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IN THE
Supreme Court of Virginia
AT RICHMOND

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Record No. 010456

SHORT PUMP TOWN CENTER COMMUNITY
DEVELOPMENT AUTHORITY, et al.,

Appellants,

— v. —

ARLIE A. HAHN, JR., et al.,

Appellees.

JOINT APPENDIX-VOLUME ONE

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TABLE OF CONTENTS

Appendix Page

Motion for Judgement filed November 6, 2000	1
Bill of Complaint for Taubman filed November 8, 2000	9
Law Motion to Enjoin and Consolidate Pleadings and Alternatively for an Extension of Time filed November 30, 2000	33
Chancery motion to Enjoin and Consolidate Pleadings and Alternatively for an Extension of Time filed November 30, 2000	43
Taubman's Response to Motion to Consolidate and Enjoin filed December 1, 2000.....	46
Taubman's Motion to Stay filed December 1, 2000	52
Grounds of Defense of Arlie Hahn filed December 4, 2000.....	57
Grounds of Defense of Bryan B. Gresham, Jr. filed December 4, 2000.....	60
Grounds of Defense of Robert Anderson filed December 7, 2000.....	62
Transcript of Motions Hearing before the Honorable George F. Tidey held December 8, 2000.....	67
Taubman Ground of Defense to Motion for Judgment filed December 15, 2000	113
Joint Answer and Demurrer to Bill of Complaint filed December 15, 2000	117

Transcript of Motions Hearing before the Honorable George F. Tidey held December 15, 2000.....	138
Demurrer and Motion to Dismiss filed December 15, 2000	146
Order (Pretrial and Denying motion to Consolidate) entered December 15, 2000	150
Transcript of Motions Hearing before the Honorable George F. Tidey held January 5, 2001.....	159
Transcript of Motions Hearing before the Honorable George F. Tidey held January 8, 2001	184
Transcript of Proceedings before the Honorable Randall G. Johnson held January 10, 2001.....	194
Taubman’s Amended Grounds of Defense filed January 11, 2001	199
Order “Unconsolidating” the Case entered January 17, 2001.....	208
Taubman’s Trial Brief filed January 26, 2001	210
Taxpayer’s Trial Brief filed January 26, 2001	217
Taubman’s Memorandum in Support of Motion to Dismiss for Lack of Jurisdiction filed January 29, 2001	223
Joint Memorandum in Opposition to Motion to Dismiss for Lack of jurisdiction filed January 30, 2001.....	235
Trial Transcript of Hearing before the Honorable Randall G. Johnson held January 31, and February 1, 2001.....	242
Preliminary Matters	245
Opening Statements	246

Testimony of Virgil Hazelett	
Direct	263
Cross	364 & 394

VOLUME TWO

Testimony of Virgil Hazelett continued	
Redirect	416
Recross.....	422

Testimony of James Traudt	
Direct	426
Cross	481 & 492
Redirect	529

Testimony of Keenan Rice	
Direct	532
Cross	549

Testimony of Bonnie France	
Direct	550
Cross	574 & 586
Redirect	594

Testimony of Jerome D. Oster	
Direct	599
Cross	632 & 634

Motions to Strike.....	660
-------------------------------	------------

Testimony of Keenan Rice	
Cross	663

Testimony of David LaRue	
Direct	677
Cross	702 & 708

Testimony of Frederick Agostino	
Direct	711
Cross	718 & 720

Redirect	722
Testimony of Bruce W. Heckman	
Direct	723
Cross	735
Testimony of John R. Marlles	
Direct	738
Testimony of Thomas Muller	
Direct	739
Closing Arguments of the Parties.....	747

EXHIBITS

PLAINTIFF'S EXHIBITS

Plaintiff's Exhibit 1	796
-----------------------------	-----

VOLUME THREE

EXHIBITS Continued

Plaintiff's Exhibit 2	805
Plaintiff's Exhibit 3	807
Plaintiff's Exhibit 4	822
Plaintiff's Exhibit 5	843
Plaintiff's Exhibit 6	869
Plaintiff's Exhibit 7	890
Plaintiff's Exhibit 8	933
Plaintiff's Exhibit 9	941

Plaintiff's Exhibit 10	944
Plaintiff's Exhibit 11	951
Plaintiff's Exhibit 12	952
Plaintiff's Exhibit 13	953
Plaintiff's Exhibit 14	954
Plaintiff's Exhibit 15	955
Plaintiff's Exhibit 16	956
Plaintiff's Exhibit 17	957
Plaintiff's Exhibit 18	958
Plaintiff's Exhibit 19	968
Plaintiff's Exhibit 20	971
Plaintiff's Exhibit 21	974
Plaintiff's Exhibit 22	976
Plaintiff's Exhibit 23	980
Plaintiff's Exhibit 24	984
Plaintiff's Exhibit 25	999
Plaintiff's Exhibit 26	1001
Plaintiff's Exhibit 27	1002
Plaintiff's Exhibit 28	1012
Plaintiff's Exhibit 29	1021

Plaintiff's Exhibit 30	1022
Plaintiff's Exhibit 31	1024
Plaintiff's Exhibit 32	1026
Plaintiff's Exhibit 33	1029
Plaintiff's Exhibit 34	1032
Plaintiff's Exhibit 35	1052
Plaintiff's Exhibit 36	1062
Plaintiff's Exhibit 37	1098
Plaintiff's Exhibit 39	1118
Plaintiff's Exhibit 40	1131
Plaintiff's Exhibit 41	1165
Plaintiff's Exhibit 42	1186
Plaintiff's Exhibit 43	1189
Plaintiff's Exhibit 44	1190
Plaintiff's Exhibit 45	1191
Plaintiff's Exhibit 46	1192
Plaintiff's Exhibit 47	1193

VOLUME FOUR

EXHIBITS Continued

Plaintiff's Exhibit 48	1230
-------------------------------------	-------------

Plaintiff's Exhibit 49	1252
Plaintiff's Exhibit 50	1308
Plaintiff's Exhibit 55	1321
Plaintiff's Exhibit 58	1324
Plaintiff's Exhibit 59	1328
Plaintiff's Exhibit 60	1367
Plaintiff's Exhibit 61	1399
Plaintiff's Exhibit 62	1402
Plaintiff's Exhibit 63	1403
Plaintiff's Exhibit 64	1404
Plaintiff's Exhibit 65	1405
Plaintiff's Exhibit 66 & 66 Cont.	1406
Plaintiff's Exhibit 67	1408
Plaintiff's Exhibit 68	1409
Plaintiff's Exhibit 69	1410
Plaintiff's Exhibit 72	1411
TAUBMAN EXHIBITS	
Taubman's Exhibit 1	1412
Taubman's Exhibit 2	1423
Taubman's Exhibit 9	1424

Taubman's Exhibit 12	1432
Taubman's Exhibit 17	1433
Taubman's Exhibit 20	1453
Taubman's Exhibit 28	1455
Taubman's Exhibit 31	1481
Taubman's Exhibit 32	1484
Taubman's Exhibit 44	1487
Taubman's Exhibit 45	1488
Taubman's Exhibit 46	1493
TAXPAYER'S EXHIBITS	
Taxpayer's Exhibit 34	1498
Taxpayer's Exhibit 38	1503
Taxpayer's Exhibit 100-B.....	1504
Taxpayer's Exhibit 112	1505
Taxpayer's Exhibit 118	1524
Final Order and Opinion entered February 13, 2001.....	1613
Notice of Appeal filed February 21, 2001	1631
Notice of Filing Transcripts filed February 21, 2001	1634
Assignment of Errors.....	1637
Assignment of Cross-Error.....	1638

Assignment of Cross-Error	1638
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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT
AUTHORITY,

Plaintiff,

v.

TAXPAYERS, PROPERTY OWNERS,
AND CITIZENS OF THE COUNTY OF
HENRICO, VIRGINIA, INCLUDING
NONRESIDENTS OWNING PROPERTY
OR SUBJECT TO TAXATION THEREIN,
AND ALL OTHER PERSONS INTERESTED
IN OR AFFECTED IN ANY WAY BY THE
ISSUANCE BY THE SHORT PUMP
TOWN CENTER COMMUNITY
DEVELOPMENT AUTHORITY OF ITS
SPECIAL ASSESSMENT BONDS,

Defendants.

LAW NO. CL00-1636.

MOTION FOR JUDGMENT

Plaintiff, the Short Pump Town Center Community Development Authority (the "CDA"), pursuant to the Public Finance Act of 1991 (Va. Code §§ 15.2-2600 *et seq.*), hereby seeks a final order establishing the following:

(a) The validity of the CDA's special assessment bonds (the "Bonds") to be issued for the purpose of:

(i) financing the acquisition, design, construction and development by or on behalf of the CDA of certain improvements in connection with the Short Pump Town Center to carry out the public purposes of the

development proposed by the CDA and the Henrico County Board of Supervisors (the "Board of Supervisors");

(ii) paying certain costs of issuing the Bonds; and

(iii) funding reserve funds as may be necessary for the Bonds.

(b) The validity and legality of all proceedings taken in connection with the authorization and issuance of the Bonds, including the levy of a special assessment and the other provisions of the herein described Memorandum of Understanding and Economic Development Agreement.

IN CONNECTION THEREWITH, the CDA states as follows:

1. The CDA, a political subdivision, and body politic and corporate of the Commonwealth of Virginia, is organized pursuant to the Virginia Water and Waste Authorities Act (the "Water Act"), Va. Code §§ 15.2-5100 *et seq.* and specifically, Article 6 of the Water Act.

2. At a meeting duly held on September 26, 2000, the Board of Supervisors adopted a Resolution creating the CDA "to assist in financing certain improvements in connection with the Short Pump Town Center to benefit the citizens of the County by promoting increased employment opportunities, a strengthened economic base and increased tax revenues and additional retail opportunities not currently available in the local area." The CDA embraces a land area described in the Resolution.

3. The Short Pump Town Center will be a first-class retail center to be constructed on West Broad Street near its intersection with Lauderdale Drive. The Center will be anchored by the Nordstrom, Lord & Taylor, Dillard's, and Hecht's

department stores and will contain approximately 370,000 square feet of space for other retailers.

4. At a meeting duly held on October 20, 2000, the CDA adopted a resolution authorizing the issuance of revenue bonds in a principal amount currently anticipated not to exceed \$25,000,000 to pay the costs of acquiring, constructing, equipping and developing certain improvements associated with the Short Pump Town Center.

5. At the meeting held on October 20, 2000, the CDA also adopted a resolution approving a special assessment to be levied within the CDA District and requesting the Board of Supervisors to levy the assessment to secure the Bonds.

6. At a meeting duly held on October 24, 2000, the Board of Supervisors adopted an ordinance establishing a special assessment within the CDA District and approving a Memorandum of Understanding (the "Memorandum") and Economic Development Agreement (the "EDA Agreement").

7. The Memorandum will be entered into by the Board of Supervisors, the CDA, the owners of the land within the CDA (the "Landowner") and the Short Pump Town Center LLC, its successors and assigns (the "Developer") and provides, *inter alia*, that:

(a) the CDA will issue Bonds to be used to finance the acquisition, design, construction and development by or on behalf of the CDA of certain improvements in connection with the Short Pump Town Center permitted under the Water Act, Va. Code § 15.2-5100 *et. seq.*, including roads and road improvements, parking, public plazas and walkways, water

and sewer system improvements, storm water management and drainage improvements (the "Improvements");

(b) the County will enter into the EDA Agreement to provide for certain incentives to the Developer subject to appropriation;

(c) the County will levy and collect the special assessments within the CDA District and, subject to annual appropriation by the Board of Supervisors, pay such assessments to the CDA; and

(d) the CDA will not issue the Bonds until the Developer has met certain requirements designed to protect the County's interest in obtaining the anticipated economic development benefits.

8. The EDA Agreement provides that the County will pay to the Economic Development Authority of Henrico County, Virginia (the "EDA") certain payments to be used as economic development incentives subject to appropriation. The payments to the EDA are subject to two limitations: (i) the payments will not exceed incremental tax revenues generated by the Short Pump Town Center development and (ii) the payments will not exceed the amount of annual installments of special assessments due on the real estate within the CDA District that have been paid or provided for by the Developer. Under the EDA Agreement, the EDA has agreed to make semi-annual payments to the CDA from the economic incentive payments to offset the Developer's semi-annual installment obligations on the assessment or to refund to the Developer certain installment payments advanced to the CDA by the Developer.

9. The Bonds, when issued, will be valid and legal limited obligations of the CDA, payable solely from the special assessments and other security pledged for their

payment. The Bonds are not the debt of the County; nor do the Bonds constitute a pledge of the faith and credit of the County.

10. The County is authorized under the Water Act (Va. Code §§ 15.2-5155 and § 15.2-5158.A.5.) to create a community development authority and to impose a special assessment on the property within the CDA to service the debt issued by the CDA.

11. The County is also authorized under Virginia law to make payments to the EDA for the purpose of promoting economic development. *See* Va. Code §§ 15.2-953.B and 15.2-1205.

12. The CDA has the power and authority under the Water Act to issue revenue bonds payable from special assessments to finance all costs associated with the Improvements. *See* Va. Code § 15.2-5158.A.1 and § 15.2-5158.A.2. The CDA also has the power and authority to accept economic incentive payments from the EDA. *See* Va. Code § 15.2-5158.

13. The EDA has the power and authority under the Industrial Development and Revenue Bond Act (Va. Code §§ 15.2-4900 *et seq.*) to make grants to any person or governmental entity for the purpose of promoting economic development, *see* Va. Code § 15.2-4905.13, and to otherwise exercise all powers expressly given the EDA by the Board of Supervisors. *See* Va. Code § 15.2-4905.10.

WHEREFORE, in accordance with §§ 15.2-2650 *et seq.* of the Public Finance Act, the CDA requests that this Court:

(a) Enter an Order in the form attached, requiring the publication of this Motion for Judgment once a week for two consecutive weeks in the *Richmond Times-Dispatch*, fixing a time and place for hearing in this proceeding, and informing any party defendant of the right to reply to the Motion for Judgment within ten days after the second publication of the Motion for Judgment, which Order shall be published with this Motion for Judgment;

(b) Grant a prompt hearing pursuant to Va. Code § 15.2-2654 and, with the least possible delay, enter a final order or decree determining and declaring pursuant to Va. Code § 15.2-2651:

(i) that the Board of Supervisors' September 26, 2000 Resolution creating the CDA and its October 24, 2000 Ordinance levying a special assessment within the CDA District are legal and valid;

(ii) that the Board of Supervisors has all necessary power and authority to transfer economic incentive payments to the EDA and otherwise participate in the financing and economic incentive programs related to the Short Pump Town Center as described in the Board of Supervisors' resolutions, ordinance, the Memorandum and the EDA Agreement;

(iii) that the CDA has all necessary power and authority to issue the Bonds and participate in the financing related to the Short Pump Town Center as described in the CDA's resolutions, the Memorandum and the EDA Agreement;

(iv) that the EDA has all necessary power and authority to receive economic incentive payments from the County and to transfer those

payments to the CDA and/or the Developer as described in the resolutions described herein and the EDA Agreement;

(v) that all proceedings heretofore taken in connection with the authorization or issuance of the Bonds, including the adoption of the resolutions and ordinances and the entering into agreements referenced in this Motion by the CDA, the Board of Supervisors, and the EDA, and the consummation of the transactions contemplated by the Memorandum and the EDA Agreement, are legal and valid;

(vi) that the use of the proceeds of the Bonds to finance the Improvements is permissible under law;

(vii) that the Bonds will be valid, legal and binding obligations of the CDA, subject to the taking of any other actions prescribed by law at the time of their issuance; and

(viii) such additional matters as may be specifically requested by the parties or as the Court may deem appropriate.

Dated: November 6, 2000

Respectfully submitted,

SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT
AUTHORITY

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VIRGINIA:

IN THE CIRCUIT COURT FOR HENRICO COUNTY

THE TAUBMAN LIMITED PARTNERSHIP)

Plaintiff,)

v.)

Chancery No. _____

BOARD OF SUPERVISORS OF THE)
COUNTY OF HENRICO, VIRGINIA)

SERVE: Joseph P. Rapisarda, Jr.)
County Attorney)
Parham and Hungary Spring Road)
Richmond (Henrico County),)
Virginia 23273)

and)

SHORT PUMP TOWN CENTER COMMUNITY)
DEVELOPMENT AUTHORITY)

SERVE: Ralph L. Axselle, Registered Agent)
Williams Mullen Christian & Dobbins)
Two James Center)
1021 East Cary Street, 16th Floor)
Richmond (City), Virginia 23219)

and)

HENRICO COUNTY ECONOMIC)
DEVELOPMENT AUTHORITY)

SERVE: Frederick T. Agostino, Executive Director)
8011 Villa Park Drive)
Suite 160, B Building)
Richmond (Henrico County),)
Virginia 23228-6501)

Defendants.)

*Filed -
11/8/00*

BILL OF COMPLAINT

COMES NOW plaintiff, The Taubman Limited Partnership, by counsel, and for its Bill
of Complaint, states as follows:

PARTIES

1. Plaintiff, The Taubman Limited Partnership ("Taubman"), is a Delaware limited partnership which is the owner of Regency Square Mall ("Regency"), a major Richmond-area regional shopping center located in Henrico County, Virginia. Through its ownership of Regency, Taubman is a taxpayer and resident of Henrico County. Regency, through itself and its tenants, is among the largest employers and taxpayers in Henrico County, and was built and is operated entirely with private funds.

2. Defendant, Board of Supervisors of the County of Henrico (the "Board"), is the body in which the powers of the County are vested pursuant to Va. Code § 15.2-602. The County of Henrico ("Henrico" or the "County") is a Virginia county. The Board has caused the County to take the actions complained of herein.

3. The Short Pump Town Center Community Development Authority (the "CDA") is a community development authority established pursuant to a resolution adopted by the County Board on September 26, 2000, at the request of certain property owners in the County under the authority of Article 6 of Chapter 51 of Title 15.2 of the Code of Virginia (the "CDA Act"), Va. Code § 15.2-5152 et seq. It is a Virginia non-stock corporation which possesses the powers and has the duties set forth in the CDA Act and in relevant portions of Chapter 51 of Title 15.2 of the Code of Virginia (the "Virginia Water and Waste Authorities Act" or the "VWWA Act").

4. The Henrico County Economic Development Authority (the "EDA") is an industrial development authority established by the County pursuant to the Industrial Development and Revenue Bond Act (the "IDRB Act"), Va. Code § 15.2-4900 et seq., and possesses the powers and has the duties set forth in the IDRB Act.

INTRODUCTION

5. Taubman seeks in this suit to challenge the legality of (i) the September 26, 2000 approval by the County of a resolution creating the CDA; and (ii) the October 24, 2000 approval of an ordinance establishing a special assessment on property within the CDA and authorizing the County to execute a Memorandum of Understanding and an Economic Development Agreement (the "Incentive Agreements"). The purpose of both of these actions, and those intended to be taken by the CDA and EDA pursuant to the Incentive Agreements, is to provide public financing by and through the County and the CDA for improvements to accommodate, facilitate, and directly benefit one specific private retail project, the Short Pump Town Center ("SPTC"), a direct competitor to Regency, and to provide tax rebates by and through the County and the EDA, to the developer of SPTC. In essence, the County proposes to provide, over five years, the sum of approximately \$30.3 million to the developer of SPTC, a proposed regional shopping center which will be located about five miles from Regency and which will compete directly with Regency. The money is either to be given directly to the developer of SPTC, or will be used to retire debt issued by the CDA to finance portions of the SPTC, which the owners otherwise would pay. Taubman seeks to redress the injuries which will accrue to it as a citizen and taxpayer in the County and as a competitor through this declaratory judgment action.

6. Taubman alleges that the CDA and its financing structure, including the Incentive Agreements and the payments to the developer are illegal because they:

(a) provide for County payments to the EDA for private purposes which are illegal under Va. Code § 15.2-953;

(b) provide for acceptance and grants of money by the EDA which are illegal under Va. Code § 15.2-4905 and other provisions of the IDRB Act, and which will be made for purposes beyond the scope of those permitted to the EDA under Virginia law;

(c) provide for the issuance of public debt for private purposes by the CDA, which is illegal under the CDA Act and beyond the lawful authority of the CDA;

(d) provide for the levy of special assessments to support the financing of improvements which are neither local nor public, in violation of Article X, § 3 of the Virginia Constitution;

(e) provide for payment of CDA debt out of County funds which may not be used by the County or the CDA for such a purpose;

(f) provide for the issuance of public debt for the purpose of funding improvements which are not necessary expenses of government but rather serve private purposes in violation of Article X, § 8 of the Virginia Constitution;

(g) will result in non-uniform taxation and taxation by agreement and exemption from taxation in violation of Article X §§ 1 and 6 of the Virginia Constitution; and

(h) will violate the lending of credit clause of Article X § 10 of the Virginia Constitution.

7. Taubman further seeks a declaratory judgment that the actions taken by the Board in approving the CDA and the Incentive Agreements are unlawful because they:

(a) violate Taubman's right to due process under the Virginia and United States constitutions because the Board's actions deprive Taubman of a substantial property interest and were arbitrary and capricious and without rational basis;

(b) deprive Taubman of its First Amendment right to petition the government for redress of its grievances because the Board's actions so prejudice the Henrico County Planning Commission to approve the SPTC plan of development ("POD") that Taubman is deprived of a meaningful opportunity to petition the Planning Commission for redress; and

(c) are arbitrary and unreasonable because they have no substantial relation to the public health, safety, morals or general welfare, and were taken (i) without any findings regarding the economic costs and benefits of the proposed public financial assistance to be provided to the owners and developers of SPTC by the CDA; (ii) before the SPTC obtained the prerequisite regulatory approvals; and (iii) before critical traffic and public safety problems were examined publicly and resolved.

FACTS

Taubman's Interest in Regency

8. In September 1997, Taubman purchased Regency for a price in excess of \$100 million. Regency had been and continues to be one of the top grossing regional shopping centers in the United States on a square foot basis. The 826,000 square foot shopping center is anchored by two Hecht's department stores, a JCPenney store and a Sears store, and generates approximately \$200 million in annual revenue. Regency, through itself and its tenants, is one of the largest employers in Henrico County and is among the largest taxpayers. Its market area extends for a radius of approximately 10 miles from the shopping center. Regency was constructed and operates without public funds.

9. On information and belief, the construction of another shopping center in Henrico County, within Regency's existing market area and supported with public funds, will directly harm Regency, diminish Taubman's right to do business in Henrico County, cause a substantial

decline in annual revenue, and a concomitant reduction in the value of the property, as well as a considerable decrease in local tax revenues generated from Regency and a loss of jobs.

The Proposed Development

10. By late spring of 2000, the developers and owners of SPTC had entered into several letters of intent with anchor department stores, and planned to construct the SPTC with some type of unspecified "financial incentives" from the County. Pursuant to a Freedom of Information Act request and a series of conversations with County officials, Taubman became aware that the owners and developers of SPTC had been engaging in a dialogue concerning these incentives since at least the fall of 1999, that the dialogue had included at least one closed meeting with the Board of Supervisors, and that an agreement was being refined, under which the County would provide approximately \$30 million in tax rebates to the developer in connection with the development of SPTC.

11. The proposed development of SPTC will comprise over one million square feet of retail space, including, the first Nordstrom and Lord & Taylor department stores in the Richmond area. It is proposed to be located on approximately 147 acres of undeveloped, forested land and wetlands in western Henrico County, on West Broad Street near the intersection of Interstate 295 and Interstate 64 ("I-64").

12. The proposed site is not within a slum or blighted area, nor is it in an area in need of economic development assistance from the County. On the contrary, it is among the most prime real estate in the County. The area is planned as a Mixed Use Development area in the Henrico County 2010 Land Use Plan and is of such importance that it is designated as its own category in the Comprehensive Plan - Far West Broad Street. West Broad Street between I-64

and the proposed development is presently densely developed with significant retail and commercial development.

13. An approved POD already exists for the site. On December 15, 1998, the developers of SPTC obtained approval of a POD, as required by Chapter 24, Section 24-106 of the Henrico County Code, for a one and two story 928,173 square foot regional shopping center with a 21-screen, 5,414 seat movie theater. This is a project substantially different than the one currently proposed by the same developers. On information and belief, there was to be no public funding of the project that was the subject of the POD approval, nor were tax rebates or development incentives proposed.

The Community Development Authority and
Financing Plan to Subsidize SPTC

14. On July 14, 2000, MJGT Associates, L.L.P. ("MJGT") and Forest City Enterprises, Inc. ("Forest City") submitted a petition to the Henrico Board of Supervisors requesting creation of the CDA. In the petition, MJGT and Forest City sought the creation of the CDA to finance and construct infrastructure improvements for the direct benefit of SPTC including, among other things, excavation of the site, a plaza, parking lots, lighting, landscaping, utility extensions, roadway improvements, entrance roads, and a ring road within the shopping center. The petition also sought establishment of a special assessment upon the tax map parcels constituting the 147 acre development parcel (the "District"), to finance the improvements, and requested that the Board enter into an agreement with the EDA for incentive payments from incremental tax revenues generated in the District. The petition further sought authority from the Board to exclude certain land from the District and the CDA, so that such land might be conveyed without being subject to the special assessment.

15. The total cost of the improvements to be financed by the CDA is estimated to be approximately \$22 million. Financing costs, reserve accounts and capitalized interest will bring this amount of CDA debt to approximately \$25.5 million. Over the anticipated five-year life of the debt, approximately \$30.3 million in debt service is projected to be paid on this debt.

16. The petition was approved by resolution of the Board of Supervisors on September 26, 2000, approving the creation of the CDA, appointing the initial board of directors, and authorizing the CDA to exclude certain property from the CDA in the future. The resolution indicated that incremental tax revenues generated "within the Initial CDA District" may be paid to the EDA and then transferred to the CDA for use in debt retirement.

17. On October 24, 2000, the County Board passed an ordinance which purports to levy a special assessment on the property within the District and which authorizes the County Manager or the Board Chairman to execute the Incentive Agreements.

The Incentive Agreements

18. The Memorandum of Understanding (the "MOU"), is an agreement by and among the County Board, the landowners, Short Pump Town Center, LLC as the developer, and the CDA. It provides that the CDA will issue bonds to finance land acquisition, design, construction and development of certain improvements in an amount not to exceed \$22 million, plus issuance costs, reserves, and capitalized interest. The face amount of the bonds to be issued, therefore, is to be approximately \$25.5 million. The financed improvements are those described in the CDA petition referred to in paragraph 14 above. The MOU further provides that the CDA will request the County to levy and collect the annual installment of the special assessment each year and that the County "pledges and assigns all of its right, title and interest in the Annual Installments to the CDA, subject to annual appropriation by the Board," and that the County agrees to "pay such

Annual Installment amounts collected to the CDA or the Trustee as assignee . . . within 20 days after receipt. . . ." Under the MOU, the County is required to enter into the Economic Development Agreement and to make semi-annual payments to the EDA in the amount of incremental tax revenues generated within the District which exceed those collected over the six-month period ending December 31, 1999, from real and personal property taxes, the local (1%) portion of the sales tax, and business, professional and occupational license taxes. The amount of such incentive payments or tax rebates will not exceed the debt service paid on the bonds, which over five years is estimated to be \$30.3 million.

19. The Economic Development Agreement (the "Development Agreement"), is an agreement by and among the County Board, the CDA, the developer, and the EDA. It provides that the County, subject to appropriation, will make the "EDA Payments" of incremental tax revenues, and that the EDA will pay such amounts to the CDA or to the developer, or both, depending upon whether annual installment payments of the special assessment are outstanding. The CDA agrees to use any payments received from the EDA to pay debt service.

20. Thus, under the Incentive Agreements, the financing of the subsidy is to be accomplished through the issuance by the CDA of approximately \$25.5 million in bonds secured by a special assessment on the shopping center improvements. The amount of the special assessment will secure the payment of the debt service on the bonds, which will be paid either (i) by the developer or the landowners in the form of installment payments on the special assessment, which will be paid to the County, which will then pay the CDA or the bond trustee, (ii) by the EDA out of tax increment funds it receives from the County and pays to the CDA or the bond trustee, or (iii) a combination of these sources. For every dollar of special assessment installments paid by the owners, the developer will receive a rebate from the County, paid

through the EDA out of incremental tax revenues generated by SPTC. If the installment payments on the special assessment are not paid, the County will make such payments to the CDA on behalf of the owner, through the EDA. Under either alternative, the developer bears none of the cost of the financed improvements to the SPTC. As the special assessment installments will include interest on the bonds, the amount to be paid by the County, either to the developer or to the CDA in satisfaction of owner obligations, or both, will exceed \$30 million.

21. As a consequence of this plan, the County will give away more than \$30 million in County tax revenues which would otherwise be available to support County needs. These lost tax revenues will be lost to the detriment of all of the other taxpayers in the County, including Regency. Substantially all the benefit to the County from SPTC will be realized only after the County has repaid the developers \$30 million. The County, its residents, taxpayers and businesses, assume the risk of the success of SPTC.

22. By contrast, immediate financial benefits would be realized by the County if the property were developed without public financial assistance. If development were to proceed pursuant to the existing, approved plan of development, which did not require public incentives or tax rebates, the County would realize immediate tax benefits only marginally less than the gross tax revenues which would accrue from the SPTC. These revenues would remain in the County's coffers and would be available to meet County needs rather than be paid to the developer. A meaningful cost benefit analysis would have yielded such a conclusion.

23. In approving the CDA and related financing structure, the Board failed to make any findings, based on identifiable facts, that the creation of the CDA and the subsidy for SPTC serve a public purpose or result in a public benefit. The County conducted no detailed economic analysis to determine the actual incremental tax revenue benefits that may accrue to the County,

or the negative effects of the proposed financial subsidy of the SPTC on existing retail establishments in Henrico County, including, in particular, Regency.

24. On October 20, 2000, the CDA board of directors (the "CDA Board") conducted its initial meeting, elected officers, appointed counsel and financial advisors, and adopted a resolution, which among other things, approved and authorized the execution of the Incentive Agreements and the issuance of the bonds.

25. The EDA will next meet on November 16, 2000. Upon information and belief, the EDA will at that time adopt the resolution approving and authorizing the Development Agreement.

SPTC Does Not Have Required Regulatory Approvals

26. SPTC, for which the Board approved the creation of the CDA and approved and authorized the Incentive Agreements, exists legally only as a proposed project. Its form, nature and impact is different from the proposed project that received planning commission approval in December 1998. The new proposal does not have critical local, state and federal regulatory approvals that are required before SPTC can be constructed. Thus, because the regulatory approval process could require a different development, or not permit the project at all, the County's action to provide a subsidy for SPTC and its developer is arbitrary and capricious.

27. Local plan of development ("POD") approval is required by Chapter 24, Section 24-106 of the Henrico County Code. POD approval requires review by the Henrico Planning Commission of the proposed development plan to determine consistency with County development requirements. In addition, an opportunity for public participation is required, and a rational, fairly-derived determination on the application must be made. Taubman is entitled to

participate in that process, including a fair and objective review of the substantive merits of a POD proposed by a competitor.

28. By approving a resolution creating the CDA and committing to provide \$30 million in financing to the developers of SPTC, the Board has destroyed the integrity, objectivity, and meaningfulness of the planning commission review process and has deprived Taubman of an opportunity to advocate and protect its interests through meaningful participation in an unprejudiced and untainted regulatory review of and decision concerning the SPTC POD proposal, including whether it should be built at all.

29. Critical traffic and public safety issues which will be a part of the POD review process also have gone unaddressed, and threaten not only public health and safety, but the economic viability of the proposed SPTC. According to the traffic study provided by the developers to the County, critical traffic congestion will occur at several points, the most important being the intersection of West Broad Street and Pouncey Tract Road/Pump Road. The traffic study concludes that the improvements needed to allow the intersection to operate safely "are not thought to be economically practical at this time."

30. Despite the fact that the traffic study projects that 83% of the project's traffic will approach from the east, the easternmost intersection that is evaluated is the West Broad Street/Pouncey Tract Road/Pump Road intersection. That intersection is a mere one-quarter mile from the proposed project. There has been no study of the impacts on other critical intersections further east on West Broad Street, or on the I-64/West Broad Street interchange which will carry much of the traffic to the site.

31. A preliminary traffic study prepared by Taubman's consultant reveals that if 83% of the traffic to the proposed project originates from the east, four major traffic interchange

elements at the I-64/West Broad Street interchange will fail. These failures will directly impact the safe operation of the interchange and will adversely impact through traffic on I-64. Costly highway improvements, including the construction of a new interchange on I-64 closer to the proposed project, may be necessary.

32. A new or amended Section 404 Clean Water Act permit is also required. In August 1998, MJGT Associates obtained an Abbreviated Standard Permit 18 ("ASP-18") to destroy wetlands on the site of the SPTC. The permit, however, was based on a proposed project that differs substantially from the one currently proposed, for which the County approved the creation of the CDA. Pursuant to 33 C.F.R. § 325.7(a) of the regulations of the Army Corps of Engineers, changes to the size and configuration of the proposed project require a new or modified permit. There is no guarantee that the Army Corps of Engineers will allow the project to be built in its new configuration, or at all.

PLAINTIFF'S CAUSES OF ACTION

COUNT ONE

(The County Payments of Incremental Taxes
to the EDA Violates Va. Code § 15.2-953)

33. Taubman hereby repleads and realleges the allegations contained above, as if fully set forth herein.

34. Va. Code § 15.2-953 authorizes counties to make gifts and donations to various charitable and civic institutions. Paragraph B of that section authorizes "like gifts, donations or appropriations of money to industrial development authorities for the purposes of promoting economic development."

35. Under the tax rebate scheme approved by the Board, the County will pay over \$30 million to the EDA, which will use these funds as grants either to pay debt service for the CDA or as a grant to the developer after payment of installments on the special assessment.

36. The funds contributed by the County to the EDA will not be used for the public benefit or to promote economic development but rather will be used to finance privately-owned improvements or to make grants to a private business entity in violation of Va. Code §15.2-953.

37. Because the contribution of funds from the County to the EDA for the purposes contemplated in the Incentive Agreements is unlawful, the Board and the CDA exceeded their authority in authorizing and approving the Incentive Agreements; the EDA has no authority to approve the Development Agreement; and the Incentive Agreements are void.

COUNT TWO

(The Receipt and Use of the Incremental Tax Payments by the
EDA Violates Va. Code § 15.2-4900 et. seq.)

38. Taubman hereby repleads and realleges the allegations contained above, as if fully set forth herein.

39. The EDA is permitted to accept contributions, grants and other financial assistance from the County only for or in aid of the construction, acquisition, ownership, maintenance or repair of authority facilities, for payment of any bond of the authority, or to make loans in furtherance of the purposes of the IDRB Act.

40. Under the IDRB Act, the EDA is permitted to make grants to businesses or governmental entities only out of authority revenues which have not been pledged or assigned, and to the extent that such revenues are contributions, grants or other financial assistance by a local government, only to the extent that they are for or in aid of construction, acquisition,

ownership, maintenance or repair of authority facilities, or to make loans in furtherance of the purposes of the IDRB Act, as provided in Va. Code § 15.2-4905(12) and (13).

41. The SPTC improvements are not an authority facility because the EDA will have no role in the construction, acquisition, ownership, maintenance or repair of the private improvements to be financed by the CDA.

42. The tax increment funds which the County intends to contribute to the EDA are subject to the limitations of Va. Code § 15.2-4905(12) and (13).

43. The grants proposed to be made by the County to the EDA are unlawful because there is no provision of the IDRB Act which authorizes the EDA to accept such a grant. Consequently, defendants exceeded their authority in approving and authorizing the Incentive Agreements; the EDA has no authority to approve the Development Agreement, and the Incentive Agreements are void.

44. The grants proposed to be made by the EDA to the developer and to the CDA are unlawful because there is no provision of the IDRB Act which authorizes the EDA to make such a grant. Consequently, the Board and the CDA exceeded their authority in approving and authorizing the Incentive Agreements; the EDA has no authority to approve the Development Agreement; and the Incentive Agreements are void.

COUNT THREE

(The Issuance of Debt by the Short Pump CDA to Support
Private Improvements Violates Va. Code § 15.2-5152 et seq.)

45. Taubman hereby repleads and realleges the allegations contained above, as if fully set forth herein.

46. Va. Code § 15.2-5158A(1) authorizes community development authorities to finance, establish, acquire or construct and maintain "the infrastructure improvements

enumerated in the ordinance or resolution establishing the district, as necessary to meet the increased demands placed upon the locality as a result of development within the district."

47. Va. Code § 15.2-5125 provides that debt service of the CDA may be paid "solely from the funds provided for in this chapter for such payment."

48. Va. Code § 15.2-5131A provides that the issuance of bonds "shall not directly or indirectly or contingently obligate... any political subdivision to levy any taxes or make any appropriation for their payment except from the funds pledged under the provisions of the [Water and Waste Authorities Act]."

49. Under Virginia law, the CDA has only the powers expressly conferred upon it by the Code of Virginia, necessarily implied from an express grant, or essential and indispensable. The CDA has no powers under Virginia law to change its boundaries or otherwise to exclude parcels now within the CDA.

50. The CDA can fund only "necessary improvements" to meet the demands placed upon a locality. The financed improvements are not necessary to meet any demand placed upon the County as a result of development within the district. Rather, those are private improvements which will be constructed only for the private benefit and private profit of the developer of SPTC. Other than water and sewer extensions, and improvements to abutting roads, none of the improvements, which are described in Exhibit C to the CDA petition, can be considered as necessary for the public. In fact, approximately 85-90% of the debt to be issued is unrelated to public improvements. Consequently, under Va. Code § 15.2-5158, these improvements may not be financed or owned by the CDA.

51. The only funds authorized by the Water and Waste Authorities Act for the payment of the CDA's debt service are revenues obtained from special assessments or a special

tax on taxable real property levied pursuant to Va. Code § 15.2-5158. Tax increment financing is not authorized by the Water and Waste Authorities Act.

52. By executing the Incentive Agreements, the County has obligated itself to levy taxes and to make appropriations of tax increment revenues which are intended for the payment of the CDA bonds. These funds are not pledged to the payment of the CDA bonds. Thus, the County's contractual obligation to make incremental tax revenues available to pay debt service violates Va. Code § 15.2-5131.

53. The provisions of the resolution approving the CDA that authorize the CDA to change its boundaries and to exclude certain land from the CDA district and from the levy of the special assessment are unlawful under Article 6 of Chapter 51 of Title 15.2 and the Dillon Rule, and because of the unlawful delegation to the CDA of powers which belong solely to the Board and may not be delegated. The power to change the CDA boundaries or to exclude parcels is not expressly granted, necessarily implied, essential or indispensable.

54. The resolution establishing the CDA, the ordinance authorizing and approving the Incentive Agreements, and the Incentive Agreements themselves are all unlawful for the reasons set forth above. Defendants have exceeded their lawful authority, or in the case of the EDA, will exceed its lawful authority, in adopting, authorizing and approving them. As a result, the resolution, the ordinance and the Incentive Agreements are void.

COUNT FOUR

(The Levy of a Special Assessment to Finance Private Improvements Violates Article X, §§ 3 and 8 of the Virginia Constitution)

55. Taubman hereby repleads and realleges the allegations contained above, as if fully set forth herein.

56. Article X, § 3 of the Virginia Constitution authorizes the use of special assessments to finance local, public improvements, and implicitly prohibits the use of special assessments where the improvements are not both local and public in nature.

57. The financed improvements, with the exception of utility extensions and off-site road improvements, are not public improvements, but instead, are private improvements, located on private, shopping center property. Specifically, the plaza, parking lots, lighting, landscaping, entrance roads, and ring road are all private improvements to be constructed for the sole benefit and profit of private business entities. Excavation costs and "soft costs" related to these improvements are likewise private improvements or private costs.

58. The financed improvements are not local improvements in the constitutional sense because construction of these improvements will have no beneficial effect on surrounding properties or the local area.

59. Article X, § 8 of the Virginia Constitution prohibits the government from levying any tax greater than that required "for the necessary expenses of the government."

60. The financed improvements, including parking lots, lighting, landscaping, a shopping center plaza, a ring road, and entrance roads, all of which are a part of the shopping center, serve private purposes and will exist for private profit, and the costs of such improvements are not necessary expenses of the government.

61. The nature of the financed improvements as private, not public, and as non-local improvements, results in the special assessments being unconstitutional under Article X § 3 of the Virginia Constitution.

62. The private nature of the financed improvements results in the improvements not being a necessary expense of the government, and thus the government financing of such improvements is unconstitutional under Article X § 8 of the Virginia Constitution.

COUNT FIVE

(The Tax Rebate Scheme Violates Article X, §§ 1 and 6 of the Virginia Constitution)

63. Taubman hereby repleads and realleges the allegations contained above, as if fully set forth herein.

64. Article X, § 1 of the Virginia Constitution provides that "[a]ll taxes shall be levied and collected under general laws and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. . . ."

65. Article X, § 6 of the Virginia Constitution provides that "the following property and no other shall be exempt from taxation" The section does not include any provision applicable to SPTC.

66. The tax rebate scheme authorized by the Incentive Agreements permits non-uniform taxation in violation of this constitutional provision, grants an unauthorized, unlawful and unconstitutional exemption from taxation, and amounts to taxation by agreement, all in violation of Article X, § 1 of the Virginia Constitution.

67. The tax rebate scheme authorized by the Incentive Agreements grants an unauthorized, unlawful and unconstitutional exemption from taxation in violation of Article X, § 6 of the Virginia Constitution.

COUNT SIX

(Violation of Lending of Credit Clause)

68. Taubman hereby repleads and realleges the allegations contained above, as if fully set forth herein.

69. Article X, § 10 of the Virginia Constitution prohibits the granting of a local government's credit to or in aid of any person, association or corporation.

70. The Incentive Agreements violate the prohibition against lending of credit because the County contractually obligates itself, subject to appropriation, to pay the future tax increment amounts, through the EDA, (i) to the CDA, for its use in paying debt service, or (ii) to the developer, or (iii) a combination of the two.

71. The Incentive Agreements are thus unconstitutional under Article X, § 10 of the Virginia Constitution as they result in a violation of the lending of credit clause.

COUNT SEVEN

(Violation of Due Process Rights)

72. Taubman hereby repleads and realleges the allegations contained above, as if fully set forth herein.

73. Article I, § 11 of the Virginia Constitution and the Fourteenth Amendment of the United States Constitution provide that no person shall be deprived of life, liberty, or property without due process of law. The federal right applies to the states through the Fourteenth Amendment of the United States Constitution. The approval of the creation of the CDA and the public subsidy of the SPTC will diminish the value of Taubman's right to conduct business in Henrico County, and cause Taubman a substantial loss in annual revenue at Regency, and

concomitant reduction in the value of Taubman's property interest in Regency. This property interest is sufficient to require the County to afford Taubman due process.

74. The Board's actions in creating the CDA and approving the Incentive Agreements, both for the sole purpose of subsidizing the SPTC, were arbitrary, capricious and without rational basis. The action bears no real or substantial relation to any legitimate public objective.

75. Consequently, the actions violate Taubman's due process rights and are unlawful and void.

COUNT EIGHT

(Violation of Right to Petition for Redress of Grievances)

76. Taubman hereby repleads and realleges the allegations contained above, as if fully set forth herein.

77. The First Amendment of the United States Constitution and Article I, § 12 of the Virginia Constitution guarantee the right to petition the government for redress of grievances. The federal right applies to the states through the Fourteenth Amendment of the United States Constitution.

78. The local POD review and approval process pursuant to Chapter 24, Section 24-106 of the Henrico County Code is a forum which should afford Taubman the opportunity to air its views and seek redress of its grievances regarding the proposed development of the SPTC.

79. The actions taken by the Board to create the CDA and approve the Incentive Agreements, however, have so infected the POD approval process with prejudice and bias as to destroy the adequacy, effectiveness and meaningfulness of Taubman's right to petition for redress of its grievances. The outcome of the Planning Commission's review of SPTC's

impending application for POD approval can only be approval, as the Board has publicly and emphatically supported the Project, including committing tax revenues to it. Moreover, the body to which Taubman would appeal any adverse decision by the Planning Commission is the Board, which has made its support for the SPTC a legislative fact.

80. Consequently, the Board's actions violate Taubman's First Amendment right to petition the government for redress of its grievances and should be declared unlawful and void.

COUNT NINE

(Board Action is Arbitrary, Capricious and Lacking in Rational Basis)

81. Taubman hereby repleads and realleges the allegations contained above, as if fully set forth herein.

82. For an act of the Board of Supervisors to be lawful it must have a rational basis and bear a substantial relation to the public health, safety, morals, or general welfare. The Board is not permitted to act in an arbitrary or capricious manner.

83. In approving the CDA and the Incentive Agreements, the Board made no findings based on reasonable and identifiable facts, regarding whether the proposed subsidy of SPTC served legitimate public purposes. The Board undertook no objective analysis, based on reasonable and identifiable facts, as to the costs and benefits of the proposed subsidy of the SPTC on residents, taxpayers and businesses in Henrico County. Moreover, the Board acted before all regulatory approvals have been obtained and before critical traffic safety issues have been resolved. These issues will have a substantial impact on the viability of the project and the economic justification for public financial assistance.

84. In approving the Incentive Agreements and in creating the CDA, the Board acted not for a public, but for a private purpose.

85. The Board's actions in creating the CDA and in approving the Incentive Agreements are beyond the authority of the Board and illegal for the reasons set out in this Complaint.

86. Consequently, the Board acted arbitrarily and capriciously and without rational basis, and its actions should be declared unlawful and void.

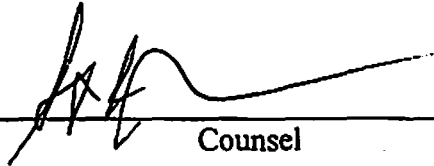
RELIEF

WHEREFORE, plaintiff Taubman requests judgment against defendants for the following:

- a. a declaratory judgment that the Incentive Agreements are unlawful and void;
- b. a declaratory judgment that the CDA and related financing structure violates the Virginia and federal Constitution, and the Code of Virginia;
- c. a declaratory judgement that in acting to create the CDA and related financing structure, the Board violated Taubman's due process and First Amendment rights and acted arbitrarily, capriciously and without rational basis;
- d. a permanent injunction preventing any further actions by the CDA, the EDA, or the Board to finance or otherwise support improvements at the SPTC; and
- e. such other and further relief as the nature of this case shall require and which to equity shall seem meet.

Respectfully submitted,

THE TAUBMAN LIMITED PARTNERSHIP

By  _____
Counsel

By  _____
Counsel

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(804) 344-3426
FAX (804) 344-3410

Counsel for The Taubman Limited Partnership

Dated: November 8, 2000

VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY

SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT AUTHORITY,

Plaintiff,

v.

Law Number CL00001636-00

TAXPAYERS, PROPERTY OWNERS,
AND CITIZENS OF THE COUNTY OF
HENRICO, VIRGINIA, INCLUDING
NON-RESIDENTS OWNING PROPERTY
OR SUBJECT TO TAXATION THEREIN,
AND ALL OTHER PERSONS INTERESTED
IN OR AFFECTED IN ANY WAY BY THE
ISSUANCE OF THE SHORT PUMP TOWN
CENTER COMMUNITY DEVELOPMENT
AUTHORITY OF ITS SPECIAL ASSESSMENT
BONDS,

Defendants.

**MOTION TO ENJOIN AND CONSOLIDATE PROCEEDINGS, AND
ALTERNATIVELY FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
RESPONSIVE PLEADINGS**

COMES NOW the Short Pump Town Center Community Development Authority (the "CDA"), by counsel, and moves the Court to enjoin proceedings in a Chancery Number CH00001304 filed in this Court by The Taubman Limited Partnership seeking to challenge the issuance of certain bonds proposed to be issued by the CDA, and to consolidate the two proceedings in this one. The CDA further moves this Court either to dispense with the requirement for the filing of responsive pleadings in this action, or for an extension of time within which to do so. In support the CDA states as follows:

11/30 2000
FILED IN OFFICE
Dep. Clerk of Court

1. On November 6, 2000, the CDA filed the present action in this Court (the “Bond Validation Suit”).

2. The CDA brought the Bond Validation Suit pursuant to Va. Code Ann. §§ 15.2-2600 et seq., portions of the Virginia Public Finance Act, seeking among other things a judicial declaration of the validity certain bonds to be issued by the CDA, the legality of all proceedings taken in connection with the authorization of the bonds, the validity of the means provided for the payment of the bonds, and the validity of all pledges of revenues and of all covenants and provisions which constitute a part of the contract between the CDA and the owners of the bonds.

3. On or about November 8, 2000, the Plaintiff, The Taubman Limited Partnership (“Taubman”), filed in this Court a separate action styled The Taubman Limited Partnership v. The Board of Supervisors of the County of Henrico, et al., Chancery CH00001304, generally seeking to invalidate the CDA bonds, and seeking to invalidate certain agreements related to the bonds (the “Bond Challenge”). Taubman was apparently not aware of the filing of the Bond Validation Suit two days earlier.

4. The Bond Challenge is in substance nothing but a reply by Taubman as a statutory party defendant to a bond validation proceeding, required by Va. Code Ann. § 15.2-2654. It presents nothing more than detailed contentions as to why the bonds ought to be declared invalid, and the two proceedings should be consolidated for all further proceedings.

5. Pursuant to Virginia Code Ann. §15.2-2655, the Court in which the “first proceeding to invalidate or sustain the bonds was instituted” may, on the motion of the bond issuer,

enjoin the commencement by any person, corporation, or association of any other action or proceeding involving the validity of the bonds or any matter recited in the motion for judgment. The court may order a joint hearing before it of all issues then pending

in any actions or proceedings in any court in the Commonwealth, may order all such actions or proceedings consolidated with the validation proceeding pending before it, and may make such orders as may be necessary or proper to effect consolidation and as may tend to avoid unnecessary costs or delays. Such orders shall not be appealable.

6. This Court is that in which the first of these proceedings was instituted, by the CDA, and if these matters are consolidated, then it would appear that the CDA need file no pleading responsive to the Bond Challenge. Proceedings should go forward on the Bond Validation Suit alone, with all issue joined for appropriate and timely disposition.

7. Because the Bond Challenge is indeed in the nature of a reply to the Bond Validation Suit, the CDA further moves this Court to order that no responsive pleadings need be filed to the Bond Challenge, or that, alternatively, the time for filing such responsive pleadings be extended pursuant to Rule 1:9 of the Rules of the Supreme Court of Virginia for such time as the Court deems proper following the hearing on the Bond Validation Suit presently scheduled for December 15, 2000. That hearing will clarify the manner in which the Court wishes to proceed on these matters, and Taubman will not be prejudiced by delay in response, if any response be required.

8. The interests of the parties and the Court in judicial economy would be best served by having these matters heard in one proceeding pursuant to Va. Code Ann. §15.2-2600.

WHEREFORE, the Short Pump Town Center Community Development Authority, by counsel, respectfully prays (a) that this Court enjoin separate proceeding in the Bond Challenge, and (b) consolidate the Bond Challenge with the Bond Validation Suit, (c) that the time for filing responsive pleadings, if any be required, be extended to such time as the Court may hereafter order, and (d) that the Court grant such other relief as it may deem just and appropriate.

RESPECTFULLY SUBMITTED,

SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT AUTHORITY

By: Robert D. Perrow

John H. Foote (VSB Number 14336)
John E. Rinaldi (VSB Number 31580)
Sylvion S. Moss (VSB Number 43049)
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1021 East Cary Street
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(804) 783-6405
General Counsel to the Short Pump Town
Community Development Authority

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of November, 2000, a true copy of the foregoing was mailed by United States Mail, postage prepaid, and sent by facsimile to Counsel for the Plaintiff:

Neil T. Proto
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Reed Smith, Hazel & Thomas, LLP
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McLean, Virginia 22102


Counsel

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IN THE CIRCUIT COURT OF HENRICO COUNTY

SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT
AUTHORITY,

Plaintiff,

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OR SUBJECT TO TAXATION THEREIN,
AND ALL OTHER PERSONS INTERESTED
IN OR AFFECTED IN ANY WAY BY THE
ISSUANCE OF THE SHORT PUMP TOWN
CENTER COMMUNITY DEVELOPMENT
AUTHORITY OF ITS SPECIAL ASSESSMENT
BONDS,

Defendants.

Law Number CL00001636-00

MOTION FOR SUBSTITUTION OF COUNSEL

The Plaintiff, by counsel, hereby moves this Court to substitute Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 9324 West Street, Suite 300, Manassas, Va. 20110-5198, as counsel for the Plaintiff.

RESPECTFULLY SUBMITTED,

SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT AUTHORITY

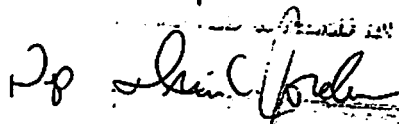
By:



Of Counsel

11/30

2000



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John E. Rinaldi (VSB Number 31580)
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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT
AUTHORITY,

Plaintiff,

v.

LAW NO. CL00-1636

TAXPAYERS, PROPERTY OWNERS,
AND CITIZENS OF THE COUNTY OF
HENRICO, VIRGINIA, INCLUDING
NONRESIDENTS OWNING PROPERTY
OR SUBJECT TO TAXATION THEREIN,
AND ALL OTHER PERSONS INTERESTED
IN OR AFFECTED IN ANY WAY BY THE
ISSUANCE BY THE SHORT PUMP
TOWN CENTER COMMUNITY
DEVELOPMENT AUTHORITY OF ITS
SPECIAL ASSESSMENT BONDS,

Defendants.

NOTICE OF HEARING

Please take notice that on December 8, 2000, at 9:00 a.m., or as soon thereafter as may be heard, Short Pump Town Center Community Development Authority, by counsel, will move for relief in accordance with its (i) Motion to Enjoin and Consolidate Proceedings, and Alternatively for an Extension of Time within which to File Responsive Pleadings and (ii) Motion for Substitution of Counsel.

SHORT PUMP TOWN CENTER COMMUNITY
DEVELOPMENT AUTHORITY

By:

Robert Penner
Of Counsel

11/30

2000

FILED IN OFFICE

John J. [Signature]
CIRCUIT COURT

Ralph L. ("Bill") Axselle, Jr. (VSB # 05213)
Robert D. Perrow (VSB # 14766)
Williams, Mullen, Clark & Dobbins
Two James Center
1021 East Cary Street
P.O. Box 1320
Richmond, Virginia 23218-1320
(804) 643-1991
(804) 783-6507 (FAX)
General Counsel to the Short Pump Town
Community Development Authority

John H. Foote (VSB # 14336)
John E. Rinaldi (VSB # 31580)
Sylvion S. Moss (VSB # 43049)
Walsh, Colucci, Stockhouse, Emrich
& Lubeley, P.C.
9324 West Street
Manassas, Virginia 20110
(703) 330-7400
(703) 330-7430 (FAX)
Special Counsel to the Short Pump Town
Community Development Authority

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of NOVEMBER, 2000, a true copy of the foregoing was mailed by United States mail, postage prepaid, and sent by facsimile to Counsel for the Plaintiff:

Neil T. Proto, Esq.
Verner, Liipfert, Bernhard, McPherson & Hand, Chartered
901 15th Street, NW
Washington, D.C. 20005

Steven W. Pearson, Esq.
Reed Smith, Hazel & Thomas, LLP
901 East Byrd Street, Suite 1700
Richmond, Virginia 23219

John J. Sabourin, Jr., Esq.
Reed Smith, Hazel & Thomas, LLP
8251 Greensboro Drive
McLean, Virginia 22102

A handwritten signature in black ink, appearing to read "Robert H. Penas", is written over a horizontal line.

I:\WMC\LIB\BOBPER\0674835 01

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT
AUTHORITY,

Plaintiff,

v.

Law No. CL00-1636

TAXPAYERS, PROPERTY OWNERS,
AND CITIZENS OF THE COUNTY OF
HENRICO, VIRGINIA, INCLUDING
NONRESIDENTS OWNING PROPERTY
OR SUBJECT TO TAXATION THEREIN,
AND ALL OTHER PERSONS INTERESTED
IN OR AFFECTED IN ANY WAY BY THE
ISSUANCE BY THE SHORT PUMP
TOWN CENTER COMMUNITY
DEVELOPMENT AUTHORITY OF ITS
SPECIAL ASSESSMENT BONDS,

Defendants.

**MOTION TO ENJOIN AND CONSOLIDATE PROCEEDINGS AND
ALTERNATIVELY FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
RESPONSIVE PLEADINGS**

COME NOW the Board of Supervisors of Henrico County, Virginia (the "Board of Supervisors") and the Economic Development Authority of Henrico County, Virginia (the "EDA"), by counsel, and state for their motion that they join in and adopt the motion filed by the Short Pump Town Center Community Development Authority (the "CDA") to enjoin proceedings in Chancery Number CH00-1304 filed in this Court by The Taubman Limited Partnership seeking to challenge the issuance of certain bonds proposed to be issued by the CDA, and to consolidate the two proceedings into this one.

11/30

2020

FILED & RECORDED IN OFFICE

[Handwritten signature]

In the alternative, the Board of Supervisors and the EDA also join in and adopt the CDA's motion for an extension of time within which to file responsive pleadings if the suits are not consolidated.

Respectfully submitted,

BOARD OF SUPERVISORS OF
HENRICO COUNTY, VIRGINIA

ECONOMIC DEVELOPMENT
AUTHORITY OF HENRICO
COUNTY, VIRGINIA

By: Joseph P. Rapisarda, Jr.
Counsel

Joseph P. Rapisarda, Jr. (VSB No. 14836)
County Attorney
John L. Knight (VSB No. 13389)
Deputy County Attorney
Ellen R. Fulmer (VSB No. 40978)
Assistant County Attorney
County of Henrico
P.O. Box 27032
Richmond, Virginia 23273-7032
804-501-4342 (Phone)
804-501-4140 (Fax)

CERTIFICATE

I hereby certify that on this 30th day of November, 2000, a copy of the foregoing Motion to Enjoin and Consolidate Proceedings and Alternatively for an Extension of Time within Which to File Responsive Pleadings was mailed by regular U.S. mail, postage prepaid, to Counsel for Plaintiff:

Neil T. Proto
Verner, Liipfert, Bernhard, McPherson & Hand, Chartered
901 15th Street, NW
Washington, D.C., 20005

Steven W. Pearson
Reed Smith Hazel & Thomas, LLP
901 East Byrd Street, Suite 1700
Richmond, Virginia 23219

John J. Sabourin, Jr.
Reed Smith Hazel & Thomas, LLP
8251 Greensboro Drive
McLean, Virginia 22102

and to Special Counsel for the Short Pump Town Center Community Development

Authority:

John H. Foote
John E. Rinaldi
Sylvion S. Moss
Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C.
9324 West Street
Manassas, Virginia 20110

and to General Counsel for the Short Pump Town Center Community Development

Authority:

Ralph L. ("Bill") Axselle, Jr.
Robert D. Perrow
William, Mullen, Clark & Dobbins
Two James Center
1021 East Cary Street
Richmond, Virginia 23219


Counsel

VIRGINIA:

IN THE CIRCUIT COURT FOR HENRICO COUNTY

THE TAUBMAN LIMITED PARTNERSHIP)	
)	
Plaintiff,)	
)	
v.)	Chancery No. CH00001304
)	
BOARD OF SUPERVISORS OF THE)	
COUNTY OF HENRICO, VIRGINIA, et al.,)	
)	
Defendants.)	

RESPONSE TO MOTION TO CONSOLIDATE AND ENJOIN

COMES NOW plaintiff, The Taubman Limited Partnership ("Taubman"), by counsel, and opposes the Motion of the Short Pump Town Center Community Development Authority (the "CDA") to consolidate this action with a bond validation suit filed by the CDA against the citizens, property owners and taxpayers of Henrico County (the "Bond Validation Suit"). The Motion further seeks to have the Court enjoin further proceedings in this action, and to dispense with all responsive pleadings in this action. In opposition to the Motion, Taubman states as follows:

1. Taubman filed this action against the Board of Supervisors of Henrico County (the "County Board"), the Henrico County Economic Development Authority (the "EDA"), and the CDA on November 8, 2000, seeking to have the Court declare unlawful and void certain agreements among parties including the named defendants and others which provide for the payment of over \$30 million to the developer of the Short Pump Town Center, a shopping center

to be developed and built in Henrico County. This action further seeks to have the Court declare that the County has violated Taubman's rights of due process and to petition the government, and to have the proposed financing of private improvements through the CDA declared unlawful and void.

2. By contrast, the Bond Validation Suit filed by the CDA is a suit against the citizens, property owners and taxpayers of the County, who are not parties to this action; nor did the Bond Validation Suit name the County Board or the Economic Development Authority as parties.

3. This action is considerably broader than the Bond Validation Suit. It is not, nor was it intended to be, an answer or grounds of defense to the Bond Validation Suit. It raises issues which go to the basis for creation of the CDA and the decision to provide over \$30 million to a private developer, questions which could not even be considered in the Bond Validation Suit. These questions include whether the County violated Taubman's constitutional rights to petition the government and to due process of law. In addition, Taubman alleges that the County Board acted arbitrarily, capriciously, and without rational basis in approving the payment of over \$30 million to the private developers who control this CDA. A bond validation court cannot resolve these issues within the scope of the Bond Validation Suit.

4. Moreover, the CDA improperly raises issues in the Bond Validation Suit which go well beyond those necessary to determine the validity of the bonds, and beyond the ability of

the Court to rule in a Bond Validation Suit.¹ For example, the question of whether the County may lawfully capture incremental taxes and pay them to private parties has no relation whatever to the debt of the CDA. In fact, such payments may not even involve the CDA, but rather are anticipated to be made by the County to the EDA, which will then pay the developers. Yet, the CDA seeks to authorize this in the Bond Validation Suit. This is the paramount issue in this case. It is legally and factually complex, and the expedited processes of a bond validation suit are not suited for the discovery of the evidence necessary for proof, and the legal analysis which is required to fully and fairly adjudicate this issue.

5. Where consolidation of cases is sought, the Court should exercise caution to see that a party will not be prejudiced. Clark v. Kinnach, 198 Va. 737, 744 (1957). The cases should involve substantially the same evidence, issues and parties. Maryland Casualty Co. v. Gallahue, 29 Va. Cir. 359, 361 (1992). In Middleburg Town Council v. Thomas, 42 Va. Cir. 56 (1997), consolidation of two certiorari proceedings arising out of the same board of zoning appeals decision was denied to the Town where it sought to achieve a procedural or substantive right in the consolidated case. It is clear that this case involves different parties, different issues and different evidence than the Bond Validation Suit. Moreover, it is clear that the CDA seeks consolidation to obtain special procedural advantages over the resolution of issues in this case, which is improper.

¹ The purpose of a Bond Validation Suit is "...to establish the validity of the bonds, the legality of all proceedings taken in connection with the authorization or issuance of the bonds, the validity of the tax or other means provided for the payment of the bonds, and the validity of all pledges of revenues and of all covenants and provisions which constitute a part of the contract between the issuer and the owners of the bonds." Va. Code § 15.2-2651.

6. The relief which may be awarded by this Court of equity is considerably broader than that which may be awarded in a Bond Validation Suit, and the relief sought by the CDA in its Motion presents a substantial possibility that Taubman will not be able to obtain the relief it seeks because a court of law will be unable to award such relief.

7. While a court in which a bond validation proceeding is instituted may enjoin the commencement of other suits involving the validity of the bonds, no such injunction has been requested, and the bond validation court is without power to enjoin further proceedings in this case. Therefore, the Court should not enjoin further proceedings in this case.

8. Consolidation of cases, even where ordered, is not a merger of the cases, but rather only permits them to be tried together. See Clark v. Kinnach, Id., at p. 745. Thus, there is no basis for dispensing with the requirement that defendants in this case file answers. Taubman requires discovery, including depositions, in order to prove its case, a process which is best undertaken in this case, with answers filed by all parties. Taubman has no objection to extension, for a reasonable period of time, of the time afforded each party to file its answer.

WHEREFORE, Taubman, by counsel, prays that the Court overrule the Motion of the CDA.

Respectfully submitted,

THE TAUBMAN LIMITED PARTNERSHIP

By Steven R. Johnson by SWP
Counsel

By John W. Penn
Counsel

Neil T. Proto
Steven R. Johnson
Patricia A. Deem
VERNER, LIIPFERT, BERNHARD
MCPHERSON & HAND, CHTD.
901 15th Street, NW
Washington, D.C. 20005
Telephone: 202.371.6000
Facsimile: 202.371.6279

Steven W. Pearson (Va. Bar No. 20688)
John J. Sabourin, Jr. (Va. Bar No. 1271)
REED SMITH HAZEL & THOMAS, LLP
Riverfront Plaza - West Tower
901 East Byrd Street, Suite 1700
Richmond, VA 23219-4069
Telephone: 804.344.3426
Facsimile: 804.344.3410

Counsel for The Taubman Limited Partnership

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December, 2000, a true copy of the foregoing
Response to Motion to Consolidate and Enjoin was sent via facsimile and mailed, first class,
postage prepaid, to:

John H. Foote, Esq.
John E. Rinaldi, Esq.
Sylvion S. Moss, Esq.
Walsh, Colucci, Stackhouse, Emrich &
Lubeley, P.C.
9324 West Street
Manassas, VA 20110

Special Counsel to the Short Pump Town
Center Community Development Authority

Ralph L. ("Bill") Axselle, Jr., Esq.
Robert D. Perrow, Esq.
Williams, Mullen, Clark & Dobbins
Two James Center
1021 East Cary Street
Richmond, VA 23219

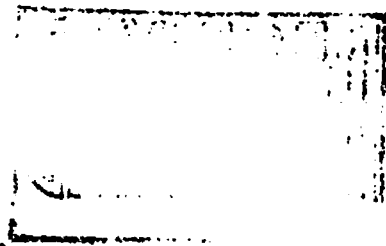
General Counsel to the Short Pump Town
Center Community Development Authority

Board of Supervisors of the County of Henrico, Virginia
c/o Joseph P. Rapisarda, Jr.
County Attorney
Parham and Hungary Spring Road
Richmond, VA 23273

Henrico County Economic Development Authority
c/o Frederick T. Agostino
Executive Director
8011 Villa Park Drive
Suite 160, B Building
Richmond, VA 23228-6501



Steven W. Pearson



VIRGINIA:

IN THE CIRCUIT COURT FOR HENRICO COUNTY

THE TAUBMAN LIMITED PARTNERSHIP,

Plaintiff,

v.

BOARD OF SUPERVISORS OF THE COUNTY
OF HENRICO, VIRGINIA, et al.,

Defendants.

Chancery No. CH00001304

MOTION TO STAY

COMES NOW Plaintiff, The Taubman Limited Partnership ("Taubman"), by counsel, and moves this Court to stay the proceedings in a law action in this Court styled Short Pump Town Center Community Development Authority v. Taxpayers, et al., Chancery No. CL00-1636 (the "Bond Validation Suit"). The grounds for this motion are set forth below.

1. On November 8, 2000, Taubman filed its bill of complaint in this action (the "Taubman Suit") against the Board of Supervisors of Henrico County (the "Board"), the Short Pump Town Center Community Development Authority (the "CDA"), and the Henrico County Economic Development Authority (the "EDA"). The Taubman Suit challenges the legality of the creation of the CDA, the establishment of a special assessment on property within the CDA and the approval of a Memorandum of Understanding and an Economic Development Agreement (the "Incentive Agreements") which will provide over \$30 million to the developer of the Short Pump Town Center. The Taubman Suit also raises significant constitutional issues under both the Virginia Constitution and the United States Constitution.

2. In its bill of complaint, Taubman sets forth in detail the statutory and constitutional deficiencies in the Defendants' illegal financing structure and the Incentive Agreements for the shopping center. Count 1 asserts that the Board payments to the EDA for private purposes violates Va. Code § 15.2-953; Count 2 asserts that the receipt and use of incremental tax payments by the EDA violates Va. Code § 15.2-4900, et seq.; Count 3 asserts that the issuance of

debt by the CDA to support private improvements violates Va. Code § 15.2-5152, et seq.; Count 4 asserts that the levy of a special assessment to finance private improvements violates Article X, Sections 3 and 8, of the Virginia Constitution; Count 5 asserts that the tax rebate scheme violates Article X, Sections 1 and 6, of the Virginia Constitution; and Count 6 asserts that the financing scheme violates the lending of credit clause, Article X, Section 10, of the Virginia Constitution. The Taubman Suit also has three additional counts contending that Defendants' actions have violated Taubman's constitutional rights: Count 7 asserts a violation of due process rights; Count 8 asserts a violation of the right to petition for redress of grievances; and Count 9 asserts that the Board action is arbitrary, capricious and lacking in rational basis.

3. The judicial determination of the validity of bonds is a unique proceeding specifically provided for by Va. Code § 15.2-2650, et seq. The Bond Validation Suit was filed on November 6, 2000, by the CDA, one of the defendants in the Taubman Suit, against the taxpayers, property owners and citizens of Henrico County as required by Va. Code § 15.2-2651. The Bond Validation Suit contains one count and is limited to one issue: the determination of the validity of bonds to be issued by the CDA. By statute, that is the purpose of such a suit.¹ Because the Bond Validation Suit is filed pursuant to Va. Code § 15.2-2650, et seq., and because the CDA has utilized and taken advantage of the unique procedures set forth in the Virginia Code for bond validation proceedings, it is limited solely to a determination of the validity of the bonds. Any

¹ Va. Code § 15.2-2651 provides in pertinent part:

The governing body of any locality or other political subdivision, agency or instrumentality of the Commonwealth proposing to issue bonds may bring at any time a proceeding . . . to establish the validity of the bonds, the legality of all proceedings taken in connection with the authorization or issuance of the bonds, the validity of the tax or other means provided for the payment of the bonds, and the validity of all pledges of revenues and of all covenants and provisions which constitute a part of the contract between the issuer and the owners of the bonds.

attempt by the CDA to expand the suit is improper and beyond the provisions of Va. Code § 15.2-2651.

4. The Taubman Suit is a much broader lawsuit in its causes of action than the Bond Validation Suit. This Court should resolve the claims raised by the Taubman Suit before proceeding with the much more limited Bond Validation Suit. For example, the Taubman suit challenges the legality of the creation of the CDA. That is an issue that must be resolved before the Court can determine the validity of the bonds. The orderly and appropriate way for this Court to proceed is to stay the Bond Validation Suit and allow the Taubman Suit to proceed forward. If this Court proceeds otherwise, Taubman may be deprived of its right to a fair and complete hearing on the issues raised in its lawsuit.

5. A motion to stay is addressed to the sound discretion of this Court and is predicated upon the inherent power of the Court to control its docket. Childers Foods, Inc. v. Rockingham Poultry Marketing Co-Op, Inc., 203 F. Supp. 794 (W.D. Va. 1962). Clearly this Court has the authority to stay the Bond Validation Suit.

WHEREFORE, Taubman requests this Court to enter an order staying proceedings in the Bond Validation Suit until the Court has resolved the claims raised in the Taubman Suit.

Respectfully submitted,

THE TAUBMAN LIMITED PARTNERSHIP

By: Steven R. Johnson by SLP
Counsel

By: Arthur W. Pen
Counsel

Neil T. Proto
Steven R. Johnson
Patricia Deem
Coke Morgan Stewart (Va. Bar No. 41933)
VERNER, LIIPFERT, BERNHARD
MCPHERSON & HAND, CHTD.
901 15th Street, NW
Washington, D.C. 20005

Steven W. Pearson (Va. Bar No. 20688)
John J. Sabourin, Jr. (Va. Bar No. 1271)
REED SMITH HAZEL & THOMAS LLP
Riverfront Plaza - West Tower
901 East Byrd Street, Suite 1700
Richmond, VA 23219-4069
(804) 344-3426
FAX (804) 344-3410

Counsel for The Taubman Limited Partnership

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Stay was sent via facsimile and mailed first-class, postage prepaid, this 1st day of December, 2000, to:

John H. Foote, Esq.
John E. Rinaldi, Esq.
Sylvion S. Moss, Esq.
Walsh, Colucci, Stackhouse, Emrich &
Lubeley, P.C.
9324 West Street
Manassas, VA 20110

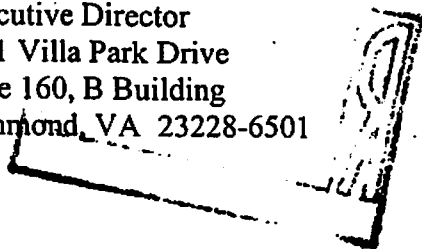
Special Counsel to the Short Pump Town
Center Community Development Authority

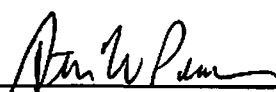
Ralph L. ("Bill") Axselle, Jr., Esq.
Robert D. Perrow, Esq.
Williams, Mullen, Clark & Dobbins
Two James Center
1021 East Cary Street
Richmond, VA 23219

General Counsel to the Short Pump Town
Center Community Development Authority

Board of Supervisors of the County of Henrico, Virginia
c/o Joseph P. Rapisarda, Jr.
County Attorney
Parham and Hungary Spring Road
Richmond, VA 23273

Henrico County Economic Development Authority
c/o Frederick T. Agostino
Executive Director
8011 Villa Park Drive
Suite 160, B Building
Richmond, VA 23228-6501





Steven W. Pearson

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO COUNTY

SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT
AUTHORITY,

Plaintiff,

v.

Law No. CL00-1636

TAXPAYERS, PROPERTY OWNERS,
AND CITIZENS OF THE COUNTY OF
HENRICO, VIRGINIA, INCLUDING
NONRESIDENTS OWNING PROPERTY
OR SUBJECT TO TAXATION THEREIN,
AND ALL OTHER PERSON INTERESTED
IN OR AFFECTED IN ANY WAY BY THE
ISSUANCE BY THE SHORT PUMP
TOWN CENTER COMMUNITY
DEVELOPMENT AUTHORITY OR ITS
SPECIAL ASSESSMENT BONDS,

Defendants.

GROUND OF DEFENSE

COMES NOW Arlie Hahn, a citizen, property owner and taxpayer of the
County of Henrico, ("Defendant"), enters an appearance in this action as a defendant, and as
Grounds of Defense to the Motion for Judgment filed by Short Pump Town Center Community
Development Authority (the "CDA"), states as follows:

1. Defendant denies the allegations in paragraph 1 of the Motion for Judgment.
2. Defendant admits the allegations in paragraph 2 of the Motion for Judgment.
3. Defendant is without knowledge or information sufficient to form a belief as to
the truth of the allegations in Paragraph 3 of the Motion for Judgment.

4. Defendant has no knowledge of the facts alleged in paragraph 4 of the Motion for Judgment and therefore denies them. Defendant states further that the resolution speaks for itself, and denies any allegations to the contrary and all other allegations.

5. Defendant has no knowledge of the facts alleged in paragraph 5 of the Motion for Judgment and therefore denies them. Defendant states further that the resolution speaks for itself, and denies any allegations to the contrary and all other allegations.

6. Defendant has no knowledge of the facts alleged in paragraph 6 of the Motion for Judgment and therefore denies them. Defendant states further that the ordinance speaks for itself, and denies any allegations to the contrary and all other allegations.

7. With respect to the allegations in Paragraph 7, Defendant avers that the Memorandum of Understanding speaks for itself and denies any allegation to the contrary and all remaining allegations.

8. With respect to the allegations in Paragraph 8, Defendant avers that the Economic Development Agreement speaks for itself and denies any allegation to the contrary and all remaining allegations.

9. Defendant denies the allegations in Paragraph 9 of the Motion for Judgment.

10. The allegations contained in Paragraph 10 constitute legal conclusions and, to the extent that they are asserted as facts, they are denied.

11. The allegations contained in Paragraph 11 constitute legal conclusions and, to the extent that they are asserted as facts, they are denied.

12. The allegations contained in Paragraph 12 constitute legal conclusions and, to the extent that they are asserted as facts, they are denied.

13. The allegations contained in Paragraph 13 constitute legal conclusions and, to the extent that they are asserted as facts, they are denied.

WHEREFORE, Defendant prays the Court dismiss this matter with prejudice, award the Defendant costs and attorneys fees expended, and grant such other and further relief as the Court deems just.

Dated this fourth day of December, 2000

Respectfully submitted,

By Arlie A. Hahn, Jr.
pro se

Name
Address

Arlie A. Hahn, Jr.
5219 Willane Road
Glen Allen, VA 23059

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO COUNTY

SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT
AUTHORITY,

Plaintiff,

v.

TAXPAYERS, PROPERTY OWNERS,
AND CITIZENS OF THE COUNTY OF
HENRICO, VIRGINIA, INCLUDING
NONRESIDENTS OWNING PROPERTY
OR SUBJECT TO TAXATION THEREIN,
AND ALL OTHER PERSON INTERESTED
IN OR AFFECTED IN ANY WAY BY THE
ISSUANCE BY THE SHORT PUMP
TOWN CENTER COMMUNITY
DEVELOPMENT AUTHORITY OR ITS
SPECIAL ASSESSMENT BONDS,

Defendants.

Law No. CL00-1636

GROUND OF DEFENSE

COMES NOW Bryan B. Gresham Jr., a citizen, property owner and taxpayer of the
County of Henrico, ("Defendant"), enters an appearance in this action as a defendant, and as
Grounds of Defense to the Motion for Judgment filed by Short Pump Town Center Community
Development Authority (the "CDA"), states as follows:

Defendant rejects the allegation in paragraph 2 of the Motion
for Judgment as baseless and mostly untrue. Consider the
listed benefits to the citizens of the county:

- "promote increased employment opportunities" The jobs
will be the same at the Hecht's and Dillard stores and all
the other stores that consider they are "upscale." Not new
jobs but the same jobs moved further west.
- "increased tax revenues" Land that would produce taxes
will be taken off the books to pay off the bonds. And the
decrease in assessment value at the current shopping malls
will reduce their taxes if they do not become defunct.
- "strengthened economic base" Having the county subsidize the
developers rather than having them bring in their own money
doesn't seem like the best economic plan.
- "retail opportunities not currently available" Yes, Nordstrom
and Lord and Taylor would be new to the area. But do our
county officials really want to provide corporate welfare to
get them here and at the expense of those of us who shop at
Penney's and Sears?

Defendant is concerned that the purpose of the bonds enumerated
in paragraph 7 does not include the cost of upgrading the
"feeder" roads to the Town Center. Not just the shoppers but
also the 4,000 projected employees who move from Regency and
Willow Lawn will have to travel the extra miles further west.
I know about one such road -- Three Chopt Road. I believe that
many of them will travel along it. Right now it is like an
hour glass going from 2 lanes to 4 lanes and back again.
Traffic will require it be 4 lane from Patterson and it will
cost a bundle. There are other roads I'm not as familiar with.

Therefore Defendant would like the Court not to issue a final order establishing the validity of the CDA and the special assessment bonds and further that the Court require the Developer to reimburse the County the amount of the legal fees in the suit against us.

Dated this fourth day of December, 2000

Respectfully submitted,

By Bryan B Gresham Jr

Name/Address -----

Bryan B Gresham Jr
9205 Lyndonway Dr
Richmond, VA 23229

Name/Address -----

12/4/2000

12/4

2000

FILED IN OFFICE

James C. Jordan
Clerk of Court

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO COUNTY

SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT
AUTHORITY,

Plaintiff,

v.

TAXPAYERS, PROPERTY OWNERS,
AND CITIZENS OF THE COUNTY OF
HENRICO, VIRGINIA, INCLUDING
NONRESIDENTS OWNING PROPERTY
OR SUBJECT TO TAXATION THEREIN,
AND ALL OTHER PERSON INTERESTED
IN OR AFFECTED IN ANY WAY BY THE
ISSUANCE BY THE SHORT PUMP
TOWN CENTER COMMUNITY
DEVELOPMENT AUTHORITY OR ITS
SPECIAL ASSESSMENT BONDS,

Defendants.

Law No. CL00-1636

GROUND'S OF DEFENSE

COMES NOW ROBERT ANDERSON citizen, property owner and taxpayer of the County of Henrico, ("Defendant"), enters an appearance in this action as a defendant, and as Grounds of Defense to the Motion for Judgment filed by Short Pump Town Center Community Development Authority (the "CDA"), states as follows:

1. Defendant denies the allegations in paragraph 1 of the Motion for Judgment.
2. Defendant admits the allegations in paragraph 2 of the Motion for Judgment.
3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Motion for Judgment.

4. Defendant has no knowledge of the facts alleged in paragraph 4 of the Motion for Judgment and therefore denies them. Defendant states further that the resolution speaks for itself, and denies any allegations to the contrary and all other allegations.

5. Defendant has no knowledge of the facts alleged in paragraph 5 of the Motion for Judgment and therefore denies them. Defendant states further that the resolution speaks for itself, and denies any allegations to the contrary and all other allegations.

6. Defendant has no knowledge of the facts alleged in paragraph 6 of the Motion for Judgment and therefore denies them. Defendant states further that the ordinance speaks for itself, and denies any allegations to the contrary and all other allegations.

7. With respect to the allegations in Paragraph 7, Defendant avers that the Memorandum of Understanding speaks for itself and denies any allegation to the contrary and all remaining allegations.

8. With respect to the allegations in Paragraph 8, Defendant avers that the Economic Development Agreement speaks for itself and denies any allegation to the contrary and all remaining allegations.

9. Defendant denies the allegations in Paragraph 9 of the Motion for Judgment.

10. The allegations contained in Paragraph 10 constitute legal conclusions and, to the extent that they are asserted as facts, they are denied.

11. The allegations contained in Paragraph 11 constitute legal conclusions and, to the extent that they are asserted as facts, they are denied.

12. The allegations contained in Paragraph 12 constitute legal conclusions and, to the extent that they are asserted as facts, they are denied.

13. The allegations contained in Paragraph 13 constitute legal conclusions and, to the extent that they are asserted as facts, they are denied.

WHEREFORE, Defendant prays the Court dismiss this matter with prejudice, award the Defendant costs and attorneys fees expended, and grant such other and further relief as the Court deems just.

Dated this fourth day of December, 2000

Respectfully submitted,

By Robert L. Laidman
pro se

Name
Address

Mrj 12/8

December 5, 2000

The Honorable Yvonne G. Smith, Clerk
The Circuit Court of the County of Henrico
P.O. Box 27032
Richmond, VA 23273


Ref: Short Pump Town Center
Law No. CL00-1636

Dear Ms. Smith:

This citizen found out late, since I do not normally read legal notices in the paper, about the opportunity to exercise my right as a Defendant in the Reference case dealing with the Short Pump Town Center. Being names a defendant in this case , a surprise to an ordinary, non-attorney, gave me little time to prepare and if possible appear to cite my views under the rules of our Commonwealth and this republic.

Certainly this tardy response will not bar an earnest citizen from appearing per se to exercise my right in this matter

I understand the case loads etc. of the Court, but from my citizen's view this a small matter in a large picture in which I wish to be heard. I am a property owner and taxpayer and a class defendant. Such an appeal, as in my case, may have already been decided, resadjudicata I think attorneys call it. Thank You.

Sincerely Yours,

Robert Anderson

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HENRICO CIRCUIT COURT

December 5, 2000

The Honorable Yvonne G. Smith, Clerk
The Circuit Court of the County of Henrico
P.O. Box 27032
Richmond, VA 23273

Ref: Short Pump Town Center
Law No. CL00-1636

Dear Ms. Smith:

This citizen found out late, since I do not normally read legal notices in the paper, about the opportunity to exercise my right as a Defendant in the Reference case dealing with the Short Pump Town Center. Being names a defendant in this case , a surprise to an ordinary, non-attorney, gave me little time to prepare and if possible appear to cite my views under the rules of our Commonwealth and this republic.

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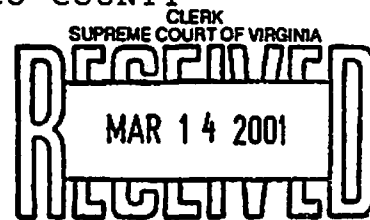
Robert Anderson

00450

VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY

SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT
AUTHORITY,



PLAINTIFF,

v.

Law No: CL00-1636

TAXPAYERS, PROPERTY OWNERS,
et al.,

DEFENDANTS.

THE TAUBMAN LIMITED PARTNERSHIP,

v.

Chancery No:
CH00-1304

BOARD OF SUPERVISORS
OF THE COUNTY OF
HENRICO, et al.,

DEFENDANTS.

Before: THE HONORABLE GEORGE F. TIDEY, JUDGE

MOTIONS

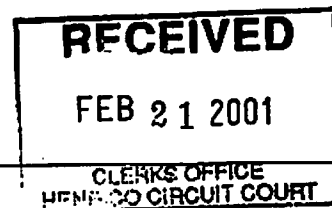
ORIGINAL

December 8, 2000
Henrico, Virginia

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Richmond, Virginia 23218-1644
(804) 741-5215

Reported by: Sally Valentine Qualls, RPR

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1 APPEARANCES:

2 WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY
3 9324 West Street
4 Manassas, Virginia 20110
5 By: JOHN H. FOOTE, ESQUIRE
6 Special Counsel on behalf of the PLAINTIFF
7 Short Pump Town Center Community Development
8 Authority

9 COUNTY OF HENRICO ATTORNEY'S OFFICE
10 By: JOSEPH P. RAPISARDA, JR., ESQUIRE
11 On behalf of the Defendants
12 Board of Supervisors and the Economic
13 Development Authority of the County of
14 Henrico

15 REED, SMITH, HAZEL & THOMAS
16 By: STEVEN W. PEARSON, ESQUIRE
17 JOHN J. SABOURIN, JR., ESQUIRE
18 901 East Byrd Street, #1700
19 Richmond, Virginia 23219
20 On behalf of the Plaintiff
21 The Taubman Limited Partnership

22 VERNER, LIIPFERT, BERNHARD, MCPHERSON
23 & HAND
24 By: STEVEN JOHNSON, ESQUIRE
25 901 15th Street, NW
Washington, DC 20005
On behalf of the Plaintiff
The Taubman Limited Partnership

1 (Proceedings began at 9:09 a.m.)

2 THE COURT: All right. Who's going to go
3 first?

4 MR. FOOTE: Your Honor, may I introduce
5 myself? My name is John Foote. I'm with the law
6 firm of Walsh, Colucci, Stackhouse, Emrich and
7 Lubeley out of Manassas. I'm here representing the
8 Short Pump Town Center Community Development
9 Authority, the CDA. By agreement with Mr. Pearson,
10 we will go first, sir.

11 THE COURT: All right.

12 MR. FOOTE: I believe you know
13 Mr. Rapisarda, your county attorney here,
14 representing the Board of Supervisors and the
15 Economic Development Authority of Henrico County.
16 Your Honor, we realize that this is the first
17 appearance we've got before you with respect to this
18 case, and I would like to just give you a very brief
19 outline of why we're here, how we got here, and why
20 we're here. And if I may hold my notes up -- because
21 of bifocals, I can't see anymore.

22 In late September of this year, Your Honor,
23 the board of supervisors of this county created
24 what's called a community development authority, a
25 CDA. It's an entity that's authorized under

1 provisions of the Virginia Water and Waste
2 Authority's Act. And it was done so for the purpose
3 of assisting in providing incentives for one of the
4 most significant economic developments to come to
5 Henrico County; it's called the Short Pump Town
6 Center. The Short Pump Town Center constitutes a
7 major investment in the Short Pump area of Henrico
8 County for what the pleadings reveal to be a
9 first-class retail project that is anchored by four
10 of the major retailers in the United States:
11 Dillard's, Hecht's, Lord and Taylor and Nordstrom's.

12 The board of supervisors and the CDA took
13 steps, in accordance with their plan of providing
14 incentives, to induce this project to locate in
15 Henrico County; the principal one of which is the
16 issuance of certain bonds. The proposal issues
17 certain bonds by the community development authority,
18 as it is authorized to do. As I say, this -- the CDA
19 is authorized to issue this kind of financing.
20 They're not, as you will learn in this case, the full
21 faith and credit of Henrico County, but rather they
22 are revenue bonds that are promulgated under the
23 provisions of Virginia law relating to those bonds.

24 On October the 20th, after creation of the
25 CDA, the CDA itself resolved to issue bonds in the

1 amount of approximately \$25,000,000 for the purposes
2 that were set forth in the organic documents that
3 created the CDA and which would permit the financing
4 of certain infrastructure in connection with the
5 development of the Short Pump Town Center. The
6 resolutions that did so incorporated two other
7 agreements which involve the economic development
8 authority of the county, the board of supervisors,
9 the CDA and the developers of this project. The
10 developers are a group out of Cleveland, Forest City
11 Enterprises, and also entities that are controlled
12 and owned by the Pruitt family locally. That entity
13 has formed a partnership for the purpose of
14 developing the shopping center and is the party
15 entering these agreements with the public agency that
16 I mentioned.

17 On October the 24th, the board of
18 supervisors authorized what's called a special
19 assessment in this case, which is the means by which
20 the bonds would be repaid, upon the petition of the
21 CDA, and again, according to the law of Virginia,
22 which authorizes the repayment of these bonds by
23 means of this special assessment.

24 On November the 6th, just last month, the
25 CDA filed what is known as a bond-validation suit

1 under the Virginia Public Finance Act. The Public
2 Finance Act is a statutory mechanism the General
3 Assembly has created for the purpose of permitting
4 public entities issuing bonds, whether general
5 obligation or revenue, to go before the Court and
6 obtain a judicial imprimatur on those bonds, which
7 makes them, in fact, marketable to potential
8 investors, removing legal questions as to the
9 validity of their creation. It is a proactive step
10 that the issuer may take in order to obtain that
11 imprimatur. You do that by filing a motion for
12 judgment in the circuit court that's appropriate,
13 which, of course, in this case, is this court. That
14 motion for judgment recites any number of things, but
15 basically recites that the CDA has been created. It
16 cites the issuance of the bonds, and it cites the
17 proceedings or recites the proceedings which were
18 associated with the approval of the issuance of those
19 bonds, and it does so in some detail.

20 On November the 8th, two days later -- and
21 we know, without the knowledge of the previous filing
22 of the bond-validation suit, that the Taubman Limited
23 Partnership, which is the owner of Regency Mall here
24 in Henrico County, filed its own bill of complaint in
25 this court, in effect challenging the issuance of the

1 bonds on a series of grounds, which are set forth in
2 its bill of complaint. They challenge the creation
3 of the CDA, the special assessment process, the
4 agreements for repayment, the uses to which the bond
5 proceeds should be put, and frankly, they throw in a
6 few Constitutional claims that are constrained only
7 by the inventiveness of very capable lawyers, as the
8 Court will learn during the course of this. Many of
9 them happen to be my former partners, and I'm fully
10 aware of their inventiveness in these matters. They
11 have thrown this complaint to the Court and said,
12 throw the bonds out, they don't work, they're illegal
13 for any number of reasons.

14 Well, on November 27th, just a few days
15 ago, sir, the CDA, in conjunction with the county and
16 with the EDA, filed in this court a motion to enjoin
17 and consolidate. That motion to enjoin and
18 consolidate is brought to this Court under the
19 provisions of the Public Finance Act. And if I may,
20 we did not bring a lot of paper to bore the Court
21 with, but if I may ask the deputy to provide the
22 Court with -- these are simply -- I'm assuming you
23 guys have got it. This is just the bond validation
24 provisions of the Finance Act. The Public Finance
25 Act is an extremely broad statute, the purpose of

1 which is to gather in one spot any question which
2 might touch on the validity of these bonds.

3 There is a specific provision that I would
4 like to direct your attention to, sir. That's
5 section 15.2, 2655 of the Public Finance Act, which
6 is the specific statutory authority for the
7 consolidation of actions or proceedings, and it says,
8 "Upon motion of the plaintiff or the issuer," the CDA
9 being the issuer here, "the Court in which the first
10 proceeding to validate or sustain the bonds was
11 instituted and may enjoin the commencement by any
12 person, corporation or association of any other
13 action or proceeding involving the validity of the
14 bonds or any matter recited in the motion for
15 judgment."

16 Now, the way the statutes are constructed,
17 I will tell you the phrase "motion for judgment" is
18 used in two contexts. One is the motion for judgment
19 filed as in this case by the CDA. It can also refer,
20 however, to the fact that even if the locality or the
21 issuer does not file a motion for judgment seeking
22 bond validation, it is possible for dissenters to
23 file, within a certain period of time, a motion for
24 judgment of their own contesting that, whether we
25 filed initially or not. The use of a motion for

1 judgment in that context therefore means that
2 essentially any allegation that touches on the
3 validity of these bonds may be taken up by a Court
4 under the Public Finance Act for resolution in one
5 spot. This statute, in addition to specifically
6 providing this Court the authority to enjoin and
7 consolidate, also authorizes this Court to issue
8 whatever orders are necessary in order to advance the
9 cause and preclude delay.

10 Now, not wishing to be outdone in this
11 case, my very capable friend, Mr. Pearson, filed, in
12 effect, a counter-motion, a tit-for-tat motion that
13 says, well, all right, we reply, we respond to your
14 motion to enjoin and consolidate with our own motion
15 to stay the bond validation proceeding, so that we
16 may proceed with our independent bill of complaint in
17 this case. By agreement, the parties also extended
18 the time for responses that each had to file, because
19 in the timing of these things, Your Honor, their
20 reply to the bond validation proceeding and our
21 answer to theirs should technically have been due
22 earlier this week. We, by mutual consent, agreed to
23 extend that until today and further order of this
24 Court.

25 The CDA, the board -- you'll hear from

1 Mr. Rapisarda. The CDA, the board and the EDA are
2 all of the opinion that, in fact, the Court must
3 enjoin these separate proceedings and bring
4 everything into one spot. The bond validation
5 proceeding that the Public Finance Act calls out is
6 meant to be a swift, sure and complete resolution of
7 all the issues that might touch on the validity of
8 these bonds. It is also, by its express terms, meant
9 to be an expedited process. Not only does the
10 statute say that, but there's a 1980 decision of the
11 Supreme Court, Harper versus City Council, in which
12 the Supreme Court recognizes the same fact under
13 prior law that the idea is to get these bonds before
14 a Court for consideration of all the potential
15 challenges to them so that those may be resolved.
16 And if they are valid bonds, then you go forward and
17 issue, without the cloud hanging over them, which
18 would preclude investors from purchasing. The Court
19 in effect, said what it said, "Dissenters must act
20 with dispatch, otherwise uncertainty will always hang
21 over bond issues and investors will be reluctant to
22 purchase." Section 15.2, 2650, the Public Finance
23 Act, gives very broad authority to this Court in
24 proceeding with this.

25 Taubman will suggest to you this morning

1 that, excuse me, Mr. Foote is not telling you that
2 our suit is actually quite a bit broader than the
3 bond validation proceeding, which goes only to the
4 validity of the bonds.

5 Your Honor, all you have to do is look at
6 2655 in the provisions of the Public Finance Act to
7 recognize that indeed, first of all, they raise
8 virtually nothing, if nothing, that's not touched
9 upon in the motion for judgment for the
10 bond-validation suit, and that the concept of
11 bringing everything together is not defeated if they
12 have one argument that doesn't completely overlap
13 with the motion for judgment. It still can be here
14 under the jurisdiction of this Court for resolution,
15 because when you look at what they asked the Court to
16 do in the motion for judgment, their bill of
17 complaint, it is quite simply to invalidate the bonds
18 for various reasons, most of which are essentially
19 legal in nature.

20 We would observe that most importantly,
21 that Taubman loses nothing by this procedure. It
22 loses nothing, Your Honor, except its ability to
23 delay the process, because quite frankly, Taubman, in
24 its bill of complaint, is very candid about this
25 process. It is a disappointed competitor. It owns

1 Regency Mall. It frankly does not like the fact that
2 these bonds have been issued for the purpose of the
3 Short Pump Town Center. And in their filings with
4 the court, they indicate that they wish to engage in
5 extensive discovery on issues they say are, "legally
6 and factually complex," and "the expedited process of
7 a bond-validation suit are not suited to the
8 discovery which is necessary."

9 Well, the whole purpose of that, of course
10 is to cost time. The Public Finance Act -- the
11 General Assembly indicated when you're dealing with
12 public bonds, the purpose is to expedite the process
13 because of the importance to the public of financing
14 through this mechanism, and yet they have been very
15 candid that what they want to do is slow the process
16 down.

17 We think that given the fact that principal
18 issues in this case will turn on public documents,
19 will turn on the resolutions that were documented by
20 the board of supervisors, by the EDA, the CDA, and
21 the fact that under Virginia law, Taubman bears a
22 very heavy burden of overcoming the very strong
23 presumptions as to the validity of the bonds and the
24 legislative actions which were undertaken to
25 promulgate the bond or to approve their issuance,

1 they can be served only by delay in this process, and
2 yet the issues that will ultimately be before this
3 Court are not going to be factually complex. We
4 think they are not all that legally complex, and yet
5 by engaging in the processes of discovery associated
6 with the separate and independent bill of complaint,
7 what do we obtain, nothing except time. All the
8 arguments that they propose to make -- and as I say,
9 their bill of complaint is essentially a litany of
10 legal arguments, many interesting, many different
11 from perhaps which you might have seen in other
12 cases, but all of which relate to the validity of the
13 bonds, these all need to be in this case and under
14 the expedited process of the bond validation
15 proceeding, so that the CDA, the EDA and the board
16 may be about their business.

17 This Court has already, by an order issued
18 in connection with the original bond validation
19 proceeding, set next Friday for a hearing on the
20 bond-validation suit, as it is required to do by
21 Section 2654 of the Public Finance Act. We represent
22 to the Court that the CDA and the board are prepared
23 to go forward with that hearing next week with the
24 evidence we believe is necessary for resolution of
25 that.

1 Taubman may well say to this Court that my
2 goodness gracious, there is just not enough time to
3 do that. We would observe, sir, that that public
4 hearing has been noticed now for weeks, at least six
5 weeks if not more. Taubman participated in the
6 public proceedings which led to the creation of the
7 CDA and the process by which the bonds have been
8 approved. And we suggest that under the statute, we
9 are, in fact, to go forward and prepared to do so;
10 represent that to you.

11 We ask Your Honor to enjoin the separate
12 proceeding, consolidate it in with this proceeding,
13 and that we proceed forward to the hearing next week,
14 and that the Court not let Taubman exercise the
15 processes of the Court to delay consideration of the
16 fundamental issues in this case.

17 MR. PEARSON: Good morning, Your Honor.
18 May it please the Court, I'm Steve Pearson of the
19 firm Reed, Smith, Hazel & Thomas. My co-counsel,
20 John Sabourin, from the same firm, is here with me.
21 And as a preliminary matter, Your Honor, I would like
22 to introduce to the Court, Steve Johnson, who is a
23 member of the Verner, Liipfert firm and a member of
24 the District of Columbia Bar, and for purposes of
25 this proceeding, move his admission.

1 THE COURT: All right.

2 MR. PEARSON: Your Honor, my former
3 colleague and my good friend, Mr. Foote, has in many
4 instances accurately characterized what we are about
5 here this morning and given the Court a succinct,
6 albeit narrow history of the process that has led us
7 here. What I would like to do as sort of a
8 preliminary matter is to give the Court a little bit
9 of additional context and to highlight those areas in
10 which Mr. Foote and I have some disagreements; and
11 they are important disagreements.

12 As Mr. Foote indicated, Taubman Limited
13 Partnership is the owner of Regency Square, and as
14 such, is interested in this action not only as a
15 taxpayer -- and that is the nature of the Taubman
16 suit that has been filed, as a taxpayer -- but
17 they're also interested in this matter as a
18 competitor. And they are affected not so much by a
19 CDA's issuance of debt in this case to support a
20 competitor's infrastructure improvements but by the
21 granting of \$30,000,000 in public funds over a
22 five-year period to the developers and the owner of
23 that property, as what amounts to a direct public
24 subsidy of a competitor's infrastructure. They
25 thought at one point that perhaps they should ask the

1 county to buy the parking lot at Regency for
2 \$30,000,000, but we knew what the answer would be on
3 that.

4 Your Honor, this case, the Taubman case, is
5 an economic development case. It's not a, per se, a
6 CDA case. The CDA plays a very minor role in this
7 issue. This is a case more like the Corner case that
8 came up about 30 years ago in the context of
9 industrial development authority powers, more like
10 the DeHaan case in Charlottesville, which was a
11 lending and credit case and aimed at construction of
12 housing development authority powers. And it
13 involves important statutory and constitutional and
14 policy issues, because the form of the economic
15 development incentives that the county proposes to
16 grant to the developer in this case, we submit, goes
17 substantially beyond the edge of the envelope that
18 currently exists in law and in policy in terms of
19 incentives to promote development and jobs. So we
20 believe that this case needs a full development on
21 the record, and -- pursuant to the rules of the
22 Supreme Court, and that it should not be subjected to
23 the short shrift type of process, which Mr. Foote has
24 already indicated that the county and the EDA and the
25 CDA will attempt to give this.

1 Let me talk for must a minute about what a
2 CDA is, because a community development authority is
3 a relatively new construct in Virginia law. It's
4 been around for about five or six years, and there
5 are maybe a half dozen, somewhere between six and ten
6 CDAs in Virginia, maybe some additional in the
7 process of formation. But they are subsets of the
8 water and waste authorities which exist to provide
9 water and wastewater services throughout the state.
10 And their purpose is to act basically as a conduit
11 financing agency for what would otherwise be
12 developer financing. In other words, a developer
13 wants to develop a large tract of land and
14 anticipates putting millions of dollars of
15 infrastructure in there. A CDA provides a mechanism
16 which, with local government approval, the developer
17 can use to turn his infrastructure cost into
18 something that he can finance with tax-exempt debt
19 and can finance on the balance sheet of another
20 entity. So what it does is it helps his internal
21 rate of return, and it helps him develop his project.
22 It helps him with his other financing. And the
23 evidence to this is found in the CDA act itself.

24 This is a developer construct. The CDA
25 cannot be adopted in any form different from that

1 expressed in the petition that the developer filed
2 with the local government for the formation of it.
3 In other words, the local government can't change
4 anything material that the developer has asked for
5 without the developer's concurrence. The developer
6 generally names the board members of the community
7 development authority, as they have in this case.
8 The five members of the CDA board were all tendered
9 to the county by the developer, and the county acted
10 and appointed those five members.

11 In addition, in most cases where public
12 bodies engage in construction, they do so pursuant to
13 the Virginia Public Procurement Act. The CDA in this
14 case has been advised by their counsel that the
15 Procurement Act does not apply, and we assume that
16 they are proceeding down the road to have either the
17 developer contract on behalf of the CDA or the
18 developer contract independently for the construction
19 of this infrastructure. And the costs are advanced
20 by the developer. There's no CDA funding mechanism
21 that is in place at this point in time to pay anybody
22 anything. The developer is advancing the cost.

23 Now, what's different about this CDA than
24 the normal CDA? As Mr. Foote indicated, the purpose
25 of this CDA is that it was formed in order that the

1 local government could wrap these development
2 incentives, the \$30,000,000 cash payments to the
3 developers, around the community development
4 authority, and they have done so in a manner which
5 puts them substantially beyond what the law allows.
6 No CDA has been formed in Virginia for the purposes
7 that this CDA has been formed, and no CDA that we are
8 aware of has been formed to finance the type of
9 infrastructure that this CDA is going to finance. It
10 is basically private infrastructure, a shopping
11 center, plaza, parking lot, lighting; all of these
12 are private improvements. They don't benefit the
13 county. The county could not and would not build
14 them under any circumstance.

15 So the CDA's purpose, again, is simply to
16 turn these developer costs into something that the
17 developer can finance with tax-exempt debt off of his
18 balance sheet. This CDA attempts to go considerably
19 beyond what a normal CDA could do.

20 Now, why would we oppose consolidation?
21 Your Honor, over the better than a year that this
22 process has been going on, a number of things have
23 happened, all of which kind of nibbled away at
24 Taubman's due-process rights, Taubman's rights to
25 petition the government, Taubman's rights to get a

1 fair shake in this matter. The first of them is that
2 when Taubman came to the county, when it was
3 considering renovation, reconstruction and
4 enlargement of Regency Square, to talk about
5 development incentives with the county, they were
6 told the county doesn't do that, if you want to
7 submit something to us, we'll consider it. But a
8 fair characterization of dialogue that was held about
9 two years ago is that Taubman was rather vigorously
10 discouraged from doing anything. Now, can the county
11 change its mind and do something later? Of course
12 they can. And I think that maybe that's what's
13 happened here. But Taubman had been discouraged from
14 doing this themselves.

15 And then they find out around about April
16 of this year, when press reports first began to
17 surface, that indeed the county and the developers of
18 the Short Pump Town Center had been engaged in
19 negotiations for incentives, and that these
20 negotiations had included closed meetings of the
21 board of supervisors and a good deal of negotiation
22 and exchange of draft documents and the like, all
23 done behind closed doors, without Taubman having the
24 benefit of any comment or any participation in that
25 process. And in fact, when the reports first

1 surfaced in April, one of the members of the board of
2 supervisors was quoted as saying in the newspaper,
3 "I'm not aware that this matter is going on and no
4 proposal has been made to us."

5 Well, within a couple of months, things had
6 developed a little bit further, and Taubman had
7 discovered, pursuant to a rather broad freedom of
8 information request, that indeed these negotiations
9 were going on. However, what was not in the freedom
10 of information documents that were made available to
11 us -- and I'm persuaded, by the way, that we did get
12 certainly the universe of documents that were related
13 to this project. There's nothing in there in the way
14 of white paper that would explain what they're doing.
15 There's nothing in the way of staff analysis.
16 There's nothing in the way of even a description of
17 the project.

18 What we got that we could use were
19 certainly draft contracts, the draft memorandum of
20 understanding, the draft economic development
21 agreement that Mr. Foote referred to. And there was
22 among those documents a reference in the form of a
23 transcribed voice mail to the effect that the
24 parties, knowing that the Freedom of Information Act
25 is out there, are trying to keep the record clear of

1 anything that might be useful to anybody who was
2 interested, such as a competitor.

3 Now, Taubman is a big boy and Forest City
4 is a big boy and Henrico County is a big boy, and we
5 understand how these things work, but the point is
6 that at every step along the way, Taubman's
7 due-process rights are getting nicked to the extent
8 that they can be nicked.

9 When the bond validation suit was filed, we
10 see still further evidence of efforts to nick away,
11 chip away at Taubman's due-process rights. When its
12 case was filed, certainly the county and the economic
13 development authority could have been joined as
14 plaintiffs in that case, but they were not. When we
15 filed our case two days later, perhaps they didn't
16 expect it, perhaps they hadn't considered it, they
17 came up with the consolidation motion. And what the
18 Court will find, the issues in the consolidation
19 matter are identity of parties, identity of issues,
20 identity of relief and absence of prejudice to the
21 parties. So here we have a county and the EDA
22 attempting to intervene in the bond validation case
23 in an effort to create that alignment of parties so
24 that the consolidation motion can then attempt
25 further to chip away at Taubman's rights.

1 In fact, shortly after the bond-validation
2 suit was filed, an editorial appeared in the Richmond
3 newspaper to the effect that it was obvious that the
4 validation suit had been filed in an effort to thwart
5 the Taubman case. And I think they're right on the
6 mark with that. That's clearly the reason that it
7 was. And it's puzzling to me why the county and the
8 CDA and the EDA aren't simply willing to engage in
9 and participate in the suit that Taubman has filed,
10 because as Mr. Foote has indicated, it is broad.

11 What we have found recently -- and this,
12 again, is another due process issue. A part of our
13 case is that the project, the Short Pump Town Center
14 project, has an approved plan of development issued
15 December, two years ago; December of '98. And by
16 increasing the size of the center by more than 20
17 percent, by increasing the footprint of the buildings
18 and the size of the department stores dramatically,
19 reconfiguring the center, if you will, that another
20 plan of development has to be filed and has to go
21 before the planning commission. And at that point,
22 Taubman, as any other citizen, will have the ability
23 to come before the planning commission and to speak
24 its piece concerning the development issues that will
25 be before them, which include traffic and traffic

1 congestion and environmental considerations, esthetic
2 considerations and the like. This is, by any
3 measure, a substantial change in the nature of this
4 center over the past two years. We believe now and
5 have written to the county manager this morning,
6 asking for an explanation, that actually what the
7 county is doing is engaging in a piecemeal process of
8 the administrative revision of this POD, and that
9 they're going to end up through that process
10 depriving Taubman and depriving the citizens of this
11 county of any voice in the development process as it
12 goes forward at that shopping center. And it is
13 important to our case because we have alleged that by
14 approving the CDA prematurely, the board, the Henrico
15 County Board, has interfered with Taubman's
16 due-process rights and interfered with Taubman's
17 rights to petition for redress of grievances, so the
18 POD is a part of our case.

19 Now, in short, what the county is trying to
20 do is to short circuit Taubman's development rights,
21 Taubman's due-process rights. And the consolidation
22 is simply a part of that process. And as I indicated
23 a moment ago, we sort of see this as a straight
24 forward consolidation issue, but it relies upon
25 identity of parties, identity of issues, identity of

1 evidence, identity of relief and the like.

2 Now, the parties clearly are not present in
3 this. You have the county's and the EDA's motion to
4 intervene, but we think that that's designed solely
5 to get before the Court the notion that perhaps there
6 is another party, but we will also have the taxpayers
7 in the bond-validation suit, taxpayers who were not
8 present in the Taubman suit. As to the identity of
9 issues, that's not present either. We have alleged
10 that the CDA was formed prematurely by the county and
11 that that premature formation has interfered with
12 Taubman's due-process rights, Taubman's rights to
13 petition the government, and we have alleged that
14 because the county did not even look at a variety of
15 things in consideration of the economic development
16 incentives, such as the affect on the tax revenues
17 and the affect on the other businesses, retail
18 businesses in the county generally, that that
19 decision to create this is arbitrary and capricious
20 and premature.

21 Now, this goes to -- it goes well beyond
22 the ability of the CDA to issue debt, because if the
23 CDA was formed prematurely and formed defectively,
24 that's a question that we believe is beyond the
25 consideration, beyond the pale in the validation

1 suit. So we have alleged these issues that go well
2 beyond the validation suit as pleaded.

3 We also believe that the validation suit as
4 pleaded is improperly pled and is far too broad. We
5 also believe that the validation suit is filed
6 without jurisdiction, that the Public Finance Act
7 provisions dealing with validation of suits do not
8 apply, and that a set of parallel complimentary
9 provisions that you will find in the Water and Waste
10 Authority's Act do apply and do enable this Court to
11 adjudicate the validity of the bonds under a
12 different format.

13 Now, why would the county and the CDA seek
14 to invoke the provisions of the Public Finance Act?
15 It's very simple. They seek to do that because the
16 comparable provisions in the Water and Waste
17 Authority's Act don't allow them to seek expedited
18 treatment, they don't allow the consolidation, they
19 don't allow the sort of plenary powers that the
20 Public Finance Act would allow. But quite simply --
21 and if we end up in that case, we'll have a motion at
22 the right time, but quite simply, the Court is
23 without jurisdiction to hear that case.

24 Your Honor, what they have asked for in
25 connection with the motion to consolidate is not only

1 that the cases be consolidated, but that the county,
2 the CDA and the EDA be relieved of the obligation
3 that they have under the rules of court to respond in
4 the form of an answer to Taubman's bill of complaint.
5 We don't think that that is authorized under the
6 statute. So even if you were to grant the
7 consolidation, we don't think that you could cut off
8 Taubman's right to the due process that would attain
9 to it in the form of requiring the parties to answer.

10 We further think that the injunction motion
11 is beyond the authority of the Court. Section 2655
12 of Title 15.2 gives the Court in which the first
13 proceeding to invalidate or sustain the bonds was
14 instituted -- clearly this court, both of the cases
15 are here anyway -- the ability to enjoin the
16 commencement of suits, but this suit had been
17 commenced prior to any order of the Court that would
18 enjoin it, and the statute quite simply is silent as
19 to enjoining proceedings.

20 Now, it does give Your Honor the ability to
21 make such orders as may be necessary or proper to
22 effect consolidation. And it does give Your Honor
23 the ability to enter orders as may tend to avoid
24 unnecessary costs or delays.

25 Now, what we would submit to you is that it

1 is much more expeditious to try the Taubman case
2 first, because the Taubman case is broader. I cannot
3 conceive of a resolution in the Taubman case that
4 doesn't fully dispose of the bond-validation case,
5 but the converse is not true. If the bond-validation
6 case, as pled, is decided, you would still have a
7 number of matters left over in the Taubman case among
8 those that I mentioned. So I believe that the
9 judicial economy is really to go ahead and stay the
10 bond-validation suit and proceed expeditiously, and
11 we are prepared to proceed expeditiously with the
12 trial and resolution of the Taubman case.

13 We do have a case that is cited in our
14 response that I think is instructive on the
15 consolidation issue. It is the Middleburg Town
16 Council case, in which the Court says that -- bear
17 with me just a moment. The Court says that -- what
18 you had in this case were two petitions for writs of
19 certiorari coming out of the board of zoning appeals'
20 actions to the circuit court in Loudoun County. An
21 individual plaintiff was behind one of the writs, the
22 town council was behind the other. Both of them
23 filed their writs, and they agreed to have the cases
24 tried on the same day. The Court said that, "If the
25 town council seeks to have the proceedings

1 consolidated so that it has some procedural or
2 substantive right in Mrs. Thomas's proceeding, the
3 motion to consolidate is denied." And we read that
4 case as meaning that if the purpose of the motion to
5 consolidate is to achieve some sort of procedural
6 advantage over another party, then it is appropriate
7 to deny that relief. And I have that case here if
8 Your Honor would --

9 THE COURT: Thank you.

10 MR. PEARSON: Thank you.

11 MR. FOOTE: Your Honor, my very able friend
12 and former partner, Mr. Pearson, has given you what I
13 consider to be an absolutely perfect argument as to
14 why these cases need to be enjoined and consolidated.
15 What he did is essentially wander far afield and tell
16 you what this case is going to be about when you
17 finally hear it, but he did not give this Court any
18 reason to conclude that this Court neither has the
19 power nor that it needs to bring the suits together.
20 Most of the arguments that he made are effectively
21 legal arguments, which go to the fact that the CDA,
22 Short Pump Town Center CDA has proposed to go forward
23 in very short order to sell \$25,000,000 worth of
24 bonds for a project that they don't like. Every
25 argument that they throw before this Court today is

1 an argument that fundamentally touches upon the
2 validity of those bonds and is an effort to stop
3 those. All the discussions about this Court's
4 equitable powers to consolidate cases, either -- I
5 say equity, either in law or in equity, to
6 consolidate cases under, sir, your common-law power
7 to do that, a power which I'm sure this Court
8 probably exercises and understands, is trumped by the
9 fact that the General Assembly of Virginia gave you
10 the specific statutory authority to do what we ask.
11 We're not dealing with your equitable powers as a
12 circuit-court judge in the Commonwealth or this
13 state. We're talking about what the General Assembly
14 states you can do.

15 They keep insisting that somehow this
16 process over time has nibbled away at their
17 due-process rights. Obviously that's a merits
18 argument that goes to whether they have any
19 due-process rights. The implication of Mr. Pearson's
20 argument is that they have a Constitutional
21 due-process right to have the County of Henrico give
22 them several million dollars. Excuse me, I just
23 don't think that this Court's going to conclude that
24 that's the case when this is all shaken out. But
25 once again, we don't need to get to the merits of

1 that. We're not here for a merits argument. We're
2 here for the question of how we shall procedurally go
3 forward in this case.

4 The Court will also learn in this process
5 as they complain of how somehow the county has
6 nibbled away at their due-process rights, at the same
7 time this process was going on in the County of
8 Henrico, and as they're filing Freedom of Information
9 Act requests on the board of supervisors, it was also
10 determined that at the same time, Taubman was engaged
11 in a process of being a suitor of the City of
12 Richmond for millions of dollars of incentives from
13 the City of Richmond. Now, they will attempt to
14 distinguish that, I'm sure, in the course of these
15 proceedings, but the issue is not the merits of
16 what's right and wrong here, but how this Court is
17 going to proceed. And I think what the Court heard
18 here was Mr. Pearson saying, well, let them go over
19 here and have their bond-validation suit, oh, but it
20 would be nice if you stopped that while we went ahead
21 and proved that somehow this is all wrong, let us go
22 forward with this other case, but this other case
23 really only relates to the bonds, because if the
24 bonds fail, well, this is all moot.

25 So what we suggest to the Court is that

1 this consolidation is unique under the statute. It
2 is so clearly called for by the argument you have
3 heard today that I couldn't have done better myself
4 if I had done both sides of the argument as to why
5 one proceeding is what you should do.

6 Let me touch briefly on this point that
7 the Public Finance Act does not apply. We actually
8 have prepared a memorandum for the Court that was in
9 preparation for today's proceeding, but determined,
10 in wisdom, to simply tell the Court what we have in
11 mind. We have a memorandum which touches not only
12 the motion to enjoin and consolidate, but why the
13 Public Finance Act most certainly does apply. And we
14 would ask the Court's leave to submit that memorandum
15 either today or the beginning of the week. But we
16 believe -- and we're happy we have it here today to
17 provide it to you, which touches on that.

18 The Public Finance Act is, in fact, the
19 statute by which the General Assembly of Virginia
20 deals with the validation process of all bonds.
21 There are, in fact, other provisions in the Virginia
22 Waste and -- Water and Waste Authority's Act dealing
23 with the issuance and testing of bonds, but those
24 provisions contain no proactive mechanism for the CDA
25 to have its bonds tested. It's sort of a wait and

1 see statute there. If somebody doesn't file a
2 compliant within 30 days, they're presumed valid,
3 presumed valid.

4 But the Public Finance Act expressly
5 contains provisions that says that this is the way to
6 get any bond issued by a public authority of Virginia
7 before a Court, to get that stamp of judicial
8 approval on them, to take away this presumption of
9 validity and make it an irrebuttable presumption of
10 validity. The Public Finance Act does apply. The
11 Public Finance Act does provide this Court the power
12 to enjoin and consolidate. And indeed it's
13 sophistry, it seems to me, to say you may enjoin the
14 commencement of a proceeding. Well, the truth is, we
15 filed first, and we are asking the Court to enjoin
16 proceedings in the separate suit; bring them all in
17 here. We're not telling Taubman that it can't bring
18 these issues to this Court; of course it can. We'll
19 argue about that in due course. But bring them here
20 under the act that is supposed to deal with these
21 issues, sir.

22 MR. PEARSON: Your Honor, I won't tread
23 very much longer on the Court's time, but a couple of
24 things Mr. Foote said prompt me to respond. And I
25 did also want to bring to the Court's attention

1 Taubman's view of the bond-validation suit, because I
2 think Mr. Foote is essentially trying to turn this
3 process to some degree into a pretrial conference in
4 that matter, and we would like to get our views
5 before the Court on that.

6 I did not hear and have not heard Mr. Foote
7 explain to the Court when these bonds are to be
8 issued. And the bonds are not to be issued for at
9 least another six months or so. The time frame that
10 I have heard is sometime in the spring.

11 Now, we have dealt in these processes for
12 some time. And in April they were talking about May,
13 and in May they were talking about June, and in June
14 they were talking about August. And these deadlines
15 seem to have had a way of slipping as time has gone
16 forward. So I would submit to the Court that the
17 matter is not a matter of utmost urgency.

18 Secondly, you know, what we want to do is
19 to prove our case in accordance with the rules of
20 court. And we have a good deal -- we have pled a
21 case which is going to require the taking of
22 evidence. We have pled a case which is going to be
23 somewhat highly nuanced. And we believe that we're
24 going to have to have a good deal of evidence on the
25 question of what these improvements are, what are the

1 dollars being spent on, how will they be built, who
2 will own them, what will the benefit of having these
3 be and who will that benefit accrue to, are these
4 private improvements or is there some local or
5 community benefit associated with them, and exactly
6 how do you characterize the economic development
7 benefits that are attendant in this matter, because
8 the Henrico County Board, when they formed the CDA,
9 certainly made no findings. We've got due process
10 issues that will require factual determinations in
11 the case and a variety of other matters, ownership of
12 the improvements, the affect on the county taxpayers
13 of the \$30,000,000 in county general funds going to
14 the developer, what reasons did the board have for
15 approving the incentives, why did they time their
16 decision the way that they did, how the alleged
17 criteria that they established for formation of a CDA
18 and conference of economic development benefits on
19 private parties, how were they developed and why were
20 they developed in such a way as to only fit the
21 developers of the downtown Short Pump -- or the Short
22 Pump Town Center project, what is the affect of the
23 board action on the planning commission process, how
24 were Taubman's due-process rights affected
25 potentially there, how were Taubman's rights to

1 petition the government affected there, how did the
2 planning-commission members view their roles in light
3 of the board's endorsement of \$30,000,000 in cash to
4 go into this project, and what actions will they take
5 in performing their public duties as a result, what
6 demands are placed on the county. This is a central
7 issue on the case; what are the demands that are
8 placed upon the county as a result of development
9 within this CDA district. What demands, which -- and
10 this is what sort of triggers the ability of the CDA
11 to finance and construct improvements, is demands
12 placed upon the county.

13 Now, our position is that there are no
14 demands placed upon the county by the development of
15 a shopping center that relates to the infrastructure
16 that they propose to finance, because again, it's
17 parking lot, it's landscaping, it's lighting, it's
18 the plaza in the shopping center and some private
19 roads and entrances.

20 Now, they point out -- I am neglecting to
21 mention to the Court that maybe about 10 percent of
22 the money is to be spent on road improvements, which
23 clearly are public, and water and wastewater
24 improvements, which clearly are public. This case is
25 really about the other 90 percent. Now, we will need

1 as well -- there's an excavation component of costs,
2 which is considerable. We don't know what they're
3 excavating. Are they excavating for the footprints
4 of the department stores, are they digging
5 foundations for the department stores? We don't know
6 that, and we'll need evidence in order to figure it
7 out.

8 Now, last matter is Mr. Foote mentioned
9 that they have prepared a memorandum on the question,
10 apparently among other things, of whether the Public
11 Finance Act applies. If Mr. Foote wants to brief
12 that, we would like to file a brief as well. So we
13 would like, Your Honor, to set up a briefing schedule
14 for it.

15 And I guess in terms of my comments on what
16 will happen in the bond-validation case, there is,
17 quite simply, no way that Taubman could be prepared
18 to proceed with what Mr. Foote suggests we ought to
19 do on that day. And what Mr. Foote wants you to do
20 is to turn Taubman's bill of complaint into an answer
21 to the bond-validation suit and have us go forward
22 with trial and with proof on that day. It's quite
23 simply -- it's impossible. There's a lot of process
24 that needs to be undertaken before then. We need to
25 have answers. We need to consider how we're going to

1 collect our evidence. We need to consider whether we
2 want an expert. We need to consider those
3 depositions that we need to take, and we need to
4 consider the likelihood that they will be filing
5 demurrers, motions to dismiss, and that we will as
6 well. Thank you, Your Honor.

7 THE COURT: You're welcome.

8 MR. RAPISARDA: Your Honor, may I be heard
9 on the motion to intervene? Judge, I asked
10 Mr. Pearson -- I'm here, on behalf, of course, of the
11 board and the EDA. I'm not sure, after hearing his
12 argument on the merits this morning, whether he still
13 objects or not, but we would ask the Court to permit
14 us, and I have a sketch order, Your Honor, that would
15 grant the county the motion of the board and EDA to
16 intervene. I won't repeat, Judge, what you have
17 heard. You realize, obviously, that the EDA and
18 board are at the centerpiece of this transaction. In
19 fact, Judge, I'm here today because it is the
20 position of the board and of the economic development
21 authority that Henrico County is the beneficiary
22 here. Certainly the developer benefits from this
23 transaction, Your Honor, but Henrico County doesn't
24 spend its money to benefit developers, it spends its
25 money to benefit Henrico County.

1 And I'm not going to go further with the
2 motions of that, Your Honor, but I would say to the
3 Court that everything Mr. Pearson has argued this
4 morning, as Mr. Foote indicated, is nothing more than
5 a reason why this bond issue should be invalidated.
6 All the private improvements, using his terminology
7 that he talks about, are the substance of the bond
8 issue, so I would ask the Court to see through the
9 smoke that's going to be considerably blowing from
10 the other side of the room, Your Honor, and focus on
11 the real issue, and that is, is this a legal
12 transaction. Mr. Pearson, Your Honor, has had for
13 months all of the underlying documents in this
14 transaction. And it almost, Your Honor -- I have to
15 say it's an affront, I think, and disingenuous to
16 come into a court of law and say I did not receive
17 due process when they have appeared at public
18 hearings, more than one, of the board. Mr. Pearson
19 submitted 25 pages of comment on behalf of the
20 Taubman Company. Mr. Pearson spoke for well over 30
21 minutes or more to the board of supervisors. He
22 spoke to the economic development authority. He
23 lost. And Your Honor, I would suggest to you it is
24 nothing more than sour grapes. We ask the Court to
25 grant our motion, sir, and we would tender that if

1 it's the Court's pleasure.

2 THE COURT: All right.

3 MR. RAPISARDA: Thank you.

4 THE COURT: Well, I'll accept your motion.
5 I'll be back in about three minutes.

6 (Recess taken)

7 THE COURT: Well, it appears to me that
8 both suits seek the same thing from opposite
9 directions, that is, the county, the CDA suit wants
10 validation of the bond, and the Taubman suit wants
11 invalidation of the bond. And that's the bottom
12 line. So the suits should be consolidated, and I
13 will consolidate them. I also will fast track it. I
14 will allow 60 days for the case to proceed, and I'll
15 set it. The dates I'm going to throw out are January
16 31, February 1, 2, February 6, 7, 8, 9. I would
17 assume it would take two days.

18 MR. FOOTE: Your Honor, I would represent
19 on behalf of the CDA that any of those dates works
20 for me. And if I had something, I'd clear it.
21 Mr. Rapisarda and I agree that two days would
22 probably be appropriate. If we can do it -- we'd
23 like to believe we're pretty focused, and if we can
24 do it in one, we will.

25 THE COURT: All right.

1 MR. PEARSON: Judge, we'll just have to get
2 it done. I don't see any conflict in terms of any of
3 those dates at this point.

4 THE COURT: All right. I'd just as soon do
5 it January 31 and February 1 then, Wednesday,
6 Thursday.

7 MR. FOOTE: Your Honor, we also represent
8 to the Court that we will cooperate with --

9 THE COURT: Mr. Pearson was hesitating,
10 excuse me, on that date. Would you rather do it 6,
11 7, 8? I don't care.

12 MR. PEARSON: Your Honor, my only
13 hesitation is that is a period of extraordinary
14 activity for me personally, but it's related to the
15 General Assembly, and it won't be over till the first
16 part of March. Unless Your Honor is willing to go
17 out to that point in time, we're just going to have
18 to figure --

19 THE COURT: I'm willing to go 60 days, is
20 my basic underlying thing, there's no injunction,
21 consolidation, but to have it -- it has to be done in
22 60 days.

23 MR. PEARSON: Okay. We will move heaven
24 and earth to get that done, of course. As we
25 consider issues of proof, I hope Your Honor will

1 entertain some sort of pretrial order?

2 THE COURT: I have no problem with that,
3 but I don't want -- and I think I might have been
4 hearing a little bit of it from your statements. I
5 need to -- I don't want fishing expeditions on these,
6 on any discovery. I want it centered. I don't want
7 fishing.

8 MR. PEARSON: We believe it is centered and
9 certainly did not mean to imply that that's what we
10 seek.

11 THE COURT: All right. Well, we'll go
12 January 31st, February 1st.

13 MR. FOOTE: Your Honor, we have also placed
14 before you a substitution order. McGuireWoods has
15 been replaced by Walsh, Colucci, and there's an order
16 there to that effect before you. And Mr. Pearson,
17 Mr. Rapisarda and I will construct an order after
18 today's proceeding, sir.

19 THE COURT: And I think that the citizens
20 who have intervened are expecting this case to come
21 up next week and ought to be notified.

22 MR. RAPISARDA: That's correct, Your Honor.
23 I did have one citizen telephone me this week and ask
24 me would I be here on the 8th, and I said pursuant to
25 your order of publication. There is the matter of

1 actually having --

2 MR. FOOTE: Yes, sir. I think all of us
3 would concur that we need to be back before this
4 Court next week, because given the order of
5 publication, there is a possibility that people who
6 have not spoken to anybody else will show up.

7 THE COURT: All right. I will see you next
8 Friday, except I guess you-all won't have to come.
9 All right, January 31st, February 1st.

10 MR. RAPISARDA: Thank you, Your Honor.

11 MR. FOOTE: Your Honor, my colleagues
12 behind me do ask a question which is relevant to the
13 construction of the order that Mr. Pearson and I are
14 going to draft, and that is the Court has
15 consolidated proceedings, but has not enjoined
16 theirs, which does suggest that there is a
17 requirement for sort of mutual responsive pleadings.
18 Now, by agreement --

19 THE COURT: I thought you agreed that was
20 okay. I thought that was --

21 MR. FOOTE: Just talking about timing, I
22 guess, here. We'd agreed to put off till today until
23 further order of this Court anything that required an
24 answer. Perhaps I could just suggest that any such
25 responsive pleadings would have to be filed by next

1 Friday and gathered together, and I don't think
2 either of us need any more time to do that.

3 THE COURT: Any problem with that,
4 Mr. Pearson?

5 MR. PEARSON: No, sir. It is clear that we
6 will get our answers, I believe.

7 THE COURT: Correct.

8 MR. FOOTE: I understood you not to have
9 enjoined their proceeding, therefore we will file a
10 response to their pleading by next Friday and that
11 will be incorporated into an order.

12 MR. PEARSON: And I understand the meaning
13 of consolidation, what that means is that both cases
14 would proceed together on the same procedural track,
15 but they are still separate cases.

16 THE COURT: They're going to be heard in
17 here together.

18 MR. PEARSON: Yes. Thank you.

19 MR. FOOTE: Your Honor, one suggestion that
20 I would make to the Court is that you leave open for
21 reconsideration whether you might not, in fact, go
22 further with your injunction and consolidation at the
23 end, and I will tell you why. Under the
24 bond-validation proceedings of the Public Finance
25 Act, not only is the process before this Court

1 expedited, but there is a dramatically expedited
2 process before the Supreme Court should there be an
3 appeal from your order. If their suit is permitted
4 to continue unaffected by that, then the Court's
5 ordinary course of appeal would be followed and the
6 bonds, if this Court finds them valid, would still be
7 subject to the lengthy appeal process that that would
8 encompass. Under the Public Finance Act, that's not
9 possible, and so we would ask you to keep an open
10 mind and not to finally rule on that point until you
11 have heard the case.

12 THE COURT: Well, I mean, an injunction is
13 with regard to stopping them from doing anything, and
14 I'm not stopping them from doing anything. I will
15 allow them to prepare their case so we can hear it on
16 January 31st. What happens at that time I will
17 handle at that time.

18 MR. FOOTE: Yes, sir. All I'm asking is
19 that you leave it open, because in the end, I think
20 we're going to ask the Court to render its ruling
21 such that the expedited appeal process of the PFA
22 would apply.

23 THE COURT: I will handle that at that
24 time.

25 MR. FOOTE: Thank you for your time, sir.

1 THE COURT: You're welcome.

2 (The proceedings concluded at 10:03 a.m.)

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8 REPORTER'S CERTIFICATE

9
10
11
12
13 I, SALLY VALENTINE QUALLS, Registered
14 Professional Reporter, do hereby certify that the
15 pages contained herein accurately reflect the notes
16 taken by me, to the best of my ability, in the
17 above-styled action.

18
19
20
21
22 
23 SALLY VALENTINE QUALLS, RPR
24 Registered Professional Reporter
25 12/9/00

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO COUNTY

SHORT PUMP TOWN CENTER)
COMMUNITY DEVELOPMENT AUTHORITY,)

Plaintiff,)

v.)

TAXPAYERS, ET AL.,)

Defendants.)

Law Number
CL00001636-00

GROUND OF DEFENSE

COMES NOW defendant The Taubman Limited Partnership ("Taubman"), by counsel, and for its Grounds of Defense to the Motion for Judgment filed by Short Pump Town Center Community Development Authority (the "CDA"), states as follows:

1. Taubman denies the allegations in paragraph 1 of the Motion for Judgment.
2. Taubman admits the allegations in paragraph 2 of the Motion for Judgment.
3. Taubman is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Motion for Judgment.

4. Taubman admits that the CDA met on October 20, 2000, and adopted a resolution authorizing the issuance of bonds to finance the Short Pump Town Center, which bonds are expected to be in the maximum amount of \$25,000,000.00. Taubman states further that the resolution speaks for itself, and denies any allegations to the contrary and all other allegations.

5. Taubman admits that the CDA board adopted a resolution on October 20, 2000, which approved special assessments to be levied within the CDA district and requested that the Henrico County Board of Supervisors "establish" the special assessments. Taubman states

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12/15 2000

IN OFFICE

[Signature]

CIRCUIT COURT

further that the resolution speaks for itself, and denies any allegations to the contrary and all other allegations.

6. Taubman admits that on October 24, 2000, the Board of Supervisors adopted an ordinance stating that it "established" special assessment within the CDA District, and that it approved the Memorandum of Understanding and the Economic Development Agreement. Taubman states further that the ordinance speaks for itself, and denies any allegations to the contrary and all other allegations.

7. With respect to the allegations in Paragraph 7, Taubman avers that the Memorandum of Understanding speaks for itself and denies any allegation to the contrary and all remaining allegations.

8. With respect to the allegations in Paragraph 8, Taubman avers that the Economic Development Agreement speaks for itself and denies any allegation to the contrary and all remaining allegations.

9. Taubman denies the allegations in Paragraph 9 of the Motion for Judgment.

10. The allegations contained in Paragraph 10 constitute legal conclusions and, to the extent that they are asserted as facts, they are denied.

11. The allegations contained in Paragraph 11 constitute legal conclusions and, to the extent that they are asserted as facts, they are denied.

12. The allegations contained in Paragraph 12 constitute legal conclusions and, to the extent that they are asserted as facts, they are denied.

13. The allegations contained in Paragraph 13 constitute legal conclusions and, to the extent that they are asserted as facts, they are denied.

14. Taubman denies each and every allegation not specifically admitted or qualified.

WHEREFORE, having fully answered the Motion for Judgment, Defendants pray the Court dismiss it with prejudice, award the Defendants their costs and attorneys fees expended, and grant such other and further relief as the Court deems just.

Dated this 15TH day of December, 2000

Respectfully submitted,

THE TAUBMAN LIMITED PARTNERSHIP

By Steven R. Johnson by SWP
Counsel

By Attn W. Pearson
Counsel

Neil T. Proto
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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of December, 2000, a true copy of the foregoing
Grounds of Defense was sent via facsimile and mailed, first class, postage prepaid, to:

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Steven W. Pearson

VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY

THE SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT AUTHORITY,
ET AL.)

Plaintiff,)

v.)

TAXPAYERS, ET AL.,)

Defendants.)

Law Number
CL00-1636

THE TAUBMAN LIMITED PARTNERSHIP)

Plaintiff,)

v.)

BOARD OF SUPERVISORS OF THE
COUNTY OF HENRICO, ET AL.)

Defendants.)

Consolidated with

Chancery Number
CH00-1304

**JOINT ANSWER AND DEMURRER TO THE BILL OF
COMPLAINT FILED BY THE TAUBMAN LIMITED
PARTNERSHIP, SUBMITTED ON BEHALF OF THE
SHORT PUMP TOWN CENTER COMMUNITY
DEVELOPMENT AUTHORITY, THE BOARD OF
SUPERVISORS OF HENRICO COUNTY, AND THE
ECONOMIC DEVELOPMENT AUTHORITY OF HENRICO
COUNTY**

COME NOW the Short Pump Town Center Community Development Authority (the "CDA"), the Board of Supervisors of Henrico County, Virginia, ("the Board"), and the Economic Development Authority of Henrico County (the "EDA"), (collectively referred to herein as the "Defendants" in the Taubman action), by Counsel, and for response to the Bill of

Dec. 15, 2000
RECEIVED & FILED IN OFFICE
Wendy R. B. [Signature], Dep. Clerk
Clerk, Henrico Circuit Court

Complaint filed by the Taubman Limited Partnership ("Taubman"), state as follows:

ANSWER

1. The Defendants are without sufficient knowledge or information to either admit or deny the allegations in paragraph 1, and therefore deny them.

2. The Defendants admit that the Board is the body in which the powers of the County are vested, inter alia, pursuant to Va. Code § 15.2-602, and that Henrico is a Virginia County. The Defendants deny the remaining allegations in paragraph 2, and specifically deny that the Board caused any actions complained of to occur with the exception of those actions which are within its jurisdiction and control.

3. The Defendants admit the allegations of paragraph 3.

4. The Defendants admit the allegations of paragraph 4. The Board has also assigned to the EDA the responsibility of functioning as the principal economic development agency for Henrico County.

5. The Defendants admit that Taubman seeks to challenge the legality of certain actions set forth in its Bill of Complaint, and to the extent that paragraph 5 contains factual statements, they deny all factual allegations in that paragraph.

6. The Defendants admit that Taubman alleges items (a) through (h), but deny the truth and content of these allegations.

7. The Defendants admit that Taubman seeks a declaratory judgment with respect to the claims it has raised, but deny the truth of the allegations in (a) through (c) of paragraph 7, and deny that any actions complained of are unlawful.

8. The Defendants are without sufficient knowledge or information to either admit

or deny the allegations in paragraph 8, and therefore deny them.

9. The Defendants deny the allegations in paragraph 9. Defendants further assert that whether or not there is harm to Taubman legally irrelevant to any legitimate issue in these consolidated proceedings.

10. The Defendants admit that, to the best of their understanding and belief, negotiations with department stores typically occur prior to a developer or property owner committing to a shopping center development, and admit that representatives of the Short Pump Town Center project met with the Board and Henrico County Staff and discussed the possibility of assistance in the financing certain costs of development; state that the documents previously retrieved by Taubman in a Freedom of Information Act request will speak for themselves, and no response is therefore required to characterizations of them; and deny all remaining allegations in paragraph 10. The Defendants further assert that all meetings and discussions that were held with representatives of Short Pump Town Center were held in conformance with all applicable requirements of Virginia law.

11. The Defendants admit that the development is proposed to contain approximately 1,000,000 square feet of retail and specialty tenant space, and that the parcel on which it is to be placed contains approximately 147.186 acres of land adjacent to West Broad Street and south of Interstate 64. The Defendants deny the remaining allegations of paragraph 11.

12. The Defendants admit that the parcel on which the development is planned is designated as a Mixed Use Development in the Henrico County 2010 Land Use Plan. The Defendants assert that any remaining allegations in paragraph 12 either contain legal conclusions to which no response is required, or are denied.

13. The Defendants admit that a Plan of Development (a "POD") has been approved for the development of the property, pursuant to a valid rezoning of the property. Such PODs are routine submissions in virtually all cases of development, and are processed according to applicable state law and County ordinances. They further admit that PODs are routinely modified during the course of development.

14. The Defendants admit that MJGT Associates, LLP, and Forest City Enterprises, Inc. submitted a petition on July 14, 2000, requesting creation of the CDA. The Defendants assert that the petition speaks for itself, and therefore no response is required to the remaining allegations of paragraph 14. The Defendants object to and deny the Plaintiff's characterizations contained in that paragraph, and to the extent that they must be, they are denied.

15. The Defendants admit that the total cost of CDA financed improvements is approximately \$22 million, and that there would be additional costs associated with bond financing as there are in all cases of such financing. They further assert that the five-year duration of the proposed bonds is uniquely brief, and served the Defendants' interests in obtaining additional net tax revenues for the County. All other allegations of paragraph 15 are denied.

16. The Defendants admit that the Petition was approved by Resolution of the Board of Supervisors on September 26, 2000. The Board's Resolution speaks for itself, and therefore no response is required to the remaining allegations of paragraph 16. To the extent additional facts are plead in this paragraph, they are denied.

17. The Defendants aver that the October 24, 2000, ordinance speaks for itself and therefore no response is required to the allegations in paragraph 17. They admit that the Board

adopted a special assessment ordinance on that date, and that such ordinance was wholly lawful.

18. The Defendants aver that the Memorandum of Understanding speaks for itself and therefore no response is required to the allegations in paragraph 18. To the extent additional facts are plead in this paragraph, they are denied.

19. The Defendants aver that the Economic Development Agreement (the "Development Agreement") speaks for itself and therefore no response is required to the allegations in paragraph 19. To the extent additional facts are plead in this paragraph, they are denied.

20. The Defendants aver that the "Incentive Agreements" speak for themselves and therefore no response is required to the allegations in paragraph 20. The Defendants affirmatively deny any characterization of the "Incentive Agreements" not contained in such documents. The Defendants expressly deny that the Board is responsible for payment of any of the financial obligations established under the operative documents, or that the full faith and credit of the County or any Defendant is pledged to repayment of any such obligations.

21. The Defendants admit that the County will receive substantial benefit from development of The Short Pump Town Center after the bonds are repaid, and deny all remaining allegations and the Plaintiff's gratuitous characterizations and assertions contained in paragraph 21.

22. The Defendants deny the allegations in paragraph 22.

23. The Defendants deny the allegations in paragraph 23.

24. The Defendants aver that the resolution speaks for itself, and no response is required to the characterization of such resolution. The Defendants admit the remaining

allegations of paragraph 24.

25. In response to paragraph 25, the Defendants admit that the EDA met on November 16, 2000 and adopted a resolution authorizing the Development Agreement, but also state that the Agreement has not been executed.

26. The Defendants admit that The Short Pump Town Center development is a legally approved project, and deny all remaining allegations in paragraph 26. They specifically deny that the project is required to have obtained all state, local, and federal approvals prior to the issuance of bonds to assist in the funding of improvements benefiting the citizens of Henrico County, and note that such allegations are specious. They deny that any actions undertaken in connection with the events alleged were arbitrary or capricious.

27. The Defendants admit that POD approval is required for this development, and aver that the requirements of Chapter 24, Section 24-106 of the Henrico County Code speak for themselves and that no response is therefore required to the remaining allegations in paragraph 27. They further admit that while Henrico County provides an opportunity for public comment on POD applications and amendments, no opportunity for such public comment is required by law, and the approval of PODs is a purely ministerial action governed by County Ordinances and state law.

28. The Defendants deny the allegations in paragraph 28.

29. The Defendants aver that the traffic study speaks for itself, and no response is required to Plaintiffs' erroneous characterizations of such study. The Defendants deny all remaining allegations of paragraph 29.

30. The Defendants aver that the traffic study speaks for itself, and no response is

required to characterizations of such study. The Defendants deny all remaining allegations of paragraph 30.

31. The Defendants are without sufficient information, knowledge or belief to either admit or deny the allegations of paragraph 31, and therefore deny them.

32. The Defendants admit that MJGT obtained ASP-18, but that it and Section 404 of the Clean Water Act speak for themselves. No response is required to characterizations of these requirements. The Defendants deny all further allegations contained in paragraph 32, and assert that any requirement for permits from the Corps of Engineers in association with the development of the project as it is finally approved is wholly irrelevant to any issue properly before this Court.

33. In response to the allegations found in paragraph 33, the Defendants incorporate by reference their responses to the preceding paragraphs as if fully set forth herein.

34. The Defendants aver that Va. Code Ann. § 15.2-953 speaks for itself, and therefore no response is required to the allegations in paragraph 34.

35. The Defendants deny the allegations in paragraph 35. The provisions of the Development Agreement speak for themselves.

36. The Defendants deny the allegations in paragraph 36.

37. The Defendants deny the allegations in paragraph 37.

38. In response to the allegations found in paragraph 38, the Defendants incorporate by reference their responses to the preceding paragraphs as if fully set forth herein.

39. The Defendants aver that the IDRB Act speaks for itself, and therefore no response is required to the allegations in paragraph 39. To the extent answer is required, the

Defendants admit that the EDA possesses the powers granted to it by law and by the Board.

40. The Defendants aver that the IDRB Act speaks for itself, and therefore no response is required to the allegations in paragraph 40.

41. The Defendants deny the allegations in paragraph 41.

42. The allegations in paragraph 42 constitute a legal conclusion to which no response is required.

43. The Defendants deny the allegations in paragraph 43.

44. The Defendants deny the allegations in paragraph 44.

45. In response to the allegations in paragraph 45, the Defendants incorporate by reference their responses to the preceding paragraphs as if fully set forth herein.

46. The Defendants aver that Va. Code Ann. § 15.2-5158A(1) speaks for itself, and therefore no response is required to the allegations in paragraph 46.

47. The Defendants aver that Va. Code Ann. § 15.2-5125 speaks for itself, and therefore no response is required to the allegations in paragraph 47.

48. The Defendants aver that Va. Code Ann. § 15.2-5131A speaks for itself, and therefore no response is required to the allegations in paragraph 48.

49. The allegations in paragraph 49 constitute a legal conclusion to which no response is required.

50. The Defendants admit that water and sewer extensions and road improvements contemplated in the development of The Short Pump Town Center are for public purposes, and deny the remaining allegations of paragraph 50, and affirmatively aver that the improvements anticipated to be funded with bond proceeds are public improvements within the meaning of

Virginia law.

51. The Defendants aver that Va. Code Ann. § 15.2-5158 speaks for itself, and therefore no response is required to the allegations in paragraph 51.

52. The Defendants aver that Va. Code Ann. § 15.2-5131 and the “Incentive Agreements” speak for themselves, and therefore no response is required to the allegations in paragraph 52. To the extent that paragraph 52 contains factual allegations as opposed to arguments of law, they are denied.

53. The allegations of paragraph 53 contain legal conclusions to which no response is required.

54. The Defendants deny the allegations in paragraph 54.

55. In response to the allegations found in paragraph 55, the Defendants incorporate by reference their responses to the preceding paragraphs as if fully set forth herein.

56. The Defendants aver that the Virginia Constitution speaks for itself, and therefore no response is required to the allegations in paragraph 56.

57. The Defendants admit that utility extensions and road improvements contemplated in the development of The Short Pump Town Center are public improvements, and deny the remaining allegations in paragraph 57.

58. The Defendants deny the allegations in paragraph 58.

59. The Defendants aver that the Virginia Constitution speaks for itself, and therefore no response is required to the allegations in paragraph 59.

60. The Defendants deny the allegations in paragraph 60.

61. The Defendants deny the allegations in paragraph 61.

62. The Defendants deny the allegations in paragraph 62.

63. In response to the allegations found in paragraph 63, the Defendants incorporate by reference their responses to the preceding paragraphs as if fully set forth herein.

64. The Defendants aver that the Virginia Constitution speaks for itself, and therefore no response is required to the allegations in paragraph 64.

65. The Defendants aver that the Virginia Constitution speaks for itself, and therefore no response is required to the allegations in paragraph 65.

66. The Defendants deny the allegations in paragraph 66.

67. The Defendants deny the allegations in paragraph 67.

68. In response to the allegations found in paragraph 68, the Defendants incorporate by reference their responses to the preceding paragraphs as if fully set forth herein.

69. The Defendants aver that the Virginia Constitution speaks for itself, and therefore no response is required to the allegations in paragraph 69.

70. The Defendants deny the allegations in paragraph 70.

71. The Defendants deny the allegations in paragraph 71.

72. In response to the allegations found in paragraph 72, the Defendants incorporate by reference their responses to the preceding paragraphs as if fully set forth herein.

73. The Defendants aver that the United States and Virginia Constitutions speak for themselves, and therefore no response is required to the characterizations thereof. The Defendants deny the remaining allegations in paragraph 73.

74. The Defendants deny the allegations in paragraph 74.

75. The Defendants deny the allegations in paragraph 75.

76. In response to the allegations found in paragraph 76, the Defendants incorporate by reference their responses to the preceding paragraphs as if fully set forth herein.

77. The Defendants aver that the Virginia Constitution speaks for itself, and therefore no response is required to the allegations in paragraph 77.

78. The Defendants aver that the requirements of Chapter 24, Section 24-106 of the Henrico County Code speak for themselves, and therefore no response is required to the allegations in paragraph 78. The Defendants further specifically aver that public consideration of comments with respect to approval of a POD is not a forum within which the Plaintiff may seek “redress of its grievances” regarding development of the Short Pump Town Center, but rather is a process whereby conformance of a plan of development with requirements of County ordinances regarding a particular development is ascertained.

79. The Defendants deny the allegations in paragraph 79.

80. The Defendants deny the allegations in paragraph 80.

81. In response to the allegations found in paragraph 81, the Defendants incorporate by reference their responses to the preceding paragraphs as if fully set forth herein.

82. The allegations in paragraph 82 constitute legal conclusions to which no response is required.

83. The Defendants deny the allegations in paragraph 83.

84. The Defendants deny the allegations in paragraph 84.

85. The Defendants deny the allegations in paragraph 85.

86. The Defendants deny the allegations in paragraph 86.

87. To the extent that the Plaintiff has made factual allegations not otherwise

specifically admitted or denied in the foregoing numbered paragraphs, those factual allegations are specifically denied by all of the Defendants. The Defendants further object to all characterizations of fact, and all legal conclusions, which are improperly asserted in the Bill of Complaint.

88. The Defendants deny that the Plaintiff is entitled to the relief sought or to any other relief.

DEMURRER

The Defendants also demur to the specific Counts of the Bill of Complaint as set forth below.

IN GENERAL

The Defendants demur generally to the Bill of Complaint on the ground that the fundamental assertion of the Bill, differently phrased in different counts but essentially directed at the same object, is that there is no public purpose for use of the proceeds of the bonds that the CDA has moved to validate, and that public assistance to the Short Pump Town Center project would benefit another private developer, not a disappointed Taubman.

The Defendants aver, however, that as a matter of law they have made legislative determinations of record in this action that the public interest will be served by the issuance of the bonds, the proceedings associated therewith and alleged in the Bill, and by their participation in the financing of the Short Pump Town Center. The allegations of the Bill of Complaint do no more than allege that any benefit to a private party is incidental to the public purposes that the Defendants have found and articulated, and such allegations are insufficient bases upon which to

invalidate the bonds, or any of the proceedings or decisions made with regard to the bonds or their proper use.

COUNT ONE

Defendants demur to Count One on the ground that Taubman attacks the validity of the Development Agreement and the Incentive Agreements (as both terms are defined in the Bill of Complaint, collectively referred to as the “Incentive Agreements”) as violative of Va. Code §15.2-953. The Code expressly authorizes the Board to make those payments to its EDA to which Taubman protests. Taubman’s challenge constitutes nothing more than a further reiteration of its essential contention that the challenged proceedings are for the purpose of providing public money for private improvements. The Defendants have made record findings that the public interest will be served by the issuance of the bonds and the use of bond proceeds, and the allegations of the Bill are insufficient to invalidate the bonds, or any of the proceedings or decisions made with regard to the bonds or their proper use. Because the animating purpose of the bonds and the agreements at issue in this action are manifestly public from the face of the documents authorizing them, payments under the authority of that statute are facially valid.

COUNT TWO

Defendants demur to Count Two of the Bill, on the grounds that payments from the EDA to the CDA challenged in that Count are expressly authorized by law, and Taubman’s challenge constitutes nothing more than a further reiteration of its essential contention that the challenged proceedings are for the purpose of providing public money for private improvements. The Defendants have made record findings that the public interest will be served by the issuance of the bonds and the use of bond proceeds, and the allegations of the Bill are insufficient to

invalidate the bonds, or any of the proceedings or decisions made with regard to the bonds or their proper use. Because the animating purpose of the bonds and the agreements at issue in this action are manifestly public from the face of the documents authorizing them, payments under the authority of that statute are facially valid.

COUNT THREE

Defendants demur to Count Three on the grounds that the documents creating the CDA and constituting the agreements to which Taubman objects are expressly authorized by Va. Code Ann. § 15.2-5152, et seq., and no political subdivision is required to levy any tax or make an appropriation for repayment of the bonds at issue herein. On the face of those agreements, the improvements which are authorized to be funded are necessary to advance the legitimate public purposes articulated by the Board, the EDA and the CDA. Taubman's challenge constitutes nothing more than a further reiteration of its essential contention that the challenged proceedings are for the purpose of providing public money for private improvements. The Defendants have made record findings that the public interest will be served by the issuance of the bonds and the use of bond proceeds, and the allegations of the Bill are insufficient to invalidate the bonds, or any of the proceedings or decisions made with regard to the bonds or their proper use. Because the animating purpose of the bonds and the agreements at issue in this action are manifestly public from the face of the documents authorizing them, payments under the authority of that statute are facially valid.

COUNT FOUR

The Defendants demur to Count Four of the Bill on the ground that Taubman's allegations that the Incentive Agreements violate Article X, Sections 3 and 8 of the Virginia

Constitution because the proposed improvements are not public improvements and are not for the necessary expenses of government is an insufficient ground as a matter of law upon which to invalidate the bonds or the associated proceedings. The animating purpose of these proceedings, as evidenced on the face of the instruments authorizing the CDA, the several agreements alleged, and the issuance of the bonds, as plead, were for the valid public purpose of assisting in the construction of a major retail facility that will bring significant benefit to the citizens of Henrico County, and will benefit private parties only incidentally to that animating purpose. Each of the expenditures that are contemplated by the several agreements is for a proper public purpose, and will have a direct and beneficial effect on the surrounding area.

COUNT FIVE

The Defendants demur to Count Five of the Bill first on the ground that Taubman lacks standing to allege that the Incentive Agreements amount to a non-uniform system of taxation in violation of Article X, Section 1 of the Virginia Constitution.

Defendants demur further on the ground that the special assessment process that will finance the repayment of the bonds is not taxation as a matter of law, and is not subject to the cited provisions of the Constitution. The manner in which the EDA and CDA payments will or may be made in accordance with the agreements plead does not, in any manner, and as is evidenced on the face of those agreements, alleviate any requirement that Short Pump Town Center pay any taxes lawfully levied on that property, and all such taxes shall be uniform with the taxation of similar properties in Henrico County.

COUNT SIX

The Defendants demur to Count Six of the Bill on the grounds that the Incentive Agreements, on their face, do not obligate the Board to lend its credit to a person, association, or corporation, in violation of Article X, §10 of the Virginia Constitution, and do not pledge the full faith and credit of the Board, the County, the EDA, or the CDA to their repayment. As a matter of law no violation of the Virginia Constitution has been alleged.

COUNT SEVEN

The Defendants demur to Count Seven of the Bill on the ground that Taubman possesses no property interest in the issuance of the bonds, or any of the proceedings or agreements associated therewith, or in the maintenance of its competitive position as a shopping center owner in Henrico County, and therefore has no substantive due process rights which are actionable under the Fourteenth Amendment of the United States Constitution or Article I, Section 11, of the Virginia Constitution. Only “fundamental rights” are within the purview of the Fourteenth Amendment, and a corporation, such as Taubman, does not have such fundamental rights.

Defendants further demur to the extent that Taubman alleges it has a right to procedural due process independently of any substantive rights, since the Virginia Supreme Court has made it plain that no one possesses a constitutional right to procedural due process in the legislative context which is applicable to the creation of the CDA, the issuance of bonds, or the approval of the agreements associated therewith.

COUNT EIGHT

The Defendants demur to Count Eight of the Bill on the grounds that Taubman has no standing to contest the approval or denial of a POD for the Short Pump Town Center project

whether in the context of this proceeding or otherwise, and that the approval vel non of any POD is wholly immaterial to any issue validly before this Court.

Taubman has no right to petition for redress of grievances under the First Amendment to the United States Constitution or Article I, Section 12 of the Virginia Constitution, which is implicated by the County's ministerial consideration of plans of development, or any amendments thereto which may be required as project requirements and specifications change. Taubman's allegations that the approval of the POD by the County Planning Commission has been preordained do not constitute an allegation that Taubman been denied the right to speak at any public hearing, but rather a claim that it has a right to be heard and its arguments acceded to. It has been denied no opportunity to speak out, and the Bill itself fairly alleges that Taubman actively participated in the proceedings leading to the creation of the CDA, the various agreements involved, and the issuance of the bonds. Its claims that its rights to petition the government have been truncated or denied are wholly specious.

COUNT NINE

Defendants demur to Count Nine of the Bill on the grounds that Taubman's assertions that the actions complained of were arbitrary and capricious is defeated on the face of the instruments effecting those actions. Taubman's challenge constitutes nothing more than a further reiteration of its essential contention that the challenged proceedings are for the purpose of providing public money for private improvements. The Defendants have made record findings that the public interest will be served by the issuance of the bonds and the use of bond proceeds, and the allegations of the Bill are insufficient to invalidate the bonds, or any of the proceedings or decisions made with regard to the bonds or their proper use. Because the

animating purpose of the bonds and the agreements at issue in this action are manifestly public from the face of the documents authorizing them, payments under the authority of that statute are facially valid.

WHEREFORE, the Defendants respectfully request the Court grant their demurrer and dismiss the Bill of Complaint with prejudice, grant its costs and fees expended in defense of this suit, and grant the Defendants the relief that they seek in the Motion for Judgment filed by the CDA, in which the other public Defendants have been granted leave to intervene as parties plaintiff.

RESPECTFULLY SUBMITTED,

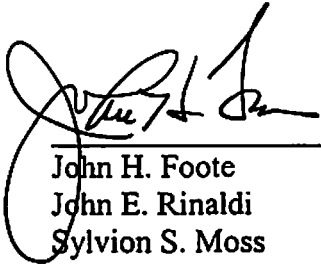
THE SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT AUTHORITY

BOARD OF SUPERVISORS OF HENRICO
COUNTY, VIRGINIA

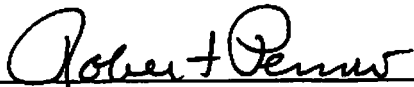
ECONOMIC DEVELOPMENT AUTHORITY OF
HENRICO COUNTY

All By Counsel

THE SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT AUTHORITY



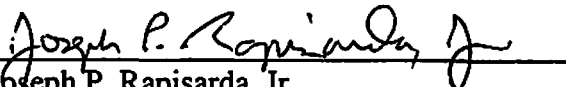
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The Taubman Limited Partnership v.
Board of Supervisors, et al.
Demurrer and Answer for the Public Defendants
Page 20

BOARD OF SUPERVISORS OF HENRICO COUNTY, VIRGINIA
And
ECONOMIC DEVELOPMENT AUTHORITY OF HENRICO COUNTY


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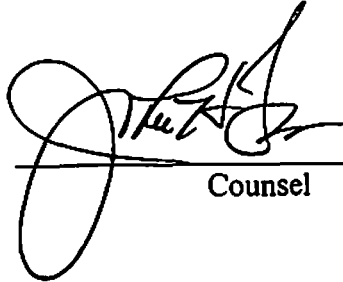
I hereby certify that a true copy of the foregoing was hand delivered to the Plaintiff, delivered by facsimile, and mailed by United States Mail, postage prepaid, to Counsel for the Plaintiff:

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this 15th day of December, 2000.



Counsel

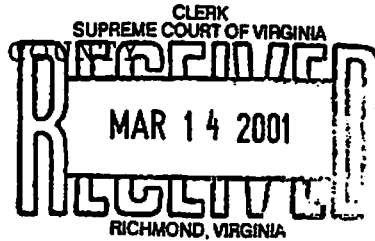
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VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY
SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT
AUTHORITY,



PLAINTIFF,

v.

Law No: CL00-1636

TAXPAYERS, PROPERTY OWNERS,
et al.,

DEFENDANTS.

THE TAUBMAN LIMITED PARTNERSHIP,

v.

Chancery No:
CH00-1304

BOARD OF SUPERVISORS
OF THE COUNTY OF
HENRICO, et al.,

DEFENDANTS.

Before: THE HONORABLE GEORGE F. TIDEY, JUDGE

MOTIONS

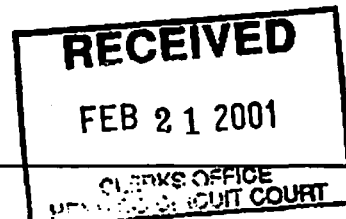
ORIGINAL

December 15, 2000
Henrico, Virginia

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2/21 2001
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HENRICO CIRCUIT COURT



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13 Development Authority of the County of
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23 By: NEIL PROTO, ESQUIRE
24 901 15th Street, NW
25 Washington, DC 20005
On behalf of the Plaintiff
The Taubman Limited Partnership

19 (Proceedings began at 9:25 a.m.)

21 THE COURT: The only reason we're on the
22 docket is to see if anybody showed up, is that right?

23 MR. FOOTE: Well, Your Honor, the other
24 matter was we have prepared an order, which the
25 deputy has provided you. Mr. Pearson, Mr. Rapisarda,

1 it's obvious that the taxpayers have a right to
2 intervene. We certainly will not have any objection
3 to that. I think Mr. Pearson may be right, it might
4 be useful to just sort of let them know what's going
5 on.

6 THE COURT: All right. The three people --
7 I'm sorry, I don't have the file in front of me for
8 the names, but the three taxpayers who have filed
9 responses that are here --

10 MR. GRESHAM: Yes, Your Honor.

11 THE COURT: All right.

12 MR. GRESHAM: And Your Honor, I did file.
13 I filed on December the 4th.

14 THE COURT: I know, all three of you have
15 filed. It's just that the copies did not go -- were
16 not sent to the other side. As you can see, it's
17 going to be a pretty complex litigation if you're
18 going to get involved in it, so you may want to
19 consult an attorney. These gentlemen can't help you.

20 MR. GRESHAM: My first question is, since
21 we're residents of Henrico, why is the county
22 attorney not helping us?

23 THE COURT: Well, he probably has a
24 position adverse to you, perhaps.

25 MR. GRESHAM: Adverse to me, the taxpayer,

1 who is going to be paying this thing?

2 THE COURT: I'm not going to decide the
3 case today. I'm just telling you that he's sitting
4 over here at the end of the table, and if you have a
5 question about it, you might ask him about it.

6 MR. GRESHAM: Well, I tried to get
7 information from the county officials, and the county
8 gave me the runaround. I tried to ask them if I
9 could talk today, and they said no. They -- I was
10 told I could be a spectator, but that this was just a
11 legal formality, and that I shouldn't expect to say
12 anything today.

13 THE COURT: Well, that's correct. It was
14 decided last week that the case could not be tried
15 today because it was just too little bit of time to
16 get -- for everybody to get ready. But I did put
17 them on a fast track, so I had the case set within 60
18 days, and that's why it's on the 31st of January and
19 the 1st of February, at which time you will have an
20 opportunity to speak and present anything that you
21 want to present to the Court.

22 MR. HAHN: Your Honor?

23 THE COURT: Yes.

24 MR. HAHN: I would like to make a request
25 that the Court appoint or give some assistance to the

1 taxpayers. We are being brought in as defendants in
2 this case. We do not have any representation. I
3 think it would be appropriate since \$30,000,000 of
4 taxpayer revenue is at stake here. We don't have any
5 representation, and this is, I think, an important
6 issue that many of the taxpayers in Henrico are not
7 aware of, of all of the issues. I think that they
8 have been misled by our public officials that this is
9 not going to cost them anything, and \$30,000,000, to
10 me, is very significant. And I think that it would
11 be appropriate -- considering all of the groups in
12 here that are being represented, that the taxpayers,
13 who do not have any representation, I think it's just
14 wrong.

15 THE COURT: Well, it may or may not be
16 wrong, but I don't have any authority to appoint an
17 attorney or attorneys to represent anybody in a civil
18 case unless the person is incarcerated or under a
19 disability. I just don't have any legal authority to
20 do what you're asking, so that puts me in a box. I
21 can't help you. And also I can't practice law, so
22 I've just got to sit here and referee. But you have
23 the right to be represented, and you also have a
24 right to represent yourself. And I understand your
25 position as far as the legal matters and quandary,

1 but there's nothing that I can do affirmatively to
2 help you, except to say that you will have a right to
3 be here, be present and to participate.

4 MR. HAHN: Can I make one any other
5 request, sir? Could this issue be decided by a jury?

6 THE COURT: It's not set with a jury at
7 this time.

8 MR. HAHN: I would like to make that
9 request.

10 THE COURT: You can do that in writing, if
11 you like, and I will take it up.

12 Yes, sir?

13 MR. ANDERSON: Your Honor, as a third
14 taxpayer, I would like to second the comments made by
15 Mr. Hahn, and second them.

16 THE COURT: All right.

17 MR. FOOTE: Your Honor, for the benefit of
18 those who haven't read the pleadings yet, could we
19 simply ask these folks if they could identify
20 themselves so we would know who they are, put them on
21 the record?

22 MR. HAHN: My name is Arlie Hahn. I'm a
23 citizen taxpayer. H-A-H-N, first name, A-R-L-I-E.

24 MR. GRESHAM: My name is Gresham,
25 G-R-E-S-H-A-M, Bryan, B-R-Y-A-N, Bryan Gresham. And

1 I live just off Three Chopt Road, which is going to
2 be decimated by this.

3 MR. ANDERSON: My name is Robert Anderson,
4 A-N-D-E-R-S-O-N, 1757 South Dover Pointe Road. I'm a
5 citizen taxpayer.

6 MR. HAHN: Your Honor, if I may say one
7 other thing. I am in no way opposed to the Short
8 Pump Town Center coming to our area. I welcome it.
9 I do oppose any public assistance to the developer.

10 THE COURT: All right. I need to tell you
11 that there are two suits in this matter, one brought
12 by Taubman, as Regency, and that is what I call a
13 yellow file, but it's a chancery matter that is not
14 entitled to a jury, and the other suit, which is
15 brought by Short Pump, for the approval, is what I
16 call a red file. Whether or not that's entitled to a
17 jury under these circumstances, I just don't know.
18 We don't try these cases every day, so I need to look
19 into that.

20 All right. January 31st and February 1st.
21 If there are any changes, I'll let you-all know. And
22 I would not be the one to waive a pre-trial
23 conference, so if you-all waive it, that's fine, but
24 I would be very much in favor of it.

25 MR. FOOTE: Yes, sir.

1 MR. RAPISARDA: Thank you, sir.

2
3 (Proceedings concluded at 9:35 a.m.)

4
5
6 ooo

7
8
9 REPORTER'S CERTIFICATE

10
11
12
13
14 I, SALLY VALENTINE QUALLS, Registered
15 Professional Reporter, do hereby certify that the
16 pages contained herein accurately reflect the notes
17 taken by me, to the best of my ability, in the
18 above-styled action.

19
20
21
22 

23 SALLY VALENTINE QUALLS, RPR
24 Registered Professional Reporter
25 12/29/00



VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO COUNTY

SHORT PUMP TOWN CENTER)
COMMUNITY DEVELOPMENT AUTHORITY,)

Plaintiff,)

v.)

TAXPAYERS, ET AL.,)

Defendants.)

Law Number
CL00001636-00

DEMURRER AND MOTION TO DISMISS

COMES NOW defendant, The Taubman Limited Partnership ("Taubman"), by counsel, and states that (i) the Court lacks subject matter jurisdiction over the motion for judgment filed by plaintiff Short Pump Town Center Community Development Authority (the "CDA"); and (ii) the motion for judgment fails to state a claim upon which relief can be granted. The grounds of the demurrer and motion to dismiss are as follows:

1. This Court lacks subject matter jurisdiction over the motion for judgment because the Public Finance Act (Va. Code §§ 15.2-2600 *et seq.*) does not apply to community development authorities.

2. This Court lacks subject matter jurisdiction over the claims in the motion for judgment related to the validity of the Memorandum of Understanding, the Economic Development Agreement, and the economic incentive payments because the authority conferred by The Public Finance Act is limited to contesting the validity of the authorization and issuance of bonds, the validity of the tax or other means provided for the payment of the bonds, and the

validity of all covenants and provisions which constitute a part of the contract between the issuer and the owners of the bonds. The Memorandum of Understanding and the Economic Development Agreement do not constitute a part of the contract between the issuer and the owner of the bonds, and the economic incentive payments to the Economic Development Authority to the developer have no relationship to the bonds.

3. This Court lacks subject matter jurisdiction over the motion for judgment because there is no actual controversy, based upon an actual antagonistic assertion and denial of right, between the CDA and the parties named as defendants. The motion for judgment seeks an advisory opinion which this Court has no jurisdiction to grant.

4. The Public Finance Act is unconstitutional because it violates the Virginia and United States' constitutional rights to due process and to petition the government for redress of grievances under Article 1, §§ 11, 12 of the Virginia Constitution and the First and Fourteenth Amendment of the United States Constitution. In failing to provide individual notice to defendants and in vesting in an entity which is at most merely quasi-governmental, the authority to invoke the judicial power in a manner that will forever divest taxpayers of the right to protect their interests as taxpayers, the taxpayers are deprived of their property without due process of law. In addition, the Act violates defendants' constitutional right to petition the government for a redress of grievances under the Virginia and United States constitutions. By divesting taxpayers of the right to seek relief in the future for their grievances based on a motion for judgment filed by a CDA controlled by a private developer seeking to serve primarily private purposes in a fictitious case, this Act unconstitutionally limits the access of defendants and all taxpayers to the courts. Therefore, the Public Finance Act is unconstitutional as applied to this case and the CDA has not stated a cause of action for which relief may be granted.

WHEREFORE, Taubman requests that this Court dismiss the Motion for Judgment.

Dated this 15th day of December, 2000

Respectfully submitted,

THE TAUBMAN LIMITED PARTNERSHIP

By Steven R. Johnson by SWP
Counsel

By Steve W. Pearson
Counsel

Neil T. Proto
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Patricia A. Deem
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Facsimile: 804.344.3410

Counsel for The Taubman Limited Partnership

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of December, 2000, a true copy of the foregoing
Demurrer and Motion to Dismiss was sent via facsimile and mailed, first class, postage prepaid,
to:

John H. Foote, Esq.
John E. Rinaldi, Esq.
Sylvion S. Moss, Esq.
Walsh, Colucci, Stackhouse, Emrich &
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Center Community Development Authority

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General Counsel to the Short Pump Town
Center Community Development Authority

Joseph P. Rapisarda, Jr., Esquire
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Counsel to Board of Supervisors of the County of Henrico, Virginia
and Henrico County Economic Development Authority

Mr. Bryan B. Gresham, Jr., pro se (no facsimile)
9205 Lyndonway Drive
Richmond, Virginia 23229

Mr. Arlie A. Hahn, Jr., pro se (no facsimile)
5219 Willane Road
Glen Allen, Virginia 23059



Steven W. Pearson

VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY

SHORT PUMP TOWN CENTER)
COMMUNITY DEVELOPMENT AUTHORITY,)

Plaintiff,)

v.)

TAXPAYERS, ET AL.,)

Defendants.)

Law Number
CL00-1636

THE TAUBMAN LIMITED PARTNERSHIP)

Plaintiff,)

v.)

BOARD OF SUPERVISORS OF THE)
COUNTY OF HENRICO, ET AL.)

Defendants.)

Chancery Number
CH00-1304

ORDER

On December 8, 2000, the parties, by counsel, came before this Court and were heard on Motions to Enjoin and Consolidate these two proceedings filed by the Short Pump Town Center Community Development Authority (the "CDA"), and joined by the Board of Supervisors of Henrico County, Virginia (the "Board"), and the Economic Development Authority of Henrico County, Virginia (the "EDA") (such parties hereinafter referred to collectively as the "Plaintiffs"), and on the Motion to Stay Case No. CL00-1636 filed by the Taubman Limited Partnership ("Taubman"), and

UPON CONSIDERATION OF THE ARGUMENTS OF COUNSEL IT APPEARING TO THE COURT that those motions should be granted in part and denied in part, and that it is incumbent upon the Court to establish requirements for the trial of these actions in order to permit disposition of these actions with due dispatch pursuant to the provisions of the Virginia Public Finance Act, §15.2-2600, et seq., it is therefore

ORDERED, ADJUDGED AND DECREED as follows:

I. Consolidation of cases effected; motions to enjoin and stay denied.

The Plaintiffs' motions filed pursuant to Va. Code Ann. § 15.2-2655 to Enjoin and Consolidate the actions in Short Pump Town Center CDA v. Taxpayers, et al., Law Number CL00001636-00, and The Taubman Limited Partnership v. Board of Supervisors, Chancery CH00001304, are hereby GRANTED to the extent that those actions are hereby consolidated, to which ruling Taubman noted its objection. The Plaintiffs' motions to enjoin the Taubman proceeding are hereby DENIED, to which ruling the Plaintiffs noted their objections. Taubman's motion to stay the CDA's Bond Validation proceeding is hereby DENIED, to which ruling Taubman noted its objection.

II. Responsive Pleadings to be filed.

Each party shall file such replies or responsive pleadings as are required by law in each action not later than close of business on December 15, 2000.

III. Trial

Hearing shall be held of each of these consolidated actions on January 31, and February 1, 2001. Because of the imminent trial date, all pleadings, discovery, notices, responses and briefs shall be served by telecopier in addition to other methods of service.

IV. Discovery

Pursuant to the authority of this Court under Rule 4:13, inter alia of the Rules of the Supreme Court of Virginia, the parties shall complete discovery, including the taking of depositions, not later than close of business on January 24, 2001. "Complete" means that all interrogatories, requests for production, requests for admissions and other discovery must be served sufficiently in advance of trial to allow a timely response by January 22, 2001. Depositions may be taken after the specified time period only by agreement of counsel of record or for good cause shown, provided, however, that the taking of a deposition after the deadline established herein shall not provide a basis for continuance of the trial date or the scheduling of motions inconsistent with the normal procedures of the Court.

All answers and objections to discovery requests shall be returned to the party propounding such requests within 10 calendar days of service thereon. The parties are enjoined reasonably to cooperate in the scheduling of depositions so as to permit adherence to the trial schedule set forth herein. If any period herein expires on a weekend or a holiday, time for response shall be extended to the next regular working day.

The parties have a duty to seasonably supplement and amend discovery responses pursuant to Rule 4:1(e) of the Rules of Supreme Court of Virginia. Seasonably means as soon as practical consistently with the times set forth in this Order. Except as provided herein with respect to time for response, no provision of this Order supersedes the Rules of Supreme Court of Virginia governing discovery. Any discovery motion filed shall contain a certification that counsel has made a good faith effort to resolve the matters set forth in the motion with opposing counsel.

Any discovery motions permitted by Rule shall be so scheduled by the parties as to be heard and disposed of not later than the discovery cutoff established hereby.

V. Designation of Experts

If requested in discovery, parties' experts shall be duly designated not later than January 12, 2001. If requested, all information discoverable under Rule 4:1(b)(4)(A)(1) of the Rules of Supreme Court of Virginia shall be provided, or the expert will not ordinarily be permitted to express any non-disclosed opinions at trial. The foregoing deadlines shall not relieve a party of the obligation to respond to discovery requests within the time periods set forth herein, including, in particular, the duty to supplement or amend prior responses pursuant to Rule 4:1(e).

VI. Dispositive Motions

All dispositive motions shall be presented to the court for hearing as far in advance of the trial date as practical. All counsel of record are encouraged to bring on for hearing all demurrers, special pleas, motions for summary judgment or other dispositive motions not less than 14 days before trial.

VII. Pretrial Conference

A pretrial conference shall be held in this matter on January 25, 2001, unless it is agreed by the parties, or determined by the Court, that no such is required.

VIII. Exhibit and Witness List

Not later than close of business January 24, 2001, counsel of record shall exchange a list specifically identifying each exhibit to be introduced at trial, copies of any exhibits not previously supplied in discovery, and a list of witnesses proposed to be introduced at trial. The lists of exhibits and witnesses shall be filed with the Clerk of the Court simultaneously therewith

but the exhibits shall not then be filed. Any exhibit or witness not so identified and filed will not be received in evidence, except in rebuttal or for impeachment or unless the admission of such exhibit or testimony of the witness would cause no surprise or prejudice to the opposing party and the failure to list the exhibit or witness was through inadvertence. Any objections to exhibits or witnesses shall state the legal reasons therefor except on relevancy grounds, and shall be filed with the Clerk of the Court and a copy delivered to opposing counsel at least 2 days before trial or the objections will be deemed waived absent leave of court for good cause shown.

IX. Motions in Limine

Absent leave of court, any motion in limine that requires argument exceeding five minutes shall be duly noticed and heard before the day of trial.

X. Witness Subpoenas

Early filing of a request for witness subpoenas is encouraged so that such subpoenas may be served at least 10 days before trial.

XI. Deposition Transcripts To Be Used At Trial

Counsel of record shall confer and attempt to identify and resolve all issues regarding the use of depositions at trial. It is the obligation of the proponent of any deposition of any non-party witness who will not appear at trial to advise opposing counsel of record of counsel's intent to use all or a portion of the deposition at trial at the earliest reasonable opportunity. It becomes the obligation of the opponent of any such deposition to bring any objection or other unresolved issues to the court for hearing before the day of trial.

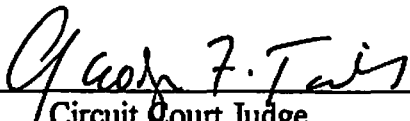
XII. Waiver or Modification of Terms of Order

Upon motion, the time limits and prohibitions contained in this order may be waived or

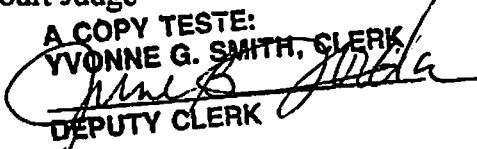
modified by leave of court for good cause shown.

These actions are continued.

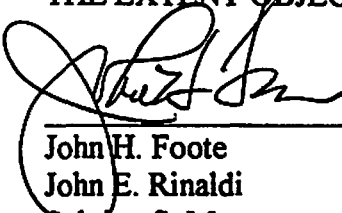
ENTERED this 15th day of DECEMBER, 2000.


Circuit Court Judge

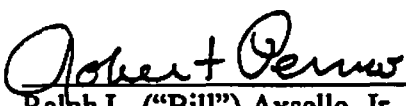
A COPY TESTE:
YVONNE G. SMITH, CLERK


DEPUTY CLERK

WE ASK FOR THIS EXCEPT TO
THE EXTENT OBJECTION IS NOTED AND PRESERVED HEREIN:



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Sylvion S. Moss
Walsh, Colucci, Stackhouse,
Emrich & Lubeley, P.C.
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the Economic Development Authority of
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SEEN AND OBJECTIONS NOTED AND PRESERVED:



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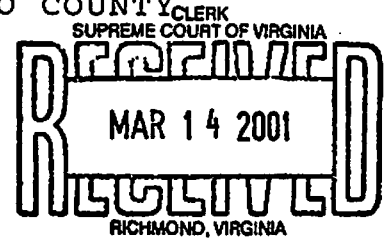
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Counsel to The Taubman Limited Partnership

J:\34\3486\002\Pleadings\SCHEDULING ORDER 2.DOC

010456

VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY,
SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT
AUTHORITY,



PLAINTIFF,
v.

Law No: CL00-1636

TAXPAYERS, PROPERTY OWNERS,
et al.,

DEFENDANTS.

THE TAUBMAN LIMITED PARTNERSHIP,

v.

Chancery No:
CH00-1304

BOARD OF SUPERVISORS
OF THE COUNTY OF
HENRICO, et al.,

DEFENDANTS.

Before: THE HONORABLE GEORGE F. TIDEY, JUDGE

MOTIONS

ORIGINAL

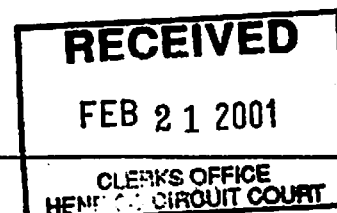
January 5, 2001
Henrico, Virginia

HALASZ REPORTING & VIDEO
Post Office Box 1644
Richmond, Virginia 23218-1644
(804) 741-5215

Reported by: Sally Valentine Qualls, RPR

2/21 2001
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CLERK OF CIRCUIT COURT



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7 Short Pump Town Center Community Development
8 Authority

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11 Richmond, Virginia 23219
12 By: ROBERT D. PERROW, ESQUIRE
13 Special Counsel on behalf of the PLAINTIFF
14 Short Pump Town Center Community Development
15 Authority

16 COUNTY OF HENRICO ATTORNEY'S OFFICE
17 By: JOSEPH P. RAPISARDA, JR., ESQUIRE
18 On behalf of the DEFENDANTS
19 Board of Supervisors and the Economic
20 Development Authority of the County of
21 Henrico

22 REED, SMITH, HAZEL & THOMAS
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The Taubman Limited Partnership

BOWMAN & BROOKE
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By: CHRISTOPHER C. SPENCER, ESQUIRE
On behalf of the DEFENDANT Taxpayers
Arlie Hahn, Bryan Gresham &
Robert Anderson

1 (Proceedings began at 9:32 a.m.)

2 THE COURT: Good morning.

3 MR. SPENCER: Good morning, Judge Tidey.

4 Chris Spencer here on behalf of Mr. Hahn. And we are
5 here, I believe, today on only one motion, which is
6 the motion for disqualification. I don't know what
7 materials, if any, the Court has read.

8 THE COURT: All of it.

9 MR. SPENCER: All right. I would note,
10 Your Honor, that yesterday afternoon at about 2:35,
11 in violation of Rule 4:15A -- excuse me, B, a
12 memorandum came across my fax machine, a memorandum
13 which is in virtually all respects a red herring.
14 The herring is not a keeper. I'll address the
15 substance of that in just a moment. But there are a
16 couple of scales that I think ought to be taken off
17 of it pretty quickly, and those are scales that call
18 into question motives of Mr. Hahn in filing this
19 motion. It's suggested by my friends on the other
20 side that the motive for this motion is delay. I
21 suggest that if counsel genuinely believe that this
22 motion is interposed for an improper purpose, they
23 have an obligation to take action under 8.01 270.1
24 and perhaps with the State Bar, and I invite them to
25 do so.

1 THE COURT: I don't think I need that right
2 now.

3 MR. SPENCER: I don't think you do either.

4 THE COURT: I don't need threats here. Do
5 your motion, and let's get on with it, all right?

6 MR. SPENCER: Yes, sir, I will. And that
7 brings me to the substance of the motion.

8 THE COURT: That's what we need to get to.

9 MR. SPENCER: The motion is very
10 straightforward. The Virginia Supreme Court has
11 adopted the Canons of Judicial Ethics as part of its
12 Rules of Court, and we cite two grounds under those
13 canons in our motion; those are 3E1DI and 3E1C. They
14 are different grounds. 3E1DI says that "The judge
15 shall recuse himself if he is a party." It's not a
16 matter of discretion, it's mandatory, "The judge
17 shall recuse himself." 3E1C says that "The judge
18 shall recuse himself if he has an economic interest
19 in the matter before him that is not de minimis."
20 Under the law, as it applies to this case, 15.2-2651,
21 which is the bond-validation statute, "All taxpayers,
22 property owners and citizens of Henrico County, who
23 are subject to taxation by the county, are parties
24 defendant to this action." And under 2652, they must
25 be named as parties defendant in the motion for

1 judgment. They are parties simply because the action
2 has been filed. Nothing further is required except
3 an order of publication, which has been entered in
4 this case. So under 2651 and 2652 all taxpayers,
5 property owners and citizens are parties defendant,
6 and in our view that brings -- that makes the Court a
7 party under 3E1DI, the first ground of our motion.

8 Now, it's said by the other side that the
9 Court is not really a party defendant unless the
10 party comes in and appears in the case; unless the
11 Court actually makes an appearance. And they cite
12 for that proposition Section 15.2-2654. We submit
13 that's a misreading of 2654. 2654 merely provides
14 that the same taxpayers, property owners, citizens
15 and other parties in interest, others not enumerated
16 in 2651, others who are not mandatory parties under
17 2651 and 2652, may enter an appearance in the case
18 and participate in the proceedings at any point up to
19 and even during the hearing. In other words, 2654
20 doesn't say that the taxpayers aren't parties unless
21 they actually appear, 2654 simply addresses who may
22 come in and participate and when they may do so. And
23 it says that even those who don't have to be
24 defendants under 2651 and 2652 can still come in,
25 right up to the point and during the trial.

1 It's also argued by the other side that the
2 Court -- there's been no showing that the Court has a
3 substantial financial interest in the outcome. That
4 is a fact. We have not introduced any such evidence,
5 and we do not intend to. We have merely alerted the
6 Court to that canon in our first filing in this case,
7 other than our notice of appearance, I might add.
8 And we don't know what the Court's property interests
9 are, what property the Court has, and we leave that
10 to the Court for its decision. That is a matter of
11 discretion for the Court, and we leave that to the
12 Court.

13 What is not a matter of discretion, we
14 submit, is when the Court is a party. Our friends on
15 the other side cite one case primarily, and that is
16 the case of -- the Fourth Circuit case involving
17 VEPCO. That is a case in which Judge Warner recused
18 himself from a case which was brought by VEPCO
19 against Sun Shipbuilding. It was alleged that Sun
20 Shipbuilding -- well, it's a very complicated case,
21 but the long and short of it was, depending upon the
22 outcome of the case, it was conceivable that
23 customers of Virginia Electric and Power Company, as
24 it was known at that time, VEPCO, could receive a
25 refund of between 70 and \$100. There was no argument

1 that Judge Warner was a party to the case, merely
2 that as a customer of one of the parties, he might
3 receive some financial benefit, subject to a great
4 many contingencies well down the line. Judge Warner
5 recused himself anyway, because he believed that a
6 federal statute required him to do so. The Fourth
7 Circuit disagreed. The Fourth Circuit agreed with
8 Judge Warner that his interest was de minimus, and
9 that the statute did not require -- the federal
10 statute did not require him to recuse himself.

11 That's entirely different from this case.
12 We're not proceeding under a federal statute in this
13 case, and we're not here on the ground that the Court
14 is a stockholder of a party or may receive some
15 incidental financial benefit from the outcome of this
16 case. We're here on the ground, primarily, of the
17 fact that the Court is a party.

18 And the case that is most clearly on point
19 is a case from the West Virginia Supreme Court that
20 is cited, that is the basis for the rule that is
21 cited in Mickey's Jurisprudence, which is "If a judge
22 of the court of record is a party to the suit, he
23 cannot take cognizance of the suit in the absence of
24 consent, in writing, by the parties thereto. Where
25 the judge, though not made a party to the suit as

1 trustee is, in fact, a necessary party," 2651 and
2 2652, "he becomes disqualified to hear and determine
3 the cause."

4 Holt, which is a case from 1905, as
5 reported at 52 Southeast 21, was a situation very
6 similar to the one at issue. There the case was a
7 dispute of the water board in the City of Grafton,
8 West Virginia. The city had passed an ordinance to
9 finance certain water improvements. The judge was a
10 citizen of the community, and he was a necessary
11 party to the case. He refused to recuse himself, and
12 the West Virginia Supreme Court reversed and said
13 that "The general equity rule is that all parties in
14 interest must be before the Court. There are certain
15 exceptions to the rule," et cetera, but "Judge Holt
16 had the right, in that suit, to come in and take the
17 benefit of any decree which may be pronounced
18 therein. In either case, he has a disqualifying
19 interest. The right to come in and take the benefit
20 of the decree as the Court and all citizens and other
21 parties in interest have under 2654 constitutes a
22 disqualifying interest as much as if he were bound by
23 the decree without coming in."

24 The Court also -- the West Virginia Court
25 also addressed another argument made by the county

1 and by the CDA in this case. They say, they note
2 that "The Court has not chosen," you, Judge, have not
3 chosen "to enter an appearance in these proceedings
4 as a party defendant." The West Virginia Supreme
5 Court said it doesn't matter, said that "Judge Holt
6 has signified no intention of coming into the suit
7 and taking the benefit of the decree, but this is
8 immaterial. The mere fact that he has the right to
9 do so disqualifies."

10 Now, the bond-validation suit or statute
11 that brings us here, at least for one of the
12 consolidated cases, does say that the action must be
13 brought in the county or city court that has
14 jurisdiction over the locality, and so the case has
15 to be brought in Henrico County. And it's said that
16 the legislature must have intended by this that the
17 Court need not disqualify itself, that somehow by
18 silence the General Assembly is overruling the
19 judicial canons that have been adopted by the
20 Virginia Supreme Court. And my friends on the other
21 side cite a number of statutes, and specifically
22 15.2-2135, 3000, and 32.1-102.9, in which the General
23 Assembly has specifically provided that in certain
24 types of cases, a judge must be brought from another
25 jurisdiction. Far from being against us, these other

1 statutes actually support our position, because in
2 each of the types of cases discussed by those
3 statutes, the Court -- the judge is not a party. One
4 involves a dispute over certificates of public need.
5 Another involves disputes between jurisdictions over
6 dams and water, and another involves situations,
7 again, in which judges are not parties. It involves
8 the boundary of cities and counties and such. Even
9 though in those specific cases the judge is not a
10 party, the General Assembly has said it's too close.
11 The Court cannot sit. It's not -- it's not -- we're
12 not even going to allow motions on this. We're not
13 even going to require parties to move the Courts to
14 recuse themselves. These statutes submit a public
15 policy in Virginia, we submit, that Courts should be
16 very mindful of the judicial canons and should err on
17 the side of recusing in situations like this.

18 THE COURT: I'm very well aware of the
19 judicial canons, in case you're interested.

20 MR. SPENCER: I'm sure that the Court is.

21 THE COURT: I don't sit up here in a
22 vacuum.

23 MR. SPENCER: I understand, Your Honor.

24 THE COURT: I don't know if you do or not.

25 MR. SPENCER: Well, I did want to talk

1 about how the canons interact with the statutes and
2 with these cases. I did not believe the Court would
3 be familiar with the Grafton case from West Virginia,
4 and I did want to address the interaction of the
5 canons.

6 THE COURT: I'm familiar with my canons,
7 I'll tell you that.

8 MR. SPENCER: I understand that.

9 THE COURT: As I said, I don't think you
10 do, but I am.

11 MR. SPENCER: Yes. It's our view, then,
12 under all of the facts, that the Court should grant
13 the motion for recusal. Thank you, Your Honor.

14 THE COURT: You're welcome.

15 MR. PERROW: Your Honor, Mr. Pearson filed
16 a similar motion on behalf of Taubman, and I would
17 inquire whether he has --

18 THE COURT: I imagine he adopts
19 Mr. Spencer's argument, but he can certainly add to
20 it if he wants to.

21 MR. PEARSON: Your Honor, the only thing
22 that I would add to this -- Steve Pearson on behalf
23 of Taubman -- is that first off, there is not a
24 scintilla of evidence that Taubman has to the effect
25 that this Court cannot render an impartial verdict in

1 this case. However, upon the matter being brought to
2 our attention, our reading of it was that Canon 3
3 clearly requires disqualification, not only in a
4 case -- in this case, because you're a party, but
5 where the impartiality of the Court might reasonably
6 be questioned. And after some reflection on that, I
7 believe it's our view that this is the kind of case
8 that we have.

9 The plaintiffs, I think, are embarrassed in
10 this case because they simply missed the issue, and
11 that is in complete accordance with their view of the
12 case. They should have recognized the seriousness of
13 this issue. But their view of this case is that this
14 is a very simplistic one. They file a case. They
15 have a notice published. They collect some stray
16 cats and dogs and taxpayers and come in here and try
17 the case, and they win it. And their conduct in the
18 case --

19 THE COURT: Stray cats and dogs, excuse me?
20 I missed that one.

21 MR. PEARSON: I was being a little
22 expansive.

23 THE COURT: Well, don't be fancy. Let's be
24 straight up with it. What's the deal? Who are the
25 stray cats and dogs?

1 MR. PEARSON: The taxpayers, the three
2 taxpayers that have come into the case. They have --

3 THE COURT: They're not stray cats and
4 dogs.

5 MR. PEARSON: No, sir, of course not, and I
6 apologize to the Court. But they're taking the
7 position that the bond-validation suit is broad
8 enough to bring in all of the issues that Taubman
9 raised in Taubman's suit, clearly beyond the scope of
10 the bond-validation suit. And the Court then
11 consolidates the two matters for trial, and now we're
12 being confronted, and I think the Court will hear
13 more about this as we go along, we're being
14 confronted with essentially a refusal to respond to
15 issues that they haven't raised in the
16 bond-validation suit in the discovery process. They
17 don't want evidence presented. And they indicated on
18 the 15th or on the 8th of December at the
19 consolidation hearing that they anticipated trying
20 this case on the 15th of December. And their
21 attitude, Judge, is that these issues don't matter.
22 And our position is that these issues are very
23 important. We can't accept a notion that this Court
24 would ever rubber stamp a preordained result without
25 any real adversity in the case and with rules that

1 are shaped to their liking.

2 And one example of their shaping of rules
3 to their liking is the brief that we received
4 yesterday afternoon at 2:30 in violation of the
5 rules. It's as if the rules apply to Taubman and the
6 statutes apply to Taubman, and you can consolidate
7 Taubman's case with the bond-validation suit, but our
8 friends on the other side of the aisle here don't
9 have to play by the rules. So with that sort of
10 attitude in mind, we just think it's natural that
11 they would miss the appearance issue, because they
12 see the validation suit as something in which the
13 normal rules don't apply.

14 Now, if you look at their brief that they
15 submitted yesterday, there's one point that I want to
16 call to the Court's attention. They relied very
17 heavily on the premise that once the lawsuit is filed
18 and the published notice is published for all the
19 residents of the county to see, that they can
20 overlook the language of Section 15.2-2651, which
21 makes every taxpayer, every citizen of the county and
22 the non-resident taxpayers parties to the suit by
23 virtue of reliance on the words "to the proceeding,"
24 in Section 15.2-2654, under which the Court can make
25 order as to the proceeding and under which parties

1 who come in and file an answer become parties to the
2 proceeding.

3 Well, they're conveniently ignoring Section
4 2652, which says that "By the publication of the
5 notice, all of the taxpayers, property owners and
6 citizens and all other persons having or claiming any
7 right, title or interest in any property or funds
8 affected in any way by this issue or having or
9 claiming any right or interest in the subject matter
10 of the motion for judgment shall be considered
11 parties defendant in the proceedings." So to the
12 extent that they appear to rely upon these words, "to
13 the proceedings or in the proceedings," Your Honor,
14 that reliance is just simply misplaced. Under 2652,
15 which applies regardless of whether an answer is
16 filed by any individual party, every citizen of the
17 county is considered to be a party to the
18 proceedings.

19 Now, then you get over to the later
20 sections, Section 15.2-2657 ends up making the result
21 binding upon every citizen of the county. So I think
22 their reliance is just clearly misplaced, and with
23 that, I will sit.

24 THE COURT: All right.

25 MR. PERROW: Your Honor, Bob Perrow on

1 behalf of the Short Pump Town Center CDA, together
2 with Mr. Foote. Your Honor, I think we have set
3 forth our position in our memorandum; however, I
4 would like to address the points raised this morning
5 by counsel for Hahn and Taubman. The first point I
6 would like to raise is the allegation that the Court
7 or that Mr. Hahn has raised, Canon 3E1C -- I have
8 searched again through the motion and do not see
9 reference to that section of the canons. However, I
10 would -- accepting that as an oral motion this
11 morning, I would point out, whether the other side
12 has conceded, that there's absolutely no evidence of
13 bias, prejudice or financial interest of this Court
14 or any other judge of the Henrico Circuit Court in
15 the outcome of this litigation, nor do we believe
16 there would be, once we present the evidence of what
17 this transaction is all about. So to the extent that
18 they're relying on that section, they haven't won any
19 kind of burden or presented any evidence to the Court
20 on it.

21 With respect to the remainder of Mr. Hahn's
22 argument, I believe that what they are centering on
23 is how do you read Section 2654 of the Public Finance
24 Act. Now, I would point out, they say we misread it.
25 We say no, we haven't. If you want to become a party

1 of the proceeding, you come in and plead. And that's
2 exactly what the other statute, 2652, says. When you
3 issue the order of publication, that's what the order
4 of publication says, and you have a deadline to do so
5 if you're a taxpayer. So if we look at the specific
6 language of 2654, it says "Any party defendant may
7 reply to the motion for judgment within ten days
8 after its second publication, as required, but not
9 thereafter. Any property owner, taxpayer," which
10 would be the nominal named defendants in this case,
11 "citizen or other person in interest may become a
12 party to the proceeding." So the statute does say
13 that a taxpayer may become a party to the proceeding
14 by pleading to the motion for judgment on or before
15 the time set for hearing. Specifically the statute
16 says that's how you become a party to the proceeding.
17 And the canon is set there, is set and is there to
18 prevent judges from ruling on cases in which they're
19 a party to the proceeding, which this Court is not.
20 And no other judge in this county, likewise, has come
21 forth and pleaded to the case or become a party to
22 the proceeding.

23 And we think the canon is set up for
24 situations akin more to, let's say a judge in this
25 circuit had a piece of real property, and it was a

1 boundary-line dispute, and he was a named party.
2 That's the type of interest that I think the canon is
3 addressed to. It's not addressed to the nominal
4 situations where the universe of citizens are named
5 in a case in which no judge takes an active interest
6 in the case.

7 The Sun Ship case, Your Honor, was cited to
8 the Court simply to put into perspective the type of
9 issue that you have before you, and that is when
10 there is a remote or de minimus involvement of the
11 Court, the Court actually has a duty -- I think the
12 Fourth Circuit is telling you, has a duty not to step
13 aside. And in that case, Judge Warner had
14 effectively excluded every single judge in the state
15 of Virginia from hearing the case. And that's what I
16 think upset the Fourth Circuit in that case. And
17 here, Mr. Hahn and Taubman would have you disqualify
18 every judge in the County of Henrico. And we know
19 that, and as we said in our memorandum, that the
20 Public Finance Act was not established that way.

21 The intent of the General Assembly, we
22 think, is clear. They would have -- they wouldn't
23 say, on one hand, you bring your suit in Henrico and
24 not go the second step and say no Henrico judge can
25 hear the case if they, in fact, believed that that

1 was a problem.

2 The last point I would make, Your Honor, as
3 I said earlier, we are not ignoring 2652. And then
4 Taubman argues that really that they have another
5 suit, but they did appear and pled in the
6 bond-validation suit, Your Honor. They filed a
7 demurrer and motion to dismiss, I believe. We
8 believe the reasons that these parties are bringing
9 this action are as set forth in our memorandum, and.
10 As we said, the canons cannot be misused, either, for
11 tactical advantage in any litigation. We submit to
12 the Court that there's no basis for disqualification
13 under either canon cited by Mr. Hahn or Taubman.

14 THE COURT: All right.

15 MR. SPENCER: Judge, three very brief
16 points addressing only those matters that I've not
17 mentioned before. 2652, contrary to what Mr. Perrow
18 has indicated, as I read it, and I'm quoting, that
19 "The parties who are named as defendants shall be
20 considered parties defendant in the proceedings."
21 You don't need to actually appear to be considered a
22 party in the proceeding. 52 says it happens
23 automatically.

24 The second point I would make is that the
25 portion of the Public Finance Act that requires the

1 action be brought here is simply a venue provision.
2 It bears noting that of the 31 judicial circuits in
3 the Commonwealth of Virginia, all but 12, 19 of them,
4 cover more than one locality. So in the vast
5 majority of the judicial circuits in the
6 Commonwealth, you could very easily have a judge who
7 normally sits in, say, Loudoun County, but actually
8 lives in an adjacent county, say Rappahannock. This
9 is particularly true in the southwestern part of the
10 state and also even Virginia Beach and Accomac.

11 The third point that I would make is, I say
12 again, we are not interested in delay. We want this
13 case tried on January 31 --

14 THE COURT: It will be.

15 MR. SPENCER: Sir?

16 THE COURT: It will be.

17 MR. SPENCER: Good. That's what Mr. Hahn
18 wants. We want to try it January 31 and February 1.
19 Thank you.

20 THE COURT: You're welcome. Well, as I
21 indicated, I am aware of the canons. I thought of
22 this issue long before it was brought up by Mr. Hahn,
23 and I determined, based on my observation, that it
24 was not a problem, otherwise I would not have sat on
25 the other motions in here. I didn't feel that I was

1 violating any of the judicial canons by
2 participating.

3 However, having said that, it appears the
4 best way to handle this, as far as I'm concerned, is
5 that I'm going to sever the cases and set aside my
6 order consolidating the cases. And Judge Johnson,
7 from the City of Richmond, will handle the Short Pump
8 case. He will be here on January 31st to hear that.
9 I will be here on February 1st to pick up the Taubman
10 case.

11 I've talked to Judge Johnson about it, and
12 he's ready, and I'll deliver the file to him today.
13 And so any motions that are going to go down in that,
14 be filed here, and at the same time, when you file a
15 motion, file with Judge Johnson also, down in the
16 city, because he will have a file. We'll only have a
17 skeleton file here at the County.

18 MR. SPENCER: Judge Tidey, I have a sketch
19 that does everything but bring Judge Johnson in. It
20 specifically preserves the trial date. If you would
21 like me to hand it up, I would be happy to.

22 THE COURT: Well, I don't know if I can
23 enter it.

24 MR. SPENCER: Judge, may I say, while
25 counsel are reviewing the order, I hope the Court did

1 not take any of our points as a gesture of disrespect
2 or calling the Court into question.

3 THE COURT: Call it like it is,
4 Mr. Spencer.

5 MR. SPENCER: Thank you, Judge. That's all
6 we ask.

7 MR. PERROW: Your Honor, we do not agree
8 with this order at all. It grants the motion you
9 just denied. I think what the Court -- well, I don't
10 speak the Court's mind, but I think what you just
11 said was that you weren't -- didn't see a ground for
12 recusal, therefore they can't win their motion, but
13 on the other hand, you, in your discretion, will
14 appoint another judge, which is in your discretion.
15 I think that's fine. I think that's what the order
16 ought to say, not that you granted their motions.

17 MR. SPENCER: You know, there's another --
18 it doesn't deal with the split of the cases. Maybe
19 we should confer on an order, and --

20 MR. FOOTE: I'm sure we can.

21 MR. SPENCER: -- then we'll submit one
22 together. I apologize.

23 MR. FOOTE: Your Honor, John Foote. Let me
24 just logistically here, we have, in accordance with
25 the Court's initial order in this case, we have been

1 doing the discovery that's appropriate. We have been
2 responding. They have been responding. We do have
3 some disputes about some of the matters that are
4 supposed to be produced and some of the subpoenas
5 that have been issued. We have not -- I have not --
6 I think Mr. Perrow has talked to Mr. Spencer.
7 Mr. Pearson and Mr. Sabourin and I have had a meeting
8 and conferred as the order has required, about it,
9 and we have narrowed our areas of disagreement. We
10 are going to be filing a motion to quash and a motion
11 for protective order with respect to a limited
12 portion of the discovery that's been requested. And
13 that discovery -- I don't know if it's fair to say
14 that that discovery, because the case was
15 consolidated, that the discovery can affect both
16 cases.

17 THE COURT: All right.

18 MR. FOOTE: So where would we go with that,
19 Your Honor? Would you prefer that we take that to
20 Judge Johnson?

21 THE COURT: I think that's where I would
22 start.

23 MR. FOOTE: All right, sir.

24 MR. SPENCER: Let's meet outside. If I may
25 suggest that we talk about how we're going to

1 proceed.

2 MR. FOOTE: Certainly.

3 THE COURT: I was going to try to get Judge
4 Johnson on a conference call after we had our little
5 confab here, but I did not -- before I came in, I did
6 not check his availability at this present moment.
7 But you-all talk about it, and if you can't come up
8 with a solution, I'm sure he and I will both be
9 available for you.

10 MR. FOOTE: Your Honor, the only reason I
11 bring it up now is that given the fact we are all
12 agreeing to depositions the week after next, this
13 motion for protective order probably needs to be
14 disposed of sometime next week, and so we'll just
15 talk to each other.

16 MR. SPENCER: We'll figure it out and work
17 together.

18 MR. FOOTE: Thank you, Your Honor.

19

20 (Proceedings concluded at 10:03 a.m.)

21

22


23

24

25

REPORTER'S CERTIFICATE

I, SALLY VALENTINE QUALLS, Registered Professional Reporter, do hereby certify that the pages contained herein accurately reflect the notes taken by me, to the best of my ability, in the above-styled action.


SALLY VALENTINE QUALLS, RPR
Registered Professional Reporter
1/09/01

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VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY

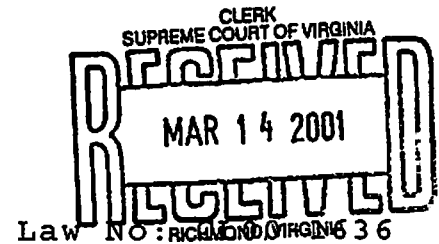
SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT
AUTHORITY,

PLAINTIFF,

v.

TAXPAYERS, PROPERTY OWNERS,
et al.,

DEFENDANTS.



Before: THE HONORABLE RANDALL G. JOHNSON, JUDGE

ORIGINAL

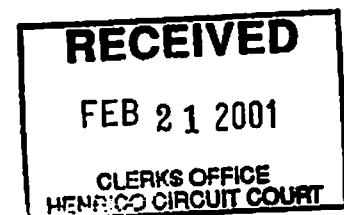
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1 | jury.

2 THE COURT: All right.

3 MR. SPENCER: If the Court is prepared to
4 rule, then that solves the matter.

5 THE COURT: I'm always prepared to rule.
6 Sometimes I wait until I think I know what I'm
7 talking about. Mr. Foote?

8 MR. FOOTE: Your Honor, just a small point.
9 The statute requires that this case be decided by the
10 Circuit Court of Henrico County. We are assuming,
11 whether we are physically here or physically there,
12 that this Court will be sitting as a circuit judge of
13 Henrico County.

14 THE COURT: That's correct. I have not yet
15 received the designation from the supreme court, but
16 I understand that's in the works.

17 MR. FOOTE: Okay. That's just a
18 jurisdictional point.

19 THE COURT: And whether we're physically
20 here or in Henrico, it will be in the circuit court
21 of Henrico.

22 MR. FOOTE: Yes, sir. With -- one of
23 the -- I'm sure that if Mr. Pearson files a motion
24 for leave to amend and amended pleading, it will be
25 liberally considered by the Court. That's the way

1 the rules are written. One of the things that we
2 have consistently insisted in this process is that
3 the bond-validation suit takes precedence. We
4 believe Judge Tidey erred in not enjoining their
5 suit, as the statute in the Public Finance Act
6 actually contemplates, because the statute gives the
7 Court that's sitting on the bond-validation suit a
8 plenary authority to issue a decision, not only with
9 respect to the bond-validation suit, but to any
10 related question. Judge Tidey chose not to do that,
11 and he consolidated the proceedings to these two
12 suits that are now separate and apart. But what I
13 hear in my good friend, Mr. Pearson's, voice is a
14 proposal that those issues be brought back into this
15 case again, and yet there is still the Taubman suit.

16 Our view is that what we have before you is
17 a bond-validation proceeding, that what Judge Tidey
18 did was kept to himself any other issues in this
19 supposedly broader lawsuit that Taubman has brought.
20 We suggest to you that when Judge Tidey gets the
21 case, that the broader issues that Taubman raises
22 will go away as a matter of law, because they're not
23 well taken as a matter of law, and we think that
24 ought to be kept apart and let Judge Tidey deal with
25 that.

1 THE COURT: Are you opposing the motion to
2 amend?

3 MR. FOOTE: Well, I don't know what he will
4 say, Your Honor. I know, as the Court will learn,
5 Mr. Sabourin, Mr. Pearson and I are former partners.
6 I was an 11-year partner at Hazel and Thomas. We
7 have known each other for many years, and I know them
8 to be very clever and very capable lawyers, and I can
9 only assume that as we attempt to simplify, one of
10 their missions will be to complexify. And so we are
11 suggesting to the Court that the issues before you
12 are whether there was authority to do what was done
13 here and whether the moving parties work. The quote,
14 "broader issues," which are purported to exist in
15 this case, we believe are precisely the issues that
16 Judge Tidey has kept for himself. And so we think
17 this is a fairly pristine proceeding that will be
18 held before you.

19 THE COURT: All right. Mr. Pearson, do you
20 want to be heard on that?

21 MR. PEARSON: Your Honor, I guess I would
22 just have to disagree with my colleague, former
23 colleague, Mr. Foote, because --

24 THE COURT: Because you have always tried
25 to simplify things, and he's the one that has tried

1 to --

2 MR. PEARSON: Thank you, Your Honor, for
3 saying that. Actually, what Mr. Foote argued, when
4 we were resisting consolidation and had moved to stay
5 their case, was the bond-validation suit is broad
6 enough to hear all of these issues. Now I hear him
7 saying that the bond-validation suit is very narrow.
8 And what I would do would be to suggest to the Court
9 that ultimately -- as both parties recognized at the
10 time that the consolidation and stay motions were
11 heard, both of these cases really can't go forward
12 and shouldn't go forward at the same time under the
13 control of different judges, because the potential
14 for disparity --

15 THE COURT: But what do you want to put in
16 an amended grounds of defense that is not already in
17 your grounds of defense?

18 MR. PEARSON: What we would do would be to
19 allege that the economic development payments to the
20 developer, the \$30,000,000 that goes into the
21 developer's pocket, are illegal. We would allege
22 that Taubman was denied due process of law in
23 connection with its efforts to contest the
24 plaintiff's development review process in Henrico by
25 virtue of the board's decision to form the CDA, and

1 that therefore the CDA was invalidly formed. We'll
2 allege that the CDA was invalidly formed for the same
3 reason, because it burdens the -- Taubman's first
4 amendment right to petition the government for
5 redress of grievances.

6 We will also allege that the CDA was
7 improperly formed, because the CDA itself was
8 delegated by the county board the authority to change
9 its own boundaries. The county board is the only
10 entity that can form a CDA, and it has to define the
11 boundaries when it forms them, so it's hard for us to
12 see how the CDA could be validly formed if it's
13 gotten that authority and can change it at will.

14 THE COURT: And these are things you have
15 not already alleged in your grounds of defense?

16 MR. PEARSON: I don't believe that any of
17 those things is in the validation suit at the present
18 time.

19 THE COURT: And they're not in the grounds
20 of defense because you thought they were going to be
21 taken care of in the other suit?

22 MR. PEARSON: Yes, sir. And of course the
23 suits were consolidated at the time.

24 THE COURT: Well, were they consolidated
25 before you filed your grounds of defense?

1 MR. PEARSON: Yes. The Court ruled on the
2 consolidation on December the 8th, and we filed
3 grounds of defense on December the 15th.

4 THE COURT: Will you be putting anything in
5 your amended grounds of defense that are not already
6 contained in the other suit for this suit?

7 MR. PEARSON: No, sir.

8 THE COURT: All right. So it will not
9 delay the trial?

10 MR. PEARSON: No. There's no reason for it
11 to delay the trial.

12 THE COURT: All right. Mr. Spencer?

13 MR. SPENCER: In the interest of
14 simplifying, I can represent, on behalf of my
15 clients, we will not ask for a jury, so --

16 THE COURT: All right.

17 MR. SPENCER: -- that makes it easy.

18 THE COURT: I appreciate that.

19 MR. SPENCER: I have no comment on
20 Mr. Pearson's argument just now, except to say that
21 it's the judgment of the taxpayers that those issues
22 are already in the bond-validation suit and are put
23 at issue by the motion for judgment filed by our
24 friends on the other side.

25 THE COURT: I'm just wondering what is not

1 already at issue, but -- all right, anybody else wish
2 to be heard on anything else?

3 MR. FOOTE: Your Honor, trying to --
4 forgive me, listening to two conversations here. But
5 the reason that we assert that the situation is, as I
6 say, that the bond-validation suit is narrow, is
7 because we lost the effort to make it all one piece
8 of litigation. Judge Tidey made it two suits, the
9 bond-validation suit and something else that we say
10 may or may not exist. That's Judge Tidey's issue.
11 We have a bond-validation suit.

12 We also don't know where the Court is with
13 respect to their proposal as to how we handle these
14 motions. We believe that this Court will be able to
15 resolve the matters presented to it expeditiously. I
16 still believe that it would be useful to the parties
17 and the Court if we do, in fact, contemporaneously
18 exchange memoranda. We have a lot of legal power.
19 We have a lot of thought going into this process, and
20 I would simply suggest it may help us all. If the
21 Court doesn't want it, if you don't want it, that's
22 absolutely fine with us, but that's just how we think
23 it through.

24 THE COURT: Okay. Thank you very much.
25 First of all, with regard to Taubman's motion for

1 leave to amend the grounds of defense, motion is
2 granted, and any amendment must be filed no later
3 than this coming Friday, which is January -- well,
4 this coming Thursday, which is January the 11th. The
5 suggestion that the Court accept trial memoranda, I
6 think that's a good idea. Anybody can. Nobody has
7 to. But anyone who wants to file a trial memorandum
8 can do so. The trial memorandum cannot be more than
9 five pages, double spaced, and is due on January 26.

10 With regard to post-trial memoranda, I'm
11 not going to make any ruling on that. We'll see what
12 happens at trial. And if I think that will be
13 helpful to me, then I will invite counsel to give me
14 post-trial memoranda, but who knows, I might be able
15 to rule, I might not. I might not be able to rule,
16 but still might not want post-trial memoranda. I
17 just don't know. It's premature to ask at this
18 point. But I would suggest that all parties be
19 prepared to make their closing arguments orally in
20 case the Court decides that post-trial memoranda will
21 not be helpful.

22 And does that take care of everything? And
23 Mr. Spencer, you said you do not want a jury.

24 MR. SPENCER: That's right.

25 THE COURT: The only other thing,



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Courts Building

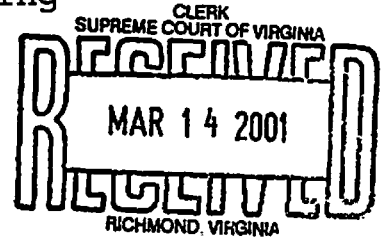
SHORT PUMP TOWN CENTER COMMUNITY
DEVELOPMENT AUTHORITY,

Plaintiff,

-vs-

TAXPAYERS, et al,

Defendants.



CASE NO.
CL00001636-00

TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE RANDALL G. JOHNSON, JUDGE

4:00 p.m., January 10, 2001

Richmond, Virginia

ORIGINAL

2/21/2001
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[Signature]
CLERK HENRICO CIRCUIT COURT

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Reported by: Terry L. Simmer, Court Reporter

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HENRICO CIRCUIT COURT

HALASZ REPORTING & VIDEO

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 24 On behalf of the DEFENDANT Taxpayers
 Arlie Hahn, Bryan Gresham and Robert Anderson
 25



1 statute which authorizes as sort of a random independent
2 third party challenge to a POD process. They're trying to
3 wrap it into this proceeding, as I suggested to the Court
4 the other day, because that simply layers on the level of
5 complexity which simply isn't involved in the case.

6 Whether there is a POD or not, forget the
7 process for a moment, whether there's a POD or not is
8 irrelevant to the bonds. Your Honor, we will represent to
9 the Court, and all the parties will agree, that there is
10 an approved plan of development for the Short Pump Town
11 Center that was done actually a couple of years ago.
12 We'll also represent to the Court that we've been told by
13 the developers that they're going to file an amended plan
14 of development, but they haven't done so. The deposed
15 defendant's possess no document with respect to the
16 amended plan of development.

17 But, your Honor, for the purposes of the bond
18 validation suit, what matter if there is a plan of
19 development at all? The relevant issue is whether the
20 processes for authorizing the issuance of bonds have been
21 satisfied. If there were no plan of development action
22 for any development out there so long as the petition
23 seeking the creation of a CDA and the ordinance created a
24 CDA articulated the purpose for which money could be
25 spent, that's the only relevant inquiry this Court's going

1 to have to get into and not whether there's a plan of
2 development.

3 Let's suppose there had been no plan of
4 development. Could the CDA and the Board still seek to
5 issue these bonds? And the answer is yes, and there's no
6 Virginia law to the contrary. The POD process --

7 THE COURT: Do I understand you correctly to say
8 that the only inquiry is whether the appropriate
9 ordinances have been passed? Maybe I just misunderstood
10 what you said. You say that the only relevant inquiry is
11 what?

12 MR. FOOTE: I said with respect to the issues
13 that I believe that they're trying to seek the POD
14 information for, the only relevant inquiry is are the
15 bonds issued for proper public purpose, and may the funds
16 that are authorized be spent on those purposes. And what
17 I --

18 THE COURT: And you don't think that the plans
19 of development have anything to do with that?

20 MR. FOOTE: No, sir. If there were none, this
21 Court would still look at the same spot to determine
22 whether, in fact, that test has been met. And under the
23 statutes, that's to look at the ordinance creating the
24 Community Development Authority, which is where the
25 purposes for which the money is to spent are set out. And

1 those have to be authorized in the Code of Virginia. But
2 that's where you look. You don't look at the POD. You
3 don't look at a plan of development, a site plan, to
4 determine whether some portion of that site plan is
5 fundable or not. The question is whether the creation of
6 the CDA created it to spend money for the proper purpose.

7 And in this case you will learn that that
8 ordinance incorporated the petition which had been filed
9 by the landowners, or the proposed developers, which
10 included in it an exhibit which set forth those items on
11 which public moneys would be spent. So the POD is
12 irrelevant today. The brief's right there in the record
13 today, and it's been produced for the other side. So to
14 say that we get to go look at the plan of development is
15 to say basically we get a site plan challenge here. We
16 say, putting aside the purpose of a site plan, what does
17 that have to do with the bonds?

18 THE COURT: Is the plan of development something
19 that is not subject to the Freedom of Information Act?

20 MR. FOOTE: It is subject to the Freedom of
21 Information Act, your Honor. This is a discovery request
22 in the course of this proceeding, but they've made no FOI
23 request at this time. They have in the past made FOI
24 requests and documents were produced in connection with
25 the FOI request. Because of the distinction, we've not

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO COUNTY

SHORT PUMP TOWN CENTER)
COMMUNITY DEVELOPMENT AUTHORITY,)

Plaintiff,)

v.)

TAXPAYERS, ET AL.,)

Defendants.)

Law Number
CL00001636-00

AMENDED GROUNDS OF DEFENSE

COMES NOW defendant TRG – Regency Square Associates ("Taubman"), by counsel, and for its Grounds of Defense to the Motion for Judgment filed by Short Pump Town Center Community Development Authority (the "CDA"), states as follows:

1. Taubman denies the allegations in paragraph 1 of the Motion for Judgment.
2. Taubman admits the allegations in paragraph 2 of the Motion for Judgment.
3. Taubman is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Motion for Judgment.

4. Taubman admits that the CDA met on October 20, 2000, and adopted a resolution authorizing the issuance of bonds to finance the Short Pump Town Center, which bonds are expected to be in the maximum amount of \$25,000,000.00. Taubman states further that the resolution speaks for itself, and denies any allegations to the contrary and all other allegations.

5. Taubman admits that the CDA board adopted a resolution on October 20, 2000, which approved special assessments to be levied within the CDA district and requested that the Henrico County Board of Supervisors "establish" the special assessments. Taubman states

further that the resolution speaks for itself, and denies any allegations to the contrary and all other allegations.

6. Taubman admits that on October 24, 2000, the Board of Supervisors adopted an ordinance stating that it "established" special assessment within the CDA District, and that it approved the Memorandum of Understanding and the Economic Development Agreement. Taubman states further that the ordinance speaks for itself, and denies any allegations to the contrary and all other allegations.

7. With respect to the allegations in Paragraph 7, Taubman avers that the Memorandum of Understanding speaks for itself and denies any allegation to the contrary and all remaining allegations.

8. With respect to the allegations in Paragraph 8, Taubman avers that the Economic Development Agreement speaks for itself and denies any allegation to the contrary and all remaining allegations.

9. Taubman denies the allegations in Paragraph 9 of the Motion for Judgment.

10. The allegations contained in Paragraph 10 constitute legal conclusions and, to the extent that they are asserted as facts, they are denied.

11. The allegations contained in Paragraph 11 constitute legal conclusions and, to the extent that they are asserted as facts, they are denied.

12. The allegations contained in Paragraph 12 constitute legal conclusions and, to the extent that they are asserted as facts, they are denied.

13. The allegations contained in Paragraph 13 constitute legal conclusions and, to the extent that they are asserted as facts, they are denied.

14. Taubman denies each and every allegation not specifically admitted or qualified.

FIRST DEFENSE

The payment of money by Henrico County to the Economic Development Authority of Henrico County ("EDA") out of tax revenue from the Short Pump Town Center for the purpose of making payments to the CDA to pay debt service and/or to the developer of Short Pump Town Center to reimburse special assessment payments made by the developer violates Va. Code § 15.2-953 because the funds contributed by the County will not be used for the public benefit or to promote economic development but rather to serve primarily private interests.

SECOND DEFENSE

The EDA's receipt and use of payments from Henrico County for the purpose of making payments to the CDA or to the developer of Short Pump Town Center, violate Va. Code § 15.2-4900 et. seq.

THIRD DEFENSE

The issuance of debt by the CDA to pay for certain improvements for the Short Pump Town Center violates § 15.2-5158 because the CDA may only use bond funds for "necessary improvements" to meet demands placed on a locality. The improvements to be financed by the CDA include private improvements unnecessary for the public and which do not meet any demand placed upon the locality by development within the district.

FOURTH DEFENSE

The obligation of the County to levy taxes to make appropriations of tax increment revenues which are in part intended for the payment of the CDA bonds, but without actually

pledging these funds for the payment of the CDA bonds, violates VA. Code § 15.2-5131 because it amounts to a contractual obligation to make incremental tax revenues available to pay debt service.

FIFTH DEFENSE

The tax increment payments which the County will pay indirectly to the CDA for debt service payments are illegal under the Water and Waste Authorities Act ("WWAA") and specifically prohibited by Va. Code §15.2-5125.

SIXTH DEFENSE

The resolution creating the CDA violates Article 6 of Chapter 51 of Title 15.2 and the Dillon Rule because it authorizes the CDA to change its boundaries and to exclude certain land from the CDA district and from the levy of the special assessment. This is an unlawful delegation to the CDA of powers which belong solely to the Henrico County Board of Supervisors.

SEVENTH DEFENSE

The levy of a special assessment to pay for improvements other than utility extensions, stormwater facilities and Route 250 improvements for the Short Pump Town Center violates Article X, §§ 3 and 8 of the Virginia Constitution because the assessments will go to pay for improvements that solely serve private interests, which are not local public improvements, and which are not necessary expenses of government.

EIGHTH DEFENSE

The rebate of incremental tax revenue to the developer violates Article X, §§ 1 and 6 of the Virginia Constitution because it permits non-uniform taxation, grants an unauthorized exemption from taxation, and amounts to taxation by agreement.

NINTH DEFENSE

The Memorandum of Understanding and the Economic Development Agreement (the "Incentive Agreements"), violate Article X, § 10 of the Virginia Constitution because in contractually obligating itself to pay, subject to appropriation, future tax increment amounts, through the EDA, to the CDA for debt service and/or to the developer, the County has violated the constitutional prohibition against the lending of its credit.

TENTH DEFENSE

The resolution creating the CDA and the ordinance approving Incentive Agreements violate Article I, § 11 of the Virginia Constitution and the Fourteenth Amendment of the United States Constitution because it deprives Taubman of its right to due process. The action by the Henrico County Board of Supervisors creating the CDA for the purposes of subsidizing the Short Pump Town Center was arbitrary and capricious, without rational basis and not substantially related to any legitimate public objective, and deprives Taubman of a substantial property interest.

ELEVENTH DEFENSE

The resolution creating the CDA and the ordinance approving the Incentive Agreements violate Article I, § 12 of the Virginia Constitution and the Fourteenth Amendment of the United States Constitution because it deprives Taubman of its right to petition the government for redress of its grievances. Taubman's right to participate meaningfully in the review of the Short Pump Town Center plan of development ("POD") application, and to petition for redress of its grievances, is denied because the Board of Supervisors' action to subsidize the Short Pump Town Center so infects the POD approval process with prejudice and bias as to destroy the adequacy and meaningfulness of Taubman's right to petition for redress of its grievances.

TWELFTH DEFENSE

The resolution creating the CDA and the ordinance approving the Incentive Agreements are unlawful and void because the Board's action was arbitrary, capricious, and without rational basis.

WHEREFORE, having fully answered the Motion for Judgment, Defendants pray the Court dismiss it with prejudice, award the Defendants their costs and attorneys fees expended, and grant such other and further relief as the Court deems just.

Dated this 11th day of January, 2000

Respectfully submitted,

TRG- REGENCY SQUARE ASSOCIATES

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Counsel

By Patricia A. Deem
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Counsel for TRG- REGENCY SQUARE ASSOCIATES

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2000, a true copy of the foregoing
Amended Grounds of Defense was sent via facsimile and mailed, first class, postage prepaid, to:

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Sylvion S. Moss, Esq.
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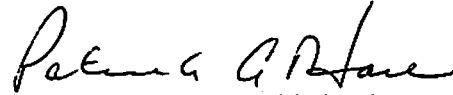
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Counsel to Arlie A. Hahn, Jr., Bryan K. Gresham, Jr. and Robert Anderson

A handwritten signature in cursive script, reading "Patrick A. O'Hare", written over a horizontal line.

Patrick A. O'Hare

VIRGINIA:

IN THE CIRCUIT COURT FOR HENRICO COUNTY

SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT
AUTHORITY,

Plaintiff,

v.

TAXPAYERS, et al.,

Defendants.

LAW NO. CL00-1636

Consolidated with

THE TAUBMAN LIMITED PARTNERSHIP,

Plaintiff,

v.

BOARD OF SUPERVISORS OF THE
COUNTY OF HENRICO, et al.,

Defendants.

CHANCERY NO. CH00-1304

ORDER

This matter came on for hearing on January 5, 2001 on the motions of Arlie A. Hahn, Jr. and The Taubman Limited Partnership for recusal. Upon consideration of the arguments of counsel, and for the reasons stated in open court and recorded in the transcript of the proceedings, it is hereby ORDERED that:

1. The court's previous order consolidating these cases is vacated and the two cases are separate;

2. I will continue to preside over Chancery Number CH00-1304, The Taubman Limited Partnership vs. Board of Supervisors of the County of Henrico, et al.;

3. That the Honorable Randall G. Johnson of the Thirteenth Judicial Circuit shall preside as Judge Designate over Law Number CL00-1636, Short Pump Town Center Community Development Authority vs. Taxpayers, et al.; and

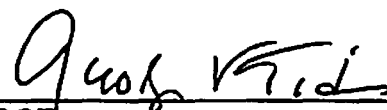
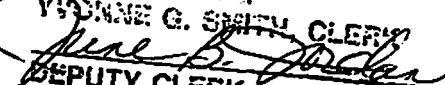
4. The transcript of the hearing shall be made part of the record when it is filed with the Clerk.

5. Discovery taken in either case may be used in both.


The court notes the objections of Short Pump Town Center Community Development Authority, Board of Supervisors of the County of Henrico and the Economic Development Authority of Henrico County, Virginia to paragraphs 1 through 4 of this order, for the reasons stated at the hearing and in their motion filed on January 4, 2001.

The clerk is directed to send attested copies of this order to all counsel of record and to enter a copy of the order into the files of each case.

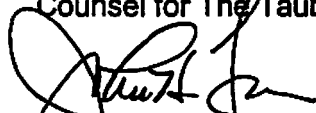
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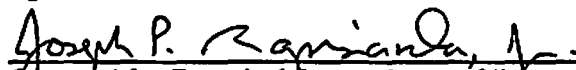

JUDGE
A COPY TESTED:
YVONNE G. SMITH, CLERK

DEPUTY CLERK

Seen:


Counsel for Arlie A. Hahn, Jr., Bryan B. Gresham, and Robert Anderson


Counsel for The Taubman Limited Partnership


Counsel for Short Pump Town Center Community Development Authority


Counsel for Board of Supervisors of the County of Henrico and Economic Development Authority of Henrico County, Virginia

VIRGINIA:

IN THE CIRCUIT COURT FOR HENRICO COUNTY

THE SHORT PUMP TOWN CENTER)
COMMUNITY DEVELOPMENT AUTHORITY,)

Plaintiff,)

v.)

TAXPAYERS, EL AL.,)

Defendants.)

Law Number
CL00001636-00

DEFENDANT TAUBMAN'S TRIAL BRIEF

Defendant TRG-Regency Square Associates LLC ("Taubman"), by counsel, hereby submits its trial brief:

I. INTRODUCTION

In this suit, the Short Pump Town Center Community Development Authority ("CDA") seeks to validate bonds issued by the CDA and various actions taken in connection therewith, for the purpose of providing \$30 million in public money to the developers of the Short Pump Town Center to induce four up-scale anchor stores, including Nordstrom and Lord & Taylor, to locate at the shopping center.

II. SUMMARY OF PROOF

Taubman will demonstrate at trial that the Board of Supervisors of Henrico County ("County Board"), the CDA, and the Economic Development Authority of Henrico County ("EDA") acted arbitrarily and capriciously and in a manner that serves primarily private interests, exceeded their statutory authority, and violated the Virginia and United States constitutions. Specifically, Taubman will prove that the County Board, the CDA, and the EDA acted (i) in a manner that serves the interests of the Short Pump Town Center developers without any benefit to the taxpayers of Henrico

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County, (ii) before critical components of the bond transaction had been finalized, (iii) without unbiased, independent expert advice regarding the feasibility of the project, the costs and risks to the County and its taxpayers, and the necessity of providing incentives, and (iv) before the plans of development had been approved and traffic safety problems resolved.

III. SUMMARY OF LEGAL ISSUES AND DEFENSES

A. This Suit Is Not Ripe For Adjudication.

Taubman will prove that this suit is not ripe for adjudication under Virginia law because several critical aspects of the CDA and the bond transaction are unresolved. Specifically, Taubman will prove that (i) the boundaries of the CDA are undetermined, (ii) the Incentive Agreements setting forth the payment structure of the bonds are vague, incomplete, and unexecuted, (iii) the specific improvements the bond proceeds will pay for are unknown, (iv) whether the bonds are going to be taxable or tax-exempt is unknown, (v) who will own the bond-financed improvements at bond issuance or after five years is unknown, and (vi) the necessary agreement between the CDA and the developer dealing with financial, construction, ownership, and maintenance issues has not even been negotiated. Under these circumstances, the court does not have jurisdiction to make a determination regarding the validity of the bond issue. See Blue Cross v. St. Mary's Hospital, 245 Va. 24, 35-36 (1993); Reisen v. Aetna Life and Cas. Co., 225 Va. 327, 331 (1983).

B. The Government Exceeded Its Authority In Issuing The Bonds.

Under Dillon's Rule, the powers of boards of supervisors and municipal entities are "fixed by statute and are limited to those conferred expressly or by necessary implication." Arlington County v. White, 259 Va. 708, 719 (2000). An ordinance that exceeds the scope of legislative authority is invalid. Board of Supervisors v. Countryside Investment Co., 258 Va. 497, 503 (1999); Button v.

Day, 205 Va. 629 (1964). Any doubt about whether legislative power exists must be resolved against the locality. City of Richmond v. Confrere Club of Richmond, 239 Va. 77, 79-80 (1990).

At trial Taubman will demonstrate that under the proposed scheme the County Board will violate Va. Code § 15.2-953; that is, the County Board authorized an agreement that violates Va. Code § 15.2-953(B) in appropriating funds to the EDA that are not for the "like" purposes authorized in that section, nor will it promote economic development. Taubman will further demonstrate that under the proposed scheme the EDA will exceed its statutory authority because, *inter alia*, (a) it is illegally accepting grants from the County Board in connection with facilities which are not "authority facilities," (b) it is not "loaning" funds to further the purposes of the Industrial Development and Revenue Bond Act, and (c) it is illegally granting gifts to the CDA or the developer, or both. See Va. Code §§ 15.2-4905(12) and (13).

Taubman will further demonstrate that the CDA exceeded its authority under the Water and Waste Authorities Act because the proposed financing scheme (a) provides for the construction of private improvements that are not "necessary to meet the increased demands placed upon the locality as a result of development within the district," Va. Code § 15.2-5158(A)(1), (b) violates the Water and Waste Authorities Act by providing for tax increment financing to fund the CDA's debt service, (c) illegally provides for a grant of 1.5 to 2.5 million dollars to the developer out of bond reserve proceeds, and (d) illegally authorizes the CDA to change its boundaries and to exclude certain land from the CDA district.

Finally, Taubman will demonstrate that, even assuming the existence of proper legislative authority, the method chosen by the government to carry out that authority was unreasonable, because the EDA is being used merely as a naked conduit for the transfer of funds from the County to the developer.

C. The Bond Issue And Proposed Financing Scheme For The Short Pump Town Center Violate The Virginia And U.S. Constitutions.

Although there is a presumption in favor of the constitutionality of legislative acts -- even by political subdivisions -- the court must strike down any act that "plainly exceeds constitutional limitations." See City of Charlottesville v. DeHaan, 228 Va. 578, 583-84 (1984). In other words, if the act is "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare," it cannot be sustained. Id. at 583 (citing Mumpower v. Housing Authority, 176 Va. 426, 443 (1940)). Moreover, in determining whether the government has committed a constitutional violation, the court must assess whether the bond issue and financing scheme fulfill a public purpose. See Commonwealth of Virginia v. Nat. Fire Ins. Co., 161 Va. 737, 750-754 (1934); South Carolina v. Riley, 278 S.E.2d 612, 617-621 (S.C. 1981) (declaring invalid a legislative provision that authorized municipal financing of a commercial shopping center); City of West Palm Beach v. Florida, 113 So.2d 374 (Fla. 1959).

First, Taubman will demonstrate violations of Article X, sections 1, 3, 6, 8, and 10 of the Virginia Constitution, because (i) the proposed improvements are neither local nor public, nor a "necessary expense" of the government, (ii) the "tax rebate" scheme under the Incentive Agreements grants the developer an "unauthorized, unlawful and unconstitutional exemption from taxation," and imposes a non-uniform tax, see, e.g., Industrial Development Authority v. Suthers, 208 Va. 51 (1967); Lee Gardens Arlington Ltd. Partnership v. Arlington County Board, 250 Va. 534 (1995), and (iii) the bond issue and financing scheme lend the government's credit for a private purpose. See, e.g., Almond v. Day, 197 Va. 782, 793 (1956); Button v. Day, 208 Va. 494, 503 (1968).

Second, Taubman will show that its right to due process was violated because the County Board's actions were arbitrary and capricious and inconsistent with legitimate public purposes, and also deprive Taubman of a protected property interest -- the market value of Regency Square -- a

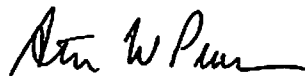
property interest to which Taubman has a legitimate claim of entitlement. See Sylvia Develop. Corp. v. Calvert Co., 48 F.3d 810, 826 (4th Cir. 1995); Biser v. Town of Bel-Air, 991 F.2d 100, 104 (4th Cir. 1993); RRI Realty Corp. v. Village of Southampton, 870 F.2d 911, 917 (2d Cir. 1989); Scott v. Greenville Co., 716 F.2d 1409, 1419-20 (4th Cir. 1983).

Third, Taubman will demonstrate that it was deprived of its right to petition the government for redress of grievances because the Board's actions render Taubman's participation in the approval process for the plan of development for the shopping center meaningless. See California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972); Wayte v. United States, 470 U.S. 598, 610 n.11 (1985); NAACP v. Claiborne Hardware Co., 458 U.S. 886, 911 (1982).

Finally, Taubman will demonstrate that the acts of the County Board, EDA, and CDA were arbitrary, capricious, and void as lacking in rational basis. In a conventional suit involving legislative action, the court must look at what is rational, and what the legislative body could have known at the time it took the action, not what it was actually told or knew. See Industrial Development Authority of the City of Richmond, Virginia v. La France Cleaners and Laundry Corp., 216 Va. 277 (1975). Here, the County Board, CDA and the EDA are acting in a proprietary fashion and in a manner, as reflected in the juridical posture of the parties, that is adverse to County taxpayers and, by definition, inconsistent with the taxpayer's interests; i.e. without facilitating a public purpose. Taubman will also prove a violation of the Public Purpose Doctrine of the Fourteenth Amendment by showing that the government's acts primarily benefit private interests and are therefore not constitutionally permissible. See Loan Association v. Topeka, 87 U.S. 655 (1874); City of Hampton v. Ins. Co. of North America, 177 Va. 494, 501-502 (1941); Troy v. Walker, 218 Va. 739, 744-45 (1978).

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VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY

SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT AUTHORITY,

Plaintiff,

v.

TAXPAYERS, ET AL.,

Defendants.

Law Number:
CL00001636-00

TRIAL BRIEF OF TAXPAYERS ARLIE A. HAHN, JR.,
BRYAN B. GRESHAM and ROBERT ANDERSON

Arlie A. Hahn, Jr., Bryan B. Gresham and Robert Anderson ("the taxpayers")
submit this trial brief.

INTRODUCTION

Short Pump Town Center ("SPTC") is a large regional shopping mall that is proposed to be located near the intersection of West Broad Street and Lauderdale Drive in western Henrico County. The proposed mall will be anchored by four department stores – Hecht's, Dillard's, Lord and Taylor's and Nordstrom's. The mall will be developed by Short Pump Town Center, LLC, which is a joint venture between Forest City Enterprises of Cleveland, Ohio, and the Pruitt family of Richmond.

The Henrico County Board of Supervisors created the Short Pump Town Center Community Development Authority ("CDA") at the request of the developer. The CDA was created for the purpose of issuing bonds to raise 22.0 million dollars, which the County intends to give to the developer for construction of SPTC. The CDA bonds are secured by a special assessment on the developer's property that is equal to the total debt service needed to retire the bonds five years after the mall opens.

In addition to the 22.0 million dollars of bond proceeds, the County also intends to pay the developer approximately 30.0 million over five years from incremental tax

revenue generated by the mall once it opens. These tax increment payments will be funneled to the developer from the County general tax fund by passing them through the Henrico County Economic Development Authority ("EDA"). The developer has the option of either accepting the tax increment payments, or allowing the EDA to divert the developer's money to the CDA to (1) pay debt service on the CDA bonds; and (2) take down the special assessment lien on the developer's property.

Plaintiff, the CDA, filed this action pursuant to Va. Code § 15.2-2651 seeking judicial validation of the proposed CDA bond issue and the public financing scheme for SPTC. The taxpayers were involuntarily made defendants in the CDA's action by operation of Va. Code § 15.2-2652. Thereafter, each of the three taxpayers voluntarily filed a timely reply to the CDA's action pursuant to Va. Code § 15.2-2654.

ISSUES FOR TRIAL

Under Va. Code § 15.2-2654, the judge shall determine all questions of law and fact. From the taxpayers' perspective, there are two overriding issues that this Court must resolve at trial.

First, is whether the improvements to be financed with public money are "infrastructure improvements enumerated in the ordinance or resolution establishing [the CDA]" and are "necessary to meet the increased demands placed upon [Henrico County] as a result of development within the [CDA]." See Va. Code § 15.2-5158. The taxpayers will demonstrate at trial that the improvements that the County and the CDA propose to finance with public money do not meet the definition set forth in Va. Code § 15.2-5158, and are not for public purposes. Rather, the improvements will benefit a private developer and a particular private development.

The second overriding issue is whether the County, the CDA and the EDA have the power and authority to do what they propose to do. In Virginia, the Dillon Rule of strict construction governs a court's determination of the powers of local governing

bodies. The Dillon Rule provides that a municipal corporation (which includes the CDA and the EDA) has only those powers which are expressly granted to it by the General Assembly, those powers fairly or necessarily implied from expressly granted powers, and those powers which are essential and indispensable. See City of Virginia Beach v. Hay, 258 Va. 217, 518 S.E.2d 314 (1999). The taxpayers will demonstrate at trial that the County, the CDA and/or the EDA do not have the express or implied power or authority to do what they propose to do in providing public financing and inducements to the developer.

Within these two overriding issues, there are many sub-issues of fact and law that the Court must decide. Issues of fact include, but are not limited to, a determination of just what the improvements are that the County and the CDA propose to finance with public money, and whether these improvements are “enumerated in the ordinance or resolution establishing the [CDA].” Questions of law include, but are not limited to:

- (1) whether the CDA was properly formed;
- (2) whether the improvements to be financed by the CDA are “infrastructure improvements” which are “necessary to meet the increased demands placed upon [Henrico County] as a result of development within the [CDA] district;”
- (3) whether the proposed improvements serve a public purpose or a distinctly private one;
- (4) whether the special assessment on property within the CDA was properly assessed and levied;
- (5) whether the County or the CDA has the power or authority to exempt certain parcels that will be given by the developer to the four anchor department stores from the special assessment;
- (6) whether the County is authorized to make the proposed “EDA Payments” to the EDA;

- (7) whether the EDA is authorized to accept the proposed “EDA Payments” from the County under Va. Code § 15.2-4905(12);
- (8) whether the “EDA Payments” are “revenues” of the EDA, as defined in Va. Code § 15.2-4902 and § 15.2-4905(13);
- (9) whether the EDA has the power under Va. Code § 15.2-4905(13) to act as a mere conduit of EDA Payments from the County to the developer or from the County to the CDA;
- (10) whether any of the proposed improvements are “authority facilities” of the EDA, as defined by Va. Code § 15.2-4902;
- (11) whether the County may lawfully grant powers to the EDA that go beyond those powers specifically granted to industrial development authorities by the General Assembly in the Industrial Development and Revenue Bond Act;
- (12) whether the County may lawfully grant powers to the CDA that go beyond those powers specifically granted to community development authorities by the General Assembly in the Virginia Water and Waste Authorities Act.

The taxpayers will demonstrate at trial that the County, the CDA and/or the EDA have exceeded their power and authority by committing to provide illegal financial inducements to a private developer for private purposes.

Respectfully submitted,

ARLIE A. HAHN, JR.
BRYAN B. GRESHAM
ROBERT ANDERSON

By Counsel

A handwritten signature in cursive script, reading "Robert M. Buell". The signature is written in black ink and is positioned above a horizontal line.

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Robert M. Buell

VIRGINIA:

IN THE CIRCUIT COURT FOR HENRICO COUNTY

THE SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT AUTHORITY,
ET AL.

Plaintiff,

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TAXPAYERS, EL AL.,

Defendants.

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CL00-1636

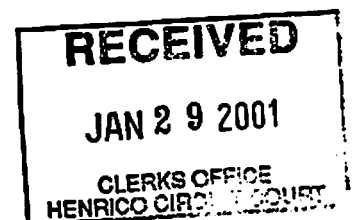
**TAUBMAN'S MEMORANDUM IN SUPPORT OF ITS
DEMURRER AND MOTION TO DISMISS
FOR LACK OF JURISDICTION**

Defendant TRG-Regency Square Associates LLC ("Taubman"), by counsel, moves to dismiss this action because the Court lacks jurisdiction under the Public Finance Act, Va. Code § 15.2-2650, et seq.

I. BACKGROUND

On September 26, 2000, the Henrico County Board of Supervisors ("County Board") adopted a resolution to create the Short Pump Town Center Community Development Authority ("CDA") under Va. Code § 15.2-5152 et seq. The creation of the CDA was sought in order to finance and construct infrastructure and other improvements for the benefit of the Short Pump Town Center. The County Board also approved Articles of Incorporation that set forth the initial CDA Board members. The board members are not elected officials and the County Board's resolution does not require that the CDA's decisions be subject to review and approval by the County or any other governmental entity.

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HENRICO CIRCUIT COURT



On November 6, 2000, the CDA filed this Motion for Judgment. The CDA sought a judicial declaration of, among other things, the validity of certain bonds issued by the CDA, the legality of all proceedings taken in connection with the authorization, and the validity of the means provided for the payment of bonds. Its sole basis for invoking this Court's jurisdiction is the Public Finance Act, Va. Code § 15.2-2650 et seq.

The Motion for Judgment sets out general, largely conclusory, allegations, but does not recite any wrongdoing committed by another party, including any taxpayer of the County, against the CDA or any illegal conduct by Henrico County or any other governmental entity that harmed or presents an imminent threat of harm to the CDA in any concrete manner. The Motion for Judgment does not recite the reasons why the CDA believes it cannot, as a matter of law, merely issue these bonds based on bond counsel opinion, or why it believes itself not in compliance with state or federal statutes, regulations, or guidelines that require it now to seek the official imprimatur of the Commonwealth of Virginia, through the judiciary, on the validity of its bonds.

The Public Finance Act does not require any individual notice to the mandatory, named taxpayer-defendants whose rights, after publication of two newspaper notices in consecutive weeks and resulting in a hearing no sooner than ten days following notice, are forever extinguished and their liability forever confirmed. Va. Code § 15.2-2652. The Motion for Judgment compels a citizen or taxpayer to become a defendant at his peril and cost and to "defend" himself against allegations that do not identify him as having committed a legal wrong against the plaintiff. The Motion for Judgment does not name (i) the Commonwealth of Virginia as a defendant, although its official and valuable imprimatur is sought, or (ii) the Attorney General as a defendant, as counsel for the taxpayers, although the authority for the County to act

at all is derived from state statutes and involves sophisticated financial and legal transactions and consequences, (cf. Tex. Water Code § 51.457, Duties of Attorney General in Validation Suit), or affirmatively state (iii) that counsel be appointed to represent the indigent or those taxpayers unable to represent themselves, including those with disabilities.¹

The County Board, although presumed to represent other taxpayers, was confronted with the anomaly of having approved the CDA, and yet choose to intervene in support of the CDA as a plaintiff. Put differently, the County does not represent its taxpayers in this suit and, as a consequence, has abjured any legal or practical presumption in that regard.

II. ARGUMENT

A. The Public Finance Act Is Not A Basis For Jurisdiction.

The Public Finance Act, Va. Code § 15.2-2651, et seq. is, in important juridical respects, a peculiar statute, even if it is within the purview of the legislature to enact. It appears, as applied here by the CDA, to create the semblance or form of a “controversy” by compelling citizens and taxpayers to be “defendants,” although none have done any harm or committed any wrongdoing against the plaintiff, nor have they any legal or contractual relationship to the CDA, in order to get the Commonwealth’s judiciary to “resolve” or adjudicate the “controversy” in such a “dispute.”

If accepted in the manner used by the CDA here, the Public Finance Act, as a practical matter, creates an artificially forced, juridical construct that seeks to determine the rights and liabilities of all the County’s citizens and taxpayers, regardless of their presence in the case itself

¹ No affirmative effort was made by the CDA or the County to notify or seek representation for taxpayers who are disabled. See, e.g., Va. Code § 8.01-9 (providing for the appointment of a guardian ad litem for a person under a disability where that person is a party-defendant in a matter); Cook v. Radford, 536 S.E.2d 906, 2000 Va. LEXIS 1334, *8 (2000).

and the lack of individual notice; it does so in perpetuity and, through the use of the judiciary, confers upon the plaintiff the legal imprimatur of the Commonwealth in the financial marketplace without the Commonwealth reviewing, approving, or being a party to the proceeding. This artificially forced construct, and the plain meaning of the Public Finance Act, does not provide a basis for the exercise of this Court's jurisdiction.

The Public Finance Act is not a jurisdictional statute. It merely sets forth procedures for content, timing, and notice. By its plain terms, it relies upon or refers to the exercise of jurisdiction conferred on this Court by virtue of a different statute. Put differently, the Public Finance Act "nowhere contains an explicit grant of jurisdiction." California v. Sanders, 430 U.S. 99, 105 (1977). Section 15.2-2650, for example, provides only that "the provisions of this article apply to all suits, actions, and proceedings of whatever nature" and section 15.2-2651, in a similar manner, provides only that an appropriate entity "may bring at any time a proceeding in any court . . . having general jurisdiction . . ." (emphasis added). This language is in stark contrast to the Declaratory Judgment Act, Va. Code, § 8.01-184, which is a jurisdiction statute. It provides, in part, that "circuit courts . . . shall have power to make binding adjudications of right;" that is, when an actual, justifiable controversy exists. No comparable language is contained in the Public Finance Act.

The CDA's sole reliance on the Public Finance Act is insufficient to provide jurisdiction in this Court to act on its Motion for Judgment. It is clear from the plain language of the statute that there has been no grant of jurisdiction. Clearly, the General Assembly knows how to say what it means. "When considering a legislative act, a court may look only to the words of the statute to determine its meaning, and when the meaning is plain, resort to rules of construction, legislative history, and extrinsic evidence is impermissible." Town of Blackstone v. Southside

Electric Cooperative, 256 Va. 527, 533 (1998) (citing Harrison & Bates, Inc. v. Featherstone Assoc., 253 Va. 364, 368 (1997)). The courts have held that “where the legislature has used words of a plain and definite import the courts cannot put upon them a construction which amounts to holding the legislature did not mean what it has actually expressed.” Davis v. Tazewell Place Associates, 254 Va. 257, 260-261 (1997) (citing Barr v. Town & Country Properties, 240 Va. 292, 295 (1990)). In the Public Finance Act, the General Assembly did not grant this Court jurisdiction.

The Court, however, also lacks jurisdiction in this matter under the Declaratory Judgment Act, Va. Code § 8.01-184. The Declaratory Judgment Act states that “in cases of actual controversy, circuit courts within the scope of their respective jurisdictions shall have power to make binding adjudications of right . . .” Va. Code § 8.01-184. This is limited to instances of “actual antagonistic assertion and denial of right.” Cupp v. The Board of Supervisors of Fairfax County, 227 Va. 580, 591 (1984) (quoting Va. Code § 8.01-184). The judiciary is only allowed to adjudicate an actual dispute. “[T]he courts are not constituted . . . to render advisory opinions . . . or to answer inquiries which are merely speculative.” Commonwealth v. Harley, 256 Va. 216, 219 (1998) (quoting City of Fairfax v. Shanklin, 205 Va. 227, 229-30 (1964)). See also Reisen v. Aetna Life & Cas. Co., 225 Va. 327, 331 (1983).

An “actual controversy” requires (i) a plaintiff with standing, (ii) a dispute historically capable of judicial resolution, (iii) a defendant whom, if judgment is rendered against it, can actually provide the relief requested by the plaintiff and directed by the court, and (iv) proof by a preponderance of the evidence that the allegations are true. See, e.g., Central States v. Central Transport, Inc., 841 F.2d 92 (4th Cir. 1988) (“It is the duty of a court to render a judgment in an

actual controversy within its jurisdiction and in the presence of proper parties . . .") None of these requirements are met in this case.

In the end, the CDA is seeking an advisory opinion from this court in order to enhance the value of its bonds in the marketplace. If accepted in this manner, the Public Finance Act violates the separation of powers under the Virginia Constitution and forces this Court, in an artificially constructed "controversy," to determine the rights and financial liability of taxpayers named as "defendants," including those not represented before this Court. The Virginia Constitution is clear that "the legislative, judicial, and executive departments of [Virginia] are to be kept apart." Gandy v. County of Elizabeth City, 179 Va. 340, 346 (1942). "This principle prevents one branch from engaging in the functions of another, such as the judicial branch performing a legislative function." Taylor v. Worrell Enterprises, Inc., 242 Va. 219, 221 (1991). In addition, in light of the liabilities purported to be imposed on taxpayers, the means of notice provided here raises serious questions of constitutional magnitude. "It is a rudimentary but profound constitutional principle that due process requires notice to a person of action sought against him before such action may be taken." Orange County v. Morgan, 28 Va. Cir. 189, 192 (1992). It is also elementary that, in light of the fact that the taxpayers of the County are all defendants in the suit and the County knows the identity of such taxpayers, they should have received individualized notice of the suit. Prudence should lead this Court to a statutory construction that avoids such Constitutional problems.²

² Even if the Court were to assume jurisdiction of the CDA's bond validation suit, there is no basis for the Court to accept jurisdiction over the transactions involving the Economic Development Authority of Henrico County ("EDA"), the County Board, or the developer because those transactions involve transfers of money which are incidental to the bonds.

B. The CDA Is Not A Proper Plaintiff To Invoke This Court's Jurisdiction.

Even if the Court were to find that the Public Finance Act conferred jurisdiction, the CDA would not be a proper plaintiff under the statute.

The Public Finance Act authorizes that “all suits . . . involving the validity of bonds” may only be filed by a “locality or other political subdivision, agency or instrumentality of the Commonwealth . . .” Va. Code § 15.2-2650 (emphasis added). The CDA is not a “political subdivision, agency or instrumentality of the Commonwealth.” It was not created by the Commonwealth, but by the County Board. In addition, the CDA is not controlled by, nor does it serve at the pleasure of, the Commonwealth. It is an “entity purely local in nature.” VEPCO v. Hampton Redevelopment and Housing Authority, 217 Va. 30, 33 (1976). In fact, the nature of the CDA stands in stark contrast to an industrial development authority created pursuant to the Industrial Development and Revenue Bond Act (“IDRBA”). Under the IDRBA, an industrial development authority is expressly defined as a “political subdivision” of the Commonwealth. See Va. Code §§ 15.2-4902 and 4903(A). Other authorities authorized by Virginia statute similarly are defined as political subdivisions of the Commonwealth. See, e.g., Va. Code § 15.2-5302 (hospital authority); Va. Code § 15.2-5402 (electrical authority); Va. Code § 15.2-5501 (tourism authority); Va. Code § 15.2-5604 (public recreation authority); Va. Code § 15.2-5801 (baseball stadium authority). No such definition is applicable to a community development authority under the Water and Waste Authorities Act.

The structure and purpose of the CDA do not support giving it access and opportunity to avail itself of the plenary powers available to plaintiffs under the Public Finance Act. Here, the CDA is performing a proprietary, not a governmental, function regardless of what statutory words or terminology are used to describe it. VEPCO, supra at 34-36. The service it performs

“inures to the benefit of a few rather than to ‘the common good of all.’” VEPCO, supra, at 36. The composition of the CDA board only substantiates the proprietary nature of its purpose. Here, the County simply ratified the CDA board -- a board that was recruited and placed before the County by the developer. Section 15.2-5113 of the Water and Waste Authorities Act states that “one or more members of the governing body of the locality may be appointed board members of the authority.” Va. Code § 15.2-5113 (emphasis added). In this instance, the CDA has opted not to have any members of the governing body of Henrico County on its board. Thus, the CDA board is not accountable to the governing body of the locality and not accountable to the public. See Mitchum v. Albemarle Co. Service Auth., 34 Va. Cir. 208 (Va. Cir. 1994); Virginia Electric and Power Co. v. Hampton Redevelopment and Housing Auth., 217 Va. 30, 32-33 (1976). The CDA-plaintiff before the Court in this case is a far cry from a local government plaintiff with a demonstrable need to resolve questions of law related to a proposed debt issuance for a public purpose.

And, an alternative means for resolving the CDA issues presented here is provided by law as the only means of bond validation. The Water and Waste Authorities Act already prescribes the procedure for determining the validity of bonds issued pursuant to that Act. Va. Code § 15.2-5126 permits “any person in interest” to contest the validity of bonds issued under the Water and Waste Authorities Act within thirty days after the filing of the initial resolution authorizing the bonds. If the validity of the bonds is not contested within the thirty-day period,

the authority to issue the bonds, the validity of the pledge of revenues necessary to pay the bonds, the validity of any other provision contained in the resolution, trust agreement, indenture or other instrument, and all proceedings in connection with the authorization and the issuance of the bonds shall be conclusively presumed to have been legally taken and no court shall have authority to inquire into such matters and no such contest shall thereafter be instituted.

Va. Code § 15.2-5126 (emphasis added). Upon actual delivery of the bonds, the validity of such bonds “shall not be questioned” by any party, including the authority itself. Id.

Section 15.2-5126 provides the sole procedure for determining the validity of bonds authorized and issued pursuant to the Water and Waste Authorities Act, as specified by two other sections of the Virginia Code. See Va. Code § 15.2-5100 (“This chapter shall constitute full and complete authority, without regard to the provisions of any other law for the doing of the acts herein authorized . . .”) (emphasis added); Va. Code § 15.2-5129 (“Bonds may be issued under the provisions of this chapter . . . without any other proceedings or the happening of any other condition or thing than those proceedings, conditions or things which are specifically required by this chapter.”) The fact that section 15.2-5126 is the only method for determining the validity of bonds is further made clear by the “conclusive presumption” of validity the bonds assume after thirty days. In other words, there is no need for the authority or any other party to file a bond validation suit under the Water and Waste Authorities Act because the bonds are presumptively valid unless someone files an action contesting the bonds within thirty days of the resolution authorizing the bond issue.

The procedure for contesting the validity of bonds issued pursuant to the Public Finance Act contains no presumption of validity. See Va. Code § 15.2-2653. Nor is there any provision declaring that bonds shall “not be questioned” after delivery. Under the Public Finance Act, bonds are only considered “conclusively valid” if (i) no appeal is taken from the decree of the trial court adjudicating the validity of the bonds, or (ii) the Virginia Supreme Court affirms the decree of the trial court. Va. Code § 15.2-2657. However, under the streamlined procedure contained in the Water and Waste Authorities Act, the presumption of validity negates any need to institute a bond validation suit.

In addition, none of the other Acts under Title 15.2 that authorize the creation of authorities or commissions contain procedures for the validation, or invalidation, of bonds issued pursuant to their respective provisions. The Water and Waste Authorities Act is the only statute, outside of the general provisions of the Public Finance Act, that specifically identifies a procedure for adjudicating the validity of a bond issue. There is, thus, a clear legislative intent that bonds issued pursuant to the Water and Waste Authorities Act be controlled by the provisions of that Act, not by the procedures articulated in the Public Finance Act.

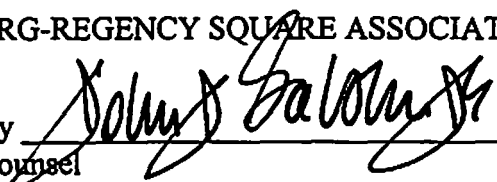
Accordingly, the filing of the present suit under the Public Finance Act is invalid because section 15.2-5126 of the Water and Waste Authorities Act provides the sole mechanism for determining the validity of the bonds issued by the CDA.

III. CONCLUSION

For the reasons set forth above, Taubman respectfully requests that this Court grant Taubman's Demurrer and Motion to Dismiss. Because of the shortness of time before trial and by agreement, Taubman elects not to notice this motion for argument. Instead, it is submitting it for the Court's adjudication on the papers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of January, 2001, a true copy of the foregoing Taubman's memorandum in support of its demurrer and motion to dismiss for lack of jurisdiction was faxed and mailed, first class, postage prepaid, to:

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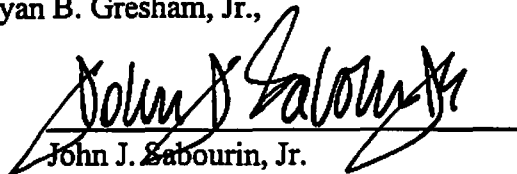
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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT AUTHORITY,

Plaintiff,

v.

Law No. CL00-1636

TAXPAYERS, PROPERTY OWNERS, AND
CITIZENS OF THE COUNTY OF HENRICO,
VIRGINIA, INCLUDING NONRESIDENTS
OWNING PROPERTY OR SUBJECT TO
TAXATION THEREIN, AND ALL OTHER
PERSONS INTERESTED IN OR AFFECTED
IN ANY WAY BY THE ISSUANCE BY THE
SHORT PUMP TOWN CENTER COMMUNITY
DEVELOPMENT AUTHORITY OF ITS SPECIAL
ASSESSMENT BONDS

Defendants.

**JOINT MEMORANDUM IN OPPOSITION TO DEMURRER
AND MOTION TO DISMISS**

Plaintiffs, Short Pump Town Center Community Development Authority ("CDA"), The Board of Supervisors of Henrico County, Virginia, and the Economic Development Authority of Henrico County, Virginia (collectively, "Plaintiffs"), as their Joint Memorandum in Opposition to Demurrer and Motion to Dismiss, state as follows:

I. The Public Finance Act Applies to Bonds of the Short Pump CDA.

Article 6 of the Public Finance Act (Va. Code §15.2-2650, et seq.) deals with the judicial determination of the validity of bonds. The provisions of Article 6 of the Public Finance Act, "apply to all suits, actions and proceedings of whatever nature involving the validity of bonds of any locality or political subdivision, agency or instrumentality of the Commonwealth." Va. Code §15.2-2650.

Taubman argues that the CDA cannot be a political subdivision "of the Commonwealth" because the Board of Supervisors of Henrico County created the CDA. However, an entity created by a county, although not itself an arm of the Commonwealth, may still be considered a political subdivision of the Commonwealth if it has the attributes of a municipal corporation. See, County of York v. Peninsula Airport Comm., 235 Va. 477, 481, 369 S.E. 2d 665, ____ (1988). The CDA is a separate body corporate and politic, created to serve a public purpose. It has the power to have a seal, to sue and be sued, to enter into contracts, to acquire, hold and dispose of its revenue, personal and real property. The CDA has the power to borrow money and issue bonds, and management of the CDA is vested in an independent board of directors. These are all attributes that make the CDA a political subdivision.

Moreover, the CDA was created under the applicable provisions of Virginia Water and Waste Authorities Act (Va. Code §§15.2-5100, et seq., "Authorities Act"). Under the Authorities Act, the very definition of the word "Authority" specifically includes Community Development Authorities, (Va. Code §15.2-5101) and Article 2 of the Authorities Act is clear that every Authority "shall be a public body politic and corporate." Va. Code §15.2-5102. As independent bodies politic and corporate, agencies created under the Authorities Act are thus considered political subdivisions. See Dykes v. Northern Va. Trans. Dist. Comm., 242 Va. 357, 372, 411, S.E. 2d 1, ____ (1991), and Mayor v. Industrial Development Authority, 221 Va. 865, 868, 275 S.E. 2d 888, ____ (1981), citing I.D.A v. LaFrance Cleaners, 216 Va. 277, 281, 217 S.E. 2d 879, 883 (1975).

Because Authorities created under the Authorities Act are political subdivisions, the bonds to be issued by agencies created under the Authorities Act can be validated under the provisions of the Public Finance Act.

II. Va. Code §15.2-5126 Does Not Preclude Application of the Public Finance Act.

The mere fact that Va. Code §15.2-5126 provides an alternative method by which it may be presumed that bonds of the CDA are valid, does not preclude the application of the Public Finance Act. Taubman's statement that the Public Finance Act contains no provisions for presumption of the validity of bonds ignores the plain language of Va. Code §15.2-2627, which is almost identical to the language found in the Authorities Act in Va. Code §15.2-5126. Also, under Va. Code §15.2-2653, the bonds of all localities are "conclusively presumed" to be valid unless there is a challenge within 30 days from the date that the initial resolution authorizing the bonds is filed. The Public Finance Act contains the mechanism for proactively seeking a determination of the judicial validity of bonds.

The Public Finance Act provides that a political subdivision "may" bring an action "at any time" to:

establish the validity of the bonds, the legality of all proceedings taken in connection with the authorization or issuance of the bonds, the validity of the tax or other means provided for the payment of the bonds, and the validity of all pledges of revenues and of all covenants and provisions which constitute a part of the contract between the issuer and the owners of the bonds.

Thus, the judicial determination provisions of the Public Finance Act are both permissive and much more broad than the provisions of Va. Code §15.2-5126. The provisions of the Public Finance Act are expressly in addition to those powers

“conferred by any other law.” Va. Code §15.2-2661. However, once the judicial determination provisions of the Public Finance Act are invoked, the provisions of the Public Finance Act control and any other action, such as those that could be brought under Va. Code §§15.2-2627, 15.2-2653, or 15.2-5126, may be enjoined by the circuit court in which a bond validity suit under the Public Finance Act is pending. Va. Code §15.2-2655. The Plaintiffs sought such an injunction in this case, but it was denied and Plaintiffs have preserved their objection to that denial. The Public Finance Act works in conjunction with the Authorities Act, and the provisions of the Authorities Act dealing with the presumption that bonds are valid do not pre-empt the provision of the Public Finance Act.

III. This Court Has Jurisdiction Under the Public Finance Act.

Taubman takes the position that because the Public Finance Act does not confer jurisdiction on this court as clearly as the Declaratory Judgment Act (Va. Code §8.01-184, et seq.) the General Assembly has not given jurisdiction over this matter to the circuit courts. This argument ignores the fact that the Public Finance Act clearly states that a decree of the circuit court adjudicating the validity of the bonds at issue:

shall be forever binding and conclusive as to the validity of the bonds, the validity of the tax or other means provided for the payment of the bonds, and the validity of all pledges of revenues and of all covenants and provisions contained in any ordinance, resolution, trust agreement, indenture, or other instrument authorizing or providing for the issuance of bonds, and all matters adjudicated and all objections presented or which might have been presented in a proceeding, and shall constitute a permanent injunction against the institution by any person of any action or proceeding contesting the validity of the bonds or any other matter adjudicated or which might have been called into question in such proceedings. Va. Code §15.2-2657.

There is no doubt that the General Assembly has the power to confer jurisdiction over any matter to the circuit courts. Va. Const. Art. V, §1. Taubman does not argue that the Public Finance Act is somehow unconstitutional. It is disingenuous for Taubman now to argue that this proceeding is brought under the Declaratory Judgment Act. In his first comment to the Court on December 8, 2000, counsel for Taubman clearly suggested that his suit was brought pursuant to §15.2-5126. The Public Finance Act clearly confers jurisdiction over this matter to the Circuit Court.

IV. Conclusion.

The Public Finance Act "evinces a sound legislative purpose to provide for a quick validation of bond issues." Harper v. City of Richmond, 220 Va. 727, 737, 261 S.E. 2d 560, ____ (1980). Taubman asks this Court to circumvent this legislative purpose by urging the Court to rule that the Public Finance Act does not apply to the bonds to be issued by the CDA. The Public Finance Act clearly applies to the bonds of the CDA. Accordingly, this Court should overrule Taubman's Demurrer and Motion to Dismiss.

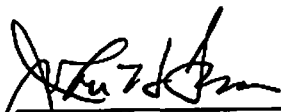
Respectfully submitted,

SHORT PUMP TOWN CENTER COMMUNITY
DEVELOPMENT AUTHORITY

BOARD OF SUPERVISORS OF
HENRICO COUNTY, VIRGINIA

ECONOMIC DEVELOPMENT
AUTHORITY OF HENRICO
COUNTY, VIRGINIA

By Counsel



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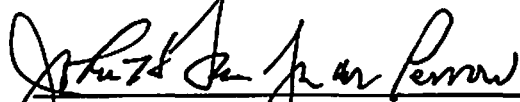
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CERTIFICATE

I hereby certify that on this 30th day of January, 2001, a copy of the foregoing Memorandum in Opposition to Demurrer and Motion to Dismiss was Delivered Via Facsimile and mailed by regular U.S. mail, postage prepaid, to Counsel for Plaintiff:

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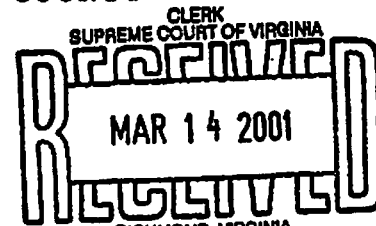

Counsel

010456

VIRGINIA:

IN THE CIRCUIT COURT OF HENRICO COUNTY

SHORT PUMP TOWN CENTER
COMMUNITY DEVELOPMENT
AUTHORITY,



PLAINTIFF,
v.

Law No: CL00-1636

TAXPAYERS, PROPERTY OWNERS,
et al.,

DEFENDANTS.

Before: THE HONORABLE RANDALL G. JOHNSON, JUDGE

TRIAL - DAY 1 - VOLUME 1

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FEB 21 2001

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o o o

INDEX OF WITNESSES

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Virgil Hazelett	75	176, 205	228	234
James Traudt	238	293, 303	341	
Keenan Rice	346	363		
Bonnie France	364	388, 400	408	



1 represent the CDA. And we have been working in
2 tandem in order to tighten this and make it doable.
3 We have simply allocated witnesses among ourselves.

4 THE COURT: Okay, but when you call a
5 witness, normally the County would have a right to
6 cross-examine that witness. Are you saying that
7 you-all are not going to be doing that?

8 MR. FOOTE: We will not do that.

9 THE COURT: In that case, you can go in any
10 order you want, since there is no cross-examination
11 by the plaintiffs.

12 MR. FOOTE: I would also represent to the
13 Court, Your Honor, that Mr. Sabourin and I have
14 spoken about the demurrer, and we are agreed that it
15 will not be argued to the Court but presented on the
16 papers. And Mr. Sabourin can give further
17 elaboration on that.

18 MR. SABOURIN: That's correct. I think we
19 stated that in our papers, that we were submitting it
20 without an oral argument.

21 THE COURT: I appreciate that. Anything
22 else? How do you-all want to do it as far as the
23 defendants are concerned?

24 MR. SPENCER: Well, I'm sorry, I may not
25 understand what just happened. But my understanding

1 with respect to this. This Court, the Circuit Court
2 of Henrico County, in its entry of a pre-trial order
3 in this case, put us under a set of extreme time
4 constraints that were agreed to by the parties,
5 entered in that order. And I think that I speak for
6 those of us who have a number of years of experience
7 at bench and bar to say that most of us have never
8 been through an experience quite as intense with
9 respect to the preparation and with respect to the
10 number of depositions that were taken. And I can
11 represent to this Court that in the period of the
12 last 60 days, there has not been a fractious word
13 spoken between the parties. There has been nothing
14 but accommodation, and for us, we thank opposing
15 counsel for their kind assistance in this process.

16 My opening statement this morning, Your
17 Honor, has obviously been thought out in some detail,
18 and I will not waste this Court's time, but it will
19 be reasonably elaborate, given the nature of the
20 proceedings to which we are about to march. First, I
21 think it's important for our perspective that the
22 Court keep in mind what the Court already knows, and
23 that is that this is nothing more than a
24 straightforward bond-validation suit brought under
25 the Public Finance Act. It is a proceeding which I

1 inducement of this mall. I repeat, the bond and the
2 assessments are the bond which we're talking about
3 here. The incentive agreements are related,
4 interrelated, indeed, with that transaction, and yet
5 are conceptually separate.

6 The Court will hear that the explicit
7 purpose of the bonds and the transactions that I have
8 just described in broad brush was to encourage, is to
9 encourage, the location in Henrico County of a large
10 development known as the Short Pump Town Center Mall.
11 This mall is proposed to be and was presented to the
12 board of supervisors as something unique to central
13 Virginia.

14 That mall will -- is planned to become what
15 would become the premier such mall in this region.
16 It will include within it what the Court will come to
17 hear are what are called high-end retailers. It
18 turns out to be a term of some art in the relating
19 industry. In fact, what the Court will learn is that
20 a mall of this size, approximately 1.2 million square
21 feet, containing the anchor stores of Nordstorms --
22 Nordstrom -- I have been corrected that there's no S
23 at the end of Nordstrom, Hecht's, Lord and Taylor and
24 Dillard's, those four stores, the Court will learn,
25 are among the highest end retailers in the United

1 States. It will be a unique experience to have those
2 four stores located in one spot, certainly unique in
3 this region. As I think I mentioned, malls such as
4 this have a name in the trade called a super regional
5 mall.

6 The mall will be rather unique in several
7 other respects, Your Honor. It will be an open-air
8 mall. You will see renderings presented to you in
9 court that will show what is proposed for the mall.
10 In that I mean it will not be an enclosed mall as you
11 and I are probably accustomed to thinking of a mall.
12 It will be unique in a sense that the open areas, the
13 walkways and plaza and other areas, will be open to
14 the public 24 hours a day and owned by the Community
15 Development Authority and available for public
16 events, recreational and cultural events, other than
17 simply going to and from stores. There will also be
18 additional infrastructure, which I will discuss in a
19 moment, which is to be paid for by these bond funds.
20 These public improvements will be owned by the CDA
21 for the life of the bonds and perhaps thereafter.

22 You will also learn, Your Honor, that the
23 County's interest in bringing this mall to Henrico
24 County is directly related to the fact that the
25 County came to understand and to believe that this

1 mall will bring to Henrico County a very substantial
2 body of additional revenues that it doesn't have
3 today. It is an economic-development project of
4 major proportion. In fact, if the mall is
5 successfully developed, it has been estimated that it
6 alone will be the fourth largest taxpayer in the
7 County.

8 Now, and as I say, you will learn that it's
9 estimated this project will bring in something in the
10 neighborhood over the next 20, 25 years of as much as
11 \$180,000,000 in tax revenues. I must preemptively
12 state that we know that the defendants in this case
13 will do everything they possibly can to throw as many
14 things against the wall with respect to the proposal
15 which was considered and adopted by the board and
16 other agencies in an attempt and to the effect that
17 some will stick and divert this Court's attention
18 from what we say are the core issues with respect to
19 the bonds. Indeed, we think they will attempt to
20 introduce evidence that will not be relevant to these
21 proceedings, such as evidence with respect to the
22 plan of development, which we have discussed with the
23 Court before, and also with respect to certain issues
24 that have to be dealt with at the time of bond
25 issuance, not at the time of bond authorization.

1 There is a legal distinction in Virginia, and we're
2 talking about the authorization.

3 You are also going to hear evidence in this
4 case from the defendants to the effect that they're
5 going to attempt to persuade you through their
6 evidence that one of the handful of triple A rated
7 counties in the Commonwealth of Virginia is managed
8 by a bunch of rubes who didn't have enough or
9 sufficient financial expertise to understand what
10 they were stepping into and that they were misled by
11 advisors who are insufficiently informed and by
12 developers who wanted them to do a bad deal, a deal
13 you will learn is remarkably similar to deals Taubman
14 itself has struck in other locations.

15 In other words, Your Honor, what you will
16 hear in this case is an effort on the part of the
17 defendants who do not possess a saber to cause death
18 by 1000 cuts, but the core issues are going to
19 remain, and those core issues simply are have these
20 bonds been properly authorized under the Virginia
21 Water and Waste Authorities Act, and does the Court
22 have the lawful authority to make the payments which
23 are proposed in the agreements. This, of course, I
24 obviously won't argue now, but this is to be tested
25 between what the board knew or could have known at

1 the time and measured against the standard.

2 The purpose of our case will be to present
3 evidence that helps the Court to keep what we believe
4 is the eye on the ball. A different analogy is to
5 let you see the forest but not the trees.

6 This case actually began, Your Honor, back
7 in 1990. That was a time when major American
8 shopping-center developers and retailers began to
9 cast a new eye upon the Richmond area for the
10 development of this super regional mall that I have
11 mentioned. The population of this area began to
12 approach 1,000,000 people, which we have learned is a
13 bit of a crucial consideration for some of the major
14 retailers, and the affluence of the region was
15 growing.

16 Between 1996 and '97, Your Honor, you will
17 learn there came a series of events which led us
18 directly to stand before you today. In the summer of
19 1997, the Taubman Companies, through an entity we now
20 know to be TRG, Regency Square Limited Liability
21 Company, which is now the plaintiff in this case,
22 bought Regency Square Mall in Henrico County. At
23 present you will find that Regency is the premiere
24 regional mall in Henrico County, but it sits on a
25 small, rather constrained site of just around 50



1 better, more secure means of ensuring that there was
2 money for the CDA papers. And so that, in broad
3 brush, Your Honor, is the outline of the transaction
4 which the Plaintiffs will attempt to produce evidence
5 to chip apart.

6 You will hear, for example, that the CDA
7 boundaries, in fact, are subject to alteration.
8 Right now it applies to the entire 147 acres, which
9 constitutes the property in the Short Pump Town
10 Center. But it is contemplated that portions of that
11 property will be removed from the special assessment
12 CDA district, not the tax district. The tax will
13 always be required, except for that property which is
14 owned by the public, not the CDA or the county. But
15 that CDA property will change, because the anchor
16 stores don't want any CDA special assessments on
17 their property. They will insist on free and clear
18 property. So the special-assessment mechanism has
19 been crafted such that the special assessment will be
20 imposed on the property that is not those anchors and
21 certain other properties. The proceeds to the bonds
22 may only be used for those purposes which are set out
23 in the resolution creating the CDA.

24 You're likely to hear a great deal of
25 testimony in this case from both sides about the

1 improvements that are proposed here. Those
2 improvements that are listed, and the way it works,
3 you will see in the organic documents that the CDA
4 creating resolution incorporates the petitions filed.
5 That petition contains within it the list of the
6 improvements that are proposed to be financed, every
7 last one of which is specifically called out in the
8 statute. But those include extension of sewer trunk,
9 water main, storm-water-management facilities, roads
10 abutting the CDA, including a ring road, entrance
11 roads, lighting, landscaping, plaza, parking, and
12 together with certain excavation related to those
13 improvements and costs in that contingency fund.

14 Now, the total cost of the improvements,
15 you will hear, has been estimated by the engineers
16 for the developer to be about \$34,000,000, with those
17 general improvements, but the County and the CDA are
18 prepared to pay only \$22,000,000 towards them. Each
19 of these improvements you will learn will be owned by
20 the public and will serve a public function, although
21 as I say, with respect to the forest and the trees,
22 but you will also hear from the County evidence that
23 the public function being served here is the
24 inducement of this major economic proposal.

25 THE COURT: What is the total cost?



1 tax-increment financing, that the tax increment is a
2 measurement mechanism. I have mentioned the
3 recapture or intercept mechanism.

4 The major moving parts are in place, Your
5 Honor. The organic documents lay out for you what I
6 have just described. You will also learn that while
7 the major moving parts are in place, there are things
8 yet to be done. And the Defendants will attempt to
9 make a great deal of that. They will suggest to you
10 that this is all so premature, there are so many
11 things undecided, such as, for example, all of the
12 disclosure requirements that would have to be made in
13 order to ensure that these rubes from Henrico County
14 have not exposed their citizens to some vast,
15 unexpected risk. You'll also understand, Your Honor,
16 that much of that would have been done, but for this
17 litigation. And Ms. France, the bond counsel, will
18 tell you, not the legal opinion, but will tell you
19 what she's doing, that the final versions of the
20 documents, which have not yet been drafted, have been
21 held up by virtue of the fact we are in litigation
22 and are not necessary to the authorization of the
23 bonds, but to their issuance.

24 We suggest in closing that the Court will
25 find from the evidence, you will hear evidence that

1 the County of Henrico prudently acted to protect the
2 interests of its citizens, both from the sole
3 perspective of its desire to induce the location of
4 this mall in Henrico County and also from its viable
5 and real concern that it could lose these revenues
6 and more to another jurisdiction if it did not act
7 prudently to do so.

8 The Court will also hear evidence with
9 respect to the arguments that the Defendants advanced
10 with respect to whether the improvements are local or
11 private or public. We submit that you will learn
12 that each of these pieces of infrastructure fits into
13 a public whole. We will suggest that each of these
14 improvements benefits the properties to which they
15 are associated to support the special assessment.
16 And you will learn that their argument with respect
17 to the lack of any net public benefit will -- in
18 fact, you're likely to hear from them that this will
19 probably cost the County money in some way. You will
20 learn that their argument is based on wholly false
21 factual assumptions, indeed, in substantial measure
22 maybe even largely or wholly is based on the
23 assumption that if the Short Pump Town Center Mall
24 was built, something else positive would be built on
25 that property, although goodness knows, no one can

1 tell you when that would, in fact, produce
2 substantial revenues for the County. Even they,
3 however, will testify that some level of public
4 investment could be justified, it's just a question
5 of how much. And their argument will ignore entirely
6 that the County was legitimately concerned if the
7 mall were not built in Henrico it could suffer the
8 double whammy I mentioned earlier. Your Honor, when
9 the evidence is all in before you, we think that you
10 will find that there was a proper animating public
11 purpose for this action, and that all the moving
12 parts are lawful under Virginia law.

13 THE COURT: Mr. Foote, thank you very much.
14 Mr. Spencer?

15 MR. SPENCER: Judge, Mr. Foote's conclusion
16 summarizes exactly why we say the County must lose
17 this case and the bonds should not be validated.

18 May it please the Court, I'm here on behalf
19 of three taxpayers, Mr. Hahn, Mr. Anderson and
20 Mr. Gresham, who are seated in the front row here
21 with my partner, Mr. Buell. As Mr. Foote has
22 explained, what we have essentially here is a
23 giveaway of about \$30,000,000, give or take some
24 millions, in taxpayer money, so that the developers
25 can put a mall in Short Pump, so that they can get a



1 an excellent job of explaining the real motivating
2 factors here.

3 The Court has also figured out how the
4 financing moving parts work. Essentially, as the
5 Court has already seen, this is a scheme by which 22-
6 to \$30,000,000 is put in the developer's pocket. We
7 have the elaborate CDA scheme with the assessments
8 and the developers --

9 THE COURT: But that happens all the time.
10 What's wrong with that?

11 MR. SPENCER: Because it violates the CDA
12 statute, that's why.

13 THE COURT: Any Constitutional provisions
14 violated?

15 MR. SPENCER: The Constitutional provisions
16 I leave to the Taubman lawyers. We incorporate them
17 by reference.

18 THE COURT: All right.

19 MR. SPENCER: The purpose of the CDA
20 statute, the Community Development Authority statute,
21 is found in the waste -- excuse me, the Water and
22 Waste Authorities chapter of the Virginia Code. The
23 original purpose of that chapter of the code was to
24 allow communities and parts of communities to band
25 together to provide water and sewer services. That's

ordinance or resolution establishing the district, three, as necessary, four, to meet the increased demands, five, placed upon the locality, six, as a result of development within the district."

Nowhere in this statute does it say that the Community Development Authority may give inducements so that developers can pay off Nordstorms and Lord and Taylor, nor does it say that the Community Development Authority can be used as a weapon to lure a mall away from a neighboring jurisdiction. Each of these six elements has to be met in order for what the CDA is doing here to be lawful. And it is our position that they are not met, because we -- it is our position that a monumental staircase on a private shopping mall is not an infrastructure improvement. It is our position, and we will show you in the organic documents, that many of the improvements that Mr. Foote mentioned are not enumerated in the ordinance or resolution establishing the district. They were added later and indeed are still being added to this day. They are not in the organic documents. These -- as Mr. Foote has said, these payments are not necessary to meet the increased demands placed upon the locality. They were deemed

1 County do under 15.2?

2 MR. SPENCER: I was just going to tell you.
3 If they want to widen Broad Street because of the
4 increased burdens upon the locality of that mall
5 sitting there, they can do that.

6 THE COURT: But they can't put in a new
7 road?

8 MR. SPENCER: Not on the private property,
9 they can't. If they want to put a left-turn lane in
10 on Broad Street, they can do that, because that --

11 THE COURT: And if all of the neighbors of
12 this development that has now been there for six
13 months, and the County has absolutely nothing to do
14 with it, are saying we can't get out of our houses in
15 the morning to go to work, we can't do anything
16 because of all of this extra traffic, it sure would
17 be nice if the County would cut a new road --

18 MR. SPENCER: Oh, that would be --

19 THE COURT: -- on Broad Street, are you
20 saying you can't do that?

21 MR. SPENCER: No. I'm -- that's my point.
22 They can do that.

23 THE COURT: Well, instead of saying it sure
24 would be nice if the County would cut a road to allow
25 us to come out of our houses, if the County would

1 it doesn't. So I'm perfectly clear, the left-turn
2 lanes from Broad Street into this mall are
3 appropriate for community development of funds, I
4 believe. Additional traffic lights, because of the
5 burdens there, are appropriate. If they want to cut
6 other roads on public right-of-ways, that's
7 appropriate. But what they're doing in this case is
8 entirely on private land. And it's entirely part of
9 what private landowners are supposed to put in.

10 What you will see, if you look here, no one
11 will argue that the sidewalk in front of this Barnes
12 and Noble does anything other than serve this Barnes
13 and Noble, and yet in this particular case, the
14 County is arguing that this sidewalk, which goes from
15 here, from Hecht's on Exhibit TP 103, over here to
16 Lord and Taylor, serves a public purpose and
17 alleviates the demand upon the locality, and it just
18 doesn't.

19 THE COURT: All right.

20 MR. SPENCER: They even say, Judge, you may
21 have noted that Mr. Foote said the total cost of the
22 improvements that they're talking about is
23 \$34,000,000, but only \$22,000,000 will be paid for by
24 the County. You need to remember two things. First,
25 all the land under these improvements remains private

1 from the County because they are not for any purpose
2 authorized by the code. Mr. Foote said it very
3 clearly. As soon as the County appropriates the
4 money, it's the developer's money, not the EDA's.

5 And so you see, it is our position that
6 both of the moving parts in this case don't work
7 lawfully. First the CDA, the improvements that are
8 being made here do not meet the six-part definition
9 of the statute. Sure, the statute goes on to talk
10 about roads, bridges, parking facilities, et cetera,
11 but those are examples of things that must still meet
12 the six-prong test.

13 Furthermore, the financing arrangement does
14 not meet the EDA statute requirements, and so it is
15 going to be our argument that the County officials
16 are not rubes -- that is not going to ever pass my
17 mouth again after that one observation. And we are
18 not going to throw up a great deal of smoke and
19 foolishness. We're simply going to say it doesn't
20 fit the statute. That's the inquiry before the
21 Court, at least from our perspective. Of course, we
22 adopt and incorporate the Taubman arguments. But it
23 doesn't fit the statute, and therefore the bonds
24 cannot be validated.

25 THE COURT: Thank you very much,

1 recommended by Mr. Axselle, an attorney who
2 represents Forest City and Mr. Pruitt. It has no
3 staff. It has no funds. It is -- the only thing
4 that it really has is an outstanding attorney
5 representing it in Mr. Foote, whose fees, I assume
6 they're being paid for by Forest City and Mr. Pruitt.
7 It is a unique vehicle. I'm aware of one other CDA
8 in Virginia, with some detail, not a great deal of
9 detail, and it is the Dulles Town Center CDA in
10 Northern Virginia. And the improvements that are
11 made or were made to that facility are improvements
12 which are interchanges completely off of the
13 property. There's no improvements that I'm aware of
14 that are being made specifically on the mall property
15 such as this.

16 We have heard a number of comments about
17 other things that Taubman has done in terms of
18 obtaining public assistance. The McArthur Center
19 down in Norfolk, that was an IRB type of transaction,
20 didn't involve a CDA. In Richmond, Stony Point,
21 again, an IRB transaction, not a CDA.

22 Our primary concerns are that this is the
23 use of public moneys to do private improvements. We
24 adopt the arguments, and I'm not going to take you
25 through the CDA statute. Mr. Spencer has done that.

1 order, so, Mr. Sabourin and I spoke this morning.
2 There may be a few relevancy objections, but frankly
3 we anticipate that both parties' exhibits will come
4 in without that.

5 THE COURT: All right.

6 MR. FOOTE: Your Honor, with the
7 introduction of those exhibits, Mr. Rapisarda will
8 take our first witness.

9 THE COURT: All right. Mr. Rapisarda?

10 MR. RAPISARDA: Your Honor, thank you. We
11 will call Mr. Hazelett.

12 THE COURT: Mr. Hazelett, will you come to
13 the witness stand, please? And we are operating
14 without a bailiff. If you will pull that gate
15 forward. Raise your right hand, please.

16

17 VIRGIL R. HAZELETT,
18 was sworn and testified as follows:

19 DIRECT EXAMINATION

20 THE COURT: Have a seat, please, and just
21 swing the microphone not right up to your face but
22 just a little -- just about to the right. That's
23 good, right about there. Mr. Rapisarda?

24 MR. RAPISARDA: Thank you, Your Honor.

25 BY MR. RAPISARDA:

1 Q Sir, would you please state your name for
2 the record and your position?

3 A My name is Virgil R. Hazelett, Henrico
4 County Manager.

5 Q And how long have you held that position,
6 Mr. Hazelett?

7 A I have been County Manager a little over
8 nine years.

9 Q Could you give the Court a brief overview
10 of the duties of your position as County Manager and
11 what you have supervision over?

12 A I'm the chief executive officer for the
13 entire operations of the County, which include all
14 governmental functions, approximately 34 departments
15 and agencies providing all services from public
16 works, human services, public safety, utilities, et
17 cetera.

18 Q Now, I believe, Mr. Hazelett, you are now
19 in preparation, aren't you, with County budgets?

20 A Yes, I am.

21 Q What is the amount of the County budget
22 estimated to be at this time?

23 A County budget for this year is an operating
24 budget of 600 and 30 plus million, and a capital
25 budget of a little over \$70,000,000, so it's right at

1 about \$710,000,000, as I recall, for this year. I
2 would anticipate 780 for the coming year.

3 Q Now, sir, what would you estimate is the
4 number of employees employed by the County
5 government?

6 A County employs a little over 8,400
7 employees, including the division of schools.

8 Q And Mr. Hazelett, has the planning officer
9 of the County given you an estimate of the County
10 population at this time?

11 A Currently the estimated population of
12 Henrico County is approximately 260,000 people.

13 Q Thank you, sir. Mr. Hazelett, when did you
14 first become employed by Henrico County, and if you
15 would walk the Court through, to save time, the
16 positions you have held with the County?

17 A Certainly, sir. I came to Henrico County
18 in 1972 as the County's first traffic engineer,
19 served in that position for approximately four years,
20 was promoted to the assistant director of public
21 works, served in that position for almost 11 years,
22 was promoted to the director of public works, served
23 in that position for a little over a year, and then
24 served as deputy county manager for community
25 development, which included the economic development,

1 planning, utilities, et cetera, for the provision of
2 planning and then was promoted or transferred, excuse
3 me, over to the position of deputy county manager for
4 administration and chief of staff, and in 1992, was
5 appointed county manager by the board of supervisors.

6 Q And how many persons are on the Henrico
7 board of supervisors?

8 A There are five members.

9 Q All right, sir. Now, let me take you back
10 to your -- I think you mentioned department of public
11 works. Briefly put, Mr. Hazelett, what is the
12 function of that County department?

13 A Department of public works in Henrico
14 County is responsible for the planning, design,
15 construction, inspection and maintenance of a road
16 system of approximately 1400 lane miles plus the
17 associated drainage with that.

18 Q All right, sir. And does the County own
19 and operate its own road system?

20 A It does. It is one of two counties in the
21 Commonwealth of Virginia that own and operate its
22 entire road system.

23 Q And would you tell the Court how much
24 experience you have had in working on
25 economic-development projects during your tenure with

1 Henrico County?

2 A In one form or another I have worked on
3 economic-development projects my entire career at
4 Henrico County. Of course, as traffic engineer and
5 starting there, just -- we started, of course, with
6 the Regency Square development in 1974-75, continued
7 through any number of efforts, including the White
8 Oak Technology Park and on up through the various
9 aspects of the economic development, which, of
10 course, is Henrico County's number one priority.

11 Q And Mr. Hazelett, did you have any personal
12 and specific involvement with the design and
13 operation of Regency when it was developed?

14 A Yes, I did. Fortunately or unfortunately,
15 depending upon the individual's viewpoint, I was the
16 individual who required and actually laid out the
17 grade separation access for Regency Square.

18 Q Thank you, sir. Would you tell the Court,
19 Mr. Hazelett, your educational background?

20 A I have a bachelor's of science degree in
21 civil engineering from West Virginia Institute of
22 Technology. I have a master's of science degree from
23 West Virginia University in transportation, planning
24 and traffic engineering.

25 Q And Mr. Hazelett, are you a registered

1 professional engineer?

2 A I am a registered professional engineer in
3 the State of Virginia.

4 MR. RAPISARDA: All right, sir. Your
5 Honor, to save time perhaps, we have got a number of
6 professional societies which Mr. Hazelett can go
7 through. I might solicit counsel's comment if they
8 intend to oppose his qualifications as an expert in
9 traffic engineering?

10 THE COURT: Mr. Spencer, do you object?

11 MR. SPENCER: In traffic engineering?

12 THE COURT: Do you have any questions as to
13 Mr. Hazelett's qualifications to testify as an expert
14 in the field of traffic engineering?

15 MR. SPENCER: Not in that field.

16 MR. SABOURIN: We do not either, Your
17 Honor.

18 THE COURT: All right.

19 MR. FOOTE: There's no objection, Your
20 Honor.

21 THE COURT: Right.

22 MR. RAPISARDA: Okay. That will move us
23 along, Judge. Thank you.

24 BY MR. RAPISARDA:

25 Q Mr. Hazelett, let me now get back into the

1 so-called story of why we're here today in Judge
2 Johnson's court. And would you tell Judge Johnson
3 when you were first approached --

4 THE COURT: Well, actually, we're not in my
5 court, we're in Henrico.

6 MR. RAPISARDA: I stand corrected, Your
7 Honor. I appreciate that.

8 THE COURT: We're in Judge Tidey's court.

9 MR. RAPISARDA: I should have known better.

10 BY MR. RAPISARDA:

11 Q Mr. Hazelett, would you tell the Court when
12 you were approached about the possible development of
13 what I'm going to refer to as the Short Pump Town
14 Center?

15 A Short Pump Town Center actually came -- it
16 was a plan of development which was approved for the
17 mall in December of '98. Thereafter I was approached
18 by the developer of Short Pump Town Center about
19 consideration of an alternative plan which would in
20 essence be a super mall or a very unique impact, very
21 unique mall in Henrico County. That was sometime
22 during 19 -- early 1999, we had a number of
23 conversations.

24 Q Now, before we get into the specifics of
25 that, Mr. Hazelett, let me take you back to your

1 comment. And would you tell the Court about the plan
2 of development, when that was approved and what it
3 did approve?

4 A The plan of development was, I recall,
5 December of 1998, which approved a mall a little over
6 920 -- I think it was 928,000 square feet. It would
7 have four anchor stores, a large movie theater
8 complex and various stores on the grounds.

9 Q And what is the zoning of the property
10 we're talking about, Mr. Hazelett?

11 A The property is zoned B3C.

12 Q And what does that allow in general terms
13 under the County zoning ordinance?

14 A The County zoning ordinance, that is the
15 highest level of commercial intensity which would be
16 allowed in Henrico County. You could, obviously,
17 locate office buildings, but it is the highest level
18 of commercial intensity available.

19 Q Do you know, Mr. Hazelett, how this
20 property is designated on the county's land use or
21 comprehensive plan?

22 A On the land-use plan, it is designated as
23 mixed use.

24 Q And what does that mean, Mr. Hazelett?

25 A That would allow commercial as well as

1 office development in this particular corridor.

2 MR. RAPISARDA: Thank you, sir.

3 Your Honor, with the Court's indulgence, if
4 I could ask Ms. Fulmer to help me with the poster
5 board, that might speed it along.

6 THE COURT: All right. And if any counsel
7 need to come over to this side of the courtroom to
8 look at it, feel free to do so.

9 MR. RAPISARDA: Your Honor, I will ask her
10 to pull out what we didn't pre-mark, but it's tab 62
11 for identification of this, Your Honor. And while
12 Ms. Fulmer puts that up --

13 THE COURT: You say it's tab --

14 MR. RAPISARDA: 62, Your Honor.

15 THE COURT: I don't have a 62.

16 MR. FOOTE: Your Honor, we don't have
17 reductions of some of those.

18 MR. RAPISARDA: I'm sorry, what I meant to
19 say was the index tells you what this is. We don't
20 actually -- we didn't make a smaller map. We figured
21 you could see.

22 THE COURT: All right.

23 MR. RAPISARDA: Thank you.

24 BY MR. RAPISARDA:

25 Q Mr. Hazelett, looking at what's been put up

1 here on the easel, can you identify and explain to
2 the Court what we're looking at here?

3 A I can, Mr. Rapisarda, but a portion of that
4 is being blocked by the easel adjacent to it.

5 MR. RAPISARDA: Let's see if we can move
6 that. Your Honor, could we move the --

7 THE COURT: Do we really need to have two
8 easels? Can we just move that one altogether?

9 MR. RAPISARDA: I think that would be
10 closer to you, too, Judge.

11 THE COURT: Well, I don't see why we need
12 to have two. All right.

13 THE WITNESS: I'm sorry, Mr. Rapisarda,
14 your question again?

15 BY MR. RAPISARDA:

16 Q Mr. Hazelett, please identify what you're
17 looking at here that's on the easel.

18 A This is an aerial view of a portion of
19 western Henrico County which specifically shows the
20 subject site in the middle, which is shown in light
21 gray, if you will, with the anchor stores from
22 previous documents that you have seen. It is bounded
23 on the north by Interstate 64, which it has no access
24 to. Obviously, it's an interstate highway, and it
25 cannot access to that point. And West Broad Street,

1 which is a major arterial facility in western Henrico
2 County, a six- and eight-lane facility, is located in
3 front of it. To the east of it is what is called
4 Pouncey Tract Road, coming to the intersection of
5 Pump Road and Pouncey Tract Road and Broad Street.
6 And of course the front door, if you will, which is
7 Lauderdale Drive, depicted on that plan, shows the
8 center or the focal point of the proposed shopping
9 center.

10 THE COURT: That is not in evidence
11 anywhere? That is not in an exhibit anywhere?

12 MR. RAPISARDA: Not in that depiction.

13 THE COURT: I know, but there were other
14 exhibits that looked like they showed the area. I
15 mean, everybody knows where it is. And I mean, I
16 don't want to tell you how to do it, but we don't
17 need to spend a lot of time telling me where it is.

18 MR. RAPISARDA: We would like to simply
19 move it into evidence as Exhibit 62.

20 THE COURT: Well, a smaller version of it
21 I'll take, but I really don't want to take big
22 things. My clerk gets mad at me when I send big
23 things like that down to the clerk's office.

24 MR. FOOTE: Your Honor, if I may, we did
25 not reduce these.

1 THE COURT: I understand, but how important
2 is that going to be to the Court's decision, to have
3 this aerial view of the -- and I don't -- I mean this
4 is the first witness. I don't want to have to go
5 through this. I see it, and it's pretty, but there
6 are other diagrams in the book which I think gives me
7 exactly the same information that that gives me.

8 MR. RAPISARDA: Judge, the only thing we
9 would be getting into later is the use of the ring
10 road. There's an issue with that and how it relates
11 to moving traffic.

12 THE COURT: All right. Is there any
13 objection to Exhibit 62?

14 MR. SPENCER: No, Your Honor.

15 MR. SABOURIN: No, sir.

16 THE COURT: All right. The Court will
17 admit a smaller version of Plaintiffs' Exhibit 62.

18 MR. FOOTE: Your Honor, logistically what
19 we'll request the Court's permission to do is after
20 court closes today, if we may have your permission to
21 remove the large exhibits for that purpose.

22 THE COURT: That's fine.

23 BY MR. RAPISARDA:

24 Q Mr. Hazelett, going back, if you would take
25 us back to the time you were approached by

1 Mr. Pruitt, did he indicate what type of mall at that
2 time he envisioned and who would be working on it?

3 A It was a regional mall, in the early
4 indications by Mr. Pruitt, with four anchors, as I
5 described, and the anticipated movie complex to the
6 north of the complex. He did not, in the initial
7 stages, identify any other individuals purporting to
8 be with him in the development stages of the mall.

9 Q Did he indicate how large a mall this would
10 be?

11 A Approximately 928,000 square feet.

12 Q And did he indicate whether it would be an
13 enclosed or an open facility?

14 A He indicated it would be an open facility,
15 which would have vehicular access and vehicular
16 parking as well as pedestrian movement on the
17 internal confines of the mall itself.

18 Q Mr. Hazelett, during this initial meeting,
19 was there any discussion about assistance from
20 Henrico County, financially?

21 A Not in the initial meetings. Mr. Pruitt
22 was simply describing the mall simply because of my
23 interest in western Henrico County and the economic
24 development aspects of Henrico. At the later
25 meetings, of course, he came forward indicating that

1 there was a consideration to change the mall itself
2 to, in essence, create what would be called a super
3 regional mall, a very unique aspect, explained that
4 to me, and of course, at that point in time, brought
5 forward the request for the incentive.

6 Q Is that when he requested the \$30,000,000
7 payment from Henrico County?

8 A That's correct. His initial request was
9 for \$30,000,000.

10 Q And what was your response to that request?

11 A I indicated to Mr. Pruitt that was not
12 something I could recommend to the board of
13 supervisors. We had not made incentive payments to
14 our retail citizens or new retail development in
15 Henrico County, and it did not appear to be
16 reasonable. However, because of the unique aspect of
17 the mall, because of the economic-development impact
18 of the mall, I would agree to go with him to the
19 board of supervisors for discussion of this, but also
20 indicated that I would oppose the direct assistance
21 of \$30,000,000.

22 Q Mr. Hazelett, at this point in time, had
23 Henrico County ever provided incentives for retail
24 development in the County?

25 A Not for retail development.

1 Q Had the County provided incentives for
2 other development in Henrico?

3 A We had provided in the recent past a very
4 large incentive effort, which of course was for White
5 Oak, which was the combination of Motorola and
6 Siemens, which was approximately \$42,000,000,
7 consisting of the extension of water and sewer
8 service as well as construction of a road into what
9 is now White Oak Technology Park, which was a park to
10 provide sites and pads, if you will, for economic
11 development of Henrico County in that area.

12 THE COURT: Mr. Rapisarda, when are you
13 going to use that, because it's uncomfortable for
14 counsel to stand here.

15 MR. RAPISARDA: I'm sorry.

16 THE COURT: And we need to move this easel
17 to they can sit down. I also don't want them to look
18 over my shoulder and my law clerk's shoulder and see
19 what notes we're taking. I think we need to move
20 that easel back so Mr. Sabourin can see the witness.
21 Maybe even move it beyond, behind the jury box. And
22 again, my bailiff is sick today and is not here, so
23 you-all are going to have to kind of do some physical
24 labor. Thank you.

25 MR. RAPISARDA: Thank you, Judge.

1 BY MR. RAPISARDA:

2 Q Mr. Hazelett, at this time you have met
3 with Mr. Pruitt. Did you previously have any
4 discussion with any representatives of the Taubman
5 Company about the development or the redevelopment of
6 Regency Square?

7 A I did.

8 Q And when did those discussions, sir,
9 commence, and if you could walk us through those
10 discussions?

11 A They occurred -- Taubman had actually
12 bought Regency Square sometime during the summer of
13 1997. They may have occurred in the early or in the
14 fall of '97, but of course, they continued into the
15 early part or the early months of '98. There were
16 initial discussions about the fact that Taubman was
17 considering the development of Stony Point or perhaps
18 the redevelopment of Regency Square to include
19 Nordstrom and probably some other large anchors.
20 They were investigating both possibilities, trying to
21 determine which project to undertake. They did not
22 believe that they could undertake both projects with
23 those types of anchors and indicated that it was a
24 monumental effort. We met on several occasions,
25 reviewed several anticipated schematics of what the

1 mall might look like. We discussed potential sources
2 of revenue to assist. At this point in time, there
3 were a number of impediments in reference to what was
4 going on, and so we simply continued along the line
5 of discussing the potential redevelopment of Regency
6 Square.

7 Q And what was your interest as county
8 manager, Mr. Hazelett, and your reaction to the
9 Taubman discussions?

10 A Very open from the standpoint that Regency
11 Square is one of our major retail customers. They
12 are a large tax revenue generator in Henrico County.
13 If it was going to be redeveloped, we, of course,
14 needed to look at the plan and the proposal which
15 they were offering.

16 Q Did there come a time, Mr. Hazelett, when
17 you and some other County officials, including
18 members of the board of supervisors, traveled to New
19 Jersey to look at the mall?

20 A Yes. Once the Taubman representatives had
21 provided us with schematics that in essence gave us a
22 feel for what they are looking at, defined the urban
23 type of mall, if you will, a very intense urban mall,
24 it was appropriate to involve two members of the
25 board of supervisors that it would impact. This was

1 because this was going to require major zoning
2 changes in Henrico County and possibly even other
3 changes in order to allow this type of development.
4 So we wanted the board members who would be impacted
5 to see the type of development, the type of mall that
6 was being proposed.

7 Q All right, sir. And what happened after
8 you made that trip? I presume you were met by
9 Taubman representatives at the New Jersey site?

10 A Oh, yes. We were met by Taubman
11 representatives. We toured the mall facility. We
12 went into detail in reference to the operation, the
13 types of parking structures that were required and so
14 forth. We went over the whole aspects to understand
15 an urban mall.

16 Q And after that trip had been concluded, did
17 Taubman ever make a specific proposal to the County
18 as to how it would proceed with Regency Square?

19 A No, they did not. Again, we had looked at
20 general schematics of what-ifs or how this might
21 develop. In this particular way, we were able to see
22 an urban type mall, but there were no specific plans
23 or proposals submitted.

24 Q Did you discuss with the Taubman
25 representatives -- and let me ask you, Mr. Hazelett,

1 at this point, do you remember the gentleman you may
2 have met with from the Taubman Company?

3 A Yes, Mr. Bruce Heckman.

4 Q Bruce Heckman?

5 A Uh-huh.

6 Q Did Mr. Heckman discuss with you any
7 request for monetary incentives?

8 A Only in a general discussion, that was,
9 there were going to be major improvements to the mall
10 that were anticipated to be major public
11 improvements. He was asking about the possibility of
12 alternative sources of revenues. The only one we
13 gave any discussion on from a general standpoint was
14 tax-incremental financing, which he had suggested. I
15 told him that we would have to review it, possibly
16 even consider taking it to the General Assembly for
17 action, if that was the vehicle we proposed to use.

18 Q And was that taken to the General Assembly,
19 Mr. Hazelett?

20 A Without any specifics, without coming down
21 to a specific improvement and an estimated cost of
22 those improvements or detailed plans for it and
23 schedule for that, we simply could not, and that, of
24 course, never came.

25 Q Mr. Hazelett, you mentioned a moment ago

1 that you had turned down Mr. Pruitt's request for a
2 payment. Did you indicate that you would discuss
3 that proposal with the Henrico Board of Supervisors?

4 A You mean, Mr. Pruitt's request?

5 Q Yes, sir, Mr. Pruitt's, now, going back to
6 Short Pump.

7 A Yes, I did. As you recall, I mentioned in
8 the spring of '99, when he requested the \$30,000,000
9 direct payment, I could not agree with that, but
10 indicated that because of the potential economic
11 impact, I would agree to take it to the board of
12 supervisors, which we did in closed meeting.

13 Q And did the board have occasion to meet in
14 June of 1999, that is on the 9th, in fact, to discuss
15 the proposal?

16 A That was the closed meeting wherein the
17 presentation was made by the developer, along with
18 the request for a \$30,000,000 incentive.

19 MR. RAPISARDA: Your Honor, I would like to
20 direct the Court and the witness to tab 24, please.

21 THE COURT: All right.

22 BY MR. RAPISARDA:

23 Q Mr. Hazelett, when you have that document
24 in front of you, let me ask, sir, can you identify
25 and do you recognize what that document is?

1 A Yes. This is a copy of the material that
2 was used for the presentation in the closed meeting
3 on June 9 by the developer's attorney.

4 MR. RAPISARDA: Your Honor, we would like
5 to move admission as Exhibit 24.

6 THE COURT: Any objection?

7 MR. SPENCER: No objection, Your Honor.

8 MR. SABOURIN: No objection.

9 THE COURT: That will be admitted as
10 Plaintiffs' Exhibit 24.

11 BY MR. RAPISARDA:

12 Q Mr. Hazelett, realizing that the Court has
13 in front of it the exhibit, could you walk the Court
14 through the high points of what was presented to the
15 board during this meeting?

16 A Yes. From the standpoint that they were
17 proposing an upscale high-end fashion mall, a super
18 regional mall if you will, it identifies the flagship
19 or four anchors, which we, of course, are aware of.
20 It indicates there would only be one mall built in
21 the Richmond metropolitan area of this type. It
22 provided information concerning the fact that the
23 City of Richmond had committed to provide the
24 \$20,000,000 towards an effort in the City of
25 Richmond. It indicated the timing of the particular

1 aspect of this going to take place as far as they
2 knew it, and provided some general information about
3 the fact that it was a preferable site, and then
4 elaborated on the benefits to Henrico County versus
5 the City of Richmond. It also went into an estimate
6 of the types of taxes that would be available for
7 Henrico County over the period of time, and of course
8 summarizing with the annual tax revenues that would
9 be available to Henrico County, based upon their
10 estimates.

11 Q All right, sir. And what did the board
12 indicate to you, Mr. Hazelett, after it heard this
13 proposal in the closed meeting?

14 A They concurred with me that we could not
15 consider a direct payment of \$30,000,000 towards this
16 development based upon the information that was being
17 sent to them. After the developer left the meeting,
18 then there were additional discussions in which they
19 indicated that while they could not consider a
20 \$30,000,000 payment, it would be appropriate not to
21 close the door, but to consider any and all
22 alternatives that might be available, simply because
23 of the impact that this particular type of
24 development would have on Henrico County and their
25 belief that if there was a means and a way to

1 consider assistance, that we should do so.

2 Q Thank you. Mr. Hazelett, after that
3 meeting concluded, did you have occasion to prepare a
4 draft of a letter to Mr. Millsap at the
5 Richmond-Times Dispatch?

6 A Yes, I did. This was sometime in July of
7 '99.

8 MR. RAPISARDA: Your Honor, I would ask the
9 Court and the witness to look at tab 26 -- excuse me,
10 25, I'm sorry.

11 BY MR. RAPISARDA:

12 Q And Mr. Hazelett, are you able to identify,
13 is that the draft that I alluded to moments ago?

14 A Yes, it is.

15 MR. RAPISARDA: Your Honor, we would move
16 this exhibit as number 25, sir.

17 MR. SPENCER: No objection.

18 MR. SABOURIN: No objection.

19 THE COURT: That will be admitted.

20 BY MR. RAPISARDA:

21 Q Mr. Hazelett, could you tell the Court what
22 was your thinking in doing this letter and why you
23 prepared it, sir?

24 A Two fold. First of all, we were actively
25 considering assistance, but at the same time, we did

1 have concerns in reference to our existing retail
2 community and what was going on. This was in reality
3 a turning point here. We were looking at a very
4 large piece of development, and yet in reality, I was
5 also looking at a retail community that had not had
6 incentives before. There were articles in the Times
7 Dispatch, along with an editorial page, and I simply
8 felt that I would like to give consideration to
9 responding to that by indicating a position, as we
10 had done in the past, that we had not provided
11 incentives to retail development, that we did not
12 believe it was necessary in Henrico County because of
13 our ongoing efforts and that quite frankly we would
14 not do so, that there was not, in essence, a war
15 between the City of Richmond and Henrico County.
16 Quite often the media likes to depict that there is
17 an adversarial role between jurisdictions, and this
18 is one method of simply trying to calm them down,
19 while at the same time depicting the position that we
20 have taken for a number of years.

21 Q Mr. Hazelett, is it true you did not send
22 this letter to Mr. Millsap?

23 A That is correct. This letter was not sent.

24 Q And why was that, sir?

25 A Again, because of the directions of the

1 board, the consideration of what might occur, wanting
2 to respond to the items within the media, but at the
3 same time, knowing that the board perhaps was willing
4 to consider a misdirection, this letter was simply
5 not sent. It, in essence, became a turning point for
6 me. The position in Henrico County had always been
7 no incentives for retail development, and now the
8 board was saying you might wish to consider that and
9 see what you might want to work out. I did not want
10 to put the board in the crossfire and, of course,
11 with that particular type of direction was in the
12 process of trying to change and look at the
13 alternatives available to me.

14 Q Mr. Hazelett, did you take any steps after
15 the board's meeting of June 9 and after you had
16 drafted the letter, which you did not send, to act on
17 the board's instruction to, quote, "keep your mind
18 open?" What steps did you take, sir?

19 A I did. In the latter part of the summer,
20 1999, I approached Mr. Jamie Traudt. Jamie Traudt is
21 a financial advisor or financial expert, if you will,
22 that was first brought to me a number of years ago by
23 Mr. Walter Craigie of Wheat First Securities,
24 indicating that Jamie had a sixth sense, if you will,
25 concerning debt capacity, debt analysis and financial

1 feasibilities involving development. And because of
2 that and our years of work with Jamie, I found that
3 to be true. He did provide and was able to
4 understand Henrico County, the environment that we
5 were in and, of course, I was very comfortable with
6 his expertise in that area.

7 Q And how long had you known Mr. Traudt at
8 this time, Mr. Hazelett?

9 A Probably eight to nine years.

10 Q Had he worked on County financing and debt
11 issues over that period of time?

12 A Yes. This was the original purpose, which
13 as I indicated, which we used Mr. Traudt. That is, I
14 prepared for the board of supervisors an analysis
15 based upon our triple, triple A bond rating, every so
16 often advising them of where we were, our potential
17 to movement forward in the future, our debt ratios,
18 our debt capacities, in essence a debt analysis,
19 which helps me with the budget and helps them
20 understand where we may be going in the future.

21 Q And by whom was Mr. Traudt employed in the
22 summer of 1999 when you contacted him?

23 A He was at that point employed by Davenport.

24 Q And did you discuss with him, sir, what you
25 had in mind or what tasks you were asking him to

1 perform?

2 A Generally speaking, I did discuss with
3 Jamie the aspect of what my expectations were, yes.

4 Q Did you also ask him, Mr. Hazelett, to
5 develop some criteria for evaluation of
6 economic-development projects?

7 A I did. As we moved forward, as we were
8 making this transition to perhaps a new policy or the
9 new effort in Henrico County, I was concerned that if
10 we were going to do this, that it was done in a
11 minimal fashion, that it was done in an appropriate
12 fashion that would enhance Henrico County and not
13 have everyone knocking at the door for particular
14 incentives for Henrico County to provide.

15 MR. RAPISARDA: Your Honor, if I may direct
16 you and the witness's attention to tab 26, please?

17 BY MR. RAPISARDA:

18 Q Mr. Hazelett, there is a document in front
19 of you. Can you identify, sir, what that document
20 is?

21 A Yes. These are the final seven criteria
22 which Mr. Traudt and myself developed through the
23 analysis.

24 Q And is this the final product of his and
25 your work on the criteria?

1 A Yes, it is.

2 MR. RAPISARDA: Your Honor, we would like
3 to move this admission, Plaintiffs' 26.

4 THE COURT: Any objections?

5 MR. SABOURIN: No objection.

6 MR. SPENCER: Do we know the date on this?

7 MR. RAPISARDA: Your Honor, I don't believe
8 it carries a date.

9 THE COURT: Ask the witness.

10 THE WITNESS: I do not know a date.

11 MR. SPENCER: No objection.

12 THE COURT: That will be admitted as
13 Exhibit 26.

14 MR. RAPISARDA: Thank you, Your Honor.

15 BY MR. RAPISARDA:

16 Q Mr. Hazelett, would you briefly summarize
17 for the Court the purpose of these criteria and what
18 they meant to you, sir?

19 A Yes. The purpose of this criteria was to
20 establish a policy for new development that would be
21 coming to Henrico County. That is as new developers
22 came to Henrico County wishing to develop projects,
23 we would look to them to generally meet these
24 particular criteria if there was to be any
25 consideration of incentives. I based that upon the

1 1.5 billion dollar investment, of course, in White
2 Oak and the aspect of what was before us. We needed
3 guidelines in order to be sure that Henrico County's
4 future was protected, with that, these seven criteria
5 came up.

6 Performance based, it simply says that the
7 incentives would be funded only with the actual
8 incremental County revenue generated by the project.
9 I did not anticipate giving direct payments over and
10 above what was going to be generated. Did believe we
11 had to come up with a project size in reference to
12 consideration of a lot of developers who had come to
13 Henrico County. I felt they should be significant in
14 size. Therefore, we indicated that it would increase
15 the tax base by 1 percent of the overall tax base of
16 Henrico County. Point in time at which this was
17 done, that 1 percent would equate to \$160,000,000 in
18 round figures, so we would anticipate a new
19 development, large development of \$160,000,000 or
20 more, we would consider. Revenue allocation was the
21 third one, simply meaning that more revenue should
22 flow to the County. We were anticipating and
23 desiring additional revenues generated over and above
24 the incentives which were offered, therefore, there
25 had to be a large generator of revenue or taxes of

1 some means to Henrico County. We also felt that the
2 incentives should be limited. I was not going to go
3 out and provide millions and millions of dollars
4 based upon simply the size of the development. So we
5 simply provided an incentive limit that it would not
6 exceed incremental County revenue expected to be
7 generated in five years.

8 There was some debate in this particular
9 area. I chose the period of five years simply
10 because of the conservative nature of Henrico County.
11 We have always been conservative in all of our
12 projections and all of our undertakings, and I did
13 not want to extend out our exposure any more than
14 what I believed to be a reasonable time for an
15 incentive effort, which was five years.

16 Q If I may interrupt, under these criteria as
17 you understood and developed them, would a developer
18 be entitled to incentives if the shopping center were
19 not successful?

20 A No, he would not.

21 Q With respect to criteria six and seven,
22 were they put in, Mr. Hazelett, to protect the
23 County's credit rating and also to minimize impact on
24 services?

25 A They were. This is the overall concern of

1 Henrico County. With our triple, triple A rating, I
2 wanted to make absolutely sure that if any incentive
3 was being considered, which would have an impact on
4 our credit rating, we would simply not do it.

5 There's a reason we listed number six as credit
6 rating, "will not adversely impact the credit rating
7 of Henrico County."

8 Of course, number seven is the impact on
9 services. That is, the project will not have a
10 substantial impact on County services. The concern
11 we have here is that there is some development that
12 might come to Henrico County of a sizeable nature
13 that would have a dramatic impact on our services
14 that might be specifically in this particular area,
15 such as a large residential community and even a golf
16 course. Those types of developments cause a large
17 drain on County services in the aspect of education
18 and virtually all of our services. I was looking for
19 development that had minimal impact upon our
20 services.

21 Q And finally, Mr. Hazelett, I skipped over
22 number five entitled debt limit. What was the
23 purpose of that particular criteria?

24 A Again, as new development comes to Henrico
25 County, we wanted to limit our exposure. Again, with

1 being very conservative in Henrico County, we did not
2 feel we could fund the total project. We had to come
3 up with a limit of what we believed to be
4 appropriate. And we discussed any aspects of this
5 and came up with the aspect that we would not
6 consider incentives for any more than 10 percent of
7 the overall value of the project.

8 Q Thank you. Mr. Hazelett, at the time this
9 work was going on, which I think you said was summer
10 to fall of 1999, did you have occasion to continue to
11 meet with the developer and some of his
12 representatives about the project?

13 A Yes, there was continuous meetings with the
14 developer at that point in time. They were bringing
15 us new information concerning the activities going
16 on, information that they found in the community,
17 information that they found from the various experts
18 that they were bringing in in reference to the impact
19 to Henrico County, in reference to what the people
20 were desiring here.

21 Q And what did that information indicate to
22 you, if anything, Mr. Hazelett, about any demand for
23 such a mall in Henrico County?

24 A It indicated that there was a great deal of
25 demand for this type of mall in Henrico County. The

1 population of western Henrico County has increased
2 dramatically in the last 10 years, and there is an
3 enormous amount of demand for all types of services,
4 services that the County provides in addition to
5 services available to them, such as shopping. We do
6 know of course that these citizens are going not only
7 to Henrico County, but other areas, in order to meet
8 these needs.

9 Q Did you also meet, during this time frame,
10 Mr. Hazelett, with Mr. Traudt, in terms of getting a
11 report from him on his analyses that he was
12 performing?

13 A On numerous occasions Mr. Traudt and I met.
14 We discussed the aspects of what he was doing. I did
15 not give Mr. Traudt specific directions or any
16 particular alternatives. I asked him to look for all
17 alternatives that might be available to Henrico
18 County and to, again, analyze the information
19 available from the Short Pump Town Center in order
20 to determine if it would be feasible. That's how we
21 got into the criteria of if we were going to do this,
22 under any of these alternatives, there should also be
23 criteria to minimize the impact upon Henrico.

24 Q Mr. Hazelett, did there come a time in
25 December of 1999 where Mr. Traudt presented you with

1 some scenarios including the formation of a Community
2 Development Authority?

3 A Yes. As the discussions took place with
4 the developer and with Mr. Traudt, it became evident
5 that the best available vehicle, based upon the
6 information provided to me, was the Community
7 Development Authority, and so we simply chose that
8 vehicle and asked that the information be prepared
9 using that.

10 Q And did there come a time, sir, when you
11 asked your staff to pursue the necessary work leading
12 up to another presentation of the board of
13 supervisors?

14 A Oh, yes. Once the alternative, once I had
15 chosen the alternative, the CDA, once we were
16 comfortable with that, I interacted with the staff
17 and asked them to evaluate all the information
18 Mr. Traudt put together to evaluate the information
19 as to how it fit our overall aspects of what the
20 County was doing and to give me any questions and
21 reactions that we might have before the board of
22 supervisors, because I would anticipate going to the
23 board of supervisors.

24 Q Did you indicate, at that time, sir, any
25 time table of when you would be going back to the

1 board?

2 A In the latter part of '99 I was not quite
3 sure. I anticipated in the next 30, 60, 90 days. We
4 still had a question outstanding with the developer,
5 and that was the amount of participation. So once
6 that was agreed upon, then we scheduled it, and I
7 think it was late January or February of 2000.

8 Q Mr. Hazelett, around this same time, did
9 you become aware of documents produced through a
10 Freedom of Information Act request that were
11 presented to you by the Short Pump developer?

12 A Yes, I was. This heightened the concern
13 that we had. As I have indicated, economic
14 development is the number one priority of Henrico
15 County, and the aspect of the information that was
16 submitted to me showing that Taubman had been
17 negotiating with the City of Richmond for a number of
18 years, that there appeared to be a deal in place on
19 the table, and there was a real and definite
20 possibility that the mall would be placed in the City
21 of Richmond, we needed to move ahead with our
22 consideration.

23 MR. RAPISARDA: Your Honor, I wonder if you
24 and the witness would turn to tab 27, please.

25 BY MR. RAPISARDA:

1 Q Do you have that in front of you?

2 A I do.

3 Q Can you identify, sir, and recognize that
4 document?

5 A Yes.

6 Q And what is this?

7 A The first page is simply a summary which I
8 used for presentation or information to the board of
9 supervisors when I attached the back information to
10 that, which simply went into the details of the
11 anticipated Taubman agreement with the City of
12 Richmond.

13 MR. RAPISARDA: Now, without going through
14 the agreement line by line, Mr. Hazelett, what type
15 of mall did this letter agreement call for under
16 number 27 -- and excuse me, Your Honor, if I may, may
17 I move its admission?

18 THE COURT: Mr. Spencer?

19 MR. SPENCER: Well, this document would be
20 hearsay. I don't mind it coming in to show the state
21 of mind or show why Mr. Hazelett did what he did, but
22 it can't be admitted for the truth of the statements
23 contained.

24 THE COURT: Mr. Sabourin?

25 MR. SABOURIN: We would join in that

1 objection.

2 MR. RAPISARDA: Your Honor, we would offer
3 it only as information considered by Mr. Hazelett.

4 THE COURT: All right. The Court will
5 allow it for that purpose only as Plaintiffs' Exhibit
6 27.

7 BY MR. RAPISARDA:

8 Q And Mr. Hazelett, back to the question of
9 what type of mall, sir, was contemplated, at least in
10 this document?

11 A Yes. In reviewing the document, it called
12 for a mall very, very similar to that which was being
13 proposed at Short Pump, 1.2 million square feet,
14 pedestrian-oriented mall, including the same four
15 anchors which were being considered for Short Pump.

16 Q And did this indicate, sir, what type of
17 incentive payment would be offered by the City of
18 Richmond if there was the actual deal?

19 A There was an actual incentive payment of
20 33.38 million dollars which was being offered at this
21 point in time that was amended from the previous
22 \$20,000,000 agreement, as well as some other rent
23 subsidies which were provided in detail in the
24 document.

25 Q Thank you. Now, did you have occasion,

1 Mr. Hazelett, to meet with the board of supervisors
2 again on February 8, 2000, to review the Short Pump
3 proposal and CDA proposal that Mr. Traudt had
4 discussed with you?

5 A Yes. Based upon all the information that
6 had been brought together, the aspect of the final
7 position of the \$22,000,000 incentive effort, we went
8 to the board of supervisors with the developer and
9 indicated that we could support the consideration of
10 the Community Development Authority and an incentive
11 effort in the amount of \$22,000,000.

12 MR. RAPISARDA: Now, Your Honor, if I may
13 ask you and Mr. Hazelett to look at tab 36, please?
14 BY MR. RAPISARDA:

15 Q Mr. Hazelett, do you identify -- can you
16 identify, excuse me, this document?

17 A Yes. This is a copy of the slide
18 presentation that was made on February the 8th to the
19 board of supervisors in order to update them as to
20 where we were, the aspect of selection of the
21 Community Development Authority, the criteria that we
22 had selected, the fact that we were proposing a
23 \$22,000,000 incentive, how that would be used in
24 reference to the Community Development Authority, the
25 aspect of what would be done with it, the funding

1 mechanism that would be provided. This, in essence,
2 is a forerunner of what was going to happen in order
3 to provide the board of supervisors with the
4 information concerning the mechanism and also the tax
5 revenues that we had anticipated would come to
6 Henrico County.

7 Q And what was presented, excuse me, to the
8 board in terms of the actual benefit financially to
9 Henrico County from this project?

10 MR. SPENCER: Again, I assume this
11 testimony is going to be for the limited purpose of
12 showing why Mr. Hazelett did what he did, not for the
13 truth of it?

14 THE COURT: Mr. Rapisarda?

15 MR. RAPISARDA: Yes.

16 THE WITNESS: It indicated that over a time
17 period, there would be a net benefit to the County of
18 over \$180,000,000, \$183,000,000, present value of
19 approximately \$72,000,000 and annual payments, tax
20 revenue, incremental tax revenue of somewhere between
21 6.6 and 9.3 million dollars would be coming to
22 Henrico County because of this effort.

23 BY MR. RAPISARDA:

24 Q And Mr. Hazelett, were you advised --

25 THE COURT: And that's over a 26- or

1 27-year period?

2 THE WITNESS: That's actually a 25-year
3 projection, Your Honor, for the figure of the
4 \$183,000,000, yes, sir.

5 THE COURT: So 2001 to 2027?

6 THE WITNESS: Yes, sir.

7 THE COURT: Years in between, that does not
8 include 2001 or 2027?

9 THE WITNESS: I see where you are, sir.
10 That was the revenue projection for that period, 2001
11 to 2027, based upon a two-year construction.

12 THE COURT: 27 years?

13 THE WITNESS: Yes, sir, two years of
14 construction, 25 years of anticipated revenue.

15 MR. RAPISARDA: Your Honor, I think I can
16 help with that, with this question.

17 BY MR. RAPISARDA:

18 Q Mr. Hazelett, when was the mall projected
19 to open if it were constructed?

20 A The mall would be projected to open in the
21 year 2002, possibly early 2003. We assumed a
22 two-year construction.

23 Q So the projections that were presented to
24 you were ran from 2002 to 2027?

25 A Yes, sir, as far as anticipated revenue.

1 Q Which would be a 25-year period. Now,
2 Mr. Hazelett, were the same four anchor tenants, that
3 is Nordstrom, Lord and Taylor, Hecht's and Dillard's,
4 presented as part of this proposal at this time in
5 February of 2000?

6 A Yes. We were talking about, as indicated,
7 a super regional mall, a very unique aspect for
8 Henrico County, the same four tenants which had been
9 and continued to be a topic of discussion as far as a
10 requirement were listed and were to be included in
11 the mall.

12 Q Were you given estimates, Mr. Hazelett, on
13 the project cost?

14 A Estimated overall project cost at that
15 point was \$236,000,000.

16 Q Was the County incentive, sir, included in
17 that figure?

18 A Yes, it was.

19 Q And how much was for the County incentive?

20 A \$22,000,000 was included as part of the
21 overall cost, which was the County incentive.

22 Q Mr. Hazelett, during this February 8
23 meeting of the board, was there any discussion about
24 the Stony Point proposal in the City of Richmond?

25 A Yes, there were indications that the

1 information had been brought to us. It had been
2 shared with the board of supervisors in summary
3 fashion, and so they were made aware of it and the
4 potential that, of course, only one mall was going
5 into the particular region and the need to move ahead
6 as they had previously indicated. This only
7 emphasized the need to move ahead.

8 Q Did you and the board receive any
9 information, sir, about the impact on Regency Square
10 from such a development at Stony Point?

11 A Yes. The developer provided a report by an
12 individual who I think you have listed as Mr. Jerry
13 Oster, who indicated the impacts on Regency Square as
14 well as -- well, the impacts on Regency Square from
15 Short Pump or Stony Point.

16 Q Was there any discussion, Mr. Hazelett,
17 about a mall down in the City of Norfolk that the
18 Taubman companies had been involved in?

19 A There were indications of a discussion of
20 MacArthur Center in Norfolk, the aspect that it was a
21 Taubman project that had moved forward, and the City
22 of Norfolk had put in a little over \$100,000,000 of
23 effort toward that particular project.

24 MR. SPENCER: Objection on the grounds of
25 relevance, non-responsive and should be stricken.

1 McArthur Mall has nothing to do with this case.

2 THE COURT: Objection is overruled. It may
3 go to the incentive of the board of supervisors in
4 doing what it did.

5 MR. RAPISARDA: Your Honor, it does, and it
6 also goes to the wherewithal, we would suggest, of
7 the Taubman Companies. This is not a fly-by-night
8 developer. This is someone who has done this --

9 THE COURT: I overruled it.

10 MR. RAPISARDA: I apologize.

11 THE COURT: Keep talking, you might make me
12 change my mind.

13 MR. RAPISARDA: I'll talk you out of it.

14 MR. SPENCER: But you are only admitting it
15 for the limited purpose of showing what motivated
16 them?

17 THE COURT: Mr. Rapisarda?

18 MR. RAPISARDA: Your Honor, this is
19 actually a deal that occurred in Norfolk.

20 MR. SPENCER: He doesn't know, no
21 foundation from this witness.

22 THE COURT: Can you lay a foundation
23 showing that this man has personal knowledge of that
24 deal?

25 BY MR. RAPISARDA:

1 Q Mr. Hazelett, did you have any personal
2 knowledge of what was going on in the City of Norfolk
3 with the McArthur Center?

4 A I did, from the information which, of
5 course, I had read in the newspaper that was
6 presented to me from the developer, yes.

7 THE COURT: Mr. Spencer?

8 MR. SPENCER: Well, I don't know what the
9 next question will be, but if it's more detail than
10 that, that's not a foundation.

11 THE COURT: You had your hands like this.
12 I thought you were trying to say something.

13 MR. RAPISARDA: We're ready to move on to
14 the next question, Your Honor.

15 THE COURT: All right.

16 BY MR. RAPISARDA:

17 Q Mr. Hazelett, you mentioned a moment ago --

18 THE COURT: So I can rule on Mr. Spencer's
19 objection, I am admitting it only with regard to the
20 motivation or knowledge that the board of supervisors
21 had at the time they made their decision.

22 MR. RAPISARDA: Thank you, sir.

23 BY MR. RAPISARDA:

24 Q Mr. Hazelett, with respect to the financial
25 projections that you alluded to earlier that were

1 presented to the board during this meeting, were you
2 told anything about the nature of these projections?

3 A The projections were extremely conservative
4 in nature. That is the way Henrico County always
5 does its revenue projections, which is something
6 Mr. Traudt is aware of. We took information that the
7 developer had as well as our information and made
8 revenue projections, cost projections, based on an
9 extremely conservative basis.

10 Q Can you give some examples, Mr. Hazelett,
11 of how these were reported to you of being
12 conservative projections?

13 A One of the aspects is the tax rate at 94
14 cents per hundred is shown throughout the 24-year
15 period as being exactly the same, 94 cents per
16 hundred. Although I'm sure the board of supervisors
17 would like to see that, I'm not sure I can do that
18 for 25 years. I'm sure it will increase.

19 Q And how about with respect to property
20 values?

21 A Property values were shown on a limited
22 basis. They were, again, conservatively estimated in
23 order to ensure if there was an error it was on the
24 conservative side and would not impact Henrico
25 County.

1 Q And what were you told, sir, about the
2 sales estimates per square foot at the Short Pump
3 Town Center versus that same figure at Regency
4 Square?

5 A Sales estimates used were less than they
6 were at Regency Square. Again, due to the
7 conservative nature, while we all believed and have
8 looked at other malls of this type, a super regional
9 type being unique in the effort, the conservative
10 projections used sales per square foot, which were
11 less than Regency Square.

12 Q Mr. Hazelett, does Henrico County receive
13 any portion of sales tax from the Commonwealth of
14 Virginia for educational purposes?

15 A We do, sir.

16 Q Is this above and beyond the County's 1
17 percent that it receives?

18 A Yes. The County receives 1 percent local
19 taxation from all sales. In addition to that there
20 is 1 percent of taxation which is dedicated back to
21 the localities for educational purposes. It is done
22 through a formula at the state. You don't receive
23 dollar for dollar, but you do receive a portion of
24 that tax.

25 Q Was that anticipated revenue included in

1 the Short Pump proposal?

2 A No, it was not. Again, looking at the
3 framework we were looking at and trying to recognize
4 we were only dealing with this particular development
5 and its generation of effort, we did not include it.

6 Q Were you given, sir, any estimate of how
7 much revenue would flow from the County from Short
8 Pump through this particular mechanism?

9 A This particular mechanism, it would amount
10 to about \$77,000,000 over that same time period.

11 Q Mr. Hazelett, did the board have occasion,
12 during its February 8 meeting, to have any discussion
13 about the potential risks of this project and how it
14 might impact the County's credit rating?

15 A Yes. Mr. Traudt was included. Mr. Traudt
16 made extensive or had extensive conversations with
17 bond counsel, as well as Moody's and Standard and
18 Poor's, concerning the particular activity. And
19 there was complete agreement that it would be causal
20 in nature and its being undertaken would have no
21 impact on our credit rating.

22 Q At this same point in time, did the board
23 take under consideration or in the planning process
24 the issuance of any other debt?

25 A At this same point in time we were

1 considering -- I had to remind the board, of
2 course -- a referendum, which would be in excess of
3 \$200,000,000. Ultimately that referendum was
4 \$237,000,000, which was approved by the citizens last
5 November.

6 Q And what affect, sir, did that have on the
7 board's discussion about the Short Pump proposal and
8 the formation of a CDA?

9 A It indicates that there was a large revenue
10 source that would be available some time in the
11 future in order to take care of the services which
12 are increasing for Henrico County, as we become more
13 urbanized. Therefore even as economic development is
14 our number one priority, when we look at this
15 particular type of effort that can give you 6.6 to
16 \$9,000,000 a year, it was a very favorable effort
17 simply because it would reduce the requirements on
18 all our citizens for the generation of tax revenues
19 for services.

20 Q Now, at the conclusion of the board's
21 February 8, 2000 meeting, Mr. Hazelett, did you make
22 any recommendation to the board as to how they should
23 proceed?

24 A I did. I recommended that the board
25 proceed with the consideration of the Community

1 Development Authority and a proposed incentive
2 agreement which would include \$22,000,000.

3 Q And what instruction, sir, were you given
4 by the board in response to your recommendation?

5 A The board indicated that we could proceed
6 with that. We also had discussed some concerns that
7 I had. The documents, of course, were not
8 formulated. We were simply beginning. They
9 indicated to the developer, as well as myself, that
10 all the demands of the County manager would be met
11 prior to any of the items being brought back for
12 public consideration.

13 Q And sir, you referred to demands. Did you
14 have some preconditions to any developer assistance
15 that you wanted put into this transaction?

16 A There were conditions, yes.

17 Q And can you summarize those, sir?

18 A Those conditions, of course, were that the
19 four major department stores would be upscale or
20 flagship stores. They would be there for 15 years.
21 There would be a guarantee of the complete
22 construction of the project by Forest City or its
23 parent company, that the bonds would be paid back in
24 five years or that the effort would be completed in
25 five years and that we would make no payments of any

1 incremental tax revenue until such time that special
2 assessments had been paid.

3 Q All right, sir. Was there any requirement
4 on your part that Forest City put any of its own
5 funds into this project?

6 A I'm sorry, Mr. Rapisarda. There was an
7 indication that Forest City itself would make a major
8 construction contribution prior to these bonds being
9 sold and the money provided through the CDA to the
10 overall development. We wanted to, again, ensure
11 that there was sufficient property value available in
12 order to ensure that there was no loss to Henrico
13 County.

14 Q All right, sir. And who did you have those
15 discussions with at Forest City?

16 A Those discussions were with Mr. Tommy
17 Pruitt and other individuals associated, David LaRue
18 and so forth.

19 Q Thank you. And Mr. Hazelett, at this time,
20 then, the board, if I understand it, was giving you
21 the green light to pursue the Community Development
22 Authority. Did you have occasion to have any
23 discussion with Mr. Traudt about whether or not he
24 would serve as an underwriter on the subsequent
25 transaction?

1 A I did. Along the time that there was
2 information on the street that Henrico County was
3 considering a Community Development Authority, and we
4 knew that the Community Development Authority was
5 going to come about, Mr. Traudt indicated his
6 interest in becoming an underwriter for the
7 particular bonding effort. It was at that point that
8 I indicated to Mr. Traudt that while I understood his
9 desire, that was a decision that would be made by the
10 Community Development Authority, and not Henrico
11 County. That's the same position that I've had to
12 indicate to two other firms who had been interested
13 in being an underwriter for this particular effort.

14 Q And who would select the underwriter?

15 A The Community Development Authority.

16 Q And that's the authority appointed by the
17 Henrico Board of Supervisors?

18 A That's correct.

19 Q And did there come a time in June,
20 Mr. Hazelett -- or excuse me, let me back up. I'm
21 sorry, Your Honor. In the period of time from
22 February 8, the board meeting we have been going
23 over, until later in the summer, what was going on
24 with respect to this project, Mr. Hazelett?

25 A Making assurances with the developer that

1 all of my requirements were being met in reference to
2 the conditions that we had discussed, formulating the
3 documents, the procedures that would have to be
4 followed, making sure that they were all proper from
5 a legal standpoint as well as a policy standpoint,
6 with Henrico County, the county attorney's office as
7 well as everyone else involved.

8 Q And did you discuss with your staff and the
9 developer's representatives a time table, Mr.
10 Hazelett, for bringing this matter back to the board
11 of supervisors for formal action?

12 A There was a tentative time table.
13 Actually, when we finally got to it, I think we were
14 originally scheduled for June, but it actually came
15 in July.

16 MR. RAPISARDA: Now, Mr. Hazelett, back up
17 a minute and asking Your Honor and you if you would
18 turn to tab 37, please.

19 THE COURT: Before you do that, I take it
20 there is no objection to the admission of the
21 exhibit, which is 36, if it is to be admitted?

22 MR. SPENCER: For the limited purpose.

23 THE COURT: All right. It is admitted for
24 that purpose. Before we get past that, is there any
25 significance, either Mr. Rapisarda or Mr. Hazelett,

1 on page two of that Exhibit 36, the separate portions
2 of the funding, CDA bond construction, 20.5 million
3 and then County construction, one and a half million?

4 MR. RAPISARDA: That's a good question,
5 Your Honor. Let me go back and ask Mr. Hazelett if
6 he could explain that. Thank you.

7 THE COURT: That's on page two. Do you see
8 that?

9 THE WITNESS: Yes, the cost breakdown,
10 accumulated \$22,000,000 breakdown of utilities, roads
11 and so forth?

12 THE COURT: No. No. No. The middle box
13 in the right column, incentive-funding plan. What is
14 the significance of those two different figures?

15 THE WITNESS: There was a moving target as
16 far as estimates of what the anticipated public
17 improvements would cost. I had indicated to the
18 board of supervisors and the developer that there
19 would be a \$22,000,000 effort. Therefore at this
20 point in time, based upon the estimations that were
21 available, it appeared, though, that those items
22 which could be undertaken by the CDA would amount to
23 20.5 million, which in essence necessitated a direct
24 payment from the Henrico County general fund of 1.5
25 million dollars. I assured the board of supervisors

1 that this was a rolling project. I had made a
2 commitment of \$22,000,000. It would have to be
3 handled that way, but I anticipated that the cost
4 would increase for these particular public
5 improvements, and of course, they have.

6 THE COURT: Maybe I'm just not
7 understanding.

8 THE WITNESS: At that point in time, Your
9 Honor, the CDA anticipated items were estimated to be
10 20.5 million dollars.

11 THE COURT: And I'm not sure I understand
12 the difference between the contribution being made by
13 the CDA and the contribution being made by the County
14 of Henrico.

15 THE WITNESS: Yes, sir, was 1.5, because I
16 had indicated that I would agree to a figure of
17 \$22,000,000 towards it.

18 THE COURT: Why did there have to be
19 separate contributions?

20 THE WITNESS: Because we did not believe,
21 again, that the items that were estimated at that
22 point in time that could be owned and maintained by
23 the CDA were \$22,000,000. They were 20.5 million at
24 that point in time.

25 BY MR. RAPISARDA:

1 Q So is it fair to say that the County was
2 going to make up that gap, at least at that point in
3 time, Mr. Hazelett?

4 THE COURT: What you're saying is that
5 there were some things that needed to be done that
6 you and the board of supervisors did not think could
7 be done by the CDA?

8 THE WITNESS: No, what I'm saying --

9 THE COURT: Or things that you thought
10 needed to be done that you thought could not be done
11 directly by the County of Henrico?

12 THE WITNESS: See, if I can explain it this
13 way, Your Honor. There's a two-fold process here. I
14 had made a commitment of \$22,000,000, which I
15 believed and told the board we should honor.

16 THE COURT: Let me ask you, why couldn't
17 the CDA just contribute the entire \$22,000,000?

18 THE WITNESS: Because at that point we
19 didn't believe that the estimates for the
20 improvements which could be included in the CDA came
21 to \$22,000,000, they only came to 20.5 at that point.

22 THE COURT: Is that because you thought
23 there was some statutory prohibition for the CDA to
24 do some of things that needed to be done in the
25 development?

1 THE WITNESS: The items that we knew that
2 could be done under the CDA, the estimate at that
3 point in time -- this was a very rough estimate, at
4 that point in time -- only came to 20.5 million
5 dollars. We did not choose to do anything through
6 the CDA that we did not feel we could do. Those were
7 the estimates for those improvements at that point in
8 time.

9 MR. RAPISARDA: May I proceed, Your Honor?

10 THE COURT: Go ahead.

11 BY MR. RAPISARDA:

12 Q Mr. Hazelett, let me direct your attention
13 to the July time frame, July, 2000. And on the 5th
14 of July, did you have occasion to have a meeting with
15 representatives of the Taubman Company?

16 A Your Honor, may I go back a minute? I'm
17 trying to help you. County contributions, we knew
18 that there were certain things that the County could
19 construct directly.

20 THE COURT: Could or could not?

21 THE WITNESS: Could, such as asphalt, curb
22 and gutters, water lines, sewer lines, that's what we
23 are in the business to do. We knew that we could do
24 that. We felt that would come to 1.5 million.

25 THE COURT: You needed \$22,000,000.

1 THE WITNESS: Yes, sir.

2 THE COURT: And if the law allowed the
3 County to contribute \$22,000,000, the County would
4 have done that.

5 THE WITNESS: Yes, sir.

6 THE COURT: But it was your understanding
7 and the board's understanding that some of these
8 things had to be done by the CDA?

9 THE WITNESS: At that point, yes.

10 THE COURT: And the things that the County
11 could not do came to twenty and a half million
12 dollars.

13 THE WITNESS: Correct.

14 THE COURT: Back where I was, then. That's
15 what I thought.

16 THE WITNESS: I'm sorry, Your Honor.

17 THE COURT: No. Thank you. Go ahead,
18 Mr. Rapisarda.

19 MR. RAPISARDA: Thank you, Judge.

20 BY MR. RAPISARDA:

21 Q Mr. Hazelett, before we get into the
22 meeting with the Taubman folks, let me drop back a
23 moment and ask you and Your Honor to turn to tab 37,
24 please. Mr. Hazelett, are you able to identify what
25 this document is and what is attached to it?

1 MR. SPENCER: What number are we on?

2 THE COURT: 37.

3 BY MR. RAPISARDA:

4 Q 37.

5 A That is document which, of course,
6 summarizes the minutes of a regular meeting of the
7 Economic Development Authority. It provides
8 information on what occurred at the meeting.

9 Q And is there a document, sir, right behind
10 those minutes?

11 A Yes, there is. There is a document behind
12 here, which --

13 Q Have you seen that document?

14 A Yes, I have.

15 Q In fact, did you receive that document in
16 June of 2000?

17 A I did.

18 Q And what is it, sir?

19 A This is a document which is an anticipated
20 press release which announces, of course, the
21 anticipated Community Development Authority along
22 with the advantages to Henrico County and what the
23 Community Development Authority is going to do. It
24 updates the total project of the proposed shopping
25 center into -- some of the items you see on the back

1 are project summary, which gives you an idea of the
2 project. Investment at this point was \$236,000,000.

3 Q Mr. Hazelett, if I may interrupt you, did
4 this provide much of the information that the board
5 had reviewed at the previous February meeting?

6 A Oh, yes. This is in summary fashion of all
7 the information reported. This document, although it
8 came to me for press-release purposes, was being
9 submitted over to the Economic Development Authority
10 for their consideration and information.

11 Q And Mr. Hazelett, did this document also
12 report some certain non-revenue benefits that the
13 Short Pump Town Center would produce for Henrico
14 County?

15 A Yes, sir.

16 Q Can you at least turn to that page and give
17 a quick summary of what those are?

18 A The aspects of -- it's Short Pump Town
19 Center Non-Revenue Benefits. Of course, the high
20 quality shopping that we indicated, that it's
21 something that is void in the Richmond metropolitan
22 area. This would provide that, which we believe is
23 actually not a non-revenue benefit. It's a
24 non-revenue benefit to the citizens. While it's a
25 revenue benefit to Henrico County, it's a non-revenue

1 benefit to people who will desire to shop in these
2 locations. Quality of life, we are always looking
3 for enhancement of quality of life in Henrico County.
4 This means they can stay here. They can shop in this
5 area and see those types of stores. Focal point, it
6 becomes a destination for other people, specifically
7 visitors to Henrico County, visitors to the
8 convention center.

9 Q Thank you. Mr. Hazelett, if you would turn
10 to the last page behind tab 37, and ask you what that
11 document is, sir, or what that sheet is.

12 A This is a document that summarizes some of
13 the information that was previously presented to the
14 board, and that is the public financial incentives
15 for retail and office centers in the State of
16 Virginia.

17 Q And did this list other projects in which
18 localities had contributed funds or assistance to
19 retail projects?

20 A It did, sir.

21 MR. RAPISARDA: Your Honor, we would like
22 to move this exhibit, this 37, move it be introduced.

23 MR. SABOURIN: We don't object, Your Honor.

24 THE COURT: And the only one on that last
25 page that is not existing is the Richmond one,

1 Richmond and Short Pump?

2 MR. RAPISARDA: That's correct.

3 THE COURT: All right. Any objection?

4 MR. SPENCER: We would have the same
5 objection we made previously. We wouldn't have any
6 objection to this being admitted for the purpose of
7 showing what --

8 THE COURT: Mr. Rapisarda, do you --

9 MR. RAPISARDA: We understand that.

10 THE COURT: All right. It will be admitted
11 for that purpose, Plaintiffs' Exhibit 37.

12 MR. RAPISARDA: Thank you, Your Honor.

13 BY MR. RAPISARDA:

14 Q Mr. Hazelett, getting back to where I was a
15 moment ago, July 5, 2000, you did have a meeting,
16 didn't you sir, with Mr. Simon and Mr. Kieras of the
17 Taubman Company?

18 A Yes, I did.

19 Q What was the substance, sir, of that
20 meeting and who requested the meeting?

21 A The meeting was requested by Taubman. They
22 were aware of the Community Development Authority
23 consideration. They wanted us, Henrico County, to
24 consider a Community Development Authority for, of
25 course, Regency Square, indicating that they were

1 there first. They felt that they should be given
2 appropriate consideration.

3 MR. SPENCER: Object to the relevance, Your
4 Honor.

5 THE COURT: Mr. Rapisarda?

6 MR. RAPISARDA: Your Honor, I think if we
7 heard the opening statement, much of it was devoted
8 to these ongoing discussions between Taubman and the
9 County and the theory that the County somehow left
10 them in the lurch, so I think it is relevant to the
11 story. In fact, it is part of it.

12 THE COURT: Is that something you're going
13 to rely on in asking the Court to approve these
14 bonds?

15 MR. RAPISARDA: No, sir.

16 THE COURT: Mr. Spencer, is it something
17 that you're going to rely on in trying to get the
18 Court to disapprove?

19 MR. SPENCER: In no way.

20 THE COURT: Objection is sustained. I'm
21 sorry, Mr. Sabourin, I didn't ask you. Are you going
22 to rely on this at all, these discussions as part of
23 your argument at the end of the case?

24 MR. SABOURIN: We may, Your Honor, because
25 we think it goes to the motive of the board.

1 THE COURT: Objection is overruled. Do you
2 want to get a different table, Mr. Spencer?

3 MR. SPENCER: They don't want me over
4 there.

5 THE COURT: Go ahead, Mr. Rapisarda.

6 MR. RAPISARDA: Thank you, Your Honor.

7 THE COURT: How much longer do you think
8 you're going to be on your direct examination?

9 MR. RAPISARDA: Your Honor, I would say
10 we're about two-thirds through what I had estimated
11 at two hours, so I will do some quick math. I would
12 say 45 minutes, perhaps?

13 THE COURT: We will take a 10-minute
14 recess. Stand in recess until about five minutes
15 after 12:00. Mr. Hazelett, feel free to step down.
16 Please don't talk to any of the lawyers during the
17 recess.

18 THE WITNESS: Yes, sir.

19 (Recess taken)

20 THE COURT: These are exhibits, I take it,
21 that are not in the book.

22 MR. RAPISARDA: That's right, Your Honor.
23 We will overnight those exhibits.

24 THE COURT: All right. If counsel don't
25 object, that's fine. Mr. Rapisarda?

1 MR. RAPISARDA: Thank you, Your Honor.

2 BY MR. RAPISARDA:

3 Q Mr. Hazelett, did there come a time --

4 MR. SPENCER: Do you object to them also
5 making the decision? The people over there usually
6 decide.

7 MR. SABOURIN: Those are not the people we
8 want to decide.

9 A MAN: We're ready to rule, Your Honor.

10 THE COURT: Mr. Rapisarda?

11 MR. RAPISARDA: Thank you, Your Honor.

12 BY MR. RAPISARDA:

13 Q Mr. Hazelett, turning your attention to
14 July of 2000, did there come a time when the County
15 received a formal petition for the creation of the
16 Short Pump Town Center Community Development
17 Authority, which I will call CDA for short?

18 A Yes, we did, and that was July.

19 MR. RAPISARDA: Your Honor, if I may, if we
20 could go to tab one, please. I'm sorry, this is
21 already admitted, Your Honor. This is an organic
22 document, excuse me.

23 BY MR. RAPISARDA:

24 Q Mr. Hazelett, did the board have occasion
25 then on July 25th to have a meeting to follow-up on

1 its efforts to implement creating the CDA?

2 A Yes, we did.

3 MR. RAPISARDA: Your Honor, if I may, tab
4 38, please?

5 THE COURT: All right.

6 BY MR. RAPISARDA:

7 Q Mr. Hazelett, can you identify what's
8 behind tab 38?

9 A I can. These are minutes of the special
10 meeting which occurred at 3:30 in the afternoon
11 summarizing the items that were reviewed by the board
12 of supervisors during that work session.

13 Q And without going through the presentation
14 itself, was this a meeting at which the developer
15 gave its latest update on the proposal?

16 A It was. The developer gave the updates,
17 and Mr. Traudt was present as well, to provide
18 information to the board.

19 Q Do the minutes indicate or do you recall,
20 Mr. Hazelett, whether any representative of the
21 Taubman Company attended this special meeting on July
22 25th?

23 A Yes, Mr. Steve Kieras did as did Mr. Steve
24 Pearson.

25 Q All right. Was there also a Mr. Rod Blake?

1 A I'm not sure.

2 Q May I direct your attention, sir, to page
3 one of the minutes?

4 A Yes. The name shows, Mr. Rapisarda, I
5 just --

6 Q You don't know who Mr. Blake is?

7 A Correct.

8 Q All right, sir. Thank you. Mr. Hazelett,
9 was the board shown, during this -- excuse me, was
10 this an open meeting, Mr. Hazelett, that is open to
11 the public?

12 A Yes, it was.

13 Q And was the board presented any
14 illustrative exhibits which showed how the mall would
15 be laid out and designed?

16 A Yes, they were.

17 MR. RAPISARDA: Your Honor, at this time I
18 would like to take the assistants and show you and
19 the witness some renderings. We could start with
20 B63, Your Honor.

21 THE COURT: All right.

22 MR. RAPISARDA: And may I ask the witness
23 to come down, Your Honor?

24 THE COURT: Mr. Hazelett, you can step
25 down, sir.

1 MR. RAPISARDA: I have also, Your Honor,
2 given him a pointer to try to move this along.

3 BY MR. RAPISARDA:

4 Q Mr. Hazelett, could you briefly identify
5 what this depicts in the mall?

6 A Yes. This depicts the actual property
7 which is owned by the mall, the occupants, of course,
8 Pruitt and Forest City, which includes the overall
9 anticipated development of all the property up to the
10 boundary line, which is 64 and, of course, Broad
11 Street here, and the western and center-most boundary
12 and the mall itself, inside the circumferential
13 roadway, the out-parcels along Broad Street, future
14 parcels for development to the rear, connected to the
15 adjacent properties to the east, which are under
16 development and existing and connected to the west
17 for future development.

18 Q I think we heard earlier in opening
19 statement a reference to the Barnes and Noble. Where
20 would that be?

21 A Approximately right here.

22 Q And what is to the west of what we're
23 looking at here on this exhibit?

24 A To the west of here is vacant property to a
25 point of near the intersection of Gayton Road. There

1 is a large auto dealership at that point, at that
2 location. Behind that is property that was approved
3 for the development of an apartment complex adjacent
4 to what we now call the Gayton Road Proposed
5 Interchange, which has not developed at this point in
6 time.

7 MR. RAPISARDA: If we could, Your Honor, we
8 would like to move this, and as I said, we will bring
9 a reduced one.

10 THE COURT: All right. Is there any
11 objection to Plaintiffs' Exhibit 63?

12 MR. SABOURIN: No objection, Your Honor.

13 MR. SPENCER: None.

14 THE COURT: It is admitted.

15 MR. RAPISARDA: We can go to 64 now, Your
16 Honor.

17 MR. SPENCER: If he could leave those
18 separated so I can use them on cross, though, that
19 would be great.

20 MR. RAPISARDA: She'll help.

21 BY MR. RAPISARDA:

22 Q Okay. Was this shown to the board,
23 Mr. Hazelett, during the meeting?

24 A It was.

25 Q And what does this depict, sir?

1 A This depicts the actual upper level
2 pedestrian pattern, if you will, of visitors to the
3 center. It shows there's a grade differential in the
4 mall itself. That closest to Broad Street, which I
5 depicted, is on one grade. That to the back is
6 another grade, so pedestrians could enter in this
7 particular area as well as this particular area, but
8 they would be on the second level of the mall.
9 Therefore, this depicts the crossings, the awnings,
10 the efforts of pedestrian usage at the second level
11 of the mall with access to the larger pedestrian
12 plaza, which is here.

13 Q And I notice a reference -- could you point
14 to the Edwards Theater on the board, Mr. Hazelett,
15 and tell us about that? Is that still planned for
16 this mall?

17 A The Edwards Theater was anticipated to be a
18 22-movie-screen theater. Because of development
19 which is occurring to the east of here, which is an
20 18-screen-theater, the decision was made not to
21 pursue this, so that is a vacant position for the
22 mall at this point in time.

23 MR. RAPISARDA: Your Honor, we would move
24 admission of 64.

25 THE COURT: Any objection?

1 MR. SPENCER: No, Your Honor.

2 MR. SABOURIN: No, Your Honor.

3 THE COURT: That will be admitted.

4 BY MR. RAPISARDA:

5 Q If you look at 65, please, is there
6 anything, Mr. Hazelett, on this that you want to
7 point out that may not have been shown on the
8 previous exhibit, this having been shown to the
9 board?

10 A Only from the standpoint that this shows
11 the expansion of what I would define as the ground
12 plaza or the plaza for pedestrians with the esthetic
13 treatments. You see amenities, a water fountain, the
14 area used for public purposes in this particular area
15 and along here, as well as along here.

16 Q Well, have you had any discussions,
17 Mr. Hazelett, with the developer about public use of
18 these areas?

19 A Yes. We have had discussions with the
20 developer as well as the Division of Parks and
21 Recreation of Henrico County about using this. The
22 mall itself, the pedestrian way, would be open on a
23 24-hour basis. Because of that, we do anticipate
24 having community activities as well as concerts and
25 other activities in what we are defining this to be

1 as an urban mall or an urban park, if you will.

2 Henrico County is expanding and growing. There is a
3 need for this type of amenity for our citizens. This
4 is one means in which we can provide an urban park.

5 MR. RAPISARDA: We would move admission,
6 Your Honor.

7 THE COURT: Any objection?

8 MR. SPENCER: No, Your Honor.

9 MR. RAPISARDA: No, Your Honor.

10 THE COURT: 65 is admitted.

11 MR. RAPISARDA: Ms. Fulmer, if you would
12 get 66?

13 BY MR. RAPISARDA:

14 Q Mr. Hazelett, were those poster boards
15 shown to the board of supervisors?

16 A They were.

17 Q And could you briefly describe what they
18 depict, sir?

19 A I can't -- this may be difficult, Your
20 Honor. I don't profess to be an engineer, but these
21 are actually cross-sections of the mall. They show
22 two levels of the mall in cross section of two -- if
23 you cut the development in two, this is what you
24 would see. You see that there would be pedestrian
25 access on the first level as well as the second

1 level. Here is the Edwards building, which was
2 separate from the overall mall consideration. You
3 see the aspects of the type of amenities which were
4 reported, fountains, landscaping, the large trees and
5 access up and down.

6 MR. RAPISARDA: And we would move 66, Your
7 Honor please.

8 THE COURT: Any objection?

9 MR. SPENCER: No, Your Honor.

10 MR. SABOURIN: No, sir.

11 THE COURT: And was 38 ever moved? Did you
12 want --

13 MR. SPENCER: It was not.

14 MR. RAPISARDA: Thank you, Your Honor. Let
15 me go back and move that.

16 THE COURT: Was there any objection to 38?

17 MR. SPENCER: None.

18 MR. SABOURIN: No, Your Honor.

19 THE COURT: 38 is also admitted.

20 MR. RAPISARDA: Thank you. Ms. Fulmer,
21 pull out 67, and why don't we pull up the two others
22 and maybe we can move this along and finish this
23 sequence. Your Honor, we have three renderings.

24 BY MR. RAPISARDA:

25 Q Let me ask you this, Mr. Hazelett, were

1 each of these shown to the board of supervisors?

2 A Yes, they were.

3 MR. RAPISARDA: Your Honor, I would like to
4 have these admitted as 67, 68, 69.

5 THE COURT: Is there any objection?

6 MR. SPENCER: No.

7 THE COURT: They're all admitted.

8 BY MR. RAPISARDA:

9 Q Mr. Hazelett, what are these particular
10 exhibits depicting?

11 A These renderings depict for the board of
12 supervisors and for people the aspect of what this
13 mall and pedestrian plaza will be like. Again,
14 trying to make it like old Richmond, but most
15 importantly it shows the expanse and use of the
16 pedestrian plaza. Again, the Edwards Cinema is in
17 the back, in the separate building, but you see the
18 large expansive plaza. This is a view that depicts
19 one of the crossovers, which would be a means of
20 crossing from one side of the mall to the other
21 against what I will call the grand plaza or the large
22 pedestrian area. This depicts that, looking down
23 into the pedestrian grand plaza. This again shows
24 the type of amenities that would be available on the
25 lower level, the canopy access for pedestrians as

1 well as open access here, which of course is the same
2 as the upper level of the mall. It shows in addition
3 to the commercial aspects the other types of
4 activities that will take place.

5 MR. RAPISARDA: Your Honor, if I may, just
6 to clarify for the record, if we could mark this one
7 as number 67, which is the open plaza.

8 THE COURT: All right.

9 MR. RAPISARDA: 68 will be the upper level
10 walkway and 69 will be the lower level showing the
11 visitors in the mall.

12 THE COURT: When you reduce those, just
13 make those notations. Let me ask you this. This is
14 all very interesting, and to the extent that I need
15 to hear it, I'm willing to hear it. I'm here. But
16 is it your position that any of this is relevant to
17 this case?

18 MR. RAPISARDA: Your Honor, the reason we
19 were going into this scope of detail on the actual
20 visual and rendering is one of the big arguments, of
21 course, you will hear from our opponents is there's
22 no public purpose served by what they call private
23 property, which the evidence will show will be owned
24 by the CDA, but apart from that, we wanted to show to
25 the Court the best way we knew how --

1 THE COURT: Well, I mean, there are
2 pedestrian walkways in all shopping malls and the
3 public uses those walkways. I guess you can always
4 say there is some public purpose, but do I really
5 need to know this level of detail in order to decide
6 whether the walkways and parking plazas and steps and
7 elevators and everything else can --

8 MR. RAPISARDA: Well, first, Your Honor,
9 that's all we have --

10 THE COURT: -- be financed through these
11 loans?

12 MR. RAPISARDA: Your Honor, first, that's
13 all we have on it. But I would say to you it is a
14 matter of degree. In other words, this is somewhat
15 of a unique facility. It is part of what motivated
16 the governing body's decision, and so I suggest there
17 is some relevance, and I will leave it to the Court.

18 THE COURT: And I don't want to turn this
19 into a closing argument, but are you saying that
20 because this one is so pretty that you can do it, but
21 if you had another one that was just a box, but you
22 also had a fountain in the middle that the public
23 could use --

24 MR. RAPISARDA: No, sir.

25 THE COURT: -- that you -- those two

1 situations are different?

2 MR. RAPISARDA: That's not our point, Your
3 Honor. You may be anticipating our ending testimony
4 here. It's going to be public access. These areas
5 would be open to the public 24-hours a day, seven
6 days a week, which certainly is not what we think of
7 as a normal mall, certainly in Henrico.

8 THE COURT: Is that the question, whether
9 they're open to the public or whether their owned
10 by --

11 MR. RAPISARDA: I think they both bear on
12 it, Your Honor.

13 THE COURT: Okay.

14 MR. RAPISARDA: Thank you.

15 BY MR. RAPISARDA:

16 Q Mr. Hazelett and Your Honor, if I could
17 direct your attention to tab 39 and ask Mr. Hazelett
18 if you can identify this document?

19 A This was the presentation made to the board
20 of supervisors in special session on July 25th, which
21 in essence updated the board to the proposed CDA
22 which was being considered that evening for
23 introduction.

24 Q And that evening, Mr. Hazelett, did the
25 board have occasion to take a formal vote on the CDA?

1 A They did not. This was an introduction and
2 establishment of a public hearing, which was set for
3 the second meeting in September.

4 Q All right. Now --

5 THE COURT: Is there any objection to 39?

6 MR. SPENCER: None.

7 THE COURT: 39 is admitted.

8 BY MR. RAPISARDA:

9 Q And Mr. Hazelett, in September of 2000 did
10 you have occasion to attend a meeting of the Economic
11 Development Authority of Henrico County?

12 A I did.

13 Q And before attending that meeting, sir, had
14 you had any discussions with Mr. Fred Agostino?

15 A I had updated Mr. Agostino on occasion
16 concerning the proposal of the CDA and the Short Pump
17 Town Center as well as early discussions with the
18 chairman of the EDA.

19 Q And who is Mr. Agostino?

20 A Mr. Agostino is the executive director of
21 the Economic Development Authority, the principal
22 staff person to the authority.

23 MR. RAPISARDA: All right, sir. Now, Your
24 Honor, if I may turn to tab 40, please.

25 BY MR. RAPISARDA:

1 Q And Mr. Hazelett, while we turn to that,
2 can you identify, sir, what that document is behind
3 tab 40?

4 A Yes. This is a presentation that was made
5 by Mr. Leon Johnson, the deputy county manager for
6 administration, to the Economic Development Authority
7 to update them on the Community Development Authority
8 proposal.

9 Q And were you at that meeting?

10 A Yes, I was. I was there to answer
11 questions. Mr. Johnson made the presentation.

12 Q What did the Economic Development Authority
13 board do after hearing this presentation?

14 A I'm trying to remember.

15 MR. RAPISARDA: Well, I'll withdraw that,
16 Your Honor. We'll get to that later.

17 BY MR. RAPISARDA:

18 Q Mr. Hazelett, did there come a time when
19 the board of supervisors held a public hearing on the
20 creation of the Community Development Authority?

21 A Yes, they did.

22 THE COURT: Do you want Exhibit 40
23 admitted?

24 MR. RAPISARDA: Yes.

25 THE COURT: Any objection to 40?

1 MR. SPENCER: No, Your Honor.

2 MR. SABOURIN: No, sir.

3 THE COURT: Admitted.

4 BY MR. RAPISARDA:

5 Q Mr. Hazelett, did there come a time when
6 the board of supervisors held an advertised public
7 hearing on the creation of the CDA?

8 A Yes, they did.

9 Q And was that on September 26, sir?

10 A It was.

11 Q Do you recall whether any representatives
12 of the Taubman companies appeared and spoke to the
13 board during the public hearing?

14 A Yes, they were.

15 Q Without going into detail about what their
16 comments were, could you tell the Court who did
17 appear?

18 A Mr. Pearson appeared as well as Mr. Proto
19 and Mr. Johnson.

20 Q And were they there, sir, and speaking in
21 opposition to the proposed resolution?

22 A They were.

23 MR. RAPISARDA: Your Honor, if I may ask to
24 turn to tab 41, please?

25 THE COURT: All right.

1 BY MR. RAPISARDA:

2 Q Can you identify the document behind tab
3 41?

4 A This is information that was presented to
5 the board of supervisors on that evening after the
6 public presentation by the individuals present.

7 MR. RAPISARDA: Thank you. Your Honor, we
8 would move its admission.

9 THE COURT: Any objection to 41?

10 MR. SABOURIN: No, Your Honor.

11 THE COURT: 41 is admitted.

12 BY MR. RAPISARDA:

13 Q Mr. Hazelett, on that same evening, did any
14 other citizens or any other persons in the audience
15 address the board of supervisors during this public
16 hearing?

17 A None that I recall.

18 Q And what action, sir, did the board take at
19 the conclusion of the public hearing?

20 A The board of supervisors approved the
21 creation of the Community Development Authority.

22 MR. RAPISARDA: Thank you. Your Honor, if
23 we could turn to tab three which is in evidence as an
24 organic document, please?

25 THE COURT: All right.

1 BY MR. RAPISARDA:

2 Q And Mr. Hazelett, you recognize this
3 document, sir? This is the resolution that the board
4 passed on September 26, 2000?

5 A This is the resolution creating the Short
6 Pump Town Center Community Development Authority.

7 Q And does this resolution, sir, have
8 attached to it articles of incorporation as well as a
9 list of the board members of the newly created
10 authority?

11 A It does.

12 Q Were you familiar, Mr. Hazelett, with the
13 individuals that were appointed by the board to the
14 authority?

15 A I am familiar with them in their business
16 capacities and their reputation in the community,
17 yes.

18 Q Now, Mr. Hazelett, did there come another
19 meeting of the board in October where the board had
20 occasion to consider an ordinance with respect to the
21 Community Development Authority?

22 A There was.

23 Q All right, sir. And would that have been
24 October 24, 2000?

25 A Yes, it would.

1 MR. RAPISARDA: Your Honor, if I may direct
2 your attention and that of the witness to tab seven.

3 BY MR. RAPISARDA:

4 Q And Mr. Hazelett, may I ask you, sir, is
5 this the ordinance that was approved by the board
6 during that meeting?

7 A This was the ordinance establishing the
8 special assessment and authorizing the agreement
9 which was attached.

10 Q And did that attach and did the board
11 approve that evening, sir, what we call the
12 memorandum of understanding and the
13 economic-development agreement?

14 A It did.

15 Q Simply stated, Mr. Hazelett, without going
16 through those, what was your understanding of how
17 those agreements worked in this transaction?

18 A These agreements established the procedure
19 in which the bonds would be negotiated, payments
20 would be made, special assessments, of course, to the
21 developer, how funding would be provided to the
22 Economic Development Authority and how it would go
23 either to the developer or to the CDA.

24 Q And did the ordinance, sir, also include a
25 document known as the rate and method of

1 apportionment for the special assessment?

2 A Yes, it did.

3 Q Okay. And who prepared that document, if
4 you know?

5 A I do not know.

6 Q And did the board at that time in approving
7 the ordinance set the parameters for the special
8 assessment?

9 A It did.

10 Q Thank you. Now, at this meeting,
11 Mr. Hazelett, on October 24, this also would have
12 been a public hearing; is that correct?

13 A Yes, it was.

14 Q And was there any comment made to the board
15 by either the Taubman representatives or any other
16 members of the public at the October 24 meeting?

17 A I don't think there were.

18 Q Okay. Do you know, Mr. Hazelett, whether
19 or not any written comments were received by the
20 board members on the date of the board meeting?

21 A Yes. There was a written letter stating
22 the objections which were submitted, yes.

23 MR. RAPISARDA: Your Honor, if we could
24 turn, and I would ask that the documents behind tab
25 42 -- Mr. Hazelett, if you can identify that, we

1 would move its admission.

2 THE WITNESS: Yes. This is the letter
3 addressed to the chairman of the board, and which was
4 received that day signed by Mr. Proto.

5 BY MR. RAPISARDA:

6 Q And this was a letter, sir, was it not, in
7 opposition to the board's action?

8 A Yes, it was.

9 THE COURT: Any objection to 42?

10 MR. SABOURIN: No, Your Honor.

11 THE COURT: 42 is admitted.

12 BY MR. RAPISARDA:

13 Q Mr. Hazelett and Your Honor, if I may turn
14 back to the beginning, again, Exhibit 1, and we'll
15 try to wrap up shortly, Your Honor, and ask you,
16 Mr. Hazelett, if you can turn to an attachment to the
17 petition that lists certain public improvements. I
18 think it's titled Exhibit C, Description of Public
19 Improvement.

20 A Yes.

21 Q Have you had occasion to review this
22 document before, sir?

23 A Yes, I have.

24 Q What is your understanding, Mr. Hazelett,
25 of who will own the various improvements listed in

1 Exhibit C to the petition?

2 A The improvements will either be owned by
3 Henrico County, which would be in the instance of
4 water and sewer, or they would be owned by the
5 Community Development Authority.

6 Q All right, sir. And I think the bonds that
7 we're talking about here have a five-year life; is
8 that correct?

9 A That is correct.

10 Q Who do you understand, sir, will own these
11 various improvements once the five-year period of the
12 bonds is expired?

13 A That has not been decided at this point.

14 Q How about the water and sewer trunk lines,
15 who would own those once the five years has expired?

16 A Water and sewer trunk lines, of course,
17 would become the possessions of Henrico County.

18 Q And would the County own and operate and
19 maintain those lines?

20 A We would, as well as the left-turn signal
21 and traffic signal which, of course, would be on
22 Broad Street and maintained by the Virginia
23 Department of Transportation.

24 Q In fact, Mr. Hazelett, this development
25 creates some additional demands on Henrico County,

1 doesn't it?

2 A We believe it does, yes.

3 Q Okay. And going down, I think you've
4 talked about water and sewer, but let me just ask you
5 briefly who is benefitted by the extension of those
6 water and sewer lines?

7 A We believe the community at large is
8 benefitted by the extension of the water and sewer
9 lines as well as the other items which are listed
10 here.

11 Q And why is that, sir, with respect to the
12 water and sewer?

13 A Water and sewer in this particular instance
14 provides not only service to this particular tract of
15 land, but also would be extended to other tracts of
16 land and other developments along the corridor.

17 Q How about storm-water-management
18 facilities, what function will they perform and who,
19 if anyone, will benefit from those facilities?

20 A Storm-water management, in this particular
21 instance, best management practice, BMPs, will be
22 used for water quality. The County has the
23 alternative to look to these on a regional basis or
24 to look to them on a particular basis. They do
25 provide improvement in water quality as well as some

1 storm-water retention, if you will, for downstream
2 efforts. They do provide some assistance to the
3 community.

4 Q And do you know, Mr. Hazelett, whether the
5 County, like other governments, is required, under
6 state law, to protect the Chesapeake Bay and meet
7 other environmental requirements?

8 A We are, sir.

9 Q And would this be something that would go
10 towards meeting those requirements?

11 A Yes, sir.

12 Q And you touched on the roads abutting the
13 CDA. Is there anything you wanted to add to what you
14 said previously on that?

15 A No. They would be public roadway
16 improvements.

17 Q Let's talk about the ring road a moment,
18 Mr. Hazelett, and perhaps we could get out the
19 exhibit that shows, just so we can see that -- in
20 fact, let's get out, if I may, Your Honor, Exhibit
21 62, which was the aerial. Mr. Hazelett, looking at
22 that exhibit, if you want to come down, I'll leave
23 that up to you; maybe it will help the Court. Could
24 you point out what function is served by the ring
25 road and who you think would benefit from such a

1 road?

2 A As I mentioned earlier, this particular
3 site, this particular corridor itself is bound by
4 Interstate 64 on the north, which while it provides
5 ample traffic flow through the area of course can
6 only be accessed at a particular interchange point.
7 West Broad Street is a major arterial corridor
8 through this area that provides the overall traffic
9 circulation to and from any development along through
10 here. What we see here is a necessity wherever
11 possible to improve the capacity or to reduce the
12 number of vehicles on Broad Street whenever we can.
13 In order to do that, we are looking at the continuous
14 use of this little road as well as this connection
15 back to the east, as well as its connection to the
16 west to what would then be North Gayton Road and an
17 interchange at 64 to provide access into and through
18 all of this development, in order to ensure that we
19 are reducing the turning movements and the other
20 aspects of volumes on Broad Street which only
21 increases the public capacity on these facilities by
22 providing the movement of public traffic through this
23 particular area. It's very, very similar to what we
24 have done on the eastern side, if you will, of
25 Pouncey Tract Road, where there are some large box

1 developments that if you go out there, you will see a
2 connector road that runs from Pump Road, comes around
3 behind, comes down to this point. It picks up
4 traffic, public traffic, if you will, from these
5 developments and allows it to access our public
6 streets without impacting this critical intersection
7 of Pump Road, Pouncey Tract and Broad Street. It, in
8 essence, is improving the capacity on the public
9 roads, both Pouncey Tract and Broad Street, by
10 allowing the circulation and distribution to and from
11 these facilities on this road. It is a private road,
12 serving a public function.

13 THE COURT: But why would anyone want to go
14 on the ring road unless they were going to the mall?

15 THE WITNESS: Your Honor, in this
16 particular instance, because of the nature of Broad
17 Street, the nature of 64, there is an enormous amount
18 of traffic on Broad Street itself. We know that from
19 the records submitted by the developer. The reports
20 that are there indicate that there is heavy traffic
21 volume, people desiring to move to and from different
22 developments --

23 THE COURT: My question was, why would
24 people go on the ring road? Are you saying that
25 people would use the ring road as a shortcut even if

1 they didn't want to go to the mall?

2 THE WITNESS: They could, sir. If you
3 wanted access to Interstate 64 without doing this
4 number, you could make this movement right here and
5 have direct access.

6 THE COURT: All right.

7 THE WITNESS: That was the proposal by
8 looking at this, because there is a means of travel
9 access of public movements throughout all of these
10 developments. The other information, of course, is
11 we can't move up here because of where 64 is and the
12 fact that it has no access. And of course Broad
13 Street being the boundary to the south, we believe,
14 provides a distribution of traffic from all over this
15 development and moving it to points where you can
16 move back across 64, either to or from, without going
17 on Broad Street, which of course, we believe, does
18 provide a public function.

19 BY MR. RAPISARDA:

20 Q Mr. Hazelett, you qualified earlier as an
21 expert in traffic engineering. Is it your opinion,
22 am I stating correctly that it is your opinion that
23 the ring road does serve a public benefit to Henrico
24 County?

25 A It does from the standpoint of the overall

1 development and the overall circulation throughout
2 the corridor.

3 Q Thank you. You understand that that road
4 is open to public motorists on an unlimited basis?
5 What is your understanding?

6 A It's open 24 hours a day.

7 MR. RAPISARDA: Thank you. We're done with
8 that exhibit for now. We'll move on.

9 THE COURT: All right.

10 BY MR. RAPISARDA:

11 Q We'll go back down the list, Mr. Hazelett,
12 if you don't mind. The next item, I believe, is
13 lighting.

14 THE COURT: Has there been any discussion
15 as to what the speed limit will be on the ring road?

16 THE WITNESS: Speed limit, Your Honor,
17 would be justified or verified by the geometrics and
18 the point of access on it. I would anticipate that
19 the speed limit is simply going to be based on the
20 volume of traffic on there. I don't anticipate them
21 to be traveling in excess of 30 miles per hour,
22 sometimes it will be 15, depending upon the movement
23 on that circulation road.

24 BY MR. RAPISARDA:

25 Q Let's take the next few items together, and

1 that is lighting, landscaping and plaza. Can you
2 tell the Court, Mr. Hazelett, what function and what
3 benefit you see coming from these improvements in
4 your experience as the county manager?

5 A This is one of the unique facilities about
6 this particular mall, and that is the pedestrian
7 plaza we're talking about here. More and more, as
8 Henrico County grows, as it becomes urban and you get
9 into the aspect of urban amenities, places where
10 people can go, they're beginning to lose their focal
11 point. They're beginning to lose their identity in
12 reference to things that they can do, in actuality,
13 the community itself. By providing this plaza, we
14 believe we are doing just that. We are providing a
15 public amenity which can be used by the people for
16 any type of activity that they undertake, including
17 concerts, including actual walking, including
18 gatherings, community gatherings and so forth, which
19 has been mentioned to some of the community
20 associations in the area. Anytime that you provide
21 an urban park type setting, which is done in any
22 number of cities and in some urban counties, you
23 begin to look at the amenities that go along with
24 that. Associated with the plaza, of course, is
25 landscaping. Any time that you want to provide a

1 recreational aspect or a park, of course you want to
2 include landscaping, trees and shrubs wherever you
3 can as an amenity to reduce the stress of the public
4 that comes, an amenity to help them, in reference to
5 the undertakings of a recreational nature.

6 Obviously, any time that you include this
7 in the parking aspects, you must look to the
8 lighting. Henrico County has been and continues to
9 be very concerned in reference to its residents. Any
10 time that you have the ability to have nighttime
11 activities, we prefer, when they're of a public
12 nature, to have areas that are lighted available to
13 them for their protection as well as their ability to
14 see actually where they're going to and from the
15 plaza.

16 Q Mr. Hazelett, you mentioned communities,
17 are there any residential subdivisions in proximity
18 to the proposed Short Pump Town Center?

19 A Yes, sir, very close on the opposite side
20 of Broad Street, the Wellesley community, which is a
21 very large community, continues to expand in that
22 particular area.

23 Q How about, sir, to the north of Broad
24 Street and along the Pouncey Tract area, is there any
25 subdivision development in that area?

1 A To the north of Broad Street in the Pouncey
2 Tract area is probably the fastest growing area of
3 Henrico County; subdivisions occurring daily. We
4 have the Wyndham development, of course the latest
5 which is the Twin Hickory development, houses upon
6 houses, continual residential development in this
7 particular corridor, which, of course, is anticipated
8 to increase.

9 Q All right, sir. You mentioned earlier,
10 Mr. Hazelett, the White Oak semiconductor development
11 and the fact that the board supported incentives for
12 that project, I think you said in the \$40,000,000
13 range. What affect have those incentives had on
14 bringing any additional business into Henrico County?

15 A Economic development is our number one
16 priority. In addition to the major initial
17 investment of White Oak, most people are not aware of
18 it, we were aware when we made those recommendations
19 to the board that there would be associated
20 businesses. To date, over 65 business have located
21 in Henrico County that are associated with White Oak
22 itself.

23 Q All right. If I could ask you a final
24 question, Mr. Hazelett. What was the bottom line for
25 your recommendation to the board of supervisors in

1 recommending that they go into this transaction?

2 A Henrico County has been and is somewhat
3 different than a lot of other localities which you
4 read about in the paper. We are open -- our number
5 one priority is economic development. We are trying
6 to provide a quality of life to our residents at the
7 lowest possible tax cost to them. We look to
8 virtually every piece of economic development that is
9 a large generator of tax revenue in order to benefit
10 the citizens of the County. This was a unique
11 opportunity in the aspect of providing what we
12 believed was a mall that would not only assist the
13 community, but would enhance the overall quality of
14 life while generating additional tax revenue that was
15 not anticipated with normal development in Henrico
16 County. Combined with that, the realization that
17 there is probably only one of these in any
18 metropolitan area, there became a real desire on my
19 part and even the board's part, once seeing all of
20 the renderings, that this is a unique opportunity,
21 something that Henrico County should consider, should
22 try to bring to Henrico County for all its business
23 benefits. We know that it will create businesses.
24 We know that it will create jobs. We believe that it
25 will create amenities that can be used by the public

1 as it continues to grow in Henrico County. We simply
2 believe that based upon those tax revenues, 6.6, 9.3
3 million dollars is something that we had to do
4 everything possible to bring. It was, in essence, a
5 benefit to the quality of life and the future of
6 Henrico.

7 MR. FOOTE: Thank you. That's all, Your
8 Honor.

9 THE COURT: Mr. Spencer, is your
10 cross-examination going to take longer than 12
11 minutes?

12 MR. SPENCER: A little bit.

13 THE COURT: Why don't we go ahead and break
14 for lunch? Be back here at 2:00 o'clock. Just for
15 planning purposes, Mr. Rapisarda, how long do you
16 think it's going to take to put on your case? How
17 many other witnesses do you have?

18 MR. FOOTE: Your Honor, we have --

19 THE COURT: Mr. Hazelett, you can step
20 down, sir.

21 THE WITNESS: Thank you, sir.

22 (Witness stood down)

23 MR. FOOTE: We have five other witnesses,
24 none of whom take as much time.

25 THE COURT: Think we can finish all your

1 witnesses today?

2 MR. FOOTE: We have every expectation we
3 can complete this today, Your Honor. I think our
4 last exhibit, we have some deposition testimony from
5 a party that we will read in, that will save probably
6 some, not having to do it through them. So I think
7 that's a total of six pieces, but most of those can
8 be --

9 THE COURT: All right. Mr. Spencer, how
10 many witness are you going to have?

11 MR. SPENCER: None.

12 THE COURT: Mr. Sabourin?

13 MR. SABOURIN: I believe that we have a
14 total of -- let me count them up here.

15 MR. SPENCER: Let me say I have none,
16 assuming he calls who I think he's going to call.

17 THE COURT: Right. How many are you really
18 going to -- you were just trying to scare the
19 Plaintiffs by listing all those people.

20 MR. SABOURIN: Potentially seven witnesses,
21 Your Honor.

22 THE COURT: Okay. We're in the middle of a
23 witness, and sometimes I tell witnesses they can't
24 talk to lawyers at lunch. I don't think this is the
25 kind of case where I have to admonish Mr. Hazelett

1 not to talk to counsel.

2 MR. SPENCER: I think perhaps you should,
3 under the circumstances. It has been long, and we
4 are just about to start cross-examination.

5 THE COURT: Do you think something came out
6 on his direct examination and Mr. Rapisarda is going
7 to try to tell him, watch out now?

8 MR. SPENCER: Yes, I do.

9 MR. SABOURIN: There may be a possibility.

10 THE COURT: Do you also want to be
11 precluded from talking to your witnesses at lunch?

12 MR. SPENCER: Well, since I have none --

13 THE COURT: And for the remainder of the
14 case?

15 MR. SPENCER: That's fine with us.

16 MR. SABOURIN: What's good for the goose is
17 good for the gander.

18 THE COURT: If you want to talk to your
19 witnesses -- because it looks like we will have to
20 come back tomorrow, and if you tell me you don't want
21 Mr. Hazelett to talk to his counsel, I will tell you
22 that you cannot talk.

23 MR. SABOURIN: Is Your Honor limiting that
24 to the -- between direct-examination and
25 cross-examination or not talking at all?

1 THE COURT: It depends on the case. And I
2 haven't heard anything yet that I can imagine
3 surprised you-all. Did anything surprise you or you
4 think surprised Mr. Rapisarda?

5 MR. SABOURIN: No, Your Honor, I would
6 agree with that.

7 MR. SPENCER: My understanding is while the
8 witness is on the stand, he's not supposed to confer
9 with counsel.

10 THE COURT: I don't know there's any hard
11 and fast rule on that. I did it when we took a short
12 recess. If you-all don't want witnesses to talk to
13 counsel, that's fine, but I think it has to apply to
14 all of them.

15 MR. SABOURIN: Just while examination is
16 ongoing, is what I'm understanding.

17 THE COURT: If there's a reason for it.

18 MR. SABOURIN: Pardon me?

19 THE COURT: If there's a good reason for
20 it. I mean, do you think that you're going to be
21 able to get Mr. Hazelett on something that if I allow
22 him to talk to his lawyers you will not be able to
23 get him on?

24 MR. SABOURIN: Not really, Your Honor. I
25 really don't.

1 MR. SPENCER: I hope to.

2 THE COURT: I'm not going to make an
3 admonition. I don't think this is the kind of case
4 in which I need to do that, so I'm not going to make
5 that admonition. There was also a motion to exclude
6 witnesses. I'm not sure, have any witnesses been
7 excluded?

8 MR. FOOTE: Yes, sir.

9 THE COURT: And do you want them not to
10 talk to you-all? I usually tell witnesses they can
11 talk to counsel but they can't talk to anyone else
12 about the case. What do you want to do about that?

13 MR. FOOTE: It is my practice -- treating
14 it as if the rule were in effect -- I never tell my
15 witnesses that are excluded what happened in the
16 courtroom. It may affect what I tell my witness I am
17 going to do with my witness, but I don't tell them
18 what happened, so I, in effect, would treat it as if
19 it were in effect.

20 THE COURT: What do you-all want me to tell
21 the witnesses who have been excluded -- or tell you
22 really, because they're not here. What do you want
23 me to tell you with regard to whether you can talk to
24 these witnesses?

25 MR. SABOURIN: My understanding is the same

1 as Mr. Foote's understanding, that we are not
2 permitted to discuss what's occurring in court. We
3 can discuss issues as it relates to other aspects of
4 the case, but we can't tell them specifically what's
5 happened in court.

6 THE COURT: Mr. Spencer?

7 MR. SPENCER: I have no position on this,
8 Your Honor.

9 THE COURT: All right. That would be the
10 ruling of the Court. You are not precluded from
11 talking to the witnesses, but you cannot tell the
12 witnesses exactly what happened in court. Since
13 Mr. Hazelett was in court, he knows what's happened
14 in court, but I'm also not going to preclude you from
15 talking to Mr. Hazelett. Anything else we need to
16 take up at this point? We will stand in recess until
17 2:00 o'clock.

18 (Witness stood down)

19 (Recess taken)

20 THE COURT: Mr. Hazelett, if you would have
21 a seat again on the witness stand.

22 MR. SPENCER: Judge, as a matter of
23 housekeeping, we do not have a separate binder
24 because so many of the exhibits we thought we would
25 use are included in there, so we will hand ours up as

1 necessary.

2 THE COURT: All right. Do you have enough
3 copies for everyone?

4 MR. SPENCER: Yes, I do.

5

6 CROSS-EXAMINATION

7 BY MR. SPENCER:

8 Q Mr. Hazelett, good afternoon. When did
9 these, the plaza and the lighting and the parking
10 lot, become necessary to meet the increased demands
11 placed upon the locality as a result of the
12 development?

13 A We considered this is as part of our
14 evaluation of the alternative for the Community
15 Development Authority and the fact that this became a
16 very unique opportunity to provide some of the things
17 that are, we believe, necessary for the community,
18 that is the recreational aspect as well as the
19 lighting and landscaping which are associated with
20 that.

21 THE COURT: You need to speak up just a
22 little bit.

23 THE WITNESS: And also the aspect of the
24 traffic circulation and the need to minimize the
25 impact upon, of course, the public facility of West

1 Broad Street when you consider a very large economic
2 development client was coming to Henrico.

3 BY MR. SPENCER:

4 Q Well, my question was a lot simpler than
5 that. My question was when, when did you first
6 consider that these things were necessary?

7 A When we gave evaluation to the Community
8 Development Authority.

9 Q Back in when, September of 2000?

10 A No, sir.

11 Q When?

12 A When we were giving the alternative
13 evaluation and the possibility of using the Community
14 Development Authority we were looking at that
15 alternative, evaluated that there could be
16 improvement we could participate in.

17 Q It's a fact, isn't it, that until today --
18 in fact, today is the very first time that you have
19 ever expressed the view that there was ever evidence
20 that these improvements were necessary to meet the
21 increased demands placed upon the locality as a
22 result of the development?

23 A No.

24 Q Do you remember giving your deposition in
25 this case in my office on January 18 of this year?

1 A Oh, yes, sir.

2 MR. SPENCER: Do you remember that we --
3 page 103, Your Honor. I have a copy for the Court.

4 THE COURT: I don't need that.

5 BY MR. SPENCER:

6 Q Do you remember that I asked you a series
7 of questions about what evidence was available to you
8 back in September of 2000 about whether the ring road
9 and parking were necessary to meet the increased
10 demands placed upon the locality as a result of the
11 development?

12 A You said specifically, Mr. Spencer, I
13 believe --

14 THE COURT: Are you going to read?

15 MR. SPENCER: Yes, sir, page 103, line 15.

16 THE COURT: That was the answer?

17 BY MR. SPENCER:

18 Q I'll read the question, page 103, line 15,
19 Question, "I guess what I'm asking you is as the
20 county manager, what evidence was available back in
21 September of 2000, and I believe this was when it got
22 the stamp of approval, that the ring road and parking
23 were necessary to meet the increased demands placed
24 upon the locality as a result of development," do you
25 remember that question?

1 THE COURT: That's a different question
2 than you asked here, Mr. Spencer.

3 MR. SPENCER: Well, the answer, though --

4 THE COURT: That's why I want you to read
5 the question.

6 MR. SPENCER: That's right.

7 THE COURT: It's a different question.

8 MR. SPENCER: Well, let me ask that
9 question.

10 THE COURT: Ask the question that you
11 wanted to ask, but you can only impeach a witness
12 with the same question.

13 MR. SPENCER: I know. If the Court will
14 let me read the answer, you'll find that it does.

15 THE COURT: You did, but go ahead.

16 BY MR. SPENCER:

17 Q Answer, "I am not aware. I didn't see any
18 information stating that position."

19 Question, "I didn't ask you what you saw, I
20 asked you what was available, and I take it that your
21 answer is I don't know what was."

22 THE COURT: Mr. Spencer, that's not the
23 question you asked. You asked when did it become
24 necessary to --

25 MR. SPENCER: Okay.

1 THE COURT: -- make these improvements,
2 when did they form the opinion that it was necessary
3 to make these improvements or something like that.

4 MR. SPENCER: I apologize to the Court. I
5 thought that was the same.

6 THE COURT: No, it really is not.

7 BY MR. SPENCER:

8 Q Okay. Well, then, what evidence was
9 available to anyone back in September of 2000 that
10 the --

11 THE COURT: That's right, your question
12 was, when did it become necessary.

13 MR. SPENCER: No, I asked when did he
14 decide.

15 THE COURT: No, your question in court was
16 when did it become necessary.

17 MR. SPENCER: I'm asking a different
18 question.

19 THE COURT: That's what I'm saying, that's
20 a different question, but you can't use a deposition
21 for that purpose.

22 BY MR. SPENCER:

23 Q Let me try it for this purpose. What
24 evidence was available back in September of 2000 that
25 the ring road and parking were necessary to meet the

1 increased demands placed upon the locality as a
2 result of the development?

3 A The only evidence, Mr. Spencer, that was
4 available was our belief that by using the Community
5 Development Authority we could participate in the
6 cost of these items.

7 Q So you did not have any evidence or
8 information --

9 A That's right.

10 Q -- to support that position. What evidence
11 was there in September of 2000, and I'm asking the
12 same question with regard to the entrance roads,
13 that -- and these are different from the entrance
14 roads that are abutting the CDA and would be on
15 public property. What evidence was there in
16 September of 2000 that the entrance roads would be
17 necessary to meet the increased demands placed upon
18 the locality as a result of development?

19 A I assume, Mr. Spencer, you're referring to
20 the entrance road, not the public improvements on
21 Broad Street.

22 Q Right.

23 A The answer would be the same.

24 Q Okay. And the same thing would be true of
25 the lighting and landscaping and plaza sidewalks and

1 canopies and excavations, correct?

2 A Correct.

3 Q And the same thing would be true with
4 respect to miscellaneous soft costs and contingencies
5 that are shown on the last page of Plaintiffs'
6 Exhibit 1?

7 A I was not able to identify, nor am I able
8 at this point in time to identify the soft costs.

9 Q So as you sit here today, as the county
10 manager of Henrico, the 1.5 million dollar line for
11 soft costs and contingencies that we see on the last
12 page of Plaintiffs' Exhibit 1, you don't know what
13 those are.

14 A That's correct.

15 Q Is it not true that that is the 1.5 million
16 that was broken out on the power-point presentation
17 that Judge Johnson referred to?

18 A No, sir, it is not.

19 Q Can you look at Plaintiffs' Exhibit 1, the
20 last page, and tell me how it is, looking at that --
21 if you can, you may not be able to -- the 1.5 million
22 on the power-point presentation, Exhibit 36, that
23 Judge Johnson pointed out, can you relate that 1.5
24 million on Exhibit 36 to anything in Exhibit 1?

25 A I cannot. No, sir.

1 Q Okay.

2 A These were costs or estimates based upon
3 information provided. These are not my estimates and
4 of course, I did not derive the soft costs or
5 contingencies.

6 THE COURT: Let me interrupt you just for a
7 second. There's a drawing here that looks a lot like
8 one of the drawings that you said you did not have a
9 smaller version of. If it's already in here, maybe
10 you don't need to, and you-all may want to go through
11 here and see if there might be some others that are
12 just like the larger ones that you talked about, to
13 save you some time.

14 MR. SABOURIN: I believe that may be the
15 only such graphic.

16 THE COURT: Only one I have found so far.
17 I'm sorry, Mr. Spencer.

18 MR. SPENCER: That's all right.

19 BY MR. SPENCER:

20 Q Referring, if we can, to Exhibit 62,
21 Plaintiffs', just to clarify, is the ring road, this
22 thing in the ring. Is that a public or a private
23 road?

24 A It's a private road which is providing what
25 I believe to be public assistance to the public road

1 of West Broad Street.

2 Q And you believe that it provides that
3 public assistance because of this little dotted line
4 over here to the left between proposed Summit
5 Apartments and Dominion Chevrolet and the left, which
6 would be west on this photograph?

7 A The dotted line that you're showing,
8 Mr. Spencer, yes, it is the same as other dotted
9 lines on there that are not constructed. The size of
10 the line is not the point.

11 Q I'm just trying to identify the road.

12 A I understand, sir, and I'm trying to tell
13 you about that.

14 Q Okay. Well, go ahead.

15 A The point is the road is there. It
16 provides a public function, doesn't make any
17 difference to me how wide it is. The public function
18 that it's providing is that it's reducing the need
19 for overall improvements on Broad Street. It is
20 reducing the capacity reduction that would occur on
21 Broad Street if and when additional signals are
22 having to be provided because the citizens of the
23 entire community have the ability to move on those
24 facilities without going back onto Broad Street.

25 Q Well, you said that the road is there. The

1 fact is, it's not there, correct?

2 A That's correct.

3 Q And the fact is, it doesn't have to be
4 there for four more years, does it?

5 A In order to provide an overall alternative
6 circulation in the area, you are correct.

7 Q All right. Well, the short answer, I mean,
8 getting right to the point, this says up here on
9 Exhibit, what -- excuse me, 72, this is a future
10 access road, correct? Do you want to see?

11 A Yes.

12 THE COURT: And what is that, what exhibit
13 is that?

14 MR. SPENCER: 72. And if Your Honor
15 please, you can see the same thing --

16 THE COURT: I just want the record to show
17 what exhibit he's looking at.

18 BY MR. SPENCER:

19 Q If you look on page 65 of Exhibit 1, that
20 large diagram, you can see in very small print on the
21 left, future access road.

22 A That is a future access road which is
23 committed as a part of the overall plan of
24 development, yes.

25 Q All right. But this access road is not

1 under the plan that was submitted to the County, and
2 the plan that was approved is not going to be built
3 at the same time as the ring road, correct? It's a
4 future access road?

5 A That's correct.

6 Q All right. And the fact is that this other
7 road to the right, where we have Regal Cinemas,
8 again, referring to Exhibit 62, that's not there
9 either, is it?

10 A It's being constructed. It's under
11 construction.

12 Q Isn't it also -- so to the extent that it's
13 your testimony that this ring road is going to be
14 used by a customer -- excuse me, by citizens
15 traveling between 15 and 30 miles an hour around the
16 shopping mall to stay off of Broad Street, they're
17 not going to be able to do that until this future
18 access road is built, correct?

19 A From the whole transportation network,
20 you're correct. They don't have an interchange at
21 I-64 and North Gayton Road at this point, either.

22 Q And by the way, is this road, this future
23 access road, a part of the district, the
24 community-development district?

25 A No, sir.

1 Q All right. And this road is not being
2 funded by the CDA, is it?

3 A No, sir.

4 Q And neither is this road over here, next to
5 Regal Cinema, correct?

6 A Correct.

7 Q Now, it's true, isn't it, that the access
8 to the ring roads to the east and west was something
9 that the County found to be the developer's
10 responsibility when it rezoned this property back in
11 1998?

12 A That's correct.

13 MR. SPENCER: Let me have Taubman Exhibit
14 1, Judge, in the other binder that you have there.

15 THE COURT: All right. Does the witness
16 have that binder also?

17 THE WITNESS: No.

18 MR. SABOURIN: Here's a separate one.

19 BY MR. SPENCER:

20 Q There you go.

21 A Thank you, sir.

22 Q Taubman Exhibit 1 is the letter that you
23 wrote to the developers on June 17, 1998, informing
24 them that the board of supervisors had granted their
25 request to conditionally rezone the property; is that

1 right?

2 A Correct.

3 MR. SPENCER: Judge, we would move Taubman
4 Exhibit 1 into evidence.

5 THE COURT: Is there any objection?

6 MR. RAPISARDA: No, sir.

7 MR. SABOURIN: No objection.

8 BY MR. SPENCER:

9 Q Turn to paragraph 21 if you would, please,
10 sir. Do you see there under access to east and
11 west --

12 A Yes, sir.

13 Q Okay. Under this document, they don't
14 even -- they never have to build either of these east
15 or west access roads, correct?

16 A In 1998, that's correct.

17 Q What document changed that?

18 A Consideration of the Community Development
19 Authority, the unique aspect of the proposed change
20 in the mall from what was approved on the initial POD
21 and the belief that we could participate in the
22 overall construction of these activities through
23 this.

24 Q I'm just asking which document it is, which
25 exhibit is it that changed these access roads from

1 being something which may never be built --

2 A There's no exhibit at this point in time,
3 Mr. Spencer. We have an amended POD which will be
4 brought forward in the very near future for Henrico
5 County to consider.

6 Q So at least according to the operative
7 document that says they're in place today at this
8 trial, there is no legal requirement that either of
9 these roads be built, true?

10 A That's correct.

11 Q Now, then, it's a matter of law in Henrico
12 County that shopping centers provide parking; is that
13 correct?

14 A That is a matter of zoning consideration
15 and the development process yes.

16 Q And it's a matter of zoning law in Henrico
17 County that shopping centers and shopping malls, even
18 regional super malls, provide lighting in their
19 parking, correct?

20 A That's correct.

21 Q It is also a matter of law in Henrico
22 County that shopping centers and regional super malls
23 have to provide access to their retail and service
24 establishments, isn't it?

25 A That's correct.

1 Q That would be a way to get inside of
2 Hecht's and outside of Hecht's, right?

3 A As a matter of the process on a routine
4 shopping-center development, you are correct.

5 Q And even routine shopping centers, Henrico
6 County requires those to provide a place for
7 customers to go inside a routine store and outside a
8 routine store?

9 A With every development in the past up to
10 this point in time you are correct.

11 Q And, in fact, as of this day, you testified
12 earlier, you said "we have never done this before."
13 As you sit here today, on January 31, 2000, every
14 other sidewalk going into every other store, high-end
15 fashion, low-end fashion, K-mart, is a sidewalk
16 that's provided by the developer --

17 A Correct.

18 Q -- by the property owner, correct?

19 A Correct.

20 Q But here, this is the only one that's
21 different.

22 A This is the only one that we have given
23 consideration to Community Development Authority and
24 to participation with the developer, yes, sir.

25 Q Right. In fact, even in this development,

1 as of June of 1998, it was the obligation of the
2 developers to provide, as we see on paragraph two --
3 this again is Taubman Exhibit 1 -- vehicular access
4 points from the property to West Broad Street.

5 A In June of 1998, yes, sir.

6 Q Right, because that's something developers
7 are supposed to do to get their customers in and out,
8 that's not to relieve the burdens on the locality,
9 correct?

10 A That's correct.

11 Q Okay. And the same thing would be true of
12 vehicular ingress, paragraph four, and egress,
13 sidewalks, landscape amenities, entrance walks and
14 fences, water features, like fountains, et cetera,
15 correct?

16 A If developed without consideration of the
17 Community Development Authority, yes, sir.

18 Q Paragraph four also includes plantings and
19 landscapings associated with the Lauderdale Drive
20 entrance, and I guess that would be over here,
21 correct, these little water areas over here, right?
22 That was all supposed to be done by the developer,
23 correct?

24 A I agree with you to a point, Mr. Spencer.
25 I'm not exactly sure what you're referring to.

1 Q Outdoor lighting, paragraph seven, that was
2 something that was required to be installed by the
3 developer and everywhere else in Henrico County is
4 installed by developers and shopping-center owners,
5 correct?

6 A Correct.

7 Q And in fact, on this location, it's still
8 is going to be installed by the developers, right?

9 A Installed by the developer unless we are
10 considering a Community Development Authority, which
11 is exactly what we are doing, and we are considering
12 a public/private participation through that process.

13 Q Perhaps I wasn't clear. Is the County
14 hiring a lighting contractor to go on this property?

15 A No, sir.

16 Q Is the County hiring a paving contractor to
17 go on this property?

18 A No, sir.

19 Q What means are in place to determine
20 whether the light pole that's being erected in the
21 parking lot is going it be a County light pole or a
22 Pruitt light pole?

23 A We will have to evaluate that through the
24 aspect of the Community Development Authority.

25 Q There is no system in place at this time?

1 A Not at this time.

2 Q And there is no system in place at this
3 time to determine whether the contractor the
4 developer hires is striping a County parking space or
5 a Pruitt parking space?

6 A That's correct.

7 Q And the same thing would be true, I guess,
8 with respect to the trees. We can't tell from
9 looking here, there's no system in place to know
10 whether this tree is going to be a County tree or a
11 Short Pump Town Center tree?

12 A You cannot make that determination, that's
13 correct.

14 Q Returning again to Taubman Exhibit 13, this
15 would be the pedestrian, you see the reference to the
16 pedestrian-oriented shopping center?

17 A I'm sorry, Mr. Spencer?

18 Q I'm moving around a bit, and I apologize.
19 Back on Taubman Exhibit 1, paragraph 13.

20 A Correct.

21 Q All right. All of the sidewalks back in
22 1998 that we see on all of these diagrams were going
23 to be put in by the developers, right?

24 A These are not the same sidewalks in 1998 as
25 they are today, but your point is correct, yes, sir.

1 In 1998 they were required by Henrico County to be
2 done by the developer.

3 Q What's different about the sidewalk between
4 the Hecht's and the Lord and Taylor as it existed in
5 1998 and as it's planned by the Community Development
6 Authority?

7 A The practical matter of the sidewalk, as
8 far as the intention, is the same.

9 Q Do you have any document or any plan at all
10 that allows anyone to determine whose trees are the
11 CDA trees, whose sidewalks are CDA sidewalks, whose
12 lights are the CDA's lights, et cetera?

13 A Not at this point in time.

14 Q What's going to happen in this program is
15 that all of the money, the money that is going to go
16 to the developers from the sale of the CDA bonds, if
17 it goes, if this is validated, goes into a big pot to
18 be spent by the developers, correct?

19 A To be spent by the developer in reference
20 to those items that we believe can be participated in
21 by the Community Development Authority. We would
22 watch very closely in reference to the location and
23 the expenditures to be made to be sure they are
24 proper and legal in reference to the commitment under
25 the CDA and Henrico County.

1 Q And the fact is that that's changing
2 constantly, isn't it?

3 A The estimates are changing constantly,
4 simply because there is not an exact planned POD. An
5 amended POD has not been approved and detailed
6 engineering drawings have not been completed, you are
7 correct.

8 Q I guess what I'm wondering is, I would like
9 you to turn to the next to last page of Plaintiffs'
10 Exhibit 1, not Taubman 1, but Plaintiffs' 1.

11 A I'm limited in room.

12 Q It's a lot of paper. If I'm going too fast
13 for you --

14 A No, sir, I just have to get the other book,
15 Exhibit 1?

16 MR. SPENCER: May I help the witness, Your
17 Honor please?

18 THE COURT: All right.

19 BY MR. SPENCER:

20 Q I have now flagged the two pages I'm going
21 to ask you about. I hope that helps you.

22 A Certainly.

23 Q That page -- it's actually page seven of
24 Plaintiffs' Exhibit 1. That is the description of
25 what are claimed to be public improvements that was

1 in the petition filed by the landowners for the
2 creation of the Short Pump Town Center Community
3 Development Authority, correct?

4 A Filed July, 2000, yes, sir.

5 Q All right. And that is the description of
6 improvements that was actually approved by the County
7 board of supervisors in exhibit -- in the resolution
8 which has been marked as Exhibit 3, correct?

9 A Yes, sir.

10 Q But that is not the schedule of
11 improvements that is in the rate and method of
12 assessment document which has been marked as
13 Plaintiffs' Exhibit 6, is it?

14 A No, it is not.

15 Q In fact, the description of improvements in
16 the rate and method of assessment document includes
17 improvements that aren't mentioned anywhere in the
18 petition for the creation of the CDA, true?

19 A From my observation of the document, that's
20 correct.

21 Q Right. And it also includes an additional,
22 what, \$12,616,972 in improvements that are nowhere
23 mentioned in the petition for the creation of the
24 CDA?

25 A That's because I believe, again, this is a

1 changing document because of cost estimates and other
2 considerations involving the CDA. And in the rate
3 apportionment method here, it may be involving
4 parcels. This is a document that I have not gone
5 over in detail.

6 Q Are you aware that legally, the only thing
7 that the CDA can be authorized --

8 MR. RAPISARDA: Excuse me, Your Honor, we
9 would object to calling for a legal conclusion.
10 Mr. Hazelett is not an attorney.

11 MR. SPENCER: I was asking him if he's
12 aware. It may not have reached his radar screen.

13 THE COURT: What's the relevance?

14 MR. SPENCER: Well, the relevance is going
15 to the fact that what is being contemplated by the
16 rate method is not concluded in the petition for the
17 CDA.

18 THE COURT: What is the relevance of
19 whether Mr. Hazelett is aware of whether it's legal
20 or not?

21 MR. SPENCER: I'll move on and make the
22 point another way.

23 THE COURT: All right.

24 BY MR. SPENCER:

25 Q Let me show you what's been marked as TP

1 Exhibit 112. There you go. TP Exhibit 112, on page
2 B-1, reveals to us the difference between what's in
3 the petition for approval of the CDA, Exhibit 1, and
4 what's in the resolution for the rate and method of
5 assessment, Exhibit 6, correct?

6 A It appears to be, yes.

7 Q Pardon?

8 A It appears to be. I'm looking at this for
9 the first time.

10 MR. SPENCER: Okay. Do you notice in
11 looking at page -- Judge, we would move, by the way,
12 TP 112 into evidence. I'm moving TP 112.

13 THE COURT: Sorry, is there any objection?

14 MR. RAPISARDA: No objection.

15 MR. SABOURIN: No objection.

16 THE COURT: All right. TP 112 is admitted.

17 MR. SPENCER: Thank you.

18 BY MR. SPENCER:

19 Q We see that the combination -- do you see
20 the parking has been moved up, correct? The ring
21 road was separate from parking before, now it's ring
22 road and parking, correct?

23 A Correct.

24 Q And before, in the petition for the
25 creation of the CDA, the total of the parking and

1 ring road was \$6,000,733 and change, correct?

2 A Correct.

3 Q But when the ring road and parking were put
4 together, the total ring road and parking is only
5 3,899,787, correct?

6 A Yes, sir.

7 Q Which marked spaces went from being CDA
8 parking spaces back to being developer's parking
9 spaces?

10 A From this document, I cannot discern that.
11 Again, that is a moving target based upon estimates
12 and finalization of what we would participate in
13 under the aspects of the CDA.

14 Q Sidewalks and canopies were added, correct?

15 A Correct.

16 Q Which sidewalks and canopies?

17 A I cannot answer that.

18 Q So Judge Johnson has no way of knowing
19 which sidewalks and canopies we have seen in these
20 pictures are part of the petition for creation of the
21 CDA and which aren't.

22 A I believe, Mr. Spencer -- no, there's not.
23 I believe the dilemma that you're facing is you're
24 trying to use estimates on a document that is
25 changing from time to time with the overall plan. I

1 don't believe you would ever have half of a sidewalk
2 within a CDA and half not, probably the total
3 sidewalk would be. That cost may be in excess of
4 these estimates at this point. I can't tell you,
5 though.

6 Q But the sidewalks and canopies you will
7 confirm for us were added after the petition for the
8 creation of the CDA and after the resolution of the
9 board of supervisors, correct?

10 A They may have been added in reference to
11 this document. It's been my understanding, as you
12 pointed out in the first document, that the plaza was
13 included; to me, of course, considers the sidewalks
14 and the canopy.

15 Q Please accept for the purposes of my
16 question that at least in our perspective, it is
17 important whether the sidewalks and canopies are in
18 the petition for the creation --

19 MR. RAPISARDA: I object to arguing with
20 the witness.

21 THE COURT: Objection is sustained.

22 BY MR. SPENCER:

23 Q Would you agree that there is no mention
24 that -- sidewalks and canopies, to quote the statute,
25 "Are not enumerated in the resolution or ordinance

1 creating the CDA, nor are they enumerated in the
2 petition?"

3 A They are not enumerated in the ordinance.
4 As far as enumerated in the petition, it's my
5 assumption they're included in the plaza.

6 Q You were asked one question by
7 Mr. Rapisarda about who was going to own the CDA
8 improvements at the end of five years, and you said
9 that has not been determined. There are two options,
10 correct, one is the CDA can continue to own them and
11 the other is the CDA can simply give them to the
12 developers, correct?

13 A That's correct.

14 Q You don't know which one is going to
15 happen?

16 A That has not been decided at this time.

17 Q I want to show you a document which is TP
18 Exhibit 34. Do you recognize Exhibit TP 34 to be
19 talking points prepared for you and members of the
20 board of supervisors back in 2000, September time
21 frame, when these incentives were coming up for a
22 vote?

23 A I'm not exactly sure of the date, but yes,
24 I recognize them as being prepared, yes.

25 MR. SPENCER: Judge, we would move Exhibit

1 TP 34 into evidence.

2 THE COURT: Any objections?

3 MR. RAPISARDA: No, sir.

4 MR. SABOURIN: None, Your Honor.

5 THE COURT: TP 34 is admitted.

6 BY MR. SPENCER:

7 Q It's true, isn't it, as paragraph two
8 notes, that in the case of the mall, that would be
9 the Short Pump Town Center Mall, some of the
10 improvements are going to be done on the developer's
11 land and that would include the parking lots and the
12 green areas, correct?

13 A That's what it says.

14 Q In fact, all of the improvements within the
15 community-development district are on land owned by
16 either the Pruitt family or one of its companies or
17 Forest City, correct?

18 A The traffic signal in the left-turn lane is
19 not.

20 Q The traffic signal in the left-turn lane on
21 Broad Street, right?

22 A Right.

23 Q But apart from that, everything else is
24 going on the developer's land?

25 A That is correct.

1 Q Okay. Page -- if you look at paragraph 15
2 of TP 34.

3 THE COURT: Sorry, what page was that?
4 BY MR. SPENCER:

5 Q Page four, paragraph 15. This document
6 says that no one is offering incentives, we aren't
7 using taxpayer money. That is no longer true, am I
8 correct about that?

9 A That depends on your viewpoint. This is a
10 document prepared to answer questions to the public,
11 and from a technical standpoint, you are correct, we
12 are using incentives. It is the aspect of how we are
13 paying for those incentives, which is incremental tax
14 revenue.

15 Q Back in June -- I will turn from this
16 document now, TP 34, so you can put that aside. I'm
17 shifting gears here. Back on July 13 of 1999, this
18 is the letter that you wrote to Mr. Millsap yet never
19 mailed. It's exhibit, I think, 25, in evidence.
20 Turning to the second page, at least in July of 1999,
21 you, as the city manager -- excuse me, county manager
22 of Henrico, differentiated between services,
23 buildings and infrastructure to meet the demands of
24 our citizens on the one hand and incentives to
25 enhance retail development on the other hand,

1 correct?

2 A That is correct.

3 Q And in fact, turning to page -- excuse me,
4 Exhibit 24 -- this is also exhibit, Plaintiffs'
5 Exhibit 24, also in evidence, there, too, the
6 discussion is of -- page two, third bullet point --
7 let me know when you're there.

8 A Page two?

9 Q Third bullet point.

10 A They will require?

11 Q They will require inducements, right.

12 A Yes, sir.

13 Q Inducements to the department stores?

14 A Right. Yes, sir.

15 Q And that's what's driving all of this;
16 isn't it?

17 A No, sir.

18 Q It's not?

19 A If you recall, Mr. Spencer, under direct I
20 was asked the question in reference to what was
21 occurring. I did testify in reference to the letter
22 of Mr. Millsap and also this document prepared by
23 counsel for the developer. There was a turning point
24 in reference to the Henrico County Board of
25 Supervisors and myself concerning our position with

1 incentives, concerning our position for assistance in
2 retail development, and that was based upon the
3 unique aspect of this particular development and our
4 belief that we can participate.

5 Q I guess what I'm asking you is, is there
6 any document that you can point to that shows that at
7 any time before today, it was the County's position
8 that anything up here at Short Pump Town Center was
9 an infrastructure improvement that was necessary to
10 meet the increased demands placed upon the county?

11 A Only the aspect of the document that we
12 prepared in reference to the Community Development
13 Authority which indicates our belief that we can
14 proceed, no official document.

15 Q Where, in any of the presentations to the
16 County, does it say that this area is going to be
17 open 24/7 so people from my neighborhood, VCU, can
18 come out there and have a picnic at 3:00 o'clock in
19 the morning?

20 A That has been indicated. It's not on the
21 document as I recall.

22 MR. SPENCER: Thanks, Mr. Hazelett. No
23 further questions.

24 CROSS-EXAMINATION

25 BY MR. SABOURIN:

1 Q Good afternoon, Mr. Hazelett. I want to
2 ask you some questions to make sure that I fully
3 understand exactly what the money from these bonds is
4 going to be used to construct. And I would like to
5 take Exhibit 63, and on Exhibit 63, I would like you
6 to reference the last page of Exhibit 1 of the CDA.

7 A Exhibit 1, sir? I've got so many notebooks
8 up here.

9 Q It's the one that says Short Pump Town
10 Center versus Taxpayers on the binder. And what
11 we're talking about is Exhibit C, which has a
12 description of public improvements.

13 THE COURT: That's the right one there.
14 BY MR. SABOURIN:

15 Q Go to Exhibit C, which is the last --
16 Exhibit 1, go to Exhibit C, which is the last page in
17 that exhibit.

18 A We're there.

19 Q Okay. The first thing that I want to ask
20 you about is the ring road. And the ring road that's
21 being talked about is this road --

22 THE COURT: You-all keep referring to
23 Exhibit C as the last page. It's not the last page
24 in mine. Oh, I see.

25 MR. SABOURIN: Second from the last page.

1 THE COURT: You have two copies of Exhibit
2 A. All right, go ahead.

3 BY MR. SABOURIN:

4 Q The ring road is this road that goes
5 entirely around the footprint of the shopping center;
6 is that correct?

7 A And the connection to the east, yes, sir.

8 Q And this being the connection to the east?

9 A No, sir, the connection just above that. I
10 would define that as a connector road.

11 Q This one up here?

12 A Yes.

13 Q Does it also include these connector roads
14 on West Broad?

15 A I define those in this description as
16 entrance roads, yes, sir.

17 Q So those are the entrance roads, and this
18 is the connector road?

19 A That's my determination.

20 Q But that's what the bond funds are going to
21 go to pay for; is that correct?

22 A Yes, sir.

23 Q All right. The second issue or the second
24 item is the parking lot, presumably that is the
25 parking lot that surrounds the Hecht's, Lord and

1 Taylor, Nordstrom's and Dillard's, correct?

2 A Or portions thereof. I have not had any
3 information that identifies the overall aspect.
4 Again, this is a moving target in reference to the
5 estimates, but I believe it is, yes.

6 Q Is this a two deck or one deck parking lot?

7 A It's -- tough question. I would say it's
8 one deck. The mall itself is actually two levels.
9 There's a grade differential.

10 Q But the bond money is going to pay for that
11 parking lot, correct?

12 A Surface parking, yes.

13 Q Now, there's a reference to lighting.
14 Where is the lighting in this?

15 A In the parking lot and also in the plaza.

16 Q Parking lot and in the plaza, which is the
17 center area here?

18 A Yes, sir.

19 Q Okay. And the bond money is going to pay
20 for that?

21 A Yes, sir.

22 Q Okay. Then there is the landscaping, can
23 you tell me where that is?

24 A Landscaping associated with the plaza and
25 perhaps even landscaping associated with the parking

1 lot. Again, until the final details of all the
2 drawings are complete, till the cost estimates are
3 prepared, I can't exactly define that at this point.

4 Q But is it landscaping that will go over
5 this 147-acre area?

6 A It would be landscaping on the property
7 defined by the CDA that at this point, while it was
8 initially 147 acres, is somewhat less than that now.

9 Q If you take a look at the last page of
10 Exhibit 1 --

11 THE COURT: And I just noticed Exhibit A,
12 that's different, so I'm putting it back in the book.

13 BY MR. SABOURIN:

14 Q Which -- that's Exhibit A, isn't it?

15 A Yes, sir.

16 Q And that shows that the property is 147.186
17 acres; is that correct?

18 A Which was submitted with the petition in
19 July of 2000, yes, sir.

20 Q Okay. And that is the CDA area, isn't it?

21 A That was the requested CDA area which was
22 on the petition, yes, sir.

23 Q And was the CDA petition approved in that
24 amount?

25 A Yes. I'm not trying to be evasive. The

1 language also says that it can be reduced, yes.

2 That's where it starts, the 147 acres.

3 Q And isn't the plan to convey out of or
4 remove somehow from the CDA the four department store
5 pads?

6 A Yes, sir. The document speaks to the four
7 department store pads and also speaks to the land on
8 the outside of the ring road, in essence, around it,
9 but leaving those parcels in along Broad Street. If
10 you read the document further, it indicates that
11 those could be taken out.

12 Q So where these parcels are shown here, they
13 could be removed?

14 A That's a big --

15 Q These buildings, looks like these represent
16 buildings along the --

17 A Between the eastern-most and western-most
18 entrance road they remain. Those portions around it
19 could be removed to the back, yes, sir.

20 Q Then there are plaza, sidewalks and
21 canopies, and just to make sure I understand what
22 we're talking about, I'd ask you to take a look at TP
23 Exhibit 100-B. You have seen this before, haven't
24 you?

25 A Yes, sir, I have.

1 Q This is a rendering that was presented to
2 the board of supervisors?

3 A That's correct.

4 MR. SABOURIN: I don't think this is in
5 evidence. We would move it into evidence.

6 THE COURT: Is there any objection?

7 MR. RAPISARDA: No objection.

8 THE COURT: And we will admit a smaller
9 version of that. What number was that?

10 BY MR. SABOURIN:

11 Q TP 100-B. Now, the sidewalks that are
12 being talked about, are they shown on this rendering?

13 A Sidewalks would be adjacent to the
14 buildings as well as the plaza itself, as well as
15 access going into the plaza areas, yes, sir.

16 Q Well, on this particular rendering, we have
17 got some green areas, and then you have some colored
18 areas that look to me like plaza and sidewalks; is
19 that fair?

20 A Yes, sir. You're looking at a schematic
21 drawing. It's not an actual detailed architect's or
22 engineering drawing. But you're correct, those areas
23 that are shown in an off brown and yellow are the
24 plaza and sidewalk areas, yes, sir.

25 Q Okay. So these areas here and the areas

1 that are in this green are areas where stores will go
2 in, correct?

3 A That's true.

4 Q And it is this plaza that is being built by
5 the money coming from the bonds, correct?

6 A Yes, sir.

7 Q Where are the canopies that are talked
8 about, are they in this area?

9 A If you'll look, you have another drawing
10 that shows a second level, and there are canopies and
11 walkways on the second level associated with the
12 pedestrian movements. There are some canopies on the
13 first level also.

14 Q Is it shown on this exhibit, which is --

15 A No, sir. The one behind there, sir, go
16 back one. That one right there is the first level.
17 You're looking -- and I'm sorry, that's a distance
18 from me. That is the lower level. The one that you
19 have is the second level.

20 Q So this is the second level?

21 A Yes, sir, and with all due respect, if you
22 would read that caption down there in the left-hand
23 corner, does that say second?

24 Q No, it says lower level.

25 A And again, I'm trying to read from a

1 distance.

2 Q This also says lower level plan.

3 A Well, there is one that says second level
4 there.

5 Q Are the canopies on the second level?

6 A Some can be on the first level, some on the
7 second level.

8 Q Is this a canopy here?

9 A No, sir, those are trees.

10 Q Are there any canopies that are shown on
11 this rendering?

12 A They would be adjacent to the building.
13 Again, they are architectural treatments which are
14 proposed for different buildings at different
15 locations. That's one of the reasons I can't tell
16 you exactly where the canopies are, because it's a
17 schematic drawing, subject to change.

18 Q What are these canopies going to be made
19 of?

20 A They can be made of different things. They
21 can be made of roofing material in one instance.
22 They may be made of iron in another instance or
23 cloth. There's different types of architectural
24 treatment.

25 Q Now, going back to Exhibit 63, the ring

1 road and the parking lot are going to be owned by the
2 CDA?

3 A Yes, sir.

4 Q And the CDA will be maintaining those
5 facilities, correct?

6 A Maintaining it through a contractual
7 agreement or itself, yes, sir.

8 Q Well, will the County be maintaining those?

9 A No, sir.

10 Q So a private contractor is going to
11 maintain property for the CDA?

12 A It's possible, yes, sir.

13 Q Do you know who is going to maintain it?

14 A At this point in time, that is still up for
15 conversation and agreement.

16 Q And is part of the agreement what -- who
17 will maintain the security within this context?

18 A No, sir. While there may be security as
19 far as the mall itself, because of the consideration
20 of the CDA, there will also be police service
21 provided by the division of police of Henrico County.

22 Q Well, will the Henrico County police patrol
23 traffic on this ring road?

24 A We will patrol traffic, yes, sir, in
25 reference to security.

1 Q So if someone is speeding along there, they
2 will get a ticket from the Henrico County police?

3 A No, sir. We do not set speed limits on
4 roadways which are private in nature.

5 Q If someone is driving recklessly will they
6 be ticketed by Henrico?

7 A They could, yes, sir.

8 Q Are there other services that the County
9 will provide for the maintenance of these facilities?
10 We talked about security --

11 A To the best of my knowledge, at this point
12 in time, I'm not aware of any. Again, those items
13 have to be discussed based upon all the drawings and
14 aspects of the arrangement that the CDA proposes to
15 make. The County is not making that, the CDA has to
16 make those decisions.

17 Q And the CDA and the developer will enter
18 into a development agreement ultimately, won't they?

19 A I think so, yes.

20 Q And that has not been done, has it?

21 A That's correct.

22 Q Let me just ask you a couple of questions
23 about Exhibit 62. This is an aerial view of the
24 site. You would agree that this is prime real
25 estate, wouldn't you?

1 A Yes, sir.

2 Q And you would also agree that if these
3 bonds are not validated, the property, which is Short
4 Pump Town Center, will be developed one way or the
5 other, won't it?

6 A It will be developed in some means, yes.

7 Q And it won't lie fallow, will it?

8 A No, sir.

9 Q Now, I'm not a traffic engineer, but I
10 understood that you proposed that a person coming
11 down West Broad Street could, instead of staying on
12 Broad Street and going out to North Gayton Road,
13 would drive through the Short Pump Town Center area,
14 come out on the west side and get onto 64; is that
15 correct?

16 A No, sir.

17 Q You're not proposing that people coming
18 down Broad Street might divert and go through the
19 shopping-center area?

20 A No, sir. What I'm saying is that it is
21 prime economic development property. It is
22 developing in a commercial and retail manner and
23 because of that, there will be large volumes of
24 traffic attracted to that particular acreage, not
25 just Short Pump Town Center, but all of that up and

1 down through there, both east and west of Pouncey
2 Tract and Pump Road. By providing these roads where
3 vehicles can move along to their destination points,
4 which are not necessarily Broad Street, they can get
5 to Gayton Road, Interstate 64, back to Broad Street,
6 Pouncey Tract Road. In essence, they have parallel
7 facilities available to them. These are not people
8 diverted from Broad Street, but people diverted from
9 Broad Street as far as them going to Broad Street as
10 an exit, as they go to this facility, by using other
11 roads.

12 Q Well, aren't you really talking about this
13 ring road being used to help people who are using the
14 shopping center and who may be going outside the
15 shopping center at one end or the other?

16 A Yes, sir. I'm talking about the ring road
17 being used for development both east and west of the
18 Short Pump Town Center and the problems that we have
19 on Pouncey Tract at its intersection with Broad
20 Street and the access to I-64, which is the only
21 available access.

22 THE COURT: But whatever extra traffic is
23 on West Broad Street as a result of this development
24 will be going to the development, won't it? Why is
25 Broad Street going to attract people on it who are

1 not going to the development?

2 THE WITNESS: Your Honor, not only is it
3 access to the development, it is also access to the
4 area. It carries major volumes of traffic.

5 THE COURT: Yes, but people going to the
6 area in any event will be going to the area in any
7 event. The increase on Broad Street will be people
8 going to the shopping mall.

9 THE WITNESS: Or by people leaving the
10 shopping mall, and that's exactly the point I'm
11 making.

12 THE COURT: And those are the people using
13 the ring road.

14 THE WITNESS: That's correct.

15 THE COURT: So if I'm on West Broad Street,
16 if all I want to do is get to I-64, why in the world
17 would I want to go on the ring road that is the
18 magnet for everybody being on West Broad Street?

19 THE WITNESS: I agree with that, sir.
20 I'm -- the point I'm trying to make, it's not the
21 volume of traffic that's on Broad Street and moving
22 on Broad Street, it's those volumes of traffic
23 attracted or inside of that commercial retail and
24 office development that have the availability to use
25 that ring road and that connector road rather than

1 Broad Street to get to those points of access.

2 THE COURT: We are still missing each
3 other. If there are 100 cars per minute in that area
4 of West Broad Street and there is no development, as
5 a result of that development, there are now going to
6 be 150 cars per minute on that area of Broad Street,
7 those extra 50 cars per minute are the people who
8 want to go to the mall.

9 THE WITNESS: I'm with you.

10 THE COURT: If I'm one of the other 100
11 people and all I want to do is go to I-64, why do I
12 want to join those other 50 people who are going to
13 the mall? Why wouldn't I stay on Broad Street, like
14 I've always done?

15 THE WITNESS: I agree with you, and you
16 wouldn't, but if I could take 25 of those 50 people
17 that were attracted to the mall and put them on a
18 parallel road and have them come out of points up or
19 down Broad Street or not ever go onto Broad Street to
20 get to 64, then I can increased my ability to carry
21 capacity and move traffic on Broad Street.

22 THE COURT: All right.

23 BY MR. SABOURIN:

24 Q Let me go back to the meetings that you
25 discussed with some of the Taubman people. The

1 initial meetings that you had after Taubman acquired
2 the Regency Square Mall involved yourself and deputy
3 county manager Harvey Hinson, didn't it?

4 A Yes, sir.

5 Q And Mr. Hinson was also present when you
6 folks went up to Short Hills, New Jersey, correct?

7 A Yes, sir.

8 Q And Mr. Hinson also was involved in the
9 White Oaks facility that located in Henrico County,
10 correct?

11 A Yes, sir.

12 Q And in fact, he was one of the architects
13 of the deal that was negotiated between Henrico
14 County and Siemens and Motorola, wasn't he?

15 A Yes, sir.

16 Q Okay. And he -- first of all, when you
17 went up to Short Hills, that was a mall that was
18 developed on a short -- on a small area, correct?

19 A Correct.

20 Q And it was similar to Regency?

21 A The depiction from Taubman was that it was
22 similar to Regency. It had evolved over time. There
23 was a need for changes added to parking decks to
24 recreate, in essence, an urban mall, different from a
25 suburban mall.

1 Q But it was the type of thing that could be
2 done at Regency?

3 A Yes, that's what they were showing. Yes,
4 sir.

5 Q And following that meeting there was a
6 discussion of possible ways of providing incentives
7 to Taubman in connection with Regency, wasn't there?

8 A Not that I'm aware of. There were meetings
9 along the way, and there may have been some
10 conversation, even in Short Hills, in reference to
11 the problems that we were going to have for zoning,
12 that there was potential for tax-incremental
13 financing, which was the only alternative discussed,
14 brought up by individuals from Taubman. We did not,
15 at that point in time, know whether we could do it or
16 not. It may take General Assembly action, whatever.
17 Those are all the conversations that I'm aware of.

18 Q But I'm focusing on the trip to Short
19 Hills. There were conversations at Short Hills about
20 tax-increment financing, wasn't there?

21 A There were those indications I just made,
22 yes.

23 Q And there were also discussions about IRB
24 financing, wasn't there?

25 A Not to my recollection, no, sir. I will

1 tell you that IRB is something we know exists.

2 That's a normal aspect available to us. It may have
3 come up in the conversation, as a matter of fact. We
4 were exploring other alternatives.

5 Q Now, when Mr. Traudt -- you commissioned
6 Mr. Traudt to prepare an analysis that he did in the
7 fall of 1999, he went and worked with the Forest City
8 folks, didn't he?

9 A Yes, sir.

10 Q You never commissioned anyone to go to work
11 with anyone from Taubman to come up with any type of
12 proposed financing, did you?

13 A I never had any information in reference to
14 cost estimates or overall proposals that we could
15 even consider moving ahead with.

16 Q Is the answer to my question no, you
17 didn't?

18 A I just gave you the answer, sir.

19 Q You never directed Mr. Traudt to go back
20 and Mr. Traudt to talk with the Taubman people about
21 potential ways of financing improvements to Regency,
22 did you?

23 A To the best of my knowledge, Taubman was
24 not requesting such information.

25 THE COURT: You have to answer the

1 question, Mr. Hazelett.

2 THE WITNESS: No.

3 BY MR. SABOURIN:

4 Q And in your conversations with Taubman,
5 they told you of the fact that they were having
6 conversations with the City of Richmond, didn't they?

7 A Yes.

8 Q And they were very up-front about that,
9 weren't they?

10 A Correction, they told me that they were
11 involved in a potential development of Stony Point in
12 the City of Richmond. They never told me they were
13 working with the City of Richmond.

14 Q You didn't understand that they were having
15 conversations with the City of Richmond?

16 A Not till later on. When I was involved
17 with them in reference to discussions about potential
18 for Regency Square, they advised me that was an
19 alternative to their Stony Point development in the
20 City of Richmond. There was never any indication at
21 that point that they were working with the City of
22 Richmond.

23 Q Well, did they indicate to you in 1998 that
24 number one, they had a letter of intent from
25 Nordstrom's?

1 A They had told me -- no, to be direct, no.
2 They told me along the way that Nordstrom's was a
3 potential for Regency Square or Stony Point.

4 Q Did they tell you they had a commitment
5 from Lord and Taylor?

6 A No.

7 Q Did they indicate to you that they would
8 prefer to develop Regency as opposed to Stony Point?

9 A No. They were still considering both.
10 That's the reason that they were asking us the
11 potential questions.

12 Q Now, Jamie Traudt or you indicated that
13 Jamie Traudt let you know that he was interested in
14 serving as the underwriter for these bonds; is that
15 correct?

16 A He did.

17 Q And you knew that the person who served as
18 the underwriter for these bonds would get a
19 significant fee, didn't you?

20 A Yes, sir.

21 Q There was discussion during the course of
22 your testimony from Mr. Rapisarda about the criteria
23 for economic-development incentives, which I believe
24 is Exhibit 26, and I think you have the right
25 notebook.

1 A Yes, sir.

2 Q What date were these criteria accepted by
3 the County?

4 A I can't recall the date, sir. I think
5 Mr. Rapisarda also asked me that question. I don't
6 honestly recall the date. From the standpoint they
7 were developed with consideration of the CDA, they
8 were probably finalized, I would say, in November or
9 December.

10 Q Of 1999?

11 A That would be November, December -- yes,
12 sir, 1999, before our presentation to the board of
13 supervisors, which was February, 2000.

14 Q All right. Has anyone except this project
15 qualified under this criteria?

16 A No, sir.

17 Q Would you take a look at Exhibit 37 in that
18 same book?

19 A Yes, sir.

20 Q That's the minutes of the July 20, 2000
21 meeting of the Economic Development Authority of
22 Henrico County, correct?

23 A Yes, sir.

24 Q And if you take a look at the page that's
25 Bates numbered -- with the last two digits being 72,

1 do you see that?

2 A Yes, sir.

3 Q Okay. That states, and tell me if I'm
4 reading it correctly, "The executive director
5 indicated that the Authority will be asked to act as
6 the conduit for one portion of a complex financial
7 plan," referring to the Short Pump Town Center,
8 correct?

9 A Correct.

10 Q And you were the person who went to
11 Mr. Agostino, who was the executive director, and
12 requested that the EDA serve as a conduit, correct?

13 A Yes, sir.

14 Q And prior to this transaction, you had
15 never gone to him and asked him to -- asked the EDA
16 to serve as conduit for a complex financial plan, had
17 you?

18 A Yes, sir.

19 Q Would you take a look at Exhibit 20 in the
20 other book? I believe it's the exhibits of Taubman.

21 A I have it, I think.

22 Q Exhibit 20 is a letter to you from Bill
23 Axselles dated August 28, 2000.

24 A Yes, sir.

25 Q And on it are -- the second page is the

1 people that he is proposing to serve as members of
2 the Community Development Authority or -- serve as
3 members of the Community Development Authority,
4 correct?

5 A Correct.

6 Q And Mr. Axselle is the attorney for
7 Mr. Pruitt and Forest City?

8 A Yes, sir.

9 Q And these are the people who are appointed
10 members of the CDA, aren't they?

11 A Yes, sir.

12 Q Returning back to those criteria, you would
13 agree that Regency Square could not meet those
14 criteria, wouldn't you?

15 A I would agree that's the indication as I
16 make it.

17 Q You were asked about the letter that you
18 wrote but never sent to the Richmond-Times Dispatch,
19 and you indicated that there was a turning point in
20 the philosophy of Henrico County as far as providing
21 incentives. Can you tell us when that turning point
22 occurred?

23 A That had to do with the closed meeting of
24 the board of supervisors, indication that I should
25 explore all alternatives that were available because