use the rest rooms or
6 whatever and then come back. Then we will take our normal
7 break at 1:00 o'clock for lunch.

8 (A recess was taken.)

9 THE COURT: This is going to be quick and to the
10 point, Mr. Clary?

11 MR. CLARY: Parts of it will be.

12 I certainly hope to be to the point.

13 DIRECT EXAMINATION

14 BY MR. CLARY:

15 Q. Mr. Stepp -- I apologize. I have a few people I am
16 confusing here.

17 Mr. Arnold, I would like to direct your attention
18 to Plaintiffs' Exhibit No. 25, which is the letter from
19 Mr. Knowles in which -- and I have it open there for you.
20 And it is the letter dated January of 1995. And in that
21 letter Mr. Knowles recounts the events of the July 31st
22 meeting -- July 31st, 1993, meeting.

23 Do you see that, sir?

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1 A. Yes.

2 Q. In fact, he references in his letter that he met
3 with all of the officers, directors, and trustees on July
4 31st, 1993, doesn't he?

5 A. Yes.

6 Q. And in fact, that was a false statement, wasn't it?

7 A. That is correct.

8 Q. If you turn for a moment to the minutes of the July
9 31st -- it's in the other book, open right in front of you --
10 the July 31st, 1993, meeting.

11 A. Yes.

12 Q. Were you present?

13 A. Yes, I was.

14 Q. And who was present at that meeting?

15 A. Frits Vandenberg. Cathy Foster. Gene Lear.

16 Q. Okay. So certainly Mr. Ware wasn't there?

17 A. That's correct.

18 Q. Certainly Mr. Stepp wasn't there?

19 A. That's correct.

20 Q. And Mr. Foster was not there, was he?

21 A. That's correct.

22 Q. Okay. Do you recall whether or not Mr. Foster put
23 in any appearance at that meeting?

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1 Articles of Incorporation that he was presenting to us, he
2 had us all sign it.

3 Q. And on the back of that document is the list?

4 A. Of the attendees.

5 Q. And actually, there is one person on there who
6 didn't attend; isn't that right?

7 A. Mike Polifko, yes. That's correct.

8 Q. Somebody else wrote down his name just so he would
9 have that information?

10 A. Right.

11 THE COURT: So he would have what information? Oh,
12 his name and address?

13 MR. CLARY: A member of the board, Your Honor.

14 BY MR. CLARY: (Resuming)

15 Q. Mr. Foster's name nowhere appears on that document,
16 does it?

17 A. It does not.

18 MR. CLARY: I move whatever our next --

19 THE COURT: No. 25.

20 Mr. Annino, do you have this?

21 MR. ANNINO: Yes, Your Honor.

22 THE COURT: Do you have any objection to its
23 admission?

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1 MR. ANNINO: No.

2 (Defendants' Exhibit No. 25 was
3 received into evidence.)

4 BY MR. CLARY: (Resuming)

5 Q. Mr. Arnold, when was the first time that you talked
6 to Mr. Gail Stepp about his status as trustee?

7 A. The first time would have been probably the first
8 week of September after our meeting with Mr. Knowles.

9 I learned that Mr. Vandenberg had had a discussion
10 with Mr. Stepp and advised him that there was some difficulty
11 with the paperwork. And I then went over to talk to Gail and
12 give him all the facts.

13 THE COURT: The first week of September 19 --

14 THE WITNESS: '93.

15 THE COURT: And you actually went to his house,
16 sir?

17 THE WITNESS: Yes, ma'am.

18 BY MR. CLARY: (Resuming)

19 Q. Now, why did you go as opposed to, say, Mr. Foster?

20 A. Well, I was the president of the association. And
21 we had in fact hired the attorney.

22 The attorney had told us what was the problem. And
23 we just wanted to take care of it. It didn't sound like a

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1 big problem.

2 Q. What, if any, offer did Mr. Foster make to you to
3 go talk to Mr. Stepp?

4 A. I don't think any.

5 I don't believe that I ever talked to him about it.

6 Q. At this point in time?

7 A. That's correct.

8 Q. At some subsequent point in time, did Mr. Foster
9 offer to talk to Mr. Stepp?

10 MR. ANNINO: Objection to what conversation --

11 THE COURT: Overruled.

12 THE WITNESS: I don't recall.

13 BY MR. CLARY: (Resuming)

14 Q. That's fine. If you don't recall, you don't
15 recall.

16 What happened when you went over to talk to
17 Mr. Stepp? Describe exactly the conversation that took
18 place.

19 A. I met with Gail and Marie and basically told them
20 that we were trying to get an incorporation, the paperwork
21 done, get the association taken care of. We had hired the
22 attorney. And in his review of the records, he had come
23 across information which included that our trustees were in

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1 fact Mr. Foster, Gene Lear, and Mr. Ware.

2 Q. Didn't you know about this earlier? I mean,
3 Mrs. Medlin and Mrs. Foster had reported this to the board
4 earlier, hadn't they?

5 A. That is correct.

6 When it was reported earlier, I asked the board
7 members "Is this a problem?"

8 And the answer was "Well, we're sure that there is
9 a mistake." Because another member of the community,
10 Mrs. Wright, had done the filing. And she was one of those
11 people who dotted I's and crossed T's. And they were sure
12 that he was a trustee. And they were relatively sure the
13 paperwork had been filled out properly.

14 So I frankly dismissed it.

15 Q. As a mistake on Mrs. Medlin and Mrs. Foster's part?

16 A. That's correct.

17 Q. Then ultimately after the attorney came back with
18 this, I take it, you thought this was more serious?

19 A. That's right.

20 Q. Okay. Go ahead and continue describing your
21 conversation with Mr. and Mrs. Stepp.

22 This was in their home?

23 A. That's right.

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1 THE COURT: In their home or in their front yard?

2 THE WITNESS: In their dining room.

3 Gail informed me that he didn't want to be a
4 trustee.

5 BY MR. CLARY: (Resuming)

6 Q. Did he say why?

7 A. He was too busy with work, among other reasons.

8 Q. Do you recall what other reasons he gave?

9 A. Well, we had a prolonged discussion that probably
10 lasted three hours, you know, in which case Gail told me that
11 he was -- that there were personal reasons involved as well.

12 Q. Did he describe what those -- did any of those
13 personal reasons involve a dislike of Mr. Foster?

14 A. Yes.

15 Q. What, if any, questions did Mr. Stepp ask at that
16 meeting regarding his either status or duties as a trustee?

17 A. At the end of the meeting he -- I had asked him
18 whether he would reconsider. And he said -- he asked me -- I
19 can't say whether it was tongue in cheek or not. But he
20 asked me what the duties of the trustee were.

21 And I referenced a document, which was the trust
22 document. He told me that he didn't have a copy of it, he
23 would like to look at it. And I offered to bring that back

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1 over to him.

2 Q. At the conclusion of your first meeting then what
3 was your understanding of Mr. Stepp's inclination to be or
4 not to be a trustee?

5 A. He told me that he did not wish to serve.

6 I had asked him to reconsider, that we wanted him
7 to serve, that the community wanted him to serve.

8 His concern was "Well, how did it happen?" And we
9 explained that.

10 He wanted to know why we were going through the
11 paperwork drill of incorporating, what was wrong with our
12 current bylaws. So we had a prolonged discussion about what
13 the association was trying to do.

14 He informed me he wasn't 100% in support of our
15 efforts, commenting on a number of things, to include the
16 fact that we had too damn many meetings, that we really
17 didn't have that many things to do in our community.

18 Q. At this first discussion what, if any, discussion
19 was there about Mr. Stepp serving on the board as dis-
20 tinguished from simply being one of the trustees?

21 A. There was no discussion at all.

22 Q. And your understanding of his willingness to be a
23 trustee as a consequence of that meeting was what?

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1 A. That he didn't want to do it. He was too busy.

2 Frankly, that's kind of how we got into the
3 discussion as to what the duties of the trustees were.
4 Because I advised him that there really weren't any duties.

5 Q. Okay. After this first meeting what did you next
6 do in relationship to this issue?

7 A. I went home and found the -- that meeting ended
8 fairly late. So I didn't go back that same evening.

9 And best I can recall, it was the following weekend
10 that I went back with a copy of the trust document outlining
11 the duties of the trustee.

12 Q. And did you meet with Mr. Stepp at that time?

13 A. Yes. And Marie as well.

14 Q. Okay. And how long did that visit last?

15 A. Probably an hour and a half or two.

16 Q. And would you describe the conversations that took
17 place at that second meeting.

18 A. Well, I gave them copies of the trust document.
19 And we talked about the duties of the trustee. And he asked
20 a lot of questions.

21 I gave him -- he asked me specifically what the
22 association thought the duties of the trustees were and how
23 it interacted with the association. And I explained it,

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1 based on my opinion anyway.

2 Q. What was your opinion that you expressed to him?

3 A. My reading of the document and discussion with him
4 basically was that the trustees did not serve any function
5 except in the absence of the association.

6 Q. Okay. Did he express any understanding, agreement,
7 or disagreement with that?

8 A. None at all. No disagreement.

9 And there wasn't a controversy about it, other than
10 just answering questions.

11 Q. What, if any, discussions occurred at that second
12 meeting with whether or not Mr. Stepp was supported by the
13 community?

14 A. You know, I advised Gail that I had gone back and I
15 had talked to the board members and there was absolutely no
16 one -- he had made some reference in our earlier meeting
17 about people not liking him, opposing him serving in that
18 capacity.

19 I had talked with our board. And I assured him
20 that no one had any objection at all or concern about him
21 continuing to serve as a trustee.

22 I offered to put forth a referendum from the
23 community of support, that the board had in fact offered a

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1 resolution to -- showing support for him to serve. And this
2 was largely in reaction to my first conversation with him
3 where he, you know, felt that there were some people who
4 would oppose it.

5 Q. Okay. In fact, during this conversation, how did
6 you express that you proposed to show the support of the
7 community for him?

8 A. I offered to, one, put forth a formal resolution
9 from the board, which we had already done at a general
10 membership meeting, as well as ask for ratification from the
11 community.

12 Q. And what, if any, discussion did you have regarding
13 criteria for trustee?

14 A. I had -- I had to talk to Gail -- I can't remember
15 if it was the first or second meeting.

16 Once we recognized that there was an issue about
17 the trustees, I had asked the board specifically -- and it
18 was me who did this -- that did anybody in the community know
19 of a criteria.

20 We recognized that the trustees had a right to pick
21 whoever they wanted. And that gave me just a little bit of
22 heartburn. And I asked whether or not in fact anyone had
23 ever thought of some minimal criteria for the appointments.

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1 Q. I take it you believed that it was appropriate for
2 the community to express to the trustees who they wanted the
3 trustees to put into a spot?

4 A. Well, not so much who. But at least that they met
5 some minimum qualification.

6 And in fact, in this particular case the criteria
7 that we talked about was consistent with my own personal
8 feelings. And Gail was uniquely qualified in that regard.

9 And I explained to him that I had asked the board
10 to establish a criteria. And I saw this as an opportunity to
11 establish that criteria. And I also told him what that
12 criteria was.

13 Q. And what explanation, if any, did you offer to him
14 about how that criteria related to his qualifications?

15 A. That he was uniquely qualified.

16 The criteria specifically was 15 years of
17 service -- I'm sorry -- living in the community for 15 years
18 and having served the community's interest for five years.

19 Q. The concepts that you have discussed about having
20 the board ratify his nomination as trustee and having the
21 general membership then -- I'm sorry -- having the board make
22 a resolution and having the general membership ratify it, is
23 that the origin of the items seen in the agenda for the May

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1 3rd, 1994, meeting?

2 A. Yes, it is.

3 Q. Okay. Was there ever intended to be an election of
4 a trustee at that meeting?

5 A. No.

6 Q. Okay. At the end of your second, now, meeting with
7 Mr. and Mrs. Stepp, what, if anything, did Mr. Stepp tell you
8 was his intent about continuing to be a trustee?

9 A. He told me he would think about it.

10 Then I -- I asked him if there was anything I could
11 further do to, you know, help him make up his mind. And he
12 said, no, he would let me know.

13 That was kind of the conclusion.

14 Q. Okay. And subsequent to that meeting then, did you
15 again follow up to try and ascertain what his decision was?

16 A. Yes, I did.

17 Q. Can you recall approximately when that was?

18 A. We were getting ready for our next annual
19 meeting -- general membership meeting, which would have been
20 the May meeting. And so sometime during the first week of
21 April, best I can recall -- that week I called Gail and asked
22 him if he had had an opportunity to think about it and had he
23 reached a decision.

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1 THE COURT: That is a long time then, sir -- from
2 September to April?

3 THE WITNESS: Right.

4 BY MR. CLARY: (Resuming)

5 Q. Was there some reason for that delay?

6 A. Not in particular.

7 Actually, I -- it wasn't much of an issue. But we
8 were coming up on our elections. We were trying to wrap up
9 loose ends.

10 We had left it to him to let us know. And I had
11 met with him twice to talk about it. I didn't feel like it
12 was an issue I wanted to press with him.

13 Q. He is the one who asked for time to think about it?

14 A. Right.

15 Q. In fact though, hadn't you scheduled your annual
16 meeting for earlier than May?

17 A. Yes, actually, we had scheduled it earlier.

18 I tried to contact Gail. I was hoping to catch him
19 when I could go over and talk to him. But finally I had to
20 settle for a phone call. And it was more my problem than
21 his.

22 Q. And in fact, if you look in the documents, there is
23 in fact what appears to be a draft agenda for an April 18th,

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1 1994, general membership meeting, is there not?

2 A. Yes.

3 Q. And in fact, the same items actually on this agenda
4 ultimately ended up in the agenda for May 3rd, 1994?

5 A. Correct.

6 Q. Why was there a delay? Why did you have to
7 reschedule the April 1994 meeting to May 3rd, 1994?

8 A. Well, I just wanted to discuss with the board
9 members what we were proposing to do and make sure that
10 everybody was in agreement.

11 When I called Gail -- actually, I called Gail and I
12 asked him had he reached a decision.

13 We talked for a few minutes. So it wasn't a very
14 brief conversation, but it wasn't long. And he basically
15 said, no, he hadn't decided; that he would let me know the
16 night of the meeting.

17 I told him that, you know, we had -- we were
18 prepared to ratify, we were prepared to nominate, we were
19 prepared to show support any way we could. Did he have any
20 suggestions for me as to what I should do? And he said no.

21 So ultimately we kept the draft the way it was and
22 went forward.

23 Q. The May 3rd, 1994, general membership meeting, how

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1 did the subject of Mr. Stepp's status as a trustee come up?

2 A. At the conclusion of the new business I brought it
3 up as -- I think we had completed our discussion of the
4 bylaws and in fact had agreed again that we were going to
5 incorporate and had agreed that we were going to continue to
6 use the bylaws.

7 THE COURT: Mr. Arnold, I am going to interrupt you
8 at this point. I am sorry to do this, but we I have a
9 judicial staff meeting at 1:00. I have to go get something,
10 so we are going to break early today and will resume at 2:00.

11 We are just at that point, the May 3rd, 1994,
12 general meeting.

13 Thank you.

14 (Whereupon, at 12:48 o'clock p.m., a luncheon
15 recess was taken, the proceedings to be reconvened at 2:00
16 o'clock p.m.)

17 AFTERNOON SESSION

18 (2:03 p.m.)

19 RESUMING DIRECT EXAMINATION

20 BY MR. CLARY:

21 Q. Mr. Arnold, directing your attention back to the
22 May 3rd, 1994, general membership meeting, can you describe
23 to the Court the events of that meeting as they relate to the

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1 subject of Mr. Stepp serving as a trustee.

2 A. We had finished the old business portion of our
3 discussions. And I made -- I brought to the floor the
4 problem that we had had with the lost document, that I had
5 talked with Gail and asked him to assist us with a refiling.
6 I mentioned that we had -- the board had met and passed a
7 resolution supporting Gail working -- continuing as a
8 trustee.

9 And there weren't really any questions. It was
10 kind of just an introduction.

11 And then I asked Gail whether or not he had made a
12 decision whether or not he wanted to continue to serve.

13 Q. What was his response?

14 A. He said no.

15 And I may have asked him again, you know, if he was
16 sure. And he said no.

17 And I believe Jim Foster asked him if he would
18 reconsider. And he again said no.

19 Q. At the end of the meeting or after the close of the
20 meeting did you have any other discussions with Mr. Stepp?

21 A. Not at that time.

22 We had -- following that, we had elections. And
23 the meeting adjourned.

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1 Q. Okay. Now, through this May 3rd, 1994, meeting how
2 would you describe your personal relations with the Stepps,
3 on the one hand, versus the Fosters on the other?

4 MR. ANNINO: I object on relevance grounds.

5 MR. CLARY: I think it has to do with his knowledge
6 and familiarity and friendship and intimacy with one person
7 versus Mr. Foster, who in these pleadings is accused of a
8 variety of conspiracies with the association that this man
9 was the president of.

10 THE COURT: The objection is overruled.

11 THE WITNESS: Gail and Marie Stepp were the first
12 couple in the community to extend their hand to us when we
13 moved there.

14 We had young children. There weren't too many kids
15 in the neighborhood. They were always nice to the kids, very
16 kind, and great neighbors.

17 And we -- while I wouldn't say that we were
18 intimate or best friends, we had a lot of friendly
19 discussions over the mailbox, as it were.

20 BY MR. CLARY: (Resuming)

21 Q. Because you were right across the street from one
22 another?

23 A. Exactly.

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1 Q. And how about with respect to Mr. Foster?

2 A. I don't think I had been in the Fosters' house four
3 or five times prior to that time.

4 While Cathy served on our board and is a very nice
5 person, Jim was frequently away. I did not have a lot of
6 contact with him. When I did see him, generally the
7 discussions were short.

8 Jim is fairly opinionated and tells you more than
9 you want sometimes.

10 Q. Okay. So would it be fair to say that you did not
11 have any close relationship with Mr. Foster?

12 A. That's right.

13 THE COURT: How old were your kids when you moved
14 in?

15 When did you move in in the eighties?

16 THE WITNESS: Let's see. We've been there for
17 about 12 years.

18 One of our children has been born there. One was
19 about three. One was nine. And the other one was 18 --
20 16 -- probably 16.

21 BY MR. CLARY: (Resuming)

22 Q. So you had four children over a really broad range
23 of age then?

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1 A. Yes.

2 Q. From a newborn to 18?

3 A. Yes.

4 THE COURT: So everybody has really grown up now?

5 THE WITNESS: My 18-year-old is 30.

6 My current 18-year-old has just moved out of the
7 house and is on his own.

8 THE COURT: And your youngest then is 12?

9 THE WITNESS: My youngest is nine. And my -- and
10 my third son is 14.

11 THE COURT: Thank you.

12 BY MR. CLARY: (Resuming)

13 Q. Mr. Arnold, at any time after the May 3rd, 1994,
14 meeting did you have occasion to see Mr. Stepp in the
15 vicinity of the park?

16 A. Yes, on one occasion.

17 We were having the problem with the drainage at the
18 park on the other side of Rio Vista Drive. The water was
19 running down the road and across the road, not going to the
20 culvert, which is on the left-hand side.

21 There is a culvert on the right which we looked at
22 earlier. And there is another culvert on the left.

23 And Gail was on a backhoe trying to fix the

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1 drainage problem for the community.

2 Q. Was this ditch line you're talking about -- does it
3 start out as part of the existing ditch lines paralleling
4 Rio Vista Drive?

5 A. It parallels Rio Vista Drive and goes around the
6 corner to Bay View in the opposite direction of the trail and
7 then goes to a culvert and from there on into the park.

8 Q. Let me direct your attention now to the May 15th,
9 1995, general membership meeting.

10 A. Which one?

11 Q. May 15th, 1995, general membership meeting.

12 You were not the president of the association at
13 this time?

14 A. That's correct. I was not.

15 Q. Dr. Polifko was?

16 A. Yes.

17 Q. Did you attend that meeting?

18 A. I did.

19 Q. And do you recall what, if anything, was said
20 during that meeting with respect to the -- with respect to
21 Mr. Stepp and him being a trustee?

22 A. Dr. Polifko mentioned that we still needed to
23 resolve the trustee issue in the community.

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1 He asked Gail whether or not he had reconsidered
2 serving as a trustee. Gail said, no, he had already answered
3 the question.

4 And Dr. Polifko asked the trustees at that meeting
5 if they would get together and appoint another trustee.

6 Q. After the close of that meeting did you have an
7 occasion to be present during an additional conversation with
8 Mr. Stepp on the subject of his being a trustee?

9 A. Gene Lear -- Marvin Lear -- was in the hallway
10 talking to Gail, asking him to reconsider. Mike walked up to
11 the meeting. I walked up to the meeting at the same time.

12 And Gene was asking him again to reconsider and
13 trying to get him to come on-board and work with us.

14 And he said no.

15 Q. Is there any question in your mind that the subject
16 of the discussion was whether or not he would be a trustee?

17 A. The subject of the discussion was whether or not he
18 would be a trustee.

19 MR. CLARY: Nothing further.

20 THE COURT: Let me get some time constraints here.
21 How many more witnesses do you have, Mr. Tolchin?

22 MR. TOLCHIN: Two more.

23 THE COURT: And Mr. Clary?

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* * *

1 A. No.

2 Q. Now, you are currently the -- withdraw that.

3 Over the period of years that you've been involved
4 with this organization -- withdraw that.

5 You've been involved with this organization since
6 its beginning in 1974, correct?

7 A. That's right.

8 Q. And over the period of years that you've been
9 involved in this organization, from '74 through the date of
10 incorporation '94 and after the date of incorporation, has
11 there been any changes in the way that the corporation does
12 business -- the way the entity organization does business?

13 A. No, over the years, except for getting more
14 organized in 1990. For the rest, everything stayed the same.

15 Q. Other than that -- that's when Mr. Arnold became
16 president?

17 A. That's right.

18 Q. Other than his attempt to become better organized,
19 everything has been the same?

20 A. The same.

21 Q. Have you spent money on different things over the
22 years?

23 A. Absolutely.

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1 Q. Has the types of expenditures changed over the
2 years?

3 A. No.

4 Q. Now, you are currently the treasurer of this
5 organization, are you not?

6 A. That's right.

7 Q. As the treasurer, have you caused a review to be
8 done of the treasury books and the records of the associa-
9 tion, which are in this box right here (Indicating)?

10 A. Mrs. Arnold and myself have gone over the records
11 from 1974 on till now.

12 Q. And based on that review, did you and Mrs. Arnold
13 prepare a summary of income and expenses from 1974 to
14 present?

15 A. Absolutely.

16 Q. Do you have a copy of it there?

17 A. I have a copy right here.

18 MR. TOLCHIN: Your Honor, this is the exhibit
19 that's been marked as Exhibit No. 26.

20 THE COURT: Yes.

21 BY MR. TOLCHIN: (Resuming)

22 Q. Now, directing your attention to Exhibit No. 26,
23 can you describe to the Court how it is this was prepared.

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1 A. We went through all the cancelled checks that we
2 had in the files, all the records that were kept. We
3 reviewed all those. And according to the ones that we could
4 find and had available to us, we made up this list.

5 Q. And this is a true and accurate summary of what's
6 in this box of records?

7 A. Yes, sir.

8 MR. TOLCHIN: Your Honor, we would move Exhibit
9 No. 26 into evidence.

10 THE COURT: Mr. Annino?

11 MR. ANNINO: No objection, Your Honor.

12 THE COURT: It's in.

13 (Defendants' Exhibit No. 26 was
14 received into evidence.)

15 BY MR. TOLCHIN: (Resuming)

16 Q. There are certain entries here that I would like to
17 address your attention to specifically, Mr. Vandenberg. The
18 first entry is an entry for "G. Galt Bready, legal, \$132."

19 Is that the same Mr. Bready that was testifying
20 here a few minutes ago?

21 A. Yeah. That was the same.

22 Q. So that legal bill was paid by the community
23 association?

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1 A. Yes.

2 Q. Now, below that on that same page there is an entry
3 on 7/10/74 for bulldozing. And then if you turn the page,
4 there is an another entry on 12/19/75, "Hopkins Bulldozer
5 Bulldozing."

6 Do you see those?

7 A. Yup.

8 Q. Can you tell the Court what the bulldozing was.

9 A. That is for work on Rio Vista Drive.

10 Q. So back in 1974 and 1975, right after the creation
11 of this entity called Belmont Bay Community Associates, you
12 were already paying people to do bulldozing?

13 A. Yes.

14 Q. Do you personally have knowledge of that bull-
15 dozing?

16 A. Absolutely. Because I saw it. And in a few cases,
17 I directed the work that was to be done.

18 Q. And who was the person who was paid to do the
19 bulldozing?

20 A. Mr. Hopkins.

21 Q. And what was Mr. Hopkins doing on Rio Vista Drive
22 back in '74 and '75?

23 A. He pulled his bulldozer down and filled in the ruts

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1 and bulldozed.

2 Unfortunately, he never crowned the road.

3 Q. He never crowned the road?

4 A. Right, he never crowned the road, because he had a
5 bulldozer. You need a roadgrader in order to crown the road.

6 Q. But he was doing at least part of the work that was
7 done, the same type of work that was redone in 1993; is that
8 correct?

9 A. That's correct.

10 Q. In 1993 you crowned the road as well?

11 A. Yeah.

12 THE COURT: What is crowning the road, sir? How do
13 you crown a road? I don't know what that is.

14 THE WITNESS: To make it higher in the center, so
15 the water would run off to the side rather than right in the
16 the middle and create just like a gulley.

17 BY MR. TOLCHIN: (Resuming)

18 Q. Now, you also were paying back in 1974 -- 9/30/74
19 -- for hardware sign and signage. And then on the next page,
20 10/14/74, 3/21/75, and 12/3/75, you were paying for mulch and
21 peat moss and things of that nature.

22 What was that for?

23 A. The sign was for the -- we had a sign at the -- a

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1 sign at the park area which said No Trespassing.

2 Q. Okay. Now, was there also a sign that was put up
3 at the very beginning on the front entrance to the community?

4 A. Yes, sir.

5 Q. Is that referenced in here as well?

6 A. That's referenced there.

7 Q. Can you show that to the Judge.

8 A. Yeah.

9 THE COURT: What page, sir?

10 THE WITNESS: The first page, 9/30/74.

11 BY MR. TOLCHIN: (Resuming)

12 Q. And that's for the sign at the front of the
13 community?

14 A. Yeah.

15 Q. And that was decided upon right after the
16 organization began in the development's bylaws?

17 A. That's correct.

18 Q. Now, on 12/18/79 there is a note there "Frits
19 Vandenberg, gate lock."

20 What is that in 1979?

21 A. We purchased a lock to -- Mr. Stepp had provided us
22 with a barrier which he said came from the Pentagon, which
23 was an old chimney. And we made -- from the chimney we made

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1 a gate. And in order to keep the gate closed, we purchased a
2 lock and a chain.

3 Q. And where was this gate placed?

4 A. At the top of Rio Vista Drive.

5 Q. The same place where there is a gate now; is that
6 correct?

7 A. Right.

8 Q. So that was way back in 1979?

9 A. Yeah.

10 Q. Did Mr. Stepp complain about putting that gate
11 there?

12 A. No. He provided the gate itself.

13 Q. And later on, in 1982, there is another entry on
14 8/28/82, "F.W. Vandenberg, concrete for signs."

15 What is that for?

16 A. We became a member of the neighborhood watch group.
17 And I purchased some signs from the police department.

18 We had to put the signs up. So we poured some
19 concrete around the post of the signs, so they wouldn't fall
20 over.

21 Q. This was a neighborhood watch sign?

22 A. Yeah.

23 Q. All these things that -- well, we'll go one more to

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1 3/13/86, "Gene M. Lear, gift, Small."

2 Do you know who the -- "gift for Small family."

3 Do you know who the Small family is?

4 A. Yeah. Mr. Small used to be president. He used to
5 live at the same place that the Barkers are living now.

6 They were moving out from the area. So we had a
7 little party for them and prepared a gift for their
8 departure.

9 Q. Now, were any of these expenditures that we've
10 addressed for the past five or ten minutes -- have they been
11 expenditures that relate to Parcel A other than to the extent
12 that the road is a road to Parcel A?

13 A. No, none of them.

14 Q. Has that been consistent from 1974 forward, that
15 the association has always spent its money on things other
16 than Parcel A?

17 A. Yeah.

18 Q. During your years in the community, have you ever
19 heard until this lawsuit was filed Mr. or Mrs. Edwards or
20 Mr. or Mrs. Stepp complaining that the association was
21 spending money outside of Parcel A?

22 A. Never heard a word.

23 Q. Have you spoken with them on occasion about various

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1 things that were done?

2 A. Well, we had a friendly relationship at one time.

3 Q. So you've had occasions to talk to them about
4 what's going on in the community?

5 A. Sure.

6 Q. And never once did any of them complain to you; is
7 that right?

8 A. No.

9 Q. Now, the work that was done in 1993, what was your
10 involvement in that -- the work that was done by Mr. Walker,
11 I guess, on Rio Vista Drive and Bay View and the park and
12 that area?

13 A. Well, I had originally contacted VDOT asking for
14 berm that they otherwise had to bring to the dump, that they
15 would be able to bring it to Rio Vista Drive.

16 After that Mr. Arnold had written a letter to VDOT.
17 And we at one time got a response from the supervisor out
18 there. He came down to look at it, because they were working
19 on some project near Hallowing Point, which is close in the
20 area where we live, and it would have some excess berm
21 available.

22 So they came down to me and asked me to grade the
23 road first and remove some trees. Because he didn't want to

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1 have any of the trucks that would come down break an axle on
2 this terrible-looking road.

3 Q. That was Rio Vista Drive?

4 A. That was Rio Vista Drive.

5 Q. So what did you do?

6 A. So we asked Mr. Walker to grade the road so that
7 the ruts would be filled, so the trucks could come down and
8 make a turn at the bottom of the hill and then dump their
9 loads as they went up the hill again.

10 Q. Did Mr. Edwards participate with you in any work
11 that was being done in 1993-1994?

12 A. He sort of supervised on occasion.

13 Q. What did he do?

14 A. Stood around and talked to the guy that was working
15 for us.

16 Q. Were you there when he was assisting in that way?

17 A. Oh, yeah.

18 Q. Did Mr. Edwards complain to you at that point that
19 this work shouldn't be done?

20 A. No, he never complained.

21 Q. One other area I want to -- before that -- after
22 the work was done did county inspectors come down and look at
23 the road?

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1 A. Yeah, on several occasions county inspectors came
2 down.

3 Q. Was any objection made by any county inspector to
4 the road?

5 A. No. They came down and made no objection whatso-
6 ever.

7 Q. And they did inspect the road with you?

8 A. Yeah. They inspected the road with us and also the
9 work that was done at Parcel A.

10 Q. And there was no objection raised?

11 A. No objection.

12 THE COURT: Where was the berm going to be dumped?

13 THE WITNESS: I beg your pardon?

14 THE COURT: The berm was going to be dumped where?

15 THE WITNESS: On the road, Rio Vista Drive.


16 THE COURT: They wanted to be able to turn around?

17 THE WITNESS: Well, they couldn't turn around on
18 Rio Vista Drive itself. They had to go to the bottom of the
19 road in order to be able to turn around and then dump their
20 loads as they went back up again.

21 Otherwise, if they dumped it before they went down,
22 they couldn't get back up.

23 THE COURT: Don't assume that I know any of that.

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1 With everybody else -- we had a telephone system
2 when I first got out there that had 12 people on the party
3 line.

4 BY MR. CLARY: (Resuming)

5 Q. Mr. Foster, I don't want to interrupt your answer.
6 But let me see if I can move you to -- there came a time, did
7 there not, after this subdivision had been abandoned that you
8 were interested in trying to acquire lots adjacent to you to
9 expand the property that you owned around your home site?

10 A. Yes.

11 Q. When was that?

12 A. 1969.

13 Q. And did you know who owned those lots at the time?

14 A. Not at the time.

15 Q. How did you find out?

16 A. I went out to the County and looked at the tax
17 records and got -- found out that a Mr. Hurvitz owned the
18 property.

19 Q. Okay. And how then did you locate Mr. Hurvitz?

20 A. Through his address. I made a telephone call.

21 And he was a patent attorney over on K Street.

22 Q. It turns out he was in the phone book?

23 A. He was in the phone book, yes.

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1 Q. Okay. And as a result of that contact, you then --
2 what did you learn about Mr. Hurvitz's ownership of lots in
3 the subdivision?

4 A. He told me that he owned some property in Virginia,
5 did not know where it was at. If this was his property, he
6 would be happy to look at a lot that I wanted to purchase.

7 Q. Had he ever seen it?

8 A. No. He got it through some default.

9 Q. Okay. And so as a consequence of that, then you in
10 fact brought him out to the property and showed him what the
11 property was?

12 A. I went into K Street and picked him up at this
13 office, drove him to his property. I showed him the lot next
14 to my house.

15 He said, "I think you ought to have that lot." And
16 he sold it to me.

17 Q. And this process from '69 up until about '72, a
18 process of discussing with him at various times specific lots
19 that were for sale, continued during that period of time,
20 didn't it, on and off?

21 A. Well, actually, in 1971 my wife and I decided maybe
22 we would add some more property. And once again, I contacted
23 Mr. Hurvitz.

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1 Q. So you had the one contact in '69 and you bought a
2 lot? And then a contact again in '71?

3 A. In 1971.

4 And he sold me two lots.

5 Q. Okay. And at that time did he also ask you to
6 bring him out to the property again?

7 A. Yes. By that time his office had moved to Crystal
8 City. He said, "I am a little closer now." I forgot how we
9 got out there. "Would you come and show me my property?"

10 Q. And as a consequence of that, did you buy a couple
11 lots?

12 A. Yes. I bought two lots.

13 Q. And did you -- did you have any discussions with
14 him about offering lots at this point in time to other people
15 in the community?

16 A. Yeah. About that time he said, "Any of your other
17 neighbors that would like to add property to their adjacent
18 lots," to get in touch with him.

19 Q. And did you contact some of your neighbors and tell
20 them about that?

21 A. I contacted Mr. and Mrs. Wright. I contacted Mr.
22 and Mrs. Lear.

23 We sort of had a little get-together up at

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1 Mr. Lear's house. And I was a messenger. I passed the word
2 that "Here is the man's telephone number if you want to buy a
3 lot."

4 Q. How much did he want for the lots?

5 A. \$2,000.

6 Q. And as of this point in time, 1971, had the
7 subject of Parcel A ever come up in your conversations with
8 Mr. Hurvitz?

9 A. No.

10 Q. And in fact, when you brought him out to the
11 property to show him his property, did you ever show him
12 Parcel A at that point?

13 A. I had no reason to. I just took him down this
14 gravel road to my house.

15 Q. To show him the lot you wanted to purchase?

16 A. To show him the lot I wanted to purchase next to
17 where I lived.

18 Q. Did there come a time when that situation changed
19 and you realized that Mr. Hurvitz owned Parcel A?

20 A. I believe it was early fall in 1992.

21 Q. '72?

22 A. Excuse me. Excuse me. 1972.

23 In 1972 Mr. Hurvitz called me up one day.

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1 Q. Okay.

2 A. And he said, "Nice to talk with you, Mr. Foster.
3 What's going on out there?"

4 I said, "About the same as when you were out here a
5 few years ago, nothing."

6 He said, "I have -- I've only heard from four
7 people. Is there anybody else that you know that would like
8 to buy any of those lots?"

9 I said, "Well, what lots -- I don't even know what
10 lots you own. I just know you owned a couple lots next to
11 me."

12 So he gave me a list of lots. And he said, "And I
13 also have a larger lot that is -- it's -- it has no number.
14 It's called Parcel A."

15 Q. And what did you say?

16 A. I thought, "There goes our sailing marina and boat
17 docks we were promised by the original developer." And I
18 said, "I'll see what I can do for you. And I'll get back to
19 you."

20 Q. And what did you do?

21 A. I put the flag up in the community, once again, at
22 Mr. Lear's house. We had just about everybody there. And I
23 said, "I've just found out that this Mr. Hurvitz has title --

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1 he says he has title to Parcel A."

2 Q. And what was -- and as a result of that, were you
3 asked to do something?

4 A. Yes. The community asked me would I please go in
5 and see if I could have a meeting with the man and try to
6 explain to him that somehow he has title to what was promised
7 to us, which I did.

8 Q. And you did that?

9 A. Yes. I went in, showed him the original brochure
10 of the community, all these promises we had.

11 And he was a fine elderly gentleman. And he truly
12 surprised me, because he says "I agree with you, Mr. Foster.
13 I have no plans for that property. It's obvious that the
14 original developer did." And he said, "I'll give it to you."

15 (The following document
16 referred to was marked as
17 Defendants' Exhibit No. 28 for
18 identification.)

19 BY MR. CLARY: (Resuming)

20 Q. Mr. Foster, I'm going to show you an exhibit which
21 has been marked for identification as Defendants' Exhibit
22 No. 28 and ask if you can identify it.

23 A. Yes. This is the original brochure that was handed

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1 out after we found the ad in the newspaper to buy the
2 property.

3 Q. And it was on the strength of this sole document
4 that you persuaded this man to give this property to the
5 community?

6 A. I explained to him "This always had been the
7 understanding. There is just a few of us down there."

8 Like I said, it didn't -- he didn't give me any
9 argument. He said, "I have no plans. And it's obvious that
10 you people were promised this." He said, "I'll draw you up a
11 deed."

12 Q. All right, sir. And he volunteered to draw up the
13 deed?

14 A. Yes.

15 MR. CLARY: I ask that this exhibit, which I think
16 is 28, be admitted.

17 THE COURT: Mr. Annino?

18 MR. ANNINO: I haven't seen it, Your Honor. I
19 would like to see it.

20 MR. CLARY: You've seen it.

21 THE COURT: Mr. Annino?

22 MR. ANNINO: I don't have any objection.

23 THE COURT: It's admitted.

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1 (Defendants' Exhibit No. 28 was
2 received into evidence.)

3 BY MR. CLARY: (Resuming)

4 Q. After you persuaded Mr. Hurvitz to give you -- to
5 give the community the property -- by the way, just so we're
6 clear here, in your discussion with Mr. Hurvitz he wasn't
7 talking about giving the property to you personally?

8 A. Oh, no, no.

9 I told him there was 140 lots out there. And I was
10 told we all have -- we all get part of this.

11 Q. You mean originally?

12 A. Originally. From the original developers.

13 Q. After -- and he said he would draft the deed?

14 A. He said, "I'm busy. But my wife and I will draw up
15 a deed, and I'll get it to you."

16 Q. Okay. What did you do then when you -- after your
17 meeting? Did you come back to the community to report this?

18 A. I came right back.

19 And of course, in those days this was hot news for
20 us getting our park. So the minute -- I called Mr. Lear
21 again. And he quickly called a meeting. And we had a
22 discussion.

23 And the first thing Mr. Lear said, "Wait a minute.

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1 If the man is going to give us seven acres on the water for
2 nothing, maybe there's something wrong with it. We'd better
3 investigate."

4 I said -- and everybody in the room either -- well,
5 they agreed.

6 THE COURT: Who was in the room, sir?

7 THE WITNESS: Pardon?

8 THE COURT: Who was in the room?

9 THE WITNESS: I can't say for sure.

10 THE COURT: I mean, how many people were living
11 there then?

12 THE WITNESS: We had maybe 11, 12 homes, something
13 like that.

14 And I -- at least every family and most everybody
15 in the families, including kids probably, were on Mr. Lear's
16 back porch.

17 I'll never forget that statement. He said, "The
18 man is trying to cheat us."

19 BY MR. CLARY: (Resuming)

20 Q. And as a consequence of that, you know, is that how
21 Mr. Bready got involved?

22 A. Yes.

23 There wasn't anybody in the room, I guess, that

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1 knew an attorney. Mr. Lear was doing some work with
2 Mr. Bready. We were short of money obviously -- everybody --
3 in those days.

4 He said, "I think I can get this man to at least
5 look at it to see if this is reasonable. And it might not be
6 too much."

7 We all agreed to whatever Mr. Lear could do.
8 "Please call this Mr. Bready."

9 Q. Now, after -- and your understanding, at least as
10 of that point in time, was that the deed that Mr. Hurvitz was
11 going to prepare was going to be to the community?

12 A. Oh, absolutely, yes.

13 Q. Now, after this fall meeting did you hear from
14 Mr. Hurvitz immediately after that?

15 A. No. We were quite concerned, because we didn't
16 hear from him.

17 Q. And did -- what next transpired in terms of getting
18 the deed?

19 A. It was very cold. It was either January or
20 February of the next year, which would be '93 --

21 Q. '73.

22 A. Excuse me. '73. This is old, way back. I'm
23 sorry.

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1 In 1973 it was cold. My son played in the Hayfield
2 band. He did something to his trumpet. We were in
3 Zaparelli's music store in Crystal City coming out on the
4 sidewalk. And Mr. Hurvitz was coming back from lunch to his
5 office. We met just on the sidewalk.

6 And he said, "Hi, Mr. Foster. I haven't seen you
7 for a while." And he was just elated. He said, "This is the
8 happiest day of my life. I've sold all that property down
9 there in Virginia."

10 Q. And what did you say?

11 A. I said, "All of it?"

12 He said, "All of it."

13 And I said, "Well, you remember last fall when you
14 said you were going to gift us Parcel A?"

15 "Oh," he said. "I'm very sorry. I've been ill.
16 I've been out of work for a couple of months. I'm just
17 getting back. That completely slipped my mind. I am so
18 busy."

19 I said, "Well, have you signed this document that
20 you've sold?"

21 "No," he said. "I have it right here. I'm going
22 to sign it as soon as I get back to the office."

23 Q. And what was the document?

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1 A. It was a contract to buy these lots along with
2 Parcel A.

3 And he said, "Look, I want you people to have that
4 Parcel A. I'm so busy. Do you have -- would you have
5 somebody draw up a deed and get it to me?"

6 Q. All right.

7 A. And then in his next words he said, "Wait a minute.
8 Wait a minute. Make sure you make it a special warranty
9 deed."

10 Q. And did you understand what a special warranty deed
11 was?

12 A. Not in those days, no.

13 Q. Did you ask Mr. Hurvitz what that was?

14 A. No.

15 I just relayed that to Mr. Bready.

16 Q. You later then came to learn what a special
17 warranty deed was?

18 A. Yes, yes.

19 Q. And you relayed that information to Mr. Bready?

20 A. Yes.

21 Q. And did you in fact then go out to Mr. Bready's
22 office and get the deed to have Mr. Hurvitz sign it?

23 A. It was a panic time. Because this -- maybe if I

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1 could back up just one second.

2 Q. All right.

3 A. Mr. Hurvitz at that time said, "I want you people
4 to have this if you can get me a deed."

5 And I assumed that meant like right now. And I
6 said, "May I ask what you got for your property?"

7 And he said, "Well, not anything near what I really
8 needed out of it. But I'm tired of it. I got \$60,000 for 64
9 lots."

10 I said, "My, oh, my. That's less than \$1,000 a
11 lot." And I'm very concerned what type of a house might be
12 going into our rundown community now when someone paid less
13 than \$1,000 for a lot. And I asked him --

14 Q. In fact, you all had paid 2,000?

15 A. We had paid 2,000 for what I called unbuildable,
16 unserviceable lots, just to have more property.

17 And I said, "Could you give -- is there any way
18 that you could hold off on that contract until we get
19 Parcel A out of the way? And give me a minute to think about
20 this. Because I am getting you \$2,000. I think we could at
21 least sell all the property out there to those people for at
22 least more than double what this man" -- and he told me,
23 "Well, I'm only getting \$6,000 down and a promise to pay."

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1 And he said, "Mr. Foster, you've never -- you've
2 been very nice." He said, "Sure, I'll hold off for a little
3 bit till you people are comfortable out there."

4 Q. In fact, the gentleman who he had contracted with
5 to sell the property to -- you knew that gentleman, didn't
6 you?

7 A. Yes.

8 Q. And why -- what was it about this gentleman that
9 he was going to sell to that gave you concerns about your
10 neighborhood?

11 A. There wasn't anything wrong with the gentleman
12 other than the fact that he was running a dump site out on
13 Route 1 that was just about out of room.

14 Q. So you were concerned he was going to turn your
15 community into a dump?

16 A. Well, I didn't know if he could do that. But I did
17 know at that time there was on Kanes Creek, which is now the
18 most beautiful wildlife preserve in Mason Neck for the
19 eagles -- there was applications on file to fill in over
20 there at Kanes Creek. And there was supposed to be -- at
21 that time Metro was being built. And anybody that had a
22 hollow in Virginia, they could get \$12 a load for every dump
23 truck out of the District or wherever.

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1 So that did concern me.

2 MR. ANNINO: Your Honor, if we could move this
3 along, we are running out of time here.

4 MR. CLARY: I'm sorry. I'll try and move it along.

5 THE COURT: All right.

6 BY MR. CLARY: (Resuming)

7 Q. Mr. Foster, so you called Mr. Bready, asked him to
8 prepare the deed.

9 Then did you go out and get the deed so that
10 Mr. Hurvitz could execute it?

11 A. I called -- his secretary took the message.

12 He called back sometime right after lunch, I
13 believe. And he said, "How soon can you get here?" And he
14 gave me directions.

15 Well, actually, I had been out there with Mr. Lear
16 prior to that.

17 Q. On another occasion?

18 A. Well, when we -- yeah.

19 Q. Did you have any discussions -- when you got the
20 deed, it wasn't to a community, was it? It was to trustees?

21 A. Yes.

22 Q. How were those trustees selected?

23 A. We were in his office. And he said, "There is no

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1 association. I can't deed this to the community. I need a
2 name. And the quickest way to get this property to you
3 people is to have three trustees."

4 Q. Did you -- what did you say in response to that?

5 A. Well, he asked, "Would you three gentlemen be
6 trustees?"

7 Q. And --

8 A. The older gentleman and I -- I said, "What do we
9 have to do as a trustee?"

10 Q. And what did he explain to you?

11 MR. ANNINO: Your Honor, I am going to object to
12 the hearsay.

13 This is Mr. Bready.

14 MR. CLARY: The fact that it was said goes to
15 Mr. Foster's state of mind as to what his duties were.

16 Moreover, we've already had testimony from
17 Mr. Bready about what he told him and the fact that it's
18 confirmed in the letter of March 8th, 1973.

19 THE COURT: Overruled.

20 Go ahead, sir.

21 THE WITNESS: He said, "Not much. When you get
22 back to the community, you must call a meeting for them to
23 form an association to take control of this parcel. And we

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1 need a name to send the tax bill to or an address."

2 BY MR. CLARY: (Resuming)

3 Q. That was the entirety of what he explained to you?

4 A. That's exactly what he told us.

5 Q. Did you have any concerns about any commitment of
6 time and effort that might be involved in being a trustee?

7 A. Yeah.

8 I would have never accepted this job, had I known
9 it was an every-day job.

10 Q. And in fact, it hasn't been an every-day job?

11 A. No, no.

12 Q. You then continued discussions thereafter with
13 Mr. Hurvitz? And in fact, you formed the Hurvitz-Foster
14 Joint Venture, didn't you?

15 A. Yes.

16 Q. The original joint venture agreement was entered
17 into actually slightly after Parcel A was deeded, wasn't it?

18 A. Yes.

19 MR. CLARY: And in fact -- if I can ask this be
20 marked as the next exhibit in order, which I think is 29.

21 (The following document

22 referred to was marked as

23 Defendants' Exhibit No. 29 for

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1 identification.)

2 BY MR. CLARY: (Resuming)

3 Q. It is -- in fact, is Defendants' Exhibit 29 your
4 original joint venture agreement with Mr. Hurvitz?

5 A. Yes. It's complete.

6 Q. Okay. And did Mr. Hurvitz draft this himself?

7 A. Yes.

8 Q. I assume you wouldn't know how to draft this?

9 A. No way.

10 Q. In your discussions with Mr. Hurvitz, did he
11 indicate any concern or sensitivity to placing any burdens on
12 your time and commitment?

13 A. I indicated to him that I would be willing to do a
14 perk test and clean up the brush and try to market as many of
15 these lots as I possibly could for him.

16 And he was concerned of maybe I didn't have the
17 ability to do all of that or it would be too time-consuming.

18 Q. And in fact, Mr. Hurvitz drafted in a provision at
19 the end of paragraph 11 on the second page which essentially
20 said the venture can be terminated if it turned out to be
21 unduly burdensome to Foster, didn't he?

22 A. Yes.

23 Q. And was this typical of his attitude in dealing

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1 with you with regard to the joint -- with respect to all the
2 property out there?

3 A. Yes.

4 He was a very kind gentleman. He didn't -- he was
5 appreciative of what I was trying to do for him. But he
6 didn't want to put a burden on my wife and I.

7 Q. And Mr. Hurvitz never indicated that he wanted you
8 to do anything specifically with respect to Parcel A, did he?

9 A. Never.

10 Q. After you got the deed you took it to Mr. Hurvitz
11 to have him execute it.

12 I assume his wife wasn't there?

13 A. No.

14 I delivered -- yes, I delivered the deed to his
15 office at Crystal City.

16 Q. And then sometime later, after his wife had
17 executed it, it was returned to --

18 A. Well, I picked it up at his office.

19 He called me up and said, "I have the deed. I'll
20 mail it to you."

21 I guess I didn't trust U.S. Mail. I said, "Would
22 you mind if I come in and pick it up?" Because we wanted
23 this property for the community.

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1 THE COURT: That was smart, sir. That was smart.

2 THE WITNESS: I don't know why.

3 But she said, "By all means. Come on in and pick
4 it up."

5 BY MR. CLARY: (Resuming)

6 Q. And what did you do with it?

7 A. I picked it up. I took it directly to Mr. Bready.

8 Q. And he indicated to you that he was then going to
9 record the deed?

10 A. Yes.

11 Q. And what did you next do?

12 Or maybe you waited until after you got the letter.

13 A. I believe Mr. Lear is the one that received the
14 document -- no.

15 Well, I am not sure. One of us received it in the
16 mail from Mr. Bready and said it had been recorded.

17 Q. That's his March 8th, 1976, letter which has
18 already been admitted as an exhibit?

19 A. I believe so.

20 Q. Is this the copy of the letter that you received
21 from Mr. Bready?

22 A. Yes, it is.

23 Q. Okay. And this was just, by way of reference,

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1 Defendants' Exhibit 21.

2 And what did you do then after you got this letter?

3 A. Mr. Ware and Mr. Lear and I got together. And I
4 believe most all this -- most everything happened at
5 Mr. Lear's home.

6 Once again, we called a meeting of the community.

7 Q. Okay. And at that meeting then did you form the
8 organization that ultimately became known as Belmont Bay
9 Community Associates?

10 A. We held the meeting where the neighbors then
11 formed -- we caused the association to be formed.

12 Q. Okay. And the residents there elected their
13 officers and directors?

14 A. Yes. They elected four officers.

15 Q. Okay. Who were the officers that were elected; do
16 you recall?

17 A. Gail Stepp was president. Mrs. Jean Lear was
18 treasurer. Willy Payne -- Mr. Payne was vice president. And
19 Sally Spangler was secretary.

20 Q. All right. And the meetings that the organization
21 had from that point in time -- let's say all the way through
22 1976 or '77.

23 In fact, all of those were general membership

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1 meetings, weren't they?

2 A. Yes.

3 Q. At some point in time -- now, at the very first
4 meeting you didn't send out any notice to nonresident lot
5 owners, did you?

6 A. No.

7 Q. And is this because you didn't know who they were?

8 A. Yes. Because we just formed our association that
9 day or that night.

10 Q. But you, I take it, felt the most important thing
11 was to get the association going?

12 A. Yes. Because we had a tax liability. And
13 Mr. Bready impressed upon us that we now owned this property,
14 so we'd better get it protected with liability insurance.

15 Q. At some point in time after the initial meeting of
16 the association did there come a time when you did make an
17 effort to find out who the nonresident lot owners were?

18 A. Yes. The next year.

19 Q. All right. And how did you do that?

20 A. Mr. Jackson replaced Mr. Stepp as president.

21 THE COURT: What year was that again, sir?

22 THE WITNESS: 1974.

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1 BY MR. CLARY: (Resuming)

2 Q. This was in February of 1974?

3 A. February of 1974, I believe.

4 Q. And what did you and Mr. Jackson do?

5 A. Well, it was -- Mr. Jackson and whoever was at the
6 meeting.

7 He said -- you have to understand Mr. Jackson is
8 the superintendent of schools of Fort Belvoir. So --

9 MR. ANNINO: I'm going to object to what
10 Mr. Jackson has said.

11 THE COURT: Actually, Mr. Annino, this strikes me
12 as being just historical background.

13 Are we beyond that?

14 MR. CLARY: It is only in the sense that one of
15 Mr. Annino's continuing charges against the trustees is that
16 they failed annually to call a meeting of all resident lot
17 owners.

18 THE COURT: All right.

19 MR. CLARY: And without getting into argument, at
20 least the Court should understand at what point in time that
21 was done.

22 And I think you have Mr. Jackson's testimony. Now
23 we're having Mr. Foster's testimony.

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1 THE WITNESS: Mr. Jackson suggested that we notify
2 all the lot owners that they now have ownership in this
3 property and advise them of what's going on.

4 BY MR. CLARY: (Resuming)

5 Q. And so you went out with him to the courthouse?

6 A. No, no.

7 He -- he requested somebody to go out. And I'm off
8 through the week in those days. And my wife and I went out
9 to get the names.

10 Q. So then what did you do with the names of the
11 nonresident lot owners that you found at the County?

12 A. We copied down -- we did it by hand in those days.

13 And we brought it back. And I gave it to
14 Mr. Jackson.

15 Q. And to your knowledge, did he use those to send out
16 notices and copies of -- all those mimeograph sheets to the
17 resident and nonresident lot owners?

18 A. Yes.

19 Q. Okay. Mr. Foster, what role did you play in the
20 original bylaws that were adopted on February 11th, 1974?

21 A. Nothing.

22 Q. Okay. What role did you play with respect to the
23 original dues structure that was adopted by the association

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1 on February 11th, 1974?

2 A. Nothing more than a community member at the
3 meeting.

4 Q. Okay. Do you know why they adopted -- the
5 association adopted a dues structure that was one price for
6 residents and one price for nonresidents?

7 A. I believe the discussion was, in the first place,
8 the people that lived in the community obviously would get
9 more use of the property than maybe someone in California.

10 Q. Okay.

11 A. And they would like -- they thought they had an
12 obligation at least for insurance and taxes. And it was
13 generally accepted -- well, they discussed this. And they
14 said, "Maybe if we only charge them half what the people
15 living in the community would be charged, then we might get
16 some participation."

17 Q. You mean they might volunteer to be members?

18 A. They might voluntarily send us some money.

19 Q. What role did you play in the adoption of the
20 original voting structure that is reflected in the bylaws?

21 A. None whatsoever other than I was at the meeting --
22 the community meeting.

23 Q. And do you know why the community -- the Belmont

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1 Bay Community Associates adopted that voting structure?

2 A. Well, part of the discussion was -- at that time I
3 owned -- and there was other people. There was a number of
4 multiple lot owners. I happened to be one. But I don't
5 think that was the biggest reason.

6 There again, there is people still thinking that
7 this Mr. Hurvitz was too easy to give us this property, I
8 think. And they said, "He's going to allow us to build this.
9 And he has 64 lots or something. He can control it."

10 Q. And so was that the basis --

11 A. They just said -- they, meaning the people at the
12 community, decided one owner, one vote, one dues.

13 Q. Okay. In fact, was there a discussion about
14 whether even to ask for dues from Mr. Hurvitz among the
15 members of the association?

16 A. Mr. Jackson brought up that when we decided on, I
17 believe it was, \$35 for absentee lot owners -- he made a
18 statement that he would be absolutely horrified if we sent
19 this Mr. Hurvitz a bill for \$35 after he had given us the six
20 or seven acres on the bay. And --

21 THE COURT: Who said that, sir?

22 THE WITNESS: Mr. Jackson, the president.

23 Well, he was --

(March 3, 1998)

1 BY MR. CLARY: (Resuming)

2 Q. And so let me back up for just a minute here.

3 So you didn't play any role in the bylaws, the dues
4 structure, or the voting structure?

5 A. No.

6 Q. I think actually your deposition is already in,
7 which makes it very clear that neither you nor any of the
8 other trustees ever made an assessment under the trust deed.

9 Is that correct?

10 A. That's correct.

11 Q. All right. Why not?

12 A. The minute they formed the association, there
13 was -- once again, the first discussion was "How do we pay
14 for this? What do we charge?"

15 And in fact, a lady was on the board. She was --
16 she was newly divorced. She had three children. And she was
17 representative of a few, maybe some other people in the
18 community. And they were very cautious on what they
19 initially wanted to charge anybody in order to belong to this
20 association. And that's how they arrived at \$20 quarterly.

21 Q. But is the reason why the trustees never made an
22 assessment is because the need never arose?

23 A. It was never necessary.

(March 3, 1998)

1 Q. And in terms of the use to which Parcel A was put
2 and whether or not it was allowed to lie fallow or allowed to
3 have a Taj Mahal built on it, who did you understand had that
4 determination?

5 A. The association.

6 Q. Okay. And if they wanted to build the Taj Mahal,
7 then they would have had to raise enough dues to do it?

8 A. Yes.

9 Q. Okay. During your -- from the inception of the
10 association to this very day, you have never controlled any
11 bank account of the association, have you?

12 A. Never.

13 Q. You -- with the exception of filling in after
14 Mr. Stepp refused to be a trustee on May 3rd, 1994 -- with
15 the exception of that one year from May 3rd, 1994, to May
16 15th, 1995, have you ever been an officer or director of the
17 association?

18 A. Never, other than that one year.

19 Q. Okay. Is there some particular reason why you
20 stayed away from the association?

21 A. I've never enjoyed politics of communities. And I
22 never -- I just never wanted to be in a position where I
23 controlled anything.

(March 3, 1998)

1 Q. Mr. Foster, why wait so long, for a year and a
2 half, after Mr. Stepp first publicly announces he doesn't
3 want to be a trustee before you select another trustee?

4 A. I knew he was upset. Mr. Lear knew he was upset.

5 We knew he had been a trustee. And I guess we
6 waited, hope on hope, that we could do this simple piece of
7 paper and get on with our business.

8 Q. But Mr. Stepp persisted in his refusal, didn't he?

9 A. Yes.

10 Q. And ultimately you did find it necessary to find a
11 replacement?

12 A. Yes.

13 Q. And that was Carolann Wright?

14 A. Yes.

15 Q. Who was appointed at a meeting of trustees in
16 December 1995?

17 A. Yes.

18 Q. I don't really think we need to get into the dock
19 issue. The photograph of the dock --

20 THE COURT: Mr. Clary, we do not need to get into
21 the dock issue.

22 MR. CLARY: Thank you for that guidance,
23 Your Honor.

(March 3, 1998)

1 THE COURT: I mean, we have discussed the dock.

2 MR. CLARY: Yes, ma'am. Enough said.

3 BY MR. CLARY: (Resuming)

4 Q. Mr. Foster, already admitted in evidence is
5 Mr. Annino's first letter to you and your -- which was
6 June 4th, 1996.

7 THE COURT: Where is that? I am not sure I know
8 where that is. That's been admitted into evidence?

9 MR. CLARY: I think it has, Your Honor.

10 THE COURT: Can you find Mr. Annino's letter to
11 Mr. Foster?

12 MR. ANNINO: No. 50, I believe.

13 MR. CLARY: It's 50. And Mr. Foster's response
14 is -- is it all 50?

15 MR. ANNINO: It's 77, I believe.

16 MR. CLARY: Mr. Foster's response is 77 apparently,
17 Your Honor.

18 THE COURT: I found it.

19 BY MR. CLARY: (Resuming)

20 Q. Mr. Foster, after you wrote this letter to
21 Mr. Annino did you receive a reply?

22 A. Yes.

23 MR. CLARY: I ask that this be marked as the next

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1 exhibit in order.

2 (The following document
3 referred to was marked as
4 Defendants' Exhibit No. 30 for
5 identification.)

6 BY MR. CLARY: (Resuming)

7 Q. Mr. Foster, I show you what's been marked as
8 Defendants' Exhibit 30.

9 Is that the reply you received?

10 A. Yes.

11 Q. Is this the first time you ever heard any claim
12 that Mr. Stepp was declining to be elected or nominated, as
13 distinguished from being the trustee?

14 A. Yes.

15 Q. And I also note in the letter in the second
16 paragraph it specifically refers to the fact that "My
17 clients," meaning Mr. Annino's clients, "are not willing to
18 put up with your self-dealing that has gone on in the past"
19 and suggests that you breached your fiduciary duties and that
20 there may be litigation that's ensuing.

21 Do you recall that?

22 A. Yes.

23 Q. What action did you take in response to that?

(March 3, 1998)

* * *

1 MR. ANNINO: Your Honor, relevance, number one.

2 Secondly, I mean, I would have to be called to

3 testify. I don't think that's an appropriate proffer.

4 THE COURT: I think we're already close to that

5 now.

6 I am going to sustain the objection --

7 MR. CLARY: Very well, Your Honor.

8 THE COURT: -- as to that speakerphone conversa-

9 tion.

10 MR. CLARY: Very well, Your Honor.

11 BY MR. CLARY: (Resuming)

12 Q. Mr. Foster, I have one last question.

13 For serving as 25 years as a trustee, what
14 compensation have you received?

15 A. None.

16 MR. CLARY: Nothing further.

17 THE COURT: We're at -- Mr. Tolchin, are you going
18 to cross-examine Mr. Foster?

19 MR. TOLCHIN: No, ma'am.

20 THE COURT: So you're not going to do anything with
21 Mr. Foster?

22 MR. TOLCHIN: No, ma'am.

23 THE COURT: Mr. Annino, how long are you going to

(March 3, 1998)

1 take?

2 MR. ANNINO: Half an hour to 45 minutes.

3 THE COURT: Okay. We're going to take a five-
4 minute break.

5 (A recess was taken.)

6 THE COURT: Okay. Mr. Annino?

7 CROSS-EXAMINATION

8 BY MR. ANNINO:

9 Q. Mr. Foster, you testified concerning your initial
10 conversations with Mr. Hurvitz back in the 1973-1974 time
11 frame?

12 A. Yes.

13 Q. And you recounted those conversations that happened
14 25 years ago in pretty specific detail?

15 A. Yes.

16 Q. Do you have any notes that reflect those conversa-
17 tions?

18 A. No.

19 Q. Now, the fact of the matter is, Mr. Foster, that
20 you entered into a business relationship with Hurvitz, didn't
21 you?

22 A. Yes.

23 Q. And you entered into a joint venture agreement with

(March 3, 1998)

1 the Hurvitz people in 1973 -- March of 1973, correct?

2 A. I believe that's correct.

3 Q. And it's a fact that Parcel A was of benefit to the
4 marketing of the lots in the Hurvitz-Foster Joint Venture?

5 A. He never looked at it that way or I never -- it's a
6 benefit to everybody in the community.

7 Q. A benefit to you and every other lot in the sub-
8 division?

9 A. Yes.

10 Q. And your joint venture agreement that's marked
11 Exhibit No. 29 gave you a certain percentage of the profits
12 of the sales of those lots, didn't it?

13 A. Yes.

14 MR. CLARY: Your Honor, the document speaks for
15 itself, 20%.

16 THE COURT: I'll give you some latitude on that,
17 Mr. Annino.

18 BY MR. ANNINO: (Resuming)

19 Q. Now, in the initial stages of the joint venture
20 your marketing efforts were pretty limited to other property
21 owners in the subdivision; isn't that a fair statement?

22 A. Yes.

23 MR. CLARY: Your Honor, I'm going to object at this

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1 point, because I kind of see where we're going with this.

2 It is outside of the scope of direct examination.
3 There was absolutely no questions asked regarding marketing
4 the property. It was information about the formation of the
5 venture. That's it. There is no question anymore about the
6 Hurvitz-Foster Joint Venture after the initial formation.

7 If he wants to make the witness his own and be
8 bound by his testimony, that's a different issue.

9 MR. ANNINO: Your Honor, I think I'm allowed to
10 some latitude in this cross-examination.

11 He testified to the joint venture agreement and
12 implied that this was some altruistic thing that he was doing
13 for the community. And I think I'm entitled to bring out
14 what benefits he's obtained from this transaction.

15 MR. CLARY: I think that's a mischaracterization of
16 the testimony and certainly beyond the scope of direct.

17 THE COURT: I am going to stick to the rules.

18 The objection that something is beyond the scope of
19 direct is a good objection. It's one that I typically ignore
20 often, because I want people to get whatever information they
21 want out.

22 But an attorney's skill depends in part on planning
23 the case appropriately. And that means that Mr. Clary asked

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1 specific questions for a specific reason.

2 And therefore, I am not going to allow you at this
3 late date to go outside the scope of the direct examination.
4 But if you want to make Mr. Foster your witness in rebuttal
5 in some fashion, you can do that. But those are the rules.

6 And you know what? I'll go further.

7 I will assume that Mr. Foster had as an intent when
8 he coaxed this gentleman into giving him Parcel A not only
9 the altruistic benefit to the community, but also his own
10 self-interest.

11 But I don't see where that gets you anywhere at
12 this point.

13 MR. ANNINO: Okay.

14 BY MR. ANNINO: (Resuming)

15 Q. Mr. Foster, did you ever tell Mr. Lear that
16 Mr. Hurvitz wanted to get rid of the property?

17 A. No.

18 I don't know. Mr. Hurvitz never told me -- he told
19 me -- when I showed him that document, he said, "I have no
20 plans for this property."

21 I don't think the man wanted to get rid of it.

22 Q. You never told Mr. Lear that?

23 A. Not that I am aware of.

(March 3, 1998)

1 Q. Now, in the course of your testimony you described
2 the original brochure that was handed out by the developer,
3 which was Exhibit No. -- Defendants' Exhibit No. 28?

4 A. Yes.

5 Q. And did you have that document in your possession?

6 A. I am -- I am not sure.

7 MR. CLARY: Time frame? I'm sorry. What's the
8 time frame?

9 BY MR. ANNINO: (Resuming)

10 Q. Have you had that document in your possession since
11 it was --

12 A. After this lawsuit we were getting documents from
13 everybody all over the country. I am not sure where that
14 came from.

15 Q. Okay. Now, regarding Mr. Stepp's status as a
16 trustee, you understood and knew that a substitute trustee's
17 deed had been recorded in the land records for Mr. Stepp,
18 correct?

19 A. Yes.

20 Q. And in fact, you recorded a similar document, a
21 declaration of trust, for the Hurvitz-Foster Joint Venture
22 right around the same time, didn't you?

23 A. No. I believe that was in 1993.

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1 Q. With respect to the declaration of -- well, when
2 did you first learn that there was a problem with Mr. Stepp's
3 status as trustee?

4 MR. CLARY: I will object to the phraseology of the
5 question.

6 I don't think there's any testimony that there's
7 ever been a problem with his status as a trustee, just an
8 error at the County.

9 MR. ANNINO: I'll rephrase the question.

10 THE COURT: All right.

11 BY MR. ANNINO: (Resuming)

12 Q. When did you discover that there was an alleged
13 problem with the County having registered Mr. Stepp as a
14 trustee?

15 A. I am not really sure when I discovered it.

16 Mainly when Mr. Knowles was reported to have said
17 "Who is Mr. Ware?" is when I really -- that's when I really
18 took notice.

19 Q. Did you have that conversation with Mr. Knowles?

20 A. No.

21 Q. So that's something somebody related to you?

22 A. Yes.

23 Q. And you didn't meet with Mr. Stepp yourself to

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1 privately discuss the situation, did you?

2 A. No.

3 Q. And you didn't go down to the courthouse or hire
4 somebody to go down to the courthouse to see if the trustee's
5 deed had been recorded, did you?

6 A. No.

7 Q. In your view of your responsibilities as a trustee,
8 other than calling this initial meeting, you didn't have any
9 other duties or responsibilities; is that a fair statement?

10 A. That's -- that's what I understood as long as the
11 association was in business.

12 Now, if they were to default or something, I would
13 expect that the trustees would have the problem back on their
14 hands.

15 Q. And do you agree that the trustee's deed specifies
16 a trustee's duties and powers? Correct?

17 A. Yes.

18 Q. And there is no other document that you have to
19 refer to that would determine those duties and powers?

20 A. No.

21 Q. And the bylaws aren't binding on the trustee in
22 your view, are they?

23 A. No.

(March 3, 1998)

1 Q. And in fact, the provision in the bylaws regarding
2 rotating trustees on the board wasn't followed during the
3 history of the organization, was it?

4 A. No.

5 Q. And you only served on the board the one year of
6 1994 to 1995; is that correct?

7 A. That's correct.

8 Q. It's true that at the May 1994 general membership
9 meeting there was no trustee action that was required to be
10 taken at that meeting, was there?

11 MR. CLARY: I'll object to that.

12 That's a conclusion.

13 THE COURT: Which meeting was it?

14 MR. ANNINO: The May 1994 general membership
15 meeting that he testified about.

16 MR. CLARY: I object. Because it is not only a
17 conclusion, but it is a misleading question in the sense that
18 nothing to do -- sure there was something to do, acknowledge
19 that you're a trustee.

20 MR. ANNINO: Your Honor, it's a proper question as
21 to this witness's understanding.

22 THE COURT: You can answer the question, sir.

23 THE WITNESS: Would you say that again please.

(March 3, 1998)

1 BY MR. ANNINO: (Resuming)

2 Q. At the May 1994 general membership meeting there
3 was no trustee action required?

4 A. There was no action as to we had to have a meeting
5 to decide something. But I was expecting to hear that
6 Mr. Stepp would be continuing to be a trustee.

7 Q. Well, in fact, there was no trustee action that was
8 necessary at that time, correct?

9 A. Other than we needed three trustees.

10 THE COURT: Mr. Annino, I am as confused as
11 Mr. Foster is by that question. Can you put that in
12 reference to something? There was no trustee action required
13 with reference to?

14 BY MR. ANNINO: (Resuming)

15 Q. With respect to any of the duties and powers set
16 forth in the trustee's deed, there was nothing that Mr. Stepp
17 was refusing to do at the May 1994 general membership
18 meeting, was there?

19 MR. CLARY: Your Honor, based upon his prior
20 testimony that he understood he had no duties, the question
21 doesn't make any sense.

22 THE COURT: Well, I think his testimony was that he
23 didn't think he had any duties so long as the association was

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1 picking up the slack with regard to the maintenance possibly.

2 I am sorry. I am confused about what your question
3 is too. Maybe you can lay a foundation for it or something.

4 BY MR. ANNINO: (Resuming)

5 Q. Mr. Foster, you were in attendance at the May 1994
6 general membership meeting, weren't you?

7 MR. CLARY: Your Honor, at this point I am going to
8 object. This is beyond the scope of direct.

9 MR. ANNINO: He testified to --

10 MR. CLARY: No questions were asked regarding the
11 May 3rd, 1994, membership meeting. The only question asked
12 was "Why did you wait so long to replace Mr. Stepp?"

13 THE COURT: Well, I think he can answer. I think
14 that's within the scope.

15 MR. CLARY: Very well.

16 THE COURT: Answer the question.

17 THE WITNESS: Would you state the question again
18 please.

19 BY MR. ANNINO: (Resuming)

20 Q. You were in attendance at the May 3rd, 1994,
21 general membership meeting, correct?

22 A. Yes.

23 Q. And the minutes of that meeting accurately reflect

(March 3, 1998)

1 what happened at the meeting, to the best of your knowledge?

2 MR. CLARY: Objection.

3 If he wants to ask what the memory of the witness
4 is regarding the event, he should ask it rather than trying
5 to trap him by identifying minutes.

6 MR. TOLCHIN: That's not even in front of him.

7 THE COURT: I think that you have to ask him what
8 his recollection of the meeting is. And then if he cannot
9 remember, then you can refresh his recollection by looking at
10 the minutes.

11 But he didn't keep the minutes. So -- can you ask
12 him what his recollection of the meeting was?

13 BY MR. ANNINO: (Resuming)

14 Q. Mr. Foster, isn't it true that Mr. Arnold asked a
15 question of Mr. Stepp at the meeting concerning his intention
16 to serve on the board as trustee? Isn't that true?

17 A. No.

18 Q. Are you aware of anything that a trustee was
19 required to do at that meeting?

20 MR. CLARY: Asked and answered.

21 THE COURT: I'm going to let him answer the
22 question so we can get over this hump, whatever it is.

23 THE WITNESS: The association had not defaulted.

(March 3, 1998)

1 There was no action required by the trustees.

2 But we -- Gene Lear and I felt that by the document
3 we were supposed to have three trustees and we should have
4 three trustees.

5 MR. ANNINO: If you'll give me a minute,
6 Your Honor.

7 THE COURT: Yes.

8 BY MR. ANNINO: (Resuming)

9 Q. Mr. Foster, you never presented Mr. Stepp with any
10 document to sign to resign as trustee, did you?

11 A. No.

12 Q. And you never presented Mr. Stepp with a trustee's
13 deed to have him replaced?

14 A. A trustee's deed to have him replaced?

15 I never presented Mr. Stepp with any paperwork.

16 Q. And until December of 1995 you had no written
17 records of trustees' meetings, correct?

18 A. That's correct.

19 Q. And after the trustee's deed appointing Mr. Stepp
20 was taken and recorded, you didn't keep a copy of it?

21 A. No. That was -- my understanding was that it was
22 sent to Mr. Gene Lear.

23 Q. And in fact, until January 30th, 1998, you didn't

(March 3, 1998)

1 do anything to register a replacement for Mr. Stepp in the
2 courthouse, did you?

3 A. No.

4 Q. And until that time there was no written document
5 which transferred any legal interest to Carolann Wright,
6 correct?

7 A. Other than we told the community.

8 Q. Do you have any records that show that all lot
9 owners were notified of the initial meeting?

10 MR. CLARY: Your Honor -- never mind. Sorry.

11 THE WITNESS: The initial meeting in 1973?

12 MR. ANNINO: Correct.

13 THE WITNESS: No. I don't even -- no.

14 MR. ANNINO: I don't have anything further,
15 Your Honor.

16 THE COURT: All right.

17 MR. CLARY: Two quick redirect.

18 REDIRECT EXAMINATION

19 BY MR. CLARY: (Resuming)

20 Q. Mr. Foster, with respect to not meeting and talking
21 with Mr. Stepp after you found out that there was a recorda-
22 tion problem, did you have a conversation with Mr. Arnold
23 about that?

(March 3, 1998)

* * *

PLAINTIFF'S
EXHIBIT

1

3790 PAGE 114

09557

THIS DEED, made this 24th day of February, 1973, by and between

HYMAN HURVITZ and ROSE HURVITZ, his wife, parties of the first part, and
JAMES A. FOSTER, MARVIN E. LEAR and MARSHALL L. WARE, TRUSTEES, parties of
the second part,

W I T N E S S E T H :

That for and in consideration of the sum of \$10.00 and other
good and valuable considerations, receipt whereof is hereby acknowledged,
the parties of the first part do hereby grant and convey unto the parties
of the second part, with SPECIAL WARRANTY of title, the following described
parcel of land in Fairfax County, Virginia:

Parcel A, BELMONT PARK ESTATES SUBDIVISION, containing
6.8087 acres, as the same appears duly dedicated,
platted and recorded in Deed Book 1478 at page 26 among
the land records of Fairfax County, Virginia.

And being part of the same property conveyed to the
parties of the first part by Deed recorded in Deed
Book 2990 at page 172 among the said land records.

To have and to hold unto the said parties of the second part upon
the following trusts and uses:

To hold said property for the use and benefit of all lot owners
in BELMONT PARK ESTATES SUBDIVISION, as the same is duly dedicated, platted
and recorded in Deed Book 1478 at page 26 among the land records of Fairfax
County, Virginia; to elect or appoint a successor trustee or trustees in the
event of the death, removal from the state, incapacity to act, refusal to
act or resignation of any trustee or trustees; to deny access to or use and
enjoyment of said property to such lot owners in BELMONT PARK ESTATES
SUBDIVISION who neglect, refuse or fail to pay a uniform charge as determined
by the trustees; to apply such funds collected from lot owners to pay
expenses incurred in the ownership, maintenance and improvement of the
property; to be governed in the use of said property, and in all matters
pertaining thereto by a Board of not less than five (5) nor more than nine (9)
lot owners of said subdivision; which Board may include the trustees, and

90 J.A. Foster
Mailing Address 7454 Belmont Lane
of Grantee Leesville, Virginia 22089

Act. to: J. Holt Greedy, Esq.

which Board shall be elected at a meeting called by the trustees of all lot owners in said subdivision, and which Board shall serve until their successors have been elected; to have no personal liability as a trustee for any act or omission in connection with said property, except for the acts committed with malice or in bad faith.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

Tax Paid
Sec 58-54 1.50
Sec 58-63.1 .50
Sec 58-54.1 1.00

Hyman Hurvitz (SEAL)
Hyman Hurvitz
Rose Hurvitz (SEAL)
Rose Hurvitz

STATE OF VIRGINIA, MARYLAND

COUNTY OF MONTGOMERY to-wit:

I, Francis C. Mudd, a Notary Public in and for the State and County aforesaid, whose commission expires on the 1st day of July, 1974, do hereby certify that HYMAN HURVITZ and ROSE HURVITZ, his wife, whose names are signed to the foregoing and hereunto annexed Deed, personally appeared before me and acknowledged the same.

Given under my hand on this 24th day of February, 1973.



Francis C. Mudd
Notary Public

Francis C. Mudd, Notary Public
Park Dr. Sherwood Manor
Mitchellville, Maryland
My Commission Expires 7/1/74

In the Clerk's Office of the Circuit Court of Fairfax County, Virginia MAR 8 1973 at 11:45 AM
This instrument was received and, with the certificate annexed, admitted to record
Teste:

John T. Frey
Clerk

- 2 -

A COPY TESTE:
JOHN T. FREY, CLERK

By: L. J. J. 11/1/73
Deputy Clerk

APPOINTMENT OF SUCCESSOR TRUSTEE

THIS APPOINTMENT of Successor Trustee is made and entered into this _____ day of November, 1986, by and among JAMES A. FOSTER, MARVIN E. LEAR and MARSHALL L. WARE, TRUSTEES, parties of the first part, and GAIL STEPP, TRUSTEE, party of the second part.

WHEREAS, by a certain deed and trust instrument dated February 24, 1973, and recorded in the Office of the Clerk of the Circuit Court of the County of Fairfax, Virginia, in Deed Book 1790 at page 114, HYMAN HURVITZ, and ROSE HURVITZ, his wife, conveyed to JAMES A. FOSTER, MARVIN E. LEAR and MARSHALL L. WARE, TRUSTEES, the following described real estate, to wit:

Parcel A, BELMONT PARK ESTATES SUBDIVISION, containing 6.8087 acres, as the same appears duly dedicated, platted and recorded in Deed Book 1478 at page 26, among the land records of Fairfax County, Virginia

And being the same property conveyed to HYMAN HURVITZ and ROSE HURVITZ by Deed recorded in Deed Book 2990 at page 172 among aforesaid land records.

Said conveyance being in trust, with certain powers, for the use and benefit of all lot owners in the said BELMONT PARK ESTATES SUBDIVISION; and

WHEREAS, the said deed and trust instrument provides for the parties of the first part to elect or appoint a successor trustee or trustees in the event of the resignation of any trustee or trustees; and

WHEREAS, MARSHALL L. WARE has resigned as trustee; and

WHEREAS, the parties of the first part have elected the party of the second part as Successor Trustee who joins in this instrument to accept the appointment as successor trustee;

NOW, THEREFORE, the parties of the first part hereby appoint the party of the second part as successor trustee to MARSHALL L. WARE, in accordance with the provisions of said deed and trust instrument.

STATE TAX _____
COUNTY TAX _____
TRANSFER TAX _____
RECORDING FEE _____
REASON FOR SALE _____
WMS _____

1000

LR

BK6698PC1914

COMMONWEALTH OF VIRGINIA,
COUNTY/CITY OF Woodbridge, to wit:

The foregoing instrument was acknowledged before me
this 27 day of November, 1986, by Gail Stepp, Successor
Trustee.

[Signature]
NOTARY PUBLIC

My Comm. Exp.: 11/27/87

BK6698PC1916

1987 APR 23 3:24

FAIRFAX COUNTY
CLERK
[Signature]

A COPY TESTE:
JOHN T. FREY, CLERK

By: [Signature]
Notary Clerk

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

James A. Foster (SEAL)
JAMES A. FOSTER, TRUSTEE

Marvin E. Lear (SEAL)
MARVIN E. LEAR, TRUSTEE

Marshall L. Ware (SEAL)
MARSHALL L. WARE, TRUSTEE

Gail Stepp (SEAL)
GAIL STEPP, SUCCESSOR TRUSTEE

BK6698pc/915

COMMONWEALTH OF VIRGINIA,

COUNTY/CITY OF Prince William, to wit:

The foregoing instrument was acknowledged before me
this 31st day of November, 1986, by James A. Foster, Trustee.

Susan J. Knepper
NOTARY PUBLIC

My Comm. Exp.:

MY COMMISSION EXPIRES AUG 4, 1989

COMMONWEALTH OF VIRGINIA,

COUNTY/CITY OF Prince William, to wit:

The foregoing instrument was acknowledged before me
this 31st day of November, 1986, by Marvin E. Lear, Trustee.

Marvin E. Lear
NOTARY PUBLIC

My Comm. Exp.: 14 Dec 1988

COMMONWEALTH OF VIRGINIA,

COUNTY/CITY OF Henrico, Va., to wit:

The foregoing instrument was acknowledged before me
this 1st day of December, 1986, by Marshall L. Ware, Trustee.

Joan M. Mills
NOTARY PUBLIC

My Comm. Exp.: October 9, 1988

24076

THIS DEED OF DEDICATION, made and entered into this 5th day of September, 1956, by GRAYSON A. ABALT, surviving Trustee under a Deed in trust, W. LEWIS LEIGH and JAMES GORDON KINCHELOE, Trustees under a Deed of Trust, and MINNIE T. HAISLIP, Noteholder;

WHEREAS, the said Grayson A. Abalt, surviving Trustee, is the sole owner of the hereinafter described land, lying and being in Fairfax County, Virginia, having acquired the same by Deed dated March 1, 1955, from John T. Haislip, et ux, recorded in Deed Book 1280, page 34, among the land records of Fairfax County, Virginia; (Walter Hebb, Trustee, having died July 4, 1956) and

WHEREAS, the said W. Lewis Leigh and James Gordon Kincheloe are Trustees under a certain Deed of Trust dated March 1, 1955, from Grayson A. Abalt and Walter Hebb, Trustees, securing John T. Haislip, recorded in Deed Book 1280, page 36, among the land records of Fairfax County, Virginia, as a lien on said property; and

WHEREAS, John T. Haislip is now deceased and Minnie A. Haislip is the present Noteholder of the note referred to above; and

WHEREAS, it is the desire of Grayson A. Abalt, Trustee, to establish certain easements and to subdivide, plat and dedicate the hereinafter described land as a subdivision to be known as "Belmont Park Estates" into certain lots and streets as shown on the plat made by Joseph Berry, Certified Land Surveyor, dated May 30, 1956, hereto attached and expressly made a part hereof, the said W. Lewis Leigh and James Gordon Kincheloe, Trustees, and Minnie T. Haislip, Noteholder, joining herein as evidence of their consent to the dedication of said land as a subdivision;

NOW, THEREFORE, WITNESSETH, that Grayson A. Abalt, Trustee, as the sole owner and proprietor of the said land, and W. Lewis Leigh, James Gordon Kincheloe, Trustees, and Minnie T. Haislip, Noteholder, consenting to the dedication of said land as a subdivision, in accordance with the laws of the State of Virginia and the County of Fairfax, Virginia, do now hereby subdivide and dedicate the hereinafter described parcel of land into lots and streets as shown on the plat hereto attached, made by Joseph Berry, Certified Land Surveyor, dated May 30, 1956, recommended for approval by the

Sept. 14, 1956 - See & return to Mr. Abalt

- 2 -

Fairfax Planning Commission on August 30, 1956, and approved by the Board of Supervisors of said County on August 30, 1956, and the said Grayson A. Ahalt, Trustee, does now designate said subdivision as "Belmont Park Estates" and does hereby certify that this subdivision is made in accordance with said plat hereto attached, said land being more particularly described by metes and bounds as follows:

BEGINNING at the corner of Cambra on the shore of Belmont Bay; thence with the line of Cambra and the same course continued with the line of Buckmaster and Lomasson, N. 17° 10' W. (passing through a pipe at 40.0 ft) 603.35 feet to an old pipe; thence with another line of Lomasson N. 83° 19' W. 533.26 feet to a pipe; thence with another line of Lomasson N. 21° 32' 40" E. 1245.8 feet to a monument; thence, continuing with the line of Lomasson N. 67° 57' 20" W. 371.73 feet to an old pipe on the southwesterly side of a road, a corner to Manuccia and Woods; thence with their line N. 25° 03' 20" E. 302.9 feet to a pipe, a corner to Plaskitt; thence with the line of Plaskitt S. 71° 13' 10" E. 559.24 feet to an old pipe on a branch; thence down the middle of the branch and with the lines of Plaskitt, S. 33° 07' E. 35.0 feet, S. 88° 07' E. 22.5 feet, S. 38° 07' E. 21.0 feet, S. 37° 13' W. 15.0 feet, S. 12° 22' E. 45.0 feet, S. 60° 13' E. 150.0 feet, S. 1° 43' W. 22.5 feet, S. 61° 32' E. 25.5 feet, S. 6° 27' E. 27.0 feet, S. 39° 42' E. 88.0 feet, S. 80° 18' E. 98.0 feet, S. 27° 07' E. 27.0 feet, S. 70° 07' E. 40.5 feet, S. 51° 37' E. 25.0 feet to a pipe, S. 74° 37' E. 87.0 feet to a pipe, S. 89° 17' E. 98.0 feet to a pipe, S. 54° 53' E. 119.0 feet to a pipe, S. 62° 38' E. 194.0 feet to a pipe, S. 67° 47' E. 59.0 feet to a pipe, S. 47° 17' E. 151.79 feet to a pipe, S. 38° 20' E. 53.0 feet to a pipe, S. 30° 28' E. 200.0 feet, to a pipe, S. 82° 07' E. 120.5 feet to a pipe, S. 4° 52' E. 204.0 feet to a pipe, S. 41° 47' E. 24.0 feet, S. 21° 27' E. 24.0 feet, S. 84° 34' E. 47.0 feet, N. 72° 22' E. 30.0 feet, S. 37° 08' E. 61.0 feet, N. 79° 42' E. 49.0 feet, S. 51° 29' E. 35.0 feet, N. 62° 09' E. 55.0 feet, S. 38° 33' E. 56.0 feet and S. 66° 41' E. 57.0 feet to the corner of Morgan, formerly Norton; thence with the line of Morgan S. 79° 49' E. 44.4 feet; thence, leaving the branch and continuing with the lines of Morgan, S. 38° 27' E. 64.0 feet to a beach tree; thence S. 36° 40' E. 188.0 feet to a pipe; thence S. 22° 36' E. 254.7 feet to a pipe; thence S. 41° 43' E. 254.2 feet to a pipe; thence S. 12° 44' E. 37.7 feet to a pipe; thence S. 49° 48' W. 220.8 feet to a pipe; thence S. 67° 09' W. 139.6 feet to a pipe; thence S. 48° 45' W. 228.8 feet to a pipe; thence S. 31° 20' W. 258.0 feet to a pipe; thence S. 46° 27' W. 173.6 feet to a pipe; thence S. 3° 50' E. 60.9 feet to a pipe; thence S. 47° 25' W. 22.2 feet to a pipe; thence N. 89° 11' W. 24.6 feet to a pipe; thence N. 36° 17' W. 129.4 feet to a pipe; thence N. 83° 08' W. 126.0 feet to a cedar tree; thence S. 52° 22' W. 41.2 feet to the shore of Belmont Bay; thence, leaving the lines of Morgan and running up the shore of the Bay, N. 61° 07' W. 524.12 feet, S. 85° 29' W. 331.0 feet, N. 69° 06' W. 278.0 feet and S. 73° 15' W. 495.47 feet to the beginning, containing 116.474 acres, as described by Joseph Berry, Certified Land Surveyor.

This dedication is made expressly subject to the easements shown on said plat.

This Dedication is made expressly subject to the following covenant and restriction, which is to run with the land:

1. No building shall be placed on any lot until approved in

- 3 -

writing by Grayson A. Abalt or Walter Von Herbullis, as to its location on any lot and its exterior architectural design. This covenant shall run for a period of five (5) years from date hereof, unless extended by Grayson A. Abalt by instrument in writing and recorded.

WITNESS THE FOLLOWING SIGNATURES AND SEALS on this the date hereinbefore set forth:

Grayson A. Abalt, Trustee (SEAL)
Grayson A. Abalt, Trustee

W. Lewis Leigh (SEAL)
W. Lewis Leigh, Trustee

James Gordon Kincheloe (SEAL)
James Gordon Kincheloe, Trustee

Minnie Haislip (SEAL)
Minnie Haislip, Noteholder

STATE OF VIRGINIA,
COUNTY OF FAIRFAX, TO-WIT:

Berulah T. Abalt, a Notary Public in and for the State and County aforesaid, whose Commission as such expires on the 15th day of October, 1958, do hereby certify that this day personally appeared before me in my said State and County, Grayson A. Abalt, Trustee, whose name is signed to the foregoing Deed of Dedication dated Sept 5 1956, and acknowledged the same.

Given under my hand this 5th day of September, 1956.

Berulah T. Abalt
Notary Public as aforesaid

STATE OF VIRGINIA,
COUNTY OF FAIRFAX, TO-WIT:

James M. Kelly, a Notary Public in and for the State and County aforesaid, whose Commission as such expires on the 2nd day of June, 1958, do hereby certify that this day personally appeared before me in my said State and County, W. Lewis Leigh and James Gordon Kincheloe, Trustees, whose names are signed to the foregoing Deed of

- 4 -

Dedication dated September 5, 1956, and acknowledged the same.

Given under my hand this 5th day of September,
1956.

Ervin M. Kelly
Notary Public as aforesaid

In the Clerk's Office of the Circuit Court of
Fairfax County, Virginia SEP 5 1956 at 11:11 AM.
This instrument was received and, with the
certificate annexed, admitted to record with plats attached
Teste:

Thomas P. Engeman, Jr. Clerk

A COPY TESTE:
JOHN T. FREY, CLERK

396

By: L. Long White

CLERK

1478 m 30

SHEET 1 OF 3

BELMONT PARK ESTATES

MOUNT VERNON MAG. DISTRICT

FAIRFAX COUNTY, VIRGINIA

SCALE 1"=100'

MAY 30, 1936

Photographed by

JOSEPH BERRY CO.

VIENNA, VA.



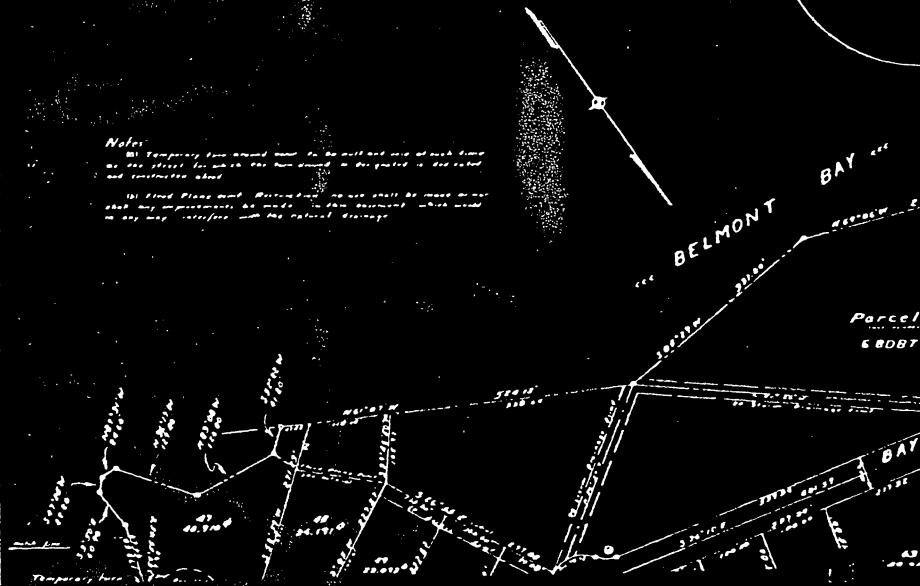
AREA OF LOTS .96.889A
AREA OF STREETS 13.136A
TOTAL AREA 109.665A



Notes:

1. Temporary fence around road. To be well out side of each time the road is closed for work. The fence should be placed in the road and construction ahead.

2. All lines shown on this plan should be made in such a way as to not interfere with the natural drainage.



Given under my hand this 30th day of May, 1958

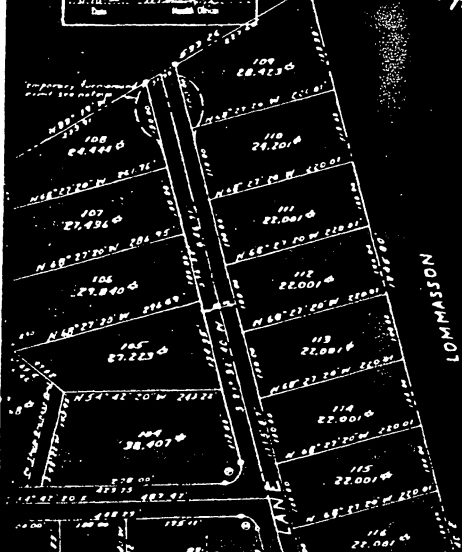
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surveyor, do certify
home on this plot is now
and was acquired by
Deed Book 1080 page 34
via from J.T. Hasslip.
original tract of said
each lot is fully and
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et in accordance with

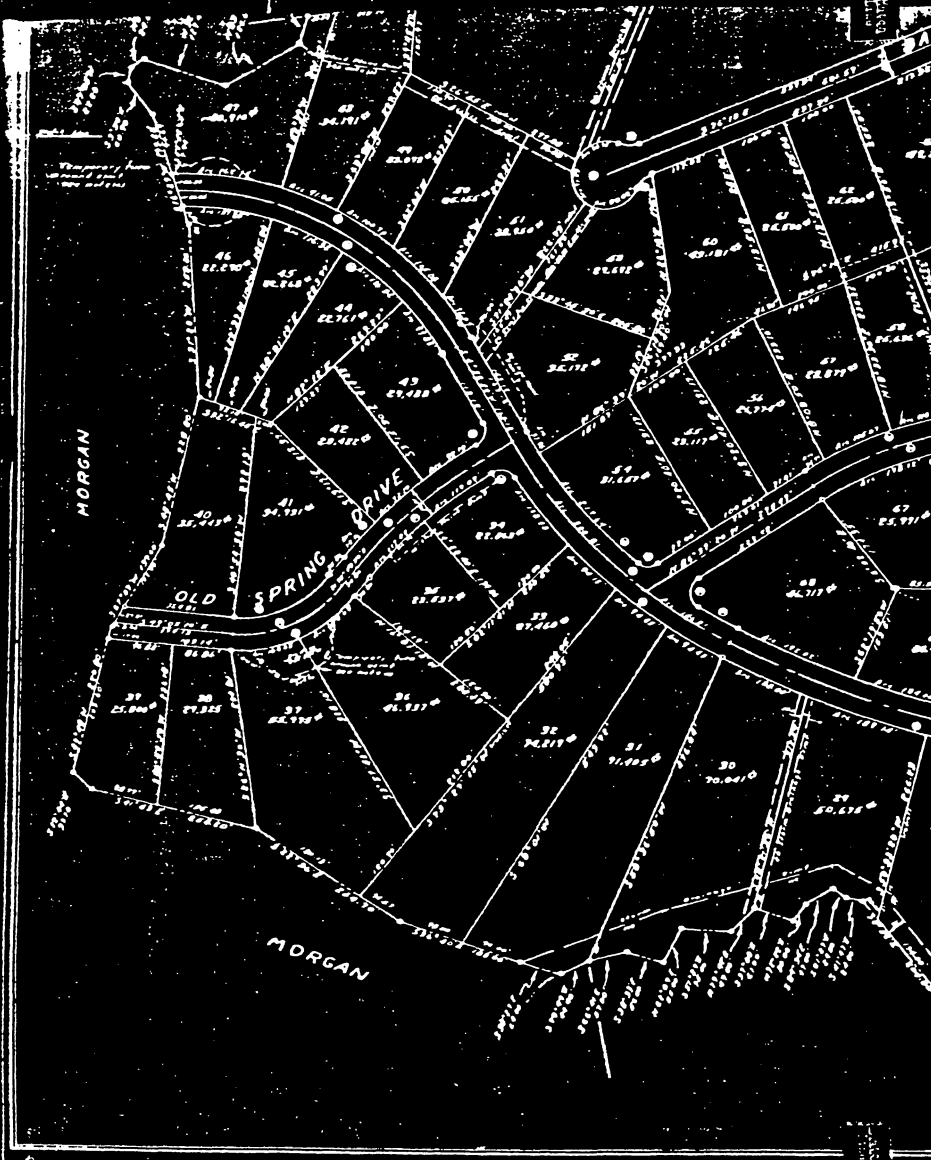
1956 APPROVED SUBJECT TO MUTATIONS SHOWING
FAIRFAX COUNTY HEALTH DEPARTMENT
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45 46 47 48 49 50 51 52 53 54 55 56
57 58 59 60 61 62 63 64 65 66 67 68
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1017 1018 1019 1020 1021 1022 1023

FINAL PLAT
RECOMMENDED FOR APPROVAL
FAIRFAX COUNTY PLANNING COMMISSION
James J. [Signature]
APPROVED
BOARD OF SUPERVISORS
FAIRFAX COUNTY, VIRGINIA
Shirley [Signature]
APPROVAL VOID IF PLAT IS NOT
OFFERED FOR RECORD WITHIN 60
DAYS AFTER DATE THEREOF

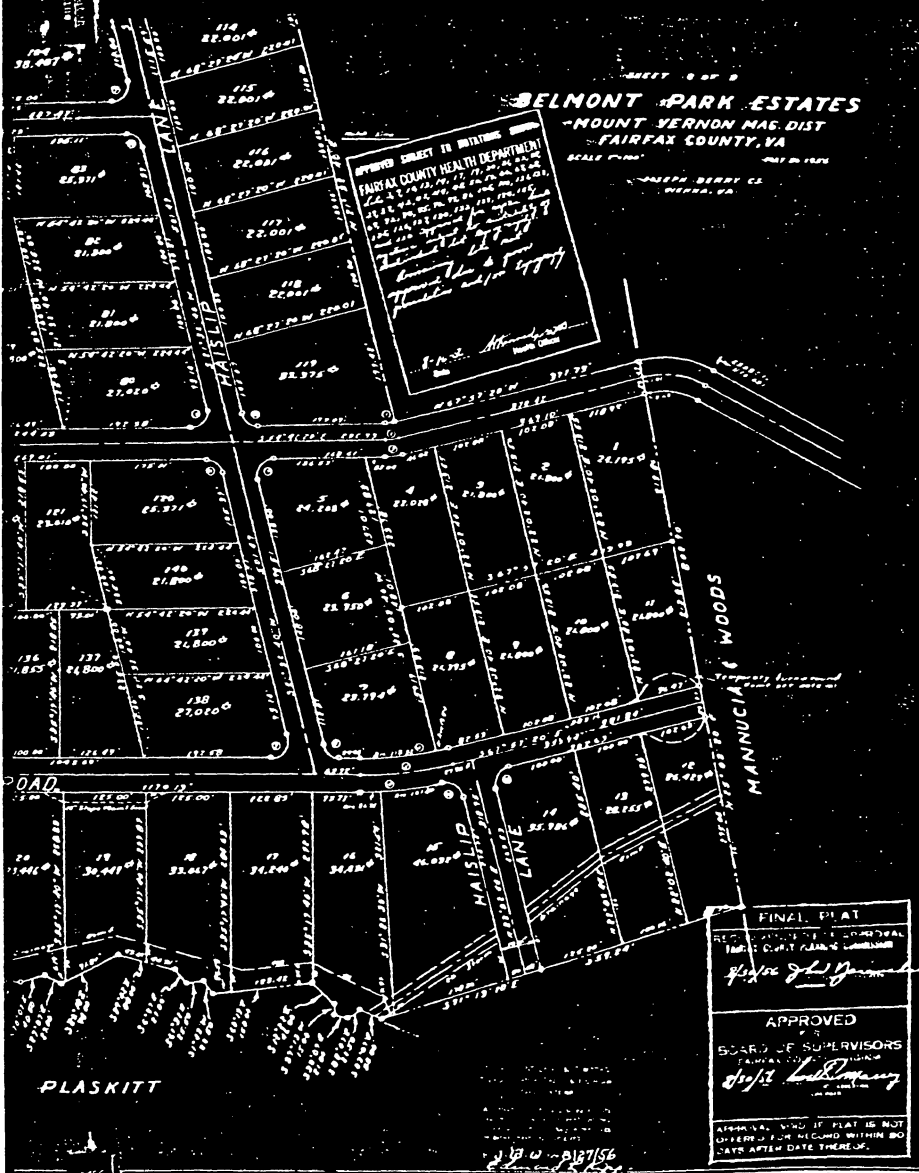
W. W. ... 8/27/56
T. L. and L. K.

[illegible]

1478 REC 33







1478 36

SHEET 3 OF 3
BELMONT PARK ESTATES

MOUNT VERNON MAG DISTRICT

FAIRFAX COUNTY VIRGINIA

SCALE 1"=100'

MAY 30, 1956

JOSEPH BERRYCS
VIENNA, VA



JOHN HUGH
CHARLESHUGH
Deed Book 181 Page 76

BELMONT

MANNUCIA & WOODS
Deed Book 181 Page 76

EDMASSON

LOT 2
BELMONT PARK
ESTATES

1478 37

I, Joseph Berry, a duly certified land surveyor, do certify that the land embraced in the 50' right of way for Belmont Blvd as shown on this plat is now in the name of the owners as shown; except that an existing 50' right of way included within the boundaries of the 50' right of way is now in the name of Grayson Ahlstrand was acquired by deed recorded in deed book 1280 page 54.

Bearings refer to the true meridian. Concrete monuments indicated thus \bullet and iron pipe indicated thus \circ will be set in accordance with the Fairfax County Subdivision Ordinance.

Given under my hand this 30th day of May 1956

Joseph Berry

Total area of dedication 3.012 Acres

HOUGH
ESHOUGH
Deed Book 11 page 76

C. HOWARD
Deed Book 11 page 26

M. MESHEP
Deed Book 11 page 14

BLVD.
BELMONT

B. G. DAVIS
Deed Book 11 page 40

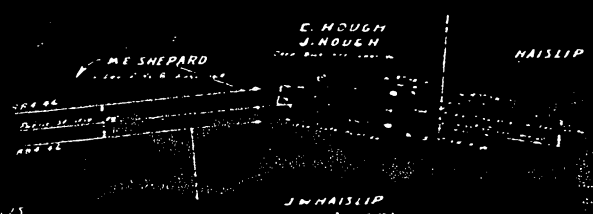
NUCIA & WOODS
Deed Book 11 page 24

1478 Box 38

CURVE TABLE

No.	Radius	Δ	Area	Perim.	Chord	Chord Bearing
1	128.00	92° 52' 30"	113.21	60.00	110.00	N 65° 28' 31" W
2	128.00	"	92.52	60.00	90.00	"
3	80.00	"	71.22	30.00	70.00	"
4	64.00	17° 30' 00"	100.00	100.00	100.00	N 17° 30' 00" W
5	64.00	"	110.00	100.00	110.00	"
6	64.00	"	120.00	100.00	120.00	"
7	96.00	7° 18' 00"	136.00	180.00	180.00	N 7° 18' 00" W
8	128.00	"	187.70	200.00	180.00	"
9	128.00	"	187.70	21.00	180.00	"
10	128.00	18° 00' 00"	200.00	180.00	180.00	N 18° 00' 00" W
11	128.00	"	187.70	180.00	180.00	"
12	128.00	"	187.70	20.00	180.00	"

for this town within the



Edmund L. Kipp
Surveyor
 3-1-36 018856
 Edmund L. Kipp

DEED BOOK 1925 PAGE 141

23055

DECLARATION OF COVENANTS
BELMONT PARK ESTATES, INC.

BOOK _____ PAGE _____

THIS DECLARATION OF COVENANTS MADE THIS 30th DAY OF AUGUST, 1960, BY BELMONT PARK ESTATES, INC., A VIRGINIA CORPORATION, THE PRESENT OWNER OF ALL THE LAND WITHIN THE BOUNDARIES OF THE SUBDIVISION KNOWN AS "BELMONT PARK ESTATES" SITUATED IN THE MOUNT VERNON MAGISTERIAL DISTRICT IN FAIRFAX COUNTY, VIRGINIA, AND SHOWN ON A PLAT RECORDED AMONG THE LAND RECORDS OF SAID COUNTY IN DEED BOOK 1280, AT PAGE 34, WITNESSETH:

WHEREAS, THE SAID BELMONT PARK ESTATES, INC. HAS ACQUIRED TITLE TO AND IS THE PRESENT OWNER OF CERTAIN LOTS WITHIN THE BOUNDARIES OF THE AFORESAID SUBDIVISION, AND IS DEVELOPING SAID LOTS, INCLUDING THE OPENING AND IMPROVING STREETS FOR ACCESS THERETO, AND IS OFFERING FOR SALE THE LOTS THEREIN, AND

WHEREAS, THE SAID BELMONT PARK ESTATES, INC. DESIRES TO ADOPT AND IMPOSE UPON AND AGAINST ALL THE LOTS OF THE AFORESAID SUBDIVISION THE COVENANTS, RESTRICTIONS, EASEMENTS AND CONDITIONS HEREINAFTER ENUMERATED FOR THE PURPOSE OF PROTECTING THE PRESENT AND FUTURE OWNERS OF THE LOTS IN SAID SUBDIVISION FROM DEPRECIATION OF THE VALUES THEREOF AND TO ASSURE THE UNIFORMITY IN DEVELOPMENT OF SAID PROPERTY AND TO FACILITATE THE SALE OF SAID PROPERTY BY BEING ABLE TO ASSURE THE PURCHASERS THEREOF OF SUCH UNIFORMITY AND PROTECTION AGAINST DEPRECIATION.

NOW, THEREFORE, THIS DECLARATION WITNESSETH, THAT FOR AND IN CONSIDERATION OF THE BENEFITS TO BE DERIVED BY THE PARTIES HERETO, THEIR HEIRS, SUCCESSORS AND ASSIGNS, THE SAID BELMONT PARK ESTATES, INC. DOES HEREBY ADOPT, ESTABLISH, AND IMPOSE UPON AND AGAINST EACH AND ALL OF THE LOTS OF THE AFORESAID SUBDIVISION THE FOLLOWING COVENANTS, RESTRICTIONS, EASEMENTS AND CONDITIONS TO BE OBSERVED AND ENFORCED BY THEMSELVES AS WELL AS BY ALL THE PURCHASERS OF THE LAND IN SAID SUBDIVISION, TO-WIT:

RYLAND, WINSTON &
CARPENTER
ATTORNEYS AT LAW
ARLINGTON, VA.

Sept. 30, 1960-Returned to:
Ryland, Winston & Carpenter, Attys.

-2-

I. LOT USE AND SIZE

- A. ALL LOTS SHALL BE SOLD AND USED FOR RESIDENTIAL PURPOSES ONLY.
- B. NO ORIGINAL LOT HAVING AN AREA OF 20,000 SQUARE FEET OR LESS SHALL BE RESUBDIVIDED, NOR SHALL ANY RESUBDIVIDED LOT CONTAIN LESS THAN 20,000 SQUARE FEET OF LAND.

II. BUILDING TYPE AND LOCATION

- A. NO BUILDING OR STRUCTURE SHALL BE ERECTED, ALTERED, PLACED, OR PERMITTED TO REMAIN ON ANY LOT OTHER THAN DETACHED SINGLE-FAMILY DWELLINGS AND OUTBUILDINGS INCIDENTAL TO THE RESIDENTIAL USE OF THE LOT, INCLUDING A GARAGE OR CARPORT FOR NOT MORE THAN TWO CARS.
- B. NO DWELLING SHALL BE ERECTED WHICH CONTAINS LESS THAN 1400 SQUARE FEET OF HABITABLE AREA.
- C. NO BUILDING, STRUCTURE, FENCE, WALL, OR SIGN SHALL BE ERECTED, PLACED, ALTERED, OR PERMITTED ON ANY LOT UNTIL THE BUILDING PLANS, SPECIFICATIONS, AND PLOT PLAN SHOWING THE LOCATION OF THE SAME HAS BEEN APPROVED IN WRITING BY THE ARCHITECTURAL CONTROL COMMITTEE AS TO THE QUALITY OF WORKMANSHIP AND MATERIALS, CONFORMITY AND HARMONY OF EXTERNAL DESIGN WITH EXISTING STRUCTURES, LOCATION WITH RESPECT TO TOPOGRAPHY AND FINISH GROUND ELEVATION, AND LOCATION WITH RESPECT TO THE EFFECT OF THE SAME UPON THE VIEW AVAILABLE FROM OTHER LOTS IN THE SUBDIVISION. IN THE EVENT THE COMMITTEE FAILS TO APPROVE OR DISAPPROVE THE SAME WITHIN THIRTY (30) DAYS AFTER THEY HAVE BEEN SUBMITTED TO IT, OR IN ANY EVENT, IF NO SUIT TO ENJOIN THE CONSTRUCTION OF THE SAME HAS BEEN COMMENCED PRIOR TO THE COMPLETION THEREOF, APPROVAL WILL NOT BE REQUIRED AND THE RELATED COVENANTS SHALL BE DEEMED TO HAVE BEEN FULLY COMPLIED WITH. THE ARCHITECTURAL CONTROL COMMITTEE SHALL BE COMPOSED OF WALTER O. VON HERBULIS (OR HIS DESIGNATED REPRESENTATIVE), AN ARCHITECT DESIGNATED BY WALTER O. VON HERBULIS, AND A REPRESENTATIVE OF THE SUBDIVISION LOT OWNERS. THE SUCCESSOR IN OFFICE TO THE SAID WALTER O. VON HERBULIS SHALL BE APPOINTED BY HIM BY AN INSTRUMENT TO BE RECORDED AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA, BUT IN THE EVENT OF HIS RESIGNATION OR DEATH WITHOUT HAVING SO APPOINTED SUCH SUCCESSOR, SAID OFFICE SHALL BE HELD BY THE VICE-PRESIDENT OF BELMONT PARK ESTATES, INC. WHO SHALL HAVE THE SAME POWERS AND DUTIES CONFERRED UPON SAID WALTER O. VON HERBULIS, SHALL CONTINUE IN OFFICE UNTIL REPLACED BY ANOTHER APPOINTEE OF SAID WALTER O. VON HERBULIS. THE SUBDIVISION LOT OWNERS' REPRESENTATIVE SHALL BE ELECTED BY A MAJORITY VOTE OF THE LOT OWNERS IN THE SUBDIVISION, EACH OF WHOM SHALL HAVE BUT ONE VOTE, AND SHALL CONTINUE IN OFFICE UNTIL REPLACED BY ANOTHER REPRESENTATIVE SO ELECTED.

RYLAND, WINSTON &
CARPENTER
ATTORNEYS AT LAW
ARLINGTON, VA.

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- C. NO BUILDING SHALL BE LOCATED ON ANY LOT NEARER THAN FIFTY (50) FEET TO THE FRONT LOT LINE, OR TO ANY SIDE STREET LINE, AND NO BUILDING (INCLUDING CARPORTS, GARAGES, SWIMMING POOLS, ETC.) SHALL BE LOCATED NEARER THAN FIFTEEN (15) FEET TO ANY SIDE LOT LINE.
- D. NO STRUCTURE OR PENS FOR PETS SHALL BE ERECTED, PLACED OR PERMITTED ON THE FRONT TWO-THIRDS OF ANY LOT.

III. PROHIBITED ACTIVITIES AND STRUCTURES

- A. NO TRAILER, BASEMENT, TENT, SHACK, GARAGE, BARN, OR OTHER OUTBUILDING ERECTED UPON ANY LOT SHALL AT ANY TIME BE USED TEMPORARILY OR PERMANENTLY AS A RESIDENCE.
- B. NO FARM ANIMALS OR POULTRY SHALL BE PERMITTED OR KEPT UPON ANY LOT.
- C. NO VEGETABLE GARDEN SHALL BE LOCATED ON THE FRONT HALF OF ANY LOT, NOR NEARER THAN TEN (10) FEET FROM ANY SIDE STREET LINE.
- D. NO SIGN OR BILLBOARD OF ANY KIND SHALL BE DISPLAYED TO THE PUBLIC VIEW ON ANY LOT EXCEPT:
 - 1. ONE PROFESSIONAL SIGN OF NOT MORE THAN TWO SQUARE FEET.
 - 2. ONE SIGN OF NOT MORE THAN FIVE SQUARE FEET ADVERTISING THE PROPERTY ON WHICH IS LOCATED A DWELLING (NONE ON VACANT HOMESITES) FOR SALE OR RENT.
 - 3. SIGNS USED BY THE ORIGINAL SUBDIVIDER AND BY BUILDERS OF DWELLING HOUSES ON THE LOTS DURING THE CONSTRUCTION AND SALES PERIOD.
- E. NO NOXIOUS OR OFFENSIVE ACTIVITY SHALL BE CARRIED ON UPON ANY LOT OR BUILDING OR STRUCTURE ERECTED THEREON BE USED IN ANY MANNER SO AS TO ENDANGER THE HEALTH AND COMFORT OF OR UNREASONABLY DISTURB THE PEACE AND QUIET OF ANY OWNER OR OCCUPANT OF ADJOINING PROPERTY OR OF THE NEIGHBORHOOD.
- F. THE DEVELOPER RESERVES THE RIGHT TO PUBLISH REGULATIONS CONCERNING THE BURNING OF BONFIRES, TRASH, LEAVES, ETC AS A FIRE PREVENTATIVE MEASURE.

IV. LOT MAINTENANCE

- A. NO TREES, SHRUBBERY, OR GROWTH OF ANY KIND UPON ANY LOT AT THE DATE OF SALE THEREOF BY THE SUBDIVIDER SHALL BE PERMITTED TO GROW OVER TWENTY-FIVE (25) FEET IN HEIGHT, IF IN SO DOING THERE IS OR SHALL BECOME AN INTERFERENCE WITH THE VIEW FROM ADJACENT LOTS.
- B. EACH LOT SHALL BE KEPT AND MAINTAINED IN A NEAT CONDITION, CLEARED OF TRASH, WASTE, RUBBISH, REFUSE OR UNSIGHTLY GROWTH BY THE OWNER THEREOF,

RYLAND, WINSTON &
CARPENTER
ATTORNEYS AT LAW
ARLINGTON, VA.

-4-

BOTH BEFORE AND AFTER CONSTRUCTION OF ANY BUILDING OR STRUCTURE THEREON. LOT OWNERS SHALL MOW AND MAINTAIN GRASS FROM THE EDGE OF THE STREET ADJOINING HIS PROPERTY TO HIS PROPERTY LINE IN ACCORDANCE WITH COUNTY REGULATIONS.

- D. THE SUBDIVIDER SHALL HAVE THE RIGHT TO ENTER UPON ANY LOT IN THE SUBDIVISION UNTIL SUCH TIME AS A PERMANENT DWELLING IS ERECTED THEREON FOR THE PURPOSE OF CUTTING GRASS OR WEEDS, TRIMMING BRUSH, CUTTING DOWN SMALL TREES, OR IN ANY MANNER CLEANING UP AND MAKING SUCH LOT MORE PRESENTABLE AND SHALL IN NO WAY BE LIABLE TO THE OWNER THEREOF.

V. POWER LINES, WATER MAINS AND SEWER LINES

- A. THE SUBDIVIDER AND ITS SUCCESSORS AND ASSIGNS EXPRESSLY RESERVES TO ITSELF AND ITS SUCCESSORS AND ASSIGNS THE RIGHT TO RE-ENTER UPON ANY PARCEL OR LOT IN THE SUBDIVISION TO ERECT, INSTALL, LAY AND/OR MAINTAIN TELEPHONE, ELECTRIC LIGHT, OR POWER LINES, POLES WIRES, CABLES, AND FIXTURES AND A WATER MAIN AND A SEWER LINE.

VI. TERM

- A. THESE COVENANTS ARE TO RUN WITH THE LAND AND SHALL BE BINDING ON ALL PARTIES AND ALL PERSONS CLAIMING UNDER THEM FOR A PERIOD OF TWENTY-FIVE (25) YEARS FROM THE DATE THIS INSTRUMENT IS RECORDED, AFTER WHICH TIME THEY SHALL BE AUTOMATICALLY EXTENDED FOR SUCCESSIVE PERIODS OF TEN (10) YEARS; UNLESS AN INSTRUMENT SIGNED BY A MAJORITY VOTE OF THE OWNERS OF THE LOTS IN THE SUBDIVISION (ALLOWING EACH OWNER ONE VOTE FOR EACH LOT IN THE SUBDIVISION OWNED BY HIM, HER, THEM, OR IT) AGREEING TO CHANGE SUCH COVENANTS IN WHOLE OR PART.

VII. ENFORCEMENT

- A. ENFORCEMENT SHALL BE BY PROCEEDINGS AT LAW OR IN EQUITY, EITHER TO RESTRAIN VIOLATION OR TO RECOVER DAMAGES AGAINST ANY PERSON OR PERSONS VIOLATING OR ATTEMPTING TO VIOLATE ANY COVENANT.

VIII. INVALIDATION OF COVENANTS

- A. INVALIDATION OF ANY OF THESE COVENANTS BY JUDGMENT OR COURT ORDER SHALL IN NO WISE AFFECT ANY OF THE OTHER PROVISIONS WHICH SHALL REMAIN IN FULL FORCE AND EFFECT.

WITNESS THE HAND OF ITS PRESIDENT AND THE SEAL OF THE SAID CORPORATION.

BELMONT PARK ESTATES, INC.

B. *Walter O. Von Hereulis*
WALTER O. VON HEREULIS, PRESIDENT

RYLAND, WINSTON &
CARPENTER
ATTORNEYS AT LAW
ARLINGTON, VA.

ATTEST
John C. Saffner
SECRETARY

STATE OF VIRGINIA,
COUNTY OF ARLINGTON, TO-WIT:

I, DOROTHY M. MATTHEWS, A NOTARY PUBLIC IN AND FOR THE
COUNTY AND STATE AFORESAID, WHOSE COMMISSION EXPIRES ON THE 7TH
DAY OF JANUARY, 1964, DO HEREBY CERTIFY THAT WALTER O. VON
HERBULIS, WHOSE NAME AS PRESIDENT OF BELMONT PARK ESTATES, INC.
IS SIGNED TO THE FOREGOING WRITING BEARING DATE ON THE 30TH
DAY OF AUGUST, 1960, PERSONALLY APPEARED BEFORE ME THIS DAY IN
MY SAID COUNTY AND STATE AND IN THE NAME AND ON BEHALF OF THE
SAID CORPORATION, ACKNOWLEDGED THE SAID WRITING AS THE ACT AND
DEED OF THE CORPORATION AND MADE OATH THAT HE IS PRESIDENT OF
SAID CORPORATION, AND THAT THE SEAL AFFIXED TO SAID WRITING
IS THE TRUE CORPORATE SEAL OF THE SAID CORPORATION, AND THAT IT
HAS BEEN AFFIXED THERETO BY DUE AUTHORITY.

GIVEN UNDER MY HAND THIS 30TH DAY OF AUGUST, 1960.

Dorothy M. Matthews
NOTARY PUBLIC

In the Clerk's Office of the Circuit Court of
Fairfax County, Virginia SEP 1 1960 at 8:27 A.M.
This instrument was received and, with the
certificate annexed, admitted to record

Teste:

Thomas C. Chymer
Clerk

RYLAND, WINSTON &
CARPENTER
ATTORNEYS AT LAW
ARLINGTON, VA.



A COPY TESTE:
JOHN T. FREY, CLERK

410

By: *L. J. White*
Deputy Clerk

93 117692

JUN-3 - 3:23

DECLARATION OF TRUST

THIS DECLARATION OF TRUST AND SUBSTITUTION OF TRUSTEES, made as of the 12th day of June, 1992, by and between RUTH JOAN/HURVITZ and JUDITH ANN/HURVITZ, Declarants and Grantors, parties of the first part; HURVITZ/FOSTER JOINT VENTURE, a Virginia joint venture existing under and pursuant to that certain Hurvitz/Foster Joint Venture Agreement dated June 12, 1992, Beneficiary and Grantor, party of the second part; and JAMES A. FOSTER, Managing Joint Venturer of the Hurvitz/Foster Joint Venture, party of the third part.

BK 8590 1256

WITNESSETH

WHEREAS, the parties of the first part are presently the sole owners of record of all those certain lots or parcels of land situate, lying and being in the County of Fairfax, State of Virginia, more particularly described as follows:

Lots 4, 5, 6, 8, 9, 11, 13 through 22, inclusive, 24, 25, 38, 39, 51, 70, 71, 88, 133 through 137, inclusive, 139 and 140, Belmont Park Estates Subdivision, as the same appears duly dedicated, platted and recorded in Deed Book 1478, at Page 26, among the land records of Fairfax County, Virginia having acquired the same by Will recorded in Will book 414 at Page 26 among the land records of Fairfax County, Virginia.

Tax Map Nos. 118-1-02-4, 5, 6, 8, 9, 11, 13 through 22, inclusive, 24, 25, 38, 39, 51, 70, 71, 88, 133 through 137, inclusive, 139 and 140, respectively;

AND WHEREAS, the parties of the first part desire to declare the true party having an interest in said property;

Clare Moore P.C.
The White Oak Tower, St. 500
341 North Vienna Hwy
Vienna, VA 22180

BK 8590 1257

NOW THEREFORE, the said parties of the first part do declare that they hold, and have at all times held, the above described Lots 4, 5, 6, 8, 9, 11, 13 through 22, inclusive, 24, 25, 38, 39, 51, 70, 71, 88, 133 through 137, inclusive, 139 and 140, Belmont Park Estates Subdivision, as the same appears duly dedicated, platted and recorded in Deed Book 1478, at Page 26, among the land records of Fairfax County, Virginia, for the use and benefit of the Hurvitz/Foster Joint Venture, a Virginia joint venture existing under and pursuant to that certain Hurvitz/Foster Joint Venture Agreement dated June 12, 1992, and in and upon the following trusts, with the following powers, and subject to the following limitations:

1. Generally, to hold, manage, maintain, protect and conserve the property, together with any improvements presently existing, or hereafter placed, thereon.

2. With the consent, or at the direction, of the Hurvitz/Foster Joint Venture, as evidenced by the joinder in any pertinent instrument by the Managing Joint Venturer of the Hurvitz/Foster Joint Venture, or by separate instrument in recordable form, duly executed, acknowledged and delivered to the Trustees by said Managing Joint Venturer, and stating the consent or direction of said Joint Venture, the said Trustees shall have the power to:

a) Sell, contract to sell, grant options to purchase exchange, lease, encumber, dedicate for public use or otherwise dispose of the property interest above described or any part

thereof.

b) Take any other actions deemed by the Hurvitz/Foster Joint Venture to be necessary or desirable.

3. Said Trustees shall have the power to receive and accept other and additional property, real or personal, to be held, managed and dealt with in accordance with the duties, powers and limitations herein set forth.

4. No party dealing with the Trustees in relation to any property held by them under and pursuant to this trust shall be obligated to see to the application of any purchase money, rent or money borrowed; and, except as herein provided, no such party shall be obligated to inquire into the authority, necessity or expediency of any act of the Trustees.

5. All actions by the Trustees shall be taken by all of the trustees under this trust, and no single trustee shall have any power to act alone for the trust, notwithstanding the fact he or she may be a sole surviving trustee.

6. The Hurvitz/Foster Joint Venture shall have the power to substitute one as a Trustee of this Trust in the place and ~~stead of~~ either of the Trustees then in title, with or without cause, and for any reason, at any time and from time to time, without notice to any then present or previous Trustee. Such substitution shall be effected by the due execution, acknowledgement and delivery to the newly appointed Trustee by the Managing Joint Venturer of the said Hurvitz/Foster Joint Venture of an instrument naming and appointing the new Trustee, whereupon all powers and duties of a

BK 8590 1259

Trustee shall devolve upon and be vested in said substitute Trustee.

AND THIS INDENTURE FURTHER WITNESSETH that the party of the third part does hereby substitute as Trustee of this Trust, in the place and stead of JUDITH ANN HURVITZ, Trustee, with all the duties, powers and limitations of said Trustee, JAMES A/FOSTER, to be Co-Trustee with RUTH JOAN HURVITZ.

IN WITNESS WHEREOF, the Grantors, together with the Grantees as indicating acceptance of this Deed and its terms, have hereunto set their hands and seals all as of the date first above written.

Judith Ann Hurvitz
JUDITH ANN HURVITZ

Ruth Joan Hurvitz
RUTH JOAN HURVITZ

HURVITZ/FOSTER JOINT VENTURE

By: James A. Foster
JAMES A. FOSTER, Managing
Joint Venturer

STATE OF VIRGINIA)
COUNTY OF FAIRFAX) to-wit:

The undersigned, a Notary Public in and for the aforesaid County and State, whose commission expires 10-31-93, does hereby certify that JUDITH ANN HURVITZ whose name is signed to the foregoing Deed in Trust, has personally acknowledged the same before me in my County and State aforesaid.

Given under my hand and seal this 3 day of MAY, 1993.

[Signature]
Notary Public

BK 8590 1260

STATE OF CALIFORNIA

COUNTY OF Alameda

On April 16, 1993

SS RUTH C. GIOVANNETTI
(Notary Name and Title)

personally appeared RUTH JEAN HURVITZ

he aforesaid

DOC: DECLARATION OF TRUST

is signed to
ged the same

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument

IN WITNESS my hand and official seal

Ruth C. Giovannetti
RUTH C. GIOVANNETTI
MY COMMISSION EXPIRES
12/22/1994



(Notarial Seal)

STATE OF VIRGINIA

COUNTY OF Fairfax

to-wit:

The undersigned, a Notary Public in and for the aforesaid County and State, whose commission expires 7/31/93, does hereby certify that JAMES A. FOSTER, managing Joint Venturer of Hurvitz/Foster Joint Venture whose name is signed to the foregoing Deed in Trust, has personally acknowledged the same before me in my County and State aforesaid as the act and deed of the said Hurvitz/Foster Joint Venture.

Given under my hand and seal this 6th day of May, 1993.

Susan F. Koser
Notary Public

JUN 5 93

RECORDED FAIRFAX CO VA

TESTE:

John T. Frey
CLERK

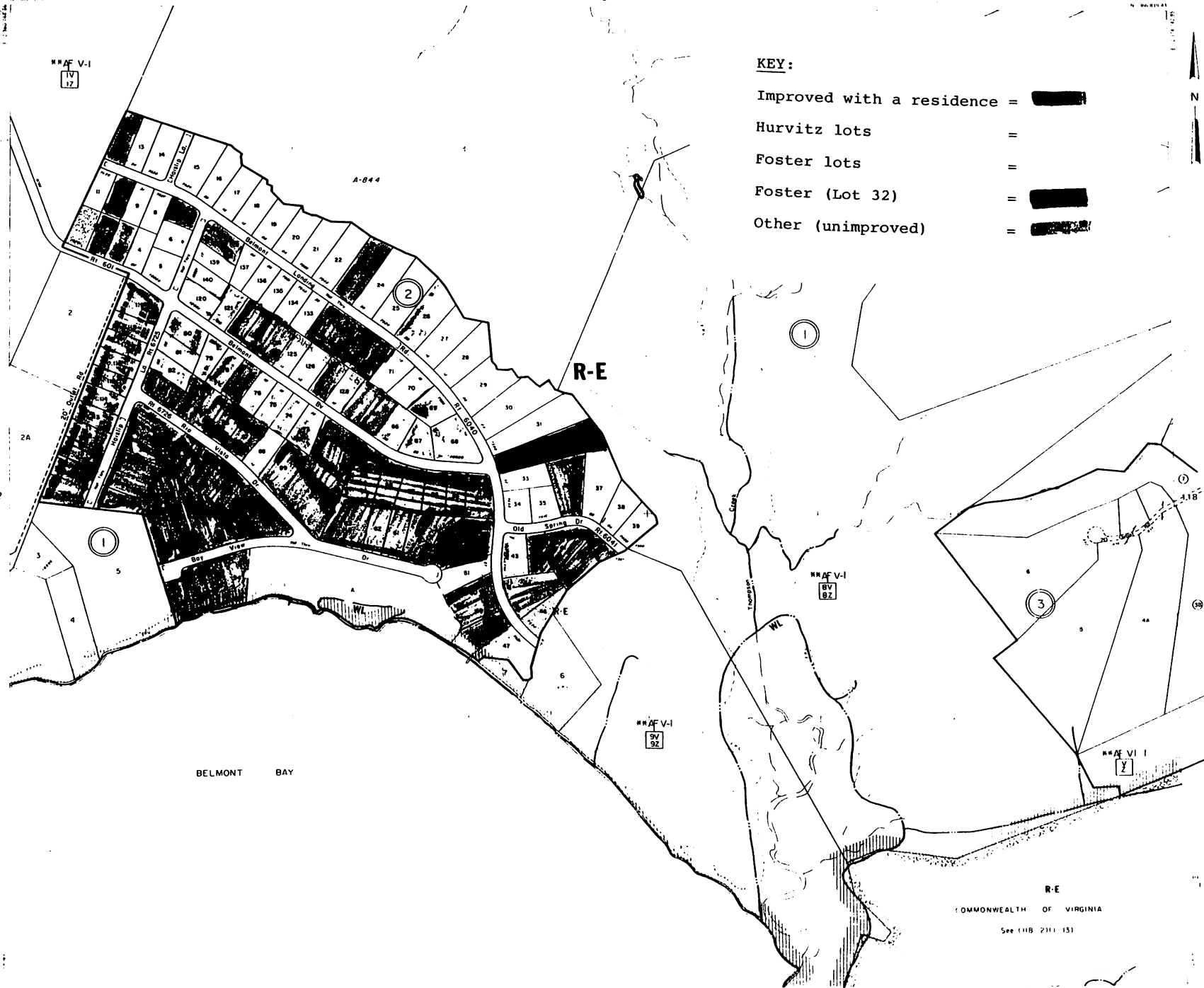
A COPY TESTE:
JOHN T. FREY, CLERK

By: John T. Frey
Notary Public

11
 ZONING
 1173
 SUBSIDIARY
 ARE NOT EFFECTED

FAIRFAX COUNTY

114 3



BBCA BOARD MEETING April 13, 1992

BOARD MEMBERS PRESENT

George Arnold, President
Luella Medlin, Treasurer
Gene Lear, Recording Secretary
Mike Polifko
Cathy Foster

Minutes of previous meeting were read and approved.

Treasurer reported \$597.60 in bank account. \$250.00 to be expended for insurance on the park.

The Treasurer opened a discussion regarding payment of dues. She reported that she had contacted everyone in Belmont Park Estates and that some residents were reluctant to pay, and some did not want to be a part of BBCA. Historically dues had been set at twenty dollars a year per homeowner. A discussion followed regarding the amount that should be charged, and the method of collection. The subject was left open for further discussion, perhaps at the next general meeting. There was additional discussion regarding if we should contact all absentee owners and request payment. This had been done at one time in the past and we had some response.

George Arnold reported that the Gunston-Wiley situation had not as of this meeting been resolved. The committee had not met. He indicated that funding may be a problem for the proposed sewer system for those two areas.

PLANNING AND ZONING;

In the absence of Bob Drye, George Arnold reported that Solite had been turned down. The matter is to go back to the Board of Supervisors. Town houses were not supported by this organization or Mason Neck. The agrarian zoning on Gunston approved. BBCA did not object.

ENVIRONMENTAL: Mike Polifko.

Mike reported that he was approached by Lee Majeskie concerning the possibility of establishing a pasture and stables on the Seabolt property. Lee asked our opinion on this. There appears to be a problem with the Rainwater property. Details not available. More information is needed.

Mike also suggested opening Rio Vista Drive as a nature trail. The road is overgrown with trees, etc. and is not passable for vehicles. He also suggested repairing the boat ramp and improving the road to the bay.

He brought attention to the board that someone had cut some very

large trees on park property. It is illegal to cut any trees on park property without consent.

The above includes the Park Committee report.

NEW BUSINESS;

It was suggested that the by-laws be reviewed and updated. The board reviewed them briefly and decided that a more intensive review should be made. Some of the information is out dated. It was agreed that the board would meet on 27th of April for this purpose.

There was a long discussion of the covenants. It was learned that they are still in effect, and should be adhered to relative to obstructing views, building heights, etc.

It was decided that the board would meet on April 27, 1992 to review and update the by-laws and restrictions. The board agreed that this should be done as quickly as possible.

George Arnold asked the board's opinion regarding publishing a news letter. There were comments both pro and con as to the value of a newsletter and how it would be written and the timing of it. It was generally agreed that all residents should be kept informed of any activity affecting Belmont Park Estates and any other County items that would have an impact on Mason Neck.

Meeting adjourned at ten twenty five PM

Marvin E. Lear, Recording Secretary.

General Meeting
Belmont Bay Community Association

November 30, 1992

Treasurers' Report

1991 Bal.	\$ 319.24	
collected	620.	dues
	10.	voluntary flower fund
earned	<u>14.90</u>	interest on savings account
	\$ 964.14.	

expenses	\$ 250.	Financial Insurance (for 7 acres at bay)
	35.	dues, Mt. Vernon Council
	<u>9.25</u>	P.O. Box w/2 keys (Pres. and Treas.)
	\$ 294.25	

The balance on hand is \$ 669.89.

(We need to maintain a \$ 200. bank balance to avoid svc. chgs.)

We have a proposal for work to be done on replacing community sign Belmont Park Estates, submitted by Ralph J. Edwards.

\$ 77.20 plywood, paint
(this is under our proposed budget of \$ 100.)

I spoke with Bill Harmon, Fairfax County, regarding the safety of children in our area. He came to Belmont Community to assess our situation, and a sign was put up, No Outlet, at the intersection of Gunston Road and Belmont Blvd.

In regard to signs reading Caution, Children at Play, etc., Mr. Harmon said experience has shown those signs give children a false sense of security, in that the sign is there, and the child thinks the road is his to play in. It does not, as the road belongs to the county.

Anyone wishing to pursue this further can contact Mr. Harmon at 934-0836.

Respectfully submitted,

Luella Medlin, Treasurer

BBCA REGULAR MEMBERSHIP MEETING
30 November, 1992

Mr. Arnold, President opened the meeting at 7:45 PM.

The recording secretary presented a brief outline of Executive Committee actions during the past summer months.

Mr. Arnold briefed the membership on the status of the Hoof property. He related that Mr. Hoof had permission from the Fairfax County Board of Supervisors to clear the land and open burn the waste timber. The County Code allows open burning on farm land, which Mr. Hoof has had zoned for some time.

He also briefed the membership regarding Mr. Lynch's proposal for the "gateway" property he owns located on Furnace Road and Number One Highway. Mr. Lynch has proposed a recycling center plus a restaurant, and other structures for the property. It was concluded by those present that this would be an eyesore to the entrance to the County, besides locating such a complex directly overlooking the river.

COMMITTEE REPORTS;

Dr. Polifko and Frits Vandenburg discussed the general condition of the park. Mowing and cleaning the property has posed a problem for several years. It was suggested that the membership consider making contact with a company to mow the property. It was suggested that property owners be assessed one hundred dollars ~~as a one time effort to acquire money to be placed in the bank and used as needed.~~

There followed a discussion regarding how to charge absentee lot owners for park maintenance. There was a general agreement that since those people do not use the park and probably would not be willing to join the BBCA, that a figure should be established and write to them and solicit funds. It was determined that although they do not live in Belmont Park Estates that they still had an obligation to help pay for maintenance of the common property, as it is a part of their deed.

A motion was presented to reduce the amount to eighty dollars per property owner. Seconded by Mr. Arnold. Motion carried unanimously.

A motion was presented to charge absentee lot owners a yearly charge of forty dollars dues. Seconded by Mr. Vandenburg. Motion carried.

Cathy Foster reported that the by-laws have been reviewed by her committee. She indicated very few changes were required except to update some language and bring the document in line with existing operations.

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Mr. Arnold stated that the Covenants are current and enforceable. There was a short discussion regarding how to enforce them. Mr. Arnold stated that they can be enforced and the membership should be aware of any deviations and report it to the proper committee.

Mrs. Michaels suggested that BBCA put out a news letter to the membership on a regular basis to keep the membership informed of any important matters of particular interest to the residents of Belmont Park Estates. It was generally agreed that it was a good idea, but no action was taken. The Executive Committee will consider the news letter at a later date.

Mr. Arnold asked for volunteers to work on various committees. Mrs. Michaels and Mr. Edwards indicated they would be interested in helping where they can.

Gene Lear brought house plans to the meeting for review. The house will be built on Lot 82.

Meeting adjourned bout 10:00.

Marvin E. Lear

Recording Secretary.

Belmont Bay Community Association
P. O. Box 686
Mason Neck, Virginia 22199

February 24, 1993

Dear Resident/Landowner:

Enclosed please find an invoice for the 1993 dues/assessments for the Belmont Park Estates, Belmont Bay Community Association. We would appreciate receiving your payment by April 1, 1993.

As you are aware, the community (each homeowner and each landowner) is responsible for the cost of insurance as well as the cost of maintaining our park and common areas. In past years this maintenance has been performed largely by volunteer labor. This has resulted in a burden of both labor and expense shared by only a few homeowners. As a result, these areas have not always been well maintained. Currently, there are many repairs needed.

At the November 1992 General Membership Meeting, the Association approved a modest plan which included road improvements to the park area, the clearing of a walking-nature trail, park area repairs, as well as contracting for periodic mowing of grass covered park areas.

To finance these improvements and repairs the Association approved an annual assessment fee of \$80.00 for each household and \$40.00 for each non-resident lot owner. Obviously these are modest charges, therefore we will continue to rely heavily on volunteer labor for most of the improvements.

The General Membership recognized the need for adequate funds to complete these projects and approved a motion that assessments be required of each homeowner/landowner without exception. Under Virginia law each owner shares legal responsibility for community assets and liabilities, this includes the cost of improvements.

When maintained the park and common areas add value to our community, they also benefit each property owner by increasing the property values. We have re-established a committee to develop plans for the community's approval. We welcome suggestions, contributions of plants, trees, materials, and of course labor.

The Belmont Board normally meets the 2nd Monday of each month and schedules quarterly General Membership Meetings as may be needed. The Associations next General Membership Meeting is scheduled for March 8th. Each homeowner/landowner may attend, but must be in good standing (dues paid) to vote. The 1993 dues are the amount assessed by invoice.

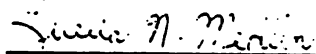
February 24, 1993

If you have information to share with the community or would like to be included as a speaker for this or a future meeting please contact any Association Board Member.


Signed:



George Arnold, President
339-7511



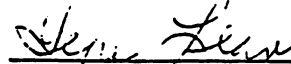
Luella Medlin, Treasurer
339-6263



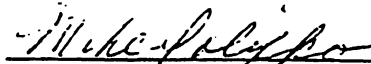
Cathy Foster, Director
339-6522



Frits Vandenberg, Vice President
339-5398



Gene Lear, Secretary
339-6836



Mike Polifko, Director
339-6013

Cpi

JOHN F. KNOWLES
ATTORNEY AND COUNSELLOR AT LAW
8712 LINTON LANE
ALEXANDRIA, VIRGINIA 22308
(703) 360-0286



July 19, 1994

Mr. George E. Arnold
10913 Belmont Boulevard
Mason Neck, VA 22079

Dear George,

Belmont Bay Community Association became a corporation last Wednesday, July 13, 1994. Enclosed for the permanent records of the corporation is the Certificate of Incorporation. Also enclosed are the other documents which the State Corporation Commission sent with the Certificate.

The next step which must be taken is for you, as Incorporator, to elect the initial Board of Directors of the Corporation. Enclosed is the type of document to be used, with the names of individuals to be inserted.

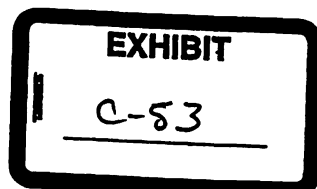
Then, again as the Incorporator, you must hold the first meeting of the initial Board of Directors, an "organizational meeting" to 1) appoint the officers of the Corporation, 2) adopt Bylaws, 3) approve a corporate seal if the Board wishes to have a corporate seal (Virginia law does not require a seal), and 4) conduct any other business the Board wishes. That might include: 1) the designation of the bank in which the Corporation will keep its account and authority for the President or Treasurer to open the account (the bank probably has its own Board resolution form which it insists be used in any event); 2) the designation of a principal office (which, however, might change every year or so as your officers change); 3) the designation of the Corporation's fiscal year, which I presume will be the calendar year; and 4) the appointment of the Registered Agent and the designation of the Registered Office.

Please let me know if a corporate seal is desired and if you want me to get the seal. It costs approximately \$30 and takes several days to obtain.

Before you convene the organizational meeting of the initial Board of Directors, you must determine what Bylaws shall be adopted. The Virginia Nonstock Corporation Act, Section 13.1-823B states: ←

"The bylaws of a corporation may contain any provision for the regulation or management of the business of the corporation that is not inconsistent with law or the articles of incorporation."

The Act, which legally governs the operations of your corporation, has sixty (60) pages of provisions!



Please let me know whether it is desired that I provide draft Bylaws as originally agreed to by your Board last fall. I see two possibilities:

1. That I revise the draft Bylaws I gave the Board last fall to take into account the fact that the Corporation does not have mandatory membership. My draft Bylaws incorporate many of the provisions of the Nonstock Corporation Act. Such a revision should not take much time.

2. That I review and propose amendments to the Association's draft Bylaws to ensure that they are "not inconsistent with the law..."

Once the content of the organizational meeting is known, I can provide the Board with draft minutes. ←

I shall be pleased to answer any questions which you or your colleagues may have.

Sincerely,



Enclosures:

1. Certificate of Incorporation
2. Receipt for fees for filing Articles of Incorporation
3. Annual Corporation Requirements
4. Notice to all Employers
5. Election of Initial Board of Directors by the Incorporator

BELMONT BAY COMMUNITY ASSOCIATION, INC.

Election of Initial Board of Directors by the Incorporator

The undersigned, being the sole Incorporator of the BELMONT BAY COMMUNITY ASSOCIATION, INC. hereby consents to the following action taken without a meeting, pursuant to the authority contained in Section 13.1-822B of the Code of Virginia.

The following named individuals are elected with their consent to serve as the initial Board of Directors of the BELMONT BAY COMMUNITY ASSOCIATION, INC. until the first annual meeting of the Members at which a Board of Directors shall be elected by the Members:

George E. Arnold
SOLE INCORPORATOR

Date: _____

Treasurer's Report.

September 27, 1993

1993Deposits

1 January	Bank Statement	\$ 675.09	
	1993 dues, collected to date	2285.00	
	Future dues, " " "	720.00	
9 June	Donation, flower fund	25.24	
15 June	Donation, for Park grading	120.00	
13 September	Purchase of Guard Rails, Ariail	9.25	
	Interest earned, to date	<u>21.76</u>	
			\$ 3856.34

Withdrawals

February	BBCA Stamp, Stationary	\$ 78.93	
	Supplies, Stamps, Invoices		
	R. Edwards, Belmont Park sign	75.00	
9 March	Insurance	250.00	
3 June	Dave Walker, grading at Bay	560.00	
	and on Rio Vista Road		
15 July	Guard Rails for Bay	84.50	
16 July	Petty Cash fund	100.00	
21 July	Dave Walker, grading	500.00	
	Hay for Bay	115.24	
12 August	Retainer, Jack Knowles, lawyer	500.00	
15 September	Dave Walker, grading	<u>500.00</u>	
			- \$ 2763.67
27 September	Balance On Hand		\$ 1092.67

Bills Outstanding

Dave Walker, grading	\$ 1000.00
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For 1994

Maintaining Road, Grading	\$ 500.00
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Respectfully Submitted,

Luella N. Medlin, Treasurer

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**BELMONT BAY COMMUNITY ASSOCIATION
QUARTERLY MEMBERSHIP MEETING**

George and Nancy Arnold's
10913 Belmont Blvd.
Monday, September 27, 1993

AGENDA

7:00 Social, coffee, cookies, soda.

7:30 Secretary's report

7:45 Treasurer's report

8:00 Park Committee report, the committee will report the work which was completed, in-process, and remaining to be accomplished from this years budget. They will discuss the work being planned for next year, to be approved at a future meeting.

8:30 Community Yard Sale, This is a planning discussion to organize and plan the sale. Items to be considered include hours, location.

8:45 Community Picnic and Family Recreational Outing, A planning and organization meeting, discussion to include establishing the times, organizing recreational activities for both children and adults, as well as food and drinks.

Board of Directors' Report

9:00

1. Status of the proposed amendments to the Association's By-Laws, concerns about liens, mandatory payments of dues, and other related concerns of the community.
2. We will request Association Membership approval to file for the Incorporation of the Association under Federal and Virginia State Laws.
3. The Community will be asked to consider ways that we can **work together to solve problems** relating to landscaping and trees which **obscure the vision** of the Bay for neighboring households.

10:00

Due to the length of the agenda and the number of items which may require discussion **we will adjourn at the scheduled time**. Unfinished business will be included at the next regularly scheduled meeting.

Belmont Bay Community Association
Treasurers' Report, December 2, 1993

1/01/93	Cash on hand		675.09
1993	DEPOSITS, Dues	+ 3145.	3820.09
	1993 Resident dues	1705.	
	Absentee dues	720.	
	1994 Resident dues	480.	
	Absentee dues	40.	
	1995 Resident dues	80.	
	Absentee dues	40.	
	1996 Absentee dues	40.	
	1997 Absentee dues	40.	
1993	Interest earned	+ 21.76	3841.85
3/03/93	Flower fund	+ 25.24	3867.09
6/15/93	Contribution for grading	+ 120.00	3987.09
9/15/93	Guard Rails, Airial	+ 9.25	3996.34
EXPENSES			
3/03/93	Edwards, BBCA sign		
	Medlin, Stationary supplies	153.93	
3/09/93	Insurance on Bay Property	250.00	
6/03/93	Dave Walker, grading	560.	
7/21/93	" " "	500.	
9/15/93	" " "	500.	
10/25/93	" " "	450.	2010.00
7/15/93	Guardrails	84.50	
7/16/93	Petty Cash	100.00	
8/04/93	Hay for Bay area	115.24	
8/12/93	Retain Lawyer, to Incorporate	500.00	
10/26/93	Postmaster, P.O. Box 686, Lorton	7.25	
11/08/93	Edwards, Community Day Picnic	<u>74.06</u>	
12/02/93	Cash on hand	- 3294.98	701.36

BELMONT BAY COMMUNITY ASSOCIATION
P.O. BOX 686
MASON NECK, VIRGINIA 22199

March 24, 1994

Dear Resident / Landowner:

Enclosed you will find an invoice for the 1994 dues/assessments for the Belmont Park Estates, Belmont Bay Community Association. We would appreciate your payment by April 15, 1994.

The funds are used to improve and maintain the park and common areas, pay insurance, as well as support the community participation in the Mason Neck Citizen's Association and the Mount Vernon Council of Citizen's Associations.

We started 1993 with ambitious plans to improve the road, establish a walking trail, make modest improvements to the park, and contract mowing of the grass in the park. Although we spent some of this year's budget, we exceeded our goals.

The road, while still needing work, was made accessible to vehicles. However, it still should not be used during inclement weather. The park was not only cleared, but enlarged. The trash and growth were removed from the cleared waterfront and the beach was leveled. The ditches along the road were cleared, and drainage to the bay was altered to provide sedimentation control. The walking trail was cleared and seeded. Split-log seats facing the waterfront were installed and treated.

These efforts were accomplished due to many contributions, including money, materials, volunteer labor, and the dues. In celebration, the Association sponsored a community picnic with food, a children's fishing tournament, and games including a parent vs child volleyball tournament. The park was what we hope it will remain, a place of pleasure, recreation, offering a sense of community for the members of Belmont Park Estates.

The park committee's plans for 1994 and 1995 are equally ambitious. The plans, yet to be approved by the membership, include; improvement of the drainage on the south end of the park, clearing an additional area of 75 ft. on the north side of the park as a recreational area with an additional 50 ft. of wooded area thinned to provide additional scenic and picnic sites.

We have budgeted for 1994, the maintenance of the road and some adjacent ditch improvements. We hope to have enough funds to lay wood chips on the walking trail. There are also plans to establish several eagle roosts and additional clearing of the park waterfront.

The 1994 budget proposed by the Board of Directors will be offered for approval at our Membership meeting, 7:30 pm, April 18, 1994 meeting at George and Nancy Arnold's. Your suggestions and comments are welcome.

We are checking the Farmer's Almanac for the appropriate date to schedule the **Spring Clean-up and Icebreaker** with a pot-luck lunch at the park-site. We hope to schedule a date and an alternative date at this Membership meeting.

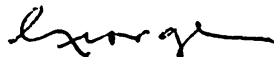
We appreciate your cooperation concerning the continued resolutions to maintain the community covenants.

During the fall meeting the membership requested that the Board work with both home and land owners to find ways to remove vegetation obstructing homeowner's view of Belmont Bay. We recognize this places a hardships on those wanting trees and shrubs, as well as landowners unable to maintain vegetation growth on vacant lots. We would appreciate your comments and suggestions as we work toward solutions to these and other problems.

On behalf of the Officers and Directors we would like to thank the community for their many contributions during the year. We thank those who suffered with us as we met, planned, reported, agreed, disagreed, worked, failed, and succeeded. We are grateful for the support you provided as well as your patience and understanding.

We can't always agree about everything, but we can all benefit from working together. Working to improve the community, benefits every lot-owner and resident. Your contributions of time and labor, your payment of dues, and your suggestions help us make this a community effort.

Thank You,



George Arnold,
President

Belmont Bay Community Association

BELMONT BAY COMMUNITY ASSOCIATION

P.O. BOX 686

MASON NECK, VIRGINIA 22199

Dear Resident / Landowner:

April 26, 1994

Enclosed you will find an invoice for the 1994 dues/assessments for the Belmont Park Estates, Belmont Bay Community Association. We would appreciate your payment by May 10. If you have already paid, Thank You.

The funds are used to improve and maintain the park and common areas, pay insurance, as well as support the community participation in the Mason Neck Citizen's Association and the Mount Vernon Council of Citizen's Associations.

We started 1993 with ambitious plans to improve the road, establish a walking trail, make modest improvements to the park, and contract mowing of the grass in the park. Although we spent some of this years' budget, we exceeded our goals.

The road, while still needing work, was made accessible to vehicles. However, it still should not be used during inclement weather. The park was not only cleared, but enlarged. The trash and growth were removed from the cleared waterfront and the beach was leveled. The ditches along the road were cleared, and drainage to the Bay was altered to provide sedimentation control. The walking trail was cleared and seeded. Split-log seats facing the waterfront were installed and treated.

These efforts were accomplished due to many contributions, including money, materials, volunteer labor, and the dues. In celebration, the Association sponsored a community picnic. There was a childrens' fishing tournament and games including a parent vs child volleyball tournament. The park was what we hope it will remain, a place of pleasure and recreation, offering a sense of community for the members of Belmont Park Estates.

The Park Committee's plans for 1994 and 1995 are equally ambitious. The plans, yet to be approved by the membership, include; improvement of the drainage on the south end of the park, clearing an additional area of 75 ft. on the north side of the park as a recreational area, with an additional 50 ft. of wooded area thinned to provide additional scenic and picnic sites.

~~We have~~ budgeted for 1994 the maintenance of the road and some adjacent ditch improvements. We hope to have enough funds to lay wood chips on the walking trail. There are also plans to establish several eagle roosts and additional clearing of the park waterfront.

The 1994 budget proposed by the Board of Directors will be offered for approval at our General Membership meeting, 7:30 pm, May 3, 1994, meeting at George and Nancy Arnold's. Your suggestions and comments are welcome.

We are checking the Farmer's Almanac for the appropriate date to schedule the Spring Clean-Up and Icebreaker with a pot-luck lunch at the park-site. We hope to schedule a date and an alternative date at this Membership meeting.

We appreciate your cooperation concerning the continued resolutions to maintain the community covenants.

During the fall meeting the membership requested that the Board work with both home and land owners to find ways to remove vegetation obstructing homeowners view of Belmont Bay. We recognize this places a hardship on those wanting trees and shrubs, as well as landowners unable to maintain vegetation growth on vacant lots. We would appreciate your comments and suggestions as we work toward solutions to these and other problems.

On behalf of the Officers and Directors, we would like to thank the community for their many contributions during the year. We thank those who suffered with us as we met, planned, reported, agreed, disagreed, worked, failed, and succeeded. We are grateful for the support you provided as well as your patience and understanding.

We can't always agree about everthing, but we can all benefit from working together. Working to improve the community benefits every property owner and resident. Your contributions of time and labor, your payment of dues; and your suggestions help us make this a community effort.

Thank You,



George Arnold,
President
Belmont Bay Community Association

General Meeting, BELMONT BAY COMMUNITY ASSOCIATION May 3, 1994

Began 1993 w/Balance on Hand	\$ 675.09	
Deposited Dues	3,225.00	
Earned Interest	21.76	
Ariaail bought guard rail	9.25	
Donation, flower fund	25.24	
Donation, Bay grading	<u>120.00</u>	
	\$ 4,076.34	Amount Deposited

1993 Expenses were:

Misc; sign, stamps, env.	\$ 153.93
Petty cash	200.00
Insurance on Bay Prop.	250.00
Lawyer, Mr. Knowles, for	500.00
Advice on Incorporaing	
P. O. Box, 2 keys	7.25
Grading, at Bay & Road	2010.00
Guard Rails	84.50
Hay	115.24
Community Picnic	<u>74.06</u>
	\$ 3,394.98

ReCap: 1993 Deposits	\$ 4,076.34
Less Expenditures	<u>3,394.98</u>
Balance on Hand for 1994	\$ 681.36

Began 1994 w/Balance on Hand	\$ 681.36	
As of 5/3/94 Deposited Dues	<u>1308.00</u>	
	\$ 1,989.36	Amount Deposited

1994 Expenses were:

Mt. Vernon Council Dues	\$ 35.00
Grading, at Bay & Road	<u>1000.00</u>
	\$ 1,035.00

(Other Expenses out of Petty Cash)

ReCap: 1994 Deposits	\$ 1,989.36
Less Expenditures	<u>1,035.00</u>
Balance on Hand 5/03/94	\$ 954.36

1994 Bills Outstanding:

Insurance on Bay Prop.	\$ 250.00
Grading at Bay & Road	<u>485.00</u>
	\$ 735.00

There is a balance of \$ 81.55 Petty Cash
10.86 Credit from Mr. Knowles, Lawyer

There is NO Budget submitted, as we have \$ 219.36 after ALL BILLS ARE PAID, until we collect outstanding dues. (5/11/94)

Respectfully Submitted
Luella Medlin, Treasurer

30

RESIDENTIAL BUILDING LOTS

LOCATED

IN

BELMONT PARK ESTATES

HISTORIC MASON NECK

FOR SALE

\$1,000,000

CONTACT:

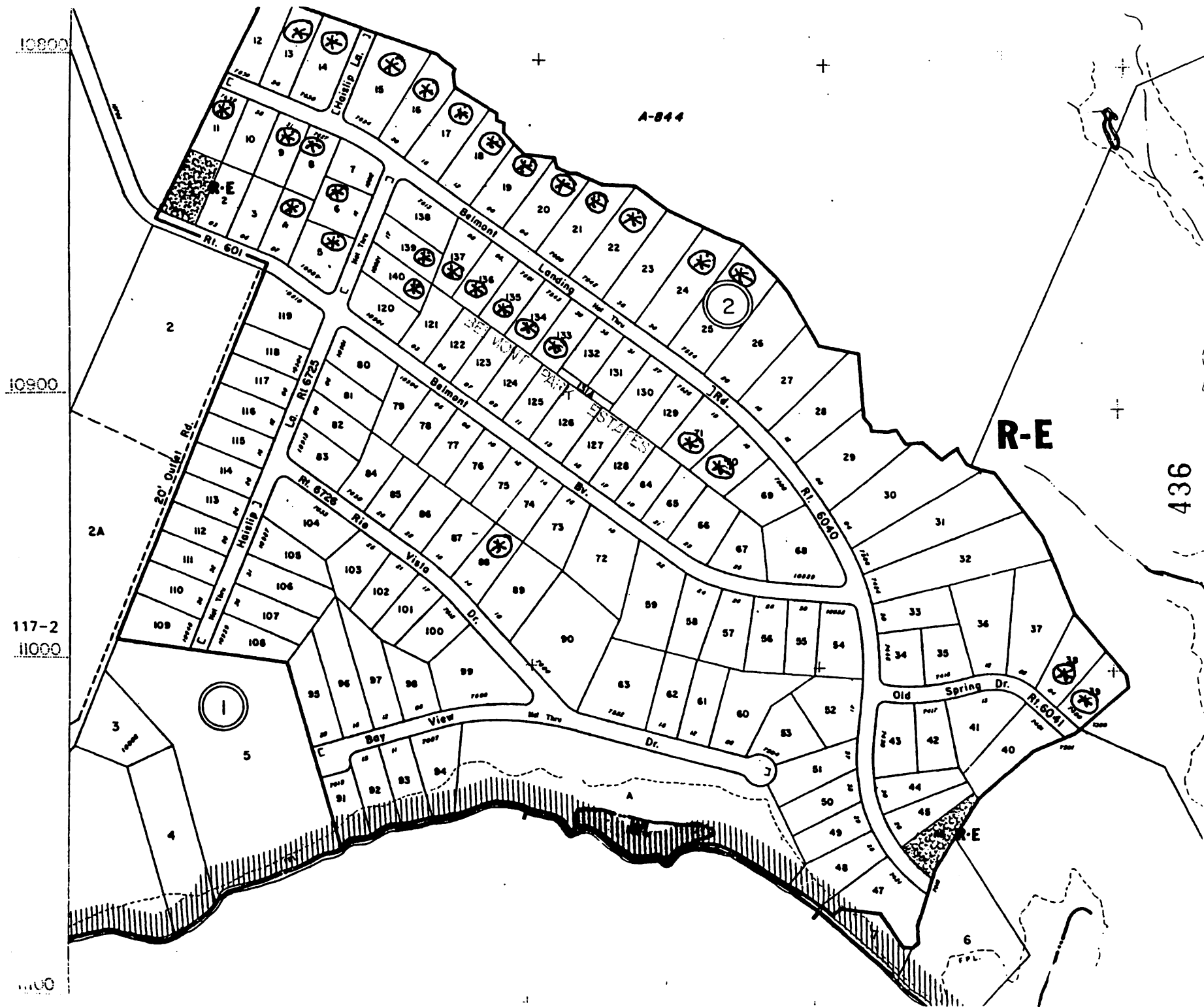


NICK FELICIONE, CRB
Manager



LONG & FOSTER, REALTORS®
2070 Old Bridge Road
Suite 201
Woodbridge, Virginia 22192

Local: (703) 491-6151
Metro: (703) 550-9413



LONG & FOSTER REALTORS

COLUMNAR REPORT - AUG 12, 1994 - 09:00 AM - PAGE 1

TAX.ID#	ST#	ST	LOT.SQFT	PROJ/SUB
FX118-1-2- -136	7605	BELMONT LANDING RD	21855	BELMONT PARK ESTS LT 136
OWNER= HURVITZ HYMAN				
FX118-1-2- -4	10807	BELMONT BLVD	22028	BELMONT PARK ESTS LT 4 WB213 630
FX118-1-2- -5	10809	BELMONT BLVD	24208	BELMONT PARK ESTS LT 5 WB213 630
FX118-1-2- -6	10816	HAISLIP LN	23950	BELMONT PARK ESTS LT 6 WB213 630
FX118-1-2- -8	7627	BELMONT LANDING RD	21795	BELMONT PARK ESTS LT 8 WB213 630
FX118-1-2- -9	7631	BELMONT LANDING RD	21800	BELMONT PARK ESTS LT 9 WB213 630
FX118-1-2- -11	7639	BELMONT LANDING RD	21800	BELMONT PARK ESTS LT 11 WB213 630
FX118-1-2- -13	7634	BELMONT LANDING RD	28255	BELMONT PARK ESTS LT 13
FX118-1-2- -14	7630	BELMONT LANDING RD	35986	BELMONT PARK ESTS LT 14 WB213 630
FX118-1-2- -15	7624	BELMONT LANDING RD	46032	BELMONT PARK ESTS LT 15 WB213 630
FX118-1-2- -16	7620	BELMONT LANDING RD	34431	BELMONT PARK ESTS LT 16 WB213 630
FX118-1-2- -17	7616	BELMONT LANDING RD	34240	BELMONT PARK ESTS LT 17 WB213 630
FX118-1-2- -18	7612	BELMONT LANDING RD	33067	BELMONT PARK ESTS LT 18 WB213 630
FX118-1-2- -19	7608	BELMONT LANDING RD	30449	BELMONT PARK ESTS LT 19 WB213 630
FX118-1-2- -20	7604	BELMONT LANDING RD	33446	BELMONT PARK ESTS LT 20 WB213 630
FX118-1-2- -21	7600	BELMONT LANDING RD	38642	BELMONT PARK ESTS LT 21 WB213 630
FX118-1-2- -22	7542	BELMONT LANDING RD	44098	BELMONT PARK ESTS LT 22 WB213 630
FX118-1-2- -24	7530	BELMONT LANDING RD	47357	BELMONT PARK ESTS LT 24 WB213 630
FX118-1-2- -25	7524	BELMONT LANDING RD	55891	BELMONT PARK ESTS LT 25 WB213 630
FX118-1-2- -38	7404	OLD SPRING DR	29325	BELMONT PARK ESTS LT 38 WB213 630
FX118-1-2- -39	7400	OLD SPRING DR	25800	BELMONT PARK ESTS LT 39 WB213 630
FX118-1-2- -51	7437	BELMONT LANDING RD	38950	BELMONT PARK ESTS LT 51 WB213 630
FX118-1-2- -70	7515	BELMONT LANDING RD	28476	BELMONT PARK ESTS LT 70 WB213 630
FX118-1-2- -71	7519	BELMONT LANDING	25250	BELMONT PARK ESTS

LONG & FOSTER REALTORS

COLUMNAR REPORT - AUG 12, 1994 - 09:00 AM - PAGE 2

TAX.ID#	ST#	ST	LOT.SQFT	PROJ/SUB
FX118-1-2- -88	7614	RD RIO VISTA DR	25642	LT 71 WB213 630 BELMONT PARK ESTS
FX118-1-2- -133	7539	BELMONT LANDING RD	21855	LT 88 WB213 630 BELMONT PARK ESTS
FX118-1-2- -134	7543	BELMONT LANDING RD	21855	LT 133 WB213 630 BELMONT PARK ESTS
FX118-1-2- -135	7601	BELMONT LANDING RD	21855	LT 134 WB213 630 BELMONT PARK ESTS
FX118-1-2- -137	7609	BELMONT LANDING RD	21800	LT 135 WB213 630 BELMONT PARK ESTS
FX118-1-2- -139	10817	HAISLIP LN RD	21800	LT 137 WB213 630 BELMONT PARK ESTS
FX118-1-2- -140	10821	HAISLIP LN	21800	LT 139 WB213 630 BELMONT PARK ESTS
				LT 140 WB213 630

OWNER= HURVITZ ROSE B

The following question's were raised in discussions at our last General Membership Meeting on Monday, February 24, 1997 between some on the board and homeowners in attendance,

Q: Why and how did the board come to the conclusion to issue two separate checks in the amount of \$500.00 and \$1,000.00 to the Attorney?

A: Was voted at the August 1996 General Membership Meeting

Q: It seems whatever the board deem they want, the rest of the community must follow. Let me clarify it to the board. YOU DO WHAT THE GENERAL ASSEMBLY VOTES ON ONLY! Any other decisions, budget expenditures, improvement etc.

A: No comment.

Q: Carol Ann Wright requests open discussions in reference to the law suit against the community?

A: Tom Goeller and Gene Lear feel strongly about not discussing the case pending due to litigation's.

Q: What are your plans for the homeowners who have requested that their dues not be spent on any legal defense.

A: Question ignored.

Q: For over a year now I have asked the question in reference to the Trustee position of Carol Ann Wright. Have you Carol Ann signed any legal documents stating that you are a Successor to the Trustee's position?

A: NO! Carol Ann replied.

Q: How can the Board Of Director's and the Trustee's acknowledge Carol Ann Wright as Trustee and not Gail Stepp. who is legally filed in the Fairfax County Court?

A: Tom Goeller replied, the board and the Trustees acknowledge Carol Ann Wright as Trustee as documented in the Secretary's Books and we don't need to have it filed or recorded in Fairfax County Court.

Please make this part of the official General Membership Meeting Minutes, dated February 24, 1997.


Nancy A. Michels

18 March 1996

Dear Neighbors and Lot Owners;

The next General Membership Meeting is tentatively scheduled for Thursday, May 30th at 7:00 at the Lorton Community Library on Route 1. Please contact any board member if you have any questions or agenda items. If you would like specific questions answered, please let us know before the meeting so we may bring appropriate documentation.

With the tenure of the current board drawing to a close, a review of board actions is in order:

1. Completion of park revitalization (access, drainage, clean up nature trail) has enabled the redirection of planning and funding toward upgrading the road to the park to all-weather conditions.
2. Street light was installed at the intersection of Haislip and Rio Vista Drive, heretofore a dark and troublesome area.
3. A successful policy for the placement of "for sale" signs advertising vacant lots has been enacted. According to the covenants these signs may only be placed outside community boundaries. The seller may stake the boundaries with identifiable tape. Other pertinent information can be written on these stakes. Any more information must be obtained through the seller or real estate agent.
4. An audit of the treasurer's books was completed and no discrepancies were found.
5. The Springfield Lawn Service was hired to cut the grass and clean up the park. They completed one season, stayed within budget and did a great job. We plan to renew their contract this year at the same price.
6. A policy for the replacement of a trustee was enacted. Basically the trustees replace themselves. The newest trustee is Carol Ann Wright who replaces Marshall Ware who resigned. Carol Ann has been a resident since 1962. The responsibility of the trustees is to assure that the community government is in order and carrying out the obligations to the park property.
7. The committee formed to revise the by-laws is working towards a presentation at the next General Membership Meeting.
8. We kept you informed. Interested neighbors attended most of the meetings. The meetings were recently switched to "neutral ground" by having them at the Lorton Library. Copies of our minutes of the regular board of directors and General Membership Meetings are now being sent to all residents and lot owners. An additional budget item will have to be made for this expense in the coming years budget.

The board has been faced with accusations of impropriety from a small but very vocal group of neighbors. Most of the accusations relate to their inability to work with past boards which they have carried over to the current board. Numerous requests for the general community to participate in subcommittees on the park and by-laws were ignored by all residents until recently. In the face of this relentless opposition we are likewise resolute in finding solutions to solve community problems with majority community input. We will continue such ways to

improve your community in the majority interests.

It is the intention of the board to establish a Park Committee with unlimited membership from the community. Committee meetings would be separate from board meetings and the committee chairperson would report directly to the board. The committee would be responsible for developing a master plan for the park (5, 10, 20 years) as well as maintenance of the common grounds. This plan could someday include a community dock, covered pavilion for picnics, more nature trails and a ball park etc.. Your input would be greatly appreciated.

The dues remain at \$80.00 for residents and \$40.00 for lot owners. This is the same fee as established in the 1960 original by-laws. In accordance with existing by-laws, voting privileges and service on committees will be denied to anyone whose 1996 dues are in arrears. The 1996 dues bill is included with this months minutes. The bills will be considered in arrears if not paid by May 15, 1996.

Please feel free to contact me or any other current board member with any questions. Lot owners, come and visit your lot. See for yourself what has and has not been done with your association dues.

Sincerely yours,

Michael Polifko
President, BBCA

Private

July 7, 1996

Dear Jim,

I have an extremely busy week and won't have time to get together with you prior to next weekend, but I wanted to express my feelings about the legal issue with the Stepps'/Edwards'.

After giving this a lot of thought, and taking into consideration the discussions that we've already had, I really see no alternative but for the Trustees to recognize Gail Stepp as a Trustee. I realize that there are a lot of emotions and conjecture involved with this issue, but here are the facts as I see them:

- a. Attorney discovered error in trustee records. Board of Directors made aware of situation, but no one (including Trustee on Board) advised Gail Stepp.
- b. Gail Stepp learns of problem through off-handed remark by a Board member. Still no action by Trustees.
- c. What happens in between is unclear, but at a membership meeting community votes to retain Gail as a Trustee. Gail declines to serve. At this point there is still no action by the Trustees.
- d. Several years later the Trustees name a replacement for Gail.

Here are the potential legal arguments that I see the Stepps' making:

- a. The trustees abrogated their responsibility by not stepping in to deal with the situation. It can probably be argued that the trustees knew that this was in all probability an administrative error (you in

fact acknowledge that you remember the day that the paperwork was filed with the county) that could easily be corrected.

b. The trustees should have dealt with this situation. The Trust Deed gives only the Trustees the power to appoint and remove trustees; it gives no such power to the Board or the community at large.

c. The Trustees took no action to formally remove Gail, therefore he is legally a trustee..

d. Although there purportedly were some conversations wherein you asked Gail to serve, there is nothing documented that shows the trustees ever got formally involved until they named a successor.

I think that the only argument that can be made for not acknowledging Gail as a trustee is the meeting minutes wherein he declined to serve after a community vote. I feel that if this goes to court that argument will be very flimsy when taken in the context of the other testimony that will come out, such as:

a. The Board at the time apparently was discussing doing away with the trustees, but Gail Stepp was not aware of the discussion.

b. The Board at the time was not "pro Gail" because he was not in favor of the improvements being made to the park area and roadway. It could be argued that the Board used this opportunity to get him out of the way.

c. There is a strong argument that the Trustees failed to step up to their responsibility and take charge of the situation. The Trust Deed levies a burden on the trustees that can not be taken lightly. It

could be argued that the Trustees violated the trust of the community by not dealing with the situation. It could be further argued that this issue is very much a reason for the divisiveness in our community today and that we would not be in this turmoil if the trustees had done their job.

Please give this some thought and I'll get in touch with you later this week. Hopefully Gene Lear will be back so we can all talk. Bottom line is that I don't think there is a legal argument to keep Gail from being a trustee and the association doesn't have the funds to fight any court battle, much less a losing one.

I intend to send a letter to the attorney stating that I feel that the community association was legal' incorporated, as indicated in the minutes of the general membership vote in favor of incorporation, however there are administrative issues relating to incorporation (such as by-laws) that are as yet incomplete because of the community unrest. I will state that I intend to continue business as a corporation with the goal of completing the administrative tasks during my tenure as President.

As I said, I'm really busy this week with school, my son coming to town, and a two day trip. I'll be home Friday night and will give you all so that we can get together and discuss.

Bill Foulois

P.S. Just received a call from Gene. Am aware that you two will get together. Will call when I return.

74

BBCA DIRECTORS' MEETING

MARCH 9, 1992

ATTENDEES: G. Arnold, F. Vandenberg, C Foster, L. Medlin
ABSENT: G. Lear, M. Polifko, N. Arnold

Old Business:

The President opened the meeting with a review of the minutes from the February Directors' Meeting. The minutes were accepted with minor correction.

The Treasurer, L. Medlin, provided the Treasurer's Report and advised receipt of the annual insurance for the Community Park for the amount of \$250. She advised we would need to collect dues by April; and were obligated to maintain an account balance of \$200. She reported \$319 in our treasury.

The Board discussed and confirmed monthly Executive Meetings as well as Quarterly General Meetings for the Year 1992. It was noted as consistent with BBCA by-laws.

New Business:

The Board confirmed the General Membership Meeting for Thursday, March 12, at 7:30.

The principal purpose of this Executive Meeting was to prepare an agenda for the scheduled General Meeting.

The Treasurer motioned that the Executive Committee recommend an increase in membership fees from \$25 to 35 annually. Upon discussion of a proposed budget, to be submitted to the membership, the motion carried.

The President advised that the Secretary, N. Arnold, had submitted a verbal resignation advising of conflicting schedules with children's activities. F. Vandenberg and C. Foster were appointed as the nominating committee to seek a suitable replacement(s).

The President suggested offering the current state of officers the General Membership for re-election in discussion it was noted the membership had voted to elect this Board to a three-year term. No further action was taken.

The Board confirmed its February motion to recommend certain community representatives and committees: chairpersons to the General Membership for approval.

Frits Vandenberg was nominated for Belmont Bay Civic Association Representative to the Mount Vernon Council of Civic Association. G. Arnold noted that as President of both BBCA and MNCA, he was unable to vote both citizens association concurrently, he recommended Mr. Vandenberg the V.P. be designated as the alternate representative and authorized to vote for BBCA Membership in the absence of the President.

Total # 74

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BBCA Directors' Meeting
March 9, 1992

-2-

The President nominated Bob Drye as continuing as BBCA's Planning and Zoning Representative to the Mount Vernon Council of Civic Association. The President noted Bob had done an outstanding job during the previous year, as always, well read and prepared to represent the community in all meetings.

Fritz Vandenberg and Mike Polifko were nominated to co-chair the BBCA Park and Belmont Projects Committee. The committee would work to plan community uses for the Park area, as well as plan and organized schedules for community maintenance. R. Edwards and D. Michaels were nominated to serve on the committee.

The Board confirmed its nomination of M. Polifko to the MVCCA Environmental Committee noting this was one of the most important to our general community. Discussion included the need to monitor Mason Neck Land fills air and water pollution, as well as other local environmental issues.

The President briefed the Board on the continuing problems of residents to the Rainwater Landfill and recommended for review by the BBCA Environmental Committee. F. Vandenberg and C. Foster were provided reports. The motion was approved.

Other New Business:

F. Vandenberg suggested that members be briefed on the new regulations governing maintenance of Septic Tanks. Specifically required 5 year pumping and inspection by licensed contractors. Discussion included the requirements of the contractor to file a report of problems with the County.

G. Arnold recommended the Board review community covenants for discussion during the April Board Meeting, with the intent to make recommendations to the Membership during the Second Quarter Meeting. After general discussion, the motion carried.

The President noted that the Board should review the 1974 BBCA By-laws for discussion during the April Board Meeting. In discussion, it was agreed consideration should be given to providing members a written process to submit motions for membership vote as well as limiting on a topic be discussed before vote or being returned to committee.

It was generally agreed the Board should propose reasonable rules order for Membership meetings and was in agreement that a Board member should serve as a rules chairman. The Board agreed that Roberts Rules of Order may provide a suitable frame work. F. Vandenberg was requested to provide an outline for Board consideration and serve as rules chairman.

In discussion the Board agreed in principal that each member and new member should receive a copy of a BBCA-By-Laws, Community restrictions, and a listing of Committees and "rules of order" for our meetings.

L. Medlin advised of the request of a Community Garage Sale and Farewell Party announcements at Thursday's meeting.

With no other business the Board meeting was closed.

75

BELMONT BAY COMMUNITY ASSOCIATION
GENERAL MEETING MINUTES
MARCH 12, 1992

ATTENDEES: C. Adams, G. Arnold, R. Edwards, M. Espina, J. Foster, K. Foster,
L. Medlin, F. Rapuano, C. Robarge, G. Stepp, F. Vandenberg,
M. Vandenberg, O. Wilcox

Old Business:

The President reported in the absence of the secretary. There had been two Board Meetings this year. The Board had proposed to meet the 2nd Monday of each month, with Quarterly General Membership Meetings conducted March, July, September, and January.

Treasurer's Report:

The Treasurer, L. Medlin, reported a balance of \$319.24 for the year ending December 31, 1991. She noted the 1992 insurance payment of \$250.00 was due in April. She also noted our obligation to maintain an account balance of \$200. The Treasurer presented the attached 1992 budget as recommended by the Board for membership approval. The budget was approved. A motion to increase Association dues for 1992 to \$35 annually was made and approved.

Gunston-Wiley Ad-hoc Committee: Belmont Bay Representative, Bob Drye.

The President reported the committee had met in January and were continuing to explore the feasibility of alternative sanitary sewage systems to include a "cluster system" and a "pump and haul" system. The committee was optimistic acceptable solutions were being considered and that both communities would have adequate sanitation systems made available. Discussion included technical questions; as well as, proposed costs.

Mount Vernon Counsel of Civic Association Planning and Zoning. Belmont Bay Civic Association Representative Bob Drye. It was reported that Planning and Zoning Activity for the Lorton area had increased substantially.

Discussion included proposed developments in Silverbrook; The Golf and Recreation Center proposed in the Shirley Acres area; and Fairfax Industrial Park on Cinderbed Road.

Discussion included Belmont's support of the Newington Communities objection to the proposed expansion of SoLite's facilities in order to operate a concrete batching plant, specifically the effect on traffic and the environment.

The Committee also reported its opposition to the proposed Pohick Station Townhouse development parallel to Route 1 and Telegraph Road. The reasons cited included inadequate land consolidation, noting that the Commercial property remaining at Route 1 may be inadequate to encourage more attractive commercial land use. Other objections included inadequate parking; additional traffic congestion at Route 1 and Telegraph Road.

Mt. Vernon Counsel Civic Association; Belmont Bay Representative, G. Arnold reporting. General discussion included the importance of community participation

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Ex # 75 C-10 447

in Counsel Subcommittee activities. It was noted that counsel recommendations to the County Supervisor, G. Hyland, came from the recommendations from related committees.

Discussion of County activity included the District of Columbia negotiations with Fairfax County to pump DC Corrections Septic waste into the Lower Potomac Treatment Plant.

It was also noted that the county budget proposals to reduce spending included closing local libraries, laying of 1 teacher per grade in each school, and a reduction of other County Services.

The following officers and committee Chairpersons were nominated/elected for the year.

Gene Lear was nominated and elected as Recording Secretary for 1992.

Frits Vandenberg was elected as the Belmont Bay "Alternate Representative" to the Mt. Vernon Civic Association General Meetings. As an alternate, he would vote when the BBKA President was unable.

Mike Polifko was elected to serve as the BBKA Environmental Representative to both the Mason Neck Citizens Association, as well as, the Mt. Vernon Counsel Environmental Committees.

Bob Drye was elected as the BBKA representative to the MVCCA Planning and Zoning Committee; as well as, the MNCA Landuse Committee.

Mike Polifko and Fritz Vandenberg were elected to Co-chair and BBKA Park and Community Planning Committee. Ralph Edwards and Daryl Michels were recommended to assist with community planning and maintenance.

The Committee plans included preparing a calendar for members to be responsible for bi-monthly cutting of the park and grass areas. Members wishing to sign-up for specific weeks should contract Fritz to schedule weekends most convenient to their Spring and Summer plans.

Members were advised that effective January 1, 1992, Homeowners with septic tanks were required to have the tank pumped and inspected every 5 years. The County is now requiring all inspections, servicing, and repair be performed by licensed companies and reported to the County.

ANNOUNCEMENTS:

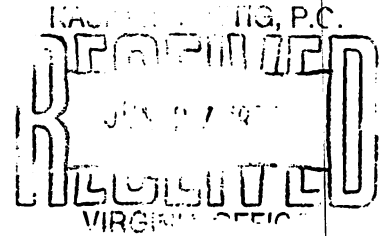
A neighborhood Garage-Lawn Sale would be conducted Saturday, March 21.

Marie Stepp and Nancy Michels would organize a Farewell Party for Norma Jean Payne scheduled for Saturday, March 28.

Members of the association were invited to submit ideas, projects, announcements, or community business or issues to any Board member for inclusion of either the Monthly Board meetings or Quarterly Membership meeting.

All such business would be submitted as new business at regularly scheduled Membership meetings along with a Board Resolution.

June 25, 1996



Stephen J. Annino, Esquire
Kasimer & Ittig, P.C.
7635 Leesburg Pike
Falls Church, Virginia 22043

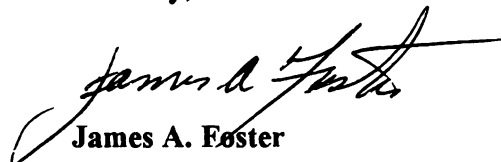
Dear Mr. Annino:

I have received your letter of June 4. Apparently there is some confusion about Mr. Stepp's role as Trustee. He was appointed a Trustee by a document dated April 23, 1987. However, subsequently he refused to serve and in fact resigned from the Association. Copies of Minutes of the May 3, 1994 meeting at which he refused to serve are enclosed together with his letter of resignation. Mr. Lear and I using the power granted us by deed in 1973 appointed a substitute Trustee but that appointment has not been recorded.

As to your question about the Corporation - At the general membership meeting on September 27, 1993 incorporation was approved. A copy of the Articles of Incorporation is enclosed for your information.

Please feel free to call if you want to discuss this matter further.

Sincerely,



James A. Foster

cc:Marvin E. Lear

September 29, 1993

Mr George Arnold, President
10913 Belmont Blvd
Lorton VA 22079

Re: Resigning Membership

Dear George:

It is with deep regret that we submit our resignation to the Belmont Bay Community Association. We have tried very hard to understand the actions taken by select members of the Association during the last few months and to condone your conduct at the most recent community meeting. We find that we cannot do this and no longer wish to be part of this organization.

Sincerely,

Gail Stepp
Marie E. Stepp

Gail Stepp

Marie E. Stepp

BBCA GENERAL MEMBERSHIP MEETING
May 3, 1994

LOCATION OF THE MEETING; The Arnold residence.

The President, Mr. Arnold opened the meeting at 7:45 P.M.

Copies of the agenda were passed out. Seventeen (17) families were in attendance.

The meeting opened with severe criticism by some members of the method of operation of the Board of Directors relative to dissemination of information to the membership. There was also criticism of the improvement of the road and Park and expenditure of funds. Some of the remarks made were valid and some were not valid, but the hostile atmosphere created difficulty in attempting to explain why things were done. Considerable time was spent on this discussion.

Mrs. Wright moved that the meeting proceed and the agenda be followed. Motion seconded and approved.

The treasurer presented a detailed account of money collected, and expenditures.

The Recording Secretary read the minutes of the last general membership meeting.

Mrs. Wright moved that a copy of the treasurer's report and minutes of regular meetings be distributed to the membership. Motion carried by all members present.

A motion was presented that future Park overlay plans and budget be put in writing with a sketch using tax map and formal procedures. Motion seconded and approved. Two members opposed.

Mrs. Michaels moved that there be no Park rules established. Motion seconded but there was no vote. The motion was amended to state that instead of the word rules, the word guidelines be substituted, and that draft guidelines be presented to the membership for review and approval. Motion seconded and carried.

t

There was a discussion and suggestion that a work party be assembled on a voluntary basis to clean out the ditch. A pot luck was suggested to be included on May 22. The membership agreed.

It was pointed out that other clean up tasks should be done, such as cutting grass, etc. It was agreed that June 5, would be a good date for most of the membership. Time 2 P.M.

Mrs. Foster, Chairperson of the By-laws committee reported on the status of the By-laws. She indicated some changes must be made due to the Incorporation of BBCA

A motion was presented to waive the rules that a member must be in good standing to hold an office for purposes of this meeting only. Motion carried.

The President informed the membership that no slate of officers had been prepared, and that all nominations would come from the floor. He asked for nominations from the floor.

The following officers were nominated and duly approved by the membership.

PRESIDENT; Dr. Michael Polifko

VICE PRESIDENT; Frank Rapuano and Darryl Michaels. When votes were counted there was a tie vote. It was agreed that the above candidates would both serve.

RECORDING SECRETARY; Ralph Edwards

TREASURER; Marie Stepp

STEERING COMMITTEE; George Arnold

PARK COMMITTEE; Frits Vandenberg

TRUSTEE: Mr. Stepp was nominated for the position of Trustee. He declined. No other nominations were offered.

The meeting adjourned about 11: P.M.

Marvin E. Lear,

Recording Secretary

file copy

ARTICLES OF INCORPORATION
OF THE
BELMONT BAY COMMUNITY ASSOCIATION, INC.

The undersigned, for the purpose of forming a nonprofit, nonstock corporation under the Virginia Nonstock Corporation Act, Chapter 10 of Title 13.1 of the Code of Virginia, hereby certifies:

FIRST: The name of the corporation is BELMONT BAY COMMUNITY ASSOCIATION, INC.

SECOND: The corporation shall have one class of members. Every lot owner of record in the Belmont Park Estates Subdivision in the Mount Vernon Magisterial District of the County of Fairfax in the Commonwealth of Virginia shall be eligible for membership. Each member household shall have one vote at a meeting of the members provided the annual membership dues have been fully paid as provided for in the Bylaws of the corporation.

THIRD: The directors of the corporation shall be elected by the members at the first annual meeting of the members and at each annual meeting of the members thereafter, which shall be held as provided for in the Bylaws of the corporation. The directors shall include the President, Vice President, Secretary and Treasurer of the corporation who are elected at the annual meeting of the members.

FOURTH: The address of the corporation's initial registered office is 8712 Linton Lane, Alexandria, Virginia 22308. The registered office is located in the County of Fairfax.

FIFTH: The name of the corporation's initial registered agent, whose business office is identical with the above registered office, is John Fielder Knowles, who is a resident of Virginia and a member of the Virginia State Bar.

SIXTH: The corporation is a community association which is not organized for, and shall not be operated for, profit. The corporation is organized and shall be operated primarily to manage, maintain and care for the community common area described as Parcel A of the Belmont Park Estates Subdivision in the land records of Fairfax County, Virginia, and any other common areas within that Subdivision which the corporation might own or have under its care, custody or control in the future, for the common benefit of all members of the corporation. The corporation shall have the overall purpose of promoting the health, safety and welfare and the common good of all the people who own property or who reside in the Belmont Park Estates Subdivision.

SEVENTH: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, any member, director, officer or any private person, except

that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its purposes set forth in Article 6 hereof.

EIGHTH: No director or officer of this corporation shall have any liability for damages of any kind arising out of any transaction, occurrence, or course of conduct in the discharge of his or her duties as director or officer in accordance with his or her good faith judgment of the best interests of the corporation; provided that the liability of a director or officer shall not be limited if the director or officer engaged in willful misconduct or a knowing violation of the criminal law.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Incorporator this 11 day of July, 1994.



George E. Arnold
Incorporator

BY-LAWS

ARTICLE I

NAME: The name of this organization shall be BELMONT BAY COMMUNITY ASSOCIATES

ARTICLE II

OBJECTIVES: The objectives for which this organization is formed are to provide recreational facilities for the residents of Belmont Park Estates and their guests, and to preserve and enhance the natural beauty of the waterfront area which has been accorded us.

ARTICLE III

ADMINISTRATION:

Section 1: This organization shall be managed by a Board of Directors subject to the laws and by-laws.

Section 2: The Board of Directors shall consist of the President, Vice President, Recording Secretary, Treasurer, one rotating member of the Board of Trustees, and two members elected at large at an annual meeting.

Section 3: DUTIES OF OFFICERS:

A. President: The President shall be the Chief Executive Officer of this organization, preside at all meetings of the Board of Directors and general membership meetings, have general and active management of the business of this organization, see that all orders and resolutions are carried out, call regular and special meetings of the Board of Directors and general membership, see that all financial matters are properly recorded and accounted for. That all reports and correspondence is properly recorded and filed, see that the by laws are enforced, execute contracts under the seal of the organization, co-sign all certificates of notes, checks or bills of exchange or other orders of payment of money duly drawn by the Treasurer, and perform all other duties as designated by the Board of Directors of the general membership.

B. Vice President: The Vice President shall, in the absence of the President, be vested with all powers and perform all the duties of the President including the co-signing of all checks or demands for money, perform such other duties as shall from time to time be assigned or delegated by the Board of Directors and act as co-ordinator for other activities.

C. Recording Secretary: The Recording Secretary shall be responsible for maintaining an accurate record of all meetings, preparation of correspondence, notice of meetings, and any other activity as directed by the President.

D. Treasurer: The Treasurer shall receive all funds and deposits then in a bank designated by the Board of Directors, disburse them as ordered by the Board of Directors, exhibit the books as requested, present a financial account at regular or special meetings, and present a full financial account at the annual meeting. The books are subject to audit annually. All checks or demands for money, or notes shall be co-signed by the Treasurer and President, in the absence of the President as so designated by the by laws.

ARTICLE IV

ELECTION AND REPLACEMENT OF OFFICERS:

Section 1: The term of all elected officers shall be one year.

Section 2: The Board of Directors shall meet five to ten days prior to all quarterly general meetings of the members.

Section 3: If an officer fails to attend three consecutive meetings, or otherwise fails to perform any of the duties set forth, such office may be declared vacant by the Board of Directors and the vacancy filled as herein provided.

Section 4: Any officer may resign providing advance notice of ten days to the Board of Directors.

Section 5: Any officer shall be removed from office for good and sufficient cause by the affirmative vote of the members present, or by proxy in writing at a special or regular meeting provided the officer had been given ten days notice of removal and only after an opportunity has been given the officer to be heard.

Section 6: Vacancies occurring prior to expiration of the normal term of office shall be filled by two thirds vote of the membership at a regular or special meeting.

Section 7: It shall be the duties of all Board of Directors, officers and committee chairmen upon leaving office to turn over to their respective successors immediately all records and data.

ARTICLE V

PROPERTY AND FINANCES:

Section 1: The funds of Belmont Bay Community Associates shall not, under any circumstances, be loaned out or invested with any member, or with any other persons.

Section 2: The accounts of Belmont Bay Community Associates shall be audited annually by a method to be specified by the Board of Directors, and copies shall be presented at each annual meeting for inspection by any and all members.

Section 3: A minimum sum of \$200.00 to \$300.00 should be retained at all times in the Capital Improvement Fund Account, which will be used only at extreme emergencies so pointed (written) by the Board of Directors.

Section 4: Any extensions, modifications or additional structures to the property for purposes other than those normally connected with said property will be approved by the affirmative two thirds vote of the membership or by proxy in writing at a regular or special meeting.

ARTICLE VI

SPECIAL COMMITTEES:

Section 1: Park Operating Committee:

A. This committee shall plan and supervise the operational use of the park. This committee shall also plan, design and supervise all construction, improvements of facilities. All plans will be submitted to the general membership for approval and all proposed expenditures shall be approved by the membership. This committee reports directly to the President and the Board of Directors. The Park Operating Committee will also prepare and publish the operational rules for the Park, including restrictions. These rules shall be made available to all members and in addition be posted in a conspicuous place on the property. The Park Operating Committee will be a standing committee.

B. Belmont Bay Community Associates shall, until amended compensate the members of this committee for expenses such as gasoline, tools and other related expenses, by an operational Petty Cash Fund approved by the Board of Directors.

Section 2: Steering Committee shall be established consisting of not more than five, and not less than three resident members of good standing. The Steering Committee will be a standing committee, members appointed by the Board of Directors with the consent of the President. This committee shall consist of one Trustee, one Member at Large and one member of the Board of Directors.

Section 3: Landscaping Committee:

This committee shall plan and advise the beautification programs for Belmont Bay Community Associates. However, major programs involving sums of money in the excess of \$50.00 must be brought before the Board of Directors for their approval.

ARTICLE VII

MEMBERSHIP:

Section 1: Membership will be open to all residents and/or property owners of Belmont Park Estates in accordance with provisions set forth below.

Section 2: Any member moving outside of Belmont Park Estates and not retaining a residence therein may reserve the right to retain their membership, providing dues are paid, if that member continues to own property in Belmont Park Estates. However, no property owner may retain membership concurrently with the person or persons residing in member's vacated property.

Section 3: Membership shall be evidenced by entering the name of the head of the family as member on the books of the organization after acceptance of the application by the Board of Directors and the payment of an initial membership fee in the amount of twenty dollars (\$20.00). (This membership fee applies to all those who become members after 1 July 1973) Those who become members prior to above date will not be entitled to back pay of their initial dues. This money will be retained by the organization and placed in the Capital Improvement Fund.

Section 4: Absentee property owners (lot owners) are subject to the same rules, regulations and restrictions as on-site residents. Their names shall be duly recorded with the Recording Secretary and the Board of Directors shall enforce such regulations, in concert with the President, or Vice President. Such property owners shall be assessed Thirty Dollars (\$30.00) per year, payable at the beginning of each fiscal year. Letters shall be written to such lot owners advising them of their responsibility and money collected shall be turned over to the Treasurer. Enforcement of dues payment shall be at the discretion of the Board of Directors, the President and/or the Vice President. Those lot owners not responding shall be recorded by name and lot number and be made known to the general membership. In the event that a lot owner erects a residence on said lot, then they are considered a resident and are subject to all the provisions in Article VII. Lot owners shall have the same rights and privileges as residents providing they have responded to the request and paid their annual dues.

Section 5: For the purpose of identifying individual participants, collecting annual dues, assessments and such other charges as may be appropriate and authorized by the organization the following class of member shall be established:

Family Member: Shall include the entire family but exclude special members, such as intermediate relation who does not reside with any member and not within Belmont Park Estates.

A. No other memberships will be granted other than above. However, members of the family of a duly paid member, not married who may reside outside of Belmont Park Estates, have the same rights and privileges as the recorded member providing the responsible member identifies the family member and their names are duly recorded with the Recording Secretary, and the Board of Directors.

B. Dues paying members may allow guests to use any facility provided that the member assumes responsibility for their guest.

Section 6: Except as herein provided, memberships are not transferable or assignable, and Belmont Bay Community Associates is not obligated to refund membership fees.

Section 7: Subject to the approval of the Board of Directors, memberships may be permanently transferred to any of the following, in order listed:

A. The purchaser of the Shareholder's or member's house within Belmont Park Estates.

B. The leasee of the Shareholder's or member's house within Belmont Park Estates.

C. The purchaser of a lot within Belmont Park Estates.

Section 8: All new members will pay, in addition to other regular dues, assessments and charges, a special transfer fee of Ten Dollars (\$10.00).

Section 9: The initial dues for all member is Twenty Dollars (\$20.00), which is to be paid in full upon acceptance to Belmont Bay Community Associates.

Section 10: The Quarterly dues for all members is Twenty Dollars (\$20.00) payable on the following dates of each year:

- A. 1 March to 15 March
- B. 1 June to 15 June
- C. 1 September to 15 September
- D. 1 December to 15 December

Section 11: Any member failing to pay the initial and quarterly dues, assessments and other charges approved by the Board of Directors, within thirty days of the delinquency date shall be promptly notified in writing by the Recording Secretary asking the member to pay dues within the next twenty days of that date. If the member should again fail to pay, then the Board of Directors, at its discretion, may cancel the membership or prevent the member from casting any vote in future elections.

Section 12: If the delinquent member should request to be reinstated through proper application to the Board of Directors, and if the member is accepted by the Board, the member must at the time of acceptance pay in full all delinquent notes due to Belmont Bay Community Associates for which the member is responsible.

ARTICLE VIII

MEETINGS:

Section 1: A regular annual meeting of all the Shareholders or Members shall be held each year. The date and place of this meeting, designated by the Board of Directors, must be specified in writing to each member at least fifteen days in advance. Normally, this meeting is to be held toward the end of each calendar year, between 1 December and 15 December. Throughout the year, meetings will be scheduled quarterly, on a regular basis. The President will cause all members to be notified at least 5 days prior to the meeting. Members may submit to the President any items they wish to be placed on the agenda. Items must be submitted seven days prior to the meeting, or may be accepted at the discretion of the President.

Section 2: Special meetings may be called by the President, or the Vice President as deemed appropriate to the occasion. Members of the Board of Directors may call a special meeting at any time, provided that at least two thirds of the Board are in agreement that a special meeting should be called. Special meetings may be called by two thirds majority of the membership providing the President is notified at least three (3) days in advance of such meetings. Emergency meetings may be called by the President, or Board of Directors at their discretion.

Section 3: At any meeting each Shareholder or Member who has not been suspended for cause shall be entitled to one vote. This vote may be in person or by proxy designated in writing.

Section 4: Any member may cast a proxy ballot. The proxy may be assigned to another member, the President or the Vice President for voting. All proxies must be in writing properly signed and dated, and shall be inspected for validity at the discretion of the presiding officer.

ARTICLE IX

GENERAL:

All powers, authority, duties and functions of the members, chairmen and officers of Belmont Bay Community Associates shall be exercised in strict conformity with applicable provision of the laws and regulations, including the by laws of Belmont Bay Community Associates.

11 February 1974

JUL-19-99 17:37 From: HOLLAND & KNIGHT LLP NO. VA.

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T-448 P.02/06 Job-582

93 11/092

JUN-3 - 3:23

DECLARATION OF TRUST

THIS DECLARATION OF TRUST AND SUBSTITUTION OF TRUSTEES, made as of the 12th day of June, 1992, by and between RUTH JOAN/HURVITZ and JUDITH ANN/HURVITZ, Declarants and Grantors, parties of the first part; HURVITZ/FOSTER JOINT VENTURE, a Virginia joint venture existing under and pursuant to that certain Hurvitz/Foster Joint Venture Agreement dated June 12, 1992, Beneficiary and Grantor, party of the second part; and JAMES A./FOSTER, Managing Joint Venturer of the Hurvitz/Foster Joint Venture, party of the third part.

WITNESSETH

WHEREAS, the parties of the first part are presently the sole owners of record of all those certain lots or parcels of land situate, lying and being in the County of Fairfax, State of Virginia, more particularly described as follows:

Lots 4, 5, 6, 8, 9, 11, 13 through 22, inclusive, 24, 25, 38, 39, 51, 70, 71, 88, 133 through 137, inclusive, 139 and 140, Belmont Park Estates Subdivision, as the same appears duly dedicated, platted and recorded in Deed Book 1478, at Page 26, among the land records of Fairfax County, Virginia having acquired the same by Will recorded in Will book 414 at Page 26 among the land records of Fairfax County, Virginia.

Tax Map Nos. 118-1-02-4, 5, 6, 8, 9, 11, 13 through 22, inclusive, 24, 25, 38, 39, 51, 70, 71, 88, 133 through 137, inclusive, 139 and 140, respectively;

AND WHEREAS, the parties of the first part desire to declare the true party having an interest in said property;

PLF-REF EX. #	6
DATE	2-25-98
JUDGE	
CASE #	2146295

459A

BK 8590 1256

The White House, St. 500
341 York Street, N.Y.
Vicinity, NY 22 180

JUL-15-99 17:37 From: HOLLAND & KNIGHT LLP NO. VA.

+7038458610

T-442 P.03/08 Job-562

BK 8590 1257

NOW THEREFORE, the said parties of the first part do declare that they hold, and have at all times held, the above described Lots 4, 5, 6, 8, 9, 11, 13 through 22, inclusive, 24, 25, 38, 39, 51, 70, 71, 88, 133 through 137, inclusive, 139 and 140, Belmont Park Estates Subdivision, as the same appears duly dedicated, platted and recorded in Deed Book 1478, at Page 26, among the land records of Fairfax County, Virginia, for the use and benefit of the Hurvitz/Foster Joint Venture, a Virginia joint venture existing under and pursuant to that certain Hurvitz/Foster Joint Venture Agreement dated June 12, 1992, and in and upon the following trusts, with the following powers, and subject to the following limitations:

1. Generally, to hold, manage, maintain, protect and conserve the property, together with any improvements presently existing, or hereafter placed, thereon.

2. With the consent, or at the direction, of the Hurvitz/Foster Joint Venture, as evidenced by the joinder in any pertinent instrument by the Managing Joint Venturer of the Hurvitz/Foster Joint Venture or by separate instrument in recordable form, duly executed, acknowledged and delivered to the Trustees by said Managing Joint Venturer, and stating the consent or direction of said Joint Venture, the said Trustees shall have the power to:

a) Sell, contract to sell, grant options to purchase exchange, lease, encumber, dedicate for public use or otherwise dispose of the property interest above described or any part

JUL-15-99 17:37 From: HOLLAND & KNIGHT LLP NO. VA.

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T-448 P.04/06 Job-562

BK 8590 1258

thereof.

b) Take any other actions deemed by the Hurvitz/Foster Joint Venture to be necessary or desirable.

3. Said Trustees shall have the power to receive and accept other and additional property, real or personal, to be held, managed and dealt with in accordance with the duties, powers and limitations herein set forth.

4. No party dealing with the Trustees in relation to any property held by them under and pursuant to this trust shall be obligated to see to the application of any purchase money, rent or money borrowed; and, except as herein provided, no such party shall be obligated to inquire into the authority, necessity or expediency of any act of the Trustees.

5. All actions by the Trustees shall be taken by all of the trustees under this trust, and no single trustee shall have any power to act alone for the trust, notwithstanding the fact he or she may be a sole surviving trustee.

6. The Hurvitz/Foster Joint Venture shall have the power to substitute one as a Trustee of this Trust in the place and stead of either of the Trustees then in title, with or without cause, and for any reason, at any time and from time to time, without notice to any then present or previous Trustee. Such substitution shall be effected by the due execution, acknowledgement and delivery to the newly appointed Trustee by the Managing Joint Venturer of the said Hurvitz/Foster Joint Venture of an instrument naming and appointing the new Trustee, whereupon all powers and duties of a

JUL-15-99 17:37 From: HOLLAND & KNIGHT LLP NO.VA.

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T-449 P.05/96 Job-562

BK 8590 1259

Trustee shall devolve upon and be vested in said substitute Trustee.

AND THIS INDENTURE FURTHER WITNESSETH that the party of the third part does hereby substitute as Trustee of this Trust, in the place and stead of JUDITH ANN HURVITZ, Trustee, with all the duties, powers and limitations of said Trustee, JAMES A. FOSTER, to be Co-Trustee with RUTH JOAN HURVITZ.

IN WITNESS WHEREOF, the Grantors, together with the Grantees as indicating acceptance of this Deed and its terms, have hereunto set their hands and seals all as of the date first above written.

Judith Ann Hurvitz
JUDITH ANN HURVITZ

Ruth Joan Hurvitz
RUTH JOAN HURVITZ

HURVITZ/FOSTER JOINT VENTURE

By: James A. Foster
JAMES A. FOSTER, Managing
Joint Venturer

STATE OF VIRGINIA)

COUNTY OF Fairfax)

to-wit:

The undersigned, a Notary Public in and for the aforesaid County and State, whose commission expires 10-31-93, does hereby certify that JUDITH ANN HURVITZ whose name is signed to the foregoing Deed in Trust, has personally acknowledged the same before me in my County and State aforesaid.

Given under my hand and seal this 3 day of MAY, 1993.

[Signature]
Notary Public

JUL-15-99 17:38 From: HOLLAND & KNIGHT LLP NC VA

+7036458610

T-448 P.06/08 Job-562

STATE OF CALIFORNIA

COUNTY OF Alameda } ss.On April 16, 1993 before me, Ruth C. Giovanetti
(Notary Name and Title)personally appeared RUTH JOAN HURVITZDOE: DECLARATION OF TRUST

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

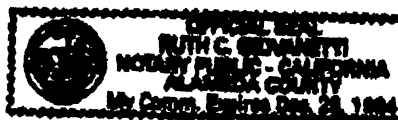
WITNESS my hand and official seal.

Ruth C. Giovanetti
Ruth C. Giovanetti

MY COMMISSION EXPIRES

T-721

-12/28/1994



(Notarial Seal)

the aforesaid

is signed to
died the same

STATE OF VIRGINIA

COUNTY OF Fairfax }

to-wit:

The undersigned, a Notary Public in and for the aforesaid County and State, whose commission expires 7/31/93, does hereby certify that JAMES A. FOSTER, managing Joint Venturer of Hurvitz/Foster Joint Venture whose name is signed to the foregoing Deed in Trust, has personally acknowledged the same before me in my County and State aforesaid as the act and deed of the said Hurvitz/Foster Joint Venture.

Given under my hand and seal this 6th day of May, 1993.

Susan J. Kooester
Notary Public

JUN 5 93

RECORDED FAIRFAX CO VA

TESTE:

John J. Foy
CLERK

459E

//

Belmont Bay Community Association, Incorporated

P.O. Box 686

Lorton, Virginia 22199-0686

February 14, 1997

Dear Residents and Property Owners:

Two resident families, the Stepps and Edwards, (plaintiffs) have filed a lawsuit against Belmont Bay Community Association, Inc. (BBCA, Inc.) and the Trustees (Mr. Jim Foster, Mr. Gene Lear and Ms. CarolAnn Wright). Each resident and lot owner of Belmont Bay Park Estates is also being sued because of our beneficial rights to the park property. Although the plaintiffs objected, the court ordered public notice be provided of these legal actions. Unfortunately, they have decided it is in their best interest to provide the minimum legal notice, serving 10 members of the community and placing a notice in a local newspaper.

Belmont Bay Community Association, Inc. wants every resident and lot owner of Belmont Park Estates Subdivision to be informed of this action, to understand the nature of the charges and to have an opportunity to respond these charges. We have retained an attorney, Ed Tolchin, of Fettmann, Tolchin, and Majors, to defend the association. the residents and lot-owners and to protect our community's mutual interest.

In summary, the plaintiff's suit asks the court to: find that Gail Stepp is a trustee rather than Carol Ann Wright; remove Jim Foster, Marvin Lear, as Trustees; appoint new trustees; require the unanimous vote of trustees on any actions; give trustees sole power over park property; abolish Belmont Bay Community Association, Inc.; recognize the former association of Belmont Bay Community Associates as the association of the community; that BBCAI account for and pay over all dues to Belmont Bay Community Associates; and reimbursement of legal cost and of course damages.

BBCA, Inc.'s position is that it is a shame that the Stepps and Edwards are pursuing this lawsuit and thus pitting neighbor against neighbor. We read constantly that we live in a too litigious society, and it unfortunately appears to be true. We want you to be aware of several points.

First, we want to be clear that our books and records are always available for any resident or property owners' inspection. These books and records are maintained by our elected members. Marie Stepp, for example, was BBCA, Inc.'s treasurer from 1994 to 1995 and maintained its financial records, and Ralph Edwards was the recording secretary during that time period and maintained the meeting minutes.

Second, the Stepps' and Edwards' demand that the Court revive Belmont Bay Community Associates is senseless. Belmont Bay Community Associates was formed about 1974 to serve as a vehicle for the community's residents and property owners to decide matters by majority vote which affected all of them. The primary objective of the Associates was to allow all of us a say in the governance of the Bay park area. While that activity clearly was the primary concern of the Belmont Bay Community Associates, the Associates also served as a forum for deciding numerous community related issues such as the modernization of Gunston Elementary School, representation on the Mount Vernon Council of Citizen's Associations and writing to representatives concerning various community issues including the increase in property taxes.

In 1994, the Associates membership decided to incorporate and call itself Belmont Bay Community Association, Inc. The purpose of creating this corporation was to provide the added legal protection which a corporation provides should, for example, some one fall and hurt themselves in the park area. The Stepps' and Edwards' participated and voted in favor of this motion, they participated in the association serving as treasurer and recording secretary during the incorporation. There is no difference between the organization known as Belmont Bay Community Associates and BBBCA, Inc., except that BBBCA, Inc. is incorporated. The Articles of Incorporation are attached.

After the incorporation of BBBCA, Inc.. "Belmont Bay Community Associates" ceased its existence. The Stepps and Edwards apparently became upset with the decisions by the majority of the residents and property owners participating in BBBCA, Inc.'s activities. Ralph Edwards unsuccessfully sought several offices during recent elections of officers and directors. They, therefore, have taken it on themselves to revive "Belmont Bay Community Associates" and have appointed themselves its chief officers without notice or input from the community or lot-owners.

Third, the Stepps' and Edwards' position regarding the lack of "authority" of BBBCA, Inc. or, for that matter, the former Belmont Bay Community Associates, to act in matters not relating to the Bay property is ironic given that they raise it in Court when they themselves were intimately involved in the process which they now challenge. Following is the genesis of this issue.

If you review the park "deed" attached to the Stepps' and Edwards' complaint, you will see that the Bay park property was transferred to the Trustees, that the Trustees were empowered to collect a "uniform charge" for the use of the park for its maintenance and improvement and to deny access to those who do not pay the charges, and that the Trustees would be governed regarding all matters pertaining to the property by a "Board" of 5 to 9 property owners to be elected at meetings called by the Trustees.

The Trustees have not collected uniform charges and have never excluded anyone from the park for failing to pay the charges. There never has been a need for the Trustees to collect charges because the upkeep of the park has been part of the voluntary activities of BBBCA, Inc. and its predecessor, the former Belmont Bay Community Associates. As to the governance of the park, the Trustees have always listened to our elected representatives of BBBCA, Inc. and its predecessor, Belmont Bay Community Associates. When you elect BBBCA, Inc.'s officers, therefore, you are participating in this activity.

Though BBBCA, Inc. and its predecessor have maintained the park, they have done other things too. For example, before incorporating, we wrote to elected officials concerning the increase of property taxes, reviewed building plans and, working with other community associations promoted low density development on Mason Neck. After forming BBBCA, Inc., we have contacted building contractors to request their drivers pay attention to the speed limit to protect the children, obtained street lights and continued to be active in local community affairs.

Neither BBCA, Inc. nor its predecessor have ever forced you to pay your dues. We hope that you do so, however, because we think that the work we do together benefits all of us.

Fourth, the allegations which the Stepps' and Edwards' level against Jim Foster (and we assume Marvin Lear, though the Complaint is unclear) are truly unfortunate. Those of us who know Jim Foster and Marvin Lear know that neither has ever profited or attempted to profit through his activities as Trustee, as a member of BBCA, Inc., or as a member of the former Belmont Bay Community Associates.

Fifth, BBCA, Inc.'s position concerning Mr. Stepps' claim that he is a Trustee is as follows. The legal documents show that Jim Foster and Marvin Lear appointed him as a successor trustee on April 23, 1987. Because the document was incorrectly filed by Fairfax County and could not be found by community members when the community decided to incorporate the association, the Board and Trustees asked Mr. Stepp to continue to serve and to re-file as trustee, to include during the May 3rd, 1994 and May 15th, 1995 Community Meetings. He refused both times, as well as on other occasions in discussion with members of the community.

At an association meeting in the fall of 1995, the association requested the trustees select another trustee. The Stepps and Edwards were in attendance and neither objected. The remaining trustees later selected Ms. CarolAnn Wright. It was only after CarolAnn's selection that Mr. Stepp notified the Board by legal action that he intended to serve as trustee.

In general, we believe that the community residents and lot-owners have the right to manage community property through the community association. We are permitted to consider issues other than the operation and maintenance of the park; as well as to communicate and represent the community's interest in these issues; and to spend funds as collected and approved by the membership. We believe the Trustees have acted properly by supporting the community as expressed through BBCA, Inc. and the former association.

*

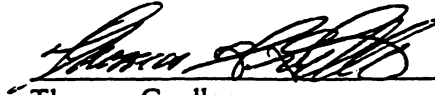
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We urge you to communicate with us concerning your positions on these issues. If you have any questions regarding these matters, please contact Tom Goeller, Acting President at (703) 550-5681, or Nancy Arnold, Secretary at (703) 339-7511. Copies of the Edward's and Stepp's Bill of Complaint and the Answers and Demurrers filed in the matter by BBCA, Inc.'s counsel as well as the Trustees' counsel may be obtained by paying the cost of copying and postage. If you are interested in contributing to our legal defense fund, please contact Past Presidents George Arnold at (703) 339-7511 or Mike Polifko at (703) 339-6013.

Sincerely,



Thomas Goeller

Acting President, originally elected Vice President



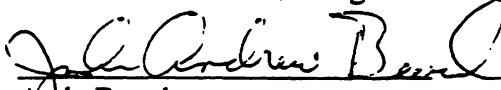
Nancy Arnold

Secretary



Ed Seara

Director and Acting Treasurer



Andy Beard

Director



CarolAnn Wright

Trustee Representative on
Board

Belmont Bay Community Association
P.O. Box 686
Mason Neck, Virginia 22199

Dear Neighbors and Lot-owners,

Please mark your calendars for the following important events.

1. The **QUARTERLY MEMBERSHIP MEETING** is scheduled for Monday September 27, at 7:00 at Nancy and George Arnold's. Please Contact any Board Member if you have any questions or agenda items
2. A **COMMUNITY YARD SALE** has been suggested and is being planned for Saturday, October 16, starting at 8:00 am.
3. A **COMMUNITY PICNIC AND FAMILY RECREATIONAL OUTING** has been proposed for Saturday, October 23.

I want to thank everyone for their efforts in renewing our park, especially Jim Foster, Frits Vandenberg, and Mike Polifko. Ralph Edwards did an excellent job providing the new sign for Belmont Park Estates. It all looks great! Although we exceeded this years budget, we accomplished a lot more than we planned. The new dues allowed us to clean out the ditches and along the access road, clear and establish the walking nature trail, clean up and improve the park site, the entrance, the beach, establish new erosion controls along the bay, and install guard rails.

When cleaning the roadway and ditches, trees and limbs were temporarily put on adjacent embankments. These will be removed and chipped this fall when we put in the walk-way for the nature trail.

The park access road was greatly improved, but we were unable to surface it with gravel. We anticipate budgeting additional grading and surfacing each year until completed. With much work remaining to make it operational, we must avoid using the road with vehicles when wet.

The road and park area are only open to community members, therefore the access will remain locked. Members will receive the combination to the lock (with this letter). If you have questions concerning dues or access to the park area, please contact Luella Medlin or Frits Vandenberg.

The agenda for the quarterly meeting is enclosed. It includes much of interest, we hope you can attend. We will make every effort to follow the schedule. Should you have any items that you would like to present to the Community or Board please contact me or any Board Member, it will be included in the next Board or Quarterly meeting.

Thanks, George Arnold

George Arnold

LOCK COMBINATION TO ACCESS
PARK IS #0339

FLF-DEF-EX # 12
DATE 8-2-98
JUDGE KHM
CASE # 6149
C146295

**BELMONT BAY COMMUNITY ASSOCIATION
QUARTERLY MEMBERSHIP MEETING**

George and Nancy Arnold's
10913 Belmont Blvd.
Monday, September 27, 1993

AGENDA

7:00 Social, coffee, cookies, soda.

7:30 Secretary's report

7:45 Treasurer's report

8:00 Park Committee report, the committee will report the work which was completed, in-process, and remaining to be accomplished from this years budget. They will discuss the work being planned for next year, to be approved at a future meeting.

8:30 Community Yard Sale, This is a planning discussion to organize and plan the sale. Items to be considered include hours, location.

8:45 Community Picnic and Family Recreational Outing, A planning and organization meeting, discussion to include establishing the times, organizing recreational activities for both children and adults, as well as food and drinks.

Board of Directors' Report

9:00

1. Status of the proposed amendments to the Association's By-Laws, concerns about liens, mandatory payments of dues, and other related concerns of the community.
2. We will request Association Membership approval to file for the Incorporation of the Association under Federal and Virginia State Laws.
3. The Community will be asked to consider ways that we can **work together to solve problems** relating to landscaping and trees which **obscure the vision** of the Bay for neighboring households.

10:00

Due to the length of the agenda and the number of items which may require discussion we will adjourn at the scheduled time. Unfinished business will be included at the next regularly scheduled meeting.

BELMONT BAY COMMUNITY ASSOC
PO BOX 686
LORTON VIRGINIA 22199

105,
104, 108
107,

Quinton Long

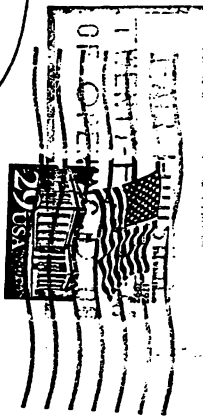
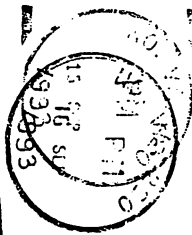
124

St. Royal

Alexandria, VA. 22314

Refused

not at address



Meeting of 11 February 1974 at the home of Mr. Lear called to order at 8.20 PM by Vice-President Mr. Payne.

Present: Mr. Ware
Mr. Stepp
Mrs. P. Wright
Mrs Vandenberg
Mr. Payne
Mr. Foster
Mr and Mrs M. Wright
Mr and Mrs Jackson
Mr and Mrs Lear
Mrs Spangler

Treasurer's Report: On hand: \$92.65

Discussion of By-Laws: There is a general desire to change the By Laws by dropping Article VI, Section 4, Architectural Covenants Committee and to adopt the By Laws otherwise as they stand.

Motion by Mr. Lear, seconded by Mrs Jackson to adopt the By Laws except for Article VI, Section 4, Architectural Covenants Committee.

By Laws adopted as noted by show of hands.

New Business: Election of new President.

Nomination by Mr. Payne, seconded by Mr. Ware:

Mr. William Jackson

Nomination closed and voted unanimously for Mr. Jackson.

Mr. Jackson took charge at this point. Appointed Park Operating Committee:

Mr. Ware and Mr Foster...filling swampy areas since they had spoken to Mr. Seybolds man who is in charge of filling his property.

Mr. Lear and Mr. Payne...Types and cost estimates of docks, piers and launching ramps.

Mrs Jackson...Beautification of front entrance.

Mr. Jackson...cost estimates of surveying park area.

Meeting adjourned at 10.30 PM. Next meeting 11 March 1974 at home of Mr Jackson.

FLF-DEF EX.#13
DATE 2-2-78
JUDGE KHM
CASE # C146295

BELMONT BAY COMMUNITY ASSOCIATES

MEETING: Home of the William Jackson's

TIME : 7.30-8.00 coffee. Business meeting 8.00 PM promptly.

DATE : 11 March 1974 (Monday)

AGENDA : Approval of the minutes of previous meeting. (11 February)

Treasurer's Report (Mrs. Lear)

Report of Committees

Mr Ware-Mr Foster: fill dirt for park area

Mr Lear-Mr Payne: types and cost estimates of docks,
piers and landing ramp.

Mrs Jackson: Beautification of entrance area.

Mr. Jackson: Cost estimate of surveying park area.

Old Business

New Business

Adjournment

Belmont Ray Community Associates

Executive Meeting held at the home of President, William Jackson on 10 March 1974. Called to order at 3.03 PM.

Mr. Jackson read a letter from a member stating non-fulfillment of covenants. Discussion: We do not have the whole of our subdivision under our jurisdiction and therefore cannot answer for various things not done under the covenants of Belmont Park Estates. Letter to be sent to concerned member explaining this.

Since we have lately organized, formal audit will be dispensed with and an informal audit will take its place. The Treasurer will draw up her books for inspection by Board of Directors.

Present: President, Mr. Jackson
Vice-President, Mr. Payne
Mr. Peter Wright
Mr and Mrs Lear
Mrs Spangler
Mr Ware

Meeting adjourned at 4.15 PM

Meeting of 11 March 1974 opened at the home of Mr and Mrs William Jackson promptly at 8.00 PM by the President, Mr. Jackson.

Present were: Mr and Mrs Seybold
Mr and Mrs Lear
Mr and Mrs Foster
Mr and Mrs Jackson
Mr Payne
Mr. Jacobson
Mr. Jameson
Mr. Ware
Mr. Wilcox (has bought 3 lots between M Wright and Hedrick)

Minutes of the 11 February meeting were read by the Secretary. Motion made to accept the minutes as read by Mrs Jackson, seconded by Mr Ware. Vote by voice to accept the minutes as read.

Treasurer's Report: On Hand : \$162.65
Dues in arrears: \$110.00

OLD BUSINESS:

Loss of trustee by any means: Provisions made in Deed for replacement by appointment or election. Mr Jackson said that should such a contingency happen during his tenure that replacement would be by election by the general membership as a general meeting.

Lock Combination

4326

REPORTS OF COMMITTEES

LANDFILL COMMITTEE: Mr Ware and Mr. Foster

Mr Ware had turned in to Mr Jackson a written report of what has been done thus far..Mr Clyde Brant has only just returned, he is the person who has been in charge of the Seybold's landfill. The committee has learned that generally flood plain cannot be filled, however, the committee is to meetwith Colonel Smith of Fairfax County to discuss our situation.

Other requirements if acceded to by the County:

Topographic Survey showing present contours and elevations and then how the fill will change this.

Widen road so that trucks can pass.

Fill only from certain areas as we may be in area infested with White Fringe Beetles.

Select fill should be used, ie, no trash.

(Subsequent note: Virginia Department of Agriculture, Mr Tamammel, 451-9464, on being called by the Secretary tells her that Beetle infestation area is bounded by Maryland-Virginia border, thence to Duke Street, west to Braddock Road, along Braddock Road to Accotink Creek, down the middle of Accotink Creek south to Shirley Highway, east to Gunston Road, east to Colchester Road, thence to Pohick Bay Park, and east to Maryland-Virginia border. Beetles do not fly, in the larvae stage they feed on all sorts of roots destroying the plants.)

Since cost of landfill has arisen, Mr. Lear made a motion, seconded by Mr. Seybold to ascertain from general membership their wishes on this landfill. Motion carried by voice vote to proceed with exploration of landfill of park area.

RAMP, DOCK, PIER COMMITTEE: Mr Payne and Mr. Lear

Mr Payne had talked to Rainwater and Virginia Concrete on cost of 6 cubic yards of concrete. Rainwater: \$135.00. There are two discounts, 10% for delivery during work week prior to 4.00 PM and another discount for Lorton residents. Virginia Concrete quoted \$179.90. Added to the cost of concrete would be site preparation, re-inforcement mesh.

DISCUSSION: Mr. Lear and Mr. Foster have talked to Pohick Bay Park as to what they used for their ramp. This is stripes of concrete 14 inches wide and some 10 feet long placed crosswise. Mr. Seybold suggested that this could be done quite reasonably by using rejected curb and guttering which are about the right dimensions. The cost would be for transportation and emplacement. Mr Seybold and Mr. Lear to explore costs. Site for projected ramp to be at or close to present destroyed pier.

BEAUTIFICATION COMMITTEE: Mrs Jackson and Mrs Foster

Mrs Jackson presented ideas for sign. Idea most acceptable is of 3 roughboards, 2 inches thick with Belmont Park Estates centered one below the other on center of boards. Mr Seybold to see if rough cut boards available at site of old saw mill.

Page 3

DISCUSSION: Do something about abandoned appliances etc. in ditch on wooded side of the road to park. Remove trash from barrel located in park area. Mrs Seybold, Butch and Kevin to do this Saturday, 16 March. Refurbish gate at top of hill and lock it. Motion by Mr. Lear, seconded by Mrs Fosterto accomplish this. Mr. Jackson asked Mrs Lear to purchase a combination lock. Mr. Jacobson to see what needs to be done and get work crew together. Volunteers to purchase azaleas at 2.75 each. Mr. Jacobson, Mrs Lear, Mrs Seybold, Mrs Jackson and Mrs Foster volunteered to purchase one each through the Pohick Garden Club. Mrs Foster discussed moving shed from present site closer to the water and removing broken walls to recover two sides as a wind break. It then could be used as a picnic area. Mr. Foster said we could ask Virginia Electric Power for service to the shed and have electricity on the site. This would clear the way for requesting a light to light the ramp once it is built. Motion by Mr. Jackson, seconded by Mrs Spangler to allow Beautification Committee up to \$50.00 for the sign. Mrs Jackson suggested that control of park area is more important than sign at this time. First consideration should be line survey to determine boundary.

SURVEYING: Mr Jackson

Woodbridge Engineering has low bid of approximately \$525.00, although it is thought the original surveyor may be cheaper. Mr. Jacobson said that his men at Fort Belvoir, although uncertified, could do the job on a Saturday for about \$100.00. This is to be pushed within the next three weeks.

Next meeting to be held at the home of Mr and Mrs Seybold, 8 April 1974 at 8.00 PM.

Respectfully submitted

Sally Spangler
Secretary

BELMONT BAY COMMUNITY ASSOCIATES

Belmont Park Estates
Lorton, Virginia 22079

22 March 1974

Dear Mr. and Mrs.

On 24 February 1973, Mr. Hyman Hurvitz, current owner of unsold lots in Belmont Park Estates, sold the plot of land, amounting to 6.8087 acres, facing Belmont Bay, known as Parcel A, to residents and lot owners through the Trustees, Mr. James Foster, Mr. Marshall Ware and Mr. Marvin Lear. This deed is recorded at Fairfax County Courthouse in Deed Book 1478, Page 26.

We understand that according to the original plan put before buyers of this subdivision, the developer was to improve Parcel A and turn it over to property owners. This never took place and through subsequent change of developers Parcel A remained in the hands of the developers until the present owner sold the land to us.

To make this undeveloped water front area useful, residents of Belmont Park Estates prepared and accepted by-laws to administer Parcel A and is known as Belmont Bay Community Associates. The following elected officers are: William Van S Jackson, President
William Payne, Vice-president
Mrs Claude Spangler, Secretary
Mrs. Marvin Lear, Treasurer

Costs to date to pay titling fees, lawyer fees, and real estate taxes have amounted to \$342.00. Perhaps you would be interested in participating in this program thereby making your lot more valuable, and if you live nearby, enjoying the use of this property as a participant.

To help prevent vandalism and property desecration, we have secured the gate at the top of the hill of the access private lane to the beach front. The gate is secured by a combination lock and for your convenience when visiting, the combination is 4326

Our immediate needs are to survey the boundary of Parcel A, secure the access road from being washed out during severe wet weather, clean or fill the swampy areas, and then to proceed to improvements such as a boat ramp, dock, picnic area etc., that will advance property values and use to all owners of property, both residents and non-residents, of Belmont Park Estates.

Under our by-laws annual dues for residents are 80.00 dollars per year and 30.00 dollars per year for non-resident lot owners, if you wish to become a non-resident member, please make check payable to

Belmont Bay Community Associates, care of, Mrs Jean Lear,
10905 Haislip Lane
Lorton, Virginia 22079

In return, we will put you on our mailing list to receive minutes of all meetings, as well as a copy of the by-laws. You will also be accorded the privilege of voting by proxy for officers at the annual election and to attend any and all meetings as a voting member.

Sincerely yours,

A handwritten signature in cursive script, reading "William Van S Jackson". The signature is written in dark ink and is positioned above the typed name.

William Van S Jackson, President,
Belmont Bay Community Associates

BELMONT RAY COMMUNITY ASSOCIATES

AGENDA

april 8, 1974

8.00 PM

Seybold Residence
10805 Belmont Boulevard

Approval of Minutes

Treasurer's Report

Assests
Arrears

Landfill report: Mr. Foster and Mr. Ware

Ramp, dock, pier Report: Mr. Lear, Mr. Payne, Mr. Seybold

Availability of curbing and gutters...cost

Beautification Report: Mrs Foster and Mrs Jackson

Report on sign
Mr. Seybold..availability of boards from old saw mill
Fixing and locking gate..Mr. Jacobson
Lights..Mr. Foster

Surveying Park Boundaries..Mr. Jacobson

Old Business

New Business

Adjournment

Lock Combination
4326

BELMONT BAY COMMUNITY ASSOCIATES

The April 8 meeting was at the home of Mr. and Mrs. Bert Seybold. Mr. Jackson, the President, opened the meeting at 8:05 PM.

Present were: Mr. Ware
 Mr. and Mrs. Lear
 Mr. and Mrs. Jackson
 Mr. and Mrs. Foster
 Mr. and Mrs. Seybold
 Mrs. Mildred Wright
 Mr. Vandenberg
 Mr. Wilcox

A motion that the minutes of the March 11 meeting submitted by Mrs. Spangler be approved was made by Mr. Seybold. Seconded by Jean Lear. Vote by voice to accept the minutes. Cathy Foster filling in for Mrs. Spangler.

Treasurer's Report: Dues received \$180.00
 Expenditures \$20.90 Mailing certified letters
 On Hand \$321.75

The Treasurer, Mrs. Lear, will write a check to Mrs. Blake for the amount of \$40.00 for payment of shrubs used to landscape the entrance. Mr. and Mrs. Jackson donated the money for the payment of the shrubs.

COMMITTEE REPORTS

LANDFILL COMMITTEE: Mr. Ware and Mr. Foster

Mr. Foster read the letter we received from Col. William Smith of Fairfax County regarding the park area. Col. Smith had met with Mr. Ware and Mr. Foster to discuss the park situation and said that we could have a permit for a fill. The letter stated what permits were needed and applications for the permits. They are as follows, Permit fee of \$10.00, a \$600.00 per acre escrow account set up, approximately \$4000.00, this put aside so that the land will be planted with grass and final grading when project completed, and a two ft. topographic map. Mr. Brandt, who had been in charge of Seybold's landfill, was contacted to see if he was interested. He brought two big truckers down to look at the area on Saturday, but they were not interested at this time. Possibly later on. Mr. Seybold thought he might be able to get some concrete for fill from some contacts that he has. There is a possibility that fill could be barged in and this will be looked into. The intent of the landfill is to fix up the park and make money available for the Association's use for the park. Mr. Seybold is going to check with the County to see if the escrow could be lowered. Mr. Jackson is going to call Col. Smith to let him know we have land available for fill and see if he could put us in contact with County people or other contractors for fill. There was much discussion on various ideas about the fill.

Mr. Seybold suggested we contact Hayfield High School to see if they would be interested in a landscape architecture class doing an artists sketch for purposed finished project of park area. This could give us ideas for different contour designs of the park. It was suggested by Mr. Jackson that we offer a prize of a \$50.00 Bond as an incentive to the student who did the best design. Mr. Jackson is going to contact the Principal of Hayfield, Mrs. Torrance, to see if this could be done. 475

Mr. Gene Lear and Mr. Peter Wright agreed to signing a bank note for the escrow account whenever the project is ready. It is hoped that each Associate member would sign a promissory note on a prorated amount in support of the escrow account.

RAMP, DOCK, PIER COMMITTEE: Mr. Lear, Mr. Payne and Mr. Seybold

Mr. Seybold reported that he has enough material to do the ramp. At this time he doesn't have any equipment to get it to the park area. Whenever availability of equipment, possibility of 30 to 60 days, the material can be transported to the park area and be ready for installation.

BEAUTIFICATION COMMITTEE: Mrs. Jackson and Mrs. Foster

Six azaleas have been purchased for the entrance planting and will be in soon. Thanks to everyone who donated an azalea for this project. Discussion: Pete Galbaugh had made some five inch letters to be considered for the sign. We didn't know what boards we would have or if these letters would work. Mr. Jackson made a motion that the committee be given \$50.00 to purchase the material needed for the sign. Seconded by Mrs. Foster. Vote by voice for the committee to have \$50.00 carried. Mrs. Jackson and Mr. Lear will check into the lumber and materials needed.

OLD BUSINESS:

Mr. Lear made a proposal that Mr. Seybold, Mr. Ware, and Mr. Foster be authorized to negotiate with contractors for the landfill. Final action will be subject to final approval by the Board of Directors. Mrs. Jackson seconded the proposal. Vote by voice carried.

NEW BUSINESS:

Mr. Lear moved that the President or someone appointed by the President compose a letter to the County concerning the roads here and asking them to make an effort to pave the rest of the roads. Seconded by Mr. Foster. Vote by voice carried. Mr. Peter Wright will write the letter to the County.

Meeting adjourned at 10:15 PM.

Next meeting at the home of Mr. and Mrs. Ware. No date set, it will be an on call basis.

Respectfully submitted

Cathy Foster
Secretary

BELMONT BAY COMMUNITY ASSOCIATES

NEWS LETTER

10 MAY 1974

In lieu of having a formal meeting at this time, this newsletter will serve, hopefully, as a progress report on items discussed at our last meeting, 8 April 1974.

Jean Lear, Treasurer, reports:

Cash received since April meeting:	\$240.00
Cash reported at April meeting:	321.75
TOTAL	561.75
Funds committed: surveying	100.00
beautifucation	50.00
BALANCE	<u>411.75</u>

We are happy and pleased to announce we have 8 paid non- resident members:

Commander Richard Trumpter
6 Neptune Court
Ramsey Island
Joppa, Maryland 21085

Dr. Michael Polisko
6433 Eastleigh Court
Springfield, Virginia 22152

Mr. Roderick Murray
3600 N. Vernon Street
Arlington, Virginia 22207

Colonel John R. Sexton
135 Via Concha
Aptos, California 95003

Mr. and Mrs. Jules V. Fish
13631 Jemet Circle
Santa Ana, California 92705

Colonel E. Thomas Dorsey
354 Old Mill Road
Fairfield, Conn. 06431

Captain William Quisenberry
4900 Casimer Street,
Annandale, Virginia 22003

page 2

Ms Fay M. Bean
6408 10th Street,
Alexandria, Virginia 22307

The above will receive minutes of all meetings as well as newspapers as they are released. We hope they will communicate any ideas or suggestions they might have to help improve our organization and the work we are doing.

SURVEYING PROGRESS REPORT

Jack Jacobson reports that the surveying of the park area has been more difficult than originally anticipated but he is hoping that it will be completed in the near future

NEW GATE TO PARK AREA

Jack also reports that he is having a new gate welded to replace the old gate to the park area, the old gate having been vandalized. As soon as it is completed he will have it installed.

LOCK TO GATE

Jack installed a combination lock on Friday, 26 April. The following night the lock disappeared. A new one has been obtained (cost 2.69) and will be installed. The combination is

4-6-9

and may I urge you to make every effort to help keep the lock combination confidential. If we give the combination to unauthorized (non-property owners) we are completely defeating all our efforts to make the park a place of which we can be proud.

FILL DIRT NEEDED

I have been in telephone contact with Colonel Smith, Fairfax County Assistant Plan Review Branch Chief, who assured me he would refer to us any contractors in need of space to dump land fill. Jim Foster obtained the name and address of Corps of Engineer in Baltimore and Peter Wright kindly volunteered to write them informing them we have a fill area available and advising them of the possibility of using barges to bring in the fill.

I contacted the principal of Hayfield Secondary School and after inquiries she informed me that they had no courses at this time that would assist a student in drawing a proposed design for our park project.

ROADS

Peter Wright has also been busy writing letters concerning our road situation:

- a) letter to the County Executive stating our road problem in the sub-division and giving suggested remedies. A copy of the letter was sent to Mr. Harrity, member of the Board of Supervisors, representing our area.
- b) A letter from Masons Neck Citizen Association to the County Executive giving full support to our organization's efforts to get our roads repaired. A copy was also sent to Mr. Harrity

BOAT RAMP

Margaret Seybold reports the equipment necessary to move the materials for the ramp is still not available. She assures me of her high hopes to have the project accomplished by the end of June at the latest.

ITEMS

I am enclosing a copy of a letter from Mr. Hedrick which I think may be of interest to members. Jim Foster has advised me that efforts are being made to have Belmont-on-the-Bay declared an historic house. (the old Haislip home) In addition, Jim also tells me that he has talked to Mr. Rawlings, the new owner, who says he is planning to renovate the old house and add an addition.

We notice that Mr. Wilcox's activities on his three lots (adjoining Belmont-on-the-Bay) indicate that construction will probably begin shortly. We all look forward to having him and his family as friends and neighbors.

Have you noticed the almost completed porch that has been added to the Lear home? A very fine addition, not only to his home, but also to the neighborhood. Gene is to be congratulated on his architectural abilities.

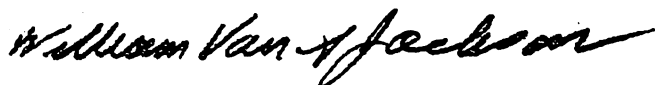
BEAUTIFICATION OF ENTRANCE

Kathy Foster and Barbara Jackson report that the ground around the entrance sign base has been spaded, fertilized and mulched as well as the grass being kept mowed.

The committee with the assistance of Gene Lear are planning to purchase appropriate lumber, thus they hope the sign will soon be completed and installed.

Finally, they are pleased to report that azalea bushes have been planted around the shrubbery at the entrance area.

Please call me if you have any suggestions or ideas relevant to our objectives and projects.



William Van S Jackson
President

Financial Report

30 July 1974

Previous report 10 May 1974	\$561.75
Cash received to July 1974	\$130.00
Expenses:	
Berens Liability Insurance	\$65.00
Postage for President	\$20.00
Fairfax County Taxes	\$50.23
Bill for bulldozer	\$196.00
Total Expenses	\$331.23
Balance on hand	\$360.52
Funds committed	
Surveying	\$100.00
Beautification	\$50.00
<u>Operating capital</u>	\$210.52
<u>Dues in arrears</u>	\$390.00

BELMONT BAY COMMUNITY ASSOCIATES

MEETING: TUESDAY 13 AUGUST 1974

PLACE: PARK AREA

TIME: 7.00 PM

AGENDA:

- a) Treasurer's Report (will be distributed at meeting)
- b) Where we were at March 1974
- c) Where we are as of August 1974
- d) Where are we going?

BELMONT BAY COMMUNITY ASSOCIATES

Minutes of meeting

13 August 1974

The meeting was called to order by the President at 7.00 PM in the Park area.

Families represented:

Blake
Foster
Jackson
Lear
Vandenberg
Ware
M. Wright
P. Wright

Families not represented:

Jacobson
Jameson
Payne
Seybold
Spangler
Stepp

Mr. Jackson gave a short presentation of what has and what has not been accomplished during the past six months. (see minutes of previous meetings) He pointed out that we have an operating fund of only \$210.52 and that we have \$390.00 in arrear dues. It was also pointed out that the yearly real estate tax (\$100.46) and liability insurance (\$65.00) are recurring annual expenses that must be met if we are to retain possession of the Park and with many dues in arrears we have little money for maintenance, not to mention improvements. Mr. Jackson asked the question, rhetorically; do we wish to continue our efforts, despite what appears to be waning interest, both financially and in personal efforts to accomplish our original dream of improving and maintaining the Park? The members present unanimously agreed that we should continue our efforts.

A discussion on how to augment our bank account ensued.

Mrs. Vandenberg suggested a "yard-bake sale" which was met with approval. Mr. Jackson was authorized to contact members to ask for donations (no commissioned sales) for such an endeavor. Each member will be requested to ask five non-resident friends to donate items for such a sale. The sale will be advertised in the Potomac News and will be held on Labor Day, Monday, 2 September 1974 at the intersection of Belmont Boulevard and Haislip Lane. The Jacksons agree to store donated items, under cover, in their drive way Saturday and Sunday ONLY prior to the sale on Monday.

Mr. Foster discussed that he has located aircraft auxiliary fuel tanks for sale at \$40.00 each. It was agreed that these would be ideal for a floating dock. It was agreed by the members present that we would buy four (\$160.00) for a dock if we achieve such a profit from the garage-bake sale.

It was agreed that Mr. Lear will contact Mr. Howard concerning hauling materials for the proposed boat launching ramp (kindly donated by Mr. Seybold) Mr. Lear will report at the next meeting.

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Mr. Jackson was authorized to solicit bids for 3-4 times per year mowing of Park area. He will report at the next meeting

Mrs Jackson reported that plywood has been purchased for the sign at the entrance to our community. The sign will be in the Colonial style. Mr. Foster volunteered to cut the plywood to size and to assist in the installation. Mrs Jackson assured the members that the sign will be completed and installed by the end of September.

The mem present agreed to meet at the Park site, 8.30 AM, Saturday, 17 August 1974 to work on the following:

1. Thorough policing of grounds.
2. Remove vandalized walls from small building on the beach.
3. Place waste cement slabs (many thanks to Mr. Seybold for arranging for us to have them) as a foundation for the boat ramp and for approach to the ramp.
4. Dig post holes for a fence along rear of property.

It is hoped that ALL MEMBERS of our organization will assist in this project. (children are welcomed) Please bring, if you have them: axes, hatchets, shovels, chain saws, wrecking bars, trash bags. Mr. Foster has volunteered his hydraulic screw to dig post holes.

Meeting adjourned at 8.15 PM.

Next meeting will be held at the park, Tuesday, 10 September 1974 at 7.00 PM.

BELMONT BAY COMMUNITY ASSOCIATES

Tuesday 10 September 1974

Park Area
7.00 PM

AGENDA:

1. Authorize paymeny to Jimmy Foster for mowing park area.
Discussion of how many times per year we wish to have
Jimmy mow in the future for same price.
2. Authorize payment to Mrs Jackson for paint for dock.
3. Report from Mrs Jackson on gate sign progress.
4. Planning for sale at Seybold property on US 1.
5. New Business
6. Treasurer's report

BELMONT BAY COMMUNITY ASSOCIATES

Minutes of meeting

September 10, 1974

The meeting was called to order by the Vice President at 7:10 PM in the park area.

Families represented:

Blake
Seybold
Jackson
M. Wright
Lear
Foster
Payne
Ware

Families not represented:

Jacobson
Jameson
Spangler
Stepp
Vandenberg
P. Wright

Treasurers Report - Mrs. Lear

	\$360.52
Dues received \$90.00, donation for the sign from Mr. & Mrs. Jackson	
\$30.00	\$120.00
Expenses - Marine plywood for sign	\$ 60.30
Balance	\$420.22
Funds still committed	\$119.70
Dues in arrears	\$270.00

Payment of small bills

There was a discussion regarding the paying of small bills that were presented to the President. Two bills that are outstanding at this time are paint that Mrs. Jackson purchased for \$12.19 and Jimmy Foster for mowing the park area for \$13.50. A motion was made by Mrs. Jackson to authorize payment of up to \$25.00 when needed by the President for expenditures on small bills. Seconded by Myron Wright. Motion carried. The President or Board of Directors will decide how many times per year the park area shall be mowed or when it is needed.

Sign Progress - Mrs. Jackson

Mrs. Lear ordered and picked up the marine Plywood from Lowes. Mr. Ware and Mr. Foster have put the two pieces of plywood together and cut it to fit the opening of the entranceway. Mrs. Jackson is in the process of drawing the scroll design on the board and Mr. Lear will cut it out with his saw and then paint it. After the sign is painted Mrs. Jackson will do the letters on the sign. In a short time the sign should be installed at the entranceway.

TRASH AND TREASURE AND BAKE SALE

DATE - SEPTEMBER 21, 1974 TIME - 10:00AM till !!!

CHAIRMAN - Margaret Seybold -- Furniture and usable items

BAKE SALE - Mrs. Vandenberg

Contact Margaret when you have your items ready so that you can take them out to Rt. 1 and they can be priced before the sale. Call her so that she can go out and let you in the building. Phone 339-7271. We are going to ask Mrs. Stepp to make a note in her column about the sale and also place an ad in the Potomac News.

Be sure and look around and find all kinds of goodies for the sale. Some posters are needed to be made so that they can be placed at different places beforehand so that we will have a good turnout for the sale.

BOAT RAMP

Mrs. Seybold will get another load of broken concrete sometime this next week for the boat ramp.

Meeting adjourned at 7:50PM/

Next meeting will be held at Mrs. Blakes house, Tuesday, October 8, 1974 at 7:30 PM.

Respectfully submitted
Cathy Foster
Secretary , Acting

BELMONT BAY COMMUNITY ASSOCIATES

Due to a conflict with Gunston Elementary and Hayfield Secondary School PTA's the Belmont Bay Community Associates Meeting originally scheduled for Tuesday 8 October 1974 has been changed to Tuesday 15 October.

PLACE: Mrs Jewel Blake
10916 Belmont Boulevard

TIME: 8.00 PM

BELMONT COMMUNITY ASSOCIATES

AGENDA

PLACE: Mrs. Jewell Blake's residence

DATE: Tuesday, 15 October 1974

TIME: 8.00 PM

1. Call to order at 8.00 PM sharp
2. Reading of previous meeting's minutes
3. Treasurer's report
4. Old Business
 - a) Dock
 - b) launching ramp
 - c) Paving of community roads
 - d) Survey of park area
 - e) other old business from floor
5. New Business
 - a) Purchase of lot by Occoquan Ski Club
 - b) Gas line construction through Mason's Neck
 - c) Light in the park area
 - d) Paving of roads in subdivision
 - e) New Business from the floor
6. Adjournment

BELMONT BAY COMMUNITY ASSOCIATES

Minutes of meeting

September 15, 1974

The meeting was called to order by the President, Mr. Jackson, at 8:00 PM, at the home of Mrs. Blake.

Families represented:

Mr. Payne
Mr. Lear
Mr. & Mrs. Jackson
Mrs Blake
Mr. & Mrs. Foster
Mr. & Mrs. Seybold
Mr. & Mrs. Vandenberg

Mr. Seybold moved that the minutes of the September 10th meeting be accepted. Seconded by Mr. Foster

Treasurers Report is included with these minutes on another sheet of paper. When paying dues to Mrs. Lear, please make checks payable to B.B.C.A.

Dock & Launching Ramp.

A week ago a work party pumped down pilings for the boat dock and did more work on the launching ramp. After some discussion it was decided to leave the dock up during the winter unless the weather gets too bad, then it can be taken up and stored. There is a section of dock washed up across the shore that is going to be checked to see if we could use it to make a walk up ramp to the dock. Mr. Seybold will pick up the material to finish the dock. We will need another work party to complete the dock. Mr. Jackson will contact people when it can be organized. When the material can be brought down the launching ramp needs to be extended out farther.

Old Business

People who are not members of B.B.C.A. are using the park area. After some discussion of this it was decided that a sign was needed saying "Members Only - Visitors Must be Accompanied by Member". Margaret Seybold is going to take care of getting the sign and putting it up.

Occoquan Ski Club has purchased Lot No. 93, down by the park area on the water. Mr. Jackson called the zoning board and reported this to them. He was told that they could not utilize this lot for Ski Club activities unless they have a special use permit. Mr. Vandenberg suggested we find out who had purchased the property if it was one person or the Ski Club and ask for what purpose the land was purchased and what were the intentions of the Ski Club as far as using the property was concerned. Any further pursuing of this will have to go through zoning when and if a special use permit is applied for by the Ski Club. Mr. Seybold made a motion that a letter be written to the Health Dept. and the Association go on record to have them inspect the three structures at the bottom of the

hill for possible violation of the health code. Mr. Lear seconded the motion. Motion carried.

Entrance Sign

As you all have seen our entrance way sign has been completed and is up. Barbara Jackson did a beautiful job doing the painting of the letters and the designs on it. THANKS, Barbara, for a job well done and thanks to all those who helped get the materials and get it installed.

Gas Line on the Neck

Mr. Lear and Mrs. Jackson brought us up to date on information about the gas line. This is to be a 36" line to be buried 3 ft. deep and a 75 ft. easement is needed. There are alternatives such as Ft. Belvoir area, Possum Point area or Mason Neck. They want to come through the Neck because they can use the easement that has been established and that they bought some time ago. This will come through the Mason Neck Wildlife Preserve and take down very old trees and 75 ft. of forest and ground cover as well as be very near where the Eagles nest. The Mason Neck group has gone on record that they do not want to have the gas line go through Mason Neck. Mrs. Jackson made a motion that a letter be written to the Mason Neck group giving them our support from this area. Mr. Lear seconded the motion. Motion carried.

Lights - Park Area

Mr. Jackson will check with the Sanitary District about getting a street light installed at the top of the hill and also at the bottom of the hill in the park area.

Park Fill

Mr. Hodges met with Mr. Lear, Mr. Jackson, and Mr. Ware down at the park area to discuss the possibility of fill. If the Association is interested he could work with the County and do this work for the Association. A topographic map is needed before Mr. Hodge can make us a firm offer on a percentage basis. Mr. Jackson will check with Mr. Jacobson about the survey and topographic map. A long discussion followed pro and con. Mr. Payne made a motion to ask Mr. Hodge to give us a preliminary bid with all the specifications. He must understand that there are some against this in the neighborhood. Mr. Seybold seconded the motion. Motion carried - 9 for 2 against.

Trails

Mr. Lear is working on a Transportation Trails committee that will connect trails from Rt. #1 to Hallowing point, Gunston Manor, Harbor View, Belmont Park Estates, and the Park. These trails are for biking, hiking, and horse back riding. Mr. Lear is going before the planning commission to make a pitch for trails in this area. A motion was made for the Association to support Mr. Lear when he goes before the planning commission to support these trails from Belmont Park Estates to Rt. #1. Mrs. Jackson seconded motion. Motion carried.

Meeting adjourned 10:30 PM

Next Meeting November 12, 1974 at the home of Mr. & Mrs. Jackson

Treasurer's Report, 15 October 1974

Previous report 10 September 1974:	\$420.22
Cashed received-dues	220.00
Sale at Seybold's	135.48
Total	775.70

Expenses:

Paint for dock	12.19
Park mowing	13.50
Hardware for sign	4.82
Peat for sign landscaping	6.18
Total	36.69
Balance on hand	738.01

Funds committed

Surveying	100.00
Beautification	8.70
Total	108.70
Operating capital	629.31
Dues in arrears	310.00

Breakdown of rummage sale 21 September 1974

Sales: Margaret Seybold	\$131.25
Others	49.10
Bake (\$5.00 contribution)	31.95
Total sales	212.30
Expenses: 1/2 for Margaret Seybold	65.62
Advertising	11.20
Total	76.82
Net proceeds to BCA	<u>\$135.48</u>

BELMONT BAY COMMUNITY ASSOCIATES

AGENDA

PLACE: JACKSON'S RESIDENCE

DATE: THUESDAY 12 NOVEMBER 1974

TIME: 8.00 PM

1. Call to order, 8.00 sharp
2. Reading of previous meetings minutes
3. Treasurer's report

Old Business:

- a) Dock
- b) paving roads, status report
- c) light in park area, status report
- d) purchase of lot #93 by Occoquan Ski Club, status report
- e) A frame and shack on lots # 92 and 94, status report
- f) Fill in park area, status report
- g) other old business from floor

5. New Business

- a) From floor

6. Adjournment

BELMONT RAY COMMUNITY ASSOCIATES

MINUTES

November 12, 1974

The meeting was called to order by the President, Mr. Jackson at 8.05 PM at the Jackson's home.

Families represented:

Foster's
Jackson's
Payne's
Ware's

Occoquan Ski Club...lot # 93

The Occoquan Ski Club has purchased lot # 93. Mr. Jackson in correspondence with Mr. Covington, Fairfax County Zoning office, learned that the Club purchased lot 93 and it is in the name of Miss Lois Patton, Treasurer of the Club. The correspondence also indicated that the Club has been informed by the Zoning office that they have until 7 December 1974 to apply for a Special Recreational Permit. The Zoning office will notify Mr Jackson if they apply for the permit and notify him as to the date for the hearing on the permit application.

Mr. Jackson telephoned Miss Patton and she indicated that a committee had been appointed who were supposed to have informed us of their plans. Miss Patton assured Mr. Jackson that the committee will be in touch with him.

Lots # 92 and 94:

Mr. Jackson received a letter from Mr. Covinton, Fairfax County Zoning office indicating that he has asked the County Health Department and County Building Permit office to investigate the two lots and after their investigations, he will inform Mr Jackson as to what action the County authorities plan to take.

Roads in our sub-division:

Mr. Jackson wrote to the County Executive, Mr. Wilson, advising him we have not heard from his office since May as to what the County plans to do regarding our request to his office last May.

Park Area Lights:

Mr. Ware is planning to meet with Mr. Smith, VEPCO engineer, on Wednesday, 13 November to discuss cost estimates for a power line to our water front shelter and also about installation of security lights in the Park area and at the top of the hill.

Park Area Fill

We cannot get a preliminary bid from Mr. Hodge since a topographic map has not been completed.

Meeting adjourned at 9.00 PM. Next meeting to be called when group action is necessary relevant to the Ski Club.

Kathey Foster, Acting Secretary 493

BELMONT BAY COMMUNITY ASSOCIATES

AGENDA

PLACE: Mr. Ware's residence

DATE: Monday, 10 March 1975

TIME: 8.00 PM

1. Call to order
2. Reading of previous meeting minutes
3. Treasurer's report
4. Old Business:

Occoquan Ski Club

Status of lots # 92 and 94

Sub-division roads

Park area lights

Surveying of Park

Other Old Business

5. New Business

Membership dues, taxes and insurance

Date for work party

New Business from floor

Election of officers

6. Adjournment

BELMONT BAY COMMUNITY ASSOCIATES
Minutes of Meeting
10 March 1975

The meeting was called to order by the President, Mr. Jackson, at 8.00 PM at the home of Mr. and Mrs. Ware.

Present: Mr and Mrs Foster
Mr. Jackson
Mr. Truscott
Mrs. Vandenberg
Mr and Mrs Ware
Mr. Wilcox
Mr and Mrs Myron Wright
Mr. Peter Wright

Copies of the Treasurer's report were distributed and accepted.

OCCOQUAN SKI CLUB

The Occoquan Ski Club President telephoned Mr. Jackson and told him they wish to use their lot for picnics by members of their organization. Mr. Jackson responded that he was informed by Mr. Covington, Fairfax County Zoning Office, that the ski club would have to obtain a recreational permit but that his office had been informed that the Club had purchased the lot for investment purposes only. The club President asked Mr. Jackson what the community response would be to the use of the lot for picnics, etc. Mr. Jackson answered that he could not speak for the members but our Association would be glad to have him appear at a meeting to explain what they hoped to do with their lot. The Ski Club President said as soon as they formulated their plans they would accept such an invitation.

STATUS OF LOTS # 92 AND #94

Mr. Jackson was informed by Mr. Covington, Fairfax County Zoning office that:

- a) The shack on lot 92 is properly secured and
- b) the A-Frame on lot 94 has a permit to build the A-Frame for storage purposes only but if used as a residence the owner would have to apply for another type of permit.
- c) In both instances the properties are currently within Fairfax County's zoning code.
- d) Other problems, such as parties, etc., would have to be handled by a complaint to the county police.

ROADS

Mr. Jackson reported he has sent several letters to Mr. Wilson, County Executive, asking for a report that had been promised in May 1974. In November, Mr. Jackson sent a letter with a copy to Mr. Herrity, Supervisor. No response was forthcoming and another letter was sent to Mr. Wilson, copy to Mr. Herrity, in January. No response from the County Executive, but Mr. Herrity's office, by telephone, promised to investigate and that a decision should be forthcoming.

Mrs. Myron Wright volunteered to check out information relevant to this matter. A discussion ensued about contacting Mrs Packard, Chairman of the Board of Supervisors, to bring to the Board's attention the history of the roads in our sub-division.

LIGHTS IN PARK AREA

An engineer from VEPCO met with Mr. Ware and after surveying our needs for lights in the park area, promised to send a cost estimate to Mr. Jackson, which to date, has not been received. Further action on this matter will be deferred.

PARK SURVEYING

The survey of the Park's boundaries has not been completed. A motion was made by Mr. Ware, seconded by Mrs. M. Wright, to have Mr. Wilcox contact Mr. Edward Roof who assisted in the surveying to see what the status is at this time and if he will complete the survey or what we owe him on a prorated basis of the \$100.00 that was allocated the project. Motion carried.

WORK PARTY

A work party is scheduled for Saturday, 15 March (weather permitting) to burn the two trash piles in the park area. Early in April, the President will call another work party to block off some of the non-paved roads, as well as to plant some pines or cedars in the park area. The broken cement at the top of the hill be moved further down the hill to fill in the ditch. Mr. Wilcox is planning on getting a bull dozer operator in when the ground dries and we are hoping to get some more bull dozer work accomplished in the park area at that time.

DUES, TAXES, INSURANCE

There was a discussion concerning dues. It was brought out that only a few delinquent accounts exist at this time, thus it was agreed to continue the resident membership at 20.00 dollars quarterly. New quarter dues (\$20.00) are due in April. A discussion followed about ear marking a certain amount of monies for bull dozer work. This will be an agenda item for a future meeting.

ELECTION OF OFFICERS

It was pointed out that Mr. Jackson has accomplished so much for the Association and has kept us so well informed during his tenure. Mrs. M Wright seconded a motion proposed by Mr. Ware that Mr. Jackson stay on as President of our Community Association for another year. Motion was carried by all present. Other officers elected unanimously were:

Mr. Payne	Vice President
Secretary	Mrs. Foster
Treasurer	Mrs Lear

We are glad to welcome Mr and Mrs Wilcox and their family who have recently moved into their new home. They will be a most welcomed addition to our Association and community.

Meeting adjourned at 9.30 PM

Cathy Foster
Secretary

ADDENDUM:

RE ROADS:

Since the meeting 10 March, the President has been informed by Mr. Haggity's office that the question of responsibility of the county regarding bringing the subdivision's roads up to state standard is now in the hands of the County Attorney and we should be informed of their decision in the not too distant future.

J

We welcome you joining us. Please use the self addressed stamped envelope to respond, using the form at the bottom of this letter. As in the past, all members will receive an announcement with an agenda of meetings, as well as a copy of the minutes of all meetings. The next meeting will be held at the Jackson residence, 10906 Belmont Boulevard, Tuesday, 30 March 1976. Coffee and conversation 7.30-8.00 PM. Business meeting to begin promptly at 8.00 PM. Election for Association officers will be held at this time. Please plan to join us.

Sincerely,

William Van S Jackson
President, BBCA

BELMONT BAY COMMUNITY ASSOCIATES

TREASURER'S REPORT

10 March 1975

Previous report	\$789.01
Cash received	\$120.00
	Total 909.01

EXPENSES:

Fairfax County taxes	\$50.22
	\$858.79 balance
Saving account opened	\$400.00
(26.11.74	458.74 balance

FUNDS COMMITTED:

Surveying	\$100.00
Reautification	\$8.70
Operating capital	\$350.09
Dues in arrears	\$180.00

DUNDRAVE HAY COMMUNITY ASSOCIATION
Minutes of Meeting
September 28, 1975

The meeting was called to order by Mr. Jackson, the President, at 1:15PM at the park area.

Present:

Mr. Payne
Mr. Lare
Mr. & Mrs. Larr
Mr. & Mrs. Peter Wright
Mr. Wilcox
Mr. & Mrs. Foster
TREASURER'S REPORT

Expenditures	\$374.92
Balance Checking	\$403.37
Balance Savings	\$410.00 (approximate)
Dues in Arrears	\$130.00
Funds Committed	\$100.00
Dues this Quarter	\$200.00
PREVIOUS BALANCE	\$453.79
CASH RECEIVED	\$300.00
Total	\$753.79

Discussion

The storm did much damage to the road and park area. The ditcher was overgrown and overflowed down and washed out much of the road. There was much discussion regarding the park area and the association as to whether to keep it or sell it or give it to Fairfax County for a park. The burden of taxes and dues are being taken care of by only so many of the families who live here. Peter Wright is going to draft a letter for the association to all the property owners to let them know what monies are due for each for the taxes and insurance.

Mr. Payne made a motion that he contact Leroy Hopkins to fix the road and ditcher. Peter Wright seconded the motion. Motion passed. Mr. Payne will get a bid from Mr. Hopkins.

A motion was made by Mr. Payne to have someone cut some of the trees in the immediate park area and to pay them \$60.00 a month between now and May to do the job. Motion not seconded. Some families wanted to cut trees for firewood.

Mr. Foster made a motion that the beautification committee go down to the park area and tag what trees that they wanted to be kept before the cutting started. Gene Larr seconded motion. Motion carried.

A combination cookout and work party is being planned for the Saturday in October closest to Halloween. Mrs. Larr and Mrs. Lare will head up the committee on the cookout and get us ready to begin.

Meeting adjourned 3:06 PM
Cathy Foster
Secretary

BELMONT BAY COMMUNITY ASSOCIATES

Meeting, Friday, 19 December 1975 at 10906 Belmont Boulevard, the Jackson Residence.

AGENDA:

7.30-8.00 PM Cand C (coffee and conversation)

1. Contribution to Lorton Community Information Center.
Discussion and action.

Money for Christmas Basket.
Discussion and action.

2. Sebold property... cars for sale.
Discussion and possible action.

3. Full dozing of lane to water front.
Status

4. Letter to property owners re cost of maintenance of park area.
discussion and possible action.

5. New business from floor.

*It has not been decided whether to pay for maintenance of
landscaping or planting. Be collected*

Dear Resident (or Property Owner) of Belmont Park -

On 28 September 1975 a meeting of the Belmont Community Associates was held in the park area. There were only seven families represented - which is a pretty poor showing, considering the number in residence or living nearby (for your information, the families represented were: Payne, Ware, Lear, Wilcox, Foster, Jackson, and the P. Wrights).

One of the prime matters discussed was the status of the Park area. Taxes must be paid, and so must premiums on liability insurance to protect us all against any possible damage claims - as you know, owners of an "attraction" can be held liable for injury, even of trespassers ... particularly when it is difficult to police the area and our "no trespassing" signs are regularly removed or defaced.

The few active residents of the area have shouldered, so far, the entire burden of work and expense in policing the litter, mowing, ditch control, road maintenance, etc. To a large extent, it is these owners who have also shouldered the tax and insurance burden. This is what triggered the discussion concerning the park status. This ~~discussion~~ discussion centered on the possibility of making some constructive disposition of the park property, since the failure of ^{many} ~~most~~ property owners to participate in the association to the extent of the \$ 3.00 per annum to cover their proportionate share of the taxes and insurance raises the real possibility of

(Totaling \$165⁰⁰ per year for 55 property owners)

losing the property if for non-payment of taxes. Since it is a conservative estimate that our properties are enhanced by a minimum of \$10,000 to \$15,000 each by joint ownership of the park property, this should be a vital matter to teach of us, and hence I have been instructed by the Associates to write you all and point this fact out .

Two alternatives to disposal of the property (if support is not forthcoming) are readily apparent: One is to have two classes of membership - active and inactive. Inactive members would, after one year of failure to meet their proportional share of expenses, lose their rights to the park property (hence, become inactive) until such time as all unpaid assessments are paid. If such back assessments are not paid prior to any transfer of the member's property, the rights to the common (waterfront) would be lost permanently.

A second alternative is for a mathematical formula to be developed to assign voting (i.e., control) rights in the Associates in such a way as reflect the payment or non-payment of assessments. This alternative can be discarded out-of-hand as cumbersome and too subject to controversy.

So far, on the only firm decision made is that the few families currently active will not carry the burden alone in the future on behalf of all the landowners. Either the property and its liability will be disposed of (probably to either a commercial enterprise as a marina or to one of the public park authorities) or e-l- else

"alternative one" above will be adopted.

A bit of history on this property is perhaps in order, so, at this point let me point to the addendum to this letter giving the specifics. Note that it is only by luck and the hard work of Messers Foster and Ware that we even have access to this property - it did not come to us as part of the subdivision as many had thought, and it had been lost to us up to the time Mr. Hervitz so generously donated it to us. Mr. Hervitz, who was under no legal obligation to so do, kept the faith with us that the original developers had not. Now, can we keep faith with each other? Frankly, that is exactly what this question boils down to.

We want, of course, maximum participation in the preservation of our waterfront park property and most valuable asset. The participation we seek is more than just financial. We want your ideas and desires regarding the waterfront. Feel free to let me know what they are, and I will see that they are made known public at the Associates meetings, and that you are replied to.

*Gene thinks
should let me
know what he
wants to do
with the property
and I will see
that it is done
as soon as possible
and that the
Associates are
kept informed
of all developments
and that you are
replied to.*

BELMONT BAY COMMUNITY ASSOCIATES

9 March 1976

Dear Neighbor:

During the last meeting of the BBCA the status of the Park area was discussed. Taxes must be paid or we lose the Park. Liability insurance premiums must be paid to protect all of us against any possible injury claims. As you know, owners of an "attraction" can be held liable for injury, even of trespassers, particularly when it is difficult to police the area and our "no trespassing" signs are regularly removed or defaced.

The few active residents of the Association have shouldered, so far, the entire burden of work and expense involved in the Park ownership. This triggered the discussion concerning the Park status and the possibility of making some constructive disposition of the Park property since the failure of some residents to participate in the Association raises the real possibility of losing the property for non-payment of taxes. It has been conservatively estimated that our home values are enhanced a minimum of 10,000 to 15,000 dollars each because of group ownership of the water front park property. This should be a vital matter to each of us.

The active members of the Association have made a decision that the few families currently active will not continue to carry the financial burden alone. Either all of us will help support the Park or consideration will be given to disposing of the property, perhaps as a commercial enterprise as a marina or to one of the public park authorities. To prevent this from happening we propose a drastic reduction of membership dues from \$20.00 quarterly (\$80.00 per year) to an extent that will cover the minimum costs and will be in range of everyone's budget.

The following indicates the basic expenditures for the past two years:

	1974	1975
Insurance	\$65.00	\$70.00
Taxes	\$100.45	\$94.33
Bulldozing	\$196.00	\$375.00
Mowing	\$13.50	\$47.00
Total	\$374.95	\$586.33

The average yearly expenditure (\$961.28 divided by 2) amounts to \$480.64 per year. Currently, we have 15 families in residence and if all 15 would join the Association, the cost would be \$32.04 or \$2.67 per month, a reduction of approximately 40 percent of current membership dues. Rounding out that figure to \$3.00 per month would give us \$60.00 above the year average expenditure which would give us an inflationary cushion and enable us not to raise the dues from \$3.00 per month for the foreseeable future.

Wednesday 8 April 1976

The Belmont Bay Community Associates' Board of Trustees met with the President, Tuesday, 6 April 1976. It was unanimously agreed that because of lack of community support, both financial and in interest, the following actions will be taken:

Dues will not be assessed.

Liability insurance will be discontinued.

County taxes will continued to be paid until the BBCA bank account is exhausted.

The Trustees are willing to reactivate the Association any time in the future if community interest and support so indicates.

Bill

William Van S Jackson
President, BBCA

Monday, 24 May 1976

Dear Neighbor:

Jim Foster recently gave me the attached letter that he received from the Occoquan Water Ski Club that until recently operated from Sandy Point and now from Lot # 93 adjacent to our park area.

I talked to Mr. Duff, President of the Water Ski Club, on the telephone yesterday and he apparently realizes that they need the support of our Association in order to obtain a recreational permit from Fairfax County to use lot # 93 as a base for their operation. He also informed me that their Club will cause little or no vehicular traffic on the access lane to the water front as, he says, the membership arrive by boat.

The Water Ski Club, as you note from the attached letter, desire a meeting with us to explain how they feel they can be of assistance to us. In order to help determine a course of action, would you kindly telephone me any evening this week, except Wednesday, and give me your opinions on the following points: 339-6631

1. I do not favor endorsing the Water Ski Club's efforts to obtain a special use permit for lot # 93.
2. I think we should endorse the Ski Club's efforts to obtain a special use permit.
3. I think we should call a meeting of our Association and invite representatives of the Ski Club to present their proposals and ideas to us and then make a decision as to whether we wish to support their efforts to obtain a special use permit.

Yours truly,

William Van S Jackson
President, ERCA

May 10, 1976

Mr. James Foster
7451 Belmont Landing Rd.
Lorton, Virginia

Dear Mr. Foster:

The Occoquan Water Ski Club respectfully requests an opportunity to present its membership to your Civic Association meeting. Our purpose is to familiarize you with the goals and ambitions of our organization.

The Occoquan Water Ski Club is composed of middle class families, dedicated to maintaining facilities in an orderly fashion, consistent with your own desires. We believe that given an opportunity to familiarize your Civic Group with our membership, we can prove ourselves an asset to your area.

As you are most likely aware our organization owns Lot #93, on Belmont Bay. The purpose of this request is to solicit your support to obtain a Special Use Permit.

Our club has maintained Sandy Point since 1955. We believe we could contribute our efforts to greatly improve your own recreation facility.

Sincerely,

Bill Duff
Bill Duff, President
Occoquan Water Ski Club
8601 Greeley Blvd.
Springfield, Virginia 22152

BD/nw

Belmont Bay Community Associates
Minutes of Meeting
June 25, 1976

The meeting was called to order by Mr. Jackson, the President, at 8:10 PM.

Members present:
Carol Ann Wright
Mr. & Mrs. Lear
Mr. & Mrs. Vandenberg
Mr. Payne
Mr. Ware
Mr. & Mrs. Wilcox
Mr. & Mrs. Jackson
Mr. & Mrs. Foster

The purpose of the meeting was to discuss the use of the Park property by the Occoquan Ski Club. It was decided that we were interested in having the Ski Club join us at the Park area.

Mr. Ware made a motion that whatever we do with the Ski Club should be done legally. Seconded by Frits Vandenberg. Motion carried.

Jim Foster made a motion that we appoint a committee to seek legal advice and the committee would also work with the Ski Club to explore an agreement between the Club and the BBCA. Seconded by Mr. Ware. Motion passed.

There was much discussion concerning whether we should incorporate our group, and of different types of corporations as well as the cost.

A Committee consisting of Gene Lear, chairman, Frits Vandenberg, and William Payne volunteered. They are checking on a lawyer for legal advice as well as work up some guide lines for the two groups to work with. Those who were present were interested in having some guidelines to control the noise, policing the area, speed limits on the road. A discussion followed.

The present Officers terms have expired and a new slate of Officers need to be elected.

Meeting adjourned 10:00 PM.

Cathy Foster
Secretary

Belmont Bay Community Associates
Minutes of Meeting
March 7, 1977

The meeting was called to order by Mr. Jackson, the President, at 7:40 PM.

Members present:

Mr. and Mrs. Vandenberg
Mr. and Mrs. Foster
Mr. and Mrs. Myron Wright
Mr. and Mrs. Lear
Mr. and Mrs. Jackson
Mr. Wilcox
Mr. Ware
Mr. Payne
Mrs. Ford

The purpose of the meeting was to discuss the agreement that the Occoquan Ski Club had sent to BBCA. Gene Lear gave us a report on the agreement, and a copy of the agreement was passed out to those members present to look over and discuss. The agreement is for a one year period to be renewed on May 1st of each following year. A discussion followed. Mrs. Ware made a motion that the Belmont Bay Community Associates will accept the agreement as written, but with the correction to the amendment on paragraph 5. Mr. Jackson seconded the motion. Motion passed.

Mr. Jackson gave a report on the sign at the entrance way that had been demolished by an accident the first of the year by a week-less driver. Two bids have been submitted to Northern Virginia Insurance Co. to replace the sign and brick work to it's original condition. Mrs. Jackson will get a bid from a local nursery as to what the cost will be to replace the shrubbery, and will send the bid to the Insurance Company. At the present time the sign has been stored under cover to keep it in good condition.

New officers were nominated at the meeting, and the slate was voted on and passed unanimously. They are as follows;
Mr. Foster nominated Mrs. Mildred Wright for President
Mr. Lear Nominated Mr. Payne for President, Mr. Payne declined the nomination.

Mr. Payne nominated Mr. Wilcox for Vice President.

Mr. Jackson nominated Mrs. Jackson for Secretary.

Mr. Ware nominated Mrs. Lear for Treasurer.

This is our new slate of officers for the year. Let's stand behind our new officers and give them our support. Mr. Jackson, our outgoing President did a fine job during his long term and got us well organized. Thanks for a job well done. Mrs. Wright took over the meeting as our new President.

Mrs. Lear gave the treasurer's report and it was approved as read. The treasurer's report is on a separate page of these minutes. Mr. Jackson suggested that we change our procedure of having both the President and the Treasurer's signature on the checks that need to be signed and just have the Treasurer's signature on the checks.

Mr. Wilcox brought up for discussion about the collection of dues again by the group. As of now we will not collect any dues until we get the agreement back from the Ski Club, and then we will discuss this again. \$70.00 was sent with the agreement, from the Ski Club, for half of last years taxes and insurance for their use of the park area.

Mr. Vandenberg brought up for discussion as to whether a sign should be put at the top of the hill to the park area as well as at the entrance of the park. He brought to our attention that there had been two serious accidents on the Bay hill during the winter snow and ice storms, that we had. The sign needs to be official looking. Fritz will look into the cost of sign's. It was discussed that also the Ski Club might place some signs at the park area.

Mr. Jackson suggested that we invite a representative of the Ski Club to our meetings after the agreement has been signed. This way we can be informed as to their plans and use of the park area that we will share.

Mr. Lear suggested that we have our meetings around the first of the month and Monday night seemed to be a good night for most members present.

Mr. Vandenberg brought up for discussion the erratic water pressure that we were having. Mrs. Wright was going to call the water company and find out how much longer we were going to be having this problem with the water pressure.

Meeting was adjourned at 9:10 PM.

Mrs. Jackson served coffee, cookies and mints.

Cathy Foster
Secretary.

Belmont Community Associates

Treasurer's Report

March 7, 1977

Financial Report to December '76

Previous Report	\$341.71
Cash Received	-0-
Total	\$341.71
Expenses	
LCSC Donation	\$ 25.00
Hopkins Bulldozing	\$200.00
Total	\$225.00
	\$341.71
Less	\$225.00
Balance	\$116.71

Financial Report for 1976

Carried Forward	\$116.71
Dues	\$ 20.00
Funds withdrawn from Savings	\$100.00
Total	\$236.71

Expenses	\$118.54
Fairfax Taxes	\$ 73.00
Belmont Ins.	\$ 5.00
Bank S.C.	\$196.54
Total	\$236.71
	\$236.71
Less	\$196.54
Balance	\$ 40.17

Financial Report to March 7, 1977

Carried Forward	\$40.17
Occoquan Eki Club	\$70.00
Total	\$110.17
Expenses	
Bank S.C.	\$ 2.00
	\$110.17
Less	\$ 2.00
Balance	\$108.17

Savings Report to January '77

Balance on Savings	\$343.50
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