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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 810335

TOWN OF VINTON, et al.,

Appellants,

v.

FALCUN CORPORATION, et al.,

Appellees.

JOINT APPENDIX

Frederick T. Gray
Robert E. Eicher
W. Scott Street, III
Williams, Mullen, Christian,
Pollard & Gray
P. O. Box 1320
Richmond, Virginia 23210

Frank G. Selbe, III
354 West Campbell Avenue
Roanoke, Virginia 24016

Counsel for Appellants

William B. Poff
Michael A. Cleary
Woods, Rogers, Muse,
Walker & Thornton
105 Franklin Road, S.W.
P. O. Box 720
Roanoke, Virginia 24004

Counsel for Appellees

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Filed in the Clerk's Office the 7 day of July; 1980.

Writ Tax

500

Attest: Elizabeth H. Spivey Clerk

Fee

250

Total Paid

750

William W. Wilke D.C.

BILL OF COMPLAINT
FOR DECLARATORY JUDGMENT

Chancery Action No. _____

Plaintiffs represent to the Court as follows:

FACTUAL ALLEGATIONS

(1) Plaintiffs, Falcun Corporation (hereafter "Falcun") and Fralin & Waldron, Inc. (hereafter "F&W"), are Virginia corporations which are duly qualified and registered to do business in Virginia. Falcun is operated and controlled by F&W.

(2) Defendant Town of Vinton is a municipality duly chartered as a town pursuant to the laws of Virginia and is located in Roanoke County, Virginia.

(3) Defendant Charles R. Hill is the mayor of the Town of Vinton who serves as chairman of Vinton Town Council.

(4) Defendants Robert R. Altice, Roy G. McCarty, Jr., James W. Reynolds and Jack L. Shelton are current members of the Vinton Town Council.

(5) This is an action for declaratory judgment brought because of an actual controversy between the parties pursuant to Section 8.01-184 et seq. of the Virginia Code, as amended.

(6) Plaintiff Falcun is the owner of a parcel of land in the Town of Vinton, Roanoke County, Virginia, which is referred to and designated as "Northampton" (the said parcel will hereafter be referred to by that name).

(7) Plaintiff F&W has, and did have at all times pertinent to this litigation, an exclusive right and option to purchase Northampton from plaintiff Falcun.

(8) Under the existing zoning ordinances of the Town of Vinton, Northampton is given the description of "Residential District R-2." Land zoned "R-2" can, under the said ordinances, be properly developed for multiple-family dwellings. See pertinent portion of the Town of Vinton Zoning Ordinance attached as Exhibit A

(9) Plaintiffs F&W and Falcun, acting in reliance on the "R-2" zoning classification for Northampton, made the necessary plans to finance and construct 50 units of multi-family housing on the said tract of land. During the planning process, the architect for F&W made inquiry to the Town of Vinton as to the impact of the project on the Town's facilities. In response, by letter dated August 16, 1979 (see attached Exhibit B), the Town Manager stated that the available utilities were adequate, that there would be a minimum impact on existing planned community facilities and energy resources and that "this type of housing is needed and will serve our community well."

(10) Subsequent to August 16, 1979, opposition to the Northampton project developed among members of the Vinton Town Council because the project would be a planned low-income apartment complex involving some federal funding and rent subsidies.

(11) As a result of the political controversy referred to in paragraph (10) above, Vinton Town Council, on or about February 5, 1980, adopted as emergency legislation Ordinance No. 400 (referred to as "conditional zoning policy for ten or more multi-family dwelling units) which is attached hereto as Exhibit C. The substance of the ordinance was to require that Vinton Town Council, rather than the Town administrative or ministerial employers who would normally handle such matters, would have to approve the granting of a building permit for any proposed multi-family project in excess of ten (10) units.

(12) Ordinance No. 400 was adopted by Vinton Town Council on a first reading without reference to the Town planning commission and without a public hearing pursuant to public notice.

(13) The sole and motivating reason for the enactment of Ordinance 400 by the Vinton Town Council was to enable the Town Council to reject the proposed Northampton project by plaintiff F&W rather than permit F&W's application for a building permit to be processed administratively and ministerially as would normally be the case.

(14) On or about June 30, 1980, F&W filed a formal application with the Town Manager of the Town of Vinton for a building permit for the 50-unit apartment complex known as Northampton. A copy of that application is attached as Exhibit D.

(15) Because of the provisions of Ordinance No. 400, as described in paragraph (11) above, F&W's building permit application for Northampton was referred by the Town Manager to the Vinton Town Council, and the matter was placed on the agenda for action at a meeting of Town Council scheduled for July 15, 1980. At its July 15, 1980, meeting Vinton Town Council, on a motion unanimously passed, refused to issue the requested building permit. The motion rejecting F&W's application for a building permit contained no statement of reason or justification for the rejection.

LEGAL ALLEGATIONS

COUNT I

(16) Plaintiffs restate, reallege and incorporated by reference the allegations contained in paragraphs (1) through (15) above.

(17) The enactment of Ordinance No. 400 by the Vinton Town Council on or about February 5, 1980, constituted by operation of law a moratorium on the construction of multi-family housing projects in excess of ten (10) units in the Town of Vinton.

(18) The Town of Vinton has no express or implied authority under Virginia law to enact a moratorium on the approval of building permits for multi-family housing projects of ten (10) or more units. Ordinance No. 400 was and is, therefore null and void, and all action taken by the Vinton Town Council under that ordinance at its meeting on or about July 15, 1980, is likewise null and void.

WHEREFORE, plaintiffs move the Court:

(A) To declare Ordinance No. 400 to be null and void;

(B) To declare the July 15, 1980, rejection of F&W's application for a building permit also to be null and void;

(C) To enjoin the defendants from interfering in any way in the future with the normal processing of F&W's building permit application through regular administrative or ministerial channels of the Town of Vinton; and

(D) To grant plaintiffs such other and further relief (pursuant to § 8.01-186 of the Virginia Code) as the Court deems equitable and proper.

COUNT II

(19) Plaintiffs restate, reallege and incorporate by reference the allegations in paragraphs (1) through (15) above.

(20) Ordinance No. 440 was not enacted pursuant to the normal ordinance-adopting process specified in Section 12 of the Vinton Town Code (see attached Exhibit E). The said ordinance was adopted on first reading and not after being read at two meetings not less than one week apart as required by Section 12(b) of the Vinton Town Code.

(21) While the Vinton Town Council attempted to breathe validity into Ordinance No. 400 by stating therein that "an emergency exists and this Ordinance be in force and effect upon its passage," no emergency did in fact exist either in contemplation of law or under Section 13 of the Vinton Town Code (see attached Exhibit E).

(a) Ordinance No. 400 is not by its terms an "emergency measure... for the immediate preservation of the public peace, property, health or safety, or providing for the daily operation

of a municipal department" as required and defined by Section 13(b) of the Vinton Town Code.

(b) Ordinance No. 400 does not recite the alleged emergency which required its immediate passage. The ordinance is, therefore, in violation of Section 13(b) of the Vinton Town Code which specifies that: "The emergency shall be stated in every such measure."

(22) To the extent Ordinance No. 400 purports to be a zoning ordinance, it was invalidly adopted under Article 13 of the zoning ordinances in the Vinton Town Code and also under § 15.1-493 of the Virginia Code, as amended. No amendment to a zoning ordinance, either under Virginia statutory law or the Vinton Town Code, can be enacted without a prior reference to a planning commission and without a public hearing both by the planning

commission and the governing body of the local government involved. Ordinance No. 400 was not, prior to enactment, referred to the planning commission of the Town of Vinton, and no public hearing was held on the ordinance either by the planning commission or the Vinton Town Council.

(23) The enactment of Ordinance No. 400 was, therefore, invalid, unreasonable, arbitrary and capricious, and the Ordinance is null and void. The action of Vinton Town Council in rejecting F&W's building permit application on July 15, 1980, was thus also null and void.

WHEREFORE plaintiffs move the Court:

(A) To declare Ordinance No. 400 to be null and void;

(B) To declare the July 15, 1980, rejection of F&W's application for a building permit also to be null and void;

(C) To enjoin the defendants from interfering in any way in the future with the normal processing of F&W's building permit application through regular administrative or ministerial channels of the Town of Vinton; and

(D) To grant plaintiffs such other and further relief (pursuant to § 8.01-186 of the Virginia Code) as the Court deems equitable and proper.

COUNT III

(24) Plaintiffs restate, reallege and incorporate by reference the allegations in paragraphs (1) through (15) above.

(25) Assuming, but not admitting, that Ordinance No. 400 was validly passed, nonetheless the action by Vinton Town Council on July 15, 1980, in rejecting F&W's building permit application was taken without the statement of any valid reason involving the health, safety or general welfare of the public. Such action was, therefore, unreasonable, arbitrary, capricious and void.

WHEREFORE, plaintiffs move the Court:

(A) To declare the July 15, 1980, rejection of F&W's application for a building permit to be null and void;

(B) To enjoin the defendants from interfering in any way in the future with the normal processing of F&W's building permit application through regular administrative or ministerial channels of the Town of Vinton; and

(C) To grant plaintiffs such other and further relief (pursuant to § 8.01-186 of the Virginia Code) as the Court deems equitable and proper.

COUNT IV

(26) Plaintiffs restate, reallege and incorporated by reference the allegations in paragraphs (1) through (15) above.

(27) Ordinance No. 400 as adopted by Vinton Town Council was an invalid attempt by the Town of Vinton to authorize the spot down-zoning of plaintiffs' Northampton property.

(28) The action taken by Vinton Town Council on July 15, 1980, in rejecting F&W's application for a building permit was itself spot down-zoning of plaintiffs' property contrary to law. Additionally, such action of rejection was taken pursuant to Ordinance No. 400 which was itself invalidly enacted and hence null and void.

WHEREFORE, plaintiffs move the Court:

(A) To declare Ordinance No. 400 to be null and void;

(B) To declare the July 15, 1980, rejection of F&W's application for a building permit also to be null and void;

(C) To enjoin the defendants from interfering in any way in the future with the normal processing of F&W's building permit application through regular administrative or ministerial channels of the Town of Vinton; and

(D) To grant plaintiffs such other and further relief (pursuant to § 8.01-186 of the Virginia Code) as the Court deems equitable and proper.

COUNT V

(29) Plaintiffs restate, reallege and incorporate by reference the allegations in paragraphs (1) through (15) above.

(30) Ordinance No. 400 by its substantive terms is, in legal effect, an ordinance relating to the approval of site plans and the issuance of building permits. The ordinance does, therefore, attempt to control ministerial rather than discretionary acts. Consequently, Ordinance No. 400 is an invalid attempt by Vinton Town Council to usurp the ministerial functions of Town administrative employees and to elevate such functions to legislative status contrary to established Virginia law.

(31) Assuming, but not admitting, that Vinton Town Council can assume for itself the approval of site plans and the issuance of building permits, it must then exercise such powers in an administrative rather than discretionary manner. Contrary to established law, however, the Vinton Town Council on July 15, 1980, rejected F&W's building permit application without regard to whether the plans submitted by F&W complied with applicable laws, regulations and building codes. Such action of rejection was taken for unreasonable, arbitrary, capricious and unstated reasons, and the denial of a building permit to F&W was, therefore, null and void.

WHEREFORE, plaintiffs move the Court:

(A) To declare Ordinance No. 400 to be null and void;

(B) To declare the July 15, 1980, rejection of F&W's application for a building permit also to be null and void;

(C) To enjoin the defendants from interfering in any way in the future with the normal processing of F&W's building permit application through regular administrative or ministerial channels of the Town of Vinton; and

(D) To grant plaintiffs such other and further relief (pursuant to § 8.01-186 of the Virginia Code) as the Court deems equitable and proper.

COUNT VI

(32) Plaintiffs restate, reallege and incorporate by reference the allegations contained in paragraphs (1) through (15) above.

(33) Ordinance No. 400 is invalid on its face because of its failure to specify any standards by which Vinton Town Council will be governed in its actions thereunder. The ordinance, by its terms, merely sets out a rule of policy which permits the Town Council to act, as they did in the instant case, unreasonably arbitrarily, capriciously and without any legally supportable reason for refusing building permit application. The action of Vinton Town Council in rejecting F&W's building permit application on July 15, 1980, was thus taken pursuant to an unconstitutionally and illegally broad, vague and defective ordinance which thus renders the building permit rejection null and void.

WHEREFORE, plaintiffs move the Court:

- (A) To declare Ordinance No. 400 to be null and void;
- (B) To declare the July 15, 1980, rejection of F&W's application for a building permit also to be null and void;
- (C) To enjoin the defendants from interfering in any way in the future with the normal processing of F&W's building permit application through regular administrative or ministerial channels of the Town of Vinton; and
- (D) To grant plaintiffs such other and further relief (pursuant to § 8.01-186 of the Virginia Code) as the Court deems equitable and proper.

COUNT VII

(34) Plaintiffs restate, reallege and incorporate by reference the allegations in paragraphs (1) through (15) above.

(35) Ordinance No. 400 was adopted by Vinton Town Council on February 5, 1980, for the very purpose of providing the Town of Vinton with a means to preclude the construction of low-income, subsidized housing within its boundaries and, specifically, to foreclose construction of multiple-family dwellings in Northampton. Furthermore, the ordinance, in order to accomplish the aforesaid purpose, draws an irrational distinction between multi-family housing of ten (10) or more units and multi-family housing of less than ten (10) units. Such an intentional and exclusionary purpose is unreasonable, arbitrary, discriminatory and bears no relation to the health, safety, morals or general welfare of the owners or residents of the area so zoned; its purpose and practical effect is to advance private over public interests. Ordinance No. 400 is, therefore, for the foregoing reasons, and because of its resulting lack of uniformity in application, invalid, and all action taken by Vinton Town Council pursuant to such ordinance on July 15, 1980, or at any other time, was null and void.

WHEREFORE, plaintiffs move the Court:

(A) To declare Ordinance No. 400 to be null and void;

(B) To declare the July 15, 1980, rejection of F&W's application for a building permit also to be null and void;

(C) To enjoin the defendants from interfering in any way in the future with the normal processing of F&W's building permit application through regular administrative or ministerial channels of the Town of Vinton; and

(D) To grant plaintiffs such other and further relief (pursuant to § 8.01-186 of the Virginia Code) as the Court deems equitable and proper.

FALCUN CORPORATION
and
FRALIN & WALDRON, INC.

By


Of Counsel

William B. Poff
Woods, Rogers, Muse, Walker & Thornton
Post Office Box 720
Roanoke, Virginia 24004
703/982-4249

Counsel of record for Plaintiffs

encroachment of general commercial or industrial uses. All residential types of structures for both permanent and transient occupancy and including institutions, are permitted plus structures for commercial uses conforming to the pattern of the district. This residential district is not completely residential as it includes public and semipublic, institutional, and other related uses. However, it is basically residential in character and, as such, should not be spotted with commercial and industrial uses. Site plans may be required by the zoning administrator for any development occurring after the effective date of this ordinance.

USE REGULATIONS

In Residential District R-2, structures to be erected or land to be used shall be for one or more of the following uses.

3-1. USE BY RIGHT

3-1-1. Single-family dwellings .

3-1-2. Two-family dwellings.

3-1-3. Three-family dwellings

3-1-4. Four-family dwellings.

3-1-5. Multiple-family dwellings.

3-1-6. Schools.

3-1-7. Churches.

3-1-8. Parks and Playgrounds.

3-1-9. Home Occupations.--An occupation conducted in a dwelling unit, provided that:
(a) No person other than members of the family residing on the premises shall be engaged in such occupation; (b) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 25 per cent of the floor area of the dwelling unit shall be used in the conduct of the home occupation; (c) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding one square foot in area, non-illuminated, and mounted flat against the wall of the principal building; (d) No home occupation shall be conducted in any accessory building; (e) There shall be no sales in connection with such home occupation; (f) No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard. (g) No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single-family residence, or outside the dwelling unit if conducted in other than a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receive off the premises, or causes fluctuations in line voltage off the premises.

3-1-10. Off-street parking (a) Tourist homes and motels shall provide on the lot parking space for one (1) automobile for each accommodation (b) For church, high school, college and university auditoriums, and for theaters, general auditoriums, stadiums and for similar places of assembly, at least one (1) parking space for every five (5) fixed seats provided in said building. (c) For hospitals, at least one (1) parking space for each two (2) beds' capacity, including infants' cribs and children's beds. (d) For medical and dental clinics, at least ten (10) parking spaces. Three (3) additional parking spaces shall be furnished for each doctor or dentists having offices in such clinic in excess of three (3) doctors or dentists. (e) For tourist courts, apartments, and apartment motels, at least one (1) parking space for each individual sleeping or living unit. For hotels and apartment motels at least one (1) parking space for each two (2) sleeping rooms, up to and including the first twenty (20) sleeping rooms, and one (1) parking space for each three (3) sleeping rooms over twenty (20). (f) For mortuaries and liquor stores, at least thirty (30) parking spaces. (g) For mobile home parks, at least one (1) on-site parking space, per dwelling unit, with a minimum area of twenty-two (22) feet by ten (10) feet. Each off-street parking space shall be surfaced with durable materials for all-weather use.

[USE BY SPECIAL EXCEPTION]

- 3-1-11. Rooming and boarding houses.
- 3-1-12. Tourist homes.
- 3-1-13. Mortuaries.
- 3-1-14. Rest or convalescent homes.
- 3-1-15. Nursing homes.
- 3-1-16. Clubs and lodges.
- 3-1-17. Professional offices.
- 3-1-18. General Hospitals.
- 3-1-19. Accessory buildings permitted as defined, however, garages or other accessory structures such as carports, porches, and stoops attached to the main building shall be considered as part of the main building. No accessory building may be closer than three (3) feet to any property line.
- 3-1-20. Public utilities: poles, lines, distribution transformers, pipes, meters, and other facilities necessary for the provision and maintenance of public utilities, including water and sewage facilities.
- 3-1-21. Business signs not exceeding six (6) square feet in area per side and not more than two (2) sides.
- 3-1-22. Church bulletin boards and church identification signs for church activities only not exceeding 12 square feet in area.
- 3-1-23. Home occupation sign not to exceed two (2) square feet in area.
- 3-1-24. Directional signs not to exceed two (2) square feet.
- 3-1-25. Real estate signs not to exceed two (2) square feet and up to the property line.

3-1-26. Mobile Home Parks.

3-1-27. Temporary Signs not to exceed four (4) square feet.

3-2. AREA REGULATIONS

3-2-1. For lots containing or intended to contain a single permitted use served by public water and sewage disposal, the minimum lot area shall be five thousand (5,000) square feet, plus one thousand (1,000) square feet for each additional dwelling unit at ground level.

3-2-2. For lots containing or intended to contain a single-family dwelling not served by public water and sewerage systems, the minimum lot area shall be fifteen thousand (15,000) square feet. The required area for any such use shall be approved by the health official. The administrator may require a greater area if considered necessary by the health official. All other permitted uses shall be served by public water and sewerage systems.

3-3. SETBACK REGULATIONS

Structures shall be located twenty-five (25) feet or more from any street right of way which is fifty (50) feet or greater in width, or fifty (50) feet or more from the center of any street right of way less than fifty (50) feet in width. This shall be known as the "setback line". Landscaping may be required within any established or required front setback area. The plans and execution must take into consideration traffic hazards. Mobile home parks shall be located fifty (50) feet or more from any street right of way. This shall be known as the "setback line".

3-4. FRONTAGE REGULATIONS

For permitted uses the minimum lot width at the setback line shall be fifty (50) feet or more.

3-5. YARD REGULATIONS

3-5-1. Side-The minimum side yard for each main structure shall be ten percent (10%) of the lot width at the building line.

3-5-2. Rear-Each main structure shall have a rear yard of twenty-five (25) feet.

3-6. HEIGHT REGULATIONS

Buildings may be erected up to thirty-five (35) feet in height from grade except that:

3-6-1. The height limit for structures may be increased up to forty-five (45) feet and up to three (3) stories provided each side yard is ten (10) feet, plus one (1) foot of side yard for each additional foot of building height over thirty-five (35) feet.

3-6-2. A public or semipublic building such as a school, church, library, or hospital may be erected to a height of sixty (60) feet from grade provided that required front, side, and rear yards shall be increased one (1) foot for each foot in height over thirty-five (35) feet.

3-6-3. Church spires, belfries, cupolas, monuments, municipal water towers, chimneys, flues, flagpoles, television antennae and radio aerials are exempt. Parapet walls may be up to four (4) feet above the height of the building on which the walls rest.

3-7. SPECIAL PROVISIONS FOR CORNER LOTS

3-7-1. Of the two sides of a corner lot the front shall be deemed to be the shortest of the two sides fronting on streets.

3-7-2. The side yard on the side facing the side street shall be twenty (20) feet or more for both main and accessory building, except as otherwise shown on the setback map.

3-7-3. Landscaping may be required within any established or required front setback area. The plans and execution must take into consideration traffic hazards. Landscaping may be permitted up to a height of three (3) feet, and to within fifty (50) feet from the corner of any intersecting streets.

3-8. MOBILE HOME PARK REGULATIONS

3-1-8. No mobile home park shall be located within fifty (50) feet of an existing residence unless and until written consent has been obtained by the owner of the mobile home park from the owner of that residential property.

3-8-2. Prior to the actual development of a mobile home park the governing body can require that the developer submit a sketch development plan to the city planning commission and the city council for approval. The plan shall be prepared at 1"=100' or 1"=200' and shall depict the following items:

3-8-3. Location and size of the mobile home park.

3-8-4. Location and size of the mobile home lots.

3-8-5. Location and width of the proposed internal streets, driveways and common walkways.

3-8-6. Location and size of the proposed sanitary facilities.

3-8-7. Location and size of the proposed service building and recreation area.

3-8-8. The mobile home park shall be developed in accordance with the approved plan.

3-8-9. The mobile home park shall be well-landscaped.

3-8-10. Each mobile home lot shall meet the following minimum requirements:

3-8-11. Minimum lot area - five thousand (5,000) square feet.

3-8-12. Minimum lot width - fifty (50) feet.

3-8-13. Minimum lot length - one hundred (100) feet.

3-8-14. Minimum yard requirements - front, twenty (20) feet; rear, twenty (20); side, twelve (12) feet on each side.

3-8-15. Maximum height of mobile home shall exceed fourteen (14) feet in height except utility poles and t.v. and radio aerials.

3-8-16. Street improvements

Surfaced streets and pedestrian walkways, having a minimum right-of-way width of thirty (30) feet, shall be provided within the mobile home park to accommodate vehicular and pedestrian movement. The minimum right-of-way width shall include twenty (20) feet for moving lanes, eight (8) feet for parallel guest parking and two (2) feet for pedestrian use. All streets shall be constructed in accordance with the construction standards of the Virginia Department of Highways.

3-9. SITE PLAN

Detailed site plans may be required of the developer by the zoning administrator prior to construction.

ARTICLE 4. BUSINESS, NEIGHBORHOOD, DISTRICT B-1

Statement of Intent

The primary purpose of this district is to establish and protect a business district that will serve the surrounding residential districts. Traffic and parking congestion is to be held to a minimum to protect and preserve property values in the surrounding residential districts, and insofar as possible all neighborhood business development shall take place in a limited business district. A desirable minimum area of such a district is one block in frontage and should include only such activities as are necessary for the operation of a normal household.

USE REGULATIONS

In Business District B-1, structures to be erected or land to be used shall be for one or more of the following uses:

4-1. USE BY RIGHT

4-1-1. Grocery stores.

4-1-1a. Banking institutions.

4-1-2. Bake shops.

4-1-3. Drug stores.

4-1-4. Pick-up laundry and drycleaning stations.

4-1-5. Coin operated laundries.

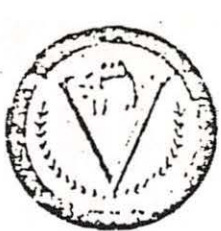
4-1-6. Barber and beauty shops.

4-1-7. Gift shops.

4-1-8. Clothing shops.

4-1-9. Appliance stores.

4-1-10. Swim Clubs



TOWN OF VINTON

VINTON, VIRGINIA 24179

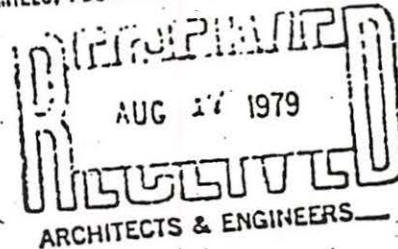
(703) 982-0230

August 16, 1979

RONALD H. MILLER
TOWN MANAGER



MILLS, OBENCHAIN, OLIVER & WEBB, INC.



Mills, Obenchain, Oliver & Webb, Inc.
P. O. Box 213
Blacksburg, Virginia 24060

Attn: Mr. Mills

Subject: Project No. 051-35321-PM/L8, Northampton

Dear Mr. Mills:

In response to Mr. Samuel H. Shull's letter to you in reference to the above project, below are our comments which have been requested by the HUD office:

Utilities

The following utilities adequately serve the proposed occupants:

- Water Supply system
- Sanitary sewer system
- Storm sewer system
- Solid waste disposal

Paved access to site - will be the responsibility of the developer under the Town's sub-division ordinance.

Impact on Existing or Planned Community Facilities - Minimum impact.

Impact on Energy Resources - Minimum impact on energy resources. This type of housing will certainly promote inefficient energy utilization.

We feel, in the Town of Vinton, this type of housing is needed and will serve our community well.

Sincerely,

Ronald H. Miller
Town Manager

RHM/cr

ORDINANCE NO. 400

At a regular meeting of the Town Council of the Town of Vinton on February 5, 1980, at 7:30 p. m., held at the Municipal Building in the Town of Vinton, Virginia.

WHEREAS, the Town Council desires to foster the orderly growth and development of the limited real property set aside for multi-family dwellings within the limits of the Town of Vinton; and,

WHEREAS, such real property so restricted for multi-family dwelling constitutes the only remaining land upon which such units may be constructed; and,

WHEREAS, the Town Council expresses grave concern regarding an improper, short-sighted or diminutive use of said property in light of population density and economic factors of the Town and surrounding governmental entities; and,

WHEREAS, the very tenets of the Town ordinances regarding real property dictate that proper use and construction be tantamount unrestricted development.

NOW, THEREFORE, BE IT ORDAINED BY the Town Council of the Town of Vinton that no multi-family dwellings, as defined by the Town Code and Zoning Ordinance, shall be constructed within the limits of the Town of Vinton, where the proposed construction is ten or more individual, residential units, upon one or more contiguous parcels of land, regardless of ownership, until such

time as a petition is filed and the proposed said project is brought before the Town Council for approval. The same shall be hereafter referred to as a "conditional zoning policy for ten or more multi-family dwelling units."

BE IT FURTHER ORDAINED that an emergency exists and this Ordinance be in force and effect upon its passage.

TOWN OF VINTON

By: _____

Mayor

ATTEST:

Clerk

IN?

796

TOWN OF VINTON, VIRGINIA

IE

6-30

1982

APPLICATION FOR BUILDING PERMIT

FEE \$ 1520.00

Permit # 796 Sign Permit # _____ Mechanical Permit # _____Issued To NORTH HANOVER APARTMENTS (Owner)Issued To FRANK AND CAROLYN, INC. (Contractor)Building 50 UNIT APARTMENT COMPLEXAddress 5 BLDGS. SEE PLANS TO BE ASSIGNED LATER

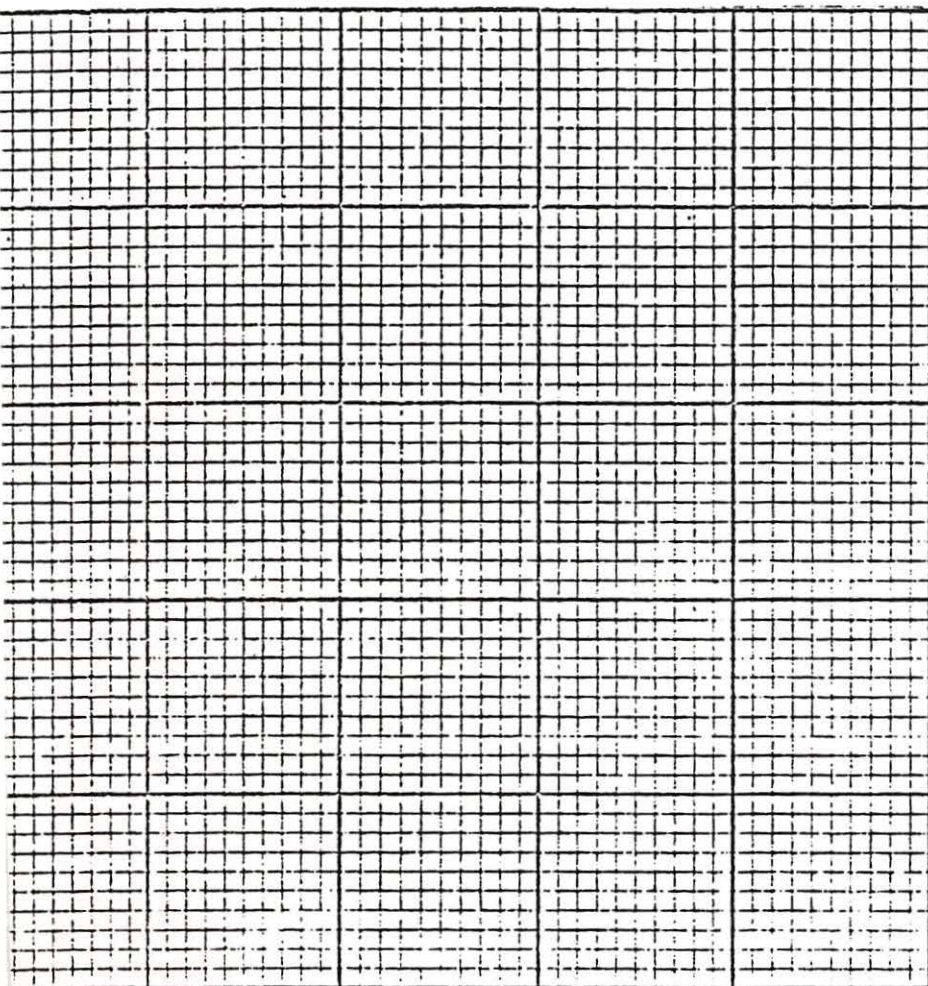
Block _____ Section _____ Subdivision _____

the _____ Side _____, Between _____ and _____

Zoning R-2 Type of Structure FRAME AND BRICKFor Rent ☒ Occupied by Owner ☐

PLOT PLAN of INVOLVED PARCELS

(back of lot)



(front of lot)

DESCRIPTION OF WORK

New ☒ Alteration _____ Addition _____

Demolition _____

Use APTS. Type Construction FRAME-BRICKNo. Floors 2 & 3 No. Rooms _____No. Apartments 50 Fin. Base. Rms. _____

Finished Attic Rooms _____

Garage/C.P. _____ Type Heat GASFireplaces NONE Height of Bldg. at Apex 35'Off Street Parking Spaces 12

If Apart. (2 Spaces Off Street Per Unit?) _____

Estimated Cost \$ 922,600.00 (Labor & Materials)

Final Cost \$ _____

Permit Fee \$ 1520.00

Information on General Contractor _____

Name FRANK & CAROLYN, INC.Address (Mail) P.O. Box 4175City ROCKWELL State VA Zip 24081Telephone No. 704 4415 Local License _____Tel. No. _____ Va. Lic. No. 7851

Local Lic. _____ Vtn. Bond No. _____

EXHIBIT D

DESCRIPTIONS, CONDITIONS & COMMENTS

COUNCIL WILL HAVE TO
 ACT ON THIS APPLICATION
 OLD. No. 400
 DATED FEB. 5, 1980
 [Signature]
 6-30-80

SUBCONTRACTORS

Type	Electrical	Plumbing - Heat	Other
Name			
Address			
City			
Telephone			

WATER & SEWER INFORMATION

All Connection Fees Must Be Paid Before A Building Permit Is Issued. Date Approved

Water Public ☒ Well 19__
 Sewer Public ☒ Septic Tank 19__

ATTEST

I hereby submit this application for a Building Permit, and certify that I will observe all requirements as indicated by the Zoning Ordinance, Building Code, and Town Code of the Town of Vinton, Virginia. I also certify that all information contained on this application is true and accurate.

Signed [Signature]
 (Owner or Authorized Contractor)

Application Approved _____ Rejected _____

Date _____, 19__

By _____

Sec. 11. Council to act by ordinance or resolution; confinement of ordinance to one subject.

Except in dealing with parliamentary procedure the council shall act only by ordinance or resolution, and with the exception of ordinances making appropriations, or authorizing the contracting of indebtedness, shall be confined to one subject.

Sec. 12. Introduction of ordinances in writing; enacting clause of ordinances.

(a) Each proposed ordinance, or resolution, shall be introduced in a written or printed form, and the enacting clause of all ordinances passed by the council shall substantially be, "Be it ordained by the council of the Town of Vinton, Virginia."

(b) No ordinance, or resolution having the effect of an ordinance, or resolution suspending an ordinance, unless it be an emergency measure, shall be passed until it has been read at two meetings not less than one week apart, one of which shall be a regular meeting and the other of which may be either an adjourned or called meeting, provided the requirement of a second reading by the affirmative vote of three members of the council may be confined to the reading of the title only. Any ordinance or resolution read at one such meeting may be amended and passed as amended at the next meeting, provided that the amendment does not materially change the ordinance. No ordinance shall be amended unless such section or sections as are intended to be amended shall be re-enacted. The ayes and noes shall be taken and recorded upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the council. Except as otherwise provided in this Charter an affirmative vote of a majority of the members elected to the council shall be necessary to adopt any ordinance or resolution.

In case of a tie vote, the presiding judge of the circuit court of Roanoke County shall appoint a person designated as a tie-breaker to break the tie. (Acts 1936, ch. 423, § 12; Acts 1956, ch. 263; Ord. No. 299, 2-15-72.)

Sec. 13. When ordinances to take effect; emergency measures.

(a) No ordinance passed by the council shall take effect until at least thirty days from the date of its passage except that the council may, by the affirmative vote of three of its members, pass emergency measures to take effect at the time indicated therein.

(b) An emergency measure is an ordinance for the immediate preservation of the public peace, property, health or safety, or providing for the daily operation of a municipal department. The emergency shall be stated in every such measure. Ordinances appropriating money may be passed as emergency measures, but no measure selling or conveying any real estate or making a grant, renewal, extension of a franchise or other special privilege or regulating the rate to be charged for its service by any public utility, shall ever be so passed. (Acts 1936, ch. 423, § 13; Acts 1956, ch. 263.)

FILED IN THE CLERK'S OFFICE
CLERK OF DISTRICT COURT, WYOMING COUNTY
AUG 7 1980
J. R. Duckland
(28) CLERK

RESPONSIVE PLEADING

In response to the motion for judgment, the defendant,
by counsel, states:

FACTUAL ALLEGATIONS

1. That the defendant is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 1 of the motion for judgment.
2. That the allegations contained in paragraph 2 of the motion for judgment are true.
3. That the allegations contained in paragraph 3 of the motion for judgment are true.
4. That the allegations contained in paragraph 4 of the motion for judgment are true.
5. That the allegations contained in paragraph 5 of the motion for judgment are specifically denied.
6. That the defendant is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 6 of the motion for judgment.
7. That the defendant is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 7 of the motion for judgment.
8. That the allegations contained in paragraph 8 of

the motion for judgment are specifically denied.

9. That the allegations contained in paragraph 9 of the motion for judgment are specifically denied.

10. That the allegations contained in paragraph 10 of the motion for judgment are specifically denied.

11. That the allegations contained in paragraph 11 of the motion for judgment are specifically denied.

12. That the allegations contained in paragraph 12 of the motion for judgment are specifically denied.

13. That the allegations contained in paragraph 13 of the motion for judgment are specifically denied.

14. That the allegations contained in paragraph 14 of the motion for judgment are true.

15. That the allegations contained in paragraph 15 of the motion for judgment are specifically denied.

LEGAL ALLEGATIONS

COUNT I

16. That allegations contained in paragraph 16, Count I, of the motion for judgment are specifically denied.

17. That the allegations contained in paragraph 17, Count I, of the motion for judgment are specifically denied.

18. That the allegations contained in paragraph 18, Count I, of the motion for judgment are specifically denied.

COUNT II

19. That allegations contained in paragraph 19, Count II, of the motion for judgment are specifically denied.

20. That the allegations contained in paragraph 20,

Count II, are specifically denied.

21. That the allegations contained in paragraph 21, Count II, subsection (a) and (b) are specifically denied.

22. That the allegations contained in paragraph 22, Count II, are specifically denied.

23. That the allegations contained in paragraph 23, Count II, are specifically denied.

COUNT III

24. That the allegations contained in paragraph 24, Count III, are specifically denied.

25. That the allegations contained in paragraph 25, Count III, are specifically denied.

COUNT IV

26. That the allegations contained in paragraph 26, Count IV, are specifically denied.

27. That the allegations contained in paragraph 27, Count IV, are specifically denied.

28. That the allegations contained in paragraph 28, Count IV, are specifically denied.

COUNT V

29. That the allegations contained in paragraph 29, Count V, are specifically denied.

30. That the allegations contained in paragraph 30, Count V, are specifically denied.

31. That the allegations contained in paragraph 31, Count V, are specifically denied.

COUNT VI

32. That the allegations contained in paragraph 32, Count VI, are specifically denied.

33. That the allegations contained in paragraph 34, Count VII, are specifically denied.

COUNT VII

34. That the allegations contained in paragraph 35, Count VII, are specifically denied.

35. That the allegations contained in paragraph 36, Count VII, are specifically denied.

NOW having fully answered, the defendant would respectfully move the Court that this suit be dismissed with their costs in this behalf be expended.

By: 
Counsel

Frank G. Selbe III
Vinton Town Attorney
227 S. Pollard Street
Vinton, Virginia 24179

CERTIFICATE OF MAILING

I, Frank G. Selbe III, do hereby certify that a true and correct copy of the foregoing Responsive Pleading was mailed to William B. Poff, Esquire; Woods, Rogers, Muse, Walker & Thornton, Post Office Box 720, Roanoke, Virginia 24004, on this the 7th day of August, 1980.


Frank G. Selbe III

OPINION OF THE COURT
Chancery No. 334-1980

The bill of complaint for declaratory judgment was filed by the plaintiffs on July 17, 1980, seeking declaratory judgment pursuant to Section 8.01-184, et. seq. The bill alleged that Falcun owned land in the Town of Vinton, and had granted an option to Fralin & Waldron, Inc., to purchase the property, and recited that the property was zoned R-2; that multiple dwellings were permitted; that plans were made relying thereon; that the Town Manager had given a favorable reply, but that opposition developed, and, on February 1, 1980, emergency Ordinance No. 400 was adopted on first reading by the Council of the Town of Vinton, without having referred the matter to the Planning Commission and without having a public hearing; that on June 30, 1980, an application was made to the Town Manager for a permit to proceed with construction of multiple homes; that the Town Manager referred the matter to the Council of the Town of Vinton, pursuant to Ordinance No. 400; that on July 15, 1980, the Council of the Town of Vinton refused the permit, with no specific reasons having been given. The plaintiffs contended that the Council had no authority to so proceed; that Ordinance No. 400 was not adopted properly, as no emergency

did exist; that the ordinance was contrary to Section 13-B of the Town of Vinton Code; that Ordinance No. 400 was not adopted pursuant to Article 13 of the Zoning Ordinance, nor Section 15.1-493 of the Virginia Code; that the matter had not been referred to the Planning Commission for consideration, nor a public hearing had. Accordingly, it was contended that Ordinance No. 400 was spot downzoning, was ministerial and not legislative, and no standards or classifications were given. The bill of complaint prayed that Ordinance No. 400 be adjudicated to be null and void; that the action of Council in rejecting the permit be declared likewise null and void, and that the Town be enjoined to prohibit the plaintiffs from proceeding in a normal manner in accordance with the Zoning Ordinance.

A general denial was filed by the Town of Vinton on August 7, 1980. Thereafter, notice was given by the Town Council to take depositions on August 18, 1980. Notice was given by counsel for the plaintiffs that a decree would be presented on August 22, 1980, carrying out the prayer of the bill of complaint. Thereafter, a motion to dismiss was filed by counsel for the Town of Vinton on September 17, 1980, and, on this date, the Court heard evidence ore tenus presented by the plaintiffs and the Town of Vinton.

Thereafter, counsel for the Town of Vinton requested time to reply to the brief filed herein by counsel for the plaintiffs on August 15, 1980, and which reply brief, on behalf of the Town, was filed on October 7, 1980. Response to said brief was filed by counsel for the plaintiffs on October 21, 1980.

Finally, the matter, pursuant to the request of counsel for the Town of Vinton, was argued by counsel before

the Court on November 10, 1980.

Counsel have filed with the Court, as above indicated, elaborate and excellent briefs in support of their respective positions. The Court has carefully reviewed all of the pleadings and proceedings, and particularly the briefs filed herein.

The facts, as related in the initial brief of counsel for the plaintiffs, have not been contested, and it, therefore, appears that the primary controversy in this matter is the validity of Ordinance No. 400 passed as an emergency measure by the Town of Vinton Council, and whether it abrogated the rights of the plaintiffs to proceed with the construction of multiple housing under R-2 of the Zoning Ordinance of the Town of Vinton. It is unquestioned that the Town of Vinton Council, both under its charter and the general laws, have the right to enact a zoning and planning ordinance. This was duly done, and exhibits containing these were filed in these proceedings. It is likewise conceded that zoning normally is a legislative power, which has been and can be delegated to cities, towns and counties, and that the statutes in Virginia specifically authorize this. Section 15.1-427, et. seq.

However, after the adoption of the comprehensive plan and ordinance, amendments thereto must be made in the same manner as required for the original plan. Section 15.1-453. See also 21A M.J. 254, et seq.; Garrison v. City of Fairmont, 150 W. Va. 498; 147 S.E. (2d) 397 (1966).

Section 15.1-493 of the Code provides for preparation and adoption of zoning ordinances, maps and amendments thereto, and it is specifically contained in said Section that no zoning ordinance shall be amended or reenacted unless the governing

body has referred the proposed amendment or reenactment to the local commission for its recommendations.

"The Virginia statute, which expressly empowers the board of supervisors to make changes in a proposed amendment to a zoning ordinance, imposes only one qualification: That the board shall not pass an amendment that rezones land to a more intensive use classification than that described in the original public notice, without first giving the statutory notice of the proposal to rezone the larger tract and holding an additional public hearing." See 21A M. J., page 255.

"A property owner whose land is involved is entitled to be accorded the same treatment and to have the same factors considered whether the decision is made by an administrative body, such as a board of zoning appeals, or by a legislative body, such as a city council or board of supervisors. Action by either must be taken within the framework of the zoning ordinances and state statutes on zoning, because a special exception and a use permit involve land use, and that is what zoning is all about. Therefore, their actions must be measured by zoning considerations, and not merely by whether such actions are reasonable or are arbitrary and capricious." 21A M.J., page 263.

"With respect to the validity of a piecemeal downzoning ordinance, when an aggrieved landowner makes a prima facie showing that since enactment of the prior ordinance there has been no change in circumstances substantially affecting the public health, safety or welfare, the burden of going forward with evidence of such mistake, fraud or changed circumstances shifts to the governing body. If the governing body produces evidence sufficient to make reasonableness fairly debatable, the ordinance must be sustained. If not, the ordinance is unreasonable and void.

"However, a statute or ordinance may not, under the guise of the police power, impose arbitrary or unreasonable restrictions upon the use of private property or the pursuit of useful activities." 21A M.J., pages 269, 270.

It has been held that "an amendment to a zoning ordinance requiring a developer to build at least 15 percent of the dwelling units as low or moderate income housing within definitions and at prices promulgated from time to time by administrative agencies exceeds the authority granted by the enabling act to the local governing body because it is socio-economic zoning and attempts to control compensation, in violation of the Virginia Constitution." 21A M.M., page 274. See also in this connection Fairfax County v. DeGroff, 214 Va. 235, 198 S.E. (2d) 600 (1973).

The effect of Ordinance No. 400 is to amend the procedure provided for in the Zoning Ordinances of the Town of Vinton without complying with the necessary steps as set out not only in the ordinance, but in the Code of Virginia, for the adoption of amendments. This requires, under both, notice of a public hearing and a public hearing in connection with the proposed amendment before it can be adopted.

Ordinance No. 400, declared to be an emergency, nevertheless, is an effort to change the procedure and to down-zone the property in question. There is no restriction as to the type or number of multiple houses permitted under R-2 of the Zoning Ordinance, and, except for Ordinance No. 400, this has not been changed to the present time.

Much discussion is contained in the briefs filed

herein as to Ordinance No. 400 being adopted as an emergency measure. The Court agrees that where the charter of the Town of Vinton prescribes the emergency should be stated to exist and that this would certainly include a statement of what the emergency is. However, if conceding that the ordinance was enacted as an emergency measure, this does not change the character of the ordinance in undertaking to amend the zoning ordinance without first taking the required steps to do so.

The Court, therefore, adopts the views of counsel for the plaintiffs, as set forth and contained in the original memorandum filed in support of the bill of complaint and in the plaintiffs' response to the defendants' brief, and concurs in the comments and authorities therein set forth. It is, therefore, the opinion of the Court that Ordinance No. 400 of the Town of Vinton is null and void, and that the action of the Council of the Town of Vinton, acting thereunder, has unreasonably, arbitrarily and capriciously denied the plaintiffs requested building permit, and that the plaintiffs should be granted the relief requested in the bill of complaint, and that the defendants should be enjoined to issue a permit to the plaintiffs in the normal manner upon the plaintiffs' compliance with the usual building ordinance and other ministerial requirements, as set forth and contained in the Town of Vinton Zoning Ordinance.

A proper decree may be presented by counsel for the plaintiffs, setting out the rulings herein contained, for entry, after first having it presented to counsel for the defendants for endorsement.

Should a conference be desired concerning such decree,
one will be arranged upon request.

F. L. Hofack
Judge

November 14, 1980

FINAL DECREE

Chancery Action No. 334-1980

This declaratory judgment action is before the Court for decision on the basis of plaintiffs' bill of complaint, defendants' answer, defendants' motion to dismiss and plaintiffs' motion for entry of a decree. Also before the Court are exhibits and evidence introduced at a hearing held on or about September 17, 1980. The Court has also been provided with memoranda of law by all parties and has heard oral argument by counsel.

After consideration of the foregoing, it is ADJUDGED, ORDERED and DECREED as follows:

- (1) That defendants' motion to dismiss is denied;
- (2) That Ordinance 400 adopted by the defendants on or about February 5, 1980 is null and void for the reasons set forth in this Court's written opinion dated November 14, 1980;
- (3) That the action of defendants at a meeting held on or about July 15, 1980 denying plaintiffs a building permit for their project known as Northampton is also null and void because taken pursuant to invalid Ordinance 400 and because of the reasons set forth in this Court's written opinion dated November 14, 1980;
- (4) That the written opinion of this Court dated November 14, 1980 is hereby incorporated by reference in this decree and hereby made part of the record in this action;
- (5) That the defendant Town of Vinton, Virginia, including its ministerial representatives, is hereby enjoined and directed to process plaintiffs' building permit application for the

F. L. H.

Northampton project through the regular administrative or ministerial channels by requiring only that plaintiffs comply with the usual ordinances and ministerial requirements;

(6) That defendants are enjoined from interfering in any way with the normal processing of plaintiffs' application for a building permit for the Northampton project; and

(7) That plaintiffs shall recover their taxable court costs from defendants.

The Court having been advised of defendants' intention to prosecute an appeal of this decision, it is further ORDERED that execution of the provisions of this Final Decree shall be suspended pursuant to §8.01-676 of the Code of Virginia, as amended, so long as defendants timely prosecute their appeal.

The Clerk is directed to mail certified copies of this Final Decree to counsel for all parties and to strike this cause from the docket.

Enter this 1st day of
December, 1980.

F. L. Holack
Judge

I request entry of this Final Decree:

[Signature] p.q.

Seen and objected to:

[Signature] p.d.

ASSIGNMENTS OF ERROR

The appellants assign as error the action of the trial court, as follows:

1. The trial court erred in holding that Ordinance No. 400 was an invalid amendment of the zoning ordinance because its enactment did not comply with the notice, hearing, and referral provisions of Section 15.1-453 and 15.1-493 of the Code of Virginia and the Town's zoning ordinances.

2. The trial court erred in holding that Ordinance No. 400 was an invalid amendment of the zoning ordinance even if it was enacted as an emergency measure pursuant to Section 12 of the Town Charter.

3. The trial court erred in holding that the Town Council acted unreasonably, arbitrarily, and capriciously under Ordinance No. 400 in denying a building permit.

4. The trial court erred in holding that Ordinance No. 400 was invalid as a piecemeal downzoning of property zoned R-2.

5. The trial court erred in holding that Ordinance No. 400 did not include a sufficient statement of an emergency.

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26343

VIRGINIA:

IN THE CIRCUIT COURT
OF ROANOKE COUNTY

SUPREME
RECEIVED
FEB 24 1981
CLERK
RICHMOND, VIRGINIA

FALCUN CORPORATION :

& :

FRALIN & WALDRON, INCORPORATED, :

Plaintiffs, :

-VS- :

TOWN OF VINTON, ET AL, ✓ :

Defendants :

SEPTEMBER 17, 1980
2:00 P.M.

BEFORE: THE HONORABLE FRED L. HOBACK

NOTARIES PUBLIC
MEMBERS
NATIONAL SHORTHAND
REPORTERS ASSOCIATION
VIRGINIA SHORTHAND
REPORTERS ASSOCIATION

CENTRAL VIRGINIA REPORTERS
P. O. BOX 2603
ROANOKE, VIRGINIA 24010

TELEPHONE
387-3831
AREA CODE 703

Received under seal
FILED IN THE CLERK'S OFFICE
CIRCUIT COURT OF ROANOKE COUNTY
VA, DEC 29 1980 19
Charles W. Wilke CLERK

APPEARANCES:

WOODS, ROGERS, MUSE, WALKER & THORNTON, ESQS.
Roanoke, Virginia
BY: William B. Poff, Esq.

Counsel on behalf of Plaintiffs

CRANWELL, FLORA & SELBE, ESQS.
Roanoke, Virginia
BY: Frank G. Selbe, III, Esq.

WILLIAMS, MULLEN, CHRISTIAN, POLLARD & GRAY, ESQS.
Chesterfield, Virginia
BY: Frederick T. Gray, Esq.

Counsel on behalf of Defendants

* * * * *

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
N. Harrison Stoneman	5	29	--	--
Roy G. McCarty, Jr.	40	46	54	57
Charles R. Hill	58	--	--	--
Plaintiffs Rest	35			
Defendants Rest	64			

N. HARRISON STONEMAN

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

DIRECT EXAMINATION

BY MR. POFF:

Q Mr. Stoneman, would you state your name, please?

A My name is Harrison Stoneman and I am Vice-President of Fralin and Waldron, Incorporated.

Q Mr. Stoneman, how long have you occupied the position of Vice-President with Fralin and Waldron?

A Approximately five years.

Q Mr. Stoneman, are you familiar with the corporation known at the Falcun Corporation which is the Plaintiff in this case?

A Yes, it is a corporation owned by three individuals: Mr. W. E. Cundiff, Mr. Horace Fralin and Mr. Elbert Waldron.

I think Mr. Cundiff is President and Mr. Waldron is Vice-President and Mr. Fralin is Secretary-Treasurer.

~~BY MR. POFF:~~

Q Mr. Stoneman, does the Falcun Corporation own any property in the Town of Vinton?

A Yes, it owns approximately 130 acres of land in the Town of Vinton.

Q And what relationship does Fralin & Waldron have to the property of the Falcun Corporation, if you know?

A Aside from the ownership entity, we have intended to develop an apartment complex on that property.

Q And did Fralin & Waldron have any ownership interest in the property owned by the Falcun Corporation in the Town of Vinton?

A We had an option to purchase.

Q And do you still have that option?

A Yes.

Q Do you know how this property in the Town of Vinton owned by the Falcun Corporation on which Fralin & Waldron has an option is zoned?

A Yes, it is zoned R-2, residential-family.

Q And how long have you been in the real estate development business?

A Myself?

Q Yes, sir.

A Since approximately 1962. 41

2 Q Approximately 18 years?

3 A Excuse me, 1972; I am sorry.

4 Q Can you tell us, Mr. Stoneman, what uses you
5 can make of your property in Vinton under an R-2 zoning
6 ordinance?

7 A For multi-family residences, I believe it
8 allows somewhere along about eight units to the acre and
9 that is where our intended use is, for the development of
10 a multi-family apartment project.

11 Q Was that property zoned R-2, or do you know,
12 at the time that the Falcun Corporation acquired it?

13 A Of that I am not sure.

14 Q Was it zoned R-2 at the time that the Falcun
15 Corporation took an option to purchase it?

16 A Yes, it was.

17 MR. POFF: We have stipulated the ordinances
18 into evidence but I think that it would be well for
19 us to provide the Court with a copy of some of the
20 pertinent parts and we will provide those as we
21 go along.

22
23 BY MR. POFF:

24 Q Mr. Stoneman, have you had, at anytime
25 prior, an occasion to deal with the Town of Vinton or has

your company had prior dealings with the Town personnel in connection with building permits?

A Yes, we have developed and built several projects in the Town of Vinton over the years and three projects come to mind: There are some townhouses for sale called South Hampton which I believe was 108 units in the same general vicinity of this property.

Now I might add, also that we have built a 120-bed nursing home better known as the Camelot Hall Nursing Home in Vinton and, in addition to that, we have developed an elderly apartment project better known as Clearyview Manor in the same area of South Hampton.

Q Do you know when the South Hampton project was completed?

A I am guessing at the date but I am going to say back around 1962.

Q Now Mr. Stoneman, we have now before us some regulations and I will ask the Reporter to mark the use regulations of, I guess, Section Three of the Town of Vinton's zoning ordinances as Plaintiff's Exhibit Three for identification.

(The five-page document entitled "Use Regulations", as above described, was marked as Plaintiff's Exhibit Number Three,

2 for identification.)

3
4 BY MR. POFF:

5 Q I now show you what has been marked as
6 Plaintiff's Exhibit Number Three for identification, which
7 purports to be the R-2 portion of the Vinton Town Zoning
8 Ordinance.

9 Are you familiar with that, sir?

10 A Yes, sir.

11 Q And in that ordinance, does, specifically,
12 Section Three point one point three hyphen five refer to
13 the multi-family dwellings?

14 A That is correct.

15 MR. POFF: If Your Honor, please, by
16 stipulation, I would move the receipt of this
17 into evidence as Plaintiff's Exhibit Number Three.

18 THE COURT: So ordered.

19 (The document previously described
20 as Plaintiff's Exhibit Number Three, for
21 identification, was entered into the Record
22 as Plaintiff's Exhibit Number Three.)
23
24
25

BY MR. POFF:

Q What has been your experience, Mr. Stoneman, in connection with the processing of these earlier building permits?

How were they processed, how did you go about filing for them and how were they processed?

A It was handled through the Town Manager's authority when an application was made through that office. I am going to assume that the various other building inspectors within the Town of Vinton would make reviews of the plans to make sure that they complied with the basic building code and things of that nature and then once those requirements were satisfied, a building permit was issued.

Q And have you ever been required to go to the Town Council for approval of a building permit?

A No, sir; not to my knowledge.

Q What plans, if any, Mr. Stoneman, did Fralin & Waldron and you make to develop the property that you have referred to as North Hampton?

A Well, approximately a year and a-half ago, or maybe closer to a year and three-quarters, the Department of Housing and Urban Development ran what they called a notice of fund availability wherein they had set aside

certain funds for multi-family projects such as this for given areas and it was in the form of a private advertisement and solicitation.

In response to that notice, we submitted two project plans: One for 100 units of elderly housing and one for 50 units of family housing, hoping to get both.

In the course of events, when HUD finally awarded the project, there were no elderly units available or funds left to fund our elderly proposal but there were 50 units of family housing available and HUD so notified us that the project had, in fact, been funded.

Q Do you have to get any approval of any Governmental bodies before you can get HUD's approval for a project such as this?

A Yes, before the Government or, in this case, HUD can fund a project, it has to go through what they call an A-95 review process.

This was something that was set up to insure that the Federal funds or that the Federal guaranties were never utilized in a situation where it could do harm to the environment, I think it was an act of Congress.

In the course of that, HUD's agent would be the Planning District Commission and in this case, it was the Fifth Planning District.

The Fifth Planning District becomes what they call the clearing house and, therefore, the Fifth Planning District Commission notified the Town of Vinton that, in fact, HUD was considering funding a project and they solicited comments back at that time and then they would make their final recommendations back to the Department of Urban and Housing Development under those guidelines.

Q Is it the Fifth District Planning Commission?

A The Fifth Planning District Commission.

Q Does it have a representative from the Town of Vinton on it?

A At that time when these two projects that I have been discussing came up, they did; yes, sir.

Q At that time, do you know who that representative was?

A It was the late mayor, Gus Nicks.

Q And were these projects then approved by that body of which Mayor Nicks was a member?

A Yes, sir.

Q And I gather from what you said that they were ultimately approved by HUD?

A Yes, sir.

Q Now during the approval process, some efforts were made to consult with the Town of Vinton -- and I

will ask that this document be marked as Plaintiff's Exhibit Four, for identification.

(The three-page document, the face document thereof being a letter from the Department of Housing and Urban Development dated July 27, 1979 addressed to Mr. Elbert H. Waldron and Mr. Horace G. Fralin was marked as Plaintiff's Exhibit Number Four, for identification.)

BY MR. POFF:

Q Now I will ask you, Mr. Stoneman, if you can identify, for the Court, Plaintiff's Exhibit Four?

A This is the commitment letter from HUD after they had selected the project.

Basically what they do is to establish the land use intensity value which is what they did and then they invited us to submit final plans and specifications.

Q And does that require any further comment from the Town of Vinton at that point?

A Yes, it does. Once HUD does fund a project, they either, through our architects or through their Architects and Engineering Section, will solicit comments from the locality involved about the adequacy of the Public

Services such as Utilities, Sewer and everything else.

Q And do you recall what you did upon receipt of the document that has been marked as Plaintiff's Exhibit Four, for identification and which I will, at this time, move that it be received into evidence, subject to Senator Gray's objection.

MR. GRAY: No objection.

THE COURT: It will be received.

(The document previously marked as Plaintiff's Exhibit Number Four for identification, was entered into the Record as Plaintiff's Exhibit Number Four.)

BY MR. POFF:

Q What did you do upon receipt of that letter, Mr. Stoneman?

A At that time, HUD notified, I think, our architects that they wanted assurances of the water and sewer adequacies.

They wrote to our architects and our architects, in turn, relayed the information down to me and I, in turn, wrote to Mr. Ron Miller asking him to respond to the various questions that HUD had proposed.

MR. POFF: I will ask that this document

be marked as Plaintiff's Exhibit Number Five, for identification.

(The one-page document being a letter dated August 6, 1979 addressed to Mr. Ronald H. Miller, Town Manager over the signature of N. Harrison Stoneman was marked as Plaintiff's Exhibit Number Five, for identification.)

BY MR. POFF:

Q Will you identify, for the Court, Mr. Stoneman, that which has been marked as Plaintiff's Exhibit Number Five, for identification?

A It is my letter of August 6, 1979 to Mr. Ronald Miller, Town Manager for the Town of Vinton, Virginia in reference to the North Hampton Apartment Project and basically the letter says that in accordance with our telephone conversations, I was enclosing the material that we had received from HUD relative to this project and I was asking him if he would please respond to it.

Q Did Mr. Miller respond to that letter?

A Yes, he did.

MR. POFF: At this time I would ask that Plaintiff's Exhibit Number Five, for identification,

be received as Plaintiff's Exhibit Number Five.

THE COURT: So ordered.

(The document previously identified as Plaintiff's Exhibit Number Five, for identification, was entered into the Record as Plaintiff's Exhibit Number Five.)

MR. POFF: I ask that this document be marked as Plaintiff's Exhibit Number Six for identification.

(The one-page document being a letter on the letterhead of the Town of Vinton addressed to Mills, Obenchain, Oliver & Webb, Incorporated to the attention of Mr. Mills over the signature of Ronald H. Miller, Town Manager and dated August 16, 1979, was marked as Plaintiff's Exhibit Number Six, for identification.)

BY MR. POFF:

Q I will ask you if you can identify Plaintiff's Exhibit Six, for identification, and if you can, since the Court doesn't have this exhibit before him, if you would,

just advise the Court as to the substance of that letter.

A Well, it is a letter under the letterhead of the Town of Vinton from Mr. Ronald H. Miller, Town Manager and it is in regard to the same subject as I referred to in the earlier letter, the North Hampton Apartments.

Mr. Miller states that in regard to the questionnaire from HUD, that he would like to report that in regard to the following utilities, they are adequate to serve the proposed occupants and he lists the water supply system, the sanitary sewer system, the storm sewer system and the solid waste disposal system.

He also goes on to say that any extension of the road would be the responsibility of the developer.

He says that there would be a minimal impact on existing or planned community facilities and a minimal impact on energy resources and he also includes: "We feel, in the Town of Vinton, this type of housing is needed and will serve our community well."

Q On the basis of that response from the Town of Vinton, what did the Federal Government do?

A They continued processing this. Now there are really like three stages that you take: The initial stage is the stage which we were already past which is

mentioned in the prior correspondence and then you come to the conditional commitment and then you go on to your firm commitment.

MR. POFF: I would ask that this letter marked as Exhibit Number Six, for identification, be entered into the Record.

THE COURT: So ordered.

(The document previously marked as Plaintiff's Exhibit Number Six, for identification, was entered into the Record as Plaintiff's Exhibit Number Six.)

MR. POFF: I would ask that this document be marked as Plaintiff's Exhibit Number Seven, for identification.

MR. GRAY: I had not seen this before; could I inquire as to the purpose of Plaintiff's Exhibit Number Seven?

It is a letter from the architects to HUD.

MR. POFF: We are merely showing that they conveyed the information contained in Plaintiff's Exhibit Six by that letter to the HUD authorities.

MR. GRAY: Excuse me, Your Honor, Plaintiff's Exhibit Six is a letter from the Town Manager of

Vinton.

MR. POFF: Yes, sir; that is to the architects and the architects then transmitted that information to HUD.

MR. GRAY: We certainly have transmitted a great deal more information than is contained in this letter.

Now I would not mind stipulating that the architects told HUD what Mr. Miller had said but

MR. POFF: Well, we will withdraw Plaintiff's Exhibit Seven and not worry about that in light of that stipulation.

BY MR. POFF:

Q Mr. Stoneman, when did any problems or the problems that have led us here today begin to develop with the Town of Vinton with regard to North Hampton?

A I believe it was December a year ago when we had requested the Virginia Housing Department Authority to provide construction financing for this project.

The Virginia Housing, in response to our request, sent out what they call a sixty-day letter to the locality involved wherein they give the locality a chance

to object to the proposed interim financing or permanent financing of any project and I think that by State Code, they have to do that.

At that time, we first became aware that, in fact, there were some problems based on, I believe, just a newspaper briefing of the fact that there was considerable discussion at the Town Council when the matter came up.

Later, Mr. Fralin, and I believe I was with him, addressed the Town Council concerning this matter and the matter was deferred at that time, I believe, with no action being taken.

The next thing that we really knew was that this ordinance had been passed and I think it was in June when we had our complete plans and specifications in a 100 percent status that I made an appearance before the Vinton Town Council and requested that the building permit under that ordinance be approved.

Q Now Mr. Stoneman, when you are referring to the ordinance, you are referring to Ordinance Number 400?

A Yes.

MR. POFF: I will ask that this document be marked as Plaintiff's Exhibit Number Seven, for identification, since we have withdrawn the earlier Exhibit Seven.

(The two-page document entitled "Ordinance Number 400" was marked as Plaintiff's Exhibit Number Seven, for identification.)

BY MR. POFF:

Q Does Ordinance Number 400 indicate when it was adopted?

A February 5, 1980.

Q Now following February 5, 1980, Mr. Stoneman, what did you do in regard to applying for a building permit for North Hampton?

A Well, as I said, there would have been no point in applying for the building permit until our plans and specifications were 100 percent completed.

At the time that they were completed, I made a personal visit to Mr. Miller's office and applied for the building permit.

He, in turn, filled out the necessary application which I signed as a representative of Fralin & Waldron and he advised me that under Ordinance 400, that this matter would have to be reviewed by Town Council.

~~Q Did you apply for a building permit in this situation just as you had done in all of the other situations?~~

MR. GRAY: If Your Honor please, I think
that the question is leading.

BY MR. POFF:

Q What was the difference, Mr. Stoneman, in
the way that you went about applying for the building
permit for the North Hampton Apartment complex from the
earlier request or applications that Fralin & Waldron had
filed?

A Well, I ordinarily would not have applied
for the building permit myself, but because of the negative
comments that had been attributed to some of the members of
Council, I felt that I should go down personally and apply
for them myself.

Q And what difference was there, if any, as to
the place where you applied for the building application?

A There was no difference, to my knowledge.

Q Now why then did you, Mr. Stoneman, on a
later date - - and do you remember, incidentally, what
that date was that you appeared before the Town Council?

A I believe it was July 15.

Q Of this year?

A Yes, sir.

Q Why then did you appear before Town Council

2 on July 15, 1980?

3 A Well, we knew that the matter was going to
4 come up on the Town agenda with regard to the Ordinance and
5 in regard to our request for a building permit and so I
6 felt that really, as a duty to Council, that it would
7 behoove me to come and make a brief presentation of what
8 we were prepared to build, the rent structure, the type of
9 construction and to give them a little better background in
10 regard to what we intended to build.

11 Q And what did the Town Council do, if anything,
12 on July 15, 1980?

13 Incidentally, did you have anything to do
14 with its getting on the agenda, did you ask that it be
15 placed on the agenda?

16 A Yes, I sent that letter requesting that and
17 in consultation with Mr. Miller, he said that the filing
18 of the building permit would automatically get it on the
19 agenda and, of course, I requested that the matter be
20 heard as soon as possible.

21 Q And what was the gist of Ordinance 400 under
22 which you were proceeding?

23 A That no building permit could be issued in
24 access of ten units unless the matter was taken to the
25 Town Council for approval.

Q Now what action did Town Council take on July 15, 1980?

A They voted not to issue the building permit.

MR. POFF: At this time I would ask that Plaintiff's Exhibit Number Seven, for identification, be entered into the Record.)

(The document previously marked as Plaintiff's Exhibit Seven, for identification, was entered into the Record as Plaintiff's Exhibit Number Seven.)

MR. POFF: I would ask that the transcript that we have stipulated into evidence be marked as Plaintiff's Exhibit Number Eight, for identification.

(Thereupon, the transcript of the July 15, 1980 Town Council Meeting for the Town of Vinton, Virginia in regard to the North Hampton project was marked as Plaintiff's Exhibit Number Eight, for identification.)

BY MR. POFF:

Q Can you tell us and tell the Court very generally what was said by Council at the time of this meeting?

A Well, generally there was no specific reason given, to my knowledge, to turn it down. I do recall a comment by one council member that if he could be assured that only Vinton residents would be able to utilize these units, that he would probably vote in the affirmative in regard to the building permit but other than that, I don't recall any other conversation.

MR. POFF: All right, we would ask that that Exhibit Number Eight, for identification, be entered into the Record.

THE COURT: So ordered.

(The document previously marked as Plaintiff's Exhibit Number Eight for identification, was entered into the Record as Plaintiff's Exhibit Number Eight.)

MR. POFF: If Your Honor please, I think that to complete our testimony, we have the minutes, copies of the minutes of the Town of Vinton for various meetings at which this matter was discussed and I would propose, by stipulation, just to put those minutes in.

I would like to withdraw them for copying purposes.

from the Fifth District Planning Commission as to what they recommended and why they recommended it and who said what?

A Yes, sir; I believe we do have copies of the minutes.

Q Copies of the minutes?

A Yes, sir.

Q Do you have them with you?

A I don't know if I have them with me or not. They could possibly be in the file of the minutes from the Fifth Planning District.

MR. POFF: I don't believe they are.

MR. GRAY: All right.

MR. POFF: I am sure that the Town of Vinton has a copy of them.

MR. GRAY: I will find them.

BY MR. GRAY:

Q In Mr. Miller's letter to you, he dealt with certain specific things, I believe he dealt with the water supply, the sanitary sewer system, the storm sewer system and the solid waste disposal but he did not deal, in that letter, with the adequacy of the fire protection in that area; did he?

A I can't answer that. The reason why is that that was in response to a questionnaire and when you speak of water supply, that may be embraced in with that.

HUD was requesting this information and when they do request information, they are very elaborate and they do request a lot of information before they go forward with one of these projects.

Q I am not talking about what HUD says now, I am talking about what Mr. Miller said.

A That is what I am saying, he was responding to a HUD questionnaire and until I could see the exact questionnaire that HUD sent to him, I cannot answer that.

Q Did he deal with the adequacy of the schools?

A I believe so. It talks about, let me see if I can see the letter here again for a second. Well, it says that there would be a minimal impact on existing or planned community facilities and I would have to assume that schools are a community facility.

Q How about the traffic situation; did he deal with that?

A The only situation discussing roads or traffic is where he says that it would be our financial responsibility to extend the road into the project.

Q Well, speaking of the road into the project,

how many accesses do you have into this project?

A Just one right now off of Wyndham Drive.

Q There is just one access in there?

A At this time; yes.

Q And you mentioned the South Hampton project; is that served by that same access road?

A Yes.

Q And that is the only access road into South Hampton?

A Yes, sir.

Q How many units are in South Hampton, to your knowledge?

A I am thinking off the top of my head, that there are 108 but I could be wrong.

Q There are 108 units in there? What is the total acreage that you say that the Falcun Corporation has in that area?

A It is approximately 130 acres, I believe.

Q Now I don't want to be putting words into your mouth but, as I understood your testimony, Fralin & Waldron wasn't really intending to develop the whole 130 acres, not on this application, but that they have an option to purchase it all?

A Yes, sir.

Q And that they intend to develop it all?

A All or part; yes.

Q Has Fralin & Waldron exercised the option - -

A No, sir.

Q - - to this date?

A No, sir.

Q Now when did you apply for the building permit? You said that you took it in yourself and that you were advised at that time that Ordinance 400 was in effect and that it had been in effect for about six months?

A Yes, sir; I believe Mr. Miller, as I said, filled out the application for me to sign and I believe he made a notation that this would have to go to Council under Ordinance 400.

Q He made a notation on your application?

A Yes, sir.

Q And you saw him make it on there when he signed it; is that right?

A Yes, sir.

Q I would ask you if this is your application?

A Yes, that is my signature.

Q And the notation that you are speaking about is the one in the lower lefthand corner?

A Yes, sir; "Council will have to act on the

2 DIRECT EXAMINATION

3
4 BY MR. GRAY:

5 Q Would you state your full name and address,
6 please?

7 A Roy G. McCarty, Jr. and I live at 450
8 Jackson Avenue in the Town of Vinton.

9 Q And you are a member of the Town Council of
10 Vinton?

11 A Yes, sir.

12 Q How long have you been a member of the
13 Council?

14 A Two years and six months, approximately.

15 Q And how long have you lived in Vinton?

16 A I have been living in Vinton for 35 years;
17 there was a brief period of time when I was out of Town in
18 the Service.

19 Q So you were born in Vinton?

20 A Yes.

21 Q Did you hold any other positions with the
22 Town of Vinton prior to becoming a councilman?

23 A Yes, sir; I was a police officer there for
24 four years.

25 Q As a police officer, were you on the streets

2 of Vinton or were you in the office?

3 A Yes, sir; I was a patrolman for the whole
4 time that I was there and I pretty well watched the area
5 grow, the whole town.

6 Q All right, sir.

7 A Also, I am on the Rescue Squad and have been
8 for 12 years.

9 Q Mr. McCarty, would you tell us then as between
10 1970 and 1980 what, if any, changes you have seen come about
11 in the Town of Vinton.

12 A The population growth in this particular
13 area in question has almost doubled, there are three - -

14 Q Excuse me, you say "in this particular area;"
15 what area are you talking about?

16 A I am speaking of South Hampton, Briarcliff,
17 Maywood and Vinton Heights; this whole area has two entrances
18 coming off of Route 24 and it all connects together.

19 From South Hampton you have to go through one
20 of these developments but all the traffic congests on two
21 entrances into the whole development and the safety is just
22 unbelievable.

23 Now the Briarcliff Apartment complex was
24 there before my time on council but in regard to the children,
25 there are just so many children there that it is just over

populated and to me, there is just one entrance into that development.

Q Where is this Briarcliff complex in relation to the proposed North Hampton project?

A Well, North Hampton and South Hampton would be sitting on top of the hill and the Briarcliff Apartments sit at the bottom of the hill and, well, it is very difficult to explain but all of the traffic would just have to come right through the middle of Briarcliff or - - well, it would still come through Briarcliff, it has to.

Q Mr. Stoneman indicated that there was only one entrance into South Hampton and North Hampton; is that the same entrance that comes through Briarcliff?

A Yes, but there are two entrances into that whole adjoining thing but one entrance goes up to South Hampton.

Q All right, sir; now you have answered with respect to the area adjacent, immediately adjacent to the vicinity of North Hampton, but how about the Town of Vinton as a whole?

A From my knowledge, there are only a few places in the Town to build any complexes and the one in question is one of them and there is some open land that is probably not available but there is some land on Hardy

2 Road but as far as multiple dwellings are concerned any-
3 where else in Town, there is just none to my knowledge.

4 Q Are there any recreational areas provided
5 for the apartments that are there that you are talking
6 about such as Briarcliff?

7 A There is a swimming pool and a play area
8 that all of the citizens in South Hampton use.

9 They have to cross a street and, from my
10 understanding of the proposal, that would be the road
11 going into the new complex and all of these children, adults
12 and everyone would have to cross the street to get to
13 their recreational area.

14 Q They would have to cross the street which
15 would serve this project?

16 A Yes.

17 Q What can you tell us about the adequacy of
18 the water supply in Vinton at this time?

19 A At this time I am sure that everyone is
20 aware that the Town is trying to improve its water and its
21 sewage but we don't have adequate water.

22 I personally, in my own home at certain times
23 of the morning, cannot take a shower. The water pressure
24 is terrible and I fear that this will create an awful lot
25 more problems as far as the water pressure is concerned.

Now sewage is the same way. We are having problems in South Hampton at this time with sewage problems and I personally have received complaints from South Hampton on the water situation up there.

Q What kind of fire protection do you have in Vinton?

A At this time, I would say that it is adequate because we did buy a new fire truck last year, a ladder truck, but now with the complexes up there, I think that it will be a burden on the Town because we probably will have to increase the fire protection and police protection.

Now I would say that we only have 3.1 square miles, I believe I am correct and I may be off a couple of points so we have got 9,000 people there and I just don't know where we are going to put any more people.

Q How many people did you have in 1970? You say you have 9,000 now.

A I would just have to guess because I really don't know. I would say that we have had a 25 percent increase since then but I am just not that familiar with it.

I do know that in that particular area that it has just doubled, the population has doubled in that particular area.

2 Q In that particular area around the proposed
3 building?

4 A Yes.

5 Q Now you did attend the meeting at which
6 Ordinance 400 was adopted?

7 A Yes.

8 Q As well as the meeting at which the
9 application of Fralin & Waldron was acted upon and turned
10 down?

11 A Yes, sir.

12 Q Could you tell us what, if any, effect the
13 conditions that you have just discussed had upon your
14 actions in this matter?

15 A Well, with the population, the density of
16 the town that we have, I personally think that it is my
17 duty as a councilman to answer to my constituents that we
18 have to take a look at what building is going on in the
19 town right now and it was brought to our attention, to
20 my attention when these gentlemen applied for the appli-
21 cation to build over there, I had no knowledge of the
22 application at all until that first initial time that
23 Fralin & Waldron came to apply for this thing and it really
24 made us or me personally, and the rest of Council, take a
25 look at what was going on in the town as far as population

is concerned and as far as growth is concerned.

I don't know of anyplace right now that you could probably build a house or a multiple dwelling, in particular, unless it was put between two houses.

You know, there are a few vacant lots that are left there but I just don't see how I can justify it to my constituents if we allow these problems I have just stated to come down on the people of the Town of Vinton.

MR. GRAY: Answer Mr. Poff's questions.

THE WITNESS: Yes, sir.

CROSS EXAMINATION

BY MR. POFF:

Q Mr. McCarty, you do recall that you were present on July 15, 1980 at the meeting?

A Yes, at the Council meeting.

Q And that was the time when Council rejected the application for the building permit?

A Yes, sir.

Q Didn't you say at that time that if you could be assured that all 50 units would be filled up with low-income families and people that needed them in

2 the Town of Vinton, that you would then vote to put it
3 there in a second?

4 A Yes, but may I elaborate on that?

5 THE COURT: You may answer the question.

6 THE WITNESS: I made that statement and it
7 was correct.

8 MR. POFF: That is all the answer that I
9 would desire from the question.

10 If Mr. Gray wants you to elaborate further,
11 he can ask you to do so.

12 THE WITNESS: All right.

13
14 BY MR. POFF:

15 Q Now that was your statement at the Town
16 Council meeting?

17 A Yes, sir.

18 Q Now Mr. McCarty, do you know, sir, when the
19 current zoning ordinances of the Town of Vinton were
20 enacted?

21 A No, sir; I do not, I do not know.

22 Q You were not there at that time?

23 A No, sir.

24 MR. POFF: Mr. Gray, may we stipulate that
25 the ordinance was adopted on May 21, 1975?

MR. GRAY: I understand that the R-2 was originally done in 1969.

MR. POFF: This ordinance which included that was done 5-21-75.

MR. GRAY: Can we stipulate for the Court that the R-2 zoning was changed in 1975?

MR. POFF: Mr. Gray, I cannot represent to the Court whether it was changed or whether it wasn't; all I can say is that the ordinances which comprise the present R-2 zoning was either re-enacted, changed or enacted and I don't know which and I am not sure that it makes any difference but, for my purpose, all I am asking is that we stipulate that the ordinance that contains the R-2 was enacted or re-enacted as of that time.

MR. GRAY: That there was an ordinance enacted in 1975, yes, I will stipulate to that and we can ascertain from the Town the accurate history and give that to the Court.

MR. POFF: Well, I have no desire to give the Court the history of that but I think that the Court can take judicial notice of it so that there will be no conflict on this.

I believe that this indicates that this was

to go into effect on May 21, 1975.

MR. GRAY: If we could get the entire history and give that to the Court I think that would be the best thing.

BY MR. POFF:

Q Mr. McCarty, you were on the Town Council back in December of 1979; were you not?

A Yes.

Q And as a matter of fact, you had an election somewhere along in the spring; did you not?

A Yes.

Q And except then for Mayor Brabham, the makeup of the Council remained the same?

A Yes. Well, we would have had one other new member that was appointed.

Q There were five members of Council; is that correct?

A Yes.

Q And, well, did everybody run for re-election?

A Yes, everyone; well, let's see, there was more than just the two of us that ran and I really cannot recollect it; there was a lot of people running for offices at the time.

Q I am not sure how significant it is but when Mayor Nicks died, Mr. Brabham became mayor; is that correct?

A Yes, he became mayor.

Q And then in a subsequent election, he was defeated and Mr. Hill was elected?

A Yes.

Q And there was someone, obviously, who took either Mr. Brabham or Mr. Hill's place but other than that, it remained the same?

A Yes.

Q Now in December of 1979 when you were on Council, do you recall when this matter came before Council when Mr. Fralin came over and asked for approval of this project for financing through the Virginia Housing Authority?

A Yes, sir.

Q Now you say that that was the first time that you had learned about it?

A Yes.

Q And so that was what, in particular, brought this project to the attention of Council?

A Yes.

Q And that was what ultimately led to the

enactment of Ordinance 400?

A Yes, sir; initially, yes, that is when we investigated it or when we had to take a look at it.

Q And that was the stimulus for what ultimately became Ordinance 400?

A For me, yes, because I had to take a look to see because of the population growth in the Town.

Q Now it was the consensus of Council at that time, was it not, as you heard it expressed at these meetings, in regard to this project - - and I believe that Mayor Brabham was rather critical about this - - was that this project was somewhat different, if it were being subsidized, from what they had envisioned it would be?

A I can speak for myself, I won't speak for the whole Council.

Now the subsidy has nothing to do with it but for me personally, I have a hard time answering this, Your Honor, because, well, the reasoning that I am giving to this gentleman's question is, as far as the subsidy was concerned, is that the Town had applied for a grant to improve the sewage and water in that particular area of South Hampton and our low income area and I personally was very confused because the grant was turned down to improve these areas but all of a sudden, and I am not sure

of the dates, but it was pretty well close in between here that all of a sudden HUD has granted a subsidy in the area that we had needed help in and, to me as a Councilman, that is putting a burden on my constituents that I don't understand.

This is all very confusing and I have tried to get answers and I cannot get the answers, at least I don't know who to go to to get the answers.

Q Well, Mr. McCarty, I don't want to cut you off, sir, but let me ask you this and see if we can reach an agreement on what I think is a matter of non dispute and then I will sit down.

Now Mayor Brabham was, as I think you have already indicated, mayor until after the election and he was mayor when Ordinance 400 was adopted; isn't that correct?

A Yes.

Q Now Mayor Brabham was probably the most vocal and outspoken of the members of the Town Council against this project; was he not?

Would that be a fair statement?

A I don't recollect what he said.

Q Well, he had a lot to say; didn't he?

A He had some comments, yes, he had some

2 A Yes.

3 Q And you mean that he was not mayor in July?

4 A Yes.

5 Q Well, Mr. McCarty, don't you recall that one
6 of Mr. Brabham's complaints was that he had some apartments
7 that he owned and he resented the fact that this subsidy
8 would enable people to get an apartment for less rent than
9 they would have to pay for his apartments?

10 A No, sir; I don't remember any of that.

11 Q You don't remember those facts?

12 A Well, I just don't remember Mr. Brabham's
13 comments. I don't have any reason to.

14 Q I believe the transcript of the July 15
15 meeting will reflect that.

16 A Yes.

17 MR. PCFF: Thank you.

18
19
20 REDIRECT EXAMINATION

21
22 BY MR. GRAY:

23 Q Mr. McCarty, just two things: You have
24 indicated, in speaking about the HUD action, that they
25 had granted this application by Fralin & Waldron in an

area in which you needed help.

Did that statement relate back to your prior statement that you needed help to build up the water and sewer facilities and that they had turned you down?

A Yes.

Q Now you also were referred to the statement that you made at the Council meeting and I believe that you did want to elaborate a little bit on your statement.

First let me read your statement from the transcript so that you will know exactly what it was that you said and then you tell me anything that you want to explain what it was that you were saying.

A Yes.

Q "I will say one thing in reservation: If I could be assured that all 50 units would be filled up with low-income families and people that need it in the Town of Vinton, then I would vote to put it there in a second."

That is the end of your statement.

A Yes.

Q Would you tell us what it was that you wanted to say?

A My reservations when I made that statement were in regard to the fact that if we could get all of our low-income people into this housing complex here, then

we would have a little bit more open land, we could get rid of our low-income housing complexes plus it would give us more room and the population growth would not grow because it would be using the same people and it would just be improving the facilities for them.

Now I think that what we are talking about here is building a complex that is going to bring in population and if I understand this gentleman here correctly, if we had granted this 50 units, then they were going to add another and another and another and so, as far as I am concerned, I would have to take a very careful look at this before we proceeded.

Also, we would have to make some improvements to that particular area on Hardy Road, Route 24 and so there are many things that need to be taken into consideration.

Q All right, one final question, Mr. McCarty: You have been in the Courtroom during the whole hearing today, have you not?

A Yes.

Q It has been stated here that the Ordinance 400 was intended as a moratorium against any more multiple-family dwellings. Would you comment on that?

A I am not going to sit here and say that I, or anyone else, wanted to stop all multiple dwellings in

the Town of Vinton; I simply wanted to be able to control what our population is going to be.

It is overgrown right now and so I think that we have got to take into consideration the safety factor of the people in the Town of Vinton and not only the Town of Vinton, but the outlying growth areas because we are getting the traffic from everything below the Town of Vinton.

The growth has been tremendous that way and it is bringing all of the traffic through the Town of Vinton and so I just felt that it was good to stop and take a look at what we were doing in regard to anything that would be over a ten-family-multiple dwelling and we really needed to look at it.

MR. GRAY: All right, sir; no further questions.

RE CROSS EXAMINATION

BY MR. POFF:

Q Mr. McCarty, just one more question: You said that there were only two areas in the Town of Vinton that you knew about that would receive multi-family

2 dwellings and one was North Hampton and the other one was
3 one that you thought would probably not be available.

4 A I don't know anything about the land on
5 that one so I really could not say one way or the other.

6 Q But those would be the only two areas that
7 would be available?

8 A To build the complex that you are talking
9 about; yes.

10 MR. POFF: All right, sir; thank you.

11 MR. GRAY: Thank you, sir.

12 (The witness was excused.)

13
14 MR. GRAY: We would call Mayor Hill, please.

15
16 CHARLES R. HILL

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

20
21 DIRECT EXAMINATION

22
23 BY MR. GRAY:

24 Q Would you state your name and address for
25 the Record, please?

2 ~~A Charles R. Hill, 622 Olney Road, Vinton.~~

3 Q And Mr. Hill, you are the mayor of the
4 Town of Vinton?

5 A Yes, sir; I am.

6 Q How long have you been the mayor?

7 A Since July 1.

8 Q And were you on Council prior to that time?

9 A Yes, I was.

10 Q And when did you first go on Town Council?

11 A July 1, '76.

12 Q Tell me, do you know what the population was
13 in 1970?

14 A I think the census would show that it was
15 6,200 plus; around 6,200 or 6,300.

16 Q And what does the 1980 census show?

17 A The preliminary figures from the census
18 showed - - and as I say, they are preliminary figures - -
19 they showed an increase of approximately around 25 percent;
20 somewhere in the neighborhood of 9,000, as I am told.

21 Q Now would you describe for the Court what
22 has taken place in Vinton incident to this growth, particularly
23 with respect to how it has affected your feelings concerning
24 multi-family dwellings in the Town?

25 A Well, I have lived in Vinton for 15 years,

Your Honor, and during the last, probably, 15 to 20 years, Vinton and the east county area - - and I believe statistics will show from the school figures - - the east county area has been the fastest growing section of Roanoke County during the last ten years.

Vinton was a quiet little town and probably with Smith Mountain Lake and this type of thing and probably the fact that the County expanded just about as far as it could to the west, this has caused Vinton to grow tremendously in the last ten years.

Q Is the project that we are concerned with here in east Vinton?

A That would be south Vinton.

Q South Vinton?

A Yes.

Q All right, sir, you were present when Ordinance 400 was adopted?

A Yes, I was, sir.

Q And you were present when the application for the permit by Fralin & Waldron was denied?

A On July 15; yes, sir.

Q Could you tell me some of the factors that went into your determination? How did you vote on that, by the way?

A I voted to deny the building permit.

Q And you voted in favor of 400?

A That is correct.

Q Would you tell us some of the factors that influenced your decision?

A Okay, a lot of them will be an echo of Mr. McCarty.

The one thing or possibly two or three things that probably stand out in my mind more than anything else would be the density of the population of the Town of Vinton, as was pointed out, that it has grown to approximately 9,000 people.

We have 3.1 square miles which makes about 3,000 people per square mile which is a tremendous amount of people for this relatively small area.

The entrance would be off of Hardy Road and that would basically be one street and it is a tremendous battle in trying to get out of there even at this time and I think this will add to the traffic problems of the Town of Vinton.

Now one of the big, and maybe the biggest concerns of mine as far as the building of a multi-family project there is the egress and ingress to the North Hampton project which will be off of Wyndham Drive and

which would be one street into the complex.

I believe that the South Hampton complex constitutes rows of townhouses on three or four streets and it is laid out so that with the recreational area being to the back of the complex, everybody living on these three or four streets, in order to get to the recreational area, has to go back and cross these streets, including the one at Wyndham that now dead ends into South Hampton and that is the only street into the North Hampton project.

Incidentally, maybe this is not a matter for the Record but I believe that the same people that are going to develop North Hampton, developed South Hampton and they laid that out with this recreational area back up behind there and with the children that live in this complex, I would be, quite frankly, worried about the safety problems that we would have there.

I believe that all of a sudden you are creating quite a congestion there because if you bring in 50 units, then you are going to have to count on two cars per unit and so that is an additional 100 cars that would be going in and out of that one street at all times and that would compound the traffic problems.

As far as I am concerned, with the safety hazard for the people that now reside in the South Hampton

area, I would say that that would just be compounded.

Q All right, sir; were there other factors?
You said that you would be echoing some of what Mr. McCarty
said.

Were there any other factors that he mentioned
that were of concern to you?

A Well, of course, I am concerned with the
fire protection in regard to the fire trucks getting in
and out through South Hampton which has been alluded to
and, really, I think that these are the main ones.

MR. GRAY: Answer Mr. Poff's questions.

MR. POFF: I have no questions.

(The witness was excused.)

MR. GRAY: Could we have a very brief
recess?

THE COURT: Yes.

(Thereupon, a short recess was taken.
Following the recess, the parties returned to the
room and the hearing continued.)

THE COURT: All right, Mr. Gray, do you have
other witnesses that you wish to offer?

MR. GRAY: If Your Honor please, I think

Northampton apcs.



August 6, 1979

Mr. Ronald H. Miller, Town Manager
Town of Vinton
Municipal Building
P. O. Box 338
Vinton, Virginia 24179

Re: Project No. 651-35321-PM/L8
Northampton Apartments

Dear Ron:

In accordance with our telephone conversation today, I am enclosing material we have received from the Department of Housing and Urban Development relative to the above mentioned project.

If you would please have your staff address the questions posed in this material in letter form to the Department of Housing and Urban Development and give me a call on Friday so that we may review this data I would appreciate it greatly.

As I indicated to you the Department has notified us that this project has been funded so your courteous expeditious handling of this matter would be greatly appreciated.

Should you have any questions or if I can be of additional assistance in this matter, please notify me.

Very truly yours,

N. Harrison Stoneman
Vice President

NHS/csb
Enclosures



TOWN OF VINTON

VINTON, VIRGINIA 24179

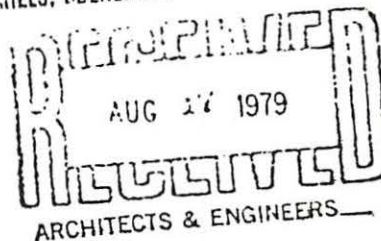
(703) 982-0230

August 16, 1979

RONALD H. MILLER
TOWN MANAGER



MILLS, OBENCHAIN, OLIVER & WEBB, INC.



Mills, Obenchain, Oliver & Webb, Inc.
P. O. Box 213
Blacksburg, Virginia 24060

Attn: Mr. Mills

Subject: Project No. 051-35321-PM/L8, Northampton

Dear Mr. Mills:

In response to Mr. Samuel H. Shull's letter to you in reference to the above project, below are our comments which have been requested by the HUD office:

Utilities

The following utilities adequately serve the proposed occupants:

- Water Supply system
- Sanitary sewer system
- Storm sewer system
- Solid waste disposal

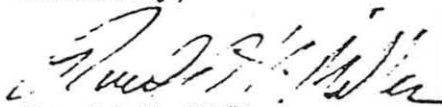
Paved access to site - will be the responsibility of the developer under the Town's sub-division ordinance.

Impact on Existing or Planned Community Facilities - Minimum impact.

Impact on Energy Resources - Minimum impact on energy resources. This type of housing will certainly promote inefficient energy utilization.

We feel, in the Town of Vinton, this type of housing is needed and will serve our community well.

Sincerely,


Ronald H. Miller
Town Manager

REM/cr



At a regular meeting of the Town Council of the Town of Vinton on February 5, 1980, at 7:30 p. m., held at the Municipal Building in the Town of Vinton, Virginia.

WHEREAS, the Town Council desires to foster the orderly growth and development of the limited real property set aside for multi-family dwellings within the limits of the Town of Vinton; and,

WHEREAS, such real property so restricted for multi-family dwelling constitutes the only remaining land upon which such units may be constructed; and,

WHEREAS, the Town Council expresses grave concern regarding an improper, short-sighted or diminutive use of said property in light of population density and economic factors of the Town and surrounding governmental entities; and,

WHEREAS, the very tenets of the Town ordinances regarding real property dictate that proper use and construction be tantamount unrestricted development.

NOW, THEREFORE, BE IT ORDAINED BY the Town Council of the Town of Vinton that no multi-family dwellings, as defined by the Town Code and Zoning Ordinance, shall be constructed within the limits of the Town of Vinton, where the proposed construction is ten or more individual, residential units, upon one or more contiguous parcels of land, regardless of ownership, until such

time as a petition is filed and the proposed said project is brought before the Town Council for approval. The same shall be hereafter referred to as a "conditional zoning policy for ten or more multi-family dwelling units."

BE IT FURTHER ORDAINED that an emergency exists and this Ordinance be in force and effect upon its passage.

TOWN OF VINTON

By: _____
Mayor

ATTEST:

Clerk

ITEM BEFORE TOWN COUNCIL
TOWN OF VINTON, VIRGINIA
RE: NORTHAMPTON APARTMENTS

PLAINTIFF'S
EXHIBIT

Handwritten signature

JULY 15, 1980
7:30 P.M.

COUNCIL MEMBERS:

C. R. HILL - MAYOR

R. R. ALTICE

R. C. McCARTY, JR.

J. W. REYNOLDS

JACK L. SHELTON

NOTARIES PUBLIC
MEMBERS
NATIONAL SHORTHAND
REPORTERS ASSOCIATION
VIRGINIA SHORTHAND
REPORTERS ASSOCIATION

CENTRAL VIRGINIA REPORTERS
P. O. BOX 2603
ROANOKE, VIRGINIA 24010

TELEPHONE
387-3831
AREA CODE 703

The following is a Transcript of
Agenda Item VII-2 heard before the Town Council of
the Town of Vinton, Virginia on July the 15th, 1980
beginning at approximately 7:30 P.M.

MAYOR C. R. HILL: The next item is
a request by Fralin & Waldron and Mr. Harrison
Stoneman is here to represent them along with
Mr. Bill Poff.

Council passed the ordinance back in
January that any units of housing with ten or more
units would have to come to the Council and they
have applied for a permit for fifty units known
as Northampton and they are here to speak on that
request.

Mr. Harrison Stoneman?

MR. STONEMAN: Mr. Mayor and Members
of the Town Council: My name is N. Harrison
Stoneman and I am Vice-President of Fralin and
Waldron, Incorporated.

I have come before you tonight to
request your approval under Town Ordinance Number
400 to construct and operate a multi-family project
to be known as Northampton Apartments.

Before I give you a description of

93

the project, I would like to give you a brief chronological history of this project which has brought us to this point and, ultimately our appearance before you tonight.

On March 2, 1979, in response to a notification of fund availability by the Department of Housing and Urban Development, we submitted two preliminary proposals to HUD on property located at the end of Wyndam Drive in Vinton, Virginia.

One proposal was for 100 units of elderly housing similar to our Clearview Manor Project and another proposal was for 50 units of family housing adjacent to the elderly application.

During the course of HUD's review of our application, they, as required by Federal Statute, initiated, through the A-95 Review Process, the appropriate mechanisms to determine whether our project fell within the guidelines and framework of local, regional and State planning criteria.

On May 24th, the Executive Committee of the Fifth Planning District Commission, after receiving favorable comments from the appropriate officials of the Town of Vinton, recommended approval of our proposed Northampton and Northampton

Elderly Projects in two separate Committee actions.

On July 27th, the Department of Housing and Urban Development notified our firm that they would be funding our Northampton Proposal, but due to the limitation of funds for this market area, could not fund our Elderly Proposal at that time.

In response to an inquiry by HUD on August 16, 1979, the Town of Vinton reaffirmed that all necessary Town services, including utilities, were available and sufficient in size and quantities to service the Northampton Project and on November 8, 1979, we applied for a conditional commitment for permanent mortgage insurance under Section 221 (D) (4) of the National Housing Act through the Federal Housing Administration.

In April of this year, the conditional commitment for this project was issued and we began preparation of our final plans and specifications for this project which have since been completed and ultimately has necessitated our appearance before you tonight.

The project itself will consist of 26 two-bedroom and 24 three-bedroom apartments ranging in size from 869 square feet to 1,026 square

feet each.

The exterior elevators will be of natural wood siding and brick veneer so as to blend appropriately with the environment and surrounding subdivision.

Amenities such as tot lots, paved play areas, laundry facilities and maintenance areas will be provided in strategic areas throughout the complex.

Rents will range from \$299 for a two-bedroom apartment to \$384 for a three-bedroom apartment; all rents will be exclusive of utilities.

The project will cost in the neighborhood of \$1,710,903 of which Fralin and Waldron will have an equity position in excess of ten percent and construction could begin within 90 days should our Building Permit be granted.

The construction and operation will be in the same mode as our Camelot Hall Nursing Home and Clearview Manor Projects which we believe have enjoyed a fine reputation in the Town of Vinton.

In capsule form, we believe this project is badly needed according to all reliable

2 planning sources including the professional staff
3 of the Fifth Planning and its Executive Committee
4 as evidenced by their endorsement.

5 The zoning of our proposed site is
6 compatible with our intended use and all necessary
7 public services are available and in sufficient
8 quantities to insure the efficient operation of our
9 project.

10 In conclusion, we feel we have
11 designed and proposed to build and manage and
12 multi-service project tailored to suit the needs
13 of Vinton and its residents in the same tradition
14 that has characterized our previous developments
15 in this area and would, therefore, request that
16 favorable consideration be given our application
17 tonight.

18 If any Members have any questions, I
19 will be more than happy to answer those.

20 MAYOR HILL: Does any Member of
21 Council have any questions?

22 MR. STONEMAN: I did bring a rendering
23 if anyone is interested in seeing what a typical
24 building would look like.

25 I will just leave that behind Mr. Miller.

97

MR. McCARTY: What was the rent range again, \$299 to what?

MR. STONEMAN: \$299 to \$369, I believe; no, \$384.

MR. SHELTON: You are speaking of 52 separate buildings?

MR. STONEMAN: No; 50 units compiled, I think, in five separate buildings.

MR. SHELTON: It is an apartment complex?

MR. STONEMAN: Yes, sir.

MR. SHELTON: At the time that this was originally proposed and planned, did I understand you correctly that you were, at that point in time, planning an elderly complex of what type of units?

MR. STONEMAN: That would have been multi-family units also of a similar nature to what we are proposing here.

We proposed the overall development in two separate packages. That is required for mortgage insurance when you talk about elderly versus a family project.

As I said, ultimately HUD did not have

1
2 the units for the elderly project for this market
3 area.

4 That does not mean that we are not
5 going to still pursue that project and hopefully
6 get another elderly complex for Vinton in that area.

7 MR. SHELTON: How many units were
8 involved in the elderly project?

9 MR. STONEMAN: The elderly, a hundred.

10 MR. SHELTON: And how many buildings?

11 MR. STONEMAN: That would have been
12 approximately eight, I would guess. I would have to
13 go back and check the plans.

14 MR. SHELTON: Thank you.

15 MAYOR HILL: Mr. Altice?

16 MR. ALTICE: No questions.

17 MAYOR HILL: Mr. Reynolds?

18 MR. REYNOLDS: No questions.

19 MAYOR HILL: Roy, do you have any
20 further questions?

21 MR. McCARTY: No; I don't have any
22 more questions right now.

23 MAYOR HILL: I don't think there are
24 any questions right at this time, Mr. Stoneman.

25 I do think that we have some citizens

1
2 in the room that are appearing to make some state-
3 ments concerning this request.

4 I don't know who all of them are but
5 I do know that one is Jack Harman who is President
6 of the Southampton Homeowners' Association.

7 I think Mr. Harman has a statement
8 that he would like to give to the Council.

9 Mr. Harman?

10 MR. JACK HARMAN: If I may, I would
11 just pass a copy of this around.

12 Gentlemen, if I may, I will just read
13 this letter and then make a few remarks in closing.

14 The Board of Directors, in fulfilling
15 its obligation to the homeowners of Southampton,
16 do hereby wish to go on record as opposing any
17 planned low-rent housing or construction of such
18 on the adjacent property thereto.

19 We wish to note the following
20 observations to Council intended to explain our
21 opposition to the above subject:

22 Number One - - and I will explain this
23 a little further after I read this - - access to
24 the property would be by way of Wyndam Drive.

25 This access parallels our Clubhouse,

our swimming pool-playground area and private parking for these facilities; it also parallels Cambridge Square.

All foot traffic to and from our recreational facilities must cross Wyndam Drive. We do hereby submit that through traffic would create a hazardous situation, particularly to the smaller children as well as the adults traversing this area.

Number Two: The Town of Vinton, as well as some Council Members, are aware that we have experienced sewage problems on a number of occasions.

The question arises: Would the present system handle the increased capacity created by the additional volume?

Number Three: One final observation: Southampton is compiled of a 180 units and, for the most part, the residents living in Southampton are homeowners and the consensus of opinion is that any low-rent units will most certainly devalue our property.

The Southampton Homeowners' Association respectfully submits this document to the Town Council

1
2 of Vinton, Virginia and requests your fullest
3 consideration to our objections as outlined
4 above.

5 Now if I may go back to Number One
6 as far as access to the property: For the benefit
7 of some of you that may not be aware of that
8 particular area and, as you can see, I am no
9 artist but the property in question is in this
10 area over here.

11 This is the access off of Niagra into
12 Wyndam. If through traffic goes through here, which
13 is proposed, you see it does parallel our recreational
14 hall, our pool, the grassy area for recreation and
15 our parking lot.

16 Now to further illustrate what I have
17 been talking about: This is Cambridge Square, this
18 is a dead end and we have 30 units; on Oxford Square,
19 we have got 30 units and on Southampton we have got
20 40.

21 Now invariably all foot traffic going
22 to these recreational facilities is this way which
23 means that it would cross Wyndam Drive.

24 There is no way that we could get to
25 that without crossing that so we do feel like that

1
2 this is a very, very objectionable part of it to us
3 because if you are talking about two cars to every
4 unit, then you are talking about 50 units and
5 conceivably there could be a hundred cars or better
6 going across through this area and we just feel
7 like it would create a big problem for us. .

8 That is all that I have to say,
9 gentlemen.

10 If there are any questions that you
11 would like to ask, I would be glad to try to answer
12 them.

13 MAYOR HILL: I have no questions because
14 I have been over there and I know what you are
15 talking about.

16 I am sure that the rest of Council do
17 have some questions.

18 MR. HARMAN: I know of two other
19 homeowners that are here, and there may be more,
20 I don't know whether they would like to express any
21 views.

22 MAYOR HILL: Are there any other of
23 the residents of Southampton that are present?

24 Yes, I see several. Give your name,
25 please.

1
2 MR. HARMAN: My name is Harman.

3 MR. JACK HARMAN: No relation.

4 MR. HARMAN: No relation but there
5 are several here and I would concur with what
6 Mr. Harman has said.

7 MAYOR HILL: Would you give us your
8 name, please?

9 MR. HARMAN: Conley Harman, C. D.
10 Harman and this is Mrs. Harman.

11 MR. DEUTSCH: My name is Ed Deutsch
12 and I would like to know what happens after these
13 first 50? How many more are they going to put up
14 which will increase the flow?

15 They are talking about the housing
16 but that is only part of it; are they going to put
17 another 50 and then another 50 units?

18 MAYOR HILL: I can't address that;
19 I don't know at this time. I don't know if Mr.
20 Stoneman or Mr. Poff either one can answer that
21 question or whether they have any additional plans
22 other than the fact that he did state that they had
23 hoped to do some construction of some elderly units.

24 MR. STONEMAN: That is correct and
25 that is all that is planned and it is still in the

working area with the FHA now.

MR. DEUTSCH: But I would say that with these 50 units and with the elderly, that is not going to take up that much space and they have got all of that hill; believe me, they will be putting more apartments in there.

MAYOR HILL: I would have no answer as to whether they would do that.

MR. DOUGLAS: I am Jack Douglas and I live up there.

They came to our meeting and they told us all of the plans, they told us that they were going all the way over the hill from one side to the other; that is what their plan was, that is what they told us.

Now you have got one road down there, Autumn Drive, and you get 100 to 150 more cars going up and down that road, you are going to have trouble; plus the sewage, we have got trouble up there now, the City Manager knows it, we have got trouble with the sanitation now.

Besides that, these are going to be low-housing apartment complexes and that breaks us down, there are going to be fights between our kids

1
2 because we own our houses and they feel something
3 about that. They are going to be on our property,
4 everyone can't keep them out.

5 Now it would have been all right if
6 they would have went ahead and built the town houses
7 up there, we would not have objected to that at all.

8 MR. DEUTSCH: Mr. Mayor, you have got
9 two streets there that are not City streets, Oxford
10 and Cambridge, they are private, they belong to the
11 Association.

12 MAYOR HILL: Right.

13 MR. DEUTSCH: We can't call the police
14 to come down there for disturbances - - I don't know
15 if we can or not, can we?

16 MR. RON MILLER: We would come.

17 MR. C. D. HARMAN: On private property?

18 MR. RON MILLER: If they were requested
19 to; yes.

20 MR. DEUTSCH: I called once on an
21 incident at the swimming pool and he said that he
22 couldn't handle it. I called on a complaint at the
23 swimming pool and he says that it belongs to the
24 Association and that he could not come.

25 MR. RON MILLER: My report shows a lot

1
2 of trips up there.

3 They are there, I will guarantee you
4 that because particularly on the weekends my reports
5 show that they do come and hopefully they are satis-
6 factory.

7 MR. C. D. HARMAN: May I ask how much
8 acreage is involved in this property?

9 MAYOR HILL: I didn't catch that?

10 MR. C. D. HARMAN: How much acreage
11 is involved in this tract?

12 MR. McCARTY: You would have to refer
13 that to Mr. Stoneman.

14 MR. STONEMAN: I think it is anywhere
15 from 12 to 19 acres that are involved in this entire
16 thing.

17 Actually there are several hundred
18 acres of land but in this particular project, I
19 think it was 12 to 19 but I wouldn't want to be
20 held to that figure.

21 MR. C. D. HARMAN: No; I wouldn't but
22 how much total acreage is owned by Fralin and Waldron?

23 MR. BRABHAM: It is F. W. C.

24 MR. STONEMAN: It is actually owned by
25 the Falcon Corporation.

1
2 MR. C. D. HARMAN: How much is owned
3 by the Falcon Corporation?

4 MR. STONEMAN: I think there is a
5 couple of hundred acres up there that are controlled
6 by the individuals.

7 MAYOR HILL: Henry, did you want to
8 say something?

9 MR. BRABHAM: My name is Henry Brabham
10 and I live at 985 Norbourne Street, Vinton. I also
11 own property on Wyndam Drive, 1008 Wyndam Drive which
12 is on the same road into this property.

13 First of all, I would like to ask these
14 gentlemen who advised them that the water and sewage
15 was available back in April of '79?

16 I happened to have been on Council at
17 that time and, to my knowledge, there was no
18 instructions from this Council - - and I was Vice
19 Mayor at that time - - and I would like to know who
20 advised your corporation that these things were
21 available?

22 That was the statement that you just
23 made.

24 MR. STONEMAN: Yes, sir.

25 It was done in a routine correspondence

1
2 between, I think, the Department of Housing and Urban
3 Development and the Town Office.

4 MR. BRABHAM: Who wrote the letter?

5 I am asking you: Who wrote the letter?

6 MR. STONEMAN: The letter was not
7 addressed to me.

8 MR. BRABHAM: Who wrote Fralin and
9 Waldron, or whatever corporation you call it, and
10 advised that it was available?

11 Who signed it?

12 MR. STONEMAN: I think the Town Manager
13 signed it.

14 MR. BRABHAM: I understand that at
15 that time you also had a letter stating that the
16 Town was in favor of this being built; who signed
17 that letter?

18 MR. STONEMAN: That came under Mr.
19 Miller's signature.

20 MR. BRABHAM: There are only four
21 Members of Council up there that were serving at
22 the same time that I was.

23 Did any of you gentlemen happen to
24 know that that correspondence took place at that
25 time? Were you advised of it?

1
2 MR. McCARTY: Not me.

3 MR. HILL: No.

4 MR. ALTICE: No.

5 MR. BRABHAM: It seems to me that
6 somebody went around the Town Council at that time
7 and tried to secure the water and sewer which the
8 money would have to be appropriated by the Town.

9 Now at that time when you first came
10 before us, you told us that you wanted a hundred and
11 five units and now you are down to fifty units;
12 why the change of plan?

13 MR. STONEMAN: I don't know what you
14 are referring to in the 105?

15 MR. BRABHAM: When you first applied
16 to Council, you asked to build 105 units of low-
17 income housing on that hill and now you say that
18 you want 50.

19 MR. STONEMAN: I don't know where you
20 got that figure from but that is erroneous.

21 MR. BRABHAM: If you look in the
22 Town Minutes, I think you will find 105.

23 I would like to go on record as
24 opposing this project for a number of reasons:
25 One, due to the low income type of housing project

1
2 that they are talking about and, to start off
3 with, who with a low income can afford a rent of
4 \$299 a month?

5 To me this is an outrageous figure
6 that every taxpayer in the community is going to
7 end up subsidizing with their hard-earned income
8 tax dollars when plenty of public housing is already
9 available, or private housing, I happen to own
10 Mansard Square Apartment Complex which has 67 units
11 and my highest rent in there, which is three bedrooms
12 and which I happen to think is one of the nicest
13 units in the Valley, is only \$225 so how do you
14 justify \$299 to \$384 for your rent?

15 Can you tell me that?

16 MR. STONEMAN: I don't think there is
17 any justification needed on my part.

18 MR. BRABHAM: I know it doesn't because
19 you are going to subsidize it from Government funds;
20 is that right?

21 MR. STONEMAN: It will be subsidized.

22 MR. BRABHAM: Everybody in the room,
23 I just want you to know that you are going to pay
24 for it with public tax dollars.

25 My second reason, Charlie, or Mr. Mayor,

1
2 excuse me, I am used to sitting on the other side
3 of that fence up there: The roads up there, as
4 these gentlemen up there in Southampton have just
5 stated, there is only one narrow road going into
6 that complex and I think it will create a terrific
7 problem up there.

8 We also have the traffic problem
9 already trying to get back out on Virginia Avenue
10 as you gentlemen already know.

11 Another thing, if you build this unit,
12 it has been proven by the City of Roanoke, I have
13 already talked to their Police Department, and
14 it will almost take one more policeman 24 hours a
15 day to patrol that area.

16 Schools: If you build 50 units, you
17 are talking about an average of three kids in that
18 type of housing area, three kids per home and if
19 they only build 50 units, you are talking about
20 150 students that will be in the classroom that we
21 are going to have to subsidize because there will
22 be no tax revenue from this development so you
23 better think about that when you vote on this issue.

24 That is all I have to say.

25 MAYOR HILL: All right.

1
2 MR. STEVE DISHON: I work in the
3 Southeast section of Roanoke City and it seems
4 to me that if you do put up something such as a
5 low-income housing development - - and we have
6 quite a bit of problems at our shop - - that
7 these people are going to come from Southeast
8 over into Vinton and you have got some rough
9 people over there.

10 I hope Council is aware of that.
11 It is rough.

12 MAYOR HILL: Bob, were you going to
13 say something?

14 A SPECTATOR: Yes.

15 I understand from this gentleman
16 here that there is a need for the housing project.
17 Where is the need coming from? Is it coming from
18 the Town of Vinton or from some other place?

19 MR. STONEMAN: Would you like for
20 me to address that?

21 THE SPECTATOR: I am addressing you;
22 yes.

23 MR. STONEMAN: As I said during the
24 review of this project, the Department of Housing
25 and Urban Development, through their own economic

1
2 section, studied the profile, the economic profile
3 of the entire Roanoke Valley Metropolitan Area.

4 They determined, in fact, through
5 their own studies that these units were needed.

6 Secondly, to back that up, the Fifth
7 Planning District Commission, in their own regional
8 plans, specify the need for these units in the area.

9 I think there was probably input from
10 the Town many years ago in the development of that
11 plan.

12 That is the best way that I can
13 accurately answer your question.

14 MR. BRABHAM: Mr. Mayor, can I speak
15 to that?

16 I was on Council for seven years and
17 during that period of seven years, it never came up
18 that we recommended that we needed a low-housing
19 development built in the Town of Vinton so where you
20 got that information from, I will be dad gummed if
21 I know because you didn't get it from anybody within
22 the Town.

23 Now I realize that Mr. Miller wrote a
24 letter, without Council's authorization, saying
25 that he approved the building of these units but

1
2 he was taken to task and, well, he was taken to task,
3 let's put it that way, about the letter.

4 No one from the Town of Vinton on
5 Council in the last seven to eight years has
6 approved this project and I don't know how you got
7 it through the Fifth Planning District because the
8 Fifth Planning District doesn't have a stinking
9 thing to do with the Town of Vinton, Virginia.

10 A SPECTATOR: I would like to know
11 how they chose that area for a subsidized housing
12 project?

13 That is a pretty nice area over there;
14 how did they happen to chose that area?

15 MAYOR HILL: You mean how Falcon
16 Corporation chose it?

17 A SPECTATOR: Yes; this FWC, or whatever
18 it is, Fralin and Waldron or whatever.

19 MR. STONEMAN: In answer to your
20 question, again we felt like that the site has a
21 relative good close-in availability to shopping for
22 the tenants, the relationship to schools and other
23 areas is good and we felt like it was a good location
24 for the type of homes that we are planning.

25 A SPECTATOR: But who made the choice,

1
2 who was the original one that said, "I have land
3 up there;" who was the original one that owned the
4 land that said it was in a good location?

5 MR. STONEMAN: I don't recall that it
6 ever came up, it was just land that we own and we
7 thought it was a good location.

8 A SPECTATOR: We also have the nursing
9 home and we have now a housing project surrounding
10 us and we have the apartment project which we don't
11 mind but now with this project, we do mind when it
12 comes to pushing more down our throats than we want.

13 A SPECTATOR: A subsidized area.

14 A SPECTATOR: And there is not any
15 sense in having to go through this with our children,
16 plus if there was a fire, how would the fire trucks
17 get up there?

18 We can't even get out on Clearview
19 across Hardy Road now because they won't put a stop
20 sign up there and now they are going to put a great
21 big apartment house in there?

22 It sounds crazy to me.

23 MR. BRABHAM: Let me ask you one more
24 question and then I will let you alone:

25 When this land was rezoned for apartments,

1
2 the thinking at that time - - and I happened to have
3 been involved in that part of the thing a few years
4 back when Mr. Fralin and Waldron and some of these
5 other gentlemen came before us - - but when this
6 thing was rezoned, I think Bob, you were on the
7 Rezoning Committee at that time, we rezoned that
8 for apartments, or whatever you call the Southampton
9 Development because at that time Mr. Fralin told us
10 that he was going to build multi-family units up
11 there that would be owned by the tenants and that
12 it would be kind of like a condominium or that they
13 would be town houses and that is all that he ever
14 wanted to built up there.

15 Now you come back and you want to
16 completely destroy that concept by putting this type
17 of project in.

18 How do you justify that?

19 MR. STONEMAN: I am not going to attempt
20 to justify that because I was not a party to that.

21 I don't know that Mr. Fralin made that
22 statement so I could not attempt to comment on that.

23 MAYOR HILL: Let's not get into an
24 argument.

25 MR. BRABHAM: Why not?

1
2 MAYOR HILL: All right, now I know
3 that there have been several people that have
4 spoken.

5 Mr. Stoneman and Mr. Poff have
6 presented their case and several of the residents
7 from this area out there have addressed the situation
8 and several other people have addressed the Southampton
9 Project, stating their opinions as to what they felt
10 should be done and not be done.

11 I really don't know if there is
12 anyone else in the room that has not spoken who has
13 anything different to say pertaining to this.

14 If not, I will ask Council if they
15 have anything that they would like to say.

16 Are there any comments from Council?
17 Okay, do any of the Council Members have anything
18 that they would like to say pertaining to this
19 situation?

20 MR. REYNOLDS: I think we have studied
21 the matter fairly thoroughly and I have not been
22 convinced of the need for the project.

23 I am ready to call for a question and
24 a vote on the issue.

25 MR. McCARTY: Do you need a motion,

1
2 Charlie? I move that we deny the Building Permit.

3 MR. ALTICE: I second it.

4 MAYOR HILL: Is there any further
5 discussion on this?

6 MR. McCARTY: I will say one thing in
7 reservation: If I could be assured that all, 50
8 units would be filled up with low-income families
9 and people that need it in the Town of Vinton, then
10 I would vote to put it there in a second.

11 MR. ALTICE: I seconded the first
12 part.

13 MR. McCARTY: That was not part of
14 the motion; that was just my comments about it.
15 If it were people from the Town of Vinton that
16 needed it - - and there are people in the Town of
17 Vinton that need housing but I am just so afraid
18 that they wouldn't be the ones to get it and that
19 is the end of the comment.

20 MAYOR HILL: We have a motion and a
21 second that the request for the Building Permit be
22 denied. Will you call the Roll, please?

23 THE CLERK: Mr. Altice?

24 MR. ALTICE: Yes.

25 THE CLERK: Mr. McCarty?

MR. McCARTY: Yes.

THE CLERK: Mr. Reynolds?

MR. REYNOLDS: Yes.

THE CLERK: Mr. Shelton?

MR. SHELTON: Yes.

THE CLERK: Mr. Hill?

MAYOR HILL: Yes.

THE CLERK: The motion is passed
unanimously.

MAYOR HILL: Thank you.

(Thereupon Section VII-2 of the
Agenda for the evening of July 15th, 1980
was concluded.)

* * * * *

C E R T I F I C A T E

COMMONWEALTH OF VIRGINIA

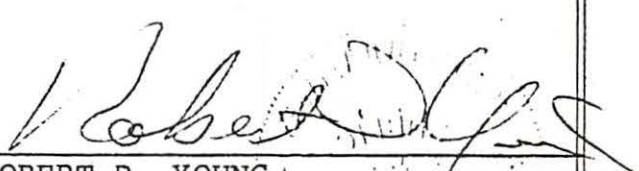
COUNTY OF ROANOKE,

I, Robert D. Young, Notary Public in and for the Commonwealth of Virginia, at Large, do hereby certify that these proceedings were by me reduced to machine shorthand, afterwards transcribed upon a typewriter under my direction; and that the foregoing is a true and correct transcript of the proceedings as aforesaid.

I further certify that these proceedings were taken at the time and place in the foregoing caption specified.

I further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand at Roanoke, Virginia on this the 4th day of August, 1980.


ROBERT D. YOUNG
NOTARY PUBLIC

My commission expires July 24, 1983.

MINUTES OF A REGULAR MEETING OF THE COUNCIL FOR THE TOWN OF
VINTON, VIRGINIA, HELD IN THE COUNCIL CHAMBERS TUESDAY,
DECEMBER 4, 1979, AT 7:30 P.M.

PRESENT COUNCILMEN: R. R. Altice, C. R. Hill, R. G. McCarty, Jr.
J. W. Reynolds and H. J. Brabham IV

Mr. Horace Fralin requested Council's approval of Virginia Housing Development Authority to finance the proposed construction of approximately 50 units of family housing for moderate and low income families to be located north of the Southampton development on Wyndham Drive.

Since members of Council were not aware of the proposed Northampton development, a motion was made by C. R. Hill to continue the request until the next meeting so Council can view the area, etc. The motion was seconded by R. R. Altice and on roll call, all Councilmen voted yes.

MINUTES OF A REGULAR MEETING OF THE COUNCIL FOR THE TOWN OF VINTON,
VIRGINIA, HELD IN THE COUNCIL CHAMBERS TUESDAY, DECEMBER 18, 1979,
AT 7:30 P.M.

PRESENT COUNCILMEN: R. R. Altice, C. R. Hill, R. G. McCarty, Jr.,
J. W. Reynolds and H. J. Brabham IV

Mayor Brabham stated that any decision on the proposed Northampton
Development would be deferred until the next meeting on January 15th.
He had received numerous calls opposing the development.

MINUTES OF A REGULAR MEETING OF THE COUNCIL FOR THE TOWN OF VINTON,
VIRGINIA, HELD IN THE COUNCIL CHAMBERS TUESDAY, JANUARY 15, 1980 AT
7:30 P.M.

PRESENT COUNCILMEN: R. R. Altice, C. R. Hill, R. G. McCarty, Jr.,
J. W. Reynolds, and H. J. Brabham IV

AGENDA

A discussion was held concerning the proposed Northampton development. Mayor Brabham requested a feasibility study to determine the costs of putting a road and water/sewer lines into the area before approval could be given. He will appoint a committee at a later date to make the study. He also stated that there was more need for homes for the elderly than more multi-family homes and would like for a study to be done to see what our housing needs are. Motion was made by R. G. McCarty, Jr., seconded by C. R. Hill, to disapprove the proposed multi-family housing development of Northampton. On roll call all Councilmen voted yes.

Motion was made by C. R. Hill, seconded by R. R. Altice, to instruct the Town Attorney to prepare an ordinance to prohibit the issuance of any building permits for a complex of 10 or more units without approval from Council. All Councilmen voted yes on roll call.

MINUTES OF A REGULAR MEETING OF THE COUNCIL FOR THE TOWN OF
VINTON, VIRGINIA, HELD IN THE COUNCIL CHAMBERS TUESDAY,
FEBRUARY 5, 1980 AT 7:30 P.M.

PRESENT COUNCILMEN: R. R. Altice, C. R. Hill, R. G. McCarty, Jr.
J. W. Reynolds and H. J. Brabham IV

AGENDA

- 2 -

Ordinance No. 400, relative to restricting multi-family dwellings within the Town limits, was read by the Town Manager. Motion was made by C. R. Hill, seconded by R. G. McCarty, Jr., that Ordinance No. 400 be passed as an emergency ordinance. On roll call, all Councilmen voted yes.

No 796

TOWN OF VINTON, VIRGINIA

DATE

6-30

197

APPLICATION FOR BUILDING PERMIT

FEE \$ 1520.00

Building Permit # 796 Sign Permit # Mechanical Permit #

Permit Issued To NORTH HAMPTON APARTMENTS (Owner)

Permit Issued To FRANKLIN & CO. INC. (Contractor)

Permit For: 50 UNIT APARTMENT COMPLEX

Type of Building: 5 BLDGS. SEE PLANS Address: TO BE ASSIGNED LATER

Block Section Subdivision

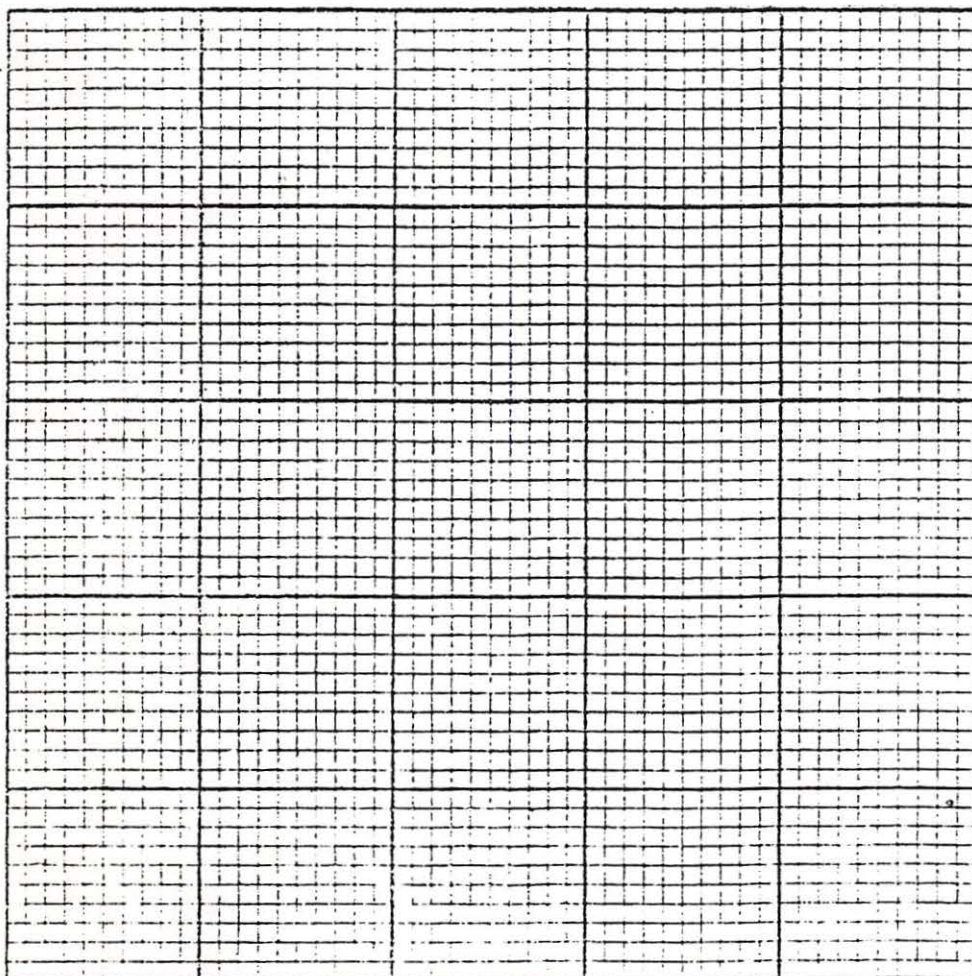
Placed on the Side Between and

Zoning: PL-2 Type of Structure: FRAME AND BRICK

Sale For Rent Occupied by Owner

PLOT PLAN of INVOLVED PARCELS

(back of lot)



(front of lot)

DESCRIPTION OF WORK

New ☒ Alteration ☐ Addition ☐Demolition ☐

Use: APTS. Type Construction: FRAME-2

No. Floors: 2 & 3 No. Rooms:

No. Apartments: 50 Fin. Base. Rms.

Finished Attic Rooms:

Garage/C.P.: Type Heat: GAS

Fireplaces: NONE Height of Bldg. at Apex: 33

Off Street Parking Spaces: YES

If Apart. (2 Spaces Off Street Per Unit?):

Estimated Cost \$ 922,603.00 (Labor & Material)

Final Cost \$

Permit Fee \$ 1520.00

Information on General Contractor

Name: FRANKLIN & CO. INC.

Address (Mail): P.O. BOX 6175

City: RICHMOND State: VA Zip: 23218

Telephone No.: 774-1105 Local License

Tel. No.: Va. Lic. No.: 785

Local Lic.: Vtn. Bond No.



DESCRIPTIONS, CONDITIONS & COMMENTS

Council will have to
 Act on this application
 ORD. No. 200
 APPROVED FEB. 5, 1980
[Signature]
 6-30-80

SUBCONTRACTORS

Type	Electrical	Plumbing - Heat	Other _____
Name			
Address			
City			
Telephone			

WATER & SEWER INFORMATION

All Connection Fees Must Be Paid Before A Building Permit Is Issued. Date Approved _____

Water Public ☒ Well _____ 19__
 Sewer Public ☒ Septic Tank _____ 19__

ATTEST

I hereby submit this application for a Building Permit, and certify that I will observe all requirements as indicated by the Zoning Ordinance, Building Code and Town Code of the Town of Vinton, Virginia. I also certify that all information contained on this application is true and accurate.

Signed *[Signature]*
 (Owner or Authorized Contractor)

Application Approved _____ Rejected _____

Date _____, 19__

By _____

MINUTES OF A REGULAR MEETING OF THE COUNCIL FOR THE TOWN OF
VINTON, VIRGINIA, HELD IN THE COUNCIL CHAMBERS TUESDAY,
JULY 15, 1980 AT 7:30 P.M.

PRESENT COUNCILMEN: R. R. Altice, R. G. McCarty, Jr.,
J. W. Reynolds, J. L. Shelton and
C. R. Hill

Mr. Harrison Stoneman of Fralin & Waldron, Inc. presented to Council a request for a building permit for 50 units of low-income apartments to be known as Northampton, a project under the federal rent subsidy program. He said the rent would range from \$299.00 to \$384.00 a month including the federal subsidy. A group of residents from Southampton town house complex was present to protest the low-income housing.

Jack Harman, president of the Southampton Homeowners Association, read a letter opposing the low-income housing. The only access to the new complex would be on Wyndham Drive where all the recreational facilities are located and would be hazardous to children and adults walking in the area. Mr. Harman also questioned whether the present sewerage system would be

Motion was made by R. G. McCarty, Jr. to deny the request for the building permit. (Mr. McCarty stated, however, that if he could be assured that it would be occupied by low-income people from Vinton who needed it he would feel differently about it.) The motion was seconded by R. R. Altice and on roll call all Councilmen voted yes.