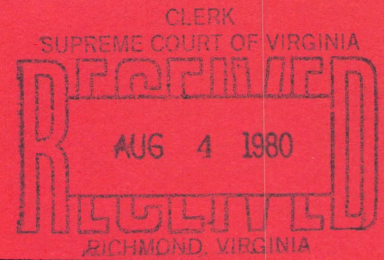


223 Va 585



IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO., 791856

YORK PHILLIPS, et al.,

.....Appellants

v.

TELUM, INCORPORATED,

.....Appellee

JOINT APPENDIX

Peter L. Tribble
County Attorney
Wickham Building
Hanover, Virginia 23069

Counsel for Appellants

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PETITION FOR WRIT OF MANDAMUS

The plaintiff Telum, Inc., by counsel, for its petition for a writ of mandamus, states the following:

1. Plaintiff is the contract purchaser of a certain parcel of real property situated at the southeast corner of the intersection of Interstate Route 95 and State Route 54, said property lying in the County of Hanover, Virginia.

2. That said property was at the time of contracting, and is now, zoned B-3 under the Zoning Ordinance of the County of Hanover which zoning specifically permits filling stations. Portions of Article V, Section 12, Paragraph 12.2 and Article II, Section 2 are attached hereto as Exhibit A.

3. That the plaintiff has expended considerable effort and large sums of money in preparing building plans, including site plans, entrance detail plan, water and sewer plan, and grading, drainage and erosion control plans for the erection of a self-service filling station on said property.

4. That on June 16, 1978, the aforesaid plans were delivered to the office of the County Building Official as a part of plaintiff's application for a building permit to construct said self-service filling station, said application having been properly filed in accordance with all State and County statutes, ordinances and regulations pertaining thereto.

5. That upon the filing of the application and the payment of the required fee of \$155.00, plaintiff was advised that the zoning was proper for the use contemplated by plaintiff on said property and that the plaintiff's application was in order.

6. That said plans were referred to the County Planner by the County Building Official for his approval of the site plans.

7. That on July 28, 1978, the then County Planner Charles Johnston wrote plaintiff's engineer and identified those things which needed to be accomplished with regard to the site plans before approval could be had.

8. On May 7, 1979, a revised site plan which complied with all of the requirements of the letter referenced in the preceding paragraph was submitted to defendant York Phillips and to the County Attorney, Peter Tribble, who advised plaintiff that no building permit would be issued because self-service filling stations were not permitted in the B-3 zone applicable to plaintiff's property, nor were such filling stations permitted in any other zone in Hanover County without a special exception.

9. That, despite plaintiff's compliance with all applicable regulations governing approval of site plans and all directives of the office of the County Planner, defendant Phillips has wrongfully refused and continues to refuse to perform his ministerial duties in approving said plans.

10. That upon submission of the plans as aforesaid to the defendant Bowles as Building Official and approval of the plans by defendant Phillips, it becomes the ministerial duty of defendant Bowles as Building Official to issue a building permit to plaintiff which he has refused and continues to refuse to do.

11. That on March 12, 1979, the State Water Control Board issued an NPDES permit to plaintiff for its contemplated filling station on said property.

12. That the use to which the plaintiff desires to put

its property has been permitted by the County of Hanover in a B-3 zone without special exception until the filing of plaintiff's application for a building permit.

13. That the Board of Supervisors of the County of Hanover has acted wrongfully and capriciously by failing or refusing to direct the defendants to approve the site plans and building permit application submitted by plaintiff and to require same to issue a building permit to plaintiff.

WHEREFORE, plaintiff prays that the Court issue a writ of mandamus commanding the defendant Phillips to approve the site plan submitted by plaintiff, commanding that the defendant Bowles issue the building permit requested by plaintiff, and enter judgment against the defendant Hanover County in favor of plaintiff for its costs herein expended, including reasonable attorney's fees.

TELUM, INC.

By Andrew J. Ellis, Jr.
Of Counsel

Andrew J. Ellis, Jr.
D. Eugene Webb, Jr.
Mays, Valentine, Davenport & Moore
23rd Floor, F&M Center
Post Office Box 1122
Richmond, Virginia 23208

Section 12. B-3 General Business District

12.1 Purpose of the District

The purpose of this district is to provide sufficient space in appropriate locations for a wide variety of commercial, automotive, and miscellaneous service activities, generally serving a wide area of the county and located particularly along certain existing major thoroughfares where a general mixture of commercial and service activity now exists, but which uses are not characterized by extensive warehousing, frequent heavy trucking activity, open storage of material, or the nuisance factors of dust, odor, and noise, associated with manufacturing.

12.2 Permitted Uses

A building or land shall be used only for the following purposes:

1. Any use permitted in the B-2 Community Business District.
2. Animal hospital or kennel with any open pens at least 200 feet from any residential district.
3. Automobile or truck sales, service, and repairs, including body or fender repairs, but not auto salvage or junk, and any major repair or storage of equipment or materials or damaged vehicles shall be inside a completely enclosed building.
4. Bakeries, no limit on floor area.
5. Boat and boat trailer sales and storage.
6. Bottling works, dyeing and cleaning works, linen service, or laundry, furniture refinishing, plumbing and heating shop, painting shop, upholstering shop not involving furniture manufacture, tinsmithing shop, tire sales and service (including vulcanizing and re-capping but no manufacturing), appliance repairs, and general service and repair establishments, similar in character to those listed in this item; provided that no outside storage of material is permitted except as provided in this section.
7. Car-wash or automobile laundry, automatic or otherwise, providing reservoir space for not less than ten vehicles for each washing lane of an employee-operated facility.
8. Filling stations, so long as bulk storage of inflammable liquids is underground.

ARTICLE 2. DEFINITIONS

Section 1. General Rules of Construction

The following general rules of construction shall apply to the regulations of this Ordinance:

1. The singular number includes the plural, and the plural the singular, unless the context clearly indicates the contrary.
2. Words used in the present tense include the past and future tenses, and the future the present.
3. The word "shall" is always mandatory. The word "may" is permissive.
4. The word "building" or "structure" includes any part thereof, and the word "building" includes the word "structure".
5. Words and terms not defined herein shall be interpreted in accord with their normal dictionary meaning and customary usage.

Section 2. Definitions

For the purpose of this Ordinance, certain terms and words are hereby defined:

-A-

Accessory Building. An accessory building is a subordinate building or a portion of the main building, the use of which is clearly incidental to or customarily found in connection with, and (except as otherwise provided in this Ordinance) located on the same lot as the main building or principal use of the land.

Accessory Use. An accessory use is one which is clearly incidental to or customarily found in connection with, and (except as otherwise provided in this ordinance) is located on the same lot as the principal use of the premises. When the term "accessory" is used in this Ordinance, it shall have the same meaning as "Accessory Use".

Administrator. The Zoning Administrator of Hanover County.

Alley. A public or private way affording secondary means of access to abutting property.

Alteration. (See Structural Alteration).

Apartment. A part of a building containing cooking and housekeeping facilities, consisting of a room or suite of rooms intended, designed, and used as a residence by an individual or a single family.

Apartment House. Same as "Dwelling, Multiple-Family".

Automobile Graveyard. (See Junkyard).

Automobile Service (or Filling Station). Any place of business with pumps and underground storage tanks, having as its purpose the servicing, at retail, of motor vehicles with fuels and lubricants, and including a general repair shop, paint or body shop, machine shop, vulcanizing shop or any operation requiring the removal or installation of radiator, engine, cylinder head, crankcase, transmission, differential, fenders, doors, bumpers, grills, glass, or other body parts, or any body repairing or painting.

MOTION TO DISMISS

Comes now, Defendants, by Counsel, and state that Plaintiff's Petition for Writ of Mandamus should be dismissed on the grounds that the Court is without jurisdiction in that the exclusive remedy of the Plaintiff is to pursue his administrative rights under Section 15.1-495 of the Code of Virginia, 1950, as amended and the County Zoning Ordinance applicable thereto.

COUNTY OF HANOVER, VIRGINIA
YORK L. PHILLIPS
EDWARD B. BOWLES

By

Peter L. Tribble
Of Counsel

Peter L. Tribble, Esq.
County Attorney
County of Hanover
Wickham Building
Hanover, Virginia 23069

C E R T I F I C A T E

It is certified that the original of the foregoing Motion to Dismiss was hand delivered to the Clerk of the Circuit Court at Hanover, Virginia and that a true copy was mailed to the offices of Andrew J. Ellis, Jr., Mays, Valentine, Davenport and Moore, 23rd Floor, F & M Center, Richmond, Virginia, 23208, this 19th day of June, 1979.

Peter L. Tribble
Peter L. Tribble

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HANOVER

TELUM, INC.,

Plaintiff,

v.

YORK PHILLIPS, County Planner
for Hanover County,
EDWARD B. BOWLES, Building Official
for Hanover County,
and
HANOVER COUNTY,

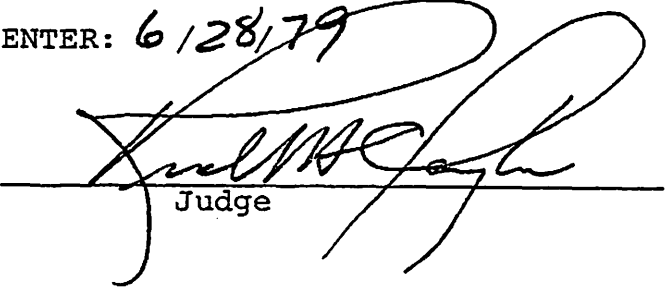
Defendants.

ORDER

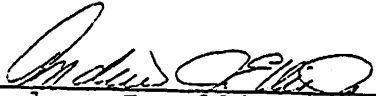
This day came the parties on the motion of plaintiff to file its Amended Petition for Writ of Mandamus, and was argued by counsel.

The Court having considered the motion and the arguments of counsel and, being of the opinion that the motion ought to be granted, it is hereby ORDERED that the Amended Petition for Writ of Mandamus be, and the same is hereby, filed.

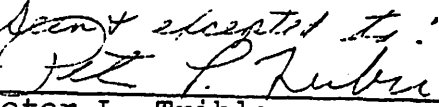
ENTER: 6/28/79



Judge



Andrew J. Ellis, Jr.
Counsel for Plaintiff

Seen & accepted to:


Peter L. Tribble
Counsel for Defendants

AMENDED PETITION FOR WRIT OF MANDAMUS

The plaintiff Telum, Inc., by counsel, for its amended petition for a writ of mandamus, states the following:

1. Plaintiff is the contract purchaser of a certain parcel of real property situated at the southeast corner of the intersection of Interstate Route 95 and State Route 54, said property lying in the County of Hanover, Virginia.

2. That said property was at the time of contracting, and is now, zoned B-3 under the Zoning Ordinance of the County of Hanover which zoning specifically permits filling stations. Portions of Article V, Section 12, Paragraph 12.2 and Article II, Section 2 are attached hereto as Exhibit A.

3. That the plaintiff has expended considerable effort and large sums of money in preparing building plans, including site plans, entrance detail plan, water and sewer plan, and grading, drainage and erosion control plans for the erection of a self-service filling station on said property.

4. That on June 16, 1978, the aforesaid plans were delivered to the office of the County Building Official as a part of plaintiff's application for a building permit to construct said self-service filling station, said application having been properly filed in accordance with all State and County statutes, ordinances and regulations pertaining thereto.

5. That upon the filing of the application and the payment of the required fee of \$155.00, plaintiff was advised that the zoning was proper for the use contemplated by plaintiff on said property and that the plaintiff's application was in order.

6. That said plans were referred to the County Planner by the County Building Official for his approval of the site plans.

7. That on July 28, 1978, the then County Planner Charles Johnston wrote plaintiff's engineer and identified those things which needed to be accomplished with regard to the site plans before approval could be had.

8. On May 7, 1979, a revised site plan which complied with all of the requirements of the letter referenced in the preceding paragraph was submitted to defendant York Phillips and to the County Attorney, Peter Tribble, who advised plaintiff that no building permit would be issued because self-service filling stations were not permitted in the B-3 zone applicable to plaintiff's property, nor were such filling stations permitted in any other zone in Hanover County without a special exception.

9. That, despite plaintiff's compliance with all applicable regulations governing approval of site plans and all directives of the office of the County Planner, defendant Phillips has wrongfully refused and continues to refuse to perform his ministerial duties in approving said plans.

10. That upon submission of the plans as aforesaid to the defendant Bowles as Building Official and approval of the plans by defendant Phillips, it becomes the ministerial duty of defendant Bowles as Building Official to issue a building permit to plaintiff which he has refused and continues to refuse to do.

11. That on March 12, 1979, the State Water Control Board issued an NPDES permit to plaintiff for its contemplated filling station on said property.

12. That the use to which the plaintiff desires to put

its property has been permitted by the County of Hanover in a B-3 zone without special exception until the filing of plaintiff's application for a building permit.

13. That the Board of Supervisors of the County of Hanover has acted wrongfully and capriciously by failing or refusing to direct the defendants to approve the site plans and building permit application submitted by plaintiff and to require same to issue a building permit to plaintiff.

WHEREFORE, plaintiff prays that the Court issue a writ of mandamus commanding the defendant Phillips to approve the site plan submitted by plaintiff, commanding that the defendant Bowles issue the building permit requested by plaintiff, and enter judgment against the defendant Hanover County in favor of plaintiff for its costs herein expended, including reasonable attorney's fees.

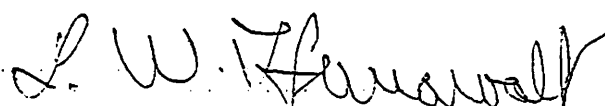
TELUM, INC.

By 
Of Counsel

A F F I D A V I T

STATE OF VIRGINIA)
)
CITY OF RICHMOND) To-wit:

This day L. W. Hanawalt, an agent of the petitioner named in the foregoing Petition, being duly sworn, says that the facts and allegations therein contained are true to the best of his knowledge and belief.


L. W. Hanawalt

Subscribed and sworn to before me this 21st day of

June, 1979.

My commission expires: March 12, 1983.

Nancy S. Vaughan
Notary Public

Andrew J. Ellis, Jr.
D. Eugene Webb, Jr.
Mays, Valentine, Davenport & Moore
23rd Floor, F&M Center
Post Office Box 1122
Richmond, Virginia 23208

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing
Amended Petition for Writ of Mandamus was delivered by hand
to Peter L. Tribble, Esquire, County Attorney, County of Hanover,
Hanover, Virginia, counsel for defendants, this _____ day
of _____, 1979.

Section 12. B-3 General Business District

12.1 Purpose of the District

The purpose of this district is to provide sufficient space in appropriate locations for a wide variety of commercial, automotive, and miscellaneous service activities, generally serving a wide area of the county and located particularly along certain existing major thoroughfares where a general mixture of commercial and service activity now exists, but which uses are not characterized by extensive warehousing, frequent heavy trucking activity, open storage of material, or the nuisance factors of dust, odor, and noise, associated with manufacturing.

12.2 Permitted Uses

A building or land shall be used only for the following purposes:

1. Any use permitted in the B-2 Community Business District.
2. Animal hospital or kennel with any open pens at least 200 feet from any residential district.
3. Automobile or truck sales, service, and repairs, including body or fender repairs, but not auto salvage or junk, and any major repair or storage of equipment or materials or damaged vehicles shall be inside a completely enclosed building.
4. Bakeries, no limit on floor area.
5. Boat and boat trailer sales and storage.
6. Bottling works, dyeing and cleaning works, linen service, or laundry, furniture refinishing, plumbing and heating shop, painting shop, upholstering shop not involving furniture manufacture, tinsmithing shop, tire sales and service (including vulcanizing and re-capping but no manufacturing), appliance repairs, and general service and repair establishments, similar in character to those listed in this item; provided that no outside storage of material is permitted except as provided in this section.
7. Car-wash or automobile laundry, automatic or otherwise, providing reservoir space for not less than ten vehicles for each washing lane of an employee-operated facility.
8. Filling stations, so long as bulk storage of inflammable liquids is underground.

ARTICLE 2. DEFINITIONS

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3. The word "shall" is always mandatory. The word "may" is permissive.
4. The word "building" or "structure" includes any part thereof, and the word "building" includes the word "structure".
5. Words and terms not defined herein shall be interpreted in accord with their normal dictionary meaning and customary usage.

Section 2. Definitions

For the purpose of this Ordinance, certain terms and words are hereby defined:

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Accessory Building. An accessory building is a subordinate building or a portion of the main building, the use of which is clearly incidental to or customarily found in connection with, and (except as otherwise provided in this Ordinance) located on the same lot as the main building or principal use of the land.

Accessory Use. An accessory use is one which is clearly incidental to or customarily found in connection with, and (except as otherwise provided in this ordinance) is located on the same lot as the principal use of the premises. When the term "accessory" is used in this Ordinance, it shall have the same meaning as "Accessory Use".

Administrator. The Zoning Administrator of Hanover County.

Alley. A public or private way affording secondary means of access to abutting property.

Alteration. (See Structural Alteration).

Apartment. A part of a building containing cooking and housekeeping facilities, consisting of a room or suite of rooms intended, designed, and used as a residence by an individual or a single family.

Apartment House. Same as "Dwelling, Multiple-Family".

Automobile Graveyard. (See Junkyard).

Automobile Service (or Filling Station). Any place of business with pumps and underground storage tanks, having as its purpose the servicing, at retail, of motor vehicles with fuels and lubricants, and including a general repair shop, paint or body shop, machine shop, vulcanizing shop or any operation requiring the removal or installation of radiator, engine, cylinder head, crankcase, transmission, differential, fenders, doors, bumpers, grills, glass, or other body parts, or any body repairing or painting.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HANOVER

TELUM, INC.,

Plaintiff,

80-79

v.

YORK PHILLIPS, County Planner
for Hanover County,
EDWARD B. BOWLES, Building Official
for Hanover County,
and
HANOVER COUNTY,

Defendants.

ORDER

This day came the parties on the motion of defendants to dismiss the Petition for Writ of Mandamus, and was argued by counsel.

The Court having considered the motion and the arguments of counsel and, being of the opinion that the motion should be denied, it is hereby ORDERED that the motion to dismiss be, and the same is hereby, denied, and further, that the defendants file their answer to the Petition not later than July 13, 1979.

ENTER:

7/5/79

Judge

D. Eugene Webb, Jr.
D. Eugene Webb, Jr.
Counsel for Plaintiff

Seen and Objected to:
Peter L. Tribble
Peter L. Tribble
Counsel for Defendants

ANSWER

The Defendants, by Counsel, for their answer to the Petition for the Writ of Mandamus filed against them by Plaintiff state, as follows:

1. Defendants neither admit nor deny the allegations contained in paragraph 1. of the Petition.

2. Defendants admit that the property referred to in paragraph 2. of the Plaintiff's Petition is zoned B-3 under the current Zoning Ordinance of the County; admit that said zoning permits filling stations and that Exhibit A is a portion of Article V, Section 12, paragraph 12.2 and Article II, Section 2 of the Zoning Ordinance and neither admit nor deny all other allegations contained in paragraph 2.

3. Defendants have no knowledge of the sums of money expended by Plaintiff as alleged in paragraph 3. of the Petition and deny that the plans referred to involve the erection of a self-service filling station under the laws and ordinances of the Defendant County.

4. Defendants admit that plans were delivered to the office of the County Building Official on June 16, 1978; admit that said plans were part of Plaintiff's application for a building permit and deny that the application was for a permit to construct a self-service filling station as alleged in paragraph 4. of the Petition. Defendants deny that said application was properly filed in that the use contemplated by the said application was not a use permitted in the zoning district within which the premises would lie.

5. Defendants admit that Plaintiff paid the required fee upon filing of the application and neither admit nor deny all other allegations contained in paragraph 5. of the Petition.

6. Defendants deny that the said plans were referred to the "County Planner" as alleged in paragraph 6. of the Petition, but admit that the plans were referred to the Planning Department.

7. With regard to paragraph 7. of the Petition, Defendants deny that Charles Johnston was the "County Planner"; admit that Charles Johnston wrote Plaintiff's engineer on July 28, 1978 and identified those things which needed to be accomplished with regard to the site plans. Defendants deny that approval would automatically follow the accomplishment of those things identified in the letter of July 28, 1978.

8. Defendants admit that on May 7, 1979, a revised site plan was submitted to Defendant York Phillips; deny that all requirements of the "letter" were complied with and deny all other allegations contained in paragraph 8. of the Petition.

9. Defendants deny the allegations contained in paragraph 9. of the Petition.

10. Defendants admit that Defendant Bowles refused and continues to refuse to issue a building permit to Plaintiff and deny all other allegations contained in paragraph 10. of the Petition.

11. Defendants neither admit nor deny the allegations contained in paragraph 11. of the Petition.

12. With regard to paragraph 12., Defendants deny that the use to which the Plaintiff desires to put its property has been.

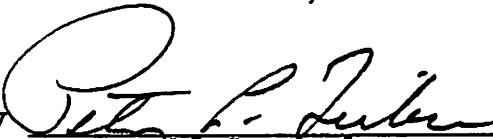
permitted by the Defendant County in a B-3 zone without sepcial exception. Defendants submit that the use contemplated by Plaintiff has been allowed to remain in a B-3 zone as a legal "non-conforming use" only, and that no building permits have been issued for the use desired by Plaintiff in the B-3 zone as currently in force.

13. Defendants admit that the Board of Supervisors of the County of Hanover has refused to direct the Defendants to approve the site plans and building permit application and to require the issuance of a building permit to Plaintiff but deny that said Board has acted wrongfully and capriciously.

WHEREFORE, your Defendants request this Court to dismiss the Plaintiff's Petition and award Defendants such other further and general relief as may be appropriate.

YORK PHILLIPS
EDWARD B. BOWLES
and
COUNTY OF HANOVER, VIRGINIA

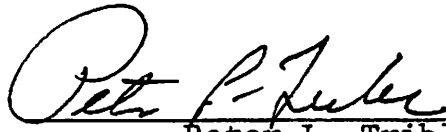
By


Of Counsel

Peter L. Tribble
County Attorney
County of Hanover
Wickham Building
Hanover, Virginia
23069

C E R T I F I C A T E

It is certified that the original of the foregoing ANSWER was hand delivered to the Clerk of the Circuit Court at Hanover, Virginia and that a true copy thereof was mailed to the offices of Andrew J. Ellis, Jr., Mays, Valentine, Davenport & Moore, 23rd Floor, F & M Center, Richmond, Virginia, 23208 this 12th day of July, 1979.



Peter L. Tribble

REQUESTS FOR ADMISSION

Plaintiff, Telum, Inc., by counsel, requests that each of the defendants, namely, York Phillips, Edward B. Bowles and Hanover County, to admit to the truth of the following matters in accordance with Rule 4:11 of the Rules of the Supreme Court of Virginia:

1. That the real property of which plaintiff is the contract purchaser and which is located at the southeast corner of the intersection of Interstate Route 95 and State Route 54 in the County of Hanover, Virginia, is zoned B-3 under the Zoning Ordinance of Hanover County, and that said zoning has been applicable to said property since 1968.

2. That on or about June 16, 1978, plaintiff made application for site plan approval and a building permit to construct a self-service filling station on said property and that it paid the required fee of \$155.00 with said application.

3. That Roy Crawford, a Hanover County planning official, advised plaintiff at the time the aforesaid application was made that the zoning was proper for the use to which plaintiff intended to put the property.

4. That the plans submitted by plaintiff were referred to the County Planner for approval.

5. That the then County Planner, Mr. Johnson, wrote a letter dated July 28, 1978, to plaintiff's engineer, enclosing comments of various Hanover County agencies.

6. That revised site plans were submitted by plaintiff on May 7, 1979.

7. That the revised site plans submitted by plaintiff met the requirements set forth in the above-mentioned letter of July 28, 1978.

8. That when the revised site plans were submitted by plaintiff on May 7, 1979, plaintiff's engineer was advised that the building permit would not be issued inasmuch as the use to which plaintiff desired to put the property was not permitted in any zone in Hanover County without special exception.

9. That the State Water Control Board issued an NPDES permit to plaintiff on March 12, 1979.

10. That the use to which plaintiff has applied to put said property has been permitted in a B-3 zone without exception until the time plaintiff submitted its application aforesaid.

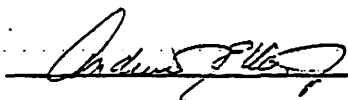
11. That an Amoco Truck Stop is located at the intersection of Atlee Road and Interstate 95 in Hanover County; that Speed & Briscoe Truck Stop is located at the intersection of Lewistown Road and Interstate 95 in Hanover County; that Truck-stops of America is located at the intersection of Route 54 and Interstate 95 in Hanover County; and that Jarrell Truck Plaza is located at the intersection of Route 30 and Interstate 95 in Hanover County; that the zoning at the above intersections where the aforesaid truck stops are located is B-3 and that no special exceptions were required for any of said uses.

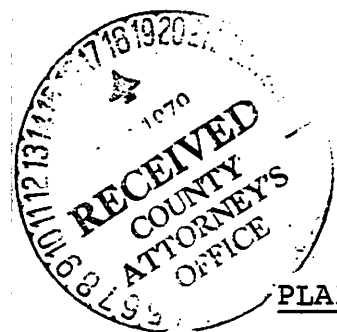
12. That the sole reason for denying plaintiff's application for a building permit is that subsequent to July 1978, a change has been made in the interpretation of the Hanover County Zoning Ordinance to the effect that the use applied for by

plaintiff is no longer permitted in a B-3 zone even though the terms of the B-3 zoning district provisions in the Ordinance have not been amended.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Requests for Admission and Plaintiff's Interrogatories to Defendants Phillips, Bowles and Hanover County was mailed to Peter L. Tribble, Esquire, County Attorney, County of Hanover, Wickham Building, Hanover, Virginia 23069, counsel for defendants, this 16th day of July, 1979.





PLAINTIFF'S RESPONSE TO REQUEST FOR ADMISSION

Plaintiff Telum, Inc. makes the following as its response to the request for admission served upon it by the defendant on July 23, 1979, all in accordance with Rule 4:11 of the Rules of the Supreme Court of Virginia.

1. Plaintiff admits that the primary use of the real property of which it is the contract purchaser and which is located at the southeast corner of the intersection of Interstate Route 95 and State Route 54 in the County of Hanover, Virginia, will be the servicing, at retail, of motor vehicles with fuels and lubricants. Plaintiff anticipates that 40% of its customers will be those driving passenger cars and that 60% of its customers will be those driving trucks, including in that latter classification pick-up trucks, campers, panel trucks, step vans, other common delivery-type trucks, and tractor trailer trucks.

2. Denied. Plaintiff states that Section 12.1 of the Hanover County Zoning Ordinance states that the purpose of the B-3 general business district "is to provide sufficient space and appropriate location for a wide variety of commercial, automotive, and miscellaneous service activities, generally serving a wide area of the County and located particularly along certain existing major thoroughfares where a general mixture of commercial and service activity now exists, but which uses are not characterized by extensive warehousing, frequent heavy trucking activity, open

storage of material, or the nuisance factors of dust, odor, and noise, associated with manufacturing." Plaintiff admits further that the Hanover County Zoning Ordinance is of the inclusive type in that it specifies uses which are permitted and does not specify those which are prohibited in particular zones, so that the prefatory language contained in Section 12.1 does not prohibit those uses which are otherwise permitted under Section 12.2.

3. Denied. It is impossible to admit to the truth of such a general statement for obvious reasons. Moreover, the servicing, at retail, of motor vehicles with fuels and lubricants, the use to which plaintiff intends to put its property, is not a use of land characterized by frequent trucking activity nor is it a use which is characterized by extensive warehousing, frequent heavy trucking activity, open storage of material, or the nuisance factors of dust, odor and noise, associated with manufacturing as the phrase "frequent heavy trucking activity" is used in the context of Section 12.1 of the Hanover County Zoning Ordinance.

4. Admitted. As a further clarification, as stated above, plaintiff admits that the Hanover County Zoning Ordinance is the inclusive type which permits only those uses specified and does not specify those which are prohibited so that the Code supplemented to June 21, 1971, as a matter of law, did not prohibit any particular use in the B-3 general business district.

5. Admitted.

6. Admitted, just as there is no explicit reference to full-service filling stations in the current Hanover County

Zoning Ordinance.

7. Plaintiff admits that the "prior Code" allowed, among other things, "service stations with repair under cover" in the B-3 general business district.

8. Plaintiff admits that sometime between June 21, 1971 and the date of the Zoning Ordinance currently in force that the Hanover County Code was amended. Plaintiff denies that the result of the amendment is that requested by defendants to be admitted and states that, among other things, the result of the aforesaid amendment was the addition of Section 12.1, Purpose of the District, to the Code which is the prefatory language containing among other things, the phrase "frequent heavy trucking activity." Plaintiff admits that the aforesaid amendment also resulted in the deletion of any reference to "service stations" as a permitted use in a B-3 general business district and the addition of, among other things, "filling stations" as a permitted use.

9. Admitted.

10. Denied. Plaintiff admits that the definition of "filling station" and of "automobile service station" is the same in the Zoning Ordinance, that being "any place of business with pumps and underground storage tanks, having as its purpose the servicing, at retail, of motor vehicles with fuels and lubricants . . ." and that said definition does not mention the servicing of trucks, nor any other type of motor vehicle, with fuels and lubricants.

11. Admitted, except that the Amoco Truck Stop was modified in approximately 1976 to change its signs under a special

exception and that Jarrell's underwent an extensive renovation in approximately 1976 which involved an addition of fuel pumps, an addition to the restaurant and an automatic truck wash.

12. Plaintiff admits that one of the comments set out in the letter dated July 28, 1978 from Charles Johnston to plaintiff's engineer, Dennis C. Beard, was that the site plan submitted with the building permit application must show the zoning of the property in question and all adjoining properties.

13. Plaintiff admits that the Hanover County Zoning Ordinance, Article 9, Section 7, provides, among other things, that the Board of Supervisors may make a determination, in cases of uncertainty, of the district classification of any use not specifically named in the regulations.

14. Plaintiff admits that the use "truck filling station" is not specifically set out in the zoning regulations or uses allowed in any classification, and that neither is "automobile filling station", or "full service filling station", or "self service filling station".

15. Plaintiff admits request number 15, but states that it plans to construct a "sewage treatment works".

16. Deny. Any use permitted in a B-2 district is a permitted use under a B-3 district. In a B-2 district, any use permitted in the R-1 district, except dwellings, is a permitted use. And, in an R-1 district, permitted uses include treatment plants.

PLAINTIFF'S ANSWER TO DEFENDANTS'
FIRST SET OF INTERROGATORIES

Plaintiff Telum, Inc., pursuant to the Rules of the Supreme Court of Virginia, provides the following answers to defendants' first set of interrogatories:

1. The following is a list of witnesses who may testify for the plaintiff in the trial of this action together with the subject area in which each witness is expected to testify if called:

(a) Dennis C. Beard - plaintiff's engineer will testify regarding the submission of plans, revised plans, conversations with Messrs. Crawford and Phillips and bills paid by plaintiff for his services.

(b) L. W. Hanawalt - will testify regarding the purchase contract as well as other matters relating to plaintiff's application for a building permit.

(c) Horace Kimball - an employee of plaintiff who will testify regarding the business plaintiff intends to conduct at the proposed facility.

(d) Nina Peace - will testify regarding her conversations with defendant Bowles as well as other matters which were covered at her depositions.

(e) Glenn Millican - will testify about the zoning of property in and around all interchanges on Interstate 95 in Hanover County and the businesses located in such places, as well as his experience as a County Planner in dealing with the Hanover County Zoning Ordinance and how it applies to the present situation.

(f) York Phillips, Roy Crawford and Edward Bowles - may be called as adverse witnesses to testify regarding those matters covered on their respective depositions.

2. Plaintiff intends to prove that the use to which it intends to put the property which is the subject of this litigation is a use authorized in the B-3 general business district zone because it is a use which is specifically permitted by the Hanover County Zoning Ordinance, a document which will be introduced in evidence. See responses to defendants' request for admission.

3. The business to be conducted on the premises will be that of a self-service fuel stop. The business will sell diesel fuel and gasoline to all types of vehicles and will also sell fast food, lubricants and oil. Defendants are referred to site plans submitted by plaintiff in connection with its building permit.

4. Objection. Plaintiff is not required to do legal research for defendants.

5. See responses to request for admission.

TELUM, INC.

By

D. Eugene Webb, Jr.
Of Counsel

Andrew J. Ellis, Jr.
D. Eugene Webb, Jr.
Mays, Valentine, Davenport & Moore
23rd Floor, F&M Center
Post Office Box 1122
Richmond, Virginia 23208

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing
Plaintiff's Response to Request for Admission, Plaintiff's Answer
to Defendants' First Set of Interrogatories and Plaintiff's Response
to Defendants' First Request for Production of Documents was mailed
to Peter L. Tribble, Esquire, County Attorney, County of Hanover,
Wickham Building, Hanover, Virginia 23069, this 16th day of
August, 1979.

D. Eugene Webb, Jr.

WRIT OF MANDAMUS

9/6/79

This cause came on ~~this day~~ to be heard upon the verified amended petition for a Writ of Mandamus, the answer filed by the defendants, the exhibits filed by all parties, the evidence heard ore tenus by the Court and was argued by counsel.

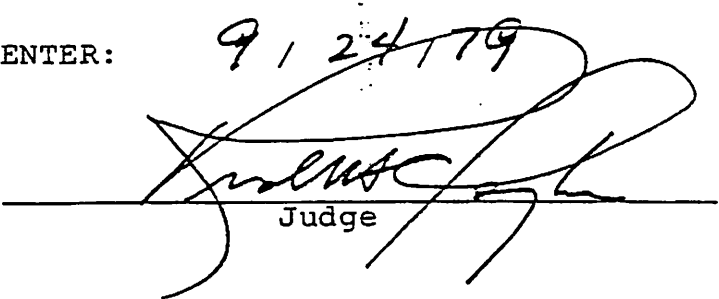
Upon consideration whereof, the Court finds that the building permit as applied for by the petitioner constitutes a permitted use in the B-3 zone of the Hanover County Zoning Ordinance, that no site plan approval is necessary prior to the issuance thereof, that petitioner is ready, willing and able to comply with the technical and engineering requirements remaining to be met and that petitioner is entitled to the issuance of the building permit upon approval of a sewage treatment plant by the County Health Department.

It is therefore ORDERED that Edward B. Bowles shall, upon the approval of sewage treatment plans by the County Health Department, issue to petitioner a building permit in conformity with the usual procedures followed by Hanover County.

Petitioner shall recover from the defendants its costs.

ENTER:

9 / 24 / 79


Judge

We ask for this:



Andrew J. Ellis, Jr.

D. Eugene Webb, Jr.


Mays, Valentine, Davenport & Moore

Post Office Box 1122

Richmond, Virginia 23208

Counsel for Plaintiff

Seen: and objected to:



Peter L. Tribble

County Attorney

County of Hanover

Wickham Building

Hanover, Virginia 23069

Counsel for Defendants

A COPY TESTED



Clerk

By _____, D. A.

ASSIGNMENT OF ERRORS

1. THE COURT ERRED IN ALLOWING A WRIT OF MANDAMUS
IN THIS CASE.
2. THE COURT ERRED IN RULING THAT THE COUNTY WAS
COMMITTED BY THE ACTIONS OF ITS EMPLOYEE.

as adverse?

MR. TRIBLE: No, Your Honor.

THE COURT: I am going to put the exhibits here, gentlemen, and you can use them. Also, in this courtroom, you can walk around in the courtroom to examine the witnesses, if you so desire. Just don't leave through the doors (Laughing).

NINA KILIAN PEACE, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. ELLIS:

Q Mrs. Peace, would you state your name, please?

A Nina Kilian Peace.

Q And your occupation, Mrs. Peace?

A I am an attorney and I am a member of the Board of Supervisors for Hanover County for the Ashland District.

Q When were you elected to the Board of Supervisors?

A November 19, '75.

Q Mrs. Peace, I direct your attention to the late fall and winter of '77, '78; and ask you if during that time frame you became aware of the acquisition or the attempted

1 acquisition of a piece of property in the Town of Ashland by
2 Telum, Inc.?

3 A Yes, I did. I happened to be at a meeting
4 that the subject came up I was on about sewerage. And they were
5 discussing the matter.

6 Q Do you recall at that time there was a great
7 deal of public opposition to the location of that facility in
8 the Town of Ashland?

9 A I believe that is correct.

10 Q Now, during the late winter or early spring
11 of 1978, did you become aware of the fact that Telum,
12 Incorporated, had signed a contract or had agreed to purchase
13 a piece of property located at the southeast corner of the
14 interchange of I-95 and Route 54?

15 A Yes, I did.

16 Q Was it not brought to your attention, as a
17 member of the Board of Supervisors, there was a great deal of
18 public opposition to the location of those facilities at that
19 location?

20 A Yes, I was. I think, you know, the public
21 opposition was mainly that that area was already overcrowded,
22 all the interchanges.

23 Q You say the opposition was because there
24 was what you might refer to as a proliferation of this type of

use at those locations?

A That is correct. Well, not just that. It would create dangers there because the level was already saturated, is what I am trying to say.

Q Too many there at that time?

A I think the lack of traffic control and the traffic - -

MR. TRIBLE: Your Honor, I object. I don't think she can testify to what was in the minds of the people that came up there one way or the other.

MR. ELLIS: She can certainly testify to what was brought to her attention.

THE COURT: Phrase it that way.

MR. ELLIS: That is what I understood that I asked her, Your Honor.

Now, I will ask that the witness be handed Exhibit Number 1.

BY MR. ELLIS: (Continued)

Q Mrs. Peace, Exhibit Number 1 is an extract copy of the minutes of May 17, 1978 of the Board of Supervisors of Hanover County, which reflects that you were present at that time. It also reflects that a Mr. John Hendrick, a resident of Max Meadows Subdivision, appeared and represented the citizens

7 in the area and stated his objections to the truckstop; do you
2 recall that meeting?

3 A I do, vaguely, yes.

4 Q Do you know Mr. Hendrick?

5 A Yes, I do.

6 Q And had you indeed spoken to Mr. Hendrick
7 about this particular use of the location at the southeast
8 corner of 95 and 54?

9 A I don't think, at that time, I had spoken
10 to him about it. No, I had spoken to some other people.

11 Q At that time, you did present a petition
12 signed by citizens opposed to the truckstop; is that correct?

13 A I think that is correct, yes.

14 Q That is what the minutes state and the
15 minutes have been approved; is that not correct?

16 A That is right.

17 Q The minutes further state that after some
18 discussion, you made the motion to down-zone the property to B-2;
19 do you recall doing that?

20 A Yes, uh-huh.

21 Q And was the reason that you did that to

22
23 MR. TRIBBLE: Your Honor, I object. I think
24 he is going to the motives of a legislative act and

seven men and women did and why they did it
legislatively.

THE COURT: It is the Court's opinion that
the testimony of Mrs. Peace is relevant and I am going
to let Mr. Ellis ask the question. I note your
exceptions, Mr. Tribble.

MR. TRIBBLE: So noted.

BY MR. ELLIS: (Continued)

Q Mrs. Peace, when you introduced this
ordinance to down-zone the property from B-3 to B-2, was it not
your intent in doing so to preclude the use for which Telum
was applying for in this case?

A No.

Q It was not?

A No.

Q Do you know why the comment was made that
a study should be made to take B-3 out of B-2 zoning and did
you make that comment?

A I think from the minutes here, I did. And
I don't really remember what I was thinking at that time. But
I can say what I mean now.

Q I am asking you what you meant at the time
when you made that comment to take B-3 out, truckstops out of

1 a B-3 zone.

2 A Well, at that time, I had not consulted
3 with any of my administration and I might say that I don't
4 always take my administration's advice, anyway. And that is
5 why there are a lot of votes of one to six, or two to five.
6 And at that time, I was very concerned about the zoning of
7 that entire area and the appropriateness thereof. And I did
8 not know as to whether the Code had been amended, the Zoning
9 Ordinance had been amended since then, what the zoning was
10 at the time. Other things came in and as to whether or not
11 if it were the case if it should not be changed now considering
12 the level of development that is there.

13 Q And did you know what type of use Telum
14 was contemplating at that location?

15 A The only way I knew what type of development,
16 and it was speculation on my part, as I said earlier, I was at
17 the meeting in Ashland when Telum presented their proposal to
18 Ashland at which time they said if the community is not
19 interested in us, we won't come. And that is the first I had
20 ever heard of Telum. And as I say, I was not there in regard
21 to Telum at that time. I just happened to hear the complaints
22 and discussions and observations from Telum that night. So,
23 at that time, I was not as concerned about Telum as I was about
24 the area itself, and the traffic problems, et cetera, that are

there.

Q Now, I believe subsequent to the May meeting, you became concerned about the legality of what is referred to "down-zoning property"; is that correct?

A Well, that is somewhat correct. At the time, there was a case in Henrico. At a later date, I withdrew this motion after I had consulted with the administration and they told me it was not necessary that B-3 did not allow the use Telum proposed anyway.

Q So, then, on July the 26th, after receiving the advice to which you just referred, you made a motion to deny or not to amend the Zoning Ordinance?

A Right, that is correct.

Q Where do you consider, Mrs. Peace, an appropriate location in Hanover County for the use to which Telum is seeking to put this property?

A Well, I think there are probably about 16 corners that are undeveloped for - - 295, that could be an appropriate place.

Q But not on 95?

A Well, there are several unused corners, you know, where Jarrell's is, and where Speed & Briscoe are. I am not sure I am really qualified to say where they should be.

Q I believe that you said you were concerned

EDWARD B. BOWLES, being previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ELLIS:

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

A I am Edward Bowles.

Q And your occupation, Mr. Bowles?

A I am a building official for Hanover County.

Q Are you the designated building inspector for Hanover County?

A Yes, sir.

Q Building official?

A Yes, sir, Building Inspector.

Q How long have you occupied that position, Mr. Bowles?

A Better than 17 years.

Q Would you tell me, in generalities, how you normally process a building permit application and when one is made to you in Hanover County?

A Yes, sir. We take the building permit application, collect the permit fees, then we send it to the Health Department for approval of a sewerage disposal. And, I believe, after that, they return that application to the County planning office and they review it for site plan and

1 then it is returned to us. And we review the plans and
2 specifications and issue a permit, usually.

3 Q And if all the technical engineering
4 requirements are complied with in zoning, then you go ahead
5 and issue the building permit; is that correct?

6 A Providing that a sewerage system has been
7 approved.

8 Q Right. And it is necessary to have a
9 sewerage system approved by the Health Department in order to,
10 for you to approve the building permit?

11 A Yes.

12 Q And once all of those requirements are met
13 with, the BOCA Code directs you to issue the permit; is that
14 not correct?

15 A Yes.

16 Q Now, the BOCA Code, which you administer,
17 deals primarily with the structural engineering of a particular
18 building; is that not correct?

19 A Yes, sir, that is correct.

20 Q In this case, do you recall that Telum,
21 Incorporated through Mr. Kimball and Mr. Hanawalt submitted a
22 building application to you on June the 16th, 1978?

23 A Yes, sir, they did.

24 Q And as a matter-of-fact, you set the fee of

1 \$155.00 and they paid the fee; is that not correct?

2 A Yes, sir.

3 Q Have you had occasion to examine the plans
4 that were submitted to you by Telum, Incorporated?

5 A Yes, sir, I have looked at those.

6 Q And as far as you can tell, they comply
7 with the BOCA Code, do they not?

8 A Yes, sir, I believe they probably do.
9 I haven't examined them, really, in detail. But I believe they
10 would. It's an awful small building.

11 Q What does the application provide for,
12 Mr. Bowles?

13 A What did it call for?

14 Q What were the plans for as you recall?

15 A The plan was for a salesroom, toilet
16 facilities, equipment room, and a small office room. I believe
17 as far as the building is concerned, it had two canopies,
18 I believe, shown where the pumps would be located.

19 Q - - provide for gas and diesel pumps?

20 A Yes, sir, it did.

21 Q Did it provide for bulk storage for the
22 fuels underground?

23 A For tanks underground, tanks, yes, sir.

24 Q Do you recall, Mr. Bowles, that you received

1 instructions from Mrs. Peace before you received this
2 application to notify her immediately upon your receipt of it?

3 A I believe she requested that I notify her
4 when this permit was applied for.

5 Q And do you recall whether or not she
6 stated any reason why she wanted to know when the application
7 was received?

8 A No, sir, I don't know that she wanted to
9 know for any reason.

10 MR. ELLIS: That is all the questions I
11 have of this witness, Your Honor.

12 THE COURT: Do you want to examine him,
13 now, or later?

14 MR. TRIBLE: I will call him later.

15 THE COURT: All right, thank you, Mr. Bowles.

16 MR. ELLIS: Your Honor, could we take a
17 short recess before I start with the next witness?

18 THE COURT: Yes, sir.

19 NOTE: A short recess was held.

20
21 MR. ELLIS: I call Mr. York Phillips as
22 an adverse witness.

23 THE COURT: Come around, Mr. Phillips.
24

YORK PHILLIPS, being previously duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. ELLIS:

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

A York Phillips.

Q Your occupation, Mr. Phillips?

A I am a director of planning for Hanover
County.

Q When were you appointed as director of
planning for Hanover County?

A I began work in July, approximately July 11,
of 1978.

Q Now, when you came to Hanover County on
July 11, 1978, was there an acting director of planning?

A Yes, sir, prior to my arrival, Mr. Crawford
was acting director of planning.

Q And do you know for approximately how long
he had been acting director of planning for Hanover County?

A My understanding it was approximately since
April.

Q And after you assumed the duties of
planner of Hanover County, what position did Mr. Crawford assume?

1 A My understanding is Mr. Crawford had been
2 principal planner at that time and was carrying out the duties
3 of principal planner before, during, and after the period when
4 he was also acting director.

5 Q All right. And what are your overall
6 responsibilities as director of planning for Hanover County?

7 A Generally, I have overall administrative
8 charge of the planning office, which carries out both functions
9 relating to the update and maintenance of the comprehensive
10 plan and, also, functions relative to the implementation of
11 the plan, zoning, and subdivision ordinances and the like.

12 Q Now, whose direct - - Does Mr. Crawford
13 work directly under you?

14 A Yes, sir.

15 Q And what are his principal duties?

16 A He is in charge of the supervision of the,
17 what I call the planning services function, which is the
18 function involving the administration of the Zoning Ordinance,
19 the day-to-day enforcement of the ordinance, the subdivision
20 ordinances, et cetera.

21 Q Now, would you describe for me, briefly,
22 how your office normally processes an application that comes
23 through for a building permit that includes a site plan
24 approval request?.

1 A We carry out those two processes separately
2 from each other. That is the review of the building permit.
3 When one arrives in our office from the Health Department, it
4 is reviewed by Mr. Dunbar, who is the zoning administrator, . . .
5 and if what is proposed is in accordance with the Zoning
6 Ordinance, it is approved and sent on to the Building Inspector's
7 Office. Distinct from that, we carry out the administration
8 of the site plan requirements. Another person in our office
9 is in charge of receiving preliminary applications for site
10 plans, referring plans to other agencies, receiving back
11 comments, rushing the comments to the applicant, receiving
12 and processing final site plans.

13 Q All right. Now, some site plans are normally
14 referred to the Board of Supervisors for their approval and
15 some are not; is that correct?

16 A That is correct.

17 Q And those that are not are normally handled
18 administratively in your department?

19 A That is correct.

20 Q And the site plans such as have been
21 submitted by Telum in this case are not normally referred to
22 the Board of Supervisors?

23 A That is correct.

24 Q So that administration approval is all that.

would be necessary?

A That is correct.

Q Once you have satisfied yourself that the site plans meet all the technical and engineering requirements of the Zoning Ordinance and the site plan requirements, do you record the site plan?

A That is correct.

Q And where do you record the site plan?

A At the Office of the Clerk of the Circuit Court, here in this building.

Q And shortly after that site plan is recorded, you then notify the Building Inspector's Office that such recordation has taken place?

A I don't believe we make a formal.

Q What do you, after you record the site plan, what do you tell the Building Inspector's Office?

A Generally speaking, we would, at some time during the process, or after that process, receive an application for a building permit and when we approve the building permit as to the BOCA Code, so we would return that to the Building Inspector's Office.

Q And then if the building inspector approves it insofar as the BOCA Code is concerned, the permit normally issues; is that not correct?

1 A I believe so.

2 Q If your department has a request for a
3 building permit with an attendant site plan approval request
4 and the zoning is not proper for the particular use that is
5 being sought, when would you normally notify the applicant
6 that his land wasn't properly zoned?

7 A The only formal notification to the
8 applicant would be by virtue of the disapproval of the building
9 permit application. The form has two lines, one for approval
10 and one for disapproval. The zoning administrator signs one
11 of these lines and in the case of a disapproval indicates the
12 reasons therefor.

13 Q You refer to that as a formal notification?

14 A Yes, sir.

15 Q Is it not a practice for an informal
16 notification by a member of your staff to advise the applicant
17 that the property is not zoned right at the beginning of the
18 application?

19 A I can't say that there is a practice.
20 Certainly, there is no practice set up by virtue of an
21 administrative procedure or anything like that.

22 Q Well, isn't it useless, Mr. Phillips, for
23 a person to apply for a building permit on a piece of property if
24 that particular building is not permitted by zoning?

1 A I can't say absolutely it would be useless.
2 There may be occasions when a person may be pursuing to some
3 other thing, such as obtaining a variance or something through
4 some other procedure somewhere else. So, at the point in time
5 when that is completed, the building permit could be approved.

6 Q All right. Well, now, as a matter-of-fact,
7 if the zoning is not proper, he is never going to get his
8 building permit unless he gets - - Well, you can't get a
9 variance for zoning.

10 A There are a number of possibilities that
11 could occur.

12 Q Mr. Phillips, - -

13 MR.. ELLIS: I will ask that the witness
14 be exhibited, handed Exhibit 5 with the attachments.

15
16 BY MR. ELLIS: (Continued)

17 Q Mr. Phillips, the letter of July 28, 1978
18 from Charles Johnston to Dennis Beard referenced Bingo Filling
19 Station has been handed you and it has several attachments.
20 I will ask you when was the first time that you saw this
21 particular letter?

22 A I am not sure I can say specifically when
23 the first time was that I saw this letter. I am sure it was
24 not long after the date that appears thereon.

Q What was Mr. Johnston's function? He signed the letter as County Planner. What was his function on July 28, 1978?

A Mr. Johnston was a planner in the planning office, at that time, who was working directly under Mr. Crawford, whose responsibilities were primarily the review of site plans and some subdivisions.

Q He wasn't, then, the county planner?

A The term, I am not sure how to describe the term "county planner." It appears to be a throw back to a time when there were maybe two people in the planning office and somehow that distinguished the job titles.

Q Was there any job title of County planner in July of 1978?

A Not in the formal organization, no, sir.

Q So, you don't know why he styled himself in this manner?

A As I say, the records indicate that he and some of his predecessors were characterized or were, used the title county planner to distinguish themselves from, say, advanced planner, which was another division, both of which were planners in the formal organization.

Q So, now, in this letter, Mr. Johnston is writing Mr. Beard reference the SPR 16-78, which is the subject

of these proceedings; is it not?

A Yes, sir.

Q All right. And he states that he has certain comments and then he lists some nine comments.

THE COURT: Mr. Ellis, before you go on, something is bothering me. You say the letter is titled Bingo?

MR. ELLIS: I said it was referenced.

THE COURT: But before you said something about - -

MR. ELLIS: SPR - - Bingo Filling Station is the reference.

THE COURT: What is the connection between Bingo and Telum is what I am saying?

MR. ELLIS: Bingo, that was the way it was applied for, that would be the proposed name of the filling station and it's on the building permit application itself.

THE COURT: All right. I'm sorry. I didn't mean to interrupt you.

MR. ELLIS: No, sir.

THE COURT: Go ahead, sir.

BY MR. ELLIS: (Continued)

Q And then he goes along and lists some nine technical and engineering requirements; is that not correct?

A That is correct.

Q And he concludes with the statement that "Once all comments have been incorporated into a final site plan, recordation in the Clerk of the Circuit Court Office will follow." That is next to the last paragraph; is it not?

A That is correct.

Q And would that be the recordation that you referred to a few moments ago when you were giving a general outline of the processing of building permits and site application, site plan reviews?

A Yes, sir.

Q Now, did you recall ever discussing this letter of July the 28th, 1978, with Mr. Crawford?

A I really don't.

Q If Mr. Crawford said he discussed it with you and that he raised some question about the notification of the owner with respect to the zoning, would you be in a position to deny that?

A I wouldn't deny it. I wouldn't be able to speak to it.

MR. ELLIS: I will ask that the witness

1 be handed Exhibit 4, please.

2
3 BY MR. ELLIS: (Continued)

4 Q (Pause) I refer you to specifically,
5 Mr. Phillips, to the answer to interrogatory number six, which
6 you signed, and ask you if you will quickly review that
7 answer.

8 A (Pause) You are referring to the item
9 A through K?

10 Q A through K, yes. Have you had an
11 opportunity to look at that?

12 A Yes, sir.

13 Q Now, you reviewed or had someone review
14 these plans when you received our request for admissions;
15 is that not correct?

16 A Yes, sir.

17 Q And in response to a question relative
18 to whether or not Telum had met all of the requirements of
19 the Charles Johnston letter and the Zoning Ordinance, you
20 listed A through K; is that correct?

21 A That is correct.

22 Q And would you characterize those items that
23 you have listed as technical and engineering requirements that
24 the plaintiff had failed to meet under the Zoning Ordinance?

1 A No, sir. These are things that had not
2 been done pursuant to the letter of July 28.

3 Q What I am saying is: I believe you said
4 that the letter of July the 28th set forth some nine technical
5 and engineering requirements that had to be met and in the
6 answer to six, I believe, you state that those that are
7 contained in that answer were technical/engineering requirements
8 that the plaintiff had not met; is that correct?

9 A That is correct.

10 Q And those were all of the technical
11 and engineering requirements that plaintiff had not met as of
12 the first day of August 19, '79 when you signed these answers
13 to the interrogatories; is that not correct?

14 A Yes, sir, pursuant, again, as I say, to
15 the letter of July 28.

16 Q Right. Now, Mr. Phillips, did you, prior
17 to May 7, 1979, notify any representative of Telum that the
18 zoning on the particular piece of property was not proper?

19 A Not formally, no, sir.

20 Q Well, did you informally?

21 A No, not either orally or written in writing
22 direct, no, sir.

23 Q Now, on May 7, 1979, at a meeting which was
24 attended by Mr. Tribble, myself, you and Mr. Beard, Mr. Beard

submitted the revised site plans on this project; is that not correct?

A That is correct.

Q And at that time, you advised Mr. Beard that the particular use as applied for would not be permitted in the B-3 zone; is that correct?

A That is correct.

Q As a matter-of-fact, you stated it was not permitted in any zone in Hanover County without special exception; is that correct?

A I believe that is correct. I can't recall the words exactly.

Q That was the first occasion that you had to either informally or formally notify any representative of Telum that the zoning was not proper on this property?

A Speaking directly to - - I represented it, yes, sir. I believe the statement may have been made at other times directed to other people.

Q But no person representing Telum?

A Not directly, not speaking to a person representing Telum.

Q Mr. Phillips, are you aware that any building permit application, in a B-3 zone, has been denied because it was necessary to construct a sewerage treatment

1 facility for that particular use?

2 A I am not offhand aware of any, no, sir.

3 I don't believe I would be in a position to be aware of.

4 Q I just asked since you have been here?

5 A No, sir, I am not aware of any.

6 Q Now, do you understand the application made
7 by Telum in this case to be for two canopies, one gasoline
8 canopy of about 30 feet by 74 feet with three islands on it
9 and another, a diesel canopy, 30 feet by 174 feet with six
10 islands on it with a kiosk; which would be a building where you
11 pay for the fuel and lubricants, and a snack bar; do you under-
12 stand that to be the application in this case?

13 A This is the understanding for the application
14 of the approval of the site plan. And I believe - -

15 Q That also includes some 27 parking lots
16 and fuel storage underground; does it not?

17 A Those are shown, yes, sir.

18 Q Would you characterize or classify a truck
19 as a motor vehicle, Mr. Phillips?

20 A In general terms, yes.

21 MR. ELLIS: I will ask that the Zoning
22 Ordinance be provided to Mr. Phillips at this time,
23 please.

24 THE COURT: What is the number?

MR. ELLIS: Thirteen.

THE COURT: Exhibit 13.

THE WITNESS: Yes, sir.

THE COURT: Go ahead, sir.

BY MR. ELLIS: (Continued)

Q All right, sir. I refer you to the definition portion of the ordinance. First of all, let me ask you, is it not correct, Mr. Phillips, that under the B-3 zone, the eighth listed permitted use is a filling station with storage of flammable liquids which is underground?

A Yes, sir, that is correct.

Q In the definitions, there is a definition of automobile service or filling station; is that not correct?

A That is correct.

Q And under the terms of that definition, that is defined as "any place of business with pumps and underground storage tanks having as its purpose the servicing, at retail, of motor vehicles with fuels and lubricants?"

A That is correct.

Q Is the reason, and I take it, you have made the decision that in your opinion that the use, that has been applied for by Telum in this case, is not permitted in the B-3 zone; is that not correct?

1 A That is correct.

2 Q And is the reason for your arriving at that
3 decision the comments contained in Section entitled "Purpose
4 of the District"?

5 A In part.

6 Q And do you specifically refer in reaching
7 your conclusion to the frequent heavy traffic?

8 A That is one of the inputs to having made
9 the interpretation, yes.

10 Q You were, of course, not with Hanover County
11 when the '74 amendment was adopted; were you?

12 A That is correct.

13 Q And when were you called on and by whom
14 to take an interpretation of this particular ordinance in this
15 particular case?

16 A I am not sure I can really recollect that.
17 Of course, the formal interpretation in a sense has not yet
18 been made in that no specific action denying a building permit
19 has been actually taken. But, certainly, suggestions in the
20 past have been - -

21 Q Okay. Let's look at it this way, then:
22 Assuming, Mr. Phillips, that Telum met all of the requirements
23 listed in the, your answer to interrogatory six; would your
24 office approve the issuance of a building permit?

A No, I don't believe so.

Q And the reason it wouldn't approve it is because you interpret the ordinance so as not to permit this particular use in the B-3 zone; is that not correct?

A That is correct.

Q As a matter-of-fact, Mr. Phillips, you interpret the ordinance to the point that the use, that is, the pump islands and the pay station is not permitted in any zone in Hanover County without a special exception; is that not correct, as Telum has submitted it?

A I think that is correct.

MR. ELLIS: Excuse me one minute, Your

Honor. (Pause)

BY MR. ELLIS: (Continued)

Q As you see the request that has been made by Telum in this instance, there was no motel provided and no specific restaurant; is that correct?

A I'm sorry, I missed the last part. No motel and what?

Q Restaurant. No separate restaurant?

A No, sir, and no motel.

MR. ELLIS: That is all the questions

I have of this witness, Your Honor.

THE WITNESS: Thank you.

MR. ELLIS: I call Mr. Crawford.

THE COURT: All right, Mr. Crawford.

ROY W. CRAWFORD, III, being previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ELLIS:

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

A Roy W. Crawford.

Q Your occupation?

A Principal Planner of Hanover County.

Q And how long have you been employed by Hanover County?

A Since October, 1976.

Q All right. Now, will you give us the benefit of the job descriptions that you have held with Hanover County since you were employed in 1976 to the present time, and what your duties have been?

A When I was first employed, I was employed as zoning administrator and the principal duties of that position.

1 were to the administration and enforcement of the County
2 Zoning Ordinance and approval of building permits, site plans,
3 et cetera. After that, the job title was changed to zoning
4 inspector. I am not sure of the exact date of that change.
5 January 1, 1978, the title, my title was principal planner
6 and the primary duties of that position are to oversee the
7 development processes as far as planning and zoning is concerned.

8 Q All right. Now, there did come a time
9 when Mr. Millikan left and prior to the employment of Mr.
10 Phillips that you were acting director of planning; is that not
11 correct?

12 A Yes, sir.

13 Q And would you have been holding that
14 position in May of 1978?

15 A Yes, sir.

16 Q And, I believe that Mr. Phillips came with
17 the County as of July 11, '78, so then you would have gone back
18 to your position as county planner at that time; is that
19 correct?

20 A Principal planner.

21 Q I'm sorry, principal planner.

22 A Yes, sir.

23 Q And in that job description, your principal
24 responsibility is to oversee the site plan approval processing

1 what comes through the County; is that correct?

2 A Yes, sir.

3 Q In May of 1978 - -

4 MR.. ELLIS: And I ask that the witness
5 be handed Exhibit Number 1.
6

7 BY MR.. ELLIS: (Continued)

8 Q I will ask the witness to read to himself,
9 if you will, the first two full paragraphs of the May 17 minutes.

10 A (Pause).

11 Q All right. Now, Mr. Crawford, in May of
12 1978, you were aware that Telum, the plaintiff in this case,
13 had contracted to purchase a piece of land at the southeast
14 corner of Interstate 95 and 54 for the purpose of putting some
15 type of filling station at that location; were you not?

16 A I was aware there was something proposed.
17 I don't know who it was or that there was a contract.

18 Q And as a matter-of-fact, the application
19 did not come in on that particular project until June 16, 1978;
20 is that correct?

21 A Yes, sir.

22 Q As of May, 1978, was it not your inter-
23 pretation of the Zoning Ordinance that the use that was being
24 sought by this particular applicant, as you later learned it to

1 be, permitted in the B-3 zone?

2 A No, sir, it was not. No, sir.

3 Q Do you know who recommended that the
4 property be down-zoned from B-3 to B-2?

5 A Minutes indicated it was on the motion of
6 Mrs. Peace.

7 Q Did you have any input into this
8 recommendation?

9 A Not that I remember, no, sir.

10 Q After the May meeting, was not there a
11 great deal of discussion amongst the planning department and
12 members of the Board of Supervisors with respect to this
13 particular motion?

14 A Yes, sir, there was some discussion.

15 Q And did not the discussion center around
16 the question as to whether or not it would be legal to down-
17 zone this particular piece of property?

18 A Yes, sir, that was part of it.

19 Q And was it not the conclusion of your
20 office and you that it would be illegal to down-zone this
21 particular piece of property?

22 A Yes, sir.

23 Q Prior to June 16, 1978, when a filling
24 station permit application was applied for, had the applicant

1 ever been questioned as to whether the use would be to
2 service trucks or automobiles?

3 A Not to my knowledge.

4 Q And as a matter-of-fact, from 1976 to 1978,
5 your office processed and approved a number of applications
6 for self-service filling stations, did it not?

7 A Yes, sir.

8 Q And is it your understanding of Hanover
9 County Zoning Ordinance that if a non-conforming use exists,
10 that use cannot be enlarged?

11 A Yes, sir.

12 Q And is it your position that all of the
13 "truckstops" in Interstate 95 located in Hanover County are
14 not conforming uses?

15 A Yes, sir.

16 Q Prior to June of 1976, had you ever been
17 raised a question as to whether a filling station was to be
18 for the service of trucks or automobiles?

19 A Prior to June of '76?

20 Q '78.

21 A Could you repeat the question?

22 Q Strike the question. I believe I have asked
23 it before. Now, the proposed amendment to the Zoning Ordinance
24 was ultimately defeated; is that not correct?

1 consider a totally different facility.

2 THE COURT: Isn't the question, though,
3 were the proposed uses a filling station under the
4 ordinance. And these are called filling stations as
5 I understand?

6 MR. TRIBLE: The applications are filled
7 out by the applicant.

8 THE COURT: Yes, I understand that. But
9 doesn't that become your duty to show they are
10 dissimilar in your examination of Mr. Crawford?

11 MR. TRIBLE: I think he has got to show
12 the relevancy. I still don't see the relevancy of it.
13 Just because you have an application labeled one
14 thing does not make it necessarily relevant.

15 THE COURT: I can see the possibility of
16 relevancy, Mr. Tribble. And I am going to let him - -

17 MR. TRIBLE: Yes, Your Honor.

18
19 BY MR. ELLIS: (Continued)

20 Q Incidentally, Mr. Crawford, there have been
21 no amendments to the permitted uses in the B-3 zone since June
22 of 1978; have there?

23 A No, sir.

24 Q All right, now, if you will, if you have the

1 same order that I have, there is a building permit application
2 dated 6/3/1975 in the name of Goodman B. Duke for a self-service
3 gas station located at Routes 33 and 54 and it was recommended
4 for approval on June the 9th, 1979 by Mr. Brent, Mr. Bowles,
5 and June 5th, '75 by Mr. Branch, who is the zoning administration.
6 This particular self-service gas station is located up in
7 Lone Oak in the Beaverdam District; is it not?

8 A Yes, sir, I believe so.

9 Q And it's located in a B-3 zone; is it not?

10 A I am not sure of the zoning on the property.

11 Q There was no special exception granted
12 for this filling station, was it?

13 A Not to my knowledge, no, sir.

14 Q All right. The next one I have is an
15 application for a cashier's booth dated 10/2/75 in the name of
16 Bradley Brothers, Incorporated at 5846 Meadowbridge Road,
17 Mechanicsville, Virginia; are you familiar - - -

18 MR. TRIBLE: Your Honor, I object. That
19 is a cashier's booth. What is the relevancy between
20 that and a self-service filling station?

21 MR. ELLIS: I am going to ask him if he
22 is familiar with the type of activities there and - -

23 THE COURT: Lay the groundwork, Mr. Ellis.

24 MR. ELLIS: I am trying to.

THE COURT: All right. Go ahead.

BY MR. ELLIS: (Continued)

Q Is that the next document you have before you?

A Yes, sir.

Q Are you familiar with that location?

A Down what zone? That particular zone is - - I am not positive, but I believe it's a B-3.

Q What is the use of the property at this particular location?

A Self-service filling station.

Q I will ask you to go to the next one.

THE COURT: Wouldn't it be relevant, Mr. Tribble, under my previous ruling if it's in addition to something - - I know you object to his relevancy.

MR. TRIBLE: I am not sure, Your Honor, I understood that ruling - - What was your ruling?

THE COURT: That these could be admitted as exhibits.

MR. TRIBLE: I still don't understand what a cashier's booth has to do with a rather extensive facility that is proposed at the intersection of I-95 and 54.

THE COURT: I assume that Mr. Crawford's previous answer if it was - -

MR. TRIBLE: We will submit that a cashier's booth is an authorized use of, you know, a B-3 land. We will stipulate to that.

THE COURT: Yes, sir, but in connection with a self-service filling station, doesn't it follow with the same category of your original argument?

MR. TRIBLE: Yes, sir.

THE COURT: Go ahead, Mr. Ellis.

BY MR. ELLIS: (Continued)

Q The next one I hand you, Mr. Crawford, is one dated 2/18/76 for a Little Oil Company, self-service gasoline station with cashier's booth and it's approved February 20, 1976. Are you familiar with that application?

A No, sir, I am not.

Q Not familiar with it. Are you familiar with that particular location where that facility is located?

A Yes, sir.

Q Where is that?

A I believe it's off of Route 1 just south of Ashland.

Q Would it be next to the Volkswagen dealer's

7
1 place on Route 1?

2 A Yes, sir.

3 Q And that is a self-service filling station;
4 isn't it?

5 A Yes, sir.

6 Q And I believe that is in a B-3 zone; is that
7 not correct?

8 A Yes, sir, there is an indication on the
9 permit.

10 Q It says, "Zoned B-3," right at the top of
11 the permit; doesn't it?

12 A Yes, sir.

13 Q The next three documents, Mr. Crawford,
14 refer to an application, Jarrell Oil Company or Jarrell Truck
15 Plaza; is that not correct?

16 A Next one I have is a letter that refers
17 to Jarrell's Motel.

18 Q That letter is dated February 19, 1976?

19 A Yes, sir.

20 Q Signed by Chris Cullen, and it's addressed
21 to Mr. Atkins and stated, "Enclosed is a record for 24-75
22 Jarrell's Motel"; is that not correct?

23 A Yes, sir.

24 Q Are you familiar with that addition to

1 Jarrell's Motel?

2 A Yes, sir, I am.

3 Q And did it not call for a large addition
4 to the motel itself and the installation of additional gas
5 pumps or diesel pumps?

6 A I am not familiar with the installation
7 of additional pumps on the land.

8 Q Are you familiar with the installation
9 of additional, of additional motel units?

10 A Yes, sir.

11 Q And you say you are not familiar with the
12 installation of additional pumps?

13 A No, sir.

14 MR. ELLIS: All right. Would the Court
15 grant me just a couple of minutes, Your Honor?

16 THE COURT: Yes, sir.

17 NOTE: -A short pause was held.

18
19 BY MR. ELLIS: (Continued)

20 Q All right, sir, Mr. Crawford, I ask that
21 you be handed your deposition from the Court file and I refer
22 you to page 41 and I am going to ask you a series of questions,
23 if you recall my asking you those questions on August the 8th,
24 1979 and your making the answers to those questions. Commencing

I have with respect to that.

BY MR. ELLIS: (Continued)

Q Now, Mr. Crawford, you have indicated that this area of site plans is one of your primary responsibility areas, I believe; is that not correct?

A Yes, sir.

Q Now, if a person comes in and applies for a building permit and has the site plan referred to your department for approval, do you not, as a matter of course, notify the applicant right away if the property is not properly zoned?

A I don't know it would be right away. We would notify them once we have determined it was not properly zoned along with a number of other things we might find and not included in the site plan.

Q How quickly would you notify them? As soon as you found out?

A Normally, yes, sir.

Q And that would be one of the first things that you looked at when the application came in; would it not?

A Yes, sir, it would be one of them.

Q So, it would be reasonable to assume from your statement that if an applicant makes application and the

1 property was not properly zoned, he would be notified fairly
2 promptly after he made application?

3 A Yes, sir.

4 Q Would you say within several weeks to a
5 month, would that be promptly?

6 A Yes, sir.

7 Q Do you recall, Mr. Crawford, on June the 16th,
8 1978, when Mr. Kimball and Mr. Hanawalt accompanied by me
9 submitted the application, which is the subject of these
10 proceedings?

11 A Yes, sir, I don't know the gentlemen's
12 names, but I remember the men.

13 Q Do you recall at that time that you made
14 a statement that the property was properly zoned?

15 A No, sir, I don't recall making a statement
16 like that.

17 Q If Mr. Kimball and Mr. Hanawalt recall that
18 you made such a statement, you would not deny it; would you?

19 A I don't remember making a statement like that.

20 Q My specific question is that if Mr. Kimball
21 and Mr. Hanawalt said you made such a statement, you would not
22 deny making it; would you?

23 A No, sir.

24 Q Now, your understanding of - - Strike that -

1 Basically, there are two distinct types of zoning ordinances;
2 is that not correct?

3 A Yes, sir.

4 Q One of them being referred to as an inclusive
5 ordinance and one being referred to as an exclusive ordinance.

6 A Yes, sir.

7 Q And the inclusive ordinance is the type
8 that specifically permits certain activities in certain zones;
9 is that not correct?

10 A Yes, sir.

11 Q And the exclusive ordinance is one that
12 specifically prohibits certain uses in certain zones; is that
13 not correct?

14 A Yes, sir.

15 Q And Hanover County Zoning Ordinance is of
16 the inclusive type; is that correct?

17 A Yes, sir.

18 Q Do you recall, Mr. Crawford, when the first
19 time it occurred that you were called upon to interpret Hanover
20 Zoning Ordinance with respect to filling stations as to whether
21 they served trucks or cars?

22 A It would have been May, approximately, of '78.

23 Q May of '78?

24 A (Indicating in the affirmative).

1 Q When the particular application - before thi
2 Court was imminent, is that not correct?

3 A Yes, sir.

4 Q And I believe that it is your opinion that
5 the servicing of trucks with fuel and lubricants, it constitutes
6 heavy trucking activity, which is proscribed in the prefatory
7 remarks of the B-3 zone; is that not correct?

8 A Yes, sir.

9 Q And for that reason, the use that has been
10 applied for by Telum, Incorporated, in this case, is not
11 permitted in the B-3 zone?

12 A That is correct.

13 Q As a matter-of-fact, it's not permitted in
14 any zone in Hanover County; is it?

15 A That is correct.

16 Q Now, what type of truck is it that would
17 constitute heavy trucking activity? I ask that question because
18 the term "truck" could include a half-ton pickup truck to an
19 18-wheeler; is that not correct?

20 A Yes, sir.

21 Q In your opinion, what type of truck would
22 be included within that heavy trucking definition?

23 A I would say those that range anywhere from
24 18-wheeler types to trucks of one-ton carrying capacity.

Q One-ton. So, you are breaking it down and saying any service station which is primarily oriented to filling up trucks with gasoline of over one ton or more is not permitted in Hanover County; is that correct?

A Yes, sir.

Q Did you ever - -

THE COURT: Mr. Ellis, would you phrase the question to ask him whether the phrase "heavy" applies to the trucking or to the activity?

MR. ELLIS: All right, sir. I was going to get into that in a little different way, Your Honor, in a few minutes, if I may. I would like to do it on my own.

THE COURT: Yes, sir, go ahead, sir.

MR. ELLIS: All right.

BY MR. ELLIS: (Continued)

Q Do you recall, Mr. Crawford, ever notifying any representative of Telum, Inc. that the use that they had applied for in this particular zone was not permitted in that zone?

A No, sir.

Q So, your answer to my question is that you did not?

1 A Right.

2 Q Now, specifically, I refer you to the letter
3 of Charles Johnston dated July 28, marked Exhibit 3. I'm sorry,
4 Exhibit 5. It had Exhibit 3 on there in depositions.

5 THE COURT: All right, sir.

6
7 BY MR.. ELLIS: (Continued)

8 Q Now, Mr. Crawford, when was the first time
9 that you saw this letter of July 28, 1978?

10 A It was sometime, August or so of 1978.

11 Q And at the time this letter was written,
12 Mr. Johnston was working immediately under you; is that not
13 correct?

14 A Yes, sir.

15 Q You have referred the site plan to him for
16 his study and recommendation?

17 A Yes, sir.

18 Q Now, when this letter came to your attention,
19 you brought it to the attention of Mr. Phillips; did you not?

20 A Yes, sir.

21 Q And the reason that you brought it to Mr.
22 Phillips's attention was because you felt that some notification
23 to the applicant should be made with respect to the zoning; is
24 that not correct?

1 A Yes, sir.

2 Q And as a result of your discussion with
3 Mr. Phillips, was it determined that he would have the
4 responsibility of so notifying the owner?

5 A There was no determination made that I can
6 remember whether he would or would not.

7 Q But you didn't notify the owner?

8 A No, sir.

9 Q And so far as you know, Mr. Phillips didn't
10 notify the owner?

11 A Not to my knowledge, no, sir.

12 Q The reason you brought it to his attention
13 was because you felt some notification was necessary?

14 A Yes, sir.

15 Q Did you by any chance attend the public
16 hearing that took place on the application for the sewerage
17 discharge permit?

18 A No, sir, I did not.

19 Q You did not. You never had any communi-
20 cations at all with the State Water Control Board relative to
21 this application; did you?

22 A No, sir.

23 Q Are you aware, Mr. Crawford, of any
24 application for use such as Telum's or for a self-service filling

1 station being denied because it required a sewerage treatment
2 plant?

3 A No, sir, not to my knowledge.

4 Q As a matter-of-fact, one of the major
5 requirements is an approved sewerage disposal system; is it
6 not?

7 A Yes, sir.

8 Q Now, let's look at the Zoning Ordinance for
9 a few minutes, if you will, Mr. Crawford; Exhibit 13.

10 Specifically, I refer you to the uses permitted in a B-3 zone.

11 And before we start that, again, to refresh my recollection,

12 I believe you stated that the servicing of trucks of one-ton

13 capacity or over, in a - - by a facility that is given them

14 gasoline constitutes heavy trucking activity, in your opinion?

15 A Yes, sir.

16 Q All right. Look at paragraph three; have
17 you read it?

18 A Yes, sir.

19 Q You can sell a truck in a B-3 zoning; can't
20 you?

21 A Yes, sir.

22 Q Does that have any limit on the size of the
23 truck?

24 A No, sir.

Q You can repair a truck in a B-3 zone; can't you?

A Yes, sir.

Q And you can also service the truck in a B-3 zone; can't you?

A Yes, sir.

Q Now, how is the servicing in - - Well, let me strike that. But you can't put gasoline or diesel oil in the truck to get it to the place you are going to sell it in a B-3 zone; can you?

A Not in a B-3 zone.

Q Or in any other zone in Hanover County?

A Correct.

Q And in your opinion, Mr. Crawford, what does the term "service an automobile or truck sales service repair" mean?

A To me, basically, it means the same kind of thing that repairs with service and repairs.

Q Would it perhaps mean changing oil?

A No, sir, not to me, it wouldn't.

Q So, you could repair it in a B-3 zone, but you can't change oil in a B-3 zone; is that right?

A Yes, sir.

Q What would be the nature of the repairs you

1 could do to it in a B-3 zone?

2 A The type of things, spring, repairing
3 springs, motor repair, the type of operation - -

4 Q Could you put any oil in it if it needed oil?

5 A I imagine if you cranked the oil out of it,
6 you would have to put it back in, yes, sir.

7 Q I am talking about oil in the mechanics.

8 A Yes, sir.

9 Q You could do that?.

10 A (Indicating in the affirmative).

11 Q Mr. Crawford, is it not a fact that there
12 was a lot of public opposition to this application made by
13 Telum; is that not correct?

14 A Yes, sir, there was.

15 Q And is it not a fact that your office tried
16 to determine how this application could be denied in this zone?

17 A We didn't try to deny it. We tried to
18 determine whether it was a permitted use in that particular zone.

19 Q At one time you thought you were going to
20 down-zone it, but decided it was illegal?

21 A I didn't make the application to down-zone it.
22 It was made by the Board of Supervisors.

23 Q But was it not or is it not a fair statement
24 to say that there was a contrived effort to deny this particular

1 application?

2 A You could probably assume that, yes, sir.

3 Q Thank you very much.

4 MR. ELLIS: That is all the questions I have.

5 THE COURT: Do you have a question at this
6 time, Mr. Tribble?

7 MR. TRIBLE: Yes, Your Honor.

8
9 CROSS EXAMINATION

10 BY MR. TRIBLE:

11 Q Mr. Crawford, would you refer again to
12 Section 12.1 of the Zoning Ordinance and would you read the
13 third to the last line beginning "Frequent"?

14 A "Frequent heavy trucking activity."

15 Q Yes, that line. It says, "Frequent heavy
16 trucking activity." Correct?

17 A Yes, sir.

18 Q With regard to the other uses that are
19 permitted that make reference to trucks in the B-3, how do you
20 differentiate those from the ones from the uses proposed by the
21 applicant here, the plaintiff here?

22 A Any number of the uses could have trucking
23 activity.

24 Q Could they have heavy trucking activity?

1 A Yes, sir.

2 Q What is the thing that characterizes?

3 A The frequency of the activity. Some of the
4 trucks might come in to service some of these uses. They would
5 stop, load, unload, what have you. They might be there for
6 a long period of time.

7 Q Then, how would you characterize the use
8 that is proposed here by the applicant as opposed to these
9 other uses; how would you characterize them?

10 A The difference would be the truck would
11 come in here and fill up and they would be on their way.

12 Q In and out?

13 A Yes, sir.

14 Q Whereas these others, they wouldn't be?

15 MR. ELLIS: I object to him leading his
16 witness, Your Honor.

17 MR. TRIBLE: Fine.

18
19 BY MR. TRIBLE: (Continued)

20 Q Mr. Ellis made reference to various other
21 applications, filling stations?

22 A Yes, sir.

23 Q And you appeared to be familiar with these
24 applications?

A (Indicating in the affirmative).

Q Would you distinguish for the Court the difference between the uses proposed in those applications and the use proposed by the applicant here in your own mind?

MR. ELLIS: Your Honor, I object to him answering the question. It's a contrived - - It will be a contrived answer because his testimony on direct was that prior to June, 1978, he was never, he never made any distinguishment between them at all. He was never requested to do so.

THE COURT: He never made any between trucks and cars.

MR. ELLIS: That is all right.

THE COURT: But I don't think that is the same question Mr. Tribble asked him.

THE WITNESS: Would you repeat it?

BY MR. TRIBLE: (Continued)

Q Would you distinguish between the uses proposed in those applications and the uses proposed by the applicant here?

A The uses that are on those locations are basically for automobiles. They are basically gasoline type pumps with maybe one diesel pump. They are on smaller parcels

1 of land.

2 Q Okay. Mr. Crawford, you made reference to
3 the fact that you said that, in your opinion, the use proposed
4 here is not allowed in any district. Is there a provision in
5 the County ordinance that would allow the provision, that would
6 allow enabling a particular use even though it wasn't listed
7 in any district to come into a particular district?

8 A Yes, sir, there is.

9 Q Would you explain what that provision is
10 of the Code?

11 A The applicant could apply for a special
12 exception to the ordinance which would be heard by the Board
13 of Supervisors.

14 Q And this could be permitted - - Isn't it
15 true it could be permitted in any zone?

16 A Yes, sir, with a special exception.

17 MR.. TRIBLE: That is all I have.

18
19 REDIRECT EXAMINATION

20 BY MR.. ELLIS:

21 Q Mr. Phillips, - - Mr. Crawford, with
22 respect to these building permits that we talked about in
23 Exhibit Number 10, you said they are primarily gas. There is no
24 prohibition of an 18-wheeler pulling into those stations and

1 THE COURT: All right, Mr. Webb?

2
3 LAWRENCE W. HANAWALT, being previously duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WEBB:

7 Q Mr. Hanawalt, would you state your name,
8 please?

9 A Lawrence W. Hanawalt.

10 Q What is your occupation, Mr. Hanawalt?

11 A I am a real estate agent with General Land
12 Company, commercial brokers, in Richmond.

13 Q How long have you been in this profession?

14 A I was real estate representative for Exxon
15 for 28 years and I have been in business for myself for five.
16 So, about 33 years.

17 Q Does your experience in real estate business
18 involve service station properties and other oil-servicing
19 related properties?

20 A I spent most of my work career acquiring
21 service station locations and driving facilities and I guess I
22 have acquired maybe in the neighborhood of 450 service stations
23 and drive-in sites in my work career.

24 Q Mr. Hanawalt, what is your connection with

the plaintiff in this case, Telum, Inc.?

A I was requested by Telum, Inc. to attempt to find some suitable locations for their intended facilities.

Q And what facility was this?

A For a self-service drive-in fuel stop.

Q And did you locate such property at any particular time?

A Yes, it's been two and a half years ago, I located approximately eight sites of which Telum was most interested in, too. And we acquired the southwest corner of Interstate 95 and Route 54 in Ashland. That was their first choice for a location.

Q About what time was this?

A I would have to look in my file, but that must have been well over two years ago.

Q Did you, at any subsequent time, help Telum locate another site?

A Yes. Mr. Kimball, the real estate representative, and I chose the southeast corner of Interstate 95 and Route 54, which was located in Hanover County. We thought well of that site, but other people from Telum thought they preferred the southwest corner located in the Town of Ashland. So, we did then later on move from the Ashland site across Interstate 95 and entered into a contract to acquire property

1 A I prepared it in consultation with the
2 owners of the property and with consultation with Telum.

3 Q Is there any contingency in this contract
4 related to the zoning of the property?

5 A There is absolutely no contingency regarding
6 zoning. The only contingency is that Telum would secure all
7 of the permits and licenses necessary for the construction and
8 operation of their intended facility. But there was nothing
9 in there about zoning because we confirmed the fact that it was
10 zoned B-3 and we felt sure in our own minds that it would
11 allow in this facility.

12 Q Is it your practice to place a zoning
13 contingency in the contract if there appears to be a problem?

14 A Many, many times we place that contingency
15 in the contract. But based on the information that I had, there
16 was no need to place that in the contract.

17 Q Mr. Hanawalt, have you performed any other
18 services subsequent to the obtaining of this contract and all
19 the extensions that are indicated that are attached to it?

20 A Well, because Telum's located out of state,
21 I did offer what assistance I could give them because I live
22 in Richmond and I had a few consultations with Associated
23 Engineers, who worked on the plans. I have had some consultation
24 with the State Highway Department. And, also, with the State

with regard to a well. And, I believe, I worked with Telum as well as the engineers and with some other people in our applications with the Water Control Board. I have offered assistance where I thought it could be of help because they are out of state.

Q Mr. Hanawalt, did you assist with the submission of the application for site plan approval and a building permit?

A I certainly did. I wanted to be there at that time. I would have to check my file to see what the date was (Pause). On June the 16th, Mr. Kimball, vice president of Telum, attorney Ellis, and I, together presented the plans. We went to the planning office, Hanover County, and we presented the plans and discussed them with a Mr. Crawford. I recall very well that when we presented the plans, the use was made known to him. I don't know whether we asked him to look over the plans, but he did so briefly, turned over the site plan, the building plans and looked at each sheet. And before we left, Mr. Ellis asked him, "Do we understand that this property is zoned for the intended use of Telum?" He said, "Yes," it was. I remember that very well because this was important to us and when I left that office that day, I had no doubt in my mind that we would receive our building permit. Then we went from there over to the Building Inspector's Office and we submitted the

A Provided the property is actually consummated.

Q Let's refer again to the contract of sale, I think it's Exhibit 3. You make mention of a contingency in there.

A Yes.

Q Not one for zoning, but you had to acquire all of the appropriate permits and that sort of thing?

A That is right.

Q Would you read specifically that, please?

A Well, first of all, it says at the top, "The attached printed contract shall be subject to the additional provisions." Number three, specifically, "The purchaser shall secure all Federal, State, County and municipal use permits and licenses and building permits to construct a self-service truckstop in accordance with the standard plans and specifications of Telum, Inc., as prepared by its engineering department."

Q Thank you. Mr. Hanawalt, you testified that you called a Mr. Cullen, I think?

A That is right.

Q And you indicated that it was a facility for the supplying of fuels to autos and trucks or trucks and autos or whatever it was?

A Correct.

1 Q Well, let me ask you this: Did you go into
2 any other more in depth description other than a facility for
3 supplying autos and trucks?

4 A Yes, I explained that the majority of the
5 fuel volume would be to trucks and over fifty percent of the
6 total vehicles entering there would be trucks.

7 Q The majority would be for trucks?

8 A That is correct. And I explained that we
9 needed a wide entrance to facilitate trucks and trailers going
10 in there and that we would have a large facility with the canopy
11 on it to serve trucks as well as passenger cars.

12 Q So, after you went through that description,
13 his words were "We would welcome you"?

14 A That is correct.

15 Q Thank you.

16 A That was unsolicited, that statement from
17 him.

18 Q Did you indicate in your discussion with
19 him how many of the various pumps, how many diesel pumps? Or maybe
20 you didn't even know at that time?

21 A I don't think that we discussed a number of
22 pumps at that time. I wouldn't think so. I mainly made the call
23 to verify that the property was zoned B-3, that it would allow
24 the intended facility. And I did make clear it was not the

typical truck facility that it already built, that it was a much less intensive use.

Q Are you familiar with the proceedings they had in Hanover County with regard to the potential down-zoning of that land that was a request to rezone?

A I was well aware of the request.

MR. WEBB: Excuse me. This goes beyond the direct examination of the witness. However, we had discussed prior to reconvening that in order to save time, we would allow Mr. Tribble to examine the witness as his own witness as to those matters not covered on direct. So, - -

MR. TRIBBLE: Your Honor, I would like for him to be designated as an adverse witness.

THE COURT: Any objection to that?

MR. WEBB: No, Your Honor.

THE COURT: Go ahead, Mr. Tribble.

BY MR. TRIBBLE: (Continued)

Q Are you familiar with the process that was begun in Hanover County that is in question here?

A I am not familiar with the whole process. But I did attend the meeting of the Planning Commission where it was discussed. And then later on I attended the meeting of the

A Yes, I have.

Q On how many occasions have you submitted site plans for approval?

A I would just estimate, I would say, maybe 20, 25.

Q Mr. Beard, what is your connection with the plaintiff in this case, Telum, Incorporated?

A We were contacted through Larry Hanawalt to review some site plans for submittal to Hanover County for approval for a building permit.

Q Do you recall when you were contacted by Mr. Hanawalt?

A Well, the earliest I have in my records is March the 7th, 1978.

Q Mr. Beard, what was the nature of the site plans you were asked to review?

A The nature of the site plans, it showed the general layout of the property, how the property was going to be developed. It showed what areas would be paved, how drainage would be taken care of, how the access to the property would be designed, how the sanitary sewer would be taken care of, where the water would be provided from, where the building locations would be, where the canopies for the pump islands would be located; just general site plans of the entire property.

Q Could you tell the Court where this property is?

A The property that we were asked to look at the site plans was on the southeast quadrant of Route 95 and Route 54.

Q Did you personally submit these plans for approval to the County?

A No, I didn't.

Q Do you know if they were submitted?

A They were submitted, I believe, by Mr. Jack Ellis, who came by our office and picked up the plans for submittal to the County and that is where he was headed when he left our office, was to submit the plans. I am sure they were submitted that day.

Q Did you subsequently receive any communication from the County relative to these plans after they were submitted?

A Yes, we did. I received a letter from the County planning office with comments in the letter, was written by Mr. Chuck Johnston, who was the County planner with the County at that time. These were comments in reference to things that needed to be added or deleted from the site plan before approval could be obtained.

MR. WEBB: Could the witness be handed a copy of Plaintiff's Exhibit Number 5, please?

7 BY MR. WEBB: (Continued)

2 Q Mr. Beard, is this the communication about
3 which you have just testified?

4 A Yes, sir, it is.

5 Q In your experience in submission of site
6 plans, is this a normal procedure to receive a communication
7 after submission of site plans sufficient as this - -

8 A In every one that I have submitted, we
9 received a letter similar to this where the comments might vary
10 from item to item on the site plan.

11 Q I refer you to the second page of Plaintiff's
12 Exhibit Number 5 and ask you if you would read to the Court the
13 third to the last paragraph in this letter.

14 A It says, "Once all comments have been
15 incorporated into the final site plan, recordation in the
16 Clerk of the Circuit Court Office will follow."

17 Q Does the letter suggest in any way that
18 the land was not properly zoned for the use indicated in the
19 plans that were submitted?

20 A No, it doesn't.

21 Q After you received this letter, Mr. Beard,
22 did you commence to comply with the comments listed in there?

23 A Yes, we did. We proceeded to make changes
24 that were outlined in Mr. Johnston's letter. Not at a real rapid

pace. We were awaiting approval of the NPDES permit from the State Water Control Board, which - - that is a discharge permit for the sanitary sewerage facility.

Q Did you assist Telum in procuring this permit?

A Yes, we did. That is correct, we filed it, the application.

Q When was that?

A I think we filed it, it was June the 1st is when we filed the application with the State Water Control Board.

Q Did you attend any public hearings in connection with this application?

A Yes, we had attended one in the Town Hall office, which is a public hearing for that State Water Control Board held in reference to the permit.

Q Were there any officials from Hanover County at the meeting?

A The County administrator, John Longmire, was there to speak against the State Water Control Board issuing the permit on behalf of the Board of Supervisors.

Q Did Mr. Longmire at this meeting make any statement to the concerns of the County regarding the zoning of the property?

A No, he didn't. If he did, I don't recall.

but I don't recall him making any such statements. He was just addressing the sewerage treatment plant itself.

Q Was the NPDES permit granted Telum ultimately?

A Yes, it was, it was. We received it or it was granted March the 13th, 1979.

MR. WEBB: The witness be handed a copy of Plaintiff's Exhibit Number 6, please.

A (Continued) (Pause).

Q Mr. Beard, you have been handed a copy of Plaintiff's Exhibit Number 6; is this the NPDES permit that was granted Telum?

A Yes, sir, I believe it is.

Q You testified you submitted the application and I am not certain we have the date correct. Do you recall the date on which the application of this permit was submitted?

A The application was submitted June the 1st, 1978.

Q Now, Mr. Beard, does there remain anything to be done with regard to this NPDES permit before construction can begin on the project contemplated by Telum?

A What the permit does, it grants you the permission to discharge in the specified stream and it sets out

stream standards that must be met prior to this discharge.

And that is usually obtained with a small package treatment plant which needs to be approved by the State Health Department and the State Water Control Board. But the main thing is getting the permit approved. The actual design of the plant is pretty much straightforward and just a technical nature. There are many on the market today that meet the standards with no problems.

Q Are you presently undertaking to design such a plant?

A Yes, we are. I would say we are probably 85 percent complete with the construction plant.

Q Thank you. Now, back to the site plans and the letter of July 28, 1978, which you received from Mr. Johnston. Have you submitted revised plans pursuant to the comments contained in this letter?

A Yes, we did. We submitted, we made or addressed all comments in his letter and revised the plans. And they were submitted back to the planning staff for approval.

Q And when were these revised plans submitted?

A I believe the County received them on --- My records show May the 7th, 1979.

MR. WEBB: Could the witness be handed

Exhibit 14?

BY MR. WEBB: (Continued)

Q In that sheaf of papers, Mr. Beard, would you identify the revised plans that you received that you submitted?

A This plan right here is the plan we prepared for that submittal. It's entitled, "Telum, Incorporated, Project Number 78054."

Q Is there a date on those plans?

A The revised date on the plans - - it says, "Revision Number 1, County Comments" and the date is 5/4/1979.

Q And, Mr. Beard, keeping the plans in front of you and looking at Exhibit Number 5, can you tell me whether the revised plans meet all of the comments contained in the July 28, 1978 letter?

A Yes, they do. The comments, we addressed all the comments and they were incorporated into this plan. And to my knowledge, they would have met the comments over in Mr. Johnston's letter.

MR. WEBB: Could Mr. Beard be handed Exhibit 4, please?

BY MR. WEBB: (Continued)

Q What I want him to look at is Defendant's answer number six to Plaintiff's interrogatories. Do you have

1 Q Mr. Beard, have you, were you ever advised
2 officially by any official of Hanover County between the time
3 you became involved with Telum and this project and May the 7th,
4 1979 when you submitted the revised plans that the zoning was
5 not proper for the use contemplated by Telum?

6 A Not officially, no, sir.

7 Q Were you advised on May the 7th to the
8 contrary?

9 A May the 7th, 1979?

10 Q '79, excuse me.

11 A Yes, sir, I was. I was with Mr. Jack Ellis
12 when we submitted the site plans answering, or we submitted the
13 site plan incorporating all the comments the County had at that
14 time. And we had a meeting, I don't know whether it was exactly
15 that day, but it was the date the plans were submitted. And we
16 were informed in that meeting that the property was not properly
17 zoned for this type of use.

18 Q Who informed you of this?

19 A Mr. Phillips.

20 MR. WEBB: I have no further questions.

21 THE COURT: Mr. Tribble?

CROSS EXAMINATION

BY MR. TRIBLE:

Q Mr. Beard, you stated that you received no official notification with regard to site plan or the use of the property or whatever it might be, that that particular plan might not be unacceptable up until May 7, 1979, I think that is what you testified.

A (Indicating in the affirmative).

Q Did you receive any unofficial notification, were you aware of any dispute at all regarding the use of the property?

A I was aware, like I stated before, that somewhere along the line that I had heard that the property, there was a problem that the property wasn't properly zoned. Rumors, or where I heard it, or who I heard it from, I don't know, or when I heard it. I just really don't know.

Q Let me ask you this: You testified that you all are continuing to work on your sewerage treatment plans and you are continuing to update these particular plans here; right?

A That is correct.

Q Are you on notification, now, that there is a dispute with regard to the use of the land in question?

A Officially, I guess. I was notified at the

1 meeting when we submitted the site plan to Chuck Johnston - -

2 Q But you continued to work. You received no
3 communication from Telum saying to stop work?

4 A No, sir.

5 Q So, whatever you do, in this case, if it
6 turns out here this is not the proper use, it's for naught?

7 A I guess it would be.

8 Q But you continue to work?

9 A That is right.

10 Q You, or I believe Telum submitted a site plan
11 application on June 16, 1978, site plan application was submitted.
12 Soon thereafter, you got involved and you attempted to make the
13 corrections on the site plan in order to comply with the
14 ordinance, as I understand it; is that correct?

15 A (Indicating in the affirmative).

16 Q Did you ever have any discussion with anybody
17 in the planning office regarding the site plan and what you had
18 to do; can you recall any discussions?

19 A I deal with the planning office.

20 Q You are in and out all the time?

21 A All the time. And I am sure I have probably
22 discussed the site plan.

23 Q Who would you have discussed it with at that
24 time?

PRINTERS NOTE:

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HORACE W. KIMBALL, being previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ELLIS:

Q Would you state your full name, please?

A Horace Whitney Kimball.

Q And where is your place of residence?

A Phoenix, Arizona.

Q Briefly, Mr. Kimball, what is your educational background?

A I have a B.S. in Political Science, a Master's in Education, Ph.D. in Foreign Affairs.

Q So, now, what is your present occupation?

A I am vice president, assistant to the president of Telum, Incorporated.

Q And how long have you occupied that position?

A A little, going on four years.

Q What are your duties in that position?

A They are varied, but primarily, it's in development of properties and building locations, new locations.

Q All right, sir. Now, with respect to Exhibit Number 3, which is before you, I ask you if that is the contract, the purchase entered into between Telum, Inc. and the Carter executors relative to the piece of land situated at the

1 procedure was going along with Ashland, we had talked to the
2 city manager asking him - -

3 Q Without saying specifically what the manager
4 said, had you undertaken to try to hook-on to the Ashland water
5 and sewer?

6 A Yes, city manager at that time told us that
7 was fine if we moved across the street..

8 Q But, subsequently, you were denied the
9 request to hook on this facility; weren't you?

10 A Yes..

11 Q Do you recall who was present at the time
12 the application was submitted at the Hanover County office
13 building on June 16, 1978?

14 A Mr. Hanawalt, yourself, and myself.

15 Q And at that time, was Mr. Crawford there?

16 A Yes, uh-huh.

17 Q - At that time, did Mr. Crawford look through
18 the plans that were submitted?

19 A Yes, I distinctly remember you telling him
20 to look through the documents submitted and see that everything
21 was there and asked him - - you realized it would take some time
22 to review them thoroughly, but if he saw anything in arrears
23 or particularly if there was any problems with regards to the
24 zoning and such and he said, "No, everything looked fine." And

1 that is the best to my knowledge of what was said.

2 Q Then, did you go to the building official's
3 office and file the building permit application?

4 A Yes, we went down to an office further down
5 the hall and filed with the Building Inspector. And I think
6 paid a fee at that time. And then I think you had discussed
7 with them in regards to everything including zoning and they
8 saw no problem.

9 Q Would you briefly describe for the Court
10 the type of use to which you propose on this, put this property?

11 A We are operators of fuel stops. We never
12 know what the percentage is in different locations as to whether
13 trucks use it the most or cars use it the most. We are what
14 people call a discounter in the fuel market. We are independents
15 that sell to the general public and to the man who is operating
16 vehicles for fuel at a substantial discount that they cannot
17 get anywhere but through our facilities. We build fuel stops
18 which service both gasoline and diesel fuels.

19 Q So, just, generally, what is proposed for
20 I-95, 54?

21 A It would be a fuel stop. If I remember
22 correctly, it would vary somewhat on different locations. There
23 will be, I think, six pumps for diesel and three double pumps
24 for gasoline.

1 Q Prior to May 7, 1979, were you, or to your
2 knowledge, any other representative of Telum, Inc. notified that
3 the zoning was not proper in this case for the use intended?

4 A No.

5 MR. ELLIS: That is all the questions

6 I have.

7 THE COURT: Mr. Tribble?

8
9 CROSS EXAMINATION

10 BY MR. TRIBLE:

11 Q Mr. Kimball, you stated that you were led
12 to believe that there would be no zoning problems other than
13 the meeting with Mr. Crawford that you have already discussed.
14 Did anyone else lead you to believe that there would be no
15 zoning problems?

16 A The only time that I can recall was when
17 Mr. Ellis and myself and Mr. Hanawalt discussed the hearing
18 at the courthouse and I wasn't led to believe it. I was, we
19 were told outright that there was no problem on that. So,
20 from that time on, nothing was - - I don't believe we discussed
21 it at any further time.

22 Q Other than the June 16 meeting, you don't re-
23 call any other contacts with officers or officials of Hanover County
24 regarding whether the zoning was appropriate or not; you, yourself?

1 did not.

2 Q Did you sign the contract?

3 A Yes.

4 Q Would you describe - - I know you already
5 have, but would you go into a little more detail with regard
6 to the use that you intend to put on the property in Hanover
7 County?

8 A Selling gasoline and diesel.

9 Q Would you mind looking at the plans and
10 giving me a description, a more detailed description of what
11 you intend to put on there. I refer to Exhibit - -

12 THE COURT: Fourteen, I believe it is.

13 MR. TRIBLE: Ten.

14 THE COURT: He is looking at 14, I believe
15 it is.

16 MR. TRIBLE: Fourteen.

17
18 BY MR. TRIBLE: (Continued)

19 Q These would be the building plans that you
20 submitted along with the application.

21 A There is two islands for fuel, one for
22 diesel and one for gas and a small kiosk, 16 by 38 by 6 inches.

23 Q Could you tell how much storage for diesel
24 you will have in that facility?

1 A The plans show four 24 gallon diesel.

2 Q Eighty thousand gallons?

3 A Right.

4 Q How much gas storage?

5 A It looks like 32,000.

6 Q Thirty-two thousand gallons?

7 A (Indicating in the affirmative).

8 Q With reference to the building permit, would
9 you refer to the building permit which is also included in that
10 packet, the yellow document, the building permit application,
11 which I believe that you have signed. Would you read the
12 description in the building permit application as to the use
13 that you proposed to put the property. And specifically the
14 line you have got the name of owner.

15 A "Self-service filling station."

16 Q And the rest of it?

17 A "PLB." I don't know what that is.

18 Q I think that is plumbing.

19 A "And wiring. INST, two gas islands."

20 Q Two gas islands?

21 A (Indicating in the affirmative).

22 Q Do you think that adequately describes the
23 use that you have applied for here?

24 A I imagine it will be better to put one diesel

1 and one gas instead of two gas islands. But I didn't write it
2 in there. That is not my handwriting.

3 Q It is your application that you made. Who
4 signed the application?

5 A I signed it. But I don't know when this
6 was written. You know, you could have done it after I signed it.
7 I didn't write it. That is not my handwriting.

8 Q Does your company operate other self-service
9 filling stations?

10 A Yes, we did.

11 Q How many do you operate?

12 A Sixty to eighty.

13 Q Where is the closest one here to Hanover?

14 A To Hanover? I don't know whether it would
15 be Tennessee or Maryland. Maryland is the closest.

16 Q You have one in Maryland?

17 A Yes.

18 Q Elkton, Maryland, is that similar to the
19 one you propose here?

20 A No, a little dissimilar. Well, designs are
21 different..

22 Q Explain, would you look at the plans.

23 A The islands are different and the building
24 is different.

1 build a station here. We have, you know, maybe the Court will
2 see otherwise, but we have always felt that we were 100 percent
3 right and, you know, we have pursued what we feel is right.
4 That is why we are doing it, if that answers your question.
5 That is why we are doing it.

6 Q Thank you. It does.

7 MR. TRIBLE: That is all I have.

8 MR. ELLIS: We are through with Mr. Kimball.
9 We call our next witness; Mr. Millikan.

10

11

WITNESS STOOD ASIDE

12

13

GLEN THOMAS MILLIKAN, JR., being previously
14 duly sworn, testified as follows:

15

16

DIRECT EXAMINATION

17

BY MR. ELLIS:

18

Q Would you state your name, please?

19

A Glen Thomas Millikan, Jr.

20

Q Where is your place of residence?

21

A 5916 Franklin Lane, Mechanicsville,
21 Virginia.

22

Q Would you, briefly, describe for the Court
23 what your educational background is?

24

A I was educated at the College of William &

Mary, Virginia Commonwealth University and the University of Richmond. I have a Master's of commercial - -

Q Do you know - - What were your degrees you received from William & Mary and VCU?

MR. TRIBLE: I will stipulate that he is an expert planner.

THE COURT: Is that sufficient, Mr. Ellis?

MR. ELLIS: That is sufficient, Your Honor.

BY MR. ELLIS:

Q What is your present occupation?

A A realtor with Joyner & Company Realtors.

Q How long have you been so occupied?

A Approximately 15 months.

Q Starting with your present occupation, would you go back step by step what your previous occupations were?

A Yes, between 1974 and 1978, I was director of planning for Hanover County. From 19 and 72 and '74, I was director of planning in New Kent County and from, I believe, the later part of 1969 to 1972, I was a staff planner with Hanover County.

Q All right, sir. Now, at my request, did you prepare an exhibit reflecting the course of Route I-95 through Hanover County?

1 BY MR. ELLIS: (Continued)

2 Q Do you have another sheet under that?

3 A The next sheet is simply the Tax Map of the
4 County showing the parcel that is as a truckstop.

5 Q Would you go back to the Doswell Exhibit?

6 I believe you referred to an addition to
7 the Jarrell Motel. Would you tell me when that was and what
8 the addition was, approximately?

9 A The addition was for motel units and
10 approved by site plans in 1976, recordation date of 2/17/76,
11 Plat Book was 31, Page 18.

12 Q Mr. Millikan, under the Hanover County
13 Zoning Ordinance, can non-conforming use be enlarged?

14 A No.

15 MR. ELLIS: I ask that the witness resume
16 his seat at the present time.

17 THE COURT: All right. Let's argue
18 Mr. Tribble's objection to the exhibit as to relevancy,
19 and all the testimony to Mr. Millikan.

20 MR. ELLIS: He didn't make his objection
21 until we were almost through it.

22 THE COURT: That would include the last
23 couple of pages. Why is this relevant, Mr. Ellis?

24 MR. ELLIS: Your Honor, it's relevant

interchanges. And I think it's relevant and I am going to let it in. The objection is overruled.

MR. ELLIS: Thank you, Your Honor.

NOTE: Document consisting of pages marked A through K was marked Plaintiff's Exhibit Number 16, initialed and dated.

BY MR. ELLIS: (Continued)

Q Now, are you familiar with the application made by Telum, Incorporated, for the improvements at the southeastern quadrant of I-95 and 54, Mr. Millikan?

A Yes, I am.

Q In your opinion, is that use as applied for permitted under the Hanover County Zoning Ordinance in the B-3 zone?

A Yes, it is.

Q Would you tell me why that is your opinion?

A In the B-3 zone of the County Zoning Ordinance, you have permitted uses. The Hanover County Zoning Ordinance spells forth a number of uses that can be made in the districts. The ordinance is an inclusive ordinance, anything that is so stipulated in the text can be built within that district. The district allows filling stations so long as the

1 bulk of the flammable liquids are underground. It defines
2 filling stations as "any place of business with pumps and under-
3 ground. storage tanks, having as its purpose the servicing
4 at retail of motor vehicles with fuels and lubricants, and
5 including a general repair shop, paint or body shop, machine shop,
6 vulcanizing shop or any operation requiring the removal or
7 installation of radiator, engine, cylinder head, crankcase,
8 transmission, differential, fenders, doors, bumpers, grills,
9 glass, or other body parts, or any body repairing or painting."

10 Therefore, since the truck is a motor
11 vehicle and trucks may be serviced, and fueling and lubrication
12 is a service, therefore, truck servicing, fueling and lubrication
13 must be allowed under the B-3 zone.

14 Q Now, were you employed by the County of
15 Hanover in your position as director of planning when the 1974
16 amendments to the ordinance were made?

17 A Yes, I was.

18 Q In your opinion, does the term "heavy
19 trucking" in the prefatory remarks prohibit the type of use
20 as applied for by Telum in this case?

21 A No, it does not. The prefatory remarks
22 within the Zoning Ordinance, I think, are a series of adjectives
23 that attempt to describe things that are associated with retail
24 businesses and to identify those activities that are, can be

with retail operations versus those associated with manufacturing. The B-3 general business district is the heaviest general retail service district within the ordinance. And in the prefatory remarks, I think, we are attempting to make it clear there were certain manufacturing uses that should be in a heavier zoning district. And there were certain uses that were retail and just to describe the difference between the two.

THE COURT: All right, sir. Go ahead,

Mr. Ellis.

BY MR. ELLIS: (Continued)

Q Referring you to Exhibit 10, the next to the last page which is a building permit dated 5/28/76; was that building permit granted while you were director of planning for Hanover County?

A Let me find that one, 5/28/76.

Q Next to the last page it should - - It's in the name of Lynn Tyler and Don Carter.

A Yes, I have it.

Q You are - -

A You are, yes.

Q Was that building permit granted while you

1 were director of planning of Hanover County?

2 A Yes, it was.

3 Q Could you tell us what that was for?

4 A A fast gas station located on the east
5 side of U.S. Route 1, which would be the northbound lane,
6 approximately at the intersection of Route 637 at Lee Road and
7 U.S. Route 301.

8 Q What was the zoning at that particular
9 location?

10 A B-3.

11 Q I refer you to the next page, which is
12 dated June 9, 1978, in the name of the owner, Bradley Brothers,
13 Incorporated, and it refers to a self-service gas and
14 convenience store. I ask you, are you familiar with that
15 particular site and the operation?

16 A Yes, this particular site is very near my
17 home, in fact, it's about three blocks from my home. It is a
18 self-service gas station and convenience store.

19 Q What is the zoning on that particular
20 location?

21 A I believe it's B-3 as well.

22 Q When you were with the County in the capacity
23 of director of planning, did you have occasion to deal with the
24 State Water Control Board relative to applications for NPDES

1 In, you know, dealings that I had had, both with the Water
2 Control Board and other State agencies, if the use could not
3 be achieved within the county, it was pointless for them to
4 continue with the permit processing.

5 Q Mr. Millikan, did you happen to be present
6 at the hearing in Ashland on the application of Telum in this
7 case before the Water Control Board?

8 A Not before the Water Control Board, no.

9 MR. ELLIS: I have no other questions.

10 THE COURT: Before you cross examine,
11 Mr. Tribble, because you might want to ask another
12 question, Mr. Ellis.

13 Mr. Millikan, had the County ordinance been
14 changed to require the recordation of the site plans
15 while you were still here?

16 THE WITNESS: Yes, Your Honor, it had been.

17 THE COURT: In the process that you went
18 through, in your office at the time you were here,
19 and after the recordation of the site plans was
20 required, was your process such that the site plan
21 could have been recorded for a use that was not in
22 a proper zone?

23 THE WITNESS: No. Our process was, we
24 checked the zoning of it, of the property, and the

application that was submitted by the applicant.

They weren't correct, we did not expend our time to continue a review of it. It was pointless.

THE COURT: All right, sir.

Anything on that, Mr. Ellis?

MR. ELLIS: Yes, I would like to follow up.

BY MR. ELLIS: (Continued)

Q Then, I take it from your answers to the Court's questions, if the zoning was not proper, you would not have recorded the site plan?

A No, sir. We would hold the plans in abeyance pending a zoning change. But we did not expend time to review and, certainly, not record site plans for a use that couldn't be built. I think that would have been very poor.

MR. ELLIS: That is all the questions

I have.

THE COURT: All right, Mr. Tribble?

CROSS EXAMINATION

BY MR. TRIBLE:

Q Mr. Millikan, you made reference to four truckstops, I believe, in your presentation; one was Jarrell's, one was as we come down the other, would be Truckstops of

ground to absorb that runoff from the paved parking area than he did in the first, within the other problems that we had identified. I think that they may be different, but they may very well be of equal intensity. I think the gasoline-powered traffic creates sometimes much more problem than the truck traffic does.

Q Then you are saying that, as I interpret what you are saying, that a use primarily designated for diesel trucks, the problems, planningwise, are no more, no worse in that facility than, say, a facility that dealt purely with cars?

A Not necessarily. I was referring to the illustrations that you gave me, not to what you - -

Q Then would you say a facility that had six diesel tanks that had storage capacity for 80,000 gallons of diesel fuel, that had three islands for gasoline with storage capacity of 20,000 gallons of gasoline fuel; would you say that facility is geared primarily for heavy truck, for heavy truck traffic?

A I would say it was geared toward truck traffic, yes.

Q Heavier trucks that use diesel on a ten acre piece of land?

A I would like a little bit of clarification

on your terms.

Q Let me ask the questions.

MR. ELLIS: If the witness doesn't understand the questions, Your Honor, he is entitled to be clarified. When he gives an answer, -- He doesn't know whether he means a half-ton pickup or 18-wheeler when he said heavy trucking.

THE COURT: Mr. Tribble, can you define - -

MR. TRIBLE: Eighteen wheeler.

BY MR. TRIBLE: (Continued)

Q Would you expect 18-wheelers in a facility, predominantly 18-wheelers in a facility as I described?

A I would expect predominantly 18-wheelers as well as your standard van-type truck. As far as the breakdown, I don't have the experience in knowing, you know, the mix that is going to be - - I was going to say the mix between your van-type truck which is diesel powered and your 18-wheeler, which is primarily tractor and trailer. And with the research generals of diesel for a viable fuel for automotive, I think that brings us into another problem in my own mind.

Q Would you, as an expert on the Hanover County ordinance and as a planner, describe the general

1 Q What agency or department approves sewer
2 systems?

3 A The Hanover County Health Department.

4 Q To this date, have you received approval
5 for the sewer system?

6 A No, sir, I have not.

7 Q Would it be fair to say, would you state
8 whether or not everything else was in order including zoning;
9 could you, at this time, approve the building permit?

10 A No, sir, I could not approve it until the
11 Health Department has approved it.

12 Q Mr. Bowles, how long have you been the
13 building official in Hanover County?

14 A About 17 years and eight months.

15 Q Would you describe - - Are you familiar
16 with the plans for the Telum application, for the Telum
17 facility?

18 A Yes, sir.

19 Q Would you describe the facilities?

20 A The first page I am looking at now is
21 the page with the construction plan of the cashier's booth and
22 toilet facilities. And it is 38 foot, six by sixteen foot
23 depth and that building has in it equipment room, office, men
24 and women's rest rooms, a hall, and an open space for the cashier.

1 On this same plan, there is a canopy on there that states it's
2 30 foot by 174 foot. And there is, also, another canopy on
3 here that is 30 foot by 74 foot. Those are the construction
4 plans that are shown on here.

5 Q Plumbing?

6 A It, also, has four tanks, underground tanks,
7 20,000 gallon tanks there and for diesel fuel. And it has two,
8 12,000 gallon gasoline tanks and one 8,000 gallon storage tank
9 there for gasoline.

10 Q Considering your experience as a building
11 official over 18 years, would you say that the primary purpose
12 for this facility is a dispensing of diesel fuel or gas fuel?

13 MR. ELLIS: Your Honor, I would object
14 to that. It's not a building code question. He
15 has described the facility and I think the Court
16 can draw what conclusions it may from it.

17 THE COURT: Have we had testimony from
18 either Mr. Bowles or Mr. Phillips before that the
19 capacity of the tanks are not important as the time
20 of deliveries or something of that nature?

21 MR. TRIBLE: The point I am trying to make,
22 Your Honor, is - -

23 THE COURT: Yes, sir, but is Mr. Bowles,
24 as a building inspector, qualified?

1 MR. TRIBLE: He has reviewed every type
2 of building that has been built in Hanover County
3 for the last 17 years. And I submit, with regard
4 to types of buildings and what they are used for,
5 I would think he would be an expert in that field.
6 Does your objection go to whether or not he is an
7 expert?

8 MR. ELLIS: It goes to everything.

9 THE COURT: All right. Mr. Ellis, I am
10 going to overrule your objection and let him testify.
11

12 A (Continued) From the evidence here, the
13 storage tanks, it's 80,000 gallons of diesel to 32,000 of
14 gasoline and I would presume that the greatest use would be
15 of diesel fuel.

16 Q Considering your experience in fuel, who
17 does this deliver from, say, a facility, which I am sure you
18 reviewed many times that it dispenses primarily gasoline?

19 A Well, usually gasoline service stations
20 and gasoline pumping facilities. For instance, is Bradley and
21 Boswell use an acre or less of land.

22 Q How much is involved there?

23 A I think 11 acres as stated on this
24 application, 11 acres of land.

Q When you were employed by Hanover County, what were your duties?

A My duties included reviewing all subdivision requests and reviewing site plan applications. And, generally, assisting in any other way.

Q What were your duties with regard to building permits?

A None. My only relationship to building permits had to deal with a development that required a site plan, had to have that site plan before the building permit could be signed. Frank Dunbar, the zoning administrator who signed the building permit, would always check with me to make sure it had been completed.

Q Do you recall whether or not you discussed with Mr. Dennis Beard the use of the property including the site plan?

A I recall discussing it with him on a phone conversation perhaps a couple times in which Dennis would ask me what the situation was. And I would, basically, tell him that I didn't know what the situation was because as I understood the circumstances, there was conclusion, not conclusion, but there was an understanding that the zoning may not have been proper for the requested use. Then, I indicated - - I did not know, basically, when we discussed it.

1 Q This was sometime after the application
2 was made? I think the application was made June 16, 1977.

3 A As I recall it, the conversations occurred
4 after the application. Dennis would be calling me to see what
5 the status of the site plan review was and I would have told
6 him, you know, if there were any problems with it - - and,
7 I believe, and he would have asked me about the whole zoning
8 question and at that time, I didn't know too much about it,
9 but I would give him what I understood to be the situation.

10 Q Are you familiar with a letter that you
11 wrote to Mr. Beard dated July 28, 1978, regarding that site
12 plan?

13 A In which I listed the ways, yes, I am
14 familiar with the letter.

15 Q At any time up until the time that you
16 wrote that letter, did you know whether or not the property
17 was properly zoned for the use that it was contemplated?

18 A No, I did not. There was discussion going
19 on in the office between Roy and York and, I believe, also,
20 yourself, concerning that question. But as I recall, a
21 determination had not been made. I was not aware of any specific
22 position as time went on. I don't know exactly the timing of
23 coinciding when the site plan was reviewed. And when the
24 discussions and the decision was eventually made in regard to

1 zoning, I don't know how that time worked out. At a certain
2 time, there was an indecision and then they decided it was
3 appropriate. I don't recall except, generally speaking, I only
4 recall that the site plan, when he was reviewing the site plan,
5 the issue of zoning had not been finally determined.

6 Q I would like to hand you a copy of that
7 letter, if I could, which is Exhibit something or another.
8 I don't have a very good list of those exhibits. If I could
9 get numbers from someone else. Number 5. Is this a letter
10 that you wrote, a copy of, that you wrote to Mr. Beard?

11 A Yes, it is.

12 Q Considering the third page of the letter,
13 the last paragraph, no, the next to the last paragraph, - -

14 MR.. ELLIS: Second page or third page?

15 MR.. TRIBLE: Third page - - second page,
16 next to the last paragraph.

17
18 BY MR.. TRIBLE: (Continued)

19 Q Would you read that paragraph?

20 A "Once all comments have been incorporated
21 into a final site plan, recordation in the Clerk of the Circuit
22 Court Office will follow."

23 Q Would you state whether or not under any
24 set of circumstances, if these were complied with that you would

1 And if they said, if they accepted that and they
2 said - - and we explained it to them, and they said,
3 I guess, "You're right," then I could ask them,
4 "Do you want to go ahead and record the site plan?"
5 And the reasonable answer would have been, "No,"
6 because there would have been no point to submit
7 the copies to pay the fee because - -

8 THE COURT: Let me phrase it this way:
9 If you had received a site plan that incorporated
10 all nine of those statements together with five
11 dollars to record the site plan, would you have asked
12 Mr. Dunbar what the zoning was before you walked
13 into the Clerk's Office and recorded it?

14 THE WITNESS: No, I wouldn't have.

15 THE COURT: All right, go ahead, Mr. Tribble.

16
17 BY MR.. TRIBBLE: (Continued)

18 Q Were you present at a June 16, 1978 meeting
19 with Roy Crawford attended by a Mr. Kimball and a representative
20 of Telum, who was a representative of Telum, Mr. Hanawalt, along
21 with Mr. Ellis in which the building permit for Telum was
22 discussed?

23 A Yes, sir.

24 Q Do you recall a discussion with regard to

1 the use to which Telum proposed to put the property?

2 A Yes, sir.

3 Q Do you recall whether or not Mr. Crawford
4 specifically stated that a truckstop would be authorized in a
5 B-3 zone?

6 A I recall Roy stating that he was not sure
7 whether - - that he was unsure. He did not say positively or
8 negatively one way or the other. I just recall him saying
9 he, frankly, just didn't know.

10 Q Would you state whether or not you ever
11 discussed the matter of the zoning with Mr. Crawford subsequent
12 to the meeting of June 16, 1978?

13 A I am sure I did at several different
14 instances. Immediately subsequent to the meeting, I recall
15 discussing it briefly with Roy and saying, you know, "What do
16 you think," because he did not state, he did not state an
17 opinion during the meeting. And I wanted to ask him after the
18 meeting was over with, just to - -

19 Q Immediately subsequent to the meeting, was
20 he decided or - -

21 A He was undecided and I wanted to pursue
22 that indecision with him so at least I could understand as best
23 I could determine as to what level he had come to. He was
24 undecided. He did not see how it was permitted in the ordinance.

1 down-zone the property; is that not correct?

2 A Yes, sir.

3 Q And so, it would be fair to assume that
4 prior to July the 28th, you sent out inquiries to the department
5 members relative to the use to which the site was to be put
6 in the site plan?

7 A Yes, sir.

8 Q You included those comments or several of
9 the comments that you received from the various departments
10 with your letter?

11 A Yes, sir.

12 Q Do you recall when this period of indecision,
13 with respect to this application, terminated?

14 A I do not recall any specific date.

15 Q Would it be fair to say it may have been
16 in the late summer or early fall of 1978?

17 A Yes, but I do not recall a specific date,
18 but I do remember after Roy had, and York and Mr. Tribble had
19 discussed the matter, that it seemed apparent to them that it
20 wasn't an appropriate use.

21 Q And do you know whether or not there was
22 any written communication to Mr. Beard or Mr. Kimball or any
23 other representative of Telum, the period of indecision had
24 terminated and that the decision had been made that they couldn't

1 put this use on that property?

2 A I am not aware of when and if or how that
3 occurred. I am only aware that the decision was made.

4 THE COURT: Redirect, Mr. Tribble?

5 MR. TRIBLE: No, Your Honor.

6 THE COURT: May Mr. Johnston be excused?

7 MR. TRIBLE: Yes.

8 THE COURT: May he be excused and go home?

9 MR. TRIBLE: Yes.

10 THE WITNESS: Thank you.

11
12 WITNESS STOOD ASIDE

13
14 MR. TRIBLE: Mr. Crawford.

15
16 ROY W. CRAWFORD, being previously duly
17 sworn, was recalled and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. TRIBLE:

20 Q For the record, would you give your name
21 and occupation?

22 A Roy W. Crawford, Principal Planner, Hanover
23 County.

24 Q Are you familiar with the proposal by the

A Yes, sir.

Q It is correct?

A Yes, sir, it is correct.

Q Were you present at a June 29, 1978 meeting of the Planning Commission in which they considered the rezoning of that particular section of 54 and 95 from a B-3 to a B-2?

A Yes, sir, I was.

Q Did you give an interpretation of the Zoning Ordinance at that time to the Planning Commission as to whether or not a facility, which is proposed by the plaintiff, would be allowed in a B-3?

A No, sir, I did not.

Q You did not state, you did not tell the Planning Commission at that time whether or not a facility such as they proposed would be allowed in that zone?

MR. ELLIS: Objection, Your Honor. He just asked the question and the witness said, "No, sir."

BY MR. TRIBLE: (Continued)

Q Did you give any interpretation of a B-3 ordinance at that meeting?

A Yes, sir.

Q Would you give the Court the benefit of

1 your interpretation?

2 A The interpretation was that a facility
3 allowing heavy trucking activity would not be permitted in a
4 B-3 district.

5 Q Do you recall whether Mr. Ellis or any
6 representative from Telum corporation were at that meeting?

7 A Yes, sir.

8 Q And at that time, will you state whether
9 or not you had the responsibility for the final interpretation
10 of the Zoning Ordinance?

11 A Yes, sir, I did.

12 MR. TRIBLE: That is all the questions
13 I have.

14 MR. ELLIS: I have no questions.

15 THE COURT: You may, Mr. Crawford, be
16 excused now.

17 WITNESS STOOD ASIDE

18 MR. TRIBLE: I would like to call Mr. Cullen,
19 if I could, please.
20
21
22
23
24

CHRISTOPHER J. CULLEN, being previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. TRIBLE:

Q Mr. Cullen, would you give your name and occupation for the record, please?

A I am Christopher J. Cullen, and I am a real estate salesman.

Q What was your occupation before you became a realtor?

A I was a planner for the County of Hanover.

Q For what period of time were you planner?

A From June of '73, June 18, 1973 to the end of December, 1977.

Q What was the capacity that you served with them during those periods of time?

A Well, I started out as County planner and dealt primarily with, we had a two-man staff at the time, the director and myself, and I dealt primarily with reviewing subdivisions, enforcing the Zoning Ordinance, reviewing and approving subdivisions, building permits, and doing some case work in rezoning. Then I became a principal planner and got more involved into, I was in charge of the current planning section, so to speak, where we reviewed the site plan, use permits

with anyone?"

MR. TRIBLE: He said, "Yes, it was with someone."

THE COURT: That was after you asked two or three questions about the quadrant, both southwest and southeast quadrants.

BY MR. TRIBLE: (Continued)

Q Do you recall discussing this with a Mr. Hanawalt?

A No.

Q Do you ever recall discussing in a discussion with anybody regarding Telum and saying that a particular use would be welcomed in the County of Hanover?

A No.

Q Would you have said something like that?

A No.

Q Would you deny ever making a statement such as that?

A Yes.

MR. TRIBLE: That is all the questions

I have.

133-A

CROSS EXAMINATION

BY MR. ELLIS:

Q Mr. Cullen, just a few questions. I forget when you said you came with Hanover; when was that?

A June 18, 1973.

Q '73. So, you were with the County when the 1974 amendments to the Zoning Ordinance were passed; were you not?

A Correct.

Q Then going back up to the late fall or early winter of 1976, I believe, there did come a time when you did, to a great extent, have discussions with Mr. Hanawalt relative to the pending application in Ashland; either Mr. Hanawalt or someone, is that not correct?

A With someone, yes.

Q With someone?

A I don't recall it being '76.

Q I'm sorry, I'm sorry, '78. I will get my dates straight. In the fall of 1977?

A Around that time period I discussed it with someone, correct, in the Town of Ashland.

Q And at that time, there was a discussion concerning the fact that the Town had the B-3 zoning at that location which was the same as the County's own zoning; is that

1 not correct?

2 A Right.

3 Q You understood that to be the fact through
4 the annexation proceeding; is that correct?

5 A Yes.

6 Q When you had that discussion at that time,
7 did you not render the advice to whom you were talking that in
8 your opinion the use that Telum had applied for in Ashland
9 was permitted in that B-3 zone?

10 A Yes, I indicated that.

11 THE COURT: Redirect, Mr. Tribble?

12 MR. TRIBLE: No questions.

13 THE COURT: May Mr. Cullen be excused?

14 MR. TRIBLE: Yes, Your Honor.

15 THE COURT: You are excused, Mr. Cullen.

16 THE WITNESS: (Indicating in the affirmative).

17

18 WITNESS STOOD ASIDE

19

20 MR. TRIBLE: Mr. Phillips.

21

22

23

24

YORK LEE PHILLIPS, being previously duly sworn, was recalled and testified as follows:

DIRECT EXAMINATION

BY MR. TRIBLE:

Q Could you, again, state your name for the record, please?

A My name is York Lee Phillips.

Q Your age?

A I am 31.

Q And your occupation?

A I am the Director of Planning for Hanover County.

Q How long have you been employed in that capacity in Hanover County?

A Since July, approximately, 11 of 1978.

Q Where were you prior to coming with the County?

A I was the director of planning for the City of Northampton, Massachusetts.

Q How long were you with Northampton?

A I was there five years.

Q How large a city is Northampton?

A Northampton has a population of about 32,500 or 33,000.

1 Q Where were you employed prior to coming
2 to Northampton?

3 A I was with the County of Fairfax, Virginia.

4 Q How long were you there?

5 A I was there four years.

6 Q What were your duties there?

7 A I worked in two different agencies. I was
8 in the Division of Land Use Administration, which had primary
9 responsibility for processing of rezoning applications,
10 applications for special permits and special exceptions
11 carrying out small areas, studies related to zoning applications.
12 Subsequent, I was with the Office of Comprehensive Planning
13 in a similar type of capacity, that is dealing with zoning
14 ordinance, development of the zoning ordinance and the review
15 of applications for zoning related matters.

16 Q Would you give your educational background?

17 A I have a Bachelor of Urban Planning Degree
18 from the University of Illinois, and a Master's of Urban
19 Affairs Degree from Virginia Tech.

20 Q Are you a member of any professional
21 planning associations and societies?

22 MR. ELLIS: Your Honor, we stipulate he
23 is similarly qualified as Mr. Millikan as an expert.

24 ~~THE COURT: Is that satisfactory?~~

zoning includes not only those concerns, but all regulations within the Zoning Ordinance. It's my impression that this is, also, the way the process works in Hanover County, how it operates.

Q In the case of the Telum proposal in the revised site plans submitted by Mr. Beard, would you state whether or not a site plan review is required under the Zoning Ordinance of Hanover County?

A It's my belief that based on the facility shown on that plan, speaking of the May 7, 1979 plan, is that the one you are interested in, a site plan approval would not be required.

Q Why then do you suppose there is a site plan review in this instance?

A I really can only speculate, but, - -
MR. ELLIS: I object to him speculating,
Your Honor.

BY MR. TRIBLE: (Continued)

Q Do you know Mr. Beard?

A I am acquainted with him, yes, sir.

Q Does Mr. Beard have many dealings with your office with regard to site plans?

A I believe so.

1 Q Would you state that Mr. Beard is familiar
2 with the site plan ordinance of Hanover County?

3 A I believe so.

4 Q Mr. Phillips, state whether or not you
5 have had occasion to review the proposed site plan for the
6 proposed facility?

7 A I have reviewed those plans, yes, sir.

8 Q Would you describe the facility that's
9 represented in the site plan, and you can make reference to
10 the site plan, which is Exhibit - -

11 THE COURT: Fourteen.

12
13 BY MR. TRIBLE: (Continued)

14 Q Fourteen.

15 A I have before me the plans submitted May 7,
16 of '79. Shall I deal with that one?

17 Q Those are the latest plans that your office
18 has?

19 A Yes, sir.

20 Q Describe the facilities as depicted on the
21 plans.

22 A The plan depicts two canopies, one designated
23 as covering 64 by 8 diesel islands adjacent to four, 20,000
24 gallon diesel storage tanks. The other covering three, 4 by 12

1 foot gasoline islands adjacent to two, 12,000 gallon and one,
2 8,000 gallon storage tanks. There is, also, a, what is
3 described as a kiosk and snack bar. It mentions our
4 approximate 30 by 60, as I recall. There are 27 parking
5 spaces, there is a large surfaced area, rather substantial
6 area appears to be in the vicinity of seven or eight acres,
7 which surrounds the facilities. There is a roadway or a
8 long entrance access road which leads out the northeast to
9 an intersection with Route 54, East of I-95.

10 Q Given the proposed facility as you have
11 described it as it was depicted on the site plan, would you,
12 please, as an expert in land use, give your opinion as to the
13 character of the facility?

14 A The facility appears to be one that would
15 be characterized by frequent heavy truck traffic in that there
16 are a number of islands, a number of islands for providing
17 diesel fuel, which is usually for use by larger trucks. There
18 are, also, appears to be relatively little else on the
19 property aside from a small snack bar and the gasoline island
20 that would be attractive to any particular use. As I said,
21 the area is, which is surfaced, is rather large. Consequently,
22 the use would, also, have a characteristic of general rating
23 substantial amount of runoff. It appears that in order to
24 achieve this development, there would be a substantial amount

1 of tree cutting. The use would be rather obvious to persons
2 located off the site to the north and the west.

3 Q Mr. Phillips, have you had occasion to
4 view a Bingo Station in Elkton, Maryland?

5 A Yes, I have.

6 Q Would you say that filling station is
7 similar in character to this particular one?

8 A The facility as shown on the site plan
9 is very similar to the facilities that I viewed at the Bingo
10 Filling Station or activity in Elkton, Maryland.

11 Q When did you view this?

12 A I was there on Tuesday, the 4th of
13 September.

14 Q Would you describe what you saw? And I
15 know that you have some pictures. Would you describe what you
16 saw, what you saw using pictures?

17 ----- MR. ELLIS: I am going to - - The
18 description, I don't think they are relevant to
19 this case. Mr. Kimball has testified that they
20 are different and this is a different operation
21 down here. I submit we are restricting this case
22 to the application as submitted.

23 THE COURT: Mr. Phillips just got through
24 testifying after looking at this site plan that

1 they are similar. I am overruling your objection
2 and letting him testify.

3 MR. TRIBLE: Your Honor, could we set up
4 a slide show?

5 THE COURT: Let's recess for five minutes.

6 NOTE: A short recess was held.

7
8 MR. TRIBLE: Your Honor, Mr. Phillips has
9 been requested to describe what he saw in Elkton,
10 Maryland.

11
12 BY MR. TRIBLE: (Continued)

13 Q If you could proceed, Mr. Phillips.

14 A Thank you.

15 MR. ELLIS: Let the record note my
16 objection to the slides.

17 THE COURT: Yes, sir, it is continuous.

18
19 A (Continued) What I observed in Elkton,
20 Maryland, was a facility consisting of three major structures,
21 the first being on the right, a canopy with six pump islands
22 dispensing diesel fuel. On the left, a smaller canopy with two
23 sets of two tons each, each with two pumps dispensing gasoline.
24 And a third building you can see in the center in the rear,

1 which is a building. I don't offhand, can't offhand say the
2 dimensions, but approximately 30 by 50 or thereabouts feet.
3 In which is located a snack bar, a seating area for people to
4 eat. Rest rooms and a place where fuel and food could be paid
5 for. This is the gasoline dispensing area and a view of the
6 diesel fuel canopy and dispensing area. This is a closer view
7 of the facility which dispenses, which sells food and where
8 the money is taken. The fuel, the diesel fuel dispensing area
9 consists, as I said, of six islands, each one apparently
10 designed to accommodate two trucks. Each island has a single
11 pump with two hoses, has a Virginia right of facilities for
12 minor things, such as cleaning windshields, and so forth.
13 And a telephone connected to the place where the person who
14 accepts money works. The peculiar character of the diesel
15 dispensing area is that it is located so as to have a large
16 area, both to the rear and to the front, apparently designed
17 to accommodate turning movements of large trucks.

18 This is the area to the rear where trucks
19 approach to arrive at the fuel dispensing area. The truck in
20 the background is going off down the road, an entrance road,
21 which goes out to a state highway, which has an interchange
22 with Interstate 95. This is a view of the gasoline storage
23 area. This is one automobile there. I was there for 45 minutes.
24 I was there for longer than that, but during a period of 45

1 minutes when I made a count, there were approximately 20
2 trucks serviced and two vehicles at the gasoline pump.

3 The pumps on the day I was there, there was
4 a single gasoline pump open, the others had signs saying the
5 pump was not in use. This sequence of pictures shows how the
6 truck would arrive along the surface road, enter the area
7 behind the fuel, the truck fuel or the diesel fuel canopy.
8 Make a turn, a wide turn, into the area underneath the canopy,
9 receive servicing and when it was through, depart, coming out
10 the way it came in. I had a couple more shots of the trucks
11 using the service road. The service, the access road itself
12 and sign located adjacent to 95 at the heart, at a location
13 on the property closest to 95 farthest from the roadway leading
14 in from the state highway, announcing the availability of fuel.

15 That is all I had.

16 THE COURT: All right.

17
18 BY MR. TRIBLE: (Continued)

19 Q Mr. Phillips, considering what the plaintiff
20 has applied for in this case and the similar facility such as
21 the one in Maryland and the one proposed in Ashland, how would
22 you, as a planner, categorize the use to which the plaintiff
23 has applied for in this case?

24 A I will categorize the use as a use in which

1 considerable amount of traffic is evident. Not unlike a
2 truckstop, I would say.

3 Q How would you define a truckstop?

4 A I would define a truckstop as being a
5 facility where fuel and minor servicing is provided for,
6 principally for trucks. I would, in that case, categorize
7 a truck as being a vehicle of over one or two-tons capacity,
8 I would say. Principally large vehicles that use diesel as
9 opposed to gasoline fuel.

10 Q Mr. Phillips, are you, or are you not
11 primarily responsible and finally responsible for the
12 termination of the and over the County Zoning Ordinance?

13 A I am.

14 Q Would you give us, give the Court the
15 benefit of your interpretation of the Zoning Ordinance and
16 whether or not the use for which the plaintiff has applied
17 is a use allowed in a B-3 zone, including why or why not?

18 A Yes, sir. It is and has been my inter-
19 pretation that the use proposed by the applicant characterized
20 by what is shown on the site plan is not a use allowed in the
21 B-3 zone. Making that interpretation, I have reviewed the
22 B-3 zone including both the statement of purpose and intent.
23 The uses specifically allowed in the B-3 zone, the character
24 of the B-3 zone as it relates to B-1, B-2, and the M districts.

1 M-1, M-2, and M-3. Again, in making that interpretation,
2 I was guided by, and am guided by the nature of the various
3 uses allowed in the zone vis-a-vis the nature of the use
4 proposed here.

5 Q Would you, with reference to the ordinance,
6 go directly in the interpretation how you arrived at your
7 interpretation specifically?

8 A The B-3 zone allows as a use, I believe,
9 what is referred to - - and I don't have the ordinance here.
10 Might I - -

11 Q We have the ordinance for reference.

12 A I would prefer not to misquote it. B-3
13 allows, as a use among other things, a use called a filling
14 station with a provision that bulk storage of inflammable
15 liquids is underground. By definition a filling station refers
16 to an automobile service station, that is the term used, which
17 depicts an automobile service station to being a place of
18 business where, with pumps and underground storage tanks, so
19 on and so forth, for the purpose of servicing at retail of
20 motor vehicles with fuels and lubricants. It's my interpretation
21 in that sense that motor vehicles, because of the lead in
22 paragraph 12.1, Article V, which goes back to the lead in
23 paragraph B-3 district that the term "motor vehicles" was not
24 intended to include trucks, primarily large trucks, which

1 receive diesel fuel, by virtue of the language which includes
2 the phrase or the statement - - I will read the whole thing. "The
3 purpose of this district is to provide sufficient space in appro-
4 priate locations for a wide variety of commercial, automotive,
5 and miscellaneous service activities, generally serving a wide
6 area of the County and located particularly along certain exist-
7 ing major thoroughfares where a general mixture of commercial and
8 service activity now exists, but which uses are not characterized
9 by extensive warehousing, frequent heavy trucking activity, open
10 storage of material, or the nuisance factors of dust, odor, and
11 noise, associated with manufacturing."

12 As I said, I, also, look at other uses in
13 the B-3 zone, also, the B-1 and B-2 zones. I noted that for
14 example in the B-2 zone a filling station is allowed as a use
15 that required, but it is allowed, subject to such a permit. I
16 noted that other uses, generally, through the B-1, B-2, B-3 zones
17 obviously provide a degree of truck-related activity. The dis-
18 tinction being this distinction, I couldn't find any deviation
19 from the distinction being that that trucking activity was of a
20 more intermittent nature. It was not frequent. While trucks
21 might be large, they were not arriving and departing from a
22 facility on a frequent basis. Consequently, the activity of the
23 other uses clearly was not of a character where there would be,
24 what I read to be, frequent heavy trucking activity.

MR. TRIBLE: That is all, Your Honor.

THE COURT: Before you let him go, Mr.

Phillips, I am going to let you cross examine him. But you might want to ask along what I am going to ask.

BY THE COURT:

Q Looking at the 12.1 again.

A Yes, sir.

Q Did you, in your examination, of it, in your arrival on the job, did you go into the legislative history of the change of 1974?

A Not in so many words, no, sir.

Q Can you elucidate to the Court why the change was made?

A No, sir.

Q The second question is: We interpreted, when Mr. Millikan interpreted it, why is the comma after noise in the last line?

A Sir, it's my reading of this, and I think that the terms "dust," "odor," and "noise" are set off by commas so as to separate them in the phrase, "or the nuisance factors of dust, odor, and noise, associated with manufacturing." That is the way I read it. It's been a long time since I have had English grammar to remember the rules of commas.

Q Let me ask you another question: If we took a ten acre site and put in only gas pumps and, say, we put in a

1 100 islands and everything else was the same as shown on the
2 Telum plan, would that use be allowed B-3?

3 A I think the clear distinction is over the
4 trucks and, yes, sir, I think that many islands all dispensing
5 gasoline would not attract large trucks, heavy trucks, on a
6 frequent basis. And therefore, I would not fall under the
7 same kind of interpretation. I, also, think the character
8 of the use would be somewhat different as a result.

9 Q What is the disagreement between frequent
10 heavy trucking activity and frequent automobile activity?

11 A Well, sir, the frequent heavy trucks - -

12 Q Does it go to traffic control?

13 A More than that. I was going to try to
14 make a list. The large trucks have caused a number of impacts,
15 if you will. I think, among other things, there is a concern
16 with traffic control because trucks move more awkwardly and
17 slowly through intersections. Therefore, you have more of a
18 problem with turning movements and it's a well accepted
19 principle of planning that it is not so much the volume of
20 traffic as it is the interruption of the flow of traffic
21 because of turning movements. In addition, the large trucks
22 are more, they are, also, exhibit considerably more noise.
23 They do give off exhaust. They have a propensity, to more of
24 a propensity to travel at night when they might be more of a

1 disturbance. A number of things like these. These are the
2 kinds of considerations that would go into drawing up a zoning
3 ordinance.

4 Q How many cars would you have to have to
5 equal a heavy truck?

6 A Well, in terms of - - There would be
7 different equivalents with respect to set standards. Certainly,
8 in terms of length, the degree to which a truck occupies a lane
9 of space on a roadway, say, waiting for a light, it's probably
10 three or four to one. In terms of noise, I am not sure.
11 Its function of the number as opposed to some other character-
12 istic; that is, a dozen automobiles probably couldn't be
13 heard at the same distance, a single truck could be heard.
14 With respect to - - in other words, with respect to other
15 things, there would be different degrees, different relationships.

16 Q All right, sir. Thank you.

17 THE COURT: Any other questions?

18 MR. ELLIS: I would like to ask some
19 questions.

20 THE COURT: I am going to let you. I just
21 wanted the full gamut.

22 MR. ELLIS: I just want to ask two or three.

23 THE COURT: I understand.
24

Q In the last month?

A I can't say specifically.

Q Prior to the last month, would it have been your conclusion that a site plan was required?

A I think if the question had been raised, I would have first gone to the ordinance to see what it said and reviewed the plan once again.

Q Of course, you weren't here when the plans were submitted?

A That is correct.

Q So, you don't know why it was required that a site plan be submitted?

A I can say I don't know why the site plan was submitted, yes, sir.

Q And you don't know why the County officials, even after you were here, spent so much time studying the site plan, do you?

A Well, there are two things there and I am not sure I can specifically answer either one of them. Let me point them out. One plan is different than the one submitted previously. I did not look at those plans to see if they necessarily met the same standards.

The other point is that routinely, I believe, our office will review a plan through a normal procedure, if it

1 is submitted. There is no provision in the site plan review
2 process for the rejection of a site plan, I don't believe.
3 And there is no - - it's a relatively simple process. That is
4 for the purposes of our office. It merely means receiving
5 plans and sending them out, taking back the comments, collating
6 the comments and returning them, and so forth, such that I
7 don't think it would be particularly onerous to pursue a plan
8 even if one had not been required.

9 Q All right. Well, assuming, then, that you
10 are now correct, or have reached the correct conclusion within
11 the last month, no site plan is required, then, insofar as the
12 Telum application is concerned, assuming that it was in the
13 proper zone. All Telum would have to do is be, receive
14 clearance from the Health Department that a sewerage plan was
15 approved and its building plans met the BOCA Code; is that not
16 correct, in order to get a building permit?

17 A As a practical matter, I think that is
18 correct.

19 Q All right, sir. Now, I believe that when
20 I called you to the stand as an adverse witness, you defined,
21 or a question I put to you was whether or not a truck was a
22 motor vehicle.

23 A That is correct.

24 Q And your response was in broad connotations,

1 now?

2 MR. TRIBLE: I would like to have a short
3 recess, if I could, Your Honor.

4 NOTE: A short recess was held.

5
6 NOTE: The closing statements of both
7 Mr. Ellis and Mr. Tribble were reported but are not
8 included in the transcript.
9

10 THE COURT: The Court's first opinion is
11 that as far as the Court is concerned, there is no
12 ambiguity in the section of the ordinance that has
13 been submitted in this case. And the plan by
14 whatever name, whether it's called a truckstop or
15 filling station or fuel stop or, if you will, service
16 station is allowed in B-3 under the ordinance.
17 The second thing, is that the Court would rule, also,
18 that the letter of July the 28th, from Mr. Johnston,
19 was a commitment from the County that told the
20 landowner if he complied with those nine items, or
21 how many there were on there, that he would have a
22 site plan and he could use the land. So, the Court
23 is of the opinion that the prayer of the amended
24 petition for mandamus ought to be granted.

1 The only addition to the prayer would be
2 subject to the items set forth in the answers to
3 the interrogatories or the admissions in paragraph
4 six, which are lettered A through J, and since the
5 Health Department is not a party to this suit,
6 Mr. Bowles has a right to wait for their approval
7 from that situation.

8 I don't know how you draw the order.
9 I will instruct Mr. Ellis to draw the order. The
10 Court does not know whether mandamus can be issued
11 conditionally, but the Court is ordering that it
12 will be. I thank the counsel for fine preparation.
13 I feel that we made a good record for both sides.
14 And, Mr. Ellis, if you will send your order to Mr.
15 Tribble and let him note his objection, I will enter
16 it.

17 MR. ELLIS: We had one further item that
18 we sought in this case. And we believe that the
19 evidence of the actions on the part of the County
20 has sustained the award of attorneys fees to counsel
21 for the petitioner. And we would ask that the Court
22 award such fees either against the County or Messrs.
23 Phillips and Bowles.

24 I think the Court might perhaps have to

May 17, 1978

PLAINTIFF'S EXHIBIT 1

VIRGINIA: At an adjourned meeting of the Board of Supervisors for Hanover County held in the Courtroom of the Henry Taylor Wickham Building on the 17th of May, 1978 at 8 p.m.

Present: Mr. Jerry P. Owen, Chairman
Mr. A. Page Nuckols
Dr. Robert G. Evans
Mrs. Nina K. Peace
Mr. E. C. C. Woods, Jr.
Mr. W. T. West
Mr. L. Andrew Duke, Jr.
Mr. Peter L. Tribble, County Attorney
Mr. John E. Longmire, County Administrator

Mr. Owen, Chairman, called the meeting to order and stated that the first item on the agenda was the presentation of a petition from the Max Meadows area residents opposing a truck stop in their area. Mr. John Hendricks, resident of Max Meadows and representing the citizens in this area, came forward and stated his objections to the truck stop and presented the Board with a petition.

After some discussion, upon motion of Mrs. Peace, seconded by Mr. Woods, the Board unanimously resolved to initiate a rezoning request to have this property rezoned down to B-2, and doth hereby request the Planning Commission to study the possibility of requiring site-plans of all business development and to study the possibility of taking truck stops out of the B-3 zoning.

It is noted that the Board requested that the owner of this property be notified of this action.

PLANNING MATTERS

Chairman Owen requested Mr. Roy Crawford, Acting Planning Director, to come forward and present the planning matters.

Mr. Crawford stated that the Special Exception requests of John H. Houchens and Ernest Mitchell had been tabled in an effort to establish hardship cases. The County Administrator advised the Board that the Building Inspector had looked at these houses and found them to be unsafe for occupancy due to the deterioration of the flues, timbers and structure.

Upon motion of Mr. Nuckols, seconded by Dr. Evans, the Board adopted unanimously the following resolution:

BE IT RESOLVED that the request of John H. Houchen be and he hereby is granted a special exception in accordance with Title I, Article 5, Section 2.6-2-G-2 of the Hanover County Zoning Ordinance, in order to locate a mobile home for living quarters as a hardship on parcel 40-25, consisting of 2.0 acres, more or less, located on a private road off of the north side of State Route 610, approximately 0.4 of a mile west of its junction with State Route 677, for a period of one year; said special exception expiring May 31, 1979, and

BE IT RESOLVED that the request of Ernest Mitchell be and he hereby is granted a special exception in accordance with Title I, Article 5, Section 2.6-2-G-2 of the Hanover County Zoning Ordinance in order to park a mobile home (due to a hardship) on part of parcel 29-70, located on the north side of State Route 33, approximately one-half mile east of the intersection of Route 33, and Route 617, for a period of one year; said special exception expiring May 31, 1979.

It is noted that the old houses on these locations could not be lived in by anyone.

EXHIBIT NO. 1
Plaintiff
2-6-79
Judge

I certify this to be
a true copy.

John E. Longmire
John E. Longmire, Clerk
Hanover County Board
of Supervisors

July 26, 1978

PLAINTIFF'S EXHIBIT 2

Mr. Phillips then presented C-12-78, a request of the Board of Supervisors.

Mr. John Hendricks appeared in behalf of the request. He advised that he represented the citizens of Max Meadows Subdivision. Traffic congestion on Route 54, noise and pollution were problems he felt would be created by the proposed truck stop.

Mrs. Mildred White also spoke in favor of the request, pointing out how the trucks would create traffic hazards.

Mr. Carter Refo came forward in opposition to the rezoning request and advised the Board that he represented the estate of Elizabeth Carter. He pointed out to the Board that an error was made in the advertisement of the parcel. The acreage should have been 22.5 acres instead of 16.61 as advertised.

He gave a brief history of the zoning of the property, and stated that it would be unfair and discriminatory spot zoning in reverse. He explained how the property would possibly lose some value if it was down zoned to B-2.

Mr. Jack Ellis, Attorney, representing Tellum, Inc., Contract Purchaser came forward and stated that he had been assured by the Planning Office that everything was in order and the zoning was proper. He stated that the Town of Ashland had backed out of an agreement to extend sewer and water services across I-95 to this location and he was now seeking a permit from the State of Virginia for a small sewage treatment plant. He stated that the building inspector had told him that the building permit could be issued as soon as the State permit was issued.

Mr. Ellis described the proposed development as being a self-service gas station with 75% truck business and 25% automobiles.

Mr. Edmund DeJannette, Jr., came forward in opposition, stating that the 1968-B-3 zoning enabled the best use of the property.

The Board was advised that a petition had been received by the Planning Department.

After further discussion, upon motion of Mrs. Peace, seconded by Mr. Woods, the Board adopted unanimously the following resolution:

BE IT RESOLVED that the request of the Hanover County Board of Supervisors to rezone from B-1, General Business, to B-2, Community Business, Parcel 47-44, located in the southeast quadrant of the intersection of State Route 54 and I-95 be and the same is hereby denied.

Mr. Phillips then presented C-13-78, the request of Herman F. Blake, Sr.

Mr. Nichols, Vice-Chairman presiding called for those in favor of the request.

Mr. Eugene McCaul, Attorney for Mr. Blake, came forward and spoke in behalf of the request, stating that the Planning Commission had recommended approval.

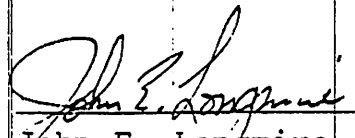
Mr. Roland A. Hughes, an adjacent property owner, came forward and asked where the road would be located. Dr. Evans explained that the Planning Department tried to encourage the developers to place the roads in a manner so that the next piece of property could be interconnected. The Planning Office would look at this at the time the subdivision was filed.

Upon motion of Mr. Owen, seconded by Dr. Evans, the Board was offered the following resolution:

WHEREAS, the Planning Commission of Hanover County, after due notice as therein set forth, has recommended the adoption of the following amendment to the Zoning Ordinance of Hanover County, and

EXHIBIT
Plaintiff
2
7-6-79
KAP

I certify this to be
a true copy.


John E. Longmire, Clerk
Hanover County Board
of Supervisors.

General Land Company, Inc.

1030 W. Franklin St.
Richmond, Virginia 23220
(804) 359-3575

PLAINTIFF'S EXH. 3

EXHIBIT TO
Plaintiff
9-6-79
Judge

REAL ESTATE PURCHASE AGREEMENT

This Agreement of Purchase made this 26th day of January, 1978, by and between TELUM, INC. (herein called the Purchaser) Carter L. Refo & Elizabeth N. Tompkins, Executors and of the Estate of Elizabeth D. Carter (herein called the Seller), and General Land Company, Inc. (herein called the Broker).

WITNESSETH: That Purchaser agrees to buy and Seller agrees to sell for the sum of One hundred fifty thousand DOLLARS (\$150,000.00), all that certain piece or parcel of land described as follows,

Parcel X of from 10.5 to 12.5 acres as outlined in red and Parcel Y of approximately 40,000 square feet as outlined in blue, as shown on plat of Parcel C of 22.5 acres designated as "Plat of 4 tracts of land located just East of the Town of Ashland in the Ashland District of Hanover County, Virginia, surveyed February 1961 for Mrs. Elizabeth D. Carter by William Hugh Redd, Certified Surveyor;" hereto attached and made a part of this contract; subject to confirmation by actual survey of both parcels. However, it is mutually agreed that the Sellers shall ~~retain~~ retain an easement and right of ingress and egress over an entrance and right of way to be installed by the Purchaser from Rt. 54 for themselves, assigns, and successors in interest for the benefit for all of the remaining land retained by the Sellers in Tract C of 22.5 acres as shown on said plat. The Purchaser shall build at his expense the maximum entrance on State Rt. 54 allowed by the State Highway Department and it shall be paved from the turning radius to the southern line of Parcel Y to the property line of Parcel X, such paved area to be at a minimum width of 50 feet.

Terms: \$5,000.00 down and balance in cash at closing.

Purchaser has deposited \$5,000.00 to bind this agreement which shall be held in escrow until the date of settlement and then applied to the purchase price, or returned to Purchaser if the title to the property is not marketable.

Special

Seller agrees to convey the property to Purchaser by ~~Special~~ Warranty Deed with the usual English Covenants of Title and free and clear from all encumbrances, tenancies, liens (for taxes or otherwise), except as may be otherwise provided herein, and Seller agrees to deliver possession of the property to Purchaser on the date of settlement.

All risk of loss or damage to the property by fire, windstorm, casualty, or other cause is assumed by Seller until the date of settlement.

All taxes, insurance, rents and interest shall be prorated as of the date of settlement.

The Purchaser agrees to comply with the terms of sale herein or the deposit will be forfeited, in which event one-half of said deposit shall be paid to the Seller and one-half paid to the Broker, and all parties are thereby relieved of any further liability hereunder.

Bldg., Richmond, Va.

Settlement shall be made at the offices of Refo & Tompkins, 1104 Travelers on or before May 26, 1978, or as soon thereafter as title can be examined and necessary documents prepared in reasonable time for Seller to correct any defects reported by the title examiner or surveyor.

The Seller agrees to pay to the Broker cash for services rendered a commission on the sale price of the property at the following rate: in the amount of \$10,000.00

This Agreement of Purchase constitutes the entire agreement among the parties and may not be modified or changed except by written instrument executed by all of the parties, including Broker.

This Agreement of Purchase shall be construed, interpreted, and applied according to the law of the State of Virginia and shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties, but this Agreement of Purchase shall not become effective as to any of the parties unless it has been executed by both Purchaser and Seller on or before January 26 1978. This contract is subject to the items 1 to 4 on attached supplement which forms a part of this contract.

WITNESS the following signatures and seals.

Seller

Purchaser

Elizabeth D. Carter (Seal)
Earl K. Cook (Seal)
Executors of the Estate of
Address Elizabeth D. Carter

TELUM, INC. (Seal)
BY Earl K. Cook (Seal)
Earl K. Cook, President
Address _____

Date of Execution: _____

Date of Execution: _____

ADDENDUM

It is further mutually agreed that if Parcel X upon actual survey shall be greater than 11 acres, then the Sellers at their option shall have the right to shift the eastern boundary of Parcel X in such a manner as to reuce Parcel X to 11 acres.

TELUM, INC.

Elizabeth L. Carter (SEAL)
Center L. Peto (SEAL)
Executors of the Estate of
Elizabeth L. Carter, ~~and~~

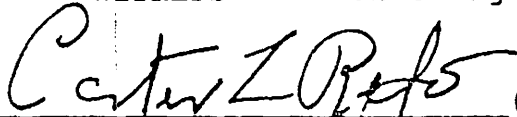
BY *Earl K. Cook* (SEAL)
Earl K. Cook, President

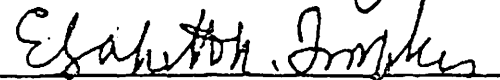
SUPPLEMENT
TO CONTRACT DATED JANUARY 26, 1978
CARTER ESTATE TO TELUM, INC.

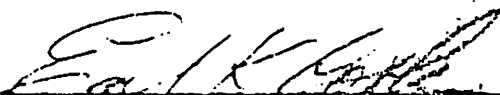
The attached printed contract shall be subject to the following additional provisions:

1. The Purchaser agrees to contract with the Town of Ashland, Virginia, to furnish water and sewerage facilities to the property which is the subject of this contract and also to all of the remaining acreage retained by the Seller and their successors in title which prior to this sale was a tract of 22.5 acres as shown on a "Plat of 4 tracts of land located just east of the Town of Ashland in the Ashland District of Hanover County, Virginia, surveyed February 1961 for Mrs. Elizabeth D. Carter by William Hugh Redd, Certified Surveyors," attached to this contract and made a part thereof. The Purchaser agrees to so construct the water and sewer facilities connecting with the Town of Ashland that they will be available to service all parts of the remaining portion of Parcel C and that the Seller shall have the right to inspect and approve such plans and that if the Seller does not approve such plans by May 26, 1978, this contract shall be terminated. The Purchaser agrees to locate a manhole for sewer connections and water jacks on Parcel X East of Route 95 and further agrees to grant to Sellers, their assigns, and successors in interest such easements across Parcel X as are necessary to make connections with said sewer manhole and water jack.
2. The Purchaser shall have the right to inspect the property to determine that it is capable of being drained and engineered for the construction of a self-service truck stop.
3. The Purchaser shall secure all Federal, State, County and municipal use permits and licenses and building permits to construct a self-service truck stop in accordance with the standard plans and specifications of Telum, Inc., as prepared by its engineering department.
4. In the event that the Purchaser is unable to satisfy all of the above mentioned conditions prior to the date of settlement on or before May 26, 1978, it shall notify the Seller of this fact and this agreement shall be null and void and the deposit paid herewith shall be returned.

WITNESS the following signatures and seals.

 (SEAL)
Carter L. Refo, Executor

 (SEAL)
Elizabeth N. Tompkins, Executor
Estate of Elizabeth D. Carter,
Deceased

 (SEAL)
Telum, Inc.
By ~~Horace W. Fairbank, Jr.~~ ^{Fairbank, Jr.}
President

ADDENDUM
TO CONTRACT DATED JANUARY 26, 1978, BETWEEN
THE EXECUTORS OF THE ESTATE OF ELIZABETH D. CARTER
AND TELUM, INC,

By this Addendum to the above mentioned contract made November 25, 1978, by and between Carter L. Refo and Elizabeth N. Tompkins, Executors of the Estate of Elizabeth D. Carter, in said contract referred to as the Sellers, and Telum, Inc., therein referred to as the Purchaser, it is mutually covenanted and agreed that the date of settlement for said contract shall be extended to November 26, 1978.

WITNESS the following signatures and seals.

Carter L. Refo, Executor

Elizabeth N. Tompkins, Executor
of the Estate of Elizabeth D.
Carter, Deceased

By _____
Horace W. Kimball
Vice President

ADDENDUM
TO CONTRACT DATED JANUARY 26, 1978, BETWEEN
THE EXECUTORS OF THE ESTATE OF ELIZABETH D. CARTER
AND TELUM, INC.

By this Addendum to the above mentioned contract made .
November 25, 1978, by and between Carter L. Refo and Elizabeth
N. Tompkins, Executors of the Estate of Elizabeth D. Carter,
in said contract referred to as the Sellers, and Telum, Inc.,
therein referred to as the Purchaser, it is mutually
covenanted and agreed that the date of settlement for said
contract shall be extended to April 20, 1979.

WITNESS the following signatures and seals.

Carter L. Refo, Executor

Elizabeth N. Tompkins
Elizabeth N. Tompkins, Executor
of the Estate of Elizabeth D.
Carter, Deceased

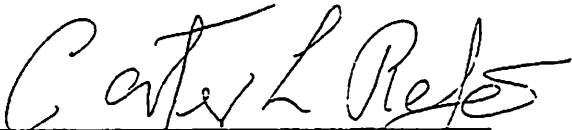
TELUM, INC.

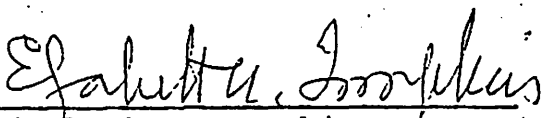
By Horace W. Kimball
Horace W. Kimball,
Vice President

ADDENDUM
TO CONTRACT DATED JANUARY 26, 1978, BETWEEN
THE EXECUTORS OF THE ESTATE OF ELIZABETH D. CARTER
AND TELUM, INC.

By this Addendum to the above mentioned contract made April 20, 1979, by and between Carter L. Refo and Elizabeth N. Tompkins, Executors of the Estate of Elizabeth D. Carter, in said contract referred to as the Sellers, and Telum, Inc., therein referred to as the Purchaser, it is mutually covenanted and agreed that the date of settlement for said contract shall be extended to July 31, 1979.

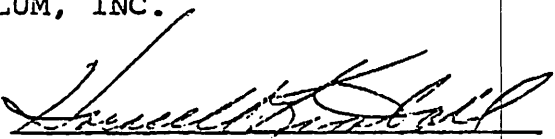
WITNESS the following signatures and seals.


Carter L. Refo, Executor


Elizabeth N. Tompkins, Executor
of the Estate of Elizabeth D. Carter,
Deceased

TELUM, INC.

By


Horace W. Kimball,
Vice President

ADDENDUM
TO CONTRACT DATED JANUARY 26, 1978, BETWEEN
THE EXECUTORS OF THE ESTATE OF ELIZABETH D. CARTER
AND TELUM, INC.

WHEREAS, the above-mentioned contract has been extended from time to time and that the latest extension of said contract will expire on July 31, 1979; and

WHEREAS, there is now pending in the Circuit Court of Hanover County, Virginia, a suit of Telum, Inc., Plaintiff v. York Phillips, County Planner for Hanover County, Edward B. Bowles, Building Official for Hanover County, and Hanover County, Defendants, wherein the Plaintiff prays that the Court issue a writ of mandamus commanding the Defendant Phillips to approve the site plan submitted by the Plaintiff, and commanding that the Defendant Bowles issue the building permit requested by the Plaintiff.

NOW, THEREFORE, it is mutually agreed between the Seller and the Purchaser that said contract shall be extended until June 1, 1980, provided, however, that should the Purchaser fail to obtain the relief prayed for in said suit and fails to perfect an appeal to the Virginia Supreme Court of Appeals, said contract shall terminate. Provided further that should the Purchaser perfect an appeal to said Court and fail to obtain the relief prayed for, from the Virginia Supreme Court of Appeals, said contract shall immediately terminate without any action of either party. Further

provided that should the County perfect an appeal to the Virginia Supreme Court of Appeals from a writ of mandamus granting relief to the Purchaser in the Circuit Court of Hanover County and the Virginia Supreme Court of Appeals should reverse such mandamus proceedings in the Circuit Court, the said contract shall terminate without the further action of either the Purchaser or the Seller. *ALL DEPOSITS SHALL BE REFUNDED TO BUYER.* *HLK*

The Seller and the Purchaser mutually agree that the Purchaser shall take measures to clear any defects in the title to the property prior to June 1, 1980, and that no further time shall be granted to clear any defects in said title as was provided in the original contract dated January 26, 1973. The Seller and the Purchaser further mutually agree that settlement shall be made under the contract between the parties before June 1, 1980, and that in no event shall the Purchaser have the right to any contract right to purchase the property after June 1, 1980.

WITNESS the following signatures this 31st day of July,

1979

Carter L. Reff

Carter L. Reff, Executor

Elizabeth N. Tompkins

Elizabeth N. Tompkins, Executor
of the Estate of Elizabeth D. Carter,
Deceased

TEIUM, INC.

By *Horace W. Kimball*

Horace W. Kimball,
Vice President

PLAINTIFF'S EXHIBIT 4

REQUEST FOR ADMISSION

PRINTERS NOTE:

The above mentioned exhibit may be found on Appendix
pages 21 through 24.

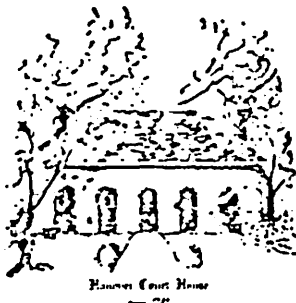
BOARD OF SUPERVISORS

JERRY P. OWEN, CHAIRMAN
CHICKAHOMINY DISTRICT

A. PAGE NUCKOLS
BEAVERDAM DISTRICT

L. ANDREW DUKE, JR.
SOUTH ANNA DISTRICT

DR. ROBERT G. EVANS
MECHANICSVILLE DISTRICT



BOARD OF SUPERVISORS

NINA K. PEACE
ASHLAND DISTRICT

W. T. WEST
COLD HARBOR DISTRICT

E. C. C. WOODS, JR.
HENRY DISTRICT

PETER L. TRIBLE
COUNTY ATTORNEY

HANOVER COUNTY

HANOVER, VIRGINIA 23069

JOHN E. LONGMIRE
COUNTY ADMINISTRATOR

PLAINTIFF'S EXHIBIT 5

July 28, 1978

Mr. Dennis C. Beard
c/o Associated Engineers
P. O. Box 959
Ashland, Virginia 23005

Re: SPR-16-78 - Bingo Filling Station

Dear Dennis:

This office has the following comments on the above referenced site plan:

1. The title block must contain the designation SPR-16-78, the title of the project, the name of the engineer, as well as the name of the developer.
2. A northpoint and a bar scale must be included on the final site plan. A vicinity map must be included with a scale of 1" = 2,000 feet. Finally, acreage of the development must also be shown.
3. The zoning of this and all adjoining properties must be shown.
4. The entire parcel must be shown with all development. If the area involved is greater than 10 acres, a scale of 1" = 50 feet may be used. All existing easements, property lines, streets, buildings, waterways, major tree masses, and other physical features must be shown.
5. The approximate location and sizes of sanitary and storm sewers, water mains, culverts, other underground structures, and all utility easements, existing and proposed, must be shown.

July 28, 1978

6. The general location and character of construction of all paved areas, entrances and exits, outdoor lighting systems, storm drainage and sanitary facilities must be shown. A development of this type requires one (1) space for each 300 square feet of building or portion thereof, thus four (4) spaces are required. Each space must be shown with a width of 10 feet, a length of 20 feet and delineated by 4" wide painted lines.
7. Location with respect to each other, to lot lines, and approximate height of all proposed buildings and structures must be shown.
8. General location, height, and material of all fences, walls, screen planting, and landscaping must be shown.
9. General location, character, size and height, and orientation of proposed signs must be shown. Before erection of any signs, a Sign Permit must be obtained from this office.

Enclosed are copies of comments from other County offices.

Once all comments have been incorporated into a final site plan, recordation in the Clerk of the Circuit Court office will follow.

For recoration, two (2) sets of mylar prints, 10 paper copies, and a check payable to R. L. Shelton, Clerk of the Circuit Court must be submitted to this office. The recordation fee is \$5.00 per page of the site plan.

Please contact this office if you have any questions.

Sincerely,



Charles Johnston
County Planner

jhs
Enclosures

EXHIBIT NO. 11
Plaintiff 6-6-79
Judge

VIRGINIA: At an adjourned meeting of the Board of Supervisors for Hanover County held in the Courtroom of the Henry Taylor Wickham Building on the 20th day of June 1978.

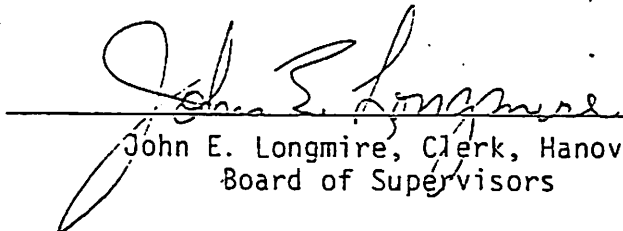
Present: Mr. Jerry P. Owen, Chairman
Mr. A. Page Nuckols
Dr. Robert G. Evans
Mrs. Nina K. Peace
Mr. E. C. C. Woods, Jr.
Mr. W. T. West
Mr. L. Andrew Duke, Jr.
Mr. John E. Longmire, County Administrator
Mr. Peter L. Tribble, County Attorney

The County Administrator advised the Board that the State Water Control Board was considering the desirability of a private sewage treatment plant on Mechumps Creek near the Town of Ashland. He said that the Town of Ashland had determined not to serve the property involved until infiltration and plant capacity problems were resolved.

On motion of Mr. Duke, seconded by Mr. Woods, it was unanimously resolved that this Board oppose the location of a private treatment plant on Mechumps Creek in an area that can be served by the Ashland Town Treatment Plant in the future; and

BE IT FURTHER RESOLVED that the County Administrator be directed to send a copy of this resolution to the State Water Control Board.

A Copy
Teste:


John E. Longmire, Clerk, Hanover County
Board of Supervisors

Alley. A public or private way affording secondary means of access to abutting property.

Alteration. (See Structural Alteration).

Apartment. A part of a building containing cooking and housekeeping facilities, consisting of a room or suite of rooms intended, designed, and used as a residence by an individual or a single family.

Apartment House. Same as "Dwelling, Multiple-Family".

Automobile Graveyard. (See Junkyard).

Automobile Service (or Filling Station). Any place of business with pumps and underground storage tanks, having as its purpose the servicing, at retail, of motor vehicles with fuels and lubricants, and including a general repair shop, paint or body shop, machine shop, vulcanizing shop or any operation requiring the removal or installation of radiator, engine, cylinder head, crankcase, transmission, differential, fenders, doors, bumpers, grills, glass, or other body parts, or any body repairing or painting.

Family. An individual or two or more persons who are related by blood or marriage living together and occupying a single housekeeping unit with single culinary facilities, or a group of not more than four (4) persons living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a non-profit, costsharing basis. Domestic servants, employed and residing on the premises shall be considered as part of the family.

Filling Station. See Automobile Service Station.

Flood Plain. Any area delineated by the U. S. Corps of Engineers, or County Engineer, subject to inundation by storms; the severity of which are expected to occur once every 100 years.

Floor Area.

- (a) Commercial, business, and industrial buildings or buildings containing mixed uses: the sum of the gross horizontal areas of the several floors of a building measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings but not including:
 - (1) attic space providing headroom of less than seven feet;
 - (2) basement or cellar space not used for retailing;
 - (3) uncovered steps or fire escapes;
 - (4) accessory water towers;
 - (5) accessory off-street parking spaces; and
 - (6) accessory off-street loading spaces.
- (b) Residential buildings: the sum of the gross horizontal areas of the several floors of a dwelling, exclusive of garages, basements, cellars, and open porches, measured from the exterior faces of the exterior walls.

Frontage.

- (a) Street Frontage: all of the property on one side of a street between two intersecting streets (crossing or terminating), measured along the line of the street, or if the street is dead-ended, then all of the property abutting on one side between an intersecting street and the dead-end of the street

- (b) Residential buidlings; the sum of the gross horizontal areas of the several floors of a dwelling, exclusive of garages, basements, cellars and open porches, measured from the exterior faces of the exterior walls.

Section 12. B-3 General Business District12.1 Purpose of the District

The purpose of this district is to provide sufficient space in appropriate locations for a wide variety of commercial, automotive, and miscellaneous service activities, generally serving a wide area of the county and located particularly along certain existing major thoroughfares where a general mixture of commercial and service activity now exists, but which uses are not characterized by extensive warehousing, frequent heavy trucking activity, open storage of material, or the nuisance factors of dust, odor, and noise, associated with manufacturing.

12.2 Permitted Uses

A building or land shall be used only for the following purposes:

1. Any use permitted in the B-2 Community Business District.
2. Animal hospital or kennel with any open pens at least 200 feet from any residential district.
3. Automobile or truck sales, service, and repairs, including body or fender repairs, but not auto salvage or junk, and any major repair or storage of equipment or materials or damaged vehicles shall be inside a completely enclosed building.
4. Bakeries, no limit on floor area.
5. Boat and boat trailer sales and storage.
6. Bottling works, dyeing and cleaning works, linen service, or laundry; furniture refinishing, plumbing and heating shop, painting shop, upholstering shop not involving furniture manufacture, tinsmithing shop, tire sales and service (including vulcanizing and re-capping but no manufacturing), appliance repairs, and general service and repair establishments, similar in character to those listed in this item; provided that no outside storage of material is permitted except as provided in this section.
7. Car-wash or automobile laundry, automatic or otherwise, providing reservoir space for not less than ten vehicles for each washing lane of an employee-operated facility.
8. Filling stations, so long as bulk storage of inflammable liquids is underground.

9. Green houses, commercial, wholesale or retail.
10. Mobile homes sales, display and storage, or sales, display and storage of travel trailers and campers, provided that all units shall be in useable condition, none shall be placed in a required front yard, the minimum parcel area shall be display area by a continuous visual screen with a minimum height of eight feet, such screen consisting of a compact evergreen hedge or foliage screening or louvered fence or wall, and the entire area shall be similarly screened from any contiguous residential development.
11. Printing, publishing and engraving establishments, photographic processing or blueprinting.
12. Rental of luggage trailers, but not including truck trailer bodies except for campers.
13. Schools for industrial training, trade or business.
14. Sign fabricating and painting shop.
15. Used car and truck sales and storage lots.
16. Wholesale establishments with not more than 5,000 square feet of accessory storage per establishment.

12.3 Permitted Accessory Uses

1. Any accessory use permitted in the R-1 Single-Family Residential District.
2. Storage of office supplies or merchandise normally carried in stock in connection with a permitted office, business, or commercial use subject to applicable district regulations.

12.4 Permitted Signs

Subject to the general sign regulations of Article 7 and consisting of accessory illuminated or non-illuminated signs as follows:

1. Flat signs, with total aggregate sign area not more than ten percent of the area of walls fronting on a street and no one sign with sign area of more than 300 square feet. Illuminated signs inside of show windows and within five feet of such windows shall be included in the computation of sign area, and in addition, shall be limited to ten percent of the total glass area of the window in which they are placed.

DOCUMENT

PRINTERS NOTE:

The above mentioned exhibit can not be reasonably reproduced.
The said exhibit consists of Large Plans,

PLAINTIFF'S RESPONSE TO REQUEST FOR ADMISSIONS
AND PLAINTIFFS' ANSWER TO DEFENDANT'S FIRST SET
OF INTERROGATORIES

PRINTERS NOTE:

The above mentioned exhibit may be found on Appendix pages
25 through 31.

Tit. 1, § 5.2-1

APPENDIX

Tit. 1, § 5.2-1

- 5.1-5-3. Church spires, belfries, cupolas, monuments, water towers, chimneys, flues, flag poles, television antennae and radio aerials are exempt. Parapet walls may be up to four feet above the height of the building on which the walls rest.
- 5.1-5-4. No accessory structure which is within ten feet of any party lot line shall be more than one story high. All accessory structures shall be less than the main structure in height.

Article 5.2. Business, General, District B-3.

- 5.2-1. Use regulations.
In business district B-3 structures to be erected or land to be used shall be for one or more of the following uses:
- 5.2-1-1. Any use permitted in B-1 and B-2 districts. (11-24-65.)
- 5.2-1-2. Service stations with major repair under cover. (11-24-65.)
- 5.2-1-3. Auto sales and service. (11-24-65.)
- 5.2-1-4. Lumber and building supply (with storage under cover). (11-24-65.)
- 5.2-1-5. Plumbing and electrical supply (with storage under cover). (11-24-65.)
- 5.2-1-6. Wholesale and processing not objectionable because of noise, dust and odors with a conditional use permit. (11-24-65.)
- 5.2-1-7. Machinery sales and service. (11-24-65.)
- 5.2-1-8. Mobile home park with a conditional use permit. (11-24-65.)
- 5.2-1-9. Water front business activities; wholesale and retail marine interest such as boats, docks, piers, etc. (11-24-65.)
- 5.2-1-10. Feed and seed supply (with storage under cover). (11-24-65.)

- 5.2-1-11. Cabinet, furniture and upholstery shops not objectionable because of noise, dust, smoke and odors with a conditional use permit. (11-24-65.)
- 5.2-1-12. Open-air, drive-in theaters with a conditional use permit. (1-27-71.)
- 5.2-2. Area regulations.
None, except for permitted uses utilizing individual water supply or sewage disposal systems, the required area for any such use shall be approved by the health official. The administrator may require a greater area if considered necessary by the health official. (11-24-65.)
- 5.2-3. Setback regulations.
Structures shall be located thirty-five feet or more from any street right of way which is fifty feet or greater in width, or sixty feet or more from the center line of any street right of way less than fifty feet in width, except that signs advertising sale or rent of premises may be erected up to the property line. This shall be known as the "setback line." (11-24-65.)
- 5.2-4. Frontage and yard regulations.
For permitted uses the minimum side yard, adjoining or adjacent to a residential or agricultural district shall be ten feet or more and off-street parking shall be in accordance with the provisions contained herein. (11-24-65.)
- 5.2-5. Height regulations.
Structures may be erected up to thirty-five feet in height from grade except that:
- 5.2-5-1. The height limit for dwellings may be increased up to forty-five feet and up to three stories, provided there are two side yards for each permitted use, each of which is ten feet or more, plus one foot or more of side yard for each additional foot of building height over thirty-five feet. (11-24-65.)
- 5.2-5-2. A public or semipublic building such as a school, church, library, or general hospital may be erected to a height of sixty feet from grade; provided that required front,

side, and rear yards shall be increased one foot for each foot in height over thirty-five feet. (11-24-65.)

- 5.2-5-3. Church spires, belfries, cupolas, monuments, water towers, chimneys, flues, flag poles, television antennae and radio aerials are exempt. Parapet walls may be up to four feet above the height of the building on which the walls rest. (11-24-65.)
- 5.2-5-4. No accessory building which is within ten feet of any party lot line shall be more than one story high. All accessory buildings shall be less than the main building in height. (11-24-65.)

Article 6. Industrial, Limited, District M-1.

STATEMENT OF INTENT.

The primary purpose of this district is to permit certain industries, which do not in any way detract from residential desirability, to locate in any area adjacent to residential uses. The limitations on (or provisions relating to) height of building, horsepower, heating, flammable liquids or explosives, controlling emission of fumes, odors and/or noise, landscaping, and the number of persons employed are imposed to protect and foster adjacent residential desirability while permitting industries to locate near a labor supply.

- 6-1. Use regulations generally.
In industrial district M-1 any structure to be erected or land to be used shall be for one or more of the following uses:
- 6-1-1. Assembly of electrical appliances, electronic instruments and devices, radios and phonographs. Also the manufacture of small parts, such as coils, condensers, transformers, and crystal holders.
- 6-1-2. Automobile assembling, painting, upholstering, repairing, rebuilding, reconditioning, body and fender work, truck

other open spaces; and to provide for amendments and changes therein; to require county planning commissions to perform certain duties with reference thereto; to permit the appointment and prescribe the powers and duties of county boards of zoning appeals; and to provide methods for enforcement of this ordinance and penalties for the violation thereof.

THEREFORE, BE IT ORDAINED, by the board of supervisors of Hanover County, Virginia, for the purpose of promoting health, safety, order, prosperity, the conservation of natural and historic resources, and the general welfare requiring it, that the following be adopted as the Zoning Ordinance of Hanover County, Virginia, together with the accompanying map adopted herewith as an integral part of the Ordinance and to be known as the Zoning Map of Hanover County, Virginia.

Article 1. Definitions.

For the purpose of this Ordinance, certain words and terms are defined as follows: Words used in the present tense include the future. Words in the singular include the plural, and the plural includes the singular.

- 1-1. *Abattoir*. A commercial slaughterhouse.
- 1-2. *Accessory use or building*. A subordinate use or building customarily incidental to and located upon the same lot occupied by a main use or building.
- 1-3. *Acreage*. A parcel of land, regardless of area, described by metes and bounds which is not a numbered lot on any recorded subdivision plat.
- 1-4. *Administration, the*. The official charged with the enforcement of the Zoning Ordinance. He may be any appointed or elected official who is by formal resolution designated to the position by the governing body. He may serve with or without compensation as determined by the governing body.
- 1-5. *Agriculture*. The tilling of the soil, the raising of crops, horticulture, forestry, and gardening, including the keeping of animals and fowl, and including any agricultural industry or business, such as fruit packing plants, dairies or similar use.

- 1-6. *Alteration.* Any change in the total floor area, use, adaptability, or external appearance of an existing structure.
- 1-7. *Apartment house.* A building used or intended to be used as the residence of three or more families living independently of each other.
- 1-8. *Automobile graveyard.* Any lot or place which is exposed to the weather upon which more than five motor vehicles of any kind, incapable of being operated, are placed. (Code of Virginia, [Acts] 1938, p. 439; Michie Code 1942, Sec. 3030c.)
- 1-9. *Basement.* A story having part but not more than one-half of its height below grade. A basement shall be counted as a story for the purpose of height regulations, if it is used for business purposes, or for dwelling purposes by other than a janitor employed on the premises.
- 1-10. *Boardinghouse.* A building where, for compensation, lodging and meals are provided for at least five and up to fourteen persons.
- 1-11. *Building.* Any structure having a roof supported by columns or walls, for the housing or enclosure of persons, animals or chattels.
- 1-12. *Building, accessory.* A subordinate building, customarily incidental to and located upon the same lot occupied by the main building. No such accessory building shall be used for housekeeping purposes.
- 1-13. *Building, height of.* The vertical distance measured from the level of the curb or the established curb grade opposite the middle of the front of the building to the highest point of the roof if a flat roof; to the deck line of a mansard roof; or to the mean height level between the eaves and ridge of a gable, hip, or gambrel roof. For buildings set back from the street line, the height shall be measured from the average elevation of the ground surface along the front of the building.
- 1-14. *Building, main.* The principal building or one of the principal buildings on a lot, or the building or one of

- the principal buildings housing the principal use on the lot.
- 1-15. *Cellar.* A story having more than one-half of its height below grade and which may not be occupied for dwelling purposes.
- 1-16. *Commission, the.* The planning commission of Hanover County, Virginia.
- 1-17. *Dairy.* A commercial establishment for the manufacture or retail sale of dairy products.
- 1-18. *District.* Districts as referred to in the State Code, section 15-845.
- 1-19. *Dwelling.* Any building which is designed for use for residential purposes, except hotels, boardinghouses, lodginghouses, tourist cabins, apartments, and automobile trailers.
- 1-20. *Dwelling, multiple-family.* A building arranged or designed to be occupied by more than one family.
- 1-21. *Dwelling, two-family.* A building arranged or designed to be occupied by two families, the structure having only two dwelling units.
- 1-22. *Dwelling, single-family.* A building arranged or designed to be occupied by one family, the structure having only one dwelling unit.
- 1-23. *Dwelling unit.* One or more rooms in a dwelling designed for living or sleeping purposes, and having at least one kitchen.
- 1-24. *Dump heap (trash pile.)* Any area of one hundred square feet or more lying within one thousand feet of a state highway, a residence, a dairy barn or a food-handling establishment, where trash, garbage or other waste or scrap material is dumped or deposited without being covered by a sanitary fill.
- 1-25. *Family.* One or more persons occupying a premises and living in a single dwelling unit, as distinguished from an unrelated group occupying a boardinghouse, lodging house, tourist home or hotel.

- 1-26. *Frontage.* The minimum width of a lot measured from one side lot line to the other along a straight line on which no point shall be further away from the street upon which the lot fronts than the building setback line as defined and required herein.
- 1-27. *Garage, private.* Accessory building designed or used for the storage of not more than three automobiles owned and used by the occupants of the building to which it is accessory. On a lot occupied by a multiple-unit dwelling, the private garage may be designed and used for the storage of one and one-half times as many automobiles as there are dwelling units.
- 1-28. *Garage, public.* A building or portion thereof, other than a private garage, designed or used for servicing, repairing, equipping, renting, selling or storing motor-driven vehicles.
- 1-29. *General store, country.* A single store, the ground floor area of which is four thousand square feet or less and which offers for sale primarily, most of the following articles: Bread, milk, cheese, canned and bottled foods and drinks, tobacco products, candy, papers and magazines, and general hardware articles. Gasoline may also be offered for sale but only as a secondary activity of a country general store.
- 1-30. *Golf course.* Any golf course, publicly or privately owned, on which the game of golf is played, including accessory uses and buildings customary thereto, but excluding golf driving ranges as defined herein.
- 1-31. *Golf driving range.* A limited area on which golf players do not walk, but onto which they drive golf balls from a central driving tee.
- 1-32. *Governing body.* The governing body of Hanover County, Virginia.
- 1-33. *Guest room.* A room which is intended, arranged or designed to be occupied, or which is occupied, by one or more guests paying direct or indirect compensation there-

- for, but in which no provision is made for cooking. Dormitories are excluded.
- 1-34. *Historical area.* An area containing buildings or places in which historic events occurred or having special public value because of notable architectural or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.
- 1-35. *Hog farm.* The keeping of hogs fed primarily on garbage transported from other places or the farm for feeding purposes.
- 1-36. *Home garden.* A garden in a residential district for the production of vegetables, fruits and flowers generally for use and/or consumption by the occupants of the premises.
- 1-37. *Home occupation.* An occupation carried on by the occupant of a dwelling as a secondary use in connection with which there is no display, and not more than one person is employed, other than members of the family residing on the premises, such as the rental of rooms to tourists, the preparation of food products for sale, and similar activities; professional offices such as medical, dental, legal, engineering, and architectural offices conducted within a dwelling by the occupant.
- 1-38. *Hospital.* An institution rendering medical, surgical, obstetrical, or convalescent care, including nursing homes, homes for the aged and sanatoriums, but in all cases excluding institutions primarily for mental or feeble-minded patients, epileptics, alcoholics or drug addicts. (Certain nursing homes, and homes for the aged may be "home occupations" if they comply with the definition herein.)
- 1-39. *Hospital, special care.* A special care hospital shall mean an institution rendering care primarily for mental or feeble-minded patients, epileptics, alcoholics or drug addicts.
- 1-40. *Hotel.* A building designed or occupied as the more or less temporary abiding place for fourteen or more individuals who are, for compensation, lodged, with or without meals, and in which provision is not generally made for cooking in individual rooms or suites.

- 1-41. *Junk yard.* The use of any area of land lying within one hundred feet of a state highway or the use of more than two hundred square feet of land area in any location for the storage, keeping or abandonment of junk including scrap metals or other scrap materials. The term "junk yard" shall include the term "automobile graveyard" as defined in Chapter 304, Acts of 1938, Code of Virginia.
- 1-42. *Kennel.* A place prepared to house, board, breed, handle, or otherwise keep or care for dogs for sale or in return for compensation.
- 1-43. *Livestock market.* A commercial establishment wherein livestock is collected for sale and auctioned off.
- 1-44. *Lot.* A parcel of land occupied or to be occupied by a main building or group of main buildings and accessory buildings, together with such yards, open spaces, lot width and lot areas as are required by this Ordinance, and having frontage upon a street, either shown on a plat of record or considered as a unit of property and described by metes and bounds.
- 1-45. *Lot, corner.* A lot abutting on two or more streets at their intersection. Of the two sides of a corner lot the front shall be deemed to be the shortest of the two sides fronting on streets.
- 1-46. *Lot, depth of.* The average horizontal distance between the front and rear lot lines.
- 1-47. *Lot, double frontage.* An interior lot having frontage on two streets.
- 1-48. *Lot, interior.* Any lot other than a corner lot.
- 1-49. *Lot, width of.* The average horizontal distance between side lot lines.
- 1-50. *Lot of record.* A lot which has been recorded in the clerk's office of the circuit court.
- 1-51. *Manufacture and/or manufacturing.* The processing and/or converting of raw, unfinished materials, or products, or either of them, into articles or substances of different character, or for use for a different purpose.

- 1-52. *Mobile home, automobile trailer, tent.* Any vehicle, tent, or similar easily movable or portable structure supported on wheels, jacks, skids or skirtings, or on any other type of foundation, and so designed or constructed as to permit occupancy for dwelling or sleeping purposes.
- 1-53. *Nonconforming lot.* An otherwise legally platted lot that does not conform to the minimum area or width requirements of this Ordinance for the district in which it is located either at the effective date of this Ordinance or as a result of subsequent amendments to the Ordinance.
- 1-54. *Nonconforming activity.* The otherwise legal use of a building or structure or of a tract of land that does not conform to the use regulations of this Ordinance for the district in which it is located, either at the effective date of this Ordinance or as a result of subsequent amendments to this Ordinance.
- 1-55. *Nonconforming structure.* An otherwise legal building or structure that does not conform with the lot area, yard, height, lot coverage, or other area regulations of this Ordinance, or is designed or intended for a use that does not conform to the use regulations of this Ordinance, for the district in which it is located, either at the effective date of this Ordinance or as a result of subsequent amendments to this Ordinance.
- 1-56. *Off-street parking area.* Space provided for vehicular parking outside the dedicated street right of way.
- 1-57. *Pen.* A small enclosure used for the concentrated confinement and housing of animals or poultry; a place for feeding and fattening animals; a coop. Enclosed pasture or range with an area in excess of one hundred square feet for each hog or small animal or two hundred square feet for each larger animal shall not be regarded as a pen.
- 1-58. *Public water and sewer systems.* A water or sewer system owned and operated by a municipality or county, or owned and operated by a private individual or a corporation approved by the governing body and properly licensed by the state corporation commission, and subject to special regulations as herein set forth.

- 1-59. *Required open space.* Any space required in any front, side, or rear yard.
- 1-60. *Restaurant.* Any building in which for compensation, food or beverages are dispensed for consumption on the premises, including, among other establishments, cafes, tea rooms, confectionery shops or refreshment stands.
- 1-61. *Retail stores and shops.* Buildings for display and sale of merchandise at retail or for the rendering of personal services, (but specifically exclusive of coal, wood and lumberyards), such as the following, which will serve as illustration: Drugstore, newsstand, food store, candy shop, milk dispensary, drygoods and notions store, antique store and gift shop, hardware store, household appliance store, furniture store, florist, optician, music and radio store, tailor shop, barbershop and beauty parlor.
- 1-62. *Sawmill, temporary.* A portable sawmill located on a private property for the processing of timber cut only from that property or from property immediately contiguous and adjacent thereto.
- 1-63. *Setback.* The minimum distance by which any building or structure must be separated from the front lot line.
- 1-64. *Sign.* Any display of any letters, words, numerals, figures, devices, emblems, pictures, or any parts or combinations thereof, by any means whereby the same are made visible for the purpose of making anything known, whether such display be made on, attached to, or as a part of a structure, surface or any other thing, including, but not limited to, the ground, any rock, tree, or other natural object, which display is visible beyond the boundaries of the parcel of land on which the same is made. A display of less than one square foot in area is excluded from this definition.
- 1-64-1. *Business.* A business sign which directs attention to a product, commodity or service available on the premises.
- 1-64-2. *Home occupation.* A home occupation sign directing attention to a product, commodity or service available on

the premises, but which product, commodity, or service is clearly a secondary use of the dwelling.

- 1-64.3. *General advertising.* A sign which directs attention to a product, commodity, or service available, other than on the premises, generally throughout the country.
- 1-64.4. *Location.* A location sign which directs attention to the approximate location of an establishment from which the advertised product may be obtained.
- 1-64.5. *Directional.* A directional sign is one (one end of which may be pointed, or on which an arrow may be painted, indicating the direction to which attention is called) two square feet or less in area, giving the name only of the farm, or business responsible for the erection of same.
- 1-65. *Sign structure.* Includes the supports, uprights, bracing and/or framework of any structure, be it single-faced, double-faced, v-type or otherwise, exhibiting a sign.
- 1-66. *Sign, temporary.* A sign applying to a seasonal or other brief activity such as, but not limited to, summer camps, horse shows, auctions or sale of land. Temporary signs shall conform in size and type to directional signs.
- 1-67. *Store.* See item 1-61 Retail stores and shops.
- 1-68. *Story.* That portion of a building, other than the basement, included between the surface of any floor and the surface of the floor next above it. If there be no floor above it, the space between the floor and the ceiling next above it.
- 1-69. *Story, half.* A space under a sloping roof, which has the line of intersection of roof decking and wall face not more than three feet above the top floor level, and in which space not more than two-thirds of the floor area is finished off for use.
- 1-70. *Street, road.* A public thoroughfare which affords principal means of access to abutting property.
- 1-71. *Street line.* The dividing line between a street or road right of way and the contiguous property.

- 1-72. *Structure.* Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground.
- 1-73. *Tourist court, auto court, motel, autel, cabins, or motor lodge.* One or more buildings containing individual sleeping rooms, designed for or used temporarily by automobile tourists or transients, with garage or parking space conveniently located to each unit. Cooking facilities may be provided for each unit.
- 1-74. *Trailer, automobile or mobile home.* A vehicle with or without motive power, originally designed to be used for human habitation as a mobile home.
- 1-75. *Trailer, automobile.* A vehicle with or without motive power, designed to be used for human habitation.
- 1-76. *Trailer court.* Any area or tract of land used or designated to accommodate two or more automobile trailers.
- 1-77. *Use, accessory.* A subordinate use, customarily incidental to and located upon the same lot occupied by the main use.
- 1-78. *Wayside stand, roadside stand, wayside market.* Any structure or land used for the sale of agricultural or horticultural produce, livestock, or merchandise produced by the owner or his family on their farm.
- 1-79. *Yard.* An open space on a lot other than a court, unoccupied and unobstructed from the ground upward, except as otherwise provided herein.
- 1-79-1. *Front.* An open space on the same lot as a building between the front line of the building (exclusive of steps) and the front lot or street line, and extending across the full width of the lot.
- 1-79-2. *Rear.* An open, unoccupied space on the same lot as a building between the rear line of the building (exclusive of steps) and the rear line of the lot, and extending the full width of the lot.
- 1-79-3. *Side.* An open, unoccupied space on the same lot as a building between the side line of the building (exclusive of steps) and the side line of the lot, and extending from the front yard line to the rear yard line.

DEFENDANT'S EXHIBIT 4

REAL ESTATE PURCHASE AGREEMENT

PRINTERS NOTE:

The above mentioned exhibit may be found on Appendix pages 157 through 166. Said exhibit is the same as Plaintiff's Exhibit Number 3,