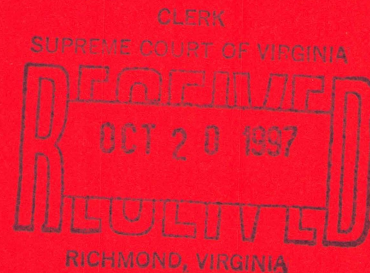


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Supreme Court of Virginia

RECORD NO. 971117



CITY OF VIRGINIA BEACH,

Appellant,

v.

RICHARDSON C. BELL, TRUSTEE FOR
BELL LAND TRUST,

Appellee.

APPENDIX

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Counsel for Appellee

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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

RICHARDSON C. BELL, Trustee for
Bell Land Trust,

the Plaintiff,

V.

CITY OF VIRGINIA BEACH,

Defendant.

LAW NO. CL-94-996

AMENDED MOTION FOR JUDGMENT

NOW COMES the Plaintiff, RICHARDSON C. BELL, Trustee of the BELL LAND TRUST, by counsel, and moves this Honorable Court to empanel a jury for the purpose of awarding the Plaintiff a monetary amount to compensate him for the taking by the Defendant of certain real property owned by the Plaintiff, without compensation, and in violation of the Virginia Constitution, Article I, Section 11, and for the reasons hereinafter set forth:

NATURE OF THIS ACTION AND VENUE

1. Richardson C. Bell, Trustee for the Bell Land Trust, is the fee simple owner of a parcel of land located in the City of Virginia Beach, known and numbered as Lots 21 and 22, Block 3 of a certain subdivision known as Chesapeake Park (the "Property") which Property is contiguous to the waters of the Chesapeake Bay.

2. The City of Virginia Beach is a municipality duly chartered by the General Assembly of Virginia.

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genzler\bell\amended2.mfj

3. Venue is correct as all parties litigant are resident in the City of Virginia Beach, Virginia.

STATEMENT OF FACTS

4. Upon information and belief, the Property consisting of Lots 21 and 22, Block 3, Chesapeake Park, were originally subdivided and recorded in the real property records of Princess Anne County on or before October 14, 1919.

5. At all times relevant, the Property has been properly zoned to allow construction of a single family residence according to the Zoning Ordinance of the City of Virginia Beach.

6. A single family residence existed on the Property until approximately 1962.

7. Richardson C. Bell has been the owner or the beneficial owner of the Property since September 25, 1979.

8. At the time of the initial purchase of the Property by Plaintiff or its related predecessors in interest, and at all times subsequent until this cause of action arose, Plaintiff had a reasonable expectation that he would be able to construct a single-family residence on the Property.

9. The Coastal Primary Sand Dune Protection Act ("the Act"), then codified at Va. Code §62.1-13.20:1, et seq, was adopted by the Virginia General Assembly on April 4, 1980. The Act was subsequently recodified in Title 28.2, Chapter 14 of the Virginia Code, effective October 1, 1992.

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10. Upon information and belief, the City Council of the City of Virginia Beach adopted Ordinance No. 1805 on August 22, 1988, the Coastal Primary Sand Dune Zoning Ordinance ("the Ordinance"), currently codified at Sec. 1600 et seq, of the Virginia Beach City Code.

11. The Property is subject to the restrictions of the Ordinance.

12. Pursuant to section 1603 of the Ordinance, a permit from the Virginia Beach Wetlands Board, an agent and instrumentality of the City of Virginia Beach, is required for any use or alteration of the Property, other than those permitted Uses listed in section 1602 of the Ordinance.

13. Those Uses allowed under section 1602 of the Ordinance do not allow construction of a single-family residence and are not otherwise economically beneficial to Plaintiff.

14. In accordance with the Ordinance, on or about April 28, 1992, Richardson C. Bell and Linda B. Bell, his wife, applied to the Virginia Beach Wetlands Board for a permit allowing for the construction of a bulkhead, filling of a portion of the Property, and associated site work, in order to construct a single-family residence on the Property ("the Improvements").

15. On May 18, 1992, the Virginia Beach Wetlands Board denied the Bell's application for a Permit under the Ordinance to conduct activities necessary to the development and economic use of the Property and the construction of the Improvements.

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16. In accordance with Va. Code §28.2-1411, Plaintiffs appealed the denial of the permit application to the Virginia Marine Resources Commission ("VMRC"), which on June 23, 1992, affirmed the denial of the permit by the Virginia Beach Wetlands Board.

17. Plaintiffs thereafter appealed the decision of the VMRC to the Circuit Court of the City of Virginia Beach, pursuant to the provisions of Section 62.1-32.15 of the Code of Virginia, 1950, as amended.

18. The Circuit Court of the City of Virginia Beach, by decree dated November 3, 1993, upheld the decision of the VMRC denying Plaintiffs appeal from the decision of the Virginia Beach Wetlands Board. With this action, Plaintiff had exhausted all legal remedies available to obtain the permit required under the Act and the Ordinance to allow development of the Property and construction of the Improvements.

19. If the required permit under the Ordinance had been granted, the Property would have a value in excess of \$225,000 per lot, for a total value of over \$450,000.

20. The Defendant has permitted other property owners within the City of Virginia Beach situated similarly to Plaintiff to improve their properties in a manner similar to that sought by Plaintiff, including construction of bulkheads and filling within the area regulated by the Ordinance and the Act.

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21. Defendant has permitted and directed public access to and use of Plaintiff's property without Plaintiff's permission, for recreational and other public purposes.

22. Defendant's denial of the requested Permit was based in whole or part upon a desire to bestow benefits upon the public at large by the preservation of the coastal primary dunes on the Property.

COUNT I

REGULATORY TAKINGS

23. The Plaintiff hereby incorporates the statements of paragraphs 1 through 22 as if fully set forth herein.

24. As a direct result of the Defendant's denial of the permit required by the Ordinance for use of the Property, Plaintiff cannot use the Property for a single-family residence or for any other economically beneficial purpose and thereby has been denied all economically beneficial use of the Property, and the value of the Property has thereby been extinguished or severely diminished.

25. The Defendant's denial of the Plaintiff's application for a permit to improve the Property, through its agent and instrumentality, the Virginia Beach Wetlands Board, constitutes the complete taking of the Property for the purpose of benefitting the public at large without compensating the Plaintiff and without due process of law in contravention of the provisions of Article I, Section 11 of the Constitution of the Commonwealth of Virginia, thereby entitling Plaintiff to compensation for the full value of the Property thus taken.

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26. In the alternative, Defendant's denial of the Plaintiff's application for a permit for the construction of the Improvements on the Property, through its agent and instrumentality the Virginia Beach Wetlands Board, constitutes a partial taking of the Property for the purpose of benefitting the public at large without compensating the Plaintiff and without due process of law in contravention of the provisions of Article I, Section 11 of the Constitution of the Commonwealth of Virginia, thereby entitling the Plaintiff to compensation for the reduced value of the Property for any other permitted use.

27. Defendant's denial to Plaintiff of equal treatment under the Ordinance, and equal protection of the laws compared to similarly situated property owners within the City of Virginia Beach, constitutes a complete or partial taking of Plaintiff's Property in violation of the provisions of Article I, Section 11 of the Constitution of the Commonwealth of Virginia, entitling the Plaintiff for compensation for the value of the Property thus taken.

COUNT II

TAKINGS BY TRESPASS AND OFFICIAL ACTIONS

28. The Plaintiff hereby incorporates the statements of paragraphs 1 through 27 as if fully set forth herein.

29. The Defendant has physically invaded and trespassed on the Property and appropriated the Property for its own use by its actions including, but not limited to the following: (a) placing trash receptacles on the Property without the Plaintiff's consent;

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(b) physically invading and trespassing upon the Property by traversing the Property with its vehicles to service the trash receptacles and to clean the beach; (c) encouraging the public to use the Property for various public uses which are incompatible with the Plaintiff's private rights in the Property by, among other things, encouraging the public to moor catamarans and sailboats on the Property; and (d) by advertising the Property and encouraging its use as a public beach.

30. The Defendant's placement of trash receptacles on the Property, traversing the Property with its service vehicles, conversion of the Property to a public beach, and encouragement to the public to make use of the Property constitutes the taking of the Property for the purpose of benefitting the public at large without compensating the Plaintiff and without due process of law in contravention of the provisions of Article I, Section 11 of the Constitution of the Commonwealth of Virginia, thereby entitling Plaintiff to compensation for the value of the Property thus taken.

COUNT III

DECLARATORY JUDGMENT

31. The Plaintiff hereby incorporates the statements of paragraphs 1 through 30 as if fully set forth herein.

32. In the alternative, Plaintiff requests that this Court issue a Declaratory Judgment, in accordance with Va. Code §8.01-187, decreeing that the actions of the City of Virginia Beach alleged herein constitute a taking of or damage to Plaintiff's

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Property without compensation in violation of the provisions of Article I, Section 11 of the Constitution of the Commonwealth of Virginia.

WHEREFORE, it is prayed that this Honorable Court empanel a jury, that the jury be instructed in accordance with the law and facts and that an award be entered in favor of the Plaintiff fully and justly compensating the Plaintiff for the taking of and damage to the Property, and for such other relief as the Court deems just and proper.

RICHARDSON C. BELL, TRUSTEE
FOR THE BELL LAND TRUST

By: Patrick A. Genzler
Of Counsel

Anita O. Poston
Patrick A. Genzler
VANDEVENTER, BLACK, MEREDITH & MARTIN, L.L.P.
500 World Trade Center
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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 1995, I mailed a true copy of the foregoing pleading(s) to all counsel of record.

Patrick A. Genzler
Of Counsel

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VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH
SUPREME COURT OF VIRGINIA

RECEIVED
MAY 19 1997
RICHMOND, VIRGINIA

RICHARDSON C. BELL,
Plaintiff,
v.
CITY OF VIRGINIA BEACH,
Defendant.

DOCKET No. CL-94996

TRANSCRIPT OF PROCEEDINGS

Virginia Beach, Virginia
January 7, 1997
Volume I

FILED
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J. CURTIS FRUIT, CLERK
BY DC

Before: THE HONORABLE EDWARD W. HANSON, JR., Judge,
and a jury

Appearances:

VANDEVENTER, BLACK, MEREDITH & MARTIN, L.L.P.
By: PATRICK A. GENZLER, ESQUIRE
ROBERT L. O'DONNELL, ESQUIRE
Counsel for the Plaintiff

CITY ATTORNEY'S OFFICE
By: RICHARD J. BEAVER, ESQUIRE
Counsel for the Defendant

ORIGINAL

1 course of my examination Mr. Bell doesn't hear or doesn't
2 seem to understand what's going on, it's because of the
3 medical condition I just mentioned. I've discussed with
4 him and the Judge and we will try and speak directly to
5 him so that he can hear a little bit better.

6
7 RICHARDSON C. BELL, called as a witness by
8 and on his own behalf, having been first duly sworn, was
9 examined and testified as follows:

10
11 DIRECT EXAMINATION

12
13 BY MR. GENZLER:

14 Q. Please state your full name and address for
15 the record.

16 A. Richard C. Bell, 1504 Stace Court, Virginia
17 Beach, Virginia, 23456.

18 Q. Are you the plaintiff in this case,
19 Mr. Bell?

20 A. Yes, I am.

21 Q. How old are you, Mr. Bell?

22 A. 61.

23 Q. What is your occupation, sir?

24 A. I'm a real estate agent and land developer,
25 small land developer.

1 Q. About how many different properties have
2 you developed as a developer?

3 A. Somewhere in the neighborhood of nine to
4 ten.

5 Q. And how long have you been a real estate
6 agent or broker?

7 A. I was licensed in 1970. I became a
8 full-time agent in 1972.

9 Q. Where have you acted as a real estate
10 agent?

11 A. In Norfolk, Virginia Beach, and the
12 vicinity.

13 Q. Mr. Bell, are you familiar with the
14 Chesapeake Park subdivision in the City of Virginia
15 Beach?

16 A. Yes, I am.

17 Q. How are you familiar with that?

18 A. I own property in the Park in Block 26 in
19 Section M of Chesapeake Park.

20 Q. And are you familiar with the beachfront
21 areas of Chesapeake Park?

22 A. I am familiar with that.

23 Q. How are you familiar with those?

24 A. I was familiar with the area long before I
25 really ever became a real estate agent. I had friends

1 living down there in Chesapeake Park, and I would stop
2 in. I was down there frequently on the beach.

3 Q. Mr. Bell, I'm going to show you an
4 exhibit --

5 MR. GENZLER: I ask that this be marked as
6 Plaintiff's Exhibit 1 for identification.

7 THE COURT: State if there's any objection.

8 MR. BEAVER: No objection.

9 THE COURT: Admitted as Plaintiff's
10 Exhibit 1.

11 (Plaintiff's Exhibit No. 1 was
12 marked for identification.)

13
14 MR. GENZLER: Thank you, Your Honor.

15
16 BY MR. GENZLER:

17 Q. I show you what the Judge has admitted as
18 Plaintiff's Exhibit 1. Can you tell the jury what this
19 is?

20 A. This is -- this is part of the plat of my
21 block, page 446. This is the platted block with
22 development numbers, Blocks 1 through 22.

23 Q. And what -- I'm sorry. Do you know when
24 this plat was made?

25 A. This original record was made in 1910; this

1 amended plat in Map Book 6, page 123, in 1919.

2 Q. And, Mr. Bell, if you can please explain
3 for the jury the significance of the circled numbers that
4 appear on the plat here and here?

5 A. The circled numbers represent the blocks of
6 that plat.

7 Q. Okay. Now, we've marked a couple of things
8 to make it easier for identification. Could you explain
9 for the jury what is marked in here in red?

10 A. In red -- the red dots is Lots 21 and 22 in
11 Block 3 of Chesapeake Park.

12 Q. Is that the subject of this case?

13 A. Yes, that's the property.

14 Q. What has been marked in yellow?

15 A. The yellow is representative of the
16 right-of-way for Ocean View Avenue, the full location of
17 the development of the subdivision.

18 Q. Has this plat been recorded in the City's
19 official records?

20 A. Yes, it has.

21 Q. Thank you, Mr. Bell. Mr. Bell, I'm going
22 to show you another exhibit.

23 MR. GENZLER: I ask that this be marked as
24 Plaintiff's Exhibit 2.

25 THE COURT: Plaintiff's Exhibit 2.

(Plaintiff's Exhibit No. 2 was
marked for identification.)

BY MR. GENZLER:

Q. Do you recognize what this document is?

A. Yes, I do. It's the tax plat prepared by
the City of Virginia Beach indicating the GPIN numbers of
the individual properties and describing them in the tax
records.

Q. Have you seen this map before?

A. Yes, I have.

Q. And where was that?

A. In the maps and surveys in the City of
Virginia Beach.

Q. Now, are Lots 21 and 22, Mr. Bell, are
those properties located on the easel?

MR. GENZLER: Your Honor, could I have him
come down and point out on the exhibits?

THE COURT: All right.

BY MR. GENZLER:

Q. Mr. Bell, would you come down here, please.

A. (Witness complies.)

Q. Now, are Lots 21 and 22 shown on this
exhibit?

1 A. Yes. They are shown in red right here on
2 this plat.

3 Q. Okay. And is Ocean View Avenue on this
4 exhibit as well?

5 A. It's demonstrated in yellow.

6 Q. Is the Chesapeake Bay Bridge Tunnel on this
7 map?

8 A. This is the Bay Bridge Tunnel across here.

9 Q. And what do the numbers on the various
10 lots -- and by that I mean the small numbers that the
11 jury can't read on the individual lots. What do those
12 represent?

13 A. These numbers are the tax numbers that are
14 designated to the individual properties -- to the
15 individual owners for tax purposes. This is the GPIN
16 number.

17 Q. Mr. Bell, there appear to be shaded blocks
18 that are shaded in blue and some of those are colored in.
19 What do those represent?

20 A. These are structures that were built on the
21 lots north of Ocean View Avenue; and here at the west
22 end, lots were developed on Ocean View Avenue -- north of
23 Ocean View Avenue.

24 Q. What is the date of this map?

25 A. It's 1986 -- 1996. I'm sorry.

1 Q. Okay. So this is a current map?

2 A. Yes, it is.

3 Q. You pointed out, in response to my prior
4 question, the blocks that have been shaded in green. You
5 called those structures. What types of structures are
6 those?

7 A. Single-family homes, residential
8 structures, with the exception of maybe right in here.
9 This is a business, Alexander's on the Bay parking lot.

10 Q. Now, with regard to those blocks that are
11 colored -- are shaded through here, what do those
12 generally represent?

13 A. These are houses all through here, houses.
14 And these are townhouses and some apartments further
15 down.

16 Q. Okay. With respect to Ocean View Avenue,
17 where do Lots 21 and 22 lay?

18 A. With respect to the north side of Ocean
19 View Avenue, those are on the beach similar to these
20 properties here.

21 Q. At the time you purchased those lots, were
22 other homes constructed north of Ocean View Avenue?

23 A. Yes, there were at the time I purchased
24 them. My -- right here, and there were several others
25 built in here. My cousin had a house further down in

1 this area here.

2 Q. Okay. I'll now show you -- excuse me.

3 MR. GENZLER: I ask the Judge to mark this
4 as an exhibit -- as Exhibit 3.

5 THE COURT: Okay.

6 MR. GENZLER: This is the map we used
7 earlier.

8 THE COURT: Plaintiff's 3.

9

10 (Plaintiff's Exhibit No. 3 was
11 marked for identification.)
12

13 BY MR. GENZLER:

14 Q. Do you recognize what's been marked here as
15 Plaintiff Exhibit 3?

16 A. Yes, I do.

17 Q. How do you recognize it?

18 A. By the red indicated here on the drawing.

19 Q. Let me ask my question. Do you recognize
20 the exhibit itself?

21 A. Yes. It is an aerial view that I obtained
22 from City Planning and Survey.

23 Q. And is the property subject, Lots 21 and
24 22, shown within this aerial view?

25 A. Yes. They are shown right here in red.

1 Q. Okay. Thank you. Are those homes that you
2 earlier indicated had been built when you purchased those
3 properties on this aerial view as well?

4 A. Yes. They are shown along here, right
5 through here and right -- some in here. These lots
6 haven't been built on as yet.

7 Q. Okay. Thank you.

8 MR. GENZLER: Mr. Bell, you can probably
9 sit back down at this point.

10 THE COURT: It's up to you.

11

12 (Whereupon, the witness resumed the
13 stand.)

14

15 BY MR. GENZLER:

16 Q. Mr. Bell, I'm going to show you -- strike
17 that.

18 MR. GENZLER: Your Honor, can I have this
19 marked as Exhibit 4, please.

20 MR. BEAVER: Can I see that one?

21 MR. GENZLER: I'm sorry.

22 MR. BEAVER: Okay.

23

24 (Plaintiff's Exhibit No. 4 was
25 marked for identification).

1 BY MR. GENZLER:

2 Q. Mr. Bell, can you tell the jury if you
3 recognize what's been marked as Plaintiff's Exhibit 4?

4 A. Yes. It is an aerial photograph. I had it
5 made to show the issue of the property that is in
6 question here today.

7 Q. Can you indicate where the property Lots 21
8 and 22 are?

9 A. They are outlined here in yellow with the
10 lots on them.

11 Q. Okay. Now, who put that red mark on the
12 map?

13 A. An engineer.

14 Q. Okay. The -- I'm sorry. Strike that.

15 MR. GENZLER: Your Honor, I ask that this
16 be marked as Exhibit 5.

17 THE COURT: Exhibit 5.

18
19 (Plaintiff's Exhibit No. 5 was
20 marked for identification).
21

22 MR. GENZLER: Thank you.
23

24 BY MR. GENZLER:

25 Q. Mr. Bell, I'm going to show you what's been

1 marked as Plaintiff's Exhibit 5. Can you identify this
2 photograph?

3 A. Yes, I can. This is an aerial view of the
4 property east of the Bay Bridge Tunnel by the property.
5 On the east side -- that is development on the east side
6 all the way down to Baylake Beach.

7 Q. And again, Mr. Bell, if you can point to
8 the location of the houses that were built when you
9 purchased your property on this map.

10 A. This house and several of these houses in
11 here and several of them along here.

12 Q. Okay. Thank you. Mr. Bell, who owns
13 Lots 21 and 22 today?

14 A. I'm sorry?

15 Q. Who owns Lots 21 and 22 today?

16 A. They are owned by the Bell Land Trust.

17 Q. Are you associated with the Bell Land
18 Trust?

19 A. Yes. I'm the trustee of the trust.

20 Q. Did you ever personally have an interest in
21 these lots?

22 A. Yes, I did.

23 Q. When was the first time you had an interest
24 in these lots?

25 A. The first time was through Seawall

1 Enterprises. And then Seawall was dissolved. And the
2 properties were divided up between Bill Page and myself,
3 and Lots 21 and 22 were part of my assets derived from
4 Seawall.

5 Q. What was your interest in the company,
6 Seawall Enterprises?

7 A. I was a 50 percent owner of Seawall
8 Enterprises.

9 Q. And who owned the other 50 percent?

10 A. William L. Page.

11 THE COURT: On what date did Seawall
12 Enterprises acquire Lots 21 and 22?

13 THE WITNESS: It acquired -- we acquired it
14 in October of 1979.

15

16 BY MR. GENZLER:

17 Q. What did Seawall pay for the property when
18 they acquired it?

19 A. We paid \$10,000 cash for it.

20 Q. Was that just for Lots 21 and 22?

21 A. That was for Inner Ear. Margaret Chapman
22 was the president; and she owned six lots, 19 through 24,
23 inclusive.

24 Q. Okay.

25 MR. GENZLER: Your Honor, could I have this

1 marked as Plaintiff's Exhibit 6, please.

2 THE COURT: Plaintiff's 6.

3
4 (Plaintiff's Exhibit No. 6 was
5 marked for identification.)
6

7 MR. GENZLER: Thank you.

8
9 BY MR. GENZLER:

10 Q. Mr. Bell, I show you Exhibit 6 and ask you
11 if you can identify that document.

12 A. Yes, I can. This is the deed from Margaret
13 Chapman, Inner Ear, Inc., to Seawall Enterprises.

14 Q. And, Mr. Bell, is there a date on that
15 deed?

16 A. This deed was dated September 25, 1979.

17 Q. Okay. Is that deed recorded in the City's
18 official records?

19 A. Yes, it is, in Map Book -- Deed Book 1947,
20 page 739.

21 Q. What was your intent when Seawall acquired
22 Lots 21 and 22?

23 A. To develop a building -- to build on the
24 property.

25 Q. What type of building were you going to

1 develop?

2 A. A residential building.

3 Q. What were you going to develop it for?

4 A. For residential purposes, the zoning, and
5 that's the highest and best use.

6 Q. Did Seawall develop any of the properties
7 it purchased?

8 A. Yes, it did.

9 Q. About how many lots did it develop?

10 A. We developed Bayview Avenue -- five lots in
11 the original purchase previously mentioned. And also,
12 Lauderdale Avenue we improved; and we built about five,
13 six houses in there.

14 Q. All in Chesapeake Park?

15 A. All in Chesapeake Park.

16 Q. When you acquired the property, that is,
17 Lots 21 and 22, did you believe you could build a
18 residence on there?

19 A. I certainly did.

20 Q. Why was that?

21 A. Construction was being performed all up and
22 down the beach east -- the east end of the beach. There
23 was no reason to believe that I couldn't build and use
24 these lots.

25 Q. Was there a house on Lots 21 and 22 when

1 you purchased it?

2 A. When I looked at it, there was a house
3 sitting on Lot 22. By the time we acquired it,
4 Ms. Chapman had the house taken down because she had
5 moved from the area.

6 Q. Did Seawall Enterprises attempt to develop
7 Lots 21 and 22?

8 A. Yes, we did.

9 Q. Could you describe for the jury when you
10 first attempted to develop that?

11 A. My first attempt was in 1979. We kept
12 running into a problem with the City because of the
13 6-foot contour -- kept throwing out the 6-foot contour,
14 6-foot contour. We couldn't develop the property.

15 Upon their instruction, I had the plat made
16 where I was going to truck sand up on the beach and
17 utilize properties that I owned and some properties that
18 were owned by others, but they weren't participating in
19 the development.

20 And that plan was submitted for the 6 foot
21 contour, and then it was another barricade that said we
22 couldn't do it.

23 Q. Mr. Bell, I'm going to show you --

24 MR. GENZLER: Your Honor, could I have this
25 marked as the exhibit next in order?

1 THE COURT: Will be 7.

2

3 (Plaintiff's Exhibit No. 7 was
4 marked for identification.)

5

6 MR. GENZLER: Thank you, Your Honor.

7

8 BY MR. GENZLER:

9 Q. Mr. Bell, I'm going to show you this, if
10 you can identify that document.

11 A. Yes. This is a document that was -- a plat
12 that was prepared by Rouse-Sirine at the direction of the
13 City that -- if we trucked sand in for development of a
14 6-foot contour, utilize the property; and this plat was
15 prepared by Rouse-Sirine in 1977.

16 Q. Who was the plat prepared for?

17 A. For the City of Virginia Beach.

18 Q. And it was prepared by you?

19 A. Yes, it was.

20 Q. Was it approved by the City?

21 A. No, it wasn't.

22 Q. Thank you. Is Seawall Enterprises in
23 existence today?

24 A. No, it isn't.

25 Q. What's happened to Seawall Enterprises?

1 A. It was dissolved through the state laws.
2 Mr. Page and I sort of parted company, dissolved the
3 company, and took all the assets personally.

4 Q. What happened to Lots 21 and 22 when
5 Seawall Enterprises split up?

6 A. I -- they were -- Lots 21 and 22 were part
7 of my share of Seawall.

8 Q. And so were they deeded to you by Seawall?

9 A. No. Deeded to me by Seawall, yes, my wife
10 and I.

11 MR. GENZLER: Your Honor, could I have this
12 marked as the exhibit next in order, please?

13 THE COURT: That'll be 8.

14
15 (Plaintiff's Exhibit No. 8 was
16 marked for identification.)

17
18 MR. GENZLER: Thank you, sir.

19
20 BY MR. GENZLER:

21 Q. Mr. Bell, I show you what the Judge has
22 marked as Plaintiff's Exhibit 8, if you can identify that
23 document.

24 A. Yes. This document here is the deed from
25 Seawall, from William L. Page, from his wife, to

1 Richard Bell and his wife; and it was dated the 5th day
2 of August 1982.

3 Q. And what property was transferred to you?

4 A. Lots 21 and 22 were transferred to me by
5 this deed.

6 Q. Were there others?

7 A. Among other properties, sure.

8 Q. Is this document recorded in the City's
9 official records?

10 A. Yes, it is in Deed Book 2213, page 119.

11 Q. Mr. Bell -- thank you, sir. Who owns
12 the -- who owns the title to the land under Ocean View
13 Avenue and Beaufort Avenue which borders your property?

14 A. I do.

15 MR. BEAVER: Excuse me, Your Honor. I need
16 to object. He's not qualified as a title examiner or
17 anything like that to qualify as to who owns underlying
18 fees and that kind of stuff.

19 MR. GENZLER: He bought it.

20 THE COURT: Overruled.

21

22 BY MR. GENZLER:

23 Q. Mr. Bell, who owns the fee or who owns the
24 title to the property underlying Ocean View Avenue and
25 Beaufort Avenue that borders your property?

1 A. I own the fee in Ocean View Avenue in front
2 of all the properties that I own and properties owned by
3 others. Mr. Page would own the fee that he owns.

4 Q. When did you acquire this interest?

5 A. That interest was acquired from
6 Michael L. Smith, the only subdivision of this property,
7 and that was done in 1978.

8 Q. Does -- strike that.

9 While you owned -- while you owned Lots 21
10 and 22 after you acquired Seawall Enterprises, did you
11 plan to develop those properties?

12 A. Yes, I did.

13 Q. When was that?

14 A. I made an attempt in '72 to develop the --
15 '82, around the latter part of '82.

16 Q. Okay.

17 MR. GENZLER: Your Honor, if I could have
18 this marked as the next exhibit in order.

19 THE COURT: Plaintiff's 9.

20

21 (Plaintiff's Exhibit No. 9 was
22 marked for identification.)

23

24 MR. GENZLER: Thank you, sir.

25

1 BY MR. GENZLER:

2 Q. I show you what the Judge has marked as
3 Exhibit 9 and ask you if you recognize this plan.

4 A. Yes, I do.

5 Q. What is this plan?

6 A. A plan that I had along with
7 Mr. William L. Page for these lots here to develop
8 properties by bulkhead and by using --

9 Q. When was this plan prepared?

10 A. This plan was prepared in '82, October '82.

11 Q. I'm sorry. Was this plan submitted to the
12 City of Virginia Beach?

13 A. Yes, it was.

14 Q. And did the City approve the plan?

15 A. No, sir.

16 Q. I'm sorry, sir. You indicated there was a
17 difference in this plan and your current plan and the
18 1982 plan?

19 A. Yes. This plan, the 1992 --

20 Q. Yes, sir?

21 A. The 1992 plan, which we have a bulkhead
22 retaining wall where this plan is, was just demonstrated
23 with pilings itself. The houses were sitting in the area
24 where the tide could roll under it.

25 Q. Did the City approve this plan?

1 A. No, they did not.

2 Q. Thank you. Did you make subsequent
3 attempts after that event to develop this property?

4 A. Yes, I have.

5 Q. And when was that?

6 A. Later in '91 -- '92 through the direction
7 of Keith Slicer with Spectra Group, another engineer, who
8 was trying to accomplish a development of this property.

9 And we had hoped to set up a meeting and
10 get all the City department heads together and find out
11 if there was some middle ground to get -- to develop the
12 property down here. And the meeting was held and with
13 little result. It was pretty negative, and so we walked
14 away empty-handed.

15 MR. GENZLER: Your Honor, could I ask you
16 to mark this as the next exhibit in order?

17 THE COURT: Plaintiff's 10.

18
19 (Plaintiff's Exhibit No. 10 was
20 marked for identification.)

21
22 MR. GENZLER: Thank you, sir.

23
24 BY MR. GENZLER:

25 Q. Mr. Bell, could you please identify the

1 document that the Judge has marked as Plaintiff 10?

2 A. Yes, I can. This document is dated
3 July 22, 1991, to a Mr. Pulley; and it outlines in detail
4 a plan that we thought would be beneficial to both the
5 City and myself and the other property owners in the
6 area.

7 And it met with very negative results by
8 all parties involved with the City.

9 Q. Why did you say beneficial to the City as
10 well as to the parties?

11 A. This letter proposes that the City wants
12 the beach. And this letter, proposing that the
13 landowners whose properties are in front of the lots of
14 Ocean View Avenue and my lots on the north side like the
15 other lots, but then there's lots in the front of that.

16 At one time, these lots in the past fronted
17 Bayside Avenue, which was destroyed by storms in '33 and
18 '36; and again, subsequently, never regained the status
19 of the plat.

20 Q. Now, Mr. Bell, those lots that you were
21 just referring to that fronted on Bayside Avenue, can you
22 point that out?

23 A. These front lots here. This is Bayside
24 Avenue. It is not shown on this particular plat; but
25 right here, Bayside Avenue, it runs the full length of

1 the subdivision.

2 These lots in the front were the lots that
3 we were offering to the City for public beach along with
4 a portion of the lots that front -- 25 foot of the lot
5 that fronted on Ocean View Avenue.

6 Q. And again, did the City approve this plan?

7 A. No, they did not.

8 Q. You know --

9 MR. GENZLER: Your Honor, if I could ask
10 you to mark this as the next exhibit?

11 THE COURT: Plaintiff's 11.

12
13 (Plaintiff's Exhibit No. 11 was
14 marked for identification.)

15
16 MR. GENZLER: Your Honor, if you'd like a
17 copy of that?

18
19 BY MR. GENZLER:

20 Q. Mr. Bell, would you identify the document
21 that the Judge has just marked as Exhibit 11?

22 A. This is a letter from the City of Virginia
23 Beach dealing with information on Lots 21 and 22, Block
24 3. It's -- it's informing me that I have to go before
25 the Wetlands Board.

1 Q. And did they tell you what type of permit
2 was required from the Wetlands Board?

3 A. I'd have to get a dunes permit.

4 Q. What's the date of this letter?

5 A. This is March 3, 1988.

6 Q. Thank you. Now, when you bought your
7 property -- strike that.

8 When Seawall Enterprises bought this
9 property in 1979, were you aware of the Coastal Primary
10 Dune Act?

11 A. No. It wasn't in existence at that time.

12 Q. Do you know when this act was adopted?

13 A. I believe it's in '80 -- maybe -- I think
14 it was '80.

15 Q. Now, when you purchased this property --
16 when Seawall purchased this property in 1979, were there
17 houses being built on lots similar to Lots 21 and 22?

18 A. Yes, there were.

19 Q. Where were those located, sir?

20 A. They were located on the east side of the
21 Bay Bridge Tunnel.

22 Q. And after you purchased Lots 21 and 22, had
23 additional houses been built in location to Lots 21 and
24 22?

25 A. There were some built on the east side and

1 in Block 1, which is up next to the Little Creek
2 Amphibious Base on the western end of the subdivision.
3 There were homes built there.

4 Q. What effect, if any, did you think that the
5 Coastal Primary Dune Zoning Ordinance would have on your
6 property when it was developed?

7 A. I thought it was going to have some impact
8 as far as regulation of what I do. I never dreamed that
9 it was going to be a flat denial of the use of my
10 property.

11 Q. And why did you think that?

12 A. Because other properties were being
13 developed in the area during, before; and I had my plans
14 for these lots way, way, way before any regulations were
15 placed on the beach.

16 Q. Now, did you ever apply for a permit from
17 the Wetlands Board for Lots 21 and 22?

18 A. Yes, I did.

19 Q. When was that?

20 A. I did that in 1991.

21 Q. Mr. Bell, are you sure of that date?

22 A. It could be '92. I'm not sure.

23 Q. I'm going to show you --

24 MR. GENZLER: Your Honor, if I could ask
25 you to mark this Plaintiff's Exhibit 12?

1 THE COURT: Plaintiff's 12.

2

3 (Plaintiff's Exhibit No. 12 was
4 marked for identification.)

5

6 BY MR. GENZLER:

7 Q. Let me show you what the Judge has marked
8 as Plaintiff's 12 and ask if you can identify that
9 document.

10 A. Yes. 1992 -- this is the plat that was
11 submitted. This was the plat that was submitted to the
12 Planning Department for approval of Mr. Pulley's office.
13 DSC I think it is.

14 And then I was informed by DSC they
15 couldn't review it formally because I had to carry it
16 before the Wetlands Board -- before the Virginia Beach
17 Wetlands Board before they could do anything.

18 Q. Excuse me one second.

19 MR. GENZLER: Your Honor, may I have one
20 minute, please?

21 Your Honor, that was Mr. Page, one of our
22 witnesses.

23 Your Honor, could I ask you to mark this as
24 the next exhibit in order, please.

25 THE COURT: Plaintiff's 13.

1 (Plaintiff's Exhibit No. 13 was
2 marked for identification.)
3

4 BY MR. GENZLER:

5 Q. Mr. Bell, I'm going to show you what the
6 Judge has marked as Exhibit 13 and ask you if you can
7 identify that document.

8 A. This document corresponded from the City to
9 Keith Slicer, who was representing me in this matter in
10 Lots 21 and 22, telling me that they disapproved that
11 drawing because I had to carry it before the Virginia
12 Beach Wetlands Board and also had the hurdle of the
13 Chesapeake Bay Preservation Act.

14 Q. Thank you, sir. Now, what kind of wetlands
15 permit did the City say that you needed to obtain?

16 A. A permit to get in front of the primary
17 dune as they called it.

18 Q. Okay. Did you submit that application to
19 the Wetlands Board?

20 A. Yes, I did.

21 Q. When was that done?

22 A. That was in 1992.

23 Q. Did you review the plan that was submitted
24 with that application?

25 A. Keith Slicer, at my direction, did.

1 Q. Okay. Did you review the application and
2 the plans that were submitted?

3 A. Yes, I did.

4 Q. Okay.

5 MR. GENZLER: Your Honor, I'd hand you two
6 exhibits that we'll talk about together but marked as --

7 THE COURT: As one exhibit or two?

8 MR. GENZLER: Two exhibits, sir.

9 THE COURT: That'll be 14 and 15.

10 MR. GENZLER: Thank you, sir.

11 THE COURT: Plaintiff's Exhibits 14 and 15.

12

13 (Plaintiff's Exhibits No. 14 and
14 No. 15 were marked for identification.)

15

16 BY MR. GENZLER:

17 Q. Mr. Bell, I show you what's been marked by
18 the Judge as Exhibit 14 and ask you if you can identify
19 that document.

20 A. This is -- this is my application to the
21 Virginia Beach Wetlands Board.

22 Q. What were you seeking in that application?

23 A. I was in relief of seeking a permit to be
24 able to build a structure as outlined in that plan.

25 Q. I'll show you a document that's been marked

1 as Exhibit 15, if you can identify that.

2 A. This is the plan which was submitted with
3 that application for their review and would hopefully
4 gain their blessing, but it didn't happen.

5 Q. You anticipated my next question. Were you
6 granted the permit by the Wetlands Board?

7 A. No, I was not.

8 Q. One second, please, sir.

9 MR. GENZLER: Your Honor, could I ask you
10 to mark this as the next exhibit?

11 THE COURT: Plaintiff's 16.

12
13 (Plaintiff's Exhibit No. 16 was
14 marked for identification.)

15
16 MR. GENZLER: Thank you.

17
18 BY MR. GENZLER:

19 Q. Mr. Bell, I'll show you what the Judge has
20 marked as Plaintiff's 16 and ask you if you recognize
21 that document.

22 A. This is the document from the Virginia
23 Beach Wetlands Board.

24 Q. And what -- what is that document?

25 A. This is when they held the public -- public

1 hearing on it.

2 Q. And what does that document represent, sir?

3 A. This represents when they were having the
4 public hearing and also when -- it was the decision to
5 deny the application.

6 Q. Mr. Bell, did anybody from the City ever
7 suggest to you that you should submit another application
8 for another permit after your permit was denied?

9 A. No one did at all.

10 Q. No one suggested to you that you change the
11 design of your site development plan so that it might be
12 adopted by the Wetlands Board?

13 A. No, they did not.

14 Q. After your permit was denied by the
15 Wetlands Board, what did you do?

16 A. I was forced to take the next step in the
17 chain, to appeal it to the Virginia Marine Resources
18 Commission.

19 Q. Okay.

20 MR. GENZLER: Your Honor, could I ask
21 you to mark this as the next exhibit, please?

22 THE COURT: That will be 17.

23

24 (Plaintiff's Exhibit No. 17 was
25 marked for identification.)

1 MR. GENZLER: Thank you, sir.

2

3 BY MR. GENZLER:

4 Q. Mr. Bell, can you identify what the Judge
5 has just marked as Exhibit 17?

6 A. This is the letter appealing to the
7 Virginia Marine Resources Commission handled by
8 Keith Slicer with Spectra Group at my direction.

9 Q. What were the grounds of your appeal?

10 A. There was never any attempt to offer any
11 kind of compromise or any suggestion whatsoever by the
12 City as to what I could do to accomplish my goal. They
13 simply denied it, and that was it.

14 Q. Now, did the Virginia Marine Resources
15 Commission grant your appeal?

16 A. No, they did not.

17 Q. What did you do after VMRC denied your
18 appeal?

19 A. I took my next step and took it to the
20 Circuit Court in Virginia Beach.

21 Q. What happened at the Circuit Court of
22 Virginia Beach?

23 A. The application was upheld by the Circuit
24 Court.

25 Q. So your appeal was denied?

1 A. I've exhausted all my remedies.

2 Q. Is there anything else that you know that
3 you could do to get a permit to build on that property?

4 A. No, I don't.

5 Q. Have you made further attempts since that
6 permit denial to get the City's approval to get the
7 permit?

8 A. Yes, I did.

9 Q. And what were those attempts?

10 A. I went to the Bay Bridge Tunnel -- they
11 started the new Bridge Tunnel crossing. They were
12 dredging 86 cubic yards of sand and planning to stockpile
13 it at Lynhaven so where the City could truck it to the
14 north end of the City of Virginia Beach.

15 MR. BEAVER: Your Honor, excuse me. May I
16 impose an objection? Should we approach?

17

18 (Whereupon, a side-bar conference
19 was held out of the hearing of the
20 reporter and the jury.)

21

22 MR. GENZLER: Excuse me one second, Your
23 Honor.

24

25

1 BY MR. GENZLER:

2 Q. Mr. Bell, who owns Lots 21 and 22 today?

3 A. The Bell Land Trust owns them.

4 Q. And what is the Bell Land Trust?

5 A. The Bell Land Trust is a trust set up for
6 my children and which I'm the trustee of.

7 Q. And why was the trust created?

8 A. The properties were titled to my wife and I
9 through tenants by the entirety, right of survivorship.

10 And at the time we were separated and
11 had -- she wanted a divorce because she wanted to
12 remarry. And had she divorced with the title --
13 properties titled as they were, she would then become
14 tenants in common with me; and that would have created
15 another monstrous worry over how to handle the
16 properties.

17 And so they were placed in the Bell Land
18 Trust. And we had already had the property estimated.
19 And so then they were put in the Bell Land Trust and my
20 daughter was the trustee of the Trust, my wife and I were
21 beneficiaries of the Trust.

22 Q. Okay.

23 A. And then after it was placed in the Trust,
24 it was in battle with legal questions and not so much
25 with the Trust but with properties we're dealing with

1 today. My daughter couldn't handle it, and she asked to
2 resign as trustee.

3 She did, and I became the trustee. And my
4 children are the beneficiaries of the Trust, and my
5 ex-wife is no longer involved.

6 MR. GENZLER: Your Honor, I ask that this
7 be marked as the next document -- the next exhibit in
8 order.

9 THE COURT: 18 -- Plaintiff's 18.

10
11 (Plaintiff's Exhibit No. 18 was
12 marked for identification.)

13
14 MR. GENZLER: Thank you.

15
16 BY MR. GENZLER:

17 Q. I'll show you what the Judge has marked as
18 Plaintiff's Exhibit 18 and ask you if you can identify
19 that document.

20 A. Yes, I can. This is the document set up in
21 March '93 setting up the Bell Land Trust.

22 Q. Okay. And who is the -- who is the
23 transferee in that document?

24 A. At the time, it was properties transferred
25 to Richard C. Bell and Linda B. Bell, husband and wife;

1 and Rita T. Bauswell was the trustee.

2 Q. Mr. Bell, is Ms. Bauswell the trustee
3 today?

4 A. No, she is not.

5 Q. Who is the trustee today?

6 A. I am the trustee today.

7 MR. GENZLER: Your Honor, I need this
8 marked, please.

9 THE COURT: 19.

10

11 (Plaintiff's Exhibit No. 19 was
12 marked for identification.)

13

14 BY MR. GENZLER:

15 Q. I show you what the Judge has marked as
16 Exhibit 19 and ask you if you recognize that document.

17 A. Yes, I do.

18 Q. What is that document?

19 A. This is a document that through the first
20 meeting of the trustee -- removing of the trustee --
21 removing Linda -- I'm sorry, Rita Bauswell and replacing
22 her with me as the trustee.

23 Q. Mr. Bell, have you advertised Lots 21 and
24 22 for sale?

25 A. No, I have not.

1 Q. All right. Why not?

2 A. No market.

3 Q. Why not?

4 A. If anybody sitting here today would like to
5 buy it --

6 Q. And has anyone offered to buy Lots 21 and
7 22?

8 A. No one.

9 Q. Do you have an opinion as to the value of
10 your property today?

11 A. It is my opinion it has been reduced to
12 nothing by the City's actions.

13 Q. Do you have an opinion of the value that
14 your property would have had had you been able to develop
15 it for residential purposes as you reasonably intended?

16 A. I think so, \$250,000.

17 Q. Why is that, sir?

18 A. Scarcity in the area, supply and demand.
19 I've got a lot of prominent people, doctors, lawyers, who
20 constantly ask me, if I ever get it straightened out --

21 Q. Any mortgages outstanding on Lots 21 and
22 22?

23 A. I've had a mortgage on Lots 21 and 22 and
24 others since 1986 held by Seaboard Savings Plan, now Life
25 Savings Plan, in the amount of \$33,000, which I have been

1 paying interest on since 1986 monthly.

2 Q. How much do you owe on that mortgage?

3 A. \$33,000.

4 Q. Thank you, sir.

5 MR. GENZLER: Your Honor, that concludes my
6 direct examination of Mr. Bell. I would move that this
7 exhibit that you previously --

8 THE COURT: I've admitted them all.

9 MR. BEAVER: I would just like to object to
10 the deeds. I certainly agree that the deeds are the
11 deeds, but I object to the fact that they may establish
12 ownership as to how it's titled.

13 THE COURT: Okay. Overruled.

14 Cross-examination?

15 MR. BEAVER: Yes, Your Honor.

16

17 CROSS-EXAMINATION

18

19 BY MR. BEAVER:

20 Q. Mr. Bell, when you first acquired these
21 lots -- I need to go up here.

22 MR. BEAVER: Your Honor, could I ask
23 Mr. Bell to come over, please?

24 THE COURT: Make sure you identify for the
25 record what exhibit you're using.

1 MR. BEAVER: This is Exhibit No. 1, which
2 is the plat of the -- old time plat of Chesapeake Park.

3
4 (Whereupon, the witness left the
5 stand.)

6
7 BY MR. BEAVER:

8 Q. Now, first of all, you originally acquired
9 Lots 21 and 22 shown here in the red. You also acquired
10 other property, did you not?

11 A. Yes, I did.

12 Q. Can you -- first of all, there was Lot 20
13 that was next to it?

14 A. Seawall Enterprises acquired that from
15 Inner Ear, Lots 19 and 20.

16 Q. Okay. Could you put it in pink here No. 20
17 at the same time?

18 A. Uh-huh.

19 (Witness complies.)

20 Q. Just 20. Have you got some other property?

21 A. Seawall -- yes. We got 19, 23, and 24.
22 You like me to color those?

23 Q. Color those pink, also. All right. And
24 what else?

25 A. What document?

1 Q. Was that all you got?

2 A. That's all I bought from Inner Ear.

3 Q. This is all that Seawall bought in 1979; is
4 that correct?

5 A. Yes.

6 Q. Since then -- that was when the transfer of
7 Seawall's assets to you and your wife was made?

8 A. Yes.

9 Q. You acquired some additional property, did
10 you not?

11 A. We own -- we owned --

12 Q. I'm not asking -- you had acquired some
13 additional property --

14 A. Yes, we did.

15 Q. -- at the time that Seawall was dissolved?

16 A. Yes.

17 Q. You acquired yourself some property in
18 Block 4, did you not?

19 A. Yes.

20 Q. And could we put those in a different color
21 just so I don't -- put those in green?

22 A. Just the ones acquired from Seawall?

23 Q. Just the ones you acquired from Seawall at
24 the dissolution.

25 A. Okay. All right.

1 Q. That's 3 and 4 I believe. That's half of
2 Lot 25 in Block 4? That's properties to the west?

3 A. This is property I acquired in this area
4 from Seawall Enterprises.

5 Q. Now, when you acquired the property from
6 Seawall after the dissolution of the company assets,
7 there was no independent appraisal of value at the time?

8 A. No, it wasn't.

9 Q. And there was no taxes paid on it?

10 A. There was no taxes paid.

11 Q. No tax on the transaction?

12 A. No. No. No.

13 Q. What about the income tax for those kinds
14 of purposes, just a pass-through?

15 A. It was handled through Abe Kalfus. He
16 dissolved the corporation.

17 Q. On this old plat, each one of these blocks
18 has a lot?

19 A. On some less, some -- but basically, yes,
20 40 lots. The average lot being 1,250 square foot.

21 Q. Each one of these lots is zoned?

22 A. Duplex, actually.

23 Q. Duplex right now?

24 A. Duplexes.

25 Q. Okay. Do you own additional properties now

1 at -- in this area besides these?

2 A. Yes, I do.

3 Q. And are you aware -- can you show on this
4 map where they are?

5 A. Yeah.

6 Q. Let's see.

7 A. I own this beach right here shown on this
8 plat. I own the fee on each street, Ocean View Avenue; I
9 own the fee on Lauderdale Avenue. I have ownership in
10 Pleasure House Lake.

11 Q. Do you own any other lots out here?

12 A. No lots.

13 Q. No other lots?

14 A. Not from Seawall.

15 Q. I'm asking you any other lots.

16 A. I own these lots right here.

17 Q. And that would be the lots -- all the rest
18 of the lots up to the Bay Bridge Tunnel and up to Smith
19 Street, which was closed?

20 A. Smith Street is closed.

21 Q. You're saying between the green area on
22 Exhibit 1 all the way to Smith Avenue, you now own that
23 property also?

24 A. This area right here, yes.

25 Q. Is there a break in the middle?

1 A. No.

2 Q. You own all -- all that right here between
3 the streets?

4 A. Well, let me correct myself. These two
5 lots right here -- these four lots, they're owned by my
6 ex-wife through Harlow Property Settlement, through the
7 divorce.

8 Q. Owned by your wife?

9 A. My ex-wife.

10 Q. Okay. Did you sell those to her?

11 A. This was part of her property settlement.

12 Q. What was the value attached to them as part
13 of that?

14 A. There was no value put on them at the time.

15 Q. It was just -- that was part of the
16 settlement that she got for it -- in blue, everything,
17 but what you still own, just so we make sure?

18 A. It is in blue that I own.

19 Q. Actually, hold it.

20 A. Let me --

21 Q. I'm sorry. I withdraw the question so as
22 not to confuse the jury anymore and finish up with the
23 green the property that you own in Block 4.

24 A. Excludes -- it excludes with a blue line.

25 Q. If it's not colored, you don't own them;

1 right?

2 A. Colored that one -- those four there and I
3 own them.

4 Q. When did you get those?

5 A. When did I acquire these? I acquired these
6 from Hedgepath.

7 Q. When was that?

8 A. That was done early part in '79.

9 Q. How much did you pay for those?

10 A. \$1,000 for --

11 Q. -- for all the rest of that property there?

12 A. Yes, sir. We acquired from Driscoll and
13 Hedgepath.

14 THE COURT: How much other property was
15 involved in that transaction?

16 THE WITNESS: It was Lots 18, 19, 20, 21,
17 and 22 --

18

19 BY MR. BEAVER:

20 Q. So that --

21 A. -- included Block 17 in this property here.
22 This property here was acquired.

23 Q. From Seawall?

24 A. No. This property here.

25 Q. You're talking --

1 A. Acquired after the City said that I could
2 truck up sand on these lots. A fellow that lives here, I
3 traded him these lots, some \$40,000 plus \$8,500 for these
4 lots here. He owned out here on the beach.

5 Q. I see.

6 A. Because we had hoped to put sand up there.

7 Q. Was there a separate value attached to this
8 property? You have to purchase all -- include -- lumped
9 in with other properties?

10 A. Depend on --

11 Q. How much did you pay?

12 A. I paid \$100,000 to Mr. Driscoll and --

13 Q. I'm -- so there's no valuation for all of
14 these?

15 A. No.

16 Q. Did that include land in Block 17?

17 A. It included these lots which were -- I
18 might mention, were not improved. Ocean View Avenue or
19 Lauderdale Avenue was a paper street. I had to put that
20 street in.

21 Q. You mentioned that -- you can go back.

22 You mentioned there's a deed of trust. So
23 you borrowed money against some of this property?

24 A. I'm sorry?

25 Q. You borrowed against some of this property?

1 A. No. I used the property for security of a
2 loan, a business loan.

3 Q. Right. And the property that is subject to
4 that is Lots 21 and 22 in Block 3?

5 A. What you see out in --

6 Q. -- the red part; right?

7 A. The red and the green. The pink -- you got
8 one lot in pink.

9 Q. All right.

10 A. And you have the four lots -- about four
11 lots.

12 Q. The property in question here is part
13 security for this \$33,000 -- \$33,000 business loan?

14 A. Right.

15 Q. Okay.

16 A. I'm using those lots as security.

17 Q. Now, Lot 20, which is contiguous and
18 adjacent to these two building lots that you're trying to
19 make into building lots, that is also included with these
20 21 and 22 for tax purposes?

21 A. That's the only way I can explain the City
22 in reducing -- in an effort to reduce its paperwork. One
23 owner -- they were transferred to three lots in one deed
24 to, therefore, put it as one deed and tax it.

25 Q. I see. Now, if we went to the GPIN map for

1 that transfer that we've done and were to compare, we
2 could look and find those lots; is that correct?

3 A. Yes.

4 Q. So we don't have to do that? It's the same
5 map?

6 A. Yeah. It's on that map. Yes.

7 Q. I'm talking about the GPIN map of the City,
8 Tax Map, which is Exhibit No. 2. Now, if you want to
9 come down and look at this?

10 A. Sure.

11

12 (Whereupon, the witness left the
13 stand.)

14

15 Q. Can you tell the jury what way the
16 coastline is right here? Where's the coastline?

17 A. The coastline -- this is what they call the
18 dune; or I guess you'd say the high water mark, if you
19 will. I don't know if it's truly the high water line. I
20 really don't know if it is.

21 Q. So you don't know what that means?

22 A. I guess it's showing the shoreline.

23 Q. You don't know what that is?

24 A. No.

25 Q. On there -- perhaps if we go to Exhibit

1 No. 12?

2 A. Yes.

3 Q. And does he show it there?

4 A. Yeah, he does. See. There it is right
5 there.

6 Q. This is the mean high water line as shown
7 on his Exhibit 12?

8 A. At the time he did his field work.

9 Q. That was in '92?

10 A. Yes, I think so.

11 Q. Does that show --

12 A. '82. Nope, I'm sorry -- '92.

13 Q. And actually, that shows the high water
14 mark on Lots 21 and 22; is that correct?

15 A. Yes.

16 Q. And then the low water mark is a little bit
17 into Lot 20?

18 A. Yes.

19 Q. I just want to show -- this is Exhibit
20 No. 4, the one with the yellow mark on it. Does the
21 yellow mark represent the property line or the bulkhead
22 line that was proposed, or do you recall?

23 A. I don't know. I haven't -- I just don't
24 know what that represents. That might represent Lots 21
25 and 22.

1 Q. But you don't know that?

2 A. I'm not sure.

3 Q. You didn't put that on there?

4 A. No.

5 Q. And you don't know what the tide was at the
6 time this was taken?

7 A. No, I don't.

8 Q. All right. That's Exhibit No. 4 that we're
9 talking about?

10 A. I would imagine.

11 Q. That shows low tide?

12 A. Ebb tide, was going out.

13 Q. I see. Sit down, please.

14

15 (Whereupon, the witness resumed the
16 stand.)

17

18 I just want to confirm, up until the
19 application for the wetlands permit, for the sand dune
20 permit, what we're talking about in this case today, you
21 never challenged any of the decisions made by the City in
22 court with respect to this property?

23 MR. GENZLER: Objection. I don't know what
24 decisions he's talking about in court where the plaintiff
25 would have the opportunity to challenge it.

1 MR. BEAVER: It's just asking two or
2 three --

3
4 BY MR. BEAVER:

5 Q. You testified that in 1979 you proposed
6 something to the City, and in 1982 you proposed something
7 to the City. And I think there were a couple of others
8 before 1992 that you said you -- you had proposed to the
9 City.

10 Now, I just want to confirm that after the
11 City made decisions, you never went back with respect to
12 those decisions to the court or to the City or anyone?

13 A. No. My hopes were and my continuing
14 efforts were to regain a permit on this property from the
15 City, that we would find some middle ground in which we
16 could work with. But after it was apparently quite clear
17 to me, after being hit in the head several times, I
18 realized my only course was going to be through the
19 courts.

20 Q. I think you told Mr. Genzler -- you told us
21 that these lots are reasonable for sale. Now, are they?

22 A. If anyone wants to come up here and you'd
23 like to buy them, I'd sell them to you.

24 Q. You haven't tried to sell them? You
25 haven't tried to sell them?

1 A. No. I have not tried to sell them. They
2 are not marketable.

3 Q. As I understand you, you're not aware of
4 any market for these properties recently?

5 A. The only market that the properties were
6 acquired after my options --

7 Q. I'm sorry. Let me make myself clear what
8 we're talking about. Let's talk about property to the
9 north of Ocean View Avenue and say from Blocks 62 to 43
10 on the GPIN map, which is Exhibit No. 2, are you aware of
11 any sales?

12 A. 62 to 43 represent -- use the block numbers
13 then I can respond.

14 Q. That'd be easier. If we take Exhibit No. 1
15 and we've got, say, from Blocks 1 through 6 or 1 through
16 5, you're not aware of any sales in that area recently?

17 A. Recently?

18 Q. Since 1977 -- since 1978?

19 A. Recently, there was lot -- these three lots
20 right here were involved and sold since 1979. I don't
21 know who the owner was.

22 Q. There was three lots?

23 A. I'm saying down -- three lots, the paper
24 street was put in -- was involved.

25 Q. Besides those, have there been any other

1 sales --

2 A. No.

3 Q. -- that you're aware of?

4 A. No.

5 Q. Mr. Bell, are you a titled examiner?

6 A. No, I'm not.

7 Q. You said in your opinion these two lots
8 should be worth a certain amount of money. What would be
9 the development cost assuming that they could be
10 developed?

11 A. The development cost if I was to develop
12 just Lots 21 and 22?

13 Q. Let me withdraw the question.

14 Isn't it true to get -- are you saying that
15 the property is worth \$250,000 as it is?

16 A. No. It has to be developed.

17 Q. All right. Now, for you to get to the
18 \$250,000 value of these two lots, how much do you think
19 you'd have to spend?

20 A. Well, to just -- to develop Lots 21 and 22
21 as a single entity, we'd have to run a three-quarter-inch
22 water line in Bay Bridge Lane, 100 feet, probably about
23 150 foot to supply water.

24 Q. So?

25 A. I would take the --

1 Q. And I understand I asked the question. Is
2 it fair to say reasonable expenses 150-, \$200,000 value?

3 A. Not just for those two lots, no. If you'll
4 permit me? For two-inch PVC line at Bay Bridge Lane at
5 the expense, I'd say, an expense of -- utility expense of
6 about \$6,000.

7 And I would have road expense of -- because
8 there's no curb and gutter in the area, I would say
9 probably \$18,000. So you'd say roughly about \$24,000.

10 THE COURT: 24-, 6-, and 1-. About 32-?

11 THE WITNESS: About \$32,000 to supply
12 utilities to that one specific lot with the street.

13

14 BY MR. BEAVER:

15 Q. And if you had utilities, it would have to
16 be improved; correct?

17 A. Yes. I would have to put -- have to grade
18 it, downgrade it.

19 Q. I understand. And the City would require
20 you to improve the street?

21 A. Yes, sir.

22 Q. And are you saying if the street was
23 improved, these two lots would be worth \$250,000?

24 A. I think -- yes.

25 Q. Would any bulkheads be required?

1 A. I'd have to bulkhead. Bulkhead runs about
2 \$8,000.

3 Q. And you'd have to fill it?

4 A. Pardon?

5 Q. And would the bulkhead include filling it?

6 A. I'd have to backfill it.

7 Q. All right. Okay.

8 MR. BEAVER: I have nothing further.

9 THE COURT: Any redirect?

10 MR. GENZLER: Just a few, Your Honor.

11

12 REDIRECT EXAMINATION

13

14 BY MR. GENZLER:

15 Q. Mr. Bell, Mr. Beaver asked you about this
16 mortgage on Lots 21 and 22 a few minutes ago; do you
17 recall that?

18 A. Yes.

19 Q. Was that for purchase money for a mortgage
20 on those lots?

21 A. No. No. It was -- it was a loan, a
22 business loan that I made using the property as
23 collateral.

24 Q. In your mind, was the value of that loan in
25 any way the measure of the value of those properties?

1 DIRECT EXAMINATION

2
3 BY MR. GENZLER:4 Q. Good morning, Mr. Slicer. Could you state
5 your full name and address for the record, please.6 A. Keith A. Slicer, 822 Terrace Avenue,
7 Virginia Beach.

8 Q. What is your occupation, Mr. Slicer?

9 A. Surveyor.

10 Q. And where are you employed today?

11 A. City of Chesapeake.

12 Q. And how long have you been with the City of
13 Chesapeake?

14 A. About three and a half years.

15 Q. Where were you employed before you worked
16 for the City of Chesapeake?

17 A. At the Spectra Group.

18 Q. And in what capacity were you employed by
19 the Spectra Group?

20 A. Staff project engineer.

21 Q. And before you worked for the Spectra
22 Group, where were you employed?

23 A. City of Virginia Beach.

24 Q. And in what department?

25 A. Department of Public Works, survey

1 engineer.

2 Q. Are you a professional engineer?

3 A. Yes.

4 Q. Do you know Mr. Richard Bell?

5 A. Yes.

6 Q. How do you know Mr. Bell?

7 A. From working at Spectra Group. We designed
8 a few projects for him during the time as well as at the
9 City of Chesapeake.

10 Q. Are you familiar with Chesapeake Park in
11 Virginia Beach?

12 A. Yes.

13 Q. And how are you familiar with that?

14 A. Both from the project we designed and -- in
15 that area for Richard and as well as having worked at the
16 City of Virginia Beach. I am generally familiar with the
17 area, yes.

18 Q. Do you recall the first opportunity you had
19 to work with Mr. Bell on a development in Chesapeake
20 Park?

21 A. Yeah. I can recall two projects which we
22 did involving Pleasure House Lake. Pleasure House Lake
23 is the one we're discussing today up along Ocean View
24 Avenue in Chesapeake Park itself. I think this was the
25 second one we did.

1 Q. Okay.

2 MR. GENZLER: Excuse me one second. I want
3 to get an exhibit if I could.

4
5 BY MR. GENZLER:

6 Q. Mr. Slicer, I'm going to show you what's
7 been admitted as Exhibit 10 in this case and ask you if
8 you recognize that document.

9 A. Yes.

10 Q. And what is that document, sir?

11 A. This is a letter that we sent to the City
12 of Virginia Beach back on July 22 of '91 where it's
13 dated -- which Mr. Bell had come in and gone over a
14 proposed project with this.

15 And we put together this proposal and went
16 to the City of Virginia Beach requesting their assistance
17 in coming up with some kind of criteria, that type of
18 thing, to proceed with this project.

19 Q. In general terms, what was the proposal
20 making to the City?

21 A. The proposal involved the development along
22 Ocean View Avenue, east of Beaufort I think it was or
23 both sides of Beaufort along Ocean View, some street work
24 and some housing type lots to be developed.

25 Q. And was this proposal approved by the City

1 of Virginia Beach?

2 A. No, it was not. I don't think we ever
3 submitted it for approval. Just discussed it with them.

4 Q. And what was the reaction to this proposal?

5 A. There was several problems that they seemed
6 to have. I don't remember exactly what they were, the
7 problems that resulted from the meeting we had with them.

8 Generally, Richard was going to re-evaluate
9 what he was doing, and he talked with us since. And we
10 changed the project to something different than what this
11 letter is proposing.

12 Q. Did you have occasion to do other design
13 work for Mr. Bell in Chesapeake Park?

14 A. Yeah. We did a plan for development from
15 several infrastructures in a building location at the
16 corner of Ocean View Avenue and Beaufort.

17 Q. I'm going to show you, if I could, what's
18 been marked and admitted as Exhibit 11 -- I'm sorry,
19 Exhibit 12, and ask you if you recognize this document.

20 A. Yeah. That's the plan we did.

21 Q. Okay. And this was for development of what
22 lots?

23 A. Lots 21 and 22, Block 3.

24 Q. What was done with this plan?

25 A. We designed the plan and submitted it to

1 Virginia Beach for approval.

2 Q. And did the City approve that plan?

3 A. No, they didn't.

4 Q. What did the City tell you?

5 A. As I recall, they told us that they weren't
6 going to formally review the plan until we got a wetlands
7 permit, with the wetlands permit process.

8 I don't think we ever got an actual review
9 letter from them or certainly not -- well, that's what --

10 Q. When you say the wetlands permit, are you
11 referring to --

12 A. The one we needed was a Coastal Dune Permit
13 it was called.

14 Q. And was that permit approved by the City?

15 A. No.

16 Q. What did you do after the permit was
17 denied?

18 A. After the permit was denied, Richard asked
19 us to assist him with the appellate procedure, the
20 VMRC -- to the VMRC hearing in Newport News.

21 Q. And was his hearing at VMRC approved?

22 A. That was denied as well.

23 Q. When you did this plan in 1992, what was
24 the zoning of this property?

25 A. It was zoned residential. I don't remember

1 the number.

2 Q. Was the design -- was the design that you
3 developed consistent with the applicable infrastructure
4 requirements that applied?

5 A. Yes.

6 Q. Was the design that you developed feasible
7 from an engineering point of view?

8 A. Yes.

9 Q. Was the -- strike that.
10 Did this plan meet all the City's
11 requirements for infrastructure approved?

12 MR. BEAVER: Objection. I'm not sure he
13 can speak for the City on his opinion as an engineer.

14 MR. GENZLER: I'll rephrase the question in
15 that light, Your Honor.

16

17 BY MR. GENZLER:

18 Q. When you did this plan, this met with all
19 the City's requirements?

20 A. Yes.

21 Q. And when you say infrastructure, what are
22 you speaking of?

23 A. Those would be site improvements necessary
24 to develop for habitation, potable water, sanitary,
25 sewage collection, storm drainage, and access road work.

1 Q. Now, at any time after your appeal to the
2 Wetlands Board was denied, did the City suggest to you an
3 alternative design that would be approved?

4 A. I don't recall if there were any
5 suggestions.

6 Q. After that appeal, did the City suggest to
7 you that Mr. Bell should submit another permit
8 application?

9 A. No.

10 Q. Thank you.

11 MR. GENZLER: No further questions,
12 Mr. Slicer.

13 THE COURT: Cross-examination?

14

15 CROSS-EXAMINATION

16

17 BY MR. BEAVER:

18 Q. Just the City didn't tell Mr. Bell or you
19 originally to develop a plan to develop this property,
20 did it? That was Mr. Bell's decision; is that correct?

21 A. Yes.

22 Q. And actually, as an engineer when you work
23 up these plans, you work for the owner of the property;
24 is that correct?

25 A. That's correct.

1 Q. Now, this plan that you talk about on the
2 corner of Bayview and Beaufort --

3 MR. GENZLER: Objection. Mistaking the
4 testimony -- making a mistake.

5 MR. BEAVER: Ocean View.

6
7 BY MR. BEAVER:

8 Q. Ocean View and Beaufort, the streets that
9 you displayed, aren't those streets now a right-of-way
10 across the land?

11 A. Yes.

12 Q. And part of this plan requires or shows how
13 the developer would propose to develop a street; and, in
14 fact, here to close part of a street; isn't that correct?

15 A. I'd like to look at it. We're not
16 proposing to close anything with this, as I recall. I
17 would show how the developed lots of the street would
18 modify any part of Beaufort, the built part of it.

19 Q. But, certainly, when we get up to the block
20 adjacent, it's not developed in the immediate vicinity of
21 Lots 21 and 22?

22 A. No, it's not.

23 Q. And, in fact, you're proposed building
24 requires Ocean View Avenue to be partially closed to
25 traffic, does it not?

1 A. No. I'm not following -- not as far as I
2 can tell.

3 Q. Part of the right-of-way to Ocean View is
4 the right-of-way which is between those two lines; is
5 that correct?

6 A. Right.

7 Q. You've used part of that right-of-way as
8 the lot that you built their house on; is that correct?

9 A. No, that's not correct.

10 Q. The house would be built entirely within
11 the property lines of 21 and 22. Part of the street is,
12 in effect, closed to any traffic because it's used for
13 Mr. Bell's driveway?

14 A. Mr. Bell's accessible to the public
15 right-of-way.

16 Q. So even though the bulkhead crosses into
17 the City right-of-way, you wouldn't say it requires the
18 street to be closed?

19 A. No.

20 Q. Wouldn't the City require an encroachment
21 on that?

22 A. I don't know. I can't answer that. I
23 don't know the facts of a private nature in a public
24 right-of-way, if that would involve an encroachment or
25 not.

1 MR. BEAVER: I have no other questions.

2 THE COURT: Any redirect?

3 MR. GENZLER: No, Your Honor.

4 THE COURT: May he be excused? You may be
5 excused.

6

7 (Witness excused.)

8

9 MR. GENZLER: At this time, I call
10 Mr. Pulley to the stand. Your Honor, I would note, as
11 Mr. Beaver previously stated, Mr. Pulley is a
12 representative of the City and is here as an adverse
13 witness.

14 THE COURT: Any objection? I think by
15 definition he is.

16 MR. BEAVER: He is certainly here as the
17 City representative. In that he's adverse.

18 THE COURT: The lawyer can ask him leading
19 questions.

20

21 JOSEPH E. PULLEY, called as an adverse
22 witness by and on behalf of the Plaintiff, having been
23 first duly sworn, was examined and testified as follows:

24

25

DIRECT EXAMINATION

BY MR. GENZLER:

Q. Good morning. Please state your name and address for the record, sir.

A. Joseph Edward Pulley, 1612 Jack Frost Road, Virginia Beach, Virginia, 23455.

Q. And what is your occupation, Mr. Pulley?

A. I'm the project manager for the Development Services Center in the Virginia Beach Planning Department.

Q. And what are your duties as the project manager?

A. I coordinate the review of the various site plans, preliminary subdivision plans, just plans, things of that nature.

Q. Do you know Mr. Richard Bell?

A. Yes, sir, I do.

Q. And how do you know Mr. Bell?

A. He's brought in other development to the City, and I've known him probably most of the time that I worked for the City. Known him quite a while.

Q. Did you review the plan that was submitted in 1992 for the development of lots in Chesapeake Park, specifically the plan that we've marked as Exhibit 12?

1 A. That plan was submitted for review, yes.

2 Q. What did you do with it when it was
3 submitted for review?

4 A. The Planning Department routed it to the
5 various City review agencies for comment.

6 Q. And was a formal review of Mr. Bell's plan
7 made?

8 A. An informal review was done.

9 Q. Was an official response returned?

10 A. We wrote a letter back to him telling our
11 position.

12 Q. Did -- did you give Mr. Bell any advice
13 regarding permits that would be required for this
14 development?

15 A. In my review letter, generally, I advised
16 him that he needed to get a permit from Virginia Beach;
17 but it would be heard by the Chesapeake Bay Board before
18 the City of Virginia Beach could do any review on it.

19 Q. I would be correct to say that the very
20 first thing he had to do to pursue this course of action
21 would be to get that wetlands permit under the Dune
22 Ordinance?

23 A. Yes, sir.

24 Q. And would it also be correct to say,
25 without that permit under the Dune Ordinance, he could

1 not build anything on that lot?

2 A. Until he gets the permit, we couldn't tell
3 what he could do with it.

4 Q. Okay, sir. Now, if Mr. Bell submitted
5 another plan of development today for this very same
6 site, what would follow?

7 A. He'd be under the same condition.

8 Q. What would you tell him if he wanted to
9 build a house on that site today?

10 A. We would advise him to get a permit from
11 the Virginia Wetlands Board. After that, he would have
12 to go to the Chesapeake Bay Board and submit a plan to
13 the Department Services Center for review for compliance
14 with City ordinance.

15 Q. Did you at that time discuss with Mr. Bell
16 that he should remit another permit --

17 A. No, sir,

18 Q. -- for a wetlands permit?

19 A. No, sir.

20 Q. Did you at that time tell Mr. Bell that he
21 could somehow modify this design to make it -- strike
22 that -- to get the permit from the Wetlands Board?

23 A. No, sir. We don't design plans.

24 Q. Did he ask you to?

25 A. No, he did not.

1 Q. Excuse me for one second, please. I'd like
2 to show you what has been admitted as Plaintiff's
3 Exhibit 10, a July 22, 1991, letter that's directed to
4 you from Keith Slicer, if you recall that document or
5 that letter?

6 A. I believe I do.

7 Q. Do you recall what happened with that
8 proposal that Mr. Bell made?

9 A. I believe this plan -- that site plan
10 accompanied that exhibit.

11 Q. You say that letter accompanied this site
12 plan? Take a minute to refresh your memory.

13 A. There is a separate letter, I assume. This
14 is to coordinate a meeting on how we could develop the
15 property.

16 Q. So I'll ask who it is addressed to.

17 A. This is addressed to me.

18 Q. Do you recall receiving that letter?

19 A. I guess I did.

20 Q. Do you recall discussing that proposal with
21 Mr. Bell and Mr. Slicer?

22 A. I'm not sure if I discussed the proposal
23 subsequent to this letter or whether it was subsequent to
24 the site plan that was submitted.

25 Q. In any case, was the proposal that they

1 made there approved by the City?

2 A. No, it was not.

3 Q. How are Lots 21 and 22 zoned?

4 A. R-5R.

5 Q. Has it been zoned residential since 1979?

6 A. Yes, sir.

7 Q. What can be built on those type properties?

8 A. In residential zones in Virginia Beach?

9 Q. Yes.

10 A. Single-family homes.

11 Q. Thank you.

12 MR. GENZLER: I have no further questions
13 for Mr. Pulley, sir.

14 MR. BEAVER: If I could ask just a couple
15 relevant ones.

16

17 CROSS-EXAMINATION

18

19 BY MR. BEAVER:

20 Q. In fact, all the lots -- can you tell us
21 the zoning of all the lots in Chesapeake Park?

22 A. R-5R, yes, sir.

23 Q. That includes all the lots?

24 A. That's correct.

25 Q. Can you tell whether or not -- I think you

1 can make it clear if you tell us whether or not the City
2 would proceed with the plan review in Mr. Bell's case
3 without approval of the Chesapeake Bay Board?

4 MR. GENZLER: Objection. Leading.

5 THE COURT: Overruled. Go ahead.

6 THE WITNESS: Answer the question?

7 MR. BEAVER: Yeah.

8 THE WITNESS: The City can't approve that
9 site plan until it has the appropriate approval by the
10 Chesapeake Bay Board and the Wetlands Board.

11

12 BY MR. BEAVER:

13 Q. And why is that?

14 A. The ordinance is written that way.

15 Q. And does that have to do with the location
16 of the property?

17 A. That's correct.

18 Q. Okay.

19 MR. BEAVER: That's all the questions I
20 have, Your Honor, until I may call him in my case.

21 MR. GENZLER: No redirect, Your Honor.

22 THE COURT: Okay. You may step down.

23 Next?

24

25

(Witness excused.)

1 MR. GENZLER: May I have one moment,
2 please, Your Honor?

3 Your Honor, at this time we call
4 Mr. William Page to the stand.

5
6 WILLIAM L. PAGE, called as a witness by and
7 on behalf of the Plaintiff, having been first duly sworn,
8 was examined and testified as follows:

9
10 DIRECT EXAMINATION

11
12 BY MR. GENZLER:

13 Q. Good morning, Mr. Page.

14 A. Good morning.

15 MR. GENZLER: Your Honor, if I could, by
16 coincidence Mr. Page also has a hearing impairment; and
17 as I advised the court and the jury that if he seems to
18 misunderstand what I ask him, I just need to ask a little
19 more loudly.

20 MR. BEAVER: May I approach the bench?

21
22 (Whereupon, a side-bar conference
23 was held out of the hearing of the
24 reporter and the jury.)
25

1 BY MR. GENZLER:

2 Q. Mr. Page, could you please state your full
3 name and address for the record, please.

4 A. William L. Page, 1700 Jermyn Lane,
5 J-E-R-M-Y-N, Virginia Beach, Virginia.

6 Q. And, Mr. Page, what is your occupation,
7 sir?

8 A. Real estate developer and builder.

9 Q. And how long have you been a real estate
10 developer and builder?

11 A. 40 years.

12 Q. Do you know Mr. Richard Bell?

13 A. Yes.

14 Q. And how do you know Mr. Richard Bell?

15 A. Associated with him. We had a development
16 business together.

17 Q. And what was that business, sir? What was
18 that business?

19 A. What was the name of the business?

20 Q. Yes, sir.

21 A. Caught me off guard. Seawall Enterprises.

22 Q. And now, are you familiar with the
23 Chesapeake Park area of Virginia Beach?

24 A. Yes.

25 Q. And how are you familiar with the

1 Chesapeake Park area?

2 A. Richard Bell and I purchased land there and
3 developed a number of houses, pieces of property in
4 Chesapeake Beach.

5 Q. Who owns Seawall?

6 A. Richard Bell and myself and our wives.

7 Q. What were your respective interests in the
8 company?

9 A. 50/50.

10 Q. And when you formed Seawall Enterprises,
11 what was your purpose in doing so?

12 A. To develop land at Chesapeake Beach.

13 Q. Now, when you say, develop that land, what
14 did you intend to do with it?

15 A. We purchase the land and whatever was
16 necessary to get it done to make building sites.

17 Q. What type of buildings are at Chesapeake
18 Park?

19 A. Single-family.

20 Q. Are you familiar with Lots 21 and 22 of
21 Block 3 in Chesapeake Park?

22 A. Yes.

23 Q. How are you familiar with those?

24 A. Richard Bell owns those lots. I owned
25 adjacent property to that particular piece of property.

1 Q. And did you at any time have an interest in
2 Lots 21 and 22?

3 A. Yes.

4 Q. When was that?

5 A. Seawall Enterprises owned that.

6 Q. What was your intention when Seawall
7 Enterprises acquired the lots including 21 and 22?

8 A. To be able to build single-family houses on
9 them.

10 Q. Did you believe you would be able to do
11 that at the time?

12 A. Yes.

13 Q. Why did you believe that?

14 A. We were planning, bidding on sites; and we
15 thought we could get them to be able to obtain any
16 building permits to build on.

17 Q. At the time you bought Lots 21 and 22, were
18 there other waterfront homes in similar locations?

19 A. Yes.

20 Q. Where were those, sir?

21 A. To the left, close to the Naval Base, and
22 also to the right on the other side of the Bay Bridge
23 Tunnel, immediately developed Ocean View Avenue.

24 Q. Thank you.

25 MR. GENZLER: Your Honor, that'll conclude

1 my questions.

2

3

CROSS-EXAMINATION

4

5 BY MR. BEAVER:

6

7

8

Q. There were no houses constructed to the west, seaward of Ocean View Avenue, at the time you originally purchased those lots, were there?

9

A. I don't think so, no.

10

11

Q. And do you still dabble in property in this area?

12

A. Yes, sir.

13

14

Q. As recently as 1984, did you buy some property in this area?

15

16

MR. GENZLER: Objection, Your Honor, relevance.

17

THE COURT: Proffer.

18

19

20

21

22

(Whereupon, a side-bar conference was held out of the hearing of the reporter and the jury.)

23

THE COURT: Any further questions?

24

MR. BEAVER: Nothing.

25

THE COURT: Redirect? *

*

*

DIRECT EXAMINATION

1

2

3

BY MR. GENZLER:

4

5

Q. Ms. Gray, could you please state your full name for the record, please?

6

7

A. Dollie, spelled with an IE; Gray, with an A.

8

9

Q. Could you tell us your address, please?

10

A. 3748 Old Forge Road, Virginia Beach, Virginia.

11

12

Q. And where are you employed, Ms. Gray?

A. Real Estate Assessor's Office.

13

14

Q. For the City?

A. Yes.

15

16

17

18

19

20

MR. GENZLER: Your Honor, again, I would like to ask the court to designate Ms. Gray as an adverse witness. In addition to being an employee of the City, she is specifically designated by the City as their representative on tax assessment matters in response to the deposition request.

21

22

23

THE COURT: Mr. Beaver?

MR. BEAVER: She's a City witness, Your Honor. She is an employee of the City.

24

25

THE COURT: That doesn't necessarily make her adverse. I don't -- I'm not going to declare that at

1 this point.

2 MR. GENZLER: All right, Your Honor.

3

4 BY MR. GENZLER:

5 Q. Ms. Gray, what are your duties as a real
6 estate appraiser supervisor?

7 A. To review the appraisers' work and
8 delegate.

9 Q. And for what purpose are these appraisers
10 doing this work?

11 A. Real estate taxation.

12 Q. Real estate taxes?

13 A. Yes.

14 Q. In particular, you're responsible for the
15 real estate assessment of Mr. Bell's property?

16 A. Yes, I am.

17 Q. And when you say Mr. Bell's property, are
18 you familiar with what's been called here Lots 21 and 22
19 of Block 3?

20 A. Chesapeake Park?

21 Q. Yes. How are you familiar with that ma'am?

22 A. That is an area which I'm responsible for.

23 Q. Okay.

24 MR. BEAVER: Your Honor, may we approach?

25

1 (Whereupon, a side-bar conference
2 was held out of the hearing of the
3 reporter and the jury.)
4

5 MR. GENZLER: Your Honor, I'd ask you to
6 mark this as the next exhibit.

7 THE COURT: This is Plaintiff's Exhibit 20.
8

9 (Plaintiff's Exhibit No. 20 was
10 marked for identification.)
11

12 MR. GENZLER: Thank you, sir.
13

14 BY MR. GENZLER:

15 Q. Ms. Gray, I'm going to show you what the
16 Judge has marked as Plaintiff Exhibit 20 and ask you to
17 briefly review those documents. Tell us what those are,
18 if you can.

19 A. This is a copy of the -- the records we
20 use.

21 Q. I'm sorry. I didn't hear you. What
22 records?

23 A. This is a copy of the records that we have
24 in the office.

25 Q. Okay. And what property do those records

1 apply to?

2 A. Chesapeake Park, Lots 20, 21, and 22, Block
3 3, of Chesapeake Park.

4 Q. Okay. Ms. Gray, I'm going to show you an
5 exhibit here that we've previously used. It has been
6 designated as Exhibit No. 12. Excuse me.

7 If you could point on this exhibit to the
8 parcels you just said your tax records apply to?

9 A. Block 3.

10 Q. That's Block 3?

11 A. 20, 21, and 22.

12 Q. Okay. So for tax assessor's purposes, you
13 include Lot 20, which is north of Lots 21 and 22?

14 A. That is correct.

15 Q. Thank you. Ms. Gray, do your tax records
16 reflect that there had been previously a dwelling on this
17 property?

18 A. Yes, it does.

19 Q. And do they reflect when that dwelling was
20 removed from the property?

21 A. I would say '75.

22 Q. What is the current value that the City has
23 assigned to this property?

24 A. \$100.

25 Q. And why was a value of \$100 assigned to

1 this property?

2 A. Because of the location.

3 Q. And what do you mean by because of the
4 location?

5 A. Well, according to our records, the lots
6 are not accessible either, partially under water.

7 Q. What part did the application of the
8 Coastal Primary Dune Ordinance play in this valuation?

9 A. I don't know if any.

10 Q. Ms. Gray, do you recall giving a deposition
11 to -- on December 17 of last year?

12 A. Yes.

13 Q. And do you recall me asking you the
14 following question, ma'am? This was on page 13 of the
15 deposition.

16 Question: How is the Wetlands and Dune Act
17 taken into consideration?

18 Answer: Well, the fact that they have a
19 lot of restrictions kind of limits what you can do with
20 the property.

21 Do you recall that?

22 A. Yes.

23 Q. Is that an accurate statement?

24 A. Yes.

25 Q. Okay. Thank you. For your valuation

1 purposes, what can Mr. Bell do with this property?

2 A. I don't know that he can do anything with
3 it.

4 Q. What does the \$100 value represent?

5 A. That he does own property at the beach.

6 Q. Would you use the term "salvage value" on
7 here to apply to that?

8 A. Yes, you could do that.

9 Q. And does that salvage value reflect that
10 the property really has no value?

11 MR. BEAVER: Objection, Your Honor. She's
12 already testified as to her ability for certain the
13 reason why.

14 THE COURT: Sustained.

15

16 BY MR. GENZLER:

17 Q. What use can be made of this property?

18 MR. BEAVER: Your Honor, I'm not sure she's
19 qualified to make those determinations. She's a tax --

20 THE COURT: Sustained at this point.

21

22 BY MR. GENZLER:

23 Q. Now, your valuation is intended to be a
24 fair market value; is that correct?

25 A. Yes.

1 Q. And what market would you say there is for
2 Mr. Bell's property to that?

3 MR. BEAVER: Objection, Your Honor. She
4 doesn't know the real estate market, not qualified to
5 testify.

6 THE COURT: Sustained unless you can show
7 that.

8 MR. GENZLER: Your Honor --

9 THE COURT: If you need to show fair market
10 value, I think the jury --

11 MR. GENZLER: All right, Your Honor.
12 Thank you.

13 THE COURT: Put that together.

14

15 BY MR. GENZLER:

16 Q. Is part of your valuation for assessment
17 purposes a determination of what use the property can be
18 put to?

19 A. No.

20 Q. It's not?

21 A. I wouldn't say that.

22 Q. For your valuation purposes -- strike that.

23 In the process of arriving at your
24 valuation, did you consider that anything could be built
25 on this property?

1 MR. BEAVER: Objection, Your Honor. I
2 still don't understand.

3 MR. GENZLER: I'm asking her, Your Honor,
4 the factors that are -- that went --

5 MR. BEAVER: She has various
6 considerations.

7 THE COURT: I'll overrule the objection, if
8 she knows.

9 THE WITNESS: Would you repeat the
10 question?

11 MR. GENZLER: I'll try.

12 THE WITNESS: Thank you.

13

14 BY MR. GENZLER:

15 Q. As part of your valuation -- as part of
16 your valuation of the property, did you -- do you
17 consider whether or not anything can be built on that
18 property?

19 A. No.

20 Q. Okay. Thank you.

21 MR. GENZLER: Your Honor, that's all the
22 questions I have for Ms. Gray.

23 THE COURT: All right. Any cross?

24

25

CROSS-EXAMINATION

BY MR. BEAVER:

Q. Ms. Gray, can you tell the jury whether or not the Chesapeake Bay Area Preservation Act has anything to do with the property?

A. It may. It could have something to do with it.

Q. In the same manner as the Virginia Ordinance?

A. Yes.

Q. Thank you. One other thing. Can you check your records? When did you adjust the value? Just curious?

A. I believe it was '94.

Q. Thank you.

THE COURT: Any further questions?

MR. GENZLER: No, Your Honor.

THE COURT: Thank you, ma'am.

MR. GENZLER: At this time, Your Honor, we call Mr. Frank Adkins to the stand.

Your Honor, my next witness is apparently not out there. He was supposed to be here.

THE COURT: Well, he's not here. Who else do you have?

1 MR. GENZLER: Well, Your Honor, I had
2 another witness who was due to be here in about two
3 minutes, shortly after two o'clock to testify.

4 THE COURT: Who is that?

5 MR. GENZLER: Your Honor, that would be
6 Mr. Dennis Gruelle, our expert appraiser.

7 THE COURT: Gruelle?

8 MR GENZLER: Your Honor, while we're
9 waiting for our witness, I do have -- well, I do -- first
10 of all and that is a request for taking judicial notice
11 of three things, which is the statute -- the Primary Dune
12 Act Statute that existed in 1992 when Mr. Bell -- when
13 Mr. Bell made his application for that permit. Secondly,
14 the provisions of the ordinance, the Virginia Beach
15 Coastal Dune Ordinance. The third, Your Honor, the
16 provisions of the sections of the Constitution that I
17 cited earlier.

18 THE COURT: Any objection?

19 MR. BEAVER: Your Honor, I move that they
20 be admitted into evidence.

21 MR. GENZLER: I have copies of the --

22 THE COURT: We can do that later.

23 MR. GENZLER: Okay.

24 MR. BEAVER: At the same point, I would ask
25 that the court take notice of the previous record in this

1 case when we referred to 122408.

2 MR. GENZLER: I'm not familiar with that.

3 MR. BEAVER: The appeal of the Wetlands
4 Board decision, the MRC decision, about that file. I
5 move that be admitted, also.

6 THE COURT: Any objection?

7 MR. GENZLER: Your Honor, I don't think
8 that's part of this case. I think you've established on
9 directive that it was a denial of that -- of that appeal.

10 THE COURT: Where are the witnesses?

11 MR. GENZLER: Well, Your Honor, I have to
12 ask for a short recess.

13 THE COURT: Ladies and gentlemen, I have to
14 ask you to step back in the jury room.

15
16 (Whereupon, the jury retired to the
17 jury room.)

18
19 THE COURT: Find them both. Find out where
20 they are. If they have a car phone, get that number.

21
22 (Whereupon, the jury returned to the
23 courtroom.)

24
25 THE COURT: Ma'am, have you been taking

*

*

*

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*

1 A. Frank A. Adkins, Jr., P.E., 6306 Atlantic
2 Avenue, Virginia Beach, Virginia.

3 Q. And, Mr. Adkins, what is your occupation?

4 A. Professional engineer and consulting
5 engineer.

6 Q. Where are you currently employed, sir?

7 A. I have my own firm, Adkins Engineering,
8 located in Virginia Beach.

9 Q. Do you hold any degrees in engineering?

10 A. I have a degree of Bachelor of Science in
11 Engineering from Virginia Tech.

12 Q. And are you a registered professional
13 engineer, sir?

14 A. I'm registered as a professional engineer
15 in the State of Virginia and the State of North Carolina.

16 Q. How long have you been a registered
17 professional engineer?

18 A. Oh, in excess of 25 years.

19 Q. Could you briefly summarize for the court
20 your past employment experience as an engineer?

21 A. In my time at Virginia Tech, I was an
22 intern with the Army Corps of Engineers in summer
23 periods.

24 Upon graduation, I worked with the Army
25 Corps of Engineers and with the Atlantic Division, Major

1 Facilities Engineering Command, combination of this time,
2 approximately ten years.

3 And at that time, I went into private
4 practice as a principal in a series of engineering firms.

5 There was one period between 1991 and 1994
6 when I was employed as the county engineer in Carteret
7 County, North Carolina.

8 Q. And since 1994, where have you been
9 employed?

10 A. I returned to Virginia Beach and reopened
11 my engineering firm as Adkins Engineering. All my
12 professional engineering career has been in the City of
13 Virginia Beach.

14 Q. Are you a member of any professional
15 organizations?

16 A. The Virginia Society of Professional
17 Engineers, the National Society of Professional
18 Engineers, American Society of Civil Engineers, American
19 Waterworks Association, among others.

20 Q. Okay. Have you been a member of any
21 governmental boards or commissions?

22 A. In the City of Virginia Beach, I was the
23 chairman of the Buildings Appeals Board for approximately
24 six years. This was back in the '80s prior to going to
25 Carolina.

1 When I was in North Carolina, I was on the
2 advisory board of the -- what they call it -- the Coastal
3 Resources Commission of the State of North Carolina.

4 Q. Have you -- have you held any other
5 governmental positions or licenses?

6 A. In my period of time as a county engineer,
7 I was a CAMA officer, Coastal Area Management, for the
8 State of North Carolina.

9 And in that position and in my office down
10 there, I and the people on my staff would handle the
11 minor waterfront construction projects for the State of
12 North Carolina, which would be piers, bulkheads, and the
13 minor construction matters.

14 Q. Didn't you say you would handle -- did you
15 have some governmental functions?

16 A. The applications were submitted to my
17 office as a CAMA representative, and we would act
18 on -- to the point of approval.

19 Q. Have you -- strike that.

20 Does part of your practice as a consulting
21 engineer involve preparation of engineering cost
22 estimates?

23 A. Yes, sir, it does.

24 Q. Have you -- have you been qualified to
25 testify previously as an expert witness on engineering

1 and engineering cost estimate matters?

2 A. As a part of my expert testimony, yes, sir.

3 MR. GENZLER: Your Honor, I tender
4 Mr. Adkins to the court as an expert witness on
5 engineering and engineering cost estimates.

6 THE COURT: Any objection?

7 MR. BEAVER: May I ask a couple questions?

8 THE COURT: Uh-huh.

9

10 CROSS-EXAMINATION (VOIR DIRE)

11

12 BY MR. BEAVER:

13 Q. You didn't have anything to prepare in the
14 site application for Mr. Bell, did you?

15 A. No, sir, I did not.

16 MR. BEAVER: I'm not sure exactly what he's
17 going to testify to or --

18 THE COURT: The court does recognize him as
19 an expert in the field. He may give his opinion
20 testimony in the field as opposed to the facts that a lay
21 witness can testify to. He can give his opinion in the
22 field of engineering. Okay.

23 MR. GENZLER: Thank you, Your Honor.

24

25

1 DIRECT EXAMINATION (Resumed)

2

3 BY MR. GENZLER:

4 Q. Now, Mr. Adkins, are you familiar with the
5 property that is owned by Mr. Bell and is an issue in
6 this case?

7 A. Yes, sir, I am.

8 Q. And what -- how is that property
9 designated, sir?

10 A. Every -- do we have an exhibit, or shall I
11 refer to a map book page? How would you like --

12 Q. Well, let me show you what's been marked as
13 Plaintiff's Exhibit No. 12 which has previously been
14 admitted, and can you tell the jury what the designation
15 of the property is?

16 A. That is Block 3, Lots 21 and 22.

17 Q. And how are you familiar with that
18 property, sir?

19 A. I don't understand the question.

20 Q. Okay. Have you had occasion to review a
21 plan of the development that has been prepared for
22 Block 3, Lots 21 and 22?

23 A. Yes, sir. I have reviewed the plan -- the
24 previously submitted plan of the City on that lot.

25 Q. Have you been to the property that's being

1 referred to?

2 A. I have made a site visit, yes, sir.

3 Q. Okay.

4 MR. GENZLER: Excuse me, Your Honor.

5
6 BY MR. GENZLER:

7 Q. Mr. Adkins, I'd like to show you another
8 exhibit that has been admitted by the court previously --
9 strike that. It's the wrong one.

10 I'd like to show you this exhibit that has
11 been admitted by the court previously into evidence and
12 ask you if you recognize that photograph.

13 A. Yes, sir, I do, sir.

14 Q. What is that a photograph of?

15 A. That's a photograph of the --

16 THE COURT: What's the exhibit number?

17 MR. GENZLER: I'm sorry, sir. This is
18 Exhibit 4.

19 THE WITNESS: On this side is the
20 Chesapeake Bay Bridge Tunnel, and this area in here are
21 the two lots which are referred to as the Bell property
22 which I assume is noted on the other exhibit.

23

24 BY MR. GENZLER:

25 Q. Mr. Adkins, do you see this yellow mark

1 that's on -- that's on the photograph?

2 A. Yes, sir, I do.

3 Q. Who put that there?

4 A. I constructed that yellow marking to the
5 best of my ability to depict the bulkhead layout that
6 shows up on the site plan that we previously looked at.

7 Q. Is this approximately to scale?

8 A. It's approximately to scale. But with an
9 orthographic projection, it's not an exact; but it's
10 pretty close.

11 Q. Okay. When you say orthographic
12 projection --

13 A. That's the angle of the plane when it was
14 out here. You notice that your shadow line, you're not
15 getting a true 90 degrees, so your dimensioning is a
16 little bit off when you do it in that manner.

17 Q. But is this approximate?

18 A. It's approximate.

19 Q. Thank you.

20 MR. GENZLER: Your Honor, you've previously
21 admitted Plaintiff's Exhibit 15, which was the plan that
22 went to the -- excuse me -- Plaintiff's Exhibit 14, which
23 was the plan that went to the Wetlands Board that I'd
24 like to give -- have this to refer to.

25

1 BY MR. GENZLER:

2 Q. Mr. Adkins, this is an enlarged copy of
3 another exhibit that's been previously admitted by the
4 court. This is Plaintiff's Exhibit 15. I ask you, is
5 this the plan that you had occasion to review before?

6 A. Yes, it is, sir.

7 Q. Can you please explain to the jury the
8 basic features of the site development that was on the
9 plan?

10 A. The property line is outlined in red of the
11 boundary of the two lots, 21 and 22. The proposed
12 single-family residence is shown by this block and
13 outlined in orange.

14 The previously proposed bulkhead is shown
15 in green. The black is the access road from the existing
16 paved areas that would serve as access to the -- to the
17 single-family residence; and in more detail, there are
18 water lines and sanitary sewer lines showing from here,
19 coming back and tying in back in the street in the
20 existing facility.

21 Q. Now, Mr. Adkins, are the location -- is the
22 location of the mean high water mark shown on this plan?

23 A. That is shown as an approximate mean high
24 water line that goes across there.

25 Q. Can you explain for the jury, what does

1 mean high water line represent?

2 A. As a common point of reference, both
3 surveys are relative to mean low water; and that is an
4 average of where we would expect the low water to be.

5 Let's call it -- the majority of the time,
6 the difference between the mean low water and the mean
7 high water is the average of the rise of the tide from a
8 low point to a high point. Again, both of these are mean
9 or average.

10 Q. Mr. Adkins, I'd like you to look at the
11 photograph that's been previously admitted as
12 Exhibit 5 -- Plaintiff Exhibit 5 and ask you if you
13 recognize this exhibit.

14 A. Yes, sir, I do.

15 Q. What does this exhibit show?

16 A. This is showing the east side of the beach
17 area with that being the common point of the Chesapeake
18 Bay Bridge Tunnel.

19 Q. And are you familiar with the homes that
20 are shown immediately adjacent to the Bay Bridge Tunnel
21 in this photograph?

22 A. I am familiar with these and also down in
23 the area of the restaurant.

24 Q. And how are you familiar with those sites?

25 A. The previous owner of the Bay Cove, which

1 is now Alexander's by the Bay, had hired me. And back in
2 1979 I had done -- I had submitted and obtained bulkhead
3 repair permits on that bulkhead that existed at that
4 time.

5 I also, in 1984, came back and did
6 additional work on the structure there at the Bay Cove
7 Restaurant; and in addition to that, the structures that
8 are to the west of the parking lot for the Alexander's by
9 the Bay.

10 The single-family residence, I had occasion
11 to be in those units. A friend of mine actually bought
12 one and owned it, so I was familiar with those units in
13 there. This goes back to the -- I guess I'd say the mid
14 '70s.

15 Q. Are you familiar with the code requirements
16 in Virginia Beach applicable to residential construction?

17 A. Yes, sir, I feel I am.

18 Q. Are you familiar with the design and
19 construction of waterfront property?

20 A. Yes, sir, I feel I am.

21 Q. Have you formed an opinion as to the
22 technical feasibility of the plan Mr. Bell submitted to
23 the City Wetlands Board?

24 A. Yes, sir, I have.

25 Q. What is that opinion?

1 MR. BEAVER: Your Honor, Mr. Slicer's
2 already testified to that. It's kind of redundant.

3 THE COURT: Overruled.

4
5 BY MR. GENZLER:

6 Q. I'm sorry, Mr. Adkins. If you could give
7 your opinion as to the technical feasibility of the plan
8 that Mr. Bell had submitted to the Wetlands Board?

9 A. The plan as prepared was proposing a
10 bulkheaded area with fill and a structure built behind
11 the bulkhead.

12 This is very similar in nature to the
13 property to the east which we just looked at in that
14 previous photograph which was the Alexander's by the Bay
15 and the other residential houses that were built in a
16 similar fashion.

17 Then to the west, there's a piece of
18 property. Do we have anything to show that, sir, an
19 exhibit?

20 Q. I'll show you what's been marked as
21 Plaintiff's Exhibit 2 for identification, and perhaps you
22 could at least locate the property you're referring to.

23 A. The previous property, this being the Bell
24 property that we're talking about, this being the
25 restaurant and the single families and this being to the

1 west which are three units that were built there, the
2 bulkhead, the owner of that property was Cromwell.

3 And that was bulkheaded in place back in
4 1978 according to the City records. And those are also
5 built in a similar fashion to what the proposal is for
6 the site plan for the Bell property --

7 Q. All right.

8 A. -- with the bulkhead and the fill.

9 Q. Thank you, sir.

10 A. And if I might mention, sir, in the
11 instance of this particular area of the beach, the houses
12 to the west and to the east and the Bell property are all
13 to the north of Ocean View Avenue. They have that in
14 common.

15 Q. All right. Thank you, sir. Could this
16 plan, that is, the plan that Bell submitted to the City
17 Wetlands Board, be constructed according to normal
18 engineering and normal construction techniques?

19 A. Yes, sir. The proposal for the movement of
20 the sand, for the installation of the bulkhead, building
21 the structure, and providing the utilities and road are
22 what I refer to as standard ordinary types of
23 construction.

24 Q. Now, Mr. Adkins, you may have covered this
25 a little bit in your testimony already. I'd like to ask

1 you specifically, can you compare the plan that Bell
2 submitted to the Wetlands Board to the construction of
3 these other homes east of the Bay Bridge Tunnel?

4 A. The location in relationship to Ocean View
5 Avenue were the same. They're all on the north side, as
6 I mentioned. They -- all of it have a bulkhead.

7 The Bell property or the proposal for the
8 Bell property would actually have a bulkhead that was
9 proposed which would be excessive to what has been in
10 place down there and has stood the test of time for a
11 number of years. It's actually a heavier bulkheaded
12 section.

13 MR. GENZLER: Your Honor, if I could ask
14 you to -- ask you to mark this photograph as the next
15 exhibit in order.

16 MR. BEAVER: We object to that as far as
17 relevance.

18 THE COURT: Objection overruled.
19 Plaintiff's 21.

20
21 (Plaintiff's Exhibit No. 21 was
22 marked for identification.)

23
24 MR. GENZLER: Thank you, Your Honor.

25

1 BY MR. GENZLER:

2 Q. Mr. Adkins, I show you a photograph which
3 has been marked as Plaintiff's Exhibit No. 21. Do you
4 recognize what is shown in that photograph?

5 A. Yes, sir, I do.

6 Q. What is that?

7 A. That is the bulkhead that is to the west of
8 the Alexander's by the Bay. Alexander's -- Alexander's
9 by the Bay would be here, and this is the bulkhead that I
10 previously referred to that went by these homes to the
11 east of the Bridge Tunnel.

12 Q. And this is the Bridge Tunnel there?

13 A. That being the Bridge Tunnel in the
14 background on this photo.

15 Q. Thank you, sir. Are there any homes
16 situated similar to Mr. Bell's; and by that I mean north
17 of Ocean View Avenue in the vicinity of the Bay Bridge
18 Tunnel, that are not bulkheaded construction?

19 A. That are north of Ocean View Avenue?

20 Q. Yes, sir. Well, what I mean is fronting
21 with a lot similar to Mr. Bell's, situated similar to Mr.
22 Bell's.

23 A. All of them that I observed in my research
24 show that they were all bulkheaded.

25 Q. In your opinion, is that the most suitable

1 type of construction for this lot?

2 A. For this particular location, yes, sir.

3 Q. And what is the basis for that opinion?

4 A. From experience I have had as an engineer
5 here at the beach for many years observing over a period
6 of time what has been built there and how well it has
7 held up, the bulkhead and the construction, over that
8 long period of time; and from my observations of the
9 stability of the beach. The photographs -- do we have
10 any earlier -- earlier drawings?

11 MR. BEAVER: I'm not sure he's qualified to
12 go into this next area.

13 MR. GENZLER: We'll drop whatever you
14 thought he was going into. I don't want what we asked
15 here in question.

16 THE COURT: Okay.

17

18 BY MR. GENZLER:

19 Q. Is there another way, other than with the
20 bulkheaded construction, that you could construct a house
21 on this site?

22 A. Well, economics become a factor any time
23 that you're dealing with residential construction. The
24 only alternate that I could possibly think of is building
25 on pilings.

1 Q. And would that be as suitable in this type
2 of site development for this location?

3 A. In my opinion, it would not be.

4 Q. And if you did -- strike that.

5 Regardless of how you build the house or
6 how you develop the site, how would you have to get
7 access to Mr. Bell's lot for any type of residential
8 construction?

9 A. The closest and the platted access to the
10 site would -- I would have to look at that exhibit so I
11 get the roads correct.

12 It is my opinion that the practical -- the
13 most practical way is as shown coming down -- what is
14 this -- Beaufort Avenue and down to Ocean View Avenue and
15 then in with the driveway to the property.

16 Q. And that would be regardless of how you
17 actually built on the property?

18 A. That is correct; yes, sir.

19 Q. All right. Mr. Adkins, have you had
20 occasion to review the design of the bulkhead, the
21 roadway, and the other infrastructure included to the
22 City in this plan?

23 A. Yes, sir, I have.

24 Q. And do those appear to be appropriate for
25 this site?

1 A. The single-family structure that is
2 proposed -- that was proposed for this site --

3 MR. BEAVER: Excuse me, Your Honor. I just
4 need to object. This is the proposal that was submitted
5 now; and if we're going to tear down the proposal, then
6 we're getting further away from what we're really here
7 about. This is the submission of the plan.

8 THE COURT: Tearing down?

9 MR. BEAVER: I don't know what he's going
10 to say about it. It certainly may be he --

11 THE COURT: It's not a new proposal. He's
12 just evaluating the old one.

13 MR. GENZLER: Your Honor, he is. And
14 specifically, I'll make a proffer to the court as to what
15 I'm driving at and submit what Mr. Beaver has already
16 uncovered in cross-examination.

17 He asked about site development costs with
18 the inference, in effect, that affects the value of the
19 property; and I'm going to ask this witness to testify --

20 THE COURT: I assumed you were.

21 MR. GENZLER: -- what it would require to
22 draw --

23 THE COURT: I assumed you were going to.
24 It is relevant just to say. He knows what you want.

25 MR. GENZLER: Thank you, Your Honor.

1 THE WITNESS: Repeat the question,
2 please.

3 MR. GENZLER: I lost track.

4 THE COURT: The site development costs.

5

6 BY MR. GENZLER:

7 Q. I want to know the site development costs.

8 A. Going through it, looking at the building
9 and a bulkhead that I felt would be adequate without
10 being too heavy a bulkhead, with the utilities, would not
11 be as large as proposed in the original site plan, and
12 this -- to serve this site would be, let's say, a safe
13 structure on that property, my engineer's estimate --
14 engineering preliminary estimate is about \$60,000.

15 Q. What was included in that?

16 A. It was a bulkhead. It was a
17 five-eighths-inch water line from the existing water
18 line, a four-inch sanitary sewage line, and a driveway
19 similar to what is constructed to the east of the
20 property and also to the west to serve some of these
21 homes on the dune line and not a full-fledged
22 right-of-way approval per Virginia Beach standards.

23 Q. Now, if these improvements -- if these
24 improvements -- these infrastructure improvements that
25 you've just described were done, would this be considered

1 to be a buildable lot?

2 A. Yes, sir.

3 Q. Mr. Adkins, I just have one more question
4 for you.

5 In your opinion, if the City had given
6 Mr. Bell the permit that he sought for this lot, from an
7 engineering point of view, could this lot have been
8 successfully developed?

9 A. Yes, sir.

10 Q. Thank you, sir.

11 MR. GENZLER: No further questions.

12 THE COURT: All right. Cross-examination?

13

14 CROSS-EXAMINATION

15

16 BY MR. BEAVER:

17 Q. Just curious, did you figure that's about
18 295 feet of bulkhead?

19 A. I believe my numbers are 250 feet.

20 Q. I see. And the bulkhead actually
21 encroaches on the street right-of-way,
22 does it not?

23 A. Yes, sir, it encroached on the east and the
24 west.

25 Q. So that would require an encroachment from

1 the City as part of this plan?

2 A. Yes, sir.

3 Q. I just want to confirm the work that you
4 did to the east. All those bulkheads were in well before
5 1979; is that correct?

6 A. Yes, sir.

7 Q. And also the lots to the west, those
8 bulkheads were also in place in 1979?

9 A. I had personal knowledge of the ones to the
10 east at the Alexander's Restaurant. I have researched
11 the files at the City of Virginia Beach, and the earliest
12 drawing on the Cromwell property to the west called it in
13 place in 1978.

14 Q. Thank you.

15 THE COURT: Any redirect?

16 MR. GENZLER: No redirect, Your Honor.

17 THE COURT: All right. Thank you,
18 Mr. Adkins, you are excused.

19

20 (Witness excused.)

21

22 THE WITNESS: Thank you, sir.

23 MR. GENZLER: We now call

24 Mr. Dennis Gruelle --

25 THE COURT: Okay.

1 MR. GENZLER: -- to testify.

2 THE COURT: Things seem to be moving along
3 pretty well.

4
5 DENNIS W. GRUELLE, called as a witness by
6 and on behalf of the Plaintiff, having been first duly
7 sworn, was examined and testified as follows:

8
9 DIRECT EXAMINATION (VOIR DIRE)

10
11 BY MR. GENZLER:

12 Q. Good afternoon, Mr. Gruelle. Could you
13 please state your full name and address for the record?

14 A. My name is Dennis William Gruelle, and my
15 office is located at 5511 Princess Anne in Virginia
16 Beach.

17 Q. Mr. Gruelle, what is your occupation?

18 A. I'm a real estate appraiser.

19 Q. And how long have you been a real estate
20 appraiser?

21 A. Since 1983.

22 Q. Could you briefly describe for the jury
23 what a real estate appraiser does?

24 A. A real estate appraiser appraises real
25 estate, that is, essentially provides a cumulative value

1 about the real estate; and that's generally presented in
2 a narrative type of format in a report.

3 Q. Could you please describe for the jury your
4 formal education, sir?

5 A. I have a Bachelor's Degree from Illinois
6 State University.

7 Q. Do you hold any professional certifications
8 in the field of appraising?

9 A. Yes, I do. I've earned the MARA, SRA
10 designation from the Appraisal Institute.

11 Q. And what is the Appraisal Institute?

12 A. That's a professional organization of real
13 estate appraisers. It's much like a CPA designation in a
14 sense. It's considered to be the highest designation
15 that can be earned in the appraisal profession.

16 Q. I think you referred to a few acronisms:
17 MARA and SRA. What do those refer to?

18 A. They refer to a designation --
19 specifically, I'm a member of the Appraisal Institute,
20 that is MARA; and the SRA is a senior residential
21 appraiser.

22 Q. And the significance of that MARA
23 designation?

24 A. It just basically indicates that you have
25 been appraising for a certain period of time. It used to

1 be a minimum of five years in the past, numerous courses
2 done, the course work and course work required, and you
3 pass all the final exams to be awarded that designation.

4 Q. Are you licensed by any states as a real
5 estate appraiser?

6 A. Yes, I am.

7 Q. And what states are those?

8 A. I am licensed by the State of Virginia, the
9 State of North Carolina, and State of Texas.

10 Q. And have you held any teaching
11 certifications or positions in the field of appraisal?

12 A. Yes, I have. I'm a certified appraisal
13 instructor through the International Appraisal
14 Association. I teach all their real estate appraiser
15 courses and their standards of professional practice.

16 Q. Did you get approved by any governmental
17 organizations to do appraisals on behalf of those
18 organizations?

19 A. Yes, I have.

20 Q. And what are those?

21 A. I have been approved by the State of
22 Virginia, the City of Virginia Beach, the City of
23 Chesapeake, numerous other municipalities.

24 Q. Have you been qualified to testify in
25 courts before as an expert witness in the field of

1 appraisal?

2 A. Yes, I have.

3 MR. GENZLER: I'll tender Mr. Gruelle to
4 the court as an expert witness in the field of appraisal.

5 MR. BEAVER: No objection.

6 THE COURT: He is so qualified. Ladies and
7 gentlemen, the same instruction that I gave for the
8 engineer. He may give his opinion testimony in this
9 field. All right.

10 MR. GENZLER: Thank you, sir.

11

12 DIRECT EXAMINATION (Resumed)

13

14 BY MR. GENZLER:

15 Q. Mr. Gruelle, are you familiar with Lots 21
16 and 22 in Block 3 of Chesapeake Park?

17 A. Yes, sir, I am.

18 Q. And how are you familiar with them?

19 A. I was asked to appraise those properties.

20 Q. And have you been to those properties?

21 A. Yes, sir, I have.

22 Q. Could you just briefly describe those
23 properties for the jury?

24 A. The lots are located in the northwest
25 sector of Virginia Beach in front along Chesapeake Bay,

1 approximately 1,000 feet west of the Chesapeake Bay
2 Bridge Tunnel.

3 The lots are situated along what we refer
4 to as a paper street. That's Ocean View Avenue. At this
5 point, it has not been developed, has not been improved.
6 It's just there on the maps. It's not physically there.

7 It's also situated adjacent to the
8 intersection of Ocean View and Beaufort Avenue; and again
9 at that point where these lots are located is an
10 undeveloped street.

11 Q. Are you familiar with the zoning categories
12 applicable to Lots 21 and 22?

13 A. Yes, I am.

14 Q. What is that?

15 A. The zoning category is R-5R which is a
16 residential zoning category.

17 Q. Have you formed an opinion of the current
18 value of Mr. Bell's property, Lots 21 and 22, if they
19 were permitted for residential development?

20 A. Yes, I have.

21 Q. And what is that opinion?

22 A. In my opinion if permitted, that is
23 physically and legally possible for residential use, the
24 value is \$150,000.

25 Q. And how did you arrive at that opinion,

1 sir?

2 A. I used what's called the sales comparison
3 approach.

4 Q. Can you explain that to the jury?

5 A. It's sort of the apples-to-apples
6 comparison to -- we do the appraisal where we look for
7 sales of lots that are similar to the subject.

8 And using that method, you look for sales
9 as closely as you can to the subject property; and then
10 you'd expand your search further until you find the
11 accurate number of sales to correctly compare to the
12 subject.

13 Q. Could you please briefly describe for the
14 jury what -- the comparable properties that you looked at
15 to establish this value for Mr. Bell's property?

16 A. Well, I looked at probably 15, maybe 20,
17 properties overall originally in the research and
18 development of properties. I narrowed it down to
19 probably 15. And then I provided three sales in the
20 written report that I gave Mr. Bell.

21 Q. Are you able to identify those properties
22 for us on a map or exhibit?

23 A. Yes. Is there an exhibit that I can --

24 Q. I'll show you what's been put in evidence
25 as Exhibit 2.

1 A. May I come down?

2 Q. Sure, you can come down here.

3

4 (Whereupon, the witness left the
5 stand.)

6

7 A. The -- I got an exhibit here also that is
8 probably very similar to this.

9 This is basically, I think, the same
10 exhibit that you-all were probably given earlier here.
11 And what I've done is mark on this one in yellow so I
12 could quickly identify them.

13 This is sale number one that I selected to
14 present -- first, let me back up a minute. This purple
15 square here is the -- Mr. Bell's property. So you can
16 see the sale number one location, in this case, to the
17 west of his property and maybe, I don't know, a block and
18 a little bit more to the west.

19 And sale number two is located about three
20 blocks going to the east. This is the Bay Bridge Tunnel
21 here.

22 And then sale number three is approximately
23 a block further to the east than that.

24 Q. Okay. I think we can take this down.

25

1 (Whereupon, the witness resumed the
2 stand.)

3
4 Is it your opinion the 150,000 you stated a
5 few minutes ago -- does that represent the fair market
6 value of the property if it had been able to be
7 developed?

8 A. Yes, it does.

9 Q. Have you formed an opinion of the value
10 Mr. Bell's property would have had for residential
11 development in the 1992 to '93 timeframe?

12 A. Yes, I have.

13 Q. And what is that opinion, sir?

14 A. I think it's similar, \$150,000.

15 Q. And what is that opinion based on?

16 A. In looking through the 15 sales that I
17 developed in more detail, I looked to see if the -- if
18 there was a pattern of either escalating, declining, or
19 stabilized sales.

20 And based upon the information in those 15
21 sales, I was not able to see a trend, either up or down.
22 It was pretty much level throughout the time period.

23 Q. Now, Mr. Gruelle, have you been asked to do
24 an appraisal of Mr. Bell's property as it sits today,
25 that is, without a house, undeveloped?

1 A. I've been asked to give my opinion of the
2 value. That's correct.

3 Q. Okay. Are you aware of any restrictions on
4 Mr. Bell's ability to develop Lots 21 and 22 as it is?

5 A. As it is, yes, I am.

6 Q. What would those be?

7 A. The Primary Coastal Sand Dune Ordinance has
8 a number of restrictions on that property.

9 Q. And are you aware that he's been denied the
10 permit?

11 A. Yes, I am.

12 Q. Okay. What is your opinion of the value of
13 Mr. Bell's property as it sits today?

14 A. As it is, in my opinion, it basically has
15 nominal value of perhaps something less than \$500; a few
16 hundred dollars.

17 Q. What is your opinion of the fair market
18 value of that property?

19 A. As a developable site?

20 Q. No. As it sits today.

21 A. As it sits today, the fair market value
22 would be a nominal amount, a few hundred dollars.

23 Q. Is there a market for Mr. Bell's property
24 as it sits today?

25 A. There may be someone who would buy the

1 property in a traditional real estate sense. There's not
2 a market for a property where there is no economic
3 utility.

4 And as it sits, there is no economic
5 utility, so there's not generally a market or a group of
6 buyers that are interested in those types of property.

7 Q. Okay. In your opinion, does this property
8 have any beneficial economic use as it sits today?

9 A. I don't see any economic use of that
10 property, no.

11 MR. GENZLER: Your Honor, at this point, I
12 would like to read into the record one of the City's
13 answers to an interrogatory that I asked to form a
14 foundation for the next line of questioning for
15 Mr. Gruelle.

16 THE COURT: Read what into the record?

17 MR. GENZLER: Your Honor, well --

18
19 (Whereupon, a side-bar conference
20 was held out of the hearing of the
21 reporter and the jury.)

22
23 MR. GENZLER: Ladies and gentlemen, as you
24 just heard, I asked the court's permission to read into
25 the record, and interrupt the questioning, an

1 interrogatory and ask, we felt, without a long
2 explanation, that both parties have a right to ask the
3 other questions as we develop the case.

4 We asked the City, if you contend the
5 plaintiff could make some economically beneficial use of
6 the property for other than a single-family residence,
7 list all the uses that would be available to the
8 plaintiff and your estimate of the economic benefit or
9 income this use would provide to the plaintiff.

10 The answer that this -- under oath, is all
11 such uses are identified in the Coastal Primary Sand Dune
12 Act and contained in Article 16 of the City Zoning
13 Ordinance, Section 1602.

14 Thank you.

15 Your Honor, I believe in response to my
16 earlier request while the jury was out, you took judicial
17 notice of that City Zoning Ordinance. And I have here
18 the provisions of that, which I don't know if you need to
19 mark that as an exhibit, but this is a blowup of Section
20 1602.

21 MR. BEAVER: I would move that the whole
22 Ordinance be admitted into evidence.

23 THE COURT: Is that the entire Ordinance?

24 MR. GENZLER: This is -- this is
25 Section 1602 from --

1 THE COURT: You say the entire -- you mean
2 the entire Ordinance? Do we have a copy?

3 MR. GENZLER: I have a copy of the entire
4 Ordinance that I can provide the court for that purpose.
5 For the purposes of my next line of questioning, that is
6 all I need.

7 THE COURT: All right.

8
9 BY MR. GENZLER:

10 Q. Mr. Gruelle, are you familiar with the
11 City's Coastal Primary Sand Dune Zoning Ordinance?

12 A. I've read that Ordinance, yes.

13 Q. Have you read particularly Section 1602?

14 A. Yes, I have.

15 Q. Okay. Does this appear to be Section 1602?

16 A. Yes, it does.

17 Q. Okay. What I'd ask you is, if you could
18 look at the uses that are permitted of Mr. Bell's
19 property -- excuse me for one second. Let me put this
20 down. Perhaps if, Mr. Gruelle, you came down here.

21

22 (Whereupon, the witness left the
23 stand.)

24

25 Looking at the uses that are permitted of

1 his property as admitted by the City, could you tell us
2 what the economically beneficial value of any of those
3 uses, in your opinion, would be to Mr. Bell?

4 A. Did you want me to read these?

5 Q. You don't have to read them all verbatim.
6 The first one I believe refers to --

7 A. There's one for a walkway across the
8 property, which I don't see any benefit or use
9 economically.

10 Two, there's an observation platform which
11 is not part of any dwelling. There's placement of beach
12 fences, sand fences, sand replenishment, maintenance of
13 the bulkhead, maintenance or repair of existing roads,
14 outdoor recreational activity that does not alter the
15 contour of the coastal primary sand dunes, conservation
16 and research activity, an emergency declaration, and
17 governmental activities.

18 Q. In your opinion, do any of those represent
19 an economically beneficial use for Mr. Bell?

20 A. Not in my opinion, no.

21 Q. Thank you very much. You can sit back
22 down.

23

24 (Whereupon, the witness resumed the
25 stand.)

1 MR. GENZLER: Your Honor, that concludes my
2 direct examination of Mr. Gruelle.

3 THE COURT: All right. Cross-examination?

4 MR. BEAVER: Yes.

5

6 CROSS-EXAMINATION

7

8 BY MR. BEAVER:

9 Q. I'd like to -- let me go over a couple of
10 your comparable sales, if we could. I think you had
11 three, and maybe we could come up to this map right here
12 which is Exhibit 2. And could you come up and show us
13 where sale number one is?

14

15 (Whereupon, the witness left the
16 stand.)

17

18 I've got the GPIN number here. Do you not --

19 A. Yes, I do; but it's a little hard to see
20 where the numbers are. I'd like to --

21 Q. You can use that, but mark on this chart
22 where -- the first one I have is 434124?

23 A. Yes, 434124.

24 Q. You've marked that in blue?

25 A. That's correct.

1 Q. And now, let's go -- the next one is

2 628127?

3 A. Yes, it is. So that's -- I got this right
4 here.

5 Q. Okay. And then number three, that's -- is
6 that 71?

7 A. Right. Actually, I don't know if that's
8 71.

9 Q. 5906?

10 A. 5906.

11 Q. Okay. And all of these houses -- do these
12 houses have improvements on them?

13 A. Do they have --

14 Q. Let's go with land sale number one.

15 A. Land sale number one does not have a
16 structure or dwelling on it, no.

17 Q. And land sale number one was purchased by
18 the people who lived to landward; is that correct?

19 A. Actually, they lived to the east.

20 Q. So they lived next door to it? So what
21 happened is they bought the property next door to them?

22 A. That's correct.

23 Q. And according to your records, that -- the
24 land wasn't even on the market. It's just that the
25 people who were next door to the vacant lot bought the

1 vacant lot?

2 A. No. Actually, I reviewed -- it had been
3 offered on the market.

4 Q. So this -- your report about that comment
5 is in error?

6 A. Yes, it's in error, yes.

7 Q. And actually, your intended use was -- as
8 you wrote in your report is for speculation and
9 development control by the adjacent owners; correct?

10 A. That's what they stated to me, that they
11 wanted to control the development next door to their
12 home.

13 Q. And the sales price of that in 1996 was
14 \$140,000?

15 A. That's correct.

16 Q. Now, land sale number two that you used,
17 actually, this was a sale from the estate of a person to
18 a beneficiary of the estate?

19 A. The executor of the estate, which was the
20 son of the -- he was the executor and also the son of the
21 estate.

22 Q. And so -- and this actually is -- there
23 was -- the total lot here in land sale number two
24 includes a site that has a building on it?

25 A. Yes, it does.

1 Q. And that it also includes two seaward lots
2 that go out into the Bay?

3 A. That's correct.

4 Q. And again, the intended use here was for
5 speculation development control by the adjacent owner,
6 according to your notes?

7 A. And again, to control the adjacent
8 property; that's correct.

9 Q. And number three -- I'm sorry --

10 A. It's to the right of number two.

11 Q. And this property was already developed; is
12 that correct?

13 A. No, sir.

14 Q. Well, there was already a site development
15 plan for it?

16 A. There was a development plan that had been
17 approved, but the lot was vacant and ready to be
18 developed.

19 Q. And this is -- this is again -- was built
20 on speculation or purchased on speculation?

21 A. It was purchased by a builder who built two
22 properties as well as one home as is -- it turned out to
23 be a condo -- and sold each unit.

24 Q. Uh-huh. And that's -- well, never mind. I
25 withdraw.

1 (Whereupon, the witness resumed the
2 stand.)
3

4 I think you told me before that you didn't
5 consider the amount that Mr. Bell paid for the property
6 as relevant to the valuation, did you not?

7 A. That's correct. I believe I said I didn't
8 know what he paid for it either.

9 Q. And your \$150,000, does that assume
10 that -- what are -- what are the assumptions again?

11 A. That it is both a physically and legally
12 buildable lot.

13 Q. And when you say physically, you mean the
14 bulkhead is already there?

15 A. That's correct. That the lot has been
16 leveled; the bulkhead has been built; the roads have been
17 extended; the utilities have been extended; it
18 is -- the lot is ready to be developed.

19 Q. And that's the assumption upon which you
20 base your appraisal of \$150,000?

21 A. That's correct.

22 Q. Now, you didn't -- you haven't considered
23 any other sales of -- well, strike that.

24 I just want to tell you -- ask you -- you
25 consider Mr. Bell's property now, or at least Lots 21 and

1 22, as having a nominal value; is that correct?

2 A. As they exist today.

3 Q. Right. And -- so what about Lot 20 which
4 is also a platted lot and that's to seaward, does that
5 also have a nominal value or is that, like, a minus
6 number?

7 A. I really didn't look at that as a part of
8 this assignment.

9 Q. I see. So you would agree that -- that
10 there's platted lots actually all along and even another
11 platted street out there along Chesapeake Bay; is that
12 correct?

13 A. Yes, sir. I agree with that. There are
14 additional platted lots.

15 Q. And those lots are all zoned --

16 A. R-5R in that section there.

17 Q. Also in here?

18 A. Some changes in different directions.

19 MR. BEAVER: Your Honor, may I approach?

20

21 (Whereupon, a side-bar conference
22 was held out of the hearing of the
23 reporter and the jury.)

24

25 MR. BEAVER: No other questions.

*

*

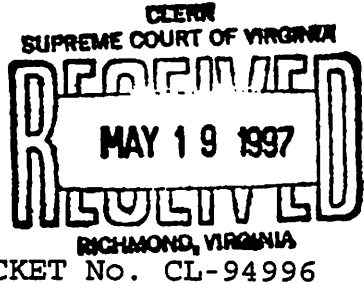
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1

VIRGINIA:

IN: THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH



RICHARDSON C. BELL,

Plaintiff,

v.

CITY OF VIRGINIA BEACH,

Defendant.

TRANSCRIPT OF PROCEEDINGS

Virginia Beach, Virginia

January 8, 1997

Volume II

Before: THE HONORABLE EDWARD W. HANSON, JR., Judge,
and a jury

FILED

97 APR -9 PM12:23

J. CURTIS FRUIT, CLERK

BY *[Signature]* DC

Appearances:

VANDEVENTER, BLACK, MEREDITH & MARTIN, L.L.P.

By: PATRICK A. GENZLER, ESQUIRE
ROBERT L. O'DONNELL, ESQUIRE
Counsel for the Plaintiff

CITY ATTORNEY'S OFFICE

By: RICHARD J. BEAVER, ESQUIRE
DIANE M. GREENE, ESQUIRE
Counsel for the Defendant

ORIGINAL

1 (Whereupon, the proceedings resumed at
2 9:15 a.m.)

3
4 THE COURT: All right. We ready to go?
5 Mr. Tye here?

6 MR. BEAVER: Yes, Your Honor, and I'm
7 awaiting confirmation -- I want to renew my motion for
8 the view if I can confirm they're ready. And I've got to
9 call back.

10 THE COURT: Okay. Let's go.

11
12 (Whereupon, the jury entered the
13 courtroom at 9:10 a.m.)

14
15 THOMAS TYE, called as a witness by and on
16 behalf of the Defendant, having been first duly sworn,
17 was examined and testified as follows:

18
19 DIRECT EXAMINATION (VOIR DIRE)

20
21 BY MR. BEAVER:

22 Q. State your name, please.

23 A. My name is Thomas Tye, T-Y-E.

24 Q. And what's your occupation?

25 A. I'm a local real estate appraiser.

1 Q. In what business are you affiliated?

2 A. Thomas Tye and Associates.

3 Q. Are you a principal in that business?

4 A. Yes, sir, I am.

5 Q. And how long have you been in that
6 business?

7 A. 18 years.

8 Q. And what are your duties as a real estate
9 appraiser? What do you do?

10 A. I've done real estate appraisals for a
11 variety of clients.

12 Q. Tell us some of your clients.

13 A. NationsBank, State of Virginia, various
14 municipalities, Life Savings Bank, a lot of mortgage
15 companies, and national clients as well.

16 Q. Did you graduate college?

17 A. Yes, I did.

18 Q. And where was that?

19 A. Old Dominion University.

20 Q. And do you have any other academic credits?

21 A. Yes, I do. I have several courses towards
22 a Master of Administration at Old Dominion University.

23 Q. And do you have any professional
24 affiliations?

25 A. Yes. I'm a member of the Appraisal

1 Institute. I have two designations with them; an SRA
2 designation, which is a senior residential appraiser, and
3 an MAI designation, which is a commercial designation
4 which stands for a member of the Appraisal Institute.

5 Q. All right. Are you licensed to appraise in
6 Virginia?

7 A. Yes. I'm certified to appraise in the
8 State of Virginia.

9 Q. Have you qualified as an expert on real
10 estate appraisal matters in courts of this Commonwealth?

11 A. Yes, sir, I have.

12 MR. BEAVER: Your Honor, I'd offer
13 Mr. Tye --

14 THE COURT: Any questions?

15 MR. GENZLER: I would offer [sic] Mr. Tye
16 as an expert in real estate appraisal matters.

17 THE COURT: The jury understands the
18 instructions previously given?

19 THE JURY: Uh-huh.

20 THE COURT: All right. Go ahead.

21

22 DIRECT EXAMINATION (Cont'd)

23

24 BY MR. BEAVER:

25 Q. Mr. Tye, are you familiar with the property

1 we're talking about here that is Lots 21 and 22 of
2 Block 3 of Chesapeake Park?

3 A. Yes, sir.

4 Q. And at my request, did you -- have you done
5 an appraisal of that property?

6 A. Yes, sir, I have.

7 Q. And did you visit the property?

8 A. Yes, I did.

9 Q. And what other things have you done for me
10 in evaluation -- in your evaluation of that property?

11 A. In addition to inspecting the property, I
12 have searched the market area to find out if other
13 similar properties have sold.

14 Q. And could you tell us -- could you tell us
15 what you consider the market area?

16 A. Yes. The market area is the Chesapeake
17 Park section of Virginia Beach basically between the
18 Amphibious Base to the west --

19 Q. And this is Plaintiff's Exhibit 2. Can you
20 just point out to the jurors what areas you considered?

21 A. Yes, sir. From the west here, the
22 Amphibious Base, up to where Ocean View Avenue
23 cul-de-sacs to the intersection of the properties along
24 the Bayfront are the ones that were considered.

25 Q. And when you did that, did you arrive at --

1 have you arrived at a valuation of this property?

2 A. Yes. Yes, sir, I have.

3 Q. And first of all, do you know how much back
4 in 1979 that property transferred for?

5 A. My understanding is that that property
6 transferred with another parcel that is similar to it,
7 and that they each effectively sold for \$5,000 apiece.

8 Q. And what's your valuation or value of the
9 property now in its present state?

10 A. It's \$5,000.

11 Q. And could you -- have you also confirmed in
12 your research whether or not there is, in your opinion, a
13 market for this property?

14 A. Yes, there is a market for this property.

15 Q. And again, how did you arrive at that
16 conclusion?

17 A. By examining the market area that I've
18 pointed out on the exhibit. There were a number of
19 properties similar to the subject, that is, undeveloped
20 raw land, that has sold. And due to that, it's obvious
21 that there are both buyers and sellers for this type of
22 property.

23 Q. And to help the jury understand what
24 we're -- what we're talking about, could you go over with
25 us some of your comparable sales?

1 A. Yes. Yes, sir.

2 Q. And would it be helpful for you to refer to
3 either a map you've prepared or this map?

4 A. I have sketched it all out on a map and can
5 transfer it to that if you'd like.

6 Q. Pin your map on top of that. Save a little
7 time there.

8 The map you have, is it identical to the
9 ones we have here, 1570-50?

10 A. Yes, it is.

11 Q. Now, would you pick any one that you want
12 and just explain what you found?

13 A. Okay. These two lots right here,
14 Lot 13 -- I'm sorry. There's three lots, Lots 11, 12,
15 and 13 in Block 7 sold in June of 1978 for \$7,500.

16 It is not served by an improved street.
17 There's no direct access to it except from the beach or
18 from an adjoining property owner.

19 Q. So from that respect, is it similar to our
20 property?

21 A. Oh, yes, sir. It's very similar to ours.
22 The next one that I have, this is Lot 9, Lot 10, and
23 Lot 2 in Block 32, which is right here. And this sold in
24 October of 1981 for \$5,000. It is not located on a
25 publicly improved street.

1 Q. Do you have another one?

2 A. Yes. I have a total of ten actually. You
3 just want me to go through them all?

4 Q. Yes.

5 A. Okay. In July of 1991, these two lots,
6 Lot 15 and Lot 16, in Block 7 sold for \$5,000. There is
7 not a publicly improved street to it. You cannot drive
8 to it. There are no utilities present to it.

9 The next property that I have sold in
10 August of 1990, and this is Lots 26 and 27 in Block 2,
11 also not located on a publicly improved street, and that
12 sold, two-third's interest in that property sold, for
13 \$10,000 in August of 1990.

14 In October 1981, Lot 31, Lots 11 -- 8, 11,
15 12, and 31 sold for \$5,900 and that -- these three lots
16 right here, those two are not located on a publicly
17 improved street.

18 In June of 1983, these lots sold for
19 \$2,000.

20 THE COURT: How many lots?

21 THE WITNESS: Lots 1, 2, 3, 39, and 40, a
22 total of five lots.

23 THE COURT: When you say 2,000, are you
24 saying 2,000 each, 2,000 --

25 THE WITNESS: 2,000 total for all of the

1 lots.

2

3 BY MR. BEAVER:

4 Q. What was that date?

5 A. That sold in June 1983, June 29, 1983.

6 In September -- in September of 1992, this
7 single lot, which is Lot 10, sold for \$2,000. Also does
8 not have any access from a publicly -- publicly improved
9 street.

10 In March of 1980, these lots, Lots 25, 26,
11 27, and 28, which are these two lots and those two lots
12 on the edge of the page, in March of 1980 sold for
13 \$10,000. Not located on a publicly improved street.

14 In October 1976, these lots, Lots 10, 11,
15 31, and 32, sold for \$6,000 in October 1976. They are
16 not located on a publicly improved street.

17 In November of 1992, Lots 13, 14, 15, and
18 16, which are all of these lots, sold for \$4,000; and
19 those as well are not located on a publicly improved
20 street.

21 Q. Were you able to go further than just
22 review the tax records or the sales records? What else
23 did you do?

24 A. I looked up the deeds to confirm the sales,
25 and I talked to some of the purchasers.

1 Q. Did you confirm the deeds of all the -- the
2 deeds of all the ones that you identified?

3 A. Every one, yes, sir.

4 Q. And what about the ones that you were able
5 to talk to buyer or seller? First, is that something you
6 usually do when you complete an appraisal?

7 A. No, not usually, unless there's really a
8 question that you might have about the sales transaction
9 because the deed records are typically reliable.

10 Q. What did you learn from the ones that you
11 pulled, if you could point them out?

12 A. Well, I talked to Mr. Lennox last night --
13 MR. GENZLER: Objection, Your Honor,
14 hearsay.

15 MR. BEAVER: Your Honor --

16

17 BY MR. BEAVER:

18 Q. Did you learn some information from him?

19 A. What I learned --

20 MR. GENZLER: Objection.

21 MR. BEAVER: Your Honor --

22 THE COURT: How can it be anything else?

23 MR. BEAVER: Your Honor, the information he
24 uses in compiling information as an expert --

25 THE COURT: That's subject to

1 cross-examination. Objection sustained.

2

3 BY MR. BEAVER:

4 Q. In your opinion, has the market changed
5 since 1979?

6 A. No, sir.

7 MR. BEAVER: Your Honor, I'd like to
8 identify these because they're marked.

9

10 BY MR. BEAVER:

11 Q. Could you explain what you've done to the
12 map here, the maps?

13 A. Yes. I've colored in the lots that sold,
14 and I've indicated the price they sold for and the date
15 that they sold.

16 Q. And also you have -- Mr. Bell's property
17 also is on there, is it not?

18 A. Yes. Yes, sir, it is right here.

19 Q. And that was sold in 1979 for \$5,000? You
20 have that identified?

21 A. Yes, sir, I do.

22 MR. BEAVER: Your Honor, I'd like to mark
23 the west section as Defense 1 --

24 THE COURT: All right. Defense 1.

25 MR. BEAVER: -- and introduce Defense 1.

1 (Defense Exhibit No. 1 was marked
2 for identification.)

3
4 MR. BEAVER: And the east section of the
5 map as 2.

6 THE COURT: Defense 2.

7
8 (Defense Exhibit No. 2 was marked
9 for identification.)

10
11 MR. BEAVER: Thank you.

12
13 BY MR. BEAVER:

14 Q. Is there any reason why you didn't go
15 somewhere else, for instance, to the south side of Ocean
16 View Avenue to look for comparables there?

17 A. The sales that are most comparable to the
18 subject, most similar, all of the sales that I have, are
19 located on unimproved streets just as the subject is. By
20 looking at those sales, you would have a very good idea
21 of what this property would reasonably be able to sell
22 for.

23 MR. BEAVER: That's all the questions I
24 have.

25 THE COURT: All right. Cross-examination?

1 MR. GENZLER: Thank you, Your Honor.

2

3 CROSS-EXAMINATION

4

5 BY MR. GENZLER:

6 Q. Mr. Tye, do you recall a deposition that
7 you gave on December 30, 1996?

8 A. Yes, sir.

9 Q. That was basically a week before the trial
10 started?

11 A. Yes, sir.

12 Q. And at that time at that deposition did you
13 testify with regard to comparable properties or
14 properties that were comparable to Mr. Bell's?

15 A. At that time I had only prepared a
16 preliminary analysis, and I had not researched the
17 immediate area.

18 Q. And a week before trial, sir, on
19 December 30, what were the properties that you testified
20 were comparable to Mr. Bell's?

21 A. At that time I testified to a range of
22 value between 1,000 and \$10,000; and I have other
23 properties that are waterfront that were not buildable.

24 Q. Sir, where were those properties that you
25 thought at that time were comparable to Mr. Bell's?

1 A. Before I had done any research on this
2 property, before I had researched the market area on
3 Chesapeake Park, I had one sale in Sandbridge and I had
4 two sales in Matthews County.

5 Q. And how far away from Matthews County is
6 the subject property, sir?

7 A. Probably about 80 or 90 miles away.

8 Q. And on December 30, 1996, a week before
9 trial, did you not testify that you thought those were
10 comparable sales to Mr. Bell?

11 A. In that they are not buildable, just like
12 Mr. Bell's, they are comparable. And they show a market
13 for properties that are not buildable.

14 Q. When did you compile the list -- strike
15 that.

16 Mr. Tye, let me show you a document. You
17 recognize this list?

18 A. Yes, sir, I do.

19 Q. I've written on it, but is this a list of,
20 basically, the comparable properties that you testified
21 to today?

22 A. That has some comparable properties that I
23 testified to and other properties that I did not testify
24 to.

25 Q. When was this list compiled?

1 A. Within the past week.

2 Q. And, in fact, did you not just compile this
3 list the day before trial?

4 A. It was being compiled last week, and it was
5 finished -- that list was faxed to you -- was finished on
6 Monday.

7 Q. On Monday?

8 A. Yes, sir.

9 Q. The day before trial?

10 A. Yes, sir.

11 Q. Okay. Thank you. Now, you have formed no
12 opinion, have you, as to the value of Mr. Bell's property
13 had he been able to build; is that right?

14 A. No, sir, I have not.

15 Q. Okay. I would like to put up your chart
16 again, if I could please. Mr. Tye, if you come down to
17 your chart for a second.

18 A. (Witness complies.)

19 Q. I'd like to look at a couple of these
20 comparables, properties that you claim are comparable.

21 A. Yes, sir.

22 Q. First off, the lots down here -- now what
23 street do these lots front on?

24 A. Bayside Avenue.

25 Q. Do these lots have any frontage on Ocean

1 View Avenue at all?

2 A. No, sir, they don't.

3 Q. How about these here?

4 A. No, sir.

5 Q. Okay. Now, let's look at Mr. Bell's
6 property. Does Mr. Bell have frontage on Ocean View
7 Avenue?

8 A. Yes, sir, he does.

9 Q. Okay. Yet you still consider these
10 comparable properties?

11 A. Yes, sir.

12 Q. Okay. Thank you.

13 A. Uh-huh.

14 Q. Perhaps you ought to stay here. I have a
15 couple other questions.

16 With regards to this property here, the
17 first one that you've indicated was comparable, who
18 purchased that property?

19 A. I would need to get my notes.

20 Q. Sure, please do.

21

22 (Whereupon, the witness resumed the
23 stand.)

24

25 A. Mr. Lazar.

1 Q. And where does Mr. Lazar live as far as you
2 can tell?

3 A. He lives right here.

4 Q. Okay. Let's look at the next property, and
5 that I believe is the one you -- one you list and call
6 the Madison property?

7 A. Yes.

8 Q. Okay. In fact, two of your parcels were
9 purchased by Mr. Madison, were they not?

10 A. There's one transaction with two separately
11 titled parcels.

12 Q. Okay. And where does Mr. Madison live?

13 A. Mr. Madison lives right here.

14 Q. Immediately behind the parcel that he
15 purchased?

16 A. Yes.

17 Q. Okay. Let's go down and look at one of
18 your other parcels that you testified to which I think is
19 the Fulford parcel.

20

21 (Whereupon, the witness left the
22 stand.)

23

24 Do you know where that one is?

25 A. Yes. Right here.

1 Q. Okay. And where does Mr. Fulford live?

2 A. He lives right across the street.

3 Q. Immediately behind the parcel that he
4 purchased?

5 A. That's right.

6 Q. How about the Wingo parcel that you
7 testified about?

8 A. That's right here.

9 Q. Okay. And --

10 A. He lives as well across the street.

11 Q. And without taking the time to point it out
12 here, the Lennox parcel that you testified to?

13 A. He lives across the street as well.

14 Q. And you testified, I think, as to the Smith
15 parcel also?

16 A. Yes.

17 Q. And two of the other parcels which you
18 referred on your list that I was provided as B and J,
19 you can't tell whether they live immediately adjacent or
20 not, can you?

21 A. The tax notices do not go to an address
22 that's close to that property so I don't know where they
23 live.

24 Q. Okay. Thank you.

25 A. Yes.

1 (Whereupon, the witness resumed the
2 stand.)

3
4 Q. Now, Mr. Tye, is your assessment of \$5,000
5 a fair market value?

6 A. Yes, it is.

7 Q. What does fair market value mean?

8 A. Willing buyer and a willing seller,
9 basically.

10 Q. Is that it -- I'm sorry?

11 A. Basically, a willing buyer and a willing
12 seller.

13 Q. Does that imply that there is a market for
14 the property?

15 A. Well, yes, because somebody would be buying
16 and somebody would be selling.

17 Q. And if there's a market for the property,
18 does that imply that there's more than one person willing
19 to buy?

20 A. It may.

21 Q. It may? If you have a piece of property
22 that may only be sold to one person, is it your testimony
23 that that represents a market value?

24 A. This property is not restricted. These
25 sales are not restricted in any manner to any one

1 particular person buying them. Anybody can purchase
2 them.

3 Q. Okay. You mean as a matter of law perhaps?

4 A. Well, as a matter of law and in looking at
5 who the properties were purchased from. They were
6 purchased from people who didn't live in the area. They
7 were purchased from out of state.

8 Q. Well, I'm sorry then. I don't understand.
9 You just testified that the majority, if not every one of
10 your comparables, were purchased by people who lived
11 immediately behind the property?

12 A. That's right, but the people that owned
13 them -- the people they bought them from did not live
14 there.

15 Q. At the time that they bought?

16 A. At the time they sold it.

17 Q. At the time they sold it. So who would buy
18 Mr. Bell's property today?

19 A. It would either be an investor, or it would
20 be an adjoining property owner.

21 Q. Okay. Now, which -- how many properties
22 adjoin Mr. Bell's?

23 A. May I step down?

24 Q. Sure.

25

1 (Whereupon, the witness left the
2 stand.)

3
4 A. On the opposite side of Bayview Avenue
5 there are a couple of duplex condominiums that have been
6 built. There is vacant land to the east -- no, the west
7 and vacant land to the east as well.

8 Q. Well now, the properties to the east don't
9 really adjoin Mr. Bell's, do they?

10 A. Well, there's a paper street in between
11 them.

12 Q. So there's a City right-of-way?

13 A. That's right.

14 Q. Okay. Now, who owns the property to the
15 west of Mr. Bell's?

16 A. I believe it's Mr. Page.

17 Q. Okay. Mr. Page -- you think Mr. Page might
18 be a logical buyer for Mr. Bell's property?

19 A. He may be.

20 Q. Are you aware that Mr. Bell had applied for
21 a permit to develop his property and has been denied?

22 A. Yes, sir.

23 Q. Are you aware that he's exhausted all his
24 appeals to build on that property?

25 A. I understand that's why we're here.

1 Q. And you think that, in fact, that might
2 still be a good investment for Mr. Page to buy that
3 property?

4 A. There's people buying up and down the
5 street.

6 Q. Well, let me ask you this. Do you know if
7 any of those other property owners have applied for a
8 permit to develop their property?

9 A. I have no knowledge that they have.

10 Q. So to your knowledge today, the only parcel
11 that we've testified about where somebody has actually
12 applied for a permit to develop it is Mr. Bell's?

13 A. I'm sorry. Would you repeat that?

14 Q. I said, to your knowledge today, the only
15 parcel where someone has actually applied for a permit to
16 develop it was Mr. Bell's?

17 A. Of the ones that we're talking about,
18 yes, sir.

19 Q. Okay. And, in fact, do you know if any of
20 those people even plan to develop those parcels?

21 A. The reason for purchasing these is to
22 protect the view, and that's why people are buying
23 them --

24 Q. Okay. What would another investor do with
25 Mr. Bell's property?

1 A. Sell it to another investor at a later
2 date.

3 Q. So it's your testimony today that
4 Mr. Bell's property, having been denied a permit to
5 develop it, would logically be bought by an investor?

6 A. An investor or an adjoining property owner.

7 Q. Okay. Well, let's talk about the investor.
8 What would the investor do?

9 A. Hold it and sell it at a later date.
10 Two -- several of these sales were purchased by Mr. Fine
11 a number of years ago; and he's an investor, a local
12 attorney. And he has since resold them.

13 Q. Well, you didn't answer my question. I'm
14 talking about Mr. Bell's property.

15 A. Uh-huh.

16 Q. Why would an investor purchase Mr. Bell's
17 property today?

18 A. For the same reason that Mr. Fine purchased
19 these and other investors have purchased them, hoping to
20 sell them at a later date for a profit.

21 Q. So you think it's -- in your opinion, an
22 investor would purchase Mr. Bell's property today for
23 \$5,000?

24 A. Yes.

25 Q. And sell it for more money in the future?

1 A. Yes, sir.

2 Q. What would that purchaser -- the second
3 purchaser that came along, what would he do with the
4 property?

5 A. Well, it would be the same thing. He would
6 either sell it to an adjoining property owner that was
7 interested in protecting the waterfront view, or he would
8 sell it to another investor hoping to sell it to someone
9 else at a later date.

10 Q. So that third investor who came along would
11 also hope to sell Mr. Bell's property for a profit in the
12 future?

13 A. Just like any real estate -- just like any
14 of these that have been purchased down here over the
15 years.

16 Q. Okay. Is there any limit to the number of
17 people that would keep buying Mr. Bell's for more and
18 more money?

19 A. As time goes on, prices change; and there
20 are always investors out willing to purchase property
21 like this.

22 Q. Like Mr. Bell's?

23 A. Yes, sir.

24 Q. Thank you, sir.

25 A. Uh-huh.

1 Q. I don't think we're going to refer to --
2 you can sit back down.

3
4 (Whereupon, the witness resumed the
5 stand.)

6
7 Now, if you were this investor and you
8 purchased Mr. Bell's property, what would you use it for?

9 A. Hold for investment.

10 Q. Are there any other uses you could put that
11 to today?

12 A. You could use it for having a picnic on it,
13 playing volleyball.

14 Q. And is it your opinion that that would be a
15 logical motivation for the investor who purchased
16 Mr. Bell's property?

17 A. The motivation would be a profit motivation
18 to sell it at a later date.

19 Q. Well, did you not testify in your
20 deposition on December 30 that it would be -- that you
21 would, in fact, pay between 1- and \$10,000 for Mr. Bell's
22 property to have a picnic on?

23 A. I own other similar properties that are not
24 developable. Yes, sir, I would.

25 Q. Thank you.

1 THE COURT: You said you personally do?

2 THE WITNESS: Yes, Your Honor.

3 MR. GENZLER: That wasn't the question.

4 The question was: Do you -- did you not testify on
5 December 30 that you would pay between 1- and \$10,000 for
6 Mr. Bell's property to be able to have a picnic on?

7 THE WITNESS: To invest in the property.

8

9 BY MR. GENZLER:

10 Q. And to be able to have a picnic on?

11 A. You asked what I could physically do with
12 the property.

13 Q. Well, you recall giving the deposition, do
14 you not?

15 A. Yes, sir.

16 Q. Do you recall this question and answer?

17 Question: What do you think they may be
18 able to use that property for? We're referring to the
19 purchaser.

20 Answer: Right. They may be able to use it
21 for selling to another property owner. They may be able
22 to use it for a picnic.

23 Question: So is it your opinion that
24 someone would pay between 1- and \$10,000 to be able to
25 picnic on that property?

1 Answer: Uh-huh.

2 Question: Would you pay that?

3 Answer: Uh-huh.

4 Do you recall that?

5 A. In the context of the question, it was
6 whether somebody would invest in the property. And
7 that's how that is related; and that's how that is
8 referred to, if somebody were to invest in the property.

9 Q. But in any case, your testimony is that a
10 person purchasing Mr. Bell's property should have no
11 expectation that he would be able to use that property?

12 A. That's correct. Yes, sir.

13 Q. Okay.

14 A. Well, may I -- may I answer that a little
15 differently?

16 Q. If you can clarify it.

17 A. Yes. An adjoining property owner could
18 certainly use it to expand their holdings, to make sure a
19 volleyball net does not go up right in front of their
20 window, to make sure catamarans aren't parked there, and
21 things of that like. And that's one of the reasons
22 they're being purchased down there.

23 Q. By the adjoining property owners?

24 A. By the adjoining property owners. An
25 investor could do that as well if he chose; but

1 typically, investors don't and for that reason they're in
2 it to make money.

3 Q. Okay. And you already testified regarding
4 your theory of investing in Mr. Bell's property a few
5 minutes ago; that is, they could resell it for a profit?

6 A. At a later date, just like it has been over
7 the years, yes, sir.

8 Q. Do you consider Mr. Bell's property to be a
9 buildable lot?

10 A. No, sir.

11 Q. And why is that?

12 A. There's a couple of reasons -- several
13 reasons it's not buildable.

14 Q. Okay. Is it not buildable because of the
15 unavailability of the permit under the -- under the
16 Coastal Primary Dune Zoning Act?

17 A. That's one of the issues. Yes, sir.

18 Q. Mr. Tye, have you testified on behalf of
19 the City in previous condemnation cases?

20 A. Yes, sir, I have.

21 Q. About how many times?

22 A. Six or seven.

23 Q. Have you ever testified against the City in
24 a condemnation case?

25 A. I've never been asked to.

1 Q. Have you ever done it?

2 A. No, sir.

3 Q. Thank you.

4 MR. GENZLER: No further questions.

5 THE COURT: Redirect?

6 MR. BEAVER: Yes, Your Honor, just a quick
7 couple questions.

8 THE COURT: All right.

9

10 REDIRECT EXAMINATION

11

12 BY MR. BEAVER:

13 Q. Mr. Tye, based on your knowledge of this
14 property and your knowledge of uses to that kind of
15 property, I think you've already testified to them, is
16 there any limitations or restrictions that you know of
17 that would preclude an owner of that property from
18 keeping his catamaran on it?

19 A. An owner? No, sir. I don't believe there
20 are. No, sir.

21 Q. Are there any restrictions or
22 prohibitions --

23 MR. GENZLER: Objection, Your Honor. I
24 don't think counsel has laid a proper foundation for
25 Mr. Tye. He's a real estate appraiser. He's not an

1 expert.

2 THE COURT: Sustained. Use of property,
3 you need to qualify him.

4

5 BY MR. BEAVER:

6 Q. Mr. Tye, are you familiar with this
7 property?

8 A. Yes.

9 Q. Are you familiar -- you've already
10 testified to some of the uses this property can be put.
11 In fact, you even said that it can be used as a picnic
12 site, can it not?

13 A. Yes.

14 Q. All right. And I believe you did say that
15 it could be used to park a catamaran?

16 A. Yes, sir.

17 MR. GENZLER: Objection again, Your Honor.

18 MR. BEAVER: That was his testimony.

19 MR. GENZLER: It doesn't matter. It's
20 beyond his expertise.

21 THE COURT: No, it's not. You can attempt
22 to qualify as to land use. You might be able to. You
23 haven't done that yet.

24

25

1 BY MR. BEAVER:

2 Q. Mr. Tye, as a real estate appraiser, do you
3 have some experience in determining and evaluating
4 appropriate land use?

5 A. Yes, sir.

6 Q. And what is that experience?

7 A. In valuing all different types of property,
8 it's necessary to determine what uses they can be put.
9 And in doing that, it is necessary to be familiar with
10 the zoning ordinance and familiar with land use patterns,
11 familiar with local ordinances.

12 Q. And are you generally familiar with this
13 area, with those -- those items?

14 A. Yes, sir.

15 Q. And with that knowledge, is there anything
16 that would prohibit, on that property, keeping my
17 catamaran there?

18 A. No, sir.

19 Q. Or having a picnic table?

20 A. No, sir.

21 Q. Or playing volleyball on my own property?

22 A. As long as you owned it.

23 MR. BEAVER: No other questions, Your
24 Honor.

25 THE COURT: Okay. Any recross?



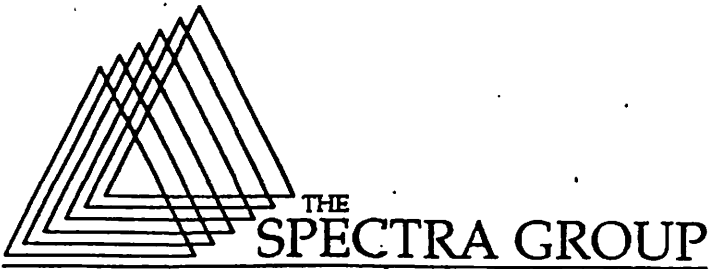
1. Picture of Lots
*(Retained in Clerk's Office in the Circuit Court
for the City of Virginia Beach)*

2. Picture of Lots
*(Retained in Clerk's Office in the Circuit Court
for the City of Virginia Beach)*

3. Photograph from Air
*(Retained in Clerk's Office in the Circuit Court
for the City of Virginia Beach)*

4. Large Photograph of Property
*(Retained in Clerk's Office in the Circuit Court
for the City of Virginia Beach)*

5. Large Photo of East Side of Property
*(Retained in Clerk's Office in the Circuit Court
for the City of Virginia Beach)*



July 22, 1991

Mr. Joseph E. Pulley
DSC
Municipal Center
Virginia Beach, VA 23456

RE: Chesapeake Park, BLK 4, Part of BLK 3

Dear Joe:

Mr. R. C. Bell, representing several property owners in these two blocks of Chesapeake Park, has approached us asking us to prepare a site plan for improvements necessary to develop lots in the above area. We have discussed various improvement alternatives. This letter is to establish a basic improvement proposal and ask that you review this proposal and set up a meeting for Mr. Bell and me to come down and discuss our proposal. We would like representatives from those affected departments to attend this meeting. At this meeting I hope that we can get the City staff input on feasible improvement alternatives so I can proceed with acquiring any survey or other data I need and design an improvement plan.

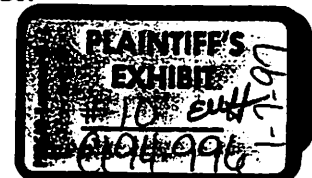
Our basic proposal is as follows:

1. Areas to be included
 - a. Closed portion of Smith Avenue.
 - b. All of BLK 4 (Lots 1-40).
 - c. A proposed closure of Bradford Avenue (Beaufort Avenue) between Blocks 3 and 4.
 - d. BLK 3 Lots 21, 22, 23, 24, 18, 19, 20.
 - e. Bayside Avenue in front of the above areas.
 - f. Ocean View Avenue in front of the above areas.
2. Dedication of Bayside Avenue in fee to the City along with riparian rights (to remain unimproved, currently in tidal waters).
3. Dedication of BLK 3 Lots 18, 19, 20 and BLK 4 Lots 1-20 in fee to the City (to remain unimproved, essentially as public beach and tidal waters).
4. Development of BLK 3 Lots 21, 22, 23, 24 ; BLK 4 Lots 21-40 ; and the closed portions of Smith Avenue and Beaufort Avenue as follows:
 - a. From Ocean View Avenue, 55 ft. of "high" ground for house construction to a proposed retaining wall parallel to Ocean View Avenue.
 - b. 20 ft. from this retaining wall seaward to remain in clear ownership by the property owner.
 - c. The remaining 25 ft. of these 100 ft. lots to be dedicated in easement to the City as beach access.

This would result in a "beach" area of about 80 ft. at mean low tide.

5. Dedication of Ocean View Avenue in fee to the City.

171



Mr. Joseph E. Pulley
DSC
July 22, 1991
Page Two

6. In dedicating Ocean View Avenue in fee, replat a 50 ft. right of way landward within the 70 ft. area of Ocean View Avenue, incorporating the remaining 20 ft. on the seaward side into the adjacent lots, replatting these 100 ft. lots landward 20 ft. This will move our development proposal landward 20 ft., adding the 20 ft. to the public beach area, leaving a total "beach" area of about 100 ft.

The original layout for Chesapeake Park set up a 70 ft. right of way retaining a proposed electric railway to the original developer. We propose that the railroad right of way be established as 20' with a remaining 50' right of way. It is our intention that this 20 ft. would be more useful as public beach than as a 70 ft. right of way for Ocean View Avenue. It is our intention to replat this without the need for a street closure with the transfer of clear title to the City.

A copy of deed book 91 page 25 is attached for your reference. The copy of map book 6 page 123 also indicates the proposed electric railway.


7. Plat 5 ft. pedestrian access easements from Ocean View Avenue to the beach at Smith Avenue, Beaufort Avenue, and a mid-block area at BLK 4.
8. Extend Beaufort Avenue and improve Ocean View Avenue with water, sewer, roadway, street light and landscape improvements.

I have attached a portion of the old plat (M.B.6 p.123) with the area of this project outlined.

I have some topography from 1979 that I can bring to a meeting to use in our discussions.

Please review this proposal and set up a meeting to discuss it. I look forward to hearing from you.

Very truly yours,



Keith A. Slicer, P. E.

KAS/bb

cc: R. Bell
E91-264

12. Plat of Proposed Development of Lots 21 and 22
for the City of Virginia Beach
(Retained in Clerk's Office in the Circuit Court

on 6-23-92

by R



City of Virginia Beach


OFFICE OF THE CITY ENGINEER
(804) 427-4131
FAX (804) 426-5668

MUNICIPAL CENTER
VIRGINIA BEACH, VIRGINIA 23456-9031

NOTICE OF WETLANDS PUBLIC HEARING APPLICATION VB92-77-SD

Pursuant to the City of Virginia Beach Zoning Ordinance, Articles 14 and 16, you are hereby notified that a public hearing for the purpose of receiving statements on the application by Richard C. and Linda B. Bell has been set for 9:30 a.m. on May 18, 1992, to be held in the Council Chambers in the City Hall Building, Courthouse Drive, Virginia Beach, Virginia. The proposal is to construct a roadway, water and sewer extension and a bulkhead for a single family dwelling, involving a coastal primary sand dune, adjacent to the Chesapeake Bay. This proposed project is located at 4900 Ocean View Avenue. All interested parties will be afforded the opportunity to comment.

The application and drawings for the proposed activity are available for public review in the City Engineer's Office, Operations Building, Virginia Beach, Virginia. For further information, contact the Waterfront Operations Inspections Bureau at 427-4131.



For Thomas W. Couch
Coastal Zone Administrator

TWC/smm

cc: Applicant: Richard C. Bell
Agent: The Spectra Group
Assistant City Attorney
City Clerk
City Soil Scientist
City Planner
Council on the Environment
Department of Game and Inland Fisheries
Department of Transportation
U. S. Army Corps of Engineers
Virginia Beach Wetlands Board (7)
Virginia Institute of Marine Science
Virginia Marine Resources Commission
Dr. Spencer Wise
Adjacent Property Owners: William L. and Anna Page



CITY OF VIRGINIA BEACH
APPLICATION FOR USE OR DEVELOPMENT OF COASTAL PRIMARY SAND
DUNES/BEACHES
6-23-92
by Q

1. Name, Address, and Telephone Number of Current Land Owner/
Applicant:

RICHARDSON C + LINDA B REIL Home Number 497 9323
1257 FOURSOME CT Work Number 456 9500
VA. Bch. VA 23455 Dead End 5213/121
Parcel 11, 20, 21 + 22 B1K3
Chesapeake Park
m. B. 6 - 123

2. Name, Address, and Telephone Number of Applicant's Authorized Agent

TUE SPECTER (Agent) (KATH A. SLICKER P.E.) Home Number 491-1901
325 OFFICE BLDG. Work Number 497-5862
VA. Beach VA. 23451

3. Legal Description of Property:

Lot No(s) 21 + 22 Block 3 Subdivision Chesapeake Park
Location: 4900 Ocean View Ave (Street Address)

4. Provide a Concise Description of the Proposed Activity:

ROADWAY, WATER, SEWER EXTENSION TO SEVE SITE. BULKHEAD, FILL, SITE WORK
FOR RESIDENTIAL HOUSE CONSTRUCTION.

5. The Proposed Project is: Private, non-commercial ☒ commercial ☐

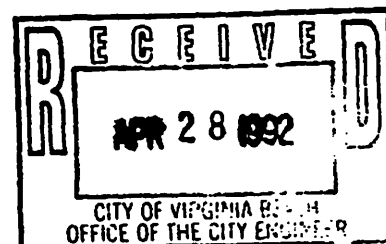
6. Estimated Cost of the Proposed Activity \$108,000 (excluding
land cost) \$48,000 SITE + \$60,000 HOUSE

Attached is my ☒ check ☐ money order in the amount of _____
Payable to Treasurer, City of Virginia Beach

FOR OFFICE USE ONLY

Date Stamp

Application No. _____



on 6-23-92
by On

7. Project Purpose:

Primary: for this research

Secondary: _____

Public Benefit: improve the areaPrivate Benefit: rights to this land

8. Is Any Portion of the Proposal or Which You are Seeking a Permit Complete?

Yes _____ No ☒ If answer is "yes" give details below. State when the work was completed. Clearly differentiate on your drawings that portion of the work which is existing and that which is proposed.

9. Approximately How Long Will It Take to Complete the Proposed Project After Construction is Begun?

120 days

10. Give Names and Addresses of ALL Adjoining Property Owners:

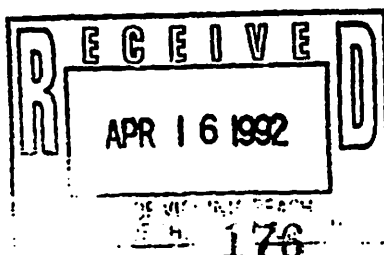
Williams L + Anne B Page Dead End #213/120
4484 Unit "B" Ocean View Ave Forest IL 1st 19, 23, 24
Va Beach Va Plat of Chesapeake Park
work 486 8800 map book 6-123

Telephone: 464 5872

Telephone: _____

Telephone: _____

Telephone: _____



Entered into record
at Commission meeting
on 6.23.92
by Am

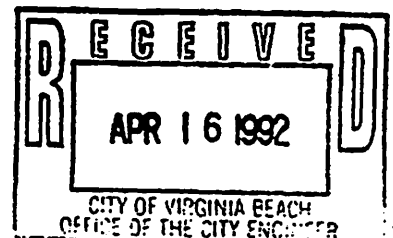
Page 3

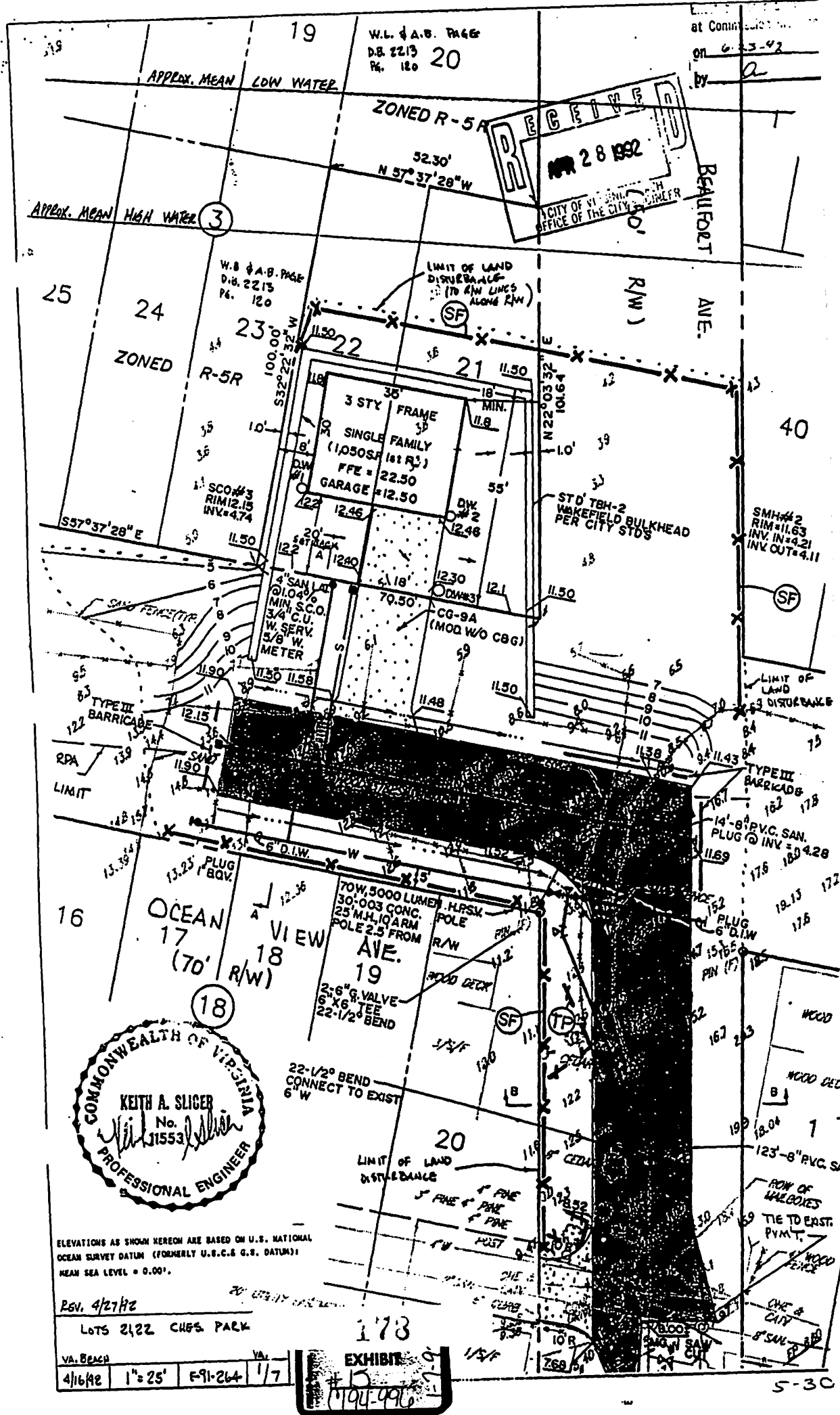
11. Complete Page 5 of the application:
12. Attach drawing(s) to scale, prepared and sealed by a Professional Engineer licensed in the Commonwealth of Virginia, which includes the following information:

Check appropriate boxes to indicate applicable items indicated on drawing(s).

PLAN AND SECTION VIEWS

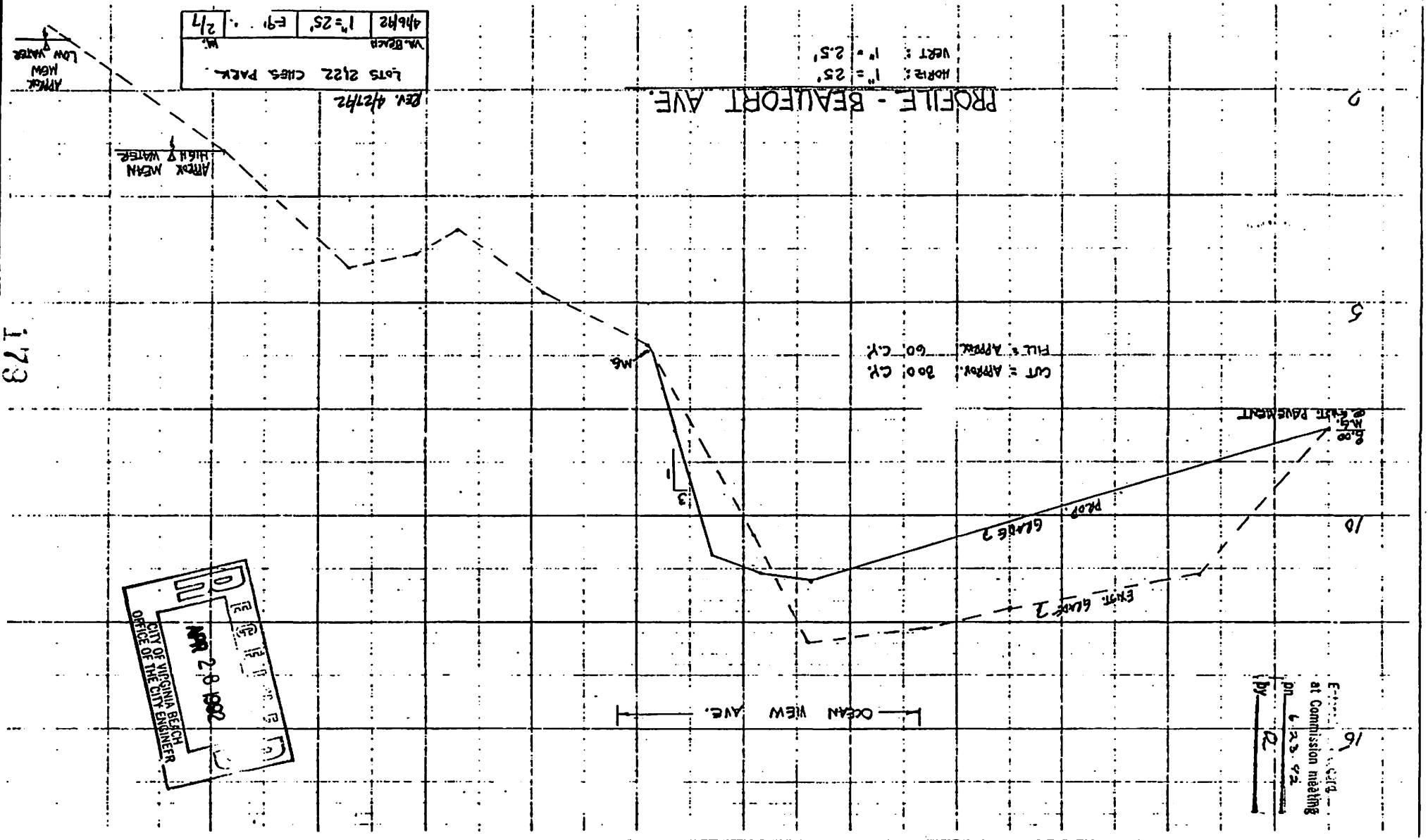
- ☐ A. Physical dimensions of property with bearings and distances.
- ☐ B. Current and proposed topography of property from mean high water to landward limit of property in two-foot intervals in both plan and section views.
- ☐ C. Clearly label all roadways.
- ☐ D. Show any existing rights-of-way and easements.
- ☐ E. Show current zoning setback lines.
- ☐ F. Show all existing and proposed structures, driveways, etc.
- ☐ G. Show the mean high water line.
- ☐ H. Indicate areas to be cut, graded, or filled, and amounts in cubic yards.
- ☐ I. Indicate length and diameter of proposed piles and depth to be placed below and above ground level.
- ☐ J. Provide a note indicating the total area in square footage to be enclosed which is not elevated more than eight feet above existing or proposed ground level.
- ☐ K. Show septic tank and drainfield with dimensions. Attach a copy of Health Department's sewage disposal system construction permit with the application.
- ☐ L. Show all areas to be paved with impervious surfaces with dimensions.
- ☐ M. Indicate any walkways, decks, platforms, etc.
- ☐ N. Note the date and the numerical scale on all drawings.



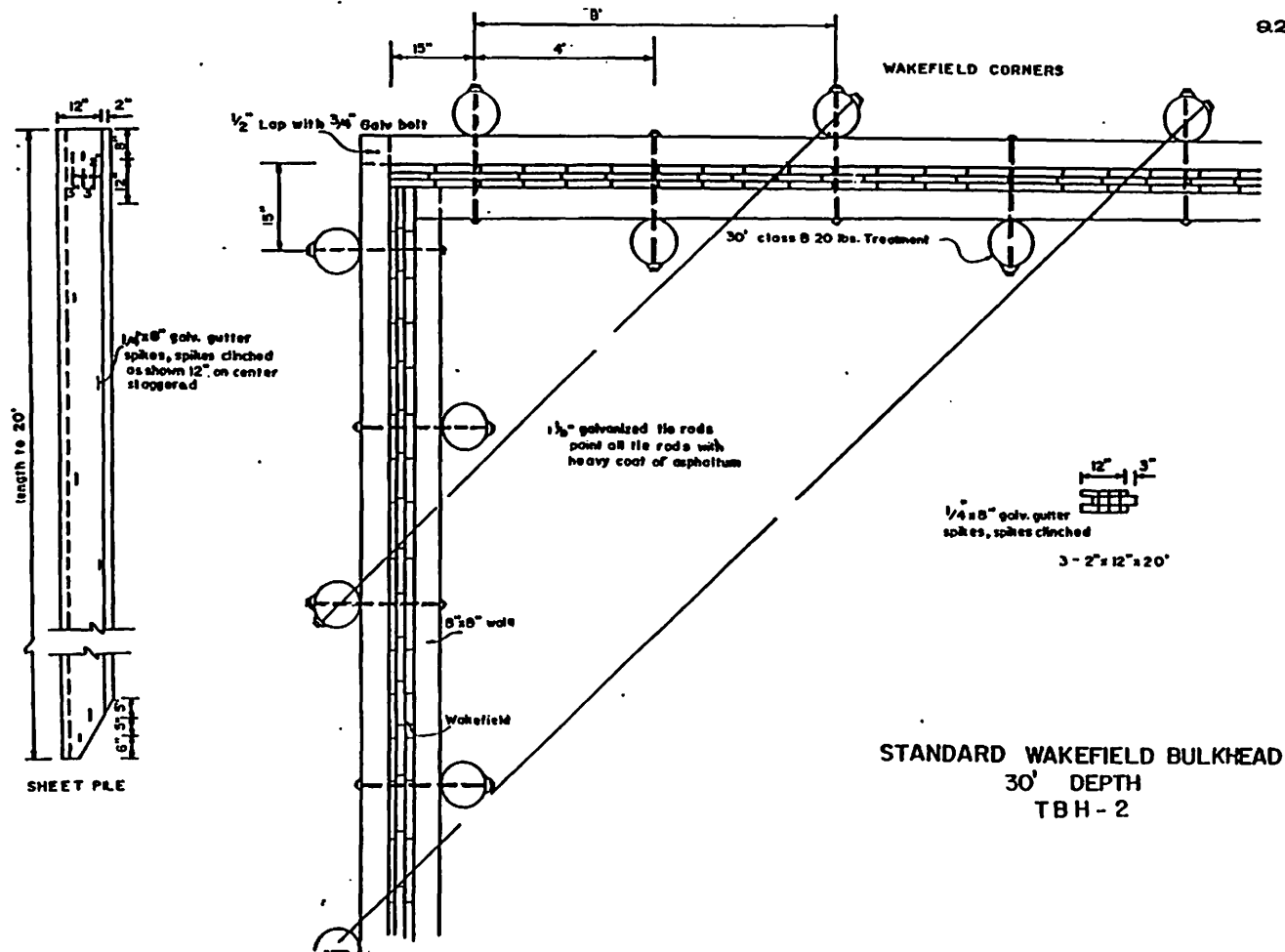


16
 at Commission meeting
 on 6.23.92
 by R.

OCEAN VIEW AVE.



Entered into record
at Commonwealth Meeting
on 6-23-92
by RL



92

RECORDED
APR 28 1992
CITY OF VIRGINIA BEACH
OFFICE OF THE CLERK

S-32

130

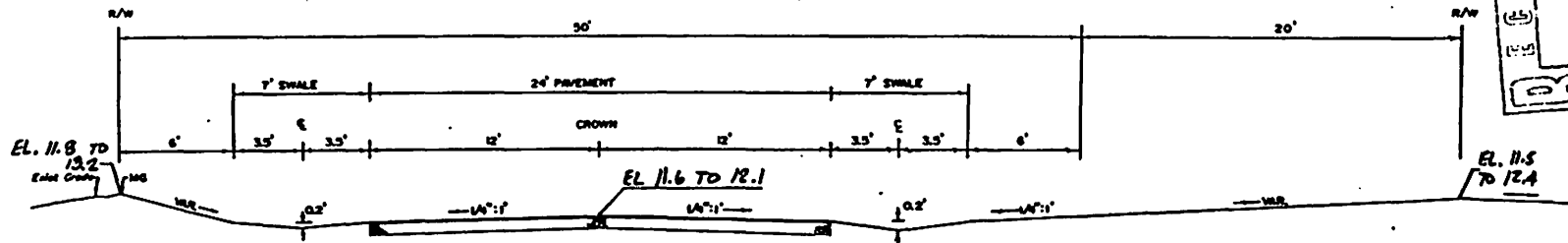
STANDARD WAKEFIELD BULKHEAD
30' DEPTH
TBH-2



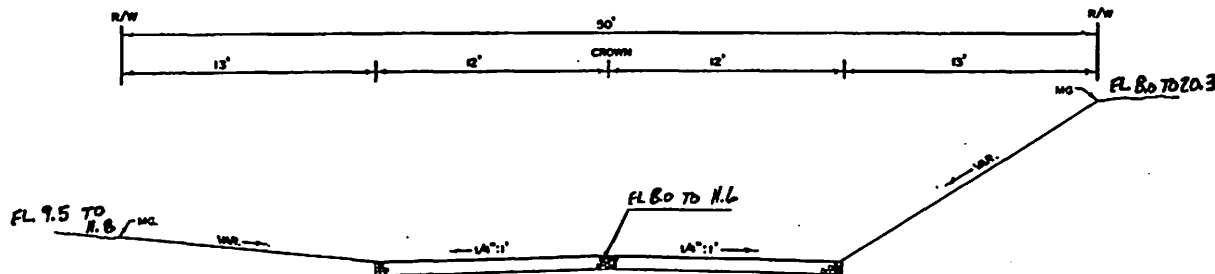
REV. 4/27/92

LOTS 2122 CHES. PARK.			
VA. BEACH	1"=25'	E-91-264	6/7

Entered into record
at Commission meeting
on 6-23-92
by R



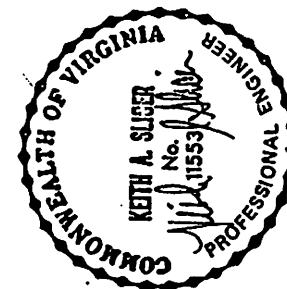
SECTION A-A
N.T.S.



SECTION B-B
N.T.S.

NOTES:

1. ALL SHOULDER AREAS IN R/W SHALL BE SPROUDED WITH AMERICAN BEACH GRASS @ 10' O.C. @ STAGGERED ROWS.
2. PAVEMENT DESIGN
2" ASR CONC. (18M-20)
8" AGG. BASE NO. 24A OR 22
PRIME W/LG. ASY. @ 0.30 GAL./LY
SUBGRADE, COMPACTED TO 95%
MAX. THEORETICAL DENSITY @
OPTIMUM MOISTURE.
(MML CBR = 20)

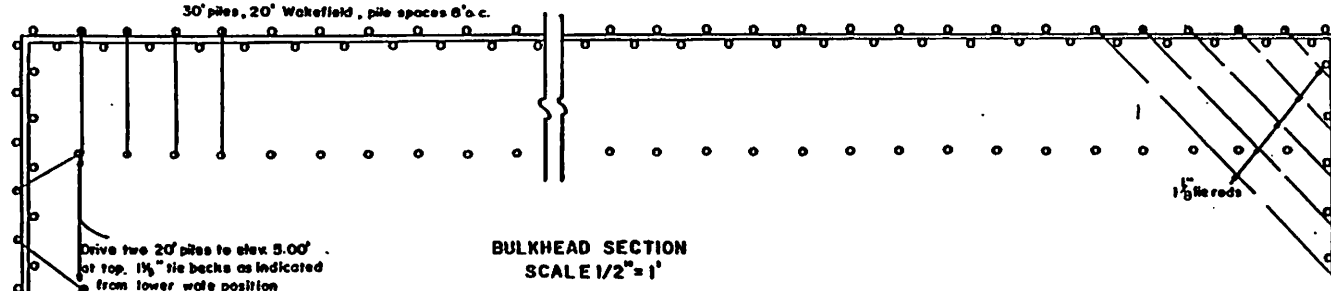


LTS. 2122 CHES. PARK			
V.C. BRACH	4/16/92	1"=25'	E-91-264
VC			47

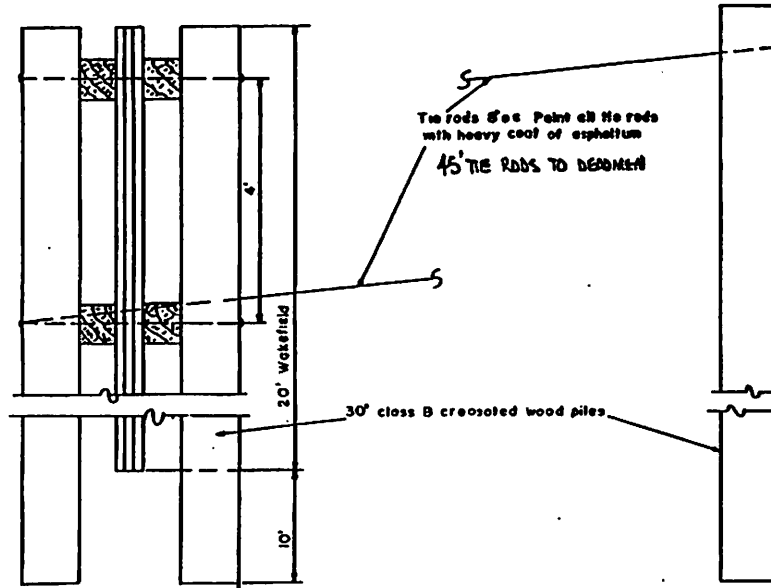
REV. 4/27/92

Entered into record
at Commission meeting
on 6-23-92
by Q

BULKHEAD PLAN
SCALE 1" = 20'

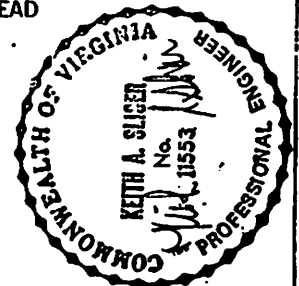


BULKHEAD SECTION
SCALE 1/2" = 1'



1. ALL TIMBER FOR WAKEFIELD SHEETING AND WALES SHALL HAVE A CREOSOTE TREATMENT OF NOT LESS THAN 20 POUNDS PER CUBIC FOOT
2. ALL SPIKES, NAIL, WASHERS, TIE RODS AND OTHER HARDWARE SHALL BE GALVANIZED

STANDARD WAKEFIELD BULKHEAD
30' DEPTH
TBH-2

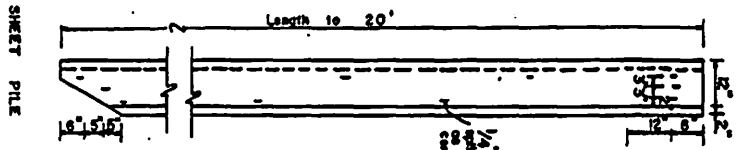


LOTS 2122 CHES. PARK.			
VALUED	1" = 25'	E-91-264	5/7

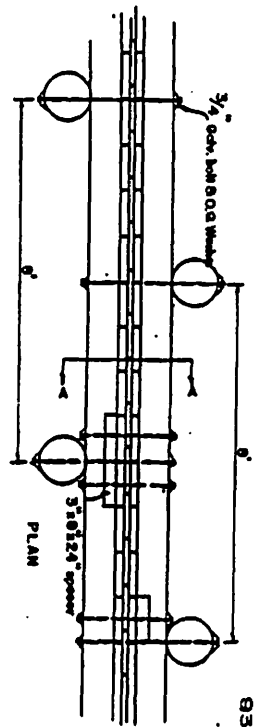
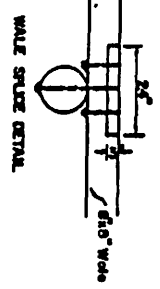
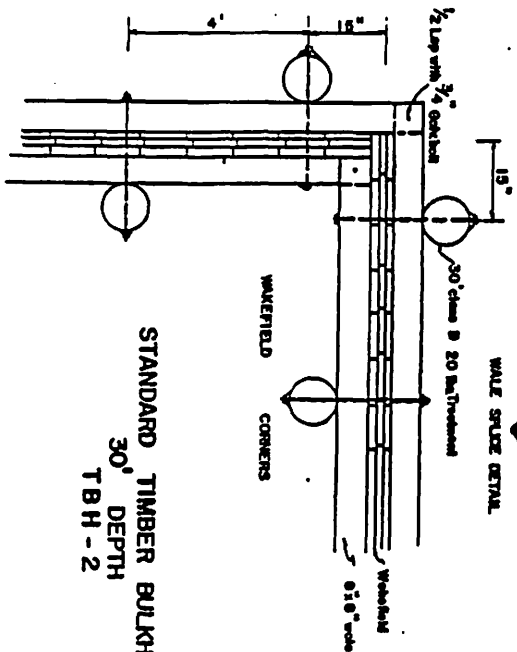
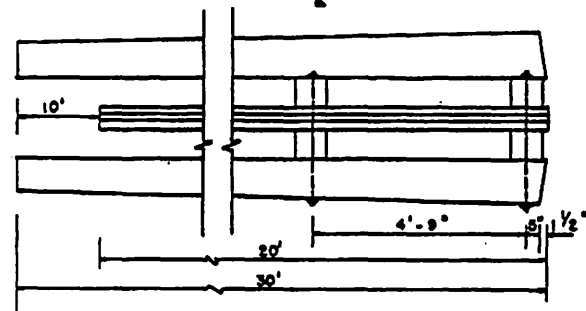
REV. 4/21/92

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APR 28 1992
CITY OF VIRGINIA
OFFICE OF THE ENGINEER

at Commission
 on 6-23-92
 by *[Signature]*



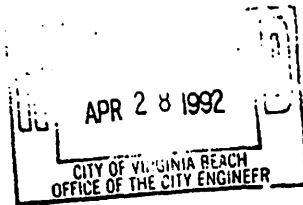
1/4" x 8" girth plates
 spaced 12" on
 center throughout.
 SECTION A-A
 1/4" x 8" girth plates
 spaced 12" on center
 3 - 2" x 12" x 20"



STANDARD TIMBER BULKHEAD
 30' DEPTH
 TBH-2

REV. 4/27/92

416192	1"=25'	E91-24	7/7
VA-8223			
LOTS 2122	CHES. PARK		





DEPARTMENT OF PLANNING
(804) 427-4621
FAX (804) 426-5657

City of Virginia Beach

Entered into records
at Commission meeting
on 6.23.92
by [Signature]

OPERATIONS BUILDING, ROOM 115
2405 COURTHOUSE DRIVE
MUNICIPAL CENTER
VIRGINIA BEACH, VIRGINIA 23456-8040
May 14, 1992

TO: Wetlands Board Members

From: Richard W. Scarper

Subject: May Wetlands Board Applications

Attached are the Planning Department's administrative comments for the following wetlands and dunes applications to be heard at the May 18, 1992 Wetlands Board Public Hearing.

VB91-281-NVW

Fred Strickland

VB92-052-SD

Charles Larry Pope

VB92-066-NVW

Charles P. Fletcher

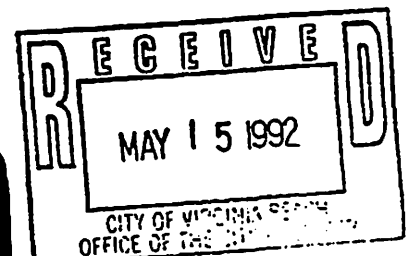
VB92-077-SD ~~Richard C. & Linda B. Bell~~

Please contact me if you have any questions regarding these comments.

Attachments

CC: Robert J. Scott
Karen Lasley
Vanessa Valldejuli
Walter Priest
Randy Owen
Bartley Tuthill
Wayne Couch ✓

185



5-37

on 6-23-92

by RL

The applicant has also proposed a riprap revetment, landward of tidal wetlands, along the contiguous steep slope feature. As exists today, minor erosion of the steep slope feature could be controlled by the planting of appropriate vegetation and select pruning of understory tree branches. This would translate into significant monetary savings to the applicant, involve less disruption to the steep slope/highly erodible soil feature and mirror goals and objectives of the Chesapeake Bay Preservation Act for shoreline stabilization.

As indicated on sheet 3 of 3 of the subject application, wetlands landward of the proposed low profile riprap revetment are comprised of a marsh peat substrate and are relatively flat. Also, this wetland area is variable in width and appears to average approximately 20 feet in width. The applicant has not addressed how the low profile riprap revetment will be constructed while minimizing impacts to the wetland feature.

Recommendation

Due to the projects potential for minimal impact on the estuarine environment, the Planning Department recommends approval of the project subject to:

Appropriate safeguards shall be employed when constructing the low profile riprap revetment so as to minimize impacts to wetland features. Specifically, those wetland features between the low profile riprap revetment and the toe of the landward riprap revetment facility. This may involve the installation of mats over the wetland features or placement of stone from the water;

NOTE: The applicant should give consideration to stabilizing the steep slope feature by vegetative means in lieu of the proposed riprap revetment. This would likely result in a significant monetary savings to the applicant while at the same time preclude further erosion of the steep slope. Appropriate city staff would be happy to assist the applicant in establishing the vegetative area as well as identify available options for plantings.

D. Richard C. & Linda B. Bell

VB-077-SD

Background

This is a request to 1) construct a roadway within a public right-of-way, 2) extend public water and sewer lines, 3) construct a three story single family residence, and 4) construct a treated timber bulkhead located on the Chesapeake

Bay in the Chesapeake Beach area. The entire project involves alteration to coastal primary sand dune as defined in the Coastal Primary Sand Dune Zoning Ordinance and accompanying State enabling legislation.

The project involves considerable cut-and-fill of the primary sand dune. Along Beaufort Avenue, approximately 300 cubic yards of material will be cut and approximately 60 cubic yards of material will be filled. Along Ocean View Avenue, approximately 80 cubic yards of material will be cut and approximately 1,236 cubic yards of material will be deposited along the beach, seaward of the primary sand dune.

The project by design will result in the destruction of all of the primary sand dune and the majority of the accompanying beach area. As proposed, there will be approximately 2.5 feet between the proposed bulkhead and mean high water. This narrow width will impede pedestrian traffic along the Chesapeake Beach area.

The Coastal Primary Sand Dune Protection Act declares that it is the "policy of the Commonwealth whenever reasonably necessary to preserve and protect coastal primary sand dunes and to prevent their despoliation and destruction and whenever practical to accommodate necessary economic development in a manner consistent with the protection of such features." The project by design will result in the total destruction of the coastal primary sand dune and does not accommodate necessary economic development consistent with state policy.

The standards of the Coastal Primary Sand Dune Protection Act state that no "permanent alteration of or construction upon any coastal primary sand dune shall take place which would: (i) impair the natural functions of the dune; (ii) physically alter the contour of the dune; (or) (iii) destroy vegetation growing thereon as defined herein unless the wetlands board determines that there will be no significant adverse ecological impact, or that the granting of a permit hereunder is clearly necessary and consistent with the public interest considering all material factors." The project appears contrary to these standards.

The Coastal Primary Sand Dune/Reaches Guidelines note the following points in relation to construction activities in the primary sand dune area:

- "Alteration of coastal primary sand dunes is ordinarily not justified.....where the dune location must be modified in order to accommodate the proposed construction activity."
- "The natural location of the primary dune is the result of all beach processes. The natural dune position is just beyond the reach of normal beach modulations. Relocation

of the dune by artificial means to a more seaward or landward location is likely to result in a loss of the sand stored in the dune. This will reduce the integrity of the dune line and compromise the ability of the dune to protect against storm flooding and erosion."

Entered into record
at Commission meeting
on 6-23-92
by hs

- "Construction within a primary dune may lead to weaknesses in the protective attributes of the system. Under severe storm attack, the weakness may lead to failure causing the site to become the locus of wave overwash activity. The breach in the system can reasonably...."(be)"....expected to widen to neighboring properties and cause otherwise avoidable damage."

Recommendation

For the aforementioned reasons, the Planning Department recommends denial of the application. We believe the project does not justify destruction of the coastal primary sand dune and beach system. Such action would set an undesirable precedent in that similar lots exist along the Chesapeake Beach area and similar development would 1) impair the natural functions of the dune system, 2) physically and permanently alter the contours of the dune, and 3) destroy vegetation growing thereon; all of which is inconsistent with the Coastal Primary Sand Dune Protection Act. Further, we believe the project does not constitute necessary economic development consistent with state policy.



May 21, 1992

Mr. Randy Owen
Virginia Marine Resources Commission
P. O. Box 756
2600 Washington Avenue
Newport News, Virginia 23607-0756

RE: VB 92-077-SD
Richardson C. and Linda B. Bell

Dear Mr. Owen:

On behalf of the above property owner (applicant), this letter is to request an appeal of the decision by the Virginia Beach Wetlands Board on May 18, 1992 to deny this permit application. This appeal is requested for the following reasons:

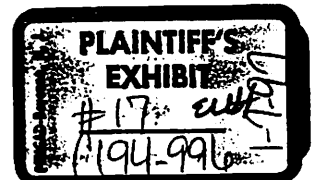
1. In a total denial of the requested activity without any discussion with the applicant of alternate development schemes, the Board has denied reasonable use of the platted property without any attempt to grant the permit with reasonable conditions or modifications. This appears to constitute a confiscation of the property.
2. Consideration of the existing development of similar properties was limited to the immediate one or two block area. Other blocks in the same subdivision of Chesapeake Park, or other bayside or oceanfront areas were not considered in determining what a reasonable use of the property might be.

Very truly yours,

Keith A. Slicer, P. E.

KAS/bb

cc: R. Bell
W. Couch



THIS DEED made this 17th day of March, 1993, by and between RICHARDSON C. BELL, A/K/A Richardson C. Bell, Sr., and LINDA B. BELL, husband and wife, parties of the first part, Grantors and CONNIE LORETTA BAUSWELL, TRUSTEE, under Land Trust pursuant to terms of a certain trust agreement dated February 1, 1993, party of the second part, Grantee, whose address is: 2008 Ames Court, Chesapeake, Virginia.

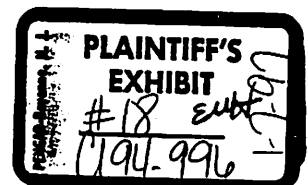
W I T N E S S E T H:

That for and in consideration of the sum of Ten and NO/100 Dollars (\$10.00) cash in hand paid, and other good and valuable considerations, the receipt of which is hereby acknowledged, the said parties of the first part do hereby grant, bargain, sell and convey with GENERAL WARRANTY and with English Covenants of Title unto CONNIE LORETTA BAUSWELL as Trustee under the Land Trust dated February 1, 1993 the following described property, situate in the City of Virginia Beach, Virginia, to-wit:

PARCEL 1 - That portion of Chubb Lake, as shown on the plat of Chesapeake Park, lying to the west of the line described in Parcel I above which is the north or northwestern portion of said lake.

GPIN 1570-32-7459

PARCEL 2 - Lots 1 through 6, 9, 10, 13 and 14, as shown on the unrecorded plat of Preliminary Subdivision of Pleasure House Lake, made by Rouse-Sirine Associates, Ltd., dated July 31, 1979.



GPIN 1570-52-3253

PARCEL 3 - ALL THOSE certain lots, pieces or parcels of land, with the improvements thereon, and known, numbered and designated as Lots 20, 21 and 22, in Block 3; Lots 3, 4, 7, 8, 34, 35, 38 and 39, in Block 4, as shown on the plat of Chesapeake Park, recorded in Map Book 6, at page 123.

GPIN for lots 20, 21 and 22, Block 3 1570-53-0082
 GPIN for lot 3, Block 4 1570-53-2067
 GPIN for lot 4, Block 4 1570-53-2054
 GPIN for lot 7, Block 4 1570-53-3053
 GPIN for lot 8, Block 4 1570-53-3072
 GPIN for lots 34 and 35, Block 4 1570-52-3908
 GPIN for lot 38, Block 4 1570-52-2934
 GPIN for lot 39 in Block 4 1570-52-2914

PARCEL 4 - All riparian rights in and to the shores and waters and beaches of the Chesapeake Bay lying to the west of the western right of way of Northampton Boulevard (Chesapeake Bay Bridge & Tunnel District) except any riparian rights to the north of any property and/or streets owned by or heretofore conveyed by Seawall Enterprises, Inc. (Seawall) to William L. Page, et ux, and all riparian rights in and to the shores, beaches and waters of the Chesapeake Bay north of any property located to the east of Northampton Boulevard (Chesapeake Bay Bridge & Tunnel District) owned by or heretofore conveyed by Seawall to the Grantors herein.

NO GPIN

PARCEL 5 - The underlying fee in Guy Avenue, Bayview Avenue, Beaufort Avenue (formerly Bradford Avenue), Garrison Avenue, Lee Avenue, that portion of Lauderdale Avenue lying to the east of the eastern side of Fentress Avenue, and all of Ocean View Avenue not conveyed to the parties of the second part and described in Parcel IX above - as shown on the plat of Chesapeake Park, recorded in Map Book 6, at page 123.

NO GPIN

PARCEL 6 - All of Lots 15, 16, the western one-half of Lot 25, all of Lots 26 and 27 in Block 4, as shown on the plat of Chesapeake Park, which said plat is recorded in Map Book 6, at page 123.

GPIN for Lots 15 and 16, Block 4 1570-52-4806
 GPIN for Western one-half of Lot 25,
 Block 4 1570-52-5749
 GPIN for Lots 26 and 27 Block 4 1570-52-5749

PARCEL 7 - The underlying fee, and any and all other interest of the Grantors in and to that property designated as a 30-foot easement running along the southern side of Pleasure House Lake between the western side of Pleasure House Road (as extended northwardly into said easement) and the eastern side of Beaufort Avenue, formerly Bradford Avenue; the easement being shown on the plat of Chesapeake Park, recorded in Map Book 6, at page 123, and also shown on the unrecorded plat of Preliminary Subdivision of Pleasure House Lake.

The parties of the first part further grant and convey unto the party of the second part all of their right title and interest in and to any and all rights of drainage into Pleasure House Lake, and further grants and conveys unto the said party of the second part, to the center line of Pleasure House Lake, in and to that property lying between said center line and the lots heretofore conveyed respectively to William L. Page, et ux and the Grantors herein, as shown on the unrecorded plat entitled Preliminary Subdivision of Pleasure House Lake hereinabove referred to.

The parties of the first part further grant and convey unto the party of the second part any and all assets of the Grantors heretofore acquired from Seawall Enterprises, Inc. not specifically set forth herein, it being the intention of the Grantors to convey to the party of the second part all of their right, title and entire interest in and to all property whatsoever, including any choses in action, rights to payments and claims they heretofore acquired from Seawall Enterprises, Inc. by deed dated August 5, 1982 and duly

recorded in Deed Book 2213, at page 119 or as otherwise acquired from Seawall Enterprises, Inc.

IT BEING any and all interest of the grantors herein in and to any property acquired by virtue of that certain deed dated August 5, 1982 from Seawall Enterprises, Inc., a Virginia corporation referred to therein as Parcels X, XI, XII, XIII, XIV. XV and XVI in said deed, duly recorded in the aforesaid Clerk's Office in Deed Book 2213, at page 0119.

NO GPIN

PARCEL 8 - Lots 17, 18, 19, 20, 21, 22, 23, 24 and the eastern one-half of Lot 25, in Block 4, as shown on the plat of Chesapeake Park, recorded in Map Book 6, at page 123.

GPIN for lots 17, 18, 19 and 20, Block 4
1570-52-6806

GPIN for lots 21, 22, 23 24 and the eastern
one-half of Lot 25, Block 4 1570-52-5749

PARCEL 9 - That portion of Ocean View Avenue shown on that certain plat entitled "Chesapeake Park, Property of Lynnhaven Corporation": Beginning at the southwestern corner of Lot 40, in Block 5, as shown on said plat, and running thence in a westerly direction across Smith Avenue and along the northern side of said Ocean View Avenue to the southern end of the dividing line between Lots 29 and 30 in Block 4, running thence in a southerly direction across the said Ocean View Avenue to the northern end of the dividing line between Lots 10 and 11 in Block 17, thence running in a easterly direction along the southern side of the said Ocean View Avenue and across Smith Avenue to the northwestern corner of Lot 1, in Block 16, as shown on said plat, thence running in a northerly direction in a straight line to the point of beginning.

IT BEING the same property conveyed to the grantors herein by deed of William L. Page, et ux, dated February 2, 1987 and duly recorded in the aforesaid Clerk's Office in Deed Book 2595, at page 1224.

NO GPIN

PARCEL 10 - All of the grantors right title and interest, including but not limited to, the absolute right to receive payment of the sum of Eighty Thousand Dollars upon that portion of Garrison Avenue being closed by ordinance of the City of Virginia Beach, Virginia and ceases to be a public street, by virtue of the provisions of that certain deed dated January 12, 1988 from the Grantors herein to Herbert L. Thompson, et ux, and recorded in Deed Book _____, at page _____.

NO GPIN

PARCEL 11 - ALL THAT certain lot, piece or parcel of land, situated in the City of Virginia Beach (formerly Chesapeake Beach, in Princess Anne County), Virginia, known, numbered and designated on the Amended Plat of Chesapeake Shores, Property of Lake Joyce Realty Corporation, located at Chesapeake Beach, dated September, 1928, and made by S. W. Armistead, C.E., recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia (formerly Princess Anne County) in Map Book 8, Page 82 and described as follows: to-wit:

BEGINNING on the north side of Lookout Road 257.62 feet east of the northeasterly intersection of Lookout Road (formerly Terrace Avenue) and Morton's Road, (formerly Beach Avenue) and thence running N 68 degrees 42' 50" W a distance of 153.50' along the northern side of Lookout Road to the intersection of Lookout Road and Lauderdale Avenue (formerly Lake Avenue) to a point of 00.00', thence turning N 58 degrees 23' 00" W a distance of 156.03', thence turning and running S 21 degrees 17' 10" E, a distance of 27.98' to the point of beginning. The said lot is a jib shaped lot and fronts on the southern side of Lauderdale Avenue and the northern side of Lookout Road.

RESERVING unto Donald W. Starbuck and Selena Starbuck, husband and wife, an easement for

that triangle of land commencing at the southwest corner of the above-described property and proceeding N 21 degrees 17' 10" E a distance of 27.98 feet; thence turning S 58 degrees 23' 00" E, a distance of 11.10 feet; thence turning S 44 degrees 05' 00" W a distance of 28.19 feet to the point of beginning. Said easement to be the exclusive use of Donald W. Starbuck and Selena Starbuck, husband and wife, their successors and assigns fully agreeing to maintain same and any roadway or improvements constructed thereon.

IT BEING the same property conveyed to the grantors herein by deed of Donald W. Starbuck and Selena Starbuck, husband and wife dated September 23, 1983 and duly recorded in the aforesaid Clerk's Office in Deed Book 2291, at page 0828 and by deed of correction dated October 21, 1983 and duly recorded in the aforesaid Clerk's Office in Deed Book 2292, at page 0710.

GPIN 1570-71-9116 AND 1570-71-8149

This foregoing conveyances are expressly made subject to the conditions, restrictions and easements of record and constituting constructive notice thereof.

The parties of the first part doth further grant and convey, with General Warranty and with English Covenants of title unto Connie Loretta Bauswell as Trustee of the Land Trust dated February 1, 1993, the following described property situate in the City of Chesapeake, Virginia, to-wit:

PARCEL 12 - ALL THAT certain piece or parcel of land situate in the Deep Creek Borough of the City of Chesapeake, Virginia, located to the north of Galberry Road and also located to the north of the property now or formerly owned by Samuel Montague, which property is separated

from the land now or formerly owned by Raymond Riddick by a lane 4 feet wide, which lane is to be kept open for the use and benefit of the grantee herein, his heirs and assigns, and the said Raymond Riddick, his heirs, devisees and assigns, the property hereby conveyed being bordered on the south by the lane above referred to and having dimensions of approximately 100 feet by 150 feet (the dimensions in an east-west direction being approximately 100 feet and the dimensions in a north-south direction being approximately 150 feet), said parcel being bordered on the east by an alley between the land now or formerly belonging to Raymond Richards (perhaps Raymond Riddick), it being the intention to convey all that property described in Deed Book 1276, at page 486, and which said property is somewhat differently described in deed recorded in Deed Book 911, at page 359.

TOGETHER with all of Grantors interest in and to an easement referred to in a Report of Stuart R. Hays the Commissioner in Chancery in the case styled Richardson C. Bell and Linda C. Bell, Complainants v. David L. Sutton, et al, Defendants, Chancery No. 29634, of record in the Circuit Court of the City of Chesapeake, Virginia, reference to which is hereby made for a more particular description thereof.

IT BEING the same property conveyed to the grantors herein by deed of Fred C. MacDonald, et ux, dated January 25, 1979, and duly recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia in Deed Book 1836, at page 254.

PARCEL 13 - ALL THAT certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the Western Branch Borough, in the City of Chesapeake, Virginia, and being more particularly bounded and described as follows, to-wit:

Beginning at a stob on the west side of the County Road at the northeast corner of the land of Silver Star Lodge No. 7; thence along the west side of the County Road North 21° East a distance of 500 feet; thence along the west side of the County Road North 16-1/8° East a distance of 128 feet; thence North 72-3/8° West a distance of 900 feet, more or less, to John T.

Griffin's line; thence along his line South 43-1/2° West a distance of 700 feet, more or less, to the Western projection of the northern line of the property of Silver Star Lodge No. 7; thence along said projection and said line South 73-3/8° East a distance of 1183 feet, more or less, to the point of beginning, save and except five (5) acres which were conveyed by Rebecca Wilson, widow, to Rex Lee Elliott, et ux, by deed dated August 30, 1945, duly recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Deed Book 794 at page 477.

SAVE AND EXCEPT that certain portion conveyed to the State of Virginia for widening of the highway, dated January 16, 1990 Parcel 074, Right of Way of Highway 664, project 0664-131-101 RW 203, Chesapeake, Virginia.

IT BEING the same property conveyed to the said parties of the first part by deed of James A. Murphy, Jr., et ux, dated December 18, 1978, and recorded in the aforesaid Clerk's Office in Deed Book 1832, at page 397.

PARCEL 14 - All of Grantors right, title and interest, consisting of an undivided one-half interest in and to ALL THAT certain lot, piece or parcel of land, with its appurtenances, situate in the City of Chesapeake, Virginia, and being bounded and described as follows, to-wit: BEGINNING at a point in the right-of-way of U. S. Route 58-460 in the dividing line between the property hereby conveyed and the property now or formerly belonging to the Kayo Oil Company, and thence along the line of the land now or formerly owned by the Kayo Oil Company South 14 Degrees 27' East 149.32 feet, more or less, to the northern line of the Seaboard Air Line Railroad right-of-way; thence east along the northern line of the Seaboard Air Line Road right-of-way 114 feet, more or less, to the west line of the land now or formerly owned by Clarence S. Warren; thence along the west line of the land now or formerly owned by Clarence S. Warren North 15 Degrees 55' West 150.5 feet, more or less, to the southern right-of-way of U. S. Route 58-460 and thence west along the southern right-of-way of U. S. Route 58-460 114 feet, more or less, to the point of beginning, save and except, 0.183 acre of land fronting on U. S. Route 58-460 conveyed by Ray Fanney and wife and Bertha Brinkley to the Commonwealth of

Virginia.

REFERENCE is hereby made to a Deed of Confirmation, bearing date the 4th day of May, 1978, and duly of record in the Clerk's Office for the Circuit Court of the City of Chesapeake, Virginia, in Deed Book 1806, at page 43.

This property is also known and numbered as 5021 West Military Highway, Chesapeake, Virginia.

IT BEING the same property conveyed to the grantor's herein by deed of Jack G. Petrie, District Director of Internal Revenue Service for the district of Richmond, Virginia dated May 17, 1989 and duly recorded in the aforesaid Clerk's Office in Deed Book _____, at page _____.

The foregoing conveyances are expressly made subject to the conditions, restrictions and easements of record and constituting constructive notice thereof.

This conveyance is made expressly subject to the following deeds of trust: Deed of Trust from Richardson C. Bell, et ux to Seaboard Equity Corp., a Virginia corporation, Trustee, dated September 26, 1986 and duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 2549, at page 389, being in the original principal sum of \$33,000.00 as to parcel 3; Deed of trust from Richardson C. Bell, et ux to Seaboard Equity Corp., Trustee, dated February 27, 1987 and duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 2644, at page 1011, being in the original principal sum of \$16,000.00 as to parcel 8 and 9; and Deed of trust from

Richardson C. Bell, et ux, to James A. Murphy, Jr., Trustee, dated August 16, 1991 and duly recorded in the Clerk's Office of the Circuit Court of the City of Virginia Beach, Virginia in Deed Book 3096, at page 2154 on June 12, 1992 being in the original principal sum of \$25,000.00 as to parcel 2.

The conveyances ierein are made to the said Trustee for the uses and purposes set forth herein and in the Land Trust dated February 1, 1993.

Full power and authority are hereby granted to the Trustee, and her successors, to protect and conserve the property; to sell, contract to sell and grant options to purchase the property, and any right, title, or interest therein on any terms; to exchange the property or any part thereof for any other real estate or personal property upon any terms; to convey the property by deed to any grantee, with or without consideration; to mortgage, pledge or otherwise encumber the property or any part thereof; to lease, contract to lease, grant options to lease and renew, extend, amend and otherwise modify leases on the property or any part thereof from time to time, for any period of time, for any rental and upon any other terms and conditions; and to release, convey or assign any other right title or interest whatsoever in the property or any part thereof.

No party dealing with the Trustee, or her

successors, in relation to the property in any manner whatsoever, and no party to whom the property or any part thereof or any interest therein shall be conveyed, contracted to be sold, leased or mortgaged by the Trustee shall be obligated to:

(a) See to the application of any purchase money, rent, or money borrowed or otherwise advanced on the property;

(b) See that the terms of the Trust have been complied with;

(c) Inquire into the authority, necessity or expediency of any act of the Trustee; and

(d) Be privileged to inquire into any of the terms of the Trust Agreement.

Every deed, mortgage, lease or other instrument executed by the Trustee in relation to the property shall be conclusive evidence in favor of every person claiming any right, title or interest thereunder:

(a) that at the time of the delivery thereof this trust was in full force and effect,

(b) that such instrument was executed in accordance with the terms and conditions hereof and of the Trust Agreement and is binding upon the beneficiary or beneficiaries thereunder,

(c) that the Trustee was duly authorized and empowered to execute and deliver every such instrument, and

(d) if a conveyance has been made to a successor or successors in trust, or an appointment of a successor or successors has been made as hereinafter provided for, that such successor or successors have been properly appointed and are fully vested with all the title, estate, right, powers, duties and obligations of its, her, his or their predecessors in trust.

The Trustee shall have no individual liability or obligation whatsoever arising from her ownership as Trustee of the legal title to said property, or with respect to any act done or contract entered into or indebtedness incurred by him in dealing with said property, or in otherwise acting as Trustee except only so far as said Trust property and any trust funds in the actual possession of the Trustee shall be applicable to the payment and discharge thereof.

A copy of the Land Trust referred to herein shall be filed at the office of the Trustee, whose current address is 2008 Ames Court, Chesapeake, Virginia.

The interest of every beneficiary or beneficiaries hereunder and under the Trust Agreement and of all persons claiming under any of the beneficiaries shall be only in the earnings, avails and proceeds arising from the rental, sale or other disposition of the property. Such interest is hereby declared to be personal property, and no beneficiary or beneficiaries hereunder shall have any right, title or interest, legal or equitable, in or to the property, as

such, but only in the earnings, avails, and proceeds thereof as provided in the Trust Agreement.

In the event of the resignation, death, incapacity, disability, removal, or absence from the State of the Trustee, or any successor Trustees, a successor Trustee or Trustees may be appointed in the following manner:

(a) The Trustee may, in her or his sole and absolute discretion, designate and appoint a successor Trustee or Trustees by an instrument duly executed and acknowledged.

(b) The Beneficiary or Beneficiaries may by unanimous written consent, with or without cause, appoint a successor Trustee or Trustees by an instrument duly executed and acknowledged; or

(c) Substitution of the Trustee or Trustees may be made with or without cause, pursuant to the provisions of Section 26-49 of the Code of Virginia, 1950, as amended and now in force; or

In the event of a conflict arising as to the method of appointing a successor Trustee or Trustees, the procedures shall have precedence according to the order stated.

When any such instrument of appointment shall have been executed, the successor Trustee or Trustees named therein shall be vested with all the powers, rights, authorities, duties and obligations vested in the Trustee

named herein. Any instrument of appointment shall be recorded in the Office of the Clerk of the Circuit Court of every city in which trust property is situated.

This deed is subject to the provisions of Section 55-17.1 of the Code of Virginia, 1950, as amended and now in force.

This deed is exempt from the taxes imposed by Section 58.1-801 by virtue of Section 58.1-811(12) of the Code of Virginia (1950), as amended.

Richardson C. Bell (SEAL)
Richardson C. Bell

Linda B. Bell (SEAL)
Linda B. Bell

Connie Loretta Bauswell
Connie Loretta Bauswell, Trustee

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

The foregoing instrument was acknowledged before me this 1st day of March, 1993 by Richardson C. Bell, A/K/A/ Richardson C. Bell, Sr. and Linda B. Bell, husband and wife.

Sharon M. Black
Notary Public

My commission expires:

5-31-94

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

The foregoing instrument was acknowledged before me
this 1st day of MARCH, 1993 by Connie Loretta Bauswell,
Trustee, under that Land Trust dated February 1, 1993.

Sharon M. Baus
Notary Public

My commission expires:

5-31-94

DEED ONLY
NO TITLE SEARCH

KALFUS & NACHMAN, P.C., ATTORNEYS AT LAW, NORFOLK, VIRGINIA

RECORDED WITH
CERTIFICATE ANNEXED

93 APR -7 AM 10: 00

\$58.1-802 TAXES PAID \$
VIRGINIA BEACH, VA.

TESTE: *Richard Hunt*
CLERK, CIRCUIT COURT

This Deed made this 8th day of April, 1993 by and between CONNIE LORETTA BAUSWELL, Trustee (Grantor for the purpose of indexing), party of the first part, and RICHARDSON C. BELL, SR., Trustee (Grantee for the purpose of indexing), party of the second part, whose address is 1504 Stace Ct., Virginia Beach, Virginia 23456.

W I T N E S S E T H:

WHEREAS, by deeds dated March 17, 1993 and recorded in the Clerk's Office of the Circuit Courts of the City of Chesapeake in Deed Book 2885 at page 493 and the City of Virginia Beach, Virginia, in Deed Book 3200 at page 1093, respectively, the property therein described was conveyed to Connie Loretta Bauswell, Trustee; and

WHEREAS, Connie Loretta Bauswell by this deed has resigned as Trustee and is desirous of appointing Richardson C. Bell, Sr. as successor Trustee in her place and stead.

NOW, THEREFORE, in consideration of the premises, the party of the first part, does hereby grant, convey, transfer, set over and relinquish unto Richardson C. Bell, Sr., Trustee, all of the right, title and interest in property in the trust estate created and existing under and pursuant to The Bell Land Trust Agreement dated February 1, 1993 in which the said property as described in Deed Book 2885 at page 493 and recorded April 2, 1993, and Deed Book 3200 at page 1093 and



recorded April 7, 1993 in the Circuit Courts of the Cities of Virginia Beach and Chesapeake, respectively, was conveyed to Connie Loretta Bauswell, Trustee; and it is hereby agreed that Richardson C. Bell, Sr., Successor Trustee, shall hold in trust the real property described in the aforesaid deed, which property constitutes the sole trust estate created by The Bell Land Trust Agreement.

The Successor Trustee, as evidenced by his signing and sealing this deed, does hereby accept said appointment and agrees to assume and be bound by all of the terms, and agrees to assume and be bound by all of the terms, covenants and conditions set forth in the Trust Agreement and in the deed referenced above as though the said Richardson C. Bell, Sr. had been named as the original trustee therein.

IN WITNESS WHEREOF, we have hereunto set our signatures and seals.

 (SEAL)
Connie Loretta Bauswell, Trustee

 (SEAL)
Richardson C. Bell, Sr., Trustee

STATE OF VIRGINIA
CITY OF NORFOLK, To-wit:

17th The foregoing instrument was acknowledged before me this day of May, 1993 by Connie Loretta Bauswell, Trustee.


Notary Public

My commission expires: 7/31/94

BK 3218PG1981

STATE OF VIRGINIA
CITY OF NORFOLK, To-wit:

17 The foregoing instrument was acknowledged before me this
day of May, 1993 by Richardson C. Bell, Sr., Trustee.

Debra R. Valley
Notary Public

My commission expires:

7-31-94

RECORDED WITH
CERTIFICATE ANNEXED
93 MAY 21 AM 9:56

TESTED

Debra R. Valley
NOTARY PUBLIC

Bryant, J. R. & Mary E.

DESCR.

SUBD. Chas. Park

SEO

Lots 20, 21, 22

FRONT FEET

LOT ~~21, 22, 23~~ BLK ~~3~~

ACREAGE

Gallo, Hiram C. & Gladys H.

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~~BAIGWELL CONNIE LORETTA TRUSTEE~~

3200 1093 04-07-93

LOTS E01302BK0030210000

BELL RICHARDSON C SR TRUSTEE

3218 1979 05-21-93 TRANSFER DONE 0026-94

LOTS E01302BK0030210000

1570 53 0082 0000 L 02

THE BELL LAND TRUST AGREEMENT

REMARKS:

PLAINTIFF'S EXHIBIT

#20

CLACK!

LOW ON

3

OLPG CLASSIFICATION

IF

CL TOTAL APPRAISED VALUE

	APPRaised VALUE	AS
LAND	\$ 12,000	\$.
BLOSS.	16,000	
TOTAL	\$ 18,000	\$

11

350			DATE	KIND	AMOUNT			
						19	LAND	6
						19	BLDG.	5
						19	TOTAL	
						73	LAND	12
						19	BLDG.	6
						19	TOTAL	18
						75	LAND	
						19	BLDG.	
						19	TOTAL	2
						75	LAND	
						19	BLDG.	
						19	TOTAL	1
						76	LAND	
						19	BLDG.	
						19	TOTAL	
						77	LAND	

REMARKS:

Corrected notice 10/28/83

APPR REVIEWED PRIOR TO
SEPT 30 1973 - NO CHANGE

Bldg demolished AS

[illegible]

~~4 18 74 4/28/1~~ ^{5/1}

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PIN NUMBER		LAND FILE INQUIRE		MAP NUMBER		02/06/95	
		JULY 1 OWNER				CLASS	
1570 53 0082 0000		BELL RICHARDSON C SR TRUSTEE		1994/95		100	
LEGAL OWNER				CUR LAND VAL \$		100	
BELL RICHARDSON C SR TRUSTEE				CUR BLDG VAL \$		0	
DB	PG	SALE DATE	SALE PRICE	REMARKS	CUR MRKT VAL \$	0	
3218	1779	03-21-93	0	LOTS			
BOROUGH		CODE	SUBDIVISION				
P SIDE	10	CHES PARK	PLAT				
LEGAL DESCRIPTION			0004 0047				
LOTS 20 21 22 BLK 3							
MRTG CO INVALID CODE				CODE			
MRTG CO LOAN #				00000			
ATTENTION TO 1				12 MOS VAL \$	0		
ATTENTION TO 2 R 95/1 PD 94-REM 11-23-94 WBH				9 MOS VAL \$	0		
MAILING ST ADRS 1504 STACE CT				6 MOS VAL \$	0		
MAILING CITY-ST VA BEACH VA				3 MOS VAL \$	0		
ZIP 23456							
PROPERTY ADDRESS		NUMBER DIR	NAME	APT/BLD	ZIP		
		0			00000		
TYPE Q TO QUIT OR PRESS ENTER TO CONTINUE=> _____							

LAND FILE UPDATE
JULY 1 OWNER

MAP NUMBER
E01302BK0030210000 CLASS

PJN NUMBER
1570 0082 0000

BELL RICHARDSON C SR TRUS

1995/96

100 -

LEGAL OWNER

CUR LAND VAL \$ 100

BELL RICHARDSON C SR TRUSTEE

CUR BLDG VAL \$ 0

DB PG SALE DATE SALE PRICE REMARKS

CUR MRKT VAL \$ 0

3218 1979 05-21-93 0

LOTS

1996/97

BOROUGH CODE SUBDIVISION

NEW LAND VAL \$ 100

BAYSIDE 10 CHES PARK PLAT

NEW BLDG VAL \$ 0

LEGAL DESCRIPTION

0004 0047

NEW MRKT VAL \$ 0

LOTS 20 21 22 BLK 3

1997/98

MRTG CO

CODE FLAG

FUT LAND VAL \$ 0

MRTG CO LOAN #

00000

FUT BLDG VAL \$ 0

ATTENTION TO 1

FUT MRKT VAL \$ 0

ATTENTION TO 2 R 95/1 PD 94-REM 11-23-94 WBH

12 MOS VAL \$ 0

MAILING ST ADRS 1504 STACE CT

9 MOS VAL \$ 0

MAILING CITY-ST VA BEACH VA ZIP 23456

6 MOS VAL \$ 0

3 MOS VAL \$ 0

NUMBER DIR NAME

APT/BLD ZIP EXEMPT 000

PROPERTY ADDRESS 0

00000

MENU _ BRWS _ PHST _ ILUF _ ULUF _

2

LAND USE FILE INQUIRE PG 2 02/06/95
PIN NUMBER MAP SD BLOCK LOT SITE
1570 53 0082 0000 E013 02 BK003 021 0000

LEGAL DESCRIPTION LOTS 20 21 22 BLK 3

SITE SQ FT	ACREAGE FRONT FT DEPTH	BY	CHANGES
WATERFRONT CHESAPEAKE BAY	OBSOLESCENCE		PRINT CODE
TOPOGRAPHY	CITY UTILITIES	WATER NO	SEWER NO
NOTES <u>PARTLY UNDER WATER</u>			EXEMPT CODE
			000

PROPERTY CHARACTERISTICS

LAND LOT	SIZE	LAND	SIZE	LAND	SIZE
	1.00				

TYPE Q TO QUIT OR PRESS ENTER TO CONTINUE=> ____

21. Photo of Bulkhead
*(Retained in Clerk's Office in the Circuit Court
for the City of Virginia Beach)*

22. Photo of Blue Print
*(Retained in Clerk's Office in the Circuit Court
for the City of Virginia Beach)*

Chapter 2.2. Coastal Primary Sand Dune Protection Act.

Sec.

- 62.1-13.21. Legislative declaration; sand dunes and beaches protected.**
- 62.1-13.22. Definitions.**
- 62.1-13.23. Standards for use of coastal primary sand dunes.**
- 62.1-13.24. Guidelines.**
- 62.1-13.25. Certain counties and cities authorized to adopt coastal primary sand dune ordinance.**
- 62.1-13.25:1. [Repealed.]**
- 62.1-13.26. Permits required for certain activities; issuance of permits by Commission.**
- 62.1-13.27. Administration; appeals; enforcement.**
- 62.1-13.27:1. Penalties.**
- 62.1-13.28. Exemptions.**

§ 62.1-13.21. Legislative declaration; sand dunes and beaches protected. - A. The Commonwealth of Virginia hereby recognizes the importance of coastal primary sand dunes with their unique physiographic features which, in their natural state, serve as protective barriers from the effects of flooding and erosion caused by coastal storms, thereby protecting life and property; that such dunes provide an essential source of natural sand replenishment for beaches and an important natural habitat for coastal fauna; and are important to the overall scenic and recreational attractiveness of Virginia's coastal area.

Inappropriate development on coastal primary sand dunes and beaches can destroy vegetation which stabilizes such features, alter the natural contour of these sand dunes and beaches, impede their natural formation and migration and interrupt wind and water currents which replenish the sand supply of beaches. Such alterations to coastal primary sand dunes and beaches may lead to increased shoreline erosion, coastal flooding, damage to fixed structures near the shore, loss of public and private open space, loss of wildlife habitat and increased expenditure of public funds.

Therefore, in order to reasonably protect the public interest, promote public health, safety, the general welfare of the Commonwealth, protect private and public property from erosion and flooding and protect wildlife and the natural environment, it is declared to be the public policy of the Commonwealth whenever reasonably necessary to preserve and protect coastal primary sand dunes and beaches and to prevent their despoliation and destruction and whenever practical to accommodate necessary economic development in a manner consistent with the protection of such features.



B. The provisions of this chapter shall apply to the protection of coastal primary sand dunes and beaches. Whenever coastal primary sand dunes are referred to in this chapter such references shall also include beaches. (1980, c. 660; 1984, c. 556; 1989, c. 342.)

The numbers of §§ 62.1-13.21 through 62.1-13.28 were assigned by the Virginia Code Commission, the numbers in the 1980 act having been 62.1-13.20:1 through 62.1-13.20:8.

The 1989 amendment designated the first paragraph as subsection A, substituted "beaches" for "reaches" in the second and third paragraphs, and added subsection B.

§ 62.1-13.22. Definitions. - For the purposes of this chapter, the following words shall have the meanings respectively ascribed to them:

"Beach" means (i) the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low water line landward to where there is a marked change in either material composition or physiographic form such as a dune, bluff or marsh, or (ii) where no such change can be identified, to the line of woody vegetation (usually the effective limit of stormwaves), or the nearest impermeable man-made structure, such as a bulkhead, revetment or paved road.

"Commission" means the Virginia Marine Resources Commission.

"Commissioner" means the Commissioner of the Virginia Marine Resources Commission.

"County or city" means the governing body of such county or city.

"Coastal primary sand dune" means a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent or greater to less than ten percent, and upon any part of which is growing as of July 1, 1980, or grows thereon subsequent thereto, any one or more of the following: American beach grass (*Ammophilla breviligulata*); beach heather (*Hudsonia tomentosa*); dune bean (*Strophostylis umbellata* var. *paludigena*); dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach-handwort (*Arenaria peptoides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside goldenrod (*Solidago sempervirens*); and short dune grass (*Panicum ararum*). For purposes of this chapter, "coastal primary sand dune" shall not include any mound of sand, sandy soil or dredge soil which has been deposited by man for the purpose of the temporary storage of such material for later use.

"Coastal primary sand dune zoning ordinance" means that ordinance set forth in § 62.1-13.25.

"Governmental activity" means any or all of the services provided by the Commonwealth or a county or city to its citizens for the purpose of maintaining public facilities and shall include but not be limited to such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights and constructing public buildings. (1980, c. 660; 1984, c. 556; 1985, c. 589; 1987, c. 499; 1989, c. 342.)

Cross references. - As to the erecting and maintenance of protective bulkheads by certain property owners in the Sandbridge Beach subdivision, see SS 62.1-13.28 B.

The 1989 amendment added the paragraph defining "Beach," deleted the designations of subsections A through F, and deleted former subsection G which defined "Reach."

§ 62.1-13.23. Standards for use of coastal primary sand dunes. - No permanent alteration of or construction upon any coastal primary sand dune shall take place which would: (i) impair the natural functions of the dune as described herein; (ii) physically alter the contour of the dune; (iii) destroy vegetation growing thereon as defined herein unless the wetlands board, or in its absence the Commission, determines that there will be no significant adverse ecological impact, or that the granting of a permit hereunder is clearly necessary and consistent with the public interest considering all material factors. (1980, c. 660.)

§ 62.1-13.24. Guidelines. - In order to implement the policy set forth in SS 62.1-13.21 and to assist cities and counties in the regulation of coastal primary sand dunes, the Commission shall, with advice and assistance from the Virginia Institute of Marine Science, promulgate guidelines which set forth the consequences of the use of these dunes. In developing these guidelines, the Commission shall consult with any affected state governmental agency. (1980, c. 660.)

§ 62.1-13.25. Certain counties and cities authorized to adopt coastal primary sand dune ordinance. - Any of the following counties or cities which adopt a wetlands ordinance pursuant to § 62.1-13.5 may adopt the ordinance contained herein: the Counties of Accomack, Lancaster, Mathews, Northampton and Northumberland and the Cities of Hampton, Norfolk, and Virginia Beach. In the event that a locality has not adopted a wetlands ordinance pursuant to Chapter 2.1 (§ 62.1-13.1 et seq.) of Title 62.1, such locality may adopt the ordinance contained herein; however, such locality shall appoint a wetlands board following the procedure specified in § 62.1-13.6. Any county or city which has adopted the Coastal Primary Sand Dune Zoning Ordinance prior to July 1, 1989, shall amend such ordinance to conform it to the ordinance contained herein by

December 1, 1989. Until such county or city has made such amendment, the ordinance shall be read as if it conformed with the ordinance contained herein.

Coastal Primary Sand Dune Zoning Ordinance

§ 1. The governing body of, acting pursuant to Chapter 2.2 (§ 62.1-13.21 et seq.) of Title 62.1 of the Code of Virginia, for the purposes of fulfilling the policy and standards set forth in such chapter, adopts this ordinance regulating the use and development of coastal primary sand dunes. Whenever coastal primary sand dunes are referred to in this ordinance, such references shall also include beaches.

§ 2. Definitions. For the purpose of this ordinance:

"Beach" means (i) the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low water line landward to where there is a marked change in either material composition or physiographic form such as a dune, bluff or marsh, or (ii) where no such change can be identified, to the line of woody vegetation (usually the effective limit of stormwaves), or the nearest impermeable man-made structure, such as a bulkhead, revetment or paved road.

"Commission" shall mean the Virginia Marine Resources Commission.

"Commissioner" shall mean the Commissioner of the Virginia Marine Resources Commission.

"County or city" shall mean the governing body of such county or city.

"Coastal primary sand dune" hereinafter referred to as "dune," shall mean a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten percent or greater to less than ten percent, and upon any part of which is growing on July 1, 1980, or grows thereon subsequent thereto, any one or more of the following: American beach grass (*Ammophila breviligulata*); beach heather (*Hudsonia tomentosa*); dune bean (*Strophostylis umbellata* var. *paludigena*); dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach sandwort (*Arenaria peploides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside goldenrod (*Solidago sempervirens*); and short dune grass (*Panicum amarum*). For purposes of this ordinance, "coastal primary sand dune" shall not include any mound of sand, sandy soil or dredge soil which has been deposited by man for the purpose of the temporary storage of such material for later use.

"Governmental activity" shall mean any or all of the services provided by the Commonwealth or a county or city to its citizens for the purpose of maintaining public facilities

and shall include but not be limited to such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights and constructing public buildings.

"Wetlands board" or "board" means the board created as provided for in § 62.1-13.6 of the Code of Virginia.

§ 3. The following uses of and activities on dunes are permitted if otherwise permitted by law:

A. The construction and maintenance of noncommercial walkways which do not alter the contour of the coastal primary sand dune;

B. The construction and maintenance of observation platforms which are not an integral part of any dwelling and which do not alter the contour of the coastal primary sand dune;

C. The planting of beach grasses or other vegetation for the purpose of stabilizing coastal primary sand dunes;

D. The placement of sand fences or other material on or adjacent to coastal primary sand dunes for the purpose of stabilizing such features, except that this provision shall not be interpreted to authorize the placement of any material which presents a public health or safety hazard;

E. Sand replenishment activities of any private or public concern provided no sand shall be removed from any coastal primary sand dune unless authorized by lawful permit;

F. The normal maintenance of any groin, jetty, riprap, bulkhead or other structure designed to control beach erosion which may abut a coastal primary sand dune;

G. The normal maintenance or repair of presently existing roads, highways, railroad beds and facilities of the United States, this Commonwealth, or any of its counties or cities, or those of any person, firm, corporation, or utility, provided no coastal primary sand dunes are altered;

H. Outdoor recreational activities, provided that such activities do not alter the natural contour of the coastal primary sand dune or destroy its vegetation;

I. The conservation and research activities of the Virginia Marine Resources Commission, Virginia Institute of Marine Science, Department of Game and Inland Fisheries and other related conservation agencies;

J. The construction and maintenance of aids to navigation which are authorized by governmental authority;

K. Activities pursuant to any emergency declaration by the governing body of any local government or the Governor of the Commonwealth or any public health officer for the purposes of protecting the public health or safety; and

L. Governmental activity on coastal primary sand dunes owned or leased by the Commonwealth of Virginia or a political subdivision thereof.

§ 4. Any person who desires to use or alter any coastal primary sand dune within this (county or city), other than for those activities specified in § 3 herein, shall first file an application with the wetlands board in accordance with § 4 of § 62.1-13.5 of the Code of Virginia. The wetlands board may establish a processing fee in accordance with § 4 of § 62.1-13.5 of the Code of Virginia. No person shall be required to file two separate applications for permits if the project to be undertaken would require that a permit be filed in accordance with § 62.1-13.5 as well as this ordinance. Under such circumstances the fee accompanying the application required by § 62.1-13.5 shall also be the fee for the purpose of this ordinance.

§ 5. All applications and maps and documents relating thereto shall be open for public inspection at the office of the recording officer of this (county or city).

§ 6. Not later than sixty days after receipt of such application, the wetlands board shall hold a public hearing on such application. The applicant, the local governing body, the Commissioner, the owner of record of any land adjacent to the coastal primary sand dunes in question, known claimants of water rights in or adjacent to the coastal primary sand dunes in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the Water Control Board, the Department of Transportation and governmental agencies expressing an interest therein shall be notified by the board of the hearing by mail not less than twenty days prior to the date set for the hearing. The wetlands board shall also cause notice of such hearing to be published at least once a week for two weeks prior to such hearing in the newspaper having a general circulation in this (county or city). The costs of such publication shall be paid by the applicant.

§ 7. In acting on any application for a permit, the board shall grant the application upon the concurring vote of three members of a five-member board or four members of a seven-member board. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision. The board shall make its determination within thirty days from the hearing. If the board fails to act within such time, the application shall be deemed approved. Within forty-eight hours of its determination, the board shall notify the applicant and the Commissioner of such determination and if the board has not made a determina-

tion, it shall notify the applicant and the Commission that thirty days has passed and that the application is deemed approved.

The board shall transmit a copy of the permit to the Commissioner. If the application is reviewed or appealed, then the board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The record shall be open for public inspection at the office of the recording officer of this (county or city).

§ 8. The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after hearing as provided herein, suspend or revoke a permit if the board finds that the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The board after hearing may suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

§ 9. A. In making its decision whether to grant, to grant in modified form, or to deny an application for a permit, the board shall base its decision on the following factors:

1. Such matters raised through the testimony of any person in support of or in rebuttal to the permit application.
2. Impact of the development on the public health and welfare as expressed by the policy and standards of Chapter 2.2 (§ 62.1-13.21 et seq.) of Title 62.1 of the Code of Virginia and any guidelines which may have been promulgated thereunder by the Commission.

B. If the board, in applying the standards above, finds that the anticipated public and private benefit of the proposed activity exceeds the anticipated public and private detriment and that the proposed activity would not violate the purposes and intent of Chapter 2.2 of Title 62.1 of the Code of Virginia and of this ordinance, the board shall grant the permit, subject to any reasonable condition or modification designed to minimize the impact of the activity on the ability of this (county or city), to provide governmental services and on the rights of any other person and to carry out the public policy set forth in Chapter 2.2 of Title 62.1 of the Code of Virginia and in this ordinance. Nothing in this section shall be construed as affecting the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity. If the board finds that the anticipated public and private benefit from the proposed activity is exceeded by the anticipated public and private detriment or that the proposed activity would violate the purposes and intent of Chapter 2.2 of Title 62.1 of the Code of Virginia and of this ordinance, the board shall deny the permit application with leave to the applicant to resubmit the application in modified form.

§ 10. The permit shall be in writing, signed by the chairman of the board and notarized.

§ 11. No permit shall be granted without an expiration date, and the board, in the exercise of its discretion, shall designate an expiration date for completion of such work specified in the permit from the date the board granted such permit. The board, however, may, upon proper application therefor, grant extensions. (1980, c. 660; 1984, c. 556; 1989, c. 342.)

The 1989 amendment added the last two sentences of the first paragraph, added the last sentence in § 1, and in § 2 added the paragraph defining "Beach," deleted the designations of subdivisions A through F, and deleted former subdivision E1, which defined "Reach."

§ 62.1-13.25:1: Not set out.

Editor's note. - This section, relating to emergency sand grading activities on sand dunes located on the Atlantic Shoreline of Virginia Beach, was enacted by Acts 1984, c. 518. In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

§ 62.1-13.26. Permits required for certain activities; issuance of permits by Commission. - No person shall conduct any activity which would require a permit under a coastal primary sand dune ordinance unless he has a permit therefor. Until such time as the county or city in which a person proposes to conduct an activity which would require a permit under such ordinance adopts such ordinance, such person shall apply for a permit directly to the Commission. (1980, c. 660.)

§ 62.1-13.27. Administration; appeals; enforcement. - In administering the provisions of this chapter and in order to provide for appellate review and enforcement, the Commission, Commissioner or wetlands board as appropriate shall, as to the Coastal Primary Sand Dune Protection Act or an ordinance adopted pursuant thereto, bear all those duties and responsibilities and follow those procedures specified in §§ 62.1-13.7 through 62.1-13.19 of the Code of Virginia in the same manner and on the same basis as they administer and enforce the Wetlands Act or an ordinance adopted pursuant thereto. (1980, c. 660.)

§ 62.1-13.27:1. Penalties. - A. Without limiting the remedies which may be obtained in this chapter, any person who violates any provision of this chapter or who violates or fails, neglects or refuses to obey any Commission or wetlands board notice, order, rule,

regulation or permit condition authorized by this chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty not to exceed \$25,000 for each day of violation. Such civil penalties may, at the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred for the purpose of abating environmental damage to, or the restoration of wetlands therein, in such a manner as the court may, by order, direct, except that where the violator is the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

B. Without limiting the remedies which may be obtained in this chapter, and with the consent of any person who has violated any provision of this chapter or who has violated or failed, neglected or refused to obey any Commission or wetlands board order, rule, regulation, or permit condition authorized by this chapter, the Commission or wetlands board may provide, in an order issued by the Commission or wetlands board against such person, for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000 for each violation. Civil charges shall be in lieu of any appropriate civil penalty which could be imposed under subsection A of this section. Civil charges may be in addition to the cost of any restoration ordered by the Commission or a wetlands board. (1990, c. 811.)

§ 62.1-13.28. Exemptions. - A. Nothing in this chapter shall affect any project or development (i) for which a valid building permit or final site plan approval has been issued prior to July 1, 1980; or (ii) which, if no building permit is required for such project including a locally approved mining operation, has been otherwise commenced prior to July 1, 1980, and certified as exempt by the Commission or appropriate wetlands board; or (iii) approved by the governing body of any county or city pursuant to any local ordinance whose principal purpose is to review development in coastal primary sand dunes prior to July 1, 1980. Nothing in this section shall be deemed to exclude from regulation any activity which expands or enlarges upon a project already in existence or under construction.

B. The Virginia Beach Wetlands Board shall make an ongoing determination in the Sandbridge Beach subdivision of the area bounded on the north by Dam Neck Naval Base, on the west by Sandfiddler Road, and on the south by White Cap Lane, to determine which structures or properties are in clear and imminent danger from erosion and storm damage due to severe wave action or storm surge. The owners of structures or properties so defined shall not be prohibited from erecting and maintaining protective bulkheads or other equivalent structural improvements of a type, size and configuration approved by the Virginia Beach Wetlands Board. The Virginia Beach Wetlands Board shall not impose arbitrary or unreasonable conditions upon its approval of any such bulkhead or other structural improvement but shall maintain a continuing responsibility to ensure that each bulkhead or structural improvement constructed under the authority of this section is maintained in a condition which is safe, structurally sound,

and otherwise in conformity with the reasonable conditions imposed by the Virginia Beach Wetlands Board. At the time the application is submitted, the applicant shall consent in writing to any subsequent construction which may occur whereby an adjacent property owner desires to tie in a bulkhead at no additional cost with that bulkhead proposed by the applicant. Such consent shall be considered a waiver of property line defenses relating to the bulkhead line. (1980, c. 660; 1987, c. 499; 1988, c. 740.)

Editor's note. - Acts 1988, c. 740, which amends this section, provides in cl. 2 that the act shall expire on June 30, 1991.

The 1988 amendment deleted the fourth and fifth sentences, pertaining to written agreements of adjacent property owners.

tially occupied by other uses except that no parcel may simultaneously receive density credit for two (2) uses.

(b) The maximum density for multi-family residential shall be eighteen (18) dwelling units per acre, and density shall be set as a condition of the use permit after due consideration is given to the nature of the project and surrounding land use.

(c) The maximum density for single family attached dwellings shall be twelve (12) dwelling units per acre. The maximum number of attached dwellings constructed in one group without side yard setbacks shall be six (6); the density and other characteristics shall be set as a condition of the use permit after due consideration is given to the nature of the project and surrounding land use. (Ord. No. 2077, 6-25-91)

Sec. 1536. Screening.

Category II screening is required at all points where office development in this district abuts single-family, semi-detached or duplex use. (Ord. No. 2077, 6-25-91)

ARTICLE 16. COASTAL PRIMARY SAND DUNE ZONING ORDINANCE*

Sec. 1600. Intent.

The city council of the City of Virginia Beach, acting pursuant to Chapter 14 (§ 28.2-1400 et seq.) of Title 28.2 of the Code of Virginia, reordains this article regulating the use and development of coastal primary sand dunes. Whenever coastal primary sand dunes are referred to in this ordinance, such references shall also include beaches. (Ord. No. 1805, 8-22-88; Ord. No. 1902, 8-14-89; Ord. No. 2203, 1-26-93)

Sec. 1601. Definitions.

For the purpose of this article:

- (a) *Beach* means the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the

forces of erosion, sediment transport and deposition that extends from the low-water line landward to where there is a marked change in either material composition or physiographic form such as a dune, bluff or marsh, or where no such change can be identified, to the line of woody vegetation (usually the effective limit of stormwaves), or the nearest impermeable manmade structure, such as a bulkhead, revetment or paved road.

- (b) *Commission* means the Virginia Marine Resources Commission.
- (c) *Commissioner* means the commissioner of marine resources.
- (d) *City* means the city council of the City of Virginia Beach.
- (e) *Coastal primary sand dune* or *dune* means a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten (10) percent or greater to less than ten (10) percent, and upon which is growing any of the following species: American beach grass (*Ammophilla breviligulata*); beach heather (*Hudsonia tomentosa*); dune bean (*Strophostylis* spp.); dusty miller (*Artemisia stelleriana*); salt-meadow hay (*Spartina patens*); seabeach sandwort (*Arenaria peploides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside goldenrod (*Solidago semper-virens*); and short dune grass (*Panicum ararum*). For purposes of this article, "coastal primary sand dune" shall not include any mound of sand, sandy soil or dredge spoil deposited by any person for the purpose of the temporary storage.
- (f) *Governmental activity* means any or all of the services provided by the City of Virginia Beach to its citizens for the purpose of maintaining public facilities, including but not limited to, such services as constructing, repairing and maintaining roads; providing street lights and sewage facilities; supplying and treating water; and constructing public buildings.

*Cross reference—Southern Watersheds Management Ordinance, App. G.



- (g) *Wetlands Board* or *Board* means the board created pursuant to Section 28.2-1303 of the Code of Virginia. (Ord. No. 1805, 8-22-88; 1902, 8-14-89; Ord. No. 2203, 1-26-93)

Sec. 1602. Uses.

The following uses of and activities in dunes are authorized if otherwise permitted by law:

- (a) The construction and maintenance of non-commercial walkways which do not alter the contour of the coastal primary sand dune;
- (b) The construction and maintenance of observation platforms which are not an integral part of any dwelling and which do not alter the contour of the coastal primary sand dune;
- (c) The planting of beach grasses or other vegetation for the purpose of stabilizing coastal primary sand dunes;
- (d) The placement of sand fences or other material on or adjacent to coastal primary sand dunes for the purpose of stabilizing such features, except that this provision shall not be interpreted to authorize the placement of any material which presents a public health or safety hazard;
- (e) Sand replenishment activities of any private or public concern, provided no sand shall be removed from any coastal primary sand dune unless authorized by lawful permit;
- (f) The normal maintenance of any groin, jetty, riprap, bulkhead or other structure designed to control beach erosion which may abut a coastal primary sand dune;
- (g) The normal maintenance or repair of presently existing roads, highways, railroad beds and facilities of the United States, this Commonwealth or any of its counties or cities, or of any person, provided no coastal primary sand dunes are altered;
- (h) Outdoor recreational activities, provided that the activities do not alter the natural contour of the coastal primary sand dune or destroy the vegetation growing thereon;
- (i) The conservation and research activities of the commission, Virginia Institute of Marine Science, Department of Game and Inland Fisheries and other conservation-related agencies;
- (j) The construction and maintenance of aids to navigation which are authorized by governmental authority;
- (k) Activities pursuant to any emergency declaration by the city council of the City of Virginia Beach or the Governor of the Commonwealth or any public health officer for the purposes of protecting the public health and safety; and
- (l) Governmental activity in coastal primary sand dunes owned or leased by the Commonwealth or a political subdivision thereof. (Ord. No. 1805, 8-22-88; Ord. No. 2203, 1-26-93)

Sec. 1603. Applications for permits.

(a) Any person who desires to use or alter any coastal primary sand dune within this city, other than for the purpose of conducting the activities specified in section 1602 herein, shall first file an application for a permit with the Wetlands Board at the planning department.

(b) An application for a permit shall be accompanied by plans and other data in reference to the proposed project. Plans shall be prepared, stamped and endorsed by such qualified professional licensed to practice in the Commonwealth as the planning director may require; provided, however, that this requirement may be waived if, in the judgment of the planning director, the nature of the work to be performed renders it unnecessary. The permit application shall include the following: the name and address of the applicant; a detailed description of the proposed activities and a map, drawn to an appropriate and uniform scale, showing the area of dunes directly affected, the location of the proposed work thereon, the area of any proposed fill and excavation, the location, width, depth and length of any disposal area, and the location of all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, and other related

appurtenances or facilities, including those on adjacent uplands; a description of the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure; and such additional materials and documentation as the Wetlands Board may require.

(c) A nonrefundable processing fee to cover the cost of processing the application shall accompany each permit application. Such fee shall be in an amount equal to seven-tenths of one (0.7) percent of the total construction value of the permit item for commercial applications, with a minimum fee of two hundred dollars (\$200.00) and a maximum fee of twenty-five hundred dollars (\$2,500.00), and one-quarter of one (0.25) percent of the total construction value of the permit item for residential applications, with a minimum fee of one hundred dollars (\$100.00) and a maximum fee of one thousand dollars (\$1,000.00). Such fees shall apply to original applications, including after-the-fact-applications, and to re-applications. No person shall be required to file two (2) separate applications for permits if the project to be undertaken will require permits under Section 28.2-1302 of the Code of Virginia and this article. Under those circumstances, the fee shall be established pursuant to this article. (Ord. No. 1805, 8-22-88; Ord. No. 2031, 2-12-91; Ord. No. 2152, 6-23-92; Ord. No. 2203, 1-26-93)

Sec. 1604. Public inspection of permit applications, maps, etc.

All applications, maps, and documents submitted shall be open for public inspection at the planning department. (Ord. No. 1805, 8-22-88; Ord. No. 2152, 6-23-92; Ord. No. 2203, 1-26-93)

Sec. 1605. Public hearing procedure on permit applications.

Not later than sixty (60) days after receipt of a complete application, the Wetlands Board shall

hold a public hearing on the application. The applicant, city council, commissioner, owner of record of any land adjacent to the coastal primary sand dunes in question, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries, the State Water Control Board, the Department of Transportation and any governmental agency expressing an interest in the application shall be notified of the hearing. The Board shall mail these notices not less than twenty (20) days prior to the date set for the hearing. The Board shall also cause notice of the hearing to be published at least once a week for two (2) weeks prior to such hearing in the newspaper having a general circulation in the City of Virginia Beach. The costs of publication shall be paid by the applicant. (Ord. No. 1805, 8-22-88; Ord. No. 2152, 6-23-92; Ord. No. 2203, 1-26-93)

Sec. 1606. Action of Board on permit application.

(a) In acting on any application for a permit, the Board shall grant the application upon the affirmative vote of not less than four (4) members. If the application receives less than four (4) affirmative votes, the permit shall be denied.

(b) The chairperson of the Board, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his or her testimony. The Board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the Board, and the rationale for the decision.

(c) The Board shall make its determination within thirty (30) days from the hearing. If the Board fails to act within that time, the application shall be deemed approved. Within forty-eight (48) hours of its determination, the Board shall notify the applicant and the commissioner of its determination. If the Board fails to make a determination within the thirty-day period, it shall promptly notify the applicant and the commission that the application is deemed approved.

(d) If the Board's decision is reviewed or appealed, the Board shall transmit the record of its hearing to the commissioner. Upon a final determination by the commission, the record shall be returned to the Board. The record shall be open for public inspection at the planning department. (Ord. No. 1805, 8-22-88; Ord. No. 2203, 1-26-93)

Sec. 1607. Bonding requirements; suspension or revocation of permit.

The Board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it, securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The Board may, after a hearing as provided herein, suspend or revoke a permit if the Board finds that the applicant has failed to comply with any of the conditions for limitations set forth in the permit or has exceeded the scope of the work described in the application. The Board may, after a hearing, suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application. (Ord. No. 1805, 8-22-88; Ord. No. 2203, 1-26-93)

Sec. 1607.1. Duties of Board.

In fulfilling its responsibilities under this article, the Board shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. However, whenever practical, the Board shall accommodate necessary economic development in a manner consistent with the protection of these features. (Ord. No. 2203, 1-26-93)

Sec. 1608. Review procedure; grant or denial of permit.

(a) In deciding whether to grant, grant in modified form, or deny an application for a permit, the Board shall consider the following:

- (1) The testimony of any person in support of or in opposition to the permit application;
- (2) The impact of the proposed development on the public health and welfare; and
- (3) The proposed development's conformance with the standards prescribed in section

1608.1 of this ordinance and Section 28.2-1408 of the Code of Virginia and the guidelines promulgated by the commission pursuant to Section 28.2-1401 of the Code of Virginia.

(b) The Board shall grant the permit if all of the following criteria are met:

- (1) The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment;
- (2) The proposed development conforms with the standards prescribed in section 1608.1 of this ordinance and Section 28.2-1408 of the Code of Virginia and the guidelines promulgated by the commission pursuant to Section 28.2-1401 of the Code of Virginia; and
- (3) The proposed activity does not violate the purposes and intent or Chapter 14 (§ 28.2-1400 et seq.) of Title 28.2 of the Code of Virginia.

(c) If the Board finds that any of the criteria set forth in subdivisions (1), (2), and (3) of subsection (b) are not met, the Board shall deny the permit application but allow the applicant to resubmit the application in modified form. (Ord. No. 1805, 8-22-88; Ord. No. 2203, 1-26-93)

Sec. 1608.1. Standards for use of coastal primary sand dunes.

No permanent alteration of or construction upon any coastal primary sand dune shall take place which would (i) impair the natural functions of the dune, (ii) physically alter the contour of the dune, or (iii) destroy vegetation growing thereon unless the Board determines that there will be no significant adverse ecological impact, or that the granting of a permit is clearly necessary and consistent with the public interest, considering all material factors. (Ord. No. 2203, 1-26-93)

Sec. 1609. Permits to be in writing, signed and notarized.

The permit shall be in writing, signed by the chairperson of the Board and notarized. A copy of the permit shall be transmitted to the commis-

sioner. (Ord. No. 1805, 8-22-88; Ord. No. 2203, 1-26-93)

Sec. 1609.1. Private rights, zoning and land use ordinances not affected.

No permit granted by the Board shall in any way affect the applicable zoning and land use ordinances of the City of Virginia Beach or the right of any person to seek compensation for any injury in fact incurred by him because of the permitted activity. (Ord. No. 2203, 1-26-93)

Sec. 1610. Expiration date and extensions of permit.

No permit shall be granted without an expiration date, established by the Board. The Board may, upon proper application, extend the permit expiration date. (Ord. No. 1805, 8-22-88; Ord. No. 2203, 1-26-93)

Sec. 1611. Emergency sand grading activities on sand dunes located on the Atlantic shoreline of Virginia Beach.

Notwithstanding the provisions of sections 1601 through 1610, sand grading activities are permitted on coastal primary sand dunes located on the Atlantic shoreline of the City of Virginia Beach if otherwise permitted by law, and if the city manager has declared an emergency and has issued a permit for this purpose. Such activities may be conducted without advance notice and hearing; however, the city manager, upon request and after reasonable notice as to time and place, shall hold a hearing to affirm, modify, amend, or cancel such emergency permit. "Emergency," as used in this section, means a sudden and unforeseeable occurrence or condition, either as to its onset or as to its extent, of such disastrous severity or magnitude that governmental action beyond that authorized or contemplated by existing law is required because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens of the Commonwealth or some clearly defined portion or portions thereof. (Ord. No. 1805, 8-22-88; Ord. No. 2203, 1-26-93)

Sec. 1612. Conducting activity without permit.

It shall be unlawful for any person to conduct any activity which would require a permit under this article without such a permit. (Ord. No. 1805, 8-22-88; Ord. No. 2203, 1-26-93)

Sec. 1613. Administrative and appellate provisions.

In administering the provisions of this article and in order to provide appellate review, the Board shall bear all those duties and responsibilities and follow those procedures specified in Sections 28.2-1404 through 28.2-1415 of the Code of Virginia. (Ord. No. 1805, 8-22-88; Ord. No. 2203, 1-26-93)

Sec. 1614. Investigations and prosecution.

The Board shall have the authority to investigate all projects, whether proposed or ongoing, which alter dunes or beaches located within the City of Virginia Beach. The Board shall have the authority to prosecute all violations of its orders, or any violation of any of the provisions of this article.

Sec. 1615. Reporting, monitoring, site inspections and notice to comply; stop-work orders.

(a) The chairperson may require a permittee to implement monitoring and reporting procedures the chairperson believes are reasonably necessary to ensure compliance with the provisions of the permit and this article.

(b) The Board chairperson may require such on-site inspections as he or she believes are reasonably necessary to determine whether the measures required by the permit are being properly performed, or whether the provisions of this article are being violated. Prior to conducting such inspections, notice shall be provided by the chairperson to the resident owner, occupier or operator, who shall be given an opportunity to accompany the site inspector. If it is determined that there is a failure to comply with the permit, the Board chairperson shall serve notice upon the permittee at the address specified in his or her application or by delivery at the site of the permitted

activities to the person supervising the activities and designated in the permit to receive the notice. The notice shall describe the measures needed for compliance and the time within which these measures shall be completed. Failure of the person to comply within the specified period, constitutes a violation of this section.

(c) Upon receipt of a sworn complaint of a substantial violation of this article, from the designated enforcement officer of the Board, the Board chairperson may, in conjunction with or subsequent to a notice to comply as specified in subsection (b) of this section, issue an order requiring all or part of the activities on the site to be stopped until the specified corrective measures have been taken. In the case of an activity not authorized by this article, or where the alleged permit noncompliance is causing, or is in imminent danger of causing, significant harm to the coastal primary sand dunes protected by this article, the order may be issued without regard to whether the person has been issued a notice to comply as specified in subsection (b) of this section. Otherwise, the order may be issued only after the permittee has failed to comply with the notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven (7) days from the date of service pending application by the enforcing authority, permittee, resident owner, occupier or operator for appropriate relief to the circuit court. Upon completion of corrective action, the order shall immediately be lifted. Nothing in this section shall prevent the Board chairperson from taking any other action specified in section 1614 of this ordinance.

(d) Upon receipt of a sworn complaint of a substantial violation of this article from a designated enforcement officer, the Board may order that the affected site be restored to predevelopment conditions if the Board finds that restoration is necessary to recover lost resources or to prevent further damage to resources. The order shall specify the restoration necessary and establish a reasonable time for its completion. The order shall be issued only after a hearing with at least thirty (30) days' notice to the affected person of the hearing's time, place, and purpose, and shall become effective immediately upon issuance by the Board. The Board shall require any scientific monitoring plan it be-

lieves is necessary to ensure the successful reestablishment of coastal primary sand dunes protected by this article and may require that a prepaid contract acceptable to the Board be in effect for the purpose of carrying out the scientific monitoring plan. The Board may also require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the Commonwealth compliance with the conditions set forth in the restoration order. The circuit court, upon petition by the Board, may enforce any such restoration order by injunction, mandamus, or other appropriate remedy. Failure to complete the required restoration is a violation of this article.

(e) The duties of the Board chairperson prescribed in this section may be delegated to his or her designees; however, such designees shall not be designated enforcement officers. (Ord. No. 1805, 8-22-88; Ord. No. 2203, 1-26-93)

Sec. 1616. Violations; penalty.

Any person who knowingly, intentionally, or negligently violates any order, rule or regulation of the commission or of the Wetlands Board, any provision of this article or any provision of a permit granted pursuant to Chapter 14 of Title 28.2 of the Code of Virginia or this article is guilty of a Class 1 misdemeanor. Following a conviction, every day the violation continues constitutes a separate offense. (Ord. No. 1805, 8-22-88; Ord. No. 2203, 1-26-93)

Sec. 1617. Injunctions.

In addition to and not in lieu of the provisions of sections 1613, 1614, 1615 and 1616 of this article, upon petition of the Wetlands Board to the circuit court, the court may enjoin an act which is unlawful under the provisions of this article and may order the defendant to take any steps necessary to restore, protect, and preserve the dunes or beaches involved. (Ord. No. 1805, 8-22-88; Ord. No. 2203, 1-26-93)

Sec. 1618. Exemptions.

(a) Nothing in article shall affect any project or development (i) for which a valid building permit or final site plan approval was issued prior to July

1, 1980; (ii) which, if no building permit is required for such project, including a locally approved mining operation, was commenced prior to July 1, 1980, and certified as exempt by the commission or the Wetlands Board; or (ii) approved by the city council pursuant to Ordinance No. 931, which was the coastline management ordinance in effect from March 26, 1979, to July 1, 1980. Nothing in this section excludes from regulation any activity which expands or enlarges a project already in existence or under construction.

(b) The Board shall make an ongoing determination in the Sandbridge Beach subdivision of the area bounded on the north by Dam Neck Naval Base, on the west by Sandfiddler Road, and on the south by White Cap Lane, to determine which structures or properties are in clear and imminent danger from erosion and storm damage due to severe wave action or storm surge. The owners of structures or properties so defined shall not be prohibited from erecting and maintaining protective bulkheads or other equivalent structural improvements of a type, size and configuration approved by the Board. The Board shall not impose arbitrary or unreasonable conditions upon its approval of any such bulkhead or other structural improvement but shall maintain a continuing responsibility to ensure that each bulkhead or structural improvement constructed under the authority of this section is maintained in a condition which is safe, structurally sound, and otherwise in conformity with the reasonable conditions imposed by the Wetlands Board. At the time the application is submitted, the applicant shall consent in writing to any subsequent construction which may occur whereby an adjacent property owner desires to tie in a bulkhead at no additional cost with that bulkhead proposed by the applicant. Such consent shall be considered a waiver of property line defenses relating to the bulkhead line. (Ord. No. 1805, 8-22-88; Ord. No. 2203, 1-26-93)

Sec. 1619. Civil penalties; civil charges.

(a) Without limiting the remedies which may be obtained under this article, any person who violates any provision of this article or who violates or fails, neglects, or refuses to obey any commission or Board notice, order, rule, regulation or

permit condition authorized by this article or Chapter 14 of Title 28.2 of the Code of Virginia shall, upon such finding by the circuit court, be assessed a civil penalty not to exceed twenty-five thousand dollars (\$25,000.00) for each day of violation. Such civil penalties may, at the discretion of the circuit court, be directed to be paid into the treasury of the City of Virginia Beach for the purpose of abating environmental damage to or restoring dunes or beaches therein, in such a manner as the court may, by order, direct, except that in the event the City of Virginia Beach or its agent is the violator, the court shall direct the penalty to be paid into the state treasury.

(b) Without limiting the remedies which may be obtained under this article, and with the consent of any person who has violated any provision of this article, or who has violated or failed, neglected, or refused to obey any commission or Board order, rule, regulation, or permit condition authorized by this article or Chapter 14 of Title 28.2 of the Code of Virginia, the Board may provide, in an order issued by the Board against such person, for the one-time payment of civil charges for each violation in specific sums, not to exceed ten thousand dollars (\$10,000.00) for each violation. Civil charges shall be in lieu of any appropriate civil penalty which could be imposed under subsection (a) of this section. Civil charges may be in addition to the cost of any restoration ordered by the commission or Board. (Ord. No. 2203, 1-26-93)

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

RICHARD BELL, et ux,

Plaintiffs,

v.

VIRGINIA MARINE RESOURCES COMMISSION

Defendant.

NOV 3 1993

Chancery No. CH92-2408

DECREE

This matter came on for hearing on March 4, 1993 on the record and was argued by counsel. The Court, after considering such record and argument is of the opinion that there is no error of law as defined in § 9-6.14:17 of the Administrative Process Act; that the Virginia Marine Resources Commission acted in accordance with its authority; that it did not act arbitrarily, capriciously, unfairly or with bias; and that its decision is amply supported by the evidence presented before the Wetlands Board and reviewed by the Commission.

While not ruling on the question of whether or not this is a condemnation, the Coastal Primary Sand Dune Act seems to be a very reasonable statute and is certainly constitutional. This Decree is limited to ruling on the constitutionality issue and on the factual issues that there are no errors involved. The Coastal Primary Sand Dune Act is constitutional and under these facts the Commission acted correctly and should be affirmed.


WHEREFORE, it is here by ADJUDGED, ORDERED and DECREED that the decision of the Virginia Marine Resources Commission affirming the Virginia Beach Wetlands Board's denial of the application be, and it hereby is, AFFIRMED.

The Clerk is directed to send a copy of this Decree to all counsel of record.


Enter: 11/3/93


Judge

I ask for this:


Frederick S. Fisher
Assistant Attorney General
101 North Eighth Street
Richmond, Virginia 23219
(804) 786-3870
Counsel for Virginia Marine
Resources Commission

Seen and objected to:


Walter B. Martin, Jr., Esquire
Vandeventer, Black, Meredith
& Martin
500 World Trade Center
Norfolk, Virginia 23510
Counsel for Richard Bell and
Linda Bell

FHS\BELL\63-p3\314

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

RICHARDSON C. BELL, Trustee for)
Bell Land Trust,)
the Plaintiff,)
v.)
CITY OF VIRGINIA BEACH,)
Defendant.)

LAW NO. CL-94-996

JUDGMENT ORDER

This matter came to be heard on January 7, 1997. Thereupon came the parties, in person and by counsel, and also came a jury, to wit: Michael B. Miller, Linda L. Levesque, Michael E. Kinne, Anna H. Holmes, Mary S. Zabala, Martha R. Thompson and Rosemary H. Salem, who were sworn to well and truly try the issue joined and a true verdict render according to the evidence and the law.

On January 7, 1997, the evidence of the Plaintiff was presented and the Plaintiff rested. At the conclusion of the Plaintiff's evidence, the defense made a motion to strike, which motion was denied and exception noted. At the end of the day, the Court adjourned.

On January 8, 1997, the Court reconvened and with the parties, in person and by counsel, and the above-named jurors present, the defense presented its evidence. Following presentation of the defense evidence, the Court, with the parties, counsel, and the above-named jurors present, conducted a view of the property in issue in the case. Upon return to court, the defense rested. The Defendant renewed its motion to strike Plaintiff's evidence at that close of all evidence, and the Court denied this motion.

Defendant's exception to this ruling was noted. After receiving instructions from the Court and hearing arguments of counsel, the jury retired to the jury room to consider their verdict, and after some time returned in to the Court with the following verdict: to-wit: We, the jury, find for the Plaintiff and fix his damages at \$110,000, plus interest running from November 3, 1993. Thereafter the Court adjourned..

It is hereby ADJUDGED and ORDERED that the judgment be, and it hereby is, entered for the Plaintiff against the Defendant in the amount of \$110,000, with pre-judgment interest thereon at the rate specified in Va. Code § 6.1-330.54 from November 3, 1993, to January 8, 1997, for a total amount of \$141,517.00, plus additional prejudgment interest at the rate of \$27.12 per day for each day between January 8, 1997 and the date of entry of this Order, plus costs. This judgment shall bear post-judgment interest at the rate specified in Va. Code §6.1-330.54 from the date of this ORDER until paid.

ENTERED this 28 day of February, 1997.

Sherrill W. Henry
Judge

SEEN AND AGREED:

Patrick A. Menzies
Counsel for Plaintiff

*Seen and objected to for reasons argued and
briefed to the court*
Richard R. Barr
Counsel for Defendant

Certified to be a TRUE COPY
of record in my custody.
J. Curtis Fruit, Clerk
Circuit Court, Virginia Beach, Va.
BY: [Signature]
Clerk

I. ASSIGNMENTS OF ERROR

1. The trial court erred in concluding that the City may be responsible for payment of compensation based upon the state Coastal Primary Sand Dune Protection Act.

2. The trial court erred in conducting this trial *de novo* on the issue of inverse condemnation instead of dismissing the case on the basis of *res judicata*.

3. The trial court erred in concluding that the denial of the permit required by the Coastal Primary Sand Dune Protection Act was a regulatory taking.

4. The trial court erred in allowing the plaintiff's appraiser's evidence of value of the property as if it were fully developed and ready to be built upon.